

WHEN RECORDED RETURN TO:

Summit County Clerk
Summit County Courthouse
60 North Main
Coalville, Utah 84017

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ALAN SPRIGGS, SUMMIT CO RECORDER
2005 JAN 20 10:05 AM FEE \$1.00 BY GGB
REQUEST: SUMMIT COUNTY CLERK

**DEVELOPMENT AGREEMENT
FOR THE SUMMIT CENTER SPECIALLY PLANNED AREA
PARCEL PP-49-A thru F, KIMBALL JUNCTION, SUMMIT COUNTY, UTAH**

THIS DEVELOPMENT AGREEMENT is entered into as of this 17th day of November, 2004, by and among Allred Summit, L.L.C., ("Developer") and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners ("County")

**Article I
DEFINITIONS**

- 1.1 **Architectural Design Guidelines** means the Architectural Design Guidelines for the Property, a copy of which is included in the Summit Center SPA Plan Book of Exhibits.
- 1.2 **Basin** means Snyderville Basin.
- 1.3 **Code** means Snyderville Basin Development Code.
- 1.4 **Comprehensive Sign Plan** means the signage regulations for the Property, which shall be approved through a Low Impact Permit. The Comprehensive Sign Plan shall be consistent with the intent of the signing concepts illustrated in the Summit Center SPA Plan Book of Exhibits.
- 1.5 **County** means Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners.
- 1.6 **Commission** means Snyderville Basin Planning Commission.
- 1.7 **Developer** means Allred Summit, L.L.C., and their assignees or transferees.
- 1.8 **Development Agreement** means this Development Agreement.
- 1.9 **Development Application** means an application to the County for development, including a building permit or any other permit, certificate or other authorization from the County required for development of the Property.
- 1.10 **Director** means the Summit County Community Development Director.
- 1.11 **Final Site Plan** means the final site plan establishing detailed development layout, and other development details such as architecture, landscaping, lighting and parking shall be approved through a Low Impact Permit, the process for which is established in this Agreement.
- 1.12 **Final Subdivision Plat** means the Final Subdivision Plat, which shall be approved in accordance with the provisions of this Agreement.
- 1.13 **General Plan** means the Snyderville Basin General Plan of the County.

BK1673 PG1511

1.14 **Intended Uses** means the approved uses of all or portions of the Property for restaurants, public facilities, businesses, commercial areas, services, residential and other appropriate uses.

1.15 **Land Use Laws** means zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations existing and in force for the County as of the date of this Development Agreement, and as may be amended from time to time.

1.16 **Landscaping Plan** means the landscaping plan for the Property, which shall be approved in accordance with the provisions of this Agreement. The landscape plan shall be consistent with the landscape concepts, guidelines, and requirements included in this Agreement.

1.17 **Lighting Plan** means the lighting guidelines for the Property, which shall be approved in accordance with the provisions of this Agreement.

1.18 **Low Impact Development** means when specifically designated as a Low Impact Activity in the Development Agreement, such uses shall be subject to a Low Impact Permit review and approval by the Director in accordance with the provisions in the Summit Center SPA Plan Book of Exhibits and all applicable provisions of the Snyderville Basin Development Code.

1.19 **Master Plan** means the Summit Center Master Plan, a copy of which is included in the Summit Center SPA Plan Book of Exhibits, which reflects the location and configuration of commercial development and amenities within the Property, and the location and configuration of the Public Facilities.

1.20 **Planning Commission** means the Snyderville Basin Planning Commission.

1.21 **Preliminary Site Plan** means the sketch or preliminary site plan depicting the location of improvements on the Property, a copy of which is included in the Summit Center SPA Plan Book of Exhibits.

1.22 **Project Site** means a predetermined location of development within the Summit Center SPA, as set forth in this Development Agreement or any of its Exhibits hereto.

1.23 **Property** means approximately 25.469 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land is shown in the Summit Center SPA Plan Book of Exhibits.

1.24 **Public Facilities** means the arterial and access roads and the other public infrastructure of public service facilities serving the Property.

1.25 **Summit Center SPA** means the Development Agreement adopted by Ordinance No. 517 for the purposes of permitting the adoption of a comprehensive development plan specifically required to implement the unique uses, densities, development locations, and programs and other features of the Property.

1.26 **Summit Center SPA Plan or Summit Center** means a comprehensive plan, set forth in this Development Agreement, which shall designate all development parameters, site plans and plats, land use locations, densities, trails, and other open space within the Property, the approximate location of public amenities which service the Property, Development Construction and all other property owner/developer obligations, commitments, and contributions made to carry out the development of the Property.

1.27 **Summit Center SPA Plan Book of Exhibits** means that portion of the Summit Center SPA Plan which shall contain concept plans, guidelines, and standards that shall be used to guide all development in the Summit Center SPA and all other specific development parameters and regulations, and developer obligations, commitments, and contributions for carrying out the development in accordance with the Summit Center SPA Plan. The Summit Center SPA Plan Book of Exhibits shall be deemed a part of this Development Agreement as fully as if set forth herein at length and shall be binding upon all parties hereto.

RECITALS

2.1 The recitals in the remainder of this Article 2, together with the findings set forth in Article 3, are an integral part of this Development Agreement and are a part of the consideration for each party's entry into this Development Agreement.

2.2 Developer is the record owner of the Property or has contractual rights to acquire any such portions thereof as are not owned of record Developer.

2.3 Developer has proposed the redevelopment on the Property a mixed-use project known as Summit Center which shall be constructed within certain predetermined development locations designated in the Summit Center SPA (the "Summit Center"). This Development Agreement serves to implement the Summit Center SPA, Ordinance No. 517 in accordance with the provisions of the Code and the General Plan.

2.4 Prior to or contemporaneously with the approval of this Development Agreement, the County has adopted an amendment to the General Plan, the Code, and the Zoning Map classifying the Property as the Summit Center SPA Zone District and setting forth therein such land use classifications, commercial densities, and development locations as are permitted under the Development Agreement.

2.5 The County has encouraged Developer to employ innovative land planning concepts within Summit Center in order to cluster development densities, preserve sensitive lands, create significant private and public recreational amenities, open spaces, and trails, and provide commercial uses within Summit Center and within the County in furtherance of the goals of the General Plan.

2.6 Developer has proposed specific plans and plats with respect to Summit Center. Summit Center has been specifically planned in response to direction from the Director and the Planning Commission.

2.7 The County therefore desires to establish Summit Center under the SPA provisions of the Code and the General Plan for the purpose of implementing development standards and processes that are consistent therewith.

2.8 This Development Agreement, which implements the Summit Center SPA, provides detailed data regarding the Summit Center plat, site plan, open space, architecture and other relevant data. The County and the Developer agree that each shall comply with the standards and procedures contemplated by the Summit Center SPA, this Development Agreement and its accompanying exhibits, the Code, and the General Plan with respect to the required development approvals.

2.9 Developer and the County desire to clarify certain standards and procedures that will be applied to certain administrative approvals contemplated in connection with the development of Summit Center and the construction of improvements of benefit to the Property, to establish certain standards for the phased development and construction of Summit Center and certain Summit Center improvements and to address requirements for certain public amenities.

2.10 The County also desires to receive certain public benefits and amenities, and Developer is willing to provide these public benefits and amenities in consideration of the agreement of the County for and intensity of uses in Summit Center pursuant to the terms of this Development Agreement.

2.11 The County, acting pursuant to its authority under Utah Code Annotated, Section 17-27-101 et seq., the Code and the General Plan, has made certain determinations with respect to Summit Center, and, in the exercise of its legislative discretion, has elected to approve the use, density, and general configuration pursuant to the Summit Center SPA, resulting in the negotiation, consideration and approval of this Development Agreement after all necessary public hearings.

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**Article 3
FINDINGS**

Summit County, acting in its legislative capacity, has made the determinations with respect to the Summit Center SPA parcel PP-49-A thru F Plan set forth in this Article 3, including all findings of fact and conclusions of law as are necessary to make each of such determinations.

3.1 Following a lawfully advertised public meeting, SPA parcel PP-49-A thru F, consisting of 25.469 acres in the Summit Center received a recommendation for approval by action of the Planning Commission taken on February 25, 2003.

3.2 The Summit Center SPA provides substantial, tangible benefits to the general public of the Snyderville Basin that significantly outweigh those that would be derived if the development occurred under the provisions of the existing zone. The provisions of those benefits and amenities has been taken into consideration by Summit County in granting increased commercial densities on the Property.

3.3 The Summit Center SPA Plan, as reflected in and conditioned by the terms and conditions of this Development Agreement, is in conformity and compliance with the General Plan, any existing capital improvements programs, the provisions of the Code (including concurrency and infrastructure requirements), and all other development requirements of the County.

3.4 The Summit Center SPA Plan contains outstanding features which advance the policies, goals and objectives of the Snyderville Basin General Plan, Land Use Maps, and the applicable Development established in Chapter 1 of the Code; beyond mere conformity, including the following: (i) agreements with respect to design controls and limitations to minimize the visual impact of the development; (ii) the creation of a trail system and park area connections and improvements; (iii) the clustering and appropriate location of density; and (iv) the preservation of critical open space area.

3.5 There are unique circumstances that justify the use of a SPA, including (i) the development of a mixed use project; (ii) the redevelopment of a portion of said project; and (iii) the adjacency of Wetland areas to be preserved.

3.6 Developer has committed to comply with all appropriate Concurrency and Infrastructure requirements of the Code, and all appropriate criteria and standards described in this Development Agreement, including all applicable impact fees of the County and its Special Districts.

3.7 There exist adequate provisions for mitigation of all fiscal and service impacts on the general public, Summit County, and the Basin.

3.8 There will be no construction management impacts that are unacceptable to the County.

3.9 The approval of the Summit Center SPA Plan will not adversely affect the public health, safety and general welfare of the residents of Summit County or the Basin.

3.10 The Summit Center SPA Plan meets or exceeds development aesthetic objectives of the General Plan and the Code, is consistent with the goal of orderly growth in the Basin, and minimizes construction impacts on public infrastructure within the Basin.

3.11 The proposed development reasonably assures life and property within the Snyderville Basin is protected from any adverse impact of its development.

3.12 Developer shall take appropriate measures to prevent harm to neighboring properties and lands from development, including nuisances.

3.13 This Development Agreement implements the Summit Center SPA.

3.14 Exemption from Code. The Board of County Commissioners acting pursuant to its authority under Utah Code Annotated 17-27-101 et. seq., as well as its regulations and guidelines, in the exercise of its legislative discretion, has determined that Summit Center is exempt from the application of the Code solely to the extent that such a finding may be a condition precedent to approval of this Development Agreement. Where there is a direct conflict between an express provision of this Development Agreement and the Code or General Plan or other land use laws, this Development Agreement shall take precedence; otherwise, the Code, General Plan, or other land use laws shall control.

Article 4
THE PROJECT

4.1 Description of the Project. The Property covered by this Development Agreement consists of approximately 25.469 acres of land located at 2734 West Rasmussen Road in the Snyderville Basin. Developer intends to construct a mixed-use development project, generally shown on the Master Plan to the Summit Center SPA Plan Book of Exhibits and as further described in this Development Agreement.

4.2 Legal Description of Property. The legal description of the Property included within the Summit Center SPA is set forth in the Summit Center SPA Plan Book of Exhibits. No property may be added to the legal description of Summit Center for purposes of this Development Agreement, except by written amendment. Unless expressly set forth in this Agreement, this Development Agreement shall not affect any land other than the Property.

4.3 Approved Use, Density, and Configuration. This Development Agreement shall, subject to the conditions, time limitations and requirements of this Agreement, vest with respect to Summit Center as to the uses, densities, configuration, massing, design guidelines and methods, development standards, the site plan, plat and other approval processes, road placements and size, road curb cuts and connections, and commercial and institutional uses, and other improvements, as reflected in the Summit Center SPA Plan Book of Exhibits and all other provisions of this Development Agreement. The Summit Center SPA Plan Book of Exhibits shall be deemed a part of this Development Agreement and shall be binding upon all parties hereto.

4.4 Development Configuration of Summit Center. The development configuration of Summit Center is specifically shown on the Summit Center Master Plan, a copy of which is included hereto in the Summit Center SPA Plan Book of Exhibits. The Summit Center Master Plan reflects the location and configuration of commercial development and amenities within Summit Center.

4.5 Development Construction.

4.5.1 The Summit Center Developer agrees to the below point system for the redevelopment of the Summit Center. With this credit system, the developer can only build two new buildings before running out of credits and then be required to either remodel or remove an existing building before construction a new building. The remodeling and demolition of existing buildings can occur concurrently with new construction.

The Summit Center earns points, or credits towards new construction by doing the following:

- | | |
|---|----------------|
| 1. Provide all of the community benefits that were part of the Snyderville Basin Planning Approval. I | (2) two Points |
| 2. Remodel Building A: | (1) One Point |
| 3. Remodel Building D: | (1) One Point |
| 4. Demolition Building 1: | (1) One Point |
| 5. Demolition Building 2: | (1) One Point |

Point Value given to new development/construction at the Summit Center

- | | |
|----------------|---------------|
| 1. Building B: | (1) One Point |
| 2. Building C: | (1) One Point |

I The community benefits must be completed in Phase I, prior to receiving a certificate of occupancy for any constructed structures in Phase I

- 3. Building E w/ Drive thru (1) One Point
- 4. Building G (1) One Point
- 5. Building H: (1) One Point

4.5.2 Within the Development Construction parameters outlined above, commercial buildings may be constructed in any order.

4.6 Specific Design Guidelines and Conditions: The development of Summit Center must be consistent with those Specific Conditions and Guidelines set forth in this section, as well as those described in the Summit Center SPA Plan Book of Exhibits, which includes, among other things the master plan, signing concepts, lighting guidelines, landscaping guidelines, and architectural design guidelines. The SPA Plan is approved subject to the following conditions, which are in addition to all other conditions specified in this Development Agreement:

4.6.1 Approval of Final Site Plan Required. Approval of this Development Agreement shall constitute preliminary site plan approval in accordance with the requirements of the Code and the General Plan for those portions of the Property included within the Appendices to the Summit Center SPA Plan Book of Exhibits. Prior to the issuance of any building, grading, or other related development permit for the Project, the developer shall obtain final site plan approval in accordance with the provisions of this Agreement.

4.6.2 Building Permit Required. Prior to the commencement of development activity on any lot designated on a Final Subdivision Plat or Final Site Plan, or before the commencement of construction on any structure authorized in this Development Agreement, a Building Permit must be obtained from the County in accordance with all applicable requirements of the Code. Failure to so comply shall be grounds for revocation of Final Subdivision Plat or Site Plan approval or denial/revocation of Building Permits issued pursuant to a Final Subdivision Plat or Site Plan or this Development Agreement. The County reserves the right to refuse the issuance of any building permit if it is reasonably believed that the Developer is in violation of any law, code or ordinance with respect to the property.

4.6.3 Owner Associations and Management Arrangements. The SPA will remain under the ownership and control of one or more commercial property owners, who shall remain responsible for the maintenance of the main entrances and road and the commercial portions of the SPA.

4.6.4 Transit District. The Developer shall not protest the creation of a transportation services district, whose boundaries include Summit Center, if such a district is created by authority of the County. The Developer, however, reserves the right, in accordance with State law, to review and object to assessments or other non-financial obligations which may be imposed by such a district. Developer shall receive credits towards any assessments for payments made for traffic related improvements.

4.6.5 Trail Easement and Financial Contributions as Community Benefit. Summit Center agrees to contribute the property on the north side of East Canyon Creek as perpetual open space with a trail easement to the Snyderville Basin Recreation District. Summit Center agrees to allow the Snyderville Basin Recreation District to construct a 10 (ten) to twelve (12) foot paved trail upon the trail easement granted to the Snyderville Basin Recreation District. Additionally, Summit Center agrees to provide and construct a trailhead-parking area as shown in the Summit Center SPA plan Book of Exhibits, and provide and construct a trail which runs parallel to Rasmussen Road

4.6.6 Amenities and Facilities. The Developer shall provide a variety of amenities and infrastructure to ensure vitality and interest to the Summit Center. These shall be consistent with the intent and guidelines provided in the Summit Center SPA Plan Book of Exhibits, and shall be specifically reviewed and approved by Summit Center through the Low Impact Permit process.

- (a) A north side East Canyon Creek trail easement shall be provided to Snyderville Basin Recreation District.
- (b) Trail head parking area including benches, a monument and picnic tables
- (c) Road Improvement Funds
- (d) There shall be connecting sidewalks throughout the commercial areas.

- (e) Commercial sidewalk lighting shall be provided.

4.6.7 Comprehensive Sign Plan Required. Prior to the approval of a certificate of occupancy for any commercial building within the project, the Developer shall submit an application for a comprehensive sign plan. The application shall be reviewed by Summit County as a Low Impact Permit. The sign plan shall address all design, size, location, lighting, and other related standards for all commercial business identifications signs, construction related signs, Project identification signs, banners, temporary signs, directional signs, and any other signs that may be contemplated by the Developer. The Developer shall be in compliance with the sign plan prior to the issuance of any certificate of occupancy for any commercial building.

4.6.8 Open Space Preservation. Developer shall preserve the natural open space areas shown on the Summit Center SPA Plan in the same general condition as those areas are presently found. Any disturbance of those areas for construction staging or the installation of utility lines shall be restored.

4.6.9 Construction Mitigation and Management Plan Required. A building permit will not be issued for any facility or structure within Summit Center until an adequate Construction Management and Mitigation Plan has been established for Summit Center and approved by the County Engineer, who may require changes to address any unforeseen impacts that occur during construction. The plan shall address the following matters specifically, together with any other related matters identified by the Summit Center Community Development Director and the Developer. A separate plan may be established for each phase of Summit Center.

- (a) Revegetation/erosion protection/runoff control.
- (b) Wetland and watershed protection; wetlands enhancement plan.
- (c) Site grading.
- (d) Dust and debris control.
- (e) Recycling construction material waste.
- (f) Damage to public roadways as a result of construction.
- (g) Traffic control/construction management control.
- (h) Hours of construction.
- (i) Impact of noise on adjacent residential uses.
- (j) Staging and screening of construction materials and equipment.

4.6.10 Public Sidewalks Required. The Developer of the phases of the project shall provide sidewalks for public use, the location, width, and surface of which shall be in accordance with the Summit Center SPA Plan Book of Exhibits. Sidewalks shall be provided in conjunction with each phase or subphase of development.

4.6.11 On-going Landscape Maintenance Required. The Developer shall ensure appropriate maintenance of all landscape material. Simply planting and spray irrigation is not an acceptable level of maintenance. Maintenance shall include a proper root watering schedule, pruning, and other sound landscape maintenance techniques. The Developer shall include a specific maintenance plan to be approved with the final site plan.

Article 5 VESTED RIGHTS

5.1 Vested Rights. Subject to Articles 5.2 and 6.1 and 9.2 the Developer shall have a vested right to have preliminary and final site, plat and construction plans approved and to develop and construct Summit Center in accordance with the uses, densities, timing and configurations (massing) of development as vested in Article 4.3 under the terms and conditions of this Development Agreement, including Article 3 (Findings), and the Summit Center SPA Plan Book of Exhibits.

5.2 Reserved Legislative Powers

5.2.1 Future Changes of Laws and Plans: Compelling Countervailing Public Interest

Nothing in this Development Agreement shall limit the future exercise of the police power of the County in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other master plans, policies, ordinances and regulations after the date of this Development Agreement. Notwithstanding the retained power of the County to enact such legislation under the police power, such legislation shall only be applied to modify the vested rights described in Articles 4.3 and 5.1, as well as other provisions of this Development Agreement, based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. (Western Land Equities, Inc., v. City of Logan, 617 P.2d 388 (Utah 1980) or successor case and statutory law). Any such proposed change affecting the vested rights of Summit Center and other provisions of this Development Agreement shall be of general application to all development activity in the Snyderville Basin; and, unless the County 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 Summit Center under the compelling, countervailing public policy exception to the vested rights doctrine. In the event that the County does not give prior written notice, Developer shall retain the right to be heard before an open meeting of the Board of County Commissioners in the event Developer alleges that its rights under this Development Agreement have been adversely affected.

5.2.2 In the event the Developer does not commence activity² or receive final approval for any phase site plan etc. under this agreement within five (5) years of the date of this agreement all approvals, rights, and vesting shall expire.

**Article 6
PROCESSES**

6.1 Fees.

6.1.1 SPA Rezone Application, Final Subdivision Plat, Development Review, Engineering and Related Fees. Developer agrees to pay the pro-rated sum of \$2,000.00 toward future traffic signaling at the intersection of Homestead and Rasmussen Road prior to obtaining a building permit for Building B approval of this Development Agreement by the Board of County Commissioners. Developer shall receive no further credits or adjustments toward any other development review, platting, site planning, or similar standard engineering review fees or other fees generally applicable to development application or building permit review and approval. The County may charge such standard planning and engineering review fees, standard building permit review fees, and other fees as are generally applicable at the time of application, pursuant to the provisions of Resolution 99-11, as amended, or other applicable statutes, ordinances, resolutions, or administrative guidelines.

6.1.2 Impact Fees. In consideration for the agreements of the County in this Development Agreement, Developer agrees that Summit Center shall be subject to all impact fees which are (1) imposed at the time of issuance of building permits, and (2) generally applicable to other property in the Snyderville Basin; and Developer waives its position with respect to any vested rights to the imposition of such fees, but shall be entitled to similar treatment afforded other vested projects if the impact fee ordinance makes any such distinction. If fees are properly imposed under the preceding tests, the fees shall be payable in accordance with the payment requirements of the particular impact fee ordinance and implementing resolution. Notwithstanding the agreement of Developer to subject Summit Center to impact fees under the above-stated conditions, Developer does not waive Developer's rights under any applicable law to challenge the reasonableness of the amount of the fees within thirty (30) days following imposition of the fees on Summit Center based upon the application of the Rational Nexus Test (as defined in Section 6.1.3).

6.1.3 Rational Nexus Test. For purposes of this Development Agreement, the Rational Nexus Test shall mean and refer to a standard of reasonableness whereby Summit Center and Property shall not bear more

² "commence activity" means the submission by the developer of a completed development application under this agreement with the payment of fees.

than an equitable share of the capital costs financed by an impact fee or exaction in relation to the benefits conferred on and impacts of Summit Center. The interpretation of "rational nexus" shall be governed by the federal or Utah case law and statutes in effect at the time of any challenge to an impact fee or exaction imposed as provided herein including, but not limited to, the standards of Banberry Development Corp. v. South Jordan City or its successor case law.

6.2 Approval of Final Construction Developments. In conjunction with a final subdivision plat or final site plan approval, but in all instances prior to the issuance of a building, grading, or other development permit, the Developer shall submit all applicable Construction Plans as required in Section 5.4 of the Code, together with a proposal for guaranteeing development improvements (Development Improvements Agreement), to Staff consistent with the provisions of the Code. In addition, any other related approvals required in this Agreement shall be submitted at this time for review and approval in accordance with the terms defined in this Agreement. The Staff shall review the information submitted pursuant to this Section and provide its recommendation to the Board of Commissioners. Following the submission of the Staff recommendation to the Board of Commissioners on the final plans, the application shall be placed on the Administrative Items Agenda of the Board of Commissioners for final approval. If the then existing Code does not require Board of Commissioners approval of the Final Construction Documents, then the Director may approve such documents following Staff review of the same.

6.3 Approval of Development Improvements Agreement. A building, grading, or other related development permit will not be issued for any project or any structure within the Project approved in the Summit Center SPA until final site plan for that phase in a form acceptable to Summit County, has been accepted by Summit County as a Low Impact Permit.

6.4 Compliance with Concurrency Management Standards Required. In addition to compliance with the criteria required under Chapter 4 of the Code, the following service provider and concurrency information shall also be required and reviewed along with the detail Final Subdivision Plat or Site Plan. Upon receiving such information, the Director shall prepare a report(s) identifying issues and concerns related to the proposal. The additional information to be provided is as follows:

6.4.1 Water Service.

- (a) A feasibility letter for the proposed water supply issued by the State Division of Drinking Water.
- (b) Evidence of coordination with the public or private water service provider, including an agreement for service and an indication of the service area of the proposed water supplier, commitment service letter or other binding arrangement for the provision of water services.
- (c) Evidence that water rights have been obtained including an application for appropriation or change application endorsed by the State Engineer pursuant to Section 73-3-10 of the Utah Code, and a certificate of appropriation or certification of change issued in accordance with Section 73-3-16 of the Utah Code. The County shall not accept an application or certificate that has lapsed, expired or been revoked by the State Engineer.
- (d) A certificate of convenience and necessity or an exemption therefrom, issued by the State Public Service Commission, for the proposed water supplier.

6.4.2 Sewer Service. A Line Extension Agreement approved by the Snyderville Basin Sewer Improvement District for the proposed development. No final subdivision plat, final site plan or low impact permit shall be approved until the applicant has paid the applicable system capacity fee for that portion of the proposed development included in such plat or low impact permit.

6.4.3 Fire Protection.

- (a) A letter from the Park City Fire District indicating that fire hydrants, water lines sizes, water storage for fire protection and minimum flow for fire protection are adequate. These shall be

determined using the standard of the Insurance Services Office which are known as the Fire System Grading Standards. In no case shall minimum fire flow be less than 1,000 gallons per minute for a period of two (2) hours.

(b) Written evidence to the County and the Park City Fire District verifying that an authorized water company shall be responsible for the perpetual and continual maintenance of all fire protection appurtenances, including annual flagging of all hydrants prior to November 1st of each year.

6.4.4 Recreation. A letter from the Snyderville Basin Special Recreation District indicating that all requirements of the District and the terms of this Amended Agreement have been satisfied.

6.4.5 Other Service Providers. The Director shall secure input regarding the proposed development from all other affected agencies and service providers, including but not necessarily limited to the Army Corps of Engineers, County Health Department, Utah Power, and the Park City/Summit County Arts Council.

6.5 Approval of Final Site Plans. Approval of final site plans shall be processed as a Low Impact Permit pursuant to the provisions of Section 3.4 of the Code existing as of the date of this Development Agreement. Site plan review shall include: 1) final site layout for conformance with the intent of the preliminary site plans approved in this Agreement; 2) sufficient architectural design details; 3) landscape; 4) exterior and site lighting; and 5) specific programs for amenities, trails, parks, and other related improvements and facilities as required in this Agreement. In the event of a procedural conflict between the Code and this Development Agreement, the provisions of the Development Agreement shall govern. The decision of the Director shall be the final decision of the County unless appealed to the Board of Commissioners by the Developer. The decision of the Director shall be based upon the Developer's compliance with the requirements and standards set forth in this Development Agreement and the criteria required under Chapter 4 of the Code. If the decision is not appealed within five (5) days after the date of the decision, the decision shall be final. Any appeal shall follow the provisions of Section 6.5.1 of this Development Agreement.

6.6 Appeal. Following the exhaustion of the administrative remedies ending in a final determination by the County's legislative body, that final determination shall be appealable to the District Courts of Summit County under Utah law, U.C.A. 17-27-1001.

6.7 Low Impact Permit Approval. Whenever in this Agreement a Low Impact use or approval process is designated or required, the developer shall submit for review and approval by Summit County all applicable information and documents in accordance with the provisions of Section 3.4 of the Code. With regard to this Agreement only, the "qualification for Low Impact Use," described in Section 3.4.D, shall be expanded to allow compliance with the terms and provisions of this Agreement.

6.8 Conditional Use Permit Approval. Whenever in this Agreement a Conditional Use or approval process is designated or required, the developer shall submit for review and approval by Summit County all applicable information and documents in accordance with the provisions of Section 3.5 of the Code. With respect to the Phase 2 commercial development project, the Developer may apply for final subdivision plat and site plan approval either in conjunction with or following Conditional Use Permit Approval for that Phase.

6.9 Temporary Use Permit Approval. Whenever in this Agreement a Temporary Use or approval process is designated or required, the developer shall submit for review and approval by Summit County all applicable information and documents in accordance with the provisions of Section 3.3 of the Code.

6.10 Amendments.

6.10.1 Substantial Amendments. Any amendment to this Agreement that alters or modifies the Term of this Agreement, permitted uses, increased density or intensity of use, deletion of any major public amenity described herein, or provisions for reservation and dedication of land, including open space dedications, shall be deemed a "Substantial Amendment" and shall require a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by the Board of County Commissioners pursuant to the Equal Dignities Rule prior to the execution of such an amendment.

Unless otherwise provided by law, all other amendments may be executed without a noticed public hearing or recommendation by the Planning Commission.

6.10.2 Administrative Amendments. All amendments to this Agreement that are not Substantial Amendments shall be Administrative Amendments and shall not require a public hearing or recommendation of the Planning Commission prior to the execution by the parties of such an amendment. The Director is hereby empowered to make all final administrative amendment decisions. Adjustments not constituting a Substantial Amendment as defined herein will be deemed approved upon the issue of the applicable building permit if not covered by a specific, separate approval.

6.10.3 Effect of Amendment. Any amendment to this Agreement shall be operative only as to those specific portions of this Agreement expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption.

6.11 Conflicts.

6.11.1 To the extent there is any ambiguity in or conflict with the provisions of this Development Agreement and the Summit Center SPA Plan Book of Exhibits (including, without limitation, the Master Plan, Site Plan, Comprehensive Sign Plan, Lighting Guidelines, Landscaping Plan, and Architectural Design Guidelines therein), the more specific provision or language shall take precedence over more general provisions or language.

6.11.2 The County has reviewed the Code and General Plan and has determined that the Developer has substantially complied with the provisions thereof and hereby finds that Summit Center is consistent with the purpose and intent of the relevant provisions of the Snyderville Basin Development Code and General Plan. The parties further agree that the omission of a limitation or restriction herein shall not relieve the Developer of the necessity of complying with all applicable County Ordinances and Resolutions not in conflict with the provisions of this Development Agreement, along with all applicable state and federal laws.

Article 7

INFRASTRUCTURE & CONCURRENCY MANAGEMENT

7.1 Concurrency Management Required. Prior to the approval of a building permit for any structure approved in Summit Center, an applicant for a building permit shall demonstrate that all concurrency management requirements of Chapter 4 of the Code met as of the day hereof continue to have been met. The Director shall cause the issuance of a building permit upon demonstration of compliance with all such requirements. In addition to the requirements of Chapter 4 of the Code, the following shall also continue to be required.

7.1.1 The Developer shall construct those infrastructure improvements, shown on the Final Site Plan and the Final Subdivision Plat, and as required by this Agreement, Chapter 4 of the Code, County Engineer, and any applicable special service district or county service area. Infrastructure shall follow phasing.

7.1.2 Developer shall comply with the applicable sections of the Code, as amended, for project infrastructure requirements. This shall include the verification of the continued availability of the following for Summit Center at the time of Building Permit approval: (a) sewage treatment capacity to cover anticipated development within the Property, (b) water and water pressure adequate for commercial and residential consumption and fire flows, (c) capacity for electrical and telephone service, and (d) road capacity.

Article 8

SUCCESSORS AND ASSIGNS

8.1 Binding Effect. This Development Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of Summit Center. Notwithstanding the foregoing, a purchaser of Summit Center or any portion thereof shall be responsible for performance of Developer's obligations

hereunder as to the portion of Summit Center so transferred in accordance with the provisions of Section 8.2 hereof and shall be part of any transfer execute a written acceptance of Developer's obligations.

8.2 **Transfer of Summit Center.** Developer shall be entitled to transfer any portion of Summit Center subject to the terms of this Development Agreement upon written notice to the County. Developer shall be entitled to transfer any commercial portion of Summit Center subject to the terms of this Development Agreement upon written notice to and written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, neither Developer nor Developer's successor shall be required to notify the County or obtain the County's consent with regard to the sale of lots or units or projects or in commercial projects which have been platted and received development approval in accordance with the terms of this Agreement. In the event of any such complete transfer of all or a portion of Developer's interests in Summit Center, the transferee shall be deemed to be the Developer for all purposes under this Development Agreement with respect to that portion of Summit Center transferred. Developer's obligation to notify or obtain any consent of the County shall terminate with respect to portions of the Property on which all of the improvements required by this Development Agreement have been substantially completed as evidenced by a certificate of occupancy granted by the County.

8.3 **Release of Developer.** Except for the sale of lots or units or commercial projects which have been platted and received development approval in accordance with the terms of this Agreement, in which case this requirement shall not apply, in the event of a transfer of all or a portion of Summit Center, the Developer shall obtain an assumption by the transferee of the Developer's obligations under this Development Agreement, and, in such event, the transferee shall be fully substituted as the Developer under this Development Agreement as to the parcel so transferred, and the Developer executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement as to the parcel so transferred.

8.4 **Obligations and Rights of Mortgage Lenders.** The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, and, as would be the case in any assignment, the purchaser of the Property from the holder shall be subject to all of the terms and conditions of this Agreement, including the obligation to complete all required amenities and improvements.

Article 9

DEFAULT, TERMINATION AND ARBITRATION

9.1 **Default.**

9.1.1 **Events of Default.** Default under this Development Agreement occurs upon the happening of one or more of the following events or conditions:

- (a) A warranty, representation or statement made or furnished by Developer to the County in this Development Agreement, including any attachments hereto, which is false or proves to have been false in any material respect when it was made.
- (b) A finding and determination is made by the County that upon the basis of substantial evidence Developer has not complied in good faith with one or more of the material terms or conditions of this Development Agreement.

- (c) Any other event, condition, act or omission by Developer which materially interferes with the intent and objective of this Development Agreement.
- (d) expiration of approval as declared in §5.2.2 and 9.21.

(d) Expiration of approval as declared in § 5.2.2 and 9.2.1.

9.1.2 Procedure Upon Default.

- (a) Within ten (10) days after the occurrence of default, the County shall give Developer (the "defaulting party") written notice specifying the nature of the alleged default and, when appropriate, the manner in which the default must be satisfactorily cured. Developer shall have thirty (30) days after receipt of written notice to cure the default. After proper notice and expiration of the thirty (30) day cure period without cure, the County may terminate or amend this Agreement by giving written notice in accordance with the procedure adopted by the County. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default. Notwithstanding the thirty day cure period provided above, in the event more than thirty days is reasonably required to cure a default and Developer, within the thirty day cure period, commences actions reasonably designed to cure the default, then the cure period shall be extended for such additional period as Developer is prosecuting those actions diligently to completion.
- (b) The County does not waive any claim of defect in performance by Developer, if on periodic annual review the County does not propose to modify or terminate this Agreement.
- (c) Should the County terminate this Development Agreement under the provisions hereof, Property not previously covered by a specific plat or site plan development approval in accordance with this Agreement will thereafter comply with and be governed by the applicable County Development Code and General Plan then in existence, as well as with all other provisions of Utah State Law.
- (d) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.
- (e) All other remedies at law or in equity which are consistent with the provisions of this Development Agreement are available to the parties to pursue in the event there is a breach.

9.2 Termination.

9.2.1 Termination for Inaction. The Developer shall be required to proceed with submittal of applications for Development Approvals in a timely manner. If no application for a Development Approval is applied for during any five (5) year period within the term of this Agreement, then this Agreement shall be terminated for inaction and shall expire by operation of time.

9.2.2 Termination Upon Completion of Development. This Agreement shall terminate when the Property has been fully developed and the Developer's and the County's obligations in connection therewith are satisfied, or at the expiration of the term of this Agreement. The County shall record a notice that the Agreement has been fully performed and therefore has been terminated.

9.2.3 Effect of Termination on Developer Obligations. Termination of this Agreement as to any Developer of the Property or any portion thereof shall not affect any of such Developer's obligations to comply with the terms and conditions of any applicable zoning, or subdivision plat, site plan, building permit, or other land use entitlements approved with respect to the Property, nor shall it affect any other covenants or any other development requirements specified or created pursuant to this Agreement. Termination of this Agreement

shall not affect or invalidate in any manner the Developer's obligations of indemnification and defense under Section 10.14 or the survival provisions of Section 10.22.

9.2.4 Effect of Termination on the County Obligations. Upon any termination of this Agreement, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement shall no longer be vested by reason of this Agreement with respect to any portion of the Property then undeveloped and not then covered by a building permit application. Those undeveloped portions of the Property may be subject to then existing planning and zoning law. Upon such a termination, the County shall no longer be prohibited by this Agreement from making any changes or modifications to such entitlements, conditions, or fees applicable to such undeveloped portions of the Property. Further, with respect to the improved portions of the Property, the County shall remain obligated to recognize and apply the development standards and configuration contained in the Summit Center SPA Plan Book of Exhibits.

9.2.5 Damages upon Termination. Except with respect to just compensation under this Agreement, Developer shall not be entitled to any damages against the County upon the unlawful termination of this Agreement.

9.2.6 Reversion to Regulations for Unimproved Portions of the Property. Should the County terminate this Agreement under the provisions hereof, Developer's remaining unimproved portions of the Property will thereafter comply with and be governed by the applicable County Development Code and General Plan then in existence, as well as with all other provisions of Utah State law, subject to any vested rights that may apply to such unimproved property.

Article 10 GENERAL TERMS AND CONDITIONS

10.1 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property as described in the Summit Center SPA Plan Book of Exhibits. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors in ownership of the Property. As used herein, Developer shall include the parties signing this Development Agreement and identified as "Developer," and all successor owners of any part of the Property or Summit Center.

10.2 Construction of Agreement. This Development Agreement shall be construed so as to effectuate the public purpose of resolving disputes, implementing long-range planning objectives, obtaining public benefits, and protecting any compelling, countervailing public interest; while providing reasonable assurances of continued vested development rights under this Agreement.

10.3 Laws of General Applicability. Where this Development Agreement refers to laws of general applicability to Summit Center and other properties, that language shall be deemed to refer to laws which apply to all other developed and subdivided properties within the Snyderville Basin of Summit County.

10.4 Duration. The term of this Development Agreement shall commence on, and the effective date of this Development Agreement shall be, the effective date of the Ordinance approving this Development Agreement. So long as there is active Development under this agreement, the term of this Development Agreement shall extend for a period of seven (7) years following the effective date above referenced. Developer or County shall have an option to extend this Development Agreement for additional five year terms as long as the terms of this Development Agreement have been substantially complied with, and this Agreement has not been earlier terminated, or its term otherwise modified by written amendment.

10.5 Mutual Releases. At the time of, and subject to, (i) the expiration of any applicable appeal period with respect to the approval of this Development Agreement without an appeal having been filed or (ii) the final determination of any court upholding this Development Agreement, whichever occurs later, and excepting the

parties' respective rights and obligations under this Development Agreement, Developer, on behalf of itself and Developer's partners, officers, directors, employees, agents, attorneys and consultants, hereby releases the County and the County's board members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County's board members, officials, employees, agents, attorneys and consultants, hereby releases Developer and Developer's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Development Agreement in connection with the application, processing or approval of the Summit Center SPA Zone District, Summit Center SPA Plan, and this Development Agreement, to include any claims for vested development rights by any Developer on property which is within the Summit Center SPA Zone District.

10.6 State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Development Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Development Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Development 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 this Development Agreement shall remain in full force and effect.

10.7 Enforcement. The parties to this Development Agreement recognize that the County has the right to enforce its rules, policies, regulations, and ordinances, subject to the terms of this Development Agreement, and may, at its option, seek an injunction to compel such compliance. In the event that Developer or any user of the subject property violates the rules, policies, regulations or ordinances of the County or violates the terms of this Development Agreement, the County may, without electing to seek an injunction and after thirty (30) days written notice to correct the violation, take such actions as allowed under law until such conditions have been honored by Developer. The parties further recognize that Developer has the right to enforce the provisions of this Development Agreement by seeking an injunction to compel compliance to the extent not inconsistent with the County's reserved legislative and police powers, as well as the County's discretionary administrative decision-making functions provided for herein. Both parties shall be free from any liability arising out of the exercise of its rights under this paragraph; provided, however, that any party may be liable to the other for the exercise of any rights in violation of Rule 11 of the Utah Rules of Civil Procedure, Rule 11 of the Federal Rules of Civil Procedure and/or Utah Code Annotated Section 78-27-56, as each may be amended.

10.8 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 Development Agreement is amended by vote of the Board of County Commissioners taken with the same formality as the vote approving this Development Agreement, no official or agent of the County has the power to amend, modify or alter this Development Agreement or waive any of its conditions as to bind the County by making any promise or representation not contained herein.

10.9 Entire Agreement. This Development Agreement constitutes the entire agreement between the parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Development Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Development Agreement.

10.11 Notices. Any notice, confirmation or other communication hereunder (each, a "notice") hereunder shall be given in writing by certified mail, postage prepaid, or personally or by nationally-recognized overnight courier, at the following addresses, or by facsimile to the following facsimile numbers provided the transmitting facsimile machine shall automatically prepare a confirmation of successful facsimile transmission:

To the County:

The Board of County Commissioners of Summit County
Summit County Courthouse
P.O. Box 128
Coalville, Utah 84017
Facsimile: (435) 336-3030

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Summit County Director of Community Development
P.O. Box 128
Coalville, Utah 84017

With a copy to:

Robert Adkins
Summit County Attorney
P.O. Box 128
Coalville, Utah 84017
Facsimile: (435) 336-3287

To Developer:

Allred Summit, L.L.C.
c/o Mike Allred
964 S. 200 W.
Salt Lake City, Utah 84101
Facsimile: (801) 292-8304

With a copy to:

Joseph E. Tesch
Tesch Law Offices, P.C.
P.O. Box 3390, 314 Main Street Suite 200
Park City, Utah 84060-3390
Facsimile: (435) 649-2561

or to such other addresses, such other facsimile numbers, or the attention of such other person as either party or their successors may designate by written notice. Notice shall be deemed given upon actual receipt, if personally delivered, when transmitted if delivered by facsimile, one (1) business day following deposit with a reputable overnight courier that provides a receipt, or on the third (3rd) day following deposit in the United States mail in the manner described above.

10.12 Applicable Law. This Development Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

10.13 Execution of Agreement. This Development Agreement may be executed in multiple counterparts or 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.

10.14 Hold Harmless.

10.14.1 Agreement of Developer. Developer agrees to and shall hold County, its officers, agents, employees, consultants, attorneys, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to Summit Center, and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effect arising from this Agreement. Developer agrees to pay all costs for the defense of the County and its officers, agents, employees, consultants, attorneys, special counsel and representatives regarding any action for damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Developer's actions in connection with Summit Center or any claims arising out of this Agreement. This hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the

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events referred to in this section or due by reason of the terms of, or effects arising from this Agreement regardless of whether or not the County prepared, supplied or approved this Agreement, plans or specifications, or both, for the project. Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of the County, including fees and costs for special counsel to be selected by the County, regarding any action by a third party challenging the validity of this Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of, or effects arising from this Agreement. County may make all reasonable decisions with respect to its representation in any legal proceeding.

10.14.2 Exceptions to Hold Harmless. The agreements of Developer in Section 10.14.1 shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of the County, or (ii) any claim reserved by Developer under the terms of this Agreement for just compensation.

10.14.3 Hold Harmless Procedures. The County 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 10 days after the assertion or commencement of the claim, demand, action or proceeding. In the event any such notice is given, the County 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.

10.15 Relationship of Parties. The contractual relationship between the County and Developer arising out of this Development Agreement is one of independent contractor and not agency. This Development Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that: (a) Summit Center is a private development; (b) County has no interest in, responsibilities for, or duty to third parties concerning any improvements to the Property unless the County accepts the improvements pursuant to the provisions of this Development Agreement or in connection with subdivision plat, site plan, deed, or map approval; and (c) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Development Agreement.

10.16 Annual Review. On or before the yearly anniversary date of this Development Agreement, the Developers shall provide to the Community Development Department, a letter advising staff of the progress, which has occurred during the last 12 months and the progress expected during the next 12 months. The County shall review such letter in connection with this Development Agreement to determine if there has been demonstrated compliance with the terms hereof. If the County finds, on the basis of substantial, competent evidence, that there has been a failure to comply with the terms hereof, this Development Agreement may be revoked or modified by the County in accordance with the provisions of Section 10.25 hereof, after a public hearing which has been noticed by publication, and for which notice has been expressly provided to Developers. County's failure to review, at least annually, Developers' compliance with the terms and conditions of this Development Agreement shall not constitute or be asserted by any party as a breach of this Development Agreement by Developers or County. Further, such failure shall not constitute a waiver of County's right to revoke or modify said Development Agreement according to the terms and conditions set forth herein.

10.17 Rights of Third Parties. This Development Agreement is not intended to affect or create any additional rights or obligations on the part of third parties.

10.18 Third Party Legal Challenges. In those instances where, in this Agreement, Developer has agreed to waive a position with respect to the applicability of current County policies and requirements, or where Developer has agreed to comply with current County policies and requirements, Developer further agrees not to participate either directly or indirectly in any legal challenges to such County policies and requirements by third parties, including but not limited to appearing as a witness, amicus, making a financial contribution thereto, or otherwise assisting in the prosecution of the action.

10.19 Computation of Time. In computing any period of time pursuant to this Development Agreement, the term "days" shall mean calendar days and shall be counted beginning on the day following the day of the act, event or default from which the designated period of time begins to run.

10.20 Titles and Captions. All section titles or captions contained in this Development Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

10.21 Savings Clause. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Development Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

10.22 Developer's Obligations. Notwithstanding any provisions of this Development Agreement or of law to the contrary and as a partial consideration for the parties entering into this Development Agreement, the parties agree that Developer is obligated to provide to the County the following enumerated extraordinary and significant benefits as required for each phase according to the phasing plan.

10.23 Force Majeure. 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, enemy or hostile governmental action, civil commotion, fire or other casualty, or 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.

10.24 Continuing Obligations. Adoption of law or other governmental activity making performance by Developer unprofitable, more difficult, or more expensive does not excuse the performance of the obligation by the Developer.

10.25 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstance, is held invalid, void, or unenforceable, but the remainder of this Agreement can be enforced without failure of material consideration to any party, then the remainder of this Agreement shall not be affected thereby and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties. If any material provision of this Agreement is held invalid, void, or unenforceable or if consideration is removed or destroyed, the Developer or the County shall have the right in their sole and absolute discretion to terminate this Agreement by providing written notice of such termination to the other party.

10.26 Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the County has no interest therein except as authorized in the exercise of its governmental functions. The Project is not a joint venture, and there is no such relationship involving the County. Nothing in this Agreement shall preclude the Developer and any Participating Landowner from forming any form of investment entity for the purpose of completing any portion of the Project.

10.27 Recordation of Agreement. This Agreement may be recorded by either party with the Summit County Recorder.

10.28 Exhibits Incorporated. All Exhibits in the Summit Center SPA Plan Book of Exhibits are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, this Development Agreement has been executed by Summit County, acting by and through the Board of County Commissioners of Summit County, State of Utah, pursuant to Ordinance 517, authorizing such execution, and by a duly authorized representative of Developer, as of the above stated date.

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, STATE OF UTAH

By: K.E. Woolstenhulme
Kenneth Woolstenhulme, Chairman

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