

# Mapleton City Council Staff Report

Meeting Date: May 20, 2014

**Applicant:** Bruce Dickerson

**Prepared by:** Sean Conroy, Community Development Director

**Public Hearing Item:** Yes

**Location:** 190 N 1100 W

**Zone:** PRD-1

## **REQUEST**

Consideration of a Resolution amending Exhibit “B” (Concept Plan) and Exhibit “C” (Conditions Precedent) of the Development Agreement for the Whisper Rock project located at approximately 190 N 1100 W in the PRD-1 Zone related to the proposed clubhouse amenities and the project trail system.

## **BACKGROUND AND PROJECT DESCRIPTION**

The subject property is approximately 16.55 acres in size. In 2009, the City approved a development agreement for the Whisper Rock subdivision project and applied a Planned Residential Development (PRD-1) zoning to the property. The development agreement and concept plan outlined the following:

- A maximum density of 58 detached residential units (with the use of TDRs);
- Private ownership of each residential unit, but all open space to be commonly owned and maintain by an HOA;
- Developer will provide no later than construction of thirty (30) residential units a project clubhouse with a minimum size of twenty two hundred (2,200) square feet which will include the follow amenities: swimming pool including restrooms with showers, theater room, meeting room and exercise facility.
- Developer to provide a walking trail for the benefit of the project residents.

Two subdivision plats have been recorded thus far for this project. Plat “A” consists of five lots, all of which have been developed. Plat “B” consists of 11 lots. Five units are currently under construction in Plat “B”, however, none of the units have received a final certificate of occupancy.

The applicant is now requesting the following amendments to exhibits “B” (concept plan) and “C” (conditions precedent) of the development agreement:

- Eliminate the size requirement for the clubhouse as well as the requirement for the pool, restrooms with showers, theater room, meeting room and exercise room. A smaller clubhouse is still proposed as well as a central park that includes a tot lot, a sports court and a large grass area.
- Walking trails will still be provided but will be more centrally located and will not wrap around the entire perimeter of the project as previously proposed.
- Fencing will be provided by the developer for a rear yard for each unit.
- On-street parking will only be allowed on one side of the interior roads.
- Amend the setback requirement for a front porch from 20 feet to 16 feet.

The applicant is also proposing to amend the Covenants, Conditions and Restrictions (CC&R’s) to allow for a larger backyard area to be maintained by each individual property owner. This change does not require City Council approval.

## **EVALUATION**

**Process:** Item #13 of the development agreement indicates that modifications to the project require City Council approval. Since none of the proposed changes require amendments to either the PRD-1 zoning text, or the approved subdivision plats, Planning Commission review is not required. However, if the Council would like the Commission's input, this item could be referred to the Commission for review.

**Project Concept:** During the previous review process for this project, the applicant had represented that the project may be marketed as a senior living development. However, the applicant is no longer proposing the senior living concept. Nothing in the project approvals, development agreement or zoning text required that the project be developed as a senior living project.

As part of the adoption of the PRD-1 zone for the project, the City Council adopted the following findings (MCC Chapter 18.77.030):

- A. *Requiring standards for smaller lot housing will help preserve the quality of housing in the future within Mapleton City.*
- B. *Smaller lot housing may be utilized to help buffer commercial uses from low density residential development.*
- C. *Although small lot housing has enjoyed a strong market demand as an alternative to the traditional large lot housing, additional standards for small lot housing are necessary to ensure adequate light, air, privacy, and open space for each dwelling unit, and to protect residents from the harmful effects of excessive noise, population density, traffic congestion, and other adverse environmental effects.*

Staff concurs with the Council's original findings. According to the 2010 U.S. Census, the median home values in Mapleton were approximately 36% higher than the Utah average. While this is certainly a positive for existing home owners, it can create a barrier for those trying to enter the housing market. Smaller lot developments allow for a more diverse housing stock and provide more housing options for both existing and future Mapleton residents. The Council should consider whether the proposed amendments would conflict with the intent of the PRD-1 zone.

**Clubhouse Changes:** The original proposal to include a large clubhouse and swimming pool was proffered by the developer and was not the result of a requirement of the City. The changes to the clubhouse and the elimination of the swimming pool will not impact the adopted design standards for the residential units and does not conflict with the intent of the PRD-1 zone. Eliminating the requirement for a swimming pool from the development agreement would not preclude the construction of a swimming pool in the future if the HOA elected to do so.

**Trail Configuration:** The original trail configuration included a perimeter trail that would run along the rear yards of many of the units. The trail also provided connections to the clubhouse and park/open space area. While the proposed trail configuration would eliminate the perimeter trail, it would still ensure that all units in the project are interconnected and can have access to the primary park/open space area and the clubhouse. The previous concept plan did not include an interior connection from Plat "A" to the rest of the development. The proposed amendment would create a connection to Plat "A", which is an improvement.

**Fencing:** In addition to the perimeter fencing that has been installed, the applicant is now proposing to install backyard fencing to create a more private limited common area for each lot. As mentioned previously, the applicant is proposing amendments to the CC&R's to address this limited common area.

**Parking:** The applicant is proposing that on-street parking only be allowed on one side of the interior roads in the development. This will avoid traffic and circulation impacts that might result for excessive vehicles being parked along the roads of the development.

**Setbacks:** The applicant is requesting that the setback requirement for entry porches be reduced from 20 feet to 16 feet. Staff is supportive of this request. In standard residential subdivision design, the garage is often located closer to the street than the rest of the building making the garage the dominant feature of the residence. By allowing for a front porch/entry way to be located closer to the street, the prominence of the garage is diminished resulting in an improved appearance.

**Neighborhood Input:** A letter dated April 21, 2014 was submitted to the Council from adjacent property owners outlining several concerns regarding the Whisper Rock development. The primary concern appears to be the desire to ensure that the Whisper Rock project is developed in a quality manner and contributes to the character of the neighborhood rather than detracting from it.

Staff agrees with the neighbors' desire of wanting a quality development. Staff can support the applicant's request for the following reasons:

- With or without the proposed amendments, the project will be consistent with the intent of the PRD-1 zone and will contribute to a more diverse housing stock in the City.
- The development agreement outlines the design standards that apply to the residential units in the development to ensure a cohesive, quality appearance. These standards are not changing with the proposed amendments.
- The originally proposed clubhouse and swimming pool would only benefit the members of the HOA, they were not proposed as public amenities.
- From the public's view, the development will appear much the same, with or without the larger clubhouse and swimming pool.

The City Council has the discretion to approve the requested amendments or to hold the developer to the original agreement. If the Council determines that the proposed amendments would result in an inferior or substandard development, it is within its discretion to deny the requested amendments.

### **RECOMMENDATION**

Adopt a Resolution approving amendments to Exhibit "B" (Concept Plan) and Exhibit "C" (Conditions Precedent) of the Whisper Rock Development Agreement.

### **ATTACHMENTS**

1. Application Information.
2. Neighborhood Correspondence.

## **RESOLUTION NO. 2014-**

### **CONSIDERATION OF A RESOLUTION AMENDING EXHIBIT “B” (CONCEPT PLAN) AND EXHIBIT “C” (CONDITIONS PRECEDENT) OF THE DEVELOPMENT AGREEMENT FOR THE WHISPER ROCK PROJECT LOCATED AT APPROXIMATELY 190 N 1100 W IN THE PRD-1 ZONE RELATED TO THE PROPOSED CLUBHOUSE AMENITIES AND THE PROJECT TRAIL SYSTEM.**

**WHEREAS**, on December 18, 2009 a development agreement was recorded with the Utah County Recorder for the Whisper Rock subdivision project; and

**WHEREAS**, the concept plan for the project included 58 detached residential units, a clubhouse, a swimming pool and a walking trail; and

**WHEREAS**, on June 17, 2009 the City Council approved a Planned Residential Development (PRD-1) zone for this project; and

**WHEREAS**, the intent of the PRD-1 zone is to allow small residential lots as a buffer between commercial property and larger lot developments, and to outline development standards for smaller lots; and

**WHEREAS**, the developer is requesting amendments to Exhibit “B” (Concept Plan) and Exhibit “C” (Conditions Precedent); and

**WHEREAS**, the proposed amendments do not conflict with the standards or intent of the PRD-1 zone.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of Mapleton, Utah, to amend Exhibit “B” (Concept Plan) and Exhibit “C” (Conditions Precedent) of the development agreement as described in the attachment.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF MAPLETON, UTAH,

This 20<sup>th</sup> Day of May, 2014.

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Brian Wall  
Mayor

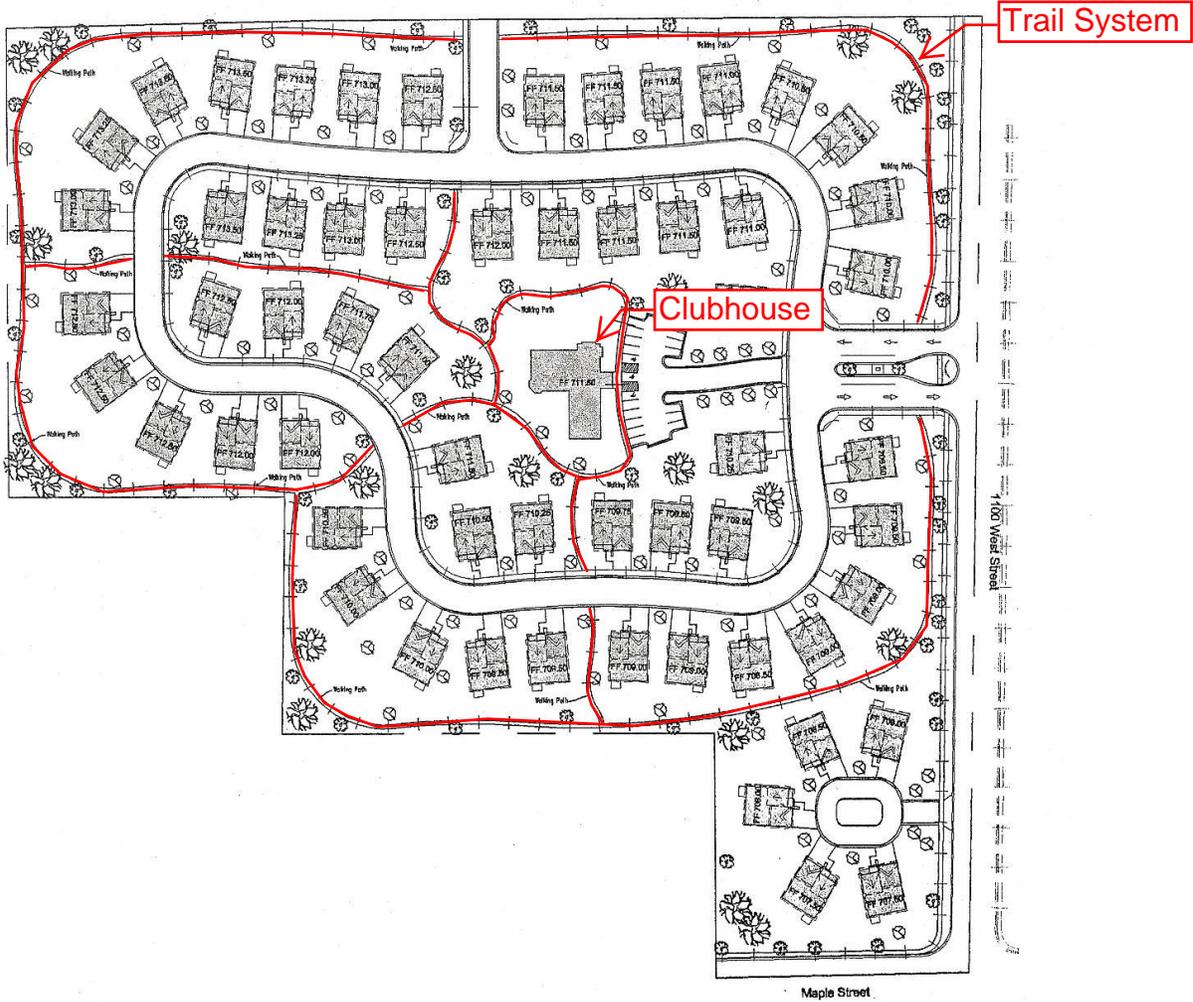
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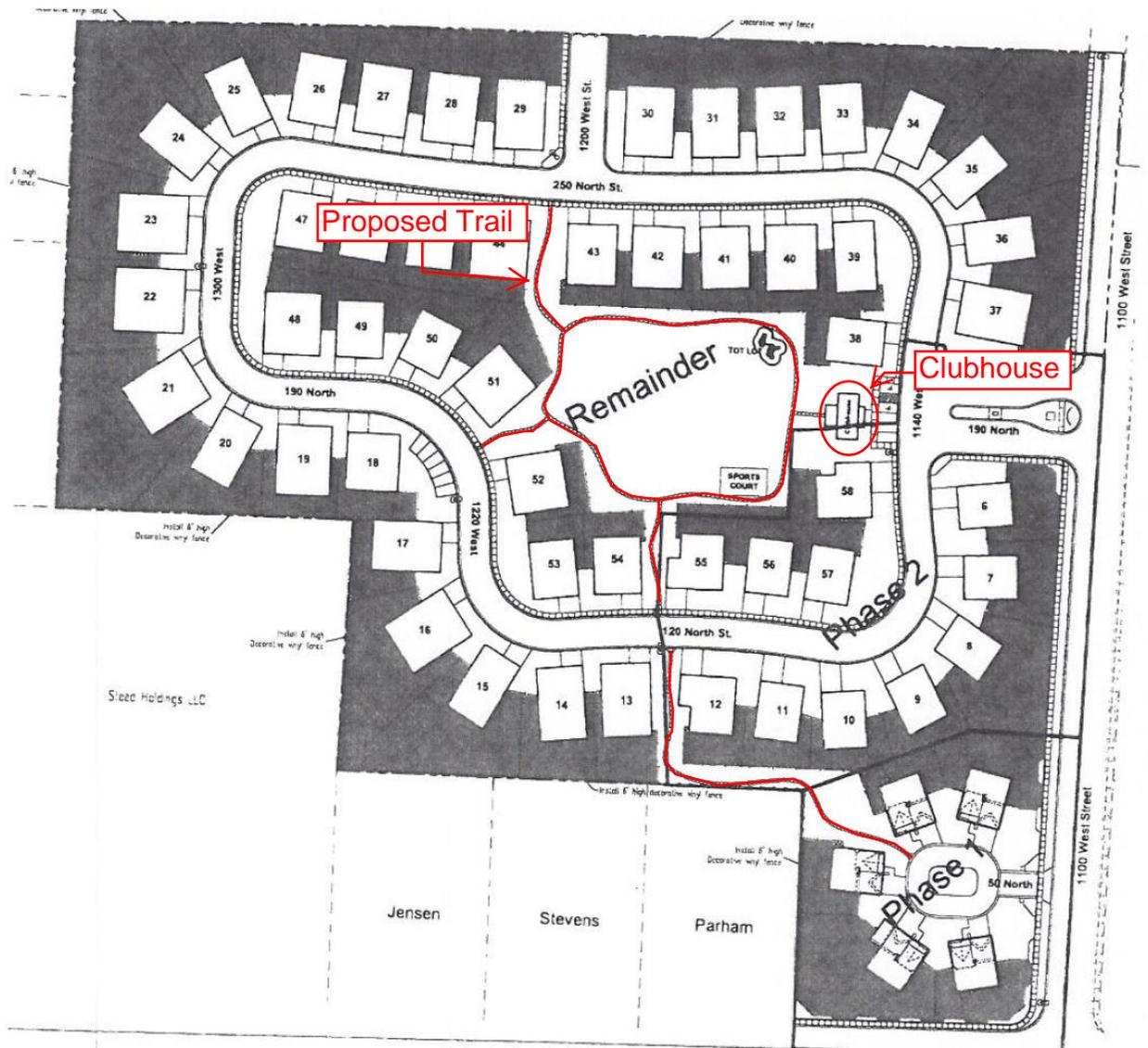
Camille Brown  
City Recorder  
**Publication Date:**  
**Effective Date:**

# Original Concept Plan and Proposed Concept Plan

## Original Concept Plan



# Proposed Concept Plan



| **Whisper Rock PRD**  
**AMENDED DEVELOPMENT AGREEMENT**

## Whisper Rock PRD DEVELOPMENT AGREEMENT

This development agreement (the "Agreement") is made and entered into on ~~May~~  , 2014, by and between the Mapleton City Corporation, a Utah Municipal Corporation hereinafter referred to as the "City", and, Whisper Rock PRD dba Whisper Rock Limited Liability Corporation, hereinafter referred to as the "Developer".

### RECITALS

A. Pursuant to enabling authority set forth in the Municipal Land Use Development and Management Act, City amended its General Plan and Zoning Ordinance.

B. Developer owns or controls property located generally at location in Mapleton, Utah, and which is legally described in Exhibit "A" (the "Property") attached hereto and made a part of this Agreement.

C. Developer has submitted an application to create and apply a new Planned Residential Development (PRD-1) zone to the property which would allow single family units to be constructed on the property at a density of up to 3.5 units per acre.

D. To assist City in its review and approval of the Project and to assure development of the Project in accordance with Developer's representations to City, Developer and City desire to enter into this Agreement which sets forth the conditions, terms, restrictions and requirements whereby Developer may develop the Project.

E. To allow development of the Property for the benefit of Developer, to ensure City that development of the Property will utilize best planning practices, and to ensure conformance with applicable City policies, Developer and City desire to enter into this Agreement and are each willing to abide by the terms and conditions set forth herein. Developer and City each acknowledge that development of the Project will result in significant planning, economic and other benefits to each party.

F. Acting pursuant to its legislative authority under Utah Code Annotated §§ 10-9-101, et seq., and after all required public notice and execution of this Agreement by Developer, the City Council of City, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Development and Management Act, City's General Plan, and Title 16, 17, and 18 of the Mapleton City Code (collectively, the "Public Purposes"). As a result of such determination, the City has elected to consider the Project and the development authorized hereunder in accordance with the provisions of this Agreement.

## **AGREEMENT**

Now, therefore, in consideration of the premises recited above and the terms, conditions and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of City action approving this Agreement. This Agreement shall terminate when a certificate of zoning compliance, as set forth in Section 18.12.100 of the Mapleton City Code, has been issued for every building included in the Project and any bonds associated with the Project, including durability bonds, have been released by City.

2. Abandonment; Reversion of Zoning. If during any one (1) year period after approval of the Project, Developer takes no substantial action in good faith to exercise the rights authorized under this Agreement to develop the Project, City may declare the Project to be abandoned. Provided, however, that prior to a declaration of abandonment, City shall give Developer thirty (30) days notice of City's intent to make such declaration. If Developer presents evidence to City of substantial good faith efforts to develop the Project or of economic or other conditions hindering development, City may grant Developer an extension of time for performance. In the event no extension of time is granted, City may elect to re-zone to an appropriate zone any portion of the Property for which a subdivision plat has not been recorded. Lots within any portion of the Project for which a subdivision plat has been recorded may be developed at any time subject to provisions of the Mapleton City Code applicable to recorded lots.

3. Agricultural Use To Remain in Undeveloped Areas - Irrigation Ditches. Any portion of the Property for which a plat has not been recorded shall be maintained in agricultural use. Agricultural use need not be maintained for any portion of the Property which is subject to a recorded plat. Irrigation ditches on the Property shall be maintained as at present unless the ditch owner in consultation with the applicable irrigation company approves piping, realignment, abandonment, or otherwise authorizes a change in the configuration or use of a ditch.

4. Conditions Precedent. City and Developer's obligations under this Agreement shall be subject to completion of the Specific conditions (the "Conditions Precedent") set forth in Exhibit "C" attached hereto and made a part of this Agreement. Upon fulfillment of the Conditions Precedent and City approval of the Project pursuant to applicable requirements of the Mapleton City Code and this Agreement, development of the Property shall be subject to the terms and conditions of this Agreement. In the event City disapproves the Project this Agreement shall be null and void and neither Developer nor City shall have any obligation hereunder.

5. Zoning Classification - Allowed Uses - Concept Plan. Subject to the terms of this Agreement, the zoning classification on the Property shall be a PRD Zone.

Refer to Exhibits A & B, which specifies the Legal Description of the land and proposed Concept Plan for the layout of the lots.

6. Applicable Code Provisions. All provisions of the Mapleton City Code and Utah Code § 10-9a-509, as constituted on the effective date of this Agreement shall be applicable to the project proposed on the Property except as expressly modified by this Agreement. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement and other requirements generally applicable to development in Mapleton City and this Agreement satisfies the legal requirement for the developer's rights to vest. The developer acknowledges the requirement to install all necessary infrastructure as stated in Mapleton City Code Chapter 17.16, at their own expense.

7. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Utah Code Annotated § 10-9a-509(1)(a)(i) or successor case law. Any such proposed change affecting Developer's rights shall be of general application to all development activity in city. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.

8. Project Plan Approval. In the event City approves the Project, Developer shall cause final plans and specifications (including site and building design plans) (the "Project Plans") to be prepared for the Project.

A. Requirements. Project Plans shall meet the following requirements:

(1) Project building elevations and landscaping plans shall be reviewed and approved by City in accordance with standards and procedures generally applicable to development projects in City.

(2) Project Plans shall be in sufficient detail, as reasonably determined by City, to enable City to ascertain whether the Project design is acceptable (including the size, scope, composition of the primary exterior components, on and off-site vehicular and pedestrian access, and general Project design) and in accordance with the terms and conditions of this Agreement.

(3) In order to ensure the entire Project has a consistent design, Project Plans for all portions of the Project, including commercial buildings and associated areas, shall conform to the design criteria set forth in Exhibit "D" (the "Project Design Criteria" or "CC&R's") attache

(4) Except as modified by the Design Criteria, Project Plans shall comply with applicable standards and requirements of the Mapleton City Code, including but not limited to Titles 15 (Buildings and Construction), 16 (Development Code Part I-Municipal Planning), 17 ((Development Code Part II-Subdivisions), 18 (Development Code Part III-Zoning), and 19 (Impact Fee Procedures).

B. Construction. Developer shall ensure the Project is constructed in compliance with the Project Plans and any other lawful requirement imposed on the Project.

9. Subdivision Plat Approval. Either concurrently with, or subsequent to, approval of the Project Plans, as determined by Developer pursuant to applicable requirements of the Mapleton City Code, Developer shall cause one or more subdivision plats (the “Subdivision Plats”) to be prepared for the Project Property. Such plats shall conform to applicable requirements of the Mapleton City Code.

A. Fees. All impact fees shall be paid by Developer to the city for each of the lots within the final approved plat prior to recording pursuant to applicable requirements of the Mapleton City Code.

B. Bonding: Meet all requirements of Chapter 17.20, Performance Guarantees, of the Mapleton City Code.

C. Culinary Water Shares. The Developer shall transfer Water to the City as per City Ordinance in effect at the time of plat approval for each phase. The water shares need to be East Bench, Hobble Creek, or Mapleton Irrigation.

10. Standard for Approval of Project Plans and Subdivision Plats. All Project and Subdivision Plans must be reviewed by the Development Review Committee and Planning Commission, the City Council shall be the approving authority. Project Plans and Subdivision Plats must conform to applicable requirements of the Mapleton City Code, State and Federal Law, and this Agreement and if, as reasonably determined by City, the Project Plans meet the design criteria attached hereto as Exhibit “B”.

11. Commencement of Site Preparation. Developer shall not commence site preparation or construction of any Project improvement on the Property until such time as Subdivision Plats and Project Plans have been approved by City in accordance with the terms and conditions of this Agreement.

12. Project Phasing and Timing. Upon approval of Project Plans, Developer shall proceed by constructing the entire Project at one time or in approved phases. Final plat approval will not be given for subsequent phases until building permits have been issued on at least 40% of the lots in the previous phase.

13. Changes to Project. No material modifications to Project Plans shall be made after approval by City without City Council's written approval of such modification. Developer may request approval of material modifications to Project Plans from time to time as Developer may determine necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which (i) changes by more than fifteen (15) percent the total area (footprint) of any building to be constructed on the Property, (ii) substantially changes the exterior appearance of the Project, (iii) substantially changes the location of any building to be constructed on the Property; or (iv) changes the functional design of the Project in such a way that materially affects traffic, drainage, or other design characteristics. Modifications to the Project Plans which do not constitute material modifications may be made without the consent of City Council. In the event of a dispute between Developer and City as to the meaning of "material modification," no modification shall be made without express City Council approval. Modifications shall be approved by the City Council if such proposed modifications are consistent with City's then-applicable rules and regulations and are consistent with the standard for approval set forth in this Agreement.

14. Time of Approval. Any approval consideration required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with applicable procedures set forth in the Mapleton City Code.

15. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City.

16. Default.

A. Events of Default. If one or more of the following events or conditions occurs, Developer or City, as applicable, shall be in default ("Default") under this Agreement:

(1) A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

(2) A determination made upon the basis of substantial evidence that Developer or City has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(3) Any other event, condition, act or omission, either by City or Developer, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

B. Procedure Upon Default.

(1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default within such thirty (30) day period and thereafter proceeds diligently to cure the default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph C herein. Failure or delay in giving notice of default shall not constitute a waiver of any default.

(2) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

C. Breach of Agreement. Upon Default as set forth in Paragraphs A and B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of zoning compliance for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a default by the City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

D. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah. The option to institute legal action, at least in the case of defaults, is available only after the cure provisions are complied with.

17. General Terms and Conditions. The parties agree, intend and understand that the obligations imposed by this Agreement are only such, as are consistent with City of Mapleton, state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with local, state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with local, state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

A. Recording of Agreement. In the event City approves the Project and all Conditions Precedent have been met, this Agreement shall be recorded as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

B. Severability. Each and every provision of this Agreement shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

C. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

D. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City.

E. State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction, this agreement shall be null and void.

F. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City



K. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

L. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

M. Hold Harmless. Developer shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages or equitable relief arising out of claims for personal injury or property damage arising from direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, in connection with the Project.

(1) The agreements of Developer in Paragraph M shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of City, or (ii) attorneys' fees under Paragraph I herein.

(2) City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

N. Relationship of Parties. This Agreement is not intended to create any partnership, joint venture or other arrangement between City and Developer. This Agreement is not intended to create any third party beneficiary rights for any person or entity not a party to this Agreement. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

O. Title and Authority. Developer expressly warrants and represents to City that it is a limited liability company in good standing and that such company owns or controls all right, title and interest in and to the Property and that no portion of the Property, or any right, title or interest therein has been sold, assigned or otherwise transferred to any other entity or individual. Developer further warrants and represents that no portion of the Property is subject to any

lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on such representations and warranties in executing this Agreement.

P. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

Q. Exhibits. All exhibits referred to herein are made a part of this Agreement as incorporated by reference date.

[signature page follows]

This Development Agreement has been executed by City, acting by and through its City Council, pursuant to a City Council motion authorizing such execution, and by a duly authorized representative of Developer as of the date first written above.

Attest: Mapleton City, a Utah Municipal Corporation

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

By: \_\_\_\_\_  
City Recorder

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

STATE OF UTAH  
COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ by Bruce Dickerson, of Whisper Rock LLC, a Utah limited liability company on behalf of such company.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

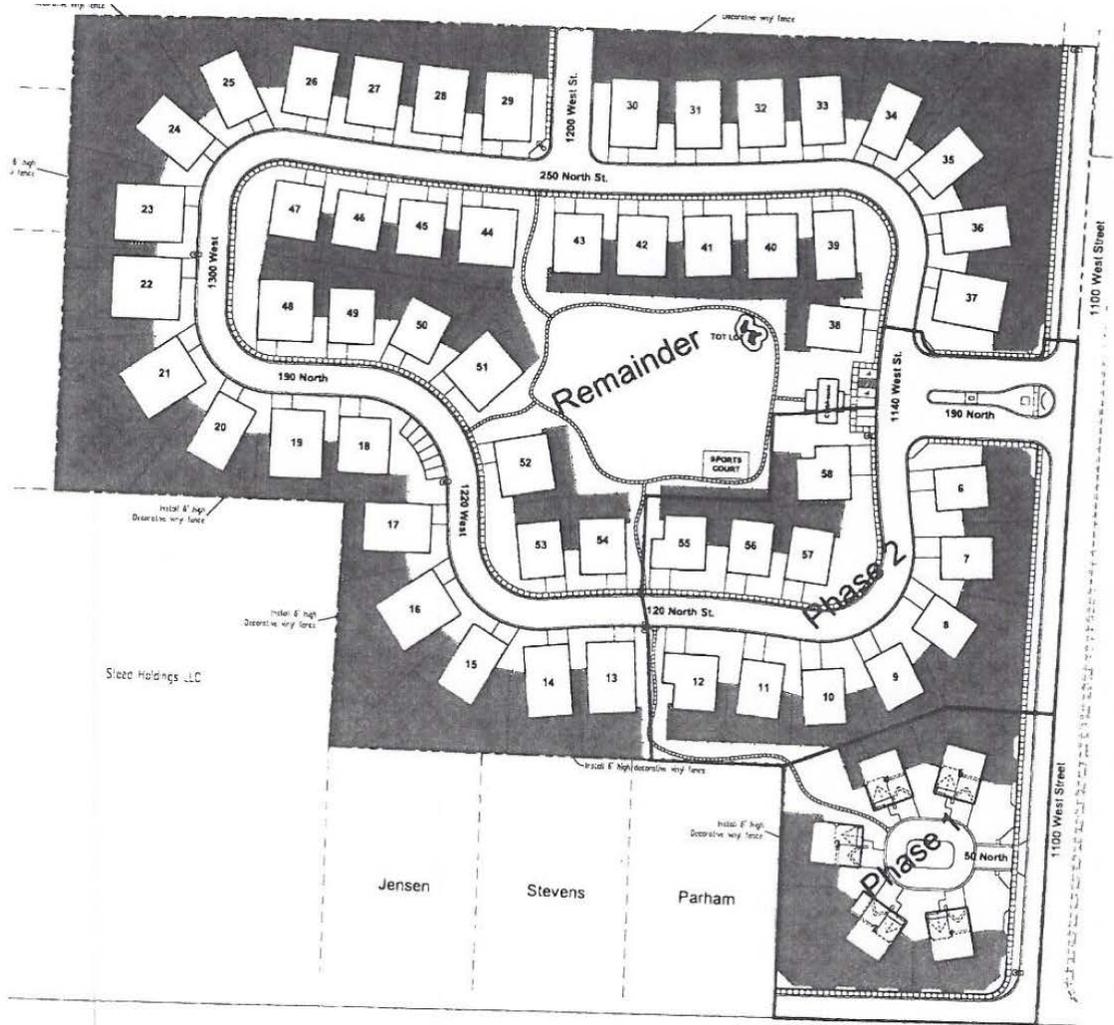
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**Exhibit "A"**  
**Legal Description**  
**Project Name**  
**Project Area**

**Property Description**

Commencing at a point located North 88°58'42" East along the Section line 1395.22 feet from the Southwest corner of Section 10, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence North 251.12 feet; thence West 451.87 feet; thence North 01°13'51" East 238.12 feet; thence North 88°51'00" West 23.52 feet; thence along the arc of a 83.00 foot radius curve to the right 44.54 feet (chord bears North 73°27'26" West 44.01 feet); thence West 386.17 feet; thence North 01°13'51" East 210.00 feet; thence West 288.29 feet; thence North 473.27 feet; thence North 88°50'32" East along a fence line 326.54 feet; thence North 89°43'12" East along a fence line 333.29 feet; thence North 89°34'17" East along a fence line 355.80 feet; thence South 01°09'42" West partially along a fence line and along the Westerly boundary line of Hales Subdivision Plats, A, B and C, 970.77 feet to the Section line; thence South 88°58'42" West along the Section line 260.91 feet to the point of beginning.

**Exhibit "B"**  
**Final Site Plan**



## Exhibit "C" Conditions Precedent

### Developer Responsibilities

1. Dedication of property for public improvements: The Developer agrees to dedicate to the City approximately twenty (20) feet of property along its frontage of 1100 West Street and along Maple Street for the widening of those roadways, the Developer also agrees to dedicate an additional 5 feet of property along those same frontages for the installation of sidewalk. The street and sidewalk dedications described will be addressed at time of site plan approval.
2. Developer will provide to the City all necessary easements for connection of project utilities to the public system.
3. Developer will provide no later than the construction of thirty (30) residential units a project clubhouse, tot lot play area and sport court, as shown on the Final Site Plan attached as Exhibit B. ~~with a minimum size of twenty two hundred (2,200) square feet. which will include the following amenities: swimming pool including restrooms with showers, theater room, meeting room and exercise facility.~~
4. Developer will provide a walking trail for the benefit of the project residents. The trail shall be constructed proportionally with each phase of construction as shown on the Final Site Plan attached as Exhibit B.
5. All units will be single family structures of frame construction with either a two (2) or three (3) car enclosed garage. The main floor living space of each unit will be a minimum of twelve hundred (1200) square feet. Building exteriors shall be of stucco, stone, brick or hard surface siding (Hardy Plank, Smart Siding or equivalent). Vinyl or aluminum siding is prohibited except for soffit and fascia and architectural features. The building front shall be a combination of stucco and stone.
6. With the recording of the first phase of development the developer will provide to the City evidence of incorporation of a homeowners association with authority to regulate common and limited common elements of the project. The homeowners association shall be responsible for all common element maintenance and shall maintain a look of uniform quality.
7. The Developer will fence the perimeter of the project with a six (6) foot vinyl fence except where adjacent to streets. All interior fencing shall be of vinyl in a compatible design to the perimeter fence. The fence design adjacent to 1100 West and Maple Streets will be approved by the City Council as a part of each phase. Additionally, each residence, with the exception of the cul-de-sac fronting on West street, will include side and rear yard fencing as shown on the Final Site Plan attached as Exhibit B.
- ~~7-8.~~ Parking will be allowed on one side of the street only.
- ~~8-9.~~ All storm drainage to be retained on site and dispersed through approved sumps and trench drains

- 9.10. \_\_\_\_\_ Water shares will be delivered at time of approval of each phase of development.
- 10.11. \_\_\_\_\_ The project density shall not exceed three and one half (3.5) single family units per acre for the overall site.
- 11.12. \_\_\_\_\_ Developer shall maintain a minimum set back of twenty (~~2020~~) feet from the garage door and back of curb (back of sidewalk where applicable), sixteen (16) feet from the porch or living area and back of curb (back of sidewalk where applicable), and maintain a minimum distance of twenty (~~1520~~) feet between units.
- 12.13. \_\_\_\_\_ The Developer shall meet all requirements of Chapter 18.77, Planned Residential Development, Mapleton City Code.

### City Responsibilities

1. Inconsideration of the above mentioned Developer responsibilities and because of the positive impact of the development as a buffer separating commercial and future commercial development from low density residential development, the City of Mapleton agrees to accept the surrender of seven (7) Transferable Development Rights or TDR's as full requirement for the increase in density. TDR's will be surrendered to the City concurrently with request for building permits at the rate of one (1) TDR per each eight point two (8.2) units.
2. The City accepts the street cross sections found in Exhibit D as the standard for street construction for the project.

April 21, 2014

Dear Mayor Brian Wall and City Council Members (Ryan Farnworth, Scott Hansen, Jim Lundberg, Michael Nelson, and Jonathan Reid):

As neighbors to the Whisper Rock (WR) development we've watched with interest as planning, infrastructure and building has progressed. Recently we've noticed a change in ownership, or marketing, to Edge Homes. As many of the city officers might be unfamiliar with the history of the WR development we wanted to provide a historical perspective of the development. Below is a brief summary of some of the important dates and changes to the development. In addition to the historical summary, we have also included a few discussion points that neighbors have raised regarding and associated to the WR development:

- 2009: Prior to spring 2009, the approved development plan was for 26 family homes. In April 2009, however, the developer sought and was eventually granted (June, 2009) the creation of a new type of zone (the PRD), and Whisper Rock was designated as such. On August 13, 2009, the planning commission recommended denial of the plat proposal to the city council, citing several concerns by the Development Review Committee (concerns presented in a packet at the meeting, but not available online), with additional concerns for safety due to road width, speed and single access point for the development. The preliminary plat approval was discussed by the city council on August 19 and September 2<sup>nd</sup>. The meeting notes do not indicate a recommendation of DENIAL from the planning commission. Preliminary and final plat approvals were granted by the city council. Phase I was soon under construction with 5 homes. [NOTE: City Council said they would not vote without neighborhood members, and then after the neighborhood members left, the City Council voted, approving the development. Paul Roundy was present and attested to this].
- 2010: In October 2010, Final Plat approval for phase II was requested and granted by the planning commission and city council.
- 2011: In August 2011, phase 2 was again brought to clarify city code, and determined the 2010 approval was still valid.
- 2013: Approval was reiterated through clarification of city code, and Phase II construction began, with three homes being completed and for sale.
- 2013 – Neighbors visited with city planner who showed plat plan for the WR development, stating that the development has to meet what is indicated on the plat plans. Specifically, the development must have a clubhouse, pool, walking area, etc. The city officials also clarified that it was only advertised as a 50+ aged community, but did not indicate that on plat plan, or in the development agreement, and therefore did not have to keep to the marketing plan (of being a retirement only community).

- 2014: Homes still for sale, but now Edge Homes appears to be the new proprietor. Rumors indicate they may try to amend the agreement with the city.

Items and concerns raised by the neighbors for future discussion:

- 1) Quality and size of phase I homes is acceptable, but most seem to be rental properties. This is a concern.
- 2) Quality and size of homes in phase II is in line with rental-type properties, not permanent residents. This is a concern.
- 3) 55+ language used to sway planning commission and city council is not enforceable, and seems to be gone from all advertisements. This is a concern.
- 4) With the agreements and approvals already in place, the surrounding neighbors are hopeful that a high-quality neighborhood will be built and thrive. It will be important for the city and the current developer to maintain the original agreement as written, requiring all aspects of the planned development. If the argument is made that the homes need to be cheaper in order to sell, we as neighbors to WR strongly disagree! Higher quality, larger, and maybe slightly more expensive homes are more likely to appeal to those considering Mapleton as their future home, as evidenced by homes in Harvest Park, for example.
- 5) If the development is altered in any way, or expands beyond that which is planned, it will be important for the city to consider all of the discussion points raised in the 2009 planning phase, especially in regards to safety and emergency access, and the "fit" of such a development into the Mapleton community. Lower density development should also be a priority, especially considering adequate city utilities and neighborhood access. An easement should be considered connecting Whisper Rock to Maple Street or 1600 West (Highway 89). 1100 West is not planned as a major thoroughfare, and is not an acceptable single point of access for Whisper Rock and the surrounding 1-acre home sites that extend to the North.

Our goal as neighbors is to maintain an excellent environment for families, maintaining the high standard of Mapleton City. We would welcome open dialog between the city, Edge Homes, and neighbors in helping ensure that we maintain the standard of excellence expected in Mapleton. We appreciate your consideration of the neighbors of Whisper Rock, and expect you will keep us abreast of any recent and future developments. We openly welcome a chance to meet together and discuss any questions you have for the neighbors. Please contact us regarding dates of any city council meetings where issues pertaining to this development will be discussed.

Sincerely,

Concerned Neighbors

*(Note: there are 16 families who live in this neighborhood, and all 16 families have reviewed and are in support this document. Their contact info is listed below).*

Dr. Geoffrey A. Wright and family  
272 N. 1100 W., Mapleton, Utah  
801-822-9952

Dr. Michael Stark and family  
434 N. 1040 W., Mapleton, Utah  
801-491-2267

Dr. Adam Green and family  
352 N. 1100 W., Mapleton, Utah  
801-704-3307

Blaine Hales and family  
1076 W. Maple, Mapleton, Utah  
801-489-5271

Boyd Hales and family  
118 N. 1100 W., Mapleton, Utah  
801489-8184

Jerry Frank and family  
152 N. 1100 W., Mapleton, Utah

Jess Christen and family  
186 N. 1100 W., Mapleton, Utah  
801489-0715

Errol Whitlock and family  
212 N. 1100 W., Mapleton, Utah  
801-372-3334

Paul Roundy and family  
234 N. 1100 W., Mapleton, Utah  
801-489-1298

Jason Eatough and family  
386 N. 1100 W., Mapleton, Utah  
801-491-2130

Tyson Tuttle and family  
972 W. 400 N., Mapleton, Utah  
801-830-2727

Robert Aagard and family  
957 W. 400 N., Mapleton, Utah

801-691-8916

Nathan Randall and family  
477 N. 1040 W., Mapleton, Utah  
801-471-9292

Jason McCoy and family  
531 N. 1040 W., Mapleton, Utah  
801-787-7820

Jerry Stoddard and family  
532 N. 1040 W., Mapleton, Utah  
801-995-1927

Thomas Marker and family  
582 N. 1040 W., Mapleton, Utah  
801-491-3795