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GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

CITY OF DRAPER

1020 E PIONEER RD

DRAPER UT 84020

BY: SAN. DEPUTY - WI 4 P.

**AGREEMENT***Parcel # 28 28 276005*

**THIS AGREEMENT** is made and entered into as of the 23<sup>rd</sup> day of February, 2006, by and between **DRAPER CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **HIDDEN VALLEY COUNTRY CLUB**, a Utah corporation, hereinafter referred to as "Country Club."

**RECITALS:**

**WHEREAS**, Draper City, for the protection of public health, safety and welfare, desires to construct a subsurface storm drain pipe under a portion of the Country Club's property; and

**WHEREAS**, the Country Club is willing to grant the City an easement for the construction and maintenance of the storm drain pipe, subject to the terms and conditions of this Agreement;

**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 parties hereby agree as follows:

1. **Conveyance of Easement.** The Country Club hereby agrees to convey to the City an easement for the construction and maintenance of a single subsurface storm drain pipe (the "Pipe") under that property more particularly described in the Easement document in Exhibit A, attached hereto and incorporated herein by reference. In consideration of the conveyance of the easement for the Pipe, the City hereby agrees to pay to the Country Club the sum of \$15,695, which cost shall be inclusive of the payment for the permanent easement and the required construction easement. In addition to the monetary consideration, the Country Club's conveyance to the Pipe and construction easements is specifically subject to the terms set forth below.

2. **Duration of Construction Activities.** The City hereby acknowledges that for the benefit of play of the golf course at the Country Club, the project must be completed by no later than March 3, 2006. The City hereby covenants and agrees that it will complete the project on or before March 3, 2006. In the event the City fails to complete construction by the close of business on March 3, 2006, the City shall be subject to penalties in the amount of \$750 per day until such construction is completed.

3. **Allowance for Resodding, Irrigation and Other Expenses.** The parties hereby acknowledge that the condition of the property upon completion of installation of the Pipe is critical to the use of the property by the Country Club. Therefore, the City hereby agrees to pay to the Country Club the following amounts, in addition to the consideration set forth in paragraph 1 above, for the purposes identified herein: (a) the sum of \$5,230 upon execution of this Agreement for the purpose of allowing the Country Club to reinstall sod over the Pipe upon completion of the project; (b) the value of all costs and expenses incurred to repair and/or replace irrigation lines, sprinkler heads and related equipment that may be damaged during construction of the Pipe; (c) all other reasonable costs and expenses incurred by the Country Club to repair or replace property damaged as

LEGAL DESCRIPTION  
NOT ATTACHED  
CO RECORDER

a result of laying, maintaining, operating, repairing, inspecting, protecting, installing, removing and/or placing the Pipe.

4. **Allowance for Repair.** In the event it becomes necessary for the City to repair, remove and/or replace the Pipe, the City hereby agrees to (a) limit such activities to the period from November 1 to February 28 whenever practicable, and when not practicable, to undertake such activities in a manner reasonably calculated to avoid disruption to the property and golf activities thereon; (b) pay to the Country Club the reasonable value of the Country Club's loss of use of the property during any such activities in an amount not less than \$750 per day whenever such loss of use occurs, and (c) restore all property through which such work traverses to as near its original condition as is reasonably possible.

5. **Indemnity.** The City hereby agrees to defend, indemnify and hold harmless the Country Club from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, damages, suits, costs and expenses incidental thereto (including costs of defense and attorneys' fees), which the Country Club may hereafter incur, be subject to, responsible for or pay as a result of the laying, maintenance, operation, repair, inspection, protection, installation, removal and/or placement of the Pipe, or as a result of the City's failure to perform its obligations in compliance with this Agreement.

6. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior negotiations, promises, inducements, representations or agreements pertaining to the subject matter hereof which are not set forth herein.

7. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, officers, employees, representatives, agents, successors and assigns.

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

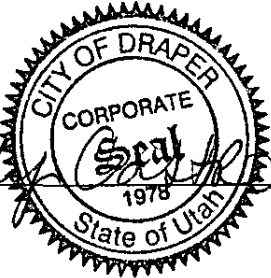
9. **Governing Law.** This Agreement and the parties' performance hereunder shall be governed by and construed in accordance with the laws of the State of Utah.

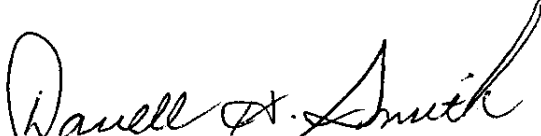
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

**"CITY"**

**DRAPER CITY**


ATTEST:

  
\_\_\_\_\_  
City Recorder

By:   
\_\_\_\_\_  
Mayor

**"COUNTRY CLUB"**

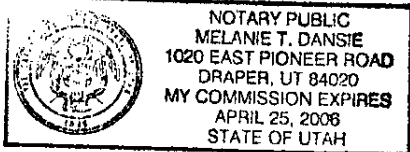
**HIDDEN VALLEY COUNTRY CLUB**

  
By: \_\_\_\_\_  
Its: PRESIDENT

### CITY ACKNOWLEDGMENT

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

On the 28<sup>th</sup> day of February, 2006, 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.



Melanie T. Dansie  
Notary Public

### COUNTRY CLUB ACKNOWLEDGMENT

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

On the 23<sup>rd</sup> day of February, 2006, personally appeared before me R. Bruce Hancey who being by me duly sworn did say that he/she is the President of **Hidden Valley Country Club**, 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.

Judy B. Koenly  
Notary Public

