

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: UV0050118

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 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

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

<u>Zoning:</u> 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.

<u>Culinary water and sanitary sewage disposal:</u> 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.

<u>Review Agencies:</u> 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

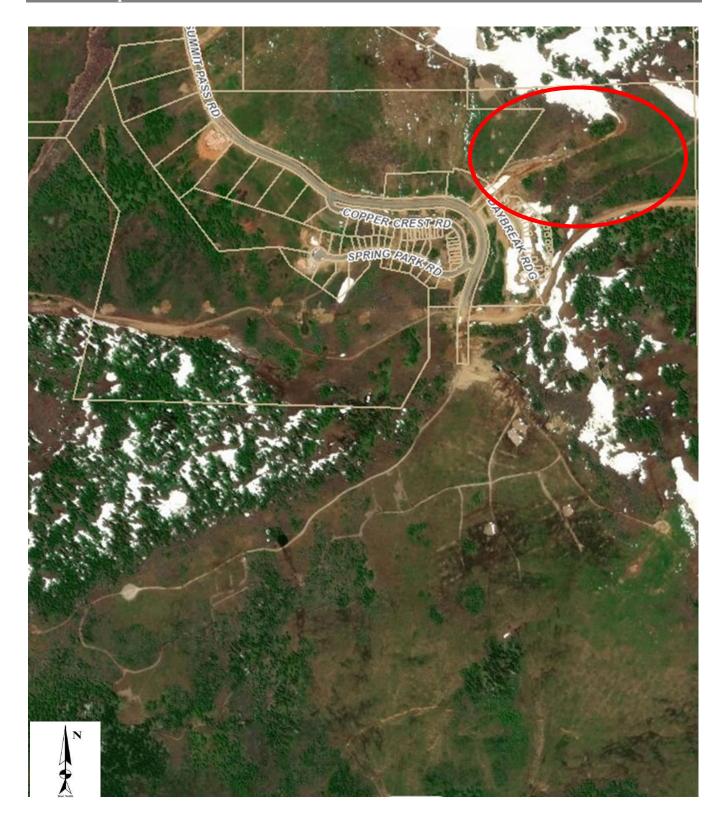
Staff recommends final subdivision approval of Overlook Phase 3, a 17 lot development located within the approved Powder Mountain Resort. This recommendation for approval is subject to all applicable review agency requirements. This recommendation is based on the following findings:

- 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



SUANT TO THE MASTER DECLARATION, POWDER MOUNTAIN OWNERS ASSOCIATION, INC., A UTAH NONPROFIT CORPORATION ("COMMUNITY ASSOCIATION") IS RESPONSIBLE FOR MAINTAINING ALL COMMON AREA, IF AND SHALL HAVE A PERPETUAL NON-EXCLUSIVE EASEMENT OVER ALL LOTS AND PARCELS FOR SUCH MAINTENANCE PURPOSES AS FURTHER DESCRIBED IN THE MASTER DECLARATION. SUCH RESPONSIBILITY AND EMENT MAY BE DELEGATED AND ASSIGNED TO THE MOUNTAIN HOMES AT POWDER MOUNTAIN OWNERS ASSOCIATION, INC., A UTAH NONPROFIT CORPORATION ("NEIGHBORHOOD ASSOCIATION").

THE PROPERTY AS DEPICTED ON THIS PLAT IS SUBJECT TO THE RIGHTS OF SMHG PHASE I AS DESCRIBED IN THE NEIGHBORHOOD DECLARATION, AND THE RIGHTS OF MASTER DEVELOPER AS DESCRIBED IN THE MASTER DECLARATION, AND SMHG PHASE I AND MASTER DEVELOPER SHALL HAVE THE RIGHT TO EXERCISE ANY APPLICABLE RIGHTS PROVIDED FOR IN SAID DECLARATIONS, INCLUDING, WITHOUT LIMITATION, RESERVATION AND GRANTING OF CERTAIN EASEMENTS, REDUCING OR RELOCATING IMPROVEMENTS WITHIN THE COMMUNITY, ADDING ADDITIONAL FACILITIES AND MAKING SUCH OTHER DEVELOPMENT DECISIONS AND CHANGES AS SMHG PHASE I OR MASTER DEVELOPER SHALL DETERMINE IN EACH OF THEIR SOLE AND EXCLUSIVE DISCRETION AND IN ACCORDANCE WITH APPLICABLE WEBER COUNTY ORDINANCES.

- THE LOTS ARE SERVED BY PRIVATE WATER AND WASTEWATER LATERAL LINES. EACH OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE AND REPLACEMENT OF ALL WATER AND SANITARY SEWER LATERALS SERVING THE RESIDENCE AND RELATED IMPROVEMENTS ON SUCH OWNER'S LOT IN ACCORDANCE WITH THE REQUIREMENTS OF THE POWDER MOUNTAIN WATER AND SEWER IMPROVEMENT DISTRICT ('PMWSID"). IN ADDITION, OWNERS WILL BE RESPONSIBLE FOR THE PAYMENT OF ALL PMWSID CHARGES FOR CONNECTION TO THE SYSTEM AND MONTHLY NON-CONNECTION AND WATER AND SEWER SERVICES.
- ALL UTILITIES WITHIN THE PROJECT SHALL BE UNDERGROUND. NOTWITHSTANDING THE GRANT OF BLANKET UTILITY EASEMENTS IN THIS PLAT, SMHG PHASE II LLC ('DECLARANT") RESERVES THE RIGHT TO RECORD ONE OR MORE INSTRUMENTS WHICH NARROW AND LIMIT SUCH GRANT OF UTILITY EASEMENT TO THE ACTUAL WIDTH OF THE UTILITY IN THOSE SPECIFIC AREAS WHICH ACTUALLY CONTAIN THE UTILITY FACILITIES AS DESCRIBED IN SUCH INSTRUMENT AND FOR THE PURPOSES DESCRIBED THEREIN. SUCH RESERVED RIGHT IS SUBJECT TO THE UTILITY COMPANIES' RIGHTS THEN LOCATED UNDER THE REAL PROPERTY DEPICTED ON
- DECLARANT HEREBY GRANTS TO ALL UTILITY PROVIDERS AN EASEMENT OVER AND ACROSS ALL AREAS SHOWN HEREON AS PUBLIC UTILITY EASEMENTS FOR THE PURPOSE OF INSTALLING, MAINTAINING AND OPERATING EQUIPMENT AND FACILITIES ABOVE AND BELOW GROUND AS MAY BE NECESSARY OR DESIRABLE IN PROVIDING UTILITY SERVICES WITHIN AND WITHOUT THE LOTS, INCLUDING THE RIGHT OF ACCESS TO SUCH FACILITIES AND THE RIGHT TO REQUIRE REMOVAL OF ANY OBSTRUCTIONS INCLUDING STRUCTURES, TREES, AND VEGETATION THAT MAY HAVE BEEN PLACED WITHIN THE EASEMENTS. AT NO TIME MAY ANY PERMANENT STRUCTURES BE PLACED WITHIN THE PUBLIC UTILITY EASEMENTS WHICH INTERFERES WITH THE USE OF THE EASEMENTS WITHOUT THE PRIOR WRITTEN APPROVAL OF THE APPLICABLE UTILITY PROVIDERS.
- THIS PLAT ESTABLISHES OVERLOOK RIDGE (SHOWN HERON AS ROAD PARCEL C) AS A LEGALLY RECOGNIZED AND PROPERLY SUBDIVIDED SEPARATE PARCELS OF REAL PROPERTY AND AS PUBLIC UTILITY EASEMENTS. THESE PARCELS ARE PRIVATE ROADS TO BE CONVEYED TO AND OPERATED, MAINTAINED AND REPAIRED BY THE COMMUNITY ASSOCIATION FOR THE USE AND BENEFIT AND AT THE EXPENSE OF ITS MEMBERS IN ACCORDANCE WITH THE MASTER DECLARATION, AND NEIGHBORHOOD DECLARATION, AS APPLICABLE. DECLARANT SHALL CONVEY ROAD PARCEL C TO THE COMMUNITY ASSOCIATION IN ACCORDANCE WITH THE MASTER DECLARATION. THESE PRIVATE ROADS MAY BE RELOCATED BY MASTER DEVELOPER AS DESCRIBED IN THE MASTER DECLARATION AND IN ACCORDANCE WITH APPLICABLE WEBER COUNTY ORDINANCES. THE PRIVATE ROADS ARE NOT PUBLIC ROADS OR RIGHTS OF WAY. THIS PLAT SHALL NOT BE DEEMED TO GRANT ANY RIGHTS IN THE PUBLIC TO USE THE PRIVATE ROADS OR CREATE ANY OBLIGATIONS ON THE PART OF WEBER COUNTY TO MAINTAIN OR REPAIR. ALL SUCH USE AND MAINTENANCE SHALL BE GOVERNED BY THE TERMS AND PROVISIONS OF THE MASTER DECLARATION, AND NEIGHBORHOOD DECLARATION, AS APPLICABLE.
- 8. PMWSID WILL OWN ALL COMMON WATER AND SEWER MAINS AND APPURTENANCES WITHIN THE COMMUNITY.
- 9. AS FURTHER DESCRIBED IN THE MASTER DECLARATION, ALL LOTS AND ALL RESIDENCES AND IMPROVEMENTS CONSTRUCTED ON THE LOTS, SHALL COMPLY WITH THE DESIGN GUIDE. NO OWNER MAY CONSTRUCT, INSTALL, OR PERFORM OTHER WORK THAT IN ANY WAY ALTERS THE APPEARANCE OF ANY PROPERTY OR LOT WITHIN THE PROJECT, AND NO OWNER MAY CONSTRUCT ANY RESIDENCES OR IMPROVEMENTS WITHOUT COMPLIANCE WITH THE DESIGN GUIDE AS DESCRIBED IN THE MASTER DECLARATION.
- 10. DECLARANT RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO UNILATERALLY AMEND THE PLAT, WITHOUT THE CONSENT OF THE AFFECTED OWNER, AT ANY TIME AND FROM TIME TO TIME IF SUCH AMENDMENT IS NECESSARY TO SATISFY THE REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, TO CORRECT MISTAKES, REMOVE OR CLARIFY AMBIGUITIES, OR FOR ANY OTHER PURPOSE SO LONG AS SUCH AMENDMENT TO THE PLAT DOES NOT MATERIALLY ADVERSELY AFFECT TITLE TO ANY PROPERTY AND IS IN ACCORDANCE WITH WEBER COUNTY ORDINANCES AND UTAH LAW. AS FURTHER SET FORTH IN THE MASTER DECLARATION, BY ACCEPTANCE OF A LOT EACH OWNER IRREVOCABLY APPOINTS MASTER DEVELOPER AS ATTORNEY-IN-FACT TO REALIGN AND ADJUST THE BOUNDARY LINES OF HIS LOT BY AMENDMENT TO
- DECLARANT RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS AND MASTER DEVELOPER, A BLANKET EASEMENT ACROSS ALL LOTS AND PARCELS FOR CONSTRUCTING AND MAINTAINING HIKING AND BIKING TRAILS ('TRAIL EASEMENT"). MASTER DEVELOPER MAY DESIGNATE, ADD TO, DELETE, OR MODIFY THE EXACT LOCATION OF THE TRAILS WITHOUT AN AMENDMENT TO THIS PLAT AS MORE FULLY DESCRIBED IN THE MASTER DECLARATION. DECLARANT HEREBY GRANTS TO THE NEIGHBORHOOD ASSOCIATION, COMMUNITY ASSOCIATION, AND THEIR MEMBERS AN EASEMENT FOR USE AND ENJOYMENT OF THE TRAIL EASEMENT, IN THE FUTURE AS-CONSTRUCTED LOCATIONS, AS MAY BE MODIFIED OR RELOCATED FROM TIME TO TIME, IN ACCORDANCE WITH THE MASTER DECLARATION AND ANY RULES AND REGULATIONS ADOPTED BY MASTER DEVELOPER.
- 12. DECLARANT RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS, AND MASTER DEVELOPER A BLANKET EASEMENT ACROSS ALL LOTS AND PARCELS FOR CONSTRUCTING AND MAINTAINING SKI TRAILS AND OTHER SKI IMPROVEMENTS, AND FOR THE GENERAL USE OF SKIERS FOR INGRESS, EGRESS, AND RECREATIONAL PURPOSES OVER AND ACROSS THE LOTS ("SKI EASEMENT"). MASTER DEVELOPER MAY DESIGNATE, DEFINE, LOCATE, RELOCATE, AND MODIFY THE EXACT LOCATION OF THE SKI TRAILS WITHIN THE SKI EASEMENT WITHOUT AN AMENDMENT TO THIS PLAT AS MORE FULLY DESCRIBED IN THE MASTER DECLARATION. DECLARANT GRANTS AN EASEMENT IN FAVOR OF THE NEIGHBORHOOD ASSOCIATION, COMMUNITY ASSOCIATION, AND THEIR MEMBERS FOR USE AND ENJOYMENT OF THE SKI EASEMENT ACROSS, OVER, AND UNDER THE LOTS AND IN THE FUTURE AS-CONSTRUCTED LOCATIONS OF THE SKI TRAILS, AS MAY BE MODIFIED OR RELOCATED FROM TIME TO TIME, IN ACCORDANCE WITH THE MASTER DECLARATION AND ANY RULES AND REGULATIONS ADOPTED BY MASTER DEVELOPER.
- 13. DECLARANT RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS, AND MASTER DEVELOPER, A TEMPORARY BLANKET EASEMENT ACROSS ALL LOTS ADJACENT TO A PRIVATE ROAD ("SLOPE" EASEMENT") AS MORE FULLY DESCRIBED IN THE MASTER DECLARATION, AND NEIGHBORHOOD DECLARATION AS APPLICABLE. SUCH SLOPE EASEMENT IS FOR THE BENEFIT OF MASTER DEVELOPER, ITS EMPLOYEES, AND CONTRACTORS, FOR THE PURPOSE OF STABILIZING, CONSTRUCTING CUT SLOPES AND FILL SLOPES, AND PERFORMING OTHER CONSTRUCTION AND MAINTENANCE TO PREVENT EROSION ALONG THE PRIVATE ROADS. THE SLOPE EASEMENT ON EACH LOT SHALL AUTOMATICALLY TERMINATE AT SUCH TIME AS A CERTIFICATE OF OCCUPANCY IS ISSUED FOR A RESIDENTIAL BUILDING CONSTRUCTED ON SUCH LOT, AT WHICH TIME A SUBSTITUTE EASEMENT MAY BE REQUIRED FOR ONGOING MAINTENANCE AND REPAIR.
- 14. DECLARANT RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS, AND MASTER DEVELOPER A BLANKET EASEMENT AND RIGHT ON, OVER, UNDER AND ACROSS ALL PRIVATE ROADS FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF TUNNELS, BRIDGES AND/OR SKI LIFTS OVER AND UNDER THE ROAD. DECLARANT MAY CONVEY, TRANSFER, OR ASSIGN ITS RIGHTS WITH RESPECT TO SUCH EASEMENT.
- 15. CERTAIN PARCELS MAY BE DESIGNATED AS "OPEN SPACE." SUCH OPEN SPACE PARCELS SHALL BE INITIALLY OWNED BY DECLARANT AND ARE NOT PART OF ANY COMMON AREA UNLESS DESIGNATED AS SUCH BY DECLARANT OR CONVEYED BY DECLARANT TO THE NEIGHBORHOOD ASSOCIATION OR COMMUNITY ASSOCIATION. NOTWITHSTANDING THE DESIGNATION AS OPEN SPACE, THE PERMITTED USES AND ANY APPLICABLE RESTRICTIONS FOR SUCH PARCELS SHALL BE AS SET FORTH IN THE NEIGHBORHOOD DECLARATION AND MASTER DECLARATION. DECLARANT RESERVES THE RIGHT, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, AND MASTER DEVELOPER, TO BUILD FACILITIES AND AMENITIES WITHIN ANY AREA DESIGNATED AS OPEN SPACE, AND RESERVES THE RIGHT TO AMEND, RELOCATE, REDUCE, OR OTHERWISE CHANGE THE AREAS DESIGNATED AS OPEN SPACE SO LONG AS THE AMOUNT OF DESIGNATED OPEN SPACE FOR THE ENTIRE COMMUNITY COMPLIES WITH THE OPEN SPACE REQUIREMENTS IMPOSED BY WEBER COUNTY.
- 16. DECLARANT GIVES NOTICE THAT THE LOTS SHOWN ON THIS PLAT ARE IN A SKI RESORT AREA ("SKI RESORT") IN WHICH HEAVY SNOW FALLS, WIND PATTERNS, AND OTHER CONDITIONS HAVE THE POTENTIAL TO CAUSE AVALANCHES IN CERTAIN AREAS. NO STUDIES HAVE BEEN CONDUCTED TO DETERMINE WHETHER ANY OF THE LOTS ARE WITHIN POTENTIAL AVALANCHE INFLUENCE AND AVALANCHE CONTROL ZONES. CERTAIN AREAS WITHIN THE SKI RESORT MAY BE SUBJECT TO AVALANCHE CONTROLS BY THE OPERATOR OF THE SKI RESORT AND SUCH CONTROL PROCEDURES MAY INVOLVE THE USE OF EXPLOSIVE CHARGES AND MAY TRIGGER AVALANCHES AS WELL AS OCCASIONAL ROAD, DRIVEWAY, AND SKI TRAIL CLOSURES. DECLARANT MAKES NO REPRESENTATION WITH RESPECT TO THE OPERATIONS OF THE SKI RESORT OR THE POTENTIAL RISKS OR HAZARDS ASSOCIATED WITH AVALANCHES OR AVALANCHE CONTROL. EACH OWNER OF A LOT SHOULD CONDUCT ITS OWN STUDIES PRIOR TO CONSTRUCTING ANY IMPROVEMENTS ON A LOT.
- 17. ALL LOTS DEPICTED ON THIS PLAT ARE LOCATED IN A LIGHTLY DEVELOPED SEMI-WILDERNESS AREA CONTAINING ANIMALS TYPICALLY FOUND IN THE MOUNTAINS, INCLUDING WITHOUT LIMITATION, BEARS, MOUNTAIN LIONS, MOOSE, DEER, ELK, SKUNKS, SQUIRRELS, RACCOONS, AND OTHER ANIMALS, BIRDS, INSECTS, AND REPTILES NATIVE OR MIGRATORY TO THE AREA. SUCH ANIMALS ROAM FREELY AND MAY ENTER THE LOTS AND OTHER PRIVATELY OWNED PROPERTIES, SCAVENGING, EATING AND DAMAGING PLANTS, FLOWERS, SHRUBS AND TREES, AND CREATING POTENTIAL HAZARDS, NUISANCES AND DAMAGE TO PERSONS AND PROPERTY. EACH OWNER SHALL ASSUME ALL SUCH RISKS AND CONDITIONS FOR ANY SUCH DAMAGE.
- 18. DUE TO THE TOPOGRAPHY AND THE LOCATION OF THIS SUBDIVISION, ALL OWNERS WILL ACCEPT RESPONSIBILITY FOR ANY STORM WATER RUNOFF FROM THE ROAD ADJACENT TO THEIR LOT AND THE REMAINDER OF THIS PROPERTY.
- 19. THIS NOTE WAS INTENTIONALLY OMITTED.
- 20. PARKING ON ANY STREETS AND ROADS SHOWN ON THIS PLAT IS PROHIBITED.
- 21. THE NEIGHBORHOOD DECLARATION AND MASTER DECLARATION SET FORTH THE TERMS AND RESTRICTIONS FOR NIGHTLY RENTALS AND LEASING OF LOTS IN THE PROJECT.
- 22. ACCESS TO THE PROJECT IS BY WAY OF A STATE HIGHWAY MAINTAINED BY THE UTAH DEPARTMENT OF TRANSPORTATION, WEBER COUNTY PUBLIC ROADS (MAINTAINED BY WEBER COUNTY), AS WELL AS PRIVATE ROADS. SEVERE WEATHER CONDITIONS MAY MAKE CERTAIN ROADS IMPASSABLE OR SUBJECT TO REDUCED VISIBILITY, SNOW, ICE, AND OTHER RISKS, AND ROADS MAY BE CLOSED DURING CERTAIN PERIODS.
- 23. DECLARANT RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS, AND MASTER DEVELOPER A SNOW STORAGE EASEMENT AS A BLANKET SNOW RELOCATION AND SNOW STORAGE EASEMENT OVER AND ACROSS ALL LOTS AND PARCELS FOR THE RELOCATION, MOVEMENT, AND STORAGE OF SNOW ("SNOW STORAGE EASEMENT"). PARTICULAR SNOW STORAGE ZONES, WHICH ARE LOCATED WITHIN THE SNOW STORAGE EASEMENT, ARE IDENTIFIED ON THE PLAT. MASTER DEVELOPER MAY DESIGNATE, DEFINE, LOCATE, RELOCATE, AND MODIFY THE EXACT LOCATION OF THE SNOW STORAGE EASEMENT WITHOUT AN AMENDMENT TO THIS PLAT AS MORE FULLY DESCRIBED IN THE MASTER DECLARATION.
- 24. OVERLOOK AT POWDER MOUNTAIN IS LOCATED WITHIN THE NATURAL HAZARDS AREA. A GEOTECHNICAL AND GEOLOGIC INVESTIGATION HAS BEEN PERFORMED BY "IGES" DATED THE WEBER COUNTY PLANNING DIVISION OFFICE.
- 25. OWNERS SHALL ENSURE THAT ALL CONSTRUCTION CONTRACTS FOR EARTHWORK ON ANY LOT SHALL CONTAIN, AND OWNERS SHALL ENFORCE, THE FOLLOWING PROVISION: "CONTRACTORS DURING EARTHWORK IF PERSISTENT AND RECOGNIZABLE GROUNDWATER FLOW, DEFINED AS CONTINUOUS SUBSURFACE FLOW INTO AN EXCAVATION THAT PERSISTS FOR FORTY-EIGHT (48) HOURS, IS ENCOUNTERED DURING EXCAVATION, THE CONTRACTOR SHALL HIRE A QUALIFIED GEOTECHNICAL AND/OR GROUNDWATER HYDROLOGY PROFESSIONAL TO PERFORM A SITE-SPECIFIC GROUNDWATER HYDROLOGY STUDY AND RECOMMEND APPROPRIATE MITIGATION TECHNIQUES. THESE MITIGATION TECHNIQUES SHALL BE INCORPORATED INTO THE CONTRACTOR'S CONSTRUCTION PLANS AND PROPERLY IMPLEMENTED AND MONITORED. THE CONTRACTOR SHALL ALSO IMMEDIATELY CONTACT THE MASTER DEVELOPER TO ADVISE HIM THAT PERSISTENT AND RECOGNIZABLE GROUNDWATER FLOW WAS ENCOUNTERED AND TO SHARE THE RESULTS OF THE GEOTECHNICAL/HYDROLOGY STUDY AND WHAT MITIGATION MEASURES ARE BEING UNDERTAKEN. EXCAVATION AND BLASTING FOR THE INSTALLATION OF ROADS, FOUNDATIONS AND/OR UTILITIES SHALL BE PERFORMED SUCH THAT TRENCHES OR FRACTURES CREATED DURING BLASTING PROCEDURES WILL NOT DRAIN OR REDIRECT GROUNDWATER THAT PROVIDES WETLAND SOURCE HYDROLOGY."
- 26. ALL LOTS DEPICTED IN THIS PLAT ARE SUBJECT TO AN ASSESSMENT LIEN PURSUANT TO WEBER COUNTY ASSESSMENT ORDINANCE NO. 2013-21, AS AMENDED BY ORDINANCE NO. 2013-24 (AS AMENDED, THE "ORDINANCE") WHEREBY EACH LOT SHALL BE ASSESSED ONE EQUIVALENT RESIDENTIAL UNIT AS DEFINED IN THE ORDINANCE AND AS SET FORTH IN TABLE A SHOWN ON THIS PLAT.
- 27. THIS NOTE WAS INTENTIONALLY OMITTED.

OVERLOOK AT POWDER MOUNTAIN PHASE 3

AMENDING A PORTION OF PARCEL D, OF SUMMIT EDEN PHASE IB

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

LIEN HOLDER'S CONSENT:

PEAK STREET MANAGEMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS ASSIGNEE AND CURRENT HOLDER/BENEFICIARY OF A SECURITY INTEREST AGAINST SOME OR ALL OF THE PROPERTY DESCRIBED IN THIS SUBDIVISION PLAT, WHICH INTEREST IS EVIDENCED BY THAT CERTAIN DEED OF TRUST RECORDED JUNE 24, 2014, AS ENTRY NO. 2691512 IN THE OFFICE OF THE WEBER COUNTY RECORDER, DOES HEREBY CONSENT TO THE RECORDING OF AND SUBORDINATE ITS INTEREST TO THIS SUBDIVISION PLAT. PEAK STREET MANAGEMENT, LLC, HEREBY REPRESENTS THAT IT IS THE PRESENT OWNER OF THE LIEN/INTEREST DESCRIBED HEREIN.

ITS:						
STATE OF						
SWORN AND SUBSCRIBED	TO BEFORE ME THIS	DAY OF		20		
BY	, THE		_, AND DULY	AUTHORIZED	AGENT OF	AIND FOR
PEAK STREET MANAGEME	NT, LLC.					

RESIDING IN: _____

ACKNOWLEDGEMENT:

ACKNOWLEL	GEMEN I :
STATE OF UTAH	
	1ENT WAS ACKNOWLEDGED BEFORE ME THIS DAY OF,, THE AUTHORIZED SIGNATORY FOR SMHG INVESTMENTS LLC, THE SOLE MEMBER
	NOTARY PUBLIC
	MY COMMISSION EXPIRES:

OWNER'S DEDICATION:

SMHG PHASE ILLIC ("DECLARANT"). AS THE OWNER OF THE HEREIN DESCRIBED TRACT OF LAND. DOES HEREBY SET APART AND SUBDIVIDE THE SAME INTO LOTS AND PARCELS AS SHOWN HEREON, SUBJECT TO ALL OF THE RESTRICTIONS, RIGHTS AND LIMITATIONS SET FORTH IN THE PLAT NOTES, AND NAME SAID TRACT, TO BE KNOWN AS OVERLOOK AT POWDER MOUNTAIN PHASE 3, AND DOES HEREBY:

- PRIVATE STREETS, ACCESS, RIGHTS-OF-WAY. DEDICATE AND RESERVE UNTO DECLARANT, ITS HEIRS, GRANTEES AND ASSIGNS, AND SUMMIT MOUNTAIN HOLDING GROUP, L.L.C. AS MASTER DEVELOPER A RIGHT-OF-WAY TO BE USED IN COMMON WITH ALL OTHERS WITHIN SAID SUBDIVISION (AND THOSE ADJOINING SUBDIVISIONS THAT MAY BE SUBDIVIDED BY THE UNDERSIGNED OWNER, ITS SUCCESSORS OR ASSIGNS) ON, OVER AND ACROSS ALL THOSE PORTIONS OR PARTS OF SAID TRACT OF LAND DESIGNATED ON SAID PLAT AS PRIVATE STREETS AS ACCESS TO THE INDIVIDUAL LOTS, TO BE MAINTAINED BY POWDER MOUNTAIN OWNERS ASSOCIATION, INC., A UTAH NONPROFIT CORPORATION ("COMMUNITY
- PUBLIC UTILITY AND DRAINAGE EASEMENTS. GRANT AND DEDICATE A PERPETUAL RIGHT AND EASEMENT OVER, UPON AND UNDER THE LANDS DESIGNATED AS PUBLIC UTILITY, STORM WATER DETENTION PONDS AND DRAINAGE EASEMENTS, THE SAME TO BE USED FOR THE INSTALLATION MAINTENANCE AND OPERATION OF PUBLIC UTILITY SERVICE LINE, STORM DRAINAGE FACILITIES, OR FOR THE PERPETUAL PRESERVATION OF WATER CHANNELS IN THEIR NATURAL STATE WHICHEVER IS APPLICABLE AS MAY BE AUTHORIZED BY THE GOVERNING AUTHORITY, WITH NO BUILDINGS OR

ASSOCIATION"), WHOSE MEMBERSHIP CONSISTS OF DECLARANT AND THE OWNERS OF THE LOTS DEPICTED ON THIS PLAT.

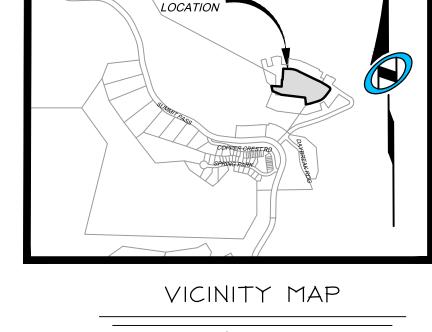
- STRUCTURES BEING ERECTED WITHIN SUCH EASEMENTS. • PRIVATE EASEMENTS. GRANT AND DEDICATE THOSE CERTAIN EASEMENTS DESCRIBED IN NOTES 2, II, I2, I3, I4, AND 23 OF THIS PLAT. SUCH NOTES AND THE RESERVATION AND GRANT OF EASEMENTS DESCRIBED THEREIN ARE INCORPORATED HEREIN BY REFERENCE.
- OPEN SPACES, GRANT AND DEDICATE TO WEBER COUNTY A PERPETUAL OPEN SPACE RIGHT AND EASEMENT ON AND OVER THE OPEN SPACE PARCELS FOR THE LIMITED PURPOSE OF GUARANTEEING TO WEBER COUNTY THAT THE OPEN SPACE PARCELS REMAIN OPEN AND UNDEVELOPED EXCEPT FOR APPROVED RECREATIONAL, PARKING AND OPEN SPACE PURPOSES. THE FOREGOING SHALL NOT CONSTITUTE A DEDICATION OF THE OPEN SPACE PARCELS FOR PUBLIC USE, SUCH PARCELS BEING RESTRICTED TO USE BY THE ASSOCIATION MEMBERS AND THEIR GUESTS AND OTHERS AS SET FORTH IN THE NEIGHBORHOOD DECLARATION AND THE MASTER DECLARATION.

IN WITNESS WHEREOF,	DECLARANT HAS	S EXECUTED	THIS OWNER'S	DEDICATION AS OF	F THE	DAY OF
20						

ACKNOWLEDGEMENT:

STATE OF UTAH							
COUNTY OF		, _} S.S.					
THE FOREGOING INSTRUMEN	IT WAS ACKNOWL	EDGED BEFORE	E ME THIS _		DAY 0F		
20, BY	, TH	E AUTHORIZED	SIGNATORY	FOR SMHG	INVESTMENTS LL	C, THE SOLE	MEMBER
OF SMHG PHASE I LLC.							
_							
N	IOTARY PUBLIC						

RESIDING IN:		



SURVEYOR'S CERTIFICATE

I, NATHAN CHRISTENSEN, DO HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR AND HOLD A LICENSE IN THE STATE OF UTAH IN ACCORDANCE WITH TITLE 58. CHAPTER 22. PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS ACT, AND THAT I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAT IN ACCORDANCE WITH SECTION 17-23-17 AND HAVE VERIFIED ALL MEASUREMENTS AND HAVE PLACED MONUMENTS AS REPRESENTED ON THIS PLAT, IN ACCORDANCE WITH STATE CODE AND COUNTY ORDINANCE WCO 106-1-8(C)(2), AND THAT THIS PLAT, OVERLOOK AT POWDER MOUNTAIN PHASE 3, IN WEBER COUNTY, UTAH, HAS BEEN DRAWN CORRECTLY TO THE DESIGNATED SCALE AND IS A TRUE AND CORRECT REPRESENTATION OF THE HEREON DESCRIBED LANDS, BASED UPON DATA COMPILED FROM RECORDS IN THE WEBER COUNTY RECORDER'S OFFICE AND FROM SAID SURVEY MADE ON THE GROUND. I FURTHER CERTIFY THAT THE REQUIREMENTS OF APPLICABLE STATUTES AND ORDINANCES OF WEBER COUNTY CONCERNING ZONING REQUIREMENTS REGARDING LOT MEASUREMENTS HAVE BEEN COMPLIED WITH.

NATHAN CHRISTENSEN PROFESSIONAL LAND SURVEYOR UTAH CERTIFICATE NO. 10175991



LEGAL DESCRIPTION

BEGINNING AT A POINT BEING SOUTH 14.99 FEET AND EAST 1335.52 FEET, FROM THE NORTH QUARTER CORNER OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARINGS FOR THIS DESCRIPTION IS NORTH 89°55'51" WEST ALONG THE LINE BETWEEN THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND THE MONUMENT AT THE INTERSECTION OF THE WEBER/CACHE COUNTY LINE, TIE FROM THE NORTHWEST CORNER OF SECTION 6 TO THE NORTH QUARTER CORNER OF SECTION 8 IS SOUTH 53°43'38" EAST 9312.68 FEET); THENCE N12°59'46"W 63.66 FEET; THENCE S87°07'22"E 125.11 FEET; THENCE N02°52'38"E 85.00 FEET; THENCE S87°07'22"E 8.18 FEET; THENCE N02°52'38"E 134.80 FEET; THENCE S86°37'29"E 83.06 FEET; THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 275.00 FEET, WITH A CENTRAL ANGLE OF 22°30'27" (CHORD BEARING AND DISTANCE OF S75°22'15"E 107.33 FEET) FOR AN ARC DISTANCE OF 108.03 FEET; THENCE S64°07'02"E 271.58 FEET; THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 975.00 FEET, WITH A CENTRAL ANGLE OF 09°19'59" (CHORD BEARING AND DISTANCE OF 559°27'02E I58.65 FEET) FOR AN ARC DISTANCE OF I58.82 FEET; THENCE WITH A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 23.00 FEET, WITH A CENTRAL ANGLE OF 92°23'57" (CHORD BEARING AND DISTANCE OF 508°35'04"E 33.20 FEET) FOR AN ARC DISTANCE OF 37.09 FEET; THENCE S37°36'55"W 97.47 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 157.00 FEET, THROUGH A CENTRAL ANGLE OF 35°40'06" (CHORD BEARING AND DISTANCE OF S55°26'58"W 96.17 FEET) FOR AN ARC DISTANCE OF 97.74 FEET: THENCE S73°17'01"W 107.94 FEET: THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 307.00 FEET, THROUGH A CENTRAL ANGLE OF 10°05'10" (CHORD BEARING AND DISTANCE OF 578'19'36"W 53.97 FEET) FOR AN ARC DISTANCE OF 54.04 FEET; THENCE N06°37'49"W 83.76 FEET; THENCE N83°03'02"W 292.84 FEET;THENCE N67°34'58"W 116.00 FEET TO THE POINT OF

CONTAINING: 170,027 S.F. OR 3.903 ACRES

SURVEYOR'S NARRATIVE:

I. THE PURPOSE FOR THIS SURVEY AND PLAT IS TO SUBDIVIDE THE AFORESAID TRACT OF LAND INTO LOTS, STREETS, PARCELS AND EASEMENTS AS SHOWN HEREON AND AS DIRECTED BY THE CLIENT.

2. THE BASIS-OF-BEARING FOR THIS PLAT IS N 89°55'51" W ALONG THE NORTH SECTION LINE BETWEEN THE NORTHEAST CORNER OF SECTION I, T.7N., R.IE., S.L.B.&M., AND A FOUND WEBER COUNTY MONUMENT AT THE INTERSECTION OF THE WEBER/CACHE COUNTY LINE AND SAID SECTION SECTION LINE. (THIS BEARING DIFFERS FROM THE WEBER COUNTY SURVEYOR'S BEARING BY 00°00'14" AS SHOWN ON THE COUNTY LINE DECLARATION RECORD PLAT BOOK 74, PAGE 64.)

3. THE NORTHERLY BOUNDARY, AND WESTERLY BOUNDARY WERE DETERMINED AND SET BY OVERLOOK AT POWDER MOUNTAIN PHASE 2. THE EASTERLY BOUNDARY, AND THE SOUTHERLY BOUNDARY WERE DETERMINED AND SET BY OVERLOOK AT POWDER MOUNTAIN PHASE I. THE LOCATION OF SAID PLAT WAS DETERMINED BY THE FOUND SECTION CORNER MONUMENTS AS REFERENCED ON EXISTING PLAT. FOUND SURVEY MONUMENTS USED ARE SHOWN HEREON.

WEBER COUNTY COMMISSION ACCEPTANCE

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT, THE DEDICATION OF

STREETS AND OTHER PUBLIC WAYS AND FINANCIAL GUARANTEE OF PUBLIC

IMPROVEMENTS ASSOCIATED WITH THIS SUBDIVISION THEREON ARE HEREBY



	SMAN NSULTANTS
SUIT MURRAY	STATE STREET TE 200 7, UT 84107 43.1300
RECOR	RDED #
TATE OF UTAH, CO ECORDED AND FILI	
CUECT OF	

RECORDED #			
ATE OF UTAH, COUNTY OF WEBER, CORDED AND FILED AT THE			
QUEST OF:			
TRY NO:			
TE:TIME:			
<i>O</i> K:PAGE <u>:</u>			
E \$			
BER COUNTY RECORDER			

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

OWNER

WEBER COUNTY ATTORNEY I HAVE EXAMINED THE FINANCIAL GUARANTEE AND OTHER DOCUMENTS ASSOCIATED WITH THIS SUBDIVISION PLAT AND IN MY OPINION THEY CONFORM WITH THE COUNTY ORDINANCE APPLICABLE THERETO AND NOW IN FORCE AND AFFECT. SIGNED THIS _____ DAY OF _____ , 20 ____ .

SIGNATURE

WEBER COUNTY SURVEYOR I HEREBY CERTIFY THAT THE WEBER COUNTY SURVEYOR'S OFFICE HAS REVIEWED THIS PLAT AND ALL CONDITIONS FOR APPROVAL BY THIS OFFICE HAVE BEEN SATISFIED. THE APPROVAL OF THIS PLAT BY THE WEBER COUNTY SURVEYOR DOES NOT RELIEVE THE LICENSED LAND SURVEYOR WHO EXECUTED THIS PLAT FROM THE RESPONSIBILITIES AND/OR LIABILITIES ASSOCIATED THEREWITH.

SIGNED THIS ______ DAY OF ______, 20_____.

COUNTY SURVEYOR

HEREBY CERTIFY THAT THE REQUIRED PUBLIC IMPROVEMENT STANDARDS AND DRAWINGS FOR THIS SUBDIVISION CONFORM WITH COUNTY STANDARDS AND THE AMOUNT OF THE FINANCIAL GUARANTEE IS SUFFICIENT FOR THE INSTALLATION OF THESE IMPROVEMENTS. SIGNED THIS _____ DAY OF ____ , 20____

SIGNATURE

WEBER COUNTY ENGINEER

MY COMMISSION EXPIRES:

COMMISSION ON THIS _____ DAY OF ____

WEBER COUNTY PLANNING COMMISSION APPROVAL

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT WAS

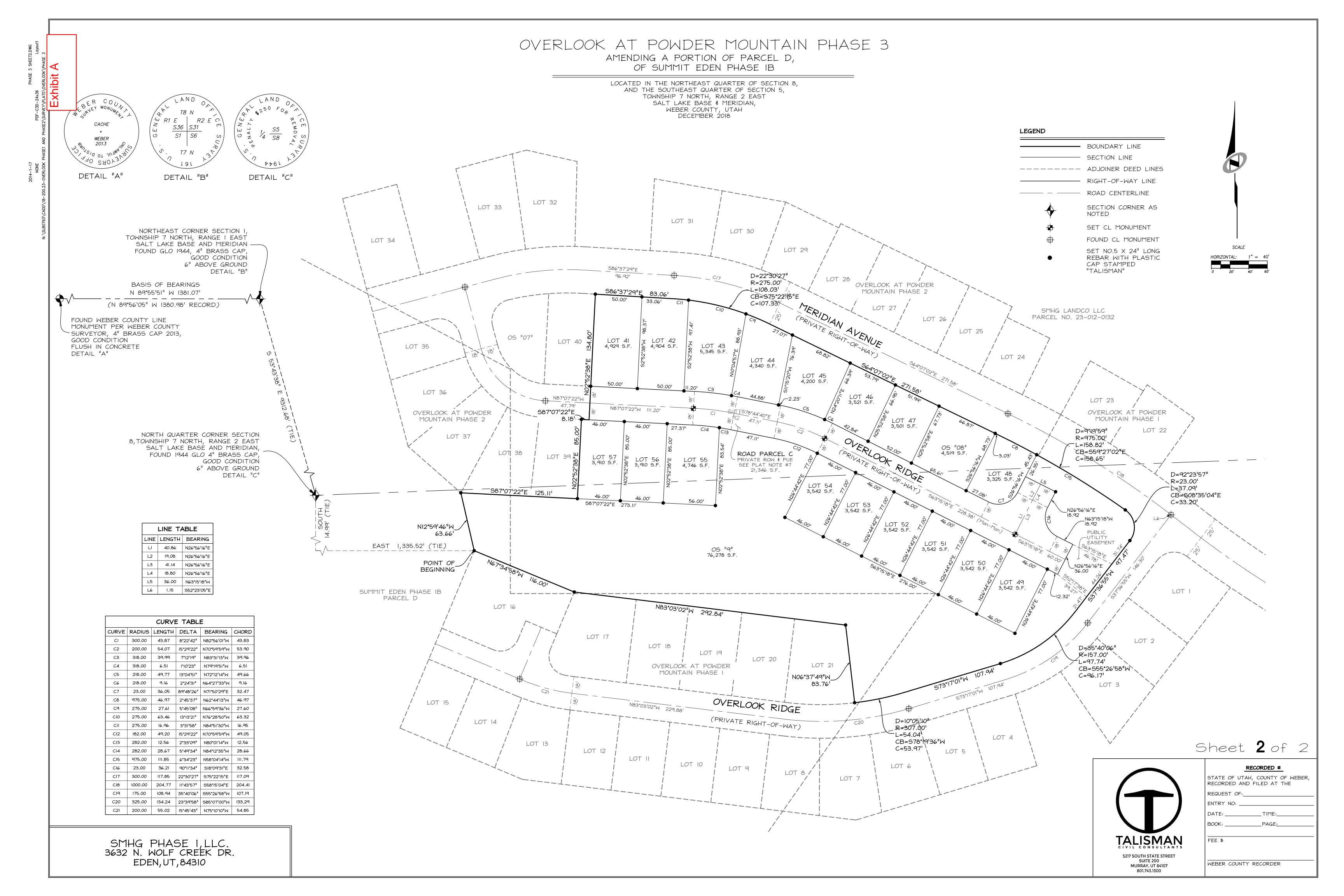
DULY APPROVED BY THE WEBER COUNTY PLANNING

APPROVED AND ACCEPTED BY THE COMMISSIONERS OF WEBER COUNTY, UTAH

THIS ______ , 20____ , 20____ . CHAIRMAN, WEBER COUNTY COMMISSION ATTEST: _

TITLE:

CHAIRMAN-WEBER COUNTY PLANNING COMMISSION



WEBER COUNTY IMPROVEMENTS GUARANTEE AGREEMENT

THIS AGREE	MENT (herein "Agreement") is entered into this 2 day of 000356 , 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, A	PPLICANT desires to post the following improvement guarantee(s) (check):
	☐ Off-site improvement guarantee
	☑ On-site improvement guarantee
with the COUN	TY for the Overlook at Powder Mountain Phase 3
located in the N	IE $\frac{1}{4}$ of Section 8 and the SE $\frac{1}{4}$ of Section 5, Township 7 North, Range 2 East (undeveloped)
improvements	COUNTY ordinances require APPLICANT to guarantee the construction of certain prior to either the recordation of the above described subdivision plat or the actual issuance) or approval(s) related to the above-described Project; and
permit(s)/appro	e terms of either the subject subdivision plat approval or the issuance of the subject eval(s) require APPLICANT to complete the following improvements, (herein "the) (check one and complete):
⊠ spe	ecified in ExhibitB, attached hereto and incorporated herein by this reference;
	- or -
□ des	scribed as follows:; and
adequate provi	DUNTY will not record the subject subdivision or grant the subject permit(s)/approval(s) until sion has been made to guarantee completion of the Improvements and to warrant the shall be maintained and remain free from any defects or damage, which improvements and nty 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 <u>A</u> 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 <u>C</u> (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.

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.

WHER	REUPON, the parties hereto have set their hands the day	and year first above written.
"APPI	LICANT"	
Ву: (Applicant Signature	10/12/2021 Date
Title:	(Signature must be notarized on following pages.)	
"COUI	NTY"	
Ву:	Commission Chair	Date
ATTES	County Clerk	Date:
APPRO	OVED AS TO CONTENT:	
Ву	Planning Division Director	10/13/21 Date
Ву	County Engineer	10 / 13 / 202 Date
Ву	County Treasurer	Date
APPRO	OVED AS TO FORM:	
Ву	Countain P. Endson County Attorney	10-13-21 Date

APPLICANT NOTARIZATION

STATE OF UTAH)			
1 1 1) SS.			
COUNTY OF Weber)	la	Krishna Lalehani,	121
ON THIS <u> 2</u> DAY OF	ack	202 BEFORE ME		122
A NOTARY PUBLIC, PERSON		T Show I	, AS THE AUTHORIZED	_, _
SIGNATORY OF SMHG INVI		WARE LIMITED LIABIL		J
	1,500		BILITY COMPANY, THE MANAGI	NC
			35	
MEMBER OF SMHG PMDP	PHASE II LLC, A UTAH I	IMITED LIABILITY CO	MPANY, PROVED ON THE BASIS	
OF SATISFACTORY EVIDENCE	CE TO BE THE PERSON	WHOSE NAME IS SUB	SCRIBED TO IN THIS	
INSTRUMENT, AND DULY A	ACKNOWLEDGED THAT	HE/SHE EXECUTED T	HIS INSTRUMENT IN HIS/HER	
AUTHORIZED CAPACITY ON	N BEHALF OF SAID COM	IPANY, INTENDING TO	D BE LEGALLY BOUND. WITNESS	S
MY HAND AND OFFICIAL SI	EAL.	1		
	77 1	/ / ,	1	
NOTARY PUBLIC SIGNATUR	RE:/ Luchuaj	why hen RESIDING	IN: Eden UT	
COMMISSION #: 70	144	MY COMMISSION EX	(PIRES: 8/15/22	
			, ,	

Exhibit A: County Engineer-Approved Cost Estimate

Description	Unit	Unit Price	Qty	Amount
EARTHWORK				\$23,775.8
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	\$720.3
Roadway Excavation	CY	\$14.25	369	\$5,258.2
Embankment Fill	CY	\$8.00	1,334	\$10,672.0
Compaction Testing	CY	\$0.60	1,334	\$800.40
Topsoil Replacement from windrow	CY	\$2.50	1,441	\$3,601.8
EROSION CONTROL				\$12,821.2
SWPPP Management and Maintenance	LS	\$3,000.00	1	\$3,000.0
Stabilized Construction Entrance	EA	\$2,500.00	1	\$2,500.0
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 Assembley	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
	A Marian Marian Company		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

State of Utah) ss: County of Weber)				
On the	_ day of October	, 20 <u>Z</u>		
the signer(s) of the within instrument, who duly acknowledged to me that he/she executed the same.				
ANN J. MORBY NOTARY PUBLIC • STATE of UTAH COMMISSION NO. 705242 COMM. EXP. 03-18-2023	Notary Public Residing at:	>		
*********	**********	*********		
APPROVED AS TO FORM:				
Courtlan V. Engleson Weber County Attorney		10-13-21 Date		
APPROVED:		Date		
Chairperson, Weber County Commission		Date		
ATTEST:				
Weber County Clerk				