

DOC # 20180044476

Agreement Page 1 of 9
 Russell Shirts Washington County Recorder
 11/06/2018 08:55:59 AM Fee \$ 0.00
 By ST GEORGE CITY



When Recorded Return To:
 City of St. George
 City Attorney's Office
 175 East 200 North
 St. George, Utah 84770

Tax ID No. SG-6-3-26-110, SG-6-3-23-237

**LANDSCAPE MAINTENANCE AGREEMENT BETWEEN THE VILLAS AT SUN RIVER ST. GEORGE
 HOME OWNERS ASSOCIATION AND THE CITY OF ST. GEORGE**

This Agreement is entered into this 1 day of November, 2018 between the City of St. George, a municipal corporation of the State of Utah (hereinafter referred to as the "City"), and the Villas at Sun River St. George Home Owners Association, a Utah non-profit corporation located in St. George, Utah (hereinafter referred to as the "HOA"). City and the HOA are herein collectively referred to as the "Parties."

RECITALS

WHEREAS, Sun River Villas Development, LLC, a Utah limited liability company located in St. George, Utah (hereinafter referred to as "Developer"), is subdividing the property described on Exhibit A attached hereto and incorporated herein by this reference (the "Property") located on at Arrowhead Canyon Drive and Sun River Parkway, into a subdivision called The Villas at Sun River St. George (the "Subdivision"), and

WHEREAS, Developer, pursuant to the Villas at Sun River St. George construction plans, is installing landscaping in the public roadway right of way (the "Right of Way") along the east edge of Arrowhead Canyon Drive and south edge of Sun River Parkway (the "Landscape Areas") as part of the improvements for the Subdivision. Such Landscape Areas are more specifically described on Exhibit B attached hereto and incorporated herein, and

WHEREAS, the HOA has agreed to maintain and repair the installed Landscape Areas as further set forth below, and the individual signing this Agreement on its behalf is authorized and empowered to bind it.

AGREEMENT

1. Recitals. The foregoing recitals are incorporated herein by reference.
2. Representatives. The representative for the City for purposes of this Agreement will be Carolyn Prickett. The representative for the HOA will be Sunwest Management.
3. Exhibits. All exhibits attached hereto are incorporated as part of this Agreement.

4. Project Approvals and Compliance with City Design and Construction Standards.

The HOA expressly acknowledges and agrees that, except as specifically modified or waived herein, nothing in this Agreement shall be deemed to relieve it from the obligation to comply with City Ordinances and City of St. George Standard Specifications for Design and Construction, and all applicable requirements of the City necessary for maintenance and repair of the Landscape Areas, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

5. Maintenance and Repair of Landscape Areas.

The HOA agrees to maintain and repair the Landscape Areas. The City hereby grants the HOA the right to access and enter the Right of Way for the sole purpose of maintaining and repairing the Landscape Areas and associated landscape features (for instance, repairing pavement and hard surfaces, pruning, mowing, replacing materials, repairing systems, weed control, litter control, and other maintenance and repair measures). This includes accessing the Landscape Areas with vehicles and machinery. Any individual performing such work within the Right of Way shall be required to wear orange clothing or outer wear. Youth under the age of 18 will not be permitted to work within the Right of Way. The HOA will maintain and repair the described Landscape Areas now and in the future. City will not pay or reimburse the HOA for any work performed to maintain or repair the Landscape Areas now or in the future.

6. Waiver, Release, and Indemnification.

The HOA hereby releases, discharges, indemnifies, defends, and holds harmless the City from any and all claims or liability arising from the performance of the HOA's duties or activities under this Agreement. This includes any claims or liability asserted by the HOA's officers, agents, employees, representatives, volunteers, or independent contractors with respect to bodily injury, personal injury, illness, death, or property damage that may result from any duties or activities related to maintenance or repair of the Landscape Areas. The HOA understands that the City does not assume any responsibility or obligation to provide medical, health, disability, or liability insurance, or any other assistance, in the event of any type of injury related to maintenance or repair of the Landscape Areas within the Right of Way. The HOA releases, discharges, indemnifies, defends, and holds harmless City, its elected officials, officers, employees, agents, and representatives against the claims of third parties, including any and all claims, suits, causes of action, judgments, appeals, demands, losses, costs, expenses, and damages (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute resolution costs) caused by, resulting from, or arising out of acts, errors, or omissions of the HOA when performing any acts to access and enter the Right of Way for the purpose of maintaining or repairing the Landscape Areas. City shall give the HOA prompt written notice of any such claim or suit filed against City. The HOA agrees to defend against any such claims brought or action filed against City, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim is brought or action filed that is the subject of the indemnity herein, the HOA agrees that City may employ attorneys of its own selection to appear and defend the claim or action at the expense of the HOA. Attorneys' fees shall be reasonable. In the event that there is concurrent negligence or fault between the City and the HOA, each Party shall be responsible to the extent of their respective negligence.

7. Insurance. The HOA shall maintain a policy of general liability insurance with adequate single and combined liability limits in force at all times, insuring all activities, conditions, operations and usage on or about the Landscape Areas, as follows:
- a. GENERAL: The HOA shall secure and maintain insurance as required by laws and regulations and the terms of this Agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the duties under this Agreement. The HOA's insurer must be authorized to do business in Utah, and must have an A.M. Best rating of A VIII or better at the time this Agreement is executed.
 - b. COMMENCEMENT OF WORK: Neither the HOA or its subcontractors shall enter the Landscape Area before City has received and accepted Certificate(s) of Insurance and Insurance Endorsements, in writing.
 - c. INSURANCE CERTIFICATES AND COVERAGE: Insurance certificates shall be issued on all policies required under this Agreement and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:
 - i. The name and address of the insured.
 - ii. City shall be named as a Certificate Holder.
 - iii. City shall be named as an additional primary insured on the General Liability Certificate with City listed as non-contributory on the General Liability certificate.
 - iv. The location of the operations to which the insurance applies.
 - v. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
 - vi. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
 - vii. A statement that all coverage is on an occurrence basis rather than a claims basis.
 - viii. A provision that the policy or policies will not be cancelled, denied renewal, or reduced in coverage until at least 30 days after written notice has been received by City.
 - ix. Name, address, and telephone number of the insurance company's agent of process in Utah.
 - x. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.
 - d. COMPENSATION INSURANCE: The HOA shall take out and maintain Worker's Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this Agreement. Coverage must be provided by a company authorized by the State of Utah to provide Worker's Compensation Insurance. The insurance shall include:
 - i. Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.
 - ii. The HOA shall require each subcontractor to provide Workers Compensation Insurance for its employees unless such employees are

covered by the HOA.

- iii. In the event any class of employees engaged in hazardous work under this contract is not protected by the Worker's Compensation Statute, the HOA shall provide, and shall cause its subcontractors to provide, special insurance for the protection of such employees not otherwise protected.

e. **COMMERCIAL GENERAL LIABILITY INSURANCE:**

- i. The HOA shall procure, and maintain commercial general liability insurance for the duration of the Agreement against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the HOA, its agents, representatives, employees or subcontractors. The insurance shall remain in effect during the term of this Agreement and such that claims reported beyond the date of substantial completion of this Agreement are covered, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein.
- ii. The Insurance Endorsement shall evidence such provisions.
- iii. The minimum commercial general liability insurance shall be as follows:
 - 1. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than \$745,200 Dollars.
 - 2. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than \$2,552,000 Dollars.
 - 3. Broad form property damage insurance in an amount not less than \$295,000 Dollars.
- iv. Such policy shall include each of the following coverages:
 - 1. Comprehensive form.
 - 2. Premises - operations.
 - 3. Explosion and collapse hazard.
 - 4. Underground hazard.
 - 5. Product/completed operations hazard.
 - 6. Contractual insurance.
 - 7. Broad form property damage, including completed operations.
 - 8. Independent contractors for vicarious liability.
 - 9. Personal injury.
 - 10. Cross liability or severability of interest's clause shall be included unless a separate policy covering the same is provided.

8. **Governing Law and Venue.** This Agreement shall be construed according to the laws of the State of Utah. The Parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The Parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.

9. Attorney's Fees. Should any Party default on 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 applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. If either Party commences legal action to enforce or interpret any term of this Agreement, the prevailing Party shall be entitled to recover from the other Party all reasonable attorney's fees, court costs, and any other costs incurred in connection with such action, whether at trial or on appeal.

10. Construction. Each of the Parties has had the opportunity to review this Agreement with counsel of their choosing, and the rule of contracts requiring a contract against the Party drafting the same is hereby waived and shall not apply in interpreting this Agreement.

11. Notices. All notices required herein, and subsequent correspondence in connection with this Agreement shall be mailed to the following:

City of St. George
Attn: City Attorney
175 East 200 North
St. George, Utah 84770

The Villas at Sun River St. George Home Owners
Association
Attn: Kamari Naase, C/O Sunwest Management
1404 W Sun River Parkway Suite 250
St. George, Utah 84790

Such notices shall be deemed delivered following the mailing of such notices in the United States mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either Party of a change of address.

12. Assignment. Neither this Agreement nor any of the provisions, terms, or conditions hereof can be assigned to any other party, individual, or entity without prior written consent of City, which consent shall not be unreasonably withheld.

13. No Joint Venture, Partnership or Third Party Rights. This Agreement does not create any partnership, joint venture, undertaking, business arrangement or other arrangement between the East HOA and the City. No term or provision of this Agreement is intended to be, nor shall be, for the benefit or obligation of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

14. Binding Effect. Subject to the provisions of this document above, all of the provisions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, heirs, representatives, officers, agents, employees, members, assigns, and receivers.

15. Integration. This Agreement contains all the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written, with respect to the subject matter.

16. Severability. If any part or provision of this Agreement is determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant or other provision of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

17. Survival. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

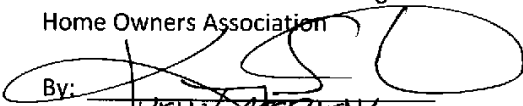
18. Headings. The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

20. Modification. The terms and conditions of this Agreement may be amended or modified only by written agreement executed by each of the Parties.

21. Authority of Parties. The persons executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated.

The Villas at Sun River St. George
Home Owners Association

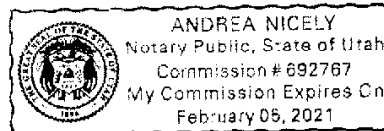
By: 
Name: KELLY STEPHENS
Title: PRESIDENT

STATE OF UTAH)
 :
COUNTY OF WASHINGTON)

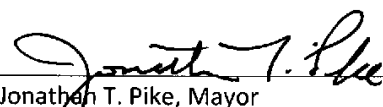
On the 18 day of OCTOBER, 2018, KELLY STEPHENS personally appeared before me, who being by me duly sworn did say that s/he is the PRESIDENT of the Villas at Sun River St. George Home Owners Association, and that s/he executed the foregoing agreement on behalf of said corporation by authority of a resolution of its board of directors, and s/he did acknowledge that the corporation executed the same for the uses and purposes stated therein.



Notary Public

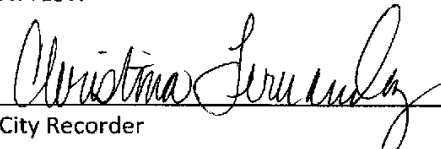


CITY OF ST. GEORGE,
A Municipal Corporation



Jonathan T. Pike, Mayor

ATTEST:



Christina Lervud
City Recorder

APPROVED AS TO FORM:

 10/25/18

Victoria H. Hales, Assistant City Attorney

**EXHIBIT A
PROPERTY DESCRIPTION**

Real property located in the City of St. George, Washington County, State of Utah, and further identified by Tax ID No. SG-6-3-26-110, and further described as:

THE VILLAS AT SUN RIVER ST. GEORGE, WASHINGTON COUNTY, UTAH

Beginning at the most easterly corner of Sun River St. George Phase 30, said point being the southerly corner of Sun River St. George Phase 25, said point also being North 01°13'39" East 351.59 feet along the extension of the section line and East 3,318.41 feet from the Southwest Corner of Section 23, Township 43 South, Range 16 West, Salt Lake Base & Meridian, and running;

Thence northerly the following (5) courses along said easterly line of Phase 25 and to and along the easterly line of Sun River St. George Phase 26;

Thence northerly 607.54 feet along an arc of a 661.00 foot radius curve to the left (center bears North 52°37'04" West, long chord bears North 11°03'05" East 586.38 feet with a central angle of 52°39'43");

Thence North 15°16'46" West 340.32 feet;

thence northerly 1,067.49 feet along an arc of a 1,967.00 foot radius curve to the right (center bears North 74°43'14" East, long chord bears North 00°16'03" East 1,054.43 feet with a central angle of 31°05'39");

Thence North 15°48'52" East 136.04 feet;

Thence northeasterly 60.63 feet along an arc of a 40.00 foot radius curve to the right (center bears South 74°11'08" East, long chord bears North 59°14'19" East 54.99 feet with a central angle of 86°50'55") to the easterly line of Sun River Parkway as defined by the UDOT Atkinville Interchange Right-of-Way (Project: HPP-LC53(33));

Thence Southeasterly and Southwesterly the following (7) courses along the southerly line of said Sun River Parkway and to and along the on ramp for Interstate 15 as defined by the UDOT Atkinville Interchange Right-of-Way (Project: HPP-LC53(33))

Thence South 21°35'02" West 40.10 feet;

Thence southeasterly 103.00 feet along an arc of a 670.00 foot radius curve to the right (center bears South 21°35'02" West, long chord bears South 64°00'43" East 102.90 feet with a central angle of 08°48'29");

Thence South 59°36'29" East 383.16 feet;

Thence South 59°36'29" East 411.83 feet;

Thence South 57°08'20" East 615.49 feet;

Thence South 22°41'53" East 57.93 feet;

Thence South 15°51'16" West 594.31 feet to the westerly line of Interstate 15;

Thence South 28°34'00" West 1,193.91 feet along said westerly line of Interstate 15;

Thence North 61°27'16" West 777.94 feet to the Southeasterly line of said Sun River St. George Phase 30;

Thence North 29°09'24" East 3.74 feet along the Southeasterly line of said Sun River St. George Phase 30 to the Point of Beginning.

Containing 2,262,991 square feet or 51.95 acres.

EXHIBIT B
LANDSCAPE AREAS

