

## Whisper Rock PRD-1 DEVELOPMENT AGREEMENT

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This development agreement (the "Agreement") is made and entered into on October 2, 2009, by and between the Mapleton City Corporation, a Utah Municipal Corporation hereinafter referred to as the "City", and, Whisper Rock PRD-1 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 15, 16, 17, 18 and 19 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-1 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, shall conform to the design criteria set forth in Exhibit "B" and "C".

(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" and "C".

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

or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer.

G. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council of City, taken with the same formality as the vote approving this agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

H. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties.

I. Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

J. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four (4) days after being sent by registered or certified mail, properly addressed to the parties as follows:

To the Developer:      Whisper Rock LLC  
                                 1013 South Orem Blvd.  
                                 Orem, Utah 84057

To the City:              Mapleton City  
                                 125 West Community Center Way  
                                 Mapleton, Utah 84664



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: [Signature]  
Mayor

By: [Signature]  
City Recorder

By: [Signature]

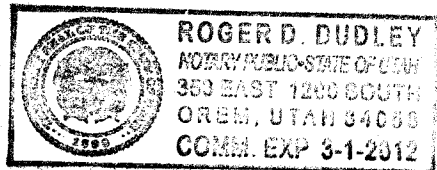
STATE OF UTAH  
COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this 30<sup>th</sup> day of NOV.,  
by Bruce Dickerson, of Whisper Rock LLC, a Utah limited liability company on behalf  
of such company.

[Signature]  
NOTARY PUBLIC

My commission expires:

3-1-12

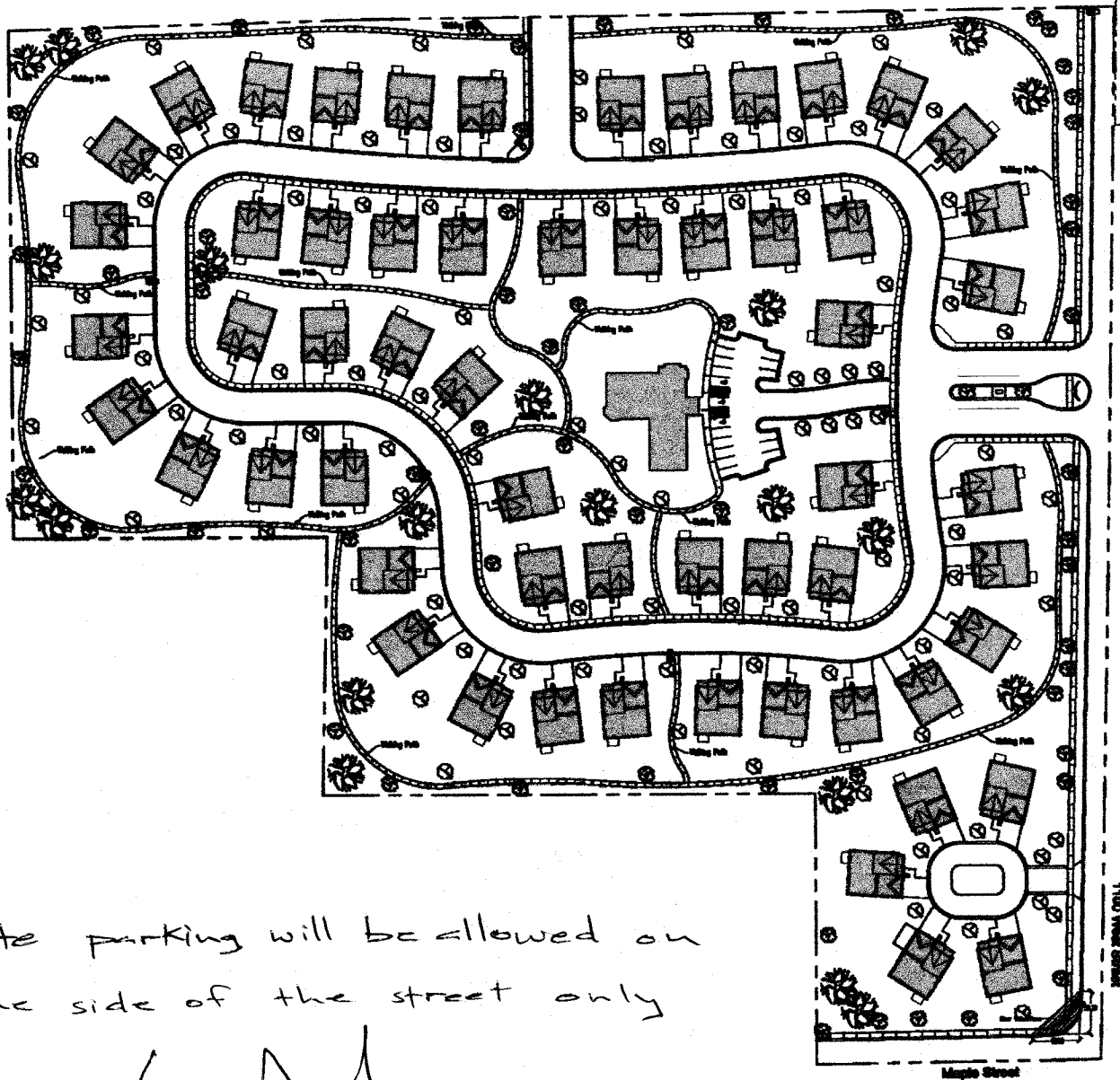


**Exhibit "A"**  
**Legal Description**  
**Project Name**  
**Project Area**

**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 288.28 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"**  
**Concept Plan**



\* Note parking will be allowed on  
one side of the street only

*Ray Anderson*

**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 final plat 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 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.
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.
8. All storm drainage to be retained on site and dispersed through approved sumps and trench drains
9. Water shares will be delivered at time of approval of each phase of development.
10. The project density shall not exceed three and one half (3.5) single family units per acre for the overall site.
11. Developer shall maintain a minimum set back of twenty (20) feet from the garage door and back of curb (back of sidewalk where applicable), and maintain a minimum distance of twenty (20) feet between units.

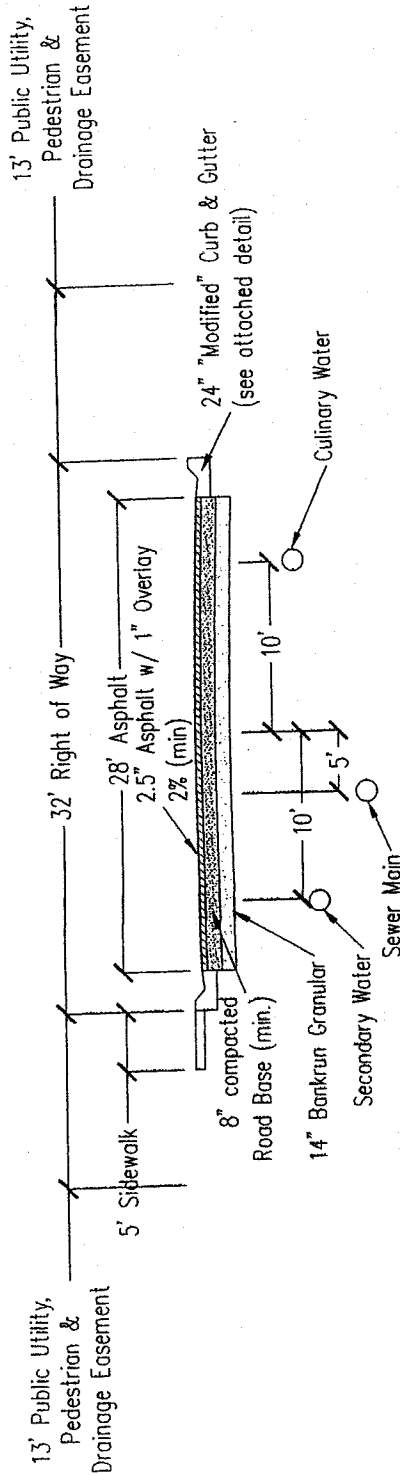
12. The Developer shall meet all requirements of Chapter 18.77, Planned Residential Development - 1, Mapleton City Code.

#### 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 final plat recording 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.

**Exhibit "D"**  
**Road Cross-Sections**





### 32' Street Cross Section

The Minimum street grade is to be 0.400% as per City standard drawing

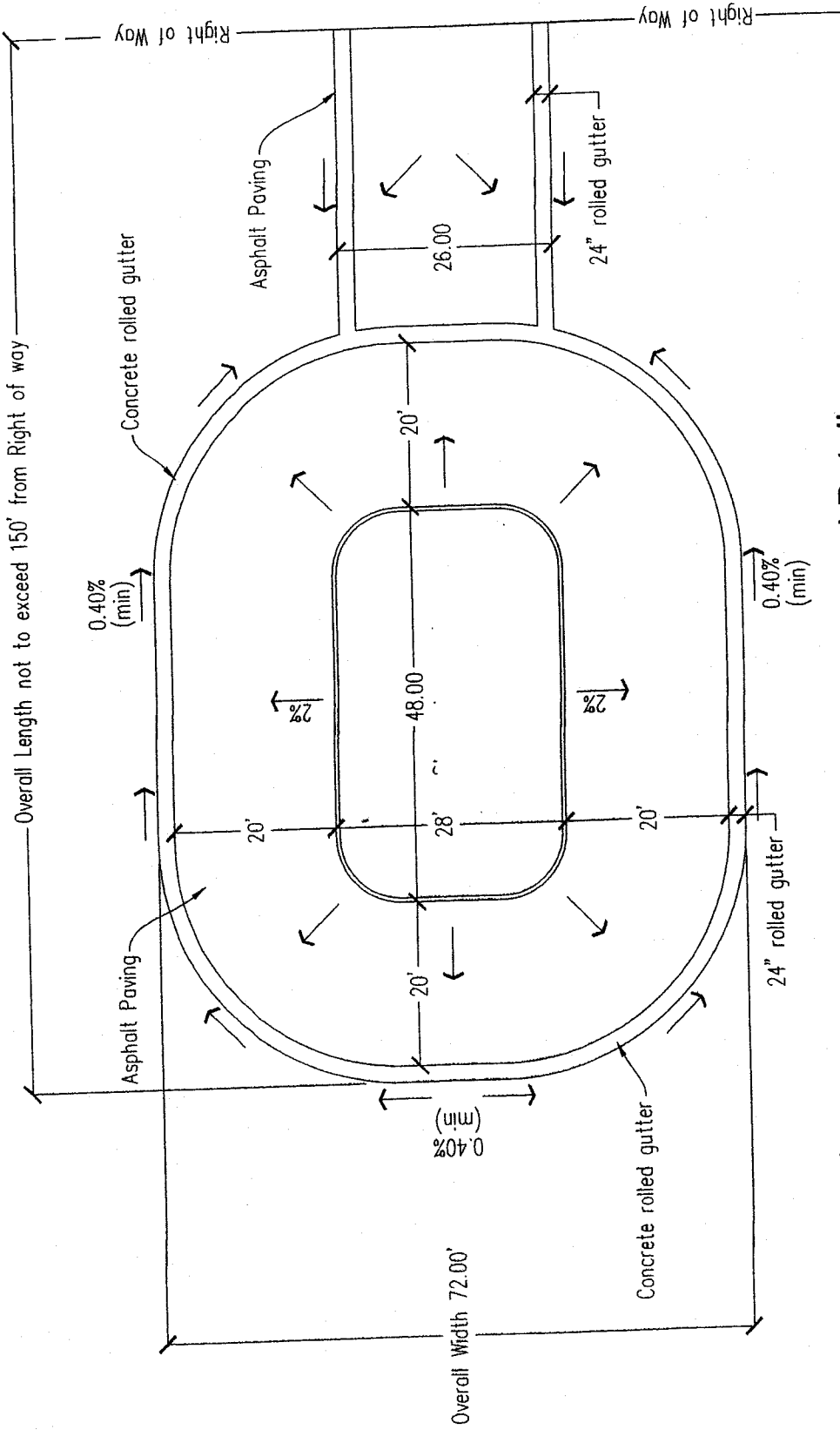
Notes:

- Bituminous Surface Course - 3" (min)
- Untreated Base Course - 8" (min)
- Compacted Granular Bank Run Fill - to be determined by CBR test.

standard drawing

Mapleton City Corporation

JUL 20 2009



### Private Courtyard Detail

Notes:

- Bituminous Surface Course - 3" (min)
- Untreated Base Course - 8" (min)
- Compacted Granular Bank Run Fill - to be determined by CBR test.

standard drawing

# Mapleton City Corporation

REVISIONS

JUL 30 2009