



STAFF REPORT

To: Summit County Council
From: Kirsten Whetstone, MS, AICP- County Planner
Date of Meeting: October 27, 2021
Subject: 2008 Summit Research Park Development Agreement Amendments
Type of Item: Work Session discussion of Development Agreement Amendments

I. Meeting purpose and staff recommendations

The purpose of this work session is to discuss key issues of the amended Summit Research Park Development Agreement, revised since the August 11, 2021, meeting. Staff recommends the Council review the Amended Development Agreement and focus discussion on items described in Section V of this report. Staff also recommends the Council discuss a timeline moving forward in terms of scheduling additional work sessions and a public hearing to consider public input on the Amended Development Agreement.

II. Project Description

Project Name: Summit Research Park Development Agreement Amendments
Applicant(s): Jeff Gochnour, Dakota Pacific Real Estate
Property Owner(s): Park City Junction, L.L.C.
Parcels: PCTC 401-AM, 402-AM, 403-AM, 404-AM, and 5B-AM
Location: West of SR 224 and south of Ute Blvd and north of Olympic Parkway at Kimball Junction
Parcel Size: 58.26 acres (includes Skullcandy site, excludes Visitor Center, Transit Center, Richins Building and platted streets)
Zone District: Community Commercial (CC) subject to Development Agreement
Final Land Use Authority: Summit County Council

III. Development Agreement

Over the past two months Staff and the applicant have met to discuss key points, terms, and conditions to finalize a draft Amended Development Agreement for the Park City Junction project (aka Dakota Pacific). At the August 11, 2021, meeting Staff updated Council on the following topics and reviewed an outline of key points and conditions.

- Potential development of a Civic Center on the county parcels
- Land use and densities
- Revised concept land use plan
- Sustainability elements
- Affordable workforce housing
- Transportation and traffic mitigation and financing opportunities

- Phasing (this item was discussed as part of each of the above topics)

Further details and context of the Development Agreement (Exhibit A) will be presented at the work session.

IV. Proposed Terms and Conditions

Terms and conditions for Council review are presented in eight (8) topic areas as follows, see Exhibit A ([Draft Amended Development Agreement and Exhibits](#)) for additional details.

1. Density.

- a) A maximum of 1,720,000 gross square feet of development square footage
 - i) 205,000 sf of Office Uses (including the existing Skullcandy Building (total gross sf = 45,000 sf) and excluding the Visitor's Center building.
 - ii) 31,000 sf of Commercial/Retail Uses
 - iii) 120,000 sf of Hotel Uses
 - iv) 1,364,000 of Residential Units (excluding the existing 152 Liberty Peaks Workforce Housing Units.)

2. Residential. A maximum of 1,100 Residential Units

- a) Workforce Housing = 336 deed-restricted Residential Units subject to Housing Agreements and consisting only of primary residences which are rented or leased on a long-term basis. Nightly rentals and short-term rentals (less than 90 days) are not allowed in Workforce Housing Units or in rental Market Rate Units.
 - i) 55 Base units @ 30% - 50% AMI (40% AMI average, may target senior 55+ population). (See paragraph (d) below)
 - ii) 201 Moderate units @ 40%-80% (60% AMI - with parameters).
 - iii) 80 Attainable units @ 100%-120% AMI.

- b) Workforce Housing Mix. The following mix of units is applied in each of the affordability bands to guarantee a variety of unit types and sizes for different AMI levels: [See Section 3.3.2.4.1 of the Amended Development Agreement for additional details and chart of unit counts.](#)

- 10% - Studios
- 45% - 1 Bedroom
- 40% - 2 Bedroom
- 5% - 3 Bedroom

- c) Deed Restrictions and Housing Agreement with Waterfall provisions for Units. [Section 3.3.2.1 of the Amended Development Agreement as well as Deed Restrictions and Housing Agreements attached as Exhibits A-6, A-7, and A-8.](#)
 - i) LIHTC financing and HUD provisions
 - ii) Waterfall priority of those working in Summit County
 - iii) Phasing of Workforce Housing – to be built when market rate units built.

- d) 55+ housing program as part of market rate units (possibly some affordable).
3. **Traffic Mitigation and Transit Improvements.**

[Section 3.2.5](#) states that the Developer agrees to implement certain traffic control measures necessary to mitigate the impacts of the Mixed-Use Project, and to generally improve the flow of traffic in the Kimball Junction Neighborhood, which measures are set for in Exhibit A-5 (Traffic Mitigation Plan). Developer shall construct and implement the traffic mitigation measures with the development of Phase II, or as otherwise set forth in Exhibit A-5 and shall cooperate with the County and UDOT to support and implement the UDOT Project (as defined in the DA). [See Amended Development Agreement for details and conditions.](#)

- a) No additional traffic mitigation measures are required for the completion of Phase I (a Medical Office Building of 85,000 +/- square feet and associated parking structure). ([See Exhibit A-10 for the other Phases described](#)).
 - b). The traffic mitigation measures which shall be constructed as part of Phase II, as set forth in [Exhibit A-10](#), include the following:
 - i) Closing the median on Ute Blvd and lengthen EB left turn lane on Ute Blvd to SR-224.
 - ii) Construction of the Skullcandy Bypass, i.e., west leg of Olympic Parkway roundabout.
 - iii) Prohibit left turns from Tech Center Drive to Landmark Road and restripe Tech Center Drive to Landmark Road intersection.
 - iv) Channelize eastbound traffic on Tech Center Drive to prevent left turns, add merge lane for southbound turns.
 - v) Construct necessary transit lanes on Landmark Drive and within the Mixed-Use Project [NTD: County to specify].
 - vi) Dedication of land to create temporary access from Richins Building to Landmark Drive [NTD: County to specify].
 - c) Mitigation measures which shall be part of all Project Areas:
 - i) Appropriate bus access by creating bus pull-outs, shelters, bike racks, etc.
 - d) Mitigation measures requiring UDOT participation and approval which shall be completed at the time of UDOT approval:
 - i) Construction of extended turn lane from southbound SR-224 to Ute Blvd. (*see* UDOT Alternative 4, D-15 (without the HOV only requirement) [Figure 1 in Exhibit A-5](#)).
 - ii) Construction of northbound through to I-80 capacity on SR-224 (*see* UDOT Alternative 4, D-11, [Figure 1 in Exhibit A-5](#)).
 - iii) Developer will dedicate, at no cost to the County or UDOT, de minimis portions of the PC Junction Property for rights-of-way required to complete the UDOT 224 project(s) set forth in [Exhibit A-5](#), provided that the dedications will not reduce the Vested Density or require the relocation of any improvements or Project Areas shown on the Master Plan.
4. **Area Transportation, Traffic, and Transit Solution Financing.** [Section 3.3.6](#) of the Amended Development Agreement states that in addition to the required Traffic

Mitigation Measures set forth in [Section 3.3.5](#) (as outlined above), the Parties agree that to ensure the viability of the Mixed-Use Project, the Parties will work cooperatively and in good faith toward area solutions to transportation, traffic, and transit issues which impact the Mixed-Use Project and the surrounding Kimball Junction Neighborhood. It is recognized that major changes to the Kimball Junction I-80 interchange, and State Route 224 may be made by UDOT and that the *Kimball Junction Area Plan Level 2 Solution Alternative 3* is the desired long-term solution. The UDOT project is more particularly described in [Exhibit A-5](#).

Currently listed as Phase 2 project meaning 10+ year in future. UDOT will require local participation for the project to meet earlier desired timelines. Funding for an Environmental Assessment was approved during the 2021 Leg. Session for KJ Interchange. There is an opportunity to elevate and accelerate UDOT focus on regional transportation investments and specifically on the UDOT project to meet County needs. To help create that opportunity, Developer commits to participate in either the HTRZ or the CRA revenue generation programs set forth in [Section 3.3.3.6.1](#) and [Section 3.3.6.2](#).

- a) Community Reinvestment Act (CRA). DPRE shall cooperate in and if needed, consent to the creation of CRA pursuant to Title 17C, Chapter 5 of the Utah Code for the purpose of funding transportation and traffic mitigation projects as well as transit solutions in the Kimball Junction area. Parties agree that if created, the net proceeds from the tax increment financing (TIF) created by the CRA would be divided (after deducting certain statutory reductions for administration and affordable housing, which will be retained by the County) as follows: 90% to the County for projects described in Sections 3.3.6.4 and 10% to Developer. See [Section 3.3.6.2](#).
- b) Housing and Transit Reinvestment Zone Act (HTRZ): If selected by the County, the Developer shall cooperate in and if needed, consent to the creation of a Housing and Transit Reinvestment Zone (“HTRZ”) as set forth in Utah Code Title 63N, Chapter 3, Part 6. The HTRZ is created for the purpose of enhancing utilization of public transit, increasing affordable housing availability, improving air quality, and investment in public transit and transportation infrastructure in strategic areas. The Parties agree that they will work together in good faith to prepare a proposal for the HTRZ that meets necessary criteria and will submit the proposal to the Governor’s Office of Economic Opportunity (GOEO) within 60 days of the Effective Date. See [Section 3.3.6.1](#).
- c) Other Assessment Areas. SAA and PID. See [Section 3.3.6.3](#).
- d) All additional tax revenue may be used and leveraged with other public and private funds to fund necessary public infrastructure and improvements as further described in the Amended Development Agreement, including the following items:
 - i) Transit: transit centers, bus lanes, Bus Rapid Transit and other associated transit infrastructure or operations and utilizing \$2.5 million funding for BRT.

- ii) Structured Park and Ride facilities associated with Transit
 - iii) Kimball Junction Area Plan Level 2 Solution Alternative 3: Grade Separated Intersections with Enhanced Pedestrian Crossing Facilities at Ute Blvd. and Olympic Pkwy. and Alternative Connections to the I-80 Interchange project (including possible SR 224 at-grade cap as part of UDOT Alternative 3)
 - iv) East-west and north-south bike/pedestrian solutions
 - v) Aerial Transit
 - vi) County government or civic facilities
 - vii) Infrastructure for electric bike share program
5. **Community Amenities and Sustainability.** Agreement to all community amenities and sustainability initiatives identified by Developer in the July 7, 2021, and August 11, 2021, presentations to Council., as described in Section 3.3.5 and as listed in the Amenities Package [Exhibit A-3 See Amended Development Agreement for details and conditions.](#)
6. **Fee waivers.** Section 2.3 outlines Fees and Exactions. Workforce Housing Fee Waivers ([Section 2.3.1.1](#)) for the approval and development of Workforce Housing Units (the deed restricted affordable and attainable housing) within the Mixed-Use Project, but not impact fees. Transportation Impact Fee Credits are described in [Section 2.3.4.1](#). [See Amended Development Agreement for details and conditions.](#)
7. **Municipal Density Zoning Grant was Replaced with Redevelopment Matching Grant.** [Section 3.3.7](#) states that within 120 days of the Effective Date the County will apply for a Redevelopment Matching Grant from the State of Utah. If granted or funded, proceeds of this Grant up to \$2,500,000, plus an equal amount funded by the County as County Matching Funds, must be used by the County for the development of improvements within or that directly benefit the Mixed-Use Project. [See Amended Development Agreement for details and conditions.](#)
8. **Correlation with existing DA** to determine which provisions survive into the new agreement. [Section 1.1.13 of the original DA](#) states that any provision not addressed in an amendment remains in place and in effect. [See Amended Development Agreement for details and conditions.](#)
- a) [Section 1.3.3 Adjacent Open Space and Boundary Adjustments: Compliant and addressed in Amended DA.](#)
 - b) [Section 1.9 Meetinghouse: Compliant](#)
 - c) [Section 3.2 Essential Project Infrastructure:](#)
 - i) [Section 3.2.1 Internal Roads & Secondary Access: Compliant](#)
 - ii) [Section 3.2.1.2 Olympic Parkway Connector Road: Compliant](#)
 - iii) [Section 3.2.1.1 Road Easement: Compliant](#)
 - iv) [Section 3.2.2 Water, Fire Flow and Public Safety: Compliant](#)
 - v) [Section 3.2.2.1 Water Quality and Water Conservation: Addressed in Amended DA.](#)

- vi) Section 3.2.3 Other Infrastructure: Compliant
 - vii) Section 3.2.4 Drainage and Flood Control: [Addressed in Amended DA.](#)
 - viii) Section 3.2.5 and A-5 Traffic: [Addressed in Amended DA.](#)
 - ix) Section 3.2.7 Lighting: [Addressed in Amended DA.](#)
- d) Section 3.3 Other requirements
- i) Section 3.3.1 Land Conveyance: Compliant
 - ii) Section 1.1 Event Use of Parking Facilities: [Addressed in Amended DA.](#)
 - iii) Section 3.3.2 Workforce Housing: Compliant and [Addressed in Amended DA.](#)
 - iv) Section 3.3.3 Trails and Inclusive Open Space: [Addressed in Amended DA.](#)
Internal trails to connect to underpass
 - v) Section 3.3.4 SR 224 Underpass Contribution: [Triggered when 225,000 gross square feet new construction completed and have received C.O. Addressed in Amended DA.](#)
- e) Sections 1.5.4 and 3.3.3.2 Transit and Bike Facilities (bus shelters, bike racks, etc.) [Addressed in Amended DA.](#)
- f) Section 4.10 Concurrency Management: [Addressed in Amended DA.](#)

V. Items for Discussion

Staff and the subcommittee identify the following main items for discussion:

1. **Process for modifications to the Land Use Plan** ([Section 1.3.4](#)) currently proposed as Administrative Amendments to the DA, provided they are necessary to achieve one or more of several outlined purposes.
2. **Process for amending the Development Agreement** ([Sections 1.10.1 and Sections 1.10.2](#)) and understanding the implications of “Substantial Amendments” and “Administrative Amendments”.
3. **Phasing of the Mixed-Use Project** is currently described in three phases ([Section 2.4, Section 4, and Exhibit A-10](#)) as outlined below. Staff requests discussion of the proposed phasing, as well as the **phasing of traffic mitigation measures and amenities.**

Phase I:

- A Medical Office Building of 85,000 +/- square feet and associated parking structure developed on the Phase I Property.

- An application for Phase I will be processed upon approval of the Architectural Design Standards. Phase I requires no additional Traffic Mitigation Measures or amenities.

Phase II:

- Phase II buildings may include:
 - Market Rate Housing Projects totaling up to 535 Market Rates Units.
 - Workforce Housing Projects totaling 30% or more of the 535 Market Rate Units.
 - Office Projects totaling up to 75,000 square feet of Vested Density.
 - Commercial / Retail totaling up to 31,000 square feet of Vested Density.
- Phase II construction shall also include the Traffic Mitigation Measures set forth in paragraphs 2, 3 and 4 of Exhibit A-5, which Traffic Mitigation Measures must be completed before the issuance of a certificate of occupancy for each Project.
- Developer shall provide and include the amenities in Phase II as shown on the Master Plan.
- Developer agrees that certificates of occupancy may be withheld until all traffic mitigation and amenities required in Phase II have been constructed or have been started and are in the process of being completed as required. If not completed before certificate of occupancy is requested, a performance bond to ensure completion may be required.

Phase III:

Phase III shall be constructed based upon market demand and may include one or more parcels. Notwithstanding the market demand, until the Workforce Housing obligation is completed, construction of Workforce Housing Units shall be part of all Project Areas or phases at a ratio of 30% or more of the total Project Area.

- The traffic mitigation measures in paragraph 3 and 4 of Exhibit A-5 shall be constructed with each Project Area, if not then already completed.
- If triggered and approved by UDOT, the traffic mitigation measures described in paragraph 3 of Exhibit A-5 shall also be constructed.
- Developer shall provide and include the amenities in Phase III as shown on the Master Plan.
- Developer may not construct market rate housing without also constructing Workforce Housing, until the obligation for 336 Workforce Units has been met. Inasmuch as the Workforce Housing obligation represents approximately **[30%]** of the Residential Units, the Workforce Housing Units shall be constructed at a rate which represents **[30%]** or more of any Project Area.
- Developer agrees that certificates of occupancy may be withheld until all traffic mitigation and amenities required in each Project within Phase III have been

constructed or have been stated and are in the process of being completed as required.

4. **Phasing of Workforce Housing** (Section 4.1.1) proposed to be constructed prior to or simultaneous with all other Project Areas and/or Market Rate Units. The number of Workforce Housing Units within each Parcel or Project Areas shall represent roughly 30% or more of the square footage, or number of units, as compared to the Market Rate Units.

5. **Area Transportation, Traffic and Transit Solution Financing** and how it impacts project phasing and completion (Section 3.3.6). Staff requests Council discussion of proposed Developer options, outlined in Section 3.3.6, if the HTRZ application is not successful, or if the Parties are unable to complete the binding legal creation and authorization of the CRA within in so many days after the Effective Date. This Section describes these options:

a. Proceed with development of Phases I and II (as set forth in Exhibit A-10 also outlined above), but not Phase III until further traffic mitigation measures, financing measures, or other changes to the development pacing can be determined and agreed upon in writing by a Substantive Amendment to this Amended DA. OR

b. Proceed with the development of all Phases of the PC Junction Property pursuant to this Amended DA, except that all references to residential development herein shall have no further force and effect, and all Vested Density, less and excepting any remaining density assigned to Workforce Housing Units, shall convert to density within one or more of the following uses, to be determined by the Developer:

- Laboratories, offices, and prototype production facilities related to research facilities and technology.
- Healthcare facilities; Offices, general; Offices, intensive; Offices, medical and dental; Offices, moderate (as defined by the Code).
- Sports medicine related uses, including research and treatment facilities (no hospital allowed).
- Incidental commercial uses principally located within the PC Junction Property to support other permitted and approved conditional uses, such as restaurants, private clubs, retail, banks, financial services, recreation facilities, health care facilities, accessory uses authorized by the Code as of the Vesting Date and facilities for limited indoor production, warehousing, and distribution.
- Utility Facilities, Water lines, Sewer lines.

6. Development Agreement allows for **nightly rentals** of Residential Market Rate for sale units (100 Townhouses and 80 Condominiums). All other Residential units (both Market Rate

and Deed Restricted) will be deed restricted only for long term rentals (no nightly or short-term rentals are allowed). [Sections 3,3,2 and 3.3.2.4.3 \(D\)](#).

7. **Sustainability and Amenities Package** items ([Section 3.3.5, 3.3.5.1, 3.3.5.2, 3.3.5.3 and 3.3.5.4 as well as Exhibit A-3](#)). Staff requests discussion regarding the Implementation of a Carbon and Electrification Plan to Achieve Carbon Neutrality. The Developer agrees to work with the County’s Sustainability Director on an on-going basis to ensure this requirement is met. No timeframe is now stated. Staff suggests that the Plan should align with the County’s Plans, Policies, and Timeframes. Staff will entertain any questions or comments about these sections.

8. **Housing Agreements and deed restriction** items ([Exhibit A-6, A-7, and A-8](#)). Staff will entertain any questions or comments.

9. **UDOT project alternatives illustrations** will need to be in black and white and legible for recordation purposes. Staff is working on this item.

VI. Recommendation. Staff recommends the Council review the Amended Development Agreement and focus discussion on items described in Section V above. Staff also recommends the Council discuss a timeline moving forward in terms of scheduling additional work sessions and a public hearing to take public input on the Amendment Development Agreement.

Attachments

Exhibit A – Amended Development Agreement and Exhibits

EXHIBIT A

Draft 10/21/2021

AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR PARK CITY JUNCTION formerly known as SUMMIT RESEARCH PARK

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “**Amended DA**”) is entered into as of this ____ day of _____ 2021, (“**Effective Date**”) by and among PARK CITY JUNCTION LLC, a Utah limited liability company (“**Developer**”) and SUMMIT COUNTY, a political subdivision of the State of Utah, by and through the Summit County Council as the legislative body (the “**County**”). Developer and the County are individually referred to herein as a “**Party**” or collectively as the “**Parties**”.

RECITALS

A. The County and Boyer Snyder Junction, L.C., a Utah limited liability company (“**Boyer**”) are parties to that certain *Development Agreement for the Summit Research Park* (“**Park City Tech Center**”) dated December 10, 2008, and recorded with the Summit County Recorder’s Office on December 11, 2008, as Entry No. 860845, in Book 1959, beginning at Page 1217, as amended by that certain *First Amendment to the Development Agreement* dated May 15, 2014 and recorded with the Summit County Recorder’s Office on December 9, 2015 as Entry No. 01034562, in Book 23214 and recorded with the Summit County Recorder beginning at page 1194 (collectively, the “**Original DA**”).

B. Boyer was the owner of approximately 89 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land was attached to the Original DA as Exhibit A (the “**Research Park Property**”). Boyer was to develop a new Research Park or Tech Center on the Research Park Property (“**Research Park**”). The Research Park was to be constructed in several distinct subdivision and vertical improvement development projects within certain development sites to be created.

C. As of the Effective Date, Boyer or Developer has developed the so-called “Visitors Center Building”, which had been constructed upon Lot 5A, Park City Tech Center Lot 5 Subdivision and Condo Plat, according to the official plat on file in the Summit County Recorder’s Office and identified as Summit County Tax Parcel No(s). PCTCC-A-1-X, PCTCC-A-2, PCTCC-A-3, and PCTCC-A.

D. As of the Effective Date, Developer owns the so called “Skullcandy Building” which has been constructed upon Lot 4, Park City Tech Center Lot 4 Subdivision, according to the official plan on file in the Summit County Recorder’s Office and identified as Summit County Tax Parcel No. PCTC-401-AM.

E. The development of the Research Park under the Original DA has not progressed or been implemented as anticipated and desired by either Party.

F. In 2018 Developer acquired from Boyer, approximately 58 acres of the Research Park Property, which 58 acres are more particularly described on **Exhibit [A-1]** (“**PC Junction Property**”).

G. Pursuant to Section 1.11 of the Original DA, Developer, in its capacity as the fee owner of the PC Junction Property and as successor-in-interest to Boyer, and the County desire to amend the Original DA with respect only to the PC Junction Property as set forth in this Amended DA. The portion of Research Park Property (i.e. the PC Junction Property) that is affected by this Amended DA and the Mixed Use Project proposed to be developed thereon pursuant to this Amended DA is referred to herein as the “**Mixed Use Project**”.

H. The Research Park is located in the Kimball Junction Neighborhood. In 2019 the Summit County Council acting in their legislative capacity adopted an amendment to the Snyderville Basin General Plan (“**General Plan**”) specifically amending the Kimball Junction Neighborhood provisions within the General Plan. The Kimball Junction Neighborhood Plan as adopted promotes mixed-use neighborhoods, including residential and other uses, walkability within the neighborhood and surrounding areas within the Kimball Junction Neighborhood and a more pedestrian friendly orientation for development.

I. The approved Research Park is no longer consistent with the amendments to the General Plan and in particular the Kimball Junction Neighborhood Plan.

J. Prior to or contemporaneously with the approval of the Original DA, the County re-zoned the Research Park Property, including the PC Junction Property, to the Community Commercial zone pursuant to the provisions of the Snyderville Basin Development Code as codified in Title 10 of the Summit County Code (the “**Code**”).

K. On May 10, 2021, the County issued a Use Determination Request (“**Determination Request**”) to Developer confirming that a medical office building is a permitted use within the Mixed Use Project.

L. Developer and the County now desire to amend and restate the Original DA as it relates solely to the PC Junction Property and not to the entire Research Park Property in order to establish certain terms, standards and procedures that will be applicable to the Mixed Use Project, and the construction of proposed improvements located on the PC Junction Property.

M. The County recognizes that this Amended DA will result in tangible benefits to the County through the increase of the County’s tax base, the ability to generate funding to help construct necessary and critical transportation and transit improvements within the Kimball Junction Neighborhood, and an increase in needed workforce housing, for which reasons the County is willing to agree to vest the development of the PC Junction Property pursuant to the terms of this Amended DA) against future legislative changes in the Land Use Laws (defined below) that would be inconsistent with the provisions in this Amended DA.

N. This Amended DA provides detailed terms regarding the Mixed Use Project. The County and Developer agree that each shall comply with the terms, standards and procedures contemplated by this Amended DA and its accompanying exhibits, the Code, and the General Plan with respect to the required development approvals.

O. The County, acting pursuant to its authority under Utah Code Annotated, §17-27a-101, et seq. and the Code, has made certain determinations with respect to the proposed Mixed Use Project, and, in the exercise of its legislative discretion, has elected to process and approve

the use, densities permitted, general configuration and development standards for the Mixed Use Project pursuant to Section 10-3-18 of the Code, resulting in the negotiation, consideration and approval of this Amended DA after all necessary public hearings.

DEFINITIONS

“**Administrative Amendments**” has the meaning set forth in Section [1.10.2].

“**Allowed Uses**” means the allowed, low impact permit, conditional, and temporary uses provided for in Section [1.6] herein below and in the Master Plan attached as **Exhibit [A-2]**.

“**Amenity Package**” means the public spaces, facilities, and other amenities that Developer will buildout in phases as part of the development of the Mixed Use Project as more particularly described in Section 3 below and **Exhibit [A-3]**. Additional amenities may be added if deemed appropriate by Developer and approved by the County.

“**Applications**” has the meaning set forth in Section [2.1.1].

“**Architectural Design Standards**” means those requirements governing the architectural design of the structures and development of other improvements on the PC Junction Property as provided in Section [4.6] herein and attached hereto as **Exhibit [A-9]**. No application for any Project Area or Parcel will be processed until the Architectural Design Standards have been approved.

“**Area Median Income**” or “**AMI**” means the Summit County median income as determined annually by the Department of Housing and Urban Development and as authorized under Section 42 of the Internal Revenue Code as Multifamily Tax Subsidy Projects (MTSPs).

“**Building Permit**” means a permit issued by the County pursuant to the requirements of the Code, Uniform Building Code, and related building codes as applicable in the Snyderville Basin Planning District, including permits for grading, footings and foundations and construction of other improvements.

“**Buildout Phasing Plan**” means the order, process, and development milestones pursuant to which the Parcels within the Mixed Use Project, including the Amenities Package and the Traffic Mitigation Plan, will be completed. The intent of the Buildout Phasing Plan is to allow the Mixed Use Project to be developed in a manner that incorporates a mix of the Allowed Uses and establishes a timeline for completion of the Amenity Package (**Exhibit [A-3]**) and the Traffic Mitigation Plan (**Exhibit [A-5]**) as is appropriate given the uses being developed, the impact of and amenities needed for those Allowed Uses, and the development schedule pursued by Developer. With the approval of the Director, the phasing of the Amenity Plan and the Traffic Mitigation Plan may be adjusted to ensure that the appropriate amenities and traffic mitigation are completed depending on the phasing of the development of the Parcels. The Buildout Phasing Plan is attached hereto as **Exhibit [A-10]**.

“**Code**” means the Snyderville Basin Development Code, adopted December 2004 (as amended) and codified in the Summit County Code as Title 10. All references to sections of the Code shall mean those relevant sections within the codified Summit County Code.

“**Completion of Development**” has the meaning set forth in Section [6.3.1].

“**Condominium Plat**” means a condominium plat as described and contemplated by Chapter 3 of the Code.

“**Construction Plan**” means the maps or drawings accompanying a final Plat or Final Site Plan and showing the specific location and design of improvements to be installed on the site of the Mixed Use Project in accordance with the conditions of approval of the Final Site Plan or Plat.

“**County**” means Summit County, a political subdivision of the State of Utah. The County has entered into this Amended DA as a party acting by and through its County Council.

“**County Council**” means the Summit County Council.

“**Deed Restrictions**” means restrictions substantially in the forms set forth in the Housing Agreements, **Exhibits [A-6]** and **[A-7]**, which by inclusion herein, have been approved by the Parties, and which will be recorded against Workforce Housing Residential Units within the Mixed Use Project setting forth the terms, conditions, and restrictions related to the occupancy, rental, and sale, if any, of Workforce Housing Residential Units constructed in the Mixed Use Project as set forth in the Code and Section [3.3.2] herein.

“**Developer**” means Park City Junction, LLC, a Utah limited liability company, its affiliate entities, and its successors, assignees, or transferees.

“**Development Improvements Agreement**” or “**DIA**” has the meaning set forth in Section [4.8] below.

“**Development Standards**” means the development standards contained in **Exhibit [A-4]** (Height Regulations), the Architectural Design Standards in **Exhibit [A-9]**, and Chapter 4 of the Code (Standards for Approval of Development Permits).

“**Director**” means the Summit County Community Development Director.

“**DPRE Declaration**” has the meaning set forth in Section [3.1] below.

“**Effective Date**” means the effective date of the Summit County Ordinance that approves this Amended DA.

“**Event of Default**” has the meaning set forth in Section [6.2.2].

“**Final Site Plan**” means any Final Site Plan establishing detailed development layout, architectural, landscaping, lighting, and other development details for a Project Area within the Mixed Use Project, the process for which is established in this Amended DA. A site plan is a development plan of one or more Parcels designated for the construction of all Allowed Uses, Public Facilities and any other facilities or other similar structures constructed on the PC Junction Property or of benefit to the Mixed Use Project and allowed by this Amended DA.

“**General Plan**” means the Snyderville Basin General Plan of the County, adopted December 2004, and amended in 2019 and as otherwise amended as of the Vesting Date.

“**Height Allowances**” means the maximum height of buildings in each Parcel within the Mixed Use Project as shown on and described on **Exhibit [A-4]**.

“**Housing Agreement**” means those agreement(s) between Developer and the County regarding the restrictions and covenants for Workforce Housing, the forms of which are ~~is~~ attached as **Exhibits [A-6]** and **[A-7]**, which are to be recorded against the Workforce Housing Units within the Mixed Use Project.

“**Housing and Transit Reinvestment Zone**” or “**HTRZ**” has the meaning set forth in Section [3.3.7] below.

“**Household Size Appropriate of the Unit**” means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of two-bedroom unit, and four persons in the case of a three-bedroom unit.

“**Incidental Uses**” means those uses which are directly related to the service needs of the Mixed Use Project and that will not primarily generate off site trips for purposes of traffic generation.

“**Market Rate Units**” are Residential Units which may be rented, leased, or sold at the prevailing market rate, and used as primary or secondary residences.

“**Master Association**” has the meaning set forth in Section [3.1].

“**Master Plan**” means the illustration attached as **Exhibit [A-2]** that generally depicts and describes the Parcels, Allowed Uses, Vested Density, volumetrics, elevations, parking and structured parking, pedestrian paths and walkways, parks, gardens, and public areas, and other configuration and development details for the Mixed Use Project. The Master Plan is a general layout of uses. In connection with or prior to the approval of each Final Site Plan, Developer will update the Master Plan for submittal to the Director for approval.

“**Mixed Use Project**” means the development on the PC Junction Property. Any time the term the “Mixed Use Project” is used in this Amended DA it refers only to rights and obligations with respect to the PC Junction Property and not any rights or obligations with respect any other portion of the Research Park Property.

“**Neighborhood Plan**” means the provisions of the 2019 Snyderville Basin General Plan Amendment specific to the Kimball Junction Neighborhood adopted by Summit County on June 15, 2019.

“**Open Space**” means land which is unoccupied or unobstructed by any above ground buildings including, slope areas, landscaped areas, or strips of land between buildings and between paved parking areas and access lanes, areas left or replanted in natural vegetation, setback areas that are not used for actual parking and other similar open and unobstructed areas.

“**Parcel(s)**” means specific portions of the PC Junction Property upon which development is to occur that are created and legally described through filing a Plat and Final Site Plan and upon approval, recording with the Summit County Recorder.

“**PC Junction Property**” means approximately 58 acres of land and appurtenant real property rights located in Summit County, Utah, the legal description of which land is shown in **Exhibit [A-1]** to this Amended DA.

“**Phase I Entitlements**” has the meaning set forth in Section [2.4].

“**Phase I Height Allowances**” means the maximum height of buildings for the Phase I Parcel as shown on and described on **Exhibit [A-11]**.

“**Phase I Property**” means that Parcel described on **Exhibit [A-12]**.

“**Phase I Master Plan**” means the Master Plan referenced in Section [1.3.1] and attached as **Exhibit [A-2]**.

“**Phase I Vested Density**” means that portion of the Vested Density of the Mixed Use Project attributable to the Phase I Property.

“**Planning Commission**” means the Snyderville Basin Planning Commission.

“**Plat(s)**” means a final subdivision plat as described and contemplated in Chapter 3 of the Code.

“**Project Area(s)**” means a subset of the Mixed Use Project to be developed upon one or more Parcels.

“**Public Facilities**” means the arterial and access roads and the other public infrastructure or public service facilities serving the PC Junction Property.

“**Remaining undeveloped land within the PC Junction Property**” has the meaning set forth in Section [6.3.2.2].

“**Residential Unit(s)**” means generally a dwelling unit that may be rented and/or sold. Residential Units in the Mixed Use Project are comprised of Market Rate Units (see definition above) and Workforce Housing Units (see definition below).

“**Sketch Plan**” means a sketch preparatory to an application for Final Site Plan review and consideration by the County. The Sketch Plan is intended to contain sufficient information, in graphic and text form, to adequately describe Developer’s intentions with regard to site layout and compliance with this Amended DA. The requirements of the Sketch Plan are set forth in the Code.

“**Staff**” means the planning staff of Summit County, State of Utah.

“**Substantial Amendment**” has the meaning set forth in Section [1.11].

“**Traffic Mitigation Plan**” means the traffic mitigation measures that Developer will complete in phases as part of the development of the Mixed Use Project as more particularly described in Section [3.2.6] and more particularly described in **Exhibit [A-5]**.

“**Transit Facilities**” means the Transit Facilities which have been or will be constructed by the County on Lot 6 (Summit County Tax Parcel ID No. PCTC-6-X).

“**Vesting Date**” has the meaning set forth in Section [2.2.1].

“**Vested Density**” means the density vested by this Amended DA for the Mixed Use Project and referenced in Section [2.2.1] herein (including the existing Skullcandy Building containing approximately 45,000 square feet, which is part of the PC Junction Property), which the Parties acknowledge and agree is a maximum of 1,720,000 square feet of gross building area for the Allowed Uses. As of the Effective Date, the Vested Density is allocated to the following “product types”:

Product Type	Square Feet
Existing Skullcandy Office Building	45,000
Additional Office (in addition to Skullcandy Office Building)	160,000 (including 85,000 +/- building and parking for the Phase I Property)
Residential Units (1100 total units)	1,364,000
Commercial / Retail	31,000
Hotel ¹	120,000
Total	1,720,000

Vested Density includes the right to build up to 1,100 Residential Units. Vested Density is calculated as the gross building area measured in square feet within each building completed within each Parcel. The referenced square footage does not include, parking, subterranean space, roof top patios, common areas, sitting areas, decks, and similar space.

“**Waterfall Provision(s)**” shall mean a provision within the Housing Agreement(s), which details the methods of tenant qualification for Workforce Housing Units, and which generally gives priority to prospective tenants that are employed or work within Summit County.

“**Workforce Housing Units**” means those 336 Residential Units described in Section [3.3.2] below which are subject to the Housing Agreements and Deed Restrictions and consist only of primary residences which are to be rented or leased but not sold.

NOW THEREFORE SUMMIT COUNTY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

¹ Hotel as defined in Code §10-11-1 means “An establishment containing sleeping rooms for the temporary occupancy of guests. Accessory facilities may include a lobby, meeting rooms, recreation facilities, group dining facilities and/or other facilities or activities customarily associated with hotels, but not including lockouts or boarding houses.”

**SECTION 1
APPROVED USE, DENSITY, GENERAL CONFIGURATION AND DEVELOPMENT
STANDARDS AFFECTING THE MIXED USE PROJECT**

1.1 **Legal Description of PC Junction Property; Effect of Original DA.** The legal description of the PC Junction Property is attached hereto as **Exhibit [A-1]**. Except as contemplated by Section [1.3.3] below with respect to adjustments to the boundaries of the PC Junction Property, no other property may be added to the legal description of the Mixed Use Project for purposes of this Amended DA, except by written amendment. Except as expressly set forth herein, this Amended DA shall not affect any land other than the PC Junction Property. The property upon which the Visitors Center Building is located, and any other real property encompassed within the Research Park Property, excluding the PC Junction Property shall remain subject to the Original DA, which remains in full force and effect. This Amended DA supersedes in its entirety the Original DA as to the PC Junction Property and therefore as to the PC Junction Property, the Original DA is of no further force or effect.

1.2 **General Description of the DPRE Mixed Use Project.** The Mixed Use Project covered by this Amended DA consists of approximately 58 acres of land located generally nearby and to the south of the existing commercial development with the Kimball Junction Area and west of SR 224. The Mixed Use Project incorporates uses of the type allowed by the Use Table described in Section [1.6] and complies with the General Plan and the Neighborhood Plan.

1.3 **Development Configuration of the Mixed Use Project.**

1.3.1 **Master Plan.** The development configuration of the Mixed Use Project shall be consistent with and subject to the Master Plan and designations that are shown generally in **Exhibit [A-2]**.

1.3.2 **Parcels and Roads.** The Master Plan reflects the proposed general location and configuration of certain uses and project configurations and the major access and circulation roads serving the Mixed Use Project. The exact locations and legal descriptions for the Parcels are not required to be provided in connection with the approval of this Amended DA. The exact locations and legal descriptions for specific Parcels shall be specified initially by Developer at the time Developer proposes the approval of a specific Project Area site plan. All such specific legal descriptions are subject to the review and reasonable approval and adjustment by the Director as a part of site plan approval processes for specific Project Areas, provided, however, that such reasonable approvals and adjustments shall be consistent with the "Development Standards" and the vested rights of Developer set forth in this Amended DA. Developer may propose a Parcel and Project Area consisting of more than one building as a part of a single site plan process and thereafter seek Building Permits with respect to such buildings within the Parcel on a phased basis.

1.3.3 **PC Junction Property Boundary Adjustment.** The County is the owner of certain open space land located adjacent and generally to the south of the Mixed Use Project, which was acquired in a transaction with Developer's or its predecessors. The County acknowledges that the common boundary between the Mixed Use Project and the adjacent open space was established based on preliminary planning of the original Research Park and that minor adjustments to the common boundary of the Mixed Use Project and the County open space may

be appropriate to accommodate the final development configuration for Parcels, the proposed locations for buildings, roadways and other improvements within Parcels and considerations related to seismic risk, geotechnical factor, soil conditions and topography; provided that the boundary adjustment results in an even exchange of acreage between Developer and the County. The County agrees that any such boundary adjustment may be proposed by either Party at the time Developer or Developer's successor proposes the approval of a specific Project Area. The proposed boundary adjustment shall be subject to approval and minor adjustment by the Director as a part of subdivision approval processes for specific Project Areas, or as a part of a separate lot line adjustment process under the provisions of Section 10-3-16 of the Code, provided, however that such approvals and minor adjustments shall be consistent with the Development Standards and the vested rights of Developer set forth in this Amended DA. Upon completion of any boundary adjustment, the definition of "**PC Junction Property**" and the legal description of the Property shall be deemed modified to refer to the PC Junction Property after the completion of the boundary adjustment, and the Master Plan shall be deemed amended to conform to the revised description of the PC Junction Property without a formal amendment to the underlying Master Plan or this Amended DA.

1.3.4 **Land Use Modifications.** Developer shall generally develop the PC Junction Property in accordance with the land uses and configurations shown in the Master Plan. Modifications to the location and size of Parcels at the time specific Parcels are proposed for platting and development may be permitted if necessary to achieve the purposes set forth below. Developer and the County agree that any such modifications proposed will be deemed Administrative Amendments and will generally be necessary to achieve one or more of the following purposes: (i) to assure that the uses and development is occurring on land appropriate for development, (ii) to preserve as Open Space land that is not appropriate for development due to soils or environmental conditions, (iii) to allow the construction of roads to serve the subject PC Junction Property or Parcels in accordance with the Development Standards, (iv) to refine the proposed boundaries of the Parcels based on the specific use and configuration of the Parcels or adjacent Parcels, (v) required because of the use, configuration or other factors relating to a previously approved Final Site Plan, (vi) necessary to qualify for a proposed Housing and Transit Reinvestments Zone, or (vii) necessary to qualify for development financing.

1.4 **General Description of the Mixed Use Projects.** The Mixed Use Project covered by this Amended DA is intended to be developed into the configuration and uses as are generally described in Section [1.6] of this Amended DA and shown on the Master Plan. The Mixed Use Project will be developed in Parcels, each of which may consist of one or more specific real estate products addressing one or more segments of the real estate market of Allowed Uses, which development on such Parcel(s) shall be referred to as a Project Area. This Amended DA may include general descriptions of the uses contemplated for the various Project Areas, references to specific types of real estate products and suggested locations for Projects as shown on **Exhibit [A-2]**. Unless expressly set forth elsewhere in this Amended DA, any such descriptions or references shall not limit the description or nature of any Project Area that may be proposed for an approved Parcel and shall not limit the particular mix of real estate products that can be included within a Project Area consistent with the allowed uses.

1.5 **Approved Use; Density and Configuration.** This Amended DA shall, subject to the conditions and requirements of this Amended DA, vest in the manner and to the extent provided in Section [2.2] with respect to the Mixed Use Project as to each of the following:

1.5.1 Uses, pursuant to Section [1.6] of this Amended DA.

1.5.2 Densities, configuration, and massing, which are generally shown in a conceptual fashion in the Master Plan attached as **Exhibit [A-2]** and permitted by other provisions of this Amended DA including, without limitation, the density or intensity of development allowed within the development envelope created within a Parcel consistent with any height limitations, Open Space requirements or other Development Standards.

1.5.3 Architectural Design Standards, pursuant to **Exhibit [A-9]** of this Amended DA.

1.5.4 Development standards, environmental criteria, Open Space, water, sewer, fire protection (including special standards as may be needed to protect parking structures in mixed use structures), parking, transit, transportation, utilities, snow removal, parks, trails, landscaping, lighting, road placements and designs (including the size of the road), road grades, road curbs, cuts and connections, and other development requirements and improvements pursuant to Utah Code, the Code, and **Exhibits [A-4]** (Height Regulations), and **[A-9]** (Architectural Design Standards).

1.5.5 Subdivision, site plan, plat, and other approval processes, pursuant to Section [4.5] through [4.9] and Chapter 3 of the Code.

1.5.6 Height limitations and methods of calculation of height pursuant to **Exhibit [A-4]**.

1.5.7 Community Commercial Zone District designation pursuant to Summit County Ordinance 706 adopted December 10, 2008.

1.5.8 Workforce and Moderate Income Housing Provisions pursuant to [3.3.2] of this Amended DA.

1.5.9 Development Improvements requirements pursuant to Code.

1.6 **Allowed Uses.** Allowed Uses includes all “allowed, low impact permit, conditional, and temporary uses” authorized in the Use Table of Section 10-2-10 of the Code as of the Effective Date, subject only to the requirements and limitations of this Amended DA. Notwithstanding the foregoing and the provisions of the Use Table of Code Section 10-2-10, the following uses are deemed allowed uses (as defined by Section 10-11-1 of the Code): Dwelling unit, multi-family; Dwelling unit, single-family attached; Healthcare facilities; Hospitals; Home based businesses, Class 1; Home based businesses, Class 2; Hotel, motel or inn with fewer than 16 rooms; Hotel, motel or inn with 16 or more rooms; Mobile food court; Offices, general; Offices, intensive; Offices, medical and dental; Offices, moderate; Recreation and athletic facilities, commercial; Childcare 16 or more children; Art space with limited public performance; Recreation, public; Resort lifts, new; and Resort lifts, replacement. In addition, notwithstanding

the foregoing and the provisions of the Use Table of Code Section 10-2-10, the following uses in the Use Table are prohibited: Adult/Sex oriented facilities and businesses; Automotive sales; and Cemetery. In addition, a “retail tobacco specialty business” (as defined in Utah Code §17-50-333(1)(h)), is deemed prohibited because of the proximity to the Summit County Library. Uses not otherwise included in the Use Table are prohibited. Review of the Allowed Uses shall follow the process set forth for a Final Site Plan under Code §10-3-15 and as described in Section [4.6] below.

1.7 **Approval of Final Site Plans.** Within each Project Area, Parcels and individual building pads for buildings and structures within a Parcel shall be approved pursuant to a Final Site Plan. Section [4.5] of this Amended DA sets forth a process for approval of specific site plans within the Mixed Use Project.

1.8 **Building Permit Required.** Prior to the commencement of development activity on any lot or Parcel designated on a Final Site Plan, or before the commencement of construction on any structure authorized in this Amended DA, a Building Permit must be obtained from the County in accordance with all applicable requirements of the Code. Notwithstanding the foregoing, as provided in Sections [3.2 and 4.2] Developer may apply for, and if compliant with the Code the Staff will reasonably approve, one or more Development Permits allowing for grading and the installation and development of roads, utilities, and other “horizontal” improvements within the PC Junction Property prior to the issuance of a Building Permit.

1.9 **Conflicts.**

1.9.1 To the extent there is any ambiguity in or conflict with the provisions of this Amended DA, the more specific provision or language shall take precedence over more general provisions or language.

1.9.2 The County has reviewed the Code, General Plan, the Original DA, and Rezone Ordinance and has determined that Developer has substantially complied with the provisions thereof and hereby finds that the Mixed Use Project is consistent with the purpose and intent of the relevant provisions of the Snyderville Basin Development Code and General Plan and the Community Commercial Zone. The parties further agree that the omission of a limitation or restriction herein shall not relieve Developer of the necessity of complying with all applicable County Ordinances and Resolutions not in conflict with the provisions of this Amended DA, along with all applicable state and federal laws.

1.10 **Amendments.**

1.10.1 **Substantial Amendments.** Any amendment to this Amended DA that alters or modifies the Term, the Allowed Uses, or the approved density, or results in a material increase in the intensity of use, that may be constructed consistent with (i) the applicable development standards and Architectural Design Standards (defined below) and the other Development Standards set forth in the Exhibits hereto; (ii) unless otherwise addressed in this Amended DA, a substantive change to the text of this Amended DA as reasonably determined by the Director; (iii) the requirement of any material amenity described herein that is available to the public; (iv) provisions for reservation and dedication of substantial portions of land; or (v) a

substantive change to the provisions of this Amended DA or any approved mechanism that imposes financial obligations on Developer or the property owners within Project (including a substantive increase in the assessments through any association of owners within the Mixed Use Project) shall be deemed a “Substantial Amendment” and shall require a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by the County Council prior to the execution of such an amendment. The conversion of density contemplated by Section [3.3.6], if elected by Developer, shall for all purposes be deemed Administrative Amendments.

1.10.2 **Administrative Amendments.** Unless otherwise provided by law, all amendments to this Amended DA that are not Substantial Amendments shall be deemed “**Administrative Amendments**” and, when approved, shall be approved and executed without a noticed public hearing, recommendation by the Planning Commission or action by the County Council. The County Council hereby designates the Director as the authorized administrative authority and empower that official to make all final Administrative Amendment decisions. Administrative Amendments may be reflected in a written approval or formal written amendment to this Amended DA. In any event, Administrative Amendments will be deemed approved upon the issuance of the applicable building permit if not covered by a specific, separate approval or a written amendment to this Amended DA.

1.10.3 **Effect of Amendment.** Any amendment to this Amended DA shall be operative only as to those specific portions of this Amended DA expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption.

SECTION 2 SUMMARY OF COUNTY DETERMINATIONS RELATING TO THE MIXED USE PROJECT

The County Council, acting in its legislative capacity, has made the following determinations with respect to the Mixed Use Project, including all findings of fact and law as are necessary to make each of the following determinations:

2.1 County Approvals Relating to the Mixed Use Project.

2.1.1 **Applications.** Developer submitted an appropriate application for the approval of this Amended DA to authorize and regulate the Mixed Use Project.

2.1.2 **Approval Process.** Following lawfully advertised public hearings before the Snyderville Basin Planning Commission on June 23, 2020, July 28, 2020, August 11, 2020, and August 25, 2020, the Application to Amend Exhibit C (Use Chart) of the Original DA received a negative recommendation by Motion of the Planning Commission taken on September 8, 2020, with a 5-2 vote. The matter thereafter came before the County Council who held lawfully advertised public hearings on January 11, 2021, and **October 27, 2021** and considered and deliberated regarding the matter at appropriately noticed public meetings on October 7th and 14th, 2020, November 9th and 16th, 2020, December 9, 2020, January 27, 2021, February 24, 2021, and **October 27, 2021**. The County Council thereafter approved the Mixed Use

Project on **November 3, 2021**, under the processes and procedures set forth in the Code and General Plan. With respect to the terms and conditions of approval, the County Council made such findings of fact and conclusions of law as are required as a condition to the approvals, as reflected in the staff recommendation and adopted with any modifications, as reflected in the minutes of the above referenced public meetings, and as reflected by the other enumerated findings herein.

2.1.3 **Compliance With Requirements.** The following is an analysis of the Mixed Use Project's compliance with the requirements of the General Plan and the Code that was utilized by the County Council in making its final approval of the Amendment Application.

2.1.3.1 **Community Commercial Zone District.** The Community Commercial (CC) Zone provisions, are met by the Mixed Use Project, as reflected in and to be regulated by this Amended DA.

2.1.3.2 **Development Agreement Approval Requirements.** The following requirements of Section 10-3-18 of the Code are met, which constitute all of the requirements for the approval of this Amended DA:

2.1.3.2.1 This Amended DA has been reviewed and considered in accordance with the provisions of Section 10-3-18 of the Code and meets all applicable requirements of that Section.

2.1.3.2.2 This Amended DA includes the written consent of each landowner whose properties are included within the boundaries of the Property.

2.1.3.2.3 This Amended DA advances policies, implements goals and achieves other desired results not generally available under the other implementation strategies of the County. The elements of the Mixed Use Project proposal that satisfy this requirement include the following:

(A) The Mixed Use Project will create tax and other revenue options not generally available to the County that will substantially enhance and advance the much needed transportation, traffic, and transit improvements to the Kimball Junction Neighborhood of Summit County consistent with the goals and policies of the General Plan and of the County generally.

(B) The Mixed Use Project will develop needed Workforce Housing for Summit County residents and those working in Summit County.

(C) This Amended DA assures that the Mixed Use Project will have a positive fiscal impact on Summit County by enhancing the County's property tax base and the development of employment opportunities for Summit County residents.

2.1.3.2.4 The Mixed Use Project as reflected in and conditioned by the terms and conditions of this Amended DA, is in conformity and compliance with the General Plan, the Kimball Junction Neighborhood Plan, any existing capital improvements programs, the provisions of the Code (including concurrency and infrastructure requirements), and all other development requirements of the County.

2.1.3.2.5 Developer has committed to comply with all appropriate concurrency and infrastructure requirements of the Code, and all appropriate criteria and standards described in this Amended DA.

2.1.3.2.6 The Mixed Use Project meets or exceeds development quality and aesthetic objectives of the General Plan and the Code, is consistent with the goal of orderly growth in the Snyderville Basin, and minimizes construction impacts on public infrastructure within the Snyderville Basin.

2.1.3.2.7 The proposed development reasonably assures life and property within the Snyderville Basin and the community is protected from any adverse impact of this development.

2.1.3.2.8 This Amended DA is consistent with the Community Commercial Zone.

2.1.3.2.9 The Mixed Use Project is consistent with the findings required in Code for approval.

2.1.4 **Approval Motions.**

2.1.4.1 The prior Motion and approval of the rezone to Community Commercial on December 10, 2008, through Ordinance 706 remains in effect.

2.1.4.2 **Motion for Approval of Amended DA for the Mixed Use Project.** The County Council, found that this Amended DA meets all applicable requirements of the Code for a development agreement that would authorize and regulate the Mixed Use Project and approved this Amended DA for the Mixed Use Project for the purposes of allowing the development of the proposed Mixed Use Project as permitted by the General Plan and the Code on the terms and conditions incorporated into this Amended DA.

2.1.4.3 **Designated County Planning Official.** The designated County planning official that is designated to interpret this Amended DA, determine Administrative Amendments and to otherwise administer certain provisions of this Amended DA is the Director, as that position is filled from time to time. The County may designate another person or the holder of another position by separate resolution of the County Council without a required amendment to this Amended DA.

2.2 **Vested Rights and Reserved Legislative Powers.**

2.2.1 **Vested Rights and Vested Projects.** Subject to Section [2.2.2], as of the effective date of the Original DA, Developer has the vested right to develop and construct the Mixed Use Project, to develop and construct specific Project Areas within the Parcels and to develop and construct necessary infrastructure and other improvements in accordance with the uses, densities or intensities permitted to be constructed consistent with the application of the other provisions of this Amended DA. Further, subject to Section [2.2.2], Developer shall have the right to have subdivision and other development or construction applications for Project Areas within the Mixed Use Project processed and approved in accordance with the procedures and standards

set forth in this Amended DA and the Code. Any such Project Areas so approved shall be deemed vested in accordance with this Section as of the effective date of the Original DA.

2.2.2 **Compelling, Countervailing Public Interest.** Nothing in this Amended DA shall limit the future exercise of the police power of the County in enacting generally applicable Land Use Laws after the Effective Date. Notwithstanding the retained power of the County to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights described in Section [2.2.1] based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. (*Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980) or successor case and statutory law). Any such proposed change affecting the vested rights of the Mixed Use Project, or any Project Area shall be of general application to all development activity in Summit County; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Mixed Use Project or any Project under the compelling, countervailing public policy exception to the vested rights doctrine. The regulations, ordinances, policies, and plans governing the permitted uses, densities or intensities permitted to be constructed consistent with the other provisions of this Amended DA shall be the terms and conditions of this Amended DA, and those Land Use Laws in effect on the Effective Date that are not inconsistent with the terms and conditions of this Amended DA.

2.2.3 **Duration.** The term of this Amended DA shall commence on the Effective Date and shall extend for a period of twenty-five (25) years thereafter unless this Amended DA is earlier terminated as provided herein or modified by written amendment signed and duly adopted by the Parties (the “**Term**”).

2.2.4 **Governing Land Use Laws.** The respective rights of the parties in the event the County seeks to apply or enforce Land Use Laws to the Mixed Use Project in a manner that is inconsistent with the terms and conditions of this Amended DA shall be governed by then existing state and federal land use case law and statutes.

2.3 Fees and Exactions.

2.3.1 **Development Application and Review Fees.** Developer has paid all application and review fees for the approval of this Amended DA. No further fees or engineering expenses shall be charged to Developer for the review and approval of this Amended DA. Except as provided in Section [2.3.1.1], all application and review fees for the Architectural Design Guidelines, Low Impact Permits, Sketch Plans, Building Permits, Plats and Final Site Plans for each phase of the Mixed Use Project and each Project Area shall be paid at the time of application for any such approval.

2.3.1.1 **Workforce Housing Fee Waivers.** The County hereby waives all fees, including application, review, planning, building, engineering, and permit fees, for approval and development of all Workforce Housing Units within the Mixed Use Project which Developer would otherwise be required to pay under the Code. This waiver does not include any applicable impact fees.

2.3.2 **Plan Engineering Review Fees.** The County shall have the right to charge and collect such standard engineering review fees for Final or amended Final Site Plans, development, or construction approvals for the Mixed Use Project or a Project Area as are generally applicable on a non-discriminatory basis at the time of application for any such approval.

2.3.3 **Other Fees.** Except for the Workforce Housing Fee Waiver provided for in Section [2.3.1.1] herein above, the County may charge other fees that are generally applicable, including but not limited to standard Building Permit review fees for improvements to be constructed on improved parcels.

2.3.4 **Impact Fees.** Developer agrees that the Mixed Use Project shall be subject to all impact fees, including but not limited to the Transportation Impact Fee, which are (1) imposed at the time of issuance of Building Permits, and (2) generally applicable to other property in the Snyderville Basin; and Developer waives its position with respect to any vested rights to the imposition of such fees (to include the Transportation Impact Fee), but shall be entitled to similar treatment afforded other vested projects if the impact fee ordinance makes any such distinction. If fees are properly imposed under the preceding tests, the fees shall be payable in accordance with the payment requirements of the particular impact fee ordinance and implementing resolution. Notwithstanding the agreement of Developer to subject the Mixed Use Project to impact fees under the above-stated conditions, Developer does not waive Developer's rights under any applicable law to challenge the reasonableness of the amount of the fees within the time frame(s) set forth in Utah Code §11-36a-702.

2.3.4.1 **Impact Fee Credits.** With the acquisition of the PC Junction Property, Developer also acquired the rights to a credit for 805.45 trips toward any Transportation Impact fee. This credit was generated by (i) the construction of the major spine road (Tech Center Drive) contemplated in Section [3.2.1] of the Original DA for a total of 661.38 trip credits; and (ii) the transfer of real property to the County contemplated in Section [3.3.1] of the Original DA for a total of 259.82 trip credits. Developer's predecessor used 49.6 trip credits with the construction of the Visitor Center Building, and 66.15 trip credits with the construction of the Skullcandy Building leaving a remainder of [805.45 trip] credits. The transfer of those credits to Developer was approved by the County through that certain Assignment of Transportation Impact Fee Credits dated December 6, 2018. As of the Effective Date, the impact fee credit is \$1,924.38 per trip (total [\$1,549,991.87]).

2.3.5 **Rough Proportionality Test.** For purposes of this Amended DA, the "**Rough Proportionality Test**" means and refers to a standard of reasonableness whereby the PC Junction Property shall not bear more than an equitable share of the capital costs financed by an impact fee or exaction in relation to the benefits conferred on and impacts of the Mixed Use Project. The interpretation of "rough proportionality" shall be governed by the federal or Utah case law and statutes in effect at the time of any challenge to an impact fee or exaction imposed as provided herein including, but not limited to, the standards of Utah Code § 10-9a-508(1), and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and cases arising therefrom including *B.A.M. Development, LLC v. Salt Lake County*, 2008 UT 74, or its successor case law. The Parties agree that the mitigations, amenities, and benefits required of and provided by Developer in this Amended DA shall meet the Rough Proportionality Test.

2.4 **Phase I Development.** That portion of the Mixed Use Project described on **Exhibit [A-12]** (“**Phase I Property**”) has all utilities, roadways, and other essential project infrastructure contemplated by Section [3.2] and otherwise necessary to allow development to occur as of the Effective Date. Notwithstanding any provision of this Amended DA to the contrary, from and after the Effective Date Developer may proceed with development of the Phase I Property as follows (“**Phase I Entitlements**”):

2.4.1 **Development Standards.** Upon approval of the Architectural Design Standards, the Phase I Vested Density may be developed on the Phase I Property pursuant to the configuration and massing shown in a conceptual fashion on Phase I Master Plan attached as **Exhibit [A-13]**, subject to the Phase I Height Limitations, with parking allowed at a ratio of up to five (5) parking stalls for every 1,000 square feet of building area, and otherwise in accordance with the requirements of Sections [1.5.1], [1.5.3], [1.5.4], [1.5.5], [1.5.7], [1.5.8], and [1.5.10]. Prior to development, Developer will submit a Final Site Plan and Plat for review and approval in accordance with Sections [4.5] and [4.7]. Developer may update the Phase I Master Plan for review and approval by the Director. The County will reasonably cooperate with Developer in providing access or cross-access to the Phase I Property and other property owned by the County.

2.4.2 **Amendment to Original DA.** To the extent this Amended DA is terminated pursuant to Section [6.3], the provisions of this Section [2.4], together with any other provisions necessary to interpret this Section [2.4] or to implement the development of the Phase I Property pursuant to this Section [2.4], will survive the termination as an Administrative Amendment to the Original DA and the Parties will immediately draft, sign and record a written amendment to the Original DA implementing the provisions of this Section [2.4].

SECTION 3 SPECIFIC PROJECT REQUIREMENTS AND AMENITIES

3.1 **Project Documents.**

3.1.1 **DPRE Declaration.** Developer shall implement a common plan of development throughout the Mixed Use Project as reflected in a Declaration of Covenants, Conditions and Restrictions (the “**DPRE Declaration**”). The DPRE Declaration shall be adopted and applied to the entire DPRE Mixed Use Project on or before the recordation of the first Final Site Plan within the Mixed Use Project. The DPRE Declaration shall contain provisions authorizing a master association of owners within the Mixed Use Project (the “**Master Association**”) to impose assessments on the owners within Project for the operation, maintenance, repair, and replacement of common private elements within the Mixed Use Project benefiting the owners and users of property within the Mixed Use Project. The DPRE Declaration shall also authorize the collection of fees to offset specific costs of the Master Association including without limitation design review, construction management and road damage costs resulting from construction activities of property owners. The DPRE Declaration, the Articles of Incorporation and the Bylaws shall be submitted to the Director for review and comment in connection with the approval of the first Final Site Plan within the Mixed Use Project. Notwithstanding any inconsistent provision in this Amended DA to the contrary, Developer and the Master Association shall be obligated to establish, implement and enforce the covenants, assessment procedures, Master Association operation and maintenance requirements relating to the common elements of

the Mixed Use Project and the Architectural Design Standards, and any owners of property within the Mixed Use Project shall look solely to Developer and the Master Association, and not the County, for the establishment, implementation and enforcement of any such requirements.

3.1.2 **Architectural Design Standards.** The development of the Mixed Use Project must be consistent with those Architectural Design Standards adopted and approved as set forth in Section [4.6] of this Amended DA, which provides a process for obtaining approval of the master Architectural Design Standards as an Administrative Amendment. Once approved, the Architectural Design Standards shall be inserted into this Amended DA as **Exhibit [A-9]** and shall replace any previously adopted Architectural Design Standards under the Original DA and be binding upon all parties to this Amended DA. Developer shall have completed and received approval for the Architectural Design Standards prior to any application for the first Parcel or Project Area.

3.2 **Essential Project Infrastructure.** If not otherwise completed, Developer and the County agree to design and obtain all necessary approvals and construct the infrastructure necessary for the operation of Project as provided in the following subsections of this Section [3.2].

3.2.1 **Internal Roads and Secondary Access.** The spine road known as Tech Center Drive and connection to Overland Drive have been constructed, dedicated to, and accepted by Summit County in accordance with County standards and Section [3.2.1] of the Original DA. As set forth in Section [2.3.4.1] above, a credit of [661.38 trips] against the Transportation Impact fees was granted to Developer by the County.

3.2.1.1 Developer shall construct or cause to be constructed any roads and secondary access not otherwise constructed which are necessary to serve a Project Area in connection with the development and improvement of each subsequent Final Site Plan.

3.2.1.2 As part of the traffic mitigation measures, Developer shall construct the road described in **Exhibit [A-5]** which connects the southern boundary of the Mixed Use Project to the western portion of the Olympic Parkway roundabout. Construction and completion of this road shall be required prior receiving the first certificate of occupancy for a Phase II project under this Amended DA.

3.2.2 **Water, Fire Flow and Public Safety.** Developer has selected Summit Water Distribution Company as its water service provider. Developer shall have (i) acquired all water shares in Summit Water Distribution Company sufficient to meet the culinary and irrigation requirements for the Mixed Use Project, and (ii) designed and obtained all necessary approvals for the construction and operation of water systems with sufficient fire flow and storage to meet the culinary, irrigation and public safety standards for development in accordance with the Development Standards. Developer shall be required to comply with the County's Water Concurrence Ordinance, as amended, in connection with the issuance of all Building Permits.

3.2.2.1 **Water Quality and Conservation Measures.** Consistent with the sustainability requirements of Section [3.3.5] and **Exhibit [A-3]**, water conservation measures (including but not limited to outdoor irrigation) shall be built into the design and operation of the Mixed Use Project, including the use of water conserving fixtures, drought tolerant

plant species, the minimization of irrigated area and the limited use of turf grass. Developer has further agreed to infiltrate or reinfiltrate surface water as created by the Mixed Use Project Area's impervious surface by use of (i) permeable surfaces in strategic locations and bioretention; (ii) sand and tree filters; (iii) underground filtration and rain gardens; and (iv) vegetated buffers and natural stormwater channels and retention areas, as applicable and appropriate, as part of its sustainable landscape plans and water quality and conservation measures. Developer shall minimize the use of turf grasses and shall use drip irrigation systems using moisture control sensors. Plant materials shall be subject to and conform to the Utah State University Summit County Plant List.

3.2.3 **Other Infrastructure.** In connection with or prior to the approval of the next Final Site Plan within the Mixed Use Project, Developer shall have designed and obtained all necessary approvals for the construction and operation of any other onsite and any necessary offsite utility infrastructure with sufficient capacity to meet the requirements of the next phase of development. Developer shall thereafter construct or cause to be constructed any such other utility infrastructure necessary to serve a Project in connection with the development and improvement of each subsequent Final Site Plan.

3.2.4 **Drainage and Flood Control.** Drainage and flood control facilities or infrastructure not already constructed, shall be constructed by Developer as a part of completion of other major facilities and development of the Mixed Use Project in accordance with the County and State Storm Water permits and requirements. Developer shall not be required to accommodate additional storm water drainage caused by development of any adjoining lands outside of the Research Park Property. Major infrastructure and retention facilities, where appropriate, will be dedicated to the County upon completion. Drainage and flood control maintenance (e.g. major channel maintenance, etc.) shall be provided by the County and/or Developer, as appropriate. **[NTD: County to provide more specificity regarding what facilities will need to be dedicated and maintained by the County.]**

3.2.5 **Traffic Mitigation.** With the changes in Allowed Uses granted in this Amended DA, Developer has agreed to implement certain traffic control measures necessary to mitigate the impacts of the Mixed Use Project, and to generally improve the flow of traffic in the Kimball Junction Neighborhood, which measures are set forth in **Exhibit [A-5]** of this Amended DA. Developer shall construct and implement the traffic measures with the development of Phase II (as defined in **Exhibit [A-10]**) or as otherwise set forth in **Exhibit [A-5]** and shall cooperate with the County and UDOT to support and implement the UDOT Project (defined below), including, if necessary, dedicating de minimis portions of the PC Junction Property for rights-of-way required to complete the UDOT Project, provided that the dedications will not reduce the Vested Density or require the relocation of any improvements shown on the Master Plan.

3.2.6 **Reimbursements.** To the extent that Developer is required by the County to construct improvements of any kind within or outside of the PC Junction Property that are properly classified as "system improvements" pursuant to the Utah Impact Fees Act, including but not limited to oversizing of facilities, Developer and the County will enter into such reimbursement agreements as are necessary for Developer to be reimbursed for the costs associated with constructing such improvements.

3.3 **Other Project Requirements.** The Parties hereby agree that the following additional provisions relating to the development and operation of the Original DA are also applicable to the Mixed Use Project and have been met or not met as provided below:

3.3.1 **Land Conveyance for County Building and Transit Facilities.** The Parties hereby stipulate that Developer or its predecessor have fully complied with the requirement pursuant to Section [3.3.1] of the Original DA, to convey to the County two parcels of land sufficient for the County's purposes; namely, (a) a County Office Building, which is a mirror image of the existing Richins Building; said parcel shall not exceed 5 acres (but may be smaller based on topography, layout and the application of shared parking principles); and (b) a regional bus depot/transit center/visitors center serving the Kimball Junction area (the "**Transit Facilities**") not to exceed 1.5 acres was substantially complied with. A quitclaim deed transferring all of Lot 6 of the Park City Tech Center Subdivision (approximately 2.93 acres) to Summit County to site the transit center and office building was recorded with the Summit County Recorder on February 8, 2011, as Entry No. 00916719. As recited in Section [2.3.4.1] above, the County has given Developer 259.82 trip credits for the value of the land donated for the Transit Facilities against Transportation Impact Fees based upon the value of the donated land not exceeding \$500,000.

3.3.2 **Market Rate Units; Moderate and Workforce Housing.** The Parties agree that the Moderate Income Housing obligation under the Original DA was completed and is in compliance with the terms of Section [3.3.3] of the Original DA. This Amended DA vests the right to develop both Market Rate Units and Workforce Housing Units. Except for 80 condominium units and 100 townhomes identified in the Master Plan, the Market Rate Units may not be converted into condominiums and sold individually. The 180 for sale townhome and/or condominium units may be used as secondary residence and may also be used for nightly or short-term rentals (less than 90 days). The remaining 584 market rate rental units may not be used as secondary residences and may not be used for nightly or short-term rentals. The Workforce Housing Units may not be converted to nightly or short-term rentals. As provided in Section [3.3.2] of this Amended DA, a Workforce Housing Unit shall not be used as a secondary residence, nor can it be sold, but rather, it shall remain in the rental pool for lease only. To meet that need the following requirements are hereby imposed as a condition of this Amended DA.

3.3.2.1 **Workforce Housing Units.** Developer and the County agree that as a part of the approved 1,100 Residential Units, Developer shall provide 336 "for rent only" Workforce Housing Units as set forth in the table below. The ratios of unit types shown in the following table are approximate and the final ratios of unit types within Base Units, Moderate Units, and Attainable Units will be determined as provided in Section [3.3.2.3.1] and in connection with the approval of the Final Site Plan for each Project Area. Because the County is committed to meeting the housing needs of those working within Summit County, subject to the terms of this Amended DA, Developer shall take commercially reasonable efforts to construct all 336 Workforce Housing Units in a manner that would allow the Deed Restriction and Waterfall provision within the Housing Agreement attached hereto as (**Exhibit [A-7]**) to contain restrictions specific to favoring those currently working in Summit County. If tax credit and other state or federal financing or federal regulations through the department of Housing and Urban Development (HUD) have restrictions that do not allow for the preferred Waterfall Provisions provided for in the form of Housing Agreement attached hereto as **Exhibit [A-7]**, then the Base and Moderate Units (as defined in the table below) shall be subject to the Workforce Housing

Agreement and restrictions set forth in **Exhibit [A-6]**. The Attainable Units shall remain subject to the Attainable Housing Agreement and restrictions, including the Waterfall Provision in as set forth in **Exhibit [A-7]**.

Type	Number	Target AMI	HUD average target
Base Units	55	30% to 50%	44% AMI
Studio units (400 sf) ²	5		
One bedroom (650 sf)	25		
Two bedrooms (900 sf)	22		
Three bedrooms (1150 sf)	3		
Moderate Units	201	40% to 80%	60% AMI
Studio units (400 sf)	20		
One bedroom (650 sf)	91		
Two bedrooms (900 sf)	80		
Three bedrooms (1150 sf)	10		
Attainable Units	80	100% to 120%	110% or less
Studio units (400 sf)	8		
One bedroom (650 sf)	36		
Two bedrooms (900 sf)	32		
Three bedrooms (1150 sf)	4		

3.3.2.2 Developer shall construct, allocate, and regulate Workforce Housing in accordance with the Buildout Phasing Plan and this Amended DA. Developer anticipates satisfying the Workforce Housing obligations in accordance with the Buildout Phasing Plan (**Exhibit [A-10]**) and otherwise imposed by this Amended DA through development of its own Residential Units. If other developers develop portions of the Mixed Use Project, those developers will satisfy the Workforce Housing obligations by entering into a separate Workforce Housing Agreement with the County or an entity approved by the County. Notwithstanding the foregoing, the obligation to provide Workforce Housing will remain at all times with developers. In the event of any conflict between a Workforce Housing Agreement and this Amended DA, the Workforce Housing Agreement will take precedent. Developer will compile an annual report specifying Workforce Housing completed within the Mixed Use Project during the previous year to allow the County to monitor Developer’s compliance with the Workforce Housing requirements and ensure the general integration into the Mixed Use Project.

3.3.2.3 Each Workforce Housing unit constructed within the Mixed Use Project will be subject to a Deed Restriction as provided herein, or by other mechanisms approved by the County to provide record notice of restrictions, rental rate restrictions, and other appropriate measures so as to ensure that the dwelling units are oriented toward persons employed in the County and remain affordable to those employed in the County, including sales beyond the original owner, pursuant to this Amended DA. It is the intent of Developer to initiate Workforce Housing in the Phase II of the development as described in **Exhibit [A-10]**. Developer will provide

² Represents minimum square footage required for each unit type per Summit County Code §10-5-4C.

an annual accounting to the Director detailing the number of Base, Moderate, and Attainable Residential Housing units supplied by Developer within the Mixed Use Project.

3.3.2.4 Developer shall ensure that the Workforce Housing Units are for rent only and not subject to resale and shall comply with the following standards consistent with the table in Section [3.3.2.1] above, to satisfy its obligation to provide Workforce Housing:

3.3.2.4.1 A variety of unit types will be provided with a mix of each unit type in each of the AMI bands described in Section [3.3.2.1]. The unit types will be allocated in approximately the following ratios: 10% studio units, 45% one-bedroom units, 40% two-bedroom units, and 5% three-bedroom units. With the approval of the Director, Developer may vary the ratio of unit types as and when necessary to comply with any applicable state and federal workforce and affordable housing development and financing requirements or opportunities, including as necessary to optimize financing applications and project scoring under the applicable requirements.

3.3.2.4.2 Developer shall provide “for rent” Workforce Housing Units for the purpose of satisfying its Workforce Housing obligations under this Amended DA and as set forth in the terms and conditions of the Housing Agreements and recorded Deed Restrictions. The Deed Restrictions will be approved by the Director prior to the issuance of Building Permits and upon recordation of the final Plat and/or Final Site Plan recorded against the Workforce Housing Units. The Deed Restrictions will be approved by the County prior to recordation of the Final Site Plan and/or the final Plat per Phase and will be effective upon the recording of each Plat of the Workforce Housing project(s) or Project Areas.

3.3.2.4.3 “For Rent” Workforce Housing units will satisfy the following requirements:

(A) As shown in the table in Section [3.3.2.1] above, the Base Units will be rented to households earning 30% to 50% AMI with an average AMI of approximately 44% or below (“**Category 1 Renter(s)**”) and rents will not exceed maximum rents for each income category as determined by Section 42 of the Internal Revenue Code as Multifamily Tax Subsidy Projects (MTSPs), including utilities for power, water, sewer, and gas or as directed by the Utah Housing Corporation from time-to-time. The Moderate Units will be rented to households earning between 40% and 80% AMI, as set forth in Paragraph [19(b)(i)] above (“**Category 2 Renter(s)**”) and rents will not exceed the maximum rents for each income category as determined by Utah Housing Corporation from time-to-time.

(B) As provided in the applicable Housing Agreement and in cooperation with the County, Developer will develop a leasing program consistent with the applicable Waterfall Provision that will provide a reasonable period of time given then current rental market demands (“**Leasing Window**”), not to exceed 30 days after the Rental Start Date (defined below), for the Attainable Workforce Housing Units as shown in the table of Paragraph [19(b)(i)] above (“**Category 3 Renter(s)**”) for the purpose of allowing Developer the opportunity to satisfy its Workforce Housing obligations under this Amended DA. The Attainable Units will be rented to households earning between 100% and 120% AMI, as set forth in Paragraph 19(b)(i) above (“**Category 3 Renter(s)**”) and rents will not exceed the

maximum rents for each income category as determined by the Summit County Housing Director and the AMI, including utilities for power, water, sewer, and gas. If a unit is not leased to a Category 3 Renter during the Leasing Window, that unit will be offered as provided under the applicable Waterfall Provision within the Attainable Housing Agreement but will remain subject to the Deed Restriction, as set forth herein, inclusive of the Waterfall Provision, as a Workforce Housing Unit. Nevertheless, that unit will still qualify as a Workforce Housing unit within the Mixed Use Project for purposes of satisfying the Mixed Use Project's total number of Attainable Units. When an Attainable Unit becomes available after the initial leasing after the Rental Start Date, that unit will only be included in the Attainable Unit lease program if that Workforce Housing unit is needed to satisfy the Mixed Use Project's total number of Workforce Housing Units. For the purpose of this Amended DA, the term "**Rental Start Date**" means the earlier of (i) the date a certificate of occupancy is issued for that unit; or (ii) the date each unit is placed on the rental market.

(C) Certain of the Workforce Housing Units may be developed as a standalone Project Areas. Workforce Housing Units that are incorporated into developments within Market Rate Units will be developed in a manner consistent with the character of the surrounding neighborhood and/or development and shall have the same general exterior design of the other similar Residential Units within that development. The interior finishes of the Workforce Housing Units may differ from but will be generally complementary with the interior finishes of the Market Rate Units, including different appliances and improvements. The specific location of the Workforce Housing Units will be determined and updated as part of the Master Plan.

(D) All rental agreements for Workforce Housing Units shall be for a minimum of 90 days and shall otherwise comply with the Housing Agreements.

(E) Additional requirements for qualifications of households leasing "for rent" Workforce Housing units, priorities, rights of first refusal and the like will be set forth in the Housing Agreements and Deed Restrictions.

(F) Nightly and short-term rentals (less than 90 days) are prohibited in Workforce Housing Units.

3.3.2.4.4 Developer may donate a lot, lots, parcels, or property to a County approved non-profit organization, who will construct the Workforce Housing Unit(s) consistent with this Amended DA, provided the non-profit organization consents in writing to such transfer. Developer will, at all times, be responsible for ensuring that the Workforce Housing Unit(s) required herein be built, whether by such non-profit organization or by itself. The consent of the County to allow a non-profit organization to build the Workforce Housing unit(s) does not relieve Developer of the responsibilities hereunder. Developer will convey the property by Special Warranty Deed free and clear of all financial encumbrances and, unless agreed to otherwise by Developer and the non-profit organization, present a construction ready lot brought to rough grade. Developer will provide a title insurance policy in the amount of the fair market value of the property showing that there are no liens or encumbrances against the property. At a minimum, Developer will provide a Phase I environmental assessment showing no conditions that

may adversely affect the property and shall pay or provide the non-profit organization with funds sufficient to pay all impact fees, special district, or recreation district fees. The property will have water available. All water shares, water impact fees and the like will be pre-paid by Developer.

3.3.2.4.5 As part of any property transfer, the non-profit organization will enter into an agreement with the County setting forth the type of Workforce Housing units to be constructed on the property, targeted income, pricing, and timing of the Workforce Housing project.

3.3.3 Trails and Inclusive Open Space.

3.3.3.1 **Trails.** Developer shall construct and maintain an internal trail system with connections from the Mixed Use Project to the Kimball Junction Town Center located on the Eastern side of SR-224. Such trails will provide connections between the Mixed Use Project and the other retail commercial facilities within the Kimball Junction Neighborhood. As Final Site Plans are approved, the internal trail system and connections to the community trail system shall be indicated on each Final Site Plan together with specific deadlines for installation of the trails.

3.3.3.2 **Inclusive Open Space.** Developer shall construct (i) pedestrian and bike friendly pathways; (ii) outdoor fitness facilities that may include various stations for step-ups, leg-raises, push-ups, chin-ups, bar jumps and sit-up as and generally located in a fitness trail area; (iii) a dog park for the use of those living within the Mixed Use Project; (iv) a community garden; (v) convenient access to transit, including bus shelters and bicycle stands; (vi) greenways; and (vii) and a community plaza as generally shown on the Master Plan. The County acknowledges that the open space shown on the Master Plan satisfies all obligations of Developer to provide open space for the Mixed Use Project.

3.3.4 **SR 224 Underpass Contribution.** Pursuant to the Original DA, upon acquisition of the PC Junction Property Developer also acquired the obligation to contribute \$300,000.00 to the County (on behalf of Snyderville Basin Recreation District) toward the construction of a pedestrian underpass under SR-224 connecting the east and west sides of the Kimball Junction Neighborhood. The construction of the underpass was completed in 2012-2013. Developer's obligation under the Original DA to contribute to the County \$300,000 shall be triggered required when 225,000 gross square feet of new construction (not including the Visitor's Center and Skullcandy Buildings) have received Certificates of Occupancy. No permit of any sort may be issued to Developer after reaching the 225,000 gross square feet requirement until this obligation has been satisfied.

3.3.5 **Sustainability.** Developer shall develop the Mixed Use Project using sustainable practices and low waste construction practices, shall provide the water conservation measures listed in Section [3.2.3.1] above and shall include the measure set forth below and in **Exhibit [A-3]**. It is the goal of the Parties to construct sustainably-designed high-performing buildings that will, in the long term, support the affordability of all buildings and units, including the Workforce Housing. To achieve that goal, Developer shall provide the following:

3.3.5.1 Electric vehicle charging stations shall be provided throughout the Mixed Use Project in locations designated by Developer and, at full buildout, at a ratio not less than _____ charging stations per _____ parking spaces.

Commented [JB1]: Planning; what are the numbers?

3.3.5.2 Implementation into the design and development of the Mixed Use Project, public spaces and infrastructure, elements selected by Developer and approved by the County Sustainability Director from: (i) the Utah High Performance Building Standard (HPBS); (ii) the Enterprise Green Communities Criteria; (iii) the Energy Star Certification for Buildings; and other similar sustainable building and development best construction and operation practices for energy and greenhouse gas emissions in effect at the time of Final Site plan approval.

3.3.5.3 Implementation of a Carbon and Electrification Plan to Achieve Carbon Neutrality. Developer will work with the County Sustainability Director on an on-going basis to ensure this requirement is met. Developer will require all buildings to enroll in and participate in the 100% Renewable Energy program offered by Rocky Mountain Power and educate and encourage all tenants entering into rental agreements or leases for the Residential Units to use renewable energy. Developer will support the County and Rocky Mountain Power with achieving their sustainability goals and the implementation of the Blue-Sky program and 100% Renewable Energy program, including (i) designing residential building systems within the Mixed Use Project to be 100% electrification ready; (ii) participating in the 100% Renewable Energy program offered by Rocky Mountain Power based on Developer's actual electric energy load of each residential building (based upon the published annual program guidelines currently set at \$1.95 per block of 200kWH, or the then current rate, whichever is less); (iii) design each residential building to support the 100% Renewable Energy program at a minimum level of 65% of the whole building energy performance; (iv) develop a measurement and verification plan for each residential building. The plan will include predicted whole building energy usage, a metering plan for energy usage data collection, actual monthly energy usage data collections, and calculations to demonstrate that the building achieved the electrification standard targets; (v) if a residential building fails to achieve the whole building energy performance target, Developer will provide financial support of the difference at the current published annual program purchase rate (\$1.95 per block of 200kWH), paid annually; (vi) report residential building performance annually to the County Sustainability Director; and (vii) support future residential tenant participation in the Blue-Sky and 100% Renewable Energy program.

3.3.5.4 Sustainable buildings using (i) High Reflectivity Roofing (reflecting radiant heat, not light) and/or green roofs; (ii) (at Developer's option) Rain Screens; (iii) Performance Fenestration (low emissivity, low solar heat gain coefficient, low reflective glass, and low u-factor); (iv) Continuous Air Barrier entrances (reduces conditioned air leakage); (v) Soil Gas Mitigation (vapor retarder and slab ventilation); (vi) additional insulation (spray foam at rim joists, parapets, and other concealed spaces); (vii) Mechanical Ventilation; (viii) Efficient Lighting (LED Fixtures) and lighting control; and (ix) air curtain or rapid garage doors for multi-family and office building parking garage entrances. As part of any Final Site Plan approval or Building Permit, the County Sustainability Director shall review and approve the proposed sustainable buildings.

3.3.6 **Area Transportation, Traffic, and Transit Solution Financing.** In addition to the required Traffic Mitigation Measures set forth in Section [3.3.5], the Parties have

agreed that in order to ensure the viability of the Mixed Use Project, the Parties will work cooperatively and in good faith toward area solutions to transportation, traffic, and transit issues which impact the Mixed Use Project and the surrounding Kimball Junction Neighborhood. It is recognized that major changes to the Kimball Junction I-80 interchange and State Route 224 may be made by UDOT and that the *Kimball Junction Area Plan Level 2 Solution Alternative 3: Grade Separated Intersections with Enhanced Pedestrian Crossing Facilities at Ute Blvd. and Olympic Parkway and Alternative Connections to the I-80 Interchange*, is the desired long-term solution (the “**UDOT Project**”). The UDOT Project is more particularly described in **Exhibit [A-5]** attached hereto. The UDOT Project is currently on UDOT’s long range plan. In order for the County to accelerate the timing of the completion of the UDOT Project, UDOT will require local financial and other participation. Funding for an Environmental /Assessment was approved during the 2021 Legislative Session for the Kimball Junction Interchange. The Parties believe an opportunity to elevate and accelerate UDOT focus on regional transportation investments, and specifically on the UDOT Project, to meet the County’s needs is beneficial to all parties and is a substantial community benefit. To help create that opportunity, Developer commits to participate in either the HTRZ (defined below) or the CRA (defined below) revenue generation programs set forth in Sections [3.3.6.1 and 3.3.6.2], the choice of which shall be evaluated and selected by the County in its sole discretion and shall be implemented by the County by the HTRZ Deadline (defined below) or the CRA Deadline (defined below), as applicable. In addition, if the HTRZ or the CRA revenue generation programs are timely implemented, Developer also commits to participate in either VAA (defined below) or the PID (defined below) revenue generation program set forth in Section [3.3.6.3], which shall be evaluated and selected by the County in its sole and absolute discretion. Because participation in and the creation of the HTRZ or CRA and the VAA or PDD are critical to the County, the Kimball Junction Neighborhood, and the Mixed Use Project, in the event the Parties, acting in good faith, are unable to complete the binding legal creation and authorization of the HTRZ within 180 days after the Effective Date (“**HTRZ Deadline**”) or later as mutually agreed to by the Parties, or, if the HTRZ program is not selected by the County, the Parties, acting in good faith, are unable to complete the binding legal creation and authorization of the CRA within 180 days after the Effective Date (“**CRA Deadline**”) or later as mutually agreed to by the Parties due to circumstances beyond their reasonable control, Developer will have the option, determined in its sole and absolute discretion, to either (i) proceed with development of Phases I and II of the Mixed Use Project, as set forth in **Exhibit [A-10]**, but not Phase III of the Mixed Use Project, as set forth in **Exhibit [A-10]**, until further traffic mitigation measures, financing measures, or other changes to development pacing can be determined and agreed upon in writing by a Substantive Amendment to this Amended DA; or (ii) proceed with development of all Phases of the PC Junction Property pursuant to this Amended DA, except that all references to Vested Density herein shall have no further force and effect, and all Vested Density less and excepting any remaining density assigned to Workforce Housing Units, shall convert to density within one or more of the following uses, to be determined by Developer:

- Laboratories, offices, and prototype production facilities related to research facilities and technology.
- Healthcare facilities; Offices, general; Offices, intensive; Offices, medical and dental; Offices, moderate (as defined by the Code).

Commented [JB2]: For Discussion: vesting of Phase II prior to HTRZ creation.

- Sports medicine related uses, including research and treatment facilities (no hospital allowed).
- Incidental commercial uses principally located within the PC Junction Property to support other permitted and approved conditional uses, such as restaurants, private clubs, retail, banks, financial services, recreation facilities, health care facilities, accessory uses authorized by the Code as of the Effective Date and facilities for limited indoor production, warehousing, and distribution.
- Utility Facilities, Water lines, Sewer lines.

3.3.6.1 **Housing and Transit Reinvestment Zone Act.** If selected by the County, Developer shall cooperate in and, if needed consent to, the creation of a Housing and Transit Reinvestment Zone (“**HTRZ**”) as set forth in Utah Code Title 63N, Chapter 3, Part 6, for the purpose of enhancing the utilization of public transit, increasing affordable housing availability, improving air quality by the reduction of motor vehicle trips, and investment in public transit and transportation infrastructure in strategic areas. The Parties agree that they will work together in good faith to prepare a proposal for the HTRZ which meets the necessary criteria and submit the proposal to the Governor’s Office of Economic Opportunity (“**GOEO**”) within sixty (60) days of the Effective Date. Developer shall thereafter cooperate with and provide information to the independent entity selected by GOEO to perform the gap analysis required by statute. The County agrees that it will be solely responsible for the cost of the gap analysis. The Parties will complete the HTRZ application and approval process on or before the HTRZ Deadline.

3.3.6.2 **Community Reinvestment Act.** If selected by the County, Developer shall cooperate in and if needed, consent to the creation of a Community Reinvestment Project Area (“**CRA**”) pursuant to Title 17C, Chapter 5 of the Utah Code for the purpose of funding transportation and traffic mitigation projects as well as transit solutions in the Kimball Junction Area of Summit County. The Parties agree that if created, the net proceeds from the tax increment financing (“**TIF**”) created by the CRA would be divided (after deducting the statutory reductions of 3% for administration and 10% for affordable housing which will be retained by the County) as follows: 90% to the County for projects described in Section [3.3.6.4] and 10% to Developer. If selected, the Parties agree that within one hundred eighty (180) days of the Effective Date, the County shall prepare a proposed community reinvestment project area plan as set forth in Utah Code §17C-5-105 and that the CRA will be approved and in place on or before the CRA Deadline.

3.3.6.3 **Other Assessment Areas.** If an HTRZ or CRA is created, Developer agrees to subject the PC Junction Property to additional taxation through the creation of either a Voluntary Assessment Area (“**VAA**”) as set forth in Title 11, Chapter 42 of the Utah Code, or a Public Infrastructure District (“**PID**”) as set forth in Title 17D, Chapter 4 of the Utah Code for the purpose of funding the County Projects (described in Section [3.3.6.4] below) or other projects which are otherwise approved by the County in its absolute and unfettered discretion. The County shall make the election, which shall be in its sole and absolute discretion, as to the revenue generation program it will pursue under this section prior to the HTRZ Deadline. When created, the Parties agree that the County may bond against the anticipated tax revenue. The revenue generated from the VAA or PID will generate the lesser of either (i) a net of \$14 million dollars; or (ii) a maximum tax increase of 3.5 mils on the PC Junction Property. Provided, however, if the

County elects to proceed with the HTRZ rather than the CRA, then Developer, in its sole and exclusive discretion, may elect to either (i) receive 10% of the revenue generated from the VAA or PID; or (ii) have the revenue generated from the VAA or PID from the PC Junction Property will be reduced by 10%. The Parties further agree that the VAA or PID will not be created earlier than 2023. In the event that the County elects a PID, Developer agrees to work with the County in good faith to accomplish the purposes of this Section by entering into an appropriate “Governing Document” (as defined in Utah Code §17D-4-202).

Commented [JB3]: For discussion: is the revenue required to be used for workforce housing like the CRA or something else?

3.3.6.4 **Use of Funds.** All additional tax revenue (less any amount owing to Developer) contemplated by Section [3.3.6] and its subparts, may be used and leveraged with other public and private monies to fund necessary public infrastructure and improvements including but not limited to (i) transit centers, bus lanes, Bus Rapid Transit (BRT) and other associated transit infrastructure or operations; (ii) structured park and ride facilities associated with Transit; (iii) the UDOT Project; (iv) other bike/pedestrian pathway solutions, including additional tunnels; (v) aerial transit; (vi) County government or civic facilities; and (vii) infrastructure for the High Valley Transit electric bike share program (collectively the “County Projects”).

3.3.7 **Redevelopment Matching Grant.** Within one hundred twenty (120) days of the Effective Date, the County will apply for a Redevelopment Matching Grant from the State of Utah. If granted or funded, all of the proceeds of Redevelopment Matching Grant up to \$2,500,000.00, plus an equal amount funded by the County (“County Matching Funds”), must be used by the County for the development of improvements within or that directly benefit the Mixed Use Project as reasonably approved by Developer. At Developer’s option, all or any portion of the Redevelopment Matching Grant and the County Matching Funds may be used by Developer as a credit against any fees due from Developer to the County related to the Mixed Use Project.

3.3.8 **Parking.** Except for parking for Phase I, which will comply with the provisions of Section [4.2], Developer shall generally ensure that each phase and/or Project Area meets the parking criteria set forth in the Code. With the approval of the Director, Developer may reduce the Code required parking through the use of shared parking or other measures meant to create greater utilization of public transportation.

SECTION 4 PROJECT DEVELOPMENT PROCESSES AND AMENDMENT PROCESSES

4.1 **Buildout Phasing Plan.** Developer proposes a phasing plan for construction of the DPRE Mixed Use Project as shown in Exhibit [A-10] (the “Phasing Plan”). For purposes of the Phasing Plan, a phase may consist of a single or several Parcels, not necessarily adjacent to each other, which Developer intends to develop and improve during a specified time period. The development of the Mixed Use Project shall generally proceed in accordance with the Phasing Plan. Developer may proceed by constructing each phase at one time, or by constructing portions of a phase, with each portion providing a logical extension of the road system through the phase; provided, however, that (i) Developer has completed at a minimum those infrastructure elements and services improvements identified on the phasing plan as essential for any phase or Project within the Mixed Use Project, and (ii) adequate offsite facilities and services exist to serve each phase or Project or Developer has paid applicable impact, connection, reservation or similar fees

so as to provide adequate facilities or services to the extent such payment is required by the terms of this Amended DA and applicable impact fee or other applicable ordinances.

4.1.1 **Phasing of Workforce Housing.** The Workforce Housing Units, as set forth in Section [3.3.2], shall be constructed prior to or simultaneous with all other Project Areas and/or Market Rate Units. The number of Workforce Housing Units within each Parcel or Project Area shall represent roughly 30% or more of the square footage, or number of units, as compared to the Market Rate Units.

4.1.2 **Traffic Monitoring with each Phase.** Developer shall construct with Phase II and Phase III the necessary traffic mitigation measures set forth in **Exhibit [A-5]**.

4.2 **Construction of Infrastructure Improvements.** Developer shall construct those improvements indicated on each Final Site Plan involving any part of the Mixed Use Project in accordance with the engineering requirements of the County consistent with the Development Standards.

4.3 **Utility Capacity Verification.** Developer shall demonstrate the continued availability of the following for the portion of the Mixed Use Project or any Project Area subject to the Final Site Plan approval at the time of each application for Final Site Plan approval within the Mixed Use Project: (a) sewage treatment capacity to cover anticipated development within the area, (b) water and water pressure adequate for commercial or industrial consumption and fire flows, (c) capacity for electrical and telephone service, and (d) internal road capacity within the Mixed Use Project. Utility capacity shall be available and verified in accordance with the "Standards for Approval of Development Permits" set forth in Chapter 4 of the Code.

4.4 **Approval of Final Construction Documents.** In conjunction with a Final Site Plan approval, but in all instances prior to the issuance of a building, grading, or other development permit, Developer shall submit all applicable construction plans to the County for review in accordance with then applicable building codes and the Development Standards and shall otherwise comply with any requirements for the issuance of Building Permits not inconsistent with the Development Standards. The County agrees that Developer or any Parcel developer may apply for permits on a "fast track" basis for any individual Project (meaning the approvals may be separately applied for and issued for grading, footings and foundations and the balance of improvements). The County agrees that the County will process separately any required permits for grading, excavation and site work and further agrees to issue in the ordinary course of its business any Building Permits that are applied for and that comply with this Amended DA, the Development Standards, approved Final Site Plan, and generally applicable building codes to the extent not inconsistent with this Amended DA or the Development Standards.

4.5 **Procedure for Approval of Final Site Plans.** The approval of a Final Site Plan for any project, permitted structure, or use shall follow the process set forth herein. In the event of a procedural conflict between the Code and this Agreement, the provisions of this Amended DA shall govern.

4.5.1 **Sketch Plan.** Developer shall submit a Sketch Plan of the proposed Final Site Plan to the Staff for preliminary review prior to submittal of a Final Site Plan. The Staff

shall review and take into consideration the written opinion of the Design Review Committee where such an opinion was obtained. Sketch Plans submitted shall meet all of the requirements of this Amended DA.

4.5.2 **Staff Review of Sketch Plans.** The Staff shall review a Sketch Plan for compliance with the requirements of this Amended DA and shall conduct discussions with Developer to review any modifications necessary to comply with such requirements.

4.5.3 **Submission of Final Site Plan.** Developer shall submit to the Staff an application with applicable fees for Final Site Plans for Parcels or structures within the Mixed Use Project. A Final Site Plan shall comply with all of the applicable requirements of this Amended DA and the provisions of the Code not modified or vested by this Amended DA.

4.5.4 **Staff Review and Recommendation.** The Staff shall review the information submitted pursuant to Section [4.6.4] for conformance with this Amended DA and the provisions of the Code not modified by this Amended DA and shall provide its recommendation to the Planning Commission. The recommendation shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA and the provisions of the Code not modified or vested by this Amended DA.

4.5.5 **Planning Commission Review and Recommendation.** The Planning Commission shall review the information submitted pursuant to this Amended DA and shall provide its recommendation to the County Manager. The recommendation shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA and applicable provisions of the Code that are not modified or vested by this Amended DA.

4.5.6 **Manager Approval of Final Site Plan.** The County Manager shall render a decision approving, denying or conditionally approving the Final Site Plan. The decision shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA and the Code, to the extent not modified or vested by this Amended DA.

4.5.7 **Recordation.** Once all required service provider signatures are obtained, the County Manager shall execute the Final Site Plan and any other applicable documents to be recorded in the records of the Summit County Recorder. Developer shall pay all applicable recording fees. The approved Final Site Plan must be recorded within one (1) year of final approval.

4.5.8 **Appeal.** Following the exhaustion of the administrative processes herein ending in a final determination by the County Manager, that final determination shall be appealable to the County Council within ten (10) calendar days. Appeals of decisions of the County Council shall be to the District Court pursuant to Section 10-9-22 of the Code and Utah Code §17-27a-801 and shall be limited to the administrative record before the County Council.

4.5.9 **Condominium Plat.** The review and approval procedure of a Condominium Plat will be the same as the review and approval procedure for a Final Site Plan as provided for in this Amended DA.

4.6 **Procedure for Approval of Architectural Design Standards.** The Architectural Design Standards for the Mixed Use Project shall be submitted for approval prior to any application for a Project Area. The Architectural Design Standards will be processed and approved pursuant to Sections [4.6.2] and [4.6.3] below and must be approved by the County Council prior to the submission of the first Final Site Plan for the Mixed Use Project.

4.6.1 **Submission of Architectural Design Standards.** Developer shall submit to the County its Architectural Design Standards for approval. Staff shall conduct a review of the Standards to ensure compliance with the General Plan and this Amended DA.

4.6.2 **Planning Commission Review and Recommendation.** The Planning Commission shall review this Amended Architectural Design Standards submitted pursuant to this Amended DA and, within forty-five (45) calendar days from submission, shall provide a recommendation to the County Council. The recommendation shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA, the Code (to the extent not otherwise vested), and the General Plan.

4.6.3 **County Council Approval of Architectural Design Standards.** The County Council shall render a decision approving, approving with modifications, or denying the Architectural Design Standards. The decision shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA, the Code (to the extent not otherwise vested) and the General Plan. The approved Architectural Design Standards shall be recorded against the PC Junction Property and inserted into this Amended DA as **Exhibit [A-9]** and shall be binding upon the Parties.

4.7 **Procedure for Approval of Plats.** The approval of a Plat for any subdivision of land within the PC Junction Property shall follow the process set forth herein. In the event of a procedural conflict between the Code and this Agreement, the provisions of this Amended DA shall govern.

4.7.1 **Application.** Developer shall submit a draft Plat meeting the requirements of Chapter 13, Section 14 of the Code to the Staff for preliminary review prior to submitting an application for a final Plat.

4.7.2 **Staff Review of Plat.** The Staff shall review the draft Plat for compliance with the requirements of this Amended DA and shall conduct discussions with Developer to review any modifications necessary to comply with such requirements.

4.7.3 **Submission of Final Plat.** Developer shall submit to the Staff an application with applicable fees for a final Plat. A Plat shall comply with all of the applicable requirements of this Amended DA and the provisions of the Code not modified or vested by this Amended DA.

4.7.4 **Staff Review and Recommendation.** The Staff shall review the information submitted pursuant to Section [4.7.3] for conformance with this Amended DA and the provisions of the Code not modified by this Amended DA and shall provide its recommendation to the Planning Commission. The recommendation shall be based solely upon Developer's

compliance with the requirements and standards set forth in this Amended DA and the provisions of the Code not modified or vested by this Amended DA.

4.7.5 **Planning Commission Review and Recommendation.** The Planning Commission shall review the information submitted pursuant to this Amended DA and shall provide its recommendation to the Director. The recommendation shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA and applicable provisions of the Code that are not modified or vested by this Amended DA.

4.7.6 **Manager Approval of Plat.** The County Manager shall render a decision approving, denying, or conditionally approving the Plat. The decision shall be based solely upon Developer's compliance with the requirements and standards set forth in this Amended DA and the Code, to the extent not modified or vested by this Amended DA.

4.7.7 **Recordation.** Once all required service provider signatures are obtained, the County Manager shall execute the Plat and any other applicable documents to be recorded in the records of the Summit County Recorder. Developer shall pay all applicable recording fees. The approved Plat must be recorded within one (1) year of final approval.

4.7.8 **Appeal.** Following the exhaustion of the administrative process herein ending in a final determination by the County Manager, that final determination shall be appealable to the County Council within ten (10) calendar days. Appeals of decisions of the County Council shall be to the District Court pursuant to Section 10-9-22 of the Code and Utah Code §17-27a-801, and shall be limited to the administrative record before the County Council.

4.8 **Development Improvements Agreement (DIA) Required.** A Development Improvements Agreement ("DIA") in a form and amount of guarantee to be approved by the County Engineer, shall be required to be recorded simultaneously with any approved Final Site Plan for any necessary infrastructure which has not yet been constructed. The Staff shall review Developer's proposal for a Development Improvements Agreement and provide its recommendation to the County Engineer who shall forward the DIA for approval to the County Manager. The County Engineer shall establish a security amount to complete improvements, warranties after completion, schedules for completing all improvements, and remedy provisions in the event of a default. All improvements shall be warranted by Developer for a period of one year of normal operation from the date of completion, as established by the County Engineer. The County shall retain 10% of the security for a period of 12 months from the date of completion of the improvements. In the case of landscaping, 40% shall be retained. A separate Development Improvements Agreement may be established for each phase of the development, Project Area, and/or for each Parcel or for specific infrastructure projects. Improvements which shall be guaranteed shall be those required by the Code and Utah Code §17-27a-604.5.

4.9 **Construction Mitigation and Management Plan Required.** A grading and/or Building Permit will not be issued for any facility or structure within the Mixed Use Project until an adequate Construction Mitigation and Management Plan has been established for the Mixed Use Project or Project Area and approved by the County Engineer, who may require changes to address any unforeseen impacts that occur during construction. The plan shall address the

following matters specifically, together with any other related matters identified by the Director and Developer. A separate plan may be established for each phase of the Mixed Use Project.

4.9.1 Revegetation/erosion protection/runoff control;

4.9.2 Wetland and watershed protection;

4.9.3 Wetlands enhancement plan;

4.9.4 All disturbance areas shall be carefully marked/fenced to the extent possible prior to construction. Whenever construction occurs near riparian and drainage areas and significant vegetation which shall be retained on the site, there shall be an appropriate amount of screening/buffering from construction disturbance;

4.9.5 Site grading;

4.9.6 Dust and debris control;

4.9.7 Recycling construction material waste;

4.9.8 Damage to public roadways as a result of construction;

4.9.9 Traffic control/construction management control;

4.9.10 Hours of construction;

4.9.11 Impact of noise on adjacent residential and commercial uses;

4.9.12 Staging and screening of construction materials and equipment (short term basis only);

4.9.13 Solid Waste Disposal for construction wastes;

4.9.14 Parking.

4.10 **Concurrency Management Required.** Prior to the approval of a Building Permit for any structure approved in the Mixed Use Project, an application for a Building Permit shall demonstrate that all concurrency management requirements of Code §10-4-5(E) have been met. The Director shall cause the issuance of a Building Permit upon demonstration of compliance with all such requirements.

SECTION 5 SUCCESSORS AND ASSIGNS

5.1 **Binding Effect.** This Amended DA shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the PC Junction Property. Notwithstanding the foregoing, a purchaser of the any lot or Parcel within the PC Junction Property or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of Project so transferred.

5.2 **Transfer of Project.** Developer shall be entitled to transfer any portion of the PC Junction Property subject to the terms of this Amended DA upon written notice to the County and subject to obtaining the assumption of Developer's obligations to the extent required by Section [5.3] below. Notwithstanding the foregoing, neither Developer, nor its successors, shall be required to notify the County or obtain the County's consent with regard to the sale of individual lots or Parcels within the PC Junction Property which have received development approval in accordance with the terms of this Amended DA. In the event of any such complete transfer of all or a portion of Developer's interest in the PC Junction Property, the transferee shall be deemed to take the place of the transferor for all purposes under this Agreement with respect to that portion of the PC Junction Property transferred. All obligation to notify or obtain any consent of the County shall terminate with respect to portions of the PC Junction Property on which all of the improvements required by this Amended DA have been substantially completed.

5.3 **Release of Developer.** Except for the sale of lots or Parcels which have received development approval in accordance with the terms of this Amended DA, in which case this requirement shall not apply, in the event of a transfer of all or a portion of the PC Junction Property, the transferring Party shall obtain an assumption by the transferee of the transferor's obligations under this Amended DA, and, in such event, the transferee shall be fully substituted for the transferor under this Agreement as to the parcel so transferred, and the transferor executing this Amended DA shall be released from any further obligations with respect to this Amended DA as to the parcel so transferred.

5.4 **Obligations and Rights of Mortgage Lenders.** Developer may finance the Mixed Use Project or any portion thereof, and may execute one or more mortgages, deeds of trust or other security arrangements with respect to the PC Junction Property and any Parcels created therein and may assign this Amended DA to a holder of any such financial instrument without prior written notice to or consent of the County. The holder of any mortgage, deed of trust, or other security arrangement with respect to the PC Junction Property, or any portion thereof, shall not be obligated under this Amended DA to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Amended DA which pertain to the PC Junction Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the PC Junction Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the PC Junction Property, or such portion thereof, subject to any pro rata claims for payments or charges against the PC Junction Property, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Amended DA shall be deemed or construed to permit or authorize any such holder to devote the PC Junction Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Amended DA, and, as would be the case in any assignment, the purchaser of the PC Junction Property from the holder shall be subject to all of the terms and conditions of this Amended DA, including the obligation to complete all required amenities and improvements.

**SECTION 6
REVIEW, DEFAULT, TERMINATION AND DISPUTES**

6.1 **Periodic Review.** The County may initiate a formal review of progress pursuant to this Amended DA no more often than once every twenty-four (24) months to determine if there has been demonstrated compliance with the terms hereof.

6.2 **Default.**

6.2.1 **Events of Default.** Developer is in default under this Amended DA upon the happening of one or more of the following events or conditions.

6.2.1.1 If a warranty, representation, or statement made or furnished by Developer to the County is false or proves to have been false in any material respect when it was made.

6.2.1.2 A finding and determination made by the County that, upon the basis of substantial evidence, Developer has not complied in good faith with one or more of the terms or conditions of this Amended DA.

6.2.1.3 Any other event, condition, act, or omission which materially interferes with the intent and objectives of this Amended DA.

6.2.1.4 Developer shall have failed to submit at least one complete application for a site plan approval for an approved use within the ten (10) year period after the Effective Date or during any five (5) year period thereafter within the term of this Amended DA.

6.2.2 **Procedure Upon Default.**

6.2.2.1 After the occurrence of a default under Section [6.2.1], the County Council may exercise a right to declare an “**Event of Default**” by authorizing the County to give Developer written notice specifying the nature of the alleged default and, when appropriate, the manner in which the Event of Default must be satisfactorily cured. Developer shall have sixty (60) days after receipt of written notice to cure the Event of Default. After proper notice and expiration of the sixty (60) day cure period without cure, the County may terminate or amend this Amended DA by giving written notice in accordance with the procedure adopted by the County. Failure or delay in declaring or giving notice of an Event of Default shall not constitute a waiver of any default by Developer under Section [6.2.1], nor shall it change the time of such default. Notwithstanding the sixty (60) day cure period provided above, in the event more than sixty (60) days is reasonably required to cure an Event of Default and Developer, within the sixty (60) day cure period, commences actions reasonably designed to cure the Event of Default, then the cure period shall be extended for such additional period as Developer is prosecuting those actions diligently to completion. Any exercise by the County of a termination right after notice and opportunity to cure shall be subject to the provisions of Section [6.3] below.

6.2.2.2 The County does not waive any claim of default in performance by Developer, if on periodic review the County does not propose to modify or terminate this Amended DA.

6.2.2.3 Any default or inability to cure a default caused by strikes, lockouts, pandemics or health related crisis, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the Party obligated to perform, shall excuse the performance by such Party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default.

6.2.2.4 Adoption of a law or other governmental activity making performance by the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by Developer.

6.2.2.5 All other remedies at law or in equity which are not inconsistent with the provisions of this Amended DA are available to the Parties to pursue in the event there is an incurred Event of Default.

6.3 Termination.

6.3.1 **Termination Upon Completion of Development.** This Amended DA may be terminated by agreement of both Parties that “Completion of Development” (defined below) has occurred and the last to be satisfied of Developer’s and the County’s obligations under this Amended DA have been satisfied (except those obligations of the Parties which expressly survive the termination of this Amended DA as provided below). The phrase “**Completion of Development**” means that (i) all of the Parcels within the PC Junction Property have been approved through a Final Site Plan, (ii) all road improvements and utilities within the Mixed Use Project have been fully completed (or permits have been issued for the construction of any such improvements that have not been fully completed), and (iii) all Parcels within the Mixed Use Project have been covered with the DPRE Declaration. In the event either Party believes the requirements of this Section for termination of this Amended DA have been met, the Party may give to the other Party a notice of Completion of Development. The Party receiving the notice may disagree with the position of the Party giving the notice of Completion of Development by giving a written objection within thirty (30) days after the notice of Completion of Development is received. When the Parties are in agreement that requirements of this Section have been met, the County shall record a notice that this Amended DA has been terminated (other than the obligations of the Parties which expressly survive the termination of this Amended DA) by agreement of the Parties upon Completion of Development as contemplated by this Section.

6.3.2 Termination Before Completion of Development.

6.3.2.1 This Amended DA shall terminate at the end of its Term unless the Term is extended by the County Council as a Substantial Amendment.

6.3.2.2 This Amended DA shall be subject to termination by the County Council prior to Completion of Development when an Event of Default by Developer remains uncured after notice and opportunity to cure as provided in this Section [6]. The termination of this Amended DA shall be exercised by the County Council after written notice to all owners of the remaining undeveloped land within the PC Junction Property and after a public

hearing providing an opportunity of all such parties to be heard on the appropriateness of termination. The termination shall not be effective until the remaining undeveloped land within the PC Junction Property is rezoned from the CC Zone to another established zoning district or districts then available under the Snyderville Basin Development Code. For purposes of Article 6, the “**remaining undeveloped land within the PC Junction Property**” or similar phrase shall refer to all land covered by this Amended DA that has not been subdivided for future sale or development and improved with road and utility improvements and at the time is not the subject of a pending or approved application for a Plat or Final Site Plan, or a pending or approved permit application for road and utility infrastructure.

6.3.2.3 In the event of a termination pursuant to this Section [6.3.2] and the rezoning of the remaining undeveloped land within the PC Junction Property, the County shall record a notice against the remaining undeveloped land within the PC Junction Property indicating that this Amended DA has been terminated and that further development activity shall be governed by the provisions of Section [6.3.3] of this Amended DA and the terms of the Snyderville Basin Development Code as it then exists and is thereafter amended from time to time.

6.3.3 **Effect of Termination on Future Land Uses.**

6.3.3.1 Notwithstanding the termination of this Amended DA for any reason, any portion of the PC Junction Property that is improved in accordance with this Amended DA and Parcels or lots created by the subdivision and other approvals contemplated hereby shall be entitled to be used and improved, and any improvements located or permitted to be located thereon at the time of termination shall be entitled to be constructed, used, remodeled and reconstructed in accordance with the provisions of this Amended DA. The foregoing provisions shall apply even if such use or the improvements authorized by this Amended DA do not conform to the requirements of otherwise applicable Summit County laws and regulations at the time.

6.3.3.2 Notwithstanding the termination of this Amended DA for any reason, any portion of the PC Junction Property that is the subject of a pending or approved application for a Final Site Plan approval shall be entitled to be processed, approved or not approved, used and improved, and any improvements located or permitted to be located thereon at the time of termination shall be entitled to be constructed, used, remodeled and reconstructed in accordance with the provisions of this Amended DA provided the owner of the portion of the PC Junction Property that is the subject of the application proceeds in a commercially reasonable manner to finalize necessary approvals and thereafter proceeds in a commercially reasonable manner to commence and complete the improvements required by the application. The foregoing provisions shall apply even if such use or the improvements authorized by this Amended DA do not conform to the requirements of otherwise applicable Summit County laws and regulations at the time.

6.3.3.3 The benefits extended by Sections [6.3.3.1] or [6.3.3.2] above shall apply to the uses and structures permitted at the time of the termination to be constructed on lots or parcels approved and subdivided under those referenced sections, regardless of when an application for a Building Permit is submitted for structures on any such lot or parcel.

6.3.3.4 Developer does not waive any rights Developer may have to assert the vested right to develop the Property after the expiration of this Amended DA under then applicable laws or regulations.

6.3.4 **Effect of Termination on Developer Obligations.** Termination of this Amended DA as to any Developer of the PC Junction Property or any portion thereof shall not affect any of such Developer's obligations to comply with the terms and conditions of any applicable zoning, or subdivision plat, site plan, Building Permit, or other land use entitlements approved with respect to the PC Junction Property, nor shall it affect any other covenants or any other development requirements specified or created pursuant to this Amended DA. Termination of this Amended DA shall not affect or invalidate in any manner the following specific obligations of Developer, which shall survive the termination of this Amended DA: (i) the obligation of Developer to complete the Final Site Plan and other infrastructure improvements covered by any issued permit (including permits issued after the termination of this Agreement based on vested applications or the provisions of Section [6.3.3]); (ii) the dedication of any trails and Open Space as requiring dedication or the granting of protection through conservation easements over such lands as delineated in the Mixed Use Project to the extent shown on the Final Site Plans; (iii) the construction of any roads or public improvements covered by a recorded Plat unless vacated to the extent shown on the Final Site Plans; (iv) the payment of impact fees and/or other financial contributions to the extent such fees are payable under the terms of this Amended DA and any applicable impact fee ordinance or implementing resolutions; and (v) the compliance with Developer's Mutual Releases and Hold Harmless Covenants under this Amended DA; and (vi) Developer's participation in any of the reinvestment or revenue generation programs set forth in Section [3.3.7].

6.3.5 **Effect of Termination on the County Obligations.** Upon any termination of this Amended DA, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Amended DA shall no longer be vested by reason of this Amended DA with respect to the remaining undeveloped land within the PC Junction Property except to the extent set forth in Section [6.3.3]. The remaining undeveloped land within the PC Junction Property shall thereafter default to the Rural Residential Zone, or its equivalent, and be subject to then existing planning and zoning law to the extent not inconsistent with Section [6.3.3]. Upon such a termination, the County shall no longer be prohibited by this Amended DA from making any changes or modifications to such entitlements, conditions, or fees applicable to such undeveloped portions of the PC Junction Property subject to the effect of Section [6.3.3]. The County shall remain obligated after termination of this Amended DA to recognize and apply the provisions of Section [6.3.3], which incorporates the use, intensity, development standards and configuration contained in this Amended DA under the circumstances described therein.

6.3.6 **Damages upon Termination.** Developer shall not be entitled to any damages against the County for any termination based upon an Event of Default by Developer.

6.4 **Institution of Legal Action.** In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Amended DA or to enjoin any threatened or attempted violation of this Amended DA; or to obtain any remedies consistent with the purpose of

this Amended DA. Legal actions shall be instituted in the Third Judicial District Court of the County of Summit, State of Utah.

6.5 **Other Enforcement Provisions.** The Parties recognize that the County has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Amended DA by seeking an injunction to compel compliance with the terms of this Amended DA. In the event that Developer or any user on the subject property violates the rules, policies, regulations, or ordinances of the County or violates the terms of this Amended DA, the County may, without seeking an injunction and after ten (10) days written notice to correct the violation, take such actions as shall be deemed appropriate under law until such conditions have been corrected or come into compliance by Developer. The County shall be free from any liability arising out of the exercise of its rights under this paragraph.

SECTION 7
RELATIONSHIP BETWEEN THE PARTIES; NO COUNTY FINANCIAL
RESPONSIBILITY

7.1 **Relationship of Parties.** The contractual relationship between the County and Developer arising out of this Amended DA is one of independent contractor and not agency. This Amended DA does not create any third-party beneficiary rights. It is specifically understood by the Parties that: (a) the Mixed Use Project is a private development; (b) the County has no interest in or responsibilities for or duty to third parties concerning any improvements to the PC Junction Property until the County accepts dedication, ownership or maintenance of the improvements pursuant to a specific written agreement providing for acceptance of dedication, ownership or maintenance; and (c) Developer shall have the full power and exclusive control of the PC Junction Property subject to the obligations of Developer set forth in this Amended DA.

7.2 **Mutual Releases.** At the time of, and subject to, (i) the expiration of any applicable appeal period with respect to the approval of this Amended DA without an appeal having been filed or (ii) the final determination of any court upholding this Amended DA, whichever occurs later, and excepting the Parties' respective rights and obligations under this Amended DA, Developer, on behalf of itself and Developer's partners, officers, directors, employees, agents, attorneys and consultants, hereby releases the County and the County's board members, council members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County's board members, officials, employees, agents, attorneys and consultants, hereby releases Developer and Developer's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the Effective Date in connection with the application, processing or approval of applications relating to the Mixed Use Project or any Project Area, to include any past claims for vested development rights that are not provided for in this Amended DA.

7.3 **Hold Harmless.**

7.3.1 **Agreement of Developer.** Developer agrees to and shall hold the County, its officers, elected officials, agents, employees, consultants, attorneys, special counsel and representatives harmless from liability for damages, just compensation, restitution, judicial or

equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to the Mixed Use Project or the actions of Developer taken pursuant to or the failure of Developer to comply with the terms of this Amended DA. Any such action shall be referred to as an “**indemnified claim.**” Developer agrees to pay all costs for the defense of the County and its officers, agents, employees, consultants, attorneys, special counsel, and representatives regarding any indemnified claim. This hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the events referred to in this section regardless of whether or not the County prepared, supplied or approved this Amended DA, plans or specifications, or both, for the Mixed Use Project or any Project Area. County may make all reasonable decisions with respect to its representation in any legal proceeding relating to an indemnified claim.

7.3.2 **Exceptions to Hold Harmless.** The agreements of Developer in Section [7.3.1] shall not be applicable to (i) any claim arising by reason of the negligence or intentional actions of the County, or (ii) any claim reserved by Developer for itself or any owner of any portion of the Property under the terms of this Amended DA for just compensation or attorney fees.

7.3.3 **Hold Harmless Procedures.** The County shall give written notice of any claim, demand, action or proceeding which is the subject of Developer’s hold harmless agreement as soon as practicable but not later than 10 business days after the assertion or commencement of the claim, demand, action or proceeding. In the event any such notice is given; the County shall be entitled to participate in the defense of such claim. Each Party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

SECTION 8 GENERAL TERMS AND CONDITIONS

8.1 **Agreements to Run with the Land.** This Amended DA and its accompanying Exhibits shall be recorded against the PC Junction Property described in **Exhibit [A-1]**. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors in ownership of the PC Junction Property. As used herein, Developer shall include the Parties signing this Amended DA and identified as “**Developer,**” and all successor owners of any part of the PC Junction Property.

8.2 **Construction of Agreement.** This Amended DA should be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling, countervailing public interest while providing reasonable assurances of continuing vested development rights. Where there is a conflict between the terms of this Amended DA and any Exhibit, the more specific provision shall be controlling.

8.3 **Laws of General Applicability.** Where this Amended DA refers to laws of general applicability to the PC Junction Property or the Mixed Use Project and other properties, this

Amended DA shall be deemed to refer to laws which apply to other developed and subdivided properties in Summit County, Utah.

8.4 **State and Federal Law.** The Parties agree, intend, and understand that the obligations imposed by this Amended DA are consistent with state and federal law. The Parties further agree that if any provision of this Amended DA becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Amended DA shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Amended DA shall remain in full force and effect.

8.5 **No Waiver.** Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Amended DA is amended by vote of the County Council taken with the same formality as the vote approving this Amended DA, no officer, official or agent of the County has the power to amend, modify or alter this Amended DA or waive any of its conditions as to bind the County by making any promise or representation not contained herein.

8.6 **Entire Agreement.** This Amended DA constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Amended DA may not be modified or amended except as anticipated in this Amended DA or except in writing mutually agreed to and accepted by the Parties.

8.7 **Notices.** All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the County:
Summit County Manager
60 N. Main
P.O. Box 128
Coalville, UT 84017

With copies to:
Summit County Attorney's Office
60 N. Main Street
P.O. Box 128
Coalville, UT 84017

To Developer:
Park City Junction, LLC
c/o Dakota Pacific Real Estate
Attention: Scott Swallow
299 South Main Street, Suite 2450
Salt Lake City, Utah 84111

With copies to:

Parsons Behle & Latimer
Attention: Shawn C. Ferrin
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

8.8 **Applicable Law.** This Amended DA is entered into under and pursuant to and is to be construed and enforceable in accordance with, the laws of the State of Utah.

8.9 **Rights of Third Parties.** This Amended DA is not intended to affect or create any additional rights or obligations on the part of third parties.

8.10 **Third Party Legal Challenges.** In those instances where, in this Amended DA, Developer has agreed to waive a position with respect to the applicability of current County policies and requirements, or where Developer has agreed to comply with current County policies and requirements, Developer further agrees not to participate either directly or indirectly in any legal challenges to such County policies and requirements by third parties, including but not limited to appearing as a witness, amicus, making a financial contribution thereto, or otherwise assisting in the prosecution of the action.

8.11 **Computation of Time.** Unless otherwise specified, in computing any period of time pursuant to this Amended DA, the day of the act, event or default from which the designated period of time begins to run shall be included, and the time shall be computed on a calendar, not work-day, basis.

8.12 **Titles and Captions.** All section titles or captions contained in this Amended DA are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

8.13 **Severability.** If any provision of this Amended DA, or the application of such provision to any person or circumstance, is held invalid, void, or unenforceable, but the remainder of this Amended DA can be enforced without failure of material consideration to any Party, then the remainder of this Amended DA shall not be affected thereby and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties. If any material provision of this Amended DA is held invalid, void, or unenforceable or if consideration is removed or destroyed, Developer or the County shall have the right in their sole and absolute discretion to terminate this Amended DA by providing written notice of such termination to the other Party.

8.14 **Recordation of Agreement.** The County shall record this Amended DA and Exhibits with the Summit County Recorder (the "**Recorder**"). When the Architectural Design Standards are approved in accordance with Section [4.6], this Amended DA and Exhibits, including the approved Architectural Design Standards, shall be re-recorded with the Recorder. The costs associated with these recordings shall be borne by Developer.

8.15 **Exhibits Incorporated.** All Exhibits to the Mixed Use Project are incorporated by reference herein as if fully set forth herein.

Draft 10/21/2021

8.16 **Execution of Agreement.** This Amended DA may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other Party within seven (7) days of receipt of said facsimile copy.

IN WITNESS WHEREOF, this Amended DA has been executed by Summit County, acting by and through the Summit County Council pursuant to Ordinance No. 698-A, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

[signatures to follow]

[SUMMIT COUNTY SIGNATURE PAGE]

COUNTY:
Summit County Council,

Glenn Wright, Chair

ATTEST:

Evelyn Furse
County Clerk
[seal]

APPROVED AS TO FORM:

SUMMIT COUNTY ATTORNEY

By: _____
Deputy

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Glenn Wright, the Chair of the Summit County Council.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

Draft 10/21/2021

**EXHIBIT A-1
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Legal Description of PC Junction Property

Draft 10/21/2021

**EXHIBIT A-2
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Master Plan

[SEE ATTACHED]

**EXHIBIT A-3
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Amenities and Benefits Package

In exchange for the vested densities and uses provided in this Amended DA, Developer agrees to provided amenities and community benefits as follows:

1. \$300,000 contribution to Underpass (Section [3.3.4])
2. Bus or Transit Shelters (Section [3.3.3.2])
3. Trails (Section [3.3.3])
4. Sustainability (Sections [3.2.3.1] and [3.3.5])
 - a. Public and Private electric vehicle (EV) stations with each phase and/or parcel project (Section [3.3.5.1])
 - b. Design elements (Section [3.3.5.2])
 - c. Carbon and Electrification Plan to achieve carbon neutrality (Section [3.3.5.3])
 - d. Sustainable building elements including but not limited to:
 - i. High Reflectivity Roofing (reflecting radiant heat, not light) and/or green roofing
 - ii. Rain Screens (developer may choose but not required)
 - iii. Performance Fenestration (low emissivity, low solar heat gain coefficient, low reflective glass, and low u-factor).
 - iv. Continuous Air Barrier (reduces conditioned air leakage)
 - v. Soil Gas Mitigation (vapor retarder and slab ventilation)
 - vi. Insulation (spray foam at rim joists, parapets, and other concealed spaces).
 - vii. Mechanical Ventilation which supports sustainability
 - viii. Efficient Lighting (LED Fixtures) and lighting control
 - ix. Rapid garage doors for multi-family and office building parking garage entrances.

- e. Sustainable Landscaping which includes (but is not limited to):
 - i. Permeable Pavement and Bioretention
 - ii. Sand and Tree Filters
 - iii. Underground Filtration and Rain Gardens
 - iv. Vegetated Buffers and naturalized stormwater
 - v. Minimization of turf grasses.
 - vi. Drip irrigation systems using moisture control sensors.
 - vii. Permitted plant materials subject to Utah State University Summit County Plant List.
- 5. Inclusive Open Space (Section [3.3.4.2])
 - a. Trail Access and wayfinding
 - b. Pedestrian and Bike Friendly pathways and bike racks within each parcel or project.
 - c. Outdoor Fitness Facilities
 - d. Dog Park
 - e. Community Garden
 - f. Access to Transit
 - g. Greenways, Pocket Parks, and Community Plaza
- 6. Workforce Housing Units (Section [3.3.2])
- 7. Area Traffic Solution Financing (Section [3.3.6])
 - a. CRA or HTRZ (Section [3.3.6.1] and Section [3.3.6.2])
 - b. VAA or PID (Section [3.3.6.3])
- 8. Aerial transportation.

**EXHIBIT A-4
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Height Regulations

1. **Building Height:** Building Height is established as either Maximum Building Height (Stories) or Maximum Building Height (Elevation - ASL) as shown on the attached Height Allowance Map. If no Maximum Building Height (Elevation - ASL) is designated for a Parcel, then Maximum Building Height (Stories) will be used to determine Building Height.
 - 1.1 Maximum Building Height (Stories) means the maximum number of stories allowed to be built above grade measured from the finished grade at any building façade.
 - 1.2 Maximum Building Height (Elevation - ASL) means the maximum elevation above sea level (ASL) specified on the Height Allowance Map.
 - a. The following exceptions to Maximum Building Height (Elevation - ASL) are allowed:
 - i. Antennas, chimneys, flues, vents, and similar structures may extend up to five feet (5'-0") above the allowed Maximum Building Height to comply with requirements of the International Building Code (IBC).
 - ii. Appurtenances for mechanical equipment and associated screening, when enclosed or screened, may extend up to sixteen feet (16'-0") above the allowed Maximum Building Height to accommodate stairs and passenger elevators to access any rooftop terrace or similar rooftop areas.
 - iii. An Elevator Penthouse may extend up to sixteen feet (16'-0") above the allowed Maximum Building Height to comply with requirements of the International Building Code (IBC).
 - iv. Roof top patios, common areas, sitting areas, decks, railings, and similar space, including covered stairways and an Elevator Penthouse providing access to the roof top.
 - v. Roof top equipment for the purposes of 'Green Initiatives' such as solar panels, rainwater harvesting tanks, etc. may extend beyond the allowed Maximum Building Height if approved by the Design Review Committee. Equipment locations that exceed the allowed Maximum Building Height shall respect a 2:1 setback from the building's outer edges and shall not exceed 30% of the overall roof area.

Height Allowance Map
[SEE ATTACHED]

**EXHIBIT A-5
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Traffic Mitigation Plan

Developer shall ensure completion of the following proposed traffic mitigation and transit improvements.

1. No additional traffic mitigation measures are required for the completion of Phase I.
2. The traffic mitigation measures which shall be constructed as part of Phase II, as set forth in Exhibit A-10, include the following:
 - a. Closing the median on Ute Blvd and lengthen EB left turn lane on Ute Blvd to SR-224.
 - b. Construction of the Skullcandy Bypass, i.e., west leg of Olympic Parkway roundabout
 - c. Prohibit left turns from Tech Center Drive to Landmark Road and restripe Tech Center Drive to Landmark Road intersection.
 - d. Channelize eastbound traffic on Tech Center Drive to prevent left turns, add merge lane for southbound turns.
 - e. Construct necessary transit lanes on Landmark Drive and within the Mixed Use Project **[County to specify]**.
 - f. Dedication of land to create temporary access from Richins Building to Landmark Drive. **[County to specify]**.
3. Mitigation measures which shall be part of all Project Areas:
 - a. Appropriate bus access by creating bus pull-outs, shelters, bike racks, etc.
4. Mitigation measures requiring UDOT participation and approval which shall be completed at the time of UDOT approval:
 - a. Construction of extended turn lane from southbound SR-224 to Ute Blvd. (*see* UDOT Alternative 4, D-15 (without the HOV only requirement) *Figure 1* below).
 - b. Construction of northbound through to I-80 capacity on SR-224 (*see* UDOT Alternative 4, D-11, *Figure 1* below).
 - c. Developer will dedicate, at no cost to the County or UDOT, de minimis portions of the PC Junction Property for rights-of-way required to complete the UDOT 224 project(s) set forth in this Exhibit A-5, provided that the dedications will not reduce

the Vested Density or require the relocation of any improvements or Project Areas shown on the Master Plan.

ALTERNATIVE 4

Phased Implementation of Short-Term Solutions

Combines the short-term alternatives that passed Level 1 screening in order to provide a solution that can be built incrementally, including improving traffic flow at existing facilities and adding active transportation, transit, and HOV amenities.

Individual Short-term Components

- D-1 Expand I-80 eastbound off ramp for transit/HOV only. Triple northbound left turns at I-80 interchange.
- D-7 Dual left turn lanes at Ute Blvd and Olympic Parkway
*A variation would be an outside northbound left turn lane at Olympic Parkway, which would be used by HOV/transit vehicles only
- D-9 Add an additional northbound left turn lane at the existing interchange for transit/HOV
- D-10 Pedestrian tunnel under Ute Boulevard
- D-11 Northbound lane widening on S.R. 224 from Olympic Parkway to Ute Boulevard
- D-12 Southbound lane widening on S.R. 224 from Olympic Parkway to Ute Boulevard
*A variation would be to widen for HOV-lane, only
- D-14 New connection and a possible traffic signal at Bear Cub Drive
- D-15 Transit/HOV-only, right turn lane from eastbound I-80 off ramp to Ute Boulevard
- D-16 Extend westbound to northbound right turn lane on Newpark Boulevard
- D-16A Close left turns at McDonalds and Richins building to extend left turn from Ute Boulevard to S.R. 224

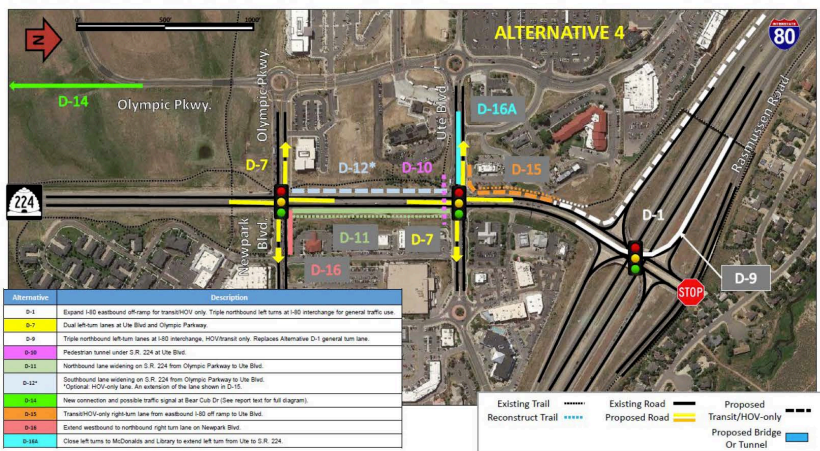


Figure 1 (UDOT Alternative 4)

5. UDOT Project, as discussed in Section 3.3.7 of the Amended DA, and styled as Kimball Junction Area Plan Level 2 Solution Alternative 3: Grade Separated Intersections with Enhanced Pedestrian Crossing Facilities at Ute Blvd. and Olympic Parkway and Alternative Connections to the I-80 Interchange, as set forth in Figure 2 below:

ALTERNATIVE 3

Grade-Separated Intersections with Alternate Connections to the I-80 Interchange

Traffic analysis shows that increased travel times are related to the lack of capacity of the intersections at Ute Boulevard and Olympics Parkway on S.R. 224. Grade-separated intersections at Ute Boulevard and Olympic Parkway with a braided ramp concept will help separate local and through traffic in the area.

Northbound S.R. 224 remains at or close to its current location horizontally but will be depressed below the surface streets through Kimball Junction. Ramps would diverge from S.R. 224 south of Olympic Parkway to create a one-way frontage road system. Olympic Parkway and Ute Boulevard would tie into the frontage system at intersections, crossing over S.R. 224 on bridges.

Vehicles heading northbound from S.R. 224 to I-80 eastbound will pass underneath Ute Boulevard bridge and exit on the right. The ramp will go underneath the northbound frontage road in a tunnel before climbing up to existing grade on the east side of the frontage road. Vehicles heading northbound on the frontage road to I-80 westbound will have a curb or barrier-separated left-turn lane and a through lane.

Benefits

- Vehicles on mainline S.R. 224 will connect directly to and from I-80 while ramps will provide a bypass and maintain or improve east-west connectivity on Olympic Parkway and Ute Boulevard
- Braided ramps will provide separated turn lanes to eliminate traffic weaving in the short distance where the frontage road and S.R. 224 are at the same elevation.
- Vehicles on the new S.R. 224 frontage roads will have full access to turn onto Olympic Parkway, Newpark Boulevard, and Ute Boulevard to access the surrounding businesses and will have full access to I-80 using the braided ramps.
- Braided ramps will allow direct but separated connections to I-80 from mainline S.R. 224 and the frontage roads.
- By depressing the roadway through Kimball Junction there will be fewer visual impacts.

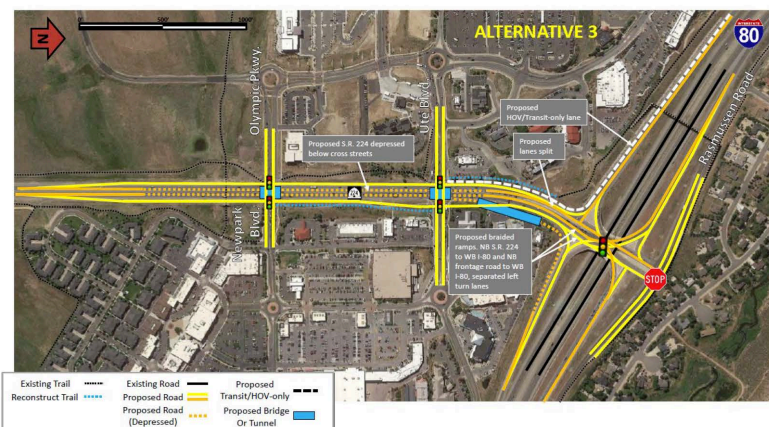


Figure 2 (UDOT Alternative 3)

**EXHIBIT A-6
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Housing Agreement (HUD Restrictions)

**HOUSING AGREEMENT FOR DPRE MIXED USE PROJECT
HUD RESTRICTIONS
SUMMIT COUNTY, UTAH**

THIS HOUSING AGREEMENT FOR DPRE MIXED USE PROJECT ("**Housing Agreement**") is made and entered into effective as of the ___ day of _____, 2021 ("**Effective Date**"), by and between PARK CITY JUNCTION, LLC, a Utah limited liability company ("**Developer**") and SUMMIT COUNTY, a political subdivision of the State of Utah, by and through its County Manager ("**County**") (the County and Developer are referred to individually as a "**Party**" and collectively as the "**Parties**"), with reference to the following:

A. Developer owns approximately 58 acres of land located generally nearby and to the south of the existing commercial development with the Kimball Junction Area and west of Highway 224, in Summit County, Utah.

B. Developer has obtained approval for the DPRE Mixed Use Project ("**Project**") from the County, as evidenced by the Amended and Restated Development Agreement dated _____ ("**Amended DA**").

C. A condition of the Amended DA is that Developer provide 55 Workforce Housing Units (defined below) with rental rate and income restrictions (as set forth herein) targeted at households earning approximately 30% to 50% AMI with an approximate average of 44% of the AMI for Summit County, Utah ("**Very Low-Income Units**").

D. A condition of the Amended DA is that Developer provide 201 Workforce Housing Units with rental rate and income restrictions (as set forth herein) targeted at households earning less than or equal to approximately 60% of the AMI for Summit County, Utah ("**Low-Income Units**").

E. A condition of the Amended DA is that Developer provide 80 Workforce Housing Units with rental rate and income restrictions (as set forth herein) targeted at households earning less than or equal to 120% of AMI for Summit County, Utah ("**Attainable Units**").

F. Developer and the County desire to enter into this Housing Agreement to establish the covenants and restrictions ("**Deed Restrictions**") that will encumber and govern the Very Low-Income, Low-Income, and Attainable Units ("**Workforce Housing Units**").

G. To finance the construction of the Project, Developer has elected to obtain a Department of Housing and Urban Development ("**HUD**") insured mortgage loan. In response to HUD's requirements, Developer has submitted to HUD an Affirmative Fair Housing Market Plan for the Project dated _____, which has been approved by HUD (such plan as approved is herein collectively referred to as the "**Approved AFHMP**"), a copy of which has been provided to the County.

FOR GOOD AND VALUABLE CONSIDERATION, Developer hereby submits the Workforce Housing Units to the following covenants and restrictions:

1. **Governance.** This Housing Agreement governs the Workforce Housing Units that Developer has agreed to provide within the Project as outlined in the Amended DA.
2. **Definitions.**
 - 2.1 "**Apartment Building**" means a building for Multi-family Units as described in the Amended DA.
 - 2.2 "**Area Median Income**" or "**AMI**" means the Summit County, Utah Median Family Income as determined annually by HUD. The AMI, calculated annually by HUD, is the "middle" number of all of the incomes in Summit County, with 50% of individuals in Summit County making more than that amount, and 50% making less than that amount. For purposes of this Housing Agreement, AMI will be rounded to the nearest tenth (for example, if the calculated AMI is 64%, it will be rounded down to 60%; if the calculated AMI is 65%, it will be rounded up to 70%, and so forth).
 - 2.3 "**Attainable Unit**" means a residential dwelling unit within the Project with rental rate and income restrictions (as set forth herein) targeted at households earning **less than or equal to 120% of the AMI for Summit County, Utah.**
 - 2.4 "**Deed Restriction(s)**" means the covenants, conditions and restrictions set forth in this Housing Agreement, which attach to each Workforce Housing Unit and run with the land.
 - 2.5 "**Floating Unit**" means a Workforce Housing Unit with rent restrictions as required by Sections 5 and 6 and designed as such as required by this Housing Agreement. The designation as a Floating Unit may be changed from time to time according to the Next Available Unit Rule. Consequently, all Workforce Housing Units are Floating Units.

- 2.6 **"Low-Income Unit"** means a residential dwelling unit within the Project with rental rate and income restrictions (as set forth herein) targeted at households earning approximately 60% of the AMI for Summit County, Utah.
- 2.7 **"Market Rate Unit"** means a residential dwelling unit which is not subject to the Deed Restrictions.
- 2.8 **"Master Waiting List"** has the meaning set forth in Section 19.
- 2.9 **"Next Available Unit Rule"** means, with respect to each classification of Workforce Housing Units (meaning "Very Low-Income Units", "Low-Income Units", or "Attainable Units") whenever there are fewer designated of each of the Very Low-Income Units, Low-Income Units, or Attainable Units as required by Section 6, one of the next three available same sized Workforce Housing Unit of the next size needed to satisfy a needed designation that becomes vacant will be designated and made available for lease at the Very Low-Income Unit, Low-Income Unit, or Attainable Income Unit classification, as applicable.
- 2.10 **"Permitted Rent"** has the meaning as set forth in Section 6.
- 2.11 **"Qualified or Qualifying Household"** means a prospective or actual leasehold tenant of a Workforce Housing Unit who meets all applicable prospective tenant qualifications, including the income qualifications set forth in Section 6.
- 2.12 **"Very Low-Income Unit"** means a residential dwelling unit within Project with rental rate and income restrictions (as set forth herein) targeted at households earning approximately 30% to 50% AMI with an average of 44% of the AMI for Summit County, Utah.
3. **Occupancy Requirement.** Subject to Section 20, Developer will use commercially reasonable efforts to provide that Workforce Housing Unit will at all times be occupied by a Qualified Household.
4. **Income Qualification:** Developer will use commercially reasonable efforts to provide that Workforce Housing Unit will be occupied by Qualified Households based upon the following:
 - 4.1 **Process:** Income qualification will adhere to the following process:
 - i. Determine the number of adults and children (all household members) to occupy the available Workforce Housing Unit.

- ii. Collect either 1040 Federal Tax Returns for the most recent year (or “transcript of tax returns” issued by the Internal Revenue Service) or current pay stub for all household members generating income.
- iii. Add together the adjusted gross income for all household members to determine the total household income.
- iv. Determine whether total household income is greater or less than the income of a family of the same size earning the applicable AMI.

4.2 **Net Worth Limitation.** In addition to the income limit, at the time of being qualified, Qualifying Households cannot have a net worth greater than four times the Summit County, Utah AMI.

4.3 **Annual Qualification.** All tenants must be income qualified annually by Developer or a third-party designee approved by Developer and the County.

4.4 **Audit.** Information regarding rents, rent rolls, tenant income and vacancy rates and other pertinent and industry standard leasing information related to the Workforce Housing Units will be provided to the County upon request.

5. **Unit Identification.** Those Workforce Housing Units designated on attached **Exhibit A** are income and rent restricted for the Term (defined below) of this Housing Agreement. With notice to the Community Development Director of the County, the final number of each type of Workforce Housing Unit (Very Low-Income, Low-Income, and Attainable Units, may vary up to, but not in excess of, 10% of the unit count specified in the following table, provided the total number of Workforce Housing Units will not be less than 336 Workforce Housing Units. Upon request by Developer prior to the issuance of the first Certificate of Occupancy for a multi-family Unit, the Parties agree to cooperate in good faith to amend this Housing Agreement in order to modify these unit numbers, provided that such modification does not result in any change in the number or types of units allowed by this Section 5, but rather only a modification of their location within and among the Project.

Type	Number	Target AMI	HUD Average Target
Very Low-Income Units	55	30% to 50%	44% AMI
Studio units (400 sf)*	5		
One bedroom (650 sf)	25		
Two bedroom (900 sf)	22		
Three bedroom (1150 sf)	3		
Low-Income Units	201	40% to 80%	60% AMI
Studio units (400 sf)	20		
One bedroom (650 sf)	91		

Two bedroom (900 sf)	80		
Three bedroom (1150 sf)	10		
Attainable Units	80	100% to 120%	120% or less
Studio units (400 sf)	8		
One bedroom (650 sf)	36		
Two bedroom (900 sf)	32		
Three bedroom (1150 sf)	4		

*The square footage shown in the forgoing table represents the minimum square footage for each unit type. In addition, the number of each type of Workforce Unit and the unit sizes are approximate.

6. **Maximum Permitted Rents.** The Workforce Housing Units will have the maximum permitted rental rates (“**Permitted Rent**”) set forth in Exhibit D to this Housing Agreement which generally follows:
 - 6.1 **Very Low-Income Units.** Monthly rents for Very Low-Income Units, adjusted annually, may not exceed an amount equal to 30% of the gross monthly income of a household earning between 30% and 50% of the AMI for Summit County, Utah adjusted only for an assumed two or more person household using HUD’s Family Size Adjustments.
 - 6.2 **Low-Income Units.** Monthly rents for Low-Income Units, adjusted annually, may not exceed an amount equal to 30% of the gross monthly income of a household earning between 40% to 80% of the AMI for Summit County, Utah adjusted only for an assumed two or more person household using HUD’s Family Size Adjustments.
 - 6.3 **Attainable Units.** Monthly rents for Attainable Units, adjusted annually, may not exceed an amount equal to 30% of the gross monthly income of a household earning 120% or less of the AMI for Summit County, Utah adjusted only for an assumed two or more person household using HUD’s Family Size Adjustments.
 - 6.4 **Utilities and Fees.** The Permitted Rent amount includes rent, parking fees, and a utility allowance (“**Utility Allowance**”). If Developer pays for all utilities, then the full rent may be charged. If the tenant pays for all or some of the utilities, then a Utility Allowance will be determined, and rents will be reduced by the amount of the Utility Allowance. The Utility Allowance for the initial operating year will be determined and set by a commonly accepted industry standard method, such as utility allowances established on an annual basis by Utah Housing Corporation. The Utility Allowance for subsequent years will be determined and set by a commonly accepted industry standard method, such as utility allowances established on an annual basis by Utah Housing

Corporation, or some other commonly accepted industry standard method, or by utilizing actual utility billings from the Project.

7. **Rental Agreement Limitations.** Very Low-Income Units, Low-Income Units, and Attainable Units will not be rented nightly or weekly. The minimum rental length will be 90 days but will not exceed 12 months without a review of income qualifications.
8. **Reporting and Compliance.** At a minimum annually, no later than October 15th of each year, or more frequently at the County's request, Developer will provide the County with a copy of each of the following: (a) the Master Waiting List, and (b) the monthly rent roll showing each household's name, unit occupied, rent charged, household gross income, income qualifications, name and location of employment (if permitted by applicable law), term of lease, and other pertinent information related to Workforce Housing Unit eligibility. This monthly rent roll will conform to a format approved by the County.
9. **Energy Star Rating.** Developer will provide the County, no later than the date a Certificate of Occupancy is issued for any Workforce Housing Unit, with a certificate of compliance showing the construction of the Workforce Housing Unit meets the currently adopted Energy Star standard or its equivalent.
10. **Term.** The term ("Term") of this Housing Agreement is a period of 60 years from the date of issuance of the Certificate of Occupancy for the last Workforce Housing Unit within the Project.
11. **HUD Insured Mortgage Protection.**
 - 11.1 **Subordination to HUD Insured First Mortgage.** Except as provided in this Section 11, this Housing Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of any HUD or other Federal Insured First Mortgage encumbering the Project ("**First Mortgage**") and to all advances validly secured by the HUD Insured First Mortgage.
 - 11.2 **Notice of Default.** The holder of a First Mortgage must provide written notice to the County (per Section 22 below) upon the recording of a notice of default of the First Mortgage in the Office of the Summit County Recorder ("**Notice of Default**").
 - 11.3 **Option to Acquire the Project from HUD Insured First Mortgagee.** If the holder of a First Mortgage records a Notice of Default and that Notice of Default is not cured by Developer within 60 days of its recording, the County may elect to cure such default and have the right to exercise an option to purchase the Project and seek the approval from the First Mortgagee and HUD for the acquisition of the Project and the assumption of the First Mortgage by

giving written notice to the First Mortgagee and Developer within three months of the recording of the Notice of Default ("**Exercise Notice**"). In the event that the County purchases the Project (instead of assuming the First Mortgage), the purchase price to be paid by the County for the Project will be the amount of outstanding principal, delinquent payments, and any advances validly secured by the First Mortgage, plus the sum of all taxes, interest, insurance, and title insurance then due and payable. In the event that the County exercises its option to acquire the Project and to assume the First Mortgage, the County will assure the First Mortgagee that the First Mortgage remains current pending the First Mortgagee's and HUD's approval of the purchase of the Project and the assumption of the First Mortgage. The County will close on its purchase of the Project within 30 days of the First Mortgagee's and HUD' s approval of the purchase and assumption ("**Closing Deadline**").

- 11.4 **No Impact on Foreclosure Sale.** The provisions of this Housing Agreement will not impair the holder of a First Mortgage from causing the Project to be sold at public sale by way of judicial or non-judicial foreclosure. Any purchaser at that sale (other than the holder of the First Mortgage) will acquire the Project subject to this Housing Agreement and the Deed Restrictions. In the event of a public foreclosure sale, the County will have no rights greater than or different from others bidding for the Project.
- 11.5 **Elimination of Housing Agreement Upon Foreclosure.** If the holder of a First Mortgage or any third-party acquires the Project via the foreclosure of the First Mortgage and the County has not exercised its option and purchased the Project (by either failing to provide notice to the holder within the Exercise Period or failing to close on such purchase by the Closing Deadline), then the provisions of this Housing Agreement will automatically terminate with respect to the Project and the holder of the First Mortgage will be entitled to transfer the Project free and clear of the Deed Restrictions. In such event the owner of the Project may, but is not be required to, file in the Office of the Summit County Recorder an affidavit or other notice of termination, reciting the events giving rise to the termination of this Housing Agreement with respect to the Project.
- 11.6 **Applicability of Deed Restrictions.** The above-described termination of this Housing Agreement and the Deed Restrictions will apply only to the acquisition of the Project by (or through) the foreclosure of a First Mortgage strictly as described in the preceding paragraphs. If any other person or entity (including the County) acquires the Project through foreclosure or trustee's sale or by any other legal means, that acquisition will be made, and the Project will remain, subject to the terms and conditions of this Housing Agreement and the Deed Restrictions which will not be automatically terminated by the foreclosure sale or other transfer event.

12. **Maintenance of Workforce Housing Units.** Developer will at all times maintain the Workforce Housing Units in good, safe, and habitable condition in all respects, and in the same general condition as Developer maintains the Market Rate Units, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the units. Developer will suffer no mechanics' liens to be recorded against the Workforce Housing Units.
13. **Default.** In the event of a breach of this Housing Agreement by Developer with respect to a Workforce Housing Unit, the County will be entitled to injunctive relief, or to any other remedy available at law or in equity for that breach, including the specific remedies enumerated herein. The prevailing Party in any dispute hereunder is entitled to recover their reasonable attorneys' fees and costs incurred in connection with that dispute, regardless of whether litigation is pursued by either Party.
14. **Enforcement.**
 - 14.1 **Monitoring.** The County will monitor compliance with the terms of this Housing Agreement and have the power to exercise all remedies available at law and in equity to ensure compliance by Developer and its successors-in-interest.
 - 14.2 **County Ordinances.** In addition to the remedies contained herein, Developer and other individuals dealing with the transfer and/or management of the Workforce Housing Units (including lenders, realtors, attorneys, and title professionals) are subject to the provisions of Summit County Criminal Ordinance 5-2-7 "Workforce Housing Fraud".
15. **Recording of Housing Agreement: Covenants to Run with the Land.**
 - 15.1 **Recording.** The legal description of the property that encompasses the Apartment Building is attached hereto as **Exhibit B**. Upon execution, this Housing Agreement will be recorded and filed in the Office of the Summit County Recorder, State of Utah.
 - 15.2 **Covenants to Run with the Land.** Developer intends, declares and covenants, on behalf of itself and all future owners of the Workforce Housing Units that this Housing Agreement and the covenants and restrictions set forth herein, regulating and restricting rents, use, and occupancy of each Workforce Housing Unit are covenants running with the land and improvements constituting the Workforce Housing Units, for the benefit of the County, encumber the Workforce Housing Units, and are binding upon Developer and all subsequent owners of the Workforce Housing Units.

16. **Marketing.** Developer will prepare and implement a marketing plan for the Workforce Housing Units ("**Marketing Plan**") which comports to the applicable Waterfall Provisions (defined below).
17. **Management Plan.** No later than the date on which Developer receives a building permit for the first Apartment Building [NTD: the term Apartment Building need to include Townhomes], Developer will prepare and adopt the initial management plan, which covers matters relating to the operation, leasing and maintenance of the Workforce Housing Units ("**Management Plan**"), will and provide a copy to the County. The Management Plan will, at a minimum, contain provisions with respect to the following matters:
 - 17.1 The procedure for dealing with the situation arising when a tenant's circumstances change, and he or she is no longer a Qualifying Household.
 - 17.2 How the Master Waiting List is maintained and publicized, including the Marketing Plan.
 - 17.3 How different applicants falling within a single specified priority category listed in Section 21 will be ranked on the Master Waiting List.
 - 17.4 The amount that may be required as a security deposit from tenants.
 - 17.5 The requirements that Developer may impose on tenants to disclose income, household, and related information.
 - 17.6 The rules governing the determination of AMI, Permitted Rent, and income in connection with the operation of the Workforce Housing Units, provided those rules are not inconsistent with any provision of this Housing Agreement.

From time to time, Developer may make reasonable changes to the Management Plan, which will become effective 30 days after written notice and a copy of the revised Management Plan are delivered to Summit County.

18. **Property Manager.** Developer will select and engage a property manager (either a nonprofit corporation or a for profit company or an employee of Developer) to lease and manage the Workforce Housing Units.
19. **Master Waiting List.** Developer will maintain a waiting list of all persons who desire to lease a Workforce Housing Unit, their income qualifications, and the name and location of their place of employment ("**Master Waiting List**"). At the option of Developer, the Master Waiting List may be operated by another party under the general

direction of Developer.

20. **Filling of Vacancies.** Developer will use commercially reasonable efforts to rent Workforce Housing Units, by classification, to Qualified Households. At initial notification of a vacancy, and where possible, a minimum of 30 days prior to termination of the lease, Developer will advertise for Qualified Households.
- 20.2 **Very Low-Income Units.** If, at the time Developer is prepared to enter into a lease to fill an upcoming or existing vacancy, no one on the Master Waiting List meets the qualifications for a Very Low-Income Unit, then Developer will open the vacancy to those Qualifying Households on the Master Waiting List for Low-Income Units. Thereafter, if no one on the Master Waiting List meets the qualifications for Low-Income Unit, then Developer will open the vacancy to those Qualifying Households on the Master Waiting List for Attainable Units and apply the Next Available Unit Rule as set forth in Section 19.8.
- 20.3 **Low-Income Units.** If, at the time Developer is prepared to enter into a lease to fill an upcoming or existing vacancy, no one on the Master Waiting List meets the qualifications for a Low-Income Unit, then Developer will open the vacancy to those Qualifying Households on the Master Waiting List for Attainable Units and apply the Next Available Unit Rule as set forth in Section 20.7.
- 20.4 **Attainable Units.** At such time as Developer is prepared to enter into a lease to fill an upcoming or existing vacancy, if no one on the Master Waiting List meets the qualifications for an Attainable Unit, then Developer, after waiting at least fifteen (15) days during the period that the Attainable Unit remains vacant and in which time no other Qualifying Household in any of the categories mentioned above is placed on the Master Waiting List, Developer may rent the Attainable Unit to a household not meeting income limits and apply the Next Available Unit Rule as set forth in Section 20.8.
- 20.5 **Exception to Qualification.** Households no longer meeting income qualifications but whose income does not exceed 140% of the applicable income limit are still considered Qualifying Households so long as they met all applicable prospective household qualifications including the income qualifications in Section 6 at move in.
- 20.6 **Rental Agreement Continuation.** Households no longer meeting income qualifications but whose income exceeds 140% of the applicable income limit may continue to occupy the Workforce Housing Unit until the termination of the stated term of the lease agreement.
- 20.7 **Conflicts with Approved AFHMP.** The Parties acknowledge that to the

extent of any inconsistencies between the foregoing vacancy provisions contained in this Section 20 and the Approved AFHMP, including those provisions which require reasonable accommodations for a person with a disability and those that address the loss of employment or a change in income qualifications, the terms and conditions of the AFHMP control. Any failure by Developer to comply with the vacancy requirements of this Section 20 resulting from the implementation of and compliance with the Approved AFHMP will not constitute a default of this Housing Agreement.

20.8 **Lease Renewal.** Tenants who are no longer Qualifying Households will be granted a safe harbor period for the remainder of their lease term. Upon expiration of the current lease, those tenants will not be permitted to renew their lease.

20.9 **Floating Units Filling of Vacancies using the Next Available Unit Rule.** Whenever there are less than the required number of Workforce Housing Units in any category, the Next Available Unit Rule may be used to bring the total number of Workforce Housing Units in the given category back to the required minimum. All Workforce Housing Units will be deemed to be Floating Units.

21. **Waterfall Provision.** It is the public policy of Summit County to house employees as close to their workplace as possible, thereby reducing traffic and congestion. In accordance with the Amended DA, Developer will be exempt from complying with the Waterfall Provision if Developer uses State and/or Federal funding programs (e.g. Low Income Housing Tax Credits, HUD Multifamily Funding Programs, or other State or Federal programs) (“**Government Funding Programs**”) that do not allow or otherwise restrict the ability to comply with the Waterfall Provision; provided, however, before Developer can exert its right to exemption to the Waterfall Provisions (in whole or in part), Developer will use good faith efforts to secure approval of the Waterfall Provisions from the provider of the Government Funding Programs and will provide the County with evidence of its efforts and that the approval has been denied and the basis therefor. In the event that an amendment of this Housing Agreement will resolve any conflict with the Government Funding Programs, Developer will seek such amendment from the County, which County may grant or deny in its discretion. In the event that Developer is exempt from complying with this Waterfall Provision pursuant to the terms and conditions of this Section 21, Developer will nevertheless use good faith efforts to conform its rental policies to achieve the intent of the Waterfall Provision as closely as possible while still complying with Government Funding Programs that have provided Developer with funding for the Project. If applicable, the terms of this Waterfall Provision will be incorporated into the Master Waiting List. Unless exempt as provided above, the Workforce Housing Units will be leased on a priority basis as follows (“**Waterfall Provisions**”):

- 21.1 **First Priority:** households meeting income limits with at least one person employed by a business located within the Project or employed at business located in the Kimball Junction area.
- 21.2 **Second Priority:** households meeting income limits with at least one person employed at a business located within the Snyderville Basin.
- 21.3 **Third Priority:** households meeting income limits with at least one person employed at a business located in Summit County
- 21.4 **Fourth Priority:** households meeting income limits.

In accordance with the foregoing provisions, the Parties acknowledge that to the extent of any inconsistencies between the Waterfall Provisions contained in this Section 21 and the Approved AFHMP, including those provisions which require reasonable accommodations for a person with a disability and those that address the loss of employment or a change in income qualifications, the terms and conditions of the AFHMP control. Any failure by Developer to comply with the Waterfall Provisions contained in this Section 21 resulting from the implementation of and compliance with the Approved AFHMP will not constitute a default of the Housing Agreement, as amended.

- 22. **Notices.** Any and all notices and demands by any Party to any other Party required or desired to be given hereunder must be in writing and will be validly given or made if (a) deposited in the U.S. mail, certified or registered, postage prepaid, return receipt requested, (b) sent by FedEx or other similar courier service keeping records of deliveries and attempted deliveries, or (c) via hand delivery with signed acknowledgment of receipt by a person of suitable age and discretion. Service by U.S. mail or courier will be conclusively deemed made on the first business day delivery is attempted. Any notice or demand to the County or Developer will be addressed to the County or Developer at the following addresses:

For Developer:

Park City Junction, LLC
c/o Dakota Pacific Real Estate
Attention: Scott Swallow
299 South Main Street, Suite 2450
Salt Lake City, Utah 84111

With a copy to:

Parsons Behle & Latimer
Attention: Shawn C. Ferrin
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

For the County:
Thomas C. Fisher
Summit County Manager
P.O. Box 128
Coalville, Utah 84017

With a copy to:
Summit County, Utah
Office of Economic Development
PO Box 128
60 North Main
Coalville, Utah 84017
Attn: Jeffrey B. Jones

With a copy to:
SUMMIT COUNTY ATTORNEY'S OFFICE
P.O. Box 128
Coalville, Utah 84017

The Parties may change their respective addresses for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address will not become effective, however, until the actual receipt thereof by the others or the recording of a change of address by the County or Developer.

23. **Entire Agreement.** This Housing Agreement, together with the Amended DA, represents the entire agreement between the Parties with respect to the Workforce Housing and will only be amended or modified by a written agreement signed by the Parties hereto.
24. **Conflicts.** In the event of a conflict between the Snyderville Basin Development Code (Summit County Code, Title 10) and this Housing Agreement, the provisions of this Housing Agreement will govern. In the event of a conflict between the Amended DA and this Housing Agreement, the Amended DA will govern. The decision of the County Manager will be the final decision of the County with respect to the interpretation of this Housing Agreement
25. **Successors.** This Housing Agreement is binding upon the successors and assigns of the Parties.
26. **Subdivision or Condominium Plat.** In accordance the Amended DA, Developer has the option of subdividing the Project into separate lots, however, so long as the Apartment Building is financed by any Government Funding Programs, the Workforce Housing Units may not be created and sold as separate, individual condominium units. Developer must comply with the processes set forth in the Code for the subdivision of

property.

27. **Third Party Beneficiary.** This Housing Agreement is not intended to confer rights on any third parties.
28. **Paragraph Headings.** Paragraph or section headings within this Housing Agreement are inserted solely for convenience of reference, and are not intended to, and will not govern, limit or aid in the construction of any terms or provisions contained herein.
29. **Gender Neutral.** Whenever the context so requires herein, any gender reference include any or all genders and vice versa and the use of the singular includes the plural and vice versa.
30. **Modifications.** Any modifications of this Housing Agreement will be effective only when made by writings signed by the Parties and recorded in the Official Records of Summit County, Utah.
31. **Incorporation of Recitals.** The recitals set forth at the beginning of this Housing Agreement are incorporated herein by this reference.
32. **HUD Rider.** As a condition to HUD's agreement to ensure development financing for the Apartment Building, the Parties adopt the HUD Rider which is attached hereto as **Exhibit C** as if fully set forth herein.
33. **Severability.** In the event that any provision of this Housing Agreement is held to be invalid or void by any court of competent jurisdiction, that provision will be deemed severable from the remainder of this Housing Agreement and will in no way affect any other provision. If that provision is deemed invalid due to its scope or breadth, the provision will be deemed valid to the extent of the scope and breadth permitted by law.
34. **Further Action/Amendment.** The Parties will execute and deliver all documents, provide all information, and take or forbear from all actions as may be necessary or appropriate to achieve the purposes of this Housing Agreement.
35. **Counterparts.** This Housing Agreement may be executed in any number of counterpart originals, each of which will be deemed an original instrument for all purposes, but all of which will comprise one and the same instrument.
36. **Governing Law.** This Housing Agreement will be construed and enforced in accordance with the laws of the State of Utah.
37. **Authority.** The individuals who sign this Housing Agreement represent and warrant that they are duly authorized to execute this instrument on behalf of each Party and that no other signature, act, or authorization is necessary to bind the Parties.

THE PARTIES have executed this Housing Agreement as of the Effective Date.

[Signature Page Follows]

[signatures]

**EXHIBIT A
TO
HOUSING AGREEMENT**

Unit Designation

**EXHIBIT B
TO
HOUSING AGREEMENT**

Legal description of Apartment Building

**EXHIBIT C
TO
HOUSING AGREEMENT**

HUD Rider

**EXHIBIT D
TO
HOUSING AGREEMENT**

2021 INCOME QUALIFICATION TABLE

2021 Summit County AMI = \$120,800	30% AMI	40% AMI	50% AMI	60% AMI	70% AMI	80% AMI	100% AMI	120% AMI
1 person	\$25,110	\$33,480	\$41,850	\$50,220	\$58,590	\$66,960	\$84,611	\$106,914
2 person	\$28,680	\$38,240	\$47,800	\$57,360	\$66,920	\$76,480	\$96,640	\$122,114
3 person	\$32,280	\$43,040	\$53,800	\$64,560	\$75,320	\$86,080	\$108,771	\$137,443
4 person	\$35,850	\$47,800	\$59,750	\$71,700	\$83,650	\$95,600	\$120,800	\$152,643
5 person	\$38,730	\$51,640	\$64,550	\$77,460	\$90,370	\$103,280	\$130,504	\$164,905
6 person	\$41,610	\$55,480	\$69,350	\$83,220	\$97,090	\$110,960	\$140,209	\$177,168

**2021 MAXIMUM PERMITTED MONTHLY RENTS
INCLUDING UTILITIES BY MEDIAN INCOME**

Number of Bedrooms	Household Size	Moderate Income Housing						Attainable Housing 100%	
		30% AMI	40% AMI	50% AMI	60% AMI	70% AMI	80% AMI	AMI	120% AMI
0	1	\$627.75	\$837.00	\$1,046.25	\$1,255.50	\$1,464.75	\$1,674.00	\$2,115.28	\$2,672.85
1	2	\$717.00	\$956.00	\$1,195.00	\$1,434.00	\$1,673.00	\$1,912.00	\$2,416.00	\$3,052.85
2	3	\$807.00	\$1,076.00	\$1,345.00	\$1,614.00	\$1,883.00	\$2,152.00	\$2,719.28	\$3,436.07
3	4	\$896.25	\$1,195.00	\$1,493.75	\$1,792.50	\$2,091.25	\$2,390.00	\$3,020.00	\$3,816.08

EXHIBIT A-7

TO

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Housing Agreement [Approved Form]

MODERATE INCOME / WORKFORCE HOUSING AGREEMENT

This Moderate Income/Workforce Housing Agreement (the "Agreement") is made by and between Park City Junction LLC ("Developer") and Summit County, Utah (the "County") and shall be effective as of the last date of signature below. Developer and the County are each referred to below as a "party" and collectively as the "parties."

WHEREAS, Developer is the owner of certain real property located in Summit County, Utah, identified as DPRE Mixed Use Project (the "Property"), a mixed-use project consisting of commercial, residential, and moderate income/workforce housing units ("Unit" or "the Units"), which is legally described in Exhibit A attached hereto and incorporated herein and configured according to the recorded site plan attached hereto as Exhibit B.

WHEREAS the County approved an Amended and Restated Development Agreement application with the condition that the Units to be constructed be rented at a rental rate that is affordable to households earning 80% of the Area Median Income ("AMI"), defined below, for Summit County, Utah, with adjustments based on family size.

WHEREAS the County further required that Developer enter into an agreement with the County to establish qualifications for and conditions of use of the Units and to monitor compliance of the Units;

NOW THEREFORE in consideration of the terms and conditions set forth hereinafter, it is agreed as follows:

1. **Definitions:**

1.1 "Area Median Income (AMI)": AMI, calculated annually by HUD, is the "middle" number of all of the incomes in Summit County, with 50% of individuals in Summit County making more than that amount, and 50% making less than that amount. For purposes of this Agreement, AMI shall be rounded to the nearest tenth (for example, if the calculated AMI is 64%, it shall be rounded down to 60%; if the calculated AMI is 65%, it shall be rounded up to 70%, and so forth).

2. **Income Qualifications:** Units may be rented to individuals or households based upon the table in Exhibit C.

Commented [JB4]: Note: This is not the same as the HUD version and needs to remain as it was.

- 2.1 Process: Income qualification shall adhere the following process:
- a. Determine the number of adults and children (all household members) to occupy the available Unit.
 - b. Collect either 1040 Federal Tax Returns for the most recent year (or “transcript of tax returns” issued by the Internal Revenue Service) or current pay stub for all household members generating income.
 - c. Add together the adjusted gross income for all household members to determine the total household income.
 - d. Review Exhibit C to determine whether total household income is greater or less than the income of a family of the same size earning 80% AMI.
- 2.2 Income Averaging: Notwithstanding the above, Developer may allow for “income averaging.” Income averaging allows Units to serve market rate households per Exhibit C, so long as the average income/rent limit in the overall Property is 80 percent or less of AMI (for example, in a 10 unit project, developer may have 1 unit at 100% AMI, 1 unit at 60% AMI and 8 units at 80% AMI which equals an overall average of 80% AMI).
- 2.3 “Over” Income: Developer shall follow the “next available Unit rule,” which means that if a Unit tenant’s income increases to more than 140% of the AMI, the next available Unit must be rented to a household within the appropriate income level for admission (80% AMI or less). However, the tenant with the increased income is still eligible to remain in the Unit.
3. **Maximum Permitted Rents**: The maximum permitted rents shall be based on the household size, the household size’s gross income and the number of bedrooms in the unit. Permitted monthly rents shall not exceed those found in the table in Exhibit D. Household size corresponds to the number of bedrooms in the Units as follows:
- a. Studio unit: use the income limit for a one-person household.
 - b. One-bedroom unit: use the income limit for a two-person household.
 - c. Two-bedroom unit: use the income limit for a three-person household.
 - d. Three-bedroom unit: use the average income limit for a four person household
- 3.1 The permitted rental amount includes the following:
- a. Use and occupancy of the Unit and the associated land and facilities;
 - b. Any separately charged fees and service charges assessed by

Developer, which are required by all tenants but is not to include security deposits;

- c. Unless subject to Section 4 below, utilities including garbage collection, sewer, water, electricity, gas and other heating, cooking, and refrigeration fuels but not to include telephone service, cable television, or high-speed modem; and
- d. Possessory interest taxes or other fees and charges assessed for use of the associated land and facilities by a public or private entity other than Developer.

- 4. **Utility Allowance:** If the Unit tenant pays all or some of the utilities, a “utility allowance” shall be determined and maximum rents identified in Exhibit C shall be reduced by the amount of the utility allowance. The utility allowance shall initially be determined by a qualified third-party rater who shall estimate charges for garbage collection, sewer, water, electricity, gas and other heating, cooking, and refrigeration fuels for each Unit based upon a complete set of building plans presented to him or her by Developer. The County shall approve the third-party rater and the utility allowance. In subsequent years, commencing in the year following the first complete year of occupancy, Developer shall provide copies of actual billings for utility providers for at least five occupied Units to the County so that a new annual utility allowance can be determined and set.
- 5. **Employment Priorities (Waterfall Provision):** It is the public policy of the County to house employees as close to the workplace as possible, thereby reducing traffic and congestion. Since Developer is providing on-site moderate income/workforce housing, occupancy of such housing shall be on a priority basis as follows:
 - a. First Priority: Individuals and households meeting income limits with at least one person employed by a business located within the development project or within the Kimball Junction Neighborhood.
 - b. Second Priority: Individuals and households meeting income limits with at least one person employed at a business located within the Snyderville Basin.
 - c. Third Priority: Individuals and households meeting income limits with at least one person employed at a business located in Summit County.
 - d. Fifth Priority: Individuals and households meeting income limits.
- 6. **Advertising Vacancies:** At the time of initial occupancy, Developer shall advertise for qualified tenants for a period of not less than thirty (30) days and shall thereafter fill the Units in accordance with the above priorities from the list of qualified tenants then

available. Upon the occurrence of a vacancy, Developer shall review its wait list of qualified tenants (and may advertise for qualified tenants, if necessary, to obtain a qualified tenant). If a qualified tenant for the First Priority is not located at the time of a vacancy Developer shall accept the next highest priority potential tenant available at that time. Upon a showing of undue hardship on an individual or household formerly employed by a business in the First, Second, Third, or Fourth Priority and upon the County's consent, Developer may choose to renew a rental agreement for a term not to exceed one (1) year.

7. **Reporting and Compliance:** Developer shall provide a monthly rent roll showing each tenants' name, Unit occupied, rent charged, household gross income, name and location of employment, term of lease and other information related to eligibility requested by the County from time-to-time. All lease terms shall be for a minimum of six (6) months. The County shall have the right to audit Developer's tenant files at least annually upon ten days advanced written notice to Developer.
8. **Monitoring and Stewardship Fee:** Commencing January 1, 2020, and annually thereafter Developer shall pay the sum of \$500.00 to the County as a monitoring and stewardship fee. The amount shall increase 3% annually thereafter without notice and continuing until sixty (60) years from the date of the Certificates of Occupancy for the Property.
9. **Parking:** Each Unit shall be entitled to, at a minimum, the use of one parking stall.
10. **Deed Restrictions:** Prior to receiving a certificate of occupancy on the Property, deed restrictions shall be recorded against each of the Units with terms consistent with this Agreement.
11. **Condominium Conversion:** In the event Developer desires to convert the Units to condominiums, this Agreement shall be amended.
12. **Exhibits:** The parties understand and agree that Exhibit C and Exhibit D to this Agreement are based upon 2021 HUD AMI which is annually updated by the Department of Housing and Urban Development and as such Exhibit C and Exhibit D shall be amended annually to reflect changes in AMI.
13. **Term:** The term of this Agreement shall be for 60 years from the date of the issuance of the Certificate of Occupancy for the Units.
14. **Recordation of Agreement:** Upon execution, this Agreement shall be recorded in the office of the Recorder of Summit County.
15. **Notices:** All notices required to be sent under this Agreement shall be sent to:

For Developer:

Park City Junction, LLC
c/o Dakota Pacific Real Estate
Attention: Scott Swallow
299 South Main Street, Suite 2450
Salt Lake City, Utah 84111

With a copy to:

Parsons Behle & Latimer
Attention: Shawn C. Ferrin
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

For the County:

Thomas C. Fisher
Summit County Manager
P.O. Box 128
Coalville, Utah 84017

With a copy to:

Summit County, Utah
Office of Economic Development
PO Box 128
60 North Main
Coalville, Utah 84017
Attn: Jeffrey B. Jones

With a copy to:

SUMMIT COUNTY ATTORNEY'S OFFICE
P.O. Box 128
Coalville, Utah 84017

16. **Entire Agreement:** This Agreement represents the entire agreement between the parties and shall only be amended or modified by a written agreement signed by the parties hereto.
17. **Binding Agreement:** This Agreement shall be binding upon the successors and assigns of the parties hereto. Either party may assign its rights and obligations under this Agreement with 30-days advance written notice to the other party.

IN WITNESS WHEREOF, the parties have caused duplicate originals of this Agreement to be signed by the parties' respective duly authorized officers.

PARK CITY JUNCTION, LLC

SUMMIT COUNTY, UTAH

Thomas C. Fisher
Summit County Manager

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
RECORDED SITE PLAN

EXHIBIT C

2021 INCOME QUALIFICATION TABLE(S)

2021 Summit County AMI = \$120,800	30% AMI	40% AMI	50% AMI	60% AMI	70% AMI	80% AMI	100% AMI	120% AMI
1 person	\$25,110	\$33,480	\$41,850	\$50,220	\$58,590	\$66,960	\$84,611	\$106,914
2 person	\$28,680	\$38,240	\$47,800	\$57,360	\$66,920	\$76,480	\$96,640	\$122,114
3 person	\$32,280	\$43,040	\$53,800	\$64,560	\$75,320	\$86,080	\$108,771	\$137,443
4 person	\$35,850	\$47,800	\$59,750	\$71,700	\$83,650	\$95,600	\$120,800	\$152,643
5 person	\$38,730	\$51,640	\$64,550	\$77,460	\$90,370	\$103,280	\$130,504	\$164,905
6 person	\$41,610	\$55,480	\$69,350	\$83,220	\$97,090	\$110,960	\$140,209	\$177,168

EXHIBIT D

**2021 MAXIMUM PERMITTED MONTHLY RENTS
INCLUDING UTILITIES BY MEDIAN INCOME**

Number of Bedrooms	Household Size	Moderate Income Housing						Attainable Housing 100%	
		30% AMI	40% AMI	50% AMI	60% AMI	70% AMI	80% AMI	AMI	120% AMI
0	1	\$627.75	\$837.00	\$1,046.25	\$1,255.50	\$1,464.75	\$1,674.00	\$2,115.28	\$2,672.85
1	2	\$717.00	\$956.00	\$1,195.00	\$1,434.00	\$1,673.00	\$1,912.00	\$2,416.00	\$3,052.85
2	3	\$807.00	\$1,076.00	\$1,345.00	\$1,614.00	\$1,883.00	\$2,152.00	\$2,719.28	\$3,436.07
3	4	\$896.25	\$1,195.00	\$1,493.75	\$1,792.50	\$2,091.25	\$2,390.00	\$3,020.00	\$3,816.08

**EXHIBIT A-8
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Deed Restrictions [Approved Form]

[Finalize once Housing Agreement is Approved]

WHEN RECORDED, RETURN TO:

Summit County Attorney
Summit County Courthouse
60 North Main Street
Coalville, Utah 84017
Tax ID: _____

**RESTRICTIONS
CONCERNING MODERATE INCOME / WORKFORCE HOUSING UNITS
FOR THE DPRE MIXED USE PROJECT**

THESE RESTRICTIONS CONCERNING MODERATE INCOME / WORKFORCE HOUSING UNITS FOR THE DPRE MIXED USE PROJECT (hereinafter this “**Deed Restriction**”) is made and entered into effective as of the _____ day of _____ 2020 (the “**Effective Date**”), by and among Park City Junction, LLC, a Utah limited liability company (“**Developer**”) and SUMMIT COUNTY, a political subdivision of the State of Utah, by and through its County Manager (the “**County**”). The County and Developer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS Developer is the owner of certain property located in Summit County identified as The Commons development (the “**Property**”), a mixed-use project consisting of commercial, residential and moderate income/workforce housing units (“**Unit**” or “**the Units**”), which is legally described in Exhibit A attached hereto and incorporated herein and configured according to the recorded site plan attached hereto as Exhibit B; and

WHEREAS the County approved Developer’s application with the condition that the Units be rented at a rental rate that is affordable to households earning an average _____ of the Area Median Income (“**AMI**”), defined below, for Summit County, Utah, with adjustments based on family size; and

WHEREAS, on or about _____, Developer and the County entered into a “Moderate Income / Workforce Housing Agreement” setting forth more specific details related to the Units which was recorded in the office of the Summit County Recorder on (date) as Entry No. _____, at Book _____, beginning at Page _____; and

WHEREAS, the Parties are exercising and recording this Deed Restriction to satisfy the terms of the Moderate Income / Workforce Housing Agreement regarding the Units on the PC Junction Property, intending that renters of the Workforce Housing Units be bound by its terms. Upon its recording in the public records of the County Recorder of Summit County, Utah, this Deed Restriction shall govern the terms and conditions of ownership, use, and occupancy of the Units by subsequent owners and their heirs, successors, executors, administrators, devisees and assigns as addressed herein.

COVENANTS AND RESTRICTIONS

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants set forth herein, the Parties agree as follows, and Developer, as owner of the PC Junction Property, hereby submits the Property to the following covenants and restrictions:

1. DEFINITIONS.

1.1. “**Area Median Income**” or “**AMI**”: calculated annually by HUD, is the “middle” number of all of the incomes in Summit County, with 50% of individuals in Summit County making more than that amount, and 50% making less than that amount. For purposes of this Deed Restriction, AMI shall be rounded to the nearest tenth (for example, if the calculated AMI is 64%, it shall be rounded down to 60%; if the calculated AMI is 65%, it shall be rounded up to 70%, and so forth).

1.2. “**County**” means Summit County, a political subdivision of the State of Utah. Actions to be taken or decisions to be made by the County hereunder are to be taken or made by the Summit County Council or the department, employee or third-party designee selected by the County Council to carry out such responsibilities or to administer, generally, the Workforce Housing programs for the County.

1.3. “**Household**” means all related and unrelated individuals occupying a Unit as a Tenant.

1.4. “**Notice**” means correspondence complying with the provisions of Section 10.1.

1.5. “**Reasonable Efforts**” means good faith efforts to advertise a Unit for rent through appropriate local means complying with the provisions of Section 2.6.

1.6. “**Tenant**” means an occupant of a Unit other than an owner or operator.

2. OCCUPANCY BY A QUALIFIED HOUSEHOLD

2.1. **Qualified Household:** Unless otherwise allowed in this Deed Restriction, each Unit shall at all times be occupied by Households on a for-rent basis. Prior to entering into any lease agreement(s), the Household of each Unit shall be pre-qualified by Developer or its third-party designee (approved by the County), as meeting the Income Qualifications set forth in Section 2.2

2.2. **Income Qualifications:** The Units shall at all times be occupied by Households, adjusted for Household size, earning an average of 80% AMI based on the table in Exhibit C (as amended annually by the Department of Housing and Urban Development and published by the Utah Housing Corporation).

2.2.1. **Process:** Income qualification shall adhere to the following process:

a. Determine the number of adults and children (all Household members) to occupy the available Unit.

b. Collect either 1040 Federal Tax Returns for the most recent year (or “transcript of tax returns” issued by the Internal Revenue Service) or current pay stub and/or projected income for all Household members generating income.

c. Add together the adjusted gross income for all Household members to determine the total Household income.

d. Review Exhibit C to determine whether total Household income is less than the income of a Household of the same size earning 80% AMI.

2.3. **Income Averaging:** Notwithstanding the above, Developer may allow for “income averaging.” Income averaging allows Units to serve market rate Households per Exhibit C, so long as the average income/rent limit in the overall Property is 80 percent or less of AMI (for example, in a 10 unit project, developer may have 1 unit at 100% AMI, 1 unit at 60% AMI and 8 units at 80% AMI which equals an overall average of 80% AMI).

2.4. **“Over” Income:** Developer shall follow the “next available Unit rule,” which means that if a Unit Household’s income increases to more than 140% of the AMI, the next available Unit must be rented to a Household within the appropriate income level for admission (80% AMI or less). However, the Household with the increased income is still eligible to remain in the Unit.

2.5. **Annual Qualification:** Except as otherwise provided for in this Deed Restriction, Households shall meet the above Income Qualifications annually by Developer or a third-party designee (approved by the County) and shall be required to submit to the Income Qualification process above prior to renewal of any lease.

2.6. **Employment Priorities:** It is the public policy of the County to house employees as close to the workplace as possible, thereby reducing traffic and congestion. Since Developer is providing on-site moderate income/workforce housing, occupancy of such housing shall be on a priority basis as follows:

2.6.1. **First Priority:** Households meeting income limits with at least one person employed by a business located within the Developer development.

2.6.2. **Second Priority:** Households meeting income limits with at least one person employed at a business located south of Interstate 80 and east of Highway 224 in Kimball Junction.

2.6.3. **Third Priority:** Households meeting income limits with at least one person employed at a business located south of Interstate 80 and west of Highway 224 in Kimball Junction.

2.6.4. **Fourth Priority:** Households meeting income limits with at least one person employed at a business located in Summit County.

2.6.5. **Fifth Priority:** Individuals and households meeting income limits.

2.7 **Advertising.** At the time of initial occupancy, Developer shall use Reasonable Efforts to advertise for qualified Tenants for a period of not less than thirty (30) days and shall thereafter fill the Units in accordance with the above priorities from the list of qualified Tenants then available. Upon the occurrence of a vacancy, Developer shall review its wait list of qualified Tenants (and may advertise for qualified Tenants if necessary to obtain a qualified Tenant). If a qualified Tenant for the First Priority is not located at the time of a vacancy, Developer shall accept the next highest priority potential Tenant available at that time. Upon a showing of undue hardship on a Household formerly employed by a business in the First, Second, Third, or Fourth Priority and upon the County's consent, Developer may choose to renew a rental agreement for a term not to exceed one (1) year.

The rental of a Unit to a Tenant who is not Income Qualified and/or who does not meet the Workplace Qualifications above does not limit the applicability of this Deed Restriction in any way with respect to such Tenant's use, occupancy, and subsequent lease of the Unit.

3. **RENTING THE UNIT**

3.1. **Maximum Permitted Rents:** The maximum permitted rents shall be based on the Household size, the Household size's gross income and the number of bedrooms in the unit. Permitted monthly rents shall not exceed those found in the table in Exhibit D. Household size corresponds to the number of bedrooms in the Units as follows:

3.1.1. **Studio unit:** use the income limit for a one-person household.

household. 3.1.2. **One-bedroom unit:** use the income limit for a two-person

household. 3.1.3. **Two-bedroom unit:** use the income limit for a three-person

person household 3.1.4. **Three-bedroom unit:** use the average income limit for a four

3.2. The permitted rental amount includes the following:

3.2.1. Use and occupancy of the Unit and the associated land and facilities;

3.2.2. Any separately charged fees and service charges assessed by Developer, which are required by all Tenants but is not to include security deposits;

3.2.3. Unless subject to Section 3.3 below, utilities including garbage collection, sewer, water, electricity, gas and other heating, cooking, and refrigeration fuels but not to include telephone service, cable television, or high-speed modem; and

3.2.4. Possessory interest taxes or other fees and charges assessed for use of the associated land and facilities by a public or private entity other than Developer.

3.3. **Utility Allowance:** The permitted rental amount includes rent and utilities. If the Unit tenant pays all or some of the utilities, a “utility allowance” shall be determined and maximum rents identified in Exhibit C shall be reduced by the amount of the utility allowance. The utility allowance shall initially be determined by a qualified third-party rater who shall estimate charges for garbage collection, sewer, water, electricity, gas and other heating, cooking, and refrigeration fuels for each Unit based upon a complete set of building plans presented to him or her by Developer. The County shall approve the third-party rater and the utility allowance. In subsequent years, commencing in the year following the first complete year of occupancy, Developer shall provide copies of actual billings for utility providers for at least five occupied Units to the County so that a new annual utility allowance can be determined and set.

3.4. **Rental Period:** Units shall not be rented nightly or weekly. The minimum rental length shall be six (6) months.

3.5. **Parking:** Each Unit shall be entitled to, at a minimum, the use of one parking stall.

3.6. **Condominium Conversion:** In the event Developer desires to convert the Units to condominiums, this Agreement shall be amended.

4. **REPORTING AND COMPLIANCE**

4.1. Developer shall keep accurate and complete records of all Tenants. Developer shall provide to the County a monthly rent roll showing each individual Tenant or Tenant's Household's name(s), Unit occupied, rent charged, Household gross income, name(s) and location(s) of employment, term of lease and other information related to eligibility requested by the County from time-to-time. The County may make reasonable requests for additional documentation from the Developer to demonstrate compliance. The County shall have the right to audit Developer's Tenant files annually upon ten (10) days advanced written notice to Developer.

5. **MAINTENANCE OF UNIT & INSURANCE.**

5.1. **Minimum Maintenance Standards.** Each Unit shall at all times be maintained in good, safe, and habitable condition in all respects, normal wear and tear excepted, and in full compliance with all applicable laws, ordinances, rules and regulations of any authority having jurisdiction over the Unit.

5.2. **Insurance.** Developer shall continuously insure the Units against all risks of physical loss for the full replacement cost of the Units. This insurance requirement applies only to the physical structure of the Units and does not include any personal belongings of the tenants, which shall be covered by a separate renter's policy obtained by and at the discretion of the tenant.

6. **DEFAULT AND REMEDIES.**

6.1. **Default.** In the event of a breach of any of terms of this Deed Restriction by Developer with respect to the Units, the County shall be entitled to injunctive relief, or to any other remedy available at law or in equity for such breach, including the specific remedies enumerated herein. The prevailing Party in any dispute hereunder shall be entitled to recover their reasonable attorneys' fees and costs incurred in connection with such dispute, regardless of whether litigation is pursued by either Party.

6.2. **Violation of Criminal Code.** In addition to the remedies contained herein, Developer, Tenant(s) and other individuals dealing with the transfer and/or management of a Unit (including lenders, Realtors, attorneys, and title professionals) may be subject to the provisions of Summit County Code §5-2-7: Affordable Housing Fraud (as may be amended or replaced).

7. **TERM.** This Deed Restriction shall continue in full force and effect for 60 years from the date of issuance of the Certificate of Occupancy for the Units unless terminated sooner by the mutual agreement of Developer and the County (the "**Term**").

8. **CHOICE OF LAW.** This Deed Restriction shall be governed and construed in accordance with the laws of the State of Utah.

9. **RECORDING AND COVENANTS TO RUN WITH THE LAND.**

9.1. **Recordation.** Upon execution by the County, this Deed Restriction shall be recorded and filed in the Official Records of Summit County, Utah.

9.2. **Covenants Run with the Land.** The County intends, declares, and covenants, on behalf of itself and all future Unit Owners, that this Deed Restriction and the covenants and restrictions set forth herein, regulating and restricting the rents, use, occupancy, and transfer of a Unit shall be covenants running with the land and improvements constituting the Unit, for the benefit of the County, shall encumber the Unit, and shall be binding upon the County and all subsequent owners of the Unit.

10. **MISCELLANEOUS.**

10.1. **Notice.** Any and all notices or demands to Developer or person(s) required or desired to be given hereunder shall be in writing and shall be validly given or made if (a) deposited in the U.S. mail, certified or registered, postage prepaid, return receipt requested, (b) sent by commercial courier keeping records of deliveries and attempted deliveries, or (c) via hand delivery with signed acknowledgment of receipt by a person of suitable age and discretion. Service by U.S. mail or courier shall be conclusively deemed made on the first business day delivery is attempted. Any notice or demand to Developer shall be addressed to:

Developer

10.2. Any and all notices or demands to the County shall be in writing and shall be served by (a) mail or commercial courier provided to the Summit County Clerk or his/her authorized agent authorized by appointment or by law to receive service by signing a document indicating receipt or (b) via hand delivery with signed acknowledgment of receipt by the Summit County Clerk or his/her authorized agent authorized by appointment or by law. Service shall be complete on the date the receipt is signed. Any notice or demand to the County shall be addressed to:

Summit County Clerk
P.O. Box 128
Coalville, Utah 84017

With a copy to:
Summit County Attorney
P.O. Box 128
Coalville, Utah 84017

Summit County, Utah
Office of Economic Development
PO Box 128
Coalville, Utah 84017
Attn: Jeffrey B. Jones

10.3. The Parties may change their respective addresses for the purpose of receiving notices or demands as herein provided by Notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others or the recording of a change of address by the County.

11. **Paragraph Headings.** Paragraph or section headings within this Deed Restriction are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

12. **Gender and Number.** Whenever the context so requires herein, the neuter and gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

13. **Exhibits:** The Parties understand and agree that Exhibit C and Exhibit D to this Deed Restriction are based upon 2019 HUD AMI which is annually updated by the Department of Housing and Urban Development and as such Exhibit C and Exhibit D shall be amended annually to reflect changes in AMI.

14. **Modifications.** Any modification of this Deed Restriction shall be effective only when made by writings signed by the County and Developer and recorded in the Official Records of Summit County, Utah. In the event Developer desires to convert the Units to condominiums, this Deed Restriction shall be amended.

15. **Incorporation of Recitals.** The recitals set forth at the beginning of this Deed Restriction are incorporated herein by this reference.

16. **Binding Agreement.** This Deed Restriction shall be binding upon the successor and assigns of the Parties hereto. Either party may assign its rights and obligations under this Agreement with 30-days advance written notice to the other party.

Signatures appear on next page

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the date hereof.

PARK CITY JUNCTION, LLC

SUMMIT COUNTY, UTAH

Thomas C. Fisher
Summit County Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

Summit County Attorney

By: _____

Deputy

NOTARY ACKNOWLEDGMENTS

STATE OF UTAH)
)
COUNTY OF SUMMIT)

On this ___ day of _____, 2020, this Deed Restriction was acknowledged before me by Tom Fisher, County Manager of Summit County.

Notary Public

STATE OF UTAH)
)
COUNTY OF SUMMIT)

On this ___ day of _____, 2020, this Agreement was acknowledged before me by _____, as Manager of Park City Junction, LLC.

Notary Public

**EXHIBIT A-9
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Architectural Design Standards

(To be included upon approval through the process set forth in Section 4.6)

**EXHIBIT A-10
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Buildout Phasing Plan

Developer intends to Phase the building of the Mixed Use Project as follows:

Phase I:

1. A Medical Office Building of 85,000 +/- square feet and associated parking structure developed on the Phase I Property.
2. An application for Phase I will be processed upon approval of the Architectural Design Standards. Phase I does not require additional Traffic Mitigation Measures or amenities.

Phase II:

1. Phase II buildings may include:
 - a. Market Rate Housing Projects totaling up to 535 Market Rates Units.
 - b. Workforce Housing Projects totaling 30% or more of the 535 Market Rate Units.
 - c. Office Projects totaling up to 75,000 square feet of Vested Density.
 - d. Commercial / Retail totaling up to 31,000 square feet of Vested Density.
2. Phase II construction shall also include the Traffic Mitigation Measures set forth in paragraphs 2, 3 and 4 of Exhibit A-5, which Traffic Mitigation Measures must be completed before the issuance of a certificate of occupancy for each Project.
3. Developer shall provide and include the amenities in Phase II as shown on the Master Plan.
4. Developer agrees that certificates of occupancy may be withheld until all traffic mitigation and amenities required in Phase II have been constructed or have been started and are in the process of being completed as required. If not completed before a certificate of occupancy is requested, a performance bond to ensure completion may be required.

Commented [JB5]: For discussion: Is Phase II before or after HTRZ creation and if before, are the terms acceptable?

Commented [JB6]: Note: This number represents 70% of all market rate housing

Commented [JB7]: Note: 30% of 535 is 161 units which represents 48% of the required # of WH units (336 total)

Commented [JB8]: Note: This is 100% of the vested commercial density

Phase III:

Phase III shall be constructed based upon market demand and may include one or more parcels. Notwithstanding the market demand, until the Workforce Housing obligation is completed, construction of remaining Workforce Housing Units shall be part of all Project Areas or phases at a ratio of 30% or more of the total Project Area.

1. The traffic mitigation measures in paragraph 3 and 4 of Exhibit A-5 shall be constructed with each Project Area, if not then already completed.
2. If triggered and approved by UDOT, the traffic mitigation measures described in paragraph 3 of Exhibit A-5 shall also be constructed.
3. Developer shall provide and include the amenities in Phase III as shown on the Master Plan.
4. Developer may not construct market rate housing without also constructing Workforce Housing, until the obligation for 336 Workforce Units has been met. Inasmuch as the Workforce Housing obligation represents approximately [30%] of the Residential Units, the Workforce Housing Units shall be constructed at a rate which represents [30%] or more of any Project Area.
5. Developer agrees that certificates of occupancy may be withheld until all traffic mitigation and amenities required in each Project within Phase III have been constructed or have been stated and are in the process of being completed as required.

Commented [JB9]: Remaining: 175 Workforce Housing Units, 229 Market Rate Units, and 120,000 sf of Hotel

**EXHIBIT A-11
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Phase I Height Allowance

**EXHIBIT A-12
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Phase I Legal Description

**EXHIBIT A-13
TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

Phase I Master Plan Buildout Phasing Plan