

WHEN RECORDED, PLEASE MAIL TO:

Farmington City Recorder
160 S. Main
Farmington, Utah 84025

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RICHARD T. NAUGHAN
DAVIS COUNTY, UTAH RECORDER
03/31/2017 04:30 PM
FEE \$0.00 Pgs: 7
~~DEF RTT REC'D FOR FARMINGTON CITY
CORP~~

Affects Parcel Numbers:

08-591-0402

AGREEMENT

THIS AGREEMENT is made by and between **PARK LANE COMMONS TWO, LLC**, whose address is 1200 West Red Barn Lane, Farmington UT 84025 (hereinafter referred to as "Developer"), and **FARMINGTON CITY**, a Utah municipal corporation (hereinafter referred to as the "City"), whose address is 160 S. Main, Farmington, Utah 84025.

RECITALS:

WHEREAS, Developer applied and received approval from the City to amend the previously recorded Park Lane Commons Phase 2 and Phase 3 subdivision plats, and minor plat approval for the Park Lane Commons Phase 4 subdivision plat (the "Final Plat"), which Final Plat is attached hereto as **Exhibit "A,"** and incorporated herein by this reference; and

WHEREAS, City ordinances generally require the dedication of necessary property and the installation of public improvements along streets fronting property to be subdivided or further developed; and

WHEREAS, as part of the Park Lane Common Phase 2 subdivision plat there was a dedication of right-of-way 16.5 feet in width for a future public street and a conveyance of a public access easement 14 feet in width to accommodate a future sidewalk and park strip, which both together is the "Right-of-way" for purposes of this Agreement; and

WHEREAS, the Right-of-way traverses the entire north to south length of the Final Plat, or the western boundary of Lot 402 (the "Property") and Lot 403 thereto, and the legal description of the Property is set forth as **Exhibit "B"**, attached hereto and by this reference made a part hereof; and

WHEREAS, the Right-of-way constitutes half the width necessary to establish a neighborhood (or local) road, and the City may desire and plan to obtain the other half (remaining right-of-way and public access easement) when and if property adjacent to the west boundary of the Right-of-way is developed in the future (hereinafter referred to as "Adjacent Land"); and

WHEREAS, the Developer is obligated to install improvements including, but not limited to, public street improvements, sub-grade, road base, asphalt, curb and gutter, park strip, landscaping, and sidewalks (the "Improvements") in the Right-of-way, including Improvements in that portion of the Right-of-way abutting Lot 403 of the Final Plat (property the developer does not now own), and the City is willing to grant Developer a deferral of the obligation to install the Improvements in the Right-of-way, subject to the terms and conditions set forth in this Agreement:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.

2. **Installation of Improvements.** City hereby grants to Developer a deferral of the obligation to install the Improvements in the Right-of-way until such time that the Adjacent Land receives approval from the City for development of their property and dedication of the necessary right of way, including the other half of the remaining right-of-way and public access easement. Developer or Developer's successor(s)-in-interest, as owner(s) of the Property hereby agrees to pay the full cost of installation of the Improvements required in the Right-of way upon written request of the City. Such Improvements shall be installed in strict accordance with all City Ordinances, standards and specifications in place at the time such Improvements are installed and Developer's obligation shall include payment of the full cost associated with the installation of such Improvements at the time of installation.

3. **Failure to Pay.** If, for any reason, Developer or Developer's successor(s) in interest fails to pay for installation of the Improvements required herein within ninety (90) days after having been requested in writing by the City to do so, the City is hereby authorized to install the Improvements at the sole expense of the then current owner of the Property and to charge such owner with the cost of the Improvements, together with a fifteen percent (15%) administrative fee. The costs incurred by the City to complete the Improvements upon failure of Developer or Developer's successor(s) in interest to do so, together with interest thereon at the rate of eight percent (8%) per annum, and all costs and reasonable attorneys' fees incurred by the City shall be a charge on the Property and shall be a continuing lien upon the Property until paid. The City may commence an action against the then current owner of the Property or the Property to obtain the necessary dedication of property and to collect the foregoing charges and to foreclose the lien against the Property. Upon foreclosure of the lien provided herein by the City, should any deficiency remain, Developer or Developer's successor(s) in interest shall remain liable for payment of the deficiency.

4. **Fee Title Owner.** Developer hereby represents and warrants that as of the date of Recording of this Agreement, Developer owns fee title interest to the Property and further hereby confesses judgment for itself, its heirs, representatives, devisees, assigns and successors in interest for the total of any and all amounts expended by the City in obtaining Developer's performance under this agreement and/or for the installation of the Improvements contemplated herein and any expenses related thereto in accordance with the terms of this Agreement. In addition, Developer or Developer's successor(s) in interest hereby covenants and agrees not to contest the formation of a special improvement district organized for the purpose of constructing any and all of the Improvements contemplated herein.

5. **Covenants.** The foregoing covenants in each and every particular are and shall be construed as real covenants and shall run with the property described herein, and the same are hereby

made binding upon the heirs, representatives, devisees, assigns and successors in interest of the parties hereto.

6. **Default.** The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

7. **Amendments.** Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

8. **Successors.** This Agreement shall be binding upon and inure to the benefit of the legal representatives, subsequent owners, successors and assigns of the parties hereto.

9. **Notices.** Any notice required or desired to be given hereunder shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

10. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

11. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

12. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

13. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only, and shall not affect the interpretation of any provision herein.

14. **Integration.** This Agreement, together with its exhibits, contains the entire and integrated agreement of the parties regarding the deferral and installation of the Improvements as of the date hereof, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

15. **Other Security.** This Agreement does not alter the obligation of Developer to provide security in acceptable form under applicable ordinances or rules of the City or any other governmental entity having jurisdiction over Developer.


16. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

17. **Recording.** This Agreement shall be recorded with the Davis County Recorder's office for all parcels or lots within the Property as notice of the required Improvements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective, duly authorized representatives as of the 24th day of March, 2017.

"DEVELOPER"

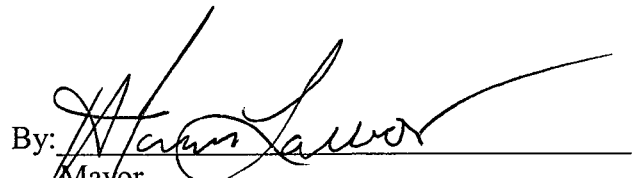
PARK LAKE COMMONS Two, LLC



(property owners signature)


"CITY"

FARMINGTON CITY

By: 

Mayor

ATTEST:

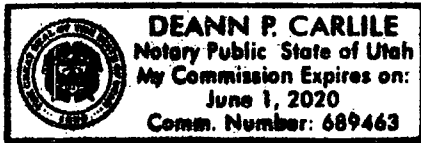


City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 24th day of March, 2017, personally appeared before me H. James Talbot, who being duly sworn, did say that he is the Mayor of **Farmington City**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said H. James Talbot acknowledged to me that the City executed the same.



Deann P. Carlile
Notary Public

DEVELOPER/PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 27th day of March, 2017, personally appeared before me Richard A. Haws who being by me duly sworn did say that (s)he is the manager of **PARK LANE COMMONS TWO, LLC.**, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority of its Articles of Organization and duly acknowledged to me that said limited liability company executed the same.

Scott Harwood
Notary Public

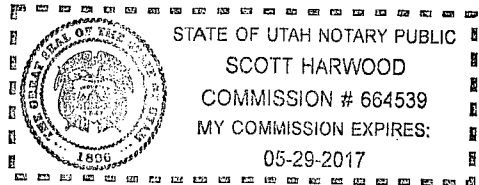


Exhibit "B"

Legal Description

A PART OF LOT 402, PARK LANE COMMONS - PHASE 4, BEING A PART OF THE SE 1/4 OF SEC 14-T3N-R1W, SLB&M; BEG AT A PT ON THE W'LY LINE OF MARKET STR, BEING 98.21 FT N 0°00'21" E ALG THE SEC LINE & 397.13 FT S 89°59'58" W FR THE SE COR OF SD SEC 14; & RUN TH S 89°21'41" E 222.58 FT TO A PT OF CURVATURE; TH E'LY ALG THE ARC OF A 108.00 FT RADIUS CURVE TO THE LEFT A DISTANCE OF 85.08 FT (DELTA ANGLE = 45°08'05", CENTER BEARS N 0°38'20" E, LC BEARS N 68°04'17" E 82.89 FT); TH N 89°54'41" E 12.25 FT TO THE W LINE OF CABELA'S DRIVE (1075 WEST STR) A PRIVATE DRIVE & A PT OF CURVATURE; TH S'LY ALG SD W LINE & THE ARC OF A 148.20 FT RADIUS CURVE TO THE LEFT A DIST OF 61.49 FT (DELTA ANGLE = 23°46'27", CENTER BEARS S 68°13'06" E, LC BEARS S 09°53'41" W 61.05 FT); TH S 0°06'18" E 144.26 FT; TH S 89°53'42" W 301.16 FT; TH N 06°06'18" W 176.46 FT TO THE POB. CONT. 1.23 ACRES TOGETHER WITH A PORTION OF LOT 401, PARK LANE COMMONS - PHASE 4, DESC AS FOLLOWS: A PART OF THE SE 1/4 OF SEC 14-T3N-R1W, SLB&M; BEG AT A PT ON THE W'LY LINE OF CABELA'S DRIVE BEING 216.00 FT N 0°00'21" W ALG THE SEC LINE 17.69 FT S 89°59'39" W & S 41°44'09" W 60.98 FT FR THE SW COR OF SD SEC 13; & RUN TH SW'LY ALG THE ARC OF A 148.08 FT RADIUS CURVE TO THE LEFT A DIST OF 51.59 FT (DELTA ANGLE = 19°57'46", CENTER BEARS S 48°15'49" E, LC BEARS S 31°45'18" W 51.33 FT); TH S 89°54'41" W 12.25 FT TO A PT OF CURVATURE; TH NE'LY ALG THE ARC OF A 108.00 FT RADIUS CURVE TO THE LEFT A DIST OF 7.10 FT (DELTA ANGLE = 3°46'06", CENTER BEARS N 44°29'45" W, LC BEARS N 43°37'12" E 7.10 FT); TH N 41°44'09" E 51.63 FT TO THE POB. CONT. 0.004 ACRES TOTAL ACREAGE 1.234 ACRES