



Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: ZDA2022-02: Consideration of an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights.

Application Type: Legislative

Agenda Date: Tuesday, February 27, 2024

Applicant: CW The Basin

File Number: ZDA 2022-02

Property Information

Approximate Address: 947 E Old Snow Basin Rd

Zoning: FR-3

Existing Land Use: Residential and Vacant

Proposed Land Use: Residential

Adjacent Land Use

North:	Residential	South:	Residential and Commercial (CVR-1)
East:	Vacant (FR-1)	West:	Residential

Adjacent Land Use

Report Presenter: Charles Ewert
cewert@webercountyutah.gov
801-399-8763

Report Reviewer: RG

Development History

On January 25, 2022, the CW Basin property was rezoned from CVR-1 to FR-3 through an ordinance and development agreement approved by the County Commission. The current development agreement restricts the use of the property to ten detached single family dwellings with short term rentals prohibited. Since the time the original development agreement was recorded, the property owner and a third party have discussed the possibility of transferring some of the development rights that would otherwise exist under the current FR-3 zoning if the development agreement did not restrict the development rights to ten. Under this proposal, the applicant is requesting that the county acknowledge that there are 64 development rights assigned to the property (the subdivision), with 10 of them reserved to be constructed onsite, and 54 of them reserved to be sold by means of a transferable development right program.

On September 27, 2022, when this revision was originally proposed to the Ogden Valley Planning Commission, they tabled a decision on this item because the third party TDR purchaser did not have land to which the rights could be lawfully transferred.

The third party now has property in the FB zone (Eden Crossing), and the applicant would like to now proceed with this proposal.

Summary

The request is to specify in the development agreement that the owner has 54 development rights that will be banked to the property, which the developer owns, until it is transferred to the third party. In exchange, the third party has agreed to provide the county with the funds for improvements to the intersection of Highway 39 and Old Snowbasin Road.

The intersection of Highway 39 and Old Snowbasin road is in need of improvements. Several recent developments have pushed the traffic demand at this intersection over the threshold that UDOT deems appropriate for intersection improvements to be made. However, no one development is the single cause of the need for those improvements. Needed improvements are the result of many different developments occurring

along Old Snowbasin Road over time, including impacts from residents who have lived in existing developments for years.

The fairest way to fund the needed intersection improvements is to find a way to extract the needed funds from all lot owners that contribute to the impact. The county could do this by means of applying a special taxing tool such as a special assessment area. However, the applicant's proposal provides an innovative alternative to providing these funds without increasing the tax-burden of those existing residents in the area.

The 64 development rights are based off a density of 20 units per acre from the FR-3 zone. It is important to note that these development rights have been included in each build-out calculation for the Ogden Valley.

Since the owner has already platted 10 development lots, they are requesting the ability to transfer 54 units. When the FR-3 zone was originally granted, it would have entitled the developer to the 64 development rights. At the time the developer was only asking for 13 development rights, citing limited access to sewer and water. Given the sewer and water limitations and neighborhood outcry against the development, by means of a development agreement restriction, the county commissioners limited the developer's ability to build on the property to no more than 10 units, cutting their request by 3.

The question at hand is whether that restriction limited the developer's ability to transfer the 54 remaining rights away from the property to be built elsewhere.

Analysis

When legislative amendments such as development agreements, are proposed, the Planning Commission and County Commission should consider the goals and policies of the general plan as well as public benefits to such agreements.

When this property was rezoned from CVR-1 to FR-3 in early 2022, a finding was that the proposed area was designated as a village on the general plan village location map. The County Commission deemed the project to be a residential village, and the rezone from commercial to residential was approved. The County Commission restricted this portion of the village to only 10 detached single family dwellings. It is recommended that the Planning Commission and County Commission consider whether allowing a developer to bank their units, and not yet develop them, complies with the general plan.

The general plan states the following regarding development rights (staff commentary provided in *italics*):

Land Use Goal 1: A goal of Weber County is to reduce the overall amount and impact of future land development in the Ogden Valley planning area.

This goal suggests the county should not only be looking at reducing the overall impact, but also the overall amount of development. Moving development rights to a more suitable location will help reduce the impact of it. Deleting development rights will reduce both the overall amount and the overall impact. The planning commission and/or county commission may find that this perspective may not support the applicant's request.

Land Use Principle 1.1: in general, additional density should not be authorized in the Ogden Valley planning area above that allowed by current zoning. Minimal density bonuses (the exact amount to be determined by ordinance, master plan, development agreement, etc.) should only be allowed when they are granted to incentivize significant contribution to the advancement of the goals and principles found in this plan.

The 54 development rights in question are a part of the overall build-out calculations found in the general plan, and as otherwise updated by staff from time to time. Allowing these rights to be transferred does not net any increase to the overall buildout previously calculated. The planning commission and/or county commission may find that this supports the applicant's request.

On the other hand, determining that these rights no longer exist (retiring them) will reduce them from the overall buildout calculations. The planning commission and/or county commission may find that this perspective may not support the applicant's request.

Land Use Implementation 1.1.1: Weber County will support the transfer of existing development rights (TDRs) as the primary means to increase densities in suitable project areas while proportionately decreasing density in other areas. incentives – such as reduced road cross sections and other cost-saving measures for master-planned developments – should be proposed to reduce development intensities and as the primary means to incentivize the purchase and transfer of development rights. Bonus density should be used sparingly, and only in the event minimal bonuses can be leveraged for significant and meaningful advancement of the goals and principles of this plan. Development rights include residential (e.g. townhouses, single family detached units, etc.) and non-residential development rights (e.g. hotel units, accessory dwelling units, retirement center units, etc.).

The first part of this strategy suggests that transfers should be supported when occurring from less suitable areas to more suitable areas. It could be argued that sending these transfers from the subject property is in conflict with the general plan, since the area is designated as a village area and is therefore the most appropriate area for it. However, when the commission restricted the use of the rights on the subject property it was done with full knowledge that the area is shown as a village area in the general plan, and thus the restriction was perhaps done for the purpose of limiting the amount of growth in this specific village area. The planning commission and/or county commission may find that this does not support the applicant's request.

The second part of this strategy suggests that bonus density could be allowed – sparingly – to meaningfully advance the goals and principles of the plan. This suggests that even if it is determined that the 54 development rights in question were “retired,” it could be appropriate to resurrect them if it serves to the benefit of implementing the general plan. The planning commission and/or county commission may find that this supports the applicant's request. More on this perspective under the Transportation Goal 1 below.

...

Land Use Principle 1.3: Encourage and promote a voluntary reduction in overall development units in the Ogden Valley planning area by such measures as conservation easements, donations of development rights, voluntary downzoning, purchases of development rights, and land purchases.

While the restriction of the 54 rights from the property was imposed by the county commission, it was imposed by means of a development agreement. As a mutually beneficial development tool, entering into a development agreement is voluntary – not compulsory. This means that the developer (CW Land) voluntarily entered into this agreement with the county in order to be able to realize the other benefits of the FV-3 zone. Thus, it could be construed that my means of agreeing to the development agreement, the developer volunteered to “retire” the remaining 54 development rights. In the context of this land use principle, it may not be appropriate to determine that these units still exist for transfer purposes.

...

Transportation Goal 1: A goal of Weber County is to ensure that Ogden Valley has a transportation system that enhances mobility and connectivity, reduces congestion, and meets air quality standards without disturbing existing land uses.

As aforementioned in Land Use Implementation 1.1.1, bonus densities may be appropriate if it advances a meaningful component of the general plan. Improvements to Highway 39 and Old Snowbasin Road may very well be deemed an important action supported by this transportation goal, as its improvement will enhance mobility and reduce congestion for those entering and existing Highway 39 from Old Snowbasin Road. The planning commission and/or county commission could use this as supporting evidence in favor of the applicant's request.

Summary of Planning Commission Considerations

As can be reviewed above, the general plan may not offer a hard-and-fast answer to the applicant's request. The answer is a matter of perspective when determining the request's overall good to the community as provided in the general plan.

In summation, the planning commission and county commission should consider the following when making a decision:

- By originally restricting the CW subdivision to 10 lots, the county effectively decreased density in the valley.
- If the developer can transfer the unused rights, they may be able to transfer them to a suitable area such as the areas with form based zoning.
- Perhaps the 54 units still exist and are transferrable, but should remain in this specific village area. The neighboring parcel to the east of this one (other side of Old Snowbasin Road) is zoned FR-3 and could potentially support these units if they are transferred there. When the property was rezoned to FR-3, several nearby residents opposed the rezone, but stated that they support a village conceptually. If this area is intended to be a residential village, then the development rights should not be sent outside of this village.
- If the 54 development rights no longer exist, or are reserved for possible later transfer within the same village, it should be noted that the funding sources for needed improvements to the intersection may not materialize as quickly or efficiently as is currently at hand.

Staff recommendation

Staff recommends that the planning commission recommend denial of the proposed development agreement amendment, ZDA 2022-02. This recommendation is based on the following finding:

1. The FR-3 rezone and development agreement, restricting the property's development rights to 10, was the county's declaration that no additional development rights exist on the property.
2. It appears that an overarching goal of the general plan is to reduce both development impacts and development in general in the Ogden Valley. Allowing the rights to remain and be transferred may not be optimal for the intended overall intended outcome of the plan.

If the planning commission is inclined to recommend approval of the proposal, staff recommends the approval be contingent on the attached draft amended development agreement (Exhibit A). This agreement is crafted to allow the applicant to transfer the 54 units to a qualifying receiving parcel.

Model Motion

The model motions herein are only intended to help the planning commission provide clear and decisive motions for the record. Any specifics provided here are completely optional and voluntary. Some specifics, the inclusion of which may or may not be desired by the motioner, are listed to help the commission recall previous points of discussion that may help formulate a clear motion. Their inclusion here, or any omission of other previous points of discussion, are not intended to be interpreted as steering the final decision.

Motion for positive recommendation **as-is**:

I move that we approve File # ZDA 2022-02, an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights on property located at 947 E Old Snowbasin Road, Huntsville, as provided in Exhibit A. **I do so with the following findings:**

Example findings:

- The proposal is supported by the General Plan.
- [_____ add any other desired findings here _____].

Motion to **table**:

I move that we **table** action on File # ZDA 2022-02, an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights, property located at 947 E Old Snowbasin Road, Huntsville, as provided in Exhibit A, **to [_____ state a date certain _____], so that:**

Examples of reasons to table:

- We have more time to review the proposal.
- Staff can get us more information on [_____ specify what is needed from staff _____].

- The applicant can get us more information on [____ specify what is needed from the applicant ____].
- More public noticing or outreach has occurred.
- [____ add any other desired reason here ____].

Motion to recommend denial:

I move that we deny File # ZDA 2022-02, an applicant driven request to amend the development agreement between Weber County and CW The Basin to acknowledge transferrable development rights, property located at 947 E Old Snowbasin Road, Huntsville. **I do so with the following findings:**

Examples of findings for denial:

- The findings in the staff recommendation.
- The proposal is not adequately supported by the General Plan.
- The proposal is not supported by the general public.
- The proposal runs contrary to the health, safety, and welfare of the general public.
- The area is not yet ready for the proposed change to be implemented.
- [____ add any other desired findings here ____].

Exhibits

Exhibit A – Proposed Draft Development Agreement Amendment

EXHIBIT A:

Draft Amended Development Agreement

AMENDMENT 1 TO THE

DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH

and

CW THE BASIN, LLC,

List of Attachments

Attachment A: Project Area Legal Description and Graphic Depiction

Table of Contents

DEVELOPMENT AGREEMENT	3
RECITALS	3
AGREEMENT	3
1. Effective Date, Expiration, Termination.	3
2. Definitions and Interpretation.	4
3. Omitted	
4. Project Description.	5
5. Project Location and Illustration.	5
6. Vesting.	5
7. Development Standards.....	6
8. Amendments and Revisions.....	6
9. Omitted.	
10. Omitted.	
11. General Provisions.....	7 6
12. Notices.	7
13. Default and Remedies.....	9 8
14. Entire Agreement.	10 9
15. Counterparts.	10 9
SIGNATORIES.....	11 10
Attachment A.....	14 12
Attachment A (Cont.)	15 13

AMENDED DEVELOPMENT AGREEMENT (AMENDMENT 1)

The Basin

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("County") and CW The Basin, LLC ("Developer"), as well as all other owners of land within The Basin subdivision ("Owners"), known together herein as the "Parties."

RECITALS

WHEREAS, The Project is currently zoned CVR-1, with a Base Density of 64 residential rights, and Developer desires to rezone the Project to the FR-3 zone, which carries an identical Base Density, consistent with the terms and provisions contained herein; and

WHEREAS, The Developer desires and intends to develop a residential subdivision (the "Project") in the unincorporated area of Weber County known as Huntsville. Key components of the Project include ~~thirteen (13)~~ ten (10) detached single-family residential dwellings; and

WHEREAS, The Developer's objective is to develop ~~thirteen (13)~~ ten (10) single family lots that complement the character of the community and is financially successful; and

WHEREAS, The Developer desires to reserve the remaining residential development rights, equaling 54 rights, for potential transfer to another receiving parcel(s), as provided for in the Code; and

WHEREAS, The County's objective is to approve only development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Board of County Commissioners; and

~~WHEREAS, The Project is currently zoned CVR-1 and Developer desires to rezone the Project to the FR-3 zone consistent with the terms and provisions contained herein; and~~

WHEREAS, The Project will be located on land referred to herein as the "Project Site". The Project Site is as more specifically described in **Attachment A**: Project Area Legal Description and Graphic Depiction. A preliminary plan showing the general location and layout of the Project is contained in **Attachment B** Preliminary Plan.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date, Expiration, Termination.

- 1.1. **Effective Date.** The Effective Date of this Agreement is the last date upon which it is signed by any of the Parties hereto.
- 1.2. **Expiration.** This Agreement shall be in full force and effect until (10) years from the Effective Date of this Agreement, at which point this Agreement shall expire. ~~After the expiration of this agreement, the development and use restrictions of Section 7 herein shall prevail as legislatively adopted land use restrictions. Typical legislative action shall be required to make changes thereto.~~

1.3. Termination. This Agreement may be terminated by mutual written agreement of the Parties to this Agreement. This Agreement automatically terminates, without notice, in the following circumstances:

1.3.1. The term of this Agreement expires;

1.3.2. The Project is abandoned or the use is discontinued, as provided for by ~~Weber~~ County Code Chapter 108-12; or

1.3.3. The Developer defaults on any provision of this Agreement and the default is not resolved as specified in Section 13 of this Agreement.

1.4. After the expiration or termination of this agreement, the development and use restrictions of Section 7 herein shall prevail as legislatively adopted land use restrictions. Typical legislative action shall be required to make changes thereto.

2. Definitions and Interpretation. For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision

2.1. Adjacent Property. "Adjacent Property" means that existing subdivision located to the South and West of the Project.

2.2. Agreement. "Agreement" means this Development Agreement between County and Developer, approved by the Board of County Commissioners, and executed by the undersigned.

2.3. Association. "Association" shall have the meaning given to such term in Utah Code Ann. §57-8a-102(2).

2.4. Base Density. "Base Density" means the same as defined in the Code.

2.3-2.5. Code. "Code" means the adopted Weber County Land Use Code.

2.4-2.6. County. "County" means Weber County, Utah.

2.5-2.7. Developer. "Developer" means CW The Basin, LLC, or its Assignees as provided in Section 11 of this Agreement.

2.6-2.8. Effective Date. "Effective Date" has the meaning set forth in Section 1 of this Agreement.

2.7-2.9. Force Majeure Event. "Force Majeure Event" means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; pandemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; material or supply delay; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a governmental or judicial authority.

2.8-2.10. Parties. "Parties" means the Developer and the County.

~~2.9-2.11.~~ **Project.** "Project" means The Basin subdivision as set forth in the Attachment B hereto.

~~2.10-2.12.~~ **Project Site.** "Project Site" means the land area on which the Project will actually be sited, as more specifically described in Attachment A: Project Area Legal Description and Graphic Depiction.

~~2.11-2.13.~~ **Routine and Uncontested.** "Routine and Uncontested" means simple and germane to the Project or Project Site, having very little chance of effect on the character of the area, and not anticipated to generate concern from the public.

~~2.12-2.14.~~ **Substantial Completion.** "Substantial Completion" means the Project is constructed, installed, and a valid business license has been obtained from the county.

~~2.13-2.15.~~ **Transferee.** A party to which the Project is transferred or assigned in part or in whole. "Assignee" shall also mean the same.

3. Omitted

4. Project Description.

~~Thirteen (13)~~ Ten (10) detached single-family residential lots.

5. Project Location and Illustration.

The Project is as described herein, and illustrated in Attachment B.

6. Vesting.

6.1. To the maximum extent permitted under the laws of the County, the State of Utah, and the United States, the Parties hereto intend that this Agreement grants to Developer the right to develop and use the Project, as outlined in and subject to the requirements set forth in this Agreement, without modification or interference by the County (collectively, the "Vested Rights"). The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law, and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann.

6.2. The Parties agree that the Base Density of the Project Site, upon rezone to the Forest Residential Zone (FR-3), equals 64 residential development rights.

6.3. Neither the County nor any department or agency of the County shall impose upon the Project (whether by initiative, or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each a "New Law") that reduces or impacts the development rights provided by this Agreement or the Vested Rights. Without limiting the generality of the foregoing, any New Law shall be deemed to conflict with this Agreement and / or the Vested Rights if it would accomplish any of the following results in a manner inconsistent with or more restrictive than applicable law, either by specific reference to the Project or as part of a general enactment that applies to or affects the Project: (i) change any land uses or permitted uses of the Project; (ii) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement, and the applicable zoning ordinance are satisfied; or (iii) apply to the Project any New Law otherwise allowed by this Agreement that is not uniformly applied on a County-wide basis to all substantially similar types of development projects and

project sites with similar zoning designations. Notwithstanding the foregoing, if Developer considers any New Law to be beneficial to the Project, this section does not require Developer to comply with the superseded ordinance, but rather in such cases, Developer may with County approval, which approval may not be unreasonably withheld, conditioned, or delayed, elect to request that the New Law apply to the Project.

- 6.4. The Developer acknowledges that the County 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 County all of its police power that cannot be so limited. Notwithstanding the retained power of the County to enact such legislation of the police powers, such legislation shall not modify the 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 Section 17-27a-509.5 of the County Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. County of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under State or Federal laws.
- 6.5. The parties mutually acknowledge that any use lawfully established under vested laws and this Agreement replaces and supersedes any previously approved development agreements pertaining to or recorded against the ~~Property~~ Project Site and Project including.

7. Development and Use Restrictions.

- 7.1. Use of Property.** The use of the Project shall be limited to ~~thirteen (13)~~ ten (10) detached single-family residential lots.

~~**7.1.7.2. Use of Residential Development Rights.**~~ The use of the remaining 54 residential development rights may not be developed anywhere on the Project Site, but may be transferred to a qualifying parcel as provided in the Code. Any such transfer shall not be used for the creation of detached single-family dwellings, but may be used for other types of dwelling units on the transfer property. The transfer notice for both the sending parcel and receiving parcel shall note this restriction.

- ~~**7.2.7.3. Short-Term Rentals.**~~ Short-Term Rentals are expressly prohibited.

8. Amendments and Revisions.

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Developer and County (an "Amendment"). The following sections specify what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

- 8.1. **Project Facility Repair, Maintenance and Replacement.** Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.
- 8.2. **Authorized Changes, Enlargements, or Alterations.** As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.
- 8.2.1. **Changes Necessary to Comply with Other Laws.** Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval; provided that the changes are routine and uncontested and the application thereof does not materially affect the County's original intent, findings, or conditions on the Project in

a manner that would have likely resulted in a different decision on this Agreement, as determined by the Planning Director.

- 8.2.2. De Minimis Changes.** Other de minimis changes requested by the Developer, which are reasonably consistent with the intent of this agreement and the FR-3 rezone, and are routine and uncontested.

9. OMITTED

10. OMITTED

11. General Provisions.

- 11.1. Assignability.** The rights and responsibilities of Developer under this Agreement may be assigned as provided herein.
- 11.1.1. Total Assignment of Project and Project Site.** The Developer, as the landowner of the Project Site at the time of the execution of this Agreement, may sell, convey, reassign, or transfer the Project Site or Project to another entity at any time, provided any division of land, if applicable, complies with County Laws.
- 11.2. Binding Effect.** This Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Site, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
- 11.3. Utah Law.** This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.
- 11.4. Authority.** Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- 11.5. Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each Party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.
- 11.6. Communication and Coordination.** The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 11.7. Force Majeure Event.** A Force Majeure Event shall be promptly addressed by Developer. County agrees to offer a reasonable period for Developer to cure the effect of the event given the extent of the effect on the Project and the Developer's ability to redress the effect.

12. Notices.

- 12.1. Written Notice.** Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.
- 12.2. Addresses.** Notices shall be given to the Parties at their addresses set forth as follows:

If to the County:

Weber County Commission
2380 Washington Blvd, Ste #360
Ogden, UT 84401

With copies to:

Weber County Attorney
2380 Washington BLVD, Ste. #230
Ogden, UT 84401

Weber County Planning Director
2380 Washington BLVD, Ste. #240
Ogden, UT 84401

If to Developer:

CW The Basin, LLC
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014

- 12.3. Notice Effect.** Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any Party at any time by Notice to the other Party may designate a different address or person to which such notice or communication shall be given.

13. Default and Remedies.

- 13.1. Failure to Perform Period.** No Party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.
- 13.2. Remedies.** The Developer's failure to comply with this agreement constitutes a violation of the ~~Land Use Code of Weber County~~, and is subject to the enforcement provisions and remedies thereof. In addition, the County may withhold any permits from the Project.
- 13.3. Dispute Resolution Process.**
- 13.3.1. Conference.** In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Developer shall send Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.
- 13.3.2. Mediation.** If this Conference process does not resolve the dispute within the 7-day

Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within forty-five (45) days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

14. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This agreement is specifically intended by the Parties to supersede all prior agreements between them or recorded to the property, whether written or oral.

15. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

(Signatures on following pages)

SIGNATORIESSIGNATURES

“County”

Weber County, a body corporate and politic of the State of Utah

By: _____

~~Scott K. Jenkins~~ James (Jim “H”) Harvey

Chair, Weber County Commission

DATE: _____

ATTEST: _____

Ricky D. Hatch, CPA

Weber County Clerk/Auditor

“Developer”
CW The Basin, LLC

By: _____

Print Name: _____

Title: _____

DATE: _____

Developer Acknowledgment

State of Utah)

)ss.

County of Davis)

On the _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

My Commission Expires:

Notary Public, residing in

“Owner”

By: _____

Print Name: _____

DATE: _____

Owner Acknowledgment

State of Utah _____)

_____)ss.

County of Davis _____)

-

On the _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn, did say that each said person is the person with proper authority and duly acknowledged to me that she/he executed the same

My Commission Expires

Notary Public, residing in

"Owner"

By: _____

Print Name: _____

DATE: _____

Owner Acknowledgment

State of Utah _____)

_____)ss.

County of Davis _____)

-

On the _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn, did say that each said person is the person with proper authority and duly acknowledged to me that she/he executed the same

My Commission Expires

Notary Public, residing in

Attachment A

Project Area Legal Description and Graphic Depiction

PART OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 6 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF STATE HIGHWAY 39, SAID POINT BEING S89°36'46"E 477.61 FEET AND S00°23'14"W 2.34 FEET FROM THE FOUND MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 24; THENCE ALONG SAID SOUTHERLY LINE, A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1959.86 FEET, AN ARC LENGTH OF 254.84 FEET, A DELTA ANGLE OF 07°27'01", A CHORD BEARING OF S80°41'48"E, AND A CHORD LENGTH OF 254.66 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF OLD SNOW BASIN ROAD; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING TWO (2) COURSES: (1) S04°48'23"W 313.97 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 1134.18 FEET, AN ARC LENGTH OF 117.20 FEET, A DELTA ANGLE OF 05°55'15", A CHORD BEARING OF S07°46'00"W, AND A CHORD LENGTH OF 117.15 FEET TO THE NORTH LINE OF CHALETS AT SKI LAKE PHASE 1; THENCE ALONG SAID NORTH LINE THE FOLLOWING TWO (2) COURSES: (1) N77°56'06"W 194.61 FEET; (2) N77°56'13"W 271.39 FEET TO THE EAST LINE OF CHALETS AT SKI LAKE PHASE 3; THENCE ALONG SAID EAST LINE THE FOLLOWING THREE (3) COURSES: (1) N12°03'47"E 156.02 FEET; (2) S77°56'13"E 158.81 FEET; (3) N13°01'42"E 260.03 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 39 AND TO THE POINT OF BEGINNING.

And also including half of the street right-of-way immediately adjacent to the legal description

CONTAINING 144,146 SQUARE FEET OR 3.309 ACRES MORE OR LESS.

Project Area Legal Description and Graphic Depiction



