



Staff Report to the Weber County Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Request for final approval of Osprey Ranch Subdivision Phase 1, consisting of 31 lots and two open-space parcels. This proposal also includes dedication of a new County roadway.

Type of Decision: Administrative

Agenda Date: Tuesday, October 25, 2022

Applicant: Osprey Ranch, LLC

File Number: UVO111221

Property Information

Approximate Address: 1385 N Hwy 158, Eden, UT, 84310

Project Area: 283.78 acres

Zoning: FV-3

Existing Land Use: Vacant

Proposed Land Use: Residential

Parcel ID: See application for all parcel numbers

Township, Range, Section: T6N, R1E, Sections 3 & 4 N and T7N R1E, Section 33 SE

Adjacent Land Use

North:	Vacant/Residential	South:	Vacant/USFS
East:	Hwy 158	West:	Vacant

Staff Information

Report Presenter: Tammy Aydelotte
taydelotte@webercountyutah.gov
801-399-8794

Report Reviewer: CE

Applicable Ordinances

- Title 104, Zones, Chapter 14 Forest Valley Zone (FV-3)
- Title 106, Subdivisions, Chapters 1-8 as applicable
- Title 108, Chapter 17 Ogden Valley Pathways

Background and Summary

11/12/2021 – Subdivision application accepted.

5/24/2022 – CUP 2022-06, approval of a water tank for the proposed subdivision, was granted by the Ogden Valley Planning Commission.

8/2/2022 – Preliminary approval granted by the Ogden Valley Planning Commission.

8/23/2022 – Recommendation of final approval issued by Ogden Valley Planning Commission.

This subdivision plat request consists of 31 lots, ranging in sizes from 3.12 acres to 18.57 acres. Lot widths vary from 100 feet to 1972.35 feet. This proposal consists of 283.78 acres, with two open space parcels totaling 30.20 acres, 0.27 acres of trail area, in Phase 1. Public roads, and paved trails within the dedicated right-of-way, are proposed throughout the development.

Analysis

General Plan: The proposal conforms to the Ogden Valley General Plan by maintaining the existing density provided by the current zoning and existing approvals (2016 Ogden Valley General Plan, Land Use Principle 1.1).

Zoning: The subject property is located in the Forest Valley (FV-3) zone. The purpose and intent of the FV-3 zone is identified in the LUC §104-14-1 as:

“The purpose of the Forest Valley Zone, FV-3 is to provide area for residential development in a forest setting at a low density, as well as to protect as much as possible the naturalistic environment of the development.”

Lot area, frontage/width and yard regulations: The site development standards for the FV-3 zone require a minimum lot area of 3 acres of net developable area. The FV-3 zone requires a minimum lot width of 150 feet. Lots located on the outside of the curved streets, or on the ends of cul-de-sacs may be reduced by up to one-third provided the lot has the required width at a distance of 70 feet back from the front lot line. Lot 17 has the smallest width, but meets this requirement.

Culinary water, secondary water, and sanitary sewage disposal: Nordic Mountain Water Inc. has issued approval to service Osprey Ranch Subdivision, with allowances for a small amount of their water to be used for irrigation purposes. The applicant has provided a receipt for all service fees due to Nordic Mountain Water. Nordic Mountain Water has approved a portion of their water for secondary use. The Division of Drinking water has approved of the submitted improvement plans. The developer will be installing infrastructure to expand sewer services of Wolf Creek Water and Sewer District. The submitted escrow covers infrastructure within the subdivision boundaries only. The conveyance infrastructure to move sewer to the processing plant has not yet been escrowed for. As a result, no building permits shall be issued for any lot in this subdivision until the County has received escrow funds for this infrastructure and installation has occurred.

Relation to Adjoining Street Systems/Ogden Valley Pathways: The proposed subdivision will create a new public road that will connect Highway 158 to Nordic Valley Drive. A 10 foot wide paved pathway will run adjacent to the new roadway, allowing for pedestrian access from Nordic Valley Drive to pathways that run adjacent to Pineview Reservoir. Proposed pathways shall be constructed or designated for public use on currently existing, or in proposed public rights-of-way. Engineered improvement plans have been submitted to the County Engineer.

A road stub is proposed to connect property to the south to the public roads created by this subdivision. An existing access easement is shown between lots 26 and 27. The County Commission has given direction to allow the proposed culs-de-sac within the development to be public.

Natural hazards/wetlands: This proposed subdivision lies within a geologic hazard study area. Per LUC § 104-22 a hazard study is required. All recommendations outlined in the submitted report (Western Geologic dated 1/3/2022), shall be followed throughout development of this subdivision, and subsequent construction of each lot.

Standards: Per LUC § 108-14-3(a) Applicability: Pursuant to Section 106-2-4, a lot that has an average percent of slope that is greater than 25-percent shall provide the following on the final plat:

1. **Buildable area.** If the lot provides a buildable area, the buildable area shall be delineated on the final plat by short dashed lines. The area shall be labeled as "Buildable area. See note [enter note number here]." The note shall read as follows: "A lot with a delineated "buildable area" shall only allow buildings within the designated buildable area."

The proposed final plat is shown in Exhibit A, and indicates buildable areas on lots 5 and 6.

Review Agencies: To date, the proposed subdivision has been reviewed by the Planning Division (recommend conditional approval), Weber Fire District (approved), and Weber County Engineering (conditional approval), and the Surveyor's Office (conditional approval). Department of Environmental Quality has issued approval of the developer's proposed plan to deliver water to each lot in this subdivision. Wolf Creek Water and Sewer has issued approval on infrastructure within the subdivision that has already been installed. At minimum, all review agency requirements must be addressed and completed prior to this subdivision being recorded.

Tax Clearance: There are no outstanding tax payments related to these parcels. The 2022 property taxes are not considered due at this time, but will become due in full on November 30, 2022.

Staff Recommendation

Staff recommends final approval of Osprey Ranch Subdivision Phase 1, consisting of 31 lots, two open space parcels, and road dedication. This recommendation for approval is subject to **all review agency requirements** and is based on the following conditions:

1. All improvements shall be installed, escrowed for, or a combination of both, to the satisfaction of the County Engineer, prior to recording of the final plat.
2. A Natural Hazard Notice shall be recorded with the plat, and a note on the final plat shall be required which states that each parcel within the subdivision is located within a natural hazard study area.
3. A notice shall be recorded with the final plat, stating that no building permits shall be issued until all required infrastructure, located within, as well as outside the subdivision boundaries has been installed, and accepted by the sewer district.
4. Signature blocks for the water and sewer districts shall be included on the final plat.

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 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.

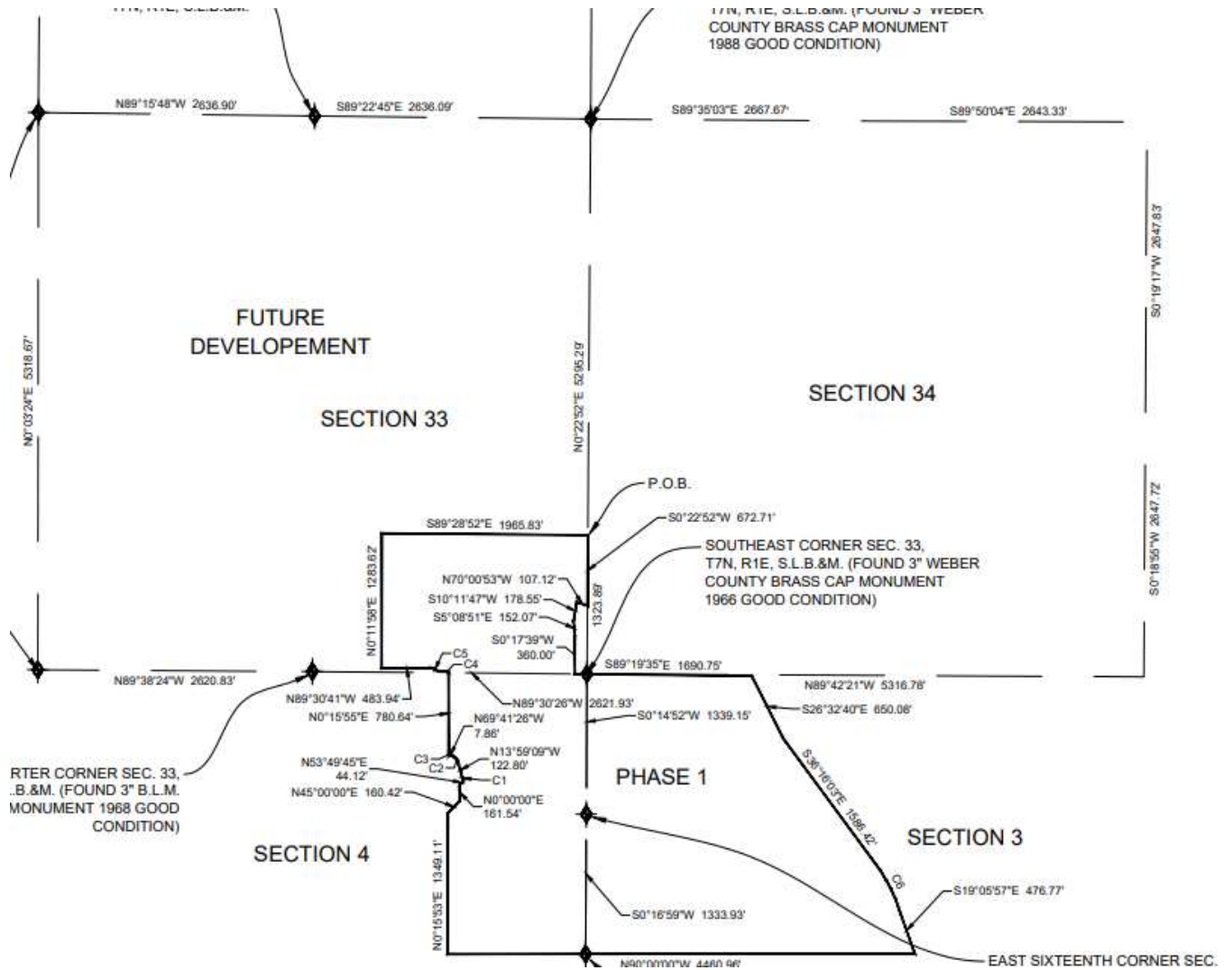
Exhibits

- A. Proposed Final Plat
- B. Water & Sewer Approval
- C. Improvement Guarantee Agreement

Location Map



Exhibit A - Proposed Final Plat



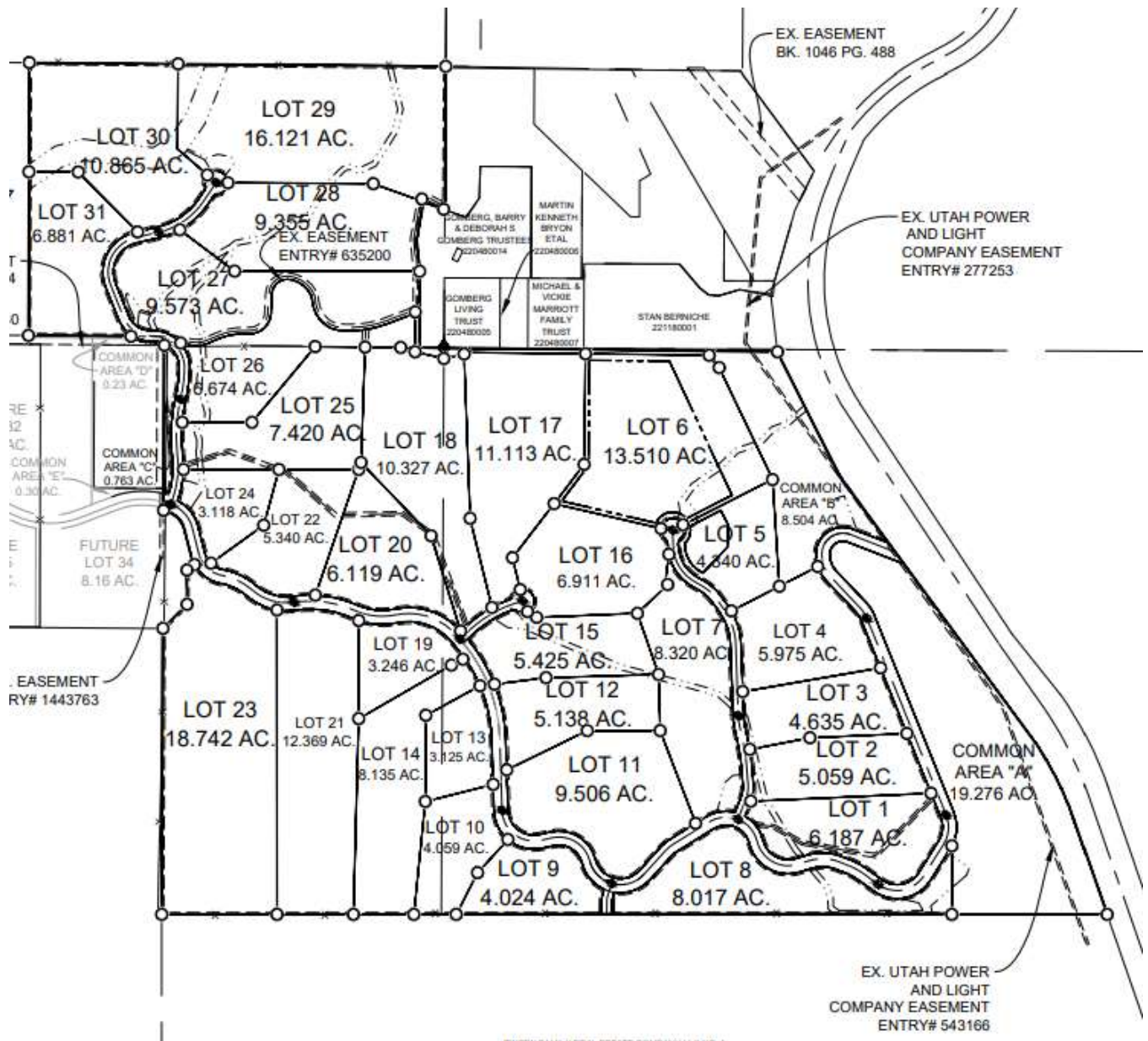


Exhibit B – Water & Sewer Approval

4. General Restrictions:
 - a. No Home Owner's Association (HOA) organized by Osprey Ranch Subdivision or its residents can include any culinary water provided by NMWI.
 - b. No extensions to the water system developed for the Osprey Ranch Subdivision that includes water provided by NMWI will be allowed beyond the initial 65 lots.
 - c. Osprey Ranch Subdivision cannot resale, manage, restrict, or charge any additional fees for water provided by NMWI under any circumstance.
 - d. All water provided by NMWI shall be used for culinary purposes only. Minimal residential landscape watering will be allowed up to 5000 sq. feet until such time as secondary water may become available.

5. Costs to the Developer
 - a. Developer pays all costs including required modifications to existing NMWI infrastructure necessary to provide NMWI water to the Osprey Ranch Subdivision as identified by NMWI or its approved agent.
 - b. Necessary modifications to existing NMWI infrastructure as well as all water line extension design and associated construction is subject to the following:
 - i. Must meet all State, County, and County Fire District Specifications and Requirements
 - ii. Must meet Water System Specifications as provided by NMWI and agreed upon, by signed agreement, at a pre-construction meeting.
 - iii. All Waterline construction must be inspected and approved by NMWI or its identified Agent during all water system construction and/or modifications at the expense of the developer. Frequency of inspection will be determined during the pre-construction meeting and/or as specified in NMWI Standards and Specifications document.
 - iv. NMWI will take possession of new and modified portion of the water system at time of completion and Developer will warranty the full installation and modifications for a period of at least 1 year from completion date at discretion of NMWI.

6. NMWI uses a gravity-flow distributions system. Since an engineering study has not been completed for the proposed subdivision, NMWI will not guarantee adequate water pressure.

7. This agreement is subject to change contingent upon legal review by an NMWI legal representative.

If these conditions are acceptable, please submit the appropriate deposit and sign this agreement. If you have any questions, please feel free to contact Bill Green at (801)791-3976 anytime or through our NMWI office. This unsigned document remains valid for 7 days from original document date.

Sincerely,

Bill D. Green
President
Board of Directors
Nordic Mountain Water, Inc.

Agreement of Terms:  Date: 5/10/21
Shane Dunleavy, Osprey Ranch Eden LLC, Subdivision Developer

Signature Date:  Date: 5/10/21
NMWI Representative

RECEIPT

RECEIPT FROM

Nordic Mountain Water, Inc.
P.O. Box 897, 4794 E 2600 N, Eden, Utah 84310
Bill D. Green – Pres. Board of Directors

Receipt Date: May 10, 2022

AMOUNT PAID

Amount Paid: \$435,000.00

PAYMENT INFORMATION

Paid by: Mr. Shane Dunleavy/Osprey Ranch LLC

Amount Paid: \$435,000.00

For Payment of: Remaining Balance as referenced in the Reservation of Service Agreement Section 3 executed May 10, 2021 between Nordic Mountain Water, Inc. and Shane Dunleavy, Osprey Ranch LLC

Initial Deposit: \$52,500 Received May 10, 2021

Final Payment: \$435,000.00 Received May 10, 2022

Total Paid toward Service Agreement: \$487,500

Total Amount of Service Agreement: \$487,500

This Service Agreement is PAID IN FULL

Bill D. Green Pres. NMWI Board of Directors

Handwritten signature of Bill D. Green in black ink, written over a horizontal line.

Shane Dunleavy, Osprey Ranch LLC

Note: All conditions of Service Agreement and Engineering agreements remain valid and binding. Developer has agreed to upgrade Big Sky Dr to 8" line starting at Hidden Brook Subdivision, rehabilitate Big Sky Road from Hidden Brook Subdivision to south end of Big Sky Dr, and provide 6" line to the Osprey Ranch 250,000 Gal Tank to be constructed at south end of Big Sky Dr as per engineering plans.



State of Utah

SPENCER J. COX
Governor

DEIDRE HENDERSON
Lieutenant Governor

Department of
Environmental Quality

Kimberly D. Shelley
Executive Director

DIVISION OF DRINKING WATER
Tim Davis
Director

April 7, 2022

Bill Green
Nordic Mountain Water Company
P.O. Box 897
Eden, Utah 84310

Subject: **Plan Approval**, Osprey Ranch Water Lines (DS001) & Osprey's Nest Tank (ST004);
Nordic Mtn Water Company, System #29009, File #12951

Dear Bill Green:

The Division of Drinking Water (the Division) received the plans and specifications for the proposed Osprey Ranch Water Lines (DS001) & Osprey's Nest Tank (ST004) from your consultant, Dan White of Gardner Engineering on March 14, 2022. In addition, the hydraulic modeling report for the Osprey Ranch Subdivision was also received. This project has met the conditions for receiving a plan approval.

Our understanding of the project is that the Osprey Ranch subdivision consists of 71 lots that will receive drinking water from the Nordic Mtn Water Company system, via a new pressure sustaining altitude valve that will service the new 250,000-gallon concrete Osprey Nest Storage Tank (identified as ST004 in the Division's database). In addition, this project will be comprised of (3) pressure reducing stations and distribution piping from 8 to 12-inch diameter PVC (C900) piping.

We have completed our review of the plans and specifications, stamped, and signed by Daniel Leon White, P.E., dated March 14, 2022, and find they basically comply with the applicable portions of Utah's Administrative Rules for Public Drinking Water Systems in R309. On this basis, **the plans for Osprey Ranch Water Lines (DS001) & Osprey's Nest Tank (ST004) are hereby approved.**

Bill Green
Page 2 of 2
April 7, 2022

This approval pertains to construction only. **An Operating Permit must be obtained from the Director before Osprey Ranch Water Lines (DS001) & Osprey's Nest Tank (ST004) may be put in service.** A checklist outlining the items required for operating permit issuance is enclosed for your information.

Approvals or permits from the local authority or the county may be necessary before beginning construction of this project. As the project proceeds, notice of any changes in the approved design, as well as any change affecting the quantity or quality of the delivered water, must be submitted to the Division. We may also conduct interim and final inspections of this project. Please notify us when actual construction begins so that these inspections can be scheduled.

This approval must be renewed if construction has not begun or if substantial equipment has not been ordered within one year of the date of this letter.

If you have any questions regarding this approval, please contact Brent Arns, of this office, at (385) 549-7420, or me at (385) 515-1464.

Sincerely,



Michael Newberry, P.E.
Engineering Manager

BA/mrn/mdb

Enclosures – Operating Permit Checklist

cc: Michelle Cooke, Weber-Morgan Health Dept., mcooke@co.weber.ut.us
Bill Green, Nordic Mtn Water Company, bill.green@digs.net
Dan White, Gardner Engineering, dan@gecivil.com
David Reed, Weber County Fire, dreed@weberfd.com
Brent Arns, Division of Drinking Water, barns@utah.gov
Ted Black, Office of the State Fire Marshal, tblack@utah.gov

DDW-2022-007019



10/22 2022

RE: Osprey Ranch

Weber County

2380 Washington Blvd

Ogden UT, 84401

To whom it may concern

Wolf Creek Water and Sewer Improvement District has Inspected the sewer infrastructure that has been installed in Osprey Ranch Phase One. Pressure testing, video inspection still need to be completed as well as final walk through. All easements for back lot sewer access need to be in place and anywhere outside the standard utility easements for sewer access. Escrow of \$ 153,000.00 has been agreed to for completing the remaining Items.

No Can and Will Serve letters will be issued for the Osprey Ranch Phase One until the pressure sewer line has been installed to the Willow Brook Treatment Plant, and all testing and inspections have been completed and the pressure line infrastructure has been accepted by the District.

A handwritten signature in black ink, appearing to read "Robert Thomas", written in a cursive style.

Robert Thomas

Wolf Creek Water and Sewer Improvement District

801-430-4647

Exhibit C – Improvement Guarantee Agreement

See attached.

**WEBER COUNTY
IMPROVEMENTS GUARANTEE AGREEMENT**

THIS AGREEMENT (herein "Agreement") is entered into this 25th day of October, 2022,

******* PARTIES *******

"APPLICANT": Osprey Ranch, LLC

a(n): limited liability company (corporation, limited liability company, partnership, individual).

address: 3718 N Wolf Creek Drive city: Eden state: UT zip: 84310

telephone: (801) 430-1507, facsimile: ()

"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 Osprey Ranch Phase 1
(description or name of Project)

located at 1385 N Highway 158, Eden, UT, 84310

(address of Project)

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 installed in accordance with the specifications of COUNTY, and inspected by COUNTY;

NOW THEREFORE, For good and valuable consideration, the parties agree as follows:

******* TERMS AND CONDITIONS *******

1. **PURPOSE FOR AGREEMENT.** The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of unauthorized subdivisions and other land developments which may leave property or improvements improperly completed, undeveloped or unproductive.

2. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protection of the Proceeds specified herein shall inure solely to COUNTY and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. COUNTY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. COUNTY shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give Notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

3. **AGREEMENT DOCUMENTS.** All data which is used by COUNTY to compute the cost of or otherwise govern the design and installation of the Improvements is hereby made a part of this Agreement, and is incorporated herein by this reference. This Agreement incorporates herein by reference any subject subdivision plat, plan, construction drawing, permit, condition of approval, and any and all other relevant data and specifications required by the Weber County Land Use Code.

4. **COMPLETION DATE.** APPLICANT shall complete the Improvements: (check one and complete)

within a period of 2 Year(s) Months (check one) from the date this Agreement was entered into;

- or -

as specified in Exhibit _____ (Completion Schedule), attached hereto and incorporated herein by this reference.

5. **FEES.** APPLICANT agrees to pay all Fees required by COUNTY for the entire Project prior to the issuance of any subsequent permit or approval within the Project.

6. **SPECIFIC PERFORMANCE.** APPLICANT has entered into this Agreement with COUNTY for the purpose of guaranteeing construction of the Improvements and payment of the Fees. COUNTY shall be entitled to specifically enforce APPLICANT'S obligation under this Agreement to construct and install the Improvements in a manner satisfactory to COUNTY, and to pay the Fees.

7. **APPLICANT'S INDEPENDENT OBLIGATION.** APPLICANT EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES that its obligation to complete and warrant the Improvements and pay the Fees and fulfill any other obligation under this Agreement, COUNTY ordinances, or other applicable law is independent of any obligation or responsibility of COUNTY, either express or implied. APPLICANT agrees that its obligation to complete and warrant the Improvements and pay the Fees is not and shall not be conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lots or part of the subdivision or development. APPLICANT further acknowledges (a) that its contractual obligation to complete and warrant the Improvements and pay the Fees pursuant to this Agreement is independent of any other remedy available to COUNTY to secure proper completion of the 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: _____,

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 **\$3,437,023.00** (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 years 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: _____
Applicant Signature Date

Applicant Signature Date

Title: _____

Title: _____

(Signature must be notarized on following pages.)

"COUNTY"

By: _____
Commission Chair Date

ATTEST: _____
County Clerk Date:

APPROVED AS TO CONTENT:

By _____
Planning Division Director

Date

By _____
County Engineer

Date

APPROVED AS TO FORM:

By _____
County Attorney

Date

APPLICANT NOTARIZATION

COMPLETE ONLY IF APPLICANT IS AN INDIVIDUAL

State of _____)
:ss
County of _____)

On this _____ day of _____, 20____, personally appeared before me _____ *[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged that he/she/they executed the same.

Notary Public

COMPLETE ONLY IF APPLICANT IS A CORPORATION

State of _____)
:ss
County of _____)

On this _____ day of _____, 20____, personally appeared before me _____ *[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the _____ *[title]*, of _____ *[name of corporation]*, a corporation, and said document was signed by him/her in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

Notary Public

COMPLETE ONLY IF APPLICANT IS A PARTNERSHIP

State of _____)
:ss
County of _____)

On this _____ day of _____, 20____, personally appeared before me
_____ [name of person(s)], whose identity is
personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she
is the
_____ [title], of _____ [name of partnership],
a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting
held or by authority of its bylaws and signed in behalf of said partnership.

Notary Public

COMPLETE ONLY IF APPLICANT IS A LIMITED LIABILITY COMPANY

State of _____)
:ss
County of _____)

On this _____ day of _____, 20____, personally appeared before me
_____ [name of person(s)], whose identity is personally known
to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the _____
_____ [title],
of _____ [name of LLC], limited liability company,
by authority of its members or its articles of organization, and he/she acknowledged to me that said limited
liability company executed the same.

Notary Public

Exhibit A: County Engineer-Approved Cost Estimate

WEBER COUNTY ESCROW								
Site Improvements Osprey Ranch Eden, Weber County, Utah						As of 10/20/22		
ROAD & ROW GRADING AND EXCAVATION	QUANTITY		UNIT PRICE		TOTAL AMOUNT	CUMULATIVE \$\$ COMPLETED	% COMPLETE	ESCROW AMT
1 Roadway Cut / Excavation	87,050	cy	\$10.70	cy	\$931,435	\$900,000	97%	\$31,435
2 Embankment Cut / Excavation	81,960	cy	\$7.55	cy	\$618,798	\$575,000	93%	\$43,798
3 Import Fill For Embankment	5,400	cy	\$38.00	sf	\$205,200	\$0	0%	\$205,200
4 Furnish and Install 3" thick Asphalt Paving	308,214	sf	\$1.90	sf	\$585,607	\$0	0%	\$585,607
5 Furnish and Install 6" Road Base	308,214	sf	\$0.87	sf	\$268,146	\$0	0%	\$268,146
6 Furnish and Install 9" Sub-base Material	308,214	sf	\$1.14	sf	\$351,364	\$0	0%	\$351,364
7 Fine Grade Roadway	308,214	sf	\$0.10	sf	\$30,821	\$0	0%	\$30,821
8 Fine Grade For Roadbase Shoulder	89,511	sf	\$0.10	sf	\$8,951	\$0	0%	\$8,951
9 9" Roadbase Shoulder	89,511	sf	\$1.00	sf	\$89,511	\$0	0%	\$89,511
ROAD & ROW GRADING AND PAVING TOTAL					\$3,089,833	\$1,475,000		\$1,414,833

WEBER COUNTY ESCROW

Site Improvements
Osprey Ranch
Eden, Weber County, Utah

As of 10/20/22

ROAD & ROW GRADING AND EXCAVATION	QUANTITY		UNIT PRICE		TOTAL AMOUNT	CUMULATIVE \$\$	%	ESCROW AMT
						COMPLETED	COMPLETE	
1 Furnish and Install 16" RCP Storm Drain	1,092	lf	\$130.00	lf	\$141,960	\$70,000	49%	\$71,960
2 Furnish and Install 18" RCP Storm Drain	70	lf	\$135.00	lf	\$9,450	\$4,500	48%	\$4,950
3 Furnish and Install 24" RCP Storm Drain	560	lf	\$215.00	lf	\$120,400	\$60,000	50%	\$60,400
4 Furnish and Install 24" Flared End Section	2	ea	\$1,410.00	ea	\$2,820	\$1,400	50%	\$1,420
5 Furnish and Install 2 x 2 Concrete Catch Basin	18	ea	\$4,735.00	ea	\$85,230	\$45,000	53%	\$40,230
6 Pond Outlet Structure	1	ea	\$4,490.00	ea	\$4,490	\$2,200	49%	\$2,290
7 Furnish and Install 3 x 3 Concrete Catch Basin	2	ea	\$6,470.00	ea	\$12,940	\$7,000	54%	\$5,940
8 Furnish and Install 6" Diameter Manhole	1	ea	\$6,000.00	ea	\$6,000	\$3,000	50%	\$3,000
9 Furnish and Install 4" Diameter Manhole	2	ea	\$7,425.00	ea	\$14,850	\$7,500	51%	\$7,350
10 Pond Excavation Cut	3,750	cy	\$11.10	ea	\$41,625	\$41,625	100%	\$0
11 Pond Excavation Embankment	3,586	cy	\$9.00	cy	\$34,974	\$34,974	100%	\$0

WEBER COUNTY ESCROW									
Site Improvements Osprey Ranch Eden, Weber County, Utah									
As of 10/20/22									
ROAD & ROW GRADING AND EXCAVATION	QUANTITY		UNIT PRICE		TOTAL AMOUNT	CUMULATIVE \$\$ COMPLETED	% COMPLETE	ESCROW AMT	
12 Furnish and Install 12" Deep Rip Rap	1,200	sf	\$11.00	sf	\$13,200	\$0	0%	\$13,200	
POND GRADING TOTAL					\$487,939	\$277,199		\$210,740	
SANITARY SEWER	QUANTITY		UNIT PRICE		TOTAL AMOUNT	TOTAL AMOUNT			
1 Furnish and Install 8" SDR-35 Sewer Main	7,018	lf	\$71.65	lf	\$502,840	\$350,000	70%	\$152,840	
2 Furnish and Install 10" SDR-35 Sewer Main	3,360	lf	\$50.65	lf	\$270,984	\$270,984	100%	\$0	
3 Furnish and Install Low Pressure 2" SDR11 HDPE	3,200	lf	\$60.00	lf	\$192,000	\$183,360	96%	\$8,640	
4 Low Pressure Cleanout	3	lf	\$4,900.00	ea	\$14,700	\$14,700	100%	\$0	
5 1 1/4" SDR11 HDPE Sewer Laterals (off 2" Pressure)	2,260	lf	\$16.45	lf	\$37,177	\$12,000	32%	\$25,177	
6 4" Sewer Laterals off 8" Main	2,240	lf	\$30.55	lf	\$68,432	\$68,432	100%	\$0	
7 4" Sewer Laterals off 10" Main	150	ea	\$61.60	lf	\$9,240	\$9,240	100%	\$0	
8 Furnish and Install 4' Diameter Manhole - Precast	41	ea	\$6,850.00	ea	\$280,850	\$280,850	100%	\$0	

WEBER COUNTY ESCROW									
Site Improvements Osprey Ranch Eden, Weber County, Utah									
As of 10/20/22									
ROAD & ROW GRADING AND EXCAVATION	QUANTITY		UNIT PRICE		TOTAL AMOUNT	CUMULATIVE \$\$ COMPLETED	% COMPLETE	ESCROW AMT	
9 Intermittent Grinder Pump	1	ea	\$27,180.00	ea	\$27,180	\$14,000	52%	\$13,180	
SANITARY SEWER TOTAL					\$1,403,403	\$1,203,474		\$199,927	
CULINARY WATER (Thom Summers)	QUANTITY		UNIT PRICE		TOTAL AMOUNT	TOTAL AMOUNT			
1 Furnish and Install 12" C-900, DR-18 Water Line	1,900	lf	\$99.06	lf	\$188,214	\$183,214	97%	\$5,000	
2 Furnish and Install 10" C-900, DR-18 Water Line	1,900	lf	\$77.40	lf	\$147,060	\$147,060	100%	\$0	
3 Furnish and Install 8" C-900, DR-18 Water Line	9,000	lf	\$60.00	lf	\$540,000	\$540,000	100%	\$0	
4 Furnish and Install 6" C-900, DR-14 Water Line	300	lf	\$42.65	lf	\$12,795	\$12,795	100%	\$0	
5 Furnish and Install 4" C-900, DR-14 Water Line	0	lf	\$94.40	lf	\$0	\$0	#DIV/0!	\$0	
6 Furnish and Install 12" Gate Valve	1	lf	\$4,372.28	ea	\$4,372	\$4,372	100%	\$0	
7 Furnish and install 10" Gate Valve	1	lf	\$3,223.65	ea	\$3,224	\$3,224	100%	\$0	
8 Furnish and install 8" Gate Valve	13	lf	\$2,110.21	ea	\$27,433	\$27,433	100%	\$0	

WEBER COUNTY ESCROW									
Site Improvements Osprey Ranch Eden, Weber County, Utah						As of 10/20/22			
ROAD & ROW GRADING AND EXCAVATION	QUANTITY		UNIT PRICE		TOTAL AMOUNT	CUMULATIVE \$\$ COMPLETED	% COMPLETE	ESCROW AMT	
9	Furnish and install 6" Gate Valve	19	if	\$1,500.60	ea	\$28,511	\$28,511	100%	\$0
10	Furnish and install Bends and Tees	136		\$612.67	ea	\$83,323	\$83,323	100%	\$0
11	Furnish and Install PRV Station	2	ea	\$45,000.00	ea	\$90,000	\$0	0%	\$90,000
11	Altitude Valve	1	ea	\$45,000.00	ea	\$45,000	\$0	0%	\$45,000
13	Furnish and install Fire Hydrant	19	ea	\$5,305.40	ea	\$100,803	\$100,803	100%	\$0
14	Furnish and install 6" C-900, DR-18 Fire Lateral	31	if	\$3,199.04	ea	\$99,170	\$99,170	100%	\$0
15	Furnish and Install Air Vac Assembly	1	ea	\$7,844.57	ea	\$7,845	\$0	0%	\$7,845
16	Connect to Existing Main	1	if	\$1,750.00	ea	\$1,750	\$1,750	100%	\$0
					CULINARY WATER TOTAL	\$1,379,500	\$1,231,655		\$147,845

WEBER COUNTY ESCROW									
Site Improvements Osprey Ranch Eden, Weber County, Utah						As of 10/20/22			
ROAD & ROW GRADING AND EXCAVATION	QUANTITY		UNIT PRICE		TOTAL AMOUNT	CUMULATIVE \$\$ COMPLETED	% COMPLETE	ESCROW AMT	
1	Furnish and install 250,000 gallon Water Tank	1	ea	\$763,000.00	if	\$763,000	\$744,000	98%	\$19,000
					Water Tank TOTAL	\$763,000		\$19,000	
Other Site Costs	QUANTITY		UNIT PRICE		TOTAL AMOUNT				
1	Landscaping w/ Entry monument	1	ea	\$220,560.00	if	\$220,560	\$0	0%	\$220,560
2	Verti - Rock Retaining Wall [ALL heights - avg cost sf]	9,870	sf	\$48.00	sf	\$473,760	\$236,880	50%	\$236,880
3	Project Trails (7 miles = 36,960 lf) Market price is \$5 - \$9 lf	20,000	if	\$6.80	if	\$136,000	\$0	0%	\$136,000
4	Street Signs	20	ea	\$300.00	ea	\$6,000	\$0	0%	\$6,000
5	Mailboxes	31	ea	\$125.00	if	\$3,875	\$0	0%	\$3,875
					Other Site Costs TOTAL	\$840,195	\$236,880		\$603,315
Totals					SUB TOTAL	\$7,963,870	\$4,424,210		\$2,795,660
					10% CONTINGENCY ON ALL EXCEPT ROADWAY AND EMBANKMENT EXCAVATION				\$441,364
					PROJECT TOTAL		ESCROW AMT		\$3,437,023

Exhibit B: County Engineer-Approved Construction Drawings

As Approved to Weber County Engineering

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 **\$3,437,023.00** 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 Osprey Ranch Subdivision Phase 1

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 _____ day of _____, 20

Escrow Agent

Signature

Title:_____

State of Utah)

ss:

County of Weber)

On the _____ day of _____, 20__ appeared before me

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

Notary Public

Residing at:

APPROVED AS TO FORM:

Weber County Attorney

Date

APPROVED:

Chairperson, Weber County Commission

Date

ATTEST:

Weber County Clerk