

MAINTENANCE AGREEMENT

AGREEMENT made effective as of the date evidenced below, by and between The Ranches at Eagle Mountain Master Homeowner's Association (the "HOA") located in Utah County, State of Utah, and Eagle Mountain City, (the "City") located in Utah County, State of Utah.

RECITALS

- A. The Ranches is located within the City limits of Eagle Mountain City.
- B. Certain property located within The Ranches Master Planned Community has been dedicated to and is owned by the City (the "Property"). This Property includes among other areas: parks, trails, parking strips, medians, and front entrance areas located within the boundaries of The Ranches Master Planned Community. The boundaries of the HOA are described in Exhibit A to the Community Declaration for The Ranches at Eagle Mountain Master Homeowner's Association recorded as Entry No. 65905:2004 in the Utah County Recorder's Office (the "Declaration").
- C. The parties desire to delegate and assign specific maintenance and insurance responsibilities for the Property to the HOA in order to maintain the Property in a timely manner and aesthetically acceptable standard to both parties.

AGREEMENT

In consideration of the foregoing and the mutual covenants of the parties contained in this Agreement, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Maintenance. The HOA shall maintain the following elements found on the Property owned by the City and located within the boundaries of the HOA (as described in the Community Declaration for The Ranches at Eagle Mountain Master Homeowner's Association): all asphalt trails and gravel horse trails. The HOA shall maintain all "two rail" fencing which is not privately owned within The Ranches. The HOA shall maintain the front entrance signs (located on SR73 & Ranches Parkway), all street sign posts including, without limitation, directional sign posts, not privately owned, all medians and shoulders and trail ways (park strips) on Ranches Parkway & Pony Express Parkway, all open space areas and parks as required on subdivision plats (excluding Nolan Park), playground equipment, pavilions or other miscellaneous items included in park/open space areas. The City shall maintain all stop signs, speed limit signs and all other signs intended to regulate vehicular traffic and pedestrian traffic of the roads.

- a. Maintenance of landscaped areas includes and is limited to: Mowing, trimming, edging, weed/pest control, landscaping improvements planned and executed by the HOA (with the methods of implementation of the aforementioned maintenance plan approved in advance by the City in writing), management of watering grounds to maintain acceptable green lawns, minor irrigation repairs for pipes and heads, replacement or removal of sod/plant (including trees, shrubs, and ground cover) material as needed and approved by the HOA and City. For purposes of this Agreement “minor irrigation repairs” shall refer to and mean as follows: (1) in areas located on the Parkways, HOA repairs shall be limited to necessary repairs on irrigation lines and valves smaller than 2” in diameter; (2) in all areas not located on the Parkways, HOA repairs shall be limited to necessary repairs located from the meters out to the sprinkler heads, inclusive of the sprinkler heads, but excluding the meters. HOA and City shall be responsible for the repair and replacement of all landscape elements that are disturbed or destroyed as a result of maintenance and repair activities.

It is the intent of the City to purchase and install a “centralized” irrigation system to allow more effective management of watering times for irrigated open space. HOA and City will work together to manage this system in a manner that will balance watering times and frequency to effectively and properly maintain the landscaped areas. Once installed, the HOA will have responsibility to manage the day to day operation of the system, with the City having oversight authority.

- b. Maintenance of landscaped areas does not include: Road repairs of any type, light fixtures, repairs to cement curb or sidewalks, plumbing leading up to and including City meter, watering clocks, valves/valve boxes, stop & waste, improvements or repairs made by the City that the HOA has not approved of as an HOA expense.
- c. Wood Maintenance: The HOA shall maintain all wooden elements found on the Property, including fences and sign posts, pursuant to a regular staining or wood preservation plan as determined by the HOA. The HOA shall replace fence rails, slats and posts as needed. The HOA shall also replace sign posts as needed. Additional signs deemed necessary by the City, but not a replacement, shall be the responsibility of the City. Once a new sign has been added within the HOA, the HOA agrees to maintain it from the date of the completion of the sign.
- d. Entrance Monument Sign: The HOA shall maintain all elements of the main entrance at SR73 and Ranches Parkway, including stone monuments, water features, landscaping maintenance and signs. The HOA shall also maintain all other stone entry monuments located throughout the Property.
- e. Trail Maintenance: The City shall be responsible for all repairs and maintenance of the trails, including, without limitation, grading of the trails, correcting major trip hazards, holes, low spots, and sinking of the trails, as well as for periodic, but less frequent, asphalt overlay work needed to replace the asphalt trail as the trails useful life expires. The HOA shall be responsible for keeping the trails clean and clear of debris, and for periodic seal coat and/or skin coat applications. The frequency of the periodic seal coat

and/or skin coat applications shall be mutually agreed upon by the City and HOA, with approval from the City prior to any work being completed.

- f. Management of all Park Pavilions: The HOA shall manage and maintain reservations, deposits, up keep maintenance and cleaning of all Pavilions excluding the Paul E. Evans Pavilion and excluding all management of Nolan Park.

- g. Open Area Amenities and Equipment. City shall be responsible to repair and replace all equipment and amenities located in the open space areas at the expiration of its useful life. Such equipment and amenities shall include, but not limited to, pavilions, park equipment, and recreation facilities, i.e. basketball, volleyball, or tennis facilities (“**amenities and equipment**”). City responsibility shall extend to other improvements that are installed, with approval of the City, in open space areas. The HOA shall provide up keep maintenance and cleaning of all equipment and amenities located in the open space areas.

In order to alleviate the concerns of both parties, more specifically the concern of the City to be required to repair and/or replace the amenities and equipment at the direction of the HOA and the HOA’s concern that they are obligated to maintain equipment that is beyond its useful life, the following provisions are being imposed. The HOA shall cause periodic reserve studies to be conducted on the amenities and equipment by an independent third party. When, based upon the required periodic reserve studies being conducted, it is determined by an independent third party that the useful life of any portion of the amenities and equipment will expire within five (5) years, the HOA shall provide written notice of the same to the City describing in detail the amenities and equipment that must be replaced.

Within sixty (60) days of receipt of the notice mentioned above, the City shall send written response to the HOA of its intent to replace the noticed amenities and equipment at the end of the five (5) year period and the expected date or dates that replacement will occur or, upon the City obtaining its own independent third party reserve analysis, written notice that the City disputes the HOA’s claim that the useful life of the described equipment or amenities will expire at the end of the five (5) year period. If the City disputes the notice sent by the HOA, the parties may negotiate and agree in writing to a shorter or longer period for the replacement of the described amenities and equipment. If the parties reach an impasse in their negotiations on the issue and agreement cannot be made as to the expiration of the useful life of the described amenities and equipment, the parties shall submit the issue to binding arbitration, each party to bear their own costs and fees. Alternatively, the City may, at their discretion, notify the HOA of its intent to remove the amenity or equipment without replacement.

- h. Lighting: Replacement lighting (bulbs) is the sole responsibility of the City. The cost of replacing damaged or broken light poles is also the responsibility of the City. In maintaining Design Guidelines within the HOA, the HOA shall reimburse the City for the

difference in materials only, for items such as wood sign posts and specific style of light poles, that exceed the actual costs of like materials being used in other parts of the City.

- i. Water: Under the terms of this paragraph, the City will be responsible to provide adequate water, to maintain grass, flowers, trees and shrubs for all areas within the Parkway Landscape and Parkway Native Open Space located in the above-referenced Property, as may be defined on each recorded subdivision plat, as may be altered in subsequent written agreements, or as set forth in The Ranches Open Space Map attached hereto as **Exhibit 2**. Water is to be used conservatively keeping a balance between maintaining living landscaped areas without waste or excessive run-off. The HOA will determine each season when to turn on and off the water at the mains. The irrigation season for the purpose of this Agreement consists of a period between April 1st and October 30th of each year. If unusual weather or climatic conditions require an extension of the irrigation season, the HOA may apply to the Mayor of Eagle Mountain City for an enlargement of the irrigation season to assure that water is available under the terms of this Agreement whenever landscaping irrigation is required to maintain the landscaping. The City will provide a water credit, without cost to the HOA, each irrigation season based on the formula attached hereto as **Exhibit 1**. If the HOA's actual water use exceeds the irrigation season water credit, as determined using the formula contained in **Exhibit 1**, the excess water used will be billed to the HOA under the then current City residential rate structure and the HOA shall pay for the excess water used. However, if the irrigation season water credit, as determined in **Exhibit 1**, shall exceed actual water use, the City shall apply the remainder of the excess irrigation season water credit against any City water charges for which the HOA may be responsible, including water used in any Pocket Parks or Islands located in the above-referenced Property, as may be defined on each recorded subdivision plat, as may be altered in subsequent written agreements, or as set forth in The Ranches Open Space Map attached hereto as **Exhibit 2**. In other words, the City will: (1) determine annually the HOA's actual total water use obtained from the City; (2) apply the irrigation season water credit as determined using the formula contained in **Exhibit 1**; and (3) send the HOA an annual bill for any water use during the irrigation season that exceeds the irrigation season water credit.

The water credit provided without charge to the HOA under this Agreement, as set forth in **Exhibit 1**, is based on calculations of the estimated irrigation requirements of gallons per square foot multiplied by the total square footage area of irrigated landscaping area within the Parkway Landscape and Parkway Native Open Space, as defined on each recorded subdivision plat and as may be altered in subsequent written agreements. This amount is based on total irrigation season needs and not on a month to month basis. If the amount of irrigated acreage is enlarged, the City will recalculate the allowance using the agreed upon formula to cover the increased landscaped irrigation area. In the event the amount of landscaped irrigation area is reduced, the City will recalculate the allowance using the agreed upon formula accordingly. The formula attached to this Agreement and upon which the City will calculate the amount of water needed for landscape irrigation are based on water conservation use standards developed and published by Utah State University.

The HOA will be responsible to adhere to all City ordinances and guidelines regarding water usage. Notwithstanding the foregoing, the City will not impose any water restrictions upon the HOA that are not evenly implemented for all residents of Eagle Mountain, the open spaces maintained by the City and other subdivisions within the City limits. Notwithstanding anything herein to the contrary, the City agrees to give the HOA a “Water Allotment Credit” to be applied against any Water Allotment Excess Fee for areas that are watered and paid for by the HOA with non-City sourced water. The HOA shall apply to the City and account for any such payments to which credits are to be applied.

2. Costs paid by HOA and Approval by City. The City shall inspect and approve all repairs, maintenance and improvement activities of the HOA, said approval not to be unreasonably withheld. The HOA is performing the work under this Agreement to enhance and beautify the areas within the areas over which the HOA has interests and all of the work will be performed at the sole cost and expense of the HOA. The parties understand and specifically agree that the HOA will not be paid for any of the work performed by the HOA under this Agreement or any implied Agreement. The HOA shall not be entitled to any payment for unjust enrichment or for any benefit conferred by the HOA on the City, its properties or the residents or citizens of the City. The HOA waives any and all rights to payment from the City for any activity contemplated by this Agreement and expressly covenants that it will not claim payment from the City in any manner for any HOA activity within the scope of this Agreement. The HOA will indemnify the City against every and all claims for damages, reimbursement or payment brought against the City by members of the HOA including the costs and expense of the City for expert witnesses, travel expenses and reasonable attorney’s fees whether or not litigation is actually filed against the City. Likewise, the City shall indemnify and hold the HOA harmless for any work that it provides, or services it renders, to the Property which causes harm or injury to any party.
3. Maintenance Easement. The HOA will be granted by the City, as part of this agreement, a maintenance easement/right to perform all said work on City property. Further, the City and HOA agree to make every effort to minimize the use of vehicles on the trail system.
4. The HOA’s Right to Enforce HOA Rules. The HOA maintains the right and authority to enforce any and all HOA rules, with its members, within the HOA boundaries to the extent that such enforcement is not inconsistent with or less stringent than any City ordinance.
5. Insurance. The HOA shall acquire and maintain adequate liability insurance on all the Property owned by the City and located within the boundaries of the HOA as described in the Declaration which the HOA, pursuant to this Maintenance Agreement, has agreed to maintain. The HOA shall obtain and file with the City Recorder, no more frequently than annually, an appropriate and comprehensive labor and material payment bond, for work to be performed pursuant to this Agreement. Such bond will indemnify and hold the City harmless from all damages, claims and demands arising out of the failure of the HOA to pay for materials, subcontractors or labor on the Property. On or before January 1st of each year, the HOA shall provide an annual cost estimate for the next succeeding year for all work to be performed under this Maintenance Agreement. The City will use the cost estimate to

calculate the amount of labor and material bond required for the year following the January 1st date.

6. Indemnification. The HOA shall indemnify and hold the City harmless from and against any and all liability for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with, the condition or use of the Property covered by this agreement, except liability for personal injuries, property damages, or loss of life or property caused solely by the negligence of the City or the negligence of the person so harmed.
7. Governing Law. This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.
8. Entire Agreement. This agreement constitutes the entire agreement between the parties and any prior agreement(s) (both written and oral), understanding or representation of any kind preceding the date of this agreement with respect to the subject matter contained herein shall not be binding on either party except to the extent incorporated in this agreement.
9. Modification. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or any authorized representative of each party.
10. Severability. To the extent that any provision in this agreement shall be found void, unenforceable, or of no effect by a court of law or equity, said provision shall be severed from this agreement and shall not affect the remainder of the provisions hereof.
11. Paragraph Headings. The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.
12. Attorney Fees. In the event that this Maintenance Agreement, or any specific provision hereof, shall come into dispute between the parties, the prevailing party in any legal action to enforce this agreement shall be entitled to its reasonable attorney fees and costs so incurred.
13. Termination. This Agreement may be terminated by either party (Terminating Party) upon 60 days' notice in writing to the Non-terminating party of the intent of the Terminating Party to terminate this Agreement. In the event of the termination of this Agreement all of the rights and remedies of either party shall survive the termination of this Agreement.

EXECUTED this _____ day of _____, 2013.

EAGLE MOUNTAIN CITY

By: _____
Heather Anne Jackson, Mayor

ATTEST:

Fionnuala B Kofoed, CMC
Eagle Mountain City Recorder

APPROVED TO AS FORM:

Jeremy R. Cook
City Attorney

**THE RANCHES AT EAGLE MOUNTAIN
HOMEOWNERS ASSOCIATION**

By: _____
Secretary

By: _____
President

(Printed Name)

(Printed Name)

Date: _____

Date: _____

Exhibit 1

Formula provided by USU Extension as follows:

Total Gallons per Month (GPM) = Gallons per Square Foot (GSF) * Total Square Feet (Area)

GSF = Total Cubic Inches (TCI) * .0043 Gallons

TCI = 12" Length * 12" Width * Total Water Applied (TWA) in Inches

Applied Numerically to The Ranches Open Space:

GSF = 1,152 (TCI) * .0043 Gallons

GSF = 4.953599999

Parkway Landscape

1,539,903 Total Square Feet * 4.953599999 (GSF) = 7,628,064 Gallons per Month (GPM)

Parkway Native Open Space

616,161 Total Square Feet * (4.953599999/2) (GSF) = 1,526,108 Gallons per Month (GPM)

Total Water Credit Allowed

Total Gallons per Month * 6.5 Months = Total Credit

9,154,172 Gallons per Month * 6.5 Months = 59,502,118 Gallons per Season

Total Credit = 59,502,118 Gallons per Season

Exhibit 2

Ranches Open Space Map