


WHEN RECORDED, MAIL TO:
Bryce Armstrong
Community Development Department
Utah County Government
51 S. University Ave., Ste #117
Provo, UT 84601



ENT 5567:2016 PG 1 of 12
JEFFERY SMITH
UTAH COUNTY RECORDER
2016 Jan 21 1:48 pm FEE 92.00 BY ED
RECORDED FOR UTAH COUNTY COMMUNITY DEVEL

Space Above for Recorder's Use Only

**MAINTENANCE AND COMMON AREA PRESERVATION AGREEMENT
(Planned Subdivision)**

THIS AGREEMENT is among the undersigned developer, with a mailing address of 11038 N. Highland Blvd. #100, Highland, UT 84003 herein referred to as the "Developer," the undersigned owners association with a mailing address of 11038 N. Highland Blvd. #100, Highland UT 84003, herein referred to as the "Association," and Utah County, with a mailing address of Utah County Commission Office, 100 East Center Street, Suite 2300, Provo, Utah 84606, herein referred to as the "County."

WHEREAS, the Developer owns certain real property in the unincorporated area of Utah County, which real property is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, the Developer is desirous of establishing on said property a planned subdivision (herein referred to as the "development") in conformity with the ordinances of Utah County, and also intends to provide for the benefit of subsequent owners certain common areas and facilities to be maintained and operated by the Association; and

WHEREAS, it is necessary and proper in connection with said development that an agreement be entered into between the Developer, and the Association and Utah County for the purpose of guaranteeing the integrity, proper management and upkeep of the development and the furnishing of necessary services to subsequent owners, and for the further purpose of assuring that existing taxpayers are not burdened with the expenses of providing new residents with capital improvements and needed or desired services not common to the entire county or provided on a county-wide basis; and

WHEREAS, Utah County may enter into forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the unincorporated area of the county or a designated mountainous planning district, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's

private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law, pursuant to Utah Code Ann. §17-27a-102; and

NOW, THEREFORE, IN CONSIDERATION of the necessary approvals, consents and authorizations to be given by Utah County for the purpose of allowing the Developer and Association to establish and operate said development, and for the purpose of complying with the ordinances of Utah County in such cases made and provided, the Developer and Association covenant and agree with the County, as follows:

1. The County shall have no obligation to construct or provide capital improvements or extended services for said development which are not common to the entire county and which are not provided on a county-wide basis to developments of this type. The County shall have the right, however, to enter upon the premises of the development for inspection and for enforcement of all applicable laws, ordinances, rules, regulations, agreements and covenants relating to the development, the operation of the development, and the furnishing of all necessary services for the development:

2. The Developer agrees to construct and provide, at its expense, the following improvements for, and in connection with, said development.

- (a) Common area amenities, facilities and landscaping, as per approved development plans.
- (b) Berm, basin, and channel system to intercept water and debris emanating out of the Box Elder Canyon and Wadsworth Canyon channels, as set forth in approved development plans.
- (c) Reseed critical areas of development to avoid sheet erosion, as per approved development plans.
- (d) All roadways, as per approved development plans, including signage and traffic control devices, along with any other necessary appurtenances, to equal or exceed Utah County standards. Those roadways lying within Alpine City must meet the applicable requirements of Alpine City.
- (e) On and off-site central water storage and delivery system facilities, as per approved development plans, to equal or exceed Utah State and Utah County standards and requirements. The developer shall ensure that the central water system is complete, operational, and provides the required water to each lot of the development, as per Utah State and Utah County requirements.
- (f) On and off-site central water sewage facilities, as per approved development plans, to equal or exceed Utah State and Utah County standards and requirements. The developer shall ensure that the central sewage system is complete, operational, and

services each lot of the development, as per Utah State and Utah County requirements.

- (g) On and off-site fire protection facilities, as per approved development plans, to equal or exceed Utah State and Utah County standards.
- (h) On and off-site storm water and drainage facilities, as per approved development plans, to equal or exceed Utah County standards.
- (i) Curbs, gutters and sidewalks, as per approved development plans, to equal or exceed Utah County standards. Those curbs, gutters and sidewalks lying within Alpine City must meet the applicable requirements of Alpine City.
- (j) Installed underground utilities, as per approved development plans, as required by Utah County Ordinances.
- (k) Open and accessible snow storage areas, as per approved development plans.
- (l) Lighting system, as per approved development plans.
- (m) Connection for irrigation system for each residential lot, as per approved development plans.
- (n) Survey monuments, as indicated on the development plat.
- (o) All other improvements required by Utah County Ordinances, all improvements as per the development plat, plans and other supporting documents, and all improvements stated as conditions of approval of the development.

Developer agrees that all construction in the development shall conform to the plans of said development and the documentation submitted to and approved by Utah County, and also to the requirements of all applicable laws, ordinances, rules and regulations promulgated by governmental authorities having jurisdiction.

After receiving final approval from the County Commission, the Developer shall execute a subdivision improvement and warranty agreement, in the form approved by the County, and (i) prior to recording the plat and prior to any development activity, the Developer shall, within a period of time not to exceed one year from the date of the approval of the development by the County Commission, or within such extended period of time during which the approval of the development remains viable as provided in the Utah County Land Use Ordinance or successor ordinance, construct and complete all required improvements and post a cash warranty bond with the County, the amount of said cash warranty bond being equal to 10% of the lesser of 1) the

original estimated cost of completion of the required improvements, as determined by the County Engineer, and 2) Developer's reasonable proven cost of completion of the required improvements; or (ii) upon request by the Developer, the Developer may post a cash construction bond with the County before recording the plat, in an amount equal to **125%** of the estimated cost of the required on-site improvements, as determined by the County Engineer, to guarantee the installation of the required on-site improvements without cost to Utah County, and a cash warranty bond, the amount of said cash warranty bond being equal to 10% of the lesser of 1) the original estimated cost of completion of the required improvements, as determined by the County Engineer, and 2) Developer's reasonable proven cost of completion of the required improvements. The final plat shall not be recorded until the developer has executed a subdivision improvement and warranty agreement, in the form approved by the County, and all off-site improvements are constructed and operational, and the on-site improvements are either constructed or the construction bond, for the on-site improvements, only, and the warranty bond are delivered to and approved by the County.

All required improvements, except for all off-site improvements, which must be complete and operational prior to plat recordation, shall be constructed and completed by the developer within one (1) year from the date of the approval of the development by the County Commission, or within such extended period of time during which the plat may be recorded and during which the approval of the development remains viable as provided in the Utah County Land Use Ordinance or successor ordinance. However, the County Commission may require the developer to install what it determines to be critical improvements on all or part of an approved large scale development within a time period which is less than the maximum time period specified.

An extension of time for construction of required improvements may be granted by the County Commission upon application by the Developer and good cause shown. Any request for an extension shall be in writing, shall be accompanied with a processing fee in such sum as determined by the County Engineer to cover the costs associated with the review and processing of the request for extension, but not less than the minimum processing fee of \$100.00, and shall be supported by a then current estimate prepared and signed by the Developer's engineer, or the applicable utility company, which describes the improvements which remain to be constructed, and the estimated cost to construct the remaining improvements. The request shall be supported by such other documentation as the County Engineer deems necessary. If an extension of time is granted, the County Commission shall require that the bond amount be increased to reflect the increased cost of the remaining improvements.

3. Developer agrees to provide, or cause to be provided, the following water which meets or exceeds all State of Utah and Utah County requirements.
 - (a) Culinary-quality water for use inside each dwelling shall be provided to each parcel at a flow rate of at least .015 cubic feet per second per dwelling unit and a quantity of at least .45 acre-feet per year per dwelling unit. Where the quantity of at least .45 acre-feet per year is not limited to dwelling use alone, culinary-quality

water shall be provided for occupied structures other than dwellings in the amount determined by the County Commission.

- (b) Water for maintaining landscaping and fuel-breaks around each dwelling and occupied structure shall be provided to each dwelling and structure at the rate of at least 1 acre-foot per year per dwelling and building site, which water shall be available between April 30 to October 1 annually.
- (c) Water for irrigation shall be provided at a rate of at least 1.5 acre feet per acre per year for the area of each lot beyond the first 10,000 square feet, which quantity shall be available from April 30 to October 1 annually.

Developer agrees that no charge for providing any of the above described water shall be made by the Developer to either the owner or occupant of said lot or the Association. It is understood, however, Alpine City, who will be providing the water for the subject development, may make a reasonable operation and maintenance charge for the use of such water, either by assessment or a service fee.

Developer warrants to the County that all water necessary to meet applicable County requirements has been deeded to Alpine City, or will be deeded to Alpine City prior to recordation of the development plat.

4. Developer agrees that it will make no user fee or charge to the owner or occupant of any lot or to the Association for any service, facility, business or enterprise which owners or occupants of the development need to subscribe to or patronize in order to have full use and enjoyment of their property or the common areas or common facilities within the development. It is understood, however, that the Association may make a reasonable charge, by assessment or otherwise, for the use of services and facilities provided for occupants of the development, or which may be necessary for the operation and maintenance thereof.

5. Developer agrees that prior to the conveyance, sale or other disposition of any lot within the development, and before the right to possession of any lot is transferred to any person, the Developer shall convey to and transfer control of all designated common areas, common amenities and common facilities to the Association, without charge or the assumption of any obligation for the cost of construction of improvements thereon or thereto. All designated common areas required by the County ordinances shall be transferred subject to a covenant and restriction running with the land prohibiting any future dwellings thereon and prohibiting all other buildings, except those approved by Utah County as provided by ordinance.

6. Developer and Association warrant to County that the Association has been duly incorporated as a non-profit corporation under the laws of the State of Utah in accordance with the documentation heretofore submitted to and approved by Utah County for such purpose, and said Association is fully organized.

7. The Association agrees to furnish and provide, at its expense, maintenance and services for the development as follows:

- (a) All necessary maintenance of the common area, common amenities, common landscaping, common facilities, and snow removal areas.
- (b) All necessary maintenance of the storm water and drainage facilities.
- (c) All necessary maintenance of the planter strips along the common area frontage.
- (d) Yearly maintenance of the berm, basin, and channel system, including the planter strip along the south side of Box Elder Way, as per the approved development plans, to intercept water and debris emanating out of the Box Elder Canyon and Wadsworth Canyon channels.
- (e) All necessary maintenance of the lighting system.

8. For the purpose of providing funds for the operation and maintenance of the development and the furnishing of necessary services to the occupants thereof, the Developer and the Association shall require an annual assessment to be made on each lot, and may also provide for special assessments for capital improvements which the Association may desire to make. The annual assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the development, and for the improvement and maintenance of the common areas, common amenities, common facilities, and for the furnishing of all required services thereto. The annual assessment for the first calendar year shall be FIVE Dollars (\$5.00) per lot, and shall be adjusted according to the number of months remaining in the calendar year. The amount of the annual assessments may be increased by the Association, but the same shall not be decreased at any time without the consent and approval of Utah County. The annual assessments shall commence as to all lots on the first day of the month following conveyance of the common areas, common amenities, and common facilities to the Association, or on the first day of the month next following the recording of the development plat, whichever event first occurs. It is understood that no lot shall be conveyed, sold or otherwise disposed of within the development, nor shall the right to possession of any lot be transferred to any person, until the common areas, common amenities, and common facilities have been conveyed to the Association. It is further understood that lots owned by the Developer shall not be exempt from assessment. If assessments are not paid, the Association shall bring an action at law against the owner personally obligated to pay the same, or shall foreclose the lien against the property assessed. No

owner of any lot may waive or otherwise escape liability for the assessment by non-use of the common areas, common amenities, common facilities, or the abandonment of his lot.

9. Upon the written request of Utah County, the Association shall collect an annual fire protection assessment, and/or an annual emergency medical services assessment, from each lot owner in such amount as determined by Utah County, and shall pay such collected assessment to the entity as designated by Utah County.

10. The Developer and the Association agree to establish and record in the office of the Utah County Recorder prior to any conveyance, sale, transfer, disposition or creation of any interest in or encumbrance on the land of the development described in Exhibit "A" attached hereto and by referenced made a part hereof, a declaration of protective covenants and restrictions and management policies which shall have first been submitted to and approved by Utah County. Said covenants and restrictions and management policies shall run with the land and be binding upon all parties and persons residing on the land or claiming any ownership or interest in the premises under or through the Developer. All of the covenants and provisions of this agreement, and such provisions as the land use ordinances of Utah County require to be set forth in such declaration, shall be set forth in and made part of said declaration of protective covenants and restrictions and management policies, together with such other provisions as the Developer and Association deem necessary for their purposes. Among other required restrictions, said declaration shall provide that no lot within the development shall be used for human occupancy, either temporarily or permanently, until culinary water and sewage and waste disposal facilities approved by Utah County are provided and available for use on said lot; and thereafter, no such lot shall be used for human occupancy at any time the culinary water or sewage and waste disposal facilities are not in compliance with the statutes of the State of Utah, ordinances of Utah County, and rules and regulations promulgated thereunder. Additionally, said declaration shall provide that Lambert Park will not be accessed, or encroached upon, from, or by, any of the fifty-nine (59) lots in the development.

11. At the request of Utah County, the Association agrees to enforce all protective covenants, restrictions and management policies set forth in the declaration of protective covenants, restrictions and management policies recorded in the office of the Utah County Recorder. Upon failure of the Association to enforce said covenants and restrictions and management policies, the County may, in County's sole discretion and following at least thirty (30) days prior written notice to the Association, cause suit to be brought against the Association for the purpose of requiring it to enforce the same, or may, in County's sole discretion, itself bring and prosecute a suit in the name of the Association for the purpose of enforcing said covenants, restrictions and management policies. The Association agrees to indemnify and hold the County and its agents harmless from all costs, expenses (including attorney's fees) and liabilities resulting from or related to, directly or indirectly, any such action taken by the County. If the Association becomes disorganized, fails to function properly, or fails to maintain its corporate entity in good standing, or if it fails to perform its obligations hereunder and under the aforesaid declaration of protective covenants and restrictions and management policies, Utah

County is hereby given the right to close the development to human occupancy, and may obtain or enforce such closure by injunction or other appropriate legal action; and said development shall remain closed to human occupancy until such time as the Association is properly organized and functioning and performing its obligations hereunder. The provisions of this paragraph shall be clearly set forth in the declaration of protective covenants, restrictions and management policies of the development hereinabove referred to.

12. Wherever in this agreement Utah County is referred to, it is understood that the reference is to the appropriate board, commission, department or person to whom authority shall have been delegated by law or ordinance or appropriate action of the Board of County Commissioners; and where no such delegation has been or can lawfully be made, the reference is to the Board of County Commissioners.

13. In the event it becomes necessary to bring legal action to enforce the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee and associated court costs, as determined by the court.

14. This Agreement shall be interpreted pursuant to the law of the State of Utah. Time shall be of the essence of this Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other gender. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

15. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement signed by the parties. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepare the same, it being acknowledged that all parties have participated in the preparation hereof.

16. The parties to this Agreement shall not assign this Agreement, or any part hereof, without the prior written consent of all parties to this Agreement. No assignment shall relieve the original parties from any liability hereunder. Without waiving the requirement for written consents prior to any assignment, this Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

17. All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage prepaid, to the parties at their addresses first above written, or at such other addresses may be designated by notice given

hereunder. The provisions of this Agreement shall not merge in any license, permit, plat, conveyance, or any other document. The individuals signing this Agreement on behalf of Developer and Association, personally warrant to County that they are authorized to sign on behalf of and bind Developer and Association to the terms of this Agreement and that all requisite approvals, resolutions, authorizations, etc., have been obtained.

18. This Agreement shall be construed as a development agreement authorized by Utah Code Ann. §17-27a-102. The parties to this Agreement consent its recording in the records of the Utah County Recorder.

IN WITNESS WHEREOF, the parties to this agreement have caused the same to be executed by their proper officers thereunto duly authorized this 11th day of January, 2016.

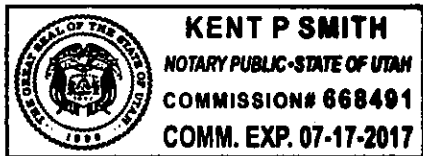
DEVELOPER

Patterson Construction, Inc.
Name of Developer

By: [Signature] James K. Patterson
Sign and Print
Its: President
Date: 1/11/16

STATE OF UTAH)
) :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this 11th day of January, 2016, by James K. Patterson, the President of Patterson Construction, Inc. (Developer)



[Signature]
NOTARY PUBLIC
Residing at: Utah County

My Commission Expires: 07-17-2017

UTAH COUNTY

Larry A. Ellertson
Larry A. Ellertson, Chairman
Board of Utah County Commissioners

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me on this 15th day of January, 2016, by Larry A. Ellertson the chairman of the Board of Utah County Commissioners.



Karen Fairbanks
NOTARY PUBLIC
Residing at: Utah County, Utah

My Commission Expires: 09-01-2018

ATTEST:
Bryan E. Thompson
Utah County Clerk/Auditor

By: *Bryan E. Thompson*
Deputy

Exhibit "A"

BEGINNING AT THE WEST QUARTER CORNER OF SECTION 17, TOWNSHIP 4 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH $89^{\circ}40'47''$ EAST 894.46 FEET; THENCE EAST ALONG THE SOUTHERLY BOUNDARY OF BOX ELDER PLAT "F" SUBDIVISION A DISTANCE OF 1289.85 FEET; THENCE NORTH ALONG THE EASTERLY BOUNDARY OF SAID SUBDIVISION A DISTANCE OF 7.21 FEET; THENCE NORTH $89^{\circ}40'47''$ EAST 454.29 FEET; THENCE SOUTH $0^{\circ}46'04''$ EAST ALONG QUARTER SECTION LINE A DISTANCE OF 120.70 FEET TO THE MONUMENTED CENTER OF SECTION 17; THENCE NORTH $87^{\circ}42'08''$ WEST ALONG QUARTER SECTION LINE A DISTANCE OF 1321.16 FEET; THENCE SOUTH $00^{\circ}32'44''$ EAST ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 17 A DISTANCE OF 1330.28 FEET; THENCE NORTH $87^{\circ}39'05''$ WEST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 17 A DISTANCE OF 1325.93 FEET; THENCE NORTH $00^{\circ}20'34''$ WEST ALONG THE SECTION LINE A DISTANCE OF 1328.88 FEET TO THE POINT OF BEGINNING.