

WHEN RECORDED RETURN TO:
Payson City Recorder
439 West Utah Avenue
Payson City, Utah 84651

Space above for County Recorder's use only

PARCEL I.D. # 34-595-0001
PARCEL I.D. # 34-595-0002

**AGREEMENT TO DELAY AND DEFER POSTING OF PERFORMANCE
GUARANTEE
AND COMPLETION OF IMPROVEMENTS**

THIS AGREEMENT is made this 7th day of June, 2017.

PARTIES

“APPLICANT(S)”: Payson Place, LLC, and American First Federal Credit Union, as property owners and developers, herein referred to as “APPLICANT(S)”, whose Business address is Payson Place LLC, 154 East Myrtle Ave Suite 303, Murray, Utah 84107 and America First Federal Credit Union, P.O. Box 9199, Ogden, UT 84409.

“CITY”: PAYSON CITY, a municipal corporation, herein referred to as “CITY”, whose address is 439 West Utah Avenue, Payson, Utah 84651.

RECITALS

WHEREAS, APPLICANT(S) desires the following permits, approvals or agreements:

DELAY AGREEMENT
AFFCU PAYSON SUBDIVISION,
Plat A, (Lots 1 & 2);

The "APPLICANT(S)", desire the approval of the creation of AFFCU Payson Subdivision, Plat A, (Lots 1 & 2); and

"APPLICANT(S)" are requesting to delay the required performance guarantee and installation of on-site and off-site improvements for Lot 1 & Lot 2 of the AFFCU Payson Subdivision, to delay the installation of roadway improvements along Turf Farm Road, the extension of Growers Grove Blvd within the subdivision, and the installation of utilities and municipal services for Lot 1 and Lot 2 of the AFFCU Payson Subdivision, until such time the property owner and/or applicant for development approval submits a request for Site Plan approval to improve the lots to accommodate a permitted use in the zone, parcels located at approximately 967 South and 919 South Turf Farm Road, Payson, Utah 84651.

The legal description of land where the improvements described herein are to be installed and/or constructed is more particularly described as follows, to wit:

"AFFCU Payson" Subdivision, Plat A, (lot 1) Utah County parcel # 34-595-0001 and (lot 2) Utah County parcel # 34-595-0002, and more particularly described in EXHIBIT "A" attached hereto and incorporated herein by this reference.

WHEREAS, the terms of the issuance of said permits, approvals or agreements require APPLICANT(S) to install and complete the following improvements:

All required off-site improvements and all required on-site improvements, including but not limited to all legally required performance guarantees, permits, and infrastructure improvements including streets, curbs, gutters, sidewalks, the disconnection of any existing utilities and the installation, competition of, and connection to the City utilities, services and infrastructure (i.e. drinking water, pressurized irrigation, sewer, power, etc.) located within 300 feet of the APPLICANT(S) existing parcel above-described.

WHEREAS, CITY cannot grant approval of said subdivision of land and delay of the installation of said legally required improvements, and delay legally required performance guarantees until APPLICANT(S) agrees to the conditions set forth hereunder regarding the above-described improvements.

NOW THEREFORE, in consideration of the premises, the parties agree as follows:

1. CITY agrees to permit APPLICANT(S) to defer completion of the above referenced improvements until such time as the property owner and/or applicant for development approval submits a request for Site Plan approval to improve the lots to accommodate a permitted use in the existing zone or until such time as written notice is sent to the APPLICANT(S) demanding installation and/or completion of any or of all the improvements; or, to reimburse CITY for CITY's installation and/or completion of the improvements at such time as CITY, through written notice to APPLICANT(S), demands reimbursement.
2. Unless otherwise expressly agreed in paragraph 1 above, CITY may require any or all of the improvements to be partially or wholly completed, in any order or pursuant to any timetable deemed appropriate by CITY.
3. Installation of the improvements by the APPLICANT(S) shall commence within 30 days of the date of the written notice or such other time as mentioned in paragraph 1 above, and shall be completed within ninety (90) days of the written notice.

DELAY AGREEMENT
AFFCU PAYSON SUBDIVISION,
Plat A, (Lots 1 & 2);

4. The cost of the improvements and their installation and completion shall be completely and wholly borne by APPLICANT(S).
5. APPLICANT(S) shall not be relieved from the obligation to install the improvements until such installation has been performed to the satisfaction of CITY.
6. Notwithstanding the provisions set forth above, if prior to the deferred time period set out in paragraph 1 above an applicant applies to CITY for approval to develop the property adjacent to the property described above, CITY may require said deferred improvements to be installed at the same time approval is given to develop the adjacent property.
7. The parties expressly agree that CITY may at any time, at its option, install and/or complete the improvements for the property described above. Should CITY exercise its option, APPLICANT(S) shall reimburse to CITY, within 30 days of the date of notice costs resulting from said installation and/or completion.
8. APPLICANT(S) expressly agrees that should APPLICANT(S) fail to install and complete the improvements as required by CITY pursuant to the terms of this Agreement or reimburse CITY for the costs to install and complete the improvements, or otherwise fail to perform its obligation pursuant to the terms of this Agreement, APPLICANT(S) agrees and recognizes CITY's right to recover the costs necessary to install the improvements or obtain reimbursement therefore through foreclosure proceedings on the property described above or obtain reimbursement therefore through any lawful means, including through foreclosure proceedings on the property described above.
9. Parties agree that the property described above is located in a Special Highway Service, "S-1" Zone, and is located along an existing public street or existing public right-of-way containing required infrastructure.
10. APPLICANT(S) agree(s) a performance guarantee shall be provided prior to commencement of any construction.
11. This Deferral Agreement and Release shall be signed by the owner(s) of property and recorded in the office of the Utah County Recorder.
12. The deferral process does not waive or modify any other regulations or requirements of Title 19, Title 20, or any other portion of the Payson City Municipal Code or the Municipal Land Use Development and Management Act, Utah Code Annotated, 10-9a-101 et seq.
13. If APPLICANT(S) sells or leases the property or any portion of the property described above, and the buyer or lessee applies to CITY for approval to develop or improve the property, CITY may require the improvements to be installed at the same time approval is given to develop the property.
14. If a special improvement district is proposed, which district would in whole or in part finance the installation of any or of all the improvements required under this Agreement, APPLICANT(S) expressly agrees not to oppose the forming of the special improvement district or the cost thereof. APPLICANT(S) expressly acknowledges that its obligation for completion of or reimbursement for any improvements which are the subject of this Agreement, but are not or will not be installed as part of the special improvement district, shall not be affected by said special improvement district.
15. Any and all of the obligations of APPLICANT(S) as outlined in this Agreement shall run with the land

described above and shall constitute an encumbrance thereon. The rights, duties and obligations herein shall inure to the benefit of and be binding upon the heirs, successors-in-interest, assigns, transferees, and any subsequent purchaser of the parties.

16. This Agreement contains the complete Agreement concerning the arrangement between the parties with respect to the posting of an infrastructure performance guarantee and/or completion of any or of all the improvements for the infrastructure described herein, and shall supersede all other agreements between the parties, written or oral. All recitals and exhibits are incorporated herein by this reference. This agreement does not waive other conditions of approval for the subdivision.
17. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party.
18. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not be affected thereby, and shall remain in full force and effect.
19. This Agreement, performance hereunder and enforcement of the terms contained herein shall be construed in accordance with and pursuant to the laws of the State of Utah.
20. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions contained herein, or the waiver of any breach of any of the term and conditions contained herein, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver has occurred.
21. In the event CITY commences legal action to enforce or interpret any term of this Agreement, CITY shall be entitled to recover from APPLICANT(S) reasonable attorney's fees, court costs, and any other costs in connection with said action.
22. APPLICANT(S) agrees to indemnify, protect, and save and hold harmless PAYSON, its employees and agents, from and against all losses, damages, injuries, claims, demands, and expenses, including attorneys' fees and court costs of whatsoever nature, arising out of the non-posting of a performance guarantee and/or delay of completion of any or of all the improvements.
23. This Agreement shall be binding upon any and all successors and assigns of all or any portion of the Property. This Agreement may not be assigned to someone other than a purchaser of the Property without written authorization by Payson City.

Dated this _____ day of _____, 2017.

Thom Williamsen, Payson Place LLC

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

On this _____ day of _____, 2017, personally appeared before me, a Notary Public in and for the State of Utah, Thom Williamsen, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person(s), whose name(s) is/are subscribed to this instrument, and acknowledged that he/she/they are the same.

NOTARY PUBLIC

Dated this _____ day of _____, 2017.

Rex Rollo, Exec VP/CFO
America First Federal Credit Union

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

On this _____ day of _____, 2017, personally appeared before me, a Notary Public in and for the State of Utah, Rex Rollo, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person(s), whose name(s) is/are subscribed to this instrument, and acknowledged that he/she/they are the same.

NOTARY PUBLIC

Dated this _____ day of _____, 2017.

RICHARD D. MOORE, MAYOR

STATE OF UTAH)
 : ss
COUNTY OF UTAH)

On this _____ day of June, 2017, personally appeared before me, a Notary Public in and for the State of Utah, RICHARD D. MOORE, Mayor of Payson City, and the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC

EXHIBIT A

A part of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Utah County, Utah:

Beginning at the Northeast Corner of Lot 13 Plat "A" Payson Meadows Subdivision located 1454.03 feet North 89°54'08" East along the Section Line, and 731.48 feet North 0°11'30" West from the South Quarter Corner of said Section 18; said point of beginning being described of record as a rebar and cap stamped with Number 150228, being an original monument at the Northeast Corner of Lot 13 Plat "A" Payson Meadows Subdivision recorded as Entry #77590 Map #7268 Page 85 located North 89°54'12" East 1453.88 feet and North 0°11'30" West 731.48 feet along the East Line of said Payson Meadows Subdivision from the South Quarter Corner of said Section 18; and running thence North 0°11'36" West 0.29 feet (0.38 feet record) to the Boundary Line Agreement recorded as Entry #11238 Book 1197 Page 391; thence North 89°59'03" East 60.22 feet (60.63 feet record) to the Boundary Line Agreement Entry #30214 Book 2633 Page 775; thence North 0°45'56" West 242.39 feet along an existing boundary Line fence; thence North 89°39'20" West 377.63 feet to the East Right-of-Way Line of Turf Road; thence South 1°07'34" East 243.09 feet along said East Line; thence South 89°39'20" East 315.87 feet (315.46 feet record) to the point of beginning.

Contains 91,553 sq. ft.

or 2.102 acres