

**THE CROSSINGS AT LAKE CREEK
DEVELOPMENT AGREEMENT FOR PHASES 2, 3, 5, 7A, 8A, 7B,
8B, 9, 10, AND 12**

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This DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this 20th day of March, 2007, by and between The Crossings at Lake Creek X, LLC, Utah limited liability company (hereinafter called "Developer"), and any and all other Subsequent Developers, and Wasatch County, a political subdivision of the State of Utah (hereinafter called the "County"). Developer and the County are hereinafter referred to individually as a "Party" and collectively as the "Parties." This Agreement specifically includes, by attachment, all of the terms, conditions and provisions of the Settlement Agreement, previously agreed to by the Parties (see "A" B). In the case of any conflict between this Agreement and the Settlement Agreement, the Settlement Agreement shall take precedence. Any reference hereafter to the Settlement Agreement does not constitute an admission by either party that the Settlement Agreement applies to a given issue.

RECITALS

- A. The County, acting pursuant to its authority under Utah Code Ann. Section 17-27-101, et seq., and Section 17-53-223, and Section 17-53-302(13), as amended, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, in the exercise of its discretion, has elected to approve and enter into this Agreement.
- B. The Developer and County had previously entered into a Settlement Agreement, as attached in Exhibit "A", dated October 28, 2002 as to the subject Property. Section 3.3 of this Settlement Agreement states: "Where there is a conflict between a provision of this Settlement Agreement and the Code, or General Plan or other land use regulations or laws, this Settlement Agreement shall take precedence." Therefore, it is agreed by the Parties that the Settlement Agreement shall remain the prevailing point of authority in the adjudication of this Project.
- C. The Developer has the vested rights to and preliminary approval for a 538 ERU development for The Crossings at Lake Creek project on approximately 336 acres (the "Project"), as further described on "B."
- D. On November 25, 2002, Developer received preliminary plat approval for The Project and the County was directed to prepare a Development Agreement with Developer concerning the Development of the Project.

- E. This Development Agreement and the Settlement Agreement, and ordinances not inconsistent therewith, govern development of Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the project which are located south of the Lake Creek Channel, as approved in the final plat approvals the legal descriptions of which are to be attached hereto as each plat is approved by the County..
- F. On November 25, 2002 Developer received preliminary plat approval to develop the Project described in Exhibit "B" as a Planned Residential Development with 538 ERU's, which may be located, in Developer's discretion, and in accordance with the approved preliminary plan, on lot types listed on Exhibit "E." Developer has received final plat approval on, Phase I Property consisting of 47 Equivalent Residential Units or lots (hereinafter referred to as "ERUs"), Phase IV Property, consisting of 26 ERU's, and has also received final plat approval on Phase 7A, 8A, 13 & 14, consisting of 103 ERU's leaving 362 ERU's of vested density for development in subsequent phases of the Project, together with other uses, as more particularly described in Section 2 of this Agreement. , Phases 7A and 8A and Phases 13 & 14 are more particularly described in Exhibits "C and "D" respectively, and in the final approved plats for Phase 7A & 8A of the Project, which are or will hereafter be recorded with the County Recorder's office, and which are incorporated by reference herein as will all Phases pertaining to this Agreement as their final plats are approved and recorded .
- G. The County desires to enter into this Agreement because the Agreement establishes planning principles, standards, and procedures to: (1) eliminate uncertainty in planning and guide the orderly development of Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project consistent with the County General Plan, the County Development Code, and the conditions imposed by the Planning Commission and County Legislative Body; (2) mitigate significant environmental impacts; (3) ensure installation of necessary on-site and off-site public improvements; (4) provide for the preservation of substantial permanent open space; (5) make provision for trail facilities; (6) provide for the timely payment of all fees and charges, including impact fees in the amounts set forth herein; (7) ensure that public services appropriate to the development of Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project are provided; (8) provide for the maintenance of facilities, trails and open space within the development during construction and after completion; and (9) otherwise achieve the goals and purposes of the County and Developer, in particular, those agreed to by the Parties as outlined in the Settlement Agreement.
- H. Developer desires to enter into this Agreement to ensure that Developer may proceed with Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project in accordance herewith.

- I. The County has undertaken review and planning actions relating to the development of the Project. These actions are set forth in the official minutes and record of the County Planning Commission and the County Legislative Body. A condition of final approval of Phase 7A & 8A of the Project is that Developer enter into and abide by the terms of this Agreement and it is the expectation of the Parties that this will also be a condition of final approval for Phases 2, 3, 5, 7B, 8B, 9, 10, and 12. The terms of this Agreement apply to Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12. These various review and planning actions, along with the attached Settlement Agreement, are collectively referred to herein as the "Current Approvals" and "Future Approvals"
- J. Following a duly noticed public hearing, the County Legislative Body granted final approval to Developer on Phase 7A & 8A of the Project on December 22, 2005, subject to Developer entering into this Agreement.
- K. By developing Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project in accordance with this Agreement and the final approvals of each phase, such phases shall be in compliance with the applicable Wasatch County General Plan and all development ordinances, resolutions, rules, regulations, policies, standards, and directives of the County, or as otherwise provided in the Settlement Agreement.
- L. Each Party acknowledges that it is entering into this Agreement voluntarily.
- M. Nothing in this Agreement shall supersede the Settlement Agreement, or the applicable ordinances to the extent not inconsistent with the Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. EFFECTIVE DATE AND TERM

1.1 Effective Date.

This Agreement shall become effective on the date it is executed by Developer and the County (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

1.2 Term.

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of twenty-five (25) years. Unless otherwise agreed between the County and Developer, Developer's vested interest(s) and right(s) contained in this Agreement expire at the end of the Term, or upon termination of this Agreement.

Upon termination of this Agreement, for any reason, the obligations of the Parties to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner. No easements, maintenance requirements, or other agreements intended to run with the land shall expire.

Section 2. DEFINITIONS

Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it in this section.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"County" shall mean Wasatch County and shall include, unless otherwise provided, any and all of the County's agencies, departments, officials, employees or agents.

"County General Plan" or "General Plan" shall mean the General Plan of Wasatch County, adopted December 10, 2001.

"Current Approvals" shall have the meaning set forth in Recital J of this Agreement.

"Developer" shall have that meaning set forth in the preamble, and shall include Developer's successors in interest and assigns.

"Director" shall mean the Director of the Wasatch County Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Home Owners' Association" or "HOA" means The Crossings at Lake Creek Home Owner's Association, a non-profit corporation formed in accordance with the state and federal law and authorized to impose fees sufficient to perform the maintenance obligations transferred to it by Developer.

"Planning Commission" shall mean the Wasatch County Planning Commission.

“Planned Residential Development”: shall have the meaning set forth in the 1997 Wasatch County Code Section 16.04.1700.

“Project” shall mean the entire 336 acre development known as The Crossings At Lake Creek Development, including without limitation Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 thereof.

“Project Improvements” shall mean the infrastructure improvements intended for public or private use and located within the boundaries of the Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 Property, as defined hereafter, including sewer lines, water lines, roads, electricity, gas, telephone, detention basins, curb and gutter, trails, recreational facilities, and open space.

“Phase 7A & 8A ” shall mean Phase 7A & 8A of the Project, consisting of 45 lots, which is more particularly described in Exhibit “C”.

“Settlement Agreement” shall mean the agreement between the Parties dated, October 28, 2002 and attached as “A”.

“Subsequent Developer” shall mean a developer assignee to whom Developer transfers or assigns Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project or any portion thereof, for further development consistent with this Agreement.

Section 3. OBLIGATIONS OF DEVELOPER AND THE COUNTY

3.1 Obligations of Developer.

(a) ***Generally.*** The Parties acknowledge and agree that the County's agreement to perform and abide by the covenants and obligations of the County set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

(b) ***Conditions to Current Approvals.*** Developer shall comply with all of the Conditions to Current Approvals, which are understood to be the following:

- (1) ***Compliance With Conditions Imposed By County:*** Developer agrees to comply with all conditions heretofore imposed by the Planning Commission or the County Legislative Body during the preliminary and final approval process, as set forth in the official minutes of the County Planning Commission and County Legislative Body.
- (2) ***Payment of Administrative Fees:*** Subject to the terms and provisions of the Settlement Agreement, Developer agrees to pay all generally

applicable Wasatch County fees as a condition of developing the Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 Property.

- (3) **Will Serve Letters:** The following services will be provided to the Project by special service districts, each of which has issued to Developer a "will serve" letter, copies of which are attached hereto as Exhibit "F" and incorporated by reference herein:

Service	Entity Providing Service
Culinary Water	Twin Creeks Water District
Irrigation Water	Lake Creek Irrigation
Trash Removal	Wasatch County Solid Waste Special Service District
Sanitary Sewer	Twin Creeks Special Service District

- (4) **Construction of Project Improvements:** Except for landscaping, irrigation lines, and recreation facilities, which are not required improvements under 16.27.19 (2004) for Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12, all Project Improvements, within Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project shall be inspected and accepted by the County, in writing prior to the issuance of any building permit, including permits for single family dwellings, within such phase. The foregoing is not intended to otherwise restrict the application of 16.27.19 of the Wasatch County Code (2004).
- (5) **Construction and Maintenance of Recreational Facilities:** Developer shall construct certain recreational facilities in conjunction with Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 in accordance with an addendum to this Agreement, which shall include renderings, to be signed for each phase as it is approved by the County. Said addendums shall list all recreational facilities within the phase and an agreed upon completion date for each recreation facility. Such addendums to this agreement shall be executed prior to the recording of the approved Plat and in general accordance with the overall preliminary approval.

Developer shall maintain the recreation facilities in each phase in all respects. This obligation shall be transferred to the Home Owner's Association. Maintenance provided by Developer or the Home Owners' Association shall meet or exceed a standard of reasonableness and safety as reasonably, legally and appropriately established by the County not inconsistent with the terms and provisions of the Settlement Agreement, and other applicable

ordinances not inconsistent with the Settlement Agreement, and state and federal laws. In the event Developer or the Home Owners' Association fails to maintain the recreational facilities, the County may (but is not obligated to) maintain them. In the event the County undertakes the maintenance of these facilities, the market value of the cost of this maintenance is hereby agreed to and shall constitute a valid lien on the Property and its lots on a parity with and collected at the same time and in the same manner as general County taxes that are a lien on the Property.

All recreation facilities will be constructed in a manner consistent in quality with the provisions and requirements specified in the respective addendum for each phase. .

Maintenance of Open Space, storm drain, water quality facilities and Trails: Developer will grant to the Home Owner's Association, and to Wasatch County, an Open Space Preservation Easement for all open space as defined and set forth in the final plat approval in each plat of Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 and shall be incorporated to this Agreement by way of an addendum upon final approval of the plat by the County. Trails shall be open and accessible to the public. The Open Space Preservation Easement shall be approved by the County and shall include language that prevents the Home Owner's Association from vacating any portion of the easement without the prior approval of the County. Developer will also reserve certain portions of Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project as trails detailed in the Trail Plan that will be submitted and approved by the Wasatch County Trail Planner prior to final approval of each phase and said plan shall be attached hereto as an addendum to this Agreement upon final approval of the phase by the County. Developer shall be responsible to maintain the open space, trails, and detention basins, in all respects, including but not limited to landscaping, irrigation, and weed control. This obligation shall be transferred by written agreement to the Home Owners' Association. Maintenance provided by Developer or the Home Owners' Association shall meet or exceed a standard of reasonableness and safety as established by the County. In the event Developer or the Home Owners' Association fails to maintain the open space, detention basins, or trails, the County may (but is not obligated to) maintain them. The market value of the cost of this maintenance is hereby agreed to and shall constitute a valid lien on the Property and its lots on a parity with and collected at the same time and in the same manner as general County taxes that are a lien on the Property. The above requirement does not apply to the property donated to the County for a Park.

Construction Information/Restrictions and Landscape Plan: Developer has submitted to the County the Construction Information and Restrictions attached hereto as Exhibit "G" and incorporated by reference herein. These Restrictions shall guide development of Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project. Developer will also submit to the County at each phase final approval a Landscape Plan which developer agrees to be bound by from a conceptual standpoint in quality, and which shall be an addendum to this Agreement.

Detention pond and storm drainage maintenance: All detention ponds will remain the property and responsibility of the Home Owners Association or other applicable entity with the long term ability to maintain and perform said maintenance. The HOA or other applicable entity remains responsible for all inspection, maintenance, and repair of the detention areas and drainage swales leading to detention ponds.

At a minimum maintenance of the detention pond shall include:

Inspection: Inspect detention pond for erosion and any changes after every major storm event but at least yearly. Inspect embankments for any visible signs of erosion, seepage, sloughing, sliding, or other instability. Inspect outlet structures for flow obstructions, cracks, vandalism, or erosion.

Regular maintenance

- Proceed with corrective measures for observed problems immediately or as soon as weather conditions permit
- Mow grass as required. Remove undesirable vegetation such as trees, bushes, and vines from embankments and pond area.
- Fill all eroded gullies and vehicle ruts and compact soil. Backfill any hollow spots under concrete spillways or outlet structures and compact soil. Replace any riprap that has washed away from spillways and pipe outlets. Determine the cause of any slides or sloughs and repair. Take corrective action to prevent future recurrence.
- Remove all trash, debris, tree limbs, or other flow obstructions from detention pond, outlet structures, and pipes. Fill all animal burrows and compact soil. Repair vandalism. Maintain pond and outlet structures in good working order.
- Do not use pesticides, herbicides, or fertilizers in or around the detention pond (unless approved by the County). These products will leach from the pond and pollute streams and river.
- Make sure that the detention pond is draining properly. Detention ponds are designed to release storm water slowly not hold the water permanently. Improperly maintained ponds can harbor breeding areas for mosquitoes and reduce the storage volume of the pond.

- Do not place yard waste such as leaves, grass clippings or brush in ponds or drainage ways.

Annual Maintenance

Remove vegetation from any cracks in concrete spillways or outlet structures and seal with mastic joint filler. Lubricate and test moving parts on gates, valves, etc. Repaint metal parts to prevent rust. Replace badly rusted parts. Remove any accumulated sediment to restore pond to design volume. Reseed with County approved seed mix as necessary to maintain good vegetative cover on exterior of embankments.

Board of Adjustment Requirements

All lots developed on Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 shall adhere to the requirements of the Board of Adjustment as approved in the Board of Adjustment hearing on May 12, 2005. The requirements are as follows:

That all homes built on lots between 6,000 and 9,999 square feet will have a minimum combined depth in front and back yards of thirty linear feet. All homes built on 10,000 square feet to 13,000 square feet or larger will have a combined depth in front and back yards of forty linear feet. (2) The minimum front yard or back yard setback will be ten feet. Back yard measurements will be made from the back plane of the home and will exclude the garage if the zero lot line placement is being utilized. (3) There will always be twenty feet between the structures regardless of the setback. (4) Corner lot setbacks on the main corridor entrance roadway off from 1200 South will be fifteen feet. There will be a minimum number of garages located on this corridor and Wasatch County will not require setbacks to be varied on the main corridor for the lots that front the main corridor. Corner side setbacks on all other lots will be a minimum of ten feet. (5) Also, to ensure varied setbacks, no more than two houses in a row may have the same front setback excepting those lots that front the main corridor. (6) All units must have a minimum of twenty feet of parkable space between the unit and the sidewalk. (7) Finally, if rear yard fencing is not used then in no case shall two units with ten foot rear setbacks be allowed to back each other.

Garage setbacks – There must be a minimum of 20' from the front of the garage to the sidewalk to allow off street parking.

(6) Bonding:

- a. *Performance Bonds and Warranty Bonds.* Developer shall post performance bonds in relation to the Project, and warranty bonds on Project Improvements except as noted below. The bonds shall conform to the requirements specified in the Settlement Agreement, specifically section 5.3.3. Furthermore, the performance bonds shall be separately itemized for the improvement of the landscaping. Upon completion the County will inspect the landscaping installation and upon acceptance will fully release the landscaping bond within 30 days of said completion. Completion of landscaping shall mean that all plants have been installed and are in a live manner at the time of the County inspection. Completion of landscaping in hydro-seeded areas shall mean that the area show a uniform 6" stand of grass after germination of seed. If for any reason Developer desires to transfer its obligations in a hydro-seeded area before a final inspection by Wasatch County, such transfer shall be to a functioning HOA through the means of the written transfer agreement approved by the County and signed by the HOA and shall require a performance bond comparable to replace or transfer the existing bond required from the Developer. The Developer and County agree that partial bond releases are available for completed work in accordance with 16.27.20(5)(a) (2004). In the event of any partial bond release, any remaining work shall be bonded for 110% of its value in order to ensure adequate bonding capacity to complete the incomplete work.

- b. *Enforcement of Warranty Bond.* Pursuant to paragraph 5.3.3 of the Settlement Agreement, Developer's warranty bond will be limited to one year in duration from the date the County accepts the Project Improvements for that phase, and shall apply only to alleged defects identified in a written notice from the County to the Developer. The warranty bond will not be expected to cover damage due to abusive use by third parties not under the control or direction of Developer. The County shall notify the Developer, in writing, within a reasonable time after the discovery of any failure, defect, or damage but not later than one year from the date of the County's acceptance of the Project Improvements for that phase. The Developer shall remedy at its expense any defects in workmanship included in the warranty. If Developer does not remedy or

begin efforts to remedy the alleged defects within a reasonable time, the County may pursue its remedies under the warranty bond.

3.2 Obligations of the County.

(a) **Generally.** The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the County's agreement to perform and abide by the covenants and obligations of the County set forth herein.

(b) **Conditions to Current Approvals.** The County shall not impose any further Conditions to Current Approvals other than those presently detailed in the Settlement Agreement, this Agreement to the extent not inconsistent therewith, and the official minutes of the County Planning Commission and County Legislative Body unless agreed to in writing by the Parties or as otherwise already agreed to in the Settlement Agreement.

(c) **Acceptance of Project Improvements.** The County agrees to accept all Project improvements intended for public use and constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Wasatch County Building and Engineering Department reviews and approves the plans for any Project improvements prior to construction; (2) Developer permits Wasatch County Building and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected and certified that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Wasatch County Building and Engineering Department; and (5) the Project improvements pass a final inspection by the Wasatch County Building and Engineering Department. In the case of open space, landscaping, and public trails, and other amenities the Planning Department will perform the reviews, approvals, and inspections described above and acceptance will be given if the improvements meet the approved plans

(d) **Additional Obligations of the County.**

1. **Road Maintenance:** The roads in Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project shall be public roads. After the roads have been constructed in accordance with County standards and the County has accepted them, the roads shall be Class B roads and shall be placed on the County Class B road map. The County shall maintain the roads, providing the same level of service provided to other Class B

roads in the County. The priority and method of maintenance shall be determined in the sole discretion of the County.

2. ***Snow Removal:*** The County shall provide snow-removal on the public roads in the Project. The County shall provide the same level of service provided to other Class B roads in the County. The priority and method of snow-removal shall be determined in the sole discretion of the County.
3. ***Garbage Removal, Police and Fire Protection:*** The County shall provide these services in the Project. The County shall provide the same level of service provided to other subdivisions in the County.
4. ***Maintenance of the Storm Drain System:*** The County shall maintain the subsurface storm drain system which maintenance shall include without limitation keeping the catch basins free of debris. The maintenance obligations for the surface detention basin are set forth in Section 3.1(b)(5) of this Agreement, above.
5. The priority and method of providing the services set forth in this subsection (d) shall be determined in the sole discretion of the County.

Section 4. VESTED RIGHTS

4.1 Vested Rights.

(a) **Generally.** Developer shall have the vested right to develop Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project in accordance with the Settlement Agreement, and this Agreement to the extent not inconsistent therewith, and approved Preliminary Plan, and final plat approvals.

Section 5. AMENDMENT

5.1 Amendments Generally. Unless otherwise stated in this Agreement, the Parties may amend this Agreement by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project.

Section 6. DEFAULT; TERMINATION; ANNUAL REVIEW

6.1 General Provisions.

(a) **Defaults.** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

(b) **Termination.** Subject to the terms and provisions of the Settlement Agreement, which cannot be terminated, if the County elects to consider terminating this Agreement due to a material default of Developer, then the County shall give to Developer a written notice of intent to terminate this Agreement and Developer shall have sixty (60) days within which to remedy any such purported default. At the conclusion of such sixty (60) day cure period, the matter may be scheduled for consideration and review by the County Legislative Body at a duly noticed public meeting to consider whether the County legislative body makes a finding whether there has been a material default by the Developer. Developer shall have the right to offer written and oral evidence prior to and at the time of said public meeting. If the County Legislative Body determines that a material default has occurred and is continuing and desires to terminate this Agreement, the County Legislative Body shall send written notice thereof to Developer by certified mail. Within sixty (60) days of this notice, either party may bring an action in a court of competent jurisdiction seeking a determination of whether a material default has occurred that has not been remedied. Termination of the Development Agreement will not modify or terminate the Settlement Agreement or any of the easements and agreements intended to last for perpetuity.

(c) **Developer's Remedies.** In the event Developer believes the County is in material default under the Agreement, it shall give written notice to the County, identifying the purported default. After the sixty (60) day cure period expires, if the Developer believes the default has not been cured, it may pursue any rights or remedies available at law or in equity. Nothing in this section is intended to waive any applicable provisions, if any, of the Utah Governmental Immunity Act.

6.2 Review by County

(a) **Generally.** The County may at any reasonable time and subject to the terms and provisions of the Settlement Agreement, and this Agreement to the extent not inconsistent therewith, and obligations of good faith, fair dealing and reasonableness, request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement, or as specified in the Settlement Agreement. Developer shall provide any and all information reasonably necessary to demonstrate compliance with this Agreement as requested by the County within thirty (30) days of the request, or at a later date as agreed between the Parties.

(b) **Determination of Non-Compliance.** If the County Legislative Body finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the County may deliver a Default Notice pursuant to Section 6.1(a) of this Agreement. If the default is not cured in a timely manner by Developer, the County may terminate this Agreement as provided in Section 6.1(b) of this Agreement. Termination of this Agreement in no way adversely impacts the Settlement Agreement.

(c) **Notice of Compliance.** Within fifteen (15) days following any written request which Developer may make from time to time, the County shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the County, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

6.3 Default by the County.

In the event the County defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 6.1 of this Agreement. Default by the County in no way adversely impacts the Settlement Agreement.

6.4 Enforced Delay; Extension of Time of Performance.

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorist acts, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

6.5 Annual Review.

Developer and the County shall (at the discretion of the County) meet annually to review the status of the Project and to review compliance with the terms and conditions of this Agreement and the Settlement Agreement.

Section 7. DEFENSE AND INDEMNITY

7.1 Developer's Actions.

Developer shall defend, hold harmless, and indemnify the County and its elected and appointed officers, agents, employees, and representatives from any and all claims, costs, judgments and liabilities (including inverse condemnation) which arise directly or indirectly from the County's approval of the Project, construction of the Project, or operations performed under this Agreement by (a) Developer or by Developer's contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors.

7.2 Hazardous, Toxic, and/or Contaminating Materials. Developer further agrees to defend and hold harmless the County and its elected and/or appointed boards, officers, employees, and agents from any and all claims, liabilities, damages, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence of hazardous, toxic and/or contaminating materials on the Project solely to the extent caused by the intentional or negligent acts of Developer, or Developer's officers, contractors, subcontractors, employees, or agents.

7.3 County's Actions.

Nothing in this Agreement shall be construed to mean that Developer shall defend, indemnify, or hold the County or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the County, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the County of improvements that have been offered for dedication and accepted by the County for maintenance; and/or (iii) violations of the Settlement Agreement, by the County.

Section 8. TRANSFER OF MAINTENANCE OBLIGATIONS.

8.1 Creation of Home Owners' Association. It is anticipated that Developer will transfer certain maintenance obligations to the Home Owners' Association. The Association shall be a non-profit corporation formed in accordance with the state and federal law. The Association shall have authority to impose fees sufficient to perform the maintenance obligations transferred to it and power to lien individual lots or homes for collection of those fees, if allowed by law. After Developer has transferred its duties or obligations in connection with any phase of the development of the Project to the Home Owners' Association with respect thereto, the Developer shall have no further liability with respect to such duties and obligations, which are transferred to the Home Owners' Association.

8.2 Written Transfer Agreement Required. The Developer shall transfer Developer's maintenance obligations to the Home Owners' Association, Developer shall do so by written transfer agreement approved by the County. Obligations may not be transferred until the following obligations are met:

1. Improvements are installed as per the plans that were submitted and approved by the County.
2. The Home Owners Association is fully operational and capable of maintaining transferred maintenance obligations.

Section 9. INSURANCE CERTIFICATES.

9.1 Insurance Certificates. Prior to beginning construction on Phases 2, 3, 5, 7A, 8A, 7B, 8B, 9, 10, and 12 of the Project, the Developer shall furnish to the County certificates of general liability insurance indicating that the County has been added as an additional named insured with respect to construction of infrastructure, project improvements, and recreational facilities within the Project. Until such time as the Project Improvements described in Section 3.1(b) of this Agreement are completed and approved by the County, such insurance coverage shall not terminate or be canceled or the coverage reduced until after thirty (30) days' written notice is given to the County.

Section 10. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the Parties that: (1) the subject Project is a private development; (2) the County has no interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the County accepts the same pursuant to the provisions of this Agreement; (3) Developer shall have full power over and exclusive control of the Property and Project herein described, subject only to the limitations and obligations of Developer under this Agreement; and (4) the County and Developer hereby renounce the existence

of any form of agency relationship, joint venture or partnership express or implied between the County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the County and Developer.

Section 11. MISCELLANEOUS

11.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

11.2 Subjection and Subordination. Each person or entity that holds any beneficial, equitable, or other interest or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to the County.

11.3 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

11.4 Other Necessary Acts. Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.

11.5 Construction. This Agreement has been reviewed and revised by legal counsel for both the County and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement, except as they may apply to the Settlement Agreement.

11.6 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

11.7 Covenants Running with the Land.

The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the

benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

11.8 Method of Enforcement.

The County may look to Developer or to the Home Owners' Association if the Developer has assigned its obligations to a Home Owners Association, for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. In the event that the Developer and Home Owner's Association are incapable or otherwise not functioning, the County may look collectively to each lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the County to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project, on a parity with and collected at the same time and in the same manner as general County taxes and assessments that are a lien on the Project. The County may pursue any remedies available at law or in equity, including the withholding of building permits or certificates of occupancy, to ensure compliance with this Agreement. The County shall not unreasonably withhold building permits or certificates of occupancy.

11.9 Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

11.10 Remedies. Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement.

11.11 Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

11.12 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement to ensure that the rights secured by the other Party through this Agreement and the Settlement Agreement can be enjoyed.

11.13 Requests to Modify Use Restrictions. Developer's successors, heirs, assigns, and transferees shall have the right, without the consent or approval of any other

person or entity owning property in any other part of the Project, to request that the County modify any zoning classification, use, density, design, setback, size, height, open space, road design, road dedication, traffic configuration, site plan, or other use restrictions associated with that portion of the Project to which the successor, heir, assign, or transferee holds title. The County shall consider any such request, but is not required to grant it, unless otherwise provided in the Settlement Agreement.

11.14 Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.
- (b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.
- (c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

11.15 Third-Party Beneficiaries. This Agreement is between the County and Developer, and its Subsequent Developer, successors and assigns. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

Section 12. NOTICES

Any notice or communication required hereunder between the County and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the County:

AL MICKELSEN
Director
Wasatch County Administration Building

188 South Main Street
Heber City, UT 84032

With Copies to:

Thomas L. Low
Wasatch County Attorney
805 West 100 South
Heber City, UT 84032

If to Developer:

The Crossings at Lake Creek X, LLC
Tracey Cannon General Manager
455 East 400 South, #400
Salt Lake City, Utah 84111

With Copies to:

Kevin E. Anderson
Parry, Anderson & Gardiner
1200 Eagle Gate Tower
Salt Lake City, UT 84111
(801) 521-3434

Section 13. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

Unless otherwise noted herein or in the Settlement Agreement, this Agreement is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the County and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A - Settlement Agreement

Exhibit B - Project Description

Exhibit C - Phases 7A 8A Property - Legal Description

Exhibit D - Phases 13&14 Property - Legal Description

Exhibit E - Recognized Lot Types

Exhibit F - Will Serve Letters

Exhibit G - Construction Information & Restrictions

Exhibit H - Wasatch County Code 16.04.1700 & 16.04.430

Exhibit I - Minutes of the May 12, 2005 Board of Adjustment Hearing

Exhibit J Project Proposed Phasing Plan

Section 14. RECORDATION OF DEVELOPMENT AGREEMENT

No later than ten (10) days after the County enters into this Agreement, the County Clerk shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

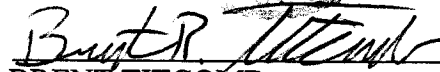
IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and the County as of the date and year first above written.

WASATCH COUNTY:


MICHAEL DAVIS
Wasatch County Manager


Attest:



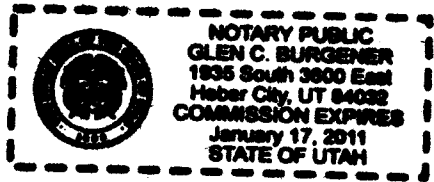

BRENT TITCOMB,
Wasatch County Clerk Auditor

STATE OF UTAH)
 SS:
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 21 day of March, 2007, by Michael Davis, who executed the foregoing instrument in his capacity as the Wasatch County Manager and by Brent Titcomb, who executed the foregoing instrument in his capacity as the Wasatch County Clerk Auditor.


NOTARY PUBLIC
Residing at: 1935 So. 3600 E. Heber, UT

My Commission Expires:
1/17/11



THE CROSSINGS AT LAKE CREEK X, LLC

By: Tracey Cannon

Tracey M Cannon
Tracey Cannon, General Member

STATE OF UTAH

COUNTY OF Salt Lake, :SS

The foregoing instrument was acknowledged before me this 20th day of March, 2007, by Tracey Cannon, who executed the foregoing instrument in her capacity as the duly authorized representative of Developer, a Utah Limited Liability Corporation.

Catherine L. Ford-Barbiero

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

5/1/2010



EXHIBIT A

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT

[Settlement Agreement]

EXHIBIT A

~~Ent 281253 Bk 0743 Pg 0685~~

Ent 317575 Bk 0935 Pg 1422

SETTLEMENT AGREEMENT FOR THE CROSSINGS AT LAKE CREEK DEVELOPMENT PROJECT IN WASATCH COUNTY, STATE OF UTAH

This Settlement Agreement (the "Settlement Agreement" or "Agreement"), is entered into this ~~28~~²⁹ day of October, 2002, by and among The Crossings at Lake Creek, L.L.C., a Utah limited liability company, T.L.C. Investment Enterprises, L.L.C., a Utah limited liability company, and Tracey Cannon, the owner and/or developers of certain undeveloped real property in Wasatch County, State of Utah ("Cannon") and Wasatch County, a political subdivision of the State of Utah, by and through its Board of County Commissioners.

Article 1 DEFINITIONS

- 1.1 **Agreement** means and refers to this Settlement Agreement.
- 1.2 **Board of County Commissioners, Board of Commissioners or County Commission, or Legislative Body** shall mean the duly elected Legislative Body of Wasatch County and shall include the Board of County Commissioners and the County Council for Wasatch County, State of Utah.
- 1.3 **Code** means the Wasatch County Code, including but not limited to ordinances regulating development and land use.
- 1.4 **Settlement Agreement** means and refers to this Settlement Agreement.
- 1.5 **County** means Wasatch County, a political subdivision of the State of Utah, acting by and through its duly elected Legislative Body.
- 1.6 **Developer or Developers** means and refers to The Crossings at Lake Creek, L.L.C., a Utah limited liability company, T.L.C. Investment Enterprises, L.L.C., a Utah limited liability company, and Tracey Cannon.
- 1.7 **District** means the Twin Creeks Special Service District.

- 1.8 **Litigation** means the litigation commenced in state and federal court by Cannon and T.L.C. Investment Enterprises, L.L.C. against the County, the Wasatch County Commission, the Twin Creeks Special Service District, Robert Mathis, Dan Matthews, Leeroy Farrell and John Does 1-20 relative to development and development densities permitted on the Property, which suits are styled *Tracey Cannon, et al. v. Wasatch County, et al.*, United States District Court, District of Utah, Civil No. 2:02 CV-0287 K; and *Tracey Cannon, et al. v. Wasatch County, et al.*, Fourth District Court, Wasatch County, State of Utah, Case No. 020500187.
- 1.9 **Property** means approximately 336 acres of undeveloped real property located in Wasatch County, Utah, the tax survey legal description of which is attached as Exhibit "A."
- 1.10 **Project** means the development of the Property into a Planned Residential Development consisting of 538 equivalent residential units, including all necessary improvements and infrastructure incidental to such development.

Article 2 RECITALS

- 2.1 Developer owns or controls the Property.
- 2.2 A dispute has arisen between the parties concerning the existence of any completed application for development approval on the Property, the processing of development applications and requests for development of the Property; vested rights to development density on the Property, the applicable law under which said vested rights were perfected, whether vested rights were obtained prior to the effective date of any affordable housing plans or ordinances in the County; the interpretation of an Agreement dated April 18, 1995 between Cannon and the Twin Creeks Special Service District, and other issues.
- 2.3 The Litigation has been commenced by Developer for the resolution of the issues set forth above, and other issues.
- 2.4 The County and the Developer have entered into settlement discussions in order to formulate a Settlement Agreement which would resolve the Litigation and related disputes.
- 2.5 The County, acting pursuant to its authority under Utah Code Ann. §§ 17-27-101, *et seq.*, 17-52-501, and 17-53-315 and the Code has elected to enter into this Settlement Agreement, and has made certain determinations with respect to the Property, the vested rights of the Developer in relation to the Property and the applicable ordinances governing development of the Property.

**Article 3
FINDINGS**

The Board of County Commissioners, acting pursuant to its authority under Utah Code Ann. §§ 17-27-101, *et seq.*, 17-52-501, and 17-53-315 and the Code, and in the exercise of its legislative discretion has made the following determinations with respect to the Property including all of the findings of fact and conclusions of law necessary to make each of the following findings and determinations:

3.1 To resolve the Litigation, and related issues in a manner that eliminates for the County the uncertainties and risks inherent in the Litigation, conserves significant time and resources that would be spent by the County to defend the Litigation, protects tax-payer money against the risk of loss resulting from an adverse judgment in the Litigation, and otherwise resolves the Litigation in a manner that assures a result acceptable to the County, the County has adopted and approved this Settlement Agreement by Resolution, on the ~~28th~~ day of October, 2002.

3.2 Developer shall have the vested right to develop the Property in accordance with the terms and conditions of this Settlement Agreement.

3.3 Where there is a conflict between a provision of this Settlement Agreement and the Code, or General Plan, or other land use regulations or laws, this Settlement Agreement shall take precedence.

**Article 4
VESTED RIGHTS**

4.1 Vested Rights Under the 1997 Development Code, § 16.04.1700, enacted January 27, 1997. The Developer shall have the vested right to develop the Property and the Project under Wasatch County Ordinance No. § 16.04.1700, enacted January 27, 1997 (the "1997 Ordinance"). Except as otherwise provided in this Settlement Agreement and except as proscribed by compelling and countervailing fire or building code provisions in effect at the time of building permit application, in developing the Property, the Developer shall not be required to comply with more restrictive or burdensome development or zoning ordinances, code provisions, standards or requirements enacted or adopted after the 1997 Ordinance, or inconsistent with the terms or provisions thereof, including any subsequently enacted ridgeline ordinance as that ordinance relates to the subdivision of the Property. It is agreed however that any less restrictive development ordinances, standards regulations, requirements or practices enacted, adopted, or followed by Wasatch County after the 1997 Ordinance will apply to Developer and the Project, at the election of the Developer, including, without limitation, the right to include flag lots in the Development. Furthermore, if development ordinances are enacted or adopted subsequent to the date of this Settlement Agreement that permit residential development density on the Property that exceeds the development

density to which Developer vests hereunder, Developer, at its election may apply to the Planning Commission for approval to develop the Property under such newly-enacted ordinances or development code. Subject to the vested rights set forth in this Settlement Agreement, in developing the Project Developer shall be required to go through the procedural planning process and administrative review required by state law and county ordinance.

4.2 Development Rights Vest Prior to Adoption of Affordable Housing Initiatives and Ordinances. It is specifically agreed that Developer's rights to develop the Property vested in accordance with this Settlement Agreement are stipulated and deemed to have accrued prior to the adoption or enactment by the County of any affordable housing standards, requirements, initiatives, or ordinances. Developer is not required to comply with the requirements thereof.

4.3 Vested Rights, Density and Open Space. The Developer and the Property and Project shall have and are hereby granted vested rights to the residential development density of 538 equivalent residential units on the Property. Developer is also vested with the right to develop the Project with an open space requirement of not more than twenty percent (20%). This density and open space vesting is specifically approved, authorized, fixed and determined pursuant to the Code, the 1997 Ordinance and this Settlement Agreement in settlement of the Litigation, and shall not be subject to further procedural planning processes or administrative review.

4.4 Vesting Re: Payment of Water and Sewer Connection Fees. Pursuant to the vesting under the 1997 Ordinance, as set forth above and except as otherwise provided herein, Developer, the Project and the Property vest under the practice existing in 1997 that the Developer is not required to advance funds to acquire water delivery connections and sewer connections from the District as a requirement for development approval or plan recordation. Instead, it is stipulated and agreed that the buyers of lots in the Project, as finally approved, shall at the time of building permit application pay for water delivery connections and sewer connections from the District, at the connection fees established and charged by the District, at the time each buyer makes application for a building permit. Developer, and its assigns, shall not be required to pre-pay for any such water or sewer connections. It is further agreed that Developer, in its sales literature will indicate that the District fees for water and sewer connections have not been paid as a part of the development approval and plat recording process, and that it is the responsibility of each lot owner to pay such fees at the at the time each lot owner makes application for a building permit. Further, Developer agrees that the plat shall contain a notation that the payment of water and sewer connection fees is the responsibility of each lot owner at the time of building permit application, and that water and sewer connection fees have not been paid by the Developer as part of the development approval or plat recording process.

4.5 Vested Rights—Future County Ridgeline Ordinance. Pursuant to vesting under the 1997 Ordinance, as set forth above, Developer shall not be required to subdivide the Property in a manner that is prescribed by any ridgeline ordinance enacted

subsequent to the date hereof; provided that Developer shall in connection with final plat approval of each phase of the Project: (1) identify all lots that would impact any primary or secondary ridgeline, as defined by any ridgeline ordinance in effect at the time of such plat approval; (2) for each such lot, identify on the plat a building envelope of a size acceptable to Developer and consistent with the setback requirements in the 1997 Code, or the Code at the time of final plat approval, whichever is less restrictive, which building envelope shall be located on the lot to mitigate ridgeline impact; and (3) for each such lot and building envelope, identify building height restrictions designed to mitigate ridgeline impact. Such building height restrictions are deemed adequate and satisfactory if the height of a house on such a lot does not exceed the height of any applicable ridgeline by more than one story and a 10/12 roof. Nothing in this Settlement Agreement shall on behalf of any lot owner within the Project constitute a waiver of aesthetic design requirements in effect at the time that each lot owner makes application for a building permit.

4.6 Development Approval. Development of the Property consistent with the vesting set forth above may occur in phases. Subject to the vesting set forth above, and except as otherwise expressly stated herein, nothing in this Settlement Agreement shall be interpreted as a waiver of the procedural requirements of state law and local ordinance for the subdivision and development of land. To the extent not inconsistent with the terms and provisions of this Settlement Agreement, Developer shall be required to submit each phase of development on the Property to the County Planning Commission and the County Legislative Body for approval. It is stipulated and agreed that Developer will not be required to obtain or transfer sufficient culinary and irrigation water rights to service any phase of the Project prior to the time of final plat approval.

4.7 Culinary and Irrigation Water Rights. As provided in Section 4.6 above, as a condition of final approval of each phase of the Project, Developer shall obtain and transfer sufficient culinary and irrigation water rights to service that phase for which Developer seeks final approval. It is agreed that the County Water Resources Director shall have authority to determine the amount and sufficiency of culinary and irrigation water rights that Developer must obtain and transfer to service each such phase of the Project, subject to the terms and provisions of this Settlement Agreement, this Code, and generally applicable policies. No plat of any phase of the Project shall be recorded and no infrastructure or improvements of any kind shall be commenced or permitted in any phase of the Project until Developer has acquired and transferred sufficient culinary and irrigation water rights to service that phase. If Developer sells all or any part of the Project, Developer shall, after consultation with the County Water Resources Director, disclose to the Buyer prior to the sale the number of acre feet of culinary and irrigation water that must be acquired and transferred in order to develop the Project or part of the Project purchased. Prior to and as a condition of final approval of Phase One of the Project, Developer shall obtain and transfer sufficient culinary and irrigation water rights, as determined by the County Water Resources Director, to service Phase One.

4.8 Term. The vested rights acquired by Developer under this Settlement Agreement shall expire 25 years from the date of this Settlement Agreement.

Article 5
ADDITIONAL CONSIDERATION FOR RESOLVING THE LITIGATION

5.1 Resolution of Issues. The County, acting as the governing board of the District, and Developer agree that the letter agreement reached by Cannon and the District, dated April 18, 1995, shall be rescinded, vacated and terminated and the parties shall be returned to their *status quo ante*. Specifically, (1) Cannon shall waive any right, title, or interest to any of the water connections referenced in said Letter Agreement; (2) any obligations owed by Cannon as of the date of this Settlement Agreement in connection with said water connections are cancelled and waived; and (3) the District shall pay to Cannon the \$455,000.00 principal amount she invested/loaned to the Twin Creeks Special Improvement District for construction of water distribution system infrastructure improvements. This repayment shall be made to Cannon upon the execution of this Agreement. The District will fund that payment through a loan made by Larry H. Miller to the District pursuant to the Promissory Note and Security Agreement attached hereto as Exhibit "B".

5.2 Separate Agreement with District. The District and Cannon shall enter into a Separate Agreement which shall, upon execution be attached hereto as Exhibit "C". This Separate Agreement shall detail the agreement generally described in section 5.1 above between the District and Developer. In the event of a conflict between this Settlement Agreement and the Separate Agreement, the Separate Agreement shall control. The County, acting as the governing board of the District, shall cause and require the District to execute such separate agreement.

5.3 Additional Agreements and Consideration for Resolution of the Litigation. In addition to the agreement set forth above, the County and Developer further stipulate and agree to the following terms and provisions as additional consideration for resolution of the claims raised in the Litigation:

5.3.1 Deferral of Greenbelt Rollback Tax Deferral. The County agrees that any greenbelt rollback taxes incurred by Developer as a result of the development of Phase One of the Project shall be deferred, and not be due or payable for three years after the recording of the final plat on Phase One of the Project, without interest or penalty accruing during such deferral period. The County agrees that any greenbelt rollback taxes incurred by Developer as a result of the development of Phase Two of the Project shall be deferred, and not be due or payable, for three years after the recording of the final plat on Phase Two of the Project, without interest or penalty accruing during such deferral period. All other greenbelt rollback taxes becoming due as a result of development of the Project shall be regularly due and payable as set forth in the Utah Code.

- 5.3.2 Waiver of Density Determination Fee. The County agrees to waive any density determination fee that would otherwise be applicable to the development of the Property in accordance with this Settlement Agreement, or any portion thereof. This fee is waived because the density has been determined by this Settlement Agreement, as a vested right, and as consideration for resolution of the Litigation.
- 5.3.3 Reduction of Warranty Bond. The County agrees that any warranty bond required by the Developer in connection with each phase of the Project will be limited to one year in duration from the date of completion of improvements for each such phase, and any warranty retainer will be limited to not more than 25% of the bond amount.
- 5.3.4 Schedule for Processing The Project . The County agrees to accelerate the process for preliminary approval of the entire Project, and for final plat approval of Phase One of the Project and consistent therewith agrees to proceed with the process in accordance with the Schedule attached hereto as Exhibit "D". The County will hold a reasonable number of special meetings or hearings necessary to process preliminary approval of the Project and final approval of Phase One therein in accordance with the specific timetable set forth in this Schedule. However, the County's obligation to comply with the specific timetable set forth in this Schedule shall be contingent upon Developer submitting to planning staff in a timely fashion all documents and submissions required by the Code that are not inconsistent with this Agreement. If the Developer is unable to submit necessary documentation or to otherwise perform any requirement necessary for preliminary approval of the Project, or final approval of Phase One within the time periods set forth in the Schedule, the County will continue to process the Project in an accelerated manner as necessary documents are submitted and requirements performed by Developer, holding a reasonable number of special meetings or hearings necessary to do so.
- 5.3.5 Resolution of Litigation. The parties shall execute a Stipulation and approve a Judgment to resolve the case consistent with the terms and provisions of the Settlement Agreement. The Stipulation shall authorize dismissal of the action with prejudice against named individuals and John Does, in their individual capacities. The parties stipulate and agree that the Judgment may be entered either in the matter of *Tracey Cannon, et al. v. Wasatch County, et al*, United States District Court, District of Utah, Civil No. 2:02 CV 0287K (the "Federal Court Action"), or in the action

pending in the Fourth District Court, County of Wasatch, State of Utah, styled *Tracey Cannon, et al. v. Wasatch County, et al.*, Civil No. 020500187 (the "State Court Action"). If the Judgment is entered in the Federal Court Action, the parties stipulate to the removal of the State Court Action to the Federal Court for consolidation in the Federal Court Action. It is agreed that if the Judgment is entered in the State Court Action, the Federal Court Action will thereafter be dismissed without prejudice by stipulated motion of the parties and thereafter be barred by the doctrine of res judicata based on the judgment entered in the State Court Action.

- 5.3.6 Deferral and Reduction of Plat Fees for Phase One Approval. The preliminary approval application fee for the entire Project shall be fixed at the sum of \$36,000.00. The payment of said \$36,000 sum shall be deferred to November 7, 2002, without interest or penalty to accrue during said deferral period.
- 5.3.7 Public Park Donation and Provision of Required Culinary and Irrigation Water. Upon request by the County, Developer shall convey to the County a 10-acre parcel within the Project to be used as a public park. This parcel shall be designated on the preliminary and final documentation of the Project submitted by Developer. The County shall have discretion to determine the time at which it requests conveyance of the parcel and the time the parcel will be improved and the nature of the improvements to be made and constructed. In making these determinations, the County will consult with the Developer. After the parcel is improved by the County, the County shall be responsible to maintain all improvements and shall provide culinary and irrigation water sufficient to support use of the parcel as a public park.
- 5.3.8 Lake Creek Flood Plain Clean-up. The County will provide clean up of that portion of the Lake Creek flood plain located on the Property. The exact scope of the clean up project will be detailed and itemized after Developer and designated County representatives conduct a joint site inspection of said flood plain. The clean up of the flood plain on the Property shall be completed by August 1, 2003.

**Article 6
SUCCESSORS AND ASSIGNS**

6.1 Binding Effect. This Settlement Agreement shall run with the land and shall be binding upon the County and inure to the benefit of the successors and assigns of Developer in the ownership or development of any portion of the Property.

6.2 Assignment. Developer shall have the right to assign its rights under this Settlement Agreement to any successors or assigns who may own the Property or develop the Project.

Article 7

GENERAL TERMS AND CONDITIONS

7.1 Agreement to Run with the Land. This Settlement Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of Developer and Developer's successors in interest. As used herein, Developer shall include the parties signing this Settlement Agreement and identified as "Developer," and all successor owners of any part of the Project.

7.2 No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.

7.3 Entire Agreement. This Settlement Agreement constitutes the entire agreement between the parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Settlement Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Settlement Agreement.

7.4 Attorneys' Fees. This Agreement is in full satisfaction and settlement of Developer's disputed claims raised in the Litigation, and any other claims known or unknown, arising out of the facts and circumstances described therein, including any attorneys' fees incurred by Developer in connection with the preparation, prosecution, negotiation or resolution of the Litigation. Should any party hereto employ attorneys for the purpose of enforcing this Settlement Agreement, or any judgment based on this Settlement Agreement, or for any reasons or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, the prevailing party shall be entitled to receive from the other party thereto reimbursement for reasonable attorneys' fees, costs and expenses incurred therein. In determining the amount of the County Attorney's fees, should that become necessary, it is agreed that the County Attorney's or a Deputy County Attorney's fees shall be determined at the same hourly rate as a lawyer in Plaintiff's law firm who has practiced law for the same number of years as the County Attorney or Deputy County Attorney, provided that such fees are otherwise reasonable and appropriate. If the County hires outside counsel, the County's attorneys' fees shall be calculated at the rate charged by the law firm retained by the County, provided that such fees are otherwise reasonable and appropriate. No attorneys' fees, expenses or costs shall be awarded to either party for time spent in preparing for or conducting a mediation of any dispute arising out of this Settlement Agreement.

7.5 Third-Parties. There are no third-party beneficiaries of this Settlement Agreement. The Developer consents to joinder in any action brought to challenge this Settlement Agreement. Developer shall be responsible for any and all costs and fees incurred by Developer in defending against such action.

7.6 Notices. Any notice, confirmation or other communication hereunder (each, a "notice") hereunder shall be given in writing by certified mail, postage prepaid, return receipt requested, at the following addresses:

To the County:

Wasatch County Legislative Body
Board of Commissioners / County Council
Wasatch County Administration Building
25 North Main Street
Heber City, UT 84032

With a copy to:

Derek P. Pullan, Esq.
Wasatch County Attorney
805 West 100 South
Heber City, UT 84032
Facsimile: (435) 654-2947

To Developer:

Tracey Cannon
814 Northview Drive
Salt Lake City, UT 84103

With a copy to:

Kevin Egan Anderson
Parry, Anderson & Gardiner
60 East South Temple, Suite 1270
Salt Lake City, Utah 84111
Facsimile: (801) 521-3484

or to such other addresses as either party or their successors may designate by written notice. Notice shall be deemed given upon actual receipt, if personally delivered, when transmitted if delivered by facsimile, one (1) business day following deposit with a reputable overnight courier that provides a receipt, or on the third (3rd) day following deposit in the United States mail in the manner described above.

7.6 Applicable Law. This Settlement Agreement is entered into under and pursuant to, and is to be construed and is enforceable in accordance with, the laws of the State of Utah.

7.7 Titles and Captions. All section titles or captions contained in this Settlement Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

7.8 Force Majeure. Any default or inability to cure a default caused by strikes, lockouts, labor disputes, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty, or other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default.

7.9 Severability. If any provision of this Settlement Agreement, or the application of such provision to any person or circumstance, is held invalid, void, or unenforceable, but the remainder of this Settlement Agreement can be enforced without failure of material consideration to any party, then the remainder of this Settlement Agreement shall not be affected thereby and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties.

7.10 Necessary Approvals. The signators to this agreement represent and warrant that they have each been fully authorized by the entity for whom they are executing this agreement to do the same, and that by signing this agreement they are binding the entity for whom they have executed the agreement, and that it is hereby made fully liable and responsible for all duties and obligations hereunder, and shall be entitled to all rights and benefits under this Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been executed by Wasatch County, acting by and through the Board of County Commissioners of Wasatch County, State of Utah, pursuant to Resolution No. 0225, dated the 06 day of October, 2002, authorizing such execution.

COUNTY:
BOARD OF COUNTY COMMISSIONERS OF
WASATCH COUNTY, STATE OF UTAH

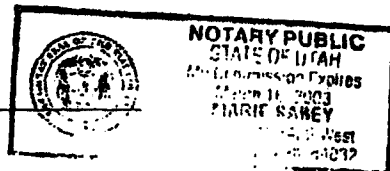
By: _____



STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 28th day of October, 2002 by T. LaRen Provost, Chairman of the Board of County Commissioners of Wasatch County, State of Utah.

Marian Sabey
Notary Public
Residing at: Heber City
My commission expires: 3-16-03



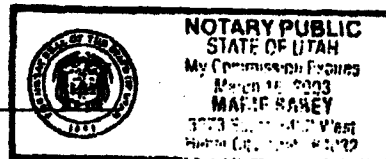
DEVELOPER: TRACEY CANNON

By: Tracey M. Cannon

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

The foregoing instrument was acknowledge before me this 28th day of October, 2002 by Tracey Cannon.

Marian Sabey
Notary Public
Residing at: Heber City
My commission expires: 3-16-03



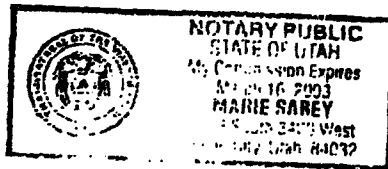
DEVELOPER:
T.L.C. Investment Enterprises, L.L.C.

By: Tracey M. Cannon

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

The foregoing instrument was acknowledge before me this 28th day of October, 2002 by, Tracey Cannon, the duly authorized gen mgr, of T.L.C. Investment Enterprises, L.L.C.

Marie Sarey
Notary Public
Residing at: Salt Lake City
My commission expires: 3-16-03



DEVELOPER:
The Crossings at Lake Creek, L.L.C.

By: Tracey M. Cannon

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

The foregoing instrument was acknowledge before me this 28th day of October, 2002 by, Tracey Cannon, the duly authorized gen mgr, of The Crossings at Lake Creek, L.L.C.

Marie Sarey
Notary Public
Residing at: Salt Lake City
My commission expires: 3-16-03

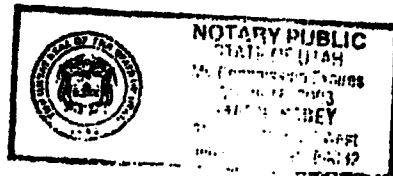


EXHIBIT B

THE CROSSINGS AT LAKE CREEK

[Project Description]

EXHIBIT C

The Crossings at Lake Creek Phases 7A & 8A Property
(Revised December 1, 2004)

THE CROSSINGS AT LAKE CREEK PHASE 7A AND 8A
Boundary Description

A parcel of land platted as a portion of a Master Planned Residential Development called "The Crossings at Lake Creek", located in Section 3, Township 4 South, Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, more particularly described as follows:

BEGINNING at a point South 89°48'35" West 905.43 feet along the north line of said Section 3 and South 4465.75 feet from the North Quarter corner of said Section 3 (basis of bearings being South 89°48'35" West 2660.60 feet measured between the North Quarter Corner and the Northwest Corner of said Section 3), and running thence South 09°21'11" West 61.77 feet; thence South 421.42 feet to the Northerly line of that certain Property recorded as Bk 369, Pg 22 in the Wasatch County Recorder's Office; thence along said property line the following two (2) calls: 1) North 89°48'40" West 236.00 feet; 2) South 348.82 feet to a point on the North right-of-way line of 1200 South Street; thence along said right-of-way line North 89°49'33" West 965.70 feet; thence North 02°38'40" East 14.46 feet to a point of tangency with a 174.96 foot radius curve to the left; thence northerly 18.25 feet along the arc of said curve through a central angle of 05°58'34" (chord bears North 00°20'37" West 18.24 feet); thence South 89°49'30" East 318.23 feet; thence North 80°46'43" East 95.28 feet; thence North 00°11'20" East 77.42 feet to a point on a 25.00 foot radius non-tangent curve to the left; thence northwesterly 39.27 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 44°48'40" West 35.36 feet); thence North 04°57'09" East 60.21 feet to a point on a 25.00 foot radius non-tangent curve to the left (radius point bears North 00°11'20" East); thence northeasterly 39.27 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 45°11'20" East 35.36 feet); thence North 00°11'20" East 150.00 feet to a point of tangency with a 25.00 foot radius curve to the left; thence northwesterly 39.27 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 44°48'40" West 35.36 feet); thence North 00°11'20" East 60.00 feet to a point on a 25.00 foot radius non-tangent curve to the left (radius point bears North 00°11'20" East); thence northeasterly 39.27 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 45°11'20" East 35.36 feet); thence North 00°11'20" East 152.50 feet to a point of tangency with a 25.00 foot radius curve to the left; thence northwesterly 39.27 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 44°48'40" West 35.36 feet); thence North 00°11'20" East 60.00 feet to a point on a 25.00 foot radius non-tangent curve to the left (radius point bears North 00°11'20" East); thence northeasterly 39.27 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 45°11'20" East 35.36 feet); thence North 00°11'20" East 49.34 feet to a point of tangency with a 487.50 foot radius curve to the right; thence northerly 30.02 feet along the arc of said curve through a central angle of 03°31'42" (chord bears North 01°57'11" East 30.02 feet); thence South 86°16'59" East 151.86 feet; thence South 89°48'40" East 472.55 feet to a point on a 355.00 foot radius non-tangent curve to the right (radius point bears South 89°00'41" East); thence northerly 10.39 feet along the arc of said curve through a central angle of 01°40'36" (chord bears North 01°49'37" East 10.39 feet); thence South 87°20'00" East 166.13 feet to the POINT OF BEGINNING.

Containing 588,288 square feet or 13.505 acres.

EXHIBIT D

The Crossings at Lake Creek Phases 13 &14 Property

EXHIBIT D**The Crossings at Lake Creek Phase No. 14**
Boundary Description

A Parcel of land located in the East Half of Section 3, Township 4 South, Range 5 East, Salt Lake Base and Meridian, being more particularly described as follows:

BEGINNING at a point on the easterly boundary line of The Crossings at lake Creek Phase 4 and on the southerly line of The Crossings at Lake Creek Phase 1 which is South $00^{\circ}03'35''$ West 1653.23 feet along the center of section line and South $89^{\circ}56'25''$ East 305.47 feet from the North Quarter Corner of Section 3, Township 4 South, Range 5 East, Salt Lake Base and Meridian (basis of bearings being South $89^{\circ}48'35''$ West 2660.60 feet between the Northwest Corner and the North Quarter Corner of Section said Section 3), said point also being a point on a 745.00 foot radius curve to the left, and running thence along said Phase 1 boundary line the following ten (10) calls: 1) 57.03 feet along the arc of said curve through a central angle of $04^{\circ}23'09''$ (chord bears North $63^{\circ}22'23''$ East 57.01 feet) to a point on a 605.00 foot radius curve to the right; 2) 224.00 feet along the arc of said curve through a central angle of $21^{\circ}12'48''$ (chord bears North $71^{\circ}47'12''$ East 222.72 feet); 3) North $82^{\circ}23'36''$ East 137.48 feet to a point on a 855.00 foot radius curve to the right; 4) 193.15 feet along the arc of said curve through a central angle of $12^{\circ}56'38''$ (chord bears North $88^{\circ}51'55''$ East 192.74 feet); 5) South $84^{\circ}39'47''$ East 37.66 feet to a point on a 285.00 foot radius curve to the right; 6) 248.92 feet along the arc of said curve through a central angle of $50^{\circ}02'35''$ (chord bears South $59^{\circ}38'29''$ East 241.09 feet); 7) North $55^{\circ}22'49''$ East 75.00 feet to a point on a 360.00 foot radius non-tangent curve to the right; 8) 339.97 feet along the arc of said curve through a central angle of $54^{\circ}06'26''$ (chord bears South $07^{\circ}33'58''$ East 327.47 feet); 9) South $19^{\circ}29'15''$ West 317.65 feet; 10) South $61^{\circ}48'45''$ East 493.99 feet; thence leaving said Subdivision South 843.13 feet; thence North $89^{\circ}40'02''$ West 252.88 feet; thence South $00^{\circ}09'02''$ West 177.36 feet; thence North $85^{\circ}44'58''$ West 183.01 feet; thence North $75^{\circ}29'43''$ West 168.48 feet; thence North $70^{\circ}38'47''$ West 206.07 feet; thence North $65^{\circ}42'42''$ West 261.49 feet; thence North $83^{\circ}11'00''$ West 176.94 feet; thence North $60^{\circ}00'17''$ West 229.46 feet to the Northerly boundary corner of The Crossings at Lake Creek Phase 4 Subdivision as recorded in the Wasatch County Recorder's Office; thence along said Subdivision boundary the

following five (5) courses: 1) North $28^{\circ}55'50''$ East 401.56 feet; 2) North $53^{\circ}03'54''$ West 133.18 feet; 3) North $03^{\circ}15'04''$ West 860.31 feet; 4) North $62^{\circ}31'40''$ East 163.71 feet; 5) North $24^{\circ}26'16''$ West 119.45 feet to the point of beginning.

Contains 2,063,642 square feet, or 47.375 Acres.

EXHIBIT E

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT

[Recognized Lot Types]

In accordance with the Preliminary Plat approval of November 2002, The Crossings at Lake Creek may include, at Developer's discretion, the following types of lots:

- 2 Acre equestrian lots
- 1 ½ Acre lots
- 1 Acre lots
- ¾ Acre lots
- ½ Acre lots
- 1/3 Acre lots
- 10,000 square foot lots
- 8,000 square foot lots
- 7,000 square foot lots
- 6,000 square foot lots
- Townhouse building pads

Some lot sizes may actually have slight variations in their overall square footage due to layout and lot configurations. Under no circumstances shall the lot sizes be less than 6,000 square feet.

EXHIBIT F

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT

[Will Serve Letters]

EXHIBIT F

Lake Creek Irrigation Company
598 North 200 West
Heber City, Utah 84032
(435) 657-1240

Cannon Associates
Attn: Brad Nelson
455 East 400 South Suite 400
Salt Lake City, UT 84111

Re: Crossings at Lake Creek Phases 1, 4, 7A & 8A

Cannon Associates,

This letter is to issue notice of "Will Serve" for the Crossings at Lake Creek Phases 1, 4, 7A & 8A located from 2400 East to 3600 East between 1200 South and Lake Creek Road, Heber City, Wasatch County, Utah. This property is within the service area of Lake Creek Irrigation Company (LCIC). The LCIC has irrigation facilities that provide pressurized irrigation service to portions of this property. Dominion Engineering has prepared preliminary plans for the proposed Phases of development on this property. The points of service for this development have been established by LCIC, and connection, modification, and metering details have been given to Crossings at Lake Creek. A "LCIC System Connection, Modification and Encroachment Application and Agreement" has been submitted to LCIC.

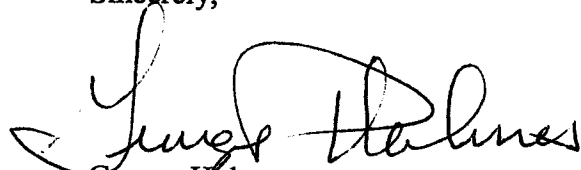
Upon approval by the Board of Directors of LCIC and execution of the above stated agreement, pressurized irrigation service will be provided by LCIC to homeowners within these proposed phases of the Crossings at Lake Creek. The LCIC system has capacity for and can adequately serve the irrigation needs of this development provided that proper improvements as required by the above stated agreement are made, all policies of LCIC are followed, and that sufficient water rights are maintained for the properties being served. Water can only be delivered at times and in amounts as permitted by the allocated water rights. There are currently 14.75 shares of Lake Creek Irrigation Company Primary stock allocated to Phases 1, 4, 7A & 8A of the Crossings at Lake Creek.

The review and approval process of the LCIC System Connection, Modification and Encroachment Application and Agreement will outline necessary improvements, stock ownership and other special conditions required to provide irrigation service to these phases of the Crossings at Lake Creek. The terms of this agreement must be implemented to validate service as indicated by this letter. This validation will be by issuance of a "Final Approval Letter" by LCIC. (See LCIC Policies governing System Connection, Modification and Encroachment agreements.)

The terms of the LCIC System Connection, Modification and Encroachment Application and Agreement discussed in this letter shall supersede all prior agreements between Crossings at Lake Creek or Evergreen Irrigation Company, LLC or any other individual or entity representing or contracting in favor of the Crossings at Lake Creek and the Lake Creek Irrigation Company. Additionally, upon execution of the LCIC System Connection, Modification and Encroachment Application and Agreement all prior "Will Serve" conditions issued by Lake Creek Irrigation Company and correspondence relating to the Crossings at Lake Creek shall be considered null and void.

If you have any questions or concerns, please contact George Holmes at 435-503-0465 or Devin McKrola at 801-830-0901 or 435-657-1240.

Sincerely,



George Holmes
President LCIC

EXHIBIT G

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT

[Construction Information & Restrictions]

Extraction from the CC&Rs

CONSTRUCTION INFORMATION & RESTRICTIONS

1. **Style.** Dwelling style, design, alterations or additions must conform to standards to be determined by the Architectural Control Committee. The following architectural styles are strictly prohibited: 1) A-frame structures, 2) Geodesic dome structures, 3) Mobile homes or any similarly constructed buildings.
2. **Roofing.** No roof shall have a pitch less than 6:12 and not greater than 12:12 unless prior written approval is received from the Committee. Flat roofs are not preferred but will be considered on a case by case basis by the Committee if the flat roof contributes to the overall exterior design of the house. If asphalt shingles are used, a minimum of a 25-year architectural shingle is required for all homes and outbuildings. All other roof materials shall compliment the building design and encourage compatibility with the surrounding environment. They shall be in tones indigenous to the area. Any brightly colored or highly visible materials are strictly prohibited.
3. **Exterior.** Exterior construction materials shall be limited to stone, brick, stucco, natural wood siding, logs, composite/concrete siding, or composite or vinyl shingles, and shall be in tones indigenous to the area. White trim is permitted but white should not be used as a primary exterior color.
4. **Garages & Driveways.** Driveways must have a minimum of twenty (20) feet from the garage to the jogging trails so that two (2) vehicles may be parked side by side.
5. **Approval of Construction Plans.** This is a two step process. The first step is to get Architectural Control Committee (the "Committee") approval and have your plans stamped for approval by this Committee. The second step is to get a Wasatch County Building Permit. **No construction of any kind shall commence without an issued building permit from Wasatch County and approval from the Committee.**

[]

EXHIBIT H

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT
[Wasatch County Code 16.0431700]

[

EXHIBIT H

16.04.1700. Planned Residential Developments.**(1) General Provisions.**

(a) **Intent.** The intent of this section is to establish guidelines which will facilitate approval of planned residential developments, and to insure that the intent and purposes of Section 16.04.010 are properly implemented.

(b) **Scope.** The owner of a tract of land located in a zone in which planned residential developments are permitted may construct such a development

thereon by complying with the regulations and standards of this section.

(2) **Permitted Uses.** Uses permitted in planned residential developments shall be limited to the following:

(a) one, two, and multiple-family dwellings, including residential condominium projects and sleeping apartments;

(b) residential accessory structures;

(c) vacation homes;

(d) recreation and cultural facilities, including but not limited to trails, ice skating rinks, swimming pools, tennis courts, central horse stables, arenas and corrals, golf courses, outdoor theaters, playgrounds, landscape parks, indoor game rooms, sauna baths, children's play equipment, and similar recreation facilities and equipment for the exclusive use of the occupants of the development and their personal guests;

(e) convenience establishments, provided such establishments to not exceed 15 square feet of sales floor space per dwelling unit, and provided the dwelling units are constructed prior to the convenience establishments;

(f) driveways, streets, parking areas, common storage areas, ponds, landscape features and similar uses and

structures;

(g) accessory storage structures.

(3) **Preliminary Plan Requirements.** The preliminary plan shall be prepared by a design team consisting of at least an engineer, an architect or landscape architect, and an attorney, and shall consist of the following elements:

(a) **Preliminary Layouts.** A preliminary layout drawn to a scale not smaller than one inch equals 100 feet, or as determined by the Planning Commission in accordance with the County standards and which shall show the following:

- (i) type of development;
- (ii) name and address of developer;
- (iii) name and address of designer;
- (iv) date;
- (v) north point;
- (vi) township, range, and section lines;
- (vii) zone boundaries and designations;
- (viii) boundary of the development;
- (ix) adjacent property owners;
- (x) contour intervals as required by the Planning Commission, highlighting slopes between 10%-20%, and 20%-30%, and at least at two-foot intervals within building development clusters;
- (xi) location of all existing buildings and structures within the bounds of the development

and within 1,000 feet from the boundaries thereof;

(xxi) location of existing public utility easements, railroads, street locations and names, power line, culverts, drain pipes, drainage channels, flood channels, areas where ground water rises periodically to within five feet of the surface of the ground, and areas within the bounds of the development which would be covered in the event of a 100 year flood;

(xiii) location and size of existing water mains;

(xiv) location and size of existing sewer mains;

(xv) proposed layout of the development showing the location of all lots, building sites, open space areas, recreational or cultural facilities, common storage areas, and other proposed facilities;

(xvi) number of dwellings or sleeping units within each building used for dwelling or sleeping purposes;

(xvii) location of proposed private streets and roads and proposed public streets, if any;

(xviii) profile of all streets on the same scale as the site plan;

(xix) cross-section of streets;

(xx) location of proposed pedestrian walkways, public utility lines and easements,

gas or heating lines, culverts, drainage channels, flood channels, and bridges;

(xxi) location and size of proposed sewage lines, if any;

(xxii) proposed disposal of sewage;

(xxiii) proposed garbage collection points;

(xxiv) intended source of water;

(xxv) location and size of proposed water lines;

(xxvi) location of proposed fire hydrants;

(xxvii) proposed street lights and floodlights;

(xxviii) drainage system plan for both surface and flood water;

(xxix) landscape plan showing general areas only;

(xxx) irrigation system plan showing how water will be delivered and distributed to the project and where it will be disposed of;

(xxxi) sketches and descriptions of all proposed buildings and structures, including elevation and floor plans of all proposed structures in sufficient detail to permit an understanding of the style, character and extent of the development;

(xxxii) tabulations showing:

a) total number of acres in the proposed development;

b) total number of lots or building sites;

c) number of lots for one-family detached dwellings;

d) number of lots for two-and multiple-family dwellings;

e) total number of dwelling units, including those contained in sleeping apartments;

f) percentages of each of the proposed dwelling types;

g) the number of square feet of area to be occupied by convenience establishments;

h) number of off-street parking places;

i) number of square feet of development area to be used for off-street parking;

j) number of linear feet of development area to be devoted to roadways;

k) percentage of area to be devoted to open space, 10% minimum;

l) percentage of development area to be covered by material that prevents ready entrance of surface water into the soil, including surfaced streets, driveways, and buildings;

m) an estimate of the average and maximum daily and monthly number of visitors according to activity and total activities;

n) Areas where water rises to within 5 feet of the surface at any time.

o) if horses or cows are to be permitted within the project a plan is to be submitted that shows how the animals will be

fed, watered, and cared for that will minimize contributions to erosion or water pollution from animal waste, pasturing, feeding, and penning the animals up.

(xxxiii) any additional information which the Planning Commission may require;

(xxxiv) see also Section 16.04.430.

(b) **Environmental Impact Statement.** An environmental impact statement shall be prepared by the developers in accordance with the County standards, and submitted to the Planning Commission, which shall be used as the basis for determining the layout, density, and other features of the planned residential development.

(c) **Preliminary Documentation.** Preliminary plans shall also include the following documents which shall be prepared in accordance with the County standards:

(i) articles of incorporation and bylaws of the Property Owners Association;

(ii) declaration of covenants, conditions, restrictions and management policies;

(iii) proposed open space preservation agreements and maintenance agreements between developer, Home Owners Association and the County, providing for the establishment of an impound account as a means of assuring proper

maintenance;

(iv) a statement from the Wasatch County Water Board indicating the domestic water rights available to the development are sufficient to supply culinary, stockwatering, and irrigation uses proposed for the project.

(v) A statement from the County Commission indicating that the plan for the disposal of all surface drainage water leaving the site is acceptable to the County.

(vi) a statement from the Utah State Department of Health, through the Wasatch City-County Health Department, containing recommendations pertaining to the proposed sewage disposal system and treatment facilities;

(vii) a statement from the Planning Commission staff certifying that the preliminary plans conform to County standards;

(viii) a statement from the Planning Commission staff containing recommendations pertaining to the quantity of water, spacing of fire hydrants, and other features relating to fire prevention;

(ix) a statement requesting annexation to an existing County service district, or requesting the creation of such a district to provide urban services, unless the land is already within such a district.

(4) **Final Plan Requirements.**

(a) **Final Layout.** The final layout shall be drawn on a map of maps at a scale of one inch equals 100 feet and shall be prepared in accordance with the County standards, as directed by the Planning Commission, which shall show the following:

- (i) a detailed site plan with complete dimensions showing the following:
 - a) the boundaries of the planned residential development;
 - b) the location of all lots;
 - c) the location of all multiple-family dwellings and all buildings containing sleeping apartments; also, the location of all recreational, cultural structures and areas, retail sales and service establishments, and all other buildings, fences, walls, and similar structures.
 - d) the location of the minimum setbacks for all one and two-family dwellings when such dwellings are located on separately owned lots;
 - e) the location of all common open spaces and special use areas and facilities;
 - f) the location of all streets, driveways, walkways and parking areas;
 - g) the provisions for the management of any large animals proposed for use within the development.
 - h) other structures,

facilities, or areas required by the Planning Commission.

- (ii) typical building plans, including floor plans and exterior evaluations in order to acquaint the Planning Commission with the type of housing intended to be built within the development;
- (iii) landscape, grading, and planting plans, showing treatment of all exposed slopes and location of all plant materials, the location of decorative materials, statuary, recreation equipment, special effects, and sprinkler and irrigation systems;
- (iv) parking layout showing parking stalls and places of ingress or egress;
- (v) engineering plans pertaining to the location and size of proposed water and sewer lines, fire hydrants, utilities, curbs and gutters, streets, drainage system and structures, irrigation system plan, and other improvements;
- (vi) engineering plans of water quality and flood protection measures to be taken on behalf of, or within the development;
- (vii) a transportation plan that has been approved by the County, showing that the traffic impact on the existing public road system has been considered and approved;
- (viii) all other information

not specifically mentioned herein but requested by the Planning Commission for submission with preliminary development plans, except that the same shall be prepared in accurate detail in accordance with the County standards as required by the Planning Commission.

(b) Final Documentation. The following statements and documents shall be submitted:

(i) a statement of approval from the Utah State Department of Health, through the Wasatch City-County Health Department showing approval of systems to be used for water for domestic purposes;

(ii) a document from an engineer registered to practice in the state of Utah certifying that the proposed source of water has been tested and that it can produce water in sufficient quantity to comply with Wasatch City-County Health Department standards, whenever the water is to come from a previously unapproved source, approval must be shown by the State, through the Wasatch City County Health Department; the document must be approved by the agencies or persons designated to represent the Wasatch County Engineering Department, and the Wasatch City-County Health Department as to its accuracy and as to quantity;

(iii) conveyance of water

rights to the appropriate public entity, or to the Home Owners Association, or corporation, or to some other entity within the exclusive control of the owners of the lots, whenever the water source is not from a recognized publicly owned system. The conveyance shall be filed after final approval has been granted, and before any lots have been sold;

(iv) a statement from the Utah State Department of Health, through the Wasatch City-County Health Department, regarding the adequacy of the proposed domestic sewage disposal facilities, whenever sewage is to be disposed of in a central domestic treatment plant which has had prior approval, approval of the governing or administrative officers for the plant that the project will be served by the facility is required;

(v) the following official documents prepared in a manner that will fully present information called for:

a) articles of incorporation and bylaws of the association;

b) declaration of covenants, conditions, restrictions, and management policies;

c) open spaces preservation agreement between the developers, the Property Owners Association, and the County;

d) a maintenance agreement between the developers,

Property Owners Association and the County, providing, among other things, for the establishment of an impound account as a means of assuring proper maintenance of the development.

(vi) an information brochure prepared in accordance with the County standards for use in the sales program to inform all home buyers in simple terms about the Home Owners Association and the rights and obligations of lot owners;

(vii) itemized estimates of the cost of constructing all required improvements to be constructed in the development. The developer shall also submit a report to the Planning Commission pertaining to the source or sources of the construction funds, as verified by the Wasatch County Engineering Department;

(viii) an itemized estimate of revenues and expenditures covering the operation and maintenance of the services to be provided by the developer or Home Owners Association, which shall be used as the basis for establishing the amount of association dues. The planning commission shall disapprove the project in the event that anticipated revenues do not appear to be sufficient to cover the cost of performing

the services to be furnished by the developers;

(ix) a statement from the Utah State Department of Health, through the Wasatch City-County Health Department, granting engineering approval of the development pertaining to water and sewage facilities;

(x) a statement showing that the road system proposed for the project is approved by Wasatch County so that the traffic impacts on publicly owned roads are minimized and so that other private properties nearby are not isolated from development by the lack of provision of connections points to the roads of this development.

(xi) a statement indicating the engineering plans have been finally approved by the appropriately designated official or body, as designated by the County Commission.

(c) **Final Plat.** The final plat shall be prepared on a linen or reproducible tracing medium approved by the Planning Commission. The plat shall be drawn in accordance with County standards at a scale of one inch equals 100 feet, or as directed by your Planning Commission, and shall show the following:

(i) boundaries of the development and location of all required survey monuments;

- (ii) the location of all lot lines;
- (iii) the location and extent of all common areas reserved for use by the residents of the development;
- (iv) the location and extent of all street and other parcels of land to be dedicated to the public;
- (v) the location and extent of all easements;
- (vi) the location and extent of all parcels within the development which are subject to the restrictions imposed by the open space preservation agreement;
- (vii) the following certifications;
 - a) owners' dedication of land for public use;
 - b) owner's statement setting forth the character and extent of the limitations imposed under the open space preservation agreement;
 - c) surveyor's certificate of survey accuracy;
 - d) County surveyor's approval of plat accuracy;
 - e) Planning Commission approval;
 - f) any privately owned roads, walkways, recreation facilities, or other privately held common facilities within the development;
 - g) connections proposed to any other private or public road systems from the development;
 - h) County Commission approval of the plat and the acceptance of dedications of public

facilities for public use if any.

(5) **Standards and Conditions.** All planned residential development shall conform to the following standards and conditions:

(a) **Design.**

(i) There shall be architectural unity and harmony within the development and with the surrounding area.

(ii) The plan shall provide for the clustering of dwellings, convenience establishments and parking area as set forth in Subsection 16.04.020 (5) (d) (ii). All clusters shall be situated on land which is appropriately suited for such development.

(iii) Clustering and spacing of dwellings, units, and other structures shall provide for a restful and uncrowded environment.

(iv) The design of the development shall be guided by the content of the environmental impact statement, the suitability of soils, vehicular safety, enhancement of aesthetic and scenic values, convenience of vehicular access to the development and to the dwellings within the development, uncrowded appearance of yards around buildings, quality of landscaping and other amenities, the preservation of bodies of water, and other significant features.

(v) The development must show how the project complies with all applicable public capital facility plans, transportation plans, recreation facility master plans, and the Wasatch County Comprehensive Master Plan.

(b) **Landscape Plan.**

(i) All areas not covered by buildings, structures, automobile parking space, driveways, or by designated standing space for people, shall be landscaped with a combination of ground cover, shrubs, and trees which shall be maintained in accordance with good landscape practice. The plan may include both areas of existing vegetation and proposed landscaped areas, and shall specify the general types of plants and architectural features to be used. One inch or more of topsoil shall be placed on all exposed slopes when needed, as determined by the County inspector, or as approved by the County on the Landscape Plan, as a means of facilitating revegetation. Mesh wire, burlap, or other material shall also be used whenever necessary, as determined by the approved Landscape Plan or the County inspector, to stabilize the soil and allow plant material to grow.

(ii) The installation of

permanent sprinkler systems may be required by the Planning Commission in order to provide irrigation for planted areas within the clusters.

(iii) Areas that are to be maintained in natural or unirrigated ground cover are to be encouraged, where practical and approved by the County. All such areas are to be specifically shown on the plans, and instructions for the protection and maintenance of all such areas, are to be provided to the responsible body that succeeds the developer when the project is completed. Natural unirrigated vegetation areas must be maintained so that they are free from noxious weeds.

(iv) Any site that has been disturbed due to construction or was previously cultivated, and will no longer be cultivated due to development, must be revegetated in accordance with the approved Landscape Plan.

(v) The Landscape Plan must show how the plan will minimize erosion and water quality degradation as defined in the appropriate County Plans and Standards.

(c) **Open Space, Parks, and Playgrounds.**

(i) At least 30% of the gross area in a planned residential development shall be designated

as open space for the common use of the occupants of the development, up to one-half of which may be included within a flood channel; however, parking and storage areas, convenience establishments, residential, recreational, and cultural buildings, and a ten foot strip of land surrounding all buildings shall be excluded in calculating the required area for open space. Up to one third of the open space required under this section may be reduced by the County when the developer proposes and agrees to provide highly desirable developed recreation or open space facilities that are compatible with appropriate County Recreation or Open Space Plans.

(ii) As assurance that the designated open space will remain open and unobstructed from the ground upward, the developers shall execute an open space preservation agreement with the County, in which the developer agrees for himself and his successors and assigns to refrain from constructing unapproved buildings on the designated open space areas throughout the life of the development.

(iii) All flood channels and flood plain areas, if any, shall be included in the open space agreement referred to in Subsections (c) (i) and (ii).

(iv) Construction of all

common areas and facilities shall be provided by the owners, and maintenance of all common areas and facilities shall be provided at the expense of the developers or the Homeowners Association throughout the life of the development, unless they are to be dedicated to the public and the responsible public entity consents to the dedication in writing.

(d) Density of Housing Facilities Within the Development.

(i) The maximum number of dwelling units and sleeping apartments permitted within a planned residential development shall be two (2) units per gross acre of land within a development, excluding the land designated as open space as defined herein, located in the RA Zone.

(ii) All dwelling units shall be located within development clusters. The dwelling units may be situated in one or more buildings, provided that no building shall contain more than six dwelling units, and provided that a strip of land at least 20 feet wide shall be landscaped and left in open space around all buildings, except for paths and driveways as approved by the planning commission. No dwelling shall be constructed on a site which has a slope in excess of 30%, or lies within a designated 100

year flood plain, or other area subject to flooding or natural hazards as known at the time of the approval request or as disclosed by the environmental impact statement.

(e) **Non-Housing Facilities Within Developments.** Neither the design capacity nor the actual use of nonresidential facilities within a planned residential development, shall be permitted to degrade unreasonably the natural environment or cause the natural environment to be unreasonably degraded, based on the environmental impact statement pertaining to the development which impact statement, has been approved by the planning commission. Such determination shall be made by the County commission after receiving the recommendations of the planning commission and after the County commission has held a public hearing thereon, as required under the procedural part of this title.

(f) **Street System.**

(i) No street of roadway shall have a grade of more than 10%. No street of roadway shall be constructed in location or in such a manner which produces a slope face which exceeds the critical angle or repose; provided that the Planning Commission may approve a roadway producing such a slope

face where in its opinion all of the following conditions exist:

a) A roadway is necessary in the development, or properties adjacent to the development, and that the proposed roadway follows the most appropriate alignment.

b) The roadway and slope will not produce an undue hazard to the environment or adjacent properties.

c) All practical measures to reduce the slope angle or to prevent the soil from moving under the force of gravity until the vegetative material becomes re-established, shall be employed to stabilize the slope.

(ii) All public streets shall conform to the official street standards for public streets as adopted by the County.

(iii) All private streets and driveways shall conform to standards for private streets as adopted by the County.

(iv) All planned residential developments shall abut on and shall have access to a public street that has been hard-surfaced in compliance with the County standards.

(v) In the event that land within the proposed development is traversed by a proposed street that is shown or proposed in the County master plan or other plan approved by

the County Commission, the circulation system within the planned residential development shall be designed in accordance with that plan, and the right-of-way across the development shall be dedicated to the County, in accordance to the appropriate procedures for such dedications.

(vi) Streets, pedestrian paths, and equestrian rails shall be so designed as to minimize traffic hazards and soil erosion.

(g) Sidewalks, Paths, and Trails.

(i) Sidewalks, shall not be required, except in high pedestrian traffic areas as may be required by the Planning Commission.

(ii) As a means of protecting the vegetation, all paths and trails for both pedestrian and equestrian travel shall be clearly marked and shall be constructed in a manner that soil erosion will not result therefrom.

(iii) Where possible, and in accordance to agreement with the County or other appropriate agency, plans for trails and sidewalks are to be encouraged within developments, where there is a plan for a publicly owned and maintained trail or sidewalk within the development boundaries, the plan for the project is to consider and prepare for the implementation, construction,

and dedication, of such facilities, according to the policies adopted by the County for the provision and acceptance for such facilities.

(h) Drainage System Plan.

(i) The drainage plan shall include an analysis of potential drainage problems which may be caused by the covering of water absorption areas by impervious material, along with a proposal indicating how the surface water will be disposed of in a manner that will avoid erosion of soil and damage to buildings and improvements, both inside the development and to adjacent properties.

(ii) The plan shall include necessary culverts, drain pipes, and drainage channels.

(iii) Where surface drainage from the development will be directed into a public street of onto adjacent land, developers shall obtain and submit to the Planning Commission a statement of acceptance of the drainage plan from the appropriate agencies.

(iv) In the event that a flood channel traverses the development, the plan shall provide for the passage of a 100 year flood, and no building or structure shall be constructed within the channel which will increase flood hazards to property either within or outside the development.

(v) Design standards which will implement the appropriate water quality protection standards and plans for the County are to be incorporated within the Drainage System Plan. These standards are to minimize erosion damage, retain water on the site as much as possible, detain products of erosion on the site as much as possible, reduce impacts to groundwater from runoff and human activities, and protect the surface waters of Wasatch County and surrounding Counties from degradation which will reduce recreation and culinary water supply uses.

(i) **Water Supply.**

(i) A water supply shall be made available to all dwelling units and convenience establishments in amounts required by the Utah State Department of Health and the Wasatch City-County Health Department, as approved by the Planning Commission.

(ii) Wherever the water to be used in a planned residential development is to be derived from a source which has not received prior approval by the state and Wasatch City-County Health Departments and by the County fire marshal, such approvals must be obtained from these two departments based on compliance with state and County standards.

(j) **Water System.**

(i) All planned residential developments shall be served by a central water system which has been approved by the Utah State Department of Health and by the County fire marshal.

(ii) The system shall be designed to comply with the minimum requirements as set forth in the officially adopted County standards, and the approvals shall be based upon compliance therewith. In no case shall the system provide for storage of less than the amount of storage recommended by the County fire marshal.

(k) **Sewage Disposal.**

(i) No development plan shall contain a building site where soil conditions fail to meet Wasatch City-County Health Department standards for an individual sewage disposal system, unless a sewage disposal system is constructed which complies with County and State health standards and is approved by the Planning Commission.

(ii) All buildings designed for human occupancy shall be served by an approved sewage disposal system or systems before the buildings may be occupied.

(l) **Fire Protection.**

(i) Fire hydrants shall be installed at intervals within a cluster of dwelling units, in

such a manner that no lot or dwelling unit will be more than 250 feet distant from the closest hydrant, measured along a street or driveway.

(ii) The Planning Commission may require additional fire protection policies or equipment when recommended by the County fire marshal.

(m) **Off-Street Parking.**

(i) At least two off-street parking spaces shall be provided for each dwelling unit.

(ii) Additional off-street parking spaces shall be required for other uses, as set forth in the provisions of this title relating to off-street parking, or as may be determined specifically by the Planning Commission.

(iii) Parking areas shall be arranged so as to prevent through traffic to other parking areas.

(iv) All parking areas shall be surrounded by landscaping or by walls.

(v) No more than 16 parking spaces shall be permitted in a continuous row without being interrupted by landscaping.

(vi) No more than 64 parking spaces shall be accommodated in any single parking area in any housing area.

(vii) All streets and any off-street loading area shall be paved, and the design thereof approved by the Planning Commission. All areas shall be

marked so as to provide for orderly and safe loading, parking, and storage.

(viii) Parking for nonresidential purposes shall be provided appropriate to the type of nonresidential use, as deemed adequate to the Planning Commission.

(ix) All parking areas shall be adequately lighted. All such lighting shall be so arranged as to direct the light away from adjoining residences.

(x) All parking areas and off-street loading areas shall be graded and drained so as to dispose of all surface water without erosion or flooding.

(n) **Utilities.** Easements of not less than ten feet in width shall be required for all utility and service lines, and all such lines shall be placed underground except as may be approved by the Planning Commission.

(o) **Location of One and Two-Family Dwellings.** The location of all buildings and structures proposed to be constructed by the developer shall be shown on the detailed site plans, except that where a developer proposes to sell separate lots for one and two-family dwellings without constructing the dwellings thereon, the final site plan shall show whether the lot is for a one or two-family dwelling and shall show the setback lines. In the event that the developer elects

to construct the dwellings and other buildings prior to the sale of the lots or building sites, the location of the buildings on the lot or site must be shown on the final plans and must be constructed substantially as shown. The location of dwelling and other buildings may be determined by criteria using solar radiation for energy conservation, so long as the plans clearly show how such access is to be protected and covenants provide for the maintenance of these provisions by the property owners association.

(6) **Required Improvements.**

(a) The intent of those subsection is to require the construction and maintenance of only those improvements that are needed by the occupants and users of the facilities within the development itself, in contrast to improvements that are needed by the general public. Accordingly, the following improvements shall be constructed by the developer in each planned residential development, in accordance with the county standards as directed by the Planning Commission or its authorized representative.

- (i) streets, driveways, and parking areas;
- (ii) drainage, water quality, erosion control, and flood

- control structures and facilities as required by the Planning Commission;
- (iii) landscaping of open spaces as shown on the final plans;
- (iv) a water supply that complies with state and County board of health standards and with the standards of the Insurance Service of Utah;
- (v) both off-site and on-site water mains;
- (vi) central off-site and on-site sewer mains and treatment facilities, unless it can be shown to the County and State health departments, after on-site investigations have been made, that the County standards for sewage disposal can be met without the use of such systems;
- (vii) fire hydrants;
- (viii) permanent survey monuments at the lot corners and around the development boundaries;
- (ix) electric lines;
- (x) restoration of exposed surfaces;
- (xi) fences, walls, and all other common areas, facilities, systems, and structures proposed for the development as shown on the final plans;
- (xii) all other improvements and facilities which the developer states that he will provide as set forth in the required brochure.

(b) Developers may install other improvements; however, the construction of other improvements shall not be required as a condition of approval of a planned residential development, but all improvements whatsoever shall be constructed in accordance with the County standards as directed by the Planning Commission or its authorized representative.
(Ord. No. 61, Renumbered, 10/01/91, 16.03.020)

conditions and specifications. The various types of work must be done by professional persons or by sub-contractors who are licensed and bonded or who are otherwise qualified to do the work in the County, but the developer is required to see that the work is executed as set forth herein.

(3) **Fees.** All fees required in the review of plans and in the inspection of the work shall be paid and permits shall be obtained as set forth in resolutions pertaining to such plans and work.

(Ord. No. 60, Renumbered, 10/01/91, 16.04.420; Ord. No. 65, Renumbered, 10/01/91, 16.05.420)

(4) **General Provisions.**

(a) **Intent.** It is hereby declared to be the public policy of the County and the purpose and intent of this section to accomplish a coordinated, adjusted, and harmonious use of the mountain areas of the County where planned recreation developments are permitted by establishing density standards on a development-by-development basis. Such use shall be in accordance with the unique setting and characteristics of each such development and with present and future needs and resources of the County and its inhabitants and shall be designed to best promote the health, safety, morals, order,

EXHIBIT I

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT

[Minutes of the May 12, 2005 Board of Adjustment Hearings]

**WASATCH COUNTY
BOARD OF ADJUSTMENT MINUTES
May 12, 2005**

Board Members Present: Paul Clark, Phil Sweat, Greg Gagon, Julie Hardman
Excused: Chip Turner, Mark Smedley
Planning Staff Present: Al Mickelsen, Planning Director; Doug Smith, Planner
County Representatives: Scott Sweat (Deputy County Attorney)
Others Present: On list attached to a separate file

Pledge of Allegiance: Repeated by everyone
Prayer: Paul Clark

Vice Chair Phil Sweat called the May 12, 2005 meeting of the Wasatch County Board of Adjustment to order at 6:00 p.m. He excused Chip Turner and Mark Smedley, and called the first agenda item.

APPROVAL OF THE APRIL 7, 2005 MEETING MINUTES

Motion:

Greg Gagon made a motion to accept the April 7, 2005 minutes.
Paul Clark seconded the motion.

The motion carries with the following vote:

AYE: Paul Clark, Greg Gagon, Julie Hardman,
NAY: None.

ITEM #1 A REQUEST BY TRACEY CANNON, REPRESENTATIVE FOR THE CROSSINGS AT LAKE CREEK, FOR A VARIANCE FROM THE FRONT AND CORNER YARD SETBACK REQUIREMENTS ON ALL LOTS SOUTH OF THE LAKE CREEK CHANNEL IN THE PLANNED RESIDENTIAL DEVELOPMENT. THE PROJECT IS LOCATED AT APPROXIMATELY 3000 EAST ON LAKE CREEK ROAD; SECTION 10, TOWNSHIP 4 SOUTH, RANGE 5 EAST.

Staff:

Doug Smith, from the Planning Department, addressed the Board of Adjustment and indicated that this matter is before the Board for two determinations: one is a staff interpretation, and the other is the variance which was continued for staff to get with the applicant and work through some things and then come back with some recommendations.

Doug listed the possible conditions:

- There will need to be a minimum setback stipulated if the variance is granted. The applicant is requesting 10-foot front setbacks and 10-foot street side setbacks for corner lots.
- Consideration of a minimum combined front and rear setback.
- Consideration of a sliding scale as the lots get larger. Maybe the combined total of front and rear setbacks for the larger lots goes to 40 or maybe 50 feet.

Doug indicated that if the applicant goes to that 10-foot setback there wouldn't be any encroachments into that; porches, stairs that type of thing. If there is a front loaded garage there would need to be 20 feet between the garage and the sidewalk to avoid people parking over the walk way.

Applicant:

Tracey Cannon, the applicant, addressed the Board of Adjustment and indicated that one of their concerns is that it doesn't make any sense to have 45 feet in the front yard and 10 feet in the back yard. She stated that she felt that is a hardship. Tracey then presented a power point presentation to the Board and showed what they were proposing with their development. She indicated that they would like to have these variations in setbacks for flexibility in side entrance garages, put the garages back further, and not have the garage focus right in the front.

Tracey indicated that her proposal to the Board of Adjustment is that, on lots that are between 6,000 and just under 10,000 square feet, there will be a minimum combined setback front and back of 30 feet. All homes built on lots larger than 10,000 square feet and 13,000 square feet would have a combined setback front and back of 40 feet. Tracey stated that the minimum setback would be 10 feet and there will always be 20 feet between structures. Also, the corner setbacks on regular corners would be a minimum of 10 feet for a total of 24.5 from back of curb which satisfies the requirement of the line of sight issue.

Tracey indicated that she wants to make this development something that Wasatch County can say is a good example of planning and giving them the flexibility will make this happen.

Vice Chair Phil Sweat indicated that he has a concern of why there needs to be a 30-foot setback instead of a 40-foot setback.

Phil then asked if there was any public comment.

Pam Johnson, representative of the applicant, addressed the Board of Adjustment and indicated that the difference between having a 30-foot setback and a 40-foot setback is that there is more flexibility.

Kevin Andersen, attorney for the applicant, addressed the Board of Adjustment and indicated that the more two story buildings there are the more crowded and more urban it looks, whereas if there is a little bit larger building envelope and flexibility, there will be fewer two story homes.

Motion:

Greg Gagon made a motion to approve, with conditions, the request by Tracey Cannon for a variance to the front and corner yard setbacks on lots south of Lake Creek Channel based on the five required findings which are supported as follows.

1. The literal enforcement of the zoning ordinance *would* cause an unreasonable hardship for the applicant because the setbacks, as interpreted, are consistent with the large lot subdivision and not a higher density subdivision and the PRD that was agreed to.
2. There *are* special circumstances attached to the property that do not generally apply to the properties in the same district. The special circumstances include the grade 2 planned unit development.
3. Granting the variance *is* essential to the enjoyment of the substantial property rights vested by other property in the same district because of the PRD.
4. The variance *will not* affect the general plan and
5. It *is* in the spirit of the zoning ordinance and the PRD that was heretofore agreed to.

The conditions to granting this variance are:

1. That all homes built on lots between 6,000 and 9,999 square feet will have a minimum combined depth in front and back yards of thirty linear feet. All homes built on 10,000 square feet and 13,000 square feet or larger will have a combined depth in front and back yards of forty linear feet.
2. The minimum front yard or back yard setback will be ten feet. Back yard measurements will be made from the back plane of the home and will exclude the garage if the zero lot line placement is being utilized.
3. There will always be twenty feet between the structures regardless of the setback.
4. Corner lot setbacks on the main corridor entrance roadway off from 1200 South will be fifteen feet. There will be a minimum number of garages located on this corridor and Wasatch County will not require setbacks to be varied on the main corridor for the lots that front the main corridor. Corner side setbacks on all other lots will be a minimum of ten feet.
5. Also, to ensure varied setbacks, no more than two houses in a row may have the same front setback excepting those lots that front the main corridor.
6. All units must have a minimum of twenty feet of parkable space between the unit and the sidewalk.
7. Finally, if rear yard fencing is not used then in no case shall two units with ten foot rear setbacks be allowed to back each other.

Paul Clark seconded the motion

The motion carries with the following vote:

AYE: Paul Clark, Greg Gagon, Julie Hardman
 NAY: None.

Ent 317575 Bk 0935 Pg 1467

ITEM #2 A REQUEST BY GRANT KOHLER FOR A VARIANCE TO THE TERMS OF TITLE 16 (WASATCH COUNTY DEVELOPMENT CODE). 16.08.08(c) REQUIRES A 50 FT SETBACK FROM THE RIGHT-OF-WAY OR 85 FT. FROM THE CENTER OF THE ROAD, WHICHEVER IS GREATER. THE REQUEST IS TO BUILD NEW AGRICULTURAL BUILDINGS, ADD ONTO EXISTING BUILDINGS AND MAINTAIN THE SETBACK OF THE EXISTING AGRICULTURAL BUILDINGS WHICH ARE APPROXIMATELY 8 FT FROM THE RIGHT-OF-WAY. THE PROPERTY IS LOCATED AT 996 NORTH RIVER ROAD IN MIDWAY, SECTION 26, TOWNSHIP 3 SOUTH, RANGE 4 EAST.

Staff:

Doug Smith, from the Planning Staff, addressed the Board of Adjustment and indicated that this is a request by Mr. Kohler for a variance to the required setback of 50 feet from the right-of-way or 85 feet from the center of the road, whichever is greater. River Road is considered, by the General Plan, to be a major county collector road which requires a greater setback than a local road.

Doug indicated that a condition of approval would be that if the variance is approved the applicant could sign a statement saying that Midway will not need to pay for improved ground if the road needs to be widened. Doug also mentioned that the Midway Planning Commission sent a letter, which is part of the file stating their position.

Applicant:

Grant Kohler, the applicant, indicated that he needs the building in that location because it is conducive to his farming operation in that particular location for large trucks to bring in commodities which are necessary for his farming operation. Grant also explained that Midway City was very favorable with the proposal because they would like to see agriculture stay in the valley.

Vice Chair Phil Sweat then asked if there was any public comment.

Motion:

Paul Clark made a motion to approve Grant Kohler's request for a variance that requires a 50-foot setback from the right-of-way or 85-foot from the center of the road, whichever is greater, and to allow his request to build new agricultural buildings or actually to add onto one existing building and add a new building which will be approximately eight feet from the right-of-way.

Paul stated that he makes this motion based on the five required findings as follows:

1. The literal enforcement of the zoning ordinance *would* cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the ordinance, because of the necessity to maintain the feed and commodities and to maintain the dairy farm and the land which was previously used for this under a lease that had been lost.
2. There *are* special circumstances attached to this property that do not generally apply to other properties in the same district. These special circumstances include the fact that this is a dairy farm - one of the last dairy farms in the area, and the properties around it are mostly residential. Also, that an existing building of twenty five years has set a precedent to the setback, which setback will be met by new buildings.
3. Granting the variance *is* essential to the enjoyment of the substantial property rights possessed by other properties in the same district, or actually, in maintaining this as a dairy farm he needs to be able to do this in order to enjoy his property rights.
4. The variance *will not* substantially affect the General Plan and will not be contrary to the public interest, because it appears that one of the goals of Wasatch County and also the City of Midway is to encourage these types of activities in our rural community.
5. The spirit of zoning *is* observed and substantial justice *is* done.

Paul indicated that there are no conditions to attach to this.
 Julie Hardman seconded the motion.

The motion carries as follows:

AYE: Julie Hardman, Paul Clark, Greg Gagon
 NAY: None.

ADJOURNMENT

Motion:

Julie Hardman made a motion to adjourn.

Greg Gagon seconded the motion.

Ent 317575 Bk 0935 Pg 1468

The motion carries with the following vote:

AYE: Julie Hardman, Paul Clark, Greg Gagon

NAY: None.

The May 12, 2005 Board of Adjustment Meeting adjourned at 8:00 p.m.

PHIL SWEAT, VICE CHAIR

EXHIBIT J

THE CROSSINGS AT LAKE CREEK DEVELOPMENT AGREEMENT

[Proposed Phasing Plan]

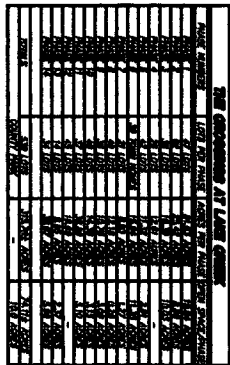
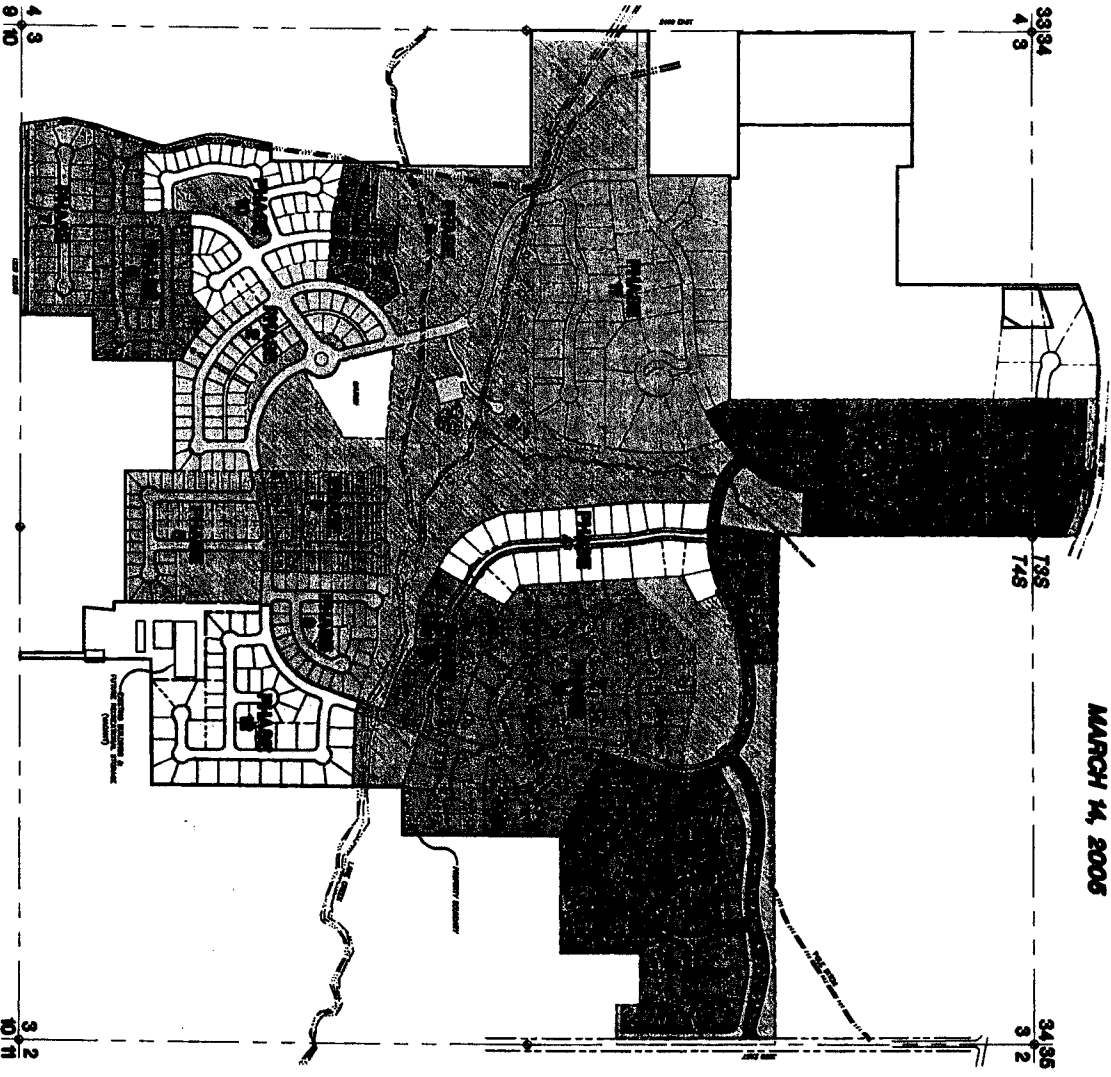
For purposes of identifying the property referred to in this agreement, the attached Phasing Plan is included as an Exhibit. The inclusion of this Phasing Plan in this Development Agreement is not intended to restrict Developer's rights in any way, but is only intended to reflect the parties' understanding of the property development.

THE CROSSINGS AT LAKE CREEK

A MASTER PLANNED RESIDENTIAL DEVELOPMENT

MARCH 14, 2005

EXHIBIT J



DATE	3/14/2005
TIME	5:33:41 PM NST
PROJECT	THE CROSSINGS AT LAKE CREEK
SCALE	AS SHOWN

THE CROSSINGS AT LAKE CREEK L.L.C.
 WASATCH, UTAH



THE CROSSINGS AT LAKE CREEK
 MASTER PHASING PLAN W/OPEN SPACE

DATE	3/14/2005
TIME	5:33:41 PM NST
PROJECT	THE CROSSINGS AT LAKE CREEK
SCALE	AS SHOWN
REV	1
BY	10/11/05
CHK	10/11/05
APP	10/11/05
DATE	3/14/2005
TIME	5:33:41 PM NST
PROJECT	THE CROSSINGS AT LAKE CREEK
SCALE	AS SHOWN
REV	2
BY	10/11/05
CHK	10/11/05
APP	10/11/05

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and the County as of the date and year first above written.

WASATCH COUNTY:

Attest:

MICHAEL DAVIS
Wasatch County Manager

BRENT TITCOMB,
Wasatch County Clerk Auditor

STATE OF UTAH)
 ss:
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by Michael Davis, who executed the foregoing instrument in his capacity as the Wasatch County Manager and by Brent Titcomb, who executed the foregoing instrument in his capacity as the Wasatch County Clerk Auditor.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

THE CROSSINGS AT LAKE CREEK X, LLC

By: Tracey Cannon

Tracey M Cannon
Tracey Cannon, General Member

STATE OF UTAH

COUNTY OF Salt Lake) :SS

The foregoing instrument was acknowledged before me this 20th day of March, 2007, by Tracey Cannon, who executed the foregoing instrument in her capacity as the duly authorized representative of Developer, a Utah Limited Liability Corporation.

Catherine L. Ford-Barbiero
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

5/7/2010

