

**DEVELOPMENT IMPROVEMENTS AGREEMENT  
FOR  
TOLL CREEK VILLAGE-BUILDING 3 "PROJECT"**

THIS AGREEMENT is made this 5<sup>th</sup> day of March, 2007, by and between Summit County, a political subdivision of the State of Utah ("the County"), and .. a Utah Toll Creek LLC ("Developer").

RECITALS:

- A. Developer is the owner of certain property situated in the County of Summit, State of Utah, more particularly described in Exhibit A hereto and known as Toll Creek Village-Building 3 ("Project").
- B. The Developer desires to develop "Project", hereinafter referred to as the ("Property") according to the recorded plat thereof (the "Plat") showing a proposed subdivision layout for said property.
- C. Developer has further submitted to the County a portion of the site improvements plan, referred to as the "Construction Drawings", and will continue to submit plans for those improvements and landscaping plans as described in the Development Agreement being constructed by the Developer in connection with the Property, collectively the "Site Improvements Plans."
- D. The Summit County Board of County Commissioners has approved the final subdivision plat submitted by the Developer subject to certain requirements and conditions, which involve the installation and construction of utilities and the improvements shown on the Site Improvements Plan for the Property.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

**1. Developer's Guarantee and Warranty**

Developer hereby guarantees the installation, as hereafter provided and as necessary to serve the Property, and payment therefore, of all private roads and private road improvements, all utility lines, storm drainage improvements, and any other improvements described in the Site Improvements Plan. Developer hereby warrants all road improvements and utility improvements constructed or installed by Developer against defects in materials and workmanship for a period of two full year's normal operation after acceptance by the County Engineer or the utility companies of such improvements. The County shall either retain ten (10) percent or require a bond or escrow equal to ten (10) percent of the required total improvement costs until twenty four

**ENTRY NO. 00808493**

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ALAN SPRIGGS - SUMMIT COUNTY RECORDER

FEE \$ 0.00 BY SUMMIT COUNTY ENGINEER



months from the date of completion of the improvements and acceptance thereof by the County, as a guarantee should the improvements prove to be defective during said 24-month period. Developer agrees to promptly correct any deficiencies in installation in order to meet the requirements of the plans and specifications applicable to such installation. In the event such installation is not completed according to the specific plans set forth in the Site Improvements Plan, the County shall have the right to cause such work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work.

## **2. Water Lines and Sanitary Sewer Collection Lines**

(a) At the request of developer, The Snyderville Basin Sewer Improvement District (the "District") has entered into a Line Extension Agreement to provide for the installation of all sanitary sewer collection lines, whether such lines and other improvements are actually on the Property, bordering the Property or on other lands connecting the Property to the existing sewage collection system, in accordance with the standard specification of the District.

(b) At the request of developer, ~~The Summit Water Distribution Company / Mountain Regional District~~ ("Water Provider") has entered into a Development Agreement to provide for the installation of all water lines, whether such lines and other improvements are actually on the Property, bordering the Property or on other lands connecting the Property to the existing water distribution system, in accordance with the standard specification of the Water Provider.

(c) It is anticipated that the installation of said sanitary sewer lines and waterlines will be completed within two years from the date hereof.

(d) The cost of all said sanitary sewer lines shall be borne by Developer pursuant to an agreement between Developer and the District, and Developer shall enter into a separate guarantee and warranty to the District for such facilities.

(e) The Developer has agreed to construct and pay for culinary and fire protection waterlines to serve the Property, and to transfer maintenance and ownership of said waterlines and other water improvements to Water Provider, after acceptance and approval of said improvements by the Water Provider. The cost of all said waterlines and water improvements shall be borne and guaranteed by the Developer, pursuant to this Development Improvements Agreement.

## **3. Electric, Gas, Telephone and Cable TV Facilities**

(a) At the request of the Developer, Utah Power shall engineer and provide for the installation of all electric distribution lines and facilities required for the Property, and Developer shall pay for such work in accordance with the established charges of Utah Power.

(b) At the request of Developer, Questar Gas Company shall engineer and provide for the installation of all required gas lines and facilities required, and Developer shall pay for such work in accordance with the established charges of Questar Gas Company.

(c) At the request of Developer, U.S. West Communications shall engineer and provide for the installation of all required telephone lines and facilities and Developer shall pay for such work in accordance with the established charges of U.S. West Communications.

(d) At the request of the Developer, one of the following options shall be selected by the Developer for television service: (i) a service provider designated by the Developer shall engineer and provide for the installation of all cable television lines or comparable fiber optic facilities required for the Property, and Developer shall pay for such work in accordance with the established charges of said service provider; and/or (ii) Developer shall make arrangements with a service provider for individual satellite television reception.

(e) The installation of the electric, gas, telephone and cable television facilities is anticipated to be completed within two years from the date hereof.

#### **4. Storm Drainage Improvements**

(a) The Developer shall install all storm drainage facilities described in the Site Improvements Plan and in accord with Summit County Ordinance 381-A.

(b) Developer anticipates completing the installation concurrent or in advance of the completion of the subdivision roads.

#### **5. Trail Easements**

With respect to those public trail easements shown on the Plat which are to be dedicated by Developer to the Snyderville Basin Special Recreation District ("Rec District"), Developer agrees to contribute to the cost of improving such trails in accordance with the agreement between the Rec District and Developer.

#### **6. Roads**

Developer agrees to construct, at Developer's cost, all private roads and private road improvements, within the Property, in accordance with the plans and specifications of the Site Improvements Plan. Developer anticipates completing said road and road improvements construction within two years from the date hereof. Developer agrees to install any traffic control signs and standard street name signs as required by the County and to re-vegetate all cuts and fills resulting from construction in a manner which will

prevent erosion. The construction of such roads shall be subject to inspection and approval by the County Engineer and the cost of such inspection shall be paid by the Developer.

**7. Landscaping**

Developer shall install landscaping in accordance with the Site Improvements Plan, at Developer's expense, and within two years from the date hereof. All such landscaping is subject to approval by the Community Development Director.

**8. Weed Control**

The Developer agrees to comply with Summit County Ordinance 484 relative to control and elimination of all noxious species of plants as identified within the project boundaries. The Developer further agrees to coordinate with the Summit County weed department, prior to commencement of work, relative to inspections and importations of weed free project materials.

**9. Road Cuts**

Developer acknowledges that the County has adopted a road cut ordinance, the provisions of which shall apply to the alteration of any road necessitated by the installation of any utilities described in this Agreement.

**10. Traffic Control**

During the construction of any utilities or improvements described herein, Developer shall be responsible for controlling and expediting the movement of vehicular and pedestrian traffic through and around all construction sites and activity. Such control shall be according to the latest version of the Manual of Uniform Traffic Control Devices.

**11. Maintenance and Repair**

(a) Developer agrees that it shall repair or pay for any damage to any existing public improvements damaged during the construction of new improvements. The County shall notify Developer within a reasonable time after discovery of any claim hereunder, and Developer shall have a reasonable period of time within which to repair said damage.

(b) At such time as the County Engineer accepts, in writing, the improvements described in the Site Improvement Plan and the Developer records the Declaration of Covenants, Conditions and Restrictions in the office of the Recorder of Summit County, Utah, which obligates "Project" Owners Association to maintain any private roads within the Property, the Developer shall be released from the obligation and liability to provide

maintenance services for the private roads or to be responsible for the cost of such maintenance. At such time as the Warranty Period is successfully completed, and/or all required repairs are completed, the Developer shall be released from the obligation to provide further maintenance and/or repairs of any private roads or other improvements completed per the Site Improvement Plan.

## **12. Financial Assurances**

To insure developer's performance under this Agreement, (except for the installation of the Sanitary Sewer Collection Lines described in Paragraph 2 above which are to be directly guaranteed to the District with separate financial assurances from Developer, the Developer shall, prior to the commencement of construction of any improvements, provide the County with sufficient security, to ensure completion of the required improvements, in the amount of 120% of the cost of construction determined in accordance with the schedule in Exhibit B. The security shall be in the form of either: 1) a letter of Credit drawn upon a state or national bank- said Letter of Credit shall: (1) be irrevocable, (2) be of a term sufficient to cover the completion and warranty periods, and, (3) require only that the County present the issuer with a signed draft and a certificate signed by an authorized representative of the County certifying to the County's right to draw funds under the Letter of Credit; or 2) Establishment of an Escrow Account or Completion Bond with the guarantee that all improvements shall be installed within two (2) years or the account or bond will be called by the County to complete the improvements. Acceptable escrow agents shall be the Summit County Treasurer's Office, or banks or savings institutions which are federally insured. This two (2) year deadline may be extended by the County upon showing of sufficient cause.

As portions of the improvements are completed in accordance with this Development Improvements Agreement, County regulations, and the approved Site Improvements Plan, the Developer may make application to the County Engineer to reduce the amount of the original letter of credit, cash escrow or completion bond. If the Board of County Commissioners is satisfied that such portion of the improvements has been completed in accordance with County standards, they may cause the amount of the letter of credit, cash escrow or completion bond to be reduced by such amount that they deem appropriate, so that the remaining amount of the letter of credit, cash escrow or completion bond adequately insures the completion of the remaining improvements.

## **13. Default**

If Developer shall default in the performance of Developer's obligation hereunder and shall fail to cure such default within thirty (30) days after receipt of written notice from the County specifying the nature of such default (or if such default cannot be cured within the aforesaid period of time, if the Developer shall fail to promptly commence to cure the same and to thereafter diligently proceed with such cure), then the County shall

be entitled to undertake such work as may be necessary and appropriate to cure such default and the County shall be reimbursed for the reasonable costs thereof either by payment of such costs to cure the default within 30 days of delivery of an invoice to Developer or by obtaining funds under the security.

**14. Limitation of Liability**

No recourse shall be had for any obligation of or default by Developer under this Agreement or for any claim with respect to this Agreement against any partner or joint venturer of Developer or seller of the Property or any other creditor or lender of Developer under any rule of law (including, without limitation, the rule of law that general partners and joint ventures are jointly and severally liable for the indebtedness of a partnership or joint venture, as applicable), contractual provision, statute or constitution or otherwise, it being understood that all such liabilities of the partners or joint ventures of Developer are to be, by the execution of this Agreement by the County, expressly waived and released as a condition of, and in consideration for, the execution and delivery of this Agreement. Nothing contained herein shall constitute a waiver of any obligation of Developer to the County under this Agreement or shall be taken to prevent recourse to or of the enforcement of any rights of the County as against the security posted by the Developer pursuant to this Development Improvements Agreement.

**15. Amendment**

This Agreement and the Site Improvements Plan referred to herein, may only be amended by written instrument signed by the County and the Developer.

**16. Binding Effect**

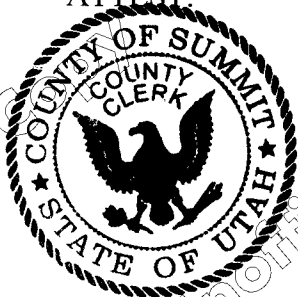
This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors, heirs and assigns of the property owners; provided that, except as provided in Paragraph 10 (b) above, purchasers of residential lots within the Property or any homeowner's association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be recorded in the Office of the Summit County Recorder and on file with the Department of Community Development. All existing lien holders shall be required to subordinate their liens to the covenants contained in the Development Improvements Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed the date and year first written above.

APPROVED:

SUMMIT COUNTY

ATTEST



[Signature]  
Summit County Clerk

By: [Signature]  
Sally Elliott, Chair  
Board of County Commissioners

APPROVED AS TO FORM.

[Signature]  
Jami Brackin, Deputy County Attorney

ACCEPTED:  
"Developer"

Toll Cuh LLC  
By: [Signature]  
Its: partner / manager

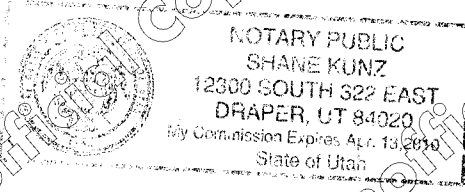
STATE OF UTAH:  
County of Salt Lake

Personally appeared before me this 5 date of March, 2007 the following:

Debra Saurch  
who acknowledged to the that he executed this agreement.

MY COMMISSION EXPIRES 4/13/2010  
NOTARY PUBLIC  
RESIDING IN Wells Fargo

[Signature]



**RECORDERS NOTE**  
DUE TO THE COLOR OF THE INK  
OF THE NOTARY SEAL AFFIXED  
TO THIS DOCUMENT, THE  
SEAL MAY BE UNSATISFACTORY  
FOR COPYING.



EXHIBIT "A"

BEG AT A POINT ON THE SOUTHERLY R/W LINE OF HOMESTEAD ROAD, AS RECORDED IN THE SUMMIT COUNTY RECORDERS OFFICE AS THE JEREMY RANCH PLAT 3, SAID POINT IS ALSO THE POINT OF CURVATURE OF A 385.00 FT RADIUS CURVE TO THE LEFT, CENTER BEARS N 17° 55' 20" E, & SAID POINT LIES S 89° 47' 18" W, ALONG THE SECTION LINE 50.33 FT & S 159.54 FT FROM THE SW COR OF SEC 1, T1S, R3E, SLBM; & RUN THENCE EASTERLY 181.911 FT, ALONG SAID ARC & SAID OUTERLY R/W LINE THROUGH A CENTRAL ANGLE OF 27° 04' 19"; THENCE S 09° 08' 59" E, ALONG A LINE RADIAL TO SAIDD CURVE, 171.17 FT; THENCE S 86° 33' 50" W 145.48 FT; THENCE S 57° 22' 52" W, 168.87 FT; THENCE S 86° 49' 12" W 280.06 FT TO A POINT ON THE NORTHEASTERLY R/W LINE OF I-80, SAID POINT LIES ON A 326.48 FT RADIUS CURVE TO THE LEFT, CENTER BEARS S 60° 00' 44" W; TH NORTHWESTERLY 152.181 FT ALONG SAID NORTHEASTERLY LINE & ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26° 42' 26"; THENCE N 20° 04' 30" E, 300.73 FT TO A POINT ON THE AFORESAID SOUTHERLY R/W LINE OF HOMESTEAD ROAD & ON A 315.00 FT RADIUS CURVE TO THE RIGHT, CENTER BEARS S 00° 47' 13" E; THENCE EASTERLY 102.858 FT ALONG SAID WESTERLY R/W LINE & ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18° 42' 33"; THENCE S 72° 04' 40" EAST ALONG SAID SOUTHERLY R/W LINE, 272.63 FT TO THE POINT OF BEGINNING.

CONTAINS 4.01 ACRES