

When Recorded Return To:  
**SMHG PHASE 1 LLC.**  
**3632 NORTH WOLF CREEK DRIVE**  
**EDEN, UT 84310**

## **WEBER COUNTY SURVEY MONUMENT IMPROVEMENT AGREEMENT**

**PARTIES:** The parties to the Monument Improvement Agreement (“Agreement”) are **SMHG PHASE 1 LLC.** the Developer of the herein described land development project (“Developer”), with a mailing address of : **3632 NORTH WOLF CREEK DRIVE, EDEN, UT 84310** , and the Weber County Surveyor (“County Surveyor”).

### **RECITALS**

**WHEREAS,** the Developer has entered the process of developing property within the Weber County (“County”), to be known as **OVERLOOK AT POWDER MOUNTAIN PHASE 3** (“the Development”), which property is shown and described on Exhibit “A” attached hereto; and

**WHEREAS,** the County seeks to protect the health, safety, and general welfare of the residents of Weber County by requiring the adequate expansion of the survey control systems necessary to provide special control upon which land boundaries, public infrastructure, and real property improvements rely; and

**WHEREAS,** the purpose of this Agreement is to protect the County from the cost of completing said survey control systems and is not executed for the benefit of any individual, corporation, or entity; and

**WHEREAS,** the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County’s Ordinance 106-4-1, and 45-6;

**THEREFORE,** the Parties hereby agree as follows:

### **DEVELOPER’S OBLIGATIONS**

**Improvements:** The Developer will construct and install, at his own expense, the monuments as required by the County Surveyor as shown and described on Exhibit “A” attached hereto (“the Improvements”). The Developer’s obligation to complete the Improvements will arise upon execution of this Agreement, independent of any obligations of the County contained herein, and will not be financially conditioned on the commencement of construction in the Development or sale of any lots or improvements within the Development.

**Security:** To secure the performance of their obligations hereunder, the Developer shall comply with County Ordinance 106-4-3-(f) and 45-6 by depositing with the County Surveyor, on or prior to the date of the execution of this Agreement, the monument improvement agreement fee and escrow.

**Standards:** The Developer shall cause the Improvements to be constructed according to the Weber County Public Works Standards Plans SRV1 – SRV7 as applicable. The Improvements shall be installed within 0.07’ from the record locations shown and described on the approved subdivision plat, engineered plans, or construction drawings for the Development described on Exhibit “A” of this agreement.

**Completion Periods:** The Developer shall install Improvements which meet compliance within a one year time period, after the asphalt (or other equivalent improvements) is installed. The Developer shall install the asphalt (or other equivalent improvements) within two years from the date of the execution of the Agreement. The Developer shall install Improvements which meet compliance within three years of the execution of the

Agreement.

**Request for Inspection:** Once the Improvements have been constructed to the standards and specifications of the Agreement, the Developer shall give a written request for inspection of the Improvements to the County Surveyor.

**Notice to Reconstruct:** Whenever an inspection reveals that the Improvements do not conform to the standards and specifications required by this Agreement the Developer shall reconstruct the non-conforming Improvements within six months of the notice to reconstruct.

**Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer:

- a. Developer’s failure to install Improvements which meet compliance within three years of the execution of the Agreement.
- b. Developer’s failure to complete construction of the Improvements which meet compliance within one year of the installation of the asphalt (or other equivalent improvements);
- c. Developer’s failure to install the asphalt (or other equivalent improvements) within two years from the date of the execution and recordation of the Agreement;
- d. Developer’s failure to reconstruct non-compliant Improvements within six months of the notice to reconstruct;
- e. Developer’s insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
- f. Foreclosure of any lien against the Development or a portion of the Development or assignment or conveyance of the Development in lieu of foreclosure.

**Forfeited Funds:** If the County Surveyor deems the Developer to be in default of any part of the monument improvement agreement the escrow and inspection fees shall be forfeited and become the property of the County Surveyor to be deposited in the Public Land Corner Preservation Fund.

**Compliance with Law:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of the execution and recordation of the Agreement. When necessary to protect the public’s health, safety, and general welfare the Developer will be subject to laws, ordinances, and regulations that become effective after said recording of the Agreement and before the completion of Improvements and Notice of Compliance.

**Right of Entry and Perpetual Easement:** When the Improvements are located outside of a publicly dedicated right of way, the Developer hereby agrees to execute and record a Right of Entry and Perpetual Easement. The Right of Entry and Perpetual Easement shall grant the County Surveyor, his successors, assigns, agents contractors, and employees a nonexclusive right to access the private property of the Development to conduct future surveying activities on, maintain, or replace the Improvements that are the subject of this agreement and any government monuments that may exist on or near the development. The Right of Entry and Perpetual Easement shall run with the land and shall be effective upon recording of the easements with the County Recorder.

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Initials

**Ownership:** The Developer hereby expressly agrees that upon completion and acceptance of the Improvements, that the Improvements automatically become property of the County, or other applicable agency as designated by the location of the Improvements. The Developer hereby expressly agrees that, at the time of completion and acceptance, the Improvements themselves will be entirely owned by the Developer in fee simple and will be free of any liens, encumbrances, or other restrictions, and the Developer will quit claim all ownership, rights, or interest in the Improvements themselves. The quit claim of the Improvements shall not constitute a waiver of the Developers obligation to warranty the improvements for one year.

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Initials

**Warranty:** The Developer warrants that all Improvements will be free from defects for a period of one year from the date that the County Surveyor accepts the Improvements by issuing the Notice of Compliance.

**Burden:** The burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors, and assigns of the Developer.

**Indemnification:** The Developer hereby expressly agrees to indemnify and hold the County Surveyor harmless from and against all claims, costs and liability of every kind and nature, for the injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to the Agreement. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

### **COUNTY SURVEYOR'S OBLIGATIONS**

**Inspection of Improvements:** Upon written request for an inspection by the Developer, the County Surveyor will inspect the Improvements in a timely manner. If acceptable to the County Surveyor, he shall issue a Notice of Compliance and authorize a release of the available escrow deposit (which deposit does not include the inspection fee). Whenever inspection reveals that the Improvements do not comply with the standards and specifications required by this Agreement the County Surveyor will provide a Notice to Reconstruct to the Developer in a timely manner.

**Notice of Compliance:** The County Surveyor shall issue a Notice of Compliance in a timely manner after:

- a. all of the Improvements are installed and meet compliance to the standards and specifications required by this Agreement.
- b. the Right of Entry and Perpetual Easement has been properly executed and recorded in the County Recorder's Office.
- c. the Developer provides adequate documentation that the Improvements installed by the Developer are free of any liens, encumbrances, or other restrictions.

Issuance of a Notice of Compliance does not constitute a waiver of the warranty guaranteed by the Developer on the Improvements.

**Use of Proceeds:** All default deposits, forfeitures, fees or penalties shall be deposited in the Public Land Corner Preservation Fund and shall be used only as authorized by UCA 17-23-19.

**Measure of Damages:** The measure of damages for breach of this Agreement will be the reasonable cost of completing the Improvements. For Improvements upon which construction has not begun, the amount of escrow funds on deposit with the County Surveyor will be prima facie evidence of the minimum cost of construction; however, neither that amount or the amount of the escrow establishes the maximum amount of the Developer's liability which may include, but not limited to, survey costs, as established by the County Surveyor, to retrace and locate the position of the unfinished Improvements. The County Surveyor will be entitled to complete all Improvements at the time of default regardless of the extent to which Improvements have been installed or whether installation ever commenced. No partial release of funds will be authorized for any partial completion of the Improvements.

**No Waiver:** No Waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision. The waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

**Amendment or Modification:** The parties to the Agreement may amend or modify this Agreement only by written instrument executed by the County Surveyor and by the Developer or his authorized agent. Such amendment or modification will be properly notarized before it may be effective.

**Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approvals required by the County, if any, before the Developer is entitled to commence development of the Development or to transfer ownership of property in the Development.

**Third Party Rights:** No person or entity who or which is not a party to the Agreement will have any right of action under this Agreement, except that if the County does not exercise its rights within 60 days following knowledge of an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the County to exercise its rights.

**Scope:** This Agreement constitutes the entire agreement between the parties and no statements, promises or inducements that are not contained in this Agreement will be binding on the parties.

**Time:** For the purpose of computing the time periods for County action, such times in which civil disaster, acts of God, or extreme weather conditions occur or exist will not be included if such times prevent the Developer or County Surveyor from performing their obligations under the Agreement.

**Severability:** If any part, term or provision of the Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

**Notice:** Any notice of default required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows. Release of the escrow deposit will only be made to the Developer and shall be sent to the address as follows:

If to Developer:  
**SMHG PHASE 1 LLC.**  
**3632 NORTH WOLF CREEK DRIVE**  
**EDEN, UT 84310**

If to County:  
Attn: County Surveyor  
Weber Center Surveyor's Office  
2380 Washington Blvd. Ste 370  
Ogden, Utah 84401

**Recordation:** It is the intent of the Parties that this Agreement encumbers only the property shown and described on Exhibit "A". Either Developer or County may record a copy of this Agreement in the County Recorder's Office.

**Immunity:** Nothing contained in this agreement constitutes a waiver of the county's sovereign immunity under any applicable state law.

**Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement will be deemed to be proper only if such action is commenced in the District Court for Weber County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Developer: \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENT

State of Utah )  
                  SS  
County of Weber )

On the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_\_\_  
personally appeared before me \_\_\_\_\_ the signer of the within  
instrument, who duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_, Utah

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CORPORATE ACKNOWLEDGMENT

State of Utah )  
                  SS  
County of Weber )

On the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_\_\_  
personally appeared before me \_\_\_\_\_ duly sworn, did say  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_,  
the corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said  
corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_, Utah

The foregoing being hereby approved at a regular meeting of the Weber County Commission on

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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James Harvey, Chair

ATTEST: \_\_\_\_\_

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Ricky Hatch, CPA  
Weber County Clerk / Auditor

## EXHIBIT A

### LEGAL DESCRIPTION

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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 S59°27'02"E 158.65 FEET) FOR AN ARC DISTANCE OF 158.82 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 S08°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 S78°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 BEGINNING.

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