

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

**DEVELOPMENT AGREEMENT
FOR
GATEWAY BUSINESS PARK PHASE I**

THIS AGREEMENT is entered into this _____ day of September, 1999, between

- HORIZON ENTERPRISES, INC.**, a Utah corporation, by Bill Bertolio, its President;
- CREEKSIDE, INC.**, a Utah corporation, by Glenn Foust, its President;
- STEVEN MISENER**, an individual;
- LOGAN CROSSROADS ASSOCIATES, L.L.C.**, a Utah limited liability company; by its Manager, Excel Investment Corporation, a Utah corporation, by Steven E. Smoot, its President;
- FC HOLDING 5050, LTD.**, a Utah limited partnership, by Stana S. Kjar, its general partner;
- SUMMERWOOD DEVELOPMENT, LTD.**, a Utah limited partnership, by Steven E. Smoot, its general partner;
- R. DEE ERICKSON**, an individual;
- W. SCOTT KJAR**, an individual;
- STEVEN E. SMOOT**, an individual;

ENT 725111 Bk 911 Pg 1030
DATE 29-SEP-1999 4:01PM FEE 58.00
MICHAEL L GLEED, RECORDER - FILED BY MG
CACHE COUNTY, UTAH
FOR PROVIDENCE CITY

(hereinafter collectively referred to as the "Developer") and **THE CITY OF PROVIDENCE**, a Utah municipal corporation (hereinafter referred to as the "City").

WHEREAS, the Development has been approved by the City for construction. Said Development is described as follows:

Gateway Business Park Phase I

Final Plat for which was recorded on the 29 day of September, 1999 in the Cache County, Utah Recorder's Office as Filing No. 725110.

Said development plan is on file in the office of Providence City and in the office of the Providence City Engineer, and is hereby incorporated by reference herein; and

WHEREAS, said Development plan indicated improvements to be made in access, streets, water, sewer, utilities, etc., as specified in the Providence City Subdivision Ordinance; and

WHEREAS, it is necessary in the interest of public welfare that improvements made be constructed in accordance with the specifications set forth in said plan and as provided by Providence City Ordinances; and

WHEREAS, in accordance with said regulations of Providence City, the Developer is required to furnish security of performance to secure the completion of all required improvements. Now, therefore, to induce the City of Providence to approve said plan and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

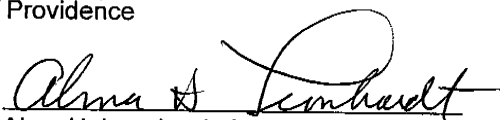
allow use of utilities, access and/or other improvements, the Developer does hereby unconditionally promise and agree to and with the City of Providence as follows:

1. That after approval of said plan, the Developer will construct all improvements as required to the furthestmost structure in said development, which improvements shall be installed in accordance with the PUBLIC IMPROVEMENT INSTALLATION AND DEVELOPMENT ADDENDUM, attached hereto as Addendum #1 (with Exhibits A through D attached thereto) (collectively the "Addendum"), and by this reference made a part hereto. All improvements, streets, and utilities as shown on said plan and as required by Providence City Ordinances will be completed on or before the date which is two (2) years after the date that the Final Plat is recorded.
2. In the event that the owner of any lot within the Subdivision requests the City to issue a building permit for the construction of any building upon any lot within the subdivision described upon the Final Plat prior to the substantial completion of the installation of the minimum Public Improvements as provided in accordance with City Ordinance 11-5-2 the Developer agrees to post security of performance with the City as more fully set forth in Section 1(f) of the Addendum. Developer shall also be obligated to provide a one (1) year warranty for the Public Improvements as more fully set forth in Section 1(e) of the Addendum.
3. In the event the Developer fails to repair any defective Public Improvements after receipt of written notice from the City, the City may proceed to foreclose said security of performance as more fully set forth in Section 1(e) of the Addendum.

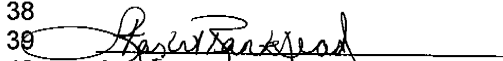
IN WITNESS THEREOF, the parties hereto have hereunto set their hands.

City of Providence

By:


Alma H. Leonhardt, Mayor

Attest:


Skarlet Bankhead, Recorder

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

HORIZON ENTERPRISES, INC.,
a Utah corporation

By: Bill Bertolio
Bill Bertolio, its President

CREEKSIDE, INC.,
a Utah corporation

By: Glenn Foust
Glenn Foust, its President

Steven Misen
STEVEN MISENSER, an individual

LOGAN CROSSROADS ASSOCIATES, L.L.C.,
a Utah limited liability company;

By: Its Manager
Excel Investment Corporation,
a Utah corporation

By: Steven E. Smoot
Steven E. Smoot, its President

FC HOLDING 5050, LTD.,
a Utah limited partnership

By: Stana S. Kjar
Stana S. Kjar, its general partner

SUMMERWOOD DEVELOPMENT, LTD.,
a Utah limited partnership

By: Steven E. Smoot
Steven E. Smoot, its general partner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

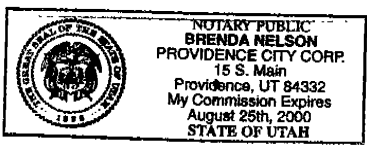
R. Dee Erickson
R. DEE ERICKSON, an individual

W. Scott Kjar
W. SCOTT KJAR, an individual

Steven E. Smoot
STEVEN E. SMOOT, an individual

STATE OF UTAH)
 :
COUNTY OF CACHE)

On this 29 day of Sept, 1999 personally appeared before me, Alma H. Leonhardt, and Skarlet Bankhead, who did say that they are the Mayor and City Recorder respectively of **THE CITY OF PROVIDENCE**, a Utah municipal corporation, and that the said instrument was signed in behalf of said corporation by authority of a resolution of the City Council and the aforesaid officers acknowledged to me that said corporation executed the same.

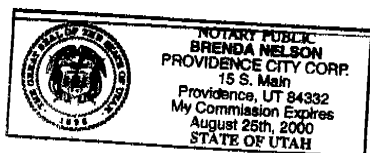


Brenda Nelson
Notary Public
Residing at: *Cache Co*
My Commission Expires: *Aug 25, 2000*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

STATE OF UTAH)
:
COUNTY OF CACHE)

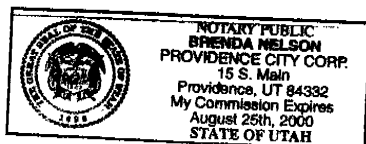
On this 28 day of Sept, 1999 personally appeared before me, **BILL BERTOLIO**, and who, being by me duly sworn, says that he/she is the President of **HORIZON ENTERPRISES, INC.**, the corporation that executed the above and foregoing instrument and that said instrument was signed by him/her in behalf of said corporation by authority of its by-laws, (or by authority of a resolution of its board of directors, as the case may be) and said **BILL BERTOLIO** acknowledged to me that said corporation executed the same.



Brenda Nelson
Notary Public
Residing at: *Cache Co*
My Commission Expires: *Aug 25, 2000*

STATE OF UTAH)
:
COUNTY OF CACHE)

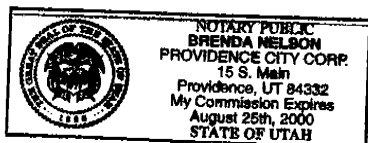
On this 28 day of Sept, 1999 personally appeared before me, **GLENN FOUST**, and who, being by me duly sworn, says that he/she is the President of **CREEKSIDE INC.**, the corporation that executed the above and foregoing instrument and that said instrument was signed by him/her in behalf of said corporation by authority of its by-laws, (or by authority of a resolution of its board of directors, as the case may be) and said **GLENN FOUST** acknowledged to me that said corporation executed the same.



Brenda Nelson
Notary Public
Residing at: *Cache Co*
My Commission Expires: *Aug 25, 2000*

1 STATE OF UTAH)
2 : ss.
3 COUNTY OF CACHE)
4

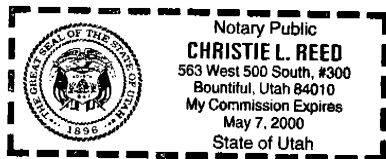
5
6 On this 28 day of Sept., 1999, personally appeared before
7 me, **STEVEN MISENER**, signer of the foregoing instrument, who duly acknowledged to me
8 that he executed the same.
9



Brenda Nelson
Notary Public
Residing at: Cache Co
My Commission Expires: Aug 25, 2000

20
21
22
23 STATE OF UTAH)
24 : ss.
25 COUNTY OF DAVIS)
26

27
28 On this 27th day of September, 1999, personally appeared before
29 me **STEVEN E. SMOOT**, and who, being by me duly sworn, says that he/she is the
30 President of **EXCEL INVESTMENT CORPORATION**, which corporation is the manager
31 of **LOGAN CROSSROADS ASSOCIATES, L.C.**, the limited liability company that executed
32 the above and foregoing instrument and that said instrument was signed by him/her by
33 authority of its by-laws, (or by authority of a resolution of its board of directors, as the case
34 may be) in behalf of said corporation in its capacity of manager of said limited liability
35 company.
36

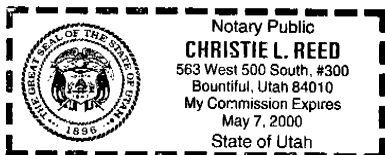


Christie L. Reed
Notary Public
Residing at: Bountiful, Utah
My Commission Expires: May 7, 2000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

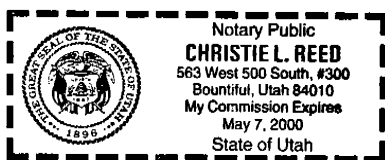
On this 27th day of September, 1999, personally appeared before me **STANA S. KJAR**, who is the general partner of **FC HOLDING 5050, LTD.**, a Utah limited partnership, which limited partnership is the signer of this instrument and he acknowledged to me that the foregoing instrument was signed by her in behalf of **FC HOLDING 5050, LTD.**, and said **STANA S. KJAR** acknowledged to me that said limited partnership executed the same.



Christie L. Reed
Notary Public
Residing at: Bountiful, Utah
My Commission Expires: May 7, 2000

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 27th day of September, 1999, personally appeared before me **STEVEN E. SMOOT**, who is the general partner of **SUMMERWOOD DEVELOPMENT, LTD.**, a Utah limited partnership, which limited partnership is the signer of this instrument and he acknowledged to me that the foregoing instrument was signed by him in behalf of **SUMMERWOOD DEVELOPMENT, LTD.**, and said **STEVEN E. SMOOT** acknowledged to me that said limited partnership executed the same.

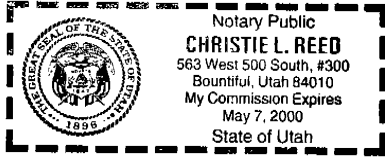


Christie L. Reed
Notary Public
Residing at: Bountiful, Utah
My Commission Expires: May 7, 2000

1 STATE OF UTAH)
 2 : ss.
 3 COUNTY OF DAVIS)
 4
 5

6 On this 27th day of September, 1999, personally appeared before
 7 me **W. SCOTT KJAR, STEVEN E. SMOOT, and R. DEE ERICKSON**, signers of the
 8 foregoing instrument, who duly acknowledged to me that they executed the same.
 9

10
 11
 12
 13
 14
 15
 16



Christie L. Reed
 Notary Public
 Residing at: Bountiful, Utah
 My Commission Expires: May 7, 2000

**ADDENDUM #1 TO DEVELOPMENT AGREEMENT
FOR GATEWAY BUSINESS PARK PHASE 1**

PUBLIC IMPROVEMENT INSTALLATION AND DEVELOPMENT ADDENDUM

This PUBLIC IMPROVEMENT INSTALLATION AND DEVELOPMENT ADDENDUM shall constitute an addendum to that certain DEVELOPMENT AGREEMENT FOR GATEWAY BUSINESS PARK PHASE 1, dated September _____, 1999, by and between and **HORIZON ENTERPRISES, INC.**, a Utah corporation; **CREEKSIDE, INC.**, a Utah corporation; **LOGAN CROSSROADS ASSOCIATES, L.L.C.**, a Utah limited liability company; **FC HOLDING 5050, LTD.**, a Utah limited partnership; **SUMMERWOOD DEVELOPMENT, LTD.**, a Utah limited partnership; **STEVEN MISENER**, an individual; **R. DEE ERICKSON**, an individual; **W. SCOTT KJAR**, an individual; **STEVEN E. SMOOT**, an individual; (collectively the "Developer"); and **THE CITY OF PROVIDENCE**, a Utah municipal corporation (the "City"); in contemplation of the following facts and circumstances:

A. The Developer is the owner of certain parcels of real property (the "Development Property") located within the corporate limits of the City.

B. The City is a Utah municipal corporation that has jurisdiction over the development of the Development Property.

C. The Developer has submitted to the City preliminary plat of the Development Property (the "Preliminary Plat") and the City has approved the Preliminary Plat for Preliminary Approval in accordance with the applicable Subdivision Ordinances of the City.

D. In accordance with the Preliminary Plat previously submitted to the City and as required by the Subdivision Ordinances of the City, the Developer has submitted to the City the proposed final plat for the development of the Development Property for a commercial subdivision to be known as **GATEWAY BUSINESS PARK SUBDIVISION** (the "Subdivision"). A copy of the fully executed Final Plat (the "Final Plat") that has been approved by the City is attached hereto as Exhibit "A". The improvements to be located within the proposed public rights of way of the Subdivision are more fully described on the approved construction plans attached hereto as Exhibit "B" (collectively the "Approved Construction Plans"). Said improvements shall be installed by the Developer. The estimated quantities of said improvements, and the costs thereof are more fully set forth on Exhibit "C", attached hereto. The improvements set forth on Exhibit "B" and Exhibit "C" attached hereto are hereinafter collectively referred to as the "Public Improvements".

E. The Developer is desirous: (i) that the City approve the Final Plat and cause the Final Plat to be recorded with the Cache County Recorder as set forth herein; (ii) to construct and install the Public Improvements in accordance with the Final Plat and the Approved Construction Plans.

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BE BB GF LA SM SM SES SS SSK SSK RDE RLC WSK LOSK Page 1 of 12

F. The City is willing to (i) approve the Final Plat and cause the Final Plat to be recorded with the Cache County Recorder as set forth herein; and (ii) allow the Developer to proceed with the construction of the Public Improvements in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Addendum and in the Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Approval of Final Plat and Construction Plans; Construction of Public Improvements by Developer.** The City has reviewed and approved: (a) the Final Plat attached hereto as Exhibit "A" and the Approved Construction Plans attached hereto as Exhibit "B". Any changes to the Approved Construction Plans shall require the approval of the City. The Public Improvements shall be constructed and installed as follows:

a. The Developer shall construct and install the Public Improvements in accordance with the Subdivision Ordinances.

b. All Public Improvements shall be constructed and installed according to the Approved Construction Plans and shall be inspected by and approved by the City. Subsequent to the completion of the construction and installation of the Public Improvements by the Developer and the inspection, approval, and acceptance thereof by the City, the Developer shall submit to the City "As-Built Construction Plans" showing the exact location of the Public Improvements installed by the Developer. The Developer shall also be responsible to pay the cost of any soils compaction tests reasonably required by the City.

c. The Developer shall complete the construction and installation of the Public Improvements within two years after the date of the recordation of the Final Plat.

d. The Developer shall in writing, no later than two weeks prior to the required date of completion, request inspection by the City Engineer and City Staff. As Built Drawings of the Public Improvements shall be submitted to the City at the time of inspection. Upon completion of the required inspections, the Developer will be notified in writing by the City whether or not the City has approved and accepted the Public Improvements. In the event that the City determines that any of the Public Improvements installed by the Developer are defective, the City shall notify the Developer in writing and set forth any defective Public Improvements that require either replacement or repair. Upon satisfactory replacement or repair of said defective Public Improvements by the Developer, the Developer shall request re-inspection of the Public Improvements in question, whereupon the City Engineer and City Staff will re-inspect the Public Improvements that have been either repaired or replaced to determine if the defective Public Improvements have been satisfactorily repaired or replaced.

e. Upon completion of the construction of the Public Improvements and the inspection, approval and acceptance thereof by the City, the Developer shall provide to the City a one year written guarantee for all Public Improvements to the effect that the Developer shall agree to repair or replace any of the Public Improvements that are determined to be defective within one (1) year (the "Warranty Period") after the date that the City has approved and accepted Public

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL SB BB GF LASM SM SES SSK RDB WSK Page 2 of 12

Improvements. Said Warranty Period shall commence upon the date of written acceptance of the Public Improvements by the City and shall expire one (1) year thereafter. Specifically, the Developer shall warrant that the Public Improvements shall remain in good condition and free from all defects in performance, materials and workmanship during the Warranty Period except where such damage or defects are caused by misuse, vandalism, or negligent acts of parties other than the Developer. In addition to the written guarantee, the Developer shall deliver to the City a bond, letter of credit, or cash deposit equal to 10% of the cost of the Public Improvements (the "Developer Warranty Bond Funds") to guarantee the replacement by the Developer of any of the Public Improvements that are determined to be defective within the Warranty Period. At any time during the construction period or the Warranty Period the City may inspect the Public Improvements to determine if any of the Public Improvements have become defective. In the event that the City discovers any defects in any of the Public Improvements during either the construction period or during the Warranty Period, the City shall deliver to the Developer a written notice (the "Public Improvement Repair Notice"), which Public Improvement Repair Notice shall be in substantially the same form and substance as the form attached hereto as Exhibit "D". The Public Improvement Repair Notice shall: (i) state that all or a portion of the Public Improvements are defective; (ii) set forth the nature and extent of the defects in the Public Improvements; (iii) put the Developer on notice that unless the Developer repairs or replaces the defective Public Improvements as required in the Public Improvement Repair Notice within ninety (90) days after Developer's receipt of the Public Improvement Repair Notice, weather permitting, the City shall cause the Public Improvements to be repaired or replaced as set forth in the Public Improvement Repair Notice and shall draw upon the Developer Warranty Bond Funds to pay the cost of the repair or replacement of said defective Public Improvements.

The Developer shall have ninety (90) days, weather permitting, after receipt of the Public Improvement Repair Notice to either repair or replace the defective Public Improvements in accordance with the Public Improvement Repair Notice. If the Developer fails to so repair or replace the defective Public Improvements then the City shall cause the defective Public Improvements to be either repaired or replaced, as the case may be. The City shall then have the right to be reimbursed the reasonable cost of the repair or replacement of the defective Public Improvements from the Developer Warranty Bond Funds, or from the Developer, in the event said funds are insufficient.

The foregoing notwithstanding, in the event that any defective Public Improvements are of such a nature that it is determined by the City, in its reasonable discretion, that such defective Public Improvements would pose a threat to the public safety if such defective Public Improvements are not repaired or replaced sooner than the above-referenced ninety (90) days, the City shall so notify the Developer by whatever means is reasonable for the given situation and state what the City has determined to be a reasonable time frame for repair or replacement of such defective Public Improvements. The Developer shall then either provide to the City reasonable assurances that such defective Public Improvements shall be either repaired or replaced within the applicable time period or authorize the City to undertake the repair or replacement of the defective Public Improvements in question. In the event that the Developer either: (i) is unable to provide to the City reasonable assurances that the defective Public Improvements in question will be repaired or replaced within the time frame provided by the City; or (ii) authorizes the City to undertake the repair or

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BB BB GF LA SM SM SES SES SSK SSK RDE RDE WSK WSK Page 3 of 12

ENT 725111 Bk 911 Pg 1040

replacement of the defective Public Improvements in question, the City shall undertake the repair or replacement of the defective Public Improvements in question and shall have the right to be reimbursed from the Developer Warranty Bond Funds, or from the Developer, in the event said funds are insufficient, for the costs that have been reasonably incurred by the City to undertake the repair or replacement of the defective Public Improvements in question.

f. The Developer may sell any of the Lots within the Subdivision subsequent to the recording of the final plat. A building permit cannot be issued prior to the completion and acceptance of the minimum improvements required by the City. The minimum improvements are:

1. All rough grading of roads (including base courses) as shown on the approved construction drawings;
2. Water, sewer, power and all other utilities that will be placed in the road bed as identified on the approved construction drawings; and
3. Egress and ingress to provide acceptable and safe travel to and from each lot in the approved subdivision. (See City Ordinance No. 11-5-2)

In the event that the owner of any lot within the Subdivision requests the City to issue a building permit for the construction of any building upon any lot within the Subdivision prior to the substantial completion of the installation of all required Public Improvements, the Developer shall deliver to the City a bond, letter of credit, or cash deposit (the "Developer Completion Bond Funds") equal to the lesser of: (a) 150%; or (b) the percentage required by the completion bond ordinance in effect at the time, of the cost of the remaining Public Improvements required by said City Ordinance and as shown on the construction drawings, that remain to be installed as of the date of the request for a building permit to guarantee the installation by the Developer of said incomplete Public Improvements. The One year warranty of the Public Improvements as set forth above, shall also apply.

g. The estimated quantities of the Public Improvements, and the costs thereof are more fully set forth on the Public Improvement Construction Cost Breakdown, attached hereto as Exhibit "C".

2. **Street Improvements.** The Developer agrees to construct the following streets as indicated on the Final Plat and the Approved Construction Plans:

a. **Easterly Extension of Golf Course Road.** The Developer shall construct a sixty foot (60') wide right-of-way and shall also provide an additional ten foot (10') wide easement for future expansion of the roadway (the "10 Foot Expansion Easement") on each side of the sixty foot (60') wide public right-of-way to provide a total right of way width of 80 feet. A cross section thereof is included on page 6 of the Approved Construction Plans. Measurement of required setbacks for parking lots shall begin at the edge of the sixty foot (60') wide public right-of-way line. Therefore the 10 Foot Expansion Easement shall be credited towards the parking lot set back required by the City notwithstanding the fact that the sidewalk is located within the 10 Foot Expansion Easement. The Easterly extension of Golf Course Road shall begin on the Westerly corporate boundary of the City and shall extend Eastward to Spring Creek Parkway Road.

(i) Originally the City had requested a right of way with a total width of sixty feet (60') for the extension of Golf Course Road. The Developer will pay for 35' of asphalt

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BB GF AA SM SM SES SL SSK SK RDE AL WSK WR Page 4 of 12

roadway. As a result of a joint coordination meeting with Logan City, the City has required the Developer to increase the asphalt width of the Golf Course roadway an additional nine feet (9') from 35 feet to 44 feet provided that the City agree to pay for costs of installing the additional nine feet (9') of the increased width of the asphalt roadway as follows:

(a) Upon completion of the installation of the extension of Golf Course Road the City shall pay to the Developer an amount equal to \$5,327 (1,385 lineal feet of 4' width multiplied by \$0.97 per square foot, as per bid from Ron Foster) for the first four feet (4') of the increased asphalt road width;

(b) The City agrees to reimburse the Developer an amount equal to \$6,657 (1385 lineal feet of 5' width multiplied by \$0.97 per square foot, as per bid provided by Ron Foster) (the "Sales Tax Road Reimbursement Incentive") for the cost of the last five feet (5') of increased asphalt road width located within the Subdivision, which reimbursement shall be paid from fifty percent (50%) of all sales taxes paid to the City that are attributable to businesses located within the Subdivision during the ten (10) year period (or until such amount is fully reimbursed) subsequent to the completion and acceptance of the subdivision by the City or at the end of the two (2) year construction period. Said Sales Tax Road Reimbursement Incentive shall be interest free.

b. Extension of Roadway Across Spring Creek. The Developer agrees to pay for the cost to design, construct and install that portion of road crossing Spring Creek and extending east to the Parkway Road. Developer shall complete that portion of the Golf Course Road that lies within the corporate boundaries of Logan City and connects to State Road 165.

c. Gateway Drive. The Developer shall construct and install Gateway Drive as a sixty-six foot (66') wide right of way. (See cross section thereof on Page No. 6 of the Approved Construction Plans) with the South end thereof ending in a cul-de-sac and the North end thereof extending to the Northerly boundary of the Subdivision.

d. Developer to Pay Costs of Public Improvements. Except as otherwise set forth herein, the Developer shall be responsible to pay for the costs of the design, construction and installation of the Public Improvements, including, but not limited to, the cost of installation of the sidewalk upon the 10 Foot Expansion Easement and on the Providence City easements and property where required to complete the extension of the "Walking Trail" crossing Spring Creek and east to the Spring Creek Park Way as referenced in Section 14, below, as such improvements are required by the Approved Construction Plans. Said Public Improvements shall include all excavation, water and sewer lines and service laterals, sub-base, base, asphalt, and concrete work and engineering fees. All such costs will be paid for by the Developer. Except as set forth herein, Providence City will not participate in any of the costs of the Public Improvements.

3. Off Street Parking. All property owners within the subdivision will provide adequate off street parking in accordance with the Subdivision Ordinances. The City has amended the Subdivision Ordinances to provide for the Planning and Zoning Commission to allow a Parking Lot set back of no less than fifteen feet (15') from the edge of the private property line. Parking along public streets within the Subdivision will not be allowed.

4. Water Improvements. The Developer agrees to install the following water

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL SB BE BB GF LA SM SM SES SS SSK RJA WSK WSK Page 5 of 12

improvements in accordance with the Approved Construction Plans:

a. Connection of 8" Main Line to City Water System. The Developer shall connect to the existing 8 inch City water line at the intersection of Golf Course Road and Spring Creek Parkway.

b. 8" Water Line into Each Lot. The Developer may install into each end of each lot (with possibly the exception of Lot No. 4) located within the Subdivision an eight inch (8") water main stub, connected to the main by Tee and a flanged valve. The Developer shall then provide a service line to each building site located within the Subdivision and shall install the appropriate water meter. When meters are installed the Developer agrees to install an adequate size service equipped with an approved yoke, barrel and lid to each potential building site. Hydrants using this line or an extension of this line in the future shall be installed by teeing off of that line and installing a valve between the tee and the hydrant with sufficient distance from the hydrant such that the entire service does not have to be disrupted for fire hydrant service. The valve shall have a flanged connection to the tee on the 8" service line. Services shall not be tapped on the line between the valve and the hydrant. The meters for each service shall be located in as close proximity to the parking strip or front property line as possible. Any meters that are under asphalt shall have a street lid with a remote reading device in a box that will be out of the asphalt with a conduit from the box to the barrel. All two inch and larger meters shall have a remote reading device. Each unit shall be serviced with a separate meter.

c. Back Flow Preventers. An approved back flow assembly will be required to be installed on the back side of the meter on each service line that may present a backflow hazard..

d. Dead End Water Lines. All dead end water lines shall have a flush hydrant installed and placed 5 to 7 feet inside property line.

e. Installation of Emergency Connection to Logan Water System. Developer shall furnish and install an 8" in-line valve to serve as an emergency connection to the Logan City Water System. Said valve shall be installed in accordance with Providence City plans and specifications. Upon completion of the installation of said in-line valve and acceptance thereof by the City, the City shall reimburse the Developer the full cost of the purchase and installation of said valve including the enclosure thereof (i.e. manhole or vault).

5. Fire Protection. The Developer agrees to install all piping and fire hydrants in accordance with the Approved Construction Plans as follows:

a. Hydrant Spacing. For construction purposes, all fire hydrants will be placed at 500 feet intervals. Additional hydrants may be required when the location and size of building is determined.

b. Fire Lanes/Hydrants. The Developer must meet Logan City requirements for fire lanes and hydrants.

c. Dedication of Fire Hydrants. All water mains, hydrants, and appurtenances will be dedicated to the City and, where required, the Developer shall provide to the City an appropriate access easement for flushing and maintaining the hydrant.

d. Exclusive Control of Fire Hydrants by City. Use of fire hydrants shall be under exclusive control of the City or its assigns.

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL SB BBS GFLA SM SM SES SSK SSK RAB WSK Page 6 of 12

6. **Sanitary Sewer Improvements.** The Developer agrees to install the following sanitary sewer improvements in accordance with the Approved Construction Plans:

a. **Connection to Logan Sewer Main.** An eight inch (8") sanitary sewer main line to match Logan City.

b. **8" Service Stubs.** An 8" service stub shall be installed to each lot and capped until further development occurs upon each lot. Any connections shall be made with a Romac or equivalent saddle and shall come in above the flow line. The Developer will make its best estimates as to location for buildings on each lot to stub the sewer so as to minimize cutting into the road at a latter date.

c. **Owner of Lot 1 to Service 12" Service Lateral.** Due to the minimal slope of the 12" sewer line serving Lot 1 of the Subdivision the owner of Lot 1 shall be responsible to maintain and repair said service line. This sewer line shall be flushed, regularly, and shall not be the responsibility of Providence City.

c. **Installation of Sewer Meter; Reimbursement by City.** The Developer will be responsible to pay for the cost of design, material, equipment, and installation of a sanitary sewer meter to be installed at the City boundary line between Logan City and the City on Golf Course Road. The sewer metering device shall be dedicated to the City. Upon completion of the installation of said sewer meter and acceptance thereof by the City, the City shall reimburse the Developer the full cost of the purchase and installation of said sewer meter including the enclosure thereof (i.e. manhole or vault).

7. **Storm Water Containment.** The Developer agrees to install the following storm sewer improvements in accordance with the Approved Construction Plans:

a. **Catch Basins and Storm Drains.** Developer shall construct and install all catch basins and storm drains shown on the Approved Construction Plans. The Developer shall also provide to the City an easement to access the storm retention facilities on each lot within the Subdivision to receive and handle storm water run off from the Development Property and the City property.

b. **On Site Detention.** All storm water in excess of natural run-off, herein quantified at 0.20 cubic feet per second per acre, shall be detained on site. Design of the storm water system must be approved by the City as per City Ordinance 11-4-6-A

c. **No Wet Land Detention.** No wet land will be used for storm water containment unless permitted by the Army Corps of Engineers.

e. **Maintenance of On Site Detention Facilities by Lot Owners.** All storm water detention facilities on each lot within the Subdivision shall be maintained by the respective owner thereof.

8. **Wet Land.** The Developer agrees not to disturb or fill any portion of the Subdivision that is determined to be jurisdictional wet lands by the Army Corps of Engineers without the authorization from the Army Corps of Engineers.

9. **Street Lighting.** The Developer agrees to install outdoor lighting at the intersections,

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BB BB GF LA SM SM SES SC SSK SK RDE RA WSK WSK Page 7 of 12

cul-de-sac, and every 650 feet along Golf Course Road and Gateway Road.

10. **Signs.** The Developer agrees to pay for the installation of roadway signs. The Cost Breakdown is attached hereto as Exhibit "C", which funds shall be used to purchase and install traffic control and street identification signs. The City agrees to consult with the Developer in selecting appropriate signs. The City will have the final decision in this matter. Any delineators and barriers required will be installed by the Developer.

11. **Water Shares.** The Developer agrees to make available for purchase by the City at prevailing rates, one water share for each acre of property within the Subdivision. Said shares shall be in either of the following irrigation companies: (i) Pioneer Irrigation Company; (ii) Spring Creek Irrigation Company; or (iii) Blacksmith Fork Irrigation Company.

12. **Irrigation Ditches.** The Developer agrees to have a written agreement from Pioneer Irrigation Co. to make any changes or additions on the two Pioneer irrigation ditches that are located upon the Development Property.

13. **Construction Period.** The Developer agrees to observe the following procedures, as necessary, during the construction period:

a. **Mud Prevention.** The Developer agrees to provide and maintain a gravel access drive, and take any other measures necessary during construction of the Public Improvements, including wash down area, as needed, to prevent the tracking of mud from the Subdivision onto existing roads.

b. **Installation of Minimum Improvements Prior to Issuance of Building Permit.** In accordance with the requirements of City Ordinance 11-5-2 the following minimum Public Improvements must be completed before a building permit can be issued for construction of any buildings within the Subdivision (See Section 1. (f) of this document). In the event that any lot owner requests a building permit prior to the completion of the Public Improvements as set forth above, the Developer shall provide a "Developer completion bond" as more fully set forth in Section 1(f), above.

14. **Walking Trail.** The Developer agrees to install a sidewalk on the north side of Golf Course Road that is situated within the Subdivision and extend the sidewalk to connect with the existing walking trail located along Spring Creek Road. The location and size of the Walking Trail is more fully set forth in the Approved Construction Plans.

15. **Landscaping.** Building permits for any buildings upon any lot within the Subdivision will not be issued until a landscaping plan for said lot is approved in accordance with City Ordinance 10-8-5.E.

16. **Miscellaneous Provisions.**

a. **Binding Effect.** This Agreement shall be binding upon and shall inure to the

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BB BB GFL GFL SMS m SES SES SSK SSK RDE RDE, WSK WSK Page 8 of 12

benefit of the parties hereto and their respective successors and assigns.

b. Attorneys Fees. In the event it becomes necessary for any party to this Agreement to commence legal action to enforce its rights under this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

c. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

To the City:

The City of Providence
15 South Main Street
Providence, Utah 84332

To the Developer:

Horizon Enterprises, Inc.
C/O Bill Bertolio
435 East 125 North
Providence, UT 84332

Creekside, Inc.
P.O. Box 490
Providence, UT 84332

Steven Misener
15 South Main Street, Suite #400
Logan, UT 84321

Logan Crossroads Associates, L.L.C., FC Holding 5050, Ltd,
& Summerwood Development, Ltd., W. Scott Kjar, & Steven E. Smoot
C/O Excel Investment Corporation
585 West 500 South #110
Bountiful, Utah 84010

R. Dee Erickson
1895 South 200 West
Bountiful, Utah 84010

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BR DB GF LA SM SN SES SC SSK SK RDE RP WSK WR Page 9 of 12

ENT 725111 Bk 911 Pg 1046

d. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

e. Captions. The article and section headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

f. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

g. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes all prior agreements, representations or understandings between them relating to the subject matter hereof. All preceding agreements relating to the subject matter hereof, whether written or oral, are hereby merged into this Agreement.

h. Construction. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

i. Further Action. The parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

j. Joint and Several Liability. The obligations of each party to this Agreement shall be joint and several with regard to each and every other party hereto. The foregoing notwithstanding, Creekside, Inc. and Steven Misener shall have no obligation to construct improvements nor post bond funds.

k. Recitals; Exhibits. All factual Recitals set forth herein shall be considered part of this Agreement. All Exhibits attached to this Agreement are expressly made a part hereof as fully as though they were completely set forth herein.

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BE BB GFLA SM SES SE SSK SK RDE RDE, WSK WSK Page 10 of 12

ENT 725111 Bk 911 Pg 1047

Exhibit "A"

Final Plat

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BB *BB* GF *GF* SM *SM* SES *SES* SSK *SSK* RDE *RDE* WSK *WSK* Page 11 of 12

ENT 725111 Bk 911 Pg 1048

Exhibit "B"

Approved Construction Plans

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BR DB GF LA SM SM SES SE SSR SK RDE RA WSK WSK Page 12 of 12

ENT 725111 Bk 911 Pg 1049

Exhibit "C"

Public Improvement Construction Cost Breakdown

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL ___ SB ___ BB *BB* GF *GF* SM *SM* SES *SES* SSK *SSK* RDB *RDB* WSK *WSK* Page 13 of 12

ENT 725111 BK 911 Pg 1050

Exhibit "D"

Form of Public Improvement Repair Notice

[City of Providence Letterhead]

PUBLIC IMPROVEMENT REPAIR NOTICE

[Date]

Logan Crossroads Associates, L.L.C.
C/O SKY Properties, Inc.
585 West 500 South Suite #110
Bountiful, Utah 84010

CERTIFIED MAIL NO. _____

Horizon Enterprises, Inc.
C/O Bill Bertolio
435 East 125 North
Providence, UT 84332

Re: Notice to Replace or Repair Defective Public Improvements

Dear Gentlemen:

This is to notify you that pursuant to an inspection by the City of Providence of the Public Improvements installed by you in accordance with that certain DEVELOPMENT AGREEMENT (the "Public Improvement Agreement") dated September _____, 1999, the City of Providence has determined that certain of the Public Improvements installed by you are defective and require either repair or replacement. The defective Public Improvements are as follows:

[Set forth in detail the nature and extent of the defective Public Improvements]

You are hereby put on notice that unless you either repair or replace the defective Public Improvements as required by this Public Improvement Repair Notice within ninety (90) days *[or state a shorter time frame if the nature of the defective public improvements poses a health and/or safety hazard if not repaired before the 90 day period]* after your receipt of this Public Improvement Repair Notice, weather permitting, the City shall cause the Public Improvements to be repaired or replaced as set forth herein and shall draw upon the Developer Warranty Bond Funds deposited in accordance with the terms and conditions of the Public Improvement Agreement to reimburse the City for the cost of the repairs or replacement of said Public Improvements.

Sincerely Yours,
Providence City,

By: _____

Print Name

Its: _____

Providence/SKY Prop. Development Agreement (09/27/99)

Initials: AHL SB BBB GF LA SM SM SES SE SSK SK RDB RA WSK WSK

Page 14 of 12

ENT 725111 Bk 911 Pg 1051