

WHEN RECORDED RETURN TO:

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

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER
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REQUEST: SUMMIT COUNTY CLERK

DEVELOPMENT AGREEMENT
FOR THE CANYONS SPECIALLY PLANNED AREA (SPA) PLAN

SNYDERVILLE BASIN, SUMMIT COUNTY, UTAH

THIS DEVELOPMENT AGREEMENT is entered into as of this 16th day of July, 1998, by and among ASC Utah, Inc., American Skiing Company Resort Properties, Inc., Wolf Mountain Resort, L.C., Iron Mountain Associates, L.L.C., C and M Properties, L.L.C., and Joseph W. Groutage III ("Developers") and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners ("the County").

RECITALS:

- A. Developers are the owners or legal representatives of the owners of approximately 6,388 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land is attached hereto as Appendix I (the "Property").
- B. Developers have proposed the development on the Property of a mixed use resort to be known as "The Canyons Specially Planned Area Plan ("SPA Plan" or "Resort") which shall be constructed within certain predetermined development locations designated in the Canyons Specially Planned Area zone district ("Canyons SPA"). This Development Agreement serves to implement the Canyons SPA Plan, Ordinance 333, in accordance with the provisions of the Snyderville Basin Development Code (the "Code") and the Snyderville Basin General Plan (the "General Plan").
- C. 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 Canyons SPA Zone District and setting forth therein such land use classifications, residential and commercial densities, and development locations as are permitted under this Development Agreement. The Canyons SPA Zone District, does not constitute, in itself, a vested development right.
- D. The County has encouraged the Developers to employ innovative land planning concepts within the Canyons SPA in order to cluster and appropriately locate development density, preserve sensitive lands, create significant private and public recreational amenities, open spaces, and trails, and provide principally a mix of destination accommodations, commercial uses, and other resort support housing, facilities, amenities, and programs that will be carried out within the Canyons SPA and within Summit County in furtherance of the goals of the General Plan.
- E. Developers have proposed specific plans and plats with respect to the Resort. The Resort is being specifically planned in response to direction from the Summit County Community Development Director (the "Director") and the Snyderville Basin Planning Commission (the "Planning Commission").
- F. The County therefore desires to establish the Resort under the SPA provisions of the Code and the General Plan for the purpose of implementing development standards and processes that are consistent therewith.
- G. Developers and the County desire to clarify certain standards and procedures that will be applied to certain additional approvals contemplated in connection with the development of the Resort, as well as the construction of improvements of benefit to the Property, and to establish certain standards for the phased development and construction of the Resort and certain Resort improvements, and to address requirements for certain public amenities.

H. The County also desires to receive certain public benefits and amenities, and Developers are willing to provide these public benefits and amenities in consideration of the agreement of the County for increased densities and intensity of uses in the Resort pursuant to the terms of this Development Agreement.

I. This Development Agreement, which implements the Canyons SPA, provides detailed data regarding platting, site plans, open space, architecture, developer obligations and contributions, and other relevant data. The County and the Developers agree that each shall comply with the standards and procedures contemplated by the Canyons SPA, this Development Agreement and its accompanying appendices and book of exhibits, the Code, and the General Plan with respect to all required development approvals.

J. The County recognizes the Developers' goals and plans to amend and expand the Resort in the future and to Master Plan 7,928 acres of land and appurtenant real property rights located within the West Mountain Neighborhood Planning Area in Summit County, Utah. The County encourages such future development to the extent that it is consistent with this Development Agreement, the Code and General Plan. For purposes of information only, a copy of the unapproved and unvested Proposed Canyons SPA Expansion Plan concepts are is at Appendix III.

K. The County and Developers desire to enter into a structured agreement whereby the Canyons SPA Plan is vested through a Development Agreement and an amendment process is set forth therein for the incorporation of the entire Canyons SPA Expansion Plan into the Canyons SPA and SPA Plan in the future. In this manner, the Developers may proceed with their initial phase of development through the Canyons SPA and this Development Agreement, while further details relevant to other phases are worked out in a future amendment to said SPA. The Developers recognize that they, alone, assume the risk of any and all future approvals related to the expansion of the Canyons SPA and SPA Plan proposal, which are not vested herein. The County is not bound as to those uses, densities or development areas which are not specifically vested in this Development Agreement.

L. There are "Global Principles" that have been developed to act as mandatory development standards for development in the Canyons.

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

FINDINGS:

A. The Board of Commissioners of Summit County, acting in its legislative capacity, has made the following determinations with respect to the Canyons SPA Plan, including all findings of fact and conclusions of law as are necessary to make each of the following determinations:

1. Resort Approval. Following lawfully advertised public hearings on April 28, May 5, May 12, and June 16, 1998, the Resort received a recommendation for approval through a Development Agreement by action of the Snyderville Basin Planning Commission taken on June 16, 1998. The Board of County Commissioners held a lawfully advertised public hearing on June 29, 1998, and during a lawfully advertised public meeting on July 6, 1998, approved the Resort under the process and procedures set forth in the Code, General Plan, and Administrative Guidelines. The terms and conditions of approval are incorporated fully into this Development Agreement. In making such approval, the Board of County Commissioners made such findings of fact and conclusions of law as are required as a condition to the approvals, as reflected in the staff recommendation adopted with any modifications, as reflected in the minutes of the above-referenced public meetings, and as reflected by the other enumerated findings herein.

2. The Canyons SPA Plan involves phased plat and site plan applications, and has a cumulative proposed project size in excess of 100 acres.
3. The Canyons, Cox and Muller, and Groutage Projects Sites are appropriate for resort core-related development as contemplated in the Snyderville Basin General Plan. All three property owners have additional lands which are not contemplated for development under this Development Agreement. However, it is anticipated that the development plans for these three property owners will be expanded in the future as part of a comprehensive amendment to this Development Agreement, as provided for herein. While only those rights specifically stated herein shall be vested, the Cox and Muller property is appropriate for future consideration of resort-related development, including cabins similar to those included in Exhibit J and/or an appropriately scaled lodge providing resort and guest accommodations.
4. The Canyons SPA Plan, as reflected in and conditioned by the terms and conditions of this Development Agreement, is in conformity with the General Plan of the Snyderville Basin of Summit County, any existing capital improvements programs, the provisions of the Code, to include concurrency and infrastructure requirements, and all other development requirements of Summit County.
5. The Canyons SPA Plan contains outstanding features which advance the policies, goals and objectives of the General Plan 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 clustering and appropriate location of density, (iii) the creation of a significant trail system and park area connections and improvements; (iv) the provision for specialized programs, facilities, and amenities to offset development impacts.
6. There exists adequate provision for mitigation of all fiscal and service impacts on the general public (Summit County and its Special Districts), including, at a minimum, contributing all capital improvements and facilities necessary to accomplish these purposes.
7. The Canyons SPA Plan meets or exceeds development quality and aesthetic objectives of the General Plan and Code, is consistent with the goal of orderly growth in the basin, and minimizes construction impacts on public infrastructure within the basin.
8. There will be no construction management impacts that are unacceptable to the County.
9. Developers have committed to comply with all appropriate Concurrency and Infrastructure requirements of the Code, and all appropriate criteria and standards described in this Development Agreement.
10. The County finds that there is adequate road and emergency access to the various development areas within the Canyons SPA. With regard to The Colony development, there is a short section of White Pine Canyon Road that does not now maintain a fifty (50) foot rights-of-way, as required for a rural collector road. Additional rights-of-way may be required to provide adequate pavement, snow storage, drainage, utilities, and safety. The County Engineer may determine that a variance is warranted. The Board of County Commissioners must approve such a variance.
11. There may be appropriate opportunities to transfer density from other areas within the Snyderville Basin, where density is considered least appropriate, to certain locations within the Canyons SPA.
12. The proposed development reasonably assures life and property within the Snyderville Basin is protected from any adverse impact of its development.
13. Developers shall take appropriate measures to prevent harm to neighboring properties and lands from development, including nuisances.

14. This Development Agreement implements the Canyons SPA.
15. The increased densities and intensity of uses in excess of the base densities and uses for specific Project Sites within the Canyons SPA are established pursuant to the Snyderville Basin Development Potential Matrix which was implemented through the Canyons SPA, Ordinance 333. As part of its use, density, and configuration for Project Sites herein approved, Developers have provided, in the context of and as only applicable to the Project Sites, the following Matrix amenities:
 - (a) **Dedication and Preservation of Viewshed/Environmental Features of the Area.** The Resort adequately dedicates and preserves the viewshed and environmental features of the area. In particular, the Resort retains all or major portions of all meadow and hillside viewsheds and ridge lines, and significant environmental features such as major portions of all waterways and non-jurisdictional wetlands, wildlife habitat, wildfire hazard areas, historic and cultural artifacts, and geologic features. These important features of the pre-development landscape are identified in the Canyons SPA Plan. The proposed Grand Summit Hotel, Sundial Lodge, the Resort Services Building, and those projects on the Groutage and Cox-Muller properties have been evaluated with regard to impacts on viewshed and have been found to be acceptable. Other improvements permitted in the Canyons SPA Pan will require further review prior to final approval to minimize impacts on the viewshed. The Resort conforms with this element of the Matrix by, among other things, minimizing the removal of vegetation from the site and the amount of over-lot grading and disturbance areas required to fit the project into the natural landscape. As part of this Development Agreement, the Developers shall retain the services of a landscape architect to assist the Developers in the enhancement of development areas in a manner that relates to the natural landscape, open space, and stream corridors in an appropriate fashion.
 - (b) **Consistency with Desired Neighborhood Character.** Development within the Canyons SPA is compatible with the desired neighborhood development patterns and policies identified in the General Plan. Minor development that exceeds base densities ensures economy of service delivery not only for Summit County and special service districts, but also to residents of the Canyons SPA.
 - (c) **Neighborhood Recreation Facilities.** Development within the Canyons SPA will provide appropriate neighborhood recreation and trail facilities, in terms of location, type, and variety, which meet the specific neighborhood resident demands that will be generated by the Project Sites, and which are not simply left over spaces within the development. The recreation and trail facilities are appropriate in terms of size and quality for the intended use, and are adequate to satisfy the neighborhood demand. The unique characteristics of the neighborhood have been taken into consideration in determining the specific requirements. The long-term care of these facilities shall be the responsibility of a Master Resort Association and The Colony property owner's association in coordination with the Developers or subsequent residents of the Project Sites, which shall be defined in any amendment to this Development Agreement.
 - (d) **Environmental Enhancements.** Development within the Canyons SPA provides adequate environmental enhancements. The environmental enhancements are compatible with the General Plan and produce benefits for the enjoyment of all residents of the Snyderville Basin. Specifically, the SPA includes design standards for landscaping; a mountain and open space preservation and reclamation plan; a Highway 224 enhancement program; a mountain re-vegetation plan; a mountain reforestation plan; a plan for enhancement of wildlife habitat; and stream zone improvements, which will be coordinated with the State of Utah and the U.S. Army Corps of Engineers, and which will include appropriate monitoring and an annual report to the County; standards for wood burning fireplaces that may be built, allowing for the use of only gas fireplaces in hotel rooms, lodging units, and multi-family residential units and allowing only one woodburning fireplace or stove in each single family detached residential dwelling unit; environmental education sites and interpretive

programs with signage along the trail system and trailheads; and a plan for the use of best efforts to re-establish any fisheries in the area.

- (e) **Restricted Affordable/Employee Housing.** Employee housing will be provided by ASC, Utah for its portion of the development included in the Canyons SPA Plan. The Colony is not required to provide restricted affordable housing under the Code. The affordable /restricted employee housing impacts of the Cox/Muller and Groutage developments have not yet been determined. This housing has been determined to be reasonable at this time. There shall be created a benchmark reporting process set forth herein and special programs for the development and adequate dedication of certain employee housing, the Global Principles, and the monitoring of need and the provision of affordable/employee housing to continue in the future.
- (f) **Contribution to Community Trails and Parks.** Development within the Canyons SPA will make more than adequate contributions for community parks and trails, in conformance with the Snyderville Basin Recreation and Trails Master Plan, and the County is satisfied that such contributions are considered appropriate and desirable by the Snyderville Basin Recreation Special Service District. To the extent that these benefits offset the need for community parks and trails, a credit, at the sole discretion of the Snyderville Basin Recreation Special Service District, may be granted toward impact fees imposed by the District in accordance with State law. The areas of permanent parks and trails are identified in the Canyons SPA Book of Exhibits. Any such space so identified shall be maintained by the Snyderville Basin Recreation Special Service District or a master property owner's association in coordination with the Developers or subsequent residents of the Project Sites, which shall be defined in any amendment to this Development Agreement.
- (g) **Exceeds Open Space Requirements for Project.** The Resort provides significant and meaningful provisional open space consistent with the requirements established in the General Plan, and the provisional open space provided exceeds the required open space for the Canyons SPA, as established in the Code. More specifically and in accordance with the West Mountain Neighborhood Planning Area Objectives in the General Plan, a portion of the open space provided for in the Canyons SPA transfers density from therein to the additional stories, (those above three stories permitted in the General Plan without density transfer), of the Grand Summit Hotel and Sundial Lodge. This density transfer encourages the policy surrounding the concept of "tall, not sprawl" within the General Plan. It is recognized that the Developers have provided a substantial amount of provisional open space to justify the additional building heights in contemplation of revisiting the issue at the time of any amendment to this Canyons SPA. However, it is also recognized that at the time of said amendment, the ultimate open space shall be determined in accordance with the Global Principles and General Plan and shall reflect (1) the mandatory open space required by the Code, which includes, among other policies, the 50% open space edge/buffer associated with the Resort Center and (2) the express locations of all additional open space which corresponds to the increased heights (above three stories) of the Grand Summit Hotel and Sundial Lodge.
- (h) **Tax Base and Economic Enhancements.** The Resort satisfies the tax base and economic enhancements desired by Summit County, including job generation for the local labor supply; enhancements to the resort economy which may include appropriate short-term accommodations and recreation amenities; significant assessed valuation increases that benefit the County and Special Service Districts, including a positive impact on the Park City School District. SPA property owners will accommodate the Resort's unique seasonal employee housing needs by providing appropriate housing on-site. Moreover, the Resort is phased in a manner that ensures that tax revenues are available to the County and Special Service Districts so as to adequately offset the fiscal impacts of the Resort on public facilities and services. The Economic and Fiscal Impact Report in the Canyons SPA Book of Exhibits, which was prepared for the Canyons Resort,

demonstrates the level of enhancement generated by the collective Project Sites, and offsets all fiscal impacts on public facilities and services caused by the Resort.

- (i) **Compatibility with Resort Design.** All development in the Resort, as provided for in the Canyons SPA Book of Exhibits, complies with the appropriate design principles identified in Policy 2.2 of the General Plan. It also complies with Policy 2.4.4 which requires a well defined development edge consisting of 50% open space and rural density development beyond.
- (j) **Land Bank and Transfer of Development Rights.** Current and future transfers of development rights, in accordance with Policy 1.6.2(B), from less desirable locations, both within and outside the Canyons SPA, to more desirable locations within the Resort, as set forth in or as contemplated under the Canyons SPA Master Plan, are authorized under this Development Agreement. The County finds that the proposed densities are appropriate in the receiving areas, to include the additional stories of the Grand Summit Hotel and Sundial Lodge, and that reductions of densities in the sending areas (open space) are appropriate and in the public interest (see Paragraph A.15(g) above).
- (k) **Unique Public Facilities and Amenities Exceeding Project Requirements.** The Resort includes both those public facilities and amenities that offset the impacts of the Resort and those public improvements and land contributions associated with the unique community facilities and amenities which exceed the specific and identifiable impacts and needs of the Resort. There is a need for these proposed public improvements; the improvements or land contributions are needed or desired at the proposed locations; the land contributions are appropriate in size and terrain to accommodate the intended use; and the improvements are compatible with the surrounding neighborhoods.
- (l) **Uses, Density, and Land Use Configuration.** The specific land uses contained in the Canyons SPA Plan, the configuration of those land uses, and the amount of density permitted are appropriate for the Resort and consistent with the goals and objective of the General Plan, Code, and Global Principles established in this Development Agreement.

B. **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 the Canyons SPA Plan 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, this Development Agreement shall take precedence; otherwise, the Code or General Plan provision shall control.

SUMMIT COUNTY AND THE DEVELOPERS HEREBY AGREE AS FOLLOWS:

Section 1. Certain Definitions with respect to this Development Agreement.

1.1 **Low Impact Development:** When specifically designated as a Low Impact Activity in this Development Agreement, such uses shall be subject to a Low Impact Permit review and approval by the Director in accordance with Exhibits B, C, D, G, I and L to the Canyons SPA Plan Book of Exhibits and all applicable provisions of the Snyderville Basin Development Code.

1.2 **Non-binding Statement of Acknowledgement (Appendix II):** A non-binding statement signed by property owners in the West Mountain Neighborhood Planning Area which provides an opportunity for such property owners to acknowledge their understanding of the Canyons SPA and SPA Plan amendment process and what processes may pertain to their land should they choose not to participate in such an amendment.

1.3 Canyons SPA: The zone district adopted by Ordinance 333 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 necessary for The Canyons Resort.

1.4 Canyons SPA Plan: A comprehensive plan, set forth in this Development Agreement, which shall designate all development parameters, site plans and plats, land use locations, densities, the resort buffer edge, pocket parks and trails, and other open space within the "Resort", the approximate location of public amenities which serve the Resort, phasing, and all other property owner/developer obligations, commitments, and contributions made to carry out the development of the Resort.

1.5 Project Site: A predetermined location of development within the Canyons SPA, as set forth in this Development Agreement or any Exhibit hereto.

1.6 The Canyons Project Overview: That portion of the Canyons SPA Plan, contained in the Book of Exhibits, which shall provide a summary of the development standards pertaining to each Project Site.

1.7 Statement of Global Principles ("Global Principles"): Those mandatory development principles and standards established in the Canyons SPA Plan, attached as Exhibit A in the Canyons SPA Plan Book of Exhibits, which are in addition to the development standards delineated in the Snyderville Basin Development Code and General Plan, that shall be used to guide all development within the Canyons SPA and which shall apply, as described herein, to both Project Sites within the Canyons SPA and to all amendments to the Canyons SPA and SPA Plan.

1.8 Canyons SPA Plan Book of Exhibits: (see Exhibits A - L) That portion of the Canyons SPA Plan which shall contain The Canyons Project Overview, Global Principles, and concept and specific plans that shall be used to guide all development in the Canyons SPA, all of the specific site plans and plats, all other specific development parameters and regulations, and developer obligations, commitments, and contributions for carrying out the development in accordance with the Canyons SPA Plan.

1.9 Proposed Canyons SPA Expansion Plan: (see Appendix III) A non-binding, unvested proposal by the Developers generally depicting the Developers' master plan goals for the entire Canyons SPA Expansion area, attached as Appendix III in the Canyons SPA Plan Book of Exhibits.

Section 2 The Project.

2.1 Description of the Project. The Property covered by this Development Agreement consists of 6388 acres of land located within and in the vicinity of the current Canyons Resort (formerly Park West and/or Wolf Mountain) and White Pine Canyon in the Snyderville Basin. Developers intend to construct a mixed use resort, generally described in the Canyons SPA and this Development Agreement.

2.2 Legal Description of Property. The legal description of the Property included within the Resort (as well as a Property Ownership Map) are set forth in Appendix I hereto, which is incorporated herein by reference. No property may be added to the legal description of the Resort 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.

2.3 Approved Use, Density, and Configuration. This Development Agreement shall vest with respect to the Canyons SPA as to the uses, densities, configuration, massing, design guidelines and methods, development standards, global principles, Project Sites, processes, road placements and designs (including size of road), road grades, road curb cuts and connections, and other improvements, as reflected in the Canyons SPA Plan Book of Exhibits and all other provisions of this Development Agreement. The Canyons SPA Plan Book of Exhibits (Exhibits A-L) shall be deemed a part of this Development Agreement and shall be binding upon all parties hereto. To the extent that there is any conflict between the Canyons SPA Plan Book of Exhibits and any other provisions of this Development Agreement, the more specific language of

the Canyons SPA Plan Book of Exhibits shall control. Appendix III reflects the proposed Canyons SPA Expansion Plan and is neither approved, nor vested herein. Its inclusion herein is merely intended to provide information as to the Developers' future goals which may be approved under an appropriate form of an amendment to the Canyons SPA and SPA Plan in accordance with this Development Agreement, the Code, the General Plan, and the Statement of Global Principles contained herein.

2.4 Statement of Global Principles. The following global planning principles, which are in addition to the applicable development standards delineated in the Snyderville Basin Development Code and General Plan, shall apply, according to their terms, to all Project Sites within the Canyons SPA, as well as to all future amendments thereto. The Statement of Global Principles is defined in detail in Exhibit A of the Canyons SPA Plan Book of Exhibits. These Global Principles may be added to in the future if needed as the proposed Canyons SPA Expansion Plan is refined. Failure to comply with these Global Principles, or for that matter, any of the standards/policies contained in the Snyderville Basin Development Code and General Plan, are grounds for denial or revocation of development approval of any Project Site. The Global Principles shall include the following:

- 2.4.1 Comfortable Carrying Capacity of the Ski Area ("CCC").
- 2.4.2 Allowable Density in the Canyons SPA.
- 2.4.3 Required Unit Configurations and Occupancy for all development in the Canyons SPA.
- 2.4.4 Development Phasing.
- 2.4.5 Provisional Open Space.
- 2.4.6 Development Pattern.
- 2.4.7 Resort Support and Mountain Recreation Related Development.
- 2.4.8 Viewshed.
- 2.4.9 Environment.
- 2.4.10 Employee Housing.
- 2.4.11 Economic Base.
- 2.4.12 Transportation.
- 2.4.13 Highway 224 and Resort Entry.
- 2.4.14 Benchmark Assessments of Resort Development, Impacts, and Programs.
- 2.4.15 Development Design Character.
- 2.4.16 Master Community, Resort Facility, Amenity, Recreation, Cultural Arts, and Marketing Program.
- 2.4.17 Community Integration.
- 2.4.18 Infrastructure Maintenance and Management.
- 2.4.19 Construction Mitigation and Management.

Section 3. Approved Project Overview and Project Sites. The Project Overview (Exhibit B), the Canyons SPA Land Use and Open Space Plan (Exhibit C), and Project Sites (Exhibits D-L) specifically approved under this Development Agreement, and the conditions of any such approval, are as follows.

3.1 The Canyons Resort Center (see Exhibits B, C, D, F, G, H, I, J, and K). For those Project Sites designated within the Canyons SPA Plan as the Grand Summit Hotel, the Forum, the Pedestrian Plaza, the T1 Village Station, the Sundial Lodge, and the Resort Services Building, approval of this Development Agreement shall constitute final plat and site plan approval in accordance with the requirements of the Code, General Plan, and Global Principles herein. Detail for Project Sites is included in the Canyons SPA Plan Book of Exhibits. All Project Sites must be developed in accordance with all applicable regulations, design standards, and Final Site Plans/Final Subdivision Plats pertaining to that particular Project Site. Failure to so comply shall be grounds for revocation of Final Site Plan/Subdivision Plat approvals or denial/revocation of Building Permits issued pursuant to such Final Site Plan/Final Subdivision Plat. This approval shall be conditioned on compliance with the following additional requirements:

3.1.1 The developer shall submit to Summit County, for review and approval by the Snyderville Basin Planning Commission, details related to the color schemes that will be incorporated on the Grand Summit Hotel, the Sundial Lodge, T1 Village Station, and the Resort Services Building, either prior to or within sixty (60) days of issuance of a building permit for the particular structure.

3.1.2 A condominium plat shall be required in accordance with Chapter 5 of the Code for any residential condominium ownership project approved under this section. Said plat(s) shall be approved by the Board of County Commissioners.

3.1.3 The on-site parking for the Grand Summit Hotel, the Sundial Lodge, and the Resort Services Building shall meet the requirements of the Development Code.

3.1.4 All transportation infrastructure shall meet the requirements of Section 4.10 of the Development Code unless otherwise approved in the Canyons SPA Plan.

3.1.5 The developer shall obtain a Low Impact Permit, in accordance with the Snyderville Basin Development Code, for all final landscaping plans, pedestrian design plan for the Forum and the Pedestrian Plaza, lighting, and signing that will be incorporated into the Canyons SPA Plan. All landscaping, lighting, and signing shall conform to the requirements of the Snyderville Basin Development Code and to the concepts established in the Canyons SPA Plan.

3.1.6 The developer shall comply with applicable service provider requirements and standards.

3.2 Ski 98. For Project Site designated as Ski 98, which constitutes a Low Impact Development Activity, approval of this Development Agreement shall constitute an approved use and density in accordance with Canyons SPA Plan Book of Exhibits, (see Exhibits B, C, D, I, and L). However, the developers may only implement such uses and densities through the acquisition of a Low Impact Permit by the Director pursuant to the Snyderville Basin Development Code and any other standards and requirements set forth in the Canyons SPA Plan Book of Exhibits, including the Statement of Global Principles.

3.3 Canyons Drive. For the Canyons Drive, (previously known as Park West Drive), approval of this Development Agreement shall constitute an approval of the Final Road Dedication Plat, as included in the Canyons SPA Plan Book of Exhibits, (see Exhibits B, C, and L). This Development Agreement shall also constitute the County's acceptance of the Canyons Drive road dedication as a public thoroughfare upon completion of the roadway and approval of the work by the County Engineer. The developer shall establish an acceptable Development Improvements Agreement for the Canyons Drive and all internal private roadways as depicted in the Canyons SPA Plan, including a re-vegetation and planting plan, as required in the Snyderville Basin Development Code prior to any construction related to the improvements. The Developers have appropriately reserved therein an easement for multiple transportation towers to support a transportation system in the

median of the roadway. Notwithstanding the County's acceptance to maintain Canyons Drive as a public thoroughfare, the Developers shall have right of ingress and egress to maintain the landscaping within the rights-of-way; such by separate rights-of-way landscape maintenance agreement which is incorporated by reference herein. The entire Canyons SPA is within County Service Area #6 and shall be assessed as such for purposes of maintaining the Canyons Drive.

3.4 People Mover. With respect to the transportation element referenced on the Canyons SPA Plan Book of Exhibits as the "People Mover," (see Exhibits B, C, and G), which is not vested hereunder, the County and Developers agree to continue a dialogue concerning the appropriateness of such for the Resort. An appropriate People Mover system shall be determined through a Low Impact Permit issued by the Director in accordance with the Snyderville Basin Development Code and any other standards and requirements set forth in the Canyons SPA Plan Book of Exhibits, including the Statement of Global Principles. The Director may seek a recommendation from the Snyderville Basin Planning Commission and may elect to hold one or more public hearings concerning the matter prior to making any decisions.

3.5 The Colony

3.5.1 The Colony Phase I. For the Project Site designated within the Canyons SPA as The Colony Phase I, approval of this Development Agreement shall constitute plat and site plan approval in accordance with the requirements of the Code, General Plan, and Global Principles herein. The application of the Global Principles to this Project Site, as well as an approved Final Subdivision Plat for such, shall be included in the Canyons SPA Plan Book of Exhibits. The Project Site must be developed in accordance with the applicable Global Principles, The Colony Architectural Design Guidelines (see Exhibits B, C, E, and L), and Code/General Plan policies/standards pertaining to that particular Project Site. Failure to so comply shall be grounds for revocation of Final Subdivision Plat approval or denial/revocation of Building Permits issued pursuant to such Final Subdivision Plat. The approval, as described herein, shall be conditioned upon compliance with the following additional requirement:

3.5.1.1 There is a short section of White Pine Canyon Road that does not now maintain a fifty (50) foot rights-of-way, as required for a rural collector road. Additional rights-of-way shall be required on the roadway prior to any construction related to The Colony. The County Engineer may determine that a variance is warranted if there is adequate pavement, snow storage, drainage, utilities, and safety along the roadway. The Board of County Commissioners must approve such a variance.

3.5.1.2 The Detailed Final Subdivision Plat shall be reviewed and approved by the Community Development Director, the County Attorney, and the County Engineer for consistency with the terms and conditions of this Development Agreement. Upon their approval, the Chairman of the Board of County Commissioners is authorized to execute the plat on behalf of Summit County.

3.5.1.3 The developer shall comply with applicable service provider requirements and standards.

3.5.2 The Colony Phases II, III, IV, and V. For Project Sites designated within the Canyons SPA as The Colony Phases II through V, approval of this Development Agreement shall constitute an approved use and density in accordance with the base density within the Snyderville Basin Development Code Development Potential Matrix. However, the Developers may only implement such base uses and densities through the issuance of a Final Site Plan/Subdivision Plat, (which are prerequisites to a building permit), in accordance with the Minor Development Permit Review Process in the Code, specific Global Principles applicable for each Project Site, The Colony Architectural Design Guidelines (see Exhibit E), and other applicable provisions of the Code and General Plan. All Project Sites must be developed in accordance with the applicable Global Principles, as well as appropriate Code/General Plan standards/policies, pertaining to that particular Project Site. Failure to so comply shall be grounds for denial of Final Site Plans and/or Subdivision Plats. The approval of Phases II, III, IV, and/or V of The Colony may not, however, be approved until such time as there is an acceptable agreement with the Master Resort Association as required in Section 4.3 herein.

3.5.2.1 **The Colony Transfer of Development Rights.** The Colony is hereby obligated to accept up to an additional 20 residential dwelling units at the discretion of Summit County. Review and approval of the up to 20 additional dwelling units shall be through the Minor Development Review Process, which shall include a public hearing, as established in the Development Code. In making an affirmative determination related to the density transfer, Summit County shall determine that the additional density and proposed site for each additional unit is consistent with the General Plan, Development Code, Statement of Global Principles, and that there is adequate water and services available. Moreover, Summit County must find that there is a suitable ratio of density transferred from other appropriate sites in order to allow any of the 20 additional dwelling units in The Colony, which may be incorporated into any phase of the Project Site. Each additional unit approved by Summit County shall be provided with comparable services and amenities as made available to the remainder of The Colony development and shall be subject to the applicable association conditions, covenants, and restrictions. Each phase of The Colony shall continue to be eligible for a base density minor development review under the Code so long as any additional development that exceeds the base density of the project, as approved in the Canyons SPA Plan, is achieved through the transfer of development rights.

3.6 **Cox and Muller and Groutage Project Sites.** For the Project Site designated as the "Cox and Muller" and Groutage projects, approval of this Development Agreement shall constitute an approved use and density in accordance with the Canyons SPA Plan Book of Exhibits, (see Exhibits B, C, J, and K). However, the Developer may only implement such uses and densities through the issuance of a Final Site Plan or Subdivision Plat, (which are prerequisites to a building permit), in accordance with the Minor Development Review Process outlined in Section 3.6.B of the Code. (Although this process is intended for residential development, the procedures outlined therein shall be used for the purpose of review in and approving these project sites). The applicant shall be required to submit with the application for review all of the pertinent information required under 3.7.E(2) of the Development Code. The major issues which shall be considered are visual impact, access, concurrency management, employee housing impacts, relationship with neighboring uses. Additionally, these projects shall comply with all standards and criteria established in the Canyons SPA Plan Book of Exhibits, including the Statement of Global Principles, the Canyons Resort Center Architectural Guidelines (see Exhibit D), and other applicable provisions of the Code and General Plan. All Project Sites must be developed in accordance with the applicable Global Principles, as well as appropriate Code/General Plan standards/policies, pertaining to that particular Project Site. Failure to so comply shall be grounds for denial of Final Site Plans and/or Subdivision Plats.

Section 4. Canyons SPA Management Associations.

4.1 There shall be one master association maintained at all times over all development within areas designated as Resort Center and Resort Support and Mountain Recreation in the Snyderville Basin General Plan. This association shall be for the purposes of regulating and maintaining certain standards and levels of maintenance of all buildings, roads, and landscaping within all resort areas of the Canyons SPA. Under certain circumstances, the Master Resort Association may contract or otherwise transfer maintenance responsibilities to individual associations, so long as the maintenance of all infrastructure that is intended to serve the Resort Center and Resort Support and Mountain Recreation areas is retained by the master association. Each Developer shall cooperate in establishing owner or management associations and/or easements and maintenance regimes reasonably required for the convenient and mutually beneficial use and operation of the Resort, provided however, that no owner or management association fees shall be assessed against any Project Site that has not yet received plat or site plan approval by the County.

4.2 There shall be one master association maintained at all times over all development within The Colony. This association shall be for the purposes of regulating and maintaining certain standards and levels of maintenance of all buildings, roads, and landscaping within The Colony.

4.3 Whenever there is overlap between the functions of The Colony Association and the Master Resort Association, which shall include road maintenance, open space management, environmental and wildlife enhancement programs, and any other joint function identified in this Development Agreement or which will be required to comply with

the Statement of Global Principles, there shall be an agreement maintained at all time the specifically defines the responsibilities and commitments of each association under such circumstances.

Section 5. Building Permits Required. Prior to the commencement of development activity at any Project Site, a Building Permit must be obtained from Summit County. In addition to all other requirements for issuance of Building Permits under the Snyderville Basin Development Code and Uniform Fire/Building Codes, a prerequisite to the issuance of any Building Permit shall be an approved Final Subdivision Plat, Final Site Plan or Low Impact Permit.

Section 6. Development Improvements Agreement Required. A building, grading, or other related development permit will not be issued for any Project Site or any structure within a Project Site approved in the Canyons SPA Plan until an adequate Development Improvements Agreement, in accordance with Chapter 6 of the Code, has been established and accepted by Summit County. A separate Development Improvements Agreement may be established for each of the Project Sites approved under Section 3 above.

Section 7. Construction Mitigation and Management Plan Required. A building permit will not be issued for any Project Site or any structure within a specific Project Site approved in the Canyons SPA Plan until an adequate Construction Management and Mitigation Plan has been established and accepted by Summit County. A separate plan shall be established for each of the Project Sites approved under Section 3 above. The plan shall address the following matters specifically, together with any other related matters identified by the Summit County Community Development Director and an applicant.

- 7.1 Revegetation/erosion protection/runoff control
- 7.2 Watershed protection
- 7.3 Site grading
- 7.4 Dust and debris control
- 7.5 Recycling construction material waste
- 7.6 Damage to public and private roadways as a result of construction
- 7.7 Construction traffic and related parking needs
- 7.8 Hours of construction
- 7.9 Impact of noise on adjacent residential uses

Section 8. Concurrency Management Required. Prior to the approval of a building permit for any structure approved in the Canyons SPA Plan, an applicant for a building permit shall demonstrate that all concurrency management requirements of Chapter 4 of the Code have been met. The Summit County Community Development 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 be required:

8.1 The Developer(s) shall construct those infrastructure improvements, contemporaneously with approval of final and preliminary subdivision plats and site plans, as are required by the Code, County Engineer, and any applicable special service district or county service area, and subject to and as modified by any applicable terms of this Development Agreement.

8.2 Developers shall comply with the applicable sections of the Code, as amended, for off-site and project infrastructure requirements at the time of preliminary and final plat or site plan approval. This shall include the verification of the continued availability of the following for Project Sites at the time of Building Permit approval: (a) sewage treatment capacity to cover anticipated development within the site plan or plat, (b) water and water pressure adequate for residential consumption and fire flows, (c) capacity for electrical and telephone service, and (d) road capacity.

Section 9. Open Space in the Canyons SPA. The provisional open space designated on the Canyons SPA Master Plan, which is shown in Exhibit C to the Canyons SPA Plan Book of Exhibits, shall be held in accordance with the provisions of this Development Agreement, to include the Global Principles and Section 10.2 hereto, (except that property pertaining to the State & Institutional Trust Lands depicted herein shall not be bound hereunder). However, the County recognizes that "provisional open space" designation is a holding category and it is anticipated that an amendment to the Canyons SPA and

the SPA Plan may change the status of much of this open space from restricted non-developable to developable areas, so long as the applicable provisions of the General Plan, Code, and Global Principles are met, the resort center character is retained, and the amendment is approved by the Board of County Commissioners. The County also recognizes that, should no SPA amendment be effectuated, provisional open space may also be released in accordance with provisions established in the Statement Global Principles.

Section 10. Timing of Development Improvements and Public Amenities

10.1 Development Phasing. The uses approved in the Canyons SPA Plan are the only uses which shall be permitted under this Development Agreement. No other uses, including any identified in the proposed Canyons SPA Expansion Plan shall be permitted, until approved by Summit County through the Canyons SPA and SPA Plan amendment procedure established herein.

10.2 Parks, Trails and Open Space.

10.2.1 The parties contemplate that as Project Sites within the Canyons SPA, areas of permanent parks and trails which will be specifically identified on subdivision plats and site plans, will be developed. Unless otherwise provided in any subdivision or site plan approval, as would occur if the County sought dedication for use by the Snyderville Basin Recreation District, any such space so identified shall be maintained by the Master Resort Association and The Colony property owner's association as required herein.

10.2.2 As integral consideration for this Development Agreement, the Developers agree to preserve and maintain all the areas designated as provisional open space (active or passive) on the Canyons SPA Master Plan (including any parcels dedicated for the exclusive use of the Resort) in accordance with the requirements of Summit County ordinances. The County may encourage any wetlands, viewsheds, or other critical lands be conveyed or restricted by conservation easement in favor of the County or another appropriate nonprofit agency or legal entity designated by the County to assure long term preservation of such land. Adequate financial arrangements, to the extent that such funding has been demonstrated to be necessary by similar funding for similar lands in the Snyderville Basin, for the maintenance of such lands shall be made by the Developers or the association of property owners within the Resort at the time a development permit is issued.

Section 11. Vested Rights and Reserved Legislative Powers.

11.1 Vested Rights. Subject to Section 11.2, the Developers shall have the vested right to have preliminary and final subdivision plats and site plans approved and to develop and construct the Resort in accordance with the uses, densities, timing and configurations (massing) of development as vested in Section 2.3 under the terms and conditions of this Development Agreement and Canyons SPA Plan Book of Exhibits, including Paragraph A of the Findings, and contemplate that the rights vested in the Resort are exempt from the application of the Code and to subsequently enacted ordinances only to the extent that such exemption is a condition precedent to grant of said vested rights (see Paragraph B of the Findings herein); and, that all other provisions of the Code, as amended, and other relevant laws shall apply, including, but shall not be limited to, the imposition of administrative fees (as established by Resolution 93-1, as amended).

11.2 Reserved Legislative Powers. 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 land use 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 Sections 2.3 and 11.1, 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 the Resort 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, Developers shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Resort under the compelling, countervailing public policy exception to the vested rights doctrine. In the event that the County does not give prior written notice, Developers shall retain the right to be heard before an open meeting of the Board of County Commissioners in the event Developers allege that their rights under this Development Agreement have been adversely affected.

Section 12. Fees.

12.1 SPA Rezone Application, Development Agreement Application, Development Review, Engineering and Related Fees. Pursuant to the provisions of Section 4.9 of the Administrative Guidelines, Developers agree to pay the sum of \$ _____ prior to final approval of the Development Agreement by the Board of County Commissioners. Developers shall receive no further credits or adjustments toward any 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. Application and review fees for final site plans, plats and/or maps for each phase of the Resort shall be paid at the time of application for any such approval. As such, the County may charge such standard planning and engineering review fees as are generally applicable at the time of application, pursuant to the provisions of Resolution 93-1, as amended, or other applicable statutes, ordinances, resolutions, or administrative guidelines. The County may charge other fees that are generally applicable, including but not limited to standard building permit review fees for improvements to be constructed on improved lots.

12.2 Impact Fees. In consideration for the agreements of the County in this Development Agreement, the Developers agree that the Project Sites 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, Developers waive their 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 the Developers to subject the Resort to impact fees under the above-stated conditions, the Developers do not waive Developers' 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 the Resort based upon the application of the Rational Nexus Test (as defined in Section 12.2.1).

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

Section 13. Non-binding Statement of Acknowledgement. A Non-binding Statement of Acknowledgement signed by property owners within the West Mountain Neighborhood Planning Area shall be set forth in Appendix II hereto, which is incorporated herein by reference. The purpose of this document is to help property owners who potentially may be included in the Canyons SPA Expansion Plan better understand the intent and purpose of the Canyons SPA and appropriate resort center and other development and to place them on notice of the requirements for participation in future amendments to said SPA, which includes the acknowledgement of the Global Principles governing such. It is agreed between the parties that all potential participants and successors within the Canyons SPA Expansion Plan area must present to the County a fully signed and authenticated original of the Non-binding Statement of Acknowledgement within sixty (60) days of the execution of this Development Agreement in order to be eligible for participation in a comprehensive amendment to the Canyons SPA. Within fifteen (15) days of the approval of this Agreement, the Developers shall notify other potential participants in the Canyons SPA Expansion Plan of the SPA Plan approval and the sixty day requirement. Participation is not required, however, and each property owners development options are fully described in the Non-Binding Statement of Acknowledgment and the Statement of Global Principles.

Section 14. Canyons SPA Amendment Process.

14.1 The parties contemplate that following approval of the Canyons SPA and its implementing Development Agreement, the Developers will desire to amend and expand such SPA. This approach is being used in order to encourage integrated planning of the entire West Mountain Neighborhood Planning Area and its designated resort center through a comprehensive master plan. Appendix III is provided to show the Proposed Canyons SPA Expansion Plan. The County has neither reviewed, nor approved such, and there is no vested development right in Appendix III. Any amendment to the Canyons SPA must comply with the applicable provisions of the Code and General Plan governing amendments to a SPA and its implementing Development Agreement, as well as to the Global Principles delineated herein. The parties hereby stipulate that any such amendment must be accomplished within 24 months of the execution of this Development Agreement; otherwise the County shall not be bound by the amendment conditions in this Development Agreement.

14.2 In addition to the applicable requirements/policies of the Snyderville Basin Development Code and General Plan governing development or development activity and amendments to SPAs and their implementing Development Agreements, all amendments to the Canyons SPA shall:

14.2.1 Comply with the Global Principles delineated in Exhibit A to the Canyons SPA Plan Book of Exhibits herein;

14.2.2 Incorporate therein this Development Agreement by reference;

14.2.3 Include any supplementation to the Canyons Overview and Concept Plans, to include all uses, densities, and development locations for all Project Sites within the amended and expanded Resort, and a review process for receiving Final Site Plan (commercial uses) or Subdivision Plat (residential uses) approval as prerequisites for building permits;

14.2.4 Provide "Benchmark Assessments of Resort Development, Impacts and Programs" to the Snyderville Basin Planning Commission as a pre-condition to any and all future amendments to the Canyons SPA, as further discussed in Global Principle #14 (Exhibit A). Such reports shall be on a periodic basis and may include, but is not limited to, such assessments as an "Employee Services Status Plan," a "Recreation Program Commitment Report," an "Environmental Enhancement Plan," a "Transportation Report," a "State Route 224 Study," and an "Update on CCC."

Section 15. Successors/Assigns.

15.1 Binding Effect. This Development Agreement shall be binding on the successors and assigns of the Developers in the ownership or development of any portion of the Resort. Notwithstanding the foregoing, a purchaser of the Resort or any portion thereof shall be responsible for performance of the Developers' obligations hereunder as to the portion of the Resort so transferred in accordance with the provisions of Section 6.2 hereof.

15.2 Transfer of Resort. Developers shall be entitled to transfer any portion of the Resort 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, Developers shall not be required to notify the County or obtain the County's consent with regard to the sale of lots in single or multi-family residential subdivisions or commercial areas 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 Developers' interests in the Resort, the transferee shall be deemed to be the Developer for all purposes under this Development Agreement with respect to that portion of the Resort transferred.

15.3 Release of Developers. Except for the sale of lots in single and multi-family residential subdivisions or commercial areas 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 the Resort, the Developers shall obtain an assumption by the transferee of the Developers' 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 Project Site so

transferred, and the Developer(s) executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement as to the parcel so transferred.

Section 16. General Terms and Conditions.

16.1 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property as described in Appendix I. 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, Developers shall include the parties signing this Agreement and identified as "Developers," and all successor owners of any part of the Property or Resort.

16.2 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.

16.3 Laws of General Applicability. Where this Development Agreement refers to laws of general applicability to the Resort 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.

16.4 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. The term of this Development Agreement shall extend for a period of five (5) years following the effective date above referenced unless this Agreement has not been earlier terminated, or its term otherwise modified by written amendment.

16.5 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, Developers, on behalf of themselves and Developers' partners, officers, directors, employees, agents, attorneys and consultants, hereby release 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 Developers and Developers' 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 Resort.

16.6 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.

16.7 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 Developers or any user of the subject property violate the rules, policies, regulations or ordinances of the County or violate 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 (or such longer period as may be established in the discretion of the Board of County Commissioners or a court of competent jurisdiction if Developers have used their reasonable best efforts to cure such violation within such thirty (30) days and are continuing to use their reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been honored by the Developers. The County 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.

16.8 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 any 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 officer, 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.

16.9 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 the County and Developers.

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

16.11 Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the County:

The Board of County Commissioners of Summit County
Summit County Courthouse
P.O. Box 128
Coalville, Utah 84017

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

With copies to:

David L. Thomas
Deputy Summit County Attorney
P.O. Box 128
Coalville, Utah 84017

To the Developers:

Blaise Carrig
General Manager
Ed Grampp
Vice President, Real Estate Development
The Canyons
4000 Park West Drive
Park City, Utah 84098

00513500 Bk01168 Pg00098

Keith Kelley
Iron Mountain Associates, LLC
2455 White Pine Canyon Road
Park City, Utah 84060

C and M Properties, L.L.C.

Joseph W. Groutage, III

Wolf Mountain Resort, L.C.

With copies to:

Shawn C. Ferrin
Parsons, Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, Utah 84145-0898

Or to such other addresses or to the attention of such other person as either party or their successors may designate by written notice.

16.12 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.

16.13 Execution of Agreement. This Development Agreement may be executed in multiple parts 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.

16.14 Hold Harmless.

16.14.1 Agreement of Developers. Developers agree to indemnify 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 the Developers or their contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to the Village; 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. Developers agree 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 Developers' actions in connection with the Resort 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 events referred to in this paragraph 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. The Developers further agree 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. The County agrees to enforce this provision solely against those individual property owners within the Canyons SPA whose actions give rise to claims for damages herein described.

16.14.2 **Exceptions to Hold Harmless.** The agreements of Developers in Section 16.14.1 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 Developers under the terms of this Agreement for just compensation or attorneys fees.

16.14.3 **Hold Harmless Procedures.** The County shall give written notice of any claim, demand, action or proceeding which is the subject of the Developers' 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 case 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.

16.15 **Relationship of Parties.** The contractual relationship between the County and Developers 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) the Resort 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) Developers shall have the full power and exclusive control of the Property subject to the obligations of the Developers set forth in this Development Agreement.

16.16 **Compliance with County Ordinances and Administrative Guidelines.** The County has reviewed the Code, General Plan, and Resolution No. 93-1 (Administrative Guidelines) and has determined that the Developers have substantially complied with the provisions thereof and hereby finds that the Resort 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 Developers 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.

16.17 **Annual Review.** The County shall review progress pursuant to this Development Agreement at least once every twelve (12) months 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 Sections 6.18 and 6.19 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 Agreement according to the terms and conditions set forth herein.

16.18 **Default.**

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

(1) A warranty, representation or statement made or furnished by Developers 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.

(2) A finding and determination made by the County following a periodic review under Section 16.17 that upon the basis of substantial evidence

the Developers have not complied in good faith with one or more of the material terms or conditions of this Development Agreement.

(3) Any other event, condition, act or omission which materially interferes with the intent and objective of this Development Agreement.

16.19 Procedure Upon Default.

16.19.1 Within ten (10) days after the occurrence of default, County shall give Developers (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. Developers 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 Developers, within the thirty day cure period, commence actions reasonably designed to cure the default, then the cure period shall be extended for such additional period as Developers are prosecuting those actions diligently to completion.

16.19.2 County does not waive any claim of defect in performance by Developers, if on periodic review the County does not propose to modify or terminate this Agreement.

16.19.3 Should the County terminate this Development Agreement under the provisions hereof, Developers' 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.

16.19.4 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 therefor, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default.

16.19.5 An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developers, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.

16.19.6 Adoption of law or other governmental activity making performance by the Developers unprofitable, more difficult, or more expensive does not excuse the performance of the obligation by the Developers.

16.19.7 All other remedies at law or in equity which are consistent with the provisions of this agreement are available to the parties to pursue in the event there is a breach.

16.20 Damages Upon Termination. Except with respect to just compensation and attorneys fees under this Development Agreement, Developers shall not be entitled to any damages against the County upon the unlawful termination of this Agreement.

16.21 Arbitration. In the event that the default mechanism contained herein shall not sufficiently resolve a dispute under this Development Agreement, then every such continuing dispute, difference, and disagreement shall be referred to a single arbiter agreed upon by the parties, or if no single arbitrator can be agreed upon, an arbitrator or arbitrators shall be selected in accordance with the rules of the American Arbitration Association and such dispute, difference, or disagreement shall be resolved by the binding decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. However, in no instance shall this arbitration provision bind the County from exercising enforcement of its police powers where Developers are in direct violation of the Code.

16.21.1 **Institution of Legal Action.** Enforcement of any such arbitration decision shall be instituted in the Third Judicial District Court of the County of Summit, State of Utah, or in the United States District Court for Utah.

16.22 **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.

16.23 **Third Party Legal Challenges.** In those instances where, in this Agreement, Developers have agreed to waive a position with respect to the applicability of current County policies and requirements, or where Developers have agreed to comply with current County policies and requirements, Developers further agree 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.

16.24 **Computation of Time.** In computing any period of time pursuant to this Development Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday.

16.25 **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.

16.26 **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.

16.27 **Survival of Developers' 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 Developers are obligated to provide to the County the following enumerated extraordinary and significant benefits even if the Developers cancel, rescind, repudiate, refuse, revoke, or in any manner terminate or attempt to terminate this Development Agreement:

16.27.1 Dedication of any parks, trails and open space shown on the Canyons Master Plan as requiring dedication or the granting of protection through conservation easements over such land as is impacted by Project Sites, delineated in Exhibit B to the Canyons SPA Book of Exhibits;

16.27.2 Construction of any roads or public improvements covered by a recorded plat unless earlier vacated prior to the sale of any lots;

16.27.3 Compliance with the Canyons SPA Book of Exhibits;

16.27.4 Payment of impact fees to the extent such fees are payable under the terms of this Agreement and any applicable impact fee ordinance or implementing resolution; and

16.27.5 Compliance with Developers' Mutual Releases and Hold Harmless Covenants under this Agreement.

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ASC Resort Properties, Inc.

By: [Signature]

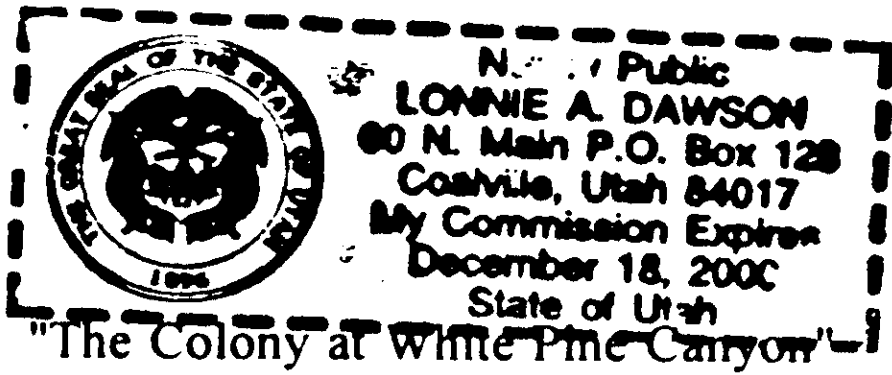
Its: Vice President, Real Estate Development

STATE OF UTAH)
)
) :ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this 6 day of July, 1998, by Edward Cayton Crump, Jr.

[Signature]
Notary Public
Residing at: Coalville, Utah

My commission expires:
12-18-2000



By: Iron Mountain Associates, L.L.C., a Utah Limited Liability Company

By: PA, LTD, a Utah Limited Partnership
Its Manager

KPK

By: [Signature] White Pine Associates, Inc., a Utah Corporation
Its General Partner

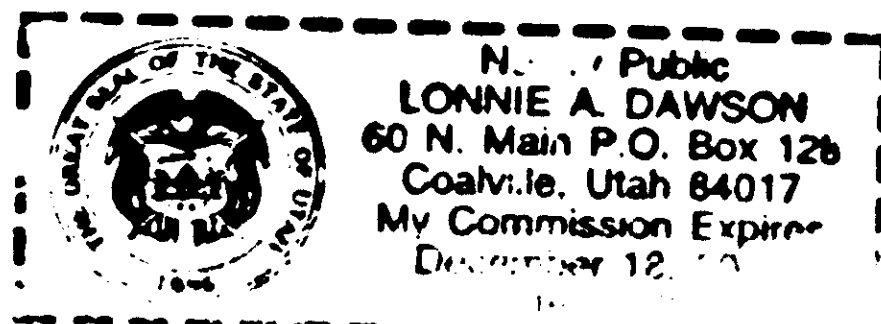
By: [Signature]
Keith R. Kelley
Vice-President and Secretary

STATE OF UTAH)
)
) :ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this 6 day of July, 1998, by Keith R. Kelley

[Signature]
Notary Public
Residing at: Coalville, Utah

My commission expires:
12-18-2000

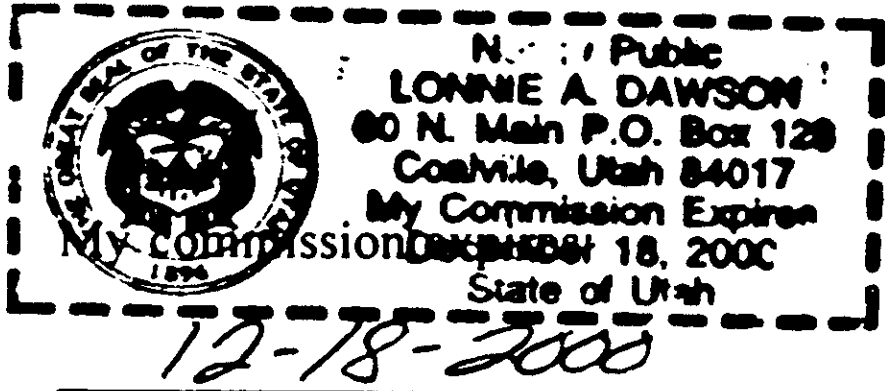


C and M Properties, L.L.C.

By: Raymond O. Klein
Its: Manager

STATE OF UTAH)
) :ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this 8 day of July, 1998, by
Raymond Otto Klein.



Lonnie A. Dawson
Notary Public
Residing at: Coalville, Utah

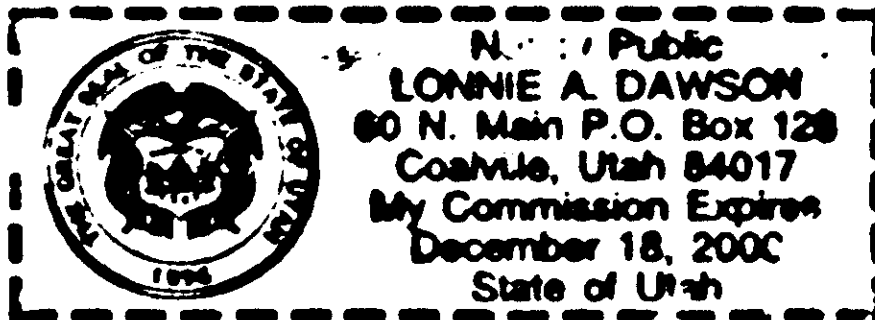
Joseph W. Groutage, III
By: Joseph W. Groutage III
Its: _____

STATE OF UTAH)
) :ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this 10 day of July, 1998, by
Joseph W. Groutage III

My commission expires:
12-18-2000

Lonnie A. Dawson
Notary Public
Residing at: Coalville, Utah



Wolf Mountain Resort, LC

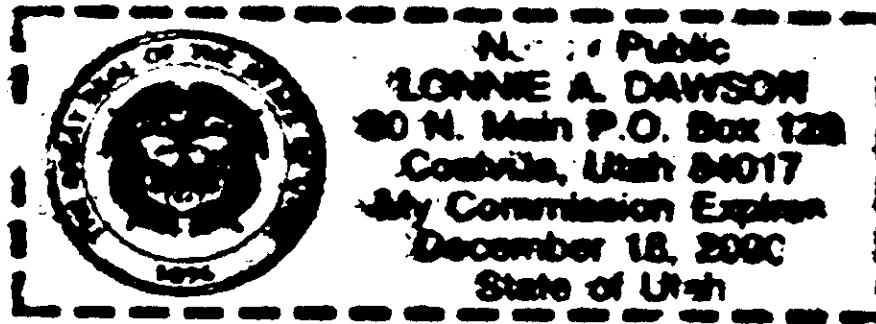
By: *Kenneth Griswold*
Its: *Managing member*

STATE OF UTAH)
) :SS.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this 8 day of July, 1998, by
KENNETH GRISWOLD

Lonnie A. Dawson
Notary Public
Residing at: *Coalville, Utah*

My commission expires:
12-18-2000



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