

**SUMMIT COUNTY  
ORDINANCE NO. 406**

**AN ORDINANCE APPROVING AND ADOPTING THE  
DEVELOPMENT AGREEMENT FOR THE PROMONTORY  
SPA**

**PREAMBLE**

**WHEREAS**, the owner and developer of the Promontory project applied for and received from Summit County a rezone of its property to a Specially Planned Area, securing a designation as the "Promontory SPA Zone District" through Summit County Ordinance No. 298-A, and,

**WHEREAS**, Summit County, acting pursuant to its authority under Utah Code Ann. Section 17-27-101, et. seq. (1953), as amended, has made certain determinations with respect to the proposed project and, in the exercise of its legislative discretion, has elected to implement the "Promontory SPA Zone District" pursuant to Summit County Ordinance \_\_\_\_\_, resulting in the negotiation, consideration and approval of this Development Agreement after all necessary public hearings; and,

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

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

Section 1. Summit County Ordinance No. 406, The Development Agreement for the Promontory SPA, Summit County, Utah, consisting of 435 pages including exhibits which has been published as a code in book form, three copies of which have been filed for use and examination in the office of the Clerk of Summit County, Utah, is hereby adopted by Summit County, and the Chairman is authorized to sign and execute the Development Agreement on behalf of Summit County.

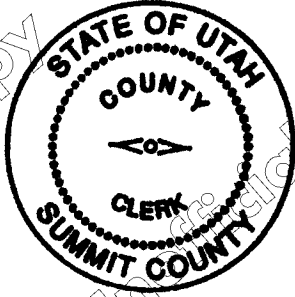
Section 2. This Ordinance shall take effect 15 days after passage by the Board of County Commissioners of Summit County and subsequent publication in a newspaper of general circulation in Summit County, Utah.

00583272 Br01355 Pg01154-01247

ALAN SPRIGGS, SUMMIT CO RECORDER  
2001 FEB 27 13:21 PM FEE \$0.00 BY DMG  
REQUEST: SUMMIT COUNTY CLERK

APPROVED, ADOPTED, AND PASSED and ordered published by the Summit County Board of Commissioners, this 12th day of February, 2001.

BOARD OF COUNTY COMMISSIONERS  
SUMMIT COUNTY, STATE OF UTAH



By:   
Chairman

Commissioner Cone voted:  
Commissioner Kerr voted:  
Commissioner Schifferli voted:

Aye  
Aye  
Aye

ATTEST:

  
County Clerk  
Summit County, Utah

APPROVED AS TO FORM:

  
Deputy County Attorney  
Summit County, Utah

**WHEN RECORDED RETURN TO:**

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

**DEVELOPMENT AGREEMENT**

**FOR THE PROMONTORY SPECIALLY PLANNED AREA**

**EASTERN SUMMIT COUNTY, UTAH**

**THIS DEVELOPMENT AGREEMENT** is entered into as of this 2nd day of January, 2001, by and among PIVOTAL PROMONTORY DEVELOPMENT, L.L.C. (the "Developer") and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners (the "County").

**Article 1  
DEFINITIONS**

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

1.2 **Association** means the Promontory Conservancy, which is the master residential homeowners association for Promontory.

1.3 **Base Density** means 885 Estate Lots consisting of at least 1 acre (or less if specifically approved by the Board of County Commissioners) and providing for the construction of a single family residence of not less than 3,500 square feet of Floor Area.

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

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

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

1.7 **Community** means the master planned resort community planned for Promontory, also referred to as "Promontory SPA Plan" or "Promontory."

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

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

1.10 **Design & Thematic Character Guidelines** means those guidelines governing the design of all structures and the development of other improvements on Development Parcels within Promontory, the current version of which guidelines are included within the Promontory SPA Plan Book of Exhibits or approved as further described in this Agreement.

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

1.12 **Developer** means Pivotal Promontory Development, L.L.C., or a successor person, partnership, limited liability company or corporation.

1.13 **Development Agreement** means this Development Agreement.

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

1.15 **Development Parcel** means an area designated on the Master Plan as available for development of a Project.

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

1.17 **Effective Date** means the effective date of the Summit County Ordinance that approves this Agreement.

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

1.19 **Estate Lot** means a Lot consisting of 1 acre (or less than 1 acre if approved by the Board of County Commissioners) upon which is to be built a single family residence with no less than 3,500 square feet of Floor Area.

1.20 **Exhibit** means an exhibit in the Promontory SPA Plan Book of Exhibits.

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

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

1.23 **Floor Area** means the square footage measured consistent with the definition of "Floor Area" in the Uniform Building Code; however, garages and unheated spaces shall be specifically excluded from any "Floor Area" definition.

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

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

1.26 **Incentive Density** means Residential Units (not including Resort Units) in addition to Base Density that are high end second home, estate type single family detached dwelling units or patio or attached residential dwelling units as shown on the Master Plan and allowed subject to compliance with Benchmark standards contained herein.

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

1.28 **Land Use Density** means the densities planned and potential densities allowed for each Development Parcel and the overall density of the entire Promontory Resort.

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

1.30 **Landscaping Plan** means a detailed landscaping plan for the Property, which is included within the Promontory SPA Plan Book of Exhibits or further approved as described in this Agreement.

1.31 **Lighting Guidelines** means the lighting guidelines for the Property, which shall be approved in accordance with the provisions of this Agreement. The lighting guidelines shall be consistent with the concepts, guidelines, and requirements included in this Agreement.

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

1.33 **Master Declaration** means the Master Declaration of Covenants, Conditions, Restrictions and Easements for Promontory.

1.34 **Master Plan** means the Promontory Master Plan, a copy of which is included in the Promontory SPA Plan Book of Exhibits, which reflects the general location and configuration of commercial and residential development and certain amenities within the Property, and the general location and configuration of certain Public Facilities and Open Space.

1.35 **Neighborhood** means a major area of Development Parcels and Projects. The Neighborhoods shown on the Master Plan are named Resort Village, Resort Highlands, Middle Valley, Mountain View and South Point.

1.36 **Open Space** means land which is unoccupied or unobstructed by any above ground buildings/structures intended for commercial or residential occupancy and is meaningful in nature; namely, open space that is continuous and not unduly broken up by vertical structures or other development configurations (open space should not be compartmentalized into isolated pockets of green space). For purposes of this Development Agreement, large open spaces identified on the Master Plan, golf courses and related

recreational facilities, open recreational areas (parks) and the portions of lots restricted from development of buildings/structures and unfenced shall be allowed as open space. However, parking lots and related landscaping, roads and small isolated pockets of land within Development Parcels shall not be recognized as open space. Open space may be traversed by roads, trails, and utilities and any above ground structures related to roads, trails, and utilities.

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

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

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

1.40 **Project or Project Site** means a specific development activity or a location of development within the Promontory SPA, as set forth in this Development Agreement or any of its Exhibits hereto.

1.41 **Property** means approximately 6,500 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land is shown in the Promontory SPA Plan Book of Exhibits.

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

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

obligations, commitments, and contributions made to carry out the development of the Property.

1.44 **Promontory SPA Plan Book of Exhibits** means that portion of the Promontory SPA Plan which shall contain concept plans, guidelines, and standards that shall be used to guide all development in the Promontory SPA and all other specific development parameters and regulations, and developer obligations, commitments, and contributions for carrying out the development in accordance with the Promontory SPA Plan. The Promontory SPA Plan Book of Exhibits shall be deemed a part of this Development Agreement as fully as if set forth herein at length and shall be binding upon all parties hereto.

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

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

1.47 **Resort or Promontory** means the Promontory resort and real estate development projects covered by this Development Agreement.

1.48 **Resort Unit** means a suite within a hotel or club facility or a dwelling located in the immediate vicinity of a hotel or club facility and offered for rent or overnight stay as a part of the operations of the hotel or club facility. Resort Units do not count as Incentive Density units.

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

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

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

1.52 **Viewshed** refers to Policy 3.12 in the Snyderville Basin General Plan, which require four different approaches to development and open space stewardship.

14



**Preservation Area** - sensitive areas in which only ecological changes, low impact recreation facilities, arterial and minor roadways, and related signs and utilities, when there is no alternative and which are sensitively designed and whose sites are appropriately restored and revegetated thereafter, should be permitted. No residential, commercial, institutional, or industrial development shall be located in any area designated a Preservation Area.

**Retention Area** - visually sensitive areas in which development and activities may occur so long as they are not visually evident or it is subordinate to the characteristics of the natural landscape.

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

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

**Article 2**  
**RECITALS**

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

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

2.3 Developer has proposed the development on the Property of a rural, second home, golf oriented residential community which shall be constructed within certain predetermined development locations designated in the Promontory SPA ("Promontory"). This Development Agreement serves to implement the Promontory SPA, Summit County Ordinance No. 298-A ("Ordinance 298-A"), in accordance with the provisions of the Code and the General Plan.

2.4 On December 27, 1999 the Board of County Commissioners (the "Board") enacted "Ordinance 298-A," which amended the Eastern Summit County and Snyderville Basin General Plans, in part to incorporate all of the Property within the Eastern Summit County Planning District, and rezone the Property in order to specify the uses and development conditions to be complied with by Developer in connection with the development of Promontory. For purposes of this Development Agreement the specially planned area created by Ordinance 298-A is called the "Promontory SPA."

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

2.6 The County therefore desires to establish Promontory under the SPA provisions of Ordinance 298-A, the Code and the General Plan for the purpose of implementing development standards and processes that are consistent therewith.

2.7 Developer has proposed certain specific plans and Plats with respect to Promontory as a part of Promontory's first phase of development, which plans and Plats are consistent with the development standards of the Promontory SPA.

2.8 This Development Agreement, which implements the Promontory SPA, provides detailed data regarding the Promontory Master Plan, planned development areas, planned Open Space, design guidelines and other relevant data. The County and the

A

Developer agree that each shall comply with the standards and procedures contemplated by this Development Agreement and its accompanying Appendices and Exhibits.

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

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

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

14

### Article 3 FINDINGS

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

3.1 After receiving a recommendation by the Snyderville Planning Commission on certain issues made at the meeting of that Commission on April 11, 2000, Promontory has received a recommendation for approval through a Development Agreement by action of the Eastern Summit County Planning Commission taken on August 9, 2000. The Board of County Commissioners held lawfully advertised public hearings on October 16th and 17th, 2000 and then during a lawfully advertised public meeting on January 2, 2000 approved the Promontory SPA Plan under the process and procedures set forth in the Code. The terms and conditions of approval are incorporated fully into this Development Agreement. In making such approval, the Board of County Commissioners made such findings of fact and conclusions of law as are required as a condition to the approvals, as reflected in the staff recommendation adopted with any modifications, as reflected in the minutes of the above-referenced public meetings, and as reflected by the other Findings enumerated herein.

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

3.3 Promontory involves unique circumstances that justify the use of the Promontory SPA, as implemented by this Development Agreement, which circumstances include the unique location of the Property, which is adjacent to existing and planned infrastructure and isolated from small towns and active agricultural production existing elsewhere within Eastern Summit County, and the unique Promontory proposal involving a community principally designed to be marketed as an architecturally-controlled, golf-oriented, second home, resort community.

3.4 Since the Property is situated between the Park City Resort area and the rural lands of Eastern Summit County, the rezone proposal is consistent with objective 3.4 of the General Plan, which allows flexibility for other uses when they are found to be compatible and consistent with nearby uses and the character of the area in which they are proposed. A second home golf community is consistent with the nature of land uses located to the west of the Property, and Promontory has established rural buffers, separation, and other agricultural protection requirements set forth in this Development Agreement in order to preserve and enhance other agricultural lands on the eastern side of the Property.

3.5 Promontory's development will not adversely affect the social, cultural and rural values and institutions of Eastern Summit County as implemented through this Development Agreement.

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

3.7 Promontory contains outstanding features which advance the policies, goals and objectives of Eastern Summit County and its General Plan beyond mere conformity, including the following: (i) agreements with respect to design controls and limitations to minimize the visual impact of the development; (ii) the clustering and appropriate location of density, (iii) the creation of significant Open Space areas, trail connections and recreational improvements, (iv) the restoration of upland sage habitat, (v) the integration of summer and winter resort activities, (vi) the development of year-round resort based employment opportunities and tax base enhancements, (vii) contributions for the preservation of agricultural lands, (viii) the development of water resources for the benefit of Summit County, and (ix) the likely generation of substantial net tax revenues to Summit County and the Eastern Summit County school districts.

3.8 The Promontory development as implemented by this Development Agreement complies with all applicable provisions of the Code, including all development evaluation standards contained in Chapter 2.0 of the Code, all criteria for the approval of a SPA contained in Section 3.80 of the Code, all criteria for the approval of a major development and a SPA plan described in Section 4.5 of the Code and the provisions for the approval of development agreements found in Section 6.70 of the Code. Findings evidencing compliance with each of those sections are incorporated herein by this reference.

3.9 Promontory meets or exceeds development quality and aesthetic objectives of the General Plan and Code, is consistent with the goal of orderly growth in Summit County, and minimizes construction impacts on public infrastructure within the County.

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

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

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

3.13 Developer has committed to comply with all criteria and standards described in this Development Agreement.

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

3.15 The proposed development through implementation of this Development Agreement reasonably assures life and property within the Eastern Summit County Planning District are reasonably protected from any adverse impacts.

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

3.17 This Development Agreement implements the Promontory SPA in accordance with all requirements of Ordinance 298-A.

3.18 The increased densities and intensity of uses in excess of the base densities and uses within the Promontory SPA are established pursuant to the Specially Plan Area provisions of the Eastern Summit County Development Code, which will be implemented through the Promontory SPA Plan.

3.19 Exemption from Code. The Board of County Commissioners acting pursuant to its authority under Utah Code Annotated 17-27-101 et. seq., as well as its regulations and guidelines, in the exercise of its legislative discretion, has determined that Promontory is exempt from the application of the Code solely to the extent that such a finding may be a condition precedent to approval of this Development Agreement. Where there is a direct conflict between an express provision of this Development Agreement and the Code or General Plan or other land use laws, this Development Agreement shall take precedence; otherwise, the Code, General Plan, or other land use laws shall control.

00583272 Bk01355 Pg01167

**Article 4**  
**THE COMMUNITY**

4.1 Description of the Community. The land covered by this Development Agreement consists of approximately 6,500 acres of land located east of Highway 40, predominantly east and southeast of I-80, north of Highway 248 and west of Brown's Canyon Road. Developer intends to construct a master planned resort community, generally described in the Promontory SPA and this Development Agreement. The Community will be concentrated within five neighborhoods generally shown on the Promontory Master Plan. The Community will be developed in phases and, within phases and neighborhoods, on a project-by-project basis.

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

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

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

4.4.1 Resort Units. Two (2) 90 room "boutique" hotels with 120 assorted resort-type cottages are permitted. Such resort cottages must be owned by either the hotels or by individual owners (as set forth below), be located in close proximity to the hotels, and be operated as additional hotel bedbase. Since these cottages are looked at as bedbase, the hotels must be constructed and in operation either before or in conjunction with the construction of the cottages. This requirement shall be satisfied by the issuance of a full building permit for the hotel before any development permit (to include grading permit) is issued on any of the cottages. Furthermore, certificate of occupancies will not be issued for the cottages until a certificate of occupancy has been issued for the associated hotel. All such hotels and cottages shall be sited within the Community in the areas designated as "Resort" on the Master Plan. While these units may be owned by the hotel operator or condominiumized, there will be restrictions that these units will be used for short term occupancy not to exceed six months. In the case of individual cottage ownership, these cottage units must be part of the rental pool managed by the hotel for overnight rental in order to ensure their

12

treatment as resort-type units and shall be designed and set up to ensure that they will not be permanent residences.

4.4.1.1 Resort Units Exception. Up to twelve (12) resort cottages can be constructed in advance of a hotel; provided however, that the Developer is willing to cause a legally binding restriction to (1) allow use of these units for only overnight and weekly rentals, and (2) ensure that these units cannot be converted to primary residential use at any time. The Developer may choose to construct all twelve adjacent to the site of a future hotel, or, at its discretion, divide the twelve resort cottages between the two hotel sites.

4.4.2 Golf Courses, Club and Community Facilities and Related Uses. Up to four (4), appropriately sized and sensitively located 18-hole, private golf courses (all golf courses must be environmentally sensitive, and minimize the use of pesticides, fertilizers, and irrigation water), equestrian and other Promontory golf club facilities including restaurants, retail and commercial uses, private clubs and other similar uses; and community gate houses, temporary and permanent sales facilities, maintenance facilities and other similar uses related to the operation, maintenance, marketing, and sales of Promontory shall be permitted. A fifth golf course will be permitted if the developer can demonstrate to the Board of County Commissioners as required in Section 4.4.2.1.4.

4.4.2.1 Golf Course Requirements

4.4.2.1.1 The design of each golf course shall permit wildlife habitat continuum around and through each golf course that is constructed within the Community, particularly in the Resort Village/Resort Highlands and South Pointe areas where deer/elk and sage grouse populations and migration are of particular concern.

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

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

4.4.2.1.4 Prior to construction of the fifth golf course the Developer must demonstrate to the satisfaction of the Board of Commissioners that the course can reasonably be accommodated within

18



the Community, that it can be designed to comply with all of the requirements stated herein related to the construction of golf courses, and that the course will not cause adverse environmental impacts.

4.4.3 Freestanding Retail. 10,000 square feet of retail, restaurant and commercial uses located outside of hotel or club facilities, but inside of the Community gates. The specific location is not shown on the Master Plan, but may be proposed by Developer at a later time. The Board of County Commissioners shall review and approve the location of the retail use. The commercial use shall be sited in such a manner which is convenient to residents of the resort community, taking into account the primary point of ingress and egress, and principal travel patterns within the Resort and complies with all requirements and Benchmarks set forth in this Agreement.

4.4.4 Base Residential Density. 885 high end, second home, estate-type single family detached dwelling units, which have a minimum Floor Area of 3,500 square feet of Floor Area, and sit on lots at least one acre in size. The Board of County Commissioners may, at its discretion, allow estate lots that are smaller than one acre. There shall be a maximum dwelling unit size of 10,000 square feet of Floor Area. A plat note shall be required to set forth these minimum and maximum building requirements. All structures which are built within the retention and ridgeline viewsheds, defined in Section 1.52 and as designated on Exhibit E, shall comply with the Design Guidelines and the Supplemental Design Guidelines for Retention and Ridgeline Areas in Exhibit C. Additionally, all base residential units located within Ridgeline Areas shown on Exhibit E must comply with the ridgeline requirements of Section 4.8.6.1.6.

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

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

4.4.4.3 Retention Area and Ridgeline Guidelines. All residential dwelling units or structures situated within any Retention Area or Ridgeline Area, as designated on Exhibit E, shall comply with the Supplemental Design Guidelines at Exhibit C. Failure to so comply shall require the relocation of such units to more appropriate areas of the Property, especially with respect to the nine (9) residential Lots designated in the Resort Highlands, Development Pod 56, on Exhibit E.

4.4.5 Incentive Residential Density. 716 incentive density units, which shall be an appropriate mix of high end, second home, estate-type single family detached dwelling units and second home, patio or attached residential dwelling units. All structures which are built within the retention and ridgeline viewsheds, defined in Section 1.52 and as designated on Exhibit E, shall comply with the Design Guidelines and the Supplemental Design Guidelines for Retention and Ridgeline Areas in Exhibit C. Incentive Residential Dwelling Units are specifically subject to the Benchmark standards in Section 4.8.3 (Occupancy of Incentive Density Units) and those units built within Ridgeline Areas shown on Exhibit E must also comply with Section 4.8.6.1.6 (Ridgeline Standards).

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

4.4.5.2 Retention Area and Ridgeline Guidelines. All residential dwelling units or structures situated within any Retention Area or Ridgeline Area, as designated on Exhibit E, shall comply with the Supplemental Design Guidelines at Exhibit C. Failure to so comply shall require the relocation of such units to more appropriate areas of the Property, especially with respect to the nine (9) residential Lots designated in the Resort Highlands, Development Pod 56, on Exhibit E.

4.4.6 Institutional Uses. The following institutional uses shall also be permitted within Promontory: Schools, at locations designated on the Master Plan, fire and law enforcement facilities, utility facilities, including water wells and related structures, water storage facilities including tanks and ponds, water lines, sewer lines, sewage treatment facilities, effluent storage ponds and discharge facilities, power substations and distribution facilities, and employee housing. All institutional structures shall be subject to the Thematic and Design Guidelines that are applicable to other structures in the Development.

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

4.6 Community Phasing.

4.6.1 Proposed Phasing.

4.6.1.1 Development will progress in a manner so that at any point during the build-out of the Community there is a consolidated residential golf community. It is anticipated that the development will commence in the Resort Village area and generally progress to the south. Development phasing that sprawls development throughout the property and into project development areas that do not possess appropriate services, infrastructure, and golf, equestrian or other resort development is not appropriate.

4.6.1.2 The various phases of the Promontory Master Plan may identify areas in which an alternative dwelling unit type that is identified under the "incentive density" program may be constructed. These alternative dwelling unit types include patio homes and attached single family dwelling units. In order to identify a location for these units within a development phase, the location must clearly follow the policies established in this Development Agreement.

4.6.1.3 The phasing strategy will ensure that completed phases can co-exist and will not produce a sprawling effect, should other phases or the "incentive density" described herein not be completed.

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

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

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

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

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

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

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

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

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

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

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

4.7.2.1 Within 180 days of the effective date of this Agreement, the Developer shall work cooperatively with the County as it develops a program for carrying out this mortgage subsidy program. While this program may be tied to existing efforts involving Mountainland Community Housing Trust, or others, there shall be appropriate assurances that the program will be made available in Eastern Summit County.

4.7.3 Recreation & Amenities.

4.7.3.1 Developer will file a fully completed petition for annexation to the Snyderville Basin Special Recreation District signed by all property owners within 180 days after the execution of this Agreement. The petition shall include the entire Promontory property. The Developer and its successors in interest are required to pay all impact fees established by the SBSRD at the impact fee rate in effect at the date of each application for a building permit. The impact fees shall be paid under the Rules and procedures established by the SBSRD.

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

4.7.4 Trails. A public trail system, specified below, shall be constructed and provisions made for permanent maintenance. The trails provided will be appropriate extensions of the Snyderville Basin trail system, as identified by the Snyderville Basin Special Recreation District (SBSRD) and as may be required to serve the needs of Eastern Summit County residents. Where appropriate, as determined by Summit County, public trails shall be dedicated to the SBSRD or to some other approved

recreational organization and in accordance with that organization's and the County's rules and regulations. The public trail system plan and its construction shall occur as set forth in Exhibit D of the Promontory SPA Plan Book of Exhibits.

4.7.4.1 The three major trails within the Community which accommodate public access shall be controlled by the SBSRD either by conveyance or appropriate form of perpetual easement acceptable to the District. The Master Homeowners Association, at its expense, may locate low-key signage at appropriate intervals along these trails to notify the public of adjacent private lands and the need to stay on the designated trail. The wording and signs shall be approved by the SBSRD. Public use of trails shall be limited to day light hours. Monitored access by the Developer shall require only a voluntary response by the public. Limited trail closures will be allowed by the Developer subject to the approval of the SBSRD.

4.7.4.2 Prior to the construction of any trails, the Developer, SBSRD and the Division of Wildlife Resources will meet to discuss the impact of trail locations on wildlife habitat. Trails will be located in a manner to reduce impacts on wildlife. Should either the Developer or SBSRD disagree with the position of the Division of Wildlife Resources, the matter will be resolved by the Board of Commissioners.

4.7.4.3 The Developer shall provide public and Community trails in the general locations indicated on the Trails Master Plan. The trail surface, width, grade, alignment, and other design specifications for the public trails shall be approved by the SBSRD. If the developer believes that the alignments required by the SBSRD to comply with such specifications will adversely affect a project, then the developer may appeal that decision to the Board of County Commissioners for a determination of reasonableness. The general locations shown on the Trails Master Plan, particularly near sub-area 84, may require adjustment given the need to comply with the specific design requirements of the SBSRD.

4.7.4.4 The Developer shall construct all public trails within two years of the effective date of this Development Agreement or as specifically approved by the SBSRD. The Developer shall enter into a specific agreement related to the provision and guarantee/warranty of these public trails with the SBSRD within 90 days of the effective date of this Agreement.

4.7.4.5 The Developer or Master Homeowners Association shall pay at the time of construction \$100,000 toward the expense of constructing an underpass under the north bound lanes of Interstate 80 or overpass or other related structure to connect the public trail within the Community to the rail trail when the State of Utah reconstructs Interstate 80 through Silver Creek Canyon. Until such time as a permanent, safe connection can be made to the rail trail near the Community entry, the Developer shall provide an easement

28

for a temporary trail connection from the northerly trail to that portion of the rail trail located south of the point that the rail trail crosses under Interstate 80. In the alternative, should the Board of Commissioners determine that an underpass or overpass is not feasible, then the \$100,000 contribution shall be paid at the time of construction toward the improvement of the above referenced easement, which shall become a permanent trail connection.

4.7.4.6 The Developer or Master Homeowners Association shall pay at the time of construction \$100,000 toward the expense of constructing an overpass of Highway 248 if the SBSRD or other recreation entity can secure easements across property located between the Community and Highway 248 to connect to a public Jordanelle and/or Richardson Flats trail system.

4.7.4.7 Developer shall provide adequate signage at all public trailheads advising the Public at Large that these trails through Promontory are open to the public.

4.7.4.8 Any approvals to be provided by SBSRD shall not be unreasonably withheld. Any dispute between SBSRD and Developer shall be resolved by the Board of Commissioners.

4.7.5 Internal Recreational Facilities. Developer shall construct appropriate internal neighborhood parks, trails and other recreational facilities for use by the Community's residents.

4.7.5.1 Private neighborhood park facilities will be constructed by the Developer at a rate of 5 acres of improved park for every 500 residential units and conveyed to the Promontory Conservancy for on-going maintenance.

4.7.5.2 The neighborhood park space may be located in a single or multiple facilities and shall be easily accessible to the residents of that neighborhood development area. Each will contain appropriate improvements for the neighborhood.

4.7.6 Water System. Developer agrees to annex the entire Promontory Property into the Mountain Regional Water Special Service District ("Mountain Regional") and to convey to Mountain Regional easements covering proposed water lines, water tanks, wells and other water facilities which may be located on the Promontory Property as required by that certain Agreement for the Annexation of Promontory Development Project and to Provide Culinary Water to Development between Mountain Regional and Developer, dated May 1, 2000, a copy of which is included in the Promontory SPA Plan Book of Exhibits as Exhibit O (the "Water Service Agreement"). All easements shall be provided within 30 days of a request from Mountain Regional provided that the location of the easements are consistent with areas designated by the Developer for roadways, common areas or other areas specifically designated for water system improvements. Developer shall contribute and

convey the Star Pointe Well 15(b) to Mountain Regional as a public amenity and benefit in exchange for the granting of some of the increased residential densities herein, and consequently the value of such well shall not act as a credit toward impact fees charged by Mountain Regional pursuant to the Water Service Agreement. Subject to issuance of any applicable Building Permits, work on the water system may commence prior to the processing of any subdivision plats.

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

**4.7.8 School Sites.** Within 90 days after a request from the South Summit School District, Developer shall convey to the School District the two school sites (10 acre elementary school parcel and 35 acre middle school parcel) shown on the Promontory Master Plan. The school sites may be conveyed subject to retained easements for utilities, including without limitation, storm water runoff, the construction of adjacent roads and improvements, and subject to Thematic and Design Guidelines. In the event that these school sites are deemed by the South Summit School District to be unnecessary, then no other development, residential or otherwise, will be permitted on these sites without amendment to this Agreement. All school facilities shall be subject to the CC&Rs for Design Review and enforcement purposes only.

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

**4.7.9 Conversion Fee.** The Covenants, Conditions and Restrictions for Promontory shall include a requirement that an owner converting an Incentive Density Residential Unit to Permanent Occupancy shall be obligated to file an affidavit with Developer and the County so declaring that owner's intent. The owner shall be obligated further to pay the County a one time \$10,000 conversion fee, subject to Price Level Adjustment, as a precondition to the approval of such change of use. Such fee shall not be construed to be an impact fee under Utah law.

RK



**4.7.10 Golf Access.** Developer shall provide public (which shall be interpreted to mean non-Promontory Resort/Community affiliated individuals, including hotel guests of the Promontory Resort) access to one resort course (and, after completion of any third resort course, access to two resort courses, one of which shall be either the Resort Village or Middle Valley course), and associated golf facilities with tee times reasonably available throughout the day at market rates every day of the week that the course is available for play by golf club members or Promontory hotel guests, with a minimum guaranteed availability of 32 rounds of public golf per day upon completion of the first resort course and 40 rounds of public golf per day upon completion of the third resort course. The private courses subject to public access shall be of championship quality. The public shall be subject to the same reservation policies required of golf club members and guests. The Developer shall provide appropriate notification of public access policies to the public and community lodging properties each year. As an additional option, upon completion of the third resort golf course, the Developer may decide to allow for public access on just one of its championship quality resort golf courses (however, the Mountain View resort golf course may not be chosen under this option as the public access golf course) with an increase in the daily minimum guaranteed rounds to 60.

**4.7.11 Fire District.** Within 180 days after the execution of this Development Agreement, Developer shall annex the entire Promontory Property into the Park City Fire Service District ("Fire District") and convey to the Fire District a fire station site shown on the Promontory Master Plan (approximately 1.75 acre site, which may be more than that stated in the Terms of Reference). Developer shall also advance \$640,000 toward the construction of a fire station on the donated site. The donation of the site and the advance and reimbursement of the funds shall be governed by the Terms of Reference approved by the Park City Fire District and included in the Promontory SPA Plan Book of Exhibits and this condition.

**4.7.12 Employee Housing.** The Developer shall provide for thirty-seven (37) employee households consisting of 82 bedroom suites of employee housing. Approval of such employee housing units shall be subject to the final site plan approval process in this Agreement.

**4.7.13 Permits Required.** Prior to the commencement of development activity designated on a Final Subdivision Plat or Final Site Plan or for a low impact development activity, including grading permits, all applicable construction plans, construction mitigation and management plans, bonding, development guarantees, and warranties shall be approved by the Board of County Commissioners. Prior to the commencement of development activity on any lot designated on a Final Subdivision Plat or Final Site Plan or approved as a low impact development activity, or before the commencement of construction on any structure authorized in this Development Agreement, a Building Permit must be obtained from the County in accordance with all applicable requirements of the Code. Building permits, including grading and/or

footing and foundation permits will not be issued until all applicable construction plans, construction mitigation and management plans, bonding, development guarantees, and warranties have been established for the related subdivision plat, site plan and/or low impact development activity.

#### 4.7.14 Owner Associations and Management Arrangements.

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

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

4.7.14.3 Individual Project Associations or Management Regimes. An individual Project may have its separate owner or management association and/or easements and maintenance regimes reasonably required for the convenient and mutually beneficial use and operation of the Project.

4.7.15 Comprehensive Sign Plan Required. Prior to the approval of a certificate of occupancy for any residential or commercial building within the Resort, the Developer shall submit an application for a comprehensive sign plan. The application shall be reviewed and approved by Summit County as a Low Impact development activity in accordance with the provisions set forth in the Promontory SPA Plan Book of Exhibits, this Development Agreement and all applicable provisions of Appendix III. The sign plan shall address all design, size, location, lighting, and

other related standards for all commercial business identification signs, residential development identification signs, construction related signs, Project identification signs, banners, temporary signs, directional signs, and any other signs that may be contemplated by the Developer.

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

**4.7.16.1** While the majority of planned open space will be privately owned by the Master Homeowners Association, a conservation easement or other acceptable restriction approved by Summit County shall be established on all major Open Space areas shown on Exhibit B within 120 days of the effective date of this Agreement. In general, these areas will include the West Slope, the major open space areas east of, but near Interstate 80, the northerly portion of the Resort Village, and those areas located on the south end of the Community near Highway 248 that are located outside of a development area. While a conservation easement or other restriction may allow future construction of low intensity recreational uses and related facilities as defined herein, environmental enhancements, easements for on or below grade utilities, roads specifically identified in this Agreement, and related signs, and other on or below grade infrastructure, the conservation easement or restriction shall otherwise be for the permanent and unconditional open space benefit of Summit County and shall assure that the land shall not be used for the construction of any dwelling or commercial or other structures.

**4.7.16.2** The parcel located west of Interstate 80 shall be conveyed free and clear of any encumbrances within 120 days of the effective date of this Agreement to Summit County to be used as Open Space or for uses that are compatible with the desired open space character.

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

PK

- (a) Revegetation/erosion protection/runoff control
- (b) Wetland and watershed protection; wetlands enhancement plan
  - (1) All disturbance areas shall be carefully marked/fenced to the extent possible prior to construction. Whenever construction occurs near riparian and drainage areas and significant vegetation which shall be retained on the site, there shall be an appropriate amount of screening/buffering from construction disturbance
- (c) Site grading
- (d) Dust and debris control
- (e) Recycling construction material waste
- (f) Damage to public roadways as a result of construction
- (g) Traffic control/construction management control
- (h) Hours of construction
- (i) Impact of noise on adjacent residential uses
- (j) Staging and screening of construction materials and equipment (short term basis only)
  - (1) Major stockpiles and construction staging unrelated to construction in the near vicinity shall be located outside of Preservation viewshed areas and to the extent possible Retention Viewshed areas to minimize the visual impact of such facilities
- (k) Solid waste disposal for construction wastes

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

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

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

4.7.21 Private Roads. All roads, to include the backbone arterial road system denoted on the Promontory Master Plan, shall be privately owned, shall

be built to appropriate county rural road standards, and shall be privately maintained by Developer or an appropriate owner's association. Arterial roads shall provide linkages to existing County roads and adjoining properties to assure an optimal flow of traffic from the Community as shown on Exhibit B.

4.7.21.1 For purposes of this Agreement, the appropriate county standards shall mean the rural road standards attached as Exhibit M to the Promontory SPA Plan Book of Exhibits and those road, driveway, cul-de-sac, and other related infrastructure design requirements of Section 4.10 of the Snyderville Basin Development Code. Specifically, these standards address access, intersections, road grades, road design, driveway access, cul-de-sac design, road base specifications, bridges and culverts, traffic control and signage, road maintenance, level of service standards, gates, sidewalks and pedestrian trails.

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

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

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

4.7.21.5 The Developer, with the completion of the access road connecting the Resort with the public road network in the Silver Creek

Business Park shall improve the flow of water to recharge and enhance the wetlands located north of this road as required by Summit County and/or the U.S. Army Corps of Engineers.

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

4.7.22 Lighting Guidelines. All exterior street and other lighting shall be kept to a minimum. A specific project-related lighting plan shall be provided within 180 days of the effective date of this Agreement or the first residential related subdivision plat, whichever comes first. Only high pressure sodium, incandescent, or sources appearing to be amber in color will be allowed. The CC&Rs should maintain specific guidelines that ensure there will be minimal exterior lighting impact from all residential structures.

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

4.7.24 Agriculture.

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

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

4.8 Community Benchmarks. Promontory's development concepts and commitments to its owners and to the County and the provisions of Ordinance 298-A require the Developer's achievement of certain Benchmarks relating to the implementation of certain County policies, the accomplishment of specific mitigation measures required under certain circumstances, or the completion (or bonding of completion) of certain amenities and other proposed or anticipated public benefits. This section implements these requirements through the Community Benchmarks (the "Benchmarks") specified in the following sub-sections. Each benchmark sets forth performance standards, a system for monitoring performance, and enforcement provisions to remedy non-performance. The individual Benchmarks shall be enforced, as described below, through one or more of the following enforcement provisions: (1) conditions of approval for individual condominium or subdivision plats, site plans,

building permits, or low impact development activity; (2) the Periodic Review and default provisions set forth in this Agreement; and (3) through action of the Promontory Conservancy and in certain cases, the Design Review Committee of the Promontory Conservancy, where such action is specifically authorized. In the event that these Benchmarks are violated by individual lot owners, the Developer or Association shall use its best efforts to assist the County in gaining compliance with respect to that individual lot owner.

#### 4.8.1 Development Pattern.

4.8.1.1 Standards. All estate single family detached dwelling units will be constructed on large lots. Estate Lots will be a minimum of one acre, unless otherwise approved by Summit County. The development pattern will, to the extent possible, ensure views and other development characteristics that are consistent with a high-end residential development. The estate homes shall be located near to a fairway or other golf amenity or configured in such a manner as to ensure that they will be related to the high end golf course community so as to attract secondary homebuyers. All patio home and attached single family dwelling units shall be in clustered projects that are in close proximity to a golf fairway, golf view, clubhouse, equestrian center or other resort amenity. These "patio and attached single family dwelling unit" types will not be permitted until such time as the golf course or corresponding resort amenity is constructed or the Developer has established a suitable bond or other mechanism to ensure the construction of that golf course or amenity. In that adjacent properties have not been fully developed, the Developer must ensure that there is adequate buffering between Project Development Areas and adjoining properties.

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

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

pr

4.8.2 Development Phasing.

4.8.2.1 Standards. In order to comply with the Global Development Principles, and to ensure that all units, regardless of whether an estate lot or patio/attached single family dwelling, are to be located in close proximity to a golf fairway/view, or other golf and resort amenity, there shall be a minimum of four development phases to carry out the proposed Master Plan. The following phasing plan shall be required:

4.8.2.1.1 Resort Village and Resort Highlands Phase.

To permit residential construction in this phase, all infrastructure and the 18 hole golf course or resort hotel and amenities shall be either constructed or guaranteed by a bond or other acceptable means.

4.8.2.1.2 Middle Valley Phase.

To permit residential construction in the Middle Valley, all infrastructure and the 18 hole golf course and club house or resort hotel and amenities shall be constructed or guaranteed by a bond or other acceptable means.

4.8.2.1.3 Mountain View Phase.

To permit residential construction in Mountain View, all infrastructure and the 18 hole golf course or equestrian facility shall be constructed or guaranteed by a bond or other acceptable means. The equestrian facility will be allowed in place of the golf course if the equestrian facility is well integrated into this development area.

4.8.2.1.4 South Pointe Phase.

To permit residential construction in this phase, all infrastructure and the 18 hole golf course shall be constructed or guaranteed by a bond or other acceptable means. At the option of the Developer, the South Pointe phase may be developed prior to the Mountain View phase. Where the Developer can adequately demonstrate golf membership is available to South Pointe residents on other Promontory resort courses, the County may waive the South Pointe golf course construction requirement. Such a waiver may require the reconfiguration of the development in the South Pointe phase.

4.8.2.1.4 Construction of subsequent golf courses shall be at the discretion of the Developer.

4.8.2.1.5 Development shall progress in a manner so that

at any point during the build-out of the Community, there is a consolidated residential golf community. This phasing strategy shall ensure that completed phases can co-exist and will not produce a

22



sprawling effect, should other phases of the "incentive density" described herein not be completed.

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

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

4.8.3 Occupancy of Incentive Density Units.

4.8.3.1 Standards. Ordinance 298-A conditions the approval of specific Subdivision Plats containing Incentive Density Residential Units based upon compliance with the standards set forth in this Section 4.8.3.

4.8.3.1.1 In order to obtain approval for a Final Subdivision Plat which contains Incentive Density Residential Units, Promontory must comply with any one of the following two tests, which shall be applied in the order listed:

4.8.3.1.1.1 Permanent Occupancy of completed Residential Units is less than twenty-five percent (25%) of all constructed Residential Units within Promontory, or

4.8.3.1.1.2 If the Permanent Occupancy percentage test is not met, then no more than twenty-five percent (25%) of all constructed Residential Units shall have fair market values, as determined by assessors records, short form appraisal or other source of market data, of less than the then-applicable Value Threshold Amount. For purposes of this test, the Value Threshold Amount is equal to \$800,000, adjusted beginning on January 1, 2003 and on January 1 of each year thereafter by the Price Level Adjustment, provided, however, that no increase shall be

applied in any year in which the Developer can demonstrate with reasonable evidence that resort housing prices generally declined in the market during the preceding calendar year. The intent of this provision is that during periods of declining housing prices there would be no short term Price Level Adjustment. However, when the price levels for housing begin to increase, the Price Level Adjustment shall apply and shall be cumulative as if the Price Level Adjustment had not been abated in any prior period of declining housing prices.

4.8.3.1.1.2.1 Although the valuation test is generally based upon a residential lot and a constructed dwelling unit, Summit County shall permit the valuation test to also include: (1) the actual sales price for the lot if it is equal to or exceeds the required valuation, and (2) the combined valuation as determined at the time of building permit application.

4.8.3.1.2 In order to apply the foregoing tests, the following special provisions shall apply.

4.8.3.1.2.1 The Permanent Occupancy status of a Residential Unit shall be determined by affidavit, in accordance with State law and County Ordinance, submitted by the owner of any completed Residential Unit or, where no affidavit requirement exists in State law, the County may look to other evidence of Permanent Occupancy, to specifically include children enrolled in the local school district. At the time of a building permit application for a residence on a lot by an owner, other than Developer (or a successor developer of a Plat or Project), the owner shall be required to provide an affidavit of residency in a form approved by the County declaring the owner's occupancy status. In the event Developer (or a successor developer) builds a home for sale without a pre-sale, the affidavit shall be obtained by Developer (or its successor) from the residence buyer at the time the purchase closes. In the case of resales, a new owner is required to file an affidavit in connection with any application for primary home status for property tax purposes.

4.8.3.1.2.2 Incentive Density will be accounted for as follows: (a) Incentive Density not meeting the definition of Estate Lots for Base Density purposes must be identified and counted at the time of final Plat approval. (b) Estate Lots may be designated by Developer as either Base Density or Incentive Density and shall be counted at the time of lot sale.

4.8.3.2 Monitoring. Compliance with the foregoing Permanent Occupancy, valuation and fiscal mitigation standards shall be ascertained by the County Assessor and by the Director at the time of periodic review and prior to approval of any Final Subdivision Plat or Condominium Plat for each Project containing Incentive Density. Approval of any such Final Subdivision Plat or Condominium Plat shall be conclusive that the Permanent Occupancy valuation and fiscal mitigation standards are complied with as of that time and for purposes of the lots in the plat.

4.8.3.3 Enforcement. Subject to Section 4.8.3.4, in the event the County asserts that Developer is out of compliance with the Permanent Occupancy, valuation and fiscal mitigation standards set forth above, the County may withhold approval of future Final Subdivision Plats containing Incentive Density until such time as these standards are met or the County agrees to an amendment to the standards of this Section.

4.8.3.4 Cure Provisions. The parties recognize that a certain level of home construction is necessary to permit a realistic determination with respect to the number and types of Residential Units with Permanent Occupancy within the Resort Community and the respective values of all Residential Units. Therefore, the parties agree that the Permanent Occupancy and valuation tests shall not be applied to subdivision plat applications for Incentive Density made prior to the time that building permits for at least 200 Residential Units have been issued by the County. If Developer, at any time after 200 building permits have been issued by the County, fails all previous tests, Ordinance 298-A requires that Developer have an opportunity to cure. In such an event, the following provisions shall apply:

4.8.3.4.1 Under circumstances of non-compliance, (a) Developer shall have the right, as a cure, to continue to plat and construct Incentive Density that also complies with the definition of "Estate Lot," provided, however, that the total of Incentive Density Estate Lots within the Resort Community shall not exceed 425 units and no such units shall be developed in the Mountain View neighborhood unless compliance is again achieved with respect to the Incentive Density occupancy standards; and (b) Developer, in order to obtain the right to build Incentive Density other than Estate Lots or to otherwise cure non-compliance under the Incentive Density occupancy standards in a manner other than as described in preceding subpoint (a), may also propose as a cure mechanism an arrangement so as to off set the impacts of Permanent Occupancy on the County through an adequate tax base or may also propose some other mechanism that is reasonably likely to achieve a cure of the non-compliance over time. The County's approval of any such proposal shall not unreasonably be withheld.

ss

4.8.4 Employee Housing.

4.8.4.1 Standards.

4.8.4.1.1 The Developer shall provide for thirty-seven (37) employee households consisting of 82 bedroom suites of employee housing sited within the Resort, not outside of the Community gates. The employee housing shall be clustered together in such a way as to create a high quality sense of community. This employee housing community shall be integrated into the fabric of the Resort Community and shall be located within either the Resort Village, Resort Highlands, Middle Valley or South Pointe development areas at a location to be determined by Developer. In all instances, employee housing should have easy access (walking, bicycling, and internal resort transit) to Resort employment generators and provide for reasonable access to South Summit School District bus stops at the Community gates (i.e., shuttle transit bus). All employee housing shall be approved pursuant to the site plan review and approval process herein.

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

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

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

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

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

4.8.5 Environmental Enhancement, Conservation, and Preservation Management Plan.

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

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

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

4.8.5.1.2.1 Developer shall initiate a program so as to allow wildlife on its resort golf courses, except for tees, greens, water features and landscaped areas.

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

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

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

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

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

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

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

4.8.5.1.10 The design of the northerly access road shall include appropriate traffic speed control devices to ensure slow traffic speeds to minimize impacts on Wildlife.

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

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

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

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

and conditions of this Section 4.8.5, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

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

4.8.6.1 Standards.

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

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

4.8.6.1.3 The passive open space provided must be "meaningful" in nature; namely, open space that is continuous and not unduly broken up by structures or other development configurations. While there may be small open spaces within a development area, the open space referred to here should not be compartmentalized into isolated pockets of green space. With the Open Space areas preserved around the development parcels as shown on Exhibits B and E, the objectives of these Open Space standards have been fulfilled.

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

4.8.6.1.5 Four critical viewsheds must be preserved; namely, the west side Hillside Viewshed, the Meadow Viewshed, the South Pointe Viewshed, and the Browns Canyon Road Viewshed, as more specifically identified in Exhibit E. Consistent with Exhibit E and existing conservation easements, no development of structures, intended for occupancy or equestrian facilities, is permitted in Preservation Areas. Development is allowed in Retention Areas so long as it complies with the Development Policy in Section 1.52 of this Agreement and the Supplemental Design Guidelines in Exhibit C. With the Viewshed areas preserved as shown on Exhibit E, the objectives of this standard have been fulfilled.

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

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

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

4.8.6.1.9 A plat note shall be provided on each final subdivision plat that requires building disturbance areas (building envelopes) to be identified by the Master Homeowners Association at the time of design review within each lot and which prohibits any disturbance outside of that area. This information will be available to



Summit County upon request to ensure compliance with the Community development policies.

4.8.6.2 Monitoring. To the extent not previously covered by conservation easements, Promontory shall preserve and enforceably restrict major Open Space designated on the Master Plan within 120 days of the effective date of this Agreement. Several methods are available, at the option of Developer, to accomplish this restriction including deed restrictions, granting of conservation or Open Space easements, or transfer of fee to a non-profit conservation organization. Compliance by an owner with the limits of disturbance requirements imposed by the Design Guidelines shall be ascertained at the time of building permit review for each structure within Promontory. Viewshed and ridgeline protection shall be monitored at the time of periodic review and prior to approval of any Final Subdivision Plat or Final Site Plan for each Project.

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

4.8.7 Transportation System.

4.8.7.1 Standards.

4.8.7.1.1 Beginning with the commencement of operations of the first hotel or Resort Units, or within 24 months of the first subdivision plat approval, Developer will implement an internal transit system for its owners and guests and will provide directly or through outside contractors services as needed to Kimball Junction, Park City, the Salt Lake City International Airport, the Canyons Resort and Kamas. This can be done through an on-call system (passenger to driver) to provide internal and external transit service pick-up for individual residential units, at club and resort facilities and amenities, employee housing, and at locations outside of the Resort Community that are in close proximity to identified external destinations. Thereafter, the program will be phased in as Promontory develops.

4.8.7.1.2 To the extent possible, the principal resident, guest, and construction vehicle access to all development within the Resort Community shall be maintained through Tollgate Canyon and the Resort Village. Secondary, school bus, and emergency access points shall be permitted, and in certain instances required, in other locations. However, it must be demonstrated that these alternative access points shall not be used as a principal means of access to any portion of the Resort Community.

4.8.7.1.3 The Resort Community's construction management and transportation management plans shall, to the greatest extent possible, minimize construction traffic on Brown's Canyon Road. As development progresses, Developer shall make such improvements to Brown's Canyon Road that are required to mitigate the specific impacts of this development as are required by the County Engineer.

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

4.8.7.1.5 Prior to the issuance of a certificate of occupancy for the first hotel or within 24 months of the first subdivision plat or site plan approval, whichever comes first, the Master Homeowners Association shall provide and maintain an appropriately sized fleet of transit service vehicles/vans to service the Resort Community.

4.8.7.1.6 The Developer shall not protest the creation of a Transportation Service District or Service Area which provides transportation services to the Resort Community, if one is proposed for creation in the future, nor shall the Developer protest the annexation into such an existing District or Service Area. In the event Promontory

AR

is annexed to a District or Service Area. Promontory may discontinue services that are duplicated by the District or Service Area.

4.8.7.1.7 In the event that the Resort Community's construction causes damage to this roadway at any time during the build out of the Resort, the Developer shall immediately cause the repair to the roadway in a manner acceptable to the County Engineer.

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

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

#### 4.8.8 Design and Thematic Character Guidelines.

4.8.8.1 Standards. Promontory will implement a comprehensive set of Design and Thematic Character Guidelines as a part of the approval process for each construction project within Promontory. The summary of Design and Thematic Character Guidelines are included as Exhibit G to the Promontory SPA Plan Book of Exhibits. Exhibit G represents certain standards that must be maintained, at a minimum, by the Master Homeowner's Association, and such standards may be amended by the Association from time to time. To the extent possible, the Design Guidelines and the Design and Thematic Character Guidelines will be utilized to guide the design of all structures in the Community, including but not limited to all single family residential dwellings (attached or detached), equestrian facility, gate houses, hotels, employee housing, club and maintenance facilities, schools and fire station. The CC&Rs pertaining to Promontory must remain at all times consistent with these Design and Thematic Character Guidelines.

4.8.8.1.1 Not all development areas within the Community are alike. Some are more sensitive because of unique environmental features and viewshed locations, particularly those that are identified as viewshed "retention areas." The Developer has assured Summit County that buildings can blend well into the terrain so as to

28

comply with the visual quality requirements of a viewshed "retention area." Supplemental Design Guidelines at Exhibit C are approved to satisfy this requirement and Developer shall comply with the standards contained therein.

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

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

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

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

4.8.9 Service Provider Compliance.

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

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

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

4.8.10 Agricultural Preservation.

4.8.10.1 Standards. Promontory will implement the agricultural preservation program as set forth in Exhibit of the Promontory SPA Plan Book of Exhibits.

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

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

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

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

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

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

evidence, that Developer has not complied in good faith with the material terms and conditions of this Section 4.8.10, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.11 Promontory Club.

4.8.11.1 Standards. Promontory will offer buyers the option to acquire a club membership with the sale of Incentive Density Residential Units.

4.8.11.2 Monitoring. Compliance with the Promontory Club requirement shall be ascertained by the County upon periodic review.

4.8.11.3 Enforcement. The County shall have the ability to enforce the promontory club marketing policies and standards by withholding condominium or subdivision plat, site plan, and building permit approvals, and issuing stop work orders for a particular Project Site that is not in compliance with the foregoing policies and standards until these policies and standards associated with that particular Project Site are addressed consistent with this Agreement, the Development Code, and other applicable County or other agency policies and programs. In addition, if the County finds, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms and conditions of this Section 4.8.11, the County may declare such party or parties in default of this Agreement and the County shall have available to it the default procedures set forth in Article 9 herein and the enforcement procedures set forth in Section 10.7 herein.

4.8.12 Community Amenities Program Compliance.

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

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

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

**Article 5**  
**VESTED RIGHTS**

5.1 Vested Rights. Subject to Articles 5.2 and 6.1, the Developer shall have the vested right to have final site plans, subdivision and condominium plat, and construction plans approved and to develop and construct Promontory in accordance with the uses, densities, timing, configurations (massing), and the other standards of development as vested in Article 4.3 under the terms and conditions of this Development Agreement, including Article 3 (Findings), and the Promontory SPA Plan Book of Exhibits.

5.2 Reserved Legislative Powers.

5.2.1 Future Changes of Laws and Plans: Compelling Countervailing Public Interest. Nothing in this Development Agreement shall limit the future exercise of the police power of the County in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other master plans, policies, ordinances and regulations after the date of this Development Agreement. Notwithstanding the retained power of the County to enact such legislation under the police power, such legislation shall only be applied to modify the vested rights described in Articles 4.3 and 5.1, as well as other provisions of this Development Agreement, based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. (Western Land Equities, Inc., v. City of Logan, 617 P.2d 388 (Utah 1980) or successor case and statutory law). Any such proposed change affecting the vested rights of Promontory and other provisions of this Development Agreement shall be of general application to all development activity in Eastern Summit County; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to Promontory under the compelling, countervailing public policy exception to the vested rights doctrine. In the event that the County does not give prior written notice, Developer shall retain the right to be heard before an open meeting of the Board of County Commissioners in the event Developer alleges that its rights under this Development Agreement have been adversely affected.

00583272 Bx01355 Pg01200

R

**Article 6  
PROCESSES**

6.1 Fees.

6.1.1 SPA Rezone Application, Development Agreement Application, Final Subdivision Plat, Development Review, Engineering and Related Fees. Pursuant to the provisions of Resolution 99-11 and prior agreements with County consultants, Developer agrees to pay the sum of \$30,241.54 prior to final approval of this Development Agreement by the Board of County Commissioners (fees for commercial within the hotels shall be paid at the time of site plan review). Developer shall receive no further credits or adjustments toward any other development review, platting, site planning, or similar standard engineering review fees or other fees generally applicable to development application or building permit review and approval. The County may charge such standard planning and engineering review fees, standard building permit review and inspection fees, and other fees as are generally applicable at the time of application, pursuant to the provisions of Resolution 99-11, as amended, or other applicable statutes, ordinances, resolutions, or administrative guidelines.

6.1.2 Impact Fees. In consideration for the agreements of the County in this Development Agreement, Developer agrees that Promontory shall be subject to all impact fees which are (1) imposed at the time of issuance of building permits, and (2) generally applicable to other property in the Snyderville Basin; and Developer waives its position with respect to any vested rights to the imposition of such fees, but shall be entitled to similar treatment afforded other vested projects if the impact fee ordinance makes any such distinction. If fees are properly imposed under the preceding tests, the fees shall be payable in accordance with the payment requirements of the particular impact fee ordinance and implementing resolution. Notwithstanding the agreement of Developer to subject Promontory to impact fees under the above-stated conditions, Developer does not waive Developer's rights under any applicable law to challenge the reasonableness of the amount of the fees within thirty (30) days following imposition of the fees on Promontory based upon the application of the Rational Nexus Test (as defined in Section 6.1.3).

6.1.3 Rational Nexus Test. For purposes of this Development Agreement, the Rational Nexus Test shall mean and refer to a standard of reasonableness whereby Promontory and Property shall not bear more than an equitable share of the capital costs financed by an impact fee or exaction in relation to the benefits conferred on and impacts of Promontory. The interpretation of "rational nexus" shall be governed by the federal or Utah case law and statutes in effect at the time of any challenge to an impact fee or exaction imposed as provided herein including, but not limited to, the standards of Banberry Development Corp. v. South Jordan City or its successor case law.

6.2 Approval of Final Construction Documents. In conjunction with a Final Subdivision Plat or Final Site Plan approval, but in all instances prior to the issuance of a building, grading, or other development permit, the Developer shall submit all applicable Construction Plans as required by Appendix II, together with a proposal for guaranteeing



development improvements (Development Improvements Agreement), to Staff consistent with the provisions of this Agreement. In addition, any other related approvals required in this Agreement shall be submitted at this time for review and approval in accordance with the terms defined in this Agreement. The Staff shall review the information submitted pursuant to this Section and provide its recommendation to the Board of Commissioners. Following the submission of the Staff recommendation to the Board of Commissioners on the final construction plans, the application shall be placed on the Consent Agenda of the Board of Commissioners for final approval. If the then existing Code does not require Board of Commissioners approval of the Final Construction Documents, then the Director may approve such documents following Staff review of the same.

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

6.3.1 Improvements which shall be guaranteed include:

- 6.3.1.1 All utilities, including water and sewer service.
- 6.3.1.2 All private roads, not including driveways.
- 6.3.1.3 Temporary and permanent, structural and non-structural runoff control measures.
- 6.3.1.4 Temporary and permanent, structural and non-structural soil conservation measures.
- 6.3.1.5 Internal project transit passenger waiting facilities.
- 6.3.1.6 School bus turnaround at an entry gate, shelter and related features shall be covered with the first residential subdivision plat within each applicable village serviced by an entry gate.
- 6.3.1.7 Required buffering, screening, and landscaping.
- 6.3.1.8 All public trails shall be constructed, with respect to timing and design, as required by this Agreement.
- 6.3.1.9 Neighborhood recreational facilities.
- 6.3.1.10 All private trails.
- 6.3.1.11 Site restoration, should development not be completed within the required construction schedule.

6.3.2 The Development Improvements Agreement, in a form and amount of guarantee to be approved by Summit County, shall establish a security to complete improvements, warranties after completion, schedules for completing all improvements,

128

and remedy provisions in the event of a default. All improvements shall be warranted by the Developer for a period of two full years of normal operation from the date of completion, as established by the County Engineer. Summit County will retain 10% of the security for a period of 24 months from the date of completion of the improvements. In the case of landscaping, 40% shall be retained.

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

6.4.1 Water Service.

- (a) A feasibility letter for the proposed water supply issued by the State Division of Drinking Water.
- (b) Evidence of coordination with the public or private water service provider (i.e.; Mountain Regional), including an agreement for service and an indication of the service area of the proposed water supplier, commitment service letter or other binding arrangement for the provision of water services, which meets the water concurrency requirements of Summit County Ordinance No. 400 or its successor law.
- (c) Evidence that water rights have been obtained including an application for appropriation or change application endorsed by the State Engineer pursuant to Section 73-3-10 of the Utah Code, and a certificate of appropriation or certificate of change issued in accordance with Section 73-3-16 of the Utah Code. The County shall not accept an application or certificate that has lapsed, expired or been revoked by the State Engineer.
- (d) A certificate of convenience and necessity or an exemption therefrom, issued by the State Public Service Commission, for the proposed water supplier.

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

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

6.4.3 Fire Protection.

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

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

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

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

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

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

24

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

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

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

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

6.5.6 Eastern Summit County Planning Commission Review and Recommendation. The Planning Commission shall consider and make a recommendation on the final subdivision or final condominium plat at a regularly scheduled meeting after receipt of the Staff recommendation. This recommendation shall be based solely upon the Developer's compliance with the requirements and standards set forth in this Development Agreement, Ordinance 298-A and the Code.

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

42

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

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

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

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

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

6.9 Amendments.

6.9.1 Substantial Amendments. Any amendment to this Agreement that alters or modifies the Term of this Agreement, permitted uses, increased density or intensity of use, deletion of any major public amenity described herein, or provisions for reservation and dedication of land, including Open Space preservation beyond existing conservation easements, shall be deemed a "Substantial Amendment" and shall require a noticed public

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

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

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

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

#### 6.10 Conflicts.

6.10.1 To the extent there is any ambiguity in or conflict with the provisions of this Development Agreement and the Promontory SPA Plan Book of Exhibits, the more specific provision or language shall take precedence over more general provisions or language.

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

**Article 7**  
**INFRASTRUCTURE & CONCURRENCY MANAGEMENT**

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

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

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

18

**Article 8**  
**SUCCESSORS AND ASSIGNS**

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

8.2 Transfer of Promontory. Developer shall be entitled to transfer any portion of Promontory subject to the terms of this Development Agreement upon written notice to the County. Notwithstanding the foregoing, neither Developer nor Developer's successor shall be required to notify the County or obtain the County's consent with regard to the sale of lots or units in single or multi-family residential subdivisions or projects or in commercial projects which have been platted and received development approval in accordance with the terms of this Agreement. In the event of any such complete transfer of all or a portion of Developer's interests in Promontory, the transferee shall be deemed to be the Developer for all purposes under this Development Agreement with respect to that portion of Promontory transferred. Developer's obligation to notify the County shall terminate with respect to portions of the Property on which all of the improvements required by this Development Agreement have been substantially completed as evidenced by a certificate of occupancy granted by the County.

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

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

12



all of the terms and conditions of this Agreement, including the obligation to complete all required amenities and improvements.

00583272 8x01355 Pg01210

AR

**Article 9**  
**DEFAULT, TERMINATION AND ARBITRATION**

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

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

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

9.1.2 Procedure Upon Default.

- (a) Within ten (10) days after the occurrence of default, the County shall give Developer (the "defaulting party") written notice specifying the nature of the alleged default and, when appropriate, the manner in which the default must be satisfactorily cured. Developer shall have thirty (30) days after receipt of written notice to cure the default. After proper notice and expiration of the thirty (30) day cure period without cure, the County may terminate or amend this Agreement by giving written notice in accordance with the procedure adopted by the County. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default. Notwithstanding the thirty day cure period provided above, in the event more than thirty days is reasonably required to cure a default and Developer, within the thirty day cure period, commences actions reasonably designed to cure the default, then the cure period shall be extended for such additional period as Developer is prosecuting those actions diligently to completion.
- (b) The County does not waive any claim of defect in performance by Developer, if on periodic or annual review the County does not propose to modify or terminate this Agreement.

- (c) Should the County terminate this Development Agreement under the provisions hereof, Property not previously covered by a specific plat or site plan development approval in accordance with this Agreement will thereafter comply with and be governed by the applicable County Development Code and General Plan then in existence, as well as with all other provisions of Utah State Law.
- (d) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.
- (e) All other remedies at law or in equity which are consistent with the provisions of this Development Agreement are available to the parties to pursue in the event there is a breach.

## 9.2 Termination.

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

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

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

9.2.4 Effect of Termination on the County Obligations. Upon any termination of this Agreement, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement shall no longer be vested by reason of this Agreement with respect to any portion of the Property then undeveloped and not then covered by a building permit application. Those undeveloped portions of the Property may be subject to then existing planning and zoning law. Upon such a termination, the County shall no longer be prohibited by this Agreement from making any changes or modifications to such entitlements, conditions, or fees applicable to such undeveloped

portions of the Property. Further, with respect to the improved portions of the Property, the County shall remain obligated to recognize all existing building permits and apply the development standards and configuration contained in the Promontory SPA Plan Book of Exhibits thereto.

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

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

9.3 Arbitration. In the event that the default mechanism contained herein shall not sufficiently resolve a dispute under this Development Agreement, then every such continuing dispute, difference, and disagreement shall be referred to a single arbitrator agreed upon by the parties, or if no single arbitrator can be agreed upon, an arbitrator or arbitrators shall be selected in accordance with the rules of the American Arbitration Association and such dispute, difference, or disagreement shall be resolved by the binding decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. However, in no instance shall this arbitration provision prevent the County from exercising enforcement of its police powers where Developer is in direct violation of this Agreement or prevent Developer from seeking an injunction or mandamus where the County is in direct violation of this Agreement.

9.4 Institution of Legal Action. Enforcement of any such arbitration decision shall be instituted in the Third Judicial District Court of the County of Summit, State of Utah, or in the United States District Court for Utah.

**Article 10**  
**GENERAL TERMS AND CONDITIONS**

10.1 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property as described in the Promontory SPA Plan Book of Exhibits. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors in ownership of the Property. As used herein, Developer shall include the parties signing this Development Agreement and identified as "Developer," and all successor owners of any part of the Property or Promontory.

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

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

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

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

Promontory SPA Zone District, Promontory SPA Plan, and this Development Agreement, to include any claims for vested development rights by any Developer on property which is within the Promontory SPA Zone District.

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

10.7 Enforcement. The parties to this Development Agreement recognize that the County has the right to enforce its rules, policies, regulations, and ordinances, subject to the terms of this Development Agreement, and may, at its option, seek an injunction to compel such compliance. In the event that Developer or any user of the subject property violates the rules, policies, regulations or ordinances of the County or violates the terms of this Development Agreement and the County has made the determinations with respect to Article 9, the County may, without electing to seek an injunction and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the Board of County Commissioners or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been honored by Developer. The parties further recognize that Developer has the right to enforce the provisions of this Development Agreement by seeking an injunction to compel compliance to the extent not inconsistent with the County's reserved legislative and police powers, as well as the County's discretionary administrative decision-making functions provided for herein. Both parties shall be free from any liability arising out of the exercise of its rights under this paragraph; provided, however, that any party may be liable to the other for the exercise of any rights in violation of Rule 11 of the Utah Rules of Civil Procedure, Rule 11 of the Federal Rules of Civil Procedure and/or Utah Code Annotated Section 78-27-56, as each may be amended.

10.8 No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Development Agreement is amended by vote of the Board of County Commissioners taken with the same formality as the vote approving this Development Agreement, no officer, official or agent of the County has the power to amend, modify or alter this Development Agreement or waive any of its conditions as to bind the County by making any promise or representation not contained herein.

10.9 Entire Agreement. This Development Agreement constitutes the entire agreement between the parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Development

88

Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Development Agreement.

10.10 Attorneys' Fees. Should any party hereto employ attorneys for the purpose of enforcing this Development Agreement, or any judgment based on this Development Agreement, or for any reasons or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses (including expert witnesses). Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

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

To the County:

The Board of County Commissioners of Summit County  
Summit County Courthouse  
P.O. Box 128  
Coalville, Utah 84017  
Facsimile: (435) 336-3030

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

With a copy to:

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

To Developer:

Pivotal Promontory Development, L.L.C.  
c/o Jahm Najafi, Chief Operating Officer  
and C. Joseph Blackburn  
2415 E. Camelback Road, Suite 960  
Phoenix, AZ 85016

00583272 Bk01355 Pg01216

R

Richard Sonntag, Managing Director  
Pivotal Promontory Development, L.L.C.  
6531 N. Landmark Dr., Suite B  
Park City, UT 84098

With a copy to:

Thomas A. Ellison  
Stoel Rives, LLP  
201 South Main #1100  
Salt Lake City, Utah 84111-4904  
Facsimile: (801) 578-6999

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

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

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

10.14 Hold Harmless.

10.14.1 Agreement of Developer. Developer agrees to and shall hold County, its officers, agents, employees, consultants, attorneys, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to Promontory; and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effect arising from this Agreement. Developer agrees to pay all costs for the defense of the County and its officers, agents, employees, consultants, attorneys, special counsel and representatives regarding any action for damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Developer's actions in connection with Promontory or any claims arising out of this Agreement. This hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the events referred to in this section or due by reason of the terms of, or effects arising from



this Agreement regardless of whether or not the County prepared, supplied or approved this Agreement, plans or specifications, or both, for the project. Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of the County, including fees and costs for special counsel to be selected by the County, regarding any action by a third party challenging the validity of this Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of, or effects arising from this Agreement. County may make all reasonable decisions with respect to its representation in any legal proceeding.

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

10.14.3 Hold Harmless Procedures. The County shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than 10 days after the assertion or commencement of the claim, demand, action or proceeding. In the event any such notice is given, the County shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

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

10.16 Periodic / Annual Review. The County may review progress pursuant to this Development Agreement at least once every twelve (12) months to determine if there has been demonstrated compliance with the terms hereof. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms hereof, this Development Agreement may be revoked or modified by the County in accordance with the provisions of Sections 9.1 and 9.2 hereof, after a public hearing which has been noticed by publication, and for which notice has been expressly provided to Developer. The County's failure to review at least annually Developer's compliance with the terms and conditions of this Development Agreement shall not constitute or be asserted by any party as a breach of this Development Agreement by Developer or County. Further, such failure shall not constitute a waiver of County's right to revoke or modify said Agreement according to the terms and conditions set forth herein.

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

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

10.19 Computation of Time. In computing any period of time pursuant to this Development Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday.

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

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

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

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

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

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

10.22.4 Payment of impact fees to the extent such fees are payable under the terms of this Agreement and any applicable impact fee ordinance or implementing resolution; and

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

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

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

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

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

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

10.28 Exhibits Incorporated. All Exhibits in the Promontory SPA Plan Book of Exhibits are incorporated by reference as if fully set forth herein.

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

10.30 Appendices. The following Appendices are an integral part of this Development Agreement:

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

00583272 Bk01355 Pg01221

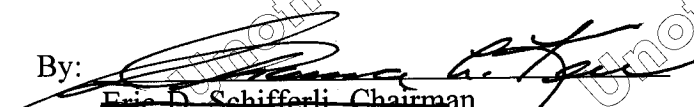
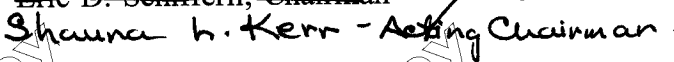
12

IN WITNESS WHEREOF, this Development Agreement has been executed by Summit County, acting by and through the Board of County Commissioners of Summit County, State of Utah, pursuant to Ordinance 406, authorizing such execution, and by a duly authorized representative of Developer, as of the above stated date.

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, STATE OF UTAH

By:

  
Eric D. Schifferli, Chairman  
  
Shauna L. Kerr - Acting Chairman

STATE OF UTAH )

: ss

COUNTY OF SUMMIT )

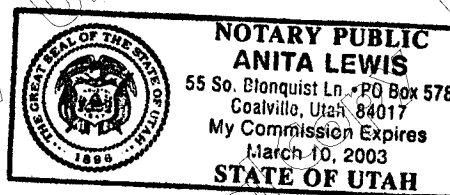
The foregoing instrument as acknowledged before me this 20 day of February, 2001 by Shauna L. Kerr, Chairman of the Board of County Commissioners of Summit County, State of Utah.

  
Notary Public

Residing at: Coalville, UT

My commission expires:

March 10, 2003



18

DEVELOPER:

PIVOTAL PROMONTORY DEVELOPMENT, L.L.C.

By: PIVOTAL GROUP X, LLC., an Arizona limited liability company  
Its: Administrative Member

By: J. Jahm Najafi, Trustee of the Jahm Najafi Trust dated July 30, 1996  
Its: Administrative Member

By: J. Jahm Najafi  
Name: J. Jahm Najafi  
Its: Trustee

STATE OF ARIZONA )

)ss.

County of Maricopa )

The foregoing was acknowledged before me this 8<sup>th</sup> day of February, 2001 by J. Jahm Najafi, Trustee of the Jahm Najafi Trust dated July 30, 1996, Administrative Member of Pivotal Group X, LLC, Administrative Member of Pivotal Promontory Development, LLC.

Jackie A. Reed  
Notary Public  
Residing at: Phoenix AZ

My Commission Expires:

6-15-03



**EXHIBITS**

- Exhibit A - Property Description
- Exhibit B - Promontory (Community) Master Plan
- Exhibit C - Retention Area Supplemental Design Guidelines
- Exhibit D - Trails Master Plan
- Exhibit E - Viewshed Designation Map
- Exhibit F - Promontory Conservancy Management Association
- Exhibit G - Design and Thematic Character Guidelines
- Exhibit H - Agricultural Preservation Program
- Exhibit I - Comprehensive Sign Plan / Concepts
- Exhibit J - Wildland Fire Program
- Exhibit K - Construction, Mitigation and Management Plan
- Exhibit L - Landscaping Plan
- Exhibit M - Infrastructure Development Standards
- Exhibit N - Master Declaration of Covenants, Conditions, & Restriction
- Exhibit O - Water Service Agreement (Mountain Regional Water)
- Exhibit P - Terms of Reference (Park City Fire District)
- Exhibit Q - Environmental Enhancement, Conservation, and Preservation Management Plan
- Exhibit R - Transportation Plan

**APPENDICES**

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

**00583272** Bk01355 Pg01224

ff

## APPENDIX I

### B. Sketch Plan.

1. Sketch Plan Information Requirements. The following information and data is required to be submitted with a sketch plan. Certain other information may be required, if necessary, to adequately describe the conceptual plan to the Staff Commission. A sketch plan is not a completed application for purposes of vesting under Utah law.
  - a. Name and address, including telephone number, of legal owner or agent of property, and citation of last instrument conveying title to each parcel of property involved in the proposed subdivision, giving grantor, grantee, date and land records reference.
  - b. Location of property lines, existing easement, burial grounds, existing rights-of-way, trails, watercourses, existing wooded areas, and all other vegetation areas; location, width, and names of all existing or platted roads or other public ways within or immediately adjacent to the tract; names of adjoining property owners from the latest assessment rolls within one thousand (1,000) feet of any perimeter boundary of the subdivision.
  - c. Location, size, elevations, and slopes of existing sewers, water mains, culverts, and other underground structures within the tract and immediately adjacent thereto; existing permanent building and utility poles on or immediately adjacent to the site and utility rights-of-way.
  - d. Existing site topography, a slope analysis of the proposed development site, showing slopes for the following percent of existing grades: 1-10, 10-20, 20-29, and slopes of 30 percent or greater, including a tabulation of the number of acres in each slope percentage.
  - e. A delineation of all Critical Areas.
  - f. The approximate location and widths of proposed roads.
  - g. Concept proposals for water and sewage disposal.
  - h. conceptual provisions for collecting and discharging surface water drainage.
  - i. The Sketch Plan shall contain enough information, in graphic and text form, to adequately describe the applicant's intentions with regard to proposed uses, site layout, including the approximate location and



dimensions of all lot and/or buildings, building design concepts, open space, and other primary features that will comprise the development plan.

- j. Concepts for complying with all applicable provisions of the Development Area.

## APPENDIX II

### 1. Detailed Final Subdivision Plat

- A. Plat Requirements. A detailed Final Subdivision Plat is required in all cases involving the subdivision of land. A subdivision plat shall conform to the following:

- 1. The plat shall be prepared by a licensed land surveyor at a convenient scale not more than one (1) inch equals one hundred (100) feet, may be prepared in pen or pencil, and the sheets shall be numbered in sequence if more than one (1) sheet is used and shall be of such size as is acceptable for filing in the office of the Summit County Recorder, but shall be thirty-four by forty-four (34 x 44) inches or larger. The map prepared for the plat may also be used for the final subdivision plat and, therefore, should be drawn on tracing cloth or reproducible mylar. Upon final approval by the BCC, the plat also shall be provided to Summit County on computer disk in Autocad (DWG) file format, or other acceptable format approved by Summit County.

- 2. The plat shall show the following:

- a. The location of property with respect to surrounding property and roads, the names of all adjoining property owners of record, or the names of adjoining developments; the names of adjoining roads.
- b. The location and dimensions of all boundary lines of the property to be expressed in feet and decimals of a foot.
- c. The location of existing roads, easements, water bodies, streams, and other pertinent features such as swamps, railroads, buildings, parks, cemeteries, drainage ditches, bridges, as determined by the BCC.
- d. The location and width of all existing and proposed roads and easements, alleys, and other public ways, and easement and proposed road rights-of-way and building setback lines.

- e. The locations, dimensions, and areas of all proposed or existing lots, including building area.
- f. The location and dimensions of all property proposed to be set aside for trail, park or playground use, or other public or private reservation, with designation of the purpose of those set asides, and conditions, if any, of the dedication or reservation.
- g. The name and address of the owner or owners of land to be subdivided, the name and address of the subdivider if other than the owner, and the name of the land surveyor.
- h. The date of the map, approximate true north point, scale and title of the subdivision.
- i. Sufficient data acceptable to the County Engineer to determine readily the location, bearing, and length of all lines, and to reproduce such lines upon the ground; the location of all proposed monuments.
- j. Names of the subdivision and all new roads as approved by the BCC
- k. Indication of the use of any lot (single-family, two-family, multi-family, townhouse) and all uses other than residential proposed by the subdivider.
- l. Lots shall be consecutively numbered or lettered in alphabetical order. The lots in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively throughout the several additions.
- m. All pertinent information shown on sketch plan or Promontory Master Plan shall also be shown on the Detailed Final Plat, and the following notation shall also be shown:
  - i. Explanation of drainage easements, if any.
  - ii. Delineation of natural features including, but not limited to, wetlands, flood plains and floodways, slopes exceeding fifteen (15) percent, vegetation areas, and threatened or endangered species habitat.
  - iii. Explanation of site easements, if any.
  - iv. Explanation of reservations, if any.

v. Endorsement of owner and date of the endorsement.

vi. Form for endorsements by Commission Chairman as follows:

Approved by Resolution/Ordinance \_\_\_\_ of the BCC on (day), (month),  
(year).

Chairman \_\_\_\_\_ Date \_\_\_\_\_

n. The lack of information under any item specified herein, or improper information supplied by the applicant, shall be cause for disapproval of a plat.

**B. Final Subdivision Plat**

1. The final subdivision plat shall be presented in India ink on tracing cloth or reproducible mylar. The following information, in addition to the requirements of Section A, shall be provided.

2. Notation of any self-imposed restrictions, and locations of any building lines proposed to be established in this manner, if required by the BCC in accordance with this Code.

a. All monuments erected, corners, and other points established in the field in their proper places. The material of which the monuments, corners, or other points are made shall be noted at the representation thereof or by legend, except that lot corners need not be shown. The legend for metal monuments shall indicate the kind of metal, the diameter, length and weight per lineal foot of the monuments.

b. Preparation. The final subdivision plat shall be prepared by a land surveyor licensed by the State of Utah.

c. Plat contents. In addition to the requirements of Section 1.A(2) hereto, final subdivision plats shall conform to current surveying practice and shall show the following information:

d. A title block giving the subdivision's name and the quarter-quarter section, section, township, range, principal meridian, and county of its location.

e. The exterior boundaries of the platted area giving lengths and bearings of the boundary lines. If the subdivision is bounded by a watercourse, a closing meander traverse of that boundary shall be made and shown on the plat. Where curving boundaries are used sufficient data to establish the

boundary on the ground shall be given, including the curve's radius, central angle, and arc length.

- f. A notation of any adjoining plats or certificates of survey and titles thereto.
- g. The basis of bearings used and a north point.
- h. A scale, no smaller than 1" to 100".
- i. All existing monuments found during the course of the survey (including a physical description such as "brass cap").
- j. All existing easements or rights-of-way, including those contiguous to the platted area, their nature, width, and the book and page number of their recording in the County's records.
- k. All lots, blocks, rights-of-way, and easements and trial (including open space) created by the subdivision with their boundary, bearings, lengths, widths, name, number or purpose. For curved boundaries the curve radius, central angle, and length of arc shall be given.
- l. All monuments set during the course of the survey (including a physical description such as "rebar driven to depth of ..."), including appropriate witness monuments.
- m. The area of all lots or parcels created by the subdivision and in a separate table or in the owner's certificate a summary of total acreage, total acreage in lots, and total acreage in roads or other dedicated parcels.
- n. A vicinity map locating the subdivision within the section identifying adjoining or nearby plats or certificates or survey and showing prominent landmarks.
- o. The owner's certificate of consent including a legal description of the subdivision's boundaries and the dedication of public ways or spaces. This certificate shall be signed, dated and notarized.
- p. The owner's certificate should include a reference to any covenants that may be declared and blanks where the county Recorder may enter the book and page number of their recording.

18

- q. A certificate of consent from any and all mortgagors, lien holders, or others with a real property interest in the subdivision. These certificates shall be signed, dated and notarized.
- r. A certificate showing the name and registration number of the surveyor responsible for making the survey. This certificate shall be signed and dated.
- s. Endorsement on the plat by every person having a security interest in the subdivision property that they are subordinating their liens to covenants, servitudes and easements imposed on the property.
- t. Signature blocks prepared for the dated signatures of the Chairpersons of the Commission and of the BCC and of the Summit County Recorder, including County Engineer, County Attorney, Utah Power & Light Co., (utility easement coordination), Snyderville Basin Special Recreation District, and Snyderville Basin Sewer Improvement District. A signature block shall also be provided for the Summit County Assessor indicating that all taxes, interest, and penalties owing to the land have been paid.
3. Plat materials; size; copies. Plats may be prepared on linen or on a stable base polyester film (mylar). Plats may be either 18 x 24" or 24 x 36". Three paper copies shall be submitted along with the linen or film copy. A copy of the submitted plats for condominiums and/or subdivisions must also be provided on 18" by 18" mylar or linen.
4. Multiple sheets. Multiple sheet plats may be used. All sheets shall be numbered and referenced to an index map, and all required certificates shall appear on a single sheet (along with the index and vicinity maps.)
5. Plat accuracy. Bearings shall be shown to the nearest second; lengths to the nearest hundredth foot; areas to the nearest hundredth acre.
6. As-built plats. A plat showing all required improvements shall be submitted upon their completion. The "as-built" plat shall show typical road sections, typical culvert installations, and similar information to facilitate long run maintenance of the improvements.

## 2. Condominium Plats

- A. Building permits for condominium units can be issued following approval of the final plat by the commission and the BCC is provided by this Chapter. The building permit will be

issued based upon a certified architectural plan of the building elevation and floor plans as approved by the Building official.

- B. All condominium plats shall be filed in the office of the Summit County Recorder following completion of construction and before acceptance of improvements.

**3. Final Site Plan**

A. A detailed final site plan is required in all cases involving non-residential uses (commercial or industrial uses), multi-family dwellings, conditional uses permits, and other developments as determined by the Director where a final subdivision plat is not required. (i.e., low impact permits. Site plans, in addition to the requirements of Section 3.B shall contain the following information:

1. A vicinity map at a scale of not less than one (1) inch equals one thousand (1,000) feet (1"=1,000 ft.).

2. A legal description and accompanying map exhibit of the exterior boundaries of the development area giving lengths and bearings of the boundary lines at the scale of one inch equals one hundred feet (1"=100 ft.) showing the location and type of boundary evidenced. Such information should be provided from the recorded plats. The legal description shall include the following data:

a. Metes and bounds of all property lines;

- 1) Total area of property;
- 2) North scale and north arrow; and

b. Name and route numbers of boundary roads and the width of existing right(s)-of-way.

3. Existing topography with maximum contour interval of two (2) feet, except where existing ground is on a slope of less than two (2) percent, then either one foot contours or spot elevation shall be provided where necessary.

4. A final detailed land use plan at a scale of one inch equal one hundred feet (1"=100 ft.) showing:

a. The location and arrangement of all proposed uses, including building area.

b. The height and number of floors of all buildings, other than single-family dwellings, both above and below or partially below the finished grade.

12

- c. A cross-section elevation plan depicting all buildings, structures, monuments, and other significant natural and man-made features of the proposed development.
- d. The yard dimensions from the development boundaries and adjacent roads and alleys.
- e. The traffic and the pedestrian circulation system, including the location and width of all roads, driveways, entrances to parking areas and parking structures, trails, walkways and bicycle paths.
- f. Off-road parking and loading areas and structures, and landscaping for parking areas.
- g. Greenbelt and other active recreation space areas, together with proposed private recreational areas, specifying the proposed improvement of all such areas, and delineating those areas proposed for specific types of recreational facilities.
- h. Architectural features of typical proposed structures, including lighting fixtures, signs and landscaping.
- i. A plan or statement showing the location and design of all screening measures and indicating the type and height of such screening.
- j. When the development is to be constructed in stages or units, a final sequence of development schedule showing the order of construction of such states or units, and approximate completion date for the construction of each state or unit.
- k. A copy of all covenants, restrictions and conditions pertaining to the use, maintenance and operation of private open space areas.
- l. All existing monuments found during the course of the survey (including a physical description such as "brass cap").
- m. All existing easements or rights-of-way, including those contiguous to the platted area, their nature, width, and the book and page number of their recording in the County's records.
- n. All rights-of-way and easements and trails (including open space) created by the subdivision with their boundary, bearings, lengths, widths, name,

18

number, or purpose. For curved boundaries the curve radius, central angle, and length of arc shall be given.

o. A final statement in tabular form which sets forth the following data, when such data is applicable to a given development plan:

- i. The area of all parcels created, total acreage, total acreage in lots, and total acreage in roads or other dedicated parcels;
- ii. Total number of dwelling units, by development phase;
- iii. Residential density and units per acre;
- iv. Total floor area and floor area ratio for each type of use;
- v. Total area in open space and length of trails;
- vi. Total area in developed recreational open space; and
- vii. Total number of off-road parking and loading spaces.

B. **Site Plan contents.** In addition to the requirements of Section 3.A hereto, final site plan shall conform to current surveying practice and shall show the following information:

1. A title block giving the subdivision's name and the quarter - quarter section, section, township, range, principal median, and County of its location.
2. A notation of any adjoining plats or certificates of survey and titles thereto.
3. All monuments set during the course of the survey (including a physical description such as "rebar driven to depth of..."), including appropriate witness monuments.
4. The owner's certificate of consent including a legal description of the subdivision's boundaries and the dedication of public ways or spaces. This certificate shall be signed, dated and notarized.
5. The owner's certificate should include a reference to any covenants that may be declared and blanks where the County Recorder may enter the book and page number of their recording.

12



6. A certificate of consent from any and all mortgagors, lien holders, or others with a real property interest in the subdivision. These certificates shall be signed, dated and notarized.
  7. A certificate showing the name and registration number of the surveyor responsible for making the survey. This certificate shall be signed and dated.
  8. Signature blocks prepared for the dated signatures of the Chairpersons of the Commission and of the BCC and of the Summit County Recorder, including County Engineer, County Attorney, Utah Power & Light Co. (utility easement coordination), Snyderville Basin Special Recreation District, and Snyderville Basin Sewer Improvement District. A signature block shall also be provided for the summit county Assessor indicating that all taxes, interest, and penalties owing to the land have been paid.
- C. Site Plan materials; size; copies. Plan may be prepared on linen or on a stable base polyester film (mylar). Plats may be either 18 x 24" or 24 x 36". Three paper copies shall be submitted along with the linen or film copy.
- D. Multiple sheets. Multiple sheets plans may be used. All sheets shall be numbered and referenced to an index, and all required certificates shall appear on a single sheet (along with the index and vicinity maps).

#### 4. Construction Plans.

- A. Construction plans shall be prepared for all required improvements. Plans shall be drawn at a scale of no more than one (1) inch equals fifty (50) feet, and map sheets shall be of the same size as the plat. The following shall be shown:
1. Profiles showing existing and proposed elevations along center lines of all roads. Where a proposed road intersects an existing road or roads, the elevation along the center line of the existing road or roads within one hundred (100) feet of the intersection, shall be shown. Approximate radii of all curves, lengths of tangents, and central angles on all roads shall be shown.
  2. The BCC may require, where steep slopes exist, that cross-sections of all proposed roads at one hundred-foot stations be shown at five (5) points as follows: On e aline at right angles to the center line of the road, and said elevation points shall be at the center line of the road, each property line, and points twenty-five (25) feet inside each property line.
  3. Plans and profiles showing the locations and typical cross-section of road pavements including curbs and gutters, sidewalks, drainage easements, servitudes,

RS

rights-of-way, manholes, and catch basins; the locations of road trees, road lighting standards, and road signs; the location, size and invert elevations of existing and proposed sanitary sewers, stormwater drains, and fire hydrants, showing connection to any existing or proposed utility systems; and exact location and size of all water, gas, or other underground utilities or structures.

4. Location, size, elevation and other appropriate descriptions of any existing facilities or utilities, including, but not limited to, existing roads, sewers, drains, water mains, easements, water bodies, streams, and other pertinent features such as swamps, railroads, buildings, features noted on the Development Agreement at the point of connection to proposed facilities and utilities within the subdivision; and each tree with a diameter of two (2) inches or more, measured twelve (12) inches above ground level. The water elevations of adjoining lakes or streams at the date of the survey, and the approximate high and low-water elevations of such lakes or streams. All elevations shall be referred to the U.S.G.S. datum plane. If the subdivision borders a lake, river, or stream, the distances and bearings of a meander line established not less than twenty (20) feet back from the ordinary high-water mark of such waterways.
5. Topography at the same scale as the sketch plan with a contour interval of two (2) feet, referred to sea-level datum. All datum provided shall be latest applicable U.S. Coast and Geodetic Survey datum should be so noted on the plat.
6. All specifications and references required by the County's construction standards and specifications, including a site-grading plan for the entire subdivision.
7. Notation of approval as follows:

_____	_____
Owner	Date
_____	_____
Chairman	Date
Board of County Commissioners	

8. Title, name, address and signature of professional engineer and surveyor, and revision dates.
  9. Construction Plan Review.
- B. General Application Requirement. Construction plans shall be prepared by or under the supervision of a professional engineer or architect registered in the State of Utah as required by state law governing such professions. Plans submitted for review by the

pt

County shall be dated and bear the responsible engineer's or architect's name, registration number and the designation of "professional engineer," "P.E." or "architect" and an appropriate stamp or statement identifying that the documents are for preliminary review and are not intended for construction. final plans acceptable to the County shall bear the seal and signature of the engineer or architect and the date signed on all sheets of the plans. Public improvement sin roads, alleys, rights-of-ways or easements shall be designed by a professional engineer registered in the State of Utah.

- C. **Construction Plan Review Procedure.** Copies of the construction plans, and the required number of copies of the plat or site plan shall be submitted to the Director for final approval prior to submittal of a final plat or site plan. The plans shall contain all necessary information for construction of the project, and other special features. Each sheet of the plans shall contain a title block including space for the notation of revisions. This space is to be completed with each revision to the plan sheet and shall clearly note the nature of the revision and the date the revision was made. The county Engineer will release the plans for construction, subject to approval of the final plat or site plan by the BCC and payment of all necessary fees. Upon such release, each contractor shall maintain one set of plans, stamped and signed by the County, on the project at all times during construction.
- D. **Preconstruction Conference.** The County Engineer may require that all contractors participating in the construction shall meet for a preconstruction conference to discuss the project prior to beginning work.
- E. **Conditions Prior to Authorization.** Prior to authorizing construction, the County Engineer shall be satisfied that the following conditions have been met:
1. The subdivision plat or site plan shall have been approved as required in this Code.
  2. All required contract documents shall be completed and filed with the County Engineer.
  3. All necessary off-site easements or dedications required for public facilities not shown on the final plat or site plan must be conveyed solely to the County, or other agency approved by the County, with proper signatures affixed. The original of the documents, and filing fees as determined by the Director shall be delivered to the County Engineer prior to approval and release of the Construction documents.
  4. All contractors participating in the construction shall be presented with a set of approved plans bearing the stamp of release of the County Engineer. These plans shall remain on the job site at all times.

RA

5. A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times must be submitted to the County Engineer.
6. All applicable fees must be paid to the County.

### APPENDIX III

#### Low Impact Permit

- A. Purpose. This section is intended to provide a process and procedure for reviewing and approving, approving with conditions, or denying a Low Impact Use. Upon compliance with the provisions of this Section, a Low Impact Use approval may be granted by the Director, with reasonable conditions necessary for the protection and preservation of the public health, safety and welfare.
- B. Submission. An application for approval of a Low Impact Permit shall be commenced by filing a sketch plan and paying the applicable fee with the Director
- C. Review Procedure.
  1. The applicant shall arrange a pre-application conference with the Director and shall provide a sketch plan. The Sketch Plan shall contain enough information, in graphic and text form, to adequately describe to the satisfaction of the Director the applicant's intentions with regard to site layout and compliance with the Development Agreement.
  2. The Director should determine whether the application is sufficient and in compliance with the provisions of the Development Agreement. The Director may require the applicant to submit a subdivision plat or a site plan.
  3. The Director shall approve, approve with conditions or deny the Low Impact Permit application and shall communicate his decision to the applicant. The Director may impose all reasonable conditions necessary to ensure compliance with the goals, objectives and policies of the Development Agreement. The Director may also provide written notice of such decision to any persons who have requested notice of such decision. Any person aggrieved by such decision may appeal the decision to the Board of County Commissioners.
- D. qualification for Low Impact Use. The following new uses qualify for Low Impact Permit consideration, unless otherwise permitted in the Development Agreement. Any

new use or change in use qualifies for a Low Impact Permit must meet all the criteria in 10(a) through (i) hereunder.

1. One single family detached dwelling unit on a lot of record or lawfully created lot located outside of a platted or recorded subdivision;
2. Limited telecommunications sites;
3. Extension of utility lines and minor utility facilities;
4. Accessory uses, including Secondary Living Units;
5. Private recreation facilities to be constructed by the lot owner or homeowners association for private use only;
6. Parks and Trails to be constructed, or caused to be constructed, by Snyderville Basin Special Recreation District or Development Agreement;
7. Signs (sign permit) in accordance with the requirements of Section 8.2.
8. A temporary use, the conversion of an existing building or structure from its current or previous use to a new or substantially different type of activity or use, a revision or amendment to an approved development permit, or other minor improvements as determined by the Director, which:
  - a. does not significantly increase vehicular traffic, unless the increases are consistent with the previously approved plans for which appropriate mitigation has been contemplated and which has been implemented in an appropriate manner to accommodate the proposed amendment.
  - b. does not significantly increase the demand for parking; unless the increases are consistent with previously approved plans for which appropriate mitigation has been contemplated and which has been implemented in an appropriate manner to accommodate the proposed amendment.
  - c. does not intensify the likelihood of pedestrian and vehicular conflicts;
  - d. does not create unsightly conditions including, but not limited to, unscreened storage and other environmental concerns;
  - e. does not intensify noise levels or odors;

- f. does not create significant dust and dirt conditions, which cannot be adequately mitigated;
  - g. does not intensify lighting and glare conditions;
  - h. does not create a sudden change in privacy for adjacent property owners; and
  - i. is generally consistent with the goals and policies of the Development Agreement.
9. Any other use or activity expressly designated as a Low Impact activity under the Development Agreement.

## APPENDIX IV

### Roads and Road Plans

The following approvals are made by the Board of County Commissioners pursuant to and in satisfaction of the requirements of Section 4.7.21.

1. The main arterial road from the North I-80 off-ramp through Resort Village and Resort Highlands is approved for all purposes under Section 4.7.21, including specific approval for the road to cross 30% slopes and for purposes of necessary exceptions to the length of the road exceeding 8% grade in Section 4.7.21.4. The main arterial road may be constructed in advance of a plat approval.
2. The access roads connecting Parcel 92 to Parcel 101 and Parcels 74/75 to Parcel 101 as shown on the Master Plan, are approved to cross 30% slopes under Section 4.7.21.4, provided that such roads conform to the road plans and profiles contained in the following drawings:

# PROMONTORY

## Index of Exhibits

January 16, 2001

- Exhibit A Property Description
- Exhibit B Community Master Plan
- Exhibit C Supplemental Design Guidelines for Sensitive Retention and Ridgeline Areas
- Exhibit D Promontory Public Trails Master Plan
- Exhibit E Viewshed Designation Map
- Exhibit F Outline of Governance Structure
- Exhibit G Design and Thematic Character Guidelines
- Exhibit H Agricultural Preservation Program
- Exhibit I Comprehensive Sign Plan
- Exhibit J Wildland Fire Program
- Exhibit K Construction Management and Mitigation Plan
- Exhibit L Landscaping Master Plan
- Exhibit M Amended Development Standards
- Exhibit N [Intentionally Omitted]

00583272 Bk01355 Pg01241



Exhibit O Water Service Agreement

Exhibit P Park City Fire District Terms of Reference

Exhibit Q Environmental Enhancement, Conservation and  
Preservation Management Plan  
- Environmental and Open Space Summary  
- Natural Resource Management Strategies

Exhibit R Transit Management Plan / Traffic Impact Study

**PROMONTORY**  
**PROPERTY DESCRIPTION**

**January 16, 2001**

**00583272 Bk01355 Pg01243**

**1. DEVELOPMENT AGREEMENT AND EXHIBITS**

---

**C. LEGAL DESCRIPTIONS**

**PROMONTORY  
Parcel Descriptions  
August 11, 1999**

**PARCEL A**

Beginning at the Southwest Corner of Section 36, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, (Basis of bearing being North 00°03'26" West from the said Southwest Corner to the West Quarter Corner of said Section 36, both being found Stone Monuments), and running thence along the West Section Line of said Section 36, North 00°03'26" West, 2664.42 feet to a stone found at the West Quarter Corner of said Section 36; thence North 00°38'03" West, 2697.90 feet to a stone found at the Northwest Corner of said Section 36; thence South 89°40'24" West 1316.90 feet to the Southwest Corner of the Southeast Quarter of the Southeast Quarter of Section 26; thence North 00°06'02" West 2661.08 feet to the Northwest Corner of the Northeast Quarter of the Southeast Quarter of said Section 26; thence South 89°40'42" West, 1316.04 feet to the Southwest Corner of the Northeast Quarter of said Section 26; thence North 00°04'55" West 2667.46 feet to a stone found at the North Quarter Corner of said Section 26, thence North 00°02'27" West 2642.55 feet to the Southwest Corner of the Northeast Quarter of Section 23; thence North 89°58'47" West, 1858.84 feet, more or less, to the Easterly line of the State of Utah, Division of Parks and Recreation Right of Way, (formerly the Union Pacific Railroad right-of-way), thence along said right-of-way line the following ten (10) courses; 1) North 17°11'48" West 60.67' feet; thence, 2) North 88°45'48" East, 52.25 feet; thence, 3) North 17°06'43" West, 719.18 feet; thence, 4) North 19° 47'10" West, 992.62 feet more or less to a point on a non-tangent 950.00 foot radius curve to the left, radius point bears North 07°16'05" West; thence, 5) Easterly, 153.29 feet along the arc of said curve through a central angle of 09°14'43"; thence, 6) North 19° 43'58" West, 298.63 feet; thence, 7) South 70°16'02" West, 153.37 feet; thence, 8) North 20°21'29" West, 444.80 feet; thence 9) South 75°29'27" West, 48.91 feet; and thence, 10) North 20°05'58" West, 344.63 feet; thence leaving said Right of Way line, South 89°36'59" East, 114.14 feet to a stone found at the Northwest Corner of said Section 23; thence South 89°36'59" East 2672.06 feet along the North line of said Section 23 to a stone found at the North Quarter Corner of said Section 23; thence North 00°23'35" East 1335.49 feet to the Northeast Corner of the Southeast Quarter of the Southwest Quarter of Section 14; thence North 89°42'03" West 1339.30 feet to

the Northwest Corner of the Southeast Quarter of the Southwest Quarter of Section 14; thence North 00°15'11" East 1333.52 feet to the Northwest Corner of the Northeast Quarter of the Southwest Quarter of Section 14, thence North 00°14'50" East, 1334.05 feet to the Northwest Corner of the Southeast Quarter of the Northwest Quarter of said Section 14; thence South 89°51'19" East 1345.97 feet to the Northeast Corner of the Southeast Quarter of the Northwest Quarter of said Section 14; thence South 89°47'40" East 1332.03 feet to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence North 00°17'53" East 1335.93 feet to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence North 89°48'16" West 1329.81 feet along the North line of said Section 14 to an existing iron rod at the North Quarter Corner of said Section 14, then continuing along said North Line: North 89°55'31" West, 2698.76 feet to a found aluminum cap at the Northwest Corner of said Section 14 and the Southwest Corner of Section 11; thence North 00°13'55" West 2642.81 feet to a stone found at the West Quarter Corner of said Section 11; thence North 07°10'37" West, 2817.61 feet to a stone found at the Northwest Corner of said Section 11, and the Southwest Corner of Section 2; thence North 00°48'17" East 4816.75 feet to a stone found at the Northwest Corner of Section 2, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 89°36'41" East 567.30 feet to a stone found at the Southwest Corner of Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian; thence North 00°47'21" East 5248.25 feet to a fence corner found at the Northwest Corner of said Section 35; thence South 89°57'25" East 5053.95 feet to a stone found at the Northeast Corner of said Section 35; thence South 00°24'17" West along the East Line of said Section, 5268.15 feet to a stone found at the Southeast Corner of said Section 35; thence North 88°48'36" East 2528.81 feet to a rebar found at the North Quarter Corner of Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 00°07'57" East 2309.38 feet to the Southwest Corner of the Northeast Quarter of said Section 1; thence South 89°25'16" East 2682.59 feet to the East Quarter Corner of said Section 1; thence South 00°05'47" East 2676.60 feet along the East line of Section 1, to the Northeast Corner of Section 12; thence South 00°05'47" East along the East Line of said Section, 5353.21 feet to a stone found at the Southeast Corner of said Section 12; thence South 00°35'51" East 5311.76 feet to a stone found at the Southeast Corner of Section 13; thence South 00°02'26" West 5315.33 feet to a rebar found at the Southeast Corner of Section 24; thence North 89°50'58" West 1338.50 feet to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of Section 25; thence South 00°01'14" East 2660.23 feet to the Southwest Corner of the Southeast Quarter of the Northeast Quarter of said Section 25; thence South 00°00'30" East 1343.62 feet to the Southwest Corner of the Northeast Quarter of the Southeast Quarter of Section 25; thence

South 89°49'21" East 1336.97 feet to the Southeast Corner of the Northeast Quarter of the Southeast Quarter of said Section 25; thence South 00°01'22" West 1321.75 feet to a stone found at the Southeast Corner of said Section 25; thence South 00°52'12" East 2688.62 feet to a stone found at the East Quarter Corner of Section 36; thence South 00°30'19" West 2609.87 feet to a stone found at the Southeast Corner of said Section 36, thence North 89°59'51" West 2652.94 feet to a stone found at the South Quarter Corner of said Section 36, thence North 89°31'22" West 2666.73 feet, more or less, to the Point of Beginning.

(Containing 6559.46 Acres, more or less)

Excluding that portion lying within the bounds of I-80 (Containing 180.07 Acres, more or less)

**Containing 6379.39 Acres Net, more or less.**

#### **PARCEL "B"**

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

**Containing 1.88 Acres Net, more or less.**

#### **PARCEL "C"**

Legal description for 100 foot road parcel:

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

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

terminus of said 100.00 foot road parcel.

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

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

**Containing 2.65 Acres Net, more or less.**

**PARCEL "D"**

A perpetual easement for the purposes of constructing, maintaining, repairing, replacing, using and enjoying a one hundred (100) foot wide roadway and underground utility corridor over and across the following:

Beginning at a point that is South 00°13'37" West along the Section Line 140.71 feet and South 19°43'58" East along the State Parks right-of-way 900.45 feet from the Northwest Corner of Section 23, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 19°43'58" East 102.14 feet to a point on a 1050 foot radius curve to the right (radius bears North 08°33'57" West); thence Westerly along the arc of said curve a distance of 156.98 feet through a central angle of 08°33'57"; thence West 52.18 feet; thence North 19°43'58" West 106.24 feet; thence East 88.05 feet to the point of curvature of a 950 foot radius curve to the left (radius bears North); thence along the arc of said curve a distance of 122.25 feet through a central angle of 07°22'22" to the point of beginning.

As granted by an Easement Deed Recorded December 7, 1993 as Entry No.393125 in Book 771 at Page 437 of Official Records.

**Containing 0.48 Acres Net, more or less.**

**Net Acreage:**

Parcel A = 6379.39 Acres

Parcel B = 1.88 Acres

Parcel C = 2.65 Acres

Parcel D = 0.48 Acres

**Total = 6384.40 Net Acres**

**00583272** Bk01355 Pg01247