# LAKE CREEK FARMS DEVELOPMENT AGREEMENT

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**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of this _____ day of May 2001, by and between Holmes Development, LLC (hereinafter "Developer"), and Wasatch County, a political subdivision of the State of Utah (hereinafter the "County"). Developer and the County are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the County involving the same Property (defined below).

## RECITALS

A. The County, acting pursuant to its authority under Utah Code Ann. Section 17-27-101, et. seq., and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has determined that the negotiation and adoption of development agreements under appropriate circumstances will advance the policies, goals, and objectives of the County, and the health, safety, and general welfare of the public.

B. The County, acting pursuant to its authority under Utah Code Ann. Section 17-27-101, et seq., and Section 17-53-223, as amended, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, in the exercise of its legislative discretion, has elected to approve and enter into this Agreement.

C. Developer has a legal interest in certain real property consisting of approximately 464 acres located in the unincorporated portion of the County and intends to develop a portion of this acreage into two platted residential subdivisions consisting of 19 lots and 13 lots respectively.

D. This development is commonly known as Lake Creek Farms, and the portion of the development subject to this Agreement is commonly known as Lake Creek Farms, Phase VI (also known as Plat "D") and Phase VIIB (also known as Plat "E"), which phases are collectively referred to herein as the "Project", and which Property is more particularly described in Exhibit A attached hereto.

E. The County has determined that this Agreement is appropriate and, therefore, desires to enter into this Agreement. This Agreement establishes planning principles, standards, and procedures to: (1) eliminate uncertainty in planning and guide the orderly development of the Property consistent with the County General Plan; (2) mitigate significant environmental impacts; (3) ensure installation of necessary on-site and off-site public improvements; (4) provide for the preservation of substantial permanent open space; (5) make provision for trail facilities; (6) provide for the timely payment of all fees and charges, including impact fees in the amounts set forth herein; (7) ensure that public services appropriate to the development of the Property are provided; (8) provide affordable housing; (9) ensure attainment of the maximum effective utilization of resources within the County at the least economic cost to its citizens; and (10) otherwise achieve the goals and purposes of the County and Developer. Furthermore, development of the Property pursuant to the Agreement would result in increased taxes, fees and other revenues resulting in fiscal benefits to the County.

F. In exchange for the benefits to the County described in Recital E of this Agreement, together with the other public benefits that will result from the development of the Property, Developer shall receive by this Agreement assurance that it may proceed with the Project in accordance with the "Applicable Law" (defined below), and therefore Developer desires to enter into this Agreement.



Ent 233256 Bk 0503 Pg 0355-0378
ELIZABETH PARCELL, Recorder
WASATCH COUNTY CORPORATION
2001 MAY 15 12:24pm Fee 57.00 MWC
FOR HOLMES DEVELOPMENT

G. The County has taken various review and planning actions relating to the development of the Property. These actions include, without limitation:

| Concept Approval | Preliminary Approval Planning Commission | Final Approval Planning Commission | Preliminary Approval County Commission | Final Approval County Commission |
|---|---|---|---|---|
| X | April 1994 | March 15, 2001 | July 1994 | April 27, 2001 |

A condition of final approval of the foregoing Plat or Plats is that Developer enter into and abide by the terms of this Agreement. The terms of this Agreement apply to the Plat or Plats listed above. These various review and planning actions are collectively referred to herein as the "Current Approvals."

H. As of the date first set forth above, following a duly noticed public hearing, the Board of Wasatch County Commissioners (the "Board") granted final approval to Developer, subject to Developer entering into this Agreement.

I. By developing the Project in accordance with this Agreement, the Project shall be in compliance with all development ordinances, resolutions, rules, regulations, policies, standards, and directives of the County.

J. Each Party acknowledges that it is entering into this Agreement voluntarily.

**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. EFFECTIVE DATE AND TERM

**1.1 Effective Date.**

This Agreement shall become effective on the date it is executed by Developer and the County (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

**1.2 Term.**

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of twenty-five (25) years. Unless otherwise agreed between the County and Developer, Developer's vested interest(s) and right(s) contained in this Agreement expire at the end of the Term, or upon termination of this Agreement.

Upon termination of this Agreement, for any reason, the obligations of the Parties to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any

manner. Notwithstanding the termination of this Agreement for any reason, where the County has theretofore accepted Developer's improvements to the Project, the County shall continue to provide the maintenance previously provided by the County relative to those improvements. In addition, notwithstanding the termination of this Agreement for any reason, the County shall continue to provide snow-removal and garbage collection services for persons owning property within the Project at the same level of service provided to similarly situated properties within the County.

**Section 2. 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 terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Approval Date" shall mean the date set forth in Recital H of this Agreement.

"Bennett-Lindsay Reservoir Transfer Agreement" shall mean the Transfer Agreement in which the Existing HOA assumes its proportionate share of the ongoing maintenance obligations for the Bennett-Lindsay Reservoir pursuant to the terms as set forth in Section 11.7 below in exchange for title to irrigation water from such reservoir as set forth herein.

"Board" shall mean the Board of Wasatch County Commissioners.

"Change Application" shall mean the change application to change 125 acre feet of water in the Bennett-Lindsay Reservoir to irrigation use based on the elimination of 63 acre feet of culinary use.

"Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"County" shall mean Wasatch County and shall include, unless otherwise provided, any and all of the County's agencies, departments, officials, employees or agents.

"County General Plan" or "General Plan" shall mean the General Plan of Wasatch County dated January 2, 1974, or (where applicable) the Jordanelle Land Use Plan dated December 14, 1998.

"Current Approvals" shall have the meaning set forth in Recital G of this Agreement.

"Developer" shall have that meaning set forth in the preamble.

"Director" shall mean the Director of the Wasatch County Planning Department, or his or her designee.

"Effective Date " shall have that meaning set forth in Section 1.1 of this Agreement.

"Existing HOA" shall mean the Lake Creek Farms Homeowners' Association Inc., A Utah non-profit corporation, governing phases I, II, and VIIA of Lake Creek Farms pursuant to the Declaration of Covenants, Conditions, Restrictions and Management Policies recorded in the Wasatch County Recorder's Office for such phases.

"Impact Fee(s)" shall have that meaning set forth in Section 3.1(b)(3) of this Agreement.

"New HOA" shall mean the new homeowners' association incorporated by Developer to govern the Project as set forth in a new Declaration of Covenants, Conditions, and Restrictions (the "New CCRs").

"Notice of Compliance" shall have that meaning set forth in Section 9.1 of this Agreement.

"Planning Commission" shall mean the Wasatch County Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

"Subsequent Approval" means a County approval or permit, which is not otherwise provided for in this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the County.

"Transfer" (noun) means the conveyance, other than for purposes of security, of both legal and equitable title to all or part of the Property owned by Developer.

"Transfer" (verb) means to affect a Transfer.

## Section 3. OBLIGATIONS OF DEVELOPER AND THE COUNTY

### 3.1 Obligations of Developer.

*(a) Generally*. The Parties acknowledge and agree that the County's agreement to perform and abide by the covenants and obligations of the County set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

*(b) Conditions to Current Approvals*. Developer shall comply with all of the following Conditions to Current Approvals:

(1) ***Payment of Fees***: Developer has paid all engineering and administrative review fees charged by the County in connection with the Project. Except where Developer owns individual lots within the Project, nothing in this section shall obligate Developer to pay the fees and charges imposed on individual lot or unit owners in the Project for municipal services, including, but not limited to, sewer, water, gas, electricity, snow-removal, or trash collection.

(2) ***Payment of Bond Obligations***: No later than April 30, 2001, Developer shall pay to the Twin Creeks Special Service District $123,412.76 in unpaid sewer bond obligations (the "Current Assessment"). Developer does not waive any right that may exist at law or in equity to challenge or appeal the Current Assessment or any future sewer bond assessment after paying the Current Assessment as required by this paragraph.

(3) ***Payment of Impact Fees***: Pursuant to Wasatch County Ordinance No. 99-08, as amended, the owner of the Property at the time building permits are issued is liable for and agrees to pay the impact fees detailed in such ordinance. Developer acknowledges that Wasatch County's Impact Fee Analysis has been prepared in accordance with Utah law, that the Ordinance No. 99-08 was lawfully adopted, and the amount of impact fees in such ordinance (subject to adjustments approved by the Director and/or Board), are correct. Developer agrees to pay the Wasatch County impact fee due and payable in connection with any structure built by Developer, or Developer's agent, employee, contractor, or subcontractor.

(4) ***Affordable Housing***: Under the Wasatch County Affordable Housing Plan adopted pursuant to County Resolution 98-24, as amended, Developer is obligated to provide affordable housing i) within the Project, ii) off-site, or iii) pay a fee in lieu of these obligations. To meet this obligation, Developer shall:

1. As to Plat VIIB, pay the County a $55,900.00 fee for use toward providing affordable housing in the County (the "AH Fee"), payable pursuant to the following terms—(1) Developer shall pay one-half of the AH Fee ($27,950.00) to the County at the time Plat VIIB is recorded; (2) The balance of the AH Fee ($27,950.00) shall be paid to the County in installments of $4,300.00 payable upon the sale and release of each lot in Plat VIIB until paid in full. If Developer fails to pay one or more of these installments, the unpaid obligation shall constitute a valid lien upon the Property within Plat VIIB on a parity with and collected at the same time and in the same manner as general County taxes that are a lien on the Property. The balance of the AH fee shall earn seven percent (7%) simple interest until paid in full.

2. As to Plat VI, pay the County a $81,700.00 fee for use toward providing affordable housing in the County (the "AH Fee"), payable pursuant to the following terms—(1) Developer shall pay one-half of the AH Fee ($40,850.00) to the County at the time Plat VI is recorded; (2) The balance of the AH Fee ($40,850.00) shall be paid to the County in installments of $4,300.00 payable upon the sale and release of each lot in Plat VI until paid in full. If Developer fails to pay one or more of these installments, the unpaid obligation shall constitute a valid lien upon the Property within Plat VI on a parity with and collected at the same time and in the same manner as general County taxes that are a lien on the Property. The balance of the AH fee shall earn seven percent (7%) simple interest until paid in full.

(5) ***Water Requirements and Special Service District Fees and Charges***: Developer acknowledges that municipal services, including water and sewage, for the Project shall be provided by the Twin Creeks Special Service District (the "District"). Developer agrees to pay any and all fees imposed by the District in connection with development of the Project, including (but not limited to) fees for plan check and engineering review. Developer shall not oppose annexation of the Project, or any part thereof, into the boundaries of the District. In addition, Developer shall deed 83.1 acre-feet of water from the Bennett-Lindsay Reservoir (and from the Clyde/Clegg Reservoir if necessary) to the Existing HOA and District as follows:

a. Developer has placed into escrow a warranty deed conveying 51.6 acre feet of water from the Bennett-Lindsay Reservoir to the Existing HOA for use as

irrigation water in the completed phases I, II and VIIA of Lake Creek Farms and a special warranty deed conveying to the Existing HOA all easements, rights-of-way, pipes, lines, valves, meters, and other improvements used to convey irrigation water to the completed Plats I, II and VIIA of Lake Creek Farms (hereafter collectively the "Lines"), with the sole warranty in such deed being that Developer is unaware of any encumbrances on the Lines and that Developer has not created any encumbrance on the Lines. In addition, Developer has placed into escrow a warranty deed to Existing HOA for 21.4 acre feet of Clyde/Clegg Reservoir water to be used for irrigation in phases I, II, and VIIA of Lake Creek Farms. All deeds placed into escrow pursuant to this Section 3.1(b)(5)(a) shall be held in escrow by the Wasatch County Department of Water Resources until the County's approval of the Bennett-Lindsay Reservoir Transfer Agreement pursuant to Section 11 of this Agreement.

b. The County acknowledges that Developer has already conveyed 56.4 acre feet of Bennett-Lindsay water to the District for use in Lake Creek Farms. Contemporaneous with the recordation of either Plat VI or Plat VIIB of the Project, Developer and the County shall cause and direct the District to use and allocate 13 acre feet of this water for culinary use in phases I, II, and VIIA of Lake Creek Farms and 32 acre feet of such Bennett-Lindsay water for culinary use in the Project. The County and Developer shall direct and cause the District to use the remaining 11.4 acre feet of Bennett-Lindsay water for irrigation in the Project.

c. Contemporaneous with the recordation of either Plat VI or Plat VIIB of the Project, Developer shall deed one and seven-ninths (1 7/9) shares of Lake Creek Irrigation Company Stock to the District for culinary use in phases I, II, and VIIA of Lake Creek Farms.

d. Upon the approval of the Change Application, Developer shall deed 12.6 acre feet of water from the Bennett-Lindsay Reservoir to the District for use as irrigation water in the Project. To the extent the State of Utah, pursuant to its approval of the Change Application, allows diversion of less than 139.5 acre feet of water from the Bennett-Lindsay Reservoir, Developer shall convey the necessary Clyde/Clegg Reservoir water to the District to ensure that 24 acre feet of water are available for irrigation in the Project.

e. Within ten (10) working days of the County's execution of this Agreement, Developer shall provide both the County and Existing HOA with a copy of the duly submitted Change Application. In addition, within fifteen (15) working days of the execution of this Agreement, Developer shall provide the County and Existing HOA with a copy of a duly submitted change application for the Clyde/Clegg Reservoir.

f. Finally, Developer shall perform certain maintenance and repairs on the Bennett-Lindsay and Clyde reservoirs as set forth in subsection 3.1(b)(7) below commencing prior to the earlier of (i) six months after the Effective Date of this Agreement or (ii) the final approval of phases III through V of the Project, provided that the repairs to the Clyde/Clegg Reservoir need not be made until future phases of Lake Creek Farms if the State of Utah, pursuant to its approval of the Change Application, allows diversion of at

least 139.5 acre feet of water from the Bennett-Lindsay Reservoir and Developer has exchanged 18.9 acre feet of Bennett-Lindsay Reservoir water for 21.4 acre feet of Clyde/Clegg water with Existing HOA pursuant to the Bennett-Lindsay Reservoir Transfer Agreement.

g. Developer agrees that Phases VI and VIIB will not connect to the existing irrigation system in Phases I, II, and VIIA, nor affect the conveyance of the irrigation water destined for Phases I, II, and VIIA. Developer shall create a new irrigation system and homeowners' association for Phases VI and VIIB.

(6) ***Construction of Project Improvements***: Unless otherwise stated herein, the County shall not issue building permits for the construction of residential structures within the Project unless and until all required Project improvements for the plat in question are installed by Developer in accordance with County standards and accepted in writing by the County. When all required Project improvements are installed and accepted in writing by the County with respect to any single subdivision plat, the County shall issue building permits to Developer or to individual lot owners, so long as Developer or the lot owners make application for the desired permits and otherwise comply with Applicable Law. Notwithstanding the foregoing, the County shall issue a building permit for one model building to be constructed in phase VI of the Development and one model building to be constructed for phase VII B of the Development, provided that sewer, water, access and fire protection services are supplied to that model building, subject to the approval of the County Commission. Developer agrees to construct all infrastructure located within the boundaries of the Project, including but not limited to sewer lines, water lines, roads, electricity, gas, telephone, and detention basins shall be completed and accepted by the County for the plat in question in writing prior to the issuance of any building permit within the Project. Developer may apply to the County for an exception to this requirement.

(7) ***Additional Obligations of Developer***: The Developer shall comply with all conditions of approval required by the Planning Commission and the Board. Pursuant to subsection (4)(d) above, Developer also has the following additional obligations with regard to the Clyde (aka Clegg Lake) Reservoir, the Bennett-Lindsay Reservoir, Existing HOA, and the New HOA:

a. ***Bennett-Lindsay Reservoir Repair Obligations:***

i. Developer shall remove all deep-rooted vegetation, from the Bennett-Lindsay dam, dike and spillway areas.

ii. Developer shall ensure that the Bennett-Lindsay piezometer is functional, labeled, and locked and that the rim elevations are surveyed.

iii. Developer shall remove or eradicate rodents from the reservoir, along with their vegetative habitat.

iv. Developer may, in its sole discretion, cover the crest of the Bennett-Lindsay reservoir with gravel, but shall not widen the crests.

v. After consulting with the Utah Department of Natural Resources, Division of Dam Safety (hereinafter the "Division"), Developer shall construct a rock control structure in the spillway control grade allowing three feet of freeboard to the top of the dam.

vi. Developer shall provide to the County written proof that Developer is the owner and has acquired title to its proportionate share of the dam. Developer will provide written notice to the Division if Developer transfers ownership of the dam to any other party.

b. ***Bennett-Lindsay Reservoir Ongoing Maintenance Obligations.*** After the obligations in Section 3.1(b)(7)(a) have been met, Developer shall, at the cost and expense of the owners of the water rights in the reservoir, in proportion to each owner's water rights to the total water rights in the reservoir:

i. Remove or eradicate rodents from the reservoir, along with their vegetative habitat as needed on an annual basis.

ii. Remove all deep-rooted vegetation, from the Bennett-Lindsay dam, dike and spillway areas as needed on an annual basis.

iii. If deemed desirable in its sole discretion, cover the crest of the Bennett-Lindsay reservoir with gravel, but shall not widen the crests.

iv. Take monthly piezometer readings at the Bennett-Lindsay reservoir when the reservoir is more than half full and weekly readings when the reservoir is full.

v. Oil, lubricate, and operate the outlet works for the Bennett-Lindsay reservoir at least annually.

vi. Developer acknowledges the Division conducts ongoing inspections of this dam, and therefore Developer agrees to provide any and all maintenance required by the Division in the future.

c. ***Clyde/Clegg Reservoir Dam Repair Obligations.***

i. Because the elevation of the outlet Parashall flume backs water into the outlet pipe, submerging the downstream controls, Developer shall remove the flume and lower the culvert to prevent water from ponding at the toe or in the pipe.

ii. Developer shall excavate a 20-foot buffer zone between the dam and the encroaching vegetation, especially the oak brush. Developer shall also remove sage brush and roots from the dam face and recompact the fill.

iii. Developer shall level the crest of the dam, providing a 12 foot wide surface, with 4 feet of freeboard from the top of the dam to the bottom of the spillway.

iv. Developer shall excavate the spillway at least 10 feet wide and 4 feet deep. Developer shall protect the dam embankment with rip rap and place a rock, grade-control at the critical flow line section. Flows shall be directed away from the dam and Developer shall construct a small berm to keep flows off the toe of the structure.

v. Developer shall eradicate rodents from the dam, along with their vegetative habitat.

vi. Developer shall provide to the County written proof that Developer is the owner and has acquired title to its proportionate share of the dam. Developer will provide written notice to the Division if Developer transfers ownership of the dam to any other party.

vii. Developer shall make all necessary repairs to the ditches and conveyance to and from the reservoir.

viii. Developer acknowledges the Division conducts ongoing inspections of this dam, and therefore Developer agrees to provide any and all maintenance required by the Division in the future.

d. ***Clyde-Clegg Reservoir Ongoing Maintenance Obligations:*** After the obligations in 3.1(b)(7)(c) have been met, Developer shall, at the cost and expense of the owners of the water rights in the reservoir, in proportion to each owner's water rights to the total water rights in the reservoir:

ix. Developer shall eradicate rodents from the dam, along with their vegetative habitat.

x. Developer will provide written notice to the Division if Developer transfers ownership of the dam to any other party.

xi. Developer shall make all necessary repairs to the ditches and conveyance to and from the reservoir.

xii. Developer acknowledges the Division conducts ongoing inspections of this dam, and therefore Developer agrees to provide any and all maintenance required by the Division in the future.

e. Any and all of the ongoing maintenance obligations set forth in this subsection (7)(b) and (7)(d) may be assumed by a homeowners' association or similar entity composed of the owners of the Property pursuant to the procedures set forth in Section 11 below. The Transfer Agreement by which any association or entity assumes the ongoing maintenance obligations set forth above shall require the association or entity to contract with a third-party to perform these obligations, which third-party shall be qualified to provide and have experience in dam maintenance.

f. Within ten (10) working days of the execution of this Agreement, Developer shall form the New HOA for the Project and shall record the New CCRs for the Project, which New CCRs shall be subject to and shall not conflict with this Agreement or any Transfer Agreement executed pursuant to Section 11 below. Developer shall cooperate fully and in good faith with the homeowners in Existing HOA to select at least two (2) new Trustees for Existing HOA and shall cause at least two of the present three Trustees to resign their office at a meeting of the homeowners to be held no later than forty-five (45) days after the execution of this Agreement. In addition, Developer shall cause all of the Officers of Existing HOA to resign at such meeting.

(8) ***Construction Schedule***: Subject to the Term of this Agreement, unless otherwise specified, (1) there is no requirement that Developer initiate or complete development of the Project or any particular phase thereof within any particular period of time; (2) Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time; and (3) Developer shall determine the order in which phases of the Project shall be developed.

(9) ***Maintenance***: Developer is obligated to maintain any and all roads that are not dedicated to the County, trails, open spaces and any and all other improvements intended for public use within the Project, or Developer shall enter into a Transfer Agreement under Section 11 of this Agreement with a homeowners' association or another entity to provide such maintenance. Maintenance provided by Developer or another entity pursuant to a written Transfer Agreement with Developer must meet or exceed a standard of reasonableness as established by the County. The County, at its

option (not obligation) may construct or maintain such improvements upon Developer's or another entity's failure to do so following written notice to Developer or said entity and a reasonable opportunity to cure. The reasonable market value of the County's services to construct and/or maintain such improvements are hereby agreed to constitute a valid lien on the delinquent Property on a parity with and collected at the same time and in the same manner as general County taxes that are a lien on the Property.

(10) ***Bonding***: Developer agrees to post the following bonds:

a. Performance Bonds: Developer shall post performance bonds in an amount determined by the County in accordance with County ordinance and policies.

b. Open Space Maintenance Bonds: The open space for the Project is to be kept in its natural, undeveloped state, without any improvements requiring maintenance. Nevertheless, to ensure compliance with the Utah Noxious Weed Act, Utah Code Ann. Sections 4-17-1, et. Seq., and County Ordinance 97-4, Developer shall promptly take any action necessary to prevent, control, or eradicate noxious weeds in the open space pursuant to the procedures set forth in such Act and Ordinance, as amended or replaced. Moreover, if Developer fails to take any action to prevent or control noxious weeds within five working days of the date specified for such action in a valid notice from the County, Developer shall promptly reimburse the County for any costs incurred by the County in performing any necessary weed prevention and control set forth in such notice. Developer shall deposit $2,500.00, which is well in excess of the annual maintenance expense for the open space within the Project, in an interest bearing account requiring the joint signature of the County and Developer for any withdrawal from such account. If Developer executes a Transfer Agreement with the New HOA or other entity with regard to the open space maintenance pursuant to Section 11 of this Agreement, the County may waive the maintenance bond requirement and allow Developer to withdraw the $2,500.00 deposited in the joint account pursuant to this subsection.

**3.2 Obligations of the County.**

*(a)* ***Generally***. The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the County's agreement to perform and abide by the covenants and obligations of the County set forth herein.

*(b)* ***Conditions to Current Approvals.*** The County shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement, unless agreed to in writing by the Parties.

*(c)* ***Acceptance of Improvements.*** The County agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that

(1) the Wasatch County Building and Engineering Department reviews and approves the plans for any Project improvements prior to construction; (2) Developer permits Wasatch County Building and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Wasatch County Building and Engineering Department; and (5) the Project improvements pass a final inspection by the Wasatch County Building and Engineering Department.

## Section 4. VESTED RIGHTS AND APPLICABLE LAW

### 4.1 Vested Rights.

*(a) Generally*. As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property in accordance with this Agreement and Applicable Law.

*(b) Reserved Legislative Powers.* Nothing in this Agreement shall limit the future exercise of the police power by the County in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the County to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

### 4.2 Applicable Law.

*(a) Applicable Law.* The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in the Current Approvals, the Conditions to Current Approvals set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including County ordinances and resolutions, in force and effect on the date the Board granted preliminary approval to Developer. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the County necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the County.

*(b) State and Federal Law*. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

## Section 5. AMENDMENT

**5.1 Amendments Generally**. Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any

interest in any specific lot, unit or other portion of the Project, unless that person is a "Replacement Developer" (defined in Section 11 below).

**5.2 Parties Required to Amend.** Where a portion of Developer's rights or obligations have been transferred and a "Transfer Agreement" (as described in Section 11 below) has been executed in connection therewith, the signature of the person to whom such rights or obligations have been transferred shall not be required to amend this Agreement unless such amendment would in the reasonable estimation of the County materially alter the rights or obligations of such transferee hereunder; provided, however, that any such transferee shall be provided thirty (30) days' prior written notice of any amendment to this Agreement.

**5.3 Subjection and Subordination.** Each person or entity (other than the County, Developer and/or any Replacement Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the County, Developer and/or any Replacement Developer.

## Section 6. COOPERATION-IMPLEMENTATION

### 6.1 Processing of Subsequent Approvals.

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the County, the County shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The County's obligations under Section 6.1(a) of this Agreement are conditioned on Developer's provision to the County, in a timely manner, of all documents, applications, plans, and other information necessary for the County to meet such obligations. It is the express intent of Developer and the County to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals.

(c) The County may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Current Approvals, and/or Conditions to Current Approvals, or (iii) the County is unable to make all findings related to the Subsequent Approval required by state law or county ordinance. The County may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or county ordinance or to make the Subsequent Approval consistent with the Current Approvals or Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

(d) If the County denies any application for a Subsequent Approval, the County must specify the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1(b) of this Agreement). The County shall approve the application if subsequently resubmitted for the County's review and the application complies with the specified modifications.

6.2 Other Governmental Permits.

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.

(b) The County shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.1(b) of this Agreement. However, the County shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

**Section 7. [Reserved]**

**Section 8. DEFAULT; TERMINATION; ANNUAL REVIEW**

8.1 General Provisions.

*(a) Defaults*. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

*(b) Termination*. If the County elects to consider terminating this Agreement due to a material default of Developer, then the County shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the Board at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the Board determines that a material default has occurred and is continuing and elects to terminate this Agreement, the Board shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. The County may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

8.2 Review by County

*(a) Generally.* The County may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information requested by the County within thirty (30) days of the request, or at a later date as agreed between the Parties.

*(b) Determination of Non-Compliance*. If the Board finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the County may deliver a Default Notice pursuant to Section 8.1(a) of this Agreement. If the default is

not cured timely by Developer, the County may terminate this Agreement as provided in Section 8.1(b) of this Agreement.

**8.3 Default by the County.**

In the event the County defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 8.1 of this Agreement and provided under Applicable Law.

**8.4 Enforced Delay; Extension of Time of Performance.**

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

**8.5 Limitation on Liability.**

No owner, director or officer of the Developer, when acting in his or her capacity as such, shall have any personal recourse, or deficiency liability associated with this Agreement, except to the extent that liability arises out of fraud or criminal acts of that owner, director, or officer.

**Section 9. NOTICE OF COMPLIANCE**

**9.1 Timing and Content.**

Within fifteen (15) days following any written request which Developer may make from time to time, the County shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the County, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

**9.2 Failure to Deliver.**

Failure to deliver a Notice of Compliance within the time set forth in Section 9.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the County from conducting a review under Section 8.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 8.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

## Section 10. DEFENSE AND INDEMNITY

**10.1 Developer's Actions.**

Developer shall defend, hold harmless, and indemnify the County and its elected and appointed officers, agents, employees, and representatives from any and all claims, costs, judgments and liabilities (including inverse condemnation) which arise directly or indirectly from the County's approval of the Project, construction of the Project, or operations performed under this Agreement, by (a) Developer or by Developer's contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors.

**10.2 County's Actions.**

Nothing in this Agreement shall be construed to mean that Developer shall defend, indemnify, or hold the County or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the County, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the County of improvements that have been offered for dedication and accepted by the County for maintenance.

## Section 11. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND NOTICE.

**11.1 Change in Developer.** Developer acknowledges that its qualifications and identity are of particular concern to the County, and that it is because of such qualifications and identity that the County is entering into this Agreement. Accordingly, prior to the contemplated completion of the terms and conditions of this Agreement, Developer shall not Transfer, assign, or dispose of its obligations under this Agreement to another developer (the "Replacement Developer"), unless Developer and the Replacement Developer comply with this Section.

**11.2 Assignment of Interests, and Rights.** Subject to the terms and conditions of this Section 11, Developer shall have the right to Transfer or assign all or any portion of its interests or rights in the Property under the Current Approvals, Conditions to Current Approvals, or Subsequent Approvals to third parties. These third-parties may include, but are not limited to purchasers or long-term lessees. These third-parties may acquire an interest or estate in the Property, or any portion thereof, including, without limitation, individual lots, parcels, or any lots, homes or facilities comprising a portion of the Property.

**11.3 Transfer Agreement Required.** In connection with the Transfer or assignment by Developer of all or any portion of its obligations under this Agreement, Developer shall enter into a written Transfer Agreement with the Replacement Developer or any other third-party transferee. In the Transfer Agreement, the Replacement Developer or transferee shall assume and succeed to all or any portion of the obligations of Developer under this Agreement. Developer shall not be required to enter into a Transfer Agreement with buyers of single residential units or lots within the Project.

**11.4 County Consent Required.** Prior to a Transfer or assignment by Developer of all or any portion of its obligations under this Agreement, Developer shall obtain the County's consent to the Transfer or assignment. If the Replacement Developer or transferee does not have the skill, expertise, or financing to take over and complete the contemplated development of the Project and Property, the County may refuse to consent to the proposed Transfer or assignment. Such determinations shall be made by the Director and are appealable to the Wasatch County Board of Adjustment within 30 days of the date

of the Director's decision. After the County consents to a Transfer Agreement, Developer shall be automatically released from all obligations undertaken by the Replacement Developer or transferee under the Transfer Agreement.

The County shall not unreasonably withhold, condition, or delay its consent to a Transfer Agreement. If Developer delivers to the County (i) a written Transfer Agreement which complies with this Section; and (ii) any evidence of the skill, expertise, or financing of the proposed Replacement Developer or Transferee reasonably requested by the County, and the County does not refuse consent to the Transfer Agreement in writing within 15 calendar days of the date of delivery of the Transfer Agreement, the County shall be deemed to have consented to the Transfer Agreement. If the County refuses to consent to a Transfer Agreement, the County shall deliver a written refusal to Developer together with the reasons for the refusal and the conditions that must be satisfied to obtain the County's written consent.

**11.5 Rights of Developer and Replacement Developer.** No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person. No breach or default hereunder by Developer shall be attributed to any person succeeding to any portion of Developer's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by Developer.

**11.6 Mortgagee-Transferees**

*(a) Generally.* If a Transfer occurs by foreclosure or trustee's sale under a mortgage or trust deed, or by deed or conveyance in lieu of foreclosure, and if the transferee is the mortgagee or beneficiary under such mortgage or trust deed (a "Mortgagee Transferee"), then the Mortgagee Transferee shall not be required to sign a Transfer Agreement until the date that the Mortgagee Transferee itself effects a Transfer of the land involved, or a portion thereof, to another party (the "Non-Mortgagee Transferee"), at which time the Transfer Agreement shall apply as to the particular land Transferred by the Mortgagee Transferee, and the obligations associated with the land so Transferred shall become the obligations of the Non-Mortgagee Transferee.

*(b) Failure to Transfer Within One Year of Acquiring Property.* Notwithstanding the foregoing, a Mortgagee Transferee shall be responsible to sign a Transfer Agreement if the Mortgagee Transferee does not Transfer the land to a Non-Mortgagee Transferee within one year of the date the Mortgagee Transferee acquired the land. In the event that a Mortgagee Transferee is required to sign a Transfer Agreement, the County shall cooperate with that Mortgagee Transferee in accessing any available proceeds under the bonds listed Section 3.1(b)(10) in this Agreement to complete the Project improvements.

*(c) Developer Obligations.* Developer shall take whatever actions are necessary to ensure that lenders on the Project, including Mortgagees and trust deed beneficiaries are placed on notice of the requirements of this Section 11.6 and agree to be bound by its terms.

**11.7 Bennett-Lindsay Reservoir Transfer Agreement.** In addition to the requirements set forth in this Section 11, any Transfer Agreement executed by Existing HOA pursuant to Section 3.1(b)(5)(a) above to assume its proportionate share of the obligations under Section 3.1(b)(7)(b) and 3.1(b)(7)(d) above shall include the following provisions:

(a) Existing HOA shall convey by warranty deed 21.4 acre feet of Clyde/Clegg water to Developer in exchange for a warranty deed conveying 18.9 acre feet of Bennett-Lindsay water to the

Existing HOA. Developer shall convey such 18.9 acre feet of Bennett-Lindsay water to the Existing HOA within ten (10) working days of receiving such water pursuant to an approved Change Application.

(b) The Existing HOA shall accept and assume its proportionate share of title, rights, responsibilities, and obligations to and for the Bennett-Lindsay Reservoir. In addition, Existing HOA shall accept and assume its proportionate share of title, rights, responsibilities, and obligations to and for the Clyde/Clegg Reservoir to the extent Developer does not receive at least another 18.9 feet of Bennett-Lindsay water pursuant to the approved Change Application and convey such water to Existing HOA.

(c) The Existing HOA shall contract for its proportionate share of the operation and maintenance of the Bennett-Lindsay Reservoir with the Lake Creek Irrigation Company, the District, or another third-party reasonably qualified to provide dam operation and maintenance services as required pursuant to Section 3.1(b)(7)(d) above. The rates or fees charged by such third-party for the operation and maintenance of the Bennett-Lindsay Reservoir (the "Maintenance Fees") shall be standard and reasonable fees negotiated in an arm's-length contract with the Existing HOA.

(d) Developer, New HOA, and Existing HOA, the District, and the other owners of water rights in the reservoir shall pay their pro rata share of the Maintenance Fees and all other costs directly associated with the ownership of the Bennett-Lindsay Reservoir (together, the "Reservoir Costs") in proportion to the number of acre feet of Bennett-Lindsay water owned by the Developer, Existing HOA, New HOA, or other owners of water in the reservoir to the total amount of acre feet of all water rights owned in the reservoir.

(e) Existing HOA shall cooperate fully, completely, and in good faith with Developer to secure approval of the Change Application, provided such Change Application seeks the use of 45 acre feet of Bennett-Lindsay for culinary use and 125 acre feet of Bennett-Lindsay for irrigation use in Lake Creek Farms, with such irrigation use being consistent with 0.75 acre feet of irrigation water being provided for each lot. Existing HOA shall cooperate fully, completely, and in good faith with Developer to secure approval of any change application for the Clyde/Clegg reservoir.

(f) Existing HOA shall assume all responsibilities and obligations with regard to the open space or common area in phases I, II and VIIA of Lake Creek Farms and shall promptly take any action necessary to prevent, control, or eradicate noxious weeds in the open space pursuant to the procedures set forth in the Utah Noxious Weed Act, Utah Code Ann. Sections 4-17-1, et. seq., and County Ordinance 97-4, as amended or replaced. Moreover, if Existing HOA fails to take any action to control or prevent noxious weeds within five working days of the date specified for such action in a valid notice from the County, Existing HOA shall promptly reimburse the County for any costs incurred by the County in performing any necessary weed prevention and control set forth in such notice.

(g) Developer, New HOA, and Existing HOA shall cooperate fully, completely, and in good faith to promote joint and harmonious use of the common area and open space in Lake Creek Farms, and the members of both New HOA and Existing HOA shall be entitled to use and enjoy the common area and open space of both home owners' associations, provided that the members follow the rules and standards set forth by the home owners' association which owns and governs the common space or open area being used. Although good faith cooperation is required to promote shared use, nothing in this paragraph shall be construed as requiring either New HOA or Existing HOA to change or relax its rules or standards to conform to the rules or standards of the other home owners association. The rules of an home owners' association which limit its members use of its common area and open space shall also apply to and limit the use of such common area and open space by the members of the other home owners' association.

(h) The Bennett-Lindsay Reservoir Transfer Agreement may be assigned to a Replacement Developer with the consent of the Existing HOA.

(i) This Transfer Agreement shall not affect Developer's initial obligation to make repairs to the Bennett-Lindsay and Clyde/Clegg Reservoirs as set forth in the Development Agreement.

## Section 12. DEVELOPER WAIVER AND RELEASE, ARBITRATION, HAZARDOUS MATERIALS, AND INSURANCE CERTIFICATES.

**12.1 Mandatory Non-Binding Arbitration of County Actions.** In consideration for the promises contained herein, (the sufficiency of which Developer expressly acknowledges), Developer agrees to submit to non-binding arbitration any and all claims or causes of action against the County, and its elected and appointed officers, agents, employees and representatives, arising out of the County's actions during the approval process on the Project, including but not limited to taking claims under the state or federal constitution, equal protection claims under the state or federal constitution, due process claims under the state or federal constitution, 42 U.S.C. § 1983 claims, equitable claims relating to the interpretation or application of County ordinances, claims challenging the validity, or seeking adjustment of any impact fee, engineering review fee, or other County fee, or claims challenging any exaction required by the County as a Condition to Current Approvals.

Arbitration of any of the foregoing causes of action shall be conducted according to the rules of the American Arbitration Association. If the Parties cannot agree on a single person to arbitrate the matter, a panel of three persons shall be selected, each Party selecting its own person, and those two persons selecting the third. The arbitration shall occur in Utah, and each Party shall pay its own costs and attorneys' fees, without regard to which Party prevails.

Developer agrees that a prerequisite to arbitration shall be the exhaustion of any and all administrative remedies available under state law or county ordinance.

**12.2 Hazardous, Toxic, and/or Contaminating Materials.** Developer further agrees to defend and hold harmless the County and its elected and/or appointed boards, officers, employees, and agents from any and all claims, liabilities, damages, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence of hazardous, toxic and/or contaminating materials on the Project solely to the extent caused by the intentional or negligent acts of Developer, or Developer's officers, contractors, subcontractors, employees, or agents.

## Section 13. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the Parties that: (1) the subject Project is a private development; (2) the County has no interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the County accepts the same pursuant to the provisions of this Agreement or in connection with the various Current Approvals or Subsequent Approvals, except as otherwise expressly set forth in this Agreement; (3) Developer shall have full power over and exclusive control of the Property and Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Current Approvals, Conditions to Current Approvals, and Subsequent Approvals, and (4) the County and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the County and Developer.

## Section 14. MISCELLANEOUS

**14.1 Incorporation of Recitals and Introductory Paragraph.** 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.

**14.2 Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

**14.3 Other Necessary Acts.** Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Current Approvals, Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

**14.4 Construction.** Each reference in this Agreement to any of the Current Approvals, Conditions to Current Approvals, or Subsequent Approvals shall be deemed to refer to the Current Approval, Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the County and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**14.5 Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

**14.6 Covenants Running with the Land and Manner of Enforcement.**

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The County may look to Developer, a Replacement Developer (as defined in Section 11), a Mortgagee Transferee (as defined in Section 11), an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the County to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project, on a parity with and collected at the same time and in the same manner as general County taxes and assessments that are a lien on the Project.

**14.7 Waiver.** No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

**14.8 Remedies.** Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement.

**14.9 Utah Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

**14.10 Other Public Agencies.** The County shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the County take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the County concerning subject matter and provisions of this Agreement.

**14.11 Attorneys' Fees.** In the event of any litigation between the Parties regarding an alleged breach of this Agreement, the prevailing Party shall be entitled to an award of costs and reasonable attorneys' fees. For purposes of this section, a Party who is found to be in breach of any provision of this Agreement shall not be deemed a prevailing party.

**14.12 Covenant of Good Faith and Fair Dealing.** Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

**14.13 Requests to Modify Use Restrictions.** Developer's successors, heirs, assigns, and transferees shall have the right, without the consent or approval of any other person or entity owning property in any other part of the Project, to request that the County modify any zoning classification, use, density, design, setback, size, height, open space, road design, road dedication, traffic configuration, site plan, or other use restrictions associated with that portion of the Project to which the successor, heir, assign, or transferee holds title. The County shall consider any such request, but is not required to grant it.

**14.14 Representations.** Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

**14.15 No Third-Party Rights.** This Agreement is solely between the County and Developer and no other party shall be deemed a third-party beneficiary of this Agreement or have any rights hereunder.

**Section 15. NOTICES**

Any notice or communication required hereunder between the County 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, such notice or communication 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 shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

**If to the County:**

AL MICKELSEN
Director
Wasatch County Administration Building
25 North Main Street
Heber City, UT 84032

With Copies to:

DEREK P. PULLAN
Wasatch County Attorney
805 West 100 South
Heber City, UT 84032

**If to Developer:**

Attn: Doug Cottle
Holmes Development, LLC
3333 North Hwy 40
Heber City, Utah 84032

With Copies to:

Attn: Steven W. Bennett
Bennett Tueller Johnson & Deere
3865 South Wasatch Blvd. Suite 300
Salt Lake City, UT 84109

**Section 16. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS**

Unless otherwise noted herein, this Agreement is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the County and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

**Exhibit A - Legal Description of the Property**

**Section 17. RECORDATION OF DEVELOPMENT AGREEMENT**

No later than ten (10) days after the County enters into this Agreement, the County Clerk shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between Developer and the County as of the date and year first above written.

**WASATCH COUNTY:**

T. LAREN PROVOST, Chairman
Board of County Commissioners

**Attest:**

BRENT TITCOMB,
Wasatch County Clerk Auditor

STATE OF UTAH )
ss:
COUNTY OF WASATCH )

The foregoing instrument was acknowledged before me this 14th day of May, 2001, by T. LaRen Provost, who executed the foregoing instrument in his capacity as the Chairman of the Board of County Commissioners of Wasatch County, Utah, and by Brent Titcomb, who executed the foregoing instrument in his capacity as the Wasatch County Clerk Auditor.

NOTARY PUBLIC
Residing at: Heber City

My Commission Expires:

3-16-03

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
March 16, 2003
MARIE SABEY
3273 South 3400 West
Heber City, Utah 84032

Holmes Development, LLC

By: Douglas G. Holmes, Manager

STATE OF UTAH )
:ss
COUNTY OF Wasatch )

The foregoing instrument was acknowledged before me this ____ day of May, 2001, by Douglas G. Holmes, who executed the foregoing instrument in his capacity as the Manager of Developer, a Limited Liability Company.

Margaret R. Stephens
NOTARY PUBLIC
Residing at: 25 N. Main, Heber City, Utah

My Commission Expires:
Nov. 19, 2003

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
November 19, 2003
MARGARET R. STEPHENS
25 North Main Street
Heber City, Utah 84032

**EXHIBIT A**
TO
LAKE CREEK FARMS DEVELOPMENT AGREEMENT

Legal Description of Property

All of Lake Creek Farms Plat VI (also known as Plat "D"), commencing at a point located North 90 degrees 0'0'' East 351.79 feet from a point on the Western Section Line of Section 12, Township 4 South, Range 5 East, Salt Lake Base & Meridian, located North 0 degrees 16'12" West 634.43 feet from the West Quarter Corner of Section 12 on said Section Line; thence North 79 degrees 37'03'' East 978.73 feet, thence South 1 degree 33'13" East 817.11 feet, thence South 89 degrees 8'37" West 107.55 feet, thence South 0 degrees 18'20" West 1030.97 feet, thence Due West 25.64 feet, thence North 49 degrees 42'13" West 155.83 feet, thence South 50 degrees 56'23" West 242.3 feet, thence North 48 degrees 5'43" West 117.36 feet, thence to a point North 67 degrees 33'10" West 306.46 feet but along the arc of a 460 feet radius curve (concave Northeasterly) a distance of 312.43 feet, thence North 2 degrees 59'23" East 300 feet, thence South 88 degrees 0'31" West 131.97 feet, thence South 77 degrees 33'42" West 144.79 feet, thence South 64 degrees 16'34" West 229.87 feet, thence South 61 degrees 43'58" West 198.47 feet, thence North 19 degrees 42'57" West 194.81 feet, thence North 72 degrees 2'29" East 9.32 feet, thence North 25 degrees 34'26" East 98.60 feet, thence North 21 degrees 15'45" East 224.07 feet, thence North 79 degrees 29'8"East 275.48 feet, thence North 59 degrees 33'0" East 228.91 feet, thence North 44 degrees 30'14" West 326.91 feet, thence North 45 degrees 34'05" East 231.64 feet, thence to a point 42 degrees 1'12" West 158.39 feet but along the arc of a 1,170 feet radius curve (concave Southwesterly) a distance of 158.51 feet, thence North 53 degrees 15'27" East 264.33 feet, thence North 37 degrees 35'52" West 174.2 feet to the point of beginning, containing 39.38 acres.

And

All of Lake Creek Farms Plat VIIB (also known as Plat "E"), commencing at a point located South 0 degrees 16'12'' East 1472.42 feet along the Eastern Section Line (basis of bearing) of Section 11, Township 4 South, Range 5 East, Salt Lake Base & Meridian, from the Northeast Corner of said Section 11; thence North 82 degrees 52'24" East 218.53 feet, thence North 65 degrees 52'4" East 201.46 feet, thence North 71 degrees 44'51" East 123.6 feet, thence North 80 degrees 52'32" East 479.44 feet, thence North 73 degrees 42'56" East 143.10 feet, thence South 32 degrees 55'18" East 85.54 feet, thence South 38 degrees 40'38" East 148.79 feet, thence North 89 degrees 35'0" East 37.9 feet, thence South 1 degree 35'17" East 398.43 feet, thence South 79 degrees 37'3" West 978.73 feet, thence South 37 degrees 35'52" East 174.2 feet, thence South 53 degrees 15'27" West 264.31 feet, thence to a point North 19 degrees 4'8" West 764.49 feet but along the arc of a 1,170 feet radius curve (concave Southwesterly) a distance along of 778.79 feet, thence Due North 151.75 feet, thence North 82 degrees 52'24" East 0.78 feet to the point of beginning, containing 20.41 acres.

OWC-1795 OWC-1793 OWC-1755 OWC-1755-6