PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
OCTOBER 12, 2006

Present: **Mayor Dana Williams; Council members, Marianne Cone; Candace Erickson; Roger Harlan; Jim Hier; and Joe Kernan**

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Patrick Putt, Planning Director; Brooks Robinson, Planner;

Bruce Erickson, Stantec consultant; Mandy Scully, David Smith, Esq. and Doug Clyde, agent, Talisker Corp; Jenny Smith and Cary Curtis, Esq., PCMC; Cheryl Fox, Summit Lands Conservancy (SLC)

1. **Council questions and comments.** Council members spoke about the success of local activities and special events over the weekend including the Fall Fest, the Hazmat Collection, Har Shalom ground-breaking, opening of Squatters, and Showdown on Main. Renewable energy was highlighted, including a tour of solar homes. Marianne Cone spoke about her husband's experience riding the bus last week where a bus driver returned lost property to a passenger, noting that our drivers are very helpful. Joe Kernan disclosed that he has recycling customers in the Rail-Central Project.

The Mayor advised that he received a letter from the Sierra Club, sent to mayors throughout the state, concerned about Rocky Mountain Power's five-year energy plan, including three new coal plants and no renewable energy initiative. He personally felt that this approach is inconsistent with the Blue Sky Program and with Council's permission, will express his opinion to Rocky Mountain Power. Mayor Williams explained the option of using sonar equipment to test wind which is more efficient than an anemometer because it is able to measure at any altitude. He received a call commending Nick Kingery's professionalism in handling an incident at PCMR.

Mark Harrington clarified that a number of parties have coordinated with the Legal Department in appropriately handling disclosures for the General Plan discussion, specifically Bruce Erickson's position as consultant from the firm Stantec and his wife, Candace, as a City Council member. He explained that there was an open bidding process where Stantec was the only bidder and selected. Also, Planning Commissioner Charlie Wintzer and his wife Mary are property owners in the Bonanza area and contacted his office about participation in the process. Mr. Harrington emphasized that this is a legislative matter and General Plan amendments are broad policy statements. Additionally, the Ethics Code also allows participation by officials, like any other citizen, in discussions once appropriate disclosures are made. Candace Erickson disclosed her husband's involvement as a consultant.

2. **General Plan amendments – Park/Bonanza Project Area.** Patrick Putt stated that the General Plan is examined every year for modifications and updates. Last year,

the Quinns Junction Area and the Park/Bonanza District were identified and the latter was the focus of staff. Over the last year, staff has not received applications for CUPs or MPDs in the neighborhood but will in the future. He emphasized that staff is now in the position of being proactive by being able to provide clear direction for the neighborhood in the future. Change is inevitable but growth is not; change is good but growth with traffic implications is not good. The area is bounded by Kearns Boulevard, Park Avenue, Deer Valley Drive, and Bonanza Drive. Since March 2006 a number of public meetings and joint sessions with Council and the Planning Commission have been held and this work session is held for discussion purposes. Some policy questions include managing traffic and transportation, pedestrian enhancements and connections, sprawl at Quinns and Kimball Junctions, and mixed land uses. He pointed out the *bullet list* included in the meeting packets which staff would like discussed by Council members and next week a public hearing will be held. Planning Commission members indicated an interest for Council to remand the General Plan back as the annual review will occur the second week in November. The Mayor felt it appropriate to forward final draft language on the element to the Planning Commission.

Consultant Bruce Erickson explained that there are six major issues which Council will be asked to prioritize. He explained that there is no right or wrong decisions outlined in the General Plan because of its nature. There are better and worse solutions, i.e., allow Park/Bonanza District to remain as it is. There are issue statements and Mr. Erickson discussed the undeveloped commercial and housing opportunities at Kimball and Quinns Junctions. Those two areas have the potential of degrading the quality of life in town and Park City's tourism economy, which is the *problem on the table* for these areas. The Planning Commission expressed that to a large degree, the Park Bonanza Area's issue is not land use planning, but traffic and transportation. He proceeded with a slide presentation beginning on transportation in the study area. One key policy recommendation is not to expand Bonanza to four lanes. The Planning Commission contemplated the timing of conducting a comprehensive transportation plan and felt it should be done sooner than later. The General Plan would be the program under which the transportation study is measured. The second issue was height in the District. He stated that the goal was providing planning flexibility to encourage public benefits in exchange for height and the initial proposal identified 50 feet which raised comments and concerns, including protecting mountain views. Differing opinions point out that reducing or limiting height reduces the potential for redevelopment, prompts sprawl and encourages tenancy at Kimball Junction. The Planning Commission, by split decision, ended up recommending 45 feet. The planning team concurs with the Commissions' recommendation and he asked at what level the Council envisions providing incentives for redevelopment efforts. Another consideration is using height to achieve additional frontage protection along Bonanza Avenue.

There was significant dialog on the mix of tenants and the Planning Commission initially preferred 60% national and 40% local retail and this are shouldn't compete with Main Street. After significant public comment, it was agreed to discourage national retail in the area and to some degree it's almost impossible to determine what national retail is or to control future tenants. There is a recommendation for a maximum of 10,000 square feet per tenant which is similar to the size of Jan's and Cole Sports. A corollary issue would be if a retailer like Rite-Aid at 35,000 square feet desires to redevelop the building, would the tenants be limited to 10,000 square feet. The public is very concerned about the District's relationship to Main Street. He addressed circulation and walk-ability and one conclusion from the Planning Commission was that Iron Horse is an excellent walking experience and should be emulated throughout the District. Mr. Erickson asked again that Council prioritize the issues.

In response to a question from Marianne Cone, Patrick Putt explained that there is a 30 foot frontage protection zone applied to two borders of the District prohibiting any sort of building and from the 30 feet to 100 feet area, a conditional use permit is required for construction. Within the 100 foot perimeter, staff is recommending not allowing consideration of additional height. Roger Harlan expressed concerns about maintaining services and shopping within the City and losing tenants because of regulations. Bruce Erickson responded that tenants will be drawn to an attractive project with parking, etc. Another approach is providing a range of housing opportunities in the District, but not specifically affordable housing. He felt that Bonanza will provide an option for smaller businesses that can't afford Main Street rents. Creating a location that draws people is attainable by providing open space, height controls and combined parking. It is also a place for people to live. Mr. Putt acknowledged *big-box* commercial at Kimball Junction and felt that this study area would present an opportunity for incubator retail. If these shops are attractive to locals, they will also appeal to visitors. Bruce Erickson relayed that the current mix of businesses in the District should be encouraged. In response to a question from Jim Hier, the Planning Director stated that Holiday Village Apartments are included in the area.

Using Rite-Aid as an example, Joe Kernan feared that the 10,000 square foot limitation associated with redevelopment would discourage remodels of old commercial stock. Jim Hier indicated that there is nothing in the General Plan prohibiting rehabilitating exteriors. However, if the plan is to tear the existing structure down and build something new, criteria in this element would apply. Candace Erickson explained that Rite-Aid could change its façade at any time and continue to operate as a drug store. Tom Bakaly brought up a policy point and asked if Rite-Aid tore down the building, would 20,000 square feet be grandfathered or would the new building be subject to the 10,000 square foot limitation. Mark Harrington understood Mr. Kernan's comments to be taking the General Plan further by discouraging remodels for spaces larger than 10,000 square feet so that redevelopment results in smaller structures. Jim Hier felt that owners should be allowed to redevelop to the same size but not to create a larger development. Bruce Erickson pointed out that there is an exception for grocery stores, theaters, etc. The Mayor expressed his reluctance to allow the same square footage with redevelopment if the use has changed. With regard to Mr. Kernan's comments, Mark Harrington interjected that the City is governed by state law and City codes regarding rights for non-conforming uses and structures, which would allow remodels in the event of a catastrophe. The City probably could not further limit those rights without pursuing significant changes to our code and perhaps state legislation. He emphasized that redevelopment triggers new development. Jim Hier distinguished that the 10,000 square feet applies to tenant size not building size. Candace Erickson pointed out that 10,000 square feet is actually too small for Jan's and/or Cole Sports, which are considered small businesses. Limiting size is an important consideration and 10,000 square feet is not that large. Joe Kernan felt there should be incentives to encourage good redevelopment and specifically mentioned the benefit of open space and plazas. Patrick Putt stated that the intent was not to over-regulate, but there was a recognition that successful redevelopment will most likely have a mix of tenant and building sizes. The proposal does not limit opportunities for larger anchor tenants in a redevelopment area because there is associated viability with that business. There is a MPD process available to evaluate applications to meet criteria of the General Plan. Mr. Kernan felt that it is more advantageous to provide some flexibility for better results.

Mayor Williams felt it would be beneficial to revisit each talking point to provide adequate direction. He added that a traffic analysis is needed for the study area and Jim Hier stated he would like to explore eliminating truck traffic on Bonanza Drive. Members agreed and Mr. Harlan indicated his support in keeping Bonanza two lanes. There was discussion about Council already committing funds to a traffic study. The Mayor agreed with the 45 foot limit and added that in his opinion private decks for restaurants don't constitute open space. There was discussion about 45 feet translating into a four story building and ground floor configurations with mezzanines. Bruce Erickson noted the language in the draft discouraging offices on the street level. Marianne Cone felt that additional height should not be considered for providing affordable housing; consideration should be given to tangible and visible elements. Candace Erickson pointed out that height is not an issue for her because of the existing MPD process and was curious why the Park/Bonanza Area is singled-out in the General Plan. If someone is willing to offer green open space, she may be inclined to favorably consider a 50 foot building, especially if it is stepped back and compatible. Bruce Erickson emphasized that the General Plan presents guidelines and not code requirements. Candace Erickson stated that she is not sure if 45 feet has to be included in the General Plan. Marianne Cone asked if there is support to include her suggestion about defining affordable housing requirements, but discussion ensued on height.

The Mayor pointed out that he is open to considering additional height if meaningful open space is provided around the project. Candace Erickson agreed as long as the setbacks are met and snow storage is provided so sidewalks are clear. In response to a question from Joe Kernan about defining a height limitation, Mr. Erickson explained that there are technical arguments supporting 50 feet but the Planning Commission dropped it to 45 feet, which is consistent with the highest zoning height allowed in town. The Mayor again referred to patios for outdoor dining which is an economic improvement for the business. Mr. Erickson explained credits for open space. Outdoor decks are included in the calculation of the percentage of open space in a project and *public open space* is the type considered for height exceptions. The open space base line for redevelopment is 30%. Tom Bakaly interjected that a public hearing on the General Plan will be held next week. Jim Hier stated that he is comfortable with remanding the draft to the Planning Commission to determine an appropriate height limit and to also examine the 10,000 square foot limitation. He suggested creating a matrix to illustrate the percentage of types of businesses within a range so that leaseable space and tenant mix can be somewhat controlled by the City. With regard to the request for Council to decide on the location of bus stops, Council member Hier added that this would be difficult to identify for the area at this time. He further clarified that he felt the wording should be broader, indicating that they will be placed appropriately taking into consideration the walk-ability study.

Candace Erickson indicated that she favors the matrix idea, referred to the 60/40 tenant mix, and asked if it is calculated by square footage, building, etc. She felt that 60% local should be the minimum. The Mayor stated that he has liked what Centura has done so far. With regard to green building credit, he felt the LEEDS program is too expensive to be practically applied when there are other avenues to more economically accomplish green building.

<u>Amendment to Talisker/United Park City Mines Company (UPCM) /Park City Mountain Resort (PMMR) Annexation and Amended Empire Pass/Flagstaff Development Agreement</u> – Planner Brooks Robinson stated that the Planning Commission forwarded a positive recommendation on September 27, 2006 approved by a 5:2 vote. In July 2005, Talisker proposed that the Montage Hotel be located at the Pod B-2 site within Empire Pass. The Montage is a world-class hotel but would exceed the allowable unit equivalents available through the development of Empire Pass. The proposal is to place a conservation easement on PCMR's ski lease areas, owned by UPCM but except out some development areas at White Pine, The Canyons, The Colony Phase 5, and the Silver King Mine site on King Road. This proposal was not particularly acceptable to the City because of additional density at the Silver King mine site.

The applicant returned with a proposed annexation of the entire area, including the conservation easement and removing the development at Silver King. The City Council accepted the annexation petition and the task force met earlier this year and forwarded recommendations to the Planning Commission after a joint work session was held with the Council and the Commission. The task force recommendations are included in the packet. Mr. Robinson noted that there was a significant amount of deliberation by the Commission, staff and the public on this proposal which differs somewhat from the recommendations of the task force. Principally, the difference is providing protection of open space by deed restriction rather than a conservation easement because of the lease with PCMR which is effective for another 45 years. He pointed out the benefits of having PCMR properties annexed within the City; currently only the base is located within the City's boundaries. The deed restriction before Council prohibits any residential or commercial development in the annexed area which was the intent of the conservation easement. Mr. Robinson addressed the benefit of having a park and ride facility. The land will be dedicated to the City and built by another party. There is additional affordable housing provided as well as economic benefits associated with the Montage Hotel.

Mr. Robinson requested that Council provide direction on the conservation easement versus a deed restriction. Mr. Robinson explained that a conservation easement conserves land values and allows specified uses while deed restrictions allow everything, with prohibitions, and in this case, it is residential and lodging uses. PCMR's biggest issue is not having third-party oversight of its mountain operations. The deed restriction would be between the City and the annexed property would be subject to City regulations. The deed restriction could only be overturned with a super majority of the Council and put to a vote of the people. He discussed the scope of development at Pinecone Ridge. The deed restriction allows the implementation of the mountain upgrade currently approved by the City, but the development agreement may have to be amended in consideration of Talisker's proposal. The LMC requires certain on-mountain improvements to go through a CUP process. As a compromise, it was decided that projects within the mountain upgrade plan can be approved administratively, except for projects over 5,000 square feet, including additions to existing restaurants, new restaurants or lodges, or the King Road maintenance shop. A forest management will be prepared by PCMR and reviewed by the City before any glading is approved.

Mr. Robinson pointed out the information distributed to Council provided by Summit Lands Conservancy (SLC) outlining distinctions between a conservation easement and deed restrictions. Talisker agreed to commit $10,000 toward a feasibility study addressing a gondola and the Commission acknowledged that both resorts would benefit. The Planning Commission specified that the dedication of 30 acres at Richardsons Flats for the construction of a 750 space parking lot and the access road could be phased and the developer would still maintain all environmental liability. The City would construct recreation facilities as deemed appropriate in the future and

Richardsons Flats would be deed restricted to open space, recreation and the park and ride. The City has agreed to maintain the park and ride lot once constructed and accepted. The lot is intended for use by Montage employees and for special events and there is an offer of an additional 20 affordable housing unit equivalents. Members of Council decided to focus on the use of a deed restriction versus conservation easement. Candace Erickson understood prior direction to be that Talisker and PCMR arrive at a mutual workable agreement. Jim Hier believed direction to be more specifically characterized as agreeing on a conservation easement. The City Manager explained that this session is for discussion purposes; a public hearing will be held next week.

David Smith, attorney for Talisker, emphasized that a conservation easement was the original objective which wasn't achievable but they have made great progress with regard to consensus of utilizing a deed restriction. The content of a conservation easement and a deed restriction emanate from the same federal regulation and the associated protections emanate from the same state statute. In Utah, protections achieved are fundamentally the same. Cary Curtis, attorney for PCMC, agreed and relayed that the state statute literally codifies restrictive covenants and creates equivalency between a conservation easement and a deed restriction. From PCMC's perspective, Mr. Curtis continued that they are willing to cooperate as long as the 90 year lease is not compromised. Placing a third party with approval rights for mountain operations is not acceptable. PCMR is already subject to the City's regulations and is comfortable with that, which is not the case with Summit Lands Conservancy's role. There is no economic incentive to amend the lease.

Jenny Smith, PCMR, stated that there are three issues of concern; the insertion of a third party into the lease, increased costs, and process issues. The deed restriction suits their needs because there is no third party involved. This is acceptable but increased costs need to be addressed. Mayor Williams believed that SLC's purview is not really geared toward mountain operations and expressed his disappointment about not proceeding with a conservation easement. Ms. Smith emphasized that the bottom line is the third-party intervention and the Mayor suggested that the City be the third party. Ms. Smith explained that if PCMC becomes a part to the conservation easement it results in amending the lease and the resort is subject to City regulation already. Mr. Curtis added that it's possible but the lease was executed in 1966 and allows *anything* on the mountain, excluding residential improvements. Guidance from the City on zoning matters is acceptable but not a third party conservation group interpreting the lease or mountain operations.

Candace Erickson explained that as a member of the task force, discussions focused on a conservation easement because that was the only mechanism offered at that point. Her main concern was removing residential uses on the mountain and she doesn't care how that is accomplished. Debating a conservation easement is a matter of semantics. The Mayor acknowledged that the language in the deed restriction is as binding as a conservation easement and achieves the same objectives. Jim Hier requested that Council members be provided a draft of the deed restriction.

Cheryl Fox, SLC, stated that they objected to the conservation easement drafted in May but the lease was not included as an attachment. The conservation easement was unclear with regard to permitted construction and SLC felt it was too broad because they didn't have all of the information. This week, she met with PCMR, and received the information and she feels that the conservation easement can be tailored so it is more specific. They have no desire to be in the business of running a ski resort, and would not need to be contacted with regard to 99% of requested improvements. Marianne Cone referred to the staff report assigning *public benefit* consideration by courts for conservation easements only and not deed restrictions. Cheryl Fox noted that conservation easements are designed to meet the shortfalls of deed restrictions. Brooks Robinson clarified for the benefit of Jim Hier, that the Planning Commission was aware of conflicts between SLC and PCMC, but didn't review a draft of the conservation easement.

In response to comments made by Marianne Cone, David Smith clarified that the terms of a deed restriction or conservation easement are specific in terms of defining their intent. State statue governs protections, enforceability, permanency, and viability and is the same for both, according equal stature under the legislation. Candace Erickson expressed her concern with regard to *public benefit* and doesn't understand how a conservation easement accomplishes public benefit. This is still private land without public access and there are no additional revenues coming to the City. Cheryl Fox explained that the open space is the public benefit traded for additional density at the Montage. Ms. Erickson pointed out the unusual application of a conservation easement in this instance where there typically is a monetary exchange. The key issues of requiring a conservation easement are not convincing, in her opinion. Mayor Williams expressed his disappointment with not having a conservation easement before Council. Cary Curtis explained that the concept they have worked toward with Talisker is not compromising PCMR's entitlements under the current lease. At time of the termination of the lease, all conservation values apply. The City is getting something; perpetuity of restrictions currently not in effect, after the termination of the lease.

Jim Hier suggested the possibility of looking at all of the property and regulating it under both a conservation easement and under a deed restriction. Mr. Curtis discussed defining pod areas on the mountain, suggested by City staff. The problem with that approach is not being able to plan for future possibilities, i.e., interconnect with The Canyons which is impossible to predict. Brooks Robinson pointed out that most of the mountain is ski terrain. There was discussion about using the CUP process for glading and Ms. Fox explained that the resort would not have to go through them because clearing trees is considered a basic operation. Mr. Hier felt the conservation easement could be more specific with regard to mountain operations. Jenny Smith expressed that they did consider that option, but the issue is still carving up PCMR's leased land. She understood after her meeting with Ms. Fox, that PCMR still has to receive permission from SLC regardless. Ms. Fox clarified that they just need to be notified by the land owner and SLC wouldn't infringe on reserved rights. Ms. Smith responded that the resort doesn't have to notify anyone currently. Carey Curtis expressed confusion about ensuring protection of recreation open space values when the property is protected by ROS zoning, and regulated by the City who provides for a public process. He questioned SLC's assignment of authority and Ms. Fox indicated that zoning can be changed. Mr. Curtis emphasized that this is not PCMR's application. Ms. Smith indicated her concern with PCMR living up to someone else's promises.

Mark Harrington believed that there was never a *meeting of the minds* about the definition of a conservation easement. He explained that a conservation easement can be less restrictive than a deed restriction. At the Planning Commission level, he discussed the different expectations of all parties involved, including Talisker, PCMR, SLC, PCMC and the public and the importance of getting parties closer to the same understanding. There was an effort to create pods which wasn't feasible and as a last resort, a deed restriction was drafted which may evolve during an MPD process. Jim Hier stated that he doesn't believe this is PCMR's problem and is not prepared to make a decision on a conservation easement.

Marianne Cone asked if there are differences in federal and state law, and Mr. Harrington explained that there is no standard difference because there is no legal definition of either. Both deed restrictions and conservation easements are contracts, outlining what the parties agree to, and differences depend on what objectives are being met, i.e., tax code conservation exemptions. In a court of law, conservation easements favor the definition of conservation over reserved uses while a deed restriction is the opposite. The prohibited uses are all that is not allowed and if it is not clear, then the right goes to the underlying property owner. On a federal level, conservation easements need to meet IRS regulations and can only be terminated by judicial decree while Utah Code allows a conservation easement to be terminated at any time by agreement of the parties.

In response to comments made by Roger Harlan, Doug Clyde explained that during task force discussions, it was clear that Talisker was offering to remove the residential density from the mountain resort. Conservation may have been the term used but the deed restriction delivers what was expected. Mayor Williams strongly disagreed and felt that to lessen the importance of providing a conservation easement is offensive. Candace Erickson disagreed with the Mayor's comments and pointed out that her goal was to remove residential development under whatever mechanism worked and she doesn't find not using a conservation easement *offensive*. Mandy Scully acknowledged that Talisker used the term *conservation easement* but understood that it would be unique because it has to meet PCMR's needs. The conservation easement was acceptable to the resort and a deed restriction seemed to be the best solution for all parties. The Mayor was not convinced that a conservation easement can not be achieved. There was discussion about the Council considering the information presented tonight before the public hearing next week.

Joe Kernan referred to the proposed gondola study and suggested that this may our last opportunity to consider a gondola without financial support from Talisker. He asked if a $15 million dollar gondola project would unfairly burden Talisker and how maintenance costs will be covered. He computed a potential project value of about 800 units and $1.5 billion and expressed that its increase in value is adequate to cover gondola construction cost increases from $10 million to $20 million or more. A gondola is a community benefit agreed to in 1999 in exchange for transferring units from less valuable and/or more expensive areas to develop in Iron Canyon and Richardson Flats. Now, Council is considering 80 more units from PCMR, which he estimated the value to be $144 million. He addressed maintenance responsibilities which could be shared by the City if it is adequately used by residents and visitors to make it worthwhile. He discussed potential impacts of a gondola on Old Town residents; there may be an opportunity to formulate other desired amenities closer to the value of a $15 million gondola.

The Mayor expressed concerns about the recommendation that administrative approvals can be made for buildings over 5,000 square feet and eliminating the public process, and the City Attorney explained that the Council can call-up any final action by the Planning Commission or the planning staff. Jim Hier asked about the process for the mountain upgrade plan and Brooks Robinson stated that once the property is annexed, the City would apply the current Code. Ski-related accessory buildings less than 600 square feet are currently processed administratively and anything greater than 600 square feet would require a CUP process. The City Attorney advised that an amendment to the mountain upgrade plan would result in an amendment to the 1998 MPD, accompanied with a pre-application meeting. Marianne Cone still expressed concerns about traffic impacts, including the effectiveness of a gondola and the hotel's shuttles. Doug Clyde explained the plan for rider-ship as it relates to the composition of the fleet and peak hours and level of service is referenced in the development agreement. Jim Hier requested a provision formalizing the timing for completion of the park and ride lot, whether it be bonding or associated with the Montage approval. The parking lot project should be conditioned and timing defined for subsequent development of future phases. Joe Kernan interjected that he would like to see more amenities afforded to Old Town because of the effects of density transfers and

Marianne Cone stated that she would like to see a different traffic plan, perhaps routing traffic on Royal Street, because of significant impacts on Marsac Avenue. There should be a finite traffic limit determined for Marsac Avenue and there was discussion on UDOT's involvement on state owned roadways. Jim Hier believed that truck traffic primarily exists during the construction stage and there is a plan for transporting guests and employees. Roger Harlan suggested procuring an additional trolley. Candace Erickson discussed the $1 million provided to the City for traffic mitigation efforts.

Jim Hier stated that he would like to see justification for increasing square footage for the restaurant from 7,000 to 10,000. The frequency of the trolley was discussed and Joe Kernan felt that an additional trolley would be an amenity to Old Town. A public hearing will be held next week.

Prepared by Janet M. Scott, City Recorder

City Council
Staff Report

Subject:	**GENERAL PLAN AMENDMENTS- PARK BONANZA PLANNING AREA-**
Date:	**October 12, 2006**
Type of Item:	**General Plan Amendments- work session**
Author:	**Kirsten Whetstone, Senior Planner**

Summary Recommendation. Staff recommends the City Council discuss the General Plan amendments proposed for the Park Bonanza Planning area and provide input to staff.

Topic

Applicant:	City Planning Department
Location:	Park Bonanza Planning Area
Zoning:	General Commercial (GC) and Light Industrial (LI)
Adjacent Land Uses:	cemetery, condominiums, City Park, retail and offices, Prospector Square retail and office uses, Olympic welcome plaza
Reasons for Review:	Amendments to the General Plan require Planning Commission review and City Council adoption

Background At the meeting on September 27, 2006, the Planning Commission conducted a public hearing and forwarded a positive recommendation to the City Council on proposed General Plan amendments for the Park Bonanza District. Kearns Blvd, Park Avenue, Deer Valley Drive, and Bonanza Drive bound the district. Zoning in the district is GC- General Commercial and LI- Light Industrial. The Planning Commission recommended several revisions and requested an opportunity to review the document one final time prior to Council's final action. At the work session, Staff will present both the original document as presented to the Planning Commission (Exhibit A) and a summary of Planning Commissions the requested revisions (see below).

On March 16th and March 30th, the Planning Commission and City Council met in joint work sessions. At the March 30th meeting, public input was provided from property and business owners within the planning area. The Planning Commission conducted public hearings on August 23rd and September 27th. Planning staff conducted open houses on July 14th and August 23rd to receive input and discuss the plan with the public and business owners. (See attached minutes- Exhibit B).

Walkable Communities Audit

On September 19th there was a Walkable Communities conference in Park City and one of the agenda items was a field trip and walkability audit of the Park Bonanza- NOMA Area. A summary of the results of the audit is attached as Exhibit C. Staff recommends that these ideas be studied and prioritized for inclusion in the General Plan as specific Action Items. Actions included programs, projects, and policies. As an example, program- walk-to-school or walk-to-the-bus programs; projects- additional bus shelters, bus pullout lanes, and more at grade striped cross-walks; and policies- allocate more transportation funds to pedestrian amenities in the area, provide more mixed use development with residential above retail and office, and provide incentives for employee housing in the area. The Planning Commission is scheduled to commence its annual review of the General Plan on November 15th and will be considering some of these items.

Discussion points

Staff has included a copy of the current proposed General Plan document (Exhibit A) revised from the initial recommendation. Areas of the document that differ from the initial recommendation are identified in parentheses below.

1. Transportation issues **(Transportation amendments have not changed significantly.)**
    - Traffic- not to result in an increase in traffic on Bonanza Drive, such that the street requires widening. Traffic is the primary limiting factor to redeveloping this area.
    - Reduce curb-cuts/friction and allow through traffic to flow more efficiently.
    - Transportation corridor study- important to have a better idea what the development and redevelopment potential is in this District prior to study.
    - Parking- allow shared parking within the District- best management options.
    - Need for many pedestrian amenities, crossings, bus shelters, wider sidewalks, connections to trails and neighborhoods, connections within the District, etc.
    - Redevelopment as change is ok, redevelopment as increased intensity/growth is not supported by these amendments, primarily due to traffic concerns.

2. Land Uses
    - National and Local retailers- 60/40 ratio of local to national tenants. Don't specifically encourage national retailers. **(Initial recommendation was to encourage specific types of National retailers, and to set a 60/40 ratio of local to national tenants.)**
    - 10,000 sf maximum tenant size with exceptions for grocery store, theaters, etc. **(Initial recommendation was 20,000 sf.)**
    - Encourage a mix of tenant sizes (1,000 sf to 10,000 sf) with many smaller tenant spaces and fewer larger tenant spaces in each project or MPD. **(Didn't address a mix of sizes.)**
    - Mixed use, discourage office on main floor of multi-story buildings, encourage residential on second and third floors, retail on first story.
    - Encourage public open space and plaza areas, allow as "open space" in MPD calculations.
    - Opportunities to provide employee housing are limited, redevelopment could provide additional opportunities.

3. Building Height
   - 45' maximum height for projects reviewed as a Master Planned Development with no increase in density. Is this adequate flexibility to attain amenities and public benefits, ie employee housing in a mixed use area, larger public plazas and open space areas, exceptional architecture, pedestrian enhancements, etc.? **(Initial recommendation was to encourage a variation in building height with a cap at 50 feet.)**
   - Zone height will remain at 35' with allowances for an additional 5' for pitched roofs. The 45' maximum, for Master Planned Developments only, is a cap on height that does not currently exist. **(Initial recommendation was 50')**

4. Entry corridor and view corridor protection **(initial recommendation did not include these specifics)**
   - Entry corridor protection- no height exceptions permitted within 100' of perimeter Highway right-of-way
   - Added view corridor protection along Bonanza and Homestake – No height exceptions permitted within 30' of property boundary.

5. A summary of the General Plan amendments that could result in Land Management Code amendments is presented in Exhibit D.

Planning Commission Recommendation

On September 27th the Planning Commission voted to forward a positive recommendation to the City Council (see minutes). The Commission requested the following revisions to the document:

1. Revise land use section to discourage rather encourage national retail.
2. Eliminate the 60/40 ratio of national to local retail and encourage smaller spaces on order of 500 to 1,000 sf.
3. Clarify what the 10,000 sf maximum tenant size means and how it can be accomplished and what mechanism will limit the total number of such tenants.
4. Include a definition of the "perimeter of the project" with respect to the maximum height for view corridor protection, including along Bonanza Drive and Homestake.
5. Make a recommendation for a transportation study to include this District.
6. Add language where bus stops shall be located and include recommendations from the walkable audit regarding pedestrian amenities and improvements.
7. Revise the definition of open space to allow certain plazas and hard-scape areas to qualify for open space, only if the space is a public space, ie. not for private outdoor dining areas or private plaza areas.

Department Review

Several internal stakeholder meetings with representatives from Planning, Building, Engineering, Transportation, Public Works, Public Affairs, and Economic Development, have occurred over the last six months to discuss the proposed General Plan amendments. Input from these City departments has been incorporated in the document.

Public Input
The Planning Commission and City Council conducted two joint meetings early in the planning process. Planning Staff conducted two public open houses to discuss the amendments, gather public input, and answer questions from the business and property owners and the general public. Public input on the proposed amendments has been received input regarding the following:
1) purpose of the general plan and specific reasoning for these amendments,
2) building heights,
3) national versus local retailers,
4) proposed maximum size of tenant spaces and buildings,
5) traffic concerns,
6) pedestrian circulation and access issues- not only within the district, but to the district from surrounding neighborhoods and businesses,
7) consolidated and shared parking in the district,
8) desire for more open space and public gathering areas and plazas in the district,
9) suggestions on land uses and heights that would allow higher quality buildings to be constructed,
10) concerns about intensifying commercial activity in the area, and
11) view corridor protection.

Alternatives
No action is requested.

Recommendation
Staff recommends Council discussion on the proposed General Plan amendments and requests input and direction on the above outlined discussion points. Staff will incorporate revisions that Council agrees upon and will bring this item back for additional discussion, scheduled public hearing, and possible action on October 19th. City Council may, at the request of the Planning Commission, make recommendations to staff to revise the document and remand it to the Planning Commission for final review prior to taking final action.

Exhibits
Exhibit A- proposed Park Bonanza District General Plan amendments
Exhibit B- meeting minutes
Exhibit C- summary of walkable community audit
Exhibit D- summary of general plan amendments and recommended LMC changes

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Background

The Park City General Plan is a policy document that forms the basis of the zoning and development regulations within the Park City limits and provides land use planning direction for those areas within the Park City Annexation Declaration area. The current General Plan has been under on-going updates on most of the elements of the plan since the 1997 General Plan was adopted.

The area encompassed by the designation of the Park Bonanza district has been cursorily considered in the General Plan within descriptions of other planning areas and in the separate Transportation element of the General Plan. Very little specific direction exists for the Park Bonanza District Planning Area.

The purpose of this document, Park Bonanza District General Plan amendment, is to provide more detailed policy direction for the protection and development of properties within the district consistent with the overall General Plan, Land Management Codes, and policies and direction of the Park City Council. In the case of the Park Bonanza District Planning Area, The General Plan would be amended to include specifically identify the district as outlined below and to include the district in all the appropriate General Plan Elements. Until the overall General Plan is edited or revised, this document will append to the General Plan.

EXHIBIT A

General District Description

The Park Bonanza District is the oldest commercial district outside of the historic Main Street area. As a planning area, the boundaries of the district are Bonanza Drive to the East, Park Avenue to the west and Kearns Boulevard to the north and Deer Valley Drive to the south. The district includes those properties along both sides of Bonanza from Iron Horse Drive to Kearns.

The area is currently a broad mix of land uses from resort commissary and parking, to shops and restaurants, banking, public works buildings and the former lumber yard. Other uses include storage area, small art and consignment shops, banks and real estate offices. The one, in town, movie theater is within the area as well as one of the two main grocery stores. The area is currently zoned General Commercial (GC) and Light Industrial (LI).

The area includes housing along Kearns Boulevard and within the Rail Central project. Portions of the area are referred to the North of Main Area (NoMa) by a large percentage of the business and property owners in the area. NoMa functions as a joint marketing vehicle and forum for NoMa members to discuss business development.

District Issues

Because the Park Bonanza District includes such a broad array of uses and provides services to the community at large, the District is an important part of the commercial life of Park City. The District is under pressure from competing commercial projects outside of the city, exemplified by the closure of the lumber yard last year. Movie theaters and restaurants in themed mall atmospheres have developed near the junction of the interstate and the state highways that form the entry corridor to Park City.

Local restaurants and shopping continues to be an active part of the district, despite commercial competition from the junction areas. The cost of rental space in the district is less than the Main Street area, and parking is generally available.

The District is central to the daily flow of traffic to the resort areas and to the Main Street area. Four of the City's six stop lights are located on the District Boundaries. Many intersections and driveways affect the flow of traffic in the District and to the resort areas and Main Street.

Several of the buildings and developments have undergone redevelopment in the past 5 years, including the Rail Central Project, the theater complex, and the Centura Emporium project. These projects represent significant efforts by the private sector to provide community level services in this area.

District Objectives

The overall objective for the Park Bonanza District is shown below:

The District will primarily continue to serve the needs of the residents and visitors to Park City, consistent with changing consumer demands for services, restaurants, shopping and housing. Local businesses will be strongly encouraged, with national brands providing visibility and stability in the product mix. The District is intended to act synergistically with Main Street, by providing a different lifestyle and commercial environment. Differences will be evident in architecture, urban design, and mix of commercial and residential uses in the District. The more detailed objectives for the area are found in the individual Plan Elements that follow.

Development or re-development is not required by this General Plan amendment in this District. The intent of the plan is to establish the framework that accomplished the overall objectives of the City and guides land use decisions that affect private property proposals.

Because of the nature of the district as a combination of land uses, changes to the district are nearly inevitable. Changes can either occur by individual parcel, collections of properties or from outside forces, such as increased development elsewhere requiring roads to be widened in the district. The intent of the planning for the district is to identity those elements that should be incorporated in development plans to guide change in a positive direction. For Park Bonanza District a positive direction is defined as increased pedestrianization and urban open spaces, maintenance of the attractiveness of local and small business and restaurants, protection of existing housing areas, improved opportunities for a range of new housing, and coordinated direction for re-development proposals.

Facilitation of the overall success for the District is achieved by coordination of land use and transportation plans, definition and incorporation of uses that contribute to the overall success of the District. Facilitation includes consideration for modification of the current City zoning regulations, consistent with the intent of this section and the overall Park City General Plan. Facilitation also includes identifying the opportunities to contribute to the overall quality of life for all of Park City. Housing, shops and services that can be served by the existing transit system, parking areas that can serve the demands of the district plus provide supplemental parking for the resorts and Main Street are examples of the current range of opportunities presented within the district. Facilitation includes the possible identification of projects where City resources can be contributed to assist with overall benefits to the Park City community.

Amendments and Revisions to General Plan Elements

The Park City General Plan is comprised of elements related to the management of land uses, future development and growth management. The Park Bonanza District

Planning Area amendment to the General Plan is intended to be appended to the overall General Plan and modify the General Plan as outlined in the following section.

> *Note: The following section of this report is formatted in bullet format to introduce the planning concepts for each of the General Plan elements relating to the Park Bonanza Planning Area. Each of the items in this section of the report will be expanded to incorporate public comment, and Planning Commission and City Council direction, researched as necessary and finally edited for adoption and amendment of the General Plan.*

General Plan Element I. Introduction

No changes required

General Plan Element II. Park City Direction

No changes required. The planning direction for the Park Bonanza District is consistent with the stated goals.

General Plan Element III. Community Character

Amend the Community Character Element as follows:

- Include the Park Bonanza District within the Developing Area Policies section of this Element. The current planning direction for the District is consistent with the current Developing Area Policies.

General Plan Element IV. Open Space

Open space in this area is established through the provisions in the Land Management Code for the General Commercial (GC) and Light Industrial (LI) zones. Under basic zoning, the open space on a parcel is determined by the setbacks from the property line. Properties along Park Avenue, Kearns Boulevard and Deer Valley Drive are subject to the provisions of the Frontage Protection Zone, which requires additional Front Yard setbacks and a Conditional Use Permit approval for development within 100 feet of the Right of Way along these streets. Bonanza Drive is not currently subject to the Frontage Protection Zone requirements. In addition to the aesthetic importance of Open Space in this area, Open Space along roads provides a critical function for snow storage for snow storage and for adequate room for sidewalks, bus zones and walkways.

Additional Open Space is required for larger project that are approved under the Master Development Plan (MPD) section of the Land Management Code.

To meet the objectives for the Park Bonanza District, the **Open Space Element** would be amended as follows:

- Open Space requirements would remain as in the current code to maintain equity between all GC and LI zoned properties whether in the District or in other Planning Areas. A further definition of Open Space (conceptually identified as "Urban Open Space") would be created to allow "hardscapes" plazas, walkways, seating areas, fountain areas, etc, to be included in the Open Space calculations.

- The Frontage Protection requirements of a 30-foot setback from Park Avenue, Kearns Boulevard and Deer Valley Drive would be maintained. A Frontage Protection setback is proposed along Bonanza Drive to allow for improved sidewalks and snow storage areas.

- The separate Conditional Use process for development within 100 feet of the Right of Way along these roads would be modified such that a separate Conditional Use Permit would not be required for projects proposed as an MPD and the Open Space requirements are met. Parking that was completely below grade, except for Open Space plaza spaces on the exposed level, could be considered between the 100 foot and 30 foot setback area in an MPD and without entrances and exits on Park Avenue, Kearns or Deer Valley Drive.

- Within an MPD, setbacks between buildings can be reduced to the minimum Fire Code requirements and Open Space combined in the most appropriate area. Snow storage must be considered in determining the appropriate amount and location of Open Space.

- A suitable open space requirement for redevelopment of housing would need to be determined.

General Plan Element V. Land Use

The current array of land uses within the GC and LI districts continue to be appropriate uses within the Park Bonanza District. In order to facilitate the desired mix of housing, shops, restaurants and commercial uses, modifications to the Land Management Code would be necessary.

The amount of parking in the district, as required under the existing Land Management Code, appears to be appropriate – that is, there are only a few situations where too much parking (Payless Drugs and Park City Plaza) is found, and some areas where parking and circulation is less than adequate (Iron Horse Drive, Rail Central).

The mix of commercial uses, tenants, retailers and restaurants is critical to meeting the goals and objectives for the district. The mix of uses may change over the course of a project and over the course of time as development proceeds. For this reason, the mix of potential uses and tenants within a proposed project is to be reviewed on a project by project basis by the Planning Commission. The criteria for review is established by the goals and objective of this planning area, combined with the overall General Plan, and policies and goals of the City Council. As currently envisioned, retail project mixes would start at an approximately 60% local and 40% larger retailers. Some project may shift over time to overweight national retail operations but the district mix as a whole should remain at approximately the 60%local ratio.

Accurate definitions of "local", "national" and other characterization of retail and restaurants are very complex. The Planning Commission should make determinations under the General plan based upon the uniqueness of a retail operation, the number of retail outlets of a company or franchise and the presence of the retail outlet in traditional shopping center settings. The objective is to create an atmosphere different from traditional shopping centers, with a mix of local and other shops attractive to residents and visitors to Park City.

Commercial buildings would be limited to a maximum of 10,000 square feet per tenant to allow for some national retail uses. These larger retailers can provide economic support for the district through name recognition, marketing strength and merchandising efforts. Local retailers, shops, galleries and restaurants can benefit from the draw of the larger merchant, while the local shops provide the needed local identity to the district. Grocery stores and theatres would be allowed to exceed the 10,000 foot per tenant subject to the other provisions of the General Plan. Single tenant office uses, could be considered by the Planning Commission to exceed the 10,000 square foot restriction.

The mix of local versus regional / national commerce (retail, restaurant, commercial, etc) would vary according to the particular type of use. For example, national scale retail that directly competed with existing local business would be discouraged. Brand shops, particularly those that appeal to an active outdoor lifestyle would be allowed and encouraged if they provided community scale benefits such as exceptional architecture, imbedded employee housing etc. Outdoor lifestyle brand stores (The North Face, Patagonia, etc) should not be encouraged if they compete directly with local retailers that carry the line. National and regional restaurant brands are allowed and encouraged under the same community benefit terms as national brand shops.

National brands that bring office, distribution and retail consistent with the active Park City lifestyle should also be encouraged to participate in the District, when bringing community benefits similar to brand shops and restaurants.

Existing and proposed housing areas should be protected from intrusions of commercial development, through increased commercial setbacks, significant landscaping and routing of traffic and deliveries away from these areas. Reviews of development and redevelopment proposals shall minimize shadow incursions into residential areas. Lighting should also not intrude into residential areas.

The design of proposed projects should carefully consider the location, geometry and access of loading and unloading areas. Loading and unloading of delivery vehicles should not restrict travel lane or pedestrian routes.

Some variation of building heights is allowed under the Master Development Plan (MPD) provisions of the Land Management Code. The land Management Code does not specify the heights of buildings that could be conceptually approved under an MPD. Buildings at or below height allowed by the General Commercial and Light Industrial zones (currently up to 35 feet with an additional 5 feet for pitched roofs) are most consistent with building heights throughout Park City, with the exception of Main Street and some resort areas adjacent to mountain sides. Small increases in height from the zone height (less than 5 feet) can be considered if the height increase is not applied over the entire building and other considerations of this plan and the Land Management Code are applied. Large increases in building height (over 5 feet) can be considered in compliance with General Plan, if the height increases result in additional open space areas, protection of sun exposures and minimization of shade on pubic open space and walkway areas. Additional height is generally more appropriate on the eastern, internal, areas of the planning district. Large height increases are not appropriate along the perimeter of the district, especially along the northern perimeter and adjacent to residential areas. Height increases must result in variations of height within a project and within the planning district. The maximum height in the planning area should not exceed 45 feet including architectural features and mechanical elements.

The potential for rezoning the existing residential areas from General Commercial to one of the Land Management Code Residential zones would provide additional control over the preservation of housing uses, but could limit potential re-development opportunities for the properties in the future. Property owners and Homeowner associations should take the lead regarding rezoning proposals. Acceptance of the rezone proposals would be weighed by the Planning Commission and City Council using the direction of the Park Bonanza District plan, the overall General Plan and City policies.

The **Land Use Element** would be amended as follows:

- Building heights could be allowed up to 45 feet on the interior areas of the Planning District to achieve the goals of coordinated, usable open space, additional sun exposure for streets and public areas, and mountain view protection. The increase in height should not continuous over the bulk of the building perimeter, nor should the height block sun on plazas and open spaces. The additional height would only be granted buildings that emphasize distinct build form and details that is in keeping with Park City design guidelines. Height increases are not appropriate adjacent to existing housing areas, nor lined along the perimeter streets.

- Setbacks could be modified as discussed in the Open Space Elements

- Parking would remain as specified in the Land Management Code for land uses. Some consideration for pass-by and multiple use parking would be allowed for projects that blend commercial uses to reduce individual trips.

- A mix of local and national shops and restaurants would be encouraged. Large tenants would be limited to 10,000 square feet. Larger spaces for service commercial – e.g. grocery stores and theaters, could be considered and approved by the Planning Commission. General and specialty retail, auto sales, clothing etc, would be limited to the 10,000 square feet restriction.

- A range of housing would be allowed within the district. Housing would be reviewed under the Housing element of the General Plan.

General Plan Element VI. Growth Management

The Growth Management Element describes the planned capacity of Park City for developments and provides planning direction for the potential annexation areas as well as neighborhoods within the City limits. The Park Bonanza District plays a key role in the long-term growth management strategy. First, redevelopment of the district will allow for current and future needs of Park City residents and tourists to be served within the current developed areas, moving some of the potential demand from undeveloped areas, such as Quinn's Junction. Second, by facilitating re-development the City can allow for some additional uses in the area without significant increases in traffic demands. Third, by encouraging a range of housing opportunities in the district, a reduction in demand for this use outside the City is possible. This focus of housing in the City limits reduces the need to extend City Services, such as transit, to outlying areas in order to minimize traffic demands.

It should be recognized that the district cannot be the target of all required employee housing projects that will come forward in the future. However, encouraging employee, affordable and attainable housing in this area allows for a population located patronizing the local shops of the area. Other housing types and prices are needed to encourage the young professional, local empty-nesters and artists to the area.

Such housing, shops, and development mixes are flexible experiments. Projects should be allowed to proceed if they can show compliance with all the district objectives and criteria.

Certain areas of the Planning areas are underutilized in terms of types of use and the size of the uses within each parcel. Examples include the former Anderson Lumber site, and the Munchkin parking and commissary site for Park City Mountain Resort. Other areas are overused from their original intent due to lack of parking, inadequate circulation and land uses that are no longer adequately sized for the use. Examples of this situation occur along Woodside Road and Munchkin Road.

It is the intend of this plan for the Park Bonanza District that redevelopment embrace change and a reorganization and distribution of land uses to meet the other goals of the plan. Maximizing the development potential of each parcel, without direct consideration on the effect on transportation, adjacent land uses and the overall intent to exchange the viability of the entire City is not the intent of this plan.

Growth of some land uses in this district can be very important in limiting sprawl of outlying areas by encouraging infill in the Park Bonanza District. Each proposal to develop in the district must be evaluated against all the elements in the Plan including this portion of the Growth Management Element.

The Growth Management Element should be modified as follows:

- Incorporation of existing and projected amounts of commercial and housing in the district to allow for calculation of potential impacts of re-development on this and other elements of the General Plan.
- Incorporation of the preceding description for the Growth Management element
- Recognition that development in the Quinn's Junction area has a direct and possibly negative effect on this district, especially for transportation and open space elements.

General Plan Element VII Transportation

The Park Bonanza District forms the hub of the major transportation corridors within Park City. It is the only Planning Area surrounded by existing transit routes on all sides. It is also on of the few areas with major frontage on the 2 main routes in and out of town – Highway U-224 (Park Avenue) and Highway U-248 (Kearns Boulevard). With this situation, a careful balance of change, growth and design are required to meet the transportation requirements for the future and reduce the current set of conflicts in the area.

Changes in the area land use will change traffic patterns and timing. Re-development and intensification of uses has the high potential to create additional traffic. It is the intent of this element of the plan to accommodate change and some growth but not at the expense of increased traffic.

Changes in land uses outside of the district will have more of an effect on this district than the changes inside the district. Traffic impacts from land use decisions at Quinn's Junction may force Bonanza Drive toward expansion to 4 lanes. Shifting land uses to Quinn's Junction, south or eastward will increase congestion on U248 in and out of town and could reduce the positive effect of redevelopment in the Park Bonanza district. For this reason, planning along Bonanza Drive should consider the undesirable effect of a forced widening of Bonanza due to eastward sprawl, but the acquisition of any potential right of way needs not promoted.

The location of the district, central to resort and Main Street transportation flows, creates a strong opportunity to locate a more inter-modal transportation center and parking area. With frontage on both U 248 and Bonanza Drive, direct transit access is possible to the resorts and Main Street. An intermodal facility accessed from Park Avenue or Deer Valley Drive is discouraged due to current traffic and turning movements. An intermodal facility in this district allows for shared parking uses, possible remote parking support for the resorts and Main Street. For this reason, City participation is encouraged to facilitate the facility planning, construction and operations. Careful coordination is necessary between street design, transit and intersections and signalization.

Every effort should be made to reduce intersections with the road surrounding the project area. Minor roads should be combined and directed to acceptable intersection locations. Individual drive and parking accesses should be discouraged and considered for elimination during re-development planning. The desired objective is to smooth the traffic flow along Bonanza and reducing the need for expansion of Bonanza due to developments within the Park Bonanza District.

Development within Park Bonanza should be planned so as not to cause Bonanza Drive to be widened. Traffic signals along Bonanza are strongly discouraged.

It is possible that that an additional signal may be warranted in the future between Park Avenue and Bonanza on Kearns Boulevard. This signal must be electronically coordinated and synchronized with the existing signal system. To the degree possible, north exiting traffic should be routed through this intersection.

Round-abouts have been considered over the past 10 years as a solution to intersection difficulties along Bonanza Drive. Redevelopment planning can allow for the round-abouts to be considered seriously. The round-abouts have the potential to reduce intersection conflicts and eliminate the need for additional signalization and driving /turn lanes. They will have the result of slowing circulation on Bonanza Drive. The use of round-abouts should not promote the widening of Bonanza except at the round-about. Adequate geometry is essential to accomplishing successful roundabouts in the planning area and will require close cooperation with adjacent property owners and the City.

School bus and transit routes along Kearns Boulevard and Bonanza Drive affect traffic flow due to the lack of turnouts and loading areas. Bus turnouts and protected loading areas should be coordinated with the school district and Park City Transit and incorporated into land plans along these roads.

Inadequate space for bicycles exists along Bonanza Drive. Adequate space should be provided or a separate bicycle route planned on internal connector streets in the District.

Pedestrian circulation and walkability within the District are key elements to accomplish the overall goals for the district. Sidewalks are required along the entire perimeter of the district. Sign plans, walking routes, snow removal and parking must take in to consideration and illustrate how pedestrian and bicycles are promoted and accommodated in designs.

Bonanza Drive presents a significant obstacle to the termination of the Rail Trail and the connection of the Rail Trail to the remainder of the Park City trail system. The City and adjacent property owners need to cooperate to resolve this conflict. Tunnels under Kearns should be considered if roadway and utility conflicts can be resolved.

The potential for aerial lift transportation between parking areas and the resorts has been presented as part of private party land use planning in the district. This type of transportation system can be considered for future implementation. Considerations of building clearances and alignment will require careful coordination between landowners and the City.

The **Transportation Element** should be modified as follows:

- Incorporation of the most recent traffic and intersection studies for the area.
- Change the Transportation Element to avoid a reduction from current daily and hourly Levels of Service (LOS). Do not allow intersection Levels of Service to reduce below current levels.
- Incorporation of the preceding description for the Transportation element.

General Plan Element VIII **Environmental**

Redevelopment of the District as planned has the potential to reduce land use sprawl, reduce the potential for remote junction commercial development and over-extension of transit services to remote locations.

- No changes required. The planning direction for the Park Bonanza District is consistent with the stated goals.

General Plan Element IX **Housing**

The redevelopment of the Park Bonanza District presents some positive opportunities to meet housing demand in an in-fill process and reduce (however slight) the demand to develop outlying properties.

This is especially true for meeting employee housing demands and the desire for resort-urban lifestyles for young professionals and empty-nesters.

Care must be taken to balance the housing types, prices and locations of these types of housing to avoid prejudicing an area with a certain type of housing.

Additional housing in the area should not be encourages to the extent that the other elements in the General Plan are negatively affected, particularly the Transportation Element.

The **Housing Element** of the General Plan would be modified as follows:

- Coordination with the Growth Management Element for the assessment of existing and projected amounts of housing in the district.
- Incorporation of the preceding description for the Housing element

EXHIBIT B

8. Park City General Plan Amendments regarding the Park Bonanza District

Bruce Erickson, a consultant with Stantec, stated that nothing in the text had changed since the last meeting. However, after hearing the discussion over the past few meetings, he and Planner Whetstone are rethinking the height issue and trying to accommodate some of the details Commissioner Wintzer suggested. Mr. Erickson remarked that the next step in the process is to take enough time to minimize the opportunity for unintended consequences.

Chair O'Hara recalled a previous discussion about finding a way in the General Plan language to set incentives for people who would eliminate curb cuts on Bonanza and realignment streets. Mr. Erickson stated that language regarding incentives has not been incorporated into the General Plan.

Commissioner Wintzer stated that he was still having a hard time determining exactly what the Planning Commission would be voting on since much of the verbiage would not be included in the General Plan. He asked if the Planning Commission would receive a final draft prior to taking action. Mr. Erickson replied that they would receive a final draft with all the detail and accuracy that the Planning Commission has requested. However, rather than rewriting everything into the General Plan they are asking that the document in their possession this evening be adopted as a single element to the General Plan as a stand alone document. Commissioner Wintzer asked if everything written in the document would eventually be incorporated in to the General Plan. Planner Whetstone replied that it would.

Chair O'Hara opened the public hearing.

Peter Barnes complimented Mr. Erickson and Planner Whetstone on doing a good job preparing this document. He commented on a number of loopholes and asked if the reference to LEED would be included in the General Plan. He worried that an applicant might think he can use any manufactured product as long as it says LEED on it.

Mr. Erickson stated that if there was a better tool for building sustainability they would use it and he was willing to take whatever recommendation Mr. Barnes had to offer.

Chair O'Hara continued the public hearing.

Commissioner Thomas stated that he is growing much more accustomed to the plan and he thanked Mr. Erickson for being patient with his comments and concerns. Commissioner Pettit thanked Mr. Erickson and Planner Whetstone for taking the time to help educate her on the background and the impetus for getting this off the ground.

She also thanked them for setting up the open house this afternoon where the public had another opportunity to make comments in a very informal forum. She hoped it would help people understand the vision and the framework.

Commissioner Wintzer asked if the 20,000 square foot building size had been reduced. Commissioner Erickson replied that they are talking about a sliding scale for something on the order of 1,000 or 1500 square feet being a minimum portion of the review. The chart was redone into a 10,000 foot threshold. They are trying to clarify the number of levels and floor area ratio. Mr. Erickson pointed out that the threshold in the County is 5,000 square feet in neighborhood commercial zoning. There is a ramp up from the 1,000 or 1500 to 5,000 to 10,000 and a fairly rigorous process at 10,000 square feet because of the external impacts.

Commissioner Wintzer noted that language in the document still refers to five stories rather than 50 feet. Commissioner Erickson stated that 50 feet will probably go away and 45 feet is a closer range. He remarked that they are trying to encourage a nice retail or restaurant on the first floor which would have a 15 or 16 foot high ceiling. If they want floors with housing space and office space that would take it up three floors, which is approximately 43 feet. Commissioner Erickson cited three examples of 50 foot tall buildings.

Commissioner Russack liked the proposal. Commissioner Thomas stated that they would still need an MPD approval for a structure that tall and having some flexibility in height would be in their best interest. Commissioner Russack asked about architectural guidelines for this area. Commissioner Thomas felt they should look at architecture that is consistent with the vernacular of this region and not rubber stamp architecture from other communities and retail establishments.

Commissioner Sletten agreed with a comment heard at the open house this afternoon that if they push the heights down too far they will end up with a crew cut look. He saw more articulation in the initial plan and cautioned them about going too short. Commissioner Wintzer remarked that this could be one reason to go to 50 feet rather than 45 feet, as long as the height does not increase density. Commissioner Wintzer commented on a reference about possibly changing the Land Management Code and asked what those changes would be. Mr. Erickson replied that there are three: 1) creating a definition for urban open space that would be paved public plaza areas and not private restaurant seats on plazas; 2) allow parking to be combined; 3) increase front yard setbacks along Bonanza Drive to accommodate a walk way. Commissioner Wintzer encouraged the City to get involved in a Bonanza traffic study as early as possible rather than waiting until people submit applications. Chair O'Hara went a step further and suggested a comprehensive traffic study for the City.

Commissioner Russack remarked that when he thinks about this area and how it has evolved in terms of its role today and the role they want it to play in the future, it is important to look at balancing the economic benefit with the community benefit. In talking about square footage and heights, it is important to look at the difference in economics. Commissioner Russack understood that it is early in the process and they are still trying to define the area, but he felt the need to bring up the issue because it may provide guidance for some of their decisions. Mr. Erickson felt this was a valid comment; however, it is difficult to model something like that because there are no fixed values and everything is a variable. Commissioner Wintzer pointed out that the trend of the day will dictate what happens and what works. Today's model might not work tomorrow. He felt it was important to determine an appropriate mix of local and non-local business and one way to do that is to reduce the size. Commissioner Russack stated that the decisions they make for that area should be made on what they want the area to become and not made out of fear. Mr. Erickson remarked that because they cannot predict the future, they are trying to craft a set of objectives so each project can be evaluated on its own merit.

Commissioner Russack asked about the power lines from the power station in the area. Mr. Erickson replied that the power lines are 75 feet high and they will remain. Commissioner Russack asked if the proposal boundaries include Fireside and Iron Horse. Commissioner Erickson replied that it includes the intersections but not the housing units. It was decided that redevelopment for Fireside and Iron Horse would result in the same type of land use and he would not expect commercial or retail in those developments. Director Putt further explained that in looking at the impacts and issues, it was not so much the nature of the residential use but more of concern regarding the intersection of Iron Horse Drive at Bonanza, as well as the pedestrian concerns associated with the cross walk and the need for the bus stop. Director Putt stated that by only including the intersection, they were able to address these primary concerns.

MOTION: Commissioner Sletten moved to CONTINUE this item to September 27. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

Minutes of the September 27, 2006 Planning Commission meeting

5. Park City General Plan Amendments regarding the Park Bonanza District
Planner Whetstone reviewed a request to amend the Park City General Plan with specific focus on the Park Bonanza District, which is bounded by Kearns to the north, Park Avenue to the west, Bonanza to the east, and Deer Valley Drive to the south. The Planning Commission and City Council have been working on these amendment for some time and both bodies met in joint meetings in March. Draft amendments were presented to the Planning Commission at June, July, and August meetings. Planner Whetstone reported that an open house was held on August 23, at which time discussions occurred between the people from within the District, as well as residents in various parts of Park City. The community provided good input and the Planning Commission provided additional comments.

Planner Whetstone stated that there was no consensus or closure on the height issue and since the last meeting she and Bruce Erickson, the consultant for the City, have revised the documents to limit the height to 45 feet with a master plan. Currently the zone allows a 35 foot height for buildings and an additional five feet for a pitched roof. The recommendation is for master planned developments with a 45-foot height cap. Currently, there is no height cap for Master Plans.

Planner Whetstone noted that the square footage for tenant sizes had been decreased to 10,000 square feet rather than the 20,000 square feet originally proposed. Language would be included to say that the size would generally be based on a percentage of the tenants. Planner Whetstone commented on language regarding the incentives for reducing curb cuts on Bonanza and Kearns Blvd., as well as general information about the green building or LEEDS.

Planner Whetstone had provided a packet of emails she received today. Based on the tone of the emails, she believed there was some sense in the community that the Planning Commission was reviewing an actual NOMA SPA or master planned development this evening. She clarified for the public that the matter this evening is only a review of the General Plan, although it is specific to the Park Bonanza District.

For the benefit of the public, Commissioner Barth asked Planner Whetstone to explain the process for future development if these amendments are approved. Planner Whetstone remarked that if these amendments are forwarded by the Planning Commission and adopted by the City Council, some of the recommendations would require Land Management Code changes. Once those changes are made, the applicant would need to follow that development code. A development greater than 10,000 square feet or a certain number of units would require a master planned development application. An MPD requires a pre-application process to determine whether the proposal is in compliance with the General Plan. Planner Whetstone pointed out that the pre-application process occurs before the applicant gets too far in developing an actual master plan. If the Planning Commission finds that the preliminary plan is consistent with the General Plan, they could submit an application for a master planned development which would come before the Planning Commission for discussion and public hearings. She noted that the Planning Commission would use the General Plan in reviewing anything specific about the master plan. Planner Whetstone remarked that the General Plan amendments provide the City's vision for that area and they provide a tool for the Planning Commission to use in reviewing a proposed development.

Planner Whetstone stated that the Staff report was written for a positive recommendation to the City Council. However, after the discussion and public hearing, if the Planning Commission wishes to make any changes, it would be appropriate to make a recommendation to the City Council with the condition that the Planning Commission would like to review the final document prior to being adopted by the City Council.

Chair O'Hara opened the public hearing.

Tom Fey, a Park City/Park Meadows resident, stated that he was under he impression that the Planning Commission would be talking about a master plan this evening. Mr. Fey believed that if the Planning Commission recommended the amendments as proposed, a developer could achieve a massive development. He remarked that the traffic in this area is already horrendous and a major development would create hazardous traffic jams. In looking at the recommendations, Mr. Fey believes that a developer could build a sequence of 10,000 square foot units, stacked side by side, 45 feet high. That type of a plan, combined with the what already exists, would result in a mall that looks like the Main Street Mall. Mr. Fey remarked that the City just made a major investment to expand the parking ramp and he did not think that Park City should have two downtown's. He believes that allowing this would kill Main Street. Park City is not about five-story buildings and he urged the Planning Commission to scale back the height and limit the number of 10,000 square foot buildings to avoid the potential for mammoth development.

Diana Gerber stated that she drives that area quite frequently at all hours of the day and traffic is frightful, particularly when the children are getting to the buses. She agreed with all of Tom Fey's comments.

Mike Sweeney, understood that the purpose of the General Plan amendments is to give the Planning Commission a tool for better planning in this area and to improve the traffic. He believes it is important for Main Street to have a complimentary area that will help house people staying in Park City. It will be an attraction that generates more people to come to Park City, including Main Street. Mr. Sweeney remarked that the worst case scenario would be to leave the Bonanza Park area the way it is. Mr. Sweeney supported the Staff recommendation and urged the Planning Commission to forward the General Plan amendments to the City Council so this area can be developed in a rationale way.

Mary Wintzer, a resident at 320 McHenry Street, stated that she has seen a lot of changes since these meetings started and they are working towards a positive end. She noted that the City is the applicant so they would not be holding up anyone if they take the time to make sure they have it right. She had attended the walkable community audit this week which put a different light and perspective on exactly what they are talking about. Ms. Wintzer recalled from a previous hearing that Sara Klingenstein had commented on the importance of a traffic study and felt that the Commissioners needed a lot more information to make sure they do it right. She agreed with Mr. Sweeney that competition is good but Main Street is the jewel of Park City and they need to be extremely careful not to put another nail in its coffin. Ms. Wintzer felt they were getting closer to what they want but she believes that more input is still needed. She encouraged the Planning Commission to take these things under advisement and to take their time to hear about the walkable idea and to get a traffic study. It is important to make sure they are setting this up to be the best for the community, for Main Street, and for the Park Bonanza District.

Kate Doordan stated that she works on Main Street and agreed with Mary Wintzer. Ms. Doordan remarked that everyone who spoke had conveyed her thoughts and she would not reiterate. Ms. Doordan underlined Ms. Wintzer's comments about being careful and taking their time to think it through. She asked the Planning Commission to keep in mind that Main Street needs political support.

Chair O'Hara closed the public hearing.

Commissioner Pettit stated that she was still struggling with the description in the land use portion of the General Plan amendments on the encouragement of retail and the ratio described. She keeps going back to her experiences working in Downtown Salt Lake and the building of Gateway and the demise of Main Street. She is sensitive to the competition remarks because this piece bothers her the most. Commissioner Pettit was hesitant to encourage "national retail" without understanding what it means. Commissioner Pettit felt the land use section needed more work and they need to think about the potential ramifications. It is important to explore what it is about Park City that they love and enjoy and why they would even think about bringing national retail into the heart of Park City. Commissioner Pettit felt decreasing the square footage from 20,000 to 10,000 square feet was a positive move, however she needed more clarification on the ratio component.

Commissioner Russack stated that he was still uncomfortable with the square footage, as well as the language of national versus local and 60 verus 40. He understood that the General Plan is supposed to provide definition and vision for an area and provide the opportunity for interpretation and latitude. In his opinion, encouraging national development seems a little strong and 10,000 square feet appears to be a good size for a national chain. Lowering that number will allow them to achieve and guide what they want for that area. Commissioner Russack also had issues with the building height and perimeter. Commissioner Russack stated that he had spent a lot of time reading the General Plan prior to this meeting and he believes these amendments are getting closer to what they want to achieve. He felt that Planner Whetstone and Mr. Erickson have done a good job trying to capture and define the vision and to give the Planning Commission parameters in which to work with.

Commissioner Sletten stated that he was generally comfortable with the amendments as written to date. This is a General Plan amendment that allows the development process to proceed with individual developments. He believed the 45 foot height allows for architectural differentiation that has been limited in Park City. Most of the development looks like a crew cut because they have artificial height limitations that do not take good architecture into account. Commissioner Sletten remarked that putting the mass to the center of a project simply allows the developer and the architect to design something a little different than what they have been able to do in Park City. He was very comfortable with the architectural provisions and the height limitations. Commissioner Sletten stated that the whole issue comes down to traffic and a traffic study at this point would be invalid without a specific development. The idea of a General Plan amendment is to allow the specific issues to be addressed with individual applications. Commissioner Sletten was prepared to vote yes on the proposal as it exists.

Commissioner Wintzer wanted to know what they consider to be the perimeter of the projects. Mr. Erickson replied that he and Planner Whetstone are currently discussing a 100 foot offset from the right-of-way line all the way around the project on Park Avenue, Bonanza, Deer Valley Drive, and Kearns Blvd. The height could not occur within that 100 foot zone, which is consistent with the Frontage Protection Zone. They are further considering limiting the height to two stories in that 100 feet perimeter.

Commissioner Wintzer encouraged a protection zone along Homestake Drive. He was comfortable with hardscape being open space, but it should remain public space and not outdoor dining for restaurants or similar uses. Commissioner Wintzer felt they should eliminate all the language related to national verus local business, and try to control it by limiting the size of the space. He agreed on the idea for a mix, but he felt it would be a nightmare to manage percentages once tenants have moved in. Commissioner Wintzer agreed that a traffic study may not be appropriate at this time, however he felt they could study where they would like to have intersections and bus stops, as an effort to guide the direction for a walkable community. Commissioner Wintzer felt they were getting closer to what they wanted.

Commissioner Thomas agreed with Commissioner Wintzer's comments. He encouraged a pedestrian/automobile study as soon as possible so they will have an idea of bus stop overlays and other walkable community overlays. Commissioner Thomas was willing to move forward with everything he has seen to date.

Commissioner Barth agreed with all comments. It is a critical area and he definitely agreed with Commissioner Sletten on the architecture and Commissioner Wintzer on the traffic. The majority of traffic flows through this area and some times it works fine but most of the year it does not. He liked the idea of wrapping their arms around intersections, etc. prior to development approvals but he was unsure if it was feasible.

Director Putt explained that the first step in the process for any project of a significant magnitude to trigger a master planned development, would be a public pre-application meeting. The public pre-application meeting was established by the Planning Commission and the City Council a number of years ago with the specific intent that the applicant would submit a concept plan in a preliminary form and give the Planning Commission, the public, and the Staff an opportunity to react to that plan before all the engineering and hard line drawings were prepared. After reviewing the concept plan, the Planning Commission makes a fundamental decision as to whether or not it meets the General Plan. Director Putt stated that given the nature of a larger scale proposal, it is possible that the issue of traffic and circulation would come up during the pre-application process. Before the Planning Commission would render a finding of compliance with the General Plan, it would be appropriate to ask the applicant to come back with more information regarding specific issues relating to the design of the street networks, where the transportation networks would be, bus stops, curb cuts, etc. That point in the process allows for a more in-depth review of those issues before the applicant invests a lot of time and money into the project. Director Putt felt there would be a number of opportunities for the Planning Commission to address this concern. One opportunity could be a traffic study early in the process.

Commissioner Barth stated that from a traffic perspective, the current proposal appears to be much more restrictive than what currently exists in the General Plan. Director Putt remarked that the objective is to recognize the serious problems that exist in the neighborhood and set an expectation that they are definitely looking to reduce the number of turning movements on Bonanza. They are not looking to widen Bonanza, which would make it more pedestrian hostile, unless it is absolutely necessary. The document specifies that if widening Bonanza were to occur, there is sufficient right-of-way to do that. Director Putt felt that the document clearly recognizes the problems with pedestrian circulation along Kearns Blvd and along Bonanza. A positive benefit of the Walkability Audit was bringing in people from the outside who immediately latched on to the issue of the school bus stop near Fireside and Iron Horse. This document recognizes in writing that this is a problem that needs to be addressed. It sets the expectation and provides greater clarity for future development. He noted that the current language for the General Commercial Zoning District allows for a substantial amount of development by right. The master planned development section of the Code allows a developer to request a height exception and the question they are wrestling with now, is what the maximum height should be. He remarked that they still need to focus on some of the more important areas, however there is a lot of opportunity, particularly through the pre-application process, to evaluate whether or not a future project will fit.

Commissioner Barth wanted to know what would trigger a pre-application meeting. Director Putt replied that the trigger is any development in excess of 10,000 square feet or 50 residential units.

Chair O'Hara echoed most of the comments from his fellow Commissioners. He emphasized the suggestion to partition the sizes of retail uses rather than try to determine the number for national versus local uses. He also felt it would be difficult to enforce the mix of national versus local.

Commissioner Russack asked if the Planning Commission could defer their decision this evening and wait for the Staff to come back with a refinement of their concerns. Mr. Erickson remarked that he and Planner Whetstone had discussed the strategy of forwarding a positive recommendation to the City Council with the objective for specific language to come back so the City Council and the Planning Commission could negotiate some of the philosophical issues prior to approval of the final language. After hearing the comments this evening, he preferred to re-write the sections relative to national versus local retail, the perimeter and Homestake Drive, incorporate walkability standards, and consider implementation of the transportation study. The failure of the master plan is that it is impossible to get a study implemented because no one knows what to do next. He has given some thought to incorporating the transportation master plan as the first step of implementation, with the responsibility of the Planning Commission to accomplish the task and the City Council to fund it correctly.

Commissioner Barth asked if Mr. Erickson would be comfortable with the Planning Commission forwarding this on to City Council while the work is still in progress. Commissioner Russack was not comfortable with that approach. Planner Whetstone replied that it could be forwarded as long as there was agreement from the Planning Commission on the items that need to be changed. The motion should state that the document will be amended to reflect the agreement from tonight's meeting. Planner Whetstone noted that they could include a condition that the Planning Commission will see the final document prior to adoption.

MOTION: Commissioner Sletten moved to forward a POSITIVE recommendation to the City Council for the General Plan amendments regarding the Park Bonanza District subject to the condition that the Planning Commission has the opportunity to look at the final draft prior to City Council approval. Commissioner Barth seconded the motion.

Commissioner Wintzer asked if Mr. Erickson could read off all the changes he intends to make to the existing document. Mr. Erickson stated that he will revise the land use section to discourage rather than encourage national retail. He will eliminate the 60/40 percentages and encourage smaller spaces on the order of 500 to 1,000 square feet in the tenant mix. He will clarify how they can accomplish a 10,000 foot maximum and limit the number of 10,000 square foot maximums in a project. He will write a definition of the perimeter of the project with respect to height and apply that perimeter to Homestake Drive. He noted that the perimeter will be 100 feet, however the perimeter for Homestake Drive would be less. He will make a recommendation for the implementation of a transportation study. He will add language in the document in terms of where bus stops should be located and their intention for Homestake Drive. He will incorporate some of the recommendations from the pedestrian and walkability study. He will revise the definition of open space to say that, "open space, for the purposes of meeting the open space requirement, cannot consider private open spaces".

Commissioner Barth clarified that the transportation study will be funded by the City for the City. Mr. Erickson replied that this was correct. Mr. Erickson suggested that the motion incorporate the stated changes.

Commissioner Russack asked for a clarification of the process if the Planning Commission forwards this on to the City Council. Mr. Erickson replied that the amendments would be forwarded to the City Council, the City Council will discuss it and possibly adopt it, however the motion says that it must come back to the Planning Commission for review of the final language.

Polly Samuels McLean, Assistant City Attorney, explained that once the Planning Commission forwards their recommendation to the City Council, the City Council has the discretion to decide whether or not they want to send it back to the Planning Commission for review. Based on that explanation, Commissioner Russack was not comfortable forwarding a recommendation this evening. He felt the Planning Commission should have the ability to review the revisions before making a decision. Commissioner Barth stated that he trusted the City Council to do the right thing and he was prepared to move forward.
Commissioner Russack clarified that he did not distrust the City Council but he wanted the opportunity to review the final document.

VOTE: The motion passed 5-1. Commissioner Russack voted against the motion.

EXHIBIT C

Walkable Community Audit **September 19, 2006**

Projects	**Programs**	**Policies**
1.Tunnel/Ramp up to intersection 2.Concentrate curb cuts to restrict thru traffic 3.Stairs from Iron Horse Condos 4.Bike Lane through major corridor east of Rite Aid road cut or trail 5.Cross Walks on Median – Kearns or Deer Valley Public Restrooms in Redevelopment area Signage for existing restroom	- study goat trails - awareness program - walking school bus - plastic cases with maps of walkable /wheelable area - walkable audit by community members	- -need zebra crossings - maintain 2 floor mixed use in redevelopment area. - Parking below ground
- Bus Stop Safety (Iron Horse Loop) - Traffic Islands - Signage - Creek Bridge on Rail Trail - Cross Walk(s) at goat trails - Bike lanes-signage - Painting bus lanes - Donating bricks to sidewalks with names to reflect "walkers and bikers" - Signage to reflect distances - Zip Line from NOMA to Main	- Walking School Bus - Chambers incentives for alt trans commuters - Marketing to promote opportunities - Sales people, publicists, perception change to reflect "cool" - Crossing guard programs (senior volunteers) - "Ride with a rider" - Bike Mentor program - Kids ride with adults	- No parking on the road - Enhanced snow removal - Pedestrian right of way - Transportation $$ allocated to pedestrian effort enhancements - Higher density urban development (flexibility on heights) - Mixed use with retail and affordable housing.

Street - Pedestrian viaduct over or under Kearns - Traffic calming to support the bus stop safety		
- Combining through cuts with redevelopment - Tunnel to Rail Trail - Improve Rite Aid parking lot - Off set parking/ crossing signal/ small islands - Diagonal circle/ high traffic/goat trails - Visual look through for work force housing - Underground Parking - Lumberyard/ New stores - Walk to School bus program expand sidewalk/play area/ build bus shelter (Iron Horse area)	- Parking Fees for students - Bus year round to DV - More Bus Stops - More attention to kids walking	- Frontage space - Kearns Sidewalk - Disability audit - Code for Street Crossing - -Sidewalks set back/repair Kearns
1. Bonanza/ Deer Valley Intersection connectivity to affordable housing 2. Goat trail access to	- Walking School Bus/ Safe Reroutes to school - Concerts/Lectures at the Wellness Celebration Center - Wellness Kick Off	- Objectionable Land Uses - Additional Streets/ shorter block lengths - Buildings closer to the streets

	bank/communit y use 3. Clear defined N/S –E/W linkage through the area Rail Trail regional 4. Bus Shelter at Iron Horse Loop 5. Safety Enhancement to Iron Horse/Bonanza 6. Wellness Celebration Center 7. Underground public works with amphitheater			
	- Iron Horse businesses (Windy Ridge etc) could be more pedestrian friendly walkways, more inviting - Move Transforme r - Encourage affordable housing in PCMR maintenanc e lot - Reconfigure crosswalks on Bonanza	- Neighborhood Park or transit spoke (farmers market, street carnivals) - Safe routes to school-walking school bus - NOMA Mile (walk from NOMA to top of Main mile markers with elevation	- Separated six foot sidewalks - Proximity of new businesses to sidewalks, roads, minimum setbacks - Multi use buildings (business below housing above - City/State Collaboration on engineering and design - Parking enforcement	

	- Coin operated bike racks			

Summary: By Mark

Programs: Support more walking to the school bus at least, and for older kids to the Middle and High school, with comprehensive Safe Routes to School approaches, including encouraging healthy behavior, educating on bike/pedestrian safety, and enforcing safe driving in the area. NOTE: Don't need to wait for big project dollars; this can start tomorrow (and will!!)

Projects: Pedestrian crossings on Bonanza and connectivity of Rail trail into other trail system and through Iron Horse area to Rite Aid/Albertsons. All wanted an underpass if possible, but agreed in the end that some safe at-grade crossings would be needed too.

Policy: Encourage (by code?) mixed use redevelopment, with housing above (maybe just 2-3 stories?) retail/commercial. Look for creative parking policies, including perhaps decreasing surface auto parking requirement for development if bike and transit support provided (e.g., build bus shelters, great covered bike parking, etc.)

EXHIBIT D

General Plan Element	Proposed Action	Reason for Action	Changes in Zoning Required	Relative Regulatory Impact	
				Less Restrictive	More restrictive
Plan Element I - Introduction	No changes		No	None	
Plan Element II – Community Character	No changes		No	None	
Plan Element III Open Space	Consider public plazas and walkways as a type of Open Space	Clarifies open space definition in developed areas, Clarify that public plazas can be used to meet Open Space requirements	Yes – add public plaza and walkway areas as a type of Open Space for Planning Commission review	Less	
Open Space	Add a Frontage Protection requirement for sidewalks and snow removal along Bonanza Drive	Mechanism to promote walkways and adequate space for snow removal	Yes – Zoning Map revision setbacks established – these could vary from current Frontage Protection Requirements		More
Open Space	A separate CUP action would not be required for projected proposed in Frontage Protection areas if part of an MPD	Simplifies project approvals	Yes	Less	
Open Space	Open Space	Allows for	Yes	Less	

General Plan Element	Proposed Action	Reason for Action	Changes in Zoning Required	Relative Regulatory Impact	
				Less Restrictive	More restrictive
	requirements for projects may be combined in the most appropriate areas for public use. This could be within the planning area but off-site of a specific project	public plaza and urban open space in the most appropriate and coordinated locations subject to Planning Commission approval and Development Agreement			
Open Space	Changing Open Space requirements from 60% for re-developed housing are suggested.	Potential to allow higher density redevelopment to accomplish City housing goals	Yes	Less	
Plan Element V. Land Use	Building Heights up to 5 Stories, with restrictions and Planning Commission Approval	No current guidance for height in General Plan. Establishes limits and locations for additional height, not in current Code	No		More
Land Use	Allow for parking to be combined and located off-site	Parking could be located in common garages or combined off site – Subject to Development Agreement and Planning	Yes	Less	

General Plan Element	Proposed Action	Reason for Action	Changes in Zoning Required	Relative Regulatory Impact	
				Less Restrictive	More restrictive
		Commission approval – no reduction in parking space requirements proposed			
Land Use	Single Tenant square footage limitations – exceptions for grocery, theatres –refer to text for ranges	No current guidance in General Plan. Promotes balance between local and larger retailers	No		More
Land Use	Limit office uses on first floor	Technique to promote shopping atmosphere General Plan guidance for Planning Commission review at project level.	No		More
Land Use	Encourage a range of housing types in area	Consistent with City policy	No		
Plan Element VI. Growth Management	Incorporate Park Bonanza text into General Plan	Clarification to General Plan guidance	No	None	
Plan Element VII. Transportation	Allow for parking structure and inter-modal center	Allows for combined parking areas	No (see Land Use)	Less	

General Plan Element	Proposed Action	Reason for Action	Changes in Zoning Required	Relative Regulatory Impact	
				Less Restrictive	More restrictive
Transportation	Add requirement for 10 wide sidewalks along Bonanza and Kearns; allow adequate space for snow removal	Added detail to General Plan for Area	No		More
Transportation	Do not allow a new major north-south collector road	Added detail to General Plan for Area	No		More
Transportation	Reduce existing intersections on Kearns and Bonanza to minimum	Added detail to General Plan for Area	No		More
Transportation	Acknowledge the possibility of future traffic signal along Kearns.	Added detail to General Plan for Area	No	None	
Transportation	Allow, with requirements, roundabouts on Bonanza	Added detail to General Plan for Area	No	Less	
Transportation	Acknowledge the potential, but emphasize the undesirability of widening Bonanza	Added detail to General Plan for Area	No	None	
Transportation	Require Bus turnouts out of traffic lanes	Added detail to General Plan for Area	No		More
Transportation	Require adequate space for	Added detail to General Plan for Area	No		More

General Plan Element	Proposed Action	Reason for Action	Changes in Zoning Required	Relative Regulatory Impact	
				Less Restrictive	More restrictive
	bicycle routes on area internal streets				
Transportation	Encourage and do not preclude a tunnel or bridge to connect the Rail trail segments	Added detail to General Plan for Area	No	None	
Transportation	Plan for new sidewalk along east side of Bonanza – south of Iron Horse	Added detail to General Plan for Area	No		More
Transportation	Allow for potential of aerial lift system	Added detail to General Plan for Area	No	None	
Transportation	Prepare updated transportation plan for entire length of Kearns and Bonanza	Coordinate transportation with other Planning Areas and Growth Management Element	No		More
General Plan Element VIII Environmental	Incorporate consideration of sustainable designs for neighborhoods and buildings including LEED for New Construction and Neighborhood Design	Additional guidance for Planning Commission in review of projects	No		More

General Plan Element	Proposed Action	Reason for Action	Changes in Zoning Required	Relative Regulatory Impact	
				Less Restrictive	More restrictive
General Plan Element IX Housing	Protect existing housing areas – consider zone change to Residential. Identify possible reductions in re-development opportunities if re-zoned	Additional guidance for Planning Commission in review of projects	Possible	Possible	Possible
Housing	Encourage range of housing opportunities in area	Additional guidance for Planning Commission in review of projects	No	Less	
Housing	Maintain 2 story buildings on east side of Homestake Road	Additional guidance for Planning Commission in review of projects	No		More

CENTURA

October 6, 2006

The Honorable Mayor and City Council Members
Park City Municipal Corporation
445 Marsac Avenue
Park City, Utah 84060

Dear Ladies and Gentlemen:

On behalf of Centura Development Co., LLC, I respectfully submit my input regarding the draft amendments to the General Plan recently forwarded to you by the Planning Commission.

Overall, the draft amendments are workable. However, the glaring exception is the proposed building height provision. The 45-foot height limitation directly conflicts with redevelopment incentives and if adopted, would result in a tremendous missed opportunity for revitalization in the NoMa / Bonanza Park District.

Building height provisions that allow for reasonable vertical density are vital to avoiding sprawl. It is not a matter of additional density, but rather shifting the density vertically so to encourage pedestrian right-of-ways, attainable residential housing, public open spaces and attractive architecture. In short, vertical density is critical to creating a vibrant and appealing neighborhood where people live, shop, work and play.

If the height provision currently included in the draft amendments is adopted, we would likely see renovation of existing improvements rather than redevelopment. Property owners and developers would have little or no incentive to cooperate among themselves in the redevelopment of the neighborhood. The functional obsolescence of Lake Tahoe is a prime example of why such restrictive limitations should be discouraged.

We do not believe that vertical density should be unlimited. However, reasonable height restrictions must be a part of the General Plan in order to make redevelopment economically viable.

True, I wear the hat of developer, but I am also a local Parkite dedicated to preserving our quality of life, economic sustainability, and small-town charm. I believe it is important for Park City to take advantage of this wonderful opportunity to reinvent and rejuvenate the NoMa District.

Therefore, I encourage you to send the draft amendments to the General Plan back to the Commission with instructions for them to foster urban vertical development instead of suburban sprawl.

Sincerely,

Rodman Jordan,
Principal Member

CC: Pat Putt – Planning Director

CENTURA
DEVELOPMENT CO.
2476 Aspen Springs Drive
Park City, Utah 84060
Tel 435 647 9700
Fax 435 647 2935

City Council Staff Report

Author:	**Brooks T. Robinson**	
Subject:	**Amendment to Flagstaff Development Agreement**	**Planning Department**
Date:	**October 12, 2006**	
Type of Item:	**Informational - Work Session discussion**	

Summary Recommendations
Staff recommends the City Council hold a work session discussion for the Flagstaff Mountain Resort (Empire Pass) amendment to the Development Agreement and the listed recommendations forwarded to the City Council by the Planning Commission. Analysis and a recommendation on the annexation will be presented by staff if the Council provides positive feedback regarding the changes to the Development Agreement. No formal action or approval is requested at this time.

Topic

Applicant:	United Park City Mines Company
Location:	Flagstaff Mountain Resort, now Empire Pass, and Park City Mountain Resort ski lease lands.
Zoning:	Residential Development (RD) and Estate (E) in the Flagstaff Master Planned Development (MPD), Mountain Remote in unincorporated Summit County, Estate (E) in area near Payday lift/run.
Adjacent Land Uses:	Ski terrain for Deer Valley and PCMR, development areas of Empire Pass.
Reason for Review:	Amendments to Development Agreements require Planning Commission review and City Council approval.

Background
June 24, 1999: City Council adopted Ordinance 99-30 approving the annexation and development agreement for the 1,655 acre Flagstaff Mountain area. Ordinance 99-30 granted the equivalent of a "large-scale" master planned development (MPD) and set forth the types and locations of land use; maximum densities; timing of development; development approval process; as well as development conditions and amenities for each parcel.

The Development Agreement specifies that only 147 acres of the 1,655 acre annexation may be developed. The remainder of the annexation area is to be retained as passive and recreational open space.

Prior to construction, the applicant must receive site-specific MPD and final plat approval from the City. The Planning Commission takes action on MPD applications and forwards a recommendation to Council on subdivision plats.

Ordinance 99-30 also required that the applicant submit 14 specific technical reports for review and approval by the City. The 14 studies, along with the Land Management Code and the Development Agreement (99-30) form the standards under which the subject MPD and preliminary/final plat will be reviewed.

The Development Agreement constrains the mixed-use development in the Mountain Village area (Pods A, B-1, and B-2) to:

- The Mountain Village is to be contained within 84 acres.
- No more than 705 Unit Equivalents (2,000 square feet each) in no more that 470 residential units (including not more than 60 PUD-style units) and no more than 16 single-family home sites.
- 65% of the residential units (306 of 470) must be within Pod A.
- No more than 75,000 square feet of resort support commercial.
- A maximum 35,000 square foot day skier lodge in Pod B-2 with no public road access, no day skier parking, and limited parking to meet service and administrative requirements.

In addition, a number of public benefits and developer mitigation measures were itemized and agreed to by all parties.

July 14, 2005: The City Council and Planning Commission held a joint work session discussion regarding a proposal to amend the Flagstaff Development Agreement (DA). The applicant requested that the DA be amended to increase the allowable Unit Equivalents (UEs) by 80 and add 192 Hotel rooms (included in the additional UEs). In exchange for the increased UEs, the applicant was going to provide a conservation easement for the Park City Mountain Resort (PCMR) ski lease area. The development sites at the Silver King mine site up King Road and at the upper end of the Colony were not part of the conservation easement and the number of UEs available off the rest of the ski lease was unknown. The general direction of the Council at that time was that any increases in UEs would need to be wholly or partially offset by decreases in UEs elsewhere.

November 17, 2005: The applicant came back to another joint session of the City Council and Planning Commission with a revised application and proposed annexation of the Park City Mountain Resort (PCMR) ski lease area. This annexation proposal could justify some or all of their requested UE increase for the Montage Hotel and additional condominium units at pod B-2.

January 6, 2006: The City received a completed annexation petition. The City Council accepted the petition for review and adopted a resolution forming a Task Force on January 12, 2006. The UPCM/PCMR Annexation Task Force was charged with conducting a review and providing a recommendation on the annexation petition, as well as designation of underlying zoning and appropriate transfer of density. The review and recommendation were to occur prior to the Planning Commission forwarding a recommendation on the annexation petition to the City Council.

Task Force Meetings: January 31, February 7 and 28, and March 7 and 21, April 11 and 25 (not a quorum), and May 2, 2006. The primary topics were density, the conservation easement, traffic and transit, parking, affordable housing and economic benefits relating to the proposed Montage hotel.

The outcome of the Task Force meetings were recommendations on the conservation easement on the proposed annexation areas, density, affordable housing, transit, traffic and parking, additional mitigation measures and public benefits.

Task Force Discussion Items	**Task Force Recommendation**
Density: Applicant is requesting additional 80 UEs, including 192 hotel rooms. Approximately 64 Units from base City/County zoning available (includes Deer Valley Shadow Lake parcel).	Finding of additional community benefits of open space, affordable housing, and transportation improvements mitigate the 16 UE deficit. (*Staff recommended that the density come from Bonanza Flats as contemplated by the Annexation Agreement)*
Zoning	Recreation Open Space (ROS-MPD) for entire annexation area and City Estate lands.
Conservation Easement	Over entire annexation area, including the Silver King site and the Deer Valley Shadow Lake parcel.
Traffic and Transit	UPCM to donate 30-40 acres in Quinn's Junction area. Relative contributions from City and applicant to construct a 750 space Park and Ride lot are unresolved. Task Force agrees in concept to Transit Plan.
Gondola (section 2.9.3 of DA)	Gondola is not feasible as traffic mitigation or in the public interest. UPCM to pay contributions as required.
Red Cloud Road	Road to be built to public standards and may become public at a future time.
Parking	Not to exceed 75% of Code. Include 75 spaces for Empire Day Lodge which is less than 75% requirement for building of this size. Amend DA to assign 1 space per condo unit.

Affordable Housing	Additional 5.7 Affordable UEs required per current DA standard. Current Housing Resolution would require 22.68 AUEs. Applicant to build additional 20 (25.7 total) as Community Benefit.
Economic Development	Net revenue of $1.3-$1.9 million/year
Recreation	Richardson Flats (Section 3.1 of DA) already restricted to recreation. 30-40 acre dedication to City for Park and Ride and recreation as determined by City.

May 10 and 24: The Task force recommendations were discussed by two joint meetings of the full City Council and Planning Commission. The minutes from the May 10 and 24 meetings are attached.

Planning Commission Recommendation

The Planning Commission opened the public hearing on the proposal on June 14, 2006, and also discussed aspects of the application on July 26, August 9 and 23, and September 23. In addition to the above items, the Commission discussed three other points that were part of the proposal; namely, a larger on-mountain restaurant (Beano's style), allowing the Montage to have 3 fireplaces instead of one, and some flexibility in the ski run setback at Red Cloud based on current locations of the runs relative to lot lines.

The Planning Commission discussed the compiled recommendations on September 27, 2006. The following is the recommendation for each of the points of discussion. *(Please note that several of these recommendations are not consistent with the attached draft amended Development Agreement proposed by the applicant--Draft DA attached)*:

Density: Applicant is requesting additional 80 UEs, including 192 hotel rooms and 77.5 additional condominium units. Approximately 64 Units from base City/County zoning is available, including the Deer Valley Shadow Lake parcel. If applicant agrees to all mitigation and community benefits as set forth in this report, the City agrees to additional density. *(Staff still recommends that any density transfer come from Bonanza Flats as anticipated in the existing Development Agreement).*

Zoning: Recreation Open Space zoning on all the annexation area and the existing Estate lands currently within the City limits.

Conservation Easement: The direction from the Task Force was to execute a conservation easement to be held by a mutually agreed upon third party prior to annexation. The Task Force also wanted Park City Mountain Resort to be amenable with the language of the conservation easement. The City did not receive a document that was acceptable to PCMR.

As an alternative, the staff suggested a deed restriction. There were two principle reasons for proposing a deed restriction. The first was the direction from the Task Force that a goal of the City is to have PCMR within the City limits and to restrict residential development on those areas. Pragmatically, this will be difficult to achieve by conservation easement given the reserved uses that PCMR will require to allow it to pursue upgrades to the Mountain Upgrade Plan. The problem is that these uses and their locations remain undefined. PCMR has clearly stated that they are unwilling to restrict future ski area plans to certain development pods (as was done with Deer Valley) or otherwise reduce their existing rights as defined by their lease.

A third option would be to limit development by plat note. This was done with the Enchanted Forest in the Red Cloud subdivision. Section 2.4.1.5 of the Flagstaff Development Agreement states: "**Enchanted Forest.** No development shall occur in the "Enchanted Forest" area generally designated on Exhibit A and further defined in the Small Scale MPD process." No conservation easement was required by the DA and what is there now by plat note is probably more than required. That is not to say that additional measures (3rd party holder, for instance) couldn't be taken. A public ski easement was also described within the Enchanted Forest.

The second reason was a function of timing. While the Montage project is ready to proceed through the MPD, CUP and building permit stage, Montage has no control over if or when PCMR may agree to language. Staff notes on bullet point two, below, that a deed restriction may be converted to a conservation easement in limited period of time giving all parties a longer time frame to work out the details. Although the Planning Commission preference was for a conservation easement (without it, two Commissioners did not favorably vote for the recommendations), the proposed deed restriction was acceptable to the Commission, PCMR, and UPCM. PCMR qualified their support stating they still did not have a response from UPCM on other financial issues.

The following criteria were recommended as part of the deed restriction:

- A deed restriction with the City as beneficiary of the restriction be placed on the entire annexation area, including the Shadow Lake parcel. Such deed restriction would prohibit all residential and lodging uses in annexation area.
- Specific public interest protections be built into the deed restriction so that the deed restriction could only be extinguished by a super-majority vote of the City Council and vote of people. UPCM suggested language that the deed restriction could only be extinguished if a court determines that the purposes of the deed restriction have become impossible. The City legal department did not have an opportunity to research and analyze the distinction. *(Staff also suggests investigating the possibility of substituting the deed restriction for a permanent conservation easement after some determined specific period of time, i.e. 3, 5, 10 years.)*
- The deed restriction must extend from the bottom of Thaynes Canyon to the top of Pinecone Ridge even though some of this area is not within annexation area and will be used as acreage for proposed Colony phase 5 lots. *(As discussed with the Planning Commission, Summit County may not grant the density in the*

Colony phase 5 under this scenario. Therefore, an alternative was suggested that UPCM create required Colony open space over Pine Cone Ridge down to the proposed City limits.)

- The deed restriction allows the implementation of the PCMR Mountain Upgrade Plan as currently approved or amended in the future.
- PCMR and the City amend the PCMR Development Agreement as necessary to remove review and approval of the mountain improvements from Summit County to the City. PCMR will be allowed to construct on mountain improvements as allowed uses or administrative conditional uses according to the Land Management Code in place at time of application, and public pre-application meetings for improvements greater than 5,000 square feet in size such as restaurants, on-mountain lodge, or improvements to the King Road shop.
- A Forest Management Plan will be prepared by PCMR and reviewed by the City prior to any glading.

The Summit Land Conservancy (SLC) distributed additional information (Exhibit D) to the Planning Commission regarding the differences between a conservation easement and a deed restriction. SLC has also provided a summary for the Council packet (Exhibit E). City Attorney Mark Harrington explained to the Commission the fundamental difference is that a conservation easement protects the conservation values of the property first, with limited reserved uses not inconsistent with that goal. A deed restriction operates in a negative manner by prohibiting certain expressed uses and allowing all others. Therefore, if the goal is to transfer residential/condo density and to allow all other uses that PCMR may apply for under the MPD and applicable zoning, a deed restriction seems more appropriate. If the goal is to restrict PCMR to future expansion only consistent with the stated conservation goals for the land, as monitored by an independent third party, then the conservation easement is more appropriate.

<u>Gondola (section 2.9.3 of DA):</u> Recommendation is that the No-Gondola option be exercised with payments to be made as follows:

- Developer's $1 million be used for construction of Park and Ride facility at Richardson Flats.
- Developer to contribute $1million to the City for transportation related to Empire Pass. The recommendation is for this million to go towards new buses to service Empire Pass and the operations of same and not towards construction of Park and Ride.
- Developer agrees to share in the cost of a feasibility study for a skier amenity gondola connecting Old Town to Empire Pass with other specific stakeholders. Staff recommends this study be completed within one year of the date of the annexation approval.

<u>Richardson Flats:</u>

The recommendation is:

- Developer to dedicate to the City an acceptable 30 acre parcel at Richardson Flats and construct a 750 space park and ride lot and the access road to SR 248 suitable for City buses.

- The parking lot may be phased with initial construction of 200 spaces and the access road.
- A late-comers agreement may be utilized to share the cost with future developments.
- Developer maintains all environmental liability at Richardson Flats, including 30 acres dedicated to the City.
- Developer agrees to extend the use and time of the Richardson soil cell to accept regulated materials related to the City's mining history as acceptable to UDEQ and USEPA as outlined in the existing agreement.
- City to construct recreation facilities as deemed appropriate.
- Richardson Flats to be deed restricted for open space, recreation, and the City Park and Ride.
- City to maintain Park and Ride lot once constructed and accepted.
- The Park and Ride lot is both traffic mitigation and a community benefit.

Red Cloud (Twisted Branch) Road
Road to be built to public standards and may become public at a future time.

Parking
Not to exceed 75% of Code. Include 75 spaces for Empire Day Lodge which is less than 75% requirement for building of this size. Amend DA to assign 1 space per condo unit at pod B2.

Affordable Housing
Developer to construct additional 25.7 Affordable Unit Equivalents. On-mountain requirement of 25% of AUEs may be constructed off-mountain at the developer's option, within current City limits, and at a ratio of 1.5 AUEs for each on-mountain AUE. City may not donate land *(Note: the provision that the City not donate land is not contemplated in the applicant's attached draft development agreement.)*

Economic Development
The City projects a net revenue of $1.3-$1.9 million/year from the development. Shortfall of this conservative projection will not be burdened to developer.

Recreation
Richardson Flats (Section 3.1 of DA) already restricted to recreation. Recommend Richardson Flats to be deed restricted for open space, recreation, and the City Park and Ride. 30 acres dedication to City for Park and Ride and recreation as determined by City.

Fireplace Restriction (2.9.5 Enhanced Environmental Protection)
Recommend that Montage be allowed three wood burning fireplaces to be located in common areas.

Ski Run Separation (2.4.1.2)

Recommend language for case by case conditional review of 50 foot ski run separation based on existing conflicts of ski runs and platted lots or ski easements.

Beano's Style Private Club (2.6)

Recommend language for limited vehicular access and size and location to be determined by the Planning Commission at CUP review. Size may be between 7,000 and 10,000 square feet.

Emergency Response Plan

The Emergency Response Plan shall be amended as necessary based on the size and construction in pod B2. This may include the requirement for developer to construct and fund a fire station and/or additional fire fighting apparatus.

Water

The original Development Agreement created the basis for subsequent water agreements regarding the project. There are currently two other water agreements that have implemented those water sections. A third agreement is in a draft from and still has unresolved issues.

Department Review

This project has gone through an interdepartmental review. No further issues were brought up at that time.

Recommendation

Staff recommends the City Council hold a work session discussion for the Flagstaff Mountain Resort (Empire Pass) amendment to the Development Agreement and the listed recommendations forwarded to the City Council by the Planning Commission. Analysis and a recommendation on the annexation will be presented by staff if the Council accepts the changes to the Development Agreement.

Exhibits

Exhibit A – Joint Hearing minutes of May 10 and 24
Exhibit B – Planning Commission minutes of September 27
Exhibit C - Proposed Development Agreement
Exhibit D – Summit Land Conservancy handout, September 27
Exhibit E – Summit Land Conservancy handout, October 12

PARK CITY PLANNING COMMISSION
JOINT MEETING WITH CITY COUNCIL
UPCM-PCMR TASK FORCE
SUMMARY RECOMMENDATIONS
MAY 10, 2006

Present: Mayor, Dana Williams, Council Members: Roger Harlan, Marianne Cone, Candy Erickson, Joe Kernan, Jim Hier; Planning Commissioners: Jim Barth, Michael O'Hara, Jack Thomas, Mark Sletten, Charlie Wintzer; City Manager, Tom Bakaly; Planner, Brooks Robinson; City Attorney, Mark Harrington

Mayor Williams stated that the purpose this evening was to give the City Council and the Planning Commission the opportunity to discuss the Task Force Summary Recommendations for the Montage project. He noted that everyone had received a considerable amount of paperwork in the last 24 hours and, while the information is significant and worth reviewing, he did not believe it would change the Task Force recommendation. Mayor Williams commented on the history of the task force meetings and felt it was significant that four different Planning Commissioners had attended the meetings at different times and provided valuable input.

Mayor Williams indicated a chart on page 2 of the summary which was broken into Task Force Discussion items and Task Force Recommendations. He pointed out that last week a couple hundred acres was added in the Shadow Lake area which slightly changed the UE count. They are now looking at a difference of10 UEs before they start considering Park and Rides, additional affordable housing, etc. Regarding affordable housing, Mayor Williams stated that the Task Force had recommended staying with the original Flagstaff Agreement in terms of the equated density. They have the option of looking at either the affordable housing ordinance in effect from that period or looking at the new ordinance. Talisker has put an additional 20 UEs of affordable housing on the table, which is 800 square feet per UE. He noted that the affordable housing portion works, regardless of which schedule they look at.

Mayor Williams remarked that there are some issues on which everyone has not come to terms with the developer. One issue is who will hold the Conservation Easement and how that will happen. A second issue is the disposition of property on Richardson Flats. He noted that some things still need to be decided through Planning Commission and City Council action.

Mayor Williams noted that the Task Force spent a considerable amount of time on the gondola. Based on the Flagstaff Agreement, they were looking at the use of a gondola as a transportation mitigator and whether it would actually lessen trips on the mine road. The Task Force determined that a fixed route system and a park and ride lot would provide substantially more traffic mitigation than a gondola. Mayor Williams pointed out that this approach means that other things would have to happen. One is a $1 million dollar contribution from the developer to offset transportation issues. The Task Force believed that an additional $1 million dollars should go towards the development of the park and ride lot.

Mayor Williams stated that even though a number of the recommendations need more clarification and discussion, the Task Force was comfortable moving this to the next level.

Council Member, Jim Hier, understood that they would be looking at a UE deficiency of 10 if they assume that the Conservation Easement takes any development rights on the additional lands that were owned by Deer Valley. Planner Robinson remarked that this was correct, which is an additional 4 UEs. In addition, language in the MPD section of the Code says that if you are bringing in additional open space, you can get up to a 10% density bonus. Both of these together total 70.4 UEs.

Council Member Hier asked for clarification on the Affordable Housing recommendation. His reading of the language is that they are using the affordable housing addition as a mitigator for the 10 UEs, based on an equivalency allowance for granting additional UEs. He understood that the current development would suggest 5.7 AUEs and the applicant is planning to build an additional 20 AUEs. Therefore, the additional 20 offsets the 10. Mayor Williams clarified that the Task Force was also looking at the Park and Ride as an offset. Council Member Hier felt that the Park and Ride was more of a traffic mitigator. He could see affordable housing as a potential mitigator for 10 UEs if they assume it. Commissioner Barth asked if it is an additional 20 UEs or an additional 14.3, since the developer is required to build 5.7. Council Member Hier noted that the recommendation summary says 25.7 total. Mayor Williams clarified that it is an additional 20 UEs.

Planner Robinson stated that the Task Force did not make the connection on the size of the affordable housing units to residential units. Regarding the housing policy, they look to the City Council for a broader policy discussion for future Development Agreements and whether those developments should be looked at under the policy in effect at the time of the original Development Agreement, or, as in this case, whether it should be looked at as a new application with the Development Agreement being opened and a different housing resolution in place from what was in place at the time of the Development Agreement. He noted that the 25.7 number covers all that but they need to determine if there is a benefit to the community that helps mitigate the additional unit equivalents on the mountain. Mr. Hier stated that they are looking at the Development Agreement as the base line and he believes that the affordable housing resolution in place when the Development Agreement was designed appears to be the way to go. Planner Robinson remarked that the Development Agreement did not actually jive with the housing resolution in place at that time. The Development Agreement said that they would look at affordable housing based on the residential units, which did not follow that resolution. He noted that the housing resolution recently adopted was not in place at the time of the new application, therefore, the 22.68 AUEs described is from Housing Resolution 99 which was in place at the time the Development Agreement was original signed. Mayor Williams noted that the Task Force used the criteria that was in the Flagstaff decision and they tried as best they could to go back to the original agreement.

Council Member Kernan wanted to know how consistent this is to their philosophy for affordable housing when an area is redeveloped. He asked if it is different than opening a Development Agreement and whether it impacts how they make other decisions.
Planner Robinson replied that it would not impact other redevelopment decisions. Since there would not be an existing Development Agreement, a new application would fall under all the current codes at the time of redevelopment. Council Member Kernan asked if this applies to annexation agreements. Planner Robinson replied that currently the housing policy does apply to any annexation at the time of application. Mayor Williams stated that this application was submitted prior to the new affordable housing requirements. Planner Robinson clarified that it is prior to the one originally adopted, but it would fall under Housing Resolution 99.

Mayor Williams commented on the Conservation Easement and noted that the Task Force recommended that the Conservancy Board should be comprised of a majority of people who are not affiliated directly with the easement in Deer Valley, Park City Mountain Resort, and Talisker. Questions were raised at the time about monitoring and who holds the easement. Those questions still need to be answered and clarified. Council Member Hier recalled a suggestion to have a Deer Valley Resort member on the Board along with a PCMR member and a Talisker member. Mayor Williams agreed, noting that the Task Force recommendation is to have enough people on the Board not directly related to the easement to outnumber Deer Valley, PCMR, and Talisker. Council Member Hier felt the process could be simplified by having a third party conservation easement holder/Talisker instead of a Board. He felt it was counter productive for land owners and business managers to sit on the Board of a Conservation Easement on property they are trying to manage or run a business. Mayor Williams stated that he would not be adverse to a Talisker conservancy since they are looking to carry easements on other properties in Summit and Wasatch Counties. However, he is not convinced that a Talisker conservancy would do the job they want in protecting the easement. Talisker thinks they can put forth an argument that their 501(c)(3) will be arm's length and they can show that any change they want to do and anything that happens has to go through Summit Land Conservancy. They are on the Board and they are used for monitoring but they are not the holder. Mayor Williams remarked that this is different from any model he has ever seen and unless he can be convinced that the easement will be safely protected, he preferred to follow the model the City always uses. Commissioner Barth believed the entire Task Force shared his opinion.

Council Member Harlan cautioned them to listen carefully to any argument against a third party easement holder. Depending on the direction of the discussion today, Mayor Williams felt this should go to the next step. It is a question that the Planning Commission needs to answer and the developer needs to show how this easement is going to be protected.

Tom Bakaly remarked that a related point that needs to be addressed is the Development Agreement between Park City and Park City Mountain Resort. The Staff's opinion is that this goes hand in hand with any discussion regarding possible annexation or Development Agreement with Talisker. If the land is to be annexed into Park City, the Staff recommends that they consider the arrangement between Park City and the Resort. Mr. Bakaly stated that they have had discussions with PCMR regarding any changes that might be needed in that Development Agreement and they are waiting to see if there is general agreement to move forward on the Conservation Easement before pursuing that discussion. Council Member Hier noted that if most of the land would be potentially developed by PCMR, it would fall within those lands that will be covered by the Conservation Easement and should be defined in the Conservation Easement. Mr. Bakaly explained that the Conservation Easement exempts lands that are currently within the lease, which is why he believes that exploring the Development Agreement between PCMR and Park City is integral to this process. City Attorney, Mark Harrington, clarified that MPD uses defined as permitted uses within the area would be covered within the uses area, but they would be allowed uses for the express purpose of conservation. Mr. Bakaly felt this could impact timing issues which is something the Staff will work on with PCMR.

Mayor Williams commented on traffic and transit recommendations. He stated that during the course of the Task Force meetings, traffic engineers for the developer and engineers hired by the City presented reports. Both were of the opinion that with the proper transit mitigation program, the overall trips up and down the canyon could be lessened by this recommendation over what was already approved. He noted that the traffic engineers came back with a negative number based on the traffic reports from the original agreement on Pod B2. Planner Robinson explained that when Fehr and Peers did the 2001 traffic study, they looked at the ITE trip generation rate based on commercial activity. The 2005 ITE shows resort support commercial so there is more internal capture of the residents and guests in Empire Pass to the uses in the Montage Hotel. Planner Robinson noted that the two traffic studies used a different generator and the numbers in the 2005 study dropped a little. Council Member Cone asked if the restaurants will be open to the public. Planner Robinson replied that there would be a club member restaurant, which is not part of the Montage. They are also planning a high end restaurant and a more casual restaurant associated with the Montage Hotel that would be available to the public. Council Member Cone questioned whether the restaurants would increase traffic. Planner Robinson noted that the Empire Day Lodge has also increased their commercial activity. Mayor Williams stated that the original Flagstaff Development Agreement anticipated that Pod A would have more restaurants and commercial activity. That has gone away and those uses have been moved to another place in the overall development so the anticipated traffic should remain the same.

Commissioner Sletten asked if the 250 parking spaces proposed to be set aside for employees in the Park and Ride would be mandatory as a condition of approval. Planner Robinson replied that the Planning Commission would need to discuss the details with the developer. He noted that traffic corresponds with parking and the Land Management Code looks at a type of use and the number of parking spaces generated by that use. It does not distinguish between users and employees. Planner Robinson stated that the Task Force recommends building 750 parking spaces at one time and 250 of those would be dedicated to Montage. The other 500 would be in the City pool for special events, etc. Development of parking lots in future developments is a way to mitigate traffic for those developments.

Mayor Williams stated that the original Flagstaff Development Agreement called for traffic mitigation through shuttle vans and other mechanisms. The Task Force could see upwards of a 750 parking lot east of town and that would be more than just a traffic mitigator. It would be a community benefit because it could be used for more than just this project. It would be incorporated into the City's transit system and used for special events or to bring employees into town. Mayor Williams remarked that the Task Force looked at the traffic mitigation required by the Development Agreement and felt that this went above and beyond that requirement, creating a community benefit. Council Member Hier agreed with this thinking for 500 spaces but he felt that the 250 employee spaces is part of traffic mitigation. Mayor Williams explained that they asked for additional ground because they could foresee that the land acquired by the City would be a community benefit for extra recreational facilities and that 500 spaces could be inadequate relatively soon.

Council Member Erickson noted that the costs were based on the assumption that the City will continue to receive Federal funds for all the buses and she did not think they could make that assumption based on the demands for funding in Washington. Council Member Erickson stated that parking the employees out there would create the need to add additional transit routes, which was not accounted for in the cost analysis. If they encourage employees to park their cars they need to be prepared to transport them. Mayor Williams agreed, noting that this has been anticipated. He stated that Montage will have a separate transit system for transporting their 250 employees and the rest of the parking will benefit the entire community. This was not looked at as part of this agreement because it would extend the Park City transit system on a citywide basis as compared to something that offsets traffic for this project. Council Member Erickson pointed out that accepting the benefit of the land donation increases the cost to the City in the long run in terms of more buses and drivers. Mayor Williams explained that over the last several years the City has envisioned a park and ride outside of town and now they have that opportunity.

County Planner, Mike Barille, stated that the County raised similar issues in a memo that was forwarded to the City Council. There is a certain quality or level of community benefit in providing land for 500 parking spaces. Building those 500 spaces provides a different community benefit and providing transit service to and from those spaces raises the benefit even higher. Mr. Barille stated that the County supports the idea of a Park and Ride in the right location and with the right design. Mayor Williams remarked that he has discussed this with Talisker and as of now, the City can get the land donation but they do not know where it will be. In his opinion, access to the site will be more important than the location.

Mr. Bakaly noted that the Task Force recommends that there be a donation of land for recreation and transit to be configured by the City. The Task Force specified a range of 30-40 acres and the applicants have said they would be comfortable with 20 acres. Mr. Bakaly felt this would be a major question for the Planning Commission and the City Council if the Development Agreement moves forward. Another unresolved issue is who pays for what and what proportion is a benefit versus mitigation. The applicant is currently proposing to pay for construction of the 250 spaces for the Montage. The Staff has recommended that they pay for construction of the 750 spaces, or possibly look at the arrangement in the language pertaining to the gondola, to see if there is a connection to the existing Development Agreement. If they move forward, these are the issues the Planning Commission will be addressing.

Commissioner O'Hara felt that everyone was in agreement that the applicant should donate the land and that the City will own the land and he wondered if the applicant shared that same opinion. Mr. Bakaly stated that the applicant is on board with the use of 20 acres. Commissioner O'Hara asked if they move forward tonight, would it be on the use of the land or the fact that there needs to be a donation. He felt that the use is very important and who to trust with owning the land is arguable. Council Member Hier agreed that they should define what the use should be. He was unsure why the ownership is significant.

Council Member Erickson read from the language regarding the shuttle, "The service will operate on an hours, days and frequencies sufficient to ensure employees' transportation needs are met as determined by the Montage." She wanted to know if the City has any recourse if the Montage determines that one shuttle at 7:00 a.m. and one shuttle at 5:00 p.m. meets their needs. She noted that it is inexpensive to build 250 parking spaces and only send two shuttles a day. Council Member Kernan stated that several questions like that came up during the Task Force meetings and additional detail will be required at the Planning Commission level to make sure this plan works. Planner Robinson stated that during the original Development Agreement process, they decided to let the Planning Commission work out the details. They ended up with 14 technical reports, one of which is a traffic transit report. If they move forward, the traffic transit report and several other reports would need to be amended based on this amendment to the Development Agreement.

After further discussion, Council Member Cone shared the concern about knowing how this will work and the number of shuttles. She agreed that it would have to be regulated and wondered who would enforce it and how. Council Member Hier stated that it relates to the amount of parking available on site. If the parking is not on site, people will be forced to take the shuttle transportation from the Park and Ride.

Council Member Cone believed they needed to come up with a finite number related to the development of Bonanza and the density. The number of trips of the average daily traffic is 6100 now and they anticipate 8492. She would like to see a number for that road at the busiest time of year and recommended that the road become one way up the Mine Road and one way coming down Royal Street. Council Member Cone felt this would mitigate the traffic and divide it in half. Mayor Williams remarked that the traffic would only be mitigated for the people who live on that road but no one else and he was opposed to this suggestion. He supported the fact that they need to verify that the mitigation will work, but he was concerned that turning it over to the Royal Street neighborhood would open up a new set of issues. Commissioner Sletten agreed with Council Member Hier that the best way to regulate traffic is to limit the parking for employees on the mountain.

Mayor Williams commented on the gondola mitigation and noted that the Task Force recommended that the $1 million dollars that would be an offset to the City would go into the Park and Ride system, along with the $1 million dollars that is required by Talisker. He anticipated some argument from the developer that this money has already been paid. Mayor Williams explained that the interpretation of the original agreement was that the money was for other traffic mitigators and did not pertain to the gondola. There is no documentation that says the $1 million dollars was going to offset the gondola. Council Member Hier recalled that these were specifically separate items in the original Development Agreement. He was comfortable using both of the $1 million dollar increments to develop the Park and Ride. Council Member Cone noted that the Task

Force recommendation is that the gondola is not financially feasible. She asked if a feasibility study was done. Mayor Williams replied that the criteria for the gondola was whether or not it is a traffic mitigator. The Task Force determined that compared to a Park and Ride lot with employee parking, a gondola would not offset the traffic enough to make it worthwhile. He clarified that this recommendation does not preclude a gondola from ever being built by other resorts or developments. Council Member Cone wanted to see a feasibility study for the gondola that involves other entities besides Talisker and addresses air quality, noise, people movement, etc. Council Member Hier felt that a gondola is a great idea for a ski area but not for traffic up and down the Mine Road. In his opinion, a gondola would not mitigate traffic as effectively as a shuttle to and from the Park and Ride. Council Member Kernan pointed out that they have not seen the numbers to make that comparison. He believed that a gondola would take some traffic off the roads.
Council Member Erickson commented on the long term cost of the Park and Ride lot and wondered why the City is paying for it. She understood the community benefit argument but she felt that benefit would be incredibly expensive. She preferred to see the Park and Ride lot at the ice rink. Mayor Williams remarked that if people park at the ice rink or anywhere else, they would still have the cost of expanding the shuttle system. Council Member Erickson noted that Park City already has a public transportation component that will go to the ice rink and that money has already been budgeted. Council Member Erickson stated that she is still opposed to moving density up hill. Council Member Hier asked if Council Member Erickson would prefer to see the $1 million go towards operation costs. She felt that the $1 million should go towards the City's traffic expenses which also includes operating costs. Council Member Cone reiterated her request for a feasibility study. She likes gondolas and would like to see if it can work as a traffic mitigator. If the answer is no she could accept that but she would like to see another creative approach to vans and shuttles. Council Member Kernan remarked that until a gondola is engineered it is hard to say whether it is feasible.

Mr. Bakaly suggested that they proceed with the Park and Ride discussion at the Planning Commission level and leave the door open for a gondola as it pertains to skiing. Council Member Harlan did not believe the gondola is feasible because they cannot answer the question of how people could access the gondola. He stated that if there was a magic place in Old Town to access the gondola, previous City Councils would have identified it. Planner Robinson pointed out that there was some discussion on the gondola in the 2001 technical report for Transit and Parking that addressed some of the issues raised this evening.

After further discussion, Mr. Bakaly asked if the City Council was comfortable handing this to the Planning Commission or whether they should send it back to the Task Force. Council Member Cone was not comfortable moving this forward. Other council members concurred. It was decided that another joint meeting was necessary to continue this discussion. A second meeting was scheduled for May 24th at 4:00 p.m., prior to the Planning Commission meeting that evening.

PARK CITY PLANNING COMMISSION
JOINT MEETING WITH CITY COUNCIL
UPCM-PCMR TASK FORCE
SUMMARY RECOMMENDATIONS
MAY 24, 2006

Present: Mayor, Dana Williams, Council Members: Marianne Cone, Candy Erickson, Joe Kernan, Jim Hier; Planning Commissioners: Jim Barth, Michael O'Hara, Jack Thomas, Mark Sletten, Andrew Volkman, Charlie Wintzer; City Manager, Tom Bakaly; Planner, Brooks Robinson; City Attorney, Mark Harrington

Mayor Dana Williams noted that the purpose of this meeting was to continue the discussion on the Task Force recommendations that began at the joint meeting on May 10. Planner Robinson had prepared a reiteration of the task force recommendations that were contained in the May 10th packet, with additional questions that the Staff felt needed further discussion. The first question was whether the density is appropriate, which could tie into the question of additional community benefits. He noted that considerable time was spent discussing the park and ride and the gondola/no gondola option. Planner Robinson stated that there were still outstanding questions regarding consensus on whether the City would consider a dedication of land at the Quinn's Junction area, who would purchase and operate a park and ride, and what the operation costs might be.

Based on discussion at the last meeting, the Staff recommended that the gondola option be removed from the recommendations as a traffic mitigator but left it as a possible future option as a feasibility study. The Staff recommended that the $2 million should be used towards mitigation measures for the project.

Mayor Williams asked if there was consensus on the Staff recommendation for removing the gondola at this time. Council member Cone noted that Roger Harlan was not in attendance and he was the one most interested in the feasibility study. Mayor Williams felt they should stick to the main issue which is whether or not the gondola would be a traffic mitigator. He noted that very early in the process, the Task Force agreed that it was not a traffic mitigator. Mayor Williams agreed that the gondola could have some benefit in other places but he had not seen Deer Valley or PCMR encourage the gondola and there is no reason to have one if the resorts do not want it. Mayor Williams felt that the gondola option was unclear in the original development agreement.

Council Member Hier agreed that the Task Force had decided that the gondola was not an issue and that the unresolved issues were the conservation easement, the park and ride, and affordable housing. He believed the purpose of this joint meeting was to provide direction on those issues since the Task Force was unable to come to some resolution. Council Member Kernan preferred to skip the gondola question and move on to other issues. Mayor Williams remarked that Council Member Kernan had voted on the Task

Force recommendations and now he was saying something different. He was unsure how to deal with that. Council Member Kernan asked if the Mayor wanted him to support every position that came out of the Task Force. Mayor Williams stated that Council Member Kernan should have spoken up during the Task Force meetings if he did not agree with everything that went into the recommendations. Council Member Kernan remarked that the Task Force did their work but they also raised some issues for discussion.

Council Member Erickson suggested that they skip the gondola and return to some of the other issues. Council Member Hier requested that they begin with the conservation easement. He commented on the lease that PCMR has with Park City Mines on that land, noting that any unresolved issues or conflicts with that lease would need to be resolved before the conservation easement could be imposed. He wanted to establish through Planning Commission deliberations, that the leasehold rights, the development rights, and the development agreement between Park City Mountain Resort with regard to their leasehold right, be resolved with Talisker, so when that conservation easement is imposed, they will have agreement between the two documents. Council Member Hier felt this should be addressed in a finding of fact determined by the Planning Commission before anything else moves forward. In his opinion, the benefit with regard to density and what they have done with the unit equivalents being transferred, is all dependent on that conservation easement. Council Member Hier felt that at this point they did not have the assurance that it is valid. Commissioner Volkman asked Council Member Hier what he meant by resolved. Council Member Hier clarified that he would like a determination between the City and PCMR with regard to development, and that the agreement is in accordance with the criteria of the conservation easement so there are no conflicts. Commissioner Thomas concurred.

Council Member Hier raised another issue with the conservation easement. He stated that the City Council has always been strong in having a third party conservation easement, even on City-owned open space, and requested a finding that there will be a third party conservation easement holder on this land. Mayor Williams stated that Talisker wants to do their own conservancy, however the more he thinks about it, the more he believes it cannot stay arms length. Council Member Hier clarified that his meaning of third party is someone that is not involved, such as Summit Lands Conservancy, Utah Open Lands, or any other independent conservation easement holder. Mayor Williams agreed.

Council Member Hier recommended that they hear comments from Talisker and PCMR prior to a final decision this evening to make sure there are no issues and to avoid any surprises.

Commissioner Thomas suggested a finding that all conflicts between involved parties must be resolved prior to moving forward. Council Member Hier was unsure if it would be a finding but thought it could be a condition of approval. He deferred to the Legal Department on how that should be addressed. The Council Members and the Commissioners concurred.

Mayor Williams called for discussion on the density. Commissioner Thomas remarked that a key component is keeping the conservation easement in place. Once that is resolved, the reality of the density transfer or the density negotiation will be more acceptable. Council Member Hier felt that the density issue should be resolved down to 10-15 unit equivalents. He understood that Talisker does not want Bonanza Flats on the table and he disagreed. At this point, he felt that affordable housing, density, and transportation are intermingled. He asked if the Task Force had agreed to leave Bonanza Flats off the table. Commissioner Volkman explained that it was agreed provided that the community benefits were sufficient. Council Member Hier stated that in his opinion, the community benefit is the affordable housing element, the 750 space parking lot being paid for by Talisker, and the land transferred to the City.

Council Member Cone asked about the number of units allowed on Bonanza Flats. Mayor Williams clarified that the units are measured in houses and not UEs. Council Member Erickson noted that 260 units in 280 UE's will be at Bonanza Flats and no more than 160 units can be single family homes. Also included is an 18 hole golf course and 75,000 square feet of resort commercial. Mayor Williams stated that if this project had come in without a conservation easement he would agreed 100% that there would be no negotiation. Based on the potential of an additional 3,000 acres and an easement, coupled with other potential benefits, he has been willing to look at some considerations. Mayor Williams understood that the City should try to stay with the development agreement as much as possible, however several areas of the agreement have been opened as part of this project.

Council Member Erickson stated that 250 parking spaces is part of the mitigation plan and anything above that number is a benefit. However, the benefit comes with a cost and she does not believe that the City should have to pay for a benefit. She also questioned the dedication of the land and asked if the City will own the land or just have the ability to use it. If it is only a use, how long will the lease run. Council Member Erickson felt that conversations with the County are crucial because it is County land and beyond the Interstate 40 area. Mayor Williams noted that the County was involved in the process and Claudia McMullin and Michael Barille had attended the Task Force meetings.

Claudia McMullin, representing the County, stated that they would still need to follow the County process for the Park and Ride land. Mayor Williams noted that they would not have to go through the County is the property is annexed. He noted that annexation is not on the table and it has not been discussed, but it is a possibility. Mayor Williams asked Council Member Erickson for her thoughts on the $2 million. She replied that the first $1 million should go to the City to cover additional expenses that will result from this land dedication, specifically providing transit to that area on a regular basis. According to the Development Agreement, the second million is for the developer to spend as they choose. Council Member Erickson recommended that the developer spend an additional $1 million for traffic mitigation beneficial to the project. Mayor Williams clarified that Council Member Erickson was suggesting that the first million should come to the City but it should not be used towards developing the Park and Ride. She replied that this was correct. The Council Members and Commissioners concurred.

Council Member Erickson commented on the density. She was still bothered by 192 hotel units because it potentially means that 380 additional people would need services. She truly believed that 18 units coming off of Silver King is what they are looking at and that the additional 40 units spread out across Park City Mountain Resort are the least likely to be built. Council Member Erickson stated that she is still struggling with the idea of whether the 40 units are worth it. Mayor Williams assumed that the units would be clustered in the most developable areas and probably would be moved. Planner Robinson noted that the PCMR Development Agreement excludes a large area of the mountain from development and allows them to transfer that density. He agreed with Mayor Williams that they would probably cluster development in those non-excluded areas. Council Member Erickson remarked that if they took that area off the table, it would alleviate her biggest fear, which is development up King Road.

Council Member Cone felt that Michael Barille was clear about density on the mountain. There are several scenarios such as one unit per 60 acres with required clustering and not on a 30% slope. Mayor Williams understood that starting at 1 unit per 120 acres would require clustering at 60 acres. Ms. McMullin could not recall anyone confirming the applicant's analysis of the County Code or confirming its accuracy. Planner Robinson explained that there was a discussion with Nora Shepard about how you get to the one unit per 60 acres. He stated that you can get to the one per 60 acres based on clustering and building the units on less than a 30% slope.

Mayor Williams summarized that two people believed that the Park and Ride should get built but that the $1 million dollar offset to the City should not be part of developing it. He felt the issue was trying to determine what is mitigation versus what is public benefit. He asked for comments on the affordable housing numbers. Council Member Hier referred to the computation of the affordable housing requirement and asked if the hotel was considered a business or a residential property. If it was considered a business, he wondered if it would it generate a higher number of employees. Planner Robinson stated that according to the current development agreement, the affordable housing requirement is an amount equal to 10% of the residential and 20% of the commercial unit equivalents. Under that requirement, the number came in at 5.7 UEs. Under the 1999 resolution, they looked at hotel employees as a generator, and that number became 22.68 UEs. He noted that the additional 20 UEs being offered by Talisker over the 5.7 covers that requirement without having to make a necessary policy decision aside from determining the community benefit.

Mayor Williams stated that the three criteria are the original Flagstaff Agreement criteria, the 1999 Affordable Housing Resolution, and the new resolution. The difference is based on how much they want to look at this as a public benefit compared to what would be mandatory. The Task Force recommended following the original Flagstaff Agreement, however, he felt that could be discussed and negotiated under the terms of the new ordinances. Council Member Hier was opposed to the idea of taking some of the 25% on-site requirement and moving it off-site. He felt it was important to have an element of worker housing on-site to help mitigate the traffic. On-site housing also encourages people to work there. Mayor Williams stated that the Task Force was concerned that on-site employee housing would actually generate more trips. Council Member Hier felt they needed to worry about peak traffic periods and employees or seasonal staff would not be using the roads during those times.

Doug Clyde, representing the applicant, noted that shift changes at the hotel occur very early in the morning and between 1 p.m. and 3 p.m. Council Member Hier outlined the reasons why they originally put 25% of the housing on-site and he believes those reasons are still valid. Council Member Kernan suggested that they let the Planning Commission address the traffic impacts and determine whether affordable housing should be kept on site. Commissioner Thomas felt that having affordable housing on the mountain would increase the traffic and amplify the problem up and down the canyon. Commissioner Volkman thought they should speak with the hotel operator to see how the shifts occur and the number of employees involved. He felt the issue bears additional study before making a decision. Commissioner O'Hara deffered to the traffic studies to see if on-site housing would be a traffic mitigator or a traffic generator. Council Member Cone noted that the affordable units will not be large enough for families. She believed the impacts would depend on the type of employees and it should be up to the developer to figure that out. Mayor Williams noted that the Task Force had looked at overall trips and not just peak times. After further discussion, Council Members Erickson and Cone agreed with Council Member Hier that the housing should not be moved off-site.

Mayor Williams called for discussion on the transit, the Park and Ride, and the land in

Bonanza Flats. Council Member Hier could not understand from the Task Force recommendations how the parking spaces would be defined. Planner Robinson explained that the Task Force looked at following the original development agreement, which was to reduce the Code required parking spaces by 25%. The exact number would be based on specific site plans and use of spaces. The Task Force recommended that they assign one of the parking spaces in the condominium unit for construction parking. Currently, the development agreement prohibits the assigning of spaces and calls for mixed use parking. In addition, the Task Force looked at allowing 75 spaces for the Empire Day Lodge, which is a year-round daily commercial activity. Mayor Williams noted that the Task Force was comfortable with a 25% reduction. Council Member Hier had concerns with that amount of employee parking, especially with a park and ride and shuttle system. Planner Robinson stated that the Code does not provide a breakdown of parking spaces per employees. The formula is based on the amount of square footage and net leasable area in a project, resulting in a blended mix of guests and employees. The Task Force followed Montage's request for one assigned parking space per condo unit. Everything else would be open parking. Mr. Clyde explained that the number was reached using a project specific analysis. They have to capture 30% of the employees by transit in order to make the 75% figure work.

Mayor Williams commented on the Park and Ride and the $2 million benefit. He asked if there was consensus on building the Park and Ride and separating out the $2 million for other traffic mitigation. Planner Robinson clarified that the City's $1 million would be donated to the City and not used to pay for the park and Ride. Mayor Williams replied that this was correct. City Manager, Tom Bakaly, noted that the $1 million to the City is talked about in the gondola language. He believed that some of the Council Members had agreed that the developer should pay for the 750 spaces; 250 of that being mitigation for their impacts and 500 being a benefit. In his mind, the $1 million benefit is tied back to the Development Agreement as the no build gondola option and they were talking about using money from a no gondola option as it relates to parking.

Council Member Erickson raised a previous issue about the land and whether it would be loaned or leased. Mr. Bakaly remarked that the Task Force discussed the size of a 750 space park and ride lot and determined that the land donation should be for a park and ride and City recreation. If the majority of this group leans towards requiring the developer to build a 750 space lot and using the remaining acreage for recreation, they would need to provide direction on the total acreage to avoid a future disagreement regarding the number of acres needed for the parking lot. Commissioner Barth noted that the Task Force agreed on 40 acres. Mayor Williams clarified that the Task Force said 30-40 acres, which would include the 750 space parking lot. Additional recreation would be determined by the City as an additional community benefit. Mr. Bakaly stressed the importance of tying together the acreage and the requirement to build the Park and Ride lot. Mayor Williams asked if everyone was comfortable with the second paragraph of the Task Force recommendations regarding the Park and Ride. The second paragraph questioned who should pay for the 750 lot, and Mayor Williams believed there was consensus from the group that the developer should pay in order to count it as a benefit.

Council Member Erickson asked if this agreement precludes or changes the original agreement regarding Richardson Flats. Mayor Williams replied that recreation does not preclude any previous agreements. He believed this codified and better defined the language for Richardson Flats in the Flagstaff Agreement. Planner Robinson noted that language in the Task Force recommendation under Recreation, includes a sentence stating that, "the Developer offers to dedicate to the City 30 -40 acres for a Park and Ride Lot with a minimum 750 spaces and additional recreation facilities as determined by the City". Richardson Flats will stay as it is. Mayor Williams pointed out that this would not preclude Talisker from putting in a golf course or equestrian park on Richardson Flats in the future because that would still be a valid use.

Council Member Cone reiterated her comment about County involvement. Ms. McMullin replied that because it is County land, uses for the land must go through the County process.

Regarding the number of acres, Mr. Clyde stated that Talisker feels strong about reducing the number to 20 acres and they are interested in working with the Planning Commission on this issue. Mr. Clyde noted that they are looking at other uses at Richardson Flats. Mayor Williams pointed out that when the Flagstaff agreement was made, any potential density on Richardson was stripped off in order to give Flagstaff its original density. Council Member Erickson noted that the original agreement also says that all density would come off of Bonanza Flats and now they are moving that density. She wanted to make sure that the City would never allow constructing density for any type of housing on Richardson Flats. Mayor Williams felt they should discuss whether or not an easement should go on that property. He was concerned that every few years the developer will come back with a new plan and request that the development agreement be opened again. He stated that Richardson Flat is an easy easement to write and it would forever preclude housing issues. He requested that the Planning Commission make sure that Richardson Flats gets an easement and that parking, transportation, and recreation are the only uses.

After further discussion on the Park and Ride lot, Mayor Williams suggested that the Planning Commission look at Highway 248 from the Junction east to see if there is an area that would be easier to access a Park and Ride Lot from Highway 248, as opposed to driving through the old dump road.

Mr. Bakaly summarized the direction from this meeting as follows:

1.) The finalization of a conservation easement and that the PCMR/Park City Municipal Development Agreement echo that first;
2) That a third party holds the conservation easement;
3) Talisker pays for construction of 750 space Park and Ride lots with 250 spaces as mitigation for traffic impacts and 500 spaces being considered as a benefit;
4) The issue of a gondola/no gondola would be addressed and discussed at the Planning Commission level with recommendations forwarded to the City Council;
5) That a land donation in the 30-40 acre range would be used for the Park and Ride, as well as City recreation needs;
6) Affordable housing - comfortable with the finding recommended by the Task Force. There was also a suggestion for further studies related to keeping with the 25% on-mountain requirement for affordable housing;
7) Parking - Stick with the 75% required by the Land Management Code with additional 75 spaces for Empire.
8) That the Planning Commission also consider a recreation conservation easement on Richardson Flats that allows private recreation uses, City recreation, and the Park and Ride.

Mayor Williams added that there should also be a permanent deed restriction on Richardson Flats.

Mr. Clyde stated that this is an extremely difficult project and the mitigation costs they are hearing are cause for alarm. He believes this project has enormous benefits to the City and provides somewhere between $1.3 and $1.9 million of additional revenue to the City every year. It provides $l.4 million surplus to the school system and it brings a major anchor to Park City's resort economy. Mr. Clyde accepted the Staff report language stating that $2 million of the no gondola money could be used to build the parking, however they have already spent $600,000 of that money in additional improvements for the Mine Road that were not contemplated in the development agreement.

Mayor Williams asked if there is any documentation stating that this additional money was going to offset not building the gondola. Mr. Clyde replied that this particular project was not identified at the time, however the no gondola alternative was well established by the transit plan and the project phasing plan, which shows the no gondola alternate payments and when they would be made. Mr. Clyde believed the Planning Commission would recall killing this off in the transit plan. Planner Robinson asked if Mr. Clyde was contending that road improvements were not part of the development agreement. Mr. Clyde explained that the creation of Hillside and the mitigation was not in the development agreement. He noted that this project was much more expensive than they ever contemplated. Mayor Williams agreed that this work was a huge community benefit.

Mr. Clyde remarked that the problem is that the developer is being straddled with the cost of a parking facility that has not been designed and they do not know the cost.

Mayor Williams commented on the impact of the overall project on the community. He felt that once the development agreement was opened, they should have expected more issues to be raised, aside from adding density to the hotel. Council Member Hier pointed out that they would not have this issue if they had used the Development Agreement to transfer density from Bonanza Flats into this area. The City is trying to find a benefit that the developer withheld from the process by taking Bonanza Flats off the table. He stated that the Flagstaff Agreement was put together to help preserve the lifestyle in that area and not just for an economic benefit.

Jenni Smith, representing Park City Mountain Resort, stated that the Resort has looked at the conservation agreement and agree in context with what the developer has put together so far. They still need to work on the development agreement in terms of the reserves and what defines the accessories. Ms. Smith remarked that the biggest issue right now is the change in process by going from the County to the City. They are not ready to say "go for it" it but they are working with Talisker and they are happy to continue to work with them. Bob Wells, representing Deer Valley, stated that they strongly support having a Montage Hotel in Deer Valley. He believes it will provide a considerable benefit to Deer Valley and to the community. On other specific issues, Mr. Wells agreed with the conservation easement and that the land would be included in any density allocation. He was comfortable with the structure of the conservation easement. Mr. Wells believed that the Shadow Lake land will ultimately become PCMR's and if PCMR is satisfied with the agreement then Deer Valley would have no problem with it. Mr. Wells stated that Deer Valley has never been in favor of the gondola alternative and believes it would provide zero traffic mitigation. Even if someone were to build one and give it to Deer Valley, they would see it as an economic fiasco.

Based on agreement with Mr. Bakaly's clarification of the Task Force recommendations, the City Council concurred that this should move forward to the Planning Commission.

MOTION: Commissioner Barth moved to forward a POSITIVE recommendation to the City Council for amendments to Chapter 2.4, HRM District; 2.5 HRC District; 2.6 HCB District; 2.8 POS District; Chapter 2.9 E-40 District, Chapter 2.10 E District; Chapter 11 - Historic Preservation Board, and Chapter 14 - Zoning Administration Enforcement. Commissioner Thomas seconded the motion.

VOTE: The motion passed unanimously.

7. United Park City Mines/Park City Mountain Resort Ski Lease Area - Annexation and amendment to Flagstaff Mountain Resort Development Agreement

Planner Brooks Robinson reported that a public hearing was scheduled this evening on the recommendations regarding an amendment to the Flagstaff Mountain Resort (Empire Pass) Development Agreement. He noted that the specifics of the annexation agreement are not before the Planning Commission at this time. The Staff would like to forward the development agreement language changes and the community benefits and mitigation measures to the City Council because if they cannot come to closure or agreement on the development agreement, the annexation proposal would probably be withdrawn.

Planner Robinson stated that a year ago United Park City Mines/ Talisker came before a joint session of the City Council and Planning Commission with a proposal to build a Montage Hotel on what is known as Pod B2, around the Empire Day Lodge, in the Empire Pass Development. This hotel and the associated condominiums would increase the unit equivalent density by 80 UE's over what was originally proposed in the development agreement. In order to get to that UE number, they proposed additional community benefit, additional mitigation, and an annexation of a substantial portion of the Park City Mountain Resort ski lease lands.

Planner Robinson noted that a number of topics have been discussed with both the Task Force and the Planning Commission and he would like to review each of those topics this evening. Planner Robinson noted with a previous comment by Commissioner Pettit that the conservation easement is the lynch pin of the whole proposal and requested that the Planning Commission discuss this matter first.

Planner Robinson stated that the Staff went through a theoretical exercise on how much density is currently available in the proposed annexation area, what the County zoning is, and what density they could potentially have with clustering and siting on low slopes. The Staff came up with approximately 64 units. A provision in the MPD Section of the Land Management Code allows the ability to grant an additional 10% or another 6+ units. Using the MPD 10%, 70 units would be allowed, which is short of the 80 units requested. The

Staff looked at additional community benefits and mitigation and started with the conservation easement.

Planner Robinson stated that the Task Force recommendation was to have United Park City Mines and Park City Mountain Resort come together with agreement on what a conservation easement would look like and what the language should be. The Task Force recommended a third party holder grantee of that conservation easement and could be in addition to the Talisker Conservation Land Conservancy. The Staff has talked with United Park City Mines and Park City Mountain Resort and they have heard from Summit Lands Conservancy, who is considered to be the Third Party easement holder. Planner Robinson noted that there has been no resolution to date on the conservation easement. If they try to accommodate PCMR, Summit Lands Conservancy thinks it is too broad. If the terms of the conservation easement are tightened up, then PCMR thinks it is too restrictive and they do not want a third party overseeing their mountain operations. Planner Robinson remarked that the Planning Commission can still recommend a conservation easement to the City Council, however at this time, the Staff is recommending a deed restriction. If the point of including the Park City Mountain Resort ski lands is to restrict all residential and hotel lodging uses from that area, that could be accomplished by a deed restriction. He expected the City Attorney to explain the difference between a deed restriction and a conservation easement.

Planner Robinson outlined the Staff's recommendations on the conservation easement as follows: 1) A deed restriction with the City as beneficiary of the restriction, placed on the entire annexation area, including the Shadow Lake parcel. Such deed restriction would prohibit all residential and hotel lodging uses in annexation area; 2) Specific public interest protections be built into the deed restriction so the deed restriction could be extinguished only if a Court determines that the purposes of the deed restriction have become impossible; 3) investigate the possibility of converting that deed restriction into a conservation easement in a specific time frame.

Commissioner Barth wanted to know which is more restrictive, a super majority or a court determination. City Attorney, Mark Harrington, clarified that he has not worked with the applicant on any language. It was explained this afternoon that the applicant still intends to draft a document that would conform with the IRS, Section 170 Regulations, which typically limits the ability to cancel the deed restriction and limit it by Court determination. He hoped the applicant would discuss this draft with the ski area and the non-profit association prior to bringing it back to the City. Mr. Harrington remarked that without the specifics, it was difficult to gauge which would be more enforceable but he did not believe either one would make a difference in terms of the intent of the bargain. Mr. Harrington recommended that the Planning Commission focus their discussion on the bargain or goals of this density transfer and the conservation easement or deed restriction. They can delineate some of the details later.

Planner Robinson had distributed copies of a letter from Cheryl Fox with Summit Lands Conservancy and information regarding the difference between a conservation easement and deed restriction.

Planner Robinson continued his review of the Staff recommendations. They talked about having a deed restriction extending from the bottom of Thaynes Canyon to the top of Pinecone Ridge, even though some of this area is not within the annexation area and will be used as acreage for proposed Colony phase 5 lots. Based on Talisker's plan for the Colony, the City and Talisker may agree to change this language to say that the open space for any proposal in the Colony that requires 75% open space must be from Pinecone ridge to the east. Other recommendations are that the deed restriction allow the implementation of the PCMR Mountain Upgrade Plan as currently approved or amended in the future; that PCMR and the City amend the PCMR Development Agreement as necessary to remove review and approval of the mountain improvements from Summit County to the City; that PCMR will be allowed to construct on-mountain improvements as allowed uses or administrative conditional uses according to the Land Management Code in place at the time of application; that a public pre-application meeting be required for improvements greater than 5,000 square feet in size such as restaurants, on-mountain lodge, or improvements to the King Road shop; A Forest Management Plan will be prepared by PCMR and reviewed by the City prior to any glading. Planner Robinson clarified that these recommendations are what the Staff believes the Planning Commission should look for in a deed restriction.

David Smith, representing Talisker, stated that from his perspective, the primary distinction is that the conservation easement would be held by an entity such as Summit Lands Conservancy. For reasons discussed in the past, Talisker would also like Talisker Open Lands Conservancy to be a co-grantee of that easement. Mr. Smith remarked that while it would be a disappointment for Talisker to not have Talisker Open Lands Conservancy be a co-grantee, he felt a deed restriction might make more sense for several reasons. The primary objective is to prevent residential development and that is accomplished by a deed restriction. The biggest distinction is that the deed restriction is held by the City, which in this case, has the added benefit of consolidating City jurisdiction over the annexed lands with the holder status on the deed restriction. Doing that potentially addresses PCMR's concern about third party oversight. Although this approach may be disappointing to Talisker, they believe it is a decent solution to resolve the dilemma.

Chair O'Hara recalled from previous discussions that the Planning Commission wanted to make sure that Park City Mountain Resort was on board with any decision and that any mechanism would be for the purpose of restricting residential development.

Jenni Smith, representing PCMR, stated that the deed restriction is an elegant solution to their problem and solves their concerns of having third party oversight. Ms. Smith remarked that PCMR has an understanding with the City on the process issue, however they have not yet determined how that will be memorialized. She noted that cost is one issue that has not been resolved but PCMR is comfortable with a deed restriction on the property.

Commissioner Sletten asked for clarification on the cost issue. Ms. Smith commented on the difference in costs coming in to the City from the County such as permitting fees and additional taxes that would amount to $35,000 per year.

Commissioner Wintzer stated that he trusts Deer Valley and Park City to do what is best for their mountain, but he is concerned about the traffic that comes through town. He was able to come to grips with this project because they were taking the potential density off of Park City Mountain Resort land which eliminated potential development up King Road. Moving the density helped move the traffic around and he was not convinced that they would have that same guarantee with a deed restriction. Commissioner Wintzer needed to be convinced that a deed restriction is as strong as a conservation easement in restricting development.

Commissioner Pettit wanted to hear from Cheryl Fox before making her comments.

Cheryl Fox, representing Summit Lands Conservancy, stated that Monday night was the first time she heard about a deed restriction, which is why she did not submit her information earlier. Ms. Fox recapped information contained in her letter that she thought might be helpful in their deliberation this evening. She stated that Summit Lands Conservancy does not advocate for or against any particular development. They do support the general idea of moving density from a place where there is no development to a place where development is occurring, thereby saving open space. Ms. Fox stated that there are three main differences between a conservation easement and a deed restriction. The first is that a deed restriction is not permanent, therefore a conservation easement is the best tool they have to insure the permanent protection of open space. A deed restriction can be changed through a process similar to a rezone. A deed restriction does not have a third party entrusted with ensuring public benefit. The second difference is that a land trust cannot hold a simple deed restriction because they have no right to monitor or enforce it. Ms. Fox read from the Land Trust Alliance Fact Sheet to point out the third difference. "A disadvantage to a deed restriction is that the case law of most states require the courts to resolve any ambiguity in the interpretation of a common law deed restriction in favor of the less restricted use. Moreover, deed restrictions can be terminated by a court based on economic hardship or impracticable without regard for public benefit. The courts are apt to give greater deference to conservation easement because of the public benefit they serve." Ms. Fox felt this was important for the Planning Commission to consider in their discussion. She noted that Summit Lands Conservancy does hold conservation easements on other ski resort lands but she has not had any conversations with PCMR regarding their concerns or their plans.

Michael Barille, Planning Director for Summit County, felt Cheryl Fox had done a good job outlining the distinctions between deed restrictions and conservation easements. They have had a fair amount of experience at the Canyons in terms of looking at different methods for protecting open space within a resort area. Mr. Barille thought Mark Harrington did a nice job describing how a deed restriction can be used and how it relates to tax implications. The important distinction is that tax implications are different than conservation values. Mr. Barille stated that his concern is with comments about this piece of the overall proposal being the lynch pin of the proposal. As a member of the Task Force, they were working towards something that had conservation value and really did limit the amount of development that would occur on the mountain. If they move towards deed restrictions with narrowly defined uses for residential and expansive uses for future on mountain recreation, it is a nice way of describing what uses are or are not allowed on the mountain, but it is not something with a lot of conservation value or limits the extent to which development occurs on the mountain. Mr. Barille felt a deed restriction would diminish the effectiveness of this piece being the lynch pin of the proposal.

Carey Jones, legal counsel for Park City Mountain Resort, stated that PCMR already has a long term lease with the restriction that they cannot develop for residential purposes. He remarked that PCMR's position with the Task Force has always been that as long as what happens in this process does not alter that lease, they are OK. When the conservation easement originally came out they were a party to it, but now they have Summit Lands Conservancy in effect performing the same function the County has performed in the past. Mr. Jones believed that the deed restriction is the best approach and he supports the Staff recommendation because it acknowledges what PCMR agreed to; that they will not develop residential product on the mountain. Anything that accomplishes that goal is consistent with their objective. If it cannot be done with a conservation easement, they are happy to do it in the form of a deed restriction.

Mark Harrington remarked that the fundamental difference between a conservation easement and a deed restriction is that a conservation easement starts with the premise of core conservation values and backs out limited reserved permitted uses. A deed restriction functions the opposite way and expressly prohibits certain uses and then fundamentally allows those that are not inconsistent. The biggest distinction between the two is how they operate. Mr. Harrington believed it is important to focus on the intent because there has never been clear direction on the intent in terms of the benefit of the bargain. Mr. Harrington stated that the challenge is to mirror the functionality of the biggest economic driver of the City with an overriding third party monitored conservation value driven restriction. If they try everything but still cannot make the conservation easement work, the Staff recommends moving down a notch to a deed restriction. Mr. Harrington acknowledged that this recommendation is different from what the Task Force recommended, and if the policy is not to change direction, then he and the Staff will continue to work on a conservation easement. Mr. Harrington commented on other options that were considered and found to be unacceptable, noting that each time they came back to a deed restriction.

Planner Robinson outlined additional issues for discussion

> Gondola/No Gondola option - the Task Force favored a no gondola option and the Staff provided four recommendations. 1) The developer's $1 million will be used for construction of a Park and Ride facility at Richards Flats; 2) The developer will contribute $1 million to the City for transportation related to Empire Pass, such as new buses and service for Empire Pass and the related operations, and not toward constructions of the Park and Ride; 3) The developer agrees to share in the cost of a feasibility study for a gondola as a ski amenity connecting Old Town to Empire Pass; 4)The developer agrees to work in good faith with other parties of interest to enter into an agreement to construct a gondola if considered economically feasible, including sharing in the cost of operation and maintenance of Old Town-Empire gondola if constructed. This is not a mandatory condition to construct a gondola.
>
> Richardson Flats - The Staff recommendation is 1) that the developer dedicate to the City an acceptable 30 acre parcel at Richardson Flat to construct a minimum 750 space park and ride lot and the access road to SR 248 suitable for city buses; 2) the parking lot may be phased with initial construction of 200 spaces and the access road; 3) A late-comers agreement may be utilized to share the cost with future developments; 4) Developer maintains all environmental liability at Richardson Flats, including 30 acres dedicated to the City; 5) the developer agrees to extend the use and time of the Richardson soil cell to accept regulated materials related to the City's mining history as acceptable to UDEQ and USEPA as outlined in the existing agreement; 6) the City would construct any recreation facilities as deemed appropriate; 7) Richardson Flats will be deed restricted for open space, recreation, and the City Park and Ride; 8) the City will maintain the park and ride lot once constructed and accepted; 9) the Park and Ride lot is both traffic mitigation and a community benefit; 10) the Montage hotel building permit will be conditioned on Summit County approval of the Park and Ride facility.
>
> Red Cloud Road (now called Twisted Branch Road) - this road is being built to public standards and may become public at a future date.
>
> Parking - Amend the development agreement to allow the assignment of one parking space per condominium unit at Pod B2, which is the Montage Hotel at B2

west and the residential units at B2 east. Include 75 spaces for the Empire Day Lodge and restrict the remainder to 75% of Code required parking, as stated in the current development agreement.

Affordable Housing - The developer had offered an additional 20 affordable unit equivalents above and beyond what is currently required under the existing development agreement ratio. The developer may remove some of the 25% on mountain housing to sites within the current City limits at a ration of I unit on mountain to I-I/2 units within the City. In response to the developer's request that the City donate land, the City is not looking to donate any land for affordable housing but they may look at other private/public partnerships.

Economic Development - The City projects a net revenue of $1.3-$1.9 million/ year revenue.

Recreation - Section 3.1 of the current development agreement already restricts Richardson Flats to recreation use. They are looking to amend that language to deed restrict Richardson Flat to recreation, open space, and City park and ride.

Planner Robinson noted that the Planning Commission discussed the following issues at the last meeting:

Fireplace Restriction - Section 2.9.5 of the current development agreement restricted wood burning fireplaces on the large hotel/condominium projects within Empire Pass. There was a request to allow three wood burning fireplaces in the Montage Hotel and the Planning Commission found that to be acceptable.

Ski Run Separation - This item is addressed in Section 2.4.1.2 of the original development agreement and the Staff recommended revising the language to allow a case by case discretionary review of a 50 foot ski run separation based on where the existing ski runs may conflict with platted property lines or ski easements in Red Cloud.

Beano's style private club - the Staff recommended revising language in Section 2.6 of the current development agreement for limited vehicular access and that size and location will be determined by the Planning Commission at the CUP review. The size, which was previously restricted to 7,000 square feet, may be between 7,000-10,000 square feet based on a suitable site plan.

Emergency Response Plan - Based on the height and size of the Montage Hotel, the emergency response plan will need to be amended as necessary based on construction on Pod B2. This may include a requirement for the developer to construct and fund a fire station and/or additional fire fighting apparatus in the area.

Water - The original development agreement creates the basis for subsequent water agreements for the project. Currently, two water agreements have been implemented under those sections of the development agreement. A third is in draft form and has unresolved issues.

Chair O'Hara opened the public hearing.

Ruth Gezelius encouraged the Planning Commission to hold the line on the park and ride lot and affordable housing. She has watched the bus going up and down the mine road and the traffic is worse than ever. The impact from the number of employees going to and from the Empire Pass area is significant and to encourage employees to use the Park and Ride lot would be a tremendous advantage. Ms. Gezelius felt it was wrong to impose worker housing on someone other than the people they work for and she thinks it is fair to ask the resort community to provide housing on site for the level of staffing they are requiring. She did not favor moving their employees into town.

Bob Wells, representing Deer Valley Resort, had questions on the gondola portion of the Staff recommendation. He understood that a decision was made for the no gondola option, however he recalled some discussion about leaving the gondola in the development agreement for the possibility of a ski connection. His confusion goes to the language and he wanted to know who the specific stakeholders might be other than Deer Valley and the City. Mr. Wells noted that Deer Valley has expressed interest in a ski connection between Old Town, Main Street, and the existing ski area and they would like to be an active participant in any study for that connection. Mr. Wells recommended that they leave the feasibility study in the development agreement, however he questioned the fairness of implying that Talisker is a liable party beyond cooperation in that study.

Michael Barille stated that the County has tried to limit their comments to the portion of the proposal that have affects on County infrastructure, services, or land. Besides the conservation easement, the park and ride lot is another key element of the benefit package being weighed against the initial density for this project. Mr. Barille felt there were a lot of unknowns in the benefit package, specifically with respect to the park and ride lot. The County supports the idea of a County located facility for worker transfer to shuttles and they would support the idea of a larger commuter park and ride area and possibly an event parking area. He outlined a number of reasons why he felt they were getting the cart before the horse in defining the benefit package. Mr. Barille requested that the City not put the County in the position of reviewing a low impact permit for a parking lot at the last minute, especially if it hinges on whether or not this project gets approved.

Cheryl Fox stated that after hearing some of the comments, it occurred to her that perhaps the conservation easement has not been discussed as fully as it could be among the parties who may hold or be a party to the conservation easement. Ms. Fox noted that Summit Lands Conservancy has not had any conversations with anyone from Park City Mountain Resort. She stated that the Resort does have a lot of rights under their lease and the conservation easement would need to be respectful of those rights. Ms. Fox suggested a 30 day window to allow Summit Lands Conservancy to work with PCMR and Talisker on a possible agreement. Ms. Fox had seen a draft of an easement that was prepared in the Spring and they have had a number of conversations with David Smith from Talisker, however there has never been something on the table that they can look at and compare. Ms. Fox did not believe all the resources for a conservation easement have been exhausted.

Chair O'Hara closed the public hearing.

Mr. Smith agreed with Mr. Harrington's comment that there never has been clear direction as to the City's intent with regards to the benefit package. However, every discussion he has been involved in has centered around the fact that the intent has been to prevent residential development. To move to a broader expansion of protection of conservation values is irrelevant to the initial objective. Mr. Smith stated that the conservation easement was never intended as a means to govern, restrict, or dictate what PCMR could do by way of ski related development at their Resort.

In response to an earlier concern by Commissioner Wintzer, Mr. Clyde pointed out that the City holds the deed restriction and the chance for future development lies completely with the City.

Doug Clyde summarized points contained in a letter from Talisker that was submitted to the Planning Commission. One issue is that in conversations with the County regarding Pine Cone Ridge, the County has said that they may not be able to grant the density Talisker has by contract with the Colony if a deed restriction is placed on the 720 acres that was reserved. He noted that the Staff was concerned about not allowing development on the ridgeline and explained that Talisker has no intention of doing that because it would be bad land planning. Mr. Clyde remarked that the ridge is subject to the ridgeline protection overlay zone and nothing is allowed on that ridge based on the County Code. The ridge is protected and the balance of the land is too steep to develop.

Mr. Clyde commented on Richardson Flat parking. They have modified their proposal and agree to take care of the improvements to the existing County road if they are limited to providing 750 stalls. Planner Robinson did not believe that intent was reflected in the letter. He wanted to know if the improvements would be made to the access from the parking lot to the County road or access from SR 248. Mr. Clyde clarified that it would be access from Highway 248.

Mr. Smith addressed the Richardson Flats environmental issue. He believed there is agreement that whatever is done at Richardson Flats must be consistent with the Consent Decree that they worked very hard to get in place with the EPA. It must also be consistent with the MOU they have with the City.

Mr. Clyde commented on density and noted that they are bringing in 70 ue's that were attributed to the property. Regarding the gondola, they will agree to contribute a fixed amount of $10,000 to study the feasibility of a skier amenity. As Bob Wells pointed out, they are not a benefitting party and would not contribute towards a new gondola.

Mr. Clyde remarked that if this project moves forward, they need to move swiftly in getting Montage's plans under review so they can obtain a building permit in the Spring. For this reason, they preferred to tie the permit for the park and ride to an occupancy permit rather than a building permit. Mr. Clyde stated that they are in a difficult situation in terms of timing and would appreciate any effort from the Planning Commission to forward this to the City Council.

Chair O'Hara called for discussion on the issues in the order they were presented.

The Commissioners were comfortable with the density and zoning issues.

Regarding the conservation easement, Chair O'Hara stated that he was on the Task Force and his recollection was that the intent of the conservation easement was to preclude residential development. Based on Planning Commission discussions, he was unsure if everyone agreed that the conservation easement is the lynch pin. Chair O'Hara stated that anything that works for the resort and precludes residential development works for him. He was comfortable forwarding this to City Council with a deed restriction and let the City Council determine whether that is appropriate. Commissioners Thomas and Barth agreed.

Commissioner Barth noted that in joint meetings with the City Council they were very adamant about a conservation easement. He recognized that some things have been discussed that open the door to another direction but he was still biased towards a conservation easement.

Commissioner Russack was comfortable with a deed restriction as long as it meets the intent of prohibiting residential development. He had read all the minutes from the Task Force meetings and it was always discussed as a conservation easement. He wondered if it was discussed that way because that seemed the most applicable. Commissioner

Russack was disheartened to hear that there had not been any discussion with Summit Lands Conservancy. He disclosed that he sits on the Board of the Summit Lands Conservancy and he has had conversations about deed restrictions with Cheryl Fox and the Mayor. Commissioner Russack was comfortable sending this to the City Council. however if there is a chance for the parties to work together and the potential for a conservation easement that allows the Resort to make their improvements and still protects the land from residential development, that would be the best case scenario.
Chair O'Hara summarized that the Planning Commission would prefer a conservation easement but they will agree to whatever works.

Commissioner Pettit noted that a lot of hard work went into establishing the density for this project. Now they are looking at re-opening the development agreement and taking density from a completely different area than what was intended and moving it uphill. In her opinion, it is not just the quid pro quo for the density transfer, it is also the fact that there needs to be a better public benefit. Commissioner Pettit believed that when you place a conservation easement, there is a perception that conservation values are being protected. While the intent was not spelled out in the Task Force meetings, in using that term and that concept, there was the perception for something more than just restricting residential development. Commissioner Pettit could not support forwarding a recommendation to the City Council without a conservation easement component. She felt it was important to the public and that there is a benefit that needs to be preserved. Commissioner Pettit stated that Summit Lands Conservancy was identified as the third party and they have not been at the table in terms of trying to resolve PCMR's concerns. Summit Lands Conservancy has offered to do that and she believed the Planning Commission should give them the time and ability to do so.

Commissioner Wintzer agreed with Commissioner Pettit. When you use the words conservation easement, you have the feeling that it is a done deal and there is no way to go back. He understood that the City would hold the deed restriction but he has no way of knowing what the nature of the City will be in twenty years or what the courts could do if someone proved hardship. Commissioner Wintzer was willing to work with something besides a conservation easement, however he needed more time to figure it out.

Chair O'Hara called for discussion on the gondola issue.

Commissioner Sletten wanted to make sure that Bob Well's comments were entered into the record in that it becomes a business decision and not a mandate from the City. He noted that there are a number of disparate parties that might have different interests. Chair O'Hara agreed, noting that he had highlighted the third and fourth Staff recommendation for the gondola. He felt it was quite generous of the applicant to offer to pay any money towards a feasibility study. Chair O'Hara was willing to leave the third bullet point but felt they should strike the fourth bullet point referencing the developer's participation in constructing a gondola. He thought it appeared to be duplicitous in the no gondola option. Commissioner Thomas favored striking the fourth bullet item. The Commissioners concurred.

Regarding Richardson Flats, Chair O'Hara referred to the Staff recommendation and reference to the access road being constructed suitable for City buses. He wanted to know who would make that determination. Director Putt stated that City Engineer, Eric DeHaan and County Engineer, Derrick Radke would make that determination. Chair O'Hara stated that he had attended the subcommittee meeting and was surprised to hear UDOT say that it was a level A road and an acceptable road to send traffic down. This was his reason for wanting to know who would make that determination and whether this would be a City/County project. Planner Robinson noted that the Staff would be comfortable capping the park and ride at 750 spaces. The Task Force had recommended up to 900 spaces with recreational parking, however if the City builds any recreation facility they should provide the parking and not the developer.

Commissioner Barth referred to the last recommendation for Richardson Flat that the Montage hotel building permit will be conditioned on Summit County approval of the park and ride facility. He expected the Snyderville Basin Planning Commission to take this through the process and he was unsure how long that would take. Chair O'Hara stated that his perspective was colored by years of permitting environmental permits for things such as air quality. The State says that if an applicant constructs a facility before they obtain permits, they do so at their own risk. In his opinion, if the applicant is willing to take the risk, he is willing to let them. Director Putt remarked that they could always adds the language, "or bonded for" to address this issue. Chair O'Hara asked if there is a specific reason to wait on construction rather than going to a certificate of occupancy. Planner Robinson replied that it would be a significant risk due to the size of the building, however if the applicants are willing to take that risk and the building would need to come down, the City would have a bond available to do that. The Commissioners were comfortable with a bond resolution.

The Commissioners were comfortable with the Staff recommendations for Red Cloud Road, and parking.

Chair O'Hara referred to the affordable housing recommendation that the "On mountain requirement of 25% of AUEs may be constructed off mountain at the developer's option, within current City limits..." and wanted to know why the term "current" was used. Planner Robinson explained that at the time of the current development agreement there was a specific City boundary. If the 21 units that could be built on-mountain come off the mountain, they should go within the current City limits where there is bus service and other available infrastructure for an affordable housing project.

Commissioner Sletten understood that during the Park City Heights Task Force meeting there was some discussion about the on-mountain affordable equipment going out to Park City Heights. Planner Robinson explained that the 75% that could be off-mountain could be at that corner parcel at Park City Heights. Chair O'Hara clarified that this would only happen if the annexation occurs. Director Putt clarified that the City currently does not have an application or an MPD for a specific project for affordable housing at Park City Heights. It has been discussed in a broader and more global sense in terms of whether or not that would be an appropriate location, but no decision or recommendation has been made.

The Commissioners were comfortable with the recommendations for economic development, recreation, fireplace restrictions, the ski run separation, and the Beano's Style Private Club, the emergency response plan, and water issues.

Planner Robinson appreciated the fact that the Planning Commission had gone through each bullet point and provided consensus to move forward to City Council. This has been scheduled for the City Council work session on October 5th and a public hearing on October 19.

Commissioner Thomas felt it was paramount to everyone that Park City Mountain Resort is able to function as a ski resort since it is one of the economic anchors for Park City. This was the overriding factor for him in terms of the conservation easement.

MOTION: Commissioner Barth moved to forward the listed recommendations to the City Council for the amendment to the Flagstaff Development Agreement. Commissioner Evan seconded the motion.

Director Putt clarified that the motion included striking bullet point #4 on the gondola section, and striking "minimum of 750 spaces" under the Richardson Flat section. Planner Robinson added that it should also include striking the final bullet point regarding the Montage Building Permit.

Commissioner Barth remarked that his motion included the points as stated above.

VOTE: The motion passed 4-2. Commissioners Wintzer and Pettit voted against the motion.

Mr. Harrington stated that his office continues to get questions about conflict issues regarding the Planning Commission, specifically with regards to the General Plan amendments. He will formally address those issues during the public hearing at the City Council level and explain what has occurred. He reminded the Planning Commission that they must disclose any potential conflict at each public hearing and that they must do it at the beginning of the hearing and not during the discussion. He stressed the importance of having that disclosure a matter of record at the beginning of the public hearing.

The Park City Planning Commission meeting adjourned at 9:15 p.m.

Approved by Planning Commission ______________________________

Recorded this ___ day of
__________, ~~1999~~2006
at Book #___ Page #_____.

AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR FLAGSTAFF MOUNTAIN, BONANZA FLATS, RICHARDSON FLATS, THE 20-Acre QUINN'S JUNCTION PARCEL AND IRON MOUNTAIN

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the ~~24th~~ _____day of ~~June~~_____, ~~1999~~2006, by and between UNITED PARK CITY MINES COMPANY, ("UPCM" or "DEVELOPER"), DEER VALLEY RESORT COMPANY, ("DEER VALLEY"), and PARK CITY MUNICIPAL CORPORATION, a third class city of the State of Utah ("City") (collectively, the "Parties").

RECITALS

A. WHEREAS, DEVELOPER and DEER VALLEY own approximately: 1,600 of 1,750 acres of patented mining claims located in the unincorporated Flagstaff Mountain area of Summit County, more particularly described and depicted in Exhibit A attached hereto (hereafter, "Flagstaff Mountain"); approximately 106 acres of patented mining claims located on Iron Mountain within an unincorporated area of Summit County more particularly described and depicted in Exhibit B attached hereto (hereafter, "the Iron Mountain Parcels"); approximately 1,500 acres of patented mining claims, constituting all of UPCM's land located in the unincorporated Bonanza Flats area of Wasatch County more particularly described and depicted in Exhibit C attached hereto (hereafter, "Bonanza Flats"); all of UPCM's land east of U.S. 40 and south of S.R. 248 constituting approximately 650 acres of real property owned in fee simple located immediately east of U.S. 40 and south of S.R. 248 within an unincorporated area of Summit County more particularly described and depicted in Exhibit D attached hereto (hereafter, "Richardson Flats"); and approximately 20-Acres of real property owned in fee simple located west of U.S. 40 and south of S.R. 248 within an unincorporated area of Summit County more particularly described and depicted in Exhibit E attached hereto (hereafter, "the 20-Acre Quinn's Junction Parcel");

B. WHEREAS, on May 17, 1994 DEVELOPER filed an application for annexation to Park City of Flagstaff Mountain, consisting of DEVELOPER's, DEER VALLEY's and Northside Neighborhood Property Owners' land, together totaling an area of approximately 1,750 acres;

C. WHEREAS, on May 10, 1997 the Park City Council unanimously resolved by Resolution 10-97 to annex Flagstaff Mountain under certain Development Parameters;

D. WHEREAS, on July 8, 1998 DEVELOPER requested reconsideration by the City of Resolution 10-97 and offered certain incentives for limiting development of the Bonanza Flats, Richardson Flats and the Iron Mountain Parcels;

E. WHEREAS, on September 10, 1998 the Park City Council unanimously adopted a resolution to rescind Resolution No. 10-97 and to adopt new development parameters for Flagstaff Mountain, Bonanza Flats, Richardson Flats and the Iron Mountain Parcels, as set forth in this Agreement; ~~and~~

F. WHEREAS, in the intervening months since the City Council adopted the September 10, 1998 development parameters, the DEVELOPER ~~has~~ further refined its proposal by offering to move 16 single family homes from the sensitive Prospect Ridge area to the Mountain Village and to constrain development in the Northside Neighborhood to reduce site disturbance and to facilitate sale to a conservation buyer for a time certain; ~~and~~

G. WHEREAS, the Parties intended to enter into ~~this~~ the original Agreement to establish new development parameters for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel, and the Iron Mountain Parcels and to establish a time certain for annexation of Flagstaff Mountain (now referred to generally as Empire Pass) into the City;~~.~~

H. WHEREAS, the Parties in fact entered into the original Agreement on or about June 24, 1999; and

I. WHEREAS, the Parties desire to amend and restate the original Agreement in connection with the development of a project known as the Montage Resort & Spa which is presently planned to include 192 hotel rooms and suites, with spa, restaurant and conference facilities, and a residential component that consists of resort condominiums.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by the Park City Land Management Code (LMC) in effect on the date of a complete application or, if different, by this Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

1.1 **"Annexation Property"** means that approximately 1,750 acres of property known as Flagstaff Mountain, described and depicted on Exhibit A.

1.2 **"Bonanza Flats"** means that approximately 1,500 acres of UPCM property commonly referred to as Bonanza Flats, consituting all of UPCM's holdings in Bonanza Flats and described and depicted on Exhibit C.

1.3 **"DEER VALLEY"** means the Deer Valley Resort Company, a Utah limited Partnership and each of its assigns, joint venture partners, and successors in interest, whether in whole or in part. DEER VALLEY shall cause its employees and agents to act in accordance with the terms of this Agreement.

1.4 **"DEVELOPER"** means United Park City Mines Company, a publicly traded Delaware corporation, and each of its assigns, joint venture partners, and successors in interest, whether in whole or in part. DEVELOPER shall cause its employees and agents to act in accordance with the terms of this Agreement.

1.5 **"Inaction"** provisionally[1] means (a) DEVELOPER's failure to pursue a sequential permit (i.e. Small Scale MPD permit, conditional use permit, subdivision application, or building permit) by failing to submit a complete application for such a permit or by failing to respond to the City's written requests for information which the City deems is necessary to process the application; or (b) DEVELOPER's failure to sustain permitted construction such that the permit under which construction is allowed, expires or is otherwise suspended or revoked.

1.6 **"Meeting Accessory Uses"** provisionally[2] means uses normally associated and necessary to serve meeting and banquet space. Meeting Accessory Uses do not require the use of Unit Equivalents and include:

1.6.1 Administrative and Banquet Offices

1.6.2 Banquet Storage Areas

1.6.3 Banquet Prep Areas Storage Areas

1.6.4 Common A/V Storage Areas

1.6.5 Coat Check Areas

1.6.6 Public Restrooms

1.6.7 Public Telephone Areas

1.6.8 Public Hallways

1.6.9 Public Circulation Areas.

1.7 **"Mountain Village"** means that mixed-use portion of Flagstaff Mountain described and depicted as the Mountain Village in Exhibit A attached hereto and limited to a total of ~~84~~ 87 acres, within three development Pods (A, B_1, and B_2) and maximum densities, unit equivalencies and configuration more fully described herein.

[1] This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superceded by an LMC definition of the term.

[2] This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superceded by an LMC definition of the term.

1.8 **"Northside Neighborhood"** means that 63-acre portion of Flagstaff Mountain described and depicted as the Northside Neighborhood in Exhibit A attached hereto and limited to the maximum density, unit equivalency, and configuration more fully described herein.

1.9 **"Northside Neighborhood Property Owners"** means, in addition to UPCM and DEER VALLEY, Park City Star Mining Company, Inc., a Utah corporation, Bransford Land Company, representing the interests of Anne Bransford Newhall, Mary Bransford Leader and Carolyn Bransford MacDonald, and Stichting Beheer Mayflower Project, a legal entity representing the interests of Stichting Mayflower Recreational Fonds and of Stichting Mayflower Mountain Fonds.

1.10 **"Pedestrian Village"** means an area configured within Pod A of the Mountain Village for the mixed use of residential, Residential Accessory, Resort Support Commercial, Resort Accessory, meeting and Meeting Accessory Uses within which at least ~~sixty-five~~fifty percent (~~65~~50%) of the residential properties are clustered within walking distance (5 minutes) of a Transportation Hub for such residential properties, which can be directly accessed by pathways or sidewalks.

1.11 **"Planned Unit Development"** or **"PUD"** means a master planned development consisting of clustered, detached, single family or duplex units with common open space and coordinated architecture.

1.12 **"Pod Z"** means that area, depicted on Exhibit F that is limited for ski-related uses as further defined herein.

1.13 **"Project"** means the residential, recreational and commercial real estate development to be constructed within Flagstaff Mountain.

1.14 **"Residential Accessory Uses"** provisionally[3] means uses that are for the benefit of the residents of a commercial residential use, such as a hotel or nightly rental condominium project. Residential Accessory Uses do not require the use of Unit Equivalents. Residential Accessory Uses include:

[3] This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superceded by an LMC definition of the term.

1.14.1 Common Ski Lockers

1.14.2 Common Lobbies

1.14.3 Registration

1.14.4 Concierge

1.14.5 Bell Stand/Luggage Storage

1.14.6 Common Maintenance Areas

1.14.7 Mechanical Rooms

1.14.8 Common Laundry Facilities and Common Storage Areas

1.14.9 Employee Facilities

1.14.10 Common Pools, Saunas and Hot Tubs

1.14.11 Public Telephone Areas

1.14.12 Public Restrooms

1.14.13 Administrative Offices

1.14.14 Public Hallways and Circulation Areas

1.15 **"Resort Accessory Uses"** provisionally[4] means uses that are clearly incidental to and customarily found in connection with the principal resort building or use and are operated for the convenience of the owners, occupants, employees, customers or visitors to the principal resort use. Resort Accessory Uses do not require the use of Unit Equivalents. They include such uses as:

1.15.1 Information

1.15.2 Lost and Found

1.15.3 Mountain Patrol

1.15.4 Mountain Administration

1.15.5 Mountain Maintenance and Storage Facilities

1.15.6 Mountain Patrol and Emergency Medical Facilities

1.15.7 Public Lockers

1.15.8 Public Restrooms

1.15.9 Employee Lockers

1.15.10 Ski School/Day Care

[4] This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superceded by an LMC definition of the term.

1.15.11 Ticket Sales Areas

1.15.12 Ski Check Areas

1.15.13 Public Circulation Areas and Hallways

1.16 **"Richardson Flats"** means all of UPCM's property at the southeast corner of U.S. 40 and S.R. 248, more fully described and depicted on Exhibit D.

1.17 **"Transportation Hub"** means the terminus of a public and/or private transportation system that is located at a convenient location within the Mountain Village.

1.18 **"Unit Equivalent,"** with respect to commercial structures and multifamily and PUD structures, has the meaning set forth in the LMC.[5] Each single family residential structure (excluding PUDs) approved by the City pursuant to this Agreement for construction within the Project shall have a Unit Equivalent of 1.00, regardless of the size or the location of the single family residential structure. Each commercial structure or portion thereof (as such may be determined in applicable MPD approvals) shall consume 1 Unit Equivalent for each 1000 square feet. Each multifamily and PUD residential structure shall consume 1 Unit Equivalent for each 2000 square feet.

SECTION II. LARGE SCALE MPD—FLAGSTAFF MOUNTAIN

2.1. DEVELOPER is hereby granted the equivalent of a Large Scale Master Planned Development (Large Scale MPD) for Flagstaff Mountain. This Large Scale MPD sets forth maximum densities, location of densities and DEVELOPER-offered amenities and is subject to all normally-applicable City processes, and in addition thereto, such processes defined below, including DEVELOPER's responsibility, prior to or concurrent with the Small Scale MPD process, to submit and ultimately to obtain (upon modification, if necessary) City approval, of satisfactory plans detailed below:

[5] Hotel rooms of 500 square feet or less constitute ¼ Unit Equivalent.

2.1.1. Mine/Soil Hazard Mitigation Plan--which plan shall include an inventory of all mine sites, potential sources of release of hazardous materials into the environment, and a plan and schedule for their remediation;

2.1.2. Detailed Design Guidelines, with strong architectural themes, for the entire Flagstaff Mountain Project;

2.1.3. Specific Transit Plan;

2.1.4. Parking Management Plan;

2.1.5. Detailed Open Space Management Plan;

2.1.6. Historic Preservation Plan;

2.1.7. Emergency Response Plan, including DEVELOPER's commitments to provide infrastructure necessary to serve the Project and Bonanza Flats and phasing therefor;

2.1.8. Trails Master Plan setting forth trail locations, specifications, phasing and timing of public easements;

2.1.9. Private Road Access Limitation Procedures;

2.1.10. Construction Phasing Plan—including construction milestones for project amenities, including Richardson Flats development;

2.1.11. General Infrastructure and Public Improvements Design and Phasing Plan, which calls for the efficient extension of services, concentrating initial infrastructure development in the Mountain Village, and secondarily in the Northside Neighborhood. Such plan shall allow for the construction of a variety of housing types in each phase;

2.1.12. Utilities Master Plan—including the timing, alignment and service strategy for water and sewer service, as well as storm water management throughout the Project and Bonanza Flats;

2.1.13. Wildlife Management Plan; and

2.1.14. Affordable Housing Plan, including phasing.

2.2. **Maximum Development Parameters--Flagstaff Mountain.** Flagstaff Mountain is composed of the Mountain Village, the Northside

Neighborhood; various ski related improvements, and the Silver Mine Adventure. Upon annexation, Flagstaff Mountain will be zoned as shown on the zoning map attached hereto as Exhibit P. The following maximum development parameters apply to Flagstaff Mountain:

2.2.1 **Mountain Village:** The Mountain Village is constrained as follows:

2.2.1.1 **Small Scale MPD.** Site specific volumetrics and configuration will be established in the Small Scale MPD process.

2.2.1.2. **Maximum Development Area.** In the Small Scale MPD process, the entire Mountain Village development shall be constrained within a total of ~~84~~ 87 acres.

2.2.1.3. **Maximum Density**. The maximum density within the Mountain Village is ~~705~~ 785 Unit Equivalents configured in no more than ~~470~~ 550 ~~residential~~ dwelling units.[6] Such density shall be configured as multi-family, hotel, or PUD units, provided the PUD units do not exceed 60. PUD units consume Unit Equivalents in the same respect as multifamily units. The 192 Montage hotel rooms shall count as Unit Equivalents at the rate of 1 Unit Equivalent per 2,000 square feet of hotel rooms, but such hotel rooms shall not have kitchens and shall not count as dwelling units. Additionally, the Mountain Village may contain up to 16 detached single family home sites.~~.~~

2.2.1.4. **Pedestrian Village**. At least ~~65%~~50% of the residential units within the Mountain Village must be clustered within the primary development pod (Pod A), and must be located within a five-minute walk of the Transportation Hub. All three development pods (Pods

[6] Hotel rooms of 500 square feet or less constitute ¼ Unit Equivalent.

A, B_1, and B_2) within the Mountain Village must be linked by transit.

2.2.1.5. **Commercial.** The Mountain Village may additionally include up to 75,000-sq. ft. of Resort Support Commercial uses, which shall include Neighborhood Convenience Commercial uses for residents and visitors such as groceries and sundries.

2.2.1.6. **Mine Site Reclamation**. To the greatest extent possible, DEVELOPER shall locate density in disturbed areas. This provision applies primarily to potential density at the Daly West site. Additionally, DEVELOPER shall reclaim[7] all mining and mining overburden sites within Flagstaff Mountain, in accordance with state and federal regulatory agency review.

2.2.1.7. **Public Trails.** DEVELOPER shall construct and dedicate public trails designated on an accepted Trails Master Plan. Many trails will be constructed on land ultimately owned by DEER VALLEY. In those areas, DEER VALLEY shall be responsible for trail maintenance and for enforcing reasonable rules and regulations for public trail use. Such rules may not exclude free public access to the public trail systems identified on the Trails Master Plan.

2.2.1.8. **Deed Restricted Open Space.** Within 30 days of issuance of a Small Scale MPD, DEVELOPER and/or DEER VALLEY shall execute for the benefit of the City perpetual covenants and restrictions with respect to all designated open space associated with the Small Scale MPD and which, at a minimum, shall prevent the construction thereon of residential, commercial and retail

[7] Reclamation shall include, at a minimum, revegetation of exposed areas.

structures but shall provide for ski-related uses consistent with paragraph 2.5 herein.

2.2.1.9. **Parking.** Each Small Scale MPD submittal shall include a parking management plan with respect to the portion of the property covered by such Small Scale MPD submittal. The goal of the plan is to design the Mountain Village in such a way as to reduce parking demand by 25%. DEVELOPER shall plan and encourage within the Mountain Village portion of the Project programs such as parking management, paid parking for commercial uses, shuttles and other programs designed to reduce the demand for private vehicles and parking. DEVELOPER shall provide for shared parking in all commercial, short-term residential and mixed-use buildings. Assigned or reserved spaces within commercial, short-term residential and mixed-use buildings are prohibited except that in the case of the Montage, one parking space may be assigned for each dwelling unit (excluding the 192 hotel rooms). The majority of the required parking areas will be fully enclosed and/or constructed underground.

2.3 **Prospect Ridge.** DEVELOPER considers the Prospect Ridge area depicted in Exhibit K to be a critical viewshed area for Old Town.

2.3.1 **Public Trails.** Consistent with the Trails Mater Plan, DEVELOPER shall construct and dedicate to the City public trails designated within the Prospect Ridge area.

2.3.2 **Deed Restricted Open Space.** Within 30 days of issuance of the first Small Scale MPD, DEVELOPER shall cause to be recorded a document, approved by the City, which shall impose perpetual covenants and use restrictions for that portion of Prospect Ridge depicted as "Recreation Open Space Dedication" on Exhibit K which shall prevent the construction thereon of residential, commercial and/or retail structures, ski lifts, and developed alpine ski runs.

2.4. **Northside Neighborhood.** The Northside Neighborhood is composed of property owned by five separate Northside Neighborhood Property Owners and, upon their written acceptance of the terms of this Agreement, may contain a maximum of 38 homes, the size and location of which shall be determined at Small Scale MPD/subdivision review. The Northside Neighborhood may also contain a 1000 sq. ft. non-denominational Chapel, that will remain open and reasonably available to the public.[8]

2.4.1 **Small Scale MPD.** The Small Scale MPD must include all Northside Neighborhood Property Owners to achieve the maximum density of 38 detached single-family homes. Absent participation by all Northside Neighborhood Property Owners, DEVELOPER and DEER VALLEY may apply for a Small Scale MPD for a maximum of 30 single-family homes on the portion of the Northside Neighborhood owned by DEVELOPER and DEER VALLEY.[9] In all circumstances, DEVELOPER and DEER VALLEY shall limit development in the Northside Neighborhood as follows:

2.4.1.1. **Meadow Restriction.** Homes shall not be in the meadow area generally designated on Exhibit A and further defined in the Small Scale MPD process.

2.4.1.2. **Ski Run Separation.** Limits of disturbance for each site shall be a minimum of 50 feet from any ski run, except where existing ski runs conflict with platted ski easements or platted lots, in which event the City shall

[8] No utility extension will be allowed for the Chapel. Power may be allowed if it is readily accessible. Location of the Chapel cannot cause the extension of an improved road. Siting and construction must comply with all Code provisions.

[9] If Park City Star, Bransford or Mayflower do not reach an agreement with DEVELOPER and DEER VALLEY with respect to the joint development of the detached single family homes within the Northside Neighborhood, then DEVELOPER and DEER VALLEY shall grant to the City the right to connect to the utility lines and to grant limited access to roads within the Northside Neighborhood without cost to serve the remaining property owners.

have the discretion and authority to approve case-by-case exceptions to the foregoing distance limitation.

2.4.1.3. **Viewpoint Restrictions**. Structures and roads must be configured to minimize road and utility impacts and to minimize wintertime visual impacts[10] from ski runs and designated viewpoints, including but not limited to the knoll behind the terminus of what is presently known as the Northside chairlift.

2.4.1.4. **Public Trails**. Consistent with the Trails Master Plan, DEVELOPER, DEER VALLEY, and Northside Neighborhood Property Owners shall dedicate to the City improved public trails and trail easements that connect to the surrounding trail system. Where trails pass through the Deer Valley Ski Area, DEER VALLEY shall be responsible for trail maintenance and for enforcing reasonable rules and regulations. Such rules may not exclude free public access to the public trail systems identified on the Trails Master Plan.

2.4.1.5. **Enchanted Forest**. No development shall occur in the "Enchanted Forest" area generally designated on Exhibit A and further defined in the Small Scale MPD process.

2.4.1.6. **Deed Restricted Open Space.** Within 30 days of issuance of a Small Scale MPD, DEVELOPER shall record perpetual covenants and restrictions with respect to all designated open space associated with the Small Scale MPD and which shall prevent the construction thereon of residential, commercial and retail structures but shall allow ski-related uses.

2.4.2. **Northside Neighborhood Conservation Plan.** DEVELOPER and DEER VALLEY agree to refrain from transferring, improving

[10] As well as summertime visual impacts.

or developing the Northside Neighborhood for 3 years, from the date of this Agreement to facilitate the potential of (a) the fee simple sale of the Northside Neighborhood, or (b) the sale and transfer of the development rights from the Northside Neighborhood. In either case, the sale would be completed within said time period and would be to a conservation buyer or buyers at fair market value at the date of purchase. Fair market value in this context shall reflect the entitlement for single family detached units set forth in the Large Scale Master Plan and this Agreement or, if the Small Scale Master Plan has been issued, as reflected in the Small Scale Master Plan for the Northside Neighborhood. The three-year period noted above shall not limit the Planning Commission's authority in connection with approval of the phasing plans required in sections 2.1.10 and 2.1.11.

2.5. **Ski-Related Development.** Subject to conditional use review, DEER VALLEY may construct a skier day lodge of a maximum of 35,000 square feet, in the approximate location depicted on Exhibit A. The day lodge shall have ~~no public road access and~~ no day skier parking, must have adequate emergency vehicle access, and shall have only limited parking to meet service, ~~and~~ administrative and special event requirements. Such parking shall consist of not more than 75 spaces. These parking spaces are in addition to those otherwise required or allowed under this Agreement and the LMC. DEER VALLEY shall provide deed-restricted employee/affordable housing units as defined by the City's affordable housing policy in an amount equal to 20% of the commercial Unit Equivalents approved by the City for the day lodge prior to issuance of a Certificate of Occupancy for the day lodge.

2.5.1 **Conditional Use (Administrative).** Ski terrain and ski-related development is an administrative conditional use within the Project, consistent with the Deer Valley Ski Area Master Plan depicted in Exhibit F attached hereto, provided that only two graded runs shall be allowed in ski Pod Z, with thinning and other limited vegetation removal in the balance of Pod Z for skier safety and glade skiing. Review of ski terrain and ski-related development shall include, but shall not be limited to consideration of the following:

2.5.1.1 Openings for ski trails and lifts with straight edges and uniform widths will be minimized to the greatest extent possible.

2.5.1.2 Trails that are designed for base area return or circulation between fall line areas shall be designed for appropriate grades and widths consistent with minimizing visual impact.

2.5.1.3 Lift towers shall be painted or otherwise treated to blend with the natural surroundings.

2.5.1.4 Vegetation management, re-vegetation and erosion control techniques shall be designed in accordance with the "Deer Valley Resort Company Ski Run Construction and Revegetation Standards" attached hereto as Exhibit G. The objective shall be to achieve a vegetative condition that enhances the skier experience and long term forest health. Re-vegetation shall be designed to control erosion and to restore ground cover as quickly as possible after ground disturbing activities.

2.6 Beano's Style Private Club. DEVELOPER may construct a private restaurant (Beano's Cabin at Beaver Creek-style[11]), at a location to be determined at the ~~Small Scale~~ MPD phase~~,~~. ~~with emergency access only, and no private vehicular access or parking. The size of the private restaurant shall be determined at Small Scale MPD review and shall not exceed 7000 square feet.~~No private parking areas or vehicular access will

[11] Beano's is a 7000 square foot private restaurant at Beaver Creek, Colorado. ~~This reference to a Beano's-style restaurant is not intended to predetermine the Planning Commission's decision regarding the maximum allowable size of such a restaurant.~~

be allowed except (i) access and space for patron drop-off's and pick-up's, and (ii) access, loading areas and circulation for emergency, delivery and service vehicles. The size of the private restarurant shall be determined by the Planning Commission at the CUP review phase, and shall be between 7,000 and 10,000 square feet.

2.7 **Silver Mine Adventure.** DEVELOPER may continue to operate the Silver Mine Adventure on the Ontario Mine Site as a valid, non-conforming use. Any change or expansion of use shall be processed in accordance with the LMC in effect at the time of the DEVELOPER's submission of a complete application for the proposed expansion.

2.8 **Access and Alignment of S.R. 224.** DEVELOPER shall access Flagstaff Mountain by means of S.R. 224, and a private road system. DEVELOPER shall realign a portion of S.R. 224 in the approximate location set forth on Exhibit H attached hereto, and shall construct a private road system for Flagstaff Mountain in the approximate location depicted on Exhibit H. The Parties agree to the following access and alignment of the road systems within Flagstaff Mountain:

2.8.1 **Alignment.** Upon Planning Commission approval of the first Small Scale MPD for Flagstaff Mountain, DEVELOPER shall petition to vacate the existing S.R. 224 alignment and, if granted, shall realign and dedicate the relocated S.R. 224 right of way to a standard similar to the existing S.R. 224 (with an asphalt surface for dust control). Such alignment shall be as generally depicted on Exhibit H. DEVELOPER shall block and prohibit vehicular access over the discontinued historic alignment of S.R. 224. Access over the realigned S.R. 224 shall remain seasonal (warm weather only). Upon completion of construction thereof, to the reasonable satisfaction of the City Engineer, the City shall accept the dedication of public roads under its jurisdiction identified on Exhibit H, or as determined by the Council, upon recommendation of the Planning Commission through the Small Scale MPD and subdivision processes.

2.8.2 **Private Road.** Upon Small Scale MPD approval, and only to the extent of the Small Scale MPD approval, DEVELOPER shall construct a private road system within Flagstaff Mountain, as depicted in Exhibit H, over which DEVELOPER shall maintain all-season access throughout the year. Said private road, from its point of departure from S.R. 224 to the Summit/Wasatch County line, may be converted to a public road, in which event existing S.R. 224 from said point of departure to the county line shall no longer be used as a public road and may be removed.

2.8.3 **Seasonal, Controlled Automobile Access.** DEVELOPER shall support and shall not undermine seasonal closure of realigned S.R. 224 and shall control motorized vehicular access from S.R. 224 to the private road system to prevent vehicular through traffic.

2.8.4 **Emergency Deer Valley Access.** The Project's seasonal emergency secondary access is through the Deer Valley Ski Area generally as depicted on Exhibit I and crash-gated in the approximate locations shown on Exhibit I. DEER VALLEY shall provide the City and the Park City Fire Service District with keys and/or combinations to the gates. The emergency access is necessary as a controlled evacuation route and as an emergency access for fire and safety personnel and equipment only. The secondary access route is an important ski run to the Deer Valley Ski Area that, in all but the most exceptional circumstances, will be used by skiers and over-the-snow vehicles. The Park City Fire Marshall may cause the access to be plowed and placed into winter service for emergency and evacuation purposes in that exceptional emergency situation when normal road access to Flagstaff Mountain is interrupted for an extended period.[12]

2.8.5 **Controlled Snowmobile Access.** Winter snowmobile access to Brighton Estates and to Bonanza Flats is presently available over portions of S.R. 224. DEVELOPER and DEER VALLEY shall allow seasonal snowmobile access to property owners and renters in Brighton Estates over those portions of S.R. 224 within the Project that are presently used or alternatively over similar portions of S.R. 224 as may be relocated. DEVELOPER and DEER VALLEY shall otherwise prevent wintertime motorized vehicular access to the extent such action is consistent with the policy of the public entity that owns S.R. 224. The current recreational snowmobile concession in Flagstaff Mountain shall be eliminated with the relocation of S.R. 224.

2.8.6 **DEVELOPER's Consent to Transfer**. DEVELOPER consents to cooperate with the City in any state transfer of any portion of S.R 224.

2.9 **Flagstaff Mountain Mitigation/Amenities.** At the City's request, the DEVELOPER shall deliver the following mitigation and amenities as an inducement to execute this Development Agreement:

2.9.1 **Trails.** DEVELOPER shall construct, maintain and commit to free public use, an improved public trail system as set forth in an approved Trails Master Plan. The construction of the trails shall be phased with the progress of the development of the Project. Existing trails shall remain open to the public until provisional or final trails have been constructed. Final trail locations may vary due to field conditions and season. Relocation of any trails shall be identified in the Trails Master Plan. Where the trails pass through the Deer Valley Ski Area, or are located on non-development lands owned or controlled by Deer Valley, Deer

[12] The Park City Fire Marshall may not cause the access to be plowed simply for pubic convenience.

Valley shall be responsible for trail maintenance and for enforcing reasonable rules and regulations for trail use, including reasonable rules and regulations intended to prevent or minimize conflict between potential trail uses. Pedestrian and bicycle uses of the trail system shall not be prohibited or restricted without being so identified in the Trails Master Plan.

~~2.9.2~~**~~Gondola.~~** ~~If approved by the City, DEVELOPER shall construct a gondola from a location in or near Old Town to a terminus in the Mountain Village. DEVELOPER shall submit to the City a complete written description comparing the development scenarios for Flagstaff Mountain with the construction of a gondola and without the construction of a gondola. The City agrees to work expeditiously through the public process with respect to making a final decision regarding the construction of a gondola as set forth in this Section.~~

2.9.2 **~~No Gondola Alternative.~~** ~~If the City determines that the construction of a gondola is not feasible or in the public interest, then: a) DEVELOPER shall contribute $1,000,000 in cash to the City to be used specifically for other traffic mitigation projects in the City related to the Project, and b) pursuant to an approved Specific Transit Plan or a Parking Management Plan, and in addition to all other commitments herein, DEVELOPER shall expend an additional $1,000,000 ($2,000,000 total) for traffic mitigation beneficial to the Project. If DEVELOPER is required to expend $1,000,000 for traffic mitigation directly related to the Project, then such traffic mitigation expenses and the timing thereof shall be set forth in the Specific Transit Plan.~~

~~2.9.3~~ *[NOTE: The following paragraph is the same as in the prior redline draft and may be subject to change.]* In lieu of the Gondola alternative contemplated under the original Agreement, the DEVELOPER shall contribute $1,000,000 to the construction of the Richardson Flats parking improvements described in the last paragraph of Section 3.1 of this Agreement, which shall be constructed in accordance with the specifications attached hereto as Schedule 3.1. Further, DEVELOPER shall contribute an additional $1,000,000 to be divided between the construction of such parking improvements and traffic mitigation expenses directly related to the Project and the Montage. The timing, division and application of that additional $1,000,000 shall be determined during the course of the Montage MPD and CUP approval process and pursuant to a revised Specific Transit Plan.

~~2.9.4~~2.9.3 **Historic Preservation.** The Historic Preservation Plan, at a minimum, shall contain an inventory of historically significant structures located within the Project and shall set forth a preservation and restoration plan, including a commitment to dedicating preservation easements to the City, with respect to any such historically significant structures. The head frame at the Daly West site is historically significant.

~~2.9.5~~2.9.4 **Enhanced Environmental Protection.** DEVELOPER shall limit the construction or installation of wood-burning devices to one wood-burning device in each of the 54 single-family homes in the Project. DEVELOPER shall not request approval from the City for wood-burning devices in any other attached, or detached, residential uses. Within each lodge, or hotel constructed within the Project, DEVELOPER shall have the right to construct one wood-burning device in each such lodge or hotel, except the Montage which may have three.~~.~~

~~2.9.6~~2.9.5 **Lady Morgan Springs Open Space (Passive Use).** The Lady Morgan Springs Area[13], shall be restricted, by conservation easements acceptable to the City, and signs and monitoring, if necessary, to limit use of the area to skiing (without cutting runs,

[13] Described and depicted on Exhibit J, and as further defined in the Small Scale MPD process.

glading, or thinning trees) and daytime recreational hiking. Neither construction activity nor motorized vehicular use of any kind shall be allowed in the Lady Morgan Springs Area, except as allowed, with City staff approval, for forestry and wetlands management.

~~2.9.7~~2.9.6 **Open Space (Active).** All land outside of the development areas (ski terrain and open space designated on Exhibit A) will be zoned as Recreation Open Space (ROS-MPD). Upon issuance of the first Small Scale MPD for any portion of the Project, DEVELOPER and DEER VALLEY shall execute a conservation easement, for the benefit of the City and a third party conservation trust (or similar entity), to limit their use of the Flagstaff Mountain ski terrain to construction, development and operation of ski and mountain bike lifts, ski and mountain bike runs, one skier day lodge, and other similar winter and summer recreational uses and services. Such conservation easements shall prohibit any hotel, lodging, residential or commercial construction or use on ROS-zoned land in Flagstaff Mountain. Such conservation easement shall be to the reasonable satisfaction of the City and shall be first in priority in title.

~~2.9.8~~2.9.7 **Open Space (Prospect Ridge).** Within 30 days of issuance of a Small Scale MPD, DEVELOPER shall grant to the City a conservation easement, with free public trail access, without encumbrances, over acreage located on Prospect Ridge, contiguous with City-owned open space. The conservation easement area on Prospect Ridge is identified on Exhibit K attached hereto. Such conservation easement shall be to the reasonable satisfaction of the City and shall be first in priority in title.

~~2.9.9~~2.9.8 **Open Space (Iron Mountain).** Upon the issuance of any Small Scale MPD, for any portion of the Project, DEVELOPER shall deed restrict or transfer to Park City, the Iron Mountain Parcels with City-approved encumbrances. In connection with such dedication, DEVELOPER shall reserve to DEVELOPER the right to lease to third parties the Iron Mountain Parcels for ski and other environmentally sensitive recreational uses. Such reservation shall not include the right to cut runs, glade, or thin trees, or construct or install ski lifts or developed alpine ski runs. DEVELOPER shall also reserve the right to retain all rent, proceeds and other consideration resulting from or generated by DEVELOPER leasing the Iron Mountain Parcels to third parties for ski and recreation-related uses. DEVELOPER shall indemnify, defend and hold the City harmless from any claim arising from DEVELOPER's or a third party lessee's use of the Iron Mountain Parcels. Nothing herein should be construed to limit or waive governmental immunity with respect to claims made against the City.

~~2.9.10~~2.9.9 **Neighborhood-Specific Design Guidelines.** DEVELOPER shall incorporate a Master Resort Association for Flagstaff Mountain and a Project-specific Property Owners' Association for the Mountain Village and Northside Neighborhood areas to cooperatively manage certain aspects of the Project. The Design Guidelines for both the Project and Bonanza Flats must emphasize a strong, common architectural theme, and shall be enforceable by one or more of the above-mentioned Associations.

~~2.9.11~~2.9.10 **Public Safety.** A comprehensive emergency response plan will be required. The proposal includes a public safety site, at a minimum. The final public safety and emergency access plan must be determined prior to any permit issuance and only after coordination with the affected entities, such as the Park City Fire Service District.

~~2.9.12~~2.9.11 **Sandridge Parking Lots.** Prior to the issuance of a Small Scale MPD for any portion of Flagstaff Mountain, DEVELOPER shall irrevocably offer to dedicate to the City a conversation easement, or deed, satisfactory to the City to preserve the Sandridge Parking Lots, described in Exhibit L as a public parking facility. Such interest shall be offered with no outstanding monetary encumbrances.

~~2.9.13~~2.9.12 **Sandridge Heights Property**. Developer further agrees to limit its use of its Sandridge Heights property, described in Exhibit L, to either affordable housing or open space.

2.10 **FLAGSTAFF MOUNTAIN MITIGATION MEASURES:**

2.10.1 **Water System.** DEVELOPER shall build and dedicate to the Park City Water Service District an adequate water delivery system within Flagstaff Mountain to serve the Project, including all fire flow and irrigation needs.

2.10.1.1 **Withdrawal of Water Protests.** DEVELOPER shall immediately withdraw its protests to the City's pending water change application(s) before the State Engineer and agrees not to protest future City applications before the State Engineer.

2.10.1.2 **Water Source.** DEVELOPER shall design and construct a water source and delivery system to transport water from the water source to Flagstaff Mountain and to dedicate that system to the City. DEVELOPER and the City anticipate that such delivery system will include the development of a well of sufficient capacity to serve the Project.

2.10.1.3 **Group II Rights.** The City and DEVELOPER agree to file a joint application with the State Engineer to convert to municipal use within the boundaries of the Park City Water Service District all "Group II" water rights owned by both parties. The joint application will list all mutual points of diversion, all of the City's municipal sources, and all of DEVELOPER's sources including the proposed Ontario and Empire Canyon Wells. DEVELOPER and the City shall divide the Group II rights approved for municipal use evenly, with DEVELOPER and the City each taking ownership of one-half of the total approved rights. DEVELOPER agrees to sell exclusively to the City its portion of the approved Group II water rights and DEVELOPER's interest in its Theriot Springs and Haueter Springs water rights (Weber Decree Award #456, #467 and #468) collectively referred to herein as the "Committed Water".

2.10.1.4 **Committed Water.** Once approved for municipal use, all Committed Water shall be leased to the City at a nominal cost and will therefore be unavailable for sale to others. DEVELOPER shall dedicate the Committed Water to the City, and the City shall pay to DEVELOPER from time to time an amount equal to the water development impact fees actually collected by the Park City Water Service District from the development of Flagstaff Mountain. Each such payment from the City to DEVELOPER shall be paid within 30 days following the receipt by the Park City Water Service District of each such water development impact fee.

2.10.1.5 **Excess Water Rights.** If after ten (10) years or 90% buildout of Flagstaff Mountain and Bonanza Flats, whichever last occurs, DEVELOPER retains water rights in excess of the water demand for both projects, the City may purchase the excess water rights from DEVELOPER at fair market value based on an appraisal from a mutually agreed upon appraiser or the City may relinquish its interest in the excess water rights. The City shall elect to either purchase (some or all of the excess water rights) or relinquish its interest in the excess water rights within 180 days of written notice of the expiration of 10 years or 90% buildout of both projects, whichever last occurs. If the City takes no action within the 180 days, City will be deemed to have relinquished its interest in the excess water rights.

2.10.1.6 **Impact Fees and Water Rates.** The City will charge water development and connection impact fees and water rates within the Project in an amount equal to the water development and connection impact fees and water rates charged to other water users within the Park City Water Service District, unless extraordinary costs can be identified by the City and fairly assigned to the water users within the Project.

2.10.2 Transportation and Traffic Mitigation. DEVELOPER has agreed to provide the following transportation and traffic mitigation measures.[14] Prior to the issuance of a Certificate of Occupancy within the Mountain Village,[15] the DEVELOPER shall provide the following to reduce the traffic anticipated by the Project:

2.10.2.1 **Van and Shuttle Service.** DEVELOPER shall provide for its owners, employees and guests, van and shuttle service alternatives consisting of regular

[14] However, within the Small Scale MPD process, the City may conclude that these transportation and traffic measures should be reduced, and will modify DEVELOPER's obligations accordingly.
[15] Except for DEER VALLEY's day lodge pursuant to paragraph 2.5 herein.

circulator service within the Mountain Village and service from the Mountain Village to key destinations such as the Salt Lake International Airport, Main Street, Silver Lake, golf courses, and recreational trail heads.

2.10.2.2 **Road and Intersection Improvements.** Attached hereto as Exhibit M is a map and a more detailed list of improvements, which shall be constructed by DEVELOPER in satisfaction of this obligation. Prior to the construction of any of the improvements described below, the City shall review and approve or reject with suggested changes all plans, drawings and specifications with respect to the alignment and construction of such road and intersection improvements. Following DEVELOPER's completion of the construction of such improvements, DEVELOPER shall offer to dedicate such improvements to the appropriate governmental entity.

2.10.2.3 **Contribution to Marsac Roundabout.** DEVELOPER shall financially participate in the reconstruction of the intersection of Marsac Avenue and Deer Valley Drive. DEVELOPER is responsible for paying its proportionate share (determined by projected traffic generation) of the City's cost of such reconstruction to mitigate the impact of the Flagstaff Mountain and Bonanza Flats projects on the intersection.

2.10.2.4 **Runaway Truck Lane**. DEVELOPER, or an affiliate of DEVELOPER, shall construct a run-away truck lane on the Mine Road section of S.R.

224, as described on Exhibit N attached hereto. DEVELOPER expects to dedicate the Runaway Truck Lane to UDOT.

2.10.2.5 **Mine Road Widening**. Upon Planning Commission recommendation, DEVELOPER shall widen the Mine Road section of S.R. 224 as described on Exhibit M attached hereto.

2.10.2.6 **Mine Road Passing Lane**. Upon Planning Commission recommendation, DEVELOPER shall create and dedicate a passing lane on the Mine Road section of S.R. 224 as described on Exhibit M attached hereto.

2.10.2.7 **Drainage Improvements.** DEVELOPER shall improve drainage to S.R. 224 as described on Exhibit M attached hereto.

2.10.2.8 **Landscaping.** Upon Planning Commission approval, DEVELOPER may construct and create, at DEVELOPER'S sole cost and expense, landscape improvements in the area depicted on Exhibit M, uphill from the intersection of S.R. 224 with Hillside to act as a Project entry statement.

2.10.3 **Construction Mitigation.** DEVELOPER shall provide the following measures, all to the reasonable satisfaction of the City's Chief Building Official, to mitigate the impact of construction within Flagstaff Mountain. DEVELOPER shall also adhere to the usual construction impact mitigation measures required by the City. Additional reasonable site-specific mitigation measures may be required at the Small Scale MPD phase. These measures will be permanently reflected in Covenants, Conditions and Restrictions of each development parcel. The Detailed Construction Phasing Plan to be submitted by DEVELOPER to the

City shall include, without limitation, provisions pertaining to:

2.10.3.1 Limits of Disturbance and Vegetation Protection for all construction, including construction of public improvements.

2.10.3.2 Construction staging, on-site batch plants, and materials stockpiling[16] and recycling in the Daly West area to keep all excavated materials on site during the Project infrastructure and construction phases.

2.10.3.3 Construction traffic routing plan to minimize traffic impacts on Old Town and residential areas, by only allowing construction traffic to use current state roads, unless otherwise directed by the City.

2.10.3.4 Dust and soils monitoring and containment, along with remediation of contaminated mining waste within the areas that are disturbed during the construction of the improvements within the Project and erosion and runoff controls for the entire Project

2.10.3.5 Temporary public access trails throughout construction.

2.10.3.6 Tools and equipment storage on-site adequate to serve all construction.

2.10.4 **Employee/Affordable Housing.** DEVELOPER shall provide deed-restricted employee/affordable housing units ("Affordable Unit Equivalents" or "AUEs") as defined by the City's affordable housing policy in an amount equal to 10% of the residential Unit Equivalents and 20% of the commercial Unit Equivalents approved by the City for the Project (collectively, the "Base AUEs"). The employee/affordable housing requirement for the Project, including the Montage, is 98.9 Base AUEs. One AUE equals 800 square feet. In addition to the Base AUEs, DEVELOPER has committed to construct, off-site, 20 additional

[16] Developer shall stockpile all earthen material on site.

AUEs (the "Additional AUEs") as an additional community benefit for the Project. Each AUE shall be sold or rented at prices and terms consistent with the City's affordable housing guidelines in effect at the time a Certificate of Occupancy is issued for the AUE. The calculation of total AUE's is detailed in the following table:

Type of Use	Unit Equivalents	Mitigation Rate	AUEs Required
Residential			
Residential Units	785	0.1	78.50
Single Family Home Sites	54	0.1	5.40
Subtotal Residential	***839***		***83.90***
Type of Use	**Square Footage / 1,000 SF**	**Mitigation Rate**	**AUEs Required**
Commercial			
Commercial Unit Equivalents	75	0.2	15.00
Subtotal Commercial	***75***		***15.00***
Base AUEs On-Site (25%): 24.725			
Base AUEs Off-Site (75%): 74.175 at Quinns Junction			
Total Base AUEs			**98.90**
Additional AUEs Contributed by Developer at Quinns Junction			**20.00**
TOTAL AUEs			***118.00***

A minimum of 25% of the Base ~~affordable housing obligation s~~ AUEs shall be located on-site within the Project~~, unless otherwise directed by the Housing Authority~~; however, ~~,~~at DEVELOPER'S option, any such on-site Base AUEs not actually constructed on-site or contractually committed to be constructed on-site may be constructed off-site on a 1.5-for-1 basis on lands provided by the City. –DEVELOPER and the City shall consult with Mountainlands Housing Trust, or its equivalent (if any), to determine the type and location of employee/affordable housing which would be most effective in offsetting the demand generated from the Project. DEVELOPER shall provide the remaining 75% of the Base AUEs~~units as directed by the Housing Authority~~ consistent with the City's approved employee/affordable housing plan. The employee/affordable housing will be phased with the Project in accordance with the approved Phasing Plan. Upon Planning Commission recommendation, the Housing Authority may direct DEVELOPER to:

2.10.4.1 Develop, subject to deed restrictions some of the remaining units on the 20-Acre Quinn's Junction

Parcel; or

2.10.4.2 Donate in a form satisfactory to the City, without restrictions or encumbrances, the 20-Acre Quinn's Junction Parcel to the City in lieu of some or all of the remaining portion of DEVELOPER's affordable housing obligation; or

2.10.4.3 Build the units on an alternate parcel provided to DEVELOPER by the City. DEVELOPER must donate the 20-Acre Quinn's Junction Parcel to the City if the City offers to donate otherwise suitable land to DEVELOPER. If the City and DEVELOPER exchange parcels with respect to the new employee/affordable housing units, then DEVELOPER shall construct on such alternate parcel such number of new employee/affordable housing units, up to the required number of units, for which DEVELOPER is able to obtain approval. In no event shall the cost incurred by DEVELOPER to construct the new employee/affordable housing units on an alternate parcel provided by the City exceed the cost which DEVELOPER would have incurred to construct such new employee/affordable housing units on the 20-Acre Quinn's Junction Parcel; or

2.10.4.4 If mutually acceptable to DEVELOPER and the City, pay to the City a fee in lieu of constructing employee/affordable housing, consistent with the City's affordable housing policy, if such payment in lieu of constructing employee/affordable housing results in the construction or dedication of actual units for affordable /employee housing; or

2.10.4.5 Satisfy its obligation in a manner otherwise consistent with the City's affordable housing policy.

2.10.5 **5-Year Irrevocable Offer to Annex the 20-Acre Quinn's Junction Parcel.** For the next five years, DEVELOPER hereby irrevocably offers to annex the 20-Acre Quinn's Junction Parcel to the City.

SECTION III. ADDITIONAL PUBLIC BENEFITS

In addition to the foregoing, DEVELOPER offers the following inducements to contract:

3.1 **Richardson Flats.** DEVELOPER unconditionally offers to annex Richardson Flats to the City and, regardless of the annexation of Richardson Flats, to restrict development of Richardson Flats to one of the following options to be selected by DEVELOPER, at DEVELOPER'S sole discretion:

Option 1. Under Option one DEVELOPER must limit the use of Richardson Flats to golf (with the requisite clubhouse, maintenance buildings and other related improvements), equestrian uses (including the construction of an arena or indoor equestrian center), and/or such other public recreational opportunities or special events as the City may deem proper. In the event DEVELOPER is able to obtain necessary approvals from EPA and/or DEQ, then DEVELOPER must construct on Richardson Flats a golf course, clubhouse, and driving range with adequate[17] provisions for defined public access.

Option 2. Under Option two, DEVELOPER must limit the use of Richardson Flats to an 18-hole golf course (with the requisite clubhouse, maintenance buildings and other related improvements)[18] and would make available to the City a site for a second 18-hole golf course. The site to be donated to the City would not include land in need of environmental remediation. If a

[17] The course must be operated to maximize play.

[18] Under Option 2 DEVELOPER may in the City's sole discretion be afforded the right to use Richardson Flats for such other public recreational opportunities or special events as the City may deem proper.

second golf course is constructed under Option two, then the City and DEVELOPER shall work cooperatively to develop shared facilities such as a driving range and golf maintenance shops.

Option 3. If, after diligent efforts, DEVELOPER cannot receive EPA or DEQ approval of the aforementioned recreational improvements, DEVELOPER will perpetually deed restrict Richardson Flats to prevent further development.[19]

Notwithstanding, but not in derogation, reduction or elimination of the foregoing DEVELOPER options, DEVELOPER shall, in part as an additional public benefit and in part as a traffic mitigation measure, provide the City with long term use of, or fee title to (including associated ownership liabilities and obligations), 30 acres at Richardson Flats. Such acreage will be used for ball fields and parking only. On this acreage, DEVELOPER will provide a parking area which may be paved and which will accommodate segregated Montage and Empire Pass parking (up to 250 spaces), parking for the City (at least 500 spaces) and parking for ball fields (up to 150 spaces), for a total of 900 spaces. The parking improvements and ball fields may be constructed in phases as approved by the City. DEVELOPER will have naming rights for the ball fields.

3.2 **Open Space/Transit Management Fund.** DEVELOPER shall pay on each transfer of DEVELOPER's land, and shall separately covenant with all successors in interest in a manner which runs with the land, to assess a 1% Open Space/Transit Management Fee on the gross sales price of all real property within the Project. 50% of the Open Space/Transit Management Fee shall belong to the Flagstaff Mountain Master Resort Association to reduce Master Resort Association dues associated with

[19] The timing of Richardson Flats development shall be addressed in the Construction Phasing and General Infrastructure Phasing Plans required in Sections 2.1.10 and 2.1.11 with development commencing as early as possible.

obligations assumed herein or to enhance the Master Resort Association's service to its members. 50% of the Open Space/Transit Management Fee shall be paid to the City to assist in funding the costs and expenses for enhanced transportation to the Project, recreation improvements and/or open space acquisition, maintenance or preservation. This Open Space/Transit Management Fee shall not apply to the transfer of real property within the Project either solely as security for financing (e.g. mortgage) or for nominal consideration solely to initially capitalize the development entity. DEVELOPER acknowledges that the Project requires an open space management fee to mitigate the adverse effects of the Project. As such, DEVELOPER covenants that it will pay this fee as a contractual obligation, and not as a regulated entity. DEVELOPER shall vigorously defend the imposition of such fees. DEVELOPER shall not take any action (contractually, judicially, or legislatively) to challenge or otherwise adversely affect the enforceability of the Open Space/Transit Management Fee as a valid and enforceable real covenant.

SECTION IV. IMPACT FEES/PLAN CHECK FEES

4.1 **Conditions of Approval and Impact Fees.** With respect to the development of Flagstaff Mountain, DEVELOPER accepts and agrees to comply with the impact, connection and building fees of the City currently in effect, or as amended, to the extent the amended fees are applied uniformly within an impact fee district. DEVELOPER acknowledges that the Project requires infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions that would otherwise be required at this time. As such, DEVELOPER covenants that it will pay impact fees as a contractual obligation, and not exclusively as a regulated entity. If the state legislature disallows the imposition of a regulatory impact fee, DEVELOPER will pay those impact fees in effect at the time of such change in state law throughout the remaining buildout of the Project. Further DEVELOPER agrees to pay plan check fees in the amount of 65% of the building permit fee.

SECTION V. BONANZA FLATS DEVELOPMENT PARAMETERS

5.1 **Restrictions on Bonanza Flats Development.** DEVELOPER covenants that it will never apply, nor assist in any application, to the City or to Wasatch County for the development of Bonanza Flats in excess of the following maximum densities. Further, DEVELOPER shall amend its development application with Wasatch County, and shall restrict development in Bonanza Flats to the following maximum densities:

5.1.1 A maximum of 260 residential units (280 Unit Equivalents), of which no more than 160 units shall be Bonanza Flats single family home sites.

5.1.2 An 18-hole golf course, including the construction of no larger than a 20,000 sq. ft club house and other golf-related facilities, with Nordic skiing thereon during the winter, all as generally depicted on Exhibit O.

5.1.3 75,000 square feet of resort-related commercial uses.

5.1.4 Alpine and Nordic ski terrain, ski runs, ski lifts and other ski-related improvements, all as depicted on Exhibit O.

5.2 **Wasatch County Approval of Bonanza Flats Development Proposal.** DEVELOPER has a pending application in Wasatch County, with respect to Bonanza Flats, requesting density far in excess of that which the City regards as appropriate. As an inducement for the City to enter into this Agreement, DEVELOPER agrees to amend its development application with Wasatch County in order to reflect the terms and conditions of this Agreement regarding the development of Bonanza Flats. City's contractual restrictions on Bonanza Flats development are in no respect an endorsement of development on Bonanza Flats. DEVELOPER agrees that the portions of Bonanza Flats, as described on Exhibit C attached hereto, which are not to be developed shall be subjected to restrictive covenants or conservation easements, dedicated to a third party conservation trust (or similar entity), in a form acceptable to the City, so that the real property which is not to be developed shall be limited in perpetuity to recreational and open-space uses. DEVELOPER and the City acknowledge that the annexation of Bonanza Flats to the City is not being considered at this time by either the City or by DEVELOPER.

5.3 **Snyderville Basin Sewer Improvement District Annexation.** Snyderville Basin Sewer Improvement District ("SBSID") must agree to annex Bonanza Flats and agree to provide sewer service within Bonanza Flats if Park City is to provide water service to the area. SBSID capacity shall be restricted in size to accommodate no more than the restricted densities agreed to herein. If Wasatch County approves the use of Park City water for culinary use in Bonanza Flats, then DEVELOPER must apply for and pursue annexation to SBSID.

5.4 **Annexation.** If Wasatch County recommends that DEVELOPER seek annexation to the City of Bonanza Flats, then DEVELOPER shall request that the City annex Bonanza Flats. In the event that DEVELOPER requests that the City annex Bonanza Flats, the City anticipates the execution of an interlocal agreement with Wasatch County to address fiscal issues in connection with the City's annexation of Bonanza Flats.

5.5 **Request for Transfer of Bonanza Flats Density to Flagstaff Mountain.** DEVELOPER may seek approval from the City of additional density within Flagstaff Mountain in exchange for DEVELOPER transferring approved density from Bonanza Flats and deed restricting such land as open space. City's contractual restrictions on development in Bonanza Flats in no way shall be construed as an endorsement of such densities either in Bonanza Flats nor transferred to the Mountain Village. Upon DEVELOPER's request, the City would consider such transfer. If favorably inclined to entertain such density transfer, the City would attempt in good faith to negotiate an interlocal agreement with Wasatch County to address fiscal issues associated with such action. In connection with any such request by DEVELOPER, the City may give higher priority to the transfer of multifamily or lodging units and may consider many factors, including but not limited to the following:

5.5.1 The location and quality of open space within the Bonanza Flats property that would occur as a result of the transfer;

5.5.2 The suitability of increased density in the Mountain Village;

5.5.3 The potential reduction of traffic;

5.5.4 The potential positive impacts on the transportation system;

5.5.5 The visual and other impacts to the Mountain Village; and

5.5.6 The positive and negative impacts to the Bonanza Flats Property.

5.6 **Private Road.** Consistent with an approved phasing plan for Flagstaff Mountain, DEVELOPER may construct a private controlled access road between the Flagstaff Mountain and the Bonanza Flats development areas, provided that such private road is properly controlled to prevent through access to adjacent properties and deed restricted to prevent its extension beyond the terminus depicted in Exhibit C.

5.7 **Water Service.** DEVELOPER and the City acknowledge and agree that water service and sewer service to Bonanza Flats should be provided from the same basin in order to avoid any trans-basin transfer issues. Inasmuch as the City shall be providing water service to the Project, the City and DEVELOPER desire that the City provide water service to Bonanza Flats as well. If Wasatch County: 1) approves DEVELOPER's amended proposal for the limited development of Bonanza Flats detailed herein, and 2) approves DEVELOPER's proposal that the City provide water service to Bonanza Flats, then, subject to a City-approved infrastructure phasing plan, DEVELOPER shall build and dedicate to the Park City Water Service District an adequate water delivery system, to service Bonanza Flats, including all fire flow and irrigation needs. DEVELOPER shall work cooperatively with the City to develop a water source or sources, including, but not limited to, making well sites, water rights and easements available to the City. The City shall provide culinary water to Bonanza Flats according to the terms of this Agreement. DEVELOPER will construct all infrastructure, including a source of water necessary to provide water service to Bonanza Flats. City water development and connection fees, as well as water rates, shall be the same as those imposed in the Project, unless the City can identify and fairly assign extraordinary costs to end users within Bonanza Flats. No water from a Weber Drainage Basin source shall be used for outdoor uses in Bonanza Flats.

5.8 **No Annexation Alternative.** If Bonanza Flats is not annexed into the City, and if the requirements described in Sections 5.3, 5.6 and 5.7 are satisfied, then DEVELOPER shall not build within Bonanza Flats more than the units described in Section 5.1 above.

5.9 **Conditions of Development of Bonanza Flats**. Regardless of the annexation of Bonanza Flats to the City, DEVELOPER agrees to the following:

5.9.1 The residential and commercial units constructed within Bonanza Flats shall not be located adjacent to the lakes within the Bonanza Flats property.

5.9.2 If Bonanza Flats is developed, but is not annexed DEVELOPER agrees to provide employee/affordable housing units consistent with its obligations in the Flagstaff Mountain annexation.

5.9.3 Within Bonanza Flats, DEVELOPER shall limit the construction of wood-burning devices to one wood-burning device per single family unit. DEVELOPER shall not request approval from Wasatch County or from the City for wood-burning devices in any other attached, or detached, residential uses. Within each lodge, or hotel constructed within Bonanza Flats, DEVELOPER may construct one wood-burning device in each such lodge or hotel.

5.9.4 DEVELOPER shall pursue an interlocal agreement with Wasatch County whereby the Park City Fire Protection District will provide fire protection services within Bonanza Flats.

5.9.5 Upon reallignment of S.R. 224, DEVELOPER shall prohibit commercial snowmobile use within Bonanza Flats.

SECTION VI. AMENDMENT OF AGREEMENT AND DEVELOPMENT PLAN

6.1 This Agreement may be amended from time to time by mutual written consent of the Parties.

SECTION VII. IMPLEMENTATION OF THIS AGREEMENT

7.1 **Processing and Approvals.** Site specific plans shall be deemed proposed Small Scale Master Plans and shall be subject to the process and limitations set forth in the Park City Municipal Corporation Land Management Code that is in effect when the DEVELOPER submits a complete application for a Small Scale MPD.

7.2 **Cooperation in the Event of Legal Challenge.** If any third party challenges the validity, or any provision, of this Agreement, (1) the Parties shall cooperate in defending such action or proceeding, and (2) DEVELOPER shall hold harmless, and shall indemnify the City for all costs (including attorneys' fees) associated with defending this Agreement. Nothing herein shall be construed as a waiver of governmental immunity, as applicable.

7.3 **Impossibility of Performance.** If this Agreement is delayed in its effect by actions beyond the control of City or DEVELOPER, this Agreement shall remain in full force and effect during such delay. If such delay in the effect of this Agreement extends for a period of more than one year, this Agreement shall be terminable by DEVELOPER or the City upon written notice to the other at any time after such initial one-year period. In the event of termination, all rights and obligations hereunder shall be deemed terminated, provided, however, that the parties shall cooperate to return to the status quo ante.

Section VIII. GENERAL PROVISIONS

8.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project.

8.2 **Transfer of Property.** DEVELOPER and DEER VALLEY shall have the right, without obtaining the City's consent or approval, to assign or transfer all or any portion of its rights, but not its obligations, under this Agreement to any party acquiring an interest or estate in the Project, or any portion thereof. Third party assumption of DEVELOPER's or DEER VALLEY's obligations under this Agreement shall not relieve DEVELOPER or DEER VALLEY of any responsibility or liability with respect to the expressly assumed obligation, unless the City expressly agrees in writing to the reduction or elimination of DEVELOPER's or DEER VALLEY's responsibility or liability. DEVELOPER and DEER VALLEY shall provide notice of any proposed or completed assignment or transfer. If DEVELOPER or DEER VALLEY transfers all or any portion of the property comprising Flagstaff Mountain, Richardson Flats, Sandridge or Bonanza Flats, the transferee shall succeed to all of DEVELOPER's or DEER VALLEY's rights under this Agreement. To the extent the City believes (in its sole discretion, considering the totality of the DEVELOPER's and/or DEER VALLEY's obligations) that the successor in interest has ample resources to secure the City's rights under this Agreement, the City may release DEVELOPER and/or DEER VALLEY from its proportionate liability under this Agreement.

8.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (1) the subject development is a private development; (2) City, DEER VALLEY and DEVELOPER hereby renounce the existence of any form of agency relationship, joint venture or partnership among City, DEER VALLEY and DEVELOPER;

and (3) nothing contained herein shall be construed as creating any such relationship among City, DEER VALLEY and DEVELOPER.

SECTION IX. MISCELLANEOUS

9.1 **Incorporation of Recitals and Introductory Paragraphs.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

9.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

9.3 **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

9.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for DEVELOPER, DEER VALLEY and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Since the time the original Agreement was adopted and executed, many of the DEVELOPER'S obligations hereunder have been satisfied, and the City and DEVELOPER have entered into agreements that impact, implement and/or clarify certain provisions of the original Agreement including (i) An Agreement For A Joint Well Development Program dated January 14, 2000, (ii) a Memorandum of Understanding, dated January 14, 2000, Between Park City Municipal Corporation and United Park City Mines Company Clarifying and Implementing the Water Service and Water Source Development Provisions of the Development Agreement of June 24, 1999, and (iii) the Water Agreement dated __________, 2006 (collectively, the Subsequent Agreements). The fact that this Agreement is styled as an amended and restated agreement shall not reinstate the DEVELOPER obligations that have been satisfied as of the date hereof, and shall not operate or be deemed to supersede, contravene, or amend the terms, conditions or provisions of the Subsequent Agreements.

9.5 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to City to:
City Manager
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060

Copy to:
City Attorney
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060

If to DEVELOPER to:
United Park City Mines Company
c/o David J. Smith
P.O. Box 1450
Park City, UT 84060

Copy to:
~~Craig B. Terry~~Clark K. Taylor
~~Parsons Behle and Latimer~~VanCott Bagley Cornwall & McCarthy
~~P.O. Box 45898~~P. O. Box 45340
Salt Lake City, Utah ~~84145-0898~~84145

If to DEER VALLEY:
Deer Valley Resort Company
Attn: Bob Wheaton, President
2250 Deer Valley Drive South
P.O. Box 889
Park City, Utah 84060

Copy to:
~~Wendy A. Faber~~________________
General Counsel
Royal Street Corporation
7620 Royal Street East, Suite 205
P.O. Box 3179
Park City, Utah 84060

9.6 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

9.7 **Counterparts and Exhibits.** This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of forty-two (42) pages, including notary acknowledgment forms, and in addition, sixteen (16) exhibits, which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Map and Legal description of Flagstaff Mountain
Exhibit B	Map and Legal description of the Iron Mountain Parcels
Exhibit C	Map and Legal description of Bonanza Flats
Exhibit D	Map and Legal description of Richardson Flats

Exhibit E	Map and Legal description of 20-Acre Quinn's Junction Parcel
Exhibit F	Deer Valley Ski Area Master Plan
Exhibit G	Deer Valley Resort Company Ski Run Construction and Revegetation Standards
Exhibit H	Guardsman Realignment
Exhibit I	Emergency Access
Exhibit J	Lady Morgan Springs Open Space Area
Exhibit K	Approximate Location of Prospect Ridge Open Space
Exhibit L	Map and Legal description of Sandridge Parking Lots and Sandridge Heights parcels
Exhibit M	Road and Intersection Improvements Detail
Exhibit N	Runaway Truck Lane
Exhibit O	Bonanza Flats golf course and ski improvements
Exhibit P	Zoning Map for Flagstaff Mountain

9.8 **Attorneys' Fees**. In the event of a dispute between any of the Parties arising under this Agreement, the prevailing Party shall be awarded its attorneys' fees and costs to enforce the terms of this Agreement.

9.9 **Duration.** This Agreement shall continue in force and effect until all obligations hereto have been satisfied. DEVELOPER shall record the approved annexation plat for Flagstaff Mountain within 30 days of the City's adoption of an annexation ordinance to annex Flagstaff Mountain. The Large Scale Master Plan for Flagstaff Mountain granted herein shall continue in force and effect for a minimum of four years from its issuance and shall be effective so long as construction is proceeding in accordance with the approved phasing plan. Upon expiration of the minimum four-year period, approval will lapse after two additional years of Inaction following the expiration of such four-year period, unless extended for up to two years by the Planning Commission.

IN WITNESS WHEREOF, this Agreement has been executed by UPCM and by DEER VALLEY by persons duly authorized to execute the same and by the City of Park City, acting by and through its City Council as of the ~~24th~~ ______day of ~~June~~__________, ~~1999~~2006.

PARK CITY MUNICIPAL CORPORATION

By: ________________________________
~~Bradley A. Olch~~Dana Williams, Mayor

ATTEST: City Clerk

By: ________________________________
Janet Scott, City Recorder

APPROVED AS TO FORM:

____
~~Jodi Hoffman~~Mark D. Harrington, City Attorney

DEVELOPER:
United Park City Mines Company,
a Delaware corporation

____
By: ~~Hank Rothwell~~____________________
Title: President

STATE OF UTAH)
: ss
COUNTY OF SUMMIT)

On this ______ day of July 1999, before me, ~~**Thomas L. O'Finnegan**~~________________, the undersigned Notary Public, personally appeared ~~**Hank Rothwell**~~______________, personally known to me to be the President of United Park City Mines Co., on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.

DRAFT
September 20, 2006

____
Notary Public, State of Utah
Residing in ~~Park City, Utah~~_____________

DEER VALLEY RESORT COMPANY,
a Utah limited partnership
By: Royal Street of Utah, a Utah corporation,
General Partner

By: ______________________________
Robert Wells, Vice President

STATE OF UTAH)
: ss
COUNTY OF SUMMIT)

On this ______ day of July 1999, before me, ~~**Thomas L. O'Finnegan**~~____________, the undersigned Notary Public, personally appeared **Robert Wells**, personally known to me to be the Vice President of Royal Street of Utah, on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.

____
Notary Public, State of Utah
Residing in ~~Park City, Utah~~_____________

DRAFT
September 20, 2006

SCHEDULE 3.1

RICHARDSON FLATS PARKING AREA SPECIFICATIONS

Talisker or United Park City Mines Company will provide to the City on a long term basis, the use of, or fee title to (including associated ownership liabilities and obligatons), 30 acres at Richardson Flats. The use of this land is provided on the basis that it will be for ball fields and parking only. On this acreage, Talisker will provide a paved area which will accommodate segregated Montage and Empire Pass parking (up to 250 spaces), parking for the City (at least 500 spaces) and parking for ball fields (up to 150 spaces), for a total of 900 spaces. The cost of constructing or improving any road leading to the site is not included. The parking improvements and ball fields may be constructed in phases as approved by the City.

Additional specifications are as follows:

1. Adequate space will be provided for drainage & snow storage.
2. The area will have reasonably flat terrain.
3. The parking lot will allow adequate bus travel through the parking area.
4. An allowance for signs and street lights is included.
5. The lot will be paved with 3"-4" of pavement on 5" of road base.

The sketch plan for the 30 acre site shows land that would accommodate 3 soccer fields and 2 softball fields, and other expansion areas, but the precise layout and cost of such is the City's responsibility.

September 27, 2006

Park City Planning Commission
Park City Municipal Corporation
PO Box 1480
Park City, UT 84060
Via email

Dear Commissioners:

We understand that United Park City Mines/Talisker is asking you consider the use of a deed restriction rather than a conservation easement to ensure the recreation and open space values of the Park City Mountain Resort Ski Lease Lands. We thought that it might be helpful in your deliberations to have some information on the differences between a deed restriction and a conservation easement.

We are submitting two brief documents for your review. The first, a Fact Sheet from the Land Trust Alliance, outlines the differences between deed restrictions and conservation easements. The second document, a "Law Update" also from the Land Trust Alliance, provides some examples of issues that might arise with deed restrictions. The Land Trust Alliance is a national organization, providing accreditation, information, and networking to more than 1,500 land trusts across America.

As you may expect, the Summit Land Conservancy advocates the use of conservation easements as the best tool for permanently protecting open space. Such easements provide the legal backing for the protection of open lands and, when held and monitored by a third-party land trust, also ensure that the conservation values are evaluated on a regular basis in perpetuity.

Thank you for your time.

Yours truly,

Cheryl Fox
Executive Director

Summit Land Conservancy
435-649-0220
PO Box 1775, Park City, UT 84060
www.summitlandconservancy.org

Conservation Easement v. Deed Restriction

Q Since we are a nonprofit with a permanent existence, is there any difference between our receiving a restriction on land by deed covenant and a restriction on land by conservation easement?

A Deed restrictions and conservation easements are essentially the same thing... legally binding restrictions on the use of land in the form of a written instrument that affects the title to the land and is generally recorded where deeds are recorded. The only significant difference is that the conservation easement, if written properly and granted to an eligible grantee, is entitled to many more protections of the law under most states' statutes. It is generally accorded greater deference by courts in the event of a dispute. Another major difference is that conservation easements that meet certain qualifications are eligible for income tax treatment as a charitable gift. Because of these added benefits, there is no reason why a qualified grantee should ever take a simple deed restriction.

Deed restrictions are a creature of "common law," the law we inherited from England, as interpreted by court decisions. Those decisions have resulted in some significant drawbacks for deed restrictions that the state conservation easement statutes were designed to eliminate. While it may differ from state to state, a deed restriction is not permanent unless it is "appurtenant" to nearby land. It must benefit that nearby land, and run with the title to both properties. Otherwise, it is enforceable only during the lifetime of the grantor. Neither is it assignable by the grantee—in other words, a land trust cannot transfer a simple deed restriction to another land trust or public agency.

Another disadvantage to simple deed restrictions is that the case law of most states require the courts to resolve any ambiguity in the interpretation of a common law deed restriction in favor of the less restricted use. Moreover, deed restrictions can be terminated by a court based on economic hardship or impracticability, without regard to public benefit. None of these impediments are applied to properly written conservation easements. In fact, some state laws instruct courts not to consider financial hardship in evaluating whether to terminate or modify an easement for "changed circumstances." Even in the absence of such specific protection, courts are apt to give greater deference to conservation easements because of the public benefit they serve.

If a full-blown easement is unappealing to a landowner and he or she doesn't care about tax deductions, in many states it is possible to draft a very simple document that more resembles a deed restrictions,but which meets the requirements of the easement statute, and therefore qualifies for all of its protections. In Maine, for instance, the following language added to short and simple deed restriction language will make it a permanent conservation easement, without even mentioning the easement statute.

> *This covenant is for conservation purposes and shall run with and burden the premises in perpetuity, and The Land Trust, its successors and assigns, shall have the right to*

enforce the same at law or in equity, and the right to enter the premises at a reasonable time and in a reasonable manner in order to monitor compliance herewith.

This kind of clause can also be used to turn a deed restriction in a deed from the land trust to another organization or person into a conservation easement. In fact, with just a few more sentences, an abbreviated version of the boilerplate language required by the IRS for income and estate tax recognition can turn the otherwise qualified restriction into a qualifed conservation contribution under the tax code. The assistance of experienced counsel is essential, of course.

Karin F. Marchetti Ponte, General Counsel Maine Coast Heritage Trust
Excerpt from "Ask an Expert", *Exchange,* Spring 2001

The following is excerpted from the "Law Update," published in *The Exchange* (Fall 2000, vol. 19 no.4). *The Exchange* is published by the Land Trust Alliance.

Land Trusts Take Action to Uphold Deed Restrictions on Transferred Lands

A coalition of New Jersey environmental organizations, led by the New Jersey Conservation Foundation (NJCF), filed suit in August in the New Jersey Superior Court to halt a ski resort development on land purchased in the 1940s as a state wildlife management area and sold to a private owner in 1989, subject to a deed restriction. Meanwhile, in New Hampshire, the Merrimack County Superior Court in June dismissed a lawsuit the Society for the Protection of New Hampshire Forests (SPNHF) filed against the state for violating a deed restriction on land SPNHF had transferred to the state in 1949.

The SPNHF lawsuit attempted to block the state from allowing a telecommunications tower on the Mount Kearsarge property, but the court noted that the deed restriction was "ambiguous" in regard to the tower. The restriction simply states that the property should be managed as a forest and recreational reserve.

As a result of the experience, SPNHF is reviewing its deed restrictions—some of which are more than 60 years old—and plans to meet with the state to clarify and reconfirm its intent for the properties, said Charlie Niebling, SPNHF director of public policy. The land trust will also regularly monitor lands it has transferred to the state.

"We learned that organizations like ours that have a long history of working to facilitate land protection with public agencies need to be vigilant about specifying and documenting their expectations, particularly when they gift a piece of land to an agency," Mr. Niebling noted. "From now on, we're going to be more specific and detailed in our deeds to the state, much as we do when we sell land to private parties subject to conservation restrictions."

In New Jersey, more than 1,200 acres on Hamburg Mountain in the town of Vernon were purchased by the state as a wildlife preserve in the 1940s, then sold in 1986 to a private owner, subject to a deed restriction.

The current landowner, an international ski resort and real estate development firm, proposed and obtained zoning changes to allow for possible development of 1,600 condominiums, two golf courses and three hotels, some of which would be developed on the former wildlife reserve. The lawsuit was filed against the town for the new zoning's inconsistency with Vernon's municipal master plan, which identifies Hamburg Mountain as an important source of the town's drinking water and urges strong limitations on development. NJCF is also arguing that the proposed development would violate the conditions of a state-imposed conservation restriction on parts of the property.

While NJCF rarely gets involved in litigation over local development, this case raises the concern that lands once protected with public funds may be converted to other uses, said Alison Mitchell, director of programs for NJCF.

—Kendall Slee, editor, Exchange

SUMMIT SLC LAND CONSERVANCY

October 9, 2006

Park City Council Members and Mayor Dana Williams
Park City Municipal Corporation
PO Box 1480
Park City, UT 84060
Via email

Dear Park City Council Members and Mayor Williams:

The Summit Land Conservancy understands that you may be considering the merits of a conservation easement as opposed to a deed restriction. Accordingly, we would like to provide you with some information that might help clarify the differences between these two types of "encumbrances."

We have attached some concise information that outlines the differences between conservation easements and deed restrictions. This information came from the national Land Trust Alliance.

The following chart summarizes the differences:

Conservation Easements	Deed Restrictions
Permanent. Conservation Easements have become the preferred tool across the country for the permanent protection of open lands and conservation values	Not permanent. Deed Restrictions may be removed by the parties that placed them
Monitored by an independent third party	Not monitored by an independent party. A land trust has no legal standing to enforce the terms of a deed restriction
Public Benefit is of great concern to a court of law if the conservation easement is challenged.	Public benefit is NOT considered by a court of law when deciding whether or not to change the terms of the deed restriction. Courts will hold deed restrictions to the least restrictive uses, and will consider the issue of hardship to the landowner.

You may be interested to note that conservation easements were created to address the weaknesses of deed restrictions as a tool for permanently protecting conservation values. States created statues enabling the use of conservation easements in order to provide a better tool for the permanent protection of open lands and other conservation values.

As you may expect, the Summit Land Conservancy advocates the use of conservation easements as the best tool for permanently protecting open space. Such easements provide the legal backing for the protection of open lands and, when held and monitored by a third-party land trust, also ensure that the conservation values are evaluated on a regular basis in perpetuity.

Thank you for your time.

Yours truly,

Cheryl Fox
Executive Director
Summit Land Conservancy