

**FIRST AMENDED AND RESTATED
DEVELOPMENT IMPROVEMENTS AGREEMENT**

**FOR
NEWPARK LOT V-1
(COTTONWOOD PLAT)**

00784302 Bk01804 Pg01536-01545

ALAN SPRIGGS, SUMMIT CO RECORDER
2006 JUL 19 16:40 PM FEE \$.00 BY GGB
REQUEST: SUMMIT COUNTY CLERK

THIS AGREEMENT is made this 26th day of June, 2006, by and between Summit County, a political subdivision of the State of Utah ("the County"), and Cottonwood Newport Two, L.C. or its assignee ("Developer").

RECITALS:

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 Lot V-1 of Newport Parcel V Subdivision 2nd Amended (the "Plats"). The legal description of the Property is that shown on Exhibit A.

C. Developer will also submit "Planning Level" Drawings and General Contractor's Estimate for those improvements being proposed by the Developer in connection with Lot V-1 which will be shown collectively on Exhibit B to be prepared by the Developer and mutually agreed upon by the parties (collectively the "Lot V-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.

E. The County and Cottonwood Newport One, L.C. entered into a Development Improvements Agreement for Newport Lot V-1 on the 21st day of December, 2004 ("Original Lot V-1 DIA"). This First Amended and Restated Development Improvements Agreement supersedes the Original Lot V-1 DIA.

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 and Weed Control

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

The Developer agrees to comply with Summit County Ordinance 484 relative to control and elimination of all noxious species of plants as identified within the project boundaries. The Developer further agrees to coordinate with the Summit County weed department, prior to commencement of work, relative to inspections and importations of weed free project materials.

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 Newport 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 or the recording of the Plats, 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 from the date a building permit is obtained 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

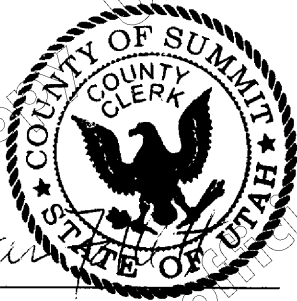
This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their successors, heirs and assigns of the property owners; provided that, purchasers of lots or parcels within the Property or any homeowner's 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.

[Intentionally left blank--signature page to follow]

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

APPROVED:

ATTEST:



Susan [Signature]

Summit County Clerk

SUMMIT COUNTY

By: *Robert [Signature]*

Chairman, Board of Summit County
Commissioners

APPROVED AS TO FORM:

[Signature]

Deputy County Attorney

ACCEPTED:

Cottonwood Newpark Two, 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 V-1 NEWPARK PARCEL V SUBDIVISION 2ND AMENDED

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

Exhibit B

"Planning Level" Drawings and General Contractor's Estimate



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

June 12, 2006

RE: Proposed Office @ Newpark Development – Plat V – Site Improvements

Dear Steve:

Per your request today, I have reviewed the site development costs for the proposed building at Plat V, also known as the Rossignol Mountain Center. This Plat has an area of approximately 72,500 sf. Based upon the final design, the site improvements for the Plat will be \$273,130. The attached spreadsheet document provides a breakdown of cost for the amount given above.

I hope that this is sufficient for your discussions with the County. Please call me with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Mark Mossing".

Mark Mossing
Senior Estimator

cc. Jim Allison, Big-D
Chris Grzybowski, Big-D

BK1804 PG1544

NEWPARK PLAT V
SITE DEVELOPMENT COSTS

June 12, 2006

DESCRIPTION	QTY	UNIT	UNIT\$	TOTAL COST
EARTHWORK				
CLEAR & GRUB	72,450	sf	\$0.15	\$10,868
SILT FENCE	355	lf	\$6.40	\$2,272
HAY BALES FOR SWPPP	50	ea	\$25.00	\$1,250
SUBTOTAL				\$14,390
ASPHALT PAVING				
3" ASPHALT WITH 8" ROAD BASE	53,467	sf	\$1.10	\$58,814
4" ASPHALT WITH 10" ROAD BASE	2,031	sf	\$1.25	\$2,539
SUBTOTAL				\$61,352
SITE CONCRETE				
CURB AND GUTTER	1498	lf	\$11.00	\$16,478
SIDEWALKS/PAVING	8700	sf	\$2.00	\$17,400
APPROACHES	1024	sf	\$3.75	\$3,840
STEPS	100	lf	\$12.00	\$1,200
SUBTOTAL				\$38,918
SITE UTILITIES				
DOMESTIC WATER LINE	45	lf	\$26.00	\$1,170
SANITARY SEWER	47	lf	\$36.00	\$1,692
GAS LINE	145	lf	\$8.50	\$1,233
FIRE LINE	133	lf	\$34.00	\$4,522
FIRE HYDRANTS	2	ea	\$1,500.00	\$3,000
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	10	ea	\$1,500.00	\$15,000
UTAH POWER CONDUIT	206	lf	\$24.00	\$4,944
PHONE CONDUIT	100	lf	\$17.00	\$1,700
SUBTOTAL				\$60,379
LANDSCAPING				
LANDSCAPING/IRRIGATION	24523	sf	\$4.00	\$98,092
SUBTOTAL				\$98,092
			GRAND TOTAL	\$273,130