

## AGREEMENT 07-39

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

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

**AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree as follows:

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

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

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

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

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

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

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

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

If to the Master Developer:

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

With a copy to:

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

If to the City:

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

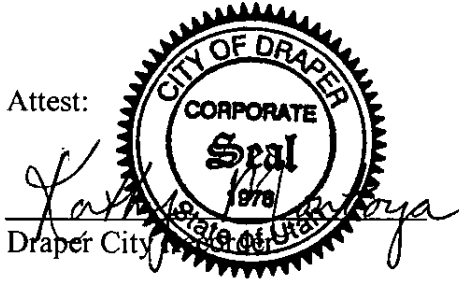
With a copy to:

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

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

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

Attest:



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

By *Danell F. Smith*  
Its Mayor

**CLETUS ESTATES, LLC**, a Utah limited liability company

By *Mark G. Decker*  
Its MANAGER

### CITY ACKNOWLEDGEMENT

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

On the 17<sup>th</sup> day of July, 2007, personally appeared before me Darrell H. Smith, who being duly sworn, did say that he is the Mayor, of **DRAPER CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Darrell H. Smith acknowledged to me that the City executed the same.

Linda Mandet  
NOTARY PUBLIC

My Commission Expires:

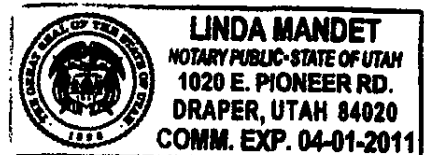
4/1/2011

Residing at:

Salt Lake Co.

### DEVELOPER ACKNOWLEDGEMENT

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



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

Kathy Montoya  
NOTARY PUBLIC

My Commission Expires:

4/17/2011

Residing at:

Salt Lake County

