

**DEVELOPMENT AND PUBLIC IMPROVEMENT
INSTALLATION AGREEMENT FOR**

SPRING CREEK VILLAGE

Ent 937531 Bk 1449 Pg 1420
Date: 22-Feb-2007 04:36 PM Fee \$0.00
Cache County, UT
Michael Gleed, Rec. - Filed By MG
For PROVIDENCE CITY

THIS AGREEMENT is entered into this 31st day of January, 2007, between

P&D Development

(hereinafter referred to as the "Developer") and the City of Providence (hereinafter referred to as the "City").

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

Spring Creek Village

Final Plat for which was recorded on the 22 day of Feb, 2007 in the Cache County, Utah Recorder's Office as Filing No. 937522.

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 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 Developments Addendum, attached. All improvements, streets, and utilities as shown on said Plan and as required by Providence City Ordinances will be completed by the 5th day of February, 2009 (not to exceed two (2) years after the date the construction drawings were approved by all required entities).
2. In accordance with City Ordinance 11-5-7:A., the Developer tenders to the City

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Spring Creek Village
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Warranty Bond in the amount of \$2,500.00, which amount is not less than 10% of the estimated cost of the construction of said improvements. In the event that the Developer shall fail or neglect to fulfill the obligations under this agreement, the City shall have the right to construct and/or repair or cause to be constructed and/or repaired said streets and improvements as shown on said Plan and as required by Providence City Ordinances. The Developer shall be liable to pay to and indemnify the City upon completion of said improvements, the final, total cost of the City, therefore, including, but not limited to, engineering, legal and contingent costs, together with any damages which the City may sustain on account of the failure of the Developer to carry out and execute all of the provisions of this agreement which said sums are secured by the security of performance attached.

3. In accordance with City Ordinance 11-5-7:B., if building permits are requested in the Development, after the minimum public works improvements are complete, but prior to completion of all the public works improvements as called for in the Approved Construction Drawings, the Developer agrees to tender to the City Public Improvement Completion Security in the amount of \$27,500.00, which amount is not less than 110% of the estimated cost of the construction of said improvements. In the event that the Developer shall fail or neglect to fulfill the obligations under this agreement, the City shall have the right to construct or cause to be constructed said streets and improvements as shown on said Plan and as required by Providence City Ordinances. The Developer shall be liable to pay to and indemnify the City upon completion of said improvements, the final, total cost of the City, therefore, including, but not limited to, engineering, legal and contingent costs, together with any damages which the City may sustain on account of the failure of the Developer to carry out and execute all of the provisions of this agreement which said sums are secured by the security of performance attached.

****Note:** This requirement may be waived as per City Ordinance 11-5-7:C.

4. In the event the Developer does not pay said sums to the City of Providence within sixty (60) days after demand, said City may proceed and foreclose said Warranty Bond and Public Improvement Completion Security; provided, however, the City may proceed and foreclose or otherwise obtain payment from said Warranty Bond and security source prior to the end of said sixty (60) day period, if necessary, to protect the City's claims therein from lapsing or expiring, prior to the end of said 60 day period.

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



City of Providence

By: *[Signature]*
Randy T. Simmons, Mayor

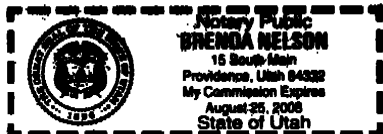
Attest:

[Signature]
Skarlet Bankhead, Recorder

STATE OF UTAH)

County of Cache)

On the 16 day of February, 2007, personally appeared before me, Randy T. Simmons, and Skarlet Bankhead, who did say that they are the Mayor and City Recorder respectively of Providence, Utah, 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.



[Signature]
Notary Public

Spring Creek Village

[Signature]
P&D Development

STATE OF UTAH)

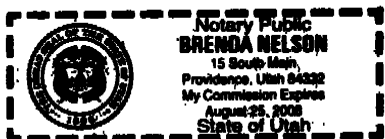
County of Cache)

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On this 16 day of February, 2007 personally appeared before me,

- who is personally known to me
- whose identity I proved of the basis of
- whose identity I proved on the oath/affirmation of

To be the signer of the above document, and he/she acknowledged that he/she signed it.



[Signature]
Notary Public
Commission Expires: Aug. 25, 2008

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**ADDENDUM TO THE DEVELOPMENT AND PUBLIC IMPROVEMENT
INSTALLATION AGREEMENT FOR**

SPRING CREEK VILLAGE

This ADDENDUM TO THE PUBLIC IMPROVEMENT INSTALLATION AND DEVELOPMENT AGREEMENT is made this 31st day of January 2007, by and between Providence City, a Utah municipal corporation (the "City"); and P&D Development, (the Developer); 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 a final plat of the Development Property and the City has approved the Final Plat for final approval in accordance with the applicable Subdivision Ordinances of the City.
- D. In accordance with the Final 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 residential subdivision to be known as Spring Creek Village (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 located within the proposed public right of way of the Subdivision are more fully described on the approved construction plans attached hereto as Exhibit "B" (collectively the "Approved 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; and (ii) to construct and install the Public Improvements in accordance with the Final Plat and the Approved Construction Plans.
- 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 Agreement, and for other good and valuable consideration, the receipt and sufficiency of

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Spring Creek Village Subdivision
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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 written approval of the City. The Public Improvements shall be constructed and installed according to said Plat and Plans and to all applicable City Codes and Ordinances, State and Federal Law, and any other related codes and/or laws.
 - a. **Warranty Bond.** Providence City Code 11-5-7:A. (modified 1/25/00)
 - i. The engineer's estimates for the public improvements are \$25,000.00; the amount required for said Warranty Bond is \$2,500.00.
 - b. **Completion Time Limit.** Providence City Code 11-5-3. All public improvements shall be completed by the 5th day of February, 2009 (not to exceed two (2) years after the date the construction drawings were approved by all required entities).
 - c. **As-Built Construction Plans.** Providence City Code 11-5-4:F.
 - d. **Completion of Construction.** Providence City Code 11-5-4:G.
 - e. **Acceptance and Written Guarantee (Warranty Period).** Providence City Code 11-5-5.
 - f. 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.
 - g. Upon completion of the construction of the Public Improvements and the 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 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 verified acts of misuse, vandalism, or negligent acts of parties other

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than the Developer. 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, the City may cause the Public Improvements to be repaired or replaced as set forth in the Public Improvement Repair Notice and may draw upon the Developer Warranty Bond Funds and/or require the Developer 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 may 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, if sufficient. If not, the Developer will pay any balance due.

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 replacement of the defective Public Improvements in question, the City may 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 and/or from the Developer directly for the costs that have been reasonably incurred by the City to undertake the repair or replacement of the defective Public Improvements in question.

- h. The Developer may sell any of the Lots within the Subdivision as provided in

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accordance with City Ordinance 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, if it is determined in writing by the City Engineer that the minimum Public Improvements (i.e. curb, gutter, underground utilities, roadway) have been installed, inspected and accepted by the City to permit construction of such building, the Developer shall deliver to the City a bond, letter of credit, or cash deposit (the "Developer Completion Bond Funds") equal to 110% of the cost of the Public Improvements required by said City Ordinance, 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.

- i. 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.
 3. **Off Street Parking.** All property owners within the subdivision will provide adequate off street parking in accordance with the Subdivision Ordinances.
 4. **Water Improvements.** The Developer agrees to install the following water improvements in accordance with the Approved Construction Plans:
 - a. **Water Service into Each Lot.** The Developer shall provide a one inch (1") service line to each building site located within the Subdivision and shall install the appropriate approved yoke, barrel and lid. The meter barrel will not be placed in a driveway or any travel portion of the right-of-way or lot. Each unit shall be serviced with a separate meter.
 - b. **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.
 - c. **Water lines shall have a minimum 5' of cover.** The Developer shall install all lines with a minimum of 5-foot of cover. Verification is required.
 5. **Fire Protection.**
 - a. The Developer shall install fire hydrants and lines as shown on the Approved Construction Drawings.
 6. **Sanitary Sewer Improvements.** The Developer agrees to install the following sanitary sewer improvements in accordance with the Approved Construction Plans:
 - a. **Manholes** will be built as shown on the Approved Construction Plans and the Construction Notes.
 - b. **4" Service Stubs.** A 4" service stub shall be installed to each lot 5' inside property line, capped and marked with a 2"x 4" post extending 4' above ground and wrapped with No. 9 wire, which connects to the end of the 4" service line.

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- c. **Inspections.** All installation of sewer services requires inspection by Providence City before the trench is backfilled. A pre-notification of 48 hours is required.
 - d. Before the sewer improvements are accepted by the City, the Developer shall be required to have the line video taped and an acceptable copy of the tape shall be labeled and furnished to the City. This shall be done at the Developer's expense as part of the minimum improvements, before any home shall be connected and before the asphalt is installed. Tests results must be accepted by the City prior to the acceptance of the minimum improvements.
7. **Water Shares.** The Developer agrees to convey to the City 1 share of water per acre (11 1/2 shares for 11.68 acres) from the Irrigation Company. Said shares shall be in Irrigation Company.
- a. If water shares are not available, the Developer agrees to pay a fee in lieu to the City of \$8,760.00 (\$750.00 per share).
8. **Irrigation Ditches**
- a. The irrigation ditches are private water laterals; the City accepts no responsibility or liability for any changes in irrigation ditches or canals, or assumed ditch and/or canal right-of-way.
 - b. The maintenance and repair of the piped irrigation ditches are the sole responsibility of the irrigation water user(s) and/or Developer. The City has no responsibility for repair and maintenance. The City has no liability should the ditch fail due to design, repair, maintenance, vandalism and/or acts of nature.
 - c. The Developer agrees to have the contractor locate and protect existing irrigation pipelines, and re-route and/or repair as necessary. If re-routing is necessary, a letter of approval from the Irrigation Company will be required.
9. **Storm Drain Control and Maintenance.** The Developer shall install a system for storm water control, including but not limited to retention/detention pond(s) and all required pipe lines as shown on the Approved Construction Plans.
- a. The Developer shall be responsible for the installation of the retention/detention pond. The owner of Lot 6 and/or the development association shall be responsible for the maintenance of the retention/detention pond. Maintenance shall be completed in a way to always allow storm water to enter the pond, be detained and exit the pond in the flow requirements as per specifications approved for this subdivision. The purpose of this pond is for storm water control. The purpose of the pond and grading cannot be altered within the retention/detention pond easement.
10. **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 at his expense a gravel access drive at the entrance to the subdivision, and take any other measures necessary during construction of the Public Improvements for prevention of mud

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on the streets. This may include a wash down area, as needed, to prevent the tracking of mud from the Subdivision onto existing roads. Water use for this will be metered and charged as per the Providence City Fire Hydrant Policy and a permit is required.

- b. **Dust Control.** The Developer shall control dust on site that is generated by the construction and/or equipment used on the Development. The Developer shall sprinkle the roadway and construction area a minimum of once daily or as may be required by the Public Works Director or the Inspector. If using Providence City water, a permit must be obtained from the Public Works Director.
- c. **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:
 - i. **Roads.** Road surfaces must be passable and include the placement of road base.
 - ii. **Underground Utilities.** Water, sewer, power and all other utilities that will be placed in the road bed as identified on the Approved Construction Drawings.
 - iii. **Fire Service.** Fire service must be available within the subdivision.
 - iv. **Inspections.** Sewer and water must be inspected, tested and approved.

BEFORE CONSTRUCTION A pre-construction meeting is required prior to any construction. Contact public works department.

- d. **Completion Security.** In the event that any lot owner requests a building permit after completion of the minimum Public Improvements as set forth above, but prior to the entire completion of the Public Improvements as set forth in the Approved Construction Drawings, the Developer shall provide a completion bond as more fully set forth in Section 1(h), above.
- 11. **Walking Trail.** Not required for this Development.
 - 12. **Landscaping.** Not required for this Development.
 - 13. **Street Lighting.** The Developer agrees to install outdoor lighting conduit in accordance with the Approved Construction Plans. The locations of the street lights are shown on the Approved Construction Plans.
 - 14. **Street Signs.** The Developer agrees to pay for the cost to purchase and the installation of roadway signs as required by the Public Works Director. The City shall install the signs. Any delineators and barriers required will be furnished, installed and maintained by the Developer.
 - 15. **Miscellaneous Provisions.**
 - a. **Binding Effect.** This Agreement shall be binding upon and shall inure to the

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- 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:

Providence City
15 South Main Street
Providence, Utah 84332

To the Developer:

P&D Development
517 West 100 North
Providence, UT 84332

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.

- 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. **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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.



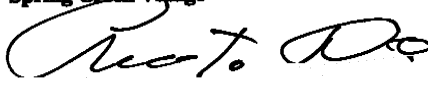
The City:
PROVIDENCE CITY,
a Utah municipal corporation

By: 
Randy F. Simmons, its Mayor

Attest:


Skarlet Bankhead
City Recorder

~~Spring Creek Village~~


P&D Development, the Developer

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Exhibit "A"

Final Plat

On file at the Providence City Office

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Exhibit "B"

Approved Construction Plans

The Approved Construction Plans are in the office of the Providence City Public Works Director.

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Exhibit "C"**Public Improvement Construction Cost Breakdown****Water Bore on Providence Lane Bid 5/31/06**

QTY	ORIGINAL DESCRIPTION	UNIT PRICE	TOTAL
1	Backhoe	1,200.00	1,200.00
1	Labor	600.00	600.00
90	Ft 6" CL350 D.I.	10.15	913.50
1	Fire Hydrant Materials	2,000.00	2,000.00
1	Tapping Saddle	700.00	700.00
1	Valve and Box	900.00	900.00
1	Highway Barricading	400.00	400.00
1	State Right-of-Way Permit	1,000.00	1,000.00
1	Boring - Pipe and Labor	12,200.00	12,200.00
			\$18,913.50

Bid 1/23/07

QTY	REVISED - 8" D.I. DESCRIPTION	UNIT PRICE	TOTAL
1	Backhoe	1,200.00	1,200.00
1	Labor	600.00	600.00
90	Ft 8" CL350 D.I.	13.65	1,228.50
1	Fire Hydrant Materials	2,000.00	2,000.00
1	Tapping Saddle	700.00	700.00
1	Valve and Box	900.00	900.00
1	Highway Barricading	400.00	400.00
1	State Right-of-Way Permit	1,000.00	1,000.00
1	Boring - Pipe and Labor	16,400.00	16,400.00
			\$24,428.50

Prices are rough and estimated from on-site visit. Bid will need to be verified after receiving approved construction drawings.

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Exhibit "D"

Form of Public Improvement Repair Notice

[City of Providence Letterhead]

**PUBLIC IMPROVEMENT REPAIR NOTICE
Subdivision**

[Date]

CERTIFIED MAIL NO.

Re: Notice to Replace or Repair Defective Public Improvements

Dear :

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 PUBLIC IMPROVEMENT INSTALLATION AND DEVELOPMENT AGREEMENT (the "Public Improvement Agreement") dated , 2005, the City of Providence has determined that certain 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

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