

**DEVELOPMENT AGREEMENT  
FOR THE SPIRO TUNNEL MASTER PLANNED DEVELOPMENT  
PARK CITY, SUMMIT COUNTY, UTAH**

This Development Agreement is entered into as of this 23<sup>rd</sup> day of February, 2007, by and between Paladin Development Partners, L.L.C., a Utah limited liability company ("Developer") as the owner and developer of certain real property located in Park City, Summit County, Utah, on which Developer proposes the development of a project known as the Spiro Tunnel Master Planned Development, and Park City, a municipality and political subdivision of the State of Utah ("Park City"), by and through its City Council.

**RECITALS**

- A. Developer is the owner of approximately 19.84 acres of real property located in Park City, Summit County, Utah, as reflected in Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property"), on which it has obtained approval for the development of a mixed use project consisting of 97 residential unit equivalents (UEs), 14.5 commercial UEs, support commercial, meeting rooms, and employee/artist-in-residence housing known as the Spiro Tunnel Master Planned Development, as more fully described in the incorporated Exhibits and as set forth below (the "Project").
- B. On August 12, 2004, the City Council of Park City enacted Ordinance No. 04-35 annexing approximately 12.32 acres of the Property into Park City's municipal boundaries and authorized the Mayor to execute an Annexation Agreement between Park City and Developer.
- C. Park City requires development agreements under the requirements of the Park City Land Management Code ("LMC") for all Master Planned Developments.
- D. Developer is willing to design and develop the Project in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the Park City General Plan, and address other issues as more fully set forth below.
- E. Park City, acting pursuant to its authority under Utah Code Ann., Section 10-9-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations 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.

Now, therefore, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, Developer and Park City hereby agree as follows:

1. **Project Conditions:**

1.1 The Annexation Agreement for the Spiro Tunnel Property, executed by the parties on August 12, 2004 and recorded at the Summit County Recorder's office on September 10<sup>th</sup>, 2004, Book #01645, Page 1347-1355, is attached hereto and incorporated herein by this reference as Exhibit B.

00750851 Bk01733 Pg01942-01940  
ALAN SPRIGGS, SUMMIT CO RECORDER  
2005 SEP 15 12:06 PM FEE \$4.00 BY GGB  
REQUEST: PARK CITY MUNICIPAL CORP

1.2 The Site Plan dated and reviewed by the Planning Commission on October 27, 2004, and Findings of Fact, Conclusions of Law and Conditions of Approval attached as Exhibit C are incorporated herein as the Project; subject to changes detailed herein.

1.3. Developer and its successors agree to pay the then current impact fees imposed and as uniformly established by the Park City Municipal Code at the time of permit application, whether or not state statutes regarding such fees are amended in the future.

2. **Vested Rights and Reserved Legislative Powers**

2.1 Subject to the provisions of this Agreement, Developer shall have the right to develop and construct the Project in accordance with the uses, densities, intensities, and general configuration of development approved by this Agreement, subject to compliance with the other applicable ordinances and regulations of Park City.

2.2 **Reserved Legislative Powers.** Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the existing land use regulations which are applicable to the Project under the terms of this Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the Project and terms and conditions of this Agreement applicable to the Project shall be of general application to all development activity in the City; and, unless the City declares an emergency, Developer shall be entitled to the required notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

3. **Subdivision Plat Approval and Compliance with Park City Design and Construction Standards**

Developer expressly acknowledges and agrees that nothing in this Development Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of Park City necessary for approval and recordation of subdivision plats for the Project, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of Park City, including but not limited to, the Park City Subdivision Ordinance as set forth in the LMC and Design and Construction Standards.

4. **Successors and Assigns.**

4.1 **Binding Effect.** This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project.

4.2 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns. This restriction on assignment is not intended to prohibit or

impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of buildings or improvements on the parcels, with Developer retaining all rights and responsibilities under this Agreement.

**5. General Terms and Conditions.**

**5.1 Term of Agreement.** Construction, as defined by the Uniform Building Code, is required to commence within two (2) years of the date of execution of this Agreement. After Construction commences, the Spiro Tunnel Master Planned Development and this Agreement shall continue in force and effect until all obligations hereto have been satisfied. The Master Plan approval for the Project shall remain valid so long as construction is proceeding in accordance with the approved phasing plan set forth herein.

**5.2 Agreement to Run With the Land.** This Development Agreement shall be recorded against the Property as described in Exhibit A hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property.

**5.3 No Joint Venture, Partnership or Third Party Rights.** This Development Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties.

**5.4 Integration.** This Development Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

**5.5 Severability.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**5.6 Attorney's Fees.** If this Development Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney's fees and all costs of enforcement of the non-breaching party.

**6. Phasing.**

**6.1 Project Phasing.** The Project may be platted in phases; however the first phase shall include the preservation and/or renovation of the three (3) historic structures identified in the MPD approval and dedication and construction of all public improvements, including but not limited to pedestrian amenities and trails, sidewalks, and bus stop amenities. The Developer may proceed by platting and constructing the Project all at one time or by phase for portions of the Project as market conditions dictate, as long as each phase provides a logical extension of the road system, infrastructure and facilities through the Project in conformance with the requirements of this Agreement and the LMC.

6.2 Construction of Access. Developer has commenced grading access to all phases of the Project as approved by the City Engineer according to generally accepted engineering practices and standards, and pursuant to permit requirements of the LMC and Uniform Building Code/Uniform Fire Code. Developer shall be responsible for maintenance of any such accesses until they are completed according to City standards and accepted by the City.

7. Water. Pursuant to the January 23, 1992 agreement between Park City and United Park City Mines Company, Developer is not required to dedicate water rights to City in support of this Agreement or the Project. However, Developer acknowledges that water development fees will be collected by Park City in the same manner and in the same amount as with other development within municipal boundaries and that impact fees so collected will not be refunded to Developer or to individual building permit applicants developing within the Project.

8. Affordable Housing.

The Developer shall comply with the Affordable Housing requirements prior to receiving any certificate of occupancy, as detailed in the conditions of approval as attached hereto at Exhibit C.

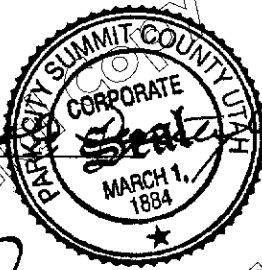
IN WITNESS WHEREOF, this Development Agreement has been executed by Paladin Development Partners, L.L.C. by persons duly authorized to execute the same and by the City of Park City, acting by and through its City Council as of the 25<sup>th</sup> day of February, 2005.

PARK CITY MUNICIPAL CORPORATION

By: Dana Williams  
Dana Williams, Mayor

ATTEST:

By: Janet M. Scott  
Janet M. Scott, City Recorder



APPROVED AS TO FORM:

Mark D. Harrington  
Mark D. Harrington, City Attorney

**DEVELOPER:**

Paladin Development Partners, L.L.C.  
1920 Park West #28D  
Park City, Utah 84098

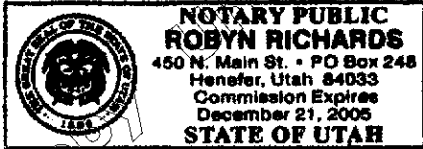
*Rory*  
By: Rory C. Murphy, Member

STATE OF UTAH

COUNTY OF SUMMIT

On this 30th day of <sup>August</sup> ~~February~~, 2005, personally appeared before me Rory C. Murphy, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he is a member of Paladin Development Partners, L.L.C., a Utah limited liability company by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said LLC executed the same.

*Robyn Richards*  
Notary Public



# EXHIBIT A

## BOUNDARY DESCRIPTION

Commencing at the East Quarter Corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; Thence South 00 15' 20" West 397.02 feet along the East line of said Section 8; Thence West 1703.28 feet to a point on the Westerly Right-of-Way of Three Kings drive and the POINT OF BEGINNING; Thence along said Right-of-Way the following 4 (four) courses; (1) Southeasterly 352.67 feet along the arc of a 625.00 foot radius curve to the left (center bears North 71 07' 36" East) through a central angle of 32 19' 50" (2) South 51 12' 14" East 141.13 feet (3) Southeasterly 70.86 feet along the arc of a 290.00 foot radius curve to the right (center bears South 38 47' 40" East) through a central angle of 14 00' 00" to a point of reverse curvature (4) Southeasterly 23.99 feet along the arc of a 680.00 foot radius curve to the left (center bears North 52 47' 40" East) through a central angle of 02 01' 17"; Thence South 30 00' 00" West 229.50 feet; Thence West 320.70 feet; Thence North 02 50' 38" East 99.95 feet; Thence North 89 51' 20" West 496.04 feet; Thence North 89 35' 52" West 481.94 feet; Thence North 0 15' 24" East 407.62 feet; Thence South 89 59' 59" East 482.86 feet; Thence East 358.35 feet to a point on a non-tangent curve; Thence Northeasterly 24.14 feet along the arc of a 110.00 foot radius curve to the right (center bears North 88 44' 18" East) through a central angle of 12 34' 18"; Thence North 13 50' 00" East 50.00 feet; Thence Northeasterly 28.27 feet along the arc of a 60.00 foot radius curve to the right (center bears South 76 10' 00" East) through a central angle of 27 00' 00"; Thence North 40 50' 00" East 83.24 feet to the POINT OF BEGINNING.

Contains 12.32 Acres

## EXHIBIT B

**When Recorded, please return to:**  
PARK CITY MUNICIPAL CORPORATION  
City Recorder  
Post Office Box 1480  
Park City, UT 84060

### ANNEXATION AGREEMENT FOR THE SPIRO TUNNEL PROPERTY

This Annexation Agreement is made by and between Park City Municipal Corporation ("Park City") and Paladin Development Partners, L.L.C., a Utah limited liability company (hereafter collectively referred to as "Petitioner") to set forth the terms and conditions under which Park City will annex land owned by Petitioner into the corporate limits of Park City and extend municipal services to that property. This Agreement is made under authority of Sections 10-2-401 et. seq. of the Utah Code, Annotated 1953 as amended, and shall serve as a supplemental annexation policy declaration when executed by all parties. In consideration of Park City's agreement to annex Petitioner's property and in consideration of the mutual promises contained herein, the parties agree that the terms and conditions of annexation shall be as follows:

1. **Property.** The property to be annexed is approximately 12.32 acres in size as depicted on the annexation plat, attached as Exhibit A and as more fully described in the legal description, attached as Exhibit B, and incorporated herein by reference (hereafter referred to as the "Property").
2. **Zoning.** Upon annexation, the Property will be zoned RDM (Residential Development Medium Density) as shown on Exhibit A. The maximum density allowed by Land Management Code zoning for the MPD parcels (comprised of the Property and neighboring parcels as described at Paragraph 3 herein) is between 84 and 132 UE. Final density will be determined by the Planning Commission prior to Final Action on the MPD. Sensitive Area Overlay Zoning (SLO) will not apply to the Property
3. **Master Plan Approval and Project Phasing.** Pursuant to LMC Section 15-8-3 (D), Petitioner on October 29, 2003, submitted an application for a Master Planned Development (MPD) known as the Spiro Tunnel MPD. The proposed Spiro Tunnel MPD consists of the subject Property, an adjacent 5.26 acre RD (Residential Development) zoned parcel, and an adjacent 2.26 acre SF (Single Family) zoned parcel, known as the "Donile parcel." This Agreement does not represent approval or vesting of the proposed Spiro Tunnel MPD or any other development proposals/plans on the Property. Following completion of the annexation process pursuant to Utah Code Annotated Section 10-2-425, as amended, development of the Property shall be governed by the zoning designation provided herein and the Park City Land Management code in effect at the time a complete application is filed with Park City.

BK1733-PG1948

4. **Trails.** Petitioner agrees as a condition precedent to final plat approval for the Property to dedicate public non-vehicular trail easements over existing trails or relocated trails approved by Park City Municipal Corporation, trail head parking and City Water Department employee's parking as required as part of the MPD review process.

5. **Fire Prevention Measures.** Because of significant wild land interface issues on the Property, the Petitioner agrees to implement a fire protection and emergency access plan, to be submitted prior to issuance of any building permits, and to be reviewed and approved by the Fire Marshall and Chief Building Official for compliance with applicable building and fire codes.

6. **Roads and Road Design.** All streets and roads within the Property shall be designed according to the City's road design standards and shall be private. Maintenance of all roads, parking, sidewalks, and pedestrian circulation shall be by the entity holding fee title to the property, or the Homeowner's Association.

7. **Sanitary Sewer.** Alignment of the sanitary sewer shall be determined as part of the final subdivision plat for the Property. The preferred alignment shall be determined by the City Engineer and the Snyderville Basin Water Reclamation District pursuant to the Park City Municipal Design Standards, Construction Specifications, Standard Drawings (latest edition) and all other requisite City Infrastructure Design Codes, which results in the least visual impact and site disturbance while meeting site design and construction requirements of the Petitioner and Snyderville Basin Water Reclamation District.

8. **Dedication of Water Rights.** Pursuant to the January 23, 1992 agreement between Park City Municipal Corporation and United Park City Mines Company, Petitioner is not required to dedicate water rights to City in support of this annexation petition or the proposed Spiro Tunnel MPD. However, Petitioner acknowledges that water development fees will be collected by City in the same manner and in the same amount as with other development within municipal boundaries and that impact fees so collected will not be refunded to Petitioner or to individual building permit applicants developing within the proposed annexation area.

9. **Water Development Fees and Other Water System Costs.** Petitioner shall construct and dedicate all necessary water facilities and easements pursuant to the Park City Municipal Design Standards, Construction Specifications, Standard Drawings (latest edition) and all other requisite City Infrastructure Design Codes as determined by the City Engineer and Public Works Director during the final subdivision review process. All such facilities shall be constructed to specifications approved by the City Engineer. Upon completion of such facilities, easements and appurtenances all to the satisfaction of the City Engineer, the Petitioner shall dedicate the easements and water facilities to the City. As each building permit is obtained for each building within the subdivision, the lot owner shall pay the Park City Water Development fees as provided by the Park City ordinance in effect at the time of application for building permits. The parties agree that no lot



owner within the Property shall be entitled to an offset (in whole or in part) of the Park City Water Development Fee as a result of the Petitioner's successful completion of this condition.

In addition, development of the Property shall be designed around any and all existing water lines, fittings, and appurtenances, and around all tunnels and tracks necessary for the ongoing operation of the Spiro Tunnel water works, and any proposed relocations of these improvements are subject to approval by Park City, and any such relocations shall be paid for entirely by the Petitioner, together with standard inspection fees and financial securities. Petitioner shall provide on-site storm runoff detention facilities, or alternatives, as approved by the Park City Engineer pursuant to the Park City Municipal Design Standards, Construction Specifications, Standard Drawings (latest edition) and all other requisite City Infrastructure Design Codes. Timing of such storm run-off improvements shall be determined at the time of final plat approval.

10. **Historic Preservation.** An Historic Building Renovation Plan for Historic Structures on the Property, in conformance with the LMC, Historic District Guidelines, and Secretary of Interior Standards is a condition precedent to the issuance of any full building permit.

11. **Planning Review Fees.** Petitioner is responsible for all planning, building, subdivision and construction inspection fees required by the City at the time of application.

12. **Impact and Building Fees.** Petitioner shall pay all generally-applicable fees, such as development impact, park and recreation land acquisition, building permit, and plan check fees due for construction on the Property at the time of application for building permits.

13. **Acceptance of Public Improvements.** Petitioner shall offer to Park City title to those water facilities, easements and appurtenances, upon Petitioner's fulfillment of all Code requirements and Park City's final approval of the infrastructure construction.

14. **Snow Removal and Storage.** Park City is not obligated to remove snow from private streets within the Property.

15. **Fiscal Impact Analysis.** The fiscal impact analysis prepared by Wikstrom Economic and Planning Consultants, Inc, dated October 2003, and submitted with the Spiro Tunnel Annexation petition, including revenue and cost assumptions related to the annexation and development of this Property, is hereby accepted and approved by the City.

16. **Comprehensive Review and Analysis of Surrounding Property.** The comprehensive land use review and analysis of the surrounding properties, entitled "Land Development Potential for Properties Adjacent to the Spiro Tunnel Site," dated February 12, 2004, and submitted by Petitioner with the petition for annexation is hereby accepted and approved by the City.

17. **Effective Date.** This Agreement is effective as of the date of the Ordinance

authorizing its execution.

18. **Governing Law.** The laws of the State of Utah shall govern this Agreement. Jurisdiction and venue are proper in Summit County.

19. **Real Covenant, Equitable Servitude.** This Agreement constitutes a real covenant and an equitable servitude on the Property. The terms of this Agreement touch and concern and both benefit and burden the Property. The benefits and burdens of this Agreement run with the land, and are intended to bind all successors in interest to any portion of the Property.

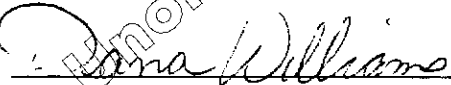
20. **Assignment.** This Agreement is also a personal obligation of the Petitioner. Petitioner may assign its obligations under this Agreement, only upon prior written consent of the City, upon demonstration that the City's rights are adequately secured by the assignment. Consent to assignment shall rest in the sole discretion of the City.

21. **Compliance with City Code.** From the time of City Council approval of this agreement, Petitioner and its agents shall comply with all City Codes and Regulations pertaining to the subject Property.

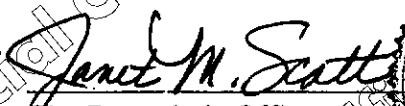
22. **Full Agreement.** This Agreement contains the full and complete agreement of the parties regarding the Annexation and there are no other agreements in regard to the annexation of the Property. Only a written instrument signed by all parties hereto may amend this Agreement.

DATED this 12 day of AUGUST, 2004.

PARK CITY MUNICIPAL CORPORATION

  
Dana Williams, Mayor

ATTEST

  
City Recorder's Office



APPROVED AS TO FORM:

  
City Attorney's Office

BK1733 PG1951

**PALADIN DEVELOPMENT PARTNERS, L.L.C.**

1920 Park West #28D  
Park City, Utah 84098

Rory C. Murphy  
By Rory C. Murphy, Member

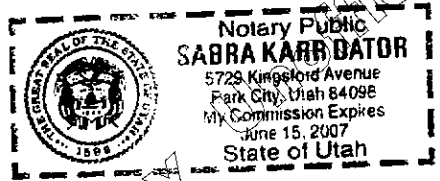
**Acknowledgment**

STATE OF UTAH )  
 ) ss.  
COUNTY OF SUMMIT )

On this 7<sup>th</sup> September day of August, 2004, personally appeared before me Rory C. Murphy, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed), did say that he is a member of Paladin Development Partners, L.L.C., a Utah limited liability company by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said LLC executed the same.

Sabra Karr Dator  
Notary Public

- Exhibits: (A) Annexation and Zoning Plat  
(B) Legal Description



## BOUNDARY DESCRIPTION

Commencing at the East Quarter Corner of Section 8, Township 2 South, Range 4 East, Salt Lake Base and Meridian; Thence South  $00^{\circ}15'20''$  West 397.02 feet along the East line of said Section 8; Thence West 1703.28 feet to a point on the Westerly Right-of-Way of Three Kings drive and the POINT OF BEGINNING; Thence along said Right-of-Way the following 4 (four) courses; (1) Southeasterly 352.67 feet along the arc of a 625.00 foot radius curve to the left (center bears North  $71^{\circ}07'36''$  East) through a central angle of  $32^{\circ}19'50''$  (2) South  $51^{\circ}12'14''$  East 141.13 feet (3) Southeasterly 70.86 feet along the arc of a 290.00 foot radius curve to the right (center bears South  $38^{\circ}47'40''$  East) through a central angle of  $14^{\circ}00'00''$  to a point of reverse curvature (4) Southeasterly 23.99 feet along the arc of a 680.00 foot radius curve to the left (center bears North  $52^{\circ}47'40''$  East) through a central angle of  $02^{\circ}01'17''$ ; Thence South  $30^{\circ}00'00''$  West 229.50 feet; Thence West 320.70 feet; Thence North  $02^{\circ}50'38''$  East 99.95 feet; Thence North  $89^{\circ}51'20''$  West 496.04 feet; Thence North  $89^{\circ}35'52''$  West 481.94 feet; Thence North  $0^{\circ}15'24''$  East 407.62 feet; Thence South  $89^{\circ}59'59''$  East 482.86 feet; Thence East 358.35 feet to a point on a non-tangent curve; Thence Northeasterly 24.14 feet along the arc of a 110.00 foot radius curve to the right (center bears North  $88^{\circ}44'18''$  East) through a central angle of  $12^{\circ}34'18''$ ; Thence North  $13^{\circ}50'00''$  East 50.00 feet; Thence Northeasterly 28.27 feet along the arc of a 60.00 foot radius curve to the right (center bears South  $76^{\circ}10'00''$  East) through a central angle of  $27^{\circ}00'00''$ ; Thence North  $40^{\circ}50'00''$  East 83.24 feet to the POINT OF BEGINNING.

Contains 12.32 Acres

Exhibit C

Findings of Fact

1. The proposed project, known as the Spiro Tunnel MPD is subject to the Spiro Tunnel Annexation Agreement between Paladin, LLC and Park City Municipal Corporation approved by the City Council on August 12, 2004 and ratified by the Planning Commission on October 27, 2004. The annexation agreement sets forth terms and conditions of annexation and zoning of a 12.32 acre parcel that is a part of the Spiro Tunnel MPD.
2. The Spiro Tunnel MPD is a mixed use project consisting of 97 residential UE (22 cottage style units, 1 single family lot for a new single family residence and the existing historic house as an associated guest house, 74 townhouse/stacked flat condominiums are proposed) 14.5 commercial UE (for an artist-in-residence use with artist studios, gallery retail, and office uses), up to 5% of the townhouse/condominium floor area for support commercial (approximately 7,500 sf) such as ski and condominium hotel related support commercial and office, and up to 5% of the townhouse/condominium floor area for meeting rooms, and 15 ue employee/artist-in-residence housing on a total of 19.84 acres.
3. The project provides approximately 14.80 acres of Open Space, approximately 75% of the site.
4. The MPD is being processed concurrent with a Conditional Use Permit for the entire project as described in #2 above. No additional conditional use permits are required prior to issuance of building permits for the structures described by the Spiro Tunnel Master Planned Development. A change of use, from that described by the MPD may require a separate conditional use permit
5. The project is located in the RD, (Residential Development), RDM (Residential Development Medium Density), and SF (Single family) zoning districts.
6. Three large structures exist on the site, as well as several smaller structures. These structures remain after the mining activity that occurred on this site. Currently the site is used as a staging area and office area for a construction and excavation company, as well as for the offices of the property owner and developer of the Spiro Tunnel MPD. There is also an existing single family home on the northern portion of the site, on the parcel known as the "Donile parcel".
7. The proposed MPD is consistent with the August 12, 2004, Spiro Tunnel Annexation Agreement
8. In large part, the Spiro Tunnel MPD site has been disturbed to the point where the natural slopes and contours have been erased by mining and construction activities. The units are situated on the most developable and least visually sensitive portions of the site and areas most heavily vegetated are not proposed for development. Substantial buffer (240'- 260') in terms of setbacks and vegetation are provided between the duplexes/cottages and the existing single family homes to the north.
9. The site is not visually prominent from designated LMC Vantage points, is not located within the entry corridor, does not contain SLO designated ridgelines, and does not contain wetlands (with the exception of 0.3 acres of drainage areas) according to the wetlands determination conducted by Psomas Engineering in May of 2004.
10. The proposed density of 97 UEs on 19.84 acres is within the density ranges allowed by the RD, SF, and RDM districts (85-132 UEs). The proposed density is also within the density ranges allowed by the zoning districts when slope areas

- greater than 40% and drainage areas are removed, leaving 17.08 acres (78- 116 UEs) of developable land.
11. The Spiro Tunnel MPD provides public benefits and amenities including 1) extensive renovation of three historic structures, 2) ski infrastructure amenities and improvements consistent with the PCMR Master Plan, 3) redevelopment and rehabilitation of a former industrial site, 4) infrastructure, parking, and housing for an artist-in-residence program, 5) resolution of parking (for Spiro trailhead and public works seasonal employees) and pedestrian conflicts along Three Kings Drive (sidewalks), and 6) public bus stop facility. The Master HOA will maintain improvements in perpetuity.
  12. The site plan provides a minimum 25' setback around the perimeter of the property. Greater setbacks (240' to 260') are provided along the north property line and setbacks of 40' to 60' are provided along Three Kings Drive and Crescent Road.
  13. The location of the proposed structures is consistent with MPD site planning criteria. The buildings step horizontally and vertically with the existing topography.
  14. The site plan provides approximately 75% open space, exceeding the standard 60% open space for MPDs.
  15. The property is not within the Sensitive Lands Overlay (SLO) zone.
  16. The site plan depicts parking for all single family and cottage style duplex units that meets the two spaces per unit LMC requirements with a total of approximately 306 spaces provided. Parking for all townhouses, condominiums, offices and support commercial uses meets the specific parking requirements as outlined in LMC Chapter 3- Off Street Parking. At the time of building permit issuance compliance with the parking requirements will need to be verified as conditioned. Specific parking lot design, landscaping, and lighting will be reviewed at the time of building permit issuance for compliance with the LMC, as conditioned.
  17. A landscape plan depicting water-efficient irrigation systems, generally drought tolerant plant materials, and adequate mulching is required due to the City's focus on water conservation.
  18. A traffic study was conducted and a report was prepared by Fehr and Peer Associates, Inc. The report concludes that traffic generated by the Spiro Tunnel MPD upon completion of the construction, will increase on Three Kings Drive, but the resulting overall traffic will not impact traffic operations on Three Kings Drive and will not exceed the capacity of this street. Construction traffic will be addressed in the Construction Mitigation Plan.
  19. A parking plan was submitted with the Spiro Tunnel MPD outlining how parking will be allocated, how parking during the winter season will be controlled and enforced to prevent public day skier parking, and other aspects of parking for this project. Parking management for trail uses and employees of the Spiro Tunnel Water facility and Parks Department will be addressed in the parking plan.
  20. An affordable housing analysis was conducted and the affordable housing obligation of 15 ue (affordable ue) is based on the density and uses described by the Spiro Tunnel MPD application. Any future change in use requiring a new conditional use permit, may increase the affordable housing obligation for this MPD.
  21. The Land Management Code, Section 15-6-5 (E) allows the Planning Commission to consider increased building height based upon a site specific analysis and determination of compliance with the outlined findings.

22. The Planning Commission reviewed a FOG-Height Analysis (August 30, 2004) at the September 8 and 22, 2004 Planning Commission meetings and found that the proposed height exceptions, as described in the FOG-Height Analysis, for the stacked flat and townhouse condominiums and plaza building do comply with the LMC Criteria for height exceptions for MPDs as described in Section 15-6-5 (F). Up to a 7' height exception (above the 33' maximum zone height) is requested for Area A and up to a 12' height exception (above the 33' maximum zone height) is requested for Area B. The cottage style duplex buildings will be constructed pursuant to the 33' zone height limitations per the LMC.
23. The increase in building height does not result in an increase in square footage or building volume over what could be allowed under the zone-required building height and density, including requirements for facade variation and design, but rather provides architectural variation.
24. Buildings have been positioned to minimize visual impacts on adjacent structures. Potential problems on neighboring properties caused by shadows, loss of solar access, and loss of air circulation, have been mitigated to the extent possible as defined by the Planning Commission.
25. There is adequate landscaping and buffering from adjacent properties and uses. Increased setbacks and separations from adjacent projects are being proposed.
26. The additional building height has resulted in more than minimum open space required and has resulted in the open space being more usable.
27. The additional building height is designed in a manner so as to provide a transition in roof elements in compliance with Chapter 9, Architectural Guidelines.
28. Utilities must be provided and/or relocated to sustain the anticipated uses. Thirty (30') foot wide non-exclusive utility easements are necessary for long term maintenance. Off-site improvements are necessary to serve the site with sewer.
29. Off-site improvements will create traffic delays and potential detours, short term access and private driveway blockage, increased transit time, parking inconveniences, and other impacts on the adjacent neighborhoods and to the community in general.
30. A Construction Mitigation Plan (CMP) is necessary to identify impacts and propose reasonable mitigation of these impacts on the site, neighborhood, and community due to construction of this project. The CMP shall include information about specific construction phasing, traffic, parking, service and delivery, stock-piling of materials and staging of work, work hours, noise control, temporary lighting, trash management and recycling, mud and dust control, construction signs, temporary road and/or trail closures, limits of disturbance fencing, protection of existing vegetation, erosion control and storm water management.
31. No public streets are vacated nor created with this site plan. A private street is created to serve the cottage style duplexes with access and egress.
32. A financial guarantee for all landscaping and public improvements is necessary to ensure completion of these improvements and to protect the public from liability and physical harm if these improvements are not completed by the developer or owner in a timely manner. This financial guarantee is required prior to building permit issuance, with the exception of restoration permits for the historic structures, as determined by the City.
33. Public hearings were held on the proposed MPD on April 14, May 12, June 23, July 14, September 8, September 22, and October 27, 2004.
34. As conditioned, the project complies with fire and emergency access requirements, by virtue of a fire protection plan that address access, material types, structural requirements, residential sprinkler systems, fire and emergency

access, and fire separation. The Chief Building Official prior to issuance of building permits must grant final assessment and approval of the final fire protection plan.

35. The applicant agrees to provide for City review and approval, prior to issuance of any building permits (with the exception of restoration and remodel of the existing structures), a final dimensioned site plan, final landscape and irrigation plan, final grading and utility plans, a parking plan, service and delivery details, final affordable housing plan, and detailed architectural elevations (including exterior lighting details). All plans will be consistent with the plans, models, cross sections, and design details approved by the Planning Commission on October 27, 2004.
36. A master sign plan is required for Planning Department review and approval and all individual signs require a sign permit prior to installation that is in conformance with the master sign plan.
37. The project will be platted into four lots, one for the single family house and guest house and one for each phase of the development. The project will also be platted as a condominium project with a common condominium homeowner's association, prior to sale of any individual residential or commercial unit. Nightly rentals will be permitted for the condominium units.
38. A stipulation of annexation was that the property be included in the City's Prospector Soils Ordinance and will be subject to all applicable regulations for excavations, testing, disposal, and capping.
39. The applicant stipulates to the conditions of approval.
40. Section 15-6-4 (G) of the LMC states that once the Planning Commission has approved an MPD, the approval shall be put in the form of a Development Agreement.

#### Conclusions of Law

1. The MPD, as conditioned, complies with all requirements outlined in the applicable sections of the Land Management Code, specifically Chapter 6-Master Planned Developments Section 15-6-5 and Section 15-1.10 review criteria for Conditional Use Permits.
2. The MPD, as conditioned, is compatible with surrounding structures in use, scale, mass, and circulation.
3. The MPD, as conditioned, is consistent with the Park City General Plan.
4. The MPD, as conditioned, is consistent with the Spiro Tunnel Annexation Agreement.
5. The MPD, as conditioned, strengthens and enhances the resort character of Park City.
6. The MPD, as conditioned, is compatible in use, scale and mass with adjacent properties, and promotes neighborhood compatibility.
7. The MPD provides amenities to the community so that there is no net loss of community amenities.
8. The MPD, as conditioned, is consistent with the Employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
9. The MPD has been designed to place Development on the most Developable Land and preserves significant features and vegetation to the extent possible.
10. The MPD, as conditioned promotes the Use of non-vehicular forms of transportation through design and by providing trail connections, skier amenities, and bus stop amenities.
11. The MPD has been noticed and public hearings held in accordance with the LMC.



12. The MPD promotes historic preservation by restoring and adapting for appropriate re-use, three large historic mining buildings.
13. The requirements necessary for the Planning Commission to grant additional building height within the MPD pursuant to the Land Management Code Section 15-6-5 have been met.
14. The proposed uses of the Conditional Use Permit are compatible with surrounding structures in use, scale and mass, and circulation.
15. The proposed uses of the Conditional Use Permit are consistent with the Park City General Plan and Spiro Tunnel MPD.
16. Any effects in difference in use or scale of the Conditional Use Permit have been mitigated through careful planning and conditions of approval.

Conditions of Approval

1. All standard project conditions shall apply (Exhibit A).
2. A final exterior lighting plan, including a parking lot lighting plan, shall be submitted to and approved by the City as a condition precedent to full permit issuance. All exterior lighting shall be subdued in nature and shall conform to the City's lighting ordinance, LMC Section 15-5-5-(f) and 15-3-3(c).
3. A final landscaping and irrigation plan shall be submitted to and approved by the City as a condition precedent to full permit issuance. Landscaping materials and irrigation shall comply with the Water Conservation Plan (September 13, 2004) submitted for review by the Planning Commission.
4. All streetlights will be privately maintained.
5. Final site plan (including final layout and landscaping of the surface parking lots) and architectural elevations consistent with the LMC and the plans, visual analysis, FOG-Height analysis, cross sections, and details reviewed and approved by the Planning Commission at the September 22 and October 27, 2004 meetings shall be reviewed and approved by the City as a condition precedent to issuance of a footing and foundation permit. The Planning Staff shall review all revisions. If such revisions are of a substantial nature, the plans will be presented to the Planning Commission for review.
6. A detailed review against specific requirements of the Uniform Building and Fire Codes in use at the time of building permit submittal is a condition precedent to issuance of a building permit. As a condition precedent to issuance of any building permits the Applicant shall provide the Chief Building Official with information regarding any existing mine shafts or left over mining structures that could complicate foundation construction. Final approval regarding snow shedding issues will be granted by the Chief Building Official only upon finding the final architectural and structural plans in compliance with the City's snow shedding requirements.
7. A Construction Mitigation Plan (CMP) shall be submitted to the City and shall be reviewed by the City for compliance with the Municipal Code, as a condition precedent to issuance of any building permits, with the exception of restoration work on the existing buildings, which will require a separate CMP. The CMP shall address construction phasing, staging, storage of materials, circulation and traffic, parking, service and delivery, re-vegetation of disturbed areas, temporary signs and construction lighting, hours of operation, dust and mud control, storm water management, and other items as may be required by the Building Department. The immediate neighborhood and community at large shall be provided notice at least 24 hours in advance of construction work impacting private driveways, street closures, and interruption of utility service.

8. The CMP shall address disposal and treatment of all excavated material and capping of exposed soils in accordance with the City's Soils Ordinance, Title 11, Chapter 15- Park City Landscaping and Maintenance of Soil Cover. All applicable regulations and requirements of the Soils Ordinance shall apply to this property prior to and following official adoption by the City Council of the amended Soils Ordinance to include within the Soils Ordinance Boundary, the Spiro Tunnel MPD property. A detailed limit of disturbance plan shall be submitted as part of the CMP. No maintenance of any sidewalk, bus drop off, parking area, trail, or landscaping will be done by Park City.
9. A financial guarantee, in a form and amount acceptable to the City and in conformance with the LMC Subdivision Regulations, for the value of all public improvements, pedestrian amenities and trails, sidewalks, bus stop amenities, landscaping (including landscaping to re-vegetate and re-landscape areas disturbed by construction related to the Spiro Tunnel MPD) to be completed according to the final approved plans shall be provided to the City prior to building permit issuance for new construction, with the exception of restoration and remodeling of the old mining structures. All public improvements shall be completed according to City standards and accepted by the City Council prior to release of this guarantee.
10. A final record of survey plat must be submitted to the City for review and approval by the City Council, for compliance with the LMC, and must be recorded at the County, prior to closing on any sale of individual condominium units. The record of survey plat shall address compliance with the ADA, including the potential for all ADA compliant units to be indicated on the record of survey plat and held as common space in perpetuity.
11. The Declaration of Condominium shall be submitted to the City Attorney for review and approval as to form. The Declaration shall be recorded at the time of recordation of the record of survey plat.
12. Recordation of a final subdivision plat, reviewed and approved in conformance with the LMC Subdivision regulations, by the Planning Commission and City Council, is a condition precedent to issuance of building permits, with the exception of building permits associated with the restoration and remodel of existing mining structures.
13. The City Engineer shall review and approve all associated utility, public improvements, grading and drainage plans for compliance with the LMC and City standards as a condition precedent to building permit issuance (except for building permits associated with the restoration and remodel of existing mining structures) and subdivision plat recordation. The final utility plans shall be consistent with preliminary utility plans on file with the City.
14. Approval by the City of a Master Sign plan, and approval of individual sign applications, in conformance with the Park City Sign Code, is a condition precedent to installation of any signs on the property, with the exception of construction related signs.
15. The Snyderville Basin Water Reclamation District's review and approval of the utility plans and subdivision plat, for conformance with the District's standards for review, is a condition precedent to final plat recordation and building permit issuance.
16. An annual review of the overall traffic and parking situation (including effectiveness of restricting day skier parking) associated with the Spiro Tunnel MPD (resort support commercial, artist-in-residence, and office portions) shall be conducted by the Applicant (or Condominium Association) and presented to the City for three consecutive years upon issuance of a certificate of occupancy for these uses. The report shall identify any traffic or parking impacts that have occurred and shall make recommendations as to ways to mitigate these impacts.

17. Mechanical vents shall be painted, hidden with architectural features, located and/or landscaped to mitigate negative impacts on the architectural intent of the buildings and such that noise, vibration, odors, steam, and impacts on the neighboring properties are minimized to the greatest degree possible.
18. All historic preservation work on the existing buildings requires an Historic Design Review to be submitted for review and approval for compliance with the Historic Preservation Plan submitted at the time of the Spiro Tunnel MPD application and approved by the City and for compliance with the Park City design guidelines as a condition precedent to issuance of any building permits.
19. All construction shall comply with the restrictions and requirements of the Park City Soils Ordinance (Municipal Code Title 11, Chapter 15).
20. As a condition precedent to receiving a certificate of occupancy for any residential condominium, townhouse, or duplex unit, the Applicants shall provide the City with proof of compliance with the Affordable Housing Analysis submitted to and agreed upon by the City and the Applicant at the time of MPD approval.
21. Any future changes in use that requires a conditional use permit shall be evaluated as to the possibility of increasing the affordable housing obligation.
22. A master sign plan shall be submitted, reviewed for compliance with the Park City Sign Code, and approved by the City, as a condition precedent to issuance of any individual signs on the Property.
23. Design and location of all loading areas, including areas for trash maintenance, shall be reviewed and approved by the City for compliance with the LMC and Building Code, as a condition precedent to issuance of a full building permit.
24. Approval of this Master Planned Development is subject to LMC Chapter 6- Master Planned Developments and shall expire two years from the date of execution of the Development Agreement unless Construction, as defined by the Uniform Building Code, has commenced on the project.
25. Section 15-6-4 (G) of the LMC states that once the Planning Commission has approved an MPD, the approval shall be put in the form of a Development Agreement. The Development Agreement must be ratified by the Planning Commission, signed by the Mayor on behalf of the City Council, and recorded with the Summit County Recorder within 6 months of the Planning Commission approval of the MPD or the Planning Commission approval shall expire.