

WHEN RECORDED, PLEASE RETURN TO:
PARK CITY MUNICIPAL CORP.
CITY ATTORNEY
P O BOX 1480
PARK CITY UT 84060

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

Recorded this ____ day of
_____, 1998 at Book
____ Page # ____.

**DEVELOPMENT AGREEMENT BY AND BETWEEN
PARK CITY MUNICIPAL CORPORATION AND POWDR CORP., POWDR
DEVELOPMENT COMPANY, PARK CITY SKI HOLIDAYS, AND GREATER PARK
CITY COMPANY, RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS
THE PARK CITY MOUNTAIN RESORT**

THIS DEVELOPMENT AGREEMENT (Agreement) is entered into this ____ day of June, 1998, by and between POWDR CORP., a Delaware corporation, POWDR DEVELOPMENT COMPANY, a Utah corporation, GREATER PARK CITY COMPANY, a Utah corporation, Park City Ski Holidays, a Utah corporation, and each of their successors in interest, parent corporations, affiliates, subsidiaries and assigns (collectively, Developer), and PARK CITY MUNICIPAL CORPORATION, a third class city of the State of Utah (City). Developer and City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties".

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7-300w
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1998 JUL 21 12:03 PM FEE \$1.00 BY DMG
REQUEST: PARK CITY MUNICIPAL CORP

RECITALS

- A. Developer controls the development rights to, owns, or is purchasing approximately 24.92 acres located in Park City as described in Exhibit A attached hereto (the "1997 Master Planned Area"), and has a legal interest (whether by lease, fee title, or prescription) in certain real property consisting of approximately three thousand five hundred (3500) acres located in unincorporated Summit, Salt Lake, and Wasatch Counties as described in Exhibit B and depicted in Exhibit C attached hereto (the "Park City Alpine Terrain").
- B. Developer intends to develop the 1997 Master Planned Area pursuant to the "Park City Mountain Resort Base Area Master Plan Study" (Exhibit D) and subject to all conditions of approval described in Exhibits E and F attached to this Agreement (respectively, the June 25, 1997 Conditions of Planning Commission Approval and the August 21, 1997

Conditions of City Council approval) (collectively, the “PCMR Concept Master Plan”). City desires to enter into this Agreement to memorialize Developer’s commitment to comply with all conditions of approval and to further clarify and memorialize the relationship of the Parties.

- C. City has taken planning actions relating to the development of the 1997 Master Planned Area and the Park City Alpine Terrain which culminated, after a duly noticed public hearing on June 25, 1997, in a unanimous, conditional approval of the PCMR Concept Master Plan.
- D. Developer will contract in reliance on the PCMR Concept Master Plan approval.
- E. City granted development rights and height variations contained in the PCMR Concept Master Plan in exchange for, *inter alia*, development restrictions on both the Open Space designations within the 1997 Master Planned Area and within the Park City Alpine Terrain.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

- (a) “Community Development Director” shall mean the Director of the City’s Department of Community Development, or his or her designee.
- (b) “Master Owners’ Association” means the Park City Resort Base Area Plaza Association, a Utah non-profit corporation.
- (c) “Parcel” means one of parcels A through E described in the PCMR Concept Master Plan.

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- (d) “Residential Accessory Use” means an approved use for the benefit of Project residents that does not require the use of Unit Equivalents and includes, but is not limited to, the following:

Health Clubs and Fitness Centers

Pools, Saunas and Hot Tubs

Ski Lockers

Lobbies

Meeting Rooms

Storage

Laundry

Employee Facilities

- (e) “Residential Support Commercial Use” means a commercial use that is oriented toward the internal circulation of the development, to serve the needs of the residents or users of that development and otherwise meets the definition of a support commercial use found in the 1997 Land Management Code. Residential Support Commercial Uses do not require the use of Unit Equivalents.

- (f) “Resort Accessory Use” means an approved use for Developer’s winter and summer operations that does not require the use of Unit Equivalents. Resort Accessory Uses include the following, as well as other uses that are not listed below but which qualify as “accessory” because they are clearly incidental to and customarily found in connection with the principal building or use and are operated and maintained for the benefit or convenience of the owners, occupants, employees, customers or visitors to the principal building or use:

Information/Lost and Found

Maintenance Facilities

Mountain Patrol

Mountain Administration

Mountain Patrol Medical Facilities

Base Day Lodge and Food Service

Public Lockers

Public Restrooms

Horseback Riding and Stables

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Mountain Bike Rental, Repair, and Sales
 Ski/Snowboard (etc) Repair, Rental and Sales
 Ski School/Skiwee/Kinderschule/Day Care
 Ticket Sales
 Summer Recreation Facilities
 Public Convention Facilities

(g) "Unit Equivalent"

Unit Equivalent

Configuration	Unit Equivalent
Motel room, not exceeding 500 square feet, including bathroom areas, but not corridors outside of room	.25
Hotel suite, or one bedroom apartment not exceeding 650 square feet, including bathroom areas, but not corridors outside of room	.33
One bedroom or studio hotel room, condominium, or two bedroom hotel suite or condominium, not exceeding 1,000 square feet	.50
Condominium or hotel suite of any number of rooms, not exceeding 1,500 square feet	.75
Condominium of any number of rooms, not exceeding 2, 000 square feet	1.00

Configuration	Unit Equivalent
Condominium of any number of rooms, not exceeding 2500 square feet.	1.33
Condominium of any number of rooms, in excess of 2,500 square feet	1.50
Commercial spaces (approved as part of Master Plan Approval), for each 1,000 square feet of gross floor area, exclusive of common corridors, or for each part of a 1,000 square foot interval	1.00

- (1) Within a hotel or condominium project with front desk nightly rental, up to 5% of the total floor area may be dedicated to meeting rooms and an additional 5% for support commercial, areas without requiring the use of a unit equivalent of commercial space.
- (2) Circulation spaces including lobbies inside or outside of units do not count as floor area of the unit, or as commercial unit equivalents
- (3) Where the unit configuration fits one of the above designations, but the square footage exceeds the footage stated for the configuration, the square footage shall control, and the unit equivalent for that size unit shall apply.
- (4) The Developer shall have the right to make its election of how to apply the unit equivalency within individual building projects. An election of the final unit configuration must be made at the time the application for final site plan is submitted, and the election of unit mixes is part of the conditional use process that the final site plan is reviewed under.
- (5) For purposes of calculating unit equivalency, "condominium" means a residential unit, which is designed to maximize its potential for continuous use as nightly lodging. Such design shall include the provision of front desk accommodation services and lockout units within a minimum of 80% of the units containing more than one bedroom attributed to each Parcel.

Section 2. OBLIGATIONS OF DEVELOPER

2.1 Conditions of Approval

Developer accepts and shall comply with all impact, connection and building fees currently in effect, or as subsequently enacted in a generally applicable fee ordinance, all subject to the provisions in ¶2.1.15 herein, and all conditions of approval imposed by the City in connection with the approval of the PCMR Concept Master Plan, including, but not limited to:

2.1.1 The approval includes and incorporates the "PCMR Base Area Master Plan Study" which details volumetrics, horizontal and vertical articulation, maximum square footage of each building, streetscapes, and architectural and design guidelines, all of which are integral to this plan. Large Scale Master Plan approval is conceptual in nature. Each Parcel is subject to conditional use (Small-Scale MPD) review by the Planning Commission. Site specific proposals must substantially conform to the approved PCMR Concept Master Plan. The square footages and unit equivalents are maximums that the Planning Commission may consider during site specific review. The maximum square footages and the volumetrics as described in the PCMR Base Area Master Plan Study are the maximum square footages and volumetrics permitted for each development Parcel. The 1997 Master Planned Area shall not exceed the permitted density of 491.78 Unit Equivalents (excluding support commercial, underground public convention and meeting space). If the Planning Commission approves less than the maximum square footages outlined in the PCMR Base Area Master Plan Study for any given Parcel, that square footage will not be transferred to another Parcel.

2.1.2 The volumetrics outlined in the PCMR Base Area Master Plan Study are intended to communicate to potential developers that building height and facade variation are critical components of this project. The volumetrics represent maximums that can be achieved on any given Parcel. The vertical and horizontal articulations that are specified in the volumetrics are

minimums that must be met. If a proposed building does not fill the volumetrics, the minimum roof and facade shifts set out in the Design Guidelines and Volumetrics of the PCMR Base Area Master Plan Study must be present in the reduced structure.

2.1.3 Final site planning to the satisfaction of the Planning Commission is required for each Small Scale MPD that shall include landscaping, streetscape details and finalization of the design guidelines for the buildings. Lighting standards shall be consistent with the standards in effect at the time of application for building permits. If the architectural design guidelines (such as materials, color and fenestration) for Park City become more restrictive in the future than those for this project, the more restrictive guidelines shall apply, but not to the extent that they negatively affect the structural engineering of the project. The final site planning shall orient delivery; service and trash access away from existing residential uses whenever possible. The bridges shown on the preliminary site plan are conceptual only and have not been granted specific approval. The Planning Commission may decide that alternative methods for providing the necessary pedestrian links are more desirable than the bridges depicted in the Concept Master Plan.

2.1.4 Developer has rezoned and partially re-subdivided the 1997 Master Planned Area. Additional re-subdivision will follow. The Planning Commission and City Council shall review and take action on re-subdivision applications as submitted. Construction of the development contemplated by the PCMR Concept Master Plan can move forward only if and when each pertinent re-subdivision is approved by the City Council. At Developer's request, the City has subdivided Parcel A. Developer agrees that Parcel A-1 will be developed first and that Parcels A-2 and A-3 shall be developed as "additional land" (as such term is used in the Condominium Ownership Act, U.C.A. §57-8-1 et. seq.) to the condominium project consisting initially of Parcel A-1.

- 2.1.5 Neither the City nor the Developer owns the current Bus Drop off Area at the Resort Center. The Bus Drop off Area must be improved, and the Bus Drop off Easement attached hereto as Exhibit G must be executed, prior to any building permit.
- 2.1.6 The Developer has submitted, and the City has approved, a detailed phasing plan attached hereto as Exhibit H.
- 2.1.7 As a part of the phasing plan, the Developer has proposed construction management practices. More detailed construction mitigation plans, to the reasonable satisfaction of the Chief Building Official, are required for each Parcel, as it is proposed for development. At a minimum, those Parcel-specific construction management plans shall address the following:
- Days of the week and hours when construction is permissible
 - Routing of construction traffic so that adjacent residential streets are not affected
 - Material stockpiling and staging on site
 - Parking of construction vehicles
 - Maintenance of pedestrian ways and trails during construction
 - Recycling of construction waste, including the minimizing of off-site soil/material transport.

Reasonable financial security will be required to ensure compliance with each Construction Mitigation Plan.

- 2.1.8 Developer has formed a Master Owners' Association for the 1997 Master Planned Area. The Association shall be responsible for, and shall ensure to the reasonable satisfaction of the City Attorney, the maintenance of all landscaping, streetscape and plaza improvements, pedestrian pathways and trails and other public amenities that are a part of the PCMR Concept Master Plan. The Master Owners' Association shall coordinate recycling, snow removal and maintenance with the existing associations in the Resort Center. Under all circumstances, the Developer is ultimately responsible for the foregoing obligations of the Master Owners' Association.

- 2.1.9. The Developer shall upgrade utilities, as the City Engineer deems reasonably necessary for the development of the Concept Master Plan. These upgrades shall be consistent with the application of these standards throughout the City. Developer shall provide financial assurance as the City Engineer deems reasonably necessary to secure the completion of public improvements contemplated by the PCMR Concept Master Plan.
- 2.1.10. Concurrent with the review of the Small Scale MPD (CUP) for each building, the Developer shall satisfy fire protection requirements attached hereto as Exhibit I. If building height or square footage is required to be decreased as a result of meeting the fire protection requirements that square footage shall not be transferred to another Parcel.
- 2.1.11. The proposed employee housing shall comply with Section 2.2 herein.
- 2.1.12. The Developer shall comply with the traffic mitigation plan attached hereto as Exhibit J.
- 2.1.13. The Developer shall comply with the parking mitigation plan attached hereto as Exhibit K. This plan shall be reviewed and modified, if necessary, as a part of the Small Scale MPD (CUP) for each phase to evaluate transit alternatives and demonstrated parking needs. If, in practice, the parking mitigation plan fails to adequately mitigate peak day parking requirements, the City shall have the authority to require the Resort to limit ticket sales until the parking mitigation plan is revised to address the issues. The intent is that any off-site parking solution include a coordinated and cooperative effort with the City, other ski areas, the Park City School District, Summit County, and the Park City Chamber/Bureau to provide creative solutions for peak day and special event parking.
- 2.1.14 Development Exclusion.
- Developer shall not promote, encourage, nor allow (to the extent of Developer's current, and if increased, future, legal rights) in the, the Shadow Lake Lease Area, the Thaynes Mining Reservation Area, or the Development Exclusion Area

depicted within the Park City Alpine Terrain (Exhibit C), residential development of any kind nor any commercial nor industrial development which customers will primarily access by rubber tired vehicles. Developer contemplates on-mountain commercial facilities such as restaurants and other services which accommodate individuals engaging in recreational activity on the Park City Alpine Terrain.

This Agreement does not prohibit the transfer of base densities from the Park City Alpine Terrain to other suitable locations in unincorporated Summit County. Further, most of the Development Exclusion Area is held under ski leases by GPCC, which reserve development rights in United Park City Mines (UPCM) and others. GPCC holds rights of first refusal in lease lands for which the owner receives a *bona fide* offer of sale. GPCC agrees immediately to notify Park City Municipal Corp. of the fact and substance of any offer to purchase which triggers GPCC's right of first refusal to purchase lease lands; and to the extent allowed by the current leases agrees to cooperate with Park City Municipal Corp. to exercise such right of first refusal prior to the expiration of the first right of refusal period described in the leases by a party, which is or will become bound by these Development Exclusions. GPCC further agrees that it will not amend any of its leases involving lands within the Park City Alpine Terrain to reduce or exclude land that is presently subject to this Agreement. The Parties agree that nothing in this subsection is intended to adversely affect lessor's rights in the leases.

- 2.1.15. Developer has chosen to mitigate additional impacts associated with developing the PCMR Concept Master Plan by paying impact fees (consistent with *Banberry Development Corp. v. South Jordan*, 631 P.2d 899 (Utah 1981)) in lieu of off-site improvements. Developer's commitment to payment of such impact fees is contractual in nature and will be assessed proportionally, prior to issuance of building permits, regardless of fluctuations in state law pertaining to the City's regulatory authority to impose impact fees. The City agrees to incorporate the substance of this subsection in all subsequent development agreements associated with similarly situated projects.

2.2 Employee Housing

Developer shall construct or provide deed restricted off-site housing for 80 PCMR employees on or before October 1, 2003.¹ The rental rate (not including utilities) for the employee housing will be determined by the City Council Housing Resolutions Establishing Guidelines and Standards, but will not exceed 1/3 of the employee's base gross wages. The rental rate shall be assured in perpetuity through deed restrictions in form and substance satisfactory to the City. Developer must commence construction or complete the purchase of housing to accommodate 80 employees within 90 days of receiving a Small Scale MPD which, in combination with previously granted Small Scale MPDs, represent approvals for a total of 50% of the total square footage of the Concept Master Plan. Developer must work expeditiously to complete the employee housing project(s). In no case shall Small Scale MPDs, which represent approvals for a total of 60% of the Small Scale MPDs within the PCMR Concept Master Plan, be issued until the required housing is available for occupancy. Park City will provide Developer a letter of compliance when it fulfills this requirement.

2.3 Ski Operations Improvements

The Developer has submitted a Mountain Upgrade Plan, which is attached hereto as Exhibit L. Development of the skiing and related facilities as identified in the Mountain Upgrade plan is a conditional use within the City limits and is a subject to administrative review² and approval or rejection for improvements visible from vantage points within the City limits prior to application to Summit County for any necessary County permit. Within the areas shown on the view shed Area map, Exhibit M, the Developer shall notify the Community Development Director of the proposed project and shall submit a plan detailing the proposed location of the alignment and scope of the proposed undertaking will be submitted with such notification. The Developer and the Community Development Director shall discuss the project and the potential

¹ If there is a downturn in the market, and the Developer fails to obtain approval for 60% of the Small Scale MPDs within the PCMR Concept Master Plan, on or before October 1, 2003, Developer shall, at a minimum acquire, by lease or by purchase its proportionate obligation to produce employee housing, and shall offer such housing to employees at a price at or below Park City's applicable affordable housing rates and standards. For example, if only 40% of the Small Scale MPDs have been approved by October 1, 2003, Developer shall provide housing for 32 PCMR employees at the lesser of the City's Affordable Housing rate or no more than 1/3 of the employee's monthly income. Once Developer ultimately achieves the 60% Small Scale MPD approval, it must provide deed restricted housing for all 80 employees as detailed above.

² Developer shall have a right of appeal pursuant to the Land Management Code of any denial of an administrative permit for Ski Operations Improvements.

impacts of the project to Park City including its visibility, re-vegetation plan and erosion control proposal. The following Standards shall apply to the Community Development Director's review:

- 2.3.1. Consistency with the Mountain Upgrade plan. The selection of lift transportation type shall be at the sole discretion of the Developer.
- 2.3.2. The Community Development Director may identify certain techniques as identified in the Park City Mountain Resort Resource Management Plan - Visual Management Guidelines to mitigate any impact to the view shed. The techniques include realignment, re-vegetation, and special silvacultural treatments between ski spaces to achieve the necessary blending. Traditional openings for ski trails and lifts with straight edges and uniform widths will be minimized to the greatest extent possible. Interconnected ski spaces of variable width and length, which are linked together in the fall-line to take advantage of the natural open spaces and vegetative conditions, islands and glades, natural or natural appearing trail edges, are preferred. Trails that are designed for base area return or circulation between fall line areas shall be designed for appropriate grades and widths consistent with minimizing visual impact.
- 2.3.3. Ski run lighting shall be consistent with the Park City lighting standards. Glare shall be minimized to the greatest extent possible.
- 2.3.4. Lift towers shall be painted or otherwise treated to blend with the natural surroundings. The color black, as currently used on the Payday Lift, is considered to be the most appropriate. Other colors may be appropriate that are consistent with low contrast with the surrounding vegetation and terrain. Galvanized lift equipment shall be treated to minimize reflectivity.
- 2.3.5. Vegetation management, re-vegetation and erosion control techniques shall be designed in accordance with the Park City Mountain Resort Resource Management Plan - Vegetation Management Plan and Re-vegetation Guidelines. The objective shall be to achieve a vegetative condition that enhances the skier experience and long term forest health.

Re-vegetation shall be designed to control erosion and to restore ground cover as quickly as possible after ground disturbing activities.

- 2.3.6. **Parking.** At all times Developer shall assure that it has adequate parking or has implemented such other assurances, as provided in the Parking Mitigation Plan, to mitigate the impact of any proposed expansion of lift capacity.

Upon Developer's compliance with the preceding standards, Developer shall apply to Summit County to issue a permit, consistent with the Community Development Director's approval, to proceed with Ski Operations Improvements within the unincorporated portions of the Viewshed Area. Ski Operations Improvements within the City limits shall comply with all applicable laws.

Section 3. DEVELOPMENT OF THE 1997 MASTER PLANNED AREA

- 3.1 Vested Right to Develop. Developer has a vested right to develop the 1997 Master Planned Area in accordance with the PCMR Concept Master Plan, which details volumetrics, horizontal and vertical articulation, maximum square footage of each building, streetscapes, and architectural and design guidelines, all of which are integral to this plan. Each Parcel is subject to Small-Scale MPD/conditional use review by the Planning Commission. Site specific proposals must substantially conform to the approved PCMR Concept Master Plan. The maximum square footages, unit equivalents and volumetrics as described in the Park City Mountain Resort Base Area Master Plan Study are the maximums permitted for each development Parcel. The overall project shall not exceed the permitted density of 491.78 Unit Equivalents (excluding support commercial, underground public convention and meeting space). If the Developer submits, or the Planning Commission approves (based on criteria in the Concept Master Plan), less than the maximum square footages outlined in the Park City Mountain Resort Base Area Master Plan Study for any given Parcel, that square footage will not be allowed to be transferred to another Parcel. The volumetrics outlined in the Park City Mountain Resort Base Area Master Plan Study communicates to potential developers that building height and facade variation is critical components of this project. The volumetrics represent maximums that can be achieved on any given Parcel. The vertical and horizontal articulations that are specified in the volumetrics are

minimum articulations that must be met. If a proposed building does not fill the approved volumetrics, then the minimum roof and facade shifts that are set out in the Design Guidelines and Volumetrics must be present in the reduced structure (i.e. the structure is reduced from the bottom up). It is solely within the Developer's discretion to submit for approval a structure that underutilizes the maximum unit equivalents or square footages for a particular structure. The Planning Commission may approve a Small Scale Master Plan for less than the stated maximum unit equivalents or square footages for any of the development Parcels in each of the following circumstances: 1) the Developer proposes the plan; or 2) the Planning Commission finds that the Developer's proposed plan does not comply with the PCMR Concept Master Plan.

3.2 Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk and size of proposed structures, provisions for reservation or dedication of land for public purposes and location of public improvements, location of public utilities and other terms and conditions of development applicable to the Property, shall be those set forth in the PCMR Concept Master Plan and are more particularly described as follows:

3.2.1. Parcel Square Footage Allowance Table

Parcel	Gross Resi. Sq.Ft.	Res. Support Comm. & Accessory Use @ 10%	Accessory Use to Resort Operation	Retail/ Comm.	Total (2)
A	287000	28700	35000	(1)	350810
B	294000	29400		(1)	323519
C	159000	15900	18000	(1)	192963

Parcel	Gross Resi. Sq.Ft.	Res. Support Comm. & Accessory Use @ 10%	Accessory Use to Resort Operation	Retail/ Comm.	Total (2)
D	93000	9300		(1)	102338
E	141000	14100	32000	(1)	187157
TOTAL	974000	97400	85000		1156787

(1) If there are retail/commercial uses other than Support Commercial or Accessory uses they will require a proportionate reduction in the square footage that is allocated for the other uses in this table.

(2) Building square footage does not include Resort Accessory Uses, mechanical, maintenance or storage space that may be located below grade or parking as shown in the Concept Master Plan.

(3) Underground public convention and meeting space is allowed in addition to the total Parcel square footage allowance.

3.2.2. **Maximum Unit Equivalents:** Developer is entitled to a maximum of 491.78 unit equivalents.

3.2.3. **Volumetrics:** The specific volumetrics, including Design Intent, Approval Criteria and Assumptions for Parcels A, B, C, D, E, and the Arcade are set forth in detail, and incorporated herein by reference, on Pages 122 through 148 of the Park City Mountain Resort Base Area Master Plan Study.

3.3 State and Federal Laws. Nothing in this Agreement shall limit the future exercise of the police power of the City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement.

Notwithstanding the retained power of the City to enact such legislation under the police power, such legislation shall only be applied to modify the vested rights described in §§3.1-3.2 if the City demonstrates a compelling, countervailing public interest to override the vested rights doctrine. Any such proposed change affecting the vested rights of the Developer shall be of general application to all development activity within the RC zone.

Section 4. AMENDMENT OF AGREEMENT AND DEVELOPMENT PLAN

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

Section 5. IMPLEMENTATION OF THIS AGREEMENT

5.1 Processing and Approvals. Site specific plans shall be deemed proposed Small Scale Master Plans pursuant to Section 1.14(a) of the Park City Municipal Corporation Land Management Code (or its equivalent) and shall be subject to the conditional use permit process as set forth in the Park City Municipal Corporation Land Management Code. City shall review and approve or deny site-specific plans according to the Concept Master Plan and the Land Management Code. City shall process and take action on Developer's applications for land use permits and approvals with due diligence.

5.2 Cooperation in the Event of Legal Challenge. If any third party challenges the validity of or, any provision of the PCMR Concept Master Plan or the height exception for the Concept Master Plan the parties shall cooperate in defending such action or proceeding and Developer shall indemnify and shall hold City harmless for any expense generated from such challenge.

Section 6. GENERAL PROVISIONS

6.1 Covenants Running with the Land. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with the land comprising the Property and the Development Exclusion Area. The burdens and benefits hereof shall bind and inure to the

benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

6.2 Transfer of Property. Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement or in the Property to third parties acquiring an interest or estate in the Property or any portion thereof. Developer's obligations under this Agreement by its assignee or transferee shall not relieve Developer of any responsibility or liability to the expressly assumed obligation. Developer shall provide notice of any proposed or completed assignment or transfer. If Developer transfers all or any portion of the property to any person or entity, the transferee shall succeed to all of Developer's rights under this Agreement as they affect the right to proceed with development of that portion of the Property transferred to the transferee. As portions of the Property are sold, Powdr Corp., Powdr Development Corp., or GPCC may ask the City to apportion their obligations to a successor or to multiple successors in interest. To the extent the City believes that the successor in interest has adequate resources to secure the City's rights in this Agreement, or some portion thereof, the City shall release the Developer from its proportionate residual liability under this Agreement.

6.3 No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties that: (1) the subject development is a private development; (2) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and (3) nothing contained herein shall be construed as creating any such relationship between City and Developer.

Section 7. MISCELLANEOUS

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

- 7.2 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.
- 7.3 Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, then, to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the parties, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.
- 7.4 Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
- 7.5 Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at the address set forth below:

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If to City to:

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

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

If to Developer to:

Powdr Development Company.
P.O. Box 39
Park City, Utah 84060

Copy to:
Stephen D. Swindle, Esq.
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street #1600
Salt Lake City, Utah 84144

- 7.6 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other party shall have any right of action based upon any provision of this Agreement.
- 7.7 Counterparts and Exhibits. This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 22 pages, including notary acknowledgment forms, and in addition, thirteen (13) exhibits, which constitute the entire understanding and agreement of the parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:
- | | |
|-----------|---|
| Exhibit A | Legal Description of 1997 Master Planned Area |
| Exhibit B | Legal Description of Park City Alpine Terrain |
| Exhibit C | Depiction of Park City Alpine Terrain, with Development Exclusion Areas |

- Exhibit D Park City Mountain Resort Area Master Plan Study
- Exhibit E June 25, 1997 Conditions of Planning Commission Approval
- Exhibit F August 21, 1997 Conditions of City Council Approval
- Exhibit G Bus Drop Off Easement
- Exhibit H Phasing Plan
- Exhibit I Fire Protection Requirements
- Exhibit J Traffic Mitigation Plan
- Exhibit K Parking Mitigation Plan
- Exhibit L Mountain Upgrade Plan
- Exhibit M Viewshed Area Map

7.8 Attorneys' Fees. The prevailing party shall be awarded its attorneys' fees and costs to enforce the terms of this agreement.

7.9 Duration. This agreement shall continue in force and effect until all obligations hereto have been satisfied. The PCMR Concept Master Plan shall continue in force and effect for a minimum of four years from its issuance and shall be effective so long as construction is proceeding in accordance with the approved phasing plan. Upon expiration of the minimum four-year period, approval will lapse after two years of inaction, unless extended for up to two years by the Planning Commission.

IN WITNESS WHEREOF, this Agreement has been executed by the City of Park City, acting by and through its City Council as of the ___ day of June, 1998.

Park City Municipal Corporation

By: Charles P. Klingenstein
 Charles P. Klingenstein, Mayor Pro Tem


ATTEST: City Clerk

By: Janet M. Scott
 Janet Scott, City Recorder



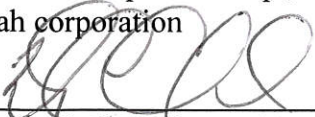
005 13070 Bk01166 Pg00397

Approved as to Form:


Jodi Hoffman, City Attorney

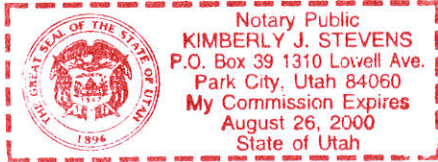
DEVELOPER:

Powdr Development Corp.,
a Utah corporation


By: Douglas Clyde, President


STATE OF UTAH)
 SS
COUNTY OF Summit)

The foregoing Agreement was acknowledged before me this 25 day of June, 1998 by Douglas Clyde, President of Powdr Development Corp., who executed the same on behalf of said corporation.

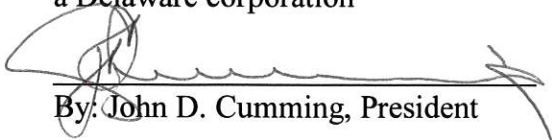



NOTARY PUBLIC

Approved as to Form:


Tom Berggren, Counsel to Powdr Development Corp

Powdr Corp.,
a Delaware corporation

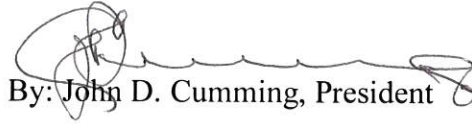

By: John D. Cumming, President

Approved as to Form:


Tom Berggren, Counsel to Powdr Corp

Greater Park City Corp.,
a Utah corporation

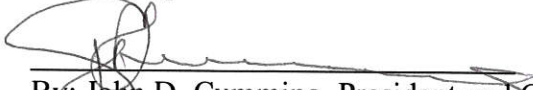
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By: John D. Cumming, President *Greater Park City Corp*

Approved as to Form:


Tom Berggren, Counsel to Greater Park City Corp

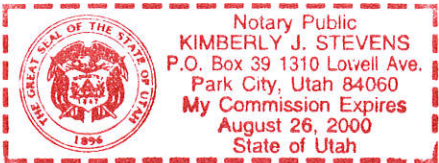
Park City Ski Holidays,
a Utah corporation


By: John D. Cumming, President and General Manager
Approved as to Form:


Tom Berggren, Counsel to Park City Ski Holidays

STATE OF UTAH)
 SS
COUNTY OF *Summit*)

The foregoing Agreement was acknowledged before me this 25 day of June, 1998 by John D. Cumming, President of Powdr Corp., Greater Park City Company, and Park City Ski Holidays, who executed the same on behalf of said corporations.




NOTARY PUBLIC