

SUMMIT COUNTY  
ORDINANCE NO. 429

AN ORDINANCE APPROVING AND ADOPTING THE  
DEVELOPMENT AGREEMENT FOR THE  
HOME SAVINGS BANK  
SPA

**PREAMBLE**

**WHEREAS**, the owner and developer of the Home Savings Bank project applied for and received from Summit County a re-zone of its property to a Specially Planned Area, securing a designation as the "Home Savings Bank SPA Zone District" through Summit County Ordinance No. 428; 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 "Home Savings Bank SPA Zone District" pursuant to Summit County Ordinance No. 429, 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 re-zone of the Home Savings Bank project, based on the terms and conditions as more fully set forth in the Development Agreement;

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

**Section 1.** Summit County Ordinance No. 429, the Development Agreement for the Home Savings Bank SPA, Summit County, Utah, consisting of 27 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.

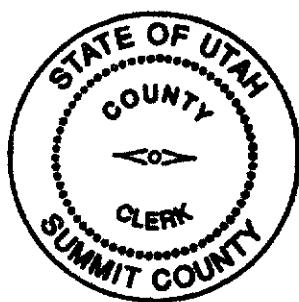
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ALAN SPRIGGS, SUMMIT CO RECORDER  
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REQUEST: SUMMIT COUNTY CLERK

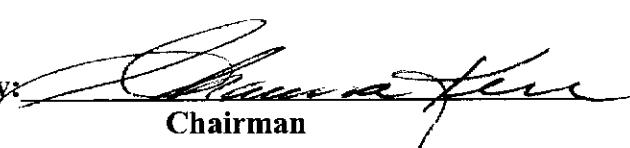
Section 2. This Ordinance shall take effect 15 days after passage by the Board of County Commissioners of Summit County and subsequent publication in a newspaper of general circulation in Summit County, Utah.

**APPROVED, ADOPTED, AND PASSED and ordered published by the Summit County Board of Commissioners, this 10 day of January, 2002.**

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



By:

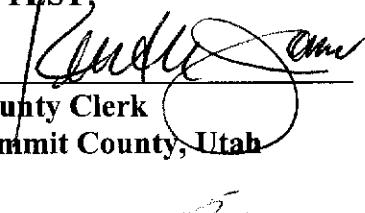
  
Chairman

Commissioner Cone voted: Aye

Commissioner Kerr voted: Aye

Commissioner Schifferli voted: 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  
HOME SAVINGS BANK SPECIALLY PLANNED AREA (SPA) PLAN  
SNYDERVILLE BASIN, SUMMIT COUNTY, UTAH

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is entered into as of this 10<sup>th</sup> day of JANUARY, 2002, by and among HOME CREDIT CORPORATION, a Utah corporation ("Developer") and SUMMIT COUNTY, a political subdivision of the State of Utah, by and through its Board of County Commissioners ("the County").

RECITALS:

1. Developer is the owner of approximately 1.09 acres of land and appurtenant real property rights located in Summit County, Utah, and more particularly described on Exhibit 1, which is attached hereto and incorporated herein by this reference (the "Property").

2. Developer has proposed to develop the Property with an office building which would provide a branch office of Home Savings Bank, and additional leaseable space, to be known as the "Home Savings Bank" Specially Planned Area Plan ("SPA Plan"), and sometimes referred to herein as the "Project". This Development Agreement serves to implement the Home Savings Bank SPA, Ordinance 428, in accordance with the provisions of the Snyderville Basin Development Code (the "Code") and the Snyderville Basin General Plan (the "General Plan").

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

4. The County has encouraged the Developer to employ innovative land planning concepts in the development of the Property in order to create a commercial office project which is consistent with the goals and objectives of the General Plan.

5. Developer has proposed a specific plan with respect to the proposed office building in response to direction from the Summit County Community Development Director (the "Director") and the Snyderville Basin Planning Commission (the "Planning Commission").

6. The County therefore desires to have the Property developed under the SPA provisions of the Code and the Snyderville Basin General Plan for the purpose of implementing development standards and processes that are consistent therewith.

7. Developer and the County desire to clarify certain standards and procedures that will be applied to the construction of improvements of benefit to the Property, and to address requirements for certain public amenities.

8. This Development Agreement, which implements the Home Savings Bank SPA, provides detailed data regarding the plat, site plan, open space, architecture, developer obligations and other relevant data. The County and the Developer agree that each shall comply with the standards and procedures contemplated by the Home Savings Bank SPA, this Development Agreement and its accompanying attachments and Book of Exhibits, the Code, and the General Plan with respect to all required development approvals.

9. Summit County, acting pursuant to its authority under Utah Code Annotated, Section 17-27-101, et seq., the Code, the General Plan, and its Administrative Guidelines has made certain determinations with respect to the proposed office building, and, in the exercise of its legislative discretion, has elected to approve the use resulting in the negotiation, consideration and approval of this Development Agreement after all necessary public hearings.

#### FINDINGS:

The Board of Commissioners of Summit County, acting in its legislative capacity, has made the following determinations with respect to the Home Savings Bank SPA Plan, including all findings of fact and conclusions of law as are necessary to make each of the following determinations:

a. Office Building Approval. Following lawfully advertised public hearings on September 28, 1998 and November 9, 1999, the Developer's plan for the Property received a recommendation for approval pursuant to a Development Agreement by action of the Snyderville Basin Planning Commission taken on August 22, 2000. The Board of County Commissioners held a lawfully advertised public hearing on March 15, 2001 and during a lawfully advertised public meeting on this 10<sup>th</sup> day of January, 2002, approved the Project under the process and procedures set forth in the Code, General Plan, and Administrative Guidelines. The terms and conditions of approval are incorporated fully into this Development Agreement. In making such approval, the Board of County Commissioners made such findings of fact and conclusions of law as are required as a condition to the approvals, as reflected in the staff recommendation adopted with any modifications, as reflected in the minutes of the above-referenced public meetings, and as reflected by the other enumerated findings herein.

b. The Home Savings Bank SPA Plan, as reflected in and conditioned by the terms and conditions of this Development Agreement, is in conformity with the General Plan of the Snyderville Basin of Summit County, any existing capital improvements programs, the provisions of the Code (including concurrency and infrastructure requirements), and all other development requirements of Summit County.

c. The Home Savings Bank SPA Plan contains outstanding features which advance the policies, goals and objectives of the General Plan beyond mere conformity, including the following: (i) agreements with respect to design controls (ii) the construction of a sidewalk trail connecting Parley's Park Elementary School with Snyder's Mill Subdivision: (iii) the donation

of land to the Park City School District, which will provide Parley's Park Elementary with a more significant buffer to the adjacent Snyder's Mill subdivision, to offset development impacts.

d. There exists adequate provisions for mitigation of all fiscal and service impacts on the general public (Summit County and its Special Districts), including, at a minimum, contributing all capital improvements and facilities necessary to accomplish these purposes.

e. The Home Savings Bank SPA Plan meets or exceeds development quality and aesthetic objectives of the General Plan and Code, is consistent with the goal of orderly growth in the basin, and minimizes construction impacts on public infrastructure within the basin.

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

g. 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.

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

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

j. This Development Agreement implements the Home Savings Bank SPA.

k. 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 the Home Savings Bank SPA Plan 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, this Development Agreement shall control; otherwise, the Code, General Plan or other land use laws shall control.

#### AGREEMENT:

NOW, THEREFOR, in consideration of the foregoing Findings and Recitals, the mutual covenants made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the County hereby agree as follows:

#### ARTICLE 1

#### DEFINITIONS

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1.1 **Building** means the professional office building to be constructed on the Property by the Developer in accordance with the terms and conditions of this Development Agreement.

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

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

1.4 **Developer** means Home Credit Corporation, a Utah corporation, and its assignees or transferees.

1.5 **Development Agreement** means this Development Agreement.

1.6 **Elevations** means the exterior building elevations for the project, copies of which are included as Exhibits #6A and #6B.

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

1.8 **Grading Plan** means the grading plan for the project, a copy of which is included as Exhibit #3 in the Exhibits.

1.9 **Home Savings Bank SPA** means the zone district adopted by Ordinance 428 for the purposes of permitting the adoption of a comprehensive development plan specifically required to implement the unique use, development location, building size and other features necessary for the Home Savings Bank Office Building.

1.10 **Home Savings Bank SPA Plan** means the comprehensive plan, set forth in the Development Agreement, which shall designate all development parameters, site plans and plats and all other property owner/developer obligations, commitments, and contributions made to carry out the development of the Property.

1.11 **Home Savings Bank SPA Plan Book of Exhibits or Exhibits** means that portion of the Home Savings Bank SPA Plan which shall contain concept and specific plans that shall be used to guide development in the Home Savings Bank SPA, including the specific site plan, architectural concepts, plat, all other specific development parameters and restrictions, and Developer obligations, commitments, and contributions for carrying out the development in accordance with the Home Savings Bank SPA Plan. The Exhibits are attached hereto and incorporated herein by this reference.

1.12 **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.

1.13 **Landscaping Plan** means the landscaping plan for the Project, a copy of which is included as Exhibit #4 in the Exhibits.

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1.14 **Lighting Plan** means the lighting plan for the Project.

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

1.16 **Property** means the real property owned by Developer in Summit County, Utah and more particularly described on Exhibit 1 of the Exhibits, which is attached hereto and incorporated herein by this reference.

1.17 **Project** means the Property and all improvements thereon, as described and contemplated in this Development Agreement.

1.18 **Site Plan** means the site plan depicting the location of improvements on the Property, a copy of which is included as Exhibit #2 in the Exhibits.

1.19 **Sprinkler Plan** means the sprinkler plan for the project, a copy of which is included as Exhibit #5 in the Exhibits.

## ARTICLE 2

### THE PROJECT

2.1 **Description of the Project:** The Property covered by this Development Agreement consists of 1.09 acres of land located off of SR 224 and Silver Springs Drive in the Snyderville Basin. Developer intend to construct an office building on the Property, consisting of approximately 4144 square feet of usable space plus 664 square feet of basement (the "Building"), with appropriate parking, landscaping and other improvements, as shown in the Exhibits.

2.2 **Legal Description of Property:** The legal description of the Property included within the property is set forth in Exhibit 1 to the Home Savings Bank SPA Plan Book of Exhibits. No property may be added to the legal description of the development parcel 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.

2.3 **Use and Configuration:** In general, approved uses for the Building and Project shall be those commercial and business uses which are consistent with the neighborhood in scale and function. Such uses shall be low intensity traffic generators. This Development Agreement shall vest with the Property, the Developer, and any successor owners of the Property or any part thereof, the uses, configuration, massing, design, parking layout, driveways and connections, curb cuts, and other improvements as reflected in the Home Savings Bank SPA and Home Savings Bank SPA Plan Book of Exhibits, which shall be deemed a part of this Development Agreement and shall be binding upon all parties hereto.

2.3.1 **Approved uses:** Approved uses for the Building and Project shall meet the intent of 2.3 above and shall include but are not limited to: community banking services,

and commercial/business office space. The hours during which the occupants of the Building may be officially open for business to the public shall be between 8:00 a.m. and 7:00 p.m.

2.3.2 Prohibited uses: Uses prohibited within the Home Savings Bank SPA Zone shall include but are not limited to: outdoor storage; automotive services, sales, repair, and maintenance facilities; ticket sales; retail sales establishments; food services, restaurant, take-out, coffee shop, etc.; medical/dental clinics/offices; exterior ATM machines (machines within the interior of the building will be acceptable); any use or uses which individually or collectively create excessive demands on the approved parking and/or consistently generate daily traffic volume in excess of 200 vehicles per day. Should substantive complaints arise regarding traffic and/or parking problems which are directly related to the Project, the owner(s) shall be responsible for documenting the existing traffic levels or parking demands. Such documentation will be subject to independent verification by the County. Any mitigation requirements imposed by the Board of County Commissioners arising from such findings shall be the responsibility of the owner(s).

2.3.3 Change in use: Any changes in use from those approved shall require a public hearing before the Planning Commission and a recommendation from the Planning Commission to the Board of County Commissioners in order to amend the Home Savings Bank SPA Development Agreement.

2.3.4 Change in type of ownership (Condominium Plat): In the event that a condominium plat is created, a Master Association shall be created and maintained at all times which is responsible for regulating and maintaining certain standards and requirements of the Development Agreement, including parking and traffic impacts, signage, and also including levels of maintenance of all buildings, driveways, parking, lighting, and landscaping within the Project as required in the Conditions of Approval attached to the recommendation for this SPA Rezone and Plan.

2.4 Specific Design Conditions: The development of the Property must be consistent with the design details set forth in the Exhibits, which include, among other things the Site Plan, elevations, Lighting Plan and Landscaping Plan.

2.5 Conditions of Approval: The SPA Plan is approved subject to the following conditions, which are in addition to all other conditions specified in this Development Agreement:

2.5.1 The Developer shall contribute to the Park City School District approximately 0.25 acres of property described as Parcel "B" on the Site Plan within ninety (90) days of the issuance of a building permit for the Building.

2.5.2 The Developer shall provide for sidewalks traversing the Property in order to provide a pedestrian connection between Snyder's Mill Subdivision and Parley's Park Elementary School.

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2.5.3 The Developer shall prepare and submit Lighting Plan for review and approval of the Summit County planning staff, which shall include fixture design, heights, finish colors, light source types, wattage and installation details. A diagram and/or narrative shall be provided with such plan which explains and graphically represents the operating details of the lighting system, such as when and how exterior lights are cycled on and off, lighting for security purposes and the like. A point to point calculation and printout of light distribution at the ground plan shall also be provided for review.

2.5.4 Exterior signage shall be subject to the review and approval of the Summit County planning staff in accordance with the Low Impact Permit review process.

2.5.6 The Developer shall comply with all applicable service provider requirements and standards.

2.6 Building Permit Required: Prior to the commencement of development, a Building Permit must be obtained from Summit County in accordance with all applicable requirements of the Snyderville Basin Development Code. Failure to so comply shall be grounds for revocation of Final Subdivision Plat approval or denial/revocation of Building Permits issued pursuant to the Final Subdivision Plat.

## 2.7 Conflicts.

2.7.1 To the extent there is any ambiguity in or conflict with the provisions of this Development Agreement and the Home Savings Bank SPA Plan Book of Exhibits (including, without limitation, the Site Plan, Lighting Plan, and Landscaping Plan), the more specific provision or language of the Exhibits shall take precedence over more general provisions or language of this Development Agreement.

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

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## ARTICLE 3

### VESTED RIGHTS

3.1 Vested Rights. Subject to Sections 3.2 and 4.2.3, the Developer shall have the vested right to have preliminary and final site plan, and construction plans approved, and to develop and construct the Project in accordance with the terms and conditions of this Development Agreement, including the Exhibits. So long as the Project is constructed in a

manner which is consistent with the plans shown in the Exhibits, the Developer shall also have the right to have a condominium record of survey map approved for the Project if the Developer elects to divide the Building into commercial condominium space.

### **3.2 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 land use 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 Sections 2.3, Paragraph 1 of the Findings, and Section 3.1, 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 338 (Utah 1980) or successor case and statutory law.) Any such proposed change affecting the vested rights of the Property and other provisions of this Development Agreement shall be of general application to all development activity in the Snyderville Basin; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project 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 allege that their rights under this Development Agreement have been adversely affected.

## **ARTICLE 4**

### **PROCESSES**

**4.1 Construction Mitigation and Management Plan Required.** A building permit will not be issued until an adequate Construction Management and Mitigation Plan has been 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 applicant:

- a. Revegetation/erosion protection/runoff control
- b. Watershed protection
- c. Site grading
- d. Dust and debris control
- e. Recycling construction material waste
- f. Damage to public roadways as a result of construction
- g. Construction traffic and related parking needs
- h. Hours of construction
- i. Impact of noise on adjacent residential uses

**4.2 Fees.**

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4.2.1 Sketch Plan, SPA Rezone Application, Development Agreement Application, Development Review, Final Site Plan, Engineering and Related Fees. Pursuant to the provisions of Section 4.9 of the Administrative Guidelines, the Developer has paid the combined Development Agreement and SPA fees of \$2,178.00 through payments in the amounts of \$160.00 on May 8, 1998 (Sketch Plan Application), \$1,190.00 on September 3, 1998 (SPA Plan and Rezone Application) and \$828.00 on December 3, 2001(Final Site Plan Application). The 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.

4.2.2 Impact Fees. In consideration for the agreements of the County in this Development Agreement, the Developer agrees that the Project 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.

4.2.3 Rational Nexus Test. For purposes of this Development Agreement, the Rational Nexus Test shall mean and refer to a standard of reasonableness whereby the Project and the 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 the Expansion. 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.

## ARTICLE 5

### INFRASTRUCTURE AND CONCURRENCY MANAGEMENT

5.1 Concurrency Management Required. Prior to the approval of a building permit for any structure approved in Home Savings Bank SPA Plan, an applicant for a building permit shall demonstrate that all concurrency management requirements of Chapter 4 of the Code have been met. The Summit County Community Development Director shall cause the issuance of a building permit upon demonstration of compliance with all such requirements. In addition to the requirements of Chapter 4 of the Code, the following shall also be required.

5.1.1 The Developer shall construct those infrastructure improvements, contemporaneously with approval of final site plans, as are required by the Code, County Engineer, and any applicable special service district or county service area, and subject to and as modified by any applicable terms of this Development Agreement.

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

## ARTICLE 6

### SUCCESSORS AND ASSIGNS

6.1 Binding Effect. This Development Agreement shall be binding on the successors and assigns of the Developer in the ownership or development of any portion of the Property.. Notwithstanding the foregoing, a purchaser of the Property shall be responsible for performance of the Developer's obligations hereunder so transferred in accordance with the provisions of Section 6.2 hereof.

6.2 Transfer of the Property. Prior to the completion of construction of the Project, Developer shall be entitled to transfer any portion of the Project, subject to the terms of this Development Agreement, upon written notice to the County. Following the completion of construction, Developer shall not be required to notify the County with regard to the sale of the Project, or any separate portion of the Building which has been platted as a commercial condominium unit. In the event of any such transfer of Developer's interests in the Project, or any portion thereof, the transferee shall be deemed to be the Developer for all purposes under this Development Agreement with respect to that portion of the Project transferred.

6.3 Release of Developer. 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 that portion of the Project so transferred, and the Developer executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement as to that portion of the Project so transferred.

## ARTICLE 7

### DEFAULT

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

- (a) A warranty, representation or statement made or furnished by Developer to the County in this Development Agreement, including any attachments hereto, which is false or proves to have been false in any material respect when it was made.

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- (b) Following a periodic review under Section 8.17, a finding and determination is made by the County that upon the basis of substantial evidence Developer has not complied in good faith with one or more of the material terms or conditions of this Development Agreement.
- (c) Any other event, condition, act or omission by Developer fails to perform its duties or obligations under this Development Agreement.

7.2 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 (30) day cure period provided above, in the event more than thirty (30) days is reasonably required to cure a default and Developer, within the thirty (30) 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 review the County does not propose to modify or terminate this Agreement.
- (c) Should the County terminate this Development Agreement under the provisions hereof, the Property will thereafter be required to comply with and be governed by the Code and General Plan then in existence, as well as with all other applicable provisions of Utah State Law.
- (d) 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.
- (e) An express repudiation or renunciation of this Development Agreement, if the same is in writing and signed by Developer, shall be sufficient to

terminate this Development Agreement and a hearing on the matter shall not be required.

- (f) 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 Developer.
- (g) 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.

7.3 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 bind the County from exercising enforcement of its police powers where Developer is in direct violation of the Code.

7.4 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 8

### GENERAL TERMS AND CONDITIONS

8.1 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property. 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 party signing this Agreement and identified as "Developer," and all successor owners of the Property.

8.2 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.

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

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8.4 Duration. The term of this Development Agreement shall commence on, and the effective date of this Development Agreement shall be, the effective date of the Ordinance approving this Development Agreement. The term of this Development Agreement shall extend for a period of five (5) years following the effective date above referenced. Developer or County shall have an option to extend this Development Agreement for additional five year terms as long as the terms of this Development Agreement have been substantially complied with, and this Agreement has not been earlier terminated, or its term otherwise modified by written amendment.

8.5 Mutual Releases. At the time of, and subject to, (i) the expiration of any applicable appeal period with respect 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 release 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 Property.

8.6 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.

8.7 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 Property violates the rules, policies, regulations or ordinances of the County or violates the terms of this Development Agreement, the County may, without electing to seek an injunction and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the Board of County Commissioners or a court of competent jurisdiction if Developer have used their reasonable best efforts to cure such violation within such thirty (30) days and are continuing to use their reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been honored by the 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

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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.

8.8 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.

8.9 Entire Agreement. This Development Agreement constitutes the entire agreement between the parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Development Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Development Agreement.

8.10 Attorney's Fees. Should any party hereto employ an attorney 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 attorney's fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

8.11 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

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With copies to:

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

To the Developer:

Home Credit Corporation  
c/o Don Ballard  
1455 East 2100 South  
Salt Lake City, Utah 84105  
Facsimile: (801) 487-0814

With copies to:

Thomas G. Bennett  
Ballard Spahr Andrews & Ingersoll, LLP  
201 South Main St., Suite 1200 — 600 *HC  
oh, v.p.*  
Salt Lake City, Utah 84111  
Facsimile: (801) 531-3001

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 business day following deposit with a reputable overnight courier that provides a receipt, or on the third day following deposit in the United States mail in the manner described above.

8.12 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.

8.13 Execution of Agreement. This Development Agreement may be executed in multiple parts 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.

8.14 Hold Harmless.

8.14.1 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

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property damage which may arise from the direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project, 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 the Project 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 paragraph 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. The 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.

8.14.2 Exceptions to Hold Harmless. The agreements of Developer in Paragraph 11.14.1 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.

8.14.3 Hold Harmless Procedures. The County shall given written notice of any claim, demand, action or proceeding which is the subject of the 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 case 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.

8.15 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) the Project is a private development; (b) the 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 the Developer set forth in this Development Agreement.

8.16 Compliance with County Ordinances and Administrative Guidelines. The County has reviewed the Code, General Plan, and Resolution No. 93-1 (Administrative Guidelines) and

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

8.17 Annual Review. The County shall review progress pursuant to this Development Agreement at least once every twelve (12) months to determine if there has been demonstrated compliance with the terms hereof. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms hereof, this Development Agreement may be revoked or modified by the County in accordance with the provisions of Sections 11.18 and 11.19 hereof, after a public hearing which has been noticed by publication, and for which notice has been expressly provided to Developer. County's failure to review at least annually Developer' 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.

8.18 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.

8.19 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.

8.20 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.

8.21 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.

8.22 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.

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 429, authorizing such execution, and by a duly authorized representative of Developer, as of the above stated date.

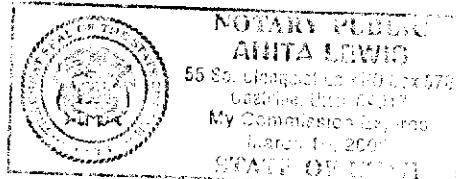
COUNTY:

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, STATE OF UTAH

By:   
Chairman

STATE OF UTAH )  
:ss.  
COUNTY OF SUMMIT )

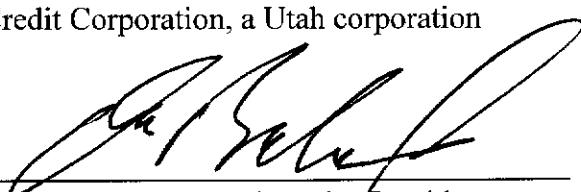
The foregoing instrument was acknowledged before me this 10 day of January, 2002, by Shauna Kerr, Chairman of the Board of County Commissioners of Summit County, State of Utah.



  
Anita Lewis  
Notary Public

DEVELOPER:

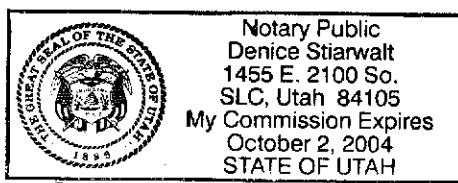
Home Credit Corporation, a Utah corporation

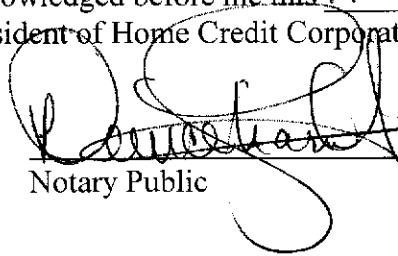
By:   
Don Ballard, Executive Vice President

STATE OF UTAH )  
:ss.  
COUNTY OF Salt Lake )

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The foregoing instrument was acknowledged before me this 19th day of December, 2001, by Don Ballard, Executive Vice President of Home Credit Corporation.



  
Denice Stiarwalt  
Notary Public

**SURVEYOR'S CERTIFICATE:**

I, John B. Stahl, Salt Lake City, Utah, do hereby certify that I am a registered Land Surveyor and that I hold License No. 7600 as prescribed by the laws of the State of Utah and that I have made a survey of the following described properties:

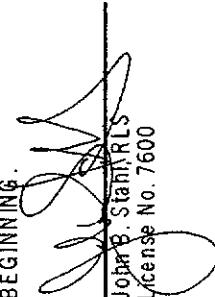
**PARCEL NO. 1**

BEGINNING at a point which is South 380.11 feet and East 1863.04 feet from the Northwest Corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian; running thence South 85°24'45" West along a fence line 383.11 feet to the easterly right-of-way line of State Highway 224; thence North 00°13'00" West 22.95 feet; thence East 33.43 feet to the point of curvature of a 350.00 foot radius curve to the left; thence along said curve 384.85 feet through a central angle of 63°00'00"; thence North 27°00'00" East 55.56 feet; thence South 72°02'00" East 12.05 feet; thence South 229.23 feet to the POINT OF BEGINNING.

Less and Excepting therefrom those descriptions conveyed to the Utah Department of Transportation in Book 641 at Page 403, Book 643 at Page 388-389 and Book 445 at Page 168 of the Official Records

**PARCEL NO. 2**

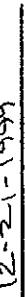
BEGINNING at a point on the north boundary of Snyder's Mill Subdivision said point being South 00°25'39" East 44.00 feet and South 89°15'54" West 538.19 feet from the North One Quarter Corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 89°15'54" West 630.46 feet along said boundary to the easterly right-of-way line of Utah State Highway U-224; thence North 00°14'42" East (North 00°12'03" East by UDOT Project No F-060(2)) 11.67 feet along said right-of-way line to the south boundary of that certain parcel of land described in Book 0735 at Page 683 of deeds recorded as Entry No. 382270 in the office of the Summit County Recorder; thence North 85°24'55" East 364.35 feet along the south boundary of said parcel to the southeast corner thereof; thence South 3.30 feet along the southerly projection of the east line of BEGINNING; thence North 85°44'06" East 268.02 feet along said fence line; thence South 49.33 feet to the POINT OF BEGINNING.

  
John B. Stahl, RLS  
License No. 7600

**PURPOSE:**

The purpose of this survey is to retrace the boundaries of parcels described herein, to combine into a Composite Parcel described herein, and to determine the location of easements and encroachments affecting the property. The record descriptions are recorded in Book 1108 at Page 78, and Book 764 at Page 505 of Summit County records.

**POINT OF BEGINNING**

  
12-21-1999  
Date

**BASIS OF BEARINGS:**

The basis of bearings for this survey was established between a found monument at the NW Corner of Section 31, and a found 5/8" Rebar with cap at the N 1/4 Corner, Township 1 South, Range 4 East. The Bearing between these two monuments is North 89°15'54" East as per the plat of Snyder's Mill subdivision as recorded in the Summit County Recorder's Office.

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**PARCEL A**

A parcel of land located in the Northwest Quarter of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah described as follow s:

BEGINNING at a point on the north boundary of Snyder's Mill Subdivision as recorded in the office

**EXHIBIT #1**  
Legal Description

of the Summit County Recorder, said point being South 00°25'39" East 440.00 feet and South 89°15'54" West 805.49 feet from the North One Quarter Corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 89°15'54" West 363.16 feet along said north boundary to the easterly right-of-way line of Utah State Highway U-224; thence along said east right-of-way line the following two courses North 00°14'42" West (North 00°12'03" West by UDOT Project No. F-060(2)) 19.65 feet and North 44°50'56" East 18.99 feet; to the south right-of-way line of Silver Springs Drive; thence East 1.28 feet along said south right-of-way line to a point of tangency of a 350.00 foot radius curve to the left; thence northeasterly along said curve 384.85 feet through a central angle of 63°00'00"; thence North 27°00'00" East 55.57 feet; to a point on the westerly boundary line of that parcel described in Book 137 at Page 248 of said records; thence leaving said southerly right-of-way line South 72°02'00" East 12.05 feet along said westerly boundary line; thence continuing along said westerly boundary line South 265.36 feet to the POINT OF BEGINNING.

**PARCEL B**

A parcel of land located in the Northwest Quarter of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah described as follow s:

BEGINNING at a point on the north boundary of Snyder's Mill Subdivision as recorded in the office of the Summit County Recorder, said point being South 00°25'39" East 440.00 feet and South 89°15'54" West 638.19 feet from the North One Quarter Corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 89°15'54" West 267.30 feet along said north boundary; thence North 32.83 feet to the southwesterly corner of that parcel described in Book 137 at Page 248 of said records; thence along the southerly boundary line of said parcel North 85°44'06" East 268.02 feet along an existing chain-link fence; thence South 49.33 feet to the POINT OF BEGINNING

**NARRATIVE:**

The purpose of this survey is to retrace the boundaries of parcels described herein, to combine into a Composite Parcel described herein, and to determine the location of easements and encroachments affecting the property. The record descriptions are recorded in Book 1108 at Page 78, and Book 764 at Page 505 of Summit County records.

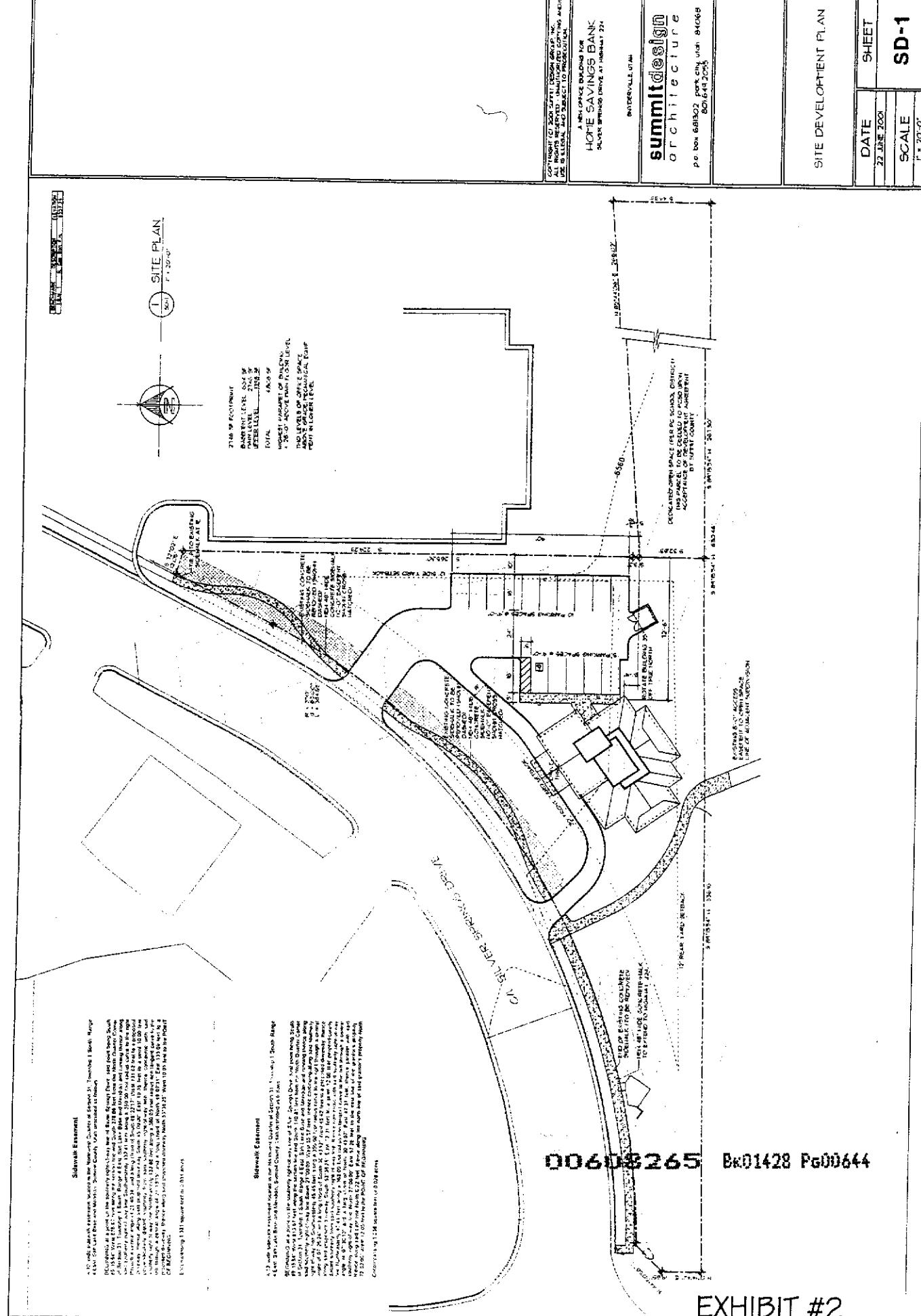


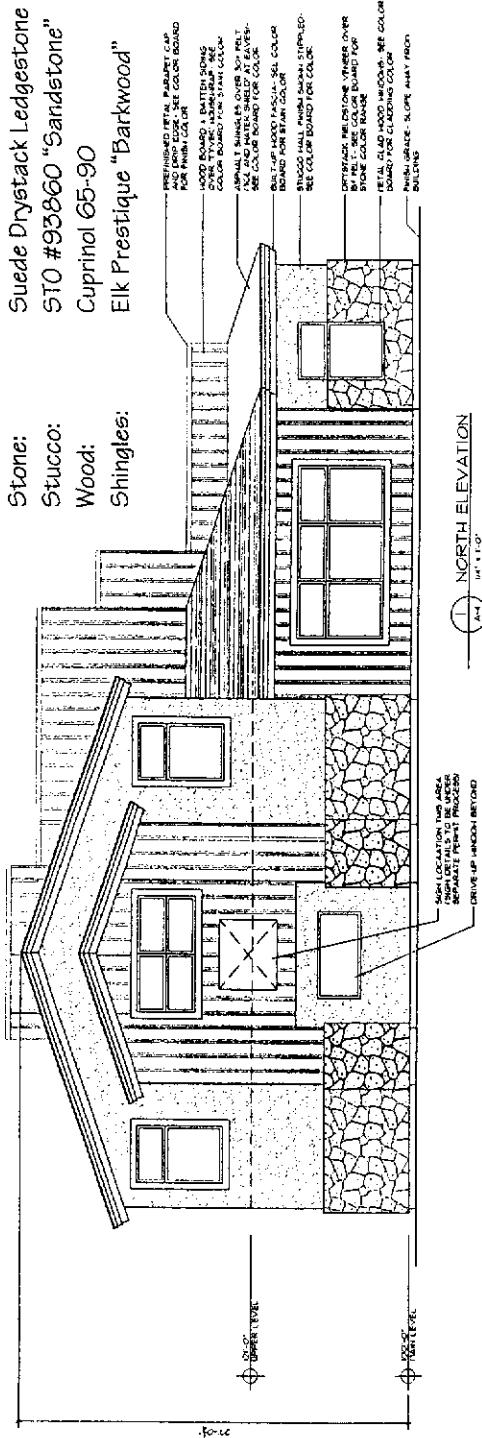
EXHIBIT #3  
Grading



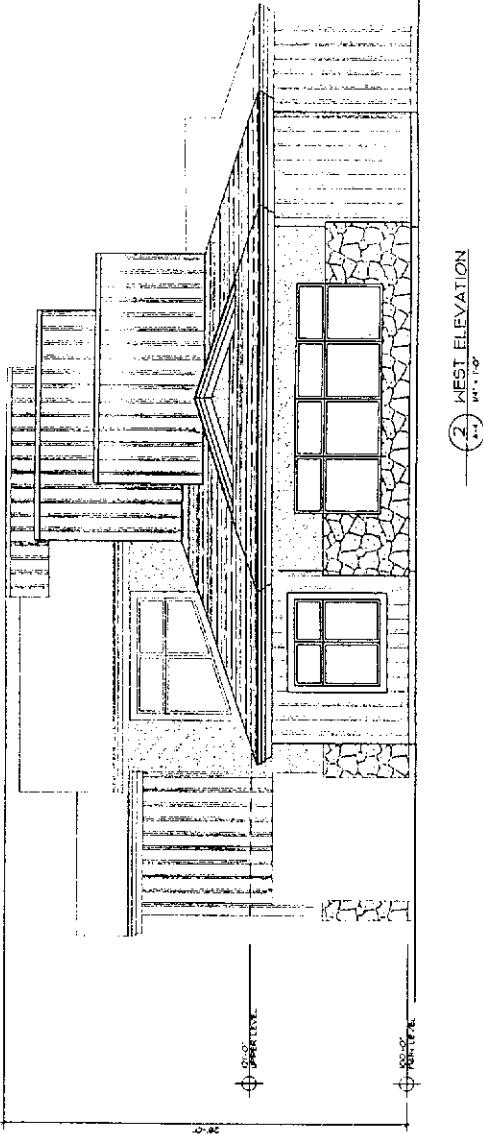


## Color Board Materials / Colors:

Stone: Suede Drystack Ledgestone  
Stucco: STO #93860 "Sandstone"  
Wood: Cuprinol 65-90  
Shingles: Elk Prestige "Barkwood"



NORTH ELEVATION



00608265 8k01428 Pe00648

EXHIBIT #6A  
Elevations

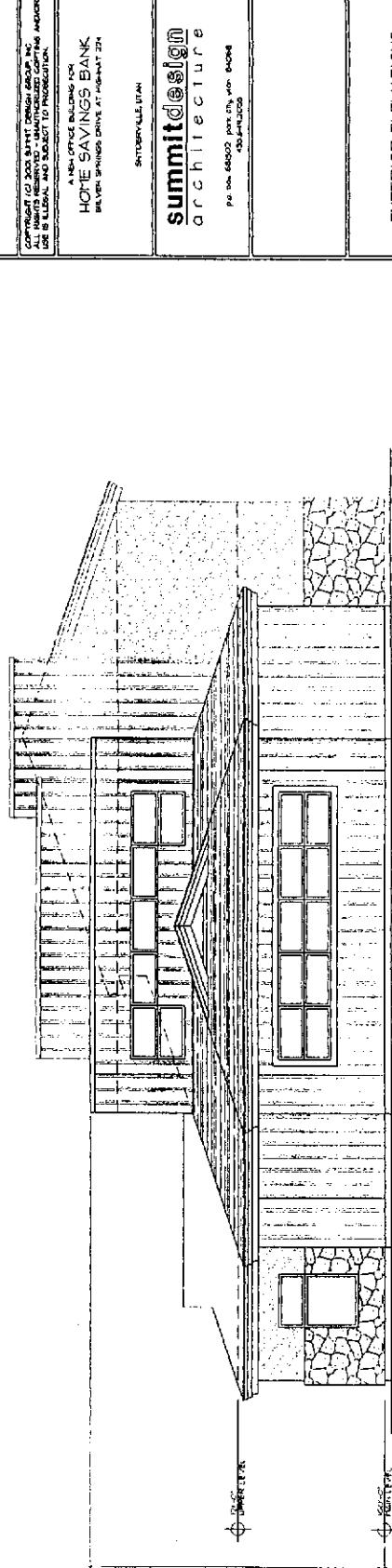
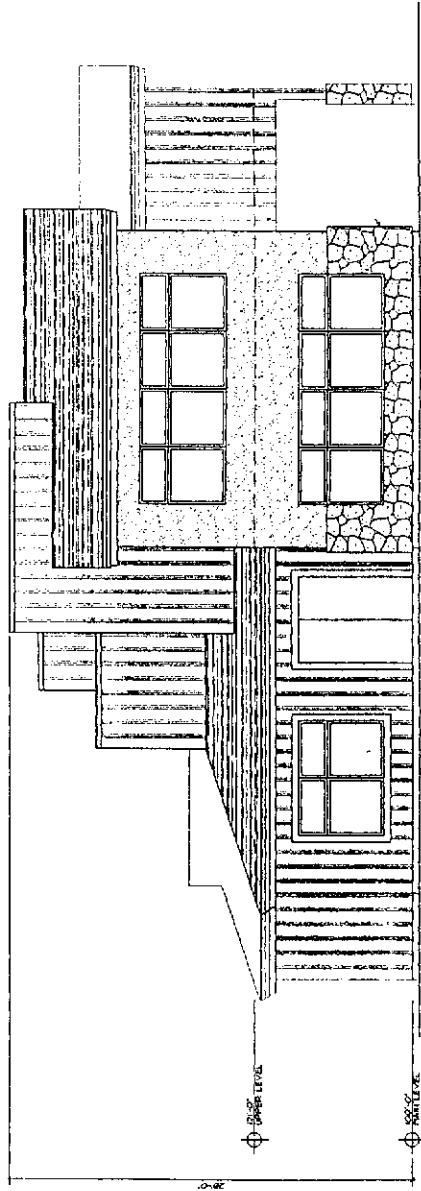
Color Board Materials / Colors:

Stone: Suede Drystack Ledgestone  
STO #93860 "Sandstone"  
Cuprinol 65-90  
Elk Prestique "Barkwood"

Stucco:

Wood:

Shingles:



00608265 Bk01428 Pg00649

**EXHIBIT #6B**  
Elevations

DATE	8/17/2000
EXTERIOR ELEVATIONS	
summit@summit	architects
STATESTON, UTAH	A NEW OFFICE BUILDING FOR HOME SAVINGS BANK BELDEN SPRINGS DRIVE AT HIGHWAY 224 PO BOX 65000 PARK CITY, UTAH 84060 (435) 469-2120

**A-5**