

WHEN RECORDED, RETURN TO:

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Coalville, UT 84017

ENTRY NO. 01002143

09/04/2014 01:45:46 PM B: 2255 P: 1163

Agreement PAGE 1/9

MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER

FEE 26.00 BY NEVIS AT NEWPARK LLC



**THIRD AMENDMENT TO
DEVELOPMENT AGREEMENT
FOR THE NEWPARK SPECIALLY PLANNED AREA
KIMBALL JUNCTION, SUMMIT COUNTY, UTAH**

THIS THIRD AMENDMENT (the “**Third Amendment**”) is entered into as of this 16th day of July, 2014, among Cottonwood Newpark Three, LLC, a Delaware limited liability company (the “**Developer**”); and Summit County, a political subdivision of the State of Utah, by and through its County Council (the “**County**”).

**Article 1
RECITALS**

- 1.1 On October 18, 2001, Summit County and MJM5, LC entered into a Development Agreement (the “**Development Agreement**”) for the development of the Redstone Parkside SPA. The entity constituting Developer hereunder is successor in interest to the Property within the Redstone Parkside SPA and the name of the project has been changed to Newpark (the “**Development**”).
- 1.2 Prior to October 18, 2006, Developer and the County agreed to extend the Development Agreement to October 18, 2011.
- 1.3 The Development Agreement technically expired on October 18, 2011; however on March 20, 2013, the Summit County Council granted a Special Exception to continue and extend the agreement through October 18, 2016.
- 1.4 The Agreement was most recently amended through an administrative amendment on June 20, 2013, the purpose of which was to clarify the process for any future extensions of the Development Agreement.
- 1.5 The Developer now desires to construct a townhome development referred to as Nevis at Newpark (the “**Project**”) under the Development Agreement.
- 1.6 The Summit County Director of Community Development (the “**Director**”) has determined that the health, safety, and welfare of the residents of Summit County would be better served if Center Drive as shown on proposed layout of the Project, included as **Exhibit A** attached hereto,

were replaced by a pedestrian plaza in substantially the form shown on **Exhibit B**, attached hereto.

1.7 Center Drive was proposed as a small part of "Main Street" in the Development (also labeled in some places as Redstone Drive). As explained on pages 6 and 25 of the Development Agreement Book of Exhibits (the "**Exhibits**"), Main Street was designed as a corridor through the Project and was designed to give preference to pedestrian movement and safety by removing thru-traffic, slowing on-street traffic, and by implementing various other measures. Further, Main Street was designed to encourage walking and gathering through the use of public seating, vegetation, and other design elements. Main Street is not a primary access route to the Development from outside of the Development, but is designed to facilitate flow within the Development with a focus on pedestrian traffic.

1.8 The Summit County Engineer ("**County Engineer**") has reviewed the pedestrian plaza that is proposed for the Development. The County Engineer discussed the Project with the Developer's Engineer of Record and the transportation engineer. The County Engineer has also met with Park City Transit to discuss any changes that will need to be made to existing transit patterns. Additionally, the County Engineer has reviewed the proposed changes to the Development Agreement. After such review, the County Engineer has determined that the proposed pedestrian plaza will not adversely impact traffic patterns in the area and recommends approval of this **Third Amendment** provided that no-parking signs be placed along Park Lane, sight distance be reviewed at final site plan phase, and the Park City Fire Special Service District approves the layout with the pedestrian plaza.

1.9 The Developer and the County now desire to amend the Development Agreement to allow for the construction of a pedestrian plaza in approximately the configuration as shown on **Exhibit B**.

1.10 The Director has determined that this **Third Amendment** is a substantive amendment pursuant to Section 6.10 of the Development Agreement. In satisfaction of the requirements for adopting a substantive amendment as set forth in Section 6.10 of the Development Agreement: (1) a duly noticed public hearing was held by the Snyderville Basin Planning Commission (the "**Planning Commission**") on May 27, 2014 to consider this **Third Amendment**, (2) the Planning Commission has recommended approval this **Third Amendment**, (3) a duly noticed public hearing was held by the Summit County Council (the "**Council**") on July 16, 2014 to consider this **Third Amendment**, and (4) the Council has approved this **Third Amendment**.

Article 2 FINDINGS

2.1 This **Third Amendment** is consistent with the original Development Agreement and is consistent with previous amendments to the Development Agreement and previous actions by the County.

- 2.2 The proposed layout of the Project as set forth in **Exhibit B** is preferable to the layout as shown on **Exhibit A** and the pedestrian plaza between the townhome buildings as shown on **Exhibit B** is preferable to the street labeled as Center Drive on **Exhibit A**.
- 2.3 The elimination of the street labeled Center Drive and addition of the proposed pedestrian plaza will not adversely impact traffic patterns in this area.
- 2.4 The original concept for Center Drive contemplated ground-floor retail and office space with residential space above; the area in question will now be entirely residential, eliminating the usefulness of and need for Center Drive.
- 2.5 The replacement of Center Drive with a pedestrian plaza will further the goals set forth for Main Street in the Development Agreement on page 25 of the Exhibits—namely that the attractiveness and usefulness for pedestrian activity and movement of the area previously planned as Center Drive will be significantly enhanced by the construction of a pedestrian plaza that will serve both residents of the Project as well as other residents of and visitors to the Development.
- 2.6 The proposed pedestrian plaza occupies an area through which pedestrian traffic naturally flows between various buildings in the Development and the pedestrian plaza will provide a pedestrian friendly area without negatively impacting vehicle traffic in the Development.
- 2.7 The elimination of Center Drive will eliminate the ten parallel parking spaces as shown on **Exhibit A**. The surrounding parking facilities have sufficient capacity to absorb the loss of those ten parallel parking spaces at current and predicted future levels of use. This **Third Amendment** complies with the requirements of the Parking and Maintenance Agreement dated November 8, 2011.
- 2.8 The elimination of the parking spaces along the street labeled Center Drive will not negatively impact the availability of parking facilities for residents of the townhomes or visitors to the Development.
- 2.9 The replacement of Center Drive with a pedestrian plaza will not affect access to public transportation or impact any existing transit facilities as described on pages 1 and 5 of the Exhibits.
- 2.10 The County Engineer has determined that the elimination of the street labeled Center Drive will not result in traffic on Park Lane North in excess of the comfortable carrying capacity of Park Lane North.
- 2.11 The County Engineer has found that the replacement of Center Drive with a pedestrian plaza is acceptable based on expected traffic demands and levels of service.
- 2.12 The residents of the Newpark Townhomes, located adjacent to the Project on the other side of Park Lane North, will not be negatively impacted by the elimination of Center Drive as the

maximum resulting traffic on Park Lane North will be within the comfortable carrying capacity of Park Lane North.

- 2.13 The replacement of Center Drive with a pedestrian plaza does not affect fire protection requirements of the Project as set forth in Section 6.4.3 of the Development Agreement and the Park City Fire Special Service District has approved the new layout with the pedestrian plaza.
- 2.14 The replacement of Center Drive with a pedestrian plaza does not affect the Development's compliance with the Snyderville Basin General Plan as detailed on page 39 of the Exhibits. The elimination of Center Drive will not affect access to the Development and will not adversely affect existing residential neighborhoods.
- 2.15 The replacement of Center Drive with a pedestrian plaza will not affect the Projects compliance with use, density, or configuration requirements in the Development Agreement as described in Section 4.3 of the Development Agreement.
- 2.16 The proposed layout of the Project as set forth in **Exhibit B** is consistent with the goals of the Development Agreement and such layout will be beneficial to the Development and the surrounding property.

Article 3
AMENDMENT TO DEVELOPMENT AGREEMENT

- 3.1 The Development Agreement is hereby amended to allow for construction of the pedestrian plaza in substantially the configuration shown on **Exhibit B**.
- 3.2 The design requirements of Park Lane North are hereby amended as necessary to allow for Park Lane North as presently constructed.
- 3.3 To the extent that other documents related to the Development Agreement or incorporated into the Development Agreement may require amendment to allow for construction of the Project as contemplated by this **Third Amendment**, such other documents are hereby amended as necessary.
- 3.4 Except as specifically amended hereby, the Development Agreement shall remain in full force and effect. All references to the Development Agreement shall be deemed to mean the Agreement as modified hereby. This **Third Amendment** shall not constitute a novation of the Development Agreement, but shall constitute an amendment thereof. The Developer and the County agree to be bound by the terms and conditions of the Development Agreement, as amended by this **Third Amendment**.

IN WITNESS WHEREOF, this **Third Amendment** has been executed by Summit County, State of Utah, acting by and through its County Council, pursuant to Ordinance 829, authorizing such execution, and by a duly authorized representative of Developer, as of the above stated date.

COUNTY:

COUNCIL OF SUMMIT COUNTY, STATE OF UTAH

By:



Christopher F. Robinson, Chairman

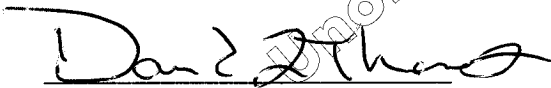
Acknowledgement:



Kent Jones
Summit County Clerk



Approved as to Form



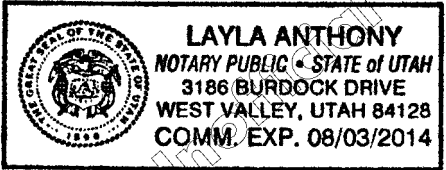
David L. Thomas
Chief Civil Deputy

COTTONWOOD NEWPARK THREE, LLC,
a Delaware limited liability company

By: *John L. West*
Its: *Authorized Person*

STATE OF UTAH)
 :SS
COUNTY OF *Salt Lake*)

The foregoing instrument was acknowledged before me this *21st* day of *July*, 2014 by
John L. West, the *Authorized Person* of Cottonwood Newpark Three, LLC, a Delaware
limited liability company.



L.A.
Notary Public residing at:

My commission expires: *August 3, 2014*

EXHIBIT A

Center Drive Layout

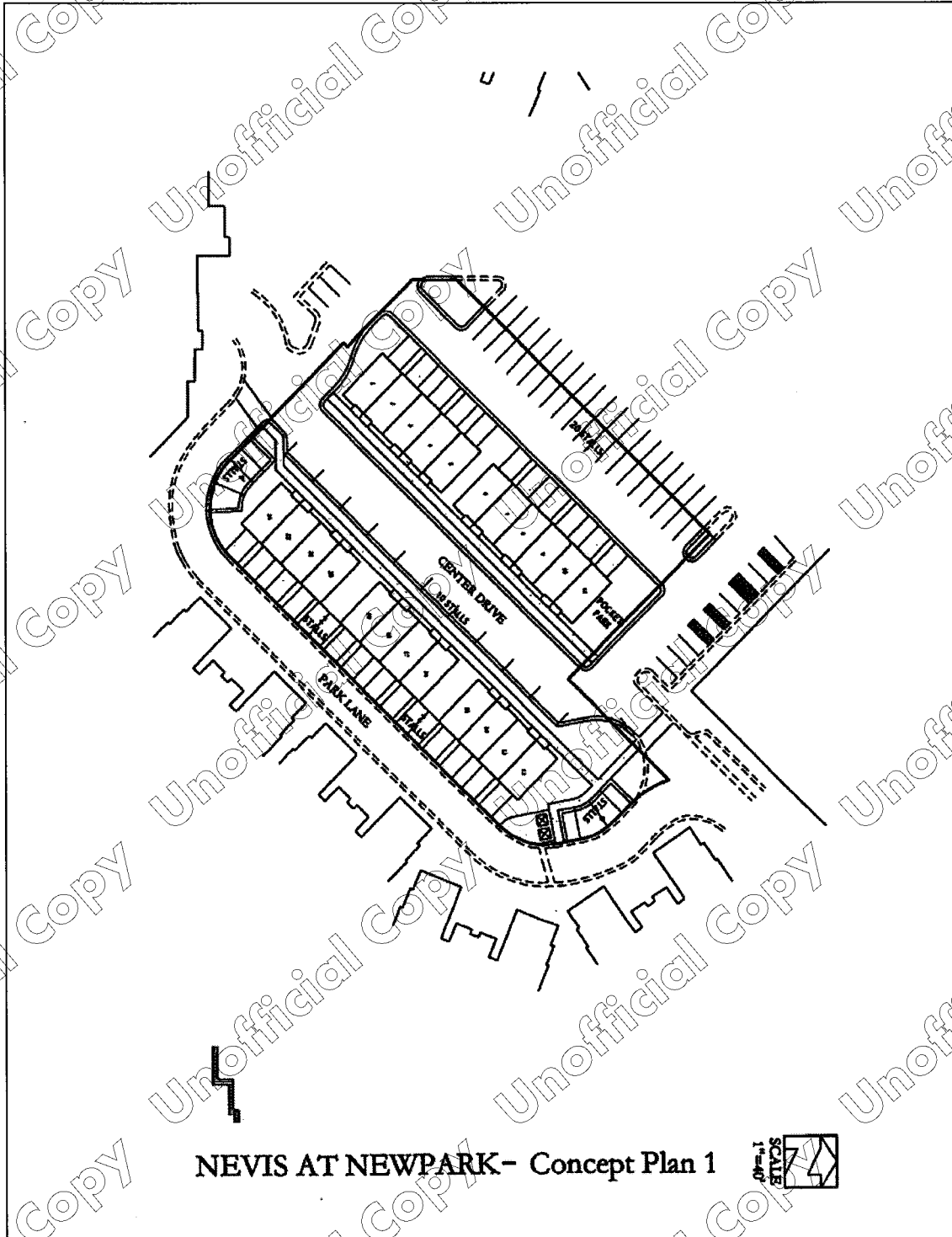
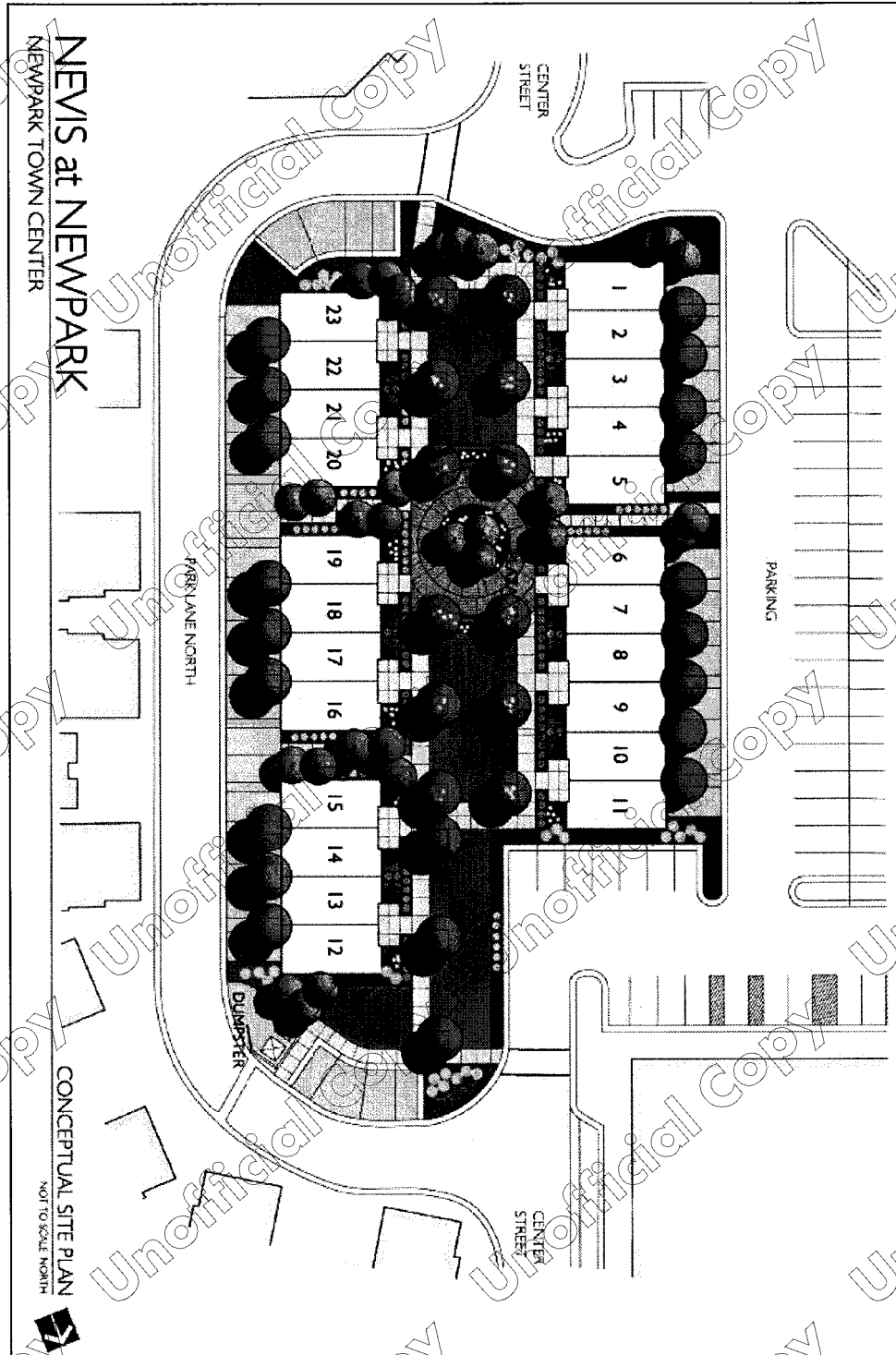


EXHIBIT B

Plaza Layout



Account 0479335

Location

Parcel Number NPRK-P-2
Account Number 0479335
Tax District 10 - PCSD A,J,K,U (C-C) (E-E)
Acres 1.20
Situs Address

Owner

Name NEVIS AT NEWPARK LLC
 308 E 4500 S #200
 MURRAY, UT 84107

Value

Market (2014) \$622,080
Taxable \$622,080
Tax Area: 10 **Tax Rate:** 0.008631
Type Actual Assessed SQFT
 Land \$622,080 \$622,080 41472.000

Legal LOT 2 NEWPARK PARCEL P
 SUBDIVISION; ACCORDING TO THE
 OFFICIAL PLAT ON FILE IN THE
 SUMMIT COUNTY RECORDERS OFFICE.
 CONT 51,964 SQ FT OR 1.20 AC 2116-1443
 2250-998

Child Accounts

Child Parcels

Parent Accounts 0478589

Parent Parcels NPRK-RP-2

Transfers

Instrument Date

07/28/2014
02/21/2012
02/21/2012

B: 2250 P: 0998
B: 2116 P: 1443
B: 2116 P: 0799

Tax

Images

Tax Year

Taxes

*2014 \$5,369.17
 2013 \$5,400.90

* Estimated