

**SUMMIT COUNTY
ORDINANCE NO. 427**

**AN ORDINANCE APPROVING AND ADOPTING
THE DEVELOPMENT AGREEMENT FOR
REDSTONE PARKSIDE**

WHEREAS, the owner and developer of Redstone Parkside applied for a Development Agreement under the Snyderville Basin Development Code; and

WHEREAS, Summit County, acting pursuant to its authority under Utah Code Annotated, Section 17-27-101, et. sq. (1953), as amended, has made certain determinations with respect to the proposed project and in the exercise of its legislative discretion, has elected to approve this Development Agreement after all necessary public hearings; and

WHEREAS, it is in the best interests of Summit County and the health, safety, and general welfare of its citizens to adopt this ordinance in order to implement Redstone Parkside, based on the terms and conditions as more fully set forth in the Development Agreement;

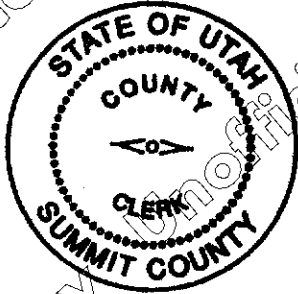
NOW, THEREFORE, the County Legislative Body of Summit County, State of Utah, ordains as follows:

Section 1. Summit County Ordinance No. 427, the Development Agreement for the Redstone Parkside Project, Summit County, Utah, consisting of 185 pages, including exhibits which has been published as a code in book form, three copies of which have been filed for use and examination in the office of the Clerk of Summit County, Utah, is hereby adopted by Summit County, and the Chairman is authorized to sign and execute the Development Agreement on behalf of Summit County.

Section 2. This Ordinance shall take effect 15 days after the passage by the Board of County Commissioners of Summit County and subsequent publication in a newspaper of general circulation in Summit County, Utah.

APPROVED, ADOPTED, AND PASSED and ordered published by the Summit County Board of Commissioners, this 18 day of October, 2001.

**BOARD OF COMMISSIONERS
SUMMIT COUNTY, STATE OF UTAH**



By: _____

Chairman

Commissioner Cone voted:
Commissioner Kerr voted
Commissioner Schifferli voted

AY
Aye
Aye

ATTEST:

County Clerk
Summit County, Utah

APPROVED AS TO FORM:

Deputy County Attorney
Summit County, Utah

WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

FOR THE REDSTONE PARKSIDE SPECIALLY PLANNED AREA

KIMBALL JUNCTION, SUMMIT COUNTY, UTAH

THIS DEVELOPMENT AGREEMENT is entered into as of this 18th day of October, 2001, between MJM5, L.C., a Utah limited liability company ("Developer") and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners (the "County").

**Article 1
DEFINITIONS**

1.1 **Architectural Design Guidelines** means the Architectural Design Guidelines for the Property, a copy of which is included in the RedStone Parkside SPA Plan Book.

1.2 **Code** means the Snyderville Basin Development Code.

1.3 **Comprehensive Sign Plan** means the signage regulations for the Property, which shall be approved through a Low Impact Permit. The Comprehensive Sign Plan shall be consistent with the intent of the signing concepts illustrated in Exhibit in the RedStone Parkside SPA Plan Book.

1.4 **County** means Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners.

1.5 **Developer** means MJM5, L.C., its affiliate entities, and its assignees or transferees.

1.6 **Development Agreement** means this Development Agreement.

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

1.8 **Director** means the Summit County Community Development Director.

1.9 **Final Site Plan** means the final site plan establishing detailed development layout, architectural, landscaping, lighting, and other development details as approved through the process for which is established in this Development Agreement.

1.10 **Final Subdivision Plat** means any Final Subdivision Plat, which shall be approved in accordance with the provisions of this Development Agreement.

1.11 **General Plan** means the Snyderville Basin General Plan of the County.

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

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

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

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

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

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

1.18 **Preliminary Site Plan** means the sketch or preliminary site plan depicting the location of improvements on the Property, a copy of which is included as Exhibit B-1 in the RedStone Parkside SPA Plan Book.

1.19 **Project Site** means a predetermined location of development within the RedStone Parkside SPA, as set forth in this Development Agreement.

1.20 **Property** means approximately 37 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land is shown in Exhibit A to this Development Agreement.

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

1.22 **RedStone Parkside SPA** means the zone district adopted by Ordinance No. for the purposes of permitting the adoption of a comprehensive development plan specifically required to implement the unique uses, densities, development locations, and programs and other features of the Property.

1.23 **RedStone Parkside SPA Plan or RedStone Parkside** means a comprehensive plan, set forth in this Development Agreement, which shall designate all development parameters, site plans and plats, land use locations, densities, pocket parks and trails, and other open space within the Property, 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.

1.24 **RedStone Parkside SPA Plan Book** means that portion of the RedStone Parkside SPA Plan which shall contain concept plans, guidelines, and standards that shall be used to guide all development in the RedStone Parkside SPA and all other specific development

parameters and regulations, and Developer obligations, commitments, and contributions for carrying out the development in accordance with the RedStone Parkside SPA Plan. The RedStone Parkside SPA Plan Book 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.

Article 2 RECITALS

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

2.2 Developer is the record owner of the Property.

2.3 Developer has proposed the development on the Property of a residential and commercial village to be known as RedStone Parkside which shall be constructed within certain development locations designated in the RedStone Parkside SPA (the "RedStone Parkside"). This Development Agreement serves to implement the RedStone Parkside SPA, Ordinance No. ___, in accordance with the provisions of the Code and the General Plan.

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

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

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

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

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

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

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

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

Article 3 FINDINGS

The Board of Commissioners of the County, acting in its legislative capacity, has made the determinations with respect to the RedStone Parkside SPA Plan set forth in this Article 3, including all findings of fact and conclusions of law as are necessary to make each of such determinations.

3.1 Following a lawfully advertised public hearing, RedStone Parkside received a recommendation for approval through a Development Agreement by action of the Planning Commission taken on August 14, 2001. The Board of County Commissioners held a lawfully advertised public hearing on October 11, 2001, and during a lawfully advertised public meeting on that same date approved the RedStone Parkside SPA under the process and procedures set forth in the Code and General Plan. The terms and conditions of approval are incorporated fully into this Development Agreement. In making such approval, the Board of County Commissioners made such findings of fact and conclusions of law as are required as a condition to the approvals, as reflected in the staff recommendation adopted with any modifications, as reflected in the minutes of the above-referenced public meetings, and as reflected by the other enumerated findings herein.

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

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

3.4 The RedStone Parkside SPA Plan contains outstanding features which advance the policies, goals and objectives of the General Plan beyond mere conformity, including the following: (i) agreements with respect to design controls and limitations to minimize the visual impact of the development; (ii) the creation of a trail system, park area connections and improvements and a 400 meter track and soccer field for the US Ski and Snowboard Association uses; (iii) the clustering and appropriate location of density; (iv) the preservation of critical open space areas, and (v) providing transfer property and receiving property for density transfers to create additional open space in the future.

3.5 There are unique circumstances that justify the use of a SPA, including (i) the development of a mixed use project; (ii) the development of a portion of the town center contemplated by the Snyderville Basin General Plan, and (iii) the adjacency of wetland areas to be preserved.

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

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

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

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

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

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

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

3.13 This Development Agreement implements the RedStone Parkside SPA.

3.14 The increased densities and intensity of uses in excess of the base densities and uses within the RedStone Parkside SPA are established pursuant to the Snyderville Basin Development Potential Matrix which was implemented through the RedStone Parkside SPA, Ordinance No. 336. As part of RedStone Parkside's use and configuration herein approved, Developer has agreed to provide the Matrix amenities identified in the RedStone Parkside SPA Plan Book.

3.15 Exemption from Code. The Board of County Commissioners acting pursuant to its authority under Utah Code Annotated 17-27-101 et seq., as well as its regulations and guidelines, in the exercise of its legislative discretion, has determined that RedStone Parkside is exempt from the application of the Code solely to the extent that such a finding

may be a condition precedent to approval of this Development Agreement. Where there is a direct conflict between an express provision of this Development Agreement and the Code or General Plan or other land use laws, this Development Agreement shall take precedence; otherwise, the Code, General Plan, or other land use laws shall control.

Article 4 THE PROJECT

4.1 Description of the Project. The Property covered by this Development Agreement consists of approximately 37 acres of land located east of SR 224 in the Snyderville Basin. Developer intends to construct a residential and commercial development, generally shown in the RedStone Parkside SPA Plan Book and as further described in this Development Agreement.

4.2 Legal Description of Property. The legal description of the Property included within the RedStone Parkside SPA is set forth in Exhibit A to this Agreement. No property may be added to the legal description of RedStone Parkside for purposes of this Development Agreement, except by written amendment. Unless expressly set forth in this Development 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 Development Agreement, vest with respect to RedStone Parkside 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, resort rental housing, commercial and institutional uses and other improvements, as reflected in the RedStone Parkside SPA Plan Book and all other provisions of this Development Agreement. The RedStone Parkside SPA Plan Book shall be deemed a part of this Development Agreement and shall be binding upon all parties hereto.

4.4 Development Configuration of RedStone Parkside. The development configuration of RedStone Parkside is shown in the RedStone Parkside SPA Plan Book.

4.5 Project Phasing.

4.5.1 The commercial portions of RedStone Parkside shall be constructed in phases as shown in the RedStone Parkside SPA Plan Book or as market conditions demand subject to the approval of the Director. The first phase of construction shall include the USSA National Training Center, associated health care and administrative offices (USSA facilities), public park/open space that interfaces with the Boyer Redstone project and the Nugget Well Café.

The first phase shall be fully completed before any portion of future Phases begin. The first phase will include up to 110,735 square feet for the USSA facilities and up to 7,000 square feet for the Nugget Well Café. The detailed layout and architecture for the USSA facility and the Nugget Well Café are approved.

4.5.2 Future phases of the development program for RedStone Parkside will include mixed use commercial, office, residential and resort rental development, designed in a manner to conform to the provisions of this Development Agreement. The detailed development layout architecture, landscaping and other development details of future phases shall be approved through the process described in the RedStone Parkside Plan Book and Article 6 of this Development Agreement. Each phase shall include all related streetscape enhancements, applicable pocket parks, and related amenities and improvements directly related to that phase as described in this Development Agreement and the RedStone Parkside SPA Plan Book.

4.5.3 Within each major phase, residential and commercial buildings may be constructed in any order and in one or more subphases.

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

4.6.1 Approval of Final Site Plan Required. Approval of this Development Agreement shall constitute preliminary site plan approval in accordance with the requirements of the Code and the General Plan for those portions of the Property included within the RedStone Parkside SPA Plan Book. Prior to the issuance of any building, grading, or other related development permit for the Project, the Developer shall obtain final site plan approval in accordance with the provisions of this Development Agreement, however, the County Engineer may grant a grading permit prior to final site plan approval provided Developer posts a suitable site restoration bond or other financial guarantee.

4.6.2 Building Permit Required. Prior to the commencement of development activity on any lot designated on a Final Subdivision Plat or Final Site Plan, or before the commencement of construction on any structure authorized in this Development Agreement, a Building Permit must be obtained from the County in accordance with all applicable requirements of the Code. Failure to so comply shall be grounds for revocation

of any Subdivision Plat or Site Plan approval and/or denial/revocation of Building Permits issued pursuant to any Subdivision Plat or Site Plan of this Development Agreement.

4.6.3 Owner Associations and Management Arrangements. There shall be one or more associations representing owners and tenants within the Project, especially for the purposes of regulating and maintaining certain standards and levels of maintenance of the buildings, roads and landscaping within the SPA.

4.6.4 Transit District. The Developer shall annex into the Kimball Junction Transportation Special Services District within sixty (60) days of the execution of this Agreement.

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

- (a) The Sun Calendar Plaza will serve as the primary gathering place for public outdoor activities. It will include public plaza spaces, a sun calendar that identifies with its shadow the times and dates of major events of human achievements, and possibly a climbing wall.
- (b) The USSA plaza will serve both as a people-gathering place and as the auto arrival location for the USSA building. The plaza will be paved and equipped as a pedestrian zone where cars are permitted but do not dominate.
- (c) The Nugget Well Plaza will be a cooperative effort of Redstone Parkside and the Redstone project to the immediate west. This plaza will span the intersection of these two projects to provide a seamless interface. The Nugget Well Plaza may include re-circulating water features and outdoor dining associated with the Nugget Well Café located with views of the Swaner Park, the USSA 400 meter track and the ski resorts.
- (d) The Church/Day Care Plaza will be at the option of the Developer. It may include an outdoor recreation ice skating sheet owned and operated by the Snyderville Basin Recreation District. This low intensity use plaza would be soft-scaped with limited paved areas for brown bagging, office and church access.

- (e) The Swaner Nature Preserve. The design will unify the park as a family gathering place for residents and visitors to the basin, as a transition from the plaza to open space and as the major pedestrian/bike portal to the regional trail system. It may shift east and be integrated into a detention basin wall.
- (f) Street furniture shall be provided throughout the development area in a reasonable manner.
- (g) There shall be connecting sidewalks though both the residential and commercial areas.
- (h) Residential and commercial sidewalk lighting shall be provided.
- (i) In the event that the costs for the traffic signal at Uinta Boulevard and SR 224 are paid by UDOT and not by Developer, then Developer shall be obligated to participate with the Developer of the Redstone Project in the cost and construction of an east frontage road.

4.6.6 Comprehensive Sign Plan Required. Prior to the approval of a certificate of occupancy for any residential or commercial building within the project, the Developer shall submit an application for a comprehensive sign plan. The application shall be reviewed by Summit County as a Low Impact Permit. The sign plan shall address all design, size, location, lighting, and other related standards for all commercial business identifications signs, 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.

4.6.7 Access Easements to Adjacent Property. The Developer shall provide adequate pedestrian, vehicular, and emergency access easements for the purposes of establishing connectivity with the adjacent property located to the west. The Developer represents that such easements are in place. However, to the extent the County determines additional easements are necessary for connectivity, such additional easements shall be conveyed within ninety (90) days of a request from Summit County.

4.6.8 Off-Site Wetland Mitigation. The project will disturb wetlands. The Developers shall mitigate the impacts of wetland disturbance. Specific mitigation shall be in accordance with the requirements of the U. S. Army Corps of Engineers.

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

4.6.10 Community Trails Required. The Developer shall construct a community trail connection that is generally shown in Exhibit B-2 in the RedStone Parkside SPA Plan Book. The trail shall meet the design standards and specifications of the Snyderville Basin Special Recreation District. In the alternative, and only if approved by the District, the Developer may contribute a suitable amount of money to the District which may construct the trails.

4.6.11 Construction Mitigation and Management Plan Required. A building permit will not be issued for any facility or structure within RedStone Parkside until an adequate Construction Management and Mitigation Plan has been established for RedStone Parkside 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 RedStone Parkside.

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

4.6.12 Public Sidewalks Required. The Developer shall provide sidewalks for public use, the location, width, and surface of which shall be in accordance with the RedStone Parkside SPA Plan Book. Sidewalks shall be provided in conjunction with each phase or subphase of development.

4.6.13 On-going Landscape Maintenance Required. The Developer shall ensure appropriate maintenance of all landscaped material. Simply planting and spray irrigation is not an acceptable level of maintenance. Maintenance shall include a proper root watering schedule, pruning, and other sound landscape maintenance techniques. The Developer shall include a specific maintenance plan, along with a three (3) year landscape bond, to be approved with the final site plan.

4.6.14 Affordable Housing. The following affordable housing program is a requirement of this Development Agreement.

(a) The affordable housing density shall be the greater of 20,000 square feet or 10 per cent of the density in the project devoted to residential use. Buildings used for resort rental housing or resort lodging are not counted as residential use under this affordable housing requirement. The County owned TDR density within the project is 202,280 square feet or approximately 25 percent of the total project density of 819,360. Accordingly, the County TDR density will be responsible for not less than 25 percent (5,000 square feet) of the affordable housing density.

(b) The affordable housing program and restrictions shall be administered by Mountainlands Housing Trust, the County or other entity authorized by the County.

(c) The units shall be offered for sale with a priority to income-qualified, existing residents of Summit County, athletes training at the USA facility or full time employees of a business located within Summit County and their immediate family. The units can be offered to any income-qualified buyer if not sold to a qualified Summit County buyer within 120 days of the initial offering of the units, beginning with the start of the pre-construction sale program.

(d) Unless a different formula is determined to be appropriate by the entity administering the program, the units shall be affordable for a buyer with an income that does not exceed 80 per cent of the median income for Summit County for a family of four. The maximum initial sales price will be established so that a buyer earning 80 per cent of the median income for a family of four will not pay more than 30 per cent of its income for mortgage, taxes, insurance, and homeowners association dues. The units will be offered and priced without regard to family size. The size, price and target market of the units may vary and will be established in consultation with the entity administering the affordable housing program. The purchaser must demonstrate eligibility to the administering entity.

(e) Equity sharing arrangements may be employed where the unit is offered with a subsidy or discount from restricted market value. A right of first offer may be used to assure that income-qualified buyers are given a full opportunity to purchase a unit offered for resale. The specific equity sharing formulas will depend on the nature of the subsidy and will be established in consultation with the administering entity.

(f) Units will be deed restricted to assure that the units will continue to be offered to income qualified purchasers. The form of the deed restrictions shall be approved by the administering entity. The deed restrictions shall apply for a period of 30 years from the date of recordation of the deed. At the end of the 30 year period, the County Commissioners will review the restrictions to determine whether the then current housing demand and supply, Project redevelopment, the condition of the units, the resale value to the units, and other economic factors justify the continued use of the units as affordable housing. The continued or termination of the restriction shall be evidenced by a recorded written notice. In the event that a written notice of termination is not given, then the same restriction shall be extended on the same terms for successive additional 10 year periods until the County gives written notice of termination.

(g) The intent is to locate the affordable housing units principally on-site within the Project to reduce commuting for employees, USSA athletes and to provide a balanced and diverse mix of uses in the Project. The present intended location of the affordable housing units within the Project include the northwest section of the Project where Ute Boulevard enters and the buildings east of the existing Kmart building, which is north and west of the proposed Sun Calendar Plaza. Other locations may be approved at the discretion of the Planning Commission and County Commission.

Article 5 VESTED RIGHTS

5.1 Vested Rights. Subject to Articles 5.2 and 6.3, the Developer shall have the vested right to have preliminary and final site, subdivision and condominium plat, and construction plans approved and to develop and construct RedStone Parkside in accordance with the uses, densities, timing and configurations (massing) of development as vested in Article 4.3 under the terms and conditions of this Development Agreement, including Article 3 (Findings), and the RedStone Parkside SPA Plan Book.

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 RedStone Parkside and other provisions of this Development Agreement shall be of general application to all development activity in the Snyderville Basin; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to RedStone Parkside under the compelling, countervailing public policy exception to the vested rights doctrine. In the event that the County does not give prior written notice, Developer shall retain the right to be heard before an open meeting of the Board of County Commissioners in the event Developer alleges that its rights under this Development Agreement have been adversely affected.

Article 6 PROCESSES

6.1 Fees.

6.1.1 SPA Rezone Application. Development Agreement Application. Final Subdivision Plat. Development Review. Engineering and Related Fees. Pursuant to the provisions of Resolution 99-11, Developer agrees to pay the sum of \$_____ prior to final approval of this Development Agreement by the Board of County Commissioners. Developer has paid the combined Development Agreement and SPA fees of \$_____. The Developer has already paid all fees applicable to the transferred density rights ("TDR"). With respect to the portion of the project, excluding the TDR, Developer shall receive no further credits or adjustments toward any other development review, platting, site planning, or similar standard engineering review fees or other fees generally applicable to development application or building permit review and approval. The County may charge such standard planning and engineering review fees, standard building permit review fees, and other fees as are generally applicable at the time of application, pursuant to the provisions of Resolution 99-11, as amended, or other applicable statutes, ordinances, resolutions, or administrative guidelines.

6.1.2 Impact Fees. In consideration for the agreements of the County in this Development Agreement, Developer agrees that RedStone Parkside 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 RedStone Parkside 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 RedStone Parkside 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 RedStone Parkside and Property shall not bear more than an equitable share of the capital costs financed by an impact fee or exaction in relation to the benefits conferred on and impacts of RedStone Parkside. 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 issuances of a building, grading, or other development permit, the Developer shall submit all applicable Construction Plans as required in Section 5.4 of the Code, together with a proposal for guaranteeing development improvements (Development Improvements Agreement), to Staff consistent with the provisions of the Code. In addition, any other related approvals required in this Development Agreement shall be submitted at this time for review and approval in accordance with the terms defined in this Development Agreement. The staff shall review the information submitted pursuant to this Section and provide its recommendation to the Board of County Commissioners. Following the submission of the Staff recommendation to the Commissioners on the final construction plans, the application shall be placed on the Consent Agenda of the Commission for final approval.

6.3 Approval of Development Improvements Agreement. A building, grading, or other related development permit will not be issued for any project or any structure within the project approved in the RedStone Parkside SPA Plan until a Development Improvements Agreement, in accordance with the requirements of Chapter 6 of the Code and in a form acceptable to Summit County, has been accepted by Summit County. The staff shall review the Developers proposal for a Development Improvements Agreement and provide its recommendation to the Commissioners. Following the submission of the Staff recommendation to the Commissioners on the Development Improvements Agreement, the agreement shall be placed on the Consent Agenda of the Commissioners for final approval. A separate Development Improvements Agreement may be established for each phase of the development or for each project.

6.4 Compliance with Concurrency Management Standards Required. In addition to compliance with the criteria required under Chapter 4 of the Code, the following service provider and concurrency information shall also be required and reviewed

along with the 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 water district or private water service provider, including an agreement for service and an indication of the service area of the proposed water supplier, commitment service letter or other binding arrangement for the provision of water services.

(c) Evidence that water rights have been obtained including an application for appropriation or change application endorsed by the State Engineer pursuant to Sections 73-3-3 and 73-3-8 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, if the proposed water supplier is a regulated public utility.

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

6.4.3 Fire Protection.

(a) A letter from the Park City Fire District indicating that fire hydrants, water lines sizes, water storage for fire protection, and minimum flow for fire protection are adequate. These shall be determined using the standard of the Insurance Services Office which are known as the Fire System Grading

Standards. In no case shall minimum fire flow be less than 1,000 gallons per minute for a period of two (2) hours.

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

6.4.4 Recreation. A letter from the Snyderville Basin Special Recreation District indicating that all requirements of the District have been satisfied.

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

6.5 Approval of Final Subdivision Plat and Final Condominium Plat. Approval of final subdivision plats and final condominium plats shall follow the process set forth herein. In the event of a procedural conflict between the Code and this Development Agreement, the provisions of this Development Agreement shall govern.

6.5.1 Submission of Final Subdivision Plats and Final Condominium Plats. The Developer shall submit applications with applicable fees for final subdivision plat and final condominium plat approval to the County. Final subdivision and condominium plat shall comply with all the applicable requirements of the Snyderville Basin Development Code and the provisions of this Development Agreement.

6.5.2 Staff Review and Recommendation. The Staff shall review the information submitted pursuant to Section 6.5.1 for conformance with this Development Agreement, the RedStone Parkside SPA Plan Book, the Development Code, 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 and the Code.

6.5.3 Planning Commission Review and Recommendation. The Planning Commission shall consider and make a recommendation on the final subdivision or final condominium plat at the next available regularly scheduled meeting after receipt of the Staff recommendation. The recommendation shall be based solely upon the

Developer's compliance with the requirements and standards set forth in this Development Agreement and the Code.

6.5.4 Board of County Commission Approval of Final Subdivision Plats and Final Condominium Plats. After receipt of the Planning Commission's recommendation, the Commission shall, after holding a public hearing noticed in accordance with the requirements of the Code, 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 and the Code. The Commission shall execute the final plat. This shall be the final decision of the County. Nothing herein shall allow the Code, or any amendment or restatements of the Code, to modify or amend the vested rights created in this Development Agreement, except as provided for in this Development Agreement.

6.5.5 Recordation. Upon approval by the County Attorney of the plat and a preliminary title report, and once all required service provider signatures are obtained, the Commission shall execute the final plat and any other applicable documents to be recorded in the records of the Summit County Recorder. The Developer shall pay all applicable recording fees.

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

6.6 Approval of Final Site Plans. Approval of detailed development layout, architecture, landscaping, lighting and other development details of the Project shall occur within a reasonable period of time. To accomplish this, the Director will include RedStone Parkside on the agenda of the first meeting each month for the Planning Commission and County Commission. This process is in harmony with the schedule agreed to between the County and Developer in the "Density Transfer Agreement", dated February 21, 2001, a copy of which is attached as Exhibit G to the Book of Exhibits. The approvals will follow a three step process. First the plans shall be submitted and approved by a design review committee established in accordance with the SPA Plan Book. Second, the plans shall be submitted and approved by the Planning Commission. Third, the plans shall be submitted and approved by the Board of County Commissioners. It is acknowledged that a project of this scope and size will likely take several years to reach full completion and occupancy. Market conditions and demands for particular uses within the project may change between the time final site approvals are rendered and the time the buildings are available for absorption into the market. Consequently, changes to any

prior approved site layouts, architecture, landscaping, etc. are allowed. Any such changes will be submitted to the Design Review Committee, Planning Commission and County Commission following the process set forth for obtaining the initial approval. Site plan review shall include: 1) final site layout for conformance with the intent of the preliminary site plans approved in this Development Agreement; 2) all architectural design details; 3) landscape; 4) exterior and site lighting; and 5) specific programs for amenities, trails, parks, public art, and other related improvements and facilities as required in this Development Agreement. In the event of a procedural conflict between the Code and this Development Agreement, the provisions of this Development Agreement shall govern. The decision of the Commission shall be the final decision of the County. The decision of the Commission shall be based upon the Developer's compliance with the requirements and standards set forth in this Development Agreement and the criteria required under Chapter 4 of the Code. Any appeal shall follow the provisions of Section 6.5.6 of this Development Agreement.

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

6.8 Conditional Use Permit Approval. Whenever in this Development Agreement a Conditional Use or approval process is designated or required, the Developer shall submit for review and approval by Summit County all applicable information and documents in accordance with the provisions of Section 3.5 of the Code.

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

6.10 Amendments.

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

public hearing and decision by the Board of County Commissioners pursuant to the Equal Dignities Rule prior to the execution of such an amendment. Unless otherwise provided by law, all other amendments may be executed without a noticed public hearing or recommendation by the Planning Commission.

6.10.2 Administrative Amendments. All amendments to this Development 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 issuance of the applicable building permit if not covered by a specific, separate approval.

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

6.11 Conflicts.

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

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

Article 7
INFRASTRUCTURE & CONCURRENCY MANAGEMENT

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

7.1.1 The Developer shall construct these infrastructure improvements, shown on the Final Site Plan and the Final Subdivision Plat, and as required by this Development 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 off-site and project infrastructure requirements. This shall include the verification of the continued availability of the following for RedStone Parkside 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 project 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 RedStone Parkside. Notwithstanding the foregoing, a purchaser of RedStone Parkside or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of RedStone Parkside so transferred in accordance with the provisions of Section 8.2 hereof.

8.2 Transfer of RedStone Parkside. Developer shall be entitled to transfer any residential portion of RedStone Parkside subject to the terms of this Development Agreement upon written notice to the County. Developer shall be entitled to transfer any commercial portion of RedStone Parkside 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 Development Agreement. In the event of any such complete transfer of all or a portion of Developer's interests in RedStone Parkside, the transferee shall be deemed to be the Developer for all purposes under this Development Agreement with respect to that portion of RedStone Parkside 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 Development Agreement, in which case this requirement shall not apply, in the event of a transfer of all or a portion of RedStone Parkside, 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 Development 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 Development 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 Development 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 Development Agreement, and, as would be the case in any assignment, the purchaser of the Property shall be subject to all of the terms and conditions of this Development Agreement, including the obligation to complete all required amenities and improvements.

Article 9
DEFAULT, TERMINATION AND ARBITRATION

9.1 Default.

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

- (a) A warranty, representation or statement made or furnished by Developer to the County in this Development Agreement, including any attachments hereto, 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) 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 Development 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 the Developer, if on periodic or annual review the County does not propose to modify or terminate this Development 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 Development 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 Development Agreement and a hearing on the matter shall not be required.
- (e) All other remedies at law or in equity which are consistent with the provisions of this Development Agreement are available to the parties to pursue in the event there is a breach.

9.2 Termination.

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

9.2.2 Termination Upon Completion of Development. This Development 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 Development Agreement. The County shall record a notice that the Development Agreement has been fully performed and therefore has been terminated.

9.2.3 Effect of Termination on Developer Obligations. Termination of this Development 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 Development Agreement. Termination of this Development 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 Development Agreement, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Development Agreement shall no longer be vested by reason of this Development 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 laws. Upon such a termination, the County shall no longer be prohibited by this Development Agreement from making any changes or modifications to such entitlements, conditions, or fees applicable to such undeveloped portions of the Property. Further, with respect to the improved portions of the Property, the County shall remain obligated to recognize and apply the development standards and configuration contained in the RedStone Parkside SPA Plan Book.

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

9.2.6 Reversion to Regulations for Unimproved Portions of the Property. Should the County terminate this Development 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. However, in no instance shall this arbitration provision bind the County from exercising enforcement of its police powers where Developer is in direct violation of the Code.

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 described in the RedStone Parkside SPA Plan Book and Exhibit A to this Agreement. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors in ownership of the Property. As used herein, Developer shall include the parties signing this Development Agreement and identified as "Developer," and all successor owners of any part of the Property or RedStone Parkside.

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 Development Agreement.

10.3 Laws of General Applicability. Where this Development Agreement refers to laws of general applicability to RedStone Parkside 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. 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 Development Agreement has not been earlier terminated, or its term otherwise modified by written amendment.

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

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

10.7 Enforcement. The parties to this Development Agreement recognize that the County has the right to enforce its rules, policies, regulations, and ordinances, subject to the terms of this Development Agreement, and may, at its option, seek an injunction to compel such compliance. In the event that Developer or any user of the subject property violates the rules, policies, regulations or ordinances of the County or violates the terms of this Development Agreement, the County may, without electing to seek an injunction and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the Board of County Commissioners 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 78-27-56, as each may be amended.

10.8 No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Development Agreement is amended by vote of the Board of County Commissioners taken with the same formality as the vote approving this Development Agreement, no 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 shall be given in writing by certified mail, postage prepaid, or personally or by nationally-recognized overnight courier, at the following addresses, or by facsimile to the following facsimile numbers provided the transmitting facsimile machine shall automatically prepare a confirmation of successful facsimile transmission:

To the County:

The Board of County Commissioners
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
Chief Civil Deputy Summit County Attorney
P.O. Box 128
Coalville, Utah 84017
Facsimile: (435) 336-3287

To Developer:

MJM5, L.C.
c/o James Doilney
1314 Bitner Road
Park City, Utah 84060
Facsimile: (435) 655-9835

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.

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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 relate to RedStone Parkside; and (2) from any claim of damages, just compensation, restitution, judicial or equitable relief due by reason of the terms of or effect arising from this Development 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 RedStone Parkside or any claims arising out of this Development 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 Development Agreement regardless of whether or not the County prepared, supplied or approved this Development 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 Development 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 Development 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 Development 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) RedStone Parkside 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 shall review progress pursuant to this Development Agreement at least once every twelve (12) months to determine if there has been demonstrated compliance with the terms hereof. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms hereof, this Development Agreement may be revoked or modified by the County in accordance with the provisions of Sections 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 Development 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 open space as requiring dedication or the granting of protection through conservation easements over such land as delineated in the RedStone Parkside SPA Plan Book;

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 RedStone Parkside SPA Plan Book;

10.22.4 Payment of impact fees to the extent such fees are payable under the terms of this Development 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 Development 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 therefore, enemy or hostile governmental action, civil commotion, fire or other casualty, or other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default.

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

10.25 Severability. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, is held invalid, void, or unenforceable, but the remainder of this Development Agreement can be enforced without failure of material consideration to any party, then the remainder of this Development 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 Development 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 Development Agreement by providing written notice of such termination to the other party.

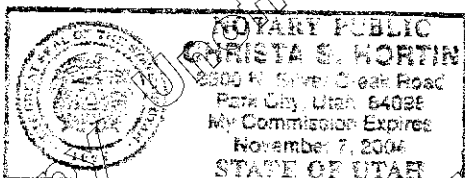
10.26 Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the County has no interest therein except as authorized in the exercise of its governmental functions. The Project is not a joint venture, and there is no such relationship involving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

MJM5, L.C.

By: [Signature]
Mike Doilney
Acting Managing Member

STATE OF UTAH)
) :ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledge before me this 22nd day of October 2001 by Mike Doilney, the Acting Managing Member of MJM5, L.C.



[Signature]

Notary Public Residing at: Warship, Utah

My commission expires 11-7-04

EXHIBIT A

REDSTONE PARKSIDE DEVELOPMENT PARCEL

DESCRIPTION

Revised May 1, 2001

Beginning at the intersection of the extension of the East Line of The Village at Kimball Junction, a subdivision recorded March 11, 1992, as Entry No. 355411 on file at the Summit County Recorder's Office and the Southerly Right of Way Line of I-80, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 413 feet from the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19) and running thence along said Southerly Right of Way Line of I-80 the following three (3) courses: 1) thence South 68°45'09" East 61.64 feet to a Right of Way Brass Cap; 2) thence South 70°15'49" East 121.75 feet to a Right of Way Brass Cap; 3) thence South 72°09'40" East 853.08 feet; thence South 17°50'20" West 160.83 feet; thence South 44°50'21" West 274.42 feet; thence South 276.32 feet; thence South 44°59'21" West 222.70 feet; thence South 44°59'32" East 112.82 feet; thence South 00°00'28" West 88.14 feet; thence South 45°00'28" West 222.44 feet; thence South 00°00'16" East 47.66 feet; thence South 44°59'32" East 142.15 feet; thence South 00°00'28" West 224.85 feet; thence South 45°00'28" West 108.12 feet; thence South 00°00'28" West 44.51 feet; thence South 45°00'00" East 111.12 feet; thence South 00°02'15" West 225.00 feet; thence South 30°38'35" West 94.22 feet; thence West 89.67 feet; thence South 45°00'28" West 107.25 feet; thence South 25°14'08" West 186.89 feet to a point of curvature of a 165.41 foot radius curve to the right, the center of which bears North 64°45'52" West; thence Southwesterly along the arc of said curve 384.81 feet through a central angle of 133°17'30" to the East Line of said The Village at Kimball Junction Subdivision; thence North 00°16'14" West along said East Line and its extension 2545.07 feet to the point of beginning.

Containing 36.42 acres more or less.

JJc# 039.0200.00

5/01/01 b.olsen

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