

WHEN RECORDED RETURN TO:

Summit County Attorney's Office
Summit County Courthouse
60 North Main
Coalville, Utah 84017
Attn: Helen Strachan

ENTRY NO. 01045702

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MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER
FEE 155.00 BY PROMONTORY DEVELOPMENT LLC



SOUTH POINT DEVELOPMENT AGREEMENT AMENDMENT

FOR THE PROMONTORY SPECIALLY PLANNED AREA

EASTERN SUMMIT COUNTY, UTAH

THIS SOUTH POINT DEVELOPMENT AGREEMENT AMENDMENT (also referred to as this "Development Agreement" or this "South Point Development Agreement" or this "South Point Development Agreement Amendment") is entered into as of this 24th day of May, 2016, by and among PROMONTORY DEVELOPMENT, LLC (the "Developer") and SUMMIT COUNTY, a political subdivision of the State of Utah, by and through the Summit County Community Development Director (the "County") as an administrative amendment to that certain "Amended Promontory Development Agreement," as defined in the Preamble, to accomplish the purposes also set forth in the Preamble.

Preamble

A. Pivotal Promontory Development, L.L.C., predecessor to Developer, commenced the development of a rural, second home, golf oriented residential community constructed and to be constructed within certain predetermined development locations designated in the Promontory Specially Planned Area (the "Promontory SPA" or "Promontory") pursuant to the terms of Summit County Ordinance No. 298-A ("Ordinance 298-A") and that certain Development Agreement for the Promontory Specially Planned Area Eastern Summit County, Utah, dated as of January 2, 2001 (the "Initial Promontory Development Agreement").

B. A portion of the land included within the Promontory SPA on its south end consists of approximately 800 acres known as South Point and more particularly described in Attachment 1 to this Development Agreement and depicted on Attachment 2 to this Development Agreement (the "South Point Property," "South Point," or the "Property").

C. The Initial Promontory Development Agreement was amended by the terms of that certain First Amendment to the Development Agreement for the Promontory Specially Planned Area dated December 31, 2004, between Summit County and Pivotal Promontory Development, L.L.C., as the developer of the Property (the "First Amendment"), recorded on January 6, 2005 as Entry No. 00722231 in Book 01671 at Pages 876-880 in the Official Records of Summit County, Utah.

D. The Initial Promontory Development Agreement and the First Amendment were further amended by the terms of that certain Second Amendment to the Development Agreement for the Promontory Specially Planned Area dated November 26, 2007, between Summit County and Pivotal Promontory Development, L.L.C., as the developer of the Property (the "2007 Second Amendment"), recorded on December 12, 2007 as Entry No. 00832477 in Book 1904 at Page 0100 in the Official Records of Summit County, Utah. The 2007 Second Amendment included three exhibits, which are included in Attachment 3 to this Development Agreement (together constituting the "South Point Master Plan Amendments"), that modify the anticipated development plan for the South Point Property and certain conservation areas affecting the South Point Property along with other property.

E. The Initial Promontory Development Agreement, the First Amendment and the 2007 Second Amendment were further amended by the terms of that certain Second Amendment to the Development Agreement for the Promontory Specially Planned Area dated February 25, 2015, between Summit County and Developer (the "2015 Second Amendment", and together with the First Amendment and the 2007 Second Amendment, the "Prior Amendments"), recorded on March 3, 2015 as Entry No. 1013800 in Book 2281 at Page 1567 in the Official Records of Summit County, Utah. The Initial Promontory Development Agreement as amended by the Prior Amendments is referred to as (the "Amended Promontory Development Agreement").

F. Developer has proposed that the County implement the Promontory SPA by separating the South Point Property for regulation under the terms of this Development Agreement Amendment and approve this Development Agreement Amendment contemporaneously with the approval of a certain proposed Third Amendment to Development Agreement for the Promontory Specially Planned Area (the "Third Amendment") so that the South Point Property and its development can be separately capitalized, regulated by this Development Agreement and separately developed without compromising commitments in the Amended Promontory Development Agreement. The remaining balance of the Promontory SPA consisting of approximately 5,755 acres (as more particularly described in the Third Amendment, the "Promontory Property") will continue to be governed by the Amended Promontory Development Agreement as further amended by the Third Amendment.

G. This South Point Development Agreement Amendment is intended to continue the existing entitlements, obligations, regulatory standards and vested rights under Ordinance 298-A, the Promontory SPA, as amended, and the Amended Promontory Development Agreement that are applicable to the South Point Property without constituting a "Substantial Amendment" under the provisions of the Amended Promontory Development Agreement. This South Point Development Agreement Amendment is further intended to fully restate in this Development Agreement Amendment the entitlements, obligations, regulatory standards and vested rights applicable to the South Point Property so as to entitle and regulate the development of the South Point Property under the terms of this Development Agreement Amendment on substantially the same terms as such Property was entitled and has been regulated under the Amended Promontory Development Agreement. Similarly, the Third Amendment is intended to make such changes to the Amended Promontory Development Agreement so that the Amended Promontory Development Agreement, as

amended by the Third Amendment, will entitle and regulate the Promontory Property without reference to the South Point Property on substantially the same terms as the Promontory Property was entitled and has been regulated under the Amended Promontory Development Agreement. Consistent with the foregoing intent, the Amended Promontory Development Agreement as further amended by the Third Amendment and the South Point Development Agreement Amendment, considered together, shall be interpreted to create the same entitlements, obligations, regulatory standards, and vested rights with respect to the development of the Promontory Property and the South Point Property, considered together, as exist under the Amended Development Agreement prior to the approval of the Third Amendment and the South Point Development Agreement Amendment. In furtherance of this intent, all references to property, neighborhoods, the community, exhibits to the Initial Development Agreement and other similar terms in the Development Agreement as amended by the Third Amendment shall be interpreted to refer only to the South Point Property and make no reference to entitlements or obligations associated with any portion of the Promontory Property, notwithstanding any failure to make any amendment necessary to express such intent.

H. Consistent with the purposes and intent reflected in the preceding paragraphs of this Preface and consistent with the intent that the South Point Development Agreement Amendment and the Third Amendment shall not constitute “Substantial Amendments,” such amendments shall be approved and shall become effective at the same time, subject to all applicable appeals periods with respect to such final approval having expired without an appeal having been filed. The intent of the preceding conditions to effectiveness is to assure that the South Point Property shall be included within and entitled by either the Amended Promontory Development Agreement or this South Point Development Agreement Amendment without any gap in time from the original point of establishing vested rights under the Initial Promontory Development Agreement.

I. For purposes of interpreting this South Point Development Agreement Amendment, (a) any references to this instrument as a “Development Agreement” shall not change its status for purposes of procedure as an administrative amendment to the Amended Promontory Development Agreement; and (b) the approval of this instrument as an administrative amendment shall not preclude the enforcement of this South Point Development Agreement Amendment, together with all documents incorporated herein by reference, as the development agreement implementing the Promontory SPA for the South Point Property. Further, although this South Point Development Agreement Amendment has been formatted with reference to, and contains language substantially similar to, the terms of the Amended Promontory Development Agreement, any changes to such terms shall be entitled to a presumption that such changes have been reviewed in detail and approved because such changes do not constitute “Substantial Amendments” to the terms of the Amended Promontory Development Agreement as the terms of that Agreement applied to the South Point Property. In light of the formatting of this Development Agreement to refer to the paragraphs and certain but not all of the provisions of the Initial Promontory Development Agreement, the use of the term “Intentionally Omitted” or the failure to incorporate a provision of the Initial Promontory Development Agreement shall be interpreted to indicate only that the corresponding obligation in the Initial Promontory Development Agreement is not applicable to the South Point Property and any such obligation has either been previously satisfied or remains applicable under the Amended Promontory Development Agreement as amended by the Third Amendment.

Article 1
DEFINITIONS

Capitalized terms shall have the meaning set forth as follows or in the Preamble:

Agricultural Preservation Program means the program designed to preserve agricultural lands in Eastern Summit County, a copy of which is included in the Promontory SPA Plan Book of Exhibits.

Amended Promontory Development Agreement has the meaning set forth in the Preamble.

Association means the master residential homeowners association for the South Point Property, which shall be the South Point Conservancy to be created at the time of the approval of the first residential subdivision plat within South Point.

Base Density means 150 Estate Lots consisting of at least 1 acre (or less if specifically approved by the County Manager in a subdivision plat approval process) and providing for the construction of a single family residence of not less than 3,500 square feet of Floor Area.

Benchmark means a policy goal or objective (in some cases quantified) identified by agreement of the County and Developer, that must be achieved by Developer in connection with the development and construction of the Community and that relates to the implementation of certain County policies, the accomplishment of specific mitigation measures under certain circumstances, or the completion (or bonding of completion) of certain amenities and other proposed or anticipated public benefits.

Building Permit means a permit issued pursuant to the requirements of the Eastern Summit County Development Code, Uniform Building Code and related building codes as applicable in the Eastern Summit County Planning District, including permits for grading, footings and foundations and construction of other improvements.

Code means the Eastern Summit County Development Code, unless the context specifically refers to the Snyderville Basin Development Code.

Community means the master planned resort community planned for South Point, also referred to as "South Point."

Comprehensive Sign Plan means the signage regulations for the Property, which is a low impact development activity and shall be approved as described in this Agreement. The Comprehensive Sign Plan shall be consistent with the intent of the signing concepts illustrated in the Promontory SPA Plan Book of Exhibits and any sign plan approved for the Promontory SPA.

County means Summit County, a political subdivision of the State of Utah.

County Council means the legislative body of Summit County, Utah

Design & Thematic Character Guidelines means those guidelines governing the design of all structures and the development of other improvements on Development Parcels within South Point, which guidelines are included within the Promontory SPA Plan Book of Exhibits as such guidelines have been updated or superseded for the Promontory SPA and as further approved pursuant to this Agreement.

Design Review Committee means the committee of the Association designated to review building plans and enforce the requirements of the Design & Thematic Character Guidelines.

Developer means Promontory Development, LLC, or a successor person, partnership, limited liability company or corporation.

Development Agreement means this South Point Development Agreement Amendment, which is intended to be administered as the Development Agreement for the South Point Property.

Development Application means an application to the County for development, including a building permit or any other permit, certificate or other authorization from the County required for development of the Property.

Development Parcel means an area within the South Point Property designated on the Master Plan as available for development of a Project.

Director means the Summit County Community Development Director or representative authorized by the County.

Effective Date means the day after the expiration of the appeal period for the administrative approval of this South Point Development Agreement Amendment and the Third Amendment.

Environmental Enhancement, Conservation, and Preservation Management Plan means the plan to be implemented by the Developer to mitigate and enhance the environmental features of the Property, a copy of which is included in the Promontory SPA Plan Book of Exhibits together with addendums to be approved as further described in this Agreement.

Estate Lot means a Lot consisting of 1 acre (or less than 1 acre if approved by Summit County in accordance with this Agreement) upon which is to be built a single family residence with no less than 3,500 square feet of Floor Area.

Exhibit (and any reference to any specific Exhibit) means Attachments 1 through 3 to this Development Agreement and any exhibit in the Promontory SPA Plan Book of Exhibits covering

any aspect of the development of the South Point Property as the content of such exhibits has been modified or supplemented by any subsequently approved plans or standards applicable to the Promontory SPA, the South Point Master Plan Amendments included in Attachment 3 or by the Prior Amendments incorporated into the Amended Promontory Development Agreement in effect at the time of approval of this Development Agreement. Where the text of the Development Agreement does not specify and unless the context indicates otherwise, a reference to an Exhibit without reference to its location shall be deemed to be a reference to the Promontory SPA Plan Book of Exhibits as amended.

Final Site Plan means the final site plan establishing detailed development layout, architectural, landscaping, lighting, and other development details for a project, the process for which is established in this Agreement. A site plan is a development plan of one or more parcels designated for the construction of all multi-family and attached residences, Resort Units, commercial buildings, entryway offices, sales and facilities, clubhouses, hotels, equestrian and maintenance facilities, fire station, schools, and community facilities, or other similar structures, expressly not including single family, detached residences on lots, which shall be addressed by the Final Subdivision Plat. A Final Site Plan application shall comply with the provision of Appendix II to the Initial Promontory Development Agreement.

Final Subdivision Plat means a map of a subdivision, which shall be approved in accordance with the provisions of this Agreement. The Final Subdivision Plat shall provide sufficient information to demonstrate: (1) the existing and proposed conditions of the parcel, including, but not limited to topography, vegetation, drainage, flood plains, wetlands, and waterways; (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures, signs, lighting, and screening devices; (3) the location of building envelopes/pads for all buildings; (4) the location and extent of all external buffers from surrounding areas; (5) typical elevations for the proposed building structures; (6) easements for Community Trails and accompanying plat note; and (7) all other pertinent information necessary to demonstrate compliance with the Benchmarks, review procedures and approval criteria as set forth in this Agreement.

Floor Area means the square footage measured consistent with the definition of "Floor Area" in the International Building Code; however, garages and unheated spaces shall be specifically excluded from any "Floor Area" definition. Consistent with established practice for Promontory, Floor Area is measured as net livable area, and Floor Area does not include the interiors of walls, garages or unconditioned storage or mechanical spaces.

General Plan means the Eastern Summit County General Plan of the County, unless the context specifically refers to the Snyderville Basin General Plan.

Grade means the surface of the ground that exists upon the effective date of this Development Agreement or the final (finished) elevation of ground surface resulting from development activity.

Incentive Density [intentionally omitted].

Initial Promontory Development Agreement has the meaning established in the Preamble.

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

Land Use Density means the densities planned and potential densities allowed for each Development Parcel and the overall density of the entire South Point Property.

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

Landscaping Plan means a detailed landscaping plan for the Property, which is included within the Promontory SPA Plan Book of Exhibits as such plan or standards have been updated or superseded for the Promontory SPA and as further approved pursuant to this Agreement.

Lighting Guidelines means the lighting guidelines for the Property, which shall be such guidelines as have been approved, updated or superseded for the Promontory SPA and as further approved pursuant to this Agreement.

Low Impact Development means a Low Impact Development Activity designated in the Development Agreement and such uses shall be subject to a Low Impact review and approval by the Director in accordance with the provisions set forth in the Promontory SPA Plan Book of Exhibits, this Development Agreement and all applicable provisions of Appendix III attached to the Initial Promontory Development Agreement.

Master Declaration means the Master Declaration of Covenants, Conditions, Restrictions and Easements for South Point, which may be developed consistent with the governance structure included within the Promontory SPA Plan Book of Exhibits and the terms of the Promontory's master declaration.

Master Plan means the Promontory Master Plan, a copy of which is included in the Promontory SPA Plan Book of Exhibits as amended by the South Point Master Plan Amendments and any of the Prior Amendments, to the extent such Master Plan is applicable to the South Point Property, which Master Plan reflects the general location and configuration of development and certain amenities within the Property, and the general location and configuration of certain Public Facilities and Open Space within the Property.

Neighborhood means the South Point Neighborhood shown on the Master Plan.

Open Space means land which is unoccupied or unobstructed by any above ground buildings/structures intended for commercial or residential occupancy and is meaningful in nature; namely, open space that is continuous and not unduly broken up by vertical structures or other development configurations (open space should not be compartmentalized into isolated pockets of green space). For purposes of this Development Agreement, large open spaces identified on the Master Plan, a golf course and related recreational facilities, any other portions of the Property covered by outdoor recreational amenities and related facilities, open recreational areas (parks) and the portions of lots restricted from development of buildings/structures and unfenced shall be allowed as open space. However, parking lots and related landscaping, roads and small isolated pockets of land within Development Parcels shall not be recognized as open space. Open space may be traversed by roads, trails, and utilities and any above ground structures related to roads, trails, and utilities.

Permanent Occupancy means the occupancy of a Residential Unit within the Community for more than six months of a calendar year or where the owner has claimed a primary residence property tax benefit under applicable law.

Planning Commission means the Eastern Summit County Planning Commission, unless the context specifically refers to the Snyderville Basin Planning Commission.

Price Level Adjustment means, with respect to any dollar value for which adjustment is required, an adjustment beginning on January 1, 2003 and on January 1 of each year thereafter for any inflation/deflation, during the preceding calendar year, of the Consumer Price Index or other index of inflation best reflective of general price increases or decreases during the preceding calendar year in the Greater Salt Lake City area. In making the Price Level Adjustment, the County shall apply to the then existing adjusted dollar value in question the percentage change in the index level reported in the monthly index publication most recently available prior to the adjustment date measured from the same index publication of a year earlier.

Prior Amendments shall have the meaning set forth in the Preamble.

Project or Project Site means a specific development activity or a location of development within the South Point Property as set forth in this Development Agreement or any of the Exhibits referred to herein.

Property (also the **South Point Property**) means approximately 800 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land is contained in Attachment A and a depiction of which is shown in Attachment B.

Promontory Property means the real property covered by the Amended Promontory Development Agreement after such Development Agreement is further amended by the terms of the Third Amendment, as such property is more particularly described in the Third Amendment.

Promontory SPA means the zone district adopted by Ordinance No. 298-A for the purposes of permitting the adoption of a comprehensive development plan specifically required to implement the unique uses, densities, development locations, and programs and other features of the Promontory Property and the South Point Property.

Promontory SPA Plan means a comprehensive plan, set forth in the Amended Promontory Development Agreement as further amended by the Third Amendment, which shall describe or provide for the creation of all development parameters, processes for the approval of all development activity within the Promontory SPA as amended by the Third Amendment, including Final Site Plans and Final Subdivision Plats, low impact development activity, land use configurations, densities, the improvement of pocket parks and trails, the preservation of other Open Space within the Promontory Property in addition to that Open Space preserved by conservation easements prior to the Initial Promontory Development Agreement, the approximate location of public amenities which service the Promontory Property, phasing and all other property owner/developer obligations, commitments, and contributions made to carry out the development of the Promontory Property.

Promontory SPA Plan Book of Exhibits means those portions of the Promontory SPA Plan, as amended and supplemented by the South Point Master Plan Amendments and the Prior Amendments, that refer to and govern the development of the South Point Property including any subsequently approved plans and standards applicable to the South Point Property. The Promontory SPA Plan Book of Exhibits contains concept plans, guidelines, and standards that shall be used to guide all development on the South Point Property and all other specific development parameters and regulations, and developer obligations, commitments, and contributions for carrying out the development of the South Point Property to the extent the South Point Property is referred to therein. The Promontory SPA Plan Book of Exhibits, as so amended and supplemented, shall be deemed a part of this Development Agreement as fully as if set forth herein at length and shall be binding upon all parties hereto, but only to the extent its exhibits refer to the South Point Property.

Public Facilities means only those arterial and access roads, community trails, and the other infrastructure or service facilities serving the Property which will be owned and maintained by the County or another public agency and which are in existence upon the effective date of this Agreement or as otherwise set forth in this Agreement. Roads and other infrastructure and facilities serving the Property may be privately owned.

Residential Unit or Units means a dwelling used primarily for the occupancy of a single family. Where the term "Unit" is used, the term shall mean Residential Unit unless the context clearly indicates the intent to refer to a Resort Unit. Separate dwelling units or the separate occupancy of portions of a residential unit on a single lot are not permitted.

Resort or Promontory means the Promontory resort and real estate development projects covered by the Initial Development Agreement, and the Promontory SPA Plan.

Resort Unit shall have the meaning set forth in Section 4.4.1.

Secondary Occupancy means occupancy of a Residential Unit which is not Permanent Occupancy.

Sketch Plan means a sketch preparatory to an application for a Final Site Plan or Final Subdivision Plat review and consideration by Summit County. The Sketch Plan shall meet the requirements of Appendix I and is intended to contain sufficient information, in graphic and text form, to adequately describe the Applicant's intentions with regard to site layout and compliance with the South Point SPA Plan and this Agreement.

South Point means the real property, proposed development and community covering the South Point Property.

South Point Property has the meaning set forth in the Preamble.

South Point SPA Plan means a comprehensive plan, set forth in this Development Agreement, which implements the Promontory SPA for the South Point Property. The South Point SPA Plan describes or provides for the creation of all development parameters, processes for the approval of all development activity for the South Point Property, including Final Site Plans and Final Subdivision Plats, low impact development activity, land use configurations, densities, the improvement of pocket parks and trails, the preservation of other Open Space within the Property in addition to that Open Space preserved by conservation easements prior to this Development Agreement, the approximate location of public amenities which service the Property, phasing and all other property owner/developer obligations, commitments, and contributions made to carry out the development of the Property. The Promontory SPA Plan Book of Exhibits, as amended by the South Point Master Plan Amendments and the Prior Amendments, shall be deemed a part of the South Point SPA Plan as fully as if set forth herein at length and shall be binding upon all parties hereto, but only to the extent it refers to or otherwise governs the development of the South Point Property.

Staff means the staff of the Community Development Department of Summit County.

Third Amendment has the meaning set forth in the Preamble.

Viewshed refers to Policy 3.12 in the Snyderville Basin General Plan, in effect as of the initial County approval of the Promontory SPA Plan, which required four different approaches to development and open space stewardship, to the extent any of such policies are applicable to the South Point Property.

Preservation Area - sensitive areas in which only ecological changes, low impact recreation facilities, arterial and minor roadways, and related signs and utilities, when there is no alternative and which are sensitively designed and whose sites are appropriately restored and revegetated thereafter,

should be permitted. No residential, commercial, institutional, or industrial development shall be located in any area designated a Preservation Area.

Retention Area - visually sensitive areas in which development and activities may occur so long as they are not visually evident or it is subordinate to the characteristics of the natural landscape. No retention areas were identified within the South Point Property and references to retention areas have been intentionally omitted for purposes of this Development Agreement.

Modification Area - development and activities are allowed to visually dominate the original/natural character of the landscape.

Rehabilitation Area - areas in which solutions should be used to restore landscapes now containing undesirable visual impacts.

Article 2 RECITALS

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

2.2 Developer is the record owner of the Property or has contractual rights to acquire any such portions thereof as are not owned of record by Developer, and the owner of record has consented to the terms hereof.

2.3 Developer has proposed to identify and develop the South Point Property as a separate portion of the Promontory SPA to create a rural, second home, recreation oriented residential community which shall be constructed within certain predetermined development locations presently designated for the South Point Property in the Amended Promontory Development Agreement and the Promontory SPA Plan Book of Exhibits as modified by the Prior Amendments. This Development Agreement implements Ordinance No. 298-A and the Promontory SPA with respect to the South Point Property.

2.4 The County has encouraged the Developer to employ innovative land planning concepts within South Point in order to locate development density, work to preserve sensitive lands, create significant private and public recreational amenities, and trails, create new Open Spaces and expand upon certain tracts of Open Space previously preserved prior to this Development Agreement, and provide a mix of housing and resort uses within South Point and within Summit County in furtherance of the goals of the General Plan, and Developer has designed South Point to comply with those policies.

2.5 This Development Agreement, which incorporates and implements the South Point SPA Plan, provides detailed data regarding the Master Plan, planned development areas, planned Open Space, design guidelines and other relevant data pertinent to the development of the South Point Property. The County and the Developer agree that each shall comply with the standards and procedures contemplated by this Development Agreement and the Appendices and Exhibits referred to herein.

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

2.7 The County also desires to receive certain public benefits and amenities, and Developer is willing to provide these public benefits and amenities in consideration of the agreement of the County for increased residential and resort densities and intensity of uses in South Point pursuant to the terms of this Development Agreement.

Article 3 FINDINGS

The Summit County Community Development Director, acting pursuant to Section 6.9.2 of the Amended Development Agreement, has made the following determinations with respect to South Point as set forth in this Article 3, including all findings of fact and conclusions of law as are necessary to make each of these determinations.

3.1 South Point has received its entitlements pursuant to the original adoption of the Promontory SPA and the Initial Promontory Development Agreement and the findings and conclusions with respect to South Point in such entitlements are deemed incorporated fully into this Development Agreement, which continues such approvals with respect to the South Point Property on the terms set forth in the South Point SPA Plan and this Development Agreement as described herein.

3.2 The amendments to the Amended Promontory Development Agreement contained in this Development Agreement and the Third Amendment are not Substantial Amendments as defined in the Amended Promontory Development Agreement and may be made by the Community Development Director without public hearing or recommendation of the Planning Commission.

3.3 To the extent that the provisions hereof modify the terms of the Promontory SPA Plan and the Amended Promontory Development Agreement applicable to the South Point Property as originally approved and subsequently amended, the Community Development Director has made all findings of fact and conclusions of law as are necessary to approve this Development Agreement as an amendment to the Promontory SPA Plan and the Amended

Promontory Development Agreement. Without limiting the generality of the foregoing, the Director finds that the Development Agreement remains generally consistent with the efficient development and preservation of the entire specially planned area plan and do not affect in a substantially adverse manner either the enjoyment of land abutting upon or in the general vicinity of the property in question, and that the public health, safety, and general welfare are not adversely impaired by any modifications. Where there is a direct conflict between an express provision of this Development Agreement and the Code or General Plan or other land use laws, this Development Agreement shall take precedence; otherwise, the Code, General Plan, or other land use laws shall control.

Article 4 THE COMMUNITY

4.1 Description of the Community. The land covered by this Development Agreement consists of approximately 800 acres of land located east of Highway 40, southeast of the balance of the land originally within the Promontory SPA, north of Highway 248 and west of Brown's Canyon Road. Developer intends to construct a portion of the master planned resort community, generally described in the Promontory SPA as applicable to South Point and as described in this Development Agreement. The Community will be located in the South Point neighborhood generally shown on the Promontory Master Plan. The Community will be developed in phases and, within phases and neighborhoods, on a project-by-project basis.

4.2 Legal Description of Property. The legal description of the Property included within South Point is set forth as Attachment A to this Development Agreement. No property may be added to the legal description of South Point for purposes of this Development Agreement, except by written amendment. Unless expressly set forth in this Agreement, this Development Agreement shall not affect any land other than the Property.

4.3 Approved Use, Density, and Configuration. This Development Agreement shall, subject to the conditions and requirements of this Agreement, vest with respect to South Point as to the uses, densities, configuration, massing, design guidelines and methods, development standards, the site plan, plat and other approval processes, road placements and size, road curb cuts and connections, residential uses, and resort, commercial and institutional uses, and other improvements, as reflected in the Promontory SPA Plan Book of Exhibits as applicable to the South Point Property as amended by the Prior Amendments and all other provisions of this Development Agreement. The Promontory SPA Plan Book of Exhibits and the Appendices to this Development Agreement, as amended by the Prior Amendments, shall be deemed a part of this Development Agreement and shall be binding upon all parties hereto, but only to the extent such Exhibits and Appendices are applicable to the South Point Property.

4.4 Permitted Uses and Densities. The following uses and densities shall be permitted within South Point:

4.4.1 Resort Units. 100 Resort Units on the Property, tightly clustered and either single family attached, detached, zero lot line or condominium setup on lots less than or equal to one half acre. The Summit County Manager may, in the Manager's sole discretion, allow Resort Unit lots that are larger than one half acre. Resort Units shall have a maximum Floor Area of 2,500 square feet. A plat note shall be required stating the maximum Floor Area.

4.4.1.1 Maximum Dwelling Unit Size Restriction. 2,500 net livable square feet is the maximum Floor Area for a Resort Unit. A lot owner shall not be allowed to purchase an adjoining lot and combine two lots under the rules, to be established in the Master Declaration or any recorded supplemental declaration, for the purpose of increasing the maximum Floor Area. A plat note shall be required setting forth this restriction.

4.4.1.2 Preservation and Ridgeline Prohibition. No Resort Unit or related structure shall be situated in any Preservation Area Viewshed or Ridgeline Area designated in the South Point SPA Plan.

4.4.1.3 Retention Area Restrictions. [intentionally omitted]

4.4.1.4 Exterior Change to Unit and Landscaping Restriction. Exterior changes to Resort Units will be prohibited by supplemental design guidelines. In addition, supplemental design guidelines will impose a uniform landscaping scheme and require common landscaping maintenance in all resort areas.

4.4.1.5 Owner Lock-off Area. Owners of Resort Units will be provided a permanent storage facility, either central to the resort cluster or within the premises of each Resort Unit, in which to store their personal possessions while the dwelling is being rented.

4.4.1.6 Covenant to Allow Nightly and Short-Term Rentals. The Supplemental Master Declaration for each resort cluster shall allow overnight and short-term rentals.

4.4.1.7 Limited Occupancy. Resort Units shall be used for short-term occupancy not to exceed six (6) months by any resident in a single calendar year period. Resort Unit owners are ineligible to qualify for permanent resident status based upon the Resort Unit ownership. A plat note shall be required setting forth this restriction. The Supplemental Declaration of CC&Rs for each cluster of Resort Units will contain a prohibition against owner-occupancy of more than six (6) months in any calendar year.

4.4.1.8 Club Membership. If a membership golf course is constructed in South Point, a golf membership will be offered for purchase with each Resort Unit.

4.4.1.9 Approved Locations and Administrative Designation of Other Locations. Up to 100 Resort Units shall be allowed in South Point adjacent to the proposed location for a golf course, with PODs 5, 15, 10, 13, 14 and 18 designated as meeting this location criterion, or in other appropriate PODs for resort development, which may be administratively approved by the Community Development Director based on the adjacency criteria stated below.

4.4.1.10 Adjacency Criteria. Resort Units not located in the aforementioned qualified locations will be adjacent to or across the street from a club or resort amenity such as a clubhouse, spa, swimming pool, tennis court, equestrian center or golf course fairway. Resort Units will be sited in such a way as to orient toward the adjacent amenity or receive resort services from a nearby association or club facility or other amenity. Other criteria for appropriate location of Resort Units may include walking distance to an adjacent or nearby amenity, line of sight to the amenity or ability to reach the amenity by short golf cart ride.

4.4.1.11 Check-In. All Resort Units will have centralized check-in within an adjacent Association or club facility or other adjacent amenity facility or shall have a separate hospitality center facility within a resort cluster specifically built for the Resort Units.

4.4.1.12 Standardized Furnishings/Décor. Resort Units will be offered with a standardized furnishings and décor package to facilitate centralized maintenance and housekeeping.

4.4.1.13 Centralized Rental Management Available. A standard agreement for nightly short term rental and management services (including housekeeping) will be offered through a private club, the Association or an adjacent boutique hotel or destination spa facility or by Promontory Realty, L.L.C. or another licensed real estate brokerage. This rental arrangement will not be mandatory.

4.4.1.14 Conversion Fee. In the event that a court or similar official government decision body determines that Section 4.4.1.7 herein is not enforceable and after such determination an owner of a Resort Unit is violating said Section by using such unit for Permanent Occupancy, an impact fee in the amount of \$10,000 will be payable to the County by the Resort Unit Owner. Such conversion fee shall be payable regardless of whether the occupancy limitation in Section 4.4.1.7 is held to be legally unenforceable by a court of competent jurisdiction. A plat note shall be required setting forth this requirement.

4.4.1.15 Subdivision Plat Submittals. Since Resort Unit plats are more dense, smaller and theoretically less valuable than second-home units, and can be located in critical viewsheds as designated in Exhibit E of the Promontory SPA Plan Book of Exhibits and the Eastern Summit County Development Code, additional application materials shall be required in subdivision plat submittals for Resort Units. Landscape plans, architectural elevations, site plans that include unit placements and site contours, and such other materials reasonably deemed to be necessary to evaluate Resort Unit subdivision plats for consistency with the Promontory Global Principles set forth in the Promontory SPA Plan Book of Exhibits shall be submitted.

4.4.2 Golf Courses, Club and Community Facilities and Related Uses. One appropriately sized and sensitively located 18-hole, private golf course (a golf course must be environmentally sensitive, and minimize the use of pesticides, fertilizers, and irrigation water), equestrian and other golf club facilities including restaurants, retail and commercial uses, private clubs and other similar uses; and community gate houses, temporary and permanent sales facilities, maintenance facilities and other similar uses related to the operation, maintenance, marketing, and sales of South Point shall be permitted.

4.4.2.1 Golf Course Requirements

4.4.2.1.1 The design of the golf course shall permit wildlife habitat continuum around and through each golf course that is constructed within the Community where deer/elk and sage grouse populations and migration are of particular concern.

4.4.2.1.2 In conjunction with an application for review and approval of a golf course, the Developer shall include a specific plan for maintenance, including the type, amount, and frequency of fertilizers and pesticides that will be used, as well as how reuse of waste water would be utilized, if reasonably available.

4.4.2.1.3 Summit County shall review and approve final golf course designs and related impact mitigation as a low impact development activity in accordance with the provisions set forth in the Promontory SPA Plan Book of Exhibits, this Development Agreement and all applicable provisions of Appendix III. Summit County may seek input from recognized wildlife experts.

4.4.2.1.4 [intentionally omitted].

4.4.3 Freestanding Retail. [intentionally omitted]

4.4.4 Base Residential Density. 150 high end, second home, estate-type single family detached dwelling units, which have a minimum Floor Area of 3,500 square feet of Floor Area, and sit on lots at least one acre in size. The Summit County Manager may, at the Manager's discretion, allow Estate Lots that are smaller than one acre at the time of approval of a Final Subdivision Plat containing such any such lots. There shall be a maximum dwelling unit size of 10,000 net livable square feet of Floor Area. A plat note shall be required to set forth these minimum and maximum building requirements. All structures which are built within the any Viewsheds as designated on Exhibit E, shall comply with the Design Guidelines and the Supplemental Design Guidelines for Retention and Ridgeline Areas in Exhibit C. Additionally, all base residential units located within Ridgeline Areas shown on Exhibit E must comply with the ridgeline requirements of Section 4.8.6.1.6.

4.4.4.1 Maximum Dwelling Unit Size Exception. Up to 15,000 square feet may be allowed if a lot owner first acquires an adjacent vacant lot and causes the two lots to be combined under rules to be established in the Master Declaration, which rules shall establish the prohibition of any additional structure from being built on that lot through deed restriction or otherwise, or, at Developer's option, a lot owner first acquires a vacant Estate Lot in any Retention Area Viewshed and causes the prohibition of any structure from being built on that lot through deed restriction or otherwise.

4.4.4.2 Preservation Area Prohibition. No residential dwelling units or structures shall be situated in any Preservation Area Viewshed so designated on Exhibit E to the Promontory SPA Plan Book of Exhibits. Any structures or building areas (building pads or envelopes) on the Master Plan which encroach into the Preservation Area Viewshed must be shifted or relocated to more appropriate areas of the Community which comply with all requirements and Benchmarks of this Agreement so as to assure that no structures and only Open Space (including permitted minor recreational facilities, roads, and utilities) will be located within the Preservation Area Viewsheds.

4.4.4.3 Ridgeline Guidelines. All residential dwelling units or structures situated within any Ridgeline Area, as designated on Exhibit E, shall comply with the Supplemental Design Guidelines at Exhibit C. Failure to so comply shall require the relocation of such units to more appropriate areas of the Property.

4.4.5 Incentive Residential Density. [intentionally omitted].

4.4.6 Institutional Uses. The following institutional uses shall also be permitted within South Point: Schools, at locations designated on the Master Plan, fire and law enforcement facilities, utility facilities, including water wells and related structures, water storage facilities including tanks and ponds, water lines, sewer lines, sewage treatment facilities, effluent storage

ponds and discharge facilities, power substations and distribution facilities, and employee housing. All institutional structures shall be subject to the Thematic and Design Guidelines that are applicable to other structures in the Development.

4.5 Development Configuration of South Point. The general development configuration of South Point is shown on the Promontory Master Plan, a copy of which is included as Exhibit B in the Promontory SPA Plan Book of Exhibits as such plan has been modified by the South Point Master Plan Amendments and the Prior Amendments. The Promontory Master Plan as modified by the South Point Master Plan Amendments and the Prior Amendments reflect the general location on the South Point Property of Development Parcels, Residential Units, Resort Units, a golf course, other amenities, major parcels of Open Space and other land uses within South Point, and the approved general location of the arterial and access roads and the other infrastructure or service facilities serving South Point. To the extent that the Master Plan shows structures in the Preservation areas, as designated on Exhibit E as modified by the South Point Master Plan Amendments, these units shall be relocated or eliminated prior to subdivision plat approvals. The specific location and engineering of Projects, Residential and Resort Units and related roads, a golf course and other amenities, utilities and other infrastructure and the engineered delineation of Preservation Viewsheds and Open Space shall be finalized at the time of Final Subdivision Plat or Final Site Plan or Low Impact Development Activity approval pursuant to the standards and processes set forth in this Development Agreement. Nothing in the Master Plan shall be read to extinguish or abandon any private rights of access or any existing public thoroughfares. The Developer may modify Development Parcels and may add or reduce residential units within Development Parcels only in accordance with the standards of this Development Agreement without the necessity of amending the Master Plan. Upon approval of any Final Subdivision Plat or Final Site Plan or Low Impact Development Activity approval, the Master Plan shall be deemed amended to conform to the final approval in question.

4.5.1 South Point Clubhouse Location. In order to provide consistency between the adjacency criteria of Section 4.4.1.10 and the amended, revised configuration of Resort Units set forth in Section 4.4.1.9 above, the Master Plan, found as Exhibit B to the Initial Development Agreement, has been amended to designate PODs 15, 16, 17, and 18 as a potential clubhouse site. The County has adjusted the boundary of the original Conservation Easement in the areas of PODs 16, 17, & 18 in order to allow the clubhouse to be constructed in this location (subject to applicable site plan approval requirements) so long as an equal amount of Open Space is added to the Conservation Easement on the south end of South Point, in the Highway 248 viewshed. The reconfigured conservation easement area is more particularly described in the legal description on Exhibit "B" and is depicted on the drawing on Exhibit "C" to the 2007 Second Amendment, both of which are attached hereto as a part of Attachment 3 to this South Point Development Agreement.

4.5.2 South Point Golf Course Routing. In order to provide for the highest and best use of adjacent PODs and to mitigate the visual and physical impact on the surrounding environment, the potential golf course routings found in the Master Plan, Exhibit B to the Initial Development Agreement, have been revised and rerouted as shown on Exhibit "A" attached to the

2007 Second Amendment and further attached hereto as a part of Attachment 3 to this Development Agreement. The Developer shall have the right, but not the obligation, to route a golf course in the approximate locations set forth in Attachment 3 hereto, subject to Final Subdivision Plat or final Site Plan or Low Impact Development Activity approval pursuant to the standards and processes set forth in this Development Agreement.

4.5.3 South Point Residential Units. The Zoning Land Use Matrix Dated January 16, 2001 and the Master Plan, Exhibit "B" to the Initial Development Agreement, have been amended and revised to allow for up to 150 Residential Units in and among the approximate locations of PODs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 20, 20A-C, 21, 22, 23, 23A-E, 26 and 26A-D to be finalized and subject to Final Subdivision Plat or Final Site Plan or Low Impact Development Activity approval pursuant to the standards and processes set forth in this Development Agreement.

4.6 Community Phasing.

4.6.1 Proposed Phasing.

4.6.1.1 Development will progress in a manner so that at any point during the build-out of the Community there is a consolidated residential community with significant recreational amenities.

4.6.1.2 [intentionally omitted].

4.6.1.3 The phasing strategy will ensure that completed phases can co-exist and will not produce a sprawling effect, should other phases not be completed.

4.6.1.4 To initiate residential construction in each phase, the following criteria must be satisfied (initiation of residential development shall mean the issuance of any building permit, including a footings and foundation permit for any residential structure):

4.6.1.4.1 Road and water infrastructure must, at a minimum, be sufficiently complete to allow proper access and protection capabilities by the Park City Fire Service District.

4.6.1.4.2 A specific time frame for completion of all infrastructure in that phase shall be established.

4.6.1.4.3 The infrastructure must be designed in capacity and at locations to ensure appropriate connections to all future phases.

4.6.1.4.4 There shall be established by the Developer an adequate guarantee by bond or other acceptable mechanism to ensure completion and warranty of all infrastructure.

4.6.1.4.5 The applicable golf, equestrian facility, or resort hotel or amenity for that phase shall either be constructed or guaranteed by a bond or other acceptable means.

4.6.2 Plat Note. An appropriate plat note shall be provided on each subdivision plat which states residential building permits, including footing and foundation permits will not be issued until the developer complies with the requirements of Section 4.6.1.

4.6.3 Benchmarks. The construction of any phase or Project may be limited by the Benchmark provisions of this Development Agreement.

4.7 Specific Guidelines and Conditions: The development of South Point must be consistent with those Specific Conditions and Guidelines set forth in this section, as well as those described in the Promontory SPA Plan Book of Exhibits that are applicable to South Point. The South Point SPA Plan is approved subject to the following conditions, which are in addition to all other conditions specified in this Development Agreement:

4.7.1 Agricultural Preservation Contributions. \$3,000, subject to Price Level Adjustment, for each Residential Unit will be payable by the purchasers of Lots at the time of Lot sale. The County may withhold the issuance of building permits pending payment of this Agricultural Preservation Contribution. The Agricultural Preservation Contribution shall be retained by the County in trust and used to acquire title to or conservation easements on agricultural properties in Summit County or otherwise to preserve or enhance agricultural operations in Summit County.

4.7.2 Affordable Housing Payments. \$500, subject to Price Level Adjustment for each Residential Unit will be payable by the owners of Lots at the time of building permit issuance for dwelling structures on such Lots. The County may withhold the issuance of building permits pending payment of this Affordable Housing Payment. The Affordable Housing Payment shall be held by an appropriate entity and used to subsidize the construction, acquisition or occupancy of residential properties within Summit County for the purpose of providing assistance to individuals providing essential public services within the County, such as school teachers, police officers, fire fighters, and other employees of businesses located in the County.

4.7.2.1 [Intentionally omitted].

4.7.3 Recreation & Amenities.

4.7.3.1 The annexation of the entire South Point Property to the Snyderville Basin Special Recreation District has been accomplished. The Developer and its successors in interest are required to pay all impact fees established by the SBSRD at the impact fee rate in effect at the date of each application for a building permit. The impact fees shall be paid under the Rules and procedures established by the SBSRD.

4.7.3.2 The Developer has proposed a number of private Community amenities and Public benefits. These amenities shall be undertaken by the Developer and maintained on an on-going basis by the Developer, the Association, or other appropriate entity as described herein. If any amenity required by this Development Agreement is removed or discontinued at any time, it shall be the Developer and/or Association's obligation to provide comparable amenity compensation to the residents and guests of the Community. Removal or discontinuation of any amenity that is required to be accessible to the general public under the terms and conditions of this Agreement is not allowed without specific approval of the County Council.

4.7.4 Trails. A public trail system has been constructed within Promontory and provisions made for permanent maintenance. The trails provided are appropriate extensions of the Snyderville Basin trail system as set forth in Exhibit D of the Promontory SPA Plan Book of Exhibits. No further trail extensions or requirements will be imposed by this Development Agreement. Any trail obligations not completed as of the date of this Development Agreement shall continue under the Amended Promontory Development Agreement as further amended by the Third Amendment.

4.7.5 Internal Recreational Facilities. Developer shall construct appropriate internal neighborhood parks, trails and other recreational facilities for use by the Community's residents. Private neighborhood park facilities will be constructed at a rate of 5 acres of improved park for every 500 Residential Units. Any such facilities constructed within South Point will contain appropriate improvements for the neighborhood, shall be easily accessible to the residents of the neighborhood and shall be conveyed to the Association for on-going maintenance.

4.7.6 Water System. The entire South Point Property has been previously annexed into the Mountain Regional Water Special Service District ("Mountain Regional") and all easements have been conveyed to Mountain Regional covering proposed water lines, water tanks, wells and other water facilities which may be located on the Promontory Property as required by that certain Agreement for the Annexation of Promontory Development Project and to Provide Culinary Water to Development between Mountain Regional and Developer, dated May 1, 2000, a copy of which is included in the Promontory SPA Plan Book of Exhibits as Exhibit O (the "Water Service Agreement"). All easements shall be provided within 30 days of a request from Mountain Regional provided that the location of the easements are consistent with areas designated by the

Developer for roadways, common areas or other areas specifically designated for water system improvements.

4.7.7 Water Conservation Measures. Water conservation measures shall be built into the design and operation of the Community, including the use of drought tolerant and natural plant species and, where permitted by all authorities, reuse of wastewater for irrigation of parks, medians, golf courses, and other appropriate areas. If permitted by all authorities and reasonably feasible, a sewer treatment system shall be designed and constructed in a manner that maximizes the opportunities for reuse of wastewater for irrigation and other purposes. If reuse is not presently permitted by all authorities but there are reasonable expectations that reuse will be possible in the future, then the sewer treatment system, to the extent feasible, shall be designed in a manner to permit the incorporation of such.

4.7.8 School Sites. The school site requirements of the Amended Promontory Development Agreement have been complied with prior to the date of this Development Agreement and no additional school site requirements are imposed by this Development Agreement.

4.7.8.1 When the road through South Point to Brown's Canyon Road is completed, school bus pick-up and drop-off turn around and waiting shelter will be provided near the Brown's Canyon gates unless other service is approved by the appropriate school district.

4.7.9 Conversion Fee. [Intentionally omitted].

4.7.10 Golf Access. As authorized by Section 4.7.10 of the Amended Promontory Development Agreement as further amended by the Third Amendment, upon completion of any golf course on the South Point Property of championship quality, the Developer and the developer of Promontory may provide the County with written notice of their agreement to allow for public access only on the South Point course and to increase the daily minimum available public rounds on such course to 60.

4.7.11 Fire District. The entire South Point Property has been annexed into the Park City Fire Service District ("Fire District") before the date of this Development Agreement.

4.7.12 Employee Housing. Some or all of the obligation under the Initial Promontory Development Agreement to provide for thirty-seven (37) employee households consisting of 82 bedroom suites of employee housing may be transferred to the South Point Property by written agreement of the Developer and developer of Promontory after giving written notice to the County. The location of such employee housing units in South Point shall be as indicated on Exhibit A to the 2007 Second Amendment attached

hereto as a part of Attachment 3. Construction of such employee housing units shall be subject to the final site plan approval process in this Agreement.

4.7.13 Permits Required. Prior to the commencement of development activity designated on a Final Subdivision Plat or Final Site Plan or for a low impact development activity, including grading permits, all applicable construction plans, construction mitigation and management plans, bonding, development guarantees, and warranties shall be approved by the Staff. Prior to the commencement of development activity on any lot designated on a Final Subdivision Plat or Final Site Plan or approved as a low impact development activity, or before the commencement of construction on any structure authorized in this Development Agreement, a Building Permit must be obtained from the County in accordance with all applicable requirements of the Code. Building permits, including grading and/or footing and foundation permits will not be issued until all applicable construction plans, construction mitigation and management plans, bonding, development guarantees, and warranties have been established for the related subdivision plat, site plan and/or low impact development activity.

4.7.14 Owner Associations and Management Arrangements.

4.7.14.1 The Association in South Point. There shall be one master home owner association, which shall be the South Point Conservancy, maintained at all times within the Community with the powers and responsibilities set forth in Exhibit F to the Promontory SPA Plan Book of Exhibits and such other powers and duties set forth in the final Master Declaration. A primary function of the Association shall be to maintain internal control over all development. These controls shall, include but not be limited to: a) monitoring and review of all design and site plan elements of the Community; b) monitoring, mitigation, and enforcement of all construction related impacts, and c) ensuring compliance with all requirements of the Development Agreement. Funding mechanisms shall be established to ensure that the Association can comply with all of its obligations under this Development Agreement. All Covenants, Conditions and Restrictions (CC&Rs) must be consistent with this Agreement. Further, all CC&Rs shall be filed with the Summit County Recorder before or in connection with the recordation of the first Final Subdivision Plat, Final Site Plan, or approval of a low impact development activity.

4.7.14.2 Management Agreements. The Association may contract with or otherwise transfer certain management and maintenance responsibilities to third party management companies or to individual Project associations within South Point, so long as the Association maintains ultimate responsibility for the maintenance of all infrastructure that is intended to serve the Community.

4.7.14.3 Individual Project Associations or Management Regimes. An individual Project may have its separate owner or management association and/or

easements and maintenance regimes reasonably required for the convenient and mutually beneficial use and operation of the Project.

4.7.15 Comprehensive Sign Plan Required. Developer may adopt the comprehensive sign plan approved for the Promontory SPA as such plan has been amended from time to time. If the Developer does not substantially adopt the existing comprehensive sign plan for the Promontory SPA, then, prior to the approval of a certificate of occupancy for any residential or commercial building within the Community, the Developer shall submit an application for a comprehensive sign plan. The application shall be reviewed and approved by Summit County as a Low Impact development activity in accordance with the provisions set forth in the Promontory SPA Plan Book of Exhibits, this Development Agreement and all applicable provisions of Appendix III. The sign plan shall address all design, size, location, lighting, and other related standards for all commercial business identification signs, residential development identification signs, construction related signs, Project identification signs, banners, temporary signs, directional signs, and any other signs that may be contemplated by the Developer.

4.7.16 Open Space Preservation. In furtherance of this Agreement and the purposes of existing conservation easements, Developer shall preserve the major Open Space areas shown on the Promontory Master Plan, Exhibit B, as described in Section 4.7.16.1, (as the same shall have been modified pursuant to the Amended Promontory Development Agreement and the South Point Master Plan Amendments) in the same general condition as those areas are presently found, with the exception that environmental management and enhancement activities required in this Agreement shall be undertaken and golf facilities, trails, recreation amenities, roads and utilities may be constructed. Any disturbance of those areas for construction staging or the installation of utility lines or by reason of the construction of golf courses and other amenities, roads and trails and related structures shall be restored through appropriate revegetation.

4.7.17 Construction Mitigation and Management Plan Required. A grading and/or building permit will not be issued for any facility or structure within South Point until an adequate Construction Management and Mitigation Plan has been established for South Point and approved by the County Engineer, who may require changes to address any unforeseen impacts that occur during construction. The plan shall address the following matters specifically, together with any other related matters identified by the Summit County Community Development Director and the Developer. A separate plan may be established for each phase of South Point. In addition, the plan approved for the Promontory SPA may be used by Developer in lieu of creating a new plan.

- (a) Revegetation/erosion protection/runoff control
- (b) Wetland and watershed protection; wetlands enhancement plan
 - (1) All disturbance areas shall be carefully marked/fenced to the extent possible prior to construction. Whenever construction occurs near riparian and drainage areas and significant vegetation which shall be

retained on the site, there shall be an appropriate amount of screening/buffering from construction disturbance

- (c) Site grading
- (d) Dust and debris control
- (e) Recycling construction material waste
- (f) Damage to public roadways as a result of construction
- (g) Traffic control/construction management control
- (h) Hours of construction
- (i) Impact of noise on adjacent residential uses
- (j) Staging and screening of construction materials and equipment (short term basis only)
 - (1) Major stockpiles and construction staging unrelated to construction in the near vicinity shall be located outside of Preservation viewshed areas to minimize the visual impact of such facilities
- (k) Solid waste disposal for construction wastes

4.7.18 Gate Houses. Private monitoring gates (gate houses) may be used and maintained throughout the Community. However, said private gates shall be "community friendly" in nature; namely, that the gates shall remain open during daylight hours and closed during the night. The primary purpose of the gates shall be to monitor access to the Community. Private security provided within the Community shall cooperate and collaborate with the County Sheriff on an ongoing basis, as specified in a Public Safety Agreement. There shall be no signs or other devices nor shall gate personnel be used to discourage public entry.

4.7.19 Wildland Fire Program. A wildland fire program shall be established, which sets forth guidelines for the protection of homes and buildings from the dangers of brush fires. Developer may adopt the program developed for the Promontory SPA.

4.7.20 Drainage and Flood Control. Drainage and flood control facilities shall be constructed (or altered in the case of existing facilities) by Developer as a part of completion of other major facilities and development of the Community in accordance with Ordinance 381 or its successor law. Major facilities, where appropriate, will be dedicated to the County upon completion. Drainage and flood control maintenance (e.g., major channel maintenance, etc.) shall be provided by the County and/or Developer, as appropriate. The Developer shall not be required to use curb and gutter as a part of the rural road standard adopted for the Community.

4.7.21 Private Roads. All roads, to include the backbone arterial road system denoted on the Master Plan, shall be privately owned, shall be built to appropriate county rural road standards, and shall be privately maintained by Developer or an appropriate owner's association. Arterial roads shall provide linkages to existing County roads and adjoining properties to assure an optimal flow of traffic from the Community as shown on Exhibit B.

4.7.21.1 For purposes of this Agreement, the appropriate county standards shall mean the rural road standards attached as Exhibit M to the Promontory SPA Plan Book of Exhibits and those road, driveway, cul-de-sac, and other related infrastructure design requirements of Section 4.7 of the Snyderville Basin Development Code. Specifically, these standards address access, intersections, road grades, road design, driveway access, cul-de-sac design, road base specifications, bridges and culverts, traffic control and signage, road maintenance, level of service standards, gates, sidewalks and pedestrian trails.

4.7.21.2 Non-arterial road improvements, including grading, shall only be allowed after approval of a final subdivision plat and specific construction drawings for that portion of the road located within the subdivision plat. The backbone arterial roads shown on the Master Plan may be constructed ahead of subdivision plat approvals, but require an appropriate grading permit, which complies with the requirements of this Section 4.7.21, from the County Engineer.

4.7.21.3 All road cuts and grading plans shall be clearly identified in the construction drawings, which will be reviewed and approved by Summit County. The Developer shall eliminate whenever possible significant cut and fill slopes for the construction of roads within the Resort, particularly in any viewshed "preservation and retention areas" designated in this Agreement. When substantial cut and fill is proposed in key viewshed areas, the Developer must demonstrate to the satisfaction of Summit County that no other, less disruptive alternative exists.

4.7.21.4 The construction of roads across slopes that exceed 30% is not permitted without specific approval from the County Council. The County has approved certain roads crossing 30% slopes as set forth in Appendix IV hereto. The maximum road grade of an arterial road shall be eight (8) percent. On all other roads, a grade of less than eight (8) percent is encouraged and preferred. However, road grades in excess of eight (8) percent, up to a maximum of ten (10) percent, may be allowed for short distances when, in the opinion of the County Engineer, it is in the best interests of preserving the natural environment and when approved by the Park City Fire Service District. Except for approved roads in Appendix IV, short distances shall not exceed 500 feet within any 1,000 foot segment.

4.7.21.5 [Intentionally omitted].

4.7.21.6 All roads constructed in the Community shall be guaranteed and warranted under a Development Improvements Agreement, the specific requirements for which are further defined herein.

4.7.22 Lighting Guidelines. All exterior street and other lighting shall be kept to a minimum. A specific project-related lighting plan shall be provided within 180 days of

the effective date of this Agreement or the first residential related subdivision plat, whichever comes first. Only high pressure sodium, incandescent, warm LED, or other sources appearing to be amber in color will be allowed. The CC&Rs should maintain specific guidelines that ensure there will be minimal exterior lighting impact from all residential structures. Developer may adopt the same standards as are applicable in the Promontory SPA.

4.7.23 Equestrian Facility. Any Equestrian Facility shall be subject to approval by Summit County through a final site plan review in accordance with the provisions set forth in the Promontory SPA Plan Book of Exhibits, this Development Agreement and all applicable provisions of Appendix II.

4.7.24 Agriculture.

4.7.24.1 Developer shall be responsible for installing and/or maintaining perimeter fencing of any locations where an active agricultural operation exists on an adjacent property. Such fencing shall be installed, if required, prior to the approval of any subdivision plat in the adjacent development phase.

4.7.24.2 The Association shall monitor and immediately respond to conflicts between the Community and adjacent agricultural operations. If the Association fails to respond and/or conflicts remain, then the Summit County Council shall determine any reasonable mitigation that shall be undertaken immediately by the Developer or the Association to remedy the problem.

4.8 Community Benchmarks. South Point's development concepts and commitments to its owners and to the County and the provisions of Ordinance 298-A require the Developer's achievement of certain Benchmarks relating to the implementation of certain County policies, the accomplishment of specific mitigation measures required under certain circumstances, or the completion (or bonding of completion) of certain amenities and other proposed or anticipated public benefits. This section implements these requirements through the Community Benchmarks (the "Benchmarks") specified in the following sub-sections. Each benchmark sets forth performance standards, a system for monitoring performance, and enforcement provisions to remedy non-performance. The individual Benchmarks shall be enforced, as described below, through one or more of the following enforcement provisions: (1) conditions of approval for individual condominium or subdivision plats, site plans, building permits, or low impact development activity; (2) the Periodic Review and default provisions set forth in this Agreement; and (3) through action of the Association in South Point and in certain cases, the Design Review Committee of the Association, where such action is specifically authorized. In the event that these Benchmarks are violated by individual lot owners, the Developer or Association shall use its best efforts to assist the County in gaining compliance with respect to that individual lot owner.

4.8.1 Development Pattern.

4.8.1.1 Standards. All estate single family detached dwelling units will be constructed on large lots. Estate Lots will be a minimum of one acre, unless otherwise approved by Summit County. The development pattern will, to the extent possible, ensure views and other development characteristics that are consistent with a high-end residential development. The estate homes shall be located near to a fairway or other golf or community amenity or configured in such a manner as to ensure that they will be related to the high end second home community so as to attract secondary homebuyers.

All patio home and attached single family dwelling units shall be in clustered projects that are in close proximity to a golf fairway, golf view, clubhouse, equestrian center or other resort amenity. These "patio and attached single family dwelling unit" types will not be permitted until such time as the golf course or corresponding resort amenity is constructed or the Developer has established a suitable bond or other mechanism to ensure the construction of that golf course or amenity. In that adjacent properties have not been fully developed, the Developer must ensure that there is adequate buffering between Project Development Areas and adjoining properties.

4.8.1.2 Monitoring. Compliance with the foregoing development pattern standards shall be ascertained by the County at the time of Final Subdivision or Condominium Plat or Final Site Plan or Low Impact approval for each Project. Any such final approval shall be conclusive that the plat or site plan in question complies with this Benchmark.

4.8.1.3 Enforcement. The County shall have the ability to enforce the development pattern policies and standards by withholding condominium or subdivision plat, and site plan approvals, as well as grading permit approvals for a proposed Project Site, and issuing stop work orders for that particular Project Site until these policies and standards associated with that particular Project Site are addressed consistent with this Agreement, the Development Code, and other County or other agency policies and programs in approved Final Site Plan or Plat. In addition, if the County finds, on the basis of substantial evidence, that a Developer has not complied in good faith with the material terms and conditions of this Section 4.8.1, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.2 Development Phasing.

4.8.2.1 Standards. In order to comply with the Global Development Principles, all units, regardless of whether an estate lot or patio/attached single family dwelling, are to be located in close proximity to a golf fairway/view, or other golf and/or resort amenity.

4.8.2.1.1 [Intentionally omitted].

4.8.2.1.2 [Intentionally omitted].

4.8.2.1.3 [Intentionally omitted].

4.8.2.1.4 South Point. To permit residential construction in any proposed subdivision within South Point, all infrastructure necessary to serve such subdivision and the 18 hole golf course shall be constructed or guaranteed by a bond or other acceptable means. Where the Developer can adequately demonstrate golf membership is available to South Point residents on other Promontory courses, the Director may waive the South Point golf course construction requirement. Alternatively, the Director may waive the golf course requirement if Developer provides other recreational amenities to which South Point residents may acquire membership or use privileges. Such a waiver may require the reconfiguration of the development in the South Point phase.

4.8.2.1.4 [Intentionally omitted].

4.8.2.1.5 Development of South Point shall progress in a manner so that residential development relates appropriately to recreational amenities and that the development does not produce a sprawling effect.

4.8.2.2 Monitoring. Compliance with the foregoing development pattern standards shall be ascertained by the County at the time of Final Subdivision or Condominium Plat or Final Site Plan or Low Impact approval for each Project. Any such final approval shall be conclusive that the plat or site plan in question complies with this Benchmark.

4.8.2.3 Enforcement. The County shall have the ability to enforce the development pattern policies and standards by withholding condominium or subdivision plat, site plan, and low impact approvals, as well as grading permit approvals for a proposed Project Site, and issuing stop work orders for that particular Project Site until these policies and standards associated with that particular Project Site are addressed consistent with this Agreement, the Development Code, and other County or other agency policies and programs in an approved Final Site Plan or Plat. In addition, if the County finds, on the basis of substantial evidence, that a Developer has not complied in good faith with the material terms and conditions of this Section 4.8.2, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.3 Occupancy of Incentive Density Units. [Intentionally omitted].

4.8.4 Employee Housing.

4.8.4.1 Standards.

4.8.4.1.1 All or any portion of the obligation in the Initial Promontory Development Agreement to provide for thirty-seven (37) employee households consisting of 82 bedroom suites of employee housing may be transferred to the South Point Property by written agreement of the Developer and developer of Promontory after giving written notice to the County. If this obligation is transferred to South Point, the employee housing shall be clustered together in such a way as to create a high quality sense of community. This employee housing community shall be located where indicated on Exhibit A to the 2007 Second Amendment, which is included as a part of Attachment 3 to this Development Agreement. In all instances, employee housing should have easy access (walking, bicycling, and internal resort transit) to Community employment generators and be sited in a manner that is generally convenient to the South Summit School District bus routes. The approved location on the Master Plan is deemed to comply with the foregoing criteria. All employee housing shall be approved pursuant to the site plan review and approval process herein.

4.8.4.1.2 All employee housing shall be produced by the Developer within a reasonable time schedule, to be approved by the County, which correlates to the construction of employment generators.

4.8.4.1.3 The Developer shall provide a specific plan that is acceptable to Summit County for the long-term ownership of the employee units, proposed deed restrictions on the use, rules and regulations regarding occupancy, maintenance obligations and maintenance funding practices that will be used, and affordable rent targets. The plan should also address unit size, quality of construction and general layout.

4.8.4.1.4 Priority for occupancy of employee housing units shall be given to employees, together with spouse and children, who earn at least 80% of their salaries from employment that is located within the boundaries of the Promontory SPA.

4.8.4.2 Monitoring. Compliance with the foregoing standards shall be ascertained by the County upon periodic review.

4.8.4.3 Enforcement. In the event the County asserts that Developer has failed to provide or bond for the completion of any required employee suites, the County may withhold approval of future Final Subdivision Plats and Final Site Plans until such time as these standards are met or the County agrees to an amendment to the standards of this Section.

4.8.5 Environmental Enhancement, Conservation, and Preservation Management Plan.

4.8.5.1 Standards. Developer will implement the Natural Resource Preliminary Assessment and Natural Resource Management Strategy, dated November 4, 1999, by using best management practices to protect key natural communities, maintain open space, improve riparian zones, and control noxious weeds and exotic species, as more fully set forth in Exhibit Q to the Promontory SPA Plan Book of Exhibits.

4.8.5.1.1 At the time of each final subdivision plat, the Developer shall identify all improvements/enhancements that shall be undertaken in accordance with the implementation plan. Such improvements/enhancements shall be guaranteed under an appropriate DIA.

4.8.5.1.2 The County may periodically review the progress of the implementation plan with Developer and the Division of Wildlife Resources to identify reasonable measures that can be undertaken to "improve" wildlife habitat. Development compliance with all reasonable recommendations that occur as a result of this review shall become a new benchmark during the annual reporting process.

4.8.5.1.2.1 Developer shall initiate a program so as to allow wildlife on its resort golf courses, except for tees, greens, water features and landscaped areas, and may adopt the plan used within the Promontory Property.

4.8.5.1.3 The reuse of waste water, if reasonably feasible and permitted, shall be maximized and used for golf course irrigation. Before commencing with reuse, the Developer shall prepare a final study of the environmental consequences of waste water reuse for review and approval by Summit County.

4.8.5.1.4 Water quality base line measurements shall be established for drainages affected by the Community. The Developer or the Association shall immediately eliminate any source of pollution in violation of the Clean Water Act or Safe Drinking Water Act.

4.8.5.1.5 Upon request by the County, the Developer shall be responsible for providing to Summit County for review and approval specific management plans for any activity that has the potential for causing environmental quality problems, including, but not limited to equestrian operations.

4.8.5.1.6 The Developer shall eliminate whenever possible significant cut and fill slopes for the construction of roads within the Community. The construction of roads across slopes that exceed 30% is not permitted without specific approval from the County Council.

4.8.5.1.7 The CC&Rs shall include a requirement that the Association will provide, on an on-going basis, an environmental educational program, approved by the County, geared to potential purchasers, residents and guests of the resort, and the general public that may be crossing the property on the public trail system.

4.8.5.1.8 The CC&Rs shall contain provisions related to the control of pets, outside fires, and other environmental concerns, including fines and the use of such revenue for environmental enhancement and education.

4.8.5.1.9 Low intensity recreational activities, such as snowmobiles, bikes, hiking, cross country skiing, and horseback riding, shall be limited to a network of easily identifiable trails within the Community and away from possible wildlife habitats.

4.8.5.1.10 [intentionally omitted]

4.8.5.1.11 There shall be no over-lot grading allowed (cutting on the uphill side and filling on the downhill side) in connection with home construction or for the purposes of creating flat development sites for non-residential uses except to the extent contemplated by the Design Guidelines in Exhibits C and G.

4.8.5.1.12 Upon request by the County, the Developer shall submit to the Summit County Manager an assessment from a recognized expert of the Community's impacts on air quality resulting from the development, particularly with respect to fire places. If it is determined at any time that the Community is a significant contributor to air quality problems in the immediate air sheds, then the Developer shall implement limits on the future installation of wood burning fireplaces. The Developer, at its discretion, may choose to minimize the number of wood burning fire places in the Master Declaration.

4.8.5.2 Monitoring. Compliance with the foregoing standards shall be ascertained by the County upon periodic review and during issuance of grading permits by the County Engineer.

4.8.5.3 Enforcement. The County shall have the ability to enforce the environmental preservation policies and standards by withholding condominium or subdivision plat, site plan, and building permit approvals, and issuing stop work orders for a particular Project Site that is not in compliance with these Environmental policies and standards until these policies and standards associated with that particular Project Site are addressed consistent with this Agreement, the Development Code, and other applicable County or other agency policies and programs. In addition, if the County finds, on the basis of substantial evidence, that Developer

has not complied in good faith with the material terms and conditions of this Section 4.8.5, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.6 Open Space and Viewshed/Ridgeline Preservation. There are six kinds of Open Space within the Promontory Community, some of which will be located within South Point. These are: (1) major Open Space designated on the Master Plan, (2) significant common areas within development neighborhoods which do not contain any type of structure, road, parking lots, or other similar features, (3) small common areas within development neighborhoods in which scenic view and open space value is minimal, (4) large open recreational lands, including golf, (5) small open recreational lands intended for neighborhood benefit, such a neighborhood parks, and (6) Open Space owned by individual lot/property owners in portions of lots that are restricted to prevent disturbance (including no structures) and fencing.

4.8.6.1 Standards.

4.8.6.1.1 The Promontory Property and the South Point Property, together, will contain no less than 60 percent passive open space (approximately 3,900 acres). Developer shall comply with the Open Space standards in Section 4.8.6.1. to the extent applicable to the South Point Property. Additional open space may be required to protect key viewsheds and other environmentally sensitive areas should the minimum requirement be inadequate. Parking lots and related landscaping shall not be counted as open space. Additionally, small common areas within development neighborhoods in which scenic view and open space value is minimal shall not be counted as part of the 60% open space requirement. Golf courses and areas previously covered by conservation easements shall be allowed as open space.

4.8.6.1.2 The principal function of passive open space is to organize development in a manner that is consistent with the Eastern Summit County General Plan, the protection of viewsheds and environmentally sensitive areas as enunciated in Ordinance 298-A, and the preservation of nearby and continuing on-site agricultural uses. Thus, the location and configuration of open space must further these independent objectives. With the Open Space areas preserved around the development parcels as shown on Exhibits B and E as amended by the South Point Master Plan Amendments and the Prior Amendments, the objectives of these Open Space standards have been fulfilled.

4.8.6.1.3 The passive open space provided must be "meaningful" in nature; namely, open space that is continuous and not unduly broken up by structures or other development configurations. While

there may be small open spaces within a development area, the open space referred to here should not be compartmentalized into isolated pockets of green space. With the Open Space areas preserved around the development parcels as shown on Exhibits B and E as amended by the South Point Master Plan Amendments and the Prior Amendments, the objectives of these Open Space standards have been fulfilled.

4.8.6.1.4 An operationally feasible portion of the Community open space area may be maintained as an operating cattle ranch, or operated as a part of a nearby ranch. Developer shall be responsible for assuring continuity of any agricultural operations.

4.8.6.1.5 The South Point critical viewshed has been preserved through conservation easements recorded prior to the date of this Development Agreement. The Brown's Canyon Road critical viewshed must be preserved, as more specifically identified in Exhibit E as amended by the South Point Master Plan Amendments and the Prior Amendments. Consistent with Exhibit E as amended and existing conservation easements no development of structures, intended for occupancy or equestrian facilities, is permitted in Preservation Areas. Development is allowed in Ridgeline Areas so long as it complies with the Development Policy in the definition of "Viewshed" in this Agreement and the Supplemental Design Guidelines in Exhibit C. With the Preservation areas preserved as shown on Exhibit E and the South Point Master Plan Amendments, as reflected in Exhibit A to the 2007 Second Amendment and included as a part of Attachment 3, the objectives of this standard have been fulfilled.

4.8.6.1.6 In no instance shall any development be permitted to encroach onto a ridgeline area designated on Exhibit E in a manner that is inconsistent with the requirements of this paragraph. For purposes of this Agreement, ridgeline protection means that on a ridgeline area designated on Exhibit E, building forms shall not break or detract from the natural lines of the hillside or ridgeline. A building that is located a minimum of 50 vertical feet below the ridge will generally be regarded as meeting the ridgeline requirements herein provided. Further, residential units which comply with the approved Supplemental Design Guidelines in Exhibit C and do not break a Ridgeline Area skyline when viewed from U.S. Highway 40, Interstate 80, Highway 248, and the Brown's Canyon Road, shall be deemed to fulfill all ridgeline requirements. The vantage points for evaluation of compliance with this ridgeline preservation requirement shall be those adopted in the 2015 Second Amendment. The County may require at subdivision plat review additional computer imaging to ensure compliance with this benchmark requirement.

4.8.6.1.7 All common areas within development neighborhoods shall be identified and restricted so as to permanently prohibit any development not authorized by the final subdivision plat.

4.8.6.1.8 All open recreational lands shall be identified, specific uses designated, and restrictions established at the time of final subdivision plat or site plan approval.

4.8.6.1.9 A plat note shall be provided on each final subdivision plat that requires building disturbance areas (building envelopes) to be identified by the Association at the time of design review within each lot and which prohibits any disturbance outside of that area. This information will be available to Summit County upon request to ensure compliance with the Community development policies.

4.8.6.2 Monitoring. Except with respect to the Brown's Canyon critical viewshed, which shall be addressed as described above in Section 4.8.6.1.5, substantial compliance with the requirement in the Initial Promontory Development Agreement with respect to preserving major Open Space designated on the Master Plan was achieved through the recording of conservation easements prior to the date of this Development Agreement. Compliance by an owner with the limits of disturbance requirements imposed by the Design Guidelines shall be ascertained at the time of building permit review for each structure within South Point. Viewshed and ridgeline protection shall be monitored at the time of periodic review and prior to approval of any Final Subdivision Plat or Final Site Plan for each Project.

4.8.6.3 Enforcement. The County shall have the ability to enforce the open space and viewshed/ridgeline preservation policies and standards by withholding condominium or subdivision plat, site plan, and building permit approvals, and issuing stop work orders for a particular Project Site that is not in compliance with the foregoing policies and standards until these policies and standards associated with that particular Project Site are addressed consistent with this Agreement, the Development Code, and other applicable County or other agency policies and programs. In addition, if the County finds, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms and conditions of this Section 4.8.6, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.7 Transportation System.

4.8.7.1 Standards.

4.8.7.1.1 Within 24 months of the first Final Subdivision Plat approval within South Point, the Association shall implement a transit system providing services as needed, either directly or through outside contractors, or in cooperation with one or more neighboring homeowners' associations, to Park City, the Salt Lake City International Airport, the Canyons Resort, Kimball Junction and Kamas. This can be done through scheduled service or an on-call system (passenger to driver) to provide pick-up and drop off at convenient locations within the Community, such as club amenities and Association facilities, employee housing and at identified external locations. This system may be implemented as an extension of the Promontory Community transportation system by written agreement between the Association and the Promontory Conservancy. In the event the system is implemented as an extension of the Promontory Community transportation system, compliance with Sections 4.8.7.1.4 and 4.8.7.1.5 below shall be deemed satisfied

4.8.7.1.2 Principal resident, guest, and construction vehicle access to all development with the Community shall be maintained through Brown's Canyon.

4.8.7.1.3 As development progresses, Developer shall make such improvements to Brown's Canyon Road that are required to mitigate the specific impacts of this development as are required by the County Engineer.

4.8.7.1.4 The above-referenced transit system shall be of high quality, considering the quality, type and number of transit vehicles, fares, frequencies, and other standard measures. It should be convenient to the residents of the Resort Community. To the extent possible, it should provide connections to other local and regional transit systems. The transit system shall be appropriately convenient for those employed within the Community, but who live off site. For employees, the transit system shall take into account the unique needs of the Community's employees, including, but not limited to the seasonal and shift nature of the uses within the Community. The purpose of this benchmark is to ensure that the number of transit service vehicles, fixed routes, fare structures, appropriate passenger waiting facilities, service frequency and flexibility, and other elements of the service are appropriate or expanded as necessary to accommodate and promote ridership by residents and employees. This on-going transportation assessment shall be subject to periodic review by Summit County and adjustments to the Transportation Plan may be required, where appropriate, by the Director.

4.8.7.1.5 Prior to the issuance of a certificate of occupancy for the first Resort Unit or within 24 months of the first Final Subdivision Plat or Final Site Plan approval, whichever comes first, the Association shall provide and maintain an appropriately sized fleet of transit service vehicles/vans to service the Community.

4.8.7.1.6 The Developer shall not protest the creation of a Transportation Service District or Service Area which provides transportation services to South Point, if one is proposed for creation in the future, nor shall the Developer protest the annexation into such an existing District or Service Area. In the event South Point is annexed to a District or Service Area, Developer may discontinue services that are duplicated by the District or Service Area.

4.8.7.1.7 In the event that the construction causes damage to County roadways at any time during the build out of South Point, the Developer shall immediately cause the repair to the roadway in a manner acceptable to the County Engineer.

4.8.7.2 Monitoring. Compliance with the foregoing standards shall be ascertained by the County upon periodic review.

4.8.7.3 Enforcement. The County shall have the ability to enforce the transportation system policies and standards by withholding condominium or subdivision plat, site plan, and building permit approvals, and issuing stop work orders for a particular Project Site that is not in compliance with the foregoing policies and standards until these policies and standards associated with that particular Project Site are addressed consistent with this Agreement, the Development Code, and other applicable County or other agency policies and programs. In addition, if the County finds, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms and conditions of this Section 4.8.7, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.8 Design and Thematic Character Guidelines.

4.8.8.1 Standards. Developer will implement a comprehensive set of Design and Thematic Character Guidelines as a part of the approval process for each construction project within South Point. The Developer will implement the Design and Thematic Character Guidelines included as Exhibit G to the Promontory SPA Plan Book of Exhibits as implemented over time with such changes to such Guidelines to allow for variations in style as may be approved by the Director. Exhibit G represents certain standards that must be maintained, at a minimum, by the Association, and such standards may be amended by the Association from time to time. To the extent possible, the Design Guidelines and the Design and Thematic Character

Guidelines will be utilized to guide the design of all structures in the Community, including but not limited to all single family residential dwellings (attached or detached), equestrian facility, gate houses, hotels, employee housing, club and maintenance facilities, schools and fire station. The CC&Rs pertaining to South Point must remain at all times consistent with the Design and Thematic Character Guidelines implemented within Promontory.

4.8.8.1.1 [Intentionally omitted]

4.8.8.1.2 The CC&Rs shall ensure implementation of a landscape design guidelines in connection with the construction of all residential and commercial structures, and shall require a guarantee of landscape replacement and maintenance for such structures. Such compliance is required to ensure that South Point remains in compliance with the visual quality requirements of the applicable viewshed designation, as defined in this Agreement. These guidelines, attached at Exhibit L, are approved to satisfy this requirement and Developer shall implement those guidelines through design review. Additional landscaping may be required as a part of the design review process.

4.8.8.1.3 Supplemental landscape may be required outside of building envelopes in order to comply with the Landscaping Plan, as determined by the Design Review Committee or the County. This is intended to enhance the natural plant communities that exist or which have been eliminated or seriously damaged over time.

4.8.8.2 Monitoring. Compliance with the Design Guidelines shall be ascertained by the County upon periodic review.

4.8.8.3 Enforcement. If the County finds, on the basis of substantial evidence, that the Developer has not complied with the material terms and conditions of this Section 4.8.8, the Developer, depending on the specific situation, may be declared in default of this Agreement by the County which shall have available to it the default procedures set forth in Article 9 of this Agreement, the enforcement procedures set forth in Section 10.7 of this Agreement, as well as the ability to withhold future approvals.

4.8.9 Service Provider Compliance.

4.8.9.1 Standards. Adequate public utilities and services will be documented and enforced at the time of Final Subdivision Plat or Final Site Plan approval. Developer shall comply with the requirements of service providers covering South Point. In the event a service provider does not require a specific service or annexation agreement, Developer shall comply with those general service provider requirements set forth in Ordinance 298-A and this Development Agreement. Developer shall retain flexibility to deal with alternative service providers or to provide services

within South Point through its own utility consistent with Ordinance 298-A and this Development Agreement.

4.8.9.2 Monitoring. Compliance with the foregoing standards shall be ascertained by the County at the time of Final Subdivision Plat and Final Site Plan review.

4.8.9.3 Enforcement. In the event the County asserts that any proposed Final Subdivision Plat or Final Site Plan fails to comply with the service provider standards set forth above, the County may withhold approval of the Final Subdivision Plat or Final Site Plan until such time as either the Plat or Site Plan is modified to conform to the standards of this Section or the County agrees to an amendment to the standards of this Section.

4.8.10 Agricultural Preservation.

4.8.10.1 Standards. Developer will implement the agricultural preservation program with respect to the South Point Property as set forth in Exhibit H of the Promontory SPA Plan Book of Exhibits.

4.8.10.1.1 The program will include, but is not limited to the acquisition of development rights or conservation easements and/or contributions to the community for undertaking such efforts.

4.8.10.1.2 The Developer shall provide an adequate program to help assist adjacent ranching operations protect themselves from interference and conflicts caused by or related to the residential uses proposed within the South Point Property.

4.8.10.1.3 The design guidelines and development standards shall address how conflicts between agricultural uses and the Community will be managed, including fencing and alternatives for dispute resolution.

4.8.10.1.4 There shall be a mechanism of some type (plat lien or otherwise) established by Developer to ensure that the Agricultural Preservation Contribution is paid by the purchaser to the County at the time of closing on each Lot.

4.8.10.2 Monitoring. Compliance with the agricultural preservation program shall be ascertained by the County upon periodic review.

4.8.10.3 Enforcement. The County shall have the ability to enforce the agricultural preservation policies and standards by withholding condominium or subdivision plat, site plan, and building permit approvals, and issuing stop work orders for a particular Project Site that is not in compliance with the foregoing policies and standards until these policies and standards associated with that particular Project Site are addressed consistent with this

Agreement, the Development Code, and other applicable County or other agency policies and programs. In addition, if the County finds, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms and conditions of this Section 4.8.10, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.11 Promontory Club. [Intentionally omitted]

4.8.12 Community Amenities Program Compliance.

4.8.12.1 Standards. Developer shall comply with its schedule of amenities as required in this Agreement.

4.8.12.2 Monitoring. Compliance with the amenities program shall be ascertained by the County upon periodic review.

4.8.12.3 Enforcement. If the County finds, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms and conditions of this Section 4.8.12, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

Article 5 VESTED RIGHTS

5.1 Vested Rights. Subject to Articles 5.2 and 6.1, the Developer shall have the vested right to have final site plans, subdivision and condominium plat, and construction plans approved and to develop and construct South Point in accordance with the uses, densities, timing, configurations (massing), and the other standards of development as vested in Article 4.3 under the terms and conditions of this Development Agreement, including Article 3 (Findings), and the Promontory SPA Plan Book of Exhibits to the extent applicable to the South Point Property, as amended by the South Point Master Plan Amendments and the Prior Amendments. This Development Agreement confirms and continues without interruption the vested rights previously granted to the South Point Property under the Amended Promontory Development Agreement from the first point in time such rights vested under the Amended Promontory Development Agreement.

5.2 Reserved Legislative Powers.

5.2.1 Future Changes of Laws and Plans: Compelling Countervailing Public Interest. Nothing in this Development Agreement shall limit the future exercise of the police power of the County in enacting zoning, subdivision, development, growth management, platting,

environmental, open space, transportation and other master plans, policies, ordinances and regulations after the date of this Development Agreement. Notwithstanding the retained power of the County to enact such legislation under the police power, such legislation shall only be applied to modify the vested rights described in Articles 4.3 and 5.1, as well as other provisions of this Development Agreement, based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. (Western Land Equities, Inc., v. City of Logan, 617 P.2d 388 (Utah 1980) or successor case and statutory law). Any such proposed change affecting the vested rights of South Point and other provisions of this Development Agreement shall be of general application to all development activity in Eastern Summit County; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to South Point under the compelling, countervailing public policy exception to the vested rights doctrine. In the event that the County does not give prior written notice, Developer shall retain the right to be heard before an open meeting of the County Council in the event Developer alleges that its rights under this Development Agreement have been adversely affected.

Article 6 PROCESSES

6.1 Fees.

6.1.1 SPA Rezone Application, Development Agreement Application, Final Subdivision Plat, Development Review, Engineering and Related Fees. Developer has paid all required fees for this Development Agreement. Developer shall receive no further credits or adjustments toward any other development review, platting, site planning, or similar standard engineering review fees or other fees generally applicable to development application or building permit review and approval. The County may charge such standard planning and engineering review fees, standard building permit review and inspection fees, and other fees as are generally applicable at the time of application, pursuant to the provisions of applicable statutes, ordinances, resolutions, or administrative guidelines.

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

the fees within thirty (30) days following imposition of the fees on South Point based upon the application of the Rational Nexus Test (as defined in Section 6.1.3).

6.1.3 Rational Nexus Test. For purposes of this Development Agreement, the Rational Nexus Test shall mean and refer to a standard of reasonableness whereby Developer and the 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 South Point. The interpretation of "rational nexus" shall be governed by the federal or Utah case law and statutes in effect at the time of any challenge to an impact fee or exaction imposed as provided herein including, but not limited to, the standards of Banberry Development Corp. v. South Jordan City or its successor case law.

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

6.3 Approval of Development Improvements Agreement. A building, grading, or other related development permit will not be issued for any project or any structure within the Community approved in this Development Agreement until a Development Improvements Agreement, in accordance with the following requirements and in a form acceptable to Summit County, has been accepted by Summit County. The Staff shall review the Developer's proposal for a Development Improvements Agreement and provide its recommendation to the Summit County Manager for final approval. A separate Development Improvements Agreement may be established for each phase of the development or for each project.

6.3.1 Improvements which shall be guaranteed include:

6.3.1.1 All utilities, including water and sewer service.

6.3.1.2 All private roads, not including driveways.

6.3.1.3 Temporary and permanent, structural and non-structural run-off control measures.

6.3.1.4 Temporary and permanent, structural and non-structural soil conservation measures.

6.3.1.5 Internal project transit passenger waiting facilities.

6.3.1.6 School bus turnaround at an entry gate, shelter and related features shall be covered with the first residential subdivision plat within each applicable village serviced by an entry gate.

6.3.1.7 Required buffering, screening, and landscaping.

6.3.1.8 All public trails shall be constructed, with respect to timing and design, as required by this Agreement.

6.3.1.9 Neighborhood recreational facilities.

6.3.1.10 All private trails.

6.3.1.11 Site restoration, should development not be completed within the required construction schedule.

6.3.2 The Development Improvements Agreement, in a form and amount of guarantee to be approved by Summit County, shall establish a security to complete improvements, warranties after completion, schedules for completing all improvements, and remedy provisions in the event of a default. All improvements shall be warranted by the Developer for a period of two full years of normal operation from the date of completion, as established by the County Engineer. Summit County will retain 10% of the security for a period of 24 months from the date of completion of the improvements.

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

6.4.1 Water Service.

(a) A feasibility letter for the proposed water supply issued by the State Division of Drinking Water.

(b) Evidence of coordination with the public or private water service provider (i.e., Mountain Regional), including an agreement for service and an indication of the service area of the proposed water supplier, commitment service letter or other binding arrangement for the provision of water services, which meets the water concurrency requirements of Summit County Ordinance No. 400 or its successor law.

(c) Evidence that water rights have been obtained including an application for appropriation or change application endorsed by the State Engineer pursuant to Section 73-3-10 of the Utah Code, and a certificate of appropriation or certificate of change issued in accordance with Section 73-3-16 of the Utah Code. The County shall not accept an application or certificate that has lapsed, expired or been revoked by the State Engineer.

(d) A certificate of convenience and necessity or an exemption therefrom, issued by the State Public Service Commission, for the proposed water supplier.

6.4.2 Sewer Service. A Line Extension Agreement approved by the Snyderville Basin Water Reclamation District (SBWRD) for the proposed development. No final subdivision plat, final site plan or low impact development activity shall be approved until the applicant has paid the applicable system capacity fee for that portion of the proposed development included in such plat or low impact development activity to the extent required in the Developer's agreement with SBWRD. In the alternative, the County may consider allowing Developer to provide South Point sewer treatment and disposal through a sewer treatment package plant or other method consistent with the standards of the SBWRD if such is operated by a regulated public utility under Utah State law and in full compliance with the Department of Environmental Quality.

6.4.2.1 Septic systems will only be permitted for use at two remote cabins, isolated golf course restrooms that cannot reasonably be served by sewer system, and the Community's main entry facility. These systems shall be installed and maintained in full compliance with the regulations and requirements of the Summit County Health Department. Percolation tests related to the installation of these septic systems shall only be conducted during the Spring season, approximately May 15 to June 15, during high water conditions.

6.4.3 Fire Protection.

(a) A letter from the Park City Fire District indicating that fire hydrants, water lines sizes, water storage for fire protection, and minimum flow for fire protection are adequate. These shall be determined using the standard of the Insurance Services Office which are known as the Fire System Grading Standards. In no case shall minimum fire flow be less than 1,000 gallons per minute for a period of two (2) hours.

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

6.4.4 Recreation. A letter from the Snyderville Basin Special Recreation District indicating that Developer is currently in compliance with all requirements of the Trails Agreement and that the terms of this Agreement have been satisfied.

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

6.5 Approval of Final Subdivision Plat and Final Condominium Plat. All Applicants requesting approval of Final Subdivision Plats (residential uses) and Condominium Plats (multi-family uses) within the South Point Property, except those specific projects whose subdivision plat approvals have been granted contemporaneously with the approval of this Agreement, shall follow the process set forth herein. In the event of a procedural conflict between the Code and this Agreement, the provisions of this Agreement shall govern.

6.5.1 Design Review Committee Preliminary Review. Prior to the submission to the County of any Sketch Plans for a proposed subdivision or condominium Plat, an Applicant shall submit its Sketch Plans to the Design Review Committee of the Association for the Design Review Committee's review under the Design Guidelines then in force. The Applicant shall be required to have obtained the preliminary opinion of the Design Review Committee prior to submitting a Sketch Plan to the County.

6.5.2 Sketch Plan. An Applicant shall submit a Sketch Plan of the proposed subdivision Plat or condominium Plat to the Staff for preliminary review prior to submittal of a Final Subdivision Plat. The Staff shall review and take into consideration the written opinion of the Design Review Committee where such an opinion was obtained. Sketch Plans submitted shall meet all of the requirements of Appendix 1 to this Agreement and all of the other terms of this Agreement (including the Promontory SPA Plan Book of Exhibits), Ordinance 298-A, and the Code.

6.5.3 Staff Review of Sketch Plans. The Staff will review a Sketch Plan for compliance with the requirements of this Agreement, Ordinance 298-A and the Code, and will conduct discussions with the Developer to review any modifications necessary to comply with such requirements.

6.5.4 Submission of Final Subdivision Plats and Final Condominium Plats Following Sketch Plan review, the Developer shall submit applications with applicable fees for final subdivision plat and final condominium plat approval to the County. Final subdivision and condominium plats shall meet all of the requirements of Appendix II to the Initial Promontory Development Agreement and all of the other terms of Ordinance 298-A, the Code and this Agreement (including the Promontory SPA Plan Book of Exhibits).

6.5.5 Staff Review and Recommendation. The Staff shall review the information submitted pursuant to Section 6.5.4 for conformance with this Development Agreement, the Promontory SPA Plan Book of Exhibits, the Code, Ordinance 298-A, and engineering detail and shall provide its recommendation to the Planning Commission. The recommendation shall be based solely upon the Developer's compliance with the requirements and standards set forth in this Development Agreement, Ordinance 298-A, and the Code.

6.5.6 Eastern Summit County Planning Commission Review and Recommendation. The Planning Commission shall consider and make a recommendation on the final

subdivision or final condominium plat at a regularly scheduled meeting after receipt of the Staff recommendation. This recommendation shall be based solely upon the Developer's compliance with the requirements and standards set forth in this Development Agreement, Ordinance 298-A and the Code.

6.5.7 Summit County Manager Approval of Final Subdivision Plats and Final Condominium Plats. After receipt of the Planning Commission's recommendation, the Summit County Manager shall render a decision approving, denying or conditionally approving the final subdivision or condominium plat. The decision shall be based solely upon the Developer's compliance with the requirements and standards set forth in this Development Agreement, Ordinance 298-A, and the Code. Nothing herein shall allow the Code, or any amendment or restatements of the Code, to modify or amend the vested rights created in this Agreement, except as provided for in this Agreement. Where any ambiguity or discrepancy exists between the Code and this Agreement, this Agreement shall govern.

6.5.8 Recordation. Except in the event of a denial, upon approval by the County Attorney of the plat and a preliminary title report, and once all required service provider signatures are obtained, the County Manager shall execute the Final Subdivision Plat and any other applicable documents to be recorded in the records of the Summit County Recorder. The project developer shall pay all applicable recording fees.

6.5.9 Appeal. The administrative appeal of the decision of the Summit County Manager shall be to the County Council. Following the exhaustion of the administrative remedies provided herein ending in a final determination by the County Council, that final determination shall be appealable to the District Courts of Summit County under Utah law, U.C.A. 17-27a-801.

6.6 Approval of Final Site Plans. All projects not specifically reviewable under a different section shall be reviewed and approved as a final site plan. Approval of Final Site Plans shall be processed pursuant to the provisions of Appendix II. Site plan review shall include: 1) final site layout conformance with the intent of this Agreement; 2) sufficient architectural design details; 3) landscape; 4) exterior and site lighting; and 5) specific programs for amenities, trails, parks, and other related improvements and facilities as required by this Agreement. In the event of a procedural conflict between the Code and this Development Agreement, the provisions of this Development Agreement shall govern. The Summit County Manager shall render a decision approving, denying or conditionally approving the Final Site Plan. The Director reserves the right to refer the Final Site Plan to the Eastern Summit County Planning Commission for advisory review and comment. Prior to the submission of a Final Site Plan to the Manager, the applicant shall be required to first obtain review of such site plan by the Design Review Committee, who shall provide a written opinion to the County. The decision of the Summit County Manager shall be based upon the Developer's compliance with the requirements and standards set forth in this Development Agreement, Ordinance 298-A, and the criteria required under the Code. Any appeal shall follow the provisions of Section 6.5.9 of this Development Agreement.

6.7 Low Impact Development Activity Approval. Whenever in this Agreement a Low Impact use or approval process is designated or required, the Developer shall submit for review and approval by Summit County all applicable information and documents in accordance with the provisions of Appendix III.

6.8 Temporary Use Permit Approval. Developer may apply for a temporary use and such use shall be reviewed as a Low Impact Development Activity.

6.9 Amendments.

6.9.1 Substantial Amendments. Any amendment to this Agreement that alters or modifies the Term of this Agreement, permitted uses, increased density or intensity of use, deletion of any major public amenity described herein, or provisions for reservation and dedication of land, including Open Space preservation beyond existing conservation easements, shall be deemed a "Substantial Amendment" and shall require a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by the Summit County Council pursuant to the Equal Dignities Rule prior to the execution of such an amendment. Unless otherwise provided by law, all other amendments may be executed without a noticed public hearing or recommendation by the Planning Commission.

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

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

6.9.4 No Further Consents. No amendment shall require the consent or approval of any owner of lots, Residential Units, or other property within the Community other than Developer, unless specifically required by State law.

6.10 Conflicts.

6.10.1 To the extent there is any ambiguity in or conflict with the provisions of this Development Agreement and the Promontory SPA Plan Book of Exhibits as it relates to South Point, this Development Agreement shall control.

6.10.2 The County has reviewed the Code, General Plan, and Ordinance 298-A and has determined that the Developer has substantially complied with the provisions thereof and hereby finds that South Point is consistent with the purpose and intent of the relevant provisions of the Eastern Summit County Development Code, General Plan, and Ordinance 298-A. The parties further agree that the omission of a limitation or restriction herein shall not relieve the Developer of the necessity of complying with all applicable County Ordinances and Resolutions not in conflict with the provisions of this Development Agreement, along with all applicable state and federal laws.

Article 7

INFRASTRUCTURE & CONCURRENCY MANAGEMENT

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

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

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

Article 8

SUCCESSORS AND ASSIGNS

8.1 Binding Effect. This Development Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of South Point. Notwithstanding the foregoing, a purchaser of South Point or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of South Point so transferred in accordance with the provisions of Section 8.2 hereof.

8.2 Transfer of South Point. Developer shall be entitled to transfer any portion of South Point subject to the terms of this Development Agreement upon written notice to the County. Notwithstanding the foregoing, neither Developer nor Developer's successor shall be required to notify the County or obtain the County's consent with regard to the sale of lots or units in single or multi-family residential subdivisions or projects or in commercial projects which have been

platted and received development approval in accordance with the terms of this Agreement. In the event of any such complete transfer of all or a portion of Developer's interests in South Point, the transferee shall be deemed to be the Developer for all purposes under this Development Agreement with respect to that portion of South Point transferred. Developer's obligation to notify the County shall terminate with respect to portions of the Property on which all of the improvements required by this Development Agreement have been substantially completed as evidenced by a certificate of occupancy granted by the County.

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

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

Article 9 DEFAULT, TERMINATION AND ARBITRATION

9.1 Default. The following default provisions apply to defaults under this Agreement and to the enforcement provisions of this Agreement, including the benchmark provisions.

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

- (a) A finding and determination is made by the County based upon substantial evidence that a warranty, representation or statement made or furnished by Developer to the County in this Development Agreement, including any attachments hereto, which is false or proves to have been false in any material respect when it was made.
- (b) Following a periodic or annual review under Section 10.16, a finding and determination is made by the County that upon the basis of substantial evidence Developer has not complied in good faith with one or more of the material terms or conditions of this Development Agreement.
- (c) A finding and determination is made by the County based upon substantial evidence that any other event, condition, act or omission by Developer which materially interferes with the intent and objective of this Development Agreement.

9.1.2 Procedure Upon Default.

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

- (d) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.
- (e) All other remedies at law or in equity which are consistent with the provisions of this Development Agreement are available to the parties to pursue in the event there is a breach.

9.2 Termination.

9.2.1 Termination for Inaction. [Intentionally omitted].

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

9.2.3 Effect of Termination on Developer Obligations. Termination of this Agreement as to any Developer of the Property or any portion thereof shall not affect any of such Developer's obligations to comply with the terms and conditions of any applicable zoning, or subdivision plat, site plan, building permit, or other land use entitlements approved with respect to the Property, nor shall it affect any other covenants or any other development requirements specified or created pursuant to this Agreement. Termination of this Agreement shall not affect or invalidate in any manner the Developer's obligations of indemnification and defense under Section 10.14 or the survival provisions of Section 10.22.

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

9.2.5 Damages upon Termination. Except with respect to just compensation, or similar compensation provided by law, and attorneys' fees under this Agreement, Developer shall not be entitled to any punitive damages against the County upon the unlawful termination of this Agreement.

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

9.3 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 arbitrator 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 prevent the County from exercising enforcement of its police powers where Developer is in direct violation of this Agreement or prevent Developer from seeking an injunction or mandamus where the County is in direct violation of this Agreement.

9.4 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.

Article 10 GENERAL TERMS AND CONDITIONS

10.1 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property as described in Exhibit A hereto. 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 South Point Property. As used herein, Developer shall include the parties signing this Development Agreement and identified as "Developer," and all successor owners of any part of the Property or South Point.

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

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

10.4 Duration. The term of this Development Agreement shall commence on, and the effective date of this Development Agreement shall be, the effective date of the Ordinance

approving this Development Agreement. The term of this Development Agreement shall extend for a period of five (5) years following the effective date above referenced. Except to the extent terminated pursuant to Article 9, this Development Agreement shall automatically be renewed by two successive five (5) year terms without the necessity of action by the County. Thereafter, the Developer or County shall have an option to extend this Development Agreement for additional five year terms as long as the terms of this Development Agreement have been substantially complied with, and this Agreement has not been earlier terminated, or its term otherwise modified by written amendment.

10.5 Mutual Releases. At the time of, and subject to, (i) the expiration of any applicable appeal period with respect to the approval of this Development Agreement without an appeal having been filed or (ii) the final determination of any court upholding this Development Agreement, whichever occurs later, and excepting the parties' respective rights and obligations under this Development Agreement, Developer, on behalf of itself and Developer's partners, officers, directors, employees, agents, attorneys and consultants, hereby releases the County and the County Council members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County Council members, officials, employees, agents, attorneys and consultants, hereby releases Developer and Developer's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Development Agreement in connection with the application, processing or approval of the South Point SPA Plan and this Development Agreement, to include any claims for vested development rights by any Developer of any portion of the South Point Property.

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

10.7 Enforcement. The parties to this Development Agreement recognize that the County has the right to enforce its rules, policies, regulations, and ordinances, subject to the terms of this Development Agreement, and may, at its option, seek an injunction to compel such compliance. In the event that Developer or any user of the subject property violates the rules, policies, regulations or ordinances of the County or violates the terms of this Development Agreement and the County has made the determinations with respect to Article 9, 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 Summit County Council or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions

have been honored by Developer. The parties further recognize that Developer has the right to enforce the provisions of this Development Agreement by seeking an injunction to compel compliance to the extent not inconsistent with the County's reserved legislative and police powers, as well as the County's discretionary administrative decision-making functions provided for herein. Both parties shall be free from any liability arising out of the exercise of its rights under this paragraph, provided, however, that any party may be liable to the other for the exercise of any rights in violation of Rule 11 of the Utah Rules of Civil Procedure, Rule 11 of the Federal Rules of Civil Procedure and/or Utah Code Annotated Section 78B-5-825, as each may be amended.

10.8 No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Development Agreement is amended by vote of the Summit County Council taken with the same formality as the vote approving this Development Agreement, and except as set forth in Section 6.9 above, 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.

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

10.10 Attorneys' Fees. Should any party hereto employ attorneys 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 attorneys' fees and all costs and expenses (including expert witnesses). Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

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

To the County:

Summit County Manager
Summit County Courthouse
P.O. Box 128

Coalville, Utah 84017
Facsimile: (435) 336-3030

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

With a copy to:

David L. Thomas
Deputy Summit County Attorney
P.O. Box 128
Coalville, Utah 84017
Facsimile: (435) 336-3287

To Developer:

Pivotal Group, Inc.
3200 East Camelback Road
Suite 295
Phoenix, AZ 85018
Attn: F. Francis Najafi, CEO

With a copy to:

Promontory Development LLC
3200 East Camelback Road
Suite 295
Phoenix, AZ 85018
Attn: F. Kelli S. Brown, CFO

And to:

Promontory Development, L.L.C.
8758 N. Promontory Ranch Road
Park City, UT 84098
Attn: Richard Sonntag, Managing Director

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

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

10.13 Execution of Agreement. This Development Agreement may be executed in multiple counterparts or originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

10.14 Hold Harmless.

10.14.1 Agreement of Developer. Developer agrees to and shall hold County, its officers, agents, employees, consultants, attorneys, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to South Point; and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effect arising from this Agreement. Developer agrees to pay all costs for the defense of the County and its officers, agents, employees, consultants, attorneys, special counsel and representatives regarding any action for damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Developer's actions in connection with South Point 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 section or due by reason of the terms of, or effects arising from this Agreement regardless of whether or not the County prepared, supplied or approved this Agreement, plans or specifications, or both, for the project. Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of the County, including fees and costs for special counsel to be selected by the County, regarding any action by a third party challenging the validity of this Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of, or effects arising from this Agreement. County may make all reasonable decisions with respect to its representation in any legal proceeding.

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

10.14.3 Hold Harmless Procedures. The County shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than 10 days after the assertion or commencement of the claim, demand, action or proceeding. In the event any such notice is

given, the County shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

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

10.16 Periodic / Annual Review. The County may 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 9.1 and 9.2 hereof, after a public hearing which has been noticed by publication, and for which notice has been expressly provided to Developer. The County's failure to review at least annually Developer's 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 Developer 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.

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

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

10.19 Computation of Time. In computing any period of time pursuant to this Development Agreement, the 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.

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

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

10.22 Survival of Developer's Obligations. Notwithstanding any provisions of this Development Agreement or of law to the contrary and as a partial consideration for the parties entering into this Development Agreement, the parties agree that Developer is obligated to provide to the County the following enumerated extraordinary and significant benefits even if Developer cancels, rescinds, repudiates, refuses, revokes, or in any manner terminates or attempts to terminate this Development Agreement:

10.22.1 Dedication of any parks, trails and major Open Space shown on the South Point Master Plan as requiring dedication, or the granting of protection through conservation easements over such land as delineated in the Promontory SPA Plan Book of Exhibits to the extent not previously accomplished through existing conservation easements;

10.22.2 Construction of any roads or public improvements covered by a recorded plat unless vacated;

10.22.3 Compliance with all public amenities specified in the Promontory SPA Plan Book of Exhibits;

10.22.4 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

10.22.5 Compliance with Developer's Mutual Releases and Hold Harmless Covenants under this Agreement.

10.23 Force Majeure. Any default or inability to cure a default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, enemy or hostile governmental action, civil commotion, fire or other casualty, or other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default.

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

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

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

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

10.28 Exhibits Incorporated. All Attachments to this Development Agreement and all Exhibits in the Promontory SPA Plan Book of Exhibits, as amended by the South Point Master Plan Amendments and the Prior Amendments, are incorporated by reference as if fully set forth herein, but only to the extent applicable to the South Point Property.

10.29 Compliance with County Ordinances. The County has reviewed the Code, General Plan, and Ordinance 298-A and has determined that the Developer has substantially complied with the provisions thereof and hereby finds that South Point is consistent with the purpose and intent of the relevant provisions of Ordinance 298-A, the Code, and the General Plan.

10.30 Appendices. The following Appendices attached to the Initial Promontory Development Agreement are an integral part of this Development Agreement to the extent such Appendices apply to the South Point Property:

- I. Sketch Plan Application Requirements
- II. Final Subdivision Plat and Final Site Plan Application Requirements
- III. Low Impact Development Activity Requirements
- IV. Approved Roads and Road Plans

IN WITNESS WHEREOF, this Development Agreement has been executed by Summit County, acting by and through the Summit County Community Development Director, State of Utah, and by a duly authorized representative of Developer, as of the above stated date.

[signature pages follow]

COUNTY:

SUMMIT COUNTY COMMUNITY DEVELOPMENT DIRECTOR,
SUMMIT COUNTY, STATE OF UTAH

By:

P. J. P.

STATE OF UTAH)

: ss.

COUNTY OF SUMMIT)

The foregoing instrument as acknowledged before me this 24 day of May,
2016, by Patrick J. Pelt, Community Development Director, Summit County, State
of Utah.



Leslie Rushton
Notary Public
Residing at: Coalville, Utah

My commission expires:

4/24/2020

CONSENT OF PROPERTY OWNER

The undersigned, owner of the South Point Property, hereby consents to without assuming the terms of this Development Agreement Amendment and authorizes the recording of this Agreement against the South Point Property described in Attachment 1 hereto in the Official Records of the Summit County Recorder

SOUTH POINT OWNER:

PROMONTORY INVESTMENTS, LLC

By: Pivotal Capital Corporation
an Arizona corporation
Its: Manager

By: 
E. Francis Najafi, President

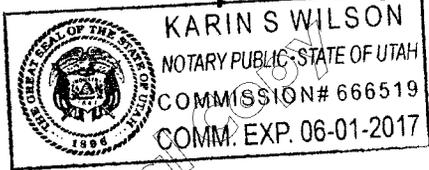
STATE OF Utah)
COUNTY OF Summit :ss.)

The foregoing instrument was acknowledge before me this 20th day of May, 2016, by F. Francis Najafi as President of Pivotal Capital Corporation, Manager of Promontory Investments, LLC


Notary Public
Residing at: Park City, Ut

My commission expires: 6/1/2017

STATE OF Utah)
COUNTY OF Summit :ss.)



ATTACHMENTS

- Attachment 1 - Property Description
- Attachment 2 - South Point Master Plan
- Attachment 3 - South Point Master Plan Amendments (2007 Second Amendment Exhibits)

Attachment 1

South Point Boundary

SS66
SS54-A

Record Description Parcel "A"

A parcel of land located in Sections 25 & 36, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, being more particularly described as follows:

Beginning at a stone found at the Southwest Corner of Section 36, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah of Promontory ALTA SURVEY recorded Entry No. S-3682 of Summit County Recorder's Office, and running thence along the Promontory Project Boundary the follow two (2) courses: 1) North 00°03'26" West 2,664.42 feet; 2) North 00°38'03" West 2,697.90 feet; thence North 62°38'37" East 2,883.14 feet; thence North 37°57'26" East 662.11 feet; thence North 74°30'05" East 429.92 feet; thence North 40°33'53" East 946.30 feet to a point on the easterly Project Boundary of Promontory; thence along said boundary the following eight (8) courses: 1) South 00°01'14" East 97.57 feet; 2) South 00°00'30" East 1,343.62 feet; 3) South 89°49'21" East 1,336.97 feet; 4) South 00°01'22" West 1,321.75 feet; 5) South 00°52'12" East 2,688.62 feet; 6) South 00°30'19" West 2,609.87 feet; 7) North 89°59'51" West 2,652.94 feet; 8) North 89°31'22" West 2,666.73 feet to the Point of Beginning.

Containing 34,884,353 square feet or 800.83 acres, more or less.

Record Description Parcel "B"

Beginning at a point on the Westerly right-of-way line of Brown's Canyon Road (formerly State Highway No. 196), said point being North 2936.44 feet and East 679.56 feet from the Southwest Corner of Section 31, Township 1 South, Range 5, Salt Lake Base and Meridian; and running thence South 80°53'14" West 123.66 feet; thence South 73°23'48" West 588.27 feet to a point on the Westerly line of said Section 31; thence North 00°20'14" West along said West Line 125.00 feet; thence North 73°23'48" East 561.11 feet; thence North 80°53'14" 146.58 feet to a point on a 1465.69 foot radius curve to the left, said point also being on the Westerly right-of-way of said Brown's Canyon Road (radius point bears South 89°35'42" East 1465.69 feet, of which the central angle is 04°43'45"); thence Southerly along the arc of said curve and the Westerly right-of-way line of said Brown's Canyon Road 120.98 feet to the point of beginning.

Record Description Parcel "C"

Legal description for 100 foot road parcel:

Beginning at a point which is North 00°03'36" East 1321.45 feet along the Westerly line of Section 30, Township 1 South, Range 5 East, thence continuing along said Westerly line of said Section 30, 50.00 feet to the true point of beginning of a 100.00 foot road parcel, measured 50.00 feet either side at right angles to the following described centerline.

From the true point of beginning thence Easterly along a line 50.00 feet Northerly of and parallel to the Northerly line of the Southwest one-quarter of the Southwest one-quarter of said Section 30, 990 feet more or less to the Westerly right-of-way of Brown's Canyon Road (formerly State Highway No. 196) with both the Northerly and Southerly right-of-way extending as required to intersect said Westerly

right-of-way of said Brown's Canyon Road, said point also being the terminus of said 100.00 foot road parcel.

Also: Beginning at a point which is North 00°03'36" East 1321.45 feet along the Easterly line of Section 25 from the Southeast Corner of Section 25, Township 1 South, Range 4 East, thence continuing along said Easterly line of said Section 25, 50.00 feet to the true point of beginning of a 100.00 foot road parcel measured 50.00 feet either side at right angles to the following described centerline.

From the said true point of beginning, thence Southwesterly along an arc of a 350.00 foot radius curve concave to the Southeast through a central angle of 90° more or less to the North line of the Southeast one-quarter of the Southeast one-quarter of said Section 25, said point being the terminus of said centerline.

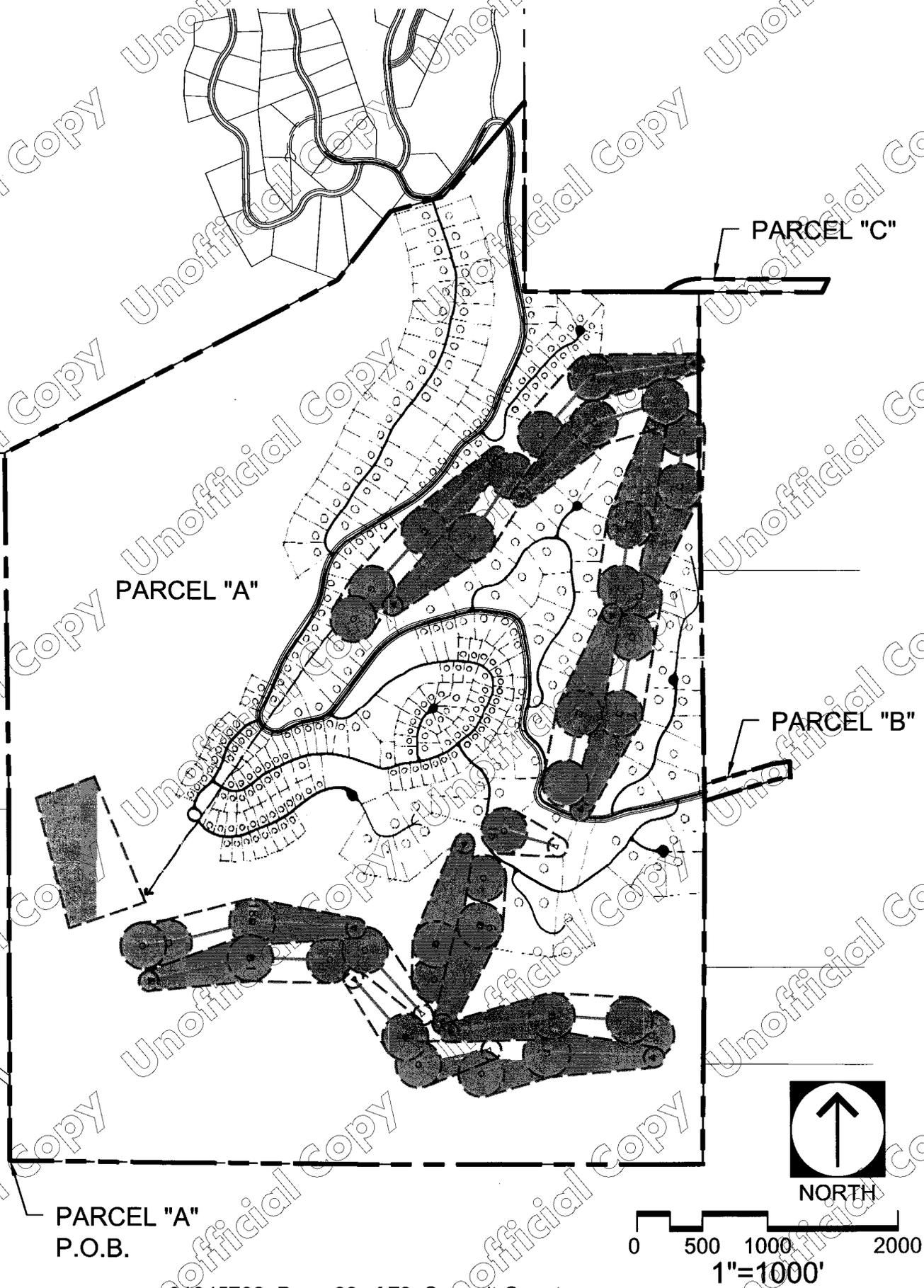
Together with:

A non-exclusive right of way and easement to make incidental use of such portions of a portion of 500 feet of property adjacent to the North of the aforementioned Parcel "C" as may be reasonably necessary in connection with the construction, maintenance, repair or replacement of any roadway improvements located thereon.

As granted by a Real Property Purchase Agreement recorded December 5, 1991, as Entry No. 350974 in Book 636 at page 497 and re-recorded December 11, 1991 as Entry No. 351244 in Book 637 at page 329 of Official Records.

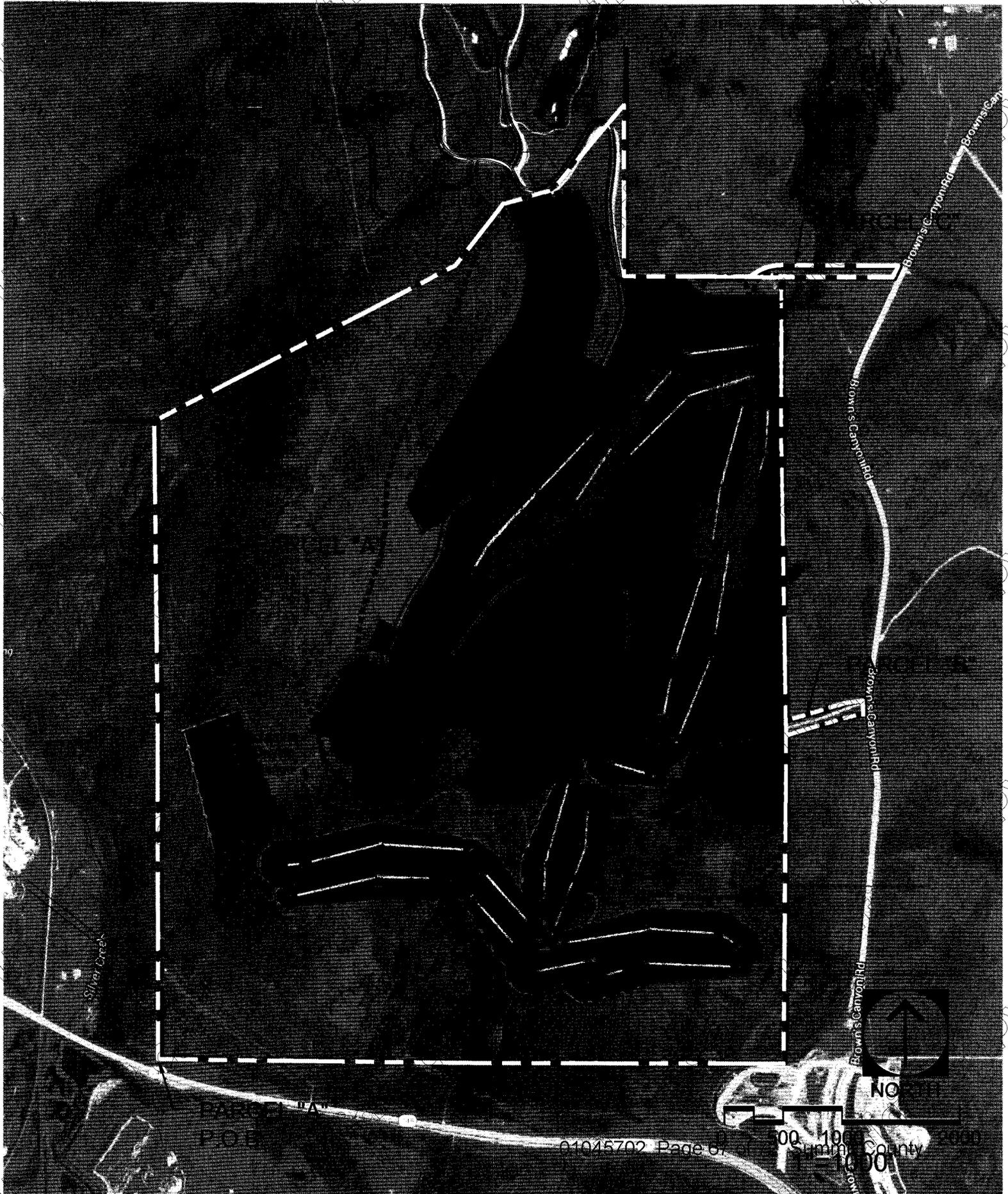
Attachment 1 (Contd.) PROMONTORY SOUTH POINT BOUNDARY

path: M:\01_MDS\01_Eng\103 Promontory\20 SouthPoint Boundray
file name: Southpoint Boundary Exhibit.dwg | plot date: December 08, 2015 | plotted by: Brian



Attachment 2

SOUTH POINT CONCEPTUAL LAND PLAN



PAGE 67
P.O.B.

**Attachment 3
(2007 Second Amendment Exhibits)**



Exhibit A

LEGEND

- Resort Residential (150)
- Resort Units (100)
- Employee Housing (60 homes)

NORTH

1" = 400'

0 200 400 600 800 1000

PLANNING DEPARTMENT
SUMMIT COUNTY
OCTOBER 2, 2027

**Legal Description
Promontory, Conservation Easement**

A PARCEL OF LAND LOCATED IN TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN CONTAINING PARTS OF:

SECTION 36 (PARCEL ID# SS-66)

The EAST HALF of the NORTHWEST QUARTER of the NORTHWEST QUARTER and
The WEST HALF of the NORTHEAST QUARTER of the NORTHWEST QUARTER and
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SECTION 25 (PARCEL ID# SS-54-A)

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The EAST HALF of the SOUTHWEST QUARTER of the NORTHWEST QUARTER and
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SECTION 24 (PARCEL ID# SS-52)

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The WEST HALF of the NORTHWEST QUARTER and
The WEST HALF of the SOUTHWEST QUARTER of the SOUTHWEST QUARTER and

SECTION 23 (PARCEL ID# SS-51-C)

The EAST HALF of the NORTHEAST QUARTER and
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The NORTHWEST QUARTER of the NORTHEAST QUARTER of the SOUTHEAST QUARTER

SECTION 14 (PARCEL ID# SS-26)

The SOUTHEAST QUARTER of the SOUTHEAST QUARTER and
The EAST HALF of the EAST HALF of the SOUTHWEST QUARTER of the SOUTHEAST QUARTER

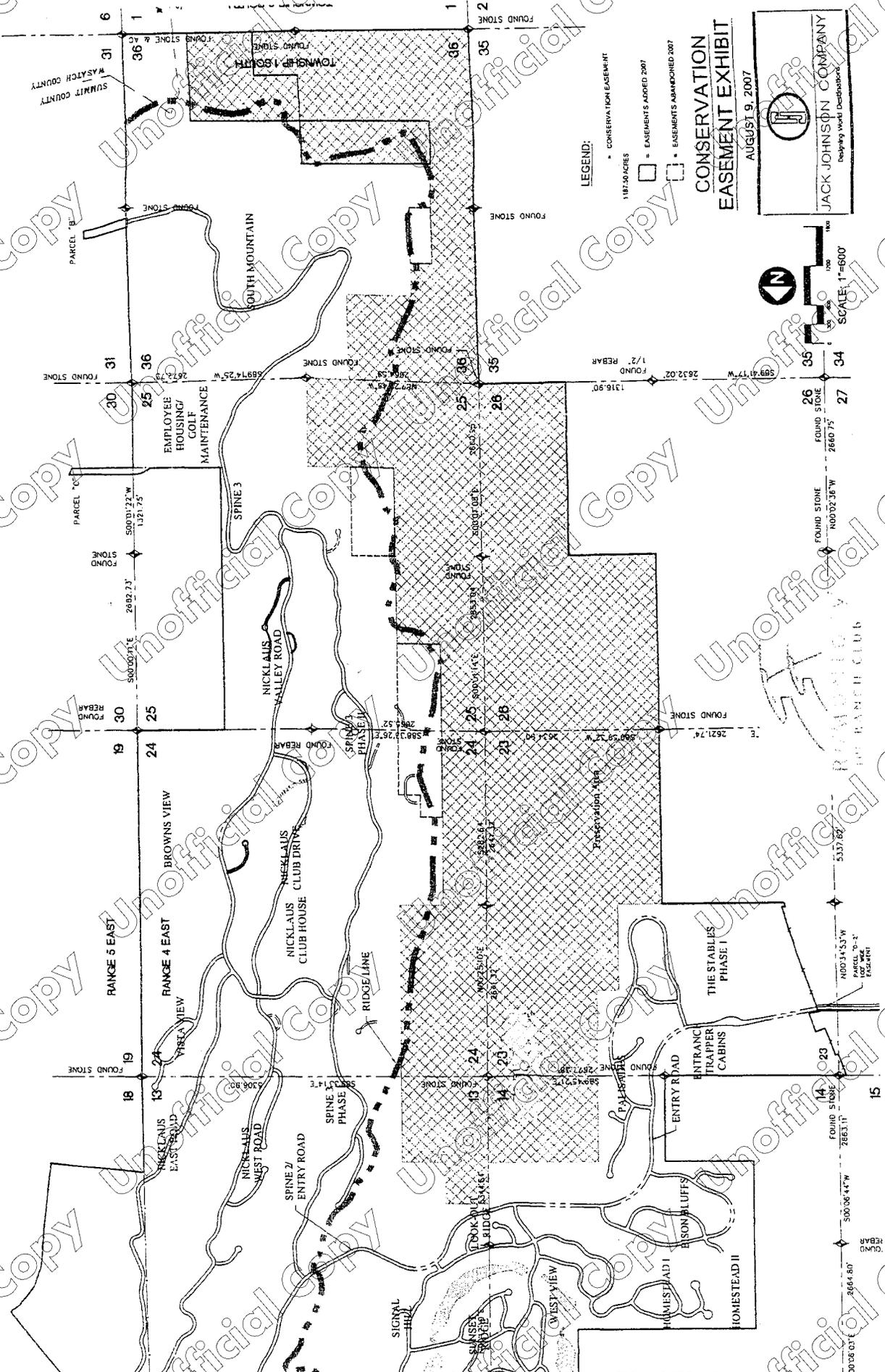
SECTION 13 (PARCEL ID# SS-25)

The SOUTHWEST QUARTER of the SOUTHWEST QUARTER and
the SOUTHWEST QUARTER of the NORTHWEST QUARTER of the SOUTHWEST QUARTER

CONTAINING 656.80 ACRES MORE OR LESS

Drawing of the Reconfigured Conservation Easement Area

Unofficial Copy



LEGEND:

- CONSERVATION EASEMENT
- 181.8 ACRES
- EASEMENTS ADDED 2007
- EASEMENTS ABANDONED 2007

CONSERVATION EASEMENT EXHIBIT

AUGUST 9, 2007

JACK JOHNSON COMPANY
 Real Estate Services



SCALE: 1"=600'