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UTAH COUNTY RECORDER
1998 Sep 16 2:44 pm FEE 0.00 BY SS
RECORDED FOR PAYSON CITY

DEVELOPMENT AGREEMENT

By and Between

PAYSON CITY CORPORATION

and

PAYSON GATEWAY DEVELOPMENT, L.C.,
DEVELOPER

August 26, 1998

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ATTACHMENTS

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- Attachment No. 1 - Site Map
- Attachment No. 2 - Legal Description of the Site
- Attachment No. 3 - Scope of Development
- Attachment No. 4 - Schedule of Performance
- Attachment No. 5 - Basic Concept Plan
- Attachment No. 6 - General Provisions
- Attachment No. 7 - Form of Deed

DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the PAYSON CITY CORPORATION ("City") and PAYSON GATEWAY DEVELOPMENT, L.C., a Utah limited Liability Company ("Developer"). The City and the Developer agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of the Agreement

The purpose of this Agreement is to effectuate the development of the area commonly known as the Pit Property located at approximately 1250 West 700 South, by providing for development within the area as more particularly described in this Agreement and its Attachments and specifying the terms and conditions pursuant to which the City and the Developer will cooperate in bringing about this objective.

1.2 Description of the Site

The "Site" is shown on the Site Map which is attached hereto as Attachment No. 1 and is more particularly described in the Legal Description that is attached hereto as Attachment No. 2. In consideration of this Agreement, the Developer agrees to bring about the development more particularly described in the Scope of Development (Attachment No. 3) pursuant to the schedule set forth in the Schedule of Performance (Attachment No. 4).

1.3 Parties to the Agreement1.3.1 City

The City is a body corporate and politic, legally existing under the laws of the State of Utah. The address of the City for purposes of this Agreement is: Payson City Corporation, 439 West Utah Avenue, Payson City, Utah 84651. The City's telephone number is (801) 465-5200 and its fax number is (801) 465-5208.

1.3.2 The Developer

The Developer is PAYSON GATEWAY DEVELOPMENT, L.C., with Douglas C. Young as its managing member. The principal office of the Developer is 7450 Greer Lane, Salt Lake City, Utah 84093. The telephone number of Developer is (801) 859-5493 or 943-9884.

1.4 Entire Agreement; Agreement Documents

This Agreement shall be executed in three duplicate originals each of which is deemed to be an original. This Agreement includes 10 pages of text and 7 attachments which constitute the entire understanding and agreement of the parties. The attachments to this Agreement, which are incorporated herein by this reference, include the following: Site Map (Attachment No. 1), Legal Description (Attachment No. 2), Scope of Development (Attachment No. 3), Schedule of Performance (Attachment No. 4), Basic Concept Plan (Attachment No. 5), General Provisions (Attachment No. 6), and the Form of Deed (Attachment No. 7). When executed by both parties this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

The provisions set forth in the text of this Agreement and Attachment Nos. 1-7 (which text and attachments are hereinafter referred to as the "Specific Provisions") are subject to the terms and conditions set forth in the General Provisions (Attachment No. 6). In the event of a conflict or discrepancy between the General Provisions and the Specific Provisions, the Specific Provisions shall govern.

2. METHOD OF FINANCING

The Developer hereby agrees to pay a Purchase Price of Two Hundred Thousand dollars (\$200,000.00) for the Site. In addition, the Developer hereby agrees, as additional compensation, to construct a baseball/softball four plex at the property site, valued at approximately Six Hundred Thousand Dollars (\$600,000.00), pursuant to the City Recreation Department and Developers specifications. The Developer also agrees to donate the real estate on which the baseball/softball four plex is located, to the City.

The City hereby acknowledges receipt of \$200,000.00 as an earnest money deposit toward this Purchase Price. The balance of the Cash Purchase Price shall be paid in full at or prior to Closing, which shall occur at or before the time specified therefor in the Schedule of Performance.

3. DISPOSITION AND SALE OF THE SITE TO THE DEVELOPER

The City hereby warrants that it has previously acquired the Site and is in a position to convey the Site to the Developer upon payment of the cash Purchase Price to the City as provided in this Section 3.

3.1 Sale of the Site to the Developer for Use and Development

In accordance with and subject to all terms, covenants and conditions of this Agreement, the City agrees to sell and convey the Site to the Developer and the Developer agrees to purchase and develop the Site, within the time, for the consideration and subject to the terms, conditions and provisions of this Agreement, and more particularly upon payment of the Purchase Price as set forth in Section 2 above.

3.1.1 Recording of Deeds

Upon the closing of the property, the title company shall record such deed when title thereto can be vested in the Developer in accordance with the terms and provisions of this Agreement.

3.1.2 Title Company Authorizations

The Title Company is authorized to:

1. Pay and charge the City and the Developer respectively for any fees, charges and costs payable under this Agreement. Before such payments are made, the Title Company shall notify the City and the Developer of the fees, charges and costs necessary to clear and convey title.
2. Disburse funds and deliver the deed and other documents to the parties entitled thereto when the conditions of closing have been fulfilled by the City and the Developer. The purchase price, other consideration, or proof of other consideration, as the case may be, shall not be disbursed by the Title Company unless and until it has recorded the deed pertaining thereto and has delivered to the Developer a title insurance policy insuring title acceptable to the Developer and its lender.
3. Record any instruments delivered through the Title Company if necessary or proper to vest title in the Developer in accordance with the terms and provisions of this Agreement.

3.2 Real Estate Commissions

The City shall not be liable for any real estate commissions or brokerage fees which may arise from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer agrees to hold the City harmless from any claim by any broker, agent or finder retained by the Developer.

3.3 Conveyance of Title and Delivery of Possession

Subject to any mutually agreed upon extensions of time, which shall not be unreasonably withheld, conveyance of title or delivery of possession to the Developer of the Site or portion thereof (in accordance with the provisions of Section 3.5 of this Agreement) shall be completed on or prior to the date specified therefor in the Schedule of Performance. The City and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession of the Site shall be delivered to the Developer concurrently with the conveyance of title, except that access and entry shall be granted before conveyance of title as needed.

3.4 Form of Deed

The City shall convey to the Developer, or its nominee, title to the Site by special warranty deed, substantially in the form of the Form of Deed (Attachment No. 7). Title shall be in the condition provided in Section 3.5 of this Agreement. The provisions of the deed or deeds shall be mutually satisfactory to the Developer, to the Title Insurance Company which will insure the title therein, and to the City, and shall be consistent with the terms of this Agreement.

3.5 Condition of Title

The City shall convey to the Developer, or its nominee, title to the Site in fee simple, free and clear of all recorded or unrecorded liens, encumbrances, covenants, conditions, restrictions, assessments, easements, leases, taxes and other defects, (collectively, "Title Exceptions"), except for those items which are set forth in this Agreement or the title commitment. Permitted Title Exceptions shall include standard printed exceptions; and ten-foot utility easements in form acceptable to the City inside the perimeter of the Site.

3.6 Time for and Place of Delivery of Deeds

Subject to any mutually agreed upon extension of time or such other extension as is permitted by the General Provisions hereof, the City shall deposit the deed with the Title Company on or before the date established therefor in the Schedule of Performance.

3.7 Payment of the Purchase Price and Recordation of Deed

The Developer shall deliver the purchase price, other consideration, or proof of other consideration, as the case may be, with the Title Company upon or prior to the date for conveyance established therefor; provided that the deed has been delivered to the Title Company and that title is in the condition to be conveyed in conformity with the provisions of this

Agreement. The Title Company shall deliver such purchase price, other consideration, or proof of other consideration, as the case may be, to the City simultaneously with the delivery to the Developer of title insurance policy insuring title to the property, and shall promptly file the deed for recordation among the land records in the Office of the County Recorder for Utah County.

3.8 Title Insurance

Concurrently with recordation of the deed conveying title to the Site, a title insurance company (the "Title Insurance Co.") satisfactory to the Developer shall provide and deliver to the Developer a title insurance policy (which at the Developer's option may be an A.L.T.A. owner's policy) issued by the Title Insurance Co. insuring that title thereto is vested in the Developer. The Title Insurance Company shall provide the Developer with a copy of the title insurance policy, and the title insurance policy shall be in the amount of the purchase price pertaining to the Site.

Concurrently with the recording of such deed, the Title Insurance Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated construction costs of the improvements to be constructed thereon.

The City shall pay all title insurance premiums for title insurance provided pursuant to this Agreement.

3.9 Taxes and Assessment

Ad valorem taxes and assessments, if any, on the Site levied, assessed or imposed for any period prior to the conveyance of title or delivery of possession thereto, shall be borne by the City, except that the City shall not be responsible for any assessments, fees or other charges necessary to remove the Site from green belt. All such ad valorem taxes and assessments levied or imposed for any period after such conveyance of title or delivery of possession shall be paid by the Developer.

3.10 Occupants of the Site

The Site shall be conveyed free of any possession or right of possession except that of the Developer, subject to restrictions, covenants, easements, and rights-of-way of record, visible by inspection or otherwise.

3.11 Access to and Entry by the Developer Upon the Site

Prior to the conveyances of title to the Site, representatives of the Developer shall have the right of access to and entry upon such Site (which is owned by the City or of which the City has possession), from time to time, at all reasonable times, for the purpose of obtaining data and

making surveys and tests necessary to carry out this Agreement. The developer agrees to and shall indemnify and hold the City and the City harmless from any and all injuries or damages arising out of any work or activity of the Developer, its agents or its employees.

When requested by the Developer, the City agrees to provide, or cause to be provided, to the Developer all data and information pertaining to the Site and available to the City.

3.12 Submission of Evidence of Financing Commitments

Within the times established therefor in the Schedule of Performance, the Developer shall submit to the City evidence that the Developer has obtained firm and binding commitments or letters of credit, for the interim and permanent financing for the acquisition and the development of the Site in accordance with this Agreement. The City shall approve or disapprove such financing commitments within the times established in the Schedule of Performance. The City shall approve such financing if the commitments are firm and binding and are from a federally insured banking institution doing business in the State of Utah or a nationally recognized lender. Failure of the City to approve or disapprove any such financing commitments within such time shall be deemed an approval. If the City disapproves any such financing commitments, the City shall do so by written notice to the Developer stating the reason for such disapproval. The Developer shall thereupon promptly obtain and submit to the City new financing commitments. The City shall approve or disapprove such new financing commitments in the same manner and within the same times established in this Section for the approval or disapproval of the financing commitments initially submitted to the City.

3.13 Condition of the Site

The City shall be entitled to convey the property in "as is" condition, and shall bear no responsibility for the conditions of the soil at the Site.

4. DEVELOPMENT OF THE SITE

4.1 Development of the Site

4.1.1 Master Declaration

The Site shall be developed by the Developer in accordance with the City zoning and in accordance with the Agreement.

4.1.2 Scope of Development

The Site shall be developed by the Developer in accordance with the Scope of Development (Attachment No. 3), and in accordance with and pursuant to all plans approved by the City pursuant to this Agreement.

4.2 Basic Concept Plan

The Developer has prepared a Basic Concept Plan for the Site and Surrounding Properties ("Developer Basic Concept Plan") and related documents for the development of the Site. The City hereby approves the Developer Basic Concept Plan (Attachment No.5).

The Site shall be developed in accordance with the Developer Basic Concept Plan as approved by the City, except as changes may be mutually agreed upon between the Developer and the City. Any such changes shall be in accordance with the Scope of Development (Attachment No. 3). Nothing herein shall be construed as excusing the Developer from complying with normal land use and development requirements of Payson City.

4.3 Landscaping and Finish Grading Plans

The Developer shall prepare and submit to the City for its approval landscaping and grading plans for the Site. Those plans shall be prepared and submitted within the times established in the Schedule of Performance (Attachment No.4).

4.4 Construction and Related Documents for the Site

The Developer shall prepare and submit construction drawings and related documents (collectively, the "Drawings") for the development of the Site to the City for reasonable architectural review and written approval in the times established in the Schedule of Performance (Attachment No.4).

4.4.1 City Approval of Plans, Drawings, and Related Documents

The City shall have the right of architectural review and of approval of all plans and other such submissions to the City, including any material proposed changes therein. Nothing herein shall absolve the Developer of its obligation to comply with all City requirements and to obtain all requisite City approvals for its development shall be borne by the Developer.

4.4.2 Cost of Construction

The cost of demolition, clearance, grading, preparing and developing the Site and constructing all improvements thereon, plus the cost of all connection fees, permit fees, impact fees, and other costs of compliance with normal City processes.

4.4.3 Schedule of Performance

After the execution of this Agreement by the City, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements on the Site and the development thereof as provided in the Scope of Development (Attachment No. 3) pursuant to the schedule set forth in the Schedule of Performance (Attachment No. 4). In particular, the Developer shall exert its best efforts to complete the baseball/softball four plex on the Site, as described in the Scope of Development, by September 1, 1999. However, the City agrees that so long as the Developer demonstrates good faith efforts to identify potential tenants or buyers for buildings to be constructed on the Site or a portion thereof, the City shall not invoke its right of reentry described in Section 12.6 of the General Provisions prior to September 4, 2003.

4.5 Responsibilities of the City

The City shall convey the Site to the Developer by the date specified for conveyance in the Schedule of Performance, as set forth in Section 3 above. The City shall cooperate with the Developer in arranging to have water, power, sewer, and other utility services brought to the Site. Developer understands that telephone and gas service is not provided by the City, and the City's responsibility with respect to such services does not extend beyond reasonable efforts to secure the cooperation of the entities responsible for providing these services.

5. USE OF THE SITE

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that during construction and thereafter the Developer, its successors and assigns shall develop and devote the Site to the uses specified in this Agreement, the Scope of Development (Attachment No. 3), and all plans approved by the City pursuant to this Agreement.

6. RIGHTS OF TERMINATION

The City may terminate this Agreement at its option if any of the following events occurs:

- a) the Developer fails to pay the Purchase Price as provided in the amounts, forms, manner and terms set forth in the Method of Financing (Section 3);
- b) the Developer fails to submit plans, drawings, and related documents for development of any or all of the Site, as required by this Agreement by the dates respectively provided for in the Schedule of Performance (Attachment No.4); or

- c) if, upon satisfaction of all conditions precedent and concurrent to Developer's obligation to perform under this Agreement and after delivery of a Default Notice and an opportunity to cure pursuant to this Agreement, Developer fails to perform any of its obligations hereunder.

In the event the City elects to terminate this Agreement pursuant to this Section, the City shall have no further liability or obligation to the Developer hereunder. Notwithstanding any such termination, the Developer shall remain liable to the City for any breaches or defaults under this Agreement which occurred prior to such termination.

7. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY; DATE OF AGREEMENT

This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the City within thirty (30) days thereafter, or the Developer may withdraw this offer of this Agreement on written notice to the City. The date of this Agreement shall be the date it is signed by the City.

IN WITNESS WHEREOF, the undersigned parties, do hereby execute this Agreement.

PAYSON CITY CORPORATION

Date: 9-3-98

By [Signature]
Gordon S. Taylor
Mayor

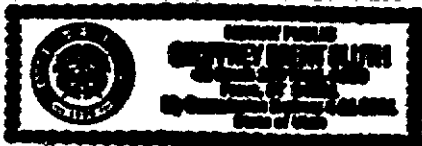
PAYSON GATEWAY DEVELOPMENT, L.C.

Date: 9-3-98

By [Signature]
Douglas C. Young
Managing Member

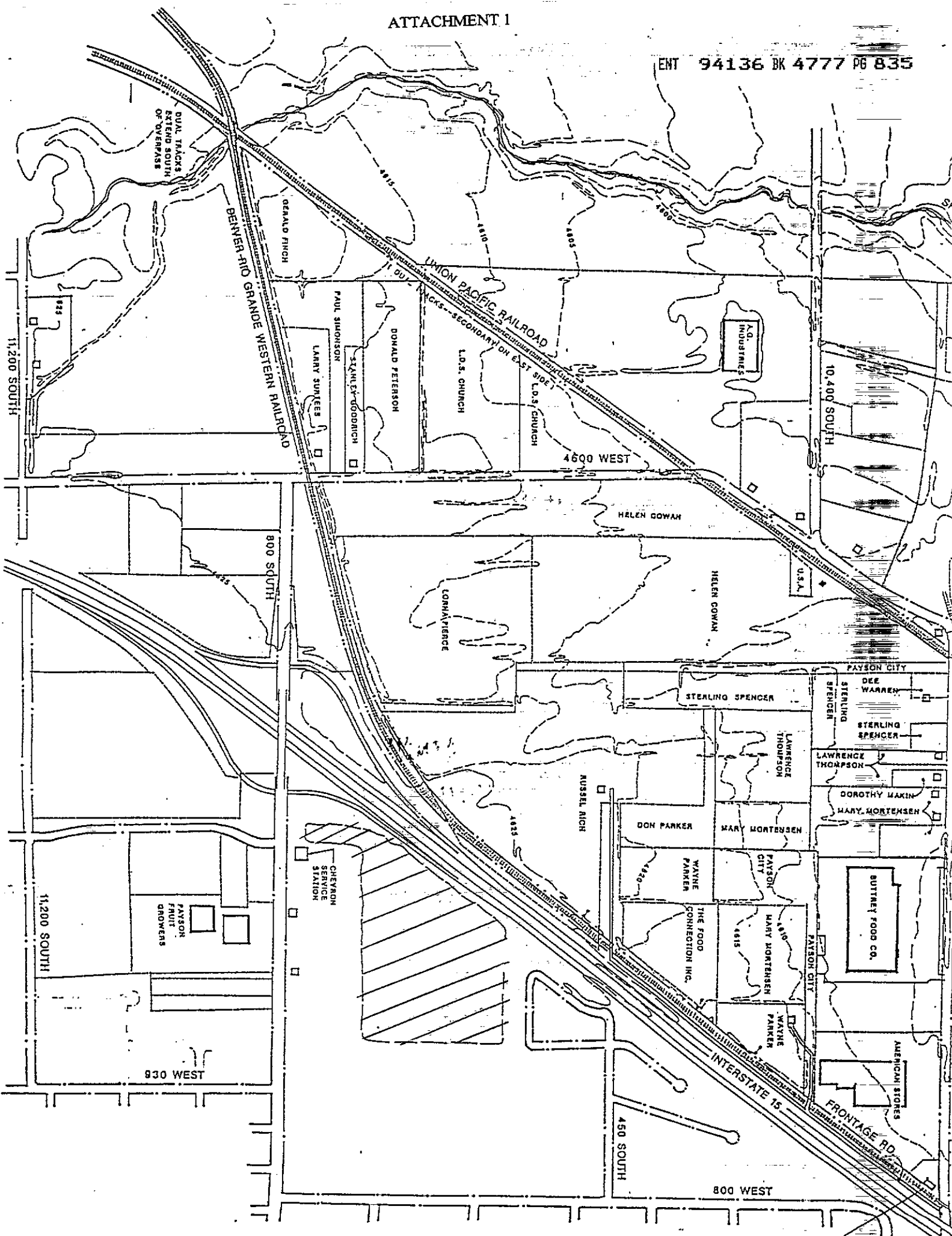
STATE OF UTAH
County of UTAH

ON THE 3RD DAY OF SEPTEMBER 1998 APPEARED BEFORE me GORDON S. TAYLOR & DOUGLAS C. YOUNG, THE SIGNERS OF THE ABOVE INSTRUMENT, who duly acknowledged to me that they EXECUTED THE SAME.



[Signature]
NOTARY PUBLIC

Payson Business Park
PAYSON GATEWAY DEVELOPMENT, L.C.
August 27, 1998



LEGAL DESCRIPTION

The Site consists of the following property situated within Payson City, Utah County,
Utah:

See the legal description of attachment #7.

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

Developer shall develop the property in accordance with the basic concept plan submitted to the City. Specifically, the developer shall be required to construct the softball complex with convenient and adequate parking as specified by City and Developer within the times established in the Schedule of Performance (Attachment No.4). The developer shall also be required to develop a specific portion of the property as an auto mall/dealership within the times established in the Schedule of Performance (Attachment No.4). The Developer, in addition, shall develop and construct a large anchor retail outlet with a minimum size of 50,000 square feet, within the times established in the Schedule of Performance (Attachment No.4). The main anchor retail outlet cannot be exclusively a grocery store. All developments mentioned and all other developments within the property shall be constructed according to City standards. When the parcel is fully developed, the Developer shall have a minimum of 500,000 square feet of retail buildings/space.

ATTACHMENT NO. 5

BASIC CONCEPT PLAN

Developer shall develop the property in accordance with the basic concept plan submitted to the City. Specifically, the developer shall be required to construct the softball complex with convenient adequate parking as specified by City and Developer within the times established in the Schedule of Performance (Attachment No.4). The developer shall also be required to develop a specific portion of the property as an auto mall/dealer within the times established in the Schedule of Performance (Attachment No.4). The Developer, in addition, shall develop and construct a large anchor retail outlet with a minimum size of 50,000 square feet, within the times established in the Schedule of Performance (Attachment No.4). The main anchor retail outlet cannot be exclusively a grocery store. All developments mentioned and all other developments within the property shall be constructed according to City standards. When the parcel is fully developed, the Developer shall have a minimum of 500,000 square feet of retail buildings/space.

ATTACHMENT No. 6

General Provisions of Development Agreements
for
Payson City Corporation

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**General Provisions of Development Agreements
for
Payson City Corporation**

1. PUBLIC PURPOSE

The fulfillment of this Agreement is in the vital and best interests of Payson City, Utah ("City") and the health, safety and welfare of its residents and in accord with public purposes. This Agreement is being entered into by Payson City Corporation ("Utah").

2. PROHIBITION AGAINST CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER DURING DEVELOPMENT PERIOD

The Developer recognizes that, in view of

- (a) the importance of the economic development of the Site to the general welfare of the community; and
- (b) the fact that a significant change in the identity of the Developer prior to the issuance of a Certificate of Completion as set forth in Section 7 below, excepting the substitution of a purchaser at a foreclosure sale or the grantee of a deed in lieu of foreclosure, may be considered, for practical purposes, a transfer or disposition of the Site then owned by the Developer;

the qualifications and identity of the Developer are of particular concern to the community and the City. The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer. Accordingly, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

For the reasons cited above, Developer represents and agrees for itself and any successor in interest of itself that prior to issuance by City of the Certificate of Completion for the Site pursuant to Section 7 of these General Provisions, there shall be no significant change in the ownership or control of Developer or in the relative distribution thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means, without the prior written approval of City. Adding members/ownership to a liability company does not constitute a significant change in the ownership or control of developer.

Developer shall promptly notify City of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in membership, management or control, of Developer or its associates (other than such changes occasioned by the death or incapacity of any individual) prior to issuance by City of a Certificate of Completion for the Site.

Prior to the issuance by the City of the Certificate of Completion pursuant to Section 7 hereof, the Developer shall not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the City. However, after the issuance of the Certificate of Completion, the Developer may, without the consent of the City, assign or transfer all or any portion of the Site, and/or any interest therein.

In the absence of specific written agreement by the City, no assignment or transfer of this Agreement, any part thereof, any right therein, or approval thereof, by the City shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and the permitted successors and assigns of the Developer.

3. DEVELOPER'S HOLD HARMLESS AGREEMENT

The Developer hereby agrees to defend and hold the City and the City, and their officers, employees and consultants harmless for any and all claims, liability and damages arising out of any work or activity of the Developer, its agents, or its employees permitted pursuant to this Agreement. The Developer hereby further agrees to defend and hold the City and the City, and their respective elective or appointive boards, officers, agents, employees and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the City.

4. UTILITY RELOCATION RESPONSIBILITIES

The City shall cooperate with the Developer and use its best efforts in arranging for utility companies to promptly relocate their lines and other facilities, at the expense of said utilities where appropriate or required by law.

5. INDEMNIFICATION DURING CONSTRUCTION; BODILY INJURY AND PROPERTY DAMAGE INSURANCE

5.1 Indemnification

During the period commencing with execution of this Agreement by the City and commencing with any preliminary work by Developer on any portion of the Site, and until such time as the City has issued a Certificate of Completion with respect to the construction of the improvements on the entire Site, the Developer agrees to and shall indemnify and hold the City and their respective elective and appointive boards, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) 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 directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer or its agents, servants, employees, or contractors, except for wilful misconduct of the City, the City, or their respective elective and appointive boards, officers, agents, employees and consultants.

5.2 Certificates of Insurance

During the period commencing with the first entry on the Site to conduct any preliminary work on any portion of any of the Site, and ending on the date when a Certificate of Completion has been issued with respect to the entire Site, the Developer shall furnish or cause to be furnished to the City, duplicate originals or appropriate certificates of insurance as follows:

5.2.1 Comprehensive General Liability

Comprehensive general liability (bodily injury and property damage), automobile liability, including owned, hired, and non-owned vehicles, blanket contractual liability, and personal injury liability, all with limits not less than \$2,000,000 combined single limit per occurrence.

5.2.2 Endorsements

Endorsements shall be obtained for the policies providing the above insurance for the following three provisions:

5.2.2.1 Additional Named Insureds

The City, their elective and appointive boards, officers, agents, employees, and consultants shall be added as additional named insureds with respect to this subject project and contract with the City.

5.2.2.2 Notice

Said policy shall not terminate nor shall it be canceled or the coverage reduced until after thirty (30) days written notice is given to the City.

5.2.2.3 Primary Coverage

Said policy and coverage as is afforded to the City, their elective and appointive boards, officers, agents, employees, and consultants shall be primary insurance and not contributing with any other insurance maintained by the City.

5.3 Anti-discrimination During Construction

The Developer for itself and its successors and assigns agrees that in the construction of the improvements on the Site provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, religion, national origin, or ancestry.

5.4 Local, State, and Federal Law

The Developer shall carry out the construction of the improvements on the Site and the operation of the contemplated Retail Development in conformity with all applicable laws.

5.5 City and Other Governmental City Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental City affected by such construction, development or work. The City shall provide all proper assistance to the Developer in seeking to secure these permits.

5.6 Rights of Access

Representatives of the City shall have the reasonable right of access to the Site with reasonable prior notice without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City and other visitors to the Site shall observe any reasonable rules adopted by Developer for purposes of maintaining safety on the Site, including requirements that such representatives or visitors be escorted. Such representatives of the City shall be those who are so identified in writing by the Executive Director of the City. The City agrees to and shall indemnify and hold the Developer harmless from and against all liability, loss, damage, costs, or expenses 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 which shall occur as a result of or arising from the City's entry upon or activities on the Site, except that this indemnity shall not apply to proportional negligence or wilful misconduct of the Developer.

The Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on or against the Site and each portion thereof subsequent to the conveyance of the title or possession of such portion to Developer. The Developer shall remove, or shall have removed, any levy or attachment made on the Site (or any portion thereof), except those created by work of the City, or shall assure the satisfaction thereof within a reasonable time but in any event prior to any sale of a part or all of the property comprising the Site. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer agrees to pay when due the uncontested portion of any tax assessment.

7. CERTIFICATE OF COMPLETION

Promptly after completion of all construction and development to be completed by the Developer on the Site pursuant to the Scope of Development (Attachment No. 3) and the plans and drawings related thereto approved of by the City, the City shall furnish the Developer with a Certificate of Completion upon written request therefor by the Developer. The City shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site, and shall so state.

After the recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer. Neither the City nor any other person, after the recordation of the Certificate of Completion with respect to the Site, shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to such Site shall be limited thereafter to those set forth in the documents recorded pursuant to this Agreement. Nothing herein or in the Certificate of Completion shall be construed to relieve the Developer or any of its successors in interest of any liability, responsibility or obligation it may have to the City.

If the City refuses or fails to furnish a Certificate of Completion for the Site after written request from the Developer, the City shall, within thirty (30) days of the written request, provide the Developer with a written statement which details the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the City finds that the Developer's failure to complete the subject construction and development is the immediate unavailability of minor specific items or materials or otherwise constitutes minor unfinished work for which a specific cost can be specified, the City shall issue a Certificate of Completion with respect to the Site upon the Developer's delivery to the City, as applicable, of: (i) evidence reasonably satisfactory to the City that when such specific items or materials are available, the subject construction and development shall be promptly completed; and (ii) either a cash bond in the amount of the cost of such items or materials and of the unfinished work or other evidence reasonably satisfactory to the City assuring the City that the Developer will pay for and complete the same. If the reason for such refusal includes other uncompleted obligations of Developer under this Agreement which can otherwise be provided for to the reasonable satisfaction of the City, the City will issue its Certificate of Completion upon City's approval of such measures as will reasonably satisfy the City that such obligations will be completed, including but not limited to, recordation of covenants running with the land. If the City shall have failed to provide such written statement within said 30-day period, the Developer shall be deemed entitled to the Certificate of Completion. Nothing in this Section 7 is intended to relieve the Developer of its obligation to take such steps as may be necessary to be entitled to the issuance of a Certificate of Completion for the Site.

Such Certificate of Completion does not constitute evidence of compliance with or satisfaction of any obligation of the Developer with respect to requirements imposed by any governmental entity other than the City.

8. ENVIRONMENTAL AND WATER RIGHTS INDEMNITY

The Developer shall indemnify and hold the City, their respective elective and appointive boards, officers, agents, employees, and consultants harmless against any claims or liabilities arising out of or in connection with environmental remediation or with water rights that are affected by development of the portions of the Site owned or acquired by the Developer.

9. MAINTENANCE, COVENANTS, AND RIGHTS OF ACCESS

9.1 Maintenance of the Site

From and after the Developer's acquisition of title or possession of any of the Parcels comprising the Site, and solely at the Developer's expense, the Developer and the Developer's successors in interest shall reasonably maintain the improvements on the Site, exclusive of public streets and rights of way. Developer shall keep the Site reasonably free from any accumulation of debris or waste materials.

The Developer shall also maintain the landscaping on the Site required to be planted under the Scope of Development in a reasonably healthy condition. The Developer shall also maintain parking areas and pedestrian walkways.

The City shall have the right to perform landscaping or other maintenance or repair in the event the Developer or its successors in interest does not do so until a final certificate of occupancy is issued. The City shall have the right to be reimbursed by the owner(s) of the benefitted property within thirty (30) days after notifying the owner(s) in writing of the charge for the maintenance or repair involved. Where feasible, the City shall give the owner(s) notice of the problem and thirty (30) days within which to correct the problem before the City performs the maintenance or repair.

9.2 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to each of the Parcels comprising the Site or any part thereof for the benefit and in favor of the City, its successors and assigns. Such covenants as are to survive the issuance of the Certificate of Completion by the City and shall remain in effect for twenty-five years.

9.3 Rights of Access - Public Improvements and Facilities

The City reserves the right to enter the property located within the Site or any part thereof at all reasonable times.

10. PROHIBITION AGAINST TRANSFER OR ASSIGNMENT

10.1 No Unauthorized Succession Permitted

No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

10.2 No Transfers Without City Consent Prior to Issuance of a Certificate of Completion

Prior to the recordation by the City of a Certificate of Completion as provided in Section 7 hereof, the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights herein; nor sell, transfer, convey, assign or lease the Site (or any portion thereof) or the improvements to be constructed thereon without the prior written approval of the City. This prohibition shall not apply to the Site (or any portion thereof), or to improvements constructed thereon, subsequent to the recordation of the Certificate of Completion with respect to thereto. After the issuance and recording of a Certificate of Completion for the entirety of the Site or for an individual phase, the Developer and its successors in interest shall be relieved of all transfer restrictions set forth in this Section 10, 11 and shall be permitted to sell, lease or otherwise transfer all or any portion of the improvements and/or the underlying real property comprising the Site or a phase within the site, without the approval of the City.

10.3 Exceptions to Prohibition

The prohibition against sales, conveyances, leases, assignments or any other type of transfers established by this Section 10, 11 shall not be applicable to:

- (a) the granting of easements or permits to facilitate the development of the Site (or portions thereof) pursuant to the Scope of Development;
- (b) leasing or selling space for occupancy in the development on the Site or portions thereof;
- (c) the granting of security interests necessary in connection with the development of the Site pursuant to this Agreement;
- (d) a sale of the Site (or any portion thereof) at foreclosure pursuant to a foreclosure thereof by a lender approved by the City under Section 11 of this Agreement (or pursuant to a conveyance of the Site (or any portion thereof) in lieu of such a foreclosure);
- (e) transfers or assignments in connection with changes in ownership, management or control of the Developer that are permitted under Section 2 hereof;
- (f) transfers or assignments to any entity or entities owned or controlled by the Developer, so long as this would not diminish any obligations of the Developer or reduce or impair any rights or remedies that the City may have against the Developer under this Agreement; or
- (g) transfers, assignments, or leases to permitted transferees approved pursuant to Section 10.4.

10.4 Approval Process

In order to obtain approval for any conveyance, lease, assignment or other transfer (except for those expressly authorized by subparagraphs (a) to (d) of Section 10.3 hereof) pursuant to this Section 10.4, the Developer shall submit a request for such approval in writing, together with all legal documents proposed to effect any such transfer, to the City and the City's attorneys. The City's attorneys shall review the submitted documents to determine whether they are consistent with this Agreement, and shall advise the City accordingly. The documents submitted shall include any documents necessary to demonstrate the potential transferee's qualification to carry out development consistent with this Agreement and to satisfy applicable requirements of this Agreement. Within thirty days after receipt of the written request and accompanying documents from the Developer, the City shall either approve or disapprove such application for transfer. Failure to approve or disapprove the proposed transfer within the thirty-day period shall be deemed an approval.

10.5 Developer Not Released from Obligations Without Express Written Approval

Prior to the issuance of a Certificate of Completion and in the absence of specific written agreement by the City as provided in this Agreement, no sale, conveyance, lease, assignment or other transfer of the Site, or any portion thereof, or the improvements thereon, or approval by the City of any such sale, conveyance, lease, assignment or other transfer, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

10.6 Remedies for Violation of Prohibition

In the event that the Developer does sell, convey, lease, assign or otherwise transfer any part of the Site, or buildings, structures or other improvements thereon prior to the recordation of a Certificate of Completion in violation of this Agreement, except as provided in this Section 10, 11, the City shall be entitled to increase the Purchase Price paid by the Developer by the net amount that the consideration payable for such sale, conveyance, lease, assignment or other transfer exceeds the Purchase Price plus the cost of the Developer's improvements and development, including carrying charges and costs related thereto, broker commissions, closing costs and costs of toxic removal, all as reasonably incurred and to the extent applicable. The consideration payable for such sale, conveyance, lease, assignment or other transfer to the extent it is in excess of the amount so authorized shall belong and be paid to the City and until paid the City shall have a lien on the Site and any part involved for such amount. Nothing herein shall preclude the City from asserting any other rights and remedies it may have under this Agreement or at law or in equity that result from or arise as a result of violation of Section 10, 11. The aim of this provision is to prevent the Developer from benefiting from speculative gains from sale, conveyance, lease, assignment or other transfer of the property prior to completion of the Developer's development obligations under this agreement without the consent of the City.

11. SECURITY FINANCING; RIGHT OF HOLDERS

11.1 No Encumbrances Except Mortgages, Deeds of Trust, Conveyances and Leases-Back or Other Conveyance for Financing for Development

Notwithstanding any other provisions of this Agreement, mortgages, deeds of trust, conveyances and leases-back, or any other form of conveyance required for any reasonable method of financing are permitted before the recordation of the Certificate of Completion (referred to in Section 7 of these General Provisions), but only for the purpose of securing loans of funds to be used for financing the acquisition of each of the Parcels comprising the Site, and/or the construction of improvements on each of the Parcels comprising the Site, and/or the financing of furniture, fixtures, equipment and other personal property acquired in connection with the development of the Site, and any other expenditures necessary and appropriate to develop each of the Parcels comprising the Site under this Agreement, including, but not limited to, real and personal property taxes, related off-site improvements, insurance premiums, closing costs, attorneys fees, loan carrying costs and costs of financing. The Developer shall notify the City in advance of any mortgage, deed of trust, conveyance and lease-back, or other forms of conveyance for financing if the Developer proposes to enter into the same before the recordation of the Certificate of Completion.

Notwithstanding anything contained herein to the contrary, the Developer shall promptly notify the City of any mortgage, deed of trust, conveyance and lease-back, or other financing, conveyance, encumbrance or lien that has been created or attached to the Site (or any portion thereof) prior to completion of the construction of the improvements thereon whether by voluntary act of the Developer or otherwise.

The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction, and land development, and any other expenditures necessary and

appropriate to develop the Site under this Agreement, which involves the granting of a security interest, except where such financing is as a result of an assignment allowed pursuant to the Special Provisions of the Agreement.

11.2 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement (the "Holder") shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion; nor shall any covenants or any other provision in the Deed conveying the Site (or any portion thereof) be so construed as to so obligate such Holder. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such Holder to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

11.3 Notice of Default to Mortgage, Deed of Trust of Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements on any Parcel, or any other default, the City shall at the same time deliver to any lender approved by the City pursuant to Section 11.1 hereof and each Holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement with respect to such Parcel, a copy of such notice or demand. Each such Holder shall have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest with respect to such Parcel. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession, if such Holder has elected to cure the default then such Holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such 90-day period, such Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such Holder shall not be required to remedy or cure any non-curable default of the Developer. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations, (with respect to the Site or portion thereof on which the Holder has an interest and to which the default is applicable), to the City by written agreement reasonably satisfactory to the City. Such Holder in that event must agree to reasonably complete, in the manner provided in this Agreement, the improvements to which the lien or title of such Holder relates, and submit evidence reasonably satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. A Holder shall be deemed approved by the City unless rejected in writing by the City within thirty (30) days after receipt of such evidence by the City. Any such Holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City with respect to its respective Parcel.

All rights and obligations of a Holder pursuant to this Section 11.3 shall also accrue to any purchaser, assignee or successor of the Holder upon acquisition of title to a Parcel by such purchaser, assignee or successor pursuant to a judicial or non-judicial foreclosure or a deed in lieu of foreclosure, or pursuant to a conveyance from a Holder by deed in lieu of foreclosure. In the event of such conveyance to a purchaser, assignee or successor then (a) the Schedule of Performance (Attachment No. 4) with respect to such Parcel shall be extended automatically for six (6) months, and (b) the City agrees that it shall not unreasonably withhold its approval of further extensions of time for performance of the Developer's obligations with respect to such Parcel under this Agreement as appropriate to (i) compensate for previous delays in performance, and (ii) to permit such purchaser, assignee or successor to obtain possession of such Parcel and enter into contracts for the construction of improvements to complete the development of the Parcel.

Provided that such Holder has given prior written notice of its name and address to the City, the notices of default to the Developer set forth herein, to be valid and effective as to the Holder and the Developer, shall be delivered by the City simultaneously to such Holder and the Developer.

Breach of any of the covenants, conditions, restrictions, or reservations contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any portion thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservation of this Agreement shall be binding and effective against the Holder and any owner of the Site, or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

No purported rules, regulations, modification, amendment and/or termination of this Agreement affecting the right of a Holder shall be binding upon any Holder holding a mortgage or deed of trust from and after the date of recordation of such mortgage or deed of trust until the written consent of such Holder is obtained.

11.3.1 Failure of Holder to Complete Improvements

In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, abandonment of a Parcel by the Developer, and the notice required by Section 11.3 hereof was given, the Holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon a Parcel comprising the Site (or portion thereof) has not expressly assumed the Developer's obligations to the City under this Agreement as provided in Section 11.3 hereof, or if it has assumed such obligations, but has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the Holder in cash of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site (or portion thereof) has vested in the Holder, the City, if it so desires, shall be entitled to a conveyance from the Holder to the City upon payment to the Holder of an amount in cash equal to the sum of the following:

- (a) The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the Holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received by the Holder during foreclosure proceedings).
- (b) All expenses with respect to foreclosure.
- (c) The net expense, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent ownership or management of each of the Parcels comprising the Site (or portion thereof), such as insurance premiums and real estate taxes.
- (d) The cost of any improvements made by such Holder.
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

11.3.2 Right of City to Cure Mortgage, Deed of Trust, of Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site (or any portion thereof) prior to the issuance of a Certificate of Completion by the City, and the Holder with respect to the Site (or any portion thereof) has not exercised its option to complete the development,

the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site (or portion thereof) to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to mortgages, deeds of trust, or other security instruments permitted pursuant to Section 11.1 hereof financing such costs and paying all costs reasonably related to the Developer's obligations to perform under this Agreement as authorized herein.

11.3.3 Right of City to Satisfy Other Liens on the Property After Title Passes

Prior to the recordation of the Certificates of Completion (referred to in Section 7 of these General Provisions) and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on any of the Parcels within the Site (or any portion thereof), the City shall have the right to satisfy any such liens or encumbrances after thirty (30) days prior written notice to the Developer; provided, however, that nothing in this Agreement shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject any of the Parcels within the Site (or any portion thereof) to forfeiture or sale.

12. DEFAULTS, REMEDIES AND TERMINATION

12.1 Default

If either the City or the Developer fails to perform or delays performance of any term or provision of this Agreement, that conduct constitutes an Event of Default and the party in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within the periods provided in Section 12.3 hereof.

12.2 Notice

If an Event of Default under this Agreement occurs, the injured party shall give written notice (a "Default Notice") of the Event of Default to the party in default, specifying the nature of the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it operate as a waiver of any rights or remedies of the injured party; but the injured party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

12.3 Cure Period

The injured party shall have no right to exercise a right or remedy hereunder unless the subject Event of Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. An Event of Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such party within thirty (30) days of delivery of the Default Notice, the non-defaulting party, at its option, may institute an action for specific performance of the terms of this Agreement or pursue such other rights and remedies as it may have.

12.4 Rights and Remedies

Upon the occurrence of an Event of Default and the expiration of the applicable cure period provided herein or by law, the injured party shall have all rights and remedies against the defaulting party as may be available at law or in equity to cure, correct or remedy any default, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such rights and remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting party.

12.5 Legal Actions

12.5.1 Venue

All legal actions must be instituted in the Fourth District Court for the State of Utah, unless they involve a case with mandatory federal jurisdiction, in which case they must be instituted in the Federal District Court for the District of Utah.

12.5.2 Service of Process

Service of process on City shall be made by personal service upon the Recorder of the City, or in such other manner as may be provided by law.

Service of process on Developer shall be made by personal service upon a partner or the chief executive officer of the Developer or in such manner as may be provided by law, whether made within or without the State of Utah. The Developer shall not object to any service delivered at the address of the Developer as specified elsewhere in this Agreement.

12.5.3 Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

12.6 Right of Reentry

The City shall have the right, at its option, to reenter and take possession of the Site (or any portion thereof) with all improvements thereon, and to terminate and revest in the City the estate theretofore conveyed to the Developer, or a permitted transferee of the Developer, as the case may be, if after conveyance of title or possession of the Site (or any portion thereof) to the Developer or any permitted transferee, as the case may be, and prior to the recordation of the Certificate of Completion pertaining to the Site (or any portion thereof), the Developer or the permitted transferee, as the case may be, (or its successors in interest) shall for any reason, not the fault of the City:

- (a) fail to commence construction of the improvements on the Site as required by this Agreement for a period of three (3) months after written notice to proceed from the City, provided that the Developer or a permitted transferee, as the case may be, shall not have obtained an extension or postponement to which the Developer or a permitted transferee, as the case may be, may be entitled pursuant to Section 13.4 hereof; or
- (b) abandon or suspend or fail to diligently proceed with construction of the improvements on such Parcel for a period of three (3) months after written notice of such abandonment or suspension or failure to diligently proceed from the City, provided that the Developer or a permitted transferee,

as the case may be, shall not have obtained an extension or postponement to which the Developer or a permitted transferee, as the case may be, may be entitled to pursuant to Section 13.4 of these General Provisions; or

- (c) assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Site, or any portion thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by the City to the Developer.

Such right to reenter, repossess, terminate, revert, the Site or any portion thereof conveyed to the Developer or a permitted transferee, as the case may be, shall be subject and subordinate to and be limited by and shall not defeat, render invalid, limit or otherwise affect:

- (a) any mortgage, deed of trust, or other security interests permitted by this Agreement;
- (b) any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests.

The rights established in this Section 12.6 shall not apply to a portion of the Site on which the improvements to be constructed thereon have been completed in accordance with the Agreement and for which a Certificate of Completion has been recorded therefor as provided in Section 7 of these General Provisions.

The Deed or Deeds to the Site shall contain appropriate reference and provision to give effect to the City's right, as set forth in this Section 12.6 under specified circumstances, prior to the recordation of the Certificate of Completion, to re-enter and take possession of the Site, or any portion thereof, with all improvements thereon, and to terminate and revert in the City the Site or the affected portions thereof conveyed to the Developer or a permitted transferee, as the case may be.

Upon the revesting in the City of title to the Site, or any portion thereof, as provided in this Section 12.6, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the revested parcel, or any part thereof, as soon and in such manner as the City shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by the City), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the City and in accordance with the uses specified for the Site, or any portion thereof. Upon such resale of the revested parcel or parcels, or any part thereof, the proceeds thereof shall be applied:

- (a) first, to reimburse the City on its own behalf for:
 - (1) all costs and expenses incurred by the City in connection with the recapture, management, and resale of the parcel(s), or part thereof, including but not limited to the salaries to personnel engaged in such action (but excluding the City's general overhead expense), less any gain or income derived, withdrawn or made by the City from the parcel(s) or part thereof, or from the improvements thereon in connection with such recapture, management and resale;
 - (2) all taxes, assessments and water and sewer charges with respect to the parcel(s), or part thereof;
 - (3) any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, or a permitted transferee, or their successors or transferees; and

- (4) any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the parcel(s), or part thereof; and any amounts otherwise owing to the City by the Developer or a permitted transferee, or their successors or transferees; and
- (b) second, to reimburse the Developer, or a permitted transferee, or its successor or transferee, up to the amount equal to (1) the sum of the Purchase Price paid to the City by the Developer or the permitted transferee for the parcels (or allocable to the part thereof); and (2) the costs incurred for the development of the parcels, or part thereof, or for the construction of the agreed improvements thereon, less any gain or income withdrawn or made by the Developer or a permitted transferee, as the case may be, therefrom or from the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the City as its property.

To the extent that the right established in this Section 12.6 involves a forfeiture, it must be strictly interpreted against the City, the party for whose benefit it is created. The rights established in this Section 12.6 are to be interpreted in light of the fact that the City will convey the parcels comprising the Site to the Developer or a permitted transferee, as the case may be, for development and not for speculation in undeveloped land.

13. MISCELLANEOUS PROVISIONS

13.1 Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer, as designated in the Special Provisions of the Agreement. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail in the form and by the methods provided in this Section 13.1. Delivery of notice shall be complete upon mailing or upon making physical delivery of the writing containing the notice.

13.2 Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

13.3 Nonliability of City Officials and Employees

No member of any elective or appointive board, official, employee or consultant of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

13.4 Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods,

earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or suppliers, acts of the other party, acts or failure to act of the City or any other public or governmental City or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause on the part of the City's governing board or on the part of the Developer. Times of performance under this Agreement may also be extended in writing by the City and the Developer by mutual agreement.

13.5 Approvals

Whenever the consent or approval is required of any party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

13.6 Waivers

All waivers of the provisions of this Agreement must be in writing.

13.7 Amendments

This Agreement and any provisions hereof may be amended only by mutual written agreement by Developer and the City.

ATTACHMENT NO. 7

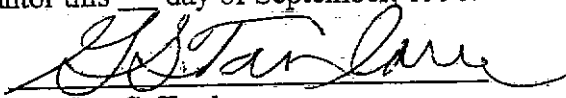
FORM OF DEED

SPECIAL WARRANTY DEED

PAYSON CITY CORPORATION, a Municipal Corporation, Grantor, of 439 West Utah Avenue, Payson, Utah County, Utah, hereby **CONVEYS AND WARRANTS** against all claiming by, through or under it to **PAYSON GATEWAY DEVELOPMENT, L.C.**, Grantor, of 860 West Labor Drive, Suite 200, Salt Lake City, Utah 84123, Grantee, for the sum of **TEN DOLLARS (\$10.00) and other good and valuable consideration**, the following described tract of land in Utah County, State of Utah, to wit:

See Exhibit "A" attached hereto and by reference made a part hereof.

WITNESS THE HANDS of said Grantor this ___ day of September, 1998.


Gordon S. Taylor
Mayor of Payson City Corporation

STATE OF UTAH)

:SS

COUNTY OF UTAH)

On the __ day of September, 1998, personally appeared before me, a Notary Public in and for the State of Utah, **Gordon S. Taylor, Mayor of Payson City Corporation**, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Notary Public

PARCEL #1:

Beginning at a point which is East 261.36 feet from the West quarter corner of Section 17, Township 9 South, Range 2 East, Salt Lake Base and Meridian, and running thence West 28.77 feet; thence South 00 deg. 13' 47" West 49.51 feet; thence along a fence line North 89 deg. 05' 13" West 917.43 feet; thence along a fence line North 00 deg. 45' East 26.72 feet; thence North 89 deg. 20' East 43.0 feet; thence North 00 deg. 50' East 620.04 feet; thence along a fence line South 89 deg. 23' 30" East 901.65 feet; thence South 00 deg. 45' West 602.0 feet to the point of beginning.

ALSO, Beginning at a point in a fence line which point is North 612.16 feet and West 738.43 feet from the East quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 89 deg. 23' 30" West 192.25 feet to the n/a line of Interstate I-15; thence North 37 deg. 39' 26" East along said Interstate Highway 318.35 feet to a fence line; thence South 0 deg. 30' 30" West along said fence line 254.08 feet to the point of beginning.

ALSO, Beginning at a fence line intersection which point is South along the section line 500.00 feet and West perpendicular to said section line 380.37 feet from the East quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 88 deg. 56' 54" West along a fence line 357.40 feet to a fence line; thence North 0 deg. 45' East along said fence line 459.30 feet to a fence line; thence South 89 deg. 05' 13" East along said fence line 357.46 feet to a fence line; thence South 0 deg. 45' 25" West along said fence line 460.16 feet to the point of beginning.

PARCEL #2:

Beginning at an established fence corner which is North 1,708 feet and West 1,389.5 feet from the Southeast corner of Section 18, Township 9 South, Range 2 East, Salt Lake Meridian, thence North 88 deg. 40' West 150.5 feet along a fence line, thence North 80 deg. 59' 59" West 383.95 feet to a fence line, thence North 0 deg. 45' East 161.65 feet to the East line of the right of way for Interstate Highway I-15, thence North 37 deg. 39' 26" East 1,344.71 feet along said right of way line to a fence line, thence South 0 deg. 45' West 409.26 feet along a fence line to an established fence corner, thence North 89 deg. 15' West 268 feet, along a fence line, thence South 0 deg. 45' West 881.4 feet along a fence line to the place of beginning.

(continued)

PARCEL #3:

Beginning at a point which is West 641.37 feet and South 7.46 feet from the East quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian, and running thence South 89 deg. 20' 00" West 43.0 feet; thence South 00 deg. 45' 00" West 26.72 feet; thence North 89 deg. 05' 13" West 47.33 feet; thence along a fence line South 00 deg. 45' 00" West 459.3 feet; thence South 87 deg. 41' 00" East 6.518 feet; thence South 0 deg. 07' 05" East 34.377 feet to the North boundary line of Plat "A", Henline Subdivision; thence North 88 deg. 23' 00" West along said boundary line 660.959 feet; thence North 0 deg. 28' 03" West 42.471 feet; thence North 87 deg. 41' 00" West 4.306 feet; thence along a fence line North 01 deg. 13' 18" East 443.19 feet; thence along a fence line South 89 deg. 05' 13" East 267.3 feet; thence along a fence line North 01 deg. 17' 53" East 409.26 feet; thence along a highway right of way North 37 deg. 39' 26" East 294.33 feet; thence South 89 deg. 23' 30" East 298.31 feet; thence South 00 deg. 50' 00" West 620.04 feet to the point of beginning.

PARCEL #4:

Beginning at a point which is South along the Section line 500.00 feet and West perpendicular to said Section line 380.37 feet from the East quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 0 deg. 45' 25" East along a fence line 460.16 feet to a fence line; thence South 89 deg. 05' 13" East along said fence line 374.33 feet to the Section line; thence South along the Section line 464.00 feet to a fence line; thence North 88 deg. 31' West along said fence line 380.50 feet to the point of beginning.

ALSO, Beginning at a point in a fence line intersection which point is South along the Section line 500.00 feet and West perpendicular to said Section line 380.37 feet from the East quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence South 88 deg. 31' East along thence fence line 380.50 feet to the Section line; thence South along said Section line 438.50 feet to a fence line on the Northerly side of a County Road; thence North 88 deg. 39' West along said fence line 379.80 feet to a fence line; thence North 0 deg. 05' 19" West along said fence line 439.50 feet to the point of beginning.