

RECORDING REQUESTED BY  
AND AFTER RECORDING RETURN TO:

Salem City  
Attn: City Recorder  
30 West 100 South  
Salem, Utah 84653



ENT 19823=2024 PG 1 of 80  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2024 Mar 28 11:53 AM FEE 40.00 BY AC  
RECORDED FOR SALEM CITY

# Second Amended and Restated Development Agreement

## The Arrowhead Springs Master Planned Development

### March 8, 2024

## ARROWHEAD SPRINGS MASTER DEVELOPMENT

As of date: 2024.03.08

## Legal Description

## MAIN PARCEL AS SURVEYED DESCRIPTION:

BEGINNING AT A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF ARROWHEAD TRAIL ROAD, SAID POINT BEING NORTH 01°17'04" WEST. ALONG THE SECTION LINE, 1223.30 FEET FROM THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG SAID RIGHT OF WAY LINE AND A FENCE THE FOLLOWING SEVEN (7) COURSES, 1) SOUTH 55°47'56" WEST 475.36 FEET; 2) SOUTH 55°50'40" WEST 520.88 FEET; 3) SOUTH 55°45'55" WEST 1150.12 FEET; 4) SOUTH 55°41'16" WEST 1158.76 FEET; 5) SOUTH 43°30'28" WEST 577.35 FEET; 6) SOUTH 43°10'20" WEST 1019.42 FEET; 7) SOUTH 42°48'50" WEST 86.97 FEET; THENCE NORTH 46°18'46" WEST 201.24 FEET TO A POINT OF CURVATURE; THENCE ALONG AN ARC 44.17 FEET TO THE RIGHT, HAVING A RADIUS OF 383.00 FEET, THE CHORD BEARS N 43°00'23" W 44.15 FEET; TO THE EASTERLY RIGHT OF WAY LINE OF 1750 WEST STREET; THENCE ALONG SAID RIGHT OF WAY NORTH 06°58'55" WEST 903.21 FEET; THENCE NORTH 83°26'39" EAST 192.67 FEET, THENCE NORTH 06°33'57" WEST 584.87 FEET, NORTH 06°34'50" WEST 752.84 FEET, THENCE NORTH 89°47'59" EAST ALONG FENCE 1211.19 FEET; THENCE NORTH 00°23'54" WEST ALONG FENCE 2027.56 FEET TO THE SOUTH RIGHT OF WAY LINE OF 8400 SOUTH STREET; THENCE NORTH 89°41'45" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 841.10 FEET; THENCE NORTH 00°06'15" WEST 25.68 FEET; THENCE NORTH 89°36'44" EAST 2063.71 FEET; THENCE NORTH 89°23'45" EAST 594.00 FEET; THENCE SOUTH 00°36'15" EAST 49.50 FEET; THENCE NORTH 89°23'45" EAST 660.00 FEET; THENCE NORTH 00°36'15" WEST 49.50 FEET; THENCE NORTH 89°23'45" EAST 594.00 FEET; THENCE SOUTH 33°21'44" EAST 65.66 FEET TO A FENCE CORNER; THENCE SOUTH 23°22'43" EAST ALONG SAID FENCE 97.49 FEET TO THE NORTHWESTERLY RIGHT OF WAY LINE OF SAID ARROWHEAD TRAIL ROAD AND FENCE; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING TWO (2) COURSES: 1) SOUTH 55°52'23" WEST 1251.30 FEET; 2) SOUTH 55°46'25" WEST 1034.42 FEET TO THE EAST LINE OF SAID SECTION 34 AND THE POINT OF BEGINNING.

CONTAINS 245.967 ACRES. MORE OR LESS

## TRIANGLE PROPERTY AS SURVEYED DESCRIPTION:

BEGINNING AT A POINT ON THE SOUTH LINE OF SECTION 34, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING SOUTH 89°47'27" WEST ALONG THE SECTION LINE, 92.63 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 34 AND RUNNING THENCE SOUTH 89°47'27" WEST, ALONG THE SECTION LINE, 1395.50 FEET; THENCE NORTH 00°46'35" EAST 167.98 FEET TO THE SOUTHEASTERLY RIGHT OF WAY OF ARROWHEAD TRAIL ROAD; THENCE NORTH 55°35'11" EAST, ALONG SAID RIGHT OF WAY LINE, 1278.01 FEET; THENCE NORTH 55°51'52" EAST, ALONG SAID RIGHT OF WAY, 397.62 FEET; THENCE SOUTH 00°38'23" EAST 590.63 FEET; THENCE SOUTH 00°25'33" EAST 517.25 FEET TO THE SOUTH LINE OF SAID SECTION 34 AND THE POINT OF BEGINNING.

CONTAINS 20.446 ACRES, MORE OR LESS



**SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR  
THE ARROWHEAD SPRINGS MASTER PLANNED DEVELOPMENT**

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE ARROWHEAD SPRINGS MASTER PLANNED DEVELOPMENT (the "Agreement") is entered into as of the 6<sup>th</sup> day of March 2024 by and between Gecko Grey, LLC, as developer (hereinafter, Developer) and Salem City, (hereinafter City), (together, the "Parties").

**RECITALS**

WHEREAS, Developer owns interest in approximately 273.33 acres of property located at approximately 1008 North 1750 West in Salem City (the Property), which Property is more particularly described in Exhibit A. Developer desires to develop the Property into a master planned project known as Arrowhead Springs; and

WHEREAS, the Parties intend to enter into this Agreement to allow Developer and City to agree on issues such as land use density; streetscape, amenities, utility infrastructure, and other development objectives prior to development of the Property in accordance with City's Master Planned Zone. This process will lead to an attractive community that functions in a way that will add quality of life to future residents while allowing City to provide municipal services in a cost effective and efficient manner and in accordance with the Salem City General Plan, applicable zoning ordinances, and Construction and Development Standards of City; and

WHEREAS, Developer has assembled a management team, as required by the Master Planned Zone, consisting of Ryan Poelman, Matt Lewis, Aftyn Morrison, Brian Bird of Bird Homes, Matt Brown of M.W. Brown Engineering, the civil engineer PJK Landscape Design, the landscape architect and Kevin Sholtz of Sholtz Architects; and

WHEREAS, approval of this agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by Salem City ordinances. Developer expressly acknowledges that nothing in this agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats, nor does it limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this agreement; and

WHEREAS, a First Amended and Restated Development Agreement was entered into by the Parties on or about June 18, 2020 (the "First Amended & Restated Development Agreement") and this agreement supersedes the "First Amended & Restated Development Agreement"; and

WHEREAS, the Parties now desire to make a second amended and restated Development Agreement in the form of this Agreement to fully set forth their agreements and understanding regarding the development of the Property.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereinafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

## SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement shall have that meaning given to it by the Salem City Municipal Code in effect on the date hereof. In the event of a conflict in definitions, that definition which provides the most restrictive development latitude shall prevail.

1.1 **Buildout** means the completion of all of the development of the Property in accordance with this Agreement.

1.2 **City** means Salem City, Utah. In certain contexts, City may mean a representative authorized by position or the City council to make a decision.

1.3 **Concept Plan** means the overall plan design for the development, attached hereto as Exhibit A.

1.4 **Construction and Development Standards** means the standards adopted by Salem City describing and defining the criteria to be met in developing a subdivision such as Arrowhead Springs.

1.5 **Developer** means Developer. This term also incorporates successors or assigns to whom the rights and responsibilities of this agreement may be transferred.

1.6 **DRC** means the Salem City Development Review Committee.

1.7 **PIDs** means collectively, Arrowhead Public Infrastructure District and Arrowhead Public Infrastructure District No. 2, with each a "PID".

1.8 **Project Owners** means Developer. This term also incorporates successors or assigns to whom the rights and responsibilities of this agreement have been transferred.

1.9 **Project Area** means the property identified on the new Exhibit A (dated the date of this amended agreement), which is the location of the proposed Arrowhead Springs development.

1.10 **Exhibit** means all exhibits or attachments including subsets of exhibits. For example, Exhibit A means and includes Exhibit A1, A2, and A3.

1.11 **Limited Property Tax Bond** means a bond that is directly payable from and secured by ad valorem property taxes that are levied by a PID which may not exceed the maximum debt mill levy applicable to such PID.

## SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

### 2.1 General Rights and Responsibilities of Developer

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Project Area, Developer accepts and agrees to comply with the impact, connection, and building fees of City in effect at the time of assessment. City agrees and represents that any such fee schedule will be applied uniformly within the City or service area of the City, as applicable.

2.1.2 **Construction Mitigation.** Developer shall provide the following measures, all to the reasonable satisfaction of City, to mitigate the impact of construction within Project Area.

Developer shall also adhere to the usual construction impact mitigation measures required by City, as they may be amended from time to time. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat: all construction, including construction of public improvements:

- (a) Limits of disturbance, vegetation protection, and the re-vegetation plan for protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed; and
- (b) Construction traffic routing plan to minimize traffic impacts as approved by City.

**2.1.3 Subsequent Applications Under Future Development Code.** Unless specifically modified herein, or by an addendum hereto, Development Standards existing at the time of each final plat approval, except for the layout and street cross sections, shall be followed for that plat which will be approved as part of the approval of the master planned development.

**2.1.4 Phasing Plan.** The Project was divided into forty (40) phases numbered 1-40. The Phasing Plan has been amended to reflect a total of 22 (twenty-two) phases and a new phasing plan in Exhibit A. Developer shall obtain City Staff approval when deviating from the numbered phases, infrastructure, open space, or other amenities as noted in the amenities section of this agreement concurrent with construction of the various phases.

**2.1.5 Vesting.** Developer is vested with the density as shown on the Phasing plan, attached hereto as Exhibit A. The parties hereto understand and acknowledge that as utility infrastructure is in part currently approved on phases 1, 2, 3, 4, 5, 6, 8, 9, 10, additional phases need finalized drawings and a set of engineering plans. The ultimate preliminary plat may contain fewer lots and/or living units than shown on Exhibit A, provided that the maximum number of lots and/or living units does not exceed 5.45 units per buildable acre based upon Salem City Municipal Code §§ 14-12-020(B) and 14-12-030(B). If a portion of the property are determined to be unbuildable by reason of wetlands or other adverse site conditions, the maximum number of units will be reduced by the 5.45 units per acre of unbuildable area. Approval of a preliminary plat will vest Developer with the number of lots and/or living units shown on the approved plat and shall remain vested so long as a final plat is approved by the DRC within two years of the most recently approved final plat, unless a State or Federal Agency determines that portions approved are unbuildable.

**2.1.6 Design Guidelines.** General design guidelines shall be followed in the construction of facilities and buildings, unless specific requirements in this agreement require a different standard. Salem City will approve all project design guidelines. In addition, design guidelines will be approved by an addendum hereto with each final plat, providing the specifics for the type of housing being constructed in that plat. Design guidelines will address quality of housing products, both interior and exterior, as well as ensure the quality of all amenities being provided with that plat.

**2.1.7 Master Plan Development Approval.** Developer acknowledges and agrees that the Arrowhead Spring Master Planned Development Concept and Development Agreement will evolve and be amended throughout the approval process.

## 2.2 General Rights and Responsibilities of City

**2.2.1 Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of City to enact ordinances, standards, or rules regulating development or zoning.

**2.2.2 Compliance with City and State Requirements and Standards.** Developer expressly acknowledges that nothing in this Agreement shall be deemed to relieve it from its obligations to comply with all applicable requirements of City and State necessary for approval and recordation of final subdivision plats and site plans for the Property in effect at the time of development approval, or re-approval in the event of expiration, including the payment of required fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies, and procedures of City.

**2.3 Recording;** City or Developer may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

### SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

#### 3.1 Municipal Utilities

##### 3.1.1 Obligations of Developer.

**3.1.1.1 Installation and Design Criteria.** City provides the following utilities, which need to be brought to the Project by Developer, at no upfront cost to City: Electric Power, Sewer, and Storm Drain. In 2021, Developer deposited \$3,500,000 with the City to satisfy its obligation to install a power substation, and a pressurized irrigation system to meet the power and water obligations of the first amended development agreement. Developer shall design build and dedicate to City adequate delivery systems for each of these utilities according to City specifications and standards and other required services to meet the needs for the Property. The specifics of the size and timing of the construction will be addressed with final plat approvals. The cost of the Power Substation, and Pressurized Irrigation improvements shall be reimbursed to Developer from impact fees as allowed by the Utah Impact Fees Act, Title 11, Chapter 36a, of the Utah Code. See Section 3.1.2.2.

Utility improvements shall be upsized, if directed by the City Engineer to meet future needs of City utilities. Reimbursement for upsizing is set forth in the next section, under Obligations of City. All facilities necessary to provide adequate utility services installed by Developer to the Project Area, upon acceptance by the City, shall thereafter be owned, operated, and maintained by City, provided that any warranty periods as established by City ordinance shall be the responsibility of Developer.

**3.1.1.1.1 Electrical Substation.** The City shall hire a qualified consultant to design the electrical substation. Developer will pay the design costs according to a budget approved by both Parties. Developer and City shall agree upon who shall construct the electrical substation as well as manage the construction of said substation, in accordance with the City approved design. The Developer and City will agree on the cost of the substation construction prior to beginning construction. Developer agrees that the City will conduct inspections and have authority to provide approval during the electrical substation construction period. Allowable costs incurred in the construction of the electrical substation shall be reimbursed to the Developer by City through electrical impact fees as such are collected over time. A separate reimbursement agreement has been executed by the parties in connection with this amended development agreement as Exhibit H.

**3.1.1.1.2 Pressurized Irrigation System.** The City has hired a qualified consultant to design the pressurized irrigation system. Developer has installed this system. The costs incurred in the construction of the improvements shall be reimbursed to the Developer by

City through pressurized irrigation impact fees. A separate reimbursement agreement has been executed in connection with this agreement as Exhibit H.

**3.1.1.2. Utility Capacities.** Developer acknowledges and understands that City does not reserve utility or other infrastructure capacity until a final plat is submitted. Developer agrees that it is not vested with Full utility or infrastructure capacity (with the exceptions contained within Exhibit H) until a final plat is submitted and that City may decline to approve any plat submitted if it determines that capacities for Services other than Power, or Water infrastructure do not exist. Developer acknowledges and understands that utility and infrastructure capacity is determined on a first-come basis, based upon the submission of a final plat. Notwithstanding the foregoing, Developer has provided, with this Project, significant infrastructure and City anticipates there will be sufficient utility and infrastructure capacity upon completion, if Developer completes the Project within fifteen (15) years.

**3.1.1.3 Easements.** Developer shall obtain and grant to City, at no cost to City, all easements necessary for the installation, operation, maintenance, and replacement of all City utilities, located within or without the Property, as City determines to be necessary to adequately and properly serve the Property

**3.1.1.4. Master Plan Utility Infrastructure Sizing.** Developer shall design, build and dedicate to City the utility infrastructure according to utility master plans and City Construction and Development Standards.

**3.1.1.5 Satisfaction of Water Rights Requirement.** Developer hereby acknowledges that it has read and is familiar with Salem City Municipal Code §13-2-110 and hereby agrees that prior to recording of a final plat it shall dedicate water rights, or cash for approved water projects, to City, or otherwise comply with the provisions of the City Code. Developer and City will work together to determine the amount of outdoor water to be transferred to meet the needs of the project. If the standard for the amount of water changes, either up or down, Developer will transfer the amount of water required by the standard in effect at the time of final plat approval. The amount of residential equivalent uses for the outdoor use will be calculated by the City and Developer notified prior to recordation of any final plat. City shall not be required to approve any plat, or issue any building permit, until the requirements of the referenced ordinance are fully satisfied. To the extent that water rights are transferred to City prior to plat approval, a credit for the water rights shall be granted when the applicable lots are approved. Water dedication agreements are acceptable for Strawberry Water in lieu of actual transfer. Cash in lieu of water transfers are acceptable only if City accepts cash in lieu at the time a transfer is required.

### **3.1.2 Obligations of City.**

**3.1.2.1 City Service Obligations.** Upon the dedication and acceptance by City of the utility infrastructure, satisfaction of the water rights requirements (as outlined in section 3.1.1.5), and payment of any applicable fees by Developer, City shall provide all of the Property served by such infrastructure with utility service at a level generally provided to other areas of the City.

#### **3.1.2.2 Reimbursement.**

(a) The cost of all infrastructure required for the project, including but not limited to, the culinary water, pressurized irrigation water, electric power, sewer, storm drain, and transportation infrastructure, except as set forth hereafter, shall be borne by Developer without reimbursement. Reimbursement for the electrical substation, pressurization irrigation system,



Regional Park / Sports Facility / Park and other over-sized infrastructure shall be reimbursed from impact fees. An impact fee reimbursement agreement related to the power substation and pressurized irrigation system has been executed between the parties as Exhibit H. Reimbursement agreements for the Park to be executed are attached as Exhibit F and G.

(b) In addition to the reimbursements to be made from impact fees, as set forth in paragraph A, Developer shall be entitled to connector's agreements consistent with City's ordinances and policies concerning connector's agreements.

### 3.2 Amenities and Other Improvements

3.2.1 **Developer Obligations.** Developer agrees to provide the following amenities.

3.2.1.1 **Street Dedication and Improvements.** Developer agrees to dedicate adequate property for multiple street widths throughout the development, based on City's Construction and Development Standards and street cross-sections included in the preliminary plat plan set, and to complete the street improvements when those phases are constructed. Streets are designated as public or private in the preliminary plat set. Driveways and parking areas in the townhome, condominium and apartment phases are private, but shall be constructed during the phase they are located in. All private and public streets and parking areas will be constructed to Salem City Construction and Development Standards. Developer shall dedicate sufficient property to widen Salem Boulevard/Elk Ridge Boulevard rights-of-way, as determined by Salem City and Utah County, as the case may be, and to complete those improvements during the first phase to which they are adjacent to. The cross-sections are shown in Exhibit E. Off-site Road improvements may be required as per traffic study recommendations performed by qualified consultants and approved by Salem City. All costs associated with traffic studies or off-site improvements will be borne by Developer.

3.2.1.2 **Access, Easements, and Maintenance.** The interior parking areas and access thereto shall be private. Developer shall create a homeowner's association, or other similar entity, to maintain, repair, and replace such areas. Developer shall grant municipal utility easements (MUE) around the perimeter of the Property and through the Property, as deemed necessary by the City Engineer. MUES should be provided on each single-family lot and in the private streets and larger multifamily lots where appropriate. City will be responsible for maintenance of water and sewer main lines. The HOA will be responsible for maintenance of water and sewer lateral lines, HOA common acres, and HOA parking areas.

3.2.1.3 **Amenities.** Developer will donate approximately 98.9 acres of landscaped open space, which includes areas located within park strip planters and trails in the streets rights-of-way, as shown on the concept plan attached hereto as Exhibit A. Developer will complete a detailed landscape plan with the submission of each phase, which shall be submitted for approval by City. The condominiums, townhomes, and apartments living units shall be fully landscaped, in a manner consistent with a landscape plan to be approved with each final plat. Complete landscaping, consistent with the approved landscape plan, shall be completed within each phase as shown on the phasing plan, attached as Exhibit A. All landscaping is to include hydro-seed grass or sod with automatic sprinklers and trees and shrubs as shown on the approved landscape plan.

In addition to the landscaped open space, Developer will provide a recreation complex, as shown on Exhibit C (Plan set Dated 2023.11.07). The complex will include amenities as described in Section 3.2.1.3.7 and as shown on Exhibit C, Developer will donate the land, but will be reimbursed for the cost of

other improvements from recreation impact fees. The phasing of the recreational amenities are described below in Section 3.2.1.3.8 and Exhibit D.

**3.2.1.3.1 Single Family.** Developer shall provide in phases 1,2,3 per Exhibit B, a minimum of one hundred twenty-nine (129) non-age restricted, single family lots. Lot sizes may vary but will average 6,575 square feet, with a minimum of 5,500 square feet, and with an average public street frontage of 60 feet, with a minimum of 55 feet.

As described in Exhibit B in phases 17,18,19,20, Developer shall provide a minimum of one hundred eleven (111) single family, non-age restricted Single-Family lots. Lot sizes may vary but will average no less than 7,500 square feet with a minimum of 6,000 square feet, and with a minimum of 60 feet of public frontage feet.

Amenities will consist of pool and clubhouse that will include exercise room, activity room, and kitchen as approved by City. The amenities in phase 18 will be installed by the time fifty percent (50%) of the units in 1,2,3,17,18,19 and 20 are built.

**Single Family-Detached Estate-Lots:** The following setback and standards apply to single family detached estate lots:

1. **Front Yard:** No dwelling shall have a front yard setback of less than twenty feet (20) measured from the front of the property line to the foundation of the dwelling.
2. **Side Yard/Rear Yard:** No dwelling shall have a side yard setback of less than ten feet (10) on the driveway side and five feet (5) on the other side as measured from the side property line to the foundation of the dwelling. No dwelling shall have a rear yard setback of less than fifteen feet (15") measured from the rear property line to the foundation of the dwelling.
3. **Side Yard; Corner Lots:** When a side yard on a corner lot faces a street, the same setbacks as described in number 1 "Front Yard", of this section shall apply to both street frontages.
4. **Garages:** All dwelling units shall have a 2-car garage. For garage doors that face the street garage shall be set back a minimum of twenty-five feet (25') from the back of sidewalk.

**3.2.1.3.2 Apartments.** The apartments shall consist of nine (9) buildings in phase eleven (11) Per (Exhibit B) which shall be no higher than 3 stories, and shall include eighteen (18) living units per building with a total of one hundred sixty-two (162) total units.

**3.2.1.3.2.1 Cottages.** The cottage style units shall have fully landscaped yards. Developer may construct up to 73 living units as shown on the Preliminary Plat Plan (Exhibit B). The detail landscaping plan will be approved with each final plat. The exterior elevations shall be maintenance free, hard surface material (brick, rock, stucco, fiber cement siding, or their equivalents as approved by the DRC). Developer shall provide two (2) off-street parking spaces for each residential unit. Parking spaces within enclosed garages are counted as part of the two (2) required spaces. Developer will provide additional off-street parking at the rate of one and one half (1) parking stalls for every two (2) dwelling units.

**3.2.1.3.3 Townhomes.** Developer may construct up to townhome units, consisting of five to eight living units each, up to a maximum of 459 living units, as shown on the Preliminary plan (Exhibit B). Open space and common areas will be comply with the preliminary plat and Master Planned Development Master Design Guidelines.

A detail landscaping plan for the common areas will be approved with each final plat. A homeowner's association will be created that will have enforcement obligations to see that the landscaping plan is followed after initial inspection and acceptance by City. The townhomes shall have two car garages which enter from the front or the rear. The townhomes will have a full hard surface front on all of the units, such as brick, stucco, fiber cement siding, or rock, with pop outs, bay windows, and off-setting rooflines, or their equivalents as determined by the DRC. Shingles are to be architectural grade, asphalt shingles. Final design and elevations will be submitted for approval with each final plat.

Driveways shall be a minimum of 20 feet in depth. Developer shall provide two (2) off street parking spaces for each residential unit. Parking spaces within enclosed garages are counted as part of the two (2) required spaces. Developer will provide additional off-street parking at the rate of one and one half (1/2) parking stalls for every two (2) dwelling units. All parking spaces are to have an asphalt or concrete surface. Parking areas will be constructed during the phase in which they are located.

Amenities will consist of tot-lots, covered and uncovered seating areas, picnic areas, a pool, and a clubhouse that will include exercise rooms, activity rooms, and a kitchen as approved by City. These amenities shall be installed by the time that fifty percent (50%) of the townhome living units are built.

**3.2.1.3.4 Condominiums.** Developer may construct up to 528 condominiums which consist of twenty-nine (29) buildings of condominium units, consisting of up to three stories with twelve (12) living units each, up to a maximum of three hundred forty-eight (348) units, as shown on the elevation plan (Exhibit B) and 10 buildings of condominium units, consisting of up to three stories with eighteen (18) living units each up to a maximum of one hundred eighty (180).

Open space and common areas will be donated, as shown on the elevation plan (Exhibit B) and as approved with each final plat. A detail landscaping plan for the common areas will be approved with each final plat. A homeowner's association will be created that will have enforcement obligations to see that the landscaping plan is followed after initial inspection and acceptance by City. The condominiums will have a full hard surface front on all of the units, such as brick, stucco, fiber cement siding, or rock, with pop outs, bay windows, and off-setting rooflines, or their equivalents as determined by the DRC. Shingles are to be architectural grade, asphalt shingles. The design and elevations will be as shown in Exhibit B and approved with the final plat. Developer shall provide two (2) off-street parking spaces for each residential unit, one of which will be covered. Developer will provide additional off-street parking at the rate of one and one half parking stalls for every two (2) dwelling units. All parking spaces are to have an asphalt or concrete surface. Parking areas will be constructed during the phase in which they are located. Amenities will consist of tot-lots, covered and uncovered seating areas, picnic areas, a pool, and a clubhouse that will include exercise rooms, activity rooms, and a kitchen as approved by Salem City. These amenities shall be installed by the time that fifty percent (50%) of the condominium living units are built.

**3.2.1.3.5 Snow Removal.** All phases that have street cross-sections narrower than sixty-six (66) feet, or that are private streets, shall show snow removal and storage areas and shall be approved with each final plat.

**3.2.1.3.6 Trails.** Trails will be constructed throughout the Project. The trails are to be asphalted and meet the City standard for width and depth of asphalt. All primary trails shall be a minimum of 10 feet wide and all secondary trails shall be a minimum of 8 feet wide. Trails within phases shall be constructed with that phase. Trails are to have lighting in the locations approved by City during final plat approval. Details for the location of the various trails will be set forth in the approved preliminary plat. The City requires the large drainage ditch along Arrowhead Trail and into the park area to be piped. If the Army Corp

of Engineers objects to the piping the Developer and the City agree to work cooperatively to develop an acceptable solution for this area. Trails shall be dedicated to the City.

**3.2.1.3.7 Recreation Complex/ Park.** A recreation complex covering approximately 52.2 acres and containing two (90') baseball /softball fields, three (80') baseball/softball fields, storage, restrooms, snack shack, score keeping booth and garage, five batting cages, six (6) pickle ball courts with field lights, pavilions, splash pad, plaza, playground with shade structures, activity hill with embankment slides, soccer fields, dog park, interactive multi use pump park (bike, scooters, etc.), multiuse sand area, seven hundred thirty-nine (739) parking spaces, park entry sign and landscaping as shown on the preliminary plat. City and Developer have worked extensively on a comprehensive Park Plan, including the amenities listed above. The City Council may substitute or modify an amenity in the Park with another amenity as long as the substituted amenity does not exceed the cost of the original amenity. The foregoing improvements, as more particularly described in Section 3.2.1.3.8 below, Exhibit C attached hereto, and any Park Plan approved by the City, are referred to herein as the "Park."

Developer will own and operate a reception center that will share parking with the recreational complex a connectors agreement shall be paid by the reception center to the City for connecting to the park utility infrastructure. All costs of the reception center shall be borne by the Developer and no portion of the limited tax bonds shall be used for this portion of the project. The reception center shall be a separate City approval and a separate recorded lot.

The open areas within the recreation complex shall be landscaped with trees and shrubs, have automatic sprinklers installed with Weather Trak controllers, be hydro-seeded with some areas that may be designated as sod as determined at the final design stage, and have a minimum of twenty-four park benches located thereon. The specific details of these amenities are set forth in the most recent plans submitted to the City Nov 7, 2023. Developer will donate the land and install the improvements.

**3.2.1.3.8 Recreation Complex Phasing.** City has approved the formation of the PIDs. The PIDs are authorized to issue Limited Property Tax Bonds secured by future property tax revenues of the development, the proceeds of which shall be used to improve the development and install the Park. Unless otherwise agreed to in writing by the City, all net proceeds of Limited Property Tax Bonds shall be utilized to finance or reimburse the costs of the Park. The foregoing requirement shall apply to all Limited Property Tax Bonds of the PIDs. The Developer shall provide the City with plan to demonstrate the proceeds from the Limited GO and the Special Assessments will generate sufficient capital to accomplish the Park project.

Developer shall construct the Park as described in Exhibit C, in four (4) phases, which phases are sequential in nature, per Exhibit D. Developer shall complete construction in its entirety of the Park before the City issues a building permit for the one thousandth (1,000th) living unit in the Project, and no later than September 1, 2027.

**Phase 1.** Phase 1 Park improvements include soccer fields, a sprinkler system, a maintenance building, a pavilion with bathrooms, a play area, an activity hill, a walking path, parking on the south lot (140 stalls), permanent fencing on the east, north, and south edges of the Park, and main utilities stubbed for Phase 2. Phase 1 shall be completed by the Developer by October 15, 2024. Phase 1 shall be completed prior to the City issuing the four hundredth (400th) building permit. The City may withhold additional building permits until Phase 1 is complete. Phase 1 of the Park shall be installed regardless of the PID Limited Property Tax Bond proceeds being received. If the grass has not been seeded or sod laid and asphalt

has not been paved within Phase 1 of the Park by October 15, 2024, the City may, at its discretion, withhold issuing building permits for the Development, regardless of the number of permits previously issued by the City.

**Phase 2.** Phase 2 Park improvements include 5 baseball and softball fields, dugouts, batting cages, a concessions and score keeping building, bleachers, field lighting, a perimeter ball field walking trail, a loop of parking around the ball fields, an entrance on 1260 West, an entrance on 1500 North, and landscaping within Phase 2. Phase 2 shall be completed prior to the City issuing the six hundredth (600th) building permit. The City may withhold building permits in excess of six hundred (600) until Phase 2 is complete. Phase 2 of the Park shall be installed regardless of the PID Limited Property Tax Bond proceeds being received.

**Phase 3.** Phase 3 Park improvements include a splash pad, shade structures, a parent hangout, a playground, a pavilion/restroom, landscaping in Phase 3 and perimeter fencing bordering Phase 3. Phase 3 shall be completed prior to the City issuing the eight hundredth (800th) building permit. The City may withhold building permits in excess of eight hundred (800) until Phase 3 is complete. Phase 3 of the Park shall be installed regardless of the PID Limited Property Tax Bond proceeds being received.

**Phase 4.** Phase 4 Park improvements include pickleball courts, a sand volleyball court, a pump track, a dog park, a pavilion in Phase 3, landscaping, and perimeter fencing bordering Phase 4. Phase 4 shall be completed prior to the City issuing the one thousandth (1,000th) building permit. The City may withhold additional building permits until Phase 4 is complete. Phase 4 of the Park shall be installed regardless of the PID Limited Property Tax Bond proceeds being received. If the Park is not complete in its entirety by September 1, 2027, the City may, at its discretion, withhold issuing building permits for the Development, regardless of the number of permits previously issued by the City.

Developer shall provide notice in writing to Home Builder Lot Buyers the terms and conditions regarding the Park installation and limitations on building permits restrictions based on phasing completions and deadlines. Developer shall collect in writing from Home Builder Lot Buyers acknowledgement of these terms.

A completed set of Park plans will be approved by the City; the summary sheet of the plans is attached as Exhibit C

In the event the Limited Property Tax Bonds are not issued, the schedule for installing the Park will follow the installation schedule above or a schedule mutually agreed upon by City and Developer.

It is understood and agreed by the City and the Developer that each phase of the Park shall be complete prior to the City's issuance of the next applicable building permit identified above with respect to the applicable phase of the Park, and in the event that the Park is not complete in its entirety by the deadline of September 1, 2027, the City may withhold any additional building permits until the Park is completed.

Developer agrees with each phase of the Park's completion. Developer shall donate to the City the applicable land and all improvements to the City, at which time all applicable maintenance and costs associated with the donated area shall be the responsibility of the City.

Developer and City agree to the following constraints regarding the City Approval of Park Costs, Materials, Equipment and Quality controls.

- (i) City and Developer agree to establish a refined budget based on the 2023.12.13 estimate and bids based on final approved plans for the Park.

(ii) City and Developer agree to stay within final budget to be established in accordance with (i) above.

(iii) City and Developer agree to reduce where possible the costs of the budgeted amounts as the Park is installed, provided Park is in accordance with approved plans.

(iv) City and Developer may choose to adjust costs across categories as needed for specific items while remaining within the overall budget.

(v) Overages and change orders beyond the scope of the established budget must be approved by City.

(vi) City and Developer will mutually agree on all major line items as they are procured and installed, sign off from both is required before an expenditure of \$25,000 or more is incurred.

(vii) City may require multiple bids for all, part, portion(s), specific item(s), or materials for procuring and installing the Park.

(viii) Developer and City mutually agree to cooperate to timely complete each phase of Park construction and to achieve the completion deadline of September 1, 2027, including the granting of any necessary City approvals for construction.

3.2.1.3.8.1 **Park Reimbursement Agreements.** The reimbursement agreements attached as Exhibit F and G shall govern the reimbursement of the costs of the Park by the City solely from and to the extent of certain Park Impact Fees and Density Fees (as defined therein).

3.2.1.3.9 **Wall/Fence.** The Developer shall construct an opaque masonry/decorative wall/fence along Arrowhead Trail as shown on the preliminary plat fencing plan. All other fencing will be constructed as shown on the preliminary plat fencing plan. Additional fencing may be required as each phase is presented for final approval.

3.2.1.3.10 **Storage Units.** Developer has reserved approximately 0.8 acres for an electric sub-station, approximately 1 acre for recreation vehicle parking, and approximately three acres for public storage units adjacent to 2200 West, across from City's sewer plant for storage units for public use and for the residents of the multi-family within the Project, which facilities shall be constructed within 36 months from approval of the first final plat. The storage area is required to be walled off from the residential uses within the Project with a masonry wall, have a gated entrance onto 2200 West, provide a driveway length which prevents backing onto public streets while waiting to gain access through the security gate, and provide landscaping between it and the street. A detailed landscape and elevations plan shall be approved by Salem City during final plat.

3.2.1.3.11 **Public Safety Building.** A public safety building site will be donated to the City on Arrowhead Trail as shown on the preliminary plan which will be a minimum of .74 acres. An opaque masonry/decorative wall/fence will be installed by Developer along the side and rear lot lines as shown on the preliminary plan. Front lot fencing may also be required.

## SECTION IV. GENERAL PROVISIONS

4.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. Future lot owners in the Project are not third-party beneficiaries of this Agreement.

4.2 **Transfer of Property.** Developer shall have the right, with City's consent, to assign or transfer all or any portion of its rights and obligations under this Agreement to any party acquiring an interest or estate in the Property or any portion thereof, except as specifically set forth below. City may not unreasonably withhold its consent to such assignment. Developer shall provide written notice of any proposed or completed assignment or transfer. Unless City objects in writing within thirty (30) days, City shall be deemed to have approved of and consented to the assignment. In the event of an assignment, the transferee shall succeed to all of Developer's rights and obligations under this Agreement.

4.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Arrowhead Springs project is a private development; (ii) City and Developer hereby renounce the existence of any form of agency relationship, joint venture, or partnership among City and Developer; and (iii) nothing contained herein shall be construed as creating any such relationship.

4.4 **Consent.** In the event this Agreement provides for consent from City or Developer, such consent shall be deemed to be given thirty (30) days after consent is requested in writing, in the event no response to the request is received within that period. All requests for consent shall be made in writing and in no event shall consent be unreasonably withheld or delayed.

4.5 **Legal Challenges.** In the event that any third person challenges this Agreement or the development contemplated herein, Developer agrees to accept responsibility for all legal fees, including attorney's fees, expert witness expenses, and/or court costs incurred by City in defending this Agreement. City shall not be required to make any impact fee reimbursements contemplated herein if the source of impact fee funds for such reimbursements are held invalid, illegal, void, or otherwise unenforceable.

## SECTION V. MISCELLANEOUS

5.1 **Incorporation of Exhibits and Headings.** All Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein. The headings to the various paragraphs and sections are for assistance in locating contract provisions but are not to be considered part of the contract provisions.

5.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

5.3 **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

5.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**5.5 Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the other, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

**5.6 Assignment.** Neither this Agreement nor any of the provisions, terms, or conditions hereof can be assigned by the Developer to any other party, individual or entity without assigning the rights as well as the obligations under this Agreement. The rights of the City under this Agreement shall not be assigned.

**5.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

**5.8 Mediation.** Any and all disputes arising out of or related to this Agreement or the Parties performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation. The parties shall: (i) mediate in good faith; (ii) exchange all documents which either believes to be relevant and material to the issue(s) in dispute, and, (iii) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be in Utah County. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed from an approved mediator list provided by the Utah State Bar Association with specialized knowledge of land use and municipal law. The appointment shall take place pursuant to the guidelines set forth by the Utah State Bar. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation.

**5.9 Attorney's Fees.** If any Party hereto is required to engage the services of counsel by reason of the default of another Party, the non-defaulting Party shall be entitled to receive its costs and reasonable attorney's fees, both before and after judgment and whether or not suit is filed. Said costs and attorneys' fees shall include, without limitation, costs and attorney's fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

**5.10 Notices.** Any notice or communication required hereunder between the Parties must be in writing and may be given either personally or by certified mail, return receipt requested. If given by certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to City, to:

Salem City  
Attn: Mayor  
30 W. 100 S.  
P.O. Box 901  
Salem, Utah 84653



With a copy to:  
Walter Bird  
Salem City Attorney  
30 W. 100 S.  
Salem, Utah 84660

If to Developer, to:

Gecko Grey, LLC  
Attn: Ryan Poelman  
260 South 1200 West  
Orem, Utah 84058

**5.11 Developer Indemnification.** The Developer agrees to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorneys' fees and court costs incurred or arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person (a) which shall occur within the Property during the Developer's construction of infrastructure improvements or occur in connection with any offsite work done for or in connection with the Property and (b) which shall be directly, substantially and proximately caused by any negligent acts of the Developer or its agents, servants, employers, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) the negligent or intentional acts of contractors who are not in the Developer's employ, nor to acts of third parties.

**5.12 Insurance.** During the period from the commencement of work on the Property and ending on the date when all work is inspected and approved by the City, the Developer shall furnish or cause to be furnished to the City, at the City's reasonable request, copies of certificates of liability insurance obtained by the Developer from general or subcontractors under the Developer's employ with respect to the Independence at the Point Project, evidencing commercial general liability insurance policies in the amount of at least \$1,000,000.00 single limit. Developer shall maintain or require all contractors and other employers performing any work on the Property to maintain adequate general liability insurance, worker's compensation insurance and public liability coverage.

**5.13 City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other improvements upon any portion of the Property by the Developer, the Developer shall, at its expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental entity having jurisdiction over the Developer's work. The City shall reasonably cooperate with the Developer in seeking to secure such permits from other governmental entities, canal companies, and public or private utility companies.

**5.14 Rights of Access.** Representatives of the City shall have a reasonable right of access to the Property and any portion thereof during the period of any construction to inspect or observe any work or proposed development on the Property. For purposes of this provision, "reasonable right of access" shall mean access during normal business hours.

**5.15 Compliance with Law.** The Developer shall comply with all applicable federal, state and local laws pertaining to the Developer's activities in connection with the Property, and any Phase thereof.

**5.16 Inspection and Approval by the City.** The City may, at its option, perform periodic inspections and quality assurance tests of any public improvements, such as streets and utilities, being installed and constructed by the Developer or its contractors. No work involving excavations shall be

covered until the same has been inspected by the City's representatives and the representatives of any other governmental entities having jurisdiction over the particular improvements involved. The City shall promptly inspect any such excavations after notice by the Developer. The Developer shall warrant the materials and workmanship of all infrastructure improvements installed by Developer in each Phase, for a period consistent with the period for improvement assurance warranties as described in Utah Code § 10-9a-604.5(1) (2012). The City shall, at the time of acceptance and/or commencement of the warranty period, if requested by the Developer in writing, provide written confirmation of the date of acceptance and commencement of the warranty period for the improvements for each Phase, and written confirmation of the end of the warranty period.

**5.17 Use and Maintenance During Construction.** The Developer covenants and agrees that, during construction, it shall develop the Property for the uses set forth in the Project Plan, as restricted and limited by the Agreement. From the commencement of construction until the City's acceptance of infrastructure improvements constructed by the Developer in a given Phase and the commencement of the warranty period (the "Developer's Construction Period"), the Developer shall keep the subject portion of the Property free and clear from any unreasonable accumulation of debris, waste materials and any nuisances, and shall make its best efforts to contain its construction debris so as to prevent its scattering, due to reasonably anticipated events of wind and water. The Developer shall likewise keep the streets reasonably free from mud, snow, and erosion debris during the Developer's Construction Period.

**5.18 Default.** An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder where due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete. Notwithstanding the foregoing, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes or labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of nature: governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; war, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

**5.18.1 Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

5.18.1 All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages as to the defaulting party

5.18.1.2 The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.

5.18.1.3 The right to draw upon any security posted or provided in connection with the Project by the defaulting party.

**5.19 Integration.** This Agreement, together with the Exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the Parties hereto.

5.20 **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

5.21 **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted).

5.22 **Non-Liability of City Officials and Employees.** No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

5.23 **Third Party Rights.** The obligations of the Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City, the Developer and any Permitted Transferees or Developer Affiliates.

5.24 **Further Documentation.** This Agreement is entered into by the parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate in good faith with respect to all such future agreements.

5.25 **Relationship of Parties.** This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

5.26 **Agreement to Run with the Land.** This Agreement shall be recorded in the Office of the Utah County Recorder against the Property and is intended and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the

5.27 **Performance.** Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

5.28 **Consents and Approvals.** Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement, the Project Plan and the City Ordinances.

5.29 **Approval and Authority to Execute.** Each of the parties represents and warrants as of the Effective Date this Agreement, he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

5.30 **Termination.** Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the final Phase of the Project has not been recorded in the Office of the Utah County Recorder within twenty-five ( 25) years from the date of this Agreement (the "Term"), or upon the occurrence of an Event of Default that is not cured as set forth in this Agreement, the

City shall have the right, but not the obligation at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (i.e., the Developer, a Permitted Transferee or Developer Affiliate, as the case may be). provided, however, that if at the end of the Term the Developer is not in default hereunder, and no more than two (2) years have passed since the Developer' s submission of the most recent final plat for a Phase of the Property, then the Term shall automatically extend for an additional period of five (5) years. For the sake of clarity, at the end of the then current Term, this Agreement shall be extended for an additional period of five (5) years unless the Developer is in default or a final plat for a Phase of the Property has not been submitted for a period of more than two (2) years. If the Term is not automatically extended, the Term may be extended by mutual agreement of the Parties.

5.31 **No Waiver.** Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

5.32 **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement, which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes, therefore, acts of nature, governmental restrictions, regulations or controls: judicial orders, enemy or hostile government actions; wars; pandemics, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

5.33 **Priority and Subordination.** The Developer agrees to use commercially reasonable efforts to obtain subordinations from all lenders with liens senior to the encumbrance created by this Agreement on the property.

5.34 **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- Exhibit A Overall Concept and Phasing Plan
- Exhibit B Overall Preliminary Plat
- Exhibit C Recreation Complex / Park summary (rendering/pictures)
- Exhibit D Park Phasing Plan
- Exhibit E Street Concept Plan
- Exhibit F Arrowhead Park Impact Fee Reimbursement Agreement
- Exhibit G Offsite Park Reimbursement Agreement
- Exhibit H Power and Water Reimbursement Agreement (as amended)

IN WITNESS WHEREOF, this Agreement has been executed by the Developer, by persons duly authorized to execute the same, and by Salem City, acting by and through its City Council, as of the 6<sup>th</sup> day of March, 2024.

SALEM CITY, UTAH

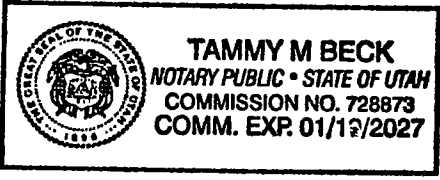
*Kurt L Christensen*  
 By: Kurt L Christensen, Mayor

Attest: *Jeffrey Nielson*  
 Jeffrey Nielson, Recorder

STATE OF UTAH )  
 ) : ss.  
 COUNTY OF UTAH )

On the 6<sup>th</sup> day of March, 2024, personally appeared before me Kurt L Christensen and Jeffrey Nielson, who being by me duly sworn did say that they are respectively the Mayor and Recorder of Salem City, and that they executed the foregoing Amendment on behalf of said City being duly authorized and empowered, and they did duly acknowledge before me that the City executed the same for the uses and purposes stated therein.

*Tammy M Beck*  
 Notary Public

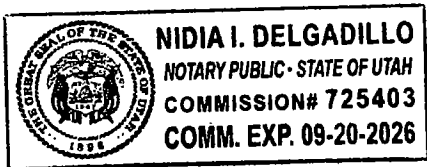


GECKO GREY, LLC

*[Handwritten Signature]*  
By: Ryan Poelman, Manager

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF UTAH        .)

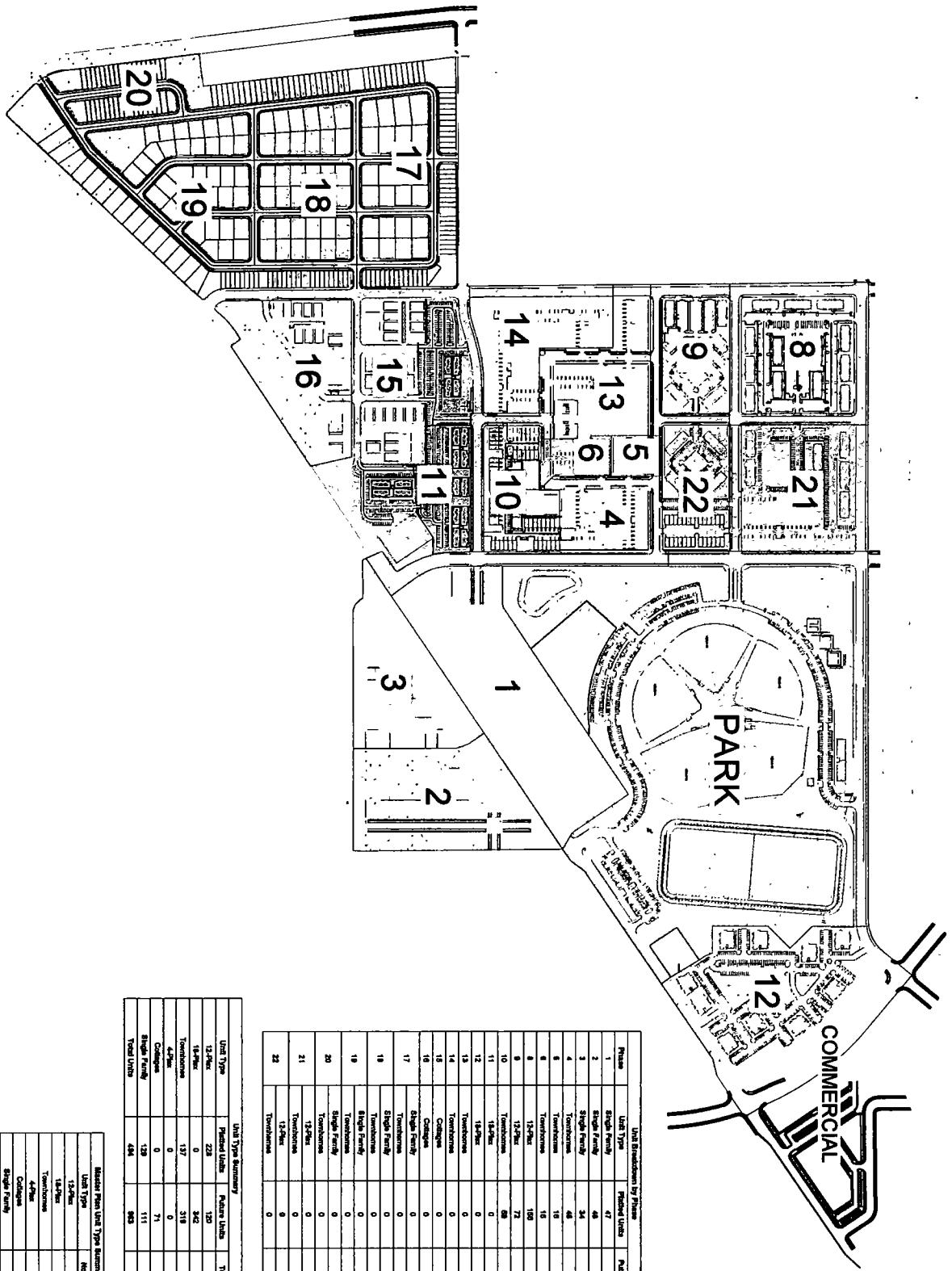
On the 5 day of March, 2024, personally appeared before me Ryan Poelman, who being by me duly sworn did say that he is the Manager of Gecko Grey, LLC, and that he executed the foregoing Amendment on behalf of said company being duly authorized and empowered, and he did duly acknowledge before me that the company executed the same for the uses and purposes stated therein.



*[Handwritten Signature]*  
Notary Public

# Exhibit A

## Concept and Phasing Plan



Unit Breakdown by Phase			
Phase	Unit Type	Proposed Units	Phase Units
1	Single Family	47	0
	Single Family	46	0
2	Single Family	34	0
	Single Family	46	0
3	Townhomes	18	0
	Townhomes	18	0
4	Townhomes	16	0
	Townhomes	16	0
5	Townhomes	15	0
	Townhomes	15	0
6	Townhomes	15	0
	Townhomes	15	0
7	Townhomes	15	0
	Townhomes	15	0
8	Townhomes	15	0
	Townhomes	15	0
9	Townhomes	15	0
	Townhomes	15	0
10	Townhomes	15	0
	Townhomes	15	0
11	Townhomes	15	0
	Townhomes	15	0
12	Townhomes	15	0
	Townhomes	15	0
13	Townhomes	15	0
	Townhomes	15	0
14	Townhomes	15	0
	Townhomes	15	0
15	Townhomes	15	0
	Townhomes	15	0
16	Townhomes	15	0
	Townhomes	15	0
17	Townhomes	15	0
	Townhomes	15	0
18	Townhomes	15	0
	Townhomes	15	0
19	Townhomes	15	0
	Townhomes	15	0
20	Townhomes	15	0
	Townhomes	15	0
21	Townhomes	15	0
	Townhomes	15	0
22	Townhomes	15	0
	Townhomes	15	0

Unit Type Summary		
Unit Type	Proposed Units	Total Units
13-4Plex	228	348
14-4Plex	0	342
Townhomes	137	318
4-Plex	0	0
College	0	71
Single Family	129	111
<b>Total Units</b>	<b>484</b>	<b>882</b>

Master Phase Unit Type Summary		
Unit Type	No. of Units	Total Units
13-4Plex	348	348
14-4Plex	342	342
Townhomes	488	488
4-Plex	0	0
College	71	71
Single Family	240	240
<b>Total Proposed Units</b>	<b>1487</b>	<b>1487</b>

ARROWHEAD SPRINGS  
 SALEM CITY, UTAH  
 OVERALL PHASING PLAN

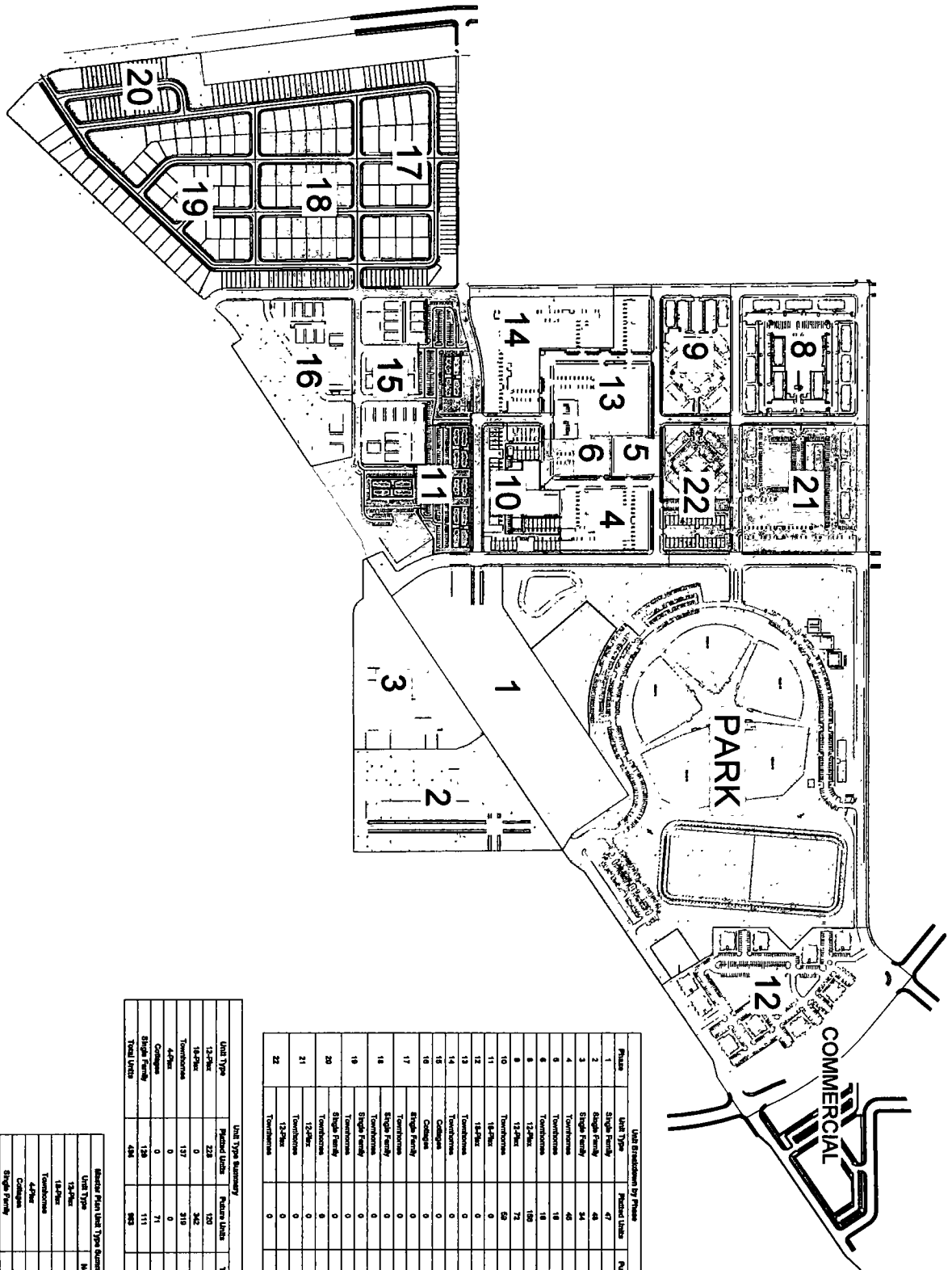
**MW BROWN**  
 ENGINEERING, INC.  
 Office (801) 377-1700 Fax: (801) 377-1789  
 578 East 770 North, Orem UT 84057

REV	DATE	BY	DESCRIPTION



# Exhibit B

## Preliminary Plat



Phase	Unit Type	Project Units	Project Units
1	Single Family	47	0
2	Single Family	48	0
3	Single Family	34	0
4	Townhomes	46	0
5	Townhomes	18	0
6	Townhomes	18	0
7	Townhomes	18	0
8	Townhomes	18	0
9	Townhomes	18	0
10	Townhomes	69	0
11	Townhomes	59	0
12	Townhomes	0	182
13	Townhomes	0	140
14	Townhomes	0	74
15	Condos	0	27
16	Condos	0	34
17	Single Family	0	40
18	Single Family	0	38
19	Single Family	0	31
20	Single Family	0	13
21	Townhomes	0	27
22	Townhomes	0	41
	Townhomes	0	48
	Townhomes	0	39

Unit Type	Phase	Project Units	Total Units
1.5-Plex	0	120	348
1.8-Plex	0	342	342
Townhomes	137	310	449
4-Plex	0	0	0
Condos	0	71	71
Single Family	129	111	240
Total Units	484	883	1467

Unit Type	No. of Units
1.5-Plex	348
1.8-Plex	342
Townhomes	449
4-Plex	0
Condos	71
Single Family	240
Total Projected Units	1467

ARROWHEAD SPRINGS  
SALEM CITY, UTAH  
OVERALL PHASING PLAN

**MW BROWN**  
ENGINEERS, INC.  
Office (801) 377-1700 Fax (801) 377-1789  
578 East 700 North, Orem UT 84057

Task: ARROWHEAD SPRINGS  
PROJECT NO: 2021-142  
Drawing No: 1487

No.	Date	By	Notes

# Exhibit C

## Recreation Complex / Park

ENT

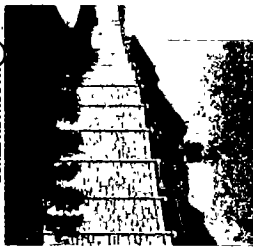
PRINT DATE: 1/17/2025



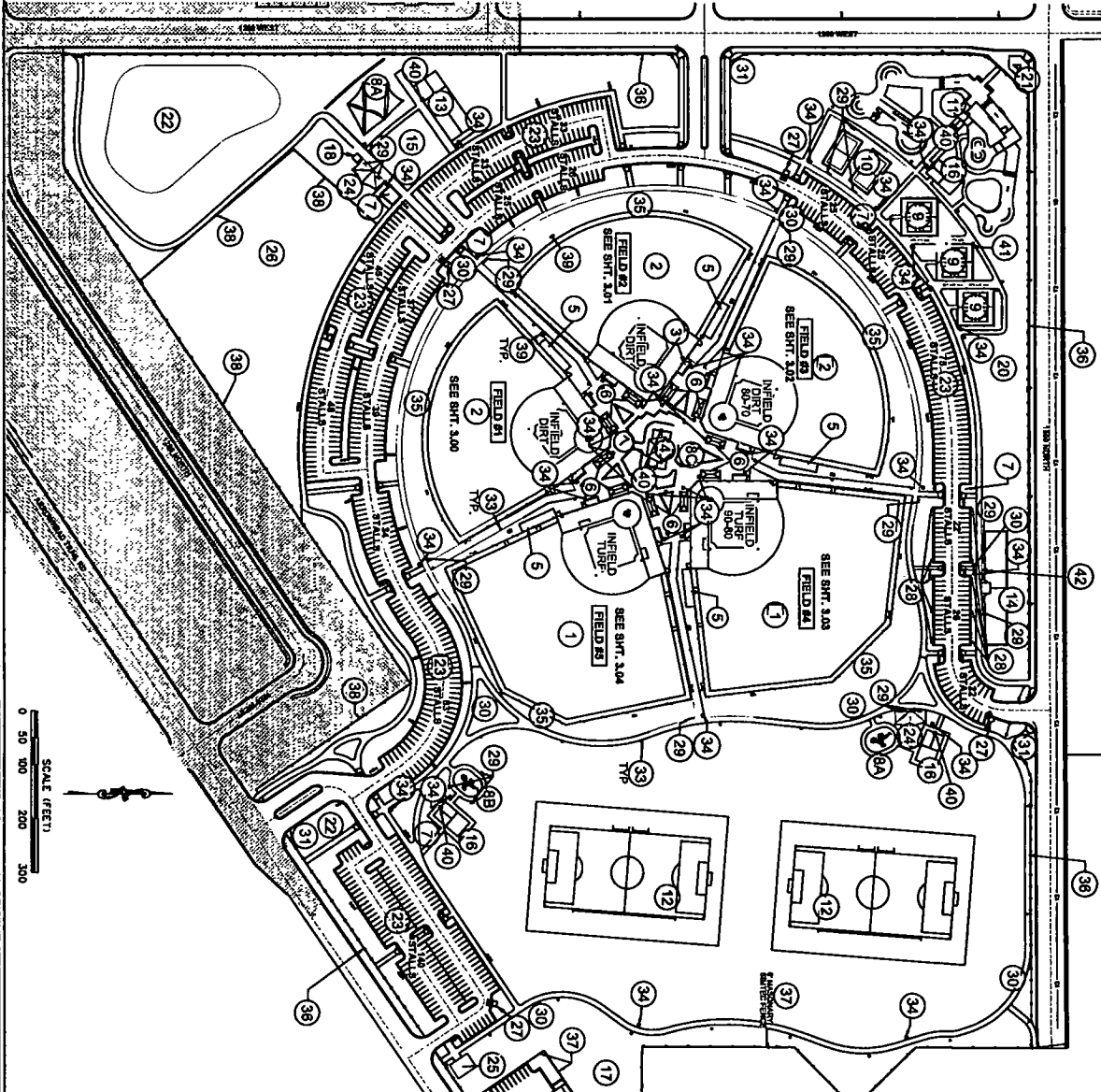
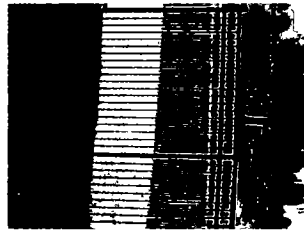
39 BUNKER FENCE



37 MASONRY FENCE



30 METAL PARK SECURITY FENCE



SCALE (FEET)  
0 50 100 200 300



41 WATER PUMPING (GENERAL)

CONCRETE CURBING FOUNDATION (GENERAL)  
NOTES: ALL FINISHED FINISHES SHALL BE FINISHED TO 1" ±

NOTES: ALL FINISHED FINISHES SHALL BE FINISHED TO 1" ±

Legend table with columns for QTY and description of materials and quantities.

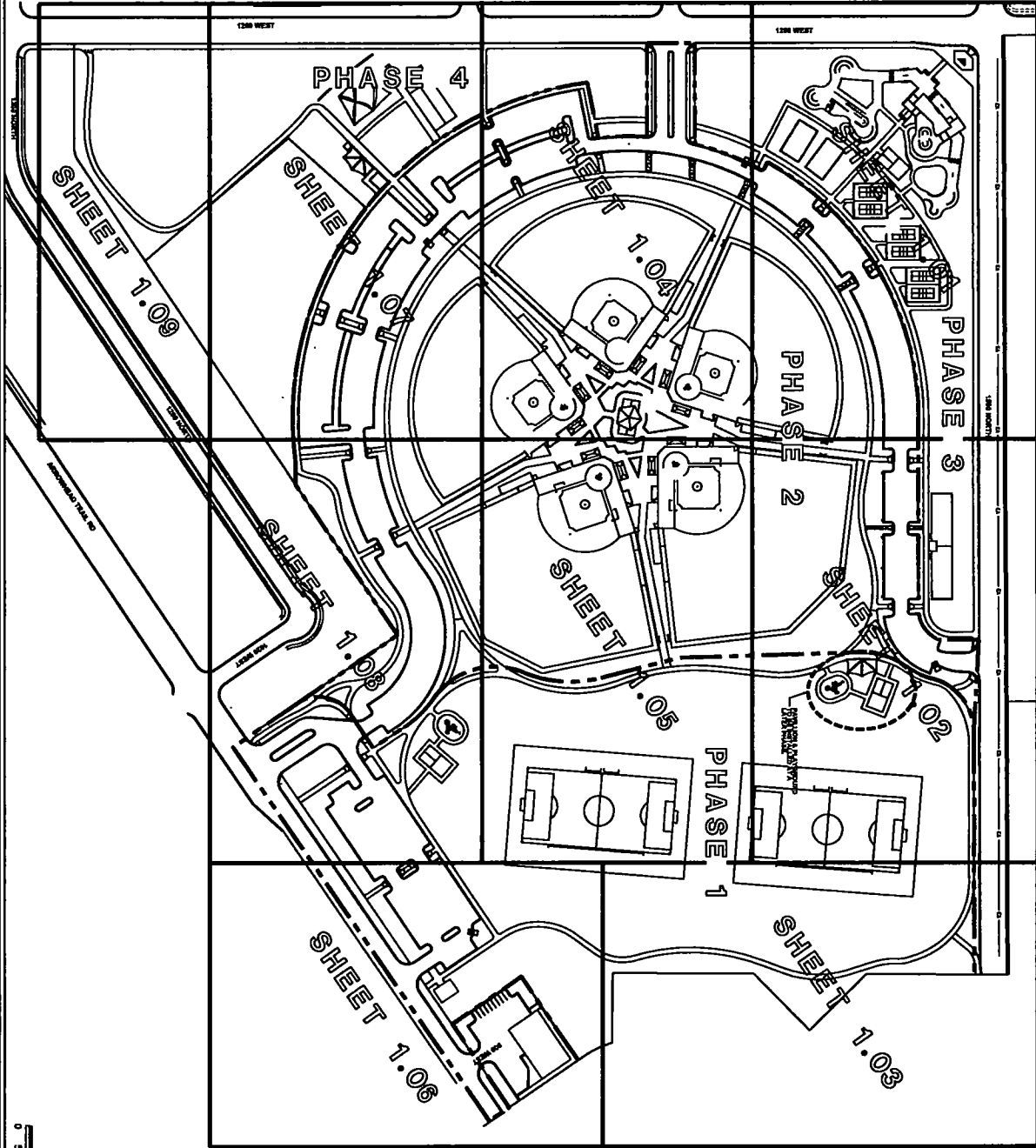
ARROWHEAD SPRINGS PARK  
SALEM, UTAH  
OVERALL SITE PLAN  
1:000

MW BROWN ENGINEERS & ARCHITECTS logo and contact information.

# Exhibit D

## Park Phasing Plan

811  
 Call before you dig  
 PRINT DATE: 11/2023



SCALE (FEET)  
 0 50 100 200 300

Title:	ARROWHEAD SPRINGS PARK
Location:	SALEM, UTAH
Drawing Name:	OVERALL PHASING PLAN
Project No:	19823
Sheet No:	1.0023

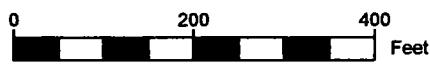
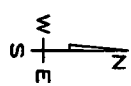
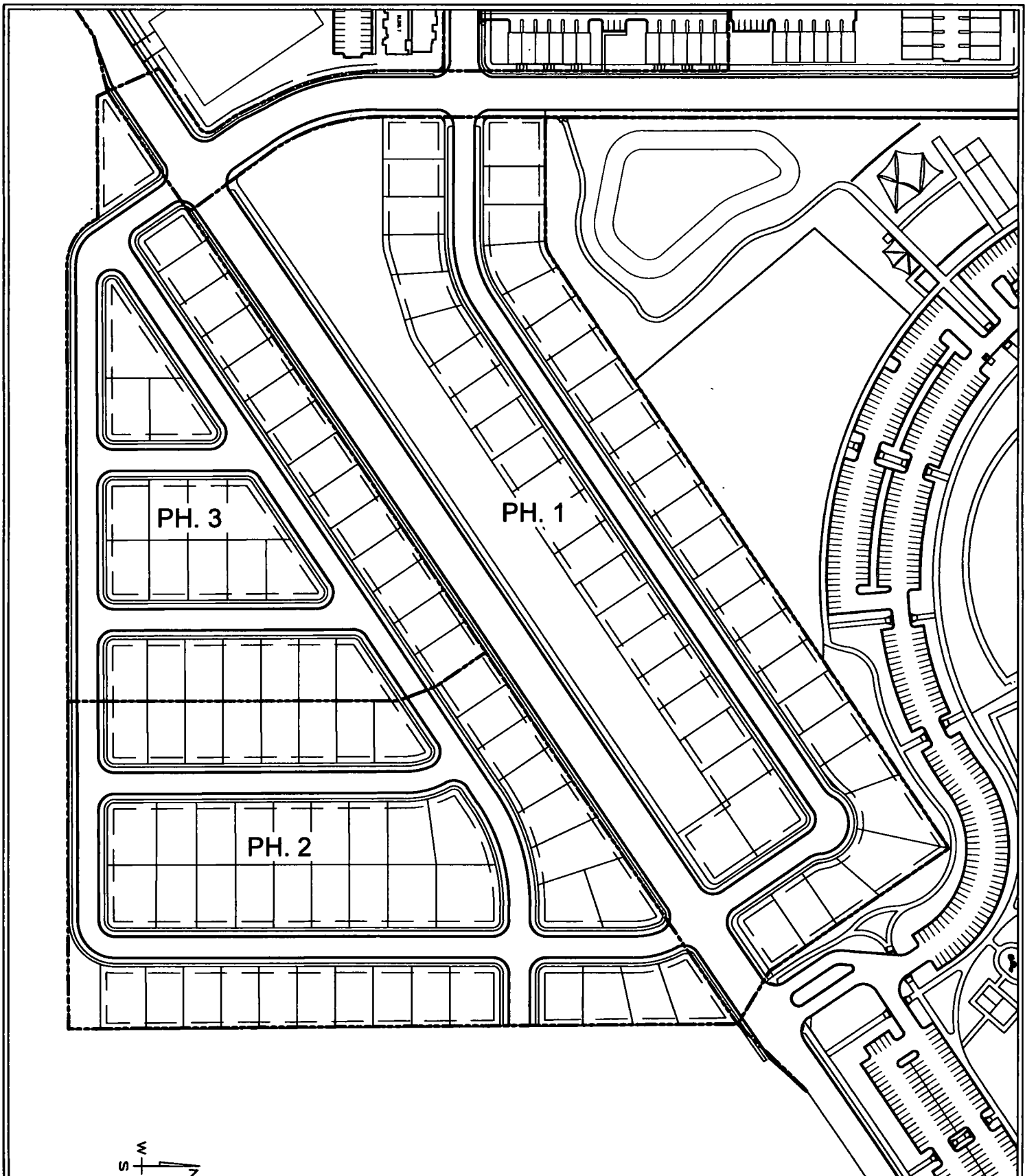
NO.	DATE	BY	REVISIONS

**MW BROWN**  
 ENGINEERING, INC  
 Office: (801) 377-1790 Fax: (801) 377-1729  
 578 East 770 North, Orem UT 84057

4/20/2024 11:11 AM

# Exhibit E

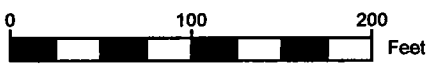
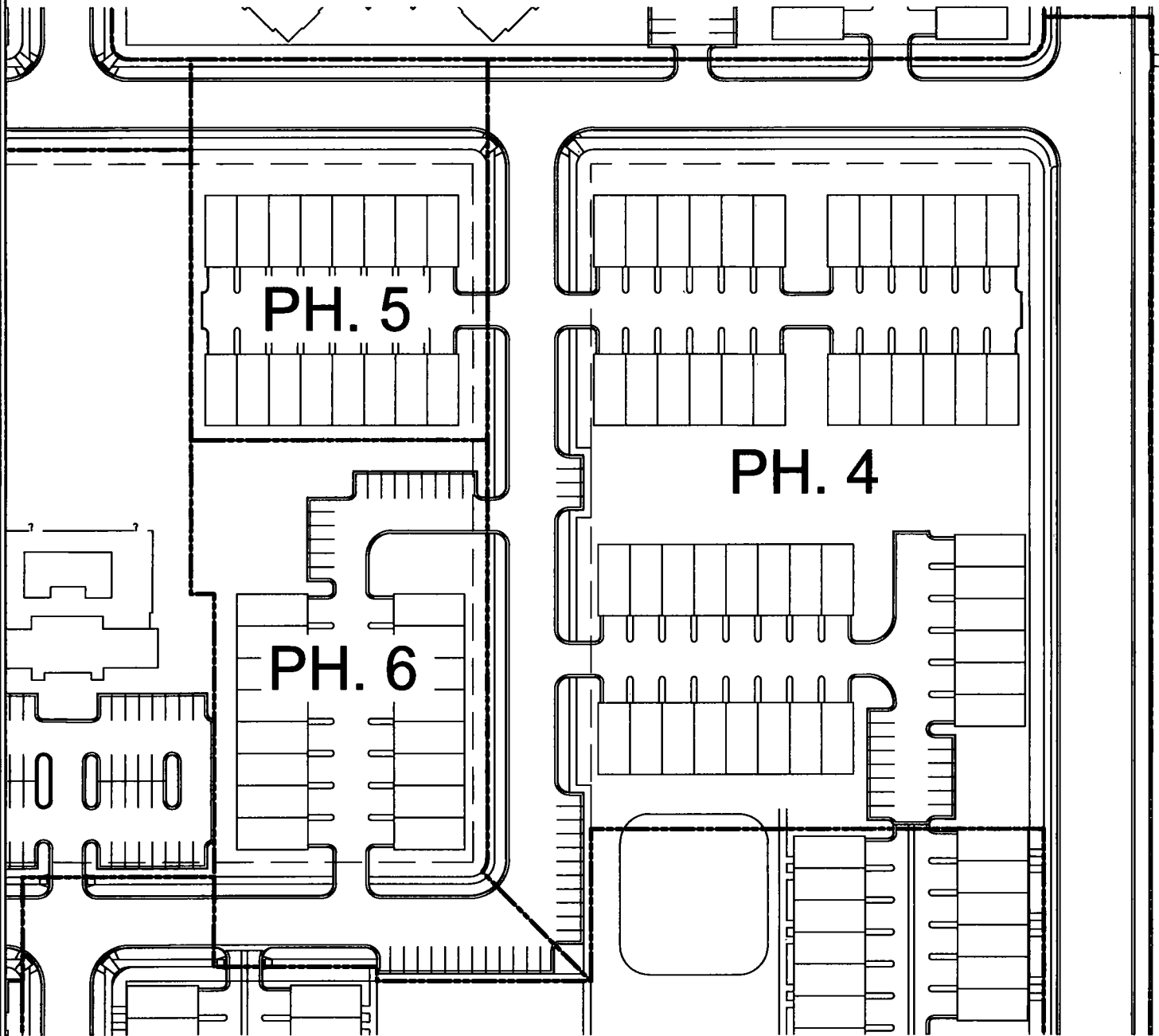
## Street Concept Plan



ENT 19823 = 2024 PG 32 of 80

PROJECT NO 2021 052 SHEET NO EXHIBIT 1	Title <b>ARROWHEAD SPRINGS DEVELOPMENT</b>		<table border="1"> <thead> <tr> <th>No.</th> <th>Date</th> <th>By</th> <th>Name</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Date	By	Name																							
	No.	Date		By	Name																									
Location <b>SALEM, UTAH</b>		<table border="1"> <thead> <tr> <th colspan="4">REVISIONS</th> </tr> <tr> <th>No.</th> <th>Date</th> <th>By</th> <th>Name</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	REVISIONS				No.	Date	By	Name																				
REVISIONS																														
No.	Date	By	Name																											
Drawing Name: <b>EXHIBIT 1 - PHASE 1, 2 &amp; 3</b>			<table border="1"> <tr> <td colspan="4" style="text-align: center;"><b>MW-BROWN</b></td> </tr> <tr> <td colspan="4" style="text-align: center;">ENGINEERING, INC.</td> </tr> <tr> <td colspan="4" style="text-align: center;"> <small>Office (801) 377-1700 Fax: (801) 377-1789 578 East 770 North, Orem UT 84058</small> </td> </tr> </table>	<b>MW-BROWN</b>				ENGINEERING, INC.				<small>Office (801) 377-1700 Fax: (801) 377-1789 578 East 770 North, Orem UT 84058</small>																		
<b>MW-BROWN</b>																														
ENGINEERING, INC.																														
<small>Office (801) 377-1700 Fax: (801) 377-1789 578 East 770 North, Orem UT 84058</small>																														





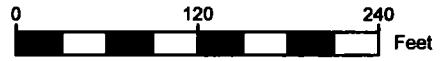
PROJECT NO  
2024 032  
SUBJECT NO  
EXHIBIT 2

Title  
**ARROWHEAD SPRINGS DEVELOPMENT**  
Location  
**SALEM, UTAH**  
Drawing Name  
**EXHIBIT 2 - PHASE 4, 5 & 6**

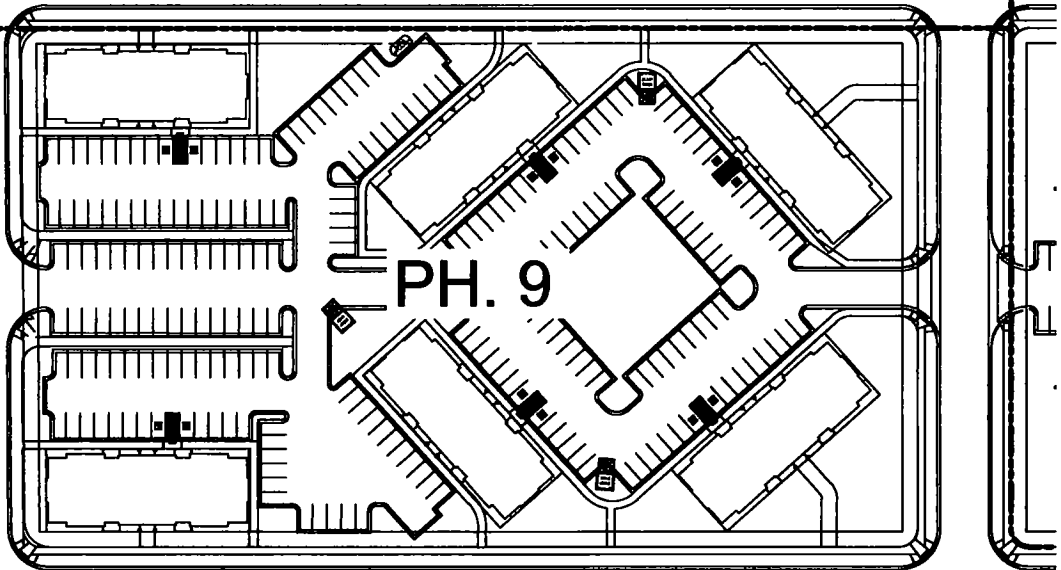
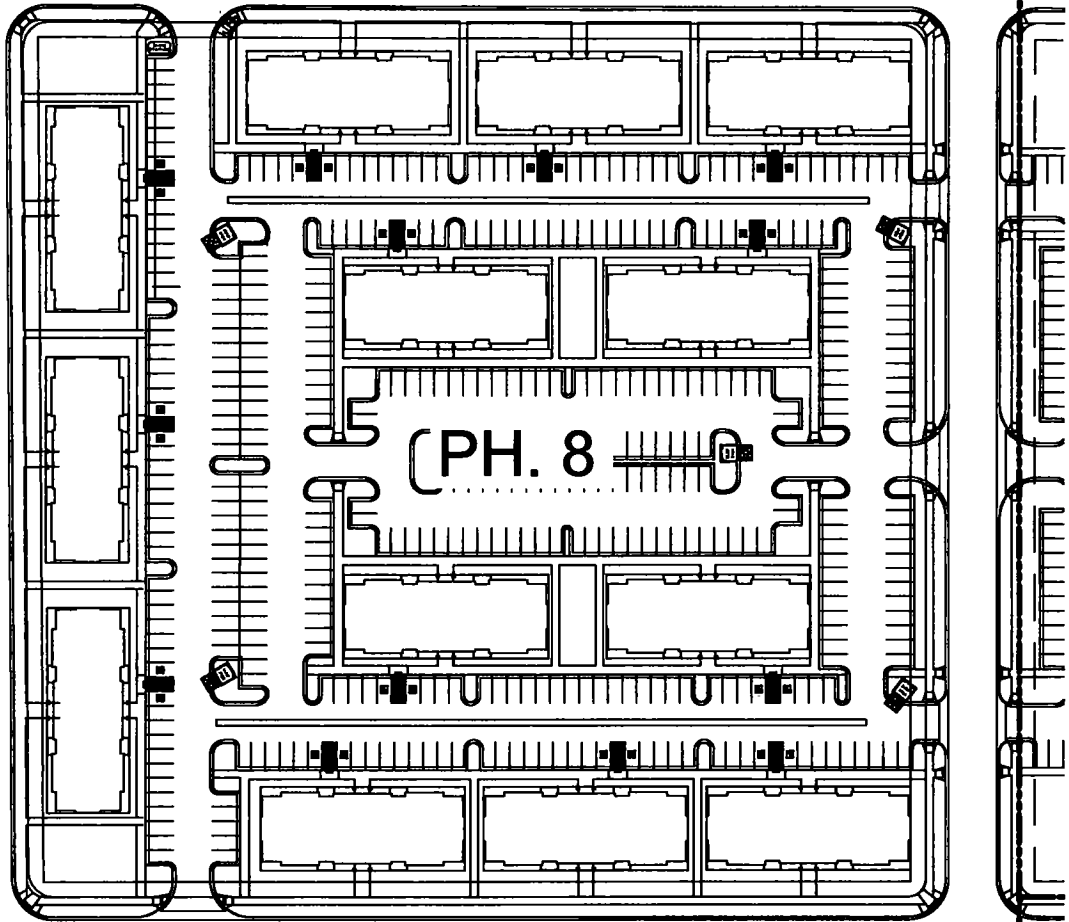
No.	Date	By	Notes

REVISIONS

**MW BROWN**  
ENGINEERING, INC.  
Office (801) 377-1790 Fax: (801) 377-1789  
378 East 770 North, Cross UT 84658



ENT 19823=2024 PG 34 of 80



PROJECT NO  
2021 002

EXHIBIT NO  
EXHIBIT 3

Title: ARROWHEAD SPRINGS DEVELOPMENT

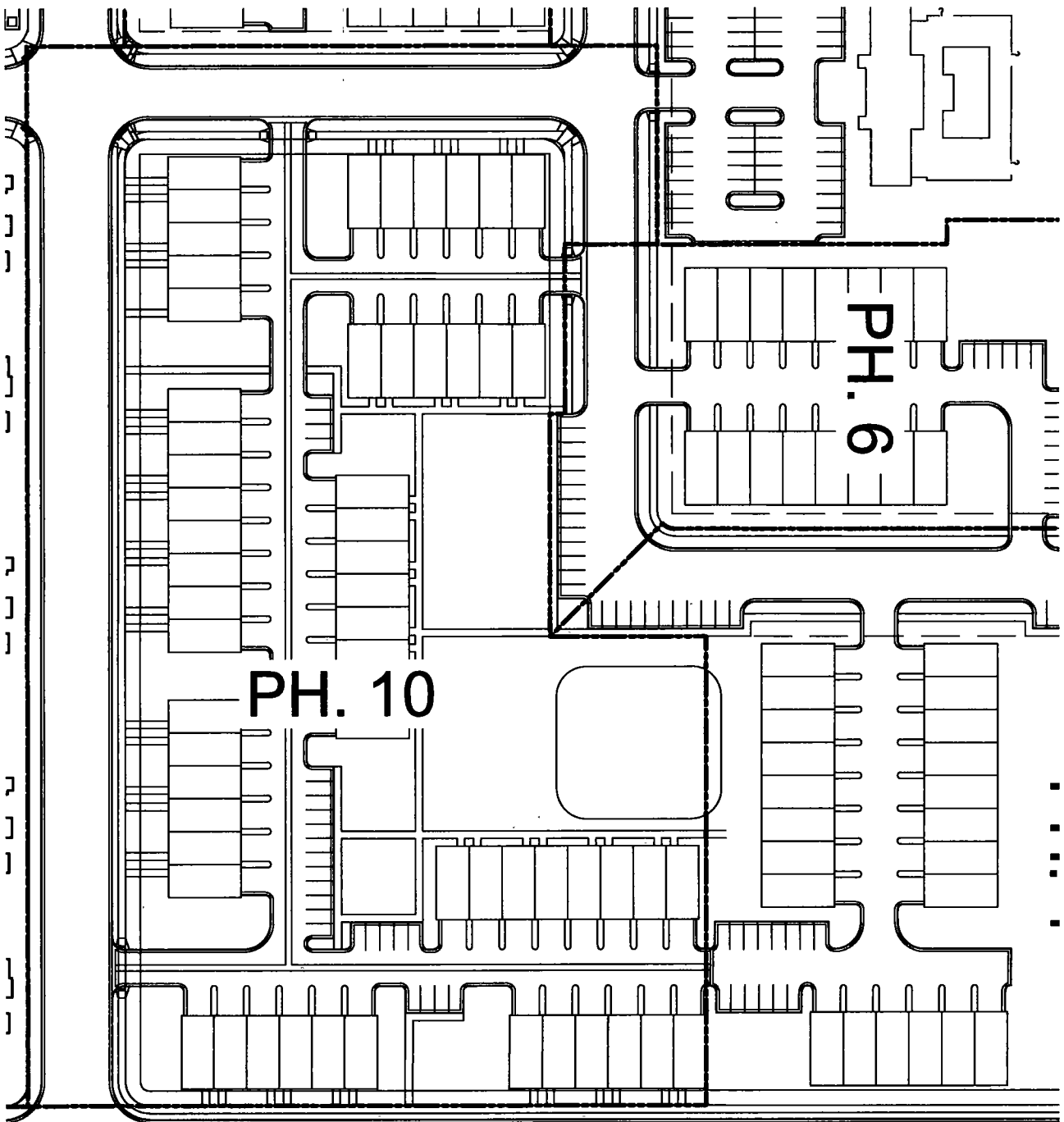
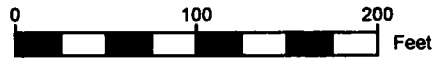
Location: SALEM, UTAH

Drawing Name: EXHIBIT 3 - PHASE 8 & 9

No.	Date	By	Notes

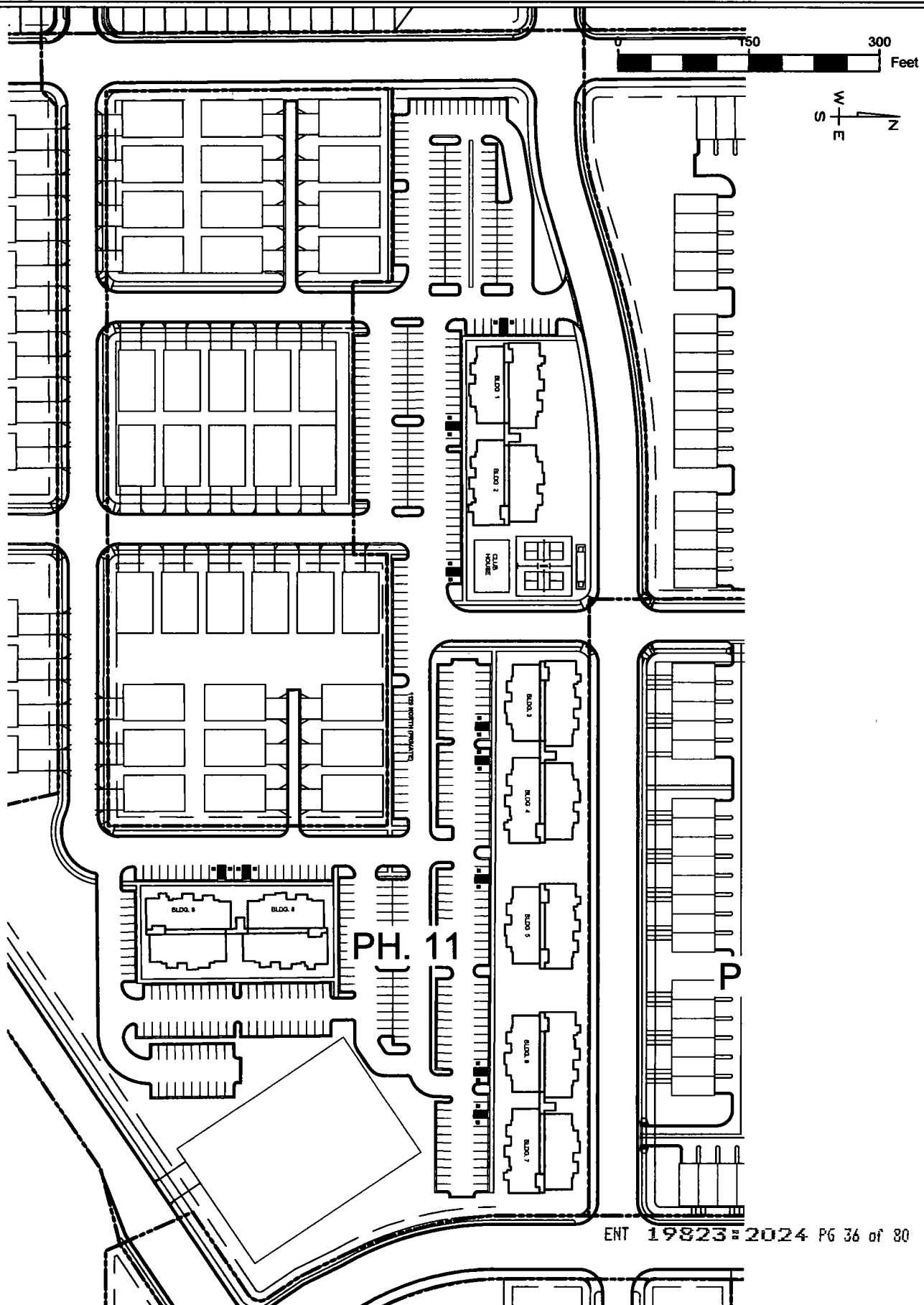
**MW BROWN**  
ENGINEERING, INC.

Office: (801) 377-1790 Fax: (801) 377-1789  
578 East 790 North, Orem UT 84058



ENT 19823=2024 PG 35 of 80

PROJECT NO 2021.002	TITLE	ARROWHEAD SPRINGS DEVELOPMENT	<table border="1"> <tr><th>No.</th><th>Date</th><th>By</th><th>Name</th></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </table>	No.	Date	By	Name																	
	No.	Date		By	Name																			
SHEET NO EXHIBIT 4	LOCATION	SALEM, UTAH																						
DRAWING NAME		EXHIBIT 4 - PHASE 10	<small>Office (801) 377-1790 Fax (801) 377-1789 578 East 770 North, Orem UT 84058</small>																					



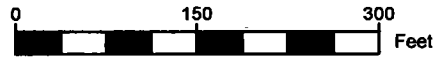
ENT 19823-2024 PG 36 of 80

PROJECT NO. 2021 002	Title <b>ARROWHEAD SPRINGS DEVELOPMENT</b>
SHEET NO. EXHIBIT 5	Location <b>SALEM, UTAH</b>
Drawing Name <b>EXHIBIT 5 - PHASE 11</b>	

No.	Date	By	Notes
REVISIONS			

Office (801) 377-1790 Fax (801) 377-1789  
 578 East 770 North, Orem UT 84058

PH. 12



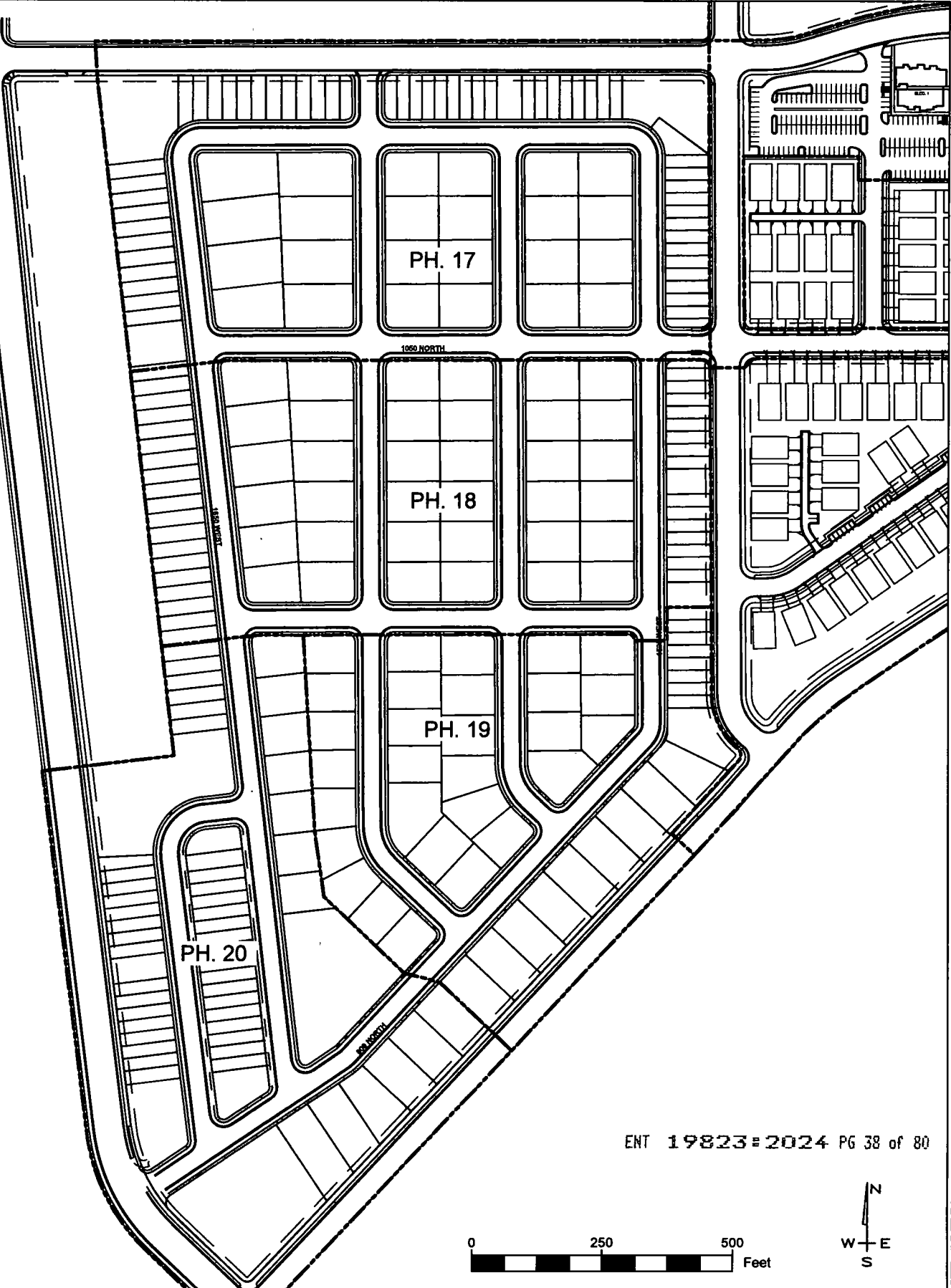
PROJECT NO 2021 032	SHEET NO EXHIBIT 6	Title	ARROWHEAD SPRINGS DEVELOPMENT
		Location	SALEM, UTAH
		Drawing Name	EXHIBIT 6 - PHASE 12

No.	Date	By	Notes

REVISIONS

**MW**  
**BROWN**  
ENGINEERING, INC

Office (801) 377-1790 Fax (801) 377-1789  
578 East 700 North, Orem UT 84058



ENT 19823 = 2024 PG 38 of 80

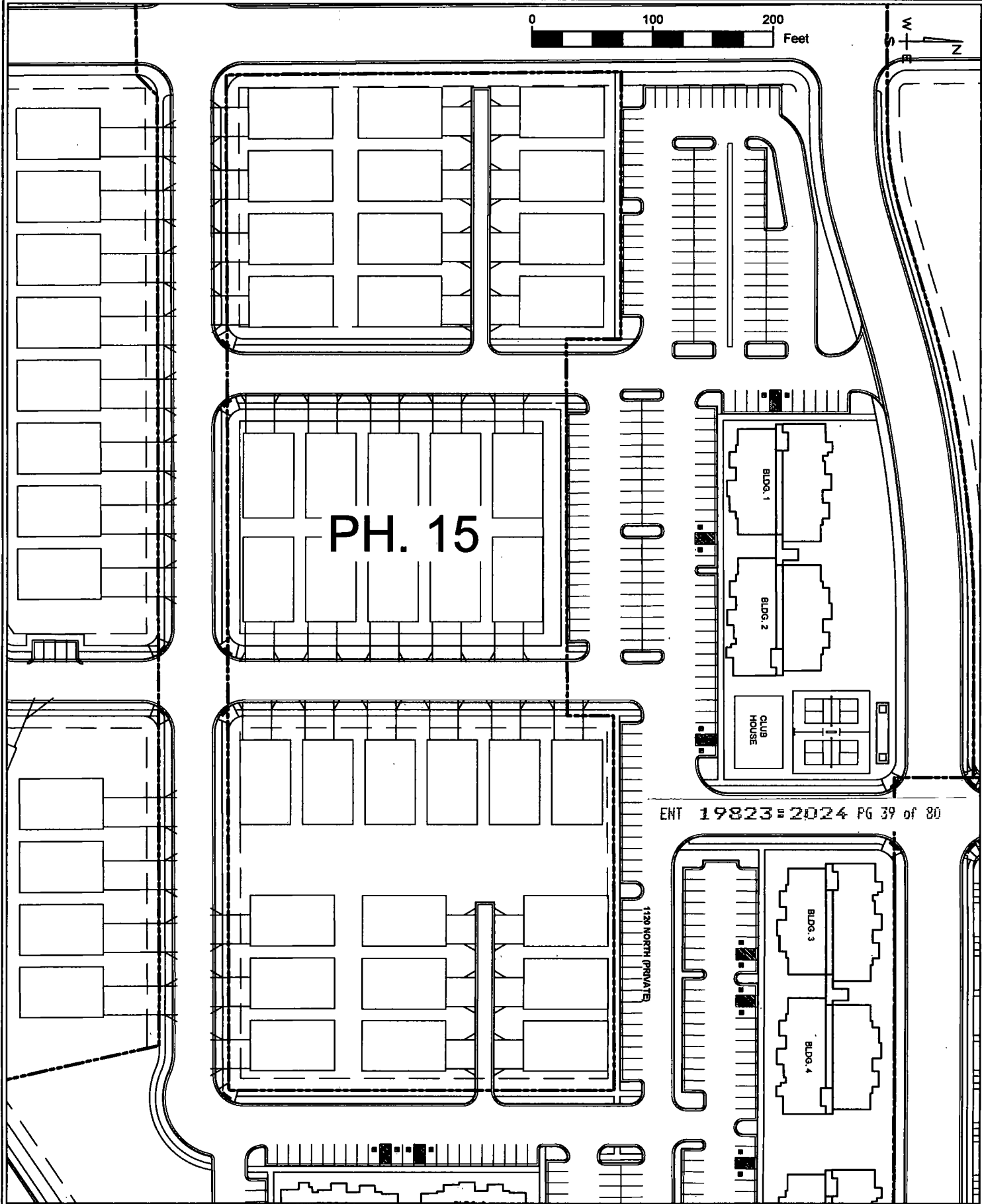
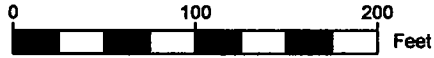


PROJECT NO. 2024 032 SHEET NO. EXHIBIT 7	Title:	ARROWHEAD SPRINGS DEVELOPMENT
	Location:	SALEM, UTAH
	Drawing Name:	EXHIBIT 7 - PHASE 17, 18, 19 & 20

No.	Date	By	Name

**MW**  
**BROWN**  
 ENGINEERING, INC.

Office (801) 377-1790 Fax (801) 377-1799  
 578 East 778 North, Orem UT 84058



ENT 19823 = 2024 PG 39 of 80

PROJECT NO:  
2021.002  
SHEET NO:  
EXHIBIT 8

**ARROWHEAD SPRINGS DEVELOPMENT**  
Location: **SALEM, UTAH**  
Drawing Name: **EXHIBIT 8 - PHASE 15**

No.	Date	By	Notes
REVISIONS			

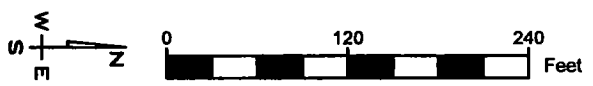
**MW**  
**BROWN**  
ENGINEERING, INC.

Office: (801) 377-1790 Fax: (801) 377-1789  
578 East 770 North, Orem UT 84058

4530 WEST

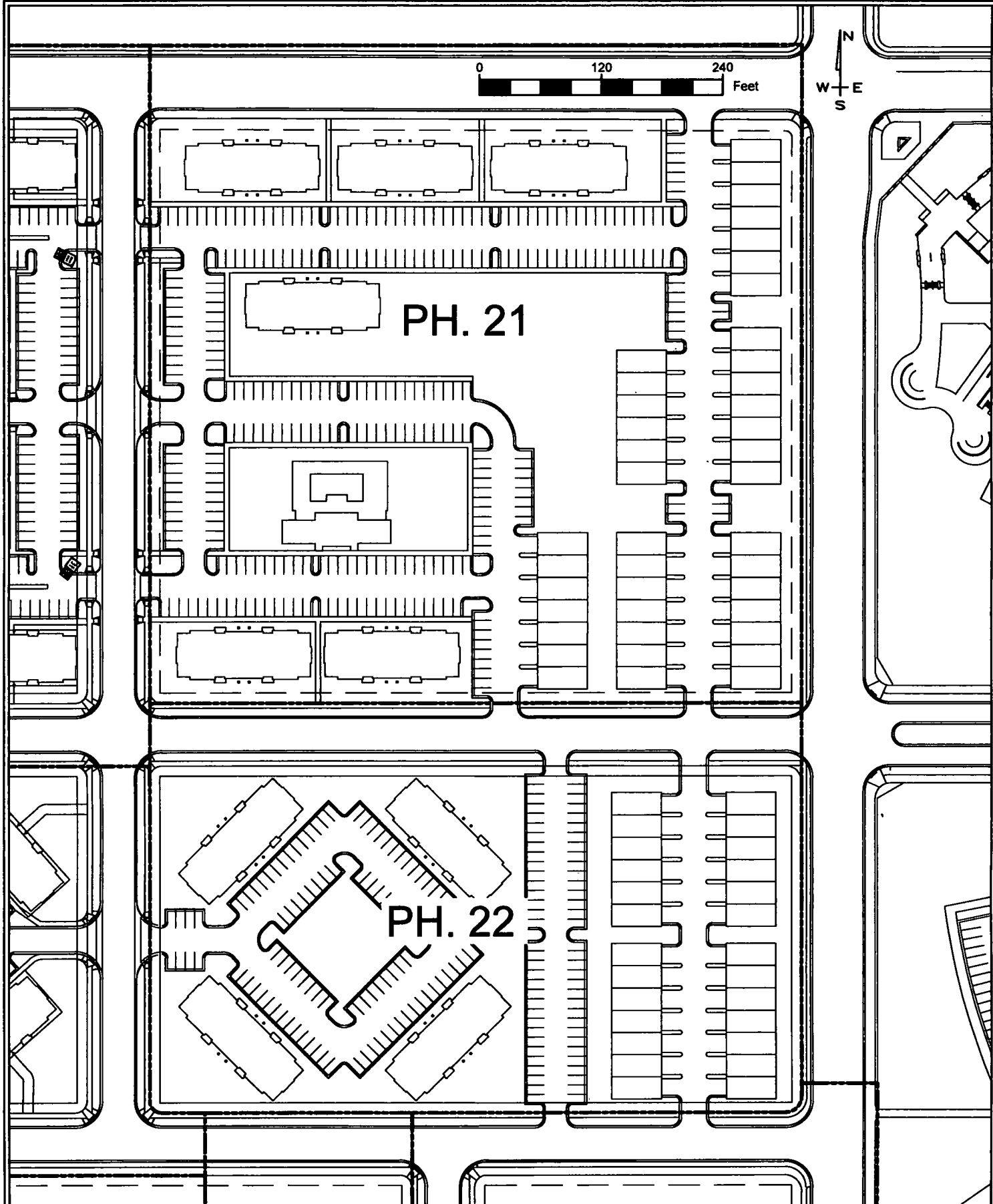
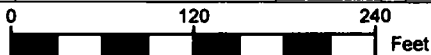
ENT 19823=2024 PG 40 of 80

PH. 16



PROJECT NO 2021 002	TITLE	ARROWHEAD SPRINGS DEVELOPMENT	<table border="1"> <thead> <tr> <th>No</th> <th>Date</th> <th>By</th> <th>Name</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No	Date	By	Name																	<p>Office (801) 377-1790 Fax (801) 377-1789 378 East 770 North, Orem UT 84058</p>
	No	Date		By	Name																			
EXHIBIT NO EXHIBIT 9	LOCATION	SALEM, UTAH																						
Drawing Name		EXHIBIT 9 - PHASE 16	<p style="text-align: center;">REVISIONS</p>																					





PH. 21

PH. 22

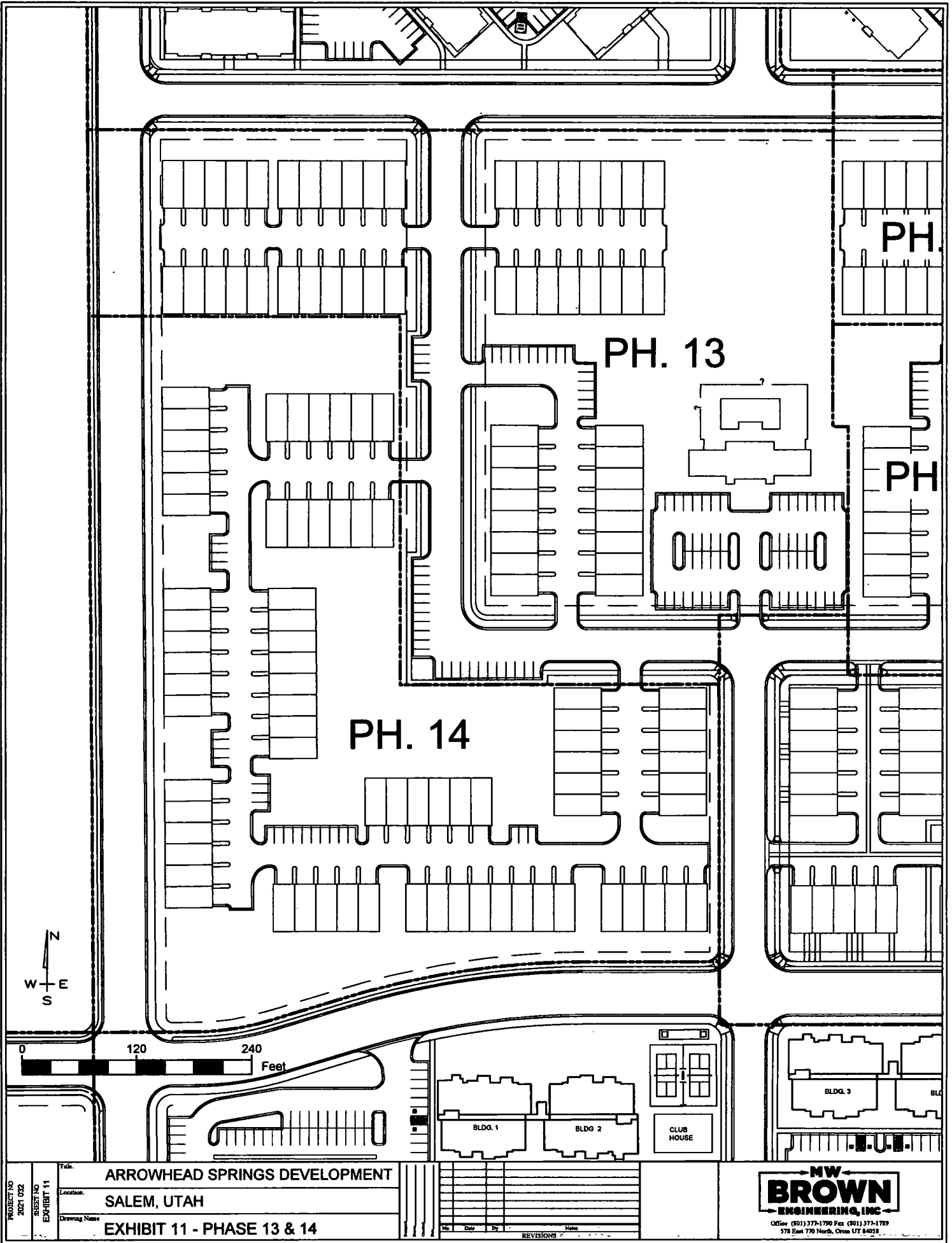
PROJECT NO  
2021.002  
SHEET NO  
EXHIBIT 10

Title  
ARROWHEAD SPRINGS DEVELOPMENT  
Location  
SALEM, UTAH  
Drawing Name  
EXHIBIT 10 - PHASE 21 & 22

No	Date	By	Notes

**MW BROWN**  
ENGINEERING, INC

Office: (801) 377-1790 Fax: (801) 377-1789  
578 East 770 North, Orem UT 84058

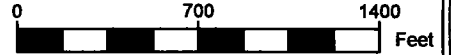
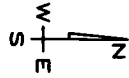


PROJECT NO  
2021 032  
SUBJECT NO  
EXHIBIT 11

Title: ARROWHEAD SPRINGS DEVELOPMENT  
Location: SALEM, UTAH  
Drawing Name: EXHIBIT 11 - PHASE 13 & 14

No.	Date	By	Name

**MW BROWN**  
ENGINEERING, INC.  
Office (801) 377-1790 Fax (801) 377-1789  
378 East 770 North, Orem UT 84058



ENT 19823=2024 PG 43 of 80

CLUBHOUSE

CLUBHOUSE

CLUBHOUSE

CLUBHOUSE

CLUBHOUSE

PROJECT NO 2024 032	Title	ARROWHEAD SPRINGS DEVELOPMENT	<table border="1"> <thead> <tr> <th>No.</th> <th>Date</th> <th>By</th> <th>Name</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Date	By	Name																	<p>Office (801) 377-1799 Fax (801) 377-1799 574 East 700 North, Orem UT 84058</p>
	No.	Date		By	Name																			
SHEET NO EXHIBIT 12	Location	SALEM, UTAH																						
Drawing Name		EXHIBIT 12 - HOA DISTRICTS																						

# Exhibit F

## Arrowhead Park Impact Fee Reimbursement Agreement

RECORDING REQUESTED BY  
AND AFTER RECORDING RETURN TO:

Salem City  
Attn.: City Recorder  
30 West 100 South  
Salem, UT 84653

**ARROWHEAD SPRINGS PARK IMPACT FEE REIMBURSEMENT AGREEMENT**  
(Park Impact Fees Only)

This **ARROWHEAD SPRINGS PARK IMPACT FEE REIMBURSEMENT AGREEMENT** (this "Agreement") is made and entered into as of the [6] day of March, 2024, by and between Gecko Grey, LLC (the "**Developer**"), a Utah limited liability company located at 260 South 1200 West, Orem, UT 84058; Salem City (the "**City**"), a Utah municipal corporation, with its offices located at 30 West 100 South, Salem, UT 84653; and Arrowhead Springs Public Infrastructure District (the "**District**") and, subject to the provisions of Section 14 hereof, Arrowhead Springs Public Infrastructure District No. 2 ("**District No. 2**" and, together with the District, the "**Districts**"), located c/o Snow Jensen & Reece, PC, 912 W. 1600 S. Ste. B200, St. George, UT 84770.

WHEREAS, pursuant to that certain Second Amended and Restated Arrowhead Springs Master Plan Development Agreement effective as of March [6], 2024 (as amended, the "**Development Agreement**"), the Developer is the developer of Arrowhead Springs Master Plan Development (the "**Development**"), a property development located within the City limits.

WHEREAS, the Development Agreement requires the Developer to provide certain public infrastructure defined in the Development Agreement as the "**Park**" (the "**Park Public Infrastructure**") and requires the City to reimburse the Developer and/or the Districts for the costs of such **Park Public Infrastructure** from and to the extent of certain impact fees, and for such purpose, the City, the Developer and the District are entering into this Agreement and the Arrowhead Springs Park Offsite Impact Fee Reimbursement Agreement, dated as of March [6], 2024 (the "**Offsite Impact Fee Reimbursement Agreement**").

WHEREAS, the City has previously approved the formation of the Districts and approved a Governing Document on July 20, 2022, and amended on March [6], 2024 (collectively, the "**Governing Document**"), to facilitate financing for the Development.

WHEREAS, pursuant to the Governing Document and that certain Interlocal Agreement between the City and the Districts, impact fee reimbursements or credits shall be for the benefit of the Districts.

WHEREAS, pursuant to Chapter 4 of Title 13 of the Salem City Municipal Code, the City is authorized to establish and collect impact fees as a condition of granting subdivision plat approval and/or as a condition of the issuance of a building permit and/or as a condition of connection to City facilities that have an impact fee associated with them; and

WHEREAS, pursuant to Ordinance No. 90623 adopted by the City Council on September 6, 2023, the City has authorized, and presently imposes and collects, for the purpose of funding costs of park and recreational improvements, a park and recreational fee (referred to herein as the "Park Impact Fee"); and

WHEREAS, the City, Developer, and Districts desire to enter into this Agreement to assure the orderly development of the Development within City limits, while maintaining and enhancing property values, and to define the Park Impact Fees to be collected from or with respect to property in the Districts, and the priority of payment thereof.

NOW THEREFORE, for good and valuable consideration, the adequacy of which is mutually acknowledged, the parties hereto contract, covenant, and agree as follows:

1. Relationship to Other Reimbursement Agreement. Except for any prior agreements specifically as they concern Park Impact Fees, this agreement does not amend any prior reimbursement agreements entered into between the City and the Developer, including, but not limited to the Arrowhead Springs Reimbursement Agreement (Culinary Water, Secondary Water, Power) between the City and the Developer, dated May 5, 2021, and all terms and provisions of the other reimbursement agreements shall remain in full force and effect.
2. Park Public Infrastructure. In accordance with the terms and conditions of the Development Agreement, the Developer will construct the Park Public Infrastructure, and the City will accept the Park Public Infrastructure.
3. Assignment of Developer Rights to Districts. As the Districts are anticipated to finance much of the cost of the Park through the issuance of Eligible Bonds (defined herein), to the extent this Agreement provides for the payment of any Park Impact Fees to the Developer, the Developer hereby assigns all right, title and interest in such Park Impact Fees: (i) to the District, to the extent such Park Impact Fees are collected from or with respect to property in the District; and (ii) upon its execution of a Joinder hereto, to District No. 2, to the extent such Park Impact Fees are collected from or with respect to property in District No. 2; provided, however, in each case, solely in the event and to the extent that the District or District No. 2, as applicable has Funded Costs (as defined herein) of the Park at least equal to the amount of such Park Impact Fees. The Developer agrees that such assignment and the Districts' right to receipt of Park Impact Fees in accordance with this Agreement is senior, and first in priority, to any claim on such reimbursement of the Developer for Actual Park Public Infrastructure Costs.
4. Reimbursement of Park Costs from Park Impact Fees. The City shall reimburse the Districts and/or the Developer, as applicable, for Park Public Infrastructure costs through the remittance of Park Impact Fees collected by the City as set forth in this Agreement, plus fees described in the Offsite Impact Fee Reimbursement Agreement, until there has been remitted to or on behalf of the Districts and/or the Developer an amount equal to the aggregate total Actual Park Public Infrastructure Costs paid by the Districts and the

Developer or, if applicable, the Funded Costs. Upon repayment of all Eligible Bonds of a District, any remaining reimbursement owed to such District hereunder may be assigned to the other District. **“Actual Park Public Infrastructure Costs”** means actual costs incurred by a District or the Developer for constructing and/or installing the Park Public Infrastructure (with respect to the Districts, whether paid directly by a District or reimbursed by a District to the Developer following Developer’s construction or installation of such Park Public Infrastructure), and with respect to which a memorandum is submitted to the City detailing and confirming the amounts paid, accompanied by actual invoices and canceled checks. Costs may not include any interest cost, costs of issuance, reserves, or capitalized interest on such bonds.

**5. Pledged Park Impact Fees.** Commencing from the date of this Agreement, the City shall deposit into a separate account (referred to herein as the “Impact Fee Account,” which may be combined with the account held under the Offsite Impact Fee Reimbursement Agreement) and hold therein until disbursed to the Districts or Developer, as appropriate, in the time and manner, and subject to the conditions set forth herein, all Park Impact Fees collected in respect of property located within the Development (the **“Pledged Park Impact Fees”**). The City hereby represents that the Park Impact Fee is presently imposed in the amount of \$5,438.69. In the event of any change in the amount of the Park Impact Fee, any increased or decreased amount collected in respect of property located within the Development shall also constitute Pledged Park Impact Fees hereunder.

**6. Reimbursement Procedure and Method of Payment.** The reimbursement procedure applicable to the remittance of Pledged Park Impact Fees for the reimbursement of Park Public Infrastructure Costs shall be as set forth in this Agreement, as amended from time to time. The City’s obligation to pay these Park Impact Fee reimbursements shall be senior, and first in priority, to any other use or application of these Pledged Park Impact Fees.

**A. Upon the issuance of Eligible Bonds** (as defined herein) by the District (or, upon its execution of a Joinder hereto, District No. 2), the City agrees to remit on at least a quarterly basis to the applicable District or, to the bank appointed to serve as trustee for such District’s Eligible Bonds (the **“Bond Trustee”**), all Pledged Park Impact Fees collected in respect of property located within the boundaries of such District then on deposit in the Impact Fee Account, subject to the Maximum Reimbursement Amount (defined below). The Districts agree to first apply Pledged Park Impact Fees to Eligible Bonds constituting limited property tax bonds (if any have been issued) prior to any application to Eligible Bonds constituting special assessment bonds.

**B. Prior to the issuance of Eligible Bonds** by a District, or at any other time that no Eligible Bonds of a District remain outstanding, the City agrees to remit on a quarterly basis to the applicable District or to the Developer (as provided below) all Pledged Park Impact Fees collected in respect of property located within the boundaries of such District then on deposit in the Impact Fee Account, subject to the Maximum Reimbursement Amount, and provided that Pledged Park Impact Fees collected in respect of property located within the boundaries of a particular District first shall be applied to reimburse such District for Actual Park Public Infrastructure Costs submitted

by such District, if any, and second shall be applied to reimburse the Developer for Actual Park Public Infrastructure Costs submitted by the Developer (in both cases, solely to the extent such costs have not been previously paid or reimbursed from the proceeds of Eligible Bonds).

C. The total amount of Pledged Park Impact Fees remitted to the Districts (or any Bond Trustee on behalf of the Districts) and the Developer hereunder, together with the total amount of Park Impact Fees and Density Fees remitted to the Districts (or any Bond Trustee on behalf of the Districts) and the Developer under the Offsite Impact Fee Reimbursement Agreement as of any particular date shall not exceed the Maximum Reimbursement Amount as of such date. **“Maximum Reimbursement Amount”** means, as of any particular date, the total amount of Funded Costs plus any additional Actual Park Public Infrastructure Costs as of such date, to the extent not paid or reimbursed from the proceeds of Eligible Bonds. **“Funded Costs”** means the net proceeds of Eligible Bonds on deposit with a Bond Trustee and restricted to or actually utilized for the payment or reimbursement of Actual Park Public Infrastructure Costs. **“Eligible Bonds”** means any bonds issued by a District (including limited property tax bonds and special assessment bonds), if the net proceeds of such bonds, in whole or in part, are required to be applied or are actually applied to pay or reimburse the costs of Park Public Infrastructure. The Districts shall be responsible to notify the City of the issuance of any Eligible Bonds and the amount of Funded Costs relating thereto.

D. Notwithstanding any other provision herein, at such time as there has been remitted by the City to the Districts and/or the Developer under this Agreement and the Offsite Impact Fee Reimbursement Agreement an amount equal to the total amount of Funded Costs and, solely to the extent such costs have not been previously paid or reimbursed from the proceeds of Eligible Bonds, Actual Park Public Infrastructure Costs, any remaining Park Impact Fees may be applied to the City to any lawful purpose.

7. Sole Source of Reimbursement. The Developer and Districts each acknowledge that their only source of reimbursement for Park Public Infrastructure costs from the City hereunder is Pledged Park Impact Fees, to be paid as they are collected by the City and in accordance with the terms and conditions of this Agreement and the Offsite Impact Fee Reimbursement Agreement, and Developer and the Districts waive all claims against the City for reimbursement from any other source.

8. Updated Notice Addresses. Addresses for notice under the Reimbursement Agreement, as amended herein, shall be updated as follows:

To the City:	Salem City Attn: City Manager 30 West 100 South Salem, UT 84653 Email: <a href="mailto:mattm@salemcity.org">mattm@salemcity.org</a>
--------------	---

To Developer:	Gecko Grey, LLC
---------------	-----------------



Attn: Ryan Poelman  
260 S. 1200 W.  
Orem, UT 84058  
Email: [rp@dm6.com](mailto:rp@dm6.com)

To the Districts: Arrowhead Springs Public Infrastructure District  
Nos. 1 & 2  
c/o Matt Lewis, Chair  
260 S. 1200 W.  
Orem, UT 8405  
Email: [Matt@dm6.com](mailto:Matt@dm6.com)

With a copy to: Snow Jensen & Reece, PC  
912 West 1600 South, Ste. B200  
St. George, UT 84770  
Attn: Matthew J. Ence  
Email: [mence@snowjensen.com](mailto:mence@snowjensen.com)  
Phone: (435) 628-3688

9. ~~Entire Agreement.~~ This Amendment, along with the terms of the Reimbursement Agreement not replaced or amended herein, represents the entire agreement related to the specific reimbursements identified herein between the parties hereto. All prior negotiations, understandings, or representations are merged herein and superseded hereby.
10. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only with a written agreement duly authorized and executed by the Parties hereto.
11. Assignment. No Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld; provided, however, that it is acknowledged and agreed that the Districts may assign their rights in the Pledged Park Impact Fees hereunder to a Bond Trustee as security for Eligible Bonds. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.
12. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants, or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.
13. Miscellaneous Provisions Incorporated. All other general and miscellaneous provisions of the Reimbursement Agreement, not modified herein, shall apply to this Amendment as if fully set forth herein, as if this Amendment were part of the original Reimbursement Agreement.

14. Joinder of District No. 2. District No. 2 (as defined herein) shall become a party to this Agreement upon execution of a Joinder Agreement in the form attached hereto as Exhibit A. It is anticipated that District No. 2 will execute such Joinder Agreement upon the completion of its formation proceedings. The City, the District and the Developer hereby consent to District No. 2 becoming a party hereto, entitled to all rights of a District hereunder, upon execution of such Joinder Agreement, without further consent or action by the City, the District or the Developer.

15. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah, as constrained by this Agreement.

16. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

17. Integration. This Agreement (including all exhibits) constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

18. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the named parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the parties shall be for the sole and exclusive benefit of the named parties.

19. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

21. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

22. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

DATED this 6 day of March 2024.

SALEM CITY, UTAH

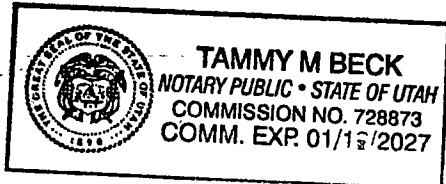
Kurt L Christensen  
By/ Kurt L Christensen, Mayor

Attest:

Jeffrey Nielson  
Jeffrey Nielson, Recorder

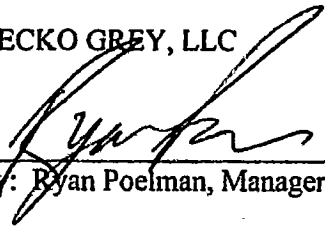
STATE OF UTAH )  
: ss.  
County of Utah )

On the 6th day of March, 2024, personally appeared before me Kurt L Christensen and Jeffrey Nielson, who being by me duly sworn did say that they are respectively the Mayor and Recorder of Salem City, and that they executed the foregoing Amendment on behalf of said City being duly authorized and empowered, and they did duly acknowledge before me that the City executed the same for the uses and purposes stated therein.



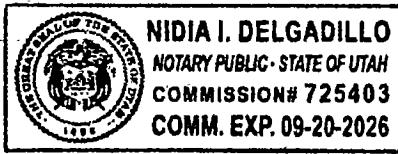
Tammy M Beck  
Notary Public

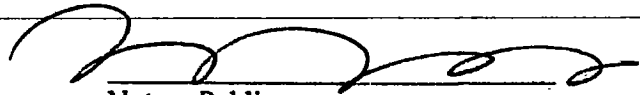
GECKO GREY, LLC

  
By: Ryan Poelman, Manager

STATE OF UTAH            )  
  : ss.  
County of Utah            )

On the 8 day of March 2024, personally appeared before me Ryan Poelman, who being by me duly sworn did say that he is the Manager of Gecko Grey, LLC, and that he executed the foregoing Amendment on behalf of said company being duly authorized and empowered, and he did duly acknowledge before me that the company executed the same for the uses and purposes stated therein.



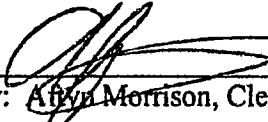
  
Notary Public

ARROWHEAD SPRINGS PUBLIC  
INFRASTRUCTURE DISTRICT

  
By: ~~Matt Lewis~~, District Chair

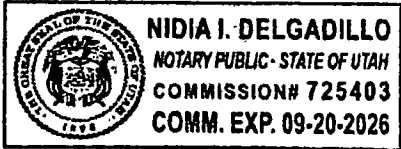
*Brian Bird*

Attest:

  
By: Aftyn Morrison, Clerk/Secretary

STATE OF UTAH            )  
  : ss.  
County of Utah            )

On the 8 day of March 2024, personally appeared before me Brian Bird and Aftyn Morrison, who being by me duly sworn did say that they are respectively the Chair and the Clerk/Secretary of Arrowhead Springs Public Infrastructure District, and that he executed the foregoing Amendment on behalf of said District being duly authorized and empowered, and they did duly acknowledge before me that the district executed the same for the uses and purposes stated therein.



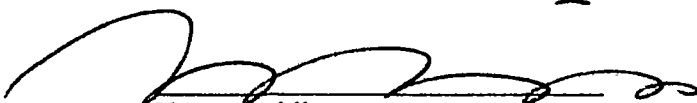
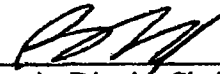
  
Notary Public

EXHIBIT A  
FORM OF DISTRICT NO. 2 JOINDER AGREEMENT

This Joinder Agreement (this "Joinder Agreement") effective as of \_\_\_\_\_, 20\_\_ (the "Joinder Effective Date"), is executed and delivered by Arrowhead Springs Public Infrastructure District No. 2 ("District No. 2") with respect to that certain Arrowhead Springs Park Impact Fee Agreement dated as of March \_\_, 2024 (the "Agreement"), by and among Gecko Grey, LLC (the "Developer"), a Utah limited liability company located at 260 South 1200 West, Orem, UT 84058; Salem City (the "City"), a Utah municipal corporation, with its offices located at 30 West 100 South, Salem, UT 84653; and Arrowhead Springs Public Infrastructure District (the "District").

In accordance with the Agreement, for and in consideration of the promises and covenants made therein by the other parties thereto, District No. 2 hereby: (a) acknowledges that District No. 2 has received and reviewed the Agreement, a copy of which is attached hereto as **Exhibit A**; (b) joins the Agreement as a party thereto; (c) assumes all of the rights and obligations of a District thereunder; and (d) agrees to comply with the Agreement and to be bound thereby as if District No. 2 had been an original party thereto.

ARROWHEAD SPRINGS PUBLIC  
INFRASTRUCTURE DISTRICT NO. 2

  
By: ~~Matt Lewis~~, District Chair  
*Brian Bird*

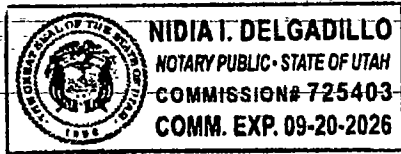
Attest:

  
By: Aftyn Morrison, Clerk/Secretary

STATE OF UTAH )  
 : ss.  
County of Utah )

On the 8 day of March, 2024, personally appeared before me Brian Bird and Aftyn Morrison, who being by me duly sworn did say that they are respectively the Chair and the Clerk/Secretary of Arrowhead Springs Public Infrastructure District No. 2, and that he executed the foregoing Amendment on behalf of said District being duly authorized and empowered, and they did duly acknowledge before me that the district executed the same for the uses and purposes stated therein.

  
Notary Public



RECORDING REQUESTED BY  
AND AFTER RECORDING RETURN TO:

Salem City  
Attn.: City Recorder  
30 West 100 South  
Salem, UT 84653

**ARROWHEAD SPRINGS OFFSITE PARK IMPACT FEE REIMBURSEMENT  
AGREEMENT**

This ARROWHEAD SPRINGS OFFSITE PARK IMPACT FEE REIMBURSEMENT AGREEMENT (this "Agreement") is made and entered into as of the 6<sup>th</sup> day of March, 2024, by and between Gecko Grey, LLC (the "Developer"), a Utah limited liability company located at 260 South 1200 West, Orem, UT 84058; Salem City (the "City"), a Utah municipal corporation, with its offices located at 30 West 100 South, Salem, UT 84653; and Arrowhead Springs Public Infrastructure District (the "District") and, subject to the provisions of Section 11 hereof, Arrowhead Springs Public Infrastructure District No. 2 ("District No. 2" and, together with the District, the "Districts"), located c/o Snow Jensen & Reece, PC, 912 W. 1600 S. Ste. B200, St. George, UT 84770.

WHEREAS, pursuant to that certain Second Amended and Restated Arrowhead Springs Master Plan Development Agreement effective as of March 6, 2024 (as amended, the "Development Agreement"), the Developer is the developer of Arrowhead Springs Master Plan Development (the "Development"), a property development located within the City limits.

WHEREAS, the Development Agreement requires the Developer to provide certain public infrastructure defined in the Development Agreement, as the "Park" (the "Park Public Infrastructure"), and requires the City to reimburse the Developer and/or the District for provision of such Park Public Infrastructure from and to the extent of certain impact fees, and for such purpose, the City, the Developer and the District are entering into this Agreement and the Arrowhead Springs Park Impact Fee Reimbursement Agreement, dated as of March 6, 2024 (the "District Impact Fee Reimbursement Agreement").

WHEREAS, the City has previously approved the formation of the Districts and approved a Governing Document on July 20, 2022, and amended on March 6, 2024 (collectively, the "Governing Document"), to facilitate financing for the Development.

WHEREAS, pursuant to the Governing Document and that certain Interlocal Agreement between the City and the Districts, impact fee reimbursements or credits shall be for the benefit of the Districts.

WHEREAS, pursuant to Chapter 4 of Title 13 of the Salem City Municipal Code, the City is authorized to establish and collect impact fees as a condition of granting subdivision plat



approval and/or as a condition of the issuance of a building permit and/or as a condition of connection to City facilities that have an impact fee associated with them; and

WHEREAS, pursuant to Ordinance No. 90623 adopted by the City Council on September 6, 2023, the City has authorized, and presently imposes and collects, for the purpose of funding costs of park and recreational improvements, a park and recreational fee (referred to herein as the “**Park Impact Fee**”); and

WHEREAS, pursuant to the various development agreements relating to Viridian Farms, New Salem, Moonlight, and Salem Fields developments entered into by the City and the respective developer(s) of such developments, the City has authorized, and presently imposes and collects, certain density fees relating to such developments (collectively referred to herein as the “**Density Fee**”); and

WHEREAS, the City, Developer, and Districts desire to enter into this Agreement to assure the orderly development of the Development within City limits, while maintaining and enhancing property values, and to define the impact fees and priority of payment with respect to Park Impact Fees and Density Fees collected on properties outside of the Development.

NOW THEREFORE, for good and valuable consideration, the adequacy of which is mutually acknowledged, the parties hereto contract, covenant, and agree as follows:

1. Relationship to Prior Reimbursement Agreement. Except for any prior agreements specifically as they concern Park Impact Fees and Density Fees, this Agreement does not amend any prior reimbursement agreements, entered into between the City and the Developer, including, but not limited to the Arrowhead Springs Reimbursement Agreement (Culinary Water, Secondary Water, Power) between the City and the Developer, dated May 5, 2021; and all terms and provisions of the other reimbursement agreements shall remain in full force and effect.
2. Park Public Infrastructure. In accordance with the terms and conditions of the Development Agreement, the Developer will construct the Park Public Infrastructure, and the City will accept the Park Public Infrastructure.
3. Assignment of Developer Rights to Districts. As the Districts are anticipated to finance much of the cost of the Park through the issuance of Eligible Bonds (defined herein), to the extent this Agreement provides for the payment of any Park Impact Fees and Density Fees to the Developer, the Developer hereby assigns all right, title and interest in such Park Impact Fees and Density Fees to the District and District No. 2, as applicable, and as further described herein; provided, however, in each case, solely in the event and to the extent that the District or District no. 2, as applicable, has Funded Costs (as defined herein) of the Park at least equal to the amount of such Park Impact Fees and Density Fees. The Developer agrees that such assignment and the Districts’ right to receipt of Park Impact Fees and Density Fees in accordance with this Agreement is senior, and first in priority, to any claim on such reimbursement of the Developer for Actual Park Public Infrastructure Costs.

4. Reimbursement of Park Costs from Park Impact Fees and Density Fees. The City shall reimburse the Districts and/or the Developer, as applicable, for Park Public Infrastructure costs through the remittance of Park Impact Fees and Density Fees collected by the City as set forth in this Agreement, plus Park Impact Fees described in the District Impact Fee Reimbursement Agreement, until there has been remitted to or on behalf of the Districts and/or the Developer an amount equal to the aggregate total Actual Park Public Infrastructure Costs paid by the Districts and the Developer or, if applicable the Funded Costs. Upon repayment of all Eligible Bonds of a District, any remaining reimbursement owed to such District hereunder may be assigned to the other District. **“Actual Park Public Infrastructure Costs”** means actual costs incurred by a District or the Developer for constructing and/or installing the Park Public Infrastructure (with respect to the Districts, whether paid directly by a District or reimbursed by a District to the Developer following Developer’s construction or installation of such Park Public Infrastructure), and with respect to which a memorandum is submitted to the City detailing and confirming the amounts paid, accompanied by actual invoices and canceled checks. Costs may not include any interest cost, costs of issuance, reserves, or capitalized interest on such bonds.

5. Pledged Park Impact Fees and Density Fees. Commencing from the date of this Agreement, the City shall deposit into a separate account (referred to herein as the “Impact Fee Account,” which may be combined with the account held under the District Impact Fee Reimbursement Agreement) and hold therein until disbursed to the Districts or Developer, as appropriate, in the time and manner, and subject to the conditions, set forth herein, the following fees collected by the City (collectively, the **“Pledged Impact Fees,”** comprised of the **“Pledged Citywide Park Impact Fees”** described in paragraph (A) below, and the **“Pledged Citywide Density Fees”** described in paragraph (B) below, in both cases subject to paragraph (C) below):

A. **Citywide Park Impact Fees Outside Arrowhead Springs.** **“Pledged Citywide Park Impact Fees”** means sixty-five percent (65%) of Park Impact Fees collected citywide, outside of the Development, but excluding from such calculation all or a portion of the Park Impact Fees collected within the following developments currently committed to other purposes or to other developers:

Moonlight Village (Arive Homes)  
Salem Fields (Flagship Homes)  
Viridian Farm (Dr Horton)

The City hereby represents that the Park Impact Fee is presently imposed in the amount of \$5,438.69, but is subject to increase or decrease without the consent of the Districts or the Developer. In the event of any change in the amount of the Park Impact Fee, the entirety of the Park Impact Fee, in any increased or decreased amount, collected in respect of property citywide, outside of the Development, but excluding the excluded developments described above, shall constitute Pledged Park Impact Fees hereunder.

B. **City wide (New Development Unit Density) Fees.** **“Pledged Citywide Density Fees”** means 45% of Density Fees collected from property within the following developments

only:

Viridian Farm (Dr Horton)  
 New Salem (Boyd Brown, Woodside Homes, Visionary Homes)  
 Moonlight (Arive Homes)  
 Salem Fields (Flagship Homes)

The City hereby represents that the Density Fee is presently imposed in the amounts of: (i) \$2,328.00 for Moonlight and Salem Fields; (ii) \$1,270.00 for New Salem; and (iii) \$1,497.01 for Vividian Farm. However, such amounts are subject to increase or decrease without the consent of the Districts or the Developer. In the event of any change in the amount of the Density Fee, the entirety of the Density Fee, in any increased or decreased amount, collected in respect of property located within the developments set forth above shall constitute Pledged Density Fees hereunder.

C. The City's obligation to remit the above-indicated portions of Density Fees and Park Impact Fees shall be senior to and first in priority to any other use or application of these fees, subject to the City's impact fee policy.

6. Reimbursement Procedure and Method of Payment. The reimbursement procedure applicable to the remittance of Pledged Citywide Park Impact Fees and Pledged Citywide Density Fees for the reimbursement of Park Public Infrastructure Costs shall be as set forth in this Agreement, as amended from time to time. The City's obligation to pay these Pledged Citywide Park Impact Fees and Pledged Citywide Density Fees reimbursements shall be senior, and first in priority, to any other use or application of these Pledged Citywide Park Impact Fees and Pledged Citywide Density Fees, but subject to the provisions of paragraph (C) of Section 5 above.

A. Upon the issuance of Eligible Bonds (as defined herein) by the District (or, upon its execution of a Joinder hereto, District No. 2), the City agrees to remit on at least a quarterly basis to the applicable District or, to the bank appointed to serve as trustee for such District's Eligible Bonds (the "Bond Trustee"), all Pledged Impact Fees then on deposit in the Impact Fee Account, subject to the Maximum Reimbursement Amount (defined below), and further provided that: (i) first, the Pledged Impact Fees collected and payable hereunder shall be payable to the Bond Trustee for limited property tax Eligible Bonds issued by the District until such amounts remitted to such Bond Trustee on behalf of the District, together with the total amount of Park Impact Fees remitted to the Bond Trustee on behalf of the District under the District Impact Fee Reimbursement Agreement equal the Funded Costs of the District or, if earlier, until such bonds are paid in full, (ii) second, the Pledged Impact Fees shall be payable to the Bond Trustee for limited property tax Eligible Bonds issued by District No. 2 (if District No. 2 has executed a Joinder hereto) until such amounts remitted to such Bond Trustee on behalf of District No. 2, together with the total amount of Park Impact Fees remitted to the Bond Trustee on behalf of the District No. 2 under the District Impact Fee Reimbursement Agreement equal the Funded Costs of District No. 2, or, if earlier, until such bonds are paid in full, (iii) third, the Pledged Impact Fees collected and

payable hereunder shall be payable to the Bond Trustee for special assessment Eligible Bonds issued by the District until all amounts remitted to any Bond Trustee on behalf of the District, together with the total amount of Park Impact Fees remitted to any Bond Trustee on behalf of the District under the District Impact Fee Reimbursement Agreement equal the Funded Costs of the District or, if earlier, until such bonds are paid in full; and (iv) fourth, the Pledged Impact Fees collected and payable hereunder shall be payable to the Bond Trustee for special assessment Eligible Bonds issued by District No. 2 until all amounts remitted to any Bond Trustee on behalf of District No. 2, together with the total amount of Park Impact Fees remitted to any Bond Trustee on behalf of District No. 2 under the District Impact Fee Reimbursement Agreement equal the Funded Costs of District No. 2 or, if earlier, until such bonds are paid in full..

**B. Prior to the issuance of Eligible Bonds** by a District, or at any other time that no Eligible Bonds of a District remain outstanding, the City agrees to remit on a quarterly basis to the applicable District or to the Developer (as provided below) all Pledged Impact Fees then on deposit in the Impact Fee Account, subject to the Maximum Reimbursement Amount, and provided that Pledged Impact Fees collected first shall be applied to reimburse the Districts for Actual Park Public Infrastructure Costs submitted by such Districts, if any, and second shall be applied to reimburse the Developer for Actual Park Public Infrastructure Costs submitted by the Developer (in both cases, solely to the extent such costs have not been previously paid or reimbursed from the proceeds of Eligible Bonds).

**C. The total amount of Pledged Impact Fees** remitted to the Districts (or any Bond Trustee on behalf of the Districts) and the Developer hereunder, together with the total amount of Park Impact Fees remitted to the Districts (or any Bond Trustee on behalf of the Districts) and the Developer under the District Impact Fee Reimbursement Agreement as of any particular date shall not exceed the Maximum Reimbursement Amount as of such date. **"Maximum Reimbursement Amount"** means, as of any particular date, the total amount of Funded Costs plus any additional Actual Park Public Infrastructure Costs as of such date, to the extent not paid or reimbursed from the proceeds of Eligible Bonds. **"Funded Costs"** means the net proceeds of Eligible Bonds on deposit with a Bond Trustee and restricted to or actually utilized for the payment or reimbursement of Actual Park Public Infrastructure Costs. **"Eligible Bonds"** means any bonds issued by a District (including limited property tax bonds and special assessment bonds), if the net proceeds of such bonds, in whole or in part, are required to be applied or are actually applied to pay or reimburse the costs of Park Public Infrastructure. The Districts shall be responsible to notify the City of the issuance of any Eligible Bonds and the amount of Funded Costs relating thereto.

**D. Notwithstanding any other provision herein,** at such time as there has been remitted by the City to the Districts and/or the Developer under this Agreement and the District Impact Fee Reimbursement Agreement an amount equal to the total amount of Funded Costs and, solely to the extent such costs have not been previously paid or reimbursed from the proceeds of Eligible Bonds, Actual Park Public Infrastructure Costs, any remaining Pledged Impact Fees may be applied to the City to any lawful purpose.

7. Sole Source of Reimbursement. The Developer and Districts each acknowledge that their only source of reimbursement from the City for Park Public Infrastructure costs hereunder are the Park Impact Fees and Density Fees described herein, to be paid as they are collected by the City and in accordance with the terms and conditions of this Agreement and the District Impact Fee Reimbursement Agreement, and Developer and the Districts waive all claims against the City for reimbursement from any other source.

8. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the City: Salem City  
Attn: City Manager  
30 West 100 South  
Salem, UT 84653  
Email: [mattm@salemcity.org](mailto:mattm@salemcity.org)

To Developer: Gecko Grey, LLC  
Attn: Ryan Poelman  
260 South 1200 West  
Orem, UT 84058  
Email: [rp@dm6.com](mailto:rp@dm6.com)

To the Districts: Arrowhead Springs Public Infrastructure District  
Nos. 1 & 2  
c/o Matt Lewis, Chair  
260 South 1200 West  
Orem, UT 84058  
Email: [Matt@dm6.com](mailto:Matt@dm6.com)

With a copy to: Snow Jensen & Reece, PC  
912 West 1600 South, Ste. B200  
St. George, UT 84770  
Attn: Matthew J. Ence  
Email: [mence@snowjensen.com](mailto:mence@snowjensen.com)  
Phone: (435) 628-3688

All notices, demands, requests, or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days

written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

9. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only with a written agreement duly authorized and executed by the Parties hereto.

10. Assignment. No Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld; provided, however, that it is acknowledged and agreed that the Districts may assign their rights in the pledged Impact Fees hereunder to a Bond Trustee as security for Eligible Bonds. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

11. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants, or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

12. Joinder of District No. 2. District No. 2 (as defined herein) shall become a party to this Agreement upon execution of a Joinder Agreement in the form attached hereto as Exhibit A. It is anticipated that District No. 2 will execute such Joinder Agreement upon the completion of its formation proceedings. The City, the District and the Developer hereby consent to District No. 2 becoming a party hereto, entitled to all rights of a District hereunder, upon execution of such Joinder Agreement, without further consent or action by the City, the District or the Developer.

13. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah, as constrained by this Agreement.

14. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

15. Integration. This Agreement (including all exhibits) constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

16. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the named parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the parties shall be for the sole and exclusive benefit of the named parties.

17. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of

such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

19. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

20. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Amended Governing Document.

*[Remainder of page intentionally left blank; signature pages to follow]*

DATED this 6<sup>th</sup> day of March, 2024.

SALEM CITY, UTAH

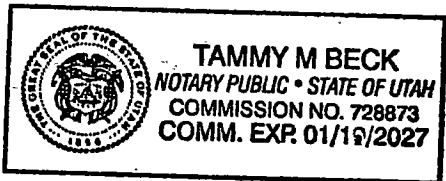
Kurt L Christensen  
By: Kurt L Christensen, Mayor

Attest:

Jeffrey Nielson  
Jeffrey Nielson, Recorder

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

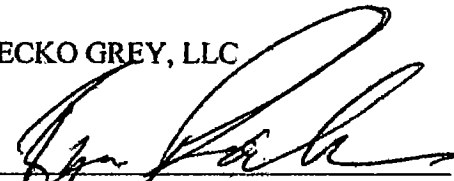
On the <sup>with me</sup> ~~7<sup>th</sup>~~ day of March, 2024, personally appeared before me Kurt L Christensen and Jeffrey Nielson, who being by me duly sworn did say that they are respectively the Mayor and Recorder of Salem City, and that they executed the foregoing Amendment on behalf of said City being duly authorized and empowered, and they did duly acknowledge before me that the City executed the same for the uses and purposes stated therein.



Tammy M. Beck  
Notary Public

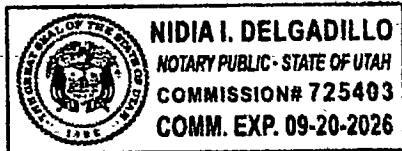


GECKO GREY, LLC

  
By: Ryan Poelman, Manager

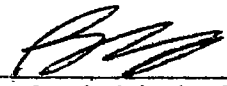
STATE OF UTAH            )  
                                      : ss.  
County of Utah            )

On the 8 day of MARCH, 2024, personally appeared before me Ryan Poelman, who being by me duly sworn did say that he is the Manager of Gecko Grey, LLC, and that he executed the foregoing Amendment on behalf of said company being duly authorized and empowered, and he did duly acknowledge before me that the company executed the same for the uses and purposes stated therein.




  
Notary Public

ARROWHEAD SPRINGS PUBLIC  
INFRASTRUCTURE DISTRICT

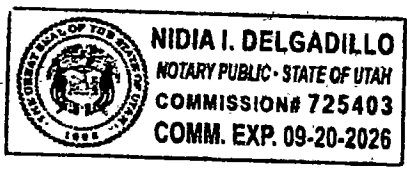
  
By: ~~Mark Lewis~~, District Chair  
Brian Bird

Attest:

  
By: Aftyn Morrison, Clerk/Secretary

STATE OF UTAH            )  
  : ss.  
County of Utah            )

On the 8 day of March, 2024, personally appeared before me Brian Bird and Aftyn Morrison, who being by me duly sworn did say that they are respectively the Chair and the Clerk/Secretary of Arrowhead Springs Public Infrastructure District, and that he executed the foregoing Amendment on behalf of said District being duly authorized and empowered, and they did duly acknowledge before me that the district executed the same for the uses and purposes stated therein.



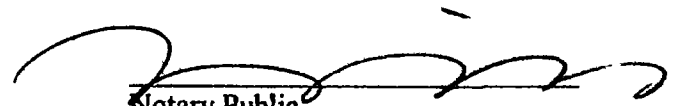

  
Notary Public


EXHIBIT A  
FORM OF DISTRICT NO. 2 JOINDER AGREEMENT

This Joinder Agreement (this "Joinder Agreement") effective as of \_\_\_\_\_, 20\_\_\_\_ (the "Joinder Effective Date"), is executed and delivered by Arrowhead Springs Public Infrastructure District No. 2 ("District No. 2") with respect to that certain Arrowhead Springs Offsite Impact Fee Agreement dated as of March 6, 2024 (the "Agreement"), by and among Gecko Grey, LLC (the "Developer"), a Utah limited liability company located at 260 South 1200 West, Orem, UT 84058; Salem City (the "City"), a Utah municipal corporation, with its offices located at 30 West 100 South, Salem, UT 84653; and Arrowhead Springs Public Infrastructure District (the "District").

In accordance with the Agreement, for and in consideration of the promises and covenants made therein by the other parties thereto, District No. 2 hereby: (a) acknowledges that District No. 2 has received and reviewed the Agreement, a copy of which is attached hereto as **Exhibit A**; (b) joins the Agreement as a party thereto; (c) assumes all of the rights and obligations of a District thereunder; and (d) agrees to comply with the Agreement and to be bound thereby as if District No. 2 had been an original party thereto.

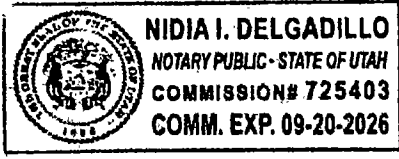
ARROWHEAD SPRINGS PUBLIC  
INFRASTRUCTURE DISTRICT NO. 2

  
\_\_\_\_\_  
By: ~~Matt Lewis~~, District Chair  
Brian Bird

Attest:  
  
  
\_\_\_\_\_  
By: Aftyn Morrison, Clerk/Secretary

STATE OF UTAH )  
 : ss.  
County of Utah )

On the 8 day of March, 2024, personally appeared before me Brian Bird and Aftyn Morrison, who being by me duly sworn did say that they are respectively the Chair and the Clerk/Secretary of Arrowhead Springs Public-Infrastructure District No. 2, and that he executed the foregoing Amendment on behalf of said District being duly authorized and empowered, and they did duly acknowledge before me that the district executed the same for the uses and purposes stated therein.



*[Handwritten Signature]*  
Notary Public

# Exhibit H

## Power and Water Reimbursement Agreement

RECORDING REQUESTED BY  
AND AFTER RECORDING RETURN TO:

Salem City  
Attn: City Recorder  
30 West 100 South  
Salem, UT 84653

**ARROWHEAD SPRINGS REIMBURSEMENT AGREEMENT**  
(Culinary Water, Secondary Water, Power)

THIS ARROWHEAD SPRINGS REIMBURSEMENT AGREEMENT (this "Agreement") is entered into as of the 5 day of May, 2021, by and between ~~Ridgepoint Management Group, LLC~~ (hereinafter "Developer") and Salem City (hereinafter "City"). **GECKO GREY, R.P.**

**RECITALS**

WHEREAS Developer has obtained an interest in \_\_\_ acres of real property located at approximately \_\_\_\_\_ in Salem, upon which it desires to construct a residential project known as Arrowhead Springs ("Development");

---

~~WHEREAS Developer and City entered into a Development Agreement for the Arrowhead Springs Master Planned Development on March 21, 2018, which was replaced by that certain First Amendment and Restated Development Agreement for the Arrowhead Springs Master Planned Development dated June 17, 2020 ("Development Agreement");~~

WHEREAS Developer has applied for approval of a subdivision plat known as the Arrowhead Springs Subdivision \_\_\_\_\_;

WHEREAS, pursuant to the Development Agreement, the parties have agreed that the Developer shall be reimbursed for the electrical substation, water tank and other oversized infrastructure through impact fees, as well as for upsizes of other utility infrastructure "above the minimum line sizes required by the City Engineer to service the Property";

WHEREAS the Parties intend to enter into this Agreement to govern the reimbursement for public improvements to be constructed in the Project finding that this process will lead to the provision of municipal services in a cost-effective and efficient manner and in accordance with the Salem City General Comprehensive Plan, applicable zoning ordinances, and Development Standards of the City in place at the time of final plat submittal;

WHEREAS approval of this agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by Salem City ordinances;

WHEREAS Developer expressly acknowledges that nothing in this agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats, nor does it limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this agreement;

WHEREAS, pursuant to Utah Code Ann. § 10-9a-102(2), City has authority and discretion to enter into development agreements regarding the timing and sequencing of infrastructure improvements; and

WHEREAS, pursuant to the Utah Impact Fees Act, Title 11, Chapter 36a, of the Utah Code, the Parties desire to enter into this Agreement as a full and final satisfaction of any and all impact fee reimbursements for impact fees paid in connection with the Project and the construction of the Improvements contemplated herein;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereinafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

**SECTION I. DEFINITIONS**

Unless the context requires a different meaning, any term or phrase used in this Agreement shall have that meaning given to it by the Salem City Land Use Ordinance (Salem Municipal Code, Title 13).

- 1.1. **City** means Salem City, a Utah municipal corporation.
- 1.2. **Developer** means Ridgepoint Management Group, LLC, a Utah limited liability company, its successors or assigns. *Gecko Grey LLC PR*
- 1.3. **Development Standards** means those Design and Development Standards set forth in the Salem Municipal Code and the Construction Standards each as in effect on the date of the final plat submittal.
- 1.4. **Improvements** mean the Pump Station(s), Substation Improvements, and other eligible infrastructure, together with the real property associated with each, as the case may be.
- 1.5. **Party** means each, individually, Developer and City.
- 1.6. **Parties** means collectively Developer and City.
- 1.7. **Project** means the project described in the Development Agreement for the the area identified on the Overall Concept Plan attached to the Development Agreement.

**SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES**

**2.1 General Rights and Responsibilities of Developer**

2.1.1 **Secondary Water Pump Station.** The City and Developer shall procure the design for a secondary water pump station to be located at approximately along the High Line Canal ("Pump Station"). Developer shall pay for the design costs according to a budget approved by both Parties. All changes to the approved plans require approval by the City. Developer shall contract for the construction of the Substation. City may participate in the selection of the contractor, and Developer and City shall agree before hiring the contractor. Concurrently with the recording the first subdivision plat for the Development, the Developer shall pay One Million Dollars (\$1,000,000) towards the construction of the Pump Station. Once the building permits have been issued and drinking water and pressurized irrigation impact fees have been paid for 600 units, Developer shall pay a second installment of One Million Dollars (\$1,000,000) towards water system improvements in the City. The

payments shall be in the form of an escrow bond from which partial releases may be made as construction progresses, consistent with City policy and practice. The contractor shall construct the Pump Station according to the City and Developer-procured design and construction shall be to the City's specifications and standards. The contractor shall be an independent contractor of the Developer. The City's role is limited to approving the selection and inspecting the work done by the Contractor.

2.1.2 Power Substation. The City and Developer shall procure the design for an electrical substation to be located at approximately Arrowhead Trail and 1750 West (actual location to be determined) ("Substation"). Developer shall pay for the design costs according to a budget approved by both Parties. All changes to the approved plans require approval by the City. Developer shall contract for the construction of the Substation. City may participate in the selection of the contractor, and Developer and City shall agree before hiring the contractor. The Developer and the City have agreed upon the costs of the Substation. An engineer's estimate of the cost of the Substation is attached hereto as **Exhibit A**. The contractor shall construct the Substation according to the City-procured design and construction shall be to the City's specifications and standards. The contractor shall be an independent contractor of the Developer. The City's role is limited to approving the selection and inspecting the work done by the Contractor.

## 2.2 General Rights and Responsibilities of City

### 2.2.1 Reimbursement Obligations.

~~2.2.1.1 Impact Fee Reimbursement: Secondary Water Pump Station. A close link exists between the secondary and drinking water systems, especially because demand for outdoor watering increases the burden upon the drinking water system during summer months. Once the Pump Station has been completed and accepted by the City and the City has issued building permits and received impact fee payments from 600 units within the Development, the City shall begin to reimburse Developer for the \$2,000,000 contributed by the Developer to construct the Pump Station and other water improvements. The source of the reimbursement shall be from secondary water impact fees as such are collected over time and as further limited herein.~~

2.2.1.2 Drinking Water Capacity Reserved. Upon the completion of the Pump Station, Developer shall be allowed capacity in the drinking water system for up to 1,488 units. However, as development occurs elsewhere in the City it will also contribute impact fees to help pay for some of the pump station capacity, which will ultimately be reimbursed to the Developer pursuant to this Agreement. The City anticipates providing other secondary capacity projects so that the guaranteed capacity contemplated herein will be available. If development occurs more rapidly elsewhere in the City or for unforeseen reasons secondary capacity projects are unable to be built quickly enough, the City cannot reserve physical capacity if it is temporarily unavailable or it may become out of compliance with requirements of the Division of Drinking Water.

2.2.1.3 Impact Fee Reimbursement: Power Substation. Upon completion of the Substation and acceptance by the City, the City shall reimburse Developer for actual costs to construct the Substation, as set forth in **Exhibit A**. The City shall not be obligated to pay any costs in excess of the engineer's estimate in **Exhibit A**. Overages shall be solely the responsibility of the Developer. The source of the reimbursement for Substation shall be



from electrical power impact fees as such are collected over time and as further limited herein. Developer shall be allowed capacity in the substation for 1,488 units.

2.2.1.4 Assessment of Impact Fees. Pursuant to City ordinance and to the extent permitted by the Act and other applicable law, the City shall assess and collect impact fees. Notwithstanding the foregoing, in the event any law or court decision hereafter prohibits, limits or eliminates the ability of a city to assess and/or collect all or a portion of the impact fees, the City shall not be obligated to assess, collect, or reimburse impact fees, except to the extent authorized by the then-existing law and/or any applicable court decisions.

2.2.1.5 Reimbursement Procedure. Prior to payments, the Developer shall submit actual invoices and cancelled checks, with an accompanying memorandum to the City detailing and confirming the amounts paid for construction or installation of the Improvements. Subject to the prior dedication to the City of the parcels of property for the Improvements, and the completion and acceptance by the City of the Improvements, the City acknowledges that reimbursements to the Developer shall be made on a quarterly basis. The amount to be reimbursed shall be based upon the amount of impact fee projects in process or completed for which the City has a reimbursement agreement. The amount to be reimbursed is further limited to the amount collected over the preceding quarter. City will disburse 100% of collected impact fees on a quarterly basis, pro-rated among all recipients of impact fees outstanding at any given time. ~~The pro-rata amount will be calculated on the total amount originally owing, not the current balance.~~ Thus, the amount reimbursed in any given quarter will vary, upward or downward, over the payback period. The City shall pay the reimbursement amount within 45 days of receipt of an invoice and the accompanying memorandum. The amount to be reimbursed shall be adjusted once all final invoices for the project are completed. All cost expenditures require approval by the City.

2.2.1.6 Miscellaneous. Notwithstanding anything in this Agreement to the contrary, the City shall have no obligation to make any reimbursement to the Developer until impact fees are actually collected by the City. The City shall not be obligated to pay interest on the cost to construct the Improvements or on the impact fees collected. The Developer hereby agrees to accept the impact fees actually collected by the City as provided herein as full and final reimbursement and satisfaction of all sums relating to the Improvements, and hereby agrees to hold the City and its officers, employees, representatives and agents harmless for any amounts claimed by the Developer for reimbursement in the event the City is unable to collect the aforesaid impact fees for any reason whatsoever despite the City's good faith and diligent efforts. Notwithstanding anything herein, no reimbursement shall be due hereunder to the Developer for any particular Improvements until the Developer has dedicated to the City or made available for the use by the City of such Improvements, and has provided the City with reasonable evidence of the Improvements' costs actually incurred by the Developer for such Improvements, as set forth herein.

2.2.1.7 **Collection Period.** It is further agreed that the City shall collect Impact Fees specified herein to the extent permitted by the Impact Fees Act and other applicable law until such time as Developer's total Improvement Costs on all the Improvements have been paid in full.

2.2.2 **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the reasonable police powers of City to enact ordinances, standards, or rules regulating land use, development, or zoning.

2.2.2 **Compliance with City Requirements and Standards.** Developer expressly acknowledges that nothing in this Agreement shall be deemed to relieve it from its obligations to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats and site plans. Notwithstanding the forgoing, in the event of a conflict between the terms of this Agreement and any then applicable requirements of City, this Agreement shall control.

2.3 **Recording.** City or Developer may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

### SECTION III. GENERAL PROVISIONS

3.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. ~~The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Project. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project to which the successor holds title. Future lot owners in the Project are not third-party beneficiaries to this Agreement.~~

3.2 **Transfer of Property.** Developer shall have the right to assign or transfer all or any portion of its rights and obligations under this Agreement to any party acquiring an interest or estate in the Project or any portion thereof. Developer shall provide written notice of any proposed or completed assignment or transfer, but in no event shall the failure to provide such written notice affect the validity of such assignment or transfer, except to the extent City has acted to its detriment without knowledge of any such assignment and such assignment is the proximate cause of such detriment. In the event of an assignment, the transferee shall succeed to the portion of the rights and obligations so transferred or assigned.

3.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project is a private development; (ii) City and Developer hereby renounce the existence of any form of agency relationship, joint venture, or partnership among them; and (iii) nothing contained herein shall be construed as creating any such relationship among City and Developer.

### SECTION IV. MISCELLANEOUS

4.1 **Incorporation of Exhibits and Headings.** All Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein. The headings to the various paragraphs and sections are for assistance in locating contract provisions, but are not to be considered part of the contract provisions.

4.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

**4.3 Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect if the intent of the Parties can be carried out by so doing.

**4.4 Construction.** This Agreement has been reviewed by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**4.5 Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

**4.6 Assignment.** Except as otherwise provided for in Section 3.2 herein, the benefits of the Agreement may not be assigned to any other party, individual, or entity without assigning the obligations under this Agreement. The rights and obligations of City under this Agreement shall not be assigned.

**4.7 Governing Law, and Dispute Resolution, and Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

~~4.7.1 Mediation; Certain Remedies. Any and all disputes arising out of or related to this Agreement or the Parties performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation. The Parties shall: (i) mediate in good faith; (ii) exchange all documents which either believes to be relevant and material to the issue(s) in dispute; and; (iii) engage and cooperate in such further discovery as the Parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be in Utah County. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed from an approved mediator list provided by the Utah State Bar Association with specialized knowledge of land use and municipal law. The appointment shall take place pursuant to the guidelines set forth by the Utah State Bar. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation.~~

**4.7.2 Attorneys' Fees.** If any Party hereto is required to engage the services of counsel by reason of the default of another Party, the non-defaulting Party shall be entitled to recover its costs and reasonable attorneys' fees, both before and after judgment and whether or not suit is filed. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

**4.8 Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally, by certified mail, return receipt requested, or by email. If given by certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. If by email, a notice is given when sent, provided that notice via another authorized means of notice is sent promptly after such email is sent. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto,

designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to City, to:  
Salem City  
Attn: City Engineer  
30 West 100 South  
Salem, UT 84653  
Email: [brucew@salemcity.org](mailto:brucew@salemcity.org)

If to Developer, to:

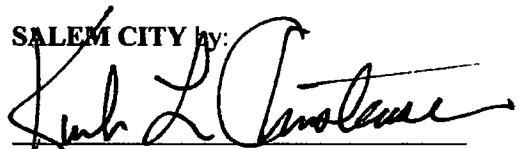
~~Ridgepoint Management Group, LLC~~ *Gracko Grey LLC*  
~~Attn: Heath Johnston~~  
~~947 South 500 East, #100~~ *1187 N 1200 W #300*  
~~American Fork, UT 84003~~ *Orion UT 84057*  
Email: *rpg@dm6.com*

4.9 **Force Majeure.** No party shall be in default in respect to any obligation under this Agreement because of "Force Majeure." Force Majeure shall mean any event that creates an inability to fulfill an obligation under this Agreement that could not be prevented or overcome by the due diligence of the Party claiming Force Majeure. ~~Such events include, but are not defined by or limited to, acts of God, strikes, lockouts, labor disputes,~~ acts of a public enemy, acts of sabotage, acts of terrorism, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, earthquakes, fires, hurricanes, storms, tornadoes, floods, washouts, civil disturbances, explosions, accidents, or the binding order of any court, legislative body, or governmental authority, other than the party claiming Force Majeure, that has been resisted in good faith by all reasonable legal means. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension. A party unable to fulfill any obligation by reason of Force Majeure shall use diligence to remove such disability. A party claiming Force Majeure shall (i) provide prompt written notice of such Force Majeure event to the other party and estimate the expected duration of such event and, (ii) attempt to exercise all reasonable efforts to continue to perform its obligations under this Agreement. The affected party shall keep the other party informed on a continuing basis of developments relating to the Force Majeure until the Force Majeure ends.

4.10 **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A Electrical Substation Cost Estimate

IN WITNESS WHEREOF, this Agreement has been executed by Developer, by persons duly authorized to execute the same, and by Salem City, acting by and through its City Council, as of the 5 day of May, 2021.

SALEM CITY by:  
  
Kurt L. Christensen, Mayor

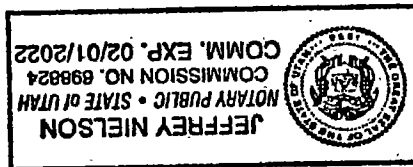
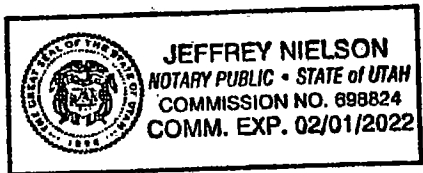


Attest:  
*[Signature]*  
Jeffrey D. Nielson, City Recorder

STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 10 day of May, 2021, by Kurt L Christensen, as Mayor of Salem City.

*[Signature]*  
Notary Public



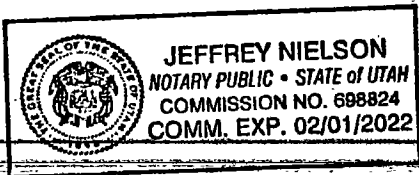
**DEVELOPER  
GECKO GREY, LLC.**

By: [Signature]  
Ryan Poelman, Manager

STATE OF UTAH )  
COUNTY OF Utah ) ss.

The foregoing instrument was acknowledged before me this 25 day of May, 2021, by Ryan Poelman as Manager of Gecko Grey, a LLC.

[Signature]  
Notary Public



**EXHIBIT A**

**ELECTRICAL SUBSTATION COST ESTIMATE**

---

<b>ARROWHEAD SPRINGS SUBSTATION ESTIMATE SUMMARY</b>				
<b>Item #</b>	<b>Description</b>	<b>Labor</b>	<b>Material</b>	<b>Total</b>
1	Major Equipment	\$58,800.0	\$902,000.0	\$960,800.0
2	Relay/Meter/SCADA Panels	\$18,480.0	\$115,000.0	\$133,480.0
3	Steel Structures	\$53,655.0	\$218,112.5	\$271,767.5
4	Concrete Foundations	\$48,720.0	\$276,500.0	\$325,220.0
5	Control Building	\$57,225.0	\$207,500.0	\$264,725.0
6	Substation Bus	\$48,615.0	\$98,000.0	\$146,615.0
7	Conduit & Cable	\$87,675.0	\$87,850.0	\$175,525.0
8	Grounding	\$25,200.0	\$90,000.0	\$115,200.0
9	Site	\$48,300.0	\$100,250.0	\$148,550.0
10	Misc. (testing/bonding)	\$8,400.0	\$65,000.0	\$73,400.0
	<b>Subtotal</b>	<b>\$455,070.0</b>	<b>\$2,160,212.5</b>	<b>\$2,615,282.5</b>
11	Construction Equipment			\$52,008.0
12	Tax			\$151,214.9
13	Contingency			\$261,528.3
14	Engineering/Testing			\$209,222.6
		<b>TOTAL SUBSTATION ESTIMATE</b>		<b>\$3,289,256.2</b>