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ADAM GARDINER
RECORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
1020 E PIONEER RD
DRAPER UT 84020
BY: SMP, DEPUTY - MA 25 P.

WHEN RECORDED, RETURN TO:

**MREC DAI EDELWEISS, LLC
1099 South Jordan Parkway
South Jordan UT 84095**

**FOURTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT
FOR THE
EDELWEISS MASTER PLANNED COMMUNITY**

THIS FOURTH AMENDMENT TO MASTER DEVELOPMENT AGREEMENT (“Fourth Amendment”) is made and entered as of the 31st day of August, 2017, by and between the City of Draper, a Utah municipal corporation (“City”), and MREC DAI EDELWEISS, L.L.C., a Delaware limited liability company (“Master Developer”).

RECITALS

A. The parties entered into a Master Development Agreement dated December 2, 2014 (“Original MDA”) governing the property shown on Exhibit “A” that is attached hereto and incorporated herein by reference (“Property”).

B. The parties have previously amended the Original MDA by Addendum # 1 dated as of March 31, 2015, Addendum # 2 dated as of May 17, 2016, and Addendum # 3 dated as of December 6, 2016.

C. Certain facts regarding the layout of the Project have changed due to the City’s approval of certain changes to the neighboring property, Hidden Canyon Estates (“Hidden Canyon”) including the request by Edge Homes to move the public connection between the two developments both horizontally and vertically.

D. The parties have cooperated in the preparation of this Fourth Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Master Developer hereby agree to the following:

AMENDMENTS

1. **Effect of this Fourth Amendment.** The Original MDA, as modified by Addendum # 1, Addendum # 2 and Addendum # 3 shall remain in full force and effect except that if any provisions of the Original MDA, Addendum # 1, Addendum # 2 or Addendum # 3 conflict with this Fourth Amendment then this Fourth Amendment shall control.
2. **New Master Plan.** Exhibit B, attached hereto and incorporated herein by reference, shall be the New Master Plan for the Project.
3. **Homes Allowed off of Single Point of Access/Fire Regulations.** The provisions of Sections 4 and 9 of the Original MDA are hereby modified to specifically acknowledge that Developer may record plats for up to fifty (50) lots and construct residential units on those lots without any requirement for a secondary access. Any temporary dead-end roads over 150' long will require a turnaround approved by the Fire Department. The parties acknowledged that if or when the road illustrated as Glacial Peak Drive on Exhibit B-1 is connected to the adjacent Hidden Canyon Estates development that connection shall be deemed to satisfy any secondary access requirement from any prior iteration of this MDA and, also, the requirements of Section 9-28-020.E.9.d of the Draper City Municipal Code. Until Glacial Peak Drive is substantially completed and provides a second access for the Project all homes shall be

constructed with required fire sprinkling system. This approval is based on plans to ultimately have two emergency access points at opposite ends of the Project in compliance with Fire Department regulations. Fire sprinklers shall also be required for homes on lots where vegetation is protected and cannot be removed or where adequate defensible space cannot be created.

4. **Phase 4.** Developer may obtain approval of a final plat for Phase 4. The Phase 4 plat may not be recorded until the road illustrated as Glacial Peak Drive on Exhibit B-1 is connected to the adjacent Hidden Canyon Estates development. Upon approval of the Phase 4 final plat, developer may obtain a land disturbance permit to construct the Glacial Peak Drive connection prior to the recordation of the Phase 4 plat.

5. **Private Drive Access.** The New Master Plan illustrates that certain lots in the Project may be accessed off of private drives and that access is hereby specifically approved modifying the provisions of Sections 4, 8 and 9 of the Original MDA and is in compliance with Section 9-28-020(E)(9)(b) of the Draper City Municipal Code.

Developer shall comply with all applicable provisions of Draper City Municipal Code for private streets.

6. **Trailhead.** The trailhead shown on the New Master Plan and required under Section 8.4 of the Original MDA has been bonded for in the amount of \$153,364.20. The trailhead shall be completed with the construction of the public improvements for the phase of the Project that is adjacent to the trailhead. Developer and the City shall agree on the location of the trailhead as a part of the platting of the phase of the Project that is adjacent to the trailhead.

7. **Open Space.** The City acknowledges that the New Master Plan shows “open space” in excess of 29% and that such open space percentage is hereby approved thus modifying any contrary provision of Section 4 and 9 of the Original MDA and the Land Use Regulations referenced therein, specifically Section 9-28-010(B) of the Draper City Municipal Code.

8. **Crossings of Metropolitan Water District Areas.** The New Master Plan shows that certain roads and public utilities servicing the Project and to be dedicated to Draper City cross properties owned by the Metropolitan Water District of Salt Lake and Sandy. The City shall accept the dedication of those roads and public utilities including the crossings when Developer has obtained an Encroachment Agreement with the Metropolitan Water District of Salt Lake and Sandy that is approved by the City.

9. **Connections to Hidden Canyon.** The City shall allow access for Developer to construct all required road improvements and utilities within the public rights-of-way and easements within the Hidden Canyon Estates development that have been dedicated to the city.

10. **Payment for Connection to “Common Detention Basin”.** Developer shall pay to the City the amount of \$87,328.24 representing the Project’s share of any charges for connecting to the common detention basin that services the Project and Hidden Canyon Estates at the time of the recordation of any final subdivision plat for the development of a portion of the Project that requires the use of the common detention basin.

11. **Storm Water Impact Fee.** The City acknowledges that Developer has already paid certain “Storm Water Impact Fees”. The need for those fees is obviated by the “Common Detention Basin” and onsite detention basins with designed release rates that match historical flow rates. Accordingly, the City shall refund to Developer the Storm Water Impact Fees already paid and shall not charge any Storm Water Impact Fees for the remainder of the Project.

12. **Road Striping.** Section 8.5 of the Original MDA is hereby deleted. Developer shall update the traffic impact study in conjunction with a plat for Phase 5 and re-stripe a portion of SunCrest Drive if recommended by the updated traffic impact. study submitted.

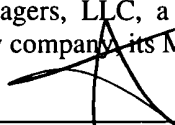
13. **Processing.** The provisions of Section 1 of the Addendum # 3 regarding the processing of development applications shall apply to all future phases of the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

MASTER DEVELOPER
MREC DAI EDELWEISS LLC a Delaware limited liability company


By: Edelweiss Draper, LLC, a Utah limited liability company, its Manager

By: DAI Managers, LLC, a Utah limited liability company, its Manager

By: 
Name: Nathan Shipp
Its: Manager

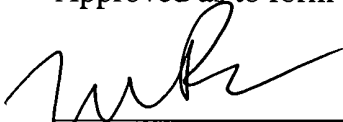



CITY
City of Draper


By: David Dobbins
Its: City Manager

Approved as to form and legality:

Attest:

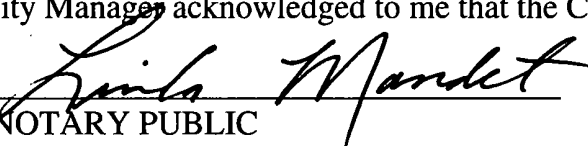

Mike Barker
City Attorney


City Recorder

CITY ACKNOWLEDGMENT

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

On the 31st day of August, 2017, personally appeared before me David Dobbins who being by me duly sworn, did say that he is the City Manager of the City of Draper, a Utah municipal corporation, and that said instrument was signed in behalf of the City by authority of its governing body and said City Manager acknowledged to me that the City executed the same.


NOTARY PUBLIC

My Commission Expires:

Residing at:

4/1/19

Salt Lake County



DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)

:ss.

COUNTY OF SALT LAKE)

On the 24 day of August, 2017, personally appeared before me Nate Shipp who being by me duly sworn, did say that he is the Manager of DAI Managers, LLC a Utah limited liability company the Manager of Edelweiss Draper, LLC a Utah limited liability company the Manager of MREC DAI EDELWEISS, LLC , a Delaware limited liability company, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

Denise Cassidy
NOTARY PUBLIC

My Commission Expires:

Residing at:

7-10-21

Salt Lake County, Utah

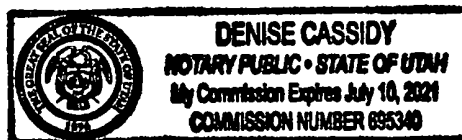


Exhibit A
Original Development Agreement dated December 2, 2014
(remainder of page intentionally left blank)

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12/22/2014 03:46 PM \$0.00
Book - 10284 Pg - 122-137
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
1020 E PIONEER RD
DRAPER UT 84020
BY: JHP, DEPUTY - WI 16 P.

**DEVELOPMENT AGREEMENT
FOR EDELWEISS**

THIS DEVELOPMENT AGREEMENT FOR EDELWEISS (the "Agreement") is entered into as of the 2nd day of December, 2014, by and between DRAPER CITY, a Utah municipal corporation (the "City"), and EDELWEISS INVESTORS, LLC, a Utah limited liability company (the "Developer"). The City and Developer are referred to herein individually as a "party" and collectively as "parties."

RECITALS

A. Developer owns or controls for development purposes approximately fifty nine (59) acres of real property located within Draper City. Said property is more particularly described in Exhibit "A", attached hereto (the "Property"). The Property is bisected by an approximately 50-foot wide swath of property owned by Metropolitan Water District of Salt Lake & Sandy ("MWDSLs").

B. The Property is currently zoned Agricultural-A5. The Developer desires to develop the Property into a master planned residential community to be known as "Edelweiss" (the "Project"). In connection with the development of such Project, the Developer has made application to the City to change the zoning from Agricultural-A5 to Master Planned Community (the "MPC Zone"), in accordance with Chapter 9-28 of the Draper City Municipal Code. The MWDSLs has previously consented to the re-zone to the extent such re-zone affects its property.

C. It is the desire of the City and Developer that development of the Project proceed in such a manner as to benefit the residents within the Project as well as residents throughout the City.

D. The City, acting pursuant to its authority under Utah Code Annotated 10-9a-101 et seq., and its land use policies, ordinances and regulations, including but not limited to Chapter 9-28-010 which requires approval of a development agreement concurrently with the establishment of the MPC Zone, has made certain determinations with respect to the Project and, in the exercise of its legislative discretion, has elected to approve this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and the City, intending to be legally bound, hereby mutually agree as follows:

1. Incorporation of Recitals and Exhibits. The above Recitals and Exhibits attached hereto and referenced herein are hereby incorporated into this Agreement.

34-10-300-028

2. **Definitions.** When used in this Agreement, each term shall have the meaning set forth below or elsewhere in this Agreement unless such meaning is clearly precluded by the context in which the term is used.

2.1. **Develop[ment]** means any construction, renovation or expansion of a building, structure, roadway, utility, or other improvement.

2.2. **Developer** means Edelweiss Investors, LLC, a Utah limited liability company, and/or as applicable, any assign or successor in interest to the Developer.

2.3. **Development Standards** means those certain development standards reflected and incorporated in the text amendment to the City's zoning ordinance adopted in connection with the approval of this Agreement. Furthermore, the Developer and City hereby agree that the development standards set forth in Section 9-16-050 of the City Code are adopted by reference and incorporated into and as part of the Development Standards set forth herein, to the extent the same do not otherwise conflict with this Agreement or the Master Plan.

2.4. **Existing Land Use Regulations** means those certain Land Use Regulations in effect as of the date of this Agreement, including any modifications thereto contained herein.

2.5. **Land Use Regulations** means laws, statutes, ordinances, codes, resolutions, rules, regulations, approvals, permits of ever kind and character, programs, and official policies and actions of the City governing the permitted uses of land, density and intensity of use, and the design, improvement, and construction standards and specifications applicable to the development of the Project. Land Use Regulations include, but are not limited to, the Draper City Municipal Code, development approvals granted by the City and the terms and conditions contained in such approvals, the City's General Plan, the Master Plan, specific plans, zoning ordinances, development moratoria and growth management and phased development programs, and ordinances establishing development exactions.

2.6. **Master Plan** means the conceptual master plan for the Project, attached hereto and incorporated herein as Exhibit "B".

2.7. **MPC Zone** means the Master Planned Community Zone, Chapter 9-28 of the Draper City Municipal Code.

2.8. **Project** has the meaning set forth in the Recitals above.

3. **Project Development and Master Plan.** The City and the Developer hereby acknowledge and agree that the Project shall be developed as a master planned community, and that Developer shall seek in connection with the development of such Project various approvals, including, without limitation, preliminary and final plat approvals and building permits. In connection with this Agreement the Developer has prepared and the City hereby approves the

Master Plan for the Project, which Master Plan is attached hereto as Exhibit “B” and by this reference are made a part hereof. As reflected in the Development Standards incorporated in the text amendment to the City’s zoning ordinance adopted in connection with the approval of this Agreement, the Project includes certain approved deviations from the City’s typical engineering and other standards, so as to allow greater flexibility in the development of the Project consistent with the goals and objectives of the City’s Master Planned Community Zone, and other development regulations. Such deviations include those deviations described in the aforementioned text amendment.

4. Regulation of Development.

4.1. Vested Rights—Development Pursuant to Project Build Out Plans.

Developer shall have the vested right to have a final plat(s) approved and to develop and construct the Project subject to compliance with the Master Plan (together with any amendments or changes thereto proposed by the Developer and approved by City) and the other terms and conditions of this Agreement. Such vested rights shall be effective until December 31, 2024. The Land Use Regulations applicable to and governing the development of the Project shall be the Existing Land Use Regulations (unless the City and Developer agree that future Land Use Regulations shall apply) and this Agreement, except when modifications are required by federal, state, county and/or City laws and regulations promulgated to avoid any imminent and substantial risk or threat of injury to the public health and safety. In the event the City imposes by ordinance, resolution or otherwise a moratorium on the issuance of building permits or the regulatory approval and review of subdivisions for any reason, the Developer shall be excluded from such moratorium unless such moratorium is based on a need to avoid an imminent and substantial threat or risk of injury to the health and public safety of the citizens of the City or the general public and residents of the Project or any phase thereof.

4.2. Reserved Legislative Powers. Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to City all of its police power that cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority that cannot be restricted by contract. In the event City exercises its legislative discretion to enact future Land Use Regulations, the Existing Land Use Regulations shall nonetheless apply to the development of the Project, unless the City and Developer otherwise mutually agree, unless such future Land Use Regulations are necessary to avoid an imminent and substantial risk or threat of injury to the public health and safety, or is required by Federal, State, County or other local law (provided such local law is necessary to avoid an imminent and substantial risk or threat of injury to the public health and safety); provided, that in the event that any such State, Federal or local law precludes compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended only as necessary to comply with such local, State and Federal laws, and the remainder of this Agreement shall remain in full force and effect to the extent that performance of the remaining provisions would not be inconsistent with the intent of this

Agreement.

4.3. Required Compliance with Master Plan – Alternative Designs. The Developer and/or its successors may submit applications for one or more phases of the Project that reflects limited modifications to the Master Plan, such as the addition of an amenity facility or a drawing identifying minor relocation of streets to improve layout or safety standards subject to the standards stated below with respect to alternative design concepts. To the extent that Developer seeks approval of a final plat for the Project that reflects an alternative design concept with numbers of dwelling units equal to or lower than the numbers of dwelling units reflected in the Master Plan, Developer shall be entitled to such final plat approval so long as the proposed design: (a) does not encroach upon areas of non-disturbance identified in the Master Plan; (b) does not vary from the Master Plan with respect to (i) restrictions in building in “no build” areas, (ii) setbacks or minimum lot sizes, or (iii) street widths and design criteria.

4.4. Compliance with Engineering Standards. Notwithstanding the vested rights granted in Section 4.1 hereof, Developer shall not be entitled to preliminary or final plat approval for any phase within the Project if such preliminary or final plat cannot be constructed in accordance with the application of City’s engineering standards, as such standards are modified by the Development Standards. The City shall not require a reduction in the numbers of dwelling units identified in the Master Plan except to the extent actually required by City’s modified engineering standards reflected in the Development Standards (if any) or to address subsurface conditions that the Developer cannot mitigate by reasonable engineering methodologies, it being expressly agreed that the City’s execution of this Agreement, pursuant to the zoning approvals previously approved and approved herewith in connection with the Project and this Agreement, represents a present exercise of its legislative discretion and approval of the number of dwelling units allowed in the Master Plan and that such numbers of dwelling units are not subject to reduction by the City except as specifically stated herein. Notwithstanding the foregoing, to the extent that any portion of a phase within the Project cannot be constructed by reason of the application of this Section, Developer shall be entitled to develop such portion of the phase as may be constructed in accordance with the requirements of this Agreement and the Development Standards.

4.5. Zoning. This Agreement hereby confirms the City’s adoption of the MPC Zone, as the applicable zoning district for the entire Project, and pursuant to Section 9-28-010(8) of the Draper City Municipal Code, the City assigns the Project the unique name “MPC-Edelweiss”. The City has determined that the Master Plan is in accordance with the Master Planned Community Zone, and otherwise fulfills the goals and objectives of the City’s general plan, and is otherwise in the best interests of the City. The City also confirms that the text amendment to the City’s zoning ordinance relating to the Project, has been adopted in connection with the approval of this Agreement.

5. Processing of Development Applications.

5.1. Conceptual Master Plan Requirement Satisfied. Approval by the City of the Master Plan shall be deemed to have satisfied the requirements of the Existing Land Use Regulations for review of a conceptual master plan by the City for purposes of the Project. So long as Developer submits applications for preliminary and final plat approval within the time periods specified in Section 4.1 hereto, Developer shall not be required to have the conceptual master plan approval re-approved or extended.

5.2. Submission of Preliminary and Final Plat. The preliminary and final plats for the Project shall be reviewed by the City staff, Planning Commission and City Council. The Developer may at its option cause preliminary and final plats to be reviewed and processed for approval by such City staff, Planning Commission and City Council for the same portions of the Project concurrently. The Developer shall pay any required fees due and owing in connection with approval of the preliminary and final plats for the Project. In addition, the Developer shall submit to the City specific construction plans for all required development improvements that are to be installed together with any other documents reasonably required by the City such as restrictive covenants, and like matters. Development improvements shall include those required by the construction standards of the City as the same may be modified by the Approved Deviations. Following approval of the final plat and obtaining the required signatures thereon, the final plat for the Project shall be recorded by the City in the office of the Salt Lake County and/or Utah County Recorder (as applicable). Developer shall provide security to the City in accordance with the Existing Land Use Regulations to insure the construction and installment of the development improvements, the revegetation of areas disturbed by construction and pay all fees as required by the ordinances of the City, as outlined in the Existing Land Use Regulations.

6. Conditions, Covenants and Restrictions. Prior to the date hereof the Developer has prepared and submitted to the City for review and comment conditions, covenants and restrictions (the "CC&R's") to provide for the matters set forth below. The CC&R's shall be consistent with this Agreement and the Existing Land Use Regulations. Developer shall record the CC&R's in the office of the Salt Lake County and/or Utah County Recorder (as applicable) concurrent with recording of the final plat for the Project recorded hereafter. Concurrent with recording of the CC&R's, the Developer shall establish a design review committee and/or homeowners association for all or portions of the Project, which shall be responsible for the preserving the quality of development within the Project. Furthermore, the homeowners association to be formed by Developer shall be responsible for maintaining and operating all privately owned common areas and facilities which are delegated to the homeowners association pursuant to the CC&R's. The open spaces areas which are to be owned and maintained by a homeowners association as private common areas, as well as areas designated as public open space to be owned and maintained by the City, are identified on the Master Plan. The CC&R's shall establish the structure, procedures, authorities and remedies of the home owners association, including rights to make assessment and to lien defaulting properties and lot/unit owners, provided, however, Developer shall have no obligation to operate or fund such homeowner's association. The documents creating the homeowners' association shall be

submitted to the City for its review and approval prior to filing of the same. The CC&R's shall establish architectural guidelines and a requirement that all plans for buildings and structures located within the Project must comply with the same and be reviewed by the homeowners association to assure compliance.

7. Payment of Fees; System Improvements.

7.1. Fees. The Developer shall pay to the City in a timely manner all required fees for each phase within the Project, or portions if applicable, which are due or which may become due pursuant to the City's Land Use Regulations (including those fees listed on the City's consolidated fee schedule). The fees shall be paid in those amounts which are applicable at the time of payment of such fees. Fees may be increased by the City from time to time during the course of development of the Project as long as any development review fee charged is generally applicable to all similar projects in the City.

7.2. System Improvements. The City and the Developer shall work together in good faith to determine those portions of any infrastructure constructed by Developer that constitute "system improvements" under the Utah Impact Fees Act (Utah Code Ann. §§ 11-36A-101 *et seq.*), and shall update the City's capital facilities plan, as and to the extent necessary, to include such infrastructure improvements in such plan and ensure the Developer's reimbursement for the same. The City and Developer acknowledge that certain parks and trails improvements, the details of which improvements are not yet finalized as of the date hereof, may be determined by the City to be system improvements under the Utah Impact Fees Act. In the event Developer constructs any such system improvement, and/or otherwise construct infrastructure that offsets the need for a system improvement to service the Project, the City and Developer shall enter into a mutually acceptable reimbursement agreement for each applicable impact fee charged by the City to reimburse the Developer for the reimbursable portion of the costs of such infrastructure. Subject to the foregoing, Developer agrees that it shall not challenge the type or current amount of any impact, connection, tap-in or other fee in place under the City's Existing Land Use Regulations as of the date hereof.

8. Utilities and Infrastructure.

8.1. Generally. Developer shall install, or pay for installation by the appropriate entity, natural gas, underground electrical service, telephone, cable television, storm drain, flood control, sanitary sewer, and culinary water supply systems for the Project when developed. Such installations shall be done according to the customary design and construction standards of the utility providers and the City Engineer. All public improvements within the Project shall be constructed and installed at the Developer's sole expense and in accordance with the Existing Land Use Regulations. Notwithstanding anything in this Agreement to the contrary, City agrees that subject to compliance with the City's Existing Land Use Regulations, the Developer shall have the option of planning and maintaining an emergency access constructed within the Project and identified in the Master Plan as a private street. The Developer

shall install a crash gate in connection with construction of any such emergency access. All storm drain infrastructure shall be designed and constructed in compliance with the Draper City Drainage Design Criteria.

8.2. Culinary Water Supply System. Notwithstanding the foregoing, the City and Developer acknowledge that certain improvements must be made to the City's existing culinary water supply system in order for the City's system to have the capacity to provide culinary water services to the Project (and other current and expected development project(s) located adjacent to or near the Project), and that the City, Developer, and possibly other parties are exploring possible solutions to construct such system improvements. The City and Developer acknowledge that it is currently anticipated that the culinary water system improvements include (among other things) the construction of a new pump station and a transmission pipeline. The City agrees to work with Developer in connection with determining and executing upon a solution to such culinary water system requirements for the area of the City including the Project that is acceptable to the City. Notwithstanding anything in this Agreement to the contrary, the City and Developer agree that the City shall not issue any building permits with respect to any phase within the Project until the City's system has the capacity to provide culinary water services to the Project in connection with the construction of the aforementioned improvements.

8.3. Traverse Ridge Special Service District. The City and Developer hereby agree that the Property shall be fully annexed into and shall be included within the boundaries of the Traverse Ridge Special Service District ("TRSSD") service area, such that the TRSSD shall provide all services to the Project that TRSSD provides to other areas within its boundaries. The City and Developer shall take all necessary steps to cause and confirm such annexation.

8.4. Trailhead Facilities and Trails. Developer agrees to construct at its expense the trailhead, associated parking and restroom identified on the Master Plan in connection with the first phase of development of the Project. The City shall construct the trails identified on the Master Plan in connection with the Developer's development of the Project, provided that (a) the Developer shall reimburse the City for the City's reasonable, actual out of pocket expenses, not to exceed \$9,000.00, in constructing the trails identified on the Master Plan within a reasonable period of time following notice to Developer of the amount of such expenses, and (b) the trails shall be designed and constructed as natural trails, matching generally the width and quality of the biking and hiking trails into which such trails are to connect.

8.5. Restriping of Traverse Ridge Road. Developer agrees to cause, at its expense and prior to any occupancy by a new homeowner within the Project, a portion of Traverse Ridge Road to be restriped consistent with the restriping plan provided by City staff to the City Council on November 18, 2014 (as part of the zone change approval for the Project); provided, however, that the foregoing requirement shall not apply if such restriping is completed by the City in connection with its road maintenance program

prior to the time Developer otherwise would be required to complete the same pursuant hereto.

9. Construction Standards and Requirements. Construction within the Project or any phase thereof shall be conducted and completed in accordance with the Land Use Regulations and the Development Standards. Prior to commencing any construction or development of any buildings, structures or other work or improvements within any portion of the Project, the Developer shall secure any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. Prior to final City release of construction security for the infrastructure on any portion of the Project, a complete set of record drawings (“as built”) shall be filed with the City Engineer upon completion of the public improvements and prior to commencement of the Warranty Period. The record drawings shall be on reproducible mylar copies of the original tracings and certified as to accuracy and completeness by the subdivider’s licensed engineer. Additionally, the subdivider shall submit electronic copies of the record drawings in AutoCAD (.dwg) format.

Improvements and landscaping for each phase of the Project shall be constructed pursuant to the Existing Land Use Regulations and the Master Plan. The following requirements shall also apply:

9.1. Security. Developer shall provide the City with security which complies with the Existing Land Use Regulations. Notwithstanding the foregoing, the City agrees that, pursuant to Utah Code Ann. § 10-9a-604.5, the Developer may dedicate to the City public infrastructure system(s) completed prior to recordation of an applicable plat, at the time of plat recordation, thereby reducing the security required by Section 17-4-070 of the Draper City Code to an improvement assurance warranty equal to ten percent (10%) of the estimated cost of such system(s). The City shall not withhold inspections of any completed infrastructure, to be provided pursuant to Section 9.2 below, on the basis that an applicable plat is not yet recorded.

9.2. Inspection by the City. The City Engineer shall, at his or her option, perform periodic inspections of the improvement being installed and constructed by the Developer and its assigns or the contractors. No work involving excavation shall be covered until the same has been inspected by the City’s representatives and/or the representatives of other governmental entities having jurisdiction over the particular improvements involved. Developer shall warrant the materials and workmanship of a public improvements to be dedicated to the City and installed for the minimum period required under Utah law, from and after the date of final inspection and approval by the City of the improvements in the Project. Final City inspection and approval shall not be unreasonably withheld and written notice of acceptance or rejection (specifying the reason or rejection) shall be provided to Developer within ten (10) business days after the Developer’s written request for final inspection (except that due to weather conditions during the period of October 15 to April 15, the City shall have such additional period of time as may be reasonably necessary to conduct such inspection and approve such improvements). In the event the City incurs any extraordinary costs for

inspections, due to Developer's action or inaction or at Developer's request, Developer shall immediately pay such extraordinary costs for inspection to the City upon receipt of billing for the same. No extraordinary inspections shall be performed by the City at the Developer's request for any phase within the Project without advance arrangements being made with the City Manager or payment of costs of the same to the City.

9.3. Maintenance During Construction. During construction of the infrastructure for any phase within the Project, the Developer or its assigns, as the case may be, shall keep such phase, all affected public streets therein, and all abutting properties free and clear from any unreasonable accumulation of debris, waste materials, mud, and any nuisances caused by such construction and shall contain construction debris and provide dust and mud control so as to prevent the scattering via wind and/or water or clogging of storm sewer system, and shall otherwise comply with MS4 State permit and fugitive dust permit requirements.

9.4. Intentionally Omitted.

9.5. Building Permits. No building or other structures shall be constructed within the Project or any phase thereof without the party constructing such building or other structure first obtaining building permits therefor.

9.6. Indemnification and Insurance During Construction.

9.6.1. Indemnification. During construction and until the date of acceptance (commencement of the warranty period) of the specific improvements by the City, Developer and its successors agree to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs or expenses, including attorneys fees and court costs incurred or arising from as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which: (a) shall occur within the location of the Project where such improvement is being constructed or occur in connection with any off-site work done for or in connection with the Project; and (b) which shall be caused by any negligent acts of the Developer or their respective agents, servants, employees or contractors, provided that the Developer shall not be responsible for and any such indemnity shall not apply to any negligent acts or omissions of the City or of its agents, servants, employees or contractors. In addition, the Developer shall indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any claims, liability, costs and attorney fees incurred or arising from or as a result of any change in the nature, direction or quantity of historical drainage flows resulting from development of the Project or the construction of any improvements

thereon, unless such changes or construction was required in writing by the City. The Developer indemnities stated herein shall not apply to any matter for which the City is in fact granted governmental immunity under the Utah Governmental Immunity Act.

9.6.2. Insurance. During the period from the commence of work on the Project or any portions thereof and ending on the date when all work is finally inspected and accepted by the City for the Project, the Developer shall furnish, or cause to be furnished, to the City satisfactory certificates of liability insurance from a reputable insurance company or companies evidencing commercial general liability insurance policies in the amount of at least \$2 million single limit naming the City as an additional insured. In addition to the foregoing, Developer shall provide any additional insurance required by any regulatory body or other governmental entity having jurisdiction over any work done or facilities developed which pertain to the Project or any phase thereof. Developer and its successor developers shall require all contractors and other employers performing any work on the Project to maintain adequate workers compensation insurance and public liability coverage.

9.6.3. Rights of Access. Representatives of the City shall have the reasonable right of access to the Project during periods of construction and/or repair to inspect or observe the Project and any work thereon. In performing inspections, the City shall make reasonable efforts not to interfere with any construction or repair activities.

10. City Obligations. The City agrees to maintain the public improvements dedicated to the City following satisfactory completion thereof by the Developer or its assigns and contractors and acceptance thereof by the City following the warranty period subject to appropriate available municipal revenues. The City further agrees to provide standard municipal services to the Project and each phase thereof, including police and other standard services, subject to the payment of all fees and charges charged or levied therefor by the City and the availability of appropriate municipal revenues.

11. Assignments. Developer may from time to time and without the consent of the City, convey any or all of the Project, in their entirety to a successor developer, together with the rights granted by this Agreement to develop any or all of the Project, so conveyed or transferred in accordance with the terms of this Agreement; provided, however, such assignment shall in no way relieve Developer of its obligations under this Agreement and Developer shall remain in jointly and severally liable with Developer's assignee to perform all of the obligations under the terms of this Agreement which are specific to be performed by Developer. Developer may request the written consent of the City to an assignment of Developer's interest in this Agreement. In such cases, the proposed assignee shall have the qualifications and financial

responsibility necessary and adequate, as required by the City, to fulfill the obligations undertaken in this Agreement by the Developer. The City shall be entitled to review and consider the ability of the proposed assignee to perform, including financial ability, past performance and experience. After review, if the City gives its written consent to the assignment, the Developer shall be released from its obligations under this Agreement for that portion of the Project for which such assignment is approved.

Nothing in this section shall prohibit the Developer from selling residential lots or from leasing space in the ordinary course of the business, or prohibit the Developer from leasing or selling a portion of the Project to one or more tenants or other user occupants for the purposes of erecting, constructing, maintaining and operating (or causing to be erected, constructed, maintained and operated) improvements thereon. The provisions of this Section shall not prohibit the granting of any security interest for financing the acquisition and development of residential lots, commercial structures or other development parcels within the Project, subject to Developer complying with the City's subdivision requirements.

In the event of any assignment by the Developer of all or any of the Project, the assignee, for itself and its successors and assign, and for the benefit of the City, shall expressly assume all of the obligations of the Developer under this Agreement with respect to the Project, or any portion thereof, which is assigned by Developer to the assignee and the assignee shall agree to be subject to all of the conditions and restrictions to which the Developer is subject with respect to the Project (or any portion thereof).

12. Default. In the event any party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have the following remedies:

12.1. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages.

12.2. The right to withhold from Developer all further approvals, licenses, permits or other rights associated with the Project or any phase thereof with respect to which the default has occurred, except for permits associated with the improvement of lots sold by Developer in a completed phase of the Project until such default has been cured.

12.3. The right to draw on any security posted or provided in connection with the Project or any phase thereof.

12.4. The right to terminate this Agreement as to those phases owned or being developed by the defaulting Developer.

12.5. The Rights and remedies set forth hereinabove shall be cumulative. Any legal actions commenced or filed in connection with the Project or any matters contained herein shall be filed in the Third Judicial District Court in and for Salt Lake County,

Utah.

13. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Edelweiss Investors, LLC
1099 West South Jordan Parkway
South Jordan, Utah 84095
Attention: Nathan D. Shipp

To the City: Draper City
Attn: City Manager
1020 East Pioneer Road
Draper, Utah 84020

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

14. On-Site Processing and Use of Natural Materials. Notwithstanding anything to the contrary herein, Developer, and/or its agents, successors, assigns, tenants, guests, and invitees shall be permitted to extract and process the natural materials located on the Property such as aggregate (rock, sand or gravel), for temporary purposes and in connection with the grading, excavation, and other ordinary and customary development processes for the Project. Such natural materials may be used in the construction of infrastructure (provided that such materials meet the requirements of the Existing Land Use Regulations, homes, or other buildings or improvements located on the Property, and may also be processed on-site and sold and hauled off-site for use in locations outside the Project. The zoning under the Edelweiss Master Planned Community Zone shall not be construed to limit or restrict any such temporary and development-related extraction, processing, and hauling activities.

15. Attorney Fees. In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled to recover their costs and a reasonable attorneys' fee.

16. Entire Agreement. This Agreement, together with the exhibits attached hereto, documents referenced herein and all regulatory approvals given by the City for the Project and/or any phase thereof contain the entire agreement of the parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the parties pertaining to the subject matter hereof which are not contained in this Agreement, regulatory approvals granted by the City and related conditions to such approval.

17. Non-Liability of City Officials, Employees and Others. No officer, employee,

representative or agent of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, in the event of any default or breach by the City, or for any act or omission arising out of, or connected to, any of the matters set forth herein, or for any amount which may become due Developer, or its successors or assigns, for any obligation arising under the terms of this Agreement.

18. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls (other than those of the City), judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder (financial inability excepted) shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

19. No Third Party Rights. The obligations of the parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and the Developer, and their successors and assigns. The City and the Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

20. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be sued to construe or limit the text herein.

21. No Waiver. Any party's failure to enforce any provision of this 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 benefitted 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.

22. Severability. If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

23. Recordation. This Agreement shall be recorded against the Project which are located within the area which is described in Exhibit "A" attached hereto and by this reference made a part hereof, senior to the CC&R's, easements and debt security instruments encumbering the Project or any undeveloped portion thereof except for those obligations previously recorded. This Agreement may be recorded by either party hereto in the offices of Salt Lake County Recorder, State of Utah.

24. Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

25. Termination. Notwithstanding anything in this Agreement to the contrary, it is

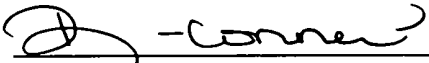
hereby agreed by the parties hereto that in the event the Project, is not completed on or before December 31, 2043, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Agreement. In the event Developer does not comply with the provisions of this Agreement, and such default is not cured within ninety (90) days after notice from the City to the Developer, as the case may be, specifying such default, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Agreement. Termination may be effected by the City giving written notice of termination to the Developer at Developer's address set forth herein for notices, whereupon the City shall be released from any further obligations under this Agreement, and the same shall be deemed terminated.

26. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon the parties hereto and their respective officers, employees, members, representatives, agents, successors in interest and assigns. The covenants contained herein shall be deemed to run with the Project.

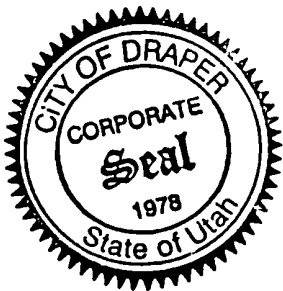
27. Amendment. This Agreement may be amended only in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

ATTEST:



City Recorder



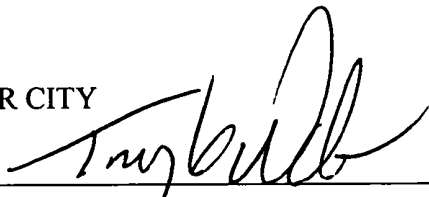
Exhibits

- A – Property Description
- B – Master Plan

1191633v11

“CITY”

DRAPER CITY

By: 
Its: Mayor

“DEVELOPER”

EDELWEISS INVESTORS, LLC, a Utah limited liability company

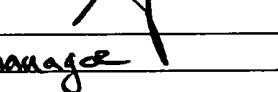
By: 
Its: manager

Exhibit A – Property Description

Development Associates – Edelweiss West Parcel

A part of Government Lot 3 and a part of the Northwest Quarter of the Southwest Quarter of Section 10, Township 4 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at a point on the North Line of said Government Lot 3 being 315.92 feet South 89°44'21" East along the Quarter Section Line from the West Quarter Corner of said Section 10; and running thence South 89°44'21" East 835.76 feet along said Quarter Section Line to the Southwesterly Line of the Water District Right-of-way as it exists at 50.00 foot width; thence South 30°20'19" East 1526.05 feet along said Southwesterly Line of the Water District Right-of-way to the North Boundary of Stoneleigh Heights at Suncrest Phase 3 Planned Unit Development; thence North 89°53'02" West 1606.60 feet along the North Boundary of said Stoneleigh Heights at Suncrest Phase 3 and Phase 2 to the Northwest Corner thereof; thence North 0°00'05" East 1317.61 feet along the West Boundary of Stoneleigh Heights at Suncrest Phase No. 1 and said line extended to the point of beginning.

**Contains 1,607,338 sq. ft.
or 36.899 acres**

Development Associates – Edelweiss East Parcel

A part of the Northwest Quarter of the Southwest Quarter of Section 10, Township 4 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at the Northeast Corner of said Northwest Quarter of the Southwest Quarter of said Section 10 being 2339.80 feet South 89°44'21" East along the Quarter Section Line from the West Quarter Corner of said Section 10; and running thence South 0°12'20" West 1314.88 feet along the Sixteenth Section Line to the Sixteenth Section Line; thence North 89°57'12" West 352.93 feet along said Sixteenth Section Line to the Northeasterly Line of the Water District Right-of-way as it exists at 50.00 foot width; thence North 30°20'19" West 1529.14 feet along said Northeasterly Line of the Water District Right-of-way to the Quarter Section Line; thence South 89°44'21" East 1130.03 feet along said Quarter Section Line to the point of beginning.

**Contains 975,702 sq. ft.
or 22.399 acres**

Exhibit B – Master Plan

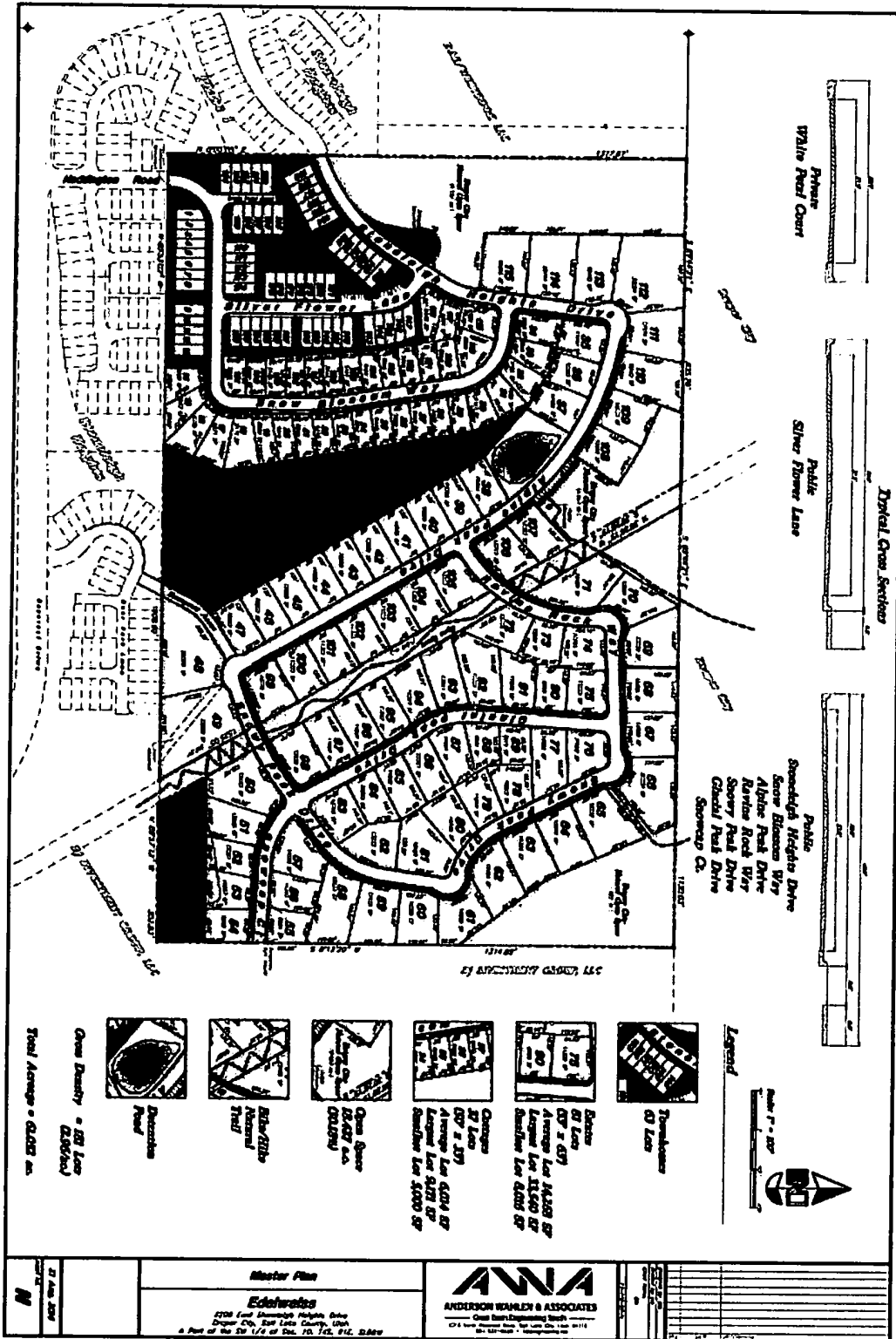


Exhibit B
New Master Plan

