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Attorneys for Proposed Intervenor, Park City Municipal Corporation

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SUMMIT COUNTY, STATE OF UTAH

SUMMIT COUNTY, a political subdivision of the State of Utah **Plaintiff and Petitioner,** **v.** **NATHAN A. BROCKBANK, an individual, JOSHUA J. ROMNEY, an individual, RB 248, LLC, NB 248, LLC, N. BROCKBANK INVESTMENTS, LLC, JJR VENTURES, LTD, WELLS FARGO BANK, NA, REDUS PARK CITY, LLC, and UNITED PARK CITY MINES COMPANY, and JUSTIN LAMPROPOULOS** **Defendants and Respondents.**	**PARK CITY MUNICIPAL CORPORATION'S MOTION TO INTERVENE** **Case No.: 200500346** **Judge Richard Mrazik**
PARK CITY MUNICIPAL CORPORATION, **Proposed Intervenor.**	

Pursuant to Rules 7 and 24 of the Utah Rules of Civil Procedure, Park City Municipal Corporation ("Park City") hereby moves the Court for intervention in the above-captioned matter. A proposed Complaint in Intervention is attached as Exhibit A hereto.

RELIEF REQUESTED

Park City seeks an order granting its intervention as a party in this matter to protect its interest in the Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 20 Acre Quinn's Junction Parcel and Iron Mountain, (the "Development Agreement"), referenced in Paragraphs 104 and 105 of the Third Amended Complaint filed by Summit County in the above-captioned matter ("Third Amended Complaint").[1] The Third Amended Complaint alleges, among other things, that Defendants and Respondents ("Defendants") have undertaken efforts to create an illegal subdivision of Parcels SS-87 and SS-88. These parcels are part of the Richardson Flats property that is subject to the Development Agreement. The Third Amended Complaint also alleges that Defendants are surreptitiously attempting to have portions of Richardson Flats annexed into the Town of Hideout. Based on these facts, Defendants' actions, individually or collectively, are in violation of the Development Agreement. Park City seeks an order granting its intervention in this matter in order to defend its interests under the Development Agreement, which cannot be adequately protected by Plaintiff Summit County, a non-party to the Development Agreement.

[1] The Development Agreement was originally entered into and recorded on or about June 24, 1999. The Development Agreement was amended and restated on or about March 1, 2007, and recorded with the Summit County Recorder's Office on March 2, 2007 as entry no. 0080610, Book 1850, Page 1897

INTRODUCTION

Over two decades ago, Park City entered into a legally valid and binding Development Agreement with United Parks City Mines Company ("UPCM") and Deer Valley Resort Company ("Deer Valley") to plan and control the development of the nearly 4,000 acres of property located within Summit County, including approximately 650 acres of property located east of U.S. 40 and South of S.R. 248 known as Richardson Flats. Summit County Parcels SS-87 and S-88 are located within Richardson Flats. As additional public benefits and express inducements to Park City entering into the Development Agreement, the Development Agreement contains several agreed development restrictions on the Richardson Flats property, including an unconditional offer to annex the Richardson Flats property into Park City. The Development Agreement by its express terms runs with the land and is binding on UPCM's successors in interest to Richardson Flats property.

In the twenty years since the adoption of the Development Agreement, Park City has honored its obligations under the development agreement with the expectation that UPCM and its successors would honor their contractual obligations. Park City has also relied on the terms of the Development Agreement in managing the development of Park City. The facts as alleged in Summit County's Third Amended Complaint demonstrate that Defendants' actions, individually or collectively, are intended to undermine and violate the very essence of the Development Agreement and the consideration exchanged between the parties. Summit County is not a party to the Development Agreement and therefore cannot adequately defend Park City's interests under said agreement. Accordingly, Park City must be allowed intervention in this matter.

RELEVANT FACTS

1. Park City, Deer Valley, and UPCM entered into the Development Agreement on or about March 2, 2007, thereby amending and restating the original development agreement entered into between these same parties on June 24, 1999. (Ex. B at 1-3.)

2. Both the original 1999 terms of the Development Agreement and the 2007 amendment to the Development Agreement were approved by legislative annexation ordinances pursuant to Utah Code Title 10, Chapter 2, Part 4. (1999 Annexation Ordinance attached as Exhibit C, 2007 Annexation Ordinance attached as Exhibit D.) Neither annexation ordinance was protested or challenged by Summit County or Wasatch County pursuant to Utah Code § 10-2-407 or by any third party within thirty days as provided by Utah Code Title 10, Chapter 9a.

3. The 1999 annexation ordinance was duly recorded and the 2007 annexation ordinance was filed with the Lieutenant Governor and a certificate of annexation issued, as required by the provisions of Utah Code 10-2-425 in effect at the relevant times.

4. In reliance on the Development Agreement, Park City and UPCM entered into a lease agreement for property within the "Operable Unit 1" area of Richardson Flats for transit parking and construction and employee parking for the Montage Deer Valley Resort and Spa.

5. Since the Development agreement and associated annexation ordinances were adopted, courts have consistently upheld their validity and application to the affected property against multiple challenges, expressly sustaining affirmative defenses including failure to exhaust administrative remedies. *See, e.g., Stichting Mayflower Mt. Fonds v. Park City Mun. Corp.*, 2007 UT App 287; *United Park City Mines Co. v. Stichting Mayflower Mt. Fonds*, 2006 UT 35; *Stichting Mayflower Mt. Fonds v. City of Park City*, No. 2:04-cv-925 (D. Utah).

6. The Development Agreement included contractual agreements and covenants regarding the 650 acre area known as Richardson Flats. (Ex. B at 7, § 1.16.) Richardson Flats includes Parcels SS-87 and SS-88 (Ex. B. at 1-2 & Exhibit D thereto.)

7. The Development Agreement contains multiple restrictive covenants with respect to the development of Richardson Flats, including an unconditional offer to annex Richardson Flats into Park City. (Ex. B at 32-33.)

8. The covenants set forth in the Development Agreement run with the land and are binding on UPCM's successors in interest. (Ex. B. at 39-40.)

9. Park City is in receipt of and has reviewed the Third Amended Complaint filed by Summit County, captioned *Summit County v. Nathan A Brockbank, et al.* Civil No. 200500346.

10. In the Third Amended Complaint, Summit County alleges that, among other things, efforts have been undertaken by Defendants to create an illegal subdivision of Parcels SS-87 and SS-88 and that Defendants are surreptitiously attempting to have portions of Parcels SS-87 and SS-88 annexed into the Town of Hideout.

11. Based on the facts as alleged in the Third Amended Complaint, Defendants' alleged transactional maneuvering and coordination to establish an illegal subdivision or to have portions of Richardson Flats annexed into the Town of Hideout violate Park City's rights under the Development Agreement, including Park City's unconditional right to annex Richardson Flats.

12. Defendants knew that Richardson Flats was subject to the Development Agreement and that the Development Agreement runs with the land and is binding on any of UPCM's successors in interest.

13. Summit County alleges that the Defendants conducted a foreclosure of portions of Parcels SS-87 and SS-88 in violation of state law and Summit County municipal ordinance.

14. Summit County alleges that the writs of execution as to portions of Parcels SS-87 and SS-88 effected an illegal subdivision of the parcels in violation of Utah Code § 10-2-402(3) and without a subdivision plat approved by Summit County. (Third Amended Complaint ¶¶ 75-76.)

15. Summit County further alleges the foreclosure as to portions of Parcels SS-87 and SS-88 was invalid and violated Utah law because the writs of execution purported to permit—and Defendants purported to conduct—seizure and sale of the property by a constable rather than the Summit County Sheriff as would be required for a foreclosure of real property under Utah R. Civ. P. 64(d)(1).

16. If Summit County is correct and the writs of execution are invalid or the foreclosure sale was otherwise void, UPCM remains the owner of Parcels SS-87 and SS-88 and remains bound by the Development Agreement.

17. To the extent the purported foreclosure of Parcels SS-87 and SS-88 was valid, the purchaser at the foreclosure sale, Defendant RB 248 LLC, is UPCM's successor in interest with respect to those parcels and is subject to the Development Agreement.

18. To the extent RB 248 LLC had a valid interest in Parcels SS-87 and SS-88, any person or entity to which it conveyed an interest in those parcels, including any of the Defendants who are alleged to or purport to hold the parcels, is also a successor in interest to UPCM and subject to the Development Agreement.

19. On August 6, 2020 and September 8, 2020, Park City put Defendants on notice of Park City's rights under the Development Agreement with respect to Richardson Flats as follows:

1. **Request to Annex:** Pursuant to Paragraph 3.1 of the Development Agreement, Park City has the absolute right to annex Richardson Flats and hereby puts you on notice that it intends to pursue such annexation. Hideout's attempt to annex this same area is in direct violation of the Development Agreement and being pursued without Park City's consent, which under the terms of the Development Agreement would be required as party with rights in the property. Further, any claim of a competing right to consent to have the property annexed by Hideout is in violation of the "unconditional" offer and consent granted to Park City under the Development Agreement. Accordingly, if you have provided such consent to Hideout (or granted such authority to a third-party[2]) Park City respectfully requests that you immediately withdraw such consent and notify Hideout.[3]

2. **Request to Grant Park City a Deed Restriction**: Pursuant to Paragraph 3.1 Option 3 of the Development Agreement, the Developer (and [its successors] in interest) did not obtain environmental approval to pursue recreational Options 1 or 2. As such, the Developer (or [its successors] in interest), is required to deed restrict Richardson Flats in a manner that prevents further development in perpetuity. [Id. 3.1.] Accordingly, Park City respectfully requests that [Developer's successors in interest] cause the restrictive deed to be recorded immediately upon passage of the redemption period on August 21, 2020. Unless and until the deed restriction is affirmed and made a matter of public record, Park City reserves the right to advise the Planning Commission

[2] The Development Agreement expressly provides that "[n]o other party shall have any right of action based upon any provision of this Agreement whether as a third-party beneficiary or otherwise." [Ex. B § 9.6] Further, any transfer or assignment shall not relieve the successor in interest . . . from complying with the covenants and restrictions set out in the Development Agreement. [*Id*. § 8.2.]

[3] Pursuant to UCA § 10-2-402(1)(c) a municipality may not annex an incorporated area if the area is located "within the area of another municipality's annexation policy plan." The very right granted to Park City to annex the property into Park City has been part of its annexation plan since 1999, and as added to the annexation expansion area in 2019. [*See* Ex. E, Attachment A: Park City Annexation Expansion Area Map]

> whether any pending applications should be processed pending this non-compliance, including the hearing scheduled for this Wednesday on Twisted Branch Subdivision.

(Notice of Violation, attached hereto as Exhibit E.) Park City also notified Defendants of its right to indemnification and attorney fees under the Development Agreement and that any further conveyance of the property would be subject to the Development Agreement. (*Id*.)

20. Summit County filed the present action on August 26, 2020, and filed a First Amended Complaint that same day.

21. Summit County filed a Second Amended Complaint on August 30, 2020.

22. Summit County filed a Third Amended Complaint on September 4, 2020.

23. No party has yet answered the Third Amended Complaint.

ARGUMENT

Park City moves to intervene in this matter to protect its vested interests under the Development Agreement. Park City's rights are directly affected by Defendants' transactional maneuvering and coordination to establish an illegal subdivision and/or surreptitious attempt to have portions of Richardson Flats annexed into the Town of Hideout in violation of the Development Agreement. Park City is accordingly entitled to intervene as of right in this matter pursuant to Rule 24(a) and, alternatively, should be permitted to intervene pursuant to Rule 24(b).

I. PARK CITY IS ENTITLED TO INTERVENTION OF RIGHT

First, Park City is entitled to intervene as a matter of right under Rule 24(a). Rule 24(a) requires a motion to intervene be granted when doing so is necessary to protect an intervenor's claimed interest in the subject of a pending suit:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Utah R. Civ. P. 24(a). Thus, a party seeking intervention under Rule 24(a) must establish four elements:

> (1) that its motion to intervene was timely, (2) that it has an interest relating to the property or transaction which is the subject of the action, (3) that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest, and (4) that its interest is not adequately represented by existing parties.

Gardiner v. Taufer, 2014 UT 56, ¶ 17, 342 P.3d 269. Park City's motion meets each of these criteria.

A. Park City's Motion to Intervene Is Timely

"The timeliness requirement is designed to minimize interference with the rights of existing parties and the orderly processes of the court." *Supernova Media, Inc. v. Shannon's Rainbow, Ltd. Liab. Co.*, 2013 UT 7, ¶ 23, 297 P.3d 599 (internal quotation marks omitted). Although timeliness is "determined under the facts and circumstances of each particular case," *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 1074 (Utah 1983), "[g]enerally, a motion to intervene is timely if it is filed before the final settlement of all issues by all parties, and before entry of judgment or dismissal." *Supernova Media*, 2013 UT 7, ¶ 24 (internal citations and quotation marks omitted).

Here, Park City filed the instant motion within days of Summit County's initiating this action and its filing of the Third Amended Complaint. No answer has been filed or is yet due to be filed by the Defendants. Under these circumstances, there is no risk that the timing of Park

City's motion will interfere with the rights of existing parties or the orderly process of the Court. Accordingly, this element is readily met.

B. Park City Has an Interest in the Relevant Portions of Parcels SS-87 and SS-88, the Subject of the Action

To satisfy the second element, Park City need only show that it claims an "interest *relating* to the subject of the litigation, such that the interest 'may be impacted by the judgment.'" *Supernova Media*, 2013 UT 7, ¶ 32 (emphasis in original). The claimed interest may be pecuniary or non-pecuniary in nature. *Id*. ¶ 33. A protectable property interest exists where "existing rules and understandings that stem from an independent source. . . secure certain benefits and [] support claims of entitlement to those benefits." *Petersen v. Riverton City*, 2010 UT 58, ¶ 22, 243 P.3d 1261 (alteration and omission in original).

In this litigation, Summit County alleges facts to establish that efforts have been undertaken to create an illegal subdivision of Parcels SS-87 and SS-88. Parcels SS-87 and SS-88 are part of the Richardson Flats property that is subject to the Development Agreement. The Development Agreement contains certain rights that have been granted to Park City with regards to Richardson Flats, including the right to annex Richardson Flats into Park City. [*See* Ex. B at 32-33, § 3.1.]

Thus, not only does Park City claim an interest in the subject of the litigation—Parcels SS-87 and SS-88—but it is beyond dispute that Park City's rights under the Development Agreement "may be impacted by the judgment.'" *Supernova Media*, 2013 UT 7, ¶ 32. Indeed, a judgment for Defendants in this case could result in Park City being deprived of its interests under the Development Agreement, as there is substantial risk that portions of Richardson Flats could be unlawfully annexed into the Town of Hideout rather than Park City. Park City has

abided by the Development Agreement for over twenty years and is entitled to intervene to ensure that all parties to the agreement and their successors in interest abide by and honor their legal obligations.

C. Disposition of this Action May Impair Park City's Ability to Protect Its Interests in Parcels SS-87 and SS-88 under the Development Agreement

This element asks whether disposition of the action creates "sufficient practical disadvantage" to merit the proposed intervenor's participation in the case. *Supernova Media*, 2013 UT 7, ¶ 40. Rule 24(a) previously permitted intervention only when an intervenor "is or may be bound by a judgment in the action." *Id*. ¶ 39 (citations omitted). However, a 1987 amendment eliminated the "bound" requirement and provides for intervention when "the disposition of the action **may** as a practical matter impair or impede [the intervenor's] ability to protect that interest." *Id*. (emphasis added). This had the effect of "mandat[ing] intervention on . . . more liberal terms." *Id*. The Court is to "view the effect on the intervenor's interest with a practical eye." *Id* ¶ 40. The Utah Supreme Court has rejected the argument that intervention should be denied where the intervenor could vindicate its interests in separate litigation, holding that "the availability of separate legal action is irrelevant to an inquiry into whether a right to intervene exists" and, indeed, "one of the primary policies underlying intervention of right is the prevention of duplicative lawsuits." *Id*. ¶ 46.

Here, there is substantial risk that Park City's ability to protect its interests in the Development Agreement will be impaired if it is not permitted to intervene. Defendants' actions as alleged in the Third Amended Complaint substantially impair and/or interfere with Park City's rights under the Development Agreement. If intervention were not permitted here, Park City would be faced with permitting the challenge to Defendants' wrongful conduct to proceed in its

absence or to file duplicative litigation challenging Defendants' actions in this same Court. Such "duplicative lawsuits" would run counter to a "primary polic[y] underlying intervention of right." *Id*. Moreover, Park City would remain at a substantial risk of issues relating to Defendants' conduct—both factual and legal—being determined in Park City's absence.[4] Moreover, as discussed below, Summit County is not an adequate representative of Park City's rights under the Development Agreement. Thus, if Park City is not permitted to intervene and present its arguments here, there will be no party in the action to assert Park City's rights and interests under the Development Agreement, including its absolute right to annex Richardson Flats. Because Park City risks significant impairment of it rights if not permitted to intervene, Park City meets the practical impairment requirement of Rule 24(a).

D. Park City's Rights Are Not Adequately Represented by Summit County

"Adequacy of representation generally turns on whether there is an identity or divergence of interest between the potential intervenor and an original party and on whether that interest is diligently represented." *Supernova Media,* 2013 UT 7, ¶ 48. However, the burden imposed by this element is "minimal, and the intervenor need show only some evidence of diverging or adverse interests." *State v. Bosh,* 2011 UT 60, ¶ 10, 266 P.3d 788. Thus, Courts have found that sufficiently divergent interests exists where the parties' goals in litigation differ because there is a significant disparity in the stakes for each party. *Id*. ¶ 51. In *Supernova Media,* the Court concluded the divergence-of-interests element was met where the existing parties in litigation

[4] Park City would not be bound by any judgment if not permitted to intervene in this action, and therefore would not be barred from pursuing claims against defendants, *Mack v. Utah State DOC,* 2009 UT 47, ¶ 29, 221 P.3d 194,

had "much less incentive" than the proposed intervenor in fighting the challenged action, and were thus less concerned with vigorously challenging the adverse parties. *Id*.

Here, this factor is easily met because, while Summit County and Park City both seek to challenge the actions of Defendants, they do so to vindicate entirely different rights. As Summit County's Third Amended Complaint makes clear, it seeks to preclude Defendants' wrongful conduct to enforce its own ordinances and laws, prevent an unlawful subdivision without Summit County's approval as the land use authority of the relevant parcels, and to avoid the taxpayers of Summit County being left "holding the 'proverbial bag'" with respect to the environmental clean-up and remediation of the parcels. (Third Amended Complaint ¶¶ 76, 129, 134, 138.)

Conversely, Park City seeks to defend its rights under the Development Agreement, to which Summit County is not a party. Accordingly, Summit County cannot enforce, and therefore does not have the same level of interest in, other critical rights under the Development Agreement. This includes both the development restrictions set forth in the Development Agreement, which are currently in default as set forth in the Notice of Violation, and the unconditional right of Park City to annex the Richardson Flats property.

Under these circumstances, it cannot be concluded that Summit County can or will adequately represent Park City's interests in the Development Agreement in this litigation. Because Park City has met each of the Rule 24(a) elements for intervention by right, Park City's motion should be granted and it should be permitted to intervene as a party in this litigation.

II. ALTERNATIVELY, PARK CITY SHOULD BE GRANTED PERMISSIVE INTERVENTION

Alternatively, even if Park City were not entitled to intervention as of right under Rule 24(a), Park City should be permitted to intervene pursuant to Rule 24(b). As relevant here, Rule 24(b) provides, "Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common." Utah R. Civ. P. 24(b). "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id*. As discussed above, Park City's motion—filed within days of the Summit County filing this action and before a responsive pleading has been filed—is timely. Park City addresses the remaining two factors below.

A. Park City's Proposed Claim Raises Identical Issues to the Petition

In the Third Amended Complaint, Summit County alleges, among other things, that Defendants have undertaken efforts to create an illegal subdivision of Parcels SS-87 and SS-88 and have surreptitiously attempted to have portions of Richardson Flats annexed into the Town of Hideout, in violation of the Development Agreement. In Park City's proposed complaint in intervention, Park City alleges the same underlying facts regarding Defendants' unlawful conduct, but seeks relief as to the Development Agreement rather than as to the rights Summit County has sued to vindicate. Thus, although the relief sought may differ as between Park City and Summit County, the factual issues are identical, and the parties thus make identical claims with respect to Defendants' conduct.

Because Park City's claims share a common legal and factual nexus with Summit County's claims, this requirement of Rule 24(b) is satisfied.

B. Park City's Intervention Will Not Unduly Delay or Prejudice the Adjudication of the Rights of the Original Parties

Last, intervention by Park City at this stage of the litigation will not delay or prejudice the rights of the original parties. "The test is whether the party's intervention would unduly delay a pending action or if permitting him to intervene would unduly complicate the issues." *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (Utah Ct. App. 1990). As discussed above, Park City has sought intervention even before a responsive pleading is due or has been filed. Park City did so to avoid any potential delays and ensure the timely resolution of Defendants' and Park City's competing claims. Moreover, Park City's proposed complaint in intervention will not "unduly" complicate the issue because, as discussed above, the proposed complaint in intervention raises at least some of the nearly, if not completely, identical claims as Summit County. In fact, Park City's intervention in the action will serve to clarify issues because given Park City's deep knowledge regarding and reliance upon the terms of the Development Agreement, Park City is in a position to assist the Court in interpreting its rights under the Development Agreement.

As each of the above factors weigh in favor of intervention, the Court should grant Park City's request for permissive intervention under Rule 24(b).

CONCLUSION

For the foregoing reasons, Park City is entitled to intervene in this matter pursuant to Rule 24(a). In the alternative, Park City should be allowed to intervene pursuant to Rule 24(b). Park City respectfully requests the Court grant this motion and permit Park City to intervene as a party in this matter for all purposes.

DATED this 8th day of September 2020.

/s/ Margaret D. Plane
Mark D. Harrington, Esq.
Margaret D. Plane, Esq.
Attorneys for Proposed Intervenor, Park City Municipal Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **PARK CITY MUNICIPAL CORPORATION'S MOTION TO INTERVENE** was served to the following this 8th day of September 2020, in the manner set forth below:

[X] Electronic Filing

[ ] Hand Delivery

[ ] E-mail:

[ ] Fed-Ex Priority Overnight:

/s/ Margaret D. Plane

INDEX

Exhibits

EXHIBIT A

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Margaret D. Plane, Special Counsel (#9550)
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Attorneys for Proposed Intervenor, Park City Municipal Corporation

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SUMMIT COUNTY, STATE OF UTAH

SUMMIT COUNTY, a political subdivision of the State of Utah **Plaintiff and Petitioner,** **v.** **NATHAN A. BROCKBANK, an individual, JOSHUA J. ROMNEY, an individual, RB 248, LLC, NB 248, LLC, N. BROCKBANK INVESTMENTS, LLC, JJR VENTURES, LTD, WELLS FARGO BANK, NA, REDUS PARK CITY, LLC, UNITED PARK CITY MINES COMPANY, and JUSTIN LAMPROPOULOS,** **Defendants and Respondents.**	**PARK CITY MUNICIPAL CORPORATION'S COMPLAINT IN INTERVENTION** **Case No.: 200500346** **Judge Richard Mrazik**
PARK CITY MUNICIPAL CORPORATION, **Intervenor.**	

Intervenor Park City Municipal Corporation ("Park City") hereby intervenes and complains against Defendants as follows:

Pursuant to Rule 10(b) of the Utah Rules of Civil Procedure, Park City hereby incorporates Paragraphs 1 through 125 of the Third Amended Complaint filed by Summit County on September 4, 2020, as if fully set forth herein.

Park City further alleges as follows:

126. Park City Municipal Corporation is a political subdivision of the State of Utah and the corporate entity of the city of Park City, Utah.

127. The Flagstaff Development Agreement is valid and binding between Park City and UPCM or any of UPCM's successors in interest.

128. The terms of the Flagstaff Development Agreement were approved by legislative annexation ordinances adopted by Park City that were duly recorded or filed with the Lieutenant Governor as required by law.

129. The annexation ordinances were not challenged by Summit County, Wasatch County, or any third party within the time permitted by law.

130. The Flagstaff Development Agreement encumbers a 650 acre area of land located east of U.S. 40 and South of S.R. 248 known as Richardson Flats.

131. Summit County Parcels SS-87 and S-88 are located within Richardson Flats.

132. The covenants of the Flagstaff Development Agreement run with the land and are thus binding on any person or entity purporting to be the record owner of parcels SS-87 and SS-88.

133. The Flagstaff Development Agreement gives Park City an unqualified right to annex the Richardson Flats property into Park City.

134. The Flagstaff Development Agreement also contains restrictive covenants that require UPCM or its successor in interest to either obtain environmental approval to pursue certain development options for the Richardson Flats property or to grant Park City a deed restriction over the Richardson Flats property that prohibits further development in perpetuity.

135. Neither UPCM nor any of the defendants who purport to be the prior or present owners of parcels SS-87 or SS-88 have complied with the environmental approval or provided Park City with the required deed restriction.

136. Accordingly, UPCM and its successors in interest are in violation of the Flagstaff Development Agreement.

137. Moreover, Defendants are seeking to further violate the Development Agreement by annexing parcels SS-87 to SS-88 into the Town of Hideout, thereby violating Park City's unqualified right to annex Richardson Flats.

FIRST CAUSE OF ACTION
(Breach of Development Agreement – Specific Performance)

138. Park City incorporates each of the foregoing paragraphs of the Complaint in Intervention as if fully set forth herein.

139. The Flagstaff Development Agreement is a valid and binding agreement between UPCM and its successors in interest that burdens the Richardson Flats properties and runs with the land.

140. Park City has performed all of its obligations under the Flagstaff Development Agreement.

141. Defendants have breached the Flagstaff Development Agreement by failing to comply with the restrictive covenants therein, including the requirement to convey to Park City a deed restriction prohibiting development on the Richardson Flats property in perpetuity.

142. Defendants have anticipatorily breached the Flagstaff Development Agreement by taking acts that are in contravention of its obligations under the agreement, i.e., by attempting to annex Parcels SS-87 and SS-88 into the Town of Hideout in violation of Park City's right to annex the Richardson Flats property.

143. Because the Richardson Flats property is unique real estate, Park City cannot be made whole for these breaches of the Flagstaff Development Agreement with money damages, and Park City is entitled to specific performance of the Flagstaff Development Agreement.

144. Accordingly, Park City is entitled to an order requiring Defendants to comply with their obligations under the Flagstaff Development Agreement, including conveyance of a deed restriction to Park City prohibiting future development of Richardson Flats, and an order prohibiting Defendants from annexing any portion of Richardson Flats into the Town of Hideout in violation of Park City's unqualified right to annex Richardson Flats.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

145. Park City incorporates each of the foregoing paragraphs of the Complaint in Intervention as if fully set forth herein.

146. This Court has the power to issue a declaratory judgment regarding the parties' respective rights, status, and legal obligations under the Flagstaff Development Agreement.

147. Park City maintains that the Flagstaff Development Agreement requires Defendants to comply with the restrictive covenants set forth therein, including conveyance of a deed restriction to Park City prohibiting future development of Richardson Flats.

148. Park City further maintains that the Flagstaff Development Agreement provides it has an unqualified right to annex the Richardson Flats property to the exclusion of other municipalities.

149. Defendants have taken action inconsistent with Park City's rights under the Flagstaff Development Agreement, demonstrating their disagreement with or dispute of Park City's rights as set forth above.

150. Accordingly, a justiciable controversy exists between Park City and Defendants regarding their respective rights and obligations under the Flagstaff Development Agreement.

151. Park City seeks a declaration that the Flagstaff Development Agreement remains valid and binding as against UPCM and any of its successors in interest, including Defendants, and that (1) Defendants are required to convey to Park City a deed restriction prohibiting future development of Richardson Flats, (2) that Defendants are prohibited from seeking to annex any part of Richardson Flats into the Town of Hideout or any other municipality and (3) that Defendants' actions as described herein constitute a violation of Park City's rights under the Flagstaff Development Agreement.

WHEREFORE, Park City requests the following relief:

A. A judgment for specific performance requiring Defendants to convey to Park City a deed restriction prohibiting future development of Richardson Flats;

B. A judgment for specific performance prohibiting Defendants from annexing any portion of Richardson Flats into the Town of Hideout or any other municipality other than Park City;

C. A declaratory judgment that Defendants are required to convey to Park City a deed restriction prohibiting future development of Richardson Flats;

D. A declaratory judgment that Defendants are prohibited from annexing any portion of Richardson Flats into the Town of Hideout or any other municipality other than Park City;

E. A permanent injunction consistent with the Court's award of specific performance and declaratory relief as against all Defendants;

F. An award of costs and attorney fees incurred in Park City in this proceedings; and

G. Any other relief the Court finds just and equitable.

DATED this __ day of September 2020.

Mark D. Harrington, Esq.
Margaret D. Plane, Esq.
Attorneys for Proposed Intervenor, Park City Municipal Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **PARK CITY MUNICIPAL CORPORATION'S COMPLAINT IN INTERVENTION** was served to the following this __ day of September 2020, in the manner set forth below:

[ ] Electronic Filing

[ ] Hand Delivery

[ ] E-mail:

[ ] Fed-Ex Priority Overnight:

EXHIBIT B

Recorded at the request of and return to: Park City Municipal Corp.
Attn: City Recorder
P.O. Box 1480, Park City, UT 84060

Recorded this ___ day of _____, 2007
at Book #___ Page #___

ENTRY NO. 00806100
03/02/2007 02:42:51 PM B: 1850 P: 1897
Agreement PAGE 1 / 49
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
FEE $ 0.00 BY PARK CITY MUNICIPAL CORP

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 2nd day of March, 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;

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;

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;

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 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.

1.14.1 Common Ski Lockers

1.14.2 Common Lobbies

1.14.3 Registration

1.14.4 Concierge

1.14.5 Bell Stand/Luggage Storage

1.14.6 Common Maintenance Areas

1.14.7 Mechanical Rooms

1.14.8 Common Laundry Facilities and Common Storage Areas

1.14.9 Employee Facilities

1.14.10 Common Pools, Saunas and Hot Tubs

1.14.11 Public Telephone Areas

1.14.12 Public Restrooms

1.14.13 Administrative Offices

1.14.14 Public Hallways and Circulation Areas

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

1.15.1 Information

1.15.2 Lost and Found

1.15.3 Mountain Patrol

1.15.4 Mountain Administration

1.15.5 Mountain Maintenance and Storage Facilities

1.15.6 Mountain Patrol and Emergency Medical Facilities

1.15.7 Public Lockers

1.15.8 Public Restrooms

1.15.9 Employee Lockers

1.15.10 Ski School/Day Care

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

1.15.11 Ticket Sales Areas

1.15.12 Ski Check Areas

1.15.13 Public Circulation Areas and Hallways

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

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

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

SECTION II. LARGE SCALE MPD—FLAGSTAFF MOUNTAIN

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

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

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

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

2.1.3. Specific Transit Plan;

2.1.4. Parking Management Plan;

2.1.5. Detailed Open Space Management Plan;

2.1.6. Historic Preservation Plan;

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

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

2.1.9. Private Road Access Limitation Procedures;

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

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

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

2.1.13. Wildlife Management Plan; and

2.1.14. Affordable Housing Plan, including phasing.

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

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

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

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

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

[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.

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.

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.

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

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.

2.4.1.3. **Viewpoint Restrictions.** Structures and roads must be configured to minimize road and utility impacts and to

[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.

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 simple sale of the Northside Neighborhood, or (b) the sale and transfer of the development rights from the Northside

[10] As well as summertime visual impacts.

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 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

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

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 restaurant shall be determined by the Planning Commission at the CUP review phase, and shall be between 7,000 and 10,000 square feet.

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

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

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

recommendation of the Planning Commission through the Small Scale MPD and subdivision processes.

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

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

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

exceptional emergency situation when normal road access to Flagstaff Mountain is interrupted for an extended period.[12]

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

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

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

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

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

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

2.9.2 **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. 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.

2.9.3 **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.

2.9.4 **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.

2.9.5 **Lady Morgan Springs Open Space (Passive Use).** The Lady Morgan Springs Area[15], 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 conservation trust (or similar entity), to limit their use of the

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

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. 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 effective as of March 2, 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.

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

[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.

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

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

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 Additional 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 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 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 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

[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.

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 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

[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.

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

TALISKER
900 MAIN ST SUITE 6111
P.O.Box 4349
84060

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

If to DEVELOPER to:
United Park City Mines
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

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:

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 effective as of the 2nd day of March, 2007.

PARK CITY MUNICIPAL CORPORATION

By: _____
Dana Williams, Mayor

ATTEST: City Clerk

By: _____
Janet Scott, City Recorder

APPROVED AS TO FORM:

_____
Mark D. Harrington, City Attorney

DEVELOPER:
United Park City Mines Company,
a Delaware corporation

David J. Smith, Authorized Signing Officer

STATE OF UTAH)
: ss
COUNTY OF SUMMIT)

On this 28th day of ~~March,~~ February 2007 before me, Lorrie J. Hoggan, the undersigned Notary Public, personally appeared David J. Smith, personally known to me to be the Authorized Signing Officer of United Park City Mines Company, 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
My Commission Expires
October 11, 2007
LORRIE J. HOGGAN
4549 NSR32
Oakley, Utah 84055

Notary Public State of Utah
Residing in Oakley, Utah

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

By: _____
Robert Wells, Vice President

DEVELOPER:
United Park City Mines Company,
a Delaware corporation

David J. Smith, Authorized Signing Officer

STATE OF UTAH)
: ss
COUNTY OF SUMMIT)

On this 28th day of ~~March~~ February, 2007 before me, Lorrie J. Hoggan, the undersigned Notary Public, personally appeared David J. Smith, personally known to me to be the Authorized Signing Officer of United Park City Mines Company, 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
My Commission Expires
October 11, 2007
LORRIE J. HOGGAN
4549 NSR32
Oakley, Utah 84055

Notary Public, State of Utah
Residing in Oakley, Utah

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

By: _____
Robert Wells, Vice President

DEVELOPER:
United Park City Mines Company,
a Delaware corporation

David J. Smith, Authorized Signing Officer

STATE OF UTAH)
: ss
COUNTY OF SUMMIT)

On this 28th day of ~~March,~~ February 2007 before me, Lorrie J. Hoggan, the undersigned Notary Public, personally appeared David J. Smith, personally known to me to be the Authorized Signing Officer of United Park City Mines Company, 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
My Commission Expires
October 11, 2007
LORRIE J. HOGGAN
4549 NSR32
Oakley, Utah 84055

Notary Public, State of Utah
Residing in Oakley, 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~~ Arizona)
: ss
COUNTY OF ~~SUMMIT~~ Maricopa)

On this 1 day of March, 2007 before me, Constance M Richards, 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.

Constance M Richards
Notary Public, State of ~~Utah~~ AZ
Residing in Maricopa County, AZ

Arizona

STATE OF ~~UTAH~~)

Maricopa : ss

COUNTY OF ~~SUMMIT~~)

On this 1 day of March, 2007 before me, Constance M Richards, 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.

OFFICIAL SEAL
CONSTANCE M. RICHARDS
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires Feb. 1, 2008

Constance M Richards

Notary Public, State of ~~Utah~~ AZ

Residing in Maricopa County, AZ

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.

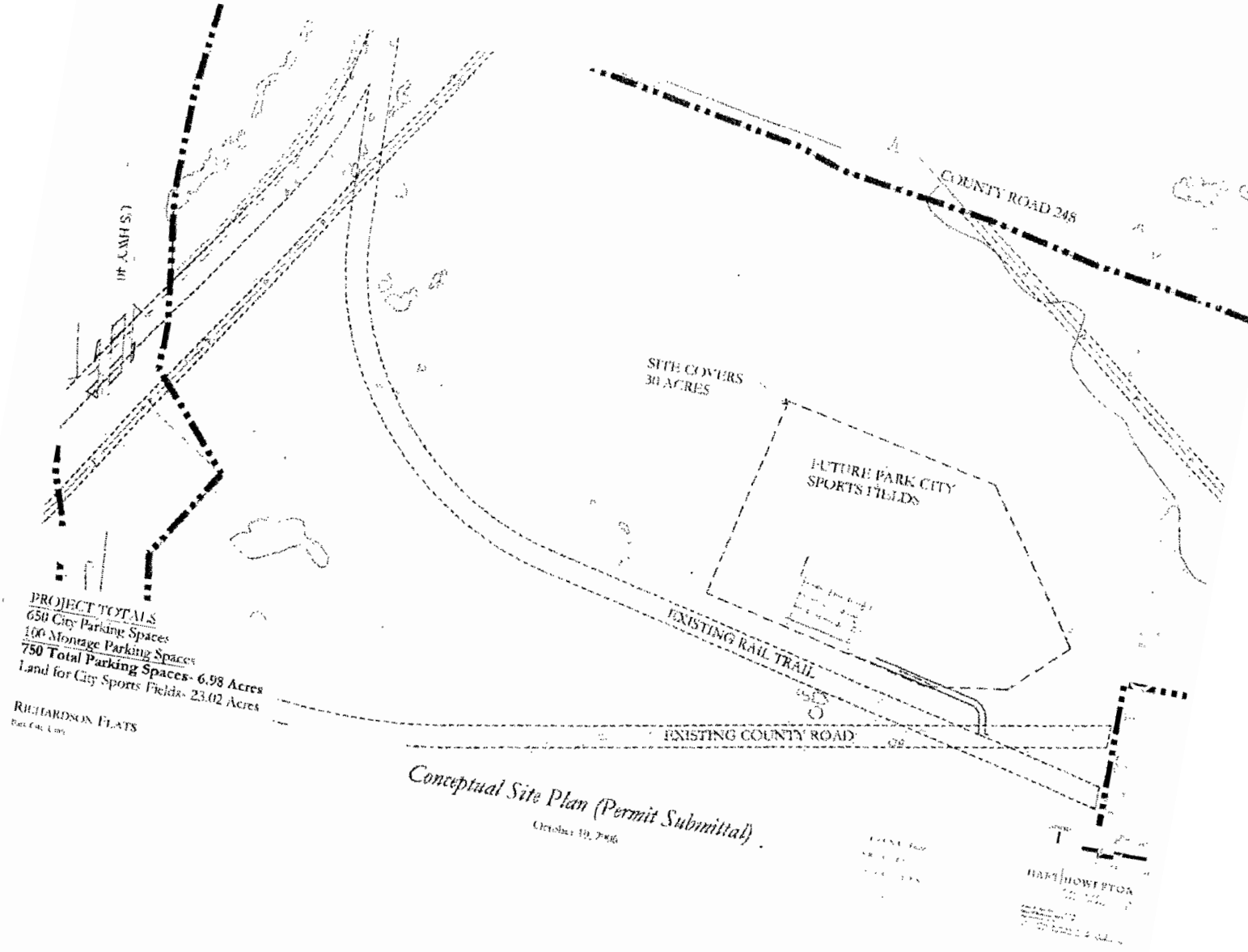
COUNTY ROAD 248
SITE COVERS
30 ACRES
FUTURE PARK CITY
SPORTS FIELDS
EXISTING RAIL TRAIL
EXISTING COUNTY ROAD
PROJECT TOTALS
650 City Parking Spaces
100 Montage Parking Spaces
750 Total Parking Spaces- 6.98 Acres
Land for City Sports Fields- 23.02 Acres
RICHARDSON FLATS
Conceptual Site Plan (Permit Submittal)

EXHIBIT C

Recorded at the request of and return to: Park City Municipal Corp. Attn: City Recorder P. O. Box 1480, Park City, UT 84060

Fee Exempt per Utah Code Annotated 1953 21-7-2

PARK CITY 1884

00545109 Bk01277 Pg00553-00555

ALAN SPRIGGS, SUMMIT CO RECORDER
1999 JUL 28 13:11 PM FEE $.00 BY MAT
REQUEST: PARK CITY MUNICIPAL CORP

Ordinance No. 99-30

AN ORDINANCE ANNEXING APPROXIMATELY 1750 ACRES KNOWN AS FLAGSTAFF MOUNTAIN INTO THE CORPORATE LIMITS OF PARK CITY, UTAH AND AMENDING THE OFFICIAL ZONING MAP OF PARK CITY TO INCLUDE THE ANNEXED AREA

WHEREAS, on May 17, 1994, United Park City Mines Company (UPCM) filed an application for annexation to Park City of certain UPCM holdings within the Ontario and Daly Canyons, along with property held by several other mining companies and/or families; and

WHEREAS, the Planning Commission reviewed the proposal several times throughout 1994 and 1995, provided feedback, an d based on Planning Commission feedback, the applicant submitted a revised annexation plan on June 14, 1995; and

WHEREAS, the Planning Commission and a special Flagstaff Task Force held several meetings on the revised plan throughout the remainder of 1995 and the balance of 1996 and held public hearings on the revised plan on October 25, 1995 and November 13, 1996; and

WHEREAS, on March 26, 1997, the Planning Commission recommended annexation of the Flagstaff area, with certain development parameters; and

WHEREAS, the Council began its consideration of the Planning Commission recommendations on April 17, 1997 and continued to take staff, applicant, and public input on April 24, 25, 28 and 29 and May 1, 6, and 8, 1997; and

WHEREAS, on April 24, 1997, the Council opened a public hearing for over 350 attendees, and took testimony from 46 participants. The public sentiment revealed support for annexation, but concerns regarding the development parameters; and

WHEREAS, the City mailed and published notice of the proposed annexation and annexation policy declaration to all affected entities and received no protest to the annexation; and

WHEREAS, on May 10, 1997, the Council concluded in Resolution No. 10-97 that annexation was appropriate and that many, but not all, of the proposed development parameters could be accommodated in the Flagstaff area; and

WHEREAS, without withdrawing its annexation petition, the applicant rejected the Council's 1997 development parameters, and began to pursue development in unincorporated Summit and Wasatch Counties; and

WHEREAS, on July 8, 1998, the applicant approached the Council with a renewed desire to annex and with additional offers of on and off-site transportation facilities, utilities, enhancements, and recreation amenities; and

WHEREAS, the Council convened several work sessions, an additional public meeting, and facilitated interest group meetings to consider new development parameters; and

WHEREAS, on August 27, 1998, approximately 100 people attended, and over 20 individuals commented on new draft development parameters; and

WHEREAS, based on public input, Council further negotiated improved development parameters; and

WHEREAS, on September 10, 1998, the Council unanimously adopted a resolution to rescind Resolution No. 10-97 and to adopt new development parameters for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel, and the Iron Mountain Parcels; and

WHEREAS, a Development Agreement has been negotiated between the City and the Developer setting forth the terms of the September 10, 1998 resolution and further terms and conditions; and

WHEREAS, the City Council has held several public meetings on the proposed Development Agreement and has taken public input at those meetings; and

WHEREAS, the Property is not included within any other municipal jurisdiction and there have been no protests filed by any other jurisdictions;

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

SECTION 1. ANNEXATION. The property is hereby annexed to the corporate limits of Park City, UT according to the annexation plat executed in substantially the same form as it is attached hereto as Exhibit A. The property so annexed shall enjoy the privileges of Park City and shall be subject to all City levies and assessments including those described in the Development Agreement, attached hereto as Exhibit B. The property shall be subject to all City laws, rules, and regulations.

SECTION 2. COMPLIANCE WITH STATE LAW AND THE PARK CITY GENERAL PLAN. The annexation meets the standards for annexation set forth in Title 10, Chapter 2, of the Utah Code and the Park City General Plan.

SECTION 3. ZONING MAP AMENDMENT. The Official Zoning Map of Park City, as adopted by Section 1.9 of the Park City Land Management Code, is hereby amended to include the Flagstaff Annexation as depicted in Exhibit A.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon recordation of the annexation plat.

PASSED AND ADOPTED this 24th day of June, 1999.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder

PARK CITY SUMMIT COUNTY UTAH CORPORATE Seal MARCH 1, 1884

Approved as to form:

Jodi Hoffman, City Attorney

00545109 Bk01277 Pg00555

FLAGSTAFF MOUNTAIN AT DEER VALLEY

Boundary Description

Beginning at a point identified as County Line Monument Number 2343, said point on the line common to Summit and Wasatch counties and also on the demarcation line between the Park City Ski Area and the Deer Valley Resort, said point lying on the ridge and hilltop above the Anchor Mine Shaft and also being North 04°39'13" East 1303.92 feet, more or less, from the Southwest corner of Section 29, Township 2 South Range, 4 East, Salt Lake Base and Meridian and running Northeasterly along said demarcation and ridge line :

North 44°09'00" East 1236.63 feet; thence North 35°07'44" East 548.54 feet; thence North 37°33'27" East 779.84 feet; thence North 49°33'13" East 616.72 feet; thence North 71°34'40" East 644.26 feet; thence North 30°09'00" East 354.14 feet; thence North 20°48'44" East 698.015 feet; thence North 10°48'36" East 569.75 feet; thence North 23°55'00" East 604.00 feet; thence North 87°35'00" East 778.00 feet; thence North 77°17'18" East 735.40 feet; thence North 82°14' East 672.44 feet more or less to a point on the Westerly boundary line of the "Anchor Tunnel Portal Mining Reservation", said point being North 39°17'38" East 942.39 feet more or less from the Southwest corner of Section 21 Township 2 South, Range 4.East, Salt Lake Base and Meridian, said point also lying along the ridge line between Empire Canyon and Walker and Webster Gulch; thence along said ridgeline the following eight courses: thence North 64°44'13" East 136.79 feet; thence North 67°45'58" East 149.28 feet; thence North 81°11'10" East 122.88 feet; thence North 77°19'44" East 85.84 feet; thence North 77°48'30" East 79.25 feet; thence North 86°11'16" East 94.42 feet; thence South 72°54'27" East 85.42 feet; thence South 71°42'35" East 163.49 feet more or less to a point on the westerly right -of-way line of the Judge Tunnel/Empire Canyon Water Tank Supply Line Easement, said point lying North 79°18'06" West 5.00 feet more or less, from Map Point A-1 as described in that certain Reservoir Easement dated April 19, 1978 and Recorded as Entry No. 147912 in the Records of the of the Recorder for Summit County, Utah; thence along said westerly right-of-way the following fifteen (15) courses: North 10°41'54" East 76.70 feet; thence North 15°21'41" East 116.20 feet; thence North 56°44'38" East 142.80 feet; thence North 46°47'25" East 123.00 feet; thence North 35°09'16" East 88.70 feet; thence North 32°14'53" East 101.60 feet; thence North 32°00'03" East 159.20 feet; thence North 33°26'55" East 136.00 feet; thence North 38° 27'54" East 138.00 feet; thence North 27°54'51" East 126.00 feet; thence North 31°30'07" East 96.20 feet; thence North 40°35'50" East 110.80 feet; thence North 50°15'25" East 92.50 feet; thence North 56°00'00" East 94.90 feet; thence North 50°23'25" East 105.09 feet; thence North 47°29'30" East 405.07 feet more or less to a point on the westerly edge of Daly Avenue; thence along said Daly Avenue the following three courses: North 32°04'00" East 296.25 feet; thence North 29°09'57" East 315.97 feet; thence North 28°18'45" East 186.56 feet, more or less, to the East-West center line of Section 21 Township 2 South, Range 4 East, Salt Lake Base and Meridian, said Section Line also being the southerly

boundary line for the corporate limits of Park City, Utah; thence South 89°59'59" East 940.12 feet, more or less, along said Section line 940.12 feet to a point on the easterly right-of-way line for Utah State Highway 224 as located in Ontario Canyon; thence along said highway the following 12 courses; South 00°15'34" West 115.59 feet to a point on a 1,482.39 foot radius curve to the left; thence Southwesterly along the arc of said curve through a central angle of 15°23'33"398.24 feet more or less; thence South 15°39'07" West 559.69 feet to a point on a 5,679.58 foot radius curve to the left; thence Southwesterly along the arc of said curve, through a central angle of 06°11'23", a distance of 613.57 feet; thence South 09°27'44" West 368.77 feet to a point on a 1,382.39 foot radius curve to the left; thence southerly along the arc of said curve, through a central angle of 16°06'55", a distance of 388.82 feet; thence South 6°39'11" East 217.32 feet to a point on a 586.62 foot radius curve to the left; thence southeasterly along the arc of said curve, through a central angle of 48°51'38", a distance of 500.26 feet; thence South 55°30'59" East 87.30 feet to a point on a 686.62 foot radius curve to the right; thence along the arc of said curve, through a central angle of 30°23'53", a distance of 364.28 feet; fhence South 25°06'53" East 397.14 feet to a point on a 508.37 foot radius curve to the right; fhence along the arc of said curve, through a central angle of 21°36'53", a distance of 191.78 feet; thence South 3°30'00" East 63.08 feet to a point on a 220.00 foot radius curve to the left; thence along the arc of said curve, through a central angle of 55°51'14", a distance of 214.46 feet; thence South 31°30'00" West 68.20 feet; thence South 79°38'18"West 45.49 feet to a point on the southeasterly boundary of the Ontario Number 3 Shaft Mining Reservation; thence South 79°59'46" West 300.78 feet more or less along the southeastern edge of said Mining Reservation; thence South 17°09'45" East 88.76 feet more or less to a point on a piece of property that is the subject of Entry Number 158551 of the Summit County Records; thence along said parcel the following five courses: South 955.96 feet; thence North 69° East 360.00 Feet; thence South 29°20' West 117.60 feet; thence North 78°10' East 714.30 feet; thence East 1,106.71 feet more or less to a point the Wasatch-Summit County line: thence along said Wasatch – Summit County line. The following thirty courses: South 04°15'00" East 1,028.07 feet; thence South 25°30'30" East 2,521.90 feet to County Line Point 51;thence South 29°50'00" West 1,398.30 Feet to County Line Point 55; thence South 4°19'00" West 1,320.70 feet to County Line Point 58; thence South 47°05'00" West 369.50 feet to a County Line Point; thence South 83°34'00" West 69.10 feet to County Line Point 59; thence South 47°42'00" West 1,207.40 feet to County Line Point 62A; thence North 39°53'30" West 1,352.50 feet to County Line Point 64; thence North 72°50'00" West 317.30 feet to County Line Point 65; thence North 46°45'00" West 87.90 feet to County Line Point 66; thence North 70°57'00" West 502.00 feet to County Line Point 67; thence North 51°56'00" West 481.90 feet to County Line Point 68; thence North 55°53'00" West 466.80 feet to County Line Point 69 feet; thence North 21°49'00" West 317.40 feet to County Line Point 70; thence North 59°57'00" West 360.50 feet to County Line Point and Triangulation Point; thence North 33°22'30" West 467.10 feet to County Line Point 71; thence South 85°10'30" West 492.30 feet to County Line Point 72; thence South 54°42'30" West 453.20 feet to County Line Point 73; thence South 88°55'30" West 344.00 feet to County Line Point 74; thence North 82°52'30" West 1,132.30 feet to

County Line Point 77; thence North 59°43'30" West 1,074.55 feet to County Line Point 2338; thence North 79°07'30" West 494.73 feet to County Line Point 80; thence North 70°28'30" West 339.90 feet to County Line Point 81; thence North 60°14'30" West 550.10 feet to County Line Point 82 and Triangulation Point 2339; thence North 64°07'00" West 727.60 feet to County Line Point 83; thence South 77°44'00" West 966.80 feet to County Line Point 85; thence North 77°28'00" West 161.00 feet to a County Line Point and Triangulation Point 2340 which is also Judge Triangulation Point Q; thence South 85°36'00" West 219.10 feet to County Line Point 86; thence North 46°44'00" West 384.70 feet to County Line Point 87; thence North 34°37'00" West 1,077.30 feet, more or less to county Line Point 2343 the point of beginning. Said Parcel contains 1,655.4 acres more or less.

EXHIBIT B

Refer to Recorder File 99-

EXHIBIT B

Refer to Recorder File 99-

EXHIBIT D

Fee Exempt per Utah Code Annotated 1953 21-7-2

Recorded at the request of and return to: Park City Municipal Corp. Attn: City Recorder P. O. Box 1480, Park City, UT 84060

Ordinance No. 07-10

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

RECORDER'S NOTE

LEGIBILITY OF WRITING, TYPING OR PRINTING UNSATISFACTORY IN THIS DOCUMENT WHEN RECEIVED.

ENTRY NO. 00806099
03/02/2007 02:42:50 PM B: 1850 P: 1794
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ALAN SPRIGGS, SUMMIT COUNTY RECORDER
FEE $ 0.00 BY PARK CITY MUNICIPAL CORP

Fee Exempt per Utah Code Annotated 1953 21-7-2

Recorded at the request of and return to: Park City Municipal Corp. Attn: City Recorder P. O. Box 1480, Park City, UT 84060

Ordinance No. 07-10

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

RECORDER'S NOTE

LEGIBILITY OF WRITING, TYPING OR PRINTING UNSATISFACTORY IN THIS DOCUMENT WHEN RECEIVED.

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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.

Conclusions of Law:

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.

Conditions of Approval:

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.

SECTION 2. EFFECTIVE DATE. 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.

PARK CITY MUNICIPAL CORPORATION

Dana Williams

Mayor Dana Williams

Attest:

Janet M. Scott, City Recorder

Approved as to form:

Mark D. Harrington, City Attorney

EXHIBIT E

PARK CITY
1884

Office of City Manager

September 8, 2020

Nathan A. Brockbank
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natebrockbank@gmail.com
jromney@gmail.com

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N. Brockbank Investments, LLC
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Town of Hideout
c/o Polly McLean
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Park City, Utah 84098
polly@peaklaw.net
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NB 248, LLC
RB 248, LLC
c/o Nathan A. Brockbank
Joshua J. Romney
2265 East Murray Holladay Road
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natebrockbank@gmail.com
jromney@gmail.com

Notice of Violation
Development Agreement for Flagstaff Mountain,
Bonanza Flats, Richardson Flats, The 20 Acre Quinn's Junction Parcel
and Iron Mountain, dated June 24, 1999 (as amended)

On behalf of Park City Municipal Corporation, I am writing to provide you with a copy of our August 6, 2020 letter wherein Park City raises several issues concerning your collaboration with Wells Fargo Bank and REDUS Park City, LLC over the Richardson Flats property that is the subject of that certain Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel and Iron Mountain dated June 24, 1999, by and between Park City and United Park City Mines (UPCM), which was recorded in the Summit County Recorder's Office as Entry No. 00544835 (the "Development Agreement").[1] Attached is a copy of the letter we provided to Wells Fargo/Redus

1 The Agreement was amended on or about March 1, 2007. The amendment was recorded with the Summit County Recorder's Office as entry no. 0080610.

Park City, LLC through its counsel Wade Budge, and to David Smith, as registered agent and putative legal counsel for UPCM/Talisker.

Pursuant to Section 8.1 of the Development Agreement, this letter applies equally to each of you either as current or potential owners, potential successors in interest, or assignees to any portion of the Richardson Flats property covered by the Development agreement. Additionally, it is the City's position that the disposition of Summit County's challenges to the legality of the Hideout annexation attempt; the legality of the subdivision; the constable's authority; and validity of the deed(s), are equally applicable and the allegations amount to a violation of the Development Agreement.

Without any indication of sincere efforts to implement the Legislature's clear window for regional cooperation to resolve this matter without continued litigation or waiting until the next full legislative session, and without an opportunity to communicate with you through other means, this letter notifies you that Park City intends to protect its interests under the Development Agreement and defend against any effort to deny Park City its contractual rights. This letter advises you that any attempt to interfere with Park City's contractual rights will be met with strong opposition. Please note that Section 9.8 of the Development Agreement entitles Park City to recover its attorney fees in the event of a dispute between the parties. In the event Park City incurs fees and costs associated with protecting its rights under the Development Agreement, the City, together with outside counsel, will seek to recover all such fees and costs.

Park City remains open to good faith, transparent discussions about regional planning, including uses of Richardson Flats that are consistent with the Development Agreement. I am certain that each of you appreciate that Park City approved its largest annexation and approved significant commercial and residential development as consideration for, among other terms, the contractual restrictions on Richardson Flats. The City intends to hold all owners—including successors in interest or assignees—to those restrictions.

Very truly yours,

Matt Dias
City Manager

cc: Park City Council via email Council_Mail@parkcity.org
Tom Fischer, Summit County via email tfisher@summitcounty.org
Wade Budge, Esq. via email wbudge@swlaw.com
David Smith, Esq. via email djsmithm3@hotmail.com

PARK CITY
1884

Office of City Manager

August 6, 2020

Via email: wbudge@swlaw.com

REDUS Park City LLC
c/o Wade Budge, Esq.
Snell & Wilmer, LP
Gateway Towner West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101-1547

Development Agreement Notice

Dear Wade:

On behalf of Park City Municipal Corporation, I am writing to raise several issues concerning your clients', Wells Fargo Bank and REDUS Park City, LLC, apparent transactional maneuvering and coordination with Josh Romney and Nate Brockbank to have the Town of Hideout surreptitiously attempt to annex an area Wells Fargo/REDUS knows is subject to the Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 20-Acre Quinn's Junction Parcel and Iron Mountain dated June 24, 1999, by and between Park City and United Park City Mines (UPCM), which was recorded in the Summit County Recorder's Office as Entry No. 00544835 (the "Development Agreement").[1] As Park City and Wells Fargo have discussed many times prior to the initiation of Wells Fargo's judicial foreclosure action relating to Richardson Flats, the Richardson Flats property is subject to certain binding covenants and restrictions concerning its use and development. [*See* Agreement, § III, 3.1.]

Specifically, UPCM, Wells Fargo's predecessor in interest "unconditionally offered to annex Richardson Flats" to Park City and, regardless of the annexation agreed to "restrict development of Richardson Flats to one of three options as mitigation and inducement for Park City to enter into the Development Agreement and grant certain development rights. [Id.] Significantly, the parties agreed and acknowledged that the provisions of the Development Agreement constituted "real covenants, contract and property rights and equitable servitudes, which shall run with the land subject to [the Development] Agreement." [Id. § 8.1.] It further provides that the "burdens and benefits … shall bind and inure to the benefit of each of the Parties and all successors in interest to the Parties hereto." [Id.]

[1] The Agreement was amended on or about March 1, 2007, which amendment was recorded with the Summit County Recorder's Office as entry no. 0080610.

Based on the foregoing, and as successor in interest of UPCM, pursuant to Paragraph 9. 5 of the Development Agreement, we are hereby putting you on notice of the following:

1. **Request to Annex**: Pursuant to Paragraph 3.1 of the Development Agreement, Park City has the absolute right to annex Richardson Flats and hereby puts you on notice that it intends to pursue such annexation. Hideout's attempt to annex this same area is in direct violation of the Development Agreement and being pursued without Park City's consent, which under the terms of the Development Agreement would be required as party with rights in the property. Further, any claim of a competing right to consent to have the property annexed by Hideout is in violation of the "unconditional" offer and consent granted to Park City under the Development Agreement. Accordingly, if you have provided such consent to Hideout (or granted such authority to a third-party[2]) Park City respectfully requests that you immediately withdraw such consent and notify Hideout.[3]

2. **Request to Grant Park City a Deed Restriction**: Pursuant to Paragraph 3.1 Option 3 of the Development Agreement, the Developer (and Wells Fargo/REDUS as successor in interest) did not obtain environmental approval to pursue recreational Options 1 or 2. As such, the Developer (or Wells Fargo/REDUS and any other successor in interest), is required to deed restrict Richardson Flats in a manner that prevents further development in perpetuity. [Id. 3.1.] Accordingly, Park City respectfully requests that Wells Fargo/REDUS cause the restrictive deed to be recorded immediately upon passage of the redemption period on August 21, 2020. Unless and until the deed restriction is affirmed and made a matter of public record, Park City reserves the right to advise the Planning Commission whether any pending applications should be processed pending this non-compliance, including the hearing scheduled for this Wednesday on Twisted Branch Subdivision.

3. **Attorney's Fees**: Section 9.8 of the Development Agreement entitles Park City to recover its attorney fees in the event of a dispute between the parties. As I'm sure you and Bruce Baird have informed your clients, the Development Agreement has been the subject of litigation in both state and federal court already. Park City not only prevailed in enforcing the

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[2] The Development Agreement expressly provides that "[n]o other party shall have any right of action based upon any provision of this Agreement whether as a third-party beneficiary or otherwise." [Id. § 9.6.] Further, any transfer or assignment shall not relieve the successor in interest (i.e. Wells Fargo) from complying with the covenants and restrictions set out in the Development Agreement. [Id. § 8.2]

[3] Pursuant to UCA §10-2-402(1)(c) a municipality may not annex an incorporated area if the area is located "within the area of another municipality's annexation policy plan." The very right granted to Park City to annex the property into Park City has been part of its annexation plan since 1999, and as added to the annexation expansion area in 2019. [See ***Attachment A***: Park City Annexation Expansion Area Map]

4. Development Agreement but was awarded fees in one such action due to the actions of the plaintiff and its counsel. If compelled to protect Park City's rights under the Development Agreement, the City, together with outside counsel, will do so and seek recompense from Wells Fargo/Redus.

5. **Third Party challenge- Indemnification**: Pursuant to Paragraph 7.2, the City hereby notifies Wells Fargo/REDUS of its obligation to cooperate, hold harmless and indemnify Park City in the event of a third party challenge as successor to Developer. In the event Park City is compelled to file an action to protect its rights under the Development Agreement, it will seek to be reimbursed and indemnified by your clients.

6. **Subsequent Conveyance:** Finally, it is our understanding that as a result of the sheriff's sale that occurred in February 2020, that Wells Fargo/REDUS will be able to convey fee title as early as August 21, 2020. Any transfer of title or conveyance of property would be subject to the Development Agreement, including the covenants and restrictions set forth above. [Id. § 8.2]

In closing, Park City remains open to discussions with you and your client. However, it must likewise protect its rights in the very property Wells Fargo/REDUS has apparently sought to sell in a transaction that flies in the good faith nature of not only our past negotiations, but the good faith nature of the parties' negotiations that led to the Development Agreement in the first place.

Very truly yours,

Matt Dias, City Manager
Park City

cc: David Smith, UPCM
Park City Council
Tom Fisher, Summit County Manager

Attachment A