

ORIGINAL

**DEVELOPMENT AGREEMENT
FOR THE
QUINN'S JUNCTION PARTNERSHIP ANNEXATION
MASTER PLANNED DEVELOPMENT
PARK CITY, SUMMIT COUNTY, UTAH**

This Development Agreement is entered into as of this 24th day of May, 2012, by and between QUINNS JUNCTION PARTNERSHIP ("Developer"), as the owner and developer of certain real property located in Park City, Summit County, Utah, on which Developer proposes the development of a project known as the Quinn's Junction Partnership Annexation Master Planned Development, and PARK CITY MUNICIPAL CORPORATION, a municipality and political subdivision of the State of Utah ("Park City"), by and through its City Council.

RECITALS

A. Developer is the owner of approximately 29 acres of real property located in Park City, Summit County, Utah, which real property is more particularly described on Exhibit A attached hereto and incorporated herein by reference, and which real property is depicted on the site plan attached hereto as Exhibit D and incorporated herein by reference (the "Property").

B. As a compromise of claims and in settlement of litigation, Summit County recognized that the property in question has a vested development right to commercial uses.

C. Developer obtained these vested rights for a commercial project now known as "Quinn's Junction Partnership Annexation Planned Development" wherein, the parties agreed to settle long standing differences in return for recognition for a commercial use of the property in question. The Settlement Agreement is attached hereto as Exhibit B.

D. Developer and Park City also entered into an Annexation Agreement wherein Park City recognized the property has vested development rights to the commercial uses, densities, and configuration as part of a motion picture studio and media campus as stated in the Settlement Agreement described in Recital B. A copy of the Annexation Agreement is attached hereto as Exhibit C.

E. Based on a further agreement between developer and Park City with the consent of the County, Developer applied to build a mixed use development on the Property consisting of a Motion Picture Studio and Media Campus, ancillary and support commercial and lodging (the "Film Studio").

F. Developer obtained Park City approval for the development on the Property of a mixed use hotel and commercial project known as the Quinn's Junction Partnership Annexation Master Planned Development (the "Master Planned Development Approval"), as more fully described in the incorporated Approval Documents (hereinafter defined) and as set forth below (the "Project").

G. Park City requires development agreements under its Park City Land Management Code ("LMC") for all Master Planned Developments.

H. Park City determined that, subject to the terms and conditions of this Development Agreement,



Developer complied with the applicable provisions the Land Management Code ("LMC") as provided in the Settlement Agreement and Annexation Agreement, and has found that the Project is consistent with the purpose and intent of the relevant provisions of the LMC, as limited by the Annexation Agreement.

I. Following a lawfully advertized public hearing, Park City, acting pursuant to its authority under Utah Code Ann., Section 10-9-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, elected to approve this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, Developer and Park City hereby agree as follows:

1. Project Conditions:

1.1. The (i) Findings of Fact, Conclusions of Law and Conditions of Approval dated May 24, 2012, attached hereto as Exhibit E, and (ii) Film Studio Master Planned Development, prepared by IBI, dated May 24, 2012, attached hereto as Exhibit F, together with related documents attached thereto, are hereby incorporated herein by reference (the "Approval Documents") and shall govern the development of Project, subject to the provisions of the January 17th, 2012 Annexation agreement including the vested rights of 374,000 gross sq. ft of development of Motion Picture and Media Campus and any modifications specifically set forth in this Development Agreement. The Project is located in the Community Transition (CT) Zoning District, with a Regional Commercial Overlay (RCO). Development Application for an Administrative Conditional Use Permit and a Park City Building Department building permit are required prior to the commencement of any construction in connection with the Project and shall be processed and granted as set forth in this Development Agreement.

1.2. Developer agrees to pay the then-current impact fees lawfully imposed and as uniformly established by the Park City Municipal Code at the time of permit application, whether or not state statutes regarding such fees are amended in the future, unless otherwise made unlawful.

1.3. Developer and its successors agree that the following are required to be entered into and approved by Park City prior to the issuance of a Building Permit: (a) a construction mitigation plan; (b) a utility plan; (c) a storm water plan; (d) a grading plan; and (e) a landscape plan in compliance with condition of approval #5 of the MPD approval and the Annexation agreement. Approvals by Park City shall not be unreasonably withheld.

1.4 Development Applications.

1.4.1 Development applications shall be approved by the City within a reasonable time if they comply with the January 17, 2012 Annexation Agreement, City's vested rights laws and conform to this Development Agreement.

1.4.2 **City's Denial of a Development Application.** Assuming Annexation is approved, if the City denies any Development Application, the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons

the City believes that the Development application is not consistent with this MPD and/or the City's vested rights laws.

1.4.3 Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of a denial to resolve the issues specified in the denial of a Development Application.

1.4.4 City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a non-city agency, Developer shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

1.4.5 Mediation of Development Application Denials.

1.4.5.1 Issues Subject to Mediation. Issues resulting from the City's denial of a Development Application shall be mediated.

1.4.5.2 Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the issue in dispute. If the parties are unable to agree on a single acceptable mediator, they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding of the parties.

1.4.6 Parcel Sales. The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular parcel may not be known at the time of the sale of a parcel. Developer may obtain approval of a subdivision that does not create any individually developable lots in the parcel without being subject to any requirement in the City's vested laws to complete or provide security for any public infrastructure at the time of such subdivision. The responsibility for completing and providing security for completion of any public infrastructure in the parcel shall be that of the developer or subdeveloper upon a subsequent re-subdivision of the parcel that creates individually development lots, or any building permit application, whichever occurs first.

1.5 Developer is responsible for compliance with all local, state and federal regulations regarding the soils and environmental conditions on the Property. Furthermore, Developer is responsible for receiving any required Army Corp of Engineer Permits related to the riparian zone of Silver Creek if it is required.

2. Master Plan Approval and Reserved Legislative Powers

2.1 MPD. Subject to the provisions of this Development Agreement, Developer is hereby granted the right by Park City, to develop and construct the Project in accordance with the general uses, densities, massing, intensities, and general configuration of development approved in the January 17, 2012 Annexation Agreement, this Development Agreement, in accordance with, and subject to the terms and conditions of the Approval Documents, and subject to compliance with the other applicable ordinances and regulations of Park City. Both parties acknowledge the Site Plan attached as Exhibit D and the Approval Documents supersede and replace the Site Plan attached as Attachment A to the Annexation Agreement.

2.2 If the Developer acquires any additional property contiguous to the Property and located within the bounds of Park City or the City Annexation Declaration area, then Developer may petition to annex or apply to add such future property within this Development Agreement. Park City will reasonably process and consider such petition or application in accordance with applicable state law and the Land Management Code in effect at that time.

2.3 Reserved Legislative Powers. Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the power of the City to enact legislation under the police powers vested in a city such exercise of power through legislation shall only be applied to modify land use and zoning regulations which are applicable to the Project in conflict with the terms of this Development Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the Project and terms and conditions of this Development Agreement under the above specific limitations and applicable to the Project shall be of general application to all development activity in the City of Park City; and, unless Park City declares an emergency, Developer shall be entitled to the required notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine. Nothing in this section shall limit the future legislative amendment of more specific ordinances or codes for which the Developer does not yet have a vested right, and except as otherwise provided in this agreement, will not vest until such time as a complete application is filed in conformance with the applicable code(s), including but not limited to: building and energy, lighting, sign and subdivision codes.

2.4 Application Under City's Future Laws. Without waiving any rights granted by the January 17, 2012 Annexation Agreement, or this Development Agreement, Developer may at any time choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application so applied for. The election by the Developer at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent Developer from relying on prior Development Applications or the City's Vested right Law as they pertain thereto.

3. General Terms and Conditions

3.1 Term of Agreement. The Master Planned Development is subject to Section 15-6-4 (H) of the Land Management Code. Unless a delay is a result of delay of process by the City for a complete,

pending application, a building permit for the first phase of the Project must be approved within two years of the execution of this Development Agreement.

3.2 Binding Effect; Agreement to Run With the Land. This Development Agreement shall be recorded against the Property as described on Exhibit A hereto, and shall be deemed to run with the land provided it remains effective and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property.

3.3 Provision of Municipal Services. Except as otherwise provided in the Annexation Agreement, Park City shall provide all City services to the Project that it provides from time-to-time to other residents and properties within the City including but not limited to police and other emergency services. The services shall be provided to the Project at the same level of services, on the same terms, and at the same rates as provided to other residents and properties in the City or applicable service district.

3.4 Assignment. Neither this Development Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Development Agreement and without the prior written consent of the City directed to the City Recorder, which consent shall not unreasonably withheld. Any such request for assignment may be made by letter addressed to the City and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns. If no response is given by the City within 14 calendar days following Developer's delivery of a request for consent, the City consent will be deemed to have been granted. This restriction on assignment shall not prohibit or impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of buildings or improvements on the parcels, with Developer retaining all rights and responsibilities under this Development Agreement.

3.5 No Joint Venture, Partnership or Third Party Rights. This Development Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties.

3.6 Integration. Except vested rights granted by Summit County to developer in consideration of the dismissal of litigation against the County and recognized by the City in the Annexation Agreement, this Development Agreement and the Approval Documents collectively contain the entire agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

3.7 Severability. If any part or provision of this Development Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Development Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Development Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

3.8 Attorney's Fees. If either party commences litigation regarding this Development Agreement, any of the Exhibits hereto or the Approval Documents, the prevailing party, as determined by a court of competent jurisdiction, shall be entitled to reasonable attorney's fees and all costs paid by the other party.

3.9 Minor Administrative Modification. Minor, immaterial administrative modification may occur to the approvals contemplated and referenced herein without revision of this Development Agreement. These include but are not limited to changes in building configuration to accommodate tenants so long as the square footage, general location and uses are consistent with what is vested herein.

3.10 No Waiver. Failure to enforce any rights under this Development Agreement or applicable laws shall not be deemed to constitute a waiver of such right.

3.11 Default.

3.11.1 **Notice.** If Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide Notice to the other party. If the City believes that the Default has been committed by a subdeveloper, then the City shall also provide a courtesy copy of the Notice to Developer.

3.11.2 **Contents of the Notice of Default.** The Notice of Default shall:

3.11.2.1 Specific Claim. Specify the claimed event of Default;

3.11.2.2 Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation, or provision of this Development Agreement (including exhibits) that is claimed to be in Default;

3.11.2.3 Materiality. Identify why the Default is claimed to be materials; and

3.11.2.4 Optional Cure. If the City chooses, in its discretion, propose a method and time for curing the Default which shall be of no less than sixty (60) days duration.

3.11.3 **Meet and Confer; Mediation.** Upon the issuance of a Notice of Default the parties shall engage in the "Meet and Confer" and "Mediation" processes specified in Sections 1.4.3- 1.4.5.

3.11.4 **Remedies.** If the parties are not able to resolve the Default by "Meet and Confer" or by Mediation, then the parties may have the following remedies:

3.11.4.1 Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.

3.11.4.2 Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

3.11.4.3 Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by the Developer, or in the case of a default by a subdeveloper, development of those Parcels owned by the subdeveloper until the Default has been cured.

3.11.5 Public Meeting. Before any remedy in Section 3.11.4 may be imposed by the City, the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the Claimed Default.

3.11.6 Emergency Defaults. Anything in this Development Agreement notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City, then the City may impose the remedies of Section 3.11.4 without the requirements of Section 3.11.5. The City shall give Notice to the Developer and/or any applicable subdeveloper of any public meeting at which an emergency default is to be considered and the Developer and/or any applicable subdeveloper shall be allowed to address the City Counsel at that meeting regarding the claimed emergency Default.

3.11.7 Extended Cure Period. If any Default cannot be reasonably cured within sixty (60) days, then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

3.11.8 Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

3.11.9 Default of Assignee. A default of any obligations assumed by an assignee shall not be deemed a default of Developer.

4. Phasing; Access.

4.1 Project Phasing. The Project shall be constructed in phases in accordance with the phasing plan approved together with this Development Agreement (the "Phasing Plan") (attached hereto as Exhibit G), and in accordance with the LMC. Developer may proceed by constructing the Project all at one time or by phase within this approved project Phasing Plan. In the event of such phasing, the issuance of a building permit on the first such phase shall be deemed to satisfy the requirement of issuance of a building permit in Section 3.1 above. **Any major modifications or elaborations to the approved Phasing Plan must be approved by the City Council prior to the commencement of construction of the applicable phase. If such proposed major modifications or elaborations are substantial as determined by the Chief Building Official and the Planning Director, such modifications or elaborations will come before the City Council for approval.**

4.2 Construction of Access. Developer may commence grading access to the Project as approved by the City Engineer according to generally accepted engineering practices and standards, and pursuant to permit requirements of the LMC, the International Building Code (or if such Code is no longer then in effect, according to the code that is, in fact, then in effect), the Uniform Fire Code, and the Army Corps of Engineers. Developer shall be responsible for maintenance of any such accesses until they are completed according to City standards and accepted by the City.

4.3 Form of Ownership Anticipated for Project. The Project will consist of a commercial building and related improvements, and a hotel building including 100 units and related improvements. Developer anticipates that the commercial portions and, if applicable, the hotel of the Project will be owned by Developer, or its assigns. Any condominiumization of the Project for private ownership, fractional ownership and common ownership of land and common facilities requires additional approvals and shall be in compliance with applicable ordinances and state code.

5. **Affordable Housing.** Pursuant to the Annexation Agreement, no affordable housing is required for this MPD. QJP shall post City affordable housing information in a work place accessible to all its employees.

6. **Open Space.** Pursuant to the Annexation Agreement, no definable open space is required for this MPD within the granted and approved development of 374,000 gross sq ft as defined in the agreement between the parties incorporated as exhibits hereto.

7. **Physical Mine Hazards.** If any, a list and map of all known Physical Mine Hazards on the property as determined through the exercise of reasonable due diligence by the Owner as well as a description and GPS coordinates of those Physical Mine Hazards are hereby attached and incorporated as Exhibit _H_.

8. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express, UPS, or other established express delivery service which maintains delivery records, (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or at such other address as the parties may designate by written notice in the above manner:

To Developer:

c/o Greg Ericksen Esq.
1065 South 500 West
Bountiful, Utah 84010

With a copy to:

Scott M. Lilja
Van Cott, Bagley, Cornwall & McCarthy
36 south State Street, Suite 1900
Salt Lake City, UT 84111-1478

To Park City:

445 Marsac Avenue
P.O. Box 1480
Park City, UT 84060
Attn: City Attorney

Such communications may also be given by facsimile and/or email transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

8. **List of Exhibits.**

Exhibit A – Legal Description

Exhibit B – Settlement Agreement for film and media campus

Exhibit D – Site Plan
Exhibit C – Annexation Agreement
Exhibit E – Master Planned Development Findings of Fact, Conclusions of Law and Conditions of Approval dated May 24, 2012
Exhibit F - Master Planned Development Plans dated May 24, 2012
Exhibit G - Phasing Plan
Exhibit H - List of all known Physical Mine Hazards on the property (None)

IN WITNESS WHEREOF, this Development Agreement has been executed by Developer by a person duly authorized to execute the same, and by Park City acting by and through its City Council, as of the 24th day of May, 2012.

QUINNS JUNCTION PARTNERSHIP "Developer"

By: *[Signature]* managing member.
MICHAEL MARTIN

Acknowledgment

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this 19 day of June, 2012, before me, the undersigned notary, personally appeared, personally known to me/proved to me through identification document allowed by law, to be the person whose name is signed on the preceding or attached document, and acknowledged that he/she signed it voluntarily for its stated purpose as MANAGING MEMBER (title) for QUINNS JUNCTION PARTNERSHIP, a Utah partnership.



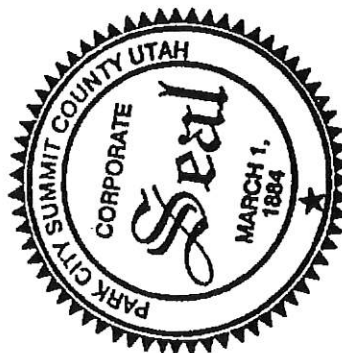
Sharon C Bauman
Notary Public

PARK CITY MUNICIPAL CORPORATION "Park City"

By: *Dana Williams*
Dana Williams, Mayor

ATTEST:

By: *Janet M. Scott*
Janet M. Scott, City Recorder



APPROVED AS TO FORM:

Mark D. Harrington
Mark D. Harrington, City Attorney