Ent 104097 Bk 234 Pg 323
Date: 18-AUG-2006 1:44PM
Fee: $48.00 Check
Filed By: AKT
BRENDA NELSON, Recorder
MORGAN COUNTY
For: GARDNER COTTONWOOD CREEK L C

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Morgan County
Attention: County Attorney
48 West Young Street
Morgan, Utah 84050

DEVELOPMENT AGREEMENT
FOR THE COTTONWOODS AT MOUNTAIN GREEN,
MORGAN COUNTY, UTAH

THIS DEVELOPMENT AGREEMENT FOR THE COTTONWOODS AT MOUNTAIN GREEN, MORGAN COUNTY, UTAH (this "**Agreement**") is entered into as of this 9th day of August, 2006, by and between GARDNER COTTONWOOD CREEK, L.C., a Utah limited liability company ("**Developer**"), and MORGAN COUNTY, a political subdivision of the State of Utah, by and through its County Council (the "**County**").

RECITALS:

A. Developer owns or has the contractual right to acquire approximately 1,036.08 acres of land located in Morgan County, Utah, commonly known as The Wilkinson Dry Farm and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Property**"), on which Developer has proposed the development of a master planned community in accordance with the site plan shown in Section 3 of the Overlay Report (defined below) (the "**Site Plan**") and more particularly known as the Cottonwoods at Mountain Green.

B. Pursuant to a duly noticed public hearing on June 17, 2004, the County's Planning Commission voted to recommend to the County Council that the Property be rezoned from A-20 and MU-160 to RR-1 and RR-5.

C. Pursuant to a duly noticed public hearing on July 20, 2004, the County Council considered and adopted the recommendation of the County's Planning Commission and the Property was rezoned from A-20 and MU-160 to RR-1 and RR-5 (the "**Zone Change**").

D. Pursuant to the County's Ordinance Nos. CO-06-16 (the "**Overlay Ordinance**") the Developer submitted to the County, and after appropriate public hearings the County conditionally approved the proposed PUD Overlay Zone Change for "The Cottonwoods at Mountain Green", dated July 5, 2005 (the "**Cottonwoods Concept Plan**"), which Cottonwoods Concept Plan constitutes a PUD overlay zone amendment.

E. The Overlay Ordinance requires that Developer and County negotiate and adopt a development agreement which advances the policies, goals and objectives of the Morgan County

General Plan (the "**General Plan**"), the Morgan County Land Use Management Code (the "**Land Use Code**"), and the Overlay Ordinance, and contributes to capital improvements, business growth, and development which substantially benefit the County.

F. Developer is willing to design and develop the Property in order to harmonize the use of the Property in accordance with the objectives of the General Plan, the Land Use Code and the Overlay Ordinance and to promote the long-range County development objectives and policies.

G. Developer and the County desire to address specific planning issues as set forth below and in the exhibits hereto and to clarify certain standards that will be applied in connection with the development of the Property.

H. The execution of this Agreement has been affirmatively recommended by the County Planning Commission and approved by the County Council based on specific findings of fact that the development of the Property in accordance with this Agreement, the Overlay Report and the Overlay Ordinance is consistent with the goals, policies and objectives of the General Plan, is in harmony with the community character and that the use of the Property as contemplated by this Agreement, the Overlay Report, the Overlay Ordinance and the General Plan is essential to the enjoyment of a substantial property right possessed by other property in the same district.

I. The County, acting pursuant to its authority under Utah Code Ann. (the "**Utah Code**") § 17-27a-101, et seq., the Overlay Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the Property, and, in the exercise of its legislative discretion, elected to approve this Agreement and the Overlay Report, including, without limitation, the density, setback and use standards set forth herein and therein, on the 18th day of July, 2006.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter to be fully kept and performed, the parties hereby agree as follows:

1. **Zoning, Construction Drawings, and Plat Approval.**

1.1. Re-Zoning of the Property.

1.1.1. The County has amended the General Plan and the County's zoning maps to reflect the Zone Change, it being agreed by the County that all public hearings necessary for the implementation of the Zone Change have been accomplished prior to the date hereto. The County Council, after holding all necessary public hearings, has adopted the Cottonwoods Concept Plan.

1.1.2. Simultaneously with the adoption of this Agreement the County Council has adopted, after holding all necessary public hearings, the provisions of that certain PUD Overlay Report dated November 15, 2005 (the "**Overlay Report**"), which Overlay Report sets forth certain standards and requirements for

the development of the Property. The Overlay Report is attached hereto as Exhibit "B". The County Council, after holding all duly noticed public hearings, has adopted this Agreement. Pursuant to the Overlay Ordinance, the Overlay Report and this Agreement constitute subdivision regulations and a PUD overlay zone amendment for the Property and supplement and amend the Cottonwoods Concept Plan. The adoption of this Agreement by the County Council constitutes the final approval of the PUD overlay zone change. To the extent there are inconsistencies between the Cottonwoods Concept Plan, this Agreement and the Overlay Report, this Agreement and the Overlay Report shall govern.

1.2. Planning Commission Preliminary Plat Approval.

1.2.1. Prior to commencing construction on any Phase (defined in Section 2.3 below), Developer shall submit a preliminary plat, the applicable Neighborhood Declaration (defined in Section 2.4 below), construction drawings and specifications (each, as may be subsequently amended from time to time in accordance with the provisions of this Agreement, a "**Plat**") and all required submittals (cost estimates, surety, title report, will serves, drainage etc.) for such Phase to the County Planning Commission. Each Plat submitted to the County Planning Commission shall comply with all technical requirements of the Land Use Code and subdivision ordinances. Developer shall pay fees for each Plat as are generally required by the County at the time of the submission of the Plat to the County Planning Commission. Timing of said submission and review by County Staff prior to the Planning Commission shall be in accordance with the adopted Planning Department submittal deadline policy.

1.2.2. The County Planning Commission shall review the Plat and all required submittals (cost estimates, surety, title report, will serves, drainage etc.) associated with the applicable Phase for completeness, and conformity with this Agreement and the Overlay Report. To the extent that such Plat is complete and consistent with the Overlay Report, this Agreement and all applicable federal, state and local laws, rules, regulations and ordinances, the County Planning Commission shall make a recommendation to the County Council for the approval of such Plat. The County Planning Commission shall hold all duly noticed public hearings required for the approval of such Plat under the Utah Code, the Overlay Ordinance, the Land Use Code and other County ordinances, as applicable; provided, however, nothing herein shall prevent the County Planning Commission in its discretion from holding any public hearings not required by applicable law. In the event the County Planning Commission determines that such Plat is not complete and consistent with the Overlay Report, all applicable federal, state and local laws, rules, regulations and ordinances and this Agreement, the County Planning Commission will provide Developer with a reasonably detailed description of any such inconsistencies, in which case Developer shall revise such Plat to remediate any such inconsistencies and resubmit such Plat to the County Planning Commission for approval pursuant to the process set forth above.

1.3. County Council Preliminary Approval of Plat. Following the recommendation from the County Planning Commission that a Plat be approved by the County Council pursuant to Section 1.2 above, such Plat shall be submitted to the County Council for approval. Developer shall be entitled to approval of the Plat provided that the Plat for the applicable Phase is complete and complies with this Agreement, the Overlay Report and all applicable federal, state and local laws, rules, regulations and ordinances. The County Council shall review the Plat for the applicable Phase for completeness, and conformity with this Agreement, all applicable federal, state and local laws, rules, regulations and ordinances and the Overlay Report. To the extent that such Plat is complete and consistent with the Overlay Report, this Agreement, the Land Use Code, and all applicable federal, state and local laws and ordinances, the County Council shall approve the Plat. The County Council shall hold all duly noticed public hearings required for the approval of such Plat under the Utah Code and the Overlay Ordinance, the Land Use Code and other applicable County ordinances; provided, however, nothing herein shall prevent the County Council in its discretion from holding any public hearings not required by applicable law. In the event the County Council determines that the Plat is not consistent with the Overlay Report and this Agreement, the County Council will provide Developer with a reasonably detailed description of any such inconsistencies, in which case Developer shall revise such Plat to remediate any such inconsistencies and resubmit such Plat to the County Council for approval pursuant to the process set forth above. Notwithstanding the foregoing, the approval of any Plat for a Phase beyond Phase 2 will be contingent upon Developer connecting Silverleaf Road to Cottonwood Canyon Road, as set forth in the Concept Plan.

1.4. Final Plat Approval. Following the preliminary approval of the Plat by the County Council pursuant to Section 1.3 above, the County Council shall authorize Developer to submit a final Plat to the County Staff for review. The County Staff shall review a paper Plat for completeness and conformance to the preliminary approval of the Plat (including any conditions for approval) pursuant to the provisions of Section 1.3 above. If such Plat is complete and conforms to the preliminary approval, the County Staff shall authorize Developer to submit a mylar copy of the final Plat for approval. Developer shall be responsible for obtaining all required signatures on the mylar with the exception of the County Planning Commission and County Council. The signed mylar shall be placed on the agenda of the County Planning Commission for review, approval and signature. Following receipt of the final Plat signature from the County Planning Commission, the County Staff shall place the mylar and final Overlay Ordinance on the agenda for the County Council for signature and adoption. The final Plat will then be released to the Developer for recordation.

1.5. Building Permits. Following the recordation of the final Plat, Developer is hereby authorized to sell lots in accordance with State and local law. The County Staff will issue building permits in accordance with this Agreement, the Master Declaration, the applicable Neighborhood Declaration, the Land Use Code and applicable federal, state and local laws, rules, regulations and ordinances. Building permits shall only be issued when required infrastructure for the applicable Plat has been installed and inspected and approved by the County Engineer, which approval shall be limited to confirming that such

infrastructure is completed in accordance with this Agreement, the Master Declaration, the applicable Neighborhood Declaration and all applicable federal, state and local laws, rules, regulations and ordinances. The County staff shall provide to all applicants for a building permit within the Cottonwoods a memorandum of understanding, concerning the required review by the architectural committee and the restricted access by construction vehicles on Willow Creek Road. No permit shall be issued unless proof of approval from the architectural committee has been submitted to the County.

2. **Approved Use, Density, General Configuration, and Development Standards Affecting the Cottonwoods.**

2.1. Property Affected by this Agreement. The legal description of the Property contained within or that may be contained within boundaries of the development to be known as the Cottonwoods at Mountain Green is attached and specifically described in Exhibit "A". No additional property may be added to this description for purposes of this Agreement except by written amendment to this Agreement executed and approved by the parties hereto. Notwithstanding the foregoing to the contrary, in the event that the Developer determines that the development of the Maximum Residential Lots (as defined below) will not be feasible, the Developer may contribute such additional contiguous land to the Property as is necessary to permit the construction of the residential units up to the Maximum Residential Lots, in which case the County will amend the Overlay Ordinance and this Agreement to include such land in the Property.

2.2. Approved Use, Density, and General Configuration. Pursuant to the Overlay Ordinance, the County has adopted this Agreement and the Overlay Report to allow flexibility and initiative in site and building design and location for the Property as a whole in accordance with the requirements set forth herein and therein. The approved use, density, and general configuration for the Property are set forth in the Cottonwoods Concept Plan and the Overlay Report. In accordance with the Overlay Ordinance, Developer is entitled to develop a base density of 467 dwelling units within the Property, plus such additional bonus dwelling units which have been recommended by the County Planning Commission and approved by the County Council consistent with the requirements of the Overlay Ordinance. Based on the development of the Property in accordance with the provisions of this Agreement and the Overlay Report, the County Planning Commission has recommended to the County Council, and the County Council has approved such recommendation, that, in accordance with Section 18.4 of the Overlay Ordinance, Developer is entitled to develop an additional 410 bonus dwelling units, for a total of 877 dwelling units within the Property (which total includes: (a) 70 lots for dwelling units previously developed by Developer in Phase I, (b) 38 lots for dwelling unit described in Section 2.7 below, and (c) the lots for dwelling units permitted pursuant to Section 2.5 below), provided, however, the Developer has agreed that it shall develop only 830 dwelling units plus the lots referred to in clause (b) above for a total of 868 dwelling units within the Property (the "**Maximum Residential Lots**") on the Property in accordance with this Agreement and the Overlay Report. The recommendations of the

County Planning Commission and the approval of the County Council for such additional bonus dwelling units are based on the chart set forth in Section 7 of the Overlay Report.

2.3. Master Declaration. Developer has caused to be recorded against a portion of the Property ("**The Cottonwoods**"), that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Cottonwoods at Mountain Green (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Master Declaration**"), which Master Declaration was recorded in the office of the Morgan County Recorder on October 12, 2004 as Entry No. 97334 in Book 210 at Page 170. The development and construction of the various portions of the Property for residential purposes shall proceed pursuant to and consistent with the Master Declaration, which Master Declaration shall be recorded by the Developer against each such phase or portion of the Property (each a "**Phase**") as are, from time to time, developed by Developer for residential purposes. The Master Declaration shall provide for a home owner's association (the "**Master HOA**") which shall maintain the Common Areas (as such term is defined in the Master Declaration) in accordance with the Master Declaration. At such time as Developer submits a Plat for a particular Phase, Developer shall prepare a budget for the Master HOA showing the costs and expenses expected to be incurred by the Master HOA during the next succeeding three (3) year period (the "**HOA Budget**"). During the period that Developer owns more than forty percent (40%) of the lots upon which a dwelling unit shall be constructed, Developer shall contribute such amounts to the Master HOA as are necessary for the Master HOA to meet its obligations under HOA Budget (taking into account any amounts assessed against lots subject to the Master Declaration and owned by third parties). From and after the date that Developer owns forty percent (40%) or less of the lots upon which a dwelling unit shall be constructed, Developer shall only be required to pay to the Master HOA such amounts as are assessed by the Master HOA in accordance with the Master Declaration against the residential lots owned by Developer. In no event shall the County be responsible or liable for the enforcement of the Master HOA.

2.4. Neighborhood Declaration. Upon the recording of a Plat, Developer shall record the covenants and restrictions with respect to the applicable Phase substantially in the form attached hereto as Exhibit C (as the same may be amended, restated, supplemented or otherwise modified from time to time, each a "**Neighborhood Declaration**") and such Neighborhood Declaration shall be applicable to such Neighborhood and in addition to the Master Declaration; provided, however, the County may not condition its approval of a Plat on the inclusion of more restrictive development standards than those set forth in the Master Declaration and the Neighborhood Declaration except as required under applicable federal, state and local laws, rules, regulations and ordinances, or upon finds of compelling public interest related to public health, safety and welfare. Each Neighborhood is generally depicted in Section 4.3 of the Overlay Report. Each Neighborhood Declaration shall be recorded against the portion of the Property in which such Neighborhood is located. The development and construction of each Phase shall proceed pursuant to and consistent with the Master Declaration and the applicable Neighborhood Declaration. In the event of a conflict in the standards for development and construction between the Master Declaration and the Neighborhood Declaration, the

Neighborhood Declaration shall control. Each Neighborhood Declaration shall establish a home owner's association for such Neighborhood (each a "**Neighborhood HOA**"), which Neighborhood HOA shall be responsible for the maintenance of the Project Common Areas (as such term is defined in the Master Declaration). At such time as Developer submits the Plat for a particular Phase, Developer shall prepare a budget for the Neighborhood HOA showing the costs and expenses expected to be incurred by the Neighborhood HOA during the next succeeding three (3) year period (the "**Neighborhood HOA Budget**"). During the period that Developer owns more than forty percent (40%) of the lots upon which a dwelling unit shall be constructed within a Neighborhood, Developer shall contribute such amounts to the Neighborhood HOA as are necessary for the Neighborhood HOA to meet its obligations under Neighborhood HOA Budget (taking into account any amounts assessed against lots subject to the Neighborhood Declaration and owned by third parties). From and after the date that Developer owns forty percent (40%) or less of the lots upon which a dwelling unit shall be constructed within a Neighborhood, Developer shall only be required to pay to the Neighborhood HOA such amounts as are assessed by the Neighborhood HOA in accordance with the applicable Neighborhood Declaration against the residential lots owned by Developer. Nothing set forth above shall require Developer to develop an entire Neighborhood unless and to the extent the entire Neighborhood is located within a Phase which is being developed by Developer. In no event shall the County be responsible or liable for the enforcement of any Neighborhood HOA.

2.5. School Site.

2.5.1. Developer shall use good faith efforts to enter into an agreement with the Morgan County School District (the "**School District**") to sell the ten to twelve (10-12) acre portion of the Property located in Phase 3 and labeled as the School Site (the "**School Site**") on the Site Plan, to the School District, provided that the School District agrees to construct a public school on the School Site at the School District's sole cost and expense within five (5) years of the date the School Site is purchased from the Developer. Developer agrees to sell the ten to twelve (10-12) acre portion of the Property at cost, i.e., raw acreage price, to the School District. In the event the School District does not commence construction of a public school on the School Site within three (3) years of the date of the purchase of the School Site by the School District, Developer may require the School District to convey the School Site back to Developer for the same price paid by the School District for the School Site. Notwithstanding the foregoing to the contrary, Developer shall provide the School Site with all electrical, natural gas, water, sewer, storm drain and telephone utilities to the perimeter of the School Site. The Developer shall work in good faith with the School District to limit bus routes on Willow Creek Road. The School District shall be responsible for paying for all connection fees, and charges for all water, gas, electric, telephone and other utilities consumed by the School District on the School Site.

2.5.2. In the event the School District does not acquire the School Site within seven (7) years of the date hereof, or if the School Site is conveyed back to

Developer in accordance with the provisions set forth above, Developer shall be permitted to re-plat the School Site such that:

(a) three (3) acres of the School Site shall be improved by Developer as a public park to be maintained by the Master HOA; and

(b) the remaining five (5) acres of the School Site may be developed as lots for dwelling units, and, consistent with the Overlay Ordinance, the density of such dwelling units may be allocated from any one or more Phases of the Property so long as:

(i) such dwelling units do not exceed the Maximum Residential Lots;

(ii) such dwelling units shall be subject to the requirements set forth in the Master Declaration and the applicable Neighborhood Declaration;

(iii) the development and construction of such dwelling units shall at all times comply with the provisions of this Agreement, the Overlay Report and the Land Use Code; and

(iv) the lots for such dwelling units shall be platted in a Plat which is approved in accordance with this Agreement, or shall be platted within an amendment to a Plat which is subject to the same approval process set forth in Sections 1.2 and 1.3 above.

2.5.3. Notwithstanding the foregoing to the contrary, the development of the Phase in which the School Site is located shall not be conditioned upon the previous or concurrent development of the School Site.

2.6. Open Space. In connection with development of each Phase of the Property, Developer shall preserve a portion of each such Phase as open space. The location of the portion of the applicable Phase to be preserved as improved open space and natural open space shall be as set forth in Cottonwoods at Mountain Green Open Space Plan and set forth in Section 14.1 of the Overlay Report (the "**Open Space Plan**"). The open spaces applicable to each Phase shall be shown on the Plat for such Phase. The open space in each Phase shall be maintained and owned in accordance with the Overlay Report, the Master Declaration, each applicable Neighborhood Declaration and the Plat.

2.6.1. Parks. Those portions of the open space which are to be developed as parks, shall be developed by Developer substantially in accordance with the Cottonwoods at Mountain Green Park Concept Plan and the Conceptual Park Plan Statistical Summary, each of which are included in Section 11 of the Overlay Report. Each park shall be developed in connection with the Phase in which such park is located. The parks shall be owned by the Master HOA or the

Neighborhood HOA, as applicable, and, except as noted below, shall be limited to the use of the members and guests of the Master HOA or Neighborhood HOA, as applicable. So long as the Developer, the Master HOA and the Neighborhood HOA, as applicable, are afforded the same or greater limitations on liability as set forth in the Utah Code § 57-14-101, et seq., such parks shall be open to the general public. Upon the filing of the Plat for a Phase, Developer shall convey to the Master HOA or Neighborhood HOA each of the parks to be maintained by the Master HOA or Neighborhood HOA, as applicable.

2.6.2. Trails. Those portions of the open space which are to be developed as trails and parkways shall be developed by Developer substantially as set forth in the Cottonwoods at Mountain Green Trails Concept Plan and the Conceptual Trails Plan Statistical Summary, each of which are included in Section 12 of the Overlay Report (the "**Trail Plans**"). The trails and parkways shown in the Trail Plans shall be developed in connection with the development of the Phase in which such trails and parkways are located. Furthermore, each portion of the trails and parkways completed as part of a Phase shall connect to previously completed trails in neighboring Phases, or if such neighboring Phases have not then been completed, then such trials and parkways shall temporarily terminate at a public street. In connection with the development of such trails, Developer shall grant to the County a public easement for the use of all paved trails and parkways. The County shall own the improvements on the paved trails and parkways, but not the underlying real property. The County shall maintain the paved trails and parkways; provided, however, in lieu of removing snow and ice from the trails and parkways during the winter, the County may elect to temporarily close the trails and parkways which the County is required to maintain during the periods which snow or ice is covering such trails. The Master HOA shall be responsible for maintaining the open space surrounding the trials and parkways and all unpaved trails and parkways. The trails and parkways maintained by the County shall be open for the use and enjoyment by the general public. The trails and parkways maintained by the Master HOA, and, except as noted below, shall be limited to the use and enjoyment of the members of the HOA and their guests. So long as the Developer, the Master HOA and the Neighborhood HOA, as applicable, are afforded the same or greater limitations on liability as set forth in the Utah Code § 57-14-101, et seq., the trials and parkways owned and/or maintained by the Master HOA shall be open to the general public. Any gates within the Property shall not unreasonably prevent the general public from accessing those trails and parkways which are open to the general public.

2.6.3. Native Open Space. Those portions of the open space which are not being improved by Developer and are to remain as native open space are shown on the Open Space Plan. The Master HOA shall own such native open space and shall be responsible for the maintenance thereof. The ownership and maintenance requirements for the native open space are outlined in Section 14 of the Overlay Report. The native open space located within a Phase shall be conveyed to the Master HOA at the time of the filing of the Plat for the applicable Phase.

2.6.4. Agricultural. At the time of the filing of the Plat, Developer may designate certain open space as "Agricultural Space", which open space shall not be required to be transferred to the Master HOA nor a Neighborhood HOA. The Agricultural Space may be used by Developer or its affiliate, or leased by Developer, or its affiliate, to a third party, for general farming purposes. Such Agricultural Space shall be maintained by Developer, its affiliate, or the third party leasing such Agricultural Space in accordance with Section 14.3 of the Overlay Report. The Agricultural Space may be fenced off from the remaining open space as is necessary for the protection of the crops located in the Agricultural Space. No crops shall be planted within the Agricultural Space which are generally considered as unsafe for residential developments as a result of such crops elevated susceptibility to fire. Notwithstanding the foregoing to the contrary, in the event Developer decides to stop using the Agricultural Space for farming purposes, Developer may elect to deed the Agricultural Space to the Master HOA at no cost to the Master HOA, and the Master HOA shall be required to accept such Agricultural Space from Developer, in which case such space shall be maintained by the Master HOA as agricultural or native open space in accordance with the provisions of Section 2.6.3 above. In the event the Master HOA elects, at the time of the conveyance of the agriculture land from Developer to the Master HOA, to maintain such land as native open space, prior to conveying such land to the Master HOA, Developer shall plant native grasses, shrubs and flowering plants, in accordance with Section 14.1 of the Overlay Report. Developer shall work in good faith and with adjoining land owners to resolve issues regarding the fencing of livestock consistent with County ordinance requirements. Said fencing shall be limited to such materials agreed upon by both parties, subject to the restrictions set forth in the Master Declaration, the applicable Neighborhood Declaration and this Agreement, and shall not be greater than five (5) feet in height. Residential lots which abut real property currently owned by Cottonwood Canyon LLC, namely those located in Durst Mountain Ranch, Cottonwood Heights & Silverlake Estates neighborhoods may be allowed to have privacy fencing in accordance to the materials and height limitations approved in accordance with the Master Declaration and the applicable Neighborhood Declaration.

2.6.5. Agricultural Easements. Upon the filing of a Preliminary Plat, Developer shall provide sufficient agriculture easements upon the unimproved open space in the Property to permit ranchers who own land adjacent to the Property as of the date hereof to cross the unimproved open space within the Property to the extent that such ranchers do not otherwise have legal access to their lands. Notwithstanding the foregoing, to the extent the real property neighboring the Property as of the date hereof is divided into smaller parcels of land, nothing herein shall require Developer to give direct access to such smaller parcels of land over the Property.

2.7. Golf Course. In the event Developer desires to construct a golf course on the Property, Developer shall apply to the County for a conditional use permit for such

golf course (the "**Golf CUP**"). Such golf course shall be considered as open space (both preserved and usable, depending on the final development of the golf course) for all purposes under the Overlay Ordinance. The County shall condition the granting of the Golf CUP to Developer only upon the following conditions:

2.7.1. Developer has demonstrated that the golf course shall have sufficient water rights to maintain the golf course as a public golf course;

2.7.2. Developer has sufficient capital to complete the construction of the golf course (including the ability to meet the County's bonding requirements);

2.7.3. the golf course shall be owned and controlled by one or more persons or entities that has sufficient experience in operating and maintaining similarly situated public golf courses (as reasonably determined by the County);

2.7.4. the golf course shall be available for use by the general public upon payment of greens fees, rental fees and other customary and reasonable fees charged by golf courses in amounts to be set by the owner's of the golf course; and

2.7.5. the approval of the golf course shall not reduce the required forty percent (40%) native and agricultural open space below the requirements set forth in the Overlay Ordinance; provided, however, that if required, Developer may convey to the Master HOA open space not currently included within the boundaries of the Property, but is adjacent to the Property in order to meet such open space requirements. The addition of such adjacent open space shall be subject to the platting requirements set forth in the Land Use Code.

Upon the granting of the Golf CUP, the County and Developer shall amend the Overlay Report to incorporate the inclusion of the golf course within the Phase designated by Developer. If Developer elects to construct a golf course, Developer shall do so substantially in accordance with the Site Plan and the Plat applicable to the Phase in which the golf course shall be located. The golf course shall be privately owned and operated. The golf course shall be constructed upon approximately 200 acres of land and may include such amenities as a clubhouse, restaurant, retail shops and such other amenities as are generally located upon a public golf course; provided, each of such separate uses must be set forth in the Golf CUP. In connection with the development of the golf course, Developer shall not be required to develop any dwelling units within the Phase(s) in which the golf course is located. In the event that Developer constructs the golf course as set forth herein, Developer shall be entitled to develop up to a maximum of thirty-eight (38) dwelling units (not to exceed the Maximum Residential Lots) within the Property (as described in Section 2.2 hereof) so long as (i) such lots comply with the requirements of the Master Declaration and the applicable Neighborhood Declaration, (ii) the development and construction of such lots shall at all times comply with the provisions of this Agreement and the Overlay Report, and (iii) such lots shall be platted in a Plat which is approved in accordance with this Agreement, or shall be platted within an amendment to a Plat which is subject to the same approval process set forth in Sections 1.2 and 1.3 above.

2.8. Equestrian Center. Developer shall construct an equestrian center on the portion of the Site Plan containing approximately nine (9) acres and labeled as shown on the Site Plan and shall construct the equestrian trail substantially in accordance with Trail Plans. Such equestrian center shall be considered as open space for all purposes under the Overlay Ordinance. Prior to commencing such construction, Developer shall apply to the County for a conditional use permit for the equestrian center (the "**Equestrian CUP**"). The County shall condition the granting of the Equestrian CUP to Developer only upon the following conditions:

2.8.1. Developer has submitted a Plat to the County Council as required by Section 1.2 above which includes the equestrian center and trails;

2.8.2. Developer has sufficient capital to complete the construction of the equestrian center and trails (including the ability to meet the County's bonding requirements);

2.8.3. the equestrian shall be initially owned and controlled by one or more persons or entities that has sufficient experience in operating and maintaining equestrian centers (as reasonably determined by the County);

2.8.4. the equestrian center and related trails shall be available for the use and enjoyment of the general public upon payment of customary fees and charges; and

2.8.5. any limitations on operations and use provided by the Land Use Code as recommended by the County Planning Commission and approved by the County Council.

The equestrian center shall be privately owned and operated. The equestrian center shall include a barn, stables, workout areas and pasture and grazing areas. The equestrian center shall be developed at the time of the development of the Phase in which the equestrian center is located.

2.9. Surface Waters and Irrigation.

2.9.1. Wilkinson (Silver Lake) Reservoir. Developer shall require Wilkinson Cottonwood Mutual Water Company (the "**Reservoir Operator**") to develop the Wilkinson (Silver Lake) Reservoir in accordance with the provisions of the Overlay Report for use by the members and guests of the Master HOA; provided, however, so long as the Developer, the Reservoir Operator (defined below) the Master HOA and the Neighborhood HOA, as applicable, are afforded the same or greater limitations on liability as set forth in the Utah Code § 57-14-101, et seq., the Wilkinson (Silver Lake) Reservoir shall be open to the general public. The Wilkinson (Silver Lake) Reservoir shall be considered as open space for all purposes under the Overlay Ordinance. Prior to submitting the Plat for

Phase 9, Developer shall cause the Reservoir Operator to obtain a conditional use permit for the use of the Wilkinson (Silver Lake) Reservoir as a recreational facility (the "**Reservoir CUP**"). In addition, if elected by Developer, Developer shall obtain a conditional use permit for the use and construction of a bed and breakfast facility near the Wilkinson (Silver Lake) Reservoir (the "**Silver Lake CUP**"). The County shall condition the granting of the Silver Lake CUP and/or the Reservoir CUP to Developer and/or Reservoir Operator, as applicable, only upon the following conditions: (a) Developer has submitted a Plat to the County Council as required by Section 1.2 above which includes the Wilkinson (Silver Lake) Reservoir and, if applicable, the bed and breakfast, (b) if applicable, the bed and breakfast shall be owned and controlled by one or more persons or entities that has sufficient experience in operating and maintaining bed and breakfast facilities (as reasonably determined by the County), (c) if applicable, the bed and breakfast facility shall comply with all Land Use Codes relating to parking requirements. Only non-motorized boating shall be permitted in the Wilkinson (Silver Lake) Reservoir. The Wilkinson (Silver Lake) Reservoir is and shall be privately owned and operated by the Reservoir Operator as an asset of Reservoir Operator. The maintenance and operation of the dam, irrigation storage, storm detention, water flows and outlets for the Wilkinson (Silver Lake) Reservoir shall be the sole responsibility of the Reservoir Operator and Reservoir Operator shall be required to make all routine maintenance and emergency repairs to the dam for the Wilkinson (Silver Lake) Reservoir. Notwithstanding the foregoing to the contrary, Reservoir Operator shall not be required to make repairs to the dam for the Wilkinson (Silver Lake) Reservoir which arise from the improper construction and maintenance of such dam by any and all previous owners until such time as Reservoir Operator receives sufficient funding from the State of Utah to accomplish such repairs. Developer hereby releases the County from any and all liability which may arise as a result of the Reservoir Operator's operation and maintenance of the Wilkinson (Silver Lake) Reservoir. The County shall have no obligation to fund or make repairs to the dam, but agrees to cooperate with any reasonable request by Reservoir Operator to receive funding from the State of Utah to accomplish such repairs; provided, however, in no event will the County be required to provided any funds, indemnities or guaranties in connection with the repairs to the dam nor shall County be required to maintain or repair the dam. Reservoir Operator shall release, indemnify and defend the County for any liability, losses, costs or expenses arising out of any repairs to the Wilkinson (Silver Lake) Reservoir performed by Reservoir Operator. The Reservoir Operator shall operate and maintain the Wilkinson (Silver Lake) Reservoir in accordance with the 2005 Wilkinson Dam Summary Report attached hereto as Exhibit "E" (the "Dam Report") and in accordance with all applicable federal, state and local laws, rules, regulations and ordinances. The Reservoir Operator shall be responsible for not exceeding the maximum pool elevation as specified in the geotechnical reports for the Wilkinson (Silver Lake) Reservoir attached to the Dam Report.

2.9.2. Bohman Hollow Drainage. The Utah Department of Transportation ("**UDOT**") has informed the County that UDOT intends to install a 36" pipe through the I-84 embankment of the Bohman Hollow drainage as outlined in that certain letter dated August 22, 2005, from UDOT to Michael J. McMillian, which is included in Section 17 of the Overlay Report. In the event that the development of the Property results in increased drainage flows to the I-84 embankment of the Bohman Hollow drainage, Developer shall agree to provide financial participation to UDOT and/or the County in an amount which is proportionate to the amount of increased drainage as a result of the development of the Property as determined by the County engineer.

2.10. Height Restrictions. With respect to the development of dwelling units located within each Phase, except as provided below, each residential unit shall not exceed a height of thirty-five feet (35') measured from the lowest finished grade elevation to the ridge line of such unit. With respect to those portions of the Property shown in Section 6 of the Overlay Report, which portions of the Property are determined to be visually sensitive areas (skyline potential), any dwelling units developed in such areas shall (a) not exceed a height of thirty feet (30') measured from the lowest finished grade elevation to the ridge line of such unit, and (b) shall not exceed two stories (a walk-out basement being considered a story for purposes of this clause (b)). Each Plat for a Phase submitted in accordance with Section 1.2 hereof shall identify those dwelling units within such Phase which are included in visually sensitive areas.

2.11. Airport Standards. In addition to the foregoing, those dwelling units which abut the airport property shall be subject to a height restriction as more fully describe in the Plat. Developer shall pay for one half (1/2) of the costs, not to exceed $5,000.00, associated with a feasibility study to be conducted by the County in connection with the future expansion of the airport. The County shall not permit the future expansion of the airport to result in greater impact on the Property than those set forth in that certain memorandum dated September 3, 2004, made by Forsgren Associates/Inc. and attached hereto as Exhibit "D" attached hereto and made a part hereof. Each Plat filed in connection with a Phase shall contain an aviation easement in favor of Morgan County Airport for the free and unrestricted passage of aircraft of any and all kinds for the purpose of transporting persons or property through the air, in, through, across and about the airspace over such Phase. Such easement shall grant the right of flight for the passage of aircraft in airspace, together with the right to cause or crease, or allow to be caused or created, such annoyances as may be inherent in, or may arise or occur from or during the operation of, aircraft in compliance will all federal, state or local aviation laws, rules, regulations and ordinances, and other aeronautical activities therein. Further, lot owners within the Cottonwoods agree to release and hold County harmless for accidents, damages and nuisances related to such use of said aviation easement.

2.12. Air Quality. All residential housing shall comply with the air quality control standards set forth in Section 21.1 of the Overlay Report and with the air quality restrictions, if any, set forth in the Master Declaration and with respect to each Phase, the applicable Neighborhood Declaration.

2.13. Night Sky. The development of each Phase of the Property shall at all times comply with the night sky provisions set forth in Section 18 of the Overlay Report including both public street lighting and private dwelling lighting and the applicable provisions of the Land Use Code. Such restrictions shall also be incorporated into the Master Declaration.

2.14. Overlay Report; Zoning Amendment. Pursuant to the Overlay Ordinance, a zoning amendment for the Property is effectuated through this Agreement and the Overlay Report. It is acknowledged by the County that the Overlay Report, including, without limitation, Section 9 of the Overlay Report, constitutes an overlay zone amendment for the Property.

2.15. Architectural Guidelines. During the development of each Phase, Developer shall comply with all architectural guidelines set forth in the Master Declaration, the applicable Neighborhood Declaration and the Overlay Report, including, without limitation, Section 8 of the Overlay Report.

2.16. Gun Range Easement. Each Plat submitted to the County Planning Commission shall specifically acknowledge the existence of the gun range easement over the Property as of the date hereof, which easement shall be described as follows: "Browning Arms operates a fire arms test range on nearby property and periodic gun fire will be audible within the boundaries of the Property". Lots within the Property are subject to a noise easement resulting from such gun range.

2.17. Double Lots. No Plat submitted to the County Planning Commission shall include any lot which is to be developed as a dwelling unit to be bordered by more than one street, except to the extent such lot is (a) a corner lot, or (b) bordered first by a perpetual landscaped strip.

2.18. Construction Access. Construction access to the Property for the development of a Phase shall be limited to Siverleaf Road. Willow Creek Road will be a restricted access for deliveries, general contractors and sub-contractors engaged in construction activities in the Cottonwoods. Developer shall place appropriate signage at the entry of the Willow Creek Subdivision which signage shall conform to all applicable federal, state and local laws and ordinances.

2.19. Access for Adjoining Property Owners. Developer shall work in good faith with property owners who own land adjacent to the Property as of the date hereof (the "**Adjacent Property**") to enter into an agreement with such property owners to provide access to the Adjacent Property from the Property, which may include a right-of-way. The number and location of such access points shall be set forth in such agreement, if any, and shall provide that the costs of providing and maintaining such access points shall be shared equally by Developer and such adjacent property owner. Such access points shall be shown on a Plat which is submitted for review in accordance with the provisions of this Agreement. Notwithstanding the foregoing, to the extent the Adjacent Property is divided

into smaller parcels of land, nothing herein shall require Developer to give direct access to each of such smaller parcels of land.

2.20. Public and Private Partnership for Affordable Housing.

2.20.1. Developer recognizes that the assurance of public benefits is a requisite component of a development agreement and Developer also acknowledges the County's need for moderate or affordable housing access as a public benefit. Prior to the approval of a Plat in accordance with the provisions of this Agreement, the County may request that Developer designate a lot in each Phase which shall be set aside by Developer for construction by the County of affordable housing (the "**Affordable Housing Lots**); provided, that, County agrees that it shall provided Developer with reasonable assurances that County has or will have sufficient funds to purchase, or cause to be purchased, the Affordable Housing Lot and construct, or cause to be constructed, affordable housing thereon. Within six (6) months after the filing of the Plat, Developer shall enter into a purchase agreement, including purchase deadlines agreeable to both parties, pursuant to which Developer shall sell to the County and the County shall purchase, or cause to be purchased, from the Seller, each of the Affordable Housing Lot at an amount equal to fifty percent (50%) of the fair market value of such Affordable Housing Lot. Thereafter, the County shall proceed with all reasonable due diligence to construct, or caused to be constructed, at the County's sole cost and expense (which may include any grants received by the County from any applicable organization) a single family residence on such Affordable Hosing Lot which meets the standards for affordable housing, but otherwise complies with the restrictions set forth in this Agreement, the Overlay Report, the Master Declaration, the applicable Neighborhood Declaration and all applicable federal, state and local laws, rules, regulations and ordinances. In the event the Developer designates a lot as an Affordable Housing Lot and the County does not purchase the Affordable Housing Lot from Developer within the six (6) month period after the filing of the Plat, the Developer may sell such lot as if such lot was never designated as Affordable Housing Lots.

2.20.2. In lieu of selling a lot within a phase to the County as contemplated by the foregoing paragraph, prior to final approval of a Plat, and upon the agreement of the County and the Developer, the Developer shall designate a and Affordable Housing Lot, and upon the consummation of the sale of the Affordable Housing Lot, the Developer shall donate fifty percent (50%) of the net proceeds from such Affordable Housing Lot to a non-profit housing authority designated by the County (or other similar agency or trust designated by the County), which organization or entity shall be organized for the sole purpose of supporting the establishment of affordable housing within the County.

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

3.1. Vested Rights. Subject to Sections 3.2, 6.2 and 6.3, Developer shall have the vested right to develop and construct the Property in Phases in accordance with the zoning, subdivision, development, growth management, transportation, environmental, open space, and other land use plans, policies, processes, ordinances, and regulations (together, the "**Land Use Laws**") in existence and effective on the date of final approval of this Agreement, including the conditional approval existing under the Overlay Ordinance (the "**Vesting Date**"), and applying the terms and conditions of this Agreement and the Overlay Report.

3.2. Reserved Legislative Powers. Nothing in this Agreement shall limit the County's future exercise of its police power in enacting generally applicable Land Use Laws after the Vesting Date. Notwithstanding the retained power of the County to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer under 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 change affecting the vested rights of The Cottonwoods shall be of general application to all development activity in the County; and, unless the County declares an emergency, Developer shall be entitled to notice and an opportunity to be heard with respect to the proposed change and its applicability to The Cottonwoods under the compelling, countervailing public policy exception to the vested rights doctrine. Developer acknowledges that the County cannot control changes in federal or state laws, rules and regulations that might affect a developer's right to develop property, including, without limitation, state and federal environmental laws.

4. **Further Approvals**.

4.1. Subdivision, Plat Approval and Compliance with Design Conditions. Subject to Section 3.1, Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable requirements necessary for approval and recordation of the Plat as set forth in Sections 1.2 and 1.3 above. Developer has a vested right to have the Plat approved, subject to the Developer's satisfaction of the requirements of Sections 1.2 and 1.3 hereof.

4.2. Phasing of The Cottonwoods. The Cottonwoods shall be developed in eight (8) or more Phases, as determined by Developer, in accordance with a Plat approved pursuant to Section 1.2 hereof. Phasing of The Cottonwoods shall take into account orderly development of The Cottonwoods, coordination in connection with the installation of infrastructure improvements, future utility capacity needs, availability of access, adequacy of utilities and related considerations, and provision of open space as provided herein. The phasing of The Cottonwoods shall be determined by the Developer in the exercise of its business judgment, which phasing shall not result in the development of more than ten percent (10%) of the Maximum Residential Lots per year or such other greater amount based on findings of fact by the County as limited by structural and topographical constraints, emergency service providers' service capabilities, utility infrastructure and additional school facility requirements and, if the County Governing

Body deems necessary, based on the continued use of Section 16.02.470 of the Land Use Code (the "**Yearly Maximum**"); provided, however, the County hereby agrees that any dwelling units constructed within the Phase(s) in which the Golf Course, if any, is developed, shall not be included within the calculation of the Yearly Maximum. Notwithstanding any representation in the Overlay Report to the contrary, nothing herein shall require the Developer to develop any Phase in any particular order so long as the development of such project is in accordance with the provision of the second sentence of this Section 4.2.

4.3. Timeliness. Where further approvals from the County are necessary, the County agrees to cooperate in processing requests for such approvals.

5. **Public Improvements.**

5.1. Phase Improvements. All public improvements located within The Cottonwoods shall be constructed and installed at the Developer's sole expense in accordance with the Plat (including the approved construction drawings and specifications), the Overlay Report and this Agreement.

5.2. Roadways. Streets within the Phase shall be developed in accordance with the Cottonwoods Concept Plan, the Overlay Report and the Plat and shall be constructed prior to or concurrent with development of adjacent lots or parcels and in accordance with the Land Use Code. Developer shall not be required to expand, operate and/or maintain any roadways outside of the Property. Developer acknowledges and agrees that the County may enact impact fees to cover the costs of maintaining and operating such roadways in accordance with the provisions of Utah Code § 11-306-201, et seq.

5.3. Sewer, Pressure Irrigation, and Storm Drainage. Developer shall install sanitary sewer, pressure irrigation, culinary water supply systems and surface water drain systems for the entire Property required to serve the Phase shown in Sections 16 and 17 of the Overlay Report. In addition, Developer shall cause to be brought to the Property such other utilities as are customary and necessary for the use of a dwelling unit. All such installation shall be done according to the reasonable and customary design and construction standards of the utility providers and the County Engineer and shall be installed underground to the extent reasonably possible. Developer shall develop water supply and storage systems for the Property in accordance with Section 16 of the Overlay Report and sanitary sewer systems in accordance with Section 17 of the Overlay Report. As a condition of the approval of a Plat, Developer shall obtain for each dwelling unit all necessary will-serve letters from the local water, sewer and utility providers. Developer shall obtain for each Phase all necessary will-serve letters and approvals from the local water, sewer and utility providers.

6. **Miscellaneous Provisions.**

6.1. Term of this Agreement. The rights of the Developer under this Agreement shall continue for a period of twenty-five (25) years following the date of its adoption by the County Council, unless the Agreement is earlier terminated or its term modified by written amendment to this Agreement. Developer's obligations under this Agreement shall continue until the earlier to occur of (a) Developer fully performing its obligations under this Agreement, or (b) the release of Developer from its obligations in accordance with Section 7.2. Notwithstanding the foregoing, any indemnification given by Developer under this Agreement shall survive the term of this Agreement.

6.2. Fees. Developer acknowledges that filing fees may increase over the life of The Cottonwoods consistent with the County's exercise of its jurisdiction in accordance with applicable law.

6.3. Construction Standards. Construction standards for all portions and phases of the development of the infrastructure for the Property shall be governed by the most current edition of the Land Use Code, the Utah State Building, Plumbing, Mechanical, Electrical Codes, and the International Building Code as enforced by the County as the primary governing agency, at the time of application for building permit. No part of this Agreement shall be deemed to supersede these standards. Developer shall be required to comply will all conditions necessary for the insurance of a building permit, including, without limitation, any bonding or guaranty requirements generally applied by the County.

6.4. Dedication, Conveyance, and Preservation of Roadways and Open Space. Upon the filing of the Plat for each Phase, and except to the extent otherwise expressly set forth in this Agreement, Developer voluntarily agrees to dedicate and convey by special warranty deed or by plat dedication, at no cost to the County and free and clear of liens and encumbrances, except those existing on the Property on the date of acquisition by Developer and those agreed to by the parties (excepting any monetary liens or encumbrances), any areas designated on any plat or site plan to be used as roadways, storm water detention basins, trails and parkways open to the general public, and amenities open to the general public, in order to assure use of the land consistent with the policies, goals, and objectives of the General Plan. All parcels to be dedicated or conveyed to the County pursuant to the terms hereof shall be conveyed at the time of recordation of the applicable Plat for a Phase within The Cottonwoods or at any earlier time agreed to by the parties. The County agrees to operate, maintain, repair and replace, as provided by applicable law all public roadways and dedicated parkways and trails. The County shall not be required to maintain or remove snow from any private roadways, parks and trails.

6.5. Minor Development Changes. In the event Developer desires to make minor changes to the approved Plat, plans and specifications and construction drawings for a Phase which have been approved in accordance with the provisions of Sections 1.2 and 1.3 hereof, following the commencement of the development of a Phase in accordance with the provisions of this Agreement and the Overlay Report, Developer shall submit such changes to the County Engineer for approval. So long as such changes are consistent with this Agreement, and applicable federal, state and local laws, rules, regulations and

ordinances, including, without limitation, the provisions of Section 6.3 hereof, and the Overlay Report, the County Engineer shall approve of such changes. In the event the County Engineer determines that such changes are inconsistent with the provisions of this Agreement or the Overlay Report, Developer must seek the approval of such changes from the County Planning Commission and the County Council.

7. **Successors and Assigns.**

7.1. Binding Effect. This Agreement shall be binding on the successors and assigns of the Developer in the ownership or development of any portion of The Cottonwoods, and the successors and assigns of the County.

7.2. Assignment.

7.2.1. Developer may from time to time and without the consent of the County, convey any or all of the Phases in their entirety to a Successor Developer, together with the rights granted by this Agreement to develop one or more of the Phases so transferred or conveyed in accordance with this Agreement; provided, however, such assignment shall in no way relieve Developer of its obligations under this Agreement and Developer shall remain jointly and severally liable with Developer's assignee to perform all obligations under the terms of this Agreement which are specified to be performed by Developer. Developer may request the written consent of the County of an assignment of Developer's interest in the Agreement. In such cases, the proposed assignee shall have the qualifications and financial responsibility necessary and adequate, as required by the County, to fulfill the obligations undertaken in this Agreement by Developer. The County shall be entitled to review and consider the ability of the proposed assignee to perform, including financial ability, past performance and experience. After review, if the County gives its written consent to the assignment, Developer shall be released from its obligations under this Agreement for that portion of the Property for which such assignment is approved.

7.2.2. Nothing in Section 7 shall require Developer to obtain the County's consent prior to selling residential lots in the ordinary course of the business of Developer, or prohibit the Developer from selling a portion of The Cottonwoods to one or more occupants for the purpose of erecting, constructing, maintaining, and operating (or causing to be erected, constructed, maintained, and operated) improvements thereon consistent with the requirements of the Overlay Report and this Agreement. The provisions of this Section shall not prohibit the granting of any security interests for financing the acquisition and development of dwelling units, residential lots, commercial structures, or other development parcels within The Cottonwoods, subject to Developer complying with the Overlay Report, this Agreement and applicable federal, state and local laws, rules, regulations and ordinances.

7.2.3. Liability of Assignee. In the event of a transfer of all or any remaining portions of The Cottonwoods and upon assumption by the transferee of the Developer's obligations under this Agreement, the transferee shall be fully substituted as the Developer under this Agreement, and shall agree to be subject to all of the conditions and restrictions to which the Developer and the Property are subject to.

8. **General Terms and Conditions.**

8.1. Agreement to Run With the Land. Except as specifically provided below, this Agreement shall be recorded in the Office of the Morgan County Recorder against the Property and shall be deemed to run with the land, shall encumber the same, and shall be binding on all successors in the ownership of any portion of the Property. Notwithstanding the foregoing, this Agreement shall not be deemed a covenant running with the land with respect to the enforcement of the zoning and land use regulations imposed hereby for any portion of the Property that would otherwise be exempt from compliance with zoning and land use regulations generally under applicable federal or state laws, rules and regulations by reason of the ownership thereof. Except as set forth in Utah Code §17-27a-305, to Developer's actual knowledge no portion of the Property is currently exempt from compliance with zoning and land use regulations. No party hereto shall, by reason of the covenants, conditions and restrictions established hereunder, have authority to take action forbidden by Utah Code §17-27a-305.

8.2. Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling, countervailing public interest while providing reasonable assurances of continuing vested development rights.

8.3. State and Federal Law. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal laws, rules and regulations. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal laws, rules and regulations or is declared invalid, this 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 Agreement shall remain in full force and effect.

8.4. Relationship of Parties and No Third Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor any rights or benefits to third parties. It is specifically understood by the parties that: (a) The Cottonwoods is a private development; (b) County has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless the County accepts the improvements in connection with a dedication plat or deed 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 Agreement.

8.5. Laws of General Applicability. Where this Agreement refers to laws of general applicability to The Cottonwoods, this Agreement shall be deemed to refer to other developed and subdivided properties in the County.

8.6. Integration. This Agreement contains the entire agreement between the parties 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 and approved by the parties hereto.

8.7. No Third Party Beneficiary. The provisions of this Agreement are and will be for the benefit of Developer and the County only and are not for the benefit of any third person or entity.

8.8. Confidentiality. This Agreement and all exhibits and attachments are subject to the provisions of the Government Records Access Management Act, Utah Code Ann. § 63-2-101 et seq. as amended.

8.9. Events of Default.

8.9.1. Upon the happening of one or more of the following events or conditions Developer or County, as applicable, shall be in default ("Default") under this Agreement:

8.9.1.1. A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

8.9.1.2. A determination by County made upon the basis of substantial evidence that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

8.9.1.3. Any other act or omission, either by County or Developer, which (i) violates the terms of this Agreement, or (ii) materially interferes with the intent and objectives of this Agreement.

8.9.2. Procedure Upon Default.

8.9.2.1. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default within such thirty (30) day period and thereafter proceeds diligently to cure the

default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Section 8.10.

8.9.2.2. 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, governmental restrictions, regulations, or controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform an obligation under this Agreement, shall excuse the performance of such obligation 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.

8.10. Breach of Agreement. Following the occurrence of a Default by Developer, after the expiration of all application notice and cure periods set forth in Section 8.9 above, County may declare Developer to be in breach of this Agreement and County (i) may elect to withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until Developer has cured such Default. In addition to such remedies, either County or Developer may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

8.11. Enforcement. The parties to this Agreement recognize that County has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance, or by withholding building permits or any other lawful means. In the event Developer violates the rules, policies, regulations or ordinances of County applicable to the Property or otherwise violates the terms of this Agreement, County may, without declaring a Default hereunder or electing to seek an injunction, upon given thirty (30) days written notice to Developer specifying the nature of the alleged violation and, when appropriate, the manner in which said violation must be satisfactorily cured (or such longer period as may be reasonably required by Develop so long as Developer has commenced the cure of such violation within such thirty (30) day period and has thereafter diligently proceeded to cure such default), take such actions as shall be deemed appropriate under law until such violations have been rectified by Developer, including the withholding of building permits. County shall be free from any liability arising out of the proper exercise of its rights under this paragraph.

8.12. 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 Agreement is amended by vote of the County Council taken with the same formality as the vote approving this agreement, no officer, official or agent of County has the power

to amend, modify or later this Agreement or waive any of its conditions as to bind County by making any promise or representation not contained herein.

8.13. Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason 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 attorney's fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

8.14. Notices.

All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

If to the County:
Morgan County Council
P.O. Box 886
48 West Young Street
Morgan, Utah 84050
Attn: County Attorney
Fax No.: (801) 945 6006

With a copy to:
Morgan County Council
48 West Young Street
Morgan, Utah 84050
Attn: County Council Chairman
Fax No.: (801) 945 6006

If to Developer:
Gardner Cottonwood Creek, L.C.
Union Pacific Depot
12 South, 400 West, Suite 250
Salt Lake City, Utah 84101
Attn: Rulon C. Gardner
Fax No.: (801) 943-2948

With copy to:
Robert A. McConnell
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Fax No.: (801) 532-7750

8.15 Effectiveness of Notice. Any notices sent by certified mail shall be effective on the date on which such notice is sent. Any party may change its address or

notice by giving written notice to the other party in accordance with the provisions with this section.

8.16 Applicable Law. This 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.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

DEVELOPER:

GARDNER COTTONWOOD CREEK, L.C., a Utah limited liability company

By: Rulon C. Gardner manager.
Name: Rulon C. Gardner
Title: Manager

RESERVOIR OPERATOR (Signing only with respect to the obligations contained in Section 2.9.1):

WILKINSON COTTONWOOD MUTUAL WATER COMPANY, a Utah corporation

By: Rulon C. Gardner President.
Name: Rulon C. Gardner
Title: President

COUNTY:

COUNTY OF MORGAN

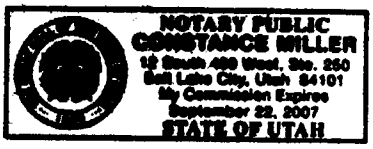
By Merrill Wilde
Name:
Title:

Attest:

Jessie A Hyde Deputy Clerk/Auditor
~~County Recorder~~

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

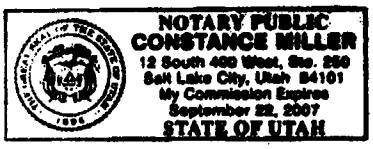
The above instrument was acknowledged before me by Rulon C. Gardner, a Manager of Gardner Cottonwood Creek, L.C., a Utah limited liability company, this 9th day of August, 2006.



Constance Miller
Notary Public
Residing in Salt Lake

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

The above instrument was acknowledged before me by Rulon C. Gardner, a President of Wilkinson Cottonwood Mutual Water Company, a Utah corporation, this 9th day of August, 2006.



Constance Miller
Notary Public
Residing in Salt Lake

STATE OF UTAH)
:ss.
COUNTY OF MORGAN)

The above instrument was acknowledged before me by Reed Wilde, the County Manager of the County of Morgan, this 9th day of August, 2006.

Monika Ballantyne
Notary Public
Residing in Morgan Utah

DEVELOPMENT AGREEMENT
EXHIBIT "A"

(Property Legal Description)

A parcel of land located in Sections 19, 20, 29 and 30 in Township 5 North, Range2 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the Center of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian, (Basis of bearing being South 88°42'14" East 1341.72 feet between the Center of Section and the South 1/4 corner of the Northeast corner of said Section 30) and running thence South 88°42'14" East 1336.65 feet; thence North 00°42'36" West 335.14 feet; thence North 76°23'47" East 32.94 feet; thence North 03°35'20" East 116.35 feet; thence North 00°57'41" West 470.92 feet; thence North 03°06'28" West 450.19 feet; thence North 03°10'42" West 248.07 feet; thence North 04°55'12" West 217.84 feet; thence South 85°04'48" West 42.16 feet; thence North 40°53'26" West 290.14 feet; thence North 32°23'57" West 139.58 feet; thence North 08°06'21" West 485.48 feet; thence South 89°29'51" West 20.18 feet; thence North 08°06'21" West 245.91 feet to a point of curvature of a 230.00 foot radius curve to the left, the center of which bears South 81°53'39" West; thence Northerly and Westerly along the arc of said curve 491.23 feet through a central angle of 122°22'16"; thence South 49°31'23" West 38.55 feet to a point of curvature of a 347.42 foot radius curve to the left, the center of which bears South 40°28'38" East; thence Southwesterly along the arc of said curve 118.83 feet through a central angle of 19°35'49"; thence South 29°55'33" West 313.18 feet; thence North 88°55'15" West 257.09 feet; thence North 46°46'42" East 3089.72 feet; thence North 52°17'58" East 511.81 feet; thence South 11°48'57" East 66.72 feet; thence North 55°15'08" East 577.92 feet; thence North 62°47'20" East 697.15 feet; thence North 59°15'48" East 905.16 feet; thence North 47°08'47" East 1225.38 feet; thence North 48°58'41" East 173.02 feet; thence North 41°01'19" West 367.66 feet; thence North 52°00'49" East 955.49 feet; thence South 89°40'57" East 1961.90 feet; thence South 38°44'36" West 3015.81 feet; thence South 08°00'08" West 2521.21 feet; thence South 70°45'46" East 639.64 feet; thence South 30°41'13" West 1174.86 feet; thence South 39°58'09" West 970.07 feet; thence South 55°28'09" West 1050.90 feet; thence South 65°28'09" West 323.36 feet; thence South 73°18'09" West 389.10 feet; thence South 44°04'10" West 432.30 feet; thence South 89°48'23" West 660.00 feet; thence South 00°25'51" East 2606.16 feet; thence South 00°42'11" West 3391.42 feet; thence South 80°42'47" West 1557.72 feet to a point on a non tangent 2353.60 foot radius curve to the left, the center of which bears South 78°24'09" West; thence Northwesterly along the arc of said curve 1900.32 feet through a central angle of 46°15'40" to a point of non tangent compound curvature of a 752.56 foot radius curve to the right, the center of which bears North 33°21'13" East; thence Northwesterly along the arc of said curve 594.31 feet through a central angle of 45°14'52"; thence North 01°51'26" West 738.77 feet; thence North 09°47'07" West 170.00 feet; thence North 79°47'56" East 25.81 feet; thence North 01°53'19" West 403.69 feet; thence South 79°57'31" West 219.14 feet; thence North 07°29'19" West 973.52 feet; thence North 02°32'09" East 713.67 feet; thence North 42°00'44" East 599.14 feet; thence North 27°19'53" West 128.18 feet; thence North 62°40'07" East 67.13 feet to a point of curvature of a 300 foot radius curve to the left (cord bears North 40°46'06" East 223.80 feet) 229.34 feet along said arc; thence North 00°00'00" West 581.05 feet to a point on the center of section line and on the South line of the Silver Stone Subdivision as recorded in the Morgan County

Recorders Office; thence along said center of section line South 88°42'14" East 731.88 feet to the point of beginning.

Containing 1036.08 Acres more of less.

Ent 104097 Bk 0234 Pg 0351

DEVELOPMENT AGREEMENT

EXHIBIT "B"

(Overlay Report)

~~[See Attached.]~~ Ray

ON FILE COMMUNITY DEVELOPMENT OFFICE

Ent 104097 Bk 0234 Pg 0352

DEVELOPMENT AGREEMENT

EXHIBIT "C"

(Neighborhoods Declarations)

~~[See Attached.]~~ RJ

ON FILE COMMUNITY DEVELOPMENT OFFICE

DEVELOPMENT AGREEMENT
EXHIBIT "D"

(Airport Memorandum)

[See Attached.]

FORSGREN
ASSOCIATES / INC.
A COMPANY OF ENGINEERS AND SCIENTISTS

MEMORANDUM

DATE: September 3, 2004

TO: Rulon Gardner

FROM: Ben White

RE: **The Cottonwoods at Mountain Green**

SUBJECT: Airport Expansion Impact

The intent of this memorandum is to quantify the impact a 2000 foot runway expansion would have on the subject property. The impact to the property is being quantified into three major categories:

1) Fee ownership ground
2) Height easement requirements
3) Ground adversely impacted by the expansion, but outside the height easement

1) Fee Ownership Ground

The airport should own and control all ground two hundred feet either direction from the centerline paralleled to the runway. They should also own the one thousand foot long clear area (RPZ) beyond the end of the runway. The impact on the parcel you are to purchase is 20.13 acres. The impact on Browning is approximately 7.4 acres.

2) Height Easement Requirement

There is a seven foot horizontal to one foot vertical height restriction to be placed on properties paralleling the runway. The seven to one slope begins at a point off set 125 feet from the center line of the runway. This area is approximately 28 acres on the easterly side of the runway. That is assuming the impact is a neutral point when the height restriction is twenty five feet or higher above existing finish ground.

The height restriction on the westerly side only has an approximate two acre impact due to the flatter existing terrain and the fact that much of the runway expansion adjoins Browning property and not Wilkenson property.

There is not a good way to calculate the impact the RPZ has on the property. The RPZ is supposed to extend out at a twenty horizontal to one foot vertical rise. However, due to the

existing terrain slope and the narrowness of Cottonwood Canyon, this requirement cannot be fully satisfied.

3) Other Impacts

The runway expansion will necessitate the relocation of Cottonwood Creek Road at its northern point. It would also push the future align further west, either west of or through the "gravel pit". This has an impact on both cost to relocate and the reduced value of the area when the road will be near the westerly property line instead of more centered like it is now. The impact here is approximately 16 acres.

Other impacts which may or may not be an issue are approach paths with respect to the future school site, noise, difficulty in getting storm drainage from one side of the runway to the other. Is the runway, taxiway, hangers, etc. a desired land use adjacent to the proposed land use.

FORSGREN
ASSOCIATES / INC.
A COMPANY OF ENGINEERS AND SCIENTISTS

MEMORANDUM

DATE: January 13, 2005 503150

TO: Dan Gardner

FROM: Ben White

RE: Morgan County Airport

I spoke with Craig Sparks, FAA Airport Aviation Safety Manger located in the Denver Airports District Office (303-342-1261) twice today regarding the Morgan County Airport. He appeared to be fairly familiar with the airport layout, surrounding land use and topography. Craig said that multiple times in the past, the FAA has recommended the closure of the airport at its current location and to construct an airport at an alternate location. The airport in its current location cannot meet FAA standards due to height restrictions so therefore they will offer very little comment regarding its operation. Their opinion is as stated above, the airport should be relocated.

I asked Craig about the vertical setbacks from the runway. He did not offer a concise opinion for the reason stated above.

It was Craig's opinion that it was up to the local jurisdiction as to what zoning constraints should be placed on adjoining properties since FAA guidelines cannot be met and therefore not imposed. It is up to the local jurisdiction to do what they are comfortable. The bottom line issue is liability. Liability that future operations of the airport could receive pressure to modify or restrict their operations from neighboring property owners. Or liability to the County for damage or loss if an aircraft related accident occurred in a developed area near the airport.

DEVELOPMENT AGREEMENT
EXHIBIT "E"

(Dam Report)

~~[See Attached.]~~ Rcy

ON FILE COMMUNITY DEVELOPMENT OFFICE