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 Book - 9847 Pg - 9232-9243
GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 CITY OF DRAPER
 1020 E PIONEER RD
 DRAPER UT 84020
 BY: KCC, DEPUTY - WI 12 P.

12

AGREEMENT 10-42

**FIRST AMENDMENT TO
 DEVELOPMENT AGREEMENT**

FOR

**KENNINGTON ESTATES
 DRAPER, UTAH**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR KENNINGTON ESTATES DRAPER, UTAH ("First Amendment") is entered into as of the 6th day of July, 2010, between DRAPER CITY, a municipality and political subdivision of the State of Utah (the "City"), KENNINGTON ESTATES HOMEOWNERS ASSOCIATION, a Utah non-profit corporation (the "Association"), as the homeowners association formed with respect to the single-family residential project known as Kennington Estates (the "Project"), and the successor in interest to certain rights of Cletus Estates, LLC, a Utah limited liability company (the "Developer"), and SUSAN B. DAY ("Day"). The City and the Association are referred to herein individually as a "party" and collectively as "parties."

RECITALS

A. The City and Developer entered into that certain Development Agreement for Kennington Estates dated July 17, 2007 (the "Development Agreement"), and recorded on August 3, 2007 as Entry No. 10183610, Book 9499, Pages 6094-97, in connection with the Project, which is more particularly described in Exhibit A attached hereto.

B. Pursuant to the Development Agreement, and in acknowledgment of a separate agreement which the Developer and Day had previously entered into relating to Developer's construction of a new home for Day within the Project (the "New Home"), the Developer and the City agreed that the Developer would remove an existing home that lies on Lot #2 of the Project and encroaches on Lot #3 within the Project ("Existing Home") within twelve (12) months following the recording of the final plat. Notwithstanding the Development Agreement and the separate agreement between the Developer and Day, the Developer never constructed the New Home for Day, and Day continues to occupy the Existing Home.

C. Since execution of the Development Agreement, the Project was foreclosed upon by the Developer's lender, Bank of American Fork. Following such foreclosure, nine (9) of the lots within the Project (the "Lots") were subsequently sold by the foreclosing bank to Todcor Holdings, LLC, which continues to own three (3) of such Lots. Todcor Holdings has conveyed a total of six (6) of the Lots to persons desiring to construct personal residences upon such Lots.

D. The Association was formed by the owners of the Lots on or around April 7, 2010, for the purpose of providing for the maintenance and repair of common areas, including but not limited to, a common area park and swimming facility proposed to be located on a portion of Lot # 3 in the Project (collectively the “**Common Area Facility**”), which property is currently owned by Day and subject to an option to purchase in favor of the Association.

E. In light of the foregoing, the parties desire to amend the Development Agreement to (1) clarify that the Existing Home may remain in its current location, (2) adjust the lot line between Lot #2 and Lot #3, in connection with the planning and construction of the Common Area Facility, and (3) decrease the front yard setback within the Project to twenty (20) feet.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Association and Day hereby amend the Development Agreement as follows:

1. Incorporation of Recitals and Exhibit. The above Recitals and Exhibit attached hereto and referenced herein are hereby incorporated into this First Amendment.

2. Existing Home. The City, the Association and Day hereby amend Section 1 of the Development Agreement by eliminating any requirement set forth therein that the Existing Home be removed from its current location and that a New Home be constructed by or on behalf of Day. Furthermore, the parties hereby agree that the existing lot line between Lots #2 and #3, as currently identified in the final recorded plat for the Project, shall be modified, by moving such lot line further north such that there will be no encroachment of the Existing Home affecting Lot #3. The foregoing lot line adjustment is depicted in **Exhibit B** attached hereto and incorporated herein. The amended Lot #3 shall thereafter be identified as Parcel C. These lot changes will be memorialized in a future plat amendment consistent with **Exhibit B**, which application shall be submitted within one year from the date hereof. After recordation of said amended plat, the City acknowledges that the Existing Home will be in compliance with the City’s zoning ordinance relating to setbacks. The parties further agree that the Association shall be entitled to improve “Parcel C” as a Common Area Facility, subject to the Association’s compliance with City ordinances.

3. Front Yard Setbacks. The parties agree that the front yard setback relating to each Lot within the Project, including but not limited to the Existing Home, shall be and hereby is reduced from twenty five feet (25’) to twenty feet (20’).

4. Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the City:

Draper City
Attn: Tracy Norr
1020 East Pioneer Road
Draper, UT 84020

With a copy to:

Douglas Ahlstrom
Draper City Attorney
1020 East Pioneer Road
Draper, UT 84020

If to the Association:

Kennington Estates Homeowners Association
Attn: Bryan Flamm
1099 West South Jordan Parkway
South Jordan, UT 84095

If to Day:

Susan B. Day
13751 S. Kennington Court
Draper, UT 84020

5. Ratification of Development Agreement. The Development Agreement, as amended herein, is hereby ratified and confirmed. Except as expressly amended and modified herein, the Development Agreement remains in full force and effect. To the extent that the terms of this First Amendment conflict with the Development Agreement, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives effective as of the date first written above.

ATTEST:

By: Tracy Brown
Draper City Recorder



CITY:

DRAPER CITY, a municipality and political subdivision of the State of Utah

By: Darrell F. Smith
Its: Mayor

ASSOCIATION:

KENNINGTON ESTATES
HOMEOWNERS ASSOCIATION, a Utah
non-profit corporation

By: Bryan Flamm, President

DAY:

Susan B. Day
Susan B. Day

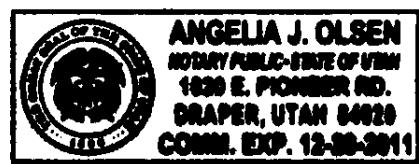
STATE OF UTAH)
: ss.

COUNTY OF SALT LAKE)

The foregoing First Amendment to Development Agreement for Kennington Estates Draper, Utah was acknowledged before me this 6th day of July, 2010, by Tarrell H. Smith, as Mayor of Draper City, a municipality and political subdivision of the State of Utah.

Angelia J. Olsen
Notary Public

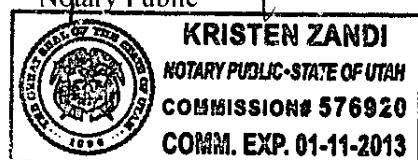
STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)



The foregoing First Amendment to Development Agreement for Kennington Estates Draper, Utah was acknowledged before me this 3 day of August, 2010, by Bryan Flamm, as President of Kennington Estates Homeowners Association, a Utah non-profit corporation.

Kristen Zandi
Notary Public

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)



The foregoing First Amendment to Development Agreement for Kennington Estates Draper, Utah was acknowledged before me this 8 day of August, 2010, by Susan B. Day.

Kristen Zandi
Notary Public

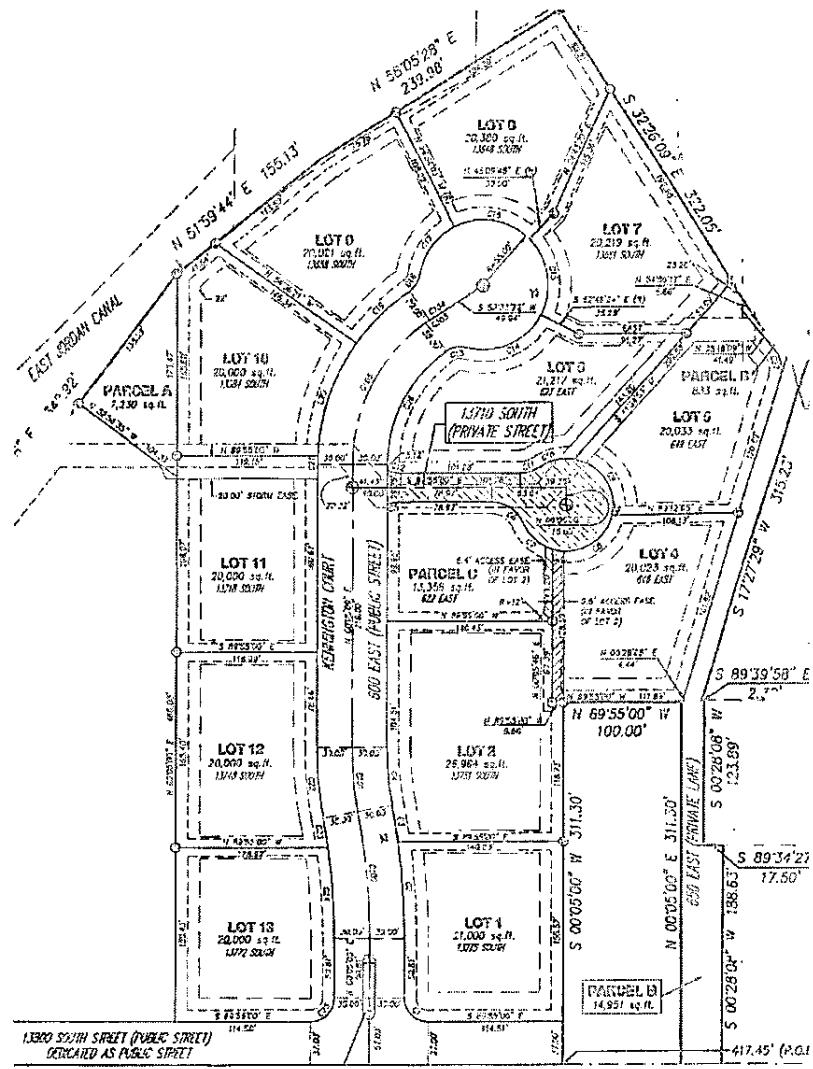


EXHIBIT A

PROPERTY DESCRIPTION

Beginning at a point being North 89°55'00" West, 417.45 feet along the section line from the East Quarter Corner of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running thence along the section line North 89°55'00" West, 863.91 feet; thence North 01°26'18" East, 164.88 feet to a point on a southerly boundary of the "East Jordan Canal"; and running thence along said "East Jordan Canal" the following ten (10) courses and distances: (1)North 43°10'55" East, 21.42 feet; thence (2)North 41°42'01" East, 118.03 feet; thence (3)North 49°18'49" East, 32.56 feet; thence (4)North 59°45'14" East, 108.43 feet; thence (5)North 58°37'05" East, 102.98 feet; thence; thence (6)South 00°45'43" East, 19.16 feet; thence (7)North 47°37'12" East, 34.37 feet; thence (8)North 37°03'25" East, 342.92 feet; thence (9)North 51°59'44" East, 155.13 feet; thence (10)North 58°05'28" East, 239.98 feet to a point on a Westernly boundary of the Becki Stevens property (Entry# 5234522, Book: 6440 Page: 0979); and running thence along said Becki Stevens Property the following two (2) course: (1)South 32°26'09" East, 322.05 feet; thence (2)North 56°59'29" East, 59.48 feet to a point on a Westernly boundary of the Ted A. Zimmerman property (Entry# 5111842, Book: 6346 Page: 0911); thence along said Ted A. Zimmerman property the following four (4) courses: (1)South 16°50'31" West, 53.75 feet; thence (2)North 57°28'20" East, 8.70 feet; thence (3)South 17°27'29" West, 315.23 feet; thence (4)South 89°39'58" East, 2.32 feet to a point on a Westernly boundary of the Chad Halter property (Entry# 7943083, Book: 8477 Page: 3168); thence along said Chad Halter property the following two (2) courses: (1)South 00°28'08" West, 123.89 feet; thence (2)South 89°34'27" East, 17.50 feet; thence South 00°28'08" West, 188.63 feet; thence North 89°55'00" West, 34.99 feet to a point on a Easterly boundary of the Reid Dixon property (Entry# 7481357, Book: 8313 Page: 7837); thence along said Reid Dixon property the following three (3) courses: (1)North 00°05'00" East, 311.30 feet; thence (2)North 89°55'00" West, 100.00 feet; thence (3)South 00°05'00" West, 311.30 feet to the point of beginning.

Exhibit "B"



10183610

10183610
06/03/2007 12:08 PM \$22.00
Book - 9499 Pg - 6094-6097
GARY W. DTT
RECORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
1020 E PIONEER RD
DRAPER UT 84020
BY: ZJM, DEPUTY - WI 4 P

AGREEMENT 07-39

**DEVELOPMENT AGREEMENT
FOR
KENNINGTON ESTATES
DRAPER, UTAH**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 17th day of July, 2007, by and between Cletus Estates, LLC, a Utah limited liability company (the "Master Developer"), as the owner and developer of the single-family residential project known as Kennington Estates (the "Project"), and Draper City, a municipality and political subdivision of the State of Utah (the "City").

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **Existing Home May Remain for 12 Months.** The parties acknowledge that the Master Developer has entered into an agreement with Susan B. Day ("Day") dated October 25, 2006 entitled the Amended Option Agreement (the "Day Agreement") pertaining to, in pertinent part, the construction of a new home for Day within the Project (the "New Home") and the corresponding demolition of Day's existing home that lies on Lot #2 of the Project and encroaches on Lot #3 within the Project (the "Existing Home"). The Master Developer represents that the Day Agreement resolved all pertinent issues between the Master Developer and Day, including the construction of a New Home within twelve (12) months following the recording of the final plat for the Project and the Master Developer's commitment to use its best efforts to allow Day to reside in the Existing Home until the New Home is completed. Should the New Home not be completed within the twelve (12) month period contemplated in this paragraph, the Master Developer understands that it will be required to immediately remove the Existing Home from Lot #2 so as to remove the encroachment affecting Lot #3. The Master Developer does not believe that any term of this Agreement is in conflict with the Day Agreement, but expressly understands that the terms of this Agreement supercede those in the Day Agreement should any conflict be determined.

2. **Knowledge.** The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to consult with legal counsel of their choice.

3. **Supremacy.** In the event of any conflict between the terms of this Agreement and those of any document referred to herein, this Agreement shall govern.

4. **No Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the parties.

-BK 9499 PG 6094-

BK 9847 PG 9239

5. Priority. This Agreement shall be recorded against the Property senior to the Protective Covenants, all Master Association covenants, and any debt security instruments encumbering the Property.

6. Amendment. This Agreement may be amended only in writing signed by the parties hereto.

7. No Waiver. Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

8. Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the Master Developer:

Cletus Estates, LLC
138 East 12300 South, Suite C, No. 177
Draper, UT 84020

With a copy to:

Jeffrey N. Walker
HOLMAN & WALKER, LC
9533 South 700 East, Suite 100
Sandy, UT 84070

If to the City:

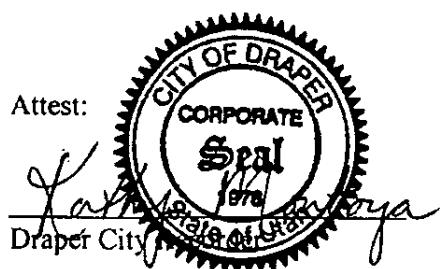
Draper City
Layne P. Long, City Manager
1020 East Pioneer Road
Draper, UT 84020

With a copy to:

Douglas Ahlstrom
Draper City Attorney
1020 East Pioneer Road
Draper, UT 84020

Any party may change his address by giving written notice to the other party in accordance with the provisions of this section.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date written above.



DRAPER CITY, a municipality and political subdivision of the State of Utah

By Danell J. Smith
Its Mayor

CLETUS ESTATES, LLC, a Utah limited liability company

By Mark G. Pech
Its MANAGER

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On the 17th day of July, 2007, personally appeared before me Darrell H. Smith, who being duly sworn, did say that he is the Mayor, of **DRAPER 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 Darrell H. Smith acknowledged to me that the City executed the same.

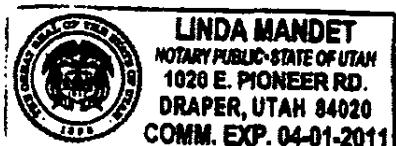
Linda Mandet
NOTARY PUBLIC

My Commission Expires:

4/1/2011

Residing at:

Salt Lake Co.



DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH)
:SS.
COUNTY OF SALT LAKE)

On the 20th day of July, 2007, personally appeared before me Mark G. Richards, who being duly sworn, did say that he/she is a Manager, of **CLETUS ESTATES, LLC** a limited liability company, and that the foregoing instrument was duly authorized by the limited liability company at a lawful meeting held by authority of its operating agreement and signed in behalf of said limited liability company.

Kathy Montoya
NOTARY PUBLIC

My Commission Expires:

4/17/2011

Residing at:

Salt Lake County



BK-9499 PG 6097

BK 9847 PG 9242

