

**RESOLUTION NO. 17-50**

**A RESOLUTION APPROVING THE MASTER DEVELOPMENT AGREEMENT FOR DIAMOND RIDGE FOR APPROXIMATELY 5.3 ACRES LOCATED AT APPROXIMATELY 12180 S. 1000 EAST WITHIN DRAPER CITY**

**WHEREAS**, the City Council hereby determines that it will be in the best interest of the City to allow development of the subject property in accordance with the Development Agreement; and

**WHEREAS**, the Development Agreement will allow for a public road to be built to private road standards in the RM2 (Multi Family Residential) zone; and

**WHEREAS**, the Development Agreement will allow defined construction and maintenance of trails by both the City and Developer in the RM2 (Multi Family Residential) zone; and

**WHEREAS**, the Development Agreement will allow for a project monument sign to be developed for the project in the RM2 (Multi Family Residential) zone; and

**WHEREAS**, the Development Agreement outlines responsibilities for each party in regards to easement procurement and street improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:**

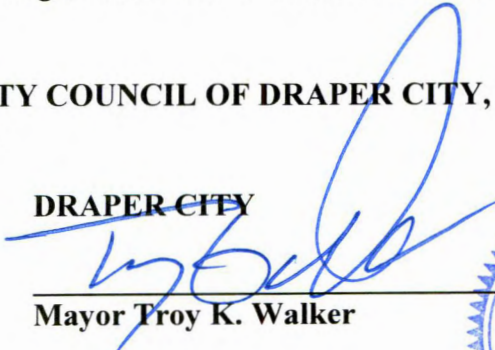
**Section 1. Development Agreement.** The City of Draper approves the Development Agreement provided in Exhibit A, otherwise known as the Master Development Agreement for Diamond Ridge.

**Section 2. Severability Clause.** If any part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution and all provisions, clauses and words of this Resolution shall be severable.

**Section 3. Effective Date.** This Resolution shall become effective immediately upon publication or posting, or 30 days after final passage, whichever is closer to the date of final passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS 1<sup>st</sup> DAY OF AUGUST, 2017.**

**DRAPER CITY**

  
\_\_\_\_\_  
Mayor Troy K. Walker



**ATTEST:**

  
\_\_\_\_\_  
Rachelle Conner, MMC, City Recorder

**VOTE TAKEN:**

**YES**

**NO**

Councilmember Rapple

Councilmember Stenquist

Councilmember Summerhays

Councilmember Vawdrey

Councilmember Weeks

Mayor Walker

## Exhibit A

**MASTER DEVELOPMENT AGREEMENT  
FOR  
DIAMOND RIDGE**

August \_\_, 2017

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**WHEN RECORDED, RETURN TO:**

Bruce R. Baird  
Bruce R. Baird PLLC  
2150 south 1300 East # 500  
Salt Lake City, UT 84106

**MASTER DEVELOPMENT AGREEMENT  
FOR  
DIAMOND RIDGE**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered as of the \_\_\_ day of August, 2017, by and among the Draper City, a political subdivision of the State of Utah, and Victors Village, L.L.C. a Utah limited liability company.

**RECITALS**

- A. The capitalized terms used in these Recitals are defined in Section 1.2, below.
- B. Developer owns and is developing the Property.
- C. Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Concept Plan and this MDA.
- D. Development of the Property pursuant to this MDA is acknowledged by the parties to be consistent with LUDMA and the Zoning Ordinance and to operate to the benefit of the City, Developer, and the general public.
- E. The City Council has reviewed this MDA, including the Concept Plan, and determined that it is consistent with the Act, the Zoning Ordinance and development of the Property.
- F. The parties acknowledge that development of the Property pursuant to this MDA will result in planning and economic benefits to the City and its residents by, among other things requiring orderly development of the Property, increasing property tax and other revenues to the City based on improvements to be constructed on the Property.



G. Development of the Property pursuant to this MDA will also result in benefits to Developer by providing assurances to Developer that it will have the ability to develop the Property in accordance with this MDA.

H. Developer and the City have cooperated in the preparation of this MDA.

I. The parties desire to enter into this MDA to specify the rights and responsibilities of the Developer to develop the Property as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

J. The parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102 (2017).

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 Developer hereby agree to the following:

## **TERMS**

### **1. Incorporation of Recitals and Exhibits/ Definitions.**

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “E” are hereby incorporated into this MDA.

1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Act** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2016).

1.2.2. **Administrator** means the person designated by the City as the Administrator of this MDA.

1.2.3. **Applicant** means a person or entity submitting a Development Application.

1.2.4. **Buildout** means the completion of all of the development on the entire Project in accordance with the approved plans.

1.2.5. **City** means the Draper City, a political subdivision of the State of Utah.

1.2.6. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage for reviewing certain aspects of the development of the Project.

1.2.7. **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.8. **City's Vested Laws** means the ordinances, policies, standards and procedures of the City in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "E".

1.2.9. **Concept Plan** means that plan for the development of the Project attached as Exhibit "B".

1.2.10. **Council** means the elected City Council of the City.

1.2.11. **Default** means a material breach of this MDA as specified herein.

1.2.12. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or "redlines" by City staff.

1.2.13. **Developer** means Victors Village, L.L.C., a Utah limited liability Company, and its assignees or transferees as permitted by this MDA.

1.2.14. **Development** means the development of a portion of the Property pursuant to an approved Development Application.

1.2.15. **Development Application** means an application to the City for development of a portion of the or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.16. **HOA** means a Homeowners Association created by Developer pursuant to Utah law to perform, among other responsibilities, certain functions specified in this MDA.

1.2.17. **Maximum Residential Units** means the development on the Property of fifty-eight (58) Residential Dwelling Units.

1.2.18. **MDA** means this Master Development Agreement including all of its Exhibits.

1.2.19. **Notice** means any notice to or from any party to this MDA that is either required or permitted to be given to another party.

1.2.20. **Project** means the total development to be constructed on the Property pursuant to this MDA with the associated public and private facilities, and all of the other aspects approved as part of this MDA.

1.2.21. **Property** means that approximately five and three tenths (5.3) acres of real property owned and to be developed by Developer more fully described in Exhibit "A".

1.2.22. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.

1.2.23. **Public Road** means that Road illustrated on Exhibit “B” that was determined to be a public road pursuant to Section 72-5-104(2)(a), Utah Code Ann., and to have been dedicated to the use of Draper City.

1.2.24. **Residential Dwelling Unit** means a structure or portion thereof designed and intended for use as a single-family residence.

1.2.25. **Trail** means that public trail illustrated on Exhibit “B”.

1.2.26. **Trail Landscaped Area** means that are adjacent to the Trail as illustrated on Exhibit “B”.

1.2.27. **Zoning Ordinance** means the City’s Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City’s Vested Laws.

2. **Effect of MDA.** This MDA shall be the sole agreement between the parties related to the Project.

3. **Development of the Project.**

3.1. **Compliance with the Concept Plan and this MDA.** Development of the Project shall be in accordance with the City’s Vested Laws, the City’s Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Concept Plan and this MDA.

3.2. **Maximum Residential Units.** At Buildout of the Project, Developer shall be entitled to have developed the Maximum Residential Units as specified in and pursuant to this MDA.

4. **Zoning and Vested Rights.**

4.1. **Zoning.** The City has zoned the Property as RM 2.

4.2. **Vested Rights Granted by Approval of this MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the City, Developer intend that this MDA grants Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws and the Concept Plan except as specifically provided herein. The Parties intend that the rights granted to Developer under this MDA are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that this MDA grant to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2017).

4.3. **Exceptions.** The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 4.2 are subject to only the following exceptions:

4.3.1. Developer Agreement. City's Future Laws that Developer agrees in writing to the application thereof to the Project;

4.3.2. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

4.3.3. Codes. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments

and are required to meet legitimate concerns related to public health, safety or welfare;

4.3.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated; or,

4.3.5. Fees. Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

4.3.6. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not work to reduce the Maximum Residential Units, are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

4.3.7. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2017).

5. **Term of Agreement.** The term of this MDA shall be until December 31, 2022. This MDA shall also terminate automatically at Buildout.

6. **Processing of Development Applications.**

**6.1. City Denial of a Development Application.** If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

**6.2. Meet and Confer regarding Development Application Denials.** The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

**6.3. Mediation of Development Application Denials.**

6.3.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that are not subject to arbitration provided in Section 6.4 shall be mediated.

6.3.2. Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the

parties.

#### **6.4. Arbitration of Development Application Objections.**

6.4.1. Issues Subject to Arbitration. Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

6.4.2. Mediation Required Before Arbitration. Prior to any arbitration the parties shall first attempt mediation as specified in Section 6.3.

6.4.3. Arbitration Process. If the City and Applicant are unable to resolve an issue through mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's or Applicant's position was not only incorrect but was also maintained unreasonably and not in good faith then the arbitrator may order the City or Applicant to pay the arbitrator's fees.



7. **Application Under City's Future Laws.** Without waiving any rights granted by this MDA, Developer may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application so long as Developer and any is not in current breach of this Agreement. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. The election by Developer at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent Developer from relying for other Development Applications on the City's Vested Laws.

8. **Tax Benefits.** The City acknowledges that Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for Open Space. Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Developer by reason of the foregoing. The City shall reasonably cooperate with Developer to the maximum extent allowable under law to allow Developer to take advantage of any such tax benefits.

9. **Public Infrastructure.**

9.1. **Construction by Developer.** Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application.

9.2. **Bonding.** If and to the extent required by the City's Vested Laws, unless otherwise provided by Chapter 10-9a of the Utah Code as amended, security for any Public or private Infrastructure is required by the City it shall provide in a form acceptable to the

City as specified in the City's Vested Laws. Partial releases of any such required security shall be made as work progresses based on the City's Vested Laws.

### **9.3. Public Road.**

9.3.1. Ownership. The Public Road was deemed by the Third District Court in Case No. 150902136 to have dedicated and abandoned to the public pursuant to Section 72-5-105, U.C.A. and to “be held by the State of Utah”. The State of Utah has, by a letter dated July 6, 2017, disclaimed any interest in the Public Road.

9.3.2. Construction. The Parties hereby acknowledge that the Public Road is available for use by the public and shall be further governed by the provisions of this MDA.

9.3.3. Design Standards. The Public Road shall be constructed by Developer to the City’s standards for a “private road” with the cross-sections/profile shown on Exhibit “C”.

9.3.4. Maintenance. The Public Road shall be maintained and repaired as necessary, including but not limited to snowplowing, by the HOA.

### **9.4. Trail.**

9.4.1. Easements. The Plat shall provide a permanent easement to the City for the Trail where the Trail is located on the Property. For any portion of the Trail that is on property owned by the City as a part of the Project the City shall provide any necessary construction easements.

9.4.2. Construction. Developer shall construct a 12’ wide asphalt Trail pursuant to the City’s specifications as illustrated on Exhibit “B”.

9.4.3. Maintenance. After its completion and acceptance by the City the Trail shall be maintained at the sole cost of the City.

**9.5. Trail Landscaping.**

9.5.1. Easements. For any portion of the Trail Landscaping that is on property owned by the City the Plat shall provide for any easement necessary for Developer to construct and for the HOA to maintain the Trail Landscaping.

9.5.2. Construction. Developer shall construct the Trail Landscaping pursuant to the City's specifications.

9.5.3. Maintenance. After its completion and acceptance by the City the Trail Landscaping shall be maintained at the sole cost of the HOA.

9.5.4. Water. Developer shall be responsible for obtaining water service required to service the Trail Landscaping from WaterPro. The regular on-going costs of any water for the Trail Landscaping shall be the responsibility of the HOA.

**9.6. Relocation of Porter Rockwell Trail/Slope Easement.** The City shall allow Developer to relocate a portion of the Porter Rockwell Trail near the southwest corner of the Project as shown on Exhibit B. The City shall cause to be obtained from the Utah Transit Authority a license necessary for Developer to construct and maintain a slope and all improvements necessarily associated therewith from the Project to the grade of the UTA property and the City acknowledges that the UTA license is sufficient to allow the development of this portion of the Porter Rockwell Trail. Developer shall cause HOA to enter into an agreement with the City for the long-term maintenance of the slope.

9.7. **Utilities.** The City acknowledges that the utility drawings submitted along with the Plat for the Project are, or will be when finally approved by the City's Engineer, acceptable to the City and that the City will allow such connections and service.

9.7.1. **Storm Water.** The City acknowledges and accepts that the storm water runoff for the Project will be retained on Parcel "A" as shown on Exhibit "B" if an under-crossing of the Utah Transit Authority right of way for a drainage pipe is approved by UTA. The City shall grant such easements or other rights necessary for Developer to construct and maintain the storm water system partially on City-owned property adjacent to Parcel "A". At any time such easement is used Developer and the HOA shall indemnify, defend and hold the City harmless from any claims relating to such storm water.

9.7.2. **Easements.** The City will grant any easements required to implement the detention necessary to implement Exhibit "B". If, at a later date, the easements granted by the City become unnecessary they will be reconveyed by Developer.

10. **Signage.** The City acknowledges that Developer intends to erect and to have the HOA maintain one (1) sign identifying the Project at the location shown on Exhibit "B" of a type as depicted on Exhibit "D" and the City hereby authorizes such construction and maintenance.

11. **Model Homes.** The City hereby authorizes Developer to construct up to three (3) model homes located as illustrated on Exhibit "B". The City will, subject to the normal approval of such building plans, issue building permits for these two model homes. Developer acknowledges that Certificates of Occupancy for these homes will not be issued by the City except as otherwise provided by the City's Code.

12. **Default.**

12.1. **Notice.** If Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide Notice to the other party

12.2. **Contents of the Notice of Default.** The Notice of Default shall:

12.2.1. Specific Claim. Specify the claimed event of Default;

12.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

12.2.3. Materiality. Identify why the Default is claimed to be material; and

12.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.

12.3. **Meet and Confer, Mediation, Arbitration.** Upon the issuance of a Notice of Default the parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 6.2 and 6.3. If the claimed Default is subject to Arbitration as provided in Section 6.4 then the parties shall follow such processes.

12.4. **Remedies.** If the parties are not able to resolve the Default by “Meet and Confer” or by Mediation, and if the Default is not subject to Arbitration then the parties may have the following remedies, except as specifically limited in 12.8.

12.4.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

12.4.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

12.4.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project.

12.5. **Public Meeting.** Before any remedy in Section 12.4 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

12.6. **Emergency Defaults.** Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 12.4 without the requirements of Sections 12.5. The City shall give Notice to Developer of any public meeting at which an emergency default is to be considered and the Developer shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

12.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. **Limitation on Recovery for Default – No Damages.** Anything in this MDA notwithstanding no party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to , Developer or any shall be that of specific performance.

13. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

**To the Developer:**

Victors Village, L.L.C.  
Attn: Mr. Nate Shipp  
Development Associates, Inc.  
1099 S. Jordan Parkway  
South Jordan, UT 84085

**With a Copy for Developer to:**

Bruce R. Baird, Esq.  
Bruce R. Baird PLLC  
2150 South 1300 East, Fifth Floor  
Salt Lake City, UT 84106  
bbaird@difficultdirt.com

**To the City:**

Draper City  
Attn: City Manager  
1020 East Pioneer Road  
Draper, UT 84020

Draper City  
Attn: City Attorney  
1020 East Pioneer Road  
Draper, UT 84020

13.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

13.1.1. Hand Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice). If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email

provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.3. Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of this Section.

14. **Estoppel Certificate**. Upon twenty (20) days prior written request by or Developer, the City will execute an estoppel certificate to any third party certifying that, Developer, as the case may be, at that time is not in default of the terms of this Agreement.

15. **Headings**. The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

16. **No Third Party Rights/No Joint Venture**. This MDA does not create a joint venture relationship, partnership or agency relationship between the City, or Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property or unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City's Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.



17. **Assignability.** The rights and responsibilities of Developer under this MDA may be assigned in whole or in part by or Developer with the consent of the City as provided herein.

17.1. **Sale of Lots.** Developer's selling or conveying lots in any approved Subdivision to builders or end users shall not be deemed to be an "assignment" subject to the above-referenced approval by the City.

17.2. **Related Entity.** Developer's transfer of all or any part of the Property to any entity "related" to Developer (as defined by regulations of the Internal Revenue Service in Section 165), Developer's entry into a joint venture for the development of the Project or or Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Developer. Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

17.3. **Notice.** Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

17.4. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of notice, the City shall be deemed to have approved of and consented to the assignment.

17.5. **Partial Assignment.** If any proposed assignment is for less than all of Developer's rights and responsibilities then the assignee shall be responsible for the performance of

each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

17.6. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of or Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 6.2 and 6.3. If the refusal is subject to Arbitration as provided in Section 6.4 then the parties shall follow such processes.

17.7. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.

18. **No Waiver.** Failure of any 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 date any such right or any other right it may have.

19. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

20. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation

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

21. **Time is of the Essence.** Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

22. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this MDA, the City, Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City shall be the City Manager and the initial representative for Developer shall be Nate Shipp. The parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this MDA and the development of the Project.

23. **Mutual Drafting.** Each party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against either party based on which party drafted any particular portion of this MDA.

24. **Applicable Law.** This MDA is entered into in Salt Lake County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

25. **Venue.** Any action to enforce this MDA shall be brought only in the Third District Court

for the State of Utah, Salt Lake City Division.

26. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

27. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "E", shall not be recorded in the chain of title. A secure copy of Exhibit "E" shall be filed with the City Recorder and each party shall also have an identical copy.

28. **Authority.** The parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the City Manager of the City is affixed to this MDA lawfully binding the City pursuant to Resolution No. \_\_\_ adopted by the City on August \_\_, 2017.

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

DEVELOPER  
Victors Village, LLC

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

**MASTER DEVELOPER ACKNOWLEDGMENT**

STATE OF UTAH            )  
  :SS.  
COUNTY OF UTAH        )

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

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

My Commission Expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

CITY  
Draper City

\_\_\_\_\_  
By: \_\_\_\_\_,  
Its: City Manager

**CITY ACKNOWLEDGMENT**

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

On the \_\_\_\_ day of August, 2017, personally appeared before me \_\_\_\_\_ who being by me duly sworn, did say that he is the City Manager of Draper City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same.

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

My Commission Expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

Approved as to form and legality:

Attest:

\_\_\_\_\_  
City Attorney

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

## TABLE OF EXHIBITS

Exhibit "A"	Legal Description
Exhibit "B"	Concept Plan
Exhibit "C"	Private Road Cross-sections/profile
Exhibit "D"	Signage
Exhibit "E"	City's Vested Laws

Exhibit "A"

Legal Description

BEGINNING AT A POINT WHICH LIES NORTH 00°02'05" WEST 2642.63 FEET (SAID POINT BEING THE RECORD LOCATION OF THE CENTER OF SECTION 29) AND NORTH 89°49'20"W 39.97 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; AND TRAVERSING THENCE NORTH 89°49'20" WEST 128.93 FEET; THENCE SOUTH 74°31'31" WEST 128.47 FEET; THENCE SOUTH 00°02'47" WEST 137.07 FEET; THENCE SOUTH 12°52'48" EAST 171.37 FEET; THENCE NORTH 89°49'20" WEST 477.98 FEET; THENCE NORTH 34°33'52" WEST 50.71 FEET; THENCE SOUTH 89°49'20" EAST 85.32 FEET; THENCE NORTH 34°33'52" WEST 361.43 FEET; THENCE SOUTH 89°49'18" EAST 551.91 FEET; THENCE NORTH 80°41'05" EAST 52.82 FEET; THENCE NORTH 12°52'48" WEST 214.09 FEET THENCE; NORTH 89°49'20" EAST 284.69 FEET; THENCE SOUTH 00°02'05" EAST 219.03 FEET TO THE POINT OF BEGINNING.

CONTAINS 5.177 ACRES OR 225,493 SQ. FT., MORE OR LESS.

ALSO INCLUDING THE FOLLOWING:

PARCEL A

BEGINNING AT A POINT WHICH LIES NORTH 00°02'05" WEST 2642.63 FEET (SAID POINT BEING THE RECORD LOCATION OF THE CENTER OF SECTION 29) AND NORTH 89°49'20"W 345.69 FEET AND SOUTH 00°02'38" EAST 338.68 FEET AND NORTH 89°49'20" WEST 387.18 FEET AND NORTH 34°33'52" WEST 50.71 FEET AND SOUTH 89°44'13" WEST 79.89 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; AND TRAVERSING THENCE NORTH 89°49'20" WEST 92.13 FEET; THENCE NORTH 00°10'15"W 134.02 FEET; THENCE SOUTH 34°33'52" EAST 163.10 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.142 ACRES OR 6,174 SQ. FT., MORE OR LESS.



# Exhibit "B" Concept plan

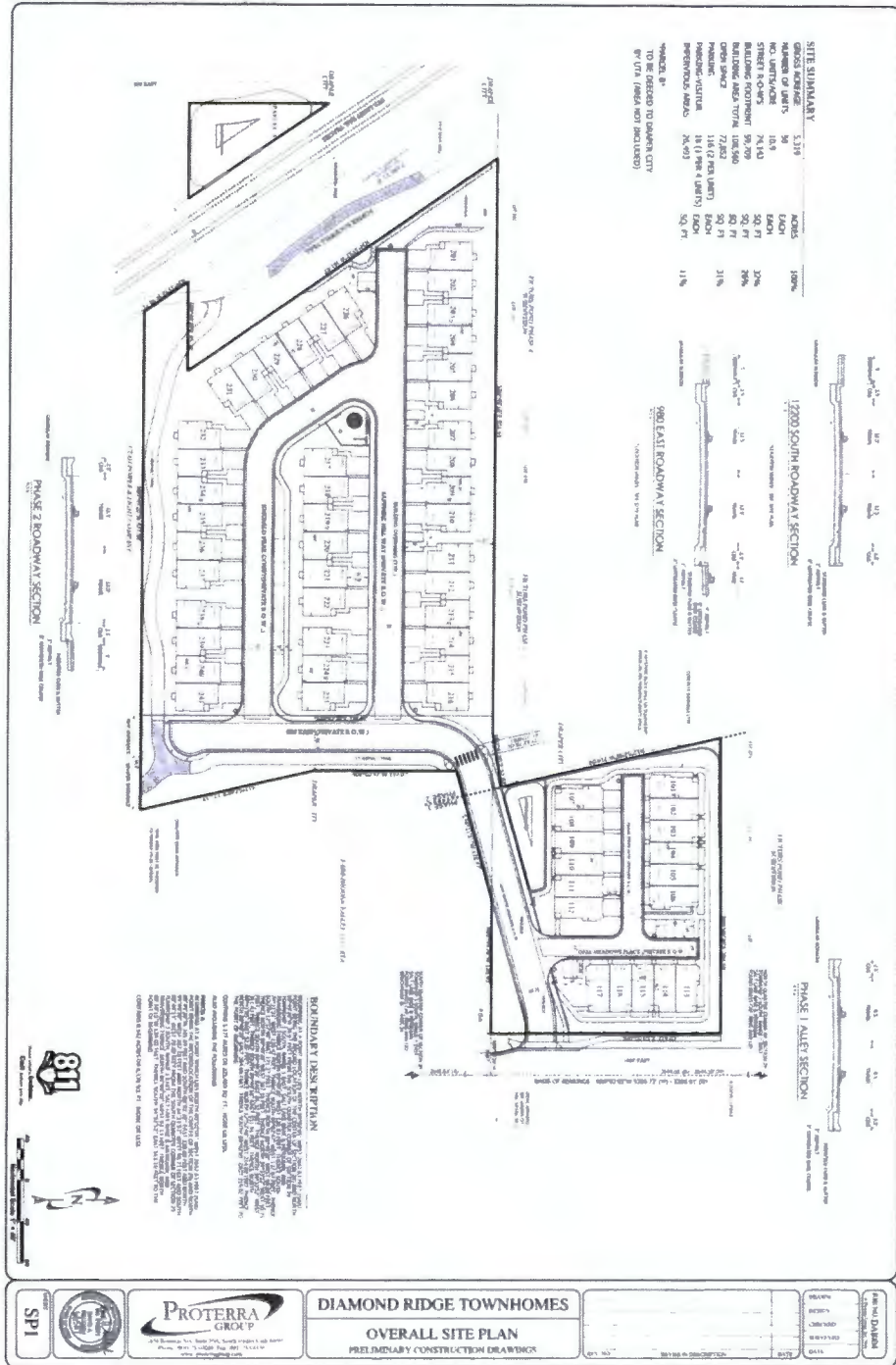
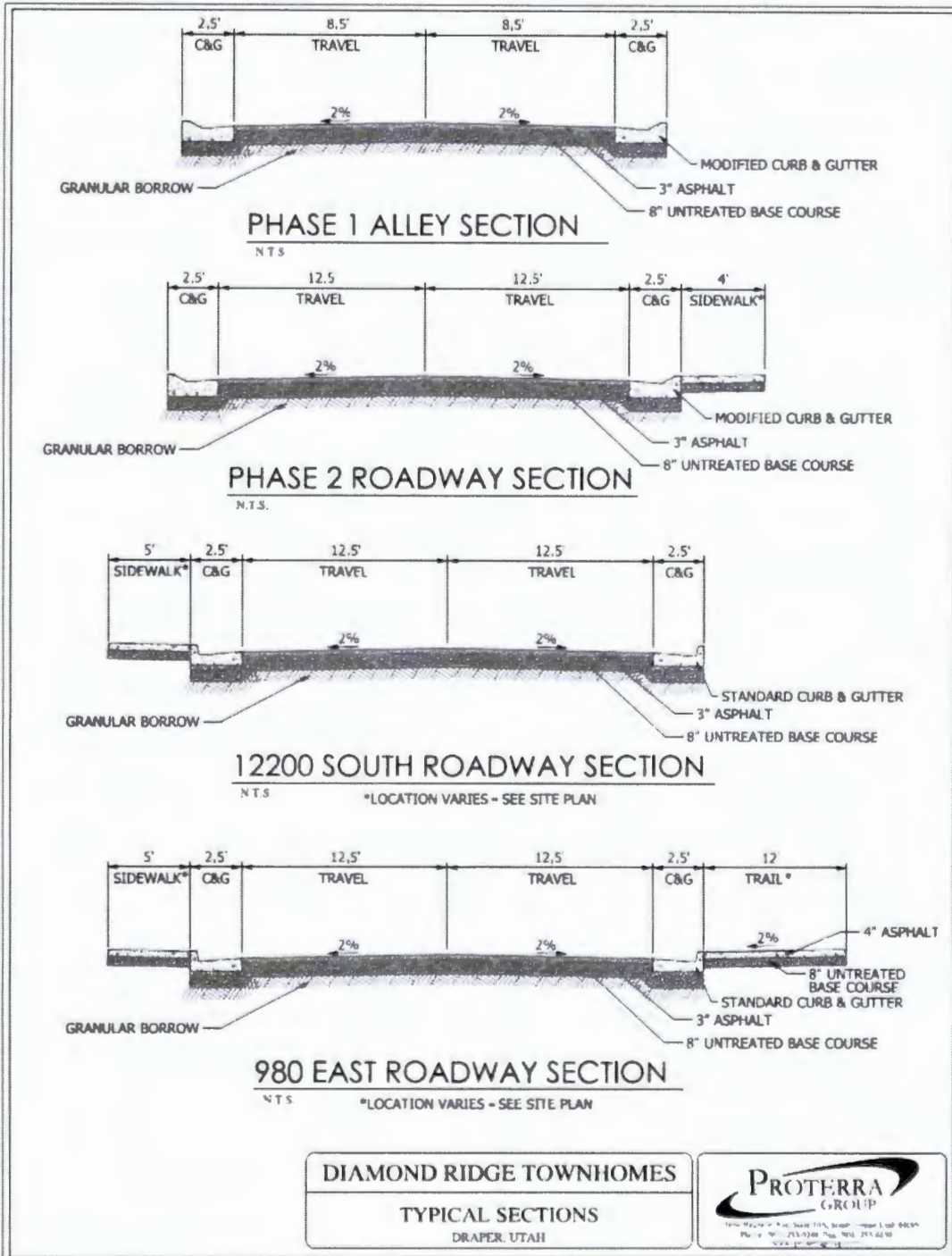


Exhibit "C"

Private Road Cross-sections/profile



DIAMOND RIDGE TOWNHOMES

TYPICAL SECTIONS

DRAPER, UTAH



Proterra Group  
1000 West 1000 North, Suite 100, Draper, Utah 84020  
Phone: 801-253-7200 Fax: 801-253-6100  
www.proterra.com

Exhibit "D"

Signage

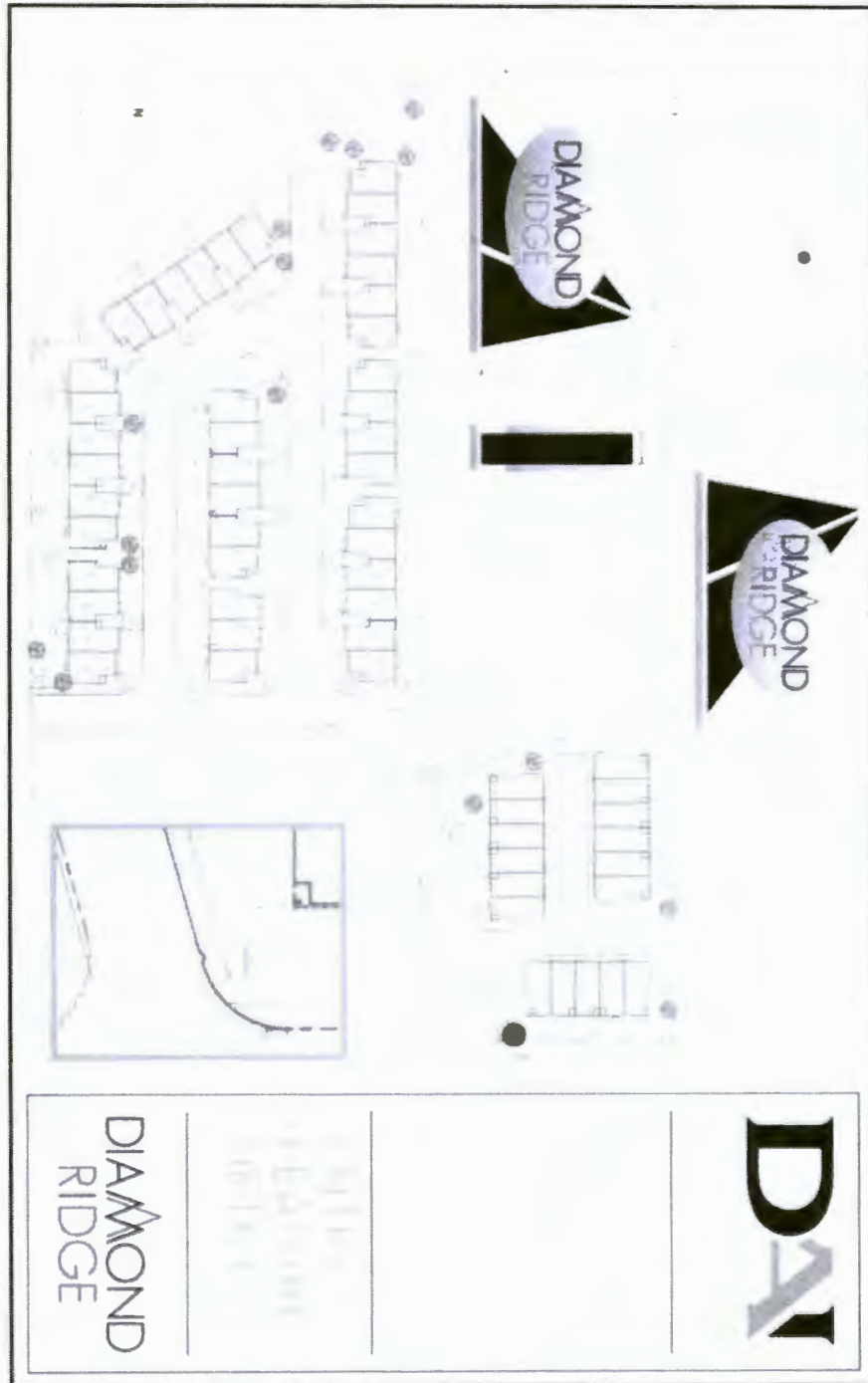


Exhibit "E"  
City's Vested Laws

**SECTION 9-26-070 PERMITTED ON-PREMISE PERMANENT SIGNS.** Permitted signage described in this Section is for specified zones, unless otherwise outlined in Section 9-26-090 where the provisions therein will govern. The area of wall, freestanding, and monument signs are added together in order to arrive at the total sign allowance.

**B. Residential Zones.**

1. Commercial uses within residential structures shall be allowed signage according to the following requirements:
  - (i) No part of a building wall sign shall extend above a roof line.
  - (ii) Such sign shall be installed with the exposed face of the sign in a plane parallel to the face of the building wall.
  - (iii) Such signs shall not project from a building wall a distance greater than 12 inches.
  - (iv) Such signs shall have a maximum area of two square feet.
2. Subdivisions and residential developments shall be allowed signage according to the following requirements:
  - (i) The maximum number of signs shall be two per vehicular entrance into the development
  - (ii) Such signs shall not exceed 24 square feet.
  - (iii) Such signs shall be a maximum of five feet in height.
  - (iv) Such signs shall be located a maximum of 25 feet the closest right-of-way property line inside the development.
  - (v) Such signs shall be mounted on or integrated into a wall surrounding the development.