

SUBDIVISION DEVELOPMENT AGREEMENT  
FOR  
THE VILLAGE OF FOX HOLLOW PLAT 2

THIS AGREEMENT is made and entered into as of 10 Aug., 2004 by and between the CITY OF SARATOGA SPRINGS ("City") and Hearthstone Development, L.L.C., ("Developer").

RECITALS:

A. The City has given final approval of The Village of Fox Hollow Plat 2 Subdivision consisting of 27 building lots (the "Subdivision") on approximately 7.44 acres. That approval was subject to, among other things, the execution of this Agreement.

B. This Agreement is being entered into by the City and Developer to provide for the construction of and bonding for the "Subdivision Improvements" and to provide for other related matters relating to the Subdivision as herein set out.

AGREEMENT:

NOW THEREFORE, for and in consideration of the mutual covenants, conditions and terms set forth in the above Recitals and hereinafter set forth, the parties hereby agree as follows:

1. Subdivision Improvements. Developer agrees to make construct or install the subdivision improvements as set forth in the Subdivision Plat and other plans and drawings for the subdivision (the "Subdivision Plans") that have been approved by the City Engineer (the "Subdivision Improvements"). The Subdivision Improvements shall be constructed and installed in a good and workmanlike manner and in full accordance with the Subdivision Plans, any applicable construction standards of City and all applicable federal, state and local laws, rules and regulations that apply. Developer will supply the City with As-Built drawings showing the Subdivision Improvements when they are completed. The Subdivision Improvements and all off-site improvements required to provide services to the Subdivision must be completed before the City will issue any building permits or certificates of occupancy. Upon conditions set and approved by the City in Resolution No. 2-0122-02 a limited number of building permits may be issued for "model homes" in the Subdivision before the requirements for a normal building permit are met. All Subdivision Improvements must be completed within one year from the date of recordation of the Subdivision Plat. If the Subdivision Improvements are not completed within one year, the City shall have the right, but not the obligation, upon notice of Developer's default as provided in this Agreement, to cause the Subdivision Improvements to be completed with the use of the proceeds of the performance bond provided in accordance with Section 2 of this Agreement. The Developer hereby warrants that all of the improvements installed and every part thereof shall remain in good condition free from all defects in design, materials and/or workmanship for two years from the date all required improvements are completed, inspected and accepted by the City's designated representative (the "Warranty Period"). The Developer shall promptly make all repairs, corrections and/or replacements for all defects in workmanship, materials and/or equipment included in the required improvements during the Warranty Period which warranty work shall be inspected and accepted by the City's designated representative.

2. Performance Bond. Developer shall provide a performance bond acceptable to the City covering the Subdivision Improvements, in the amount of 115% of the estimated cost of said improvements, as set forth in Exhibit A attached hereto and made a part hereof. The bond shall provide that periodic completion payments for the improvements described in Exhibit A, calculated on percent of completion less 10%, provided that at least 20% of the bond amount shall be retained until all required improvements are completed, inspected and accepted by the City's designated representative. Percent of completion shall be calculated by the City's designated representative based upon such inspection as he deems appropriate and based upon actual invoices and other documentation as he deems appropriate. When all required improvements are completed, inspected and accepted by the City's designated representative, all of the bond amount except for 10% of the bond amount may be disbursed or released

by Lender. The remaining 10 % of the bond amount shall be retained by the City for the Warranty Period to cover any defects in workmanship or materials discovered during the Warranty Period and not repaired, corrected and/or replaced by Developer.

3. Dedication of Improvements. The Subdivision Improvements as well as all public open space, streets and easements as set out in the Subdivision Plat shall be dedicated to City upon City's acceptance of same.

4. Sewer Service. City agrees to provide sewer service to the Subdivision at standard rates generally charged for other development within the City in accordance with the ordinances, rules and regulations of the City and the Timpanogos Special Service District ("Timpanogos") covering sewer service on the following conditions:

4.1. Sewer Lines. City shall not be obligated to provide sewer to any lot until all sewer lines within the Subdivision and all off-site sewer lines and/or facilities required to provide sewer service to the Subdivision are completed and accepted by the City.

4.2. Sewer Fees. Timpanogos requires payment of an impact fee/capital facilities charge which is subject to change from time to time by Timpanogos. The impact fee/capital facilities charge is currently collected by the City but may hereafter be collected directly by Timpanogos and may hereafter be collected as a capital facilities charge or as an impact fee. Developer acknowledges and agrees that said capital facilities charge or impact fee by Timpanogos is separate from and in addition to sewer connection fees and sewer impact fees (if applicable) imposed by the City.

5. Water Service. City agrees to provide culinary and secondary (outside irrigation) water service to the Subdivision at standard rates generally charged for other development within City in accordance with the Ordinances and rules and regulations of City covering water service on the following conditions:

5.1. Water Facilities and Water Rights. The water facilities and water rights have been provided in accordance with the City's Water Utilities Ordinance. City may provide to Developer or such other party who has provided such water facilities and water rights, Water Certificates evidencing that water facilities and water rights have been provided for all lots in the Subdivision. Such certificates shall be provided to City at the time a building permit is issued.

5.2. Water Lines. City shall not be obligated to provide water service to any lots in the Subdivision until all culinary and secondary water lines within the Subdivision and all off-site culinary and secondary water lines and/or facilities required to provide water service to the Subdivision are completed and approved and accepted by City.

5.3. Water Fees. The lot owners shall be required to pay connection fees to cover the costs of water meters and the costs to connect the same in order to receive water service.

6. Other Municipal Services. City shall provide standard municipal services to the Subdivision in the same manner and level as said services are provided to other developments in the City subject to the payment of all fees and charges charged or levied therefore by the City.

7. Street Lighting SID. The land covered by the Subdivision and all lots and parcels in the Subdivision shall be added to the City's Street Lighting Special Improvement District ("Lighting SID") for the maintenance of the street lighting. Developer has or will give written consent to have the land covered by the Subdivision included in the Lighting SID as a condition to final plat approval. The Lighting SID is not for the installation of street lights but is for the maintenance of the street lights that Developer is required to install as part of the Subdivision Improvements.

8. Impact Fees. Impact fees for roadways, storm drainage, wastewater, parks and open space and public safety facilities shall be imposed on all lots in the Subdivision in accordance with the City's Impact Fee Ordinance and shall be paid prior to the issuance of a building permit for any development on

a lot in the Subdivision. (Culinary and secondary water impact fees shall not be imposed on lots in the Subdivision except by prior arrangement with Developer relating the provision of Water Facilities.) Any credits for impact fees based on improvements, dedications or conveyances by Developer shall be set out in Exhibit B to this Agreement, upon the prior approval of City. City may issue certificates for such impact fee credits to Developer, in which event, City will not issue building permit unless said impact fee credit certificates are surrendered to City in lieu of payment of the applicable impact fee(s).

9. Kiosk. Developer shall construct at a location within the Subdivision or at some other location agreed to by the City and the Developer a kiosk for public notices including public notices to be posted by the City. The kiosk shall be built according to the City's standards for the same or according to another design proposed by the Developer and agreed to by the City Planner. The City shall have access to the Kiosk to post public notices for the benefit of the residents of the Subdivision and others in the area. If Developer or others have already built a kiosk that will provide notice to the residents of the Subdivision, the City Planner may waive the requirements to build a kiosk in this Subdivision.

10. CC&Rs and Owners Association. The Declaration of Covenants, Conditions and Restrictions for the Subdivision (the "CC&Rs"), in the form attached as Exhibit C hereto and made a part hereof, shall be recorded at the time of the recording of the Subdivision Plat. City shall not be obligated to issue any building permit that would result in a violation of the CC&Rs. The Owner's Association for the Subdivision has been or shall be incorporated as a nonprofit corporation with Articles of Incorporation and Bylaws in the forms approved by the City Attorney prior to the recording of the Subdivision Plat.

11. Rights of Access. The City Engineer and other representatives of the City shall have a reasonable right of access to the Subdivision during construction to inspect or observe the work on the Subdivision Improvements and to make such inspections and tests as are allowed or required under the City's ordinances.

12. Assignment. Any and all successors and assigns, in title or right, with respect to the Subdivision Improvements, shall be bound by the same requirements and obligations as described in this Agreement.

13. Default. In the even Developer fails to perform its obligations under this Agreement, within 30 days of such default by the City, City may, at its election, have the following remedies

13.1. All rights and remedies provided in this Agreement or available at law and in equity, including injunctive relief, specific performance and/or damages.

13.2. The right to withhold all further approvals, licenses, permits or other rights associated with the Subdivision and any building or development on any lots in the Subdivision.

The rights and remedies herein provided shall be cumulative. If either party default in any of the covenants or agreements herein contained, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise.

14. Integration. This Agreement and the attached exhibits and referenced agreements constitute the entire agreement between the parties as to the matters specifically addressed herein. This Agreement supersedes any and all negotiations, dealings and agreements by the parties subsequent to the execution of the Agreement as to the matters addressed herein. Any amendments to this Agreement must be in writing and signed by both parties hereto.

15. Fees. Concurrent with the execution of this Agreement and prior to recording the Subdivision Plat, Developer shall pay to City all fees for subdivision approval and all engineering and other fees for inspection and testing of the Subdivision Improvements. Developer shall reimburse City for

its attorney's fees in negotiating and drafting this Agreement and other documents and agreements involved with the subdivision and subdivision approval.

16. Time of the Essence. It is agreed that time is of the essence in the performance of duties and obligations under this Agreement.

17. Notice. Any notice given under this Agreement shall be written and shall be delivered personally, by first class mail or by express mail addressed as follows:

To City: City of Saratoga Springs  
2015 South Redwood Road  
Saratoga Springs, Utah 84043

To Developer: Dave Olsen  
Hearthstone Development  
1094 North Ridgeway  
Spanish Fork, Utah 84660

Or other such address as either party may designate by written notice to the other party as herein provided.

18. Construction. This Agreement shall be governed as in validity, enforcement, construction, effect and in all other respects by the Laws of the State of Utah. The section headings and numbers are for convenience only and are not to be used to construe or interpret the provision of this Agreement.

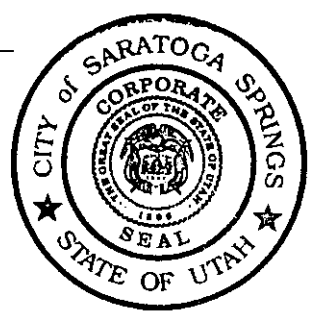
19. Waiver. No failure or delay in exercising any right, privilege hereunder on the part of any party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the party making the waiver.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date hereinabove written.

DEVELOPER  
By: Dave Olsen

CITY OF SARATOGA SPRINGS  
By: Timothy G. Fisher  
Mayor

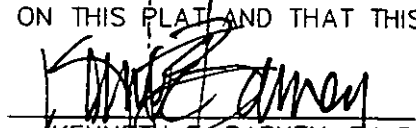
Attest:  
Doreen Yates  
City Recorder



### SURVEYOR'S CERTIFICATE

I, KENNETH E. BARNEY DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 172762 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY BY AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF SAID TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS, STREETS, AND EASEMENTS AND THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT AND THAT THIS IS TRUE AND CORRECT.

JUNE 7, 2004  
DATE

  
KENNETH E. BARNEY, F.L.S.

### BOUNDARY DESCRIPTION

A PARCEL OF LAND LYING IN THE SOUTH HALF OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MONUMENTING THE WEST 1/4 CORNER; THENCE N.89°49'52"E. A DISTANCE OF 2453.22 FEET ALONG THE 1/4 SECTION LINE TO THE REAL POINT OF BEGINNING:

THENCE N.89°49'52"E. A DISTANCE OF 803.00 FEET; THENCE S.00°10'03"E. A DISTANCE OF 343.79 FEET; THENCE S.89°49'57"W. A DISTANCE OF 105.00 FEET; THENCE N.00°10'03"W. A DISTANCE OF 33.63 FEET; THENCE S.89°49'57"W. A DISTANCE OF 56.00 FEET; THENCE S.89°50'07"W. A DISTANCE OF 115.83 FEET; THENCE S.00°31'13"E. A DISTANCE OF 150.56 FEET; THENCE S.45°51'14"W. A DISTANCE OF 66.25 FEET; THENCE N.48°45'32"W. A DISTANCE OF 61.05 FEET; THENCE N.70°05'51"W. A DISTANCE OF 54.75 FEET; THENCE N.75°31'56"W. A DISTANCE OF 48.83 FEET TO A POINT OF CURVATURE OF A 115.50-FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; THENCE SOUTHWESTERLY A DISTANCE OF 65.89 ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 32°41'12" AND A CHORD THAT BEARS S.86°26'32"W. A DISTANCE OF 65.00 FEET TO A POINT OF INTERSECTION WITH A TANGENT 1580.50-FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY A DISTANCE OF 288.70 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 10°27'57" AND A CHORD THAT BEARS N.82°26'50"W. A DISTANCE OF 288.30 FEET; THENCE N.02°19'11"E A DISTANCE OF 56.00 FEET; THENCE N.00°31'13"W. A DISTANCE OF 188.25 FEET; THENCE N.00°09'53"W. A DISTANCE OF 56.00 FEET; THENCE N.89°50'07"E. A DISTANCE OF 14.34 FEET; THENCE N.00°10'03"W. A DISTANCE OF 100.11 FEET TO THE POINT OF BEGINNING, CONTAINING 7.44 ACRES.

180

### OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, ALL OF THE UNDERSIGNED OWNERS OF ALL THE PROPERTY DESCRIBED IN THE SURVEYOR'S CERTIFICATE HEREON AND SHOWN ON THIS MAP, HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, STREETS, AND EASEMENTS AND DO HEREBY DEDICATE THE STREETS AND OTHER PUBLIC AREAS AS INDICATED HEREON FOR PERPETUAL USE OF THE PUBLIC.

IN WITNESS HEREOF WE HAVE HEREUNTO SET OUR HANDS THIS DAY OF June 9, A.D. 2004.

VILLAGE AT SARATOGA L.L.C.

BY: DAVID OLSEN  
MANAGING MEMBER

  
DAVID OLSEN - MEMBER

### ACCEPTANCE BY LEGISLATIVE BODY

THE MAYOR OF CITY OF SARATOGA SPRINGS, COUNTY OF UTAH, APPROVES THIS SUBDIVISION AND HEREBY ACCEPTS THE DEDICATION OF ALL STREETS, EASEMENTS, AND OTHER PARCELS OF LAND INTENDED FOR PUBLIC PURPOSES FOR THE PERPETUAL USE OF THE PUBLIC.

SITE

