

ENTRY NO. 01090962

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MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER

FEE 0.00 BY SUMMIT COUNTY ENGINEERING



## DEVELOPMENT IMPROVEMENTS AGREEMENT

Project File #: 18-CP-04 Tax ID #: PP-38-C-3, PP-38-C, PP-39

Project Name: Discovery Project

THIS AGREEMENT is made this 3RD day of May, 2018, by and between Summit County, a political subdivision of the State of Utah (the "County"), and Discovery Ridge, LLC, a LLC, whose address is 1168 Harline Circle, Kaysville, Utah 84037 (the "Developer"). The County and Developer are individually referred to herein as a "Party" and jointly referred to herein as the "Parties". The Effective Date of this Agreement shall be the date upon which it is recorded in the Office of the Summit County Recorder.

### RECITALS

- A. Developer is the owner of certain property situated in the County of Summit, State of Utah, more particularly described in **Exhibit A** hereto and known as the Discovery Project (the "Project").
- B. The Developer desires to develop "Project", hereinafter referred to as the ("Property") according to the approved final subdivision plat or final site plan thereof (the "Plat" or "Final Site Plan") showing a proposed subdivision or site layout for said Property.
- C. The County has approved the Plat/Final Site Plan submitted by the Developer subject to certain requirements and conditions, which involve the installation and construction of utilities, landscaping (if applicable), as well as other public and private infrastructure improvements shown on the submitted construction drawings, Plat, Final Site Plan, Landscape Plan (if applicable) and documents for the Property, which is attached at **Exhibit B** ("Site Improvements Plan").
- D. In lieu of completing all landscaping and infrastructure improvements prior to Plat/Final Site Plan recordation in accordance with UCA §17-27a-604.5 or successor statute, Developer may enter into a Development Improvements Agreement with the County .
- E. In doing so, the County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of the Site Improvements Plan and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive.

F. The purpose of this Agreement is to protect the County from assuming the cost to complete the utility, landscaping, and infrastructure improvements and is not executed for the benefit of material men, laborers, or others providing work, services or material to the Property or for the benefit of lot or home buyers in the Project.

G. The mutual promises, covenants, and obligations contained herein are authorized by State and local law and regulation.

**NOW, THEREFORE**, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the Parties hereto, it is agreed as follows:

### **DEVELOPER'S OBLIGATION**

1. **Improvements:** The Developer will design, construct, and install, at his own expense, those on-site and off-site utility, landscaping (if applicable), and infrastructure improvements in accordance with the approved Site Improvements Plan and the **Cost of Construction PE Estimate**, which is attached at **Exhibit C** (together the Site Improvements Plan and the Cost of Construction PE Estimate are referred to as the "**Improvements**"). At a minimum, the Site Improvements Plan shall address culinary water, sewer, electrical power service, natural gas service, telephone service, television service, storm water drainage, trails, roads, landscaping and weed control. The Developer's obligation to complete the Improvements will be in conformance with the time schedule defined by this Agreement and will be independent of any obligations of the County contained herein.
2. **Improvement Completion Assurance ("Assurance") Options:** To secure the construction and installation of the Improvements under this Agreement and the obligations for the warranty as set forth in ¶ 4 herein, the Developer will deposit with the County as an Assurance, 110% of the Cost of Construction PE Estimate (which includes a 10% warranty), on or prior to the Effective Date, through one of the following mechanisms:
  - **Option A.** Irrevocable Letter of Credit in the amount of \$ \_\_\_\_\_.
  - **Option B.** Subdivision Improvements Disbursement Agreement in the amount of \$ 7,182,857.43.
  - **Option C.** Cash in the amount of \$ \_\_\_\_\_, to be escrowed by the County Treasurer or third party escrow agent pursuant to a Cash Bond Escrow Agreement.
  - **Option D.** Performance or Surety Bond in the amount of \$ \_\_\_\_\_.
  - **Option E.** Subdivision Plat Hold.

- **Option F. Building Permit Hold.**
  - **Option A: Irrevocable Letter of Credit (“Letter of Credit”)** – The Letter of Credit shall be (a) irrevocable, (b) issued by a financial institution, (c) of a term sufficient to cover the Completion and Warranty Periods, and (d) reviewed as to form by the County Attorney. The Letter of Credit will be payable upon demand to Summit County. The Letter of Credit will be payable to the County in full or in part at any time upon presentation of (i) a sight draft drawn on the issuing financial institution to which the County is entitled to draw pursuant to the terms of this Agreement and the Letter of Credit; (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; and (iii) the original Letter of Credit.
  - **Option B: Subdivision Improvements Disbursement Agreement (“Disbursement Agreement”)** – The Disbursement Agreement will be executed by a financial institution, the Developer and the County. The Disbursement Agreement will provide for segregation of Developer’s loan proceeds by the financial institution. Pursuant to the terms of the Disbursement Agreement, the County is entitled to draw funds, in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Disbursement Agreement. Modifications to the County’s standard Disbursement Agreement shall be reviewed by the County Attorney for acceptance as an Assurance.
  - **Option C: Cash Bond Escrow Agreement (“Cash Bond”)** - Cash in the form of a cashier’s check or bank account in the sole ownership of the County will be escrowed with the County Treasurer or third party escrow agent pursuant to a Cash Bond. The County is entitled to draw upon these funds, pursuant to the terms of the Cash Bond. The funds will be disbursed to the County in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Cash Bond.
  - **Option D: Performance or Surety Bond (“Performance Bond”)** – A Performance Bond shall be issued upon which the County will be entitled to draw pursuant to the terms of the Performance Bond and will include a term sufficient to cover the Completion and Warranty Periods. The funds will be disbursed to the County in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement; or (iii) as

otherwise provided by the Performance Bond. The Performance Bond shall be reviewed by the County Attorney for acceptance as an Assurance.

- **Option E: Subdivision Plat Hold (“Plat Hold”)** – A Plat Hold may be utilized as an Assurance for projects that do not contain Improvements to existing Summit County Right-of-Way or Right-of-Way incidental to the subject Plat. The Plat and Recording fees will be held by the County. Release and recording of the Plat will require: (i) completion of the Improvements pursuant to the terms of this Agreement; (ii) County Manager acknowledgement on the Plat certifying the completion of the Improvements and extinguishment of this Agreement; and (iii) a letter from the lien holder, as indicated on the Plat, that they remain the current lien holder. Completion period for the Improvements is limited to two (2) years.
  - **Option F: Building Permit Hold (“Permit Hold”)** – A Permit Hold may be utilized as an Assurance on a limited basis where there are Improvements valued at less than \$10,000. The release of the Permit Hold requires completion of the Improvements pursuant to the terms of this Agreement. The completion period is limited to six (6) months.
3. **County Standards:** The Developer will construct the Improvements according to the approved Site Improvements Plan, general industry standards, this Agreement, and applicable County regulations (the “County Standards”). The Developer shall instruct the contractor or construction manager to provide timely notice to the Developer, contractor, issuer of the Assurance and the County Engineer whenever an observation or related construction activity reveals that an Improvement does not conform to the County Standards or is otherwise defective.
  4. **Warranty Period:** The Developer warrants that the Improvements, each and every one of them, will be free from defects in materials or workmanship under normal operation for a period of twelve (12) months from the date of the County’s acceptance of the Improvements (the “**Warranty Period**”). Developer agrees to promptly correct any deficiencies in order to meet the County Standards.
  5. **Commencement and Completion Periods:** All Improvements, as outlined in the Cost of Construction PE Estimate and Site Improvements Plan, will be installed and completed within two (2) years from Plat or Final Site Plan approval (the “**Completion Period**”), with the exception of Improvements guaranteed by a Permit Hold, which requires that Improvements be completed within six (6) months.
  6. **Damage to Public Improvements:** Developer agrees that it shall repair or pay for any damage to any existing public improvements damaged during the construction of new improvements. The County shall notify Developer within a reasonable time after discovery of any claim hereunder, and Developer shall have a reasonable period of time within which to repair said damage.

7. **Traffic Control:** During the construction of any utilities or Improvements described herein, Developer shall be responsible for controlling and expediting the movement of vehicular and pedestrian traffic through and around all construction sites and activities. Such control shall be according to the latest version of the Manual of Uniform Traffic Control Devices.
8. **Road Cuts:** Developer acknowledges that the County has regulations governing road cuts, the provisions of which shall apply to the alteration of any road necessitated by the installation of any utilities or Improvements described in this Agreement.
9. **Weed Control:** The Developer agrees to comply with Summit County Code §4-4-1, et. seq. relative to control and elimination of all noxious species of plants as identified within the Property boundaries. The Developer further agrees to coordinate with the Summit County Weed Department, prior to commencement of work, relative to inspections and importations of weed free project materials.
10. **Roads:** Developer agrees to construct, at Developer's cost, all public and private roads and public and private road improvements, within the Property, in accordance with the plans and specifications within the Site Improvements Plan. Developer agrees to install any traffic control signs and standard street name signs as required by the County and to re-vegetate all cuts and fills resulting from construction in a manner which will prevent erosion.
11. **Compliance with Law:** The Developer shall comply with all relevant federal, state and local laws and regulations in effect at the time of Plat and/or Final Site Plan approval when fulfilling its obligations under this Agreement.
12. **Special Geotechnical Requirements:** The Discovery Project contains expansive/moisture sensitive soils as documented in the following geotechnical reports:
  - a. AGEC – 1/8/2012
  - b. AGEC – 1/8/2013, revised 3/28/2016
  - c. AGEC Memo – 10/17/2013
  - d. GeoStrata – 12/4/2014
  - e. GeoStrata – 1/23/2015
  - f. GeoStrata Memo – 9/2/2015

As agreed upon during the project improvements review process, the Developer will retain a geotechnical engineer, licensed in the State of Utah, to observe the exposure of possible expansive/moisture sensitive soils, primarily in the vicinity of the Phase 1 and lower Phase 2 lots, and verify soil type, in-place compaction suitability, or the need for over-excavation and removal of unsuitable soils and import and compaction of an approved low-permeable fill material.

This procedure will be followed for public roadway improvements and areas underneath habitable structures.

This agreement provides an estimated amount of funds for the County to provide their own geotechnical engineer, licensed in the State of Utah, to review and verify Developer geotechnical engineer's findings and recommendations. Should the Developer's and County's geotechnical engineers disagree on findings and recommendations, the funds estimated in this agreement will be used to retain an independent third party geotechnical engineer, licensed in the State of Utah, who will review the provided information, findings, recommendations, and disagreements, and will provide an unbiased, third party recommendation. The third party geotechnical engineer's recommendations will constitute the final decision in matters of disagreement between the Developer's and County's respective geotechnical engineers. The third party geotechnical engineer must be completely independent and cannot currently be under contractor with either the County or Developer.

13. **Special Flood Zone Requirements:** The Discovery Project limits contain an existing Flood Zone 'A' designation associated with the Toll Canyon Creek, which runs through the vicinity of the Phase 1 portion of the project. The existing, approximated flood zone boundary is inaccurately designated based on the more detailed and accurate topography data provided by the Developer. The current flood zone designation impacts two proposed townhome structures, which impacts proposed Lots 110 through 117. A detailed floodplain analysis was completed by Bowen Collins & Associates, documented in a memo dated 7/6/2016. The memo was reviewed and approved by the County, with the understanding that a Letter of Map Revision (LOMR) would be obtained through the approved Federal Emergency Management Agency (FEMA) process.

The agreed upon process for completing a LOMR approval, obtaining building permits, constructing the above-mentioned structures, and obtaining certificates of occupancy is as follows:

- The County has approved the detailed hydraulic analysis provided by Bowen Collins & Associates and will allow building permits to be pulled on the two structures in question.
- The developer will complete the two proposed bridge structures analyzed in the Bowen Collins & Associates study in a timely manner, as soon as practically possible.
- As-built data will be collected for each of the bridge structures and included in a formal LOMR submittal to FEMA for LOMR review and approval.

Following approval of the LOMR, certificates of occupancy will be issued by the County for the two structures in questions, assuming all building related requirements have been met.

## COUNTY'S OBLIGATION

14. **Inspections and Notice of Defect:** The County shall conduct inspections of the Improvements from time to time. In the event that there is a deficiency in performance by Developer hereunder (during the Completion or Warranty Periods), the County may issue a **Notice of Defect** to the Developer and the issuer of the Assurance. The Developer shall have thirty (30) calendar days thereafter to cure the defect (the "**Cure Period**"). If a defect is not corrected within the Cure Period, a condition of default may be declared and an **Affidavit of Lapse of Improvements**

**Agreement** may be issued stating that building permits, grading permits and certificates of occupancy will not be issued in connection with any lots within the Plat or Final Site Plan, and the County may request that a court of competent jurisdiction enjoin the sale, transfer or conveyance of lots within the Plat or Final Site Plan until a new Development Improvements Agreement and Assurance are accepted by the County. If the defect cannot be corrected within the Cure Period, the Developer may request an extension of the Cure Period from the County Engineer.

15. **Notice of Non Compliance with Completion Date:** The County shall issue the Developer a **Notice of Noncompliance** in the event that the Improvements are not completed by the Developer and accepted by the County within the Completion Period. If inclement weather or circumstance beyond the Developer's control prevents construction within the Completion Period, an extension to the Completion Period of up to a twelve (12)-months may be requested by the Developer and approved by the County Engineer. A written request by the Developer indicating cause and reason for an extension shall be submitted to the County Engineer not earlier than fourteen (14) calendar days prior to the expiration of the Completion Period. The request for extension will be reviewed by the County Engineer and may only be granted in such cases where the Assurance is also extended for the life of the modified Completion Period. An approved extension will be executed as a written Addendum to this Agreement. If an extension of time is not approved by the County Engineer, an Affidavit of Lapse of Improvements Agreement may be recorded stating that building permits, grading permits and certificates of occupancy will not be issued in connection with any lots within the Plat or Final Site Plan, and the County may request that a court of competent jurisdiction enjoin the sale, transfer or conveyance of lots within the Plat or Final Site Plan until a new Development Improvements Agreement, with modified time lines, and Assurance are approved by the County.
16. **Acceptance of Improvements:** The County's acceptance of Improvements is conditioned upon (a) the presentation by Developer of the required signatures of acceptance by all entities serving the constructed Improvements, (b) clear documentation and testing that the Improvements have been completed per County Standards, and (c) the presentation by Developer of a document or documents, where appropriate, for the benefit of the County, demonstrating that the Developer owns the Improvements in fee simple title with no liens or encumbrances thereon. Acceptance of any Improvement does not constitute a waiver by the County of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after the acceptance. Public Improvements shall be dedicated to the appropriate public entity. Private Improvements serving more than one lot shall be assigned by separate agreement to a Home Owners Association.
17. **Reduction of Assurance:** As portions of the site Improvements are completed in accordance with this Agreement, County regulations, and the approved Site Improvements Plan, the Developer may make application to the County Engineer to reduce the amount of the original Assurance. If the County Engineer is satisfied that such portion of the Improvements have been installed and completed in accordance with County Standards, she may cause the amount of the Letter of Credit, Disbursement Agreement, Cash Bond or Performance Bond to be reduced by such amount that she

deems appropriate, so that the remaining amount of the Letter of Credit, Disbursement Agreement, Cash Bond or Performance Bond adequately insures the completion of the remaining site Improvements. At the request of the Developer, the County will execute an amendment to this Agreement verifying the acceptance of said installed and completed Improvement, and waiving and releasing its right to draw upon the Assurance for installation and completion of the same. A Developer in default under this Agreement will have no right to such a reduction of the Assurance. Upon the acceptance of all site Improvements, all amounts up to 100% of the Cost of Construction PE Estimate which may be drawn under the Letter of Credit, Disbursement Agreement, Performance Bond or Cash Bond, will be released, leaving a remaining balance of 10% of the Cost of Construction PE Estimate as the warranty. Following the expiration of the Warranty Period, the full remaining balance which may be drawn under the Letter of Credit, Disbursement Agreement, Performance Bond or Cash Bond, will be released.

18. **Use of Proceeds:** The County will use funds drawn under the Assurance per ¶12 herein only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

## **OTHER PROVISIONS**

19. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period or Warranty Period:
- a. Developer's failure to complete any portion of the Improvements in conformance with the County Standards within the Completion or Warranty Periods, as the case may be, and shall fail to cure such default within the Cure Period (or extended Cure Period) after receipt of written **Notice of Defect** from the County specifying the nature of such defect. The County shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the County shall be reimbursed for the reasonable costs thereof either by payment of such costs within 30 days of delivery of an invoice to Developer or by obtaining funds under the Assurance set forth in ¶12 herein.
  - b. Developer's failure to satisfactorily complete each portion of the Improvements within the Completion Period, as documented by the issuance of a **Notice of Noncompliance**, or to remedy defects within the Warranty Period.
  - c. Notification to County of Developer's insolvency, the appointment of a receiver for the Developer, the filing of a voluntary or involuntary petition in bankruptcy, and the foreclosure of any lien against the Property or a portion of the Property.
20. **Measure of Damages:** The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the Improvements. For Improvements upon which construction has not begun, the estimated costs of Improvements as shown on Cost of Construction PE Estimate will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the Assurance amount shall establish the maximum amount of Developer's liability.



21. **County's Rights Upon Default:** When any event of default occurs, the County may exercise its rights under the Assurance and contract with a third party for completion of the Improvements. The Developer grants to the County, its successors, assigns, agents, contractors, and employee, a nonexclusive right and easement to enter the Property for the purposes of constructing, installing, maintaining, and repairing such Improvements. Alternatively, the County may assign the proceeds of the Letter of Credit, the Disbursement Agreement, Performance Bond or the Cash Bond to a subsequent party who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the County, if and only if, the subsequent party agrees in writing to complete the unfinished Improvements and provides reasonable Assurances for the obligation. In addition, the County may also revoke certificates of occupancy, issue an Affidavit of Lapse of Improvements Agreement, and/or enjoin the sale, transfer, or conveyance of lots within the Plat or Final Site Plan, until the Improvements are completed and accepted. These remedies are cumulative in nature and are in addition to any other remedies the County has at law or in equity.
22. **Indemnification:** The Developer expressly agrees to indemnify and hold the County, its employees, agents, and assigns harmless from and against all claims, costs and liability of every kind and nature except those arising out of negligence on the part of the County, its employees, agents, and assigns, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the County.
23. **No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for in a written amendment to this Agreement signed by both the County and Developer; nor will the waiver of any default under this Agreement 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.
24. **Amendment or Modification:** The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County by the County Engineer and by the Developer or its authorized officer. Such amendment or modification will be properly notarized and recorded as an amendment to this Agreement, before it may be effective.
25. **Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence development of the Property or to transfer ownership of the Property or any portion thereof.
26. **Third Party Rights:** No person or entity, who or which is not a party to this Agreement, will have any right of action under this Agreement.
27. **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.

28. **Force Majeure:** For the purpose of computing the Completion Period, and time periods for County action, such times in which war, civil disasters, or acts of God occur or exist, will not be included if such times prevent the Developer or County from performing their obligations under this Agreement.
29. **Severability:** If any part, term, or provision of this 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 hereof, and the rights of the Parties will be construed as if the illegal or unenforceable part, term, or provision was never contained within this Agreement.
30. **Benefits:** The benefits, rights and obligations of this Agreement pertaining to the Developer are personal in nature and may not be assigned without the express written consent of the County. Such consent may not be unreasonably withheld, but any unapproved assignment is voidable at the option of the County.
31. **Binding Effect:** This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the Parties hereto and their successors, heirs and assigns; provided that, purchasers of residential lots within the Property or any homeowner's association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be recorded in the Office of the Summit County Recorder and be on file with the County Engineer. All existing lien holders shall be required to subordinate their liens to the covenants contained in this Agreement.
32. **Notice:** Any notice required or permitted by this Agreement will be deemed effective either (a) when personally delivered in writing, or (b) seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

**If to Developer:**

Mike Milner, Managing Partner  
 Developer's Name  
1168 Hanline Circle, Kaysville, Utah 84024  
 Developer's Mailing Address

**If to County:**

Summit County Engineer  
 60 N. Main Street  
 P.O. Box 128  
 Coalville, UT 84017

33. **Recordation:** The County will record a copy of this Agreement in the Office of the Summit County Recorder, Coalville, Utah.

34. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law, including the Governmental Immunity Act of Utah, UCA Title 63G, Chapter 7, as amended.

35. **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 this Agreement, Letter of Credit, Performance Bond, Disbursement Agreement, or Cash Bond will be deemed to be proper only if action is commenced in the Third District Court for Summit County, Utah. The Developer expressly waives his right to remove such action to any other court.

36. **Release:** This Agreement shall be extinguished only through formal acceptance of the Improvements and successful expiration of the Warranty Period per the provisions of this Agreement or through entering into a written **Release** between the County and the Developer (**Exhibit F**).

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed per the Effective Date as indicated.

**DEVELOPER**

Company Name: Discovery Ridge, LLC

By: Mike Milner, Managing Partner Signature *Michael J. Milner*

STATE OF Utah  
COUNTY OF Summit <sup>SS.</sup>

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of April, 2018, by *Michael J. Milner*

Witness my hand and official seal.

My commission expires: September 16, 2021

*[Signature]*  
Approved as to form  
Summit County Attorney

*[Signature]*  
Notary Public



**SUMMIT COUNTY**

County Manager

By: Thomas C. Fisher

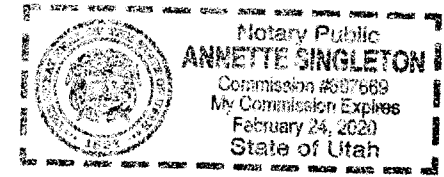
Signature [Handwritten Signature] 5/3/18

STATE OF Utah )  
 ) ss.  
COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this 3<sup>RD</sup> day of May, 2018  
by THOMAS C. FISHER

Witness my hand and official seal.

My commission expires: 2/24/2020



[Handwritten Signature]  
Notary Public

EXHIBIT A

**PROPERTY LEGAL DESCRIPTION**

(Insert Legal Description of the Property after this Page)

Discovery Ridge, LLC Description (County Parcel No. PP-38-C-3):

BEGINNING at a point South, 2155.20 feet and West, 225.00 feet from the Northeast Corner of Section 10, Township 1 South, Range 3 East, Salt Lake Base and Meridian; Running thence South, 217.80 feet; thence West, 200.00 feet; thence North 217.80 feet; thence East, 200.00 feet to the point of beginning.

Discovery Ridge, LLC Description (County Parcel No. PP-38-C):

BEGINNING at the East quarter corner of Section 10, in Township 1 South of Range 3 East of the Salt Lake Base and Meridian; and running thence North 89°58'00" West 1502.15 feet along the center of Section; thence North 00°02'00" West 327.91 feet; thence North 10°00'00" East 162.43 feet; thence South 42°19'31" East 410.84 feet; thence North 42°54'58" East 248.60 feet; thence North 02°12'48" West 305.16 feet; thence North 56°37'40" East 368.86 feet; thence South 18°21'11" East 157.78 feet; thence North 46°43'36" East 181.53 feet; thence South 00°04'11" East 15.4 feet; thence North 61°16'46" East 625.69 feet; thence South 0°04'11" East 1134.85 feet to the point of beginning.

Excepting from the above described parcel, the following described tracts of land:

BEGINNING at the East quarter corner of Section 10, Township 1 South, Range 3 East, Salt Lake Base and Meridian, said point also being the Southeast corner of Lot 2 of said Section 10; thence North 89°58'00" West along the South line of said lot a distance of 552.19 feet; thence North 00°02'00" East 200.0 feet; thence South 89°58'00" East parallel with said South line 551.83 feet to a point on the East side of said lot; thence South 00°04'11" East 200.0 feet to the point of beginning.

BEGINNING at a point South, 2155.20 feet and West, 225.00 feet from the Northeast Corner of Section 10, Township 1 South, Range 3 East, Salt Lake Base and Meridian; Running thence South, 217.80 feet; thence West, 200.00 feet; thence North 217.80 feet; thence East, 200.00 feet to the point of beginning.

Discovery Ridge, LLC Description (County Parcel No. PP-39)

All of that Real Property described in Deed Book 1244 Page 58 of the Official Records of Summit County, located in the NE1/4 and the SE1/4 of Section 10, Township 1 South, Range 3 East, Salt Lake Base & Meridian, more particularly described by Survey as follows:

Beginning at the Northeast Corner of the NW1/4 of the SE1/4 of Section 10, T1S, R3E, S.L.B. & M. located N89°58'00"W along the ¼ Section line 1,427.52 feet from an Iron Pipe marking the East ¼ Corner of Section 10, T1S, R3E, S.L.B. & M.; thence S0°11'50"E along the 1/16<sup>th</sup> (40 acre) line 1,344.27 feet; thence N89°51'57"W along the 1/16<sup>th</sup> (40 acre) line 1,430.05 feet to the ¼ Section line; thence N0°05'22"W along the ¼ Section line 1,341.74 feet to an Iron Pipe marking the East ¼ Corner of said Section 10; thence S89°58'00"E along the ¼ Section line 664.76 feet to the southeast corner of Lot 2, SUMMIT PARK CREEK Subdivision, according to the Official Plat thereof on file in the Office of the Summit County Recorder; thence N7°55'30"W along said lot 20.26 feet to a fence line on the southerly line of that Real Property described in Deed Book 2112 Page 940 of the Official Records of Summit County; thence along said deed and fence line the following 4 (four) courses and distances: N81°52'00"E along a fence line 251.42 feet to a rebar (found); thence N82°09'29"E along a fence line 193.50 feet to a rebar (found) at a fence corner; thence N6°13'00"W

along a fence line 58.00 feet; thence N7°36'00"W along a fence line 139.60 feet; thence S81°25'03"W 4.47 feet to the easterly line of that Real Property described in Deed Book 1869 Page 1588 of the Official Records of Summit County; thence along said deed the following 7 (seven) courses and distances: N20°30'12"W 181.89 feet; thence N20°57'06"E 14.71 feet; thence N31°27'37"W 19.18 feet; thence N44°00'44"W 49.92 feet; thence N29°10'00"W 24.17 feet; thence N35°11'50"W 25.39 feet; thence N25°56'13"W 158.02 feet to the southerly line of Kilby Road, a frontage road incident to Interstate 80; thence N61°10'30"E along the extension of, and along the right-of-way fence 175.75 feet; thence N63°25'16"E 73.74 feet to the westerly line of that Real Property described in Deed Book 2131 Page 625 of the Official Records of Summit County; thence S48°26'49"W along said deed 79.94 feet; thence S70°00'00"E along said deed 394.57 feet; thence S10°00'00"W along said deed and extension thereof 304.60 feet; thence S0°02'00"E 327.91 feet to the ¼ Section line; thence S89°58'00"E along the ¼ Section line 74.64 feet to the point of beginning. LESS AND EXCEPTING any portion lying within the bounds of TIMBERLINE 1 Subdivision, according to the Official Plat thereof on file in the Office of the Summit County Recorder.

ALSO LESS AND EXCEPTING A portion of the NE1/4 of Section 10, Township 1 South, Range 3 East, Salt Lake Base & Meridian, Summit County, State of Utah, more particularly described as follows:

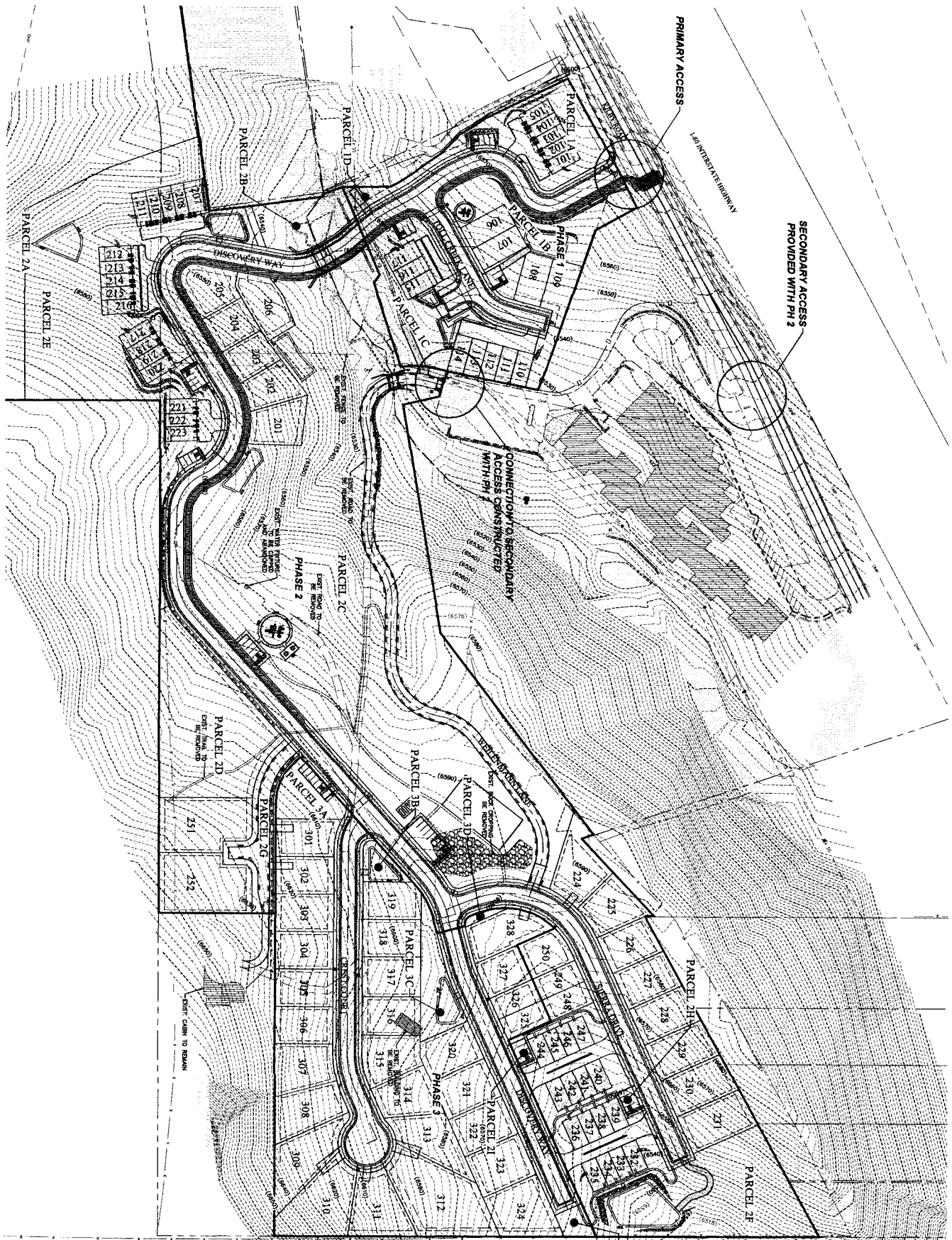
Beginning at a point on the easterly line of that Real Property described in Deed Book 1869 Page 1588 of the Official Records of Summit County located N89°58'00"W along the 1/4 Section line 1,793.85 feet and North 310.25 feet from the East 1/4 Corner of Section 10, Township 1 South, Range 3 East, Salt Lake Base and Meridian; thence along said deed the following 3 (three) courses and distances: N20°30'12"W 147.07 feet; thence N20°57'06"E 14.71 feet; thence N31°27'37"W 19.18 feet; thence S34°09'39"E 27.02 feet; thence S35°56'30"E 36.39 feet; thence S31°55'30"E 23.09 feet; thence S27°55'00"E 14.82 feet; thence S0°24'00"E 83.34 feet to the point of beginning.

EXHIBIT B

**SITE IMPROVEMENTS PLAN**

(Insert Site Improvements Plan after this Page)

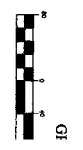




SECONDARY ACCESS PROVIDED WITH PH 2

PRIMARY ACCESS

CONNECTION TO SECONDARY ACCESS CONSTRUCTED WITH PH 1



01

**EXHIBIT C**

**COST OF CONSTRUCTION PE ESTIMATE**

(Insert Cost of Construction PE Estimate after this Page)

**COST OF CONSTRUCTION PE ESTIMATE**

**Project:** Discovery Subdivision

Item No.	Description (provide for each item listed)	Unit (unit of measurement)	Quantity	Unit Cost (\$)	Total Cost (\$)
1	Clear & Grub Including Trees	LS	1	\$114,151.00	\$114,151.00
2	Mobilization	LS	1	\$87,960.00	\$87,960.00
3	Remove Topsoil 1' Depth	CY	29945	\$15.98	\$478,521.10
4	Cut to Fill	CY	52305	\$3.85	\$201,374.25
5	Import Fill Allowance	TON	10200	\$22.00	\$224,400.00
6	Re-Vegetate Disturbed Slopes Less than 3:1	LS	1	\$36,079.00	\$36,079.00
7	Re-Vegetate Disturbed Slopes Greater than 3:1	SF	100000	\$0.24	\$24,000.00
8	8" Roadbase	SF	151577	\$1.40	\$212,207.80
9	3" Asphalt	SF	12273	\$2.39	\$29,332.47
10	4" Depth Asphalt	SF	139304	\$2.13	\$296,717.52
11	10" Subbase	SF	47941	\$1.52	\$72,870.32
12	8' Asphalt Trail	LF	1834	\$18.50	\$33,929.00
13	Weilenmann Lane Bridge (Small)	LS	1	\$75,085.00	\$75,085.00
14	Discovery Way Bridge	LS	1	\$228,729.00	\$228,729.00
15	2' Compacted Low Perm Fill	SF	60000	\$2.73	\$163,800.00
16	30" Curb & Gutter	LF	8613	\$19.50	\$167,953.50
17	24" Curb & Gutter	LF	226	\$18.00	\$4,068.00
18	4' Sidewalk	LF	822	\$39.00	\$32,058.00
19	5' Sidewalk	LF	6939	\$48.00	\$333,072.00
20	ADA Ramps	EACH	12	\$1,868.00	\$22,416.00
21	6" Curb Wall	LF	859	\$23.00	\$19,757.00
22	8" PVC & HDPE SDR 17 Sewer	LF	0	\$0.00	\$0.00
23	10" HDPE SDR 11 Sewer	LF	0	\$0.00	\$0.00
24	12" SDR 35 Sewer	LF	0	\$0.00	\$0.00
25	3" & 2" Pressure Sewer	LF	0	\$0.00	\$0.00
26	4" Sewer Laterals	EACH	0	\$0.00	\$0.00
27	1 1/4" Pressure Laterals W/Stainless Steel Check Valve	EACH	0	\$0.00	\$0.00
28	4' Manhole	EACH	0	\$0.00	\$0.00
29	Sewer Access Pad	SF	0	\$0.00	\$0.00
30	5' Manhole	EACH	0	\$0.00	\$0.00
31	Reconnect 4" Lateral	EACH	0	\$0.00	\$0.00
32	Remove Existing Lines and Manhole	EACH	0	\$0.00	\$0.00
33	18" Steel Casing	LF	0	\$0.00	\$0.00
34	By-Pass Pumping	LS	0	\$0.00	\$0.00
35	8" DR 9 & DIP Water W/8" Fittings and Valves	LF	5,991.00	\$42.68	\$255,695.88
36	10" DR 9 & 13.5 Water W/10" Valves, Fittings & Foam	LF	2,903.00	\$49.89	\$144,830.67
37	Fire Hydrant	EACH	15	\$6,523.00	\$97,845.00
38	3/4" Water Service	EACH	109	\$1,459.00	\$159,031.00
39	8" Connection to Existing	EACH	1	\$6,381.00	\$6,381.00
40	8" Isolation Valve	EACH	3	\$4,689.00	\$14,067.00
41	8" Core Drill under Creek	EACH	2	\$26,686.00	\$53,372.00
42	1 1/2" Fire Service	EACH	65	\$1,692.00	\$109,980.00
43	PRV	EACH	1	\$55,272.00	\$55,272.00
44	2" Secondary Water Service	EACH	5	\$3,332.00	\$16,660.00
45	2-4" Water Conduit Crossings	EACH	15	\$843.00	\$12,645.00
46	5' Storm Drain Manholes	EACH	38	\$2,647.00	\$100,586.00
47	Curb Inlets	EACH	36	\$2,840.00	\$102,240.00
48	Drive Inlets	EACH	10	\$1,458.00	\$14,580.00
49	SD Inlets	EACH	9	\$3,931.00	\$35,379.00
50	Dbl Curb Inlets	EACH	4	\$5,031.00	\$20,124.00
51	Flared End Sections	EACH	17	\$1,123.00	\$19,091.00
52	Yard Box	EACH	19	\$1,001.00	\$19,019.00
53	15" RCP	LF	3,559.00	\$46.50	\$165,493.50
54	12" RCP	LF	537	\$40.00	\$21,480.00
55	12" HDPE	LF	955	\$33.50	\$31,992.50

Sewer items regulated by sBWRD and included here only to match Contractor bid item numbers.

COST OF CONSTRUCTION PE ESTIMATE					
Project: Discovery Subdivision					
Item No.	Description (provide for each item listed)	Unit (unit of measurement)	Quantity	Unit Cost (\$)	Total Cost (\$)
56	18" RCP	LF	30	\$49.50	\$1,485.00
57	24" RCP	LF	432	\$61.00	\$26,352.00
58	24" HDPE	LF	132	\$62.50	\$8,250.00
59	36" RCP	LF	45	\$109.00	\$4,905.00
60	48" HDPE	LF	100	\$163.00	\$16,300.00
61	6x1 Drainage Swale	LF	886	\$11.00	\$9,746.00
62	Drainage Rip Rap Pads	LS	1	\$6,237.00	\$6,237.00
63	Pond Sediment Marker	EACH	11	\$845.00	\$9,295.00
64	Detention Pond Headwalls	EACH	3	\$6,749.00	\$20,247.00
65	Detention Pond Access Roads	LS	1	\$9,582.00	\$9,582.00
66	Detention Pond 8 with Overflow Structure	LS	1	\$81,026.00	\$81,026.00
67	Temp. Culvert for Bridge Construction	LS	1	\$7,444.00	\$7,444.00
68	Street Signs	EACH	95	\$407.25	\$38,688.75
69	Painted Area No Parking	EACH	1	\$113.00	\$113.00
70	Crosswalk Ramp	EACH	2	\$2,001.00	\$4,002.00
71	Thermoplastic Cross Walk	EACH	8	\$821.00	\$6,568.00
72	Raised Cross Walk	LS	1	\$16,011.00	\$16,011.00
73	Solar Powered Ped Sign	EACH	2	\$2,765.00	\$5,530.00
74	Painted Curb	LF	475	\$1.27	\$603.25
75	2" & 4" Power Conduit	LF	8773	\$18.50	\$162,300.50
76	Black Vinyl Chain Link Fence	LF	500	\$24.00	\$12,000.00
77	Community Mail Box	EACH	3	\$3,585.00	\$10,755.00
78	Weathered Steel Guard Rail	LF	443	\$78.50	\$34,775.50
79	Demolition	LUMP SUM	1	\$3,674.00	\$3,674.00
80	Striping	LUMP SUM	1	\$5,070.00	\$5,070.00
81	4' Tall Split Rail Fence	LF	339	\$29.50	\$10,000.50
82	Gravity Walls W/15% Bury	LF	6912	\$26.82	\$185,379.84
83	Rock Walls W/15% Bury	LF	7465	\$32.02	\$239,029.30
84	Keystone Walls W/15% Bury	LF	5862	\$32.43	\$190,104.66
85	SWPPP (Silt Fence, Const. Ent., Inlet Protection, Conc. Washout, Prep and Permitting)	LS	1	\$84,890.00	\$84,890.00
86	3rd Party Geotechnical Services	LS	1	\$100,000.00	\$100,000.00
87	Landscaping - Deciduous Trees	EACH	350	\$300.00	\$105,000.00
88	Landscaping - Evergreen Trees	EACH	126	\$500.00	\$63,000.00
89	Landscaping - Shrubs	EACH	531	\$100.00	\$53,100.00
90	Landscaping - Drip Irrigation	LS	1	\$73,100.00	\$73,100.00
91	Topsoil and Revegetation	SQ FT	87180	\$0.20	\$17,436.00
				Subtotal:	\$5,936,245.81
	Contingency	(10% of Subtotal)			\$593,624.58
				<b>Total:</b>	<b>\$6,529,870.39</b>

10% Warranty (10% of Construction Subtotal plus Contingency) = \$652,987.04  
 Cost including 10% Contingency and 10% Warranty = \$7,182,857.43

The sanitary sewer improvements included in this estimate (Bid Items 22 to 34) are provided only to maintain continuity with the Contractor's bid tabulation. These sewer bid items are not included in the final estimate total provided.

Construction Estimate Less Sewer & Water \$5,604,090.84  
 Engineering Fees \$13,654.09  
 Stormwater Inspection Fees \$1,800.00  
 Total Fees \$15,454.09

EXHIBIT D

**ASSURANCE**

(Insert the proper Assurance after this Page)

## SUBDIVISION IMPROVEMENTS DISBURSEMENT AGREEMENT

This Agreement is entered into by and between Summit County, Utah ("County"), FIRST UTAH BANK ("Bank"), and Discovery Ridge, LLC ("Developer"). The County, Bank, and Developer are individually referred to herein as a "Party" and jointly referred to herein as the "Parties".

### RECITATIONS

The Developer has been required by the County to construct certain improvements ("Improvements") to Discovery Project ("Subdivision") in accordance with the Summit County Code, under a Development Improvements Agreement ("DIA") which is attached hereto and incorporated herein by this reference.

The Bank has agreed to loan funds to the Developer for the construction of Improvements in the Subdivision.

Summit County has received an estimate, certified by a Utah State Professional Engineer, for the total costs to complete the Improvements, inclusive of any construction engineering, permit fees or other cost required to complete the Improvements ("Cost of Construction"), plus the 10% warranty, in the amount of \$ 7,182,857.43, and that this amount from the Developer's loan proceeds shall be referred to in this Agreement as the "Funds".

The Parties wish to insure that the Funds are disbursed only to pay for the Improvements or costs incidental to completing the Improvements.

### TERMS

The Parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Funds for Improvements:** Bank shall lock out the Funds on behalf of Developer within three (3) business days of execution of this Agreement. The Funds will not be paid out or disbursed to or on behalf of the Developer except as set forth in this Agreement.
- 2) **Disbursement of Funds:**
  - a. The amount of the draw upon the Funds during the **Completion Period** as set forth in the DIA shall not exceed the Cost of Construction. Except as provided under Section 3 below, the Bank shall disburse a portion of the Funds to Developer only upon the receipt of the following:
    - (i) A Draw Request stating which of the Improvements has been completed; that the County Engineer has inspected the Improvements for which payment is requested; that the work has been completed in accordance with the approved plans and

specifications; and that the sum requested to be disbursed is reasonable and consistent with the estimates which form the basis for the DIA ("Draw Request").

(ii) Copies of all bills or invoices for such work as set forth in the Draw Request which has been approved by the Developer.

(iii) Copies of all testing reports as required by Summit County which pertain to the Draw Request.

(iv) Certification by the County Engineer as to the validity of the Draw Request.

(v) The Final Draw Request shall contain signatures of acceptance by all entities taking ownership of the constructed improvements.

b. During the Warranty Period as set forth in the DIA, the County shall be entitled to draw upon the Funds to repair any accepted Improvements.

- 3) **Default by Developer:** Upon default of the Developer on this obligation to Bank or default under the DIA, Bank shall cease disbursement of the Funds directly to the Developer. All funds shall thereafter be distributed directly to the County under the terms of this Agreement.
- 4) **Default Notification:** Bank shall notify the County Engineer in writing within seven (7) calendar days of the following:
  - a. 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;
  - b. Default on this obligation to Bank; or
  - c. Foreclosure of any lien against the Property or a portion of the Property or conveyance of the Property in lieu of foreclosure.
- 5) **County's Rights Upon Default:** County shall have all rights and privileges as set forth in Paragraph 18 of the DIA.
- 6) **Developer Consent:** Developer consents to disbursements and other conduct authorized by the provisions of this Agreement.
- 7) **Liability for Loss:** If the Bank fails to disburse Funds in accordance with the procedures as set forth under this Agreement and the County suffers loss by reason of such failure, Bank shall be liable to County for the amount of the County's loss.
- 8) **Successors and Assigns; Termination:** This Agreement shall be binding upon the heirs, successors, receivers and assigns of all Parties and shall terminate when the County has accepted the Improvements and has extinguished the DIA following the expiration of the Warranty Period, or upon one of the following conditions: receipt by the County of the full

amount of the remaining undisbursed Funds as requested upon default or ninety-one (91) days after the filing of an Affidavit of Lapse of Improvements Agreement, whichever comes first.

- 9) **Notice:** Any notice required or permitted by this Agreement will be deemed effective either (a) when personally delivered in writing, or (b) seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Mike Milner, Managing Partner

Developer's Name

1168 Hanline Circle, Kaysville, Utah 84037

Developer's Mailing Address

If to Bank:

FIRST UTAH BANK

Bank Name

8915 S. 700 E., STE. 103 SANDY, UT 84070

Bank's Mailing Address

If to County:

Summit County Engineer

60 Main Street

P.O. Box 128,

Coalville, UT 84017

- 10) **Waiver:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law, including the Governmental Immunity Act of Utah, UCA Title 63G, Chapter 7, as amended.
- 11) **Attorney's Fees:** Should any Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party ( plaintiff or defendant), will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing Part(ies). If the court awards relief to all Parties, none of the Parties shall be entitled to their costs.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the 3rd day of May, 2018.


SUMMIT COUNTY

By: [Signature] Date: 5/3/18  
Title: COUNTY MANAGER

STATE OF Utah)  
) ss.  
COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this 3rd day of May, 2018, by THOMAS C. FISHER.

Witness my hand and official seal.  
My commission expires: 2/24/2020

  
Notary Public  
[Signature]  
Notary Public

DEVELOPER

By: [Signature] Date: 4/17/18  
Title: Mgr - Discovery Fibre, LLC

STATE OF Utah)  
) ss.  
COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this 17th day of April, 2018 by Michael J. McIner.

Witness my hand and official seal.  
My commission expires: 9/16/2021

  
Notary Public - State of Utah  
**STACY MALONE**  
Commission #697624  
My Commission Expires  
September 16, 2021

[Signature]  
Notary Public

BANK

By: [Signature]  
Title: SENIAR VICE PRESIDENT

Date: 4-17-2018

STATE OF (Utah)  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 17 day of April, 2018, by  
Scott Geertsen

Witness my hand and official seal.  
My commission expires: 3-4-20

[Signature]  
Notary Public

