

1-21-2014



W2672951

When Recorded Return To:
M. Thomas Jolley
3632 N. Wolf Creek Drive
Eden, UT 84310

E# 2672951 PG 1 OF 12
ERNEST D ROWLEY, WEBER COUNTY RECORDER
27-JAN-14 1039 AM FEE \$0.00 DEP TOT
REC FOR: WEBER COUNTY SURVEYOR

**WEBER COUNTY SURVEY
MONUMENTATION IMPROVEMENT
AGREEMENT**

23-128-0001 to 0031
23-129-0001 to 0013
23-130-0001 to 0072
23-131-0001 to 0026

- Parties:** The parties to the Survey Monumentation Improvement Agreement ("the Agreement") are SMHG Phase I LLC ("the Developer") and the Weber County Surveyor ("the County Surveyor").
- Effective Date:** The Effective Date of the Agreement will be the date that the County Surveyor or his Authorized Agent signs this agreement or other dates as specified herein.

RECITAL

WHEREAS, the Developer seeks permission to subdivide property within the area of Weber County, to be known as Summit Eden Phase 1A, 1B, 1C, 1D ("the Subdivision"), which property is shown and described on the submitted plat maps for review by the County Surveyor, and upon final approval of the Subdivision by the County Commission the final approved subdivision plat shall be made a part hereof and incorporated herein (the "Plat"); and

WHEREAS, the County seeks to protect the health, safety and general welfare of the residents of Weber County by requiring the completion of adequate monumentation of the Subdivision and thereby limiting the harmful effects and eventual loss or obliteration of public and private property lines as dedicated and/or established by the recording of the Plat; and

WHEREAS, the purpose of this Agreement is to protect the County from the cost of completing subdivision monumentation improvements and is not executed for the benefit of material, men, laborers, surveyors or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County's Subdivision Ordinance 106-4-3 et seq;

THEREFORE, the Parties hereby agree as follows:

DEVELOPER'S OBLIGATIONS

- Improvements:** The Developer will construct and install, at his own expense, those on-site and off-site subdivision monuments or improvements as shown on the final approved subdivision plat and/or as specifically required by the County Surveyor ("the Improvements").

1 | (Summit Eden Phases 1A, 1B, 1C, 1D)
| Monumentation Improvement Agreement

The Developer's obligation to complete the Improvements will arise upon final plat approval by the Weber County Commission, will be independent of any obligations of the County contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

4. **Security:** To secure the performance of their obligations hereunder, the Developer shall comply with County Ordinance 106-4-3-(f) by depositing with the County Surveyor, on or prior to the date which the County Surveyor signs and seals his approval block on the subdivision plat, an amount, **payable by check or cash**, to the County Surveyor equal to the estimated cost(s) as contained in the Subdivision Monumentation Letter ("the Letter") which Letter is prepared during the County Surveyor's subdivision review process and prior to the deposit requirement. All terms or conditions of that letter are incorporated herein and made part hereof.

5. **Standards:** The Developer shall cause the Developer's surveyor to construct the Improvement(s) according to county monument standards as approved and adopted by the County Surveyor which standards are incorporated herein by this reference and/or as special circumstances may require a variation to the standard. Any variations must be approved by the County Surveyor. A copy of the monument construction standards are available at the County Surveyor's Office.

6. **Warranty:** The Developer warrants that all required Improvement(s) will be free from defects for a period of one year from the date that the County Surveyor accepts the Improvement(s) by issuing the Certificate of Escrow Fund Release and by recording the Easement for monumentation.

7. **Completion Periods:** The Developer shall cause the Developer's surveyor to complete the installation of all required Improvement(s) within the time period required by County Ordinance 26-4-3 paragraph 7 which states, "*... the subdivider's surveyor shall install such monuments within a one year time period, after the asphalt is installed*". Should the Developer fail to install the asphalt within 2 years from the date of final approval by the County Commission the County Surveyor may declare the escrow in default. It shall be the Developer's responsibility, once the Improvement(s) are ready for inspection, to notify the County Surveyor and make a request for an inspection of the Improvements. Once the Improvements have been accepted by the County Surveyor it shall be the responsibility of the Developer, within 90 days of the County Surveyor's notice of acceptance, to make a written request for reimbursement of the available Escrow deposit. Should the written request for reimbursement fail to be made within the 90 days or the County Surveyor's notice of acceptance the Developer shall be deemed to be in default and the entire Escrow deposit and Checking fees shall be forfeited to the County Surveyor and shall be deposited in the Public Land Corner Preservation Fund in accordance with UCA 17-23-19.

8. **Compliance with Law:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of recording the final subdivision plat with the County Recorder. When necessary to protect 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 final subdivision plat and before the completion and acceptance of the work.

9. **Relinquishment and granting of a Perpetual Easement:** The Developer hereby Agrees to execute a Perpetual Easement granting the County Surveyor the right to access, inspect, repair, replace, maintain, alter or adjust the Improvements that are the subject of this agreement. The Developer also agrees to execute a Perpetual Easement granting the right to access, inspect, repair, replace, maintain, alter or adjust county or government monuments that may exist on or near this development as required by the county surveyor. Furthermore, the Developer agrees to grant to the County Surveyor, his successors, assigns, agents, contractors, and employees a nonexclusive right and Perpetual Easement to enter the Property to conduct future surveying activities as may be required by the County Surveyor. The granting of the Perpetual Easements will be effective upon recording of the easements with the county recorder.

WTS
Initials

COUNTY SURVEYOR'S OBLIGATIONS

10. **Plat Approval:** The County Surveyor or his authorized agent shall affix his signature and seal to the subdivision plat when all the plat requirements, survey requirements and conditions of this Agreement have, in the judgment of the County Surveyor, been satisfactorily completed.

11. **Inspection and Certification:** Upon notification by the Developer as required in paragraph 7 above, the County Surveyor will inspect the Improvements. If acceptable to the County Surveyor, he shall authorize a release of the available Escrow deposit (which deposit does not include the checking fee).

12. **Notice of Defect:** The County Surveyor will provide timely notice to the Developer or Developers Surveyor whenever inspection reveals that an Improvement does not conform to the standards and specifications required by this Agreement. The Developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The County Surveyor may not declare a default under this Agreement during the 30 day cure period on account of any such defect unless it is clear the Developer does not intend to cure the defect. The Developer will have no obligation to cure defects in or failure of any Improvement found to exist or occurring after the warranty period. Should it become necessary for the Developer to need more time to fully complete the monument installation, the Developer may make a written request for an extension of time on a form provided by the County Surveyor.

13. **Acceptance of Improvements:** The County Surveyor shall accept the Relinquishment and Perpetual Easement (see paragraph 9 above) of any validly accepted Improvement(s) which acceptance will be evidenced by the issuance of the Certificate of Escrow Fund Release and Easement Acceptance letter. The County Surveyors acceptance of the Improvement(s) is conditioned on the presentation by the Developer of adequate documentation that the Improvement(s) are owned by the Developer free of any liens, encumbrances, or other restrictions on the Improvement(s) unacceptable to the County Surveyor in his reasonable judgment. Acceptance of the Relinquishment and Perpetual Easement of any Improvement does

not constitute a waiver of the County Surveyor to draw funds from the Escrow fund retainer on account of any defect in or failure of the Improvement(s) that is detected within one year after the date of the release of Escrow funds. Additionally, acceptance of the Improvements(s) is also based on proper execution of and recording of the Perpetual Easement document.

14. **Reduction of Security:** After the acceptance of any Improvement, the amount which the County Surveyor is entitled to draw on the Escrow deposit may be reduced by an amount equal to 90% of the available Escrow on deposit. At the request of the Developer, the County Surveyor will execute a certificate of release verifying the acceptance of the Improvement(s) and waiving its right to draw on the Escrow to the extent of such amount specified in the certificate. A Developer in default under this Agreement will have no right to such a certificate. Upon the Acceptance of all of the Improvements, the balance that may be drawn under the Escrow will be available to the County Surveyor for 90 days after expiration of the Warranty Period. After said 90 days any Escrow on deposit which has not been requested in accordance with paragraph 7 above shall be deemed forfeited and become the property of the County Surveyor to be deposited in the Public Land Corner Preservation Fund in accordance with UCA 17-23-19.

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

16. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Construction Period:

- a. Developer's failure to commence construction of the street monument Improvements subsequent to the installation of the asphalt in accordance with the terms of paragraph 7 above;
- b. Developer's failure to complete construction of the Improvements within one year of the installation of the asphalt in accordance with the terms of paragraph 7 above;
- c. Developer's failure to cure the defective construction of any Improvement within the applicable cure period;
- d. 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;
- e. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

The County Surveyor may not declare a default until written notice has been issued to the Developer.

17. **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 Improvement(s) have been installed or whether installation ever commenced. **No partial release of funds will be authorized for any partial completion of the Improvements.**

18. **County Surveyor's Rights Upon Default:** When any event of default occurs, the County Surveyor may draw the full amount of the Escrow and Checking fees for each and all Improvements. The County Surveyor will have the right to complete Improvements himself or contract with a third party for completion and utilize any escrow funds available to compensate for the installation. Alternatively, the County Surveyor may assign the proceeds of the Escrow to a subsequent developer who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the County Surveyor if and only if the subsequent developer agrees in writing to complete the unfinished Improvements. In addition, the County may suspend final plat approval. These remedies are cumulative in nature except that during the Warranty Period, should the defects fail to be cured within 30 days of notice, the County's remedy is the same as outlined in paragraph 17 above and will be to draw funds under the Escrow deposit retainer.

19. **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.

20. **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 by a written amendment to the Agreement signed by both County Surveyor 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.

21. **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.

22. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.

23. **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 Subdivision or to transfer ownership of property in the Subdivision.

24. **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.

25. **Scope:** This Agreement constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

26. **Time:** For the purpose of computing the Commencement, Abandonment, and Completion Periods, and 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 from performing his/its obligations under the Agreement.

27. **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.

28. **Benefits:** The benefits of the Agreement to the Developer are personal and may not be assigned without the express written approval of the County Surveyor. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, 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. There is no prohibition on the right of the County to assign its rights under this Agreement. The county will release the original developer's Escrow to the Developer if it accepts new security from any developer who obtains the Property. However, no act of the County will constitute a release of the original developer from this liability under this Agreement.

29. **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:

If to Developer (Attn)
(Address)

SMHG Phase I LLC
c/o Summit Mountain Holding Group, L.L.C.
3632 N. Wolf Creek Drive
Eden, UT 84310

6 | (Summit Eden Phases IA,1B,1C,1D)
: |
| Monumentation Improvement Agreement

Attn: General Counsel

If to County

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

30. **Recordation:** It is the intent of the Parties that this Agreement encumber only the property shown on the final plat as approved by the County Commission and as recorded with the County Recorder. Either Developer or County may record a copy of this Agreement in the County Recorder's Office of Weber County, Utah by attaching a legal description of the subdivision property being encumbered herein and included as "EXHIBIT 'A' - Description of Property Being Subdivided". The attached description(s) may be subject to change, correction, or alteration during the review process and prior to the County Surveyor's signature and seal being affixed to the final plat. It is the intent of this Agreement that the land being affected by this Agreement is to conform with the description of the final subdivision plat as approved by the County Commission and properly recorded.

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

32. **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 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.

EXHIBIT 'A' - Description of Property Being Subdivided.

(Attach a reduced 8.5" x 11" copy of the submitted plat. Note: This attached plat will be superseded and replaced by the Approved Final Subdivision Plat upon recording of the Plat.)

SUMMIT EDEN PHASE 1A

SUMMIT EDEN PHASE 1B

SUMMIT EDEN PHASE 1C

SUMMIT EDEN PHASE 1D

8 | (Summit Eden Phases 1A,1B,1C,1D)
: |
| Monumentation Improvement Agreement

SMHG PHASE I LLC, a Delaware limited liability company

By: SMHG Investments LLC, a Delaware limited liability company

Its: Sole Member

By: Elliott Bisnow - Manager

By: Gregory Vincent Mauro - Manager

CORPORATE ACKNOWLEDGMENT

State of Utah)
 : ss
County of Salt Lake)



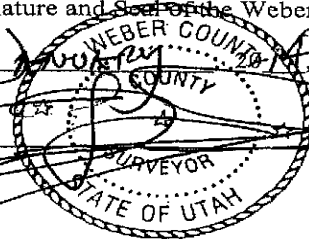
On the 17 day of January A.D. 2014 personally appeared before me Elliot Bisnow and Gregory Vincent Mauro the Managers and duly authorized agents of SMHG Investments LLC which is the sole member of SMHG Phase I LLC, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same. Witness my hand and official seal.

Emily A. Bagley
Notary Public
Residing at: Weber County, Utah

Signature and Seal of the Weber County Surveyor or Authorized Agent


Signed this 21st day of January

Signature




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

_____ day of _____ 20__



Kerry Gibson, Chair

ATTEST: _____



Ricky Hatch, CPA
Weber County Clerk / Auditor

SUBDIVISION MONUMENTATION LETTER

January 17, 2014

ADDRESS: SMHG Phase I LLC
 Attn: M. Thomas Jolley
 3632 N. Wolf Creek Drive
 Eden, Utah 84310

RE: SUMMIT EDEN PHASES 1A, 1B, 1C, 1D

Before the above referenced subdivision is approved by the this office the amount shown below must be deposited with the County Surveyor to be held in Escrow as security in accordance with the Survey Monumentation Improvement Agreement ("the Agreement") which will need to be signed at the time of the Escrow and Checking fee deposit. A copy of the Agreement accompanies this letter for your review.

The Developer shall assure that their surveyor completes the installation of the required monuments in accordance with the Agreement and County Ordinance 26-4-3 paragraph 7 (or current amendment).

SUMMIT EDEN PHASE 1A: 10 MONUMENTS
 SUMMIT EDEN PHASE 1B: 5 MONUMENTS
 SUMMIT EDEN PHASE 1C: 5 MONUMENTS
 SUMMIT EDEN PHASE 1D: 8 MONUMENTS

28 monument(s) @ \$550.00 Escrow deposit for each monument,	Escrow Deposit sub-total	\$ 15,400
plus \$150.00 non-refundable checking fee per monument.	Checking fee sub-total	\$ 4,200
Total Escrow and Checking fee deposit		\$ 19,600

The street monuments shall be constructed in accordance with County Surveyor's monument specifications for Ring & Lid construction and installed at the locations specified on the approved subdivision plat. All other monumentation will be completed in accordance with the policies and/or requirements of the County Surveyor.

It shall be the Developers responsibility to notify this office when the required monumentation has been properly constructed, installed, stamped, punched and ready to be inspected. The Surveyor's Office will notify the Developer of the acceptance of the Improvements after which it shall be the Developers responsibility to request, in writing, reimbursement of the Escrow deposit in accordance with the Agreement. The Checking fee is retained by the County Surveyor and deposited in the Public Land Corner Preservation Fund as per UCA 17-23-19 (other relevant sections of Utah Law are, but not limited to, UCA 17-23-1(3)(vii) and 17-23-17.5).

It should be noted that in the event that it is determined during the initial inspection that the construction of the monumentation does not meet County Standards or is deficient in completion an additional \$100.00 per required monument penalty will be charged for each subsequent inspection trip . The subsequent inspection trip penalty will be retained from the Escrow deposit thus reducing the amount of reimbursement available.

Sincerely,

Larry L. Slagowski, PLS
 Chief Deputy Surveyor

11 | (Summit Eden Phases 1A,1B,1C,1D)
 :
 | Monumentation Improvement Agreement

Weber County Surveyors Office
(801) 399-8006