

**DEVELOPMENT IMPROVEMENTS AGREEMENT  
FOR  
NEWPARK PARCEL Q AND LOT T-1  
(COTTONWOOD PLATS)**

THIS AGREEMENT is made this 21<sup>st</sup> day of December, 2004, by and between Summit County, a political subdivision of the State of Utah ("the County"), and Cottonwood Newpark One, L.C. or its assignee ("Developer").

00726721 BK01679 Pg01116-01124

RECITALS:

ALAN SPRIGGS, SUMMIT CO RECORDER  
2005 FEB 17 14:17 PM FEE \$ .00 BY GGB  
REQUEST: SUMMIT COUNTY CLERK

A. Developer is the owner of certain property situated in the Summit County, State of Utah, more particularly described in Exhibit A and known as "Project".

B. The Developer desires to develop the "Project", hereinafter referred to as the ("Property") according to the Parcel Q and Lot T-1 Subdivisions (the "Plats"). The legal description of the Property is that shown on Exhibit A.

C. Developer will submit Construction Drawings and General Contractor's Estimate for those improvements being constructed by the Developer in connection with Parcel Q and Lot T-1 of which will be shown collectively on Exhibit B to be prepared by the Developer and mutually agreed upon by the parties (collectively the "Parcel Q and Lot T-1, Site Improvements Plan").

D. The Summit County Board of County Commissioners has approved the Plat submitted by the Developer subject to certain requirements and conditions, which involve the installation and construction of utilities and the improvements shown on the Site Improvements Plan for the Property.

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

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

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

agreement, or escrow equal to ten (10) percent of the required total improvement costs until twenty four months from the date of completion of the improvements and acceptance thereof by the County, as a guarantee should the improvements prove to be defective during said 24-month period. Developer agrees to promptly correct any deficiencies in installation in order to meet the requirements of the plans and specifications applicable to such installation. In the event such installation is not completed according to the specific plans set forth in the Site Improvements Plan, the County shall have the right to cause such work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work.

**2. Electric, Gas, Telephone and Cable TV Facilities**

The installation of Electric, Gas, Telephone, Sewer, Water and Cable TV facilities is provided for by Newpark Corporation, the master developer for Newpark, pursuant to a Development Improvement Agreement between Newpark Corporation and Summit County as a condition of the Newpark Master Development Parcel Plat, recorded as Entry No. 654674.

**3. Storm Drainage Improvements**

(a) Developer shall install all storm drainage facilities described in the Site Improvements Plan.

**4. Roads**

The installation of all public and private roads and public and private road improvements, within Newpark, were constructed by Newpark Corporation, the master developer for Newpark, pursuant to a Development Improvement Agreement between Newpark Corporation and Summit County as a condition of the Newpark Master Development Parcel Plat, recorded as Entry No. 654674.

**5. Landscaping**

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

**6. Road Cuts**

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

**7. Traffic Control**

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

**8. Maintenance and Repair**

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

(b) Developer shall be released from the obligation and liability to maintain private roads and shall not be responsible for the cost of such maintenance as the result of the recordation of the Declaration of Covenants, Conditions and Restrictions in the office of the Recorder of Summit County, Utah, which obligates Newpark Owners Association to maintain any private roads within the Property.

**9. Financial Assurances**

To insure developer's performance under this Agreement, Developer shall, prior to the commencement of construction of any improvements, provide the County with sufficient security, to ensure completion of the required improvements, in the amount of 120% of the cost of construction determined in accordance with the schedule in Exhibit B.

The security shall be in the form of either: 1) a letter of Credit drawn upon a state or national bank- said Letter of Credit shall: (1) be irrevocable, (2) be of a term sufficient to cover the completion and warranty periods, and, (3) require only that the County present the issuer with a signed draft and a certificate signed by an authorized representative of the County certifying to the County's right to draw funds under the Letter of Credit; or 2) Establishment of an Escrow Account, Loan Set-Aside Agreement or Completion Bond with the guarantee that all improvements shall be installed within two years or the account or bond will be called by the County to complete the improvements. Acceptable escrow agents shall be the Summit County Treasurer's Office or banks or federally insured savings institutions. This two year deadline may be extended by the County upon showing of sufficient cause.

As portions of the improvements are completed in accordance with this Development Improvements Agreement, County regulations, and the approved Site Improvements Plan, the Developer may make application to the County Engineer to reduce the amount of the original letter of credit, cash escrow, loan set-aside agreement, or completion bond. If the Board of County Commissioners is reasonably satisfied that such portion of the improvements has been completed in

accordance with County standards, they will cause the amount of the letter of credit, cash escrow, loan set-aside agreement, or completion bond to be reduced by such amount as is reasonably appropriate, so that the remaining amount of the letter of credit, cash escrow, loan set-aside agreement, or completion bond adequately insures the completion of the remaining improvements.

**10. Default**

If Developer shall default in the performance of Developer's obligation hereunder and shall fail to cure such default within sixty (60) days after receipt of written notice from the County specifying the nature of such default (or if such default cannot be cured within the aforesaid period of time, if the Developer shall fail to promptly commence to cure the same and to thereafter diligently proceed with such cure), then the County shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the County shall be reimbursed for the reasonable costs thereof either by payment of such costs to cure the default within 60 days of delivery of an invoice to Developer or by obtaining funds under the security.

**11. Limitation of Liability**

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

**12. Amendment**

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

**13. Binding Effect**

This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors, heirs and assigns of the property owners; provided that, purchasers of lots or parcels within the Property or any homeowner's association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any

portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be recorded in the Office of the Summit County Recorder and on file with the Department of Community Development. All existing lien holders shall be required to subordinate their liens to the covenants contained in the Development Improvements Agreement.

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

APPROVED:

ATTEST:

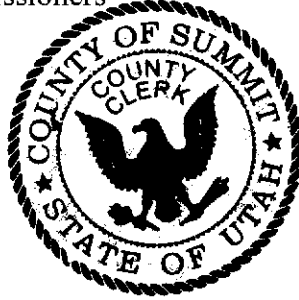
SUMMIT COUNTY

Susan Fellett

Summit County Clerk

By: Robert M.

Chairman, Board of Summit County  
Commissioners



APPROVED AS TO FORM:

[Signature]  
Deputy County Attorney

ACCEPTED:

Cottonwood Newpark One, L.C. by, CPM  
Newpark, L.C, its manager, by Cottonwood Partners  
Management, Ltd., its manager, by CotNet  
Management, Inc., its general partner

By: [Signature]  
John L. West, President

# **Exhibit A**

**Parcel Q      NEWPARK PARCEL Q SUBDIVISION**

**LOCATED IN THE NORTHEAST QUARTER OF SECTION 19,  
TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND  
MERIDIAN SUMMIT COUNTY, UTAH**

**Lot T-1                  NEWPARK PARCEL T SUBDIVISION**

**LOCATED IN THE NORTHEAST QUARTER OF SECTION 19,  
TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND  
MERIDIAN SUMMIT COUNTY, UTAH**

# **Exhibit B**

## **Construction Drawings and General Contractor's Estimate**



Mr. Steven Baer  
Cottonwood Realty Services  
2855 E. Cottonwood Parkway, Suite 560  
Salt Lake City, Utah 84121

December 8, 2004

**RE: Proposed Office @ Newpark, Park City, Utah – Site Improvements**

Dear Steve:

Per your earlier request, here are the costs for the site improvements as required by the Summit County Engineer:

Earthwork.....	\$10,000
Asphalt Paving.....	\$72,143
Site Concrete.....	\$66,728
Site Utilities.....	\$56,356
Landscaping.....	\$70,758
<b><u>Total Amount .....</u></b>	<b><u>\$275,985</u></b>

Please call me with any questions you may have.

Sincerely,

Mark Mossing  
Senior Estimator

cc. Mike Phillips, Big-D

**BK1679.PG1123**



**NEWPARK PLATS Q & T1****SITE DEVELOPMENT COSTS**

December 20, 2004

DESCRIPTION	QTY	UNIT	UNIT\$	TOTAL COST
<b>EARTHWORK</b>				
CLEAR & GRUB	66,667	sf	\$0.15	\$10,000
SILT FENCE	400	lf	\$6.40	\$2,560
HAY BALES FOR SWPPP	50	ea	\$25.00	\$1,250
<b>SUBTOTAL</b>				<b>\$13,810</b>
<b>ASPHALT PAVING</b>				
3" ASPHALT WITH 8" ROAD BASE	54,480	sf	\$1.10	\$59,928
4" ASPHALT WITH 10" ROAD BASE	6,724	sf	\$1.25	\$8,405
<b>SUBTOTAL</b>				<b>\$68,333</b>
<b>SITE CONCRETE</b>				
CURB AND GUTTER	3173	lf	\$11.00	\$34,903
SIDEWALKS/PAVING	10775	sf	\$2.00	\$21,550
APPROACHES	1460	sf	\$3.75	\$5,475
STEPS	100	lf	\$12.00	\$1,200
CROSSWALKS	400	sf	\$9.00	\$3,600
<b>SUBTOTAL</b>				<b>\$66,728</b>
<b>SITE UTILITIES</b>				
DOMESTIC WATER LINE	50	lf	\$26.00	\$1,300
SANITARY SEWER	36	lf	\$36.00	\$1,296
GAS LINE	56	lf	\$8.50	\$476
FIRE LINE	133	lf	\$34.00	\$4,522
FIRE HYDRANTS	1	ea	\$1,500.00	\$1,500
12" STORM DRAIN LINE	400	lf	\$27.00	\$10,800
15" STORM DRAIN LINE	338	lf	\$34.00	\$11,492
24" STORM DRAIN LINE	127	lf	\$38.00	\$4,826
CATCH BASINS	9	ea	\$1,500.00	\$13,500
UTAH POWER CONDUIT	206	lf	\$24.00	\$4,944
PHONE CONDUIT	100	lf	\$17.00	\$1,700
<b>SUBTOTAL</b>				<b>\$56,356</b>
<b>LANDSCAPING</b>				
LANDSCAPING/IRRIGATION	24971	sf	\$2.00	\$49,942
STONE BASES AT TRELLIS	8	ea	\$1,000.00	\$8,000
WOOD FRAMEWORK AT TRELLIS	576	sf	\$16.00	\$9,216
WOOD BENCHES AT POCKET PARK	9	ea	\$400.00	\$3,600
<b>SUBTOTAL</b>				<b>\$70,758</b>
			<b>GRAND TOTAL</b>	<b>\$275,985</b>