

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this _____ day of _____, 2017 by and between the City of Payson, a Utah municipal corporation, hereafter referred to as "**City**", and Patterson Construction, Inc., a Utah corporation, hereafter referred to as "**Developer**". The Developer is the owner of the property contained in the "Payson View Estates Subdivision Plat G-1" (the "**Project**"). The City and Developer are sometimes collectively referred to in this Agreement as the "**Parties**".

RECITALS

A. Payson City, acting pursuant to its authority under Utah Code Annotated 10-9a-102 (2) *et seq.*, as amended and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the development and, in exercise of its legislative discretion, has elected to enter into this Agreement.

B. Developer is the owner of certain real property located in Payson, Utah and desires to develop a portion of the Developer's property and is willing to design and construct the project in a manner that is consistent with and intended to promote the long range policies, goals, and objectives of the Payson City General Plan, zoning, and development regulations in order to receive the benefit of vesting for certain uses and density under the terms of this Agreement as more fully set forth herein.

C. The Payson View Estates Subdivision Plat G-1 is located on or about 1370 South 450 East, Payson, Utah and encompasses Utah County Parcel Numbers 30-072-0119, 30-072-0121 (portion), and 30-072-0131 (portion) with the legal description being contained in **Exhibit "A"** attached hereto and incorporated herein by this reference.

D. Parties acknowledge the Project property is located within the Payson View Estates Subdivision and is a single phase of a larger residential development and is subject to the conditions imposed by the Payson City Council for Preliminary Plan approval, Final Plat approval, and the terms of this Agreement.

E. Developer acknowledges the unique physical nature of the development site warrants special conservation methods to protect the natural environment, water resources, hillside areas, utility corridors, the aesthetic qualities of the ridgeline, and other similar project features.

F. Parties acknowledge the Project property is located in an area identified in the Growth and Market Opportunity Analysis dated May 6, 2011 as an area that will be developed in a manner to accommodate dwellings for high-income individuals and families.

G. Developer has prepared and presented to the City land use applications for a single-family residential subdivision to be known as the Payson View Estates Subdivision Plat G-1, hereafter referred to as the "**Project**". The application package was submitted and reviewed by the City pursuant to the requirements of the Payson City Municipal Code and related protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The resulting final approved subdivision plat is referred to herein as the "**Final Plat**" and the approved construction drawings and associated studies and plans are referred to herein as the "**Plans and Specifications**."

H. Developer and City desire to allow the Developer to make improvements to the Property and develop the Project in accordance with the Final Plat and the Plans and Specifications.

I. The Payson City Council has authorized the negotiation of and adoption of a development agreement which advances the policies, goals, and objectives of the Payson City General Plan, and preserve and maintain the atmosphere desired by the citizens of the City. Moreover, the Developer has voluntarily agreed to the terms of this Agreement and hereby acknowledges the obligations to complete the Project in a manner consistent with the approval of the City Council and the regulations of the land use and development ordinances.

J. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement by Resolution_____, a copy of which is attached to this Agreement as **Exhibit "B"**.

AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

- I. Recitals.** The recitals set forth above are incorporated herein by this reference.
- II. Exhibits.** The Exhibits and attachments are intended to be included as if in the body of this Agreement and regulated as such:

Exhibit A – Legal Description of Property

Exhibit B – Adopting Resolution

Exhibit C – Final Plat for Plat G-1 of the Payson View Estates Subdivision

III. Developer Obligations.

- A. **Completion of the Project.** Developer agrees to construct and complete the Project in accordance with the Preliminary Plan, Final Plat and the Plans and Specifications (collectively, the "**Work**") and dedicate to the City all roads and other applicable public infrastructure included within the Project, to the extent to such roads and other public infrastructure are located within the boundaries of the City and are to be operated by the City. Any modification from the approved project drawings must be approved in writing by both Developer and City.

The Payson City Council granted Preliminary Plan approval of the Payson View Estates Subdivision on December 1, 2004, contingent upon the satisfaction of certain conditions. Plat G-1 of the Payson View Estates Subdivision was approved by the Payson City Council on May 3, 2017. Developer hereby agrees to satisfy all conditions imposed by the Payson City Council in conjunction with Preliminary Plan and Final Plat approval as such conditions pertain or relate to the Project.

All infrastructure, roadways, lot improvements, and amenities in the Project must be completed by Developer and inspected and approved by City prior to the issuance of any building permits in the Project. For the purposes of this Agreement, the completion of project infrastructure shall also include on-site and off-site water facilities, storm drainage facilities, off-site sewer line upgrades, grading and slope stabilization, connection of existing dwellings to City infrastructure systems, and removal of buildings. Project landscaping and revegetation must be completed prior to the issuance of an occupancy permit.

- B. **Project Density and Lot Arrangement.** The Project was approved in accordance with Title 19, Zoning Ordinance and Title 20, Subdivision Ordinance. Developer shall be entitled to the project density and lot arrangement for the Project consistent with the approval granted by the Payson City Council and in accordance with the land use ordinances of Payson City adopted and in effect at the time of the signing of this Agreement, together with the Plans and Specifications for the Project. Each dwelling unit in the Project shall be on a separate lot and used for single family purposes only.
- C. **Infrastructure, Circulation, and Access.** All infrastructure and streets shall be constructed in accordance with the Standard Specifications and Standard Plans of Payson City. Developer

agrees to complete all on-site and off-site improvements necessary to provide adequate service to the Project. The following are improvements are specific to Plat G-1:

- i. Developer agrees to update the service connections to the existing single family dwellings on Lot 111 in a manner that satisfies the Standard Specifications and Standard Plans of Payson City. Developer shall submit the appropriate connection and impact fees for the connection of the dwelling to the Payson City infrastructure system. Developer further agrees to properly terminate and cap or remove, as the case may be, the existing on-site water and sewer services.
- ii. The accessory structure that straddles the property line of Lot 111 must be demolished prior to the issuance of any building permit. Prior to removal of any structures, Developer agrees to obtain a demolition permit.
- iii. The lots in the Project will not have access to irrigation water because the lots are located above the pressure zone of the pressurized irrigation system. Developer agrees to provide written notice to all potential property owners that connection to the pressurized irrigation system of Payson City is not available. All outdoor irrigation will be provided through an automatic sprinkling system connected to the drinking water system of Payson City and future property owners will be required to pay drinking water usage rates for the water. Because drinking water will be used for outdoor purposes, each lot will establish and maintain the limits of disturbance area for the lot.
- iv. Developer agrees to coordinate with the private utility providers to ensure underground placement of existing overhead facilities and installation of all new facilities prior to the placement of asphalt. The improvements shall be completed, inspected and approved prior to the issuance of any building permits in the Project. There are existing private utility services on the property included in Plat G and Plat H of the Payson View Estates Subdivision. Developer agrees to observe all rights and privileges included in the easement and/or right-of-way documents recorded in favor of the private utility companies.

Developer understands and agrees that no more than ten (10) units can be constructed on one point of ingress/egress. Developer agrees to provide at least two points of ingress/egress at all times, including during the construction phase of the project. Developer shall provide turn-around areas consistent with the land use and development ordinances and the adopted fire code for any temporary dead end roads.

D. Soil Analysis, Grading, Landscaping, and Slope Stabilization. Due to the location of the Project (hillside development), the sensitive nature of the area, geotechnical issues, and other matters related to development on slopes, additional requirements are necessary.

- i. All recommendations and suggestions of the geotechnical report prepared for the Payson View Estates Subdivision must be addressed, unless a stricter or more intensive regulation is required by the land use and development ordinances of Payson City. At a minimum, Developer agrees to complete, or cause to complete, the following recommendations of the geotechnical report:
 - a. Provide at least twenty-four (24) inches of structural fill beneath all footings.
 - b. Provide no less than a four (4) inch layer of free-draining gravel placed immediately below each floor slab.
 - c. Satisfy "Zone 3" seismic requirements.
 - d. Proof roll each building site in accordance with the geotechnical report.
 - e. Pavement design shall be consistent with the geotechnical report.
 - f. Excavation the potential seismic fault to determine adequate protection measures for all structures in the Project.
- ii. Improvements on the lots must be completed in a manner that controls runoff from impervious cover and slopes steeper than 2:1 must be properly retained. Retaining walls, berms, anchors, and other slope stabilization techniques must be properly design, and possibly engineered. A grading and stabilization plan will need to be prepared that addresses lot to lot drainage, imported fill and compaction, and other

slope stabilization methods. Stabilization methods must be properly designed and approved by Payson City prior to installation. City does not participate, arbitrate or resolve drainage issues between private property owners; however, a building permit, or occupancy permit as the case may be, will not be issued for any structure the City finds will not properly drain without trespass onto adjacent properties or if the lot to lot drainage and slope stabilization methods are not implemented by the lot owner.

- iii. In order to protect the storm drainage system, avoid erosion, eliminate noxious weeds, and improve aesthetics, the lots will need to be fully landscaped prior to the issuance of a Certificate of Occupancy.
 - iv. Because of the topography of the land, all stabilization methods and landscaping must be completed prior to the issuance of an occupancy permit. All landscape and lawn areas, including those in the landscape planter strip, shall be maintained by an underground automatic sprinkler system.
- E. **Sensitive Lands, Wildland Urban Interface, and Wildlife Protection Plan.** The Project is located in an area that contains sensitive environmental and geologic constraints. Developer acknowledges that development in this area will be subject to any improvement and construction regulations adopted by Payson City related to Sensitive Lands and Wildland Urban Interface areas. The Utah Division of Wildlife Resources (UDWR) has determined the Project will impact valuable wildlife habitat. Developer understands and agrees to implement the wildlife protection plan submitted in conjunction with the Project.
- F. **Conveyance or Dedication of Required Easements.** Prior to the construction of a particular utility facility, Developer shall convey or dedicate or cause to be conveyed and dedicated to the applicable public entity or other applicable utility provider, at no cost, such required utility easements on or across the Project as are necessary to facilitate the extension of those required utility services to be constructed to and throughout the Project and as are shown on the Plans and Specifications.
- G. **Assurance for Completion of Improvements.** Developer agrees to provide a performance guarantee for all infrastructure improvements that will be dedicated to Payson City, required landscaping, and stabilization improvements. The performance guarantee shall be equal to one hundred twenty (120) percent of the approved engineer's cost estimate and in cash or in the form of an irrevocable letter of credit. Developer will also submit, in cash, an amount consistent with the Payson City Fee Resolution that will be used to complete public works inspections and testing requirements. Developer will provide, in cash, the amount necessary to complete the one (1) inch asphalt overlay for all roadways in the Project once ninety (90) percent of the dwellings in the Project have been constructed.
- H. **Recordation of Project Declaration.** Prior to the Developer's conveyance of any Lot in the Project, Developer shall cause to be recorded against the Project a Declaration of Covenants, Conditions and Restrictions (the "**Project Declaration**"). At a minimum, the Project Declaration shall:
- i. Include information about the acceptable building styles and standards for the Project, including acceptable building styles and architectural details, exterior materials, dwelling size, and other development standards deemed necessary and appropriate by the City and Developer;
 - ii. Include information related to erosion control, slope stabilization, and revegetation of the Lots;
 - iii. Include information to ensure the requirements related to Sensitive Lands, Wildland Urban Interface, and the Wildlife Protection Plan are implemented; and
 - iv. The Project Declaration shall be signed and recorded in the office of the Utah County Recorder and deed restrict the Project so the CC&R's shall run with the land regardless of ownership.

Developer and City acknowledge that the Project Declaration is not enforced by City but are a civil matter to be legally enforced in a court having appropriate jurisdiction.

- I. **Residential Dwelling Design Elements.** Because of the unique and highly visible location of the Project, Developer agrees to construct dwellings that will accommodate housing for high-income individuals and families and reduce the visual impact of the Project on critical view corridors. Developer agrees to implement the following design elements in the development:
- i. It is anticipated that the dwelling units will increase in size as the Subdivision progresses up the hillside. The minimum square footage requirements are as follows:
 - a. Lots 105-114: Each single-story dwelling unit shall contain no less than fourteen hundred (1400) square feet of finished floor space on the main level, and each two-story dwelling unit shall contain no less than twenty-one hundred (2100) square feet of total finished floor space.
 - b. Lots 115 and 116: Each single-story dwelling unit shall contain no less than sixteen hundred (1600) square feet of finished floor space on the main level, and each two-story dwelling unit shall contain no less than twenty-four hundred (2400) square feet of total finished floor space.
 - ii. Each dwelling unit shall be constructed using primarily brick, stucco, stone, and cementitious siding as exterior materials with the exception of roofing materials, eaves, doors, windows, and other similar architectural details. Vinyl and metal siding is limited to eaves, soffits, and fascia areas. Use of other building materials, such as wood, vinyl, and engineered wood siding may be used as an accent material on dormers and gables. The use of natural earth tones will be encouraged and muted colors will be required.
 - iii. White siding or other reflective materials will not be allowed, except for trim and small cosmetic areas, in limited amounts. The use of cathedral windows or other large areas of reflective materials, such as glass may not be allowed. Roofing materials shall be either approved wood shingles (with acceptable fire rating), composition asphalt shingles, or tile.
 - iv. Rooflines must be kept at 6/12 pitch or higher, and the primary pitch of the roof shall be parallel to the natural slope of the land.
 - v. Developer agrees to vary the elevations so that similarly designed homes are not located on adjoining lots or across the street from one another. Variations in colors, material treatments, elevation details, rooflines, and other features can be adequately altered to avoid a tract feel in the development.
 - vi. Each dwelling unit shall contain at least an attached two-car garage that measures no less than twenty (20) feet by twenty (20) feet. Recessed garage doors and other creative solutions to avoid having the garage appear as the dominant architectural feature of the home will be stressed in the development. Side entry garages that do not face public streets, garage doors that are recessed from the front of the structure, or other creative solutions are highly encouraged.
 - vii. The addresses will be back lit and a contrasting color to the background color. Because some of the lots are relatively large and contain significant vegetation, if the homes are not visible from the roadway, a lit address marker will need to be placed adjacent to the road.
 - viii. Recreational vehicles, motorhomes, boats, trailers, and other similar apparatus shall be stored and maintained within an enclosed structure or located behind the front of the dwelling and screened from public view by a sight-obscuring fence.

IV. **Vested Rights and Reserved Legislative Powers.**

- A. **Vested Rights.** Developer shall have the vested right to develop and construct the Project in accordance with the underlying zoning designation, the Preliminary Plan, the Final Plat, and the Plans and Specifications, subject to compliance with the terms and

conditions of this Agreement and the other applicable ordinances and regulations of the City.

- B. **Reserved Legislative Powers.** Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer with respect to use under the zoning designations under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the County; and, unless in good faith the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

V. **Term.** This Agreement shall be effective as of the date of execution, and upon recordation, shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised.

VI. **General Provisions.**

A. **Notices.** All Notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, by nationally recognized overnight courier, or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to:

If to City: Payson City Corporation
439 W. Utah Avenue
Payson, Utah 84651
Attention: City Recorder

If to Developer: Patterson Construction, Inc.
11038 Highland Blvd
Highland, UT 84003

or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective.

B. **Mailing Effective.** Notices given by mail shall be deemed delivered seventy-two (72) hours following deposit with the U.S. Postal Service in the manner set forth above. Notices that are hand-delivered or delivered by nationally recognized overnight courier shall be deemed delivered upon receipt.

C. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach by the same of any other provision of this Agreement.

D. **Meet and Confer regarding Development Application Denials.** The City and Developer shall meet within fifteen (15) business days of any recommendation for denial by the City staff to resolve the issues specified in the recommendation for denial of a development application.

E. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any provision this Agreement.

F. **Authority.** The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Developer represents and warrants that each party is fully formed and validly existing under the laws of the State of Utah, and that each party is duly qualified to do business in the State of Utah and each is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing.

G. **Entire Agreement.** This Agreement, including exhibits, constitutes the entire Agreement between the parties.

H. **Amendment of this Agreement.** This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Utah County Recorder's Office.

I. **Severability.** If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purpose of this Agreement and the Developer's ability to complete the Project is not defeated by such severance.

J. **Governing Law.** The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Utah County, Utah, and the Parties hereby waive any right to object to such venue.

K. **Remedies.** If any party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.

L. **Attorney's Fee and Costs.** If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

M. **Binding Effect.** The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns.

N. **Assignment.** The rights of the Developer under this Agreement may not be transferred or assigned, in whole or in part except by written approval of the City. Developer shall give notice to the City of any proposed or requested assignment at least thirty (30) days prior to the effective date of the assignment. City shall not unreasonably withhold its consent to assignment. The provisions of this paragraph shall not prohibit the granting of any security interests for financing the acquisition and development of the Project, subject to the Developer complying with applicable law and the requirements of this Agreement. The provisions of this paragraph shall also not prohibit Developer's sale of completed subdivision Lots within the Project.

O. **Third Parties.** There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

P. **No Agency Created.** Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.

[Signatures on following page]

CITY

CITY OF PAYSON
A Utah Municipal Corporation

By: _____
Richard D. Moore,
Payson City Mayor

By: _____
Mark A. Sorenson,
Payson City Attorney

STATE OF UTAH)
)
 : ss.
County of UTAH)

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah

DEVELOPER

PATTERSON CONSTRUCTION, INC., a Utah corporation

By: _____
James K. Patterson, President

STATE OF UTAH)
 : ss.
County of UTAH)

On this ____ day of _____, 2017, before the undersigned notary public in and for the said state, personally appeared JAMES K. PATTERSON, known or identified to me to be the President of Patterson Construction, Inc., a Utah corporation, and the person who executed the foregoing instrument on behalf of said Corporation and acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah

Exhibit "A"
(Legal Description of Property)

Exhibit “B”
(Adopting Resolution)

Exhibit "C"
(Final Plat for Plat G-1 of the Payson View Estates Subdivision)
