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ENT 22990:2023 PG 1 of 13
ANDREA ALLEN
UTAH COUNTY RECORDER
2023 Apr 12 4:41 pm FEE 0.00 BY MC
RECORDED FOR PAYSON CITY CORPORATION

When recorded return to:
Payson City Corporation
439 W. Utah Avenue
Payson, UT 84651

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into this 22nd day of February, 2023 by and among Payson City Corporation, a Utah municipal corporation, hereafter referred to as “City”, and Mitchell Development, LC, a limited company, and The Cregg Merrill Jacobson Family Limited Partnership, hereafter referred to collectively as “Developer”. The Developer is the owner of the property contained in the “Springside Meadows Subdivision Plat P” (the “Project”). The City and Developer are sometimes collectively referred to in this Agreement as the “Parties”.

RECITALS

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

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

C. Springside Meadows Subdivision Plat P is located east of Main Street between 1600 South and 1800 South, Payson, Utah and encompasses Utah County Parcels 30:071:0050 and 30:071:0065, with the legal description being contained in **Exhibit “A”** attached hereto and incorporated herein by this reference.

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

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

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

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

H. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement by Resolution No. 02-15-2023-A, a copy of which is attached to this Agreement as **Exhibit "B"**.

AGREEMENT

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

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

Exhibit "A" – Legal Description of Property

Exhibit "B" – Adopting Resolution

Exhibit "C" – Final Plat for Springside Meadows Subdivision Plat P

III. Developer Obligations.

- A. Completion of the Project.** Developer agrees to construct and complete the Project in accordance with the Preliminary Plan, Final Plat and the Plans and Specifications (collectively, the "**Work**") and dedicate to the City all roads, open space, trails, public utility easements, and other applicable public infrastructure included within the Project, to the extent such roads, improvements, easements, and other public infrastructure are located within the boundaries of the City and are to be operated by the City. Modifications from the approved project drawings will only be allowed if approved in writing by both Parties.

All infrastructure, roadways, lot improvements, and trail connections in the Project must be completed by Developer and inspected and approved by City for compliance with the Plans and Specifications. Completion of the Work is a condition of approval of the land use application and shall be completed by Developer with no reimbursement from City. All infrastructure and roadways must be completed, inspected and approved prior to the issuance of any building permits in the Project or any phase thereof.

- B. Relationship with Annexation Agreement.** Developer understands and agrees that the Project property was included in the Mower Addition Annexation and subject to the provisions of the Specific Plan and Annexation Agreement approved through a legislative act of the city council. The development must be consistent

with the Specific Plan and Annexation Agreement, including the creation of distinct neighborhoods that provide a wide range of housing opportunities and choices.

- C. **Preliminary Plan and Final Plat Approval.** The Payson City Council granted Final Plat approval on November 18, 2020, contingent upon the satisfaction of certain conditions. Developer hereby agrees to satisfy all conditions imposed by the Payson City Council in conjunction with Preliminary Plan and Final Plat approval as such conditions pertain or relate to the Project.
- D. **Limited Access, Driveways, and Side Entry Garages.** Main Street is classified as a major collector on the Functional Classification Map of the Payson City Transportation Master Plan and City may limit the number of driveways and at-grade intersections for higher capacity streets. Parties agree that each lot will be limited to one drive approach. Driveways shall be designed to provide access to side entry garages and to accommodate additional backing area to allow vehicles to turn around on-site and to avoid backing into Main Street.
- E. **Open Space Corridor and Neighborhood Trail Connector.** Developer shall provide pedestrian access from the neighborhood to future regional trail facilities. The corridor will be dedicated to City with the recordation of the plat and improved by Developer consistent with the Plans and Specifications and recommendations of the Payson City Parks Superintendent. The open space corridor and trail connector improvements may be delayed until Lot 107 is improved to ensure proper elevation and stabilization of the trail corridor. In no case will the performance guarantee for the improvements be released until the improvements are completed by Developer and inspected and approved by City.
- F. **Residential Design Elements.** To create a well-planned housing community, the Springside Meadows Subdivision consists of distinct neighborhoods that provide a wide range of housing opportunities and choices. The dwellings in this neighborhood will be designed with custom exterior elevations and strict avoidance of tract housing, file plans, repetitive use of colors, materials, and architectural styles and features. This neighborhood will contain dwellings with varying design and architecture. Rooflines will include distinctive and significant articulation.
- i. *Dwelling size.*
 - a. A one-story dwelling shall not be less than 1900 square feet above finished lot grade.
 - b. A two-story dwelling must have a minimum of 2000 square feet of finished floor area above grade with at least 900 square feet on the main level. The second story square footage shall not exceed 80% of the ground floor square footage including garage and porch areas.
 - c. The required square footage is finished living area and exclusive of basements, unenclosed porches, decks, and similar architectural features.
 - ii. *Garage.* Each dwelling shall contain at least an attached two-car garage that measures no less than 20 feet by 20 feet. The garage must be side entry. The garage area must be maintained as off-street parking space and shall not be used or converted in a manner that will eliminate the required covered parking.

- iii. *Exterior materials.* A mix of hard surface materials to include brick, stucco, stone, cementitious siding, and engineered wood siding product will be used. All dwellings shall have stone or brick on at least 30% of the front elevation. Architectural consideration may be given in lieu of the stone or brick requirement. When additional architectural elements are installed in its place, staff may modify or waive the use of stone or brick. Natural wood may be used to enhance architectural features. Vinyl and aluminum siding is not allowed.
- iv. *Diversity.* No two adjacent dwellings will be the same elevation. Strict avoidance of tract housing, file plans, and repetitive use of colors, materials, and architectural features is required.

G. Soil Analysis, Grading and Slope Stabilization. Due to the location of the Project, geotechnical issues, proximity to existing irrigation facilities, and other matters related to development on slopes, additional requirements are necessary.

- i. All recommendations and suggestions of the geotechnical report prepared for the Springside Meadows Subdivision must be addressed, unless a stricter or more intensive regulation is required by the Payson City Code.
- ii. A grading and slope stabilization plan shall be submitted with the building permit that identifies areas proposed to be disturbed (i.e. dwelling, driveways, accessory buildings, landscaping) and the improvements that will be completed to properly address lot-to-lot drainage and slope stabilization. Retaining walls, berms, anchors, and other slope stabilization techniques must be properly designed, and possibly engineered. Because of the topography and the necessity of slope stabilization, all stabilization methods and landscaping must be completed prior to the issuance of an occupancy permit.
- iii. No structure, excavation, or earthwork is allowed in the 35' limits of disturbance area along the High Line Canal. Landscaping may be allowed if the owner can demonstrate to the satisfaction of the city engineer that the landscaping materials and improvements will not change the soil moisture content in a manner that will compromise the slope stability of the irrigation corridor. City reserves the right to hire a geotechnical engineer, at the owner's expense, to evaluate the slope stability.
- iv. City does not participate, arbitrate, or resolve drainage issues between private property owners; however, a building permit, or occupancy permit as the case may be, will not be issued for any structure the City finds will not properly drain without trespass onto adjacent properties or if the lot-to-lot drainage and slope stabilization methods are not implemented by the lot owner.

H. Electrical Considerations. As required by City ordinance, City shall provide all electrical service to the Project, unless otherwise agreed to in writing by City. Developer will take all steps necessary to affect a transfer of electric service to City at such time as City shall direct. No development will be approved until such transfer of electrical service has been completed. Developer agrees to reimburse City for all amounts paid by City to South Utah Valley Electric Service District (dba SESD) pursuant to Section 10-2-421 Utah Code Annotated. Provision of electrical service for future customers must satisfy the regulations of federal, state and local law or ordinance, and any other service provider obligations. The Parties will work together to secure easements or needed land dedication to provide connection to the Payson Power electrical system.

- I. **Final Approval Items.** Developer must obtain in a timely manner and show proof satisfaction of all requirements of the Project, including but not limited to the following: The proper transfer of sufficient water rights to City; payment of performance guarantees; payment of property taxes; payment of electrical materials and labor; payment of public works testing and inspection fees; and complete a pre-construction meeting prior to the commencement of any construction on the site.

IV. Vested Rights and Reserved Legislative Powers.

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

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

VI. General Provisions.

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

If to City: Payson City Corporation
Attention: City Recorder
439 W. Utah Ave.
Payson UT 84651

If to Developer: Mitchell Development, LC
Attn: Steve Mitchell

1455 West 200 South
Lindon UT 84042

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

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

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

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

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

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

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

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

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

J. **Governing Law.** The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in

connection with this Agreement shall be proper only in a court of competent jurisdiction located in Utah County, Utah, and the Parties hereby waive any right to object to such venue.

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

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

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

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

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

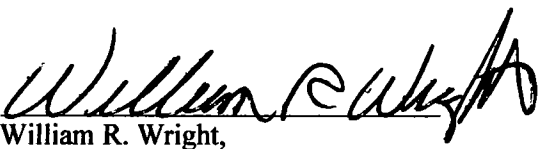
P. **No Agency Created.** Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.

[Signatures on following page]

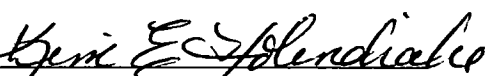
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written:

CITY

PAYSON CITY CORPORATION
A Utah Municipal Corporation

By: 
William R. Wright,
Payson City Mayor

ATTEST:

By: 
Kim E. Holindrake,
Payson City Recorder



DEVELOPER

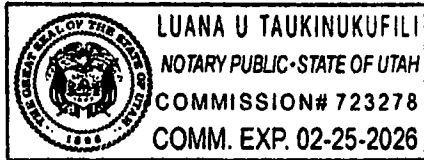
Mitchell Development, LC

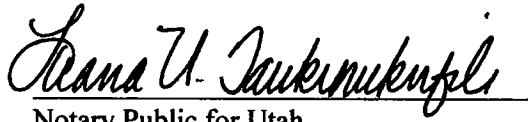
By: 
Scott Mitchell, Manager

STATE OF UTAH)
 : ss.
County of UTAH)

On this 22nd day of February, 2023, before the undersigned notary public in and for the said state, personally appeared Scott Mitchell, known or identified to me to be a Manager of Mitchell Development, LC, a Utah limited company, and the person who executed the foregoing instrument on behalf of said Company and acknowledged to me that said Company executed the same.

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




Notary Public for Utah

DEVELOPER

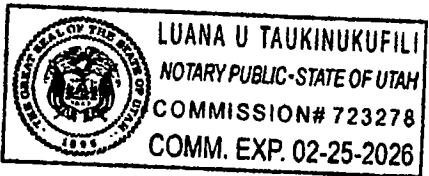
The Cregg Merrill Jacobson Family Limited Partnership

By: *DeAnne Jacobson*
Print Name: *DeAnne Jacobson*
Title: *manager*

STATE OF UTAH)
 : ss.
County of UTAH)

On this *22nd* day of *February*, 2023, before the undersigned notary public in and for the said state, personally appeared *DeAnne Jacobson* known or identified to me to be a *manager* of The Cregg Merrill Jacobson Family Limited Partnership, and the person who executed the foregoing instrument on behalf of said Company and acknowledged to me that said Company executed the same.

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



Luana U. Taukinukufili
Notary Public for Utah

Exhibit "A"
Legal Description of Property W

A DISTANCE OF 286.25 FEET TO THE POINT OF BEGINNING

**BEGINNING AT A POINT BEING N.89°12'41"E. 1374.68' ALONG THE SECTION LINE AND NORTH 791.04'
FROM THE NORTH 1/4 CORNER OF SECTION 29, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE &
MERIDIAN;**

**THENCE, N 14° 54' 49" E FOR A DISTANCE OF 943.49 FEET TO A POINT ON A LINE.
THENCE, N 89° 30' 17" E FOR A DISTANCE OF 318.09 FEET TO A POINT ON A LINE.
THENCE, S 20° 07' 10" W FOR A DISTANCE OF 492.66 FEET TO A POINT ON A LINE.
THENCE, S 89° 41' 11" W FOR A DISTANCE OF 1.72 FEET TO A POINT ON A LINE.
THENCE, S 17° 39' 19" W FOR A DISTANCE OF 97.62 FEET TO A POINT ON A LINE.
THENCE, S 16° 28' 10" W FOR A DISTANCE OF 138.70 FEET TO A POINT ON A LINE.
THENCE, S 08° 08' 29" W FOR A DISTANCE OF 79.11 FEET TO A POINT ON A LINE.
THENCE, S 07° 14' 53" W FOR A DISTANCE OF 146.14 FEET TO A POINT ON A LINE.
THENCE, S 84° 58' 48" W FOR A DISTANCE OF 4.92 FEET TO A POINT ON A LINE.
THENCE S 89° 34' 38" W A DISTANCE OF 286.25 FEET TO THE POINT OF BEGINNING**

CONTAINS 5.91 ACRES AND 8 LOTS

PROJECT BASED ON STATE PLANE COORDINATES, NAD83S AND 8 LOTS

Exhibit "B"
Adopting Resolution

RESOLUTION NO. 02-15-2023-A

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT ON BEHALF OF PAYSON CITY BETWEEN PAYSON CITY, A MUNICIPAL CORPORATION, "CITY", AND MITCHELL DEVELOPMENT, LC AND CREGG MERRILL JACOBSON FAMILY LIMITED PARTNERSHIP, COLLECTIVELY "DEVELOPER", FOR THE DEVELOPMENT OF THE SPRINGSIDE MEADOWS SUBDIVISION, PLAT P, "PROJECT".

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

WHEREAS, Developer and City acknowledge that the Final Plat was approved by the Payson City Council on November 18, 2020; and

WHEREAS, Developer requested City Council action resulting in approval of R-1-A, Single Family Residential for the Springside Meadows Subdivision, Plat P, whereby the approvals are implemented through the Development Agreement; and

WHEREAS, City desires to allow Developer to make improvements and develop the Project in accordance with the Final Plat and the Plans and Specifications and Terms and Conditions of the Development Agreement for the Springside Meadows Subdivision, Plat P; and

NOW THEREFORE, BE IT RESOLVED BY THE PAYSON CITY COUNCIL, that Mayor William R. Wright is authorized and directed to execute the attached Development Agreement for Springside Meadows Subdivision, Plat P, in Payson City.

This Resolution shall take effect immediately upon its passage by the Payson City Council adopted in a public meeting.

Passed and adopted by the Payson City Council, Utah, this 15th day of February, 2023.

Attest:


William R. Wright, Mayor


Kim E. Holindrake, City Recorder



Exhibit "C"
 Final Plat for Springside Meadows Subdivision Plat P

