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Mary Ann Trussell, Summit County Utah Recorder
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By SUMMIT ESCROW & TITLE
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Joseph E Tesch
Tesch Law Offices PC
PO Box 3390
Park City UT 84060

**PROPERTY EXCHANGE AND
COST SHARING AGREEMENT
FOR**

SILVER CREEK VILLAGE AREA BASIC SHARED INFRASTRUCTURE

THIS PROPERTY EXCHANGE AND COST SHARING AGREEMENT FOR SILVER CREEK VILLAGE AREA BASIC SHARED INFRASTRUCTURE ("Agreement") is made as of this 27 day of Sept, 2012, by and between Liberty Capital Lending, LLC, a Utah limited liability company ("Liberty") and Gayle Kennedy Larsen, an individual; collectively hereinafter "Owner" in the singular and "Owners" in the plural.

A. Liberty owns that certain parcels of real property consisting of approximately 218.86 acres located in east of the junction of US Highway 40 and Interstate Highway 80 in Summit County, Utah, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Original Liberty Parcel"). Larsen warrants that she will not contest Liberty's ownership of the Original Liberty Parcel.

B. Larsen owns that certain parcel of real property consisting of approximately 25.46 acres located south of and adjacent to the Liberty Parcel, also east of the junction of US Highway 40 and Interstate Highway 80 in Summit County, Utah, more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Original Larsen Property"). Liberty warrants that it will not contest Larsen's ownership of the Original Larsen Property.

C. The Owners are desirous of exchanging certain portions of their respective Parcels (including the development and density rights assigned thereto), and thereupon undertaking the cooperative development of the basic infrastructure improvements more particularly described below in the development of a project to be known as the Silver Creek Village, in general configurations as depicted in the Master Plan Plat attached hereto as Exhibit "C" attached hereto and incorporated herein by this reference.

D. The Owners have determined that the "Initiating Party" (as defined below) shall be responsible for completion of the Work (as defined below), in accordance with and subject to the terms and conditions of this Agreement.

E. The Owners desire to enter into this Agreement for the purpose of establishing the terms and conditions pursuant to which (i) the Work shall be accomplished, and (ii) the manner in which the costs of the Work shall be allocated among the Owners, and paid to the Initiating Party.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the

mutual benefits to be deemed herefrom, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owners hereby agree as follows:

DEFINITIONS

When used in this Agreement, capitalized terms, except where otherwise defined, shall have the following meanings

“Basic Shared Infrastructure” means those roads, medians, pavement, drainage ditches, sidewalks, culverts, retaining walls, directional and informational signs, utility lines, lights, wires, pipes, poles, grates, conduits, and mains; and utility lines whether above or below ground, for water, electricity, telecommunications, gas, sewage, septic, sanitary sewer, and drainage, which are to be shared by the Owners for the common benefit of the Parcels. This definition is limited to the process of installing discrete shared infrastructure as specifically identified in writing and executed by the Owners, and reasonably necessary or appropriate for the development of the Silver Creek Village. Basic Shared Infrastructure consists only of such Work as shall be necessary for the construction of improvements that will benefit all of the Parcels and limited to the off-site (outside of the Silver Creek Village) improvements, entry roads to the Silver Creek Village, Silver Creek Village community parks, and Silver Creek Village signage, and such other amenities and improvements as may be required by a yet to be completed Development Agreement with Summit County.

“Initiating Party” means that Owner who elects to initiate any activity as defined herein necessary to complete the Work.

“Interest Rate” means a variable interest rate equal to the prime interest rate published by Wells Fargo Bank plus 2.0 percent per annum from the time the Work is initiated until completion of pay back by the parties.

“Mortgage” means any instrument creating a lien with respect to any Parcel in the Silver Creek Village, including a lien of any sort (voluntary or involuntary), mortgage, a deed of trust or any similar security agreement.

“Mortgagee” means the holder of the obligation which is secured by a Mortgage.

“Owner” means the parties hereto which, as of the date hereof, are the legal owners of record in the Official Records of a whole or undivided fee interest in any Parcel within the area which shall become Silver Creek Village, and their successors or assigns; provided that, notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the real property concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

“Official Records” means the official records of the Summit County Recorder, State of Utah.

“Parcel” or **“Parcels”** means those parcels of land within the Silver Creek Village

Master Plat and owned by an Owner or Owners.

“Work” means undertaking and completing all tasks necessary and required for the construction of the Basic Shared Infrastructure of the Silver Creek Village, including planning, engineering, necessary studies and reports, finalization of the construction drawings, obtaining of all required permits, soliciting bids and completing the construction in accordance with the approved designs and permits. A list of the Work (the costs of which are to be shared in accordance with the terms hereof) is attached hereto as Exhibit “D” and may be amended, modified, and supplemented only in writing signed and dated by both Owners. All Work shall be designed to accommodate the needs of both owners (e.g. sewer and water lines shall be designed to accommodate reasonable access on all development parcels). As used in this Agreement, “Work” does not include any work to be performed of either of the Parcels for the sole benefit of that individual Parcel. The responsibilities for such work are set forth in paragraph 10 below.

1. Real Property Exchange.

a. *Exchange of Real Property.* Larsen shall convey by special warranty deed to Liberty that portion of the Original Larsen Parcel as depicted in Exhibit “C.” Liberty shall convey to Larsen by special warranty deed that portion of the Original Liberty Parcel as depicted in Exhibit “C.” The conveyances described in this paragraph shall be made as soon as practicable following the execution of this Agreement, with the ownership of the revised Parcels (hereinafter the “Liberty Parcel” and the “Larsen Parcel” respectively) being noted on the Master Plan of the Silver Creek Village. The approximate configuration of the Liberty Parcel and the Larsen Parcel (as revised) is depicted on Exhibit “C.” Notwithstanding the depiction in Exhibit “C,” the exact configuration of the Silver Creek Village and the respective revised Parcels may be adjusted by express consent of the Owners as a result of their consultation with the surveyor and title company. The Parties further agree that final engineering and construction drawings and location of roads and utilities may not efficiently occur according to the parcel descriptions, in which case the Parties agree to accommodate the reasonable request for necessary easements so long as the requested easements do not negatively impact development of the easement granting parcel.

b. *Distribution of Density Entitlements.* Development and density entitlement rights shall be distributed and conveyed by and between the Parties concurrently with the real property exchange so that following the exchange, Liberty will have the entitlement right to develop 864 “Market Rate Units” and 297 “Work Force Rate Units” on the Liberty Parcel, and Larsen will have the right to develop 96 “Market Rate Units” and 33 Work Force Rate Units” on the Larsen Parcel. The Parties hereby agree, consent and acknowledge that said reciprocal conveyances and distribution of entitlement development rights constitute and full and adequate consideration to and from each Party.

2. Design and Approval of Work

a. *General Design Considerations for Work.* The Owners agree that the Work shall be planned and developed consistent with the Master Plan for the Silver Creek Village and, in that regard, the Work shall accommodate the design, engineering, location, construction, and maintenance of any roadways and utilities now or hereafter planned pursuant to and in accordance with this Agreement. The proposed alignment and profile of the Basic Infrastructure, shall be designed so as to accommodate the Parcels in a fair, equitable and reasonable manner, and shall be constructed and/or located in accordance with any and all applicable governmental, regulatory and administrative laws, rules and regulations.

b. *Design Standards for the Work.* The Work shall be designed by a reputable engineering or design firm (the "Engineer") and shall comply with applicable Summit County ordinances and the requirements of other governmental agencies (water and sewer district, etc.) and good design and construction practices for similar projects in the Park City area.

c. *Plans, Specifications and Estimate of Cost for the Work.* On or before commencement of the Work, the Initiating Party shall circulate to the other Owner plans, specifications and a written estimate that in the opinion of the Engineer reasonably estimates the cost of performing the Work, including a reserve for contingencies in an amount not less than ten percent 10% of the cost of such work (the "Estimated Cost of the Work"). The other Owner shall have the right to review and approve such plans, specifications and cost estimate prior to the commencement of any construction by the Initiating Party, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the other Owner shall not disapprove, in writing, of the Estimated Cost of the Work within fifteen (15) days following receipt thereof from the Initiating Owner, such Owner shall be deemed to have approved the Estimated Cost of the Work.

d. *Bidding of Work.* The Initiating Party shall obtain bids for the performance of the Work, and the Initiating Party may, after consultation with the other Owner, accept a bid therefore from a bidder that the Initiating Party determines to be a responsible, qualified bidder, that need not be the lowest bidder. If the other Owner is in disagreement with the choice of a bidder that was not the lowest bidder, it shall set forth its basis in writing. All contracts with engineers and contractors shall be on AIA documents (or other documents agreed to by the Parties) as reasonably modified to this specific project.

3. Allocation of Cost of Work. The costs and expenses of the Work shall be allocated among the Owners of the Parcels based on the ratio of 89.6% to the Owner of the Liberty Parcel and 10.4% to the Owner of the Larsen Parcel (the "Assigned Percentages"). Each Owner shall pay the full amount of its respective allocation for the Work (the "Allocated share") to the Initiating Party as set forth below.

4. Performance of Work. The Owners agree that the Work shall be performed by the Initiating Party on and subject to the following terms and conditions:

a. *Schedule for the Work.* At its sole election, any Owner shall have the right

to commence the Work (in such case, the "Initiating Party") by giving written notice to the other Owner of its intent to perform the Work, including its proposed schedule for completion of the Work (the "Initiating Party's Notice") as the Initiating Party under this Agreement.

b. *Performance.* The Owners agree that the Initiating Party shall take or cause to be taken such actions as may be necessary or appropriate to cause the Work to be performed diligently by the Engineer and the Contractor. The Owners hereby agree to fully cooperate with each other in connection with the performance of the Work. Each Owner agrees not to unreasonably withhold, delay or condition any consent or approval required or permitted by this Agreement. By way of example of this mutual cooperation obligation, and not by limitation, once the Initiating Party has submitted plans for commencement of the Work, which plans have been approved pursuant to paragraph 2 above, the other Party shall expeditiously execute the appropriate dedicatory plat or cross-easement conveyance permitting the Initiating Party prompt access needed for construction of the approved plans.

c. *Conditions to Commencement of the Work.* The Initiating Party shall not commence, and shall have no obligation to commence, the performance of the Work unless or until each of the following conditions has been fully satisfied. None of the following conditions may be waived other than by the written agreement of all Owners.

- (1) The Owners shall have approved the plans, specifications, the estimated cost of the Work and the bid documents for the Work;
- (2) The Owners shall have approved the contract documents covering the Work;
- (3) The Contractor shall have obtained and delivered to the Initiating Party payment and/or performance bonds in the respective amounts fixed by the contract documents covering the Work, and copies thereof shall have been delivered to the other Owner; and
- (4) The Initiating Party shall have delivered to other Owner's evidence of the insurance required by this Agreement.

d. *Mechanic's Lien Indemnity.* In the event any contractor, subcontractor or materialman files a mechanic's lien against the Work, or any of the property upon which the Work is being completed, (a "lien") and provided the Owner whose property has been impacted has made full payment to the Initiating Party in accordance with the provisions hereof, the Initiating Party shall indemnify said Owner from said lien. The Initiating Party shall, when requested by an Owner, either furnish such Owner with a bond sufficient to discharge the lien or deposit in an escrow approved by the Owner and the Initiating Party a sum sufficient to discharge the lien. The Initiating Party shall have the

right and opportunity, in cooperation with the Owner, to contest the validity of any such lien so long as during the pendency of any such contest, the Initiating Party shall effectively stay or prevent any official or judicial sale of any of the real property or improvements comprising the Work.

5. Payment of Costs and Expenses; Reimbursement of Initiating Party.

a. *Obligation of Initiating Party.* Subject to the reimbursement and cost-sharing obligations of the Owners under this Agreement, the Initiating Party shall be responsible for the initial payment of all costs and expenses for the Work.

b. *Payment by Other Owner.* Following the completion of and payment for all or a discrete portion of the Work as previously approved by both Owners, the Initiating Owner shall deliver to the other Owner a request for payment (the "Initiating Owner's Request for Payment") setting forth each Owner's respective Allocated Share of the costs and expenses of the Work, determined in accordance with the terms and conditions of this Agreement. No later than thirty (30) days after its receipt of the Initiating Owner's request for payment, the other Owner shall pay to the Initiating Party its respective Allocated Share of said costs and expenses. Any Owner that does not make the payment required pursuant to the preceding sentence (each a "Deferring Owner") shall be deemed to have elected (without any breach of this Agreement) to defer the payment of such Allocated Share, in accordance with the terms and conditions of subparagraph c. below.

c. *Terms of Deferral of Payment of Allocation Shares.* On or before the Deferred Payment Due Date (as defined in and determined in accordance with subparagraph d. below), each Deferring Owner shall pay to the Initiating Party (i) the full amount of the Deferring Owner's Deferred Payment, and (ii) interest on the Deferred Payment which shall accrue annually (calculated on the basis of a 360-day year, actual days elapsed) at the Interest Rate from thirty (30) days after receipt of the Initiating Owner's request for payment until the Deferred Payment is paid to the Initiating Party (the "Deferred Payment Interest"). Payments received shall first be applied to accrued interest.

d. *Due Date of Deferral Payments.* Each Deferring Owner shall pay its respective Deferral Payments to the Initiating Party on or before the date (the "Deferral Payment Due Date") that is the earlier of (i) three (3) years after the Participation Date, or (ii) the date of sale by the Deferring Owner of its Parcel or any lot within or portion thereof, or (iii) the date on which the Deferring Owner first applies for a building permit for construction or performance of any work on its Parcel. Failure by a Deferring Owner to pay its Deferral Payments by the Deferral Payment Due Date constitutes a default as defined herein and shall allow the Initiating Party to take such enforcement actions as provided for herein including withholding issuance of Building Permits by Summit County.

e. Certain work has already been performed by Liberty in furtherance of the

common good of the parties in the amount of \$54,722.91 as shown on Exhibit E. Liberty has provided backup documents to attorney Joseph E. Tesch representing Larsen and he has reviewed those documents. Larsen stipulates that it owes to Liberty 10.4% of those expenditures and the Parties stipulate that the time for payment of this amount (\$5691.18) does not begin to run until either Party as Initiating Party commences additional work under paragraphs 4 and 5 above.

6. Resolution of Disputes. The Owners agree that the overriding principles of dealing with each other are fairness, equity and reasonableness. They also recognize that disagreements and disputes may arise between them (not amounting to a default) concerning issues such as what Work is or is not a sole benefit of a particular parcel or whether Work may so disproportionately benefit one parcel that the 89.6% vs. 10.4% allocation of cost is not fair, equitable or reasonable and they desire a quick, informal but enforceable resolution of those disputes. They therefore appoint Mr. Robert Hilder to perform such function (or a mutually agreeable substitute if he is unavailable). The process shall be similar to mediation in that each party will submit its position in writing in five (5) pages or less and Mr. Hilder will decide it on those submittals unless either Owner or Mr. Hilder requests a meeting, in which case the Owners or their appointed representatives shall attend and Mr. Hilder will act similar to a mediator. However, if he is unable to get the Owners to agree, then he shall render a decision based upon the submittals and the information he received during the mediation type meeting solely on the basis of fairness, equity and reasonableness. His decision shall be binding on both Owners and it may not be appealed to any court for any reason whatsoever, even for any reason that an arbitrator's decision may be set aside under Utah law. This binding decision may be enforced by court proceeding. The prevailing party in any court proceeding for enforcement is entitled to reasonable costs and attorney's fees.

7. Default.

a. *Default.* The following acts or omissions shall constitute events of default by any Owner under this Agreement: the material failure to perform any duty or obligation under this Agreement and such failure is not cured within thirty (30) days after receipt of written notice of the occurrence of such failure, except in the case of any failure to make any payment required under this Agreement which shall be cured within ten (10) days following receipt of written notice of such failure.

b. *Cure of Default.* Only in the event that an Owner gives notice of a default by another Owner as contemplated hereunder, and the default is of such a nature that it cannot be cured within the thirty (30) day period as provided for herein, then such default shall not be deemed to continue so long as defaulting Owner, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default shall be deemed to continue if and so long as the defaulting Owner shall be so proceeding to cure the same in good faith or be prevented from curing the same by any of the causes constituting "force majeure" (as defined below).

c. *Failure to Perform; Binding Arbitration Remedies.* In the event of a default or threatened default of this Agreement, either Owner shall be entitled to initiate informal binding arbitration proceedings by demanding such in a writing delivered to the other party. In such case, the Arbitration shall be governed by the arbitration provisions of the applicable Utah statutes, referred to Robert Hilder, or (if Mr. Hilder declines or is unwilling to accept such appointment) such other individual agreeable to both Parties, and shall proceed on an expedited basis. The complaining Party shall be entitled to all remedies (at law or in equity) for full and adequate relief, and/or compensation from the consequences of such default or threatened default. Such remedies shall include without limitation the right to specific performance and injunctive relief. In the event any Owner initiates or defends any action or proceeding in connection with a default or alleged default of this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable) shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs (including the cost of the arbitrator) and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued upon the mailing of the demand for arbitration and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

d. *Lien Rights.* Any reimbursement obligation of any Owner owing in accordance with the terms and provisions of this Agreement shall be secured by, and each Owner hereby grants and conveys to the other Owner, a lien on that Owner's Parcel and all improvements thereto owned by said Owner. Such lien shall secure payment of the amount of any unpaid obligation of that Owner, together with all interest at the Interest Rate from the date of each advance and with all collection and enforcement charges thereon or related thereto, including reasonable attorneys' fees and costs. To evidence a lien for sums due pursuant to this Agreement, the non-defaulting Owner shall prepare a written notice of lien, setting forth: the original amount of the obligation; the due date thereof; the amount of the obligation remaining unpaid; the name of the defaulting Owner; and the legal description of the Parcel then owned by the defaulting Owner. Such a notice shall be signed and acknowledged by the non-defaulting Owner and may be recorded in the office of the Summit County Recorder, State of Utah. No notice of lien shall be recorded until there is a Default in payment of the obligation as set forth in this paragraph 7. Such lien may be enforced by foreclosure and sale conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages, or in any other manner permitted by law. In any such foreclosure, the defaulting Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall also be secured by the lien being foreclosed. The non-defaulting Owner shall have the right and power to designate an attorney authorized to practice law in the State of Utah as a trustee, with authority to conduct a trustee's foreclosure sale and to convey the defaulting Owner's Parcel in the name of the non-defaulting Owner. The non-defaulting Owner shall have the right to bid at any foreclosure sale.

8. Accounting Books and Records. Within ten (10) days following written request

from the other Owner, the Initiating Party shall promptly provide or make available copies of payment applications received from the Contractor and the Initiating Party's records relating to all disbursements theretofore made. The Initiating Party shall cause to be kept books and records of all construction costs and expenses for the Work. Following completion of the Work, the Initiating Party shall cause to be prepared a statement of the operating revenues and expenses incurred relative to this Agreement. Such statement shall be prepared within a reasonable period following the completion of the work and shall be mailed to the other Owner within a reasonable time thereafter. The other Owners may, upon appointment during regular business hours, and at its own expense, cause an inspection or audit to be made of the books and records maintained by the Initiating Party with respect to the statement. Once an audit of the statement has been carried out by an Owner, it shall serve as the only audit of such statement, made on behalf of the Owners and the Owner carrying out such audit shall make available to the other Owner, the results of such audit. Further, the Initiating Party shall, within ten (10) business days after the other Owner's request, execute and deliver to the other an estoppel certificate in favor of the requesting Owner setting forth any reasonably requested information regarding the construction costs and expenses.

9. Insurance. The Initiating Party shall cause both of the Owners to be named as insureds under the general liability insurance of the Contractor's and the contractor performing the Work. The general liability insurance carried by the contractor shall require a minimum coverage of one million dollars (\$1,000,000) per occurrence. The insurance shall be endorsed to require a minimum of thirty (30) day's notice from the carriers) to each of the Owners prior to any cancellation thereof. Written evidence of such insurance (and of the carrier's requirement to provide any such notice of cancellation) shall be provided to each of the Owners prior to the commencement of the Work by the contractor performing the Work. In this connection, each of the Owners hereby waives any and all rights of recovery against the other or against the officers, agents, employees, and representatives of loss or damage occasioned to the Owners, as the case may be, or property or the property of others under their respective control, to the extent that such loss or damage is covered under any insurance policies carried by the Owners, as the case may be, and in force at the time of such loss or damage. Each insurance policy obtained hereunder shall provide that the insurance company waives all right of recovery by way of subrogation against the Owners, as the case may be, in connection with any loss or damage covered by such insurance policy, all without impairment or invalidation of such insurance.

10. Improvements Outside of the Basic Shared Infrastructure. As set forth in the definition of "Work" above, Work does not include any work to be performed on either of the Parcels for the sole benefit of such individual Parcel, including all roads, sidewalks, gutters, utility lines, etc. situated entirely within said Parcel. The responsibilities for completion and repayment of all of such work shall be the sole responsibility of the Owner of such Parcel. In the situation of the construction of a road (and related improvements) which is located on the boundary line between Parcels, the costs and expenses associated with the construction of said road shall be equally shared by the Owners of the Parcels.

11. Master Declaration of Covenants, Conditions and Restrictions. The Owners intend and agree to create and record against both Parcels as Master Declaration of Covenants, Conditions and Restrictions ("Master CC&R's") by which the entire Silver Lake Village shall be

generally planned, constructed and managed, allocating the costs of ongoing repairs and maintenance for the shared improvements. Each Owner is authorized to create and record subordinate covenants, conditions, and restrictions appurtenant only to the Parcel owned by such Owner, which may not be inconsistent with the Master CC&R's.

12. **Cross-Easements.** To the extent that any road is constructed by the Owners with the intent that such road would be dedicated or conveyed to the County as a public road, but the County fails to accept said road, the Owners shall execute and record cross-easements giving access to and over said roads to the future owners of the lots in both Parcels, and their families, agents, and invitees, either as a part of the Master CC&R's or by a separately recorded instrument.

13. **Survival.** The agreements, covenants, conditions, representations and warranties set forth in this Agreement shall survive final payment or the expiration or earlier termination of this Agreement.

14. **Assignment.** No Owner shall assign this Agreement or any portion of this Agreement to any third-party without obtaining, in each and every instance, prior written approval from the other Owners hereto. Such approval shall not be unreasonably withheld, but reasonable consideration shall be based upon the financial strength, competence and a track record of non-default of its contractual obligations. Notwithstanding the foregoing, any assignment made solely to family members or for business or other reasons wherein the Owner remains a principal owner, or for estate planning purposes wherein control is maintained and the obligations retained by the original Owner (or the principals thereof) are hereby approved in advance.

15. **Attorneys' Fees.** In any legal or equitable proceeding regarding any claim or dispute arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees in such amount as may be fixed by the court in such proceedings, in addition to costs of suit.

16. **Conflict of Laws.** The laws of the State of Utah shall govern the interpretation, validity and construction of the terms and conditions of this Agreement. Under no circumstances, however, shall this paragraph be interpreted to apply Utah conflict of laws principles to require the laws of another state to determine the interpretation, validity or construction of this Agreement.

17. **Amendment.** This Agreement may be amended or supplemented only by an instrument in writing executed by all of the Owners.

18. **Integration.** This Agreement sets forth the entire Agreement of the Owners and supersedes all prior representations, understandings and agreements of the Owners concerning the subject matter hereof.

19. **Severability.** Should any of the provisions of this Agreement prove to be invalid or otherwise ineffective, the other provisions of this Agreement shall remain in full force and

effect. There shall be substituted for any such invalid or ineffective provision a provision which, as far as legally possible, most nearly reflects the intention of the Owners hereto.

20. No Relationship of Principal or Agent. Nothing contained in this Agreement, nor any acts of the Owners undertaken pursuant to this Agreement, shall be deemed or construed to create the relationship of principal and agent, or of limited or general partnership, or of joint venture or of any other similar association between or among the Owners or their successors or assigns.

21. Successors and Assigns; Obligations to Run with the Land. Subject to Paragraph 11, above, this Agreement shall inure to the benefit of and be binding on the Owners' respective successors and permitted assigns. The obligations of the Owners hereunder shall be servitudes on each of the Parcels and shall run with the land. Either this Agreement or a memorandum hereof shall be recorded against the Silver Creek Village and/or each of the Parcels.

22. Notation of Master Plat. The Owners agree that the Silver Creek Village Master Plat shall bear the following notation:

The Owners have entered into that certain Property Exchange and Cost Sharing Agreement For The Silver Creek Area Basic Infrastructure, dated as of July __, 2012 (the "Cost Sharing Agreement"). The Cost Sharing Agreement sets forth covenants binding upon such Owners and their respective successors and assigns regarding payment for the costs of the development and construction of the Silver Creek infrastructure improvements as more particularly described in the Cost Sharing Agreement. A copy of the Cost Sharing Agreement may be obtained at the offices of the Liberty Capital Lending, LLC at 6028 South Ridgeline Drive, Ogden, Utah 84405 or at its then current address.

23. Notices. Any notices or statements required or given under this Agreement, unless otherwise provided herein, shall be personally served or sent by United States mail to the address set forth below, until notice of a difference in address be given. Notices not personally served shall be deemed given one (1) business day after deposit with a nationally-recognized, overnight courier, or three (3) business days after deposit in the United States mail, properly addressed and with postage prepaid.

24. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

25. Authority and Further Assurances. Each Party hereto represents and warrants that it has the right, power, legal capacity, authority, and means to enter into and perform this Agreement (as well as the documents referenced herein) and that, to the best of its knowledge, the same will not contravene or result in the violation of any agreement, law, rule, or regulation to which any such party may be subject. Each party to this Agreement shall use reasonable efforts and exercise reasonable diligence to accomplish and effect the transactions contemplated and, to that end, shall execute and deliver all such further instruments and documents as may be

GAYLE KENNEDY LARSEN,
an individual

BY: Joseph E. Tesch
Joseph E. Tesch, her Attorney-in-Fact

Address: c/o Joseph E. Tesch
314 Main Street, suite 200
P.O. Box 3390
Park City, Utah 84060-3390

STATE OF Utah
COUNTY OF Summit :ss

The foregoing instrument was acknowledged before me this 27th day of September, 2012, by Joseph E. Tesch

Tassie Williams
NOTARY PUBLIC

My commission expires:
3-29-2016

Residing at: Summit County



EXHIBIT "A"
DESCRIPTION OF ORIGINAL LIBERTY PARCEL

EXHIBIT "B"
DESCRIPTION OF ORIGINAL LARSEN PARCEL

Silver Creek Village

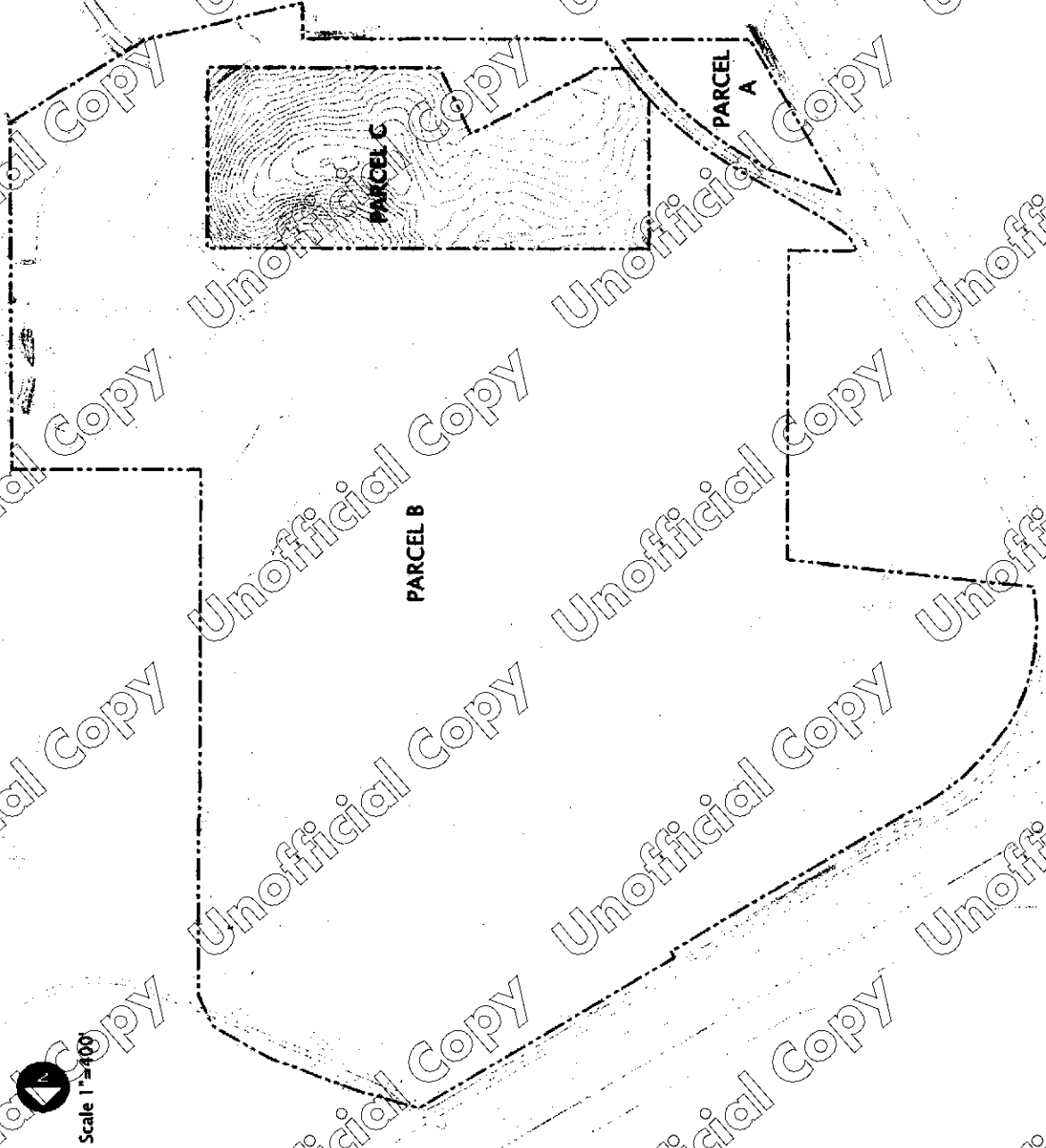
Original Larsen Parcel

Parcel C

A parcel of land situated in the Northwest Quarter of Section 22, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:
 Beginning at a point North 89°43'00" East 528.77 feet from the Northwest corner of the 22; thence South 89°43'00" East 1,702.43 feet; thence South 00°22'10" West 698.32 feet; thence North 85°44'00" West 857.44 feet; thence North 14°40'15" West 280.37 feet; thence South 82°55'20" West 535.95 feet; thence South 26°50'48" East 8.33 feet; thence North 89°42'50" West 114.31 feet; thence Northwest along the arc of a 1482.39 foot radius curve to the left (Chord bears North 59°51'26" West 125.87 feet); thence North 00°16'28" East 281.21 feet to the point of beginning. Contains 1,105,080 sq. ft., or 25.359 acres more or less.

Total Larsen Parcel Acreage - 25.359 Acres

Total SPA Acreage - 244.32 Acres



Larsen Boundary






Lansgard Design Group

EXHIBIT "C"
SILVER CREEK VILLAGE MASTER PLAN PLAT

Attach Plat

Silver Creek Village

LEGEND

-  LARSEN DEVELOPMENT PARCELS
134 UNITS
42 APARTMENTS
46 TOWNHOMES
48 SINGLE FAMILY
-  LARSEN ROADWAYS
-  LIBERTY CAPITAL ROADWAYS
-  SHARED ROADWAYS *
-  SHARED AMENITIES

*Shared Roadways also includes all rights associated with the required Silver Summit Interchange Improvements as required for the Silver Creek Village SPA Development.

- EF1 Entry Feature 1
- EF2 Entry Feature 2
- CG1 Community Garden 1
- PP Petrified Wood Park
- NP1 Neighborhood Park 1
- VC Village Green

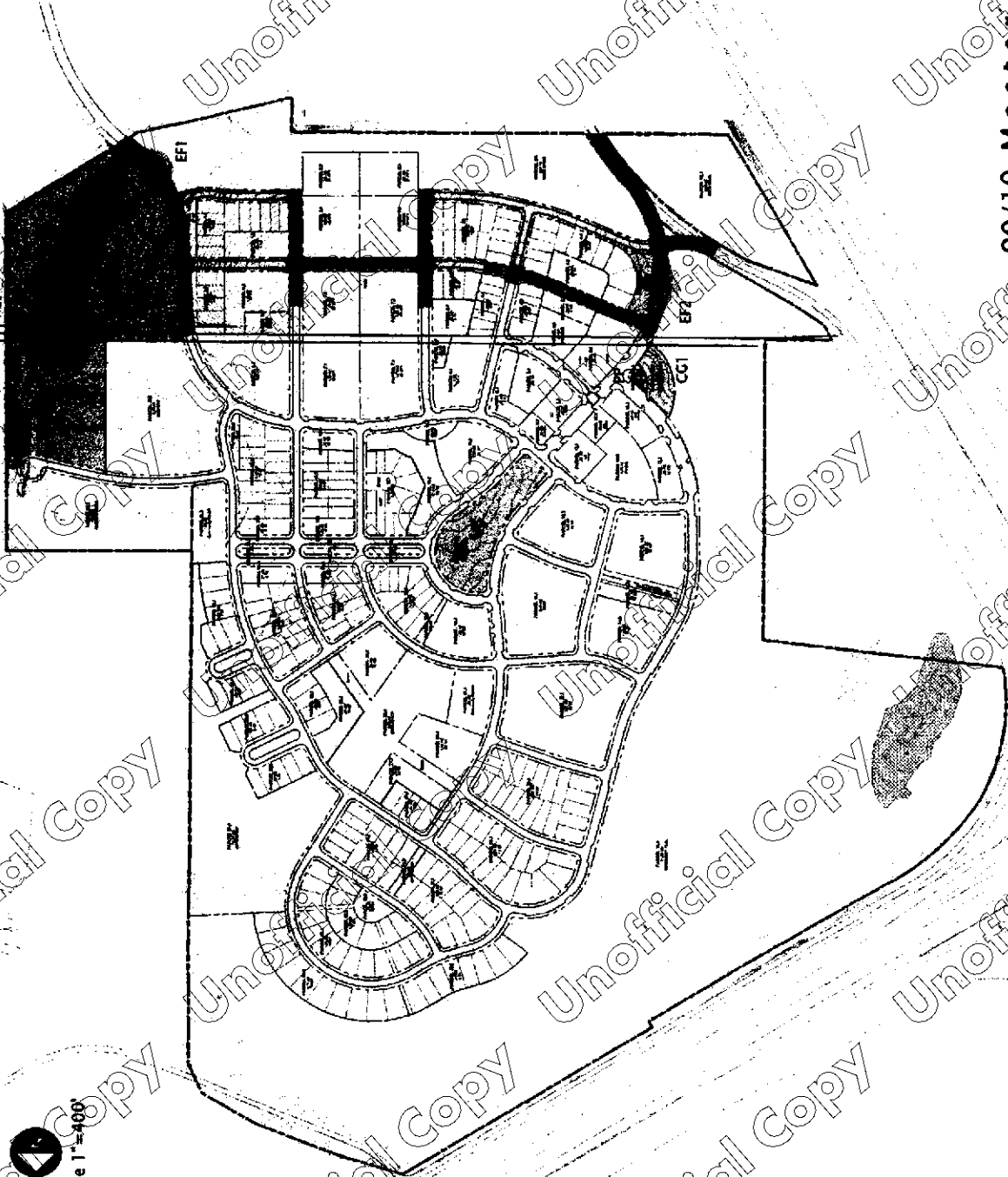


EXHIBIT C

LARSEN PARCELS:

A parcel of land situate in the Northwest Quarter of Section 22, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:

Beginning at a point South 89°43'02" East 476.22 feet, and South 00°00'00" East 59.03 feet from the Northwest Corner of said Section 22; thence South 67°15'01" East 415.02 feet; thence Southeasterly 79.90 feet along the arc of a 500.00 foot radius curve to the left (chord bears South 71°49'42" East 79.81 feet); thence South 76°24'22" East 121.65 feet; thence Southeasterly 53.13 feet along the arc of a 750.00 foot radius curve to the left (chord bears South 78°26'07" East 53.13 feet); thence North 13°35'38" East 281.40 feet; thence South 89°31'50" East 163.74 feet; thence South 00°05'09" East 577.38 feet; thence South 89°54'51" West 104.93 feet; thence Northwesterly 249.50 feet along the arc of a 1045.00 foot radius curve to the right (chord bears North 83°14'46" West 248.91 feet); thence North 76°24'22" West 121.65 feet; thence Northwesterly 127.04 feet along the arc of a 795.00 foot radius curve to the right (chord bears North 71°49'42" West 126.90 feet); thence North 67°15'01" West 233.31 feet; thence Northwesterly 84.66 feet along the arc of a 175.00 foot radius curve to the left (chord bears North 81°06'36" West 83.84 feet); thence Northwesterly 70.59 feet along the arc of a 545.00 foot radius non-tangent curve to the right (chord bears North 08°51'33" West 70.54 feet); thence North 09°20'56" East 56.73 feet; thence Northeasterly 75.59 feet along the arc of a 813.00 foot radius non-tangent curve to the left (chord bears North 06°41'07" East 75.56 feet); thence North 07°01'18" East 84.94 feet; thence Northeasterly 46.82 feet along the arc of a 545.00 foot radius non-tangent curve to the right (chord bears North 20°17'18" East 46.81 feet) to the point of beginning. Contains 329,068 sq.ft., or 7.554 acres more or less.

Also a parcel of land situate in the Northwest Quarter of Section 22, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:

Beginning at a point North 89°37'07" West 806.02 feet and South 00°00'00" East 8.04 feet from the North Quarter Corner of Said Section 22; thence South 89°37'07" East 397.50 feet; thence Southeasterly 72.41 feet along the arc of a 422.50 foot radius non-tangent curve to the right (chord bears South 07°44'31" East 72.33 feet); thence South 02°49'55" East 294.63 feet; thence Southeasterly 196.14 feet along the arc of a 527.50 foot radius curve to the left (chord bears South 13°29'02" East 195.01 feet); thence South 68°34'50" West 14.53 feet; thence Southwesterly 140.79 feet along the arc of a 275.00 foot radius non-tangent curve to the right (chord bears South 83°14'51" West 139.26 feet); thence North 82°05'09" West 35.09 feet; thence Northwesterly 31.42 feet along the arc of a 225.00 foot radius curve to the left (chord bears North 86°05'09" West 31.39 feet); thence South 89°54'51" West 276.02 feet; thence North 00°05'09" West 25.00 feet; thence South 89°54'51" West 222.50 feet; thence North 00°05'09" West 270.00 feet; thence North 89°54'51" East 250.00 feet; thence North 00°05'09" West 278.30 feet to the Point of beginning. Contains 310,074 sq.ft., or 7.118 acres more or less.

SS-48-B-1

EXHIBIT C

LOWE PARCELS:

A parcel of land situate in the Northwest Quarter of Section 22, the Northeast Quarter of Section 21, the Southeast Quarter of Section 16, and the Southwest Quarter of Section 15, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:

Beginning at the Southwest Corner of Said Section 15; thence North 00°24'00" East 1195.99 feet; thence North 83°50'00" West 943.52 feet; thence Northeasterly 533.24 feet along the arc of a 787.40 foot radius non-tangent curve to the right (chord bears North 09°26'52" East 523.11 feet); thence Northeasterly 465.60 feet along the arc of a 991.74 foot radius non-tangent curve to the right (chord bears North 45°09'39" East 461.33 feet); thence North 59°20'07" East 790.30 feet; thence North 58°36'37" East 345.57 feet; thence North 31°23'23" West 25.00 feet; thence North 58°42'37" East 983.38 feet; thence North 58°42'37" East 166.45 feet; thence South 73°30'00" East 261.06 feet; thence South 68°50'00" East 349.50 feet; thence South 60°00'00" East 250.00 feet; thence South 25°35'00" East 132.00 feet; thence South 00°24'00" West 2049.87 feet; thence South 89°43'02" East 724.58 feet; thence South 00°00'00" East 1345.66 feet; thence South 58°25'15" West 600.50 feet; thence South 77°33'34" West 304.97 feet; thence South 76°22'47" West 325.40 feet; thence North 00°11'30" West 139.14 feet; thence North 89°43'02" West 1160.28 feet; thence Northwesterly 732.07 feet along the arc of a 1462.39 foot radius non-tangent curve to the left (chord bears North 45°39'33" West 724.45 feet); thence North 60°00'00" West 336.18 feet; thence Northwesterly 151.32 feet along the arc of a 1369.39 foot radius non-tangent curve to the right (chord bears North 56°50'04" West 151.24 feet); thence North 28°43'02" West 68.02 feet; thence South 89°39'01" East 267.29 feet to the point of beginning. Contains 10,430,944 sq.ft., or 239.46 acres.

Also A parcel of land situate in the Northeast Quarter of Section 21, and the Northwest Quarter of Section 22, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:

Beginning at a point North 89°39'01" West 207.48 feet, and South 00°00'00" East 216.17 feet from the Northeast Corner of Said Section 21; thence South 70°27'19" East 297.30 feet; thence South 60°00'00" East 92.89 feet; thence Southeasterly 664.81 feet along the arc of a 1402.39 foot radius curve to the right (chord bears South 46°25'10" East 658.60 feet); thence North 89°43'02" West 486.95 feet; thence North 30°24'51" West 692.87 feet to the point of beginning. Contains 211,890 sq.ft., or 4.864 acres more or less.

Less and accepting the following described tracts of land:

A parcel of land situate in the Northwest Quarter of Section 22, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:

Beginning at a point South 89°43'02" East 476.22 feet, and South 00°00'00" East 59.03 feet from the Northwest Corner of said Section 22; thence South 67°15'01" East 415.02 feet; thence Southeasterly

79.90 feet along the arc of a 500.00 foot radius curve to the left (chord bears South 71°49'42" East 79.81 feet); thence South 76°24'22" East 121.65 feet; thence Southeasterly 53.13 feet along the arc of a 750.00 foot radius curve to the left (chord bears South 78°26'07" East 53.13 feet); thence North 13°35'38" East 281.40 feet; thence South 89°31'50" East 163.74 feet; thence South 00°05'09" East 577.38 feet; thence South 89°54'51" West 104.93 feet; thence Northwesterly 249.50 feet along the arc of a 1045.00 foot radius curve to the right (chord bears North 83°14'46" West 248.91 feet); thence North 76°24'22" West 121.65 feet; thence Northwesterly 127.04 feet along the arc of a 795.00 foot radius curve to the right (chord bears North 71°49'42" West 126.90 feet); thence North 67°15'01" West 233.31 feet; thence Northwesterly 84.66 feet along the arc of a 175.00 foot radius curve to the left (chord bears 81°06'36" West 83.84 feet); thence Northwesterly 70.59 feet along the arc of a 545.00 foot radius non-tangent curve to the right (chord bears North 08°51'33" West 70.54 feet); thence North 09°20'56" East 56.73 feet; thence Northeasterly 75.59 feet along the arc of a 813.00 foot radius non-tangent curve to the left (chord bears North 06°41'07" East 75.56 feet); thence North 07°01'18" East 84.94 feet; thence Northeasterly 46.82 feet along the arc of a 545.00 foot radius non-tangent curve to the right (chord bears North 20°17'18" East 46.81 feet) to the point of beginning. Contains 329,068 sq. ft., or 7.554 acres more or less.

Also a parcel of land situate in the Northwest Quarter of Section 22, Township 1 South, Range 4 East Salt Lake Base and Meridian being more particularly described as follows:

Beginning at a point North 89°37'07" West 806.02 feet and South 00°00'00" East 8.04 feet from the North Quarter Corner of Said Section 22; thence South 89°37'07" East 397.50 feet; thence Southeasterly 72.41 feet along the arc of a 422.50 foot radius non-tangent curve to the right (chord bears South 07°44'31" East 72.33 feet); thence South 02°49'55" East 294.63 feet; thence Southeasterly 196.14 feet along the arc of a 527.50 foot radius curve to the left (chord bears South 13°29'02" East 195.01 feet); thence South 68°34'50" West 14.53 feet; thence Southwesterly 140.79 feet along the arc of a 275.00 foot radius non-tangent curve to the right (chord bears South 83°14'51" West 139.26 feet); thence North 82°05'09" West 35.09 feet; thence Northwesterly 31.42 feet along the arc of a 225.00 foot radius curve to the left (chord bears North 86°05'09" West 31.39 feet); thence South 89°54'51" West 276.02 feet; thence North 00°05'09" West 25.00 feet; thence South 89°54'51" West 222.50 feet; thence North 00°05'09" West 270.00 feet; thence North 89°54'51" East 250.00 feet; thence North 00°05'09" West 278.30 feet to the Point of beginning. Contains 310,074 sq. ft., or 7.118 acres more or less.

SS-30-A
SS-30-B
SS-32-B-1
SS-48-B

EXHIBIT "D"
ITEMIZED LIST OF WORK

EXHIBIT D

SILVER CREEK VILLAGE SPA – SHARED COST TASKS

Land Planning and Site Design– Overall Master Plan

Development Agreement & Design Guidelines, Exhibits

Land Planning, Site Design and Landscape Architecture – Park Designs

- **Community Park, Neighborhood Park, Village Green, Petrified Wood Park, Community Garden**

Land Planning, Site Design and Landscape Architecture – Entry Features

Land Planning, Site Design and Landscape Architecture – Phase 1 Open Spaces and Steetscapes

Summit County Coordination – Approvals (Overall SPA, Phase 1)

Engineering – Overall Utility Design (Sewer, water, storm and graywater/secondary irrigation)

Engineering – Phase 1 Road (Layout and Grading) and Utility Design (Sewer, water, storm)

Engineering - Traffic

Platting (Overall Master Plan and Phase 1)

Surveying

- **Environmental Planning**
- **Utility Planning**
- **Utility and Roadway bidding**
- **Utility and Roadway installation as outlined in Exhibit A of the master plan and paid for as outlined in the agreement.**

EXHIBIT "E"
WORK COMPLETED PRIOR TO EXECUTION OF AGREEMENT

567376.6

EXHIBIT E

| | |
|---|-------------------------------|
| Langvardt Design: | \$29,740.00 |
| Horrocks Engineering | \$7,556.00 (Traffic Planning) |
| Contour Land Solutions | \$5,357.50 |
| Sage Environmental | \$9,569.41 |
| Utah Div. of Environmental Response and Remediation | \$2,500.00 |
| Gardner Engineering (Yet to be paid for survey work for metes and bounds for agreement) | |
| Total | \$54,722.91 |