



Staff Report to the Weber County Commission

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration and action on a request for the final subdivision approval of Overlook at Powder Mountain Subdivision Phase 3, a 17-lot development located within the approved Powder Mountain Resort.
Application Type:	Administrative
Agenda Date:	Tuesday, October 26, 2021
Applicant:	SMHG, LLC
Authorized Agent:	Rick Everson
File Number:	UVO050118

Property Information

Approximate Address:	8465 E Copper Crest
Project Area:	3 acres
Zoning:	DRR-1
Existing Land Use:	Resort
Proposed Land Use:	Resort
Parcel ID:	23-012-0169
Township, Range, Section:	T7N, R2E, Sections 5 and 8

Adjacent Land Use

North:	Ski Resort/Resort Development	South:	Ski Resort/Resort Development
East:	Ski Resort/Resort Development	West:	Ski Resort/Resort Development

Adjacent Land Use

Report Presenter:	Steve Burton sburton@webercountyutah.gov 801-399-8766
--------------------------	--

Applicable Ordinances

- Title 101, Chapter 1, General Provisions, Section 7, Definitions
- Title 104, Chapter 29 Ogden Valley Destination and Recreation Resort Zone (DRR-1)
- Title 104, Zones, Chapter 28, Ogden Valley Sensitive Lands Overlay Districts
- Title 106, Subdivisions, Chapter 1-8 as applicable
- Title 108, Natural Hazards Areas

Development History

- Summit Mountain Holding Group, LLC petitioned Weber County to rezone approximately 6,198 acres from the CVR-1, FV-3 and F-40 zones to the DRR-1 zone to enable them to proceed with their development in a manner that would be consistent with the proposed Master Plan that was presented to Weber County as part of the rezone application. The petition to rezone the development to the DRR-1 zone was heard and approved on January 13, 2015 by the Weber County Commission after receiving a unanimous recommendation for approval from the Ogden Valley Planning Commission on October 28, 2014. Weber County entered into Zoning Development Agreement Contract # C2015-6 and the contract was recorded on January 14, 2015 as Entry# 2717835.
- Received preliminary approval on December 4, 2018 by the Ogden Valley Planning Commission.
- Received recommendation for final approval on April 23, 2019 by the Ogden Valley Planning Commission.

Background and Summary

As part of their recommendation for final approval, the Ogden Valley Planning Commission included the following conditions:

1. A geologist and geotechnical engineer are onsite during development to ensure that their recommendations are adhered to. A verification letter shall be provided by the engineering geologist prior to final approval stating that the design adequately meets the recommendations in the geologic report.
2. A "Natural Hazards Disclosure" document will be required to be recorded to provide adequate notice of any geotechnical and geological recommendations for future property owners.
3. A cost estimate for the subdivision improvements shall be and an escrow account set up prior to the subdivision being forwarded to the County Commission for final approval.
4. A draft copy of any CC&R's will be provided to the County for review by the applicable agencies prior to final approval.
5. A construct permit from the Utah State Department of Environmental Quality Division of Drinking Water for expansion of the water system and water lines serving the subdivision are required prior to the subdivision receiving final approval from the Planning Commission and County Commission.
6. A temporary turn around easement must be located at the end of all temporary stubbed streets.

The conditions of final approval from the Planning Commission have been met by the developer. With this final approval, the developer is requesting approval of the subdivision improvement agreement, guaranteeing improvements in the amount of \$462,588.30. This amount is based on the cost estimate on page 10 of 12 of the attached improvement agreement.

Analysis

General Plan: The proposal conforms to the Ogden Valley General Plan by encouraging development within the existing resort-related commercial areas.

Zoning: The subject property is located in the Ogden Valley Destination and Recreation Resort Zone more particularly described as the DRR-1 zone. The purpose and intent of the DRR-1 zone is identified in the LUC §104-29-1 as:

"The purpose of this chapter is to provide flexible development standards to resorts that are dedicated to preserving open space and creating extraordinary recreational resort experiences while promoting the goals and objectives of the Ogden Valley general plan. It is intended to benefit the residents of the county and the resorts through its ability to preserve the valley's rural character, by utilizing a mechanism that allows landowners to voluntarily transfer development rights to areas that are more suitable for growth when compared to sensitive land areas such as wildlife habitats, hazardous hillsides or prime agricultural parcels. Resorts that lie within an approved destination and recreation resort zone shall, by and large, enhance and diversify quality public recreational opportunities, contribute to the surrounding community's well-being and overall, instill a sense of stewardship for the land."

As part of the subdivision process, the proposal has been reviewed against the current subdivision ordinance in LUC Chapter 106 and the standards in the DRR-1 zone in LUC Chapter 104 Title 29. The proposal has been reviewed against the adopted zoning and subdivision ordinances to ensure that the regulations and standards have been adhered to. It appears that the proposed subdivision, with the recommended conditions, is in conformance with county code. The following is a brief synopsis of the review criteria and conformance with the LUC.

Lot area, frontage/width and yard regulations:

The DRR-1 Zone does not have a minimum lot area or a minimum lot width requirement per LUC §104-29-2(h) for a single family residential structures which are considered a permitted use in the DRR-1 Zone. The proposed development will create 17 lots with access and frontage along private right of ways identified as Meridian Avenue, Overlook Drive, Overlook Ridge and Cobabe Court. The proposed lots range in size from 3,300 square feet to 5,000 square feet. The lots range in width from 45 feet to 85 feet. Based on the proposed lot configuration, the proposed lots meet the minimum lot area and minimum lot width requirement per LUC §104-29-2(h).

Natural Hazard considerations:

Geotechnical and geologic hazard investigations have taken place by IGES for the proposed subdivision in accordance with the Natural Hazard Areas as outlined in LUC Chapter 108 Title 22. The site specific investigation for the proposed Lots 1 through 57 (There are 57 lots in the overall phasing) are in the IGES report Project # 01628-027 dated February 12, 2019. Specific recommendations have been made for the development of the Overlook site and it is being made a condition of approval that IGES staff is onsite to verify compliance with the recommendations and a verification letter shall be provided

by the engineering geologist prior to final approval stating that the design adequately meets the recommendations in the geologic report.

A condition of approval that a "Natural Hazards Disclosure" document will be required to be recorded to provide adequate notice of any geotechnical and geological recommendations for future property owners.

Culinary water and sanitary sewage disposal: Culinary water and sewer service are provided by Powder Mountain Water and Sewer Improvement District. A "Capacity Assessment Letter" has been provided by Powder Mountain Water and Sewer Improvement District. A construct permit from the Utah State Department of Environmental Quality Division of Drinking Water for expansion of the water system and water lines serving the subdivision has been provided.

Review Agencies: The Weber County Surveyor's Office and Weber County Engineering Division have reviewed and approved the proposal and have signed the subdivision plat. The Weber Fire District have reviewed and approved the proposal.

Staff Recommendation

Staff recommends final subdivision approval of Overlook Phase 3, a 17 lot development located within the approved Powder Mountain Resort. This recommendation for approval is subject to all applicable review agency requirements.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Ogden Valley General Plan.
2. With the recommended conditions, the proposed subdivision complies with all previous approvals and the applicable County ordinances.
3. The proposed subdivision will not be detrimental to the public health, safety, or welfare.
4. The proposed subdivision will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.
5. The proposed master planned development is in conformance with the approved Zoning Development Master Plan.

Exhibits

- A. Overlook Final Plat Phase 3
- B. Draft Improvement Agreement

Location Map

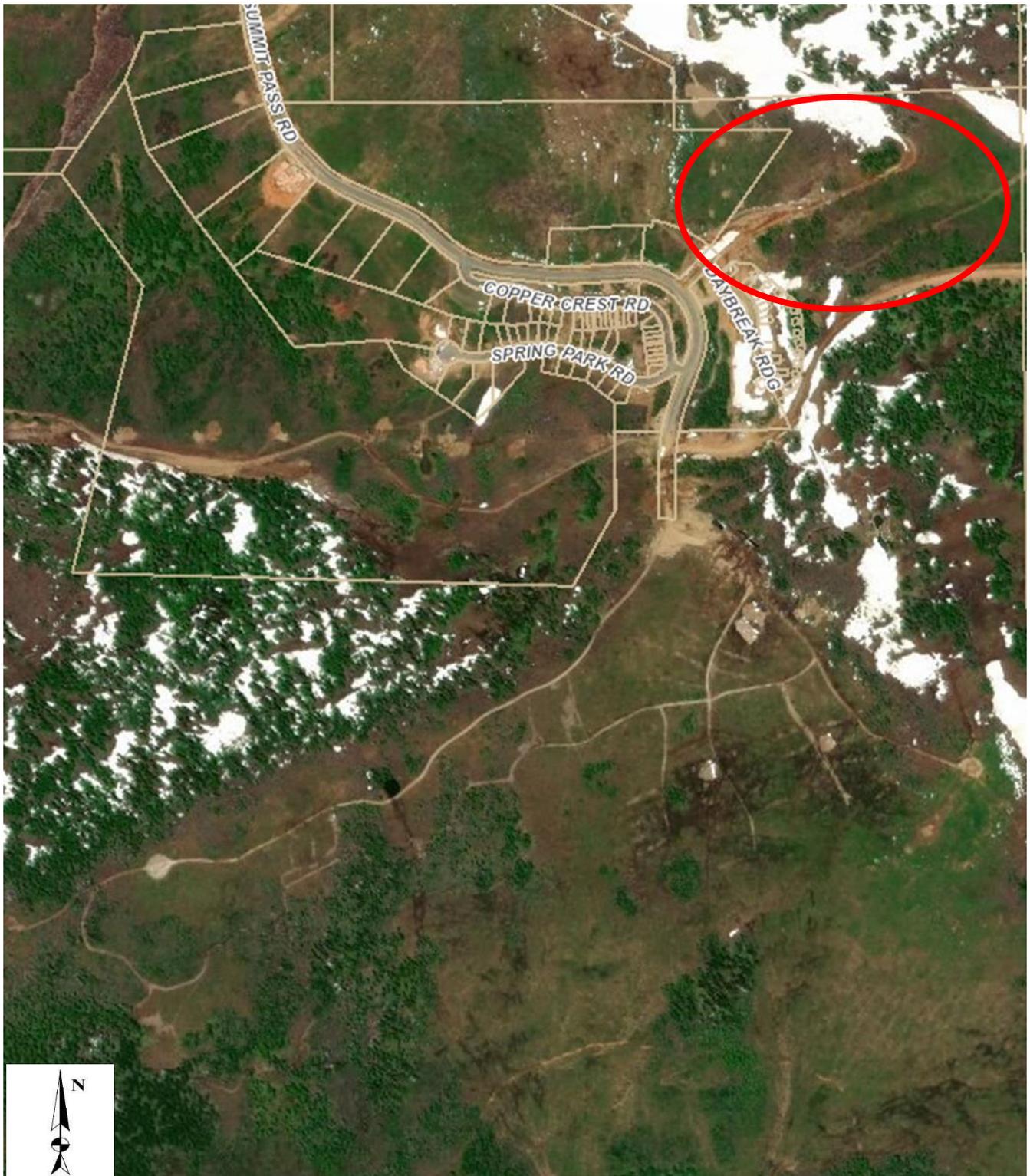
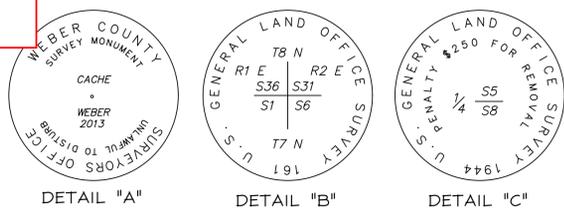
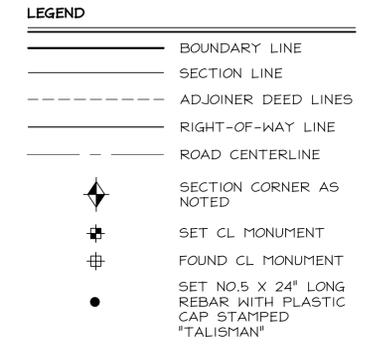


Exhibit A



OVERLOOK AT POWDER MOUNTAIN PHASE 3 AMENDING A PORTION OF PARCEL D, OF SUMMIT EDEN PHASE 1B

LOCATED IN THE NORTHEAST QUARTER OF SECTION 8,
 AND THE SOUTHWEST QUARTER OF SECTION 5,
 TOWNSHIP 7 NORTH, RANGE 2 EAST
 SALT LAKE BASE & MERIDIAN,
 WEBER COUNTY, UTAH
 DECEMBER 2018



NORTHEAST CORNER SECTION 1,
 TOWNSHIP 7 NORTH, RANGE 1 EAST
 SALT LAKE BASE AND MERIDIAN
 FOUND GLO 1944, 4" BRASS CAP,
 GOOD CONDITION
 6" ABOVE GROUND
 DETAIL "B"

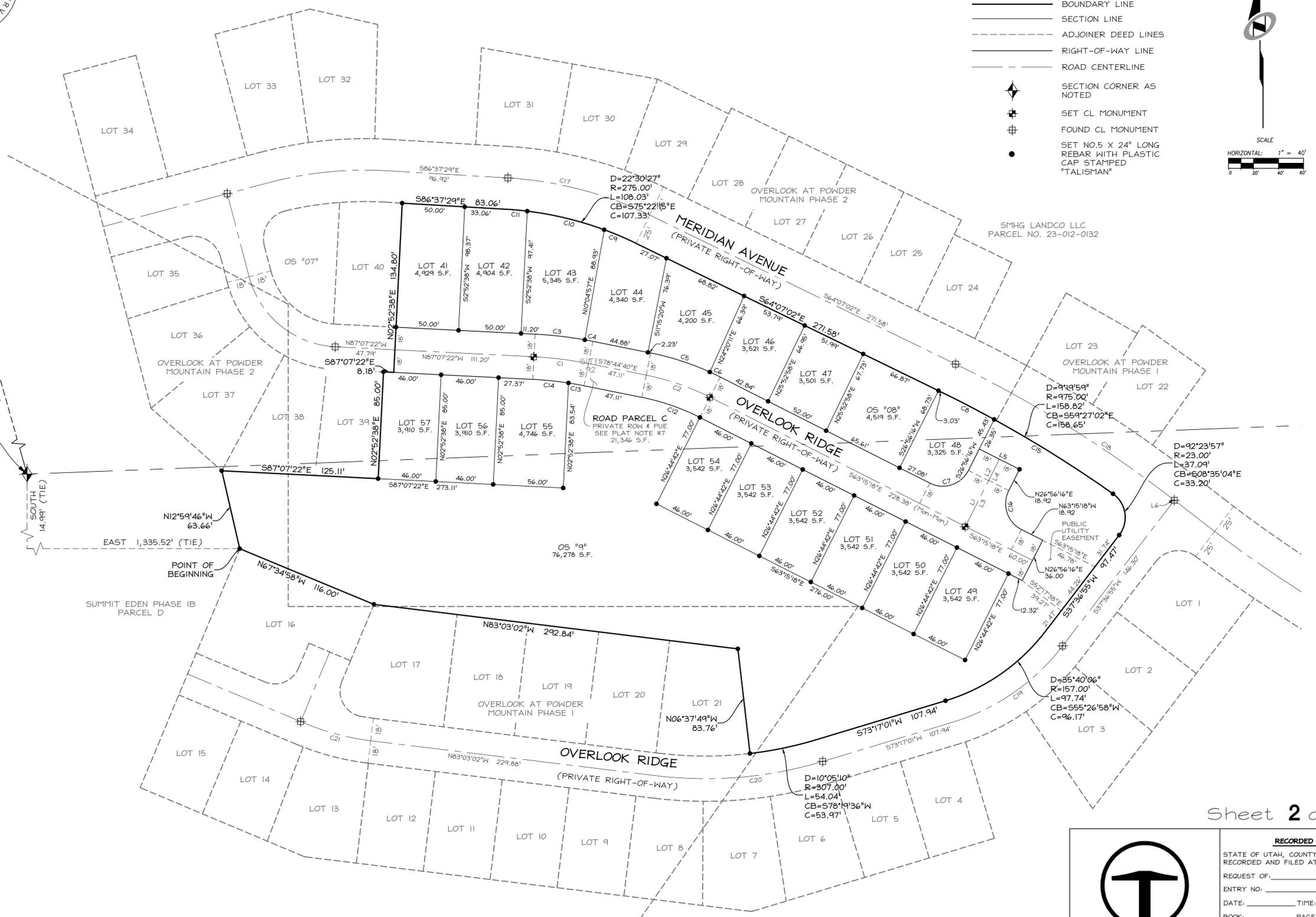
BASIS OF BEARINGS
 N 89°55'51" W 1380.98' RECORD
 (N 89°56'05" W 1380.98' RECORD)

FOUND WEBER COUNTY LINE
 MONUMENT PER WEBER COUNTY
 SURVEYOR, 4" BRASS CAP 2013,
 GOOD CONDITION
 FLUSH IN CONCRETE
 DETAIL "A"

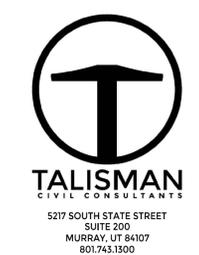
NORTH QUARTER CORNER SECTION
 8, TOWNSHIP 7 NORTH, RANGE 2 EAST
 SALT LAKE BASE AND MERIDIAN,
 FOUND 1944 GLO 4" BRASS CAP,
 GOOD CONDITION
 6" ABOVE GROUND
 DETAIL "C"

LINE	LENGTH	BEARING
L1	40.86	N26°56'16"E
L2	19.08	N26°56'16"E
L3	41.14	N26°56'16"E
L4	18.80	N26°56'16"E
L5	36.00	N63°15'18"W
L6	1.15	S52°23'05"E

CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD
C1	300.00	43.87	8°22'42"	N82°56'01"W	43.83
C2	200.00	54.07	15°24'22"	N70°59'59"W	53.90
C3	318.00	39.99	7°12'19"	N83°31'13"W	39.96
C4	318.00	6.51	1°10'23"	N79°19'51"W	6.51
C5	218.00	49.77	13°04'51"	N72°12'14"W	49.66
C6	218.00	9.16	2°24'31"	N64°27'33"W	9.16
C7	23.00	36.05	89°48'26"	N71°50'29"E	32.47
C8	975.00	46.97	2°45'37"	N62°44'13"W	46.97
C9	275.00	27.61	5°45'08"	N66°59'36"W	27.60
C10	275.00	63.46	13°13'21"	N76°28'50"W	63.32
C11	275.00	16.96	3°31'58"	N84°51'30"W	16.95
C12	182.00	49.20	15°24'22"	N70°59'59"W	49.05
C13	282.00	12.56	2°33'09"	N80°01'14"W	12.56
C14	282.00	28.67	5°49'34"	N84°12'35"W	28.66
C15	975.00	111.85	6°34'23"	N58°04'14"W	111.79
C16	23.00	36.21	90°11'34"	S18°09'31"E	32.58
C17	300.00	117.85	22°30'27"	S75°22'15"E	117.09
C18	1000.00	204.77	11°43'57"	S58°15'04"E	204.41
C19	175.00	108.94	35°40'06"	S55°26'58"W	107.19
C20	325.00	134.24	23°39'58"	S85°07'00"W	133.29
C21	200.00	55.02	15°45'43"	N75°10'10"W	54.85



SMHG PHASE 1, LLC.
 3632 N. WOLF CREEK DR.
 EDEN, UT, 84310



Sheet 2 of 2

RECORDED #
 STATE OF UTAH, COUNTY OF WEBER,
 RECORDED AND FILED AT THE
 REQUEST OF:
 ENTRY NO. _____
 DATE: _____ TIME: _____
 BOOK: _____ PAGE: _____
 FEE \$ _____
 WEBER COUNTY RECORDER

WEBER COUNTY
IMPROVEMENTS GUARANTEE AGREEMENT

THIS AGREEMENT (herein "Agreement") is entered into this 2nd day of OCTOBER, 2021

***** PARTIES *****

"APPLICANT": SMHG PMDP Phase II LLC, a limited liability company
3923 N. Wolf Creek Drive, Eden, UT 84310
(303) 905-3496

"COUNTY": Weber County, a political subdivision of the State of Utah,
2380 Washington BLVD, Ogden, UT 84401,
(801) 399-8374.

***** RECITALS *****

WHEREAS, APPLICANT desires to post the following improvement guarantee(s) (check):

- Off-site improvement guarantee
- On-site improvement guarantee

with the COUNTY for the **Overlook at Powder Mountain Phase 3**

located in the NE ¼ of Section 8 and the SE ¼ of Section 5, Township 7 North, Range 2 East (undeveloped)

WHEREAS, COUNTY ordinances require APPLICANT to guarantee the construction of certain improvements prior to either the recordation of the above described subdivision plat or the actual issuance of any permit(s) or approval(s) related to the above-described Project; and

WHEREAS, the terms of either the subject subdivision plat approval or the issuance of the subject permit(s)/approval(s) require APPLICANT to complete the following improvements, (herein "the Improvements") (check one and complete):

- specified in Exhibit B, attached hereto and incorporated herein by this reference;

- or -

- described as follows: _____; and

WHEREAS, COUNTY will not record the subject subdivision or grant the subject permit(s)/approval(s) until adequate provision has been made to guarantee completion of the Improvements and to warrant the Improvements shall be maintained and remain free from any defects or damage, which improvements and required warranty are estimated to cost the amount set forth herein, and which improvements shall be

Improvements and payment of the Fees; (b) that APPLICANT shall not assert as a defense that COUNTY has remedies against other entities or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform as outlined in this Agreement or preclude COUNTY from requiring APPLICANT'S performance under this Agreement; (c) that APPLICANT has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full and timely pay the Fees in full; and (d) should APPLICANT Default under this Agreement in any degree, APPLICANT agrees to compensate COUNTY for all costs, including Incidental Costs, related to APPLICANT'S failure to perform its obligation to complete and warrant the Improvements or pay the Fees to the extent that such costs are not adequately covered by the Proceeds ("Proceeds" defined in paragraph 10).

8. **INCIDENTAL COSTS.** "Incidental Costs", as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or materialmen's liens, and any other cost and interest thereon incurred by COUNTY, occasioned by APPLICANT'S Default under this Agreement.

9. **DEFAULT.** "Default," as used in this Agreement, shall mean, in addition to those events previously or subsequently described herein, a party's failure to perform, in a timely manner, any obligation, in whole or in part, required of such party by the terms of this Agreement or required by COUNTY ordinance or other applicable law. In addition, the following shall also be considered Default on the part of APPLICANT: APPLICANT'S abandonment of the Project, as determined by COUNTY; APPLICANT'S insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; APPLICANT'S failure to file with COUNTY a renewed Financial Guarantee, as defined in paragraph 10, more than 60 days before a Financial Guarantee will expire, unless APPLICANT'S obligations have been terminated under paragraph 36(b); APPLICANT'S Escrow Repository's or Financial Institution's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy, or failure to perform under the terms of this agreement; the commencement of a foreclosure proceeding against the Project property; or the Project property being conveyed in lieu of foreclosure.

The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, or otherwise available pursuant to the terms of this Agreement. Only the parties hereto are authorized to determine Default. Default shall not be declared prior to the other party receiving written notice.

10. **GUARANTEE OF IMPROVEMENTS.** APPLICANT hereby files, as an independent guarantee (herein "Financial Guarantee") with COUNTY for the purpose of insuring construction and installation of the Improvements and payment of the Fees, one of the following (check one and complete applicable information):

CASH CERTIFICATE, identified by the following:

Escrow Account: _____,

Escrow Account Repository: Weber County Treasurer

IRREVOCABLE LETTER OF CREDIT (herein the "Letter of Credit"), identified by the following:

Letter of credit account or number: _____,

Financial Institution: _____,

The Financial Guarantee shall be in the amount of one hundred ten percent (110%) of the County

Engineer's Cost Estimate (see also Exhibit A attached hereto). The Escrow Certificate or Letter of Credit shall be issued in favor of COUNTY to the account of APPLICANT herein, in the amount of **\$462,588.30** (herein the "Proceeds"), and is made a part of this Agreement as Exhibit C (Escrow Certificate or Letter of Credit).

11. **PARTIAL RELEASE OF PROCEEDS.** As the Improvements are initially accepted by COUNTY and the Fees are paid, the APPLICANT may submit written request to COUNTY for authorization for a partial release of Proceeds. APPLICANT is only entitled to make a request once every 30 days. The amount of any release shall be determined in the sole discretion of COUNTY. No release shall be authorized by COUNTY until such time as COUNTY has inspected the Improvements and found them to be in compliance with COUNTY standards and verified that the Fees have been paid. Payment of Fees or completion of Improvements, even if verified by COUNTY, shall not entitle APPLICANT to an automatic authorization for a release of the Proceeds. At no time may APPLICANT request a release of funds directly from Escrow Account Repository or Financial Institution.

12. **NOTICE OF DEFECT.** COUNTY will provide timely notice to APPLICANT whenever an inspection reveals that an Improvement does not conform to the standards and specifications shown on the Improvement drawings on file in COUNTY's Engineering and Surveyor's Office or is otherwise defective. The APPLICANT will have 30 days from the issuance of such notice to cure or substantially cure the defect.

13. **FINAL ACCEPTANCE.** Notwithstanding the fact that Proceeds may be released upon partial completion of the Improvements, neither any partial release nor any full release of the Proceeds shall constitute final acceptance of the Improvements by COUNTY. Final acceptance of the Improvements shall be official only upon written notice to APPLICANT from COUNTY expressly acknowledging such and only after APPLICANT provides a policy of title insurance, where appropriate, for the benefit of the County showing that the APPLICANT owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the County in its reasonable judgment.

14. **WARRANTY OF IMPROVEMENTS.** Following initial acceptance of the Improvements, APPLICANT hereby warrants that the Improvements shall be maintained by APPLICANT and remain free from defects or damage as determined by COUNTY, such that the Improvements continue to meet COUNTY standards for 1 year following said initial acceptance.

15. **RETAINAGE.** APPLICANT expressly agrees that, notwithstanding any partial release of any of the Proceeds, the Proceeds shall not be released below 10% of the estimated cost of the Improvements (herein the "Retainage"), as specified herein, for the timeframe specified in paragraph 14. The Retainage shall be held to insure that the Improvements do not have any latent defects or damage as determined by COUNTY, such that the Improvements do not continue to meet COUNTY standards for the timeframe specified in paragraph 14. Notwithstanding said Retainage, APPLICANT shall be responsible for bringing any substandard, defective, or damaged Improvements to COUNTY standard if the Retainage is inadequate to cover any such Improvements.

16. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless COUNTY, its elected officials, officers, employees, agents, and volunteers from and against any and all liability which may arise as a result of the installation of the Improvements prior to COUNTY'S initial acceptance of the Improvements as defined herein, and from and against any and all liability which may arise as a result of any Improvements which are found to be defective during the warranty period covered by this Agreement. With respect to APPLICANT'S agreement to defend COUNTY, as set forth above, COUNTY shall have the option to either provide its own defense, with all costs for such being borne by APPLICANT, or require that APPLICANT undertake the defense of COUNTY.

17. **FINAL RELEASE OF PROCEEDS.** In the event the Improvements have been installed to the

satisfaction of COUNTY and the Fees have been paid pursuant to this Agreement and COUNTY ordinances within the above stated time period(s), COUNTY agrees to execute a written release to Escrow Account Repository or Financial Institution of the remaining Proceeds.

18. **DEMAND FOR AND USE OF PROCEEDS.** In the event APPLICANT fails to install Improvements to the satisfaction of COUNTY, or the Fees are not paid pursuant to this Agreement and COUNTY ordinances within the above stated time period(s), or APPLICANT Defaults on any obligation under this Agreement or COUNTY ordinances, as determined at the sole discretion of COUNTY, COUNTY shall send Notice of APPLICANT'S Default to Escrow Account Repository or Financial Institution with a written demand for the release of Proceeds. COUNTY may, at its sole discretionary option, use and expend all the Proceeds or such lesser amount as may be estimated by COUNTY to be necessary to complete Improvements, pay Fees, and/or reimburse COUNTY for Incidental Costs as required herein.. COUNTY may, at its sole discretionary option, convert the Proceeds to a COUNTY held cash escrow for future satisfactory installation of Improvements.

19. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to COUNTY standards or to pay the Fees or to compensate for Incidental Costs, for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency independent of the Financial Guarantee. Additionally, no further approvals, permits or business licenses shall be issued, and any existing approvals, permits or business licenses applicable to the location of the Improvements may be immediately suspended or revoked by COUNTY'S Community and Economic Development Director until the Improvements are completed and the Fees are paid, or, until a new guarantee acceptable to the COUNTY has been executed to insure completion of the remaining Improvements and payment of the Fees. Furthermore, the cost of completion of the Improvements shall include reimbursement to COUNTY for all costs including, but not limited to, construction costs and any Incidental Costs incurred by COUNTY in completing the Improvements or collecting the Proceeds.

20. **ACCESS TO PROPERTY.** Should COUNTY elect to use the Proceeds to complete the Improvements, APPLICANT herein expressly grants to COUNTY and any contractor or other agent hired by COUNTY the right of access to the Project property to complete the Improvements.

21. **IMPROVEMENT STANDARDS.** Improvements shall be done according to the specifications and requirements of the COUNTY. All work shall be subject to the inspection of COUNTY. Any questions as to conformity with COUNTY specifications or standards, technical sufficiency of the work, quality, and serviceability shall be decided by the County Engineer. The County Engineer's decision shall be final and conclusive.

22. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the timeframe specified in paragraph 14, COUNTY shall notify APPLICANT in writing of such substandard or defective Improvements. APPLICANT shall then have 15 days from Notice from the COUNTY in which to commence repair of the Improvements, and a reasonable amount of time, as determined by COUNTY, which shall be specified in the Notice, to complete repair of the Improvements. Should APPLICANT fail to either commence repair of the Improvements or complete repair of the Improvements within the required time periods, COUNTY may exercise its option to remedy the defects and demand payment for such from APPLICANT, should the Proceeds be insufficient to cover the costs incurred by COUNTY.

23. **INSURANCE.** Should COUNTY elect to install, complete, or remedy any defect or damage in the Improvements, APPLICANT shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to APPLICANT or its property as a result of the work of any contractor or agent hired by COUNTY to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by COUNTY. APPLICANT shall indemnify,

defend, and hold harmless COUNTY, its officers, employees, and agents for any liability which exceeds the insurance policy limit. COUNTY, at its option, may collect and expend the Proceeds to make the premium payments should APPLICANT fail to pay said premium. No permit, approval or business license shall be issued by COUNTY, and any existing permit, approval, or business license shall be suspended until said premium is initially paid and a bond is in place to cover subsequent payments.

24. **NOTICE.** Notice to any party herein shall be mailed or delivered to the address shown in this Agreement. The date Notice is received at the address shown in this Agreement shall be the date of actual Notice, however accomplished.

25. **MECHANIC/MATERIAL LIENS.** Should COUNTY elect to complete or remedy the Improvements, APPLICANT shall indemnify, defend, and hold harmless COUNTY from and against any liability which exceeds the Proceeds for the payment of any labor or material liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by COUNTY or which may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.

26. **WAIVER.** The failure by any party to insist upon the immediate or strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a Default thereof shall not constitute a waiver of any such Default or any other covenant, agreement, term, or condition. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring Default.

27. **ATTORNEY'S FEES.** In the event there is a Default under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith, either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

28. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall Default on its obligations at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

29. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by COUNTY ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the residents of COUNTY, shall also apply to the subdivision or development which is the subject of this Agreement.

30. **SUCCESSORS.** "APPLICANT" and "COUNTY," as used in this Agreement, shall also refer to the heirs, executors, administrators, successors, or assigns of APPLICANT and COUNTY respectively.

31. **INDUCEMENT.** The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.

32. **INTEGRATION.** This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein.

33. **MODIFICATION.** Except as otherwise authorized by this Agreement, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

34. **CAPTIONS.** The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content, or intent of any part or parts of this Agreement.
35. **SEVERABILITY.** If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.
36. **TERMINATION.**
- (a) APPLICANT cannot unilaterally terminate its obligations under this Agreement.
 - (b) If, under the terms of this Agreement, COUNTY releases the full amount of the Proceeds or demands and receives the full remaining amount of the Proceeds, then APPLICANT'S obligations under paragraphs 4 and 10 shall terminate.
 - (c) All rights and obligations in this Agreement that are not terminated under sub-paragraph (b) shall survive until all applicable statutes of limitations have run with respect to the types of claims that may be associated with those rights and obligations.
 - (d) The entire Agreement shall terminate when all applicable statutes of limitations have run or when the parties jointly execute an agreement to terminate this Agreement.
37. **CONFLICT.** Any conflict between this Agreement and its exhibits or any other document shall be interpreted against the exhibit or other document and in favor of statements made in the numbered paragraphs of this Agreement.

WHEREUPON, the parties hereto have set their hands the day and year first above written.

"APPLICANT"

By:  10/12/2021
Applicant Signature Date

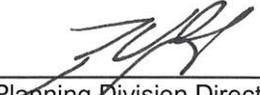
Title: AUTHORIZED SIGNATORY
(Signature must be notarized on following pages.)

"COUNTY"

By: _____
Commission Chair Date

ATTEST: _____
County Clerk Date:

APPROVED AS TO CONTENT:

By:  10/13/21
Planning Division Director Date

By:  10/13/2021
County Engineer Date

By: _____
County Treasurer Date

APPROVED AS TO FORM:

By:  10-13-21
County Attorney Date

APPLICANT NOTARIZATION

STATE OF UTAH)
) SS.
COUNTY OF Weber)

Idrishna Lakhani, 122

ON THIS 12 DAY OF Oct., 2021, BEFORE ME Mark Schroeter,
A NOTARY PUBLIC, PERSONALLY APPEARED Mark Schroeter, AS THE AUTHORIZED
SIGNATORY OF SMHG INVESTMENTS LLC, A DELAWARE LIMITED LIABILITY COMPANY, THE SOLE
MEMBER OF SMHG PHASE II INVESTOR LLC, A DELAWARE LIMITED LIABILITY COMPANY, THE MANAGING
MEMBER OF SMHG PMDP PHASE II LLC, A UTAH LIMITED LIABILITY COMPANY, PROVED ON THE BASIS
OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO IN THIS
INSTRUMENT, AND DULY ACKNOWLEDGED THAT HE/SHE EXECUTED THIS INSTRUMENT IN HIS/HER
AUTHORIZED CAPACITY ON BEHALF OF SAID COMPANY, INTENDING TO BE LEGALLY BOUND. WITNESS
MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC SIGNATURE: Idrishna Lakhani RESIDING IN: Eden UT

COMMISSION #: 701744, MY COMMISSION EXPIRES: 8/15/22



Exhibit A: County Engineer-Approved Cost Estimate

Description	Unit	Unit Price	Qty	Amount
EARTHWORK				\$23,775.87
Clear and Grub, haul off vegetation	SF	\$0.07	38,900	\$2,723.00
Windrow Topsoil at edges of slopes	CY	\$0.50	1,441	\$720.37
Roadway Excavation	CY	\$14.25	369	\$5,258.25
Embankment Fill	CY	\$8.00	1,334	\$10,672.00
Compaction Testing	CY	\$0.60	1,334	\$800.40
Topsoil Replacement from windrow	CY	\$2.50	1,441	\$3,601.85
EROSION CONTROL				\$12,821.25
SWPPP Management and Maintenance	LS	\$3,000.00	1	\$3,000.00
Stabilized Construction Entrance	EA	\$2,500.00	1	\$2,500.00
Inlet Protection	EA	\$215.00	3	\$645.00
Seeding (broadcast & rake)	SF	\$0.30	19,075	\$5,722.50
Erosion Control Blanket	SF	\$0.05	19,075	\$953.75
SEWER				\$108,675.15
8" SDR-35 PVC Pipe	LF	\$72.65	579	\$42,064.35
Test/Flush Video	LF	\$4.00	579	\$2,316.00
Compaction Testing	LF	\$1.20	579	\$694.80
4' Concrete Manhole	EA	\$6,050.00	4	\$24,200.00
5' Concrete Manhole	EA	\$16,000.00	1	\$16,000.00
Sewer Lateral	EA	\$2,600.00	9	\$23,400.00
WATER				\$89,534.80
8" C-900 PVC Pipe	LF	\$60.00	594	\$35,640.00
Test/Flush/Sample	LF	\$3.00	594	\$1,782.00
Compaction Testing	LF	\$1.20	594	\$712.80
8" Bends and Tees	EA	\$1,200.00	2	\$2,400.00
Fire Hydrant Assembly	EA	\$8,200.00	1	\$8,200.00
2" Water Service Lateral	EA	\$2,400.00	17	\$40,800.00
STORM SEWER				\$47,484.80
15" RCP culvert	LF	\$72.50	368	\$26,680.00
Compaction Testing	LF	\$1.10	368	\$404.80
4' Storm Drain Manhole	EA	\$5,600.00	2	\$11,200.00
Curb Inlet, single grate	EA	\$4,600.00	2	\$9,200.00
ROADBASE & STRUCTURAL FILL				\$60,741.15
Aggregate Base Course	CY	\$80.80	621	\$50,176.80
Compaction Testing	CY	\$1.10	621	\$683.10
Stabilization Fabric	SF	\$0.75	13,175	\$9,881.25
CURB & GUTTER				\$41,781.80
Curb and Gutter	LF	\$35.00	1,172	\$41,020.00
Concrete Testing	LF	\$0.65	1,172	\$761.80
PAVING/ASPHALT				\$35,720.00
Asphalt Import and Place	TON	\$95.00	323	\$30,685.00
Asphalt Testing	TON	\$2.00	323	\$646.00
Chip Seal @ 1 year	SY	\$3.00	1,463	\$4,389.00
			SUBTOTAL	\$420,534.82
			10% WARRANTY	\$42,053.48
			TOTAL	\$462,588.30

Exhibit B: County Engineer-Approved Construction Drawings

The Overlook Phase 3 Powder Mtn Site Construction Drawings by Talisman Civil Consultants, stamped 10/8/2019, project #18-200.23, sheets 1-20.

Exhibit C: Reserved for Escrow Certificate or Letter of Credit

ESCROW CERTIFICATE

TO WEBER COUNTY, UTAH:

The undersigned Escrow Agent does hereby certify that it has in its possession and custody, cash in the sum of \$ _____ which said sum said Escrow Agent is holding in escrow to guarantee the installation and completion, according to Ordinance, of all on and or off-site improvements, as specified in Exhibit "B" on the following described tracts of land in Weber County, Utah to wit:

All of Overlook at Powder Mountain Phase 3 Subdivision

In the event the funds so provided herein do not pay for and complete in full all of the specified improvements set forth in Exhibit "B" and as contemplated herein, then and in that event, subdivider/developer agrees to forthwith pay to Weber County all additional amounts necessary to so complete such improvements.

Said Escrow Agent hereby covenants and agrees that it will not release said funds to any person, firm or corporation (other than as is hereinafter provided) without the express written consent and direction from said Weber County, Utah, and that if said improvements are not satisfactorily installed and completed according to Ordinance within one month short of two years from the date hereof, that the said Escrow Agent will upon demand deliver said funds to said Weber County, Utah for the sole purpose of making and/or completing all of said improvements, with said County to return to the said Escrow Agent any and all funds which may prove to be in excess of the actual cost to the County to make and/or complete said improvements.

It is understood that the County may, at its sole option, extend said period of two years for such completion of such improvements upon request of the Escrow Agent or the Subdivider, if the County Commission determines that such extension is proper.

It is further understood and agreed that all matters concerning this agreement shall be subject to the pertinent provisions of the ordinances of Weber County, Utah.

DATED this 13th day of October, 20 21

Gary Myers
Escrow Agent

Gary Myers
Signature

Title: County Engineer

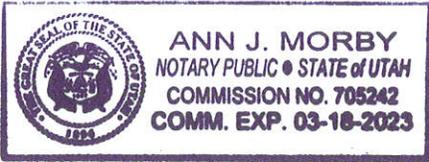
State of Utah)

ss:

County of Weber)

On the 13th day of October, 2021 appeared before me

the signer(s) of the within instrument, who duly acknowledged to me that he/she executed the same.



Ann J. Morby
Notary Public
Residing at:

APPROVED AS TO FORM:

Courtlan P. Erickson
Weber County Attorney

10-13-21
Date

APPROVED:

Chairperson, Weber County Commission

Date

ATTEST:

Weber County Clerk