PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 1, 2007

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, February 1, 2007.

Closed Session – City Council Chambers
2:30 p.m. Property/litigation

Work Session – City Council Chambers
3:50 p.m. Council questions/comments
4:00 p.m. Affordable housing – City-owned properties
4:30 p.m. Potential use of Aerie Drive parcel
4:50 p.m. Legislative update
5:10 p.m. Liaison appointments – roles and protocol
5:40 p.m. Regular meeting questions/comments
5:50 p.m. Break

Regular Meeting – City Council Chambers
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III PUBLIC INPUT *(any matter of City business not scheduled on agenda)*

IV CONSENT AGENDA PUBLIC HEARINGS *(items listed will be open for public hearing prior to consideration for adoption or rejection; hearings may also be continued by vote of the Council)*

Continuation of hearing on consideration of an Ordinance approving the 255 Deer Valley Drive Replat, an amendment to Lots 7, 8, 22 and 23 on Block 66 of the amended plat of the Park City Survey

V CONSENT AGENDA *(items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")*

1. Ordinance approving the 255 Deer Valley Drive Replat, an amendment to Lots 7, 8, 22 and 23 on Block 66 of the amended plat of the Park City Survey

2. Cooperative Corridor Preservation Agreement with UDOT for SR248

3. Street Lighting Agreement with UDOT for Street Lighting at the Park City High School Crosswalk on SR248

VI OLD BUSINESS *(continued items with presentations and/or anticipated detailed discussions)*

Consideration of an Ordinance approving the United Park City Mines/Park City Mountain Resort Annexation Agreement and amending the Official Zoning Map

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

Posted: 01/29/07
See: www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

February 2007

8 Joint closed session
Legislative update
Historic District discussion – work (2 hrs)
Resolution adopting strategic plan for ice arena – work/action
Ordinance – 430 Ontario Avenue plat amendment - KW
Ordinance – 654 Woodside Avenue plat amendment **(motion to continue)** - KW
Ordinance – 1335 Lowell Avenue survey plat – RM

15 Legislative update
Closed session – personnel
Ordinance Accepting the Public Improvements at Eagle Pointe Subdivision Phase 4.
Emergency preparedness and response program
Acceptance of disclosure statements
Water Service District Meeting
Consideration of Weber Basin Water Conservancy District Water Sales Agreement for 2500 acre feet of district and non-district water
Consideration of Mountain Regional Special Service District Agreement for 3,100 gpm

22 **No meeting**

March 2007

1 Legislative update
LMC Chapter 15 Definitions, Chapter 5

8 **No meeting**

15

22

29

Pending Items:
General Plan - Park/Bonanza
Electronic voting
Main Street/Historic District solid waste update - Jerry
Noise/outdoor decks
Strategic plan for ice arena
MOU between Park City and Summit County for Animal Control Services
Air quality discussion
Brewpub lease assignment – RDA
Regional bus service SLC

Tentative "no meeting" dates:
April 12
May 10

June 14
July 26
August 16
September 6
October 18
December 27

City Council Staff Report

Author: Phyllis Robinson
Subject: Affordable Housing Direction
Date: February 1, 2007
Type of Item: Informational

PARK CITY 1884

Sustainability

Summary Recommendations: Direct Staff to proceed with preparing a Request for Qualifications (RFQ) for Snow Creek Lot 9B, the redevelopment of the Park Avenue Fire Station site and the Pechnik parcel. Staff will update Council on the selection process consistent with approved budget policies.

Description:

Topic:

Development of Significant City Property

Background:

Over the past year Staff has worked on refining City's affordable housing programs and policies, assisting local nonprofits to develop affordable housing in Park City, negotiating with developers for the inclusion of affordable housing in Master Planned Developments and Annexations, and initiated predevelopment activity for City-owned property.

At the 2007 Council Visioning session, Council directed staff to move forward with the active development of workforce housing on city-owned parcels, with the expressed goal of having construction on Snow Creek Lot 9B (behind the new police facility) begin in Summer 2007.

Council re-affirmed that the City's primary role is to facilitate the development and/or preservation of affordable housing through financial and regulatory processes, but that in some instances it may be necessary or desirable for the City to have a more active role in housing production. Specifically when there is a significant city contribution of land or capital, the City's role may include coordination and/or overseeing the housing development.

Analysis:

In 2006 Council provided direction to staff to proceed with feasibility studies/ predevelopment on the following city-owned or to-be-acquired city properties. All sites are infill sites, appropriately zoned for the proposed development, on the bus route and/or walkable to service areas. The potential project sizes discussed for the parcels below are based upon existing zoning and land management code requirements, preliminary feasibility studies and initial concept sketches. The project sizes are meant to be representative of the development potential and have not received any public approvals.

<u>Snow Creek 9B</u>

Staff prepared a set of footprint sketches outlining development options for this parcel including assisted living, multi-family, town homes and single family detached units. These concept sketches are included as Attachment A. The sketches should not be interpreted as a final or desired design or layout nor that any public approvals have been received. Based upon the initial concept sketches, Staff proceeded with further feasibility analysis. Staff engaged Stantec Consulting to provide a preliminary geotechnical and infrastructure cost analysis and environmental impact assessment for this site. The site is zoned Residential Development – Medium Density. The process was conducted to identify key factors that will affect the development of the property and to provide a site infrastructure development cost estimate. The findings of the study indicate that there is a total effective developable site, once wetlands, floods plains, boundary setbacks and other geographic constraints are taken into consideration of 1.894 acres. Stantec also made a general assessment of the soils conditions based upon the findings of the Geotechnical Study performed on the new Police Station site and previously observed trench conditions during the sanitary sewer installation that traverses the west boundary of the site. Preliminary findings from Stantec consulting indicate an estimated development potential of three single family detached homes, 24 at-grade attached town homes, or 40 multi-unit stacked condominiums consistent with the initial concept sketches for the site.

Based upon the 2007 Council Visioning discussion to proceed with site development, staff anticipates the following schedule:
March:
Sustainable Request for Qualifications (RFQ) for Design/Build Proposals is announced.
April:
- *Review of RFQ submittals*
- *Selection of top candidates*
- *Receipt of Request for Proposals from top candidates*

May:
- *Community Open House to review Concept/Schematic Drawings*
- *Staff recommendation to Council*
- *Award of Contract*

June 2007
- *Successful development team initiates required approval process(es).*

September 2007
- *Site work begins*

*Snow Creek Discussion***:**
- It is likely that one or more developers with an outstanding housing obligation from existing approved annexations and/or MPDs may be interested in submitting a development proposal on this parcel to fulfill part or all of its obligations. A developer with an existing housing obligation would fulfill one Affordable Unit Equivalent for every 800 square feet constructed. Fulfilling this obligation on city-owned land would represent a savings in time and expense to the developer. ***Staff is requesting Council discussion as to whether Council would (i) permit a developer to fulfill an outstanding housing obligation on city-owned property, and if so under what conditions. Staff recommends that the developer receive credit for .50 Affordable Unit Equivalent for each 800 square feet constructed in recognition of the time and expense savings.***

- ***Is the City Council willing to contribute the underlying land to the project to enhance project affordability?*** Staff would recommend that the City explore mechanisms such as a 99 year renewable lease/land trust in which the City retains ownership of the underlying land separate from the improvement, long term deed restrictions or other deeds of trust instruments such as a silent second mortgage.

- There is an identified need for affordable home ownership property in Park City. ***Is Council willing to put owner-occupancy restrictions on the initial development and subsequent sales of the property?*** This would help to ensure that the property remains a long term viable source of affordable home ownership in Park City. Staff will return to Council with the form of limited equity restrictions.

- There is also an identified need for seasonal housing within the community. ***Would Council like staff to consider alternative uses for this parcel including seasonal housing?***

Park Avenue Fire Station Redevelopment

The initial site analysis estimated a redevelopment potential of approximately 20 condominium units on the site that includes both the fire station at 1353 Park Avenue and the adjacent lot at 1333 Park Avenue. The historic house would be preserved under any redevelopment scenarios. It is anticipated that the property exchange between Park City Municipal and the Fire Service District will occur in Spring 2007. The Fire District anticipates construction beginning on the Holiday Ranch site in Summer 2007. The new station is expected to be operational in Spring 2008.Once the property exchange is finalized Staff is prepared to proceed on the issuance of a Sustainable RFQ for this property with construction commencing in Spring 2008.

Park Avenue Discussion

- ***Is Council comfortable with issuing the RFQ for the redevelopment of the Park Avenue concurrent with the issuance of the RFQ for Snow Creek 9B?*** Staff anticipates that there may economies and efficiencies achieved in the responses to the Snow Creek site if there is another project also available to the developer. It would also allow a developer to move forward with the planning process and be ready to begin construction as soon as the Holiday Ranch Station is operational.

- There is also an identified need for seasonal housing within the community. ***Would Council like staff to consider alternative uses for this parcel including seasonal housing?***

Pechnik Parcel

In 1999 the RDA acquired the Pechnik site (across from the Sandridge Parking Lot) with the intent to use the site for affordable housing. The existing house has been demolished to prepare the site for a more useful development configuration. Staff engaged Blake Chambliss to prepare a feasibility study of the development potential of this site. While the site has development constraints, it is possible to build a modest number of units (2- 4 units) on the site. Mr. Chambliss' report and concept site sketches are included as Attachment A to this staff report.

Pechnik Parcel Discussion:

- ***Is Council comfortable with issuing the RFQ for the development of the Pechnik site concurrent with the issuance of the RFQ for Snow Creek 9B?*** Staff anticipates that there may economies and efficiencies achieved in the responses to the Snow Creek site if there is another project also available to the developer. The project could be developed concurrently assuming all approvals are received. This site provides one of the last opportunities for providing workforce housing within the downtown core.

- ***Alternatively, would Council like to consider a fair market value sale of the Pechnik site with the proceeds directed to other workforce housing projects?*** The Pechnik site was acquired in 1999 for $205,000.

Department Review:
This staff report has been reviewed by the City Attorney, City Manager and Planning Department.

Alternatives:

A. Direct Staff to proceed with preparing the RFQ for Snow Creek Lot 9B, the redevelopment of the Park Avenue Fire Station site and the Pechnik parcel. **This is Staff's recommendation.**

B. Direct Staff to proceed with preparing an RFQ for one or more of the city-owned parcels as identified by Council.

C. Continue the item and request staff to return with additional site analysis and information prior to giving Council direction on the development of workforce housing on City-owned land.

D. Deny the request.

Significant Impacts:
There is an identified need for workforce and seasonal housing in Park City. The City has identified several parcels as appropriate for the development of workforce housing. Two of the three parcels have been acquired by the City using RDA funds and are ready to proceed. The third parcel (Park Avenue Fire Station) will not be acquired until Spring 2007 and construction will not be able to begin assuming all entitlements are received until late spring/early summer 2008. The most significant impact of not proceeding with these projects is the loss of approximately 50 units of affordable home ownership in Park City.

Recommendation:
Direct Staff to proceed with preparing a Request for Qualifications (RFQ) for Snow Creek Lot 9B, the redevelopment of the Park Avenue Fire Station site and the Pechnik parcel. Staff will update Council on the selection process consistent with approved budget policies.

ATTACHMENT A: Snow Creek Concept Sketches
ATTACHMENT B: Park Avenue Concept Sketches
ATTACHMENT C: Pechnik Report
ATTACHMENT D: Pechnik Concept Sketches
ATTACHMENT E: Resume

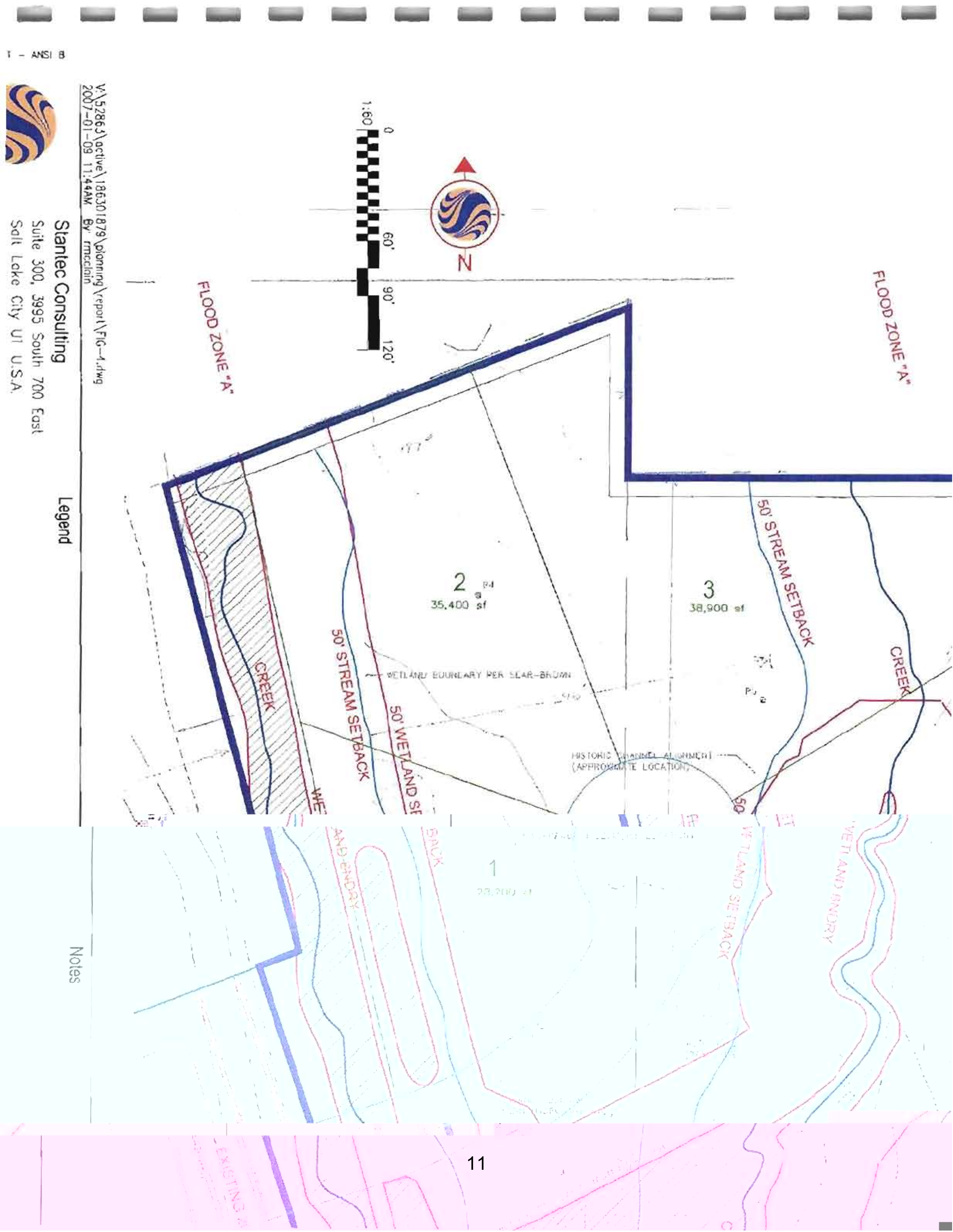
Park City, Utah

Snow Creek Property Analysis

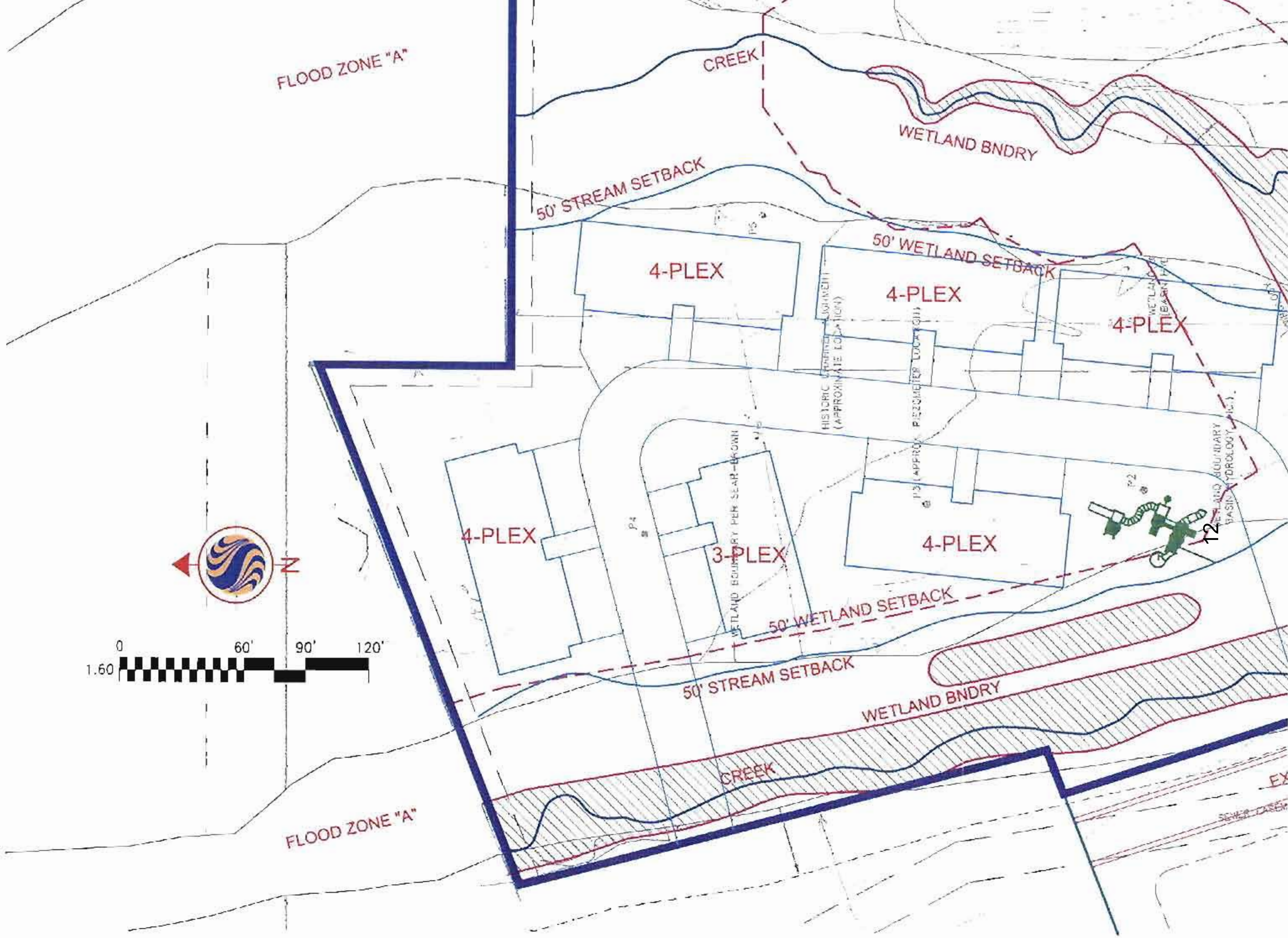
Affordable Housing Options

Park City, Utah

Snow Creek Property Analysis **Affordable Housing Options**



Stantec Consulting
Suite 300, 3995 South 700 East
Salt Lake City UT U.S.A.
Legend
Notes
1:60
0
60'
90'
120'
N
FLOOD ZONE "A"
FLOOD ZONE "A"
2
35,400 sf
3
38,900 sf
1
50' STREAM SETBACK
50' STREAM SETBACK
50' WETLAND SETBACK
CREEK
CREEK
WETLAND BOUNDARY PER SEAR-BROWN
HISTORIC CHANNEL ALIGNMENT
(APPROXIMATE LOCATION)



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Stantec Consulting
Suite 300, 3995 South 700 East
Salt Lake City UT U.S.A

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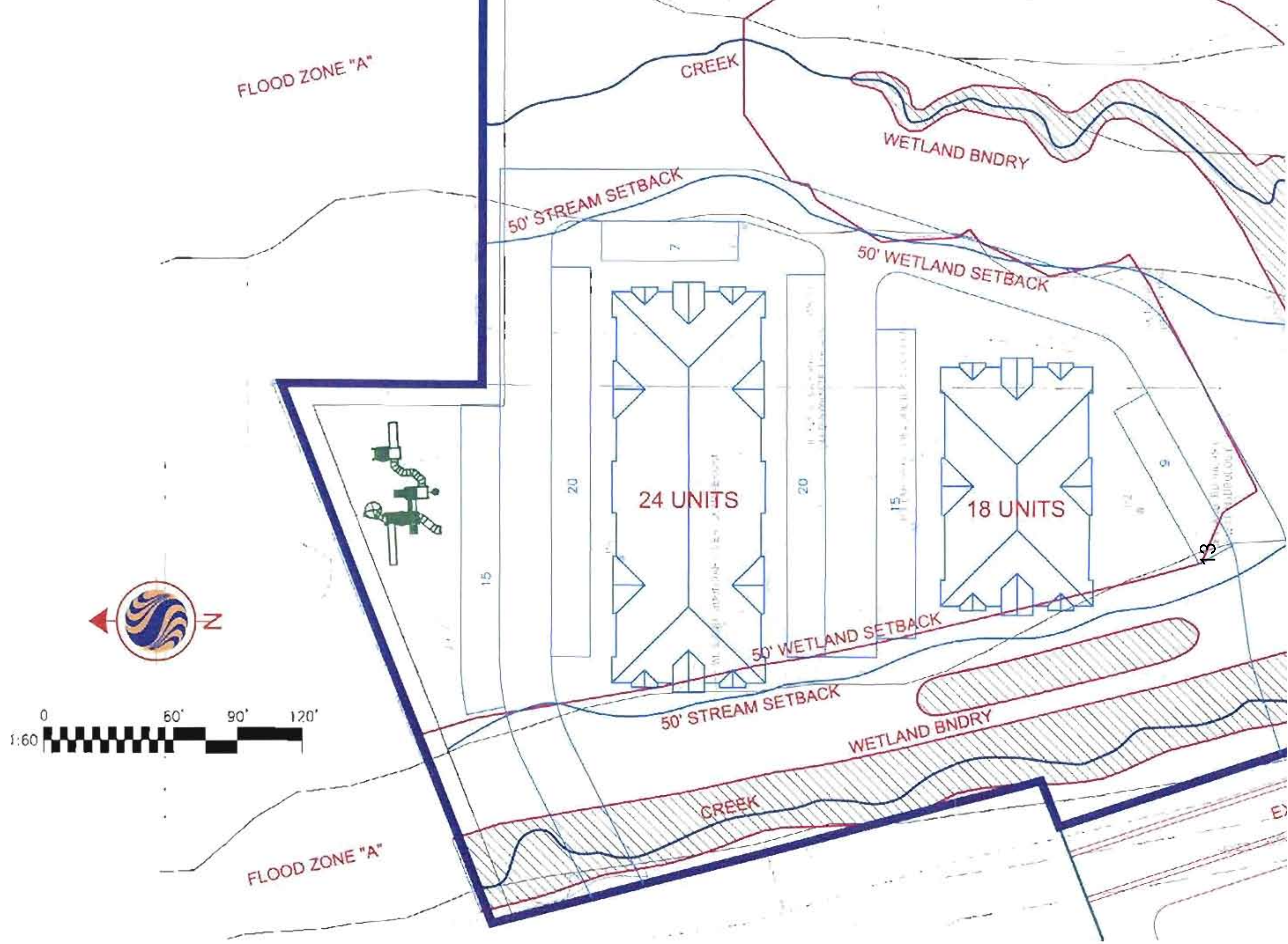

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Stantec Consulting
Suite 300, 3995 South 700 East
Salt Lake City UT U.S.A.

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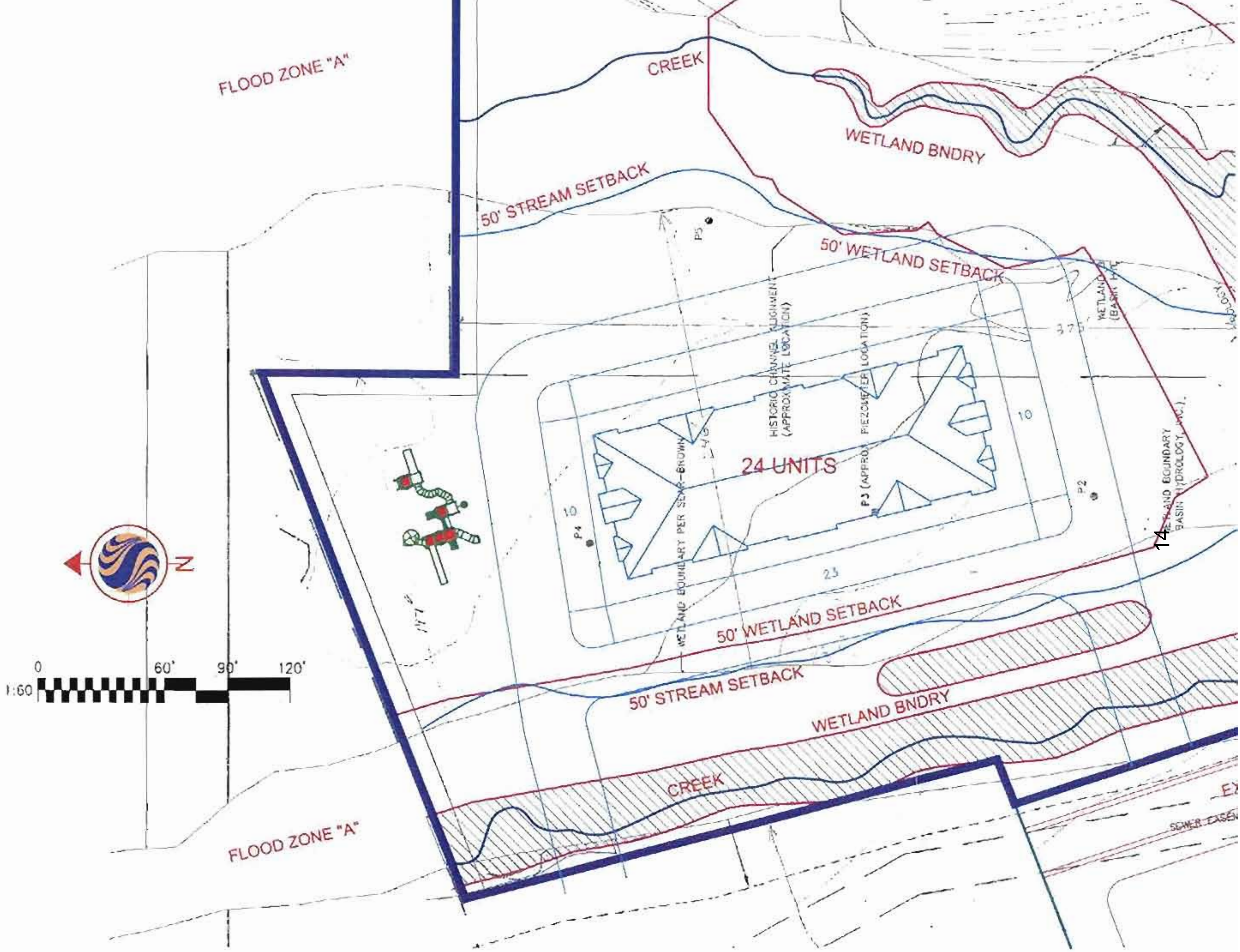

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Stantec Consulting
Suite 300, 3995 South 700 East
Salt Lake City UT U.S.A.

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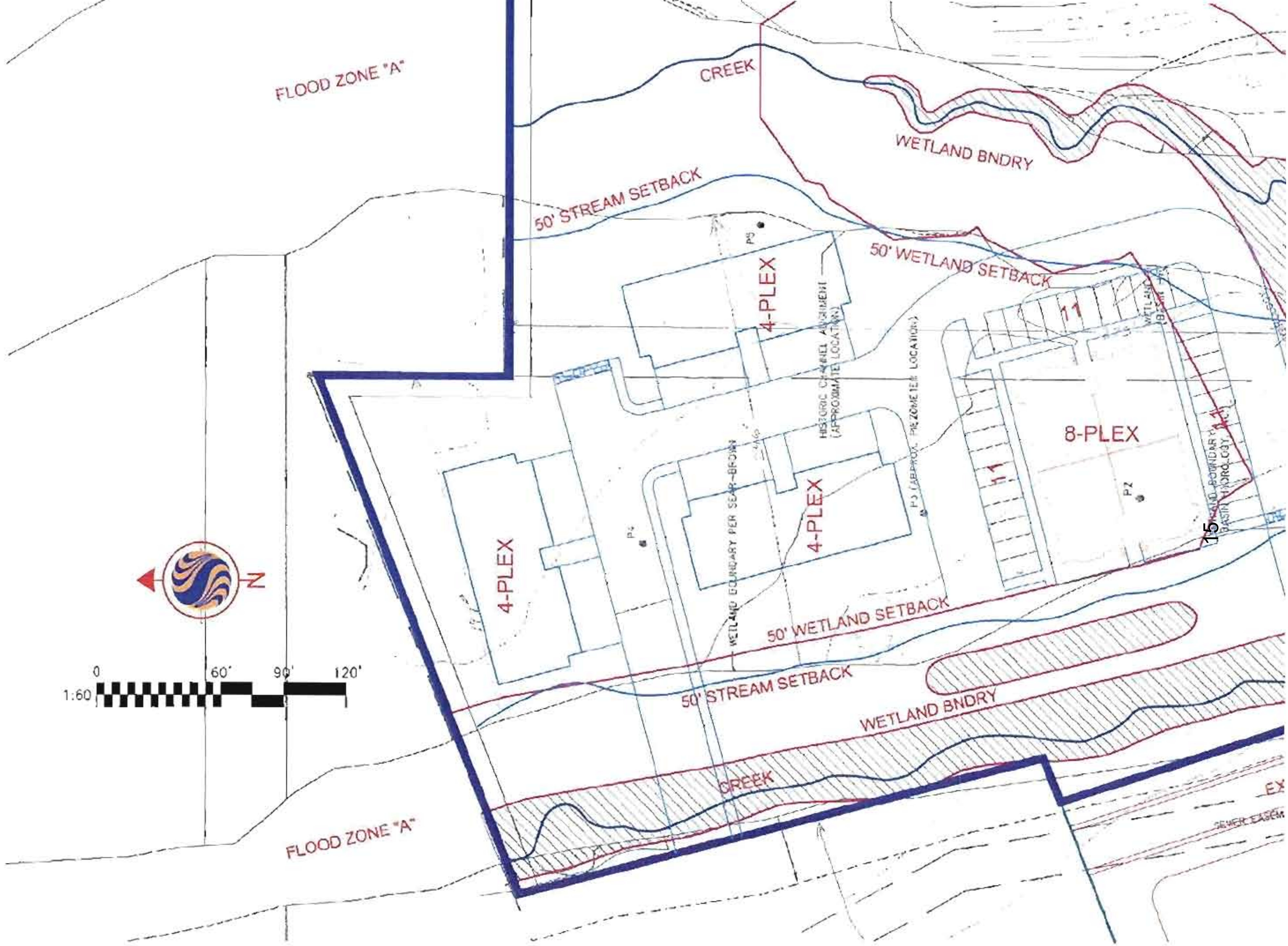

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Stantec Consulting
Suite 300, 3995 South 700 East
Salt Lake City UT U.S.A.

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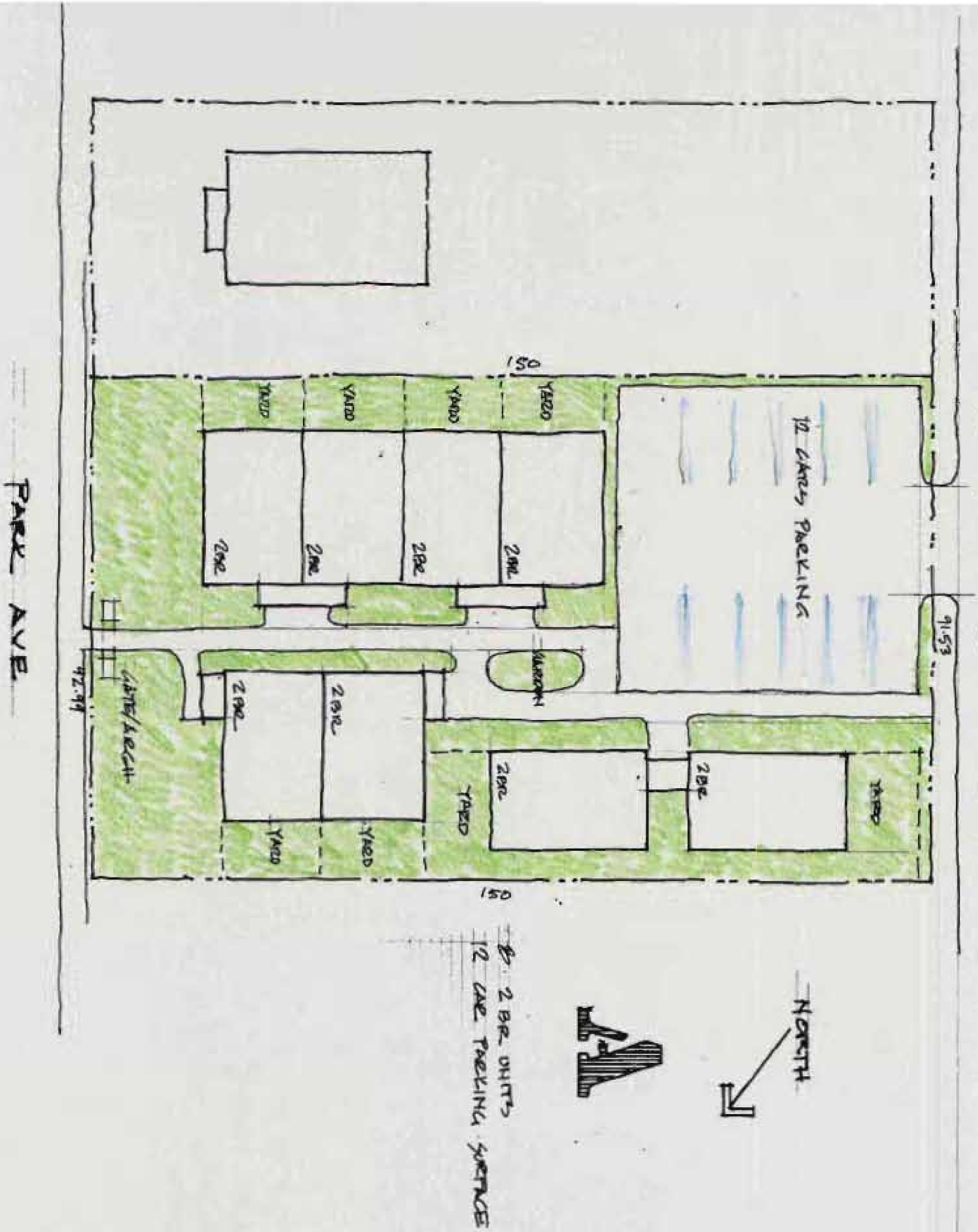
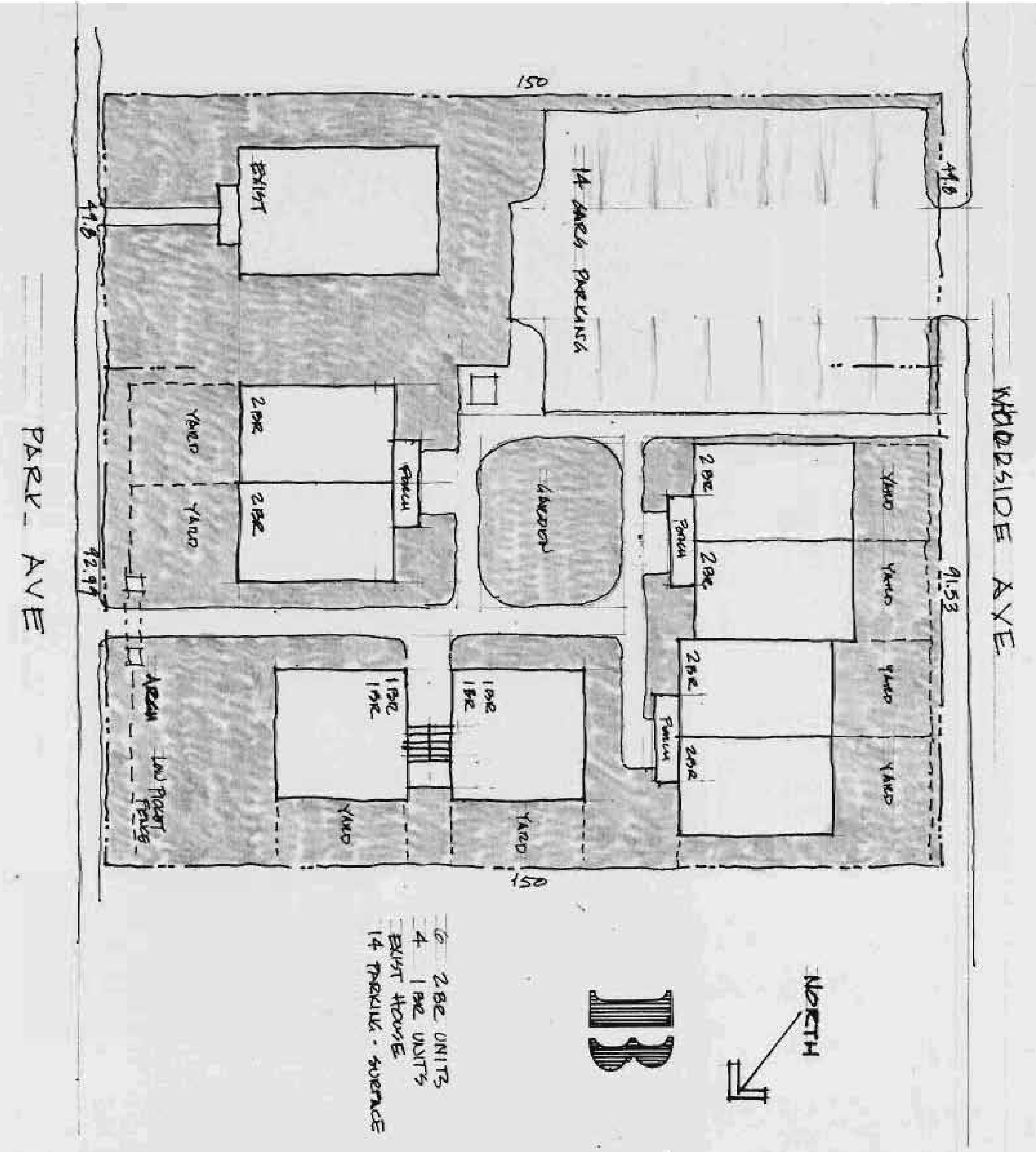


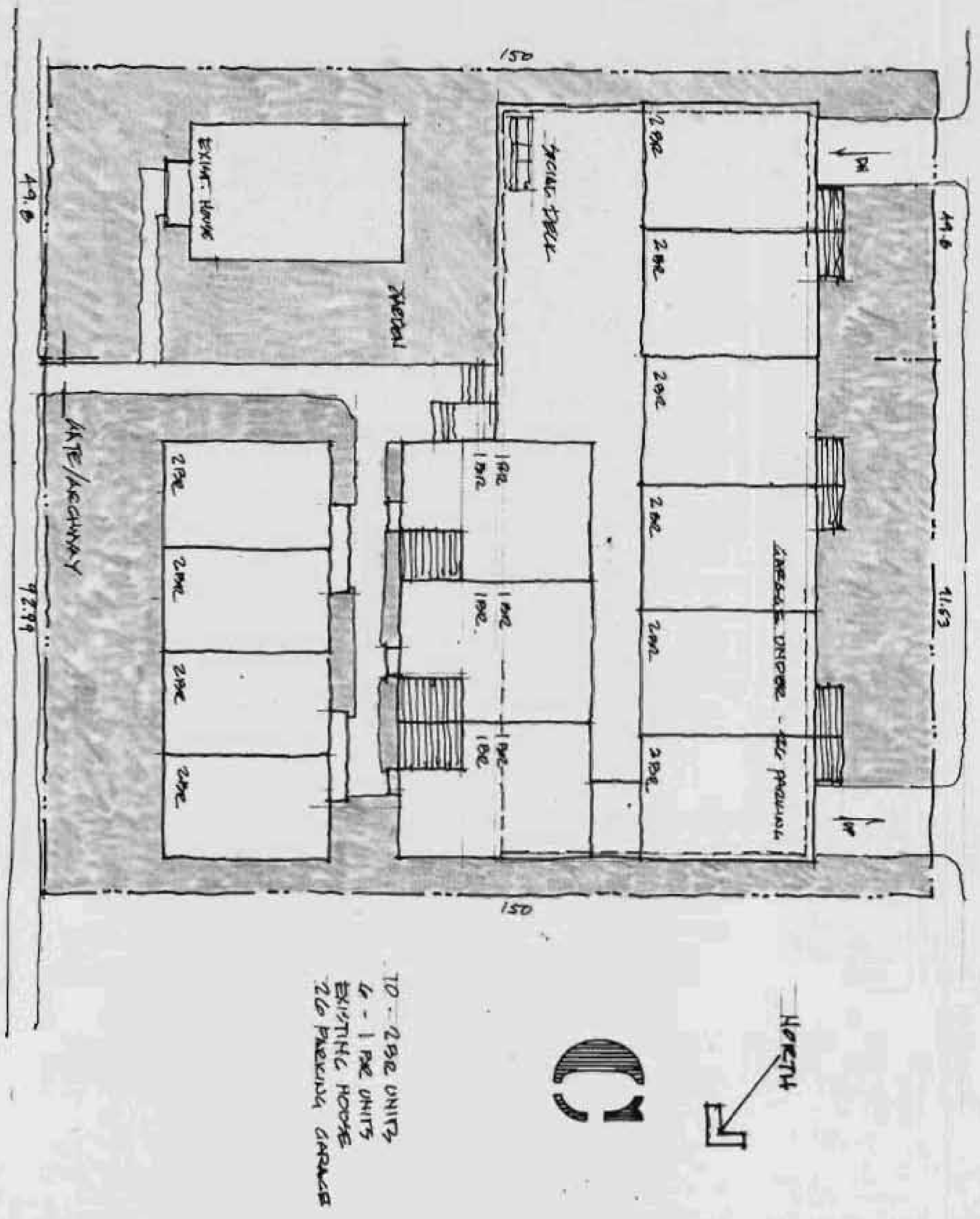
Park City, Utah

Firehouse Property Analysis | Affordable Housing Options



Park City, Utah

Firehouse Property Analysis **Affordable Housing Options**


PARK AVE
WOODSIDE AVE
150
150
49.8
49.8
92.99
71.63
EXIST. HOUSE
GARDEN
SOCIAL DECK
GATE/ARCHWAY
GARAGE UNDER - ALL PARKING
NORTH
10 - 2BR UNITS
6 - 1 BR UNITS
EXISTING HOUSE
26 PARKING GARAGE

ATTACHMENT C:

Analysis of Pechnik Parcel
for Creating Affordable Working-Family Housing
January 22, 2007
D. Blake Chambliss, FAIA

In preparing this analysis, I visited the site and discussed their potential for affordable housing with City staff, the Planning Office and the City Engineer. I have reviewed the applicable City Municipal Codes, specifically the Land Management Code as it applies to the property and reviewed any third party reports related to the site.

In addition, I have taken the further steps of exploring the specific development potential for each of the sites, including creating concept design alternatives for the sites. The design concept sketches accompany this report. The site analysis follows.

Pechnik Property

The Pechnik site is small (approximately 8500 SF according to my site survey estimate), about one-fifth of an acre. Under the Park City Land Management Code, 15-6 7, Master Planned Affordable Housing Development allows a maximum of 20 units/acre. So it would seem that a maximum of four units could be placed on the site.

It is also very steep; from the base on Marsac Avenue as constructed (not the platted Marsac Avenue in the area, which will need to be vacated to allow the property to be developed) to the rear property line is approximately a 35'-40' change in elevation. That is at the limit of the allowed slope (40%) for property development. That slope will require substantial structural foundation and retaining walls, though not unlike some of the other homes in the area. I have suggested two potential solutions,

> The first solution (A) has been laid out to include two duplexes, providing for 4 affordable housing units. Two duplexes are suggested, to provide better control of snow storage and surface runoff than contiguous row houses. Each of the units has been designed to accommodate the entry and a one-car garage at the street level, living areas up one floor, with either two or three bedrooms on the third level, depending on the unit (great views of the City and the ski area from both Living and BR levels). The driveway provides space for off-street parking for a second car for each unit. A substantial amount of terracing and/or retaining walls will be necessary in the back yards to handle the steep terrain.
>
> The second alternative (B) has been laid out as two single family homes. Though it only provides for two affordable housing units, they penetrate less into the hill, and allow more flexibility, with lower construction costs and less structural landscaping to manage the steep slope in the rear yard. The design utilizes a similar configuration – with a two-car garage and entry on the ground level, living on the second floor and bedrooms on the third level. It would be possible to increase the unit sizes to provide 4 bedroom housing.

Included are sketches of the two alternatives, with Building Sections that illustrate the housing configurations and suggestions for handling the steep rear yard terrain.

Conclusion:
There are two potential alternatives shown, providing either two or four affordable housing units.

> The **four unit** solution (A) requires substantially greater structural foundation construction, building into the hillside, with structural landscape terracing to control and stabilize the steep slope. This solution provides more affordable units and of a more modest size, but with a greater initial cost for the foundations. The added cost of the more extensive and complicated foundation and terracing is likely to be in the $40,000 to $60,000 range for the site.

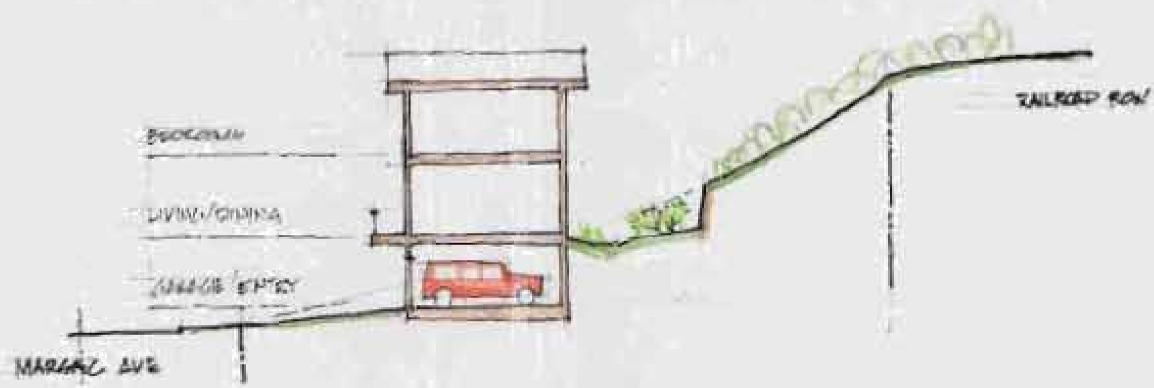
The **two unit** solution (B) will be easier to construct. The units are aligned parallel to the hillside slope rather than penetrating into the hill, reducing the extent of the required foundation and landscape terracing work. It also offers the potential for greater unit flexibility for providing larger living space and more bedrooms to accommodate larger workforce families.

Park City, Utah

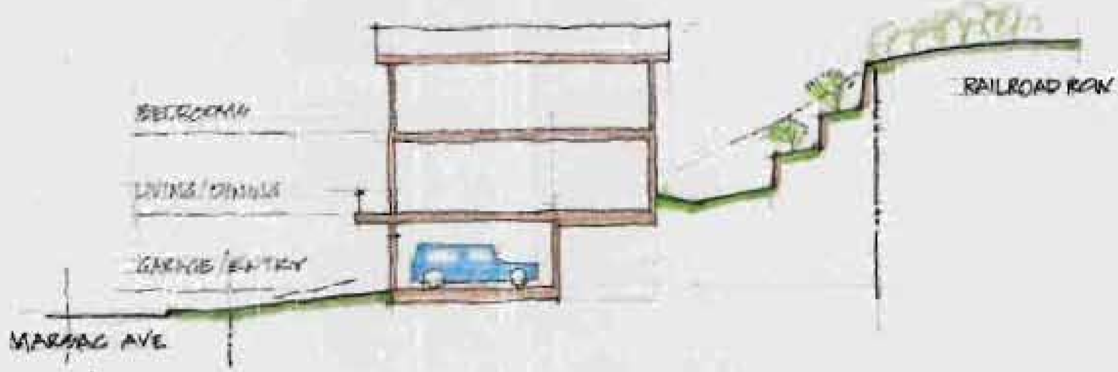
Pechnik Property Analysis

Affordable Housing Options


ONTARIO AVE
MARSAC AVENUE
2 BR
3 BR
PLATTED MARSAC AVE
℄ RAILROAD SPUR
2 SINGLE FAM. HOMES
~ 4000 SF LOTS
2 - 3/4 BR. UNITS
B
NORTH



SECTION B - SINGLE FAMILY HOMES



SECTION A - DUPLEX UNITS

ATTACHMENT E:

Blake Chambliss, FAIA

3300 East Virginia Avenue
Denver, CO 80209
303 521-3412
blakechambliss@yahoo.com

A nationally known leader in affordable housing development, public policy analysis and technical assistance delivery, Blake is an architect with over 40 years' experience in architecture, community planning and housing for elderly and special needs populations. He is an accomplished educator, trainer and facilitator, an advocate and spokesperson for non-profit development of affordable, special needs and service-supported housing.

Affordable Housing. Blake is a recognized authority in expanding the role of public and nonprofit organizations to create livable communities that include a full range of affordable and special needs housing. He identifies, evaluates and assembles resources for community-based public and non-profit groups. He researches and helps create innovative public policy housing solutions to address the full continuum of housing with health and service needs.

Architecture/Planning. In Grand Junction, CO, he founded his architectural practice, then managed and administered it with a staff of up to 12 professionals for 23 years. His firm provided full architectural service for the construction of public and private facilities, such as hospitals, health care facilities, banks, churches, elderly housing and schools throughout Western Colorado and Wyoming. He led the preparation of public housing policy plans for municipalities, states and private agencies, integrating affordable housing into community development strategies.

Organizational Dynamics. He is skilled in securing public input, emphasizing consensus-building among community groups: balancing financial, smart growth, community and public interests. Cooperation and partner-building are significant outcomes as participants reconcile their own interests with public-interest goals.

Professional Experience

Blake Chambliss, FAIA, *Denver, CO* 2005 –

Contracting with community-based non-profits across the Western U.S., he is helping implement the concepts reinforced by his Walk across Colorado in the summer of 2004 – that housing is more than just shelter – that housing developments must be respect neighborhood/community values. Elderly and working families need a continuum of affordable housing choices. Unique, regional and community-based solutions will be required to fill their housing needs. Housing is a vital job creator and should be incorporated into each community's social and economic development strategy.

Rural Community Assistance Corporation, Sacramento, CA and Denver, CO 1996-2004
Senior Rural Housing Specialist

Blake opened and managed the Denver office, assisting community-based housing organizations throughout the West in developing programs to serve lower-income families with appropriate housing. He led community housing and design workshops addressing service-supported housing, from New Mexico to Washington and Montana to Hawaii. He assisted Native American Tribal groups, Oglala Sioux/Lakota in Pine Ridge, SD, Havasupai in AZ and Kootenai in MT, to create their own culturally responsive housing and community design solutions. In 1998 he co-authored the RCAC published manual *Creating Community-Based Assisted Living Housing,* funded by the Colorado Trust and the Hearst Foundation. In 2003, he authored the ONAP study, *Developing Assisted Living Housing on Tribal Lands in Washington State,* with the Colville and Cowlitz Tribes in WA.

- He coached emerging non-profit groups to create a broad vision, then implementing their mission through: influencing public policies, organizing strategic planning, project analysis, pro forma development, identifying funding and helped them make grant and loan applications.
- He developed and presented funding application workshops for non-profit, low income and special needs housing in Montana, Colorado, Arizona, California, Hawaii, Idaho, New Mexico, Texas, Utah, Washington and Wyoming. He created affordable housing design training for RCAC Training Conferences, and for national HAC, NAHRO, NCCA, Neighborhood Reinvestment and Federal Reserve housing conferences.
- He was a frequent and regular contributor to RCAC's publications *Pacific Mountain Review* and *Pacific Mountain Network News.* He authored articles on organizational development, project successes and the need for greater public involvement in meeting community housing and development goals.

Federal Deposit Insurance Corporation, **Denver, Colorado** 1991-1995

Resolution Trust Corporation (RTC)
Affordable Housing/Direct Sales Team Chair

Created and helped implement the Direct Sales Program for the disposition of 400 multi-family properties containing 38,000 units of housing (book value $650,000,000) to public agencies and non-profit organizations. This program was adopted as a national model by RTC. He led in the development of program parameters, guidelines, policies and procedures, meeting the Congressional intent to "maximize the preservation of the availability and affordability of RTC's inventory of properties." He managed the activities of 30 multi-family affordable housing staff and over one hundred professionals specializing in sales, legal and asset management.

- Authored and/or edited training manuals and directed the training of field staff and contractors to ensure consistency in implementation.
- Researched public and private low income housing funds for acquiring and renovating RTC properties by public and nonprofit buyers.
- Created management system for tracking and monitoring the marketing and property disposition in six regional offices.
- Wrote articles on affordable housing for in-house RTC and other periodicals.

Mercy Housing, Inc., Denver, CO. (formerly Catherine McAuley Housing Foundation) 1990-1991
Director, Technical Assistance

He created the Technical Assistance Division to provide hands-on technical assistance to affordable housing-related projects for Mercy and other housing non-profit organizations. Consulted with public, private and non-profit and health-related entities in developing low- and moderate-income housing. Activities included:

- Developed a statewide housing needs assessment and public policy recommendations for the Wyoming Community Development Authority and Housing Needs analyses for South Dakota and Idaho.
- Established a Technical Assistance Advisor (TAA) relationship with the RTC for the disposition of their distressed properties.
- Advised RTC in identifying and marketing to qualified buyers, providing training and support to buyers with property and market analysis, identifying financial resources and processing offers.

Anderson, Mason, Dale, P.C. Architects, Denver, CO 1986-1989
Senior Associate

Project Architect for elderly and low-income housing projects in Colorado and Wyoming. Directed a staff of ten architects, developed project programs, prepared project budgets, operating pro forma, schedules and established project standards. Communicated with clients, community groups, financial advisors, engineers, contractors and sub-contractors.

Chambliss Associates Architects, Grand Junction, CO 1963-1986
Senior Partner

He founded his architectural practice in 1963 on Colorado's Western Slope, serving as Managing Principal. He developed business plans, policies and procedures and secured, trained and developed required staff. His firm provided full-scope architectural services throughout Colorado, Wyoming and Utah on public and commercial projects, including housing, schools, banks, offices, churches, nursing homes and libraries. In 1975, he expanded the practice to provide community planning and development consulting services to private corporations, public agencies and non-profit community groups. There he helped develop public-private affordable housing strategies for addressing energy and industrial impacts on communities.

- Architect for more than fifty low-income housing projects, totaling 900 units of elderly housing, 300 units of low-income family housing and 240 beds of health care, nursing, and assisted living facilities.
- Researched community/housing planning and strategic housing needs in Wyoming for the Wyoming Community Development Authority and for the City of Casper, WY; secured public policy input for the mitigation of impacts from mining development for AMAX Corporation in Gunnison County, CO; and prepared the oil shale impact plan for the Town of Parachute, CO.

Education:

Master in Architecture, Harvard University, Graduate School of Design	1960
B.S. Architectural Engineering, University of New Mexico	1956

Community Service:

- **Housing Justice! Inc.** Founding Board member Member 2001 to present
  Inter-faith organization advocating decent, affordable housing for all residents. Blake walked 850 miles around the State of Colorado during the summer of 2004 to heighten awareness of the affordable housing crisis throughout the State.
- **Colorado Affordable Housing Partnership** Founding Board, Member 1986 to Present Pres.1995-96
  Statewide forum for education and advocacy for meeting affordable housing needs
- **National AIA Housing Committee** Exec. Comm. 1981-84 Chair 1984-85
  Founded and chaired "Search for Shelter" program Chair 1985-91
  Mobilized professional architects in 150 U.S. cities, in providing pro bono assistance to address local homeless conditions.
  Appointed to AIA Affordable Housing Task Force Member 1996-99
  Appointed to AIA Livable Communities Committee Member 2001-02
- **Colorado Housing and Finance Authority** Member 1976-91 Chair 1988-89
  Leading Board advocate for broadening Authority into special needs and homeless housing initiatives
  National Conference of State Housing Boards Chair 1989-90
  Encouraged State Housing Finance Authorities to meet a broader range of affordable housing needs
- **Colorado Coalition for the Homeless**, Homeless Families Project Chair 1990-91
  Built consensus for three-county effort with five housing authorities, eight case management agencies. Awarded Robert Wood Johnson Grant to implement Metro-wide coordinated homeless service delivery.
- **Glenwood Canyon Citizens Advisory Committee** Member and Secretary 1976-1986
  Governor-appointed representative of Design Profession to advise the Colorado Highway Department on the feasibility of extending 1-70 through Glenwood Canyon; engaged in ten-year process to assure design parameters were met in final design and construction phases.

- **Governor's Housing Task Force** Co-Chair 1974-75
  Led statewide hearings defining a new state role in housing Colorado's citizens
- **Colorado Housing, Inc.** Founding Board Member 1968-76 Chair 1972-74
  Facilitated bringing technical assistance to rural communities throughout Colorado with unmet housing needs
- **Grand Junction City, Regional Planning Commissions** Member 1967-78
  Advised City and County on development issues, including potential impacts of massive Oil Shale development

Awards:

2006: 9Who Care Award by KUSA, 9News for "his efforts to educate Coloradoans about affordable housing including an 850-mile walk around the State in the summer of 2004."
2004: Peacemaker Award, Rocky Mountain Conference, United Church of Christ
"for his creative and tireless efforts to educate, advocate and mobilize for housing justice"
1990: United Nations Operation Habitat Recognition Award for AIA's "Search for Shelter"
"In appreciation of its efforts in helping develop affordable housing for all"
1985: Fellow, American Institute of Architects
"the highest honor the AIA bestows on its members for contributions to the community and profession"
1980: Lee F. Johnson Housing Award from Colorado Housing, Inc.
"for outstanding dedication to serving the needs of low income people in Colorado"
1970: Man of the Year, Club 20
"for helping define a more comprehensive view of environmental values throughout Western Colorado"
1965: Annual Award, Colorado Easter Seal Society
"for leadership in developing facilities to serve handicapped children throughout Colorado"

City Council
Staff Report

Author: Phyllis Robinson and Myles Rademan
Subject: Aerie Drive Property
Date: February 1, 2007
Type of Item: Property Disposition

Sustainability

Summary Recommendation:
Staff recommends that based upon an independent housing consultant assessment Council commit the entire 4.51 acre Aerie Drive property purchased from Royal Street Associates as permanent open space and authorize the expenditure of $150,000 of Open Space Bond proceeds to reimburse the 5 Year CIP.

Description:

Topic:
Open space and trail protection and possible affordable housing site.

Background:
The City purchased 4.51 acres on Aerie Drive from Royal Street Associates for $150,000 on September 30, 2005 under a bargain sale contract for the purposes of protecting the Lost Prospector Trail easement. The property was valued at $300,000. The City paid for the purchase using 5 Year CIP Funds with the intent of reimbursing the CIP from the appropriate funding source(s) once the final use for the site was determined.

With the trail easement/alignment protected, Council also directed staff to look at the feasibility of building affordable housing on a portion of the site. Staff returned to Council in June 2006 with the recommendation that the site is not suitable or cost-effective for affordable housing development due to the physical geography of the parcel including steep slopes, lack of utilities to the site and the safety of access onto Aerie Drive among other issues.

Council then asked Staff to conduct an enhanced site analysis prior to making a final determination as to use and funding source because the use of Open Space Bond proceeds precludes development from this site in the future.

Staff engaged Blake Chambliss, FAIA to prepare a third-party site analysis of the Aerie Drive parcel. Mr. Chambliss is a Fellow of the American Association of Architects (FAIA) and a nationally known leader in affordable housing with more than 40 years' experience in architecture, community planning and affordable housing development. Blake conducted a site visit, met with City staff and prepared an independent analysis of the development potential of that site. Mr. Chambliss will be at the February 1, 2007 Council meeting to answer any questions that Council might have about his analysis. Mr. Chambliss' resume is included in this staff report as Attachment B.

Analysis:

Mr. Chambliss identified two major concerns, the driveway access and a building pad. There is a slim possibility to get a legal driveway access to the site, if one could begin on what appears to be a flattened transition area of Aerie Drive adjacent to its intersection with Deer Valley Drive. That location is only about 50' from the where the two streets meet, just inside the right-of-way line, and may violate intersection proximity regulations of the City and/or Utah Department of Transportation (UDOT). Assuming that one could gain vehicular access to the site from Aerie Drive, the driveway would be approximately 450 feet in length and switched back across the hillside to maintain a grade no greater than ten percent. The estimated cost of a driveway to the site alone would cost between $150,000 and $250,000 – if there are no geologic issues that have to be overcome in the construction. The cost of utilities, which are not currently available to the site, would add an additional $50,000 to $100,000. In addition, there will be ongoing operating costs for maintaining the drive, landscaping the disturbed area and caring for the landscaping.

The second issue is the building pad. There is one small area in the center of the site with a relatively lower slope, about 15%, according to the site plan topography that could accommodate a development footprint of approximately 1,200 feet. The concept site plan included as Attachment A to this staff report shows the impact of construction of only a single family home with this footprint. Any multi-unit project would be even more difficult and expensive to build.

Mr. Chambliss' evaluation concluded that the property *"would not provide housing that would be affordable to Park City's workforce families."* A copy of Mr. Chambliss' evaluation and site plan is included as Attachment A.

Staff sincerely appreciates Council's ongoing commitment to identifying city-owned sites for creating workforce housing solutions. Based upon prior staff site analysis and Mr. Chambliss' findings, staff recommends that this parcel be dedicated as open space to the City by using bond proceeds to repay the CIP. Council should also consider placing a conservation easement on the land consistent with prior Council direction regarding the use of open space bonds.

Department Review:
This report was reviewed by the City Manager, City Attorney, City Engineer, Planning Department, Budget, Debt and Grants and the Trails Coordinator.

Alternatives:

Approve the Request: Transfer $150,000 in open space bond funds to reimburse the 5 Year CIP (which were used to purchase the site from Royal Street Associates). This will permanently restrict the parcel as open space and protect the trailhead.

Deny the Request: Direct staff to identify a permanent funding source for the property acquisition that would not preclude the future use of affordable housing. Funds are not currently budgeted for this expense. Staff would return to Council during the budget process for this appropriation.

Continue the Request: Direct staff to return to Council with additional information.

Significant Impacts:
The property has already been purchased by the City and is not under any private development pressure. The remaining issue is that of the long term use of the site and the appropriate funding source. Should Council determine that the site should be preserved for open space and trail head protection, the City has an identified source of funds through Open Space Bonds which can be used to reimburse the 5 Year CIP. Should Council determine that affordable housing is an appropriate and cost effective option on the site, or an option worth preserving, a funding source will need to be identified and funds appropriated to the Housing CIP during the upcoming budget process so that the 5 Year CIP can be reimbursed.

Recommendation:
Staff recommends that Council commit the entire 4.51 acre Aerie Drive property purchased from Royal Street Associates as permanent open space and authorize the expenditure of $150,000 of Open Space Bond proceeds to reimburse the 5 Year CIP.

ATTACHMENT A
Park City, Utah
Analysis of Aerie Drive Parcel
for Creating Affordable Working-Family Housing
January 22, 2007
D. Blake Chambliss, FAIA

In preparing this analysis, I visited the site and discussed their potential for affordable housing with City staff, the Planning Office and the City Engineer. I have reviewed the applicable City Municipal Codes, specifically the Land Management Code as it applies to the property, and reviewed reports related to the Aerie Drive site.

In addition, I have taken the further steps of exploring the specific development potential for each of the sites, including creating concept design options. The design concept sketch accompanies this report. The analysis of the site follows:

Aerie Drive Property

The Aerie Drive site is a 4.51 Acre site purchased by the City in September 2005 for the purposes of maintaining it as open space and protecting the Lost Prospector Trail easement. At that time Council directed staff to look into future affordable housing opportunities on the site as well as preserving the trail connection.

The City Engineer, Eric DeHaan, reported in August 2006 that “the parcel has never been legally subdivided. It is only a parcel, not an approved lot. In order to approve a building permit, Park City needs to approve a subdivision plat. The subdivision ordinance requires driveway and road access in accordance with City standards, which go on to discourage driveways on arterial roads and prohibit roads steeper than 10%. Aerie Drive near the subject property is build in excess of 10%. A condition of subdivision approval may be that no occupied structures could be built on the lot since legal driveway access from a compliant street is not available.”

There is a slim possibility, despite the City Engineer’s concerns, that a legal connection could be made at the base of Aerie Drive It might be possible to get a legal driveway access to the site, if one could begin on what appears to be a flattened transition area of Aerie Drive adjacent to its intersection with Deer Valley Drive. That location is only about 50' from the where the two streets meet, just inside the ROW line, and may violate intersection proximity regulations of the City and/or Utah Department of Highways (UDOH). As the City Engineer states, there does not appear to be any other possible legally acceptable site access.

There is one small area in the center of the site with a relatively lower slope, about 15%, according to the site plan topography. The development of such an un-subdivided parcel is regulated under the Estate Zone, which requires a 3 Acre minimum size. Therefore the 5.41 Acre parcel would allow only a single dwelling and, in order to protect the Lost Prospect Trail, any structure would need to stay at least 50’-100’ from the trail itself. Affordable housing is a conditional use within the Estate Zone and while it is possible that the site could receive a density bonus under Section 15-6-7, the site limitations including but not limited to steep slope and access would significantly limit the development of additional units beyond the base footprint.

If the access at the base of Aerie Drive were to be allowed, it would be necessary to build a private drive to a buildable site. It would take approximately 450 ft of drive at within the maximum grade requirements of a 10% grade to reach the building site, approximately 40-50' above the intersection. To provide for required snow removal, maintenance and erosion control, the drive must be built with controlled retaining walls sloping down (or up) from the road bed to the natural grade. The driveway would have to be constructed -- with retaining walls protecting the driveway edges. Including turn-around areas at the switchbacks it would require a total of approximately 500+ ft of driveway. Most of that drive would require retaining walls on one or both sides throughout its length. These estimates assume trips generated by a single family residence and may need to be increased to accommodate additional units.

The road and its construction would consume more than one-forth of the site, and if there were construction problems as a result of the underlying geology (rock, unstable soils, etc.) it could disturb substantially more. There would be little of the natural landscape left between the house and the City. The visual impact of the development on the City and from Deer Valley Drive will require substantial landscaping.

Conclusion:
The cost of a driveway to the site alone would cost between $150,000 and $250,000 – if there are no geologic issues that have to be overcome in the construction. The cost of utilities, which are not currently available to the site, would add an additional $50,000 to $100,000. In addition, there will be ongoing operating costs for maintaining the drive and caring for the landscaping.

This property clearly would not provide housing that would be affordable to Park City's workforce families.


DEER VALLEY DRIVE
AERIE DRIVE
blake chambliss

ATTACHMENT C:

Blake Chambliss, FAIA

3300 East Virginia Avenue
Denver, CO 80209
303 521-3412
blakechambliss@yahoo.com

A nationally known leader in affordable housing development, public policy analysis and technical assistance delivery, Blake is an architect with over 40 years' experience in architecture, community planning and housing for elderly and special needs populations. He is an accomplished educator, trainer and facilitator, an advocate and spokesperson for non-profit development of affordable, special needs and service-supported housing.

Affordable Housing. Blake is a recognized authority in expanding the role of public and nonprofit organizations to create livable communities that include a full range of affordable and special needs housing. He identifies, evaluates and assembles resources for community-based public and non-profit groups. He researches and helps create innovative public policy housing solutions to address the full continuum of housing with health and service needs.

Architecture/Planning. In Grand Junction, CO, he founded his architectural practice, then managed and administered it with a staff of up to 12 professionals for 23 years. His firm provided full architectural service for the construction of public and private facilities, such as hospitals, health care facilities, banks, churches, elderly housing and schools throughout Western Colorado and Wyoming. He led the preparation of public housing policy plans for municipalities, states and private agencies, integrating affordable housing into community development strategies.

Organizational Dynamics. He is skilled in securing public input, emphasizing consensus-building among community groups: balancing financial, smart growth, community and public interests. Cooperation and partner-building are significant outcomes as participants reconcile their own interests with public-interest goals.

Professional Experience

Blake Chambliss, FAIA, *Denver, CO* 2005 –

Contracting with community-based non-profits across the Western U.S., he is helping implement the concepts reinforced by his Walk across Colorado in the summer of 2004 – that housing is more than just shelter – that housing developments must be respect neighborhood/community values. Elderly and working families need a continuum of affordable housing choices. Unique, regional and community-based solutions will be required to fill their housing needs. Housing is a vital job creator and should be incorporated into each community's social and economic development strategy.

Rural Community Assistance Corporation, Sacramento, CA and Denver, CO 1996-2004
Senior Rural Housing Specialist

Blake opened and managed the Denver office, assisting community-based housing organizations throughout the West in developing programs to serve lower-income families with appropriate housing. He led community housing and design workshops addressing service-supported housing, from New Mexico to Washington and Montana to Hawaii. He assisted Native American Tribal groups, Oglala Sioux/Lakota in Pine Ridge, SD, Havasupai in AZ and Kootenai in MT, to create their own culturally responsive housing and community design solutions. In 1998 he co-authored the RCAC published manual *Creating Community-Based Assisted Living Housing,* funded by the Colorado Trust and the Hearst Foundation. In 2003, he authored the ONAP study, *Developing Assisted Living Housing on Tribal Lands in Washington State,* with the Colville and Cowlitz Tribes in WA.

- He coached emerging non-profit groups to create a broad vision, then implementing their mission through: influencing public policies, organizing strategic planning, project analysis, pro forma development, identifying funding and helped them make grant and loan applications.
- He developed and presented funding application workshops for non-profit, low income and special needs housing in Montana, Colorado, Arizona, California, Hawaii, Idaho, New Mexico, Texas, Utah, Washington and Wyoming. He created affordable housing design training for RCAC Training Conferences, and for national HAC, NAHRO, NCCA, Neighborhood Reinvestment and Federal Reserve housing conferences.
- He was a frequent and regular contributor to RCAC's publications *Pacific Mountain Review* and *Pacific Mountain Network News.* He authored articles on organizational development, project successes and the need for greater public involvement in meeting community housing and development goals.

Federal Deposit Insurance Corporation, **Denver, Colorado** 1991-1995

Resolution Trust Corporation (RTC)
Affordable Housing/Direct Sales Team Chair

Created and helped implement the Direct Sales Program for the disposition of 400 multi-family properties containing 38,000 units of housing (book value $650,000,000) to public agencies and non-profit organizations. This program was adopted as a national model by RTC. He led in the development of program parameters, guidelines, policies and procedures, meeting the Congressional intent to "maximize the preservation of the availability and affordability of RTC's inventory of properties." He managed the activities of 30 multi-family affordable housing staff and over one hundred professionals specializing in sales, legal and asset management.

- Authored and/or edited training manuals and directed the training of field staff and contractors to ensure consistency in implementation.
- Researched public and private low income housing funds for acquiring and renovating RTC properties by public and nonprofit buyers.
- Created management system for tracking and monitoring the marketing and property disposition in six regional offices.
- Wrote articles on affordable housing for in-house RTC and other periodicals.

Mercy Housing, Inc., Denver, CO. (formerly Catherine McAuley Housing Foundation) 1990-1991
Director, Technical Assistance

He created the Technical Assistance Division to provide hands-on technical assistance to affordable housing-related projects for Mercy and other housing non-profit organizations. Consulted with public, private and non-profit and health-related entities in developing low- and moderate-income housing. Activities included:

- Developed a statewide housing needs assessment and public policy recommendations for the Wyoming Community Development Authority and Housing Needs analyses for South Dakota and Idaho.
- Established a Technical Assistance Advisor (TAA) relationship with the RTC for the disposition of their distressed properties.
- Advised RTC in identifying and marketing to qualified buyers, providing training and support to buyers with property and market analysis, identifying financial resources and processing offers.

Anderson, Mason, Dale, P.C. Architects, Denver, CO 1986-1989
Senior Associate

Project Architect for elderly and low-income housing projects in Colorado and Wyoming. Directed a staff of ten architects, developed project programs, prepared project budgets, operating pro forma, schedules and established project standards. Communicated with clients, community groups, financial advisors, engineers, contractors and sub-contractors.

Chambliss Associates Architects, Grand Junction, CO 1963-1986
Senior Partner

He founded his architectural practice in 1963 on Colorado's Western Slope, serving as Managing Principal. He developed business plans, policies and procedures and secured, trained and developed required staff. His firm provided full-scope architectural services throughout Colorado, Wyoming and Utah on public and commercial projects, including housing, schools, banks, offices, churches, nursing homes and libraries. In 1975, he expanded the practice to provide community planning and development consulting services to private corporations, public agencies and non-profit community groups. There he helped develop public-private affordable housing strategies for addressing energy and industrial impacts on communities.

- Architect for more than fifty low-income housing projects, totaling 900 units of elderly housing, 300 units of low-income family housing and 240 beds of health care, nursing, and assisted living facilities.
- Researched community/housing planning and strategic housing needs in Wyoming for the Wyoming Community Development Authority and for the City of Casper, WY; secured public policy input for the mitigation of impacts from mining development for AMAX Corporation in Gunnison County, CO; and prepared the oil shale impact plan for the Town of Parachute, CO.

Education:

Master in Architecture, Harvard University, Graduate School of Design	1960
B.S. Architectural Engineering, University of New Mexico	1956

Community Service:

- **Housing Justice! Inc.** Founding Board member Member 2001 to present
  Inter-faith organization advocating decent, affordable housing for all residents. Blake walked 850 miles around the State of Colorado during the summer of 2004 to heighten awareness of the affordable housing crisis throughout the State.
- **Colorado Affordable Housing Partnership** Founding Board, Member 1986 to Present Pres.1995-96
  Statewide forum for education and advocacy for meeting affordable housing needs
- **National AIA Housing Committee** Exec. Comm. 1981-84 Chair 1984-85
  Founded and chaired "Search for Shelter" program Chair 1985-91
  Mobilized professional architects in 150 U.S. cities, in providing pro bono assistance to address local homeless conditions.
  Appointed to AIA Affordable Housing Task Force Member 1996-99
  Appointed to AIA Livable Communities Committee Member 2001-02
- **Colorado Housing and Finance Authority** Member 1976-91 Chair 1988-89
  Leading Board advocate for broadening Authority into special needs and homeless housing initiatives
  National Conference of State Housing Boards Chair 1989-90
  Encouraged State Housing Finance Authorities to meet a broader range of affordable housing needs
- **Colorado Coalition for the Homeless**, Homeless Families Project Chair 1990-91
  Built consensus for three-county effort with five housing authorities, eight case management agencies. Awarded Robert Wood Johnson Grant to implement Metro-wide coordinated homeless service delivery.
- **Glenwood Canyon Citizens Advisory Committee** Member and Secretary 1976-1986
  Governor-appointed representative of Design Profession to advise the Colorado Highway Department on the feasibility of extending 1-70 through Glenwood Canyon; engaged in ten-year process to assure design parameters were met in final design and construction phases.
- **Governor's Housing Task Force** Co-Chair 1974-75
  Led statewide hearings defining a new state role in housing Colorado's citizens
- **Colorado Housing, Inc.** Founding Board Member 1968-76 Chair 1972-74
  Facilitated bringing technical assistance to rural communities throughout Colorado with unmet housing needs
- **Grand Junction City, Regional Planning Commissions** Member 1967-78
  Advised City and County on development issues, including potential impacts of massive Oil Shale development

Awards:

2006: 9Who Care Award by KUSA, 9News for "his efforts to educate Coloradoans about affordable housing including an 850-mile walk around the State in the summer of 2004."
2004: Peacemaker Award, Rocky Mountain Conference, United Church of Christ
"for his creative and tireless efforts to educate, advocate and mobilize for housing justice"
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"for outstanding dedication to serving the needs of low income people in Colorado"
1970: Man of the Year, Club 20
"for helping define a more comprehensive view of environmental values throughout Western Colorado"
1965: Annual Award, Colorado Easter Seal Society
"for leadership in developing facilities to serve handicapped children throughout Colorado"

City Council
Staff Report

DATE: **February 1, 2007**
DEPARTMENT: **Public Works**
AUTHOR: **Kent Cashel, Deputy Public Works Director**
TITLE: **Protocols for Task Force Liaisons**
TYPE OF ITEM: Work Session - Informational

SUMMARY RECOMMENDATION:
Staff requests that Council review and approve the attached draft protocols for interagency task forces and task forces for pending land use applications.

Background

What is a task force and why does the City use them?
A task force is a small group made up of representatives from City Council, Boards and Commissions, City Staff and sometimes a third party working together to develop and recommend solutions to a well-defined issue facing the City and the third party. Task forces are most often used for short durations.

The City has utilized task forces to improve the efficiency and to streamline the process with which difficult issues are addressed. The task force is an approach designed to increase the involvement of all parties while reducing the time commitment required of all of Council. Task forces allow staff to:

- Conduct adequate research
- Develop a clear understanding of an issue
- Develop a range of potential solutions by involving Council and other representatives early in the process
- Develop a well-reasoned recommendation that Staff will bring to the complete Council membership at a regularly scheduled meeting.

The purpose of a task force is not to limit or hand-cuff the deciding authority when the matter is formally brought back to the Council or applicable body for final decision.

What issues have task forces been used to process in the past?
To date task forces have been utilized to work on complex city projects, and issues with developers and other governmental agencies. Examples of some previous task forces included the following:

- Summit County/PCMC Joint Transit Task Force – governmental agency
- Talisker/Montage Task Force – pending land use application
- Interagency Task Force (ongoing) – governmental agency

What are the City's current task forces?
Currently the City has the following active task forces:

- Park City Heights Task Force – pending land use application
- Park City School District/PCMC Transportation TF– governmental agency
- Interagency Task Force (ongoing) – governmental agency

On Wednesday January 17th (during Council's Visioning Session) City Council discussed and voted to allow non-appointed liaison Council members to attend any task force meeting.

During Council discussion the following issues were touched upon but not addressed in depth:

- Noticing requirements for meetings
- Conduct of open meetings
- Role of liaison and non-liaison Council members.

Council directed Staff to publicly notice task force meetings to legally allow three (3) or more Council members to attend these meetings.

Staff believes that clear and agreed upon protocols that provide role clarity and guidelines for the conduct and noticing of these "open" task force meetings will significantly reduce the potential for misunderstandings and problems in the future.

Analysis

When three (3) or more Council members are present at a meeting held to discuss or vote\act upon an issue Utah State Code requires that that meeting be "open" (i.e., noticed and open to the general public). State regulations place several requirements upon open meetings those requirements are detailed below.

Noticing requirements

Utah State Code requires that any time three (3) or more Council members meet to discuss or act\vote on an issue that the meeting be noticed at least 24 hours in advance as follows:

- Notice must be posted at City Hall and in a newspaper of general circulation (Park Record).
- Notice must include the following elements
    - Date
    - Time
    - Place
    - Agenda (must describe in detail all items to be discussed or voted upon)

- o The following statement “ A majority of the City Council may attend, but will not take any action separate from the task force”

Conduct of open meetings
Several issues must be addressed in open meetings that do not occur during closed meetings, some of those issues are:

- Public input
- Press
- Recording of minutes
- ADA accommodation

Public Input
The general public will be noticed and not precluded from attending all task force meetings. It is foreseeable some members of the public will arrive wanting to play an active role in the meeting. A protocol for the public’s involvement in the meetings should be developed to manage this expectation and interaction. Staff believes that the most efficient way to conduct the meetings would be as a “work session” where public input or testimony are not allowed or are allowed at one pre-defined point in the meeting (e.g., the beginning or end of the meeting).

Press
Given that meetings will be noticed and open to members of the press all individuals on the task force need to be acutely aware that anything they say or do while in the meeting is part of the public record and may be used as material by the press.

Recording of Minutes
Minutes must be recorded and include the following:
- Date
- Time
- Place
- Names of members present
- Names of members absent
- Name of any person who testified
- Substance of each testimony
- Copies of all materials distributed at meeting (e.g., handouts)
- Any other info a member requested be entered into the record.

These minutes will need to be stored \archived according to the City’s document retention policy.

ADA Accommodation
Each meeting notice will need to include a statement regarding special needs accommodations and contact info for making special needs requests. Once a request for accommodation is received the City must make reasonable efforts to accommodate those needs (e.g., move of meeting to accessible location, sign language interpreter and etc.).

Liaison and Non-liaison roles and responsibilities

Appointed liaison Roles and Responsibilities
The role of the two (2) Council appointed liaisons, while not yet formally outlined in a task force liaison protocol, could mirror that of the role identified for a Liaison in the Council approved “Protocol for Goal\Action Item Liaison” (attached). That protocol defines a liaison’s role as the following:

- Serve as a resource for staff working on goal or action item
- Serve as “go to” elected official
- Gather information and bring summary\discussion back to Council (cc: City Manager and relevant staff members)
- Can express own opinion (identified as such) but not represent Council when it needs discussion/direction by Council first
- Maintain trust, respect, communication, and overall quality of the relationship so that it works
- Communicate meeting summary to other Council members within 48 hours after attending a meeting.

Task Forces for pending land use applications require special attention and therefore a separate list of protocols are listed for them. Staff suggests that each such task force invites the Legal Department to the first meeting to clarify roles and authority as limited by applicable codes.

Non-liaison roles and responsibilities
Roles and responsibilities for those non-liaison Council members who choose to attend task force meetings have yet to be formally approved. However, based upon Council discussions on January 17th the following roles and responsibilities for non liaison Council members could be included:

- Attend meetings as an observer only, not actively engaging in the discussions or proceedings.
- Communications with the task force members regarding the task will be directed through the appointed liaison(s) (e.g., requests for clarifications, requests to consider additional information or to explore other alternatives).

The Need for Clear and Agreed Upon Protocols
When three (3) or more Council members attend a task force meeting a special set of legal and operational requirements must be addressed. Staff believes that clear and agreed upon protocols that provide role clarity and guidelines for the conduct and noticing of these now “open” meetings will significantly reduce the potential for misunderstandings and problems in the future.

Staff has attached draft protocols to this report for Council consideration and adoption.

Department Review

This report has been reviewed by the City Manager's office and The City Attorney's office

ALTERNATIVES

A. Approve The Recommendation.
Staff requests that Council review and adopt the attached draft protocols for interagency and developer task forces.

B. Amend and Approve The Recommendation
Council could amend the attached draft protocols and then adopt them as amended.

C. Deny The Recommendation.
Council could deny Staff's request. Staff does not recommend this course of action due to the lack of clarity that will exist for task forces.

D. Defer the item to a later date.
Council could defer the item. Staff does not recommend this course of action

E. Do Nothing.
Council could do nothing. Staff does not recommend this course of action

SIGNIFICANT IMPACTS

The legal and operational requirements of an "open" meeting present many potential pitfalls fro Council and Staff. The adoption of a clear and agreed upon set of protocols for the conduct of these meetings will help mitigate these pitfalls. The lack of protocols is likely to lead to misunderstandings and problems in the conduct of these meetings.

Staff has rescheduled one task force meeting (Park City School District/PCMC Transportation Task Force) to allow time to develop and adopt protocols. Further delays in adoption of protocols are likely to negatively impact the effectiveness of those task forces working on time-sensitive issues.

Additional staff time will be required to administer the open meeting approach. If the process for task forces is too cumbersome some City customers may seem them as redundant or unnecessary.

RECOMMENDATION

Staff requests that Council review and adopt the attached draft protocols for interagency and pending land use task forces.

Protocol – Government Agency Task Force Draft

Why? – Increasing Efficiency

- Getting to know the Council Person who is interested.
- Want to hear opinions and if different than where we are going, can know it in a smaller group setting and avoid wasting time.

Noticing and Conduct of Meetings

- Meetings will be publicly noticed following the noticing guidelines provided by the City Attorney's office.
- The Mayor, Council and City manager must be notified of the meeting place, date and time.
- Meetings will be conducted as "Work Sessions" public comment will not be taken at task force meetings. Public will be notified of this at the beginning of each meeting and information will be provided when and where public comment can be made at a regularly scheduled Council meeting.
- Requests for reasonable special needs accommodations must be honored. The City Attorney's office will be consulted before any denial.
- Meeting minutes will be recorded according to guidelines provided by the City Attorney's office.
- Task force members will be reminded at the start of each meeting that all proceedings are part of the public record.

Role of Interagency Task Force Liaison Council Member

- Be available as a resource to the Staff doing the work on the task force.
- Go to person – elected official
- Gathering information, bringing summary/discussion, update back to Council (cc: City Manager and relevant Staff members
- Get a decision from Council if needed
- Can express own opinion (identified as such) but not represent Council when it needs discussion/direction by Council first
- Maintain trust, respect, communication and overall quality of the relationship so that it works
- Communicate within 48 hours attending a meeting on a goal or action item if you are the liaison

Role of Interagency Task Force Non-Liaison Council Member

- Attend meetings as an observer only, not actively engaging in the discussions or proceedings.
- Communications with the task force members regarding the task will be directed through the appointed liaisons (e.g., requests for clarifications, requests to consider additional information or to explore other alternatives).

General Guidelines

- To maintain efficiency Council will appoint no more than two (2) liaisons to each task force. Other Council members wishing to attend meetings will do so as a non-liaison.
- Discussion (not direction, not decision)
- Discussion is communicating, e-mailing, phone conversation updating
- Direction (is agendized) and Decision (is a vote) happen in a City Council work session that has an agenda with the item on it
- Liaisons talk to each other across Liaison Roles (board, goal Action Item) to ensure continuity

Why? – Increasing Efficiency

- More comprehensive analysis of complex issues.
- Want to explore preliminary input and analysis based upon application of applicable standards and code, and if different than applicant proposal, provide early direction and avoid wasting time.

Noticing and Conduct of Meetings

- Meetings will be publicly noticed following the noticing guidelines provided by the City Attorney's office.
- The Mayor, Council and City manager must be notified of the meeting place, date and time.
- Meetings will be conducted as "Work Sessions" public comment will not be taken at task force meetings. Public will be notified of this at the beginning of each meeting and information will be provided when and where public comment can be made at a regularly scheduled Council meeting.
- Requests for reasonable special needs accommodations must be honored. The City Attorney's office will be consulted before any denial.
- Meeting minutes will be recorded according to guidelines provided by the City Attorney's office.
- Task force members will be reminded at the start of each meeting that all proceedings are part of the public record.

Role of Task Force Liaison Council Member

- Participate in accordance with enabling resolution
- Know applicable code and LMC standards that govern role
- Can express own preliminary input (identified as such) but not represent Council when it needs discussion/direction or decision by Council first
- Maintain trust, respect, communication and overall quality of the relationship so that it works

- Communicate within 48 hours attending a meeting on a goal or action item if you are the liaison

Role of Task Force Non-Liaison Council Member

- Attend meetings as an observer only, not actively engaging in the discussions or proceedings.
- Communications with the task force members regarding the task will be directed through the appointed liaisons (e.g., requests for clarifications, requests to consider additional information or to explore other alternatives).

General Guidelines

- To maintain efficiency Council will appoint no more than two (2) liaisons to each task force. Other Council members wishing to attend meetings will do so as a non-liaison.
- Preliminary Discussion and direction (not decision)
- Discussion is communicating, e-mailing, phone conversation updating
- Decision (is a vote) that happens in a City Council work session that has an agenda with the item on it
- Liaisons talk to each other across Liaison Roles (board, goal Action Item) to ensure continuity
- Liaisons and non-liaison Council members should avoid communicating directly (outside of task force meetings) with a developer regarding issues being addressed by a task force

Why? – Increasing Efficiency

- Getting to know the Council Person who is interested
- Doing an update allows for increased opportunities for direction
- Want to hear opinions and if different than where we are going, can know it in a smaller group setting and avoid wasting time

Role of Goal / Action Item Liaison

- Be available as a resource to the Staff doing the work on the Goal or Action Item
- Go to person – elected official
- Gathering information, bringing summary/discussion, update back to Council (cc: City Manager and relevant Staff members
- Get a decision from Council if needed
- Can express own opinion (identified as such) but not represent Council when it needs discussion/direction by Council first
- Maintain trust, respect, communication and overall quality of the relationship so that it works
- Communicate within 48 hours attending a meeting on a goal or action item if you are the liaison

General Guidelines

- Discussion (not direction, not decision)
- Discussion is communicating, e-mailing, phone conversation updating
- Direction (is agendized) and Decision (is a vote) happen in a City Council work session that has an agenda with the item on it
- Liaisons talk to each other across Liaison Roles (board, goal Action Item) to ensure continuity

City Council
Staff Report

Author: Ben Davis
Subject: 255 Deer Valley Drive – Replat
Date: February 1, 2007
Type of Item: Administrative- Plat Amendment

PARK CITY
1884
PLANNING DEPARTMENT

Summary Recommendations
Staff recommends the City Council hold a public hearing and consider approving the 255 Deer Valley Drive Replat based on the findings of fact, conclusions of law, and conditions of approval as found in the attached ordinance.

Topic

Applicant:	Miriam Broumas
Location:	253 and 255 Deer Valley Drive
Zoning:	R-1
Adjacent Land Uses:	Residential and Open Space (Estate Zoning)
Reason for Review:	Plat amendments require City Council action

Background
On October 16, 2006 the City received a complete application for a plat amendment for 253 and 255 Deer Valley Drive. The application is a proposal to consolidate all of lots 7, 8, 22, and 23 on Block 66 of the amended plat of Park City Survey into one lot of record. Exhibit A shows the four lots. A duplex currently exists on lots 7 and 8. The current building footprint is 1,054 square feet. The purpose of the Plat Amendment is to be able to expand the duplex in the future.

At the time of application the City Engineer noticed that an additional parcel exists in the title report, but could not be located in a distinct location on the map. This parcel is likely a remnant from previous quit claim deeds over time, and may not represent any real ground since the parcel description in internally conflicted. The applicant stated her desire to Quit Claim Deed this property to the City in order to disassociate the parcel with her four lots, and to prevent any future complications (Exhibit B).

The current duplex is within the R-1 zone and is adjacent to Estate zoning both north and east of the property. A steep slope exists on the property (approximately 65%) however some of this has been disturbed and may result in a slightly steeper slope measurement than the previous undisturbed condition.

The Planning Commission reviewed the application at their January 10, 2007, meeting and forwarded a positive recommendation for approval to the City Council. There was no public input.

Analysis and Discussion

	Permitted	Existing/Proposed
Minimum Lot Size (duplex)	3,750 sf	5,680 sf
Front Yard	15'	16'
Rear Yard	10'	10'
Side Yard	5'	5'
Building Height	33'	not applicable
Parking Spaces	2 per unit	2 per unit

Staff finds good cause for this Plan Amendment for the following reasons:

- The plat amendment is consistent with the Land Management Code by consolidating lots and allowing a duplex configuration, which is an allowed use in the R-1 District.
- The plat amendment will enable a use that is consistent with neighboring properties. Neighboring properties have already consolidated parcels, and expanded their structures.
- The plat amendment will enable the rectification of a "ghost parcel", which will be quit claim deeded to the City.

If future building plans extend to the area evaluated as steep slope, a Steep Slope Conditional Use Permit will be required in a separate process.

Department Review

On October 24, 2006 this project was discussed at an interdepartmental review meeting. The "ghost" parcel was discussed and it was suggested that this be addressed within this Plat Amendment process. This has been sufficiently addressed with the Quit Claim Deed process.

Notice

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also published in the Park Record on December 20, 2006.

Public Input

No input has been received at the time of drafting this report. There was no public input at the Planning Commission hearing.

Alternatives

- The City Council may approve the 255 Deer Valley Drive Replat as conditioned or amended, or
- The City Council may deny the 255 Deer Valley Drive Replat and direct staff to make Findings for this decision, or
- The City Council may continue the discussion on the 255 Deer Valley Drive Replat.

Significant Impacts
There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation
If the Plat Amendment were not approved, the following consequences would result:

- The applicant could not expand the current duplex.
- The “floating” parcel would not be deeded to the City, and would remain attached to these parcels.

Recommendation
Staff recommends the City Council hold a public hearing and consider approving the 255 Deer Valley Drive Replat based on the findings of fact, conclusions of law and conditions of approval as found in the attached ordinance.

Exhibits
Exhibit A – Proposed Plat Amendment
Exhibit B – Existing Conditions
Exhibit C – Quit Claim Deed
Exhibit D– Photographs

Exhibit A – Proposed plat adjustment

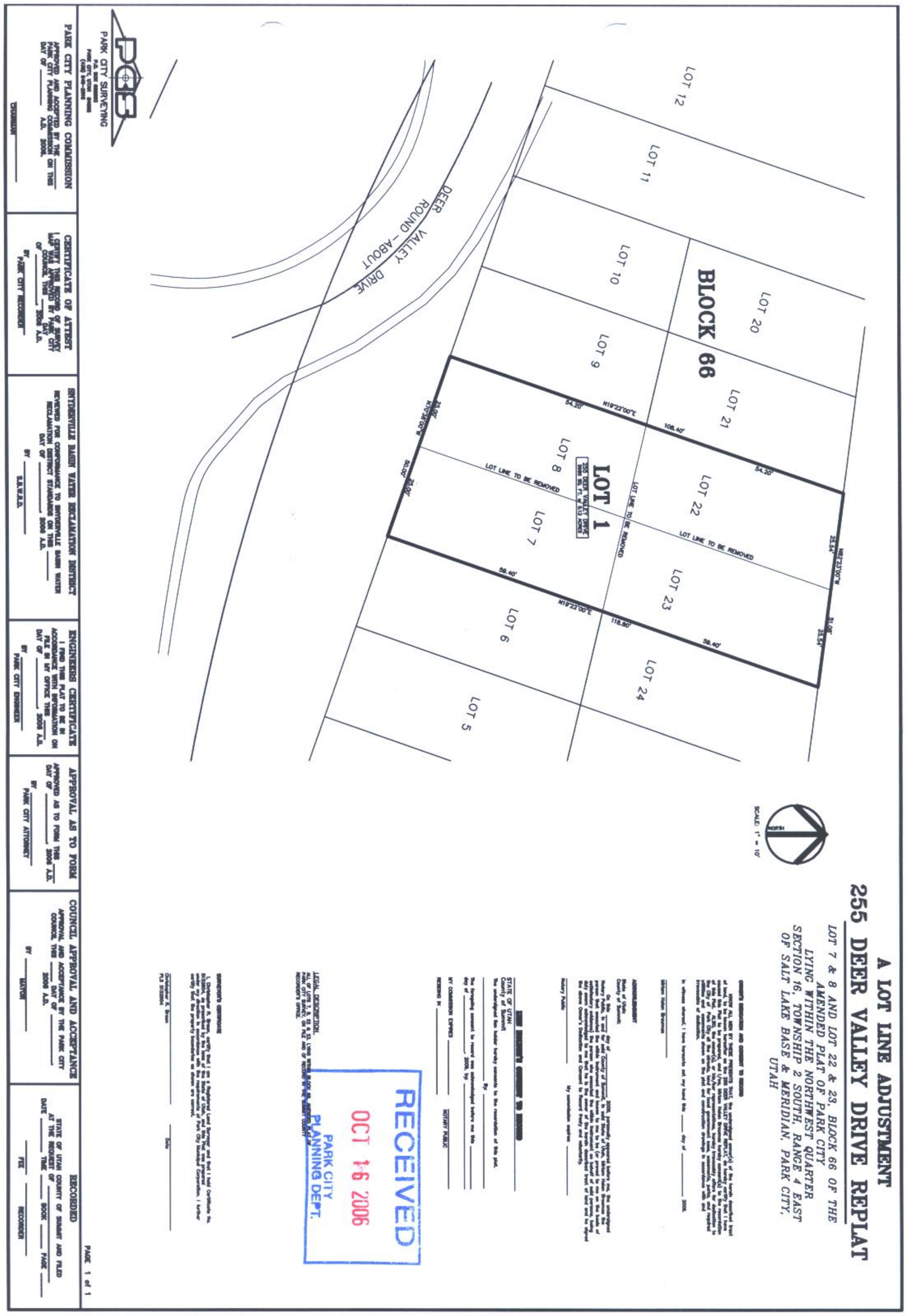


Exhibit B – Existing Conditions

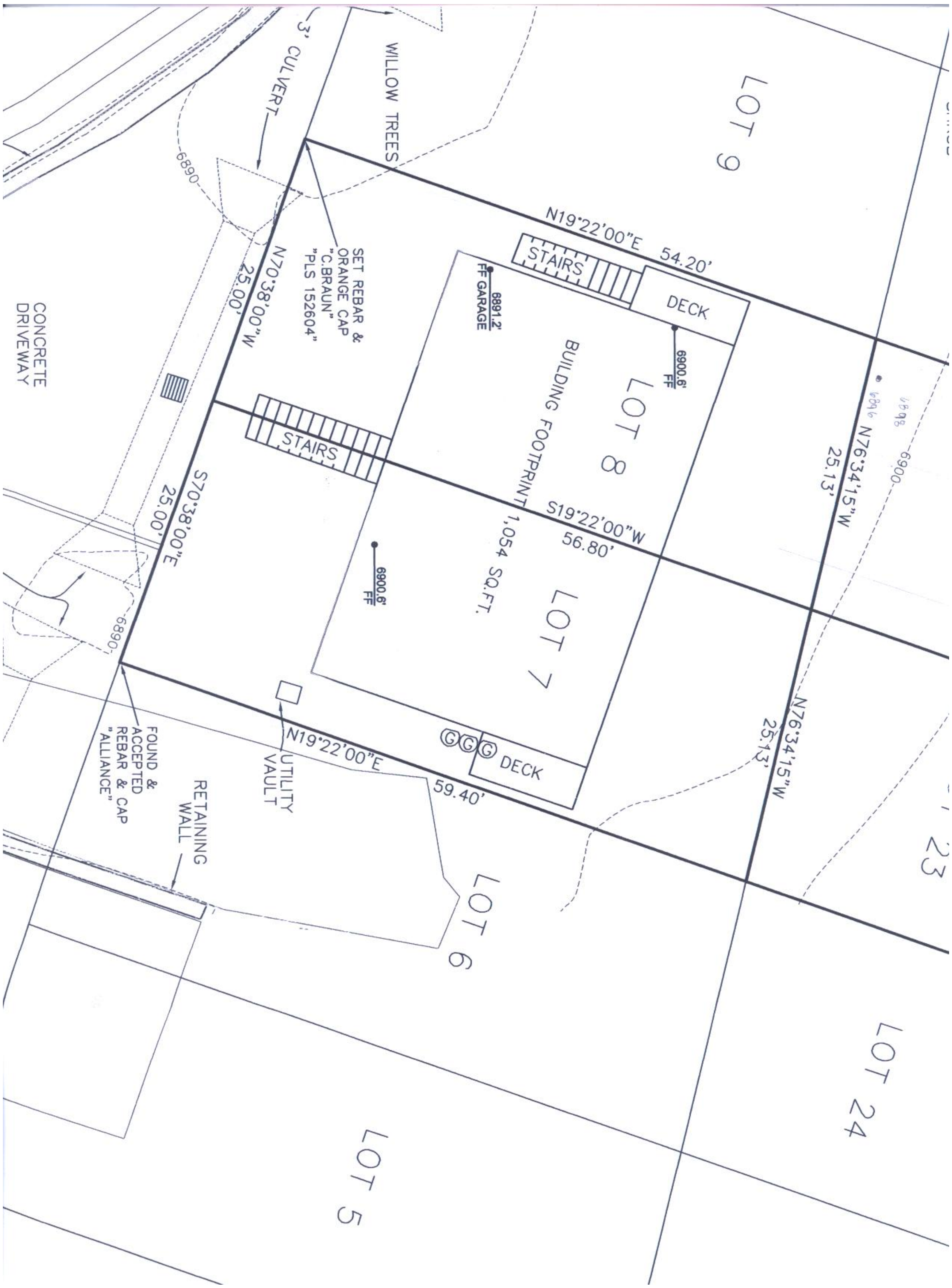


Exhibit C -- Quit Claim Deed

11/21/06

From the offices of Miriam Broumas
253 and 255 Deer Valley Dr.
Park City, Utah 84060

P.O. Box 1694
Phone 435-655-7109

I Miriam Broumas would like to quick claim deed a parcel to the city. Unit parcel number PC-520 Tax ID # is 0022446.
I would like the City Planning to draw up the Quit Claim Deed for me.
Reason for this transaction is because this parcel is not attached to my property and has been quit claim in the past several times.

Thank You

Miriam Broumas
Miriam Broumas

Exhibit D - Photographs

Ordinance No. 07-

AN ORDINANCE APPROVING THE 255 DEER VALLEY DRIVE REPLAT, AN AMENDMENT TO LOTS 7, 8, 22, AND 23 ON BLOCK 66 OF THE AMENDED PLAT OF PARK CITY SURVEY

WHEREAS, the owners of the property located 253 and 255 Deer Valley Drive have petitioned the City Council for approval of the Replat; and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held a public hearing on January 10, 2007 to receive input on the Plat Amendment and forwarded a positive recommendation to the City Council on January 10, 2007; and,

WHEREAS, on February 1, 2007, the City Council approved the 255 Deer Valley Drive Replat; and

WHEREAS the 255 Deer Valley Drive Replat will allow the consolidation of four lots into one lot within the same exterior boundary.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. APPROVAL. The above recitals are hereby incorporated as findings of fact. The 255 Deer Valley Drive Replat, as shown in Exhibit 1 is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

Findings of Fact:
1. The property is located at 253 and 255 Deer Valley Drive.
2. The zoning is Historic Residential R-1.
3. One duplex exists across lots 8 and 9.
4. The current building footprint is 1,054 square feet. The R-1 zone does not have a maximum footprint.
5. The current configuration of lots is four lots. Lot 7 is 56.80’ x 25.13’ x 59.40’ x 25.00’. Lot 8 Is 54.20’ x 25.13’ x 56.80’ x 25.00’. Lot 22 is 54.20’ x 25.54’ x 56.80’ x 25.13’. Lot 23 is 56.80’ x 25.54’ x 59.40’ x 25.13’.
6. The future configuration of the single lot will be 108.40’ x 51.08’ x 118.80’ x 50.00’.
7. A slope of approximately 65% exists on lots 22 and 23.
8. A “ghost” parcel (Parcel 9) is associated with the four parcels, exists in the title report, but is not locatable.

9. The applicant has stated she would like to Quit Claim Deed the “ghost parcel” to the City.
10. A Quit Claim Deed will deed the “ghost parcel” to the City.
11. No public comment has been received.
12. The existing duplex meets the current R-1 zoning requirements for height and setbacks.

<u>Conclusions of Law:</u>

1. There is good cause for this Plat Amendment because it is consistent with the Park City Land Management Code. The ultimate purpose for the plat amendment is to expand a duplex, which is an allowed use in the R-1 zone.
2. There is good cause for this Plat Amendment because it will enable the quit claim deed of a “ghost parcel” to Park City Municipal Corporation.
3. Neither the public nor any person will be materially injured by the proposed Plat Amendment.
4. Approval of the Plat Amendment, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

<u>Conditions of Approval:</u>

1. The City Attorney and City Engineer will review and approve the final form and content of the Plat Amendment for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The Quit Claim Deed will be drafted and signed by the City Engineer, City Attorney, and applicant prior to recordation of plat.
3. All standard project conditions will apply.

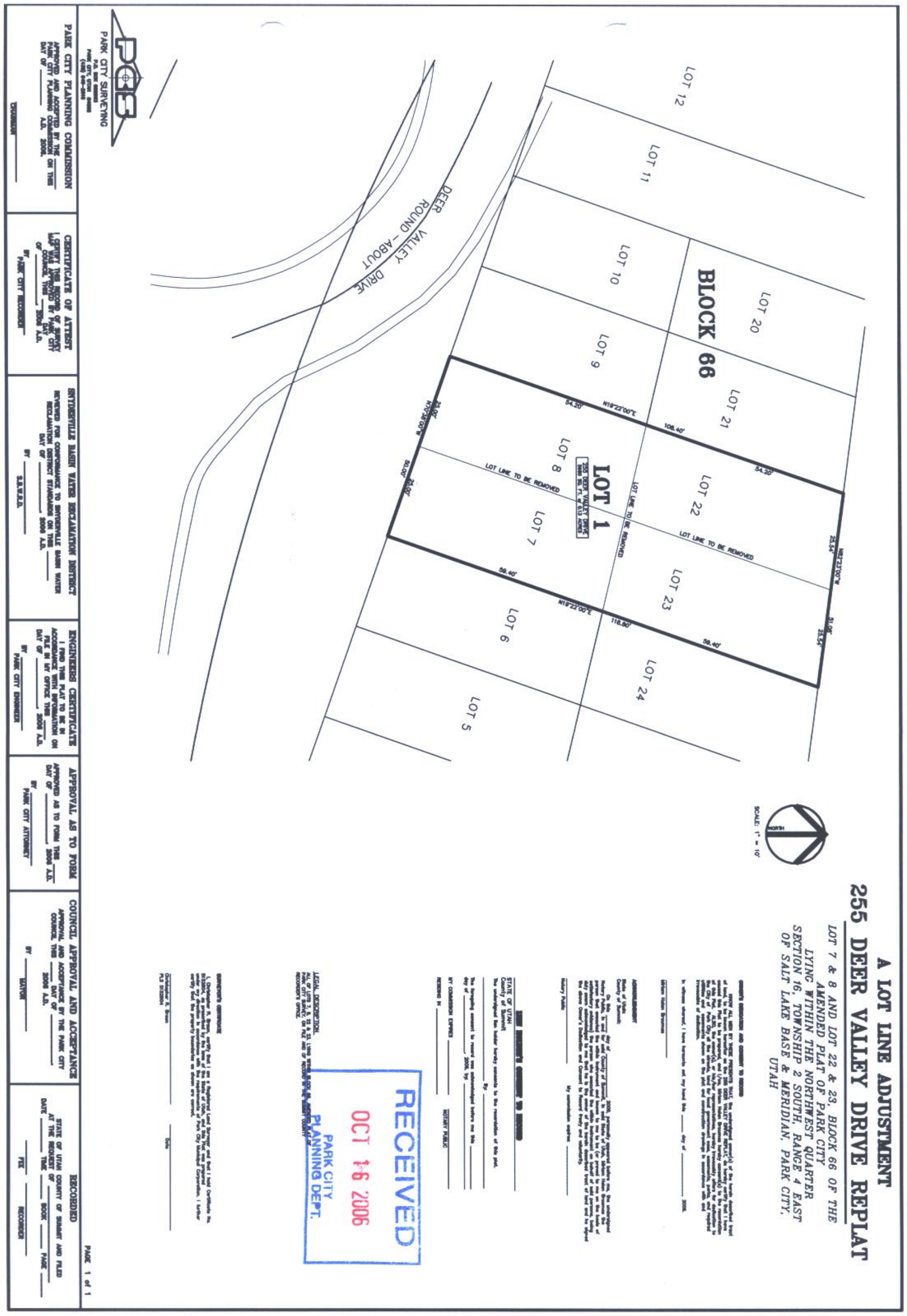
<u>SECTION 2. EFFECTIVE DATE.</u> This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 1st day of February, 2007.

Exhibits

Exhibit 1 – Record of Survey Plat

Exhibit 1 – Record of Survey Plat



City Council
Agenda Report

CITY ENGINEER

Author:	**Eric DeHaan, P.E.**
Subject:	**UDOT AGREEMENTS**
Department:	**Executive**
Date:	**February 1, 2007**
Type of Item:	**Legislative**

Summary Recommendations:
Authorize the City Manager to execute the Cooperative Corridor Preservation Agreement and the Street Lighting Agreement with UDOT.

Topic:
For several months the City staff had been working with UDOT on two separate agreements affecting S.R. 248 in Park City. The Corridor Preservation Agreement updates a similar existing agreement to provide for the future installation of traffic signals at the IHC access, the Park City Heights access ("Gun Club Road"), and possibly at Homestake Road, among other locations. The Street Lighting Agreement simply addresses the maintenance of the two new street lights at the pedestrian crossing on S. R. 248 in front of the Park City High School. Copies of both agreements are attached.

Background:
From time to time the City and UDOT negotiate agreements related to the two State highways in town. The agreements open the way to good planning decisions and to provide seamless maintenance of the various public improvements related to the state highways. With increased traffic on S.R. 248 every year, this highway is very important to Park City and it is in our best interest to optimize its convenience for motorists and pedestrians. The staff can pursue long-term planning such as IHC's MPD application, the Park City Heights annexation, and the design of the Talisker Park and Ride lots in reliance on these agreements.

Analysis:
With regard to the Cooperative Corridor Preservation Agreement, it is important to note that this agreement <u>only</u> addresses existing and future traffic signals, not capacity issues such as any future widening or underpasses. It in no way tries to be a corridor master plan for S.R. 248. What it does is list four possible signal locations that coordinate with background studies for the IHC, the Park-Bonanza District, Park City Heights, and the school campus. The four new possible signals are:

Homestake Road (the redevelopment of the Anderson Lumber site)
Wyatt Earp Way
S.R. 248 at Old Dump Road
S.R. 248 (minimum ¼ mile west of US-40 southbound offramp)

The agreement goes on to require Park City and Summit County to approve frontage roads (likely built by developers who need annexation or MPD approvals) connecting their developments to the new signal locations rather than allowing a hodge-podge of driveways. It also allows UDOT to develop signal control systems such as the SCATS system on S.R. 224 knowing where all possible traffic signals will be.

The staff feels that this Corridor Preservation Agreement is the best method to allow IHC to construct the planned signal at the location that works well for IHC, NAC, and the City's recreation complex, and is consistent with the IHC task force recommendation. Absent an updated Corridor Preservation Agreement the signal would be delayed until after the hospital is open and signal "warrants" have been met. The agreement will also allow for flexible timing to meet Park City's needs for the other intersections on S.R. 248 listed above.

The Street Lighting Agreement simply provides for Park City to maintain the street lights at the important Park City High School pedestrian crossing.

Department Review:
This report has been reviewed by Legal, Public Works, Planning, and Sustainability. The Staff does not have any unresolved issues with either agreement.

Alternatives:

Approve the Agreements:
This is Staff's recommendation.

Continue the Agreements:
In the event the Council needs more information, the agreements can be continued to a future meeting.

Deny the Agreements:
If the Council denies the agreements there will not be a framework with UDOT for approving the IHC signal, and the street lights at the Park City High School pedestrian crossing will continue to be orphans.

Significant Impacts:
The Corridor Preservation Agreement does not represent any direct significant financial impact to Park City. Indirectly, it will allow traffic signals to be installed in locations serving several major new developments and redevelopments. The Street Lighting

Agreement will add two more street lights to the inventory of several hundred already maintained by Public Works.

Consequences of not taking the recommended action:
Unless otherwise resolved there would not be a traffic signal at the IHC intersection on S.R. 248 until it is separately warranted by actual traffic counts, likely only considerable time after IHC's new Facility is open.

Recommendation:
The staff recommends that the Council authorize the City Manager to execute both the Cooperative Corridor Preservation Agreement and the Street Lighting Agreement.

Attachments:
Cooperative Corridor Preservation Agreement
Street Lighting Agreement

COOPERATIVE

CORRIDOR PRESERVATION AGREEMENT

THIS COOPERATIVE AGREEMENT, made and entered into this __________ day of ________________, 2006, by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as **"UDOT"** and **PARK CITY**, a Municipal Corporation in the State of Utah, hereinafter referred to as the **"City"**, and **SUMMIT COUNTY**, a Municipal Corporation in the State of Utah, hereinafter referred to as the **"County"**.

WITNESSETH:

WHEREAS, to facilitate traffic flow along the SR-248 corridor between S.R. 224 to US-40 Quinn's Jct., the parties hereto desire to designate specific access management and corridor preservation elements; and

WHEREAS, the parties hereto have determined by formal finding that regulation of intersection and access points for future highway improvements is not in violation of the laws of the State of Utah or any legal contract with the **City** or **County**.

THIS COOPERATIVE AGREEMENT is made to set out the terms and conditions whereunder said rights-of-way shall be preserved. This agreement is to replace the existing cooperative agreement for SR-248.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

(1). To facilitate traffic flow along the SR-248 corridor between S.R. 224 and US-40 Quinns Jct., the following locations are identified as locations for future traffic signal installation. Actual installation will be as determined by the criteria contained in enumerated paragraphs (2) and (6).

Homestake Rd.	Proposed
Bonanza Dr.	Existing
Park City High School (approximately midway between Bonanza and Comstock)	Proposed Pedestrian Signal
Comstock Dr.	Existing
Wyatt Earp Drive	Proposed
SR-248 at Old Dump Rd.	Proposed
SR-248 development signal (minimum ¼ mile west of US-40 SB offramp terminal)	Proposed

(2). The parties hereto agree that proposed traffic signals will only be installed at the locations specified in enumerated paragraph (1) in the herein described SR-248 corridor and only as they become warranted as defined by Chapter 4C of the Manual on Uniform Traffic Control Devices (FHWA, current edition), except as noted in enumerated paragraph (6). As agreed upon by the parties hereto, it is further agreed that it may be necessary to not allow unsignalized accesses between Old Dump Rd. to US-40 Quinn's Jct. The **City** and **County** shall develop any master plan in this area around this concept and the parties hereto shall work towards the common goal identified in this agreement. The parties hereto agree that up to two additional access points may be constructed on S.R. 248 east of U.S. 40 to access a planned Park and Ride lot subject to normal permitting by UDOT.

(3). In order to promote safety and efficiency within the SR-248 corridor, unsignalized accesses between Old Dump Rd. to US-40 Quinn's Jct. will be closed upon development and future signal installation as noted in enumerated paragraph (1).

(4). In order to promote safety and efficiency within the SR-248 corridor, unsignalized accesses between Wyatt EarpWay to Old Dump Rd. will be administered as per **UDOT**'s access management requirements (Administrative Rule R930-6).

(5). Upon completion of the south development in the area between Homestake Rd. and Bonanza Dr., the existing non-signalized accesses shall be consolidated to promote safety and efficiency within the SR-248 corridor.

(6). In order to promote safety and efficiency along the SR-248 corridor, all other access to the corridor will be administered as per **UDOT**'s access management requirements (Administrative Rule R930-6).

(7). Regarding development located westside of US-40 Quinn's Jct.:

(a). The northside development will be serviced by the future development signalized intersection located minimum ¼ mile from the US-40 SB offramp terminal. This future development signalized intersection will also serviced the southside development and road connection from Old Dump Rd. As agreed upon by the parties hereto, the signal may be warranted and built to coincide with the opening of this development. Any right-of-way acquisition, environmental clearance, design, and construction costs shall be paid by the developer.

(b). Upon completion of the northside development and the installation of the future development signalized intersection, the existing N.A.C. (National Ability Center) access will be closed.

(c). Upon completion of the southside development and the installation of the future development signalized intersection, existing non-signalized accesses will be closed.

(d). This agreement shall not be considered precedent-setting. It is not the general practice of the **UDOT** to warrant a signal before traffic volumes meet minimum thresholds as defined by Chapter 4C of the <u>Manual on Uniform Traffic Control Devices</u> (FHWA, current edition).

(8). Based upon future considerations and needs, this Cooperative Corridor Preservation Agreement may need to be amended from its original form and, therefore, any desires to amend this agreement shall require the concurrence of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:	**PARK CITY,** a Municipal Corporation of the State of Utah
______________________	By ______________________
______________________	______________________
Title ______________________	Title ______________________
Date: ______________________	Date: ______________________
(IMPRESS SEAL)	
ATTEST: Corporation	**SUMMIT COUNTY,** a Municipal of the State of Utah
______________________	By ______________________
______________________	______________________
Title ______________________	Title ______________________
Date: ______________________	Date: ______________________

(IMPRESS SEAL)

****

RECOMMENDED FOR APPROVAL: **UTAH DEPARTMENT OF TRANSPORTATION**

By ______________________________ By ______________________________
Region Two Traffic Engineer Region Director

Date: ____________________________ Date: ____________________________

APPROVED AS TO FORM: By ______________________________

UDOT Comptroller Office
The Utah State Attorney General's Office has previously approved all paragraphs in this Agreement as to form.

Contract Administrator

Date: ____________________________

STREET LIGHTING

AGREEMENT

THIS STREET LIGHTING AGREEMENT, made and entered into this ___ day of ________, ______, 200__, by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**UDOT**" and **PARK CITY CORPORATION**, a Municipal Corporation of the State of Utah, hereinafter referred to as the "**City**",

WITNESSETH:

WHEREAS, the parties hereto desire to install street lighting facilities under the **UDOT** Project identified as 81T00505; SR-248 School Crossing, Park City Lighting Plan, at Park City High School, between Bonanza Drive and Comstock Drive. Said facilities are shown on the **UDOT** provided plan sheet, a copy of which is marked EXHIBIT A, attached hereto and thereby made a part hereof; and

WHEREAS, UDOT is willing to provide materials and installation of the new street lighting facilities at no cost to the **City**; and

WHEREAS, after construction, the **City** is willing to furnish electrical energy and thereafter maintain the street light facilities without further cost to **UDOT**; and

WHEREAS, UDOT has determined by formal finding that payment for said work on public right of way is not in violation of the laws of the State of Utah or any legal contract with the **City**.

THIS STREET LIGHTING AGREEMENT is made to set out the terms and conditions where under said work shall be performed.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. **UDOT** will furnish all materials and install two (2) 250 Watt High Pressure Sodium Luminaires at the locations as shown on said EXHIBIT A.

2. Upon completion of construction, the **City** will own the luminaire light units, the mast arms and poles, wiring to the lights units and all appurtenances associated with said light units and will thereafter maintain, provide electrical power, and renew said street light units and appurtenances at no cost to **UDOT**.

3. It is understood that access for maintenance and servicing of the **County's** property located on right of way of said project will be permitted only by permit issued by **UDOT** to the **County**, and that the **County** will obtain permit and abide by conditions thereof for policing and other controls in conformance with **UDOT's** "MANUAL FOR THE ACCOMMODATION OF UTILITIES AND THE CONTROL AND PROTECTION OF STATE HIGHWAYS RIGHTS OF WAY", a copy of which has been furnished to the **County** and any supplements or amendments thereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

ATTEST:

____

____

Title ______________________________
Date: ______________________________
(IMPRESS SEAL)

PARK CITY CORPORATION,
A Municipal Corporation of the State of Utah.

By ______________________________

____

Title ______________________________
Date: ______________________________

****

RECOMMENDED FOR APPROVAL: **UTAH DEPARTMENT OF TRANSPORTATION**

By ______________________________
Traffic Operations Engineer

Date: ______________________________

By ______________________________
Region Director
Date: ______________________________

APPROVED AS TO FORM:

The Utah State Attorney General's Office has previously approved all paragraphs in this Agreement as to form.

By ______________________________
UDOT Comptroller's Officer
Contract Administrator

Date: ______________________________

Exhibit A

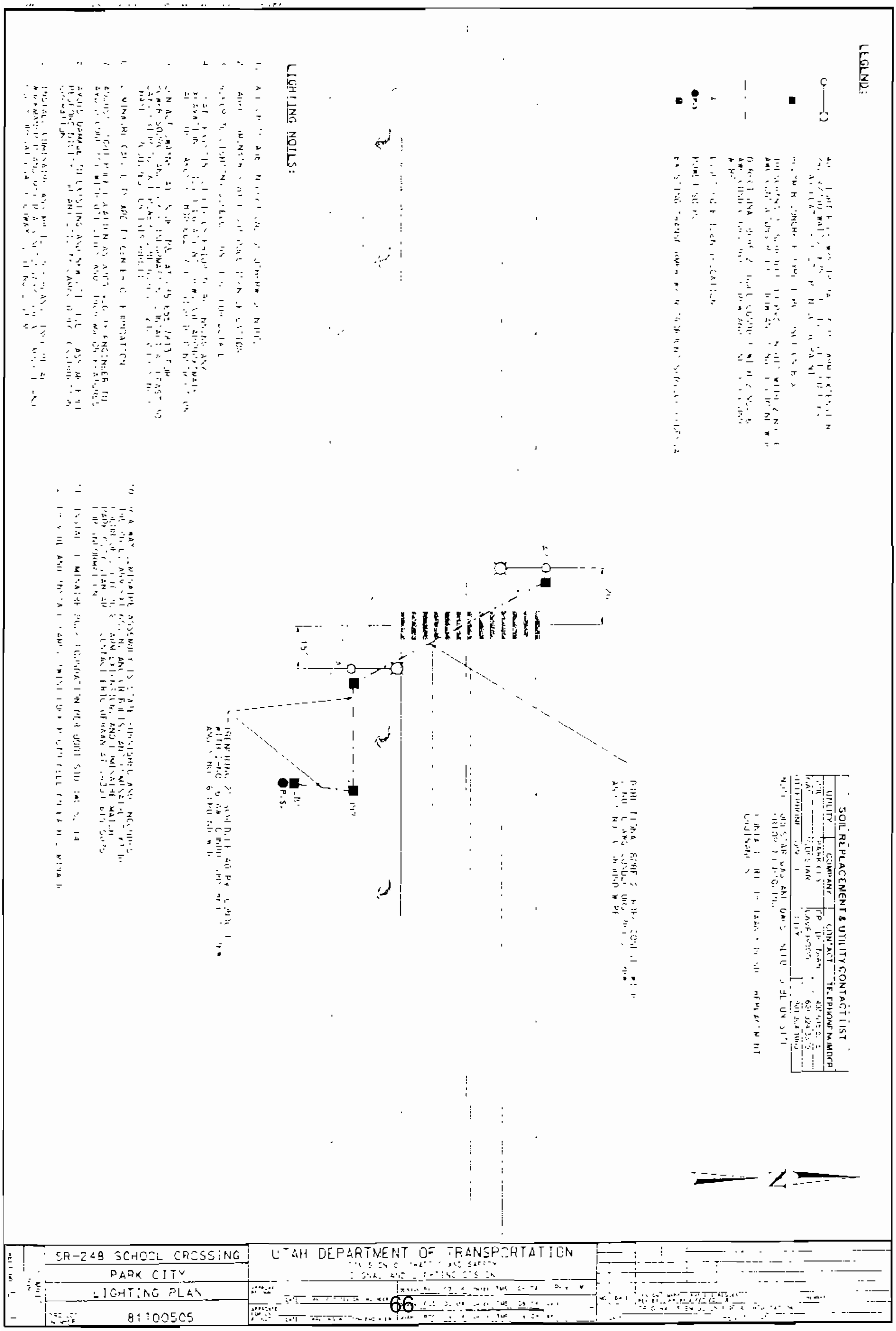

LEGEND:
SOIL REPLACEMENT & UTILITY CONTACT LIST
LIGHTING NOTES:
UTAH DEPARTMENT OF TRANSPORTATION
SR-248 SCHOOL CROSSING
PARK CITY
LIGHTING PLAN
81100505

Exhibit A

FOR INFORMATION ONLY

LIGHT POLE SCHEDULE

CIRCUIT SCHEDULE

SR-248 SCHOOL CROSSING	UTAH DEPARTMENT OF TRANSPORTATION
PARK CITY	
LIGHTING PLAN	
	51T00535

City Council Staff Report

Author: Brooks T. Robinson
Subject: United Park City Mines Company Annexation of Lands at PCMR
Date: February 1, 2007
Type of Item: Legislative – Annexation and Amendment to the Official Zoning Map, Amendment to Flagstaff Mountain Development Agreement

PARK CITY 1884
PLANNING DEPARTMENT

Summary Recommendations

Staff requests the City Council re-open the public hearing; and review the requested annexation, amendments to the Park City zoning map, and amendments to the Flagstaff Mountain Development Agreement. Staff has provided an Annexation Agreement, amended Zoning Map, and ordinance approving the amendments to the Flagstaff Mountain Development Agreement for the Council's consideration.

Topic

Applicant:	United Park City Mines Company
Location:	Park City Mountain Resort west of current corporate boundaries.
Zoning:	Summit County Mountain Remote
Adjacent Land Uses:	Predominately undeveloped land, ski terrain, and contiguous to Treasure Hill subdivision
Reason for Review:	Annexations, Amendments to the Zoning Map, and amendments to a Development Agreement require Planning Commission review and City Council approval

Background

On January 6, 2006, the applicant filed a petition for annexation with the City Recorder for annexation of approximately 2,800 acres currently within the jurisdiction of Summit County. The property is located directly west of the PCMR base area and south to the Flagstaff annexation boundary of Park City Municipal Corporation.

The applicant has submitted all necessary signatures and annexation petition materials according to provisions of the City's Annexation Policy Plan and Utah State Code. A signed annexation plat, prepared by a licensed surveyor, has been filed. The applicant also provided necessary notification of the intent to file the petition to the required affected entities.

Due to the applicant's desire not to formally initiate the process until clear direction to move forward was received, the petition was never certified and notice to affected entities was not sent. Therefore, the applicant re-filed the petition, which the City Council accepted on November 9, 2006, once again starting the 30 day certification process. The City Recorder certified the petition on November 20, 2006, and notice of acceptance was sent to all affected entities. The Summit County Board of County Commissioners heard this petition on December 6, 2006, and did not protest the annexation petition. No protests were submitted to the City during the protest period.

This annexation is tied to amendments to the Flagstaff Mountain Development Agreement (DA). The substantive changes to the DA have been discussed for over a year with a Task Force and joint meetings of the Planning Commission and City Council and separate meetings of both bodies.

On December 13, 2006, the Planning Commission held a public hearing on the applications and forwarded a positive recommendation to the City Council. There was no public input.

The City Council opened the public hearing on this application on December 21, 2006. Additional discussion was held on January 11, 2007.

Analysis

The property consists of approximately 2,800 acres that is contiguous to the Park City Municipal boundary. The parcel is within the Annexation Expansion Area, as described by the adopted Annexation Policy Plan. The majority of the acreage is encumbered by the Park City Mountain Resort (PCMR) ski lease. The ski lease lands will be deed restricted to prohibit residential and commercial lodging. This deed restriction converts to a conservation easement at the end of the PCMR lease. The balance of the acreage, around the Silver King mine site, will be further restricted by a conservation easement. No development other than what is allowed by the PCMR Development Agreement is allowed within the annexation boundary. Therefore, many of the requirements of the Annexation Policy Plan are not applicable.

The Annexation Policy Plan requires an annexation evaluation and staff report to be presented that contains certain items (see Section 15-8-5 (B)). The staff analysis is as follows:

1. General Requirements of Section 15-8-2

With the exception of water, the annexation meets the general annexation requirements as stated in Section 15-8-2. See Section E of this staff report for a detailed analysis of the annexation as it relates to Section 15-8-2.

2. Map and natural features

The property consists of approximately 2,800 acres that is contiguous to the Park City Municipal boundary. The land is within the Annexation Expansion Area, as described by the adopted Annexation Policy Plan. There are areas of wetlands, visible ridges and areas of steep slopes as defined by the Sensitive Lands Overlay criteria.

3. Residential Density

No residential or commercial lodging density is proposed or allowed. All density is transferred to the Flagstaff Annexation Area. Only ski related and resort support development is allowed as contemplated in the PCMR Development Agreement and Park City Land Management Code.

4. Land Uses-existing and proposed

The property will be zoned Recreation Open Space (ROS) and ROS-MPD, subject to the Sensitive Lands Overlay (SLO). The Park City Mountain Resort is located on the majority of the proposed annexation and will continue to operate. No residential or commercial lodging density is proposed or allowed. All density is transferred to the Flagstaff Annexation Area. Only Ski Related Accessory Buildings and uses as contemplated and defined in the PCMR Development Agreement and Park City Land Management Code.

5. Wildlife

There are no proposed changes to the use and development of the acreage. Information received does not identify any wildlife issues.

6. Environmental Issues

While there are steep slopes, visible ridges, wetlands and streams within the proposed annexation, any impacts to the environment will be mitigated according to applicable City ordinance at the time any Development Activity is applied for.

7. Utility & Access

There is existing utilities and access (via King Road) within the proposed annexation area. Most of these utilities serve the PCMR ski area. King Road provides access up the mountain to the PCMR maintenance shop and further access via dirt roads throughout the resort. No other Development Activity is proposed necessitating utility or access.

8. Character and Development of adjacent property

Surrounding land uses include a multi-unit development to the north (Spiro Tunnel MPD- Silver Star Condominiums) and multi-acre rural/agricultural properties located outside of the City limits to the north. These multi-acre rural properties are located within the Mountain Remote zoning district in the County. The base area of PCMR, large-lot residential of Northstar, Treasure Hill, and 555 King Road also border the eastern boundary.

9. Zoning- existing and proposed

The parcel is currently zoned Mountain Remote in Summit County, subject to the Snyderville Basin General Plan. The proposed zoning is Recreation Open Space (ROS) on the entire parcel. Staff recommends the entire property be included in the Sensitive Lands Overlay district. The PCMR lease area will likely be zoned ROS-MPD upon subsequent amendment of their MPD to include the annexed area.

The proposed zoning of Recreation Open Space is consistent with Park City's General Plan for the West Mountain area and with the surrounding zoning and land uses.

10. Goals and Policies of the Park City General Plan

The General Plan identifies this property as being within the Park City Resort/West Hill Planning Area, and indicates that the majority of development should occur within, or immediately adjacent to, the existing City limits at the base of the ski area. Any residential development in this area should be clustered and not spread out over the hillside. The Plan also encourages within this Area, development of more summer hiking, biking, and horse-riding trails and for these trails to connect with other existing trails.

This annexation is consistent with the goals and policies of the Park City General Plan in that all the residential and commercial lodging and development is transferred off the annexation area to be included in the Flagstaff Mountain Annexation area as part of the proposed Montage Hotel and Resort development.

11. Assessed valuation

Annexation of the proposed area will not have a negative impact on the property's assessed valuation. Beginning in 2001, UPCM petitioned the Utah State Tax Commission for a reduction in the assessed valuation of the PCMR leased lands, on the grounds that 1) there were no development rights associated with such lands, and PCMR's lease prohibited any kind of residential development on such lands by PCMR, and 2) PCMR's Development Agreement with Park City contained further development restrictions prohibiting residential and related uses. After hearings at the Tax Commission, the assessed valuation was reduced.

12. Demand for municipal services

All essential services for the existing and proposed on-mountain resort support will be provided by existing entities. These services include: Park City Fire District, Snyderville Basin Water Reclamation District (SBWRD - sewer), Park City School District (no residential, so not applicable), Questar gas, Rocky Mountain Power, Comcast cable, Qwest gas, and BFI trash removal.

13. Effect on City boundaries

This annexation does not create an island, peninsula, or other irregular shaped City boundary.

14. Timetable for extending services

No services for this annexation are required to be extended.

15. Revenue versus costs

There is no cost to the City as no services are provided. The potential increased revenue from property, sales and transient room taxes will generate $1.3 to $1.9 million per year to the City.

16. Tax consequences
The property will be entirely privately owned. The City estimates an ongoing tax consequence to PCMR (who pays property and other taxes on the ski lease land) of approximately $50,000. PCMR currently pays approximately $15,000. One fifth of the $35,000 increase is due to the City's higher Business License fees; the rest is the difference in City taxes versus County taxes.

17. Impact on Summit County
Park City Mountain Resort currently pays the property taxes on the ski lease land to the amount of $5,500 per year; staff finds this to be a minimal impact on Summit County. The City Budget Director has reviewed the costs of PCMR for County and City services and taxes. Summit County did not protest the annexation.

18. Historic and cultural resources
This annexation will include historic mining era structures within the Park City limits. The Silver King mine and other mining structures throughout the annexation area are more than 50 years old and would be considered to be historic structures due to the age of construction. No determination of historical significance has been made. Any changes to the historic buildings would require review by the Planning Department for compliance with the LMC preservation ordinance and Historic Design Guidelines. The Flagstaff Historic Preservation Technical Report will necessarily need to be amended to include those resources within the annexed area. The annexation therefore has a significant public benefit in the area of historic or cultural resources, in that several historic structures will be included within the City limits. If the structures are rehabilitated to building code, resort support uses could be permitted subject to a Conditional Use Permit.

Annexation Policy Plan

Purpose (Section 15-8-1)

Chapter 8 of the Land Management Code is considered Park City's annexation policy plan and declaration. In Section 15-8-1 the Code states the following:
The annexation requirements specified in this Chapter are intended to protect the general interests and character of the community; assure orderly growth and development of the Park City community in terms of utilities and public services; preserve open space, enhance parks and trails; ensure environmental quality; protect entry corridors, view sheds and environmentally Sensitive Lands; preserve Historic and cultural resources; create buffer areas; protect public health, safety, and welfare; and ensure that annexations are approved consistent with the Park City General Plan and Utah State Law.

Staff finds that the proposed annexation meets the above stated purposes in that this annexation contributes to the achievement of the goals and policies of the Park City General Plan and further protects the general interests and character of Park City by preserving 2,800 acres of open space to the west of the City, preserving prominent viewsheds and environmentally sensitive areas, bringing several historic structures in the City limits, promoting an opportunity to review

this area for additional trails and open space connections, and developing consensus with Summit County on appropriate development patterns in a joint-planned area.

In addition the Annexation Policy Plan states:
If practical and feasible, boundaries of an Area proposed for annexation shall be drawn:

(A) Along the boundaries of existing special districts for sewer, water, fire, and other services, along the boundaries of school districts whose boundaries follow City boundaries… and along the boundaries of other taxing entities;
(B) To eliminate islands and peninsulas of territory that is not receiving municipal type services;
(C) To facilitate the consolidation of overlapping functions of local government;
(D) To promote the efficient delivery of services; and
(E) To encourage the equitable distribution of community resources and obligations.

It is the intent of this Chapter to ensure that Property annexed to the City will contribute to the attractiveness of the community and will enhance the resort image which is critical for economic viability, and that the potential deficit of revenue against expense to the City is not unreasonable.
Staff has reviewed this annexation proposal against these stated purposes and finds that the proposal is consistent with and furthers the interest of the Park City Annexation Policy Plan in that the proposed annexation area is within the boundaries of existing special districts for fire, sewer and school districts. The annexation will bring the property into the Park City Municipal Corporation boundary. The proposal also sets an appropriate land use precedent for the area that is consistent with the City's General Plan.

<u>General Requirements (Section 15-8-2)</u>
Staff has reviewed the proposed annexation and preliminary plat against the following general requirements (findings in ***italics***). The following specific requirements are hereby established for annexation to Park City:
(A) Property under consideration of annexation must be considered a logical extension of the City boundaries.
<u>Complies</u>. The property is contiguous to the Park City Municipal boundary along the western corporate boundary line from the Wasatch County line to the south to the properties abutting the Silver Star development and Snow Lanes.

(B) Annexation of Property to the City must be consistent with the intent and purposes of this Chapter and the Park City General Plan.
<u>Complies.</u> This annexation proposal has been submitted and processed consistent with the intent and purposes of the Annexation Policy Plan. The annexation petition has been accepted by the City Council and the petition certified by the City Recorder. The applicant submitted all required documents

and information, per LMC Section 15-8-3 (A)-(J) and including all submittal requirements as stated on the application form. The property has been posted and affected property owners have been notified of the public hearing. Legal advertisement has been posted in the Park Record. The property falls within the Park City Annexation Expansion Area boundaries.

(C) Every annexation shall include the greatest amount of Property possible that is a contiguous Area and that is contiguous to the City's municipal boundaries.
<u>Complies.</u> Property is defined in the Land Management Code as Any Parcel, Lot, or tract of land, including improvements thereon, in the possession of or owned by, or recorded as the real Property of the same Person or Persons. The property is contiguous to the Park City Municipal boundary. The property is a contiguous area owned in its entirety by United Park City Mines Company.

(D) Piecemeal annexation of individual small Properties shall be discouraged if larger contiguous Parcels are available for annexation within a reasonable time frame in order to avoid repetitious annexations.
<u>Complies.</u> The annexation area constitutes 2,800 acres owned by the applicant. Contiguous additional lands are owned by UPCM but will be considered as open space for Summit County development of additional Colony lots to the west. The property is contiguous to the Park City Municipal boundary.

(E) Islands of county jurisdiction shall not be left or created as a result of the annexation and peninsulas and irregular boundaries shall be avoided.
<u>Complies.</u> This annexation does not create an island, peninsula, or an irregular boundary.

(F) In addition to services provided by existing districts, such as sewer, fire protection, and public schools, the following urban level services, consistent with those normally provided in the rest of the incorporated boundaries will be provided to annexed areas.
<u>Complies as outlined below.</u>

1. <u>Police protection</u> - ***City Police protection currently provided by special agreement with the County Sheriff for routine calls. Criminal investigation is currently the responsibility of the County Sheriff and would transfer to the City.***
2. <u>Snow removal on Public Streets</u> ***No public streets are within the annexation area.***
3. <u>Street maintenance</u> ***No public streets are within the annexation area.***
4. <u>Planning, zoning, and Code enforcement</u> ***Currently Summit County Planning and Building Department and would transfer to the City departments of Planning and Building.***
5. <u>Availability of municipal sponsored parks and recreational activities and cultural events and facilities</u> ***Parks are public and open to County and City residents. This annexation has many trails that link the City and future open space and***

recreation parcels.

6. Water services as the Area is developed. Existing water treatment and storage facilities may currently be inadequate to provide services to the annexed Area. Developers of the annexed Area are required to pay for the cost of improvements related to the extension of and connection with the City lines and systems as well as participate in additional improvements such as storage capacity and distribution as necessary for safe, reliable, and efficient water flows. ***The Flagstaff water agreement needs to be modified to address the increased water rights, facilities, and use demands generated by the additional density transferred to pod B-2. The City agreed to provide culinary water to the project for, among other things, a contribution towards system operational costs. If as Talisker now asserts, the City is 100% responsible for discharge permit and associated Judge Tunnel maintenance, the City would have calculated a different number for the original water contribution. Staff disagrees with David Smith's characterization of this issue as un-related or last minute. The cost and reliability of the Judge Tunnel is material to the City's agreement to provide culinary water to the Flagstaff Annexation area. Additionally, the matter of the discharge is a material environmental impact that needs to mitigated. Accordingly, staff recommends that the City Council adopt the Annexation Ordinance incorporated the Amending Development Agreement with staff's suggested language. The language attempts to bridge the gap between the complexity of uncertain conditions, and future changes in the status quo such as a change in regulatory climate, a change in quality of the water, mine related events such as physical changes or collapse in the tunnel, the applicant declaring its mine as "abandoned," or citizen lawsuits, any of which may again change the percentage of responsibility despite a 2007 determination/agreement. The important part is that the applicant continue to take primary responsibility for its mine workings and cooperate in a reasonable and proportional manner regarding protection of the city's water and environmental resources.***

(G) If feasible and practical, water and sewer lines shall be extended to the Area proposed for annexation. Expenses associated with such extension shall be the responsibility of the Applicant(s). The City shall determine timing and capacity of extending water to the proposed annexation area. The Water Reclamation district shall determine timing and capacity of extending sewer service to the proposed annexation area.

No sewer service is required to be extended at this time. Future needs will be borne by the property owner. See (6) above for water issues.

(H) Before considering requests for annexation the City shall carefully analyze the impacts of annexation of an Area, taking into consideration whether the Area will create negative impacts on the City and considering whether the City can economically provide services to the annexed Area. Community issues such as location and adequacy of schools and community facilities, traffic, fire protection, particularly in Wildfire/Wildland Interface Zones, useable open space and recreation

Areas, protection of Sensitive Lands, conservation of natural resources, protection of view corridors**,** protection and preservation of Historic resources, affordable housing, balance of housing types and ownership, adequate water and sewer capacity to serve the future needs of the proposed annexation Areas shall also be considered.

There is a net benefit to the City as a result of this annexation, due to the community benefits of 2,800 acres of open space, historic mining structures included within the City Limits, limited additional City services, and visual open space. The applicant will be financially responsible to provide all basic infrastructure and utilities including water, sewer, power, gas, and cable, if needed. The City will provide basic public services including police, planning and building services, etc. As noted above, water issues still need to be resolved.

(I) Situations may exist where it is in the public interest to preserve certain lands from Development where there exist Geologic Hazards, excessive Slopes, flood plains or where the need for preservation of community open space and/or agricultural lands is consistent with the General Plan. In such circumstances, annexation may occur as a means of retaining those lands in a natural state.
Complies. ***The entirety of the annexation area will be preserved as skiable terrain and open space. The area will be included in the Sensitive Lands Overlay district.***

(J) The City shall consider annexation of unincorporated Areas of Summit County that are within the annexation expansion Area.
Complies. ***This property is within the Park City Annexation Expansion Area, adopted by the City Council in 2003.***

(K) In general, the City does not favor annexation of territory, which should be located within another municipality, nor does it favor the annexation of unincorporated territory solely for the purpose of acquiring municipal revenues, or for retarding the capacity of another municipality to annex.
Complies. ***The purpose of this annexation is not to acquire municipal revenues or to retard the capacity of another municipality to annex this property. Provision of municipal services for this property is more efficiently provided by Park City than by Summit County.***

(L) Annexations that expand the resort and/or tourist economy provide second home or rental residential Properties, preserve environmentally Sensitive Lands, and provide significant public open space and community facilities are preferred.
Complies. ***This annexation will provide 2,800 acres of property encompassing the Park City Mountain Resort while transferring all residential density to an approved development site within the Flagstaff Mountain annexation area. The annexation incorporates several historic mining era structures within the City boundaries, preserves environmentally sensitive areas, and provides public access to all trails. It is logical and reasonable to provide municipal level services to this property.***

Annexation Agreement
The Annexation Policy Plan establishes a requirement for an Annexation Agreement to be approved by the City Council to address standard conditions that must be met prior to completion of the annexation. Staff finds that the proposed annexation, as outlined in the draft annexation agreement (Exhibit B) and the Amended Flagstaff Development Agreement, complies with the requirements and criteria of the Park City Annexation Policy Plan regarding Annexation Agreements.

Zoning Map Amendment
The proposed annexation will be zoned Recreation Open Space. In addition, a 139 acre parcel owned by the applicant and currently within the City will change zoning districts from Estate (E) to Recreation Open Space (ROS).

PCMR Financial Issues
The City Council had previously given direction to the applicant to resolve this issue. The applicant and PCMR announced on January 11th that an agreement had been signed.

Conservation Easement
The applicant handed out a one page sheet at the meeting of December 21st listing changes to the Reserved Uses. These changes have been incorporated into the attached conservation easement.

Flagstaff Mountain Development Agreement Amendments
The amended Flagstaff Mountain Development Agreement (DA) is attached as Exhibit C. The substantive changes have previously been discussed by the Planning Commission, City Council, and a joint Task Force.

Density (Section 2.2.1 of the Development Agreement)
The additional 80 Unit Equivalents (705 UEs increasing to 785 UEs) of density that is tied to the PCMR annexation causes other effects as evidenced in the amended Development Agreement (DA). There is a slight increase in the developable acreage (84 increasing to 87), the percentage of development in pod A is reduced (65% to 50%) and the number dwelling units increases from 470 to 550. These changes can be found on page 9 of the DA. The additional 192 hotel rooms for the Montage are further discussed as footnote 6 on page 10.

Parking (2.2.1.9)
The DA still requires that the parking be reduced by 25% of Land Management Code requirements. However, through the Task Force, Council and Planning Commission discussions, the request for one assigned parking space for the residential condominiums in Montage was found acceptable. See page 11 of the DA.

Ski Run Separation (2.4.1.2)
A couple of platted Red Cloud (Northside Neighborhood) lots have ski runs that encroach into the lots and may the 50 foot separation difficult to achieve. Each case will be reviewed by the City.

Empire Day Lodge (2.5)
The redline draft approximates the changes that were approved with the 2004 DA Addendum and incorporates the 75 parking spaces allocated to the Day Lodge through the discussions with the Task Force, Council, and Planning Commission.

Beano's Style Private Cabin (2.6)
Changes include clarification on vehicular access and parking at the on-mountain restaurant and additional size request. Currently, the DA restricts the restaurant to 7,000 square feet. The applicant wishes to allow the building to be between 7,000 square feet and 10,000 square feet based on CUP review. The Planning Commission reviewed this request and did not object to the increase. Staff's recommendation to the Planning Commission was to keep the size limitation as is. The applicant provided some information to the City Council on the Beano's at Vail regarding its actual size, number seats and the number of members.

Private Road (2.8.2)
Proposed language recognizes possible jurisdictional transfer of SR 224 and the conversion of private road to public. Currently, UDOT would have to approve the public dedication and relocation of the existing SR 224.

Gondola (2.9.2)
The Task Force, a majority of the City Council, and Planning Commission all found that the gondola was not economically feasible or in the public interest for mitigating traffic on the existing roads. Therefore, the No Gondola alternative is accepted and the Developer is to make a contribution of $1 Million to the City for the purpose of providing traffic mitigation measures relating to the project. The City has consistently stated that this $1 Million will be used towards operations and equipment to serve the Empire Pass development. However, the City and applicant agreed to leave in the possibility of a gondola as a resort amenity. As such, the Developer offers to contribute $10,000 towards the cost of a feasibility study and contribute to the costs of the parking improvements at Richardson Flats. These parking improvements (the Park and Ride) will be assured by the posting of completion bond in the amount of $1.8 Million.

Enhanced Environmental Protection (2.9.4)
This section is amended to allow the Montage three wood burning fireplaces. With the potential density and fireplaces in the annexation area and the lack of fireplaces in several of the condo buildings under construction, staff finds the additional fireplace for the Montage acceptable.

Public Safety (2.9.10)
The additional language in this section is relative to the additional density and the size of the Montage building. As neither were anticipated in the original DA, additional fire protection measures may be necessary.

Subsequent Agreements (2.10.2) (Water)
A new section of the Development Agreement (Subsequent Agreements 2.10.2) relates to water agreements between the City and the Developer. A current water agreement has not been finalized. The amended DA shows a blank date for item (iii). For the December 21st meeting the City and the applicant proposed different language regarding ongoing discussions on water and a possible discharge permit from the UDEQ and/or USEPA. Council had previously directed that this issue be resolved prior to approving the amended DA. After considerable discussion and differing opinions, staff has identified the following options in order of overall staff preference:

1. Council can approve the amended DA with staff's recommendation on language. This option places the responsibility for a possible discharge permit on UPCM. **This is the recommended action**. Staff strongly urges that the Council finalize the matter now. When the City allows important agreements such as this to get delayed and handled in piecemeal fashion at a timing advantageous to the applicant, the City loses the ability to negotiate the best possible solution in a comprehensive manner with regard to the impacts of the overall development activity.
2. Council could specify a cost sharing percentage (50/50) to insert in the current draft agreement. This option recognizes the possibility of joint responsibility and while risking that the City actually has no potential risk of cost, it would cap any potential liability and be consistent with a history of cooperation at the tunnel.
3. Council can memorialize the current water agreements and eliminate the reference for item (iii) and direct staff and the applicant to continue to cooperatively pursue a new agreement including sharing the responsibilities and liabilities of a potential discharge permit. This is the option requested by the applicant.
4. Staff has offered to draft compromise language that would put current responsibility for the discharge permit with UPCM, but with additional language that lays the framework for on-going negotiations regarding final determination of permit responsibility. This has also been rejected by UPCM, but the provision would read as follows:

   Talisker agrees to be responsible for obtaining a UPDES permit with Utah Department of Environmental Quality and Talisker shall apply for such permit within thirty days of the execution of the amended development agreement. Although Talisker shall be identified as the permit holder, Talisker and Park City agree to work together toward a final determination of which entity is the appropriate permit holder. Talisker and Park City agree to share all information, and, where necessary, to assist one another in acquiring all information, including maps, water flow records, water quality data, agreements, either requested by the other entity or relevant to a final determination of permit holder liability. The determination of permit responsibility by state and / or federal agency shall be deemed final when all appeals of any agency action, both state and federal, have concluded or, if no appeal is filed, the time for filing an appeal shall have expired. In the event of the ultimate determination being one of shared liability, the parties agree to enter into a cost-sharing agreement that addresses each entity's respective treatment obligation. Talisker and Park City agree that an agreement providing for shared responsibility may require other approvals from state and federal agencies and courts of appropriate jurisdiction and that Talisker shall remain the sole UPDES permit holder until such time as a cost-sharing agreement is finalized.

Council heard the discussion at the previous meetings. There has been no resolution to the differing opinions of staff and applicant subsequent to those hearings. Staff has provided an amended Development Agreement with the language recommended by staff. The applicant has provided a memo dated January 24 on the water/Judge Tunnel issue (attached).

Employee/Affordable Housing (2.10.5)
Staff has provided the table and language for the additional Affordable Housing Units (AEUs) requirement. Language is inserted to allow on-mountain mitigation to be off-mountain on a 1.5 for 1 required AEU basis. Developer agrees to provide an additional 20 AEUs to be located at Quinn's Junction within 24 months or post a financial guarantee to the City equal to 10 percent of the estimated construction costs. Existing off-mountain obligation is still subject to the approved Technical Report.

Richardson Flats (3.1)
On page 33 is a new paragraph relating to the dedication of 30 acres at Richardson Flats for the Park and Ride and recreation facilities. The Park and Ride will be a total of 750 spaces with 100 of those for the Montage/Empire Pass. Other uses on Richardson Flats are still constrained by the existing language and options. Schedule 3.1 on page 47 further describes the specifications of the Richardson Flats Park and Ride, including the $1.8 million bonding, reconstruction of the County Road leading to the P&R, and parameters of the design. The Developer will need to amend to the approved Transit and Parking Technical Report to incorporate additional City and Developer obligations with regards to the Park and Ride and Transit.

The applicant has provided a cost estimate for the Park and Ride project. The $1.8 million estimate is derived from similar construction and paving projects and includes the access road and storm water detention. What is not included in the cost estimate is the improvement to the County Road that will be necessary for City buses to use. The phasing for this project is somewhat tied to the Summit County review process. An application has been submitted to the County for review. Instead of a specific date tied to a Montage process (building permit, certificate of occupancy), staff has agreed to the performance bond. The applicant also agrees to complete the project within two years of approval or forfeit the performance bond.

Responding to another request by Council, the applicant has inserted the line, "[This parking area will serve as the location for Montage construction parking, and DEVELOPER shall be responsible for providing or arranging construction parking shuttles.]" in section 3.1 of the amended DA.

Council suggested at the January 11th meeting to include LEED or similar environmental measures, as feasible, in the design of the Park and Ride. Staff will investigate the scope of these design guidelines and pass the information to the County and the applicant. Language can be added to the amended Development Agreement section 3.1 to include environmental design standards.

Department Review

This project has gone through an interdepartmental review. No further issues that aren't discussed above have been identified.

Notice

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record.

Public Input

Please refer to the previously distributed minutes for prior public input at the Task Force, City Council, and Planning Commission. A binder containing all the minutes is available at the Planning Department. Task Force: January 31, February 7 and 28, and March 7 and 21, April 11 and 25 (not a quorum), and May 2, 2006. The Task force recommendations were discussed by two joint meetings (May 10 and 24) of the full City Council and Planning Commission. 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. The City Council held public hearings on October 12 and October 19 on the elements of the amendments to the Flagstaff Development Agreement and remanded the Development Agreement back to the Planning Commission for formal recommendation. The Planning Commission held a public hearing on December 13, 2006, and forwarded a positive recommendation on the annexation, amended zoning map, and amendments to the Flagstaff Mountain Development Agreement. There was no public input at the December 13th hearing. The City Council opened the public hearing on December 21, 2006, and continued the discussion on January 11, 2007.

Alternatives

- The City Council may approve the UPCM Annexation of Lands at PCMR, the amendment to the Park City Zoning Map, and the amended Flagstaff Development Agreement as conditioned or amended, or
- The City Council may deny the UPCM Annexation of Lands at PCMR, the amendment to the Park City Zoning Map, and the amended Flagstaff Development Agreement and direct staff to make Findings for this decision, or
- The City Council may continue the discussion on UPCM Annexation of Lands at

PCMR, the amendment to the Park City Zoning Map, and the amended Flagstaff Development Agreement.

Consequences of not taking the Suggested Recommendation

The proposed annexation would not occur and the 2,800 acres would remain outside of the City limits. In addition, the proposed changes to the Flagstaff Mountain annexation and transfer of density would not occur. The Montage MPD and CUP would not proceed. It is likely that the remainder 185 Unit Equivalents and 98 residential units would be developed in a fashion similar to Pod A.

Recommendation

Staff requests the City Council re-open the public hearing; and review the requested annexation, amendments to the Park City zoning map, and amendments to the Flagstaff Mountain Development Agreement. Staff has provided an Annexation Agreement, amended Zoning Map, and ordinance approving the amendments to the Flagstaff Mountain Development Agreement for the Council's consideration. If the Council adopts the ordinance provided and executes the amended Development Agreement that is recommended by staff, the applicant will have 30 days in which to record the annexation. If the annexation is not recorded within 30 days, the Council would have to re-adopt the Annexation Agreement.

Exhibits

Exhibit A – Record of Survey plat
Exhibit B – Annexation Agreement
Exhibit C – Amended Flagstaff Mountain Development Agreement (Staff language)
Exhibit D – Deed Restriction and Conservation Easement for Annexed Lands
Exhibit E – Proposed amended Zoning Map
Exhibit F – Water memo from applicant dated January 24, 2007.
Exhibit G - Amended Flagstaff Mountain Development Agreement (Talisker language)
Exhibit H – Correspondence from Talisker, January 29, 2007

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Ordinance No. 07-

AN ORDINANCE APPROVING THE UNITED PARK CITY MINES COMPANY AND ROYAL STREET LAND COMPANY ANNEXATION OF LANDS AT PCMR AND APPROVING AN AMENDMENT TO THE PARK CITY ZONING MAP TO PLACE THE LANDS AT PCMR INTO THE RECREATION OPEN SPACE (ROS) ZONING DISTRICT AND APPROVING AMENDMENTS TO THE FLAGSTAFF MOUNTAIN DEVELOPMENT AGREEMENT, PARK CITY, UTAH.

WHEREAS, the owners of 2,800 acres of property located in unincorporated Summit County have petitioned the City Council for approval of the Annexation of Lands at PCMR into the City limits, an amendment to the current City Zoning Map and an amendment to the Flagstaff Mountain Development Agreement; and

WHEREAS, the proposed annexation is approximately 2,800 acres in size; and

WHEREAS, the zoning for the 2,800 acres will be Recreation Open Space (ROS) and zoning for the 139 acres currently within the City will also be Recreation Open Space (ROS); and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held a public hearing on December 13, 2006, to receive input on the Annexation of Lands PCMR, the amendment to the Park City Zoning Map, and the amended Flagstaff Development Agreement; and

WHEREAS, the Planning Commission, on December 13, 2006, forwarded a positive recommendation to the City Council; and,

WHEREAS, on December 21, 2006, January 11 and February 1, 2007, the City Council held public hearings to receive input on the Annexation of Lands PCMR, the amendment to the Park City Zoning Map, and the amended Flagstaff Development Agreement; and

WHEREAS, on February 1, 2007, the City Council approved the Annexation of Lands at PCMR, an amendment to the Park City Zoning Map and amendments to the Flagstaff Mountain Development Agreement; and

WHEREAS, it is in the best interest of Park City, Utah to approve the Annexation of Lands at PCMR, amendments to the Park City Zoning Map, and amendments to the Flagstaff Mountain Development Agreement.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. APPROVAL. The above recitals are hereby incorporated as findings of fact. The Annexation of Lands at PCMR and amendment to the Park City Zoning Map as shown in Exhibit A is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

Findings of Fact:

1. The property is located within unincorporated Summit County and contains approximately 2,800 acres to be annexed into Park City.
2. Royal Street Land Company owns a 236 acre parcel within the annexation area known as the Shadow Lake parcel. The rest of the annexation area is owned by United Park City Mines Company.
3. The current county zoning is Mountain Remote.
4. As part of the annexation petition the petitioner has requested Recreation Open Space (ROS) zoning for the entire 2,800 acre parcel and an additional 139 acre parcel currently within the City Limits and zoned Estate (E).
5. The proposed land uses are consistent with the purpose statements of the proposed zoning district. The applicants have volunteered to restrict all residential and commercial lodging by transferring all potential density to an existing development area within the Flagstaff Mountain annexation area. These restrictions are reflected in the annexation agreement.
6. Preliminary site analysis demonstrates existence of sensitive lands on the property. Therefore, the proposed SLO zoning is appropriate.
7. The proposed annexation meets the purposes stated in the Annexation Policy Plan, in that this annexation contributes to the achievement of the goals and policies of the Park City General Plan and further protects the general interests and character of Park City by including several historic mining era structures within the Park City boundary, and provides 2,800 acres of open space and ski resort related uses.
8. The annexation will bring the property into the Park City Municipal Corporation boundary and enable services to be provided to the Property, such as police and water, which are more easily accessible from the City than the County.
9. Annexation of this parcel will not create an island, peninsula, or irregular city boundary. The annexation is a logical extension of the City Boundary.
10. This property is located within the Park City Annexation Expansion Area, adopted by the City Council in 2003.
11. Provision of municipal services for this property is more efficiently provided by Park City than by Summit County.
12. Areas of wetlands, visible ridges, and steep slopes have been identified on the property. It is reasonable to include this property within the Sensitive Lands Overlay Zone.
13. It is reasonable and logical to provide municipal level services to this property adjacent to the western boundary of Park City. The annexation provides an open space buffer between Park City and the proposed boundary to the west.
14. The application is subject to the City’s Affordable Housing Resolution 17-99 in

that residential density is being transferred to another location in the City. Affordable Housing is being provided under the current requirements of the Flagstaff Mountain Development Agreement, as amended.

15. The findings in the Analysis section of the staff report dated February 1, 2007, are incorporated herein.

<u>Conclusions of Law</u>:

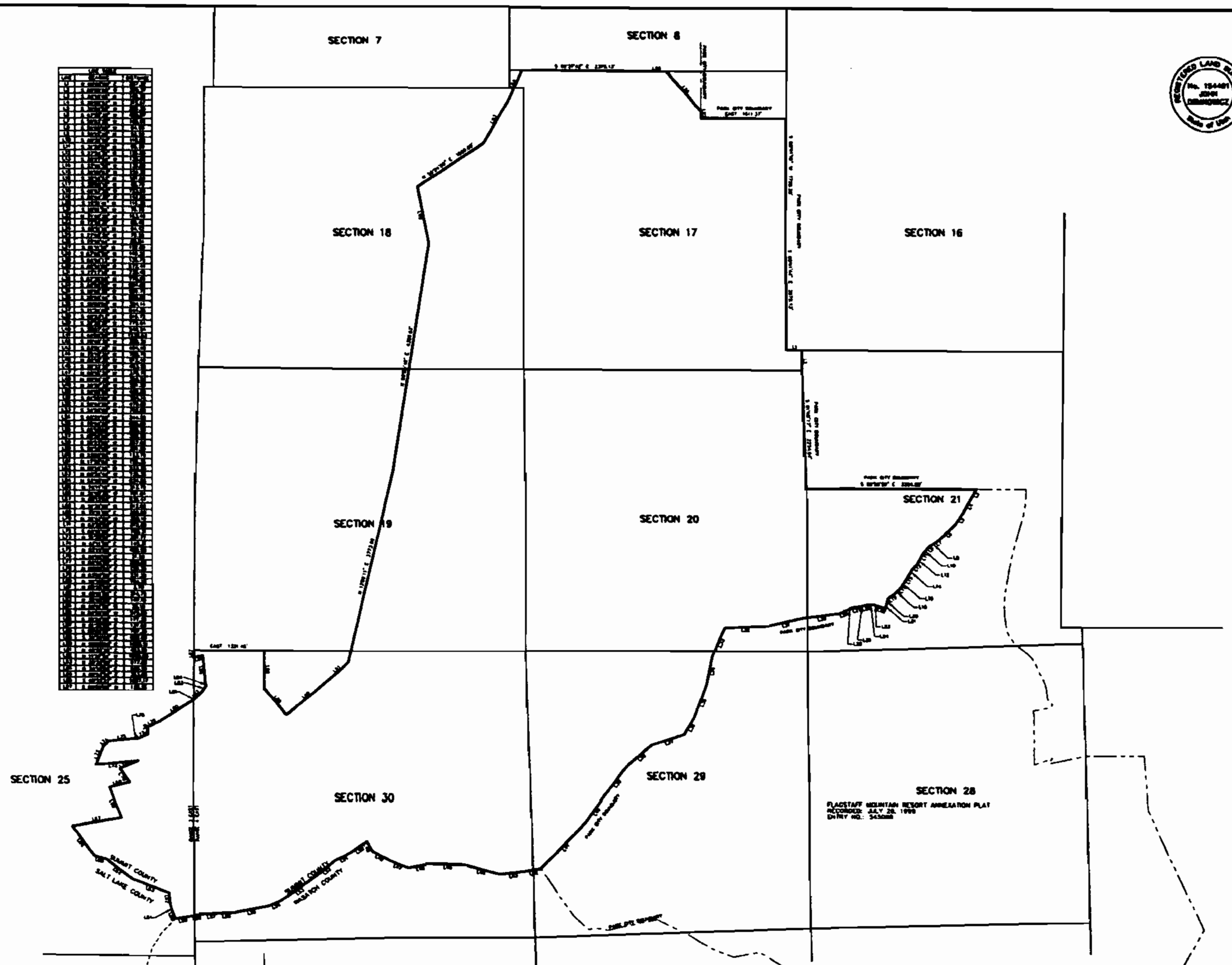
1. The Zoning Map amendment is consistent with the Park City Land Management Code and General Plan.
2. Approval of the Annexation and Zoning Map amendment does not adversely affect the health, safety and welfare of the citizens of Park City.
3. This annexation meets the standards for annexation set forth in Title 10, Chapter 2 of the Utah Code, the Park City General Plan, and Land Management Code--Chapter 8: Annexation.

<u>Conditions of Approval</u>:

1. The Official Zoning Map shall be amended to include the UPCM Annexation of Lands at PCMR property within the Recreation Open Space (ROS) District and within the Sensitive Lands Overlay (SLO) Zone.
2. The Official Zoning Map shall be amended to change the 139 acre parcel within the Park City limits currently zoned Estate (E) to Recreation Open Space (ROS).
3. The annexation agreement shall be substantially the same as Exhibit B, in a form approved by the City Attorney, and fully executed and recorded with the Annexation Plat.
4. The Flagstaff Mountain Development Agreement shall be substantially the same as Exhibit C, in a form approved by the City Attorney, and fully executed and recorded with the Annexation Plat.
5. The Deed Restriction and Conservation Easement for the Annexed Lands shall be substantially the same as Exhibit D, in a form approved by the City Attorney, and fully executed and recorded with the Annexation Plat.

<u>SECTION 2. EFFECTIVE DATE.</u> This Ordinance shall be effective upon publication and the Annexation shall be effective upon recordation and filing of this Ordinance and annexation plat pursuant to the Utah Code Annotated Section 10-2-425, and with the execution of the Amended Flagstaff Development Agreement and UPCM Lands at PCMR Annexation Agreement.

PASSED AND ADOPTED this 1st day of February, 2007.



PROPOSED ANNEXATION LANDS AT PCMR

LOCATED IN SECTION 17, THE EAST HALF OF SECTION 18, SECTIONS 19 AND 20, THE SOUTH HALF OF SECTION 21, SECTIONS 29 AND 30, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN AND ALSO THE EAST HALF OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

1000' 0 1000' 2000'

SURVEYOR'S CERTIFICATE

I, John Demkowicz, certify that I am a Registered Land Surveyor and that I hold Certificate No. 154491, as prescribed by the laws of the State of Utah, and that this plat accurately describes and illustrates the boundary and the Patented Government Lots of Record as prescribed within the boundary of the PROPOSED ANNEXATION LANDS AT PCMR annexation petition.

John Demkowicz ______ Date ______

BOUNDARY DESCRIPTON

A parcel of land located in Section 17, the east half of Section 18, Sections 19 and 20, the south half of Section 21, Sections 29 and 30, Township 2 South, Range 4 East, Salt Lake Base and Meridian and the east half of Section 25, Township 2 South, Range 3 East, Salt Lake Base and Meridian, said parcel being more or less described as follows:

Beginning at the southwest corner of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence [illegible]

OWNER'S DEDICATION AND CONSENT TO RECORD

Know all men by these presents that the undersigned corporate agent for United Park City Mines; the owner of the majority of the land described and illustrated on this plat do hereby petition Park City Municipal Corporation, of Summit County, Utah that said lands be annexed to and included within the legal boundary of Park City, Utah, and be subject to such benefits and restrictions as exist under applicable legal ordinances of Park City, Utah.

Name ______

Title ______

ACKNOWLEDGEMENT

State of Utah
:ss
County of Summit

On this ______ day of ______ 2006 ______ personally appeared before me, the undersigned Notary Public, who being duly sworn, did say that he is the Corporate Agent for United Park City Mines Company, the owner of the majority of the land described and illustrated on this plat and that the foregoing Owners Dedication and Certificate of Consent to Record was signed freely and voluntarily for the purposes therein mentioned and that said Company executed the same.

______
A Notary Public commissioned in Utah

Printed Name ______
Residing in: ______
My Commission Expires: ______

SHEET 1 OF 2

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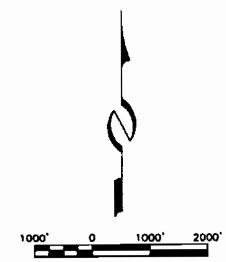
(435) 649-9467

ENGINEER'S CERTIFICATE	APPROVAL AS TO FORM	CERTIFICATE OF ATTEST	COUNCIL APPROVAL AND ACCEPTANCE	RECORDED
I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS ______ DAY OF ______ 2006 A.D. BY ______ PARK CITY ENGINEER	APPROVED AS TO FORM THIS ______ DAY OF ______ 2006 A.D. BY ______ PARK CITY ATTORNEY	I CERTIFY THIS RECORD OF SURVEY MAP WAS APPROVED BY PARK CITY COUNCIL THIS ______ DAY OF ______ 2006 A.D. BY ______ PARK CITY RECORDER	APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS ______ DAY OF ______ 2006 A.D. BY ______ MAYOR	STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF ______ DATE ______ TIME ______ BOOK ______ PAGE ______ FEE ______ RECORDER



PROPOSED ANNEXATION LANDS AT PCMR

LOCATED IN SECTION 17, THE EAST HALF OF SECTION 18, SECTIONS 19 AND 20, THE SOUTH HALF OF SECTION 21,
SECTIONS 29 AND 30, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN AND
ALSO THE EAST HALF OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

SHEET 2 OF 2

JOB NO.: 1-1-01 FILE: X:\Empire\dwg\Tellaker\plat\annexation-sht2.dwg

RECORDED

STATE OF UTAH, COUNTY OF SUMMIT, AND FILED
AT THE REQUEST OF ____________
DATE ______ TIME _____ BOOK _____ PAGE _____

______ FEE ______ RECORDER

When recorded, please return to:
PARK CITY MUNICIPAL CORPORATION
City Recorder
PO Box 1480
Park City UT 84060

ANNEXATION AGREEMENT
FOR THE UNITED PARK CITY MINES COMPANY LANDS AND THE ROYAL STREET LAND COMPANY LANDS AT OR NEAR THE PARK CITY MOUNTAIN RESORT

This Annexation Agreement is made by and between Park City Municipal Corporation ("Park City"), United Park City Mines Company, Owner ("Petitioner"), and Royal Street Land Company ("RSLC") to set forth the terms and conditions under which Park City will annex land owned by Petitioner and RSLC into the corporate limits of Park City and extend certain municipal services to that property. This Agreement is made under authority of I0-2-401 et. Seq. of the Utah Code, Annotated 1953, as amended, and shall serve as a supplemental annexation policy declaration when executed by all parties. In consideration of Park City's agreement to annex Petitioner's and RSLC's property and in consideration of the mutual promises contained herein, the parties agree that the terms and conditions of annexation shall be as follows:

1. **Property.** The property to be annexed is approximately 2,800 acres in size as depicted on the annexation plat, attached as Exhibit A, and as more fully described in the legal description, attached as Exhibit B, and the preliminary plat, attached as Exhibit C, and incorporated herein by reference (hereafter referred to as the "Property"). Park City Mountain Resort (hereafter referred to as PCMR) owns a ski lease over a substantial portion of the annexation property.

2. **Zoning.** Upon annexation, the entire Property will be zoned ROS, Recreation Open Space. The entire Property shall also be included within the Sensitive Lands Overlay District. A Deed Restriction prohibiting residential and commercial lodging uses applies over the PCMR ski lease lands and the RSLC property within the annexation boundary, and a Conservation Easement applies to those areas within the annexation boundary not subject to the PCMR ski lease and not owned by RSLC.

3. **Master Plan and Subdivision Plat Approval.** Due to the transfer of development capacity from this property to adjacent lands within the Flagstaff Mountain Resort Annexation, a Master Planned Development ("MPD") is not required. The next application or amendment under the PCMR MPD must add the PCMR lease land annexed hereby to the PCMR MPD. Following completion of the annexation process, pursuant to Utah Code Annotated Section 10- 2-425, development on the Property shall be governed by the zoning designation provided herein, this Agreement, and the Park City Land Management code in effect at the time complete subdivision and building permit applications are filed with Park City.

4. **Density.** At annexation, the total density of the UPCM lands and the RSLC lands within the annexation boundary is zero. No residential or commercial lodging uses are allowed. Limited ski area improvements may be permitted subject to the PCMR Master Planned Development and Park City Land Management Code.

5. **Trails.** Numerous trails exist on the Property. These trails will be available for public use subject to reasonable restrictions due to construction, maintenance, and environmental factors including wildlife and erosion. The existing and any newly required trails shall be added to the Park City Master Trails and as necessary dedicated to the City either on the Annexation plat or at the time of PCMR MPD amendment.

6. **Open Space**. The entirety of the Annexation Property will be dedicated open space.

7. **Affordable Housing.** The Petitioner shall comply with all applicable Affordable Housing requirements of Resolution 17-99, as part of the transfer of density to the Flagstaff Annexation area, as specified in the Amended Development Agreement For Flagstaff Mountain.

8. **Fire Prevention Measures.** Because of significant wild land interface issues on the Property, if required by Park City, the Petitioner agrees to implement a fire protection and emergency access plan, to be submitted prior to issuance of any building permits, and to be reviewed and approved by the Fire Marshall and Chief Building Official for compliance with applicable building and fire codes.

9. **Roads and Road Design.** No new public or private streets or roads are proposed as part of this annexation.

10. **Sanitary Sewer.** No new public or private sewer line is required or proposed with this annexation.

11. **Dedication of Water Rights.** This Annexation is conditioned upon the satisfaction of the requirements of the Water Section of the Amended Development Agreement For Flagstaff Mountain.

12. **Water Infrastructure and Other Water System Costs.** This Annexation is conditioned upon the satisfaction of the requirements of the Water Section of the Amended Development Agreement For Flagstaff Mountain.

13. **Sensitive Lands Review:** At the time of annexation the entire Property shall be included within the Sensitive Lands Overlay District (SLO). A sensitive lands analysis was submitted and reviewed by the Planning Commission during the annexation review for consideration of potential density available to be transferred.

14. **Planning, Building, and Inspection Fees.** Petitioner is responsible for all customary Development Activity fees, including all planning, building, subdivision, and construction inspection fees required by the City at the time of application and/or approvals.

15. **Impact and Building Fees.** Unless otherwise specified in the Amended Development Agreement For Flagstaff Mountain, Petitioner shall pay all generally applicable fees,

such as development impact, park and recreation land acquisition, building permit, and plan check fees due for construction on the Property at the time of application for building permits.

16. **Acceptance of Public Improvements.** No public infrastructure is required or proposed with this annexation area, but the annexation is conditioned upon those improvements as specified in the Amended Development Agreement For Flagstaff Mountain.

17. **Snow Removal and Storage.** No snow removal or storage is required or proposed with this annexation.

18. **Fiscal Impact Analysis.** There is no proposed development within this annexation area that requires a fiscal impact analysis to be submitted with the petition. Fiscal analysis including costs and revenues relating to the density transferred to the Flagstaff Annexation area has been reviewed and accepted by the City.

19. **Comprehensive Review and Analysis of Surrounding Property.** The Petitioner submitted with the petition for annexation a comprehensive land use review and analysis of the surrounding properties.

20. **Effective Date.** This Agreement is effective as of the date of the Ordinance authorizing its execution.

21. **Governing Law.** The laws of the State of Utah shall govern this Agreement. Jurisdiction and venue are proper in Summit County.

22. **Real Covenant, Equitable Servitude.** This Agreement constitutes a real covenant and an equitable servitude on the Property. The terms of this Agreement touch and concern and both benefit and burden the Property. The benefits and burdens of this Agreement run with the land, and are intended to bind all successors in interest to any portion of the Property.

23. **Assignment.** This Agreement is also a personal obligation of the Petitioner. Petitioner may assign its obligations under this Agreement, only upon prior written consent of the City, upon demonstration that the City's rights are adequately secured by the assignment. Consent to assignment shall rest in the sole discretion of the City.

24. **Compliance with City Code.** Notwithstanding paragraph 20 herein, from the time of City Council approval of this agreement, Petitioner and his agents shall comply with all City Codes and Regulations pertaining to the subject Property.

25. **Amending the Agreement.** Only a written instrument signed by all parties hereto may amend this Agreement. No Third-party beneficiaries are created by this agreement.

26. **Additional Agreements.** This Annexation is conditioned upon the Amended Development Agreement For Flagstaff Mountain, the Talisker Conservation Deed Restriction and the Conservation Easement executed and recorded concurrently herewith.

DATED this _______ day of ____________, 2007.

Exhibits: A) Annexation and Zoning Plat

B) Legal Description
C) Preliminary plat

(Signatures, jurats, attestations, approved as to forms etc will be added prior to official signatures)

D R A F T
January 24, 2007

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Recorded this ___ day of

___________, 2007

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 ______day of ______, 2007, 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").

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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

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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;

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F. WHEREAS, in the intervening months since the City Council adopted the September 10, 1998 development parameters, the DEVELOPER 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;

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G. WHEREAS, the Parties intended to enter into 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;

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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

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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 87 acres, within three development Pods (A, B_1, and B_2) and maximum densities, unit equivalencies and configuration more fully described herein.

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[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 fifty percent (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.

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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

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[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.

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1.15.10 Ski School/Day Care

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.

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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 87 acres.

2.2.1.3. **Maximum Density**. The maximum density within the Mountain Village is 785 Unit Equivalents configured in no more than 550 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. Additionally, the Mountain Village may contain up to 16 detached single family home sites.

2.2.1.4. **Pedestrian Village**. At least 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 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

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

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[6] Hotel rooms of 500 square feet or less constitute ¼ Unit Equivalent. In the case of the Montage, 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.

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

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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.

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

[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.

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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 or developing the Northside Neighborhood for 3 years, from the date of this Agreement to facilitate the potential of (a) the fee

[10] As well as summertime visual impacts.

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 day skier parking, and must have adequate emergency vehicle access. Any parking lot for the lodge shall be for the purpose of meeting temporary events, intermittent seasonal dining, and service and administrative requirements, and shall be reviewed by the planning commission as a Conditional Use. Such Conditional Uses will have a traffic mitigation plan that may include the number of events, hours of operation, shuttle bus requirements and/or a limit to the number of guests. Pursuant to a Conditional Use Permit, said temporary parking area may be located on adjacent properties. Permanent non-skier parking for the Empire Day Lodge will be considered as part of the POD B-2 Master Plan Development. 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

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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 CUP phase. No private parking areas or vehicular access will 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.

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Deleted: 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.

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

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[11] Beano's is a 10,000 square foot private restaurant at Beaver Creek, Colorado.

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.

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-

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

development lands owned or controlled by Deer Valley, Deer 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 **No Gondola Alternative.** 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.

2.9.3 Additionally, the DEVELOPER shall (i) contribute $10,000 toward the cost of a feasibility study, when commissioned by the City, to evaluate a potential ski amenity gondola, and (ii) contribute toward 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 and conditions attached hereto as Schedule 3.1. The parking improvements shall be constructed in phases as established during the MPD for those improvements in cooperation with Summit County. Construction of the parking improvements will be assured through a form of completion bonding consisting of a draw-down letter of credit or other similar instrument in an amount equal to the good faith estimated cost to construct the parking improvements, but in an amount not to exceed $1,800,000. In the event any permit application is denied such that the parking improvements cannot be constructed, the City shall be entitled to draw the entire amount of the completion bond, letter of credit or similar instrument (as the case may be), and DEVELOPER shall have no further obligation to construct the parking improvements. **Historic Preservation.** The Historic Preservation Plan, at a minimum,

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Deleted: <#>**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.¶

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Deleted: If the City determines that the construction of a gondola is not feasible or in the public interest, then: a)

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Deleted: 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.

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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.

2.9.4 **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.

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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, 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.

2.9.6 **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

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

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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.

2.9.7 **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.

2.9.8 **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.

2.9.9 **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.

2.9.10 **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. To the extent the Montage hotel structure requires additional safety equipment or infrastructure to achieve a minimum standard that will not result in a degradation of the Park City Fire District's I.S.O. rating, and to the extent ongoing tax revenues and impact fees generated by the Montage are insufficient to cover the costs of such additional equipment and infrastructure, any such shortfall shall be paid by DEVELOPER. Changes to any applicable Technical Report must be approved by the Park City Fire Marshall.

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.

2.9.12 **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.

2.10.1.3 **Group II Rights.** The disposition of the Group II Water Rights is addressed in the January, 2000, agreements and the 2007 Amended Water Agreement.

2.10.1.4 **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

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Deleted: DEVELOPER and the City anticipate that such delivery system will include the development of a well of sufficient capacity to serve the Project.

Deleted: 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".

Deleted: <#>**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.

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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.

2.10.1.5 **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 **Subsequent Agreements.** Since the time the original Agreement was adopted and executed, 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 __________, 2007 (collectively, the Subsequent Agreements). The fact that this Agreement is styled as an amended and restated agreement shall not operate or be deemed to supersede, contravene, or amend

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the terms, conditions or provisions of the Subsequent Agreements. The 2007 Agreement shall state that Developer is responsible for obtaining a UPDES permit with Utah Department of Environmental Quality for the Judge Tunnel.

2.10.3 **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:

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

2.10.3.2 **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

[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.

improvements, DEVELOPER shall offer to dedicate such improvements to the appropriate governmental entity.

2.10.3.3 **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.

2.10.3.4 **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.

2.10.3.5 **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.

2.10.3.6 **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.

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

2.10.3.8 **Landscaping.** Upon Planning Commission

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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.

2.10.4 **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:

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

2.10.4.2 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.

2.10.4.3 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.

2.10.4.4 Dust and soils monitoring and containment, along with remediation of contaminated mining waste within the areas that are disturbed during the construction of the

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

improvements within the Project and erosion and runoff controls for the entire Project

2.10.4.5 Temporary public access trails throughout construction.

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

2.10.5 **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 AUEs (the "Additional AUEs") as an additional community benefit for the Project. Within 24 months from the effective date of this Agreement, the DEVELOPER (or any assignee thereof) shall either (i) begin construction of the 20 Additional AUEs, or (ii) post a financial guarantee in a form acceptable to the City Attorney in favor of the City equal to 10 percent of the estimated construction costs of the Additional AUEs. 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 AUEs 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***
	Square Footage /	**Mitigation Rate**	

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Type of Use	1,000 SF		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 *			
Total Base AUEs			**98.90**
Additional AUEs Contributed by Developer (located Quinns Junction)			**20.00**
TOTAL AUEs			***118.00***

*May be located at Quinns Junction, consistent with the City's approved employee/affordable housing plan.

A minimum of 25% of the Base AUEs shall be located on-site within the Project; 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. 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 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:

2.10.5.1 Develop, subject to deed restrictions some of the remaining units on the 20-Acre Quinn's Junction Parcel; or

2.10.5.2 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

2.10.5.3 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

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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

2.10.5.4 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

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

2.10.6 **5-Year Irrevocable Offer to Annex the 20-Acre Quinn's Junction Parcel**. For the next five years from the date of this Amended and Restated Agreement, 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

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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 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]

[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.

[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.

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In addition to the foregoing provisions, DEVELOPER shall, in part as an additional public benefit and in part as a traffic mitigation measure, provide the City with fee title (unless the City otherwise agrees to a long term lease) to 30 acres at Richardson Flats. Such acreage will be used only for ball fields or similar recreational spaces, and improvements related thereto, and parking. 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 100 spaces), and parking for the City (up to 650 spaces), for a total of up to 750 spaces. This parking area will also serve as the location for Montage construction parking, and DEVELOPER or Montage shall be responsible for providing or arranging construction parking shuttles. The parking improvements may be constructed in phases. DEVELOPER will have naming rights for the ball fields or similar recreational spaces, and will not select a name that is inappropriate. The parking improvements (excluding the 100 dedicated Montage spaces and spaces required for construction parking and other operational needs) may be used by the City for reasonable ancillary uses such as special events.

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 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

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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.

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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.

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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.

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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. The fact that this Agreement is styled as an amended and restated agreement shall not be deemed or construed to reinstate the DEVELOPER obligations that have been satisfied as of the date hereof.

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

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(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:
Clark K. Taylor
VanCott Bagley Cornwall & McCarthy
P. O. Box 45340
Salt Lake City, Utah 84145

Deleted: Craig B. Terry

Deleted: Parsons Behle and Latimer

Deleted: P.O. Box 45898

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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:

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General Counsel
Royal Street Corporation
7620 Royal Street East, Suite 205
P.O. Box 3179
Park City, Utah 84060

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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

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Exhibit P Zoning Map for Flagstaff Mountain

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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 _____ day of __________, 2007.

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PARK CITY MUNICIPAL CORPORATION

By: ________________________________
Dana Williams, Mayor

Deleted: Bradley A. Olch

ATTEST: City Clerk

By: ________________________________
Janet Scott, City Recorder

APPROVED AS TO FORM:

____
Mark D. Harrington, City Attorney

Deleted: Jodi Hoffman

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DEVELOPER:
United Park City Mines Company,
a Delaware corporation

____
By: ____________________
Title: President

Deleted: Hank Rothwell

STATE OF UTAH)
: ss
COUNTY OF SUMMIT)

On this ______ day of _______________, 2007 before me, __________________, the undersigned Notary Public, personally appeared ________________, 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.

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Deleted: **Thomas L. O'Finnegan**

Deleted: **Hank Rothwell**

____
Notary Public, State of Utah
Residing in ______________

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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 ___________, 2007 before me, ____________, 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

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Deleted: **Thomas L. O'Finnegan**

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herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.

____
Notary Public, State of Utah
Residing in ____________

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SCHEDULE 3.1

RICHARDSON FLATS PARKING AREA SPECIFICATIONS

Talisker or United Park City Mines Company will provide the City with fee title (unless the City otherwise agrees to a long term lease) to 30 acres at Richardson Flats (map attached). The use of this land is provided on the basis that it will be only for ball fields or similar recreational spaces (and related improvements) and parking. On this acreage, Talisker will provide a paved area which will accommodate segregated Montage and Empire Pass parking (up to 100 spaces) and parking for the City (up to 650 spaces) for a total of up to 750 spaces. The cost of improving the existing County road leading to the site shall be paid for by the Developer, and shall be subject to a late comer's agreement. The parking improvements shall be constructed in phases as established during the MPD for those improvements in cooperation with Summit County. The parking improvements (excluding the 100 dedicated Montage spaces and spaces required for construction parking and other operational needs) may be used by the City for reasonable ancillary uses such as special events. Construction of the parking improvements will be assured through a form of completion bonding consisting of a draw-down letter of credit or other similar instrument in an amount equivalent to the good faith estimated cost to construct the parking improvements, but in an amount not to exceed $1,800,000. In the event any permit application is denied such that the parking improvements cannot be constructed, the City shall be entitled to draw the entire amount of the completion bond, letter of credit or similar instrument (as the case may be), and DEVELOPER shall have no further obligation to construct the parking improvements.

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 to accommodate the weight of City busses, in accordance with applicable Summit County construction standards and/or the Park City Construction Specifications and Standard Drawings as reasonably applied by the City engineer and the DEVELOPER'S design engineer.

The precise layout and cost of the ball fields or similar recreational spaces within the 30 acre parcel, and improvements related thereto, are the City's responsibility.

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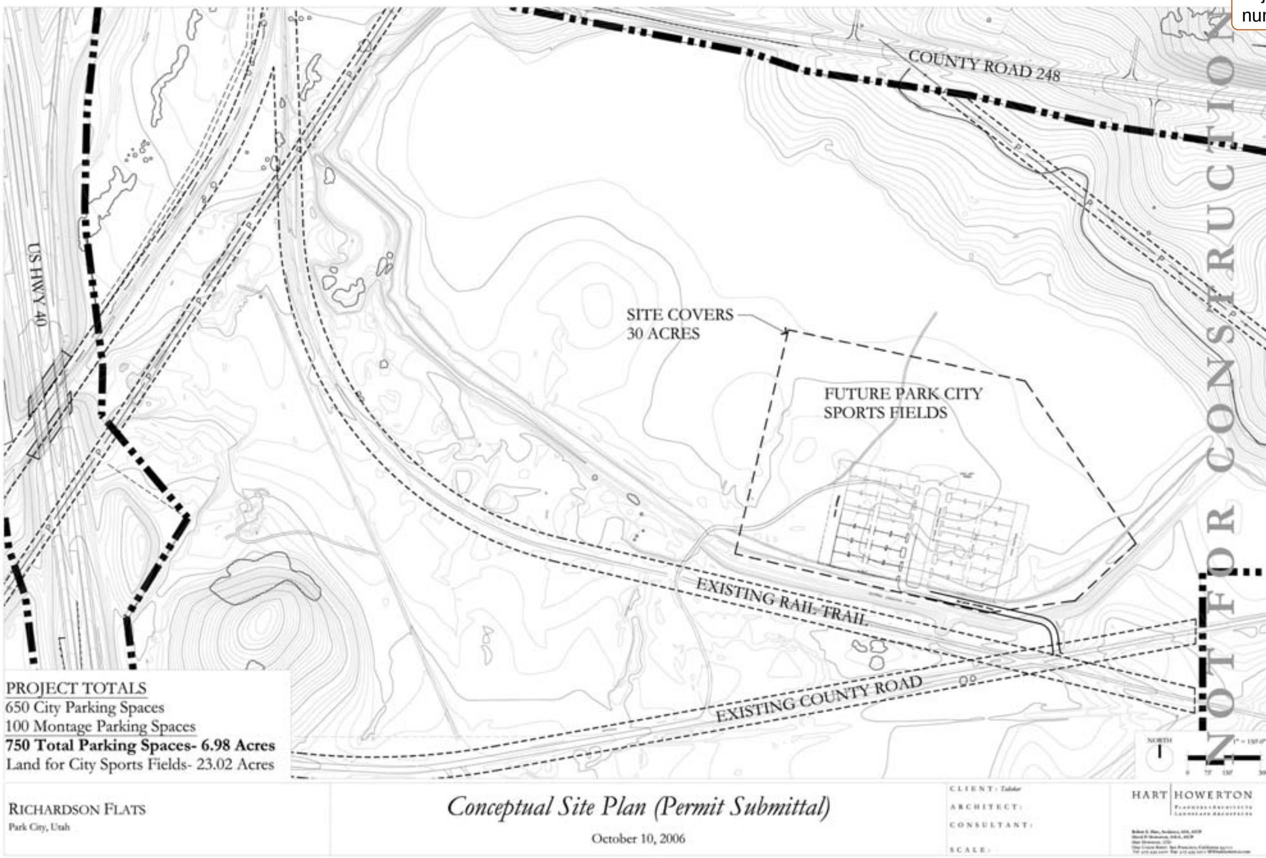

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WHEN RECORDED, MAIL TO:
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TALISKER CONSERVATION DEED RESTRICTION

THIS GRANT OF CONSERVATION DEED RESTRICTION (“Deed Restriction”) is made this ____ day of ______________, 2006, by TALISKER LAND HOLDINGS, LLC, a Delaware limited liability company, (“TLH”), which is an affiliate of UNITED PARK CITY MINES COMPANY, a Delaware corporation (“UPCMC”), which contributes, grants and conveys the rights described hereafter to PARK CITY MUNICIAL CORPORATION, a city and political subdivision of the STATE OF UTAH located in Summit County, Utah (“City”). TLH is referred to herein as “Grantor” and City is referred to herein as “Grantee”. Grantor and Grantee are sometimes collectively referred to herein as the “Parties”.

WITNESSETH:

WHEREAS, Grantor owns certain real property located in Park City and Summit County, Utah (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Property possesses natural, scenic, open space, public recreation, wildlife and wetland values described in Section 170(h)(4)(A) of the Internal Revenue Code of 1986 (the “Code”) (collectively referred to herein as "Conservation Values"); and

WHEREAS, the specific Conservation Values of the Property are documented in a resource manual and is hereinafter sometimes referred to as the “Baseline Documentation,” which consists of reports, maps, photographs and other documentation intended to provide the Parties with an accurate representation of the Property at the time of the granting of the Deed Restriction as defined below; and

WHEREAS, the Property is appropriate for substantial and regular skiing, year-round recreational and other uses as hereinafter described as the Reserved Use Rights, and the Property is necessary to the operation of the Park City Mountain Resort; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those existing at the time of the recording of this Deed Restriction, subject to the Reserved Use Rights; and

WHEREAS, Grantor further intends, as owner of the Property, to preserve and protect the conservation values of the Property in perpetuity, subject to the Reserved Use Rights; and

WHEREAS, GRANTEE is a political subdivision of the State of Utah described in Code Section 170(b)(1)(A)(v), (c)(1) and (h)(3)(A); and

WHEREAS, Grantee agrees by accepting this grant that the Deed Restriction contained herein significantly furthers a clearly delineated local governmental policy of Grantee, and that Grantee will honor the intentions of Grantor stated herein to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Utah and in particular U.C.A. Title 57, Chapter 18, Grantor hereby contributes, grants and conveys to Grantee a conservation Deed Restriction in perpetuity over the Property of the nature and character and to the extent set forth herein (the "Deed Restriction").

1. <u>Purpose</u>. It is the purpose of the Deed Restriction to prevent residential development on the Property and, subject to the Reserved Use Rights described in Section 3 of this Deed Restriction, to assure that the Property will be retained forever in its open, generally undeveloped condition as provided herein and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that the Deed Restriction will confine the use of the Property to those activities, including without limitation the Reserved Use Rights, that are consistent with the terms of this Deed Restriction.

2. <u>Rights of Grantee</u>. To accomplish the purpose of this Deed Restriction, the following rights are conveyed to Grantee by this Deed Restriction, subject at all times to the Reserved Use Rights:

(a) The right to preserve and protect the Conservation Values of the Property;

(b) The right to enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Deed Restriction; provided that such entry shall be upon prior reasonable notice to Grantor and to Grantor's tenants and subtenants, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property, whether directly or through tenants or subtenants;

(c) The right to prevent any activity on or use of the Property that is inconsistent with the terms of this Deed Restriction and to enforce the restoration of such areas or features of the Property that may be damaged by inconsistent activity or use, pursuant to Section 7 hereof; and

(d) The right to enforce this Deed Restriction by appropriate legal proceedings, after providing Grantor with reasonable notice and opportunity to cure, as provided in section 7 herein.

3. <u>Reserved Use Rights</u>. The following uses and practices (collectively referred to herein as the "Reserved Use Rights"), while not an exhaustive recital of permitted uses and practices, are consistent with the purpose of the Deed Restriction, and the following purposes

and practices shall not be precluded or prevented by this Deed Restriction to the extent they are not inconsistent with Conservation Values:

(a) Until the expiration or earlier termination of that certain Lease dated as of January 1, 1971, by and between UPCMC and Treasure Mountain Resort Company ("Current Lessee"), recorded on ____________, in Entry No.__________, Book________, beginning at Page ____ of the official records of the Summit County, Utah, Recorder, as now amended, as the term may be extended from time to time (the "Lease"), all uses, practices and activities permitted under the Lease. The Parties agree that all permitted uses under the Lease are consistent with Conservation Values. Future amendments to or replacements of said Lease shall also be permitted, provided that such are consistent with applicable zoning requirements and this Deed Restriction.

(b) Upon and after the expiration or earlier termination of the Lease:

(i) Recreational, entertainment, and retail usages not inconsistent with Conservation Values.

(ii) All uses, practices and activities incident to the operation, maintenance, repair and replacement of the Park City Mountain Resort and related facilities when done in a manner not inconsistent with Conservation Values.

(iii) Substantial and regular skiing uses consisting of ski lifts, ski runs, and other winter and summer recreational and resort facilities and uses incident or related thereto, such facilities and uses to include (i) fuel storage and dispensing, (ii) bomb caches for avalanche control, (iii) maintenance facilities, (iv) vehicle fleet maintenance and operations, (v) bike trails, (vi) avalanche hazard reduction, (vii) forestry management, (viii) night skiing operations and related lighting, (ix) day lodges and restaurants, (x) yurts, (xi) mobile or modular units for security personnel, (xii) culinary water lines, pump stations and storage tanks, and (xiii) snowmaking water lines, pump stations, storage tanks and storage ponds, all of which are to be implemented in a manner not inconsistent with Conservation Values;

(iv) The construction, development and operation of ski-related development and other allowed uses as provided by the PCMR Development Agreement dated on or about June 25, 1998 (as amended from to time in a manner not inconsistent with Conservation Values), including activities conducted under Master Festival Licenses, and recreational, entertainment, and retail usages that are not inconsistent with the Development Agreement, underlying zoning or with Conservation Values;

(v) The construction, installation, use, maintenance, repair, replacement and relocation of water wells, water lines, sanitary sewer lines, storm sewer lines and the right to discharge their flows, natural gas lines, electric power lines, cable television lines, telephone lines, and other utility lines, together with the right to temporarily stockpile construction materials and equipment as approved by the Grantee, so long as such uses are necessary for the Reserved Use Rights, are located in disturbed areas such as ski runs or existing utility corridors (unless otherwise approved by the Grantee) and are not inconsistent with Conservation Values;

(vi) The construction, installation, use, maintenance, repair, replacement and relocation of secondary access roads provided all applicable land use approvals are obtained from Grantee (nothing herein shall be deemed as such approval) and such are done in a manner not inconsistent with Conservation Values;

(vii) All activities on the Property that are necessary to perform investigation, remediation, closure and/or reclamation work consistent with or required by law with respect to any portion of the Property that has been used previously for mining activities or mining operations;

(viiii) The right to access all subsurface oil, gas or other minerals by subsurface techniques to the maximum extent permitted by a "Qualified Mineral Interest" within the meaning of Section 170(h)(6) of the Code provided that such rights are exercised only without use of any surface mining method and only in a manner which is not inconsistent with the Conservation Values.

(ix) Passive uses otherwise allowed by the Park City Land Management Code in the ROS District intended to preserve and protect the Conservation Values.

4. Prohibited Uses and Practices. Any activity on or use of the Property inconsistent with the purpose of the Deed Restriction is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Any residential construction or use, and any surface mining, use of surface mining methods or mining by any method inconsistent with Conservation Values; and

(b) Hunting or trapping for any purpose other than predatory or problem animal control.

The foregoing prohibited activities and uses may be amended by the express written agreement of the Grantee and Grantor, provided such amendment is not inconsistent with either Section 170(h) of the Code or Conservation Values.

5. Existing Liens. The Property is subject to all existing easements and other liens and encumbrances of record.

6. Reserved Rights. Grantor reserves to Grantor and to Grantor's successors and assigns as the owner of the Property all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are consistent with the purpose of the Deed Restriction and that are not expressly

prohibited herein, including without limitation the right to engage in or permit others to engage in Reserved Use Rights.

6.1 Minor Boundary Adjustments. Grantor reserves the right to make reasonable and minor boundary line adjustments in the legal description of the Property, provided that any such adjustments are consistent with the Reserved Use Rights and provided that the total area of the Property that is subject to the Deed Restriction shall not be reduced as the result of any such boundary line adjustments. The Grantee shall execute, acknowledge and record in the Office of the Recorder of Summit County, Utah any amendments to this Deed Restriction proposed by Grantor for such purpose so long as such adjustments are not inconsistent with Conservation Values.

6.2 Notice of New Uses. Grantor agrees to notify Grantee in writing at least 30 days in advance of any change in use or exercise of any Reserved Use Right which may have an adverse impact on any Conservation Value.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Deed Restriction or that a violation is threatened, Grantee shall give written notice to both Grantor and Current Lessee of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the terms of this Deed Restriction, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Deed Restriction, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Deed Restriction or injury to any Conservation Values protected by the Deed Restriction, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Deed Restriction, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Deed Restriction are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Deed Restriction, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Current Lessee shall, with at least simultaneous notice to Grantor, have the right, but not the duty, to undertake any above described cures on behalf of Grantor if

Grantor has not commenced such cure at least five days before the end of the cure period described herein.

7.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Deed Restriction against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Deed Restriction shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Deed Restriction, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

7.2 Grantee's Enforcement. Failure by Grantee to immediately enforce this Deed Restriction in the event of any breach of any term of this Deed Restriction by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Deed Restriction.

7.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

7.4 Acts Beyond Grantor's Control. Nothing contained in this Deed Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. Access. No specific right of access by the general public to any specific portion of the Property is conveyed by this Deed Restriction, but the overall operation of the Property shall be such as to provide the Public substantial and regular access for recreational and scenic uses.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

9.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, the Deed Restriction, and shall furnish Grantee with satisfactory evidence of payment upon request.

9.2 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees arising from or in any connection with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (b) the obligations specified in Sections 9 and 9.1; and (c) the existence or administration of this Deed Restriction.

10. Property Interest; Condemnation or Extinguishment. The Deed Restriction constitutes a real property interest immediately vested in Grantee, which the Parties agree can not be extinguished except by a judicial action as permitted under Treas. Reg. 1.170A-14(g)(6)(i), and which, for the purposes of this Deed Restriction, the Parties stipulate to have a fair market value determined in accordance with the requirements of the Code and Treas. Reg. 1.170A-14(g)(6)(ii), as applicable to conservation contributions. Grantee acknowledges that Grantor is making a bargain contribution as described in the eighth sentence of Treas. Reg. 1.170A-14(h)(3)(i), but makes no representation as to the tax consequences of the transaction contemplated by this Deed Restriction. Grantor will obtain independent tax counsel and be solely responsible for compliance requirements of the Code. The values as of the date of this Deed Restriction shall be those values used to calculate the deduction, if any, for federal income tax purposes allowable by reason of this Deed Restriction, pursuant to Section 170(h) of the Code. If the Deed Restriction is taken, in whole or in part, by exercise of the power of eminent domain or by an extinguishment by judicial proceeding permitted under Treas. Reg. 1.170A-14(g)(6)(i), Grantee shall be entitled to compensation in accordance with applicable law (but in no event less than the amount required to be received under Treas. Reg. 1.170A-14(g)(6)(ii)) and such proceeds shall be used in solely in accordance with Treas. Reg. 1.170A-14(c)(2).

11. Assignment. The Deed Restriction is not transferable by Grantee.

12. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Deed Restriction and otherwise evidences the status of this Deed Restriction as may be requested by Grantor.

13. Baseline Documentation. The Parties acknowledge that an inventory of Baseline Documentation relating to the Property has been completed by competent professionals familiar with the Property and furnished by Grantor to Grantee. Copies of this inventory of Baseline Documentation are on file in Grantee's offices and in Grantor's offices. The Parties acknowledge that this collection of Baseline Documentation contains an accurate representation of the condition of the Property subject to the Deed Restriction and the natural resources associated with the Property as of the date of the execution of this Deed Restriction in accordance with Treasury Regulation § 1.170A-14(g)(5)(i). Notwithstanding the foregoing, in the event of a controversy arising with respect to the nature of the biological and/or physical condition of the Property, the Parties shall not be foreclosed from using any and all other relevant or material documents, surveys, reports and other information to assist in the resolution of that controversy.

14. Notices. Any notice, demand, request, consent, approval, or communication that any Party to this Deed Restriction desires or is required to give to the other Parties shall be in writing and shall be served either personally or sent by first class mail, postage prepaid, addressed as follows:

To Talisker Land Holdings, LLC, Grantor:	Talisker Land Holdings, LLC Attn.: David J. Smith P. O. Box 1450 Park City, Utah 84060
To Park City Municipal Corporation, Grantee:	Office of the Mayor 445 Marsac Avenue Park City, UT 84060

or to such other address as any Party to this Agreement from time to time shall designate by written notice to the other Party.

15. Recordation. Grantee shall record this Deed Restriction in a timely fashion in the Office of the Recorder of Summit County, Utah, and Grantee may re-record it at any time as may be required to preserve Grantee's rights in the Deed Restriction.

16. General Provisions.

(a) Controlling Law. The Code, Treasury Regulations and laws of the State of Utah shall govern the interpretation and performance of this Deed Restriction.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Deed Restriction shall be liberally construed in favor of preserving Conservation Values and to effect the purpose of the Deed Restriction and the policy and purposes of both Utah statute and Section 170(h) of the Code. If any provision in this Deed Restriction is found to be ambiguous, an interpretation consistent with Conservation Values and the purpose of the Deed Restriction that would render the provision valid shall be favored over any such interpretation that would render it invalid.

(c) Severability. If any provision of this Deed Restriction, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed Restriction, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This Deed Restriction sets forth the entire agreement of the Parties hereto with respect to the Deed Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Deed Restriction, all of which are merged herein.

(e) Amendments. Any amendments to this Deed Restriction must be in writing and must be executed by all Parties hereto.

(f) No Forfeiture. Nothing contained herein will result in the forfeiture or reversion of Grantor's title in any respect.

(g) Successors. The covenants, terms, conditions, and restrictions of this Deed Restriction shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. A Party's rights and obligations under this Deed Restriction (but no part of the Deed Restriction itself) shall terminate upon transfer of the Party's interest in the Deed Restriction or the Property, as the case may be, except that responsibility for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this Deed Restriction have been inserted solely for convenience of reference and are not a part of this Deed Restriction and shall have no effect upon the construction or interpretation hereof.

IN WITNESS WHEREOF Grantor and Grantee have caused this Deed Restriction to be executed by persons duly authorized to execute the same as of the day and year first above written.

GRANTOR:

TALISKER LAND HOLDINGS, LLC, a Delaware limited liability company

By: ______________________________

GRANTEE:

PARK CITY MUNICIPAL CORPORATION,
a Utah city and political subdivision.

By: ______________________________

Non-Party Approval:

____

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of ____________, 2006 by ___________________ in his capacity as the _______________ of Talisker Land Holdings, LLC, a Delaware limited liability company.

____
NOTARY PUBLIC
Residing at: ________________________________

My Commission Expires:

____

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of ___________________, 2006 by _____________________________, as the __________________________ of Park City Municipal Corporation, a Utah city and political subdivision.

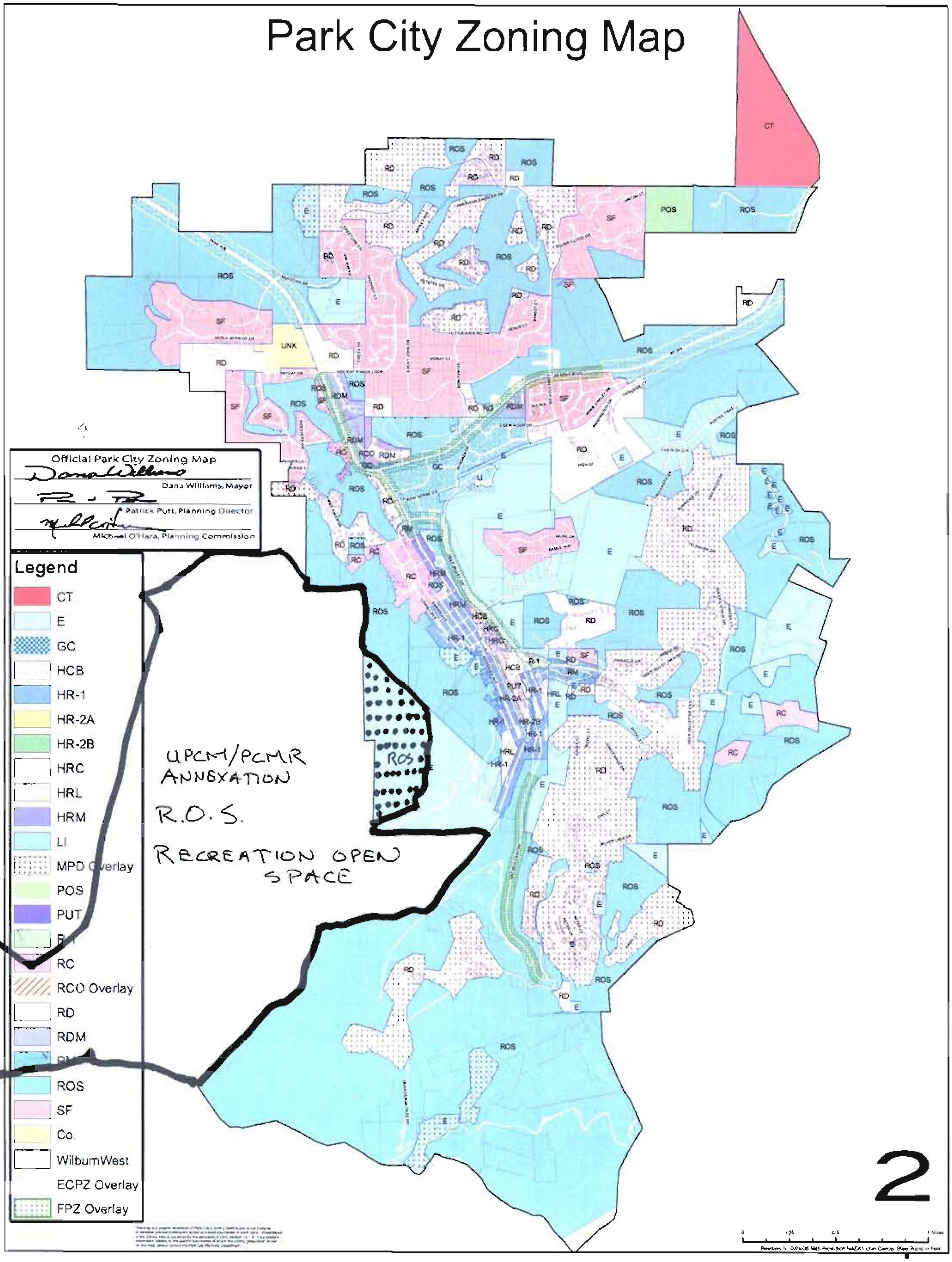
____
NOTARY PUBLIC
Residing at: ________________________________

My Commission Expires:

____

EXHIBIT A
TO
GRANT OF TALISKER CONSERVATION DEED RESTRICTION

[Insert Legal Description of the Property]


Park City Zoning Map
Official Park City Zoning Map
Dana Williams, Mayor
Patrick Putt, Planning Director
Michael O'Hara, Planning Commission
Legend
CT
E
GC
HCB
HR-1
HR-2A
HR-2B
HRC
HRL
HRM
LI
MPD Overlay
POS
PUT
RC
RCO Overlay
RD
RDM
ROS
SF
Co.
WilburnWest
ECPZ Overlay
FPZ Overlay
UPCM/PCMR ANNEXATION
R.O.S.
RECREATION OPEN SPACE
ROS
2

MEMORANDUM

To: Park City Council Members
The Honorable Dana Williams, Mayor

From: Talisker / United Park City Mines Company

Date: January 24, 2007

Subject: **WATER / JUDGE TUNNEL**

This Memo addresses some of the questions surrounding the Judge Tunnel and the water permit.

What is the City / Talisker water issue?

The issue facing the City and Talisker is whether a water quality discharge permit must be obtained from the Utah Division of Water Quality for the overflow water that periodically emanates from the City's Judge Tunnel storage system and flows into Silver Creek, and if so, who is required to obtain the permit. There will be ongoing costs associated with any such permit.

By way of background, the Judge Tunnel is owned by UPK but is operated exclusively by the City. For more than 75 years, the Tunnel has been a source of drinking water for Park City. Park City collects the water deep within the Judge Tunnel, directs the flow along the Tunnel floor and then through a pipeline to the City's storage tank and treatment system located outside the mouth of the Tunnel. The treated water is merged into the rest of the City's culinary water system for use throughout the community. During peak flows, the City's storage tank and treatment system cannot handle all of the water collected by the City within the Judge Tunnel, and the excess water is directed untreated through an overflow pipe emanating from the City's water system at a point located approximately 100' outside the mouth of the Judge Tunnel. The overflow water then flows into Silver Creek.

Is there a reasonable solution to the water permit issue that would avoid the need either to obtain a discharge permit for the overflow water or to expand the capacity of the City's existing storage and treatment system to handle all of the water collected in the Tunnel?

Yes. The City's collection system within the Judge Tunnel could be effectively modified by installing a diversion system in the Tunnel consisting of a small dam and piping that would capture excess water during periods of peak flow and convey that excess water back though the Judge and other internally connected mine tunnels into the Ontario Tunnel operated by the Jordanelle Special Services District. There, the water could be treated by the JSSD under its existing discharge permit and treatment system, and a like amount of water could be returned by the JSSD to the City. The JSSD has expressed a willingness to cooperate in such an endeavor.

What is the brief history of the Tunnel and the associated municipal water delivery system?

The Judge Tunnel was driven by the Anchor Mining Company beginning in 1887. The City began using the Judge as a source of culinary water in 1932 by agreement with the Park Utah Consolidated Mines Company. Since that time, to facilitate delivery of its water to residents of the City, the City has caused significant improvements to be constructed within the Judge Tunnel to capture ***all*** *of the Tunnel's flow of water, including a municipal water pump station, pipes and flumes, small dams or bulkheads, security systems and gates, a 1,200 foot long water connection tunnel, and related items. Over the years (primarily between 1975 and 2000), UPK conveyed to the City all of its water rights in the Judge Tunnel, and the City now has water rights in the Judge that exceed the flows out of the Judge. Also in 1975, the City acquired from UPK effective control over the operation and maintenance of the Judge Tunnel so the City could continue to control and operate its water system. The City today controls the access, maintenance and operation of the Judge Tunnel, the water system, and all of the water flowing through the Judge Tunnel.*

Does Talisker get any water from the Judge?

No. Neither Talisker nor UPK hold any rights to the Judge Tunnel water, and this water is not water for any of Talisker's or UPK's existing or planned projects. Again, the City has the rights to ***all*** *the water from the Judge Tunnel. Additionally, as expressly acknowledged in the draft of the new water agreement, Talisker's 850 GPM water source capacity obligation under the 1999 Development Agreement is fully satisfied through obligations unrelated to the Judge Tunnel.*

Who is responsible for any excess flows?

The City. As indicated above, the City has the water rights associated with all flows out of the Judge Tunnel, which are for the City's benefit. Based on the City's ownership and control of the Judge Tunnel water system (including the new treatment plant, when completed), and the City's operation, control and maintenance of the Judge Tunnel, it is clear under applicable federal and state water quality regulations that the City is responsible for any excess flows.

Is the Judge Tunnel water system run by UPK or the City? For how long?

The City, for at least the past 30 years and probably much longer. As indicated above, the Judge Tunnel is a significant water system owned and operated by the City that has been in place since before the 1970's. As part of this municipal water system, the City has constructed a 1200 foot long water connection tunnel which collects all of the water flow deep within the Judge Tunnel and conveys it to the City's storage tank and treatment system outside the mouth of the Judge Tunnel. The City paid for these improvements and operates them as part of its water system under specific easements that give the City the right to do so.

If there is a problem with the tunnel or water works, who responsible?

The City is responsible and has been repairing and maintaining the Judge Tunnel for decades. For example, when a problem with supporting timbers in the Judge Tunnel arises, the City hires a contractor to address the issue. More importantly, in a 1975 water agreement, UPK is indemnified by the City for any problems which may occur. The indemnification (copy attached) states:

> *The City will indemnify, defend, and hold UPK harmless "from and against any claims, demands, causes of action or liabilities arising out of injuries to the person or property of third persons by reason of the utilization by the City of the [Judge Tunnel easements] or the [Judge Tunnel water], or in any way connected therewith, as well as any action or operations conducted by or on behalf of City on the Mining Properties."*

Does underlying ownership of land make a difference?

No. The applicable federal and Utah water quality regulations make it clear that the operator (in this case, the City) of a point source discharge is obligated to obtain the discharge permit.

Has this permit come up in the past?

Yes. The City itself applied to the Utah Division of Water Quality for the discharge permit in 2002.

What do the legal, engineering, environmental and water experts say?

We have attached letters from the following individuals:

- *Steve Clyde, preeminent water expert (All of UPK's water from the Judge Tunnel has been transferred to the City, and the City has rights that enable it to divert whatever quantity of water is physically available from the Judge Tunnel)*
- *Dallin Jensen, former Attorney General representing the Division of Water Resources in connection with the 1975 water system agreements among the State, UPK and the City (The City constructed a water development project and improvements in the Judge Tunnel, and received the easements, water right and improvements necessary to operate the Judge Tunnel water development project)*
- *Fred C. Pehrson, P.E., former Manager of Permits, Compliance and Monitoring Branch, Division of Water Quality, Utah Department of Environmental Quality (If a permit is required, it is the City's responsibility)*
- *Michael Keller, outside environmental counsel to UPK (If a permit is required, it is the City's responsibility)*

Talisker and the City have been working on a Water Agreement for months. Why is this becoming an issue now?

Both parties have discussed issues related to the permit. For the last twelve months, the draft water agreement circulated between the parties has shown the City as responsible for the permit. Six weeks ago, the City communicated that if the Montage is to be timely approved, the draft water agreement must be changed so that UPK would be responsible for obtaining a water discharge permit for the untreated overflows from the City's Judge Tunnel water system.

What does City want Talisker to do?

The City wants Talisker to be responsible for another financial contribution and for obtaining and maintaining the discharge permit. Neither are acceptable to Talisker. The City is effectively attempting to make Talisker responsible for the City's Judge Tunnel water system (including the City's treatment plant) and associated permit costs. Talisker is not legally obligated to do so, has no legal rights to do so, and cannot agree to do this for a municipal water system it does not control, own, or have a legal right to operate.

What is the best solution to this water permit issue?

As suggested above, the City should negotiate an arrangement with the JSSD (and any others) to divert excess flows within the Judge Tunnel into the Ontario Tunnel so the water can be treated by the JSSD and returned to the City, thereby eliminating the need for a permit. Although this will take time, such is part of the normal course of business for any municipality. UPK has agreed to fully cooperate in this endeavor.

What is the solution to the Montage and the Water Agreement?

All other Montage issues have been resolved, and all other new water agreement issues have been resolved. Execution of the new water agreement will address all of the global water matters that UPK and the City have worked hard to resolve during the past two years. Talisker strongly feels that it clearly is not responsible for the permit and that the City should in the new water agreement take full responsibility for the permit. Talisker's compromise suggestion is that we should proceed with the new water agreement which incorporates a covenant that both parties will cooperate together to implement a practical solution that eliminates the need for a permit, but remain silent on permit responsibility should one be required.

DRAFT
January 24, 2007

Recorded this ___ day of
___________, ~~1999~~2007
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~~2007, 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

[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.

1.15.10 Ski School/Day Care

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

[6] Hotel rooms of 500 square feet or less constitute ¼ Unit Equivalent. In the case of the Montage, 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.

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

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

[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.

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 or developing the Northside Neighborhood for 3 years, from the date of this Agreement to facilitate the potential of (a) the fee

[10] As well as summertime visual impacts.

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, and must have adequate emergency vehicle access.~~, and shall have only limited~~ Any parking lot for the lodge shall be for the purpose of ~~to~~ meeting temporary events, intermittent seasonal dining, and service ~~and~~ and administrative requirements, and shall be reviewed by the planning commission as a Conditional Use. Such Conditional Uses will have a traffic mitigation plan that may include the number of events, hours of operation, shuttle bus requirements and/or a limit to the number of guests. Pursuant to a Conditional Use Permit, said temporary parking area may be located on adjacent properties. Permanent non-skier parking for the Empire Day Lodge will be considered as part of the POD B-2 Master Plan Development. 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~~ CUP 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 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

[11] Beano's is a ~~7000~~ 10,000 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~~

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.

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

~~maximum allowable size of such a restaurant.~~

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.

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

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 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~~ Additionally, the DEVELOPER shall (i) contribute $10,000 toward the cost of a feasibility study, when commissioned by the City, to evaluate a potential ski amenity gondola, and (ii) contribute toward 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 and conditions attached hereto as Schedule 3.1. The parking improvements shall be constructed in phases as established during the MPD for those improvements in cooperation with Summit County. Construction of the parking improvements will be assured through a form of completion bonding consisting of a draw-down letter of credit or other similar instrument in an amount equal to the good faith estimated cost to construct the parking improvements, but in an amount not to exceed $1,800,000. In the event any permit application is denied such that the parking improvements cannot be constructed, the City shall be entitled to draw the entire amount of the completion bond, letter of credit or similar instrument (as the case may be), and DEVELOPER shall have no further obligation to construct the parking improvements.

~~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, 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

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

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. To the extent the Montage hotel structure requires additional safety equipment or infrastructure to achieve a minimum standard that will not result in a degradation of the Park City Fire District's I.S.O. rating, and to the extent ongoing tax revenues and impact fees generated by the Montage are insufficient to cover the costs of such additional equipment and infrastructure, any such shortfall shall be paid by DEVELOPER. Changes to any applicable Technical Report must be approved by the Park City Fire Marshall.

~~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 **Subsequent Agreements.** Since the time the original Agreement was adopted and executed, 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 __________, 2007 (collectively, the Subsequent Agreements). The fact that this Agreement is styled as an amended and restated agreement shall not operate or be deemed to supersede, contravene, or amend the terms, conditions or provisions of the Subsequent Agreements.

~~2.10.2~~2.10.3 **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

[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.

Occupancy within the Mountain Village,[15] the DEVELOPER shall provide the following to reduce the traffic anticipated by the Project:

~~2.10.2.1~~2.10.3.1 **Van and Shuttle Service.** DEVELOPER shall provide for its owners, employees and guests, van and shuttle service alternatives consisting of regular 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~~2.10.3.2 **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~~2.10.3.3 **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

[15] Except for DEER VALLEY's day lodge pursuant to paragraph 2.5 herein.

(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~~2.10.3.4 **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~~2.10.3.5 **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~~2.10.3.6 **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~~2.10.3.7 **Drainage Improvements.** DEVELOPER shall improve drainage to S.R. 224 as described on Exhibit M attached hereto.

~~2.10.2.8~~2.10.3.8 **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~~2.10.4 **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~~2.10.4.1 Limits of Disturbance and Vegetation Protection for all construction, including construction of public improvements.

~~2.10.3.2~~2.10.4.2 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~~2.10.4.3 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~~2.10.4.4 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~~2.10.4.5 Temporary public access trails throughout construction.

~~2.10.3.6~~2.10.4.6 Tools and equipment storage on-site adequate to serve all construction.

2.10.5 **Employee/Affordable Housing.** DEVELOPER shall provide deed-restricted employee/affordable housing units ("Affordable

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

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 AUEs (the "Additional AUEs") as an additional community benefit for the Project. Within 24 months from the effective date of this Agreement, the DEVELOPER (or any assignee thereof) shall either (i) begin construction of the 20 Additional AUEs, or (ii) post a financial guarantee in a form acceptable to the City Attorney in favor of the City equal to 10 percent of the estimated construction costs of the Additional AUEs. 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 AUEs 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 *			
Total Base AUEs			**98.90**
Additional AUEs Contributed by Developer (located Quinns Junction)			**20.00**
TOTAL AUEs			***118.00***

*May be located at Quinns Junction, consistent with the City's approved employee/affordable housing plan.

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. –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~~2.10.5.1 Develop, subject to deed restrictions some of the remaining units on the 20-Acre Quinn's Junction Parcel; or

~~2.10.4.2~~2.10.5.2 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~~2.10.5.3 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~~2.10.5.4 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~~2.10.5.5 Satisfy its obligation in a manner otherwise consistent with the City's affordable housing policy.

~~2.10.5~~2.10.6 **5-Year Irrevocable Offer to Annex the 20-Acre Quinn's Junction Parcel**. For the next five years from the date of this Amended and Restated Agreement, 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 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]

In addition to the foregoing provisions, DEVELOPER shall, in part as an additional public benefit and in part as a traffic mitigation measure, provide the City with fee title (unless the City otherwise agrees to a long term lease) to 30 acres at Richardson Flats. Such acreage will be used only for ball fields or similar recreational spaces, and improvements related thereto, and parking. On this

[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.
[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.

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acreage, DEVELOPER will provide a parking area which may be paved and which will accommodate segregated Montage and Empire Pass parking (up to 100 spaces), and parking for the City (up to 650 spaces), for a total of up to 750 spaces. This parking area will also serve as the location for Montage construction parking, and DEVELOPER or Montage shall be responsible for providing or arranging construction parking shuttles. The parking improvements may be constructed in phases. DEVELOPER will have naming rights for the ball fields or similar recreational spaces, and will not select a name that is inappropriate. The parking improvements (excluding the 100 dedicated Montage spaces and spaces required for construction parking and other operational needs) may be used by the City for reasonable ancillary uses such as special events.

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 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. The fact that this Agreement is styled as an amended and restated agreement shall not be deemed or construed to reinstate the DEVELOPER obligations that have been satisfied as of the date hereof.

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~~2007.

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

D R A F T
January 24, 2007

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

STATE OF UTAH)
: **ss**
COUNTY OF SUMMIT)

On this ______ day of ~~July 1999~~______________, 2007 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.

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~~__________, 2007 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~~____________

SCHEDULE 3.1

RICHARDSON FLATS PARKING AREA SPECIFICATIONS

Talisker or United Park City Mines Company will provide the City with fee title (unless the City otherwise agrees to a long term lease) to 30 acres at Richardson Flats (map attached). The use of this land is provided on the basis that it will be only for ball fields or similar recreational spaces (and related improvements) and parking. On this acreage, Talisker will provide a paved area which will accommodate segregated Montage and Empire Pass parking (up to 100 spaces) and parking for the City (up to 650 spaces) for a total of up to 750 spaces. The cost of improving the existing County road leading to the site shall be paid for by the Developer, and shall be subject to a late comer's agreement. The parking improvements shall be constructed in phases as established during the MPD for those improvements in cooperation with Summit County. The parking improvements (excluding the 100 dedicated Montage spaces and spaces required for construction parking and other operational needs) may be used by the City for reasonable ancillary uses such as special events. Construction of the parking improvements will be assured through a form of completion bonding consisting of a draw-down letter of credit or other similar instrument in an amount equivalent to the good faith estimated cost to construct the parking improvements, but in an amount not to exceed $1,800,000. In the event any permit application is denied such that the parking improvements cannot be constructed, the City shall be entitled to draw the entire amount of the completion bond, letter of credit or similar instrument (as the case may be), and DEVELOPER shall have no further obligation to construct the parking improvements.

Additional specifications are as follows:

1. Adequate space will be provided for drainage & snow storage.

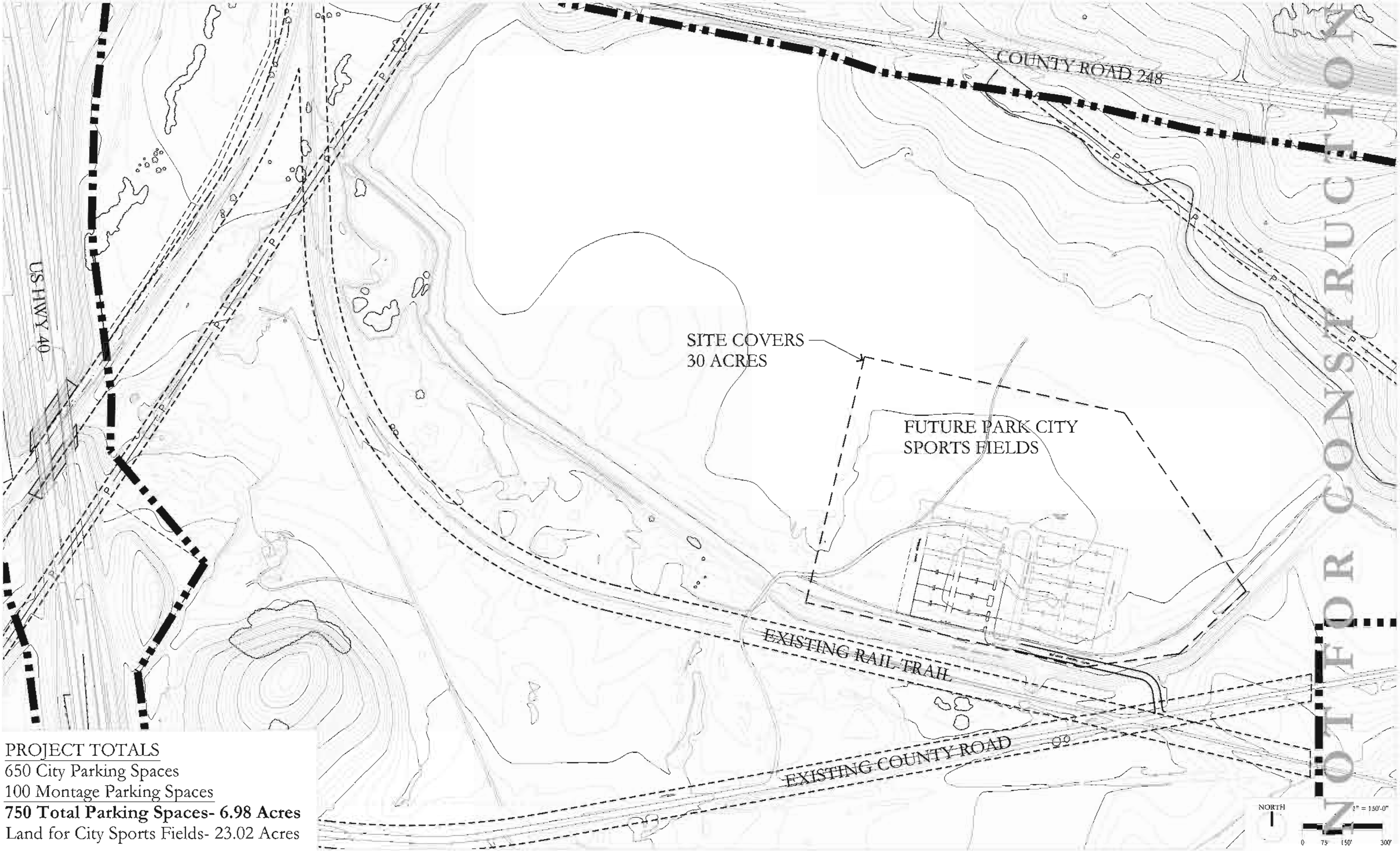
2. The area will have reasonably flat terrain.

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 to accommodate the weight of City busses, in accordance with applicable Summit County construction standards and/or the Park City Construction Specifications and Standard Drawings as reasonably applied by the City engineer and the DEVELOPER'S design engineer.

The precise layout and cost of the ball fields or similar recreational spaces within the 30 acre parcel, and improvements related thereto, are the City's responsibility.



PROJECT TOTALS
650 City Parking Spaces
100 Montage Parking Spaces
750 Total Parking Spaces- 6.98 Acres
Land for City Sports Fields- 23.02 Acres

RICHARDSON FLATS
Park City, Utah

Conceptual Site Plan (Permit Submittal)

October 10, 2006

CLIENT: *Talisker*
ARCHITECT:
CONSULTANT:
SCALE

HART | HOWERTON
PLANNERS • ARCHITECTS
LANDSCAPE ARCHITECTS

January 29, 2007

Mr. Tom Bakaly, City Manager
Park City Municipal Corporation
445 Marsac Avenue
Park City, Utah 84060

Re: *Judge Tunnel Permit*

Dear Tom:

You have proposed that because UPK is so sure it is not responsible for the Judge Tunnel water permit, UPK should agree to take responsibility for the permit today in the new water agreement and let the agencies or courts decide later. I cannot allow UPK to do this. Making a false admission like that, no matter how carefully worded, would taint and damage UPK. It would be tantamount to pushing an innocent party to plead guilty now, with the reassurance that, since innocent, a judge will surely come to that conclusion later.

Because Montage is on the verge of losing its '07 construction season given timing and seasonal building constraints, Montage has advised us they will have to reallocate their resources after February 1st if we don't get through the approvals scheduled for that date. It would be a shame to lose the Montage and all the related community and City benefits over this water permit issue especially where the Judge Tunnel doesn't supply water to either the Montage or any Talisker or UPK project.

The outcome of holding up Montage because of an unrelated water issue is that the Montage will go away and Talisker will simply proceed with its original plan for condos rather than a fantastic hotel, spa and conference facility that is a perfect fit on the B2 site. As well, millions of dollars of additional City and School District revenue will be forfeited.

Our own research and advisors point to the City being responsible for the water permit. However, we would agree that a compromise solution is that the water agreement remain silent on permit responsibility and that both parties continue actively working together on a solution which obviates the need for a discharge permit.

Over two years we've all come far on this great opportunity and have accomplished much for the City including (i) global solutions in a new water agreement, (ii) a 30 acre recreational/park-n-ride facility, (iii) the 2,800 acre annexation and open space at PCMR in the heart of the City, (iv) extra units of affordable housing, and (v) a revenue generator of $1.3-$1.9 million annually to the City. It would be a travesty to see everything evaporate at this late date, and we hope the City seriously considers Talisker's proposed solution for the last remaining issue so this $300 Million opportunity does not go to some other mountain resort community.

After all of the time, energy and resources committed by so many on all sides during the past two years, Park City should be the home of the Montage Resort & Spa.

Sincerely,

D/S

David J. Smith
Sr. Vice President & General Counsel

cc: City Council & Mayor
Brooks Robinson & Pat Putt
Tom Daley & Mark Harrington

900 Main Street, Suite 6111 P.O. Box 4349 Park City, Utah 84060
Office: 435/608.1300 Facsimile: 435/615.1239