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07-193-0128, 0130  
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AUG 23 2002

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SHERYL L. WHITE, DAVIS CNTY RECORDER  
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REC'D FOR CENTERVILLE CITY

**PROPERTY ACQUISITION  
AGREEMENT**

*Parcel A Lexington Park #3, Parcel A.B Lexington Park #1 Parcel A Lexington Park #2*

**THIS AGREEMENT** is made and entered into this 20th day of August, 2002, by and between **CENTERVILLE CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **LEXINGTON PARK HOMEOWNERS ASSOCIATION**, a Utah non-profit corporation, hereinafter referred to as "Homcowners Association."

**RECITALS:**

**WHEREAS**, Phases 1, 2 and 3 of the Lexington Park Subdivision have been previously developed and are currently existing within the City located along the east side of Frontage Road, Davis County, State of Utah, hereinafter collectively referred to as the "Subdivision"; and

**WHEREAS**, as a condition of development of the Subdivision, the developer was required to install a swale area and related improvements and facilities along the Frontage Road for the purpose of creating a drainage barrier for the Subdivision, hereinafter referred to as the "Swale Area"; and

**WHEREAS**, as a condition of development of the Subdivision, the developer, or its successors and assigns, was required to maintain the Swale Area and all required improvements and facilities therein; and

**WHEREAS**, the ownership of the Swale Area has been deeded to the Homeowners Association and the ownership and maintenance of the same has been a burden on the Homeowners Association and the Homeowners Association desires to dedicate the Swale Area property to the City in consideration of the City undertaking the maintenance of such property; and

**WHEREAS**, the City Council is willing to accept the dedication of the Swale Area property and to thereafter maintain such property, subject to the terms and conditions set forth in this Agreement.

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

**Section 1. Dedication of Property.** Homeowners Association hereby agrees to dedicate and deed the Swale Area to the City by Warranty Deed(s) duly executed and acknowledged in recordable form conveying to the City fee simple title to the dedicated property. The Swale Area property to be conveyed and deeded to the City consists of four (4) separate parcels and is more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference. Homeowners Association shall deliver to the City such Warranty Deed(s) simultaneously with the execution of this Agreement by Homeowners Association, which

Warranty Deed(s) shall be recorded by the City in the Davis County Recorder's Office after final execution of this Agreement. The City and Homeowners Association hereby agree that the recording of the Warranty Deed(s) shall constitute a recorded agreement between the owners of adjoining properties adjusting their mutual boundary.

**Section 2. Clear Title.** Homeowners Association hereby represents that the Swale Area property is free and clear of all liens and encumbrances other than utility or public easements of record. Homeowners Association shall create no liens or encumbrances on the Swale Area property prior to or after the date of this Agreement. Homeowners Association further represents that it is the fee title owner of the Swale Area with legal authority to transfer ownership of the property. Homeowners Association shall be responsible for all taxes and assessments against the Swale Area property, including any greenbelt or rollback taxes due and owing as a result of the conveyance of the Property, as of the date of conveyance. The City shall pay all recording fees for recording the Warranty Deed(s). Homeowners Association agrees to hold the City, its officers, employees, agents and assigns, harmless from any and all liens, encumbrances and/or claims regarding the Swale Area property as provided herein.

**Section 3. Compliance.** Prior to conveyance of the Swale Area property to the City, Homeowners Association agrees to bring all improvements located within the Swale Area into compliance with applicable City standards, including, but not limited to, all landscaping, irrigation and drainage improvements. Homeowners Association shall be liable for all deficiencies of the improvements existing or created prior to conveyance of the same to the City.

**Section 4. Maintenance.** Upon proper conveyance of the Swale Area property to the City, the City agrees to thereafter maintain the Swale Area. The parties expressly agree and acknowledge that the Swale Area may be maintained by the City in conjunction with its Storm Drainage Utility and that additional service and maintenance fees may be charged to homeowners within the Subdivision in conjunction with such Storm Drainage Utility. Nothing herein shall be construed or deemed to prevent the City from imposing such additional fees on the homeowners within the Subdivision as otherwise permitted by law.

**Section 5. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

**Section 6. Entire Agreement.** This Agreement, together with any exhibits incorporated by reference, constitutes the final expression of the parties' agreement with respect to the subject matter hereof and is a complete and exclusive statement of the terms of that agreement. This Agreement supersedes all prior or contemporaneous negotiations, discussions and understandings between the parties, whether oral or written or otherwise, all of which are of no further effect. This Agreement may not be changed, modified or supplemented except in writing signed by the parties hereto. This Agreement shall survive the recording of the deeds and this Agreement shall be noted on the deeds to be recorded.

**Section 7. Default.** Except as otherwise provided herein, in the event any party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have all rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.

**Section 8. Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Homeowners Association:

Lexington Park Homeowners Association  
629 West 2075 North  
Centerville, Utah 84014

To the City:

Centerville City  
Attn: City Recorder  
250 North Main Street  
Centerville, Utah 84014

Any party may change its address for notice by giving written notice to the other party in accordance with the provisions of this Section.

**Section 9. Attorneys' Fees.** In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and reasonable attorneys' fees.

**Section 10. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement individually or by and through their respective, duly authorized representatives as of the day and year first above written.

**"HOMEOWNERS ASSOCIATION"  
LEXINGTON PARK HOMEOWNERS  
ASSOCIATION**

By: *[Signature]*  
Its: Vice President

**"CITY"  
CENTERVILLE CITY**

By: *[Signature]*  
Mayor

**ATTEST:**

*Marilyn Holge*  
City Recorder



HOMEOWNERS ASSOCIATION ACKNOWLEDGMENT

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

On the 22<sup>nd</sup> day of August, 2002, personally appeared before me Jerry Alan Ostler who being by me duly sworn did say that (s)he is the Vice President of LEXINGTON PARK HOMEOWNERS ASSOCIATION, a Utah non-profit corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Trustees; and they acknowledged to me that said corporation executed the same.

Marilyn J. Holje  
Notary Public  
Residing at:  
Centerville UT

My Commission Expires:  
6-20-2003

CITY ACKNOWLEDGMENT

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

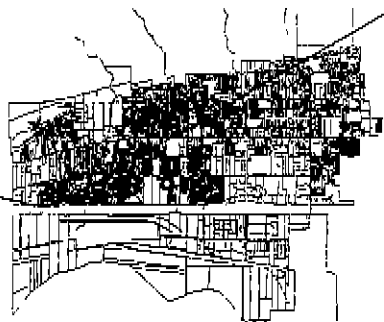
On the 22<sup>nd</sup> day of August, 2002, personally appeared before me **MICHAEL L. DEAMER**, who being duly sworn, did say that he is the Mayor of **CENTERVILLE CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Mayor acknowledged to me that the City executed the same.

Marilyn J. Holje  
Notary Public  
Residing at:  
Centerville UT

My Commission Expires:  
6-20-2003

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION(S)**  
**OF SWALE AREA**

# Lexington Park Swale Area



CENTERVILLE CITY RECORDER  
250 NORTH MAIN  
CENTERVILLE, UTAH 84014-1824

WARRANTY DEED

**LEXINGTON PARK HOMEOWNERS ASSOCIATION**, a Utah non-profit corporation, hereby grants, conveys and warrants to **CENTERVILLE CITY**, a Utah municipal corporation, Grantee, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described tracts of land located in Davis County, State of Utah, together with all public improvements therein, to wit:

PARCEL A, PHASE 1

All of Parcel A, Lexington Park Subdivision, Phase 1. Contains 0.261 acres. (Detention Basin and Public Pathway). Less & Excepting: Beg at the NW Corner of Lot 125, Lexington Park Subdivision Phase 1; thence S 0°11'30" W 136.97 feet along the westerly line of said Lot 125; thence N 89°39'30" W 2.20 feet; thence N 0°11'30" E 137.58 feet to a point on a 220 foot radius curve; thence easterly along the arc of said 220.00 foot radius curve 2.28 feet (chord bears S 74°02'48" E 2.29 feet) to beginning. Contains 0.007 acres. Total acreage 0.254 acres.

07-193-0128  
PARCEL B, PHASE 1

All of Parcel B, Lexington Park Subdivision Phase 1. Cont. 0.13 acres. (Detention Basin and Public Pathway). Less & Excepting: Beginning at the NW Cor of Lot 101, Lexington Park Subdivision Phase 1; thence S 0°11'30" W 75.35 feet along the westerly line of said Lot 101; thence westerly along the arc of a 280.00 foot radius curve 12.50 feet (chord bears N 78°41'14" W 12.50 feet); thence N 0°11'30" E 33.00 feet; thence S 89°48'30" E 10.41 feet; thence N 0°11'30" E 39.95 feet; thence S 89°48'30" E 1.85 feet to the point of beginning. Contains 0.01 acres. Total acreage 0.12 acres.

07-193-0130  
PARCEL A, PHASE 2

All of Parcel A, Lexington Park Subdivision Phase 2. Cont. 0.48 acres. (Being a Detention Basin and Public Pathway). Excepting the easterly 1.85 feet thereof. Total acreage 0.468 acres.

07-194-0216  
PARCEL A - PHASE 3

All of Parcel A, Lexington Park Subdivision Phase 3. Cont. 0.48 acres. Excepting the easterly 1.85 feet thereof. Total acreage 0.468 acres.

07-210-0324



This deed is subject to the written agreement between the parties hereto dated August 20, 2002.

IN WITNESS WHEREOF, the Grantor has executed this Warranty Deed on this 22<sup>nd</sup> day of August, 2002.

**GRANTOR:**  
**LEXINGTON PARK HOMEOWNERS ASSOCIATION**

By: \_\_\_\_\_  
Its: Vice President

**HOMEOWNERS ASSOCIATION ACKNOWLEDGMENT**

STATE OF UTAH            )  
                                      :ss.  
COUNTY OF DAVIS        )

On the \_\_\_\_\_ day of August, 2002, personally appeared before me \_\_\_\_\_ who being by me duly sworn did say that he/she is the \_\_\_\_\_ of LEXINGTON PARK HOMEOWNERS ASSOCIATION, a Utah non-profit corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Trustees; and they acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
Notary Public

Accepted for Recordation by:

\_\_\_\_\_  
Steve H Thacker, City Manager

\_\_\_\_\_  
Date