

**DEVELOPMENT AGREEMENT  
FOR THE WHISPERWOOD COVE PHASE III  
AN OPEN SPACE PLANNED UNIT DEVELOPMENT  
SUBDIVISION**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 7th day of December, 1999, by and between the City of Draper, a municipal corporation of the State of Utah, hereinafter referred to as the "City", and Whisperwood Phase III, Inc., a Utah Corporation, hereinafter referred to as the "Developer".

**RECITALS:**

- A. The Developer owns approximately 23.844 acres of land, to be developed as Whisperwood Cove, Phase III PUD Subdivision, located within the City which property is more particularly described in Exhibit "A" attached hereto and by this reference made part hereof (the "Property").
- B. Developer received final plat approval for Developer's project on the Property as an open space planned unit development on May 4, 1999. Approval of a revised and amended final plat was granted on December 7, 1999. Developer's project shall be known as Whisperwood Cove, Phase III, an Open Space PUD Subdivision (the "Project"), a 45-lot, single-family residential subdivision.
- C. The Property is presently zoned under the City's Zoning Ordinance as R-1-14.5. The Property is subject to all of the City's ordinances and regulations including the provisions of the City's General Plan, applicable provisions of the Draper City Code, the City's Zoning Ordinances and any permits issued by the City pursuant to the foregoing ordinances and regulations (collectively the "City's Laws").
- D. Developer's application to the City for approval of the Project as a planned unit development has been granted by the City. This Agreement includes various conditions consistent therewith which must be satisfied by Developer in development of the Project.
- E. Persons and/or entities hereafter developing Property or any portions of the Project thereon shall accomplish such development in accordance with the City's Laws and the provisions set forth in this Agreement.
- F. This Agreement contains certain requirements for design and development of the Property and the Project in addition to those contained in the City's Laws.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

I. Incorporation of Recitals. The Recitals are hereby incorporated into this Agreement.

1. Property Development. Developer shall develop the Project on the property as a planned unit development in the form of a planned development subdivision. It is anticipated that the Project will be platted and developed as one subdivision of 45 single-family lots. The provisions of this Agreement shall apply only to those portions which have been or are in the process of being platted.

2. Final Plat. A subdivision plat for the Project to be developed will be required for Project approval by the City in accordance with the City's development standards and subdivision review requirements and the City's Laws. The Project has received final plat approval and must be developed in strict accordance with the approved final plat. No amendments or modifications to the final plat shall be made by the Developer without the prior written approval of the City.

3. Development of the Project. The Project shall be developed by the Developer and/or Developer's successors and assigns in accordance with all of the requirements contained herein. The City has granted to the Developer certain exceptions to standard Code requirements as part of the approval of this PUD. To receive these exceptions, the Developer has agreed to provide, at the Developer's sole expense, certain improvements outlined below and contained in the approved plans.

a. Open Space. The Developer shall insure dedication to the City, free of all encumbrances, and improve approximately 2.561 acres of property as open space and a public park. Improvements to be provided by the Developer in the park shall include trees, turf, irrigation and a Type I paved trail. Trees shall be 2" minimum caliper and planted according to the approved landscape plan. The paved trail shall be installed on the south side of Willow Springs Lane, meandering through the park, then south along the east side of 700 East, in accordance with the City Parks and Trails Plan and the Parks and Trails Committee recommendation. Open Space improvements shall be bonded prior to recording of the subdivision plat with the Salt Lake County Recorder. Upon written acceptance of the park by the City, the park shall be maintained by the City.

b. Improvements to 700 East Street. The Developer shall escrow, in a form acceptable to the City, funds to cover the cost of constructing the connection of 700 East from the north boundary of the Project, north approximately 100 feet to the existing asphalted portion of the road (approximately 12570 South), as a secondary access to the Project. The escrowed funds shall be in an amount deemed by the City sufficient to complete improvements for the eastern two-thirds of the roadway consisting of 24 feet of asphalt and two-and-one-half (2 ½) feet of curb and gutter, as well as a five-foot sidewalk adjacent to the curb on the east side of the roadway. Actual construction of these improvements shall be completed by the City following acquisition by the City of the necessary right of way. Seven-hundred East within the Project is to be installed from the north boundary of the Project to the south border of the park. Also, the triangular remnant parcel to the south of the park, located in the future alignment of 700 East, is to be dedicated to the City for the future southward connection of 700 East.

BK8387PG7838

c. Fencing. The Developer shall install, or cause to be installed, the following fences as a part of the Project: the Developer shall install a masonry wall five feet high along 700 East within the Whisperwood Subdivision. The wall shall end at the subdivision's north boundary line and shall be the same design as the block wall to the south in Whisperwood Cove Phase II. Additionally, Developer shall install an anti-graffiti sealant to the walls. The Developer shall install a three-rail vinyl fence along the north right-of-way line of Willow Springs Lane on the lots adjoining this street, with breaks in the fence to allow access to Willow Springs Lane from the pedestrian pathways. Adjacent to the East Jordan Canal to the rear of lots 315 to 325, the Developer shall install a black, vinyl-coated chain-link fence with black coated posts. All fencing shall be installed in accordance with City engineering standards. All fencing shall be bonded by the Developer.

d. Setbacks. The following minimum setbacks shall be required for all single-family residential structures located within the Project, as measured from property line:

- (1) The front yard setback shall be twenty-five (25) feet. Corner lots along 700 East shall have a setback of thirty-five (35) feet from 700 East.
- (2) The side yard setbacks shall be ten (10) feet.
- (3) The rear yard setback shall be twenty (20) feet. Rear lots adjacent to 700 East shall have a setback of thirty (30) feet.
- (4) Corner lots shall be considered to have two front yard setbacks parallel to the streets and side yard setbacks on the remaining sides.

e. Pedestrian Pathways. The Developer shall install, or cause to be installed, pedestrian pathways from the two cul-de-sacs east of 700 East to Willow Springs Lane and from the cul-de-sac west of 700 East to 700 East. The pedestrian pathways shall be ten feet in width with ten feet of asphalt. Fencing shall be installed on both sides of each pathway that allows for sight into the pathway and that is aesthetically harmonious with the subdivision. Chain-link fencing is not permissible.

f. Landscaping Improvements of Parkstrips. The Developer shall install, or cause to be installed, low-maintenance street trees and ground cover along 700 East and Willow Springs Lane within the parkstrips for these streets. A landscape plan for these streetscapes must be approved by the City and shall include spacing of street trees at an interval no greater than 30 feet on center. All landscape improvements shall be included in subdivision improvement bonds.

g. Installation of Street Lights. Street lights within the Project shall be installed by Pacificorp at the direction of the City, and shall be of a type and size available from Pacificorp. If Pacificorp offers a variety of light styles for a given lighting situation, the Developer may select the style to be used, with the City Engineer's approval. The Developer shall pay the applicable Street Light Fee prior to recordation of any phase of the Project.

h. Covenants, Conditions and Restrictions. The Developer shall create and record covenants, conditions and restrictions (CC&R's) for the Project prior to the conveyance of any lots and the issuance of any building permits. The CC&R's shall include a provision for the creation of a Homeowners' Association if the Project improvements include sub-surface drains or underground de-watering system.

i. Lot-specific Investigation. Due to the high level of subterranean water, each lot is required to have a lot-specific investigation to determine the water level below grade. Home construction must be a minimum of three feet above the subterranean water level. Evidence of water level and elevation of lowest floor level of the home must be provided by a certified engineer and submitted to the City prior to issuance of a building permit. This requirement must be included in the CC&R's and made known to prospective buyers through closing documents. Should sub-surface drains be used within the Project, the Developer shall enter into a maintenance agreement with the Homeowners' Association and the HOA shall be responsible for payment of all costs for maintenance associated with such drains.

j. Utilities and Infrastructure.

- (1) Developer shall install natural gas, telephone, cable television, underground electrical service, sanitary sewer, and culinary water supply systems for the entire Project to each individual lot and up to the boundary lines of the Project. Such installation shall be done according to the reasonable and customary design and construction standards of the utility providers and the City Engineer.
- (2) Developer shall make arrangements with and shall comply with the requirements of the Salt Lake County Sewerage Improvement District No. 1 to provide public sanitary sewer service to the Project and all phases thereof.

k. Dedication and Donation. Prior to, or simultaneously with, the recordation of the final plat for each phase of the Project in the office of the Salt Lake County Recorder, the Developer agrees to dedicate, or have dedicated, transfer and voluntarily donate to the City all required easements for the purpose of constructing, installing, operating, maintaining, repairing and replacing public utilities and improvements including all roads or streets.

4. Construction Standards and Requirements. All construction shall be conducted and completed in accordance with the Ordinances and development standards of the City. All required improvements for the Project shall be constructed in accordance with the City's construction standards and/or plans specifically approved for the Project, and all required public improvements and easements shall be dedicated to the City. Prior to commencing any construction or development of any building, structures or other work or improvements within 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. The Developer shall construct, or cause to be constructed, all improvements for the Project in conformity with all applicable federal, state and/or local laws, rules

and regulations. The Developer must meet all requirements of the City Engineer's Office and the Fire Marshal regarding the Project.

No driveway access will be permitted onto 700 East or Willow Springs Lane.

5. Grading. Developer will grade individual building lots according to the Uniform Building Code, including Appendix 33, Draper City Effective Planting Guide and the approved drainage plan. An erosion control plan must be approved by the City prior to any grading. Developer will be responsible to inform builders and homeowners through CC&R's and closing documents that the overland drainage swales must be constructed and maintained along lot lines between houses to allow storm water to reach City streets without causing erosion to properties.

6. Location of Willow Creek Drainage Channel in Willow Springs Lane. The Developer will locate, or cause to be located, the Willow Creek Drainage Channel within the landscaped median strip of Willow Springs Lane between 700 East and the East Jordan Canal. The Developer will donate the land required for the Channel in lieu of providing and constructing a storm water detention basin. Installation of the drainage channel shall be in conformance with plans approved by Salt Lake County and the City. This improvement is a part of the Salt Lake County flood control system and as such maintenance responsibility belongs to the County. Additionally, the Developer shall submit to the City a landscape plan for the drainage channel which matches the landscaping of the channel further to the west. All landscaping is to be installed, or cause to be installed, by the Developer in accordance with the approved landscape plan.

7. Reimbursement for Improvements to the Willow Creek Drainage Channel. Reimbursement for improvements to the Willow Creek Drainage Channel shall be in the amounts specified in Exhibit "B", attached hereto and follow the reimbursement schedule of City Ordinance 5-15-040 (j). Only those items and amounts specified in Exhibit "B" shall be reimbursed to the Developer from the City's Storm Water Impact fees as those funds become available.

8. Payment of Fees. The Developer shall pay all required fees to the City in a timely manner which are due or which may become due pursuant to the City's Laws in connection with the Project or any phase thereof. Developer and its successor(s) shall pay all required fees to the City in those amounts which are in effect at the time the fees are actually in fact paid to the City.

9. City Obligations. Subject to the Developer complying with all of the City's Laws, rules and regulations and the provisions of this Agreement, the City agrees to provide, or cause to be provided, standard municipal services to the Project including police and fire protection, subject to payment of all fees and charges charged or levied therefore by the City. The City will also be responsible for maintenance of the public park.

10. Indemnification. Developer hereby agrees to indemnify and hold the City and its officers, employees, representatives, agents and assigns harmless from all liability, loss, damage,

BK8387PG7841

costs or expenses, including attorney's fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to property of any person which shall occur within the Property or occur in connection with any off site work done for or in connection with the Project which shall be caused by any acts done thereon or act or omission of the Developer or of its agents, contractors, servants, employees at any time. Developer shall furnish or cause to be furnished to the City a satisfactory certificate of insurance from a reputable insurance company, evidencing general public liability coverage for the Property and the Project in a single limit of not less than two million dollars and naming the City as an additional insured.

11. Compliance with Law. Developer shall comply with all applicable federal, state and City laws, ordinances, rules and regulations pertaining to Developer's activities in connection with the Project or any phase thereof.

12. City and Other Governmental Permits. Before commencement of construction or development of any building, structures, grading or other work or improvements upon any portion of the Project, Developer shall, at its expense, secure any and all permits which are required by the City or any other governmental agency having jurisdiction over the work or affected by its construction or development. Failure by the Developer to obtain all required permits when due shall constitute a default on the part of the Developer under this Agreement.

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

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

b. The right to withhold all further approvals, licenses, permits or other rights associated with any project or development described in this Agreement until such default has been cured.

c. The rights and remedies set forth herein shall be cumulative.

14. 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:

Whisperwood Phase III, Inc.  
11576 S. State Street  
Draper, Utah 84020

To City:

Draper City  
Attn: City Manager  
12441 South 900 East  
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.

15. Attorneys' Fees. In the event of any lawsuit between the parties hereto arising out of or relating to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any, awarded in such proceeding, to recover reasonable attorneys' fees and costs.

16. Entire Agreement. This Agreement, together with the exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective parties hereto.

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

18. Non Liability of City Officials and Employees. No officer, representative, agent or employee 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 amount which may become due Developer, or its successors or assignees, for any obligation arising under the terms of this Agreement.

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. The City and 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. Assignability. The Developer shall not assign this Agreement or any rights or interests herein without the prior written consent of the City.

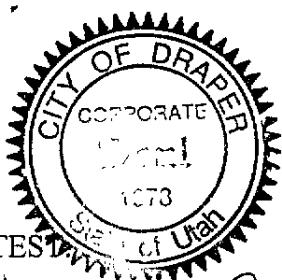
21. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, representatives, officers, agents, employees, successors and assigns (if any assignments are allowed as provided hereinabove).

22. Bonds or Security. The Developer shall post with the City, adequate bonds, escrow or other security approved by the City to adequately insure completion of this Agreement and any other improvements specified in approved plats, plans and documents for a warranty period of 24 months.

23. Right to Inspect Site. Representatives of the City shall have the right of access to the Property and any portions thereof at any reasonable hours to inspect or observe the development or any work thereon.

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

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 hereinabove written.



ATTEST

Barbara L. Sadler  
City Recorder

"CITY"  
DRAPER CITY  
By: Richard J. Allen  
Mayor

APPROVED AS TO FORM  
City Attorney's Office

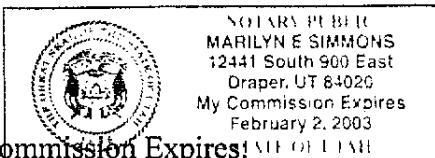
Date: December 13, 1999  
By: Todd G. Taylor

"DEVELOPER"  
James W. McDougal  
By: Philip W. McDougal III  
Title: President

## CITY ACKNOWLEDGMENT

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

On the 31<sup>st</sup> day of Dec., 1999, personally appeared before me Richard D. Alsop, 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 Richard D. Alsop acknowledged to me that the City executed the same.



My Commission Expires: 2/2/03

Marilyn E. Simmons

Notary Public

Residing at:

Salt Lake County

## DEVELOPER ACKNOWLEDGMENT

STATE OF Utah )  
:ss.  
COUNTY OF Salt Lake )

On the 31<sup>st</sup> day of Dec., 1999, personally appeared before me George W. McAllan who being by me duly sworn did say that (s)he is the President of WHISPERWOOD PHASE III, INC., a Utah corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and they acknowledged to me that said corporation executed the same.

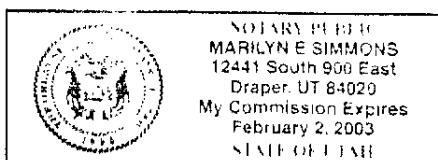
Marilyn E. Simmons

Notary Public

My Commission Expires:

Residing at:

Salt Lake County



**WHISPERWOOD COVE PHASE III, PUD SUBDIVISION**

**EXHIBIT "A"**

**SUBDIVISION PARCEL**

BEGINNING AT A POINT WHICH IS S05°00'00" W, 343.001 FEET FROM THE NORTHEAST CORNER OF SECTION 31, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE S85°00'00" E, 749.23 FEET TO A POINT ON THE EAST JORDAN CANAL RIGHT-OF-WAY ALONG SAID RIGHT-OF-WAY THE FOLLOWING 15 COURSES: S59°52'10" E, 132.78; THENCE S73°38'17" E, 40.31 FEET; THENCE S82°31'57" E, 85.63 FEET; THENCE S83°17'34" E, 86.20 FEET; THENCE S83°29'51" E, 79.15 FEET; THENCE S76°01'48" E, 35.26 FEET; THENCE S34°30'18" E, 32.53 FEET; THENCE S14°34'07" E, 61.11 FEET; THENCE S12°58'17" E, 60.75 FEET; THENCE S15°41'25" E, 48.45 FEET; THENCE S21°04'41" E, 112.00 FEET; THENCE S28°54'04" E, 92.09 FEET; THENCE S80°48'36" E, 101.94 FEET; THENCE S32°06'48" E, 300.38 FEET; THENCE S15°26'54" E, 42.96 FEET; THENCE N87°46'25" W, 883.50 FEET; THENCE S04°30'28" W, 164.80 FEET; THENCE S89°40'03" W, 137.86 FEET; THENCE S88°37'32" W, 227.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF 700 EAST STREET; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING THREE COURSES: NORTHEASTERLY 195.05 FEET ALONG THE ARC OF A 504.24 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS N12°04'55" E, 193.84 FEET); THENCE N01°00'00" E, 335.58 FEET; THENCE NORTHERLY 79.87 FEET ALONG THE ARC OF A 614.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS N02°43'36" W, 79.81 FEET); THENCE N89°30'00" W, 175.19 FEET; THENCE N84°51'02" W, 194.51 FEET; THENCE N85°00'00" W, 132.46 FEET; THENCE N02°00'00" E, 392.80 FEET; THENCE N05°00'00" E, 63.29 FEET; THENCE S88°00'00" E, 15.74 FEET TO THE POINT OF BEGINNING.

CONTAINS 23.8443 ACRES

BK8387P67846

**EXHIBIT "B"**

Schedule for reimbursement:

Grading Willow Springs Drainage	\$21,000.00
Extra Curb and Gutter (1,740 ft.)	\$14,007.00
Extra Asphalt and Road base	\$ 6,800.00
Two Box Culverts including wingwalls	\$75,000.00
Two Headwalls	\$ 2,535.00
Landscaping, sprinklers, trees	\$28,365.00
<b>Total</b>	<b>\$147,707.00</b>

BK 8387 PG 7847

DATE RECORDED: 01/05/2000  
ENTRY: 7561084 BY SOURCE PG 0000 TIME 01:04  
# OF PAGES: 01 REPORTABLE? Y  
REC DATE 00/00/0000 TM 00:00  
DECL # 000000 BY SOURCE PG 0000  
FLAT PAGES: 00-00-01  
00-00-01

19. **What is the primary purpose of the *Journal of Clinical Endocrinology and Metabolism*?**

7719197  
09/15/2000 09:08 AM NO FEE  
Book - 8387 Pg - 7837-7848  
NANCY WORKMAN  
RECODER, SALT LAKE COUNTY, UTAH  
CITY OF DRAPER  
12441 S 900 E  
DRAPER UT 84020  
BY: RDJ, DEPUTY - WI 12 P.

PF1 = RXEN PF2 = RREF PF3 = RXLP PF7 = RXAB

**LIGHT TYPE  
CO. RECORDER**

BK8387PG7848