



**PARK CITY PLANNING COMMISSION MEETING
SUMMIT COUNTY, UTAH
March 9, 2022**

NOTICE OF HYBRID IN-PERSON AND ELECTRONIC MEETING: PUBLIC NOTICE IS HEREBY GIVEN that the Planning Commission of Park City, Utah will hold its regular meeting with an anchor location for public participation at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah 84060 for the purposes and at the times as described below on Wednesday, March 9, 2022. Planning Commission members may connect electronically by Zoom or phone. Members of the public may attend in person or participate electronically. Public comments will also be accepted virtually. To comment virtually, use eComment or raise your hand on Zoom through www.parkcity.org/public-meetings. Written comments submitted before or during the meeting will be entered into the public record but will not be read aloud. For more information on attending virtually and to listen live, please go to www.parkcity.org.

MEETING CALLED TO ORDER AT 5:30 PM.

- 1. ROLL CALL**
- 2. MINUTES APPROVAL**
- 3. PUBLIC COMMUNICATIONS**
- 4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES**

CONTINUATIONS

3805 Fox Tail Trail - Rezone - PL-21-04865. Continue to May 11, 2022.
[Staff Report](#)

3805 Fox Tail Trail - Plat Amendment - PL-21-04826. Continue to May 11, 2022.
[Staff Report](#)

5. REGULAR AGENDA

- 5.A. **9300 Marsac Ave (Sommet Blanc/B2East Parcel)** - Applicant is Requesting Amendments to the Approved Master Planned Development and a Conditional Use Permit for Proposed Development of 49 Residential Units Above Underground Parking, and a 3,600-Square-Foot Public Restaurant. PL-21-04771 & PL-20-04702 (75 mins.)
(A) Public Hearing; (B) Possible Action
[Sommet Blanc DA, MPD Amendments & CUP Staff Report](#)
[DRAFT Sommet Blanc DA, MPD & CUP Final Action Letter](#)

Exhibit A: Applicant Narrative
Exhibit B: Sommet Blanc CUP- MPD Proposal Packet
Exhibit C: Background
Exhibit D: B2 East Subdivision
Exhibit E: 2007 Amended Flagstaff DA
Exhibit F: 2007 Empire Pass B-2 Master Planned Development
Exhibit G: Ordinance 99-30 Flagstaff Annexation
Exhibit H: Resolution 20-99 Large Scale Flagstaff MPD
Exhibit I: Village at Empire Pass Map
Exhibit J: Link to Technical Reports
Exhibit K: 2004 Village at Empire Pass MPD
Exhibit L: Hill Glazier Plans
Exhibit M: Development Covenants 3.6.18
Exhibit N: Parcel B-2 Empire Village Subdivision
Exhibit O: B2 East Sub. Ordinance 2017-07
Exhibit P: Flagstaff Master CCRs Amended 2004
Exhibit Q: EPA Notice of Completion Mazepah Mine Site
Exhibit R: 2007 Hill Glazier Plan and Approved Volumetrics 4-24-2006
Exhibit S: Admin CUP for Retaining Walls Greater than 6'™ in height Action Letter 6-18-21
Exhibit T: Admin CUP for Temp. Sales Trailer Approval Letter
Exhibit U: Hales Engineering Sommet Blanc Trip Generation Study
Exhibit V: Preliminary Construction Mitigation Plan
Exhibit W: B2 East Access Easement with Redus Park City re. access to Villas
Exhibit X: Civil Drawings for Mid Mountain Trailhead Parking Lot
Exhibit Y: UDOT Conditional Access Permit for Curb Cut for Villa Units, Roundabout & Ped Crossing
Exhibit Z: Elevation Heat Map
Exhibit 1: Overall Grading Plan
Exhibit 2: Housing Mitigation Plan
Exhibit 3: Public Comment
Exhibit 4: Guardsman Pass and Mid Mountain Trial Parking Lot Proposal
Exhibit 5: Empire Pass Design Guidelines " Book V
Exhibit 6: Empire Pass Design Review Board Preliminary Approval 6.11.21
Exhibit 7: Empire Pass Design Review Board Preliminary Approval 7.28.21
Exhibit 8: Analysis of Sommet Blanc CUP Hill Glazier Challenges
Exhibit 9: Overall Retaining Wall Plans and Renderings
Exhibit 10: Flagstaff Annexation and Empire Pass Units and Unit Equivalents Analysis Table
Exhibit 11: 9.8.21 Height Proposal
Exhibit 12: B2 East Recorded Sewer Access Easement
Exhibit 13: Arborist Report 10.31.21
Exhibit 14: DV Lucky Jack Tree Island Letter 2021
Exhibit 15: Hales Engineering Sommet Blanc Trip Generation Study 1/252/2
Exhibit 16: Attorney Letter from Applicant Regarding Twisted Branch Road

6. ADJOURN

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Planning Department at 435-615-5060 or planning@parkcity.org at least 24 hours prior to the meeting.

***Parking is available at no charge for Council meeting attendees who park in the China Bridge**

parking structure.

Planning Commission Staff Report

Subject: Fox Tail Rezone
Application: PL-21-04826
Author: Browne Sebright
Date: March 9, 2022
Type of Item: Legislative – Plat Zoning Map Amendment



Recommendation

Open a public hearing and continue the item to May 11, 2022.

Description

Applicant:	Douglas Ogilvy, REDUS Park City, LLC
Location:	3805 Fox Tail Trail (Parcel No. PCA-S-98-SEC-11)
Zoning District:	Estate and Recreation Open Space
Adjacent Land Uses:	Residential, Open Space
Reason for Review:	Subdivisions require Planning Commission review and recommendation and City Council review and action.

Summary

The Applicant continues to work on modifying the proposal and Staff will review the materials as they are submitted. The Applicant is preparing an alternative plan to present to Planning Commission for consideration.

Planning Commission Staff Report

Subject: Fox Tail Subdivision
Application: PL-21-04826
Author: Browne Sebright
Date: March 9, 2022
Type of Item: Administrative – Plat Amendment



Recommendation

Open a public hearing and continue the item to May 11, 2022.

Description

Applicant:	Douglas Ogilvy, REDUS Park City, LLC
Location:	3805 Fox Tail Trail (Parcel No. PCA-S-98-SEC-11)
Zoning District:	Estate and Recreation Open Space
Adjacent Land Uses:	Residential, Open Space
Reason for Review:	Subdivisions require Planning Commission review and recommendation and City Council review and action.

Summary

The Applicant continues to work on modifying the proposal and Staff will review the materials as they are submitted. The Applicant is preparing an alternative plan to present to Planning Commission for consideration.

Planning Commission Staff Report



Subject: Sommet Blanc/B2 East Conditional Use
Permit and Amendments to Pod B2 Master
Planned Development and Flagstaff Development Agreement

Applications: PL-20-04702, PL-21-04771

Author: Makena Hawley, Planner II

Date: March 9, 2022

Type of Item: Administrative – Conditional Use Permit, MPD Amendment &
Development Agreement Amendment

Recommendation

Staff recommends the Planning Commission re-open and close the public hearing and consider approving 1) an Amendment to the 2007 Pod B2, Empire Pass MPD; 2) an amendment to the 2007 Flagstaff Development Agreement; and 3) a Conditional Use Permit for Pod B2 East, Sommet Blanc Residences, at 9300 Marsac Avenue, according to the findings of fact, conclusions of law, and conditions of approval as outlined in the Draft Final Action Letter (Attachment 1).

Description

Applicant: Sommet Blanc Residences I LLC /
Douglas Ogilvy and Hannah Tyler

Location: 9300 Marsac Avenue

Zoning District: Residential Development (RD) within a Master Planned
Development (MPD)

Adjacent Land Uses: Empire Day Lodge, Montage Deer Valley, Deer Valley Ski
Resort

Reason for Review: The Planning Commission takes final action on Conditional
Use Permits and Modifications to Master Planned
Developments and Development Agreements

Abbreviations

AUE	Affordable Unit Equivalent
CC&R	Covenants, Conditions, and Restrictions
COA	Conditions of Approval
CUP	Conditional Use Permit
DA	Development Agreement
DRB	Design Review Board
EPA	Environmental Protection Agency
EPMOA	Empire Pass Master Owners Association
HG	Hill Glazier
JSSD	Jordanelle Special Service District

LMC	Land Management Code
MPD	Master Planned Development
PUD	Planned Unit Development
RD	Residential Development
SB	Sommet Blanc
SF	Square Feet
TBR	Twisted Branch Road
UE	Unit Equivalent
VMPD	Village Master Planned Development

Terms that are capitalized as proper nouns throughout this Staff report are defined in LMC § [15-15-1](#).

Summary

The most updated information is a request from the Applicant to allow a 3-foot height exception above the proposed roof height to allow only for screened mechanical equipment, elevator overruns and items included in LMC [§15-2.13-4\(A\) Height E](#).

The proposed development site is Lot 1 of the B2 East Subdivision (Parcel B2 East, Exhibit D), located at 9300 Marsac Avenue, adjacent to the Deer Valley Empire Day Lodge and the Montage Deer Valley. The Lot is located in the Residential Development (RD) zone. Multi-Unit Dwellings are a Conditional Use in the RD zone. The project is subject to the requirements of the 2007 Empire Pass B-2 Master Planned Development (MPD, Exhibit F) and the [2007 Amended Flagstaff Development Agreement](#) (Development Agreement or DA, Exhibit E).



The Applicant and the Planning Commission continued to work through the proposal mitigations and design in several meetings (additional information of past meetings and renderings can be found in Exhibit C):

Meeting Date	Meeting Type	Links
March 24, 2021	Work Session	Staff Report ; Minutes , p.3
June 9, 2021	Work Session	Staff Report ; Minutes , p.3
September 8, 2021	Work Session	Staff Report ; Minutes , p.3
October 27, 2021	Regular Agenda	Staff Report ; Minutes , p.17
December 8, 2021	Regular Agenda	Staff Report ; Minutes , p.11
February 9, 2022	Regular Agenda	Staff Report ; Minutes , p.12

December 8, 2021

At the Planning Commission meeting, the Applicant proposed a new design in response to the Planning Commission's earlier concerns over extensive site disturbance and retaining site vegetation by eliminating the two (2) duplex buildings and the ancillary ski building and incorporating the density into the three (3) larger multi-unit buildings in the proposal. The Commission expressed interest in discussing this further as the proposed changes minimizes the site disturbance and eliminates the curb cut on 224 despite resulting in a greater height accommodation of one story each on Building B (94' above USGS 8362') and C (106' above USGS 8376.5').

January 26, 2022

The Applicant submitted modified plans displaying the updates discussed at the previous meeting. The submittal proposes three **(3) condominium buildings with 49 residential units above underground parking, and a 3,600 square foot public restaurant** (Exhibit B).





Latest Site Plan and Rendering

February 9, 2022

The plans presented at the end of the December 8th, 2022 meeting were considered for review by the Planning Commission and are the same as the above submittal. Items of discussion noted included Dark Sky lighting concerns, Twisted Branch Road, and a height consideration in regard to the change in site plan.

At the meeting, a request was made to create a COA to cap the height request at the maximum USGS from grade that the applicant was currently proposing. This consideration would effect the building by effectively not allowing any mechanical equipment or elevator bump outs on the roof.

In the latest version, the Applicant requests the following approvals, modifications, and amendments:

1. Conditional Use Permit:

- **49 residential units** above underground parking in three (3) multi-unit condominium buildings labeled A, B, and C with a **3,600-sf public restaurant**.
- Fewer units than entitled under the 2007 MPD (Applicant proposes 49, Maximum of 70); however, utilizing the same 81 Unit Equivalents (UEs) of residential Density (one Residential Unit Equivalent is equal to 2,000 square feet, totaling 162,000 square feet of residential development).
- In the RD zone a Multi-Unit Dwelling is a Conditional Use and is defined as *“a Building containing four (4) or more Dwelling Units.”*
- Due to the number of units, the project is also subject to provisions of LMC Chapter 15-6, Master Planned Development.

2. Pod B2 MPD – Amendment to Approved Volumetrics and Height

The Applicant is requesting approval to modify the Conditions of Approval #1 and #2 regarding the allowed Volumetrics and Building Height within Pod B2 MPD pursuant to LMC [Chapter 15-6](#), Master Planned Developments.

- COA #1 (of MPD) “The building plans and volumetrics for the project shall meet substantial compliance with the drawings dated April 24, 2006, and as reviewed by the Planning Commission.”
 - COA #2 (of MPD) “A height exception for the Montage to 114 feet above a benchmarked grade (USGS 8346”) is granted with the Master Plan. A height exception for the east side condominiums to 82 feet above benchmarked grades (USGS 8330' for north datum point and 8380' for south datum pint) is granted with the Master Plan. Datum points are indicated on the site plans reviewed by the Planning Commission.” (Pg. 9 of Exhibit H)
3. Amendment to Flagstaff Development Agreement 2.1.2 Design Guidelines
Amend the current Empire Pass Design Guidelines by creating a new section specific to the B2East property to reflect the more “mountain modern” design aesthetic. Recent examples of this more mountain modern style of architecture include One Empire Pass, and the new Goldener Hirsch Residences.
 4. Mid-Mountain Trail
The Applicants propose to reroute Mid-Mountain Trail and updates to the existing parking area with an added, adjacent trailhead kiosk (Exhibit 4).

Condition of Approval #25: The final proposed parking lot and Mid-Mountain Trail re-route will require approval from the City’s Trails and Open Space Manager.

Background

Due to the lengthy history of the property, the full Background section can be found as Exhibit C.

Analysis

Documents that govern the site include, but are not limited to, the following:

- The [2007 Empire Pass B-2 Master Planned Development](#) (MPD, Exhibit F);
- The [2007 Amended Flagstaff Development Agreement](#) (DA, Exhibit E); including the [14 specific technical reports \(Exhibit J\)](#);
- The [2017 B2 East Subdivision](#) approval ([Ordinance 2017-07](#), Exhibit D);
- The Land Management Code [§ 15-1-10](#) Conditional Use Permit; and
- The Land Management Code [Chapter 15-6](#) Master Planned Development Requirements.

General Plan

The proposed development is located within [Neighborhood 9: Upper Deer Valley](#) (Pg. 245), which is characterized by resort-oriented development, prioritization of open space, an emphasis on transportation and improved connectivity, environmentally responsible second homes, and a focus on the aesthetics of massing and design of new development.

Substantive Modification to the B-2 East Master Planned Development

Per LMC [§ 15-6-4\(K\)](#), MPD Modifications require the Planning Commission to determine whether the amendment is Minor or Substantive. The criteria for MPD amendments are set forth in LMC [§ 15-6-4](#). A key issue for a substantive modification is whether it creates additional impacts, and that would require a review of the entire MPD. The triggers include, but are not limited to, a change to a condition of approval or a finding of fact, a change in use, or a change in floor area that triggers additional off-street parking, additional floor area, or an increase in traffic.

During the March 24, 2021 meeting ([See Minutes here](#)) the Planning Commission determined the Applicant's proposed modifications are a Substantive Modification, requiring Planning Commission review and approval.

The Applicant is requesting the following modifications:

Pod B2 MPD	
Existing:	Proposed:
COA #1 "The building plans and volumetrics for the project shall meet substantial compliance with the drawings dated April 24, 2006, and as reviewed by the Planning Commission."	COA #1 "The building plans and volumetrics for the project shall meet substantial compliance with the drawings dated February 9, 2022, and as reviewed by the Planning Commission."
COA #2 "A height exception for the Montage to 114 feet above a benchmarked grade (USGS 8346') is granted with the Master Plan. A height exception for the east side condominiums to 82 feet above benchmarked grades (USGS 8330' for north datum point and 8380' for south datum pint) is granted with the Master Plan. Datum points are indicated on the site plans reviewed by the Planning Commission." (Pg. 9 of Exhibit H)	COA #2 "A height exception for the Montage to 114 feet above a benchmarked grade (USGS 8346') is granted. A height exception for the east side condominiums above benchmarked grades is granted as follows: Building A 82' above USGS 8345' Building B 94' above USGS 8362' Building C 106' above USGS 8376'6"

All Master Planned Developments shall contain the following minimum requirements in accordance with [LMC § 15-6-5](#). The Applicant is requesting an amendment to the MPD to update the drawings, the site plan, volumetrics, and height, discussed in detail below.

(A) DENSITY. Type of Development, number of units, and Density permitted on a given Master Planned Development Site based on a Site Suitability Analysis. The Master Planned Development shall not exceed the maximum Density in the Zoning District, except as otherwise provided in this Section. The Site shall be looked at in its entirety.

Requires an Amendment to the MPD.

Per the 2007 DA the Mountain Village was granted a maximum density of 785 Unit Equivalents in a maximum of 550 dwelling units. Following the DA amendment, the Pod B2 MPD approval allotted the east side of B2 81 Unit Equivalents (Per LMC [§ 15-6-8](#), one UE equates to 2,000 sf of Multi-family dwelling floor area or 1,000 sf of commercial or office floor area). Therefore, 81 UEs would be considered 162,000 sf. Finally, the 2018 B2 East subdivision approval confirmed the 81 UEs but added the restraint that they must be constructed in a maximum of 70 units' total.

The DA included a total of 75,000 sf of Resort Support Commercial uses. Out of the total granted Resort Support Commercial square footage, B2 East was allotted 3,600 sf.

Currently, the Applicant proposes the following:

	Approved:	Proposed:	Complies:
Residential Units:	70	49	Complies
Residential UEs:	81	81	Complies
Residential SF:	162,000 sf	162,000 sf	Complies
Resort Support Commercial:	3,600 sf	3,559 sf	Complies
Affordable Units:	4.2	6	Complies.
Affordable UEs:	(Only number of units were required)	5.9	Per LMC § 15-6-8 on-site AUEs do not count towards the residential UEs of the MPD and the Applicant exceeds the required AUEs for the project.
Accessible Units:	Not required	2	Complies Per LMC § 15-6-8 "Required ADA units do not count towards the residential UEs of the MPD." See ADA analysis below.

In terms of number of units and allotted Unit Equivalents, the Sommet Blanc development complies with the density permitted under the 2007 Amended DA and MPD.

ADA Units

The Applicant proposes that Sommet Blanc intends to meet the Americans with Disabilities Act definition of a 'Place of Public Accommodations', and they are therefore required to provide the proposed two ADA dwelling units. Each ADA unit is 810 sf located

in Unit A-21 and B-21. The Applicant argues the two units are exempt under LMC [§15-6-8](#) because they are required for the certification and are therefore exempt from density. As a result, the units would not count towards the 81 UE limit / 162,000 sf of salable square footage as they will be owned by the HOA and provided for guests who require such accommodations. This has been the case with previous development at Empire Pass such as One Empire Pass and The Argent at Empire Pass. These units will be Common Property of the HOA, and available for guests requiring accessible accommodations.

This is a voluntary measure taken by the developer. The LMC does not require ADA units to be constructed per the code however to gain an accreditation such as 'Place of Public Accommodations', has its own requirements that the Applicant has proposed to meet and has been reviewed by the Planning Department and the Building Department.

Condition of Approval #42: The two (2) ADA units will be owned and maintained in perpetuity as ADA units by the HOA. The CCRs shall designate the City as a third party beneficiary for enforcement purposes and prohibit the third party sale of the ADA units, unless a density increase and plat amendment is approved by the City.

MAXIMUM ALLOWED BUILDING FOOTPRINT FOR MASTER PLANNED DEVELOPMENTS WITHIN THE HR-1 DISTRICT (Not applicable)

(B) SETBACKS. *The minimum Setback around the exterior boundary of a Master Planned Development shall be twenty-five feet (25') for Parcels greater than two (2) acres.*

Complies.

Per the MPD Analysis Section (C) (incorporated in the Findings of Fact #14) *"the annexed area of Flagstaff Mountain was granted a large-scale MPD at the time of annexation with specific development pods. The Planning Commission and Staff have consistently maintained that the setback requirement is fulfilled at the annexation boundary and does not need to be met within the defined development pods."* (Exhibit F)

Lot 1 adheres to minimum RD zone setbacks including (See Exhibit B):

Front Setbacks	Minimum 25 feet to front facing garage, 20 feet to building. Proposed front setback is 20 feet (garage is setback approximately 35 feet). Complies.
Rear Setbacks	Minimum 15 feet rear setbacks. Proposed minimum rear setback is 15 feet. Complies.
Side Setbacks	Minimum 12 feet side setbacks. Proposed minimum setback is 12 feet. Complies.

(C) OPEN SPACE. *All Master Planned Developments shall contain a minimum of sixty percent (60%) open space.*

Complies. Additional Open Space proposed with new proposals.

Per the MPD in Analysis section (D) (incorporated in the Findings of Fact #14): *"As with the setback requirement in (C) above, the annexation area contains more than the minimum 60% requirement. The development of the Village (pods A, B-1 and B-2) is*

limited to 87 acres, as amended, within the original 1550 acres or 5% of the land area.”
(Exhibit F)

Per the change in site plan and the elimination of the villas, the Applicant is also proposing to record a Conservation Easement on 3.06 acres (out of a total of 6.91 acres) of Lot 1. This is an additional 44.3% of Open Space located on the Lot itself.

(D) OFF STREET PARKING.

Complies. (Evaluated in CUP Staff Analysis Off Street Parking Section Below.)

(E) BUILDING HEIGHT.

The Applicant requests modifications to approvals.

On February 9th, 2022, a request was made by the Commission to create a COA to not allow any rooftop equipment on the buildings, essentially capping the height maximum that the Applicant had requested. During the meeting the Applicant was amenable to this request.

After deliberating with the architectural team, the Applicant found that the height cap would be difficult to comply with as the building is designed, mainly due to screened mechanical equipment and elevator overruns.

Per LMC §15-2.13-4(A) permits height exceptions for “Water towers, mechanical equipment, and associated Screening, when enclosed or Screened, may extend up to five feet (5') above the height of the Building.” The Applicant requests to utilize this height exception for only the necessary mechanical equipment, elevator overruns, and other related screening for a maximum of 3 feet above the permitted building height.

The approved design and volumetrics, referred to as the ‘Hill-Glazier Plan’ (Exhibit L) originally limited the condominiums to 33 feet in height from final grade (Noted in MPD Action Letter, Exhibit F) but was increased to 82 feet in the MPD’s COAs. The Applicant is proposing to set a height limit of **94 feet above a “benchmark grade” location for Building B and 106 feet above a “benchmark grade” location for Building C**, as was done with the Montage. At the Montage, height was measured from the ‘benchmark’ location of 114’ above the entry lobby. The proposed benchmark location for the condominium buildings at Sommet Blanc is the grade of the entry-level for Building A, and the skier entry/amenity level for Buildings B and C. Building A is compliant with the MPD conditioned exception of 82’ above benchmark (at 82’). Such a height determination would result in varying heights from different portions of the building relative to the benchmark.

The benchmark grade was chosen to measure height for these Pods due to the heavy disturbance within the development Pods from mining activity that took place around the Mazepah Mine Shaft and the Daly West Head Frame and the subsequent soil remediation and infill of clean soil.

During the Flagstaff Mountain MPD and Pod-B2 MPD the Planning Commission determined that, both the Montage and the “east side condominiums” (aka current Sommet Blanc) warranted height exceptions of 114 feet and 82 feet (respectively) above specified benchmark grades (Exhibit F).

The UEs are consistent, so the only square footage that is not counted in either plan is the Residential Accessory Use, that totals 141,660 square feet including the following:

- 28,963 sf of amenity space (skier lounges, ski/boot storage, fitness facilities, yoga and massage rooms, swimming pool and hot tubs, board rooms and concierge desk)
- 3,474 sf of back of house
- 33,800 sf of circulation
- 1,103 sf of bathrooms
- 12,025 sf of storage
- 8,941 sf of mechanical, electrical, and plumbing
- 53,354 sf of parking

The other categories not included in the Residential Accessory square footage are as follows:

- 6,228 sf of Accessible and Affordable
- 3,559 sf Restaurant
- 162,000 sf of Residential Saleable

The Applicant states they cannot provide a volumetric comparison with the 2006 HG plans because the Residential Accessory Use square footage was not identified at that time.

For MPD applications the Planning Commission may consider an increase in Building Height based on a **Site-Specific** analysis. LMC [§ 15-6-5\(F\)](#) states the Applicant must request a Site-Specific determination and shall bear the burden of proof to the Planning Commission that the necessary findings for an increase in Building Height can be made according to the Subsections below (Applicant’s review can be found in Exhibit A – Applicant Narrative – Pages 9 & 10):

1. The increase in Building Height does not result in increased square footage or Building volume over what would be allowed under the zone-required Building Height and Density, including requirements for Facade variation and design, but rather provides desired architectural variation, unless the increased square footage or Building volume is from the Transfer of Development Credits;
2. Buildings have been positioned to minimize visual impacts on adjacent Structures. Potential problems on neighboring Properties caused by shadows, loss of solar Access, and loss of air circulation have been mitigated as determined by the Site specific analysis;
3. There is adequate Landscaping and buffering from adjacent Properties and Uses;
4. Increased Setbacks and separations from adjacent projects are proposed;
5. The additional Building Height results in more than the minimum Open Space required and results in Open Space that is publicly accessible

The maximum Building Height proposal of 94 and 106 feet above benchmark grade for Buildings B and C is a change requested by the Applicant in response to Planning Commission feedback on the design and disturbance of the site. The Applicant proposes elimination of the villas, the ancillary ski building, and the additional curb cut higher up on SR-224 for a preferred site plan. The re-design requests additional height exceptions to incorporate the villa units into the condominium lodges without increasing the building footprint. The re-design also decreases the Limits of Disturbance (LOD) and increases the amount of Open Space on the parcel, as well as preserves Significant vegetation which was looked upon favorably by the Planning Commissioners during the December 8, 2022, Planning Commission meeting. The increase in height on the southeast end of the property gradually decreases by lowering the building heights on the northwest end of the property closest to the road and the Empire Day Lodge.

Staff finds the proposed Building Height appropriate for the site as the height increase provides desired architectural variation with appropriate façade variation without increasing the overall square footage. In addition, Staff notes that the proposed building heights will have no negative impacts on adjacent properties in terms of shadows, loss of solar access, or air circulation because adjacent buildings are too far from the proposed development (The Day Lodge located 50 feet from the closest point of Building A).

Below are a few examples of the solar access and shadows to be expected with relative changes. (These samples were submitted in April 2021, so they do not exhibit the full expectation for the new proposal – important main differences include: Building B and C are one floor higher and the villas and ski ancillary building do not exist). The below photos are to provide a general expectation for the buildings impact on the solar activity of and around the site:

SPRING / FALL EQUINOX

- Orientation of building massing maximizes solar exposure for landscape courtyard and restaurant patio
- No impact on solar exposure for Empire Day Lodge



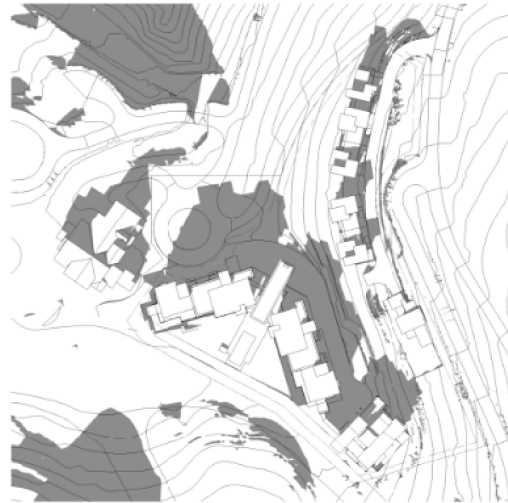
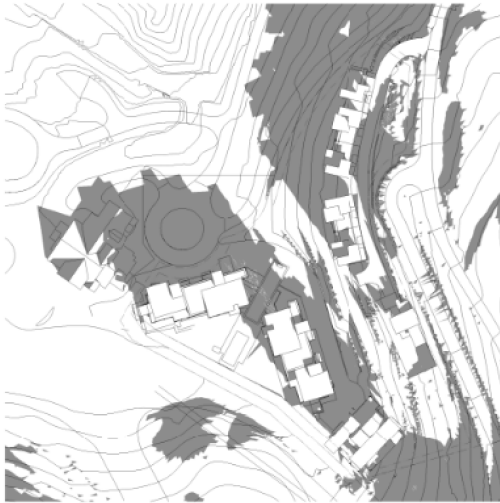
10AM



2PM

WINTER SOLSTICE

- Orientation of building massing maximizes solar exposure for landscape courtyard and restaurant patio
- No impact on solar exposure for Empire Day Lodge



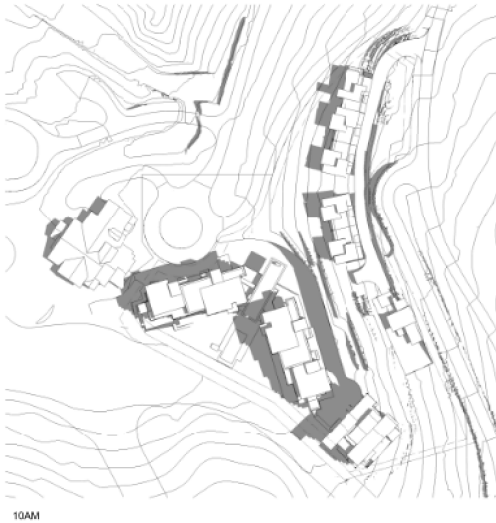
SPRING / FALL EQUINOX

- Orientation of building massing maximizes solar exposure for landscape courtyard and restaurant patio
- No impact on solar exposure for Empire Day Lodge



SUMMER SOLSTICE

- Orientation of building massing maximizes solar exposure for landscape courtyard and restaurant patio
- No impact on solar exposure for Empire Day Lodge

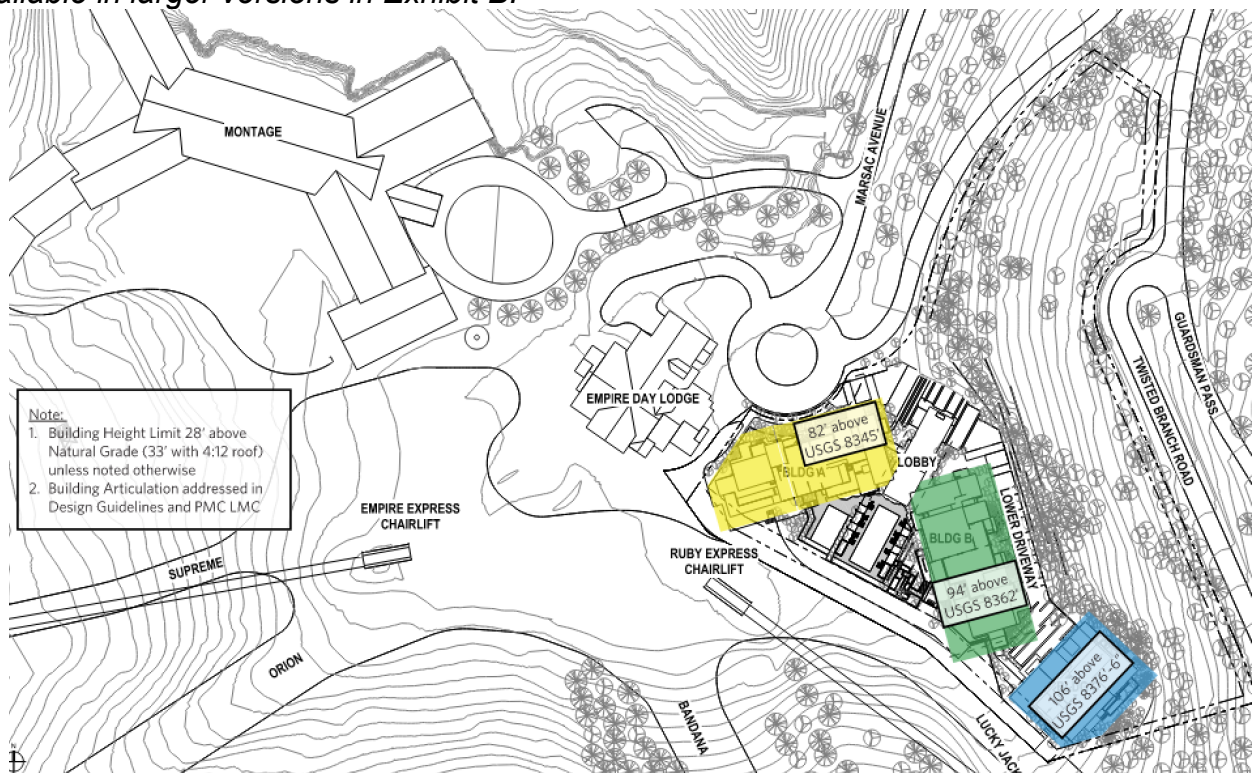


10AM



2PM

Below are Height and visual analysis renderings submitted by the Applicant, also available in larger versions in Exhibit B.



Existing condominium lodge building heights:

	Ridge Height Above Road	Ridge Height Above Slopeside Patio	Ridge Height Other
Montage	114'	102'	165' above Event Lawn
One Empire Pass	110'	85'	97' above Pool Deck
Talisker Tower Residences	103'	78'	
Empire Residences	95'	88'	
Argent	91'	85'	131' above Marsac

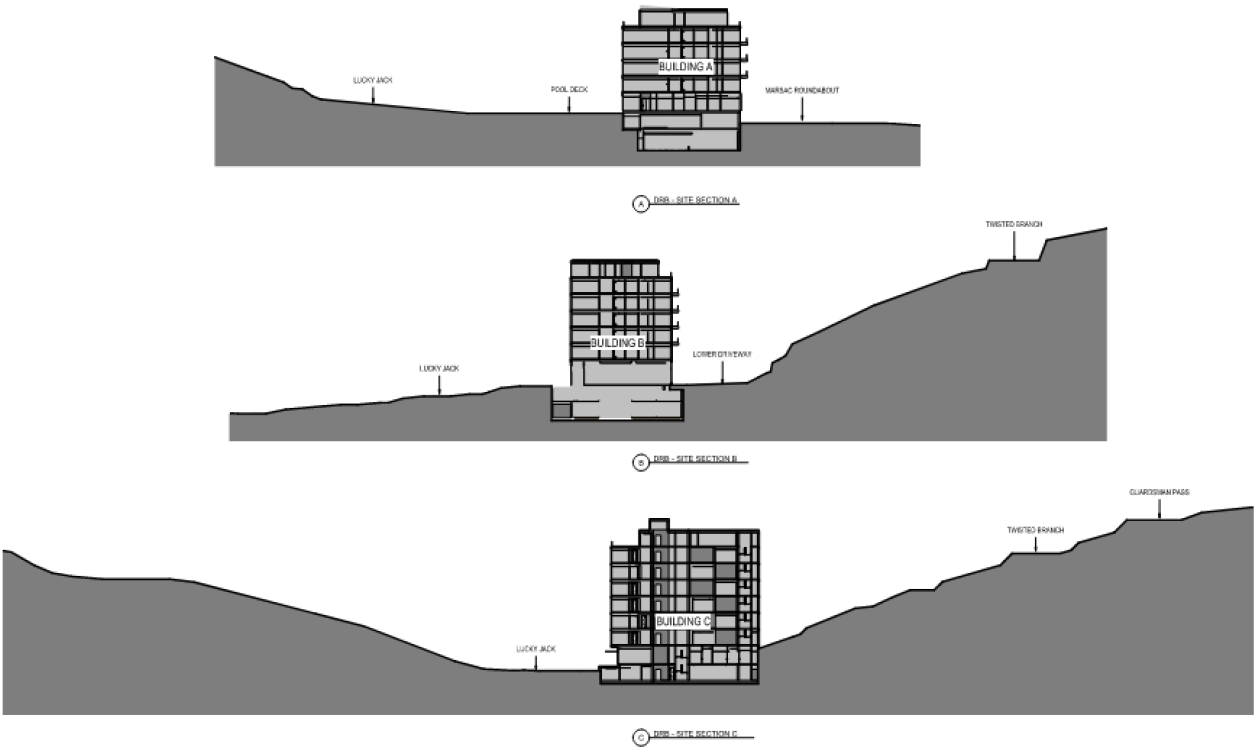
The following are proposed maximum building heights for the three condominium lodges:

	Height	Benchmark	Location
Building A	82'	8,345'	Entry Lobby
Building B	94'	8,362'	Skier Lobby/Amenity Level
Building C	106'	8,376' 6"	Skier Lobby/Amenity Level

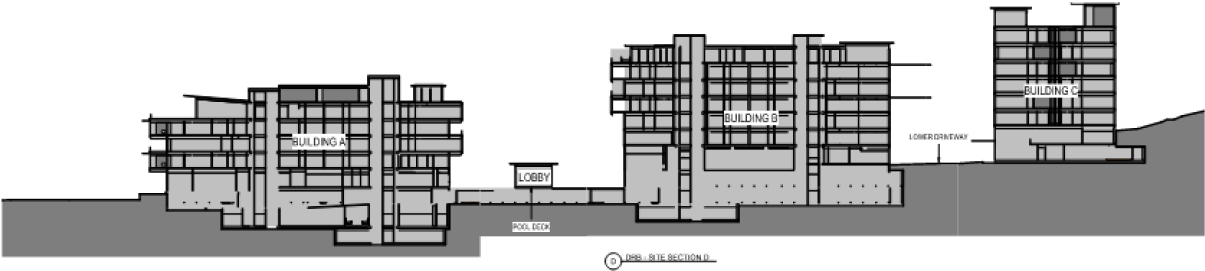
With the proposed volumetrics and design, maximum building heights relative to roads, driveways and slopeside patios will be as follows:

	Ridge Height Above Road	Ridge Height Above Slopeside Patio	Ridge Height Other
Building A	89' (Marsac)	79' (Pool Deck)	80' (Arrival)
Building B	100' (Driveway)	98' (Après Patio)	110' (Pool Deck)
Building C	116' (End Driveway)	105' (Lounge Patio)	

SITE SECTIONS



SITE SECTIONS





1 AREA PLAN - BLDG A PENTHOUSE
SCALE: 1/32" = 1'-0"

2 AREA PLAN - BLDG B PENTHOUSE
SCALE: 1/32" = 1'-0"

3 AREA PLAN - BLDG C PENTHOUSE
SCALE: 1/32" = 1'-0"

Penthouse Floor Area Plans

(F) SITE PLANNING. *An MPD shall be designed to take into consideration the characteristics of the Site upon which it is proposed to be placed. The project should be designed to fit the Site, not the Site modified to fit the project. The Applicant shall address the following in the Site planning for a Master Planned Development.*

Complies.

The Applicant proposes amending the Site Plan for the following reasons:

1. The Hill Glazier (HG) plan was an afterthought when reviewing the development with the Montage. The Applicant reports the HG plans had little or no engineering documents provided with the approved drawings thus making it difficult to consider the feasibility of the HG plans. From reviewing City documents, only the conceptual drawings with some measurements were found, which supports this claim (Exhibit L).
2. The HG plan would not comply with the International Fire Code:

D105.3 Proximity to Building

One or more of the required access routes meeting this section shall be located not less than 15 feet and not greater than 30 feet from the building and shall be positioned

parallel to one entire side of the building. The side of the building on which the aerial fire apparatus access road is positioned shall be approve by the fire code official.

3. In the 2018 Subdivision Plat, the subdivision created one lot and one parcel. Lot 1 is 6.91 acres in area and Parcel A is 0.94 acres in area. Per the approved plat, no density was assigned to Parcel A, and the parcel would be expected to be used in connection with Deer Valley Resort and similar activities in the future.

The Applicant provided a comparison study prepared by the architect showing the footprint of the HG site plan from 2006 and the current proposal. The comparison study is limited to building footprints and is not a gross square footage comparison for each development.

	Total Site Area:	Proposed Footprint:	Area percentage of Footprint:
Hill Glazier	300,857 sf.	57,601 sf.	19%
Sommet Blanc	300,857 sf.	41,817 sf.	12%

- Clustering of the buildings to retain 44% more Open Space on the site is preferable to spreading out the square footage and site disturbance with the 4 villas and, and ancillary ski building.
- One less street and curb cut and additional access road proposed compared to December 2021 proposal.
- The area of proposed development under the three (3) buildings is historically heavily disturbed.
 - Mazepah Mine-Shaft Operations
 - Mine Remediation
 - Previous site of Real Estate offices
 - Improved safety with one less road and curb cut off of SR-224 compared to December proposal.
 - Reduces site disturbance significantly and retains much more Significant vegetation than previous plans (compared to HG and December proposal with 4 villas)
 - Reduced all the retaining walls proposed to support the street to the villas.

The Sommet Blanc proposal is located over the now demolished Discovery Gallery sales office and East-West development office. Additionally, the site includes the concrete covered shaft of the old Mazepah mine shaft, sealed in 2016. Significant excavation was required for health and safety reasons as well as governed by the DA. The site is already heavily disturbed from previous mining activity and subsequently the cleanup and refill of clean soil in the area per the DA.

Although much of the Development Pod has been disturbed to create SR-224 and Twisted Branch Road, it is preferable to keep the highest amount of disturbance in an area that has already been disturbed, thus causing less development impact on the vegetation, soils, root activity, and habitat of the area.

**(G) Landscape and Lighting
Complies.**

Please see review under CUP Staff analysis Review item #7.

**(H) Sensitive Lands Compliance
Complies.**

Please see review under CUP Staff analysis Review item #9.

**(I) Employee/Affordable Housing
Complies.**

The total on-mountain remaining requirement for the Flagstaff DA is 4.03 Affordable Unit Equivalents (AUEs). Following feedback from the Planning Commission during the past Work Sessions, the Applicant has increased the on-site Affordable units to a total proposal of eight (8) Affordable housing units (Six Studio apartments and two, two-bedroom units), totaling 4,683 square feet.

Per 2.10.5 in the DA, one AUE equals 800 square feet.

Per Resolution 05-2021 Affordable Housing Guidelines, one AUE equals 900 square feet of net livable space.

The proposed square footage of the AUE net livable space is 4,683 sf. This is a total of 5.9 AUEs per the DA and a total of 5.2 AUEs per the Housing Resolution, both scenarios being larger than 4.03. The floor plans can be viewed in Exhibit B (pages 40, 41, 49 and 58).

Condition of Approval #44: The Applicant will be required to meet the 4.03 AUEs with a total of 5.9 AUEs (a total of 4,683 sf) to meet the Affordable Housing obligation.

**(J) Child Care
Complies.**

No childcare facility is proposed for this site.

**(K) Mine Hazards
Complies.**

The property is the site of the historic Mazepah mine shaft. In September 2016, the Applicant began working under an Administrative Settlement and Order on Consent for Removal Action with the EPA permit to remediate and remove mine soil on the site and to close an old mine shaft on the property. The mine shaft was permanently closed in 2016 under geotechnical supervision. Significant amounts of soil downstream from the mineshaft was contaminated and had to be removed.

In August of 2018, the EPA confirmed that all work performed on site was in accordance with EPA requirements (Exhibit Q). Following cleanup of the site the grade at the center of the development site on the property was approximately 15-20' below grade of the adjacent *Lucky Jack* ski trail, according to the

Applicant.

Due to environmental cleanup required for the mine tailing remediation, clean fill was imported from sites elsewhere within the Flagstaff Annexation area. The grade on-site is still well below the adjacent ski trail in anticipation of underground parking. (Exhibit B)

**(L) Historic Mine Waste Mitigation
Complies.**

The map and technical report regarding the mine soil and physical mine hazard mitigation plan can be found in Exhibit J (Technical reports Volume 1, Exhibit 1). Please see additional review above.

**(M) General Plan Overview
Complies.**

Please see review under CUP Staff analysis item #16.

**(N) Historic Sites
Complies.**

There are no designated Historic Sites on the B2-East development Lot per the in-depth analysis included in the Historic Preservation Technical Report completed with the DA (Exhibit J).

**(O) Land Management Code Review
Complies.**

The proposal complies with the RD Zoning District Requirements outlined in LMC [§ 15-2.13](#).

Zoning Requirement	Analysis of Proposal
Lot Size	No minimum lot size. Lot 1 is approximately 6.91 acres (300,999.6). <u>Complies.</u>
Front Yard Setbacks	Please see Review C under the MPD analysis above. <u>Complies.</u>
Rear Yard Setbacks	
Side Yard Setbacks	

Conditional Use Permit for a Multi-Use Dwelling in the RD Zone

Underlying Zoning

LMC [§ 15-2.13-1](#), Residential Development (RD) District notes that the purpose of the RD District is to:

- A. allow a variety of Residential Uses that are Compatible with the City's Development objectives, design standards, and growth capabilities,
- B. encourage the clustering of residential units to preserve natural Open Space,

- minimize Site disturbance and impacts of Development, and minimize the cost of municipal services,
- C. allow commercial and recreational activities that are in harmony with residential neighborhoods,
- D. minimize impacts of the automobile on architectural design,
- E. promote pedestrian connections within Developments and between adjacent Areas; and
- F. provide opportunities for variation in architectural design and housing types.

Pursuant to Land Management Code LMC [§15-1-10](#), there are certain Uses that, because of unique characteristics or potential impacts on the municipality, surrounding neighbors, or adjacent land Uses, may not be Compatible in some Areas or may be Compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

The Planning Department evaluates proposed Conditional Uses and may recommend conditions of approval to preserve the character of the zone, and to mitigate potential adverse effects of the Conditional Use.

A Conditional Use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed Use in accordance with applicable standards.

If the reasonable anticipated detrimental effects of a proposed Conditional Use cannot be substantially mitigated by the proposal or imposition of reasonable conditions to achieve compliance with applicable standards, the Conditional Use may be denied.

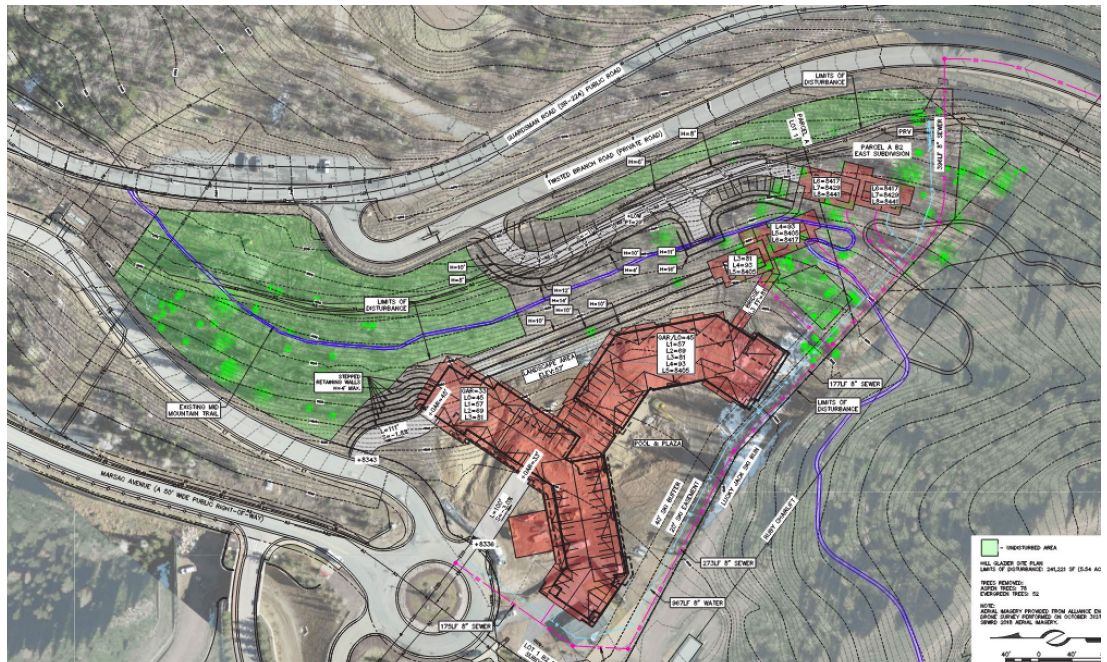
The Planning Commission must review all proposed Conditional Uses according to the following procedure, unless a subsequent provision of this LMC specifically sets forth an administrative approval process for a specific Conditional Use, in which case that section shall control. The 16 criteria the Planning Commission evaluates for Conditional Use Permit review are outlined below:

1. Size and location of the Site;
No unmitigated impacts.

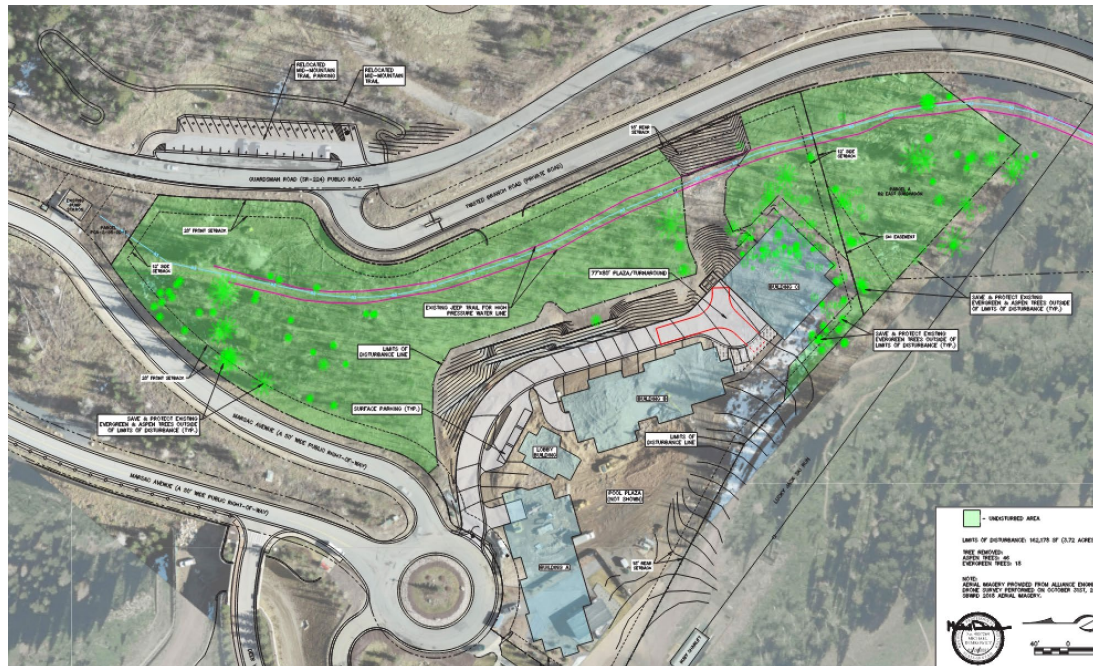
The Applicant is proposing a new arrangement and design for Lot 1 of the B2 East Subdivision in the RD zone under the Flagstaff DA. The chosen location is within the one of the three development Pods (A, B1 and B2) known as the Mountain Village of the Flagstaff DA. Out of the 1,750 acres of the Flagstaff annexation, the Pods constrained development within 87 acres. Staff finds that the current Sommet Blanc proposal is within the prescribed development pod.

Renderings created by the architect indicate the previously approved footprint of the HG plan in comparison with the SB proposal. The footprint calculation exhibited a reduction of the building footprint from 19% proposed for HG to 12% for Sommet Blanc.

Site Plan for Hill Glazier:



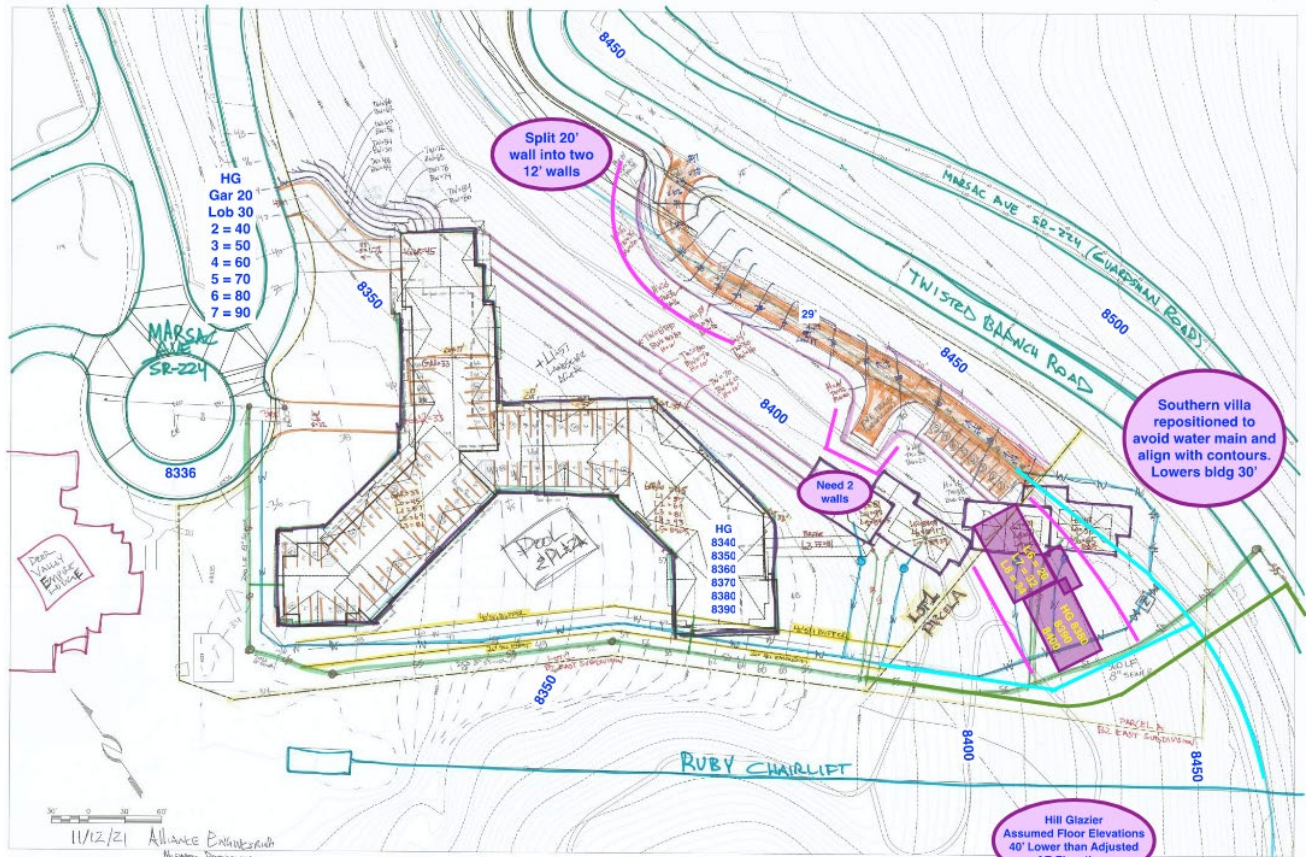
Site plan for Sommet Blanc:



The differences between the site plans include:

1. A single curb cut proposed off the round-about compared to the three proposed by the HG plan.
2. A change in location of the buildable area: a portion of the previous HG plan that had tailed toward the south-west has been proposed to be re-configured into three buildings around a similar area of development (see examples above).

To analyze differences regarding the overall limits of disturbance area, the Applicant commissioned Alliance Engineering to provide engineered drawings of what the HG plan would potentially require in terms of disturbance to build the HG plan. This was an important step because as approved with the MPD, the HG plan did not provide engineered drawings and did not have the same potential to compare with the current SB plan. The below renderings show the comparison plans, including retaining walls, road access for fire trucks to reach certain portions of the building, the Mid-Mountain trail re-route, utilities, as well as tree retention. The comparisons are shown below:



**Alliance Engineering Review of Hill Glazier Site Plan
(Tweaked to Avoid Exist Water Main and Split 20' Retaining Walls)**
Additional details can be seen in Exhibit B.

What was not possible to see previously with the 2007 HG plans was the solutions for fire access, re-routing of the Mid-Mountain trail, and location of the retaining walls that the HG plan would require. The above renderings also aim to provide more detailed information to illustrate the true impacts of the proposal. The Applicant points out that the required retaining walls are taller on the HG plan versus SB, the HG plan would require three (3) walls with narrow benches between them. The Mid-Mountain trail would be more affected than proposed now as the HG building climbs up the southwest end of the site and a similar driveway would still be required to grant access for fire trucks.

Mid-Mountain Trail

The Mid-Mountain Trail is an iconic, world-class mountain bike and hiking trail. The trail crosses the subject Property parallel to Twisted Branch Road and across Parcel A of the B2 East Subdivision Plat. The Applicant has worked to temporarily reroute and re-grade the trail as part of mitigation requirements for sewer line implementation. As noted by the City's Trails & Open Space Manager, a portion of this detour is steeper than ideal for a permanent trail alignment. Upon completion of the sewer line, the Applicants propose to address the deficiencies in the current detour to bring it up to a standard suitable for permanent use. The City's Trails & Open Space Manager has indicated that he will work with the Applicant to make the trail acceptable.

Condition of Approval #25: The final proposed parking lot and Mid-Mountain Trail re-route will require approval from the City's Trails and Open Space Manager.

In addition, the Applicants propose to reroute Mid-Mountain Trail between SR-224 and the Upper Tour de Suds bike trail with a new crossing over SR-224 immediately south of the trailhead parking lot. Pedestrian/cyclist safety will be well served by the improved sight lines at the new road crossing and visitor orientation and safety will be improved by the updates to the existing parking area and with an added, adjacent trailhead kiosk (Exhibit 4).

The Applicant has remained willing to improve the parking lot, however the Applicant is also willing to post a \$150,000 public improvement guarantee for construction of trailhead parking lot improvements should Planning Commission and the City prefer to explore alternate designs.

2. Traffic considerations including capacity of the existing Streets in the Area:
No unmitigated impacts.

The Applicant appointed Hales Engineering to perform a Trip generation study, completed October 6, 2021 (Exhibit U). The report addresses the trip generation by Sommet Blanc, reporting that an average of 442 trips would be anticipated on a weekday, including 28 trips during the morning peak hour and 48 trips during evening peak hour. As a comparison with the HG plan, the report states "*With the anticipated patronage, the morning peak hour trips generated will be reduced by 36% under the new plan, the evening peak hour trips generated will be reduced by 11%, and the daily trips will be reduced by 24%.*"

Due to concerns brought up by the Commissioners regarding traffic on SR-224 the Applicant submitted an additional traffic study, completed on January 25, 2022 (Exhibit 15). This study focused on traffic operations at key intersections for existing 2022 conditions with and without the proposed project. This report noted that the project would likely generate 514 weekday daily trips, including 42 trips in the morning peak hour and 53 trips in the evening peak hour (Exhibit 15). As the results are similar to the first traffic study completed in October the SB project (with 21 less units proposed than HG) will still result in a reduced number of trips. Overall, the traffic study concluded there would still be

a high level of service available during peak hours on SR-224 with the addition of the density at SB.

The Applicant completed a traffic study based on Commission input in the December 8, 2022 meeting. The traffic expected with the new development, though less than expected from the previous approved development for B2E, does not necessarily address the Commission's broader policy concerns over the safety of SR-224 above this project in the summer nor accessibility for a wider diversity of users in the winter.

Twisted Branch Road

SR-224 is a state-maintained, seasonal, public roadway. Above the Lot of proposed SB lies the access to the private, gated, Twisted Branch Road (TBR). TBR is owned by the company REDUS, maintained by Empire Pass MOA, and Park City Municipal Corporation maintains an easement over the road for maintenance and emergency access to Bonanza Flats property. Commissioner Suesser requested more information regarding the existing private easement rights of the EPMOA for Twisted Branch and questioned whether such rights violated the Amended Flagstaff DA. The EPMOA Master CCRs from December 10, 2004 are attached as Exhibit P. Staff review, including the City Attorney's Office, confirms that these rights are limited to owners within the project and necessary emergency services access, and therefore do not violate the restrictions of the Amended Flagstaff DA.

Sections 2.8.2 and 2.8.3 of the DA allowed for the construction of a private controlled access road between Flagstaff Mountain and the Bonanza Flats area provided that such private road is properly controlled to prevent through access to adjacent properties. The DA Technical Report titled Private Road Access Limitation Procedures for Flagstaff Mountain, notes "[t]he primary goal and objective of these procedures is to preserve the existing limited wintertime public access to Park City from Wasatch County by continuing the seasonal closure of Guardsman Pass Road through the Resort."

Section 2.8.5 of the DA directly addresses Controlled Snowmobile Access and states "[w]inter snowmobile access to Brighton Estates and to Bonanza Flats is presently available over portions of SR 224. Developer and Deer Valley shall allow seasonal snowmobile access to property owners and renters in Brighton Estates over those portions of SR 224 within the Project that are presently used, or over similar portions of SR 224 as may be relocated. Developer and Deer Valley shall otherwise prevent wintertime motorized vehicular access to the extent such action is consistent with the policy of the public entity that owns SR 224...."

The Amended Agreement stipulates that should the private road be converted to a public road, SR 224 shall no longer be used as a public road. It notes that the "developer shall support and shall not undermine seasonal closure... of SR 224 and shall control motorized vehicular access from SR 224 to the private road system to prevent vehicular through traffic."

The applicant maintains that they do not hold ownership over TBR and it is not in their

ability to control or facilitate. To mitigate the project's impacts on upper use of SR 224, within SB owners' ability, the Applicant has proposed that owners and guests of SB will be directed to use TBR to access Wasatch County, subject to operating hours and easement rights. Furthermore, the newly proposed Site Plan creates less traffic conflict without the additional curb cut off SR 224 that was originally proposed to reach the four (4) villas which alleviates one more safety concern.

To date Park City Municipal Corporation has no indication whether UDOT plans to abandon SR 224 as a seasonal public right of way and any such discussions will need to be with the current property owner of Twisted Branch and other stakeholders/easement grantees.

Condition of Approval #47: If the City and the owner of Twisted Branch Road and other parties later agree to allow expanded public use of Twisted Branch Road, Sommet Blanc developers and Sommet Blanc Homeowners [Sub]Association shall not object to, or veto expanded public use.

3. Utility capacity, including Storm Water run-off:

Condition of Approval Recommended.

The Empire Pass utilities were sized assuming 81 UEs of development at B2 East. As such, there is adequate sewer, water, electricity, and gas available for the proposed project.

Storm water detention for Empire Canyon was designed on a community-wide basis, including a large detention basin in Empire Canyon just upstream of the Park City Water Tank accessed from the Ontario Mine Bench. From a storm water runoff perspective, the proposed Sommet Blanc development is not materially different than the Hill Glazier development concept.

The Applicant will be required to provide engineering plans to be approved by the City Engineer, including drainage calculations, a grading and drainage plan identifying the retention pond for storm drainage storage for a 100-year 24-hour event, and plans to address pre- and post-development drainage conditions.

Condition of Approval #4: A final water efficient landscape and irrigation plan that indicates required storm water facilities and snow storage areas, and that meets the defensible space requirements and mitigates for removal of significant vegetation, shall be submitted with the building permit application for approval by the Planning, Building, and Engineering Department, and shall be in substantial conformance with the plans reviewed by the Planning Commission on February 9, 2022.

Condition of Approval #9: All utility facilities must be located on site unless specific easements have been provided on the recorded plat. A plan must be provided at the time of the building permit application showing all utility locations, including dry utilities. The Applicant shall provide verification that the utility plan is viable, and the utility boxes can be screened with landscaping and/or fencing.

Condition of Approval #22: The plat shall note that this development is part of a common plan development, and an MS4 storm water permit is required for all land disturbance activities, prior to building permit issuance.

Condition of approval #30: A final approved storm water plan, as well as final utility and grading plans, are required prior to issuance of a building permit.

The Development Review Committee reviewed the project on the following dates:

- December 15, 2020
- March 3, 2021
- August 31, 2021

Although items have been brought up by the Building and Engineering Departments and Fire District, these items will be worked out at the Building Permit stage and will not require immediate attention with this approval and will not cause major Site Design changes of any kind.

4. Emergency Vehicle Access;

Condition of Approval Recommended.

The Park City Fire District reviewed the most recent proposal and requires standards and conditions of the Fire Code to be met. The changes required to bring the design up to Fire Code will be addressed later on in the process, as noted by the District Fire Marshal. The changes required will not affect the building footprint or height. Minor redesigns will be proposed to meet Fire Code compliance, mainly regarding path size and accessibility around the structure and the walkway between building B and C. It is not essential at this time for these requirements to be resolved as they will be addressed in detail during the Building Permit review and the Permit cannot gain approval without the satisfied conditions of the Fire Code.

The lower Driveway provides Emergency Vehicle Access to Lodge Buildings A, B & C, with hammerhead designed into cul-de-sac adjacent Bldg. C as shown on the overall site plan sheet 4 (Exhibit B). The Lower Driveway is set back from the face of Bldgs. A & B to ensure adequate room for ladder access to buildings as required by Fire Code.

Condition of Approval #34: Before submitting a building permit application, the Applicant shall revise the plans to be compliant with the Fire Code and shall obtain approval from the Fire Department.

5. Location and amount of off-Street parking;

No unmitigated impacts.

The Transit and Parking Management Plan approved with the MPD and the DA requires a 25% reduction in parking from what would be normally required by the LMC. Per LMC [§15-3](#), Buildings A, B & C require 142.6 off street parking spaces for residential and restaurant uses (See table below). Included in this calculation, each market rate and

affordable unit will have one parking stall assigned to the unit. Per Flagstaff DA, the parking stall requirement is reduced by 25% to 107.1 rounding to 107 parking spaces.

The 2007 MPD permits *up to* 75 parking spaces on the B2 East site for the benefit of Deer Valley's adjacent Fireside Dining operation in the Empire Day Lodge (Section 2.5 of DA Exhibit F and Section (E) of the MPD Off Street Parking). Per agreement between Deer Valley and the Applicant, the Sommet Blanc project includes 60 tandem parking spaces within a parking deck dedicated for valet parking by Deer Valley.

Applicant Analysis - (Exhibit B, Page 33 Parking Summary table)

PARKING SUMMARY - BUILDING A&B P2, BUILDING C P1					
	UNITS	STALLS/UNIT	REQ'D STALLS	25% REDUCTION	TYPE
Type A Units (ADA)	2	1	2	1.5	ADA
Affordable 2 Bed Housing Units	2	1.5	3	2.3	Standard
Affordable Studio Housing Units	4	1	4	3	Standard
Buildings AB Residential	36	2	72	54	Standard
Buildings C Residential	13	2	26	19.5	Standard
Restaurant (10 stalls/1,000sf)	3.56	10	35.6	26.7	Tandem
TOTAL			142.6	107.0	
PARKING SPOTS PROVIDED:				107	

Staff Analysis -

Sommet Blanc Parking Item and Total	LMC §15-3 Parking Requirement
Six units less than 1,000 square feet <i>Required: 1 per Dwelling Unit</i>	6 Spaces
Two units between 1,000 and 2,000 square feet <i>Required: 1.5 per Dwelling Unit</i>	3 Spaces
49 units 2,000 square feet or greater <i>Required: 2 per Dwelling Unit</i>	98 Spaces
Restaurant totaling 3,559 square feet <i>Required: 1 per every 100 sf</i>	35.6 Spaces
Total:	142.6
25% Reduction per DA:	107.1
Addition of Empire Day Lodge Parking (Required per DA and MPD):	56 Tandem spaces
Total Parking Spaces:	163 Spaces

In addition to the parking spaces, Sommet Blanc will be included in the Empire Pass MOA (EPMOA) Empire Express transportation system. This is an app and on-demand door-to-door service that provides shuttles to Empire Pass and Greater Park City limits.

Electric Vehicle Charging Stations ([LMC §15-3-11](#)):

Ordinance 2020-48 was adopted on 11/19/2020 and requires applicants to “provide Electric Vehicle Charging Station Infrastructure for twenty percent (20%) of the first one hundred (100) required Off-Street parking spaces for Multi-Unit Dwellings and non-Residential Development and for five percent (5%) of required Off-Street parking spaces above one hundred (100).”

Additionally, 15-3-11 states: “An Applicant shall install Electric Vehicle Charging Stations for five percent (5%) of required Off-Street parking spaces for Multi-Unit Dwellings and non-Residential Development for the first 200 parking spaces.”

Therefore, the Applicant will be required to provide electric vehicle charging infrastructure for at least 23 spaces out of the 163 spaces and they are required to build and at least eight (8) charging stations.

Condition of Approval #38: Per 15-3-11(B) Applicant must provide Electric Vehicle Charging Station Infrastructure for twenty percent (20%) of the first one hundred (100) required Off-Street parking spaces and 5% for the spaces above one hundred (100).

Condition of Approval #39: Applicant shall provide information in the CC&Rs or other documents governing a homeowner or master owners association for the Development regarding notice of the Electric Vehicle Charging Station infrastructure that exists on site.

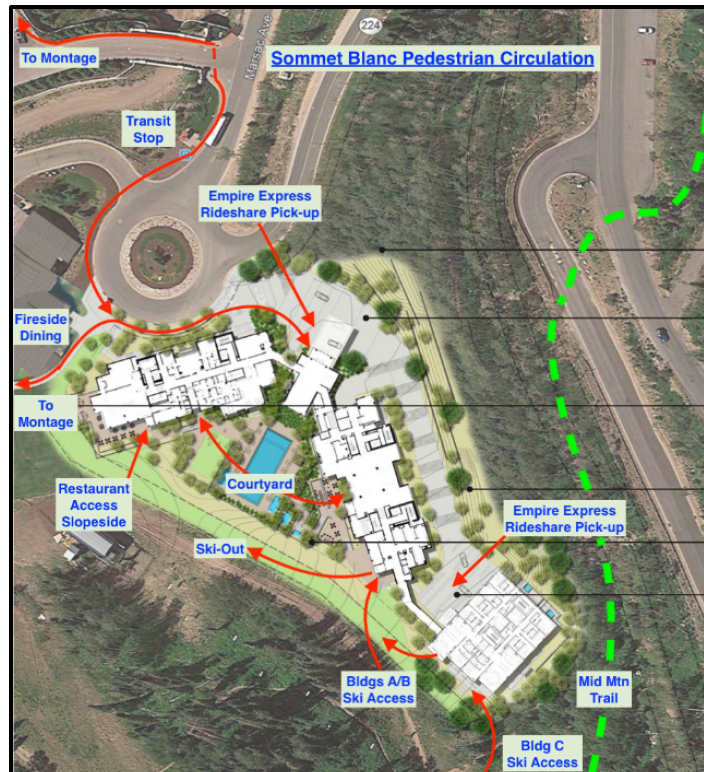
Condition of Approval #40: Electric Vehicle Charging Stations shall be installed for 5% of required Off-Street parking spaces (5 spaces in this case). The first charging station installed shall be dual port with one Charging Station that is ADA accessible.

6. Internal vehicular and pedestrian circulation system;

No unmitigated Impacts.

The lodge buildings are accessed from the Lower Driveway with a proposed curb cut off the roundabout at SR 224. Ski lockers and the skier lounge for the lodge units are in the central B Bldg.

The Applicant provided the following Pedestrian Circulation Exhibit:



7. Fencing, Screening, and landscaping to separate the Use from adjoining Uses;
Condition of Approval Recommended.

The project's only fencing is security fencing around the pool as required by safety codes.

The project includes a 20' easement for widening Lucky Jack ski trail plus an additional 20' "buffer easement" which will include soft landscape elements between the public ski trail and private Sommet Blanc courtyard area. Trees adjacent the Marsac roundabout will soften the project's appearance from Marsac Avenue. There is a portion of trees along the Lucky Jack ski trail that will be maintained, which the Applicant has noted on their own plans and Deer Valley has provided a letter of support to keep the "tree island" outside the LOD (Exhibit 14).

Condition of Approval #46 – The Applicant shall submit an arborist report to the Planning Director prior to submitting a building permit application that identifies Significant Vegetation impacted by development and plans to replace Significant Vegetation with like vegetation, as approved by the Planning Director.

As COA, a final landscape plan is required as a condition precedent to Building Permit as well as Final Design approval from the Empire Pass Design Review Board (DRB). The Applicant has provided preliminary design approval from the Board which are included in the exhibits from June 11, 2021, and July 28, 2021 (Exhibits 6 and 7). The Applicant has not gained preliminary approval for the current design at this time but the Applicant will be required to gain full approval from DRB before applying for a building permit (COA #27). Landscaping and irrigation must be water efficient, utilizing drought tolerant planting,

limited turf area, and drip irrigation according to the requirements outlined in LMC [§ 15-5-5\(N\)](#). The Applicant has also utilized the retaining walls to provide planting benches to revegetate after development.

The Applicant has provided a Forest Health Assessment for B2East/Sommet Blanc (Exhibit 13). The report describes a native fungal pathogen infecting some trees on site and suggests recommendations for optimal removal and the healthiest process possible for the trees that will not be disturbed by development.

A plan shall be provided indicating mitigation for removal of identified significant trees and replacement in kind of these trees. A Limits of Disturbance area will require fencing to keep disturbance away from trees that are not to be affected by development and all significant trees to be removed will be required to be replaced in kind. The arborist suggested that providing the same amount of diameter worth of trees removed but in increments of trees with a diameter less than 2.75 Diameter at Breast Height (DBH) which will fare better than more mature trees. The requirement for removal and replacement of significant trees is reflected in Condition of Approval 46.

8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;

No unmitigated impacts.

The building mass, bulk, orientation, and location of the buildings on the site have been reviewed during several previous Planning Commission meetings. This is the first meeting that the proposal eliminates the villas. The Planned Unit Developments (proposed previously) have been eliminated and the height of Buildings B and C has been reconfigured in response to feedback from the Commission. The proposal is similar in mass, bulk, and location as the previously approved HG plans; however, the density has been consolidated in height rather than a larger building footprint. The buildings will be much taller than the neighboring Empire Day Lodge, but the architecture has been altered to create a more harmonious transition for the height on the overall site, creating a slope downwards in elevation of the tops of the buildings leading down to the shortest elevation of Building A before dropping lower to meet their neighboring structure Empire Day Lodge. The SB project is smaller in bulk, height and mass compared to the site's other neighbor, the Montage, and there are no other developments on the adjoining lots.

As stated above, the Applicant is requesting a height exception granting an allowance of 94 feet and 106 feet above benchmark grade for Building B and C (respectively). A zone height exception had been previously granted within the 2007 MPD to allow an 82-foot height above benchmark grade. Please see the analysis on Building Height in Section F of the MPD review above.



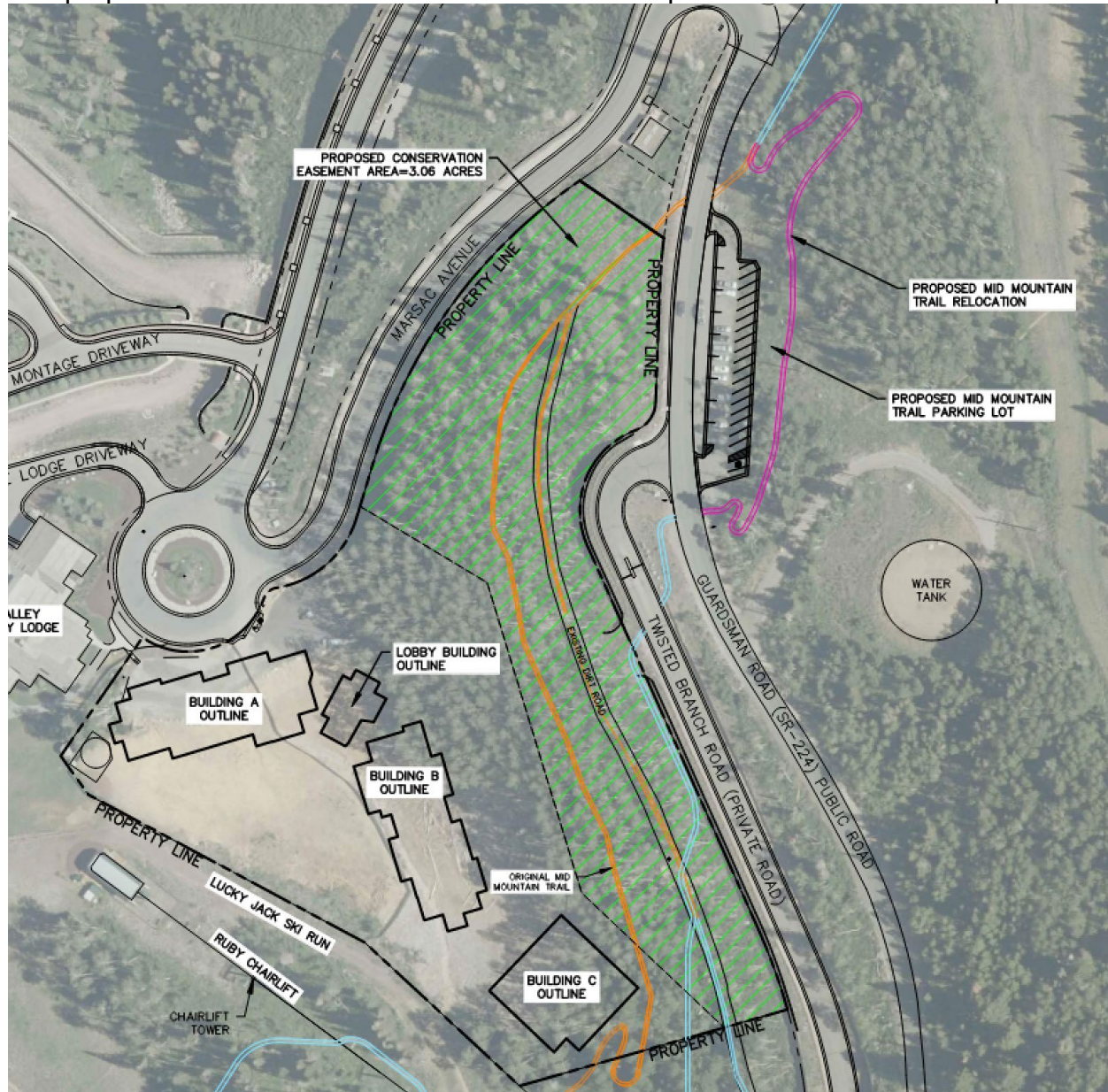


9. Open Space;
No unmitigated impacts.

The Open Space requirements for the MPD were far exceeded as the annexation and DA specified the development pods to be the only areas of allowed development and 826 acres were covered by specific conservation easements. One of the Open Space parcels was deeded to Deer Valley and the other to the Summit Land Conservancy. Per the Subdivision plat, Parcel A has also been excluded as developable area.

Additionally, the new design proposal, which eliminates the villas on the southern end of the Lot, now offers the possibility of decreasing the Limits of Disturbance for the building footprint. Out of the 6.91 acres on the Lot the Applicant is proposing to record a Conservation Easement on 3.06 acres of the property.

The proposed Conservation Easement would encompass the area in the example below:



A re-route for the Mid-Mountain trail is proposed to allow for the development of SB but also to accommodate the changes to the parking lot and increase site visibility for pedestrians, bikers, and cars on SR 224. The current proposal for the parking lot off Marsac Avenue (note and trail relocation has been deemed appropriate and, in some cases, a major improvement by the Trails and Open Space manager. At the time of

building permit for the parking lot improvements, the project will require additional permitting through Planning, as its own entity.

Although Pod B2 was not included in the SLO (noted in MPD Conclusion of Law #10), during the 2007 MPD review, there was one locally rare native plant that had been previously identified by the Utah Native Plant Society. The Applicant will be required to identify the location of the plant colony and to take steps to preserve it. According to the 2007 MPD, the plant is not located within the development area.

10. Signs and lighting:

Condition of Approval Recommended.

No signs have been proposed at this time and all lighting will need to comply with LMC [§ 15-5-5\(J\)](#).

Condition of Approval #5: All exterior lights must conform to the City lighting ordinance. Exterior lights must be Fully Shielded and down directed with bulbs that do not exceed 3,000 degrees Kelvin. Individual outdoor lights shall not exceed 2,500 Lumens and the total lighting shall not exceed 100,000 Lumens per acre. Proposed lighting shall be approved by Staff prior to issuance of a certificate of occupancy.

Condition of Approval #6: All exterior signs require an approved sign permits prior to installation.

11. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;

No unmitigated impacts.

The Applicant has provided a comprehensive set of Design Guidelines for the B2 East site and worked with the Empire Pass Design Review Board (DRB). The DRB wanted to ensure the changes would not impact built neighborhoods within Empire Pass. The final product of the “redlines” was an addition of “Book V” to the overall Design Guidelines. “Book V – Site, Landscape, and Architectural Design Guidelines for Pod B2 East” (Exhibit 5).

“Book V” is an addition to the Empire Pass Design Guidelines specific to the B2 East site. This does not change the Design Guidelines in effect for the rest of Empire Pass.

The roofs contain 27% green roofs. The Applicant has created renderings in the presentation packet of the Sommet Blanc development in its proposed location to be viewed in context with the Day Lodge and the Montage (Exhibit B).



Within the DA, under Section II, it states that it is the Developers responsibility to submit and ultimately obtain City approval for items such as mine/soils mitigation plans, transit plans, etc. Included in this list, mentioned at 2.1.2 is “Detailed Design Guidelines” which were submitted and accepted along with the 2007 DA. Further in the agreement under 2.9 Flagstaff Mountain Mitigation/Amenities and more specifically 2.9.9 Neighborhood-Specific Design Guidelines, it states the Design Guidelines must emphasize strong, common architectural themes and be enforceable by one or more of the Associations mentioned in the Agreement – namely the Master Resort Association for Flagstaff and a Project-specific Property Owners Association or the Mountain Village which now is the Empire Pass Design Review Board.

The process to amend the Design Guidelines requires review and approval from the Design Review Board of Empire Pass as well as approval by the City (the Planning Commission) as an Addendum to the technical reports connected to the Annexation.

The Applicant asserts that the Flagstaff CC&Rs allow the Design Review Board to modify, adopt, and establish Design Guidelines. The Applicant has sought several reviews and provided preliminary design approval from the Board which are included in the exhibits from June 11, 2021 and July 28, 2021 (Exhibits 6 and 7). Through COA #27 the Applicant is required to gain approval from the DRB as a condition precedent to Building Permit.

12. Noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;

No unmitigated impacts.

The plans as submitted do not indicate issues of vibration, odors, steam, or other mechanical factors that might affect people and Property Off-site or On-site. Most mechanical equipment will be located below the residences and the mechanical equipment required to be located on the roof, such as chillers, are required to be screened to avoid noise or vibrations.

13. Control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;

No unmitigated impacts.

Trash

There are trash/recycling enclosures in the parking garage under Buildings A & B. There is also an outdoor fully enclosed, trash enclosure directly outside Building C as shown on architectural plans. Trash and recycling pickup days will be staggered with the trash and recycling wheeled out to the outdoor trash enclosure for pickup.

Delivery & Service Vehicles

With 8'6" clearance, the parking garage provides ample headroom for most service providers driving pick-ups and standard vans. Larger vehicles (cube vans) will stage on the parking garage driveway aprons and load supplies in through the garage.

Loading/Unloading

Pedestrian loading and unloading for Buildings A & B will be under the porte cochere at the lobby building. There is also the opportunity for pick-up and drop-off by the Bldg. C front door.

Deer Valley Fireside Dining

Deer Valley will continue to have guests arrive at the existing pullout on Marsac Roundabout adjacent Empire Day Lodge with valets running guest vehicles to Bldg. B for parking in the dedicated upper parking level.

14. Expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities;

No unmitigated impacts.

The Applicant anticipates roughly 50% of the units to be short-term rental, roughly 5% used as full-time residences, and the remainder as second homes.

The project will be platted as a condominium with a prohibition on time share ownership. It is expected that the HOA Manager will offer nightly rental management services to those owners wishing to participate in the HOA Manager's program; the HOA Manager has not yet been selected. The public restaurant will be platted as a separate commercial condominium.

Condition of Approval #45: Nightly Rentals require compliance with City Code, including a business license.

A relevant COA regarding transfer of ownership from the 2017 Subdivision plat which will also be included for this application for emphasis is as follows:

Condition of Approval #33: "The CC&Rs shall provide notice and process for the tracking and collection of the Real Estate Transfer Fee as required and defined by the Flagstaff Mountain Development Agreement, as amended."

This will be added as a COA for this application as well for emphasis.

15. Within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site;

No unmitigated impacts.

During the DA stage, 14 technical reports were created to review the annexation area. Historic Mine waste and Mine hazards were identified on the site and in 2016 the Applicants began soil remediation, mine closure and cleanup of the site including infill of clean soil back onto the site.

The MPD Conclusion of Law #10 notes that the Flagstaff Annexation was not included in the Sensitive Lands Overlay. The MPD does not assert why this is, but it may be because at the time of annexation, the City and Applicant strategically chose specific development pods and donated the other acreage to preservation. Fourteen (14) technical reports were required and submitted with the annexation agreement that covered detailed reports of the area including a mine soil mitigation plan, open space management plan, a trails master plan, historic preservation, and wildlife management plan (amongst others). Again, these plans were utilized to suggest the least sensitive areas for development while preserving 826 acres as Open Space. The 2004 Village at Empire Pass MPD Conclusion of Law #10 noted “The Sensitive Lands (overlay) Zone did not specifically apply to the Empire Pass Large-Scale MPD annexation; however, the locations of the development pods are based on Sensitive Lands principles”.

16. Reviewed for consistency with the goals and objectives of the Park City General Plan; however such review for consistency shall not alone be binding.

No unmitigated impacts.

Upper Deer Valley is a resort neighborhood with a mix of ski runs, open space, resort-oriented housing, and visitor amenities. The proposed project is in keeping with the General Plan for this neighborhood.

The Applicant anticipates roughly 50% of the units to be short term rental, roughly 5% used as full-time residences, and the remainder as second homes/condominiums. This is consistent with the General Plan 9.2 - “Housing in this neighborhood will remain oriented toward second-homes and/or nightly rental use.”

Department Review

The Development Review Committee and Planning, Engineering, and Legal Departments reviewed this application.

Notice

Staff published notice on the City’s website and the Utah Public Notice website and posted notice to the property on January 26, 2022. Staff mailed courtesy notice to property owners within 300 feet on October 12, 2021. Since then, the item has been continued to dates certain and does not require additional mailings. The *Park Record*

published notice on January 26, 2022 LMC.

Public Input

Public Input in writing is attached as Exhibit 3.

Alternatives

- The Planning Commission may approve the Modification to the MPD, an Amendment to the Flagstaff Development Agreement, and the Conditional Use Permit;
- The Planning Commission may deny the Modification to the MPD, the Amendment to the Flagstaff Development Agreement, and Conditional Use Permit and direct Staff to make Findings for the denial; or
- The Planning Commission may request additional information and continue the discussion to a date certain.

Exhibits and Attachments

Attachment 1 – Draft Final Action Letter

Exhibit A – Applicant Narrative

Exhibit B – Sommet Blanc CUP Proposal Packet

Exhibit C – Background of the Property

Exhibit D – B2 East Subdivision

Exhibit E – 2007 Amended Flagstaff Development Agreement

Exhibit F – 2007 Empire Pass B-2 Master Planned Development

Exhibit G – Ordinance 99-30 Flagstaff Annexation

Exhibit H – Resolution 20-99 Large Scale Flagstaff MPD

Exhibit I – Village at Empire Pass Map

Exhibit J – Link to Technical Reports

Exhibit K – 2004 Village at Empire Pass MPD

Exhibit L – Hill Glazier Plans

Exhibit M – Development Covenants 3-6-18

Exhibit N – Parcel B-2 Empire Village Subdivision

Exhibit O – B2 East Sub. Ordinance 2017-07

Exhibit P – Flagstaff Master CCRs Amended 2004

Exhibit Q – EPA notice of completion of Removal action for Mazepah Mine Waste Site

Exhibit R – 2007 Hill Glazier Plan and Approved Volumetrics 4-24-2006

Exhibit S – Admin CUP for Retaining Walls Greater than 6' Action Letter 6-18-21

Exhibit T – Admin CUP for temp. Sales Trailer Action Letter 10-6-19

Exhibit U – Hales Engineering Sommet Blanc Trip Generation Study 10/6/21

Exhibit V – Preliminary Construction Mitigation Plan

Exhibit W – B2 East Access Easement with Redus Park City re. access to Villas

Exhibit X – Civil Drawings for Mid-Mountain Trailhead Parking Lot

Exhibit Y – UDOT Conditional Access Permit for Curb Cut for Villa Units, Roundabout & Ped Crossing

Exhibit Z – Elevation Heat Map

Exhibit 1 – Overall Grading Plan
Exhibit 2 – Housing Mitigation Plan
Exhibit 3 – Public Comment
Exhibit 4 – Guardsman Pass and Mid-Mountain Trail Parking Lot Proposal
Exhibit 5 – Empire Pass Design Guidelines – Book V
Exhibit 6 – Empire Pass Design Review Board Preliminary Approval 6/11/21
Exhibit 7 – Empire Pass Design Review Board Preliminary Approval 7/28/21
Exhibit 8 - Analysis of Sommet Blanc CUP Hill Glazier Challenges
Exhibit 9 – Overall Retaining Wall Plans and Renderings
Exhibit 10 – Flagstaff Annexation and Empire Pass Units and UE Analysis Table
Exhibit 11 – 9.8.21 Height proposal
Exhibit 12 – B2 East Recorded Sewer Access Easement
Exhibit 13 – Arborist Report on B2-East/Sommet Blanc
Exhibit 14 – DV Lucky Jack Tree Island Letter of Consent
Exhibit 15 – Hales Engineering Sommet Blanc Trip Generation Study 1/25/22
Exhibit 16 – Attorney Letter from Applicant Regarding Twisted Branch Road



March 9, 2022

Sommet Blanc Residences
9300 Marsac Avenue
Park City, UT 84060

NOTICE OF PLANNING COMMISSION ACTION

<u>Application #</u>	PL-20-04702 & PL-21-04771
<u>Subject</u>	Lot 1, B2 East Subdivision
<u>Address</u>	9300 Marsac Avenue
<u>Description</u>	Master Planned Development Amendments, and Conditional Use Permit
<u>Action Taken</u>	Approved
<u>Date of Action</u>	March 9, 2022

On March 9, 2022, the Planning Commission held a public hearing and Approved Amendments to the Empire Pass Pod B2- Master Planned Development and a Conditional Use Permit based on the following:

Findings of Fact:

1. Site Location
 - A. Sommet Blanc Residences LLC., is Lot 1 of the B2 East Subdivision, located at 9300 Marsac Avenue. The site is located within Pod B2 of the Village at Empire Pass Master Planned Development MPD, and of the 2007 Flagstaff Amended Development Agreement, adjacent to the Deer Valley Empire Day Lodge.
2. Site Zoning
 - A. The site is zoned Residential Development (RD-MPD) as part of the Flagstaff Annexation and Master Planned Development.
 - B. In the RD zone a Multi-Unit Dwelling is a Conditional Use.
3. Controlling Documents
 - A. The property was originally part of the Flagstaff Mountain Annexation and Development Agreement approved by City Council per Resolution No. 99-30 on June 24, 1999 and amended on March 2, 2007.

- B. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and development approval process; as well as development conditions, restrictions, obligations, and amenities for each parcel.
- C. On July 28, 2004, the Planning Commission approved a Master Planned Development for the Village at Empire Pass (Village MPD) (Pods A and B1) within the Flagstaff Mountain Annexation and Development area. The MPD (known as Mountain Village) was amended to include Pod B2 (Montage). The Mountain Village (Pods A, B1 and B2) was approved for a maximum of 785 UE of multi-family (550 multifamily units) and 16 single family units. A maximum of 60 PUD style units (i.e. Belles, Paintbrush, and Nakoma) were approved as part of the overall multi-family units.

4. Application

- A. In November 2020, the applicant submitted an application for a Conditional Use Permit which was amended on July 15, 2021, for three (3) condominium lodges (Multi-Unit Dwellings) buildings with 43 residential units above underground parking, a 3,600-square-foot public restaurant, and four (4) townhome villas within two (2) duplexes, and a detached ancillary ski locker building located on the hillside above the condominiums.
- B. On January 20, 2022 the applicant submitted modified plans for the Conditional Use Permit which includes three (3) condominium lodges (Multi-Unit Dwellings) buildings with 49 residential units above underground parking, a 3,600-square-foot public restaurant.
- C. The property is known as Lot 1 of the B2East Subdivision, approved by Council on March 9, 2017.
- D. The subdivision plat entails a 7.85 acre metes and bounds parcel. The subdivision consists of a 6.91 acre 'Lot 1', and a 0.94 acre 'Parcel A', for anticipated Deer Valley Resort ski related activities and infrastructure (potential ski bridge). Parcel A has no assigned density and is not developable in terms of residential units or UEs. The applicant recorded a Development Covenant which allocates 3,600 sf of Resort Support Commercial (from MPD maximum of 75,000 sf), and 81 UEs, to be located within a maximum of 70 multi-family dwelling units.
- E. With 49 residential units the project includes less units than entitled under the 2007 MPD (Maximum of 70) but is proposing to utilize the same 81 Unit Equivalents (UEs) of residential Density.
- F. The applicant is requesting to modify the Conditions of Approval #1 and #2 regarding the allowed Volumetrics and Building Height within Pod B2 MPD pursuant to LMC [Chapter 15-6](#), Master Planned Developments.
- G. Through the 2007 MPD process for Pod B2 Empire pass, the Empire Pass Design Guidelines had approved a plan referred to as the Hill Glazier plan regarding volumetrics and design.

5. Compliance with CUP Criteria

- A. Size and location of the site;

- a. Staff finds that the current Sommet Blanc proposal is within the prescribed development pod. Subdivision. (15-1-10(E)1).
- B. Traffic considerations including capacity of the existing Streets in the Area;
 1. Hales Engineering performed a Trip generation study, completed October 6, 2021. The report addresses the trip generation by Sommet Blanc, reporting that an average of 442 trips would be anticipated on an average weekday, including 28 trips during the morning peak hour and 48 trips during evening peak hour.
 2. As a comparison with the previous HG plan, the report states "With the anticipated patronage, the morning peak hour trips generated will be reduced by 36% under the new plan, the evening peak hour trips generated will be reduced by 11%, and the daily trips will be reduced by 24%."
 3. The second Hales Engineering Traffic Study completed on January 25, 2022 produced similar results to the initial Traffic Study. The Conclusion stated there would still be a reduced number of trips compared to the Hill Glazier plans and that there would still be a high level of service available during peak hours on SR-224.
- C. Utility Capacity
 1. The Empire Pass utilities were all sized assuming 81 UEs of development at B2 East. As such, there is ample sewer, water, electricity, and gas available for the proposed project.
 2. Lot 1 of the B2 East subdivision is included in the storm water detention for the Empire Canyon community, which includes use of the large detention basin.
 3. A final Storm Water Plan is required for review and approval prior to the issuance of a building permit (15-1-10(E)3).
- D. Emergency vehicle Access;
 1. Before the building permit is issued, the Applicant will be required to gain approval from the Fire Department with fully compliant plans. (15-1-10(E)4)
- E. Location and amount of off-Street parking;
 1. Per the Flagstaff DA, the residential parking stall requirement is reduced by 25% to 107.1 which rounds to 107 parking stalls. Each residential condo unit will have one assigned parking space.
 2. Per an agreement between Deer Valley and the Applicant, the Sommet Blanc project includes 56 tandem parking spaces within a parking deck dedicated for valet parking by Deer Valley for the Fireside Dining operation in the Empire Day Lodge. (15-1-10(E) 5).
- F. Internal vehicular and pedestrian circulation system;
 1. The lodge buildings are accessed from the Lower Driveway with a proposed curb cut off the roundabout at SR 224. (15-1-10(E)6)
- G. Fencing, Screening, and landscaping to separate the Use from adjoining Uses;

1. Sufficient screening and landscaping separate the use from adjoining uses.
 2. A final landscape plan is required as a condition precedent to Building Permit (15-1-10(E)7).
- H. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
1. The project is smaller in bulk, height and mass compared to its neighbor the Montage and there are no other developments on the adjoining lots with the exception of the Empire Day Lodge (15-1-10(E)8).
- I. Usable Open Space;
1. Both passive and active Open Space are provided in excess of 88% within the Flagstaff Annexation boundary and individual lots were not required to provide open space.
 2. The Applicant proposes to record a Conservation Easement on 3.06 acres on the upper portion of the site
- J. Signs and lighting;
1. Signs and lighting must be in conformance with the LMC and the Flagstaff Mountain Resort Design Guidelines. (15-1-10(E)10).
- K. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing;
1. Amended Building articulation and massing are consistent with approved lodge buildings and meet the intent of the Flagstaff DA. The applicant has received preliminary Design Approval from the Empire Pass Design Review Board and will require final approval by Building Permit stage.
- L. Noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site;
1. All uses except the outdoor plaza area are inside the building and there are no expected impacts on residents, visitors or abutters. (15-1-10(E)12).
- M. Control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas;
1. Trash is located inside the garage and 4 parking spaces in the front provide for sufficient loading and unloading (15-1-10(E)13).
- N. Expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities;
1. The project will be platted as a Condominium and Nightly Rental is a permitted use within the RD zone. (15-1-10(E)14).
- O. Within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site;

1. There are no environmentally sensitive lands within or adjoining the site.
 2. The building is located on a sloping lot within Pod B2 and is appropriate for the topography of the site with the garage below grade (15-1-10(E)15).
- P. Review for consistency with the goals and objectives of the Park City General Plan;
1. This property was annexed, zoned, master planned and platted to be consistent with the goals and objectives of the Park City General Plan in providing resort based lodging and guest amenities in close proximity to Deer Valley Resort, affordable housing, reduction in traffic generation, with clustered development in the Village, shuttle service within the development and within Park City, significant open space and trails, as well as attention to mitigation of past and present environmental impacts. (15-1-10(E)16).
6. Compliance with the Amended and Restated Development Agreement for Flagstaff Mountain
- A. Per the 2007 DA the Mountain Village was granted a maximum density of 785 Unit Equivalents in a maximum of 550 dwelling units.
 - B. The Pod B2 MPD approval allotted the east side of B2, 81 Unit Equivalents.
 - C. Per LMC § 15-6-8, One UE equates to 2,000 sf of Multi-family dwelling floor area or 1,000 sf of commercial or office floor area
 - D. 81 UEs is equal to 162,000 sf.
 - E. The 2018 B2 East subdivision approval confirmed the 81 UEs but added the restraint that they must be constructed in a maximum of 70 unit's total.
 - F. The DA included a total of 75,000 sf of Resort Support Commercial uses. Out of the total granted Resort Support Commercial square footage, B2 East was allotted 3,600 sf.
 - G. The applicant is proposing 81 UEs in 49 units for a total of under 162,000 square feet.
 - H. The applicant is proposing under 3,600 square feet Resort Support Commercial.
 - I. The applicant is proposing two ADA units.
 - J. Sommet Blanc is meeting the Americans with Disabilities Act definition of a 'Place of Public Accommodations' which is requiring the project provide two ADA dwelling units. Since the units are required, they do not count towards the 81 UE limit.
 - K. The ADA units will be owned by the HOA and provided for guests who require such accommodations.
 - L. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum densities, location of densities, and developer-offered amenities for the annexation area.
 - M. The application is in compliance with the location, density, volumetrics, parking, design and affordable housing requirements of the Development Agreement as they apply to this lot.

7. Compliance with the Amended Pod B-2 Empire Pass Master Planned Development

- A. On July 28, 2004, the Planning Commission approved a Master Planned Development (MPD) for the Village at Empire Pass (Pod A), known as the Village Master Planned Development (VMPD) Pod A.
- B. On March 14, 2007, the Planning Commission approved a Master Planned Development (MPD) for Pod B2 at Empire Pass as an amendment to the July 28, 2004 Village at Empire Pass MPD (VMPD).
- C. Building volumetric diagrams were approved with the Pod B2 MPD known as the Hill Glazier plans.
- D. The Pod B2 MPD approved 192 hotel rooms utilizing 69.6 Unit Equivalents (UEs) and 94 hotel condominiums utilizing 114 UEs, on the west side parcel (aka Montage Deer Valley).
- E. 81 UEs of residential condominiums were assigned to the east side parcel, aka B2 East.
- F. Condition of Approval #1 of the MPD states: "The building plans and volumetrics for the project shall meet substantial compliance with the drawings dated April 24, 2006, and as reviewed by the Planning Commission.
- G. As amended, the MPD will update COA #1 to state: "The building plans and volumetrics for the project shall meet substantial compliance with the revised Sommet Blanc drawings dated 3/9/2022 as reviewed by the Planning Commission."
- H. Condition of Approval #2 of the MPD states: "A height exception for the Montage to 114 feet above a benchmarked grade (USGS 8346') is granted with the Master Plan. A height exception for the east side condominiums to 82 feet above benchmarked grades (USGS 8330' for north datum point and 8380' for south datum pint) is granted with the Master Plan. Datum points are indicated on the site plans reviewed by the Planning Commission."
- I. Buildings B and C are granted an exception for building height of up to 94 feet above the benchmark grade and 106 feet above the benchmark grade, respectively, stated in the MPD.
- J. This building height was approved based on a site-specific analysis made by the Planning Commission.
- K. As amended, the MPD will update COA #2 to state: "A height exception for the Montage to 114 feet above a benchmarked grade (USGS 8346') is granted with the Master Plan. A height exception for the east side condominiums to 82 feet and an allowance of 94 feet for Building B and 106 feet for Building C above benchmarked grades (USGS 8330' for north datum point and 8380' for south datum pint) is granted with the Master Plan. Datum points are indicated on the site plans reviewed by the Planning Commission."
- L. Lot 1 adheres to minimum RD zone setbacks.
- M. Per the MPD: "As with the setback requirement in (C) above, the annexation area contains more than the minimum 60% requirement. The development of the Village (pods A, B-1 and B-2) is limited to 87 acres, as amended, within the original 1550 acres or 5% of the land area." Lot 1 complies with the open space requirements.

- N. The Applicant will record a Conservation Easement on 3.06 acres of the Lot to count towards Open Space.
- O. The total On-Mountain remaining requirement for the Flagstaff DA is 4.03 Affordable Unit Equivalents (AUEs).
- P. The applicant proposes six (6) Affordable housing units (Four Studio apartments and two, two-bedroom units). This is a total of 5.9 AUEs or 4,683 sf.
- Q. Staff does not recommend that a Child Care center be provided on-site.
- R. The Mazepah mine shaft, located on Lot 1, was permanently closed in 2016 under geotechnical supervision.
- S. In August of 2018, the EPA confirmed that all mine soil remediation work performed on site was in accordance with EPA requirements.
- T. There are no Historic Sites on the B2-East development Lot.
- U. The proposal complies with the RD Zoning District Requirements outlined in LMC § 15-2.13.
- V. The MPD, as conditioned, complies with all the requirements of the Land Management Code;
- W. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 herein, except as noted in Findings of Fact 6(M), 6(O), 7(G), 7(J), & 7(L);
- X. The MPD, as conditioned, provides the highest value of Open Space, as determined by the Planning Commission. As previously approved in the DA, the applicant is proposing the Sommet Blanc development within the development Pod B2-E, specifically set aside to ensure that 826 acres of the Flagstaff Annexed land were deeded to Open Space;
- Y. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;
- Z. The MPD, as conditioned, is Compatible in Use, scale, and mass with adjacent Properties, and promotes neighborhood compatibility, and protects residential neighborhoods and Uses;
- AA. The MPD, as conditioned, provides amenities to the community so that there is no net loss of community amenities, such as transportation amenities, a public restaurant, skier lounges, fitness and yoga rooms, and bike storage;
- BB. The MPD, as conditioned, is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the application was filed; The applicant is providing 5.9 AUEs totaling 6 units;
- CC. The MPD, as conditioned, meets the Sensitive Lands requirements of the Land Management Code. The project has been designed to place Development on the most developable land and least visually obtrusive portions of the Site;
- DD. The MPD, as conditioned, promotes the Use of non-vehicular forms of transportation through design and by providing trail connections; Sommet Blanc will be part of the EPMHOA which offers on demand shuttle service to Main Street area and back; and
- EE. The MPD has been noticed and public hearing held in accordance with this Code.

- FF. The MPD, as conditioned, incorporates best planning practices for sustainable development, including water conservation measures and energy efficient design and construction, per the Residential and Commercial Energy and Green Building program codes adopted by the Park City Building Department in effect at the time of the application;
- GG. The MPD, as conditioned, addresses and mitigates Physical Mine Hazards according to accepted City regulations and policies.
- HH. The MPD, as conditioned, addresses and mitigates Historic Mine Waste and complies with the requirements of the Park City Soils Boundary Ordinance.
- II. The MPD, as conditioned, addresses Historic Structures and Sites on the Property, according to accepted City regulations and policies, and any applicable Historic Preservation Plan.
- JJ. The MPD, as conditioned, addresses and mitigates traffic expected with the development.
- KK. The increase in Building Height does not result in increased square footage or Building volume over what would be allowed under the zone-required Building Height and Density, including requirements for Facade variation and design, but rather provides desired architectural variation; the proposal distributes previously allocated density on the site and meets the LMC Section 15-5-8 façade length and variation requirements;
- LL. The buildings have been positioned to minimize visual impacts on adjacent Structures. Potential problems on neighboring Properties caused by shadows, loss of solar Access, and loss of air circulation have been mitigated as determined by the Site specific analysis;
- MM. The MPD, as conditioned, permits adequate Landscaping and buffering from adjacent Properties and Uses;
- NN. The MPD follows required setbacks and separations from adjacent projects;
- OO. The additional Building Height results in more than the minimum Open Space required and results in Open Space that is publicly accessible per the previously approved 2007 MPD;
- PP. The additional building height is designed in a manner that provides a transition in roof elements in compliance with Chapter 5 Architectural Guidelines.

8. Other Findings of Fact

- A. The building complies with RD District zone setbacks maintaining a 20' front setback, 12' side setbacks and 15' rear setbacks. LMC exception to the side yard setback allows screened mechanical equipment to have a five foot setback from the Side Lot Line.
- B. A Master Homeowners Association document and Maintenance Agreement for the Mountain Village were reviewed and approved by the City prior to issuance of building permits for buildings within the Mountain Village. This

- property is also subject to these documents, in addition to any declaration of condominium and CCRs recorded with the condominium plat.
- C. Excavated soil will remain within the Flagstaff Annexation area as required by the Annexation Agreement with a location to be identified on the final Construction Mitigation Plan submitted with the building permits.
 - D. The property is part of a common development that exceeds one acre and thus has MS4 requirements to meet.

Conclusions of Law:

1. The application, as conditioned, is consistent with the Village at Empire Pass Master Planned Development, the Pod B2 Master Planned Development and Flagstaff Mountain Resort Master Planned Development, the Park City Land Management Code, and the General Plan.
2. The proposed CUP, as conditioned, will be compatible with the surrounding structures in use, scale, mass and circulation.
3. The effects of any differences in use or scale have been mitigated through careful planning.
4. As conditioned, the Master Planned Development Amendment meets the 16 Conclusions of Law outlined in 15-6-6:
 1. complies with all requirements of the Land Management Code;
 2. meets the minimum requirements of Section 15-6-5;
 3. provides the highest value of Open Space, as determined by the Planning Commission;
 4. strengthens and enhances the resort character of Park City;
 5. compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;
 6. is Compatible in Use, scale, and mass with adjacent Properties, and promotes neighborhood Compatibility, and Historic Compatibility, where appropriate, and protects residential neighborhoods and Uses;
 7. provides amenities to the community so that there is no net loss of community amenities;
 8. is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time staff determined the Application to be complete;
 9. meets the Sensitive Lands requirements of the Land Management Code and is designed to place Development on the most developable land and least visually obtrusive portions of the Site;
 10. promotes the Use of non-vehicular forms of transportation through design and by providing trail connections;
 11. was noticed and the Planning Commission held a public hearing in accordance with this Chapter;
 12. incorporates best planning practices for sustainable development, including water conservation measures and energy efficient design and construction, per the Residential and Commercial Energy and Green Building program and codes adopted by the Park City Building Department in effect at the time of the Application;

- 13.addresses and mitigates Physical Mine Hazards according to accepted City regulations and policies;
- 14.addresses and mitigates Historic Mine Waste and complies with the requirements of the Park City Soils Boundary Ordinance;
- 15.addresses Historic Structures and Sites on the Property, according to accepted City regulations and policies, and any applicable Historic Preservation Plan;
- 16.addresses and mitigates traffic.

Conditions of Approval:

1. All standard conditions of approval apply to this Conditional Use Permit.
2. This Conditional Use Permit shall expire one year from the date of Planning Commission approval if a building permit has not been issued prior to this date unless an extension is requested in writing prior to expiration date and the extension is granted by the Planning Director.
3. Final building plans and construction details submitted with the building permit application shall substantially comply with the plans reviewed by the Planning Commission on March 9, 2022.
4. A final water efficient landscape and irrigation plan that indicates required storm water facilities and snow storage areas, and that meets the defensible space requirements and mitigates for removal of significant vegetation, shall be submitted with the building permit application for approval by the Planning, Building, and Engineering Department, and shall be in substantial conformance with the plans reviewed by the Planning Commission on March 9, 2022.
5. All exterior lights must conform to the City lighting ordinance and the Flagstaff Mountain Resort Design Guidelines. Final compliance with the City's Lighting Ordinance will be verified at the time of building permit plan review and prior to issuance of a certificate of occupancy. Exterior lighting shall be shielded and down directed.
6. All exterior signs require an approved sign permit prior to installation.
7. Materials, color samples and final design details shall be approved by staff prior to building permit issuance and shall be in substantial compliance with the elevations reviewed by the Planning Commission on March 9, 2022.
8. All exterior mechanical equipment shall be located out of required setbacks and screened and shielded from public streets. Screening with landscaping and fencing/grating materials is allowed. All wall and roof top vents and protruding mechanical shall be painted to match the adjacent wall or roof to minimize impacts on public view.
9. All utility facilities must be located on site unless specific easements have been provided on the recorded plat. A plan must be provided at the time of the building permit application showing all utility locations, including dry utilities. The applicant shall provide verification that the utility plan is viable, and the utility boxes can be screened with landscaping and/or fencing.
10. The applicant shall record a Condominium Plat for the site prior to selling individual units.

11. Affordable housing provided with this Conditional Use Permit shall comply with all requirements of the City's affordable housing resolution in effect at the time of the Development Agreement. The affordable units shall be indicated on the final condominium plat prior to recordation of such plat and shall be completed prior to issuance of a certificate of occupancy for the building.
12. Deed restrictions for the six (6) affordable units, approved by the City in accordance with the applicable Housing Resolution, shall be recorded prior to plat recordation. The deed restrictions shall outline and resolve any issues or concerns that may have come up on other affordable units platted as private. The plat shall note that the affordable units are subject to a deed restriction.
13. The CCRs shall limit the HOA dues related to the deed restricted affordable units in order to ensure the Units remains affordable. The CCRs shall reflect a lower par-value to reflect the reduced cost of the unit (or exempt the unit from HOA fees) to ensure that the unit doesn't lose its affordability due to HOA fees.
14. The CCRs shall be submitted with the condominium plat for review and approval by the City prior to final condominium plat recordation.
15. All conditions of approval of the Village at Empire Pass MPD shall continue to apply.
16. All conditions of approval of the Flagstaff Annexation and Development Agreement shall continue to apply, including the restrictions on solid wood burning fireplaces (Flagstaff DA 2.9.4), removal of excavated materials, construction of pedestrian connections to the transit hub within the Village, and provision of any required ADA and affordable housing units.
17. A Final Construction Mitigation Plan (CMP) shall be submitted for approval by the Planning, Building, and Engineering Departments prior to issuance of a building permit. The CMP shall indicate where and how excavated soils will be hauled and/or stored, hours of construction, truck routes, phasing of construction, road closures, and other items required by the Building Department.
18. Interior fire sprinklers are required for new construction and shall meet requirements of the Chief Building Official at the time of review of the building permit.
19. The property is located within a water source protection zone. All sewer construction must comply with State of Utah drinking water regulations.
20. All requirements and conditions of the Snyderville Basin Water Reclamation District shall be met prior to building permit issuance.
21. The deed restricted units shall meet the plat note requirement of 4.2 AUEs for this lot. One AUE is equivalent to 800 sf according to the Development Agreement.
22. The plat shall note that this development is part of a common plan development, and an MS4 storm water permit is required for all land disturbance activities, prior to building permit issuance.
23. Prior to building permit issuance, the applicant shall verify that capacity exists in the existing detention pond utilized by Pod A and shall demonstrate that sufficient run-off will remain on site to support existing tree stands.
24. Development of this property is subject to the conditions of approval, plat notes, easements and restrictions of the Village at Empire Pass North Subdivision plat.
25. The final proposed parking lot and Mid Mountain Trail re-route will require approval from the City's Trails and Open Space Manager.

26. The final proposed parking lot shall propose amendments to the license agreement in a form approved by the City Attorney's Office.
27. A final landscape plan is required as a condition precedent to Building Permit.
28. Landscaping and irrigation must be water efficient, utilizing drought tolerant planting, limited turf area, and drip irrigation. The plan shall indicate mitigation for removal of identified significant trees.
29. A plan shall be provided indicating mitigation for removal of identified significant trees and replacement in kind of these trees.
30. A final approved storm water plan, as well as final utility and grading plans, are required prior to issuance of a building permit.
31. The CC&Rs shall provide notice and process for the tracking and collection of the Open Space Transit Management Fund also known as the Re-Investment Fee as required and defined in 3.2 of the Flagstaff Mountain Development Agreement, as amended.
32. All applicable conditions, regulations, requirements, and stipulations of the Amended and Restated Development Agreement for Flagstaff Mountain, the 2007 Empire Pass B2-East MPD, B2-East Subdivision plat, Bonanza Flats, Richardson Flats, The 20-Acre Quinn's Junction Parcel, and Iron Mountain (recorded at Summit County on March 2, 2007), and associated technical reports and Agreements, continue to apply.
33. Requirements and obligations of the Flagstaff Mountain Development Agreement, as amended and recorded at Summit County in March of 2007, as applied to this Property, shall be completed, or bonded for completion, prior to issuance of certificates of occupancy for any approved development located on Lot 1, unless otherwise conditioned herein. This includes gondola payments, number of shuttles in operation, provision of affordable housing units, collection mechanism for Open Space Transit Management Fund, and all other such obligations as are outlined in the March 2007 Agreement, some of which are triggered by the number of certificates of occupancy issued.
34. Before the Building Permit is issued, the Applicant will be required to gain approval from the Fire Department with fully compliant plans. (15-1-10(E)4)
35. Sufficient screening and landscaping separate the use from adjoining uses.
36. Precedent to a Building Permit application the applicant must receive Final Design Approval from the Empire Pass Design Review Board (DRB).
37. Prior to building permit issuance, documentation from UDOT showing approval of any curb cuts or modifications to existing curb cuts onto Marsac Avenue, a state highway, is required.
38. Per 15-3-11(B) Applicant must provide Electric Vehicle Charging Station Infrastructure for twenty percent (20%) of the first one hundred (100) required Off-Street parking spaces and 5% for the spaces above one hundred (100).
39. Applicant shall provide information in the CC&Rs or other documents governing a homeowner or master owners association for the Development regarding notice of the Electric Vehicle Charging Station infrastructure that exists on site.

40. Electric Vehicle Charging Stations shall be installed for 5% of required Off-Street parking spaces (5 spaces in this case). The first charging station installed shall be dual port with one Charging Station that is ADA accessible.
41. The Applicant shall include bike racks for securing at least 10 bicycles on the site plan submitted for building permit review. Bike racks must provide for both the bike frame and wheels to be locked by the user and must be designed to prevent damage to the bike and to facilitate easy and secure storage without interference from or to adjacent bikes. Bike racks must be anchored and be of solid construction, resistant to rust, corrosion, hammers, and saws. Bike racks shall be in convenient, highly visible, active, well-lit areas, and shall not interfere with pedestrian movements or snow storage. Bike racks shall be installed prior to City issuance of a Certificate of Occupancy.
42. The two (2) ADA units will be owned and maintained in perpetuity as ADA units by the HOA. The CCRs shall designate the City as a third-party beneficiary for enforcement purposes and prohibit the third party sale of the ADA units, unless a density increase and plat amendment is approved by the City.
43. The Applicant will record a Conservation Easement on 3.06 acres on the upper portion of the site
44. The Applicant will be required to meet the 4.03 AUEs with a total of 5.9 AUEs (a total of 4,683 sq.ft) to meet the Affordable Housing obligation.
45. Nightly Rentals require compliance with City Code, including a business license.
46. The Applicant shall submit an arborist report to the Planning Director prior to submitting a building permit application that identifies Significant Vegetation impacted by development and plans to replace Significant Vegetation with like vegetation, as approved by the Planning Director.
47. If the City and the owner of Twisted Branch Road and other parties later agree to allow expanded public use of Twisted Branch Road, Sommet Blanc developers and Sommet Blanc Homeowners [Sub]Association shall not object to, or veto expanded public use.

Please be aware that this approval in no way exempts the property from complying with other requirements that may be in effect on the property, and building permit regulations, as applicable. It is the responsibility of the property owner and applicant to ensure compliance with these regulations.

As the Applicant, this letter is intended as a courtesy to document the status of your request. The official minutes from the Planning Commission meeting are available in the Planning Department office and online.

If you have questions regarding your application or the action taken, please don't hesitate to contact Makena Hawley at 435-615-5059 or Makena.hawley@parkcity.org. She will continue working with you through the Building Permit and Certificate of Occupancy process.

Sincerely,

John Phillips
Planning Commission, Chair
Cc: Makena Hawley, Planner II

Empire Pass Pod B2 East - Sommet Blanc & Alpine Villas

- MPD Amendment (Volumetric Guidelines)
- CUP

Follow Up to 2/9/22 Planning Commission Meeting and Public Hearing

February 24th, 2022

On 2/9/22, Planning Commission held a Meeting and Public Hearing on the proposed Sommet Blanc project. At the Public Hearing, prior to making a formal motion with respect to the Application, Planning Commission asked Staff and the Applicant for additional information on several issues. The only public comment heard related to Twisted Branch Road, not the Sommet Blanc project.

2/9 PLANNING COMMISSION MEETING AND PUBLIC HEARING

Twisted Branch Road (“TBR”)

Planning Commission remains concerned about traffic safety issues on the Guardsman Pass Road. Planning Commission is also interested in the possibility of public access to TBR. The City Attorney advised that there is no nexus between the Sommet Blanc project and Planning Commission’s concerns with Twisted Branch Road.

Planning Commission also expressed concerns with the possibility of Sommet Blanc residents and guests using Twisted Branch Road (“TBR”) to access Wasatch County. The Applicant has reviewed underlying documents and determined that the TBR easement in favor of the Empire Pass MOA (“EPMOA”) stops at the entrance to the Red Cloud subdivision. The EPMOA easement does not cover the gated gravel road linking the top of TBR with the top of SR224. For the last several years, this gate has been opened during summer construction hours. Planning Commission requested that usage of this gravel road be limited in accordance with recorded easements. The Applicant will advise EPMOA of these concerns.

Alternate Site Plan

The Applicant presented an alternate site plan that eliminates the villas on the upper portion of the property and moves the associated density onto an additional floor on each of Buildings B and C. The alternate site plan results in a significant reduction in site disturbance in comparison with the approved 2007 site plan and includes a 3 acre conservation easement. Planning Commission responded favorably to the alternate site plan.

Height of Appurtenances

Planning Commission expressed a desire to impose height restrictions on building appurtenances such as elevator overruns and screening of

rooftop mechanical equipment. LMC 15-2.13-4.A permits typical appurtenances to extend 5' above height of building, and elevator penthouses to extend 8' above. Planning Commission requested the elimination of these exceptions for Sommet Blanc. Reviewing this request with the design team subsequent to the Planning Commission meeting, the Applicant learned that this would be very problematic. As designed, the project includes mechanical enclosures adjacent the elevator overruns which will project slightly above the proposed building height limitation for three of the five elevator cores. The design team has confirmed that all elevator overruns and mechanical enclosures can be accommodated if the height exception is reduced to 3' above permitted building height.

Area Restriction for Topmost Floors

As designed, the topmost floor of each floor is smaller than the floor below. Planning Commission expressed a desire to codify this condition. This could be achieved with a Gross Floor Area ("GFA") cap of 7,000 sf for the topmost floor of Buildings A & C, and 11,500 sf for Building B.

Reinvestment Fees

Planning Commission requested clarification on funding for the Open Space Transit Management Fund. A Reinvestment Fee is collected by EPMOA on the sale of units within Empire Pass (new or resale). The CCRs for Sommet Blanc will clarify this ongoing obligation.

Curb Cuts

UDOT previously approved a Conditional Access Permit for a curb cut for the upper driveway serving the villa units. That driveway has now been eliminated. The lower driveway is a minor realignment of an existing curb cut that has been reviewed and approved by UDOT. With the elimination of the villas and upper driveway, the UDOT Conditional Access Permit is now redundant.

Summary

The most recent clarifications requested by Planning Commission are minor and have been addressed above. The Applicant has no means to address Planning Commission concerns with respect to TBR, nor is there any nexus between TBR and Sommet Blanc. March 9th is the seventh meeting with Planning Commission since the original application was submitted in November 2020. The Applicant has modified the project design several times to address Planning Commission feedback.

The Applicant would greatly appreciate a vote on the current Sommet Blanc project application.

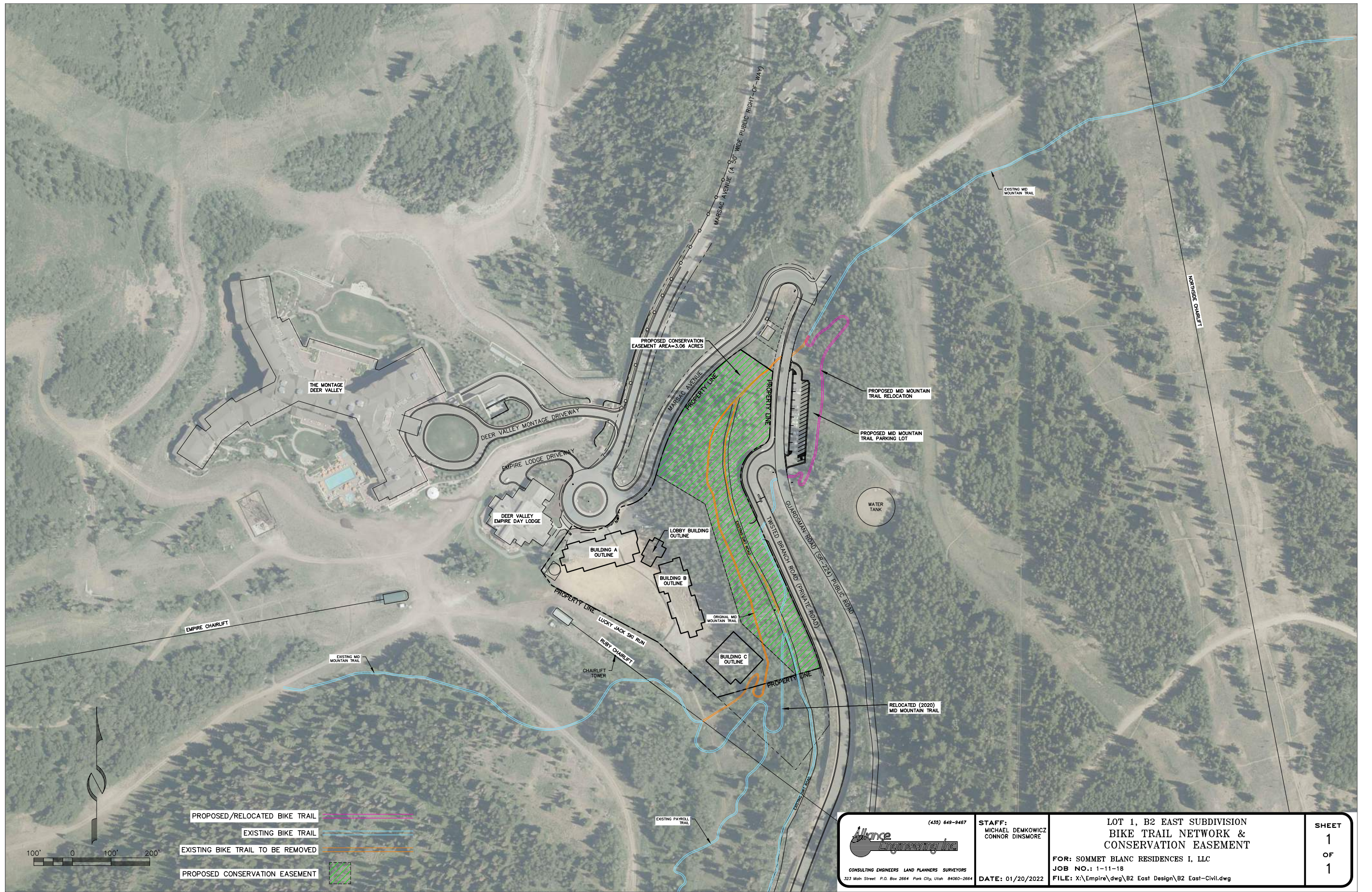


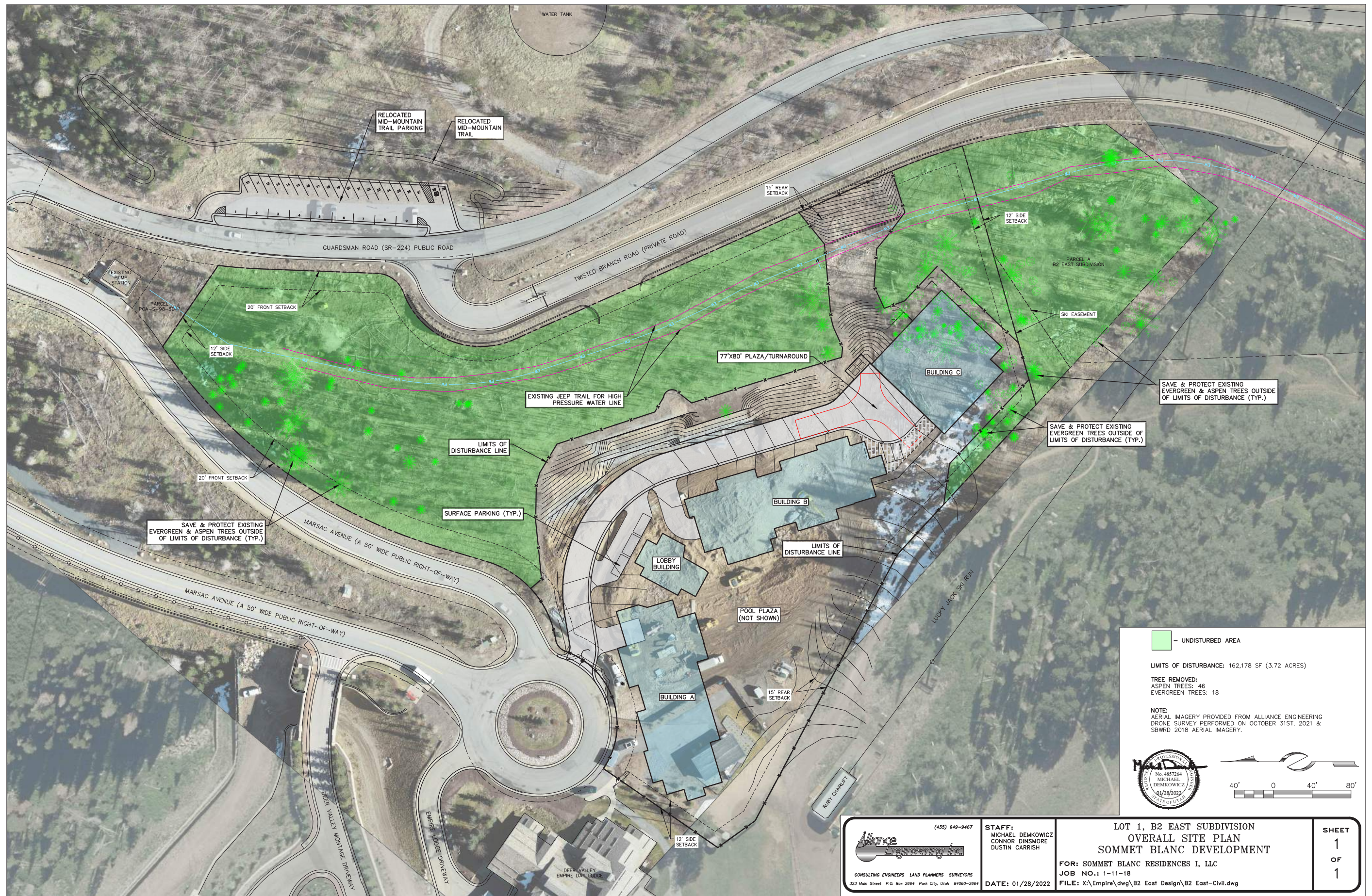
SOMMET BLANC

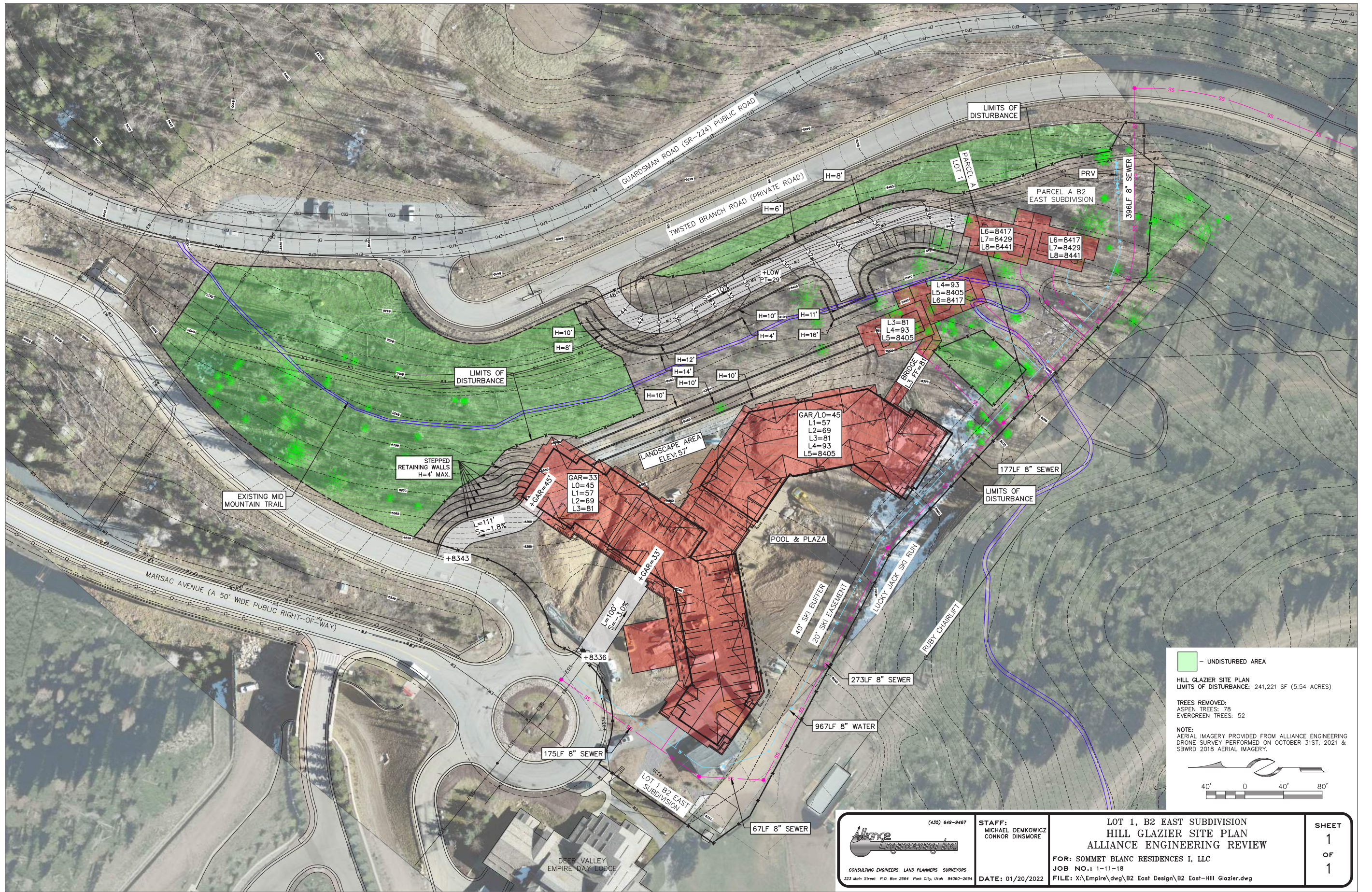
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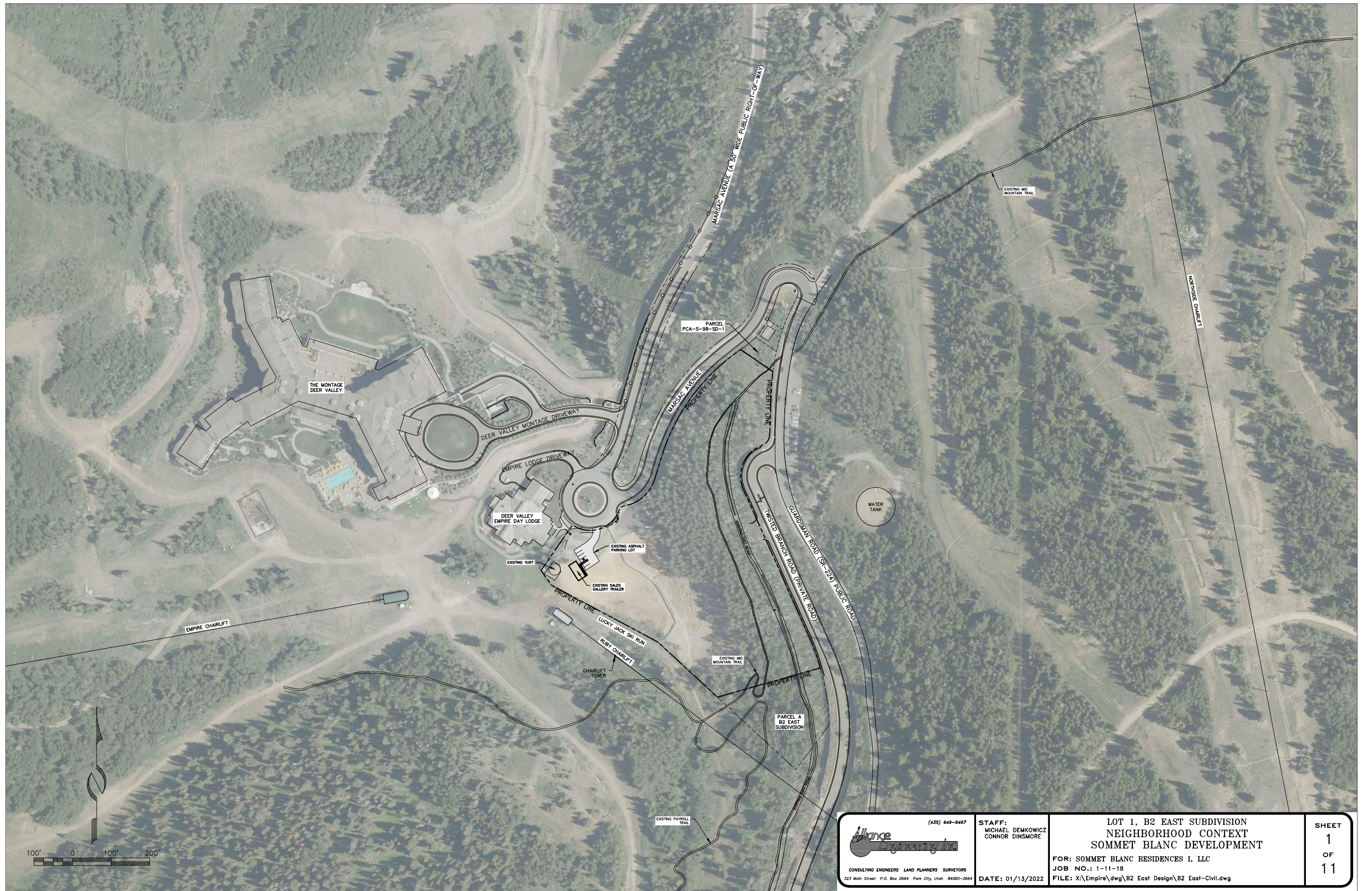
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Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 1 - Civil & Landscape Design
March 1, 2022

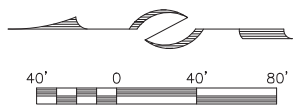
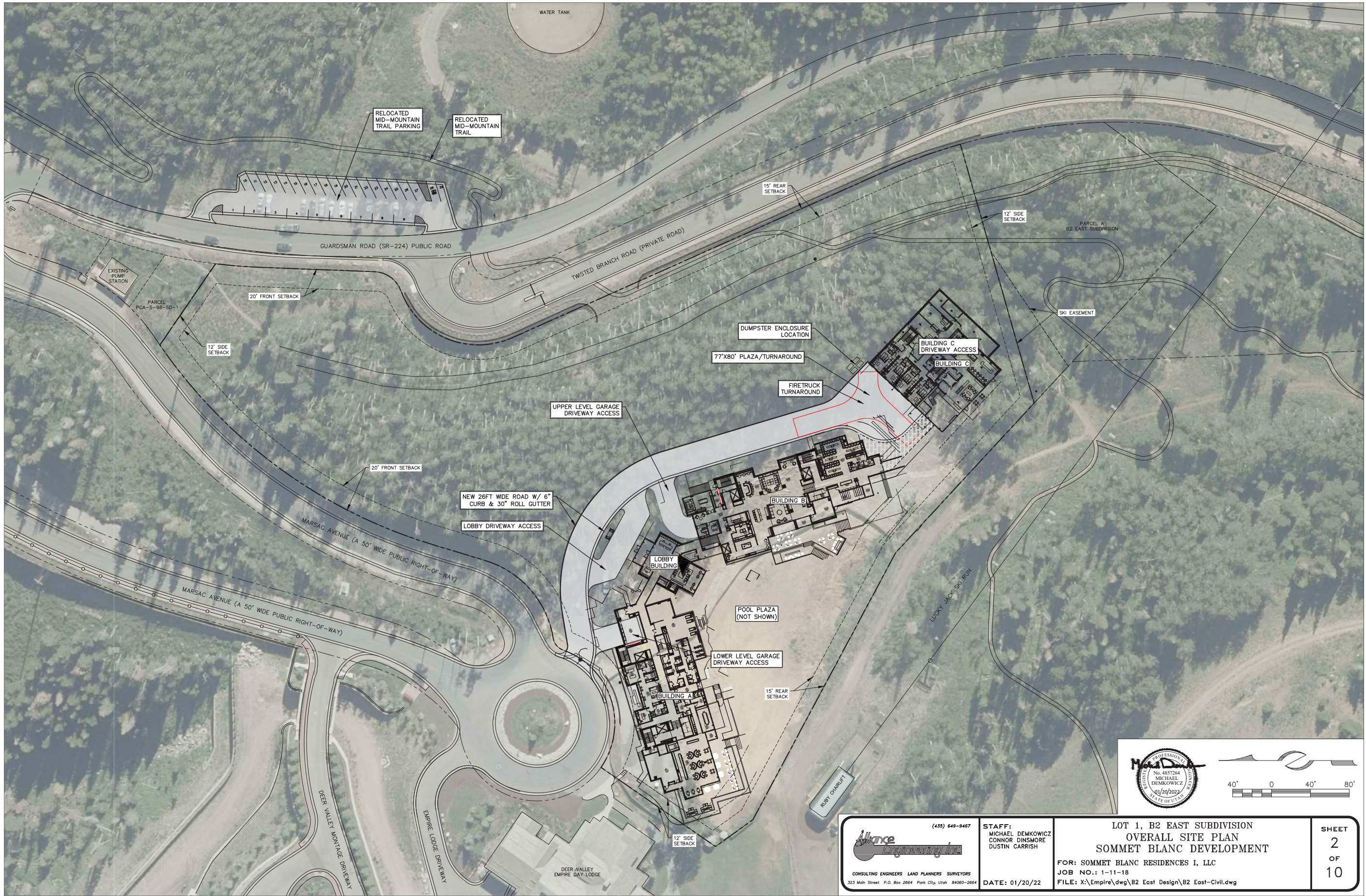




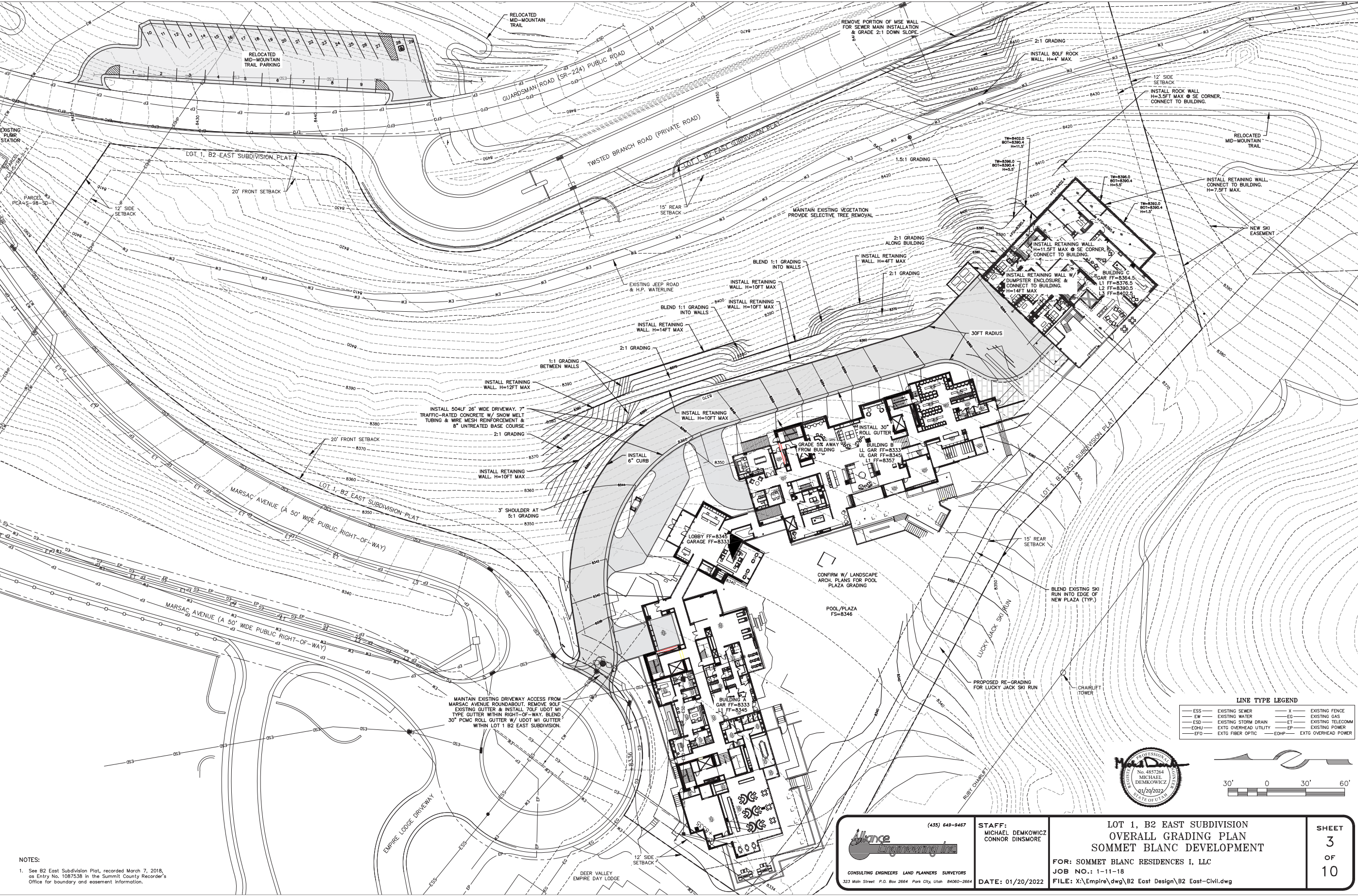


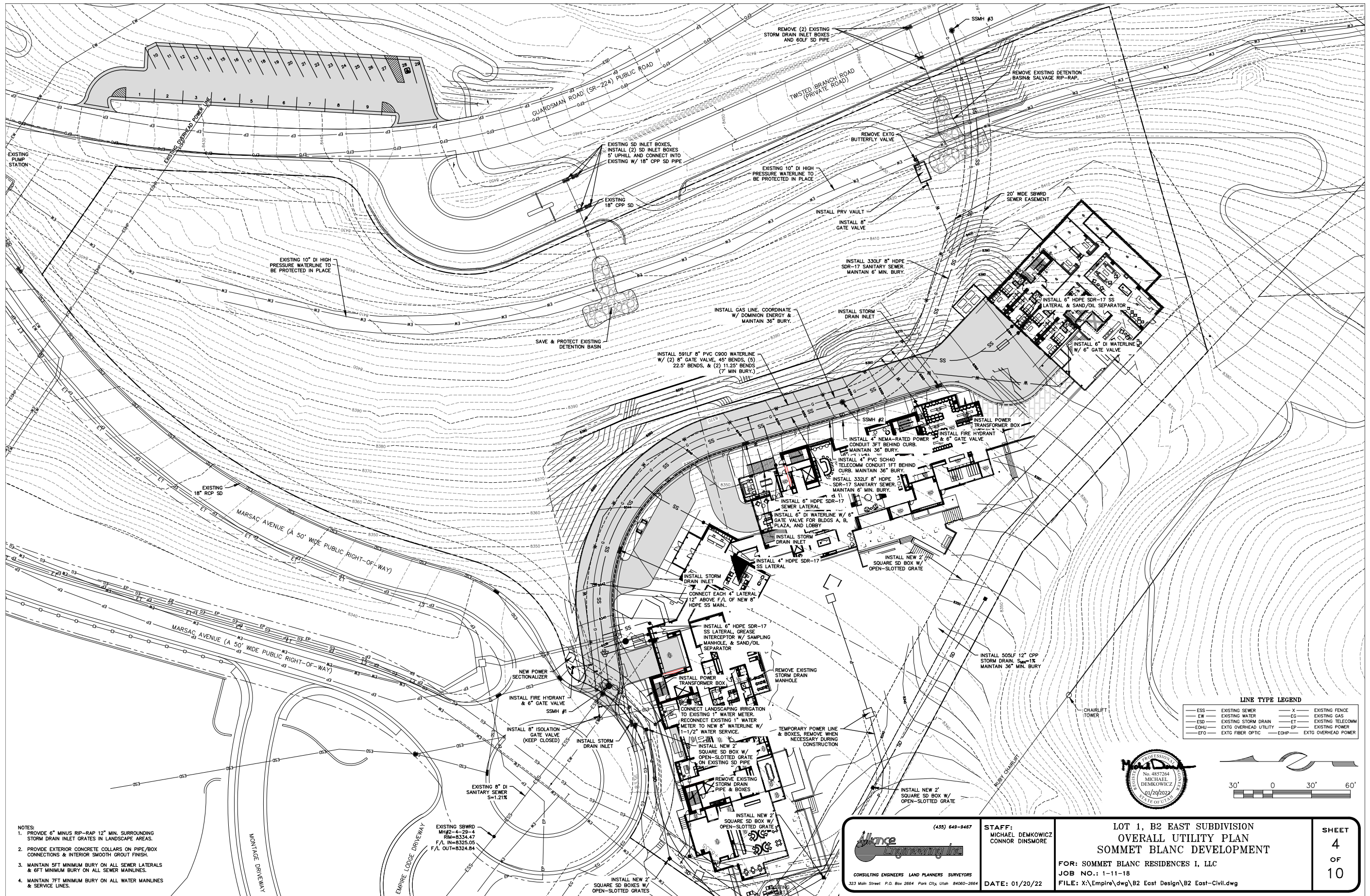


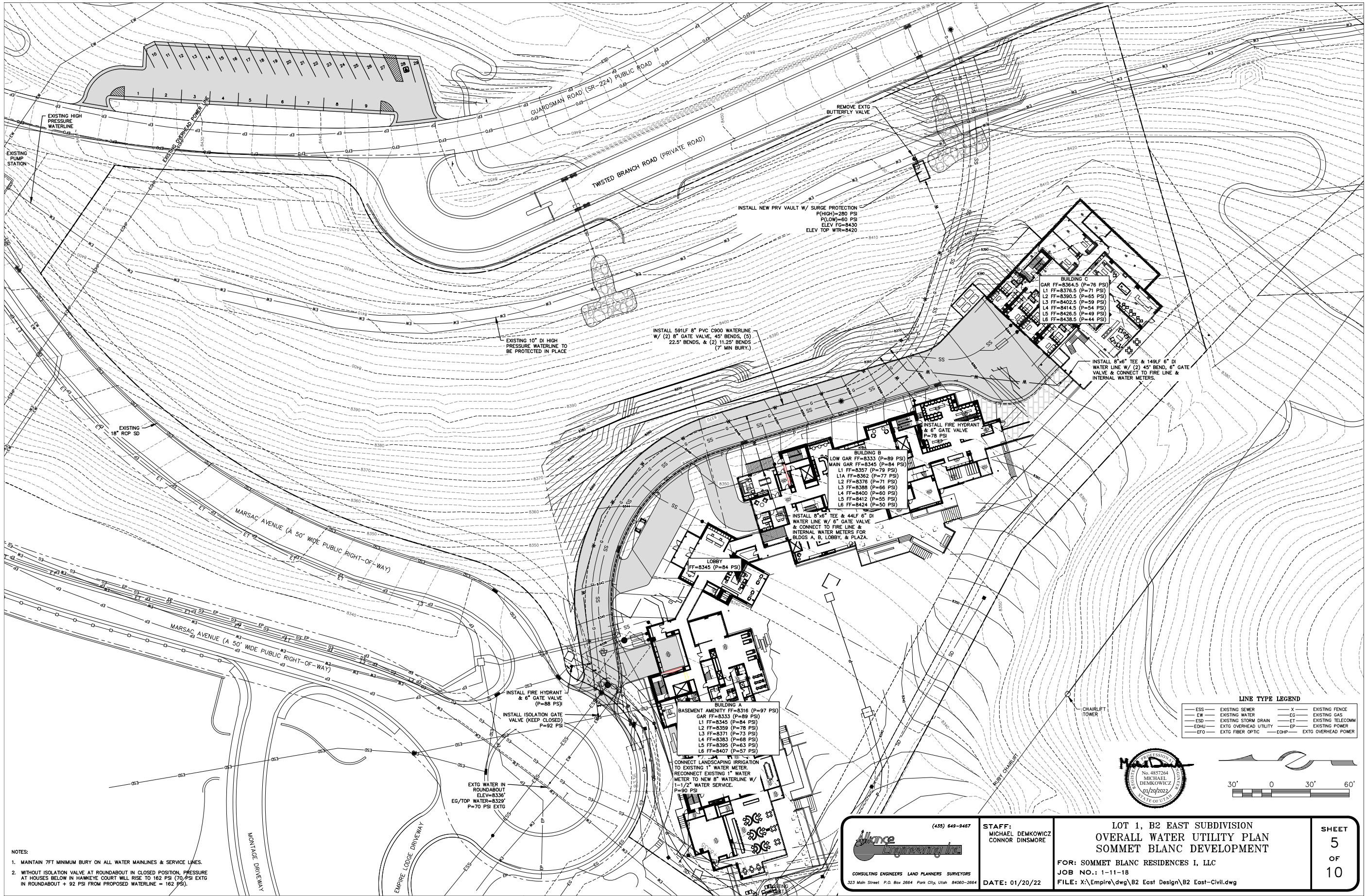


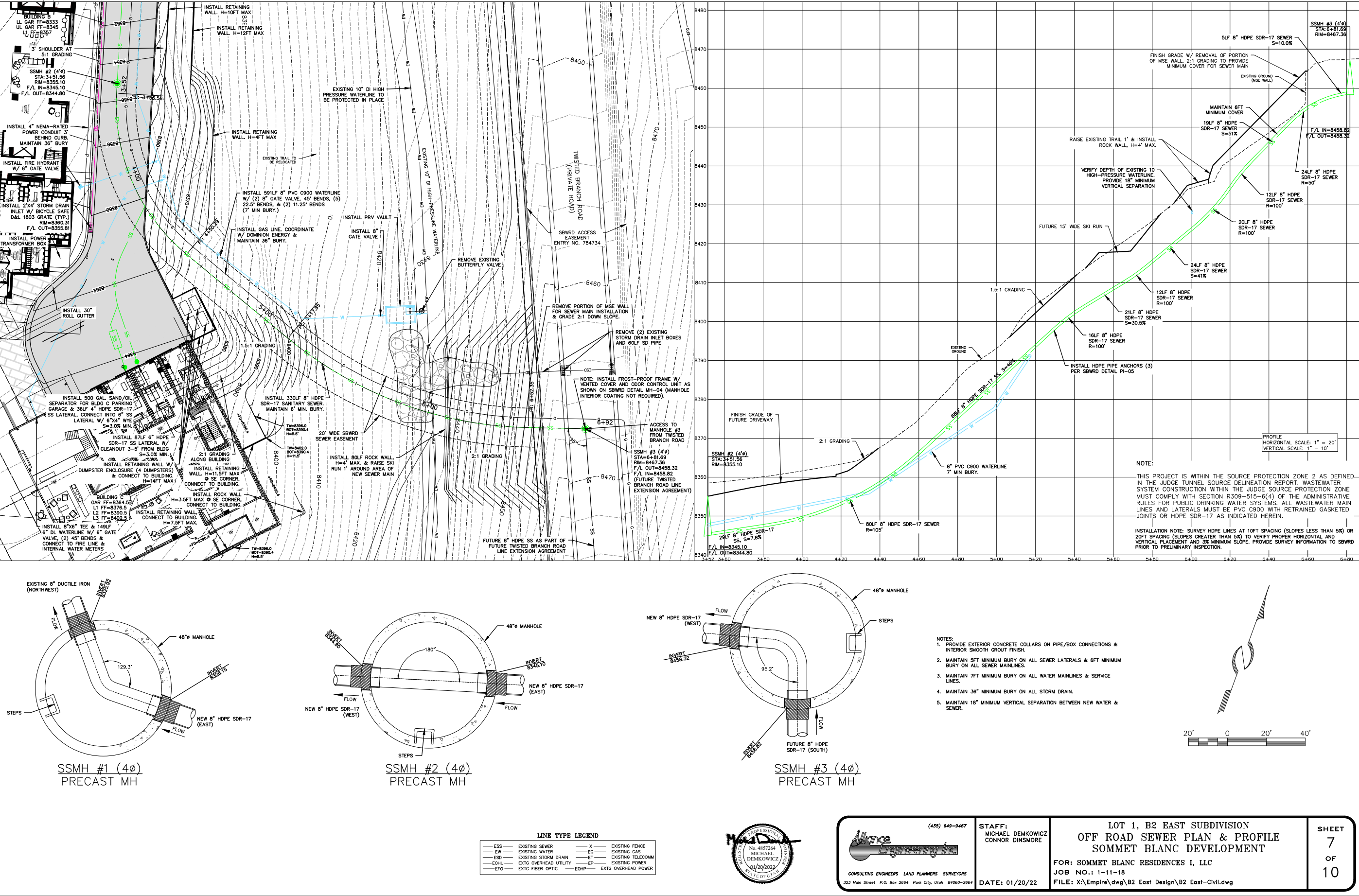


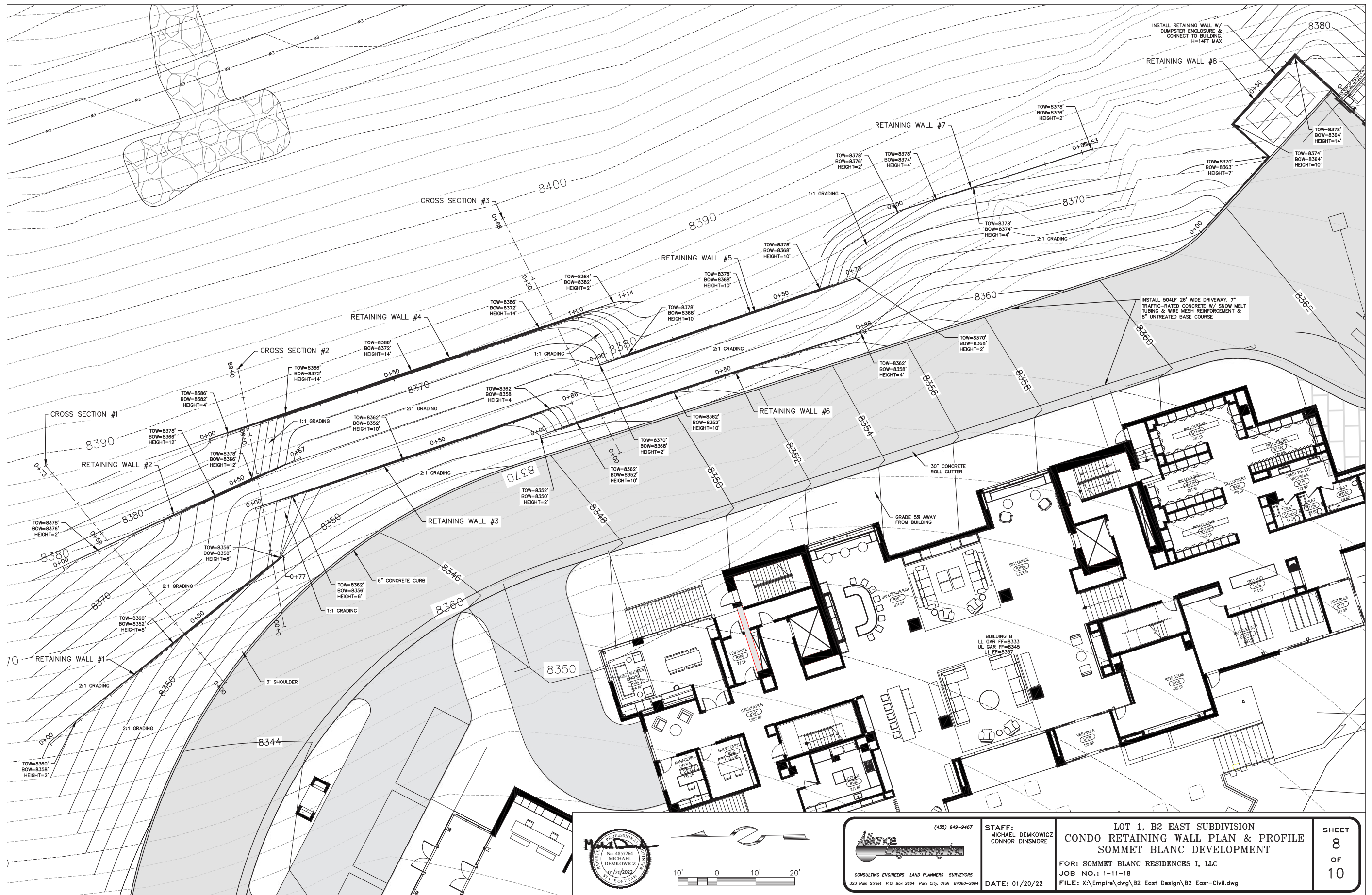
 (435) 649-9467 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664	STAFF: MICHAEL DEMKOWICZ CONNOR DINSMORE DUSTIN CARRISH	LOT 1, B2 EAST SUBDIVISION OVERALL SITE PLAN SOMMET BLANC DEVELOPMENT FOR: SOMMET BLANC RESIDENCES I, LLC JOB NO.: 1-11-18 DATE: 01/20/22 FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil.dwg	SHEET 2 OF 10
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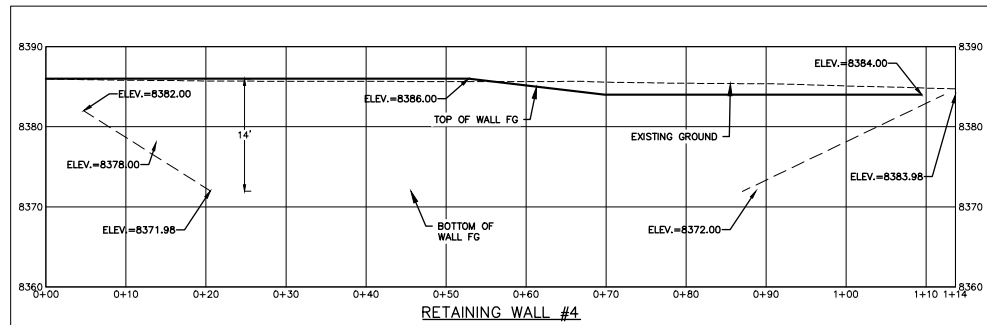
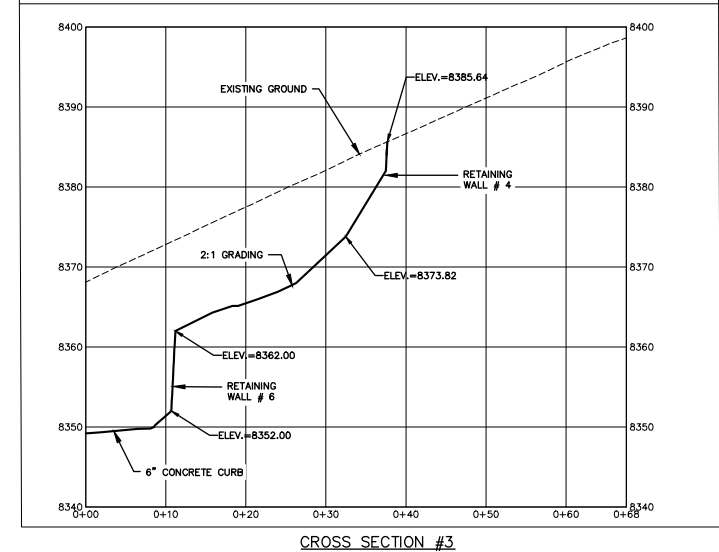
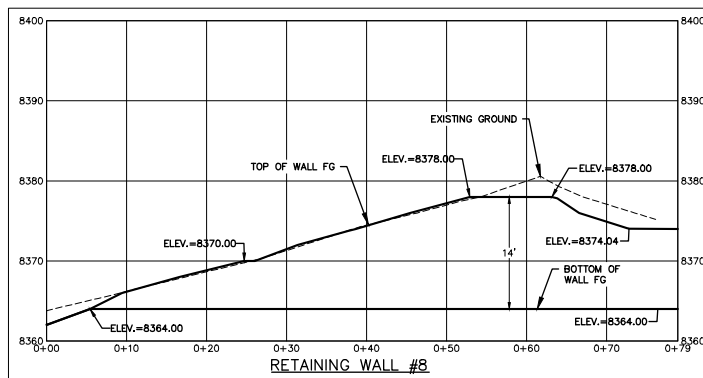
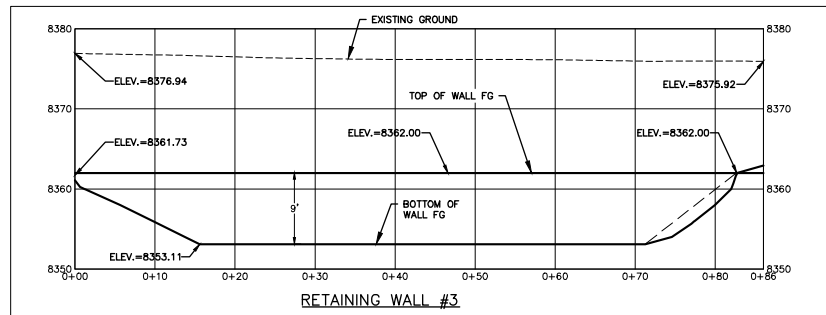
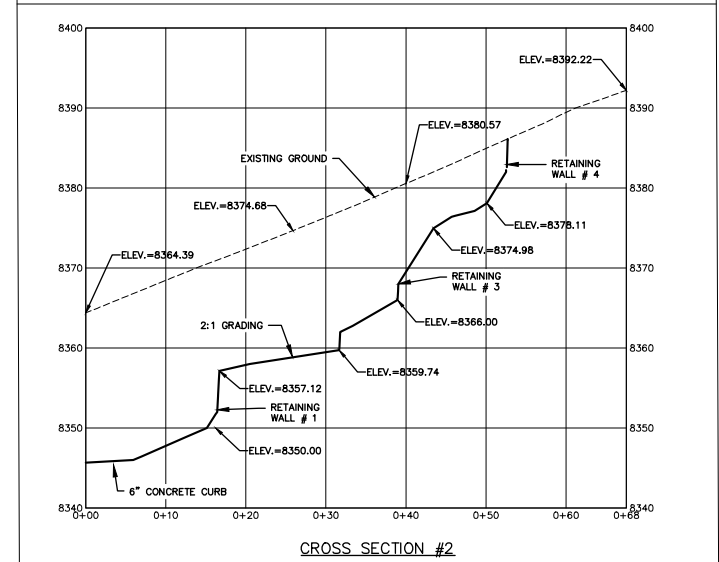
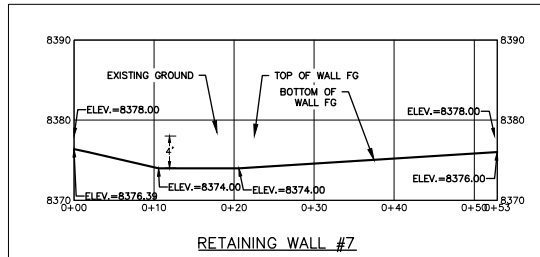
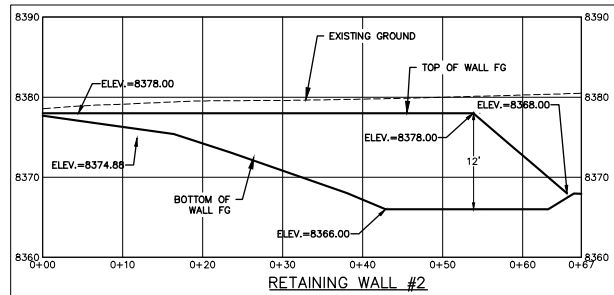
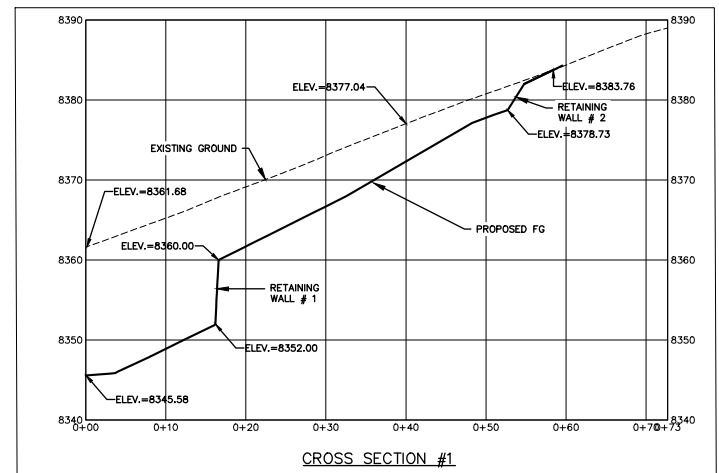
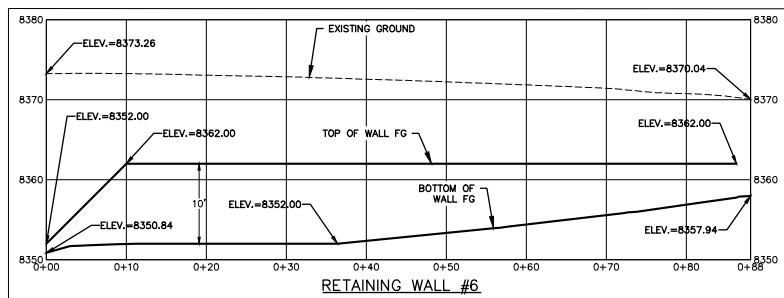
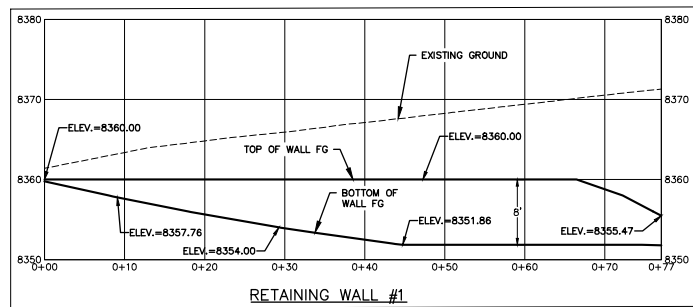




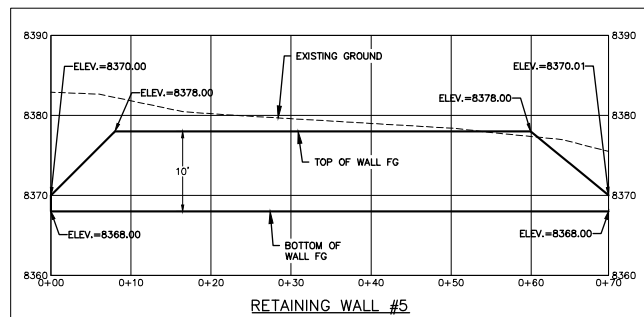




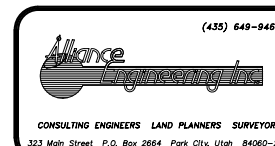
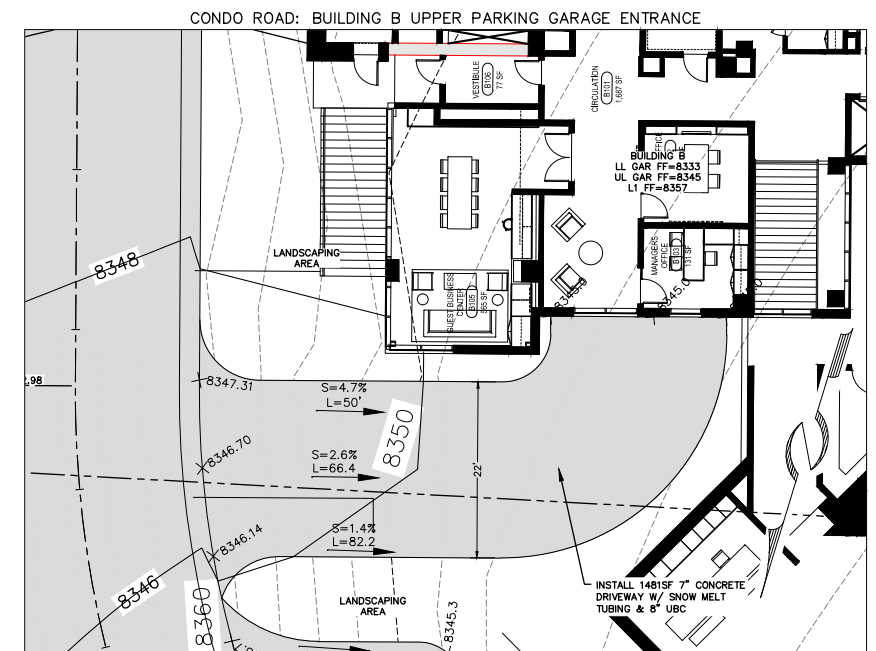
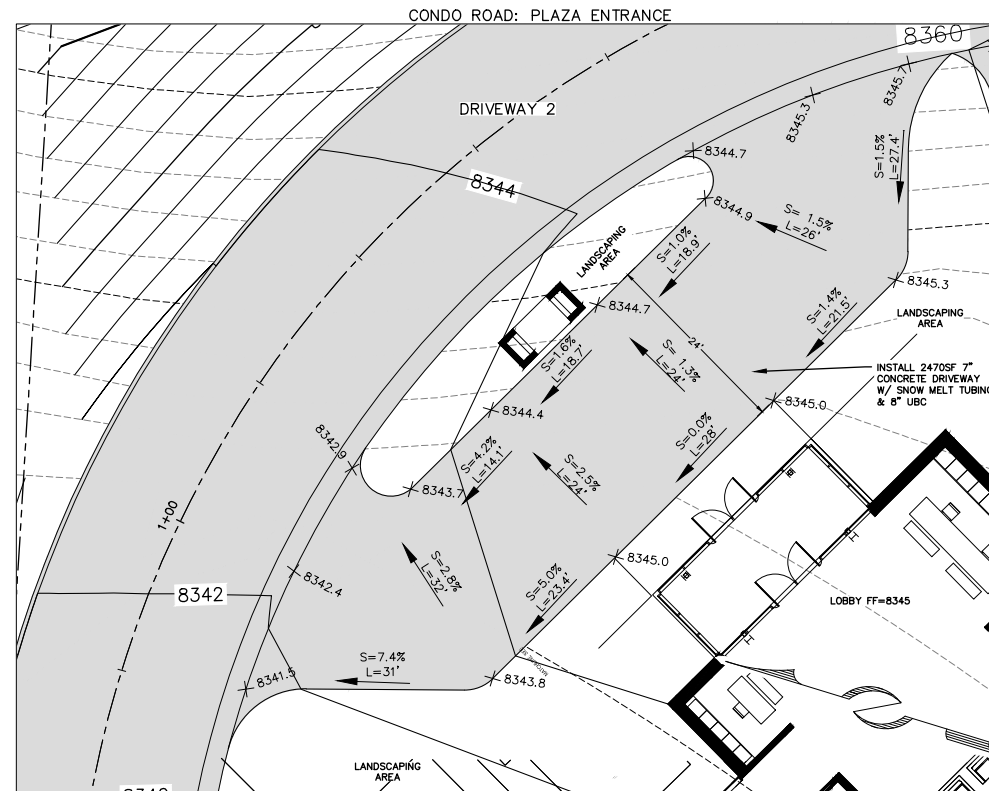
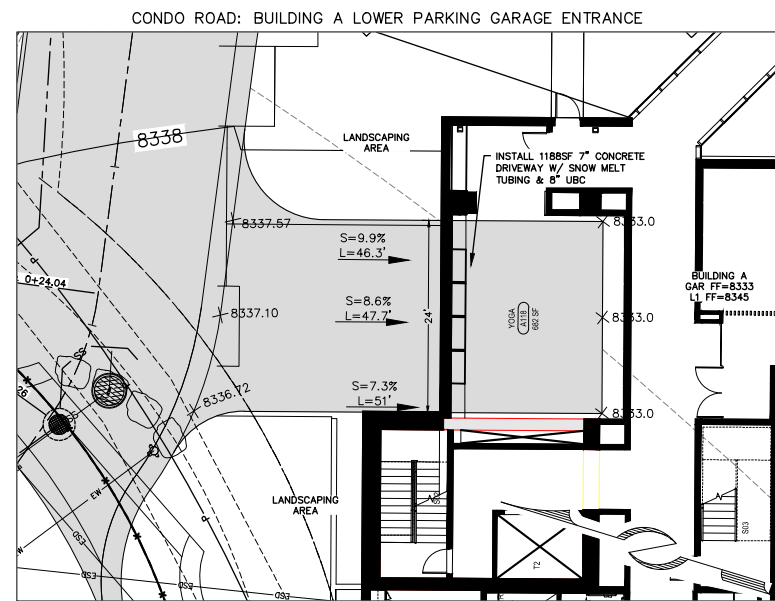




- NOTE:
1. BOTTOM OF WALL GRADING TO BE SMOOTH 2:1 OR 1:1 GRADING, REFER TO GRADING PLAN SHEET.
 2. DASHED LINE ON PROFILES TO REPRESENT SMOOTH BOTTOM OF WALL GRADING.



 (435) 649-9467 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664	STAFF: MICHAEL DEMKOWICZ CONNOR DINSMORE	LOT 1, B2 EAST SUBDIVISION RETAINING WALL PLAN & PROFILE SOMMET BLANC DEVELOPMENT FOR: SOMMET BLANC RESIDENCES I, LLC JOB NO.: 1-11-18 FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil.dwg	SHEET 9 OF 10
	DATE: 01/20/22		



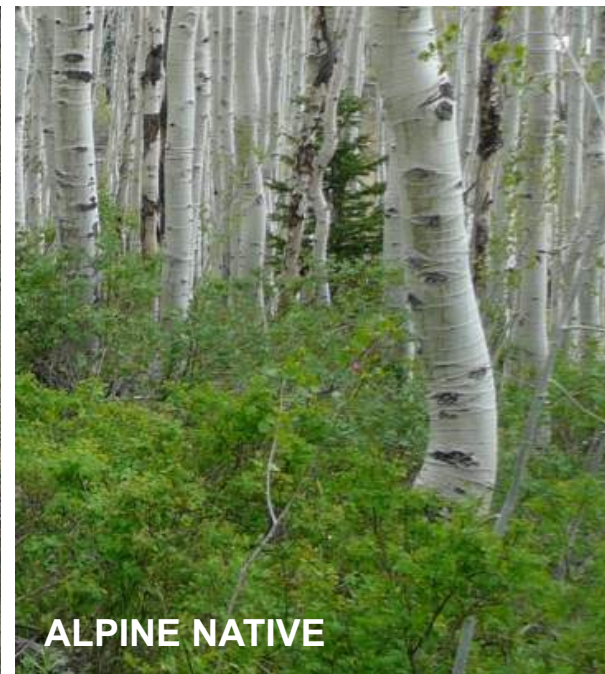
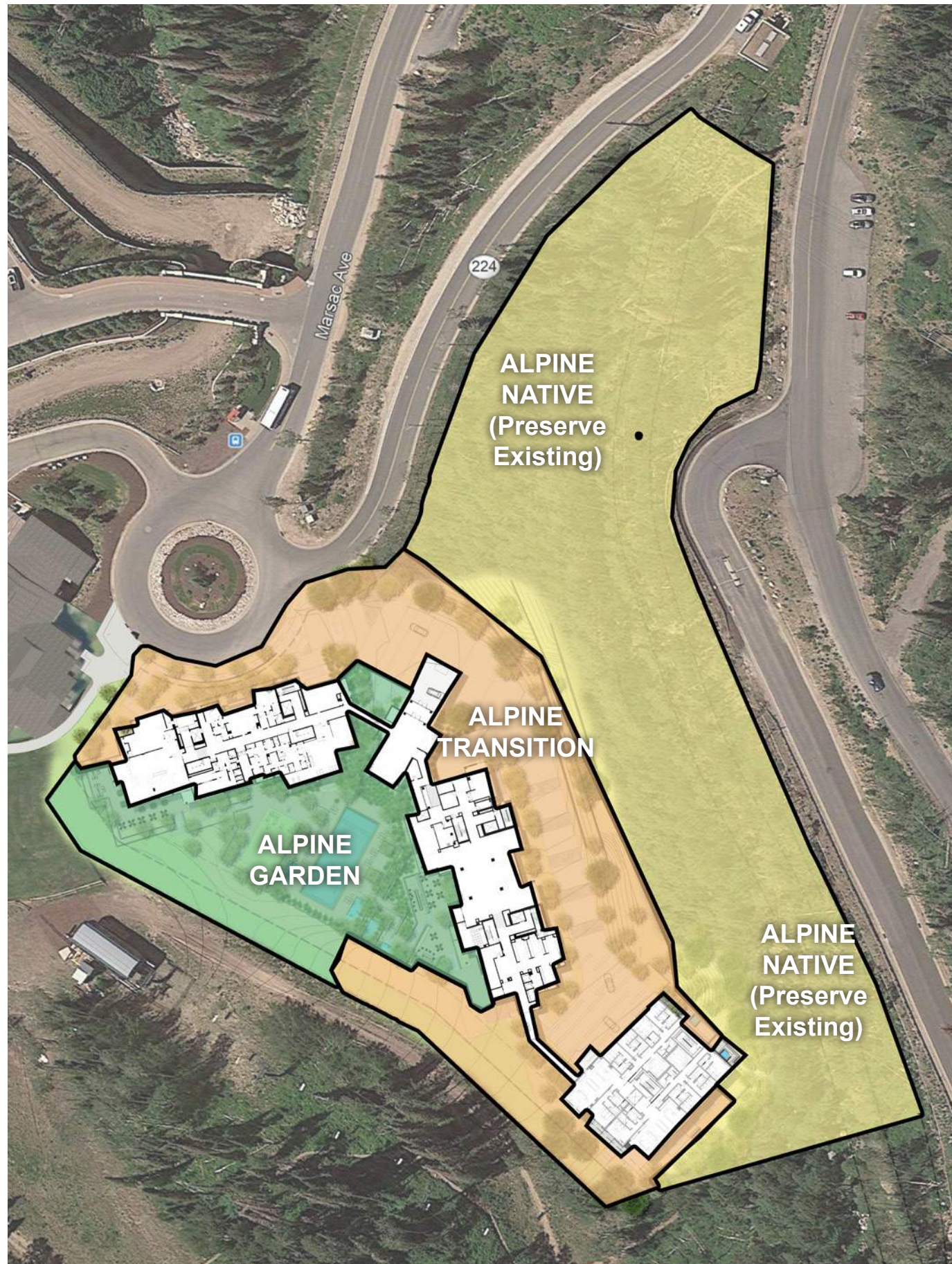
STAFF:
MICHAEL DEMKOWICZ
CONNOR DINSMORE

DATE: 01/20/2022

LOT 1, B2 EAST SUBDIVISION
ADDITIONAL DRIVEWAY GRADING
SOMMET BLANC DEVELOPMENT

FOR: SOMMET BLANC RESIDENCES I, LLC
JOB NO.: 1-11-18
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10



ALPINE NATIVE



ALPINE NATIVE



ALPINE TRANSITION



ALPINE GARDEN

PRELIMINARY SITE PLANTING LISTS

ALPINE NATIVE PLANT LIST

Largely undisturbed portions of the site. Leave existing vegetation. Maintain and clean up the large monoculture swaths of native vegetation only as needed. Fell dead timbers and cultivate nursing logs for next phases of the forest vegetation.

In areas where utilities and site walls require the removal of existing vegetation, it will be replaced with planting to match the existing context vegetation.

Plants will consist of the following:

TREES

- *Juniperus scopulorum* - Rocky Mountain Juniper
- *Picea pungens* - Colorado Green Spruce
- *Populus tremuloides* - Quaking Aspen

SHRUBS

- *Amelanchier alnifolia* - Saskatoon Serviceberry
- *Artemisia tridentata* - Big Sage
- *Chrysothamnus nauseosus* - Rubber Rabbitbrush
- *Symphoricarpos occidentalis* - Western Snowberry

GRASSES

- *Bromus marginatus* - Mountain Brome
- *Elymus lanceolatus spp.* - Streambank Wheatgrass
- *Pascopyrum smithii* - Western Wheatgrass

ALPINE TRANSITION PLANT LIST

Create a blending zone to transition from the native area to the more gardensque areas of the project. These include drive lane planting, the ski beach landing and more naturalized building base planting. Large swaths and monocutures will be used to match in with the existing context in a simple and elegant form. Some additional plants added to each category to tie in the the garden areas of the site. Plants will consist of the following:

TREES

- *Acer ginnala* - Amur Maple
- *Acer glabrum* - Rocky Mountain Maple
- *Juniperus scopulorum* - Rocky Mountain Juniper
- *Picea pungens* - Colorado Green Spruce
- *Picea omorika* - Siberian Spruce
- *Populus tremuloides* - Quaking Aspen
- *Rhus glabra* - Smooth Sumac

SHRUBS

- *Amelanchier alnifolia* - Saskatoon Serviceberry
- *Artemisia tridentata* - Big Sage
- *Chrysothamnus nauseosus* - Rubber Rabbitbrush
- *Cornus sericea* - Redtwig Dogwood
- *Mahonia repens* - Creeping Oregon Grape
- *Paxistima myrsinites* - Mountain Lover
- *Salix spp.* - Willow
- *Symphoricarpos occidentalis* - Western Snowberry

GRASSES

- *Bromus marginatus* - Mountain Brome
- *Elymus lanceolatus spp.* - Streambank Wheatgrass
- *Pascopyrum smithii* - Western Wheatgrass

ALPINE GARDEN PLANT LIST

Utilize many of the same plants found in the Native and Transition portions of the design, but create organization and form in the landscape that responds to the architectural site walls and features. Perennials added for seasonal color. Plants will consist of the following:

TREES

- *Acer ginnala* - Amur Maple
- *Acer glabrum* - Rocky Mountain Maple
- *Juniperus scopulorum* - Rocky Mountain Juniper
- *Populus tremuloides* - Quaking Aspen
- *Rhus glabra* - Smooth Sumac
- *Picea pungens* - Colorado Green Spruce
- *Picea omorika* - Siberian Spruce

SHRUBS

- *Amelanchier alnifolia* - Saskatoon Serviceberry
- *Arctostaphylos uva-ursi* - Kinnikinnick
- *Artemisia tridentata* - Big Sage
- *Chrysothamnus nauseosus* - Rubber Rabbitbrush
- *Cornus sericea* - Redtwig Dogwood
- *Mahonia repens* - Creeping Oregon Grape
- *Paxistima myrsinites* - Mountain Lover
- *Ribes alpinum* - Alpine Currant
- *Salix spp.* - Willow
- *Symphoricarpos occidentalis* - Western Snowberry

GRASSES

- *Bromus marginatus* - Mountain Brome
- *Elymus lanceolatus spp.* - Streambank Wheatgrass
- *Festuca ovina* - Sheep Fescue
- *Pascopyrum smithii* - Western Wheatgrass
- *Miscanthus spp.* - Maidengrass
- *Poa alpina* - Alpine Bluegrass
- *Poa pratensis spp.* - Kentucky Bluegrass

PERENNIALS

- *Agastache rupestris* - Hyssop
- *Alcea rosea* - Hollyhock
- *Aquilegia caerulea* - Columbine
- *Lavendula spp.* - Lavender
- *Rudbeckia spp.* - Black-eyed Susan



MID MOUNTAIN TRAIL PARKING

ALPINE NATIVE LANDSCAPE PROTECT IN PLACE AND RESTORE TO NATIVE

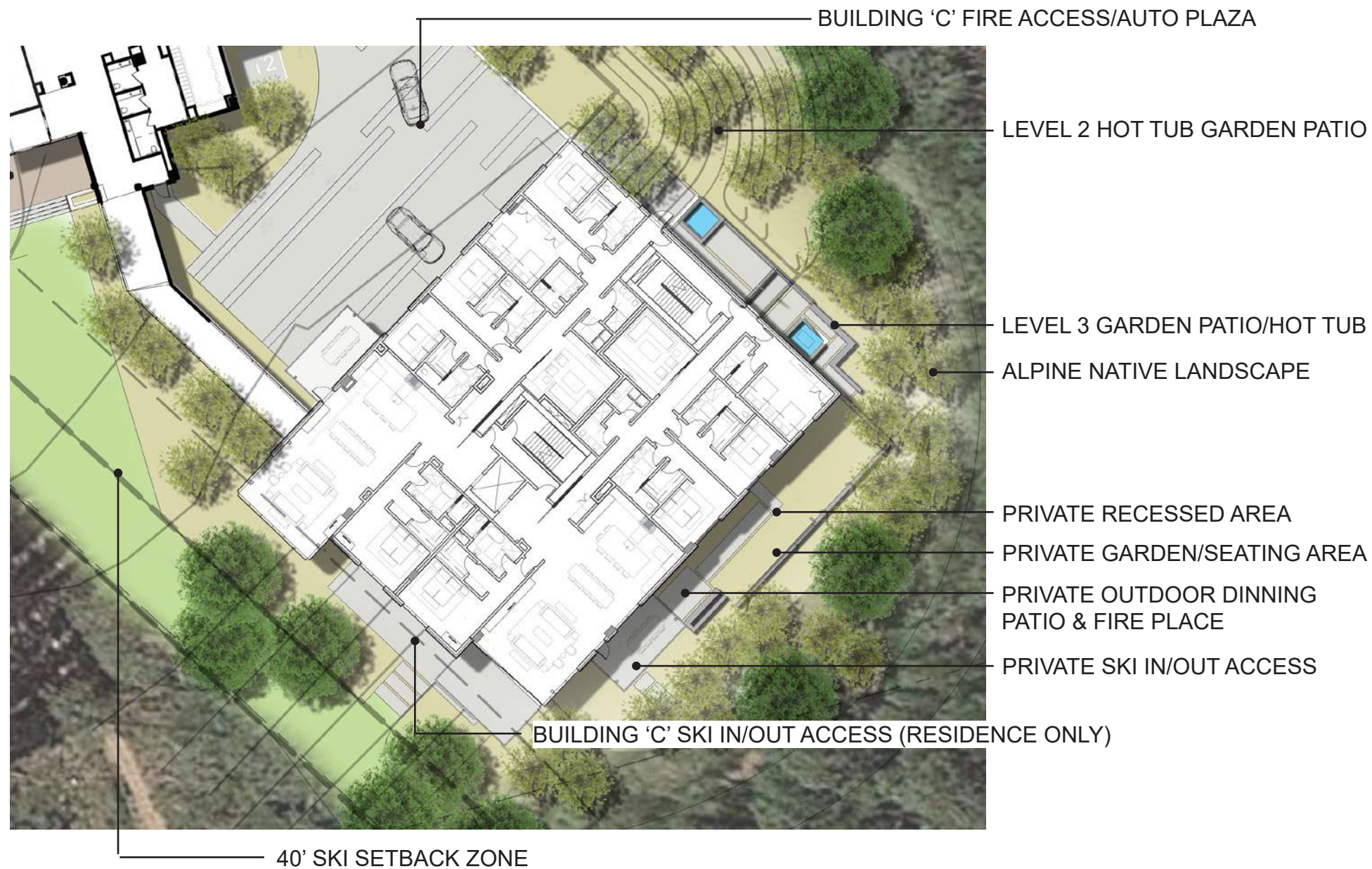
LOWER ROAD DECORATIVE PAVING AND STREETScape

EXISTING LANDSCAPE AND PATIO AT EMPIRE PASS

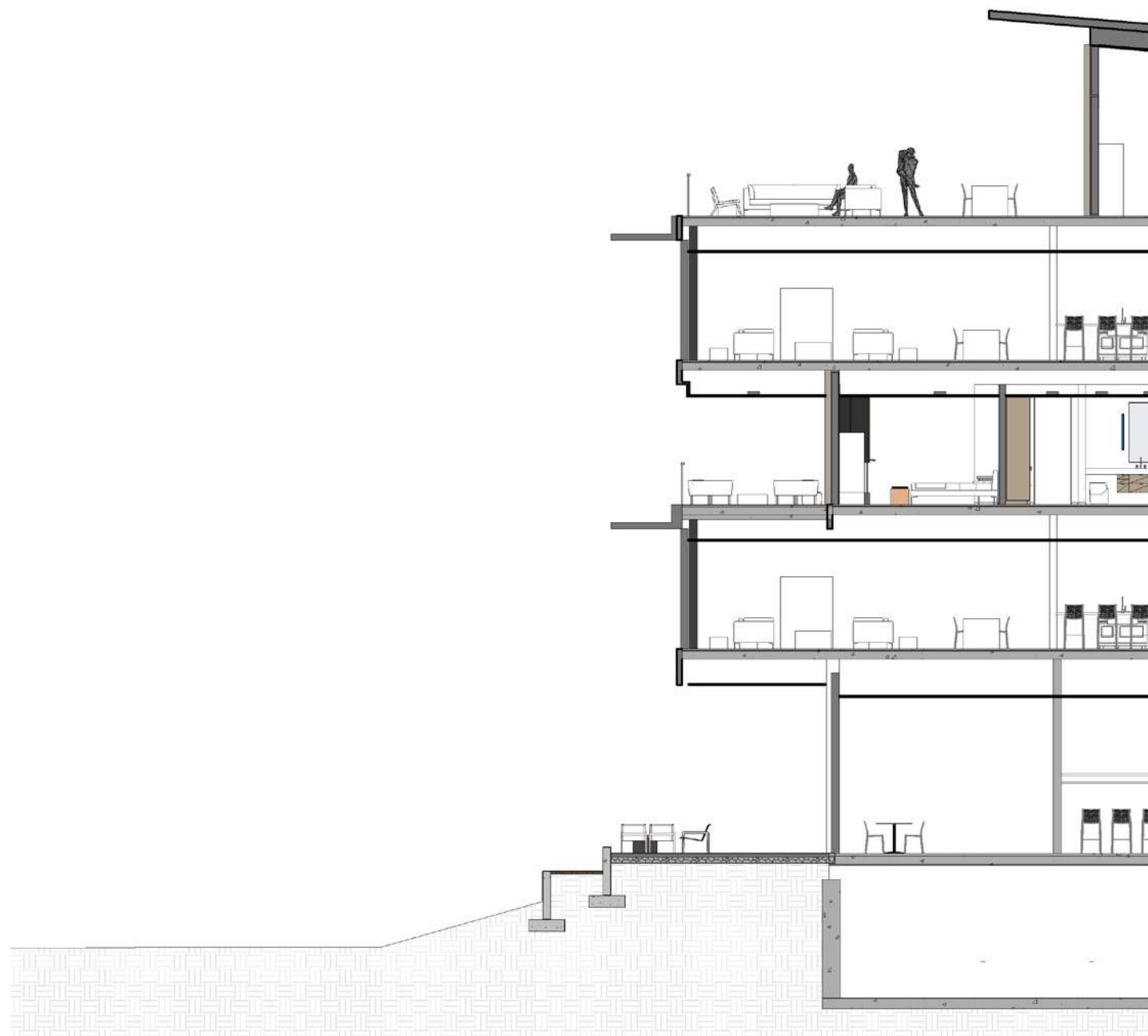
ALPINE TRANSITION LANDSCAPE DECORATIVE RETAINING WALLS AND SLOPE STABILIZATION STRATEGIES

ALPINE GARDEN AREA SEE AMENITY ENLARGEMENT PLAN

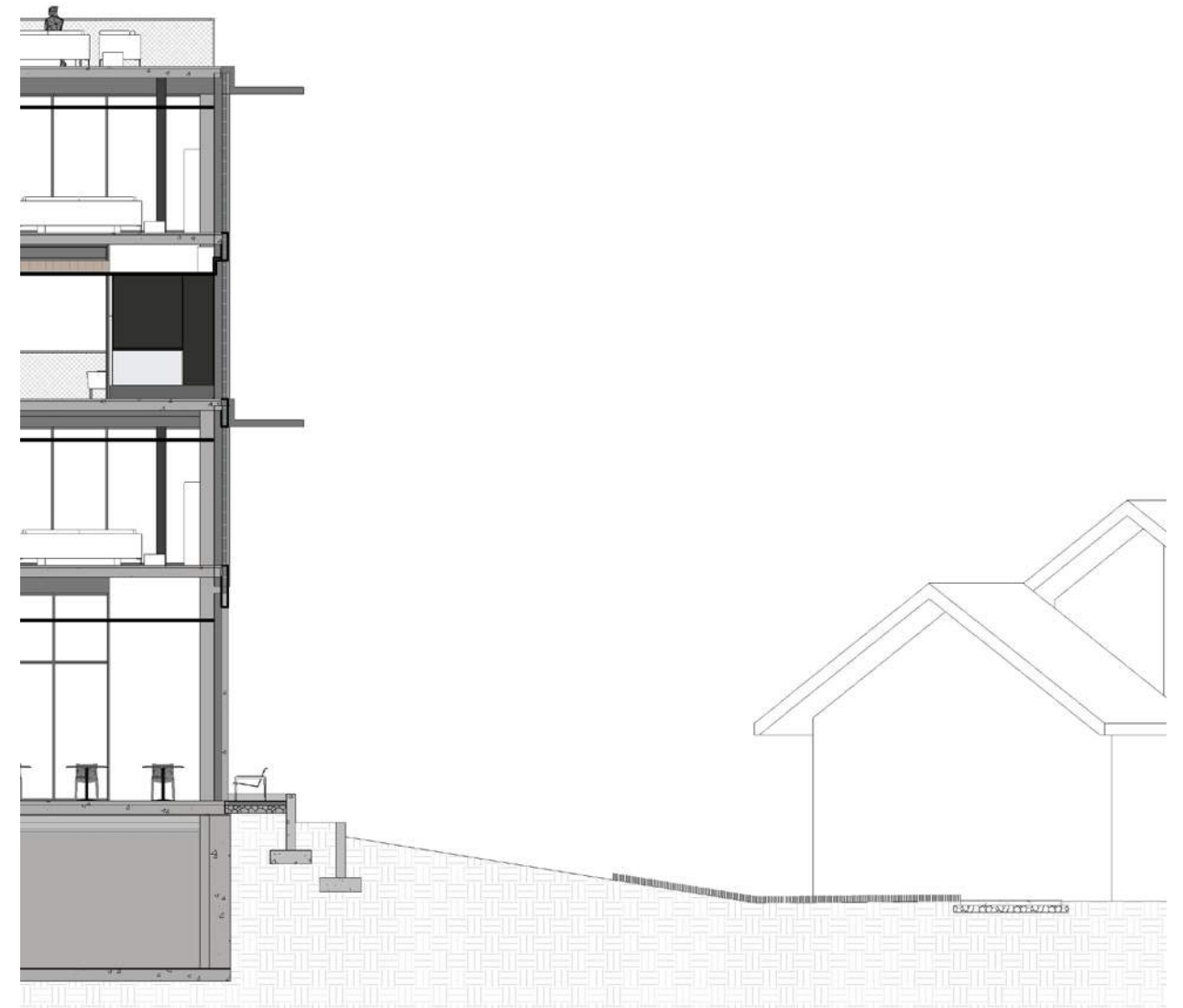
BUILDING C PLAZA AND TURN AROUND AREA







A



B

RESTAURANT SECTIONS



C

POOL BARRIER SECTION



RESTAURANT



POOL



APRES-SKI



STONE DECK AT POOL AREA



LONG UNIT C.I.P. CONC DRIVEWAY



ALPINE NATIVE LANDSCAPE



ALPINE GARDEN LANDSCAPE



ASPEN TREES IN PAVING AREA'S



VIEW OF POOL FROM LOBBY



BRIM FULL POOL AND WHITE CONC



ALPINE NATIVE



ALPINE GARDEN

OVERVIEW

The lighting design strategy for this project is minimal and restrained. Ceilings are kept as clean as possible with flanged square recessed downlights placed strategically throughout the project in gypsum and wood ceilings supported by key decorative luminaires.

All permanently installed interior and exterior lighting shall be LED technology with a standard Correlated Color Temperature (CCT) of 2700 Kelvin and a Color Rendering Index (CRI) greater than 80. All front of house and saleable unit lighting shall be dimmable and be controlled to meet local energy code compliance and life and safety requirements.

Saleable Units: Recessed downlights provide ambient and focal point lighting. Decorative pendants are located over select kitchen islands and/or dining tables. Vanity sconces are located at each mirror. Undercabinet lighting is provided in all upper cabinets. Portable floor and table lamps add soft ambient illumination and flexibility for the owner. Exterior decks are sparsely lit with fully shielded sources to meet Dark Sky Compliance. All larger back of house areas including the garage are lit with wall or ceiling mounted linear led strips while smaller spaces are equipped with surface mounted flat panel downlights.

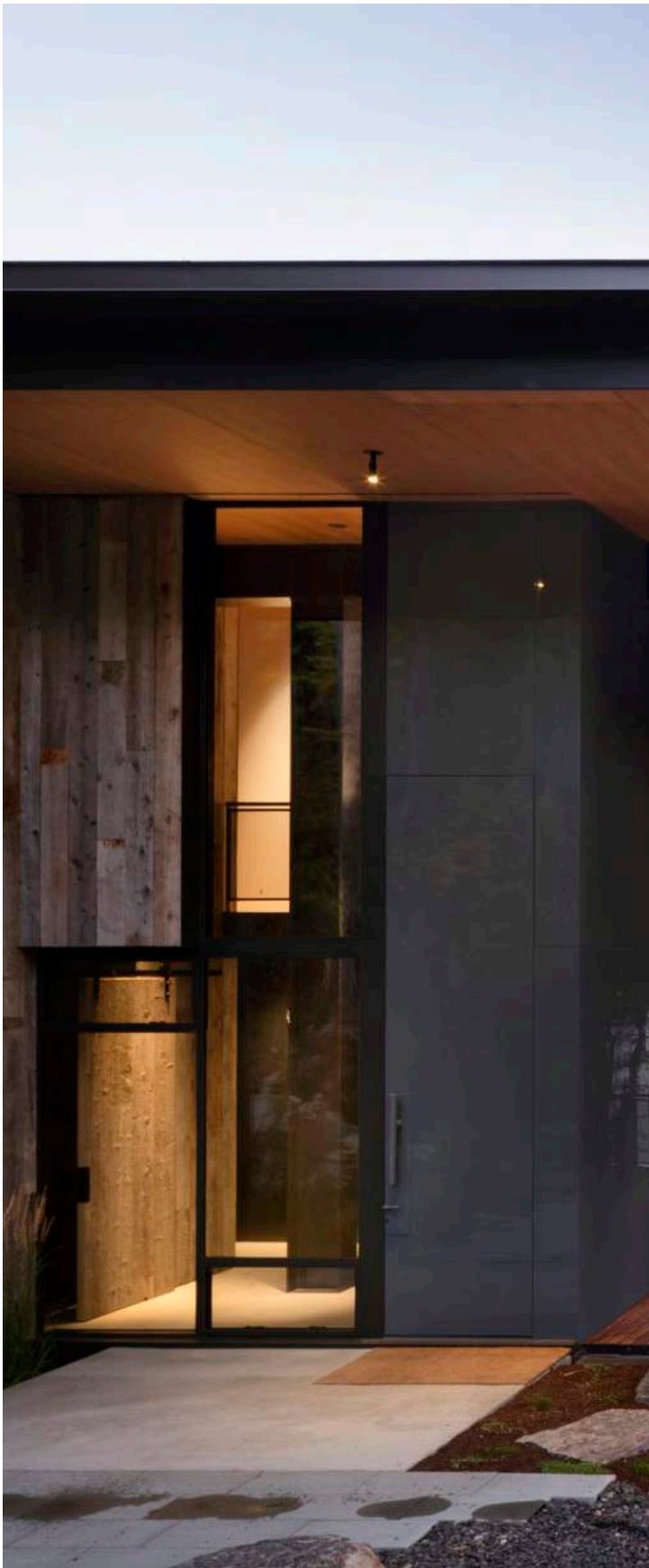
Lighting Controls: Provide pricing for conventional wall box lighting controls and alternative pricing for a lighting and shade control system as an upgrade package.

Public Spaces: Recessed downlights provide ambient and focal point lighting. Downlight locations are designed to deliver egress lighting and will be used as emergency lighting per generator [preferred] or inverter. In addition, each lobby has a custom decorative chandelier. Any mirrors in lockers and public bathrooms are equipped with flanking decorative sconces. Portable floor and table lamps are placed in all public and amenity seating areas.

Interior back of house staircases are lit with one wall sconce per landing. Lighting for all larger back of house areas is provided by wall or ceiling mounted linear LED strips. Smaller spaces are equipped with surface mounted flat panel downlights.

Parking levels are lit with wet location rated linear led strips.

Exterior Lighting: is designed to provide no more than egress illuminance where required by code and follows Dark Sky Compliance with fully shielded direct only luminaires. Stumbling hazards like stairs and edges will require step or pathlights to provide safe conduct. Paths are lit with hip high fully shielded bollards at every twelve feet and private roads and parking are lit with ten foot high poles every thirty feet. Lighting at pool deck and hot tubs is provided by bollards placed at the edge of the deck at no more than twelve feet mounting distance.





OVERVIEW

EXTERIOR LIGHTING IS DESIGNED TO PROVIDE NO MORE THAN EGRESS ILLUMINANCE WHERE REQUIRED BY CODE AND FOLLOWS DARK SKY COMPLIANCE WITH FULLY SHIELDED DIRECT ONLY LUMINAIRES. STUMBLING HAZARDS LIKE STAIRS AND EDGES WILL REQUIRE STEP OR PATHLIGHTS TO PROVIDE SAFE CONDUCT.

EGRESS ILLUMINANCE NO LESS THAN 1 FC
RECESSED DOWNLIGHTS
WALL MOUNTED FULLY SHIELDED SCONCES
FACADE MOUNTED ADJUSTABLE FULLY SHIELDED FLOOD LIGHTS
FULLY SHIELDED BOLLARDS EVERY 12 FEET
STEP LIGHTS

PARKING & ROAD ILLUMINANCE 1 FC AVG, CONTRAST RATIO 4:1
10 FOOT POLE LIGHTS EVERY 30 FEET FOLLOWING HARDSCAPE DETAILS

POOL AREA ILLUMINANCE NO LESS THAN 3 FC
FULLY SHIELDED BOLLARDS EVERY 12 FEET
STEP LIGHTS
IN-POOL LIGHTING (PROVIDED BY OTHERS)

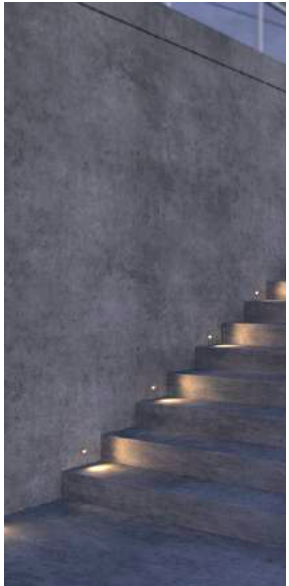


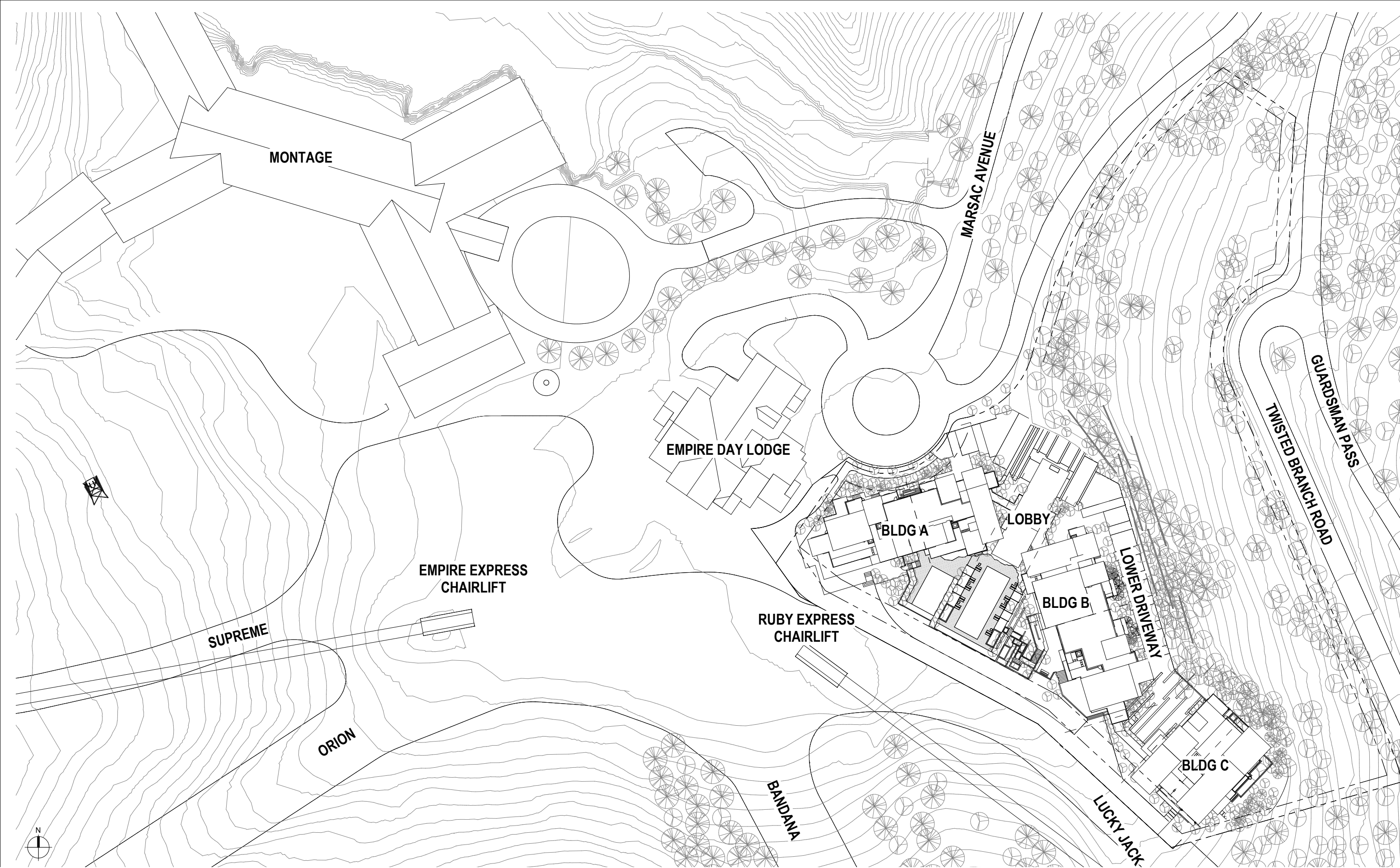
IMAGE	TYPE	DESCRIPTION	LOCATION	MANUFACTURER	MODEL	QUANTITY	URL
	X01	WALL MOUNTED SCONCE WET FULLY SHIELDED	EXTERIOR GARAGE	HK LIGHTING	ZX20-WM	ONE PER EXTERIOR DOOR	https://www.hklightinggroup.com/spec/wm/28-HK%20Spec%20Sheets%20Concepts-ZX20-WM%2BZX20-WM-SOi.pdf
	X02	FACADE MOUNTED CYLINDER DOWNLIGHT FULLY SHIELDED	POOL AREA	HK LIGHTING	ZX30-WM-LOCK-WITH 45 DEGREE SNOOT	PER MARKUPS	https://www.hklightinggroup.com/spec/aa/39-HK%20Spec%20Sheets%20Concepts-ZX30%2BZX30-SOi.pdf
	X03	RECESSED WALL MOUNTED STEPLIGHT WET	LANDSCAPE STAIRS	BK LIGHTING	MINI MICRO	PER MARKUPS	https://bklighting.com/collaterals/specs/specs-731.pdf
	X04	BOLLARD	POOL AREA AND PATHLIGHTING	BEGA US	99058	EVERY TWELVE FEET ON PATHS AND AT EDGE OF POOL DECK	https://bega-static.s3.us-east-2.amazonaws.com/userfiles/files/99058_BEGA_Spec.pdf
	X05	POLE	ROADS AND EXTERIOR PARKING	BEGA US	88978	EVERY THIRTY FEET ALONG ROADS AND PARKING	https://bega-static.s3.us-east-2.amazonaws.com/userfiles/files/Download_Documents/88978/88978_BEGA_Spec.pdf







Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 2 - Condo Lodge Plans and Elevations
March 1, 2022



GROSS AREA SCHEDULE	
Area Type	Area
ACCESSIBLE & AFFORDABLE	6,228 SF
AMENITY	28,963 SF
BOH	3,474 SF
CIRCULATION	33,800 SF
MEP	8,941 SF
PARKING	53,354 SF
RESIDENTIAL SALEABLE	162,000 SF
RESTAURANT	3,559 SF
RESTROOMS	1,103 SF
STORAGE	12,025 SF
GRAND TOTAL	313,447 SF

PARKING SUMMARY - BUILDING A&B P2, BUILDING C P1					
	UNITS	STALLS/UNIT	REQ'D STALLS	25% REDUCTION	TYPE
Type A Units (ADA)	2	1	2	1.5	ADA
Affordable 2 Bed Housing Units	2	1.5	3	2.3	Standard
Affordable Studio Housing Units	4	1	4	3	Standard
Buildings AB Residential	36	2	72	54	Standard
Buildings C Residential	13	2	26	19.5	Standard
Restaurant (10 stalls/1,000sf)	3.56	10	35.6	26.7	Tandem
TOTAL			142.6	107.0	
PARKING SPOTS PROVIDED:			107		

DEER VALLEY PARKING - BUILDING B P1				
	REQUIRED	PROVIDED		TYPE
Empire Day Lodge Parking	0	56		Tandem

UNIT SCHEDULE - BLDG C				
Number	Name	Area	Type	Unit Type
C 201	BLDG C UNIT 201	4,211 SF	5BR	M
C 202	BLDG C UNIT 202	3,898 SF	4BR	O
C 301	BLDG C UNIT 301	4,176 SF	5BR	N
C 302	BLDG C UNIT 302	4,211 SF	5BR	M
C 401	BLDG C UNIT 401	4,211 SF	5BR	M
C 402	BLDG C UNIT 402	4,176 SF	5BR	N
C 501	BLDG C UNIT 501	4,176 SF	5BR	N
C 502	BLDG C UNIT 502	4,211 SF	5BR	M
C 601	BLDG C UNIT 601	4,211 SF	5BR	M
C 602	BLDG C UNIT 602	4,176 SF	5BR	N
C 701	BLDG C UNIT 701	4,176 SF	5BR	N
C 702	BLDG C UNIT 702	4,211 SF	5BR	M
C 801	BLDG C UNIT 801	5,003 SF	PH	P
GRAND TOTAL: 13		55,048 SF		

UNIT SCHEDULE - TYPE A (ADA)				
Number	Name	Area	Type	Unit Type
A 21	BLDG A UNIT 21	810 SF	1BR - Type A (ADA)	L
B 21	BLDG B UNIT 21	810 SF	1BR - Type A (ADA)	L
GRAND TOTAL: 2		1,620 SF		

UNIT SCHEDULE - AFFORDABLE				
Number	Name	Area	Type	Unit Type
A 22	BLDG A UNIT 22	1,458 SF	2BR - Affordable	K
B 22	BLDG B UNIT 22	1,458 SF	2BR - Affordable	K
C22	BLDG C UNIT 22	423 SF	1 Bed - Affordable	Q
C23	BLDG C UNIT 23	424 SF	1 Bed - Affordable	Q
C24	BLDG C UNIT 24	422 SF	1 Bed - Affordable	Q
C25	BLDG C UNIT 25	424 SF	1 Bed - Affordable	Q
GRAND TOTAL: 6		4,609 SF		

PROPERTY ENTITLEMENTS		
Residential Saleable Permitted	81 ERUS	162,000 SF
Residential Saleable Provided		162,000 SF
Affordable Housing Required		3,360 SF
Affordable Housing Provided		4,609 SF
Residential Units Permitted		81
Residential Units Provided		49
Resort Support Commercial Permitted		3,600 SF
Resort Support Commercial Provided		3,559 SF

UNIT SCHEDULE - BLDG A				
Number	Name	Area	Type	Unit Type
A 202	BLDG A UNIT 202	2,650 SF	3BR	C
A 203	BLDG A UNIT 203	2,555 SF	3BR	D
A 204	BLDG A UNIT 204	3,234 SF	4BR	H
A 301	BLDG A UNIT 301	2,732 SF	3BR	F
A 302	BLDG A UNIT 302	2,650 SF	3BR	C
A 303	BLDG A UNIT 303	2,555 SF	3BR	D
A 304	BLDG A UNIT 304	3,202 SF	4BR	G
A 401	BLDG A UNIT 401	2,546 SF	3BR	E
A 402	BLDG A UNIT 402	2,650 SF	3BR	C
A 403	BLDG A UNIT 403	2,555 SF	3BR	D
A 404	BLDG A UNIT 404	3,234 SF	4BR	H
A 501	BLDG A UNIT 501	2,732 SF	3BR	F
A 502	BLDG A UNIT 502	2,650 SF	3BR	C
A 503	BLDG A UNIT 503	3,942 SF	PH	R
A 602	BLDG A UNIT 602	5,326 SF	PH	S
GRAND TOTAL: 15		45,211 SF		

UNIT SCHEDULE - BLDG B				
Number	Name	Area	Type	Unit Type
B 202	BLDG B UNIT 202	2,650 SF	3BR	C
B 203	BLDG B UNIT 203	2,555 SF	3BR	D
B 204	BLDG B UNIT 204	2,986 SF	4BR	G
B 301	BLDG B UNIT 301	2,546 SF	3BR	E
B 302	BLDG B UNIT 302	2,650 SF	3BR	C
B 303	BLDG B UNIT 303	2,555 SF	3BR	D
B 304	BLDG B UNIT 304	3,202 SF	4BR	H
B 401	BLDG B UNIT 401	2,732 SF	3BR	F
B 402	BLDG B UNIT 402	2,650 SF	3BR	C
B 403	BLDG B UNIT 403	2,555 SF	3BR	D
B 404	BLDG B UNIT 404	3,223 SF	4BR	G
B 501	BLDG B UNIT 501	2,546 SF	3BR	E
B 502	BLDG B UNIT 502	2,650 SF	3BR	C
B 503	BLDG B UNIT 503	2,555 SF	3BR	D
B 504	BLDG B UNIT 504	3,199 SF	4BR	H
B 601	BLDG B UNIT 601	2,732 SF	3BR	F
B 602	BLDG B UNIT 602	2,650 SF	3BR	I
B 603	BLDG B UNIT 603	2,555 SF	3BR	D
B 604	BLDG B UNIT 604	3,223 SF	4BR	J
B 702	BLDG B UNIT 702	4,502 SF	PH	F
B 703	BLDG B UNIT 703	4,827 SF	PH	D
GRAND TOTAL: 21		61,741 SF		

Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 2 - Condo Lodge Plans and Elevations

Area Plans

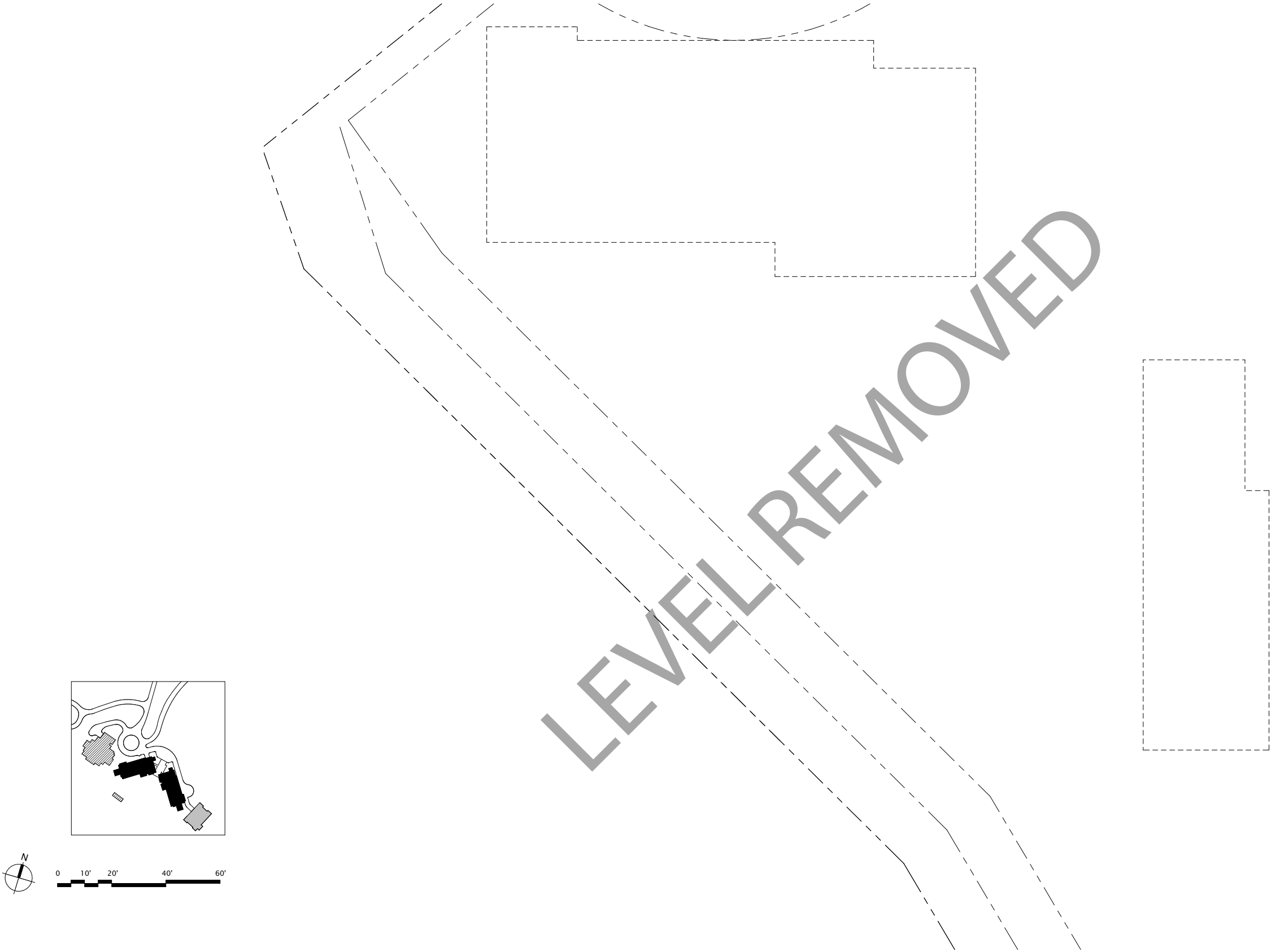


Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 2 - Condo Lodge Plans and Elevations

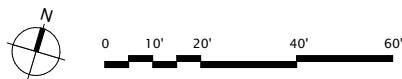
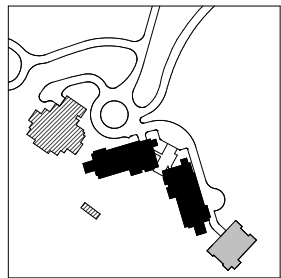
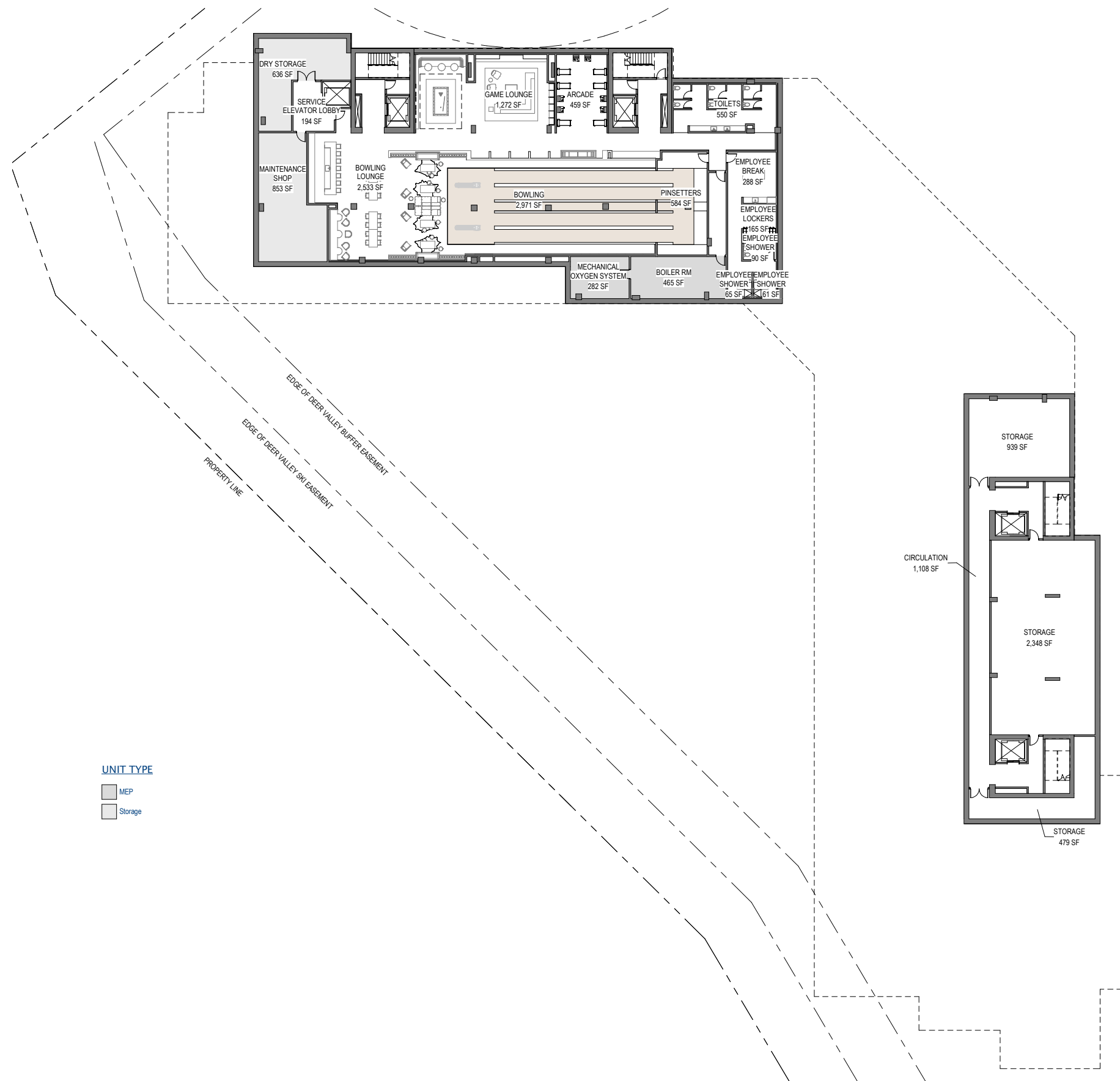
Area Plans

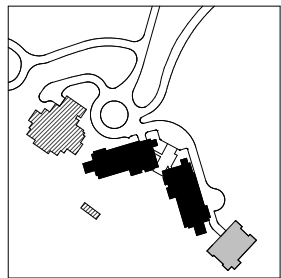
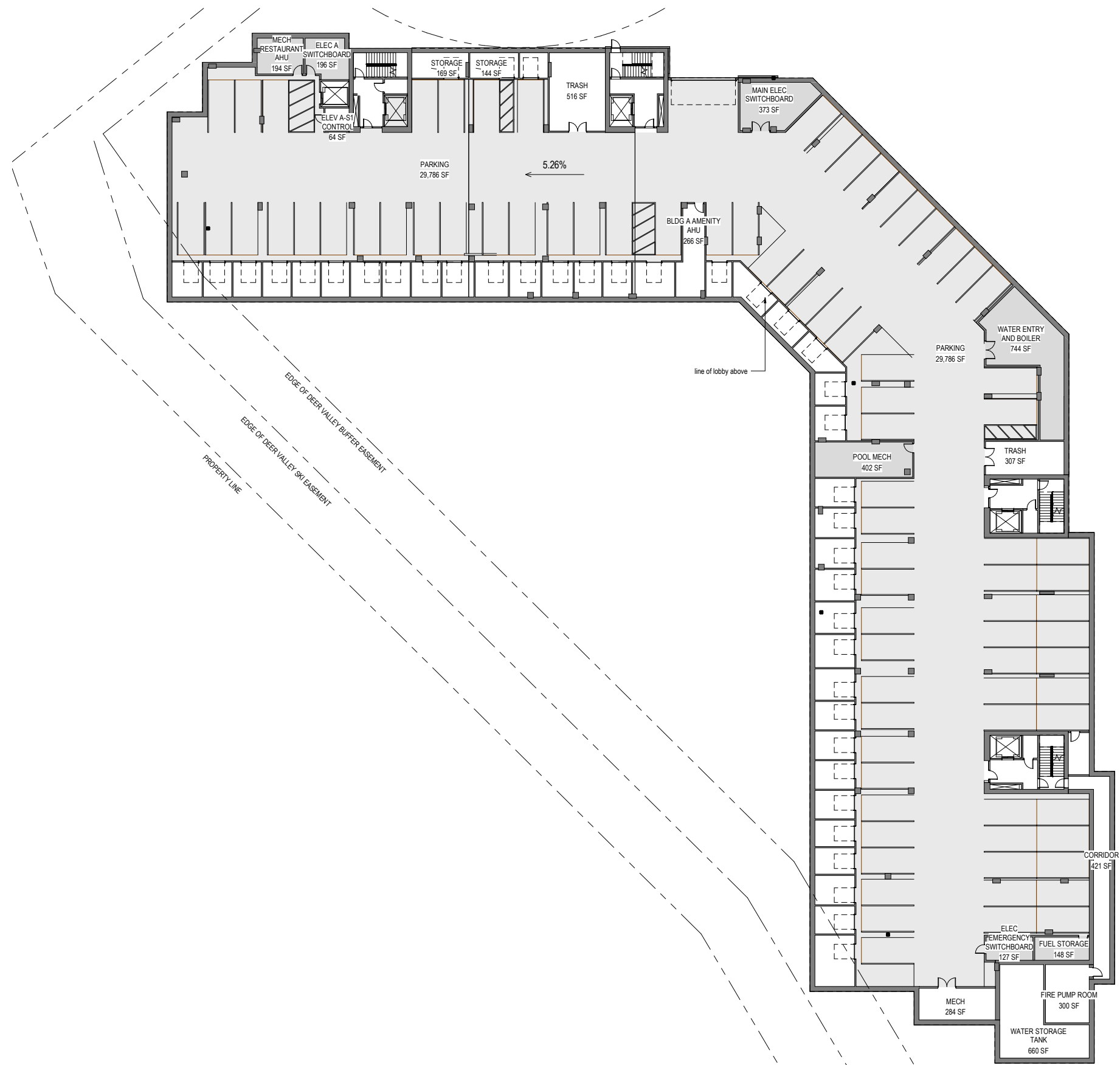


BLDG A - BASEMENT STORAGE

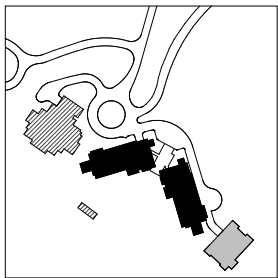
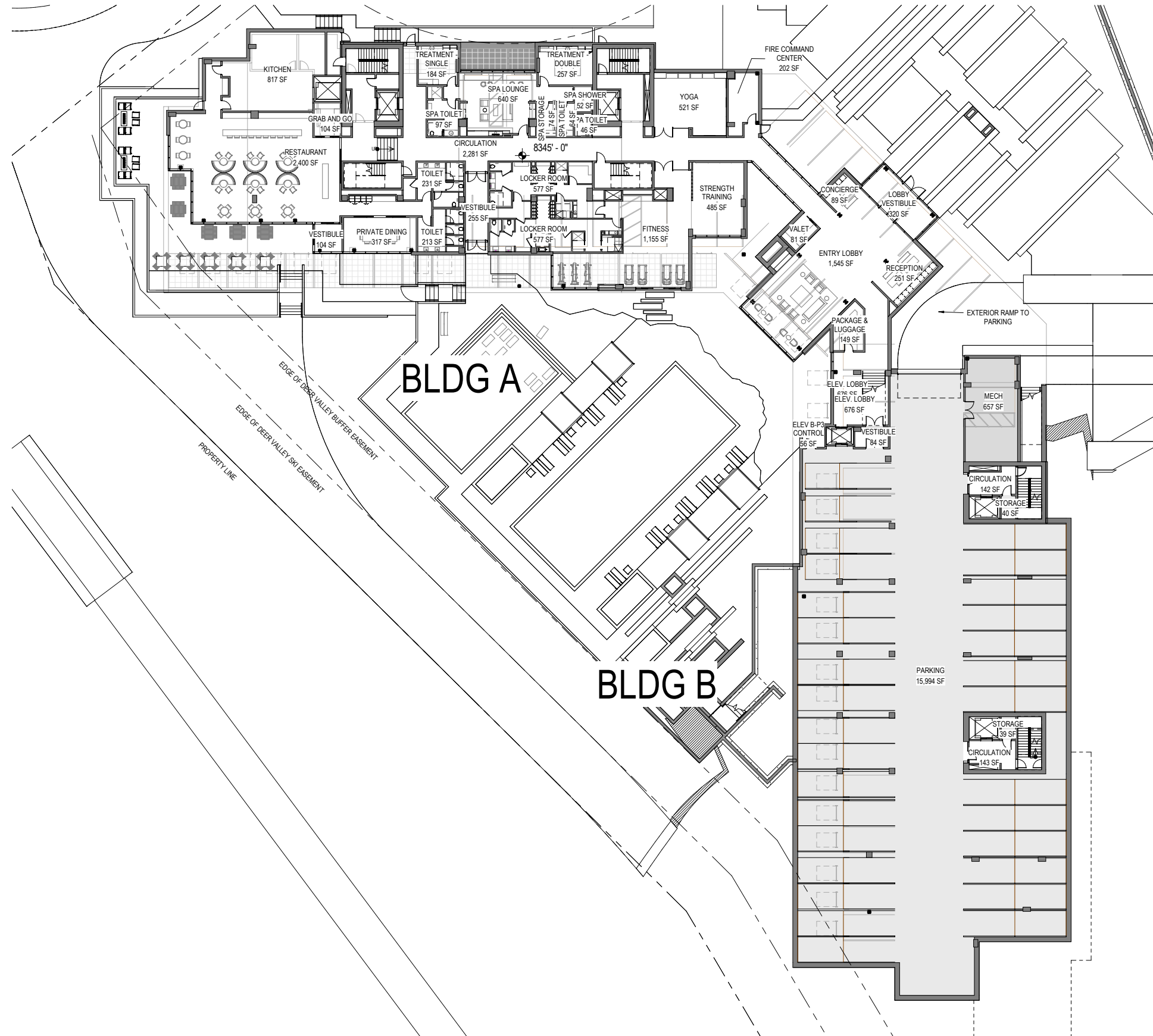


BLDG A - BASEMENT AMENITY LEVEL



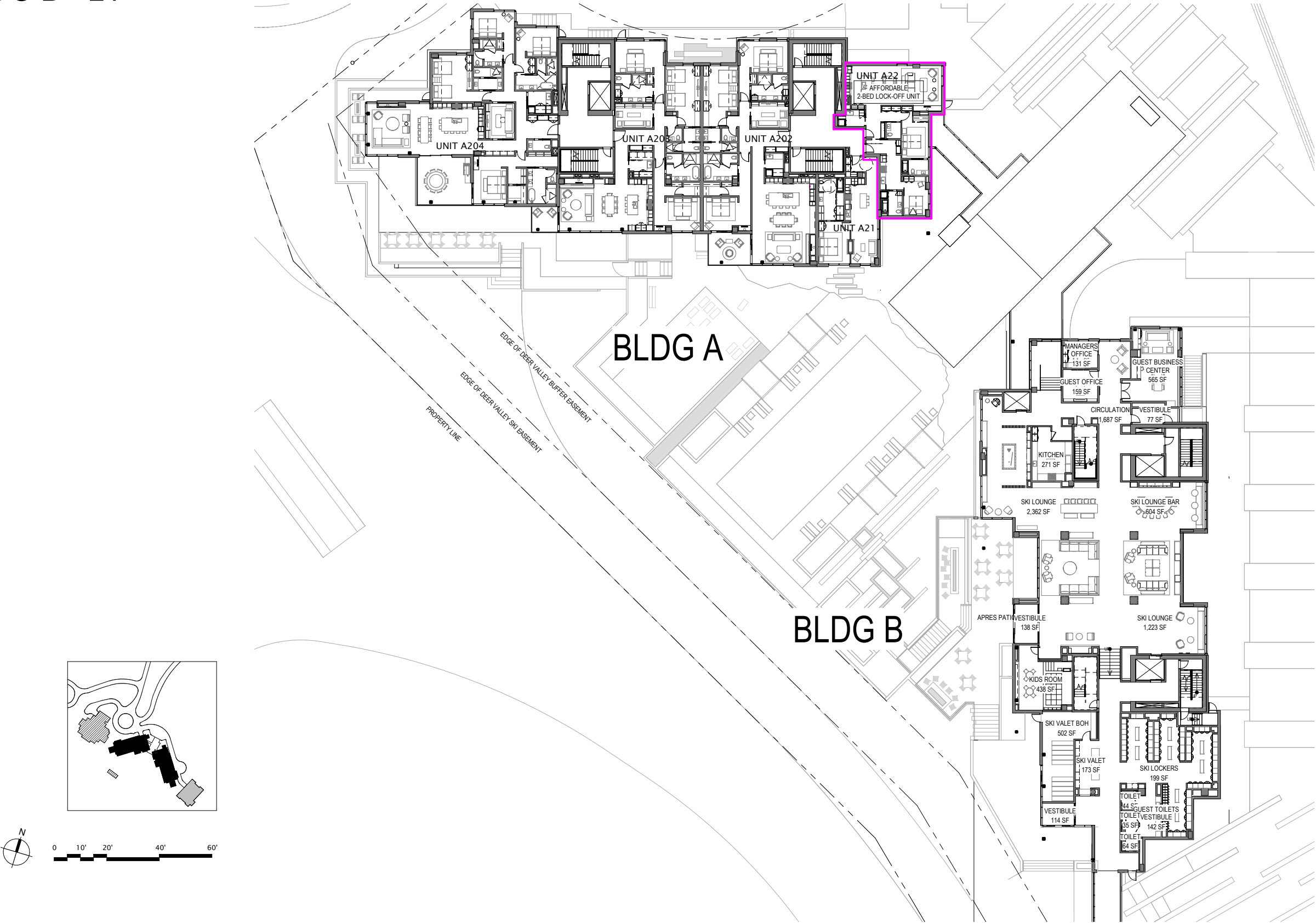


BLDG A - L1
BLDG B - P1

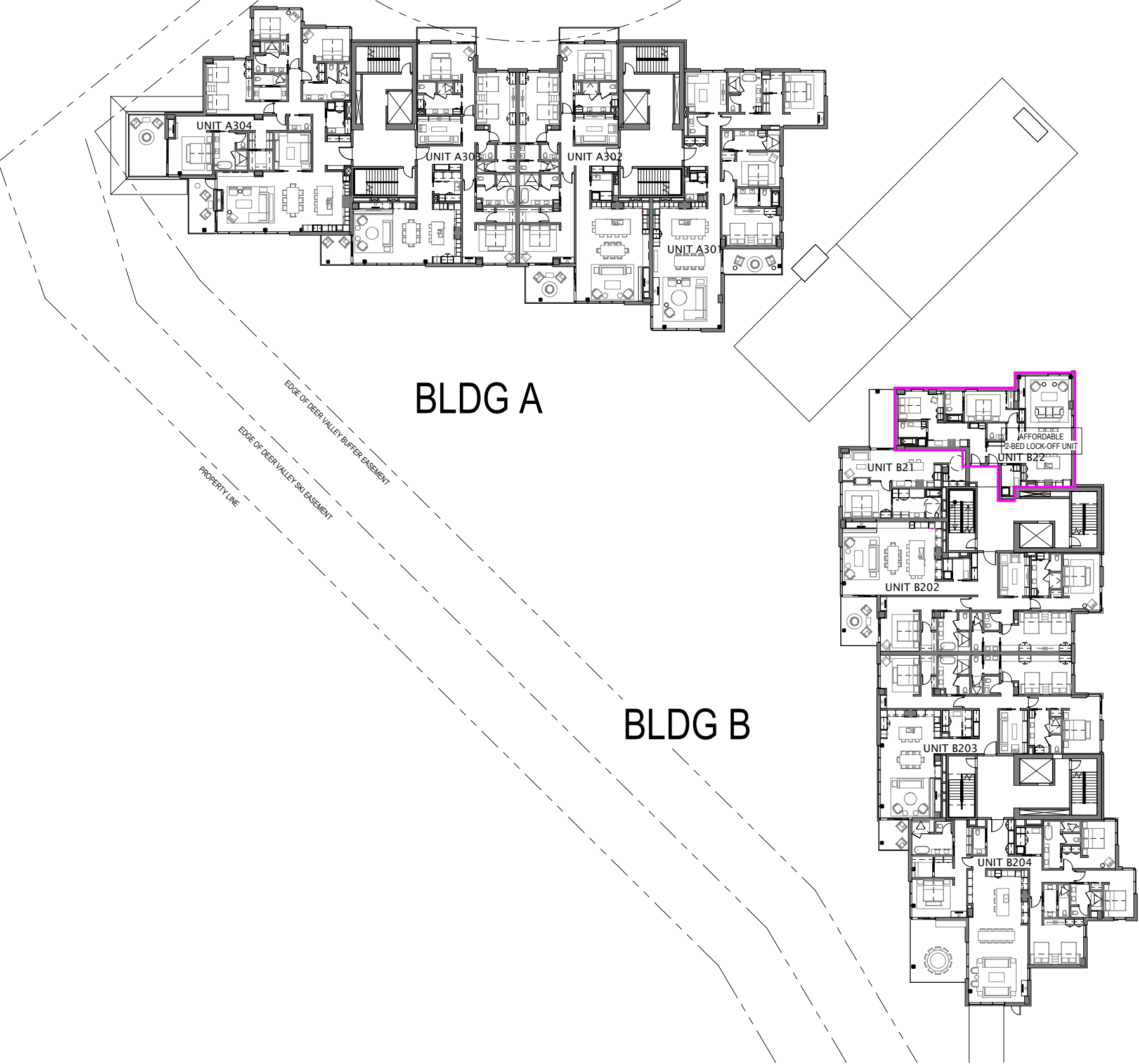


BLDG A - L2
BLDG B - L1

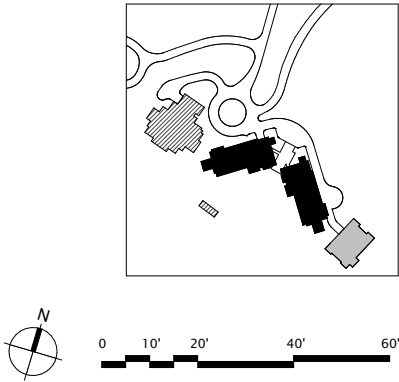
1 AFFORDABLE
2 BED-LOCK OFF UNIT



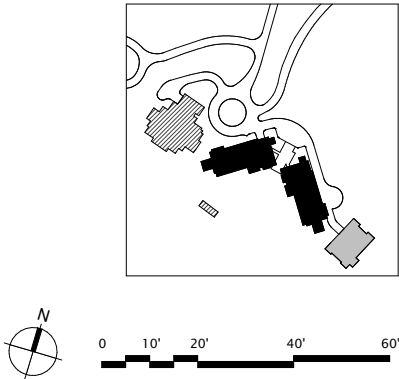
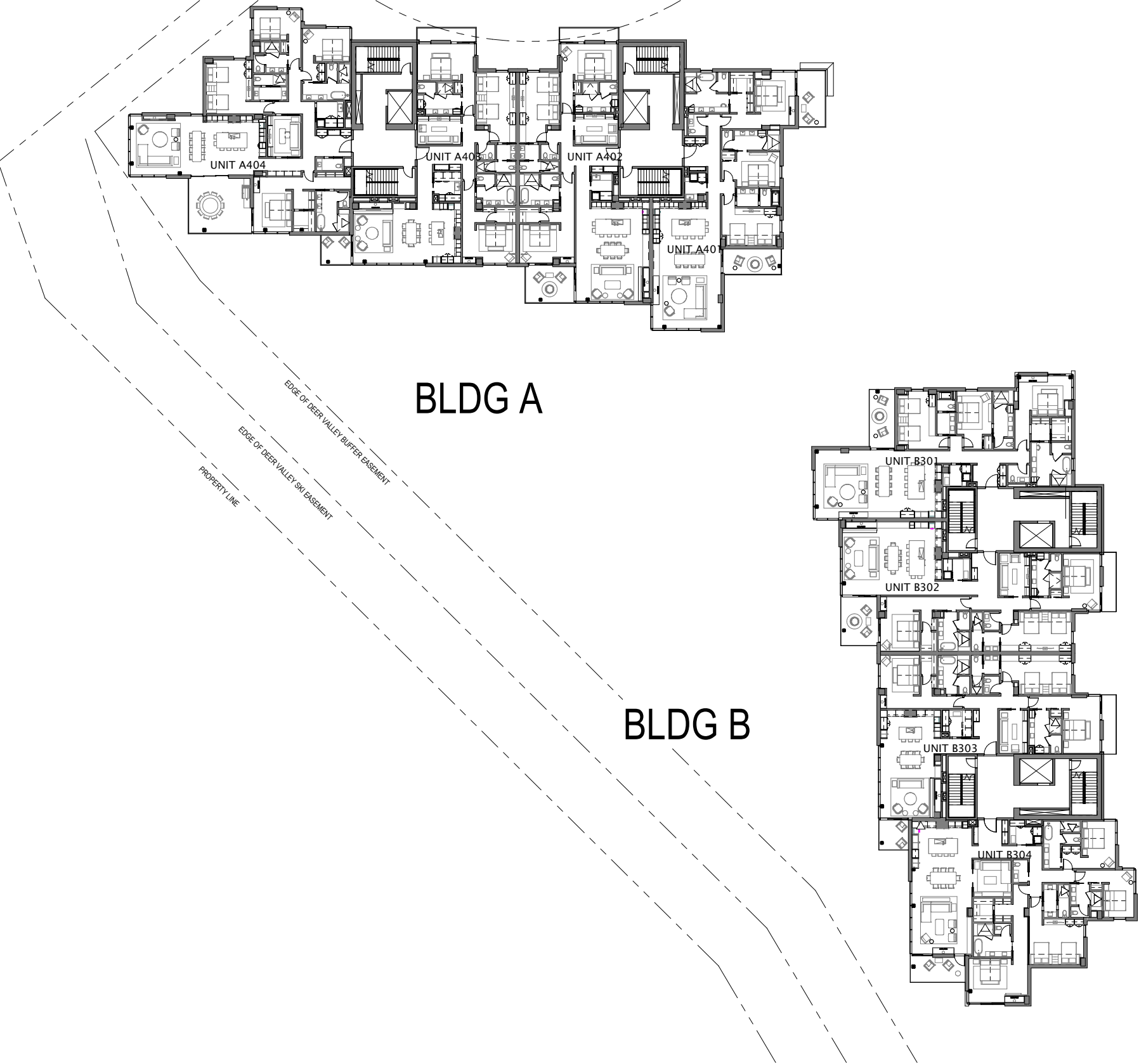
BLDG A - L3
BLDG B - L2



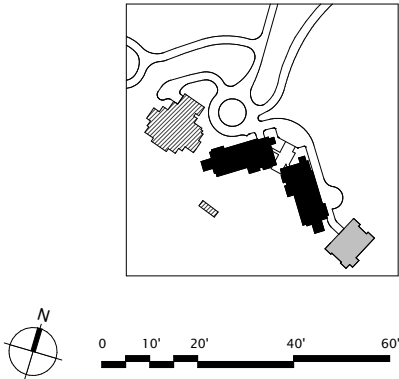
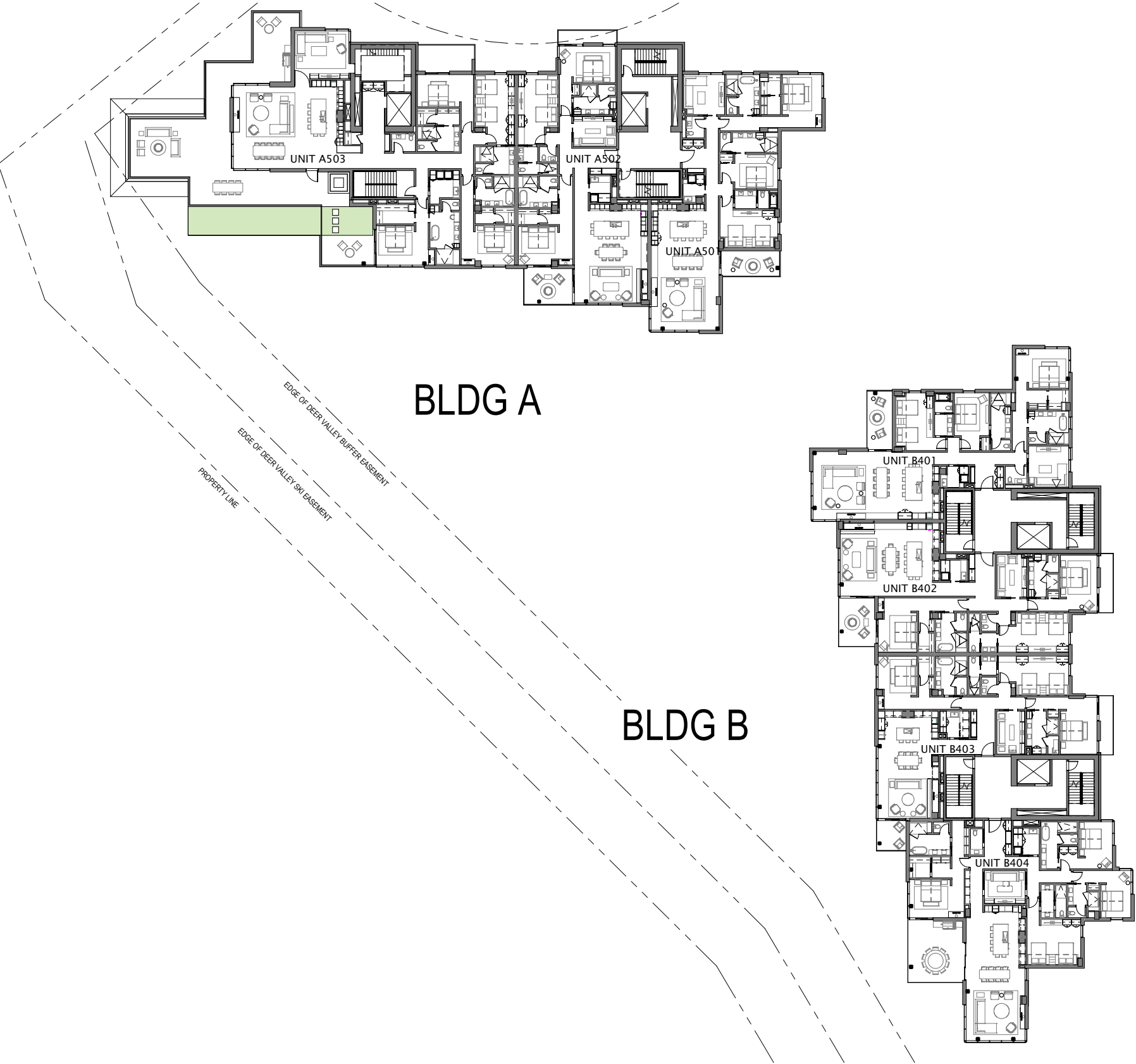
1 AFFORDABLE
2 BED-LOCK OFF UNIT



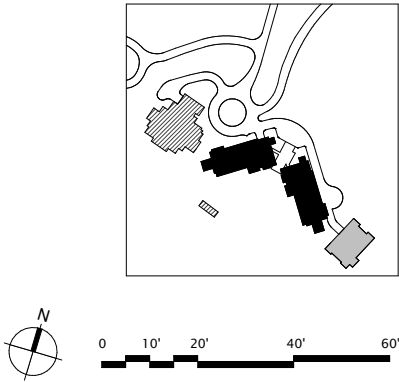
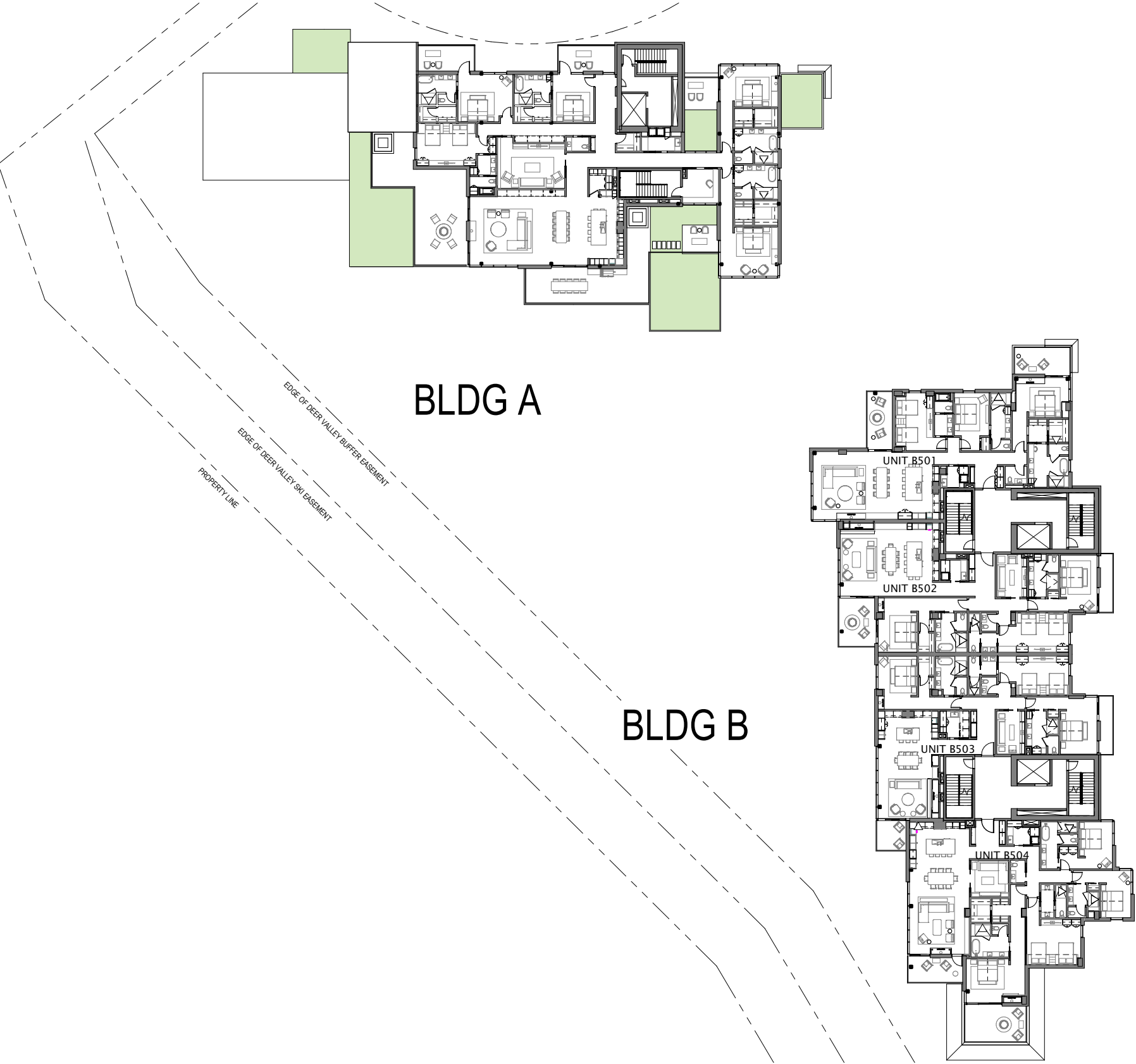
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BLDG B - L3



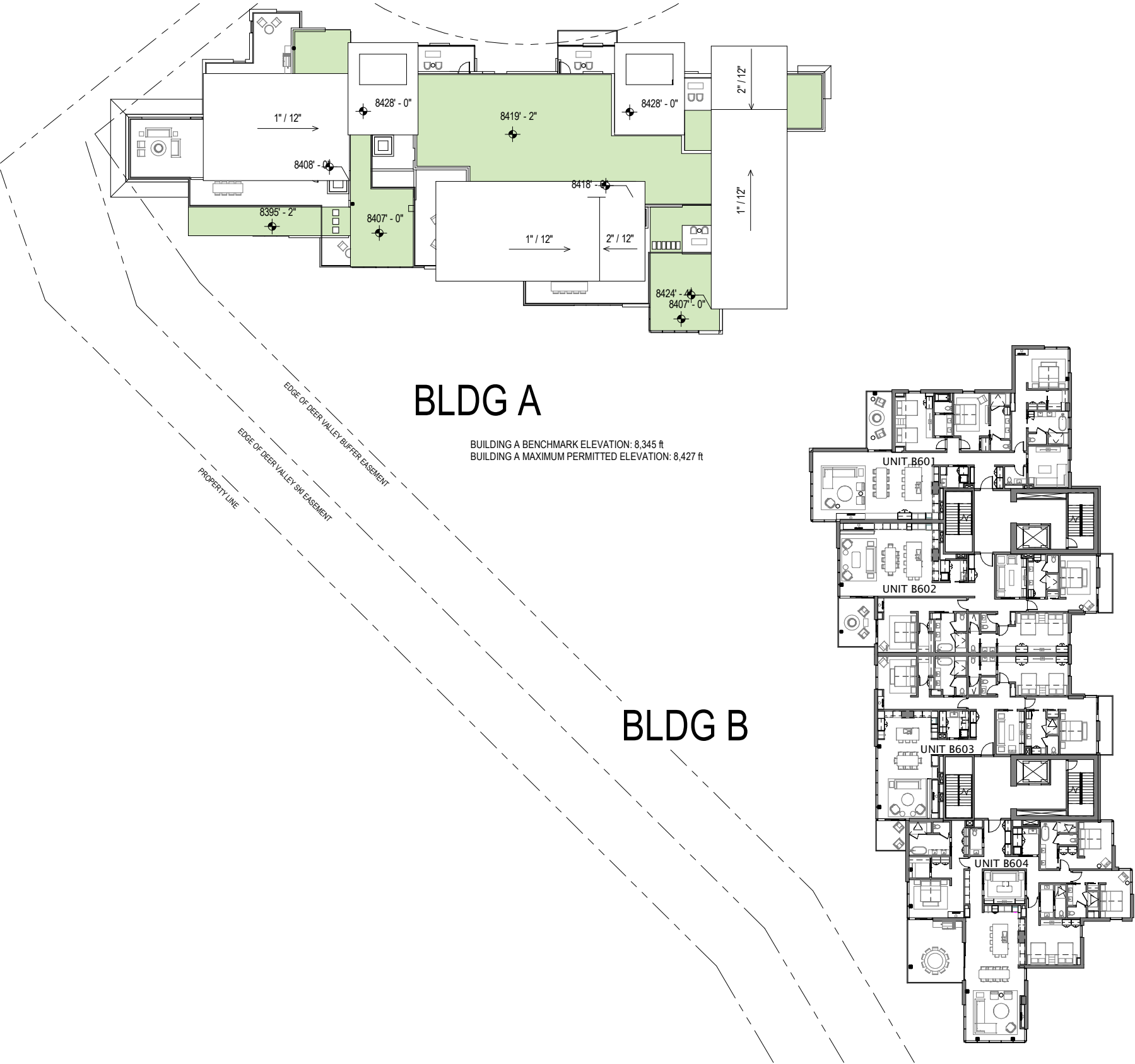
BLDG A - L5
BLDG B - L4



BLDG A - L6
BLDG B - L5



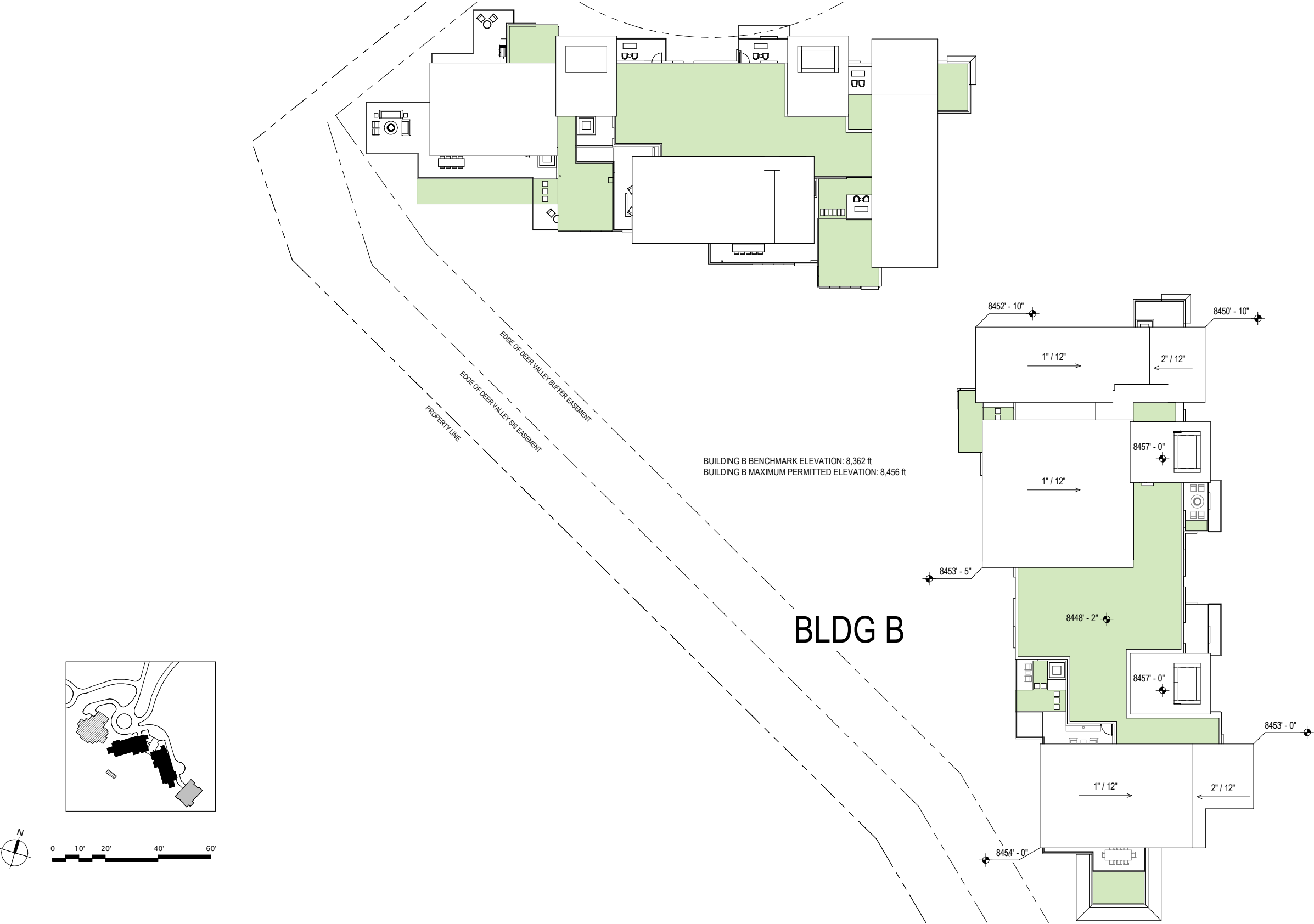
BLDG A - ROOF
BLDG B - L6



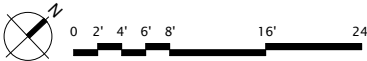
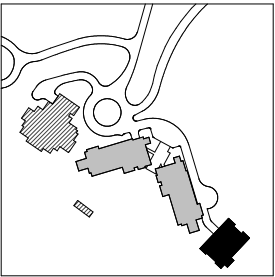
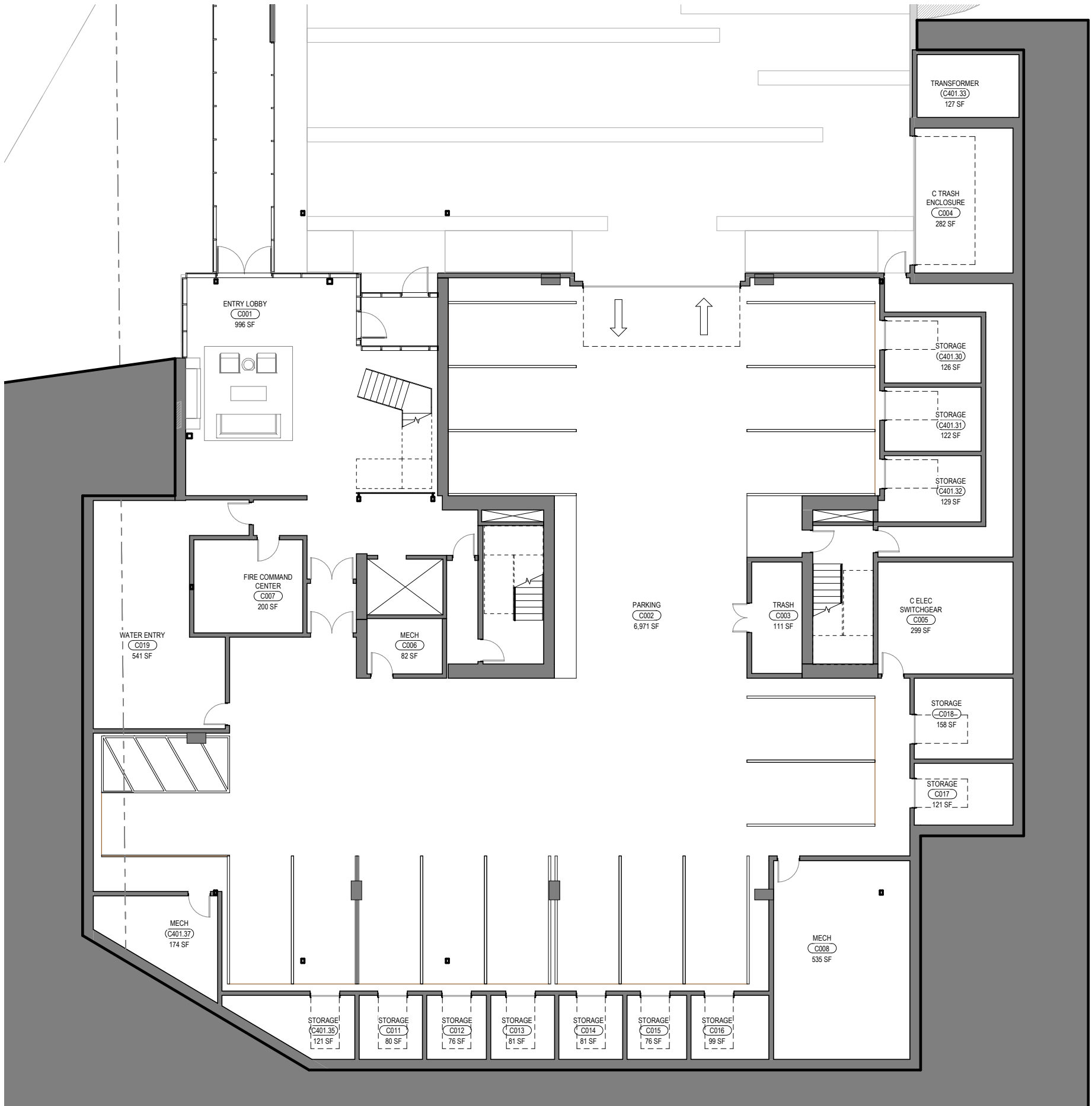
BLDG B - L7



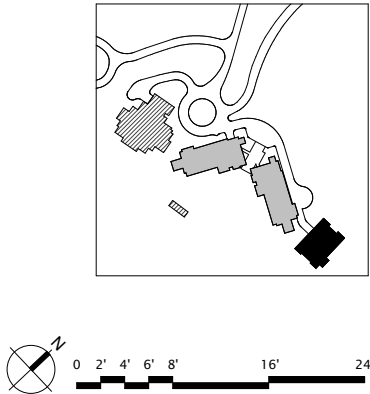
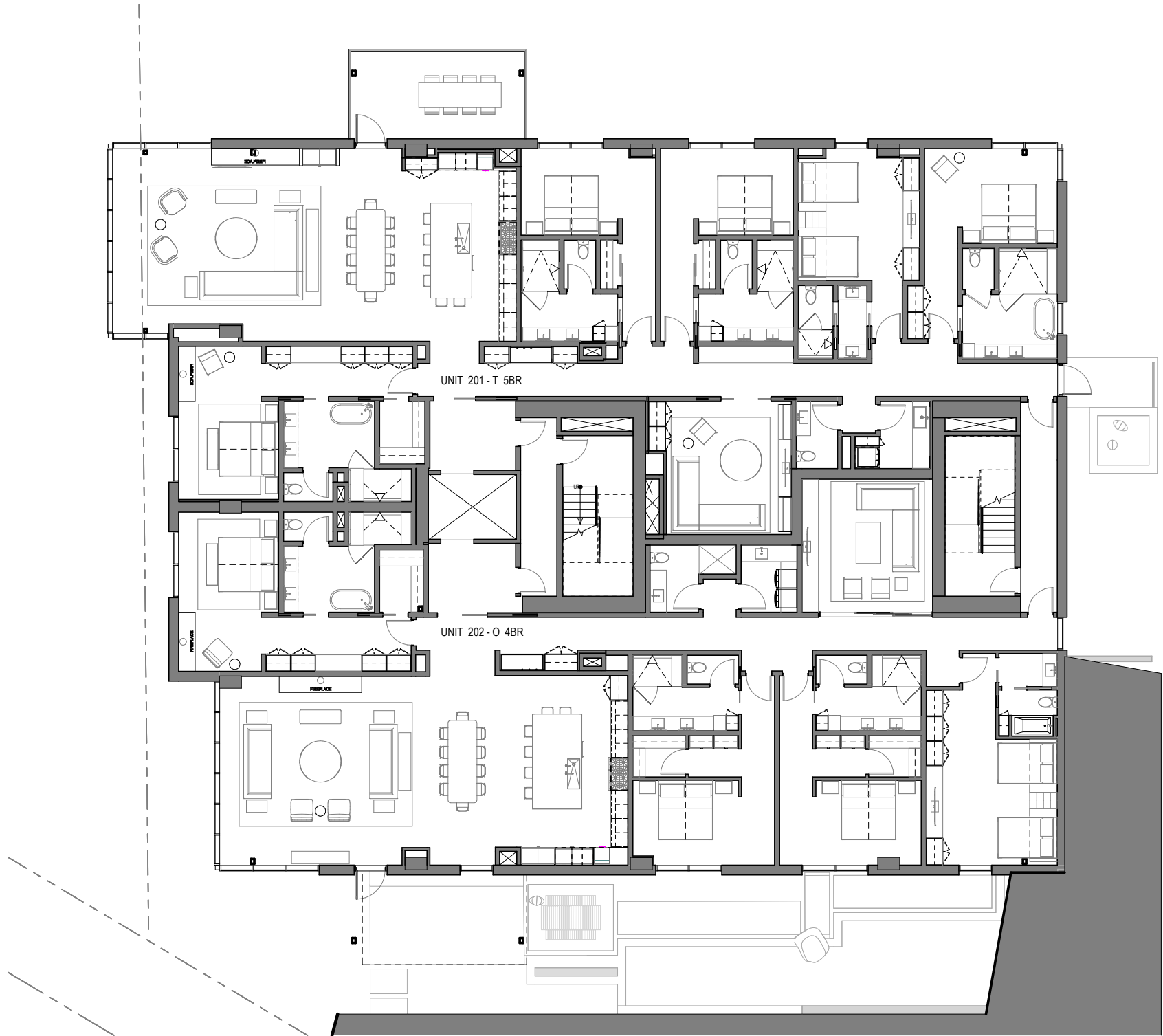
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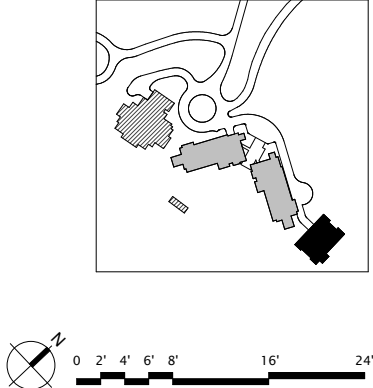
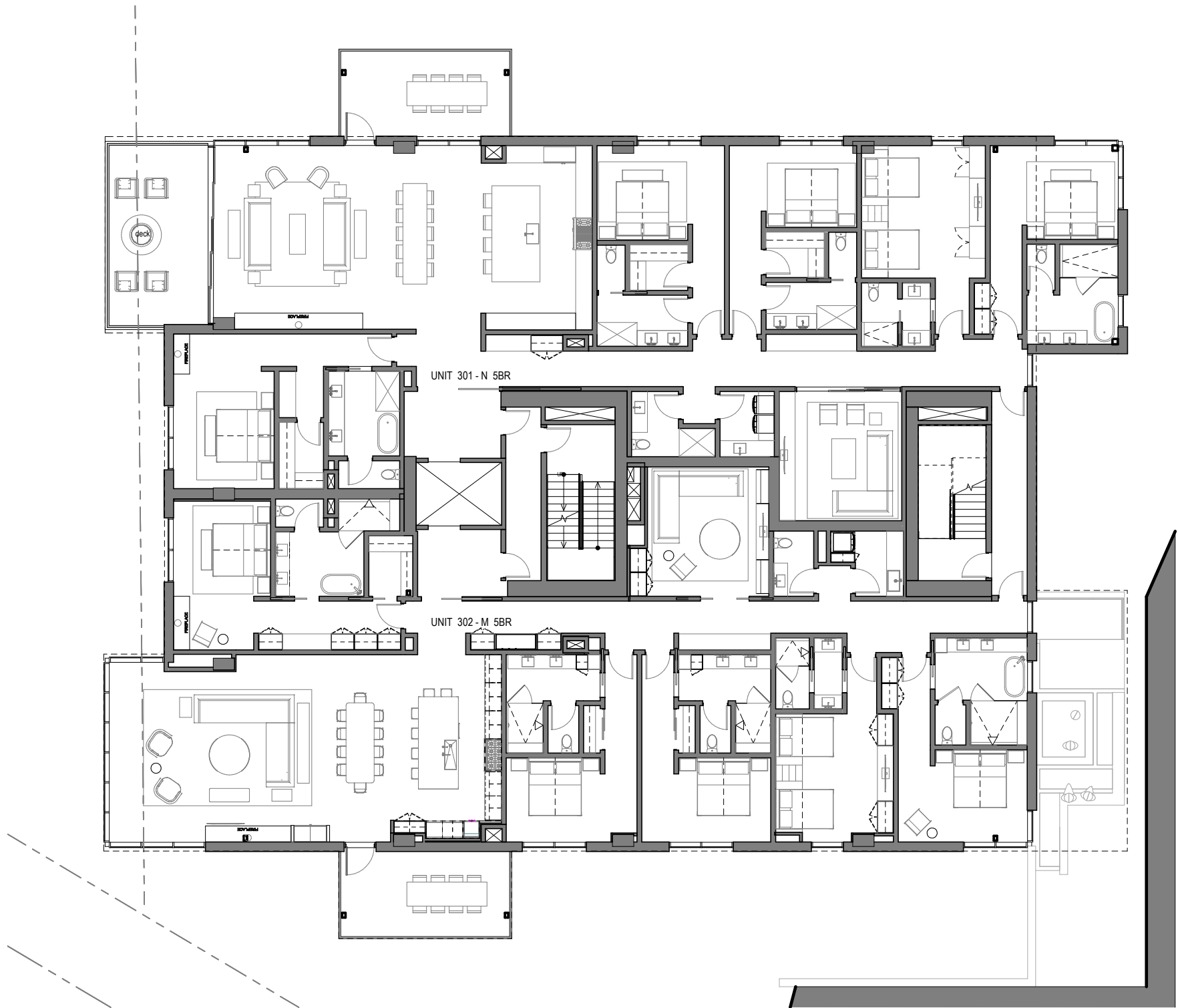


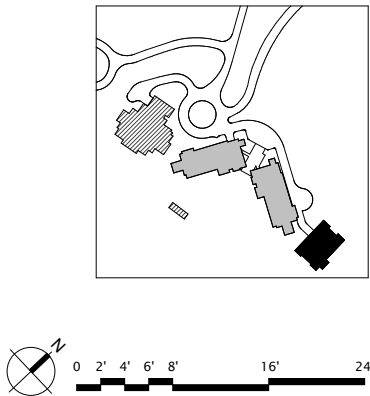
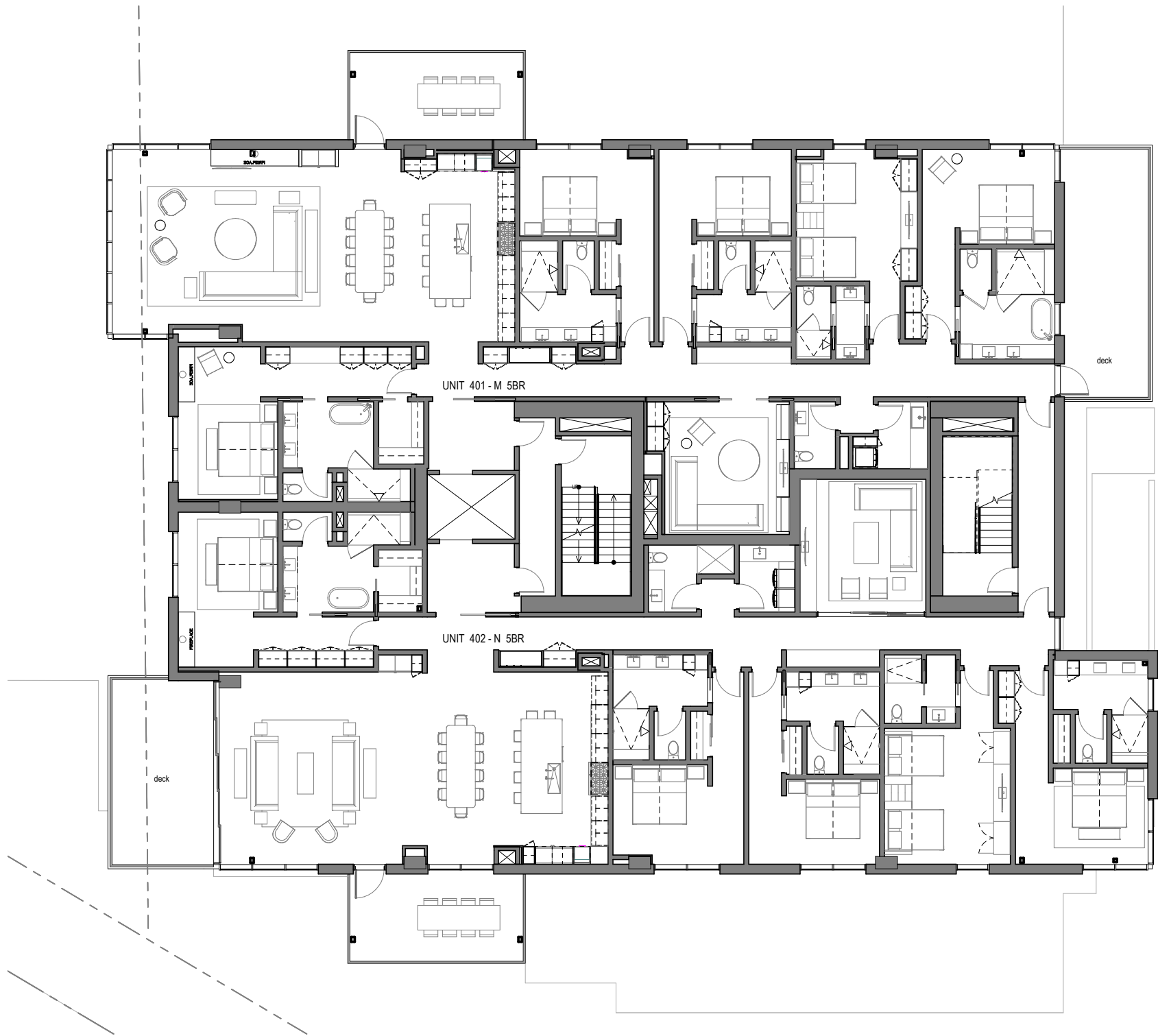
BLDG C - PARKING

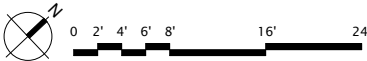
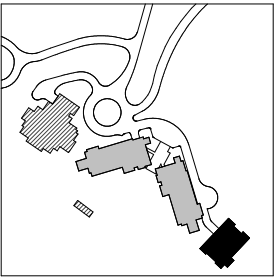
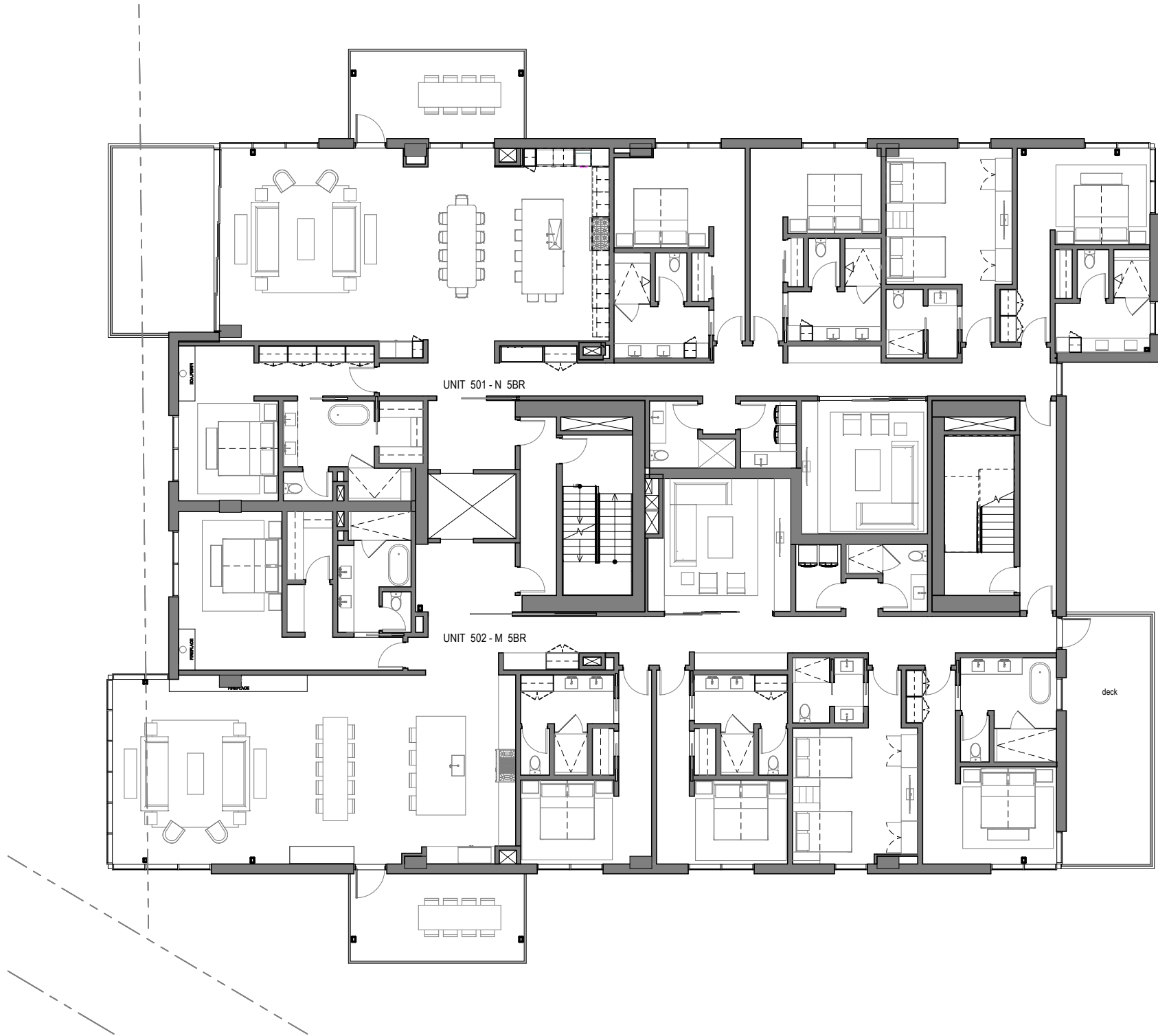


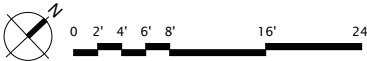
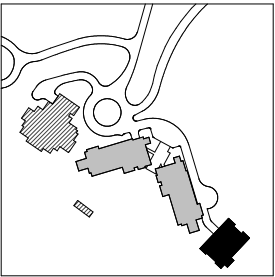
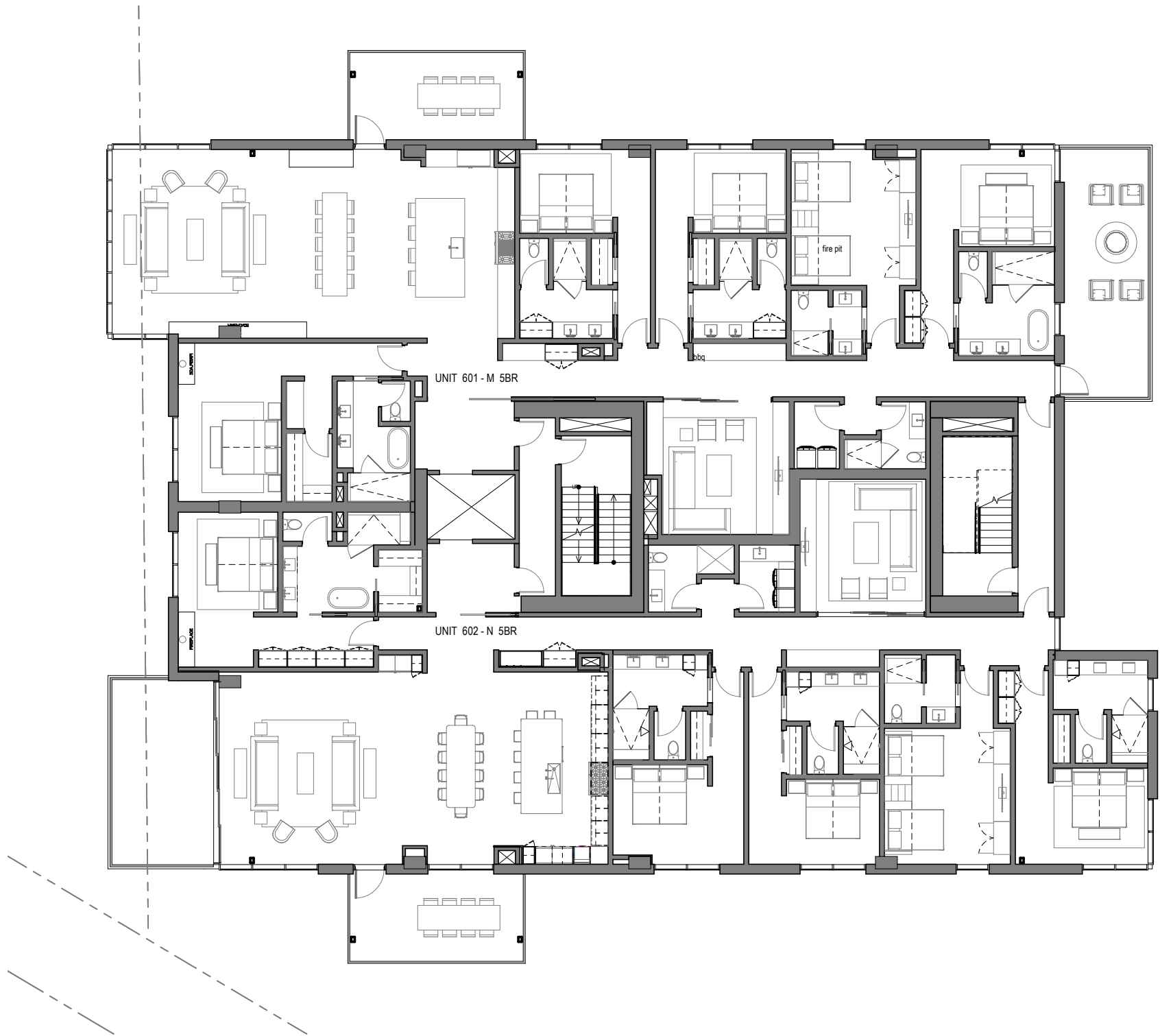


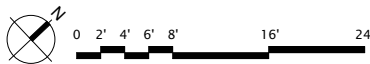
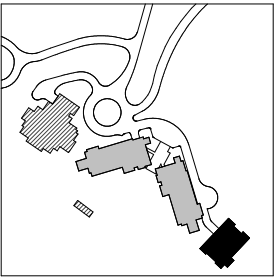
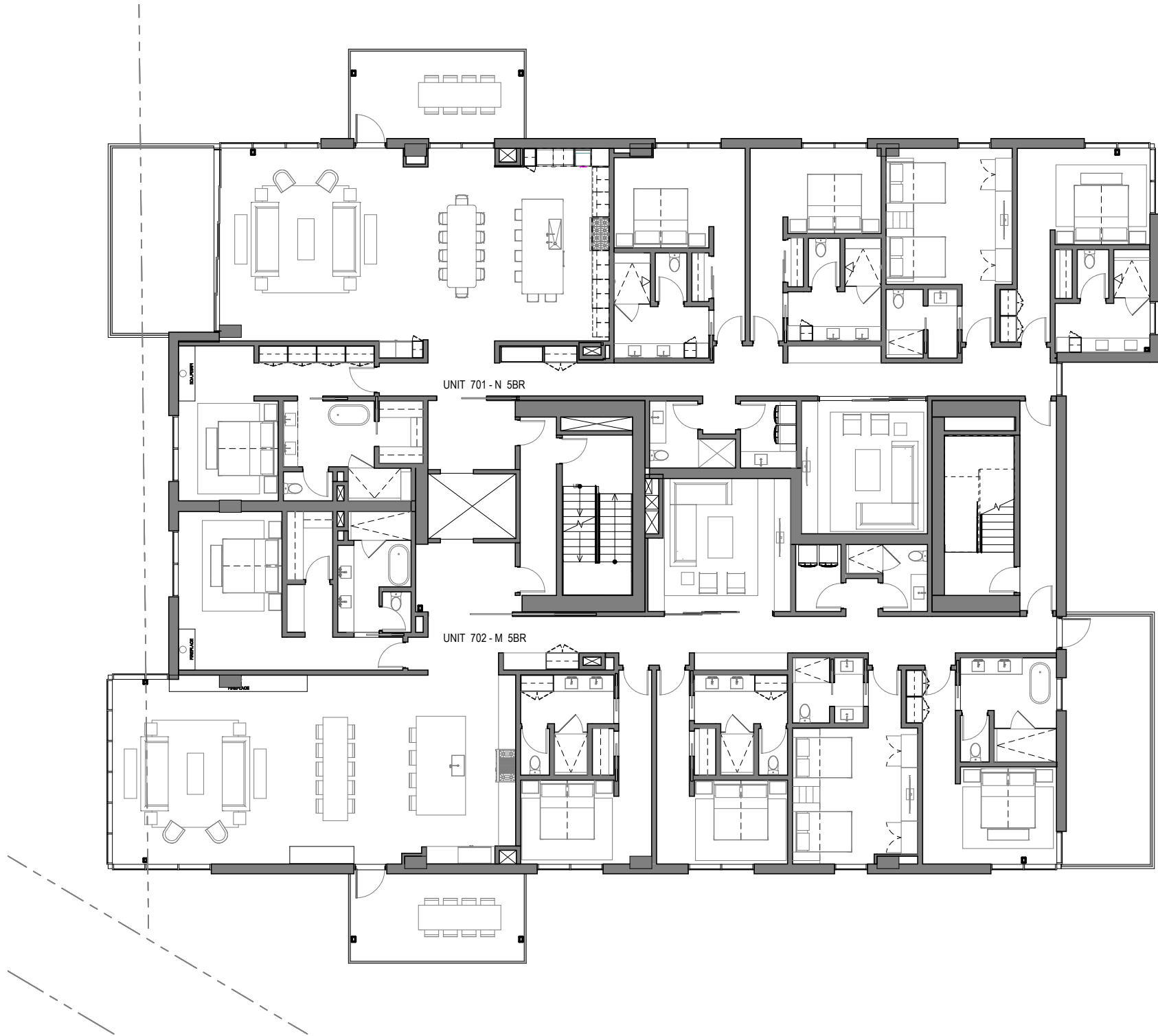


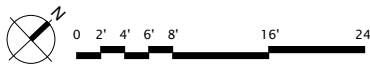
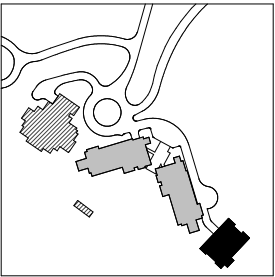
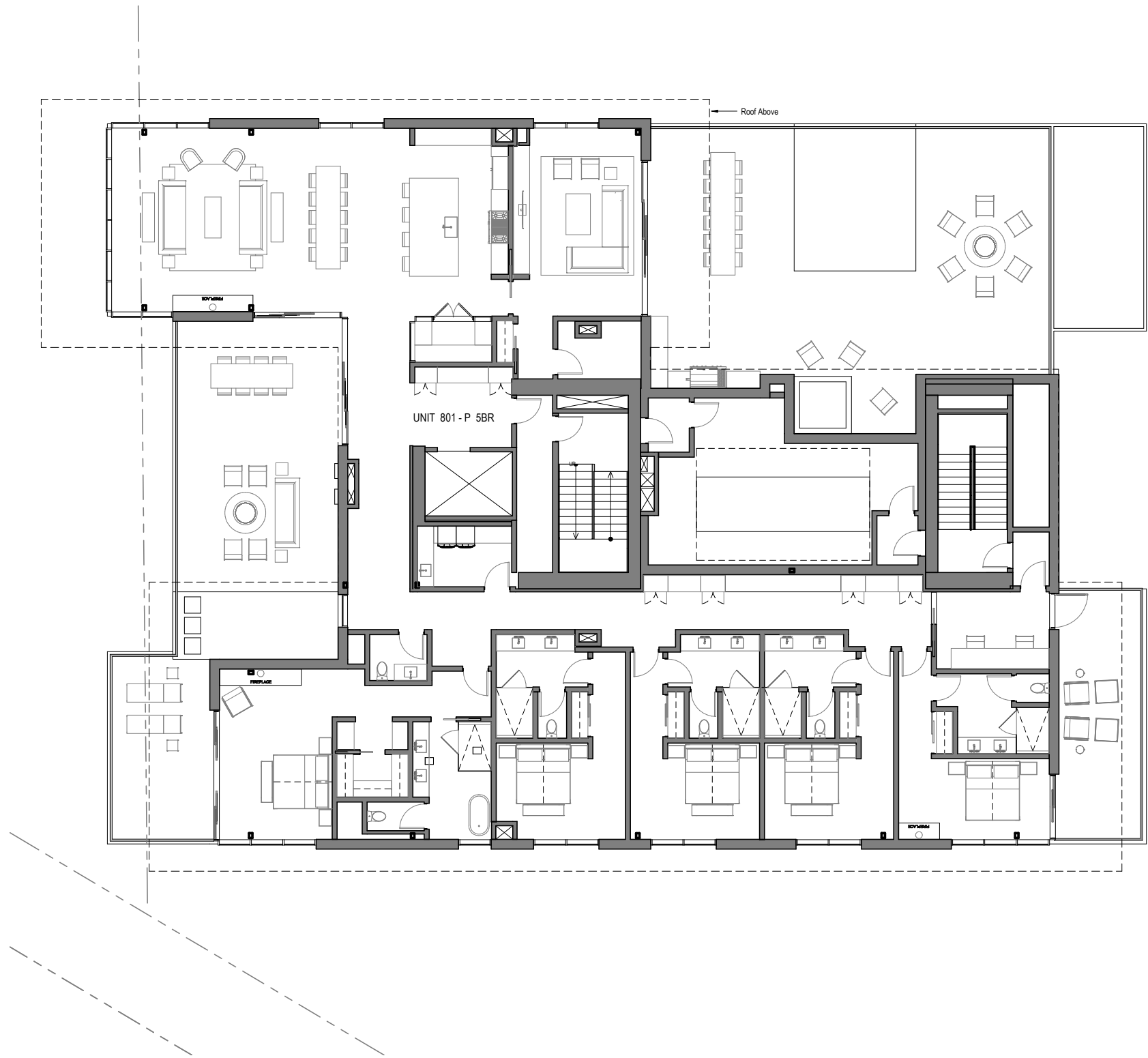






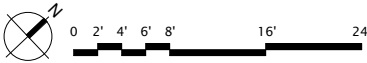
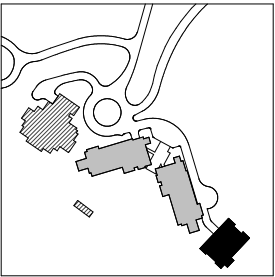
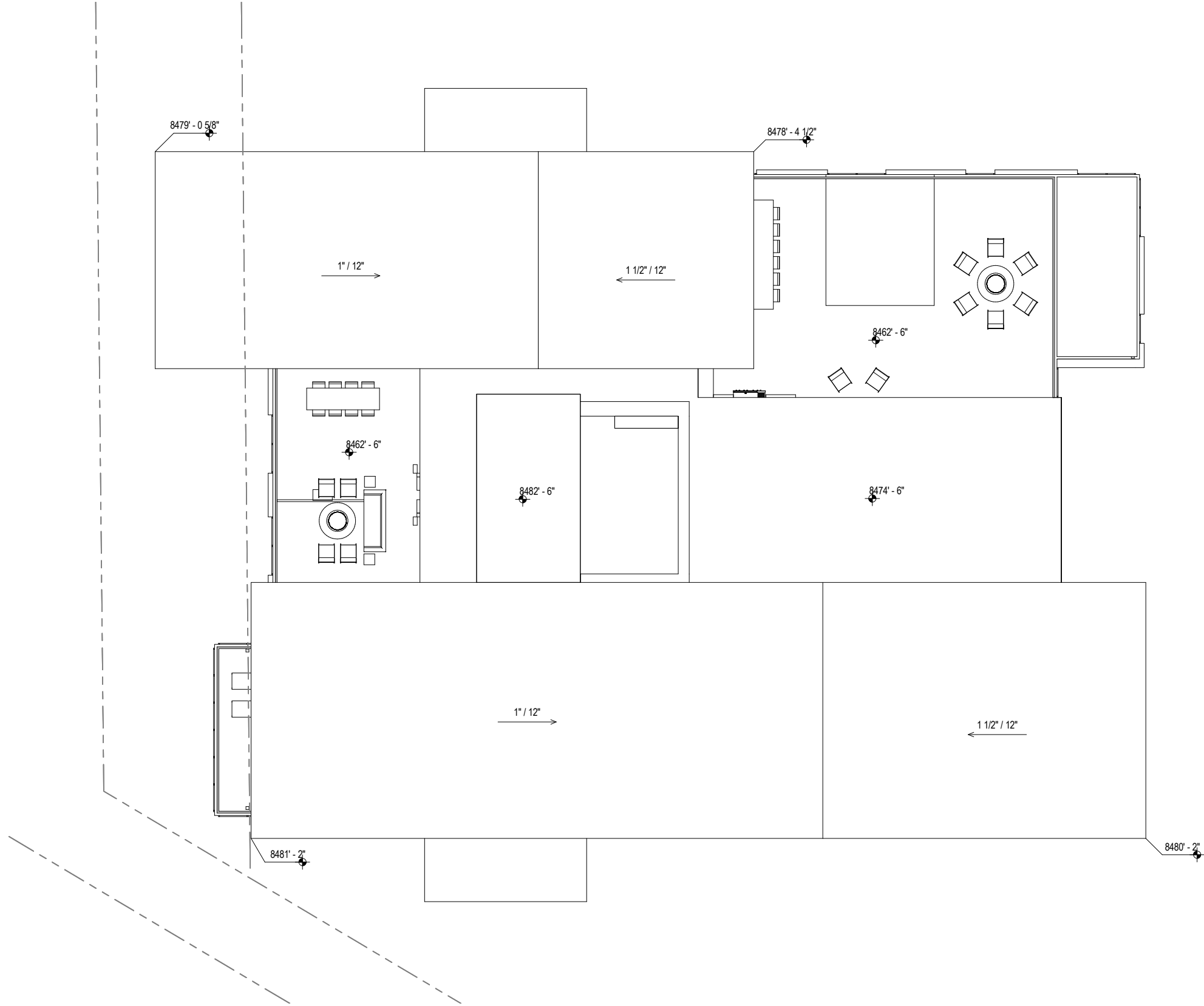




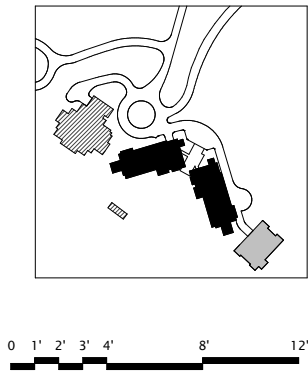
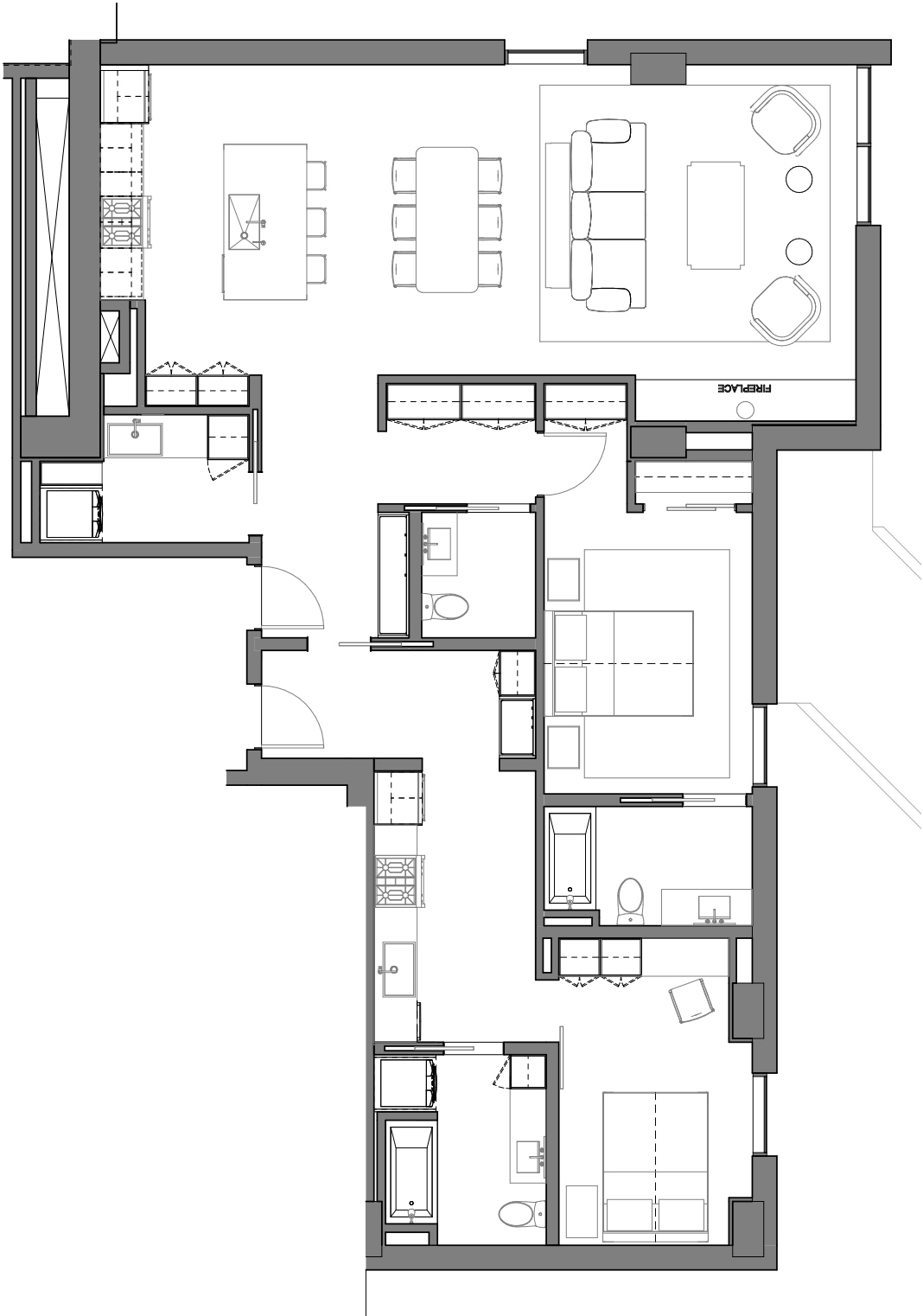


BLDG C - ROOF

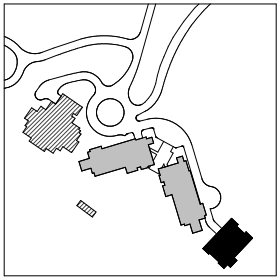
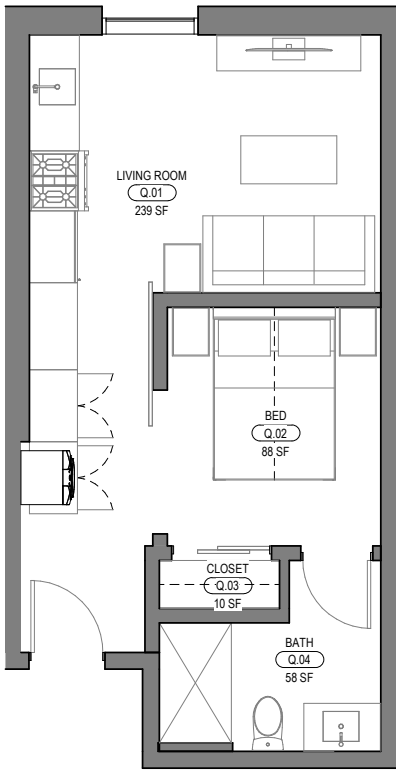
BUILDING C BENCHMARK ELEVATION: 8,376' - 6"
BUILDING C MAXIMUM PERMITTED ELEVATION: 8,482' - 6"



BLDG A & B
AFFORDABLE 2 BED LOCK-OFF UNIT PLAN
TOTAL QUANTITY: 2

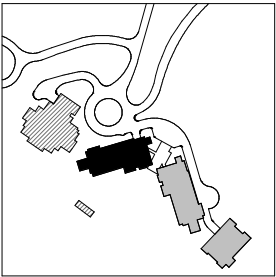


BLDG C
AFFORDABLE 1 BED UNIT PLAN
TOTAL QUANTITY: 4

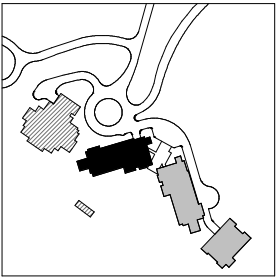
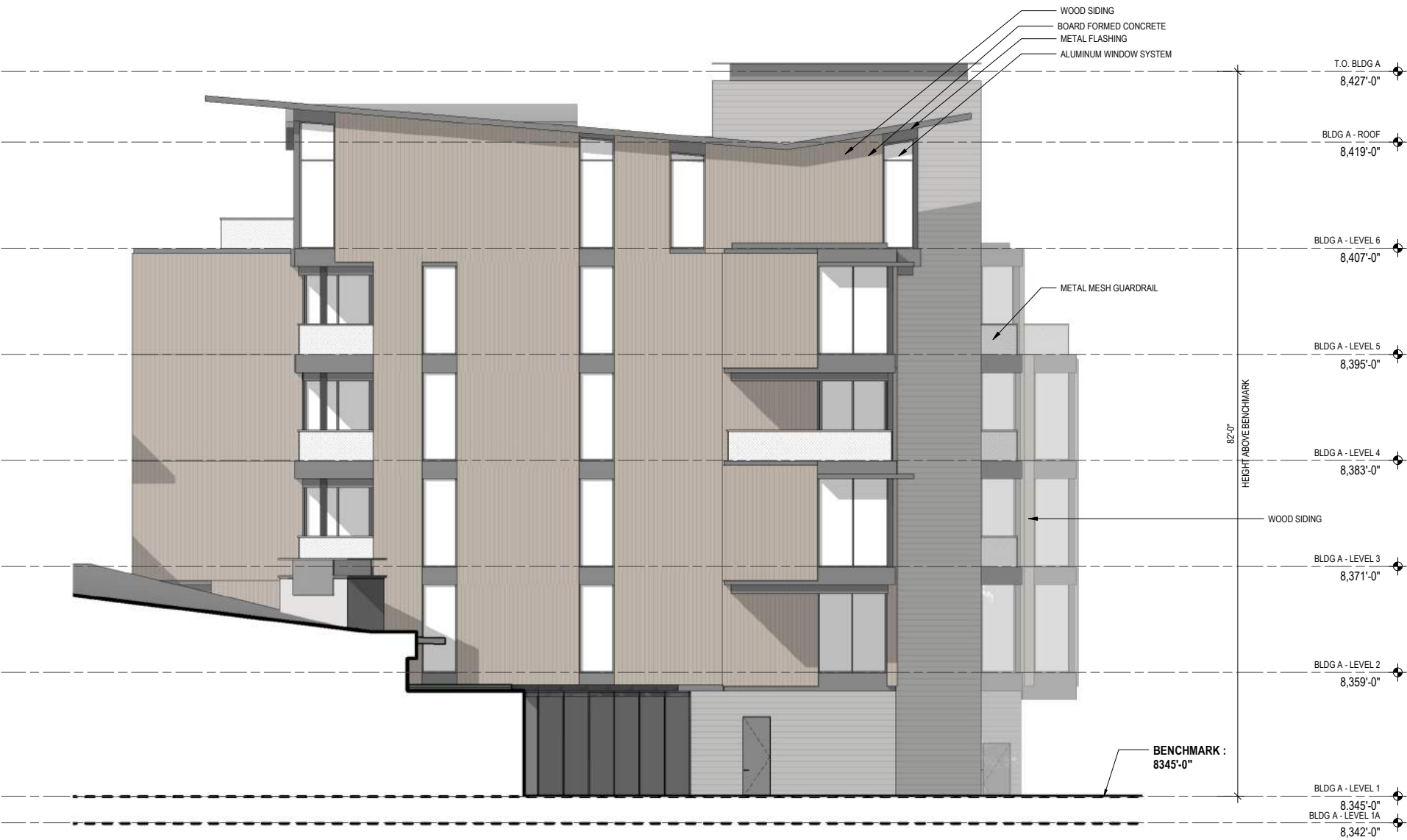


0 1' 2' 3' 4' 8' 12'

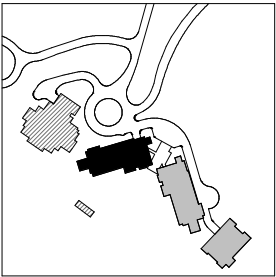
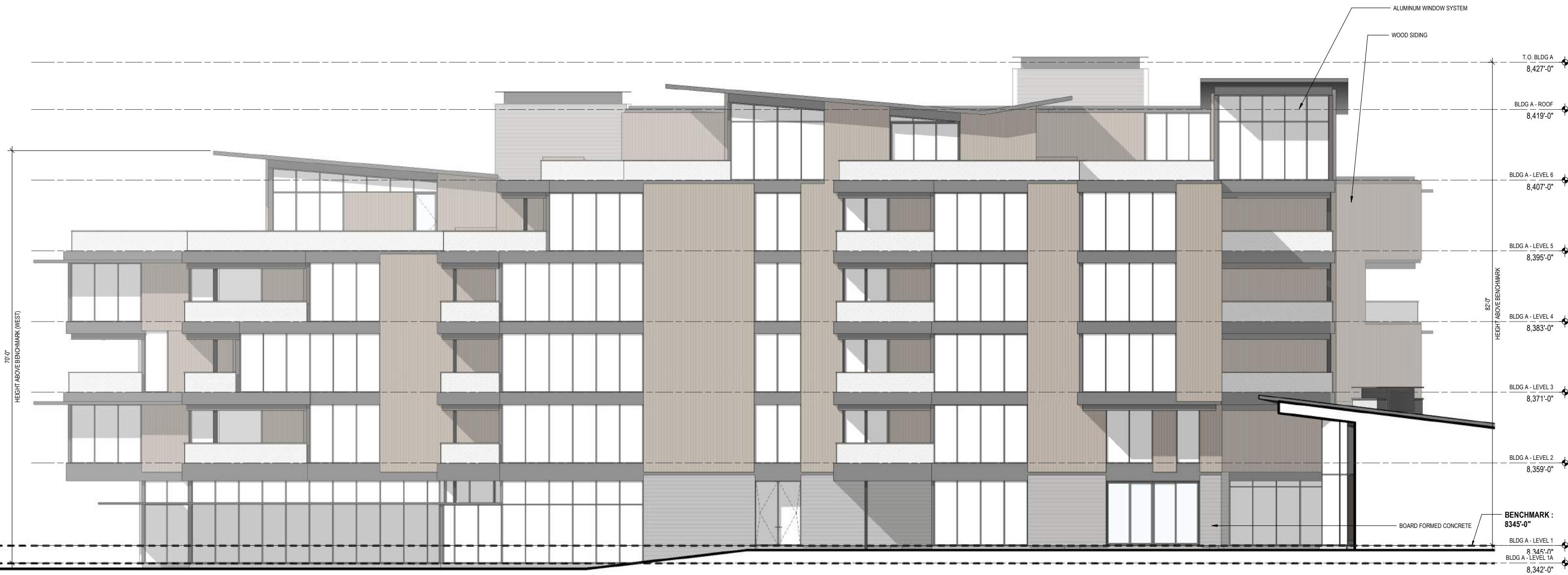
BLDG A - NORTH ELEVATION



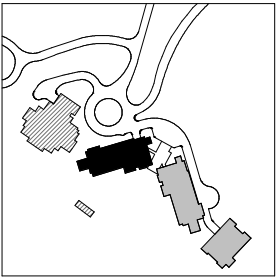
BLDG A - EAST ELEVATION



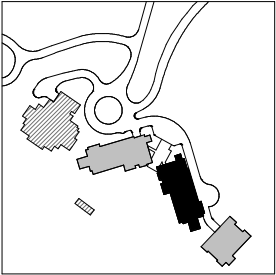
BLDG A - SOUTH ELEVATION



BLDG A - WEST ELEVATION



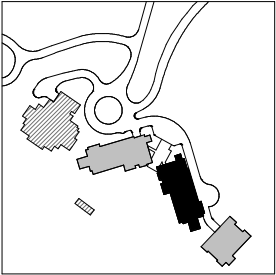
BLDG B - NORTH ELEVATION



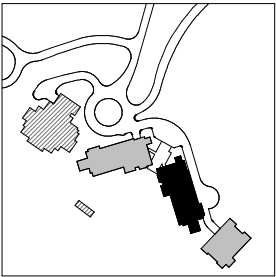
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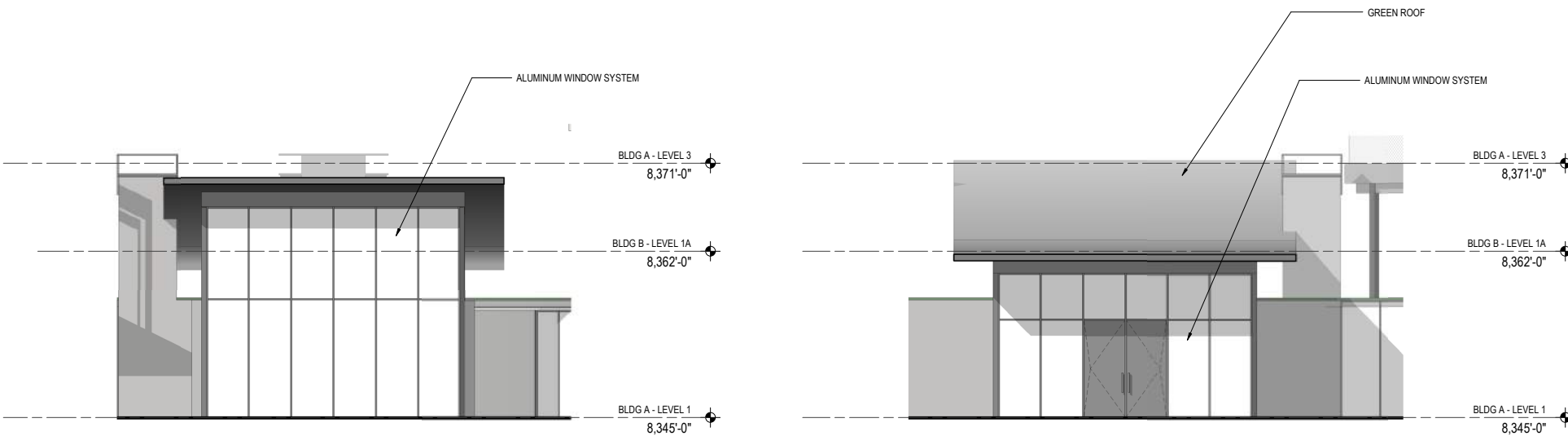
BLDG B - SOUTH ELEVATION



BLDG B - WEST ELEVATION

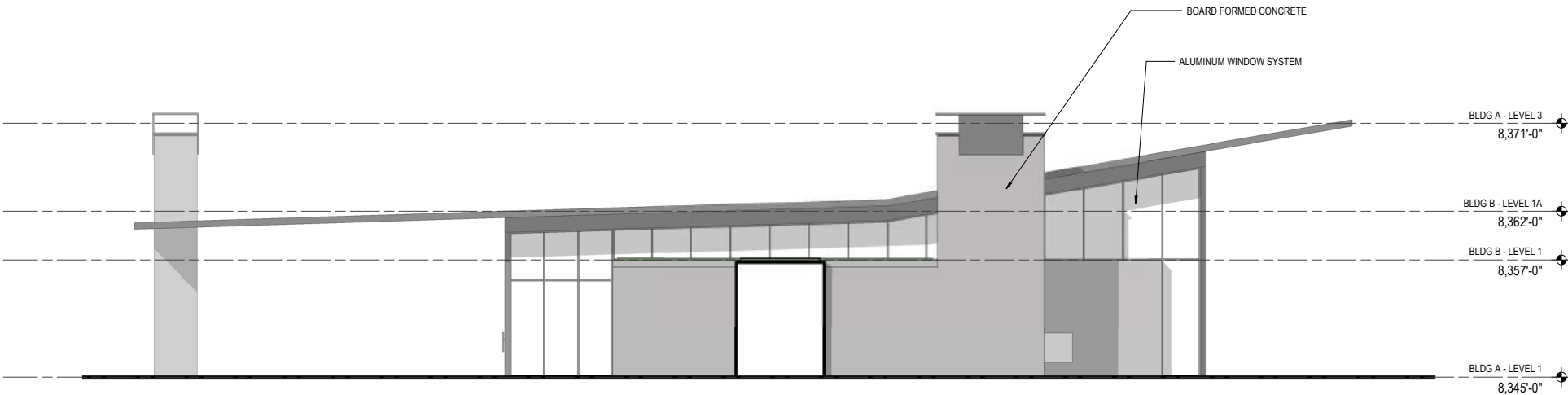


BLDG AB LOBBY ELEVATIONS

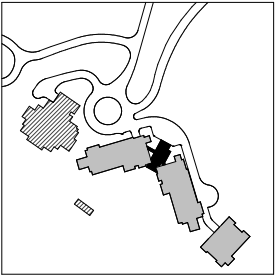


1 LOBBY ELEVATION BACK
SCALE: 1/8" = 1'-0"

2 LOBBY ELEVATION FRONT
SCALE: 1/8" = 1'-0"



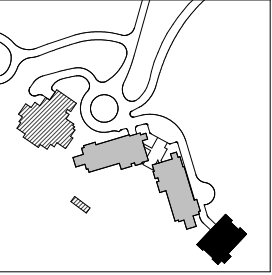
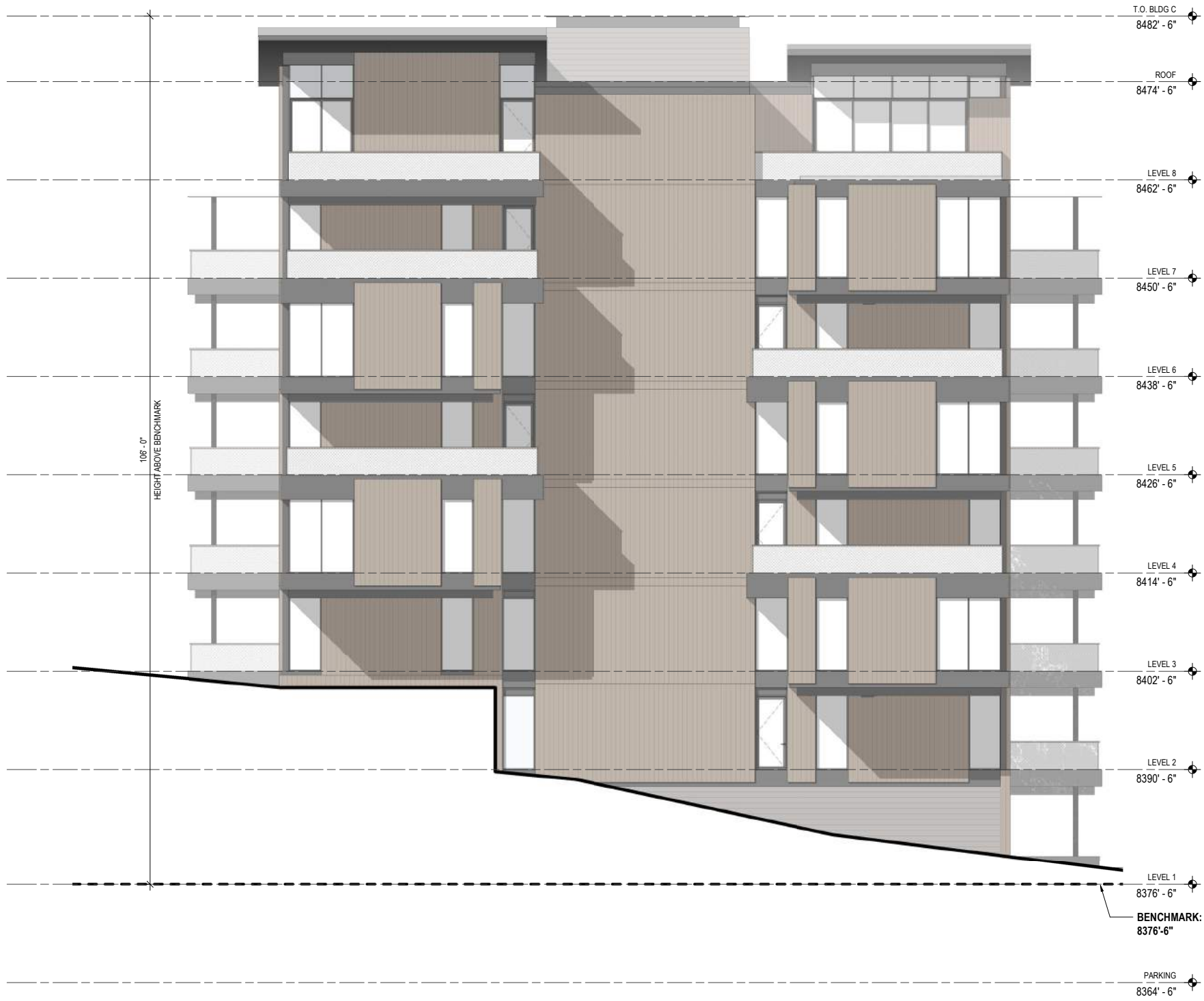
3 LOBBY ELEVATION SIDE
SCALE: 1/8" = 1'-0"



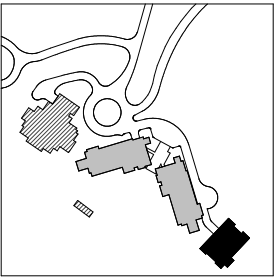
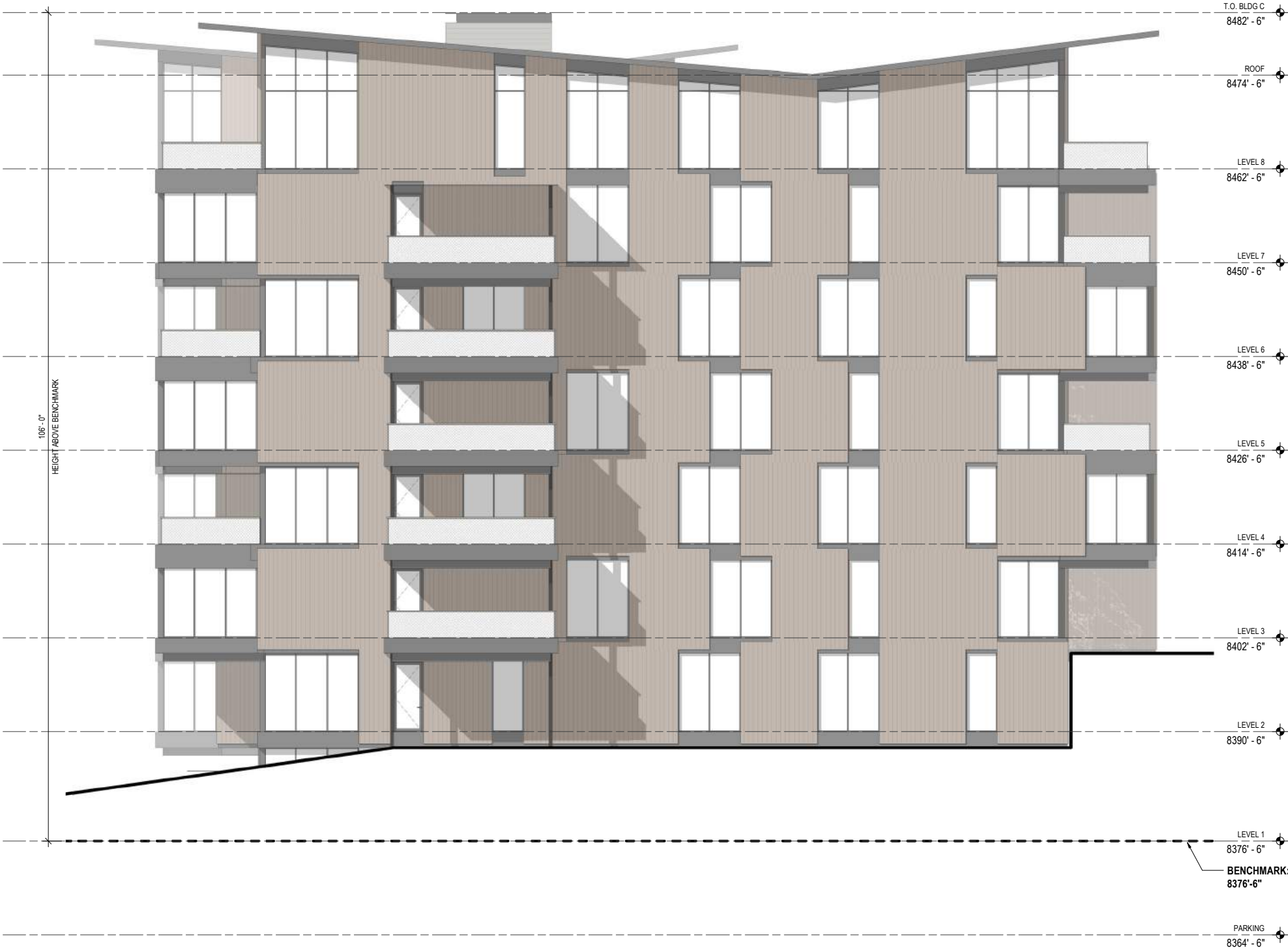
BLDG C - NORTH ELEVATION



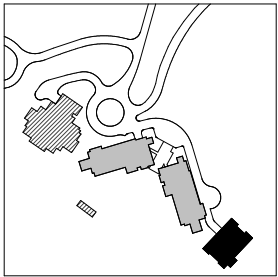
BLDG C - EAST ELEVATION



BLDG C - SOUTH ELEVATION



BLDG C - WEST ELEVATION

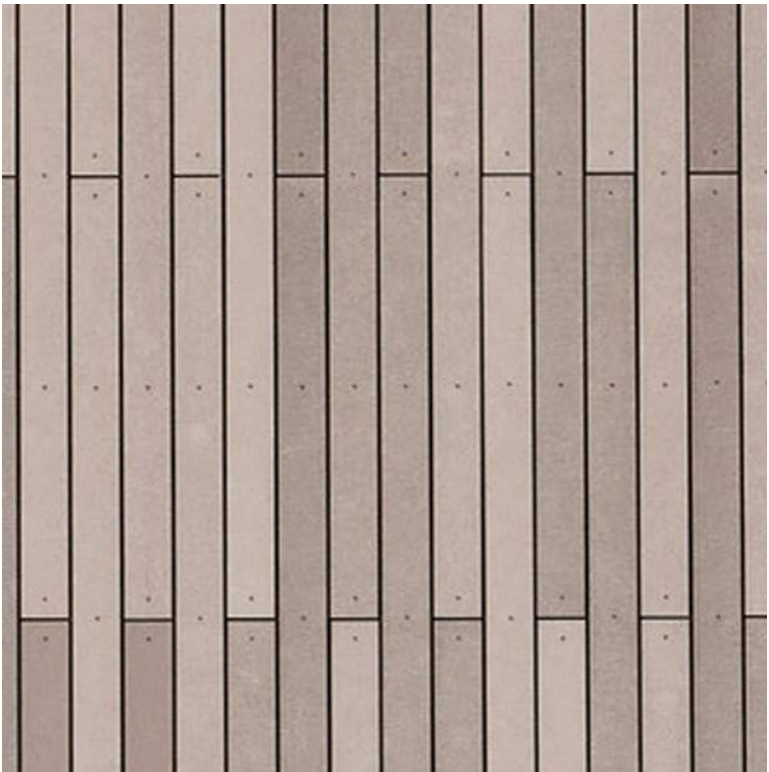


0 2' 4' 6' 8' 16' 24'

MATERIAL PALETTE



INSPIRATION



VERTICAL PLANK SIDING



ALUMINUM WINDOW SYSTEM



CAST IN PLACE CONCRETE



PAINTED METAL

Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 3 - Visual Impact
March 1, 2022









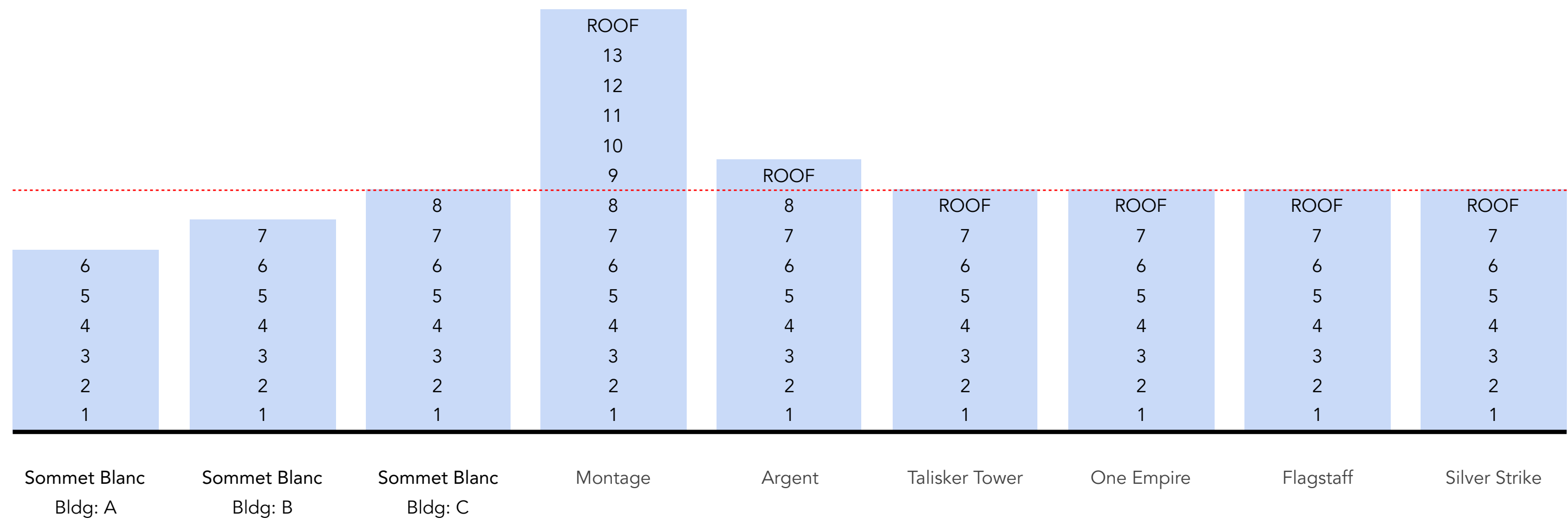


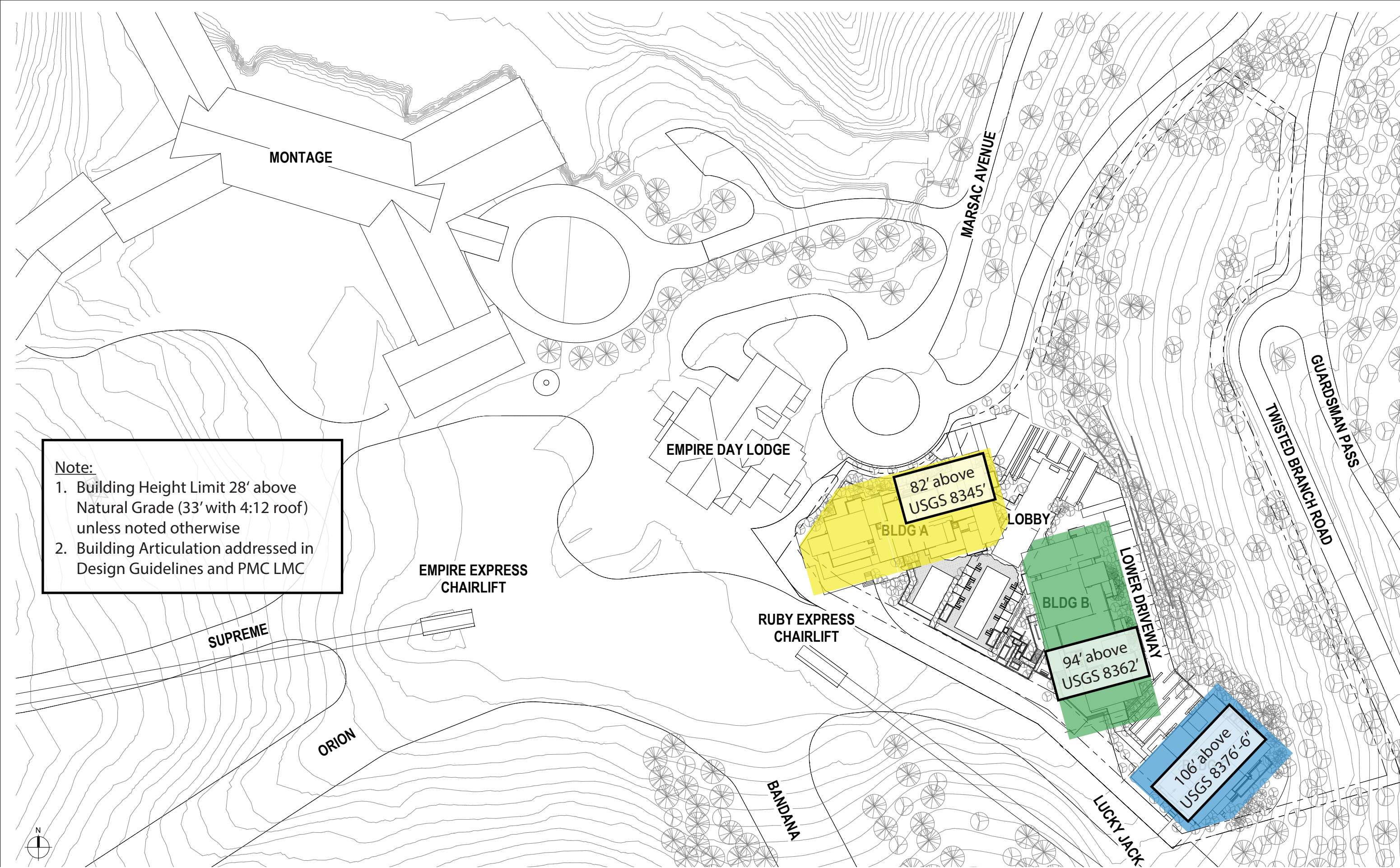






Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 4 - Height Study and New Volumetrics
March 1, 2022





Existing condominium lodge building heights:

	Ridge Height Above Road	Ridge Height Above Slopeside Patio	Ridge Height Other
Montage	114'	102'	165' above Event Lawn
One Empire Pass	110'	85'	97' above Pool Deck
Talisker Tower Residences	103'	78'	
Empire Residences	95'	88'	
Argent	91'	85'	131' above Marsac

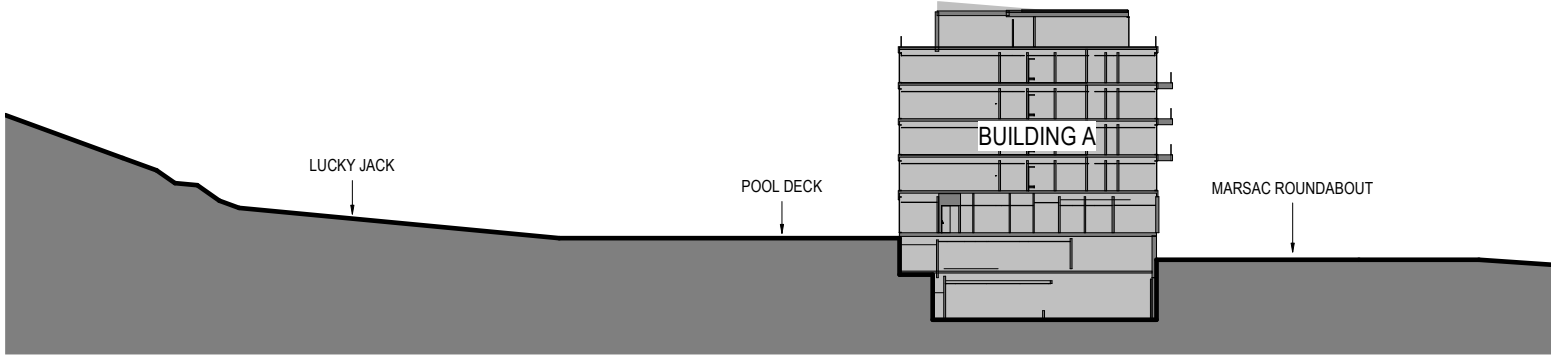
The following are proposed maximum building heights for the three condominium lodges:

	Height	Benchmark	Location
Building A	82'	8,345'	Entry Lobby
Building B	94'	8,362'	Skier Lobby/Amenity Level
Building C	106'	8,376' 6"	Skier Lobby/Amenity Level

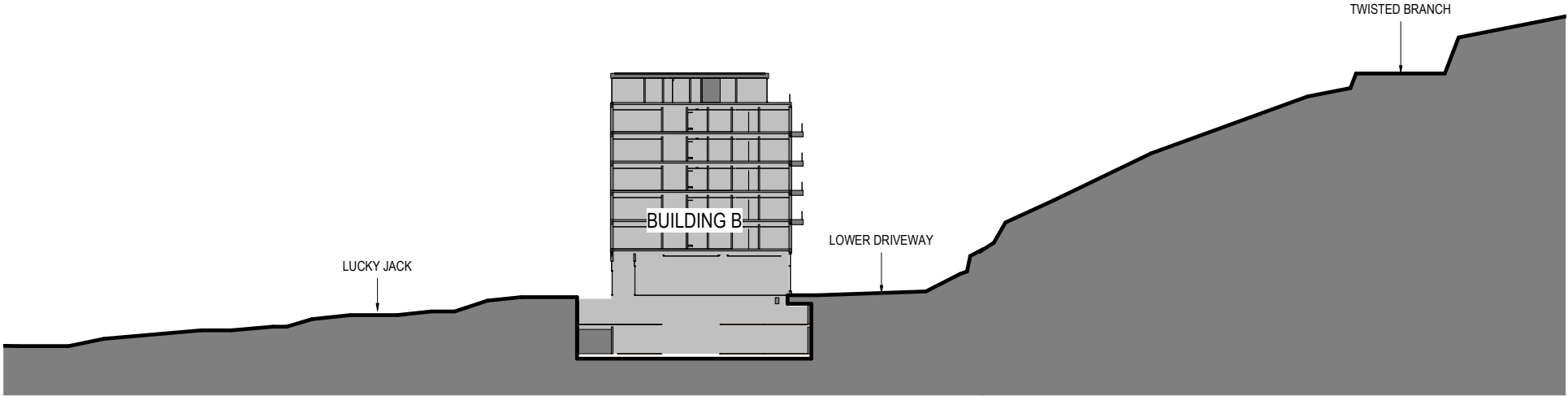
With the proposed volumetrics and design, maximum building heights relative to roads, driveways and slopeside patios will be as follows:

	Ridge Height Above Road	Ridge Height Above Slopeside Patio	Ridge Height Other
Building A	89' (Marsac)	79' (Pool Deck)	80' (Arrival)
Building B	100' (Driveway)	98' (Après Patio)	110' (Pool Deck)
Building C	116' (End Driveway)	105' (Lounge Patio)	

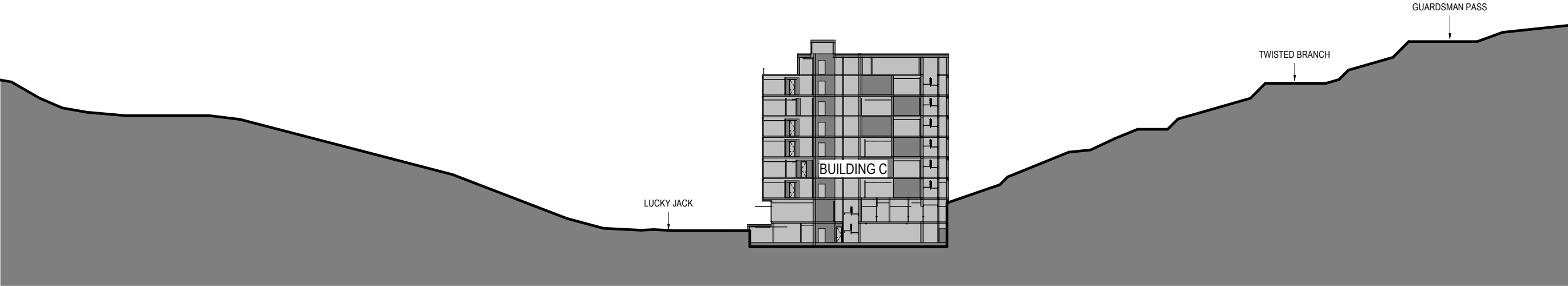
SITE SECTIONS



A DRB - SITE SECTION A

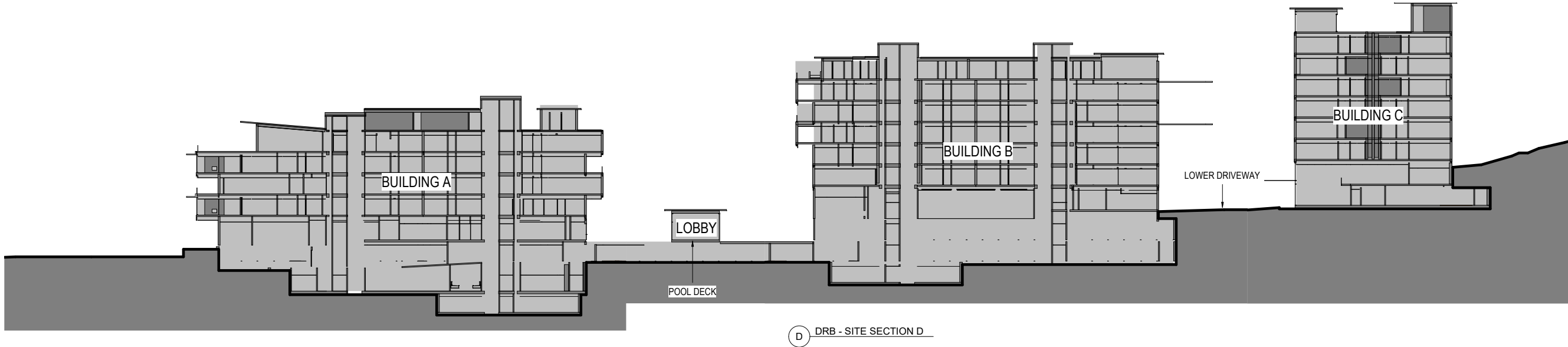


B DRB - SITE SECTION B

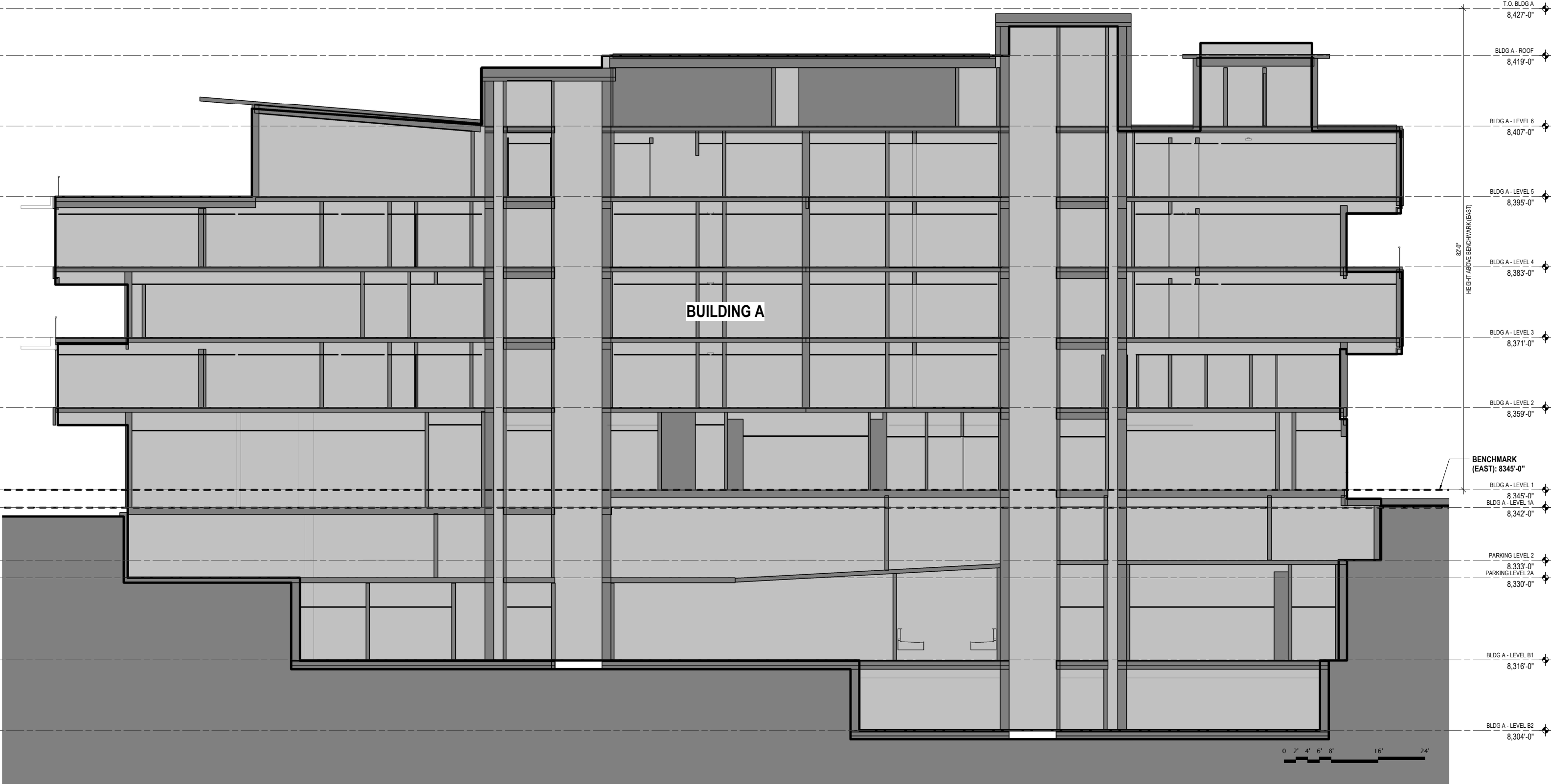


C DRB - SITE SECTION C

SITE SECTIONS



BUILDING A SECTION



BUILDING B SECTION

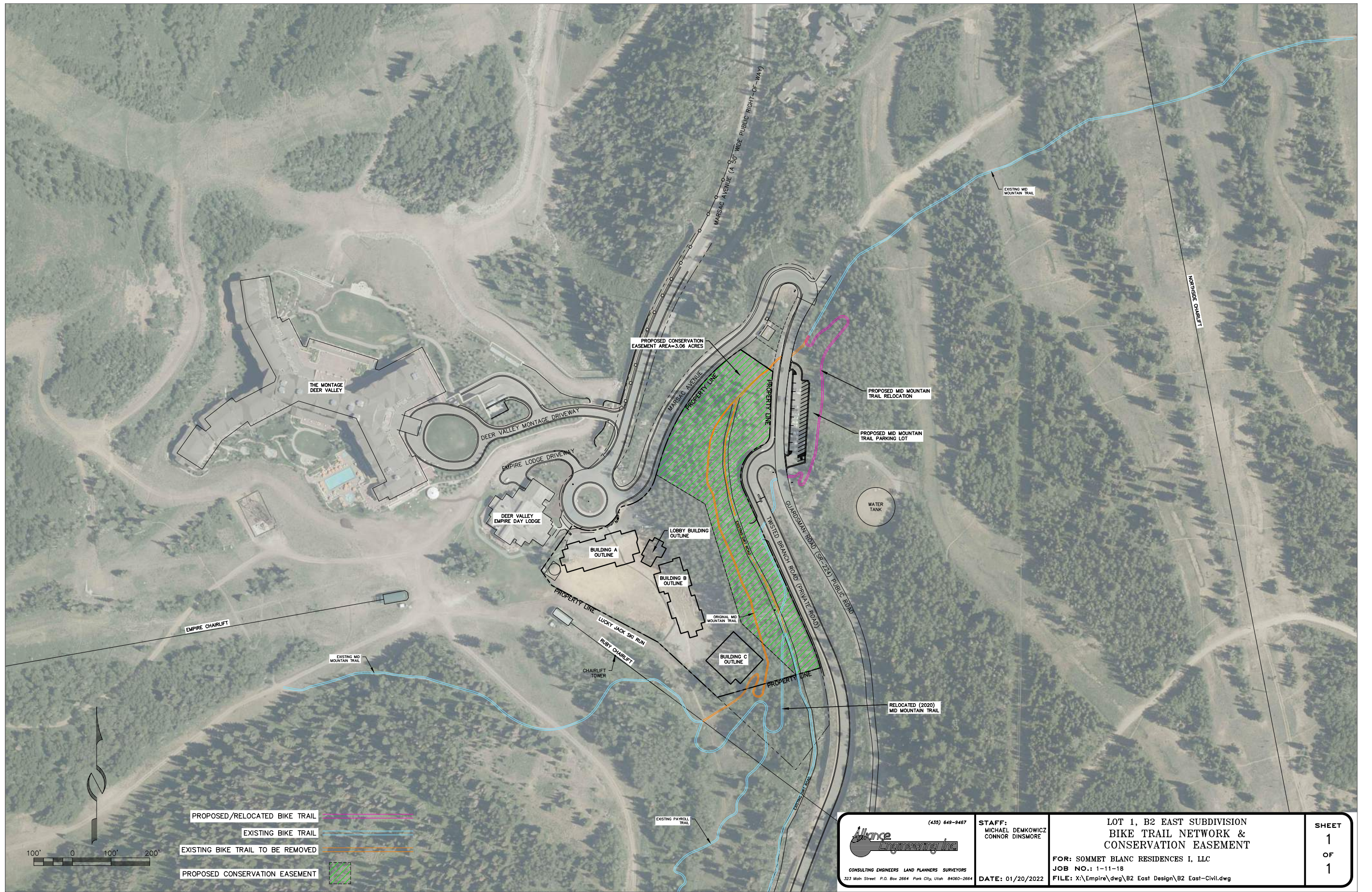


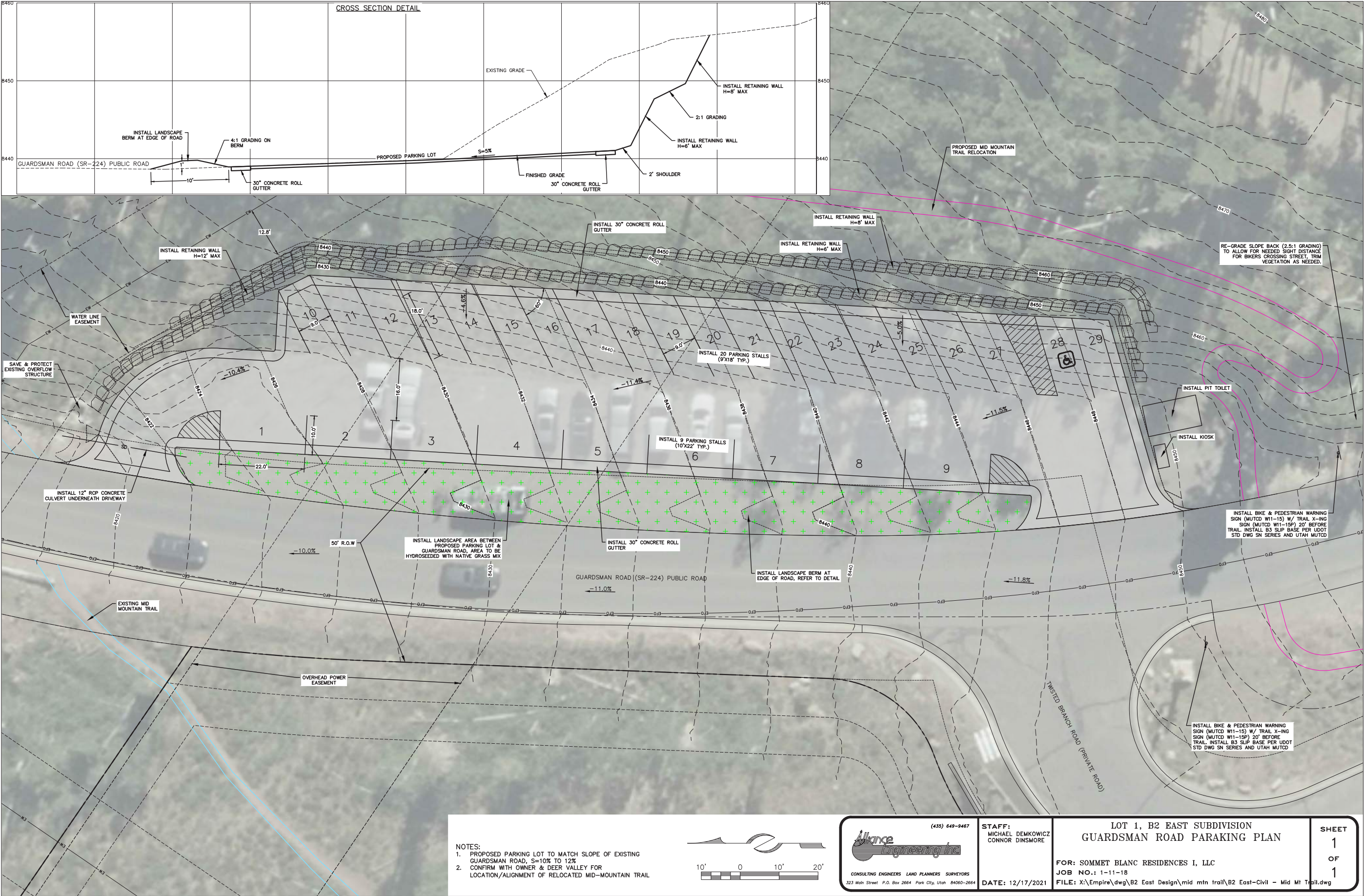
BUILDING C SECTION





Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 5 - Mid Mountain Trail
March 1, 2022





Background

Flagstaff Annexation

On June 24, 1999, Council adopted Ordinance 99-30 (Exhibit G) and Resolution 20-99 (Exhibit H) approving the annexation and Development Agreement for the Flagstaff Mountain area, of which the subject property is part of. Resolution 20-99 granted the equivalent of a "large-scale" Master Planned Development (MPD) and set forth the types and locations of land Uses; maximum Densities; timing of development; development approval process; as well as development conditions, restrictions, obligations, and amenities for each parcel. The Flagstaff Development Agreement (Agreement) was amended and recorded in March 2007 ([Exhibit F- link to Amended Agreement](#)).

The 2007 Amended Agreement specifies that a total of 87 acres, within three (3) development pods (A, B1 and B2), of the 1,750 acres of annexation property may be developed for the Mountain Village. The Mountain Village is further constrained to a maximum density of 785 residential unit equivalents (UE) configured in no more than 550 dwelling units as multi-family, hotel, townhouse or PUD units, provided the number of PUD units does not exceed 60.

The Mountain Village is also allowed 16 single family home sites. At least 50% of the residential units within the Mountain Village must be clustered within the primary development pod (Pod A). The development pods are linked by transit, mainly on-demand shuttle vans. A fourth pod, pod D is allowed 30 single family lots (this area was platted with the Red Cloud Subdivision for 30 single family home sites). The subject property is located within Pod B2, also known as the B2 East Subdivision (Exhibit I - Pod Map and Exhibit D - B2 East Subdivision).

The Development Agreement required the original developer (United Park City Mines Company) to submit 14 specific technical reports for review and approval by the City. The 14 studies, along with the Land Management Code and the amended Development Agreement form the standards under which the subject Conditional Use Permit and subsequent MPD and Agreement Amendments, are reviewed (Exhibit J – [Link to Technical Reports](#)).

Pod B2 at Empire Pass Master Planned Development

On July 28, 2004, the Planning Commission approved a Master Planned Development (MPD) for the Village at Empire Pass (Pod A), known as the Village Master Planned Development (VMPD) Pod A. The VMPD was the first step in the development process for Pod A. A separate MPD for Pod B1 was approved in May 2002 and amended in 2008. On March 14, 2007, the Planning Commission approved a Master Planned Development (MPD) for Pod B2 at Empire Pass as an amendment to the July 28, 2004 Village at Empire Pass MPD (VMPD) (See Exhibit K).

The purpose of the VMPD was to establish unit mix and density for the Mountain Village, as well as addressing overall project infrastructure throughout the Annexation Area. The VMPD established building volumetric diagrams, including

specific height exceptions, density, and development location. Building volumetric diagrams were approved with the Pod B2 MPD ("Hill Glazier Plans", Exhibit L).

The Pod B2 MPD approved 192 hotel rooms utilizing 69.6 Unit Equivalents (UEs) and 94 hotel condominiums utilizing 114 UEs, on the west side parcel (aka Montage Deer Valley). An additional 81 UEs of residential condominiums were assigned to the east side parcel, aka B2 East. The applicant requested a plat note identifying the maximum density allowed on Lot 1 as 81 UEs configured in no more than 70 residential condominium units.

The Pod B2 MPD approved Resort Support Commercial uses for 35,000 sf of Spa floor area and 28,059 sf for restaurants, bar, and retail space within the Montage Deer Valley building (Exhibit 10). The MPD approved 15,000 sf of meeting/conference space and lounge area based on the total floor area of the building, not including the parking garage. The MPD describes findings and conditions for development of Pod B2.

Concurrent with the MPD, the Planning Commission approved a Conditional Use Permit (CUP) for Phase I of the MPD for the Montage. The Montage is complete and has full occupancy permits for 174 hotel rooms and 84 condominium units were constructed with the Montage as recorded with the Hotel and Residences at Empire Canyon Resort Condominium plat, utilizing a total of 182 UEs.

Subdivisions

On March 29, 2007, the City Council approved the Parcel B-2 Empire Village Subdivision creating three lots of record for Parcel B-2 (West) (Exhibit D). The Parcel B-2 Empire Village Subdivision amended and consolidated parcel A of the previous Empire Village Subdivision for the Empire Day Lodge, created Lot B, site of the Daly West head frame and access to JSSD underground mine tunnels, and created Lot C, site of the Montage. Parcel B-2 Empire Village Subdivision plat was recorded on May 23, 2007. The Staff report for the Parcel B-2 Subdivision indicates that a future subdivision would encompass the 81 UE condominiums to the southeast of the Empire Day Lodge (B2 East Lot), which is the subject of this Staff Report.

On March 9, 2017, the City Council approved the B2 East Subdivision creating a lot of record for the 81 multi-family UEs, in not more than 70 condominium units, as identified by the Pod B-2 Master Planned Development and Subdivision. The subdivision plat entails a 7.85 acre metes and bounds parcel (Exhibit D). The subdivision consists of a 6.91 acre 'Lot 1', and a 0.94 acre 'Parcel A', for anticipated Deer Valley Resort ski related activities and infrastructure (potential ski bridge). Parcel A has no assigned density and is not developable in terms of residential units or UEs. The applicant recorded a Development Covenant which allocates 3,600 sf of Resort Support Commercial (from MPD maximum of 75,000 sf), and the 81 UEs, to be located within a maximum of 70 multi-family dwelling units (Exhibit M)

Staff notes that the working copy of the B2 East Subdivision plat contains hand-

drawn parcels consisting of Parcels B2EAST-1-A, B2EAST-1-B, B2EAST-1-C, and B2EAST-1-D, which have been assigned new Tax ID numbers and are shown on the Summit County Parcel Viewer (Exhibit P). According to the applicant, the project will be phased and for the purposes of financing, the ownership group holds title with different entities for each phase. These internal boundary lines have **not been reviewed or approved by the City**. The internal boundary lines are not recognized by the City and have no legal standing in terms of the plat, which is why they only appear on the working copy. The County Recorder's office has their own set of requirements for recordation which includes items such as owners' signatures under a notary and proper legal descriptions which is why these changes are only reflected on the Working Copy not the Original plat. Since owners can feasibly record items on a plat that have not been assessed or approved by Park City Municipal, the "original" plat is what the City recognizes as the reviewed and approved recorded plat. For the sake of this application, staff aims to clarify that the valid plat is the original B2 East Subdivision plat (Exhibit D).

Mine Soil Removal

The property is the site of the historic Mazepah mine shaft. In September 2016, the applicant began working under an Administrative Settlement and Order on Consent for Removal Action with the EPA permit to remediate and remove mine soil on the site and to close an old mine shaft on the property. The mine shaft was permanently closed in 2016 under geotechnical supervision. Significant amounts of soil downstream from the mineshaft was contaminated and had to be removed.

In August of 2018, the EPA confirmed that all work performed on site was in accordance with EPA requirements (Exhibit Q). Following cleanup of the site the grade at the center of the development site on the property was approximately 15-20' below grade of the adjacent *Lucky Jack* ski trail, according to the applicant.

As a result of environmental cleanup and importing clean fill from sites elsewhere within the Flagstaff Annexation area the grade on site is still well below the adjacent ski trail in anticipation of underground parking. (Exhibit B).

Current Approvals on the Lot

Permit Type:	Description:	Approval Date:	Relevant Conditions of Approval:
Administrative Conditional Use Permit PL-19-04372	Temporary Sales Trailer: For the sale of the units staffed by a licensed realtor.	12/6/2019	Applicant has submitted an Admin CUP Extension that is currently being processed.
Administrative Conditional	Seven (7) Retaining walls six (6) to ten (10) feet in height to	11/13/2020 Revised:	Applicant has submitted an Admin

Use Permit PL-20-04677	support a new sanitary sewer line servicing the proposed Hot Creek restaurant in addition to addressing Fire Department access requirements for future plans.	6/18/2021	CUP Extension that is currently being processed.
Temporary Sign Permit PL-20-04575	Temporary Real Estate Sign.	8/24/2020	
Grading Permit 20-749	Install sewer line through B2-East Lot 1 to Twisted Branch Road.	7/22/2020	
Grading Permit BD-16-13406	Clear for geotechnical soils investigation.	8/16/16	
Flatwork BD-16-23272	Seal Mazepah mine shaft in accordance with AGECE 9/14/16 closure	9/14/16	
Flatwork BD-16-26240	Concrete pad to move yurt location.	10/31/18	
Grading Permit BD-18-13505	Place fill to replace removed contaminated soils	10/26/18	

The site has had on-going disturbance with appropriate permitting measures including work such as mine tailings mitigation, temporary buildings on the site that have since been demolished, and currently, utility implementation and retaining walls. The “Hot Creek Restaurant” and B2East project are allowed under the Flagstaff Development Agreement and the Empire Pass B2 MPD (Exhibit E and F). The developers of those projects coordinated between themselves and with Deer Valley Resort to locate the sewer line that will serve both projects and recorded a sewer line easement on 6/29/2020 (Exhibit 12).

The Empire Pass Design Review Board submitted a letter that they had reviewed and approved the proposed retaining walls and the City's Development Review Committee reviewed the project as well. The project was reviewed by the Planning Department in accordance with the LMC Criteria for Conditional Use Permits and approved on November 13, 2020. A subsequent revision to the location of the sewer line was also reviewed and approved in June of 2021.

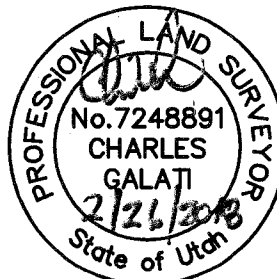
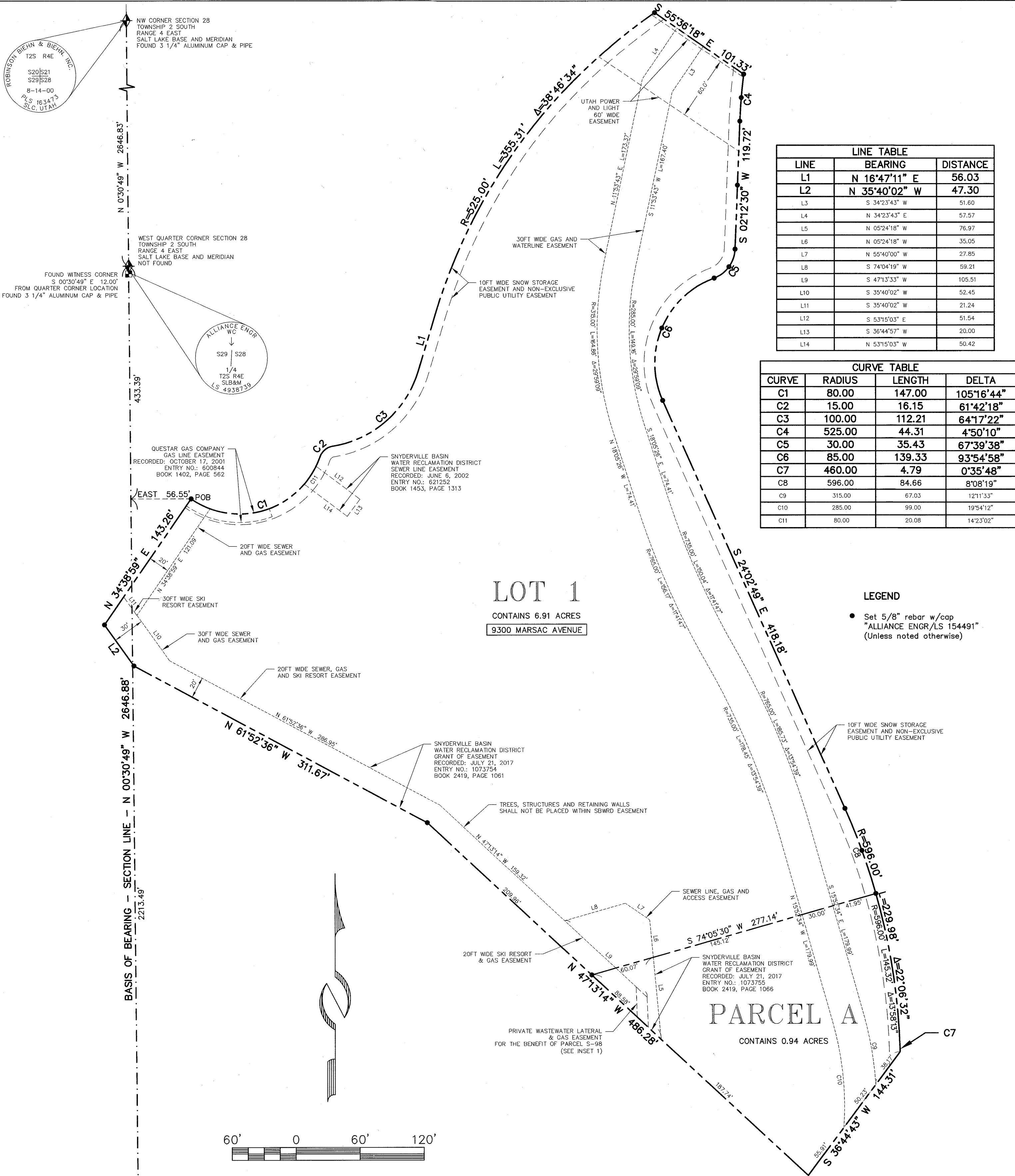
Retaining walls in the RD zone that are greater than six feet (6') from final grade and not in the setbacks require an Administrative CUP. The B2East developer submitted an Administrative CUP application for a series of retaining walls on their property to accommodate the proposed sewer line. A project notification sign was posted on the property and abutters were noticed. No public input was received for this project. The Admin CUP for retaining walls was approved 11/13/2020 (Exhibit S) and the Admin

CUP for a temporary Sales Traylor was approved December 6, 2019 (Exhibit T).

There is generous separation between the walls to allow for planting of trees and shrubs to mitigate the visual impact of the walls. Walls will be faced with stone veneer over formed concrete and the proposed veneer is a dry stack natural stone. Approval for landscaping will come at the time of project approvals for the proposed B2 East project currently under review by the Planning Commission.

NOTES:

- This plat is subject to the Conditions of Approval in Ordinance 2017-07.
- All applicable conditions, regulations, requirements, and stipulations of the Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 20-Acre Quinn's Junction Parcel, and Iron Mountain recorded at Summit County on March 2, 2007, as Entry No. 00806100 in Book 1850, Page 1897 (the "Development Agreement"), and associated technical reports and agreements, continue to apply.
- Conditions of approval of the Village at Empire Pass Master Planned Development, approved July 28, 2004, and the Pod B-2 at Empire Pass Master Planned Development, approved March 14, 2007, shall continue to apply.
- Utility structures such as ground sleeves and transformers and other dry utility boxes must be located on the lots.
- Fire sprinklers are required for new construction per the Chief Building Official at the time of review of the building permit.
- No building permits shall be issued on Lot 1 or Parcel A until the mine shaft has been fully closed and mine soil remediation under EPA supervision has been completed. Prior to issuance of any building permits, documentation certifying the work is complete shall be presented to the Chief Building Official and Planning Director. As part of any building permit submission, property owner shall submit a closure plan for the adit, approved by a geotechnical engineer, and detailing any additional work required in conjunction with building construction in the vicinity of the adit.
- Prior to building permit issuance, documentation from UDOT showing approval of any curb cuts or modifications to existing curb cuts onto Marsac Avenue, a state highway, is required.
- A conditional use permit approval is required prior to issuance of a building permit for any residential building proposed on Lot 1. A construction mitigation plan shall be submitted with the conditional use permit application and in advance of issuing building permits. Parcel A is not a development lot.
- A declaration of condominium and a record of condominium plat are required prior to the sale of individual units within the development.
- Lot 1 is subject to the Declaration of Development Covenants, recorded as Entry No. 0081411, in the official records of the Summit County Recorder. Lot 1 has an on-site affordable housing obligation of 4.2 Affordable Unit Equivalents as defined in the Development Agreement. All deed restricted units shall be identified on the final condominium plat prior to recordation of such plat. Phasing of affordable housing units shall be commensurate with the certificates of occupancy for the buildings.
- Wastewater service to B2 East Subdivision shall be provided by the Snyderville Basin Water Reclamation District ("SBWRD"). A Line Extension Agreement approval letter was provided by SBWRD on January 24, 2017, in connection with that certain Line Extension Agreement for Public Wastewater System dated January 23, 2017 (the "Line Extension Agreement"). The owner shall be responsible for extending the public wastewater system within Lot 1 according to requirements of the Line Extension Agreement. Easements associated with the Line Extension Agreement are depicted on the plat.
- The property is located within a water source protection zone. All sewer construction must comply with State of Utah drinking water regulations.
- This development is part of a common plan development and a MS4 storm water permit is required for all land disturbance activities for each separate phase of construction, prior to building permit issuance.
- The Empire Pass Master Owners Association, Inc. (the "Master Association"), together with the Master Declaration of Covenants, Conditions, and Restrictions of Empire Pass (as amended the "Master Declaration") requires the membership of each lot or unit owner. Members are subject to the terms of the Master Association's articles of incorporation, bylaws, rules and regulations and other governing documents that may be established from time to time by the Master Association, including assessments and reinvestment fees as provided therein.
- Requirements and obligations of the Development Agreement, as applicable to this property, shall be completed, or bonded for completion, prior to issuance of certificates of occupancy for any approved development located on Lot 1, unless otherwise conditioned herein. This includes number of shuttles in operation, collection mechanism for real estate reinvestment fees, and all other such obligations as are outlined in the Development Agreement. Per that certain Acknowledgement and Waiver [Marsac 100] dated November 30, 2017 by Park City Municipal Corporation, a political subdivision of the State of Utah ("PCMC") and that certain Acknowledgement and Waiver [Mine Bench] dated November 30, 2017 by PCMC, obligations under the Development Agreement for off-site affordable housing and gondola payments have been deemed satisfied, terminated, and fulfilled.
- Owners and potential buyers of any parcel, unit or land within the lot or parcel depicted on this plat are given notice that they own or are buying property in a resort area in which all-season resort activities are conducted and where certain risks are present, including, without limitation, damage to property and improvements and personal injury and death caused by errant skiers, snowboarders, mountain bikers and other resort patrons, equipment, machine-made snow, heavy equipment, construction or improvements of facilities, objects or equipment falling from lifts, water runoff, drainage, heavy snow falls, wind patterns, and other conditions that may affect the properties depicted hereon. The adjacent ski resort and its facilities are not amenities of any master association but are owned by a private resort and access to such lands and facilities is governed by such owner or agreements with such owner.



SURVEYOR'S CERTIFICATE

I, Charles Galati, certify that I am a Professional Land Surveyor and that I hold Certificate No. 7248891, as prescribed by the laws of the State of Utah. I further certify that by authority of the owners, I have made a survey of the tract of land shown on this plat and described hereon, and have subdivided said tract of land into lots and parcels together with easements, hereafter to be known as B2 EAST SUBDIVISION and that the same has been, to the best of my knowledge, correctly surveyed and monumented on the ground as shown on this plat.

BOUNDARY DESCRIPTION

A parcel of land located in the west half of Section 28 and the southeast quarter of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point that is North 00°30'49" West 2213.49 feet along Section Line and East 56.55 feet from the southwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the Recorder, Summit County, Utah, and on a curve to the left having a radius of 80.00 feet, of which the radius point bears North 34°38'59" East; and running thence along the southerly line of the Marsac Avenue Right of Way the following five (5) courses: 1) easterly along the arc of said curve 147.00 feet through a central angle of 105°16'44" to a point on a reverse curve to the right having a radius of 15.00 feet, of which the radius point bears South 70°37'45" East; thence 2) northeasterly along the arc of said curve 16.15 feet through a central angle of 61°42'18" to a point on a curve to the left having a radius of 100.00 feet, of which the radius point bears North 08°55'27" West; thence 3) northeasterly along the arc of said curve 112.21 feet (chord bears North 48°55'52" East 106.41 feet) through a central angle of 64°17'22"; thence 4) North 16°47'11" East 56.03 feet to a point on a curve to the right having a radius of 525.00 feet, of which the radius point bears South 73°12'49" East; thence 5) northeasterly along the arc of said curve 355.31 feet through a central angle of 38°46'34"; thence South 55°36'18" East 101.33 feet to a point on a curve to the left having a radius of 525.00 feet; thence southerly along the arc of said curve 44.31 feet (chord bears South 04°37'35" West 44.30 feet) through a central angle of 4°50'10"; thence South 02°12'30" West 119.72 feet to a point on a curve to the right having a radius of 30.00 feet, of which the radius point bears North 87°47'30" West; thence southerly along the arc of said curve 35.43 feet through a central angle of 67°39'38" to a point of reverse curve to the left having a radius of 85.00 feet, of which the radius point bears South 20°07'52" East; thence southwesterly along the arc of said curve 139.33 feet through a central angle of 93°54'58"; thence South 24°02'49" East 418.18 feet to a point on a curve to the right having a radius of 596.00 feet, of which the radius point bears South 65°57'11" West; thence along the arc of said curve 229.98 feet through a central angle of 22°06'32" to a point of compound curve to the right having a radius of 460.00 feet, of which the radius point bears South 88°03'42" West; thence southerly along the arc of said curve 4.79 feet through a central angle of 00°35'48"; thence South 36°44'43" West 144.31 feet; thence North 47°13'14" West 486.28 feet; thence North 61°52'36" West 311.67 feet; thence North 35°40'02" West 47.30 feet; thence North 34°38'59" East 143.26 feet to the point of beginning.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 16°47'11" E	56.03
L2	N 35°40'02" W	47.30
L3	S 34°23'43" W	51.60
L4	N 34°23'43" E	57.97
L5	N 05°24'18" W	76.97
L6	N 05°24'18" W	35.05
L7	N 55°40'00" W	27.85
L8	S 74°04'19" W	59.21
L9	S 47°13'33" W	105.51
L10	S 39°40'02" W	52.45
L11	S 39°40'02" W	21.24
L12	S 53°15'03" E	51.54
L13	S 36°44'57" W	20.00
L14	N 53°15'03" W	50.42

CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	80.00	147.00	105°16'44"
C2	15.00	16.15	61°42'18"
C3	100.00	112.21	64°17'22"
C4	525.00	44.31	4°50'10"
C5	30.00	35.43	67°39'38"
C6	85.00	139.33	93°54'58"
C7	460.00	4.79	0°35'48"
C8	596.00	84.66	8°08'19"
C9	315.00	67.03	121°1'33"
C10	285.00	99.00	19°54'12"
C11	80.00	20.08	142°3'02"

LEGEND

- Set 5/8" rebar w/cap "ALLIANCE ENGR/LS 154491" (Unless noted otherwise)

OWNER'S DEDICATION AND CONSENT TO RECORD

KNOW ALL MEN BY THESE PRESENTS that REDUS Park City LLC, a Delaware limited liability company, the undersigned owner of the herein described tract of land to be known hereafter as B2 EAST SUBDIVISION, does hereby certify that it has caused this Plat to be prepared and does hereby consent to the recordation of this Plat.

ALSO, the owner or its representative, hereby irrevocably offers for dedication to the city of Park City all the easements and required utilities shown on the plat in accordance with an irrevocable offer of dedication.

In witness whereof, the undersigned set his hand this 26 day of Feb. 2018.

REDUS Park City LLC,
a Delaware limited liability company

By: REDUS Properties, Inc.
a Delaware corporation, its Manager

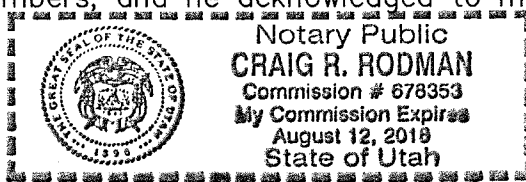
By: David Ash, Sr. Vice President

ACKNOWLEDGMENT

State of Utah
County of Summit

On this 26 day of Feb., 2018, David Ash personally appeared before me, whose identity is personally known to me or proven on the basis of satisfactory evidence, and who by me duly sworn/affirmed, did say he is the Sr. Vice President of Redus Properties, Inc., a Delaware corporation, and that said document was signed by him on behalf of said corporation by authority of its Operating Agreement or Resolution of its Members, and he acknowledged to me that he executed the Subdivision Plat.

G. R. Rodman
A Notary Public commissioned in Utah

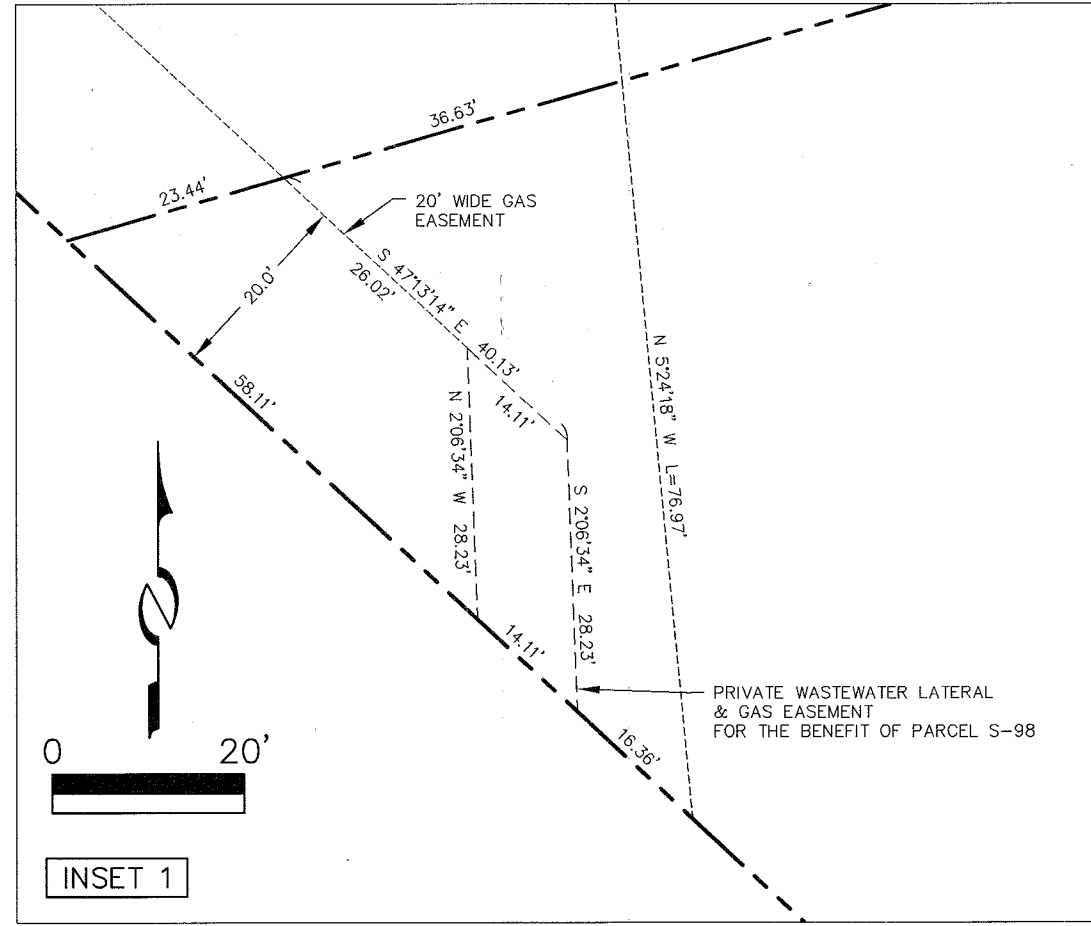


Craig R. Rodman
Printed Name

Residing in: Park City, UT

My commission expires: 8/19/2018

Commission No. 678353



B2 EAST SUBDIVISION

LOCATED IN THE WEST HALF OF SECTION 28 & THE SOUTHEAST QUARTER OF SECTION 29
TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

SHEET 1 OF 1

(435) 649-9467
Alliance Engineering Inc.
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

SNYDERVILLE BASIN WATER RECLAMATION DISTRICT
REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER RECLAMATION DISTRICT STANDARDS ON THIS 26th DAY OF February, 2018
BY [Signature]
S.B.W.R.D.

PLANNING COMMISSION
APPROVED BY THE PARK CITY PLANNING COMMISSION THIS 8TH DAY OF February, 2017
BY [Signature]
VICE-CHAIR

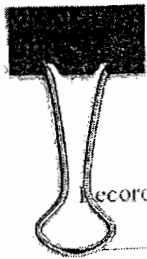
ENGINEER'S CERTIFICATE
I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS 2nd DAY OF March, 2018
BY [Signature]
PARK CITY ENGINEER

APPROVAL AS TO FORM
APPROVED AS TO FORM THIS 2nd DAY OF March, 2018
BY [Signature]
PARK CITY ATTORNEY

COUNCIL APPROVAL AND ACCEPTANCE
APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS 9TH OF MARCH, 2017
BY [Signature]
MAYOR

CERTIFICATE OF ATTEST
I CERTIFY THIS PLAT WAS APPROVED BY PARK CITY COUNCIL THIS 9TH DAY OF MARCH, 2017
BY [Signature]
PARK CITY RECORDER

RECORDED
STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF REDUS PARK CITY LLC
FEE \$32.00
DATE 3/1/2018 TIME 8:19 AM ENTRY NO. 1081638
RECORDED BY [Signature]



Recorded at the request of and return
to: Park City Municipal Corp.
Attn: City Recorder
P.O. Box 1480, Park City, UT 84060

Recorded this ____ day of _____
_____, 2007
at Book # ____ Page # ____

ENTRY NO. 00806100

03/02/2007 02:42:51 PM B: 1850 P: 1897

Agreement PAGE 1 / 49

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE \$ 0.00 BY PARK CITY MUNICIPAL CORP



**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR FLAGSTAFF MOUNTAIN,
BONANZA FLATS, RICHARDSON FLATS,
THE 20-Acre QUINN'S JUNCTION PARCEL
AND IRON MOUNTAIN**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the 2nd day of March, 2007, by and between UNITED PARK CITY MINES COMPANY, ("UPCM" or "DEVELOPER"), DEER VALLEY RESORT COMPANY, ("DEER VALLEY"), and PARK CITY MUNICIPAL CORPORATION, a third class city of the State of Utah ("City") (collectively, the "Parties").

RECITALS

- A. WHEREAS, DEVELOPER and DEER VALLEY own approximately: 1,600 of 1,750 acres of patented mining claims located in the unincorporated Flagstaff Mountain area of Summit County, more particularly described and depicted in Exhibit A attached hereto (hereafter, "Flagstaff Mountain"); approximately 106 acres of patented mining claims located on Iron Mountain within an unincorporated area of Summit County more particularly described and depicted in Exhibit B attached hereto (hereafter, "the Iron Mountain Parcels"); approximately 1,500 acres of patented mining claims, constituting all of UPCM's land located in the unincorporated Bonanza Flats area of Wasatch County more particularly described and depicted in Exhibit C attached hereto (hereafter, "Bonanza Flats"); all of UPCM's land east of U.S. 40 and south of S.R. 248 constituting approximately 650 acres of real property owned in fee simple located immediately east of U.S. 40 and south of S.R. 248 within an unincorporated area

of Summit County more particularly described and depicted in Exhibit D attached hereto (hereafter, "Richardson Flats"); and approximately 20-Acres of real property owned in fee simple located west of U.S. 40 and south of S.R. 248 within an unincorporated area of Summit County more particularly described and depicted in Exhibit E attached hereto (hereafter, "the 20-Acre Quinn's Junction Parcel");

- B. WHEREAS, on May 17, 1994 DEVELOPER filed an application for annexation to Park City of Flagstaff Mountain, consisting of DEVELOPER's, DEER VALLEY's and Northside Neighborhood Property Owners' land, together totaling an area of approximately 1,750 acres;
- C. WHEREAS, on May 10, 1997 the Park City Council unanimously resolved by Resolution 10-97 to annex Flagstaff Mountain under certain Development Parameters;
- D. WHEREAS, on July 8, 1998 DEVELOPER requested reconsideration by the City of Resolution 10-97 and offered certain incentives for limiting development of the Bonanza Flats, Richardson Flats and the Iron Mountain Parcels;
- E. WHEREAS, on September 10, 1998 the Park City Council unanimously adopted a resolution to rescind Resolution No. 10-97 and to adopt new development parameters for Flagstaff Mountain, Bonanza Flats, Richardson Flats and the Iron Mountain Parcels, as set forth in this Agreement;
- F. WHEREAS, in the intervening months since the City Council adopted the September 10, 1998 development parameters, the DEVELOPER further refined its proposal by offering to move 16 single family homes from the sensitive Prospect Ridge area to the Mountain Village and to constrain development in the Northside Neighborhood to reduce site disturbance and to facilitate sale to a conservation buyer for a time certain;
- G. WHEREAS, the Parties intended to enter into the original Agreement to establish new development parameters for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel, and the Iron Mountain Parcels and to establish a time certain for annexation of Flagstaff Mountain (now referred to generally as Empire Pass) into the City;

- H. WHEREAS, the Parties in fact entered into the original Agreement on or about June 24, 1999; and
- I. WHEREAS, the Parties desire to amend and restate the original Agreement in connection with the development of a project known as the Montage Resort & Spa which is presently planned to include 192 hotel rooms and suites, with spa, restaurant and conference facilities, and a residential component that consists of resort condominiums.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by the Park City Land Management Code (LMC) in effect on the date of a complete application or, if different, by this Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

- 1.1 **"Annexation Property"** means that approximately 1,750 acres of property known as Flagstaff Mountain, described and depicted on Exhibit A.
- 1.2 **"Bonanza Flats"** means that approximately 1,500 acres of UPCM property commonly referred to as Bonanza Flats, constituting all of UPCM's holdings in Bonanza Flats and described and depicted on Exhibit C.
- 1.3 **"DEER VALLEY"** means the Deer Valley Resort Company, a Utah limited Partnership and each of its assigns, joint venture partners, and successors in interest, whether in whole or in part. DEER VALLEY shall cause its employees and agents to act in accordance with the terms of this Agreement.
- 1.4 **"DEVELOPER"** means United Park City Mines Company, a publicly traded Delaware corporation, and each of its assigns, joint venture partners, and successors in interest, whether in whole or in part. DEVELOPER shall cause its employees and agents to act in accordance

with the terms of this Agreement.

- 1.5 **"Inaction"** provisionally¹ means (a) DEVELOPER's failure to pursue a sequential permit (i.e. Small Scale MPD permit, conditional use permit, subdivision application, or building permit) by failing to submit a complete application for such a permit or by failing to respond to the City's written requests for information which the City deems is necessary to process the application; or (b) DEVELOPER's failure to sustain permitted construction such that the permit under which construction is allowed, expires or is otherwise suspended or revoked.
- 1.6 **"Meeting Accessory Uses"** provisionally² means uses normally associated and necessary to serve meeting and banquet space. Meeting Accessory Uses do not require the use of Unit Equivalents and include:
- 1.6.1 Administrative and Banquet Offices
 - 1.6.2 Banquet Storage Areas
 - 1.6.3 Banquet Prep Areas Storage Areas
 - 1.6.4 Common A/V Storage Areas
 - 1.6.5 Coat Check Areas
 - 1.6.6 Public Restrooms
 - 1.6.7 Public Telephone Areas
 - 1.6.8 Public Hallways
 - 1.6.9 Public Circulation Areas.
- 1.7 **"Mountain Village"** means that mixed-use portion of Flagstaff Mountain described and depicted as the Mountain Village in Exhibit A attached hereto and limited to a total of 87 acres, within three development Pods (A, B₁, and B₂) and maximum densities, unit equivalencies and configuration more fully described herein.

¹ This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superseded by an LMC definition of the term.

² This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superseded by an LMC definition of the term.

- 1.8 **"Northside Neighborhood"** means that 63-acre portion of Flagstaff Mountain described and depicted as the Northside Neighborhood in Exhibit A attached hereto and limited to the maximum density, unit equivalency, and configuration more fully described herein.
- 1.9 **"Northside Neighborhood Property Owners"** means, in addition to UPCM and DEER VALLEY, Park City Star Mining Company, Inc., a Utah corporation, Bransford Land Company, representing the interests of Anne Bransford Newhall, Mary Bransford Leader and Carolyn Bransford MacDonald, and Stichting Beheer Mayflower Project, a legal entity representing the interests of Stichting Mayflower Recreational Fonds and of Stichting Mayflower Mountain Fonds.
- 1.10 **"Pedestrian Village"** means an area configured within Pod A of the Mountain Village for the mixed use of residential, Residential Accessory, Resort Support Commercial, Resort Accessory, meeting and Meeting Accessory Uses within which at least fifty percent (50%) of the residential properties are clustered within walking distance (5 minutes) of a Transportation Hub for such residential properties, which can be directly accessed by pathways or sidewalks.
- 1.11 **"Planned Unit Development" or "PUD"** means a master planned development consisting of clustered, detached, single family or duplex units with common open space and coordinated architecture.
- 1.12 **"Pod Z"** means that area, depicted on Exhibit F that is limited for ski-related uses as further defined herein.
- 1.13 **"Project"** means the residential, recreational and commercial real estate development to be constructed within Flagstaff Mountain.
- 1.14 **"Residential Accessory Uses"** provisionally³ means uses that are for the benefit of the residents of a commercial residential use, such as a hotel or nightly rental condominium project. Residential Accessory Uses do not require the use of Unit Equivalents. Residential Accessory Uses include:

³ This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superceded by an LMC definition of the term.

- 1.14.1 Common Ski Lockers
- 1.14.2 Common Lobbies
- 1.14.3 Registration
- 1.14.4 Concierge
- 1.14.5 Bell Stand/Luggage Storage
- 1.14.6 Common Maintenance Areas
- 1.14.7 Mechanical Rooms
- 1.14.8 Common Laundry Facilities and Common Storage Areas
- 1.14.9 Employee Facilities
- 1.14.10 Common Pools, Saunas and Hot Tubs
- 1.14.11 Public Telephone Areas
- 1.14.12 Public Restrooms
- 1.14.13 Administrative Offices
- 1.14.14 Public Hallways and Circulation Areas

1.15 **“Resort Accessory Uses”** provisionally⁴ means uses that are clearly incidental to and customarily found in connection with the principal resort building or use and are operated for the convenience of the owners, occupants, employees, customers or visitors to the principal resort use. Resort Accessory Uses do not require the use of Unit Equivalents. They include such uses as:

- 1.15.1 Information
- 1.15.2 Lost and Found
- 1.15.3 Mountain Patrol
- 1.15.4 Mountain Administration
- 1.15.5 Mountain Maintenance and Storage Facilities
- 1.15.6 Mountain Patrol and Emergency Medical Facilities
- 1.15.7 Public Lockers
- 1.15.8 Public Restrooms
- 1.15.9 Employee Lockers
- 1.15.10 Ski School/Day Care

⁴ This definition has been inserted in anticipation of its inclusion in a new revision of the Land Management Code. This definition will be superseded by an LMC definition of the term.

1.15.11 Ticket Sales Areas

1.15.12 Ski Check Areas

1.15.13 Public Circulation Areas and Hallways

1.16 **“Richardson Flats”** means all of UPCM’s property at the southeast corner of U.S. 40 and S.R. 248, more fully described and depicted on Exhibit D.

1.17 **“Transportation Hub”** means the terminus of a public and/or private transportation system that is located at a convenient location within the Mountain Village.

1.18 **“Unit Equivalent,”** with respect to commercial structures and multifamily and PUD structures, has the meaning set forth in the LMC.⁵ Each single family residential structure (excluding PUDs) approved by the City pursuant to this Agreement for construction within the Project shall have a Unit Equivalent of 1.00, regardless of the size or the location of the single family residential structure. Each commercial structure or portion thereof (as such may be determined in applicable MPD approvals) shall consume 1 Unit Equivalent for each 1000 square feet. Each multifamily and PUD residential structure shall consume 1 Unit Equivalent for each 2000 square feet.

SECTION II. LARGE SCALE MPD—FLAGSTAFF MOUNTAIN

2.1. DEVELOPER is hereby granted the equivalent of a Large Scale Master Planned Development (Large Scale MPD) for Flagstaff Mountain. This Large Scale MPD sets forth maximum densities, location of densities and DEVELOPER-offered amenities and is subject to all normally-applicable City processes, and in addition thereto, such processes defined below, including DEVELOPER’s responsibility, prior to or concurrent with the Small Scale MPD process, to submit and ultimately to obtain (upon modification, if necessary) City approval, of satisfactory plans detailed below:

⁵ Hotel rooms of 500 square feet or less constitute ¼ Unit Equivalent.

- 2.1.1. Mine/Soil Hazard Mitigation Plan--which plan shall include an inventory of all mine sites, potential sources of release of hazardous materials into the environment, and a plan and schedule for their remediation;
- 2.1.2. Detailed Design Guidelines, with strong architectural themes, for the entire Flagstaff Mountain Project;
- 2.1.3. Specific Transit Plan;
- 2.1.4. Parking Management Plan;
- 2.1.5. Detailed Open Space Management Plan;
- 2.1.6. Historic Preservation Plan;
- 2.1.7. Emergency Response Plan, including DEVELOPER's commitments to provide infrastructure necessary to serve the Project and Bonanza Flats and phasing therefor;
- 2.1.8. Trails Master Plan setting forth trail locations, specifications, phasing and timing of public easements;
- 2.1.9. Private Road Access Limitation Procedures;
- 2.1.10. Construction Phasing Plan—including construction milestones for project amenities, including Richardson Flats development;
- 2.1.11. General Infrastructure and Public Improvements Design and Phasing Plan, which calls for the efficient extension of services, concentrating initial infrastructure development in the Mountain Village, and secondarily in the Northside Neighborhood. Such plan shall allow for the construction of a variety of housing types in each phase;
- 2.1.12. Utilities Master Plan—including the timing, alignment and service strategy for water and sewer service, as well as storm water management throughout the Project and Bonanza Flats;
- 2.1.13. Wildlife Management Plan; and
- 2.1.14. Affordable Housing Plan, including phasing.
- 2.2. **Maximum Development Parameters--Flagstaff Mountain.** Flagstaff Mountain is composed of the Mountain Village, the Northside

Neighborhood; various ski related improvements, and the Silver Mine Adventure. Upon annexation, Flagstaff Mountain will be zoned as shown on the zoning map attached hereto as Exhibit P. The following maximum development parameters apply to Flagstaff Mountain:

2.2.1 **Mountain Village:** The Mountain Village is constrained as follows:

2.2.1.1 **Small Scale MPD.** Site specific volumetrics and configuration will be established in the Small Scale MPD process.

2.2.1.2. **Maximum Development Area.** In the Small Scale MPD process, the entire Mountain Village development shall be constrained within a total of 87 acres.

2.2.1.3. **Maximum Density.** The maximum density within the Mountain Village is 785 Unit Equivalents configured in no more than 550 dwelling units.⁶ Such density shall be configured as multi-family, hotel, or PUD units, provided the PUD units do not exceed 60. PUD units consume Unit Equivalents in the same respect as multifamily units. Additionally, the Mountain Village may contain up to 16 detached single family home sites.

2.2.1.4. **Pedestrian Village.** At least 50% of the residential units within the Mountain Village must be clustered within the primary development pod (Pod A), and must be located within a five-minute walk of the Transportation Hub. All three development pods (Pods A, B₁, and B₂) within the Mountain Village must be linked by transit.

2.2.1.5. **Commercial.** The Mountain Village may additionally include up to 75,000-sq. ft. of Resort Support Commercial uses, which shall include Neighborhood

⁶ Hotel rooms of 500 square feet or less constitute ¼ Unit Equivalent. In the case of the Montage, the 192 Montage hotel rooms shall count as Unit Equivalents at the rate of 1 Unit Equivalent per 2,000 square feet of hotel rooms, but such hotel rooms shall not have kitchens and shall not count as dwelling units.

Convenience Commercial uses for residents and visitors such as groceries and sundries.

2.2.1.6. **Mine Site Reclamation.** To the greatest extent possible, DEVELOPER shall locate density in disturbed areas. This provision applies primarily to potential density at the Daly West site. Additionally, DEVELOPER shall reclaim⁷ all mining and mining overburden sites within Flagstaff Mountain, in accordance with state and federal regulatory agency review.

2.2.1.7. **Public Trails.** DEVELOPER shall construct and dedicate public trails designated on an accepted Trails Master Plan. Many trails will be constructed on land ultimately owned by DEER VALLEY. In those areas, DEER VALLEY shall be responsible for trail maintenance and for enforcing reasonable rules and regulations for public trail use. Such rules may not exclude free public access to the public trail systems identified on the Trails Master Plan.

2.2.1.8. **Deed Restricted Open Space.** Within 30 days of issuance of a Small Scale MPD, DEVELOPER and/or DEER VALLEY shall execute for the benefit of the City perpetual covenants and restrictions with respect to all designated open space associated with the Small Scale MPD and which, at a minimum, shall prevent the construction thereon of residential, commercial and retail structures but shall provide for ski-related uses consistent with paragraph 2.5 herein.

2.2.1.9. **Parking.** Each Small Scale MPD submittal shall include a parking management plan with respect to the portion of the property covered by such Small Scale MPD submittal.

⁷ Reclamation shall include, at a minimum, revegetation of exposed areas.

The goal of the plan is to design the Mountain Village in such a way as to reduce parking demand by 25%. DEVELOPER shall plan and encourage within the Mountain Village portion of the Project programs such as parking management, paid parking for commercial uses, shuttles and other programs designed to reduce the demand for private vehicles and parking. DEVELOPER shall provide for shared parking in all commercial, short-term residential and mixed-use buildings. Assigned or reserved spaces within commercial, short-term residential and mixed-use buildings are prohibited except that in the case of the Montage, one parking space may be assigned for each dwelling unit (excluding the 192 hotel rooms). The majority of the required parking areas will be fully enclosed and/or constructed underground.

2.3 **Prospect Ridge.** DEVELOPER considers the Prospect Ridge area depicted in Exhibit K to be a critical viewshed area for Old Town.

2.3.1 **Public Trails.** Consistent with the Trails Master Plan, DEVELOPER shall construct and dedicate to the City public trails designated within the Prospect Ridge area.

2.3.2 **Deed Restricted Open Space.** Within 30 days of issuance of the first Small Scale MPD, DEVELOPER shall cause to be recorded a document, approved by the City, which shall impose perpetual covenants and use restrictions for that portion of Prospect Ridge depicted as "Recreation Open Space Dedication" on Exhibit K, which shall prevent the construction thereon of residential, commercial and/or retail structures, ski lifts, and developed alpine ski runs.

2.4. **Northside Neighborhood.** The Northside Neighborhood is composed of property owned by five separate Northside Neighborhood Property Owners and, upon their written acceptance of the terms of this Agreement,

may contain a maximum of 38 homes, the size and location of which shall be determined at Small Scale MPD/subdivision review. The Northside Neighborhood may also contain a 1000 sq. ft. non-denominational Chapel, that will remain open and reasonably available to the public.⁸

2.4.1 Small Scale MPD. The Small Scale MPD must include all Northside Neighborhood Property Owners to achieve the maximum density of 38 detached single-family homes. Absent participation by all Northside Neighborhood Property Owners, DEVELOPER and DEER VALLEY may apply for a Small Scale MPD for a maximum of 30 single-family homes on the portion of the Northside Neighborhood owned by DEVELOPER and DEER VALLEY.⁹ In all circumstances, DEVELOPER and DEER VALLEY shall limit development in the Northside Neighborhood as follows:

2.4.1.1. Meadow Restriction. Homes shall not be in the meadow area generally designated on Exhibit A and further defined in the Small Scale MPD process.

2.4.1.2. Ski Run Separation. Limits of disturbance for each site shall be a minimum of 50 feet from any ski run, except where existing ski runs conflict with platted ski easements or platted lots, in which event the City shall have the discretion and authority to approve case-by-case exceptions to the foregoing distance limitation.

2.4.1.3. Viewpoint Restrictions. Structures and roads must be configured to minimize road and utility impacts and to

⁸ No utility extension will be allowed for the Chapel. Power may be allowed if it is readily accessible. Location of the Chapel cannot cause the extension of an improved road. Siting and construction must comply with all Code provisions.

⁹ If Park City Star, Bransford or Mayflower do not reach an agreement with DEVELOPER and DEER VALLEY with respect to the joint development of the detached single family homes within the Northside Neighborhood, then DEVELOPER and DEER VALLEY shall grant to the City the right to connect to the utility lines and to grant limited access to roads within the Northside Neighborhood without cost to serve the remaining property owners.

minimize wintertime visual impacts¹⁰ from ski runs and designated viewpoints, including but not limited to the knoll behind the terminus of what is presently known as the Northside chairlift.

2.4.1.4. **Public Trails.** Consistent with the Trails Master Plan, DEVELOPER, DEER VALLEY, and Northside Neighborhood Property Owners shall dedicate to the City improved public trails and trail easements that connect to the surrounding trail system. Where trails pass through the Deer Valley Ski Area, DEER VALLEY shall be responsible for trail maintenance and for enforcing reasonable rules and regulations. Such rules may not exclude free public access to the public trail systems identified on the Trails Master Plan.

2.4.1.5. **Enchanted Forest.** No development shall occur in the “Enchanted Forest” area generally designated on Exhibit A and further defined in the Small Scale MPD process.

2.4.1.6. **Deed Restricted Open Space.** Within 30 days of issuance of a Small Scale MPD, DEVELOPER shall record perpetual covenants and restrictions with respect to all designated open space associated with the Small Scale MPD and which shall prevent the construction thereon of residential, commercial and retail structures but shall allow ski-related uses.

2.4.2. **Northside Neighborhood Conservation Plan.** DEVELOPER and DEER VALLEY agree to refrain from transferring, improving or developing the Northside Neighborhood for 3 years, from the date of this Agreement to facilitate the potential of (a) the fee simple sale of the Northside Neighborhood, or (b) the sale and transfer of the development rights from the Northside

¹⁰ As well as summertime visual impacts.

Neighborhood. In either case, the sale would be completed within said time period and would be to a conservation buyer or buyers at fair market value at the date of purchase. Fair market value in this context shall reflect the entitlement for single family detached units set forth in the Large Scale Master Plan and this Agreement or, if the Small Scale Master Plan has been issued, as reflected in the Small Scale Master Plan for the Northside Neighborhood. The three-year period noted above shall not limit the Planning Commission's authority in connection with approval of the phasing plans required in sections 2.1.10 and 2.1.11.

- 2.5. **Ski-Related Development.** Subject to conditional use review, DEER VALLEY may construct a skier day lodge of a maximum of 35,000 square feet, in the approximate location depicted on Exhibit A. The day lodge shall have no day skier parking, and must have adequate emergency vehicle access. Any parking lot for the lodge shall be for the purpose of meeting temporary events, intermittent seasonal dining, and service and administrative requirements, and shall be reviewed by the planning commission as a Conditional Use. Such Conditional Uses will have a traffic mitigation plan that may include the number of events, hours of operation, shuttle bus requirements and/or a limit to the number of guests. Pursuant to a Conditional Use Permit, said temporary parking area may be located on adjacent properties. Permanent non-skier parking for the Empire Day Lodge will be considered as part of the POD B-2 Master Plan Development. Such parking shall consist of not more than 75 spaces. These parking spaces are in addition to those otherwise required or allowed under this Agreement and the LMC. DEER VALLEY shall provide deed-restricted employee/affordable housing units as defined by the City's affordable housing policy in an amount equal to 20% of the commercial Unit Equivalents approved by the City for the day lodge prior to issuance of a Certificate of Occupancy for the day lodge.

2.5.1 Conditional Use (Administrative). Ski terrain and ski-related development is an administrative conditional use within the Project, consistent with the Deer Valley Ski Area Master Plan depicted in Exhibit F attached hereto, provided that only two graded runs shall be allowed in ski Pod Z, with thinning and other limited vegetation removal in the balance of Pod Z for skier safety and glade skiing. Review of ski terrain and ski-related development shall include, but shall not be limited to consideration of the following:

- 2.5.1.1 Openings for ski trails and lifts with straight edges and uniform widths will be minimized to the greatest extent possible.
- 2.5.1.2 Trails that are designed for base area return or circulation between fall line areas shall be designed for appropriate grades and widths consistent with minimizing visual impact.
- 2.5.1.3 Lift towers shall be painted or otherwise treated to blend with the natural surroundings.
- 2.5.1.4 Vegetation management, re-vegetation and erosion control techniques shall be designed in accordance with the "Deer Valley Resort Company Ski Run Construction and Revegetation Standards" attached hereto as Exhibit G. The objective shall be to achieve a vegetative condition that enhances the skier experience and long term forest health. Re-vegetation shall be designed to control erosion and to restore ground cover as quickly as possible after ground disturbing activities.

2.6 Beano's Style Private Club. DEVELOPER may construct a private restaurant (Beano's Cabin at Beaver Creek-style¹¹), at a location to be determined at the CUP phase. No private parking areas or vehicular

¹¹ Beano's is a 10,000 square foot private restaurant at Beaver Creek, Colorado.

access will be allowed except (i) access and space for patron drop-off's and pick-up's, and (ii) access, loading areas and circulation for emergency, delivery and service vehicles. The size of the private restaurant shall be determined by the Planning Commission at the CUP review phase, and shall be between 7,000 and 10,000 square feet.

2.7 Silver Mine Adventure. DEVELOPER may continue to operate the Silver Mine Adventure on the Ontario Mine Site as a valid, non-conforming use. Any change or expansion of use shall be processed in accordance with the LMC in effect at the time of the DEVELOPER's submission of a complete application for the proposed expansion.

2.8 Access and Alignment of S.R. 224. DEVELOPER shall access Flagstaff Mountain by means of S.R. 224, and a private road system. DEVELOPER shall realign a portion of S.R. 224 in the approximate location set forth on Exhibit H attached hereto, and shall construct a private road system for Flagstaff Mountain in the approximate location depicted on Exhibit H. The Parties agree to the following access and alignment of the road systems within Flagstaff Mountain:

2.8.1 Alignment. Upon Planning Commission approval of the first Small Scale MPD for Flagstaff Mountain, DEVELOPER shall petition to vacate the existing S.R. 224 alignment and, if granted, shall realign and dedicate the relocated S.R. 224 right of way to a standard similar to the existing S.R. 224 (with an asphalt surface for dust control). Such alignment shall be as generally depicted on Exhibit H. DEVELOPER shall block and prohibit vehicular access over the discontinued historic alignment of S.R. 224. Access over the realigned S.R. 224 shall remain seasonal (warm weather only). Upon completion of construction thereof, to the reasonable satisfaction of the City Engineer, the City shall accept the dedication of public roads under its jurisdiction identified on Exhibit H, or as determined by the Council, upon

recommendation of the Planning Commission through the Small Scale MPD and subdivision processes.

- 2.8.2 **Private Road.** Upon Small Scale MPD approval, and only to the extent of the Small Scale MPD approval, DEVELOPER shall construct a private road system within Flagstaff Mountain, as depicted in Exhibit H, over which DEVELOPER shall maintain all-season access throughout the year. Said private road, from its point of departure from S.R. 224 to the Summit/Wasatch County line, may be converted to a public road, in which event existing S.R. 224 from said point of departure to the county line shall no longer be used as a public road.
- 2.8.3 **Seasonal, Controlled Automobile Access.** DEVELOPER shall support and shall not undermine seasonal closure of realigned S.R. 224 and shall control motorized vehicular access from S.R. 224 to the private road system to prevent vehicular through traffic.
- 2.8.4 **Emergency Deer Valley Access.** The Project's seasonal emergency secondary access is through the Deer Valley Ski Area generally as depicted on Exhibit I and crash-gated in the approximate locations shown on Exhibit I. DEER VALLEY shall provide the City and the Park City Fire Service District with keys and/or combinations to the gates. The emergency access is necessary as a controlled evacuation route and as an emergency access for fire and safety personnel and equipment only. The secondary access route is an important ski run to the Deer Valley Ski Area that, in all but the most exceptional circumstances, will be used by skiers and over-the-snow vehicles. The Park City Fire Marshall may cause the access to be plowed and placed into winter service for emergency and evacuation purposes in that

exceptional emergency situation when normal road access to Flagstaff Mountain is interrupted for an extended period.¹²

2.8.5 Controlled Snowmobile Access. Winter snowmobile access to Brighton Estates and to Bonanza Flats is presently available over portions of S.R. 224. DEVELOPER and DEER VALLEY shall allow seasonal snowmobile access to property owners and renters in Brighton Estates over those portions of S.R. 224 within the Project that are presently used or alternatively over similar portions of S.R. 224 as may be relocated. DEVELOPER and DEER VALLEY shall otherwise prevent wintertime motorized vehicular access to the extent such action is consistent with the policy of the public entity that owns S.R. 224. The current recreational snowmobile concession in Flagstaff Mountain shall be eliminated with the relocation of S.R. 224.

2.8.6 DEVELOPER's Consent to Transfer. DEVELOPER consents to cooperate with the City in any state transfer of any portion of S.R. 224.

2.9 Flagstaff Mountain Mitigation/Amenities. At the City's request, the DEVELOPER shall deliver the following mitigation and amenities as an inducement to execute this Development Agreement:

2.9.1 Trails. DEVELOPER shall construct, maintain and commit to free public use, an improved public trail system as set forth in an approved Trails Master Plan. The construction of the trails shall be phased with the progress of the development of the Project. Existing trails shall remain open to the public until provisional or final trails have been constructed. Final trail locations may vary due to field conditions and season. Relocation of any trails shall be identified in the Trails Master Plan. Where the trails pass through the Deer Valley Ski Area, or are located on non-development lands owned or controlled by Deer Valley, Deer

¹² The Park City Fire Marshall may not cause the access to be plowed simply for public convenience.

Valley shall be responsible for trail maintenance and for enforcing reasonable rules and regulations for trail use, including reasonable rules and regulations intended to prevent or minimize conflict between potential trail uses. Pedestrian and bicycle uses of the trail system shall not be prohibited or restricted without being so identified in the Trails Master Plan.

2.9.2 **No Gondola Alternative.** DEVELOPER shall contribute \$1,000,000 in cash to the City to be used specifically for other traffic mitigation projects in the City related to the Project. Additionally, the DEVELOPER shall (i) contribute \$10,000 toward the cost of a feasibility study, when commissioned by the City, to evaluate a potential ski amenity gondola, and (ii) contribute toward the construction of the Richardson Flats parking improvements described in the last paragraph of Section 3.1 of this Agreement, which shall be constructed in accordance with the specifications and conditions attached hereto as Schedule 3.1. The parking improvements shall be constructed in phases as established during the MPD for those improvements in cooperation with Summit County. Construction of the parking improvements will be assured through a form of completion bonding consisting of a draw-down letter of credit or other similar instrument in an amount equal to the good faith estimated cost to construct the parking improvements, but in an amount not to exceed \$1,800,000. In the event any permit application is denied such that the parking improvements cannot be constructed, the City shall be entitled to draw the entire amount of the completion bond, letter of credit or similar instrument (as the case may be), and DEVELOPER shall have no further obligation to construct the parking improvements.

2.9.3 **Historic Preservation.** The Historic Preservation Plan, at a minimum, shall contain an inventory of historically significant

structures located within the Project and shall set forth a preservation and restoration plan, including a commitment to dedicating preservation easements to the City, with respect to any such historically significant structures. The head frame at the Daly West site is historically significant.

2.9.4 Enhanced Environmental Protection. DEVELOPER shall limit the construction or installation of wood-burning devices to one wood-burning device in each of the 54 single-family homes in the Project. DEVELOPER shall not request approval from the City for wood-burning devices in any other attached, or detached, residential uses. Within each lodge, or hotel constructed within the Project, DEVELOPER shall have the right to construct one wood-burning device in each such lodge or hotel, except the Montage which may have three.

2.9.5 Lady Morgan Springs Open Space (Passive Use). The Lady Morgan Springs Area¹³, shall be restricted, by conservation easements acceptable to the City, and signs and monitoring, if necessary, to limit use of the area to skiing (without cutting runs, glading, or thinning trees) and daytime recreational hiking. Neither construction activity nor motorized vehicular use of any kind shall be allowed in the Lady Morgan Springs Area, except as allowed, with City staff approval, for forestry and wetlands management.

2.9.6 Open Space (Active). All land outside of the development areas (ski terrain and open space designated on Exhibit A) will be zoned as Recreation Open Space (ROS-MPD). Upon issuance of the first Small Scale MPD for any portion of the Project, DEVELOPER and DEER VALLEY shall execute a conservation easement, for the benefit of the City and a third party conservation trust (or similar entity), to limit their use of the

¹³ Described and depicted on Exhibit J, and as further defined in the Small Scale MPD process.

Flagstaff Mountain ski terrain to construction, development and operation of ski and mountain bike lifts, ski and mountain bike runs, one skier day lodge, and other similar winter and summer recreational uses and services. Such conservation easements shall prohibit any hotel, lodging, residential or commercial construction or use on ROS-zoned land in Flagstaff Mountain. Such conservation easement shall be to the reasonable satisfaction of the City and shall be first in priority in title.

2.9.7 Open Space (Prospect Ridge). Within 30 days of issuance of a Small Scale MPD, DEVELOPER shall grant to the City a conservation easement, with free public trail access, without encumbrances, over acreage located on Prospect Ridge, contiguous with City-owned open space. The conservation easement area on Prospect Ridge is identified on Exhibit K attached hereto. Such conservation easement shall be to the reasonable satisfaction of the City and shall be first in priority in title.

2.9.8 Open Space (Iron Mountain). Upon the issuance of any Small Scale MPD, for any portion of the Project, DEVELOPER shall deed restrict or transfer to Park City, the Iron Mountain Parcels with City-approved encumbrances. In connection with such dedication, DEVELOPER shall reserve to DEVELOPER the right to lease to third parties the Iron Mountain Parcels for ski and other environmentally sensitive recreational uses. Such reservation shall not include the right to cut runs, glade, or thin trees, or construct or install ski lifts or developed alpine ski runs. DEVELOPER shall also reserve the right to retain all rent, proceeds and other consideration resulting from or generated by DEVELOPER leasing the Iron Mountain Parcels to third parties for ski and recreation-related uses. DEVELOPER shall indemnify, defend and hold the City harmless from any claim

arising from DEVELOPER's or a third party lessee's use of the Iron Mountain Parcels. Nothing herein should be construed to limit or waive governmental immunity with respect to claims made against the City.

2.9.9 Neighborhood-Specific Design Guidelines. DEVELOPER shall incorporate a Master Resort Association for Flagstaff Mountain and a Project-specific Property Owners' Association for the Mountain Village and Northside Neighborhood areas to cooperatively manage certain aspects of the Project. The Design Guidelines for both the Project and Bonanza Flats must emphasize a strong, common architectural theme, and shall be enforceable by one or more of the above-mentioned Associations.

2.9.10 Public Safety. A comprehensive emergency response plan will be required. The proposal includes a public safety site, at a minimum. The final public safety and emergency access plan must be determined prior to any permit issuance and only after coordination with the affected entities, such as the Park City Fire Service District. To the extent the Montage hotel structure requires additional safety equipment or infrastructure to achieve a minimum standard that will not result in a degradation of the Park City Fire District's I.S.O. rating, and to the extent ongoing tax revenues and impact fees generated by the Montage are insufficient to cover the costs of such additional equipment and infrastructure, any such shortfall shall be paid by DEVELOPER. Changes to any applicable Technical Report must be approved by the Park City Fire Marshall.

2.9.11 Sandridge Parking Lots. Prior to the issuance of a Small Scale MPD for any portion of Flagstaff Mountain, DEVELOPER shall irrevocably offer to dedicate to the City a conversation easement, or deed, satisfactory to the City to preserve the Sandridge

Parking Lots, described in Exhibit L as a public parking facility. Such interest shall be offered with no outstanding monetary encumbrances.

2.9.12 **Sandridge Heights Property.** Developer further agrees to limit its use of its Sandridge Heights property, described in Exhibit L, to either affordable housing or open space.

2.10 FLAGSTAFF MOUNTAIN MITIGATION MEASURES:

2.10.1 **Water System.** DEVELOPER shall build and dedicate to the Park City Water Service District an adequate water delivery system within Flagstaff Mountain to serve the Project, including all fire flow and irrigation needs.

2.10.1.1 **Withdrawal of Water Protests.** DEVELOPER shall immediately withdraw its protests to the City's pending water change application(s) before the State Engineer and agrees not to protest future City applications before the State Engineer.

2.10.1.2 **Water Source.** DEVELOPER shall design and construct a water source and delivery system to transport water from the water source to Flagstaff Mountain and to dedicate that system to the City. DEVELOPER and the City anticipate that such delivery system will include the development of a well of sufficient capacity to serve the Project.

2.10.1.3 **Group II Rights.** The City and DEVELOPER agree to file a joint application with the State Engineer to convert to municipal use within the boundaries of the Park City Water Service District all "Group II" water rights owned by both parties. The joint application will list all mutual points of diversion, all of the City's municipal sources, and all of DEVELOPER's sources including the proposed Ontario and Empire Canyon

Wells. DEVELOPER and the City shall divide the Group II rights approved for municipal use evenly, with DEVELOPER and the City each taking ownership of one-half of the total approved rights. DEVELOPER agrees to sell exclusively to the City its portion of the approved Group II water rights and DEVELOPER's interest in its Theriot Springs and Haueter Springs water rights (Weber Decree Award #456, #467 and #468) collectively referred to herein as the "Committed Water".

2.10.1.4 **Committed Water.** Once approved for municipal use, all Committed Water shall be leased to the City at a nominal cost and will therefore be unavailable for sale to others. DEVELOPER shall dedicate the Committed Water to the City, and the City shall pay to DEVELOPER from time to time an amount equal to the water development impact fees actually collected by the Park City Water Service District from the development of Flagstaff Mountain. Each such payment from the City to DEVELOPER shall be paid within 30 days following the receipt by the Park City Water Service District of each such water development impact fee.

2.10.1.5 **Excess Water Rights.** If after ten (10) years or 90% buildout of Flagstaff Mountain and Bonanza Flats, whichever last occurs, DEVELOPER retains water rights in excess of the water demand for both projects, the City may purchase the excess water rights from DEVELOPER at fair market value based on an appraisal from a mutually agreed upon appraiser or the City may relinquish its interest in the excess water rights. The City shall elect to either purchase (some or all of the

excess water rights) or relinquish its interest in the excess water rights within 180 days of written notice of the expiration of 10 years or 90% buildout of both projects, whichever last occurs. If the City takes no action within the 180 days, City will be deemed to have relinquished its interest in the excess water rights.

2.10.1.6 Impact Fees and Water Rates. The City will charge water development and connection impact fees and water rates within the Project in an amount equal to the water development and connection impact fees and water rates charged to other water users within the Park City Water Service District, unless extraordinary costs can be identified by the City and fairly assigned to the water users within the Project.

2.10.2 Subsequent Agreements. Since the time the original Agreement was adopted and executed, the City and DEVELOPER have entered into agreements that impact, implement and/or clarify certain provisions of the original Agreement including (i) An Agreement For A Joint Well Development Program dated January 14, 2000, (ii) a Memorandum of Understanding, dated January 14, 2000, Between Park City Municipal Corporation and United Park City Mines Company Clarifying and Implementing the Water Service and Water Source Development Provisions of the Development Agreement of June 24, 1999, and (iii) the Water Agreement dated effective as of March 2, 2007 (collectively, the Subsequent Agreements). The fact that this Agreement is styled as an amended and restated agreement shall not operate or be deemed to supersede, contravene, or amend the terms, conditions or provisions of the Subsequent Agreements.

2.10.3 Transportation and Traffic Mitigation. DEVELOPER has agreed to provide the following transportation and traffic mitigation measures.¹⁴ Prior to the issuance of a Certificate of Occupancy within the Mountain Village,¹⁵ the DEVELOPER shall provide the following to reduce the traffic anticipated by the Project:

2.10.3.1 Van and Shuttle Service. DEVELOPER shall provide for its owners, employees and guests, van and shuttle service alternatives consisting of regular circulator service within the Mountain Village and service from the Mountain Village to key destinations such as the Salt Lake International Airport, Main Street, Silver Lake, golf courses, and recreational trail heads.

2.10.3.2 Road and Intersection Improvements. Attached hereto as Exhibit M is a map and a more detailed list of improvements, which shall be constructed by DEVELOPER in satisfaction of this obligation. Prior to the construction of any of the improvements described below, the City shall review and approve or reject with suggested changes all plans, drawings and specifications with respect to the alignment and construction of such road and intersection improvements. Following DEVELOPER's completion of the construction of such improvements, DEVELOPER shall offer to dedicate such improvements to the appropriate governmental entity.

¹⁴ However, within the Small Scale MPD process, the City may conclude that these transportation and traffic measures should be reduced, and will modify DEVELOPER's obligations accordingly.

¹⁵ Except for DEER VALLEY's day lodge pursuant to paragraph 2.5 herein.

- 2.10.3.3 **Contribution to Marsac Roundabout.** DEVELOPER shall financially participate in the reconstruction of the intersection of Marsac Avenue and Deer Valley Drive. DEVELOPER is responsible for paying its proportionate share (determined by projected traffic generation) of the City's cost of such reconstruction to mitigate the impact of the Flagstaff Mountain and Bonanza Flats projects on the intersection.
- 2.10.3.4 **Runaway Truck Lane.** DEVELOPER, or an affiliate of DEVELOPER, shall construct a runaway truck lane on the Mine Road section of S.R. 224, as described on Exhibit N attached hereto. DEVELOPER expects to dedicate the Runaway Truck Lane to UDOT.
- 2.10.3.5 **Mine Road Widening.** Upon Planning Commission recommendation, DEVELOPER shall widen the Mine Road section of S.R. 224 as described on Exhibit M attached hereto.
- 2.10.3.6 **Mine Road Passing Lane.** Upon Planning Commission recommendation, DEVELOPER shall create and dedicate a passing lane on the Mine Road section of S.R. 224 as described on Exhibit M attached hereto.
- 2.10.3.7 **Drainage Improvements.** DEVELOPER shall improve drainage to S.R. 224 as described on Exhibit M attached hereto.
- 2.10.3.8 **Landscaping.** Upon Planning Commission approval, DEVELOPER may construct and create, at DEVELOPER'S sole cost and expense, landscape improvements in the area depicted on

Exhibit M, uphill from the intersection of S.R. 224 with Hillside to act as a Project entry statement.

2.10.4 **Construction Mitigation.** DEVELOPER shall provide the following measures, all to the reasonable satisfaction of the City's Chief Building Official, to mitigate the impact of construction within Flagstaff Mountain. DEVELOPER shall also adhere to the usual construction impact mitigation measures required by the City. Additional reasonable site-specific mitigation measures may be required at the Small Scale MPD phase. These measures will be permanently reflected in Covenants, Conditions and Restrictions of each development parcel. The Detailed Construction Phasing Plan to be submitted by DEVELOPER to the City shall include, without limitation, provisions pertaining to:

2.10.4.1 Limits of Disturbance and Vegetation Protection for all construction, including construction of public improvements.

2.10.4.2 Construction staging, on-site batch plants, and materials stockpiling¹⁶ and recycling in the Daly West area to keep all excavated materials on site during the Project infrastructure and construction phases.

2.10.4.3 Construction traffic routing plan to minimize traffic impacts on Old Town and residential areas, by only allowing construction traffic to use current state roads, unless otherwise directed by the City.

2.10.4.4 Dust and soils monitoring and containment, along with remediation of contaminated mining waste within the areas that are disturbed during the construction of the improvements within the Project and erosion and runoff controls for the entire Project

¹⁶ Developer shall stockpile all earthen material on site.

2.10.4.5 Temporary public access trails throughout construction.

2.10.4.6 Tools and equipment storage on-site adequate to serve all construction.

2.10.5 **Employee/Affordable Housing.** DEVELOPER shall provide deed-restricted employee/affordable housing units ("Affordable Unit Equivalents" or "AUEs") as defined by the City's affordable housing policy in an amount equal to 10% of the residential Unit Equivalents and 20% of the commercial Unit Equivalents approved by the City for the Project (collectively, the "Base AUEs"). The employee/affordable housing requirement for the Project, including the Montage, is 98.9 Base AUEs. One AUE equals 800 square feet. In addition to the Base AUEs, DEVELOPER has committed to construct, off-site, 20 additional AUEs (the "Additional AUEs") as an additional community benefit for the Project. Within 24 months from the effective date of this Agreement, the DEVELOPER (or any assignee thereof) shall either (i) begin construction of the 20 Additional AUEs, or (ii) post a financial guarantee in a form acceptable to the City Attorney in favor of the City equal to 10 percent of the estimated construction costs of the Additional AUEs. Each Additional AUE shall be sold or rented at prices and terms consistent with the City's affordable housing guidelines in effect at the time a Certificate of Occupancy is issued for the AUE. The calculation of total AUEs is detailed in the following table:

<u>Type of Use</u>	<u>Unit Equivalents</u>	<u>Mitigation Rate</u>	<u>AUEs Required</u>
Residential			
Residential Units	785	0.1	78.50
Single Family Home Sites	54	0.1	5.40
Subtotal Residential	839		83.90
<u>Type of Use</u>	<u>Square Footage / 1,000 SF</u>	<u>Mitigation Rate</u>	<u>AUEs Required</u>
Commercial			
Commercial Unit Equivalents	75	0.2	15.00
Subtotal Commercial	75		15.00
Base AUEs On-Site (25%): 24.725			
Base AUEs Off-Site (75%): 74.175 *			
Total Base AUEs			98.90
Additional AUEs Contributed by Developer (located Quinns Junction)			20.00
TOTAL AUEs			118.00

*May be located at Quinns Junction, consistent with the City's approved employee/affordable housing plan.

A minimum of 25% of the Base AUEs shall be located on-site within the Project; however, at DEVELOPER'S option, any such on-site Base AUEs not actually constructed on-site or contractually committed to be constructed on-site may be constructed off-site on a 1.5-for-1 basis. DEVELOPER and the City shall consult with Mountainlands Housing Trust, or its equivalent (if any), to determine the type and location of employee/affordable housing which would be most effective in offsetting the demand generated from the Project. DEVELOPER shall provide the remaining 75% of the Base AUEs consistent with the City's approved employee/affordable housing plan. The employee/affordable housing will be phased with the Project in accordance with the approved Phasing Plan. Upon Planning Commission recommendation, the Housing Authority may direct DEVELOPER to:

- 2.10.5.1 Develop, subject to deed restrictions some of the remaining units on the 20-Acre Quinn's Junction Parcel; or
- 2.10.5.2 Donate in a form satisfactory to the City, without restrictions or encumbrances, the 20-Acre Quinn's Junction Parcel to the City in lieu of some or all of the remaining portion of DEVELOPER's affordable housing obligation; or

2.10.5.3 Build the units on an alternate parcel provided to DEVELOPER by the City. DEVELOPER must donate the 20-Acre Quinn's Junction Parcel to the City if the City offers to donate otherwise suitable land to DEVELOPER. If the City and DEVELOPER exchange parcels with respect to the new employee/affordable housing units, then DEVELOPER shall construct on such alternate parcel such number of new employee/affordable housing units, up to the required number of units, for which DEVELOPER is able to obtain approval. In no event shall the cost incurred by DEVELOPER to construct the new employee/affordable housing units on an alternate parcel provided by the City exceed the cost which DEVELOPER would have incurred to construct such new employee/affordable housing units on the 20-Acre Quinn's Junction Parcel; or

2.10.5.4 If mutually acceptable to DEVELOPER and the City, pay to the City a fee in lieu of constructing employee/affordable housing, consistent with the City's affordable housing policy, if such payment in lieu of constructing employee/affordable housing results in the construction or dedication of actual units for affordable /employee housing; or

2.10.5.5 Satisfy its obligation in a manner otherwise consistent with the City's affordable housing policy.

2.10.6

5-Year Irrevocable Offer to Annex the 20-Acre

Quinn's Junction Parcel. For the next five years from the date of this Amended and Restated Agreement, DEVELOPER hereby irrevocably offers to annex the 20-Acre Quinn's Junction Parcel to the City.

SECTION III. ADDITIONAL PUBLIC BENEFITS

In addition to the foregoing, DEVELOPER offers the following inducements to contract:

- 3.1 **Richardson Flats.** DEVELOPER unconditionally offers to annex Richardson Flats to the City and, regardless of the annexation of Richardson Flats, to restrict development of Richardson Flats to one of the following options to be selected by DEVELOPER, at DEVELOPER'S sole discretion:

Option 1. Under Option one DEVELOPER must limit the use of Richardson Flats to golf (with the requisite clubhouse, maintenance buildings and other related improvements), equestrian uses (including the construction of an arena or indoor equestrian center), and/or such other public recreational opportunities or special events as the City may deem proper. In the event DEVELOPER is able to obtain necessary approvals from EPA and/or DEQ, then DEVELOPER must construct on Richardson Flats a golf course, clubhouse, and driving range with adequate¹⁷ provisions for defined public access.

Option 2. Under Option two, DEVELOPER must limit the use of Richardson Flats to an 18-hole golf course (with the requisite clubhouse, maintenance buildings and other related improvements)¹⁸ and would make available to the City a site for a second 18-hole golf course. The site to be donated to the City would not include land in need of environmental remediation. If a second golf course is constructed under Option two, then the City and DEVELOPER shall work cooperatively to develop shared facilities such as a driving range and golf maintenance shops.

Option 3. If, after diligent efforts, DEVELOPER cannot receive EPA or DEQ approval of the aforementioned recreational

¹⁷ The course must be operated to maximize play.

¹⁸ Under Option 2 DEVELOPER may in the City's sole discretion be afforded the right to use Richardson Flats for such other public recreational opportunities or special events as the City may deem proper.

improvements, DEVELOPER will perpetually deed restrict Richardson Flats to prevent further development.¹⁹

In addition to the foregoing provisions, DEVELOPER shall, in part as an additional public benefit and in part as a traffic mitigation measure, provide the City with fee title (unless the City otherwise agrees to a long term lease) to 30 acres at Richardson Flats. Such acreage will be used only for ball fields or similar recreational spaces, and improvements related thereto, and parking. On this acreage, DEVELOPER will provide a parking area which may be paved and which will accommodate segregated Montage and Empire Pass parking (up to 100 spaces), and parking for the City (up to 650 spaces), for a total of up to 750 spaces. This parking area will also serve as the location for Montage construction parking, and DEVELOPER or Montage shall be responsible for providing or arranging construction parking shuttles. The parking improvements may be constructed in phases. DEVELOPER will have naming rights for the ball fields or similar recreational spaces, and will not select a name that is inappropriate. The parking improvements (excluding the 100 dedicated Montage spaces and spaces required for construction parking and other operational needs) may be used by the City for reasonable ancillary uses such as special events.

- 3.2 **Open Space/Transit Management Fund.** DEVELOPER shall pay on each transfer of DEVELOPER's land, and shall separately covenant with all successors in interest in a manner which runs with the land, to assess a 1% Open Space/Transit Management Fee on the gross sales price of all real property within the Project. 50% of the Open Space/Transit Management Fee shall belong to the Flagstaff Mountain Master Resort

¹⁹ The timing of Richardson Flats development shall be addressed in the Construction Phasing and General Infrastructure Phasing Plans required in Sections 2.1.10 and 2.1.11 with development commencing as early as possible.

Association to reduce Master Resort Association dues associated with obligations assumed herein or to enhance the Master Resort Association's service to its members. 50% of the Open Space/Transit Management Fee shall be paid to the City to assist in funding the costs and expenses for enhanced transportation to the Project, recreation improvements and/or open space acquisition, maintenance or preservation. This Open Space/Transit Management Fee shall not apply to the transfer of real property within the Project either solely as security for financing (e.g. mortgage) or for nominal consideration solely to initially capitalize the development entity. DEVELOPER acknowledges that the Project requires an open space management fee to mitigate the adverse effects of the Project. As such, DEVELOPER covenants that it will pay this fee as a contractual obligation, and not as a regulated entity. DEVELOPER shall vigorously defend the imposition of such fees. DEVELOPER shall not take any action (contractually, judicially, or legislatively) to challenge or otherwise adversely affect the enforceability of the Open Space/Transit Management Fee as a valid and enforceable real covenant.

SECTION IV. IMPACT FEES/PLAN CHECK FEES

- 4.1 **Conditions of Approval and Impact Fees.** With respect to the development of Flagstaff Mountain, DEVELOPER accepts and agrees to comply with the impact, connection and building fees of the City currently in effect, or as amended, to the extent the amended fees are applied uniformly within an impact fee district. DEVELOPER acknowledges that the Project requires infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions that would otherwise be required at this time. As such, DEVELOPER covenants that it will pay impact fees as a contractual obligation, and not exclusively as a regulated entity. If the state legislature disallows the imposition of a regulatory impact fee, DEVELOPER will pay those impact fees in effect at the time of such change in state law throughout the remaining buildout of the Project. Further DEVELOPER

agrees to pay plan check fees in the amount of 65% of the building permit fee.

SECTION V. BONANZA FLATS DEVELOPMENT PARAMETERS

- 5.1 **Restrictions on Bonanza Flats Development.** DEVELOPER covenants that it will never apply, nor assist in any application, to the City or to Wasatch County for the development of Bonanza Flats in excess of the following maximum densities. Further, DEVELOPER shall amend its development application with Wasatch County, and shall restrict development in Bonanza Flats to the following maximum densities:
- 5.1.1 A maximum of 260 residential units (280 Unit Equivalents), of which no more than 160 units shall be Bonanza Flats single family home sites.
 - 5.1.2 An 18-hole golf course, including the construction of no larger than a 20,000 sq. ft club house and other golf-related facilities, with Nordic skiing thereon during the winter, all as generally depicted on Exhibit O.
 - 5.1.3 75,000 square feet of resort-related commercial uses.
 - 5.1.4 Alpine and Nordic ski terrain, ski runs, ski lifts and other ski-related improvements, all as depicted on Exhibit O.
- 5.2 **Wasatch County Approval of Bonanza Flats Development Proposal.** DEVELOPER has a pending application in Wasatch County, with respect to Bonanza Flats, requesting density far in excess of that which the City regards as appropriate. As an inducement for the City to enter into this Agreement, DEVELOPER agrees to amend its development application with Wasatch County in order to reflect the terms and conditions of this Agreement regarding the development of Bonanza Flats. City's contractual restrictions on Bonanza Flats development are in no respect an endorsement of development on Bonanza Flats. DEVELOPER agrees that the portions of Bonanza Flats, as described on Exhibit C attached hereto, which are not to be developed shall be subjected to restrictive covenants or conservation easements, dedicated to a third party conservation trust (or

similar entity), in a form acceptable to the City, so that the real property which is not to be developed shall be limited in perpetuity to recreational and open-space uses. DEVELOPER and the City acknowledge that the annexation of Bonanza Flats to the City is not being considered at this time by either the City or by DEVELOPER.

5.3 Snyderville Basin Sewer Improvement District Annexation.

Snyderville Basin Sewer Improvement District ("SBSID") must agree to annex Bonanza Flats and agree to provide sewer service within Bonanza Flats if Park City is to provide water service to the area. SBSID capacity shall be restricted in size to accommodate no more than the restricted densities agreed to herein. If Wasatch County approves the use of Park City water for culinary use in Bonanza Flats, then DEVELOPER must apply for and pursue annexation to SBSID.

5.4 Annexation. If Wasatch County recommends that DEVELOPER seek annexation to the City of Bonanza Flats, then DEVELOPER shall request that the City annex Bonanza Flats. In the event that DEVELOPER requests that the City annex Bonanza Flats, the City anticipates the execution of an interlocal agreement with Wasatch County to address fiscal issues in connection with the City's annexation of Bonanza Flats.

5.5 Request for Transfer of Bonanza Flats Density to Flagstaff Mountain.

DEVELOPER may seek approval from the City of additional density within Flagstaff Mountain in exchange for DEVELOPER transferring approved density from Bonanza Flats and deed restricting such land as open space. City's contractual restrictions on development in Bonanza Flats in no way shall be construed as an endorsement of such densities either in Bonanza Flats nor transferred to the Mountain Village. Upon DEVELOPER's request, the City would consider such transfer. If favorably inclined to entertain such density transfer, the City would attempt in good faith to negotiate an interlocal agreement with Wasatch County to address fiscal issues associated with such action. In connection with any such request by DEVELOPER, the City may give higher priority

to the transfer of multifamily or lodging units and may consider many factors, including but not limited to the following:

- 5.5.1 The location and quality of open space within the Bonanza Flats property that would occur as a result of the transfer;
- 5.5.2 The suitability of increased density in the Mountain Village;
- 5.5.3 The potential reduction of traffic;
- 5.5.4 The potential positive impacts on the transportation system;
- 5.5.5 The visual and other impacts to the Mountain Village; and
- 5.5.6 The positive and negative impacts to the Bonanza Flats Property.

5.6 **Private Road.** Consistent with an approved phasing plan for Flagstaff Mountain, DEVELOPER may construct a private controlled access road between the Flagstaff Mountain and the Bonanza Flats development areas, provided that such private road is properly controlled to prevent through access to adjacent properties and deed restricted to prevent its extension beyond the terminus depicted in Exhibit C.

5.7 **Water Service.** DEVELOPER and the City acknowledge and agree that water service and sewer service to Bonanza Flats should be provided from the same basin in order to avoid any trans-basin transfer issues. Inasmuch as the City shall be providing water service to the Project, the City and DEVELOPER desire that the City provide water service to Bonanza Flats as well. If Wasatch County: 1) approves DEVELOPER's amended proposal for the limited development of Bonanza Flats detailed herein, and 2) approves DEVELOPER's proposal that the City provide water service to Bonanza Flats, then, subject to a City-approved infrastructure phasing plan, DEVELOPER shall build and dedicate to the Park City Water Service District an adequate water delivery system, to service Bonanza Flats, including all fire flow and irrigation needs. DEVELOPER shall work cooperatively with the City to develop a water source or sources, including, but not limited to, making well sites, water rights and easements available to the City. The City shall provide culinary water to Bonanza Flats according to the terms of this Agreement. DEVELOPER will

construct all infrastructure, including a source of water necessary to provide water service to Bonanza Flats. City water development and connection fees, as well as water rates, shall be the same as those imposed in the Project, unless the City can identify and fairly assign extraordinary costs to end users within Bonanza Flats. No water from a Weber Drainage Basin source shall be used for outdoor uses in Bonanza Flats.

5.8 **No Annexation Alternative.** If Bonanza Flats is not annexed into the City, and if the requirements described in Sections 5.3, 5.6 and 5.7 are satisfied, then DEVELOPER shall not build within Bonanza Flats more than the units described in Section 5.1 above.

5.9 **Conditions of Development of Bonanza Flats.** Regardless of the annexation of Bonanza Flats to the City, DEVELOPER agrees to the following:

5.9.1 The residential and commercial units constructed within Bonanza Flats shall not be located adjacent to the lakes within the Bonanza Flats property.

5.9.2 If Bonanza Flats is developed, but is not annexed DEVELOPER agrees to provide employee/affordable housing units consistent with its obligations in the Flagstaff Mountain annexation.

5.9.3 Within Bonanza Flats, DEVELOPER shall limit the construction of wood-burning devices to one wood-burning device per single family unit. DEVELOPER shall not request approval from Wasatch County or from the City for wood-burning devices in any other attached, or detached, residential uses. Within each lodge, or hotel constructed within Bonanza Flats, DEVELOPER may construct one wood-burning device in each such lodge or hotel.

5.9.4 DEVELOPER shall pursue an interlocal agreement with Wasatch County whereby the Park City Fire Protection District will provide fire protection services within Bonanza Flats.

5.9.5 Upon realignment of S.R. 224, DEVELOPER shall prohibit

commercial snowmobile use within Bonanza Flats.

SECTION VI. AMENDMENT OF AGREEMENT AND DEVELOPMENT PLAN

- 6.1 This Agreement may be amended from time to time by mutual written consent of the Parties.

SECTION VII. IMPLEMENTATION OF THIS AGREEMENT

- 7.1 **Processing and Approvals.** Site specific plans shall be deemed proposed Small Scale Master Plans and shall be subject to the process and limitations set forth in the Park City Municipal Corporation Land Management Code that is in effect when the DEVELOPER submits a complete application for a Small Scale MPD.
- 7.2 **Cooperation in the Event of Legal Challenge.** If any third party challenges the validity, or any provision, of this Agreement, (1) the Parties shall cooperate in defending such action or proceeding, and (2) DEVELOPER shall hold harmless, and shall indemnify the City for all costs (including attorneys' fees) associated with defending this Agreement. Nothing herein shall be construed as a waiver of governmental immunity, as applicable.
- 7.3 **Impossibility of Performance.** If this Agreement is delayed in its effect by actions beyond the control of City or DEVELOPER, this Agreement shall remain in full force and effect during such delay. If such delay in the effect of this Agreement extends for a period of more than one year, this Agreement shall be terminable by DEVELOPER or the City upon written notice to the other at any time after such initial one-year period. In the event of termination, all rights and obligations hereunder shall be deemed terminated, provided, however, that the parties shall cooperate to return to the status quo ante.

Section VIII. GENERAL PROVISIONS

- 8.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each

of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project.

8.2 **Transfer of Property.** DEVELOPER and DEER VALLEY shall have the right, without obtaining the City's consent or approval, to assign or transfer all or any portion of its rights, but not its obligations, under this Agreement to any party acquiring an interest or estate in the Project, or any portion thereof. Third party assumption of DEVELOPER's or DEER VALLEY's obligations under this Agreement shall not relieve DEVELOPER or DEER VALLEY of any responsibility or liability with respect to the expressly assumed obligation, unless the City expressly agrees in writing to the reduction or elimination of DEVELOPER's or DEER VALLEY's responsibility or liability. DEVELOPER and DEER VALLEY shall provide notice of any proposed or completed assignment or transfer. If DEVELOPER or DEER VALLEY transfers all or any portion of the property comprising Flagstaff Mountain, Richardson Flats, Sandridge or Bonanza Flats, the transferee shall succeed to all of DEVELOPER's or DEER VALLEY's rights under this Agreement. To the extent the City believes (in its sole discretion, considering the totality of the DEVELOPER's and/or DEER VALLEY's obligations) that the successor in interest has ample resources to secure the City's rights under this Agreement, the City may release DEVELOPER and/or DEER VALLEY from its proportionate liability under this Agreement.

8.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (1) the subject development is a private development; (2) City, DEER VALLEY and DEVELOPER hereby renounce the existence of any form of agency relationship, joint venture or partnership among City, DEER VALLEY and DEVELOPER;

and (3) nothing contained herein shall be construed as creating any such relationship among City, DEER VALLEY and DEVELOPER.

SECTION IX. MISCELLANEOUS

- 9.1 **Incorporation of Recitals and Introductory Paragraphs.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- 9.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.
- 9.3 **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.
- 9.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for DEVELOPER, DEER VALLEY and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Since the time the original Agreement was adopted and executed, many of the DEVELOPER'S obligations hereunder have been satisfied. The fact that this Agreement is styled as an amended and restated agreement shall not be deemed or construed to reinstate the DEVELOPER obligations that have been satisfied as of the date hereof.
- 9.5 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States

mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to City to:

City Manager
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060

Copy to:

City Attorney
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060

If to DEVELOPER to:

United Park City Mines
c/o David J. Smith
P.O. Box 1450
Park City, UT 84060

Copy to:

Clark K. Taylor
VanCott Bagley Cornwall & McCarthy
P. O. Box 45340
Salt Lake City, Utah 84145

If to DEER VALLEY:

Deer Valley Resort Company
Attn: Bob Wheaton, President
2250 Deer Valley Drive South
P.O. Box 889
Park City, Utah 84060

Copy to:

General Counsel
Royal Street Corporation
7620 Royal Street East, Suite 205
P.O. Box 3179
Park City, Utah 84060

TALISKER
900 MAIN ST Suite 6111
P.O. Box 4349
84060

9.6 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

9.7 **Counterparts and Exhibits.** This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of forty-two (42) pages, including notary acknowledgment forms, and in addition, sixteen (16) exhibits, which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Map and Legal description of Flagstaff Mountain
Exhibit B	Map and Legal description of the Iron Mountain Parcels
Exhibit C	Map and Legal description of Bonanza Flats
Exhibit D	Map and Legal description of Richardson Flats
Exhibit E	Map and Legal description of 20-Acre Quinn's Junction Parcel
Exhibit F	Deer Valley Ski Area Master Plan
Exhibit G	Deer Valley Resort Company Ski Run Construction and Revegetation Standards
Exhibit H	Guardsman Realignment
Exhibit I	Emergency Access
Exhibit J	Lady Morgan Springs Open Space Area
Exhibit K	Approximate Location of Prospect Ridge Open Space
Exhibit L	Map and Legal description of Sandridge Parking Lots and Sandridge Heights parcels
Exhibit M	Road and Intersection Improvements Detail
Exhibit N	Runaway Truck Lane
Exhibit O	Bonanza Flats golf course and ski improvements

Exhibit P Zoning Map for Flagstaff Mountain

- 9.8 **Attorneys' Fees.** In the event of a dispute between any of the Parties arising under this Agreement, the prevailing Party shall be awarded its attorneys' fees and costs to enforce the terms of this Agreement.
- 9.9 **Duration.** This Agreement shall continue in force and effect until all obligations hereto have been satisfied. DEVELOPER shall record the approved annexation plat for Flagstaff Mountain within 30 days of the City's adoption of an annexation ordinance to annex Flagstaff Mountain. The Large Scale Master Plan for Flagstaff Mountain granted herein shall continue in force and effect for a minimum of four years from its issuance and shall be effective so long as construction is proceeding in accordance with the approved phasing plan. Upon expiration of the minimum four-year period, approval will lapse after two additional years of Inaction following the expiration of such four-year period, unless extended for up to two years by the Planning Commission.

IN WITNESS WHEREOF, this Agreement has been executed by UPCM and by DEER VALLEY by persons duly authorized to execute the same and by the City of Park City, acting by and through its City Council effective as of the 2nd day of March, 2007.

PARK CITY MUNICIPAL CORPORATION

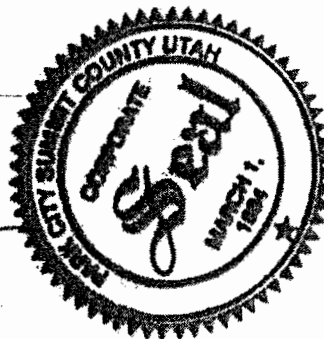
By: *Dana Williams*
Dana Williams, Mayor

ATTEST: City Clerk

By: *Janet Scott*
Janet Scott, City Recorder

APPROVED AS TO FORM:

Mark D. Harrington
Mark D. Harrington, City Attorney



DEVELOPER:

United Park City Mines Company,
a Delaware corporation



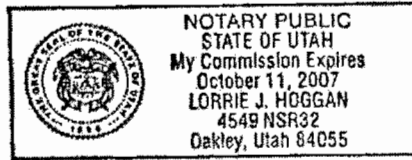
David J. Smith, Authorized Signing Officer

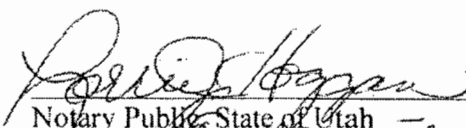
STATE OF UTAH)

: ss

COUNTY OF SUMMIT)

On this 28th day of ~~March~~ ^{February}, 2007 before me, Lorrie J. Hoggan, the undersigned Notary Public, personally appeared David J. Smith, personally known to me to be the Authorized Signing Officer of United Park City Mines Company, on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.




Notary Public, State of Utah

Residing in Oakley, Utah

DEER VALLEY RESORT COMPANY,

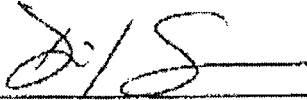
a Utah limited partnership

By: Royal Street of Utah, a Utah corporation,
General Partner

By: _____
Robert Wells, Vice President

DEVELOPER:

United Park City Mines Company,
a Delaware corporation



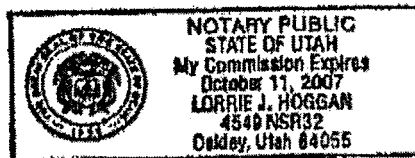
David J. Smith, Authorized Signing Officer

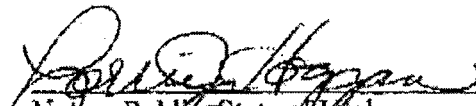
STATE OF UTAH)

: ss

COUNTY OF SUMMIT)

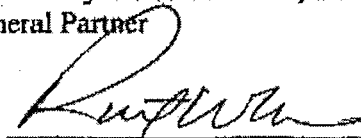
On this 28th day of ~~March~~ ^{February}, 2007 before me, Lorrie J. Hoggan, the undersigned Notary Public, personally appeared David J. Smith, personally known to me to be the Authorized Signing Officer of United Park City Mines Company, on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.




Notary Public, State of Utah
Residing in Orlery, Utah

DEER VALLEY RESORT COMPANY,
a Utah limited partnership

By: Royal Street of Utah, a Utah corporation,
General Partner

By: 

Robert Wells, Vice President

DEVELOPER:

United Park City Mines Company,
a Delaware corporation



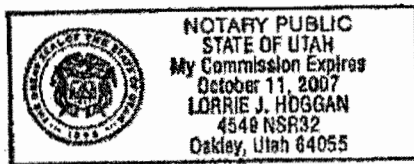
David J. Smith, Authorized Signing Officer

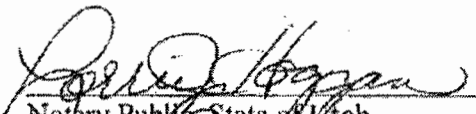
STATE OF UTAH)

: ss

COUNTY OF SUMMIT)

On this 28th day of ~~March~~ ^{February}, 2007 before me, Lorrie J. Hoggan, the undersigned Notary Public, personally appeared David J. Smith, personally known to me to be the Authorized Signing Officer of United Park City Mines Company, on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.

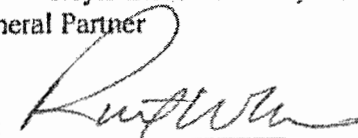



Notary Public, State of Utah
Residing in Oakley, Utah

DEER VALLEY RESORT COMPANY,

a Utah limited partnership

By: Royal Street of Utah, a Utah corporation,
General Partner

By: 

Robert Wells, Vice President

Arizona
STATE OF UTAH)
MARICOPA : ss
COUNTY OF SUMMIT)

On this 1 day of MARCH, 2007 before me, *Constance M Richards*, the undersigned Notary Public, personally appeared **Robert Wells**, personally known to me to be the Vice President of Royal Street of Utah, on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.



Constance M Richards
Notary Public, State of Utah AZ
Residing in Maricopa County, AZ

ARIZONA
STATE OF UTAH)
MARICOPA : SS
COUNTY OF SUMMIT)

On this 1 day of MARCH, 2007 before me, Constance M Richards, the undersigned Notary Public, personally appeared **Robert Wells**, personally known to me to be the Vice President of Royal Street of Utah, on behalf of the corporation named herein, and acknowledged to me that the corporation executed it. Witness my hand and official seal.



Constance M Richards
Notary Public, State of Utah AZ
Residing in Maricopa County, AZ

SCHEDULE 3.1

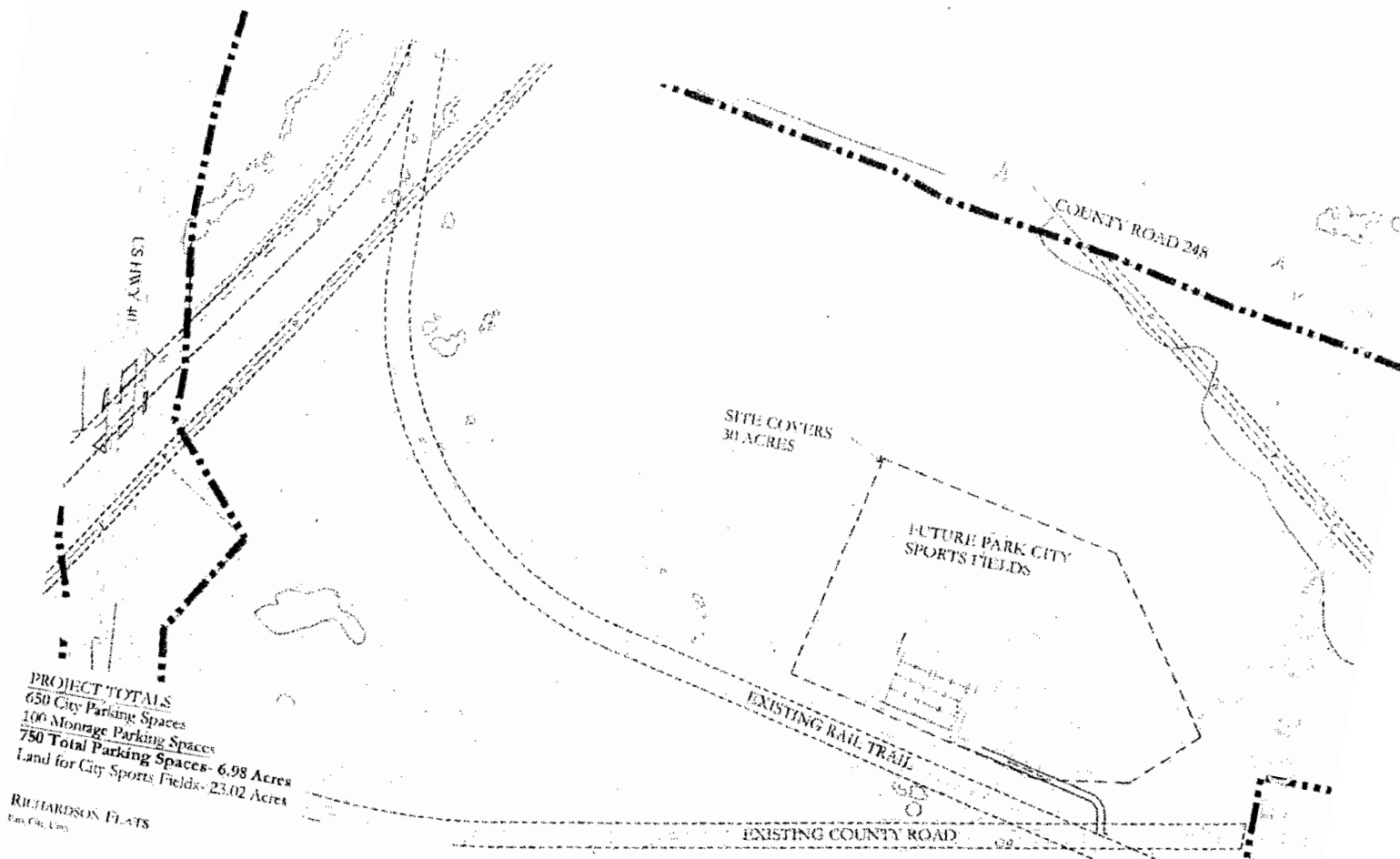
RICHARDSON FLATS PARKING AREA SPECIFICATIONS

Talisker or United Park City Mines Company will provide the City with fee title (unless the City otherwise agrees to a long term lease) to 30 acres at Richardson Flats (map attached). The use of this land is provided on the basis that it will be only for ball fields or similar recreational spaces (and related improvements) and parking. On this acreage, Talisker will provide a paved area which will accommodate segregated Montage and Empire Pass parking (up to 100 spaces) and parking for the City (up to 650 spaces) for a total of up to 750 spaces. The cost of improving the existing County road leading to the site shall be paid for by the Developer, and shall be subject to a late comer's agreement. The parking improvements shall be constructed in phases as established during the MPD for those improvements in cooperation with Summit County. The parking improvements (excluding the 100 dedicated Montage spaces and spaces required for construction parking and other operational needs) may be used by the City for reasonable ancillary uses such as special events. Construction of the parking improvements will be assured through a form of completion bonding consisting of a draw-down letter of credit or other similar instrument in an amount equivalent to the good faith estimated cost to construct the parking improvements, but in an amount not to exceed \$1,800,000. In the event any permit application is denied such that the parking improvements cannot be constructed, the City shall be entitled to draw the entire amount of the completion bond, letter of credit or similar instrument (as the case may be), and DEVELOPER shall have no further obligation to construct the parking improvements.

Additional specifications are as follows:

1. Adequate space will be provided for drainage & snow storage.
2. The area will have reasonably flat terrain.
3. The parking lot will allow adequate bus travel through the parking area.
4. An allowance for signs and street lights is included.
5. The lot will be paved to accommodate the weight of City busses, in accordance with applicable Summit County construction standards and/or the Park City Construction Specifications and Standard Drawings as reasonably applied by the City engineer and the DEVELOPER'S design engineer.

The precise layout and cost of the ball fields or similar recreational spaces within the 30 acre parcel, and improvements related thereto, are the City's responsibility.



Conceptual Site Plan (Permit Submittal)

October 19, 2006

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 64°44'13" E	136.79
L2	N 67°45'58" E	149.28
L3	N 81°11'10" E	122.88
L4	N 77°18'44" E	85.84
L5	N 77°48'30" E	79.25
L6	R 55°11'16" E	94.42
L7	S 72°54'27" E	85.42
L8	S 71°42'35" E	163.43
L9	N 10°41'54" E	76.70
L10	N 15°21'41" E	116.30
L11	N 56°44'38" E	142.80
L12	N 46°47'25" E	123.00
L13	N 35°09'16" E	88.70
L14	N 32°14'53" E	103.60
L15	N 32°00'03" E	159.20
L16	N 33°28'55" E	136.00
L17	N 38°27'54" E	138.00
L18	N 27°54'51" E	126.00
L19	N 31°30'07" E	96.30
L20	N 40°35'50" E	110.60
L21	N 50°15'25" E	32.50
L22	N 58°00'00" E	94.30
L23	N 50°23'25" E	105.09
L24	N 28°18'45" E	186.59
L25	S 00°15'34" W	115.59
L26	S 08°39'11" E	217.32
L27	S 35°30'59" E	87.30
L28	S 03°30'00" E	83.08
L29	S 31°30'00" W	68.20
L30	S 79°25'18" W	45.49
L31	S 17°08'46" E	88.76
L32	S 29°20'00" W	117.80
L33	S 83°34'00" W	89.10
L34	N 46°45'00" W	87.90
L35	N 77°28'00" W	161.00
L36	S 35°36'00" W	219.10

CURVE TABLE

CURVE	ARC	DELTA	RADIUS	CHORD	BRG
C1	398.24	15°23'33"	1482.39	S 07°57'20" W	
C2	813.57	06°11'23"	5879.58	S 12°33'25" W	
C3	388.82	16°06'55"	1392.39	S 01°24'18" W	
C4	300.26	48°51'38"	386.52	S 31°03'00" E	
C5	364.28	30°23'53"	686.62	S 40°19'03" E	
C6	191.78	21°28'53"	508.37	S 14°18'27" E	
C7	214.46	55°51'14"	220.00	S 31°55'37" E	

SURVEYOR'S CERTIFICATE

I, John Demkowicz, certify that I am a Registered Land Surveyor and that I hold Certificate No. 163931, as prescribed by the laws of the State of Utah, and that this plat accurately describes and illustrates the boundary and the Patented Government Lots of Record as prescribed within the boundary of the Flagstaff Mountain Resort annexation petition. In addition, this plat accurately illustrates a parcel of land located in the Southwest Quarter of Section 2, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

John Demkowicz
L.S. No. 163931

Date

OWNER'S DEDICATION AND CONSENT TO RECORD

Know all men by these presents: That the undersigned corporate agent for United Park City Mines, the owner of the majority of the land described and illustrated on this plat do hereby petition Park City Municipal Corporation, of Summit County, Utah, that said lands be Annexed to and included within the legal boundary of Park City, Utah, and be subject to such benefits and restrictions as exist under applicable legal ordinances of Park City, Utah.

Hank Rothwell, President

ACKNOWLEDGEMENT

State of _____
County of _____

On this _____ day of _____, 1999 Hank Rothwell personally appeared before me, the undersigned Notary Public, who being duly sworn, did say that he is the Corporate Agent for United Park City Mines Company, the owner of the majority of the land described and illustrated on this plat and that the foregoing Owners Dedication and Certificate of Consent to Record was signed freely and voluntarily for the purposes therein mentioned and that said Company executed the same.

Notary Public

My Commission Expires: _____

LEGAL DESCRIPTIONS

Beginning at a point identified as County Line Monument Number 2343, said point on the line common to Summit and Wasatch counties and also on the demarcation line between the Park City Ski Area and the Deer Valley Resort, said point lying on the ridge and hilltop above the Anchor Mine Shaft, and also being North 04°39'13" East 1003.92 feet, more or less, from the Southwest corner of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian and running Northeastly along said demarcation and ridge line: North 44°09'00" East 1238.63 feet; thence North 35°07'44" East 548.54 feet; thence North 57°33'27" East 779.84 feet; thence North 49°33'13" East 816.72 feet; thence North 71°34'40" East 644.25 feet; thence North 30°09'00" East 354.14 feet; thence North 20°48'44" East 698.015 feet; thence North 10°48'38" East 569.79 feet; thence North 23°55'00" East 604.00 feet; thence North 87°35'00" East 778.00 feet; thence North 77°17'18" East 735.40 feet; thence North 82°14'14" East 672.44 feet; more or less to a point on the westerly boundary line of the "Anchor Tunnel Portal Mining Reservation", said point being North 39°17'38" East 942.39 feet, more or less from the Southwest corner of Section 21, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also lying along the ridge line between Empire Canyon and Walker and Webster Gulches; thence along said ridge line the following eight courses: thence North 84°44'13" East 136.79 feet; thence North 67°45'58" East 149.28 feet; thence North 81°11'10" East 122.88 feet; thence North 77°18'44" East 85.84 feet; thence North 77°48'30" East 79.25 feet; thence North 88°11'16" East 94.42 feet; thence South 72°54'27" East 85.42 feet; thence South 71°42'35" East 163.49 feet more or less to a point on the westerly right-of-way line of the Judge Tunnel/Empire Canyon Water Tank Supply Line Easement, said point lying North 79°18'06" West 5.00 feet more or less, from Map Point A-1 as described in that certain Reservoir Easement dated April 19, 1978 and Recorded as Entry No. 147912 in the Records of the of the Recorder for Summit County, Utah; thence along said westerly right-of-way line the following fifteen (15) courses: North 10°41'54" East 76.70 feet; thence North 15°21'41" East 116.30 feet; thence North 56°44'38" East 142.80 feet; thence North 46°47'25" East 123.00 feet; thence North 35°09'16" East 88.70 feet; thence North 32°14'53" East 103.60 feet; thence North 32°00'03" East 159.20 feet; thence North 33°28'55" East 136.00 feet; thence North 38°27'54" East 138.00 feet; thence North 27°54'51" East 126.00 feet; thence North 31°30'07" East 96.30 feet; thence North 40°35'50" East 110.60 feet; thence North 50°15'25" East 32.50 feet; thence North 58°00'00" East 94.30 feet; thence North 50°23'25" East 105.09 feet; thence North 28°18'45" East 186.59 feet; thence South 00°15'34" West 115.59 feet; thence South 08°39'11" East 217.32 feet; thence South 35°30'59" East 87.30 feet; thence South 03°30'00" East 83.08 feet; thence South 31°30'00" West 68.20 feet; thence South 79°25'18" West 45.49 feet; thence South 17°08'46" East 88.76 feet; thence South 29°20'00" West 117.80 feet; thence South 83°34'00" West 89.10 feet; thence North 46°45'00" West 87.90 feet; thence North 77°28'00" West 161.00 feet; thence South 35°36'00" West 219.10 feet; thence North 34°37'00" West 1,077.30 feet, more or less to County Line Point 2343 the point of beginning. Said Parcel contains 1,655.4 acres more or less.

600 0 600 1200 feet

FLAGSTAFF MOUNTAIN RESORT ANNEXATION PLAT

LOCATED IN THE SOUTHEAST 1/4 OF SECTION 20, THE SOUTH 1/2 OF SECTION 21, THE WEST 1/2 OF SECTION 27, SECTION 28, SECTION 29, THE NORTHEAST 1/4 OF SECTION 32, THE NORTH 1/2 OF SECTION 33, THE NORTHWEST 1/4 OF SECTION 34, THE NORTH 1/2 OF THE SOUTH 1/2 OF SECTION 3, AND THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 2, TOWNSHIP 2 SOUTH, RNGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH



JOB No. 17-4-96 FLAGSTAFF OVERALL \FLGANEX

ALLIANCE ENGINEERING INC.

P.O. BOX 2664
323 MAIN STREET
PARK CITY, UTAH 84060
(435) 649-9467

PLANNING COMMISSION

APPROVED BY THE PARK CITY
PLANNING COMMISSION THIS _____
DAY OF _____, 1999 A.D.

BY _____
CHAIRMAN

ENGINEERS CERTIFICATE

I FIND THIS PLAT TO BE IN
ACCORDANCE WITH INFORMATION ON
FILE IN MY OFFICE THIS _____
DAY OF _____, 1999 A.D.

BY _____
PARK CITY ENGINEER

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS _____
DAY OF _____, 1999 A.D.

BY _____
PARK CITY ATTORNEY

CERTIFICATE OF ATTEST

I CERTIFY THIS RECORD OF SURVEY
MAP WAS APPROVED BY PARK CITY
COUNCIL THIS _____ DAY
OF _____, 1999 A.D.

BY _____
PARK CITY RECORDER

COUNCIL APPROVAL AND ACCEPTANCE

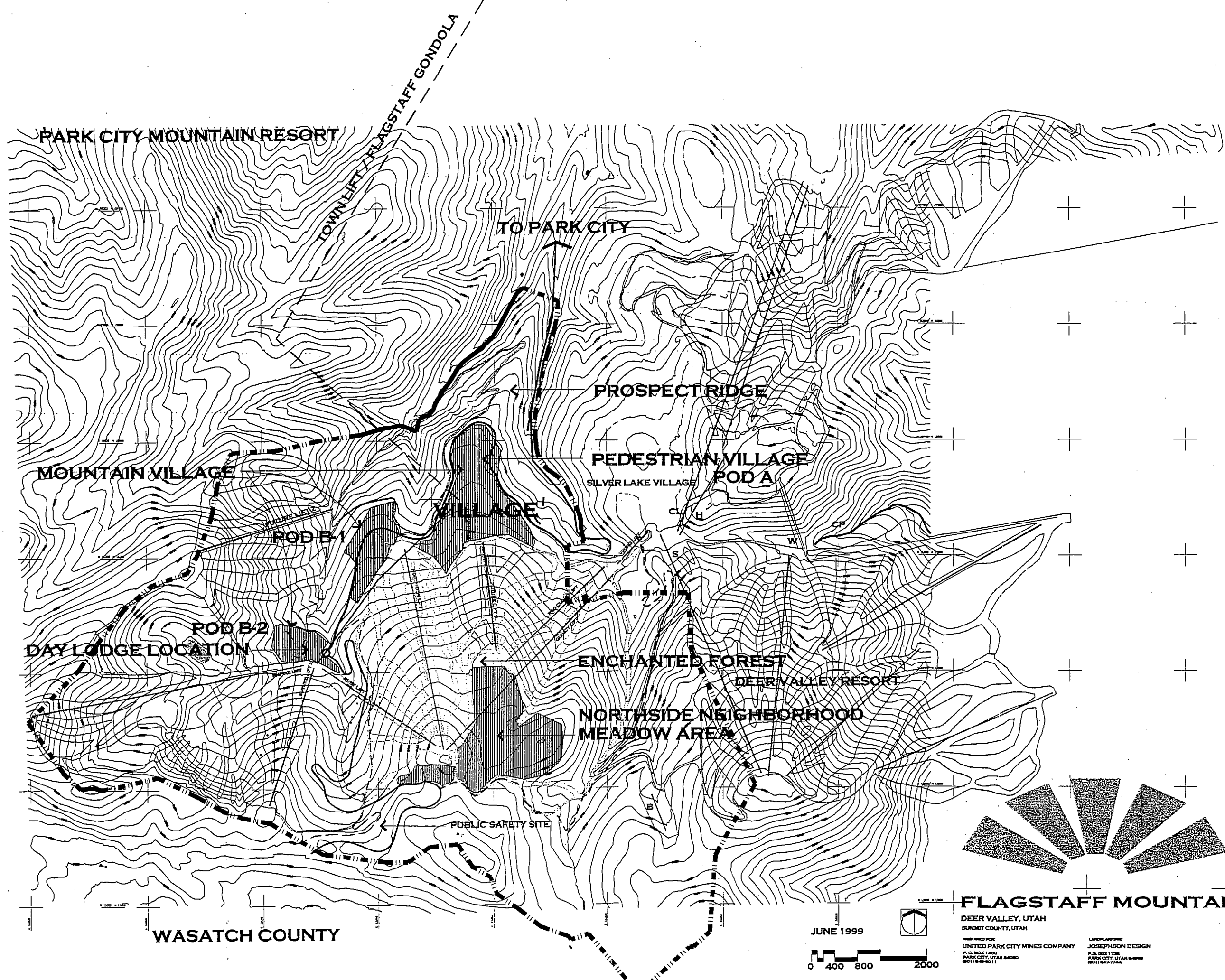
APPROVAL AND ACCEPTANCE BY THE PARK CITY
COUNCIL THIS _____ DAY OF _____,
1999 A.D.

BY _____
MAYOR

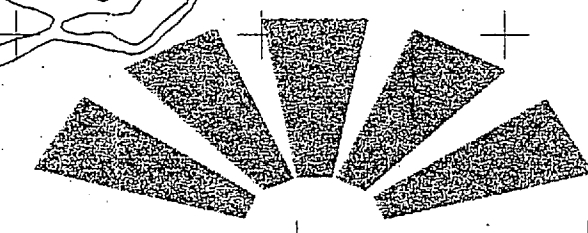
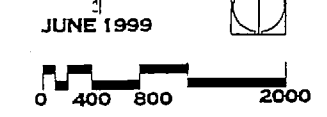
RECORDED

STATE OF UTAH COUNTY OF SUMMIT AND FILED
AT THE REQUEST OF _____
DATE _____ TIME _____ BOOK _____ PAGE _____

FEE _____ RECORDER _____

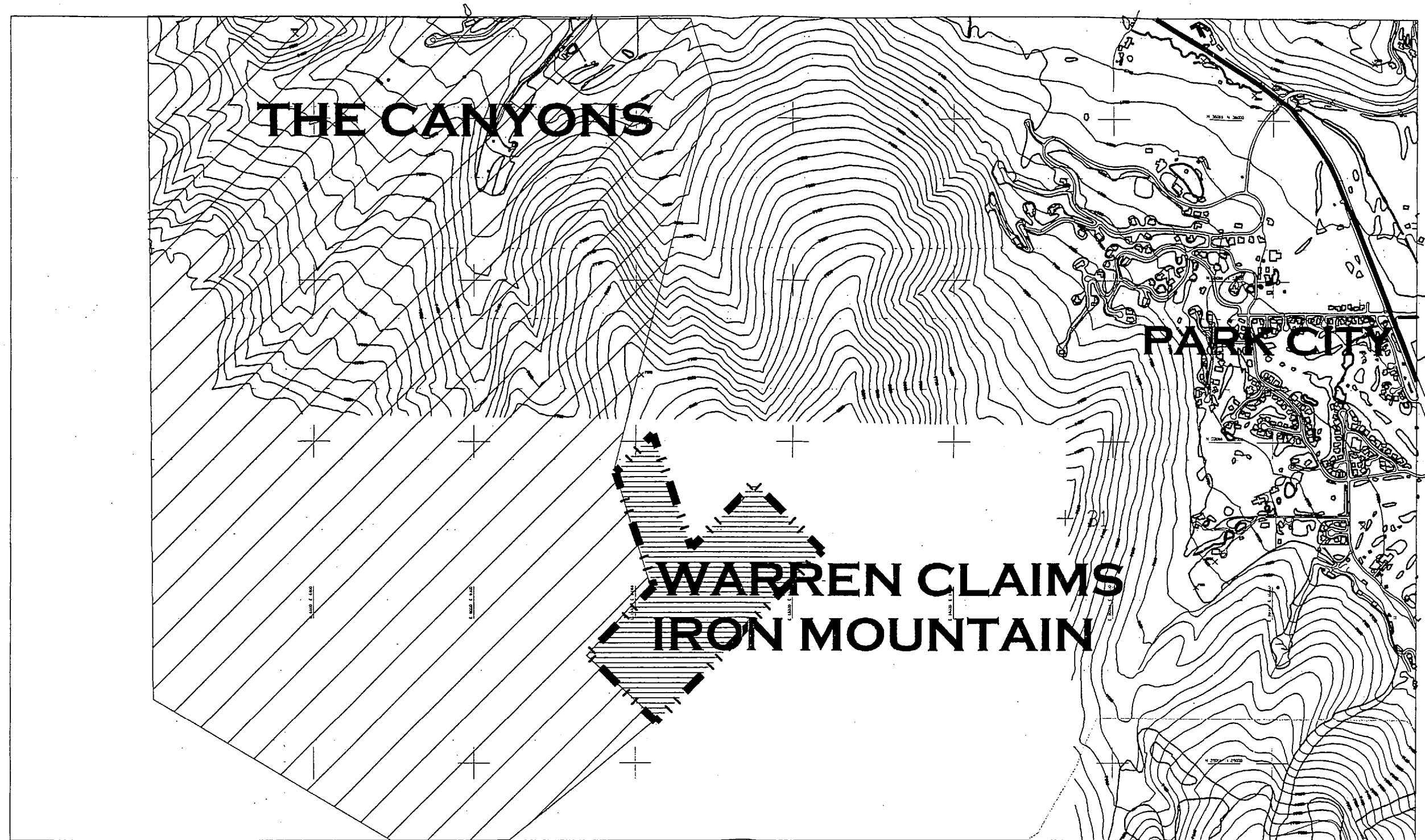


WASATCH COUNTY



FLAGSTAFF MOUNTAIN RESORT

DEER VALLEY, UTAH
SUNSET COUNTY, UTAH
PREPARED FOR:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1400
PARK CITY, UTAH 84060
801/640-6011
LANDSCAPE ARCHITECT:
JOSEPHSON DESIGN
P.O. BOX 1738
PARK CITY, UTAH 84060
801/640-7744



IRON MOUNTAIN PARCEL

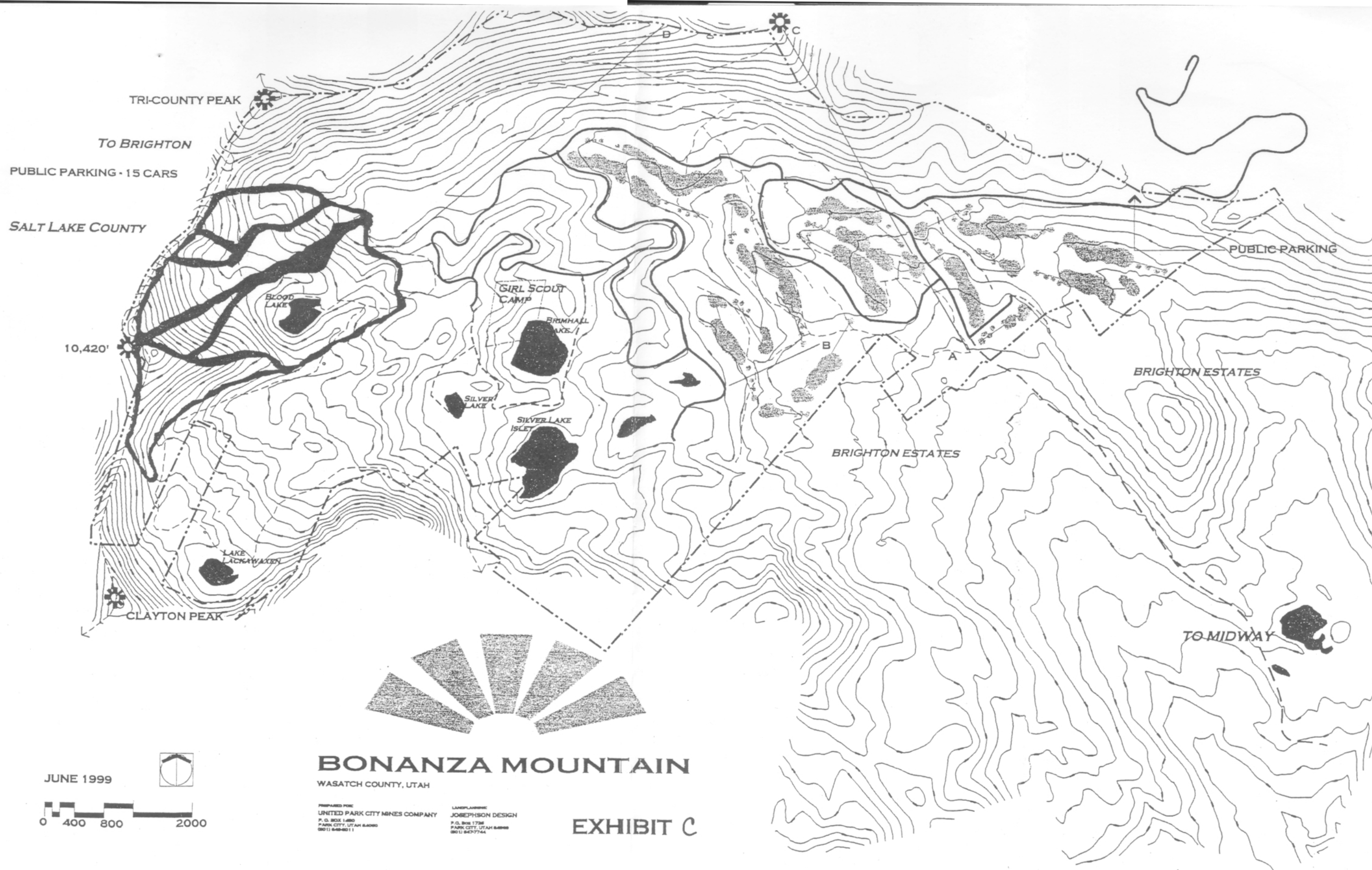
APRIL 1999



SUNDOY COUNTY, UTAH
PREPARED FOR
UNITED PARK CITY MINES COMPANY
P.O. BOX 1480
PARK CITY, UTAH 84302
8011 645-7744

LUCIFERINE
JOSEPHSON DESIGN
P.O. BOX 1728
PARK CITY, UTAH 84302
8011 645-7744

EXHIBIT B



JUNE 1999

0 400 800 2000

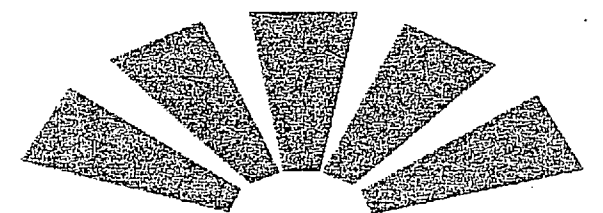
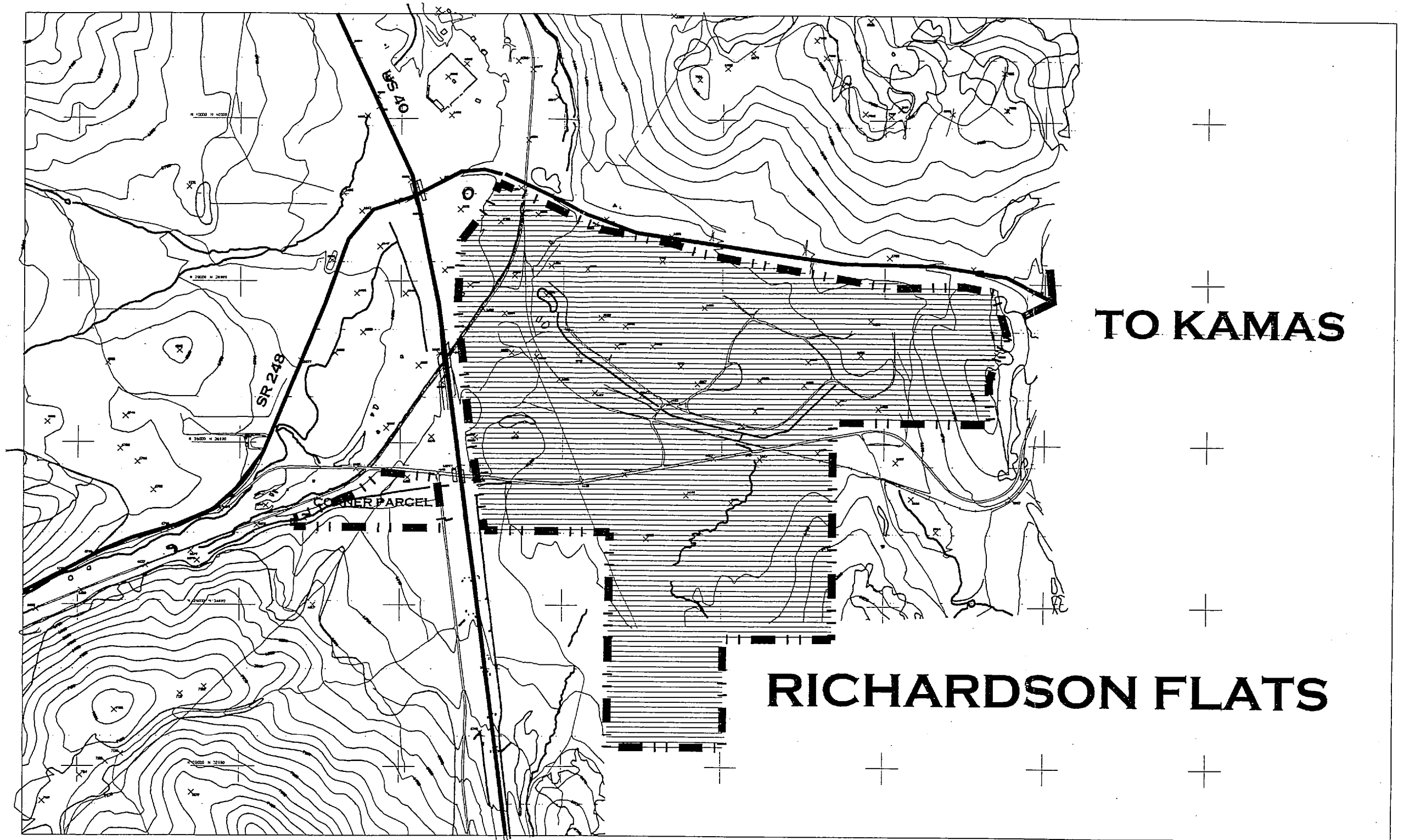
BONANZA MOUNTAIN

WASATCH COUNTY, UTAH

PREPARED FOR:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1480
PARK CITY, UTAH 84080
(801) 648-6011

LANDPLANNING:
JOSEPHSON DESIGN
P.O. BOX 1738
PARK CITY, UTAH 84080
(801) 642-7744

EXHIBIT C



RICHARDSON FLATS PARCEL

APRIL 1999

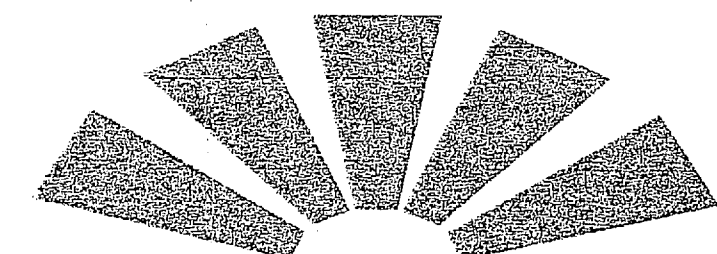
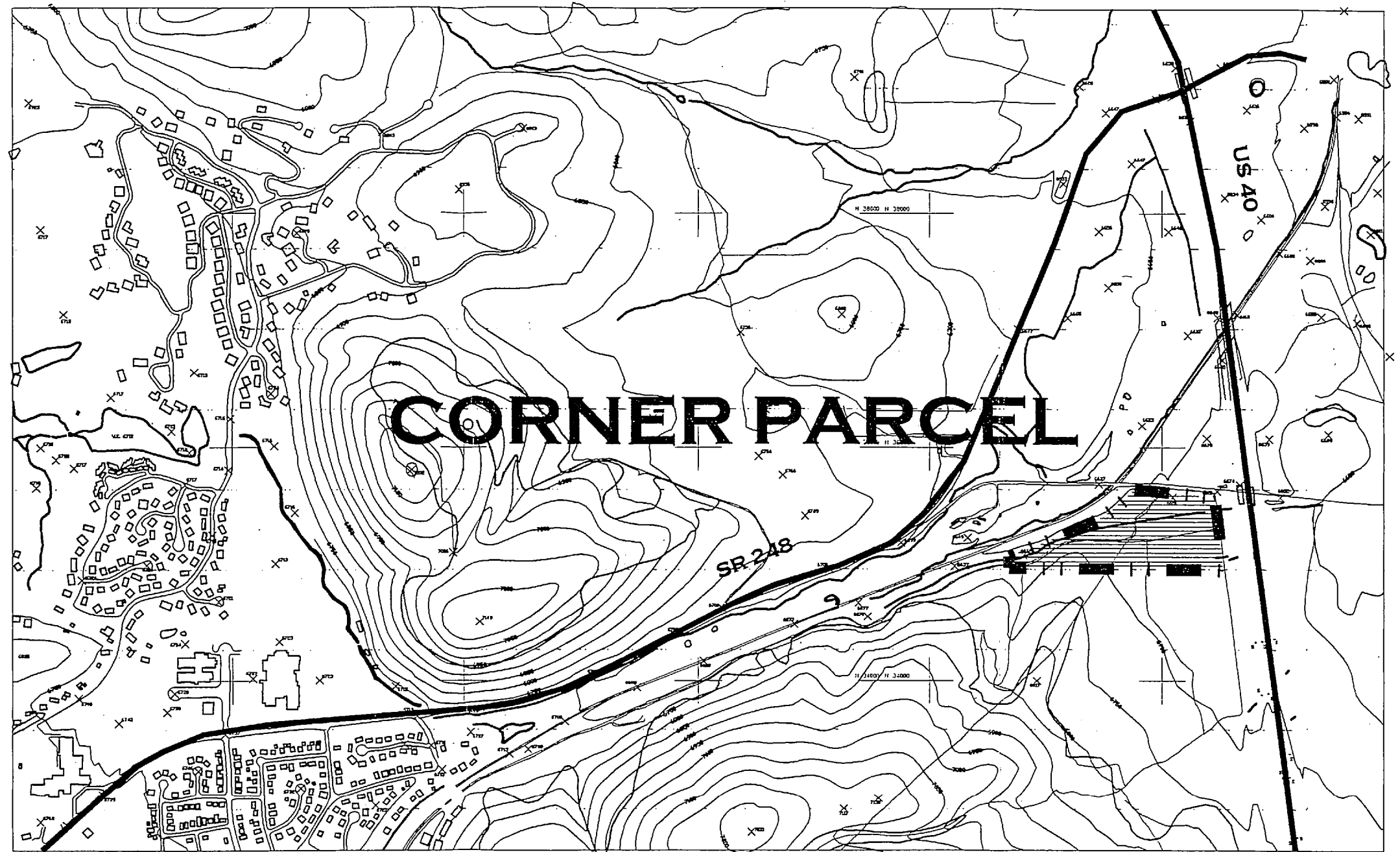


SUMMIT COUNTY, UTAH
SUMMIT COUNTY, UTAH

PREPARED FOR:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1400
PARK CITY, UTAH 84060
(801) 546-8011

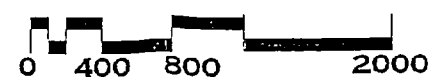
LANDPLANNING:
JOSEPHSON DESIGN
P.O. BOX 1788
PARK CITY, UTAH 84060
(801) 546-7744

EXHIBIT D



CORNER PARCEL

APRIL 1999

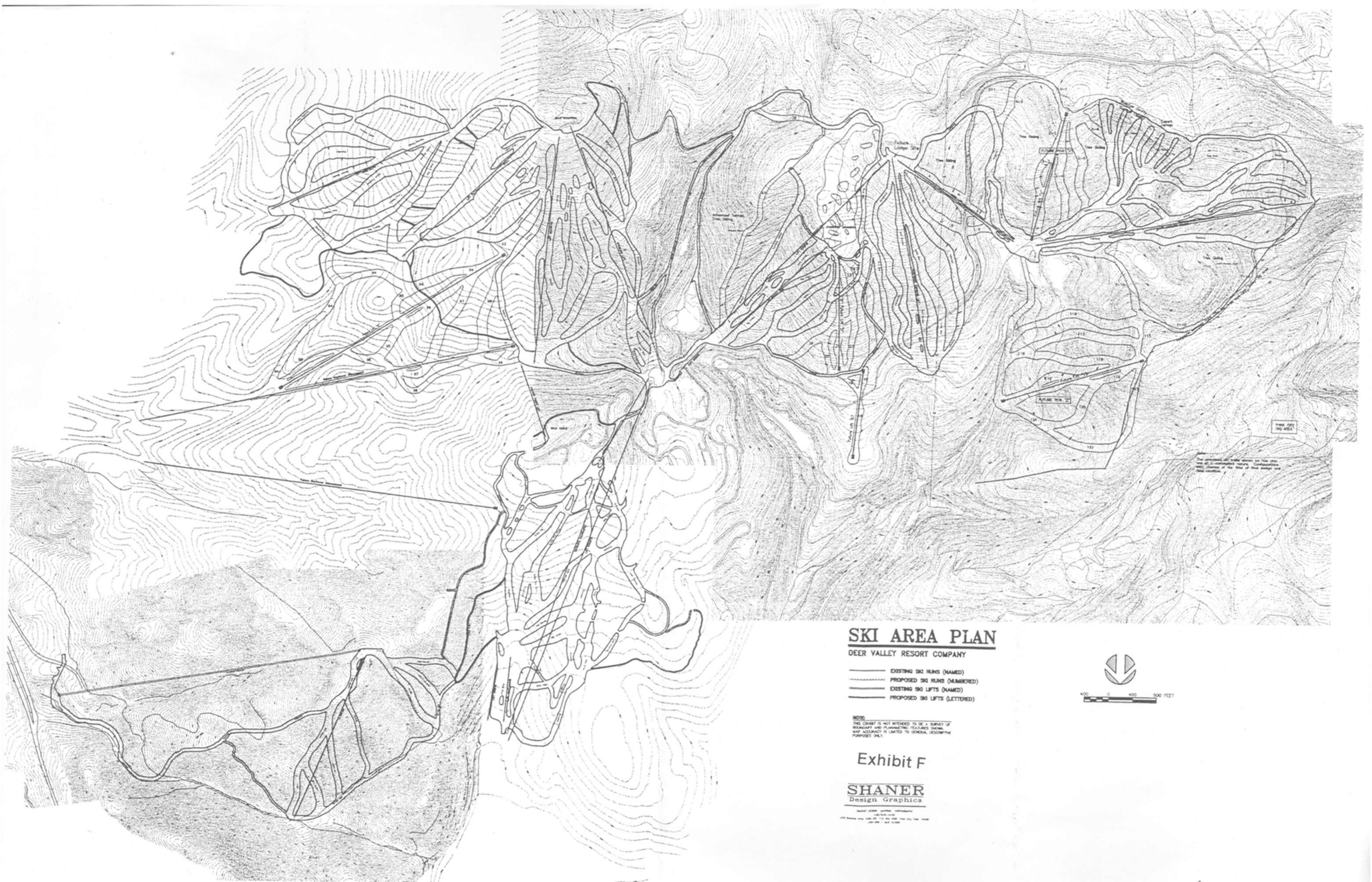


SUMMIT COUNTY, UTAH

PREPARED FOR:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1450
PARK CITY, UTAH 84060
(801) 549-9011

LANDPLANNING:
JOSEPHSON DESIGN
P.O. BOX 1728
PARK CITY, UTAH 84060
(801) 642-7744

EXHIBIT E



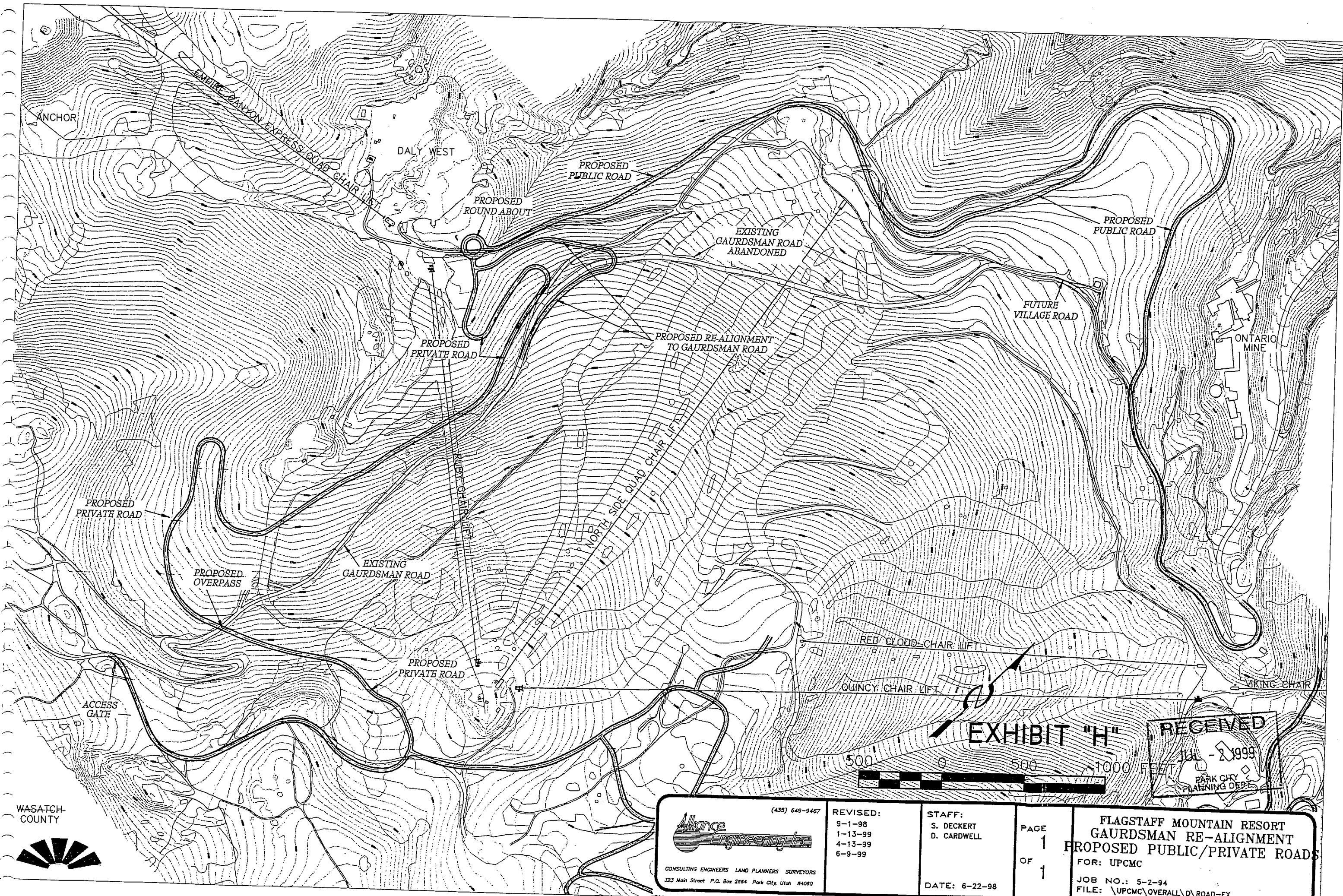
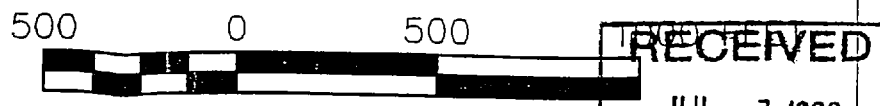
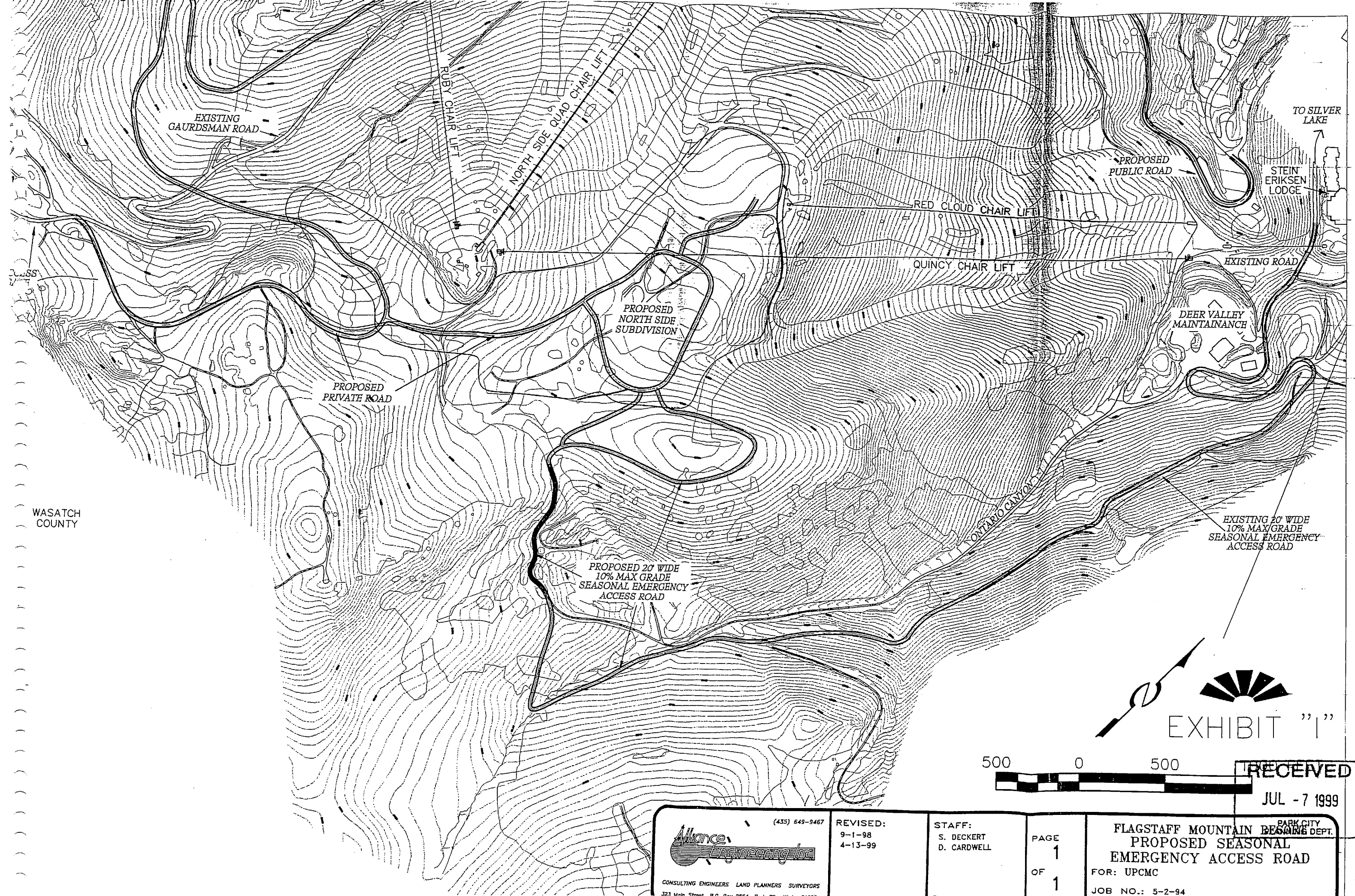


EXHIBIT "H"

RECEIVED
JUL - 2 1999
PARK CITY
PLANNING DEPT



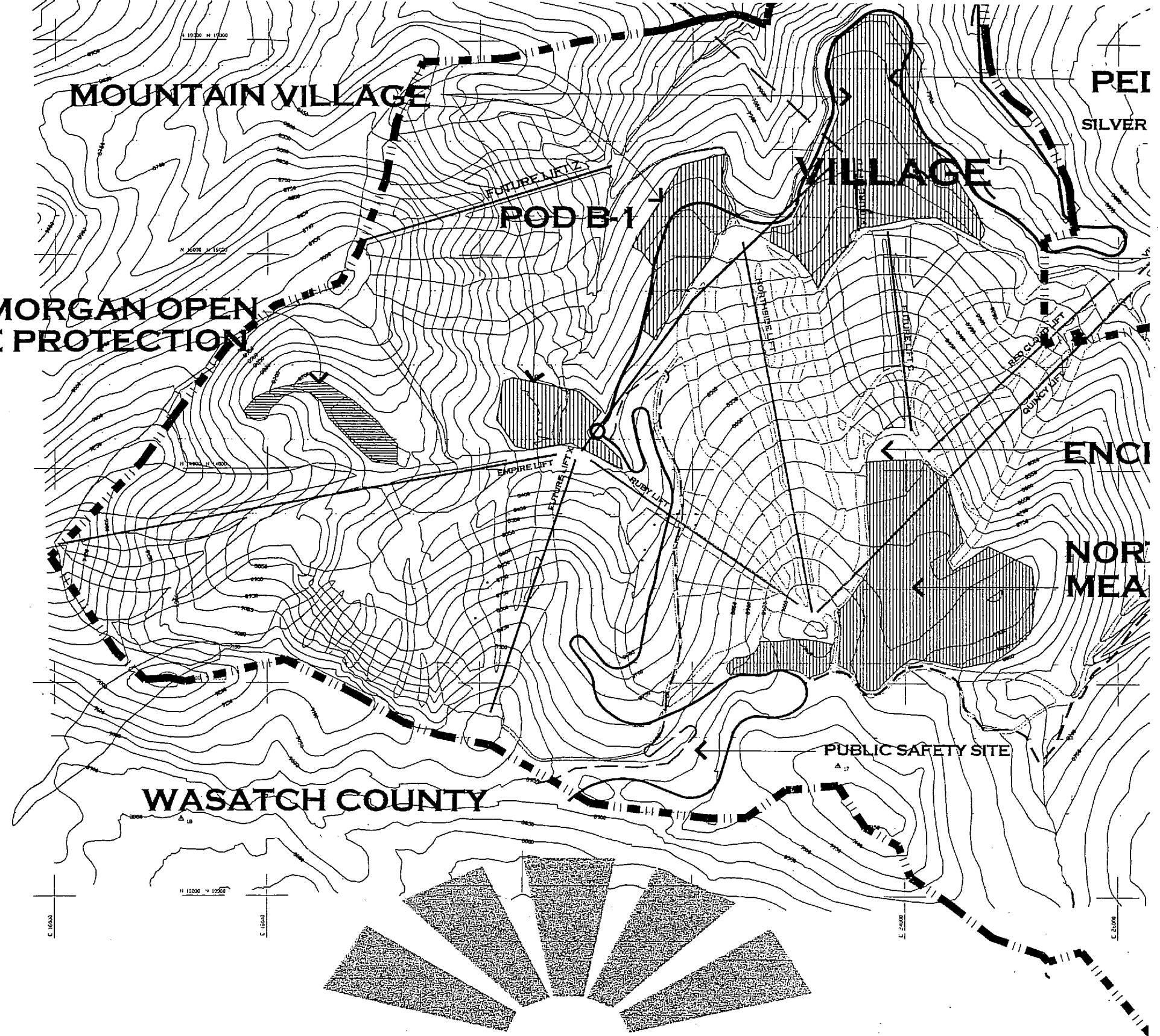
(435) 649-9457 Alliance Engineering Inc CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2884 Park City, Utah 84060	REVISED: 9-1-98 1-13-99 4-13-99 6-9-99	STAFF: S. DECKERT D. CARDWELL DATE: 6-22-98	PAGE 1 OF 1	FLAGSTAFF MOUNTAIN RESORT GAURDSMAN RE-ALIGNMENT PROPOSED PUBLIC/PRIVATE ROADS FOR: UPCM JOB NO.: 5-2-94 FILE: \UPCMC\OVERALL\D\ROAD-EX
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JUL - 7 1999

 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street, P.O. Box 999, Park City, UT 84060	REVISED: 9-1-98 4-13-99	STAFF: S. DECKERT D. CARDWELL	PAGE 1	FLAGSTAFF MOUNTAIN BEAVER DEPT. PROPOSED SEASONAL EMERGENCY ACCESS ROAD FOR: UPCM JOB NO.: 5-2-94
			OF 1	

**LADY MORGAN OPEN
SPACE PROTECTION**



FLAGSTAFF MOUNTAIN RESORT

JUNE 1999

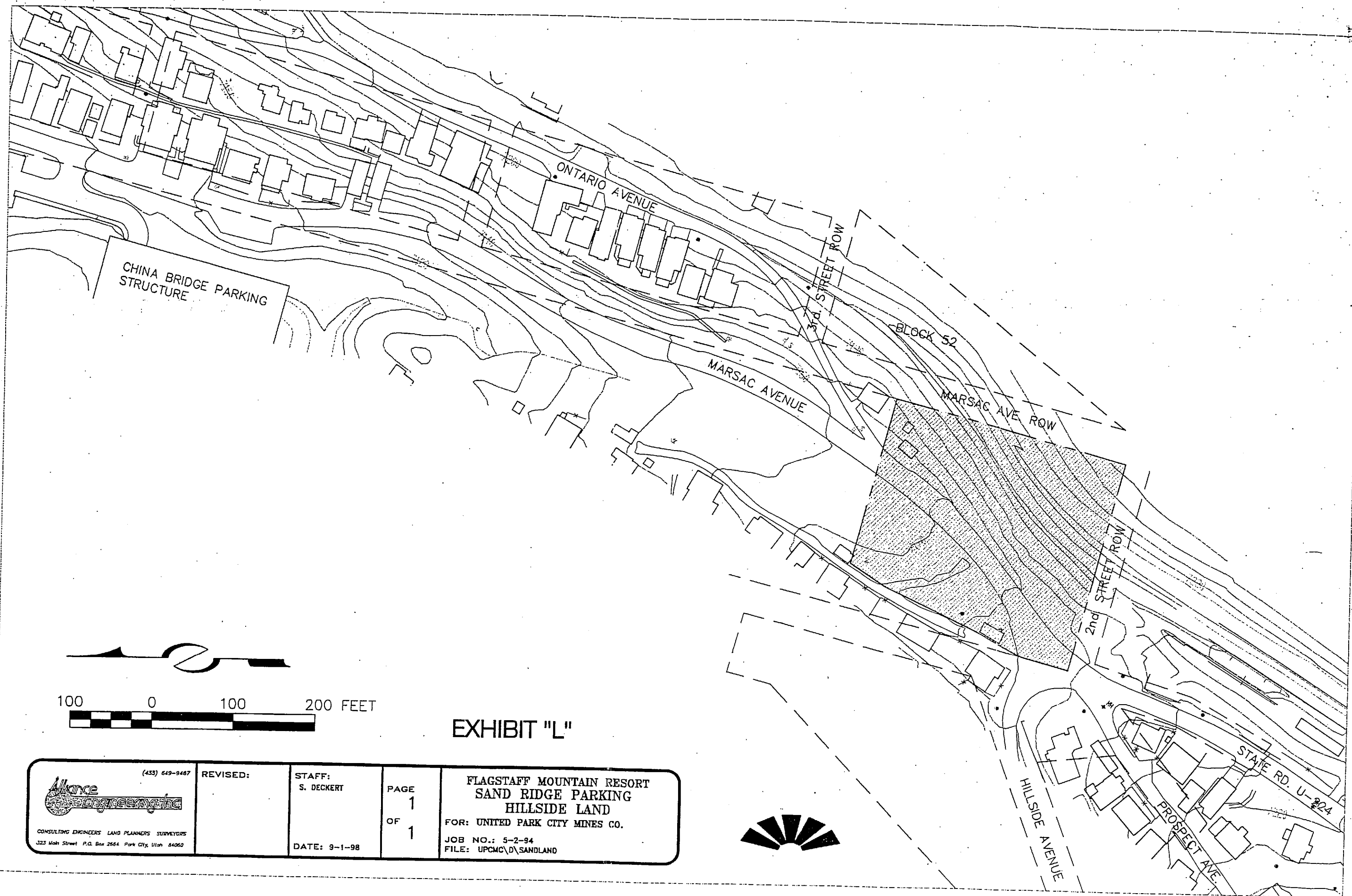
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SUMMIT COUNTY, UTAH

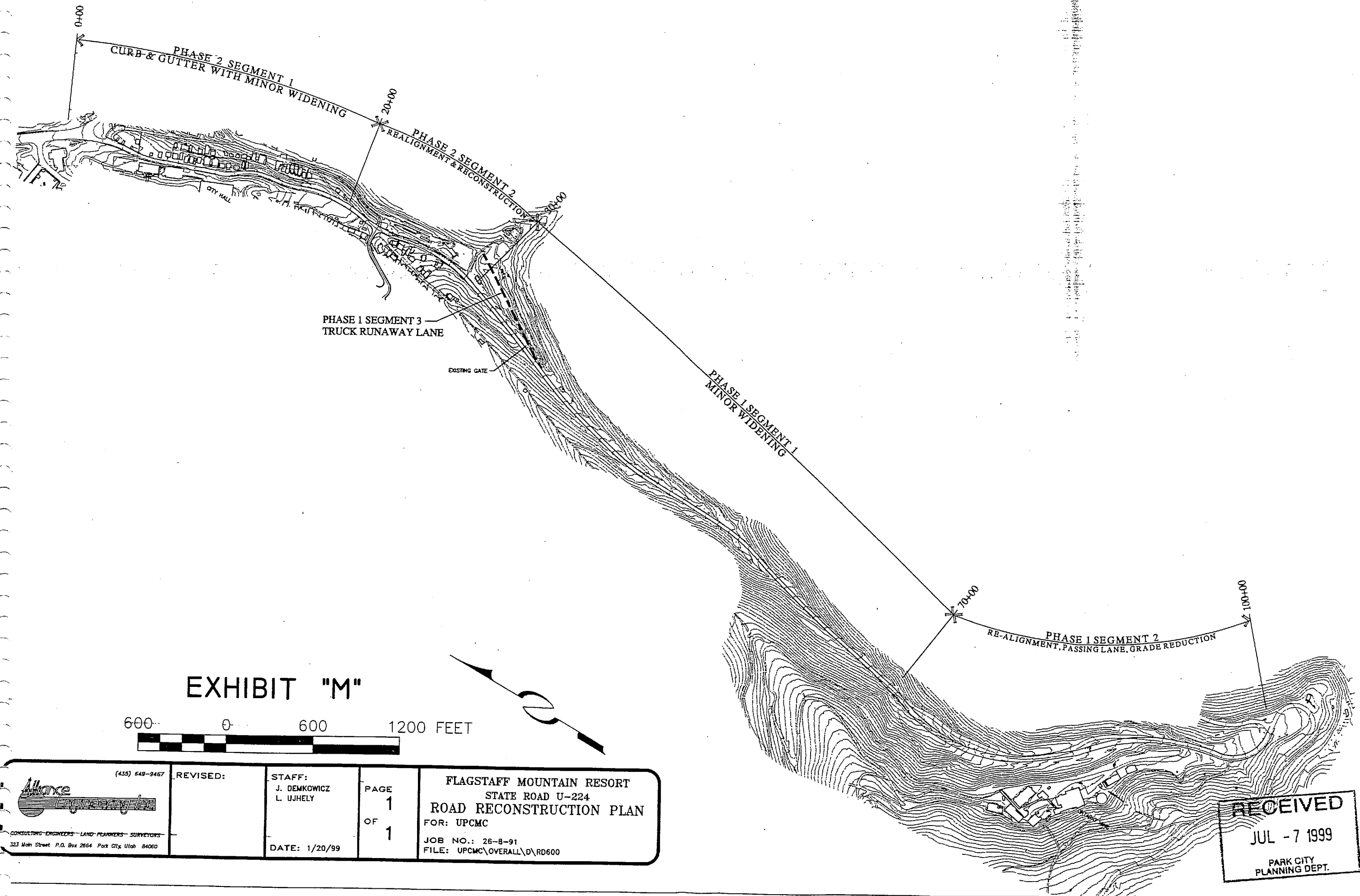
PREPARED FOR:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1450
PARK CITY, UTAH 84060
(801) 849-8011

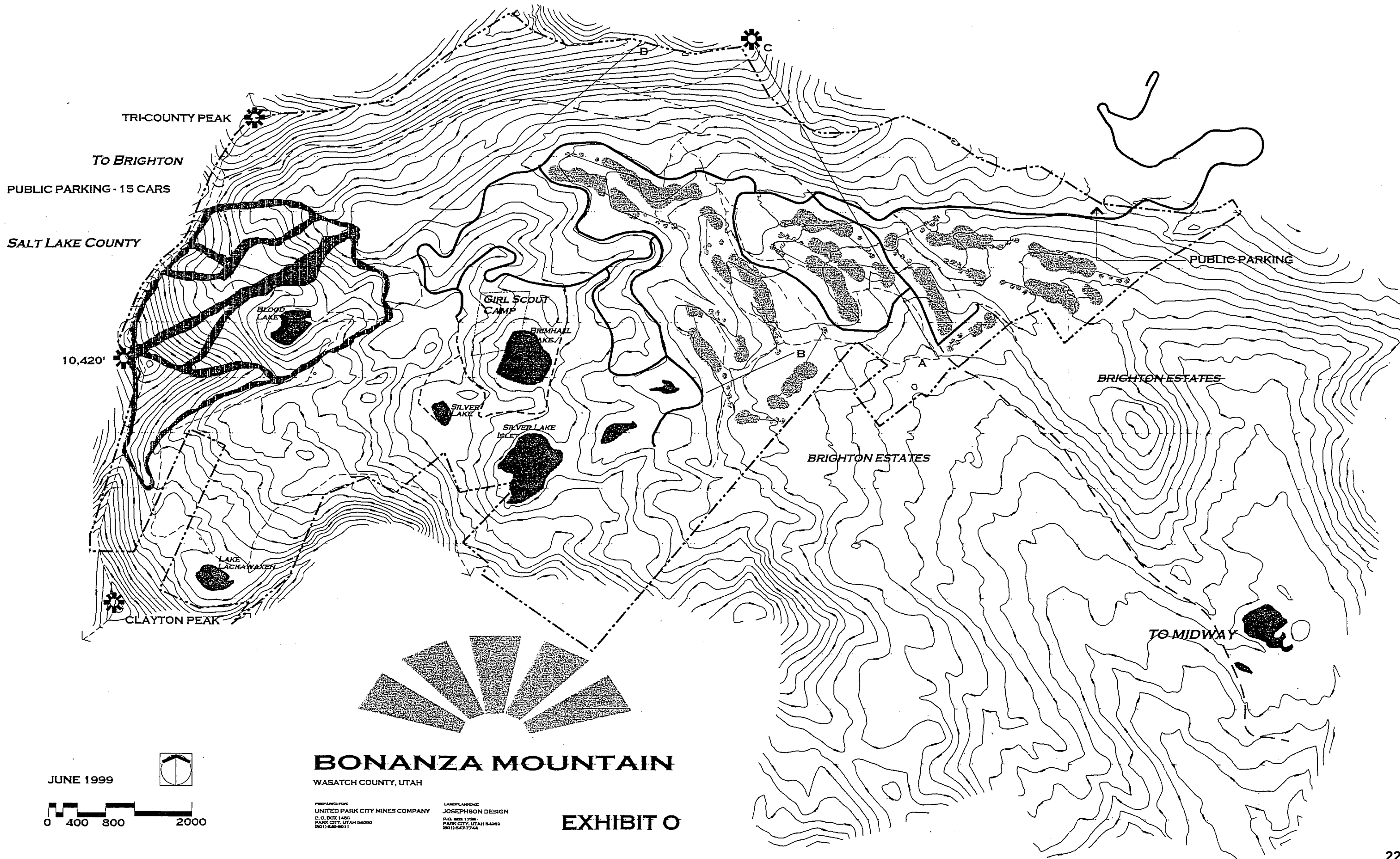
LANDPLANNING:
JOSEPHSON DESIGN
P.O. BOX 1728
PARK CITY, UTAH 84069
(801) 647-7744

EXHIBIT J



 (435) 649-9467 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2864 Park City, Utah 84060	REVISED:	STAFF: S. DECKERT DATE: 9-1-98	PAGE 1 OF 1	FLAGSTAFF MOUNTAIN RESORT SAND RIDGE PARKING HILLSIDE LAND FOR: UNITED PARK CITY MINES CO. JOB NO.: 5-2-94 FILE: UPMC/D/SANDLAND
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BONANZA MOUNTAIN

WASATCH COUNTY, UTAH

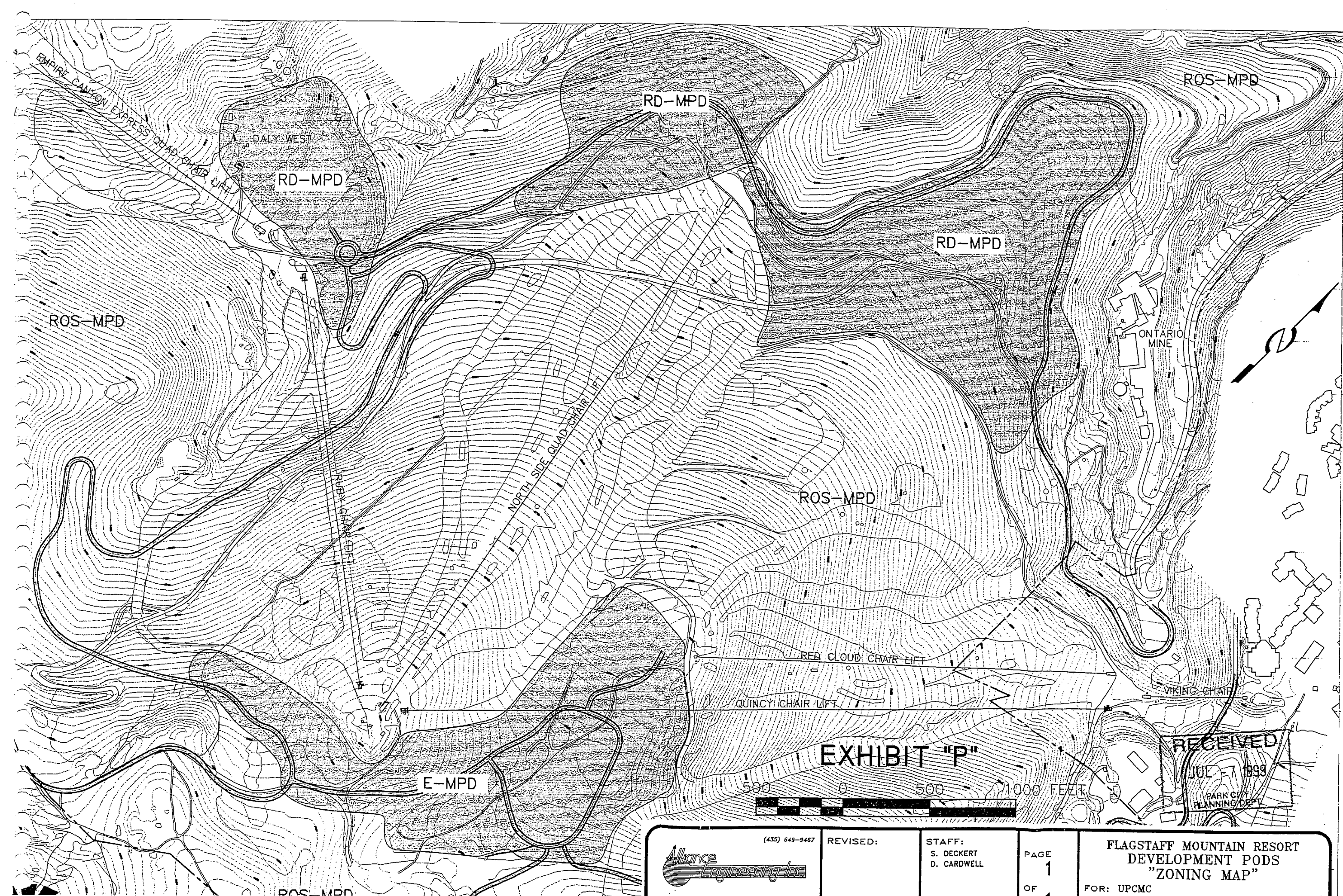
EXHIBIT O

JUNE 1999



PREPARED FOR:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1450
PARK CITY, UTAH 84060
(801) 640-0011

LANDSCAPE ARCHITECT:
JOSEPHSON DESIGN
P.O. BOX 1738
PARK CITY, UTAH 84060
(801) 647-7744



(435) 649-9467 <i>Alliance Engineering Inc.</i>	REVISED:	STAFF: S. DECKERT D. CARDWELL	PAGE 1 OF 4	FLAGSTAFF MOUNTAIN RESORT DEVELOPMENT PODS "ZONING MAP" FOR: UPCMC
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March 15, 2007

The DV Luxury Resort LLC
136 Heber Avenue, Suite 204
Park City UT 84060

Sent via email

NOTICE OF PLANNING COMMISSION ACTION

<u>Project Name</u>	Pod B-2, Empire Pass
<u>Project Description</u>	Master Planned Development
<u>Date of Meeting</u>	March 14, 2007

Action Taken By Planning Commission: The Planning Commission APPROVED the proposed Empire Pass B-2 Master Planned Development based on the following:

Analysis

All Master Planned Developments shall contain the following minimum requirements in accordance with Section 15-6-5 of the Land Management Code.

*(A) **DENSITY.** The type of Development, number of units and Density permitted on a given Site will be determined as a result of a Site Suitability Analysis and shall not exceed the maximum Density in the zone, except as otherwise provided in this section. The Site shall be looked at in its entirety and the Density located in the most appropriate locations.*

Complies

During the Olympic break in 2002, a subcommittee consisting of the applicant's design team, staff, and Commissioners Chris Larson, Bruce Erickson, and Michael O'Hara focused on a review of the preliminary road layout for the mountain village (Pods A, B-1, and B-2) and a building height analysis for the project build-out using the base RD-zone 33-foot height limit. These items were reviewed at a work session and a public hearing on March 27, 2002. No public comment was received. The Commission concluded that:

The base RD-zone height analysis demonstrates that the maximum project densities set forth in Ord. 99-30 could potentially be constructed within the approved

development pods without the necessity of a height increase above the 33-foot RD zone height limit; and

Building height increases for specific multi-family/resort-related buildings may be considered based on site-specific reviews and compliance with the standards set forth in the Master Planned Development section of the Land Management Code (LMC).

The additional 80 Unit Equivalents proposed for B-2 can be absorbed within the Empire Pass project in Code compliant 33-foot height buildings as shown on Exhibit A. The total number of units approved with this MPD are 192 hotel rooms using 69.6 Unit Equivalents (UEs) and 94 hotel condominiums (114 UEs) in the west side and 81 condominiums (81 UEs) on the east side.

(B) MAXIMUM ALLOWED BUILDING FOOTPRINT FOR MASTER PLANNED DEVELOPMENTS WITHIN THE HR-1 DISTRICT. (Not applicable)

(C) SETBACKS. *The minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for Parcels greater than one (1) acre in size.*

Complies

The annexed area of Flagstaff Mountain was granted a large-scale MPD at the time of annexation with specific development pods. The Planning Commission and staff have consistently maintained that the setback requirement is fulfilled at the annexation boundary and does not need to be met within the defined development pods.

(D) OPEN SPACE. *All Master Planned Developments shall contain a minimum of sixty percent (60%) open space.*

Complies

As with the setback requirement in (C) above, the annexation area contains more than the minimum 60% requirement. The development of the Village (pods A, B-1 and B-2) is limited to 87 acres, as amended, within the original 1550 acres or 5% of the land area.

(E) OFF-STREET PARKING. *The number of Off-Street Parking Spaces in each Master Planned Development shall not be less than the requirements of this Code, except that the Planning Commission may increase or decrease the required number of Off-Street Parking Spaces based upon a parking analysis submitted by the Applicant at the time of MPD submittal.*

Complies

The Flagstaff Development Agreement stipulates that parking will be reduced by 25% below the Code requirements. The parking plan submitted meets this requirement and exceeds it. Based on the proposed residential unit sizes, hotel rooms and commercial spaces, the parking at B-2 West (west of the Empire Day Lodge, the site for the Montage Hotel) would require 742 spaces, reduced 25% to

561. The applicant is proposing a further reduction at B2 West to 530 stalls because valet parking will be mandatory for guests. The valet parking will be in a tandem configuration. The Planning Commission will need to make a finding that tandem parking for 192 spaces is acceptable with a valet program. Parking at B-2 East (east of the Empire Day Lodge and site of 81 condominiums and two employee housing units) would require by Code 165 spaces plus the 75 for the Empire Day Lodge. The 165 would be reduced 25% to 124 spaces. Each of the residential condominium units will be allowed to have one space assigned to the unit.

*(F) **BUILDING HEIGHT.** The height requirements of the Zoning Districts in which an MPD is located shall apply except that the Planning Commission may consider an increase in height based upon a Site specific analysis and determination. The Applicant will be required to request a Site specific determination and shall bear the burden of proof to the Planning Commission that the necessary findings can be made. In order to grant Building height in addition to that which is allowed in the underlying zone, the Planning Commission is required to make the following findings:*

(1) The increase in Building Height does not result in increased square footage or Building volume over what would be allowed under the zone required Building Height and Density, including requirements for facade variation and design, but rather provides desired architectural variation;

Complies

Please refer to section (A) Density above for discussion on the density built at the 33-foot zone height. Exhibit B is the applicant's narrative on each of the criteria for additional height. Square footage is governed by the Development Agreement, as amended. Code requirements for façade and roof variation will apply. The applicant is requesting a maximum building height of 114 feet above the USGS datum at the entry to the Montage and a maximum building height of 82 feet for the east side condominiums. As each of these sites have been or will be heavily disturbed for the mine soils mitigation, no "natural grade" can be established.

(2) Buildings have been positioned to minimize visual impacts on adjacent Structures. Potential problems on neighboring Properties caused by shadows, loss of solar Access, and loss or air circulation have been mitigated to the extent possible as defined by the Planning Commission;

Complies

The only existing structure is the Empire Day Lodge. The lodge is situated between the Montage Hotel to the west and the additional residential condominiums to the east. Neither of the proposed buildings will have an effect on the solar access to the day lodge. The major controlling factor in B2 is the ridgelines to the east, south, and west. Proposed are greater setbacks from the buildings to the day lodge than would be allowed by the LMC thereby allowing greater air flow through the project area.

(3) There is adequate landscaping and buffering from adjacent Properties and Uses. Increased Setbacks and separations from adjacent projects are being proposed;

Complies

The Montage hotel to the west of the day lodge is approximately 170 feet away; the condominium buildings to the east are approximately 70 away from the day lodge. The RD zone requirement is 12 feet for side yard setbacks. The conceptual landscape plan has significant landscaping between these buildings.

(4) The additional Building Height has resulted in more than the minimum open space required and has resulted in the open space being more usable;

Complies

The Flagstaff Annexation clustered the development of the project into several development pods, leaving 88% of the area as open space. Most of this open space is used for ski terrain, other recreation, and wildlife habitat.

(5) MPD's which include the additional height shall be designed in a manner so as to provide a transition in roof elements in compliance with Chapter 9 Architectural Guidelines or Historic District Design Guidelines if within the Historic District; and

Complies

The applicant has provided conceptual renderings and detailed volumetrics for the Montage hotel and east side condominiums. The roof elements are substantially stepped and provide architectural interest.

(6) Structures within the HR-1 District which meets the standards of development on Steep Slopes, may petition the Commission for additional height per criteria found in Section 15-2.2-6.

This section is not applicable.

If and when the Planning Commission grants additional height due to a Site specific analysis and determination, that additional height shall only apply to the specific plans being reviewed and approved at the time. Additional Building Height for a specific project will not necessarily be considered for a different, or modified, project on the same Site.

(G) SITE PLANNING. *An MPD shall be designed to take into consideration the characteristics of the Site upon which it is proposed to be placed. The project should be designed to fit the Site, not the Site modified to fit the project. The following shall be addressed in the Site planning for an MPD:*

(1) Units should be clustered on the most developable and least visually sensitive portions of the Site with common open space separating the clusters. The open space corridors should be designed so that existing Significant Vegetation can be maintained on the Site.

Complies

The Montage hotel on the west side is placed within a heavily disturbed site. The east side condos are sited over the existing sales office and East-West development office. This area has significant regulated soils that are required to be removed and would necessitate the removal of the aspens in this area. There is significant space

between the Montage and the Empire Lodge and the Lodge and the condo buildings to the east. These gaps provide visual corridors to the ridgeline behind.

(2) Projects shall be designed to minimize Grading and the need for large retaining Structures.

Complies

Significant excavation will be required; however, the buildings will fill the excavated areas with underground parking and service facilities. There are several retaining structures and a bridge into the entry court to the Montage. Generally, the buildings step with the site without the need of large or numerous retaining structures. The outdoor amenities to the buildings will flow at grade into the existing landscape. The ski run around the east and north side of the Hotel will require substantial grading; however, this is already a disturbed site from previous mining and remediation activities.

(3) Roads, utility lines, and Buildings should be designed to work with the Existing Grade. Cuts and fills should be minimized.

Complies

Minimal road work is required. An access road to the Montage is proposed to intersect State Route 224 just before the traffic circle. A bridge will span the drainage gully in this area. The buildings will step with the grade requiring minimal walls and cut/fill slopes.

(4) Existing trails should be incorporated into the open space elements of the project and should be maintained in their existing location whenever possible. Trail easements for existing trails may be required. Construction of new trails will be required consistent with the Park City Trails Master Plan.

Complies

The Mid-Mountain trail loops behind (south) of the project site. Although not a specifically identified trail on the Mountain Trails Foundation 2006 Trail Map, the emergency access road up Empire Canyon from the top of Daly Avenue is used by hikers and bikers. The site plan shows a proposed ski trail to the future pod Z lift in the area as well.

(5) Adequate internal vehicular and pedestrian/bicycle circulation should be provided. Pedestrian/ bicycle circulations shall be separated from vehicular circulation and may serve to provide residents the opportunity to travel safely from an individual unit to another unit and to the boundaries of the Property or public trail system. Private internal Streets may be considered for Condominium projects if they meet the minimum emergency and safety requirements.

Complies

No new streets are being created except for the short access road into the project site.

(6) The Site plan shall include adequate Areas for snow removal and snow storage. The landscape plan shall allow for snow storage Areas. Structures shall be set back

from any hard surfaces so as to provide adequate Areas to remove and store snow. The assumption is that snow should be able to be stored on Site and not removed to an Off-Site location.

Complies

There are minimal hard surfaces as all parking is underground. The hard surfaces proposed (entry drives, porte cochere, and patios) will be heated eliminating the need for snow storage.

(7) It is important to plan for refuse storage and collection and recycling facilities. The Site plan shall include adequate Areas for dumpsters and recycling containers. These facilities shall be Screened or enclosed. Pedestrian Access shall be provided to the refuse/recycling facilities from within the MPD for the convenience of residents and guests.

Complies

All refuse storage facilities will be underground in the garages of the buildings. Hotel staff will handle refuse and recycling collection.

(8) The Site planning for an MPD should include transportation amenities including drop-off Areas for van and shuttle service, and a bus stop, if applicable.

Complies

The Flagstaff Mountain annexation included 15 Technical Reports, one of which is the Transit Plan. The Transit Plan has been amended and updated with the inclusion of the Montage. The Montage project has additional transportation elements for guests and employees as found in the November 27, 2006 Technical Memorandum submitted by Fehrs and Peers, Transportation Consultants, on behalf of the developer.. Both the east and west phases will have drop-off/pick-up areas outside of the circulation pattern for the garages.

(9) Service and delivery Access and loading/unloading Areas must be included in the Site plan. The service and delivery should be kept separate from pedestrian Areas.

Complies

Service and delivery, particularly for the Montage hotel, are located within the garage level. The garage door and loading areas can accommodate a semi-truck.

*(H) **LANDSCAPE AND STREETScape.** To the extent possible, existing Significant Vegetation shall be maintained on Site and protected during construction. Where landscaping does occur, it should consist primarily of appropriate drought tolerant species. Lawn or turf will be limited to a maximum of fifty percent (50%) of the Area not covered by Buildings and other hard surfaces and no more than seventy-five percent (75%) of the above Area may be irrigated. Landscape and Streetscape will use native rock and boulders. Lighting must meet the requirements of LMC Chapter 15-5, Architectural Review.*

Complies

Minimal vegetation currently exists due to the mining activities associated with the site. Landscaping will be accomplished using native and other appropriate drought-

tolerant plant materials in accordance with the Flagstaff Design Guidelines. A small formal lawn area is proposed on the south side of the Montage. Irrigation will be principally by drip.

*(I) **SENSITIVE LANDS COMPLIANCE.** All MPD Applications containing any Area within the Sensitive Areas Overlay Zone will be required to conduct a Sensitive Lands Analysis and conforms to the Sensitive Lands Provisions, as described in LMC Section 15-2.21.*

Complies

The Flagstaff Annexation is not included in the Sensitive Lands Overlay. However, there is one locally rare native plant that has been identified by the Utah Native Plant Society. The applicant has been in contact with the UNPS to identify the location of the plant colony and to take steps to preserve it. The plant is not located within the development area.

*(J) **EMPLOYEE/AFFORDABLE HOUSING.** MPD Applications shall include a housing mitigation plan which must address employee Affordable Housing as required by the adopted housing resolution in effect at the time of Application.*

Complies

Additional employee/affordable housing is required with the increased 80 Unit Equivalents. The mitigation rate in the original Development Agreement would increase the housing requirement by 5.7 Affordable Employee Units (AEUs). In accordance with the Development Agreement, 25% of the required housing must be on-mountain. The Montage is programming 10 units on-site which include the 5.7 and additional AEUs for the rest of Empire Pass.

*(K) **CHILD CARE.** A Site designated and planned for a Child Care Center may be required for all new single and multi-family housing projects if the Planning Commission determines that the project will create additional demands for Child Care.*

Complies

Staff does not recommend that a Child Care Center be provided on-site. Limited permanent Child Care demands will be generated by the hotel and condominiums.

Approval: The Planning Commission based their decision on the Analysis, above, and the following:

Findings of Fact

1. The Master Planned Development (MPD) is for Pod B-2 of the Flagstaff Mountain Resort Annexation area, now known as Empire Pass.
2. The MPD is located in the RD-MPD zoning district.
3. The City Council approved the Development Agreement for Flagstaff Mountain Development Agreement/Annexation Resolution No. 99-30 on June 24, 1999. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities.

4. The City Council approved an amendment to the Development Agreement on February 1, 2007, that increased the allowable density by 80 Unit Equivalents, 192 hotel rooms (included in the 80 UEs) and the allowable units by 77.5, to be located in the B-2 MPD.
5. Concurrent with this application and approval, the Planning Commission approved the Conditional Use Permit for Phase I of this MPD on March 14, 2007. Phase I is the Montage Hotel to be located on the west side of the Empire Day Lodge (B-2 West).
6. Concurrent with this application, the Planning Commission forwards a positive recommendation to the City Council for the amended Pod B-2 Empire Village Subdivision.
7. The total number of units approved with this MPD are 192 hotel rooms using 69.6 Unit Equivalents (UEs) and 94 hotel condominiums (114 UEs) in the west side of the Empire Day Lodge (B-2 West) and 81 condominiums (81 UEs) on the east side of the Empire Day Lodge (B-2 East). In addition, there is 35,000 square feet of spa space, 28,059 square feet of bar/restaurant/retail space and approximately 15,000 square feet of meeting/conference space and lounge areas.
8. The maximum Building Height in the RD District is 28 feet (33 feet with a pitched roof). A height exception to 114 feet above a benchmarked grade (USGS 8346') is requested.
9. The volumetrics as shown in the exhibits dated April 24, 2006, and reviewed by the Planning Commission provide the façade shifts and roof shifts necessary to create architectural interest and break the building into smaller components.
10. The setbacks within the RD zone are twenty feet (20') in the front (25 feet to front facing garage), fifteen feet (15') to the rear and twelve feet (12') on the side. Setbacks are the minimum distance between the closest of the following: property line, platted street, or existing curb or edge of street.
11. The elevation and climate of Flagstaff creates a harsh environment for utilities and their maintenance.
12. The Development Agreement requires the Master Developer to provide water source capacity.
13. The Flagstaff Mountain Resort Development Agreement, as amended, requires reclamation of mine hazards.
14. The **Analysis** section of this staff report is incorporated herein.

Conclusion of Law:

1. The MPD, as conditioned, complies with all the requirements of the Land Management Code.
2. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 of this Code.
3. The MPD, as conditioned, is consistent with the Park City General Plan.
4. The MPD, as conditioned, provides the highest value of open space, as determined by the Planning Commission.
5. The MPD, as conditioned, strengthens and enhances the resort character of Park City.

6. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible.
7. The MPD, as conditioned, is Compatible in Use, scale and mass with adjacent Properties, and promotes neighborhood Compatibility.
8. The MPD provides amenities to the community so that there is no net loss of community amenities.
9. The MPD, as conditioned, is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
10. The MPD, as conditioned, meets the provisions of the Sensitive Lands provisions of the Land Management Code. The project has been designed to place Development on the most Developable Land and least visually obtrusive portions of the Site.
11. The MPD, as conditioned, promotes the Use of non-vehicular forms of transportation through design and by providing trail connections.
12. The MPD has been noticed and public hearing held in accordance with this Code.
13. The MPD, as conditioned, is consistent with the approved Flagstaff Mountain Resort Development Agreement, as amended.

Conditions of Approval:

1. The building plans and volumetrics for the project shall meet substantial compliance with the drawings dated April 24, 2006, and as reviewed by the Planning Commission.
2. A height exception for the Montage to 114 feet above a benchmarked grade (USGS 8346') is granted with the Master Plan. A height exception for the east side condominiums to 82 feet above benchmarked grades (USGS 8330' for north datum point and 8380' for south datum point) is granted with the Master Plan. Datum points are indicated on the site plans reviewed by the Planning Commission.
3. City Engineer approval of a utility and infrastructure plan is a condition precedent to the issuance of any building permits within the B-2 Master Planned Development area. The utility plan may include temporary utilities that must be removed (not just abandoned) upon completion of permanent utilities.
4. All regulated soils will be removed from the site and transported via SR 224 and SR 248 to the engineered repository at Richardson Flats. A specific hauling plan, similar to the previous soils hauling operation, must be approved by the Chief Building Official and will incorporate safety inspections, daily reports, and coordination between the City Police and Utah Highway Patrol.
5. Prior to issuance of any building permits for that unit or building which causes overall water consumption at Empire Pass to exceed 150 gallons per minute (approximately 75 units), the Master Developer shall have provided adequate water source capacity satisfactory to the City Attorney and Public Works Director.
6. A revised Mine Soils Hazard Remediation Technical Report (Exhibit 1 of the Technical Reports) shall be submitted to the Chief Building Official. Approval of the revised plan shall have been made by the Building Official prior to any building permit being issued. Prior to vertical construction of the project, UPCM

shall provide acknowledgement from the State of compliance with State mining regulations regarding operation, reclamation, surety, and post-mining land use permit requirements.

7. A revised Emergency Response Plan (Exhibit 7 of the Technical Reports) shall be submitted to the Chief Building Official. Approval of the revised plan shall have been made by the Building Official prior to any building permit being issued. The fire protection component of the plan shall ensure that Park City's ISO rating is not negatively affected by construction of the Montage.
8. The revised Transit Plan dated November 27, 2006, as submitted by Fehr and Peers, Transportation Consultants, on behalf of the applicant will be implemented at Certificate of Occupancy for the Montage Hotel.
9. The \$1.8 million bond for the Richardson Flats Park and Ride, in a form approved by the City Attorney, shall be posted prior to any building permit issuance.
10. The 30 acres at Richardson Flats for the Park and Ride and future recreation facilities will be dedicated to the City (unless the City agrees to a lease), in a form approved by the City Attorney, prior to building permit issuance.
11. The additional 20 Employee Housing Units will begin construction within 24 months from the effective date of the amended Development Agreement (March 2, 2007) or post a financial guarantee in a form acceptable to the City Attorney equal to 10 percent of the estimated construction costs of the additional Affordable Units.

Sincerely,

Brooks T. Robinson
Principal Planner



00545109 Bk01277 Pg00553-00555

Ordinance No. 99-30

ALAN SPRIGGS, SUMMIT CO RECORDER
1999 JUL 28 13:11 PM FEE \$1.00 BY NAT
REQUEST: PARK CITY MUNICIPAL CORP

**AN ORDINANCE ANNEXING APPROXIMATELY
1750 ACRES KNOWN AS FLAGSTAFF MOUNTAIN
INTO THE CORPORATE LIMITS OF
PARK CITY, UTAH AND
AMENDING THE OFFICIAL ZONING MAP
OF PARK CITY TO INCLUDE THE ANNEXED AREA**

WHEREAS, on May 17, 1994, United Park City Mines Company (UPCM) filed an application for annexation to Park City of certain UPCM holdings within the Ontario and Daly Canyons, along with property held by several other mining companies and/or families; and

WHEREAS, the Planning Commission reviewed the proposal several times throughout 1994 and 1995, provided feedback, and based on Planning Commission feedback, the applicant submitted a revised annexation plan on June 14, 1995; and

WHEREAS, the Planning Commission and a special Flagstaff Task Force held several meetings on the revised plan throughout the remainder of 1995 and the balance of 1996 and held public hearings on the revised plan on October 25, 1995 and November 13, 1996; and

WHEREAS, on March 26, 1997, the Planning Commission recommended annexation of the Flagstaff area, with certain development parameters; and

WHEREAS, the Council began its consideration of the Planning Commission recommendations on April 17, 1997 and continued to take staff, applicant, and public input on April 24, 25, 28 and 29 and May 1, 6, and 8, 1997; and

WHEREAS, on April 24, 1997, the Council opened a public hearing for over 350 attendees, and took testimony from 46 participants. The public sentiment revealed support for annexation, but concerns regarding the development parameters; and

WHEREAS, the City mailed and published notice of the proposed annexation and annexation policy declaration to all affected entities and received no protest to the annexation; and

WHEREAS, on May 10, 1997, the Council concluded in Resolution No. 10-97 that annexation was appropriate and that many, but not all, of the proposed development parameters could be accommodated in the Flagstaff area; and

WHEREAS, without withdrawing its annexation petition, the applicant rejected the Council's 1997 development parameters, and began to pursue development in unincorporated Summit and Wasatch Counties; and

WHEREAS, on July 8, 1998, the applicant approached the Council with a renewed desire to annex and with additional offers of on and off-site transportation facilities, utilities, enhancements, and recreation amenities; and

WHEREAS, the Council convened several work sessions, an additional public meeting, and facilitated interest group meetings to consider new development parameters; and

WHEREAS, on August 27, 1998, approximately 100 people attended, and over 20 individuals commented on new draft development parameters; and

WHEREAS, based on public input, Council further negotiated improved development parameters; and

WHEREAS, on September 10, 1998, the Council unanimously adopted a resolution to rescind Resolution No. 10-97 and to adopt new development parameters for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel, and the Iron Mountain Parcels; and

WHEREAS, a Development Agreement has been negotiated between the City and the Developer setting forth the terms of the September 10, 1998 resolution and further terms and conditions; and

WHEREAS, the City Council has held several public meetings on the proposed Development Agreement and has taken public input at those meetings; and

WHEREAS, the Property is not included within any other municipal jurisdiction and there have been no protests filed by any other jurisdictions;

00545109 Bk01277 Pg00554

NOW, THEREFORE BE IT ORDAINED, by the City Council of Park City as follows:

SECTION 1. ANNEXATION. The property is hereby annexed to the corporate limits of Park City, UT according to the annexation plat executed in substantially the same form as it is attached hereto as Exhibit A. The property so annexed shall enjoy the privileges of Park City and shall be subject to all City levies and assessments including those described in the Development Agreement, attached hereto as Exhibit B. The property shall be subject to all City laws, rules, and regulations.

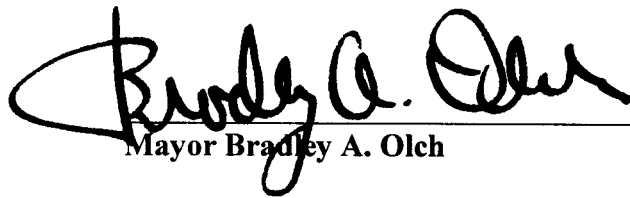
SECTION 2. COMPLIANCE WITH STATE LAW AND THE PARK CITY GENERAL PLAN. The annexation meets the standards for annexation set forth in Title 10, Chapter 2, of the Utah Code and the Park City General Plan.

SECTION 3. ZONING MAP AMENDMENT. The Official Zoning Map of Park City, as adopted by Section 1.9 of the Park City Land Management Code, is hereby amended to include the Flagstaff Annexation as depicted in Exhibit A.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect upon recordation of the annexation plat.

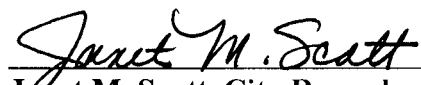
PASSED AND ADOPTED this 24th day of June, 1999.

PARK CITY MUNICIPAL CORPORATION



Mayor Bradley A. Olch

Attest:



Janet M. Scott, City Recorder



Approved as to form:



Jodi Hoffman, City Attorney

00545109 Bk01277 Pg00555

FLAGSTAFF MOUNTAIN AT DEER VALLEY

Boundary Description

Beginning at a point identified as County Line Monument Number 2343, said point on the line common to Summit and Wasatch counties and also on the demarcation line between the Park City Ski Area and the Deer Valley Resort, said point lying on the ridge and hilltop above the Anchor Mine Shaft and also being North 04°39'13" East 1303.92 feet, more or less, from the Southwest corner of Section 29, Township 2 South Range, 4 East, Salt Lake Base and Meridian and running Northeasterly along said demarcation and ridge line :

North 44°09'00" East 1236.63 feet; thence North 35°07'44" East 548.54 feet; thence North 37°33'27" East 779.84 feet; thence North 49°33'13" East 616.72 feet; thence North 71°34'40" East 644.26 feet; thence North 30°09'00" East 354.14 feet; thence North 20°48'44" East 698.015 feet; thence North 10°48'36" East 569.75 feet; thence North 23°55'00" East 604.00 feet; thence North 87°35'00" East 778.00 feet; thence North 77°17'18" East 735.40 feet; thence North 82°14' East 672.44 feet more or less to a point on the Westerly boundary line of the "Anchor Tunnel Portal Mining Reservation", said point being North 39°17'38" East 942.39 feet more or less from the Southwest corner of Section 21 Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also lying along the ridge line between Empire Canyon and Walker and Webster Gulch; thence along said ridgeline the following eight courses: thence North 64°44'13" East 136.79 feet; thence North 67°45'58" East 149.28 feet; thence North 81°11'10" East 122.88 feet; thence North 77°19'44" East 85.84 feet; thence North 77°48'30" East 79.25 feet; thence North 86°11'16" East 94.42 feet; thence South 72°54'27" East 85.42 feet; thence South 71°42'35" East 163.49 feet more or less to a point on the westerly right-of-way line of the Judge Tunnel/Empire Canyon Water Tank Supply Line Easement, said point lying North 79°18'06" West 5.00 feet more or less, from Map Point A-1 as described in that certain Reservoir Easement dated April 19, 1978 and Recorded as Entry No. 147912 in the Records of the of the Recorder for Summit County, Utah; thence along said westerly right-of-way the following fifteen (15) courses: North 10°41'54" East 76.70 feet; thence North 15°21'41" East 116.20 feet; thence North 56°44'38" East 142.80 feet; thence North 46°47'25" East 123.00 feet; thence North 35°09'16" East 88.70 feet; thence North 32°14'53" East 101.60 feet; thence North 32°00'03" East 159.20 feet; thence North 33°26'55" East 136.00 feet; thence North 38° 27'54" East 138.00 feet; thence North 27°54'51" East 126.00 feet; thence North 31°30'07" East 96.20 feet; thence North 40°35'50" East 110.80 feet; thence North 50°15'25" East 92.50 feet; thence North 56°00'00" East 94.90 feet; thence North 50°23'25" East 105.09 feet; thence North 47°29'30" East 405.07 feet more or less to a point on the westerly edge of Daly Avenue; thence along said Daly Avenue the following three courses: North 32°04'00" East 296.25 feet; thence North 29°09'57" East 315.97 feet; thence North 28°18'45" East 186.56 feet, more or less, to the East-West center line of Section 21 Township 2 South, Range 4 East, Salt Lake Base and Meridian, said Section Line also being the southerly

boundary line for the corporate limits of Park City, Utah; thence South $89^{\circ}59'59''$ East 940.12 feet, more or less, along said Section line 940.12 feet to a point on the easterly right-of-way line for Utah State Highway 224 as located in Ontario Canyon; thence along said highway the following 12 courses; South $00^{\circ}15'34''$ West 115.59 feet to a point on a 1,482.39 foot radius curve to the left; thence Southwesterly along the arc of said curve through a central angle of $15^{\circ}23'33''$ 398.24 feet more or less; thence South $15^{\circ}39'07''$ West 559.69 feet to a point on a 5,679.58 foot radius curve to the left; thence Southwesterly along the arc of said curve, through a central angle of $06^{\circ}11'23''$, a distance of 613.57 feet; thence South $09^{\circ}27'44''$ West 368.77 feet to a point on a 1,382.39 foot radius curve to the left; thence southerly along the arc of said curve, through a central angle of $16^{\circ}06'55''$, a distance of 388.82 feet; thence South $6^{\circ}39'11''$ East 217.32 feet to a point on a 586.62 foot radius curve to the left; thence southeasterly along the arc of said curve, through a central angle of $48^{\circ}51'38''$, a distance of 500.26 feet; thence South $55^{\circ}30'59''$ East 87.30 feet to a point on a 686.62 foot radius curve to the right; thence along the arc of said curve, through a central angle of $30^{\circ}23'53''$, a distance of 364.28 feet; thence South $25^{\circ}06'53''$ East 397.14 feet to a point on a 508.37 foot radius curve to the right; thence along the arc of said curve, through a central angle of $21^{\circ}36'53''$, a distance of 191.78 feet; thence South $3^{\circ}30'00''$ East 63.08 feet to a point on a 220.00 foot radius curve to the left; thence along the arc of said curve, through a central angle of $55^{\circ}51'14''$, a distance of 214.46 feet; thence South $31^{\circ}30'00''$ West 68.20 feet; thence South $79^{\circ}38'18''$ West 45.49 feet to a point on the southeasterly boundary of the Ontario Number 3 Shaft Mining Reservation; thence South $79^{\circ}59'46''$ West 300.78 feet more or less along the southeastern edge of said Mining Reservation; thence South $17^{\circ}09'45''$ East 88.76 feet more or less to a point on a piece of property that is the subject of Entry Number 158551 of the Summit County Records; thence along said parcel the following five courses: South 955.96 feet; thence North 69° East 360.00 Feet; thence South $29^{\circ}20'$ West 117.60 feet; thence North $78^{\circ}10'$ East 714.30 feet; thence East 1,106.71 feet more or less to a point the Wasatch-Summit County line: thence along said Wasatch – Summit County line. The following thirty courses: South $04^{\circ}15'00''$ East 1,028.07 feet; thence South $25^{\circ}30'30''$ East 2,521.90 feet to County Line Point 51; thence South $29^{\circ}50'00''$ West 1,398.30 Feet to County Line Point 55; thence South $4^{\circ}19'00''$ West 1,320.70 feet to County Line Point 58; thence South $47^{\circ}05'00''$ West 369.50 feet to a County Line Point; thence South $83^{\circ}34'00''$ West 69.10 feet to County Line Point 59; thence South $47^{\circ}42'00''$ West 1,207.40 feet to County Line Point 62A; thence North $39^{\circ}53'30''$ West 1,352.50 feet to County Line Point 64; thence North $72^{\circ}50'00''$ West 317.30 feet to County Line Point 65; thence North $46^{\circ}45'00''$ West 87.90 feet to County Line Point 66; thence North $70^{\circ}57'00''$ West 502.00 feet to County Line Point 67; thence North $51^{\circ}56'00''$ West 481.90 feet to County Line Point 68; thence North $55^{\circ}53'00''$ West 466.80 feet to County Line Point 69 feet; thence North $21^{\circ}49'00''$ West 317.40 feet to County Line Point 70; thence North $59^{\circ}57'00''$ West 360.50 feet to County Line Point and Triangulation Point; thence North $33^{\circ}22'30''$ West 467.10 feet to County Line Point 71; thence South $85^{\circ}10'30''$ West 492.30 feet to County Line Point 72; thence South $54^{\circ}42'30''$ West 453.20 feet to County Line Point 73; thence South $88^{\circ}55'30''$ West 344.00 feet to County Line Point 74; thence North $82^{\circ}52'30''$ West 1,132.30 feet to

County Line Point 77; thence North $59^{\circ}43'30''$ West 1,074.55 feet to County Line Point 2338; thence North $79^{\circ}07'30''$ West 494.73 feet to County Line Point 80; thence North $70^{\circ}28'30''$ West 339.90 feet to County Line Point 81; thence North $60^{\circ}14'30''$ West 550.10 feet to County Line Point 82 and Triangulation Point 2339; thence North $64^{\circ}07'00''$ West 727.60 feet to County Line Point 83; thence South $77^{\circ}44'00''$ West 966.80 feet to County Line Point 85; thence North $77^{\circ}28'00''$ West 161.00 feet to a County Line Point and Triangulation Point 2340 which is also Judge Triangulation Point Q; thence South $85^{\circ}36'00''$ West 219.10 feet to County Line Point 86; thence North $46^{\circ}44'00''$ West 384.70 feet to County Line Point 87; thence North $34^{\circ}37'00''$ West 1,077.30 feet, more or less to county Line Point 2343 the point of beginning. Said Parcel contains 1,655.4 acres more or less.



Resolution No. 20-99

**A RESOLUTION AUTHORIZING THE
FLAGSTAFF MOUNTAIN
DEVELOPMENT AGREEMENT**

WHEREAS, on May 17, 1994, United Park City Mines Company (UPCM) filed an application for annexation to Park City of certain UPCM holdings within the Ontario and Daly Canyons, along with property held by several other mining companies and/or families; and

WHEREAS, the Planning Commission reviewed the proposal several times throughout 1994 and 1995, provided feedback, and based on Planning Commission feedback, the applicant submitted a revised annexation plan on June 14, 1995; and

WHEREAS, the Planning Commission and a special Flagstaff Task Force held several meetings on the revised plan throughout the remainder of 1995 and the balance of 1996 and held public hearings on the revised plan on October 25, 1995 and November 13, 1996; and

WHEREAS, on March 26, 1997, the Planning Commission recommended annexation of the Flagstaff area, with certain development parameters; and

WHEREAS, the Council began its consideration of the Planning Commission recommendation on April 17, 1997, and continued to take staff, applicant, and public input on April 24, 25, 28 and 29, and May 1, 6, and 8, 1997; and

WHEREAS, on April 24, 1997, the Council opened a public hearing for over 350 attendees, and took testimony from 46 participants. The public sentiment revealed support for annexation, but concerns regarding the development parameters; and

WHEREAS, the City mailed and published notice of the proposed annexation and annexation policy declaration to all affected entities and received no protest to the annexation; and

WHEREAS, on May 10, 1997, the Council concluded in Resolution No. 10-97 that annexation was appropriate and that many, but not all, of the proposed development parameters could be accommodated in the Flagstaff area; and

WHEREAS, without withdrawing its annexation petition, the applicant rejected the Council's 1997 development parameters, and began to pursue development in unincorporated Summit and Wasatch Counties; and

WHEREAS, on July 8, 1998, the applicant approached the Council with a renewed desire to annex and with additional offers of on and off-site transportation facilities, utilities, enhancements, and recreation amenities; and

WHEREAS, the council convened several work sessions, an additional public meeting, and facilitated interest group meetings to consider new development parameters; and

WHEREAS, on August 27, 1998, approximately 100 people attended, and over 20 individuals commented on new draft development parameters; and

WHEREAS, based on public input, Council further negotiated improved development parameters; and

WHEREAS, on September 10, 1998, the Council unanimously adopted a resolution to rescind Resolution No. 10-97 and to adopt new development parameters for Flagstaff Mountain, Bonanza Mountain, Richardson Flats, the 20-Acre Quinn's Junction Parcel and the Iron Mountain Parcels; and

WHEREAS, a Development Agreement has been negotiated between the City and the Developer setting forth the terms of the September 10, 1998 resolution and further terms and conditions; and

WHEREAS, it is in the best interests of the City to authorize the Mayor to execute the Development Agreement;

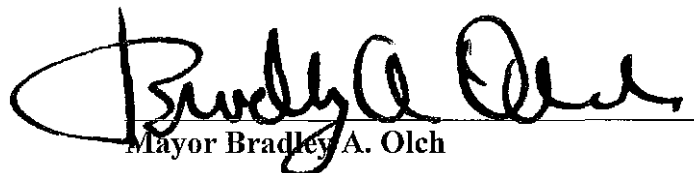
NOW, THEREFORE BE IT RESOLVED, by the City Council of Park City, Utah, as follows:

SECTION 1. AUTHORIZATION TO EXECUTE. The Mayor is hereby authorized to execute the Development Agreement in substantially the same for attached hereto as Exhibit A which sets forth, *inter alia*, the terms and conditions of annexation of Flagstaff Mountain.

SECTION 2. EFFECTIVE DATE. This Resolution shall take effect immediately.

PASSED AND ADOPTED this 24th day of June, 1999.

PARK CITY MUNICIPAL CORPORATION


Mayor Bradley A. Olch

Attest:

Janet M. Scott
Janet M. Scott, City Recorder

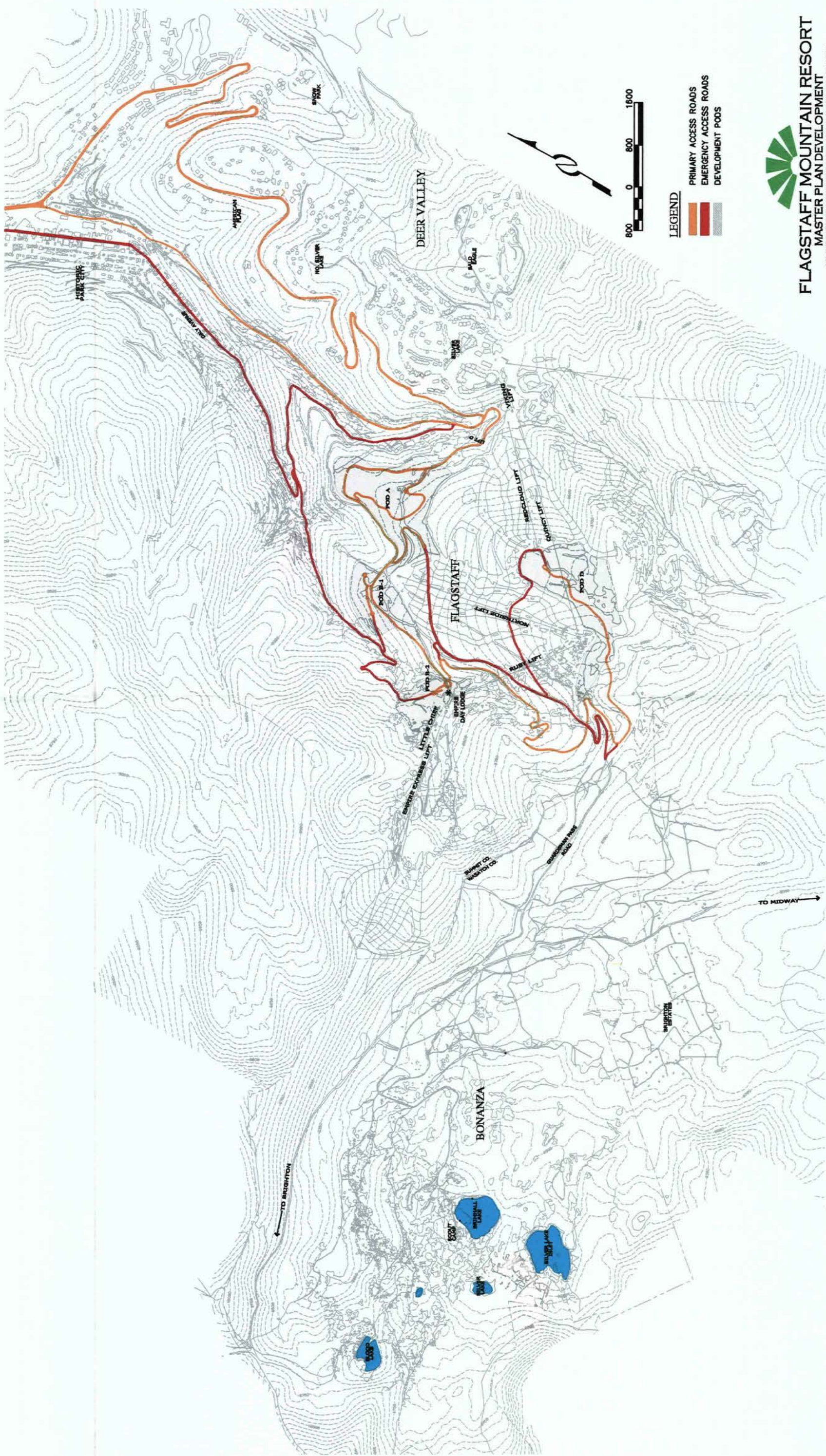


Approved as to form:

Jodi Hoffman
Jodi Hoffman, City Attorney

EXHIBIT A

REFER TO RECORDER FILE 99-0624



EMERGENCY RESPONSE PLAN

REVISED AUGUST 30, 2004

SECONDARY EMERGENCY ACCESS PLAN EXHIBIT "J" WINTER



FLAGSTAFF MOUNTAIN RESORT MASTER PLAN DEVELOPMENT

A PLANNED RESORT COMMUNITY LOCATED IN DEER VALLEY, PARK CITY, UTAH

DEVELOPED BY:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1480 PARK CITY, UTAH 84060
PHONE (435) 649-6011 FAX (435) 649-6035
ARCHITECT/ENGINEER:
ALLEN ENGINEERING INC. BUSINESS, SURVEYORS & PLANNERS
DOUGLAS CLYDE, PLANNING, PERMITTING & ENVIRONMENTAL



EMERGENCY RESPONSE PLAN

REVISED AUGUST 30, 2004

SECONDARY EMERGENCY ACCESS PLAN EXHIBIT "J" SUMMER



FLAGSTAFF MOUNTAIN RESORT
MASTER PLAN DEVELOPMENT
A PLANNED RESORT COMMUNITY LOCATED IN DEER VALLEY, PARK CITY, UTAH

DEVELOPED BY:
UNITED PARK CITY MINES COMPANY
P.O. BOX 1480 PARK CITY, UTAH 84060
PHONE (435) 649-6011 FAX (435) 649-6035
ALLIANCE ENGINEERING INC. ENGINEERS, ARCHITECTS, & PLANNERS
DOUGLAS CLYDE, PLANNING, PERMITTING, & ENVIRONMENTAL

EMPIRE PASS
THE VILLAGE MASTER PLAN
A PLANNED RESORT COMMUNITY LOCATED IN DEER VALLEY, PARK CITY, UTAH.

DEVELOPED BY:
UNITED PARK CITY MINE COMPANY
P.O. BOX 1450
PARK CITY, UTAH 84060
PHONE (435) 649-8011
FAX (435) 649-8035

PLANS PREPARED BY:
ALLIANCE ENGINEERING INC.: ENGINEERS, SURVEYORS, & PLANNERS
DOUGLAS CLYDE: PLANNING, PERMITTING, & ENTITLEMENTS
HART HOWERTON, PLANNERS: ARCHITECTS, LANDSCAPE ARCHITECTS
SEGERBERG, MAYHEW & ASSOCIATES ARCHITECTS, P.C.
GWATHMEY PRATT SCHULTZ ARCHITECTS, P.C.
OZ ARCHITECTURE

- SHEET INDEX**
- 1. SHEET INDEX / VICINITY MAP
 - 2. EXISTING CONDITIONS ORTHOGRAPHIC
 - 3. SITE / GRADING PLAN
 - 4. CONCEPT WATER PLAN
 - 5. CONCEPT SEWER PLAN
 - 6. CONCEPT STORM DRAIN PLAN
 - 7. LIMITS OF DISTURBANCE PLAN
 - 8. LIMITS OF DISTURBANCE PLAN WITH ORTHOGRAPHICS
 - 9. PRELIMINARY PLAT
 - 10. SETBACK EXHIBIT

June 11, 2004

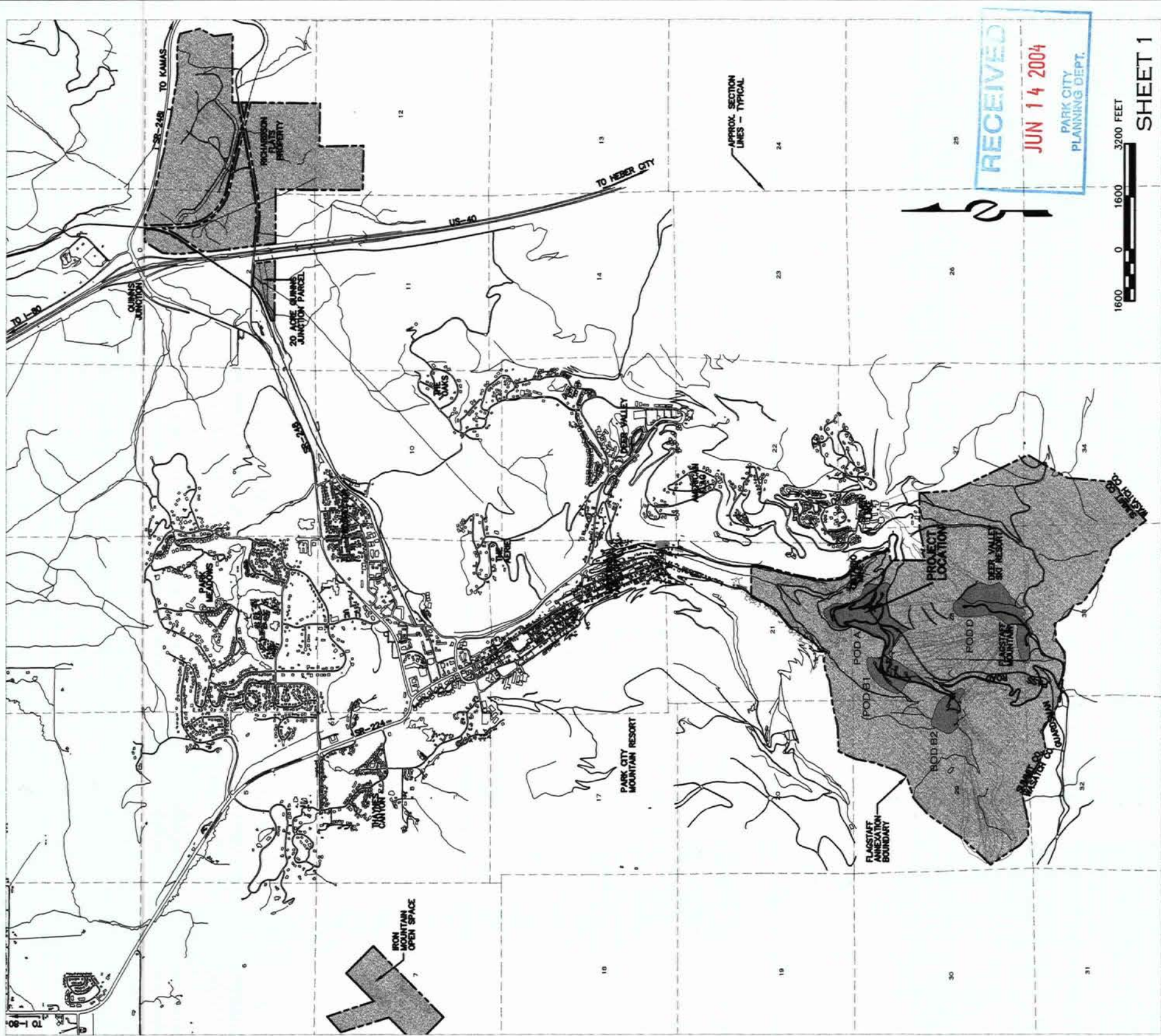


Exhibit J – Link to Technical Reports

[Volume 1 of 2](#)

[Volume 2 of 2](#)

[Open Space Management Plan](#)

[Historic Preservation Plan](#)

Planning Commission Staff Report

Author: Brooks T. Robinson
Subject: Village at Empire Pass,
Master Planned Development
Date: July 28, 2004
Type of Item: Administrative

Note
changes

PARK CITY

1884

**PLANNING
DEPARTMENT**

Summary Recommendations:

The Planning Department recommends the Planning Commission re-open the public hearing and take public comment. Staff has prepared Findings of Fact, Conclusions of Law and Conditions of Approval.

Topic

Applicant

United Park City Mines / Talisker Corp.

Location

Village at Empire Pass (formerly known as Flagstaff Mountain Resort)

Zoning

Residential Development (RD) as part of the Flagstaff Master Planned Development (MPD)

Adjacent Land Uses

Deer Valley Resort ski terrain, State Route 224

Background

On June 24, 1999, Council adopted Ordinance 99-30 approving the annexation and development agreement for the 1,655 acre Flagstaff Mountain area. Ordinance 99-30 granted the equivalent of a "large-scale" master planned development (MPD) and set forth the types and locations of land use; maximum densities; timing of development; development approval process; as well as development conditions and amenities for each parcel.

The Development Agreement specifies that only 147 acres of the 1,655 acre annexation may be developed. The remainder of the annexation area is to be retained as passive and recreational open space.

Prior to construction, the applicant must receive site-specific MPD and final plat approval from the City. The Planning Commission takes action on MPD applications and forwards a recommendation to Council on subdivision plats.

Ordinance 99-30 also required that the applicant submit 14 specific technical reports for review and approval by the City. The 14 studies, along with the Land Management Code and the Development Agreement (99-30) form the standards under which the subject MPD and preliminary/final plat will be reviewed.

During the Olympic break a subcommittee consisting of the applicant's design team, staff, and Commissioners Chris Larson, Bruce Erickson, and Michael O'Hara focused on a review of the preliminary road layout for the mountain village (Pods A, B-1, and B-2) and a building height analysis for the project build-out using the base RD-zone 33 foot height limit. These items were reviewed at a work session and a public hearing on March 27, 2002. No public comment was received. The Commission concluded that:

1. The base RD-zone height analysis demonstrates that the maximum project densities set forth in Ord. 99-30 could potentially be constructed within the approved development pods without the necessity of a height increase above the 33-foot RD zone height limit; and
2. Building height increases for specific multi-family/resort-related buildings may be considered based on site-specific reviews and compliance with the standards set forth in the Master Planned Development section of the Land Management Code (LMC).

Proposal

The applicant seeks Master Planned Development (MPD) approval for the Mountain Village (Pods A, B-1, and B-2), now called the Village at Empire Pass. Pod B-1 was previously approved in May 2002. B-2 is not far enough along in the planning process to have a clear idea of that part of the development. However, residual units and unit equivalents remain for a future B-2 MPD.

The Development Agreement constrains the mixed-use development in the Mountain Village area (Pods A, B-1, and B-2) to:

- The Mountain Village is to be contained within 84 acres.
- No more than 705 Unit Equivalents (2,000 square feet each) in no more than 470 residential units (including not more than 60 PUD-style units) and no more than 16 single-family home sites.
- 65% of the residential units (306) must be within Pod A.
- No more than 75,000 square feet of resort support commercial.
- A maximum 35,000 square foot day skier lodge in Pod B-2 with no public road access, no day skier parking, and limited parking to meet service and administrative requirements.

On May 22, 2002, the Planning Commission approved an MPD and final plats for portions of the Mountain Village including:

Lot	Unit Equivalents	Actual Units	Acres
Ten single family homes	Does not count towards 705 total		6.40 acres in Pod B-1

A: Empire Day Lodge	None currently. Commercial activities outside of Day Skier use may require use of Commercial UEs.		1.33 acres in Pod B-2
B: PUD-style homes	27 UEs	18	16.99 acres in Pod B-1
C: Ironwood Townhomes	37.5 UEs	25	3.63 acres in Pod B-1
D: Building H	33 UEs plus 1UE Support Commercial	22	1.34 acres in Pod A
Larkspur Townhomes (currently approved is a tri-plex and a duplex)	7.1 UEs or 14,052 sf	5	Pod A
Paintbrush PUD-style SFD	18.1 UEs or 36,139 sf	7	Pod A
TOTAL: 77 units (10 SFD homes do not count towards total)	<u>123.7</u>	77 -	28.35 acres outside of Pod A

Proposed Pod A Village (excludes Building H which is in Pod A; includes already approved Paintbrush and Larkspur units)

Lot	Unit Equivalents	Actual Units	Units as PUDs	Single Family
Buildings 1-9	225.6 UEs	217 Units		
PUD-style	85.4	30	30	
Townhomes	64	51	8	
Banner SFD				6
Total	375	298	38	6

Analysis

Master Planned Development Review

Staff has performed a final review of the proposed Master Planned Development per the Land Management Code Section 15-6-5: Master Planned Developments-MPD Requirements.

Length of Approval

Construction of the approved MPD will be required to commence within two (2) years of the approval date. After construction commences, the MPD remains valid as long as it is consistent with the approved MPD and any phasing plan.

MPD Modifications

Substantive changes to the MPD require a subsequent Planning Commission review and approval of the MPD and Development Agreement.

Site Specific Approvals

Conditional use permit approval including a specific density (square foot) allocation will be required prior to the construction of the PUD-style single-family units and the multi-family units. No conditional use permit is required for the proposed 6 single-family lots. Approval and recordation of the subdivision plat, as well as City Engineer approval of all public improvements is necessary prior to construction of the proposed subdivision.

Density

With the current approvals noted above, Pod A and the development parcel of Pod B-2 outside of the Empire Day Lodge is limited to 55.65 acres, 393 residential units and 563.3 Unit Equivalents. ^{(includes 18 PUDs in Lot B) Pod B-2} Pod A has 34 units (9 PUDs, 3 townhomes, and 22 condo-lodge units in Building H) already approved of the 306 residential units that are required to be in Pod A. Proposed for Pod A is 321.5 Units, which includes the 34 units, leaving up to 105.5 units unallotted. In addition, the remaining 6 single-family lots of the 16 allowed in the Village are proposed in Pod A.

Marsac Claim/Mayflower

Please refer to the July 14, 2004 report for discussion on the Marsac Claim and Mayflower holdings. The Court issued a ruling in the partition case between Mayflower and Unite Park. Staff will update the Commission as necessary, but it does not impact this application or approval.

Pod B-1

The density table allocates 90,000 square feet or 45 Unit Equivalents to Lot C. The previous MPD approval for these 18 PUD-style homes allocated 27 UEs to this lot, with each unit being up to 5,000 square feet. The footprints and sections that were reviewed by the Planning Commission were concepts of 5,000 square foot units. An amendment to the MPD will be required to adjust this number, however the density table recognizes that up to 90,000 square feet may be assigned to Lot C. ~~B~~

Pod B-2

The developer is unsure what this last development piece may look like. Several alternatives were presented in the Planning Commission binder. An MPD will be required when a UPK has a better idea of how this pod will develop. This MPD approval only applies to Pod A.

Setbacks

The LMC requires a minimum 25-foot setback around the exterior boundary of a master planned development. The proposed Village MPD complies with this standard. Within the Village, the Planning Commission may reduce the RD zone setbacks. Exhibit 10 (Setback Exhibit) shows potential areas for setback reductions based on the conceptual site plans. Specific setbacks will be considered during the Conditional Use Permit process.

Open Space

The Development Agreement limits the overall development to 147 acres out of the 1,655-acre project area. The 88% open space provision exceeds the normal 60% open space requirement set forth in the LMC. Within each of the pods, Conservation Easements will be placed on several lots to restrict development on platted lots. Staff finds that this restriction is consistent with the development acreage restriction and will not count the Conservation Easement areas as part of the development acreage.

Off-Street Parking

The Parking and Transit Management Plans (adopted by the Planning Commission on October 24, 2001) establish specific parking requirements for the project area that include a 25% parking reduction from the normal LMC requirements for multi-family and commercial units. Parking for all single-family and PUD-style single-family units will meet or exceed the two-space/unit requirement. Specific parking requirements for the multi-family units and any commercial area will be subject to more specific analysis during the subsequent conditional use permit review process.

Building Height

The single-family (both PUD and non-PUD) and townhouse units will be constructed pursuant to the 33' RD-zone height limitation. Height exceptions are being requested for the nine stacked-flat condo-lodges including the Empire (Alpine) Club. The applicant's request and discussion of the four required findings for additional height are discussed in the Volumetrics Analysis section of the application binder. The Planning Commission gave a final review of the Visual Analysis and building heights at the July 14, 2004 hearing and preliminarily determined the proposed heights comply with these criteria.

The LMC grants the Planning Commission the authority to allow additional building height based upon site-specific analysis provided the Commission can make the following four findings. The findings are listed below with Staff comments.

1. The increase in building height does not result in an increase in square footage or building volume over what could be allowed under the zone-required building height and density, including requirements for facade variation and design, but rather provides desired architectural variation.

Complies. In January 2002, a Planning Commission subcommittee and staff met with the applicant over the course of several meetings to review a base zone height analysis of the Flagstaff Mountain Resort (now Empire Pass) project. The

analysis was conducted to determine whether or not the density authorized in Development Agreement and Large-Scale MPD could be designed to meet the RD District 33-foot building height limits. Based on this analysis, it was determined that the Mountain Village area (Pods A, B-1, and B-2) could be designed utilizing 2-3 story, relatively-flat roof structures (4:12 roofs) and meet all necessary LMC height, setback, and facade shift requirements without the necessity of height exceptions. The result of such a design approach to the Mountain Village would be significantly greater site disturbance and loss of significant areas of vegetation. At the March 27, 2002 meeting, the Planning Commission reviewed the analysis and concluded that additional building height could be considered for multi-unit dwellings provided that proposal was consistent with the LMC.

Consistent with the base zone height analysis previously reviewed by Staff and the Planning Commission, the proposed buildings 1-9 volumetrics result in a unit count and overall square footage consistent with the density assigned to the Mountain Village area pursuant to the Development Agreement and Large-Scale MPD approval. Therefore, there is no increase in density or square footage as a result of the height increase. The additional height is also offset by increased setbacks that offer opportunities for greater landscape buffers to be established. The proposed roof design, including pitched roofs that step with grade, are consistent with LMC Architectural Design Guidelines, suggestive of pitched/sloping roofs found on historic mine structures originally located in the area, provide increased vertical breaks in the building mass, and increased architectural interest beyond that provided by a relatively flat roof building.

2. Buildings have been positioned to minimize visual impacts on adjacent structures. Potential problems on neighboring properties caused by shadows, loss of solar access, and loss of air circulation, have been mitigated to the extent possible as defined by the Planning Commission.

Complies. No structures currently exist on the neighboring properties. Townhouses and Single Family/PUD-style units are proposed to the south, east and west of the nine building core. The conceptual site plan is designed to orient the multi-family units to the central ski run and to mountain views to the west and east.

3. There is adequate landscaping and buffering from adjacent properties and uses. Increased setbacks and separations from adjacent projects are being proposed.

Complies. The proposed building exceeds the RD District setback requirements. The setback requirements of the RD District are 20 feet for front yards, 15 feet for rear yards, and 12 feet for side yards. The proposed setbacks are 25-55 feet for the front yard setback, 15-25 feet for the rear setback, and 15-30 feet for the side yard setback. Staff finds that sufficient building separation between each

structure is provided. A specific landscaping/buffer plan will be required as part of the conditional use permit review for each of the nine buildings.

4. The additional building height has resulted in more than minimum open space required and has resulted in the open space being more usable.

Complies. The Mountain Village design clusters the majority of the Empire Pass density into Pods A, B-1, and B-2 in exchange for larger areas of project open space. The LMC requirement for MPD open space is 60%. Approximately 88% open space is provided pursuant to the Development Agreement. The bulk of the project open space is utilized for passive recreation areas, trails, ski terrain and improvements, wildlife areas, and sensitive terrain preservation.

In addition to the criteria outlined above, the Planning Commission subcommittee identified several vantage points during the Olympic break that are to be used during MPD and subsequent PUD reviews. The vantage points include views from King Road, two points from Stein Eriksen Lodge, the Marsac Building, Guardsman Road/Guardsman Road Connection intersection, the Daly West head frame, and American Flag Subdivision. A visual analysis of the Village from these vantage points has been included with this report as an attachment. As demonstrated by the visual analysis, the nine buildings are partially visible from the subcommittee's vantage points, but are mitigated by the current and potential tree canopy and the backdrop of the mountains behind. The buildings do not break any significant ridgelines.

Site Planning

The nine site planning criteria outlined in the LMC are intended to promote overall design that incorporates the development into the site's natural characteristics. Generally, the location of the proposed development parcels is consistent with the development pods approved as part of Development Agreement and Large-Scale MPD which clustered the development onto less-steep terrain and in the least visually sensitive areas. The open space areas designated in the Development Agreement are respected with this plan.

Roads

The roadway system has been reviewed by staff and is much preferable to the previous configurations. Three roads plus a frontage road on the north end townhouses serve Pod A. The previous configuration had dead-end cul de sacs serving the interior larger buildings. The present configuration allows for greater tree buffer along Marsac Avenue and reduced grading. However, a cul de sac in excess of 650 feet is created in the southwest quadrant. This is in conflict with the general policy and subdivision code of the City to limit the length of dead-end roads. The Chief Fire Marshall finds the plan to comply with the necessary standards for fire access and safety. The end of the cul de sac continues as an emergency access point as part of the Emergency Response Plan. The Commission reviewed this issue at the work session of April 14, 2004 and was

accepting of the Fire Marshall's recommendation. Approval of the proposed cul de sac will require a specific finding of the Planning Commission.

Trails

Existing and new trails are accommodated with the proposed plan. All "back-country" work is to be coordinated with the Mountain Trails Foundation. The proposed trail work is consistent with the Trails Master Plan adopted by the Planning Commission on October 24, 2001.

Overall pedestrian circulation is outlined in the applicant's packet. The internal pedestrian paths are intended to keep users off the roads as much as possible and to link the Empire Club with the outlying areas. There may be instances, particularly at the north and south ends, where sidewalks along the streets would be required in order to meet the subdivision regulations. The Planning Commission discussed this issue on April 14, 2004 and agreed to waive this requirement. Snow storage, landscaping, recycling, delivery access, and ADA access for multi-family units will also be analyzed during the subsequent conditional use permit process.

Landscape and Streetscape

Landscaping, streetscape, and lighting will be reviewed for the multi-family and PUD-style single-family lots during the subsequent conditional use permit process. The applicant will need to clarify the amount and type of street lighting proposed along the residential streets. The lighting must comply with the City Engineer's specifications, the Municipal Lighting Code, and the Design Guidelines adopted by the Planning Commission on October 24, 2001. All streetlights will be privately maintained. Staff has added a Condition of Approval that each CUP application include a preliminary landscape plan with water-efficient irrigation systems.

Sensitive Lands Compliance

The Sensitive Lands (overlay) Zone did not specifically apply to the Empire Pass Large-Scale MPD and annexation; however, the locations of the development pods are based on Sensitive Lands principles.

Employee/Affordable Housing

Pursuant to the Flagstaff Mountain Resort Employee/Affordable Housing Plan, 15 employee/affordable housing units are required to be constructed or in-lieu fees paid with the Certificate of Occupancy of 150 Unit Equivalents. Review of the employee housing units and specific conditions of approval will take place during the conditional use permit review process.

Recommendation: The Planning Department recommends the Planning Commission re-open the public hearing and take public comment. Staff has prepared Findings of Fact, Conclusions of Law and Conditions of Approval for the Village at Empire Pass as follows:

Findings of Fact

1. The Village at Empire Pass (Mountain Village) Master Planned Development is located in the RD-MPD and ROS-MPD Districts.
2. The City Council approved the Development Agreement for Flagstaff Mountain Development Agreement/Annexation Resolution No. 99-30 on June 24, 1999. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities.
3. The Flagstaff Mountain Annexation is approximately 1,655 acres. Mixed-used development is limited to approximately 147 acres in four (4) development areas identified as Pods A, B-1, B-2, and D. The remainder of the annexation area is to be retained as passive and/or recreational open space.
4. The Development Agreement limits development in Pods A, B-1, B-2 to:
 - No more than 705 Unit Equivalents in no more than 470 residential units (including not more than 60 PUD-style units) and no more than 16 single-family home sites.
 - no more than 75,000 square feet of resort support commercial; and
 - a maximum 35,000 square foot day skier lodge in Pod B-2.
5. The Development Agreement required City review and approval of fourteen (14) technical reports/studies. The reports include details on the following information:
 - Mine/Soil Hazard Mitigation
 - Architectural Design Guidelines
 - Transit
 - Parking
 - Open Space Management
 - Historic Preservation
 - Emergency Response
 - Trails
 - Private Road Access Limitations
 - Construction Phasing
 - Infrastructure and Public Improvement Design
 - Utilities
 - Wildlife Management
 - Affordable Housing
6. The Planning Commission completed the review and approval process for the technical reports/studies on December 12, 2001.

7. This Master Plan for Pod A consists of a total of 321.5 units and 435.6 Unit Equivalents, including the previously approved Paintbrush, Larkspur, and Building H; the Transit Hub, ski lift and ski trails, and the location of the Alpine Club.
8. Over 65% of the residential units (minimum 306) are within Pod A and within walking distance of the Transit Hub as required by the Development Agreement.
9. The 14 technical reports/studies, along with the Land Management Code and the Development Agreement (99-30) form the standards which the subject Master Planned Development and Phase 1 preliminary/final plat are reviewed.
10. The applicant has provided supplemental materials including Master Plan Development Project Description (dated July 2004, Exhibit A), Supplemental Project Description and Conditions (dated July 5, 2004, Exhibit B) Volumetric Analysis (dated July 5, 2004, Exhibit D and E), Visual Analysis dated July 4, 2004 (Exhibit F), Architectural Character dated March 19, 2004 (Exhibit G), and Supplemental Plans including Building Height Diagram, Vegetative Buffer, Trails, and Construction Sequencing (Exhibit H), ^{and a Compliance Matrix w/ the Tech. Reports (Exhibit I)} Together with the Site Plans dated July 21, 2004 (Exhibit C), these Exhibits and this report comprise the Village at Empire Pass MPD. *incorporating the revisions of July 28*
11. The Village at Empire Pass MPD illustrates conceptual access and street layouts that have not been specifically approved by the City Engineer and City Fire Marshall. Final road layout will be subject to individual Subdivisions and Conditional Use Permits.
12. Conditional Use Permit approval is required prior to any development within the Village at Empire Pass MPD area.
13. The proposed Village at Empire Pass Master Planned Development includes a maximum density assignment and conceptual site design for Thirty (30) detached single-family PUD-style units utilizing 85.4 Unit Equivalents.
14. The proposed Village at Empire Pass Master Planned Development includes a maximum density assignment and conceptual site design for Fifty-One (51) Townhouse units utilizing 64 Unit Equivalents. Eight of these Townhouse units are in a duplex configuration and count towards the PUD limit of 60.
15. The proposed Village at Empire Pass Master Planned Development includes a conceptual site design for Six (6) single-family homes.
16. Conservation Easements are proposed within platted lots. These Conservation Easement areas will not count towards the development acreage.
17. The PUD-style cluster homes and the Townhomes are to be platted as condominiums and not as individual lots.

18. Utility lines and ski trails will be routed in existing clearings and common utility corridors to the greatest extent practical upon the City Engineer's approval.
19. The Emergency Response Plan has been reviewed by the Chief Fire Marshall and the Planning Commission in order to allow fire access and safety at the end of the over length cul de sac.
20. The Planning Commission may decrease setbacks within an MPD. Setback variance is shown on Sheet 10 of 10 of Exhibit A, dated June June 15, 2004.
21. The maximum Building Height in the RD District is 28 feet (33 feet with a pitched roof).
22. The Land Management Code, Section 15-6-5(E) allows the Planning Commission to consider increased building height based upon a site specific analysis and determination.
23. The applicant has requested additional building height for the structures proposed as Buildings 1-9, inclusive. The proposed building volumetrics are detailed on Exhibit D dated June 14, 2004.
24. The proposed increase in building height for Buildings 1-9 does not result in an increase in square footage or building volume over what could be allowed under the zone-required building height and density, including requirements for facade variation and design, but rather provides desired architectural variation.
25. Proposed Buildings 1-9 has been positioned to minimize visual impacts on adjacent structures. Potential problems on neighboring properties caused by shadows, loss of solar access, and loss of air circulation, have been mitigated to the extent possible as defined by the Planning Commission.
26. The site plan for proposed Buildings 1-9 on includes adequate landscaping and buffering from adjacent properties and uses.
27. The additional building height for proposed Buildings 1-9 has resulted in more minimum open space than required and has resulted in the open space being more usable.
28. An MPD for pod B-2 will be reviewed under a separate MPD application.

~~29. A Compliance Matrix of the Compliance with the Technical Reports is attached~~
Conclusions of Law ~~Add to #10~~ as Exhibit I.

1. The MPD, as conditioned, complies with all the requirements of the Land Management Code;

2. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 of this Code;
3. The MPD, as conditioned, is consistent with the Park City General Plan;
4. The MPD, as conditioned, provides the highest value of open space, as determined by the Planning Commission;
5. The MPD, as conditioned, strengthens and enhances the resort character of Park City;
6. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;
7. The MPD, as conditioned, is Compatible in use, scale and mass with adjacent Properties, and promotes neighborhood Compatibility;
8. The MPD provides amenities to the community so that there is no net loss of community amenities;
9. The MPD, as conditioned is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
10. The MPD, as conditioned, meets the provisions of the Sensitive Lands provisions of the Land Management Code. The project has been designed to place Development on the most Developable Land and least visually obtrusive portions of the Site:
11. The MPD, as conditioned promotes the Use of non-vehicular forms of transportation through design and by providing trail connections; and,
12. The MPD has been noticed and public hearings held in accordance with this Code.
13. The requirements necessary for the Planning Commission to grant additional building height within the MPD pursuant to the Land Management Code Section 15-6-5 have been met.

Conditions of Approval

1. A Conditional Use Permit is required prior to any development within the Village at Empire Pass MPD area. As per the Phasing Plan, only the nine large multi-family buildings require a CUP review by the Planning Commission. All other units are to be reviewed at a Staff level.

2. City Engineer approval of a utility and infrastructure plan is a condition precedent to the issuance of any building permits within the Village Master Planned Development area.
3. Utility lines and ski trails shall be routed in existing clearings and common utility corridors to the greatest extent practical upon the City Engineer's approval.
4. If and when the realigned Guardsman road is dedicated to the City, the Developer will execute an encroachment agreement, in a form acceptable to the City Attorney and City Engineer for the private improvements (ski bridges and/or tunnels) within the rights-of-way.
5. All essential municipal public utility buildings associated with the utility plan for the subdivision require a conditional use permit.
6. The proposed over-length cul de sac that ends in the six single family lots will have a secondary emergency access from the end of the road to Marsac Avenue. The emergency access will continue as a minimum 20-foot wide all-weather surface road.
7. A Construction Mitigation Plan, including truck routing, is a submittal requirement for each Conditional Use Permit.
8. A preliminary landscape plan, including provisions for water-efficient irrigation systems, shall be submitted with each CUP application.
9. All subsequent applications and approvals are subject to the Technical Reports as approved or amended,

Exhibits

- A – Master Plan Development Project Description (8 pages)
- B – Supplemental Project Description and Conditions (3 pages)
- C – Conceptual Plans (10 pages)
- D – Volumetric Analysis (3 pages)
- E – Volumetrics, Buildings 1-9 (19 pages)
- F – Visual Analysis (5 pages)
- G – Architectural Character (6 pages)
- H – Supplemental Plans

→ I - Compliance Matrix

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BE/BP

6.0 Thomas not
voting.



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Montage Resort and Spa at Deer Valley

B-2 MPD Village Master Plan at Empire Pass

PARK CITY, UTAH



April 24, 2006

SHEET INDEX

A	0.01	SHEET INDEX
A	1.01	PERSPECTIVE B2-W AND B2-E FROM SKI AREA
A	1.02	PERSPECTIVE B2-W HOTEL APPROACH
L	1.01	CONCEPTUAL LANDSCAPE PLAN
LW	1.02	SITE SECTION AT HOTEL B2-W
AW	3.01	VOLUMETRICS PLAN HOTEL B2-W
AW	3.02	VOLUMETRICS PLAN VIEW EAST - HOTEL B2-W
AW	3.03	VOLUMETRICS PLAN VIEW NORTH - HOTEL B2-W
AW	3.04	VOLUMETRICS PLAN VIEW WEST - HOTEL B2-W
AW	3.05	VOLUMETRICS PLAN VIEW SOUTH - HOTEL B2-W
AE	3.06	VOLUMETRICS PLAN CONDOMINIUM B2-E
AE	3.07	VOLUMETRICS PLAN VIEW NORTH - CONDOMINIUM B2-E
AE	3.08	VOLUMETRICS PLAN VIEW SOUTH - CONDOMINIUM B2-E
C	1.01	SITE PLAN & VICINITY MAP
C	1.02	B2 WEST & B2 EAST CONCEPT UTILITY PLAN



HILL GLAZIER ARCHITECTS, INC.

Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	10000
Sheet No.	10000-001
Scale	As Shown
Drawn By	A 001



PERSPECTIVE B2-W HOTEL APPROACH



HILL GLAZIER ARCHITECTS, INC. 200

Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	10008
Date	APRIL 24 2004
Scale	AS NOTED
Sheet No.	A102

(THIS PLAN IS A PRELIMINARY CONCEPTUAL LANDSCAPE PLAN. IT IS NOT A FINAL DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION. IT IS THE PROPERTY OF HILL GLAZIER ARCHITECTS, P.C. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM HILL GLAZIER ARCHITECTS, P.C.



CONCEPTUAL LANDSCAPE PLAN

Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

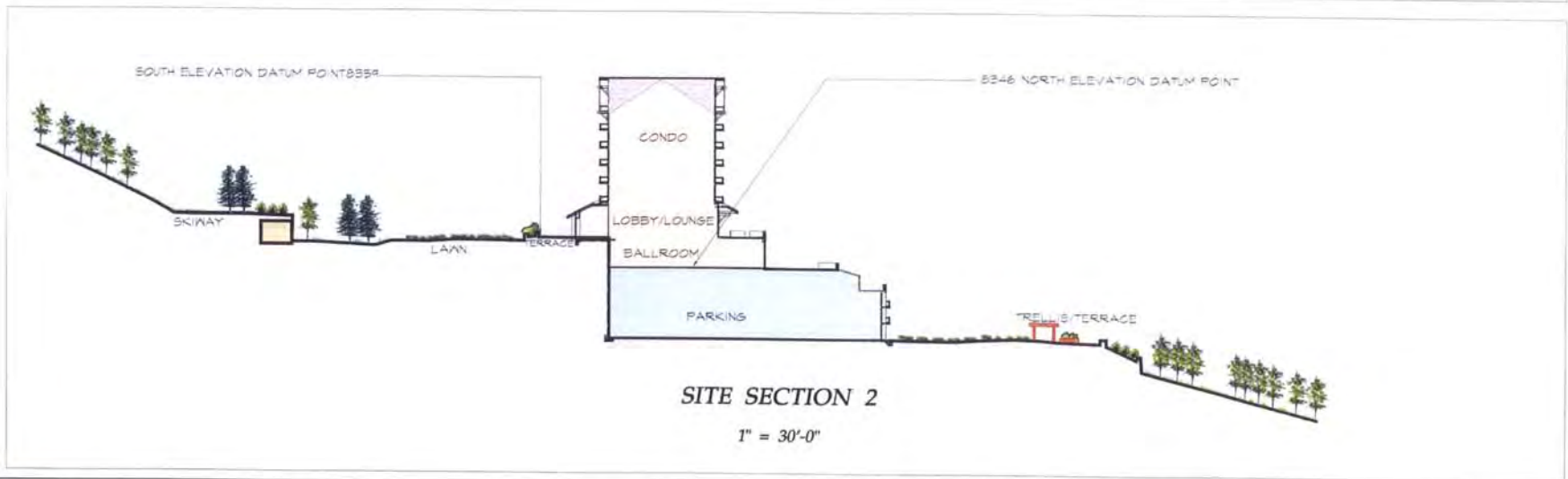
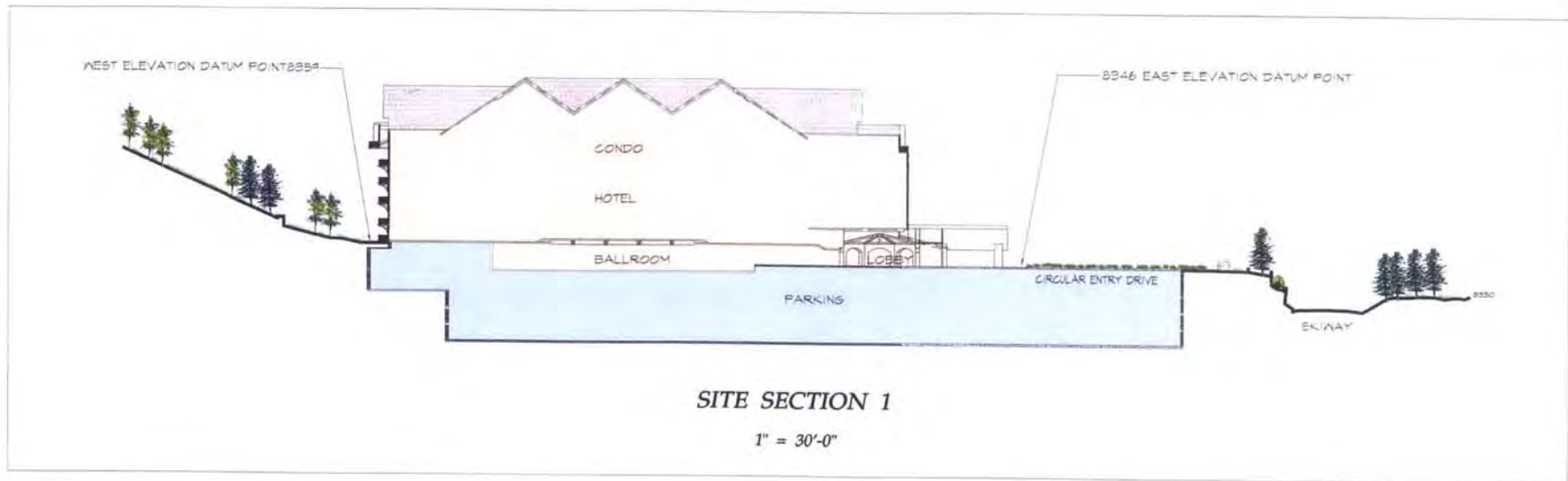


HILL GLAZIER ARCHITECTS, P.C.



TERRASAN
LANDSCAPES
ARCHITECTS
1600 GR PINE STREET
DENVER, CO 80218
Tel: (303) 331-1717
Fax: (303) 331-1818

Project No.	11000
Site	4000 1st Street
Date	10/10/01
Sheet No.	L 101

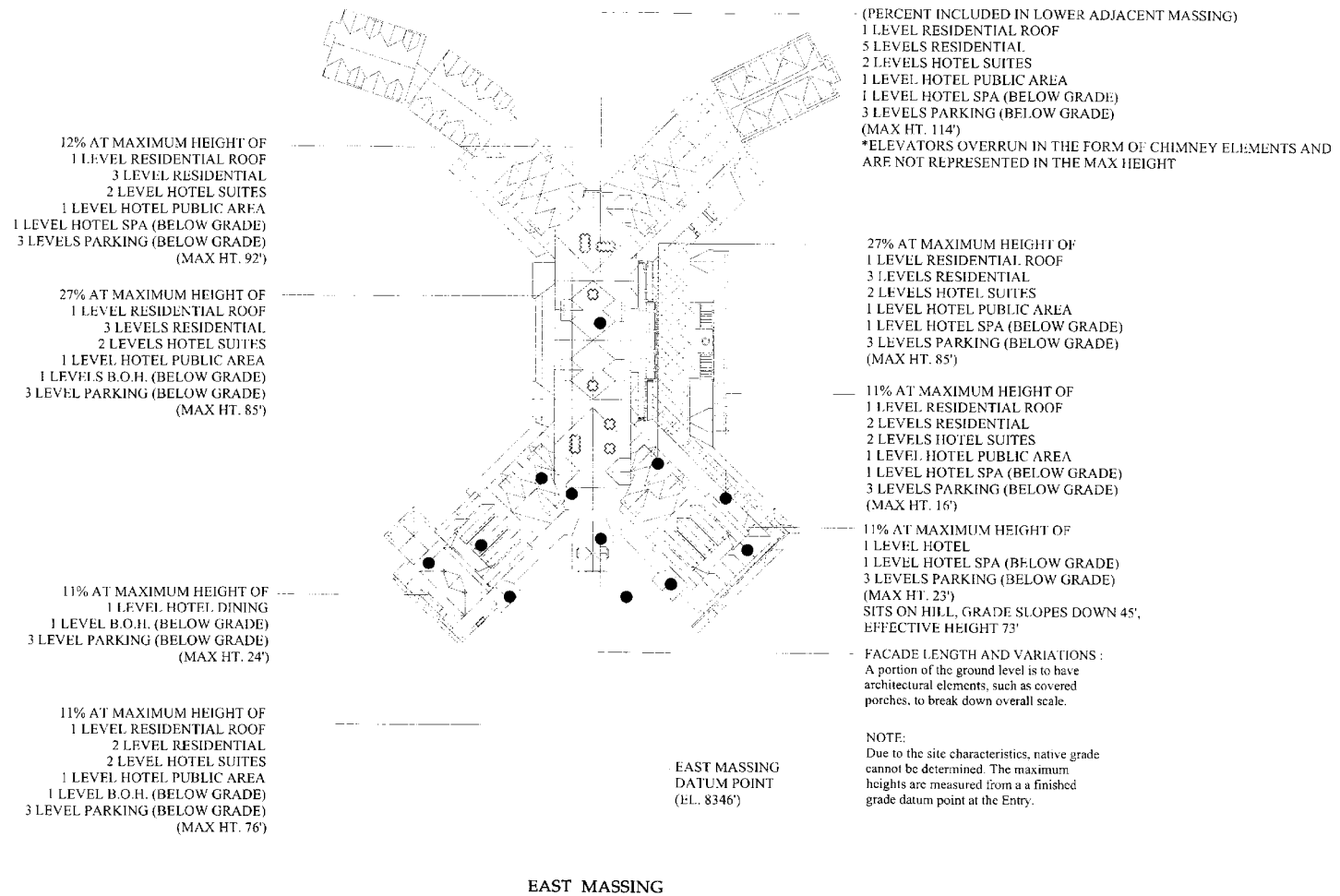


MONTAGE RESORT AND SPA AT DEER VALLEY

PARK CITY, UTAH

Project No.	5308
Date	APR 24 2008
Scale	AS NOTED
Sheet No.	LW102

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VOLUMETRICS
PLAN VIEW EAST

HG
HILL GLAZIER
ARCHITECTS

1000 WEST 1000 SOUTH, SUITE 100, PARK CITY, UT 84303-1000
PHONE: 201-400-1111 FAX: 201-400-1112

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Montage Resort and Spa at Deer Valley
PARK CITY, UTAH

Project No. 13738
Date: APRIL 22, 2008
Survey: AS NOTED
Sheet No. AW 3.02

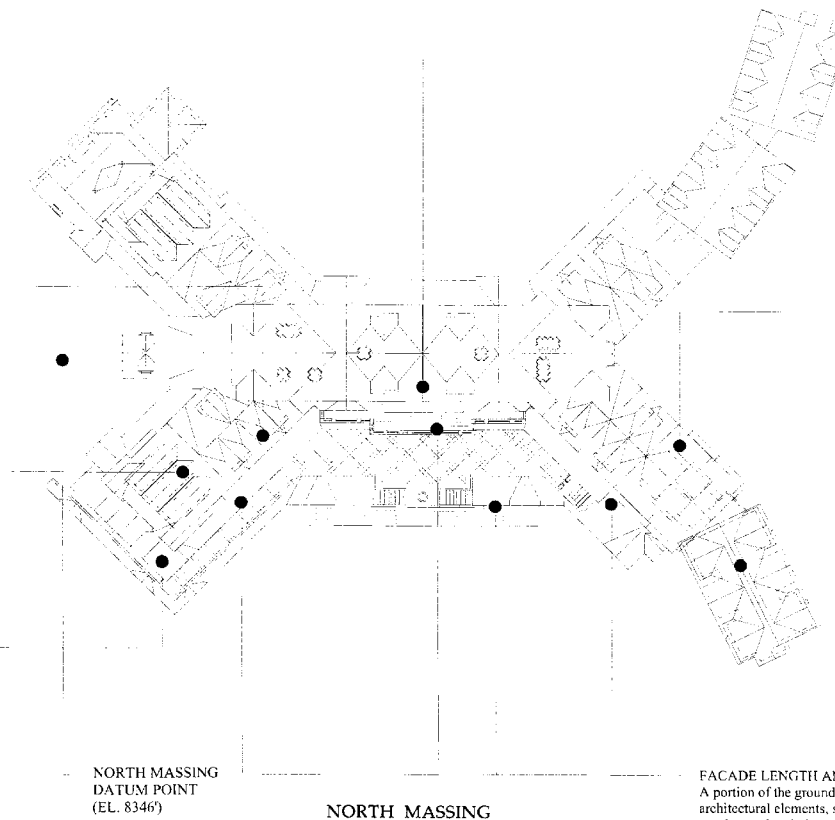
25% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
5 LEVELS RESIDENTIAL
1 LEVEL HOTEL SUITES
2 LEVELS HOTEL PUBLIC AREA
1 LEVEL HOTEL SPA
3 LEVELS HOTEL SUITES
(MAX HT. 114')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
2 LEVELS HOTEL SUITES
1 LEVEL HOTEL PUBLIC AREA
4 LEVELS HOTEL SUITES
(MAX HT. 85')

10% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
2 LEVELS RESIDENTIAL
2 LEVELS HOTEL SUITES
1 LEVEL HOTEL PUBLIC AREA
4 LEVELS HOTEL SUITES
(MAX HT. 76')

5% AT MAXIMUM HEIGHT OF
1 LEVEL HOTEL PUBLIC AREA
4 LEVELS HOTEL SUITES
(MAX HT. 23')

NOTE:
Due to the site characteristics, native grade
cannot be determined. The maximum
heights are measured from a finished
grade datum point at the Entry.



10% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
2 LEVELS HOTEL SUITES
1 LEVEL HOTEL PUBLIC AREA
1 LEVEL HOTEL SPA
3 LEVELS HOTEL SUITES
(MAX HT. 85')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
4 LEVELS HOTEL SUITE
(MAX HT. 92')

FACADE LENGTH AND VARIATIONS:
A portion of the ground level is to have
architectural elements, such as covered
porches, to break down overall scale.
(Major balconies, Entry gables, Spa skylight)

VOLUMETRICS
PLAN VIEW NORTH



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

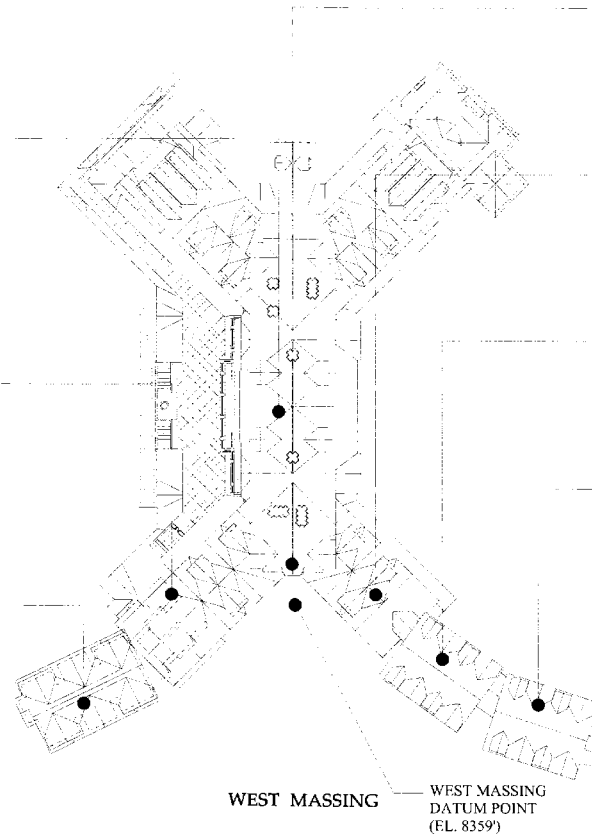
Project No.	19028
Date	08/24/2016
Scale	AS NOTED
Sheet No.	AW 3.03

THESE VOLUMETRIC MASSING DIAGRAMS ARE PREPARED BY HILL GLAZIER ARCHITECTS INC. FOR THE PROJECT AND ARE NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF HILL GLAZIER ARCHITECTS INC.

(PERCENT INCLUDED IN LOWER ADJACENT MASSING)
 AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 5 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 2 LEVELS HOTEL PUBLIC AREA (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 101')

5% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL SUITES (DOWN SLOPE)
 1 LEVEL SPA (BELOW GRADE)
 (MAX HT. 72')

30% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 4 LEVELS HOTEL SUITES (DOWN SLOPE)
 (MAX HT. 79')



(PERCENT INCLUDED IN LOWER ADJACENT MASSING)
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING, B.O.H (BELOW GRADE)
 (MAX HT. 97')

45% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 (MAX HT. 72')

5% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVEL RESIDENTIAL
 (MAX HT. 72')

15% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 (MAX HT. 72')

NOTE:
 Due to the site characteristics, native grade cannot be determined. The maximum heights are measured from a finished grade datum point.

VOLUMETRICS PLAN VIEW WEST



Montage Resort and Spa at Deer Valley PARK CITY, UTAH

Project No.	01700
Rev.	APRIL 24, 2004
Scale	AS SHOWN
Sheet No.	AW 3.04

(PERCENT INCLUDED IN ADJACENT MASSING)
 1 LEVEL RESIDENTIAL ROOF
 4 LEVELS RESIDENTIAL
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 97')

25% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 (MAX HT. 72')

15% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 1 LEVEL HOTEL SUITES
 (MAX HT. 72')

10% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 (MAX HT. 72')

SOUTH MASSING
 DATUM POINT
 (EL. 8359')

FACADE LENGTH AND VARIATIONS:
 A portion of the ground level is to have architectural elements, such as covered porches, to break down overall scale.
 (Major balconies, Pool house)

SOUTH SIDE MASSING

20% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 5 LEVELS RESIDENTIAL
 2 LEVEL HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVEL PARKING, B.O.H./SUITES (BELOW GRADE)
 (MAX HT. 101')
 *ELEVATORS OVERRUN IN THE FORM OF CHIMNEY ELEMENTS AND ARE NOT REPRESENTED IN MAX HEIGHTS

(PERCENT INCLUDED IN ADJACENT MASSING)
 AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 4 LEVELS RESIDENTIAL
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 97')

30% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS SUITES
 2 LEVELS B.O.H. (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 72')

10% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 2 LEVELS B.O.H. (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 63')

5% AT MAXIMUM HEIGHT OF
 1 LEVEL HOTEL DINNING
 1 LEVEL B.O.H. (BELOW GRADE)
 3 LEVEL PARKING (BELOW GRADE)
 (MAX HT. 11')

NOTE:
 Due to the site characteristics, native grade cannot be determined. The maximum heights are measured from a finished grade datum point at the Lobby Terrace

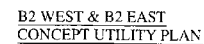
VOLUMETRICS
 PLAN VIEW SOUTH

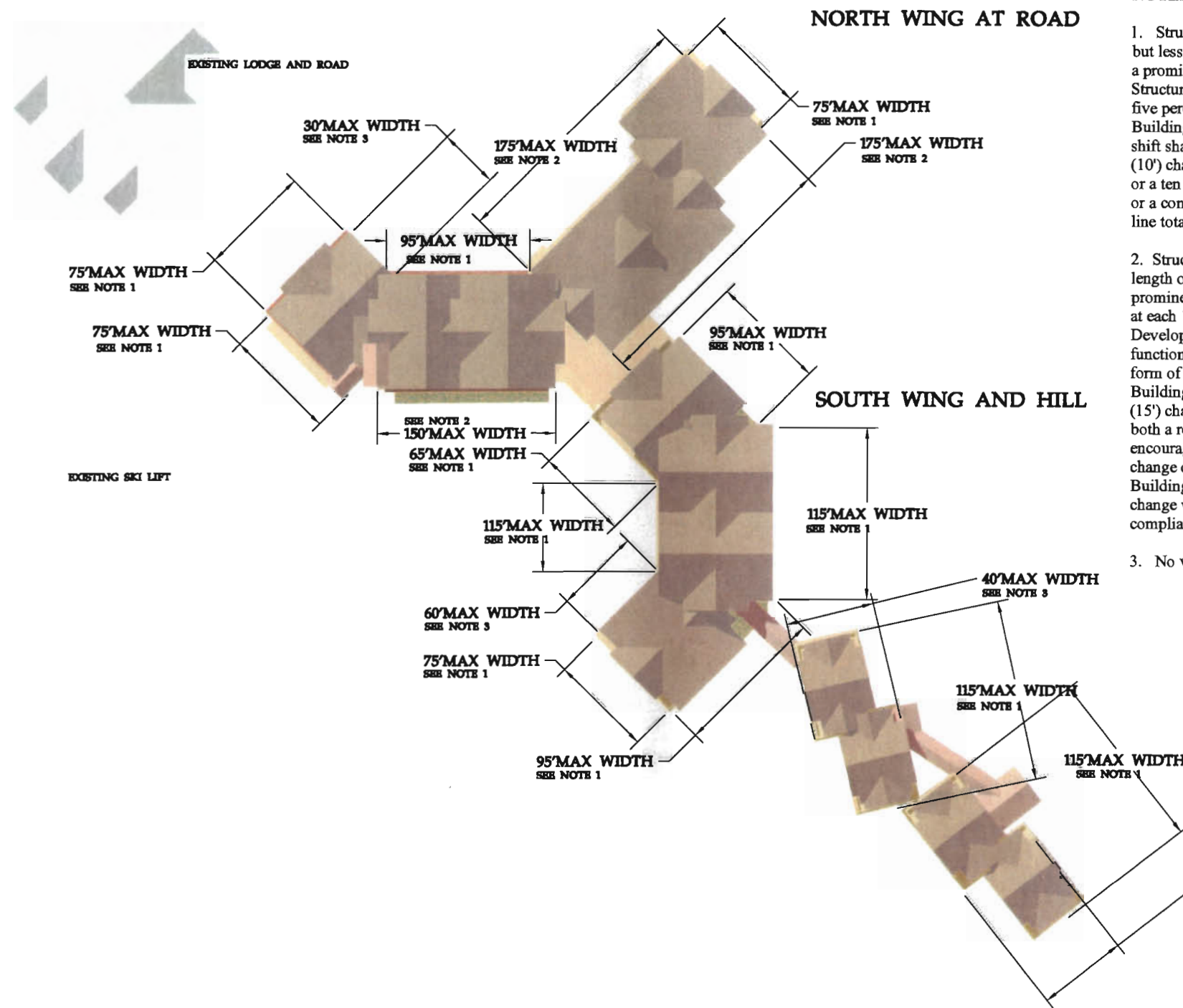


Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	0025
Date	APR. 24, 2016
Scale	AS SHOWN
Draw No.	AW 3.05





FACADE LENGTH AND VARIATIONS NOTES

1. Structures greater than sixty feet (60'), but less than 120 feet in length must exhibit a prominent shift in the facade of the Structure so that no greater than seventy five percent (75%) of the length of the Building Facade appears unbroken. Each shift shall be in the form of either a ten foot (10') change in Building Facade alignment or a ten foot (10') change in roof line height, or a combined change in facade and roof line totaling ten feet (10').

2. Structures which exceed 120 feet in length on any facade shall provide a prominent shift in the mass of the Structure at each 120 foot interval, or less if the Developer desires, reflecting a change in function or scale. The shift shall be in the form of either a fifteen foot (15') change in Building Facade alignment or a fifteen foot (15') change in roof line. A combination of both a roof line and facade change is encouraged and to that end, if the combined change occurs at the same location in the Building plan, a fifteen foot (15') total change will be considered as full compliance.

3. No variation required.

CONDO VOLUMETRICS
PLAN VIEW

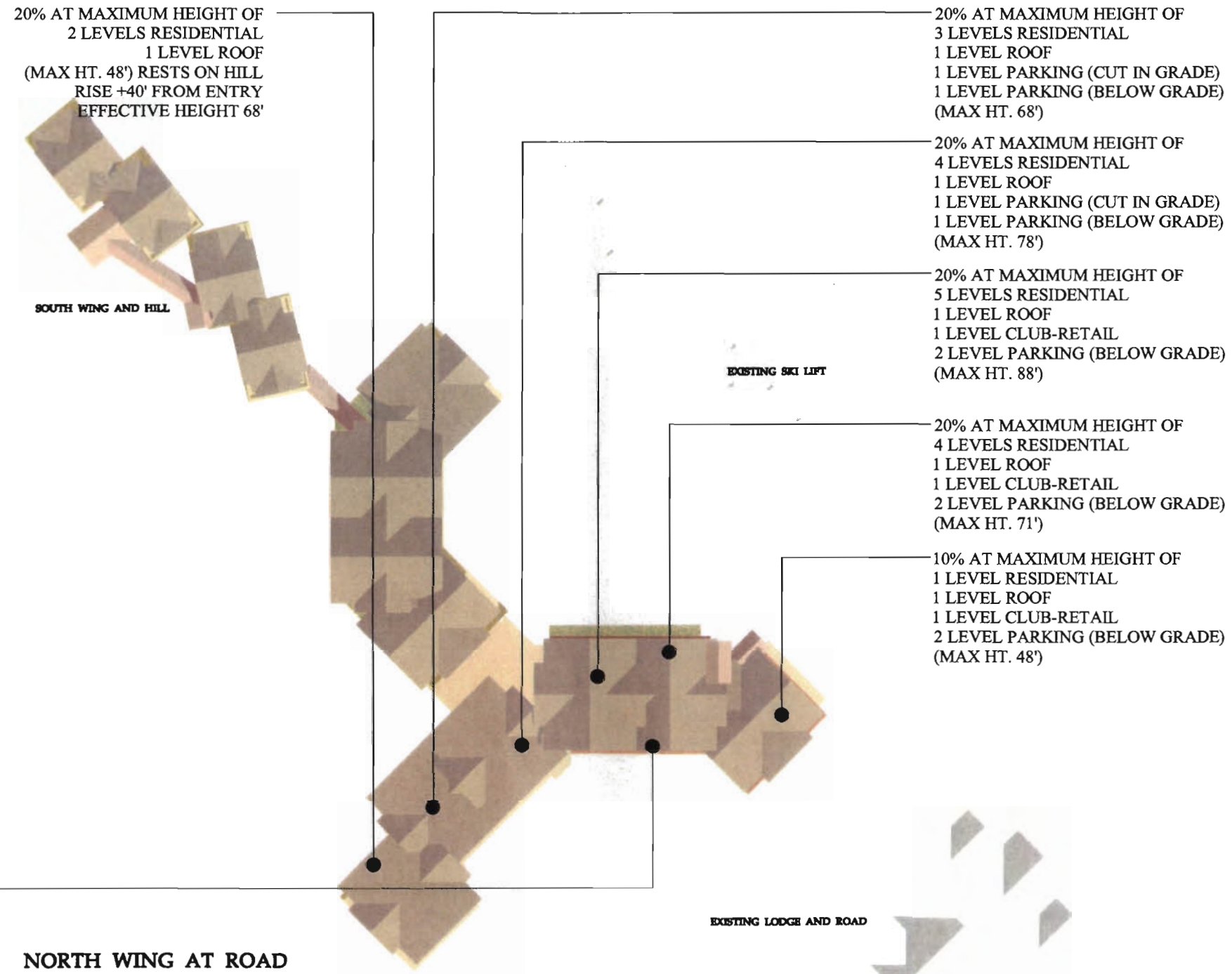


Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Project No.:	03008
Date:	June 15, 2005
Scale:	AS NOTED
Sheet No.:	AE 3.06



**FACADE LENGTH AND VARIATIONS
NOTES**

A portion of the ground level is to have
architectural elements, such as covered
porches, to break down overall scale.

Note:

The "effective height" is the height taken at
the lowest point of the grade at the portion
of the building under consideration

**CONDO VOLUMETRICS
PLAN VIEW**

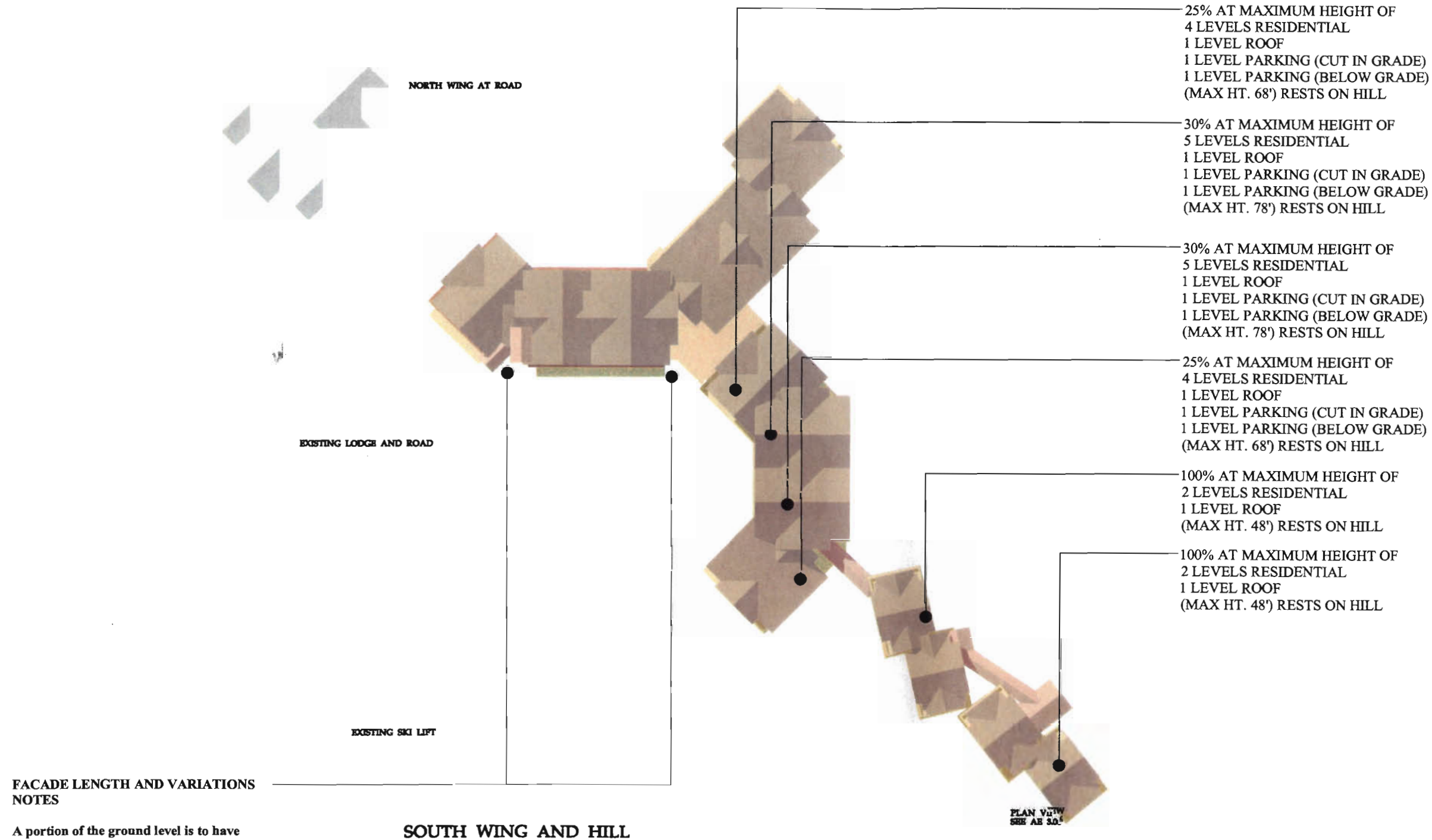


Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Project No.:	03008
Date:	June 15, 2005
Scale:	AS NOTED
Sheet No.:	AE 3.07



**FACADE LENGTH AND VARIATIONS
NOTES**

A portion of the ground level is to have
architectural elements, such as covered
porches, to break down overall scale.
(Major balconies, entry clock tower)

Note:

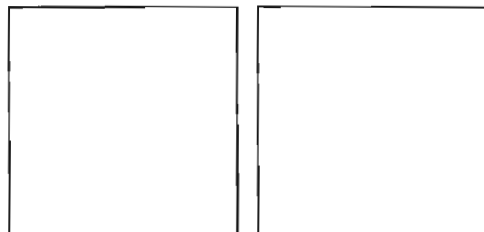
The "effective height" is the height taken at
the lowest point of the grade at the portion
of the building under consideration

CONDO VOLUMETRICS
PLAN VIEW



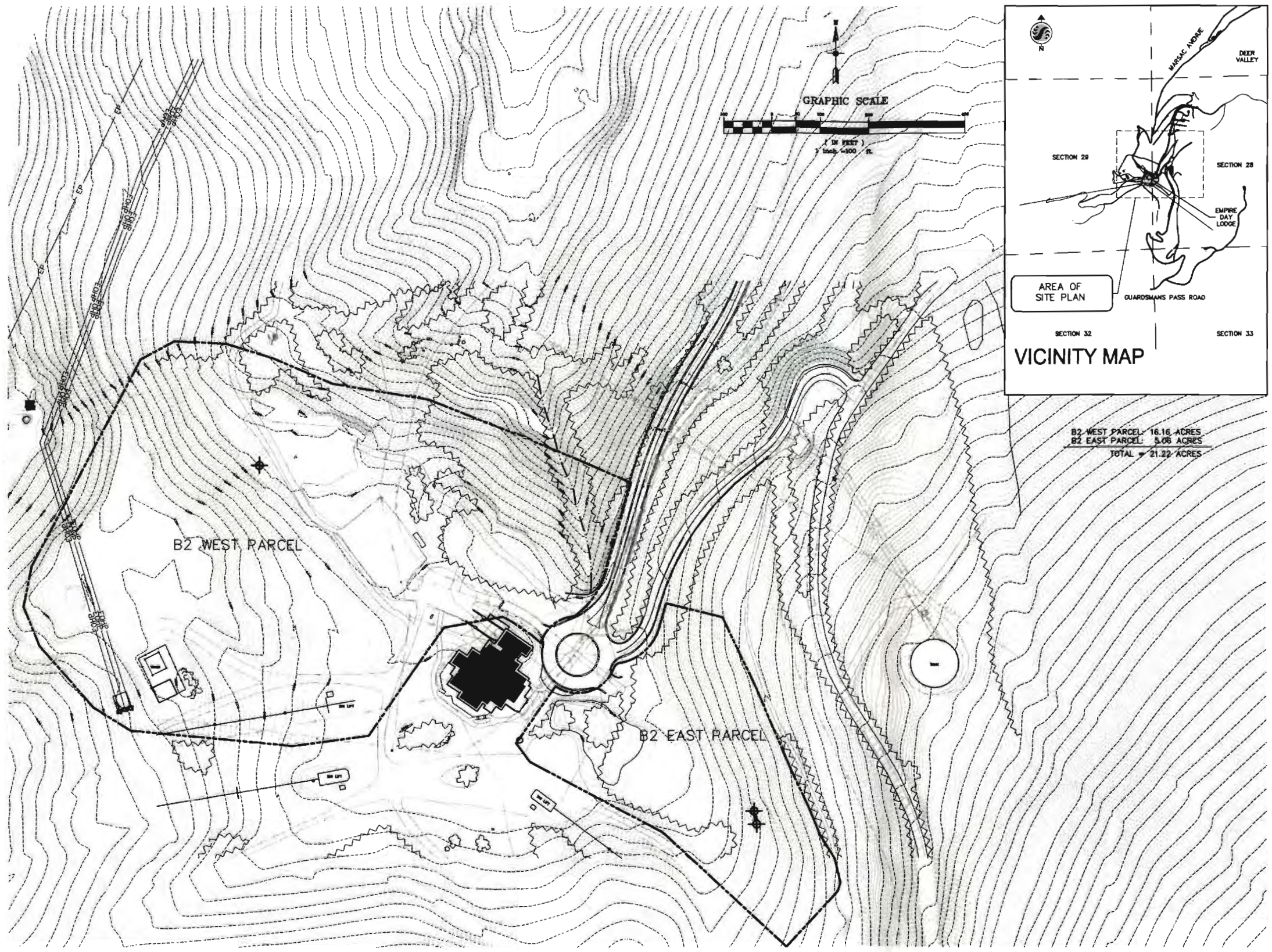
Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



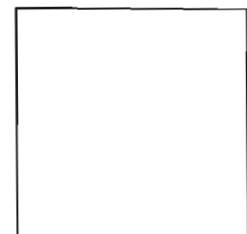
Project No.:	03008
Date:	June 15, 2005
Scale:	AS NOTED
Sheet No.:	AE 3.08

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE THE ORIGINAL AND UNPUBLISHED WORKS OF THE ARCHITECT AND THE SAME MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT



Legend	
	B2 WEST PROPERTY BOUNDARY
	EXISTING GAS
	EXISTING POWER
	EXISTING SANITARY SEWER
	EXISTING STORM DRAIN
	EXISTING TELEPHONE
	EXISTING WATER
	BORE HOLE
	TEST PIT
	MINE SHAFT
	EXISTING DIRT ROADS
	TREELINE

RECEIVED
JUN 24 2005
PARK CITY
PLANNING DEPT.



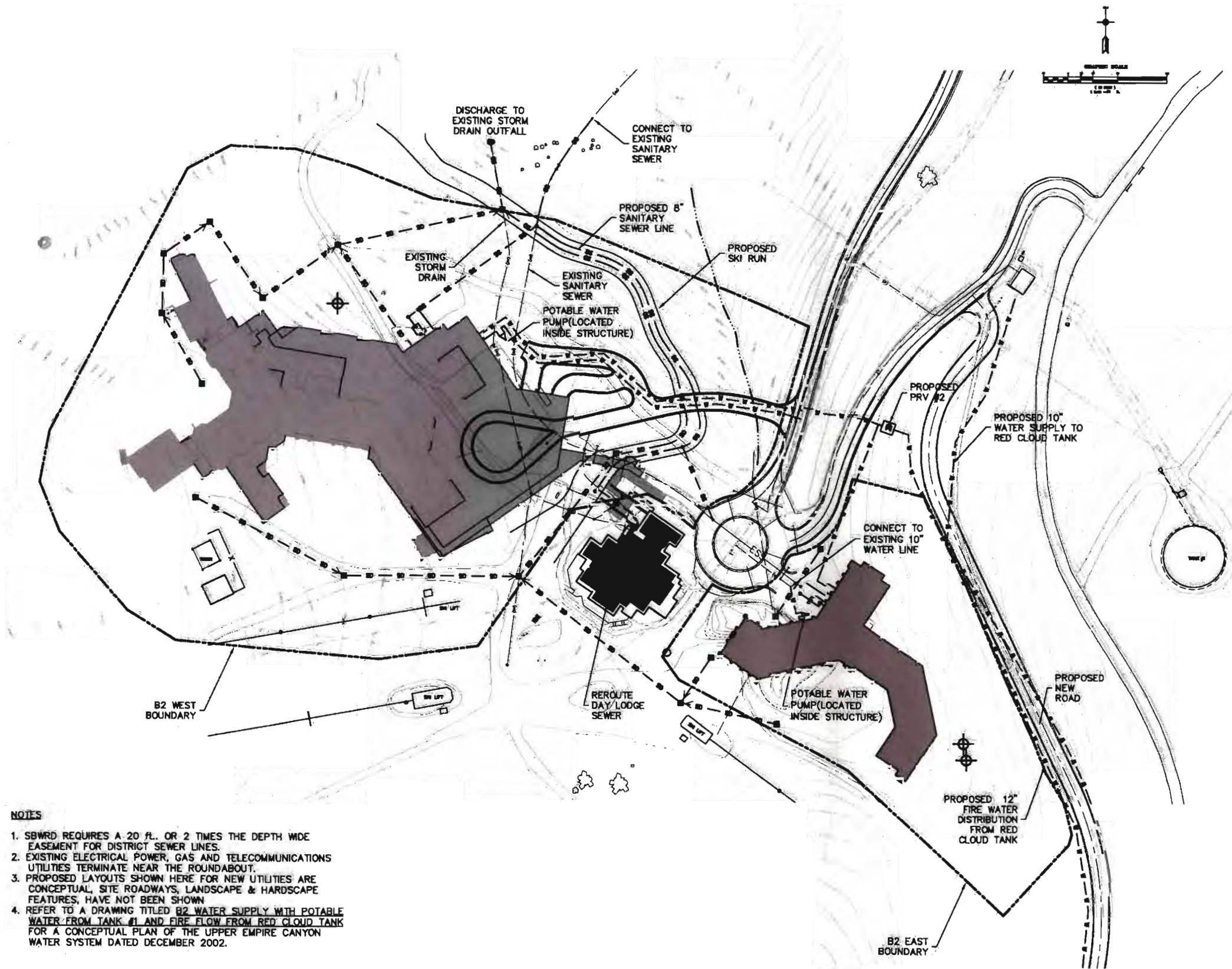
Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Project No.:	03008
Date:	June 15, 2005
Scale:	AS NOTED
Sheet No.:	C 101

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE THE ORIGINAL AND UNPUBLISHED WORKS OF THE ARCHITECT AND THE SAME MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT



Legend	
---	B2 WEST/EAST PROPERTY BOUNDARY
(gas)	EXISTING GAS
(pw)	EXISTING POWER
(se)	EXISTING SANITARY SEWER
(sd)	EXISTING STORM DRAIN
(t)	EXISTING TELEPHONE
(w)	EXISTING WATER
---	PROPOSED SANITARY SEWER
---	PROPOSED STORM DRAIN
---	PROPOSED WATER LINES
---	PROPOSED STORM DRAIN STRUCTURE
---	PROPOSED MANHOLE
---	BORE HOLE
---	TEST PIT
---	MINE SHAFT
---	EXISTING DIRT ROADS
---	TREELINE

- NOTES
1. SBWRD REQUIRES A 20' FL. OR 2 TIMES THE DEPTH WIDE EASEMENT FOR DISTRICT SEWER LINES.
 2. EXISTING ELECTRICAL POWER, GAS AND TELECOMMUNICATIONS UTILITIES TERMINATE NEAR THE ROUNDABOUT.
 3. PROPOSED LAYOUTS SHOWN HERE FOR NEW UTILITIES ARE CONCEPTUAL, SITE ROADWAYS, LANDSCAPE & HARDSCAPE FEATURES, HAVE NOT BEEN SHOWN
 4. REFER TO A DRAWING TITLED B2 WATER SUPPLY WITH POTABLE WATER FROM TANK #1 AND FIRE FLOW FROM RED CLOUD TANK FOR A CONCEPTUAL PLAN OF THE UPPER EMPIRE CANYON WATER SYSTEM DATED DECEMBER 2002.

RECEIVED
JUN 24 2005
PARK CITY
PLANNING DEPT.



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Project No.:	03008
Date:	June 15, 2005
Scale:	AS NOTED
Sheet No.:	C 102

01087491 B: 2452 P: 1749

Page 1 of 5

Mary Ann Trussell, Summit County Utah Recorder

03/06/2018 10:37:24 AM Fee \$18.00

By Snell & Wilmer LLP

Electronically Recorded

WHEN RECORDED RETURN TO:

Wade R. Budge

SNELL & WILMER L.L.P.

15 West South Temple, Suite 1200

Salt Lake City, UT 84101

Affecting Part of Tax Serial No. PCA-S-98-GG-1

DECLARATION OF DEVELOPMENT COVENANTS

[B2]

This DECLARATION OF DEVELOPMENT COVENANTS (the “**Development Declaration**”) is made and entered into this 1ST day of March, 2018, by **REDUS PARK CITY LLC**, a Delaware limited liability company (“**Redus**” and sometimes “**Declarant**”).

RECITALS:

A. Redus is the owner of certain real property in Summit County, Utah, more particularly described on **Exhibit 1**, attached hereto and made a part hereof (the “**Property**”).

B. The Property constitutes a portion of the real property described in, and covered by, that certain Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 20-Acre Quinn’s Junction Parcel and Iron Mountain, dated as of March 2, 2007, and recorded with the Summit County Recorder on March 2, 2007 as Entry No. 00806100 in Book 1850, Page 1897 (the “**Development Agreement**”). Redus is the owner of additional undeveloped real property described in, and subject to, the Development Agreement. The term “**Project**” as used in this Development Declaration shall mean any project Redus pursues within the real property subject to the Development Agreement from time to time.

C. Redus is executing and recording this Development Declaration for the purpose of allocating and confirming certain development rights and obligations with respect to the Property’s development, as set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises, Declarant hereby declares and states as follows:

1. **Recitals.** Redus hereby affirms the accuracy of the Recitals.
2. **Property Made Subject to Development Declaration.** The Property is hereby made subject to this Development Declaration, and shall be held, conveyed, transferred, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved, or developed, in whole or in part, subject to, and consistent with, the terms and conditions of this Development Declaration.
3. **Development Covenants.** By accepting title to the Property, any owner or developer of the Property (a “**Developer**”), agrees and covenants, with respect to the Property, to the following:

a. **Development Requirements.** If and to the extent that Developer elects to develop the Property or any portion thereof, Developer shall, at Developer's sole cost and expense, develop and improve the Property in compliance with this Development Declaration, the Development Agreement, the Park City Land Management Code, existing development approvals, any future development approvals obtained by Developer, and the restrictions and covenants of record as to the Property, in each case to the extent applicable to the Property.

b. **Affordable Housing.** Developer shall be responsible to construct four and two tenths (4.2) Affordable Unit Equivalents ("AUEs") on the Property as part of satisfying the on-site affordable housing requirements in the Development Agreement.

c. **No Opposition.** Developer shall not, at any time, oppose any development activities that Redus desires to take with respect to any Project, unless Developer, in good faith, determines that such activity violates the Development Agreement, as may be amended, and will materially and adversely affect the Property or Developer's development, operation, or use thereof.

4. **Allocation of UEs.** Without representation or warranty whatsoever, Redus hereby allocates the right to develop all remaining entitled multifamily residential dwelling units and commercial space on the Property (collectively, the "Entitlements"). Redus shall not be obligated to allocate or assign to Developer any additional Entitlements, or Unit Equivalents, as that term is defined in the Development Agreement. The Entitlements do not include an assignment of any PUD units, as defined in and currently permitted under the Development Agreement, it being the intent of Redus to reserve unto itself such PUD units.

5. **Right of Inspection.** Redus and its agents shall have the right, upon reasonable advance written notice and at any reasonable time or times, from and after the date hereof, to enter upon the Property or portions thereof for the purpose of determining whether the use of the Property is in compliance with the provisions of this Development Declaration. The fact that Redus or its agents, exercises or fails to exercise the foregoing inspection rights shall not, in any manner, be deemed to be a waiver by Redus of any of Developer's obligations under this Development Declaration.

6. **Enforcement Rights.** In the event Redus or Developer, as applicable, shall at any time be in default with respect to its obligations under this Development Declaration (such defaulting party, the "Defaulting Party"; the non-defaulting party is referred to herein as the "Non-Defaulting Party"), the Non-Defaulting Party shall have the right to enforce the provisions of this Development Declaration against the Defaulting Party by an action for specific performance, injunctive relief or other appropriate equitable remedy. The Defaulting Party's breach or potential breach of the provisions of this Development Declaration shall constitute irreparable harm to the Non-Defaulting Party. Neither Redus nor Developer need provide a bond in connection with obtaining equitable relief under this paragraph. A breach of this Development Declaration may also result in a claim for damages in a court of law, and the existence of a claim for damages shall not limit Redus' or Developer's ability to obtain equitable relief to enforce the provisions of this Development Declaration against the Non-Defaulting Party.

7. **Successors and Assigns.** This Development Declaration shall be binding upon the successors-in-title of Developer and shall inure to the benefit of the successors and assigns of Redus. Any assignment of Developer's rights or obligations under this Development Declaration shall be null and void and of no effect. Redus shall be permitted to assign its interests hereunder. The term "Developer" as used herein shall not mean any owner of a unit in a development or building constructed on the Property.

8. **Covenant Running with Land.** The provisions of this Development Declaration shall run with the Property and shall be binding upon all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

9. **Effective Date.** This Development Declaration shall be effective as of the date it is recorded in the Office of the Recorder of Summit County, Utah.

10. **Notices.** All notices, requests, demands or other communications required or permitted under this Development Declaration shall be delivered to a party's respective addresses on file with the Utah Division of Corporations and Commercial Code, or other agency for the state in which the party is incorporated or organized.

11. **Waiver.** No waiver by Redus of any breach by Developer of any term or provision of this Development Declaration shall be construed to be or constitute a waiver of any succeeding breach of the same or any other term or provision of this Development Declaration. No term or provision of this Development Declaration shall be deemed to have been waived by Redus unless such waiver shall be set forth in writing.

12. **Severability.** If any term or provision of this Development Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Development Declaration, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Development Declaration shall be valid and shall be enforced to the fullest extent permitted by law.

13. **Amendment.** This Development Declaration may be amended, restated, revoked or terminated in whole or in part by an instrument in writing executed and acknowledged by Redus (or those obtaining Redus's rights under this Development Declaration under a written assignment) and recorded in the office of the County Recorder, Summit County, Utah.

14. **Time of the Essence.** Time is of the essence of this Development Declaration.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this instrument has been executed by Redus as of the day and year first above written.

REDUS:

REDUS PARK CITY LLC,
a Delaware limited liability company

By: **REDUS PROPERTIES, INC.,**
a Delaware corporation
Its: Manager

By: [Signature]
Name: DAVID L. ASH
Title: SVP

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF San Francisco)

On March 1, 2018 before me, Auxiliadora Rios, Notary Public
(insert name and title of the officer)

personally appeared David L. Ash, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature] (Seal)

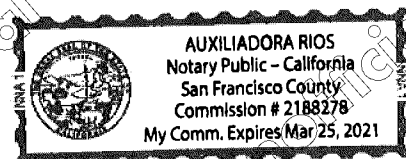


EXHIBIT 1
Legal Description of the Property

B2 EAST SUBDIVISION LOT 1

A parcel of land located in the west half of Section 28 and the southeast quarter of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

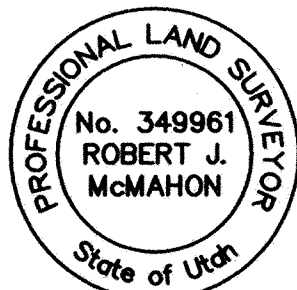
Beginning at a point that is North 00°30'49" West 2213.49 feet along Section Line and East 56.55 feet from a GLO stone monument at the southwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the southerly line of the Marsac Avenue Right of Way, recorded June 28, 2003, as Entry No. 623451 in the office of the Recorder, Summit County, Utah, and on a curve to the left having a radius of 80.00 feet, of which the radius point bears North 34°38'59" East; and running thence along the southerly line of the Marsac Avenue Right of Way the following five (5) courses: 1) easterly along the arc of said curve 147.00 feet through a central angle of 105°16'44" to a point on a reverse curve to the right having a radius of 15.00 feet, of which the radius point bears South 70°37'45" East; thence 2) northeasterly along the arc of said curve 16.15 feet through a central angle of 61°42'18" to a point on a curve to the left having a radius of 100.00 feet, of which the radius point bears North 08°55'27" West; thence 3) northeasterly along the arc of said curve 112.21 feet through a central angle of 64°17'22"; thence 4) North 16°47'11" East 56.03 feet to a point on a curve to the right having a radius of 525.00 feet, of which the radius point bears South 73°12'49" East; thence 5) northeasterly along the arc of said curve 355.31 feet through a central angle of 38°46'34"; thence South 55°36'18" East 101.33 feet to a point on a curve to the left having a radius of 525.00 feet; thence southerly along the arc of said curve 44.31 feet (chord bears South 04°37'35" West 44.30 feet) through a central angle of 4°50'10"; thence South 02°12'30" West 119.72 feet to a point on a curve to the right having a radius of 30.00 feet, of which the radius point bears North 87°47'30" West; thence southerly along the arc of said curve 35.43 feet through a central angle of 67°39'38" to a point of reverse curve to the left having a radius of 85.00 feet, of which the radius point bears South 20°07'52" East; thence southwesterly along the arc of said curve 139.33 feet through a central angle of 93°54'58"; thence South 24°02'49" East 418.18 feet to a point on a curve to the right having a radius of 596.00 feet, of which the radius point bears South 65°57'11" West; thence along the arc of said curve 84.66 feet through a central angle of 08°08'19"; thence South 74°05'30" West 277.14 feet; thence North 47°13'14" West 209.96 feet; thence North 61°52'36" West 311.67 feet; thence North 35°40'02" West 47.30 feet; thence North 34°38'59" East 143.26 feet to the point of beginning.

Description contains 6.91 acres.

(PART OF TAX SERIAL NO. PCA-S-98-GG-1)

SURVEYOR'S CERTIFICATE

I, Robert J. McMahon, do hereby certify that I am a Registered Land Surveyor and that I hold Certificate No. 349961 as prescribed under the laws of the State of Utah. I further certify that by the authority of the owners I have made a survey of the tract of land shown on this plat and described herein and subdivided said tract of land into lots, rights-of-way, and easements to be hereafter known as PARCEL B-2 EMPIRE VILLAGE SUBDIVISION and that the same has been correctly surveyed on the ground as shown on this plat.



ROBERT J. MCMAHON DATE 5/15/07

BOUNDARY DESCRIPTION 1

ALL of Parcel A of the PARCEL A EMPIRE VILLAGE SUBDIVISION according to the official plat thereof on file in the office of the Summit County Recorder, Summit County, Utah, Recorded 6-28-02 as Entry No. 623454.

BOUNDARY DESCRIPTION 2

A parcel of land located in the southeast quarter of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

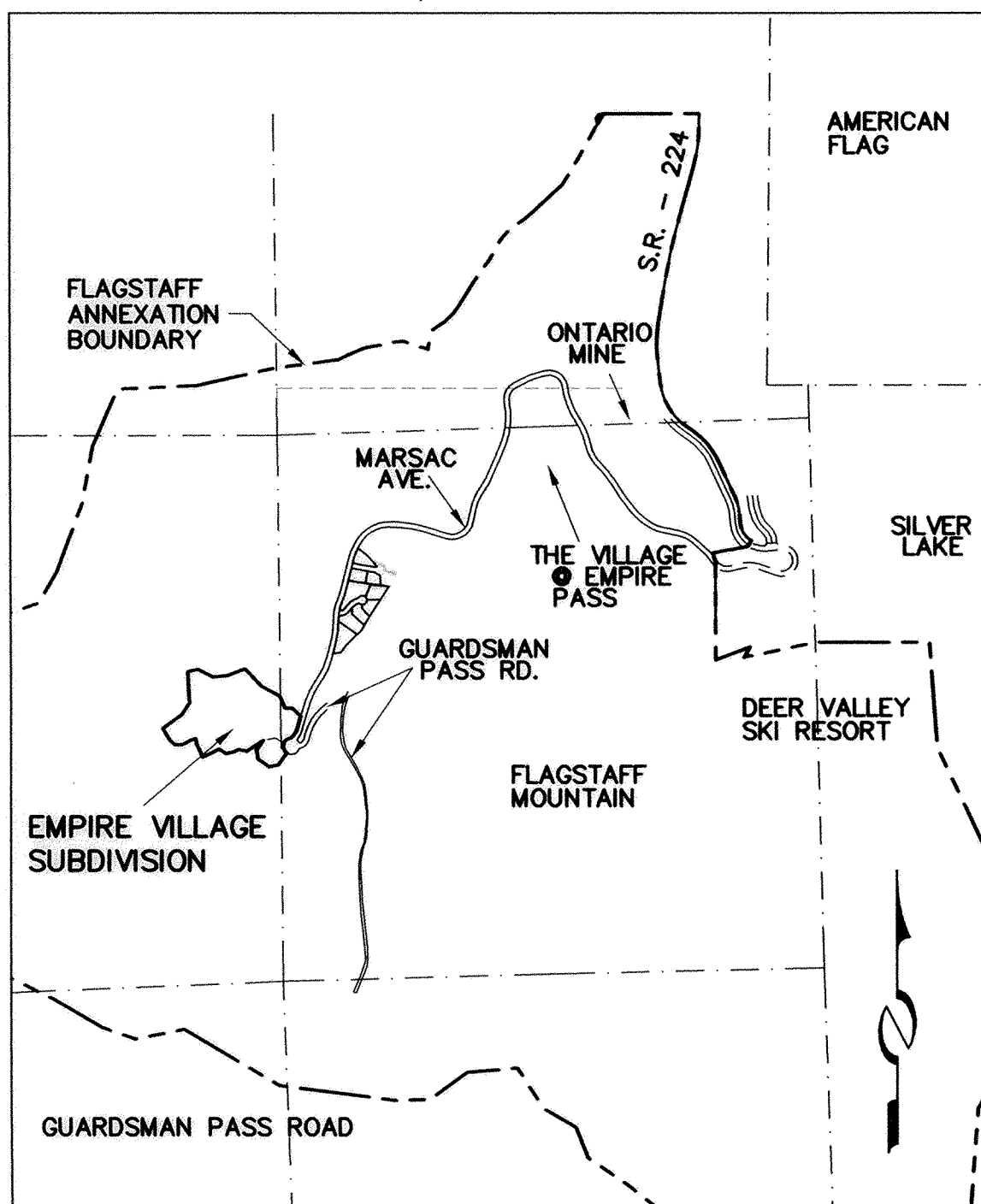
Beginning at a point North 00°30'49" West 2172.54 feet along Section Line and West 763.87 feet from the southeast corner of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 64°05'11" East 70.70 feet; thence North 25°54'49" West 112.30 feet; thence South 64°05'11" West 70.70 feet; thence South 25°54'49" East 112.30 feet to the point of beginning.

BOUNDARY DESCRIPTION 3

A parcel of land located in the west half of Section 28 and the east half of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at a point that is South 00°30'49" East 78.89 feet along section line and East 196.75 feet from the west quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the westerly boundary of Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah, entry #623451; and running thence along the westerly right-of-way of said Marsac Avenue the following four (4) courses: 1) South 154°3'36" West 119.45 feet to a point on a curve to the right having a radius of 175.00 feet, of which the radius point bears North 74°16'24" West; thence 2) along the arc of said curve 113.64 feet through a central angle of 37°12'27" to a point on a non tangent curve to the right having a radius of 10.00 feet, of which the radius point bears North 37°04'06" West; thence 3) westerly along the arc of said curve 5.37 feet through a central angle of 30°47'13" to a point on a non tangent curve to the left having a radius of 80.00 feet, of which the radius point bears South 06°16'44" East; thence 4) southwesterly along the arc of said curve 91.38 feet through a central angle of 65°26'37" to a point on a non tangent curve to the left having a radius of 360.43 feet, of which the radius point bears South 41°35'39" West; said point being on the northerly boundary of Parcel A, Empire Village Subdivision, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah, entry #623454; thence along the northerly boundary of said Parcel A the following two (2) courses: 1) northwesterly along the arc of said curve 95.00 feet through a central angle of 15°06'08"; thence 2) South 79°42'31" West 122.55 feet; thence South 57°01'50" West 193.11 feet; thence North 79°11'55" West 81.19 feet; thence South 75°32'40" West 118.84 feet; thence South 56°44'58" West 34.84 feet; thence South 77°50'55" West 83.11 feet; thence North 58°49'35" West 75.63 feet to a point on a curve to the right having a radius of 300.00 feet, of which the radius point bears North 31°10'25" East; thence along the arc of said curve 6.47 feet through a central angle of 01°14'11"; thence South 64°05'11" West 103.49 feet; thence North 25°54'49" West 112.30 feet; thence South 64°05'11" West 70.70 feet; thence North 25°54'49" West 22.95 feet; thence North 11°17'02" West 59.92 feet to a point on a non tangent curve to the left having a radius of 240.25 feet, of which the radius point bears South 11°17'02" East; thence southwesterly along the arc of said curve 112.50 feet through a central angle of 26°49'42" to a point on a non tangent curve to the right having a radius of 155.02 feet, of which the radius point bears North 26°30'22" West; thence westerly along the arc of said curve 106.81 feet through a central angle of 38°28'36"; thence North 47°33'31" West 64.77 feet; thence North 31°31'14" West 133.05 feet; thence North 54°41'45" East 230.84 feet; thence North 32°10'40" East 138.83 feet; thence North 02°54'42" West 302.23 feet; thence North 78°05'26" East 99.99 feet; thence South 63°03'11" East 163.55 feet; thence North 85°22'37" East 142.18 feet; thence North 68°47'11" East 185.20 feet; thence South 43°51'26" East 235.70 feet; thence South 62°01'29" East 202.20 feet; thence South 24°09'48" East 127.44 feet; thence East 68.61 feet; thence South 46°04'15" East 115.10 feet to the point of beginning.

VICINITY / SECTION MAP



NOTES

- Lot A consists of PARCEL A of the PARCEL A EMPIRE VILLAGE SUBDIVISION (recorded June 28, 2002, Entry #623454) with certain boundaries removed and relocated as shown on the face of this plat.
- It is anticipated that the Park City Municipal Corporation Water Line Easement depicted on the face of this plat will be relocated at or about the time construction of improvements on LOT C commences.
- It is anticipated that the existing Snyderville Basin Water Reclamation District Sewer Line Easement depicted on the face of this plat will be relocated at or about the time construction of improvements on LOT C commences.
- It is anticipated that the Jordanelle Special Service District Access Easement depicted on the face of this plat will be relocated at or about the time construction of improvements on LOT C commences.
- It is anticipated that the Deer Valley Resort Company Driveway Easement depicted on the face of this plat will be vacated or relocated at or about the time of construction of improvements on LOT C commences.
- Wastewater service to Lot B is not available.
- A 10' snow storage easement is hereby dedicated along the frontage of Marsac Avenue.
- 9200 Marsac Avenue street address
- All conditions of approval of the Empire Pass Master Planned Development and the Pod B-2 Master Planned Development shall continue to apply.
- No remnant parcel created hereby is separately buildable.
- No building permits shall be issued on Lot C until the Revised Technical Reports on Mine Soils Hazard Mitigation (Exhibit 1 of the Technical Reports), evidence of Mine Site Reclamation pursuant to Section 2.2.1.6 of the Development Agreement, as amended, and the Emergency Response Plan (Exhibit 7 of the Technical Reports) shall have been approved by the Chief Building Official.

PARCEL B-2 EMPIRE VILLAGE SUBDIVISION

INCLUDING THE AMENDMENT AND CONSOLIDATION OF FORMER PARCEL A EMPIRE VILLAGE SUBDIVISION

A SUBDIVISION LOCATED IN THE WEST 1/2 OF SECTION 28, AND THE EAST 1/2 OF SECTION 29 TOWNSHIP 2 SOUTH, RANGE 4 EAST SALT LAKE BASE & MERIDIAN

CONSENT TO RECORD

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Trust Deed Beneficiary, in its capacity as Administrative Agent on behalf of and for the benefit of lenders, hereby consents to the recordation of this plat.

Executed this 15th day of May, 2007.

WELLS FARGO BANK, NATIONAL ASSOCIATION, Real Estate Group

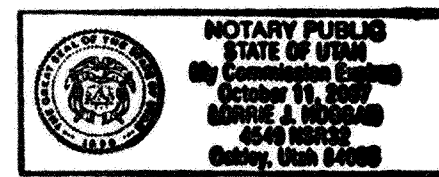
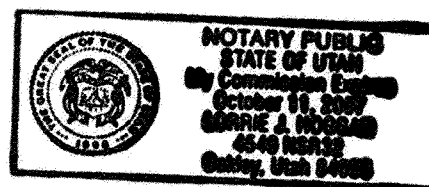
By: Shaun Nielson

ACKNOWLEDGMENT

State of Utah
County of Salt Lake

On the 15th day of May, 2007, personally appeared before me, Shaun Nielson who being by me duly sworn, did say that he is the Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, Real Estate Group, and that the within and foregoing Consent to Record was signed on behalf of said company and did acknowledge to me that said company executed the same.

Residing in: Oakley, UT My commission expires: 10-11-07



OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that the undersigned is an Owner of the herein described tracts of land and hereby causes the same to be divided into lots together with easements and public rights-of-way as set forth on the plat, hereafter to be known as PARCEL B-2 EMPIRE VILLAGE SUBDIVISION.

Also the owner hereby dedicates to Park City Municipal Corporation, Snyderville Basin Water Reclamation District, Park City Fire Protection District, and dry utilities providers, a non-exclusive easement over the utility easements shown on this plat for the purpose of providing access for utility installation, maintenance, use, and eventual replacement.

The owner or its representative, hereby irrevocably offers for dedication to the City of Park City all the streets land for local government uses, easements, parks, required utilities and easements shown on the subdivision plat and construction plans in accordance with an irrevocable offer of dedication.

In witness whereof the undersigned has set his hand on this 15th day of May, 2007.

MOUNTAIN DEVELOPMENTS I, INC., a DELAWARE CORPORATION

By: David J. Smith TITLE: AUTHORIZED SIGNING OFFICER

ACKNOWLEDGMENT

State of Utah
County of Summit

This instrument was acknowledged before me this 15th day of May, 2007 by DAVID J. SMITH, the

AUTHORIZED SIGNING OFFICER of MOUNTAIN DEVELOPMENTS I, Inc, a Delaware Corporation, that he signed the foregoing Owner's Consent to Record on behalf of the corporation with full authority of its bylaws.

Residing in: Oakley, UT My commission expires: 10-11-07

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that the undersigned is the Owner of the herein described tract of land, and hereby causes the same to be divided into lots together with easements and public rights-of-way as set forth on the plat, hereafter to be known as PARCEL B-2 EMPIRE VILLAGE SUBDIVISION.

Also the owner hereby dedicates to Park City Municipal Corporation, Snyderville Basin Water Reclamation District, Park City Fire Protection District, and dry utilities providers, a non-exclusive easement over the utility easements shown on this plat for the purpose of providing access for utility installation, maintenance, use, and eventual replacement.

The owner, or his/her representative, hereby irrevocably offer for dedication to the City of Park City all the streets land for local government uses, easements, parks, required utilities and easements shown on the subdivision plat and construction plans in accordance with an irrevocable offer of dedication.

In witness whereof the undersigned has set its hand on this 16th day of May, 2007.

DEER VALLEY RESORT COMPANY, a Utah Limited Partnership

By: Robert W. Wells, Vice President

ACKNOWLEDGMENT

State of Utah
County of Summit

This instrument was acknowledged before me this 16th day of May, 2007 by ROBERT W. WELLS, the Vice President of ROYAL STREET OF UTAH, a Utah Corporation, that he signed the foregoing Owner's Consent to Record on behalf of the corporation with full authority of its bylaws.

Residing in: Oakley, Utah My commission expires: 10-11-07

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that the undersigned is the Owner of the herein described tract of land, and hereby causes the same to be divided into lots together with easements and public rights-of-way as set forth on the plat, hereafter to be known as PARCEL B-2 EMPIRE VILLAGE SUBDIVISION.

Also the owner hereby dedicates to Park City Municipal Corporation, Snyderville Basin Water Reclamation District, Park City Fire Protection District, and dry utilities providers, a non-exclusive easement over the utility easements shown on this plat for the purpose of providing access for utility installation, maintenance, use, and eventual replacement.

The owner, or his/her representative, hereby irrevocably offer for dedication to the City of Park City all the streets land for local government uses, easements, parks, required utilities and easements shown on the subdivision plat and construction plans in accordance with an irrevocable offer of dedication.

In witness whereof the undersigned has set its hand on this 16th day of May, 2007.

JORDANELLE SPECIAL SERVICE DISTRICT

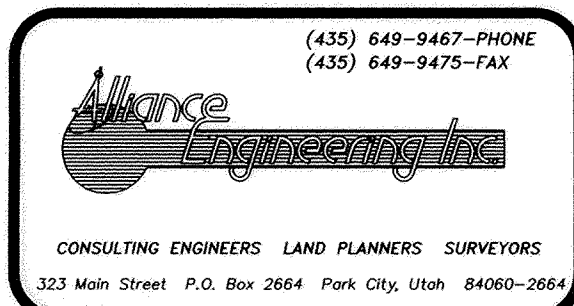
By: Dan Matthews, the Manager

ACKNOWLEDGMENT

State of Utah
County of Wasatch

This instrument was acknowledged before me this 16th day of March, 2007 by Dan Matthews, the Manager of JORDANELLE SPECIAL SERVICE DISTRICT and that he signed the foregoing Owner's Consent to Record on behalf of the corporation with full authority of its bylaws.

Residing in: Oakley, Utah My commission expires: 10-11-07



SNYDERVILLE BASIN WATER RECLAMATION DISTRICT

REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER RECLAMATION DISTRICT STANDARDS ON THIS 15th DAY OF May, 2007 A.D.

By: S.B.W.R.D.

PLANNING COMMISSION

APPROVED BY THE PARK CITY PLANNING COMMISSION THIS 14th DAY OF MARCH, 2007 A.D.

By: CHAIRMAN

ENGINEER'S CERTIFICATE

I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS 12th DAY OF May, 2007 A.D.

By: PARK CITY ENGINEER

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS 22nd DAY OF May, 2007 A.D.

By: PARK CITY ATTORNEY

CERTIFICATE OF ATTEST

I CERTIFY THIS RECORD OF SURVEY MAP WAS APPROVED BY PARK CITY COUNCIL THIS 29th DAY OF MARCH, 2007 A.D.

By: PARK CITY RECORDER

COUNCIL APPROVAL AND ACCEPTANCE

APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS 29th DAY OF MARCH, 2007 A.D.

By: MAYOR

5/15/07 JOB NO.:1-1-01 FILE:X:\Empire.dwg\Talsker\plat\pod b2_01-23-07.dwg

814178 RECORDED

STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF Coalition Title

DATE 5-31-07, TIME 3:28 PM BOOK PAGE 433.00 FEE Recorder

Ordinance 2017-07

AN ORDINANCE APPROVING THE B2 EAST SUBDIVISION, LOCATED WITHIN THE POD B-2 EMPIRE PASS MASTER PLANNED DEVELOPMENT AT 9300 MARSAC AVENUE, PARK CITY, UTAH.

WHEREAS, owners of the property known as Pod B2 East, located at 9300 Marsac Avenue in Park City, Utah, have petitioned the City Council for approval of a final subdivision plat; and

WHEREAS, legal notice of the public hearing was published in the Park Record and on the Utah Public Notice website on November 26th and December 28th, 2016, and January 21, 2017, and the property was posted on November 30, 2016, according to the requirements of the Land Management Code; and

WHEREAS, courtesy notice was sent to surrounding property owners on November 30, 2016, according to requirements of the Land Management Code; and

WHEREAS, the Planning Commission held public hearings on December 14, 2016, and January 11th and February 8th, 2017, to receive input on the subdivision plat; and

WHEREAS, the Planning Commission, on February 8, 2017, forwarded a positive recommendation to the City Council; and,

WHEREAS, on March 9, 2017, City Council held a public hearing on the subdivision plat; and

WHEREAS, it is in the best interest of Park City, Utah, to approve the B2 East Subdivision plat.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. APPROVAL. The above recitals are hereby incorporated as findings of fact. The subdivision plat as shown in Exhibit A is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

Findings of Fact

1. The property is located at 9300 Marsac Avenue.
2. The zoning is Residential Development (RD) within Flagstaff Mountain Resort Annexation and the Village at Empire Pass B2 MPD (RD-MPD).
3. On June 24, 1999, Council adopted Ordinance 99-30 and Resolution 20-99 approving the annexation and development agreement for the Flagstaff Mountain area.
4. Resolution 20-99 granted the equivalent of a "large-scale" master planned development (MPD) and set forth the types and locations of land use, maximum

- densities, timing of development, development approval process, as well as development conditions and amenities for each parcel.
5. The Flagstaff Development Agreement was subsequently amended and recorded in March of 2007.
 6. The Development Agreement specifies that a total of 87 acres, within three development pods (A, B1 and B2), of the 1,750 acres of annexation property may be developed for the Mountain Village.
 7. The Mountain Village is further constrained to a maximum density of 785 UE configured in no more than 550 dwelling units as multi-family, hotel, or PUD units, provided the number of PUD units do not exceed 60. The Mountain Village is allowed 16 single family home sites. At least 50% of the residential units within the Mountain Village must be clustered within the primary development pod (Pod A).
 8. There are currently 588.742 UE (382 multi-family units) platted within the Village at Empire Pass (Pods A, B1 and B2).
 9. With approval of 81 UE (and up to a total of 70 multi-family condominium units) on Lot 1 of the B2 East Subdivision, there will be 669.742 UE platted, 452 (or fewer) units platted, and 57% of the units of Pods A, B1 and B2 will be located within Pod A. The numbers for UE and units do not include the UE and units proposed on the Village North Subdivision under concurrent review. There would then be 88.258 UE and 98 units available for the Village North subdivision, as well as for the un-built Tower Residential (Building One of the Village at Empire Pass MPD).
 10. On March 14, 2007, the Planning Commission approved a Master Planned Development for Pod B2 at Empire Pass. The MPD approved 192 hotel rooms utilizing 69.6 Unit Equivalents (UE) and 94 hotel condominiums utilizing 114 UE, on the west side parcel (Montage Resort and Spa). An additional 81 UE of residential condominiums were assigned to the B2 East parcel.
 11. The Pod B2 MPD approved Resort Support Commercial uses for the 35,000 sf of Spa space and 28,059 sf for restaurants, bar, and retail space. The MPD approved 15,000 sf of meeting/conference space and lounge area based on the floor area of the building, not including the parking garage. The Pod B2 MPD describes findings and conditions for development of Pod B2, and includes language related to the location of allowed parking for the Empire Day Lodge.
 12. The Development Agreement allows a total maximum of 75,000 sf of MPD Resort Support Commercial floor area within Pods A, B1 and B2.
 13. The Tower Club CUP in Pod A includes 2,264 sf of private dining room, kitchen and store and was approved for an amendment to the CUP for a dining room addition of 1,115 sf. The Tower Club CUP is approved for 3,379 sf of MPD Resort Support Commercial.
 14. The Grand Lodge Condominium plat approved a total of 1,275 sf of MPD Resort Support Commercial.
 15. There exists a total of 7,287 sf of unallocated Resort Support Commercial that can be allocated within the Village MPD to Pods A, B1, and B2. With approval of the proposed application, 3,600 sf of Resort Support Commercial will be allocated to Lot 1, leaving a balance of 3,687 sf unallocated Resort Support Commercial available under the Flagstaff Development Agreement.
 16. Accounting of the support commercial, residential accessory space, and support meeting space is finalized at the time of review of the Conditional Use Permit and

- memorialized in the final condominium plat(s).
17. On March 29, 2007, the City Council approved the Parcel B-2 Empire Village Subdivision creating three lots of record for Parcel B-2 (West). The Parcel B-2 Empire Village Subdivision amended and consolidated parcel A of the prior Empire Village Subdivision for the Empire Day Lodge and created Lot B, site of the Daly West head frame and access to JSSD underground mine tunnels, and Lot C, site of the Montage Resort and Spa CUP.
 18. Subject property is a metes and bounds parcel and is not part of the Parcel B-2 Empire Village Subdivision plat.
 19. The staff report for the Parcel B-2 Empire Village Subdivision indicates that the Parcel B-2 East would have to be platted to create a legal lot for development of 81 UE of residential condominiums.
 20. Parcel B-2 Empire Village Subdivision plat was recorded on May 23, 2007.
 21. The proposed B2 East Subdivision plat creates one lot and one parcel for the B-2 East parcel. Lot 1 is 6.91 acres in area and Parcel A is 0.94 acres in area. Total property consists of 7.85 acres.
 22. Lot 1 has frontage on Marsac Avenue, a State Highway and utilities are available to the lot. A Line Extension Agreement approval letter was issued by SBWRD on January 24, 2017.
 23. All existing and required easements will be recorded on the plat, including utilities, storm drainage, access, snow storage, etc. No changes are proposed to existing streets.
 24. Final utility plans are required to be submitted with the Conditional Use Permit based on the proposed configuration of units and buildings. Additional off-site utility easements maybe required and will have to be recorded prior to issuance of building permits.
 25. There is an existing curb cut off Marsac Avenue. Any relocation of this curb cut for future buildings requires review and approval by the City Engineer and UDOT.
 26. There is no minimum or maximum lot size or lot width in the RD District.
 27. All applicable requirements of Land Management Code apply, unless otherwise allowed per the Flagstaff Development Agreement and Pod B2 at Empire Pass MPD.
 28. A height exception and building volumetric were approved with the Pod B2 at Empire Pass MPD.
 29. The final Mylar plat is required to be approved and signed by the Snyderville Basin Water Reclamation District prior to recordation to ensure that requirements of the District are addressed.
 30. Snow storage area is required along public streets and rights-of-way due to the possibility of large amounts of snowfall in this location.
 31. In September 2016, the applicant began working under an Administrative Settlement and Order on Consent for Removal Action with the EPA permit to remediate and remove mine soil from the property and to close an old mine shaft/adit on the property. After the mine shaft closure was completed, this work was halted in November 2016 on account of the weather. Some contaminated soil remains on site in the area of the former and remaining parking lot. The adit (a gently sloping shallow tunnel) discovered during the mine shaft closure has been temporarily closed but will require further work at time of building construction.

32. On site affordable housing requirements are required by the Flagstaff Development-Affordable Housing Technical Report. This plat identifies an on-site housing obligation of 4.2 AUE (per requirements of the Affordable Housing Mitigation Plan) to be incorporated into the building (s) and noted on the plat.
33. Requirements of the Flagstaff Development Agreement will be reviewed and verified for compliance during the Conditional Use Permit application review for development of Lot 1. This includes transportation, affordable housing, environmental, transfer fees, construction mitigation, and others as may apply. Some of these obligations are triggered by the number of certificates of occupancy issued.
34. All findings within the Analysis section and the recitals above are incorporated herein as findings of fact.

Conclusions of Law

1. There is good cause for this subdivision plat.
2. The subdivision plat is consistent with the Park City Land Management Code and applicable State law regarding subdivisions, the Park City General Plan, and the Empire Pass Pod B-2 Master Planned Development.
3. Neither the public nor any person will be materially injured by the proposed subdivision.
4. Approval of the subdivision, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

Conditions of Approval

1. The City Attorney and City Engineer will review and approve the final form and content of the subdivision plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.
2. The applicant will record the plat at Summit County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void unless a written request for an extension is submitted to the City prior to the expiration date and the City Council grants an extension.
3. All applicable conditions, regulations, requirements, and stipulations of the Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 20-Acre Quinn's Junction Parcel, and Iron Mountain (recorded at Summit County on March 2, 2007), and associated Technical Reports and Agreements, continue to apply.
4. The plat will note that conditions of approval of the Village at Empire Pass Master Planned Development and the Pod B-2 Master Planned Development shall continue to apply.
5. Utility structures such as ground sleeves and transformers and other dry utility boxes must be located on the lots.
6. Non-exclusive public utility easements (PUE) shall be indicated on the plat prior to recordation as approved by the City Engineer and SBWRD, including drainage easements.
7. A financial security to guarantee for the installation of any required public improvements is required prior to plat recordation in a form approved by the City Attorney and in an amount approved by the City Engineer.

8. A ten foot (10') wide public snow storage easement is required along the public street frontage of the Lot and Parcel.
9. Fire sprinklers are required for new construction per the Chief Building Official at the time of review of the building permit. A note stating this shall be on the plat.
10. No building permits shall be issued on Lot 1 or Parcel A until the mine shaft has been fully closed and mine soil remediation under EPA supervision has been completed. Prior to issuance of any building permits, documentation certifying the work is complete shall be presented to the Chief Building Official and Planning Director. As part of any building permit submission, property owner shall submit a closure plan for the adit, approved by a geotechnical engineer, and detailing any additional work required in conjunction with building construction in the vicinity of the adit.
11. Prior to building permit issuance, documentation from UDOT showing approval of any curb cuts onto Marsac Avenue, a state highway, is required. If documentation of the existing curb cut does not exist, a new application shall be submitted to UDOT for approval of the curb cut location. This approval shall be submitted to the City Engineer.
12. Any modifications to existing curb cuts for access to Marsac Avenue, a state highway, must be approved by the City Engineer and UDOT.
13. A Conditional Use Permit approval is required prior to issuance of a building permit for the residential building proposed on Lot 1.
14. A final grading and utility plan, including storm water and drainage plans, shall be submitted with the Conditional Use Permit for development on Lot 1, for approval by the City Engineer and SBWRD. No building permits shall be issued until all necessary utility easements are recorded.
15. A declaration of condominium and a record of condominium plat are required prior to the sale of individual units within the development.
16. Requirements of the affordable housing mitigation plan shall be addressed with the Conditional Use Permit and condominium plat. A note shall be included on the plat indicated that the development of Lot 1 has an on-site affordable housing obligation of 4.2 AUE, to be consistent with all requirements of the Flagstaff Affordable Housing Mitigation Plan. All deed restricted units shall be identified on the final condominium plat prior to recordation of such plat. Phasing of affordable housing units shall be commensurate with the Certificates of Occupancy for the buildings.
17. Wastewater service to B2 East Subdivision shall be provided by the Snyderville Basin Water Reclamation District. A Line Extension Agreement approval letter was provided by SBWRD on January 24, 2017. The Owner shall be responsible for extending the public wastewater system within Lot 1 according to requirements of the Line Extension Agreement. Easements associated with this agreement are to be depicted on the plat.
18. The property is located within a water source protection zone. All sewer construction must comply with State of Utah drinking water regulations.
19. This development is part of a common plan development and a MS4 storm water permit is required for all land disturbance activities for each separate phase of construction, prior to building permit issuance.
20. The CC&Rs shall provide notice and process for the tracking and collection of the Real Estate Transfer Fee as required and defined by the Flagstaff Mountain

Development Agreement, as amended.

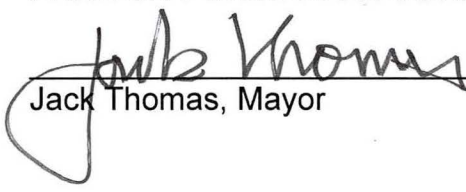
21. Requirements and obligations of the Flagstaff Mountain Development Agreement, as amended and recorded at Summit County in March of 2007, as apply to this Property, shall be completed, or bonded for completion, prior to issuance of certificates of occupancy for any approved development located on Lot 1, unless otherwise conditioned herein (e.g. soil and mine remediation to be complete prior to building permit issuance). This includes gondola payments, number of shuttles in operation, provision of affordable housing units, collection mechanism for real estate transfer fees, and all other such obligations as are outlined in the March 2007 Agreement, some of which are triggered by the number of certificates of occupancy issued.
22. A Construction Mitigation Plan shall be submitted with the Conditional Use Permit application and in advance of issuing building permits.

SECTION 2. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED this 9th day of March, 2017.

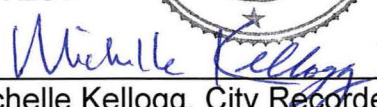


PARK CITY MUNICIPAL CORPORATION



Jack Thomas, Mayor

ATTEST:



Michelle Kellogg, City Recorder

APPROVED AS TO FORM:



Mark Harrington, City Attorney

Exhibits

Exhibit A – Proposed subdivision plat

EXHIBIT A



SURVEYOR'S CERTIFICATE

I, Martin A. Morrison, certify that I am a Registered Land Surveyor and that I hold Certificate No. 4938736, as prescribed by the laws of the State of Utah, and that by authority of the courts, this Report of Survey map of B2 EAST SUBDIVISION has been prepared under my direction and that the same has been or will be monumented on the ground as shown on this plot. I further certify that the information on this plot is accurate.

BOUNDARY DESCRIPTIONS

A parcel of land located in the west half of Section 28 and the southeast quarter of Section 29, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 00°30'49" West 2213.49 feet along Section Line and East 58.55 feet from the southwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the southern line of the Morace Avenue Right of Way, according to the official plat thereof on file and of record in the office of the Recorder, Summit County, Utah, and on a curve to the left having a radius of 80.00 feet, of which the radius point bears North 34°38'59" East; and running thence along the southern line of the Morace Avenue Right of Way the following five (5) courses: 1) easterly along the arc of said curve 147.00 feet through a central angle of 103°18'14" to a point on a reverse curve to the right having a radius of 15.00 feet, of which the radius point bears South 70°37'45" East; thence 2) northeasterly along the arc of said curve 16.15 feet through a central angle of 61°42'16" to a point on a curve to the left having a radius of 100.00 feet, of which the radius point bears North 09°55'27" West; thence 3) northeasterly along the arc of said curve 112.21 feet (chord bears North 48°55'32" East 108.41 feet) through a central angle of 64°17'22" to a point on a curve to the right having a radius of 825.00 feet, of which the radius point bears South 73°12'49" East; thence 4) northeasterly along the arc of said curve 355.31 feet through a central angle of 38°40'34" to a point on a curve to the left having a radius of 525.00 feet; thence southeasterly along the arc of said curve 44.31 feet (chord bears South 04°37'35" West 44.30 feet) through a central angle of 42°01'30" to a point on a curve to the right having a radius of 30.00 feet, of which the radius point bears North 87°47'30" West; thence southeasterly along the arc of said curve 35.43 feet through a central angle of 67°39'36" to a point on a reverse curve to the left having a radius of 85.00 feet, of which the radius point bears South 20°07'30" East; thence southeasterly along the arc of said curve 139.33 feet through a central angle of 93°54'58" to a point on a curve to the right having a radius of 596.00 feet, of which the radius point bears South 65°57'11" West; thence along the arc of said curve 228.98 feet through a central angle of 22°06'32" to a point of compound curve to the right having a radius of 450.00 feet, of which the radius point bears South 60°13'42" West; thence southeasterly along the arc of said curve 4.79 feet through a central angle of 00°30'49", thence South 38°44'47" West 144.31 feet; thence North 47°13'14" West 486.28 feet; thence North 61°12'35" West 311.67 feet; thence North 35°40'02" West 47.30 feet; thence North 34°38'59" East 143.28 feet to the point of beginning.

OWNER'S DEDICATION AND CONSENT TO RECORD

KNOW ALL MEN BY THESE PRESENTS that REDUS Park City LLC, the undersigned owner of the herein described tract of land, to be known hereafter as B2 EAST SUBDIVISION, does hereby certify that it has caused this Plot to be prepared, and does hereby consent to the introduction of this Plot.

In witness whereof, the undersigned set his hand this _____ day of _____, 2016.

REDUS Park City LLC, a Delaware limited liability company

By: REDUS Properties, Inc., a Delaware corporation
Its: manager

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

State of _____
County of _____

On this _____ day of _____, 2016, _____ personally appeared before me, the

undersigned Notary Public, in and for said state and county. Having been duly sworn, _____ acknowledged to me that he is an authorized signatory of the herein described tract of land, and that he signed the above Owner's Dedication and Consent to Record freely and voluntarily.

A Notary Public commissioned in _____

Printed Name _____

Residing in _____

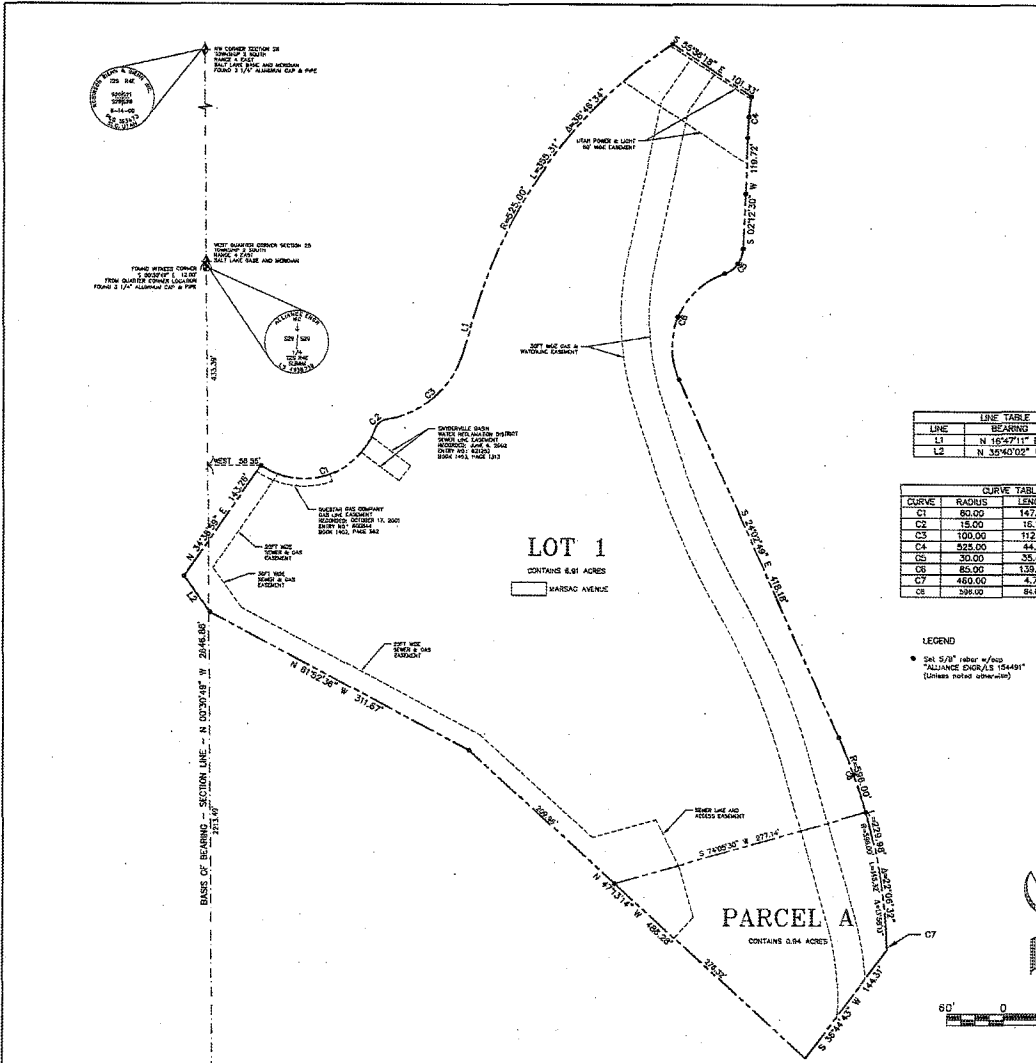
My commission expires: _____

NOTES:

- This plot is subject to the Conditions of Approval in Ordinance 2016-_____.
- Wastewater service to B2 East Subdivision shall be provided by the Snyderville Basin Water Reclamation District ("District"). A Line Extension Agreement with the District may be required for Lot 1. If necessary, it shall be the responsibility of the Owner to extend the public wastewater system with Lot 1 according to the requirements of the Line Extension Agreement.
- Conditional use permit approval will be required prior to construction on Lot 1.
- A dedication of condominium and a recorded condominium map will be required for the purpose of the sale of individual units within the single development lot shown hereon.
- The lot and parcel described on this plot are subject to the Restored Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 30-Acre Quinn's Junction Pines and Iron Mountain dated as of March 2, 2007, and recorded on March 2, 2007 as Entry No. 00800102 in Book 1850, Page 1897 (the "Development Agreement"). By separate Declaration of Development Covenants, recorded _____ as Entry No. _____ in the official records of the Summit County Recorder, Lot 1 has been allocated the right to develop 81 Unit Equivalents within 70 multifamily dwelling units and the obligation to locate 42 Affordable Unit Equivalents thereon, on each of these apportioned terms as defined in the Development Agreement. Declaration of Development allocates a maximum of 3,600 square feet (3.6 commercial Unit Equivalents) for Resort Support Commercial within Lot 1. The foregoing confirmation of the allocation of commercial Unit Equivalents does not include the 05 apportioned support commercial allowed by existing covenants, which number shall be determined and added to the allotment for Lot 1 of such time as the owner of Lot 1 obtains a conditional use permit approval. No Unit Equivalents will be allocated to Parcel A as Parcel A is to be used in connection with resort and similar activities.
- Owners and potential buyers of any parcel, unit or lot within the lot or parcel depicted on this plot are given notice that they own or are buying property in a resort area in which all-season resort activities are conducted and where certain risks are present, including, without limitation, damage to property and improvements and personal injury and death caused by errant skiers, snowboarders, mountain bikers and other resort patrons, equipment, machine-made snow, heavy equipment, construction or improvements of facilities, objects or equipment falling from lifts, water runoff, droppage, heavy snow falls, wind patterns, and other conditions that may affect the properties depicted hereon. The applicant so resort and its facilities are not members of any master association but are served by a private resort and its facilities are governed by such owner or agreement with such owner.
- The Empire Peak Master Owners Association, Inc. (the "Master Association") together with the Master Declaration of Covenants, Conditions, and Restrictions of Empire Peak, as amended ("Master Declaration"), requires the membership of each lot or unit owner. Members are subject to the terms of its articles of incorporation, bylaws, rules and regulations and other governing documents that may be established from time to time by the Master Association, including assessments and reinvestment, fees as provided therein.
- [Utility Easement dedication - await comments from PCMC regarding Waterline]
- The property is located within a water source protection zone. All sewer construction must comply with the State of Utah drinking water regulations.
- A 10' snow storage easement is hereby dedicated to the Master Association along the frontage of the single development lot depicted hereon.
- Fire sprinklers will be required within all dwellings constructed on the single development lot depicted hereon.

SHEET 1 OF 1

UTAH JOB NO. 12-3-16 FILE #X\Ensign\dwg\lot\plat\B2\120216-B2 East.dwg



LINE	BEARING	DISTANCE
L1	N 16°27'11" E	56.03
L2	N 35°40'02" W	47.30

CURVE	RADIUS	LENGTH	DELTA
C1	80.00	147.00	103°18'14"
C2	15.00	16.15	61°42'16"
C3	100.00	112.21	64°17'22"
C4	825.00	355.31	38°40'34"
C5	30.00	35.43	67°39'36"
C6	85.00	139.33	93°54'58"
C7	450.00	4.79	00°30'49"
C8	596.00	84.66	00°30'49"

LEGEND
• Salt 5/8" rebar w/flag
• ALUMINE COLUMNS 154491"
(Unless noted otherwise)

B2 EAST SUBDIVISION

LOCATED IN THE WEST HALF OF SECTION 28 & THE SOUTHEAST QUARTER OF SECTION 29
TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

 SNYDERVILLE BASIN WATER RECLAMATION DISTRICT REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER RECLAMATION DISTRICT STANDARDS ON THIS _____ DAY OF _____, 2017 BY _____ S.B.W.R.D.	PLANNING COMMISSION APPROVED BY THE PARK CITY PLANNING COMMISSION THIS _____ DAY OF _____, 2016 BY _____ CHAIR	ENGINEER'S CERTIFICATE I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS _____ DAY OF _____, 2017 BY _____ PARK CITY ENGINEER	APPROVAL AS TO FORM APPROVED AS TO FORM THIS _____ DAY OF _____, 2017 BY _____ PARK CITY ATTORNEY	COUNCIL APPROVAL AND ACCEPTANCE APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS _____ DAY OF _____, 2017 BY _____ MAYOR	CERTIFICATE OF ATTEST I CERTIFY THIS RECORD OF SURVEY MAP WAS APPROVED BY PARK CITY COUNCIL THIS _____ DAY OF _____, 2017 BY _____ PARK CITY RECORDER	STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF _____ DATE _____ TIME _____ ENTRY NO. _____ FEE _____ RECORDER

WHEN RECORDED, RETURN TO:
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, Utah 84145-0898
Attn: Craig B. Terry

00719855 Bk01666 Pg01054-01155

ALAN SPRIGGS, SUMMIT CO RECORDER
2004 DEC 14 15:55 PM FEE \$233.00 BY GGB
REQUEST: COALITION TITLE

**CERTIFICATE OF AMENDMENT AND
AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF EMPIRE PASS**

December 10, 2004

**CERTIFICATE OF AMENDMENT AND
AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF EMPIRE PASS**

THIS CERTIFICATE OF AMENDMENT AND AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMPIRE PASS, is made effective as of this 10th day of December, 2004, by EMPIRE PASS MASTER OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, and UNITED PARK CITY MINES COMPANY, a Delaware corporation, as the successor in interest to Blue Ledge Corporation, a Delaware corporation, with respect to the following:

RECITALS:

A. Declarant owns or controls certain real property located in Summit County, Utah ("Declarant Property"). Declarant desires to develop, in phases, portions of the Declarant Property as a planned community formerly known as Flagstaff and by this Declaration now known as Empire Pass consisting of residential, commercial, recreational and other areas and uses. Declarant intends to develop as the first phase of Empire Pass that certain portion of the Declarant Property defined below as the Property. The Property is more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

B. The Flagstaff planned community was created by (a) that certain Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community dated June 28, 2002, that was recorded on June 28, 2002 in the Office of the Recorder of Summit County, Utah, as Entry No. 623450, Book 1457, beginning at Page 747, as amended by (i) that certain Supplemental Declaration and Amendment to the Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community dated October 21, 2002, that was recorded on October 22, 2002 in the Office of the Recorder of Summit County, Utah, as Entry No. 635722, in Book 1481, beginning at Page 1538, and (ii) that certain Second Supplemental Declaration to the Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community dated July 18, 2003, that was recorded on July 18, 2003 in the Office of the Recorder of Summit County, Utah, as Entry No. 665954, in Book 1553, beginning at Page 8 (collectively referred to herein as the "Original Declaration"); (b) that certain subdivision plat known as Northside Village Subdivision, a single family subdivision recorded in the Office of the Recorder of Summit County, Utah on June 28, 2002, as Entry No. 623455; (c) that certain subdivision plat known as Northside Village Subdivision II, a multifamily subdivision recorded in the Office of the Recorder of Summit County, Utah on June 28, 2002, as Entry No. 623453; (d) that certain plat for the Marsac Avenue Right-of-Way recorded in the Office of the Recorder of Summit County, Utah on June 28, 2002 as Entry No. 623451; and (e) that certain Park City Ordinance No. 03-11, an Ordinance Approving a Four Parcel Metes and Bounds Subdivision at Flagstaff Mountain Village Park City, Utah, dated April 17, 2003, as evidenced by a Certificate of Approval dated April 17, 2003, and recorded in the Office of the Recorder of Summit County, Utah on May 5, 2003, as Entry No. 657115, in Book 1532, at Page 718.

C. Empire Pass is located in a mountainous setting located near the Deer Valley Ski Resort and is intended to be a mountain ski resort development. At full development it is intended, without obligation, that Empire Pass will collectively have several residential neighborhoods and subdivisions, condominium developments, townhouse developments, overnight lodgings, planned unit developments, recreational areas which may include, without obligation, trail systems, ski trails, open spaces, walkways, tennis courts, swimming pools and clubhouses and other social, commercial, civic and cultural buildings and facilities.

D. As part of the various phases of development of the Property, Declarant intends, without obligation, to record various Plats; to dedicate portions of the Property to the public for streets, roadways, utilities, drainage, flood control and general public use; and to record various Neighborhood Declarations and Supplemental Declarations covering portions of the Property, which Neighborhood Declarations and/or Supplemental Declarations will designate the purposes for which such portions of the Property may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Property.

E. Declarant may, without an obligation to do so, annex all or portions of the Additional Land into Empire Pass, which land is not presently included in Empire Pass, and subject all or any portion of the Additional Land to this Declaration.

F. As part of the development of the aforesaid lands, Declarant may, without an obligation to do so, sell Parcels to various Merchant Builders and record Neighborhood Declarations and/or Supplemental Declarations creating restrictive covenants on the Parcels sold, and those Merchant Builders, subject to Declarant's approval, shall record Plats and make public dedications on the Parcels purchased.

G. Declarant has formed the Master Association as a non-profit corporation for the purpose of benefiting the Property and its Owners and Residents, which non-profit corporation will (a) acquire, construct, operate, own, manage and maintain a variety of Community Areas and other areas within the Property; (b) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; (c) upon the Transfer of any Lot, Unit or Parcel, levy, collect and disburse the Transfer Assessment imposed hereunder; (d) perform and provide certain services and functions including, without limitation, Resort Activities, maintaining ski runs and trails, and providing security measures for portions of Empire Pass; and (e) as the agent and representative of the Members of the Master Association and the Residents of Empire Pass, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property. Declarant desires and intends that the portions of the Property utilized for Residential purposes shall be subject to all of the Assessments and that the portions of the Property utilized for Commercial purposes shall be exempt from Annual Assessments and Special Assessments.

H. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Residents, occupants or other holders of an interest in the Property, or any part thereof, certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the Property.

I. Declarant desires and intends that the Owners, Mortgagees, lessees and trustees under trust instruments or deeds, occupants, Residents and other persons hereafter acquiring any interest in or otherwise utilizing portions of the Property shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, privileges, covenants and restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of Empire Pass and are established for the purpose of enhancing the value, desirability and attractiveness of Empire Pass.

J. Declarant therefore desires to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens and reservations set forth in this Declaration.

K. In order to cause this Declaration and the Covenants to run with the Property and to be binding upon the Property and the Owners, Mortgagees, Residents and occupants or holders of interest thereof from and after the date this Declaration is recorded, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to this Declaration; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by this Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth, except to the extent such persons are specifically excepted herefrom and that all portions of the Property acquired by them shall be bound by and subject to this Declaration.

L. The Master Association considered amending and restating the Original Declaration to: (a) change the name of the Property that is subject to this Declaration from Flagstaff to Empire Pass; (b) simplify the method of assessing the Assessable Property; (c) eliminate the Annual Assessment and Special Assessment on all Commercial Areas; (d) implement the obligations undertaken by the Master Association to Park City under the Maintenance Agreement; (e) implement certain modifications and updates to the Design Guidelines; and (f) adopt such other changes as the Master Association deems desirable including the restatement of the Original Declaration in its entirety. The Master Association also considered amending the Article of Incorporation to change the name of the Master Association to Empire Pass Master Owners Association, Inc.

M. On November 29, 2004, the Master Association caused written notice to be sent to the Members of a special meeting of the Master Association called and held pursuant to the Articles and the Bylaws, ("Special Meeting") to consider the amendment and restatement of the Original Declaration. In accordance with Section 3 of the Bylaws, the Master Association held the Special Meeting on December 10, 2004, at 10:30 a.m., at 890 Main Street, Suite 5109, Park City, Summit County, Utah. At the Special Meeting, the Master Association considered and approved the amendment and restatement of the Original Declaration as set forth in this Declaration.

N. The Master Association hereby certifies that, pursuant to the Bylaws and Section 18.2 of the Original Declaration, at the Special Meeting, the Members voted, by the affirmative vote of the Voting Members casting not less than sixty-seven percent (67%) of the votes of the

Members subject to the Original Declaration, to amend and restate the Original Declaration in the respects described above and in this Declaration and to amend the Articles to change the name of the Master Association to Empire Pass Master Owners Association, Inc.

O. In accordance with the Bylaws and Section 18.2 of the Original Declaration, Declarant and the Master Association, through its duly appointed president, have executed and shall record this Declaration for the purpose of evidencing of record the foregoing described matters.

NOW, THEREFORE, Declarant and the Master Association hereby amend and restate the Original Declaration in its entirety to be as follows:

ARTICLE I DEFINITIONS

The following words, phrases or terms used in this Declaration (including that portion hereof headed "Recitals") shall have the following meanings:

1.1 "Affordable Housing" shall have the meaning set forth in the Park City Land Management Code, as may be amended from time to time.

1.2 "Additional Land" shall mean, refer to, and consist of the parcels of real property situated in Summit County, Utah and/or Wasatch County, Utah now or in the future owned and controlled by Declarant and Declarant's affiliates. In addition, the Additional Land shall also consist of any other real property located not more than ten miles from the exterior boundaries of the Additional Land. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the existing Empire Pass in accordance with the provisions of Article XVI of this Declaration.

1.3 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Unit or Parcel (other than Exempt Property) pursuant to Section 7.3, hereof.

1.4 "Apartment Development and/or Apartment Development Use" shall mean a Parcel or portion thereof that is dedicated for such purpose in a Neighborhood Declaration, Supplemental Declaration or in the Master Land Use Plan, and is comprised of Rental Apartments, including without limitation Affordable Housing, and surrounding areas that are intended, as shown by the site plan therefor approved by the Municipal Authority and the Design Review Board or otherwise, as one integrated apartment operation under the same ownership.

1.5 "Articles" shall mean the Articles of Incorporation of the Master Association as the same may from time to time be amended or supplemented.

1.6 "Assessable Property" shall mean any Lot, Unit or Parcel that has a Land Use Classification that permits Residential Use, except such part or parts thereof as may from time to time constitute Exempt Property; provided however, that Exempt Property shall not be exempt from Maintenance Charges, Transfer Assessments and Special Assessments. Assessable

Property shall include Apartments Developments, Residential Condominium Developments and Timeshare/Fractional Share Developments.

1.7 “Assessments” shall mean collectively the Annual Assessment, Special Assessment and Transfer Assessment imposed by the Master Association.

1.8 “Assessment Lien” shall mean the lien created and imposed by Article VII.

1.9 “Assessment Period” shall mean the term set forth in Section 7.8.

1.10 “Board” shall mean the Board of Directors of the Master Association.

1.11 “Bulk Service Provider” means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Residents, Lots, Units and/or Parcels within Empire Pass, or within one or more portions thereof, pursuant to a Bulk Service Agreement.

1.12 “Bulk Service Agreement” means an agreement between Master Association and a Bulk Service Provider pursuant to which the Bulk Service Provider would provide cable television, community satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Residents, Lots, Units and/or Parcels within Empire Pass, or within one or more portions thereof.

1.13 “Bylaws” shall mean the Bylaws of the Master Association, as the same may from time to time be amended or supplemented.

1.14 “Certificate of Amendment” shall mean an amendment to this Declaration Recorded by the Master Association pursuant to Section 18.2 of this Declaration and/or shall mean an amendment to this Declaration Recorded by the Declarant pursuant to Section 18.3 or Section 18.4 of this Declaration.

1.15 “Church Use” shall mean use of portions of the Property by a church or religious organization for a permanent church facility including a chapel used for religious services and which may be used for church cultural and recreational activities. Residential Areas and Commercial Areas may not be utilized for Church Use, except as permitted by a Neighborhood Declaration, a Supplemental Declaration or the Declarant. No Dwelling Unit may be utilized for Church Use.

1.16 “Cluster Residential Development and/or Cluster Residential Use” shall mean Lots and Units in planned unit developments or subdivisions with Dwelling Units intended for Residential occupancy and may include those types of Residential housing arrangements known as townhouses, clustered housing, duplexes, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Dwelling Units in the cluster development.

1.17 “Commercial and/or Commercial Area(s) and/or Commercial Use” shall mean any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is used for one or more commercial purposes, including, but not limited to the following: Retail Use, Hotel Use, restaurants, spas and health clubs or Timeshare/Fractional Share Development, and other areas used for non-Residential purposes. Commercial Areas shall not include any Community Areas owned by the Master Association or other Community Areas owned by a Sub-Association or Community Areas owned in common by Residential Condominium Unit Owners. Declarant specifically acknowledges and intends that certain Lots or Parcels within Empire Pass may contain structures that will have a mixture of Residential Areas and Commercial Areas within the same structure. In that event, the provisions of this Declaration pertaining to Residential Areas shall apply to and govern the Residential Areas within such structure, and the provisions of this Declaration pertaining to Commercial Areas shall apply to and govern the Commercial Areas within such structure.

1.18 “Commercial Condominium Development and/or Commercial Condominium Development Use” shall mean a Condominium Development intended for Commercial Use.

1.19 “Community Area” and “Community Areas” shall mean (a) all Master Association Land designated from time to time by the Board for use by the Members, Residents and their guests, including entry monument areas and the entry monuments related to projects subject to Neighborhood Declarations and/or Supplemental Declarations constructed by developers or Merchant Builders; (b) all areas identified as open space on the Master Land Use Plan, including the Trail System, which may or may not be dedicated to the public or to a Municipal Authority, but only until such open space is dedicated to a Municipal Authority; (c) all land within Empire Pass which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Master Association including enhanced parkways and median strips and areas between roadways and Lots, even if owned by a Municipal Authority; (d) all land within Empire Pass which the Declarant indicates on a Plat, Neighborhood Declaration or Supplemental Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of Empire Pass and/or the general public and is to be dedicated to the public or a Municipal Authority upon the expiration of a fixed period of time, but only until such land is so dedicated; (e) all land or right-of-way easements within Empire Pass which are dedicated to the public or to a Municipal Authority, but which such Municipal Authority or other governmental agency requires the Master Association to maintain; (f) areas on a Lot, Unit or Parcel within easements granted to the Master Association or its Members for the location, construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a Plat or Neighborhood Declaration or Supplemental Declaration or by a Deed or other conveyance accepted by the Master Association; (g) roadways, walkways, bridges, culinary water system components, tunnels and certain storm drain pipes (as set forth in the Maintenance Agreement) within the existing and subsequent phases of Empire Pass; (h) Improvements located outside of Empire Pass that the Master Association has the duty, obligation or right to improve, maintain, replace or repair; and (i) other public infrastructure within the existing and subsequent phases of Empire Pass.

1.20 “Community Expense Fund” shall mean and refer to the fund created or to be created pursuant to the provisions of Article VII of this Declaration and into which all monies of the Master Association shall be deposited. Two separate and distinct funds shall be created and

maintained thereunder, one for operating expenses and one for capital or reserve expenses which together shall constitute the Community Expense Fund.

1.21 "Community Expenses" shall mean and refer to those costs and expenses incurred by or on behalf of the Master Association arising out of or connected with the maintenance, improvements and operation (including capital repairs and replacements) of Empire Pass and the Master Association as described in Article VII hereof and which determine the Assessments made to Owners.

1.22 "Condominium Development" shall mean a condominium ownership regime established under the laws of the State of Utah including both Residential and Commercial Condominium Developments.

1.23 "Condominium Unit" shall mean a condominium unit (as defined under Utah Code Ann. § 57-8-1 et seq.), including its appurtenant interest in all common areas as set forth on a condominium plat, established under Utah law. Such term shall not include a Rental Apartment in an Apartment Development.

1.24 "Consideration" shall mean the total of money paid and the Gross Sales Price of any property delivered, or contracted to be paid or delivered, in return for the Transfer of any Lot, Unit or Parcel, and includes the amount of any note, contract indebtedness, or rental payment payable to the Transferor in connection with such Transfer, whether or not secured by any lien, deed of trust, or other encumbrance given to secure the Gross Sales Price, or any part thereof, or remaining unpaid on and encumbering such Lot, Unit or Parcel at the time of Transfer, whether or not assumed by the Transferee. The term "Consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Utah, or a municipal or quasi-municipal governmental corporation or district.

1.25 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, rights, obligations, servitudes, liens, reservations and easements set forth in this Declaration, as amended or supplemented from time to time.

1.26 "Declarant" shall mean United Park City Mines Company, a Delaware corporation, as the successor in interest to all rights, title and interests of Blue Ledge Corporation, a Delaware corporation, its wholly-owned subsidiary corporation, pursuant to that certain Assignment of Declarant's Rights dated December 10, 2004, and Recorded on December 10, 2004 in the Office of the Recorder of Summit County, Utah, as Entry No. 719588, in Book 1665, beginning at Page 1909, which Blue Ledge Corporation was identified as the Declarant under the Original Declaration. The term Declarant shall also mean the successors and assigns of Declarant's rights and powers hereunder. Declarant shall also include any Person or Persons that have been assigned and have agreed to assume certain of Declarant's rights and/or obligations in this Declaration pursuant to Section 19.1 effective upon the Recording of a written instrument signed by the Declarant and such Person or Persons and duly Recorded in the Office of the Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable, that evidences such assignment and assumption.

1.27 “Declarant Property” shall have the meaning set forth in Recital A above. Except for the Property, this Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Declarant Property unless and until such portion has been added to the existing Empire Pass in accordance with the provisions of Article XVI of this Declaration.

1.28 “Declaration” shall mean this Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass, as amended or supplemented from time to time.

1.29 “Deed” shall mean a deed or other instrument conveying the fee simple title in a “Lot,” “Unit” or “Parcel”.

1.30 “Deer Valley Ski Resort” shall mean the real property and related improvements and facilities commonly known as Deer Valley located near or adjacent to Empire Pass which property and facilities are owned and/or operated as a ski resort by Deer Valley Resort Company and its successors and assigns.

1.31 “Design Guidelines” means those design guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. Declarant or the Design Review Board reserves the right to modify the Design Guidelines. The Design Guidelines may impose, without limitation, certain restrictions with respect to a Dwelling Unit’s mandatory minimum and maximum square footage, building materials used in constructing the Dwelling Unit, architectural standards and other matters. The Design Guidelines also may include certain signage guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. There is no assurance that such Design Guidelines will not change from time to time, and they may change with respect to unsold Lots, Units or Parcels, subject to this Declaration, after one or more other such Lots, Units or Parcels, have been sold by Declarant.

1.32 “Design Review Board” shall mean the committee created pursuant to Article XI.

1.33 “Development Agreement(s)” shall mean (a) that certain Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn’s Junction Parcel and Iron Mountain dated June 24, 1999, entered into by and between Declarant, Deer Valley Resort Company, a Utah limited partnership and Park City and other parties as amended or supplemented from time to time; and (b) any other development agreement entered into between Declarant and any Municipal Authority with respect to development of Empire Pass.

1.34 “Development Guidelines” shall mean those development guidelines for Empire Pass that may be established by Declarant and applicable Municipal Authorities which relate to the development and construction of roadways, major infrastructure and other matters related to both off-site and on-site development of Lots and Parcels, but excluding the guidelines for construction of Dwelling Units and buildings on Lots and Parcels which are governed and controlled by the Design Guidelines. Certain of the Development Guidelines are currently set forth in the Development Agreement or may be subsequently incorporated into the Development

Agreement from time to time, and upon such incorporation they shall be part of the Development Guidelines. The Development Guidelines also include certain technical reports, studies and agreements on file with Park City and/or the Declarant including, without limitation, the Mine/Soil Hazard Mitigation Plan, the Specific Transit Plan, the Parking Management Plan, the Construction Phasing Plan, the General Infrastructure and Public Improvements Design and Phasing Plan, the Utilities Master Plan, the Affordable Housing Plan, and the Master Construction Mitigation Plan.

1.35 “Drainage Control Features” shall mean the term set forth in Section 3.4.

1.36 “Dwelling Unit” shall mean any building or portion thereof designed for Use as the residence or sleeping place of one (1) or more Persons or families and includes a kitchen, but does not include a Hotel, motel, lodge, nursing home or an area of such building with separate exterior access and toilet facilities, but no kitchen.

1.37 “Eligible Mortgagee” shall mean and refer to a Mortgagee which has requested notice of certain matters from the Master Association in accordance with Section 17.1 of this Declaration.

1.38 “Emergency Reserve Account” shall mean an account, with an initial balance of \$50,000, established at a federally insured bank or savings and loan with an office in Park City pursuant to the Maintenance Agreement and Section 10.4.2 hereof.

1.39 “Empire Pass” shall mean, refer to, and consist of the Property and the development to be completed thereon, commonly known as Empire Pass, together with the Additional Land and/or any other real property hereafter annexed to Empire Pass pursuant to the provisions of this Declaration.

1.40 “Empire Pass Rules” shall mean the rules for Empire Pass adopted by the Board pursuant to Section 5.3.

1.41 “Exempt Property” shall mean the following parts of Empire Pass:

1.41.1 All land and Improvements owned by or dedicated to and accepted by the United States, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective, including all Municipal Authority Property and all property utilized for General Public Uses;

1.41.2 All Master Association Land, for as long as the Master Association is the owner thereof.

1.41.3 All land and/or Improvements (or portions thereof) utilized for Church Use.

1.41.4 All land and/or Improvements (or portions thereof) utilized for Private Amenities.

1.41.5 All Affordable Housing.

1.41.6 All land and/or Improvements (or portions thereof) utilized exclusively for Commercial Uses.

1.41.7 Each other property, including each Lot, Unit or Parcel, while owned by Declarant, a Declarant related developer entity or other Class B Member, until the earliest to occur of (i) the acquisition of its record title by a Member holding Class A Membership, (ii) the 60th day after the Municipal Authority having jurisdiction over such property issues a certificate of occupancy for the first Dwelling Unit or building hereafter constructed thereon, or (iii) the 10th anniversary of the date on which the real property comprising such Exempt Property is subjected to this Declaration. Declarant or a Declarant related developer entity may expressly waive its right to an exemption from Annual Assessments and Special Assessments as to some or all Exempt Properties of which it is then the Owner, by a Supplemental Declaration identifying such Exempt Properties and signed by it. In such event, such exemption shall terminate as to each such identified Exempt Property when such Supplemental Declaration is Recorded. Any such waiver shall run with the title to each such Exempt Property and bind its subsequent Owners, including Declarant, any Declarant related developer entity and any Merchant Builder.

1.42 "FHA" shall mean and refer to the Federal Housing Administration.

1.43 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.44 "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.45 "First Mortgagee" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.46 "FNMA" shall mean and refer to Federal National Mortgage Association.

1.47 "General Commercial Development or General Commercial Use" shall mean those types of developments and uses in a Commercial Area designated by the Design Guidelines and/or Master Land Use Plan as General Commercial, including but not limited to Commercial Condominium Developments, Hotel Use or any other development denominated as General Commercial Use by Declarant.

1.48 "General Public Uses" shall mean those types of uses designated by the Master Land Use Plan as General Public Uses, including but not limited to school sites, open spaces and trails, conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority.

1.49 "Governing Documents" shall mean this Declaration, Certificate(s) of Amendment, Neighborhood Declaration(s), Supplemental Declaration(s), the Bylaws, the Articles, the Empire Pass Rules, the Design Guidelines, the Development Guidelines, the

Board's resolutions, the Recorded Plats, the Development Agreement and the Maintenance Agreement.

1.50 "Gross Sales Price" shall mean with respect to a Lot, Unit or Parcel subject to Transfer, in the case of a Transfer that is in all respects a bona fide sale, the Consideration given for the Transfer less actual customary expenses of sale (or the equivalent thereof which would have been received by the Transferor had the transaction been an arms-length, third-party cash transaction, in the event the Transfer is not an arms-length, third-party cash transaction) of the Lot, Unit or Parcel subject to Transfer. Notwithstanding the foregoing, the value of timeshare interests and timeshare estates and vacation club ownership interests, for purposes of determining Gross Sales Price, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate, including the fees and costs associated with the sale of the timeshare interests and timeshare estates that exceed those fees and costs normally incurred in the sale of other similar properties, the fees and costs associated with the operation, ownership, and use of timeshare interests and timeshare estates, vacation exchange rights, and benefits available to a timeshare unit owner. In case of a Transfer that is a lease or is otherwise not in all respects a bona fide sale, Gross Sales Price of the Lot, Unit or Parcel subject to Transfer shall be determined by the Master Association. A Transferee may make written objection to the Master Association's determination within 15 days after the Master Association has given notice of such determination, in which event the Master Association shall obtain an appraisal, at the Transferee's sole expense, from a MAI real estate appraiser of good reputation, who is qualified to perform appraisals in Utah, who is familiar with Summit County and Park City area real estate values, and who shall be selected by the Master Association. The appraisal so obtained shall be binding on both the Master Association and the Transferee. Notwithstanding any provision herein to the contrary, where a Transferee does not object within 15 days after the time required herein for objecting, the Transferee shall be deemed to have waived all right of objection concerning Gross Sales Price, and the Master Association's determination of such shall be binding.

1.51 "Hotel" and/or "Hotel Use" shall mean a building containing sleeping rooms for the occupancy of guests for compensation on a nightly basis and accessory facilities such as a lobby, meeting rooms, recreation facilities, and group dining facilities.

1.52 "Improvement(s)" shall mean any improvement now or hereafter constructed in Empire Pass and includes anything which is a structure for purposes of applicable Municipal Authority law including but not limited to any building, structure, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel.

1.53 "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Section 4.1, which designates the type of Improvements which may be

constructed on a Lot, Unit, Parcel or Master Association Land and the purposes for which such Improvements and surrounding land may be utilized.

1.54 “Lease” shall mean a written lease or sublease for the leasing or rental of an apartment or other Residential or Commercial property.

1.55 “Lot” shall mean any portion of the Property designated as a subdivided unit of land on any Plat Recorded and approved by Declarant, including any subsequent adjustment of boundary lines thereto, and limited by this Declaration, by a Neighborhood Declaration and/or by a Supplemental Declaration to Single Family Lot Use.

1.56 “Maintenance Agreement” shall mean that certain Maintenance Agreement dated March 12, 2004, entered into by and between Declarant, Blue Ledge Corporation, a Delaware corporation, the Master Association, and Park City, as amended or supplemented from time to time. The Maintenance Agreement was recorded on March 19, 2004 in the Office of the Recorder of Summit County, Utah, as Entry No. 692326, Book 1606, at Pages 210 through 219.

1.57 “Maintenance Charges” shall mean any and all costs assessed to a Sub-Association and/or an Owner pursuant to Sections 10.2 and 10.3.

1.58 “Manager” shall mean such Person retained by the Board to perform certain functions of the Board pursuant to this Declaration or the Bylaws. The Manager for the Master Association shall carry out certain responsibilities of the Master Association as required herein, by the Development Agreements, and by any other Governing Document.

1.59 “Master Association” shall mean the Utah nonprofit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, the Articles, the Bylaws and any other Governing Document and the successors and assigns of such nonprofit corporation. Declarant caused the Master Association to be incorporated on August 2, 2002, and the Board shall cause the Articles to be amended in order to change the name of the Master Association to be “EMPIRE PASS MASTER OWNERS ASSOCIATION, INC.”

1.60 “Master Association Land” shall mean such part or parts of Empire Pass, together with the buildings, structures and Improvements thereon, and other real property which the Master Association now or hereafter owns in fee for as long as the Master Association is the owner of the fee.

1.61 “Master Association Use” shall mean those portions of Empire Pass intended for the use and benefit of the Master Association including, without limitation, amenities provided by the Master Association for the use and enjoyment of the Members and Residents.

1.62 “Master Land Use Plan” shall mean the map, site plan and other documents showing and/or identifying the various Land Use Classifications and density allocations applicable to various Parcels as approved by the applicable Municipal Authority and the Declarant, as the same may from time to time be amended, a copy of which shall be on file at all times in the office of the Master Association. Declarant reserves the right to modify the Master

Land Use Plan from time to time. Such modifications by Declarant may include, among others, the addition or deletion of Land Use Classifications.

1.63 “Member” shall mean any person holding a Membership in the Master Association pursuant to this Declaration.

1.64 “Membership” shall mean a Membership in the Master Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Master Association.

1.65 “Merchant Builder” shall mean a Person who acquires a Parcel or a group of five or more Lots or Units in Empire Pass for the purpose of improving and constructing Dwelling Units or other Improvements thereon for resale to the general public or other development purposes; provided, however, that the term “Merchant Builder” shall not mean or refer to Declarant or its successors.

1.66 “Mortgage” shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot, Unit or Parcel or interest therein as security for the payment of a debt or obligation.

1.67 “Mortgagee” shall mean a beneficiary of a Mortgage as well as a named Mortgagee.

1.68 “Municipal Authority” shall mean the applicable governmental entity or municipality which has jurisdiction over some part of Empire Pass including without limitation, Park City.

1.69 “Municipal Authority Property” shall mean all real property which is from time to time conveyed, assigned, or transferred by Deed or other written instrument to the applicable Municipal Authority, which may include, without limitation, portions or all of the Trail System, public streets including medians and enhanced parkways, retention basins and drainage facilities and open space areas.

1.70 “Neighborhood” shall mean two or more Lots, Units or Parcels (as designated by Declarant or by the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) which share interests other than those common to all Lots, Units or Parcels, as more particularly described in Section 6.6. By way of illustration and not limitation, a Single Family Lot Development, a Cluster Residential Development, a Residential Condominium Development or a Commercial Area might each be designated as separate Neighborhoods, or a Neighborhood may be comprised of more than one housing or use type with other features in common. In addition, each Parcel intended for development shall constitute a Neighborhood, subject to division by Declarant into more than one Neighborhood upon development. Where the context permits or requires, the term “Neighborhood” shall also refer to the Sub-Association which in some instances may be established to act on behalf of the Owners within the Neighborhood. Declarant has initially established Neighborhood boundaries which boundaries may be modified by Declarant (or by the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) as provided herein.

1.71 "Neighborhood Declaration" shall mean a declaration Recorded pursuant to Section 4.1 of this Declaration. A Neighborhood Declaration shall contain restrictions on use and establish a Land Use Classification for each Parcel covered by the Neighborhood Declaration as described in Section 4.1 of this Declaration. The Neighborhood Declaration shall identify the density allocated to the property it covers. It is contemplated that a Neighborhood Declaration will be, in contrast to a Supplemental Declaration, a more comprehensive and detailed document such as a condominium declaration or restrictive covenants which more specifically regulate a Neighborhood.

1.72 "Neighboring Property" is any property or street within Empire Pass (including annexed property) other than the specific property in reference.

1.73 "Nondisturbance Areas" shall mean the term set forth in Section 4.2.36.

1.74 "Original Declaration" shall mean the term set forth in Recital B above.

1.75 "Owner" shall mean (a) any Person(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot, Unit or Parcel including, without limitation, one who is buying a Lot, Unit or Parcel under a Recorded contract or Recorded notice of such contract, but excluding others who hold an interest therein merely as security and (b) any Person(s) entitled to occupy all of a Lot, Unit or Parcel under a lease or sublease for an initial term of at least ten (10) years, in which case the fee owner or sublessor of the Lot, Unit or Parcel shall not be deemed the Owner thereof for purposes of this Declaration during the term of said lease or sublease.

1.76 "Parcel" shall mean a portion of the Property limited by a Neighborhood Declaration or Supplemental Declaration or the Master Land Use Plan to one of the following Land Use Classifications: Apartment Development, Residential Condominium Development (but only until the condominium regime therefor is Recorded), Commercial Condominium Development, General Commercial Development or Timeshare/Fractional Share Development. The term Parcel shall also include those portions of the Property which a Neighborhood Declaration or Supplemental Declaration or the Master Land Use Plan designates for Single Family Lot Use or Cluster Residential Use but which have not yet been subdivided into Lots and/or Units and related amenities and rights-of-way, but any such areas shall cease to be a Parcel upon the recordation of a Plat or other instrument covering the area and creating Lots and/or Units and related amenities. A Parcel shall not include a Lot or a Unit but, in the case of staged developments, shall include areas not yet included in a Plat, condominium property regime or other Recorded instrument creating Lots and/or Units and related amenities. A Parcel with a Land Use Classification of Apartment Development shall cease to be a Parcel if the Apartment Development is converted to a Residential Condominium Development. Declarant shall have the right, subject to the terms of the Development Agreements, to identify and create and/or reconfigure the boundaries of any Parcel of which Declarant is the Owner.

1.77 "Park City" shall mean Park City Municipal Corporation, a body corporate and political subdivision of the State of Utah.

1.78 “Park City Assessment” shall mean the charge levied and assessed by Park City (on behalf of the Master Association) pursuant to Section 10.4.1 hereof.

1.79 “Person” shall mean a natural individual, a corporation, limited liability company, partnership or any other entity with the legal right to hold title to real property.

1.80 “Plat” shall mean any subdivision plat or condominium plat affecting Empire Pass as Recorded in the Office of the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, as such may be amended from time to time, including but not limited to any such Recorded plats respecting all or any portion of the Additional Land.

1.81 “Private Amenities” or “Private Amenity” shall mean any real property, improvements and/or facilities thereon located and all related and supporting facilities and improvements within Empire Pass that is owned and operated by Persons other than the Master Association for recreational and related purposes, on a club membership basis or otherwise.

1.82 “Private Amenities Use” shall mean use of portions of the Property by any Person for a Private Amenity.

1.83 “Property” shall mean the real property described on Exhibit A and any Additional Land annexed to Empire Pass by Declarant pursuant to Article XVI.

1.84 “Record” or “Recording” shall mean placing an instrument of public record in the Office of the County Recorder of Summit County, Utah or the County Recorder of Wasatch County, Utah, as applicable, and “Recorded” shall mean having been so placed of public record.

1.85 “Rental Apartments” shall mean Dwelling Units within a permanent improvement consisting of four (4) or more commercially integrated Dwelling Units under single ownership upon one or more contiguous Parcels, each of which is designed and utilized, otherwise than as a Hotel or on some other transient basis, for rental or lease for Residential purposes to non-Owners.

1.86 “Resident” shall mean:

1.86.1 Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is Recorded, and each tenant or lessee actually residing or conducting a business on any part of the Assessable Property; and

1.86.2 Members of the immediate family of each Owner, lessee, tenant or buyer referred to in Section 1.86.1 actually living in the same household with such Owner, lessee, tenant or buyer.

Subject to the Empire Pass Rules (including the imposition of special non-resident fees for use of the Master Association Land if the Master Association shall so direct), the term “Resident” also shall include the on-site employees, guests or invitees of any such Owner, lessee, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

1.87 “Residential” or “Residential Areas” shall include Single Family Lot Developments, Cluster Residential Developments, Residential Condominium Developments and Timeshare/Fractional Share Developments, and all common recreational areas and facilities associated with any of the foregoing and other non-Commercial Areas. The use of one or more Units in a Residential Condominium Development or Residential Timeshare/Fractional Share Development for nightly rental purposes shall not change the Residential nature of such development into a Commercial Use. Declarant specifically acknowledges and intends that certain Lots or Parcels within Empire Pass may contain structures that will have a mixture of Residential Areas and Commercial Areas within the same structure. In that event, the provisions of this Declaration pertaining to Residential Areas shall apply to and govern the Residential Areas within such structure, and the provisions of this Declaration pertaining to Commercial Areas shall apply to and govern the Commercial Areas within such structure.

1.88 “Residential Condominium Development and/or Residential Condominium Development Use” shall mean a Condominium Development intended for Residential Use.

1.89 “Resort Activities” shall have the meaning set forth in Section 21.1.

1.90 “Retail Use” shall mean use of a Commercial Area for the display, marketing, and sale of merchandise, food and/or services to the general public.

1.91 “Security Deposit” shall have the meaning set forth in Section 11.5.

1.92 “Single Family” shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit.

1.93 “Single Family Lot Development and/or Single Family Lot Use” shall mean Lots in a subdivision intended for Single Family occupancy in Dwelling Units, together with related areas intended for the use and enjoyment of the Owners and Residents of such Lots.

1.94 “Special Assessment” shall mean any assessment levied and assessed pursuant to Section 7.6.

1.95 “Special Service District” shall mean the term set forth in Section 2.4.

1.96 “Special Use Fees” shall mean the term set forth in Section 3.1.5.

1.97 “Sub-Association” shall mean any Utah nonprofit corporation or unincorporated association, or its successor in interest, the membership of which is composed of the Owners of Lots, Units or Parcels subject to one or more Neighborhood Declarations and/or Supplemental Declarations. Subject to Declarant’s prior approval, any Merchant Builder or Neighborhood shall be required to Record a Neighborhood Declaration against a Neighborhood development and organize a Sub-Association under the conditions set forth in this Declaration.

1.98 “Supplemental Declaration” shall mean an amendment or supplement to this Declaration filed pursuant to Article XVI which subjects Additional Land to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land

described thereon, including but not limited to, designation of certain Lots, Units or Parcels as Neighborhoods thereon. The term shall also refer to an instrument filed by the Declarant identified as a Supplemental Declaration and Recorded pursuant to Section 4.1 of this Declaration, which establishes a Land Use Classification and may, pursuant to Section 6.6.3, designate Voting Groups. Neighborhood Declarations may or may not be Recorded in addition to or as a part of a Supplemental Declaration in the Declarant's sole, exclusive, and subjective discretion. However, it is possible, but not required, that certain Lots, Units or Parcels may be subject to both a Neighborhood Declaration and a Supplemental Declaration. It is contemplated that a Supplemental Declaration will be, in contrast to a Neighborhood Declaration, a relatively short document adding property to Empire Pass, identifying Land Use Classifications, designating Neighborhoods and/or Voting Groups and identifying density allocated to the property it covers.

1.99 "Timeshare/Fractional Share Development or Timeshare/Fractional Share Use" shall mean any such development as defined under Utah Code Ann. § 57-19-2(16) or successor statutes. Notwithstanding anything to the contrary contained in this Declaration, Declarant may, in its sole and absolute discretion, approve and locate a Timeshare/Fractional Share Development in Residential Areas or Commercial Areas.

1.100 "Trail System" shall mean the system of trails for Empire Pass which is established from time to time by Declarant, the Master Association and/or a Special Service District and which may be identified in the Development Agreements, on the Master Land Use Plan or on any Plat for Empire Pass. The Trail System may be owned by the Master Association and/or conveyed, assigned, or transferred by Deed or other written instrument to the appropriate Special Service District and/or Municipal Authority.

1.101 "Transfer" shall mean, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any Lot, Unit or Parcel, including but not limited to (1) the conveyance of fee simple title to any Lot, Unit or Parcel, (2) the transfer of any ownership interest in any timeshare or fractional ownership interest or vacation club interest; (3) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Lots, Units or Parcels, and (4) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, joint venture or other entity which, directly or indirectly, owns one or more Lots, Units or Parcels; provided, however, that "Transfer" shall not mean or include, any of the following, except to the extent that they are used for the purpose of avoiding the Transfer Assessment:

1.101.1 Any Transfer to the United States, or any agency or instrumentality thereof, the State of Utah, any county, city, municipality, district, or other political subdivision of the State of Utah.

1.101.2 Any Transfer to the Master Association or its successors.

1.101.3 Any Transfer made (A) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no

Consideration other than issuance, cancellation or surrender of the subsidiary's stock; or (B) by a partner, member or a joint-venturer to a partnership, limited liability company or a joint venture in which the partner, member or joint venture has not less than a 50 percent interest, or by a partnership, limited liability company or joint venture to a partner, member or joint venture holding not less than a 50 percent interest in such partnership, limited liability company or joint venture, in each case for no Consideration other than the issuance, cancellation or surrender of the partnership, limited liability company or joint venture interests, as appropriate; or (C) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Lot, Unit or Parcel is transferred generally pro rata to its shareholders and no Consideration is paid other than the cancellation of such corporation's stock; or (D) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers, in connection with a liquidation of the partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers, if the Lot, Unit or Parcel is transferred generally pro rata to its partners, members or joint venturers and no Consideration is paid other than the cancellation of the partners', members' or joint venturers' interests; or (E) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Lot, Unit or Parcel and such persons have the same relative interests in the Transferee entity as they had in the Lot, Unit or Parcel immediately prior to such Transfer, and no Consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the Transferee entity; or (F) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the Transferor(s) and the Transferee(s) are and remain under common ownership and control as determined by the Board in its sole discretion applied on a consistent basis; provided, however, that no such Transfer or series of transactions shall be exempt unless the Board finds that such Transfer or series of transactions (1) is for no Consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the Transferor or Transferee, as appropriate, (2) is not inconsistent with the intent and meaning of this Subsection, and (3) is for a valid business purpose and is not for the purpose of avoiding the obligation to pay the Transfer Assessment. For purposes of this Section 1.101.3, a Transfer shall be deemed to be without Consideration (x) if the only Consideration is a book entry made in connection with an intercompany transaction in accordance with generally accepted accounting principles, or (y) if no person or entity which does not own a direct or indirect equity interest in the Lot, Unit or Parcel immediately prior to the Transfer becomes the owner of a direct or indirect equity interest in the Lot, Unit or Parcel (an "Equity Owner") by virtue of the Transfer, and the aggregate interest immediately prior to the Transfer by all Equity Owners whose equity interest is increased on account of the Transfer does not increase by more than 20 percent (out of the total 100 percent equity interest in the Lot, Unit or Parcel), and no individual is entitled to receive directly or indirectly any Consideration in connection with the Transfer. In connection with considering any request for an exception under this Section 1.101.3, the Board may require the applicant to submit true and correct copies of all relevant documents relating to the Transfer and an opinion of the applicant's counsel (such opinion and counsel to be

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reasonably acceptable to the Board) setting forth all relevant facts regarding the Transfer, stating that in their opinion the Transfer is exempt under this Section 1.101.3, and setting forth the basis for such opinion.

1.101.4 Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives (including the Transferor's spouse), but only if there is no more than nominal Consideration for the Transfer. For the purposes of this exclusion, the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a Transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust.

1.101.5 Any Transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership or in connection with a divorce, except to the extent that additional Consideration is paid in connection therewith.

1.101.6 Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution.

1.101.7 Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously Recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights of way, or licenses.

1.101.8 Any exchange of Lots, Units or Parcels between Declarant and any original purchaser from Declarant of one or more Lots, Units or Parcels being transferred to Declarant in such exchange. To the extent that Consideration in addition to previously purchased Lots, Units or Parcels is paid to Declarant in such an exchange, the additional Consideration shall be a Transfer subject to the Transfer Assessment. To the extent that Declarant, in acquiring by exchange Lots, Units or Parcels previously purchased from Declarant, pays Consideration in addition to transferring Lots, Units or Parcels, the amount of such additional Consideration shall be treated as reducing the original assessable Transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant Lots, Units or Parcels previously purchased from Declarant, to a refund from the Master Association of the amount of the Transfer Assessment originally paid on that portion of the original Transfer.

1.101.9 Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable Transfer in a series of transactions which includes only one effective Transfer of the right to use or enjoyment of a Lot, Unit or Parcel.

1.101.10 Any lease of a Lot, Unit or Parcel (or assignment or transfer of any interest in any such lease) for a period of less than 15 years (including renewal options).

1.101.11 Any Transfer solely of water or water rights, or minerals or interests in minerals.

1.101.12 Any Transfer to secure a debt or other obligation or to release property that is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a Deed given in lieu of foreclosure.

1.101.13 The subsequent Transfer or Transfers of a Lot, Unit or Parcel involved in a "tax free" or "tax deferred" exchange under the Internal Revenue Code, wherein the interim owner acquires such Lot, Unit or Parcel for the sole purpose of reselling that Lot, Unit or Parcel within 30 days after the exchange. In these cases, the first Transfer of title is subject to the Transfer Assessment, and subsequent Transfers will only be exempt as long as a Transfer Assessment has been paid in connection with the first Transfer of such Lot, Unit or Parcel in such exchange.

1.101.14 The Transfer of a Lot, Unit or Parcel to an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, provided that the Master Association specifically approves such exemption in each particular case.

1.101.15 Any Transfer made by a corporation or other entity, for Consideration, (i) to any other corporation or entity that owns 100 percent of its equity securities ("Holding Company"), or (ii) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100 percent by such Holding Company.

1.101.16 Any Transfer of two or more Lots, Units or Parcels by a Mortgagee or an affiliate thereof to an affiliate of such Mortgagee or to a third party, where the intent of such Transferee is not to make personal use of such Lot, Unit or Parcel but is rather to resell the same.

1.101.17 Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where Consideration is paid for, or in connection with, such Transfer; however, unless such Transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the Transferee in the Transferor immediately prior to the Transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Lot, Unit or Parcel to corporation A for \$2,000,000, 60 percent of the Transfer Assessment would be exempt, and a Transfer Assessment would be payable only on \$800,000 (i.e., 40 percent of the \$2,000,000 consideration).

1.101.18 The consecutive Transfer of a Lot, Unit or Parcel wherein the interim owner acquires such Lot, Unit or Parcel for the sole purpose of immediately reconveying such Lot, Unit or Parcel, but only to the extent there is no Consideration to the interim Owner and such interim Owner receives no right to use or enjoyment of such Lot, Unit or Parcel, provided the Board specifically approves such exemption in each particular case.

To the extent that Consideration is paid to, or for the benefit of, the interim Owner, the additional Consideration shall be a Transfer subject to the Transfer Assessment. In these cases, the first Transfer of title is subject to the Transfer Assessment and subsequent Transfers will only be exempt as long as a Transfer Assessment has been paid in connection with the first Transfer of such Lot, Unit or Parcel in such consecutive transaction and only to the extent there is no Consideration to the interim Owner.

1.101.19 All Transfers of the common stock of Declarant or Declarant's parent to Capital Growth Partners, its members and/or its designees.

1.101.20 Any Transfer of Affordable Housing.

1.102 "Transfer Assessment" shall mean the fee assessed by the Master Association upon the Transfer of any Lot, Unit or Parcel in an amount equal to the Gross Sales Price of the Lot, Unit or Parcel multiplied by the Transfer Assessment Rate. The Transfer Assessment shall be payable to the Master Association by the Transferee.

1.103 "Transfer Assessment Levy Date" shall mean the term set forth in Section 7.15.3.

1.104 "Transfer Assessment Rate" shall mean one percent unless and until the Board shall adopt a different rate, provided that the Board shall not set a rate higher than two percent unless such rate is approved by the affirmative vote of a majority of the Class A Membership at a meeting duly called for such purpose.

1.105 "Transferee" shall mean all parties to whom any interest in or to a Lot, Unit or Parcel passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee with respect to the Transfer Assessment and shall be subject to all other provisions of this Declaration including, without limitation, the lien provisions hereof.

1.106 "Transferor" shall mean means all parties from whom any interest in or to a Lot, Unit or Parcel passes by a Transfer, and each party included in the term "Transferor" shall have joint and several liability for all obligations of the Transferor with respect to the Transfer Assessment and shall be subject to all other provisions of this Declaration including, without limitation, the lien provisions hereof.

1.107 "Unit" shall mean a Condominium Unit, Rental Apartment, a Dwelling Unit within a Single Family Lot Development, a Dwelling Unit within a Cluster Residential Development, and/or a Dwelling Unit within a Timeshare/Fractional Share Development.

1.108 "Use" shall mean one or more specific types of property development and classification as set forth in Section 4.1 of this Declaration.

1.109 "VA" shall mean the Veterans Administration.

1.110 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on Neighboring Property, on the level of the base of the object being viewed.

1.111 “Voting Group” shall mean one or more Neighborhoods whose Voting Members vote on a common slate for election of directors to the Board, as more particularly described in Section 6.6.3 or, if the context so indicates, the group of Owners whose Lots, Units or properties comprise such Neighborhoods.

1.112 “Voting Member” shall mean the representative(s) selected by the Members within each Neighborhood as provided in Section 6.6.2 to be responsible for casting votes attributable to Lots or Units or other properties in the Neighborhood on matters requiring a vote of the Membership (except as otherwise specifically provided in this Declaration and in the Bylaws). The term “Voting Member” shall include alternate Voting Members acting in the absence of the Voting Member and any Owners authorized to personally cast the votes for their respective Lots, Units or Parcels pursuant to Section 6.6.2.

ARTICLE II PROPERTY SUBJECT TO DECLARATION

2.1 General Declaration Creating Empire Pass. Declarant hereby declares that the Property, together with any Additional Land annexed pursuant to Article XVI of this Declaration, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended or modified from time to time. In addition, all or portions of the Property shall be subject to Recorded Neighborhood Declarations and/or Recorded Supplemental Declarations as applicable and as amended from time to time. Declarant intends to develop the Property by subdivision into various Lots, Units and Parcels and to sell such Lots, Units and Parcels. As portions of the Property are developed and/or sold to Merchant Builders for development, except as otherwise provided in this Declaration, Declarant or its designated nominee shall Record one or more Neighborhood Declarations and/or Supplemental Declarations covering such property. Said Neighborhood Declarations and/or Supplemental Declarations will specify the Land Use Classification and permitted uses of property described therein (in accordance with Article IV hereof) and will incorporate this Declaration and establish such additional covenants, conditions and restrictions as may be appropriate for that property. This Declaration and all subsequent Neighborhood Declarations and Supplemental Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of the Property and are established for the purpose of enhancing the value, desirability and attractiveness of Empire Pass and every part thereof. All of this Declaration and applicable Neighborhood Declarations and Supplemental Declarations shall run with the Property and shall be binding upon and inure to the benefit of Declarant, the Master Association, all Owners and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Master Land Use Plan or any portions thereof as to which a Neighborhood Declaration and/or Supplemental Declaration has not been Recorded. This Declaration shall not be construed to prevent the Declarant from dedicating or conveying portions of the Property, including but not limited to streets or roadways, for uses other than as a Lot, Unit, Parcel, or Master Association Land, subject to the provisions of Section 4.1.

2.2 Master Association Bound. Upon filing of the Articles with the Utah Division of Corporations and Commercial Code, the Covenants shall be binding upon and shall benefit the Master Association.

2.3 Municipal Authority Property. From time to time, the Declarant may, in its sole and exclusive discretion and without the vote of the Members, convey, assign, or transfer by Deed or other written instrument certain Community Areas to the applicable Municipal Authority. Once any such Community Areas are conveyed, assigned or transferred to a Municipal Authority, they shall be Exempt Property and shall constitute Municipal Authority Property. It is contemplated that from time to time certain open space areas, the Trail System and other real property and facilities, may be conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority, which conveyances are hereby authorized pursuant to this Declaration.

2.4 Special Service Districts. In connection with the development of Empire Pass, it is contemplated that one or more special service and/or improvement districts (each referred to herein as a "Special Service District") may be formed in order to provide Empire Pass with various services and facilities including but not limited to the Trail System, waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters, secondary water systems and facilities, and other services and infrastructure. Each Special Service District shall be a body politic and corporate and a quasi-municipal public corporation of the State of Utah. The Special Service Districts shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within the Special Service Districts. The Special Service Districts may have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. It is contemplated that all of Empire Pass may be part of one or more Special Service Districts, and each Owner and Resident will be subject to all charges levied by them.

2.5 Affordable Housing. The Development Agreement provides that Declarant may be required to provide certain Affordable Housing for seasonal workers and employees within Empire Pass.

2.6 Private Amenities.

2.6.1 Declarant or other Persons may, without obligation, develop certain Private Amenities as an integral part of Empire Pass including, without limitation, alpine or mountain clubs and/or golf course(s) for recreational and related purposes, on a private or club membership basis or otherwise.

2.6.2 The Master Association shall have no right to grant to any Person any ownership interest in or right to use any Private Amenity. No Person shall have any ownership interest in or right to use any Private Amenity by virtue of being an Owner of a Lot, Unit or Parcel, or by virtue of being a Member of the Master Association. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without

limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

2.6.3 All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Master Association, any Merchant Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. The ownership, operation, existence, location or configuration of any Private Amenity may change at any time by virtue of, without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors, and/or (d) the decision of the owner or operator of the Private Amenity to abandon, redevelop (to any extent, which may include an entirely different type of use, such as Dwelling Units or commercial facilities), or change the location or configuration of, all or any part of any Private Amenity, subject to all required approvals of Declarant, the Design Review Board, any applicable Municipal Authority and/or the Master Association. Consent of the Master Association, any Sub-Association, or any Owner shall *not* be required to effectuate any change in ownership or operation of any Private Amenity, or to subject any Private Amenity to or release any Private Amenity from any mortgage, covenant, lien or other encumbrance.

ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMUNITY AREAS

3.1 Easements of Enjoyment. Every Member shall have a right and nonexclusive easement of enjoyment in and to the Community Areas, as such areas are dedicated for use by Declarant, which shall be appurtenant to and shall pass with the title to every Lot, Unit and Parcel, subject to the following provisions:

3.1.1 The right of the Master Association to suspend the voting rights of any Member and the right to the use of the Community Areas by any Member (i) for any period during which any Assessment against such Member's Lot, Unit or Parcel remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction by such Member of this Declaration, a Neighborhood Declaration, a Supplemental Declaration, Empire Pass Rules or applicable Design Guidelines, and (iii) for successive sixty (60)-day periods if any such infraction by such Member is not corrected during any prior sixty (60)-day suspension period.

3.1.2 The right of the Master Association to dedicate or transfer all or any part of the Master Association Land to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Master Association.

3.1.3 The right of the Master Association to regulate the time, place and manner of use of the Community Areas through Empire Pass Rules and to prohibit access to those Community Areas, such as maintenance buildings, landscaped rights-of-ways, and other areas not intended for use by the Members. Empire Pass Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Community Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

3.1.4 The right of the applicable Municipal Authority and any other governmental or quasi-governmental body having jurisdiction over Empire Pass to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within Empire Pass for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal service.

3.1.5 The right (but not the obligation) of the Master Association to charge special use fees ("Special Use Fees") for the use of the Community Areas. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Community Areas, if any, selected by the Board to be subject to a Special Use Fees, and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Community Area so that all of the costs of operating such selected portions of the Community Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Residents and other Persons using such selected portions of the Community Area.

3.2 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Community Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's right and nonexclusive easement of enjoyment in the Community Areas or any funds or other assets of the Master Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot, Unit or Parcel (and only with respect to the right and nonexclusive easement of enjoyment that is appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property.

3.3 Easements for Encroachments. If any part of a Dwelling Unit or Improvement built in substantial accord with the boundaries for such Dwelling Unit or Improvement as depicted on a Plat (or in other approved documents depicting the location of such on the Lot, Unit or Parcel) encroaches or shall encroach upon the Community Areas or upon an adjoining Lot, Unit or Parcel, an easement for such encroachment and for the maintenance of the same

shall and does exist. If any part of the Community Areas encroaches or shall encroach upon a Lot of a Dwelling Unit or Parcel or an Improvement, an easement for such encroachment and for the maintenance of the same shall and does exist. Each Owner shall have an unrestricted right of ingress or egress to and from its Lot, Unit or Parcel.

3.4 Easements for Drainage Maintenance and Flood Water. Various Community Areas, Lots, Units and Parcels have or may have ditches, diversions, swales, depressions, berms, retention basins, detention basins, bulkheads, walls, dams, or other structures retaining water or other similar features on, under or through the soil that are designed to carry water away from any Community Area, Lot, Unit or Parcel, as depicted upon a Recorded Plat, or otherwise found on such properties (collectively, "Drainage Control Features"). All Owners of Lots, Units or Parcels wherein Drainage Control Features are located shall (a) install, keep, maintain, and replace the Drainage Control Features surface in order to prevent flooding; and (b) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Notwithstanding the foregoing, the Declarant reserves for itself and its successors, assigns, and designees, a perpetual, nonexclusive right and easement, but not the obligation, to enter upon the Drainage Control Features located within any Community Area, Lot, Unit or Parcel for the purpose of maintaining, repairing, cleaning, or altering drainage and water flow, and shall have an access easement over and across any Community Area, Lot, Unit or Parcel (but not the Dwelling Units or other buildings thereon) abutting or adjacent to any portion of any Drainage Control Features to the extent reasonably necessary to exercise their rights under this Section 3.4. The Declarant's rights and easements provided in this Section 3.4 shall be transferred automatically to the Master Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. All persons entitled to utilize these easements shall use reasonable care in, and repair any material damage resulting from, the use of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, excessive spring run-off, or natural disasters. Owners or Residents are strictly prohibited from disrupting the drainage pattern and shall not interfere with, obstruct, rechannel, construct upon, alter, build-in, fill-in, or impair any Drainage Control Features or the drainage pattern over his or her Lot, Unit or Parcel from or to any other Lot, Unit or Parcel as that pattern may be established by Declarant, a Merchant Builder, or other developer.

3.5 Easements for Utilities. There is hereby created an easement at specific locations approved by Declarant upon, across, over and under the Community Areas for reasonable ingress, egress, installation, replacement, repair or maintenance of all emergency access roads and all utilities, including, but not limited to, gas, water, sanitary sewer, telephone, storm drain, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment at such locations on the Community Areas, but no sanitary sewers, electrical lines, water lines, storm drain lines, or other utility or service lines may be installed or located on the Community Areas, except as designed, approved and/or constructed by the Declarant or as approved by the Board.

3.6 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Community Areas. There is also created an easement for

ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Residents of the Lots, Units and Parcels and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Community Areas and all private streets, private roadways, private driveways and private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Park City or any other governmental body or agency having jurisdiction including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

3.7 Delegation of Use. Each Member shall, in accordance with this Declaration and Empire Pass Rules and the limitations therein contained, be deemed to have delegated his or her right of enjoyment in the Community Areas or from time to time portions of the Master Association Land to the members of his or her family, his or her tenants or lessees, his or her guests or invitees or to his or her tenant's family, guests or invitees.

3.8 Transfer of Title. Declarant agrees that it shall convey to the Master Association the Master Association Land subject to certain easements, this Declaration, and the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities) within a reasonable period of time after the closing of the last sale of a Lot, Unit or Parcel within the Property, or at such earlier time as Declarant determines in its sole discretion.

3.9 Trail System. Certain pathways or trails around and/or through the Property (including the Trail System) may be developed and maintained by the Master Association, a Special Service District or other Municipal Authority, from time to time as part of skiing, hiking and/or bicycling trail systems serving the public in addition to Owners and Residents; in such instances, members of the public shall also have the right to use such trails for the purposes for which they are developed and maintained, subject to reasonable, non-discriminatory rules and regulations as the Board may adopt from time to time and subject to applicable requirements and regulations of Park City and any other governmental body or agency having jurisdiction thereof. Except in connection with the construction, repair and maintenance activities, no motor vehicles shall be operated on any pedestrian pathways, biking, hiking or skiing trails (including the Trail System), or portions of the Community Areas designated by the Board from time to time as areas where no motor vehicles shall be operated. For purposes of this Section 3.9, "motor vehicles" shall include all automobiles, motorcycles, motorbikes, motor scooters, mini-bikes, all-terrain vehicles, snowmobiles, mopeds, off-road vehicles, or other gas or electric powered means of transportation of any size or type.

ARTICLE IV
LAND USE CLASSIFICATIONS, PERMITTED
USES AND RESTRICTIONS

4.1 Land Use Classifications. As portions of the Property are readied for development and/or sale to Merchant Builders, the Land Use Classifications, restrictions, easements, rights-of-way and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Neighborhood Declaration and/or Supplemental Declaration which shall be Recorded for that portion of the Property. The Land Use Classifications, Neighborhoods, and density allocations affecting the Property as of the date of this Declaration are set forth on Exhibit B attached hereto and incorporated herein. Any such Neighborhood Declaration or Supplemental Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. In exercising its authority to Record Neighborhood Declarations and/or Supplemental Declarations, Declarant may impose new Land Use Classifications or new restrictions so long as such are generally in conformance with then existing uses and restrictions applicable to Empire Pass and with the scheme of development contemplated by the Master Land Use Plan, the Development Guidelines and this Declaration. The Land Use Classifications for Lots, Units, Parcels and Master Association Land established by a Neighborhood Declaration or Supplemental Declaration shall not be changed except as specifically permitted by this Declaration. The current contemplated Land Use Classifications are as follows:

4.1.1 Single Family Lot Use;

4.1.2 Cluster Residential Use;

4.1.3 Residential Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Declarant or the Board;

4.1.4 Apartment Development Use, which may be converted to Residential Condominium Development Use upon approval by the Declarant or the Board;

4.1.5 General Commercial Use;

4.1.6 Retail Use;

4.1.7 Master Association Use, which may include Community Areas;

4.1.8 Hotel Use;

4.1.9 Timeshare/Fractional Share Use;

4.1.10 General Public Uses approved by the Declarant;

4.1.11 Church Use; and

4.1.12 Private Amenities Use.

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Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such Land Use Classifications, shall be determined in the applicable Neighborhood Declaration or Supplemental Declaration and shall be within the complete discretion of the Declarant. All Neighborhood Declarations and Supplemental Declarations shall be subject to the zoning, land use, and development laws, ordinances, rules and regulations and policies of the applicable Municipal Authority and subject to the Development Agreements.

4.2 Covenants Applicable to All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, Units and Parcels, the Owners and lessees thereof, and all Residents, whether or not a Neighborhood Declaration or Supplemental Declaration has been Recorded on said property and regardless of the Land Use Classification of such property.

4.2.1 Architectural Control. No Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any portion of the Property, or the Improvements located thereon, from its natural or improved state existing on the date this Declaration is Recorded shall be made or done without the prior written approval of the Design Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, Units or Parcels, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without the prior written approval of the Design Review Board.

4.2.2 Animals. No animal, bird, or fish, other than a reasonable number of generally recognized house or yard pets as determined solely by the Board, shall be maintained on any Lot, Unit or Parcel and then only if they are kept, and raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard (including electric) or on a leash at all times. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Design Review Board. If an Owner or Resident fails to abide by the rules and regulations and/or covenants applicable to pets, the Board may bar such pet from use of or travel upon the Community Areas. The Board may subject ingress, egress, use, or travel upon the Community Areas by a Person with a pet to a Special Use Fee, which may be a general fee for all similarly-situated Persons or a specific fee imposed for failure of an Owner or Resident to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health of any Owner or Resident of a Lot, Unit or Parcel or which creates a nuisance or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board, must be permanently removed from the Property upon seven (7) days' written notice by the

Board. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute subjective discretion, whether for the purposes of this Section 4.2.2 a particular animal, fish or bird is a generally recognized house or yard pet, whether such a pet is a nuisance or whether the number of animals, fish or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to permit horses to be maintained on certain Parcels or Master Association Land within Empire Pass as determined solely by Declarant (or by the Master Association after the termination of all Class B Membership status pursuant to Section 6.4.2).

4.2.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Subject to the Design Guidelines, temporary buildings or structures may be used during the construction of any structure on any property.

4.2.4 Maintenance of Yards and Plantings. Except where otherwise provided in a Neighborhood Declaration or Supplemental Declaration, each Owner of a Lot, Unit or Parcel shall care for and maintain all shrubs, trees, hedges, grass and plantings of every kind located on:

4.2.4.1 the Owner's Lot, Unit or Parcel (including set back areas and any applicable portions of Community Areas);

4.2.4.2 planted public right-of-way areas between sidewalks (or bike paths) and the street curb on the front or side of his or her property, if any;

4.2.4.3 any other public right-of-way or easement area which abuts the Owner's Lot, Unit or Parcel and which is located between the boundary line of his or her Lot, Unit or Parcel and the paved area of any street, sidewalk, bike path or similar area; and

4.2.4.4 any non-street public right-of-way or easement area adjacent to his or her Lot, Unit or Parcel, and shall keep all such areas neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Master Association assumes the responsibility in writing; (2) the Master Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; or (3) a Municipal Authority assumes the responsibility. The Design Review Board may require landscaping by the Owner of all or any portion of an improved or developed Lot, Unit or an improved or developed Parcel including the areas described in Subsections 4.2.4.1, 4.2.4.2, 4.2.4.3, and 4.2.4.4 above.

4.2.5 Landscaping. All Owners and Residents of Single Family Lots and detached or attached Dwelling Units within Residential Cluster Developments are

required to install or cause to be installed all landscaping and irrigation on areas of such Lot shown on the landscape plan as areas to be landscaped including, without limitation, front and corner side yards and rear and side yards, within twelve (12) months from commencement of occupancy of a Dwelling Unit. All landscape plans shall be approved in advance by the Design Review Board.

4.2.6 Nuisances. No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, Unit or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No other nuisance shall be permitted to exist or operate upon any Lot, Unit or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. Without limiting the generality of any of the foregoing provisions, except as specifically provided in this Section 4.2.6, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Notwithstanding any provision in this Section 4.2.6 to the contrary, Declarant acknowledges and intends that certain large mixed-use Improvements within Empire Pass that are designated and approved for Hotel Use may incorporate exterior speakers for event gatherings. However, the use and operation of any such exterior speakers shall be subject to the Empire Pass Rules and such rules and regulations that may be adopted and enforced by the applicable Sub-Association to govern the use and operation of any such exterior speakers.

4.2.7 Construction Activities. All construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall be subject to the Design Guidelines and approved by the Design Review Board pursuant to Article XI. The Design Review Board in its sole discretion shall have the right to determine the existence of any nuisance arising out of construction and any activities related thereto. The Design Review Board has the right to impose fines related to violations of the Design Guidelines. The Design Guidelines require submittal to the Design Review Board of site specific construction mitigation plans prior to any construction activities.

4.2.8 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot, Unit or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.2.9 Repair of Improvements. No Improvement on any Lot, Unit or Parcel shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by Section 4.2.1 above and subject to the provisions of any Neighborhood Declaration or Supplemental Declaration, such Improvement shall be immediately repaired, rebuilt or demolished. If any Improvement should be demolished, then the Owner shall at all times maintain the vacant Lot, Unit or Parcel in a clean and sightly condition, and shall clear

and shall continue to clear the Lot, Unit or Parcel of any weeds, debris, garbage, tree prunings or like items.

4.2.10 Antennas and Satellite Dishes. To the full extent permissible under state and federal law, no television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot, Unit, Parcel or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall be subject to the Design Guidelines and the regulation and prior approval of the Design Review Board.

4.2.11 Mineral Exploration. No Lot, Parcel or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant, and no derrick or other structure designed for use in boring for water, oil, or other hydrocarbons or minerals of any kind or nature shall be erected, maintained or permitted on any Lot or Parcel.

4.2.12 Signs. No signs whatsoever (including, but not limited to commercial, political, "for sale," "for rent," and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot or Parcel except:

4.2.12.1 Signs erected and maintained by Declarant (or the Master Association pursuant to Section 10.1.4) pursuant to this Declaration.

4.2.12.2 Signs required by law.

4.2.12.3 Residence identification signs, provided the size, color, content and location of such signs have been approved in writing by the Design Review Board.

4.2.12.4 Signs of Merchant Builders approved from time to time by the Design Review Board as to number, size, color, design, content, location and type.

4.2.12.5 Such construction job identification signs and subdivision identification signs which are in conformance with the requirements of any Municipal Authority and which have been approved in writing by the Design Review Board as to number, size, color, design, content, and location.

4.2.12.6 Signs identifying the entry way to distinct Neighborhoods or locations of special interest (such as Hotels), provided the size, color, content and location of such signs have been approved in writing by the Design Review Board.

4.2.13 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, Unit or Parcel, except in covered containers of a type, size and style

which are approved by the Design Review Board or required by the applicable Municipal Authority. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection within a 24 hour period. All rubbish, trash and garbage shall be removed from the Lots, Units and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot, Unit or Parcel.

4.2.14 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot, Parcel or other property so as to be Visible From Neighboring Property.

4.2.15 Outdoor Play Apparatus, Sculptures and Art. No outdoor play apparatus, structures or devices including, without limitation, basketball goals, backboards, swimming pools, tennis courts and swing sets, sculptures, or outdoor art shall be erected, placed or maintained on any Lot or Parcel without the prior written approval of the Design Review Board (including, without limitation, approval as to appearance and location).

4.2.16 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, Unit or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Master Association may require for the operation and maintenance of the Property; or (iii) that which is used or displayed in connection with any business permitted under a Neighborhood Declaration or Supplemental Declaration.

4.2.17 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot, Unit or Parcel shall be further subdivided or separated into smaller Lots, Units, Parcels or interests by any Owner, and no portion less than all of any such Lot, Unit or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant (or the Master Association following conversion of the Class B voting Memberships to Class A voting Memberships), which approval must be evidenced on the Plat or other instrument creating the subdivision, easement or other interest. This provision shall not apply to transfers of an ownership interest in the whole of any Lot, Unit or Parcel. Further, this provision shall not, in any way, limit Declarant from subdividing or separating into Lots, Units or Parcels the Property, the Additional Land (if annexed) or any other property at any time owned by Declarant and which has not previously been platted or subdivided into Lots and/or Units. Except for Improvements constructed by Declarant, no buildings or other Improvements shall be constructed on any Lot, Unit or Parcel until a Neighborhood Declaration or Supplemental Declaration has been Recorded on such property. No Neighborhood Declaration, Supplemental Declaration or further covenants, conditions, restrictions or easements shall be Recorded by any Owner or other person against any Lot, Unit or Parcel without the provisions thereof having been first approved in writing by the Declarant (or the Design Review Board following conversion of the Class B voting Memberships to Class A voting Memberships), and any covenants,

conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, Unit or Parcel, and no applications for variances or use permits, shall be filed with a Municipal Authority unless the proposed use of the Lot, Unit or Parcel complies with this Declaration and any applicable Neighborhood Declaration or Supplemental Declaration.

4.2.18 Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot, Unit and Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to storm drain, water, sewer, gas, telephone, electricity, television cable or communication lines and systems, as such utilities are installed in connection with the initial development of the Lot, Unit or Parcel and the construction of the first Dwelling Unit or other Improvement thereon and also to the extent deemed necessary thereafter by the Declarant or the Master Association provided that the location of any such easements shall not unreasonably interfere with the intended use of such Lot, Unit or Parcel by the Owner thereof. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots, Units and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, storm drain lines, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot, Unit or Parcel except as approved by the Declarant (or the Design Review Board following conversion of the Class B voting Memberships to Class A voting Memberships), or, if installed after a Neighborhood Declaration or Supplemental Declaration is Recorded, as approved by the Declarant or the Merchant Builder of such property and also by the Design Review Board.

4.2.19 Perimeter Fences and Walls. Perimeter fences or walls along major roadways, as determined solely by the Declarant, shall be maintained by the Master Association, subject to the provisions of Sections 10.2 and 10.3, except that each Owner of a Lot, Unit or Parcel shall remain responsible for painting and maintaining the surface of the portion of the perimeter wall or fence facing such Owner's Lot, Unit or Parcel. The Master Association shall be responsible for the maintenance of all landscaping outside the perimeter walls and fences, except any maintenance assumed by a Municipal Authority or by a Sub-Association which is obligated to perform such maintenance.

4.2.20 Utility Service. No lines, wires or other devices for communication or for the transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot, Unit or Parcel, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Declarant (or the Design Review Board following conversion of the Class B voting Memberships to Class A voting Memberships), except for:

4.2.20.1 overhead power poles and lines to perimeter areas of the Property as approved by Declarant or the Design Review Board; and

4.2.20.2 boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices as approved by the Declarant (or the Design Review Board following conversion of the Class B voting Membership to Class A voting Membership).

4.2.21 Overhead Encroachments. Except as provided for herein, no tree, shrub or planting of any kind on any Lot, Unit or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet without the prior approval of the Design Review Board. Notwithstanding the foregoing, if any part of a healthy tree or shrub shall encroach upon the Community Areas, or upon an adjoining Lot, Unit or Parcel, an easement for such encroachment and for the maintenance of the same shall and does exist, provided such encroachment does not create a hazardous, dangerous or unsafe condition. Each Owner shall have a right of ingress or egress to the adjoining Lot, Unit or Parcel to the extent reasonably necessary to maintain such tree or shrub.

4.2.22 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding one-ton, nor any mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any street or Community Area in Empire Pass so as to be Visible From Neighboring Property, or visible from the Community Areas or the streets; provided, however, the provisions of this Section 4.2.22 shall not apply to (i) pickup trucks of less than one-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Section 4.2.23 below and are used on a regular and recurring basis for basic transportation, or (ii) trucks, trailers and campers parked in an approved recreational vehicle storage area within a Residential Area or other approved areas designated for such parking in Commercial Area Land Use Classifications in connection with permitted commercial activities conducted in such Commercial Area Land Use Classifications.

4.2.23 Motor Vehicles, Parking and Towing.

4.2.23.1 No automobile, motorcycle, motorbike, snowmobile, snow cat, personal watercraft, boat, boat trailer, motorcycle, motorbike, motor scooter, mini-bike, all-terrain vehicle, moped, off-road vehicle, recreational vehicle or other similar equipment or vehicle or other motor vehicle shall be stored, constructed, reconstructed or repaired upon any Lot, Parcel or street or other Community Area in Empire Pass, and no inoperable vehicle may be stored or parked on any such Lot, Unit, Parcel or street, so as to be Visible From Neighboring Property or to be visible from Community Areas or streets; provided, however, that the provisions of this Section 4.2.23 shall not apply to (i) emergency vehicle repairs; (ii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Design Review Board; (iii) the parking of such

vehicles during normal business hours in areas designated for parking in a non-Residential Land Use Classification; (iv) vehicles parked in garages on Lots, Units or Parcels so long as such vehicles are in good operating condition and appearance and are not under repair; (v) the storage of such vehicles in an area designated for such purposes on a Neighborhood Declaration or Supplemental Declaration or on a site plan approved by the Design Review Board; and (vi) non-Commercial vehicle repair within a garage which is closed except as necessary for ingress and egress.

4.2.23.2 It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages and residential driveways of the Owner and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot, Unit or Parcel; provided, however, this Section 4.2.23 shall not be construed to permit the parking in the above described areas of any vehicle whose parking on the Property is otherwise prohibited or the parking of any inoperable vehicle. Recreational vehicles shall be parked in covered garages except for limited periods in Residential driveways or other designated parking areas as determined by the Board and promulgated as part of the Empire Pass Rules.

4.2.23.3 The Board has the right, without notice, to have any vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of Section 4.2.23 towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Master Association in connection with the towing of any vehicle must be paid to the Master Association upon demand by the owner of the vehicle. If the vehicle is owned by an Owner or Resident, any amounts payable to the Master Association will be secured by the Assessment Lien against that Owner's or Resident's Lot or Unit, and the Master Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

4.2.24 Roofs. To the full extent permissible under state and federal law, no apparatus, structure or object shall be placed on the roof of a Dwelling Unit without the prior written consent of the Design Review Board. Any apparatus, structure or object approved by the Design Review Board for placement on the roof of a Dwelling Unit shall be mounted on the rear of the roof so that such apparatus or object is below the highest ridge on the roof and is not Visible From Neighboring Property and is not visible from any street by a Person standing anywhere on the curb or street in front of the Dwelling Unit or at the rear or sides of Lots or Units backing upon any open space or public right of way. No air conditioning units or evaporative coolers extending from windows or protruding from roofs are permitted.

4.2.25 Arterial Fencing and Walls. All perimeter walls and fencing along arterials (for the purposes of this Section 4.2.25 "arterials" shall be as designated by the Declarant) must be constructed and maintained in accordance with the specifications and

regulations established by the Design Guidelines and as approved the Design Review Board.

4.2.26 Draperies and Window Coverings. Within thirty (30) days of occupancy each Owner of a Lot, Unit or Parcel consisting of a Residential Use shall install permanent draperies or suitable window treatments on all exterior windows. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No exterior reflective material shall be used as a window covering. No interior reflective material shall be used as a window covering unless such material has been approved in advance by the Design Review Board.

4.2.27 Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his or her Lot, Unit or Parcel from or to any other Lot, Unit or Parcel as that pattern may be established by Declarant, a Merchant Builder, or any other developer or as described in Section 3.4 hereof with respect to Drainage Control Features.

4.2.28 Garage Openings. All garages shall be fully enclosed. No carports shall be permitted. No garage door shall be open except when necessary for access to and from the garage, cleaning, maintenance or repair.

4.2.29 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident or occupant of a Lot, Unit or Parcel, any member of the Design Review Board, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, Unit or Parcel and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

4.2.30 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by Merchant Builders or their duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of the Property, if those structures, Improvements or signs have been approved by the Design Review Board.

4.2.31 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and Residents, the Design Review Board may make rules restricting or regulating their presence within Empire Pass as part of the Design Guidelines.

4.2.32 Model Homes. The provisions of this Declaration and of Neighborhood Declarations or Supplemental Declarations which, in certain instances, prohibit non-Residential use of Lots, Units and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the

construction of Residential Dwelling Units at Empire Pass and parking incidental to the visiting of such model homes so long as the location of such model homes and the opening and closing hours are approved by the Design Review Board and so long as the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Design Review Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the governing Municipal Authority and any rules of the Design Review Board. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Dwelling Units on Single Family Lots at Empire Pass, and no home shall be used as a model home for the sale of homes not located at Empire Pass.

4.2.33 Incidental Uses. The Declarant or the Design Review Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Declarant or the Design Review Board may wish to impose, in its sole discretion, for the benefit of Empire Pass as a whole. By way of example and not of limitation, the uses which the Design Review Board may permit are: private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use; open spaces, tennis clubs and/or swimming clubs intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use, Residential Condominium Development or other Residential Use; a business office for the Master Association within an area having a Land Use Classification of Master Association Use; open spaces, tennis courts, swimming pools and other recreational facilities intended for usage by the Residents or Owners of more than a single Lot, Unit or Parcel within any Residential Area; and a sales, information and marketing center operated by the Declarant, a Merchant Builder, or any other developer within an area having a Land Use Classification of Master Association Use.

4.2.34 Leases. Any Lease between an Owner and a tenant or lessee respecting a Lot or Dwelling Unit shall be subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such Governing Documents shall be a default under the Lease. Specifically, all Leases shall comply with the Governing Documents and shall require that the tenant acknowledge receipt of a copy of the Governing Documents and/or reference to the location thereof for inspection by such tenant or lessee. The Lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

4.2.35 Tree or Vegetation Removal. No trees shall be removed, except: (a) diseased or dead trees; and (b) trees which must be removed to promote the growth of other trees or for safety reasons, unless approved in writing by the Design Review Board.

4.2.36 Nondisturbance Areas. Certain areas at Empire Pass possess great natural beauty and/or are subject to institutional or engineering controls associated with environmental clean up and shall be designated as "Nondisturbance Areas" at the Declarant's sole discretion, as such areas may be identified on a Plat or other written document provided to an Owner. Declarant intends to preserve such Nondisturbance Areas through the use of a coordinated plan of Lot development and the terms of this Declaration. No Improvements (whether temporary or permanent), landscaping, alterations, repairs, excavation, grading or other work which in any way alters the exterior appearance of any Nondisturbance Area from its natural state existing on the date this Declaration is Recorded, or existing on the date a Neighborhood Declaration or Supplemental Declaration is Recorded, shall be made or done without the prior written approval of the Design Review Board. No building, fence, wall, Dwelling Unit or other Improvement shall be commenced, erected, maintained, improved, altered or made within any Nondisturbance Area without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, Dwelling Unit or other Improvement, including exterior color scheme, within a Nondisturbance Area and all changes in the grade of Nondisturbance Areas, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without the prior written approval of the Design Review Board.

4.2.37 Energy Conservation Equipment. To the full extent permissible under state and federal law, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed, unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Design Review Board.

4.2.38 Violations of Law. Any activity which violates local, state, or federal laws or regulations is prohibited; however, the Board shall have no obligation to take enforcement action in the event of a violation.

4.2.39 Easement for Development. The Declarant hereby reserves an easement throughout the Property for the purpose of completing all Improvements contemplated by this Declaration, including but not limited to Improvements to the Additional Land. Declarant shall be entitled to use all Community Areas, roadways and other facilities located in, on or under the Property to access the Additional Land in order to make Improvements thereto and to continue with the development of the Property. The foregoing easement shall include, without limitation, the right to design, construct, repair, replace, maintain and operate ski trails, runs and related access ways to provide ski access to, from and between portions of the Property and Deer Valley Ski Resort for the Owners and Residents and their guests.

4.2.40 Sales Offices. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising Empire Pass, and models in any areas of Empire Pass owned by the Declarant. Declarant may relocate sales offices, management offices and models to other locations within Empire Pass at any time.

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4.2.41 Poles. No pole, including but not limited to a flag pole, shall be placed, constructed, or maintained on any Lot, Unit, Parcel or other part of Empire Pass, unless such pole is approved in writing in advance by the Design Review Board. The Design Review Board may adopt one or more rules or regulations permitting an Owner to install and maintain a flag pole upon such Owner's Lot, Unit or Parcel, provided that the location and size of such flag pole (and the number and size of any flag(s) mounted thereon) may be regulated by the Design Review Board, and may, if so provided in such rule or regulation, be made subject to the prior written approval thereof by the Design Review Board. Nothing in this section shall be deemed to prohibit the Declarant from installing and maintaining flag poles on, at, or adjacent to model homes within Empire Pass. Poles to which basketball backboards, goals, and related recreational equipment are affixed, shall be governed by Section 4.2.15.

4.2.42 Wood Burning Devices. No wood burning device shall be constructed, installed, or maintained on a Lot or within a Dwelling Unit, except as specifically permitted in the Development Agreement. The Development Agreement currently provides that "one wood burning device shall be allowed for 54 single family homes" within Empire Pass. Also, the Development Agreement currently provides that "one wood burning device shall be allowed per lodge or hotel" within Empire Pass.

4.2.43 Tanks. Unless otherwise approved by the Design Review Board, no tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of an above ground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub", so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Empire Pass Rules or as otherwise approved by the Design Review Board, so as not to be Visible From Neighboring Property.

4.3 Covenants, Conditions, Easements and Restrictions Applicable to Single Family Lot Development and Cluster Residential Development Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and Dwelling Units and the Owners and Residents thereof lying within the Single Family Lot Development and Cluster Residential Development Land Use Classifications:

4.3.1 General. The portions of the Property classified for Single Family Lot Development under a Neighborhood Declaration or Supplemental Declaration may be used only for the construction and occupancy of Single Family Dwelling Units and typical residential activities incidental thereto, such as the construction and use of a family swimming pool, together with any common recreational facilities or any other Community Areas or amenities. All property within such Land Use Classification shall be used, improved and devoted exclusively to Single Family Lot Use. No structure whatsoever, other than one private, Single Family Dwelling Unit, together with a private garage for cars and (if desired and if permitted by the Municipal Authority) a guest house

or servant quarters, shall be erected, placed or permitted to remain on any Single Family Lot.

4.3.2 Business Activities. Property classified for Single Family Lot Development under a Neighborhood Declaration or Supplemental Declaration shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for Empire Pass; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Residents of the Property; and (d) the activity is consistent with the Residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property, as may be determined in the sole discretion of the Board. This Section 4.3.2 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to its development and sale of the Lots, Units or Parcels or its use of any Dwelling Units which it owns within Empire Pass.

4.3.3 Tenants. The entire Dwelling Unit on a Lot may be leased to a Single Family tenant or lessee from time to time by the Owner, subject to the provisions of this Declaration (including without limitation Section 4.2.34), the Empire Pass Rules and any applicable Design Guidelines.

4.4 Covenants Applicable to Property Within Residential Condominium Development, Cluster Residential Development and Timeshare/Fractional Share Development Land Use Classifications. The following covenants, conditions, restrictions and reservations of rights shall apply only to Dwelling Units and the Owners and Residents thereof lying within a Residential Condominium Development Land Use Classification, a Cluster Residential Development Land Use Classification or a Timeshare/Fractional Share Development Land Use Classification:

4.4.1 General. Property classified as a Residential Condominium Development or a Cluster Residential Development or a Timeshare/Fractional Share Development under a Neighborhood Declaration or Supplemental Declaration may be used only for the construction and occupancy of Residential Dwelling Units together with common recreational facilities and other Community Areas. All property within such Land Use Classifications shall be used, improved and devoted exclusively to Residential Use.

4.4.2 Business Activities. Property classified for the purposes set forth in Section 4.4.1 under a Neighborhood Declaration or Supplemental Declaration shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for Empire Pass; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business

invitees or door-to-door solicitation of Residents of the Property; and (d) the activity is consistent with the Residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property, as may be determined in the sole discretion of the Board. This Section 4.4.2 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to its development and sale of the Lots, Units or Parcels or its use of any Dwelling Units which it owns within Empire Pass, nor shall it apply to any Timeshare/Fractional Share Development established by Declarant which is governed by a separate Neighborhood Declaration.

4.4.3 Tenants. The entire Dwelling Unit may be leased to a tenant or lessee for Residential occupancy from time to time by the Owner, subject to the provisions of this Declaration (including without limitation Section 4.2.34) the Empire Pass Rules and any applicable Design Guidelines.

4.5 Covenants Applicable to Property Within Apartment Developments, General Commercial Developments, Timeshare/Fractional Share Developments and all other Commercial Areas. The following covenants, conditions, restrictions and reservation of rights shall apply only to Apartment Developments, General Commercial Developments, Timeshare/Fractional Share Developments and all other Commercial Areas, the Improvements constructed thereon and the Owners and Residents and occupants within Commercial Area Land Use Classifications:

4.5.1 General. Property classified as and located within a Commercial Area will generally be developed as individual Commercial projects by Declarant and/or one or more Merchant Builders. Declarant may sell or lease one or more Parcels to individual Merchant Builders who will construct Improvements with respect to such a Parcel in accordance with a specific Neighborhood Declaration or Supplemental Declaration.

4.5.2 Tenants. All or some portion of a Parcel in a Commercial Area may be leased to one or more tenants or lessees from time to time by the Owner of a Parcel, subject to the provisions of this Declaration (including without limitation Section 4.2.34), the Empire Pass Rules and any applicable Design Guidelines.

4.6 Variances. Subject to the provisions of the Design Guidelines, the Design Review Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV of this Declaration or in the Design Guidelines or in any Neighborhood Declaration or in any Supplemental Declaration, if the Design Review Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner which hardship is not self imposed by such Owner or (ii) that a change of circumstances since the date this Declaration is Recorded has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of Empire Pass and is consistent with the high quality of life intended for Owners and Residents of Empire Pass.

4.7 Business Activities Conducted Within Dwelling Units. Business activities conducted within a Dwelling Unit shall neither change the Residential Use of such Dwelling

Unit into a Commercial Use nor exempt such Dwelling Unit from Annual Assessments or Special Assessments under this Declaration.

ARTICLE V ORGANIZATION OF MASTER ASSOCIATION

5.1 Formation of Master Association. The Master Association shall be a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Directors and Officers. The affairs of the Master Association shall be conducted by a Board of at least three (3) directors and such officers, as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until conversion of the Class B Memberships to Class A Memberships pursuant to Section 6.4. The Board may also appoint various committees and may appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

5.2.1 administration, including administrative support as required for the Design Review Board;

5.2.2 preparing and administering an operational budget;

5.2.3 establishing and administering an adequate reserve fund;

5.2.4 scheduling and conducting the annual meeting and other meetings of the Voting Members;

5.2.5 collecting and enforcing the Assessments and the Maintenance Charges;

5.2.6 accounting functions and maintaining records;

5.2.7 promulgation and enforcement of the Empire Pass Rules;

5.2.8 maintenance of the Community Areas; and

5.2.9 all the other duties imposed upon the Board pursuant to the Governing Documents, including enforcement thereof.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Governing Documents as the responsibility of the Design Review Board.

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5.3 Empire Pass Rules. By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Empire Pass Rules. The Empire Pass Rules may restrict and govern the use of any area of Empire Pass by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the Empire Pass Rules shall not discriminate among Members and shall be consistent with the Governing Documents.

5.3.1 Notwithstanding any provision in this Declaration to the contrary, no rule, regulation or action of the Master Association, Board or Manager shall: (i) interfere with the reasonable use, enjoyment or operation of any Private Amenity; or (ii) unreasonably impede Declarant's right to develop the Property.

5.3.2 ALL OWNERS ARE GIVEN NOTICE THAT THE USE OF THEIR LOT, UNIT OR PARCEL AND THE COMMUNITY AREAS IS LIMITED BY THE EMPIRE PASS RULES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT, UNIT OR PARCEL CAN BE AFFECTED BY THIS PROVISION AND THAT THE EMPIRE PASS RULES MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS OR UNITS ARE ON NOTICE THAT THE BOARD MAY ADOPT CHANGES TO THE EMPIRE PASS RULES FROM TIME TO TIME. COPIES OF THE CURRENT EMPIRE PASS RULES MAY BE OBTAINED FROM THE MASTER ASSOCIATION.

5.4 Personal Liability. No director or member of any committee of the Master Association (including but not limited to the Design Review Board), no officer of the Master Association and no Manager or other employee of the Master Association shall be personally liable to any Member or to any other person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the Manager, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Sub-Associations. Prior to such time as a Sub-Association is formed by a Merchant Builder developing a Parcel or subdivision at Empire Pass, the articles of incorporation and bylaws or other governing documents for such Sub-Association must be approved by the Declarant so long as it holds a Class B Membership, by the Master Association and by the Design Review Board. The governing documents for such Sub-Association shall specify that the rights of its members are subject and subordinate to the provisions of the Governing Documents.

5.6 Professional Management. The Master Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Master Association, shall be responsible for managing Empire Pass for the benefit of the Master Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Master Association, be authorized to perform any of the functions or acts

required or permitted to be performed by the Master Association itself. Subject to the provisions of the Development Agreements, any such management agreement may be terminated by the Declarant without cause at any time while the Class B Membership as described in Section 6.4 exists. In addition, subject to the provisions of the Development Agreements, any such management agreement may be terminated by the Master Association without cause upon giving reasonable notice at any time after the termination of such Class B Membership. The above termination provisions shall not apply to any other types of service contracts.

5.7 Implied Rights. The Master Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Master Association may be exercised by the Board without a vote of the Voting Members. The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Community Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty of the Board to institute litigation on behalf of or in the name of the Master Association or its Members. In exercising the Master Association's rights and powers, making decisions on behalf of the Master Association, and conducting the Master Association's affairs, Board directors shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Articles and Bylaws. All final decisions of the Board shall be nonappealable.

ARTICLE VI MEMBERSHIPS AND VOTING

6.1 Owners of Lots, Units and Parcels. Every Person who is the Owner of Assessable Property shall be subject to Annual Assessments and Special Assessments and shall be a Member of the Master Association (provided, however, the Declarant and each Merchant Builder shall remain a Member of the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments). Each such Owner of a Lot or Unit that is subject to Annual Assessments and Special Assessments shall have one Class A Membership for each separate Lot or Unit owned by such Owner. Each such Owner of a Parcel that is subject to Annual Assessments and Special Assessments designated for development as a Residential Area but as to which a Plat has not been recorded, shall have one Membership for each Lot or Unit permitted upon the Parcel under the Master Land Use Plan then in effect, the number of such Lots or Units to be determined on the assumption that the number of Lots or Units within a density classification on the Master Land Use Plan will be spread evenly over all land within the density classification. If a site plan for the Parcel is subsequently approved by the Declarant, the Design Review Board and the Municipal Authority for a number of Lots or Units different than the number of Lots or Units assumed pursuant to the Master Land Use Plan, the number of Memberships will be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Lots or Units authorized by the approved site plan.

6.1.1 No Owner of a Lot, Unit or Parcel designated as a General Commercial Area or as a Commercial Condominium Development shall have any Membership by virtue of such ownership but shall nevertheless be subject to the Governing Documents.

6.1.6 There shall be no fractional Memberships, and each Owner shall have at least one Membership.

6.1.7 No Memberships shall be allocated to Community Areas, Exempt Property (except as otherwise provided regarding Declarant and Merchant Builders), property utilized for a Church Use, Private Amenity or other General Public Uses.

6.1.8 Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot, Unit or Parcel to which the Membership is attributable. All Memberships shall be shared by any joint Owners of, or Owners of undivided interests in a Lot, Unit or Parcel.

6.2 Tenants. Tenants or lessees of Rental Apartments shall not be Members of the Master Association. The Owner of Rental Apartments shall have one Membership for each Dwelling Unit, unless such Dwelling Unit constitutes Affordable Housing.

6.3 Declarant. The Declarant shall be a Member of the Master Association with voting rights for so long as the Declarant holds a Class B Membership pursuant to Section 6.4.

6.4 Voting. The Master Association shall have two classes of voting Memberships:

6.4.1 Class A Memberships shall be all Memberships except the Class B Memberships held by the Declarant and the Merchant Builders. Each Owner shall be entitled to one (1) vote, by and through the applicable Voting Member, for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof. Notwithstanding the foregoing, no vote shall be cast or counted for any Class A Membership not subject to Assessment. Except as otherwise set forth in this Declaration, all matters requiring a vote of the Membership shall require the vote of both the Class A Membership and the Class B Membership.

6.4.2 The Class B Memberships shall be held only by the Declarant, any successor of Declarant and any Merchant Builder that takes title to any Parcel for the purpose of development and sale and who is designated as such in a Recorded instrument executed by Declarant, until converted pursuant to this Section 6.4. The Declarant shall initially be entitled to 550 votes; this number shall be decreased by one (1) vote for each Class A Membership existing at any one time. This number shall be increased by the appropriate number of votes allocated to any Additional Land added to Empire Pass by Declarant pursuant to Article XVI. The Class B Memberships shall cease and shall be converted to Class A Memberships, on the basis of the number of Lots, Units and/or Parcels owned by the Declarant and by Merchant Builders, on the happening of the first of the following events:

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6.4.2.1 When the total votes outstanding in the Class A Memberships equal or exceed 413 votes, which number shall be increased by an amount equal to 75% of the total votes allocated by Declarant to any Additional Land; or

6.4.2.2 Twenty-five (25) years from the date the Original Declaration was Recorded; or

6.4.2.3 when, in its discretion, the Declarant so determines as to all or any portion of the Class B Memberships including, without limitation, Class B Memberships held by any Merchant Builder.

6.4.3 From and after the happening of such events, whichever occurs first, the Class B Member shall be deemed to be a Class A Member entitled to the Memberships and votes on the same basis as Owners as set forth in Section 6.1 hereof. Upon the happening of an event described in Sections 6.4.2.1, 6.4.2.2 or 6.4.2.3, or at such time as Declarant determines to convert all Class B Memberships, the Declarant shall advise the Membership of the termination of any Class B Membership status.

6.4.4 The sale in one transaction of an unimproved Parcel or a group of five or more Lots or Units by the Declarant to a Merchant Builder, who is in the business of subdividing and/or building Dwelling Units for sale to individual home purchasers shall not convert the Class B Memberships attributable to that Parcel or those Lots or Units to Class A Memberships; provided, however, that any other sale of a Lot, Unit or Parcel to a Person other than to a Merchant Builder shall convert the Membership(s) attributable to that Lot, Unit or Parcel to Class A Membership(s).

6.4.5 Until such time as all of the Class B Memberships are converted to Class A Memberships, each Member of the Class B Membership other than Declarant shall be conclusively presumed, by accepting the conveyance of a Lot's/Unit's or Parcel's legal title from Declarant or another Member of the Class B Membership, to have (i) given Declarant an irrevocable and exclusive proxy to cast such Class B Member's votes on each question coming before the Membership while such Class B Member holds such title; and (ii) agreed with Declarant that such proxy is given to and relied on by Declarant in connection with Declarant's sale or conveyance of such Lots, Units or Parcel to such Class B Member, and in connection with Declarant's development, construction, marketing, sale and leasing of Empire Pass or the Additional Land, and is coupled with an interest.

6.4.6 Until such time as all of the Class B Memberships are converted to Class A Memberships, the Declarant, as holder of the right to vote the Class B Memberships, shall have the sole right to appoint a majority of the Directors as provided in this Declaration.

6.4.7 Except as otherwise expressly provided in this Declaration or in any of the other Governing Documents, any issue put to a vote by ballot without a meeting or at a duly called meeting of Voting Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting,

regardless of whether such votes are otherwise deemed to be Class A votes or Class B votes.

6.5 Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote and/or approval attributable to each Lot or Unit owned by a Class A Member shall be exercised by a Voting Member representing the Neighborhood of which the Lot or Unit is a part, as provided in Section 6.6. The Voting Member may cast all such votes or approvals as it has been directed by a majority of the votes or approvals of Members such Voting Member represents. EACH MEMBER IS HEREBY GIVEN NOTICE THAT NO MEMBER SHALL HAVE THE RIGHT TO EXERCISE SUCH MEMBER'S VOTE OR OTHER APPROVAL DIRECTLY ON MASTER ASSOCIATION MATTERS AND MAY ONLY EXERCISE SUCH MEMBER'S VOTE OR APPROVAL ON MASTER ASSOCIATION MATTERS THROUGH THE APPLICABLE VOTING MEMBER REPRESENTING THE NEIGHBORHOOD OF WHICH THE MEMBER'S LOT OR UNIT IS A PART.

6.6 Neighborhoods, Voting Members and Voting Groups.

6.6.1 Neighborhoods. Every Lot, Unit and Parcel shall be located within a Neighborhood (as designated by Declarant or by the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) and shall be subject to a Neighborhood Declaration or Supplemental Declaration including any assessment provisions contained therein. In the discretion of the Owner(s) and developer(s) of each Neighborhood, the Lots, Units and Parcels within a particular Neighborhood may be subject to additional covenants and/or the Owners of Lots, Units may all be required to be members of a Sub-Association in addition to being Members of the Master Association. Each amendment to this Declaration filed to subject Additional Land to this Declaration shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. Declarant (or the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) may unilaterally amend this Declaration or any amendment to this Declaration to redesignate Neighborhood boundaries.

6.6.2 Voting Members. The Class A Members within each Neighborhood shall elect one Voting Member for each 20 Class A Memberships within the Neighborhood (rounded to the nearest integral multiple of 20). Each Neighborhood shall have at least one Voting Member. For example, if there were 1 to 30 Class A Memberships in a Neighborhood there would be one Voting Member. If there were 31 to 50 Class A Memberships in a Neighborhood, there would be two Voting Members. On all Master Association matters requiring a Membership vote, each such Voting Member shall be entitled to cast that number of votes determined by dividing the total number of Class A votes attributable to Memberships in such Neighborhood by the number of Voting Members elected from such Neighborhood, except as otherwise specified in this Declaration or the Bylaws. The Class A Members within each Neighborhood shall also elect one or more alternate Voting Members to be responsible for casting such votes in the absence of a Voting Member.

6.6.2.1 The Voting Member(s) and alternate Voting Member(s) from each Neighborhood shall be elected on an annual basis, either by written ballot or at a meeting of the Class A Members within such Neighborhood, as the Board determines; provided that, upon written petition of the Class A Members holding at least 10 percent of the votes attributable to Memberships within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Class A Members representing at least thirty percent (30%) of the total Class A votes attributable to Memberships in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

6.6.2.2 The Board shall call for the first election of the Voting Member(s) and alternate Voting Member(s) from a Neighborhood not later than 18 months after the first conveyance of a Lot, Unit or Parcel in the Neighborhood to a Person other than Declarant or a Merchant Builder. Subsequent elections shall be held within thirty (30) days of the same date each year or at any other time during the year as reasonably determined by the Neighborhood governing board or by the Neighborhood Class A Members. Each Class A Member shall be entitled to cast one (1) equal vote for each Membership which it owns in the Neighborhood for each Voting Member position that is to be elected at such election. The candidate for each Voting Member position who receives the greatest number of votes shall be elected to serve a term of one year and until a successor is elected. Any Owner of a Lot, Unit or Parcel in the Neighborhood may submit nominations for election or declare himself or herself a candidate in accordance with procedures which the Board shall establish.

6.6.2.3 Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number Memberships owned by Class A Members in the Neighborhood which such Voting Member represents.

6.6.2.4 In any situation in which a Member is entitled personally to exercise the vote for his or her Lot or Unit and there is more than one Owner of a particular Lot or Unit, the vote for such Lot or Unit shall be exercised as such co-Owners determine among themselves and as they then advise the Voting Member(s) for the Neighborhood in which such Owners' Lot, Unit or Parcel is located. Absent such advice, the Lot's or Unit's vote shall be suspended if more than one Person seeks to exercise it.

6.6.3 Voting Groups. The Declarant (or the Board following the conversion of all of the Class B voting Memberships to Class A voting Memberships) may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing the Board, in order to promote representation on the Board for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able, due to the number of Memberships in such Neighborhoods, to elect the entire Board, excluding the representation of other Neighborhoods. Following termination of the Class B Memberships, the number of Voting Groups within Empire Pass shall not exceed the total number of Board members

to be elected by the Class A Members pursuant to the Bylaws. The Voting Members representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of Board members specified in the Bylaws.

6.6.3.1 The Declarant shall establish Voting Groups, if at all, not later than the date of termination of all of the Class B Memberships by filing with the Master Association and Recording in the Office of the Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, a Supplemental Declaration identifying the Neighborhoods within each Voting Group. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the termination of all of the Class B Memberships by Recording an amendment to the Supplemental Declaration.

6.6.3.2 After the termination of all of the Class B Memberships, the Board shall have the right to amend the Voting Group designation upon the vote of a majority of the total number of Board members by Recording an amendment to the Declaration which shall not require the consent or approval of any Person except as stated in this paragraph. Until such time as Voting Groups are established, all of Empire Pass shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of Empire Pass which are not assigned to a specific Voting Group shall constitute a single Voting Group.

6.7 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time.

6.8 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Master Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon Transfer of ownership to an Owner's Lot, Unit or Parcel and then only to the Transferee of ownership to such Lot, Unit or Parcel. A Transfer of ownership to a Lot, Unit or Parcel may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a Mortgage or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Any attempt to make a prohibited Transfer shall be void. Any Transfer of ownership to a Lot, Unit or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot, Unit or Parcel to the new Owner thereof.

ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Except as otherwise provided in Sections 7.5 and 7.12, the Declarant, for each Lot, Unit and Parcel hereafter established within Empire Pass, hereby covenants and agrees, and each Owner by acceptance of a Deed or other conveyance of a Lot, Unit or Parcel (whether or not it shall be so expressed in such Deed or conveyance) is deemed to covenant and agree, to pay to

the Master Association the following assessments and charges: (1) Annual Assessments established by this Article VII; (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII; (3) Maintenance Charges established by Sections 10.2 and 10.3; and (4) Transfer Assessments established under Section 7.15. Notwithstanding the foregoing sentence and notwithstanding any other provisions in this Declaration to the contrary, Exempt Property shall not be subject to assessments and charges from the Master Association for Annual Assessments or for Special Assessments. However, Exempt Property shall be subject to assessments and charges for Maintenance Charges and Transfer Assessments. All Assessments shall be established and collected as hereinafter provided. No diminution or abatement of Annual Assessments, Special Assessments, Maintenance Charges or Transfer Assessments nor any decrease, offset, deduction or set-off shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or to perform some function required to be taken or performed by the Master Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken by the Master Association or the Board to comply with any law, ordinance, or with any order or directive of any Municipal Authority or other governmental authority. The obligation to pay Assessments and Maintenance Charges shall be deemed to be a separate and independent covenant on the part of each Owner of Assessable Property. The Annual Assessments, Special Assessments, Maintenance Charges and Transfer Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot, Unit or Parcel and shall be a continuing servitude and lien upon the Lot, Unit or Parcel against which each such Assessment or Maintenance Charge is made, except that Exempt Property shall not be subject to the Annual Assessments and the Special Assessments. Each such Annual Assessment, Special Assessment, Maintenance Charge and Transfer Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Lot, Unit or Parcel at the time when the Assessment or Maintenance Charge fell due. Except for the Transfer Assessment, the personal obligation for delinquent Assessments and for Maintenance Charges shall not pass to the successors in title of the Owner, unless expressly assumed by them. However, the lien upon the applicable Lot, Unit or Parcel for any unpaid Assessments or Maintenance Charges existing at the time of any Transfer shall continue, notwithstanding such Transfer, until the Assessments or Maintenance Charges have been paid in full.

7.2 Property Assessable Upon Recording of Deed. ALL OWNERS ARE GIVEN NOTICE THAT THEIR LOT(S)/UNIT(S) AND/OR PARCEL(S) SHALL BE SUBJECT TO FULL ASSESSMENT IN ACCORDANCE WITH THE TERMS OF THIS DECLARATION UPON ACCEPTANCE OF A DEED, REGARDLESS OF WHETHER OR NOT SUCH LOT(S)/UNIT(S) AND/OR PARCEL(S) HAVE BEEN IMPROVED, EXCEPT AS OTHERWISE PROVIDED IN THIS MASTER DECLARATION. At the time a Deed is Recorded conveying a Lot, Unit or Parcel to an Owner, such Lot or Unit shall thereupon be subject to the Assessments and Maintenance Charges, and the Board shall levy such Assessment or Maintenance Charge upon the Owner of the Lot, Unit or Parcel within 30 days after the Recording of such Deed. If applicable, the Annual Assessment and/or any Special Assessment shall be prorated for the remaining portion of the assessment year. In any dispute, question of controversy regarding whether property is Assessable Property or Exempt Property, the Board shall have the exclusive power and authority to decide such dispute, question or controversy and

any decision regarding the foregoing shall be conclusive and binding on all interested parties. All final decisions of the Board regarding the foregoing shall be nonappealable.

7.3 Annual Assessments. Annual Assessments shall be computed and assessed against all Lots, Units and Parcels (other than Exempt Property) as follows:

7.3.1 Community Expense. Annual Assessments shall be based upon advance estimates of the Master Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance, improvement and operation of the Community Areas (including capital repairs and replacements), fulfilling the Master Association's obligations under the Maintenance Agreement and operating the Master Association. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and assessments (unless and until the Lots, Units and Parcels are separately assessed); premiums for all insurance that the Master Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Master Association employees, including fees for a Manager; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Community Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Master Association under or by reason of this Declaration and the Development Agreements. Such shall constitute Community Expenses, and all funds received from Annual Assessments under this Section 7.3.1 shall be part of the Community Expense Fund.

7.3.2 Apportionment. Community Expenses shall be apportioned among and assessed to the Members in accordance with Section 7.4.

7.3.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin as provided in Section 7.8, and on or before November 1 of each year thereafter, the Board shall prepare and make available to each Member, or cause to be prepared and to be made available to each Member, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Master Association shall be operated during such annual period.

7.3.4 Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Member in writing as to the amount of the Annual Assessment against his or her Lot, Unit or Parcel on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each Annual Assessment shall be payable in equal monthly, quarterly or annual installments as determined by the Board in its sole discretion; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year that remains after the notice of the Annual Assessment becomes effective. The Members

shall commence payment of the full monthly Assessments against their respective Lots, Units or Parcels upon conveyance to any Member of the first Lot, Unit or Parcel in Empire Pass. All unpaid installments of any Annual Assessment shall bear interest at the rate established by the Board, not to exceed eighteen percent (18%) per annum, from and after fifteen (15) days after the date each such installment became due until paid, and the Member shall be liable for late fees as determined by the Board, and all costs, including attorneys' fees incurred by the Master Association in collecting the same. In addition, in the event that any installment of the Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Master Association may, at its option, and upon fifteen (15) days prior written notice to the Member, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period, and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Member from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such Assessment shall have been given to the Member in the manner provided in this Declaration.

7.3.5 Inadequate Funds. In the event that the Community Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Member's Assessment, the Board may, on behalf of the Master Association, levy additional Special Assessments in accordance with the procedure set forth in Section 7.6 below, except that the vote therein specified shall be unnecessary.

7.4 Classification of Assessable Property. The amount of any Annual Assessment or Special Assessment against each Lot, Unit or Parcel (other than Exempt Property) shall be fixed as set forth in this Section. For purposes of fixing the amount of the Annual Assessment or Special Assessment, the Board shall classify each Lot, Unit or Parcel of Assessable Property in one of the following classifications, as such classifications may vary or be adjusted from time to time by the Board in its sole and absolute discretion, without amending this Declaration: (a) detached Dwelling Unit that is built on a separately-platted Lot, which Lot contains a custom-designed and custom-built Dwelling Unit; (b) detached Dwelling Unit that is not included within the immediately preceding classification (a); (c) attached Dwelling Unit within a building containing up to six Dwelling Units; (d) Condominium Unit within a multi-story building containing seven or more Condominium Units; or (e) Rental Apartment within an Apartment Development. The Board shall determine, in its sole and absolute discretion, the amount of the Annual Assessment and any Special Assessment within each of the foregoing classifications of Assessable Property, which classifications may vary or be adjusted from time to time without an amendment of this Declaration, as determined by the Board in its sole and absolute discretion, provided that the Annual Assessment and any Special Assessment shall be equal for each Lot, Unit or Parcel within each classification of Assessable Property. The Board's determination of the criteria for each classification, the Board's determination of the classification of each Lot, Unit and Parcel, and the Board's determination of the amount of the Annual Assessment and

Special Assessment for each classification shall be conclusive upon the Owners and shall be nonappealable under all circumstances. Notwithstanding the foregoing, the initial Annual Assessment shall be no less than \$1,000 per Lot, Unit and Parcel of Assessable Property unless or until changed by the Board. The failure of the Board to levy an Annual Assessment for any calendar year shall not be deemed a waiver, modification or release of the Owners' liability for Community Expenses.

7.4.1 Anything in Section 7.4 to the contrary notwithstanding, if, after an Assessment's record date but before the end of the fiscal year for which it is levied, an Assessable Property is added to Empire Pass or a Neighborhood by a Supplemental Declaration or by a Neighborhood Declaration, or an Exempt Property becomes Assessable Property, then each Assessment that would have been levied against such Assessable Property for such fiscal year if it were not Exempt Property (as hereafter reduced) shall be due on the later of (a) the date on which such Assessment would have been due, if such part of Empire Pass had been Assessable Property on such record date, or (b) the date on which such Assessable Property becomes subject to Assessment levy. If an Assessable Property is added to Empire Pass or a Neighborhood as provided for above, the Master Association shall be deemed, automatically and without the need for further action, to have levied against it each Annual Assessment and Special Assessment for such fiscal year which the Master Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section 7.4 as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Supplemental Declaration is Recorded, or such Exempt Property becomes an Assessable Property, as the case may be.

7.5 Certain Owners Exempt from Annual Assessments and Special Assessments. Notwithstanding Section 7.4, the following Owners shall not have an obligation to pay any Annual Assessment or Special Assessment:

7.5.1 Each Owner of a Private Amenity.

7.5.2 Each Owner of Exempt Property.

7.6 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Master Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Association Land or other Community Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that, except as provided in Section 7.3.5 and Section 14.4, any such Special Assessment shall have the assent of at least sixty-seven percent (67%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose or by written approval of such Members. The provisions of this Section 7.6 are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes. Special Assessments may be collected as specified by the Board, unless otherwise determined the majority vote of the Members of the Master Association approving the

Special Assessment. The vote and/or written approval of the Class A Members under this Section 7.6 shall be made by and through the Voting Members.

7.7 Notice and Quorum for Any Action Authorized Under Section 7.6. Written notice of any meeting called for the purpose of taking any action authorized under Section 7.6 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called for the consideration of a Special Assessment, the presence of Voting Members or of proxies entitled to cast thirty percent (30%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. With respect to the determination of a quorum for Class A Members, Voting Members having the authority to cast thirty percent (30%) of the Class A votes shall constitute a quorum of the Class A Members. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied ("Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the Recording of the first Neighborhood Declaration or Supplemental Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by Recording with the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable, an instrument specifying the new Assessment Period.

7.9 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt Empire Pass Rules setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual Assessments, Special Assessments, Transfer Assessments and the Maintenance Charges, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Master Association to send a bill to a Member shall not relieve any Member of his or her liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Member on the records of the Master Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Master Association shall be under no duty to refund any payments received by it, even though the ownership of a Membership changes during an Assessment Period. Successor Owners of Lots, Units or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners. The amount of the Annual Assessment and the Special Assessment against Members who become such during an Assessment Period upon the recordation of a Neighborhood Declaration or Supplemental Declaration shall be prorated.

7.10 Community Expense Fund. The Master Association shall establish and maintain two (2) separate and distinct funds, one for the periodic regular maintenance and repair of Empire Pass and for other routine operating expenses and one for capital expenses and the

replacement of Improvements to the Community Areas the Master Association may be obligated to maintain, repair or replace. These two (2) funds shall be maintained out of Annual Assessments and Special Assessments for Community Expenses which two funds together shall constitute the Community Expense Fund.

7.11 Evidence of Payment. Upon receipt of a written request by a Member or any other Person, the Master Association within a reasonable period of time thereafter shall issue to such Member or other Person a written certificate stating (a) that all Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Section 7.3.4 and Section 10.3) have been paid with respect to any specified Lot, Unit or Parcel as of the date of such certificate, or (b) if all Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges have not been paid, the amount of such Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Master Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot, Unit or Parcel in question.

7.12 Property Exempted from the Annual Assessments and Special Assessments. All Exempt Property shall be exempt from Annual Assessments, Special Assessments (and any related Park City Assessments) and Membership in the Master Association (provided, however, the Declarant, a Declarant related entity or a Merchant Builder shall remain a Member in the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Annual Assessments and Special Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and architectural controls. Provided, however, at the sole and exclusive option of Declarant, property described in Section 1.41.1 shall be fully exempt from all of the terms and provisions of this Declaration. Exempt Property shall not be exempt from the Maintenance Charges and the Transfer Assessments, from attorneys' fees, costs, expenses and interest as described in Section 7.3.4 and Section 10.3, or from the Assessment Lien to secure said amounts; provided, however, that in the event any change of ownership or use of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments (prorated as of the date it became Assessable Property) and the associated Assessment Lien.

7.13 Declarant's Duty to Fund Deficits. During any fiscal year in which Declarant or a Declarant related developer entity owns one or more Lots, Units or Parcels which (under Section 1.41 of the definition of Exempt Property) are Exempt Properties due to such Person's ownership thereof, and which would not constitute Exempt Properties under any other part of such definition, Declarant shall be obligated to fund to or for the account of the Master Association, at such time or times as such funding is reasonably required by the Master Association during such fiscal year, an aggregate amount for such fiscal year equaling the lesser of (i) the total amount which Declarant and/or such Declarant related developer entity would have owed to the Master Association on account of any Annual Assessments and Special Assessments which, if such

Exempt Properties had been Assessable Properties, would have been levied against them for such fiscal year, or (ii) any excess, for such fiscal year, of the Community Expenses over the aggregate Annual Assessments and Special Assessments levied against all Assessable Properties in Empire Pass and the portion of the Transfer Assessments retained by the Master Association for the payment of Community Expenses. Notwithstanding the foregoing, Declarant shall have no obligation to fund to or for the account of the Master Association any amounts under this Section 7.13 after such time as the Class B Memberships are converted to Class A Memberships.

7.14 Declarant Funding Options. Declarant shall be entitled to meet its funding obligations under Section 7.13 by making, or (if such Person so agrees in writing) causing any Declarant related developer entity, Merchant Builder or other Person to make on its behalf, one or more cash payments or in-kind contributions of goods or services, or any combination thereof, and the Master Association shall have the right to enter into written or oral contracts with Declarant or a Declarant related developer entity or Merchant Builder for the contribution of such goods or services for such purpose. Except for the limitations set forth in Article VII, nothing in this Section 7.14 or elsewhere in this Declaration shall be deemed to impose on the Master Association (or Declarant) any duty whatsoever to refrain from increasing (or from causing the Master Association to increase) the Annual Assessments from fiscal year to fiscal year, or from levying Special Assessments, all to the extent otherwise permitted by this Declaration.

7.15 Open Space and Transit Management Fund. Section 3.2 of the Development Agreement requires the assessment of an open space/transit management fee which fee is defined in this Declaration as the Transfer Assessment. All Transfer Assessments shall belong to the Master Association to reduce the Annual Assessments, Special Assessments or Maintenance Charges and/or to enhance the Master Association's services to its Members. Notwithstanding the foregoing, the Master Association shall pay to Park City a portion of each Transfer Assessment not to exceed the Gross Sales Price of the Lot, Unit or Parcel multiplied by one-half of one-percent (0.5%) to assist Park City in funding the costs and expenses for enhanced transportation for Empire Pass, recreation improvements and/or open space acquisition, maintenance and preservation as provided in Section 3.2 of the Development Agreement. This Section 7.15 shall run with the Property and shall be binding upon and inure to the benefit of Declarant, the Master Association, all Owners and Residents and their respective successors and assigns.

7.15.1 Upon the occurrence of a Transfer, the Transferee under such Transfer shall pay to the Master Association the Transfer Assessment. Each Owner shall be obligated to pay and shall pay to the Master Association the Transfer Assessment levied with respect to such Owner's Lot, Unit or Parcel, and each Owner shall comply with any determinations made by the Board with respect to such Transfer Assessments.

7.15.2 Each Transferor shall provide written notice to the Master Association of a proposed Transfer of a Lot, Unit or Parcel at least 15 days prior to the date of the Transfer. Such notice shall include the name and address of the Transferee, the Consideration to be given by the Transferee, the closing date, a statement of the nature of the Transfer including, without limitation whether the Transfer is a sale or lease and the

terms thereof, and such other information as the Master Association may thereafter request.

7.15.3 All Transfer Assessments to be levied shall be levied at the time of a Transfer and shall be payable on the date of the closing of the Transfer ("Transfer Assessment Levy Date"), and each Transfer Assessment not paid within 10 days of the Transfer Assessment Levy Date, shall accrue interest until fully paid at five percent (5%) per annum over the rate of interest announced from time to time by Zions First National Bank, a national banking association, as its "prime rate" for commercial loans; such interest shall be payable on demand, computed monthly, and if unpaid, compounded monthly, not in advance, at the rate so calculated as of ten (10) days after the Transfer Assessment Levy Date, and all accruing interest shall become a part of the Transfer Assessment due and owing to the Master Association.

7.16 Right to Assess Sub-Associations. Notwithstanding any provision of this Declaration, the Master Association shall have the right to directly assess each Sub-Association for all Assessments and Maintenance Charges otherwise assessable to the Owners of such Sub-Associations.

ARTICLE VIII ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND MAINTENANCE CHARGES AND ENFORCEMENT OF ASSESSMENT LIEN

8.1 Master Association as Enforcing Body. Except as otherwise set forth in this Declaration, the Master Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration.

8.2 Master Association's Enforcement Remedies. If any Member fails to pay the Assessments or installments when due, or to pay Maintenance Charges, the Master Association may enforce the payment of the Assessments, Maintenance Charges and/or Assessment Lien by taking one or more of the following actions, concurrently or separately (and by exercising any of the remedies hereinafter set forth, the Master Association does not prejudice or waive its right to exercise any other remedy):

8.2.1 Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments or the Maintenance Charges;

8.2.2 Foreclose the Assessment Lien against the Lot, Unit or Parcel in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code Annotated, as amended from time to time, or any other means permitted by law, and the Lot, Unit or Parcel may be redeemed after foreclosure sale, if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Declarant hereby designates Coalition Title Agency, Inc., a Utah corporation having an office in Park City, Utah as trustee ("Trustee") and grants and conveys the

Property, IN TRUST, to Trustee, as trustee with full power of sale, to foreclose any such liens as directed by the Board. The Board may, at any time, designate one or more successor trustees, in the place of Trustee, in accordance with the provisions of Utah law for the substitution of trustees under deeds of trust. Such Trustee, and any successors, shall not have any other right, title or interest in the Property beyond those rights and interests necessary and appropriate to foreclose any liens against Lots, Units or Parcels arising pursuant hereto. In any such foreclosure, the Owner of the Lot, Unit or Parcel being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Master Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots, Units or Parcels purchased at such sale.

8.2.3 Notwithstanding the subordination of an Assessment Lien as described in Section 8.3, the delinquent Member shall remain personally liable for the Assessments and the Maintenance Charges and related costs after his or her Membership is terminated by foreclosure or Deed in lieu of foreclosure or otherwise.

8.3 Priority of Lien. The Assessment Lien provided for herein shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided and except as provided in Section 17.5, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot, Unit or Parcel. The sale or transfer of any Lot, Unit or Parcel shall not affect the Assessment Lien, except as provided in Section 17.5.

8.4 Attorneys' Fees and Costs. In any action taken pursuant to Section 8.2, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, the Special Assessments, the Transfer Assessments and the Maintenance Charges together with the Master Association's collection costs and attorneys' fees, including those costs, fees and interest specified in Section 7.3.4 and Section 10.3.

ARTICLE IX USE OF FUNDS; BORROWING POWER; OTHER MASTER ASSOCIATION DUTIES

9.1 Purposes for Which Master Association's Funds May Be Used. The Master Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments, Transfer Assessments, Maintenance Charges, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Empire Pass and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within Empire Pass, which may be necessary, desirable or beneficial to the general common interests of Empire Pass, the Members and the Residents. The following are some, but not all, of the areas in which the Master Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents; maintenance of landscaping on Community Areas

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and public right-of-way and drainage areas within Empire Pass; fulfilling the Master Association's obligations under the Maintenance Agreement; recreation; insurance; communications; ownership and operation of vehicle storage areas; transportation; health; utilities; public services; safety and indemnification of officers and directors of the Master Association, the Design Review Board, and any other committees created by the Master Association; and compliance with the Development Agreements and any other Governing Document. The Master Association also may expend its funds as otherwise permitted under the laws of the State of Utah.

9.2 Borrowing Power. The Master Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Members.

9.3 Master Association's Rights in Spending Funds From Year to Year. The Master Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, Transfer Assessments, Maintenance Charges, fees or otherwise), and may carry forward as surplus any balances remaining. The Master Association shall not be obligated to reduce the amount of Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Master Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Master Association and the accomplishment of its purposes.

ARTICLE X MAINTENANCE

10.1 Community Areas and Public Right-of-Way. The Master Association, or its duly delegated representative, shall maintain and otherwise manage all Community Areas, including, but not limited to, the landscaping, walkways, riding paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said properties; provided, however, the Master Association shall not be responsible for providing or maintaining the landscaping or structures on any Community Areas which are part of Lots, Units or Parcels unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Empire Pass and (ii) the Master Association assumes in writing the responsibility as set forth in a Recorded instrument as hereinafter provided. The Master Association shall also maintain any landscaping and other Improvements not on Lots, Units and Parcels which are within the exterior boundaries of Empire Pass, which are within areas shown on a Plat or other plat of dedication for Empire Pass or covered by a Neighborhood Declaration or Supplemental Declaration and which are intended for the general benefit of the Owners and Residents of Empire Pass, except that the Master Association shall not (except by separate agreement) be obligated to maintain areas which (i) are owned by a Municipal Authority, (ii) a Sub-Association is required under a Neighborhood Declaration or Supplemental Declaration to maintain, or (iii) are to be maintained by the Owners of a Lot, Unit or Parcel pursuant to Section 4.2.4 of this Declaration. Specific areas to be maintained by the Master Association may be identified on Plats Recorded or approved by the Declarant, in Neighborhood Declarations, Supplemental Declarations and in Deeds from the Declarant to a transferee of a Lot, Unit or Parcel, but the failure to so identify such areas shall

not affect the Master Association's rights or responsibilities with respect to such Community Areas and other areas intended for the general benefit of Empire Pass. Notwithstanding anything to the contrary herein, the Board shall have discretion to enter into an agreement with a Municipal Authority to permit the Master Association to upgrade and/or maintain landscaping or other improvements on property owned by a Municipal Authority, if such property is within Empire Pass, if the Board determines such agreement benefits the Master Association.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property. In this regard the Master Association may, subject to any applicable provisions on Special Assessments, in the discretion of the Board:

10.1.1 Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Master Association Land;

10.1.2 Maintain (including snow removal therefrom), construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Community Areas used as a road, street, walk, driveway or parking area;

10.1.3 Replace injured and diseased trees and other vegetation in any Community Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

10.1.4 Place and maintain upon any Community Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and

10.1.5 Do all such other and further acts which the Board deems necessary to preserve and protect the Community Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

10.1.6 The Board shall be the sole judge as to the appropriate maintenance of all Community Areas and other properties maintained by the Master Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

10.1.7 In the event any Plat, Neighborhood Declaration, Supplemental Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots, Units or Parcels will be responsible for maintenance of certain Community Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Empire Pass for the Master Association or for an individual Owner or a Sub-Association to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Master Association to contract with others for the performance of the maintenance and other obligations of the Master Association under this Article X, and in order to promote uniformity and harmony of appearance, the Board may also cause the Master Association to contract to provide maintenance services to Sub-Associations or to Owners of Lots, Units and Parcels having such responsibilities in exchange for the

payment of such fees as the Master Association, the Sub-Association or the Owner may agree upon.

10.2 Assessment of Certain Costs of Maintenance and Repair of Community Areas and Public Areas. In the event that the need for maintenance or repair of Community Areas, structures and other property maintained by the Master Association is caused through the willful or negligent act of any Owner or Resident of a Lot, Unit or Parcel, or any family members, guests, invitees or tenants of such Persons, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot, Unit or Parcel is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot, Unit or Parcel pursuant to Section 10.1 in connection with a contract entered into by the Master Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

10.3 Maintenance and Use of Lots, Units and Parcels. Each Dwelling Unit, Improvement, Lot, Unit and Parcel shall be properly maintained by the Owner so as not to detract from the appearance of Empire Pass and so as not to affect adversely the value or use of any other Dwelling Unit, Improvement, Lot, Unit or Parcel. In the event any portion of any Lot, Unit or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots, Units and Parcels or other areas of Empire Pass which are substantially affected thereby or related thereto, or in the event any portion of a Lot, Unit or Parcel is being used in a manner which violates this Declaration or any Neighborhood Declaration or any Supplemental Declaration applicable thereto, or in the event the Owner of any Lot, Unit or Parcel is failing to perform any of its obligations under the Governing Documents and standards of the Design Review Board, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to: (i) enter the Lot or Unit and cause such action to be taken, and the cost thereof shall be added to and become a part of the Assessment (including interest at the rate of 18% per annum) to which the offending Owner and the Owner's Lot, Unit or Parcel is subject and shall be secured by the Assessment Lien; (ii) Record a notice of violation in the Office of the County Recorder of Summit County, Utah or the County Recorder of Wasatch County, Utah, as applicable; (iii) impose a fine commensurate with the severity of the violation; and/or (iv) bring an action at law and recover judgment of specific performance and/or damages against the Owner and including costs and attorneys' fees. In any action taken pursuant to this Section 10.3, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Master Association's collection costs and attorneys' fees.

10.4 Master Association Obligations Under Maintenance Agreement. Pursuant to the Maintenance Agreement, the Master Association is obligated to Park City to: (a) ensure that certain portions of the Community Areas as described in the Maintenance Agreement are maintained and repaired by the Master Association or the applicable Sub-Associations; (b) establish the Emergency Reserve Account for exclusive use by Park City to fund maintenance,

repairs or corrections undertaken by Park City where the Master Association has failed to do so; (c) maintain property casualty insurance on the bridges and tunnels within Empire Pass; and (d) otherwise perform its obligations and comply with the terms and conditions set forth in the Maintenance Agreement. If the Master Association defaults in its obligations to Park City, Park City, among other rights, shall have the right, but not the obligation, to undertake the maintenance and repair of the portions of the Community Areas described in the Maintenance Agreement and/or to correct certain conditions affecting public health and safety within Empire Pass as described in the Maintenance Agreement. The Master Association shall have the right to assess each Sub-Association and/or the Owners within such Sub-Association for any costs, charges, fees and expenses related to maintenance and repair of Community Areas within such Sub-Association as required by the Maintenance Agreement.

10.4.1 Park City Assessment. If Park City undertakes to maintain and/or repair such Community Areas, Park City shall have the right (on behalf of the Master Association) to assess and levy the Park City Assessment on the Members owning Lots, Units or Parcels (other than Exempt Property). Each Member by acceptance of a Deed or other conveyance of a Lot, Unit or Parcel that is not Exempt Property (whether or not it shall be so expressed in such Deed or conveyance) is deemed to covenant and agree, to pay to Park City the Park City Assessment. The total amount of the Park City Assessment shall not exceed the costs of maintenance and/or repairs undertaken by Park City together with reasonable administrative/overhead costs in an amount not to exceed ten percent. The amount of any Park City Assessment against each Lot, Unit or Parcel (other than Exempt Property) shall be fixed in the same manner as Annual Assessments and Special Assessment are fixed under Section 7.4. Park City shall notify each Member in writing as to the amount of the Park City Assessment against his or her Lot, Unit or Parcel and provide fifteen days for payment of such Park City Assessment. If a Member fails to pay the Park City Assessment, Park City shall have the right but not the obligation to enforce the Park City Assessment against the Members to the same extent as the Master Association may under Section 8.2. In any action taken pursuant to this Section 10.4.1, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Park City Assessment together with interest at the rate of 18% per annum plus Park City's collection costs and attorneys' fees.

10.4.2 Emergency Reserve Account. Pursuant to the Maintenance Agreement, Declarant has funded and established on behalf of the Master Association the Emergency Reserve Account. The balance of the Emergency Reserve Account will be reviewed for sufficiency from time to time at the request of any party to the Maintenance Agreement, but at least every five (5) years. The balance of the Emergency Reserve Account will be adjusted based on actual and estimated costs and experience. Park City, through its designated official, will have the sole authority to draw on the Emergency Reserve Account at such times and for such purposes as set forth below. The funds may be withdrawn and expended by Park City for the emergency protection of the health and safety of people within Empire Pass, including but not limited to correcting, removing or repairing conditions which might exist or arise on or within the portion of the Community Areas designated in the Maintenance Agreement, subject to certain limitations set forth in the Maintenance Agreement. The Master Association shall have sixty (60) days following any withdrawal of funds from the Emergency Reserve Account by Park City to

replenish the Emergency Reserve Account. If the Master Association fails to replenish the Emergency Reserve Account, Park City is entitled to bring suit against the Master Association to recover the amount required, and the Master Association is obligated to pay all reasonable costs associated with that suit.

10.5 Maintenance of Sewer Laterals. Without diminishing the Owners' responsibilities set forth in Section 10.3, the Master Association shall have the right but not the obligation to maintain, replace and repair sanitary sewer laterals serving any Dwelling Unit and/or Improvement within Empire Pass. If the Master Association elects to perform such maintenance, replacement and repair, the cost thereof shall be assessed by the Master Association at the election of the Master Association to either the applicable Sub-Association governing the Dwelling Unit or Improvement, or to the applicable Owners of the Dwelling Unit or Improvement. The Board shall not need the prior approval of the Members to cause such maintenance, replacement or repairs to be accomplished, notwithstanding the cost thereof. The Master Association shall have a right of entry and access to, over, upon, and through all of the Property including each Lot, each Dwelling Unit, each Improvement and the Community Areas, to enable the Master Association to perform such maintenance, repair, and replacement of sanitary sewer laterals. In the event of an emergency, the Master Association's right of entry to a Dwelling Unit or Improvement may be exercised without notice; otherwise, the Master Association shall give the Owners or Residents of a Dwelling Unit or Improvement no less than twenty-four hours advance notice prior to such entry.

ARTICLE XI DESIGN GUIDELINES AND DESIGN REVIEW BOARD

11.1 Membership. There is hereby established a Design Review Board which shall be responsible for the establishment and administration of the Design Guidelines and to carry out all other responsibilities assigned to the Design Review Board in order to carry out the purposes and intent of this Declaration. The Design Review Board shall be composed of at least three (3) but not more than (7) individuals or entities as determined by Declarant in its sole discretion, who need not be Members of the Master Association. All of the members of the Design Review Board shall be appointed, removed, and replaced by Declarant in its sole discretion, until such time as all of the Class B Membership is terminated, and at that time the Board shall succeed to Declarant's right to appoint, remove, or replace the members of the Design Review Board. At the sole and exclusive option of Declarant, the Declarant may establish a "Modifications Committee" which shall be a subcommittee of the Design Review Board. The Modifications Committee shall deal solely with changes to structures and Improvements which have previously been approved by the Design Review Board and which an Owner desires to alter or change following the original construction of such structure or Improvements. It is contemplated that the Modifications Committee will be made up largely of Owners who will take over responsibility for modifications subject to appropriate written guidelines established by the Design Review Board.

11.2 Purpose. The Design Review Board shall review, study and either approve, reject or request resubmittal of additional information with respect to all proposed developments and all Improvements to a Lot, Unit or Parcel, all in compliance with this Declaration and as further set forth in the rules and regulations of the Design Review Board and the Design Guidelines

adopted and established from time to time by the Design Review Board. Each developer, including any Merchant Builder, of a Parcel shall demonstrate to the Design Review Board that its Neighborhood Declaration or Supplemental Declaration, Plat and development plan have been approved by the Declarant and by the applicable Municipal Authority and that such items are in compliance with the Design Guidelines. In addition to complying with the Master Construction Mitigation Plan set forth in the Design Guidelines, each developer, including any Merchant Builder, of a Lot or Parcel shall prepare and submit a construction mitigation plan to the Design Review Board and the applicable Municipal Authority for review and approval.

11.2.1 The Design Review Board shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, Unit or Parcel, height, grade and finished ground elevation, and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

11.2.2 Except for Improvements made by Declarant, no Improvement on a Lot, Unit or Parcel shall be erected, placed or altered on any Lot, Unit or Parcel nor shall any construction be commenced, until plans for such Improvement shall have been approved by the Design Review Board.

11.2.3 The actions of the Design Review Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

11.3 Organization and Operation of the Design Review Board.

11.3.1 Term. The term of office of each member of the Design Review Board, subject to Section 11.1 hereof, shall be three (3) years, commencing January 1 of each year, and continuing until his successor shall have been appointed, with the exception of the first three (3) members of the Design Review Board, who will hold terms of one, two and three years, respectively, as designated by the Declarant. The terms of the members of the Design Review Board will be staggered, so that one term expires each year. Should a Design Review Board member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 11.1 hereof. So long as Declarant appoints the Design Review Board, the Declarant may remove any member of the Design Review Board at any time for any cause (or for no cause) without notice.

11.3.2 Chairman. So long as Declarant appoints the Design Review Board, Declarant shall appoint the chairman. At such time as the Design Review Board is appointed by the Board, the chairman shall be elected annually from among the members of the Design Review Board by majority vote of said members.

11.3.3 Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Design Review Board prior to any meeting. The notice shall set forth the time and place of the meeting, and notice

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may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

11.3.4 Voting. The affirmative vote of a majority of the members of the Design Review Board shall govern its actions and be the act of the Design Review Board. A quorum shall consist of a majority of the members.

11.3.5 Expert Consultation. The Design Review Board may avail itself of technical and professional advice and consultants as it deems appropriate.

11.4 Expenses. Except as provided below, all expenses of the Design Review Board shall be paid by the Master Association. The Design Review Board shall have the right to charge a fee for each application submitted to it for review and a fee for construction compliance and inspection in amounts which may be established by the Design Review Board from time to time, and such fees shall be collected by the Design Review Board and remitted to the Master Association to help defray the expenses of the Design Review Board's operation. The Design Review Board shall provide written notice to an applicant of any failure to pay a fee, expense or other charges hereunder, specifying the unpaid amounts which exist and stating that unless payment is made in full within fourteen (14) days, the Design Review Board may: (i) withdraw any approval previously give to an Owner, whereupon such Owner shall immediately cease further work; (ii) impose a fine commensurate with the severity of the violation; and/or (iii) refer the matter to the Board for further action. In any action taken pursuant to this Section 11.4, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Design Review Board's costs and expenses together with interest at the rate of 18% per annum plus collection costs and attorneys' fees.

11.5 Security Deposit. The Design Review Board shall have the right to require from an applicant a cash security deposit ("Security Deposit"), in an amount established by the Design Review Board in its sole discretion, for the purpose of securing complete performance of all of an applicant's obligations under Article XI. The Design Review Board may retain the Security Deposit until such time as the applicant has fully performed all of its obligations and paid all sums due to the Design Review Board. The applicant is not entitled to receive any interest earned on the Security Deposit. The Security Deposit is not an advance payment of fees by the applicant and does not constitute a measure of damages if the applicant defaults in the performance of its obligations under Article XI. If the applicant defaults in the performance of its obligations, the Design Review Board may use, apply or retain all or any part of the Security Deposit to pay application review fees, inspection fees and/or any other fee, charge, cost or expense and to reimburse the Design Review Board for any cost or expense it incurs because of such default, including, without limitation, all losses, costs or damages the Design Review Board incurs. Any actions by the Design Review Board against the applicant for default in the performance of such applicant's obligations are not limited to or restricted by the amount of the Security Deposit or the Design Review Board's use or application of all or any part of the Security Deposit. The Design Review Board's use or application of all or any part of the Security Deposit shall not constitute a waiver of any of the Design Review Board's rights or remedies and shall not constitute the Design Review Board's election of any specific remedy to the exclusion of other remedies available to the Design Review Board under this Declaration, at

law or in equity. If the Design Review Board uses or applies all or any part of the Security Deposit as provided in this Section 11.5, the applicant will pay to the Design Review Board on demand the amount so used or applied in order to replenish the Security Deposit, which replenished Security Deposit shall be held and used by the Design Review Board in the manner described in this Section 11.5.

11.6 Design Guidelines and Rules. The Design Review Board shall adopt, establish, and publish from time to time Design Guidelines, which shall be a Governing Document of Empire Pass. The Design Guidelines shall define and describe the design standards for Empire Pass and the various uses therein. The Design Guidelines may be modified or amended from time to time by the Design Review Board. To the extent permitted by the Design Guidelines, the Design Review Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Empire Pass design review process is not a substitute for compliance with applicable Municipal Authority building, zoning, and subdivision regulations and requirements, and each Owner is responsible for obtaining all applicable Municipal Authority approvals, licenses, and permits as may be required in addition to obtaining final approval of any Improvements from the Design Review Board prior to commencing construction.

11.7 Procedures. As part of the Design Guidelines, the Design Review Board shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. All final decisions of the Design Review Board shall be nonappealable.

11.8 Limitation of Liability. The Design Review Board shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Design Review Board, nor any individual Design Review Board member, shall be liable to any person for any official act of the Design Review Board in connection with submitted plans and specifications, except to the extent the Design Review Board or any individual Design Review Board member acted with gross negligence or was guilty of willful misconduct. Approval of plans and specifications by the Design Review Board does not necessarily assure approval of such plans and specifications by the appropriate Municipal Authority. Notwithstanding the approval by the Design Review Board of any plans and specifications, neither the Design Review Board nor any of its members shall be responsible or liable to any Owner, developer, or contract holder with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Improvements. Neither the Board, the Design Review Board, nor any agent thereof, nor Declarant nor any of its shareholders, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Design Guidelines or any other Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Review Board shall be defended and indemnified by the Master Association in any such suit or proceeding which may arise by reason of the Design Review Board's decision. The Master Association, however, shall not be obligated to indemnify any member of the Design Review Board to the extent any such member of the Design Review Board shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty as a member of the Design Review Board, unless and then only to the extent that the court in which such action or suit may be

brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

11.9 Inspection and Compliance. The Design Review Board shall have the right, but not the obligation, to inspect any Lot, Unit or Parcel or Improvement thereto to ensure compliance with the Design Guidelines and any plans approved by the Design Review Board. If a violation of the Design Guidelines or any previously approved plans is discovered, the Design Review Board shall provide written notice of non-compliance to the Owner of the Lot, Unit or Parcel, specifying the particular condition or conditions which exist and stating that unless corrective action is taken within fourteen (14) days, the Design Review Board may: (i) withdraw any approval previously give to an Owner, whereupon such Owner shall immediately cease further work; (ii) impose a fine commensurate with the severity of the violation; and/or (iii) refer the matter to the Board for further action. In any action taken pursuant to this Section 11.9, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Design Review Board's costs and expenses together with interest at the rate of 18% per annum plus collection costs and attorneys' fees.

ARTICLE XII RIGHTS AND POWERS OF MASTER ASSOCIATION

12.1 Master Association's Rights and Powers As Set Forth in Articles and Bylaws. In addition to the rights and powers of the Master Association set forth in this Declaration, the Master Association shall have such rights and powers as are set forth in its Articles and Bylaws and the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101, et seq. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Master Association, a copy of the Articles and Bylaws of the Master Association shall be available for inspection at the office of the Master Association during reasonable business hours.

12.2 Master Association's Rights of Enforcement. The Master Association, as the agent and representative of the Owners and Members, shall have the right to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Master Association or by Declarant. In the event suit is brought or arbitration is instituted or an attorney is retained by the Master Association to enforce the terms of this Declaration or any other Governing Document and the Master Association prevails, the Master Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Master Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and

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shall also be secured by the Assessment Lien against said Owner's Lot, Unit or Parcel. If the Master Association should fail to act within a reasonable time, any Owner shall have the right to enforce the Covenants set forth in this Declaration.

12.3 Contracts with Others for Performance of Master Association's Duties. Subject to the restrictions and limitations contained herein, the Master Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Board members or officers of the Master Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other Board members acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Board member, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he or she is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote to authorize any such contract, transaction or approval with like force and effect as if he or she were not so interested.

12.4 Change of Use of Master Association Land. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Master Association Land or of the Master Association's interest in other Community Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose (with Class A Members voting by and through their Voting Members), the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any Deed restrictions (or zoning regulations) restricting or limiting the use of the Master Association Land or Community Areas. Any construction, reconstruction, alteration or change of the buildings, structures and Improvements on Master Association Land shall require the approval of the Design Review Board.

ARTICLE XIII INSURANCE AND FIDELITY BONDS

13.1 Hazard Insurance. The Master Association shall at all times maintain in force insurance meeting the following requirements: A "master" or "blanket" type policy of property insurance shall be maintained, if reasonably available, covering all insurable Improvements, if any, on the Master Association Land and where appropriate on the Community Areas; fixtures, building service equipment, personal property and supplies comprising a part of the Community Areas or owned by the Master Association and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. If blanket all-risk insurance is not reasonably available, then at a

minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to Empire Pass in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Community Areas covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy shall be determined by the Board.

13.2 Flood Insurance. If any part of the Community Areas is or comes to be situated in a "special flood hazard area" as designated on a "flood insurance rate map," a "master" or "blanket" policy of flood insurance shall be maintained, if reasonably available, covering the Improvements located on the Community Areas, and any machinery and equipment related thereto (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all insurable property within any portion of the Community Areas located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for such policy shall be determined by the Board.

13.3 Policy Requirements.

13.3.1 The name of the insured under each policy required to be maintained by the foregoing sections (Section 13.1 and Section 13.2) shall be the Master Association for the use and benefit of the individual Owners. Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Master Association, including any Insurance Trustee (as hereinafter defined) with whom the Master Association has entered into an agreement (referred to herein as an "Insurance Trust Agreement", or any successor to such Insurance Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Master Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request.

13.3.2 Each policy required to be maintained by the foregoing sections (Section 13.1 and Section 13.2), shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional

mortgage investors in the area in which Empire Pass is located. If FNMA is a holder of one or more Mortgages on Lots, Units or Parcels within Empire Pass, such mortgage clause shall name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as Mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.3.3 Each policy required to be maintained by the foregoing sections (Section 13.1 and Section 13.2), shall provide, if available, for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; a provision that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively, and a provision that the policy is primary in the event the Owner has other insurance covering the same loss.

13.3.4 Each policy required to be maintained by the foregoing sections (Section 13.1 shall also contain or provide the following: (1) "inflation guard endorsement", if available; (2) "building ordinance or law endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "steam boiler and machinery coverage endorsement" which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the Improvements containing the boiler or machinery.

13.4 Fidelity Bonds or Insurance. The Master Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds or insurance, including but not limited to, directors' and officers' insurance for the benefit of all members of the Board, officers and members of committees and subcommittees appointed by the Board or otherwise established pursuant to the provisions of this Declaration, for all officers, agents, and employees of the Master Association and for all other persons handling or responsible for funds of or administered by the Master Association. Furthermore, where the Master Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds or insurance, with coverage identical to such bonds required of the Master Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Master Association. The total amount of fidelity coverage required shall be based upon the Master Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Master Association, or the Manager, as the case may be, at any given time during the term of coverage. A lesser amount of fidelity insurance coverage is acceptable for the Master Association so long as the Master Association and the Manager adhere to the following financial controls: (1) the Master Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are

deposited sends copies of the monthly bank statements directly to the Master Association; (2) the Manager maintains separate records and bank accounts for each association that uses its services, and the Manager does not have authority to draw checks on or to transfer funds from the Master Association's reserve account; or (3) two directors of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such fidelity coverage be less than the sum equal to three months' aggregate Annual Assessments on all Lots, Units and Parcels. The coverage required shall meet the following additional requirements: (1) the fidelity coverage shall name the Master Association as obligee or insured; (2) the bonds or insurance shall contain waivers by the issuers of the bonds or insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds or insurance required herein for the Master Association (except for premiums on fidelity bonds or insurance maintained by the Manager for its officers, employees and agents) shall be paid by the Master Association as part of the Community Expenses; and (4) the bonds or insurance shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Master Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

13.5 Liability Insurance. The Master Association shall maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Community Areas, public ways in Empire Pass, if any, all other areas of Empire Pass that are under the Master Association's supervision, and Commercial spaces owned by the Master Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to Empire Pass in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Community Areas, and legal liability arising out of lawsuits related to employment contracts of the Master Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to Empire Pass in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Master Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified by any party without at least thirty (30) days' prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.6 Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Master Association, the Master Association's authorized representative, including any trustee with whom the Master Association may enter into any Insurance Trust Agreement or any successor to such trustee (each

of whom shall be referred to herein as the “Insurance Trustee”), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Master Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Master Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Master Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear. Each insurance policy maintained pursuant to this Declaration shall be written by insurance carriers which are licensed to transact business in the State of Utah and which have a B general policyholder’s rating or a financial performance index of 6 or better in the Best’s Key Rating Guide or an A or better rating from Demotech, Inc., or which are written by Lloyd’s of London or which are otherwise approved by the Board. No such policy shall be maintained where: (1) under the terms of the carrier’s charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Master Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier’s charter, bylaws, or policy, loss payments are contingent upon action by the carrier’s board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Master Association, an Owner, or FNMA) from collecting insurance proceeds. The provisions of this Article XIII shall not be construed to limit the power or authority of the Master Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Master Association may deem appropriate from time to time.

13.7 Annual Review of Policies and Coverage. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Community Areas and Improvements thereon which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration. In the event any of the insurance coverage provided for in this Article XIII is not available at a reasonable cost or is not reasonably necessary to provide Empire Pass with adequate insurance protection, as determined by the Board, the Board shall have the right to obtain different insurance coverage or insurance coverage which does not meet all of the requirements of this Article XIII so long as, at all times, the Board maintains insurance coverage on a basis which is consistent with the types and amounts of insurance coverage obtained for projects similar to Empire Pass.

ARTICLE XIV DAMAGE OR DESTRUCTION

14.1 Master Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Master Association as such Owner’s true and lawful attorney-in-fact in such Owner’s name, place, and stead for the purpose of dealing with personal property owned by the Master Association on behalf of the Owners and the Improvements on the Community Areas upon damage or destruction as provided in this Article or a complete or partial

taking as provided in Article XV below. Acceptance by any grantee of a Deed or other instrument of conveyance from the Declarant or from any Owner shall constitute, appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Master Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, Deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Master Association as attorney-in-fact. All proceeds from the insurance required hereunder shall be payable to the Master Association except as otherwise provided in this Declaration.

14.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the personal property owned by the Master Association and Improvements on the Community Areas, the Master Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part thereof so damaged or destroyed. "Repair and reconstruction" as used in this Article XIV shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

14.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Master Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Master Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Master Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

14.4 Funds for Repair and Reconstruction. The proceeds received by the Master Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction of such affected personal property and Improvements on the Community Areas. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Master Association may, pursuant to Section 7.6 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

14.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Master Association and the amounts received from the Special Assessments provided for in Section 14.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be retained by the Master Association to pay for future Community Expenses.

14.6 Notice to First Mortgagees. The Master Association shall give timely written notice to any holder of any First Mortgage on a Lot, Unit or Parcel who requests such notice in

writing in the event of substantial damage to or destruction of a material part of the personal property owned by the Master Association and/or Improvements on the Community Areas.

ARTICLE XV CONDEMNATION

15.1 Rights of Owners. Whenever all or any part of the Community Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Master Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

15.2 Partial Condemnation Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Master Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Community Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and Owners representing at least sixty-seven percent (67%) of the Class A votes (with Voting Members exercising the votes of the Class A Members) in the Master Association shall otherwise agree, the Master Association shall restore or replace such Improvements so taken on the remaining land included in the Community Areas to the extent lands are available therefor, in accordance with plans approved by the Board and the Design Review Board. If such Improvements are to be repaired or restored, the provisions in Article XIV above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Community Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Master Association to pay for future Community Expenses.

ARTICLE XVI ADDITIONAL LAND

16.1 Right to Expand and State of Title to New Lots, Units and Parcels. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand Empire Pass at any time (within the limits herein prescribed) and from time to time by adding to Empire Pass the Additional Land or a portion or portions thereof. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner or Mortgagee) and shall be limited only as specifically provided in this Declaration. Any given portion of the Additional Land shall be deemed added to Empire Pass at such time as a duly approved Plat and a Supplemental Declaration containing the information required by Section 16.3 below have been Recorded with respect to the portion of the Additional Land concerned. After the date such Supplemental Declaration is Recorded, title to each Lot, Unit and Parcel thereby created within the portion of the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to the Community Areas shall be vested in and held by Declarant, and none of the other Owners or the Master Association shall have any claim

or title to or interest in such Lot, Unit and Parcel or its appurtenant right and easement of use and enjoyment to the Community Areas.

16.2 Rights and Statements Respecting Additional Land. Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of Empire Pass by the addition thereto of the Additional Land or a portion or portions thereof.

16.2.1 All of the Additional Land need not be added to Empire Pass, if any of such Additional Land is added. Rather, a portion or portions of the Additional Land may be added to Empire Pass at any time (within the limits herein prescribed) and from time to time.

16.2.2 There are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to Empire Pass or relative to the order in which particular portions of the Additional Land can be added to Empire Pass. Future Improvements on the Additional Land added to Empire Pass shall be subject to compliance with the Design Guidelines.

16.3 Procedure for Expansion. Each Supplemental Declaration by which an addition to Empire Pass of any portion of the Additional Land is accomplished shall be executed by Declarant, shall be in recordable form, must be Recorded in the Office of the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, on or before June 28, 2029, and shall contain the following information for that portion of the Additional Land which is being added:

16.3.1 Data sufficient to identify this Declaration with respect to that portion of the Additional Land being added.

16.3.2 The legal description of the portion of the Additional Land being added.

16.3.3 A statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed, occupied, improved and developed subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.

16.3.4 Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the date any Supplemental Declaration contemplated above is Recorded, it shall automatically supplement this Declaration and any Supplemental Declarations previously Recorded. At any point in time, this Declaration for Empire Pass shall consist of this Declaration, as amended and expanded by all Supplemental Declarations theretofore Recorded pursuant to the terms hereof.

16.4 Allocation of Assessments and Voting Rights Following Expansion. Each Lot, Unit or Parcel created that is or shall become Assessable Property shall be apportioned a share of the Community Expenses attributable to Empire Pass, as provided in Article VII. Each Owner of a Lot, Unit or Parcel that is or shall become Assessable Property shall be entitled to

Memberships and the votes (by and through Voting Members as applicable) in the Master Association to the extent provided for in Section 6.1 and Section 6.4. Assessments and voting rights shall commence as of the date the Declarant Records a Supplemental Declaration.

16.5 No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to Empire Pass of any or all of the Additional Land; (ii) the creation or construction of any Lot, Unit or other Improvement; (iii) the carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Additional Land.

16.6 Withdrawal of Property. At any time on or before June 28, 2029, Declarant shall have the right to withdraw property from Empire Pass without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant), except as otherwise expressly provided in any Supplemental or Neighborhood Declaration with respect to such property. The withdrawal of all or any portion of Empire Pass shall be effected by the Declarant Recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from Empire Pass pursuant to this Section, such property shall no longer be subject to this Declaration.

ARTICLE XVII MORTGAGEE REQUIREMENTS

17.1 Notice of Action. Upon written request made to the Master Association by a Mortgagee, or an insurer or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer or governmental guarantor and the Lot, Unit or Parcel number or the address of the Dwelling Unit, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

17.1.1 Any condemnation loss or any casualty loss which affects a material portion of Empire Pass or any Lot, Unit or Parcel on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

17.1.2 Any delinquency in the payment of Assessments or Maintenance Charges owed by an Owner, whose Lot, Unit or Parcel is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

17.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Master Association; and

17.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.2 below or elsewhere herein.

17.2 Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-

seven percent (67%) of the votes of each class of Members (with Voting Members exercising the votes of the Class A Members) in the Master Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Master Association is required, in which case such specific provisions shall control) and of Eligible Mortgagees holding Mortgages on Lots, Units or Parcels having at least fifty-one percent (51%) of the votes of the Lots, Units or Parcels subject to Mortgages held by Eligible Mortgagees shall be required to:

17.2.1 Abandon or terminate the legal status of Empire Pass after substantial destruction or condemnation occurs. Termination of the legal status of Empire Pass for any other reason shall require the affirmative vote or authorization of Eligible Mortgagees holding at least sixty-seven percent (67%) of the Mortgages on Lots, Units or Parcels.

17.2.2 Amend this Article XVII.

17.3 Mortgagee Approval. Any Mortgagee, insurer or governmental guarantor who receives a written request from the Master Association to approve additions or amendments to the Governing Documents and who fails to deliver or post to the Master Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

17.4 Availability of Documents and Financial Statements. The Master Association shall maintain and have current copies of the Governing Documents and other rules concerning Empire Pass as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Lots, Units or Parcels. Generally, these documents shall be available during normal business hours.

17.5 Subordination of Lien. The lien or claim against a Lot, Unit or Parcel for unpaid Assessments or Maintenance Charges levied by the Master Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, Unit or Parcel, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot, Unit or Parcel shall take the same free of such lien or claim for unpaid Assessment or Maintenance Charges, but only to the extent of Assessments or Maintenance Charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a Deed or assignment in lieu of foreclosure. No Assessment, Maintenance Charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Master Association from or against a First Mortgagee, a successor in title to a First Mortgagee, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by Deed in lieu of foreclosure, of the Lot, Unit or Parcel affected or previously affected by the First Mortgage concerned.

17.6 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Community Areas are not timely paid, or in the event the required hazard-insurance described in Section 13.1 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or

singly, pay such taxes or premiums or obtain such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Master Association.

17.7 Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Units, Parcels or the Community Areas.

ARTICLE XVIII

TERM: AMENDMENTS: TERMINATION

18.1 Term; Method of Termination. This Declaration shall be effective upon the date of the Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Voting Members casting eighty percent (80%) of the total votes of the Members cast at an election held for such purpose (or otherwise approved for such purpose in writing) within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. This Declaration may be terminated at any time, if Voting Members casting at least eighty percent (80%) of the votes of the Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until written consent to such termination or amendment has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from Eligible Mortgagees on fifty-one percent (51%) of the Lots, Units and Parcels upon which there are such Eligible Mortgagees. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable, a "certificate of termination," duly signed by the President or Vice President attested by the Secretary or Assistant Secretary of the Master Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Master Association shall be dissolved pursuant to the terms set forth in its Articles.

18.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, a Certificate of Amendment, duly signed and acknowledged by and on behalf of the Master Association. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 18.3 and 18.4 hereof or elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the Articles and Bylaws or by separate written consent without a meeting, the Voting Members casting at least sixty-seven percent (67%) of the votes of the Members voted affirmatively for the adoption of the amendment or approved such amendment by separate written consent. Except as provided in Sections 18.3 and 18.4 hereof or elsewhere in this Declaration, a Neighborhood Declaration or Supplemental Declaration may be amended in the same manner as this Declaration, with the approval of Voting Members casting at least sixty-seven percent (67%) of the votes of the Members subject to the Neighborhood Declaration or Supplemental Declaration. Within twenty-five (25) years from the date of Recording this

Declaration and so long as the Declarant is the Owner of any Lot, Unit or Parcel in Empire Pass, this Declaration and any Neighborhood Declaration and any Supplemental Declaration may be amended or terminated only with the written approval of the Declarant.

18.3 Unilateral Amendments. Notwithstanding anything contained in this Declaration to the contrary, this Declaration, a Neighborhood Declaration or Supplemental Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, to make technical corrections, to correct mistakes or to remove/clarify ambiguities; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, Units or Parcels subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property, unless any such Owner shall consent thereto in writing. Further, so long as the Class B Membership exists, Declarant may unilaterally amend this Declaration, a Neighborhood Declaration or Supplemental Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner. Any such amendment hereunder shall be effected by the Recording by Declarant of a Certificate of Amendment duly signed by the Declarant.

18.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or such agency's approval of the sale of property within Empire Pass, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s)/Unit(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording by Declarant of a Certificate of Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of Empire Pass and all persons having an interest therein.

18.5 Declarant's Control. It is the desire and intent of Declarant to retain control of the Master Association and its activities during the anticipated period of planning and development of Empire Pass. If any amendment requested pursuant to the provisions of this Article XVIII deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

ARTICLE XIX DECLARANT'S RIGHTS

19.1 Transfer of Declarant's Rights. Any or all of the special rights and obligations of the Declarant may be assigned and transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective, unless it is in a written instrument signed by the Declarant and duly Recorded in the Office of the Recorder of Summit County, Utah and/or Wasatch County, Utah. Without limiting the generality of the foregoing, Declarant may by such Recorded instrument establish that Declarant and such Person or Persons be co-Declarants under this Declaration, in which event such Persons shall be deemed collectively the Declarant for all purposes under this Declaration, and any ownership of portions of the Property by any such Persons shall be considered owned by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any Additional Land in any manner whatsoever. So long as Declarant continues to have rights under this Article XIX, no person or entity shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of Empire Pass without Declarant's review and written consent thereto, and any attempted Recording without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect, unless subsequently approved by a Recorded consent signed by the Declarant.

19.2 Sales Material. So long as Declarant continues to have rights under this Article XIX, all sales, promotional, and advertising materials, and all forms for deeds, contracts for sale, and other closing documents for the subdivision and sale of property in Empire Pass by any Merchant Builder shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver notice to any Merchant Builder of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any Merchant Builder within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

19.3 Modifications. Declarant reserves for itself and its assigns the right to vary the timing, mix, type, use, style, and numbers of Lots, Units and Parcels, and other such details of construction or modifications in adding phases to this Declaration. If additional Land Use Classifications, such as, by way of explanation and not limitation, additional Commercial, are subsequently permitted by zoning, Declarant shall have the right to add such Land Use Classifications to this Declaration. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its development plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the Property owned by the Declarant or changing the nature or extent of the uses to which such Property may be devoted.

19.4 Amendment. This Article XIX may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article XIX shall terminate upon the earlier of (a) June 28, 2029, or (b) the Recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XX DEVELOPMENT GUIDELINES

The Declarant may, in its sole discretion, from time to time and subject to the provisions of this Declaration, establish, amend and repeal, as approved by the applicable Municipal Authority, guidelines for the development of the Property known as the Development Guidelines. The Master Association shall administer, in conjunction with Declarant, the Development Guidelines. Each developer, including any Merchant Builder, of a Parcel shall demonstrate to the Master Association that its Neighborhood Declaration or Supplemental Declaration, Plat and development plan have been approved by the Declarant and by the applicable Municipal Authority and that such items are in compliance with the Development Guidelines. The Master Association shall exercise its best judgment to see that each Merchant Builder undertakes its development of a Parcel, including but not limited to, the roadways and major infrastructure, in compliance with the Development Guidelines. Compliance with the Development Guidelines and/or the Design Guidelines is not a substitute for compliance with applicable Municipal Authority building, zoning, and subdivision regulations and requirements, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required by the applicable Municipal Authority prior to commencing construction of any Improvements. Until Declarant no longer owns any portion of the Property, the Development Guidelines shall not be subject to modification or amendment without the prior written consent of Declarant, which consent may be withheld in its sole and absolute discretion. The Design Review Board shall have no authority to excuse compliance or permit variances in connection with any requirements of the Development Guidelines.

ARTICLE XXI MOUNTAIN RESORT DEVELOPMENT

21.1 Assumption of Risk, Waiver of Claims and Indemnification. Each Owner, by its purchase of a Lot, Unit or Parcel, hereby acknowledges that Empire Pass is a mountain resort community with resort-type activities, which may include, without limitation: skiing, ski runs and trails, hiking trails, mountain biking trails, open spaces, wildlife, rugged terrain, Private Amenities, golf courses, tennis courts, horses and horseback riding, outdoor concerts, festivals, children's events, games and activities, outdoor theatre, golf, tennis and other tournaments, running, snow shoeing, alpine and cross country skiing and mountain bike courses and/or races and/or other competitions of various kinds, and other resort-type facilities, events, activities and programs (collectively, "Resort Activities"), and each such Owner expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance may take place at any time(s) of the day or night), (b) noise caused by Resort Activities and participants, (c) view restrictions caused by installation, relocation and maturation of trees and shrubbery, (d) reduction in privacy, including that related to maintenance activities, (e) errant equipment, including skis, golf balls and golf

clubs, and (f) facilities design. Each such Owner agrees that neither Declarant, the Manager, the Master Association, any committee created by the Master Association, any of the Declarant's affiliates or agents, nor any Resort Activities participant (unless acting recklessly or in a willfully wrongful manner) shall be liable to an Owner or any other person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of an Owner's Lot, Unit or Parcel to any ski run or trail, golf course, Private Amenity or other Resort Activity venue; (b) any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, the Manager, the Master Association or any committee created by the Master Association; or (c) any Resort Activity or Private Amenity (collectively referred to herein as the "Waived Claims"). Each Owner hereby agrees to indemnify, defend and hold harmless Declarant, Declarant's affiliates and agents, the Manager, the Master Association and any committee created by the Master Association, from and against any and all Waived Claims asserted by such Owner and/or by such Owner's visitors or tenants, and by others upon such Owner's Lot, Unit or Parcel. Each Owner further covenants that the Master Association, any committee created by the Master Association, the Declarant and the owners and operators of all Resort Activities shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Resort Activities.

21.2 Disclaimer Regarding Ski Resort. All Persons, including without limitation all Owners, are hereby advised that, except as expressly set forth in this Declaration, no representations, warranties or commitments have been or are made by the Declarant or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, Deer Valley Ski Resort including its ski runs, lifts or related facilities within, near or adjacent to the Property, whether or not depicted on the Plat, or any other land use plan, sales brochure or other marketing display, rendering or plan. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such ski resort or related facilities may change at any time and from time to time. No Owner or Resident shall have any ownership interest in, or right to use, Deer Valley Ski Resort or related facilities solely by virtue of: (i) his, her or its Membership; or (ii) his, her or its ownership, use or occupancy of any Lot, Unit or Parcel, or portion thereof.

21.3 Rights of Access. The owner of the Deer Valley Ski Resort, its successors and assigns, and its members, invitees, spectators, employees, agents, contractors or designers shall at all times have a right and nonexclusive license of access and use over all roadways located within the Property as reasonably necessary to travel to and from any entrance within the Property to and from such Deer Valley Ski Resort or related facilities and, further, over those portions of the Property (whether Community Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Deer Valley Ski Resort and its facilities (including any portions thereof located within Empire Pass).

21.4 Ski Run Easements. It is contemplated there will be certain nonexclusive easements for ski runs, chair lifts, gondolas, towers, trails, bridges and accessways designated as such on one or more plats of the Property, or portions thereof, which may be used for skiing and

snowboarding, grooming, maintenance and vehicle access, and unhindered access between said easements and the Deer Valley Ski Resort. Nothing shall be placed or maintained in any such easement which shall interfere with the utilization thereof as part of the Deer Valley Ski Resort, and all other Improvements within said easements (except those installed or constructed by the Declarant) shall require the approval of the owner of Deer Valley Ski Resort benefited thereby.

21.5 Operation of the Ski Resort. Each Owner acknowledges that the operation and maintenance of any ski resort within, near or adjacent to the Property, including but not limited to, all facilities that are now or hereinafter part of the Deer Valley Ski Resort, will require that maintenance personnel and other workers perform work relating to the operation and maintenance of such ski resort at any time(s) of the day or night. In connection therewith, each Owner and Resident agrees that the Declarant, and the owner or owners of all or any portion of the Deer Valley Ski Resort and the employees, agents and contractors of the Declarant and of such owners, shall not be responsible or accountable for, liable for and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

21.6 Other Ski Resort Agreements. No Owner or Resident, and no guest, invitee, employee, agent or contractor of any Owner or Resident, shall at any time enter upon the Deer Valley Ski Resort property, for any purpose (other than to engage in skiing or as a spectator or guest of the Deer Valley Ski Resort or to engage in other activities specifically permitted within the Deer Valley Ski Resort, in each and every case subject to all rules and regulations of Deer Valley Ski Resort and any club operated in connection therewith including, without limitation, all requirements relating to membership, fees and the like), and each Owner and Resident shall keep his, her or its pets and other animals off any property (and out of any related facilities) of the Deer Valley Ski Resort at all times. No Owner shall (or permit his, her or its Residents, guests, invitees, employees, agents or contractors to) interfere in any way with skiing within Empire Pass or the Deer Valley Ski Resort (whether in the form of physical interference, noise, harassment of skiers or spectators, or otherwise). Each Owner (for such Owner and its Residents, guests and invitees) recognizes, agrees and accepts that: (a) operation of a ski resort and related facilities will often involve parties, events and other gatherings (whether or not related to skiing, and including without limitation weddings and other social functions) at or on the Deer Valley Ski Resort property, competitions, loud music, use of public address systems and the like, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, ski resorts present certain potentially hazardous conditions, which may include, without limitation, man-made or naturally occurring snow and topographical features such as washes, gullies, canyons, uneven surfaces and the like; (c) grooming and snow making or related facilities may result in snow drifting or blowing onto adjacent or nearby Lots, Units or Parcels; and (d) neither such Owner nor its Residents, guests and invitees shall make any claim against the Declarant, the Master Association, the Design Review Board, the Manager, any other committee of the Master Association, any sponsor, promoter or organizer of any competition or other event, or the owner or operator of the Deer Valley Ski Resort (or any affiliate, agent, employee or representative of any of the foregoing) in connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

ARTICLE XXII BULK SERVICE AGREEMENTS

22.1 Bulk Service. The Board, acting on behalf of the Master Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Service Providers, for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Residents of Lots, Units and/or Parcels within Empire Pass, or within one or more portions thereof, cable television, community satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services: (a) which might not otherwise be generally available to such Owners and Residents; (b) at rates or charges lower than might otherwise generally be charged to Owners and Residents for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Residents generally; or (d) any combination of the foregoing.

22.2 Master Association Costs. If all Lots, Units and Parcels within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Master Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Master Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly) (provided that such "separate billing" may be made as one or more separate line items on billings or invoices from the Master Association to the affected Owner(s) for Annual Assessments or other charges). If not all Lots, Units and Parcels within Empire Pass will be served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) above.

22.3 Owners Covenant to Pay. Declarant, for each Lot, Unit and Parcel, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot, Unit or Parcel, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot, Unit or Parcel) by the Board pursuant to Section 22.2 and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots, Units or Parcels against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys' fees incurred by the Master Association in collecting or attempting to collect delinquent amounts; (c) shall be secured by the Assessment Lien; and (d) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot, Unit or Parcel at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them or unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or unless title is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

22.4 Prohibition on Withholding Payment. No Owner of a Lot Unit or Parcel covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged

by the Board to such Owner or such Owner's Lot, Unit or Parcel under Section 22.2 whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot, Unit or Parcel upon which no Dwelling Unit or Improvement has been completed.

22.5 Declarant's Rights. So long as Declarant holds a Class B Membership, the Board shall not, without the approval of Voting Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Master Association, enter into a Bulk Service Agreement which imposes on the Master Association or its Members (other than Declarant or a Merchant Builder which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section 22.5 shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Master Association or its Members installation, connection, service charges or similar charges or fees which do not exceed those generally prevailing at the time within the greater Summit County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Service Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

ARTICLE XXIII MISCELLANEOUS

23.1 Interpretation of the Covenants. Except for judicial construction, the Master Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Master Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the Covenants and provisions hereof.

23.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

23.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

23.4 Rules and Regulations. In addition to the right to adopt Empire Pass Rules on the matters expressly mentioned elsewhere in this Declaration, the Master Association (through its Board) shall have the right to adopt rules and regulations with respect to all other aspects of the Master Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

23.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Plat or other instrument Recorded in the Office of the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Empire Pass can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, the Declarant expressly reserves the right at any time and from time to time to amend the Master Land Use Plan.

23.6 References to the Covenants in Deeds. Deeds or any instruments affecting any Lot, Unit or Parcel or any part of Empire Pass may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner of all Lots, Units and Parcels within Empire Pass or other person claiming an interest in any Lot, Unit or Parcel through any instrument and his or her heirs, executors, administrators, successors and assigns.

23.7 List of Owners and Eligible Members. The Board shall maintain up-to-date records showing: (i) the name of each Person who is an Owner, the address of such Person, and the Lot, Unit or Parcel which is owned by him or her; (ii) the name of each Person who is an Eligible Mortgagee, the address of such person or entity and the Lot, Unit or Parcel which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each Person who is an insurer or governmental guarantor, the address of such person or entity and the Lot, Unit or Parcel that is the subject of such insurance or guarantee. In the event of any Transfer of a fee or undivided fee interest in a Lot, Unit or Parcel, the Transferee shall furnish the Board with evidence establishing that the Transfer has occurred and that the Deed or other instrument accomplishing the transfer is of Record in the Office of the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable. The Board may for all purposes act and rely on the information concerning Owners and Lot, Unit or Parcel ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot, Unit or Parcel or Lots, Units or Parcels which is obtained from the Office of the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable. The address of an Owner shall be deemed to be the address of the Lot, Unit or Parcel owned by such person unless the Board is otherwise advised. The list of Owners shall be made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and such Owner's payment of any copying charges and such Owner's execution of a privacy and nondisclosure statement prepared by the Board.

23.8 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Lots, Units and Parcels, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Lot, Unit and Parcel, unless otherwise expressly provided herein.

23.9 Rights of Action. Subject to the provisions of this Declaration, the Master Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Declaration or the decisions of the Master Association. Owners shall have a similar right of action against the Master Association.

23.10 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder.

23.11 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

23.12 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

23.13 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Master Association for the purpose of service of such notice or to the address of the Lot, Unit or Parcel of such person, if no address has been given. Such address may be changed from time to time by notice in writing received by the Master Association. Notice to the Board or to the Design Review Board shall also be delivered or mailed to the Declarant or such other address as the Board may designate after the end of Declarant's control of the Board.

23.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays, and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or legal holiday.

23.15 Notice of Violation. The Master Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or provision of the Declaration. The notice shall be executed and acknowledged by an officer of the Master Association and shall contain substantially the following information: (a) the name of the Owner or Resident; (b) the legal description of the Lot, Unit or Parcel against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Master Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Resident, and to any subsequent purchaser of the Lot, Unit or Parcel, that there is such a violation. If, after the Recordation of such notice of violation, it is determined by the Master Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Master Association shall Record a notice of compliance which shall state the

legal description of the Lot, Unit or Parcel against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Master Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

23.16 Security. The Master Association may, but shall not be obligated to, maintain or support certain activities within Empire Pass designed to make Empire Pass safer than it otherwise might be. NEITHER THE MASTER ASSOCIATION, THE BOARD, THE MANAGER, THE DESIGN REVIEW BOARD, NOR THE DECLARANT OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN EMPIRE PASS, HOWEVER, AND NEITHER THE MASTER ASSOCIATION, THE BOARD, THE MANAGER, THE DESIGN REVIEW BOARD, NOR THE DECLARANT OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF ITS FAILURE TO PROVIDE ADEQUATE SECURITY OR BY REASON OF THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, RESIDENTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR RESIDENT, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE MASTER ASSOCIATION, THE BOARD, THE MANAGER AND THE DESIGN REVIEW BOARD DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT, THE MASTER ASSOCIATION OR THE DESIGN REVIEW BOARD MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, RESIDENT, TENANT, GUEST OR INVITEE OF AN OWNER OR RESIDENT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE MASTER ASSOCIATION, THE BOARD, THE MANAGER AND THE DESIGN REVIEW BOARD OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS ARE NOT INSURERS AND THAT EACH OWNER, RESIDENT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLING UNITS, AND TO OTHER IMPROVEMENTS AND TO THE CONTENTS OF DWELLING UNITS AND OF OTHER IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE MASTER ASSOCIATION, THE BOARD, THE MANAGER AND THE DESIGN REVIEW BOARD OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, RESIDENT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN EMPIRE PASS.

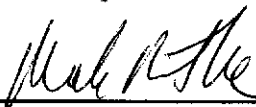
23.17 Use of Empire Pass Term. No Person shall use the term "Empire Pass" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant.

IN WITNESS WHEREOF, the Master Association and Declarant have executed this Declaration as of the day first above written.

EMPIRE PASS MASTER OWNERS
ASSOCIATION, INC.,
a Utah nonprofit corporation

By: 
Mark R. Thorne
Title: President

UNITED PARK CITY MINES COMPANY,
a Delaware corporation

By: 
Mark R. Thorne
Title: Vice President

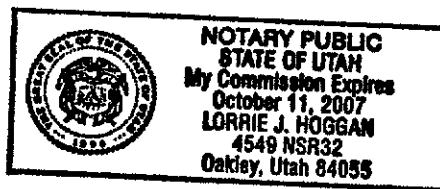
STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged to me this 16th day of December, 2004, by Mark R. Thorne, as the President of Empire Pass Master Owners Association, Inc., a Utah nonprofit corporation.


NOTARY PUBLIC
Residing at: Summit County, Utah

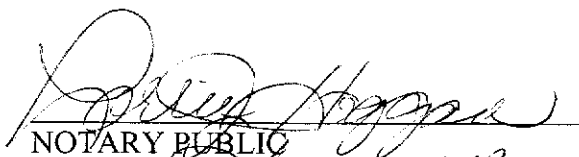
My commission expires:

10-11-07



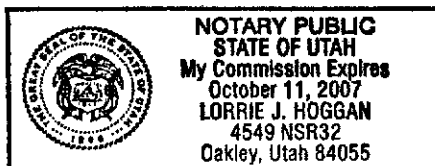
STATE OF UTAH)
 : ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged to me this 10th day of December, 2004, by Mark R. Thorne, as the Vice President of United Park City Mines Company, a Delaware corporation.


NOTARY PUBLIC
Residing at: Summit County, Utah

My commission expires:

10-11-07



**EXHIBIT A
TO
CERTIFICATE OF AMENDMENT AND
AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
EMPIRE PASS**

(Legal Description of the Property)

The real property referenced in the foregoing instrument is located in Summit County, Utah and more particularly described as:

LOT A:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1290.54 feet along Section Line and East 1179.56 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 28°16'22" West 123.87 feet; thence South 33°36'22" West 308.16 feet; thence South 31°55'31" West 268.90 feet; thence South 45°26'40" West 216.02 feet; thence South 35°32'55" West 82.21 feet; thence South 81°28'22" West 79.42 feet; thence North 15°56'43" East 43.24 feet to a point on a 1149.60 foot radius curve to the left of which the radius point bears North 74°03'17" West; thence northerly along the arc of said curve 317.97 feet through a central angle of 15°50'52" to a point on a 322.06 foot radius reverse curve to the right of which the radius point bears South 89°54'08" East; thence northerly along the arc of said curve 127.20 feet through a central angle of 22°37'44" to a point on a 1225.00 foot radius reverse curve to the left of which the radius point bears North 67°16'24" West; thence northerly along the arc of said curve 185.80 feet through a central angle of 08°41'25"; thence North 14°02'10" East 235.22 feet to a point on a 725.00 foot radius curve to the right of which the radius point bears South 75°57'50" East; thence northerly along the arc of said curve 149.34 feet through a central angle of 11°48'08"; thence South 51°01'37" East 132.30 feet; thence South 40°13'27" East 126.16 feet to a point on a 45.00 foot radius curve to the right; thence southeasterly along the arc of said curve 83.96 feet (chord bears South 72°19'06" East 72.30 feet); thence North 89°17'00" East 150.96 feet to the Point of Beginning.

Containing 6.40 acres.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE ACCESS EASEMENT FOR LOT 10:

A parcel of land located in the west half of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1929.23 feet along Section Line and East 757.01 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 44°51'04" East 11.81 feet; thence South 26°39'22" West 79.91 feet to a point on a 485.00 foot radius curve to the left; thence southwesterly along the arc of said curve 184.99 feet (chord bears South 37°56'54" West 183.87 feet); thence South 27°01'19" West 140.90 feet to a point on a 665.00 foot radius curve to the right of which the radius point bears North 62°58'41" West; thence southwesterly along the arc of said curve 180.58 feet through a central angle of 15°33'30"; thence South 42°34'49" West 138.06 feet to a point on a 335.00 foot radius curve to the left of which the radius point bears South 47°25'11" East; thence southwesterly along the arc of said curve 124.56 feet through a central angle of 21°18'11"; thence South 21°16'39" West 64.98 feet to a point on a 1599.55 foot radius curve to the left of which the radius point bears South 68°43'21" East; thence southwesterly along the arc of said curve 28.55 feet through a central angle of 01°01'22"; thence North 15°43'36" East 52.62 feet to a point on a 925.00 foot radius curve to the right of which the radius point bears South 74°16'24" East; thence northerly along the arc of said curve 173.14 feet through a central angle of 10°43'28"; thence North 42°34'49" East 139.00 feet to a point on a 635.00 foot radius curve to the left of which the radius point bears North 47°25'11" West; thence northeasterly along the arc of said curve 172.43 feet through a central angle of 15°33'30"; thence North 27°01'19" East 140.90 feet to a point on a 515.00 foot radius curve to the right of which the radius point bears South 62°58'41" East; thence northeasterly along the arc of said curve 37.71 feet through a central angle of 04°11'43"; thence North 58°46'57" West 8.62 feet; thence North 35°32'55" East 82.21 feet; thence North 45°26'40" East 152.33 feet to the Point of Beginning.

Containing 0.57 acres.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE NON-PUBLIC TRAIL ACCESS EASEMENT:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1320.45 feet along Section Line and East 1163.20 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 65°30'19" West 49.60 feet to a point on a 90.00 foot radius curve to the left of which the radius point bears South 24°29'41" West; thence westerly along the arc of said curve 39.60 feet through a central angle of 25°12'34"; thence South 89°17'00" West 51.29 feet to a point on a 45.00 foot radius curve to the left; thence westerly along the arc of said curve 83.96 feet (chord bears North 72°19'06" West 72.30 feet); thence North 40°13'27" West 93.21 feet; thence

South 64°35'37" East 88.54 feet to a point on a 70.00 foot radius curve to the right; thence southeasterly along the arc of said curve 69.31 feet (chord bears South 66°59'01" East 66.51 feet) to a point on a 49.20 foot radius reverse curve to the left of which the radius point bears North 51°22'50" East; thence easterly along the arc of said curve 44.74 feet through a central angle of 52°05'42" to a point on a 100.00 foot radius reverse curve to the right of which the radius point bears South 00°42'53" East; thence easterly along the arc of said curve 44.00 feet through a central angle of 25°12'34"; thence South 65°30'19" East 50.26 feet; thence South 28°16'22" West 10.02 feet to the Point of Beginning.

Description contains 0.12 acres.

LOT B:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 863.10 feet along Section Line and East 1355.20 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on a 1183.33 foot radius curve to the left of which the radius point bears South 12°14'02" West; and running thence westerly along the arc of said curve 284.49 feet through a central angle of 13°46'30" to a point on a 375.00 foot radius compound curve to the left of which the radius point bears South 01°32'28" East; thence southwesterly along the arc of said curve 387.60 feet through a central angle of 59°13'14" to a point on a 775.00 foot radius compound curve to the left of which the radius point bears South 60°45'42" East; thence southerly along the arc of said curve 205.63 feet through a central angle of 15°12'08"; thence South 14°02'10" West 235.22 feet to a point on a 1175.00 foot radius curve to the right of which the radius point bears North 75°57'50" West; thence southerly along the arc of said curve 178.22 feet through a central angle of 08°41'25" to a point on a 372.06 foot radius reverse curve to the left of which the radius point bears South 67°16'24" East; thence southerly along the arc of said curve 146.95 feet through a central angle of 22°37'44" to a point on a 1099.60 foot radius reverse curve to the right of which the radius point bears North 89°54'08" West; thence southerly along the arc of said curve 304.14 feet through a central angle of 15°50'52"; thence South 15°56'43" West 43.26 feet; thence North 69°33'46" West 130.22 feet; thence North 20°26'14" East 296.23 feet; thence North 35°43'21" West 536.94 feet; thence North 25°58'38" East 776.89 feet; thence North 59°54'31" East 564.66 feet; thence South 86°31'59" East 351.13 feet; thence South 02°53'37" East 481.96 feet to the Point of Beginning.

Containing 16.99 acres.

LOT C:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1120.67 feet along Section Line and

East 1272.44 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 28°16'22" West 192.88 feet; thence South 89°17'00" West 150.96 feet to a point on a 45.00 foot radius curve to the left; thence northwesterly along the arc of said curve 83.96 feet (chord bears North 72°19'06" West 72.30 feet); thence North 40°13'27" West 126.16 feet; thence North 51°01'37" West 132.30 feet to the point on a 725.00 foot radius curve to the right; thence northeasterly along the arc of said curve 43.02 feet (chord bears North 27°32'19" East 43.01 feet) to a point on a 325.00 foot radius compound curve to the right of which the radius point bears South 60°45'42" East; thence northeasterly along the arc of said curve 335.92 feet through a central angle of 59°13'14" to a point on a 1133.33 foot radius compound curve to the right of which the radius point bears South 01°32'28" East; thence easterly along the arc of said curve 179.30 feet through a central angle of 09°03'53"; thence South 32°30'13" East 35.81 feet to a point on a 127.40 foot radius curve to the right of which the radius point bears South 57°29'47" West; thence southerly along the arc of said curve 118.51 feet through a central angle of 53°18'01" to a point on a 162.92 foot radius reverse curve to the left of which the radius point bears South 69°12'12" East; thence southerly along the arc of said curve of 82.15 feet through a central angle of 28°53'18" to the Point of Beginning.

Containing 3.50 acres.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE NON-PUBLIC TRAIL ACCESS EASEMENT:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1320.45 feet along Section Line and East 1163.20 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 65°30'19" West 49.60 feet to a point on a 90.00 foot radius curve to the left of which the radius point bears South 24°29'41" West; thence westerly along the arc of said curve 39.60 feet through a central angle of 25°12'34"; thence South 89°17'00" West 51.29 feet to a point on a 45.00 foot radius curve to the left; thence westerly along the arc of said curve 83.96 feet (chord bears North 72°19'06" West 72.30 feet); thence North 40°13'27" West 93.21 feet; thence South 64°35'37" East 88.54 feet to a point on a 70.00 foot radius curve to the right; thence southeasterly along the arc of said curve 69.31 feet (chord bears South 66°59'01" East 66.51 feet) to a point on a 49.20 foot radius reverse curve to the left of which the radius point bears North 51°22'50" East; thence easterly along the arc of said curve 44.74 feet through a central angle of 52°05'42" to a point on a 100.00 foot radius reverse curve to the right of which the radius point bears South 00°42'53" East; thence easterly along the arc of said curve 44.00 feet through a central angle of 25°12'34"; thence South 65°30'19" East 50.26 feet; thence South 28°16'22" West 10.02 feet to the Point of Beginning.

Description contains 0.12 acres.

LOT D:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1120.67 feet along Section Line and East 1272.44 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian said point also being on a 162.92 foot radius curve to the right of which the radius point bears North 81°54'30" East; thence northerly along the arc of said curve 82.15 feet through a central angle of 28°53'18" to a point on a 127.40 foot radius reverse curve to the left of which the radius point bears North 69°12'12" West; thence northerly along the arc of said curve 118.51 feet through a central angle of 53°18'01"; thence North 32°30'13" West 35.81 feet to a point on a 1133.33 foot radius curve to the right; thence easterly along the arc of said curve 190.86 feet (chord bears South 77°39'07" East 190.63 feet); thence South 72°49'39" East 167.71 feet to a point on a 50.00 foot radius curve to the left; thence southeasterly along the arc of said curve 70.52 feet (chord bears South 22°58'05" East 64.82 feet); thence South 63°22'22" East 22.27 feet; thence South 28°09'42" West 133.33 feet; thence North 61°44'30" West 175.20 feet; thence North 74°14'12" West 43.58 feet; thence South 85°27'32" West 49.33 feet; thence South 60°08'37" West 68.26 feet; thence South 28°16'22" West 4.64 feet to the Point of Beginning.
Containing 1.34 acres.

NORTHSIDE LOTS:

Those certain parcels of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

All of Lot B, Lot C, and Lot D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

Tax Serial Nos. NSVII-B, NSVII-C and NSVII-D.

CGP PARCELS:

The following parcels established by Ordinance No. 03-11, an Ordinance Approving a Four Parcel Metes and Bounds Subdivision at Flagstaff Mountain Village Park City, Utah, dated April 17, 2003, as evidenced by a Certificate of Approval dated April 17, 2003, and recorded in the Office of the Recorder of Summit County, Utah on May 5, 2003, as Entry No. 657115, in Book 1532, at Page 718:

CGP Parcel IA:

A parcel of land located in the northeast quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 88°09'24" East 93.48 feet along Section Line and South 1169.39 feet from the north quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 09°03'53" East 188.41 feet; thence North 17°47'47" West 102.41 feet; thence North 08°48'47" West 184.89 feet; thence North 27°56'12" West 29.67 feet; thence North 62°03'48" East 22.77 feet; thence North 55°44'19" East 101.85 feet; thence North 78°05'46" East 32.40 feet; thence South 68°38'07" East 41.06 feet to a point on a 45.00 foot radius curve to the left; thence easterly along the arc of said curve 117.78 feet (chord bears South 74°09'44" East 86.92 feet) to a point on a 15.00 foot radius reverse curve to the right of which the radius point bears South 59°08'28" East; thence northeasterly along the arc of said curve 11.62 feet through a central angle of 44°23'39" to a point on a 47.00 foot radius compound curve to the right of which the radius point bears South 14°44'49" East; thence easterly along the arc of said curve 43.39 feet through a central angle of 52°53'38"; thence South 51°51'12" East 107.93 feet to a point on a 375.00 foot radius curve to the left of which the radius point bears North 38°08'48" East; thence easterly along the arc of said curve 371.95 feet through a central angle of 56°49'49" to a point on a 15.00 foot radius reverse curve to the right of which the radius point bears South 18°41'01" East; thence easterly along the arc of said curve 18.69 feet through a central angle of 71°24'14" to a point on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah; thence along the southerly line of the Marsac Avenue Right of Way the following three (3) courses: 1) South 37°16'47" East 62.90 feet to a point on a 425.00 foot radius curve to the left of which the radius point bears North 52°43'13" East; thence 2) southeasterly along the arc of said curve 110.79 feet through a central angle of 14°56'10"; thence 3) South 52°12'57" East 74.75 feet; thence South 41°23'39" West 262.38 feet; thence North 77°28'34" West 189.26 feet; thence North 86°52'45" West 196.66 feet; thence South 75°02'27" West 190.91 feet; thence South 80°22'11" West 155.52 feet to the Point of Beginning.
Description contains 7.54 acres.

CGP Parcel IB:

A parcel of land located in the northeast quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 88°09'24" East 64.11 feet along Section Line and South 348.33 feet from the north quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 03°42'27" West 181.80 feet; thence North 89°36'26" East 354.76 feet to a point on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah, and on a 725.00 foot radius curve to the right; thence along the southerly line of the Marsac Avenue Right of Way the following five (5) courses: 1) southerly along the arc of said curve 21.56 feet (chord bears South 13°23'27" East

21.56 feet) to a point on a 425.00 foot radius reverse curve to the left of which the radius point bears North 77°27'40" East; thence 2) southeasterly along the arc of said curve 245.75 feet through a central angle of 33°07'47" to a point on a 975.00 foot radius reverse curve to the right of which the radius point bears South 44°19'52" West; thence 3) southeasterly along the arc of said curve 288.14 feet through a central angle of 16°55'57" to a point on a 375.00 foot radius reverse curve to the left of which the radius point bears North 61°15'49" East; thence 4) southeasterly along the arc of said curve 55.92 feet through a central angle of 08°32'36"; thence 5) South 37°16'47" East 41.31 feet to a point on a 15.00 foot radius curve to the right of which the radius point bears South 52°43'13" West; thence southerly along the arc of said curve 29.75 feet through a central angle of 113°39'10" to a point on a 325.00 foot radius compound curve to the right of which the radius point bears North 13°37'37" West; thence westerly along the arc of said curve 293.68 feet through a central angle of 51°46'25"; thence North 51°51'12" West 107.93 feet to a point on a 97.00 foot radius curve to the left of which the radius point bears South 38°08'48" West; thence northwesterly along the arc of said curve 32.19 feet through a central angle of 19°00'59"; thence North 10°03'54" West 45.64 feet; thence North 10°26'27" East 50.68 feet; thence North 46°17'19" West 100.92 feet; thence North 71°43'44" West 236.35 feet to the Point of Beginning.

Description contains 4.11 acres.

CGP Parcel IC:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 88°09'24" East 2021.31 feet along Section Line and South 603.08 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah; and running thence North 85°30'52" East 129.46 feet; thence North 57°41'29" East 151.08 feet; thence North 50°01'04" East 195.25 feet; thence North 57°59'57" East 213.73 feet; thence South 00°37'34" East 358.74 feet; thence South 00°49'54" West 60.81 feet to a point on a 1025.00 foot radius curve to the right; thence southwesterly along the arc of said curve 300.36 feet (chord bears South 58°25'03" West 299.28 feet); thence North 23°11'16" West 50.00 feet; thence South 66°48'44" West 12.88 feet to a point on a 815.86 foot radius curve to the left of which the radius point bears South 23°11'16" East; thence southwesterly along the arc of said curve 378.29 feet through a central angle of 26°33'58" to a point on a 292.28 foot radius reverse curve to the right of which the radius point bears North 49°45'13" West; thence southwesterly along the arc of said curve 25.69 feet through a central angle of 05°02'08"; thence North 08°56'35" West 82.91 feet; thence North 63°10'40" West 94.29 feet to a point on the southerly line of the Marsac Avenue Right of Way and on a 215.00 foot radius

curve to the left; thence along the southerly line of the Marsac Avenue Right of Way the following three (3) courses: 1) northerly along the arc of said curve 26.84 feet (chord bears North $15^{\circ}18'49''$ East 26.83 feet); thence 2) North $11^{\circ}44'12''$ East 109.47 feet to a point on a 509.74 foot radius curve to the right of which the radius point bears South $78^{\circ}15'48''$ East; thence 3) northeasterly along the arc of said curve 208.55 feet through a central angle of $23^{\circ}26'29''$ to the Point of Beginning.

Description contains 5.74 acres.

**EXHIBIT B
TO
CERTIFICATE OF AMENDMENT AND
AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
EMPIRE PASS**

(Land Use Classifications, Neighborhoods, Density Allocations)

1. Land Use Classifications. The Land Use Classifications for the Property is as follows:

- (a) Cluster Residential Use - all of Lot B and Lot C of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.
- (b) Residential Condominium Development Use and General Commercial Use - all of Lot D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.
- (c) Single Family Residential Use - all of Lots 1 through 10 of the Northside Village Subdivision.

The Land Use Classifications established by Declarant for the Property pursuant to this Declaration shall not obviate the need for compliance with: (i) the Design Guidelines and the Declaration; (ii) all codes, rules, regulations and requirements of the City; (iii) the requirements of the MPD; and (iv) the City's approvals for such property. The Property may only be developed upon the approval of a conditional use permit pursuant to the final conditions, findings of fact and conclusions of law of the Park City Planning Commission for such Property.

2. Neighborhood Designation. The Property is made a part of the following Neighborhoods:

- (a) Northside Neighborhood - all of Lots B, C and D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.
- (b) All of Lots 1 through 10 of the Northside Village Subdivision.

3. Density Allocation. The maximum density allocated to the Property is as follows:

- (a) 18 units/27 UEs ($18 \times 1.5UE = 27 UEs$) - Lot B of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat

recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

- (b) 25 units/37.5 UEs ($25 \times 1.5 \text{ UE} = 37.5 \text{ UEs}$) - Lot C of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.
- (c) 22 units/33 UEs ($22 \times 1.5 \text{ UE} = 33 \text{ UEs and commercial}$) - Lot D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.
- (d) 86,500 square feet - Lots 1 through 10 of the Northside Village Subdivision.

BK1666 PG1155



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: EPR-ER

Douglas Ogilvy
Redus Park City, LLC
741 Martingale Lane
Park City, UT 84098

Re: Mazeppah Mine Waste Site – Administrative Settlement Agreement and Order on Consent for Removal Action (CERCLA Docket No. 08-2016-0007) (Settlement Agreement)

August 13, 2018

Dear Sir:

Pursuant to Paragraph 95 of the above-mentioned Settlement Agreement, this letter is provided as a Notice of Completion of the Removal Action at the Mazeppah Mine Waste Site. As stated in Paragraph 95, this letter does not conclude any continuing obligations existing under the Settlement Agreement, including payment of oversight costs. Notwithstanding the continuing obligations, EPA has received and reviewed the Mazeppah Mine Waste Site Final Report dated July 11, 2018. All work at the Site has been fully performed in accordance with the Settlement Agreement and workplan.

It has been a pleasure working with you on this project. If you have any questions regarding the completion notice, please don't hesitate to contact me at 303-312-6963.

Sincerely,

A handwritten signature in black ink that reads "Martin McComb".

Martin McComb
Federal On-Scene Coordinator
Emergency Response Unit



Printed on Recycled Paper



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



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Montage Resort and Spa at Deer Valley

B-2 MPD Village Master Plan at Empire Pass

PARK CITY, UTAH



April 24, 2006

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A	1.02	PERSPECTIVE B2-W HOTEL APPROACH
L	1.01	CONCEPTUAL LANDSCAPE PLAN
LW	1.02	SITE SECTION AT HOTEL B2-W
AW	3.01	VOLUMETRICS PLAN HOTEL B2-W
AW	3.02	VOLUMETRICS PLAN VIEW EAST - HOTEL B2-W
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Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	10000
Sheet No.	001 of 001
Scale	As Shown
Drawn By	A 001



PERSPECTIVE B2-W AND B2-E FROM SKI AREA



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Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Project No.	13008
Date	APRIL 14, 2006
Scale	AS NOTED
Sheet No.	A101



PERSPECTIVE B2-W HOTEL APPROACH

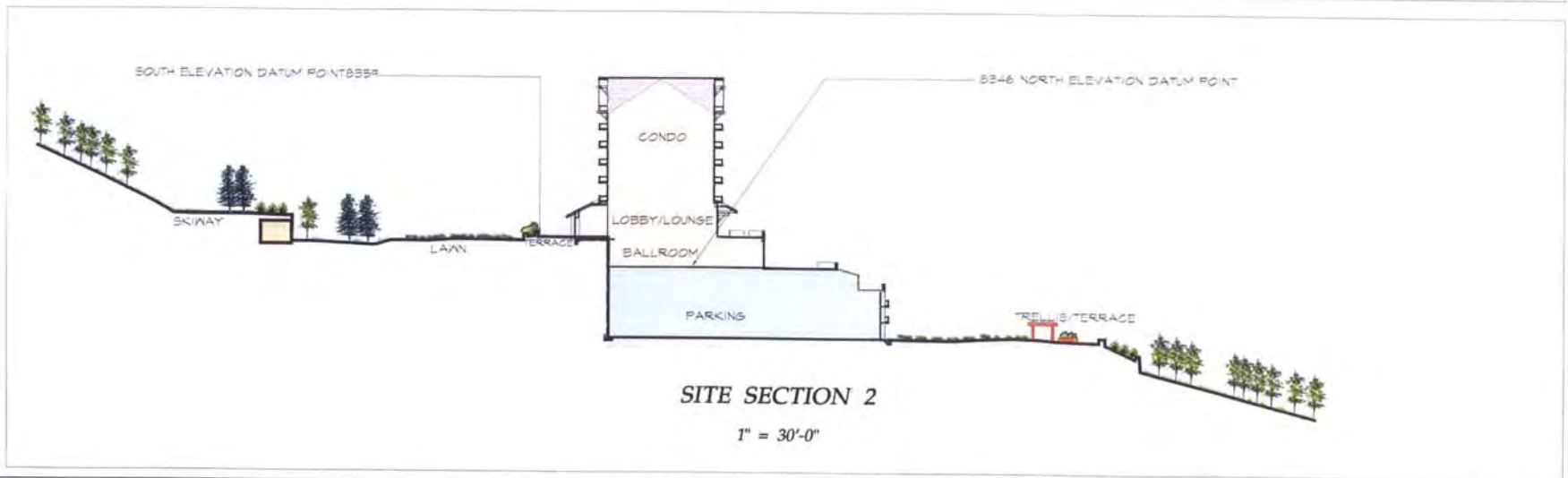
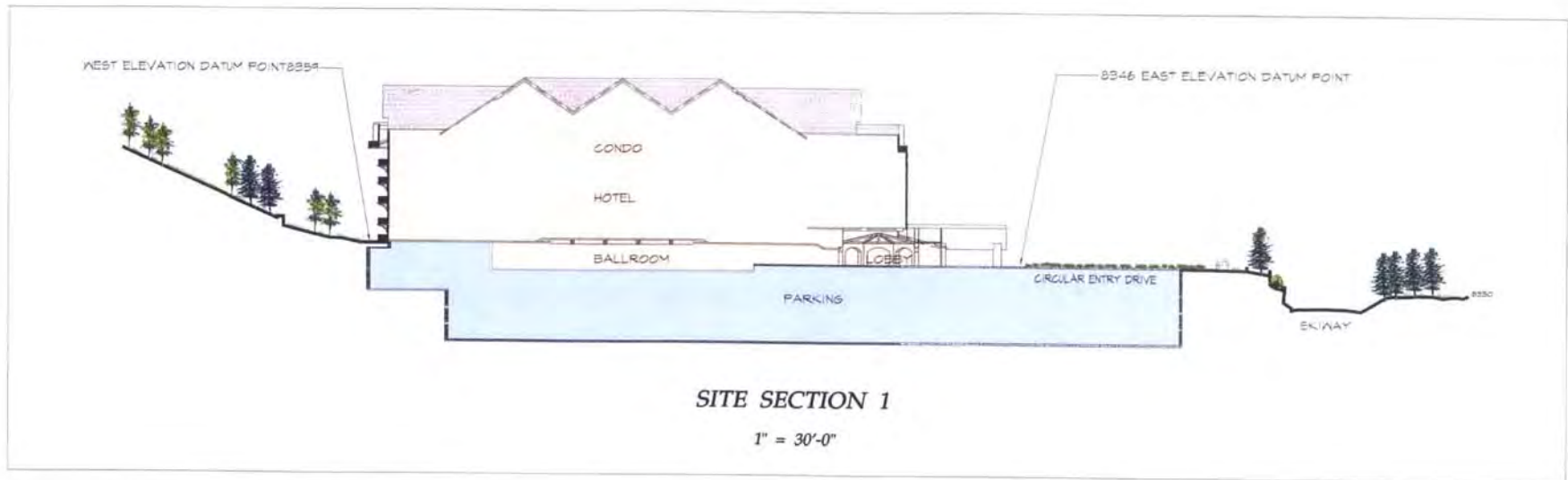


HILL GLAZIER ARCHITECTS, INC. 200

Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	10008
Date	APRIL 24 2004
Scale	AS NOTED
Sheet No.	A102



MONTAGE RESORT AND SPA AT DEER VALLEY

PARK CITY, UTAH

Project No.	5308
Date	APR 24 2008
Scale	AS NOTED
Sheet No.	LW102

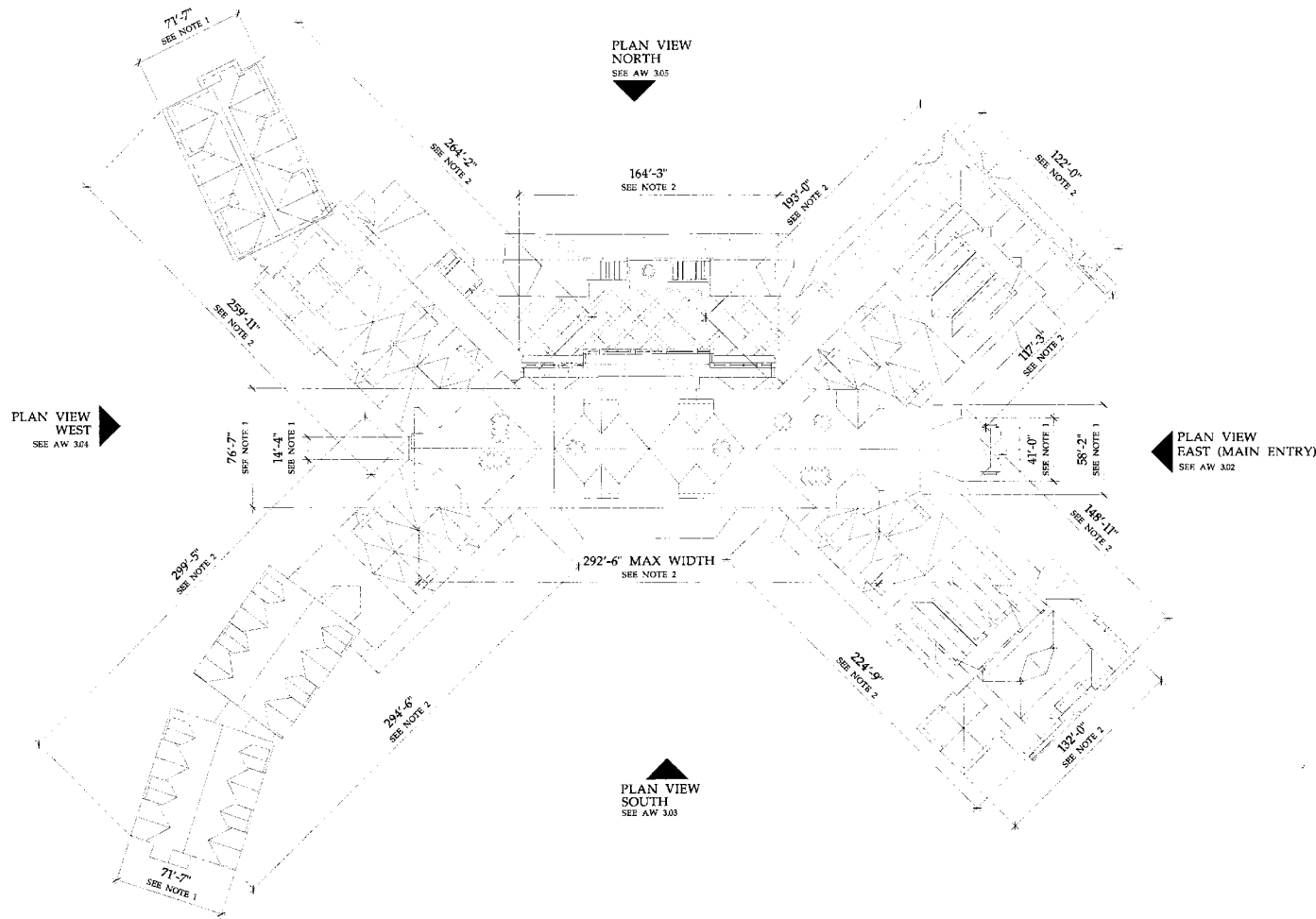
1. Structures greater than sixty feet (60'), but less than 120 feet in length must exhibit a prominent shift in the facade of the Structure so that no greater than seventy five percent (75%) of the length of the Building Facade appears unbroken. Each shift shall be in the form of either a ten foot (10') change in Building Facade alignment or a ten foot (10') change in roof line height, or a combined change in facade and roof line totaling ten feet (10').

FACADE LENGTH AND VARIATIONS NOTES

1. Structures greater than sixty feet (60'), but less than 120 feet in length must exhibit a prominent shift in the facade of the Structure so that no greater than seventy five percent (75%) of the length of the Building Facade appears unbroken. Each shift shall be in the form of either a ten foot (10') change in Building Facade alignment or a ten foot (10') change in roof line height, or a combined change in facade and roof line totaling ten feet (10').

2. Structures which exceed 120 feet in length on any facade shall provide a prominent shift in the mass of the Structure at each 120 foot interval, or less if the Developer desires, reflecting a change in function or scale. The shift shall be in the form of either a fifteen foot (15') change in Building Facade alignment or a fifteen foot (15') change in roof line. A combination of both a roof line and facade change is encouraged and to that end, if the combined change occurs at the same location in the Building plan, a fifteen foot (15') total change will be considered as full compliance.

VOLUMETRICS OVERALL PLAN VIEW



Montage Resort and Spa at Deer Valley PARK CITY, UTAH

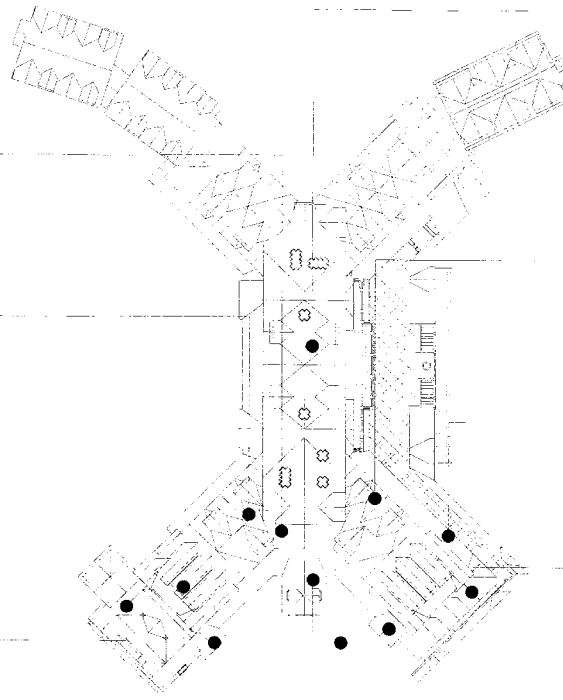
Project No.	01008
Date	APRIL 24, 2004
Scale	AS NOTED
Sheet No.	AW 3.01

12% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 92')

27% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVELS B.O.H. (BELOW GRADE)
 3 LEVEL PARKING (BELOW GRADE)
 (MAX HT. 85')

11% AT MAXIMUM HEIGHT OF
 1 LEVEL HOTEL DINING
 1 LEVEL B.O.H. (BELOW GRADE)
 3 LEVEL PARKING (BELOW GRADE)
 (MAX HT. 24')

11% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVEL RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL B.O.H. (BELOW GRADE)
 3 LEVEL PARKING (BELOW GRADE)
 (MAX HT. 76')



(PERCENT INCLUDED IN LOWER ADJACENT MASSING)
 1 LEVEL RESIDENTIAL ROOF
 5 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 114')
 *ELEVATORS OVERRUN IN THE FORM OF CHIMNEY ELEMENTS AND ARE NOT REPRESENTED IN THE MAX HEIGHT

27% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 85')

11% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 16')

11% AT MAXIMUM HEIGHT OF
 1 LEVEL HOTEL
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 23')
 SITS ON HILL, GRADE SLOPES DOWN 45',
 EFFECTIVE HEIGHT 73'

FACADE LENGTH AND VARIATIONS :
 A portion of the ground level is to have architectural elements, such as covered porches, to break down overall scale.

NOTE:
 Due to the site characteristics, native grade cannot be determined. The maximum heights are measured from a finished grade datum point at the Entry.

EAST MASSING
 DATUM POINT
 (EL. 8346')

EAST MASSING

VOLUMETRICS
 PLAN VIEW EAST



© HILL GLAZIER ARCHITECTS, INC. 2008

Montage Resort and Spa at Deer Valley PARK CITY, UTAH

Project No.	13738
Date	JUNE 22, 2009
Survey	AS NOTED
Sheet No.	AW 3.02

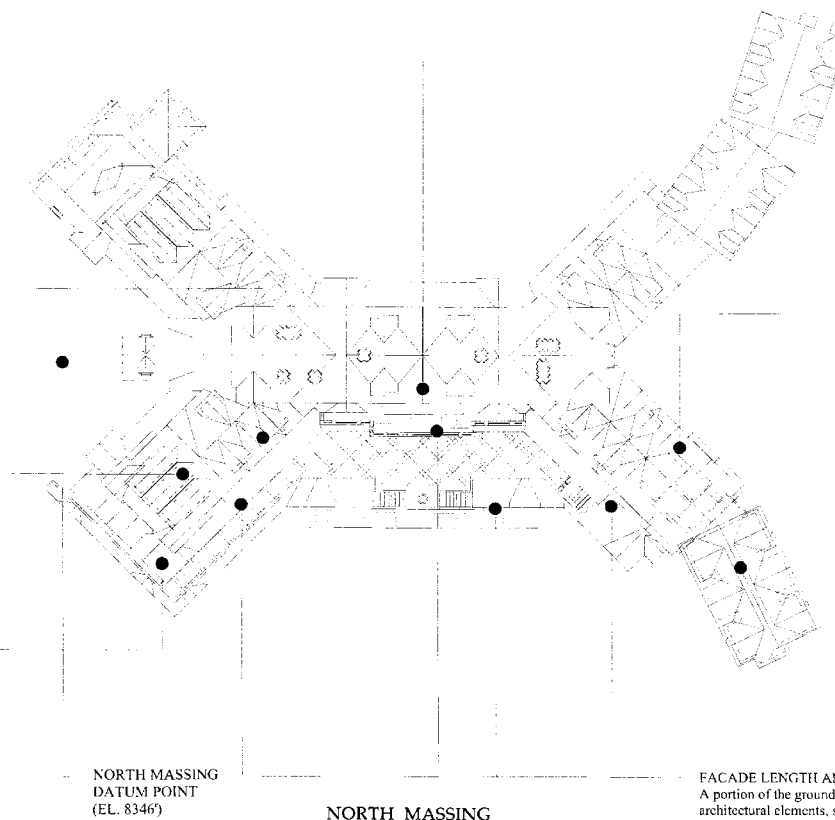
25% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
5 LEVELS RESIDENTIAL
1 LEVEL HOTEL SUITES
2 LEVELS HOTEL PUBLIC AREA
1 LEVEL HOTEL SPA
3 LEVELS HOTEL SUITES
(MAX HT. 114')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
2 LEVELS HOTEL SUITES
1 LEVEL HOTEL PUBLIC AREA
4 LEVELS HOTEL SUITES
(MAX HT. 85')

10% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
2 LEVELS RESIDENTIAL
2 LEVELS HOTEL SUITES
1 LEVEL HOTEL PUBLIC AREA
4 LEVELS HOTEL SUITES
(MAX HT. 76')

5% AT MAXIMUM HEIGHT OF
1 LEVEL HOTEL PUBLIC AREA
4 LEVELS HOTEL SUITES
(MAX HT. 23')

NOTE:
Due to the site characteristics, native grade
cannot be determined. The maximum
heights are measured from a finished
grade datum point at the Entry.



10% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
2 LEVELS HOTEL SUITES
1 LEVEL HOTEL PUBLIC AREA
1 LEVEL HOTEL SPA
3 LEVELS HOTEL SUITES
(MAX HT. 85')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
4 LEVELS HOTEL SUITE
(MAX HT. 92')

FACADE LENGTH AND VARIATIONS:
A portion of the ground level is to have
architectural elements, such as covered
porches, to break down overall scale.
(Major balconies, Entry gables, Spa skylight)

VOLUMETRICS
PLAN VIEW NORTH



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

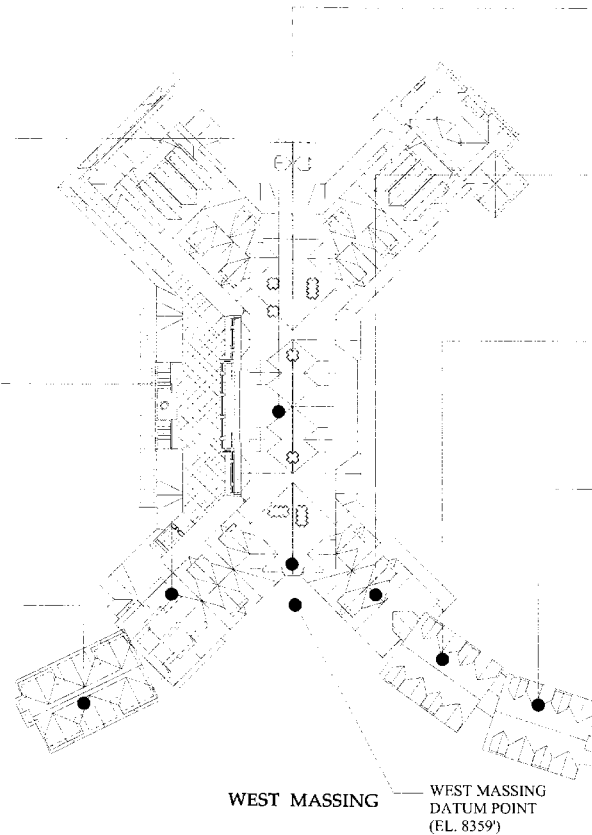
Project No.	19028
Date	08/24/2016
Scale	AS NOTED
Sheet No.	AW 3.03

409

(PERCENT INCLUDED IN LOWER ADJACENT MASSING)
 AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 5 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 2 LEVELS HOTEL PUBLIC AREA (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 101')

5% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL SUITES (DOWN SLOPE)
 1 LEVEL SPA (BELOW GRADE)
 (MAX HT. 72')

30% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 4 LEVELS HOTEL SUITES (DOWN SLOPE)
 (MAX HT. 79')



(PERCENT INCLUDED IN LOWER ADJACENT MASSING)
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING, B.O.H (BELOW GRADE)
 (MAX HT. 97')

45% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 (MAX HT. 72')

5% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVEL RESIDENTIAL
 (MAX HT. 72')

15% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 (MAX HT. 72')

NOTE:
 Due to the site characteristics, native grade cannot be determined. The maximum heights are measured from a finished grade datum point.

VOLUMETRICS PLAN VIEW WEST



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	01700
Rev.	APRIL 24, 2004
Scale	AS SHOWN
Sheet No.	AW 3.04

(PERCENT INCLUDED IN ADJACENT MASSING)
 1 LEVEL RESIDENTIAL ROOF
 4 LEVELS RESIDENTIAL
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 97')

25% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 (MAX HT. 72')

15% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 1 LEVEL HOTEL SUITES
 (MAX HT. 72')

10% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 (MAX HT. 72')

SOUTH MASSING
 DATUM POINT
 (EL. 8359')

FACADE LENGTH AND VARIATIONS:
 A portion of the ground level is to have architectural elements, such as covered porches, to break down overall scale.
 (Major balconies, Pool house)

SOUTH SIDE MASSING

20% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 5 LEVELS RESIDENTIAL
 2 LEVEL HOTEL SUITES
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL (BELOW GRADE)
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVEL PARKING, B.O.H./SUITES (BELOW GRADE)
 (MAX HT. 101')
 *ELEVATORS OVERRUN IN THE FORM OF CHIMNEY ELEMENTS AND ARE NOT REPRESENTED IN MAX HEIGHTS

(PERCENT INCLUDED IN ADJACENT MASSING)
 AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 4 LEVELS RESIDENTIAL
 1 LEVEL HOTEL PUBLIC AREA
 1 LEVEL HOTEL SPA (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 97')

30% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 3 LEVELS RESIDENTIAL
 2 LEVELS SUITES
 2 LEVELS B.O.H. (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 72')

10% AT MAXIMUM HEIGHT OF
 1 LEVEL RESIDENTIAL ROOF
 2 LEVELS RESIDENTIAL
 2 LEVELS HOTEL SUITES
 2 LEVELS B.O.H. (BELOW GRADE)
 3 LEVELS PARKING (BELOW GRADE)
 (MAX HT. 63')

5% AT MAXIMUM HEIGHT OF
 1 LEVEL HOTEL DINNING
 1 LEVEL B.O.H. (BELOW GRADE)
 3 LEVEL PARKING (BELOW GRADE)
 (MAX HT. 11')

NOTE:
 Due to the site characteristics, native grade cannot be determined. The maximum heights are measured from a finished grade datum point at the Lobby Terrace

VOLUMETRICS
 PLAN VIEW SOUTH



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No. 0025
 Date APR. 24, 2016
 Scale AS SHOWN
 Draw No. AW 3.05

1. Structures greater than sixty feet (60'), but less than 120 feet in length must exhibit a prominent shift in the facade of the Structure so that no greater than seventy five percent (75%) of the length of the Building Facade appears unbroken. Each shift shall be in the form of either a ten foot (10') change in Building Facade alignment or a ten foot (10') change in roof line height, or a combined change in facade and roof line totaling ten feet (10').



FACADE LENGTH AND VARIATIONS NOTES

1. Structures greater than sixty feet (60'), but less than 120 feet in length must exhibit a prominent shift in the facade of the Structure so that no greater than seventy five percent (75%) of the length of the Building Facade appears unbroken. Each shift shall be in the form of either a ten foot (10') change in Building Facade alignment or a ten foot (10') change in roof line height, or a combined change in facade and roof line totaling ten feet (10').
2. Structures which exceed 120 feet in length on any facade shall provide a prominent shift in the mass of the Structure at each 120 foot interval, or less if the Developer desires, reflecting a change in function or scale. The shift shall be in the form of either a fifteen foot (15') change in Building Facade alignment or a fifteen foot (15') change in roof line. A combination of both a roof line and facade change is encouraged and to that end, if the combined change occurs at the same location in the Building plan, a fifteen foot (15') total change will be considered as full compliance.
3. No variation required.

VOLUMETRICS OVERALL PLAN VIEW



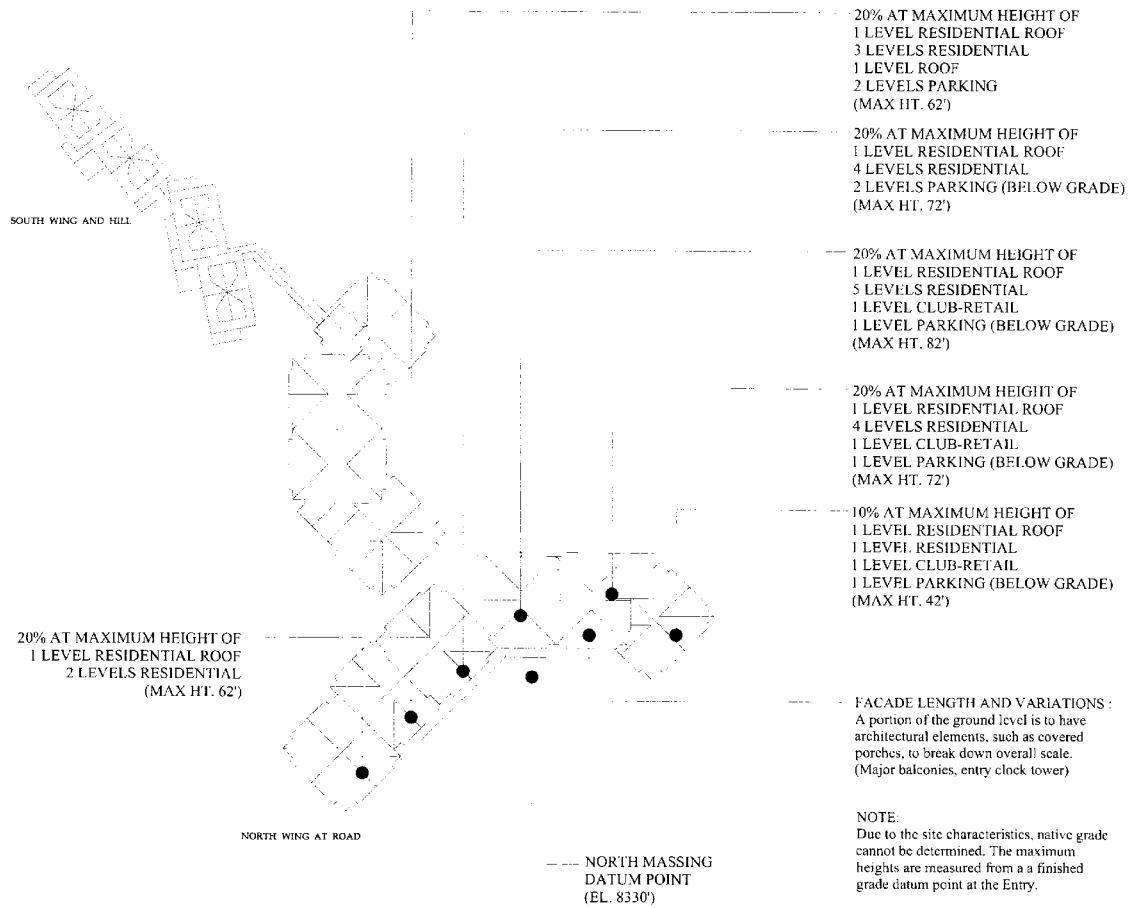
HILL GLAZIER
ARCHITECTS
3000 Main Street, Suite 200, Park City, UT 84302
Tel: 435.263.1234 Fax: 435.263.1235

Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.	03096
Date	April, 21, 2021
Scale	AS NOTED
Sheet No.	AE 3.06

20% AT MAXIMUM HEIGHT OF 1 LEVEL RESIDENTIAL ROOF 3 LEVELS RESIDENTIAL 1 LEVEL ROOF 2 LEVELS PARKING (MAX HT. 62')



20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
3 LEVELS RESIDENTIAL
1 LEVEL ROOF
2 LEVELS PARKING
(MAX HT. 62')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
4 LEVELS RESIDENTIAL
2 LEVELS PARKING (BELOW GRADE)
(MAX HT. 72')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
5 LEVELS RESIDENTIAL
1 LEVEL CLUB-RETAIL
1 LEVEL PARKING (BELOW GRADE)
(MAX HT. 82')

20% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
4 LEVELS RESIDENTIAL
1 LEVEL CLUB-RETAIL
1 LEVEL PARKING (BELOW GRADE)
(MAX HT. 72')

10% AT MAXIMUM HEIGHT OF
1 LEVEL RESIDENTIAL ROOF
1 LEVEL RESIDENTIAL
1 LEVEL CLUB-RETAIL
1 LEVEL PARKING (BELOW GRADE)
(MAX HT. 42')

FACADE LENGTH AND VARIATIONS :
A portion of the ground level is to have
architectural elements, such as covered
porches, to break down overall scale.
(Major balconies, entry clock tower)

NOTE:
Due to the site characteristics, native grade
cannot be determined. The maximum
heights are measured from a finished
grade datum point at the Entry.

NORTH MASSING

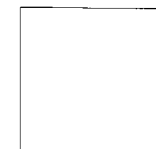
CONDO VOLUMETRICS
PLAN VIEW NORTH



2017 HILL GLAZIER ARCHITECTS, INC. 200

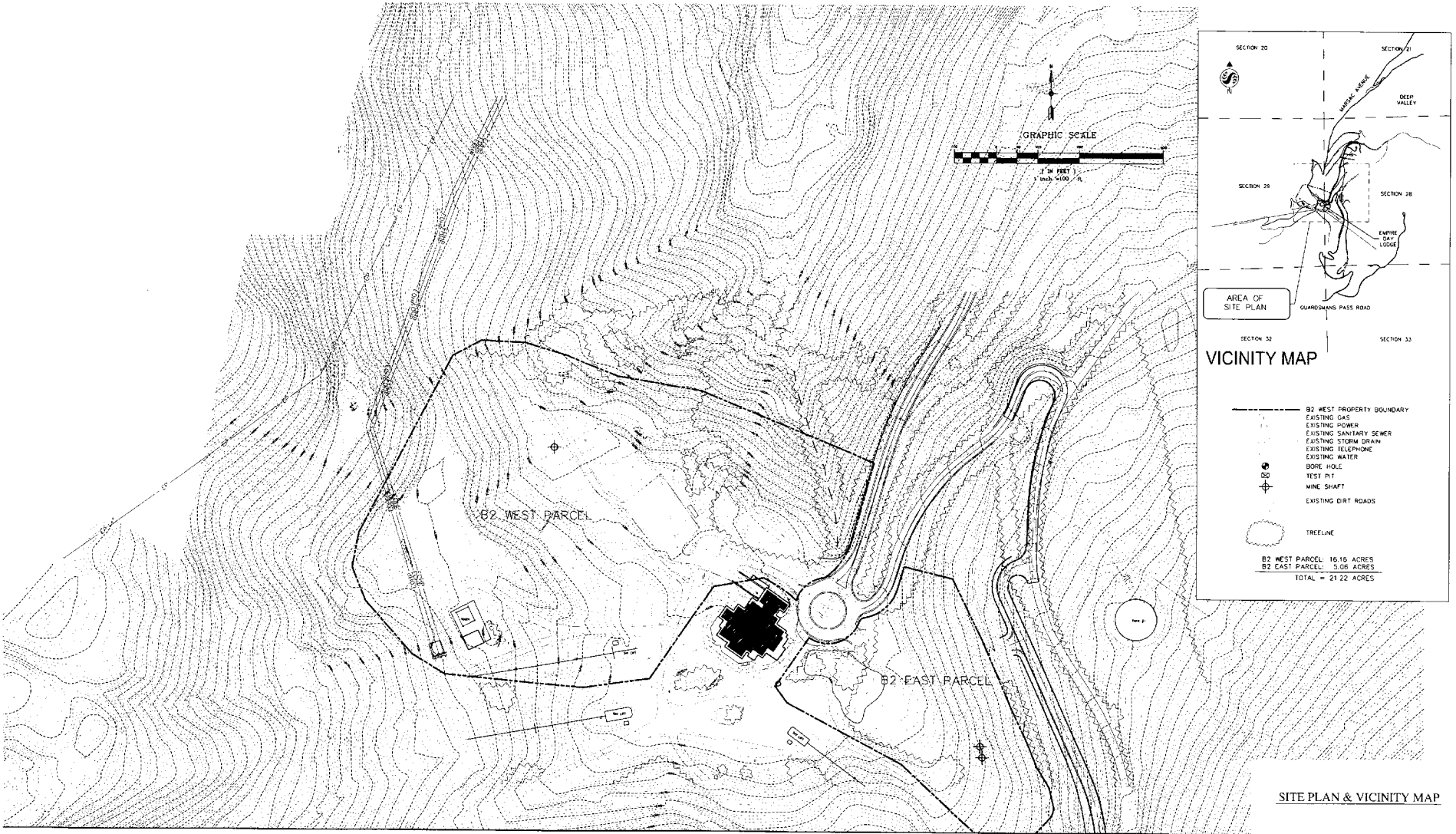
Montage Resort and Spa at Deer Valley

PARK CITY, UTAH



Project No.	00028
Date	APRIL 14, 2016
Scale	AS SHOWN
Drawn By	AE 3.07

ALL DRAWINGS AND WRITTEN MATERIALS HEREIN CONSTITUTE THE ORIGINAL AND UNPUBLISHED WORKS OF THE ARCHITECT AND THE SAME MAY NOT BE REPRODUCED, COPIED, OR DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.



SITE PLAN & VICINITY MAP



Montage Resort and Spa at Deer Valley

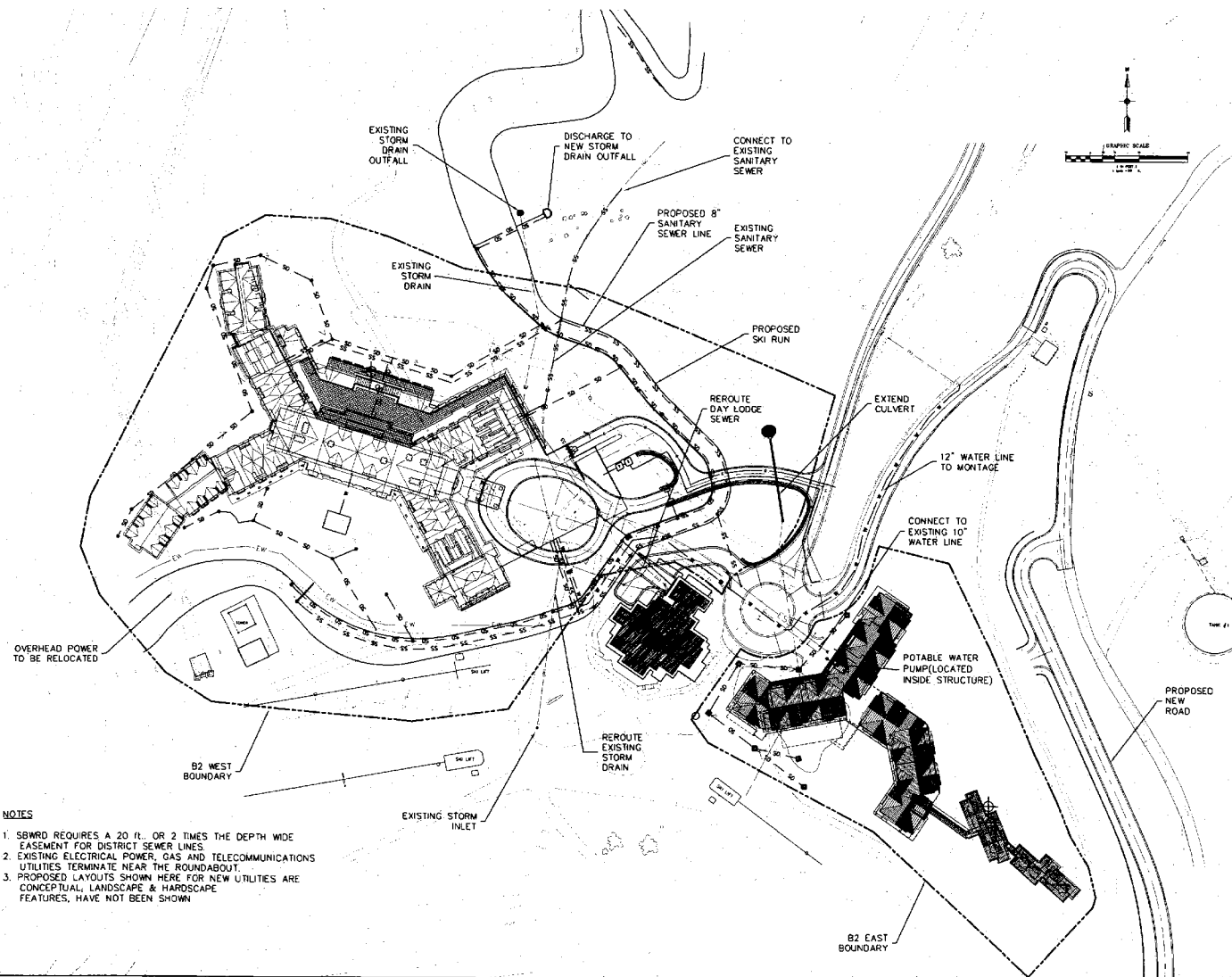
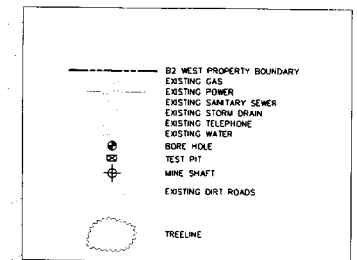
PARK CITY, UTAH

Project No.	13000
Date	APRIL 28, 2004
Scale	1" = 80'
Sheet No.	C 1.01

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE THE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND THE SAME MAY NOT BE REPRODUCED, COPIED, OR IN ANY MANNER DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.

NOTES

1. SBWRD REQUIRES A 20 FT. OR 2 TIMES THE DEPTH WIDE EASEMENT FOR DISTRICT SEWER LINES
2. EXISTING ELECTRICAL POWER, GAS AND TELECOMMUNICATIONS UTILITIES TERMINATE NEAR THE ROUNDABOUT.
3. PROPOSED LAYOUTS SHOWN HERE FOR NEW UTILITIES ARE CONCEPTUAL. LANDSCAPE & HARDSCAPE FEATURES, HAVE NOT BEEN SHOWN



B2 WEST & B2 EAST
CONCEPT UTILITY PLAN

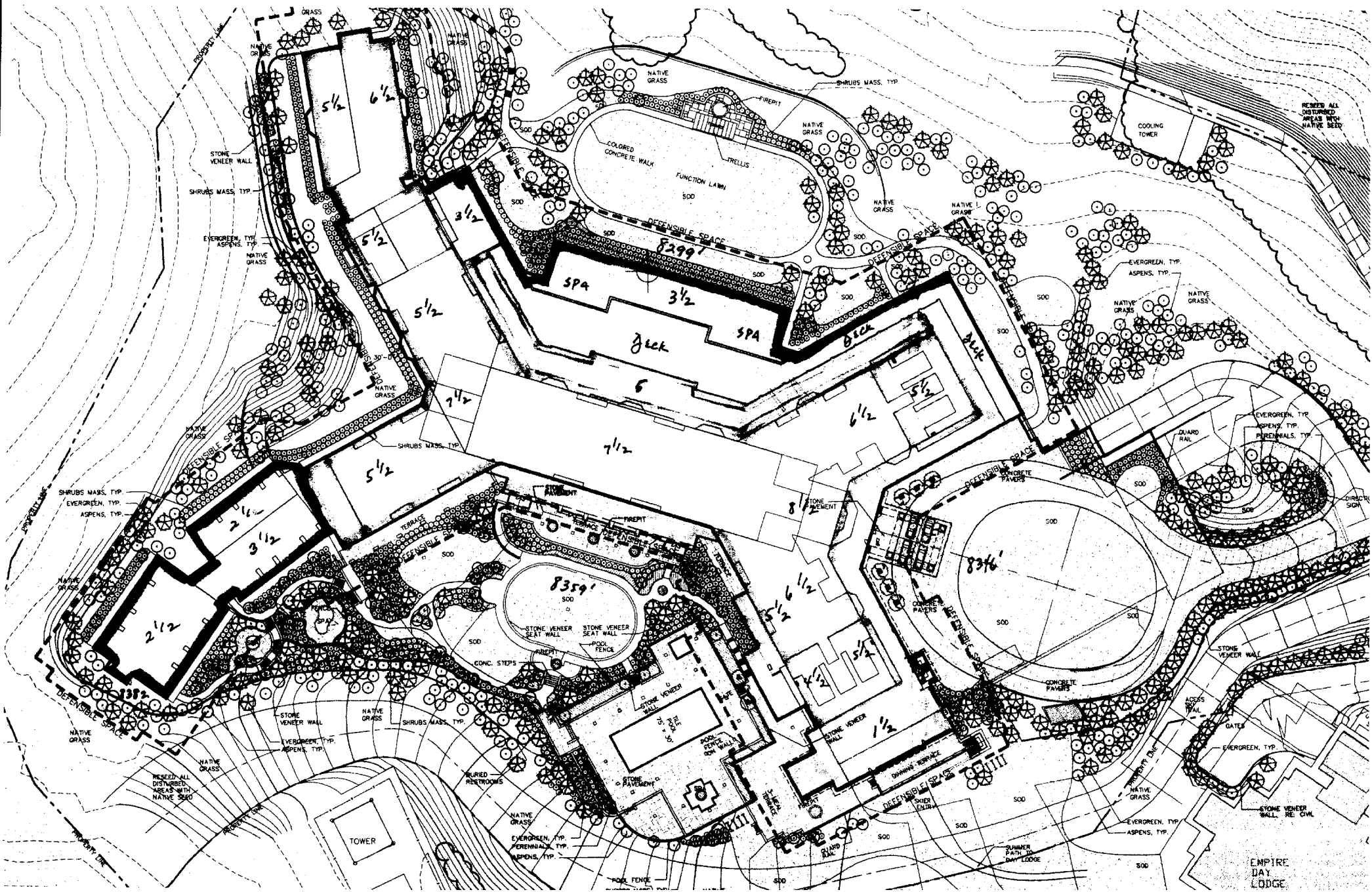
HG
HILL GLAZIER
ARCHITECTS



Montage Resort and Spa at Deer Valley

PARK CITY, UTAH

Project No.: 03008
 Date: APRIL 28, 2006
 Scale: 1" = 80'
 Sheet No.: C 1.02





November 13, 2020

Revised June 18, 2021

Douglas Ogilvy
Representing Sommet Blanc Residences 1 LLC
PO Box 9800022
Park City, UT 84098

<u>Application #</u>	PL-20-04677
<u>Subject</u>	Administrative CUP for Retaining Walls Greater than Six Feet (6') in Height
<u>Address</u>	9300 Marsac Avenue

On November 13, 2020, the Planning Department reviewed and approved your application for an Administrative CUP for seven (7) retaining walls greater than six feet (6') in height, necessary for the construction of a new sanitary sewer line servicing the proposed Hot Creek restaurant site.

On June 18, 2021 the Planning Department reviewed revised plans shifting the driveway, sewer and retaining walls east to address Fire Department ladder access requirements. The Planning Department finds there are no additional impacts that have not been mitigated as a result of the change of plans. These revised plans include the Overall Retaining Wall Plan and Profile, 3 pages, all dated 6/4/21, stamped and signed by Michael Demkowicz, Professional Engineer.

Findings of Fact:

1. The property is located at 9300 Marsac Avenue.
2. The site is located in the Residential Development zoning district, and is part of the Village at Empire Pass MPD (RD-MPD).
3. The site is located within the Sensitive Lands Overlay Zone and outside of the Soils Ordinance Zone.
4. The applicant is proposing to locate eight (8) retaining walls necessary for the construction of a new sewer line servicing the proposed Hot Creek restaurant site, to be located off of Twisted Branch Road.
5. The sanitary sewer line alignment is under the driveway of the proposed B2 East development.
6. The sewer easement was recorded on 6/29/2020.
7. To construct the sewer line Sommet Blanc is proposing retaining walls 3-14 feet high, with generous separation between the walls, to allow for planting of trees and shrubs to mitigate the visual impact of the walls.

8. Walls will be faced with stone veneer over formed concrete. Proposed veneer is a dry stack natural stone.
9. Approval for landscaping will come at the time of project approvals for the proposed B2 East project.
10. The Empire Pass Design Review Board reviewed and approved the proposed retaining walls.
11. Adjacent abutters were noticed of this application and a notice sign was posted on the property on 10/29/2020. No public input was received for this project.
12. The DRC reviewed this project on 11/3/2020.
13. The Engineering Department will need to review the geotechnical report and retaining wall design stamped by a Professional Structural Engineer prior to the issuance of a Building Permit.
14. There were no other concerns raised by any departments.
15. This application was reviewed in accordance with LMC Section [15-1-10\(E\)\(1-16\)](#). No impacts need to be mitigated as the sewer line will be below grade and the retaining walls will be landscaped with the construction of the B2 East project.

Conclusions of Law:

1. The application is consistent with requirements of the Park City Municipal Code, specifically Chapter 15, Section 1-10(E).
2. The Use is consistent with the Park City General Plan and is allowed by an Administrative Conditional Use Permit.
3. The Use is compatible with surrounding structures in terms of scale, mass, and circulation.
4. The effects of any differences in use and scale have been mitigated through careful planning.

Conditions of Approval:

1. The ACUP is valid for one (1) year. The applicant can request an extension in writing prior to December 13, 2021.
2. A Building Permit will be required.
3. The Engineering Department will need to review the geotechnical report and retaining wall design stamped by a Professional Structural Engineer prior to the issuance of the Building Permit.
4. The retaining walls shall be constructed consistent with plans prepared by Alliance Engineering Inc., Stamped and Signed by Michael Demkowicz P.E., including Overall Retaining Wall Plan and Retaining Wall Plan and Profile, both dated 9/25/2020 6/4/21.

This approval in no way exempts the property from complying with other requirements that may be in effect on the property, and building permit regulations, as applicable. It is the responsibility of the property owner to ensure compliance with these regulations.

If you have questions regarding your application or the action taken please don't hesitate to contact your Planner, Alexandra Ananth at 435-615-5066 or

alexandra.ananth@parkcity.org.

Sincerely,



Gretchen Milliken, Planning Director
Park City

EMPIRE PASS
DESIGN REVIEW BOARD
Meeting Minutes
June 9, 2021 - 1:45pm to 3:30pm
Meeting Held Onsite & By Zoom

DRB Members Present:

Doug Ogilvy-Clachan Development
Jeff Butterworth - Storied Living
John Shirley-Think Architecture
Steve Issowits - Deer Valley

Staff Present:

Trish Waterman- Talisker HOA
Steve Mair-Talisker HOA

Doug Ogilvy called the meeting to order at 1:45pm

Item #1 Sommet Blanc, Preliminary Review

Preliminary Review is based off plans dated April 16, 2021. The total site of is comprised of 6.91 acres.

There are 2 Villa Buildings:

5 Units total, the total saleable square footage for the Villas is 25,000, the maximum building height for the Villas is 48 feet above natural grade. The driveway width for the villas road coming off of Guardsman Road is 26 feet wide, the first section of grade is 5% with a 10% maximum grade and leveling off at 1%. The villas have 10 enclosed parking spaces. There is a Ski Lounge Building for the Villas (single story)

There are 3 Lodge Buildings:

Building A: 17 units, Building B: 17 units, Building C: 9 units, there is a Lobby Building for the Lodges (single story), the total saleable square footage for the lodges is 137,000, the max square footage per Pod B2 approved MPD is 162,000, the maximum building height for the lodge buildings are 82 feet above datum points, the driveway width for the lodges coming off Marsac Ave is 26 feet wide, with 4% for the first section, 10% maximum and finishing off at 5% grade. The lodges have 155 enclosed parking spaces, 4 at grade totaling 159.

The Lodge's height of ridges at building ends:

Building A

- West End - Level 5 Roof 8,407'
 - Restaurant Patio 8,342'
 - Height from Finished Grade 65'

- East End - Level 6 Roof 8,424'

	- Lobby Driveway	<u>8,345'</u>	
	- Height from Finished Grade		79'
Building B			
• North End- Level 5 Roof			8,424'
	- Lobby Driveway	<u>8,345'</u>	
	- Height from Finished Grade		79'
• South End- Level 6 Roof			8,441'
	- Upper Cul de Sac	<u>8,362'</u>	
	- Height from Finished Grade		79'
Building C			
• West End - Level 6 Roof			8,455'
	- Ski Lounge Patio	<u>8,376'</u>	
	- Height SW corner		79'
	- Upper Cul de Sac	<u>8,364'</u>	
	- Height NW Corner		91'
• East End	- Level 6 Roof		8,455'
	- Level 3 Patio		<u>8,402'</u>
	- Height SE corner		53'
	- Upper Cul de Sac	<u>8,364'</u>	
	- Height NE corner		91'

The DRB walked the site to review the lot staking of the entire project. The DRB would like to see more details for landscaping and walls on the corner of the property adjacent to the Empire Canyon day lodge. The DRB discussed the preservation of trees above the proposed condo retaining walls and the area below the Villas ski lounge building. To be field verified with applicant when LOD is set. The applicant will provide finish materials for all proposed retaining walls. The DRB granted a variance for retaining walls to have a maximum height of 14 feet to accommodate the Fire Marshall required shift of the lower driveway to meet ladder access requirements.

The flat roofs now have the addition of green roofs. The DRB conceptually approved and favored the proposed exterior materials. All exterior materials are subject to mockup review and approval. The applicant to provide deck and railing details for final review.

Submit color and texture sample for colored concrete drive areas, which requires DRB approval prior to installation. Applicant understand that no faux or manufactured materials may be used as finished exterior product, this would include glue-lam beams, faux stone, bare concrete, vinyl siding, etc. The DRB to review the complete lighting plan, including cut sheets and specifications for all exterior light fixtures proposed with the applicant for final review. Applicant to provide complete landscape plan, including counts and planting specs, for DRB review. Art work specs to be provided for final review. The applicant shall submit a detailed sign program to the DRB for review and approval prior to installation of the same. Building height, volumetrics and square footage calculations to be addressed to the satisfaction of the DRB and the City.

Item #2 Review & Approval of May 19, 2021 Minutes

John made a motion to approve the May 19, 2021 minutes, Jeff seconded, motion carried.

Item #3 Other Items/Adjourn

Jeff made a motion to adjourn, John seconded, meeting adjourned at 3:30pm.

Alexandra Ananth

From: Douglas Ogilvy <douglas.ogilvy@gmail.com>
Sent: Friday, June 11, 2021 3:37 PM
To: Alexandra Ananth
Subject: Fwd: B2 East Retaining Walls - ACUP
Attachments: B2 East - Retaining Wall ACUP 11-13-20.pdf; B2 East-Retaining Wall Plans & Renderings 6-4-21.pdf

Hi Alex,

Digging into the history with Alliance, it was during a meeting with Mike Owens that he advised us that the driveway (and sewer and retaining walls) needed to shift east to address ladder access requirements. (See email below from Connor at Alliance.) SBWRD has approved the revised alignment and we are eager to start work on the sewer project (which means the retaining walls).

We would like to amend our ACUP for the retaining walls issued 11-13-20 to reflect the updated plans dated 6-4-21.

Should you have any questions after you get through next week's Planning Commission, please ping or call me.

Thanks and have a great weekend!

Douglas

Begin forwarded message:

From: Connor Dinsmore <connor@alliance-engr.com>
Subject: B2 East Driveway Shift
Date: June 11, 2021 at 3:20:40 PM MDT
To: "douglas.ogilvy@gmail.com" <douglas.ogilvy@gmail.com>

Hey Doug,

Per the meeting with Mike Owens from the Fire Department on Tuesday February 16, we are going to have to shift the lower Condo Road 15' to the east for the fire trucks to access the site and be able to deploy their ladders in case of a fire. The 15' shift also accounts for the overhanging decks off the buildings so that there is no obstructions for the fire truck ladders.

Thanks,
Connor Dinsmore, P.E.

Civil Engineer



P.O. Box 2664
323 Main Street
Park City, UT 84060

connor@alliance-engr.com

Phone: (435) 649-9467

Fax: (435) 649-9475

November 13, 2020



Douglas Ogilvy
Representing Sommet Blanc Residences 1 LLC
PO Box 9800022
Park City, UT 84098

Application # PL-20-04677

Subject Administrative CUP for Retaining Walls Greater than Six Feet (6') in Height

Address 9300 Marsac Avenue

On November 13, 2020, the Planning Department reviewed and approved your application for an Administrative CUP for seven (7) retaining walls greater than six feet (6') in height, necessary for the construction of a new sanitary sewer line servicing the proposed Hot Creek restaurant site.

Findings of Fact:

1. The property is located at 9300 Marsac Avenue.
2. The site is located in the Residential Development zoning district, and is part of the Village at Empire Pass MPD (RD-MPD).
3. The site is located within the Sensitive Lands Overlay Zone and outside of the Soils Ordinance Zone.
4. The applicant is proposing to locate seven (7) retaining walls necessary for the construction of a new sewer line servicing the proposed Hot Creek restaurant site, to be located off of Twisted Branch Road.
5. The sanitary sewer line alignment is under the driveway of the proposed B2 East development.
6. The sewer easement was recorded on 6/29/2020.
7. To construct the sewer line Sommet Blanc is proposing retaining walls 6-10 feet high, with generous separation between the walls of 16-28 feet, to allow for planting of trees and shrubs to mitigate the visual impact of the walls.
8. Walls will be faced with stone veneer over formed concrete. Proposed veneer is a dry stack natural stone.
9. Approval for landscaping will come at the time of project approvals for the proposed B2 East project.
10. The Empire Pass Design Review Board reviewed and approved the proposed retaining walls.
11. Adjacent abutters were noticed of this application and a notice sign was posted on the property on 10/29/2020. No public input was received for this project.
12. The DRC reviewed this project on 11/3/2020.
13. The Engineering Department will need to review the geotechnical report and retaining wall design stamped by a Professional Structural Engineer prior to the issuance of a Building Permit.
14. There were no other concerns raised by any other departments.
15. This application was reviewed in accordance with LMC Section [15-1-10\(E\)\(1-16\)](#).
No impacts need to be mitigated as the sewer line will be below grade and the

retaining walls will be landscaped with the construction of the B2 East project.

Conclusions of Law:

1. The application is consistent with requirements of the Park City Municipal Code, specifically Chapter 15, Section 1-10(E).
2. The Use is consistent with the Park City General Plan and is allowed by an Administrative Conditional Use Permit.
3. The Use is compatible with surrounding structures in terms of scale, mass, and circulation.
4. The effects of any differences in use and scale have been mitigated through careful planning.

Conditions of Approval:

1. The ACUP is valid for one (1) year. The applicant can request an extension in writing prior to December 13, 2021.
2. A Building Permit will be required.
3. The Engineering Department will need to review the geotechnical report and retaining wall design stamped by a Professional Structural Engineer prior to the issuance of the Building Permit.
4. The retaining walls shall be constructed consistent with plans prepared by Alliance Engineering Inc., Stamped and Signed by Michael Demkowicz P.E., including Overall Retaining Wall Plan and Retaining Wall Plan and Profile, both dated 9/25/2020.

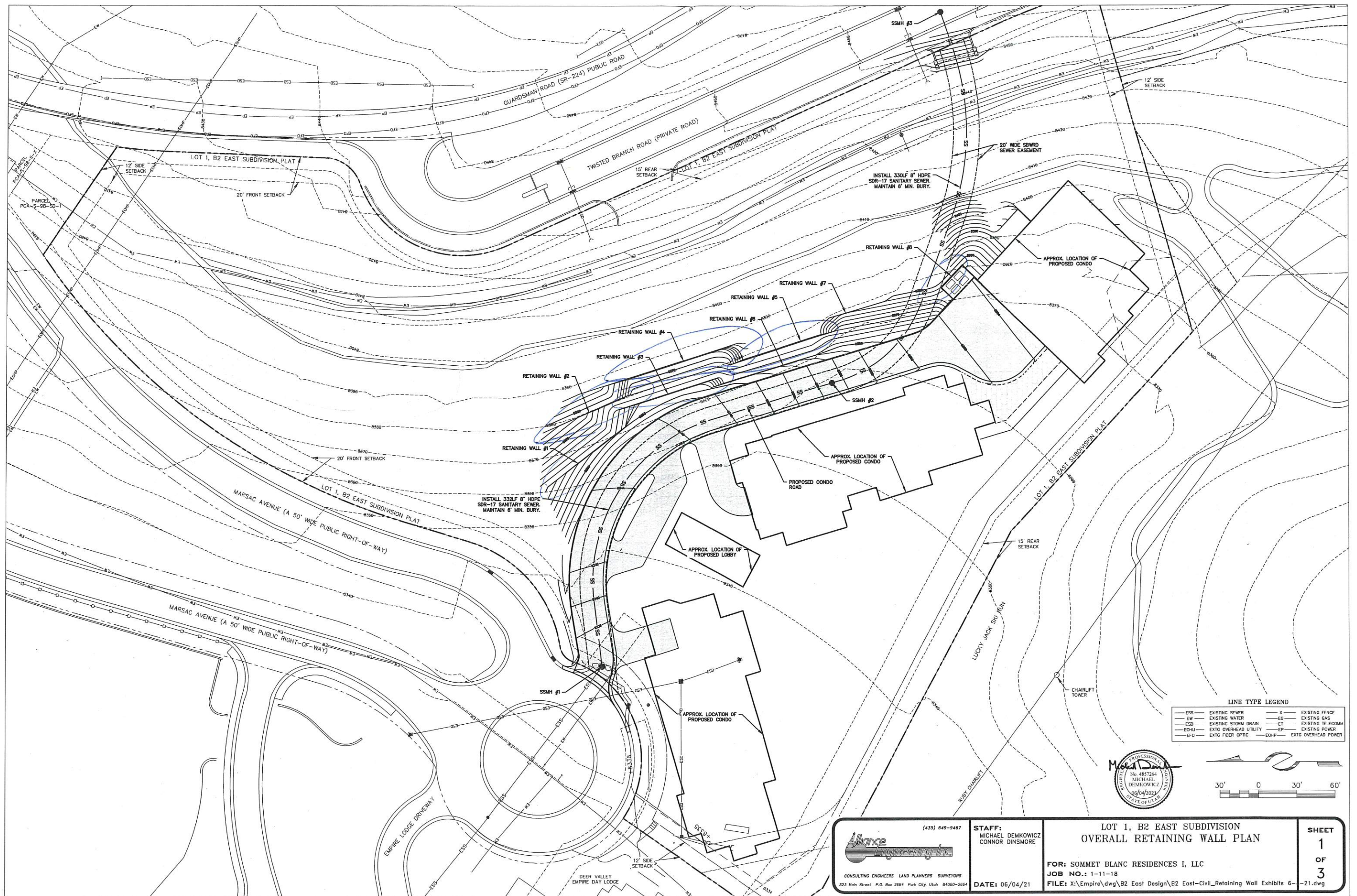
This approval in no way exempts the property from complying with other requirements that may be in effect on the property, and building permit regulations, as applicable. It is the responsibility of the property owner to ensure compliance with these regulations.

If you have questions regarding your application or the action taken please don't hesitate to contact your Planner, Alexandra Ananth at 435-615-5066 or alexandra.ananth@parkcity.org.

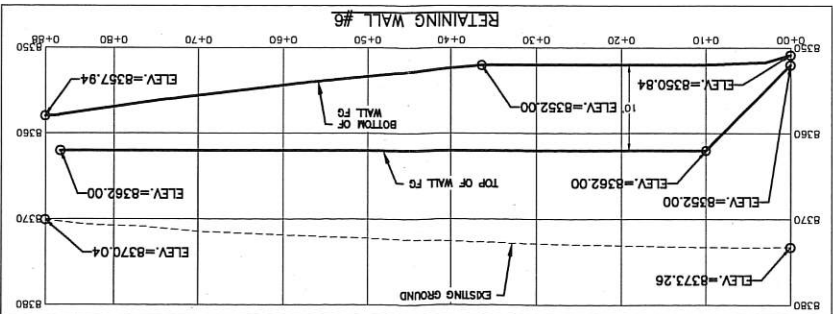
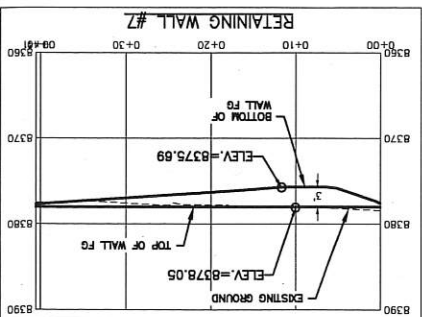
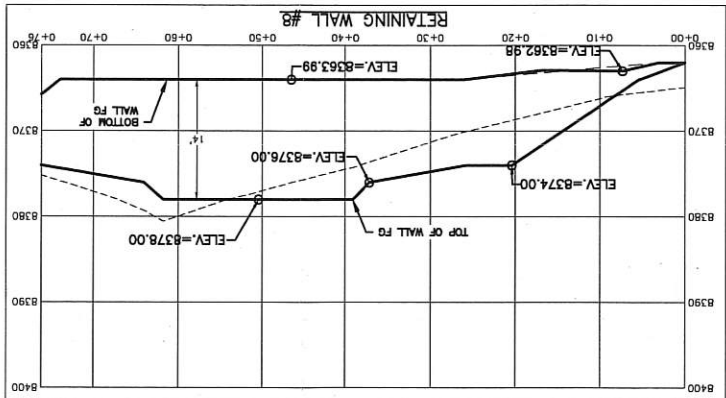
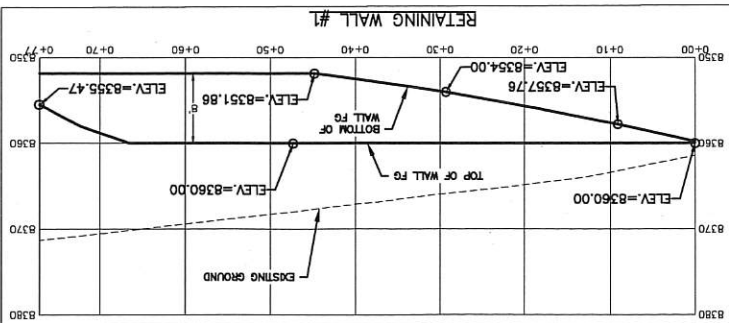
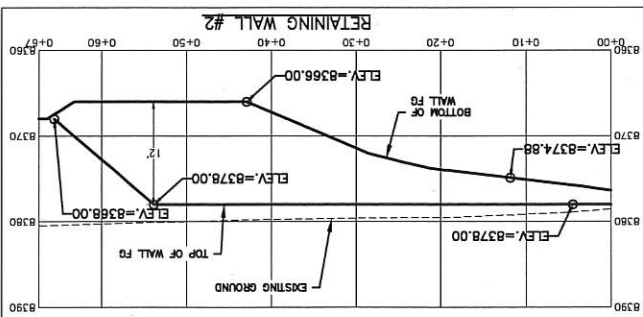
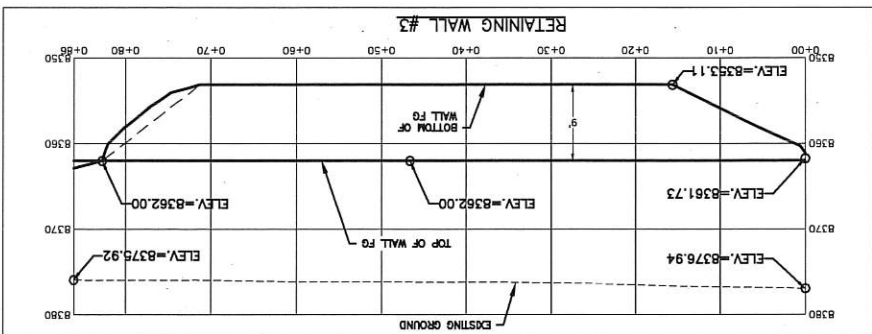
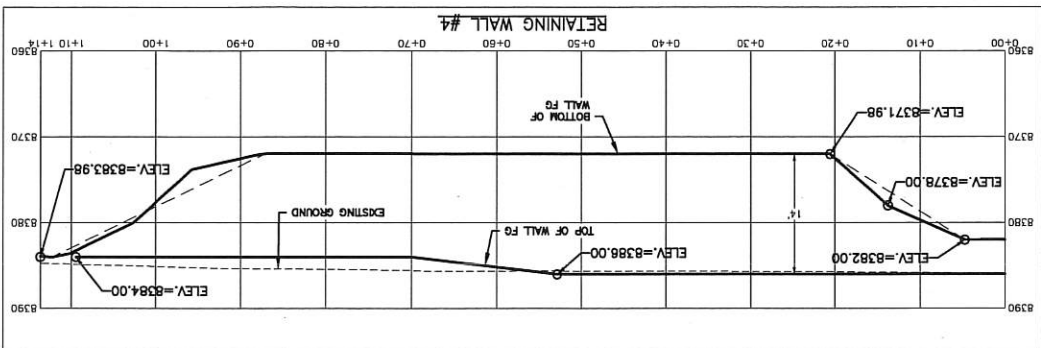
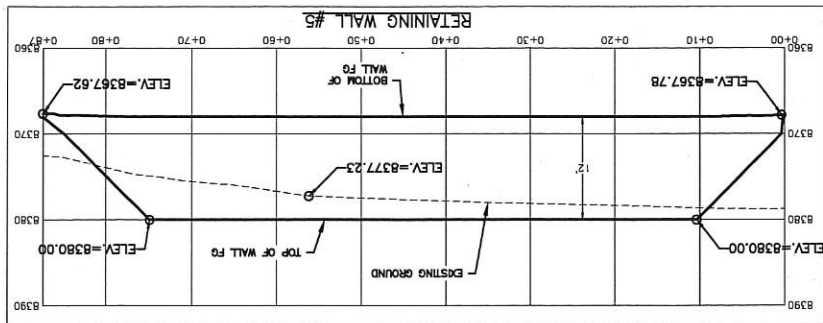
Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Everitt', is written over a rectangular stamp that contains two vertical bars.

David Everitt, Deputy City Manager
Park City



 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664	(435) 649-9467	STAFF: MICHAEL DEMKOWICZ CONNOR DINSMORE	LOT 1, B2 EAST SUBDIVISION OVERALL RETAINING WALL PLAN	SHEET 1 OF 3
			FOR: SOMMET BLANC RESIDENCES I, LLC	
			JOB NO.: 1-11-18	
			FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil_Retaining Wall Exhibits 6--21.dwg	
DATE: 06/04/21				



NOTE:
1. BOTTOM OF WALL GRADING TO BE
SMOOTH 2:1 OR 1:1 GRADING. REFER TO
GRADING PLAN SHEET.
2. DASHED LINE ON PROFILES TO REPRESENT
SMOOTH BOTTOM OF WALL GRADING.

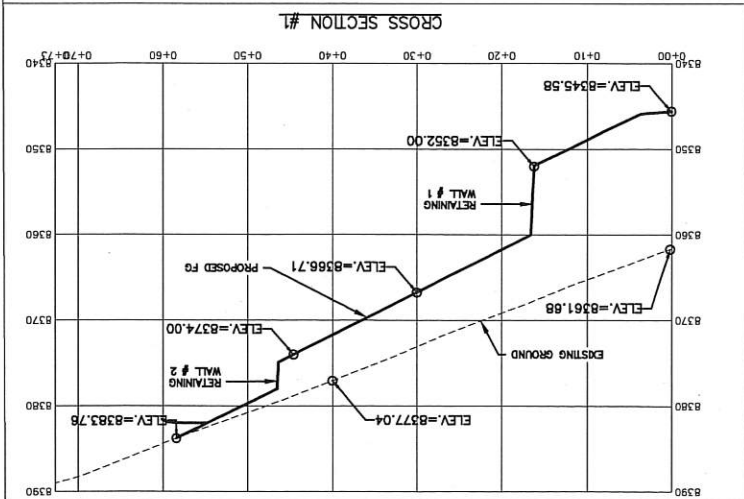
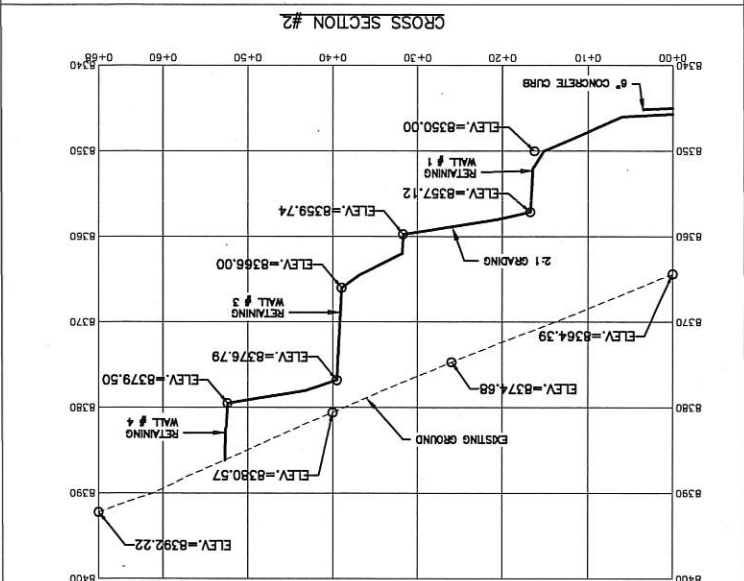
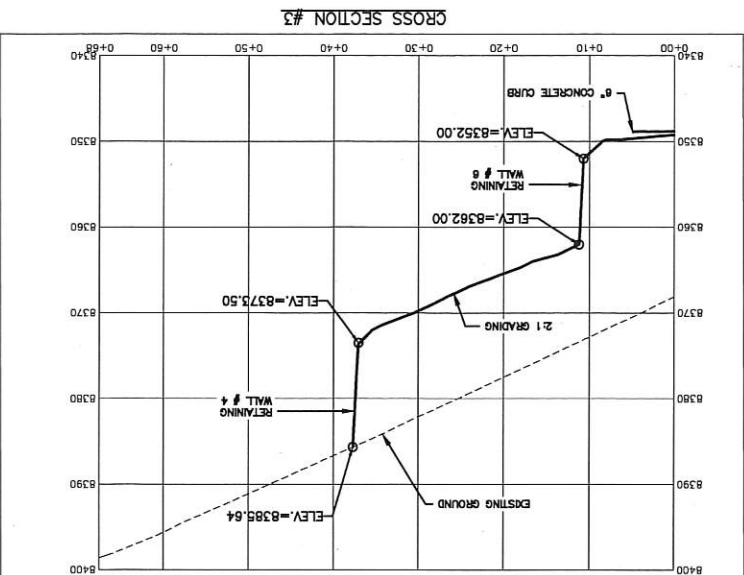


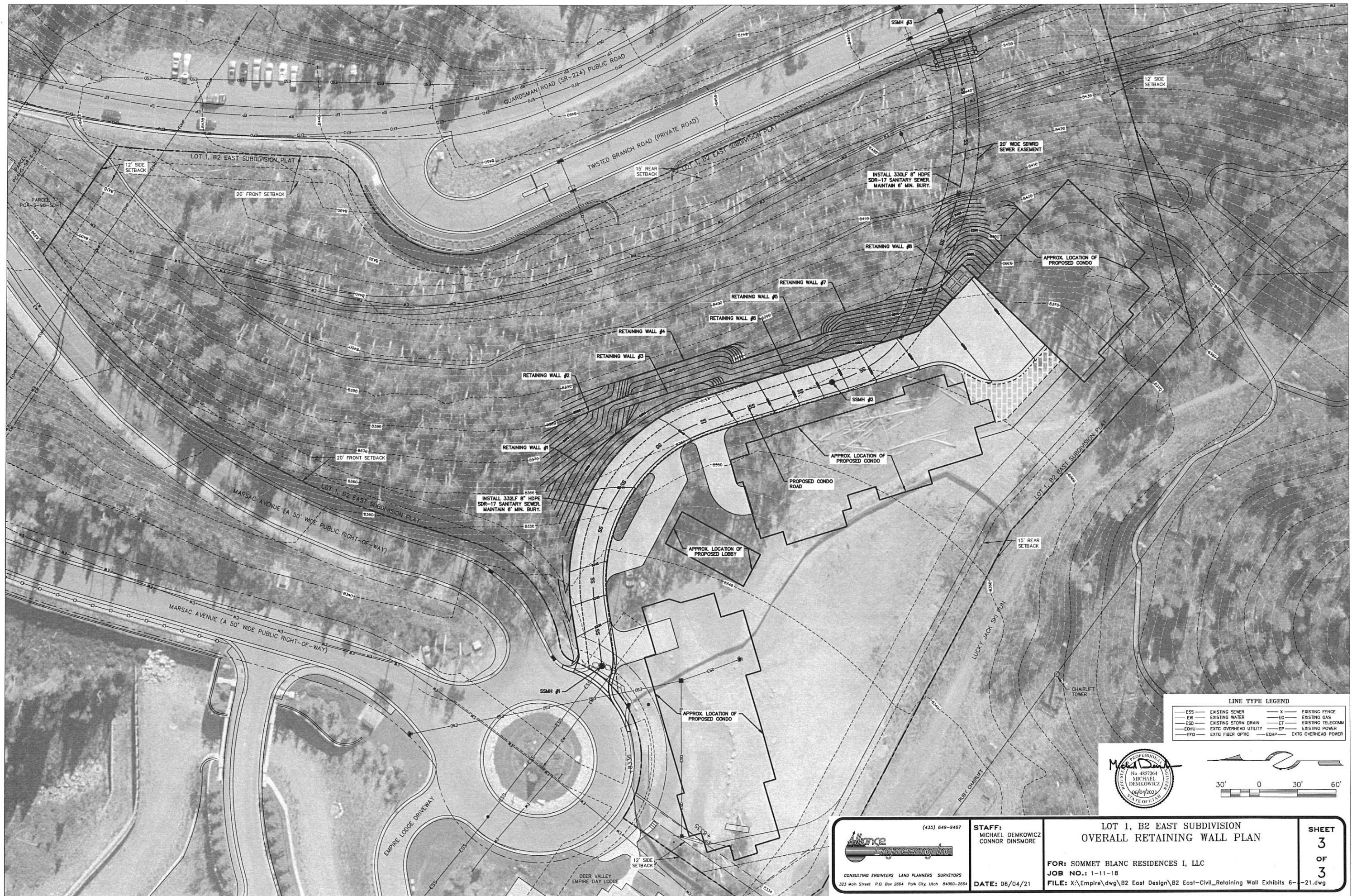
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
MICHAEL DEMKOWICZ
CONOR DINSMORE
STAFF:
(432) 643-9467

DATE: 06/04/21
JOB NO.: 1-11-18
FOR: SOMMET BLANC RESIDENCES I, LLC
MICHAEL DEMKOWICZ
CONOR DINSMORE

LOT 1, B2 EAST SUBDIVISION
RETAINING WALL PLAN & PROFILE
FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil-Retaining Wall Exhibits 6-21.dwg

SHEET
2
OF
3





Alliance Engineering Inc.
 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

STAFF:
 MICHAEL DEMKOWICZ
 CONNOR DINSMORE
DATE: 06/04/21

**LOT 1, B2 EAST SUBDIVISION
 OVERALL RETAINING WALL PLAN**
FOR: SOMMET BLANC RESIDENCES I, LLC
JOB NO.: 1-11-18
FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil_Retaining Wall Exhibits 6--21.dwg

**SHEET
 3
 OF
 3**



PLANNING DEPARTMENT

December 6, 2019

Lynn Padan, Sommet Blanc Residences I, LLC
P.O. Box 980022
Park City, UT 84098

NOTICE OF PLANNING DEPARTMENT ACTION

<u>Project Name:</u>	Sommet Blanc Residences (B2 East) Temporary Sales Trailer
<u>Project Address:</u>	9300 Marsac Avenue
<u>Zoning:</u>	Residential Development (RD) Zoning District
<u>Proposed Use:</u>	Temporary Improvement
<u>Project Description:</u>	Administrative Conditional Use Permit for a Temporary Sales Trailer for the duration of one (1) year, expiring on December 6, 2020.

Action Taken By Planning Department: An Administrative Conditional Use Permit was granted based upon the following:

Findings of Fact:

1. The project is located at 9300 Marsac Avenue on Lot 1 of B2 East.
2. The zoning is Residential Development (RD), part of the Village at Empire Pass MPD (RD-MPD).
3. Temporary Improvements are an Administrative Conditional Use in the RD zone.
4. The property uses adjacent to the proposed project are recreational skiing and residential lodge, and restaurant.
5. The applicant is proposing a Temporary Sales Trailer on the property.
6. The applicant intends to submit a future Conditional Use Permit for a 20-unit residential project on the site (49,000 sf) in December of 2019. The 20-unit residential project will be known as Sommet Blanc Residences. This proposed Temporary Sales Trailer would be for the sale of the units within Sommet Blanc and would be staffed by a licensed Realtor. The Sales Trailer will comply with ADA requirements, contain sanitary facilities, and be connected to water and electricity.
7. The applicant will install an asphalt driveway and asphalt parking area with one (1) ADA Parking Space and 33 Parking Spaces for continued use by Deer Valley Resort under the existing CUP for the Empire Day Lodge. Parking shall not be used for skier parking unrelated to direct use of the Empire Day Lodge.
8. The Temporary Sales Trailer shall not have a height greater than sixteen feet (16') measured from Final Grade.
9. All underlying Zoning Requirements shall be met and confirmed upon submittal of a Building Permit for the proposed Structure and site improvements.
10. A separate sign application shall be required if the temporary structure desires any signage.
11. The temporary sales structure has been reviewed and received approval from the Empire

Pass Design Review Board.

12. The Temporary Sales Trailer will require a Building Permit.

Conclusions of Law:

1. The application is consistent with requirements of the Park City Municipal Code, specifically Chapter 15, Section 1-10.
2. The Use is consistent with the Park City General Plan and is a Temporary Use allowed by an Administrative Conditional Use Permit.
3. The Use is compatible with surrounding structures in terms of scale, mass, and circulation.
4. The effects of any differences in use and scale have been mitigated through careful planning.

Conditions of Approval:

1. The Administrative Conditional Use Permit is valid for one (1) year. The Applicant must request an extension in writing by December 6, 2020.
2. All lighting shall comply with the Park City Land Management and Municipal Codes.
3. The Building Official reviews extension requests for temporary structures and requires an annual inspection prior to approval.
4. No changes to the exterior of the approved temporary structures are permitted.
5. All building plans must meet the satisfaction of the Chief Building Official for year around use.
6. The Park City Water Department will not accept a temporary Water Service. As a part of the Building Permit submittal for the Temporary Sales Trailer, the proposed permanent Water Service shall be identified. How the permanent Water Service will be utilized once the Temporary Sales Trailer use is no longer needed shall also be identified. The proposed Use shall connect to the existing water line near the existing Montage Structure. All water service plans shall be submitted with the Building Permit.
7. Prior to Building Permit issuance, record of approval by the Health Department for the proposed sewage holding tank shall be provided to the Building Department.
8. The Engineering Department will require that not more than one (1) vehicular entrance to be in use at any time on this property. Coordination will be required as plans are developed for the proposed Sommet Blanc Residences, including the Construction Management Plan.
9. Applicant shall contact the Utah Department of Transportation to determine if an Access Permit is needed for this property.

Sincerely,

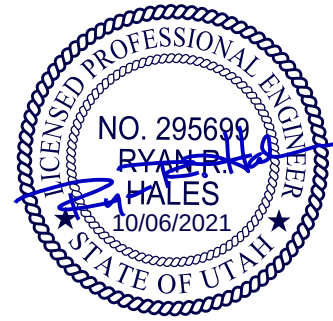


Hannah M. Tyler, AICP
Senior Planner
Park City Planning Department

CC: Bruce M. Erickson, AICP
Planning Director
Park City Planning Department

MEMORANDUM

Date: October 6, 2021
To: Doug Ogilvy
From: Hales Engineering



Subject: Park City Sommet Blanc Trip Generation Study

UT21-2024

This memorandum discusses the trip generation study completed for the proposed Sommet Blanc project Park City, Utah. A vicinity map of the proposed development is shown in Figure 1.

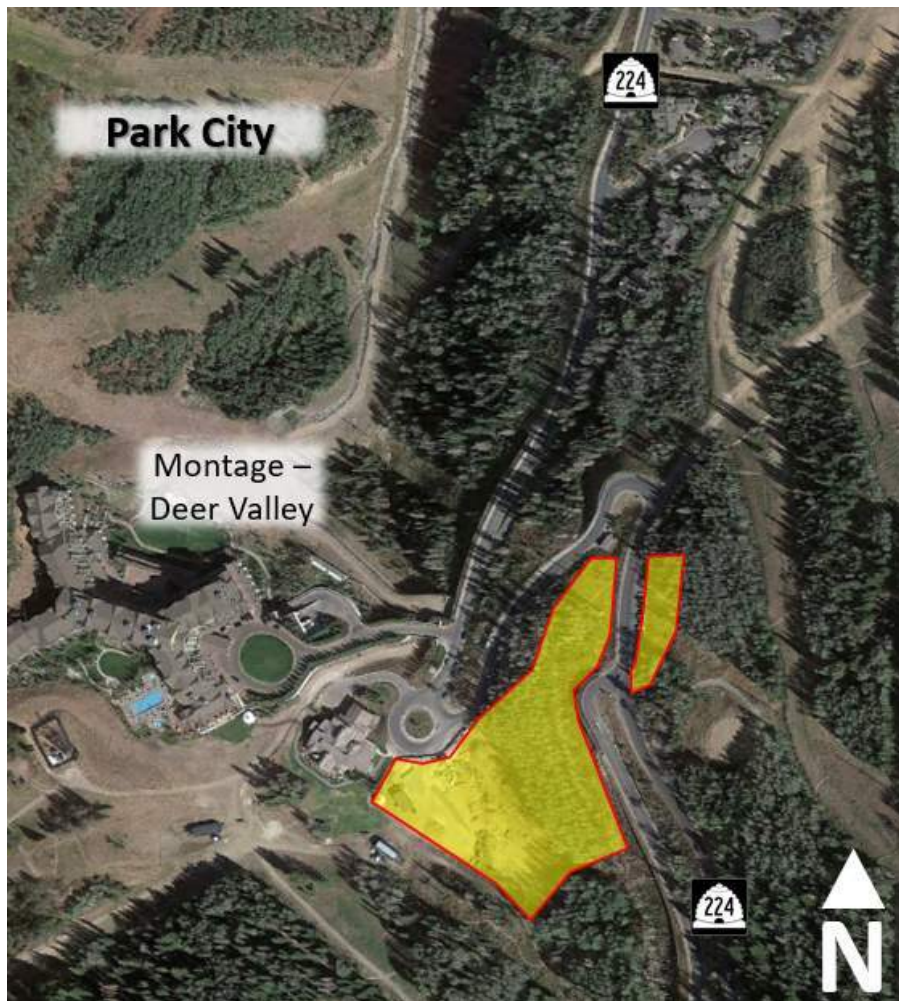


Figure 1: Vicinity map of the proposed development in Park City, Utah

Background

The proposed Sommet Blanc development is located on along SR-224 near the Montage Hotel at Deer Valley Resort in Park City. The project includes 47 residential condominium units, with an additional 6 affordable units for a total of 53 units, and a 3,600 sq. ft. restaurant. Access to the project will be gained at two points along SR-224. The project will also reconstruct the adjacent Mid Mountain Trail parking lot to improve safety. A site plan for the proposed development is included in Appendix A.

The proposed land use for the development has been identified as follows:

- Multi-family Housing (Low-rise) 47 units
- Affordable Multi-family Units (Low-rise) 6 units
- Fine Dining 3,600 sq. ft.

Trip Generation

Trip generation for the development was calculated using trip generation rates published in the Institute of Transportation Engineers (ITE) *Trip Generation (10th Edition, 2017)*. Trip generation for the proposed project is included in Table 1.

As shown in Table 1, it is anticipated that the proposed condominiums and restaurant will generate approximately 442 trips on an average weekday, including 28 trips during the morning peak hour, and 48 trips during the evening peak hour.

Table 1: Trip Generation for Updated Site Plan

Trip Generation Park City - Sommet Blanc											
Weekday Daily Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Reductions	New Trips Entering	New Trips Exiting	Total New Daily Trips
Multifamily Housing (Low-Rise) (220)	47	Dwelling Units	316	50%	50%	158	158	0%	158	158	316
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	6	50%	50%	3	3	0%	3	3	6
Quality Restuaruant (931)	3.6	1,000 Sq. Ft. GFA	302	50%	50%	151	151	60%	60	60	120
Total			624			312	312		221	221	442
Morning Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Reductions	New Trips Entering	New Trips Exiting	Total New AM Trips
Multifamily Housing (Low-Rise) (220)	47	Dwelling Units	24	23%	77%	6	18	0%	6	18	24
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	4	23%	77%	1	3	0%	1	3	4
Quality Restuaruant (931)	3.6	1,000 Sq. Ft. GFA	3	50%	50%	2	1	100%	0	0	0
Total			31			9	22		7	21	28
Evening Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Reductions	New Trips Entering	New Trips Exiting	Total New PM Trips
Multifamily Housing (Low-Rise) (220)	47	Dwelling Units	31	63%	37%	20	11	0%	20	11	31
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	5	63%	37%	3	2	0%	3	2	5
Quality Restuaruant (931)	3.6	1,000 Sq. Ft. GFA	29	67%	33%	19	10	60%	8	4	12
Total			65			42	23		31	17	48

1. Land Use Code from the Institute of Transportation Engineers (ITE) *Trip Generation*, 10th Edition, 2017.

SOURCE: Hales Engineering, October 2021

It is important to note that the owner anticipates the restaurant usage will be 100% internal in the morning peak hour. For the evening peak, it is anticipated that 30% of restaurant usage will be generated on-site, 30% from the Empire Pass shuttle, and 40% from outside users. With the anticipated usage, the internal and shuttle users would not be contributing to the new trips generated. Therefore, the total new evening peak hour trips generated would be reduced from 65 to 48.

Comparison to Previous Site Plan

Changes have been made to the Sommet Blanc development since the original 2007 site plan. The original plan included 81 residential condominiums plus an additional 6 affordable units for a total of 87 units and no on-site restaurant. The original trip generation is included in Table 2.

The original site plan included the following land uses:

- Multi-family Housing (Low-rise) 81 units
- Affordable Multi-family Units (Low-rise) 6 units

Table 2: Trip Generation for Previous Site Plan

Trip Generation Park City - Sommet Blanc										
Weekday Daily Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	New Trips Entering	New Trips Exiting	Total New Daily Trips
Multifamily Housing (Low-Rise) (220)	81	Dwelling Units	572	50%	50%	286	286	286	286	572
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	6	50%	50%	3	3	3	3	6
Total			578			289	289	289	289	578
Morning Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	New Trips Entering	New Trips Exiting	Total New AM Trips
Multifamily Housing (Low-Rise) (220)	81	Dwelling Units	40	23%	77%	9	31	9	31	40
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	4	23%	77%	1	3	1	3	4
Total			44			10	34	10	34	44
Evening Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	New Trips Entering	New Trips Exiting	Total New PM Trips
Multifamily Housing (Low-Rise) (220)	81	Dwelling Units	49	63%	37%	31	18	31	18	49
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	5	63%	37%	3	2	3	2	5
Total			54			34	20	34	20	54

1. Land Use Code from the Institute of Transportation Engineers (ITE) Trip Generation, 10th Edition, 2017.

SOURCE: Hales Engineering, October 2021

Safety Improvements

The Mid Mountain Trail parking currently has 25 stalls and is accessed directly on SR-224 with vehicles backing out directly onto the roadway. The proposed plan will reconstruct the parking lot with one-way traffic flow and a guard rail separating the parking lot from SR-224. This will reduce conflict points and eliminate the backing of vehicles directly onto SR-224.

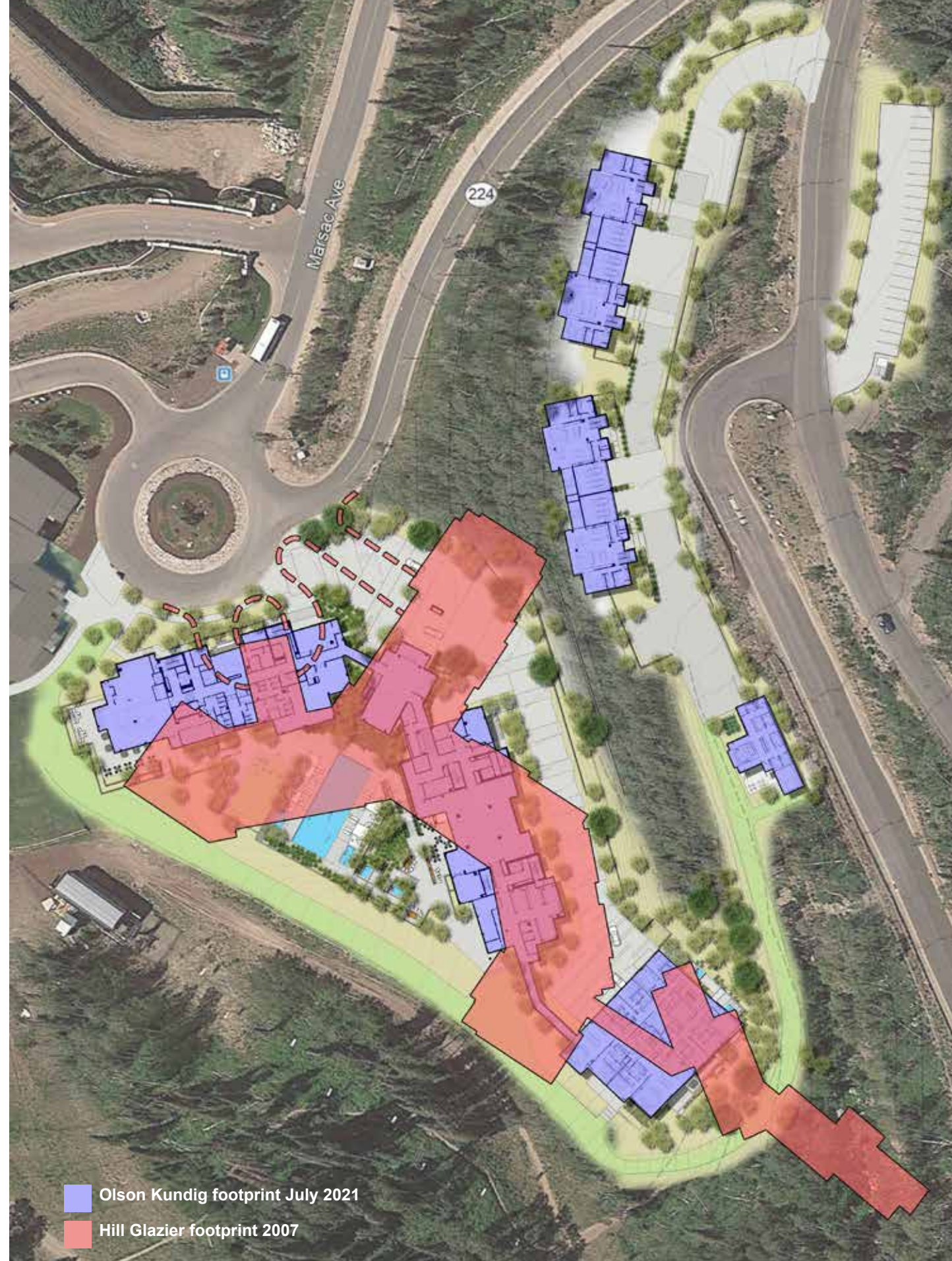
Conclusions

The findings of this study are as follows:

- The proposed development includes 47 residential condominiums with 6 affordable units.
- It is anticipated that the proposed project will generate approximately 442 trips on an average weekday, including 28 trips during the morning peak hour, and 48 trips during the evening peak hour. The owner anticipates internal and shuttle riders to account for the majority of patrons at the restaurant. This will reduce the total number of trips generated. These are the trips that will use the project access points.
- With the anticipated patronage, the morning peak hour trips generated will be reduced by 36% under the new plan, the evening peak hour trips generated will be reduced by 11%, and the daily trips will be reduced by 24%.
- The Mid Mountain Trail parking will be reconstructed to improve safety by eliminating the 90-degree parking and the side friction created by those turning in and backing out of the stalls. The new trail parking will be accessible via a driveway and a parking lot on the northeast side of the road, see site plan in Appendix A.

APPENDIX A

Site Plan



Preliminary Construction Mitigation Plan

Empire Pass Pod B2E – Sommet Blanc & Alpine Villas

1. **Hours of Operation:**

Typical hours of construction operations are 7:00am to 6:00pm, Monday through Friday, 8:00am to 6:00pm on Saturday, and no work on Sundays. With this structure being primarily cast in place concrete, occasional longer work hours may be needed for critical concrete placements. Contractor will notify the neighboring residents and Park City Building Department, if wanted, ahead of time of these concrete placement durations.

2. **Parking:**

There is limited onsite parking. This will be reserved for visitors and construction project management personnel. All other construction workers shall park off site and be bused to and from the construction site. The worker parking location is TBD, but could be near the Mine Bench or Richardson Flat. The parking plan assumes there is no on street parking on Marsac Avenue, Twisted Branch Road, or Guardsman Pass Road. Construction equipment, (fork lifts, cranes, backhoes, etc.) is not permitted to be driven or parked on public parking lots, city streets or private property unless otherwise approved.

3. **Deliveries:**

Deliveries to the site will be only during construction operation hours. Typically, deliveries will be just-in-time for the materials to be incorporated into the ongoing construction progress.

4. **Stockpiling and Staging:**

Given the site location, access, and building footprint coverage of the site, there is limited area for stockpiling and staging materials. Materials will have to be delivered to the project just-in-time to incorporate into the construction work. This means and method is similar to building a multistory building in a downtown urban setting. It is the contractor's responsibility to coordinate with subcontractors to minimize problems due to the limited staging and stockpiling areas.

5. **Construction Phasing:**

No construction phasing is planned. Construction is planned to be completed in one continuous time period from Summer 2021 through Summer 2024.

6. **Trash Management & Recycling:**

The construction debris dumpster shall be located within the fenced construction boundary. Its remaining capacity will be monitored daily and the dumpster emptied on a regular basis to prevent over flowing and accumulation of debris around the construction site.

7. **Dust & Mud Control:**

The project site has two distinct access points. The Villas will be constructed from an access point on Marsac Avenue above the property. The Lodges will be constructed from access off the Marsac roundabout. Both project access points will be improved as stabilized gravel construction entries to help eliminate dirt and mud from being tracked onto the paved street. Streets will be monitored daily and cleaned as needed to keep them free of dirt and mud. The majority of excavation work will take place in the summer and fall. This work is not expected to generate much dust, but a water source will be available to keep dust down as needed.

8. **Noise:**

Noisy work shall be kept within the approved project work hours. The developer and contractor will coordinate with Deer Valley to mitigate impact on special events at the Empire Day Lodge.

9. **Grading & Excavation:**

The mass excavation for this project will generate several thousand cubic yards of export. Excavated materials will be dispersed at the tipping sites identified in the 2018 Amendment to the Flagstaff Construction Mitigation Plan. Other than organics, no excavated material will be hauled outside of the Flagstaff Mountain Development boundary. The planned haul route utilizes Marsac Avenue. Flagmen will be used as required at the roundabout on Marsac Avenue to help manage the truck traffic. The haul hours will be limited to between 7:00am and 6:00pm Monday through Friday and 8:00am to 6:00pm on Saturday. All suitable soils to be re-used for backfill will be stockpiled on site or at one of the designated tipping sites.

10. **Temporary Lighting:**

Exterior construction lighting will be kept as minimal as possible. The lighting will be turned off as much as possible during non-work hours. Occasional temporary lighting will be needed for morning concrete placements. This lighting will be accomplished by using portable light plants that are set up only for a specific concrete placement, then moved off site. Temporary interior lighting will be used during construction work hours and turned off to leave a minimal amount of lighting for egress and emergency access.

11. **Construction Sign:**

Project information signs will be posted at the upper and lower entrances to the construction site. Signs will comply with Empire Pass and PCMC requirements. No other construction signs are planned.

12. **Other issues:**

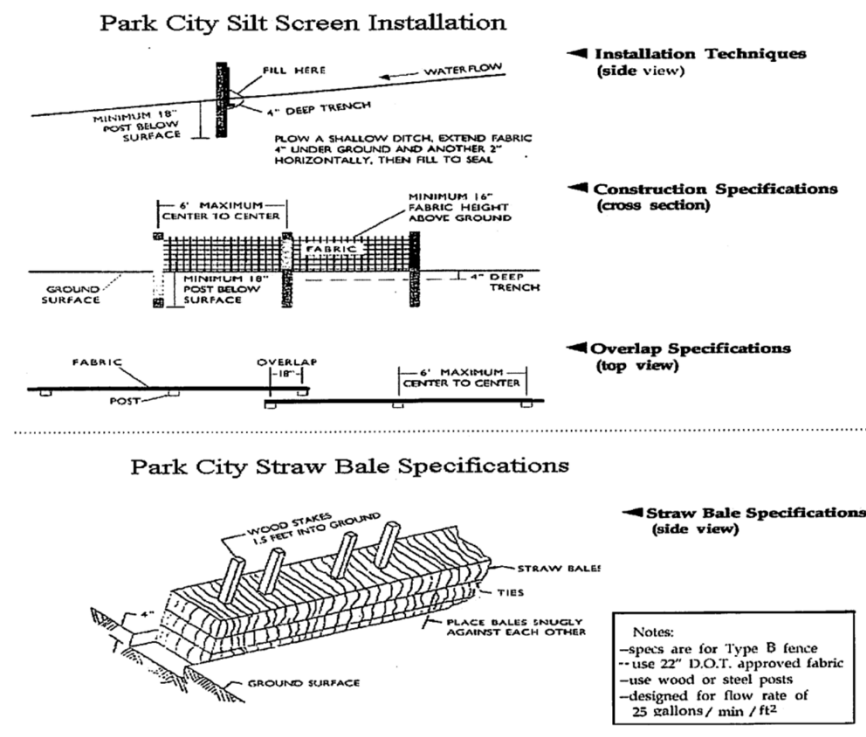
Dogs or pets are not allowed on site. Firearms, alcohol, and drugs are prohibited as well. Visitors must check in at the construction project office and be authorized to be on site with the proper personal protective equipment (hard hat, safety vest, safety glasses, etc.).

13. **Soils Ordinance:**

Under EPA oversight, the property was subject to three years of environmental clean-up including extensive export of contaminated soil. The property received a Notice of Completion from the EPA in August 2018 following removal of contaminated soil down to clean native soil.

14. **Erosion Control:**

The contractor is enlisting the services of Alliance Engineering to help draft and maintain a SWPPP and erosion control program throughout the project duration. This plan will be submitted prior to start of construction. Cut and fill areas and utility trenches will be backfilled and revegetated as soon as practical to help minimize erosion.



01097590 B: 2477 P: 0084

Page 1 of 7

Rhonda Francis Summit County Recorder

08/30/2018 02:23:54 PM Fee \$22.00

By Snell & Wilmer LLP

Electronically Recorded

WHEN RECORDED, RETURN TO:

SNELL & WILMER L.L.P.

Attn: Wade R. Budge

15 West South Temple, Suite 1200

Salt Lake City, UT 84101

Affects Summit County Parcel Nos:

Part of PCA-S-98-SD-1

B2EAST-1

DECLARATION OF ACCESS EASEMENT

[TBR – B2 East]

THIS DECLARATION OF ACCESS EASEMENT (“Declaration”) is made as of the 28th day of AUGUST, 2018 (the “Effective Date”), by **REDUS PARK CITY LLC**, a Delaware limited liability company (“Declarant”).

A. Declarant owns certain real property located in Summit County, State of Utah, commonly referred to as “B2 East” and more particularly described on Exhibit A attached hereto (“Benefitted Property”).

B. Declarant owns certain additional real property located in Summit County, State of Utah, more particularly described on Exhibit B and depicted as “Access Easement” on Exhibit C attached hereto (the “Burdened Property”).

C. In advance of transferring the Benefitted Property to a third party, Declarant desires to grant and establish a non-exclusive easement in order to provide pedestrian and vehicular access to and from the Benefitted Property, over the Burdened Property.

NOW, THEREFORE, Declarant executes, and shall cause to be recorded, this Declaration, subject to the following terms, conditions, and provisions:

1. **Access Easement.** Declarant hereby conveys, declares and grants a perpetual, non-exclusive, and continuous easement and right-of-way (the “Easement”), for the benefit of and appurtenant to the Benefitted Property, over the Burdened Property for the purposes of providing vehicular and pedestrian ingress and egress to and from the Benefitted Property. Any party utilizing the benefits conferred by the Easement shall be responsible to pay all costs of relocating existing facilities.

2. **Access Gate; Use.** An access gate to Twisted Branch Road (“TBR Gate”) is located on the Burdened Property. Provided that the Benefitted Property Owner [defined below] is not in default in its obligations under this Declaration, Declarant shall provide Benefitted Property Owner keys or access codes to the TBR Gate. Use of the portion of the Burdened Property located south of the existing TBR Gate shall be limited to access for repair and maintenance purposes only, provided that if Benefitted Property Owner reasonably requires regular vehicular access to the portion of the Burdened Property located south of the TBR Gate, then Benefitted Property Owner may, at its sole cost and expense, and subject to Declarant’s prior written approval, which approval shall not be unreasonably withheld, relocate the TBR Gate to the southernmost portion of the Burdened Property. Notwithstanding anything to the contrary herein, Declarant reserves the right at all times to relocate or reconstruct the TBR Gate at its cost

and expense, provided such relocation or reconstruction does not materially diminish the Easement rights declared hereby.

3. **Personal Easement/Assignability.** The Easement and applicable provisions of this Declaration are personal to the record fee owner of the Benefitted Property ("**Benefitted Property Owner**"), and may not be assigned or transferred to another party without the written consent of Declarant, or its successor or assign.

4. **Term of Easement.** The Easement shall remain effective so long as the Easement is being utilized by the Benefitted Property Owner for access to the Benefitted Property.

5. **No Interference; Use.** Except to the extent reasonably necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate (other than the existing TBR Gate, which may be relocated or reconstructed as set forth in Section 2 above), wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the Easement shall be constructed or erected, nor shall any party in any other manner obstruct or interfere with the use of such right-of-way and Easement. For the avoidance of doubt, notwithstanding anything to the contrary herein, Declarant may maintain, or cause to be maintained, gates on or leading to the Burdened Property without violating the provisions of this Declaration. Provided that the Benefitted Property Owner is not in default in its obligations under this Declaration, Declarant shall provide keys or access codes to the Benefitted Property Owner for any such gate(s) leading to or located on the Burdened Property.

6. **Indemnification.** For purposes of this Agreement, "**Permittees**" shall mean Declarant's and Benefitted Property Owner's respective successors and assigns, tenants, subtenants, and licensees, and their respective agents, invitees, members, customers, employees, and contractors. Declarant and Benefitted Property Owner shall indemnify, defend, and hold harmless each other, and their affiliates, members, managers, agents, tenants, and representatives for, from, and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of injury to persons, loss of life, or damage to property resulting from the negligent or willful act or omission of the indemnifying party or its Permittees, arising out of the performance of any of the obligations set forth in this Declaration or the indemnifying party's or its Permittees' use of the Burdened Property, except to the extent such claims are due solely to the gross negligence or willful act or omission of the other party or its Permittees.

7. **Rights Run With The Land.** Subject to the terms hereof, including Section 2, all provisions of this Declaration, including the benefits and burdens, shall run with the land and are binding upon and shall inure to the benefit of the respective successors and assigns of Declarant and Benefitted Property Owner. If the Benefitted Property is hereafter further divided by further subdivision, lot split, separation of ownership or by lease or other means, all parts shall enjoy the benefit of the Easement hereby created. Any transferee of all or any part of the Benefitted Property or the Burdened Property shall automatically be deemed, by acceptance of title to or the applicable interest in such portion of such property, to have assumed all rights and obligations of this Declaration relating thereto.

8. **No Public Dedication/No Third Party Beneficiaries.** The provisions of this Declaration are not intended to and do not constitute a dedication for public use of the Easement, and the rights herein created are for private use of Benefitted Property Owner and its Permittees, and no other. This Declaration is not intended to confer benefits on any other party.

9. **Miscellaneous.** If any term, provision or condition contained in this Declaration shall to any extent be deemed invalid or unenforceable, the remainder of the Declaration shall not be affected thereby, and each remaining term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law. This Declaration shall be governed by the laws of the State of Utah, without giving effect to its conflict of laws principles. All references in this Declaration to exhibits shall, unless otherwise expressly provided, be deemed to be references to the exhibits attached to this Declaration. All such exhibits attached hereto are incorporated into this Declaration as though fully set forth herein. No modification, waiver, or amendment of any provision of this Declaration shall be made except by a written instrument signed by the Benefitted Property Owner, or its successor-in-title, and the owner of the Burdened Property, or its successors or assigns, and recorded in the office of the Summit County Recorder.

[Signatures and Acknowledgements Follow]

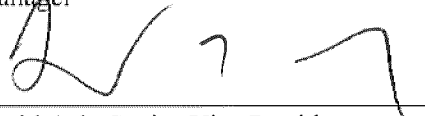
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

DECLARANT:

REDUS Park City LLC,
a Delaware liability company

By: REDUS Properties, Inc.,
a Delaware corporation

Its: Manager

By: 
David Ash, Senior Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

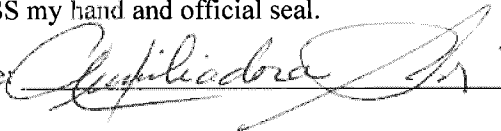
STATE OF CALIFORNIA)
COUNTY OF San Francisco)

On August 28, 2018 before me, Auxiliadora Rios, Notary Public personally appeared **David Ash**, Senior Vice President of REDUS PROPERTIES, INC., a Delaware corporation, as manager of REDUS PARK CITY LLC, a Delaware limited liability company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

 (Seal)

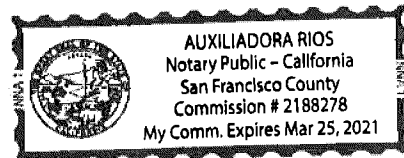


EXHIBIT A
[Legal Description of the Benefitted Property]

Lot 1, B2 East Subdivision, according to the official plat filed March 7, 2018, as Entry No. 1087538 in the office of the Summit County Recorder.

Tax Serial No. B2EAST-1
(Formerly Part of Tax Serial No. PCA-S-98-GG-1)

EXHIBIT B
[Legal Description of the Burdened Property]

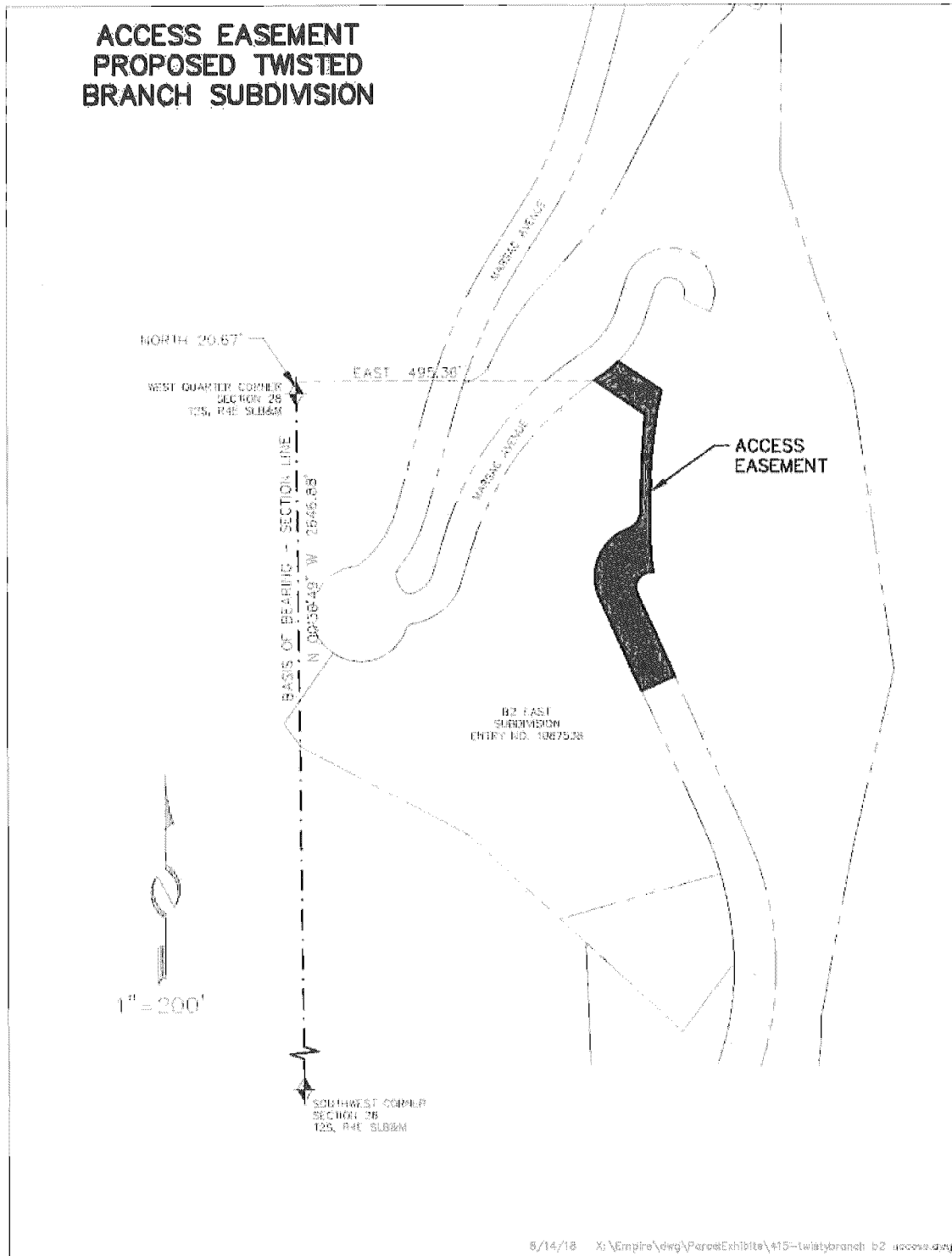
A parcel of land located in the west half of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being described as follows:

Beginning at a point that is North 20.67 feet and East 495.36 feet from the west quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point being on the boundary of Marsac Avenue Right Of Way, recorded June 28, 2002, as Entry No. 623451 in the Office of the Recorder, Summit County, Utah; and running thence coincident with said Marsac Avenue Right Of Way the following two (2) courses: 1) North 55°33'45" East 12.79 feet to a point on a curve to the left having a radius of 190.00 feet, of which the radius point bears North 34°26'15" West; thence 2) along the arc of said curve 37.54 feet through a central angle of 11°19'17" to a point on that certain Special Warranty Deed, recorded March 19, 2004, as Entry No. 692324 in the Office of the Recorder, Summit County, Utah; thence coincident with said Special Warranty Deed South 55°36'17" East 64.83 feet; thence continuing South 55°36'17" East 20.36 feet to a point on the edge of existing State Road 224, also known as Marsac Avenue, said point being on a non tangent curve to the left having a radius of 792.26 feet, of which the radius point bears South 77°40'42" East; thence coincident with the edge of State Road 224 the following three (3) courses: 1) southerly along the arc of said curve 170.54 feet through a central angle of 12°19'59"; thence 2) South 00°00'41" East 82.64 feet to a point on a curve to the left having a radius of 299.13 feet, of which the radius point bears North 89°59'19" East; thence 3) along the arc of said curve 50.91 feet through a central angle of 09°45'02"; thence South 81°43'09" West 6.62 feet to a point on a curve to the left having a radius of 25.00 feet, of which the radius point bears South 08°16'51" East; thence along the arc of said curve 46.15 feet through a central angle of 105°45'58"; thence South 24°02'49" East 151.13 feet; thence South 65°57'11" West 60.00 feet to a point on the easterly boundary of B2 East Subdivision, recorded March 7, 2018, as Entry No. 1087538 in the Office of the Recorder, Summit County, Utah; thence coincident with said B2 East Subdivision the following six (6) courses: 1) North 24°02'49" West 169.88 feet to a point on a curve to the right having a radius of 85.00 feet, of which the radius point bears North 65°57'11" East; thence 2) along the arc of said curve 139.33 feet through a central angle of 93°54'58" to a point on a reverse curve to the left having a radius of 30.00 feet, of which the radius point bears North 20°07'52" West; thence 3) northeasterly along the arc of said curve 35.43 feet through a central angle of 67°39'38"; thence 4) North 02°12'30" East 119.72 feet to a point on a curve to the right having a radius of 525.00 feet, of which the radius point bears South 87°47'30" East; thence 5) along the arc of said curve 44.31 feet through a central angle of 04°50'10"; thence 6) North 55°36'18" West 101.33 feet to the point of beginning.

Description contains 0.59 acres.

The Basis of Bearing for the above description is North 00°30'49" West 2646.88 feet between the southwest corner and the west quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

EXHIBIT C
[Depiction of the Burdened Property]







GENERAL INFORMATION

Issuance Date	Region	Project Name	OLP Application ID
12/17/2020	Region 2	B2 East Development	109246
Physical Address	City	Permit Type	Access Use Type
9300 Marsac Avenue	PARK CITY	New	Residential

PERMITEE INFORMATION

Property Owner Name	Primary Contact	Primary Phone	Email
Sommet Blanc Residences I, LLC.	Michael Demkowicz	(435) 649-9467	michael@alliance-engr.com

LOCATION, WIDTH, AND ACCESS CATEGORY INFORMATION

State Route	Milepost Marker	DD Center Latitude	DD Center Longitude	Access Width	Access Category
0224	1.12			30	7 - Community Rural

A Conditional Access Permit is hereby authorized subject to the Utah Department of Transportation's (the Department's) Access Management Rule (Utah Administrative Code R-930-6), the Utility Accommodation Rule (Utah Administrative Code R930-7), the Standard Specifications for Road and Bridge Construction, and any terms, conditions, and limitations set forth herein. Per Utah Administrative Code R930-6-8(6)(g), a Conditional Access Permit shall expire if the access construction is not completed within twelve (12) months of the issuance date as identified at the top left of this document.

By carrying out the activities authorized by this approval the permittee and the permittee's successors in interests and/or assigns agree to accept all terms, conditions, and, limitations, of the approval including any attachments submitted with the Conditional Access Permit Application. In addition, the permittee certifies they will comply with all applicable regulations, properly control and warn the public of said work to prevent accident, and shall defend, indemnify and hold harmless the Department from all damages arising out of any and all operations performed during construction and operation of said access. Per Utah Administrative Code R930-6-8(5)(e), the permittee understands any intentional misrepresentation of existing or future conditions or of information requested for the application for the purposes of receiving a more favorable determination is sufficient grounds for permit revocation. The access allowed under this permit creates a license to only access a state highway to the extent provided in the permit. The access may be closed, modified or relocated by UDOT if, at any time, UDOT determines in its sole discretion that safety, efficiency or other reasons so require. UDOT will not be liable for any costs, losses or damages resulting from UDOT's review and comments on the submitted plan sets for a Conditional Access Permit.

This conditional access permit does NOT allow construction or other activities within a state right-of-way. An encroachment permit must be separately applied for and issued before any construction within a state right-of-way may commence. Work on UDOT's right-of-way is seasonally restricted from October 15 to April 15. Work is not allowed on the right-of-way during the AM/PM peak traffic hours of 6:00 A.M. to 9:00 A.M. and 3:30 P.M. to 6:00 P.M. Some exceptions to this A.M./P.M. peak travel work restriction may be permissible for low AADT routes in rural areas. Any such exception requires special Region approval and must be explicitly stated on the approved encroachment permit.

Authorizing Name (printed)	Nazee Treweek	Authorizing Name (signed)	
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TERMS, CONDITIONS, AND LIMITATIONS

Special Limitations: Any safety issues that may arise due to this access will bring this access up for review by UDOT.

1. A copy of this permit must be posted in a conspicuous location and be available for immediate review at the location of the permitted activity. No exceptions.
2. This agreement and/or permit is UDOT approval only. The permittee is responsible for obtaining clearances, authorizations, or permits from railroads, private property owners, other utility owners, and other government agencies as may also be required.
3. By the accepting this permit, the permittee acknowledges the hazardous nature of conducting activities within the right-of-way and assumes full responsibility in the event of an accident or other incident involving death, injury, or damages to any party resulting from the permittee's authorized use of the right-of-way.
4. All work performed under this permit must be in accordance with UDOT approved plans and standard drawings unless otherwise stated in writing.
5. The primary function of the highway is for transportation purposes. All other highway purposes are subordinate to this primary purpose. By conducting the activities authorized by this permit, the permittee agrees to timely prosecute the permitted activities in a manner that minimizes transportation-related impacts including but not limited to; ensuring overall site safety as an overarching priority, and by applying systematic efforts to minimize, or shorten, the project schedule.
6. UDOT may cancel, suspend, or revoke this permit due to:
 - A) Non-compliance with the permit provisions including terms, conditions, and limitations
 - B) Deviating from the approved permit provisions without written authorization



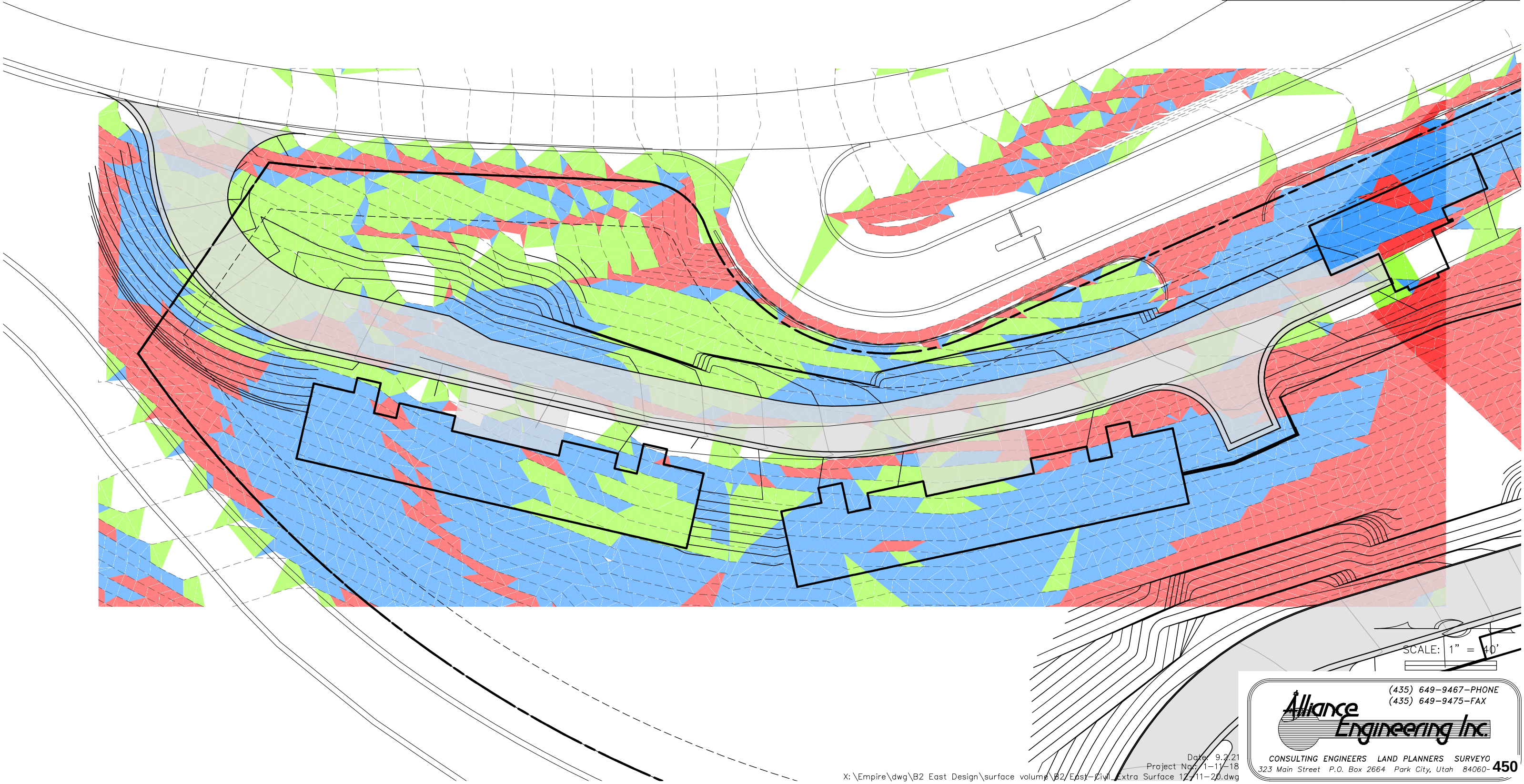
- C) Misrepresentation(s) discovered on the originating application, or associated documents
- D) Adverse weather or traffic conditions
- E) Concurrent transportation construction or maintenance operations in conflict with the permit
- F) Any condition deemed unsafe for workers or for the traveling public
- G) Any other condition that arises where work stoppage may be warranted for cause

In the event of a cancellation, suspension, or revocation the permittee shall promptly terminate occupancy of the right-of-way.

7. At all times the permittee and all activities authorized under this permit will comply with all applicable federal and state constitutions, law, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
8. Use current edition of UDOT standard drawings for traffic control. Use Utah MUTCD standards for traffic control elements not shown in UDOT standard drawings. Traffic control must be maintained at the encroachment site for the entire encroachment period.
9. Before constructing the access connection authorized by this conditional access permit, an encroachment permit must be secured first.
10. The permittee agrees to maintain the permitted access in a professional workmanlike manner, free from physical defects including but not limited to potholes or other similar substandard conditions for the life of the permit. The permit holder's maintenance-related responsibilities shall extend to UDOT's edge of asphalt where said permitted access physically connects to UDOT's main traveled way and shall be guaranteed in perpetuity. Failure to properly maintain said private access point shall be grounds for permit revocation and for the closure of the permitted access point.

SOMMET BLANC
SLOPE MAP 'B'

Slopes Table		
Minimum Slope	Maximum Slope	Color
0%	15%	
15%	30%	
30%	40%	
40%	100%	



SCALE: 1" = 40'

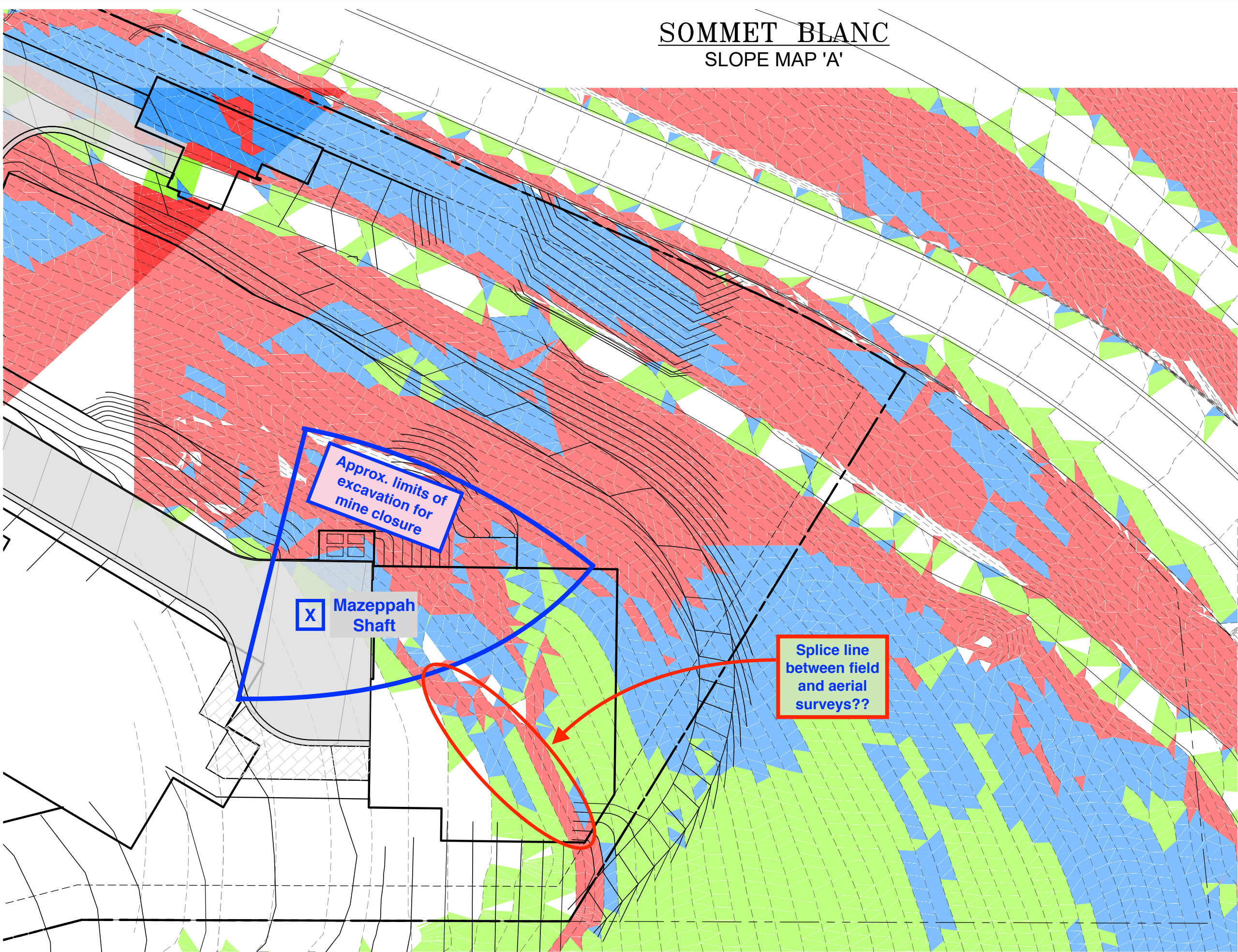
Alliance Engineering Inc.

(435) 649-9467-PHONE
(435) 649-9475-FAX

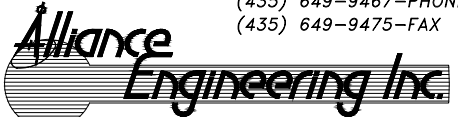
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-450

SOMMET BLANC
SLOPE MAP 'A'

Slopes Table		
Minimum Slope	Maximum Slope	Color
0%	15%	
15%	30%	
30%	40%	
40%	100%	

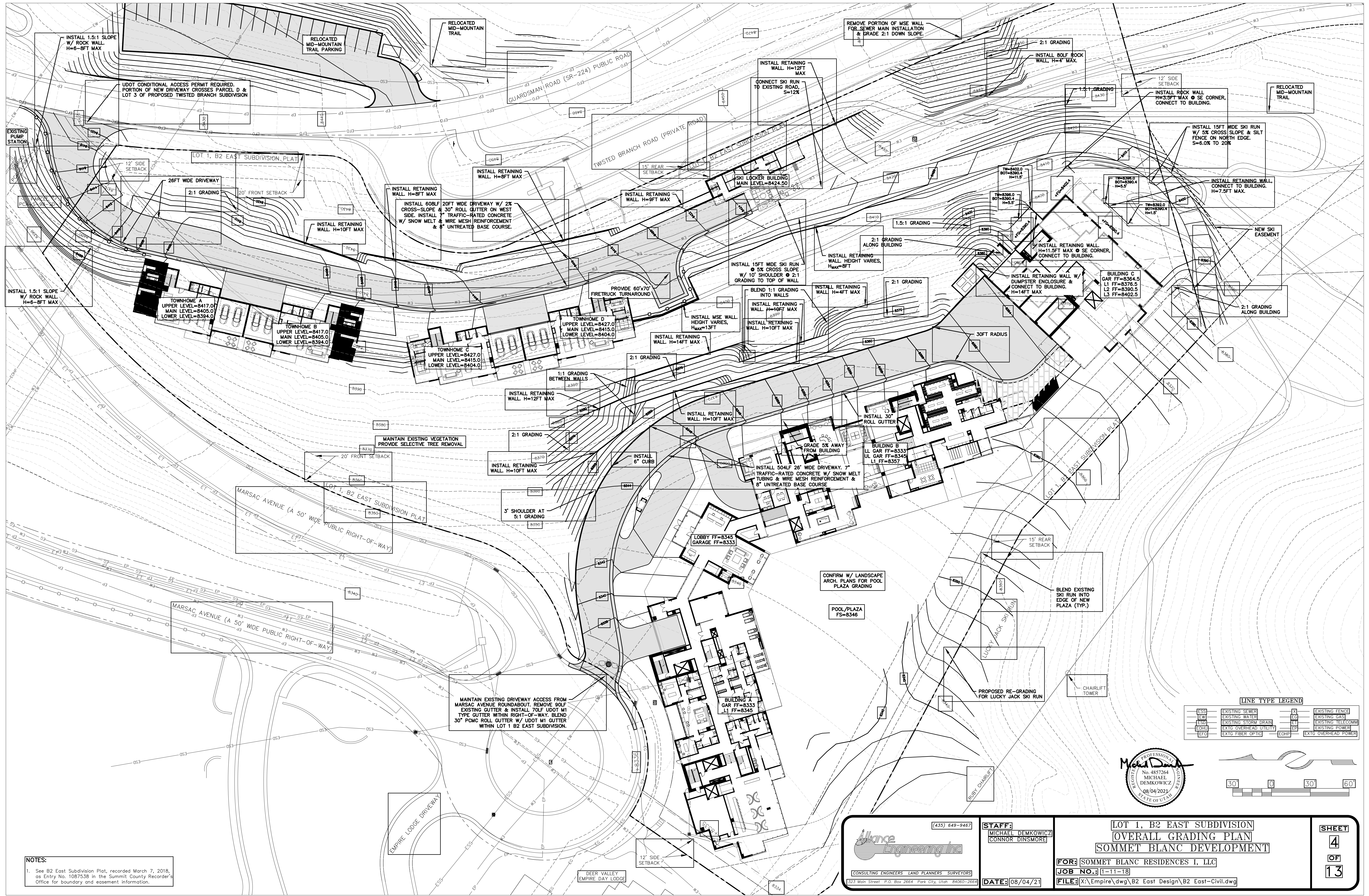


SCALE: 1" = 40'



(435) 649-9467-PHONE
(435) 649-9475-FAX

CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-451



NOTES:
1. See B2 East Subdivision Plot, recorded March 7, 2018, as Entry No. 1087538 in the Summit County Recorder's Office for boundary and easement information.

(435) 649-9467
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS

STAFF:
MICHAEL DEMKOWICZ
CONNOR DINSMORE

DATE: 08/04/21

**LOT 1, B2 EAST SUBDIVISION
OVERALL GRADING PLAN
SOMMET BLANC DEVELOPMENT**

FOR: SOMMET BLANC RESIDENCES I, LLC

JOB NO.: 11-11-18

FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil.dwg

SHEET
4
OF
13

Sommet Blanc

Housing Mitigation Plan

Governing Documents:

The 2018 B2 East Plat includes a requirement for 4.2 Affordable Unit Equivalents (AUEs). The 2007 Flagstaff Development Agreement requires 118.9 AUEs. All off-mountain housing (94.175 AUEs) was satisfied in 2018 with the transfer of the 100 Marsac parcel to Park City Municipal Corporation. At that time, of the 24.725 required on-mountain AUEs, 16.675 AUEs had been completed. The remaining 8.05 AUEs were assigned on the Village at Empire Pass North and B2 East Plats. With the completion of the Argent project, the total AUEs satisfied at Empire Pass will be:

<u>On-Mountain Requirement</u>		<u>24.725 AUEs</u>
On-Mountain Platted (2021)		
Argent (under construction)	2.0	
Empire Residences	1.1	
Talisker Tower Residences (u/c)	0.92	
One Empire Pass	1.125	
Silver Strike Lodge	1.1	
Flagstaff Lodge	1.6	
Arrow Leaf A	2.85	
Grand Lodge	1.2	
Ironwood	1.0	
Montage	<u>7.8</u>	
<u>Completed or Under Construction (2021)</u>		<u>20.695</u>

Total On-Mountain Remaining Requirement:

4.03 AUEs

Proposed AUEs:

In response to Planning Commission comments, the Applicant has revised and increased the on-site Affordable Housing program for the Project. The proposed development now includes eight (8) Affordable Housing Units providing almost 50% more AUEs than the remaining requirement for Empire Pass:

UNIT SCHEDULE - AFFORDABLE				
Number	Name	Area	Type	Unit Type
A 22	BLDG A UNIT 22	1,495 SF	2BR - Affordable	K
B 22	BLDG B UNIT 22	1,495 SF	2BR - Affordable	K
C22	BLDG C UNIT 22	423 SF	Studio - Affordable	Q
C23	BLDG C UNIT 23	424 SF	Studio - Affordable	Q
C24	BLDG C UNIT 24	422 SF	Studio - Affordable	Q
C25	BLDG C UNIT 25	424 SF	Studio - Affordable	Q
GRAND TOTAL: 6		4,683 SF		

AUEs required: 4.03 AUEs

AUEs proposed: 5.9 AUEs (4,683 SF)

Target AMI, Rental Rate, and Prioritization:

Target AMI:

80% Area Median Income

Proposed Rental Rate:

The proposed annual rental rates will be consistent with the standards established by HUD as approved by the Park City Housing Authority on an annual basis. The following table identifies the rental rates for 2021 and this will be updated annually.

2021 Rent Limits									
Family Size ► AMI ▼	One Dorm	One SRO*	One Efficiency/Studio	Two 1-br	Three 2-br	Four 3-br	Five 4-br	Six	
80%	\$ 685	\$ 1,268	\$ 1,691	\$ 1,933	\$ 2,174	\$ 2,416	\$ 2,609	\$ 2,803	

Prioritization:

1st tier: Employees working within Flagstaff Annexation Area

2nd tier: Employees working within Deer Valley MPD Boundaries

3rd tier: Employees working anywhere within City limits

Layout and Development Context:

The following floor plans identify the Affordable Housing units located in Buildings A, B, and C.

BLDG A - L2



BLDG B - L2



BLDG C - L2



Jack Thomas AIA
8716 Parleys Lane
Park City, UT 84098
August 11, 2021

To Whom It May Concern:

Re: Sommet Blanc

I have long been an admiring student of Tom Kundig's work as an architect. His buildings have an innate relationship with their surroundings wherever they are. His massing of buildings on larger projects like Sommet Blanc are carefully placed and stepped through the terrain to reduce the visual impact. While he capitalizes on maximizing the views from within he importantly studies the impact those buildings have from the neighbors' perspectives, as one might see the project from its perimeter. The massing offers shifts and steps in plan but also steps down to adjacent properties in elevation. With flat roofs he avoids the heaviness and additional height of massive sloped roofs.

I believe he has met the intent of the code while creating architecture that is of its moment in time – that is it uses sustainable material in an honest way. To continue to create traditional sloped roof design with heavy timbers and logs has a charm when found on smaller projects in quiet settings. However, we need to step away from this type of construction because it is wasteful of materials and inefficient in terms of heating and cooling. Sloped roofs also create ice damming and snow slides that can injure people, and they require heat tape and snow melt that are a huge waste of energy.

We are not a community that is frozen in time like Brigadoon. We evolve and we change. With a project like Sommet Blanc we can be one that also grows in terms of creativity. I gladly support Kundig's design for this magical site. It is a fitting and appropriate use of this treasured land.

Sincerely,

Jack Thomas AIA

From: [Kevin Lontz](#)
To: [Makena Hawley](#)
Subject: Re: [External] Re: Sommet Blanc Public Comment
Date: Monday, December 13, 2021 4:22:00 PM

Makena:

Thanks for your email. I appreciate your response and the thought that's gone into the parking modifications. I'd seen the engineering draft and took note of the model showing the car + trailer. I might suggest that some or all of the "parallel to road" (west side) parking spots be reserved for trailer use. All it would take is as few as 2 cars parked "strategically" within that 9 space allotment for the entire area to effectively shut down any trailer parking options. I'm not sure I previously mentioned this, but I would encourage no "commercial trailer" parking as has often happened there for trailers looking to service Brighton Estates homes without having gate access.

Sincerely,

Kevin Lontz

On Tue, Dec 7, 2021 at 10:14 AM Makena Hawley <makena.hawley@parkcity.org> wrote:

Hey Kevin,

Regarding your other questions, I was notified that 10 spots will remain 72 hour parking with the rest utilizing signage for no-overnight parking. Enforcement will remain the same. This could always change depending on the necessity but will have to be reviewed at the time if it seems to become more of an issue.

Your last question was regarding how the truck-trailer parking could be difficult. The last renderings I sent you are the most updated, and the engineers at Alliance ran a model of a car pulling a boat to review angles, turn radius and parking. I can send it again if you would like. Unfortunately, I don't think backing in would still work but there are still options for the vehicles pulling a trailer, and I guess the point of this project is to still allow parking options while making the lot safer and improved for public use up by the mid mountain trail.

I hope that gives you some details on the proposal but of course if you have more questions give me a call or an email.

Thanks, Makena

From: Kevin Lontz <kevinlontz@gmail.com>
Sent: Thursday, December 2, 2021 10:03 PM
To: Makena Hawley <makena.hawley@parkcity.org>
Subject: [External] Re: Sommet Blanc Public Comment

[CAUTION] This is an external email.

Makena;

Thanks for your response and i'm glad that PC feels it can be effectively plowed, even if it's not PC maintained and is rather Talisker (though I'm a bit surprised - or at least was unaware - that is the case).

I continue to be interested in my other points raised including the allowance for vehicle + trailer parking in that area as is currently possible in winter following gate closure.

Thanks,

Kevin Lontz

Sent from my iPhone

On Dec 1, 2021, at 3:54 PM, Makena Hawley <makena.hawley@parkcity.org> wrote:

Hi Kevin,

I just wanted to send a note thanking you for your comments regarding the parking lot! It will be apart of the packet in the public comment portion and additionally I wanted to say I appreciate your perspective and also the practicality of the issues you brought up. It helps me try and find practical solutions to practical problems, so the format you presented your points in was super useful.

I'm working on answers to some of your points, I have been able to research the snow plow issues though. I spoke with our Streets department manager Troy Daley and even though the City does not plow that road (apparently Talisker does, who contracts it out) he stated the following (This is regarding the new plans which I attached):

"From what I can see the snow will be pushed from the island and kiosk to the West and North. A snowplow can back up or plow in circles as needed. We don't want to drive against traffic.

I appreciate the island as it will be beneficial for snow storage from the street plowing. All and all, I have no concerns with the design or layout for snow removal."

Thought you might be interested, hopefully that helps a bit with that, and I'll try and follow up on your other points. In the meantime, please let me know if you have any other questions/concerns and I'm happy to help address them as best I can.

Thanks!

Makena

Makena Hawley

Planner II

Park City Municipal Corporation

Marsac Avenue, PO Box 1480

Park City, UT 84060

o: 435.615.5059

Makena Hawley

From: planning
Sent: Tuesday, November 9, 2021 3:25 PM
To: Makena Hawley
Subject: FW: [External] Mid Mountain Parking Lot changes associated with 9300 Marsac Avenue (Sommet Blanc Development)

Follow Up Flag: Follow up
Flag Status: Completed

FYI

From: Kevin Lontz <kevinlontz@gmail.com>
Sent: Tuesday, November 9, 2021 2:53 PM
To: planning <planning@parkcity.org>
Subject: [External] Mid Mountain Parking Lot changes associated with 9300 Marsac Avenue (Sommet Blanc Development)

[CAUTION] This is an external email.

Park City Planning Commission:

Regarding the proposed realignment of the Mid Mountain Trail Parking Lot associated with the proposed development plans at 9300 Marsac Avenue (Sommet Blanc Development), I feel that the proposed parking lot changes are favorable and - in several ways - an improvement over the current parking lot. However, I feel a couple of points are very important as it relates to winter parking when the Empire Pass gate just above the lot is closed for the winter season:

1. The lot has historically been allowed 72 hour parking - I would want to ensure this continues as the lot is used by overnight travelers into Bonanza Flats area and Brighton Estates development, particularly when poor winter conditions do not allow further car/truck traffic (instead, snowmobile access is sometimes required even by persons having winter access through the gate).
2. While I feel it is important to continue to allow extended (72 hour) parking, it is also important to enforce that parking requirement so that "long term" parking is not taking place. I would hope that this requirement be enforced, including removal of violators.
3. The current lot is contiguous with the roadway, and thus, allows for oversized car+trailer parking without impeding roadway vehicular traffic. I have noted that with the new plan that there are 9 (nine) 10'x22' stall spaces outlined and parallel with the roadway in addition to smaller diagonal parking spaces. Historically, car/trucks + trailers (snow machine users) have not been precluded from parking in this lot for limited winter access. It would seem that this plan would render car/truck + trailer parking difficult, limited, or even impossible (the redesign of the lot prevents easy "back in" trailer parking as has been previously allowed with little difficulty. How

would the Planning Commission propose to allow car/truck + trailer parking given this realignment of the parking area?

4. As the newly proposed lot is unidirectional with specific and separate entry and exit points, it will be even more important (and more challenging) to clear snow from these areas so as to allow for the usage by the number of cars outlined. I would ask that Park City be made aware of this potential issue and provide possibly greater resources for snow clearance during winter weather events.

I appreciate your consideration of my comments,

Sincerely,

Kevin Lontz

From: [Mark J Fischer](#)
To: [Makena Hawley](#)
Cc: [Mark Harrington](#); [Gretchen Milliken](#)
Subject: [External] Re: Max Occupancy for Sommet Blanc at build out.
Date: Friday, February 25, 2022 7:43:49 AM

[CAUTION] This is an external email.

Makena, cc: Mark, Gretchen

Thank you for your reply. I figure there will be 3-400 people in that complex at peak periods which will have an increased impact on the use of upper SR224(recreation/site seeing+). Public safety issues will continue to grow to an alarming level if the public is not put on the safe newer road as contemplated 20+ years ago.

I do not understand how the Staff and City can support this project going forward without resolving the road issue and the DV ski run needs as these steps were clearly contemplated as part of the overall Empire Pass/Flagstaff Agreement 2 billion dollar development project. I realize that I am probably fighting a “losing battle” here but I do want the public record to properly record my input.

Please put this email in the public comment record related to the Sommet Blanc application.

Thanks to all of you for putting up with my ongoing rant,

Mark J Fischer
mark@fischernetwork.c
cell: 435-640-6858

On Feb 22, 2022, at 1:28 PM, Makena Hawley <makena.hawley@parkcity.org> wrote:

Hi Mark,

Hope you had a great weekend.
Through the CUP process that info isn't required so I don't have the exact data. I imagine you could count the number of beds that exist in the plans, included in the last packet to get a rough idea, depending on what the goal is.

Let me know how I can help,
Thanks -
Makena

Makena Hawley
Planner II

Park City Municipal Corporation
<https://www.parkcity.org/departments/planning>
Marsac Avenue, PO Box 1480
Park City, UT 84060
o: 435.615.5059

Message submitted from the <Park City, UT> website.

Site Visitor Name: Mark J. Fischer

Site Visitor Email: mark@fischernetwork.com

M,

Please send me the maximum occupancy that will be permitted in all of SB's buildings if approved and built. Also, anticipated staffing level. Thanks.



GENERAL INFORMATION

Issuance Date	Region	Project Name	OLP Application ID
12/17/2020	Region 2	B2 East Development	109246
Physical Address	City	Permit Type	Access Use Type
9300 Marsac Avenue	PARK CITY	New	Residential

PERMITEE INFORMATION

Property Owner Name	Primary Contact	Primary Phone	Email
Sommet Blanc Residences I, LLC.	Michael Demkowicz	(435) 649-9467	michael@alliance-engr.com

LOCATION, WIDTH, AND ACCESS CATEGORY INFORMATION

State Route	Milepost Marker	DD Center Latitude	DD Center Longitude	Access Width	Access Category
0224	1.12			30	7 - Community Rural

A Conditional Access Permit is hereby authorized subject to the Utah Department of Transportation's (the Department's) Access Management Rule (Utah Administrative Code R-930-6), the Utility Accommodation Rule (Utah Administrative Code R930-7), the Standard Specifications for Road and Bridge Construction, and any terms, conditions, and limitations set forth herein. Per Utah Administrative Code R930-6-8(6)(g), a Conditional Access Permit shall expire if the access construction is not completed within twelve (12) months of the issuance date as identified at the top left of this document.

By carrying out the activities authorized by this approval the permittee and the permittee's successors in interests and/or assigns agree to accept all terms, conditions, and, limitations, of the approval including any attachments submitted with the Conditional Access Permit Application. In addition, the permittee certifies they will comply with all applicable regulations, properly control and warn the public of said work to prevent accident, and shall defend, indemnify and hold harmless the Department from all damages arising out of any and all operations performed during construction and operation of said access. Per Utah Administrative Code R930-6-8(5)(e), the permittee understands any intentional misrepresentation of existing or future conditions or of information requested for the application for the purposes of receiving a more favorable determination is sufficient grounds for permit revocation. The access allowed under this permit creates a license to only access a state highway to the extent provided in the permit. The access may be closed, modified or relocated by UDOT if, at any time, UDOT determines in its sole discretion that safety, efficiency or other reasons so require. UDOT will not be liable for any costs, losses or damages resulting from UDOT's review and comments on the submitted plan sets for a Conditional Access Permit.

This conditional access permit does NOT allow construction or other activities within a state right-of-way. An encroachment permit must be separately applied for and issued before any construction within a state right-of-way may commence. Work on UDOT's right-of-way is seasonally restricted from October 15 to April 15. Work is not allowed on the right-of-way during the AM/PM peak traffic hours of 6:00 A.M. to 9:00 A.M. and 3:30 P.M. to 6:00 P.M. Some exceptions to this A.M./P.M. peak travel work restriction may be permissible for low AADT routes in rural areas. Any such exception requires special Region approval and must be explicitly stated on the approved encroachment permit.

Authorizing Name (printed)	Nazee Treweek	Authorizing Name (signed)	
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TERMS, CONDITIONS, AND LIMITATIONS

Special Limitations: Any safety issues that may arise due to this access will bring this access up for review by UDOT.

1. A copy of this permit must be posted in a conspicuous location and be available for immediate review at the location of the permitted activity. No exceptions.
2. This agreement and/or permit is UDOT approval only. The permittee is responsible for obtaining clearances, authorizations, or permits from railroads, private property owners, other utility owners, and other government agencies as may also be required.
3. By the accepting this permit, the permittee acknowledges the hazardous nature of conducting activities within the right-of-way and assumes full responsibility in the event of an accident or other incident involving death, injury, or damages to any party resulting from the permittee's authorized use of the right-of-way.
4. All work performed under this permit must be in accordance with UDOT approved plans and standard drawings unless otherwise stated in writing.
5. The primary function of the highway is for transportation purposes. All other highway purposes are subordinate to this primary purpose. By conducting the activities authorized by this permit, the permittee agrees to timely prosecute the permitted activities in a manner that minimizes transportation-related impacts including but not limited to; ensuring overall site safety as an overarching priority, and by applying systematic efforts to minimize, or shorten, the project schedule.
6. UDOT may cancel, suspend, or revoke this permit due to:
 - A) Non-compliance with the permit provisions including terms, conditions, and limitations
 - B) Deviating from the approved permit provisions without written authorization



- C) Misrepresentation(s) discovered on the originating application, or associated documents
- D) Adverse weather or traffic conditions
- E) Concurrent transportation construction or maintenance operations in conflict with the permit
- F) Any condition deemed unsafe for workers or for the traveling public
- G) Any other condition that arises where work stoppage may be warranted for cause

In the event of a cancellation, suspension, or revocation the permittee shall promptly terminate occupancy of the right-of-way.

7. At all times the permittee and all activities authorized under this permit will comply with all applicable federal and state constitutions, law, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
8. Use current edition of UDOT standard drawings for traffic control. Use Utah MUTCD standards for traffic control elements not shown in UDOT standard drawings. Traffic control must be maintained at the encroachment site for the entire encroachment period.
9. Before constructing the access connection authorized by this conditional access permit, an encroachment permit must be secured first.
10. The permittee agrees to maintain the permitted access in a professional workmanlike manner, free from physical defects including but not limited to potholes or other similar substandard conditions for the life of the permit. The permit holder's maintenance-related responsibilities shall extend to UDOT's edge of asphalt where said permitted access physically connects to UDOT's main traveled way and shall be guaranteed in perpetuity. Failure to properly maintain said private access point shall be grounds for permit revocation and for the closure of the permitted access point.

BOOK FIVE
Site, Landscape and Architectural
Design Guidelines for Pod B2 East

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PREFACE

This document, Book Five: Site, Landscape and Architectural Guidelines for Pod B2 East, constitutes part five of the Design Guidelines (“Guidelines”) for Empire Pass.

The Guidelines have been created to ensure that all Improvements at Empire Pass preserve the natural beauty of the surrounding mountain landscape and contribute to a cohesive architectural style. The Guidelines explain the architectural aesthetics and site considerations that are to guide the design and construction of all new buildings, building additions, site work, and landscaping within Empire Pass. The review and approval of all building and site Improvements are subject to the discretion of the Design Review Board (DRB) as described in the Guidelines.

Separate documents (Books I, II & III) exist for each building type (Custom Home, Condominium Lodge and Townhouse/Cluster Home) constructed in other areas of Empire Pass, as described below. In addition, a separate document (Book IV) exists to establish and explain the construction process, organization of the Design Review Board, and the design review process. All five documents are collectively referred to as the Design Guidelines:

Book I:	Site, Landscape and Architectural Design Guidelines for Custom Homes
Book II:	Site, Landscape and Architectural Design Guidelines for Townhouses and Cluster Homes
Book III:	Site, Landscape and Architectural Design Guidelines for Condominium Lodges
Book IV:	Design and Construction Review Process and Appendices for all Building Types
Book V:	Site, Landscape and Architectural Design Guidelines for Pod B2 East

The documents for Pod B2 East are made up of two books: this Book V along with Book IV. The illustrations provided in the Design Guidelines are intended to convey concepts, and not to depict specific plans for construction. Where appropriate, this Book V includes separate guidelines for Townhouse & Cluster Homes (“Villas”) distinct from the guidelines for the Condominium Lodges (“Lodges”).

The Guidelines will be administered and enforced by the Empire Pass Design Review Board in accordance with the procedures set forth in the Master Declaration of Covenants, Conditions and Restrictions (CC&Rs) for Empire Pass. The Guidelines may be amended from time to time, as deemed necessary by the DRB. In the event of any conflict between the Guidelines and the CC&Rs, the CC&Rs shall govern and control.

It is the Owner’s responsibility to ensure they have the most current edition of the Guidelines and have carefully reviewed all applicable sections of the CC&Rs. These Guidelines are binding on any persons, company or firm that intends to construct, reconstruct or modify any permanent or temporary Improvements at Empire Pass.

All capitalized terms used in these Guidelines are defined in Appendix A (Book IV) or within the text of this Book V.

Approved and adopted at Empire Pass MOA Board meeting, _____, 2021.

1.0 AN INTRODUCTION TO EMPIRE PASS

1.1 THE EMPIRE PASS COMMUNITY VISION

Empire Pass is an all-season Mountain Village set in the beautiful Wasatch Mountain Range adjacent to Park City and Deer Valley Resort ®. During the winter, residents and guests may take advantage of skiing, snowshoeing and a variety of other recreational opportunities. The summer offers guests and residents a broad choice of outdoor activities including golfing, boating, swimming, hiking, mountain biking, picnicking and horseback riding. A wide-range of music, art and other cultural events are available in Empire Pass and the greater Park City area year round. These all-season recreational opportunities enhance the vitality of the resort and strengthen the feeling of community among residents and guests.

The Mountain Village consists of a collection of interconnected neighborhoods. A mix of residential building types, including Custom Homes, Condominium Lodges, Townhouses and Cluster Homes, will surround the central ski run, to create the “Village Core”. Within the Village Core, the Alpine Club offers members access to fitness and spa facilities, food and beverage services, lounges, a general store and ski valet services. Beyond the core, other mountain neighborhoods offer additional Custom Home, Condominiums, Townhouse and Cluster Home sites. Pod B2 East is one of these distinct neighborhoods. An integrated system of shuttle transportation, ski runs, hiking and biking trails, and pedestrian paths connect individual buildings and neighborhoods to the Village Core, each other and the greater Park City area, allowing residents and guests to leave their cars behind.

The design of all buildings and related Improvements at Empire Pass is to build upon and reinforce the vision of establishing a truly interconnected Mountain Village while addressing the goals and objectives laid forth in these Design Guidelines.

The B2 East site is a distinct neighborhood within Empire Pass, physically separated from the Village Core, Northside and Red Cloud neighborhoods. Nearby buildings include Deer Valley Resort ®’s Empire Canyon Lodge adjacent the property and the much larger Montage Deer Valley ~500’ to the north.

The Empire Pass Design Review Board finds this physical separation supports the establishment of this distinct set of Design Guidelines for the B2 East site based on a contemporary mountain architectural vernacular.

1.2 THE B2 EAST DESIGN APPROACH

The natural environment surrounding Empire Pass provides the inspiration for all design. The beauty of the landscape draws residents to the Resort both for the opportunity to live in such an environment and to take advantage of the first-class recreation available throughout the Resort and the surrounding Park City/Deer Valley Resort ® area. Three main objectives, as listed below, have been identified to ensure all Residences and other Improvements are designed in harmony with the goals and overall design approach at Empire Pass. Owners, their Architects and Landscape Architects are to work together through all phases of design and construction to ensure all aspects of the design are consistent with these objectives and those listed throughout the Design Guidelines.

- Architecture and site planning is to preserve and build upon the natural setting. All buildings, structures, landscape and site Improvements are to take their cue from the surrounding natural vegetation patterns and landforms. The lasting impression formed by

visitors to Empire Pass should be of the dominance and beauty of the natural mountain setting, not of buildings and other man-made structures or Improvements. All buildings are to be sited and designed to integrate and enhance features of the site into final design.

- Building and landscape design are to emphasize and reinforce the community-wide circulation system that links and interconnects neighborhoods within Empire Pass as well as the outlying Park City area. Empire Pass is designed as a truly pedestrian-friendly Mountain Village. All Residences at Empire Pass, whether Condominium Lodges, Custom Homes, Townhouses or Cluster Homes are to include building and landscape designs that connect, enhance and support this community-wide system of trails and paths. (Refer to Section 1.1.)
- Building materials shall reflect a palette in harmony with the natural surroundings, but true to their structural function. Generous glazing will bring the natural vistas into indoor spaces. Low reflectivity glazing will be required.

These three objectives form a solid foundation for all design work at B2 East. Owners and their Consultants are to ensure the direction of their work incorporates these principles. Final interpretation and approval regarding a design's compliance with these Guidelines is subject to the sole discretion of the DRB.

1.3 THE EMPIRE PASS STYLE - ARCHITECTURAL CHARACTER

Design at B2 East is not beholden to the architectural traditions of the early 20th century. Architecture will respond to advancements in building materials and construction techniques yet integrate into its surroundings. Described below are general characteristics that are to be incorporated into all design work:

- Buildings use bold forms and spacious volumes that are in scale with the natural mountain setting.
- Exterior materials and details are crisp and clean, celebrating architectural form.
- Broad, sheltering roofs are the dominant building element and provide shade and protection at windows, entries, decks and porches. Roof forms should respond to the structure and shall be simple and straightforward. Additional embellishments such as dormers, should be minimized and approved on a case-by-case basis.
- Roof profiles should step down to reduce overall thickness of assembly. Expressed outriggers and rafter tails should be part of the roofs structure, and not merely decorative.
- Windows and doors should facilitate a connection to outdoor rooms. Covered decks and patios are encouraged. Railings should prioritize view and transparency.
- The Design Guidelines incorporate these basic concepts and explain, in greater detail, the specifics of their application within the B2 East Neighborhood.

1.4 HOW THESE DESIGN GUIDELINES ARE ORGANIZED

This Book V of the Design Guidelines for Empire Pass addresses the siting, landscape and architectural Guidelines for the B2 East Neighborhood while Book IV sets forth the design review process and construction review process. Each document is organized into the chapters and Appendices listed below.

BOOK IV:

- ***Design Review Board Organization*** – Chapter 1 provides a description of how the Design Review Board (DRB) administers the design and construction review process. It describes the composition of the DRB, its function and jurisdiction, as well as its responsibility to uphold, and right to amend, the Empire Pass Design Guidelines.
- ***Design Review Process*** – Chapter 2 outlines the entire procedure required to obtain approval for new building construction, site Improvements or alterations and additions to existing structures. It delineates the submission materials required for each phase of review and describes the process by which approval is granted.
- ***Construction Guidelines*** – Chapter 3 describes the construction review process and outlines various Guidelines intended to assure the preservation of the surrounding landscape and environment throughout the construction process.
- ***Appendices*** – Appendix A contains a list of defined terms, capitalized throughout this document. Appendix B provides an approved native plant list for use within Empire Pass. Appendix C contains a list of prohibited plant species.

BOOK V:

- ***An Introduction to Empire Pass*** – Chapter 1 summarizes the community make-up and design aesthetic, including a brief overview of the architectural traditions that contribute to and identify the Empire Pass style.
- ***Site and Landscape Guidelines*** – Chapter 2 outlines the standards and Guidelines for siting buildings sensitively to the surrounding landscape and environment.
- ***Architectural Guidelines*** – Chapter 3 provides Guidelines and standards for the construction, remodeling, renovation and/or alteration of any building Improvement. This section includes standards on building massing, height, color and exterior finish design.

2.0 SITE AND LANDSCAPE GUIDELINES

The following chapter sets forth Guidelines and standards for all site work relating to each Lot, including grading, planting, siting of structures, design of outdoor areas and preservation and enhancement of the landscape and views.

2.1 SITE AND LANDSCAPE OBJECTIVES

The treatment of the site's natural topography and vegetation is vital to ensuring all Improvements at Empire Pass are made in harmony with the surrounding landscape and are complementary of the overall community design. The following site and landscape objectives have been identified as the basis for integrating buildings with their natural surroundings:

- ***Preserve, maintain and enhance the natural tree and vegetation patterns to anchor buildings to the land.*** Trees provide a valuable backdrop that integrates buildings with the landscape. All buildings are to be sited and designed to integrate and enhance features of the site into final design. Introduced native plant materials are to blend the architecture with the natural landscape. Natural and existing landscape features such as rock outcroppings, vegetation and topography are to be preserved, to the greatest extent feasible, when siting buildings and designing outdoor spaces in order to achieve a seamless transition from the built to the natural environment.
- ***Incorporate site-specific design solutions that respond to the site's unique topography and micro-climate.*** Buildings are to be sited to optimize the relationship between building amenities, landscaped courtyard and adjacent ski trail. Outdoor areas are to be designed to take advantage of sunlight, provide wind and snow protection and capture views.
- ***Build upon, enhance and extend the Mountain Village trail system.*** The B2 East Neighborhood is to incorporate skier and pedestrian paths that connect to the existing trail system throughout the community. Paths and trails are to be designed for use in all seasons.
- ***The B2 East Neighborhood is to be designed as a pedestrian-oriented "mountain enclave" that is distinguishable from other neighborhoods within Empire Pass by distinctive hardscape, planting and architectural detailing.*** The Villas on the upper portion of the site are to be nestled into the surrounding landscape to create a separate enclave that is distinct from yet related to the Lodges below. Plant materials are to enhance the vegetated buffer around enclaves. Hardscapes and architectural detailing are to create a unique neighborhood identity.

2.2 SITING CONSIDERATIONS

The B2 East Neighborhood has been heavily disturbed over the years due to the presence of the Mazeppah Mine. In recent years, thousands of yards of soil were removed as part of an environmental beautification. Integrating buildings and other Improvements with the adjacent ski experience and the natural landscape beyond is critical to successful site planning. Buildings should pull back from the ski trail to enhance the experience for skiers and residents. A conceptual plan incorporating Villas on the upper portions of the site and Lodges on the lower portion transitions from high density adjacent the ski trail to lower density on the hillside beyond. Building placement should avoid the steepest portions of the site. A spacious landscaped courtyard and pool opens up to the adjacent *Lucky Jack* ski trail, with a public restaurant and patio fronting the ski trail adjacent Deer Valley Resort ®'s Empire Canyon Lodge.

A site plan is to be prepared in concert with the architectural design. The site plan is to illustrate how building siting, orientation, views, grading, neighborhood street access, driveways and other design issues have been addressed. Site plans are to find balance between the needs of preserving and enhancing the natural features of the site and addressing the Owner's design objectives. A Landscape Architect is to be retained from the beginning of conceptual design to collaborate with the Architect in developing the site plan.

The following Guidelines describe how Improvements are to be integrated into the overall landscape setting. Key site design concepts include:

- Buildings on sloping sites are to minimize grading by aligning the long axis of buildings parallel to existing contours and stepping building foundations and ridgelines with the existing topography as it rises and falls.
- Buildings and all site Improvements are to be designed as integral elements of the existing terrain and vegetation so that they recede into and merge with the landscape.
- Significant tree stands, identified during the design review process, are to be preserved and protected during construction.

2.3 DESIGN PARAMETERS AND THE B2 EAST PRELIMINARY PLAN

The Site Plan of April 16, 2021 attached as Exhibit A as approved by the Design Review Board, or subsequent revision, demonstrates how the B2 East Site may successfully accommodate Lodge and Villa buildings. Suggested building locations are shown on the plan to indicate how they may be sited to fit the site's unique attributes. Information provided on the Preliminary Plan includes, but is not limited to, easements of record and recommended design parameters for the following: building locations, Neighborhood Gathering Area locations, building size, unit counts, average unit size, neighborhood street and driveway access, and ski in/ski out trails. In order to discuss the particular attributes associated with the B2 East Neighborhood and proposed construction, Owners are to meet with the DRB at the Pre-Design Conference prior to beginning any design work. (Refer to *Book IV*, Chapter 2 for a description of the design review process and meetings.)

2.3.1 DESIGN PARAMETERS

The recommended design parameters shown on the Preliminary Plan were determined based on Park City setback requirements, the specific characteristics of the site and the planning and design criteria of Empire Pass. These criteria include:

- Preserving the dominance of the natural setting;
- Optimizing views and solar orientation;
- Protecting view corridors;
- Protecting sensitive environments;
- Protecting and utilizing distinctive natural features, such as rock outcroppings, vegetation and topography;
- Reinforcing the system of skier and pedestrian connections within Empire Pass and the

surrounding Park City area.

- Establishing a favorable relationship between project landscaping, outdoor amenities and adjacent ski trail.
- Minimizing vegetation removal;
- Blending man-made Improvements into the topography and forest; and
- Maintaining existing drainage patterns.

2.3.2 *NATURAL AREA*

Within the B2 East Neighborhood, a significant portion of the property is designated as a “Natural Area” that is to remain in an essentially natural condition. Proposed trees, shrubs and ground covers to be planted within the Natural Area are to blend with adjoining native landscaped areas to create informal, natural screens that obscure built Improvements from off-site views. Good forestry practices, including tree thinning, clearing of fire hazards, and defensible space, are permitted within the Natural Area, subject to the Guidelines described in Section 2.15. All plant materials introduced in this area are to be native species as indicated in the Approved Plant List (see Appendix B). Refer to Section 2.14 for specific Guidelines regarding planting requirements within the Natural Area.

2.4 ENCROACHMENTS

All structures and site Improvements such as driveway turnarounds, parking areas, patios, pools and Accessory Buildings are to be located within the Lot boundaries. The DRB recognizes, however, that each Lot presents its own unique design challenges. Owners and their Consultants may develop design solutions involving minor encroachments outside of the Lot that may be appropriate in certain cases. Such encroachments will be considered by the DRB on a case-by-case basis and only when doing so presents a design solution that better achieves the design intent and objectives outlined in these Guidelines. Upon DRB approval, the Owner is responsible for obtaining all necessary Park City approvals.

2.5 GRADING AND DRAINAGE

Grading and drainage designs are to focus on minimizing impacts to the site, including impacts on existing vegetation, rock formations, water quality and drainage courses.

The Landscape Architect is to collaborate with a professional civil engineer, licensed in the State of Utah, to prepare a full set of drawings, including grading, drainage, sedimentation and erosion control plans for the design of all Improvements within Empire Pass.

2.5.1 *GRADING DESIGN*

Recommended building locations have been selected to minimize the need for excessive grading. Site grading is to comply with the following Guidelines:

- Grading is to address the historical site disturbance by setting grade to match the adjacent ski trail and creating a generous landscaped forecourt to the Lodges beyond. Driveways are to be situated behind the building hidden from view from the ski trail and Marsac Avenue. Retaining walls are to be stepped with generous planting strips between walls. Refer to Section 2.2 for siting considerations regarding building placement.

- In general, natural slopes are to be used rather than retaining structures. However, retaining walls may at times be appropriate in order to address significant grade changes. Refer to the Section 2.6 for additional Guidelines regarding retaining walls.
- Slopes are not to exceed 2:1, unless it can be demonstrated that a steeper slope will not erode.
- Grading is to blend with the natural contours by feathering cuts and fills into existing terrain.
- If beneficial to ski experience, project grading may be considered to extend onto adjacent ski trail with approval of Deer Valley Resort®.
- All areas disturbed by grading operations are to be re-vegetated and additional erosion control measures implemented as soon as possible. Erosion control mixes are to utilize native plant materials that establish rapid surface stabilization. The DRB may also require jute matting or other additional stabilization measures.
- Cut and fill quantities are to balance on-site to the extent feasible.
- Fill may be used to raise the landscaped forecourt elevation above the adjacent ski trail, provided that views of the building shall not dominate the skyline and/or project above the tree canopy.
- Ski-in/Ski-out trails shall have a minimum grade of 6% and a maximum grade of 20%.

2.5.2 *DRAINAGE DESIGN*

- Drainage plans are to locate snow storage and push zones where snow accumulation will not block drains and/or dam melt-water runoff. Drainage designs are to consider where melt-water will go and/or be retained on-site. Use of snow melt in driveways can reduce the need for snow storage areas.
- Drainage is to be dispersed within the Lot to the extent possible through the use of dry creeks, outfalls, french drains, dispersion trenches and/or other means of dispersion.
- Drainage is to be directed away from the adjacent ski slope and from the center of impervious surfaces to avoid ice buildup. Paved or impervious areas are to be sloped a minimum of 2% to increase water flow off of surfaces and to avoid ice accumulation.
- Owners are responsible for controlling drainage resulting from the development of their Lot. Drainage is not to be directed onto other Lots or properties, unless located within a designated drainage easement.
- Culverts are to be used to direct drainage under driveways. Culverts, headwalls, ditches and similar drainage structures are to be cut to match finished grade and constructed of materials similar to that used elsewhere on the site. The maintenance of culverts and stone facing are the responsibility of the Owner.
- Trenching for drainage lines is not to encroach within the dripline of existing trees.
- Impervious surfaces (such as concrete paving) are to be minimized to the extent feasible to encourage water percolation into the ground. The use of more pervious materials such as crushed rock, porous asphalt or open-celled pavers is encouraged.

- Drainage design is to minimize any potential for erosion and consequent downstream water quality impacts per Park City regulations. See Book IV, Section 3.18 for additional erosion control measures.

2.6 RETAINING AND SITE WALLS

Retaining walls and freestanding site walls are to be designed in accordance with those standards established in Section 2.5 as well as with the following Guidelines:

- Walls are to be located adjacent to or in close proximity to other built Improvements and may be constructed of exposed natural cast in-place concrete with finish to be approved by the Design Review Board prior to concrete placement.
- Walls are not to exceed 6 feet in height, except in areas not prominent from off-site where they may extend up to 14 feet in height. Retaining walls are to be stepped with minimum 10-foot wide typical planting terrace between walls. The DRB may approve retaining walls in excess of 6 feet when it is demonstrated that higher walls will result in a more sensitive design solution. If approved, such modifications will be recommended to the appropriate Municipal Authority for approval.
- Walls exceeding 4 feet in height are to be designed by a structural engineer.
- Tops of retaining walls are to be horizontal where feasible. Wall ends are not to stop abruptly, but are to make natural transitions into adjacent landforms and vegetation. Trees, shrubs and vines are to be planted at the base and top of walls to blend them with the site.

2.7 NEIGHBORHOOD STREETS AND DRIVEWAYS.

The Preliminary Plan identifies UDOT approved access points for the B2 East Neighborhood. Unless otherwise approved by the DRB, proposed neighborhood street access is to comply with that indicated on the Preliminary Plan. Additional Guidelines regarding neighborhood streets, driveways, garages and guest parking are noted below:

2.7.1 *GENERAL CONSIDERATIONS*

- Neighborhood streets, driveways and/or parking areas are to be designed to drain quickly, accommodate snow removal equipment and provide access to snow storage areas.

2.7.2 *NEIGHBORHOOD DRIVEWAYS*

- The lower neighborhood driveways accessing the Lodges shall maintain a width of 26' as required by Park City Fire Marshall. The upper neighborhood driveway accessing the Villas shall reduce from 26' width to 20' width at a location acceptable to the Fire Marshall.
- Neighborhood driveway curb cuts are to be constructed in accordance with approved UDOT Conditional Access Permits, with street alignments then following a curved alignment that minimizes visibility of homes, garages, paved areas and other Improvements from community roads.
- Gradients of neighborhood driveways are not to exceed 10%.
- The neighborhood driveways may widen as necessary for fire truck turnaround.

2.7.3 *INDIVIDUAL DRIVEWAYS*

- Individual Villa driveways are to be a maximum of 20 feet wide.
- Driveway gradients are not to exceed 15%. Heated driveways are required for any slopes greater than or equal to 10%.

2.7.4 *DRIVE WAY MATERIALS AND COLORS*

- Neighborhood driveways, where they come off of community roads, are to be built of asphalt to match Empire Pass roads. Neighborhood driveways may later introduce a different material, such as unit pavers, colored concrete or an approved Empire stone, provided there is a smooth transition from one material to another.
- Curbs, where necessary for drainage or traffic control, are to be constructed of colored concrete as approved by the DRB.
- Colors of finish paving materials are to blend with the surrounding earth colors. Natural concrete finish is permitted.

2.8 *GARAGES AND PARKING AREAS*

Garage layouts, parking and driveway alignments are to minimize visibility of garage doors and guest parking from off-site. Garage and parking designs are to adhere to the following Guidelines:

2.8.1 *SITING AND DESIGN REQUIREMENTS*

- Avoid long uninterrupted rows of garage doors and minimize their visibility from off-site through vegetation screening, roof overhangs and/or reorienting doors.
- Parking and turnaround areas are to be located within Lot boundaries. On-street parking is not allowed anywhere within Empire Pass.
- Garage doors are to be recessed a minimum of 12 inches, as measured from the outside face of the wall.
- Recreational vehicles, boat trailers and similar vehicles that do not fit through a standard single-bay garage door (maximum size of 9 feet wide by 9 feet tall) may not be parked on Lots overnight.

2.8.2 *PARKING SPACE REQUIREMENTS*

- The location and design of parking spaces are to respond to the site's natural topography, setting and vegetation cover.
- The quantity and minimum size of parking spaces is to satisfy all Park City requirements. Both below-ground and at-grade parking spaces will be counted towards the minimum parking space requirement. Carports are not allowed.
- Exterior guest parking spaces are to be designed adjacent to entries and are to be sufficient in number to handle the visitor parking needs of the building.

- Parking will be included for Deer Valley Resort's ® Empire Canyon Lodge as per contractual agreement between Owner and Deer Valley Resort ®.

2.9 EXTERIOR HARDSCAPE AND OUTDOOR ROOMS

Outdoor living spaces may provide an effective transition between buildings and the outdoors, to reinforce the visual connection between buildings and site. Terraces, verandas, patios, porches, courtyards and other similar outdoor spaces are to be an integral component of the building design. The following Guidelines are to be incorporated into exterior hardscape design.

2.9.1 GENERAL CONSIDERATIONS

- Porches and covered outdoor spaces may be created by extending roofs and overhangs. Materials are to be similar to those used in roof framing.
- The transition from outdoor living spaces to the native landscape is to be made gradually with hardscape materials transitioning to more pervious materials as they move away from the building.
- Plant materials, landscape structures and architectural devices are to be incorporated into the design of outdoor spaces in accordance with Sections 2.13 & 2.15.

2.9.2 HARDSCAPE AND OUTDOOR ROOM SITING CONSIDERATIONS

- Paths, outdoor stairs and “outdoor rooms” are to be designed to blend with the natural topography and vegetation, and with associated retaining walls, fences or building foundations.
- Seasonal sun and wind exposure, along with how and when a space is to be used, are to be primary considerations when designing and locating outdoor spaces. For example, outdoor spaces might be placed on the east for protection from prevailing winds, on the south for morning and evening use in the summer or on northern locations for midday use during the summer.
- Outdoor hardscape and landscape designs are to consider requirements for snow removal equipment access, snow storage and melt-water drainage. All areas are recommended to have positive drainage at a minimum of 2% grade to move water off of surfaces quickly and minimize surface cracking and/or icing.
- Locating paths in areas with good sun exposure is recommended to minimize ice accumulation. Recommended gradients on paths are a maximum of 7% with a 2% maximum cross slope. In steeper areas, steps with a minimum 16-inch tread and 6-inch riser are encouraged.

2.9.3 NEIGHBORHOOD GATHERING AREAS

- Neighborhood Gathering Areas, central meeting places and/or potential transportation nodes, are to be incorporated in the landscape design of the Villas enclave to provide a distinctive gathering place for neighborhood residents.

2.9.4 *HARDSCAPE PAVING MATERIALS*

- Designs are to minimize the use of several types of paving materials in order to produce an understated, unified design. Materials are to augment and complement architectural materials while using proven techniques and applications that are designed to withstand the winter climate.
- The hardscape at Neighborhood Gathering Areas is to introduce special paving material, such as stone pavers or bands, to create an attractive meeting place and potential transportation node where residents connect to adjacent trails and/or pick up shuttles.
- Approved hardscape paving materials for outdoor rooms, paths and stairs include:
 - Local stone
 - Stamped colored, stamped and/or patterned concrete
 - Pre-cast concrete pavers
 - Chipped stone
 - Gravel and/or decomposed granite
 - Natural wood
 - Wood mulch

2.10 PATHS, SIDEWALKS, AND TRAILS

Paths and sidewalks are to connect the B2 East Neighborhood to the Empire Pass trail network to allow Residents to move about the Resort without relying on cars. The iconic Mid Mountain Trail traversing the site shall be realigned while meeting IMBA standards along with a new, safer crossing of Marsac Avenue as reflected in UDOT Conditional Access Permit plans. The following Guidelines apply to the design of all paths, sidewalks and trails:

- Paths, sidewalks and trails are to use an approved paving material as listed in Section 2.9.
- Grading for ski-in/ski-out trails and connections is to follow those Guidelines listed in Section 2.5 and should be designed to preserve significant trees and vegetation.
- Continuations of the community trail and path system are to connect at Neighborhood Gathering Areas.

2.11 FENCES AND GATES

An underlying goal for Empire Pass is to create a sense of continuity throughout the Mountain Village. For this reason, the introduction of fences and gates is limited to that necessary to establish privacy and screening in areas immediately adjacent to buildings. When used, fences and gates are to comply with the following Guidelines:

- Fences may not extend into front yard areas and are to start a minimum of 10 feet behind the main building's front facade.
- Fences are to relate to and extend from the site's architecture while responding to the natural topography and landscape. Perimeter fencing of the property line is not permitted.
- Fences are not to exceed 4 feet in height except in areas not visible from off-site and at pool

enclosures, where they may extend up to 6 feet in height.

- Wrought iron fencing, painted black or green to recede into the landscape, may be used at pool safety enclosures.
- Inappropriate wall and fence materials include, but are not limited to:
 - Railroad ties
 - Concrete block
 - Stucco
 - Pickets
 - Chain link
- Wood fences are to be left to weather, treated and/or stained to blend in with the surrounding trees and vegetation. Refer to Section 3.15 – ‘Approved Finishes and Colors’.
- Planting plans are to incorporate tree and shrub plantings adjacent to fences in order to blend them with the surrounding landscape.
- Pool and spa fencing required by code may require additional detailing and landscape treatments, as specified by the DRB, to mitigate off-site visibility. Where allowed, the use of non-fencing solutions, such as locking pool covers should be considered.
- Dog runs and outdoor pet enclosures are not allowed.
- Privacy fencing or extensions of house walls are to be used to block views of utilities, mechanical equipment, trash enclosures and outdoor work areas. Such enclosures may extend up to 6 feet, if the fence is not visible from off-site.
- During winter months, temporary fencing is permitted to encourage skier safety as appropriate.

2.12 LANDSCAPE STRUCTURES AND SITE FURNISHINGS

The design and siting of all landscape structures and furnishings are subject to the following Guidelines:

- The height, color, materials and style of outdoor structures are to be the same or similar to that of the Residence. In general, the same Guidelines that apply to architecture apply to the design of landscape structures (refer to Chapter 3).
- Play structures that do not adversely affect views from off-site may be considered by the DRB provided they are constructed of natural materials and finished to recede into the landscape. Brightly colored play structures or furnishings will not be approved.
- Sport courts and associated equipment will be considered on a case-by-case basis. If approved, they are to be located in areas not visible from off-site.

2.13 POOLS, SPAS AND WATER FEATURES

All pools, spas and water features are to adhere to the following Guidelines:

- Pools, spas and other water features are to be visually connected to the building, and designed as an integral part of its exterior design.
- The introduction of landscaped water features, such as artificial creeks, is not allowed.

Small decorative fountains are permitted within courtyards and/or other outdoor spaces not visible from off-site.

- Pool safety measures are to be taken in accordance with local governmental regulations. Design solutions that eliminate the need for a pool fence while still complying with all safety codes are encouraged. (See Section 2.11 – ‘Fences and Gates’.)
- Pools and spas are to be set down into the ground, terraces and/or decks.
- Spa and water feature equipment enclosures are to appear as extensions of the home and/or located in underground vaults to contain noise. Solid noise absorbing covers for equipment will be required after installation if it is discovered that the equipment is audible from adjacent properties.

2.14 PLANTING DESIGN

The underlying goal of landscape design at Empire Pass is to preserve, enhance and continue the natural landscape. The following Guidelines apply for all landscape planting designs:

2.14.1 *GENERAL PLANTING CONSIDERATIONS*

- Planting clusters are to be planted between individual Villas buildings to provide privacy and to subordinate buildings to the landscape.
- Planting plans are to consider impacts on views from adjacent properties to ensure plant materials do not obscure views at installation and/or at plant maturity.
- Landscape plantings are to define outdoor spaces and entries, frame desirable views, buffer prevailing winds and provide seasonal shade.
- Plant color, texture and form are to visually tie buildings and Improvements to the land and add interest to courtyards and other outdoor areas.
- Areas disturbed by site development or home construction are to be restored to reflect the characteristics of the natural landscape. Areas adjacent to the building and surrounding landscape Improvements are to be enhanced with native plant materials to effectively transition to the Natural Area.
- Landscape materials are to be planted in informal, natural patterns. Planting of trees or shrubs in straight lines, circles or other unnatural patterns is not allowed.
- Owners are responsible for the care and maintenance of all plant materials located in the public right-of-way between sidewalks/paths and the front street curb.
- Introduced plant materials are to be equal in scale (at installation) to the natural existing material surrounding the site using a mix of sizes that blend naturally into existing vegetation.
- Non-native plants, planting beds and gardens may be introduced adjacent to buildings. Plants are to transition to an all-native palette as one moves away from the building towards the Natural Area.
- Temporary irrigation is required for all landscape Improvements. Temporary systems are to be removed or disconnected after two growing seasons or after plant materials have been established.

- Landscape Improvements are to minimize irrigation requirements by grouping plant materials with similar water consumption needs. Refer to Section 2.17 for irrigation requirements.
- In order to minimize the use of water and to reinforce the integration of buildings and Improvements with the natural environment, the introduction of manicured lawns is to be minimized.
- Recommended plant materials are listed in Appendix B – ‘Approved Plant List’. These plants are not necessarily native to the alpine regions of Park City and may require supplemental water for peak performance. Prohibited plant species are listed in Appendix C.

2.14.2 *PLANT QUANTITY AND SIZE REQUIREMENTS*

- Any trees greater than 6 inches in diameter at breast height (DBH) proposed for removal are to be mitigated at a 1:1 ratio. Mitigation trees may be planted anywhere on the Lot, subject to the Guidelines outlined in this section.
- 50% of evergreens required for mitigation are to be a minimum of 10 feet in height; 50% are to be a minimum of 14 feet in height. 50% of deciduous trees required for mitigation are to be a minimum size of 2-inch caliper DBH; 50% are to be a minimum 3-inch caliber DBH.
- All shrub plantings are to utilize a minimum 5-gallon container.
- The DRB may require additional plant materials and/or sizes, as necessary, to adequately filter views from off-site.

2.14.3 *PLANTING DESIGN WITHIN THE NATURAL AREA*

- Planting within the Natural Area is to be limited to native plant material as specified in Appendix B – ‘Approved Plant List’.
- In order to create a uniform edge treatment, plant materials and landscaping in the Natural Area of each Lot is to smoothly interface with and transition into the natural landscape adjacent to the trails and ski runs. The use of mature landscape materials that exceed minimum size requirements is encouraged.

2.14.4 *PLANTING DESIGN AT THE NEIGHBORHOOD GATHERING AREA*

- Planting design at Neighborhood Gathering Areas is to break up large sections of paving, provide shade during summer months and offer wind protection during winter months. Plantings are to allow for sufficient sun penetration during winter months to prevent ice buildup.
- Special planting accents, such as a central tree island and/or planting area at landscape benches, are to be designed to offer added interest and/or a “landmark” at Neighborhood Gathering Areas.

2.15 FOREST PRESERVATION

To ensure the long-term health and vigor of the surrounding forests, Empire Pass has prepared a forest management plan with the following objectives:

- Encourage a diversity of species.
- Balance a healthy mix of mature trees with vigorous younger trees.
- Thin trees to avoid over-crowding, competition, stress, pests and disease.
- Require the removal of dead and diseased trees and the trimming of dead tree branches. (Refer to Section 2.16 for fire safety and prevention Guidelines.)

2.15.1 TREE PROTECTION GUIDELINES

Tree removal for building construction and Lot maintenance will be managed by the Design Review Board, and further overseen by Park City. Tree retention and health is to be managed using the following Guidelines:

- Tree protection and fertilization measures are to be taken on all large trees (12-inch caliper DBH or greater) within 30 feet of construction activity, including those outside of the Improvement Envelope.
- Tree wells constructed of approved stone are to be used when adding fill under the drip line of major trees. A blanket of porous stone and a network of aeration lines are to be installed at existing grade to allow air to reach the roots and to prevent over-compaction.
- Protective fencing is to be erected around all existing trees during construction. Refer to Book IV, Section 3.20 for tree protection measures during construction.
- Additional Guidelines are provided in the Forest Management Plan available from the DRB.

2.15.2 TREE REMOVAL GUIDELINES

Tree removal is to be done with the approval of the DRB according to the following Guidelines:

- Within the Natural Area, tree removal is to be avoided wherever possible, while still maintaining the health of the trees. In limited instances, the DRB may approve tree removal or thinning within the Natural Area for view corridors or solar exposure, provided it does not unreasonably increase visibility of buildings and other Improvements from off-site.
- The DRB may approve tree removal and/or selective tree thinning within the Improvement Envelope in order to accommodate buildings, driveways, sun exposure and selected views.
- Unauthorized tree removal is subject to fines of up to \$5,000 per tree, payable to the Master Association.

2.16 FIRE SAFETY AND DEFENSIBLE SPACE PROVISIONS

Portions of Empire Pass are located in wildfire hazard areas. A number of measures have been implemented to reduce the risk of wildfire, including the design and use of ski runs and roadways as natural fire breaks. Nonetheless, it is important that Owners be aware of the possibility of wildfire. The threat of wildfire can be greatly reduced with the thoughtful planning and maintenance of a defensible space around the home. With this in mind, the following fire safety standards have been implemented:

- Potential fire fuel (such as dead limbs, leaves, needles and other material) is to be removed from areas immediately surrounding built structures.
- Owners are to select building and landscape planting materials that provide low fuel for potential fires.
- The maintenance of a 30-foot safety zone in all directions around all Buildings is strongly encouraged. Within this zone, the following fire prevention actions are recommended:
 - Regularly dispose of slash and debris materials resulting from thinning operations.
 - Periodically mow dry grasses and vegetation.
 - Stack firewood away from the home.
 - Maintain an irrigated area around buildings.
- Exterior wood building materials are to comply with all fire safety standards and procedures established by Park City, other applicable Municipal Authorities and the DRB. Regular observations for ongoing compliance with these standards will be conducted as described in Book IV, Section 2.12.

2.17 IRRIGATION AND WATER CONSERVATION

The following irrigation guidelines apply for Villas and Lodges:

- Permanent underground irrigation systems for lawns and flower gardens are limited to areas adjacent to the building and other built Improvements.
- Automatic irrigation systems are required at all re-vegetation areas (excluding the 30-foot wildfire safety zone). These systems may be abandoned when plantings have been clearly established after a minimum of two growing seasons.
- The use of moisture sensors, drip irrigation and pop-up heads are encouraged to conserve water.
- Backflow preventors are required; manual valves are permitted.
- Trenching for irrigation lines is not to encroach within the dripline of existing trees.
- Mulch all new planting areas, including trees in lawn areas, with a minimum of 3 inches to retain soil moisture, reduce erosion and provide for weed control.

2.18 OUTDOOR ARTWORK

All outdoor artwork is to be reviewed and approved by the DRB, prior to display. If approved, artwork is to be located adjacent to buildings and out of view from off-site. The DRB maintains the right to approve or deny an Applicant's request to display artwork outside of the Residence. Artwork locations shall be selected with skier safety in mind.

2.19 EXTERIOR LIGHTING

The clarity of the night sky in the Park City area is to be preserved. To help preserve the dark nighttime sky the following lighting Guidelines are to be observed:

2.19.1 *LIGHTING FIXTURES*

- Lighting fixture design is to be consistent with the architectural details of the building.
- Light fixtures at pathways and driveways are to be a maximum height of 36 inches.

2.19.2 *LOCATION OF LIGHT FIXTURES*

- Light fixtures, with the exception of driveway and address marker lighting, are to minimize impacts on adjacent properties. Light sources are not to be visible from adjacent buildings and/or off-site.
- Recessed light fixtures are to be used at entry monuments and address markers to identify neighborhood entrances and illuminate addresses. Street lamps are not permitted on neighborhood streets.
- Low-level path lighting is to be used at Neighborhood Gathering Areas to provide subtle lighting at path entrances, waiting areas and transportation nodes.
- The following light types and locations are not permitted:
 - Security yard lights
 - Landscape, plant or tree lighting
 - Architectural lighting of buildings with the exception of sign lighting and seasonal holiday lighting, as approved by the DRB.

2.19.3 *LIGHT EMISSION*

- Exterior night lighting is to be kept to an absolute minimum as required for safety and address identification at entrances, driveways and buildings. All light fixtures are to be activated for short-term use only.
- Exterior lighting is to use downward facing, horizontal cut-off fixtures, which hide the light source. Uplighting is not allowed.
- Lanterns are to use low intensity (25 watt or less) light sources with translucent or frosted glass lenses. Clear glass may be acceptable with low voltage bulbs and clear glass bulbs, subject to the DRB review of visibility from off-site.

- Driveway lighting is to be the minimum required for safety and is not to be spaced at regular intervals. Guardrails with reflectors may be used to help mark the driveway.
- Security lighting for emergency purposes may be permitted by the DRB, provided the sources are not visible from off-site, are fully shielded and are set on a timer or motion detector.
- Light sources are to be a warm, soft color that accurately renders true color. Sources that emit harsh, glaring white light are not permitted.

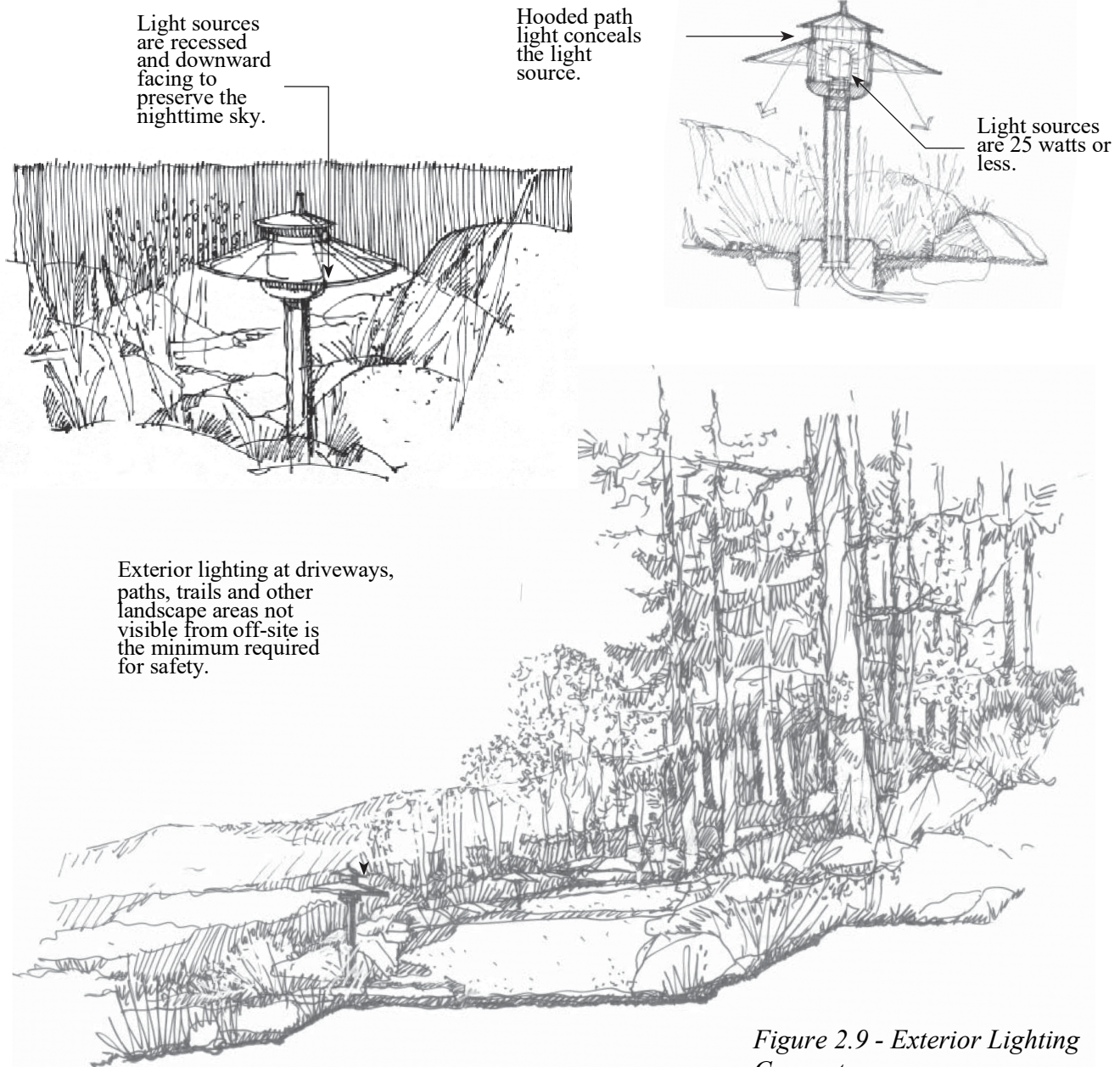


Figure 2.9 - Exterior Lighting Concepts

2.19.4 SEASONAL AND HOLIDAY OUTDOOR LIGHTING AND DECORATION APPLICABLE TO ALL AREAS EXCLUSIVE OF COMMON AREAS

Seasonal/Holiday Outdoor Lighting shall be permitted between November 15 and March 1 of the subsequent year and permitted between the hours (MST) of 5PM and midnight. The specific guidelines for installation in landscaped areas are as follows:

- Trees are permitted to be lighted for the purpose of seasonal lighting and decoration during winter months. Such lighting is to be installed in a manner that allows individual property owners enjoyment of seasonal lighting without causing undue glare or other negative visual impacts to neighboring properties or as viewed from areas outside the resort.
- White, string lights are required. Absolutely no chasing, blinking, or “icicle” lights are permitted.

Seasonal/Holiday Outdoor Lighting shall be permitted between November 15 and March 1 of the subsequent year and permitted between the hours (MST) of 5PM and midnight. The specific guidelines for installation on or around structures are as follows:

- White, string lights, which may decorate porches as well as the main entrance (doorway and associated entryway structure) to the home.
- “Outlining” of a home or individual architectural features of a home by applying strings of lights to run continuously along roof eaves, window trim or other prominent architectural features of a home is not permitted.
- Plastic statuary, inflatable lawn displays and other similar ornate displays containing unnatural, non-indigenous materials are not permitted. However, garland and/or wreaths which simulate, in a life-like manner, true, organic evergreen or deciduous tree boughs will be permitted; garland and wreaths made of organic materials are preferred and encouraged.

2.20 SERVICE AREAS, STORAGE AND UTILITY LOCATIONS

The following Guidelines apply for all outdoor service and storage areas:

- Trash disposal, outdoor work areas, utility meters and connections, transformers, air conditioning units, satellite dishes, pool/spa equipment and similar above-ground devices are to be completely screened from off-site views by the use of architectural devices and/or plant materials. Where feasible, these areas are to be integrated into the building’s architecture. The location and screening of such devices will be reviewed by the DRB throughout all stages of the design review process. Noise emission from such devices is to be contained.
- Service and storage areas are to be made inaccessible to wildlife.
- Owners are responsible for providing utility service lines from the property line to the building. Utility easements have been established throughout Empire Pass in order to facilitate the installation and maintenance of utilities.
- In order to minimize site disturbance, all utility lines are to be located underground, and

when feasible, under or along driveways. Utility alignments are to minimize grading and tree removal.

2.21 ENTRY MONUMENTS AND ADDRESS SIGNS

- Entry monuments that identify the Villas and Lodges enclaves are to be located within 20 feet of the intersection of the community road and the neighborhood street.
- Entry monument designs are to be reviewed and approved by the DRB.
- Entry monuments size shall be regulated by Municipal Code.
- An address marker is to be installed and maintained by the Owner.
- The address marker is to be located within 20 feet of the intersection of the driveway and the neighborhood street.
- Entry monuments and address signs are to be illuminated using internally shielded light fixtures.
- Signs containing the name of individual Villas are not permitted.
- Real estate signs are not permitted within Empire Pass.
- Any maintenance work performed on entry monuments and/or address markers by the Master Association will be billed to the Owner.

2.22 MAIL AND DELIVERY BOXES

Individual home mail delivery is not available at Empire Pass. Outdoor mailboxes, newspaper boxes, package tubes and similar delivery containers are not permitted.

3.0 ARCHITECTURAL GUIDELINES

The following chapter sets forth Guidelines and standards for all work relating to the renovation, alteration or addition to the exterior finish of an existing structure and/or new construction of building(s), including Building Heights, Massing, color and materials.

3.1 ARCHITECTURAL DESIGN OBJECTIVES

Buildings in the B2 East Neighborhood are to compliment the existing natural landscape and the overall history of the site. Nestled in a large natural bowl, the site is surrounded by quaking aspens and long-range expansive views. The following design objectives have been identified to help further the overall vision for Empire Pass.

- ***Design buildings that compliment the surrounding natural landscape.*** Like the dramatic surrounding mountains, building masses are to be bold yet in harmony with the natural surroundings. Buildings facades and rooflines are to be articulated with variations and not flat. Building massing shall step with existing topography as the site climbs from north to south.
- ***Design buildings that respond to the local climate and take advantage of the outdoor lifestyle of the Wasatch Mountains.*** Buildings are to be oriented to the outdoor lifestyle available year-round to residents of the Park City region. Decks, balconies and windows are to be located and designed to capture views, maximize sun and shade (depending on season), reduce wind exposure and otherwise take advantage of the spectacular outdoor environment.
- ***Utilize building materials that are true to their structural purpose.... Materials shall clearly fit into a structural or cladding language, architecturally. Efforts should be made to keep this distinction between materials “honest” when possible.. Building massings or trimwork that is purely decorative should be discouraged and will be considered on a case by case basis***
- ***Develop custom detailing designs that tie the Villas on the upper portion of the site to the Lodges on the lower portion of the site.*** Custom detailing at accent features, exposed roof edge details, balconies, railings, chimney caps, colors, materials and other architectural elements are to create a unique architectural character for the B2 East Neighborhood.

3.2 BUILDING FORMS

Building forms are to be designed with three main elements:

1. Foundation walls on the Villas may be recessed behind the residential floors above in order to reduce disturbance of the ground plane and the height of exposed foundation walls. Foundation walls shall be constructed of cast in-place concrete. Foundation walls on the Lodges shall be a maximum one story in height except at garage entries. Foundation walls may seamlessly transition into vertical stair tower elements.
2. Villas Building walls are not to exceed three Stories in height. Lodge Building Walls height shall be limited by Volumetrics approved for B2 East Neighborhood.
3. Articulation of massing through “Ragged Edges” of cantilevered living spaces over decks below at the ends of each Lodge building will be the dominant design element of the Lodges, framing the calmer middle sections of the buildings. The Villas’ massing will be broken up by multiple roof elevations stepping down from three stories over the master bedroom to an understated two story element incorporating the garages.

3.3 BUILDING MASS, SCALE AND COMPOSITION

In summary, buildings are to reflect the scale and drama of their mountain setting, have large sheltering roofs and dramatic use of cantilevers as a counterpoint to the rugged surrounding mountains.

- Structures are to utilize a variety of forms, arranged in a hierarchy with one form clearly dominant. For the Villas, roof lines shall step down with the lowest roof height over the garage element between units creating separation of building mass. Lodges buildings shall incorporate multiple roof steps and also incorporate a variety of roof elements. Overall, the Lodges buildings will climb following the grade of the adjacent ski trail.
- Villas Building Massing is to be broken into room-sized volumes, reflective of interior spaces and uses. Building materials, offsets, projections, recessed windows and doors, and balconies are to be used to provide shadow and texture. In order to avoid large bulky masses, Villas garages are to be articulated as a distinct building form, subordinate to the main Residences.
- Lodges Building Massing is to be composed of clusters of building forms so that they appear to be a collection of individual masses and not rows and/or stacks of essentially identical “products”.
- Lodges Accent Features (architectural elements that add interest and relief to building elevations) are to be incorporated in order to create the sense that the Lodges consist of a collection of building forms rather than one large unarticulated rectangular mass. Lodges may incorporate the following techniques to create Accent Features:
 - The use of full-height stacked balcony elements or other building projections to break up the perceived building length.
 - The incorporation of building projections of various heights that are approximately the size of a bedroom, living room or large alcove.
 - Variations in building materials at entries, balconies and other building projections.
- Adjacent Lodges buildings are to be designed to blend with and not contrast with each other. This is to be achieved by:
 - Breaking up long horizontal lines at wall and roof planes by introduction vertical elements, such as balconies; and
 - Linking buildings to landscape features and neighboring Lodges buildings by the use of walls, plantings, patios and/or terraces.
- Porte cocheres, entry gables, shed roofs, balconies and other single-story elements are to be introduced to reduce the apparent height and mass of Lodges buildings and to provide shadow and texture.
- Building masses are to use simple, bold forms.
- Roof forms and skylines are to be fragmented with varied roof elements and with roof lines climbing from one building to the next as the site climbs from north to south.
- All Buildings shall conform to PCMC LMC Section 15-5-8 (Facade Length and Variations).

3.4 BUILDING SIZE

In conjunction with building Massing, building size will be evaluated by the DRB to ensure building's are in scale with their surrounding natural setting. Building size is calculated using Saleable Square Feet. (Refer to Appendix A for the definition of Saleable Square Feet.)

- Development on the B2 East site is limited to 162,000 sf Saleable Square Feet, plus 3,600 sf of Resort Support Commercial.
- To reduce the project density adjacent the ski trail, site planning incorporating approximately 25,000 Saleable Square Feet of Villas on the upper portion of the B2 East site is encouraged.
- To break down the project density adjacent the ski trail the remaining development incorporated in the Lodges shall be broken into several distinct buildings.

3.5 BUILDING HEIGHT

Building heights are to be designed according to the following Guidelines in order to create buildings that are pedestrian-friendly and not overwhelming in scale.

Building Height is measured as “the vertical distance under any roof or roof element to existing grade”, or as set forth in the most current Park City Land Management Code. Building Height is subject to the more restrictive of the following Guidelines:

- Buildings are to comply with maximum Building Height as specified by Park City.
- Building Heights are to generally be consistent with the Volumetrics as shown on the B2 East Site Plan dated 4/16/2021, or subsequent revisions as approved by Planning Commission.
- The height of chimneys, cupolas and other roof forms will be reviewed on a case- by-case basis.
- Villas Buildings are to remain below surrounding tree canopy levels.

3.6. ACCESSORY BUILDINGS

All Accessory Buildings, such as the entry lobby, detached skier lounge and trash enclosures are subject to the following Guidelines:

- Accessory Buildings are to be subordinate to the main Buildings and similar in detailing and stylistic qualities.
- Accessory Buildings may be freestanding or connected to the main Buildings by outdoor rooms and/or architectural projections such as breezeways or arcades.

3.7 ROOFS

In keeping with the mountain climate, roof designs are to be kept simple. Roofs are to be designed in accordance with the following Guidelines:

3.7.1 *ROOF MATERIALS AND COMPOSITIONS*

- Roofs are to be large sheltering forms, predominantly flat or very low pitched shed roofs. Clipped gables, conical, and flat roofs are generally discouraged, but may be considered at secondary roofs on a case-by-case basis. A-frame roofs are not allowed.
- Roofs are to use a limited palette of materials in order to present a coherent design image throughout the community. Approved primary roof materials include:
 - Standing seam metal (in a dark color approved by the DRB)
 - Vegetated green roofs on flat roofs are encouraged.
 - Concrete pavers may be used on high flat roofs where vegetated green roofs are not appropriate or practical.
- Flashing, gutters and downspouts are to be constructed of durable materials, such as copper or other pre-finished metals that have the appearance of aged copper. Metals are to weather and/or be treated to blend with the adjacent walls and roofs.
- All exposed metal is to be consistent in appearance and finish.

3.7.2 *ROOF PITCHES AND DIMENSIONS*

- Roof pitches are to generally be between 0:12 and 2:12. The DRB may consider alternate roof pitches provided the roof relates well to the wall mass below, is well suited to the specific site and presents an overall aesthetic consistent with these Guidelines when viewed from off-site.
- Roofs sharing the same ridge are to have the same pitch. Pitch breaks are permitted when they occur at architecturally appropriate locations such as plate lines or changes in plane.
- Long roof overhangs (minimum of 24 inches) are to be incorporated to give a sense of shelter and enclosure. Deeper overhangs are to be used above large window openings.
- Roofs eaves are not permitted within 7 feet of finished grade.

3.7.3 *SNOW GUARDS, GUTTERS AND DOWNSPOUTS*

- Roofs are to be designed to retain snow. Pedestrians may be protected from snow shedding by use of snow guards and heating of eaves as appropriate. Either cold roof or super insulated roof construction may be used.
- Snow guards may be used, per Park City building regulations, wherever significant amounts of snow may accumulate over occupied areas, such as entries, patios, decks, balconies or parking areas.
- Snow guards are to be constructed of plate steel vertical supports with steel members that relate to nearby structural members. All exposed steel is to be acid-washed or painted to match the roof or building trim.
- Gutters and downspout are to be used at roofs that partially cover outdoor gathering areas. Where roofs are in constant shadow or have northern exposures, gutters and downspouts

may be more effective when used in conjunction with heat tape.

- Gutters used below snow guards are to be designed to withstand the load of the accumulated snow and ice released from snow guards.
- Approved materials for gutters, downspouts and eavelines include:
 - Copper
 - Galvanized steel, acid-washed
 - Corten steel
 - Pre-finished metal, finished to look like aged copper
 - Coated metal
- Gutter sections may be traditional or half-round.
- Roof drains internal to the building are encouraged.

3.8 EXTERIOR WALL MATERIALS

Exterior wall materials are to use authentic, indigenous and rustic looking materials, such as local stone, rough-sawn wood and hammered metal. The following Guidelines apply to the use of all exterior wall materials at B2 East.

3.8.1 *MATERIALS AND FINISHES*

- Approved foundation wall finish materials include:
 - Exposed cast in-place concrete with finish to be reviewed and approved by Design Review Board prior to concrete placement.
- Approved building wall finish materials include:
 - Vertical wood siding
 - Cementitious siding, with a texture to simulate natural wood grain
 - Exposed natural concrete with finish to be reviewed and approved by Design Review Board prior to concrete placement.
 - Pre-finished metal panels/flashing
 - Natural metals that develop a living finish, such as zinc, copper, or steel
- Inappropriate exterior wall materials include, but are not limited to:
 - Faux and/or non-local stone
 - Cobblestone and river rock
 - Logs

- Board and batt
- Shingles
- Additional siding materials may be considered by the DRB on a case-by-case basis.
- A maximum of three exterior wall materials and a minimum of two are to be used on any one building.
- Reflective materials or finishes are not allowed. All materials are to utilize staining or natural weathering processes which render them non-reflective within one year of completed construction.

3.8.2 *CONCRETE WALL APPLICATIONS*

- Exposed board formed concrete is to be used at building foundations and ground floor levels to give buildings the appearance of having a properly proportioned and load bearing foundation. Concrete may also be used to define three-dimensional elements, such as stair towers or chimney elements. Concrete is not to be used merely as a skirting strip around building bases or as panels within a wood sided wall.
- Concrete walls are to be vertical.

3.8.3 *WOOD WALL APPLICATIONS*

- Wood siding (and cementitious siding as required by fire code) is to be limited to two types per building. Vertical siding is to be the dominant application, but may be complemented with horizontal siding on accent elements. Transitions between wood siding materials are to take place at offsets in the wall plane, such as at cantilevers and/or building additions, rather than in horizontal layers.

3.9 DOORS AND WINDOWS

Fenestration design is to comply with the following Guidelines:

3.9.1 *GENERAL GUIDELINES*

- Windows and doors are generally rectangular in shape.
- Fenestration design is to utilize generous expanses of glass with minimal use of mullions.
- Clear glazing is preferred, however, glass may be coated and tinted to control solar heat gain. Mirrored appearance is not acceptable.
- Building facades shall include sufficient solid elements to contrast with and separate the expansive glazing elements.

3.9.2 *EXTERIOR DOORS*

- Doors are to avoid the danger of shedding snow by placing them under protective roof elements.

- Door massing and sizes are to be appropriately scaled to the size and materials of the wall in which they are placed.
- Exterior doors may be of glass, wood or steel.
- Door wall systems providing for indoor/outdoor living are encouraged.

3.9.3 *WINDOWS*

- Approved window types include:
 - Fixed - Double-hung
 - Awning - Casement
- Jalousie, glass block and similar window types are not allowed. Pivoting and/or hopper windows will be considered on a case-by-case basis.
- Window proportions are to be based on a vertical or square unit, whether set into a wall or grouped together in horizontal openings.
- The shapes and details of all openings are to be appropriate to the structural expression of the walls within which they are located.
- Window designs are to be consistently applied throughout all elevations of a building through the use of consistent proportions, modular elements and/or similar lite designs.
- Windows are to be clad in maintenance free metals such as copper, powder-coated aluminum or acid-washed galvanized steel. Copper cladding may be left to patina naturally, provided it loses its reflective properties within one year of construction completion. Vinyl cladding is not permitted. Refer to Section 3.15 for approved color selections.
- Window shutters are not permitted.

3.10 STRUCTURAL EXPRESSION

Structural systems may be concealed within floor and roof elements. Exterior columns may be minimized to maintain expansive views and transparency of building between residential decks below and living areas above.

3.11 CHIMNEYS AND ROOF PROJECTIONS

- The sizes and heights of chimneys are to be in scale with the building's architecture.
- Rooftop equipment, including vents and all flues 6 inches in diameter or greater, are to be concealed in chimney-like structures that are an integral part of roof designs.
- Heights of wood-burning chimneys are to comply with all applicable codes. Heights of gas-burning chimneys or boiler flues are to match those of their wood burning counterparts.
- Chimney veneers are to be constructed of stone or concrete to match and/or complement building materials.

- Chimneys may terminate in decorative caps of stone, concrete or metal. Creative designs are encouraged. When flat or pitched stone caps are used, they are to have a minimum thickness of 6 inches. All chimney caps are to have screen spark arrestors per local codes.
- Air conditioning and heating equipment may not be mounted on roofs, unless completely concealed.

3.12 FIREPLACES

Per Park City code, wood-burning fireplaces are not allowed in individual Villas or Lodges units. The quantity of gas burning fireplaces is not restricted.

3.13 DECKS, BALCONIES AND RAILINGS

Decks and balconies are to be used to strengthen the connection between the indoors and the outdoors, subject to the following Guidelines:

- Railing designs are to maximize transparency. Approved railing materials include:
 - Metal mesh or flat bar
 - Metal, non-reflective and similar to metal detailing used elsewhere on the Buildings
- Balcony, deck, porch and railing designs shall be consistent between buildings within the B2 East neighborhood.
- Floors of balconies that are visible from off-site, or from units located above or adjacent to them, are to be finished in wood, stone, or colored, stamped or patterned concrete or concrete pavers.
- Design of balconies, decks and porches is to take into consideration shade, sun, wind, snow shedding and other climatic influences.

3.14 DETAILS

Finish details such as exterior hardware and light fixtures shall reflect the contemporary architectural vernacular.

3.15 APPROVED FINISHES AND COLORS

The color of exterior elements, including roofs, walls, trims and landscape structures, is generally subdued, complementary of and slightly darker than the colors found in the surrounding landscape. Accent colors and trims, however, are to add more vibrancy and warmth to buildings.

- Building elements are to fall within the following general color ranges:
 - Roofs are to be brown, gray, dark green and/or gray-green in hue
 - Wood walls are natural browns or grays
 - Accent and trim colors are dark grays, browns or bronze
 - Fences are to be of dark colors to minimize visibility

- Colors shall be selected to provide contrast between primary building cladding materials. Monochromatic color schemes are discouraged.
- More vibrant accent colors may to be used at entry and first floor levels to add interest and warmth to pedestrian levels.
- Color schemes in the B2 East neighborhood are to be generally consistent between buildings, with no color changes between units in one building.
- Wood walls are to use more transparent stains to emphasize and retain the natural texture, grain and variation of the wood.
- Concrete and wood materials are not to be covered with paints and/or opaque stains.
- Steel vertical supports at snow guards are to be painted black or to match roof colors.

3.16 SKYLIGHTS SOLAR PANELS AND SATELLITE DISHES

Skylights, solar panels and satellite dishes are to be completely screened from off-site and are subject to the following additional Guidelines:

- Satellite dishes and their locations are to be approved by the DRB. An application, application fee and proposed location for all satellite dishes must be submitted to the DRB for review and approval prior to satellite dish installation. (Refer to *Book IV* for design review procedures and application requirements.)
- Satellite dishes are to be a maximum of 24 inches in diameter and colored to blend with the site or building. A maximum of two satellite dishes are permitted per building.
- Skylights and solar panels are permitted only where not visible from off-site.
- Where approved, skylights are to use clear, flat and non-reflective glass. Skylights are to match the pitch of the roof and are not to extend further than 4 inches above the roof plane.
- Interior lights may not be pointed upwards through skylights or cast light onto overarching vegetation.

3.17 IT/TELECOMMUNICATION FACILITIES

All Buildings at Empire Pass have access to high bandwidth infrastructure that delivers high-speed data connection for real-time services such as remote-location teleconferencing, learning, healthcare and entertainment. In order to avoid impacts to off-site views, all wiring and equipment housing is to be incorporated as part of the building design and not as an exterior detached utility closet. Recommended cabling requirements are outlined in the *Multi-Family Residential Pre-Wire Guidelines*, available from the DRB office.

ATTACHMENT 1: SITE PLAN



EMPIRE PASS
DESIGN REVIEW BOARD

June 11, 2021

Sommet Blanc Development, LLC
Mr. Lynn Padan
PO Box 980022
Park City, UT 4098

RE: Sommet Blanc, 9300 Marsac Ave
Empire Pass Development
Preliminary Design Approval

Dear Lynn,

Thank you for your recent application regarding Sommet Blanc, 9300 Marsac Ave to the Empire Pass Design Review Board (the DRB) requesting Preliminary Design approval of the proposed condominiums and townhomes project. At the June 9, 2021 meeting the DRB granted Preliminary Approval with the following conditions:

1. Preliminary Review is based off plans dated April 16, 2021.
2. The total site of is comprised of 6.91 acres.
3. There are 2 Villa Buildings:
 - 5 Units Total
 - The Total Saleable Square Footage for the Villas is 25,000
 - The maximum building height for the Villas is 48 feet above natural grade
 - The driveway width for the villas road coming off of Guardsman Road is 26 feet wide, the first section of grade is 5% with a 10% maximum grade and leveling off at 1%
 - The villas have 10 enclosed parking spaces.
 - There is a Ski Lounge Building for the Villas (single story)
4. There are 3 Lodge Buildings
 - Building A: 17 units
 - Building B: 17 units
 - Building C: 9 units
 - There is a Lobby Building for the Lodges (single story)
 - The Total Saleable Square Footage for the Lodges is 137,000
 - The Max Square Footage per Pod B2 approved MPD is 162,000
 - The maximum building height for the Lodge buildings are 82 feet above datum points
 - The driveway width for the Lodges coming off Marsac Ave is 26 feet wide, with 4% for the first section, 10% maximum and finishing off at 5% grade.
 - The lodges have 155 enclosed parking spaces, 4 at grade totaling 159.

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DESIGN REVIEW BOARD

5. The Lodge's height of ridges at building ends:

Building A

- West End - Level 5 Roof 8,407'
 - Restaurant Patio 8,342'
 - Height from Finished Grade 65'
- East End - Level 6 Roof 8,424'
 - Lobby Driveway 8,345'
 - Height from Finished Grade 79'

Building B

- North End - Level 5 Roof 8,424'
 - Lobby Driveway 8,345'
 - Height from Finished Grade 79'
- South End - Level 6 Roof 8,441'
 - Upper Cul de Sac 8,362'
 - Height from Finished Grade 79'

Building C

- West End - Level 6 Roof 8,455'
 - Ski Lounge Patio 8,376'
 - Height SW corner 79'
 - Upper Cul de Sac 8,364'
 - Height NW Corner 91'
- East End - Level 6 Roof 8,455'
 - Level 3 Patio 8,402'
 - Height SE corner 53'
 - Upper Cul de Sac 8,364'
 - Height NE corner 91'

6. The DRB walked the site to review the lot staking of the entire project. The DRB would like to see more details for landscaping and walls on the corner of the property adjacent to the Empire Canyon day lodge.
7. The DRB discussed the preservation of trees above the proposed condo retaining walls and the area below the Villas ski lounge building. To be field verified with applicant when LOD is set.
8. The applicant will provide finish materials for all proposed retaining walls.
9. The DRB granted a variance for retaining walls to have a maximum height of 14 feet to accommodate the Fire Marshall required shift of the lower driveway to meet ladder access requirements.
10. The flat roofs now have the addition of green roofs.

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DESIGN REVIEW BOARD

11. The DRB conceptually approved and favored the proposed exterior materials.
12. All exterior materials are subject to mockup review and approval.
13. The applicant to provide deck and railing details for final review.
14. Submit color and texture sample for colored concrete drive areas, which requires DRB approval prior to installation.
15. Applicant understand that no faux or manufactured materials may be used as finished exterior product, this would include glue-lam beams, faux stone, bare concrete, vinyl siding, etc.
16. The DRB to review the complete lighting plan, including cut sheets and specifications for all exterior light fixtures proposed with the applicant for final review.
17. Applicant to provide complete landscape plan, including counts and planting specs, for DRB review.
18. Art work specs to be provided for final review.
19. The applicant shall submit a detailed sign program to the DRB for review and approval prior to installation of the same.
20. Building height, volumetrics and square footage calculations to be addressed to the satisfaction of the DRB and the City.
21. Applicant understands the requirement to provide an on-site mock-up of exterior materials, colors and construction techniques for further DRB review and approval prior to installation of the same.
22. Applicant has provided utility routes, connection points.
23. The DRB to review the construction mitigation plan with the applicant during the final review.
24. Applicant to provide details of the entry monument for final review.
25. Provide for final review: excavation export/import quantities, identify soil storage areas on construction management plan.

Again, we thank you for your Preliminary Design submittal and look forward to working with you and your team as the process continues.

Feel free to contact our office at 435-333-3700 with any questions regarding the Design Review process.

Respectfully,

Trish Waterman

Trish Waterman, Empire Pass MOA Director
On behalf of the Empire Pass Design Review Board

EMPIRE PASS
DESIGN REVIEW BOARD

July 28, 2021

Sommet Blanc Development, LLC
Mr. Lynn Padan
PO Box 980022
Park City, UT 4098

RE: Sommet Blanc, 9300 Marsac Ave
Empire Pass Development
DRB Modified Plan Preliminary Design Approval

Dear Mr. Padan,

Thank you for your re-submittal of Preliminary plans regarding Sommet Blanc, 9300 Marsac Ave to the Empire Pass Design Review Board (the DRB). The DRB previously granted Preliminary approval on June 9, 2021 based off plans dated April 16, 2021. On July 27, 2021 the DRB reviewed modified Preliminary plans dated July 15, 2021 and granted an amended Preliminary approval with the following conditions:

The DRB approved changes to the Buildings on site include:

Building A

1. One floor was dropped on the west side adjacent to the Empire Canyon Day Lodge.
2. The west elevation is now 4 stories at the upper cantilever and climbs to 5 stories for the west penthouse.
3. At the far east end the building is dropped to 5 stories and climbs to 6 stories for the east penthouse.
4. A cantilevered glass element was added the elevation facing the roundabout to increase architectural interest.
5. Area of the green roof increased.
6. The transition from the Day Lodge to the building is now softer.

Building B

1. The penthouse roofs were rotated to face west rather than north/south, which reduced the building height at the ends of the building.
2. Area of the green roof increased.

Building C

1. One floor was added, which increased the height to 92' above the benchmark.

Villas

1. The number of villas was reduced to 4 units from 5 units.
2. There is now separation between the northernmost villa and Marsac Ave below and allows more landscaping opportunities.
3. The two duplex buildings are not situated on the flattest portion of the upper site.
4. The amenity building and the driveway hammerhead are pulled further north.

EMPIRE PASS
DESIGN REVIEW BOARD

Patio Area

1. The restaurant patio was reduced to introduce a landscape buffer between the patio and the ski beach.

Exhibit D shows the updated volumetrics to the height of Building A (west) and the addition of another floor to Building C to accommodate density shifted from Building A and the eliminated villa. The DRB asked the applicant to do their best to preserve the trees between Building C and the villas. The DRB favored the direction of the architecture with the flat roofs, which comply with the B2 East design guidelines.

Again, we thank you for your submittal. Feel free to contact our office at 435-333-3700 with any questions regarding the Design Review process.

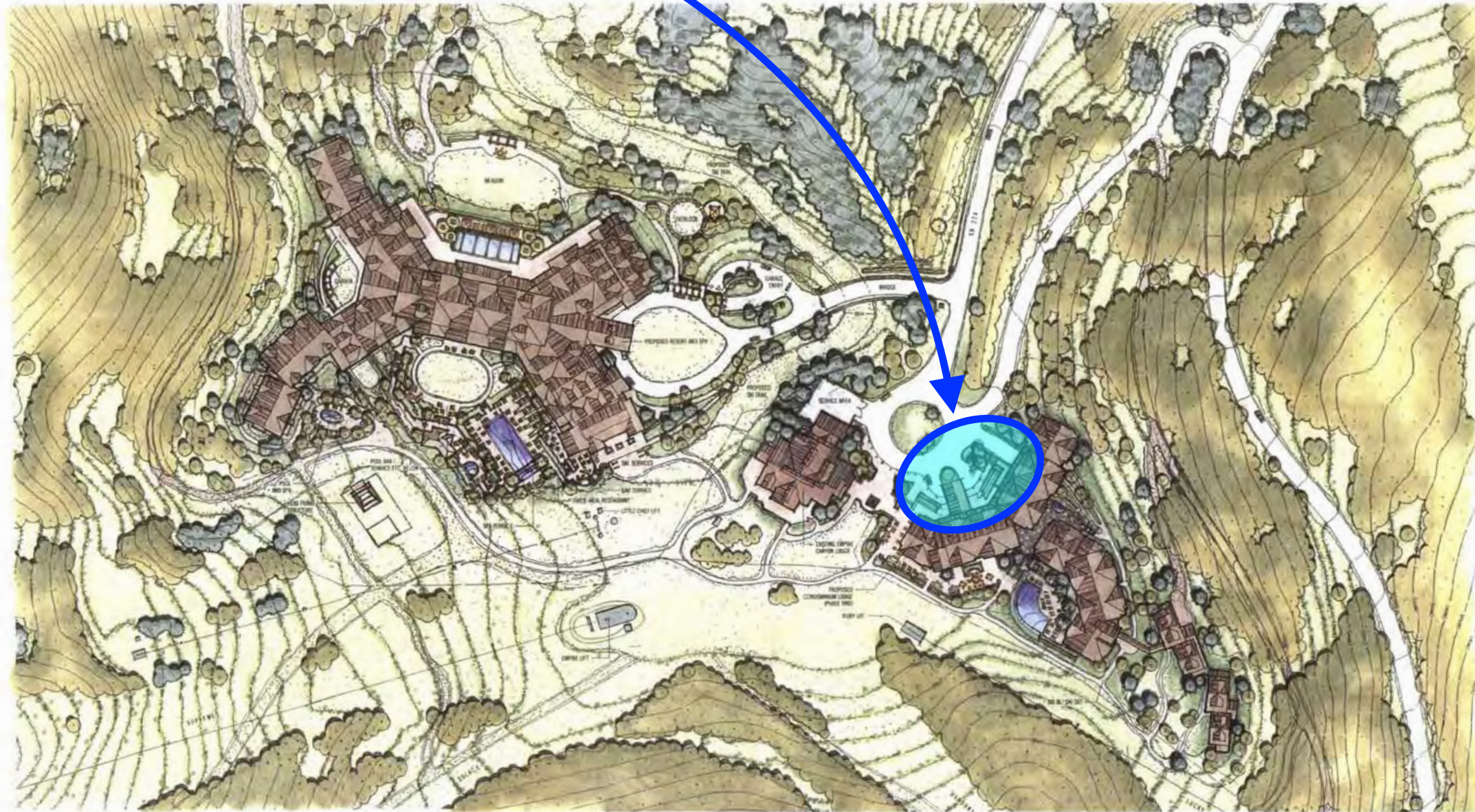
Respectfully,

Trish Waterman

Trish Waterman, Empire Pass MOA Director
On behalf of the Empire Pass Design Review Board

Sommet Blanc (B2 East) - CUP & MPD Amendment
Exhibit 5 - Hill Glazier Challenges
September 2nd, 2021

Three B2 East
curb cuts on
Marsac
roundabout

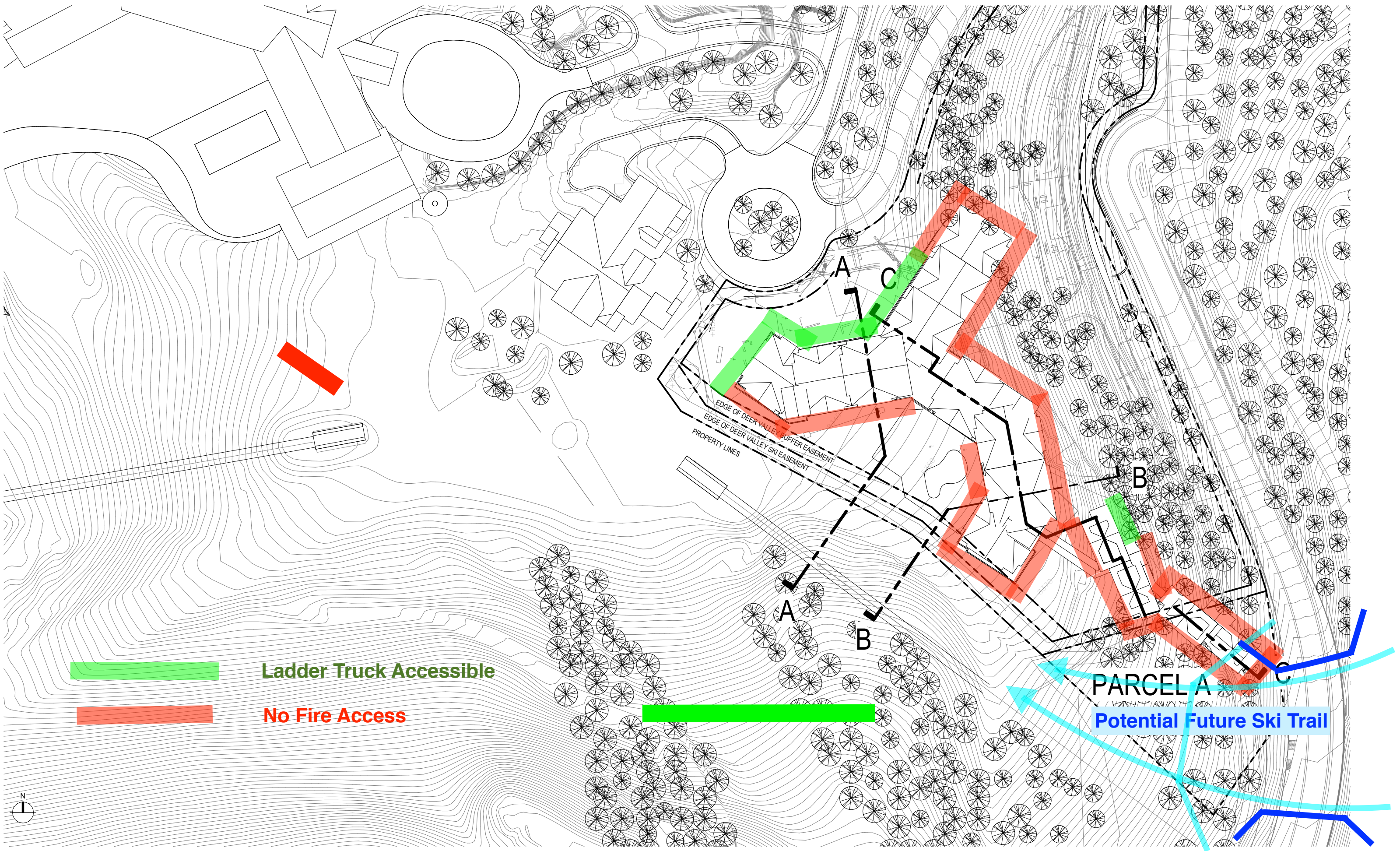


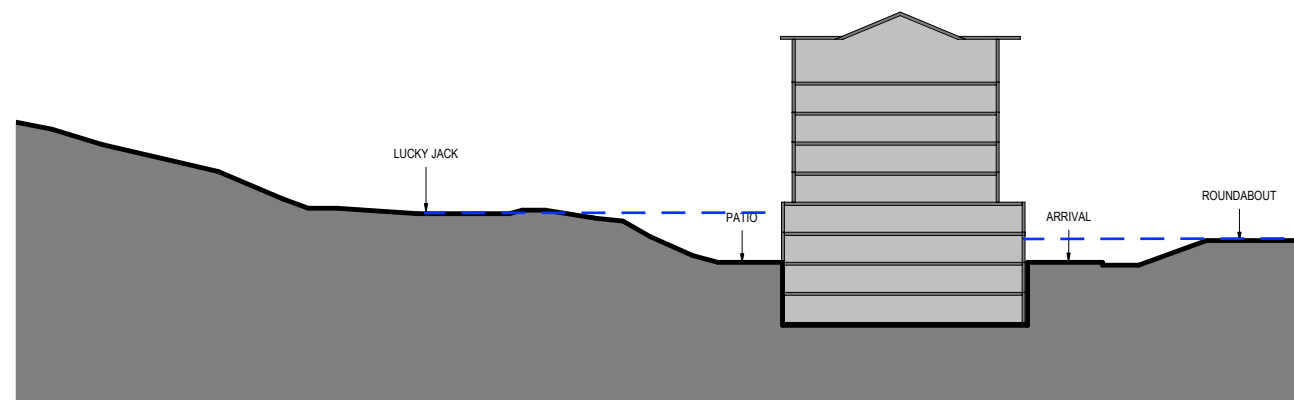
CONCEPTUAL LANDSCAPE PLAN

Montage Resort and Spa at Deer Valley PARK CITY, UTAH



Project No.	11006
Date	APRIL 14, 2006
Scale	AS NOTED
Sheet No.	L 101

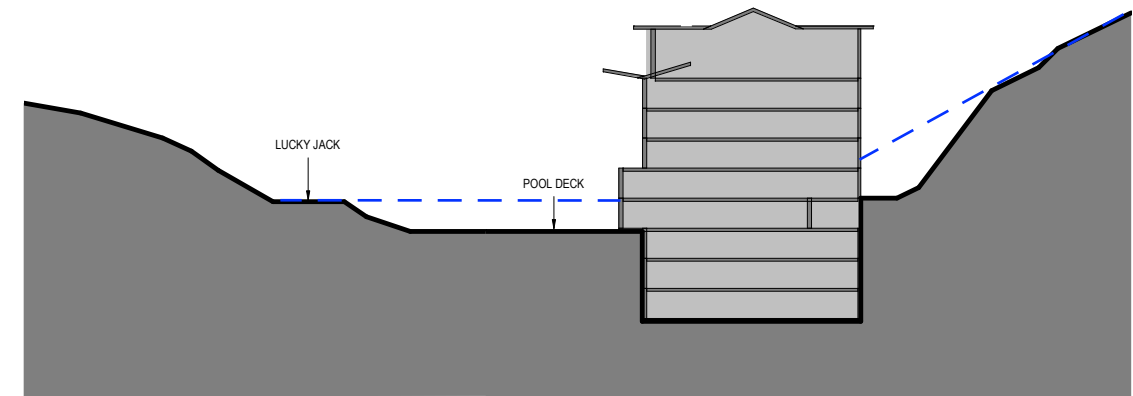




**Patio well below
Lucky Jack**

(A) HILL GLAZIER -SECTION A

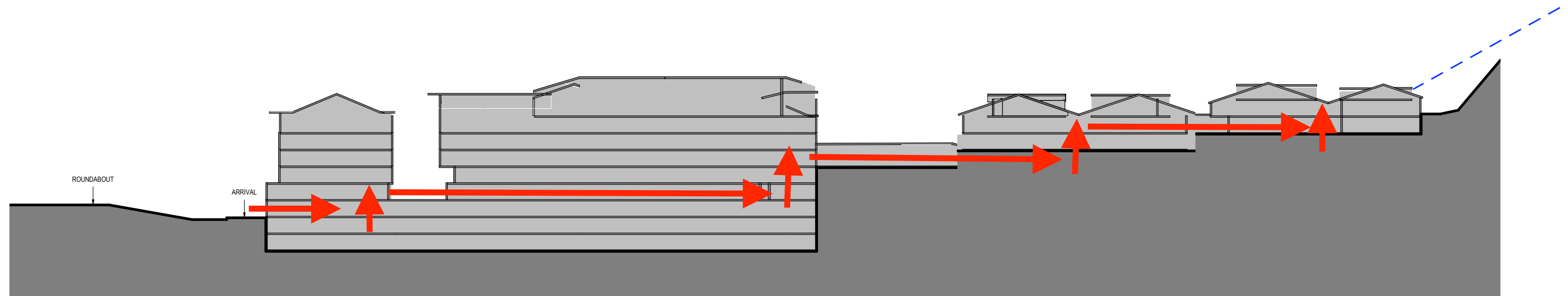
**Arrival below
roundabout**



**Pool deck well
below Lucky Jack**

(B) HILL GLAZIER -SECTION B

**Massive cut slope
at rear of building**

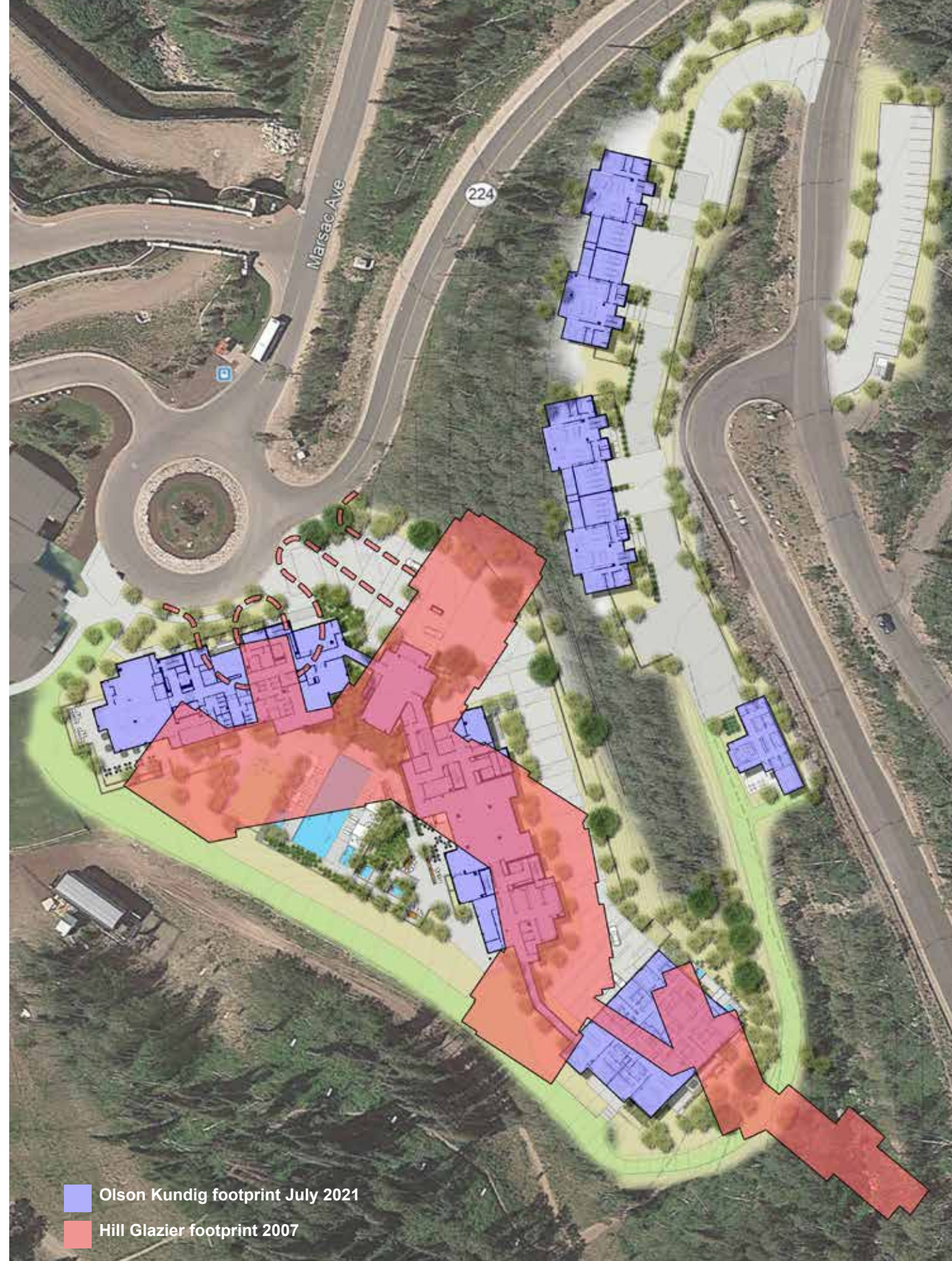


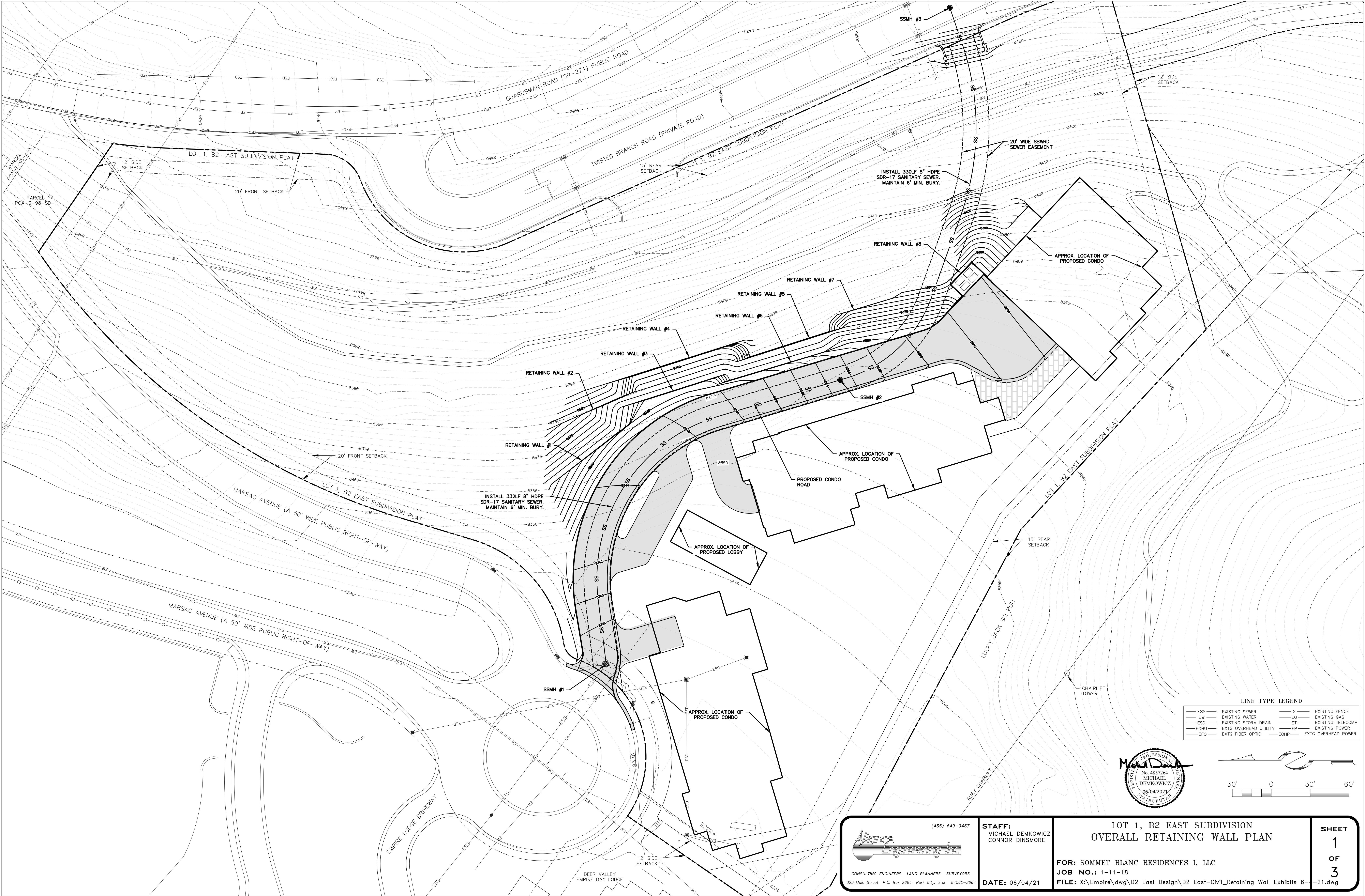
**Arrival below
roundabout**

(C) HILL GLAZIER -SECTION C

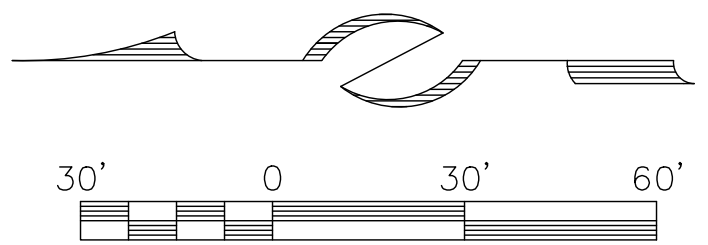
**Crazy internal circulation.
See red arrows**

**Massive cut slope
above last villa**





LINE TYPE LEGEND					
ESS	EXISTING SEWER	X	EXISTING FENCE		
EW	EXISTING WATER	EG	EXISTING GAS		
ESD	EXISTING STORM DRAIN	ET	EXISTING TELECOMM		
EOHU	EXTG OVERHEAD UTILITY	EP	EXISTING POWER		
EFO	EXTG FIBER OPTIC	EOHP	EXTG OVERHEAD POWER		



(435) 649-9467
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

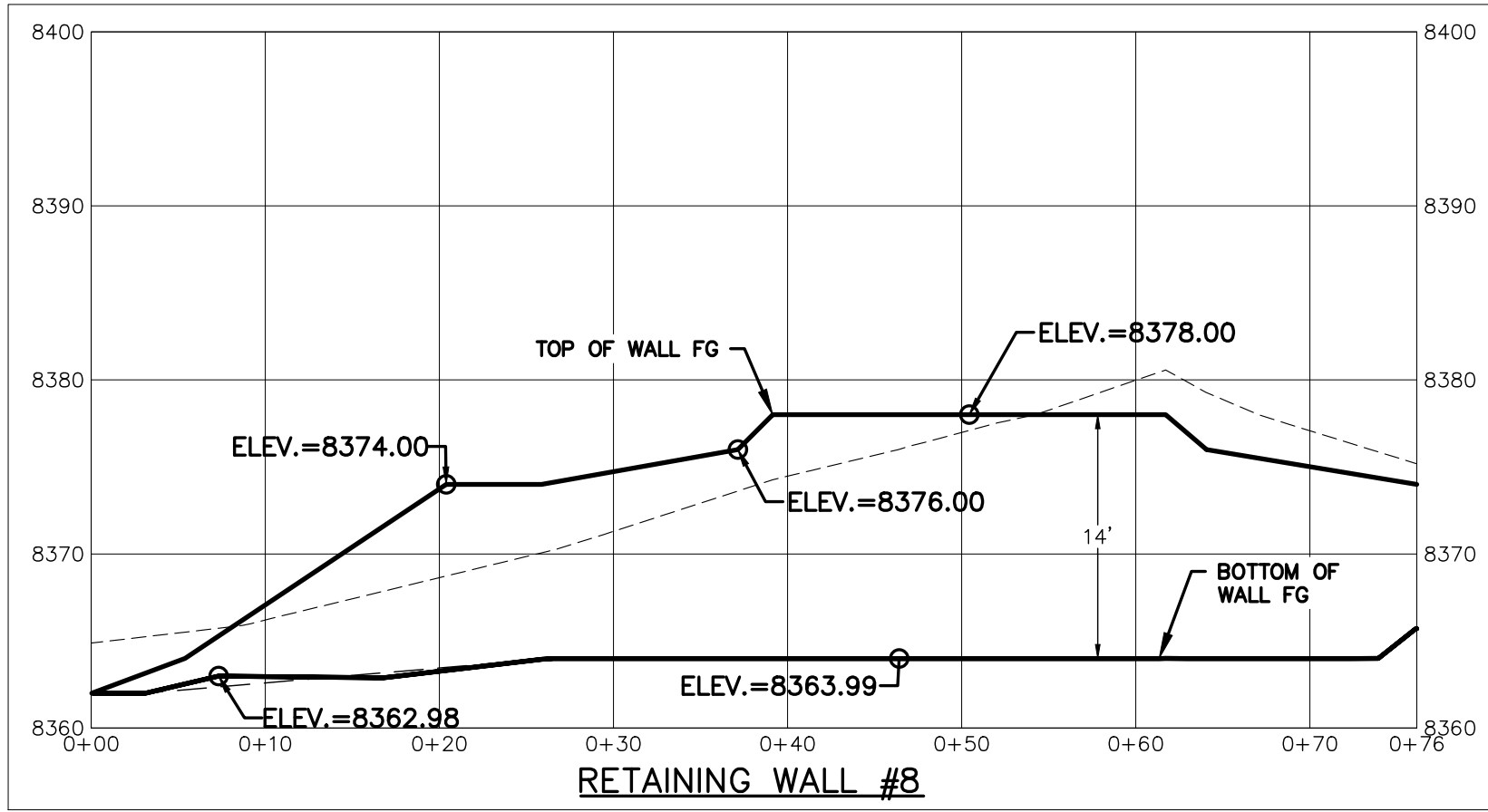
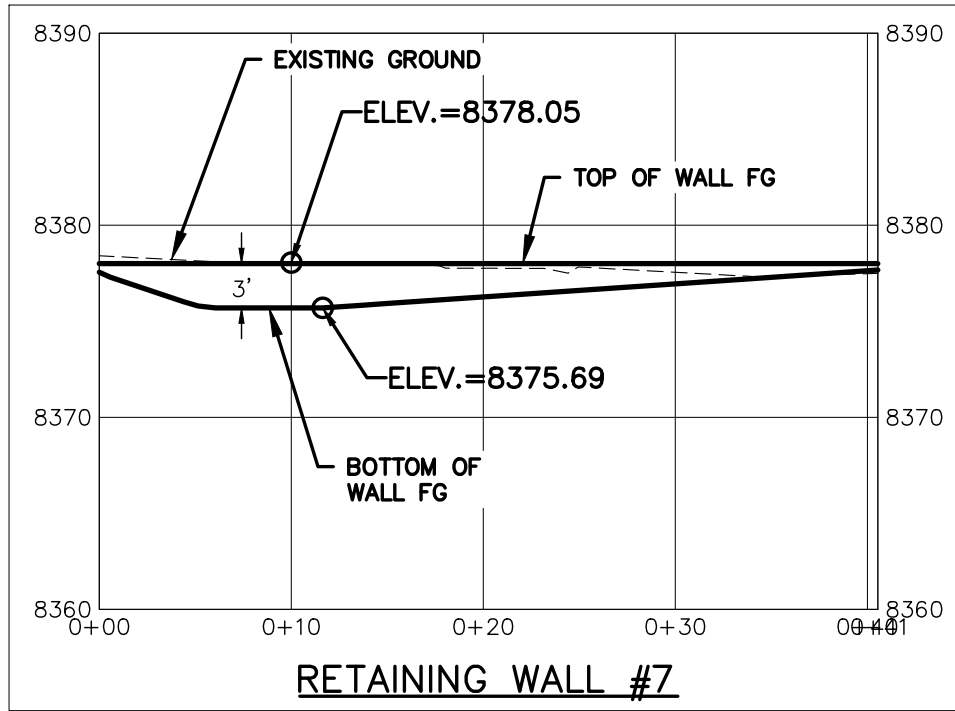
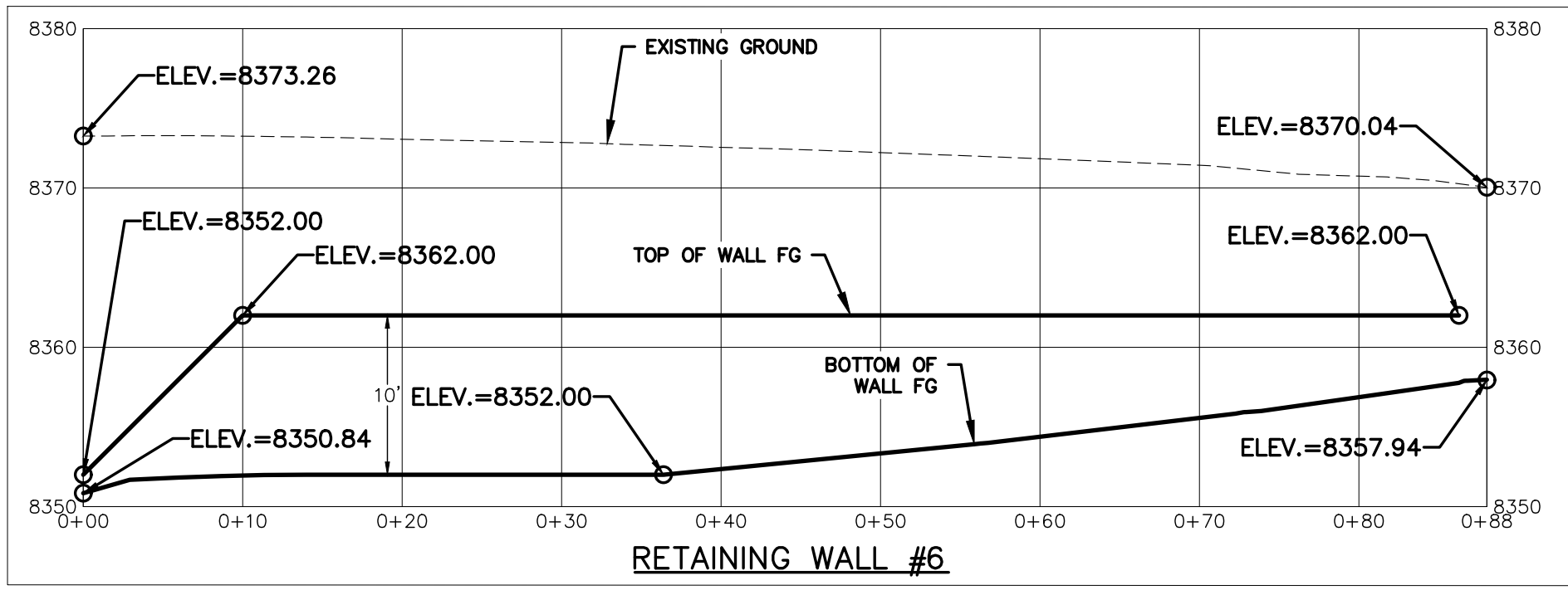
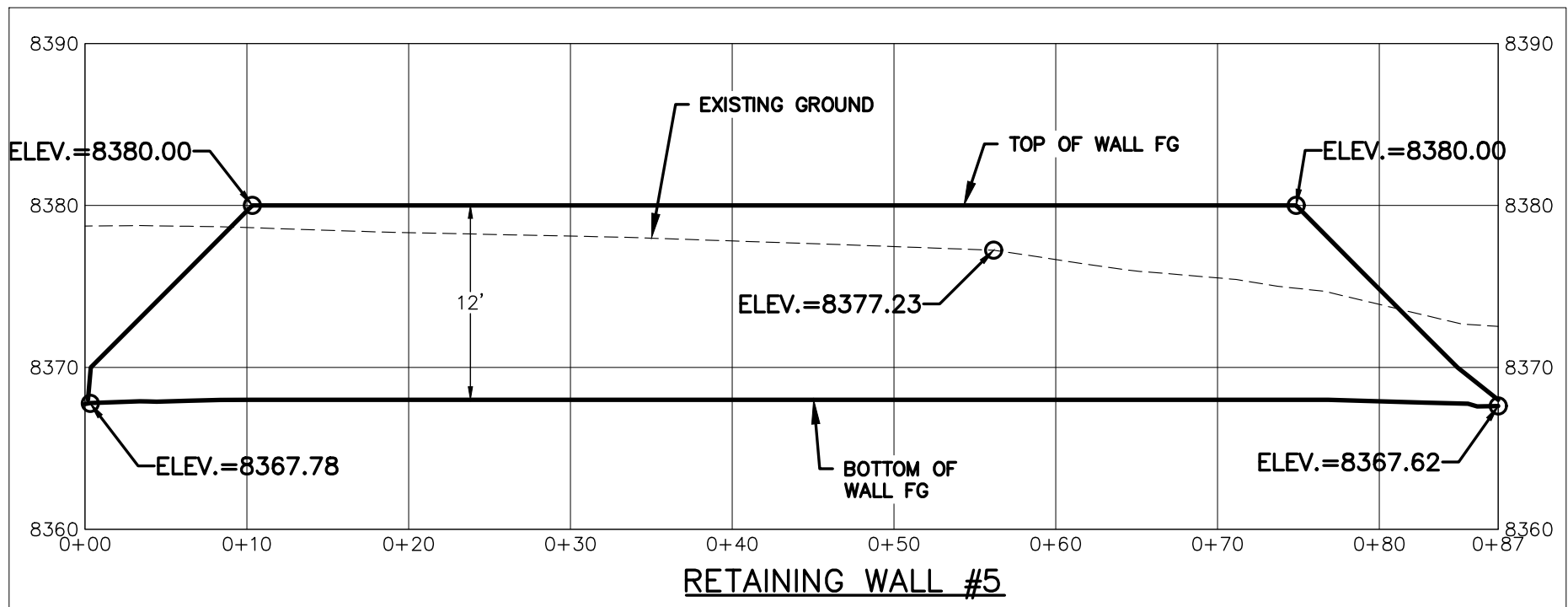
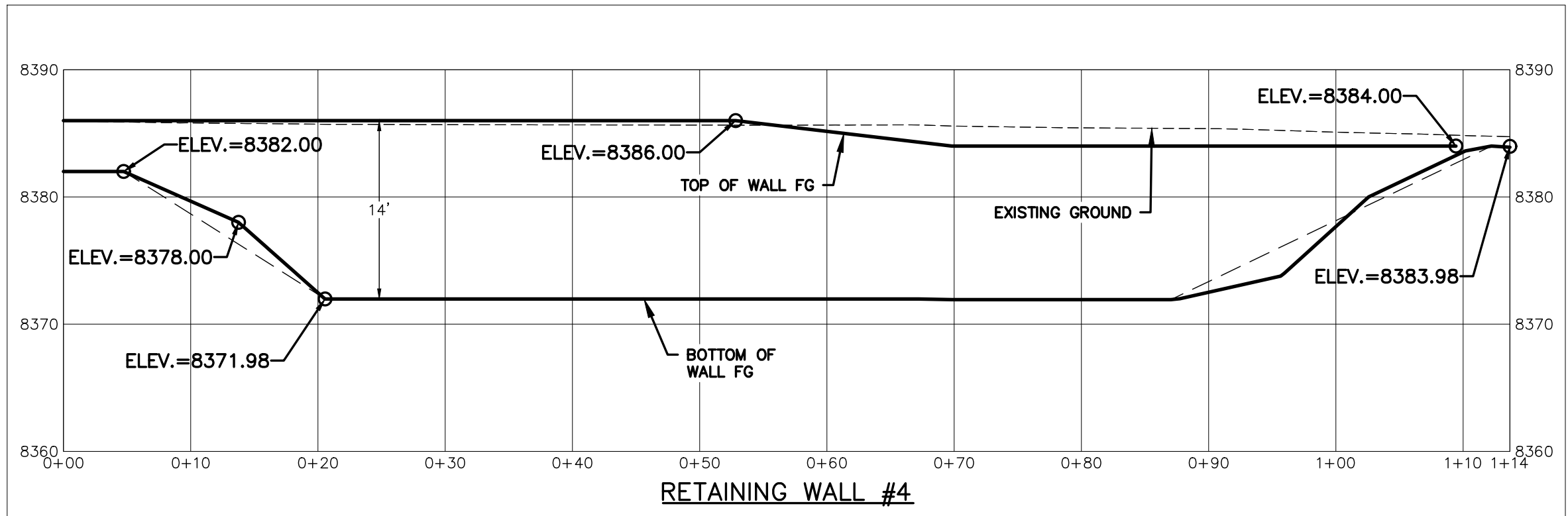
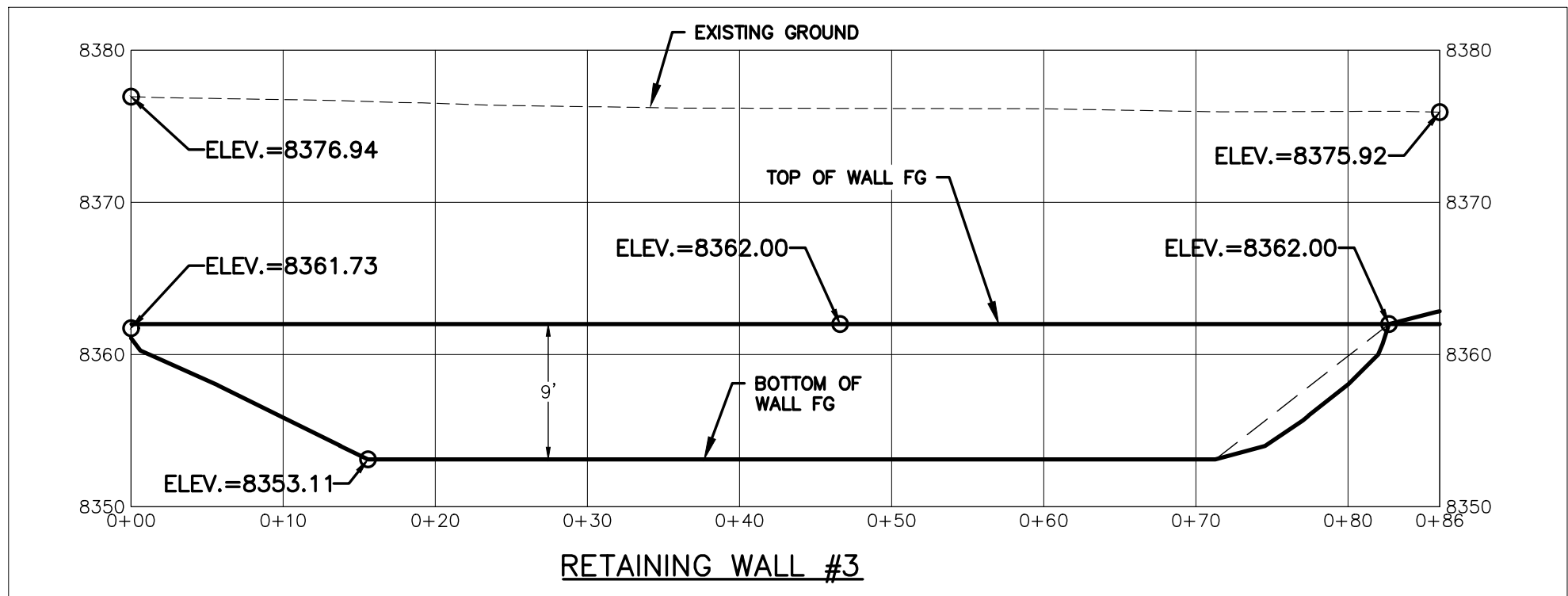
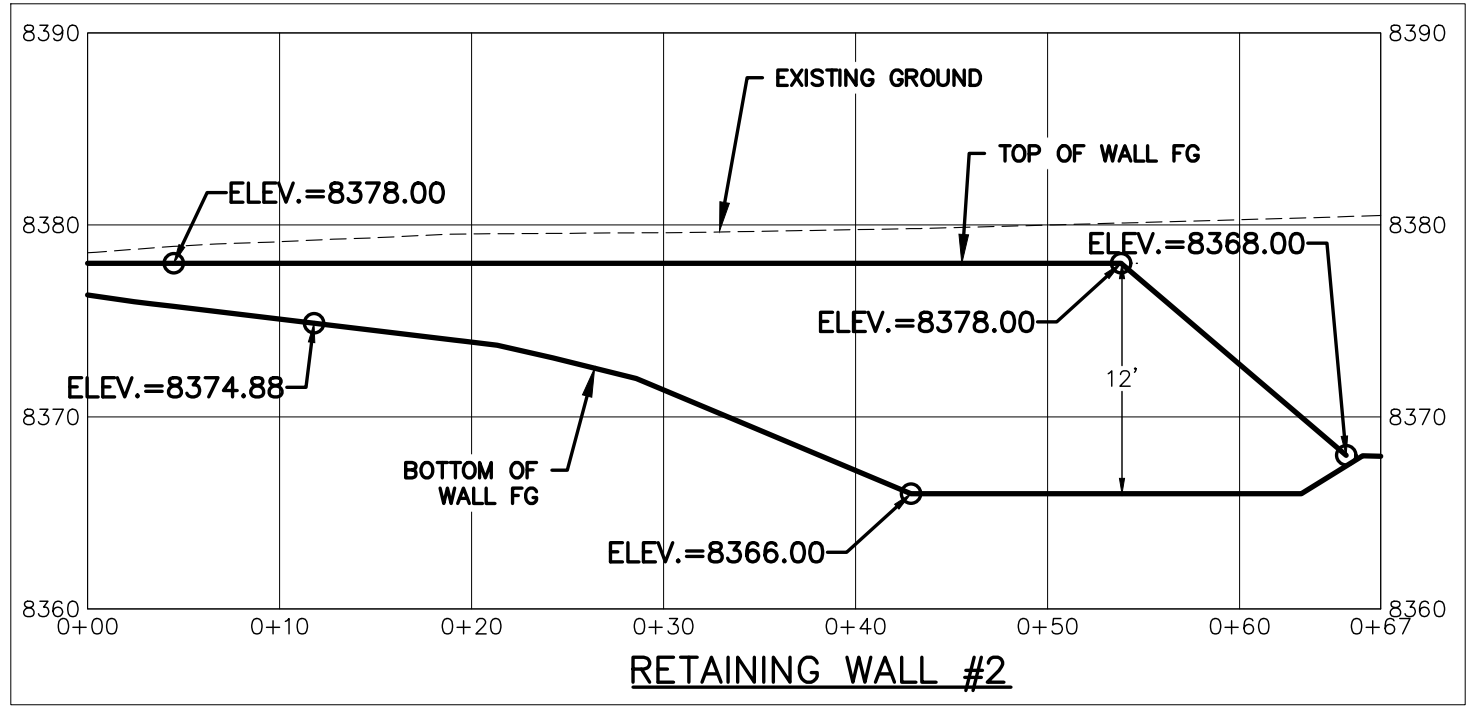
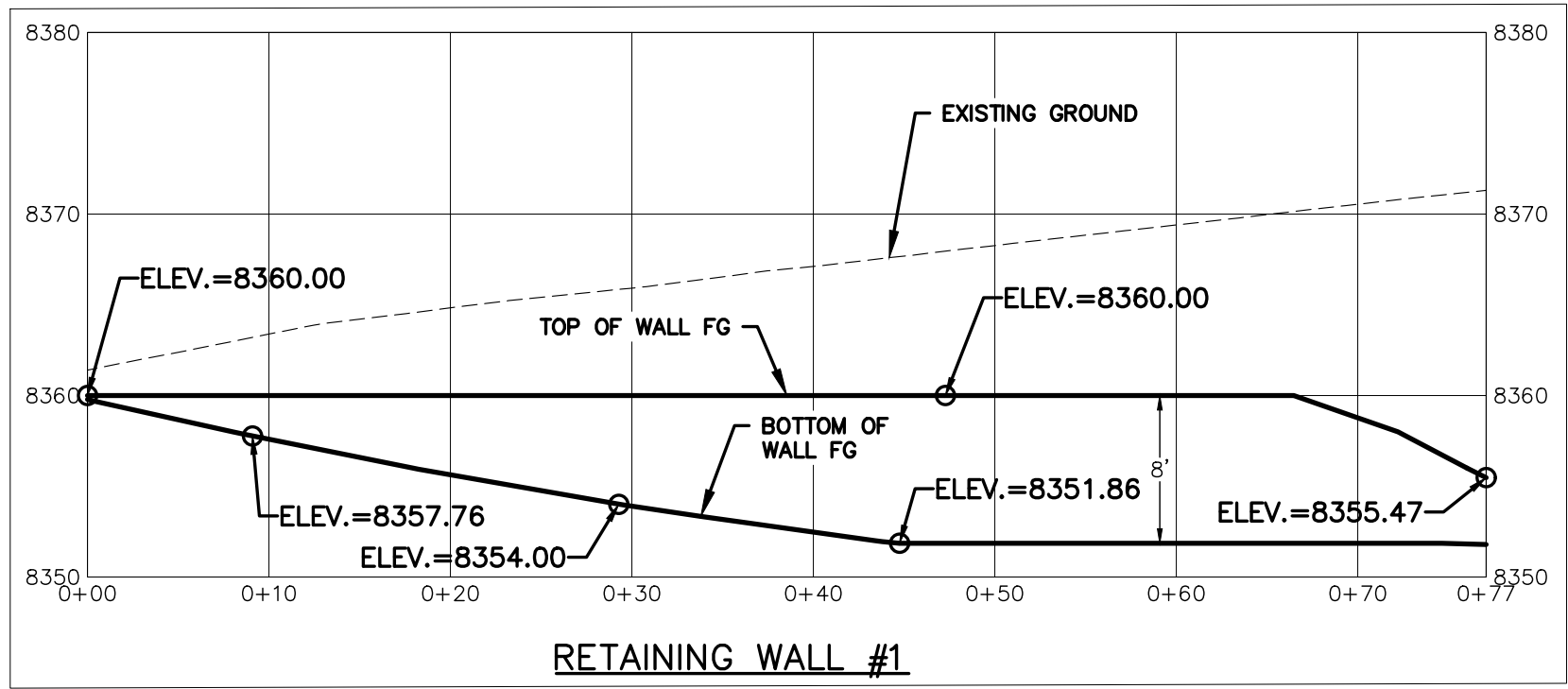
STAFF:
MICHAEL DEMKOWICZ
CONNOR DINSMORE

DATE: 06/04/21

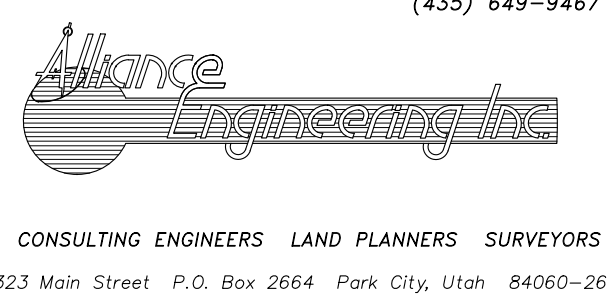
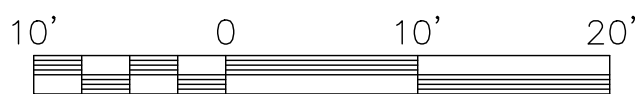
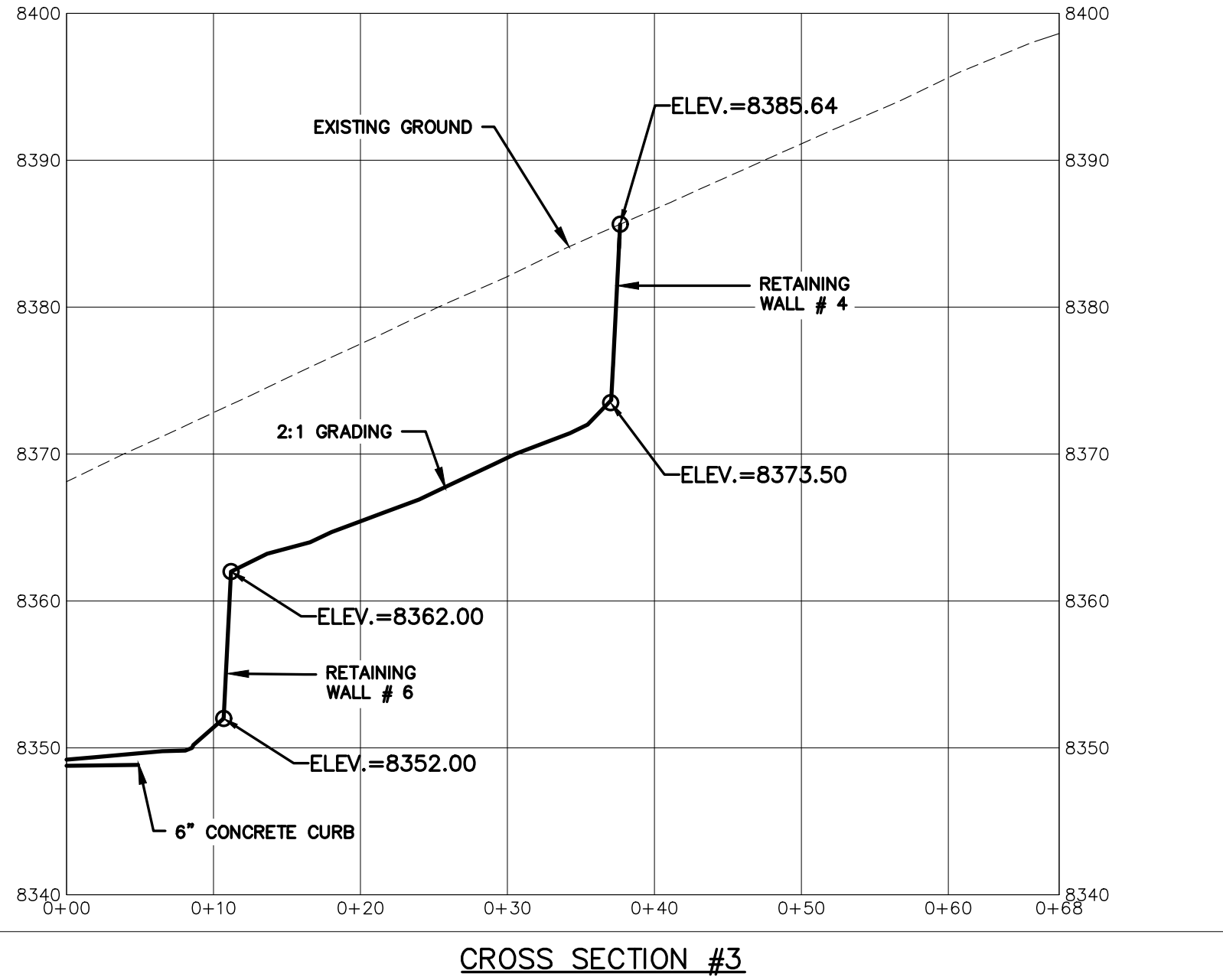
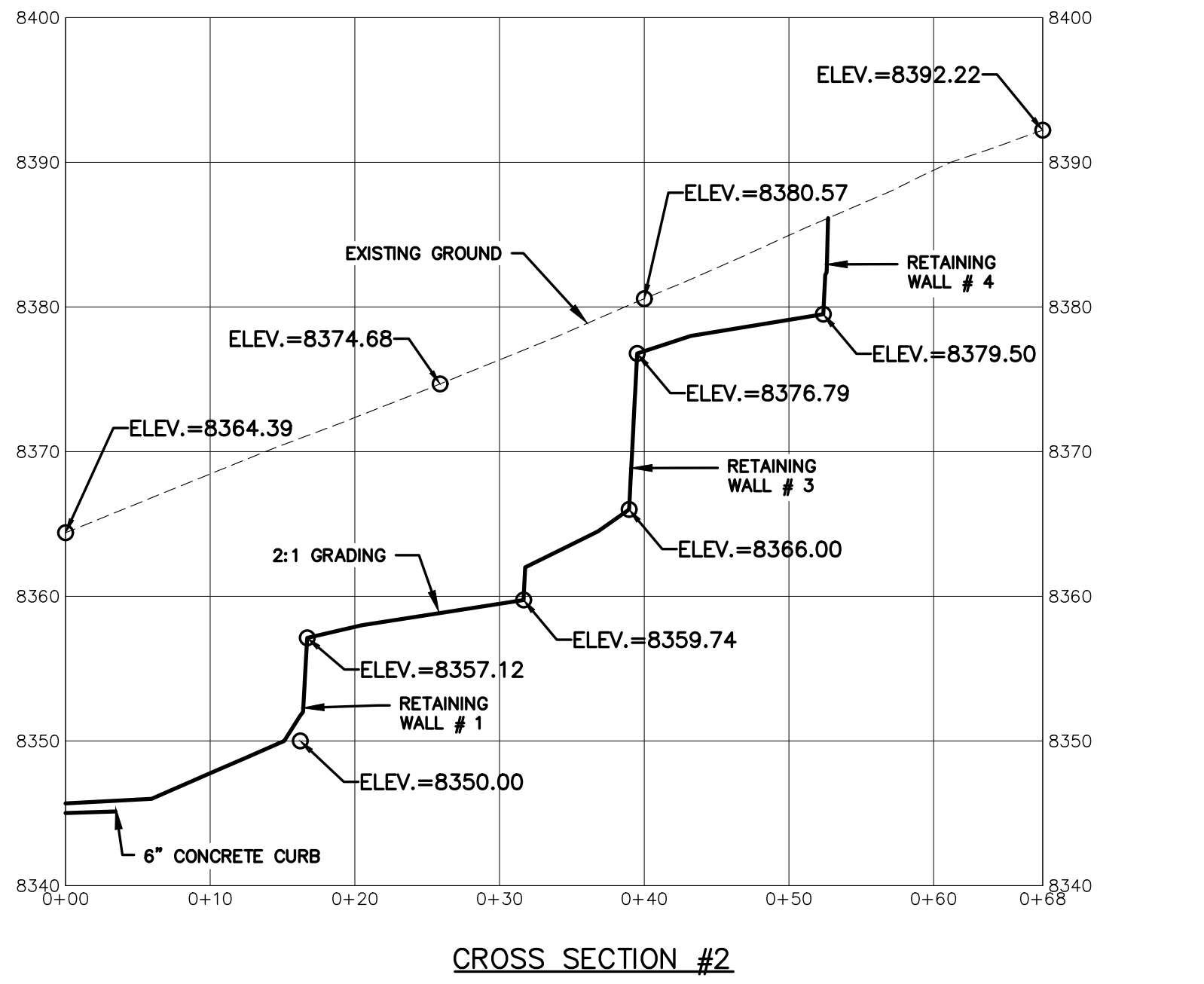
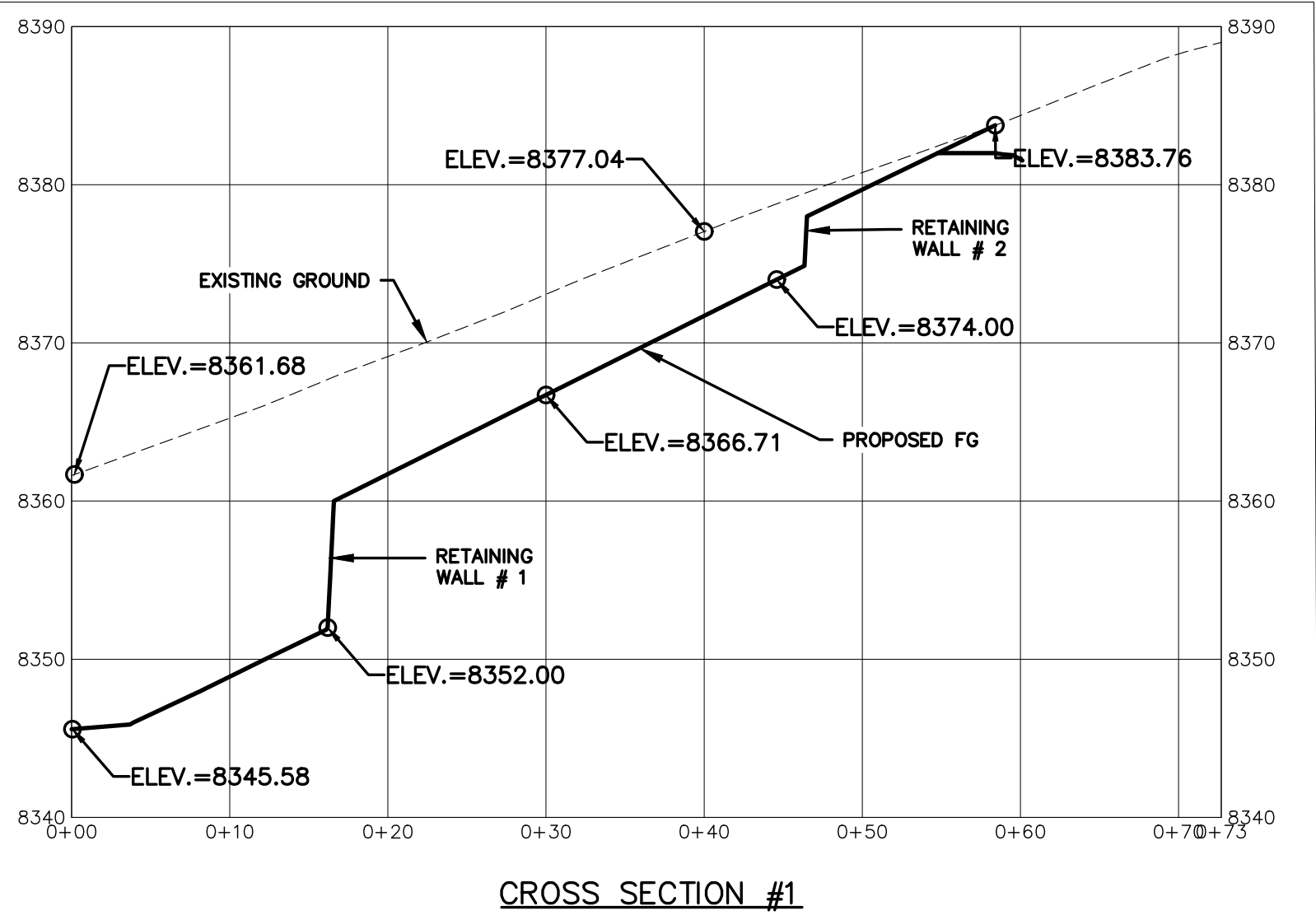
**LOT 1, B2 EAST SUBDIVISION
OVERALL RETAINING WALL PLAN**

FOR: SOMMET BLANC RESIDENCES I, LLC
JOB NO.: 1-11-18
FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil_Retaining Wall Exhibits 6--21.dwg

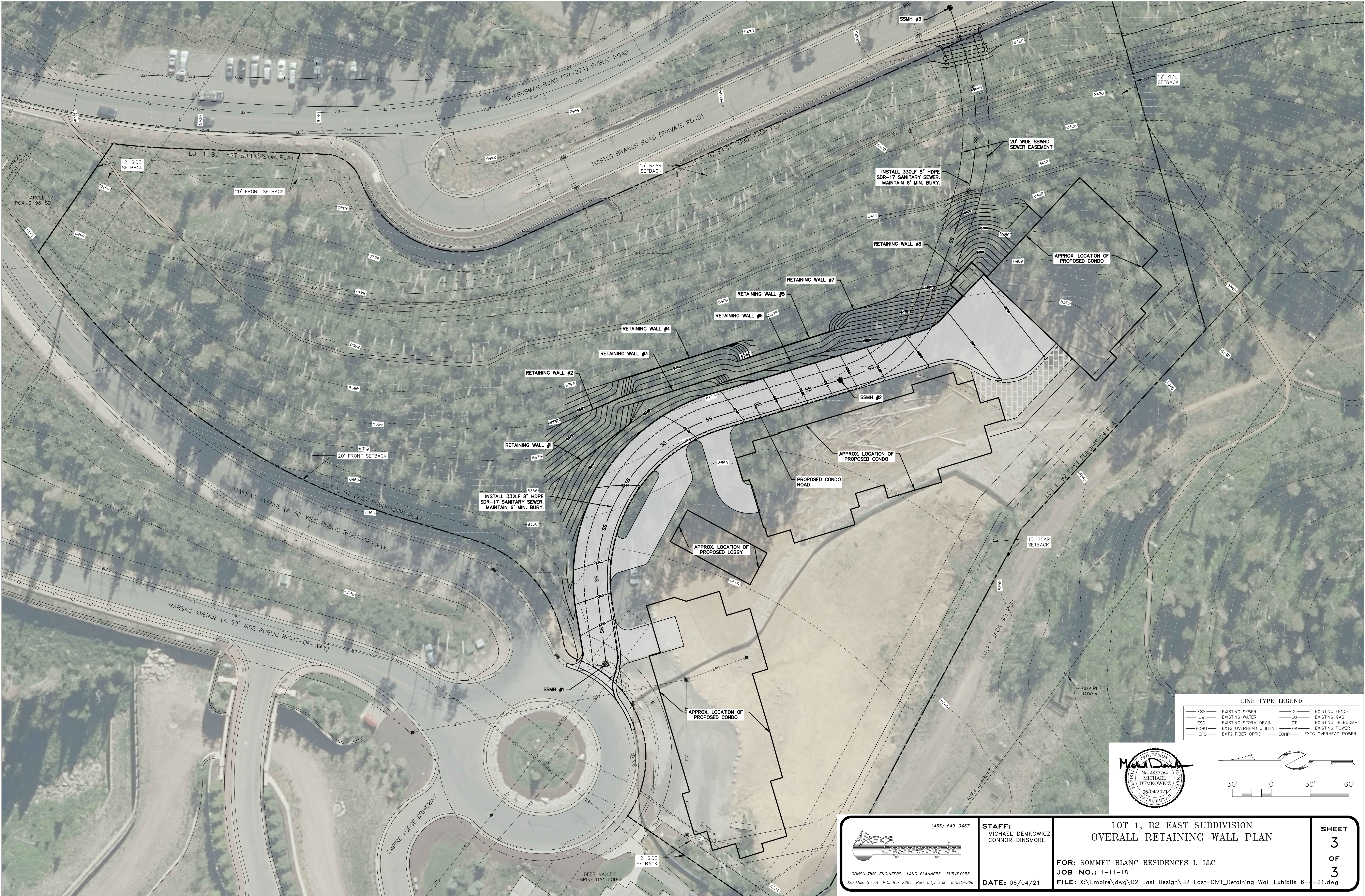
**SHEET
1
OF
3**



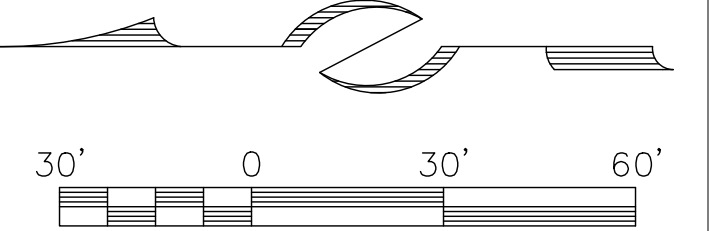
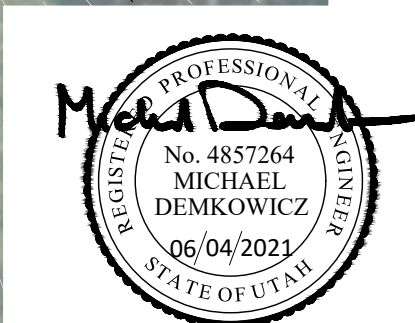
NOTE:
1. BOTTOM OF WALL GRADING TO BE SMOOTH 2:1 OR 1:1 GRADING, REFER TO GRADING PLAN SHEET.
2. DASHED LINE ON PROFILES TO REPRESENT SMOOTH BOTTOM OF WALL GRADING.



STAFF: MICHAEL DEMKOWICZ CONNOR DINSMORE	LOT 1, B2 EAST SUBDIVISION RETAINING WALL PLAN & PROFILE	SHEET 2 OF 3
DATE: 06/04/21	FOR: SOMMET BLANC RESIDENCES I, LLC JOB NO.: 1-11-18 FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil_Retaining Wall Exhibits 6--21.dwg	



LINE TYPE LEGEND					
ESS	EXISTING SEWER	X	EXISTING FENCE		
EW	EXISTING WATER	EG	EXISTING GAS		
ESD	EXISTING STORM DRAIN	ET	EXISTING TELECOMM		
EOHU	EXTG OVERHEAD UTILITY	EP	EXISTING POWER		
EFO	EXTG FIBER OPTIC	EOHP	EXTG OVERHEAD POWER		



Alliance Engineering Inc.
(435) 649-9467
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

STAFF:
MICHAEL DEMKOWICZ
CONNOR DINSMORE
DATE: 06/04/21

**LOT 1, B2 EAST SUBDIVISION
OVERALL RETAINING WALL PLAN**

FOR: SOMMET BLANC RESIDENCES I, LLC
JOB NO.: 1-11-18
FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil_Retaining Wall Exhibits 6-21.dwg

**SHEET
3
OF
3**

Flagstaff Annexation and Empire Pass Units and Unit Equivalents

As of 10.25.18 Reflects Empire Residences platted, Silver Strike amendment and (Larkspur Townhouse (3 units) , Moonshadow 8 PUD (31 UE), Tower Res (14 units) plats under review)

SINGLE FAMILY LOTS

POD	Single Family	Approved SF lots	Cert of Occupancy to date	Remaining lots to CO
A	Banner Wood-platted	6	4	2
B1	Northside-platted	10	10	0
D	Red Cloud-platted	30	11	19
Totals	(Single Family only)	46	25	21

Maximum SF Allowed by Flagstaff Development Agreement
 Remaining Units/UE to Plat

46
0

MULTI-FAMILY UNITS

POD	Multi-family	Units Approved/Proposed	UE Approved/Proposed	Units Platted or under review	UE Platted or under review	SF Platted or under review	PUD units (SF/duplex use UE)	ADA provided/r equired	CO UE's to date	CO Units to date
A	Moon Shadow Condo 8 PUD on Lot 1 VEPN apprvd	8	31.00	8	31	62,000	8	0	0	0
A	Lot 3 VEPN plat-(Bldg 3) (Empire Residences approved)	21	24.50	21	24.49	48,981	0	1	0	0
A	Lot 2 VEPN plat-(Bldg 4) TBD	TBD	TBD				0	TBD	0	0
A	Lot A VEMP1 3 townhomes condo plat to CC 11/29/18	3	5.75	3	5.75	11,500	0	0	0	0
A	Tower Resid. (Bldg 1)- platted lot/CUP/Condo plat to PC 11/14/18	14	21.23	14	21.226	42,453	0	1	0	0
A	Shooting Star-platted lot and condo (Bldg 2)	21	18.30	21	18.055	36,109	0	1	18.1	21
A	One Empire Pass-platted lot and condo (Bldg 5)	27	32.80	27	32.513	65,026	0	1	32.8	27
A	Silver Strike-platted lot and condo (Bldg 6) (subject to plat amend)	34	35.60	34	35.653	71,305	0	2	35.7	34
A	Flagstaff -platted lot and condo (Bldg 7)	37	35.90	37	36.753	73,506	0	2	36.8	37
A	Arrow Leaf A-platted lot and condo (Bldg 8)	28	24.50	28	23.229	46,458	0	2	23.3	28
A	Arrow Leaf B- platted lot and condo (Bldg 9)	28	25.70	28	24.373	48,746	0	2	24.4	28
A	Grand Lodge-platted lot and condo (Bldg H)	27	33.00	27	32.672	65,344	0	2	32.7	27
A	Larkspur East Townhouses-all platted/condo (3 duplex = 6 PUD)	15	24.40	15	24.347	48,693	6	0	24.4	15
A	Larkspur West Townhouses-all platted/condo	12	20.70	12	20.637	41,273	0	0	20.7	12
A	Paintbrush PUDs- all platted /condo	12	31.90	12	31.538	63,076	12	0	32	12
A	Belles PUDs- all platted/condo	17	45.00	17	45	90,000	17	0	37.85	16
B1	Nakoma PUDs- all 17 are platted condo but 5 unbuilt	17	45.00	17	45	90,000	17	0	35	12
B1	Ironwood- all platted/condo	24	37.40	23	36.972	73,944	0	1	37.1	23
B2	B2 West Montage- 174 hotel rooms platted(apprvd 192)	hotel rooms	69.60	n/a (hotel rooms)	72.665		0		72.4	1
B2	B2 West Montage condos- platted (apprvd 94)	94	114.00	84	109.335	218,669	0	5	109.3	84
B2	B2 East- B2East Subdivision approved/No condo plat yet	70	81.00				0	TBD	0	0
Totals (Multi-family (MF) only)		509	757.28	428	671.208	1,197,083	60	20	572.55	377

Maximum (MF) Allowed by Flagstaff Development Agreement

550

785.00

550

785

n/a

60

n/a

Remaining MF Units/UE (to be approved and/or platted)

41

27.72

122

113.792

n/a

0

n/a

MF Totals by POD- apprvd/platted/proposed, includes PUDs, not SF lot

Units

UE

Units Platted (or plat
under review)

A (includes unbuilt Empr Res, Larkspur, Moon Shadow, Tower Residential)

304

410.28

304

B1

41

82.4

40

B2 (plus 174 hotel rooms for units, hotels rooms included in UE)

164

264.60

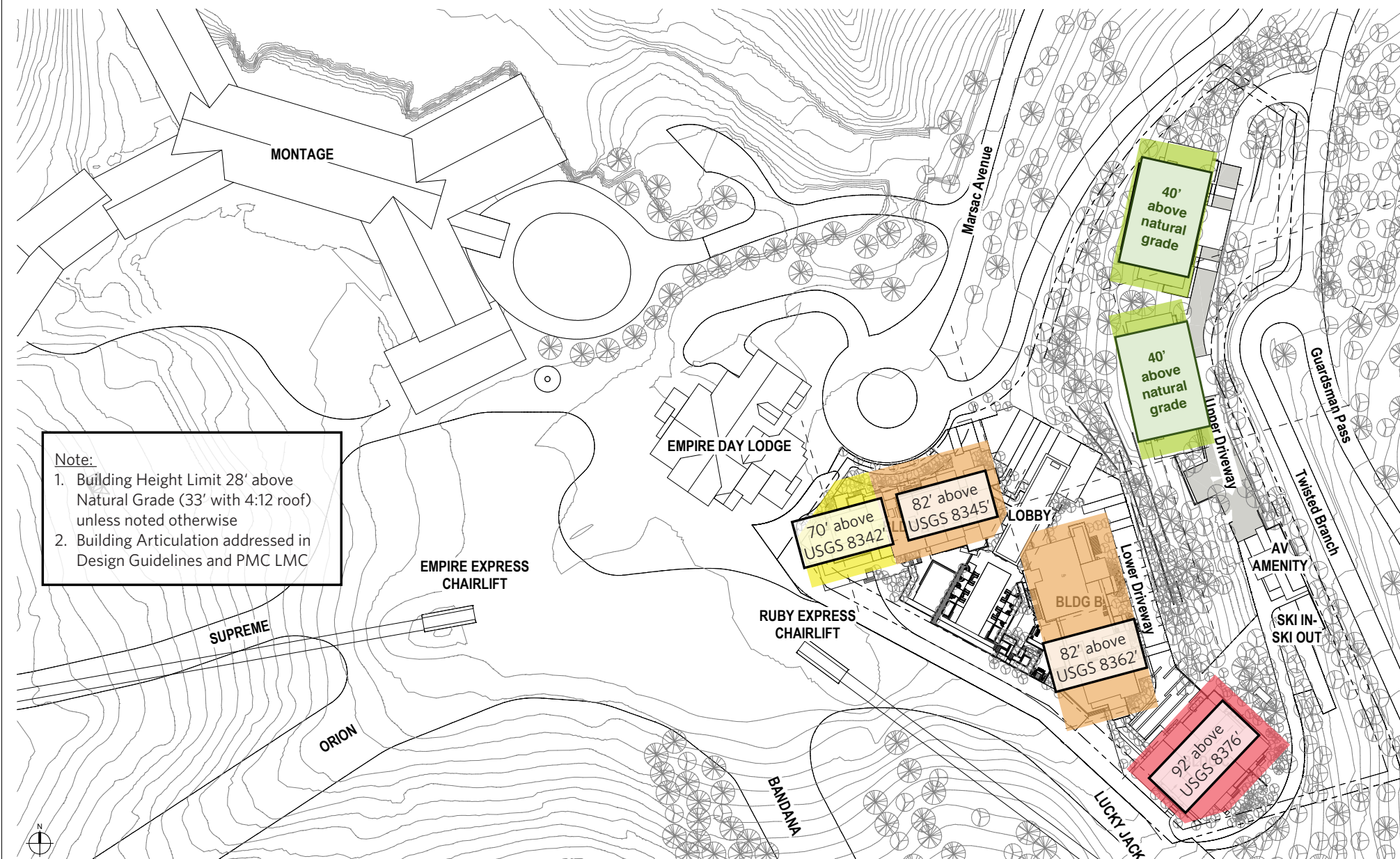
84

Totals Multi-family (MF)**509****757.28****428**

% of MF units total in Pods A, B1 and B2 that are in POD A
 (MPD requires minimum of 50%)

59.72%

71.03%



When recorded return to:
Snyderville Basin Water Reclamation District
2800 Homestead Road
Park City, Utah 84098

ENTRY NO. 01135384

06/29/2020 12:50:28 PM B: 2579 P: 1501

Easements PAGE 1/9

RHONDA FRANCIS, SUMMIT COUNTY RECORDER
FEE 0.00 BY SNYDERVILLE BASIN SID



**GRANT OF EASEMENT AND ACCESS EASEMENT
FOR CONSTRUCTION AND MAINTENANCE OF WASTEWATER COLLECTION
AND TRANSPORTATION PIPELINE(S) AND APPURTENANCES**

Sommet Blanc Residences I, LLC, a Utah limited liability company; Braunwen Shaye, LLC, a Utah limited liability company; Alpine Villas, LLC, a Utah limited liability company and Vonspar, LLC, a Utah limited liability company, Grantors, do hereby convey and warrant to the Snyderville Basin Water Reclamation District, a local District of the State of Utah, (the District) Grantee, of Summit County, Utah, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, a permanent non-exclusive easement and right-of-way for the purpose of constructing, operating and maintaining one or more underground pipelines and appurtenances in the easement granted herein for the collection and transportation of wastewater as permitted by the District in the exclusive discretion of the District, over, across, through and under the premises of the Grantors situated in Summit County, Utah which is more specifically described as follows:

SANITARY SEWER EASEMENT

An easement located in the southwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said easement being described as follows:

Beginning at a point that is South 00°30'49" East 433.50 feet coincident with the section line and East 147.36 feet from the west quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point being on the southerly boundary of Marsac Avenue Right of Way, recorded June 28, 2002, as Entry No. 623451 in the Office of the Recorder, Summit County, Utah, and also being on a curve to the left having a radius of 80.00 feet, of which the radius point bears North 34°30'25" West; and running thence coincident with Marsac Avenue Right of Way and Northeasterly along the arc of said curve 36.13 feet through a central angle of 25°52'29"; thence North 76°29'43" East 48.90 feet to a point on a curve to the right having a radius of 110.00 feet, of which the radius point bears South 13°30'17" East; thence along the arc of said curve 166.78 feet through a central angle of 86°52'08"; thence South 16°38'08" East 132.07 feet to a point on a curve to the left having a radius of 90.00 feet, of which the radius point bears North 73°21'52" East; thence along the arc of said curve 75.05 feet through a central angle of 47°46'37"; thence South 64°24'45" East 59.74 feet to a point on a curve to the left having a radius of 190.00 feet, of which the radius point bears North 25°35'15" East; thence along the arc of said curve 147.43 feet through a central angle of 44°27'35"; thence North 71°07'40" East 18.58 feet to the east boundary of B2 East Subdivision, recorded March 7, 2018, as Entry No. 1087538 in the Office of the Recorder, Summit County, Utah; thence coincident with said east boundary South 24°02'49" East 20.08 feet; thence South 71°07'40" West 20.39 feet to a point on a curve to the right having a radius of 210.00 feet, of which the radius point bears North 18°52'20" West; thence along the arc of said curve 162.95 feet through a central

angle of 44°27'35"; thence North 64°24'45" West 59.74 feet to a point on a curve to the right having a radius of 110.00 feet, of which the radius point bears North 25°35'15" East; thence along the arc of said curve 91.73 feet through a central angle of 47°46'37"; thence North 16°38'08" West 132.07 feet to a point on a curve to the left having a radius of 90.00 feet, of which the radius point bears South 73°21'52" West; thence along the arc of said curve 136.45 feet through a central angle of 86°52'08"; thence South 76°29'43" West 78.62 feet to the point of beginning.

This easement is contained within Parcels B2EAST-1-A, B2EAST-1-B, B2EAST-1-C and B2EAST-1-D.

Also granting to the Snyderville Basin Water Reclamation District a perpetual right of ingress and egress to and from and along said right-of-way and with the right to operate, maintain, repair, replace, augment and/or remove the pipelines and appurtenances deemed necessary by the District for the collection and transportation of wastewater; also the right to trim, clear or remove, at any time from said right-of-way any tree, brush, structure or obstruction of any character whatsoever, which in the sole judgment of the Grantee may endanger the safety of or interfere with the operation of Grantee's facilities. The Grantors and their successors in interest hereby forever relinquish the right to allow or construct any surface or underground improvement which would interfere with the operation, replacement or repair of the pipelines constructed and maintained under the provisions of this easement and covenant and agree that no underground or surface improvement, trees or structures will be constructed under or over the surface of the easement granted herein, without the express written consent in advance of the Grantee, which would interfere with the exercise of the rights of the Grantee to operate, maintain, repair or replace the sewer pipeline constructed by or for the Grantee.

Also granting to the Snyderville Basin Water Reclamation District a perpetual right of ingress and egress to the above described permanent easement over, across, and through the premises of the Grantors situated in Summit County, Utah which is more specifically described as follows:

SANITARY SEWER ACCESS EASEMENT

An easement located in the southwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said easement being described as follows:

Beginning at a point that is South 00°30'49" East 436.81 feet coincident with the section line and East 142.07 feet from the west quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point being on the southerly boundary of Marsac Avenue Right of Way, recorded June 28, 2002, as Entry No. 623451 in the Office of the Recorder, Summit County, Utah, and also being on a curve to the left having a radius of 80.00 feet, of which the radius point bears North 30°03'21" West; and running thence coincident with Marsac Avenue Right of Way the following two (2) courses: 1) Northeasterly along the arc of said curve 56.65 feet through a central angle of 40°34'24" to a point of reverse curve to the right having a radius of 15.00 feet, of which the radius point bears South 70°37'45" East; thence 2) along the arc of said curve 8.98 feet through a central angle of 34°17'41" to a point on a non tangent curve to the left having a radius of 10.00 feet, of which the radius point bears North 76°10'02" East;

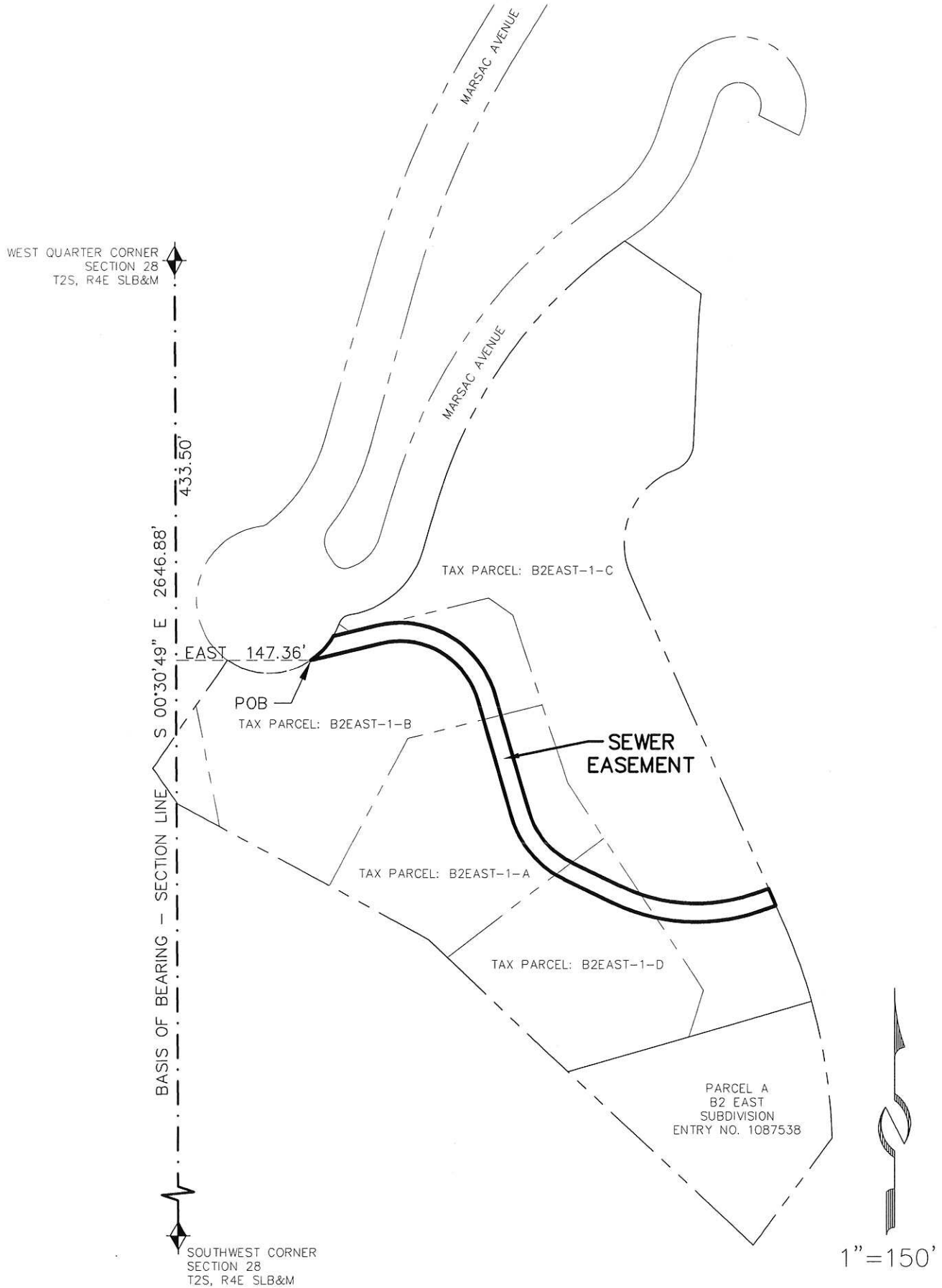
thence along the arc of said curve 15.65 feet through a central angle of 89°40'19"; thence North 76°29'43" East 23.32 feet to a point on a curve to the right having a radius of 117.00 feet, of which the radius point bears South 13°30'17" East; thence along the arc of said curve 177.39 feet through a central angle of 86°52'08"; thence South 16°38'08" East 109.91 feet to a point on a curve to the left having a radius of 35.00 feet, of which the radius point bears North 73°21'52" East; thence along the arc of said curve 40.03 feet through a central angle of 65°31'32" to a point of reverse curve to the right having a radius of 35.00 feet, of which the radius point bears South 07°50'19" West; thence along the arc of said curve 149.98 feet through a central angle of 245°31'32"; thence North 16°38'08" West 173.62 feet to a point on a curve to the left having a radius of 88.00 feet, of which the radius point bears South 73°21'52" West; thence along the arc of said curve 133.42 feet through a central angle of 86°52'08"; thence South 76°29'43" West 84.50 feet to the point of beginning.

The Basis of Bearing for the above description is South 00°30'49" East 2646.88 feet between the west quarter corner and the southwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

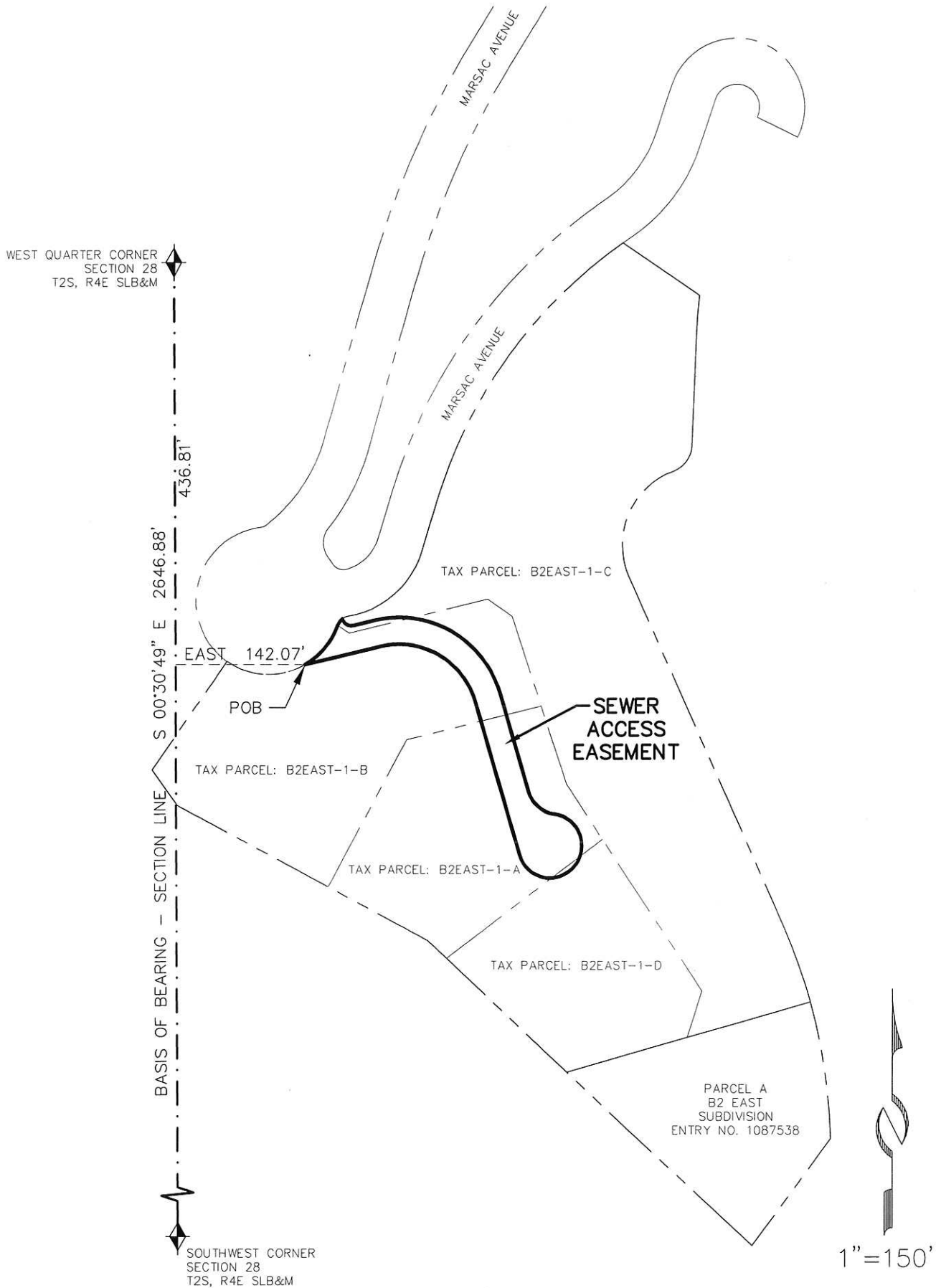
This easement is contained within Parcels B2EAST-1-A, B2EAST-1-B, B2EAST-1-C and B2EAST-1-D.

The easements granted herein are subject to the condition that the Grantee shall indemnify and hold harmless, the Grantors, their heirs and successors against any and all liability caused by the acts of the Grantee, its contractors or agents, during the construction, operation or maintenance of the sewer pipeline provided for in this easement; the Grantors' right to indemnification or to be held harmless by the Grantee under the terms of this paragraph are expressly conditioned upon prompt and immediate notice to the Grantee of any claim or demand which would cause a claim against the Grantee and upon the Grantee's right to defend any claim against the Grantors which would cause a claim of indemnification against the Grantors. This provision shall not be interpreted or construed to waive the rights of the Grantee to the affirmative defenses to claims provided under the Utah Governmental Immunity Act.

SANITARY SEWER EASEMENT B2 EAST SUBDIVISION



SANITARY SEWER ACCESS EASEMENT B2 EAST SUBDIVISION



WITNESS the hand of said Grantor this 26 day of June, 2020.

Sommet Blanc Residences I, LLC
a Utah limited liability company

By: [Signature]
Lynn Padan, Manager



STATE OF VT)
COUNTY OF Summit) :SS.

On this 26 day of June, 2020, personally appeared before me, Lynn Padan, who being duly sworn, did say that he is the signer of the within instrument, and that the within and foregoing Grant of Easement was signed on behalf of Sommet Blanc Residences I, LLC, a Utah limited liability company, with actual and requisite authority, and said signer acknowledged to me that he executed the same.

[Signature: Shannon Ireland]
NOTARY PUBLIC
RESIDING AT: Summit

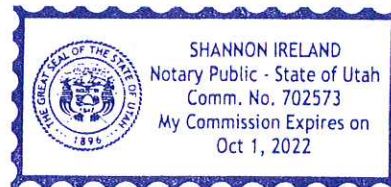
My Commission Expires:

Oct 1, 2022

WITNESS the hand of said Grantor this 26 day of June, 2020.

Braunwen Shaye, LLC
a Utah limited liability company

By: [Signature]
Jeffrey Taylor, Manager



STATE OF UT)
COUNTY OF Summit) :SS.

On this 26 day of June, 2020, personally appeared before me, _____, who being duly sworn, did say that he/she is the signer of the within instrument, and that the within and foregoing Grant of Easement was signed on behalf of Braunwen Shaye, LLC, a Utah limited liability company, with actual and requisite authority, and said signer acknowledged to me that he/she executed the same.

[Signature: Shannon Ireland]
NOTARY PUBLIC
RESIDING AT: Summit

My Commission Expires:

Oct 1, 2022

WITNESS the hand of said Grantor this 26 day of June, 2020.

Alpine Villas, LLC
a Utah limited liability company

By: [Signature]

Lynn Padan, Manager



STATE OF UT)

COUNTY OF Summit) :SS.

On this 26 day of June, 2020, personally appeared before me, Lynn Padan, who being duly sworn, did say that he is the signer of the within instrument, and that the within and foregoing Grant of Easement was signed on behalf of Alpine Villas, LLC, a Utah limited liability company, with actual and requisite authority, and said signer acknowledged to me that he executed the same.

[Signature: Shannon Ireland]
NOTARY PUBLIC
RESIDING AT: Summit

My Commission Expires:

Oct. 1, 2022

WITNESS the hand of said Grantor this 26 day of June, 2020.

Vonspar, LLC
a Utah limited liability company

By: [Signature]

Jeffrey Taylor, Manager



STATE OF UT)

COUNTY OF Summit) :ss.

On this 26 day of June, 2020, personally appeared before me, _____, who being duly sworn, did say that he/she is the signer of the within instrument, and that the within and foregoing Grant of Easement was signed on behalf of Vonspar, LLC, a Utah limited liability company, with actual and requisite authority, and said signer acknowledged to me that he/she executed the same.

[Signature]
NOTARY PUBLIC
RESIDING AT: Summit

My Commission Expires:

October 1, 2022

Forest Health Assessment for B-2 East/Sommet Blanc

Prepared by Keith B Clapier
ISA Board Certified Master Arborist #UT-0034B
ASCA Registered Consulting Arborist #546
October, 31, 2021

Prepared for Doug Oglivy

Introduction: This 7.0-acre west-facing parcel sits at approx 8,400 feet. The slope is steep, and the soil is rocky. The overstory is primarily aspen (*Populus tremuloides*) and subalpine fir (*Abies lasiocarpa*). The dominant understory is snowberry (*Symphoricarpos oreophilus*), with associated species of elderberry, chokecherry, wild rose and Engelman aster.

Assignment: 1) Flag all aspen that are dead or dying greater than 4.0 inches DBH¹, 2) write a forest health assessment.

Observations

- 1) All the flagged 274 dead or dying aspen trees had Sooty bark canker (*Cenangium singulare*)² (photo 1), which equates to approx 40 stems per acre. There were some other pests and diseases present, e.g. *Cytospora* canker (photo 3) and Bronze poplar borer, (*Agrilus liragus*) but these appear to be minor.
- 2) This 7.0-acre parcel is fragmented on three sides, with Marsac Avenue bordering the north and east sides and the current construction bordering the west (photo 5). The result is a long, slender peninsula landform that is still attached to the aspen/fir forest to the south.
- 3) There is approx. 50% fir encroachment in the understory and the canopies are occupying only 25% of the trunk (see photo 5).
- 4) Some wind breakage was observed (see photo 6).

Discussion

Sooty bark canker is a native fungal pathogen that isn't much of a problem in landscaped aspen in Park City but is the most damaging canker disease of native aspen stands in the west, and the number one killer in Colorado.³ It affects mature trees primarily on sites of both high and low quality for aspen growth, and is lethal within several years⁴. Of the 274 dead aspen I flagged, 70% were in the 7-9 inch DBH range, with very few 6" DBH or less affected (12%). Like other canker diseases in aspen, Sooty bark doesn't affect the roots, and infects its host through wounds to the stem/trunk. Being a pioneer species, aspen put most of their resources into growth rather than defense, however they do allocate resources into protecting their root system which is interconnected with all the stems in the clone. Before the construction of Marsac Avenue (State Route 224), this 7.0-acre parcel was connected to a much larger aspen stand, probably where the Hawkeye Ski Trail currently exists, which may have contributed to more photosynthate (and water) available for defense. In addition, Marsac Avenue is situated above the stand, therefore there may be less gravitational water available because the road construction has altered the hydrology on the site. To keep this small, isolated aspen stand viable, two management strategies are recommended: 1) sanitation and 2) preservation (see **Recommendations**).

¹ DBH=Diameter at Breast Height of 4.5 feet

² syn :*Encoelia pruinosa*

³ USDA Forest Service RMRS-GTR-241

⁴ Diseases of Trees and Shrubs, Sinclair, Lyon and Johnson, Cornell Press, 1987

In the absence of a disturbance like wildfire, landslides and avalanches. Shade-tolerant, subalpine fir saplings get established in the understory of the older, seral⁵ aspen stands and will eventually replace the aspen until the next disturbance. This is what is currently occurring with this 7-acre aspen stand, with an estimated 50% fir encroachment. In addition, as competition increases for limited resources like water, light and space, the size of the aspen canopies decreases, resulting in less than 25% of trunk area supporting canopy (see photo 5). Because Sooty bark canker tends to attack older, larger trees (>7" DBH), coppicing the standing dead mature aspen snags, will a) rid the source of inoculum and b) provide more water, light and space for aspen ramets⁶ to regenerate, creating a healthier, more resilient, age-diverse aspen stand⁷. Growing the dense suckering will keep the younger aspen stems smaller, so that the aspen can be managed in rotation of 80-100 years⁸. This natural process can be augmented by planting more aspen during the final landscaping process.⁹ Managing for existing subalpine fir is beneficial because it increases diversity, both structurally and species, which in turn increases wildlife habitat. However, I would caution against growing a monoculture of fir¹⁰, because it could preclude the establishment of other species besides aspen by shading the site and acidifying the soil over time; as well as increasing the fire hazard. Fir trees are extremely flammable. Allowing the growth of aspen helps build the soil and allows sunlight to penetrate the forest floor, providing a rich array of understory species. In addition, aspen are fire-resistant.

Finally, some wind damage was observed (photo 6). Whenever you open up a closed forest stand, you create an "edge". Trees that grow in a closed stand have a different root development than those that grow in open sites. Pay special attention to standing dead aspen flagged along the edge of the parcel, especially those on the north end above Marsac Avenue¹¹. Dead stems may be susceptible to decay and because the stand has recently been opened up (approx 10 years), it is now exposed to high wind events that could result in failure on the highway below.

Conclusion All the flagged 274 dead or dying aspen trees had Sooty bark canker, although a fairly aggressive native, fungal pathogen, it can be managed effectively by removing the diseased individual stems (sanitation) and nurturing the remaining healthy aspen stems. This can be accomplished by protecting them from inevitable construction damage by fencing and preventing further stress by supplemental irrigation when roots are severed. A good mix of aspen and subalpine fir, with a diverse age class, is recommended for wildlife habitat and healthy, resilient forest.

⁵ Seral is a phase in sequential development of a climax community. Some aspen stands are climax aspen, this one is not.

⁶ Ramets are genetically identical individuals that originate vegetatively rather than sexually.

⁷ Note that approx 3 snags with broken tops approx 20 feet in height were marked as "wildlife" trees.

⁸ You may need to fence and protect the young aspen from herbivores like elk.

⁹ Note: installing genetically different aspen, seed-grown in a nursery, will not create a problem with the clonal aspen on-site. Eventually their roots will graft.

¹⁰ This includes other conifer species like Blue spruce.

¹¹ Some dead stems on the north end are very large, 10-12" DBH.



Keith B Clapier

ISA Board Certified Master Arborist #UT-0034B

ASCA Registered Consulting Arborist #546

October 31, 2021

Recommendations

- 1) Flush cut all 276 dead aspen flagged and remove off-site. Do not remove stumps. This technique is known as **coppice**. Besides stimulating growth, this will remove the source of inoculum. Sanitation is key in controlling this fungal pathogen. There is no fungicide available to control Sooty bark canker.
- 2) Create TPZs (trunk protection zones) by erecting protective fencing around the aspen stems you're trying to manage. Damaging the trunk with construction equipment may cause an infection court and increase the incidence of sooty bark on the site.
- 3) Add supplemental irrigation during the hottest, driest time of the year to minimize drought stress. Designate routes for machinery to minimize soil compaction, consolidate and install utilities where the driveways are located to minimize severing roots



Photo 1, Close up photo of Sooty bark canker (*Cenangium singulare*). The black and silver structures are apothecia which attack the inner bark. Curiously, the canker grows faster vertically ($>12''/\text{yr}$) than horizontally ($4\text{--}6''/\text{yr}$), therefore, although it's aggressive, it is relatively slow to girdle the stem ($3\text{--}10$ yrs). Remnants of the outer bark (periderm) are still visible in the upper left hand corner. When the conditions are right, the apothecia will erupt spores.

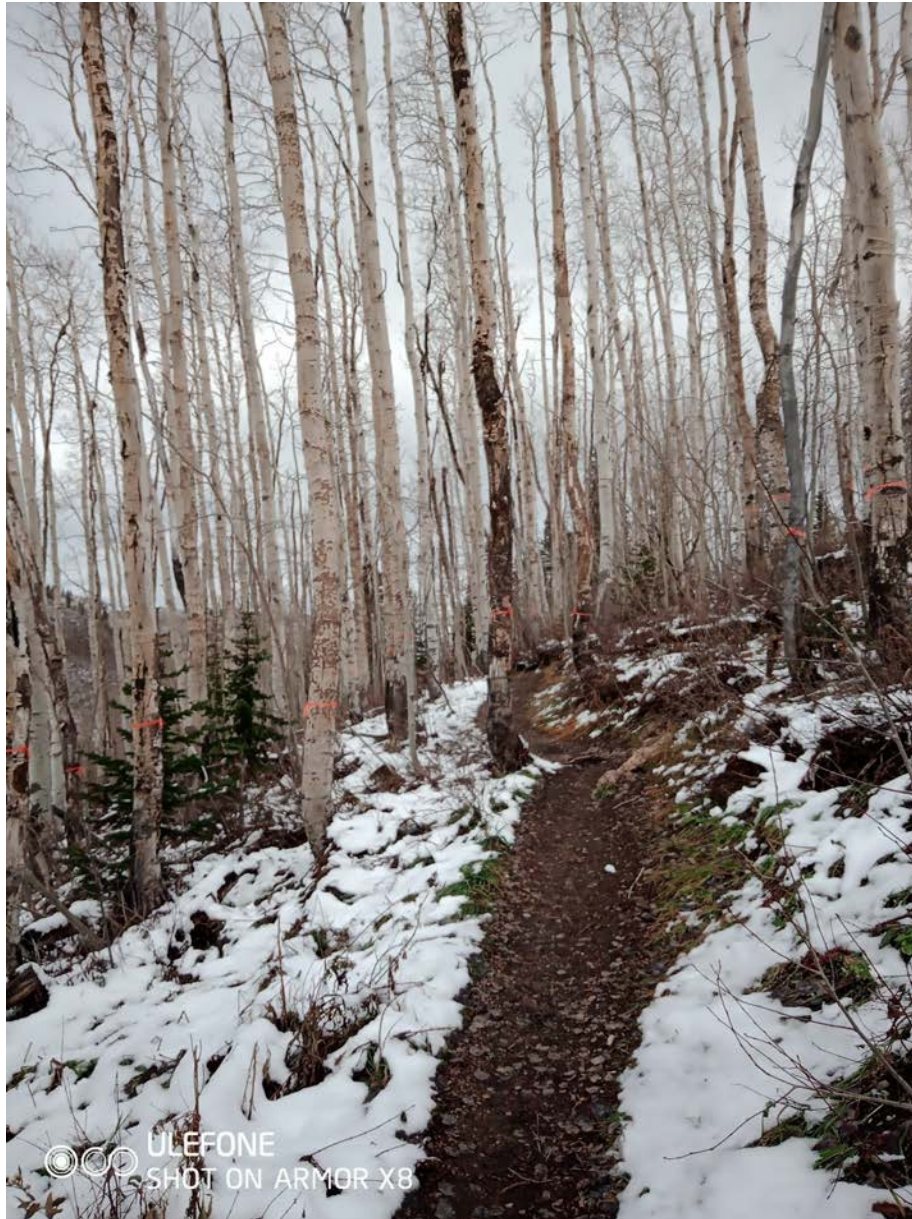


Photo 2. Some areas in the parcel have a higher incidence of infection. This is due to a higher concentration of even-aged mature stems (7-9" DBH). Note the outer bark peels off, exposing the "sooty" infection underneath. The hiking trail probably contributed very little to stress of the clone due to the absence of root severance.



Photo 3. Other pathogens present include *Cytospora* canker. This didn't seem to be much of a problem on this site.



Photo 4. Evidence of old elk gnawing. The sooty bark canker attacked the stem after the elk damage.



Photo 5. Overview of site. Note how the canopy only occupies the top 25% of the trunk, this is indicative of competition. Note subalpine fir encroaching in the understory.



Photo 6.

Aspen trunk snapped off in the wind. This can be a problem along the “edge” of the stand.



December 2, 2021

Douglas Ogilvy
Clachan Development LLC
douglas.ogilvy@gmail.com

Re: Sommet Blanc Tree Retention

Dear Doug,

We have reviewed the latest plans for Sommet Blanc and fully support the developer's efforts to preserve the tree island SW of Building C, adjacent the Lucky Jack ski trail as shown on the attached site plan. While the proposed tree island is within the Deer Valley ski easement and adjacent Deer Valley owned land, retention of a tree buffer between the building and the ski trail would be much appreciated from a visual and skier safety standpoint and improve the ski experience. This would be the resort's preference as opposed to widening the trail in that location, at this time.

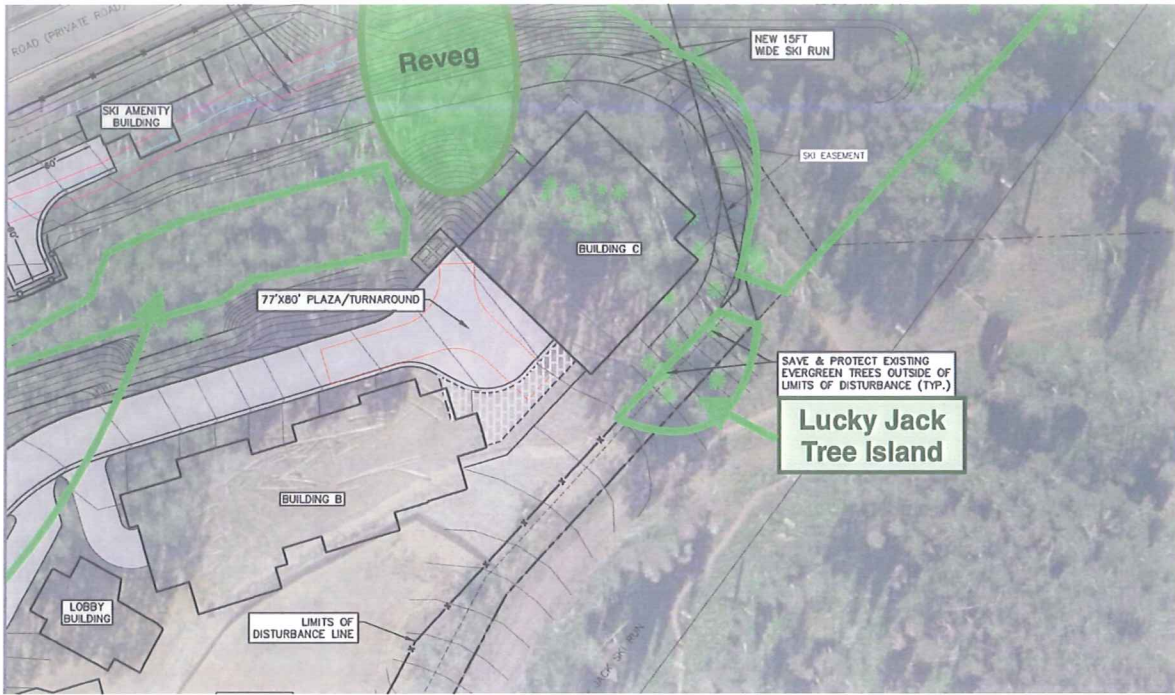
As easement holder and fee owner of the adjacent property, Deer Valley reserves the right to review this matter in the future as may be needed from time to time and as we can later assess how the ski run is functioning in conjunction with the development of Sommet Blanc.

Thank you for working with Deer Valley to maintain the look and feel of the ski experience as it relates to your project.

Regards,

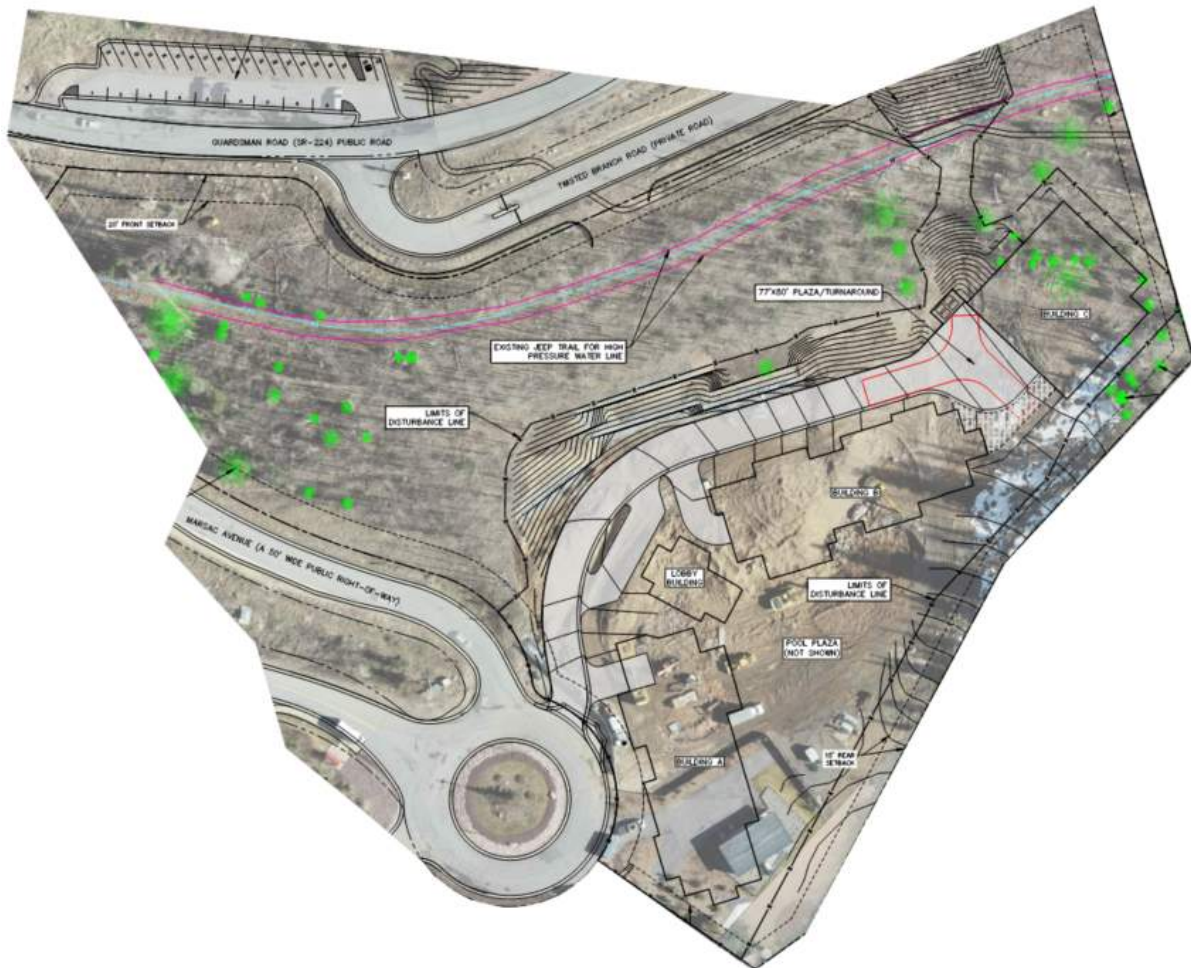
Steve Issowits
Vice President – Real Estate & Resort Planning
Deer Valley Resort Company, LLC

cc. makena.hawley@parkcity.org



Sommet Blanc

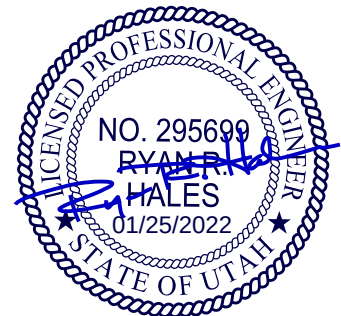
Traffic Impact Study



Park City, Utah

January 25, 2022

UT21-2024



EXECUTIVE SUMMARY

This study addresses the traffic impacts associated with the proposed Sommet Blanc development located in Park City, Utah. The Sommet Blanc development is located along SR-224 near the Montage Hotel at Deer Valley Resort in Park City.

The purpose of this traffic impact study is to analyze traffic operations at key intersections for existing (2022) conditions with and without the proposed project and to recommend mitigation measures as needed. The evening peak hour level of service (LOS) results are shown in Table ES-1.

Table ES-1: Evening Peak Hour Level of Service Results

Intersection		Level of Service	
		Existing (2022)	
		BG	PP
1	Empire Lodge / Project Access / S.R. 224	A	A
2	Montage Access / S.R. 224	a	a
1. Intersection LOS values represent the overall intersection average for roundabout, signalized, and all-way stop-controlled (AWSC) intersections (uppercase letter) and the worst movement for all other unsignalized intersections (lowercase letter) 2. BG = Background (without project traffic), PP = Plus Project (with project traffic) Source: Hales Engineering, January 2022			

SUMMARY OF KEY FINDINGS & RECOMMENDATIONS

Project Conditions

- The development will consist of multi-family residential units and a restaurant
- The project is anticipated to generate approximately 514 weekday daily trips, including 42 trips in the morning peak hour, and 53 trips in the evening peak hour
- The project will also reconstruct the adjacent Mid Mountain Trail parking lot to improve safety

2022	Background	Plus Project
Assumptions	• None	• Transit and internal capture reductions applied
Findings	• Acceptable LOS at all study intersections	• Acceptable LOS at all study intersections

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I. INTRODUCTION

A. Purpose

This study addresses the traffic impacts associated with the proposed Sommet Blanc development located in Park City, Utah. The proposed project is located along SR-224 near the Montage Hotel at Deer Valley Resort in Park City. Figure 1 shows a vicinity map of the proposed development.

The purpose of this traffic impact study is to analyze traffic operations at key intersections for existing (2022) conditions with and without the proposed project and to recommend mitigation measures as needed.

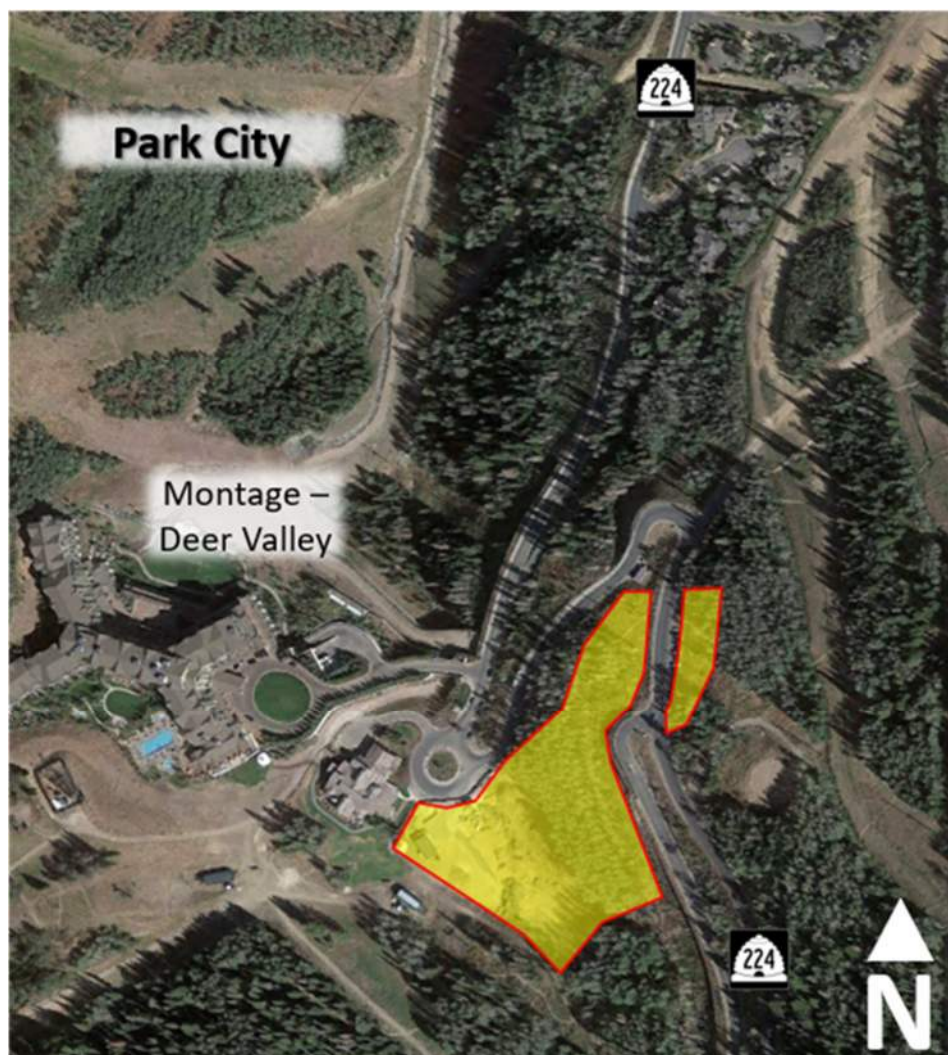


Figure 1: Vicinity map showing the project location in Park City, Utah

B. Scope

The study area was defined based on conversations with the development team. This study was scoped to evaluate the traffic operational performance impacts of the project on the following intersections:

- Montage Access / S.R. 224
- Empire Lodge Accesses / S.R. 224

C. Analysis Methodology

Level of service (LOS) is a term that describes the operating performance of an intersection or roadway. LOS is measured quantitatively and reported on a scale from A to F, with A representing the best performance and F the worst. Table 1 provides a brief description of each LOS letter designation and an accompanying average delay per vehicle for both signalized and unsignalized intersections.

The *Highway Capacity Manual* (HCM), 6th Edition, 2016 methodology was used in this study to remain consistent with “state-of-the-practice” professional standards. This methodology has different quantitative evaluations for signalized and unsignalized intersections. For signalized, roundabout, and all-way stop-controlled (AWSC) intersections, the LOS is provided for the overall intersection (weighted average of all approach delays). For all other unsignalized intersections, LOS is reported based on the worst movement.

Using Synchro/SimTraffic software, which follow the HCM methodology, the peak hour LOS was computed for each study intersection. Multiple runs of SimTraffic were used to provide a statistical evaluation of the interaction between the intersections. The detailed LOS reports are provided in Appendix B. Hales Engineering also calculated the 95th percentile queue lengths for the study intersections using SimTraffic. The detailed queue length reports are provided in Appendix D.

D. Level of Service Standards

For the purposes of this study, a minimum acceptable intersection performance for each of the study intersections was set at LOS D. If levels of service E or F conditions exist, an explanation and/or mitigation measures will be presented. A LOS D threshold is consistent with “state-of-the-practice” traffic engineering principles for urbanized areas.

Table 1: Level of Service Description

LOS		Description of Traffic Conditions	Average Delay (seconds/vehicle)	
			Signalized Intersections	Unsignalized Intersections
A		Free Flow / Insignificant Delay	≤ 10	≤ 10
B		Stable Operations / Minimum Delays	> 10 to 20	> 10 to 15
C		Stable Operations / Acceptable Delays	> 20 to 35	> 15 to 25
D		Approaching Unstable Flows / Tolerable Delays	> 35 to 55	> 25 to 35
E		Unstable Operations / Significant Delays	> 55 to 80	> 35 to 50
F		Forced Flows / Unpredictable Flows / Excessive Delays	> 80	> 50

Source: Hales Engineering Descriptions, based on the *Highway Capacity Manual* (HCM), 6th Edition, 2016 Methodology (Transportation Research Board)

II. EXISTING (2022) BACKGROUND CONDITIONS

A. Purpose

The purpose of the background analysis is to study the intersections and roadways during the peak travel periods of the day with background traffic and geometric conditions. Through this analysis, background traffic operational deficiencies can be identified, and potential mitigation measures recommended. This analysis provides a baseline condition that may be compared to the build conditions to identify the impacts of the development.

B. Roadway System

The primary roadways that will provide access to the project site are described below:

S.R. 224 – is a state-maintained roadway (classified by UDOT access management standards as a “Community – Rural Importance” facility, or access category 7 roadway). S.R. 224 has one travel lane in each direction. As identified and controlled by UDOT, a “Community – Rural Importance” access classification identifies minimum signalized intersection spacing of one-quarter mile (1,320 feet), minimum unsignalized street spacing of 300 feet, and minimum driveway spacing of 150 feet. The posted speed limit on S.R. 224 is 25 mph.

C. Traffic Volumes

Weekday morning (7:00 to 9:00 a.m.) and evening (4:00 to 6:00 p.m.) peak period traffic counts were performed at the following intersections:

- Montage Access / S.R. 224
- Empire Lodge Accesses / S.R. 224

The counts were performed on Thursday, January 6, 2022. The morning peak hour was determined to be between 7:30 and 8:30 a.m., and the evening peak hour was determined to be between 4:30 and 5:30 p.m. The evening peak hour volumes were approximately 30% higher than the morning peak hour volumes. Therefore, the evening peak hour volumes were used in the analysis to represent the worst-case conditions. Detailed count data are included in Appendix A.

Hales Engineering evaluated potential seasonal adjustments to the observed traffic volumes. Monthly traffic volume data were obtained from a nearby UDOT automatic traffic recorder (ATR) on S.R. 224 (ATR #605) and S.R. 248 (ATR #606) near Park City. In recent years, traffic volumes in January have been above average. The observed traffic volumes were not adjusted for seasonality to remain conservatively high.

Figure 2 shows the existing evening peak hour volumes as well as intersection geometry at the study intersections.

D. Level of Service Analysis

Hales Engineering determined that all study intersections are currently operating at acceptable levels of service during the evening peak hour, as shown in Table 2. These results serve as a baseline condition for the impact analysis of the proposed development during existing (2022) conditions.

Table 2: Existing (2022) Background Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
Empire Lodge / S.R. 224	Roundabout	-	1.6	A
Montage Access / S.R. 224	EB Stop	EBL	4.4	a

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.
 2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

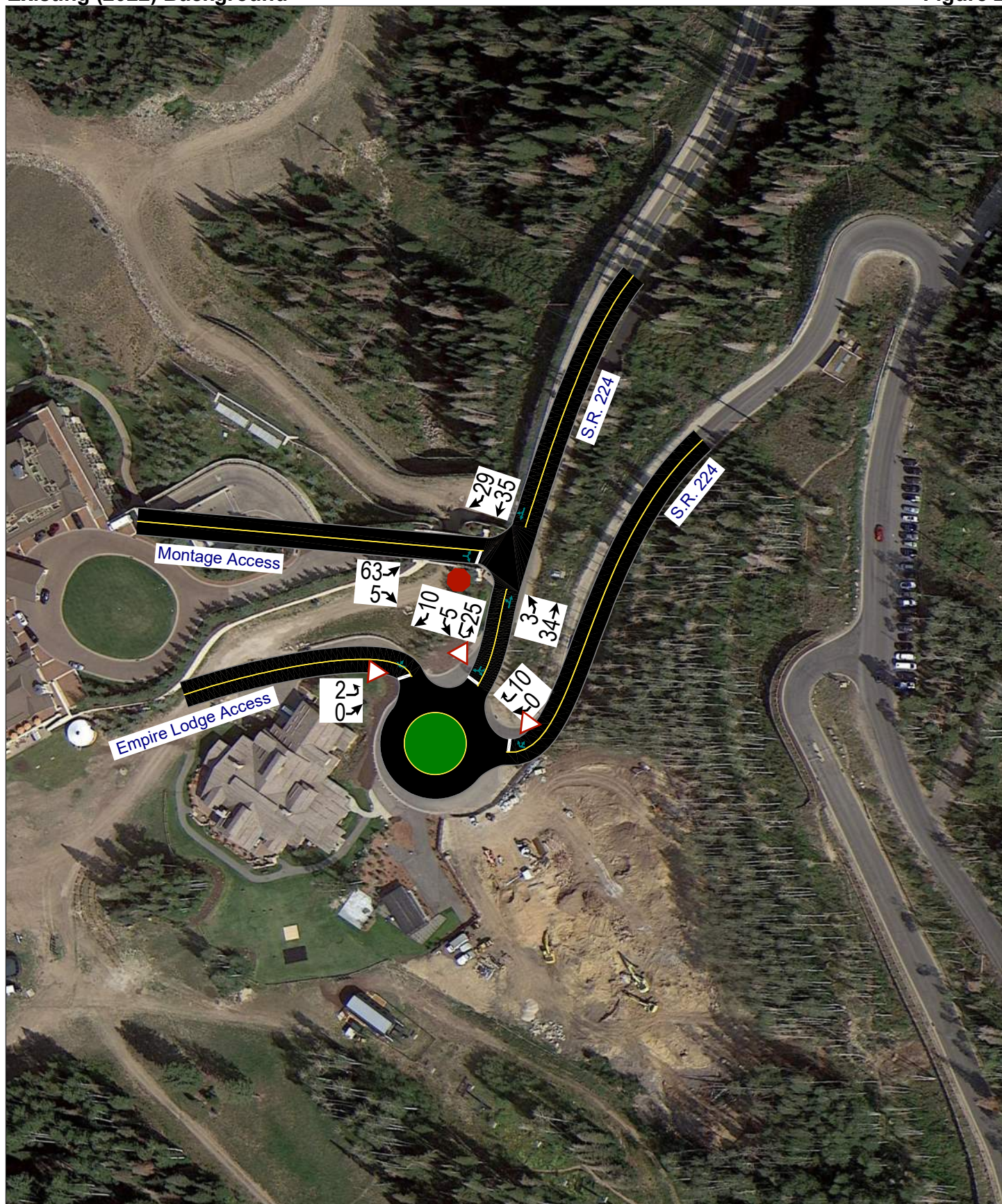
Source: Hales Engineering, January 2022

E. Queuing Analysis

Hales Engineering calculated the 95th percentile queue lengths for each of the study intersections. No significant queueing was observed during the evening peak hour.

F. Mitigation Measures

No mitigation measures are recommended.



III. PROJECT CONDITIONS

A. Purpose

The project conditions discussion explains the type and intensity of development. This provides the basis for trip generation, distribution, and assignment of project trips to the surrounding study intersections defined in Chapter I.

B. Project Description

The proposed Sommet Blanc development is located along S.R. 224 near the Montage Hotel at Deer Valley Resort in Park City. The development will consist of 49 residential units, 2 ADA suites, 6 affordable housing units, and a 3,600 sq. ft. restaurant. A concept plan for the proposed development is provided in Appendix C. The proposed land use for the development has been identified in Table 3.

Table 3: Project Land Uses

Land Use	Intensity
Multi-family housing (low-rise)	57 Units
Fine Dining Restaurant	3,600 sq. ft.

C. Trip Generation

Trip generation for the development was calculated using trip generation rates published in the Institute of Transportation Engineers (ITE), *Trip Generation*, 11th Edition, 2021. Trip generation for the proposed project is included in Table 4.

It is important to note that the owner anticipates the restaurant usage will be 100% internal in the morning peak hour. For the evening peak, it is anticipated that 30% of restaurant usage will be generated on-site, 30% from the Empire Pass shuttle, and 40% from outside users. With the anticipated usage, the internal and shuttle users would not be contributing to the new trips generated. Therefore, the total new evening peak hour trips generated would be reduced from 76 to 53.

The total trip generation for the development is as follows:

- Daily Trips: 514
- Morning Peak Hour Trips: 42
- Evening Peak Hour Trips: 53

Table 4: Trip Generation

Trip Generation Park City - Sommet Blanc											
Land Use ¹	# of Units	Unit Type	Trip Generation					Reductions	New Trips		
			Total	% In	% Out	In	Out	Internal Capture & Transit	In	Out	Total
Weekday Daily											
Multifamily Housing (Low-Rise) (220)	57	DU	442	50%	50%	221	221	0%	221	221	442
Fine Dining Restaurant (931)	3.6	KSF	302	50%	50%	151	151	60%	36	36	72
TOTAL			744			372	372		257	257	514
AM Peak Hour											
Multifamily Housing (Low-Rise) (220)	57	DU	42	24%	76%	10	32	0%	10	32	42
Fine Dining Restaurant (931)	3.6	KSF	4	50%	50%	2	2	100%	0	0	0
TOTAL			46			12	34		10	32	42
PM Peak Hour											
Multifamily Housing (Low-Rise) (220)	57	DU	46	63%	37%	29	17	0%	29	17	46
Fine Dining Restaurant (931)	3.6	KSF	30	67%	33%	20	10	60%	5	2	7
TOTAL			76			49	27		34	19	53
1. Land Use Code from the Institute of Transportation Engineers (ITE) <i>Trip Generation</i> , 11th Edition, 2021. SOURCE: Hales Engineering, January 2022											

1. Land Use Code from the Institute of Transportation Engineers (ITE) *Trip Generation*, 11th Edition, 2021.
 SOURCE: Hales Engineering, January 2022

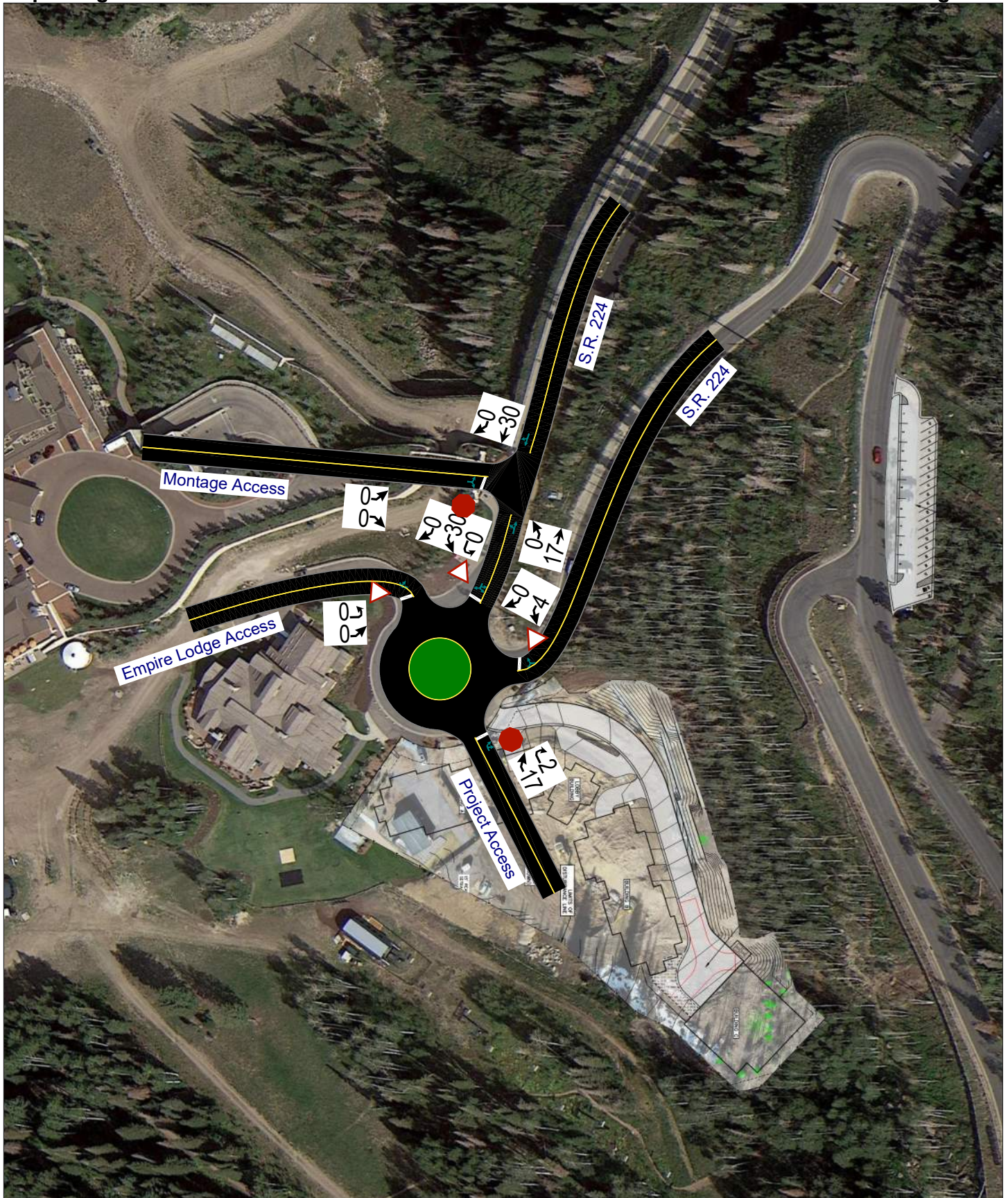
D. Trip Distribution and Assignment

Project traffic is assigned to the roadway network based on the type of trip and the proximity of project access points to major streets, high population densities, and regional trip attractions. Existing travel patterns observed during data collection also provide helpful guidance to establishing these distribution percentages, especially near the site. The resulting distribution of project generated trips during the evening peak hour is shown in Table 5.

Table 5: Trip Distribution

Direction	% To/From Project
North	90%
South	10%

These trip distribution assumptions were used to assign the evening peak hour generated traffic at the study intersections to create trip assignment for the proposed development. Trip assignment for the development is shown in Figure 3.



E. Access

The proposed access for the site will be gained at the following locations (see also concept plan in Appendix C):

S.R. 224:

- The Project Access will be located on the southeast side of the Empire Lodge / S.R. 224 roundabout. It is anticipated that the access will be yield-controlled.

IV. EXISTING (2022) PLUS PROJECT CONDITIONS

A. Purpose

The purpose of the existing (2022) plus project analysis is to study the intersections and roadways during the peak travel periods of the day for existing background traffic and geometric conditions plus the net trips generated by the proposed development. This scenario provides valuable insight into the potential impacts of the proposed project on background traffic conditions.

B. Traffic Volumes

Hales Engineering added the project trips discussed in Chapter III to the existing (2022) background traffic volumes to predict turning movement volumes for existing (2022) plus project conditions. Existing (2022) plus project evening peak hour turning movement volumes are shown in Figure 4.

C. Level of Service Analysis

Hales Engineering determined that all intersections are anticipated to operate at acceptable levels of service during the evening peak hour with project traffic added, as shown in Table 6.

Table 6: Existing (2022) Plus Project Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
Empire Lodge / Project Access / S.R. 224	Roundabout	-	2.3	A
Montage Access / S.R. 224	EB Stop	EBL	4.7	a

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.

2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

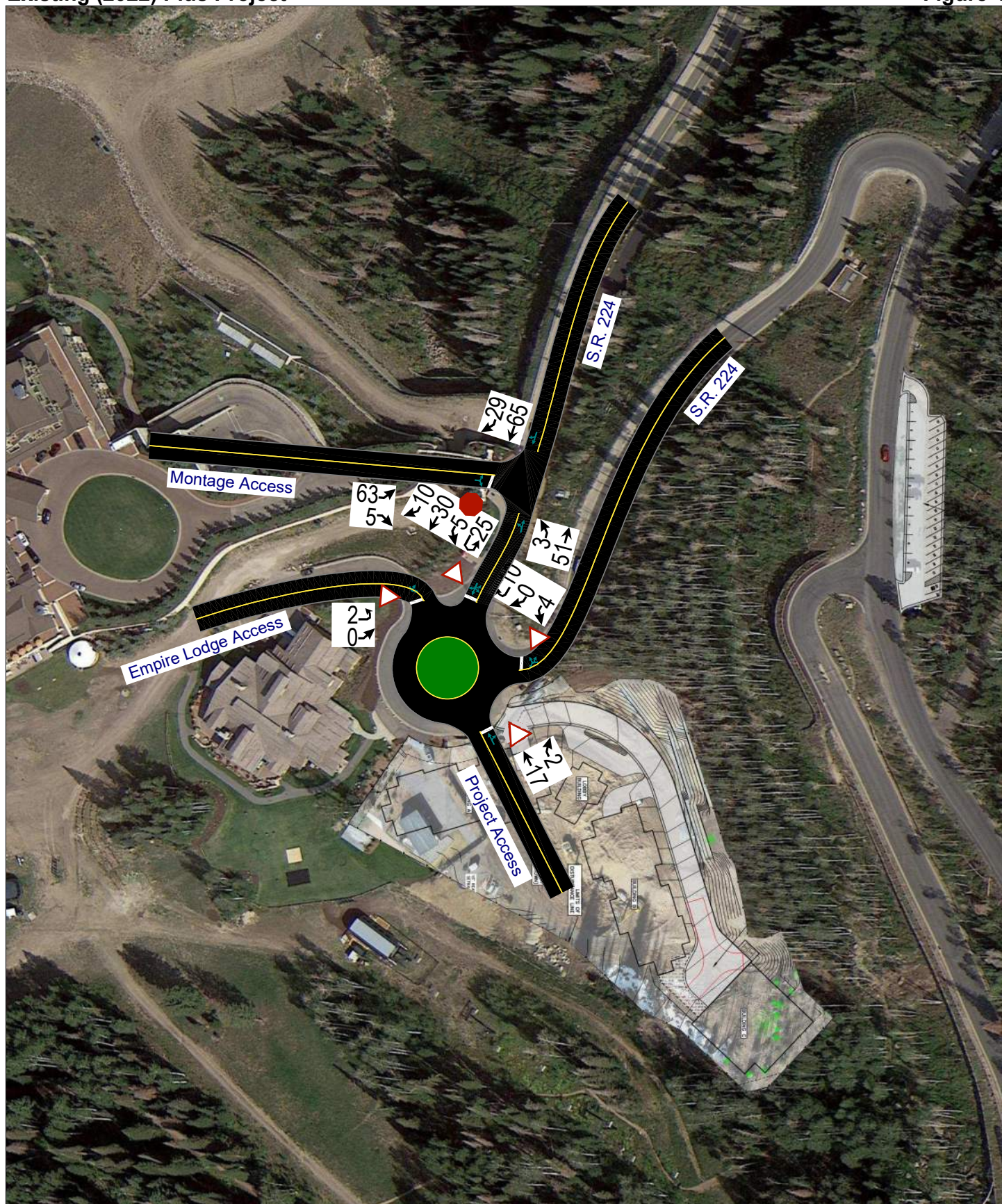
Source: Hales Engineering, January 2022

D. Queuing Analysis

Hales Engineering calculated the 95th percentile queue lengths for each of the study intersections. No significant queueing is anticipated during the evening peak hour.

E. Mitigation Measures

No mitigation measures are recommended.



APPENDIX A

Turning Movement Counts

Intersection Turning Movement Summary

Intersection: S.R. 224 / Montage Access
North/South: S.R. 224
East/West: Montage Access
Jurisdiction: Park City
Project Title: Sommet Blanc TGS
Project No: UT21-2024
Weather: Clear

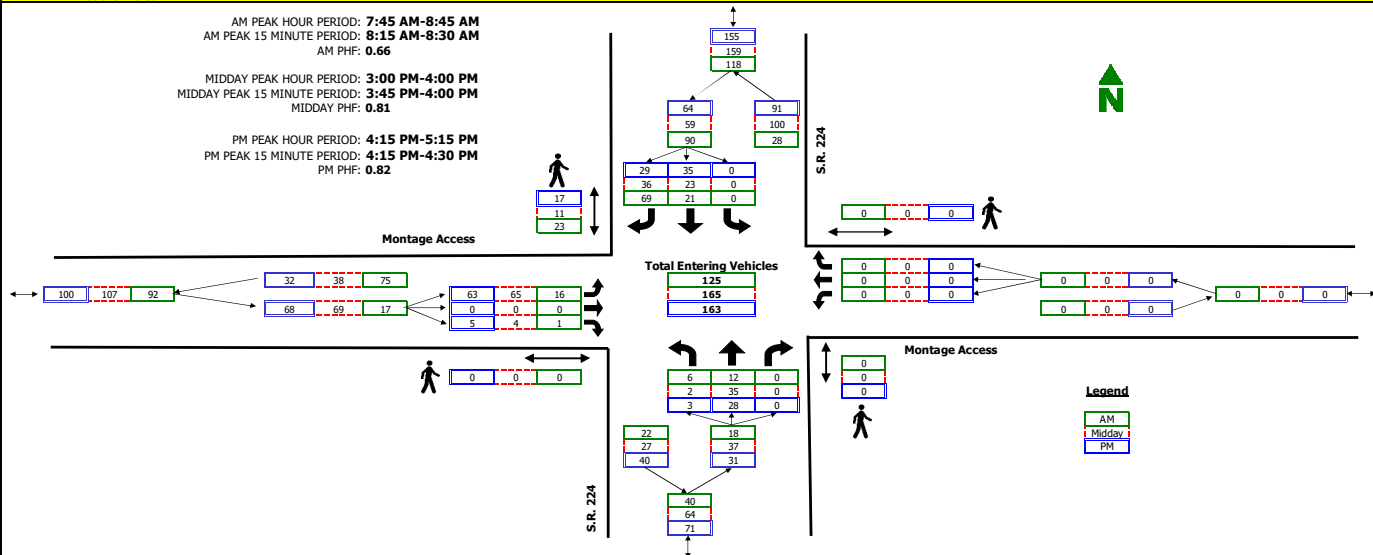
Date: 1-6-22, Thu
Day of Week Adjustment: 100.0%
Month of Year Adjustment: 100.0%
Adjustment Station #: 0
Growth Rate: 0.0%
Number of Years: 0

1-6-22, Thu
1-7-22, Fri AM

AM PEAK HOUR PERIOD: 7:45 AM-8:45 AM
AM PEAK 15 MINUTE PERIOD: 8:15 AM-8:30 AM
AM PHF: 0.66

MIDDAY PEAK HOUR PERIOD: 3:00 PM-4:00 PM
MIDDAY PEAK 15 MINUTE PERIOD: 3:45 PM-4:00 PM
MIDDAY PHF: 0.81

PM PEAK HOUR PERIOD: 4:15 PM-5:15 PM
PM PEAK 15 MINUTE PERIOD: 4:15 PM-4:30 PM
PM PHF: 0.82



RAW COUNT SUMMARIES	S.R. 224 Northbound				S.R. 224 Southbound				Montage Access Eastbound				Montage Access Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	South In	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	1	3	1	0	0	1	11	0	6	0	0	0	0	0	0	0	23
7:15 - 7:30	0	3	0	0	0	6	6	27	5	0	0	0	0	0	0	0	20
7:30 - 7:45	0	3	0	0	0	2	11	1	2	0	0	0	0	0	0	0	18
7:45 - 8:00	0	1	0	0	0	2	22	9	3	0	0	0	0	0	0	0	28
8:00 - 8:15	1	2	0	0	0	3	12	2	5	0	0	0	0	0	0	0	23
8:15 - 8:30	2	4	0	0	0	10	26	8	4	0	1	0	0	0	0	0	47
8:30 - 8:45	3	5	0	0	0	6	9	4	4	0	0	0	0	0	0	0	27
8:45 - 9:00	0	4	0	0	0	3	4	4	2	0	1	0	0	0	0	0	14
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
9:00 - 9:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:15 - 9:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:30 - 9:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:45 - 10:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	5	0	0	0	0	7	1	14	0	2	0	0	0	0	0	28
15:15 - 15:30	1	7	0	0	0	7	9	7	16	0	0	0	0	0	0	0	40
15:30 - 15:45	1	9	0	0	0	7	10	0	17	0	2	0	0	0	0	0	46
15:45 - 16:00	0	14	0	0	0	9	10	3	18	0	0	0	0	0	0	0	51
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
16:00 - 16:15	0	2	0	0	0	0	8	0	20	0	0	0	0	0	0	0	30
16:15 - 16:30	2	6	0	0	0	6	8	11	25	0	3	0	0	0	0	0	50
16:30 - 16:45	0	6	0	0	0	2	8	0	12	0	0	0	0	0	0	0	28
16:45 - 17:00	1	8	0	0	0	14	7	1	16	0	1	0	0	0	0	0	47
17:00 - 17:15	0	8	0	0	0	13	6	5	10	0	1	0	0	0	0	0	38
17:15 - 17:30	0	3	0	0	0	7	11	5	10	0	1	0	0	0	0	0	32
17:30 - 17:45	2	6	0	0	0	6	4	0	10	0	1	0	0	0	0	0	29
17:45 - 18:00	0	7	0	0	0	9	12	0	11	0	0	0	0	0	0	0	39

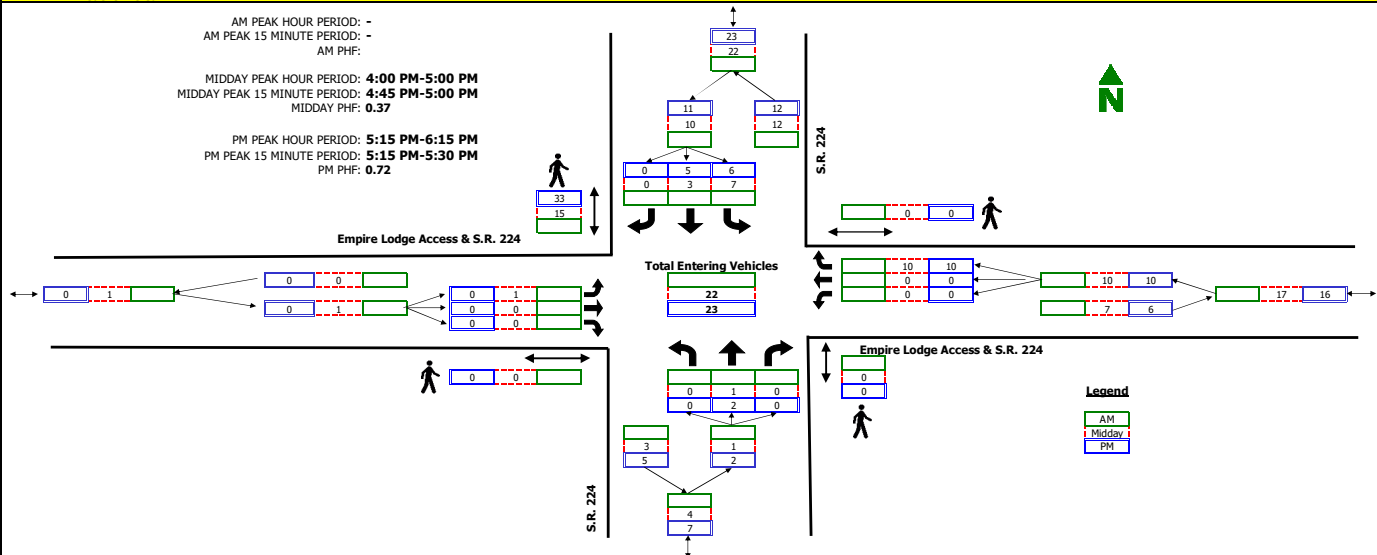
Intersection Turning Movement Summary

Intersection: S.R. 224 / Empire Lodge Access & S.R. 224
 North/South: S.R. 224
 East/West: Empire Lodge Access & S.R. 224
 Jurisdiction: Park City
 Project Title: Sommet Blanc TGS
 Project No: UT21-2024
 Weather: Clear

Date: 1-6-22, Thu
 Day of Week Adjustment: 100.0%
 Month of Year Adjustment: 100.0%
 Adjustment Station #: 0
 Growth Rate: 0.0%
 Number of Years: 0

1-6-22, Thu
 100.0%
 100.0%
 0
 0.0%
 0

AM PEAK HOUR PERIOD: -
 AM PEAK 15 MINUTE PERIOD: -
 AM PHF: -
 MIDDAY PEAK HOUR PERIOD: 4:00 PM-5:00 PM
 MIDDAY PEAK 15 MINUTE PERIOD: 4:45 PM-5:00 PM
 MIDDAY PHF: 0.37
 PM PEAK HOUR PERIOD: 5:15 PM-6:15 PM
 PM PEAK 15 MINUTE PERIOD: 5:15 PM-5:30 PM
 PM PHF: 0.72



RAW COUNT SUMMARIES	S.R. 224 Northbound				S.R. 224 Southbound				Empire Lodge Access & S.R. 224 Eastbound				Empire Lodge Access & S.R. 224 Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	South In	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:15 - 7:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:30 - 7:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:45 - 8:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:00 - 8:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:15 - 8:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:30 - 8:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:45 - 9:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:15 - 15:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:30 - 15:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:45 - 16:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16:00 - 16:15	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	1
16:15 - 16:30	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	3
16:30 - 16:45	0	0	0	0	2	0	0	6	0	0	0	0	0	0	1	0	3
16:45 - 17:00	0	1	0	0	5	0	0	8	0	0	0	0	0	0	9	0	15
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
17:00 - 17:15	0	1	0	0	0	0	1	0	0	0	0	0	0	0	1	0	3
17:15 - 17:30	0	15	0	0	3	0	7	0	0	0	0	0	0	4	0	0	8
17:30 - 17:45	0	0	0	0	0	1	0	2	0	0	0	0	0	0	4	0	5
17:45 - 18:00	0	0	0	0	0	0	0	15	0	0	0	0	0	0	2	0	2
18:00 - 18:15	0	1	0	0	3	4	0	9	0	0	0	0	0	0	0	0	8
18:15 - 18:30	0	0	0	0	2	1	0	8	0	0	0	0	0	0	0	0	4
18:30 - 18:45	0	1	0	0	1	0	0	2	0	0	0	0	0	2	0	0	4
18:45 - 19:00	0	1	0	0	2	1	0	8	0	0	0	0	0	0	3	0	7

APPENDIX B

LOS Results

SimTraffic LOS Report

Project: Park City Sommet Blanc TIS
Analysis Period: Existing (2022) Background
Time Period: Evening Peak Hour

Project #: UT21-2024

Intersection: S.R. 224 & Empire Lodge Accesses
Type: Roundabout

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
SB	L2	2	3	150	1.5	A
	Subtotal	2	3	150	1.5	A
WB	R2	10	10	103	1.9	A
	Subtotal	10	10	100	1.9	A
SW	L	5	5	95	1.5	A
	T	1	1	100	0.1	A
	R	10	11	113	1.5	A
	Subtotal	16	17	106	1.4	A
Total		52	55	105	1.6	A

Intersection: Montage Access & S.R. 224
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	3	92	1.1	A
	T	34	36	105	0.1	A
	Subtotal	37	39	105	0.2	A
SB	T	35	34	98	0.3	A
	R	29	32	110	0.1	A
	Subtotal	64	66	103	0.2	A
EB	L	63	64	102	4.4	A
	R	5	7	133	3.0	A
	Subtotal	68	71	104	4.3	A
Total		169	176	104	1.8	A

SimTraffic LOS Report

Project: Park City Sommet Blanc TIS

Analysis Period: Existing (2022) Plus Project

Time Period: Evening Peak Hour

Project #: UT21-2024

Intersection: Project Access & S.R. 224 & Empire Lodge Access
Type: Roundabout

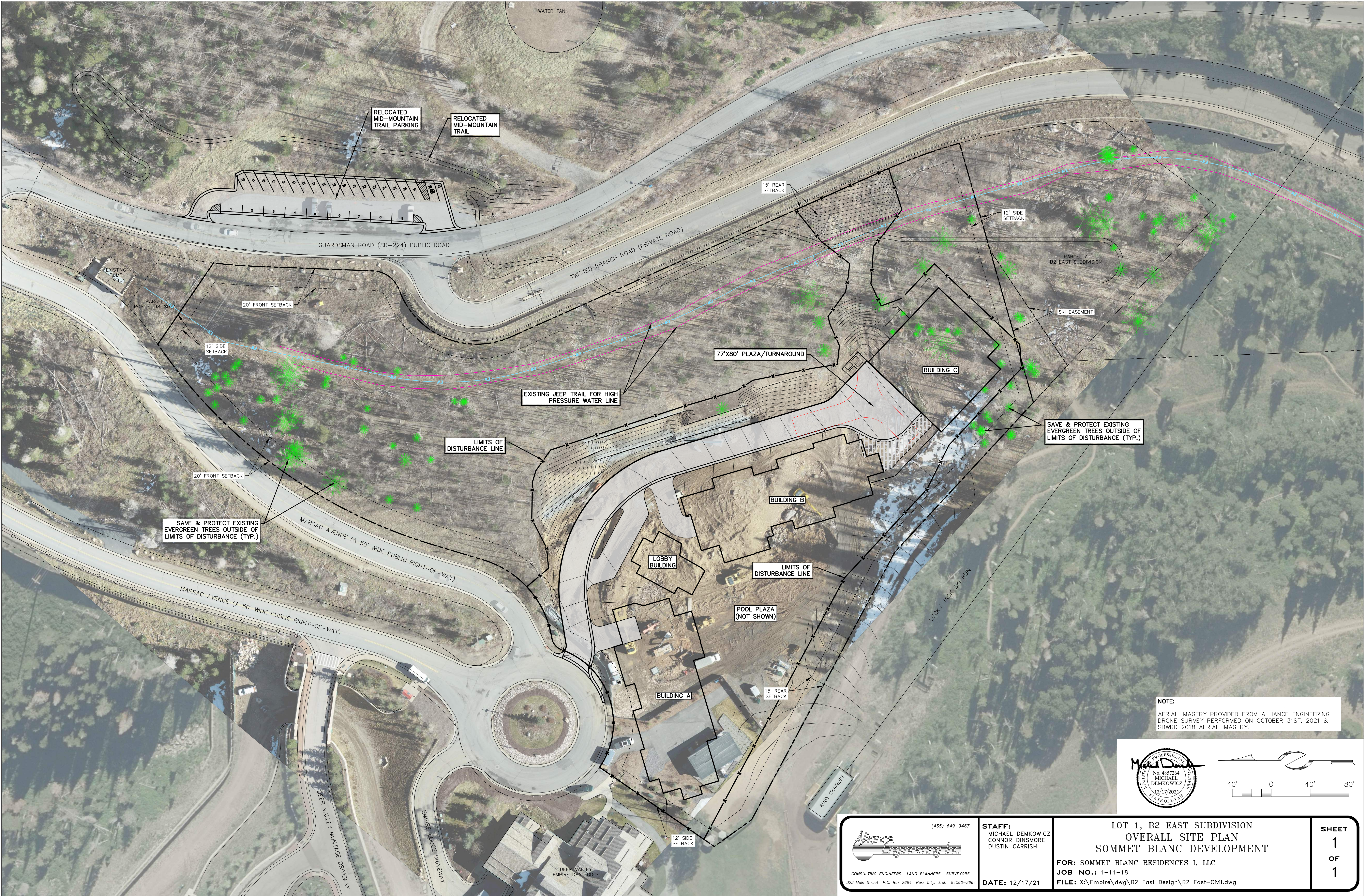
Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	T	17	17	99	4.7	A
	R	2	2	100	4.0	A
	Subtotal	19	19	100	4.6	A
SB	L	5	5	95	1.6	A
	T	30	30	99	2.0	A
	R	10	10	103	1.5	A
	Subtotal	45	45	100	1.8	A
WB	L	4	3	71	1.8	A
	R2	10	10	103	1.9	A
	Subtotal	14	13	93	1.9	A
SE	L2	2	2	100	2.0	A
	Subtotal	2	2	100	2.0	A
Total		105	108	103	2.3	A

Intersection: Montage Access & S.R. 224
Type: Unsignalized

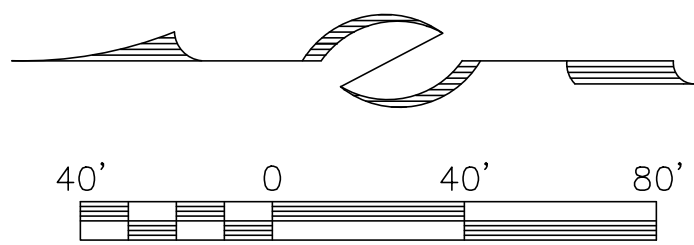
Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	3	92	1.1	A
	T	52	56	109	0.4	A
	Subtotal	55	59	107	0.4	A
SB	T	65	69	107	0.2	A
	R	29	32	110	0.1	A
	Subtotal	94	101	107	0.2	A
EB	L	63	62	99	4.7	A
	R	5	5	95	2.7	A
	Subtotal	68	67	99	4.6	A
Total		216	227	105	1.6	A

APPENDIX C

Site Plan



NOTE:
AERIAL IMAGERY PROVIDED FROM ALLIANCE ENGINEERING
DRONE SURVEY PERFORMED ON OCTOBER 31ST, 2021 &
SBWRD 2018 AERIAL IMAGERY.



 (435) 649-9467 CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664	STAFF: MICHAEL DEMKOWICZ CONNOR DINSMORE DUSTIN CARRISH	LOT 1, B2 EAST SUBDIVISION OVERALL SITE PLAN SOMMET BLANC DEVELOPMENT		SHEET 1 OF 1
	DATE: 12/17/21	FOR: SOMMET BLANC RESIDENCES I, LLC		
		JOB NO.: 1-11-18		
		FILE: X:\Empire\dwg\B2 East Design\B2 East-Civil.dwg		

APPENDIX D

95th Percentile Queue Length Reports

SimTraffic Queueing Report**Project: Park City Sommet Blanc TIS****Analysis: Existing (2022) Background****Time Period: Evening Peak Hour**95th Percentile Queue Length (feet) - Rounded Up to Nearest Multiple of 25 ft**Project #: UT21-2024**

Intersection	NB	SB	EB	WB
	LT	<L	LR	R>
01: S.R. 224 & Empire Lodge Accesses		25		25
02: Montage Access & S.R. 224	25		50	

SimTraffic Queueing Report

Project: Park City Sommet Blanc TIS

Analysis: Existing (2022) Plus Project

Time Period: Evening Peak Hour

95th Percentile Queue Length (feet) - Rounded Up to Nearest Multiple of 25 ft

HALES



ENGINEERING

innovative transportation solutions

Project #: UT21-2024

Intersection	NB		EB	WB
	LT	TR	LR	LR>
01: Project Access & S.R. 224 & Empire Lodge Access		50		25
02: Montage Access & S.R. 224	25		75	



SEILER, ANDERSON,
FIFE & MARSHALL, LC

Attorneys and Counselors at Law

Thomas W. Seiler
Jared L. Anderson
Morgan Fife
Derek T. Marshall

Lacey M. Whimpey
Perris E. Nelson
Scott B. Mosley
Rachel Mabey Whipple
Mark F. Robinson
Norman H. Jackson
Craig Johnson

October 24, 2021

Mark Harrington
Park City Municipal Corporation
445 Marsac Avenue
Park City, UT 84060
Email: mark@parkcity.org

RE: Sommet Blanc CUP Application

Dear Mr. Harrington:

My name is Morgan Fife. I am an attorney representing the owner of the property known as “Sommet Blanc” (9300 Marsac Avenue).

During the course of a Planning Commission work session for Sommet Blanc on September 8, 2021, Mark Fischer made comment regarding certain matters related to the Sommet Blanc project. It has been reported to me that Mr. Fischer is an officer in the owners’ association for a Wasatch County community known as Brighton Estates, as well as an owner of real property in Brighton Estates.

Mr. Fischer’s comments are largely focused on SR-224 and Twisted Branch Road. The meeting minutes from the September 8, 2021 meeting are attached. While Mr. Fischer mentions certain alleged safety issues with SR-224, his ultimate end game is adequately summarized in the minutes which state: “[Mr. Fischer] concluded that he could not see this project moving forward without resolving the long-term use of Twisted Branch Road ...” I have been informed that Brighton Estates has made previous efforts to gain access to the Brighton Estates properties through Twisted Branch Road. Mr. Fischer’s comments on September 8 appear to have little to do with Sommet Blanc, but represent an effort to leverage an unrelated private property to obtain access to Brighton Estates via the privately owned Twisted Branch Road.

Significantly, consideration of Sommet Blanc’s proposed conditional use permit (“CUP”) and amendment to the 2007 Hill Glazier master planned development (“MPD”) is not the proper context for addressing Brighton Estates’ desire to gain access to the privately owned Twisted Branch Road, nor is it the proper context to address any alleged safety issues related to SR-224 above Sommet Blanc. Among other things,

- 1) Sommet Blanc has no relationship with or involvement in Red Cloud;
- 2) Sommet Blanc has no relationship with or involvement in Brighton Estates;
- 3) Sommet Blanc’s project shall make no use of SR 224 on those portions closed during the winter; and

- 4) Sommet Blanc has no ownership rights in, no control of, no access to, no authority over, and no relationship with Twisted Branch Road.

There is no nexus between the proposed CUP and MPD amendment and the desires of Brighton Estates as they relate to SR 224 and Twisted Branch Road. As a result, any effort to condition the approvals sought by Sommet Blanc would be entirely unreasonable. If Brighton Estates wanted to petition a party for relief, it should look to UDOT, REDUS Park City, Park City Municipal Corporation, the Empire Pass Master Owners Association, and any others who actually have the power and right to make the changes sought by Brighton Estates. Without any right in Twisted Branch Road, Sommet Blanc can offer no redress, and, therefore, conditioning its approvals on the matters identified by Brighton Estates would be an abuse of discretion.

It is important to note that the amendment to the existing MPD sought by Sommet Blanc will decrease the total number of units from 81 to 47, and reduce curb cuts on SR-224 from 4 to 2. Ironically, what Brighton Estates seeks would actually result in an exponential increase in the winter use of Marsac Avenue, SR-224 and the surrounding areas, exacerbating many of the very concerns voiced by Brighton Estates, and to which Sommet Blanc as a property owner would be negatively impacted by.

In light of the lack of any nexus between Sommet Blanc, Twisted Branch Road, and Brighton Estates, the City should move forward without delay in considering and approving Sommet Blanc's proposed CUP and MPD amendment.

Sincerely,

SEILER, ANDERSON, FIFE & MARSHALL, LC

A handwritten signature in black ink, appearing to read 'Morgan Fife', with a stylized flourish at the end.

Morgan Fife
Attorney for Sommet Blanc

CC: Makena Hawley, Planner PCMC (makena.hawley@parkcity.org)
Gretchen Milliken, Planning Director PCMC (gretchen.milliken@parkcity.org)

EXHIBIT A
September 8 Minutes



**PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
SEPTEMBER 8, 2021**

COMMISSIONERS IN ATTENDANCE: Chair John Phillips, John Kenworthy, Sarah Hall, Doug Thimm, Bill Johnson, Christin Van Dine

EXCUSED: Commissioner Laura Suesser

EX OFFICIO: Gretchen Milliken, Planning Director; Makena Hawley, City Planner; City Planner, Brown Sebright; Mark Harrington, City Attorney

1. ROLL CALL

Chair Phillips called the meeting to order at approximately 5:30 p.m. He noted that Commissioner Laura Suesser advised that she would not be in attendance at this meeting.

The following written determination was read:

The Chair issued a written determination that because of the public health emergency, conducting a meeting with an anchor location presents a substantial risk to the health and safety of those who may attend in person. This determination is based on the ongoing risks and infection rates statewide and in Summit County. For these reasons, this meeting will be an electronic meeting without an anchor location. Planning Commission members will connect electronically.

Public comments will be accepted virtually. To comment virtually, use eComment or raise your hand on Zoom. Written comments submitted before or during the meeting will be entered into the public record but will not be read aloud. For more information on attending virtually and to listen live, please go to www.parkcity.org.

2. MINUTES APPROVAL

A. Consideration to Approve the Planning Commission Meeting Minutes from August 18, 2021.

Commissioner John Kenworthy commented on the second paragraph on page 4 that references tracking ride-on information. He recalled requesting that information if it was available and reiterated that request. In the last paragraph on page 4, he made the following corrections, noted in italics: "Commissioner Kenworthy stated that the intent is to *reduce vehicle traffic and increase the AVO (Average Vehicle Occupancy) as we count on bus ridership to do this.*"

Commissioner Kenworthy also referenced the second paragraph on page 8 which should read "Commissioner Kenworthy commented that in the morning hours 42% of those parking in Snow Park come from Wasatch Front and Salt Lake City using SR-224." He continued by referencing Paragraph 3, which starts with "Ms. Rodriguez verified that CVMA did not receive additional density..." where she thereafter stated that she "was relatively certain that they paid \$3 million for 100 spaces, but agreed to provide the exact number..." It should be reflected that Commissioner Kenworthy asked for a copy of this contract and Ms. Rodriguez agreed to provide it.

At the bottom of the third full paragraph on page 8, he noted the following changes, noted in italics: "he [Commissioner Kenworthy] believed that this is something that can be achieved for both locals and visitors, *but this plan falls way short at this current time.*"

Commissioner Kenworthy referenced the second to last paragraph on page 9 and reiterated that he requested a copy of the contract and Ms. Rodriguez agreed to provide it.

MOTION: Commissioner Bill Johnson moved to APPROVE the Meeting Minutes from August 18, 2021, as amended. Commissioner Sarah Hall seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission. Commissioner Doug Thimm noted his absence from that meeting, however, after reviewing the minutes and in deference to the assertions of the other Commissioners, he voted in favor of the motion.

B. Consideration to Approve the Planning Commission Meeting Minutes from August 25, 2021

MOTION: Commissioner John Kenworthy moved to APPROVE the Meeting Minutes from August 25, 2021. Commissioner Christin Van Dine seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

3. PUBLIC COMMUNICATIONS

There were further no public communications.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

There were no disclosures.

A. Staff Communications Report Regarding Meeting Start Times.

Planning Director, Gretchen Milliken, addressed the request made at a previous meeting to move up the starting time for future meetings to as early as 4:30 p.m. Staff determined that two Commissioners would not be able to meet at the earlier time, so they would continue with the 5:30 p.m. start time.

5. CONTINUATIONS

- A. 1660 and 1700 Three Kings Drive – Payday Condominiums – Plat Amendment – The Applicant is Requesting to Amend the Existing Plat to Rectify Inconsistencies and Clarify Developable Private Residential Space for Condominium Owners.**

City Planner, Makena Hawley, stated that there is additional analysis to complete on this item, and would bring it back before the Commission when that analysis has been completed.

Chair Phillips opened the public hearing. There were public comments. Chair Phillips closed the public hearing.

MOTION: Commissioner Doug Thimm moved to Continue 1660 and 1700 Three Kings Drive—Plat Amendment, to October 7, 2021. Commissioner John Kenworthy seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

6. CONSENT AGENDA

7. WORK SESSION

- A. 9300 Marsac Avenue (Sommet Blanc/B2East Parcel) – Applicant is Requesting a Work Session Before the Planning Commission Prior to Public Hearings for a Conditional Use Permit and Amendments to the Approved Master Planned Development and Flagstaff Development Agreement for Proposed Development of 43 Residential Units Above Underground Parking, 4 Townhome Villas within Duplexes on the North-Eastern Portion of the Site, a 3,600 Square-Foot Public Restaurant, and a Detached Ancillary Ski Locker Building. PL-21-04771 and PL-20-04702.**

Planner Hawley introduced herself and stated that she is glad to be back. She looked forward to working with the Planning Commission. She reported that the Commission will ultimately be presented with an action item on this application for a Conditional Use Permit (“CUP”) and Amendments to the Master Planned Development (“MPD”) in the Flagstaff Development Agreement. She explained that Lot 1 is adjacent to the Deer Valley/Empire Day Lodge. The governing documents are the 2007 Amended Flagstaff Development Agreement, the 2007 MPD, and the Land Management Code (LMC) for the residential development and MPD zone.

Planner Hawley recapped the prior presentation and noted that the Planning Commission requested information on the following:

- Residential Accessory space;
- The focus on architecture and roof pitch; and
- Approved volumetrics and building height in comparison to the Hill-Glazier Plan from 2007

She noted that the applicant’s team would present some of the changes made to the proposal. Planner Hawley explained that to establish parameters for these discussions, the Commission would, in the future, be looking at the 16 criteria for the Conditional Use Permit, the amendments

to the Flagstaff Development Agreement to reduce permitted multi-family units by five, and increase of the Planned Unit Developments ("PUD") by two. The Commission would also look at modifications to the Flagstaff Design Guidelines and modifications to the MPD, Conditions of Approval 1 and 2, which address building volumetrics and heights of 82 feet above benchmark grades.

Planner Hawley reported that staff determined that the applicant's proposal for Residential Accessory space is in substantial compliance with the LMC. She clarified that there are several definitions within the Development Agreement and the LMC, but since the Development Agreement incorporates the LMC's definitions, then the LMC would govern. The applicant's current proposal is for 29,625 square feet of Residential Accessory space. The LMC and the Development Agreement do not require the use of Unit Equivalents ("UE") for Residential Accessory space.

Planner Hawley reported that the Meeting Accessory use cannot exceed 5% of the total square footage. The applicant proposed a guest Business Center that totals approximately 565 square feet, far less than the 5% limit. Planner Hawley stated that the LMC requires that any changes in use go back through the Planning Department who could recommend a Condition of Approval for the CUP that any changes in use require approval from the Planning Commission.

Planner Hawley next addressed the architecture and reported that they have obtained Design Review Board approval. She explained that the 2003 Empire Pass Design Guidelines are included within four books. The applicant and the Design Review Board decided that rather than redlining the existing books, it would be better to add a book. Therefore, they proposed Book V for the proposed neighborhood.

She presented information on the Design Guideline review process and explained that with the inception of the MPD, design proposals were submitted through the MPD, which would then be accepted with the design proposals attached. Changes to the design were then submitted to the Empire Pass Design Review Board. Once those changes are accepted, the neighborhood would then take them to the Planning Commission for approval. Planner Hawley reported that the volumetrics were difficult to analyze, primarily because the Hill-Glazier plan does not include everything needed for an accurate comparison. The development is not yet at the stage to allow a straight "apples to apples" comparison. She explained that they could compare UEs, approximate height, approximate footprint, and approximate slope disturbance. They do not have sufficient information to compare Accessory Residential space and they do not have site disturbance from the Hill-Glazier plan.

Planner Hawley explained that pursuant to the Conditions of Approval in the MPD, there is a height exception of 82 feet above benchmark grade due to the heavy site disturbance and increase in elevation on the site. They have been given benchmarks from the USGS datum points between 8330 feet and 8380 feet. The applicant made changes to their proposal by lowering Building A and transferring that level to Building C, which would make Building C six feet above the allowed building height above the benchmark grade.

She reported that while there are some sections where they can provide some detail on grade changes, it would still be an approximation since they do not know the exact grade. She noted that the footprint submitted by the applicant as overlaid over the Hill-Glazier plan showed that it was very similar. The Hill-Glazier footprint was 57,601 square feet, as compared to 55,697 square feet for Sommet Blanc. Planner Hawley also referenced the heat maps provided by the applicant

that show the different grades as they exist and the projected site disturbance. She also presented a topography map showing the locations of the proposed retaining walls.

The applicant, Douglas Ogilvy from Sommet Blanc Residences I, LLC explained that they have been working with Deer Valley for six years to develop a project concept that is complementary to the Deer Valley guest experience. He noted that through the process they increased the setback from the Lucky Jack Ski Trail from 15 feet to 40 feet. They also carved off Parcel A to create the opportunity for a future direct ski run from the top of Ruby Chair to the bottom of Ruby Chair. Mr. Ogilvy continued by stating that the proposal provides a long-term parking solution and more recently they agreed to relocate the sewer from running adjacent to the property line to running internally through the site. He reported that Deer Valley has been happy with the project and the most recent design changes to step down the building next to the Empire Day Lodge.

Mr. Ogilvy stated that they feel strongly that the mountain contemporary architecture is appropriate. The Design Review Board approved the introduction of the mountain contemporary architecture, and former Mayor Jack Thomas has been complimentary of the approach to contemporary design on the site. He commented that virtually every Master Planned Development in Park City has acknowledged that mountain contemporary architecture has arrived and they do not feel that Empire Pass should be any different. He noted that this development is one mile from Empire Pass Village and the immediate neighbors are the Empire Pass Day Lodge and The Montage. The applicant proffered that they should not be locked into mimicking either of those structures. Mr. Ogilvy also stated that flat roofs are a better design solution in snow country than gabled roofs, which create snow management issues. He also commented that they created some interesting architecture as seen from the pedestrian level.

Mr. Ogilvy noted that their presentation will also respond to comments from the Planning Commission regarding design changes. They have reduced the number of villas from five to four. They lowered the western half of Building A to four stories adjacent to the Day Lodge and stepped the height up into the hillside. He reported that they also added a floor in Building C. They believe that this is a superior design solution over the Hill-Glazier plan.

Mr. Ogilvy introduced the design team from Olson Kundig. Todd Matthes identified himself as the Principal/Project Lead, along with Tom Kundig, who is the Principal Architect on the project. Mr. Matthes explained that contemporary architecture is more appropriate for the site since the texture of the environment would be created through the layering of different architectural styles over time. Architecture has evolved not only due to stylistic preferences but reflects advanced material technologies, construction methods, and a shift in the desire to live and interact in new ways. Mr. Matthes also stated that contemporary architecture aspires to advance the way that space is inhabited and interacts with the natural context. A desirable texture emerges as the natural evolution of the architectural style over time is embraced. He stated that the goals of Sommet Blanc are to integrate with the diverse as-built environment of the area while contributing to and supporting a new way of living for people who appreciate and respect the mountains.

Mr. Matthes reiterated that there are many diverse environments with many architectural styles that co-exist well. Architecture is changing throughout the area and this site is no different as both modern and traditional architectural diversity exists throughout Park City and Deer Valley. He showed the Commission photographs of different neighborhoods in and around Park City. Mr. Matthes presented several renderings that demonstrate how the project fits in the context. The immediate neighbor is the Empire Day Lodge and the project abuts Lucky Jack ski run. There is good separation from The Montage and significant separation from the Village.

He explained that they took much of the project density and separated it into seven different structures. They have also included complementary color palettes and the materials and textures help fold the project into the landscape. He noted that they stepped down the massing to achieve an appropriate scale and height, which nestles the project into the landscape. Mr. Matthes noted that they are also set back from the Lucky Jack ski run. He commented that this project will be less visible from roads. The tallest building, which is Building C, will be nestled into the hillside and the massing steps down from there. This respects the neighbors and the scale of the area. The villas were designed to nestle into the hillside as well. Mr. Matthes pointed out that they have reduced the number of villas from five to four, which sets them further back from Marsac Avenue and increases the buffer of Aspen trees. He described the project as a seven-acre enclave, neighbored only by Empire Lodge and the Lucky Jack ski run.

Mr. Matthew presented a rendering showing that only Building A is visible from the roundabout, with the step-down massing protects the ridgeline beyond the project. A view from Burgers and Bourbon at The Montage demonstrated that the view impact will not be significant and will not impact the ridgeline beyond. He added that it is very important for the project massing to step down with the topography.

Mr. Matthes next outlined the proposed massing changes that will address some of the prior comments and concerns expressed by the Commission. He presented diagrams showing the original massing and the proposed modifications. He reported that they took the Commission's comments regarding reducing the scale adjacent to Empire Day Lodge and dropped a full story from Building A, moving that density into Building C. In eliminating one villa, they moved that density into Building C as well. These changes add a story to Building C. He explained that they also rotated some penthouses at the rooftop to adjust to the new massing and further articulated the rooflines as seen both from Lucky Jack and Marsac Avenue.

Mr. Matthes added that as part of these changes, they increased the green roof to 33% of the total roof area. He mentioned the porosity of the design, which he described as how one notices the landscape flowing through the buildings. He reiterated that this project is its own enclave, separated significantly from the Village. They also created a generous ski beach with ski-in/ski-out amenities, with an increased setback from the ski run. They reduced the size of the patio to introduce a softer transition from the restaurants to the Deer Valley domain. The villas are nestled into the Aspen trees. Mr. Matthes commented that one of the overall goals for this project was to maximize the indoor/outdoor relationships by using large windows and generous decks that reach out to the landscape. He added that by eliminating one villa they have lowered the driveway grade to a maximum height of 40 feet above grade, which is a nine-foot decrease from the prior plan.

The proposed roofline falls in the line with his prior statements regarding the evolution of architecture and technical improvements. Low sloped and flat roofs with internal drains reflect a snow retention approach rather than a snow shedding approach. This has brought about safety improvements to protect the pedestrians below, as well as snow management improvements. Additionally, the proposed roof overhangs provide cover and covered outdoor space. He highlighted the added public benefit of adding a restaurant that faces Ruby Express and that would be accessible to anyone skiing Deer Valley. Mr. Matthes concluded that they think it appropriate to introduce a more contemporary architecture for this project. He added that this design widens the ski run as a result of the setback of 40' from Lucky Jack ski run and reiterated the benefit of the step-down massing.

Mr. Ogilvy next presented an updated site plan and noted that the footprint has not changed for Buildings A, B, and C, with the exception of the reduced patio area at the Building A restaurant. The reduction of one villa has allowed them to design wider, shallower units and reduce the height of the driveway by nine feet and pull it back further from Marsac Avenue. He added that the amenities building was also shifted further north. He explained that while there were no significant changes to the site plan, they made changes that they view as improvements. One of the impacts of this project involves the requirement to relocate the Mid Mountain Trail. He explained that the section of Mid Mountain Trail below Twisted Branch Road has already been constructed and accepted. Additionally, they proposed to relocate the Mid Mountain Trail above Guardsman Pass Road, and the engineers suggested a one-way parking lot that would have a second access opposite the project's upper driveway. He reported that this configuration would provide for better traffic flow. While they must still meet with the Utah Department of Transportation ("UDOT") on this issue, they are agreeable to the engineers' recommendations in this regard.

Mr. Ogilvy highlighted the increased setbacks from the Lucky Jack ski run. He referenced other projects in Deer Valley noting that The Montage is the largest at 13 floors plus a roof. Argent, as viewed from Marsac Avenue, has 8 floors plus a roof and most of the Empire Pass Village is seven floors plus a roof. Mr. Ogilvy commented that Sommet Blanc Buildings A and B would both be six floors with no roof. Building C will have seven floors with no roof. He suggested that the proposed heights are commensurate with what already exists in the area and much lower than The Montage.

Mr. Ogilvy stated that the proposed volumetric codification would set a height limit of 70 feet at the west end of Building A, and 82 feet for the eastern portion of Building A and all of Building B. They proposed a height limit of 92 feet for Building C and a 40-foot height limit for the villas. He explained that the building heights will be measured from benchmarks while the villas will be measured from natural grade. He commented that other than these heights, everything else on-site will be limited to a height of 28 feet. Mr. Ogilvy invited questions and comments from the Commission and recalled that the last meeting left off at the issue of whether it was appropriate to introduce the mountain contemporary architecture at this stage of development of Empire Pass. He highlighted the presentation by Mr. Matthes and the endorsement of former Mayor Jack Thomas as support for the appropriateness of this architecture and a better solution than the Hill-Glazier plan.

Chair Phillips sought clarification on the proposed height limits for the villas. Mr. Ogilvy responded that the challenge with the villas is that the driveway will be installed over a high-pressure water main that feeds the Red Cloud neighborhood. Therefore, they proposed to lower the driveway to the extent possible and expressed that the 40-foot building height would fit well and would be of a similar or slightly lower height than that proposed in the Hill-Glazier plan. He also highlighted the fact that the villas would not block any views.

Chair Phillips requested a rough cross-section of the villas to illustrate the need for the 40-foot height limit. He commented that these villas appear to be residential-scale buildings and he would be inclined to limit the height of the villas to match the other residential buildings in the area. He requested clear justification for an exception to the 33' height limit. Mr. Ogilvy clarified that the current allowable height is 28' without exception, given the proposed roof pitch.

Chair Phillips also mentioned the differing tree species in the area noting that if this area were more of an Aspen grove he would be concerned with die-off due to cutting or excavation of the

ground. He added that language might be required that the developer will replace any trees that die in the future. Mr. Ogilvy stated that the forest in the area is predominantly Aspen, with some younger growth evergreens. He assumed some plantings would be required in different areas of the site. Chair Phillips requested clarification and delineation of the public versus private access points to the buildings, particularly on the ski run side of the project.

In response to a request from Commissioner Kenworthy, Mr. Matthes verified that the rendering depicting the view from Marsac Avenue facing west is to scale, to a reasonable degree. He noted that they utilize drone photography and 3-D models approximated with the view angles to create these renderings.

Commissioner Kenworthy asked about the height of the Lodge. Mr. Ogilvy stated that The Montage is 165 feet above the Event Lawn, and from the Marsac roundabout to the ridge, this project is 89 feet on the eastern side and 75 feet on the western side. Commissioner Kenworthy found this to be a significant improvement in the massing and the comparison between the two developments and wanted assurance that what is depicted is close to scale. Mr. Ogilvy added that the height from the restaurant patio to the roof above is 69 feet.

Commissioner Johnson commented that the step down on Building A looks much better than the previous design and asked why the density was transferred to Building C. Mr. Matthes explained that to maintain target square footage, they relocated the density to Building C while being sensitive to other concerns. Hannah Tyler from Sommet Blanc I, LLC, clarified that change increases the height to six feet higher than the allowed height of 82 feet at the highest benchmark.

In response to a comment from Commissioner Johnson, Mr. Ogilvy stated that it will be difficult to fit that six feet back down into lower levels given floor height dimensions and grading. He noted that the building is built into the hillside so there will already be quite a bit of cut at the southeast corner. He recognized that ultimately, the volumetrics is at the discretion of the Planning Commission and any height above 28 feet will require Planning Commission approval. He added that most of the buildings in the Empire Pass area were approved with a 92-foot height limit, with The Montage being approved at 114 feet above a benchmark and the Hill Glazier Plan approved at 82 feet above benchmark. Mr. Ogilvy explained further that putting the extra density in a location furthest from the Marsac roundabout was the most suitable place to relocate it.

Commissioner Van Dine expressed appreciation for the changes made by the applicant and specifically mentioned the reduction in the number of villas from five to four as well as the parking lot and relocation of the Mid Mountain Trail.

Commissioner Hall asked if there would be further details presented at this meeting on the Mid Mountain Trail relocation, or if it would be addressed in the future. Planner Hawley suggested that the applicant address it now and noted the temporary re-route for a sewer. Mr. Ogilvy presented a concept sketch for the Mid Mountain parking lot noting that it is a work-in-progress that he received just prior to the meeting. He explained that they originally proposed a parking lot that followed the contour lines. When concerns were raised about problems attendant with one-way parking lots and trailers, the concept of a design with one-way traffic flow through the parking lot was recommended. K-rails would separate the Marsac Avenue roadway from the Mid Mountain Trail parking lot.

Mr. Ogilvy continued by explaining that the entrance to the lot would be adjacent to the Twisted Branch Road turnoff, with angled parking on the right and parallel parking on the left. The exit

would be adjacent to the upper driveway. He explained that the northern limit is impacted by the high-pressure water line. He reported that they have proposed to install composting toilets at the trailhead, as well as a trailhead kiosk. He noted that the applicant does not own this property, but the property owner has agreed to permit these improvements.

Mr. Ogilvy stated that they have received approval from UDOT to install the trail crossing adjacent to the Twisted Branch Road turnoff. He noted that some regrading would be necessary between the parking lot and the driveway up to the water tank in order to improve sightlines for vehicles on Guardsman Pass Road. They would field fit the trail to wrap above the parking lot and tie back into Mid Mountain Trail a little further north. He reported that this lot would abut a UDOT right-of-way, but expressed confidence that UDOT would consider this a dramatic improvement. Ms. Tyler shared an overview of the proposed trail relocation. Commissioner Van Dine commented that the parking lot would be a vast improvement from the current conditions.

Mr. Ogilvy clarified that the parking lot would be configured as a one-way downhill with a grade of approximately 10%, which admittedly allows for some exposure to door dings but would include a K-rail that would provide much safer conditions than what currently exists.

Commissioner Johnson agreed that the parking lot will be an improvement and noted that it would be used primarily during the summer months. In response to an inquiry, Mr. Ogilvy stated that plowing during the winter has not been addressed as of yet, but acknowledged it would need to be plowed in the winter.

Chair Phillips requested a schematic that shows the hairpin turn with the new proposed driveway road as he wondered whether there could be issues with sight and safety. Mr. Ogilvy noted that this concept has been reviewed and approved by UDOT and conditional access permits have been issued for the new curb cut for the lower driveway and the new trailhead crossing. They have not yet requested permission from UDOT to loop the driveway but anticipated that they would approve the one-way plan. Mr. Ogilvy noted that the driveways will align and the traffic speed out of the hairpin turn is low so they utilized sightline studies to obtain the conditional access permit for the upper driveway and the pedestrian crosswalk. These were included in the November submission.

Commissioner Kenworthy stated that he would like to see exactly where the driveway will be located.

Mr. Ogilvy explained that the change in the parking was done at the request of the Engineer who feels that the current parking lot is in a very unsafe condition. In response to Commissioner Kenworthy's request, Mr. Ogilvy shared with the Commission schematics and sightline studies of the proposed driveway into the parking lot that was approved by UDOT. He explained that with the exception of a sightline impact of the hillside between the water tank access road and the parking lot, the existing condition meets all of the criteria for the proposed improvements. He also noted that the sightline impact would be corrected by shaving a portion of that hillside. Mr. Ogilvy added that the upper driveway is serving only four units, so the vehicle counts would be negligible. As there are already 25 parking spots along the road, their proposal seeks to create improved conditions for those 25 stalls.

In response to an inquiry from Commissioner Kenworthy regarding access to the villas off of Twisted Branch Road, Mr. Ogilvy stated that they would not be using that access for anything other than the Mid Mountain Trail.

Commissioner Doug Thimm addressed the concept plan for the parking lot and commented that it appears the upper driveway into the parking lot is not aligned, which could create an issue with UDOT. Mr. Ogilvy acknowledged that they are not aligned and explained that they are juggling maintaining the current stall count with the engineering. Commissioner Thimm expressed that the proposal is likely the best solution, but stated that alignment would be important due to the number of decisions that would need to be made by drivers going in opposite directions and perpendicular to each other.

Commissioner Hall asked if there was a way to add a buffer zone at the driveway to allow drivers coming from the hairpin turn to pause. Mr. Ogilvy explained that good engineering principles provide that efforts should be made to keep curb cuts aligned because it simplifies things for drivers. He acknowledged that UDOT would have suggestions for improvement at this location. Commissioner Hall expressed that she liked the concept and appreciated the efforts to make the parking lot safer and more user-friendly.

Planning Director, Gretchen Milliken, suggested that due to the complexity of the site, it would be beneficial for the Planning Commission to do a site visit with the engineers and other experts to look at these issues in the field. Chair Phillips agreed and stated that one of his concerns remains the height and proximity to the roundabout. He suggested ballooning the proposed buildings so that they could visualize the proposed heights. The Commissioners agreed that a site visit would be helpful.

Chair Phillips opened the public hearing.

Mark Fischer expressed appreciation for all involved and the thought put into this project over many years. He stated that the Staff Report does not call out as an adjacent land use for notifications to the SR-224 Mid Mountain Trailhead public users. He stated that he only found out about this meeting just prior because there were no public notices on the site and questioned whether the meeting was properly noticed. He stated that what is missing from the discussions thus far is the effect of this project on upper SR-224, UDOT, and Twisted Branch Road. Based on his review of studies, there is currently \$1.6 billion in residential construction from the horse corral to the top of the County line, which includes The Montage. In 1998, as part of the development of this project, the public was to be directed to Twisted Branch Road because Deer Valley does not have an active UDOT permit to ski across the public highways. The Bandana ski run goes across SR-224, which, according to state statute, is not a permissible use.

Mr. Fischer noted that the solution was to put the public onto the UDOT designed road and abandon the substandard 15-foot road that goes under the Ruby Chairlift, which Deer Valley wants to make a ski run. He opined that this project should be tied to that decision given the three additional UDOT curb cuts being requested. Mr. Fischer believed that UDOT would use this opportunity to finally resolve the intended use of Twisted Branch Road, which is in reality the substitute for upper SR-248.

Mr. Fischer stated that given the amount of development in the area, he would request that Staff require a Traffic Study if it has not been completed already, up to the Wasatch County line. He would also like to see a Public Safety Analysis due to the multiple uses that occur on this road during the winter months. He noted that the lot is busier in the winter than in the summer, and cars line up down the street to the Empire roundabout.

He concluded that he could not see this project moving forward without resolving the long-term use of Twisted Branch Road, which was designed to be the replacement for the 15-foot wide road. He emphasized that this issue would not go away, and needed to be addressed. He commented that the public trailhead parking lot is a great start. He would like the Planning Commission's site visit to be publicly announced and open to the public. He added that in 2018, he requested that the Planning Commission conduct a site visit, and the Commissioners at that time all expressed their desire for a site visit. He understood that this site visit has not yet occurred.

Mr. Fischer reminded those present that the public is an important neighbor to be considered, as this project is second in size only to The Montage. He stressed his concern over the public safety issues and hoped that the developer would take his comments into consideration.

Mike Hinckley stated that he is a Park City resident and expressed concern over the safety and the impacts occurring on Marsac Avenue at this time. He has reviewed the Master Plan and the new upper driveway onto Guardsman Pass Avenue and is concerned that they are unaware of the traffic bottlenecks that exist during the winter and the summer. A site visit would be helpful and he would like to be invited as well.

He added that he believes UDOT, and possibly the developer, are not aware of these issues and would expect that they would want their guests to be able to access that road safely. On Marsac Avenue, there are large dumpster trucks and excavation vehicles which are creating safety issues. Mr. Hinckley reported that he spoke with Captain Kirk from the Police Department who commented that the Planning Commission would be the best forum for his concerns to be heard. He stated that Marsac Avenue is a death trap waiting to happen. The curb cuts on Guardsman Pass Road must also be looked at, and he referenced an incident last year when a semi-truck took out the power source on the switchback.

Mr. Hinckley also remarked that addressing responsibility for snow removal in the parking area is important. He echoed the concerns about the narrow roads, steep drop-offs, and conflicts with large vehicles. Mr. Hinckley questioned whether the parking lot was adequately addressed in terms of traffic impacts.

Director Milliken stated that a site visit with the Commission would include a notification to the public so they could attend. Chair Phillips asked about the public noticing for this meeting, and Planner Hawley expressed her belief that a work meeting was not required to be noticed, however notice of this meeting was posted in the newspaper and online. City Attorney, Mark Harrington, confirmed that the public hearing would trigger formal public notice requirements, so there was no legal deficiency in noticing for this work session. The full notice would go out once it is set for a public hearing.

It was confirmed by Director Milliken that if the Commission conducted a site visit, the public would be invited.

Chair Phillips commented that a Traffic Study and Public Safety Analysis would be pertinent to this application to address the increased intense use of the roads and access points in a tight area. It would be useful to understand the additional use being putting on Guardsman Pass Road.

In response to the public comments, Mr. Ogilvy stated that the project does not change anything with regard to the existing conditions on Guardsman Pass Road or Twisted Branch Road. Twisted Branch Road is on land owned by Redus Park City, LLC and the current applicant has no control

over that roadway. He reported that the applicant obtained permission from Redus to make improvements to the Mid Mountain Trailhead parking lot.

In terms of traffic impacts, the applicant has received UDOT approval for conditional access permits for the two curb cuts in the residential development. There is an existing curb cut on the Marsac roundabout, which they have moved approximately 20 feet. He noted that while the Hill-Glazier plan included three curb cuts, UDOT strongly preferred one curb cut. He explained that there is one curb cut on the Marsac roundabout that has been in place since approximately 2005. The second curb cut on the upper driveway, which has already been approved by UDOT, would serve four residential units. Changes to the parking lot would require UDOT approval, and he anticipated approval with some of the design changes they have discussed.

Mr. Ogilvy reiterated that Twisted Branch Road is not owned by the applicant and is not impacted by this project. The Development Agreement specifically states that Twisted Branch Road shall remain private. He recognized the concerns expressed about safety on Guardsman Pass Road but stressed that any issues on Twisted Branch Road have nothing to do with this project.

Commissioner Kenworthy referenced an issue raised by Commissioner Suesser regarding an Evacuation Plan for Snow Park, which Deer Valley was quick to address. With the recent fire scare, he wanted to know how they have addressed it for this project. Mr. Ogilvy responded that if they used snowcats, they would use the Lucky Jack ski trail. In terms of summer emergency egress from Empire Pass, there is a summer road just north of the Mid Mountain Trailhead, as required by the 1998 Flagstaff Development Agreement. He noted that there are also provisions for emergency vehicle use of Twisted Branch Road.

With regard to the addition of another lift, Mr. Ogilvy reported that Deer Valley has plans for what is currently being called Lift X, which would go from the bottom of Ruby Chair to an area above the Red Cloud water tank. He added that there have been discussions over the course of 20 years about whether Twisted Branch Road should be public or private. Deer Valley has stated their preference that Twisted Branch Road would become a public road, which would create the opportunity for Guardsman Pass Road to become a second ski-out from the top of Lift X. He clarified that none of this is on the applicant's property.

In response to an inquiry from Chair Phillips, Mr. Ogilvy stated that in order to permit duplexes on the villas site, the Development Agreement must be amended to increase the number of Planned Unit Development ("PUD") units and decrease the number of MPD units. They would also look to amend the volumetrics, which are part of the 2007 MPD. He noted that the applicant is also looking for the Planning Commission to endorse the amendment to the Design Guidelines by the creation of Book V. If all of these changes take place, then the Commission would be in a place to grant a Conditional Use Permit for the project.

Chair Phillips requested clarification on this process as compared to the process for the two other MPD amendments they are considering and questioned whether a Traffic Analysis should be required for this project. Planning Director Milliken acknowledged that there are similarities between this project and the base mountain resort project, stating that the latter would have more impacts by virtue of its' location. However, the concerns raised about this area being a pinch point could warrant further traffic studies, especially if they are trying to align ingress and egress to the parking within a short span and its proximity to the hairpin turn. She stated they could require further traffic study on this project.

Chair Phillips stated he would like to see further traffic studies, especially given the sensitivity of the road, which is likely the most hazardous road in Park City. He reiterated that he is in favor of a site visit.

Mr. Fischer disagreed with the comments made by Mr. Ogilvy and did not believe they were factual. He suggested that Mr. Ogilvy bring his lawyers to future meetings because he does not understand the depth of the issues. Mr. Fischer stated that because the applicant requires an amendment of the Flagstaff Development Agreement, Twisted Branch Road does come into the discussion.

Mr. Fischer also reported that on September 11, 2019, his lawyer was told, "Redus would not get ahead of the City and would take into account what the City says on this Twisted Branch Road item." He stated that the City could require Redus to put the public on Twisted Branch Road to get the amendment to the Flagstaff Development Agreement that this applicant needs.

Chair Phillips stated that he was coming around on the Design Guidelines and noted that the Commission appears to be leaning towards the Design Guideline changes. Mr. Ogilvy noted that the Two Hay Development was sold, so Redus holds a small number of landholdings in town, including Twisted Branch Road.

Chair Phillips liked the design but had been concerned about the design pendulum swinging too far and provided the example of contemporary architecture on 535 Woodside. He also noted that every building with modern architecture in Old Town, as shown in the applicant's presentation, would not be allowed under the current Code. The Design Guidelines for Park City proper were recently revised because they had allowed unlimited flat roofs, which they realized was a swing too far.

Chair Phillips commented that this design is drastically different from any other stand-alone building of this size. Flat roofs along Main Street do not necessarily demonstrate a shift in design because commercial buildings have historically been predominantly flat. The Kimball Building originally was presented with a more modern design, which was not allowed. He opined that what exists there now is more fitting and was a wise decision by the City, despite being widely considered an architectural blunder at the time.

Chair Phillips reiterated his view that while he likes the design, it would represent a fairly radical shift. He was not opposed to contemporary but noted that the flat roof element is the hardest part of contemporary design to accept. Referencing the applicant's presentation, Chair Phillips stated that the Stein Erickson residence would be more in line with what he was hoping to see because it includes a mix of flat and pitched roofs.

Chair Phillips also expressed concern about the size of the glass, especially on the highest levels. While he is amenable to a floor to ceiling windows, this design is drastically different than anything he has seen and he would be inclined to require the applicant to justify the height by comparison with other projects in the area. He reiterated that the buildings are beautiful and is familiar with and respects the architectural firm. He added that this project would be a good improvement on the site.

Commissioner Thimm agreed that a site visit would be helpful. He did not take exception to the Residential Accessory space and agreed that residents and guests would utilize the square footage and not add to the intensity and use in terms of traffic and utilities. As far as the

architecture, Commissioner Thimm expressed his opinion that the architecture is appropriate. Park City is very much about history and architecture. Architecture and design are a continuum; so not embracing current architecture fails to recognize the heritage and how architecture develops with time. With regard to how the masses are broken down and how the buildings are being looked at in detail, Commissioner Thimm commented that it brings forth what is needed together with timeless and sustainable materials, which would create a bridge with the past.

Commissioner Thimm stated that in terms of volumetrics, he believes they are very much in context with this district. He opined that the change to bring down the mass of Building A and creating a buffer to the Lodge and then taking that mass back up the mountain is an appropriate solution and sensitive to how this site should be developed. Chair Phillips agreed with Commissioner Thimm's comments on the volumetrics. He is generally in favor of the height exception but still needs to be convinced on the PUDs.

Commissioner Hall expressed her general agreement with Commissioner Thimm and liked the aesthetic presented. She requested clarification of the green roofs. Mr. Ogilvy confirmed that 33% of the roof area would be a flat green roof, with the remaining 67% being 1:12 low-sloped roofs. Chair Phillips assumed the flat roofs would not be white membrane roofs, as depicted in some of the photographs. Mr. Matthes agreed and confirmed there are wide selections of available colors for the flat roofs. Mr. Ogilvy added that all of the roofs would either be green or clad with paver stones. Commissioner Hall applauded the use of green roofs.

Commissioners Van Dine and Johnson agreed with the observations of Commissioner Thimm.

Chair Phillips re-opened the public hearing to allow Steven Issowits to comment.

Steven Issowits provided Deer Valley's perspective on this project. He noted that in 2007 when the Development Agreement was amended, certain densities were moved around. The applicant has worked well with Deer Valley Resort in terms of trying to find a better way to fit the density onto the site as compared to the Hill Glazier plan. They also requested that work be undertaken to address the placement of a sewer line and utilities along the Lucky Jack ski run. Redus worked with Deer Valley to create setbacks and included an internal driveway to improve the corridor for utilities. Ideally, he would not like to see something with this mass on top of Empire Lodge but acknowledged that is not for him to decide. He noted that the applicant worked with Deer Valley considerably to shift density and to step back the building. The trade-off was the inclusion of flat roofs, and it helps from both the ski run side and the street side.

Mr. Issowits stated he was never a big fan of modern architecture but has grown to like it. He noted that the palettes and materials used could help with cohesiveness with the surrounding area. He supported the location of the townhomes, noting that it saves quite a few trees. With regard to the comments about the roadway, he has stated publicly that Deer Valley would like to see the roadway change over and they would leave it to the City to determine if this project sparks any discussion on that. Deer Valley would like to see another way for skiers to move out of the Empire area and switching the roadway would allow this to occur.

Mr. Ogilvy responded to the comments regarding traffic. He noted that the Hill-Glazier plan was approved with 81 keys, so intuitively, the reduction from 81 keys to 47 keys entails a reduction in traffic on Marsac Avenue. Also, by having an amenity-rich building there would be less cause for people to be going on and off the property on a regular basis, which also leads to a reduction in traffic. He noted that the restaurant is not large and Empire Pass is well served by the Empire

Express private Uber service. He offered that most of the patronage of the restaurant would be skiing in, or arriving by Empire Express.

Mr. Ogilvy explained that the foregoing was the rationale behind not engaging in a formal Traffic Study, and UDOT never felt it necessary to approve the curb cuts. He agreed that Guardsman Pass Road is getting busy for the size of the road, but there is no nexus between this project and the current condition on Guardsman Pass Road. That should be a separate discussion between the City and Redus, the owner of Twisted Branch Road.

Chair Phillips directed staff to provide an analysis of the concerns raised during this meeting.

Mr. Ogilvy added that the 2018 site visit likely related to an application to plat the Hot Creek site and the lower portion of Twisted Branch Road, and not this application. Commissioner Thimm recalled that the 2018 site visit did not have anything to do with this application, but agreed that a site visit should be scheduled.

After a brief recess, Chair Phillips confirmed the presence of a quorum to move forward with the next item.

8. REGULAR AGENDA

A. 543 Park Avenue – Hotel, Minor Conditional Use Permit – The Applicant Requests a Minor Hotel Conditional Use Permit to Convert the Washington School Inn, a Landmark Historic Structure on the Park City Historic Sites Inventory in the Historic Residential – 1 Zoning District, from a Bed and Breakfast to a Minor Hotel with Accessory Facilities for Events. PL-20-04477.

City Planner, Browne Sebright, reported that this application is for a Conditional Use Permit for a proposed designation of a minor hotel in the Washington School House. This item was intended to be on the regular agenda but was changed to a continuation item, in part because after a meeting with the Neighborhood Traffic Management Program Committee, Staff decided to conduct a follow-up meeting with some members of the Committee to refine some of the Conditions of Approval and additional feedback. He acknowledged the presence of the applicant and applicant's representatives, Graham Gilbert and Wade Budge.

Chair Phillips opened the public hearing. There were no public comments. Chair Phillips closed the public hearing.

Wade Budge introduced himself and offered to orient the Commission on this matter. He reported that the applicant already has an existing use on the property and is trying to change the designation to reflect what they are doing in terms of operations for the best and most efficient use of the property. He stated that to address that, they have prepared a Management Plan that would be presented to the Commission.

Chair Phillips invited Mr. Harrington to weigh in on how to proceed in light of the continuation. Mr. Harrington stated that because this item was not noticed, the introduction is better suited with the full benefit of the Staff Report and public notice.

Chair Phillips expressed appreciation to the applicant for their work and requested the full presentation be made at the next meeting.

MOTION: Commissioner Doug Thimm moved to Continue 543 Park Avenue CUP to October 13, 2021. Commissioner Christin Van Dine seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

B. 91 and 95 King Road – Plat Amendment – The Applicant Proposes Removing Internal Lot Lines and to Dedicate a Portion of the Property for the Ridge Avenue Right-of-Way to Create Two Lots of Record, Amending the Plat to Create Two Lots in the Historic Residential – Low-Density (HRL) Zoning District. PL-21-04775.

Planner Sebright reported that the applicant proposed a two-lot plat amendment to remove internal lot lines for the purpose of enabling future renovation and redevelopment. He explained that both 91 and 95 King Road are improved lots with residences dating back to the 1970s and 1990s. The lots are located in the Historic Residential Low (HRL) zoning district. The application is seeking to remove internal lot lines from three original Old Town-sized lots and to dedicate a portion of Ridge Avenue at the rear of the property to the City.

Planner Sebright stated that 91 and 95 King Road are located at the far southern end of Old Town, which is designated HRL due to the character of the roads that require a slightly larger minimum lot size and other dimensions to reduce density. The two properties are sandwiched between King Road and Ridge Avenue. He presented a photograph of the front of the properties. Staff determined that the proposed plat amendment complies with HRL zoning requirements. The HRL zone establishes larger lot sizes and both properties received variances as they are slightly below the minimum lot size of 3,750 square feet. He noted that the structures comply with rear setback requirements.

He explained that the plat amendment would accommodate the existing structures, but remove the other impediments to future development. Planner Sebright noted that 95 King Road received a variance for lot size, front setback, and side setbacks in 1995. In August 2021, the Board of Adjustment granted variances to 91 King Road for lot size, lot width, and front and side setbacks. He reported that the second analysis conducted by Staff involved looking at the general subdivision requirements of the City and the Land Management Code. Staff found the proposal complies as conditioned.

Planner Sebright noted a point of clarification in the Staff Report regarding compliance with general lot design requirement. He noted that the reference to Condition of Approval 18 for Debris and Waste Requirement should be Condition of Approval 13. He stated that as conditioned, the proposed plat amendment complies with the LMC.

For the fourth analysis, Planner Sebright reported that staff looked at how maximum building footprints would be calculated for these lots given the Ridge Avenue right-of-way. Staff recommended that the Planning Commission establish maximum building footprints for these two properties using the maximum building formula as outlined in the LMC based on the original configuration of the parcels prior to the proposed plat amendment.

He provided the revised calculations to the Commission and stated that Conditions of Approval 14 and 15 would be amended to read as follows:

“1,015.94 square feet for 91 King Road and 1,386.52 square feet for 95 King Road”

Planner Sebright stated that for the fifth analysis, staff found good cause for the 91 and 95 King Road plat amendment because it removes lot lines, dedicates portions of the property that are on Ridge Avenue to the City, and would allow four snow easements to be recorded for both King Road and Ridge Avenue.

The sixth area of analysis was presented to the Development Review Committee to identify any issues with the right-of-way. They recommended two conditions of approval, one of which is related to the potential realignment of King Road and the requirement that the applicant is responsible for removing any retaining walls or structures in the right-of-way. The Development Review Committee also recommended a condition of approval for snow storage easements on both King Road and Ridge Avenue. Planner Sebright noted that Condition of Approval 18 should also be amended as follows: “The final plat shall show the road dedication to accommodate a 20-foot pavement width for Ridge Avenue, subject to the review and approval of City Engineer for compliance with City standards not to extend beyond the dedicated right-of-way.”

Planner Sebright commented that Ridge Avenue is one of the substandard streets in this part of Old Town. At its’ narrowest, it is approximately 14 feet wide. Based on discussions with the Engineering Department and Fire District, they understood the ultimate goal was to have a minimum width of 20 feet primarily for fire access. It is anticipated that most of that expansion would occur to the east side.

Planner Sebright presented a graphic of a 10-foot snow storage easement and the proposed 20-foot right-of-way. He reported that Staff found that this proposal complies with the HRL zoning district requirements, the zoning district lot and site requirements, the general subdivision requirements, and general lot design requirements as conditioned. Staff has not received public input prior to this meeting. Staff recommended that the Commission forward a positive recommendation for City Council’s consideration on October 7, 2021, for 91 and 95 King Road plat amendment, amending Conditions of Approval 14, 15, and 18.

Commissioner Thimm asked about the jog in the new property line that touches the Parcel B building rather than being drawn to allow for a setback. Planner Sebright stated that the intent of the variance, and of this plat amendment, is to allow redevelopment of this site. Although variances were granted for side setbacks for 91 King Road, they are specific to the existing structure and it is anticipated that the structure would be replaced at some point. All future developments on site would be required to comply with all setback requirements of the zone.

Chair Phillips opened the public hearing. There were no public comments. Chair Phillips closed the public hearing.

Jeff Love, the applicant for 95 King Road, expressed his appreciation to Planner Sebright and the Commission for their time in consideration of this proposal.

MOTION: Commissioner Doug Thimm moved to forward a positive recommendation to the City Council for the 91 and 95 King Road Plat Amendment, according to the Findings of Fact and Conclusions of Law and Amended Conditions of Approval as follows:

Findings of Fact

1. Zoning History
2. The current configuration of these lots has been in place since 1992.
3. On September 19, 1995, the Board of Adjustments granted 95 King Road Variances for minimum Lot size, Front Setback, and Side Setbacks.
4. On August 24, 2021, the Board of Adjustments granted Variances to 91 King Road for minimum Lot size, Lot width, and Front and Side Setbacks.
5. The Applicant proposes the 91 & 95 King Road Plat Amendment to create a 2,298 square foot Lot and a 3,135 square foot lot in the Historic Residential - Low-Density Zoning District for Single-Family Dwellings.
6. The proposed Plat Amendment complies with the purposes of the Historic Residential - Low-Density Zoning District.
7. The proposed Subdivision complies with the Lot and Site requirements for the Historic Residential - Low-Density Zoning District.
8. The proposed Subdivision complies with Land Management Code Section 15-7.3-2, as outlined in the staff report, and conditioned below.
9. The proposed Subdivision complies with Land Management Code Section 15-7.3-3, as outlined in the staff report, and conditioned below.

Conclusions of Law

1. There is Good Cause for this Subdivision because the removal of the Lot lines resolves existing issues, portions of the property that include Ridge Avenue, a Public Street, are dedicated, and snow easements are dedicated on both King Road and Ridge Avenue.
2. The Subdivision complies with Land Management Code Chapters 15-2.1, as well as Sections 15-7.3-2 and 15-7.3-3.
3. Neither the public nor any person will be materially injured by the proposed Plat Amendment.
4. Approval of the Subdivision, subject to the conditions stated below, does not adversely affect the health, safety, and welfare of the citizens of Park City.

Conditions of Approval

1. The City Planner, City Attorney, and City Engineer will review and approve the final form and content of the plat for compliance with State law, the Land Management Code, and the conditions of approval, prior to recordation of the plat.

2. The applicant shall record the plat at the County within one year from the date of City Council approval. If recordation has not occurred within one year, this approval will be void, unless the applicant submits a request for an extension in writing prior to the expiration date and an extension is granted by the City Council.
3. The plat shall note that fire sprinklers are required for all new construction, to be approved by the Chief Building Official. Interior and exterior fire sprinkler systems may be required by the Park City Fire District at the time of Building Permit review.
4. A non-exclusive ten-foot public snow storage easement on King Road and Ridge Avenue shall be dedicated on the plat.
5. The property is not located within the Soils Ordinance and therefore it is not regulated by the City for mine-related impacts. However, if the property owner encounters mine waste or mine waste impacted soils, they must handle the material in accordance with State and Federal law.
6. City Engineer review and approval of all lot grading, utility installations, public improvements, and drainage plans for compliance with City standards is a condition precedent to building permit issuance.
7. All Significant Vegetation that is removed shall be replaced in kind.
8. Limits of Disturbance that protect Significant Vegetation shall be approved by the Planning Director and shown on the final plat.
9. Existing natural drainage shall be maintained.
10. Site plans and Building designs shall resolve snow release issues to the satisfaction of the Chief Building Official.
11. Lot drainage shall be laid out to provide positive drainage away from the Single-family Dwelling in accordance with the International Building Code.
12. All disturbed areas on the Lot shall be covered with topsoil and revegetated.
13. No cut trees, timber, debris, earth, rocks, stones, soil, junk, rubbish, or other waste materials of any kind shall be buried in any land or left or deposited on the Lot at the time of a Certificate of Occupancy.
14. The plat notes shall state that the Maximum Building Footprint for 91 King Road is 1,015.94 square feet.
15. The plat notes shall state that the Maximum Building Footprint for 95 King Road is 1,386.52 square feet.
16. Prior to Plat recordation, the Applicant shall either remove the existing retaining wall encroachments from the City Right-of-Way or enter into an Encroachment

Agreement with the City that includes these encroachments conditioned by the City Engineer.

17. If at some point in the future King Road is re-aligned or at the time of redevelopment of the property, the applicant shall be responsible for the removal of retaining walls and other structures in the Right-of-Way at their sole expense and in an expeditious manner (within 90 days of written notice). The Applicant is responsible for securing appropriate City approvals and permits before any work on the encroachments can begin.
18. The Final Plat shall show a road dedication that accommodates a twenty-foot (20') pavement width for Ridge Avenue for the road, subject to review and approval of the City Engineer for compliance with City Standards and not to extend beyond the dedicated right-of-way.

Commissioner Bill Johnson seconded the motion.

VOTE: The motion passed with the unanimous consent of the Commission.

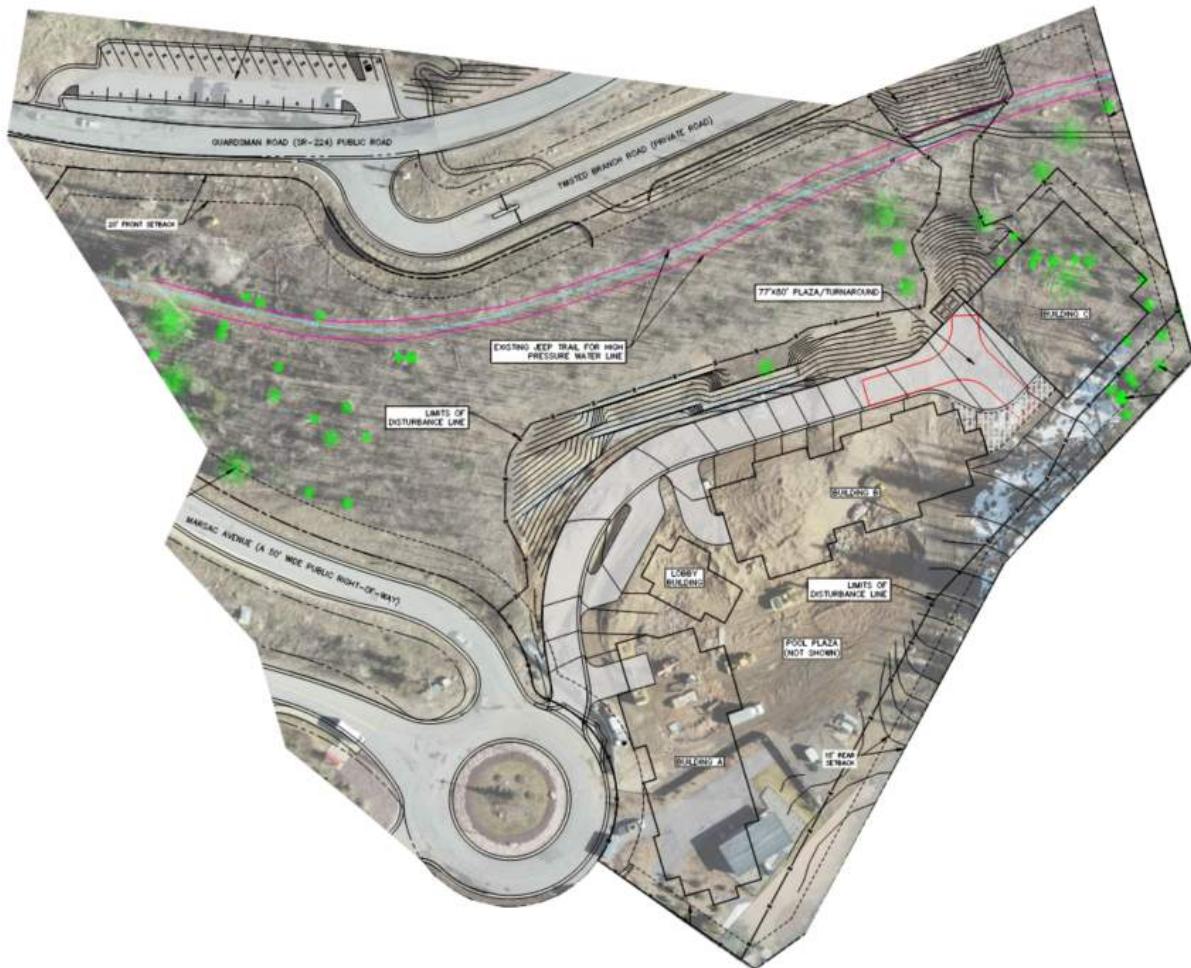
9. ADJOURN

Commissioner Doug Thimm moved to adjourn.

The meeting adjourned at approximately 8:25 p.m.

Sommet Blanc

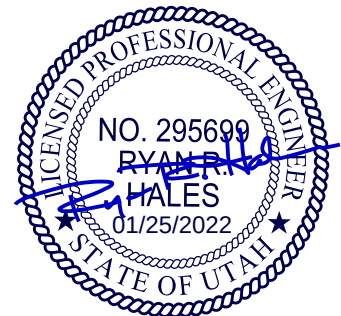
Traffic Impact Study



Park City, Utah

January 25, 2022

UT21-2024



EXECUTIVE SUMMARY

This study addresses the traffic impacts associated with the proposed Sommet Blanc development located in Park City, Utah. The Sommet Blanc development is located along SR-224 near the Montage Hotel at Deer Valley Resort in Park City.

The purpose of this traffic impact study is to analyze traffic operations at key intersections for existing (2022) conditions with and without the proposed project and to recommend mitigation measures as needed. The evening peak hour level of service (LOS) results are shown in Table ES-1.

Table ES-1: Evening Peak Hour Level of Service Results

Intersection		Level of Service	
		Existing (2022)	
		BG	PP
1	Empire Lodge / Project Access / S.R. 224	A	A
2	Montage Access / S.R. 224	a	a
1. Intersection LOS values represent the overall intersection average for roundabout, signalized, and all-way stop-controlled (AWSC) intersections (uppercase letter) and the worst movement for all other unsignalized intersections (lowercase letter) 2. BG = Background (without project traffic), PP = Plus Project (with project traffic) Source: Hales Engineering, January 2022			

SUMMARY OF KEY FINDINGS & RECOMMENDATIONS

Project Conditions

- The development will consist of multi-family residential units and a restaurant
- The project is anticipated to generate approximately 514 weekday daily trips, including 42 trips in the morning peak hour, and 53 trips in the evening peak hour
- The project will also reconstruct the adjacent Mid Mountain Trail parking lot to improve safety

2022	Background	Plus Project
Assumptions	• None	• Transit and internal capture reductions applied
Findings	• Acceptable LOS at all study intersections	• Acceptable LOS at all study intersections

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I. INTRODUCTION

A. Purpose

This study addresses the traffic impacts associated with the proposed Sommet Blanc development located in Park City, Utah. The proposed project is located along SR-224 near the Montage Hotel at Deer Valley Resort in Park City. Figure 1 shows a vicinity map of the proposed development.

The purpose of this traffic impact study is to analyze traffic operations at key intersections for existing (2022) conditions with and without the proposed project and to recommend mitigation measures as needed.

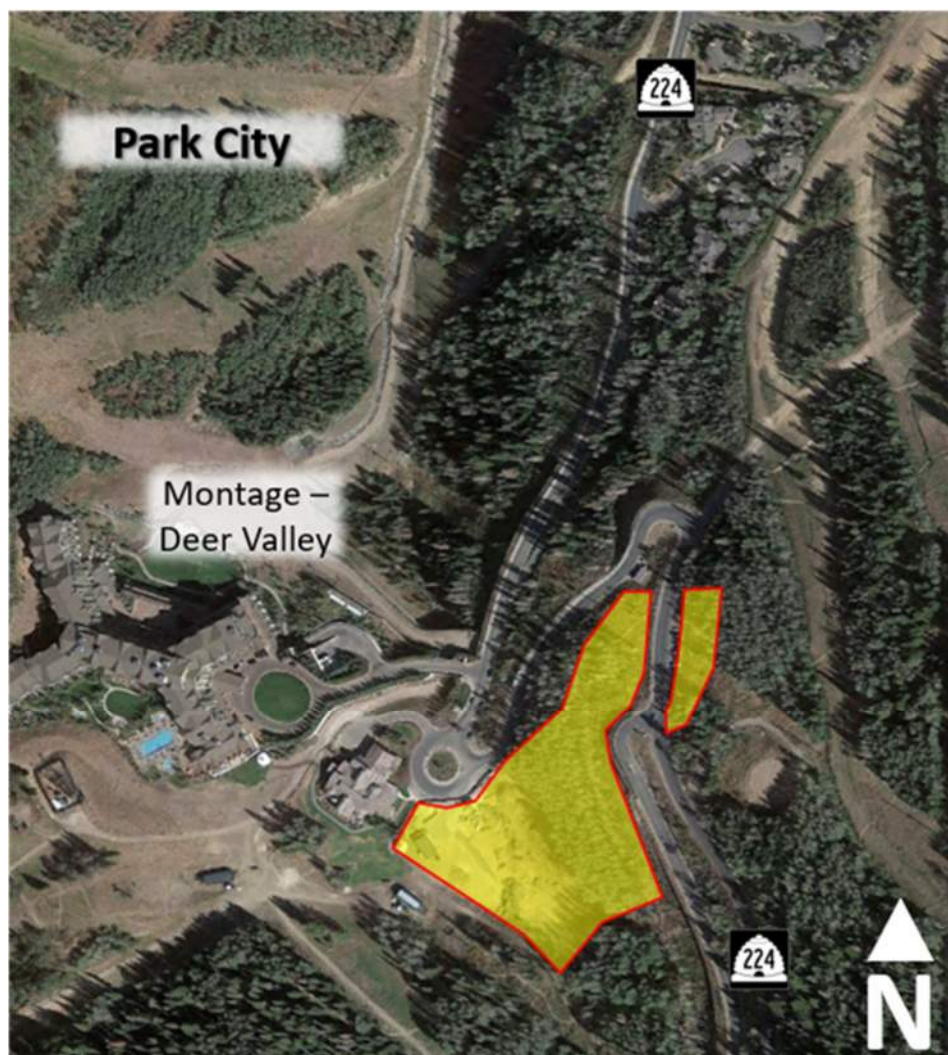


Figure 1: Vicinity map showing the project location in Park City, Utah

B. Scope

The study area was defined based on conversations with the development team. This study was scoped to evaluate the traffic operational performance impacts of the project on the following intersections:

- Montage Access / S.R. 224
- Empire Lodge Accesses / S.R. 224

C. Analysis Methodology

Level of service (LOS) is a term that describes the operating performance of an intersection or roadway. LOS is measured quantitatively and reported on a scale from A to F, with A representing the best performance and F the worst. Table 1 provides a brief description of each LOS letter designation and an accompanying average delay per vehicle for both signalized and unsignalized intersections.

The *Highway Capacity Manual* (HCM), 6th Edition, 2016 methodology was used in this study to remain consistent with “state-of-the-practice” professional standards. This methodology has different quantitative evaluations for signalized and unsignalized intersections. For signalized, roundabout, and all-way stop-controlled (AWSC) intersections, the LOS is provided for the overall intersection (weighted average of all approach delays). For all other unsignalized intersections, LOS is reported based on the worst movement.

Using Synchro/SimTraffic software, which follow the HCM methodology, the peak hour LOS was computed for each study intersection. Multiple runs of SimTraffic were used to provide a statistical evaluation of the interaction between the intersections. The detailed LOS reports are provided in Appendix B. Hales Engineering also calculated the 95th percentile queue lengths for the study intersections using SimTraffic. The detailed queue length reports are provided in Appendix D.

D. Level of Service Standards

For the purposes of this study, a minimum acceptable intersection performance for each of the study intersections was set at LOS D. If levels of service E or F conditions exist, an explanation and/or mitigation measures will be presented. A LOS D threshold is consistent with “state-of-the-practice” traffic engineering principles for urbanized areas.

Table 1: Level of Service Description

LOS		Description of Traffic Conditions	Average Delay (seconds/vehicle)	
			Signalized Intersections	Unsignalized Intersections
A		Free Flow / Insignificant Delay	≤ 10	≤ 10
B		Stable Operations / Minimum Delays	> 10 to 20	> 10 to 15
C		Stable Operations / Acceptable Delays	> 20 to 35	> 15 to 25
D		Approaching Unstable Flows / Tolerable Delays	> 35 to 55	> 25 to 35
E		Unstable Operations / Significant Delays	> 55 to 80	> 35 to 50
F		Forced Flows / Unpredictable Flows / Excessive Delays	> 80	> 50

Source: Hales Engineering Descriptions, based on the *Highway Capacity Manual* (HCM), 6th Edition, 2016 Methodology (Transportation Research Board)

II. EXISTING (2022) BACKGROUND CONDITIONS

A. Purpose

The purpose of the background analysis is to study the intersections and roadways during the peak travel periods of the day with background traffic and geometric conditions. Through this analysis, background traffic operational deficiencies can be identified, and potential mitigation measures recommended. This analysis provides a baseline condition that may be compared to the build conditions to identify the impacts of the development.

B. Roadway System

The primary roadways that will provide access to the project site are described below:

S.R. 224 – is a state-maintained roadway (classified by UDOT access management standards as a “Community – Rural Importance” facility, or access category 7 roadway). S.R. 224 has one travel lane in each direction. As identified and controlled by UDOT, a “Community – Rural Importance” access classification identifies minimum signalized intersection spacing of one-quarter mile (1,320 feet), minimum unsignalized street spacing of 300 feet, and minimum driveway spacing of 150 feet. The posted speed limit on S.R. 224 is 25 mph.

C. Traffic Volumes

Weekday morning (7:00 to 9:00 a.m.) and evening (4:00 to 6:00 p.m.) peak period traffic counts were performed at the following intersections:

- Montage Access / S.R. 224
- Empire Lodge Accesses / S.R. 224

The counts were performed on Thursday, January 6, 2022. The morning peak hour was determined to be between 7:30 and 8:30 a.m., and the evening peak hour was determined to be between 4:30 and 5:30 p.m. The evening peak hour volumes were approximately 30% higher than the morning peak hour volumes. Therefore, the evening peak hour volumes were used in the analysis to represent the worst-case conditions. Detailed count data are included in Appendix A.

Hales Engineering evaluated potential seasonal adjustments to the observed traffic volumes. Monthly traffic volume data were obtained from a nearby UDOT automatic traffic recorder (ATR) on S.R. 224 (ATR #605) and S.R. 248 (ATR #606) near Park City. In recent years, traffic volumes in January have been above average. The observed traffic volumes were not adjusted for seasonality to remain conservatively high.

Figure 2 shows the existing evening peak hour volumes as well as intersection geometry at the study intersections.

D. Level of Service Analysis

Hales Engineering determined that all study intersections are currently operating at acceptable levels of service during the evening peak hour, as shown in Table 2. These results serve as a baseline condition for the impact analysis of the proposed development during existing (2022) conditions.

Table 2: Existing (2022) Background Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
Empire Lodge / S.R. 224	Roundabout	-	1.6	A
Montage Access / S.R. 224	EB Stop	EBL	4.4	a

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.
2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

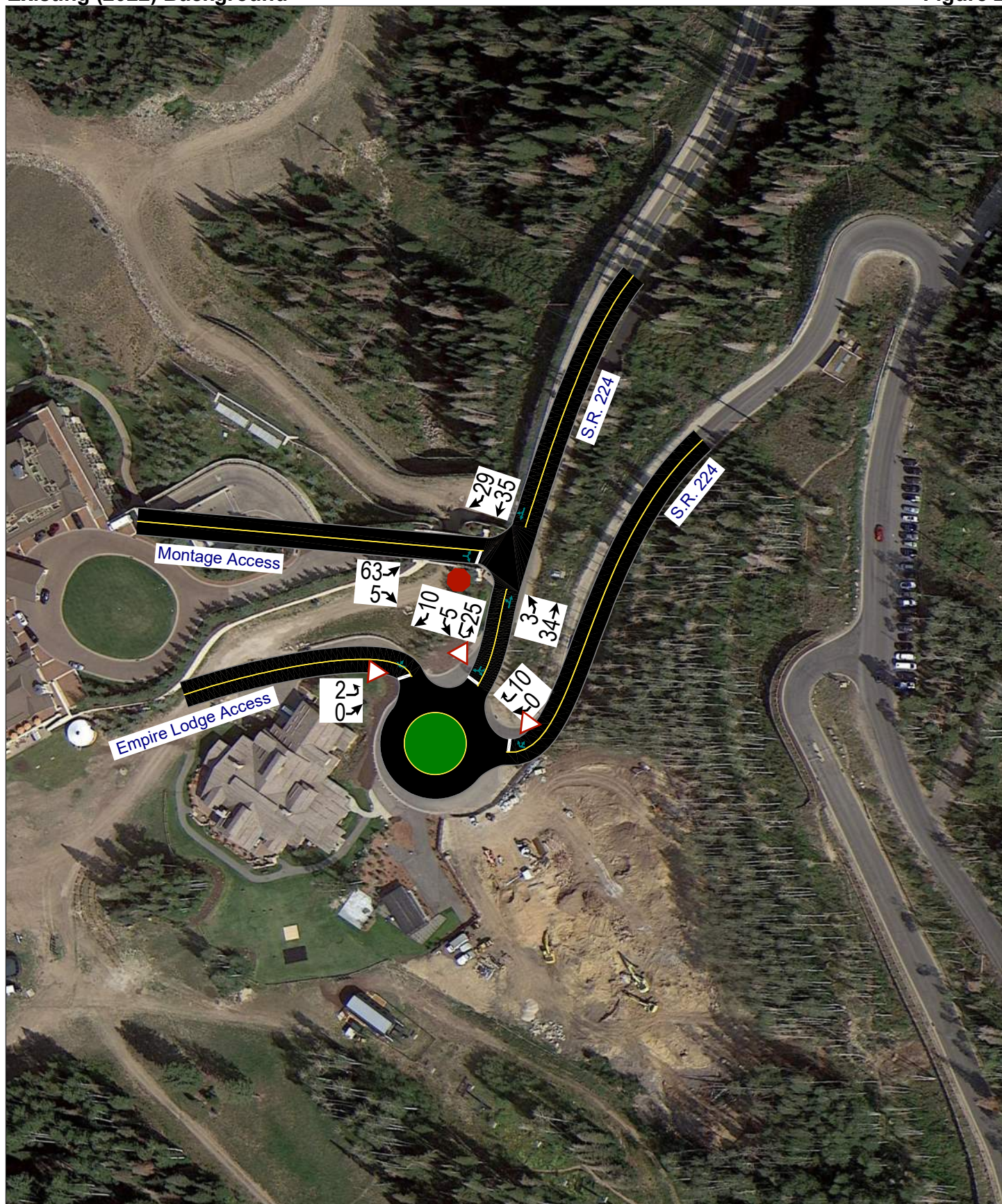
Source: Hales Engineering, January 2022

E. Queuing Analysis

Hales Engineering calculated the 95th percentile queue lengths for each of the study intersections. No significant queueing was observed during the evening peak hour.

F. Mitigation Measures

No mitigation measures are recommended.



III. PROJECT CONDITIONS

A. Purpose

The project conditions discussion explains the type and intensity of development. This provides the basis for trip generation, distribution, and assignment of project trips to the surrounding study intersections defined in Chapter I.

B. Project Description

The proposed Sommet Blanc development is located along S.R. 224 near the Montage Hotel at Deer Valley Resort in Park City. The development will consist of 49 residential units, 2 ADA suites, 6 affordable housing units, and a 3,600 sq. ft. restaurant. A concept plan for the proposed development is provided in Appendix C. The proposed land use for the development has been identified in Table 3.

Table 3: Project Land Uses

Land Use	Intensity
Multi-family housing (low-rise)	57 Units
Fine Dining Restaurant	3,600 sq. ft.

C. Trip Generation

Trip generation for the development was calculated using trip generation rates published in the Institute of Transportation Engineers (ITE), *Trip Generation*, 11th Edition, 2021. Trip generation for the proposed project is included in Table 4.

It is important to note that the owner anticipates the restaurant usage will be 100% internal in the morning peak hour. For the evening peak, it is anticipated that 30% of restaurant usage will be generated on-site, 30% from the Empire Pass shuttle, and 40% from outside users. With the anticipated usage, the internal and shuttle users would not be contributing to the new trips generated. Therefore, the total new evening peak hour trips generated would be reduced from 76 to 53.

The total trip generation for the development is as follows:

- Daily Trips: 514
- Morning Peak Hour Trips: 42
- Evening Peak Hour Trips: 53

Table 4: Trip Generation

Trip Generation Park City - Sommet Blanc											
Land Use ¹	# of Units	Unit Type	Trip Generation					Reductions	New Trips		
			Total	% In	% Out	In	Out	Internal Capture & Transit	In	Out	Total
Weekday Daily											
Multifamily Housing (Low-Rise) (220)	57	DU	442	50%	50%	221	221	0%	221	221	442
Fine Dining Restaurant (931)	3.6	KSF	302	50%	50%	151	151	60%	36	36	72
TOTAL			744			372	372		257	257	514
AM Peak Hour											
Multifamily Housing (Low-Rise) (220)	57	DU	42	24%	76%	10	32	0%	10	32	42
Fine Dining Restaurant (931)	3.6	KSF	4	50%	50%	2	2	100%	0	0	0
TOTAL			46			12	34		10	32	42
PM Peak Hour											
Multifamily Housing (Low-Rise) (220)	57	DU	46	63%	37%	29	17	0%	29	17	46
Fine Dining Restaurant (931)	3.6	KSF	30	67%	33%	20	10	60%	5	2	7
TOTAL			76			49	27		34	19	53
1. Land Use Code from the Institute of Transportation Engineers (ITE) <i>Trip Generation</i> , 11th Edition, 2021. SOURCE: Hales Engineering, January 2022											

1. Land Use Code from the Institute of Transportation Engineers (ITE) *Trip Generation*, 11th Edition, 2021.
 SOURCE: Hales Engineering, January 2022

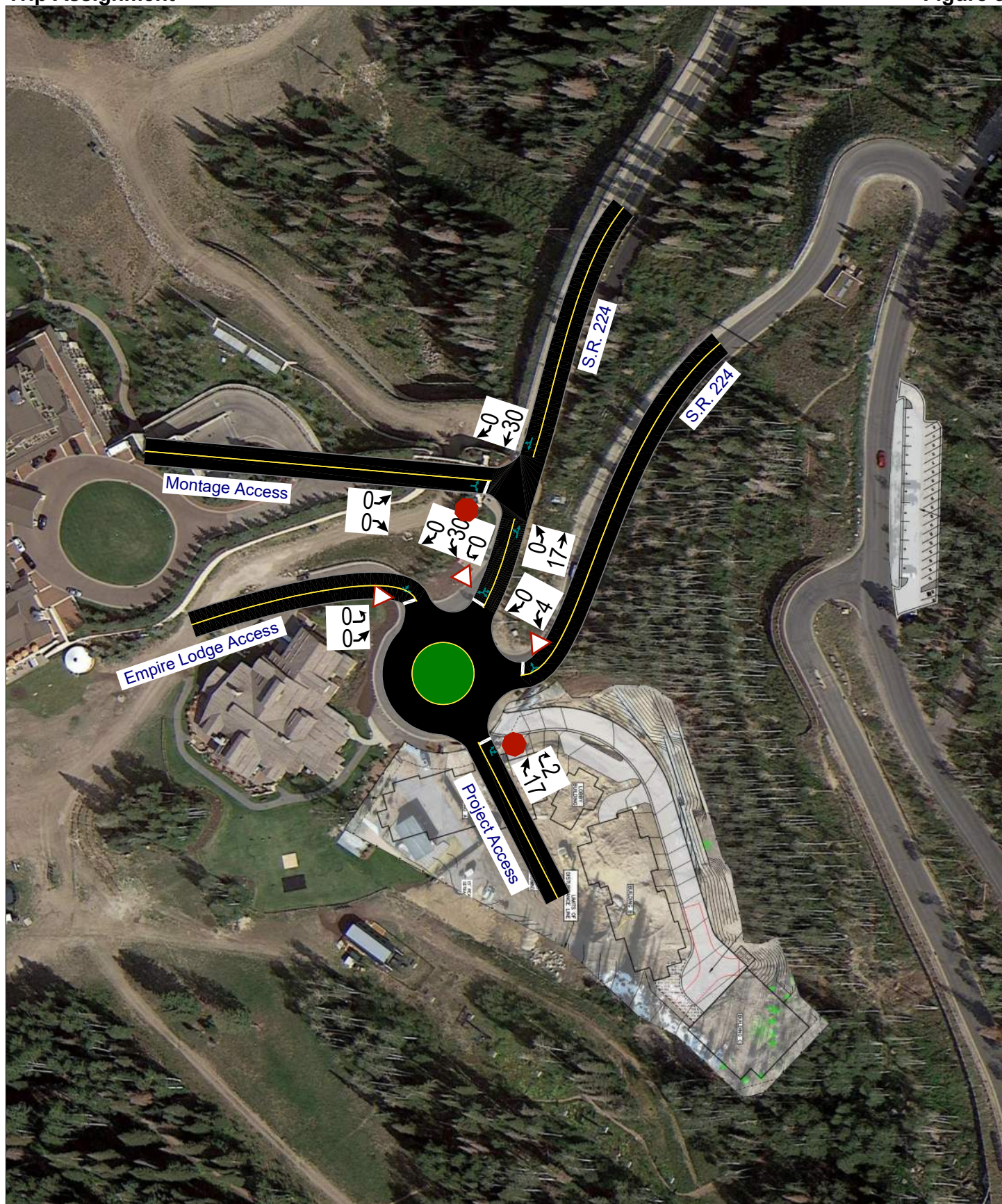
D. Trip Distribution and Assignment

Project traffic is assigned to the roadway network based on the type of trip and the proximity of project access points to major streets, high population densities, and regional trip attractions. Existing travel patterns observed during data collection also provide helpful guidance to establishing these distribution percentages, especially near the site. The resulting distribution of project generated trips during the evening peak hour is shown in Table 5.

Table 5: Trip Distribution

Direction	% To/From Project
North	90%
South	10%

These trip distribution assumptions were used to assign the evening peak hour generated traffic at the study intersections to create trip assignment for the proposed development. Trip assignment for the development is shown in Figure 3.



E. Access

The proposed access for the site will be gained at the following locations (see also concept plan in Appendix C):

S.R. 224:

- The Project Access will be located on the southeast side of the Empire Lodge / S.R. 224 roundabout. It is anticipated that the access will be yield-controlled.

IV. EXISTING (2022) PLUS PROJECT CONDITIONS

A. Purpose

The purpose of the existing (2022) plus project analysis is to study the intersections and roadways during the peak travel periods of the day for existing background traffic and geometric conditions plus the net trips generated by the proposed development. This scenario provides valuable insight into the potential impacts of the proposed project on background traffic conditions.

B. Traffic Volumes

Hales Engineering added the project trips discussed in Chapter III to the existing (2022) background traffic volumes to predict turning movement volumes for existing (2022) plus project conditions. Existing (2022) plus project evening peak hour turning movement volumes are shown in Figure 4.

C. Level of Service Analysis

Hales Engineering determined that all intersections are anticipated to operate at acceptable levels of service during the evening peak hour with project traffic added, as shown in Table 6.

Table 6: Existing (2022) Plus Project Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
Empire Lodge / Project Access / S.R. 224	Roundabout	-	2.3	A
Montage Access / S.R. 224	EB Stop	EBL	4.7	a

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.

2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

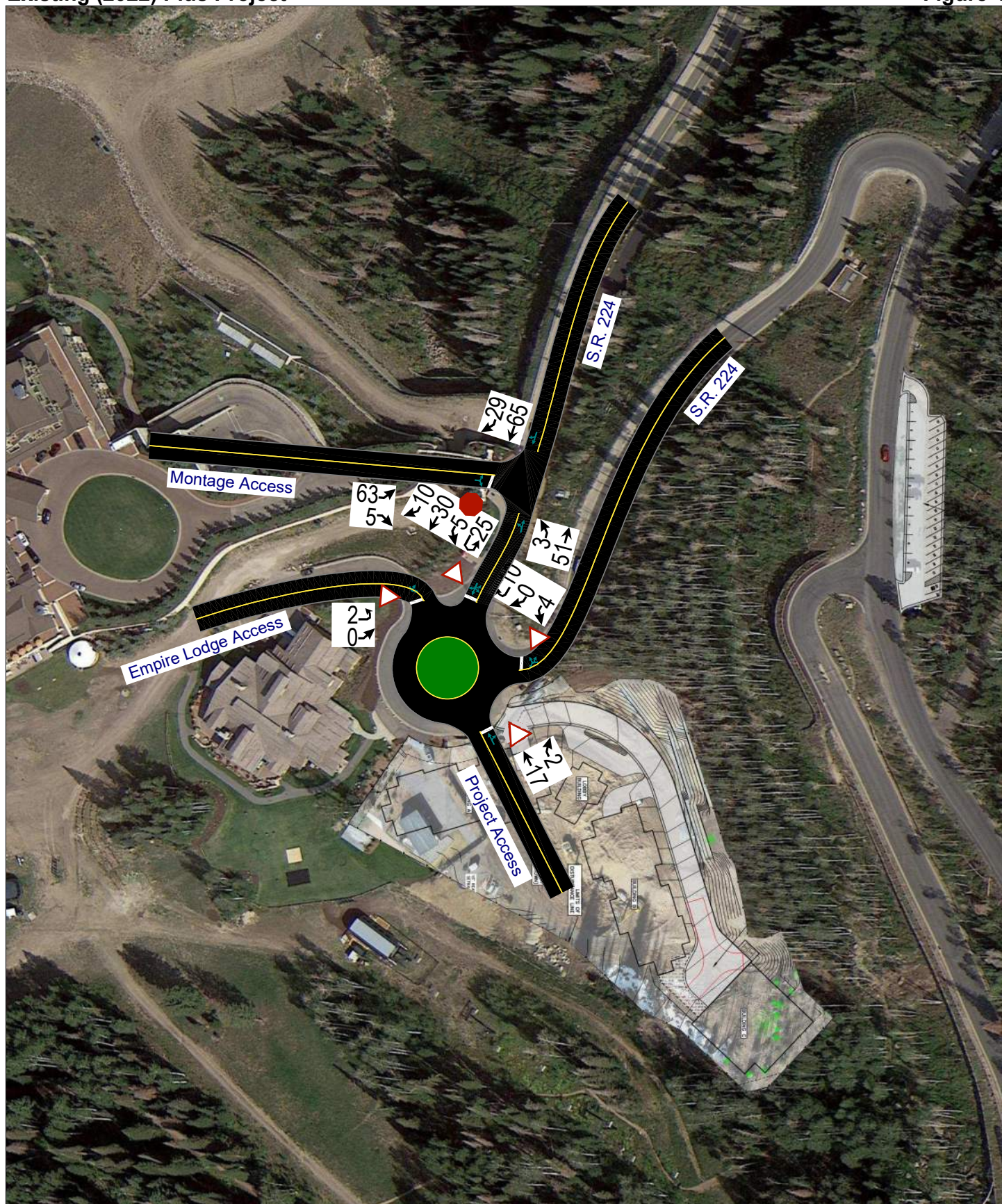
Source: Hales Engineering, January 2022

D. Queuing Analysis

Hales Engineering calculated the 95th percentile queue lengths for each of the study intersections. No significant queueing is anticipated during the evening peak hour.

E. Mitigation Measures

No mitigation measures are recommended.



APPENDIX A

Turning Movement Counts

Intersection Turning Movement Summary

Intersection: S.R. 224 / Montage Access
North/South: S.R. 224
East/West: Montage Access
Jurisdiction: Park City
Project Title: Sommet Blanc TGS
Project No: UT21-2024
Weather: Clear

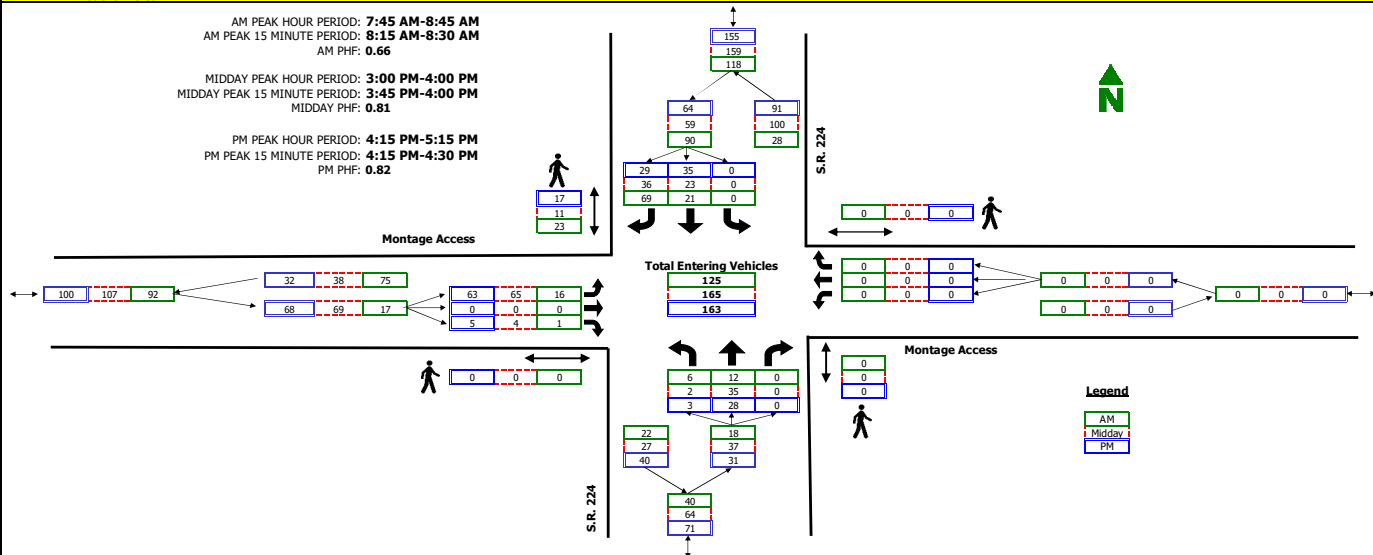
Date: 1-6-22, Thu
Day of Week Adjustment: 100.0%
Month of Year Adjustment: 100.0%
Adjustment Station #: 0
Growth Rate: 0.0%
Number of Years: 0

1-6-22, Thu
1-7-22, Fri AM

AM PEAK HOUR PERIOD: 7:45 AM-8:45 AM
AM PEAK 15 MINUTE PERIOD: 8:15 AM-8:30 AM
AM PHF: 0.66

MIDDAY PEAK HOUR PERIOD: 3:00 PM-4:00 PM
MIDDAY PEAK 15 MINUTE PERIOD: 3:45 PM-4:00 PM
MIDDAY PHF: 0.81

PM PEAK HOUR PERIOD: 4:15 PM-5:15 PM
PM PEAK 15 MINUTE PERIOD: 4:15 PM-4:30 PM
PM PHF: 0.82

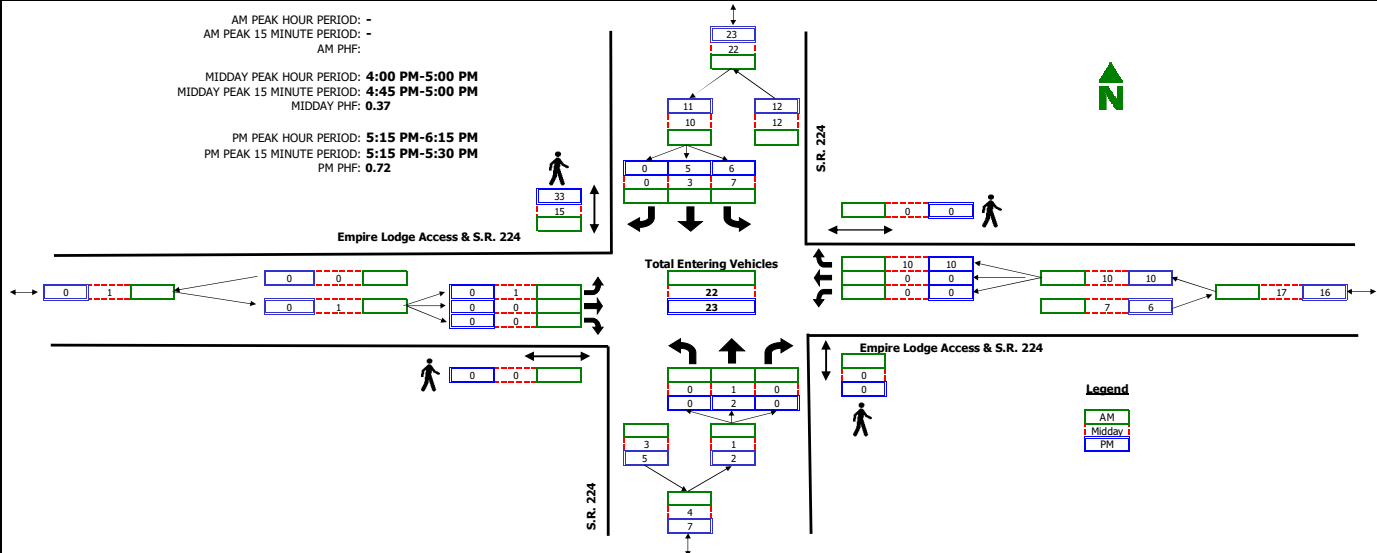


RAW COUNT SUMMARIES	S.R. 224 Northbound				S.R. 224 Southbound				Montage Access Eastbound				Montage Access Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	South In	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	1	3	1	0	0	1	11	0	6	0	0	0	0	0	0	0	23
7:15 - 7:30	0	3	0	0	0	6	6	27	5	0	0	0	0	0	0	0	20
7:30 - 7:45	0	3	0	0	0	2	11	1	2	0	0	0	0	0	0	0	18
7:45 - 8:00	0	1	0	0	0	2	22	9	3	0	0	0	0	0	0	0	28
8:00 - 8:15	1	2	0	0	0	3	12	2	5	0	0	0	0	0	0	0	23
8:15 - 8:30	2	4	0	0	0	10	26	8	4	0	1	0	0	0	0	0	47
8:30 - 8:45	3	5	0	0	0	6	9	4	4	0	0	0	0	0	0	0	27
8:45 - 9:00	0	4	0	0	0	3	4	4	2	0	1	0	0	0	0	0	14
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
9:00 - 9:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:15 - 9:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:30 - 9:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:45 - 10:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	5	0	0	0	0	7	1	14	0	2	0	0	0	0	0	28
15:15 - 15:30	1	7	0	0	0	7	9	7	16	0	0	0	0	0	0	0	40
15:30 - 15:45	1	9	0	0	0	7	10	0	17	0	2	0	0	0	0	0	46
15:45 - 16:00	0	14	0	0	0	9	10	3	18	0	0	0	0	0	0	0	51
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
16:00 - 16:15	0	2	0	0	0	0	8	0	20	0	0	0	0	0	0	0	30
16:15 - 16:30	2	6	0	0	0	6	8	11	25	0	3	0	0	0	0	0	50
16:30 - 16:45	0	6	0	0	0	2	8	0	12	0	0	0	0	0	0	0	28
16:45 - 17:00	1	8	0	0	0	14	7	1	16	0	1	0	0	0	0	0	47
17:00 - 17:15	0	8	0	0	0	13	6	5	10	0	1	0	0	0	0	0	38
17:15 - 17:30	0	3	0	0	0	7	11	5	10	0	1	0	0	0	0	0	32
17:30 - 17:45	2	6	0	0	0	6	4	0	10	0	1	0	0	0	0	0	29
17:45 - 18:00	0	7	0	0	0	9	12	0	11	0	0	0	0	0	0	0	39

Intersection: S.R. 224 / Empire Lodge Access & S.R. 224
North/South: S.R. 224
East/West: Empire Lodge Access & S.R. 224
Jurisdiction: Park City
Project Title: Sommet Blanc TGS
Project No: UT21-2024
Weather: Clear

Date:
Day of Week Adjustment:
Month of Year Adjustment:
Adjustment Station #:
Growth Rate:
Number of Years:

1-6-22, Thu	1-7-22, Fri AM
100.0%	
100.0%	
0	
0.0%	
0	

[illegible]

APPENDIX B

LOS Results

SimTraffic LOS Report

Project: Park City Sommet Blanc TIS
Analysis Period: Existing (2022) Background
Time Period: Evening Peak Hour

Project #: UT21-2024

Intersection: S.R. 224 & Empire Lodge Accesses
Type: Roundabout

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
SB	L2	2	3	150	1.5	A
	Subtotal	2	3	150	1.5	A
WB	R2	10	10	103	1.9	A
	Subtotal	10	10	100	1.9	A
SW	L	5	5	95	1.5	A
	T	1	1	100	0.1	A
	R	10	11	113	1.5	A
	Subtotal	16	17	106	1.4	A
Total		52	55	105	1.6	A

Intersection: Montage Access & S.R. 224
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	3	92	1.1	A
	T	34	36	105	0.1	A
	Subtotal	37	39	105	0.2	A
SB	T	35	34	98	0.3	A
	R	29	32	110	0.1	A
	Subtotal	64	66	103	0.2	A
EB	L	63	64	102	4.4	A
	R	5	7	133	3.0	A
	Subtotal	68	71	104	4.3	A
Total		169	176	104	1.8	A

SimTraffic LOS Report

Project: Park City Sommet Blanc TIS

Analysis Period: Existing (2022) Plus Project

Time Period: Evening Peak Hour

Project #: UT21-2024

Intersection: Project Access & S.R. 224 & Empire Lodge Access
Type: Roundabout

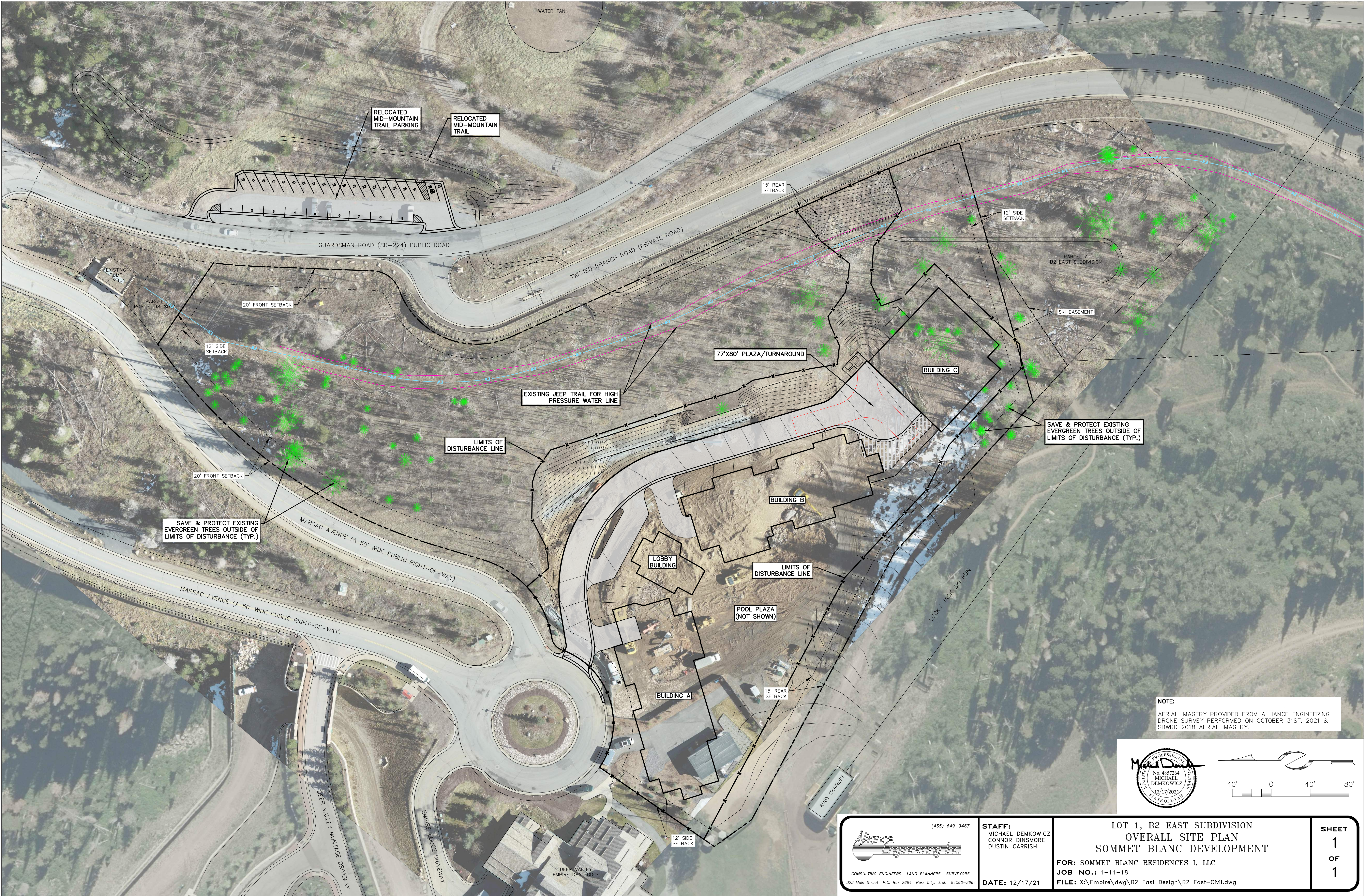
Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	T	17	17	99	4.7	A
	R	2	2	100	4.0	A
	Subtotal	19	19	100	4.6	A
SB	L	5	5	95	1.6	A
	T	30	30	99	2.0	A
	R	10	10	103	1.5	A
	Subtotal	45	45	100	1.8	A
WB	L	4	3	71	1.8	A
	R2	10	10	103	1.9	A
	Subtotal	14	13	93	1.9	A
SE	L2	2	2	100	2.0	A
	Subtotal	2	2	100	2.0	A
Total		105	108	103	2.3	A

Intersection: Montage Access & S.R. 224
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	3	92	1.1	A
	T	52	56	109	0.4	A
	Subtotal	55	59	107	0.4	A
SB	T	65	69	107	0.2	A
	R	29	32	110	0.1	A
	Subtotal	94	101	107	0.2	A
EB	L	63	62	99	4.7	A
	R	5	5	95	2.7	A
	Subtotal	68	67	99	4.6	A
Total		216	227	105	1.6	A

APPENDIX C

Site Plan



APPENDIX D

95th Percentile Queue Length Reports

SimTraffic Queueing Report**Project: Park City Sommet Blanc TIS****Analysis: Existing (2022) Background****Time Period: Evening Peak Hour**95th Percentile Queue Length (feet) - Rounded Up to Nearest Multiple of 25 ft**Project #: UT21-2024**

Intersection	NB	SB	EB	WB
	LT	<L	LR	R>
01: S.R. 224 & Empire Lodge Accesses		25		25
02: Montage Access & S.R. 224	25		50	

SimTraffic Queueing Report

Project: Park City Sommet Blanc TIS

Analysis: Existing (2022) Plus Project

Time Period: Evening Peak Hour

95th Percentile Queue Length (feet) - Rounded Up to Nearest Multiple of 25 ft

HALES



ENGINEERING

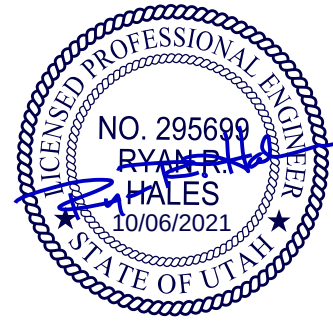
innovative transportation solutions

Project #: UT21-2024

Intersection	NB		EB	WB
	LT	TR	LR	LR>
01: Project Access & S.R. 224 & Empire Lodge Access		50		25
02: Montage Access & S.R. 224	25		75	

MEMORANDUM

Date: October 6, 2021
To: Doug Ogilvy
From: Hales Engineering



Subject: Park City Sommet Blanc Trip Generation Study

UT21-2024

This memorandum discusses the trip generation study completed for the proposed Sommet Blanc project Park City, Utah. A vicinity map of the proposed development is shown in Figure 1.

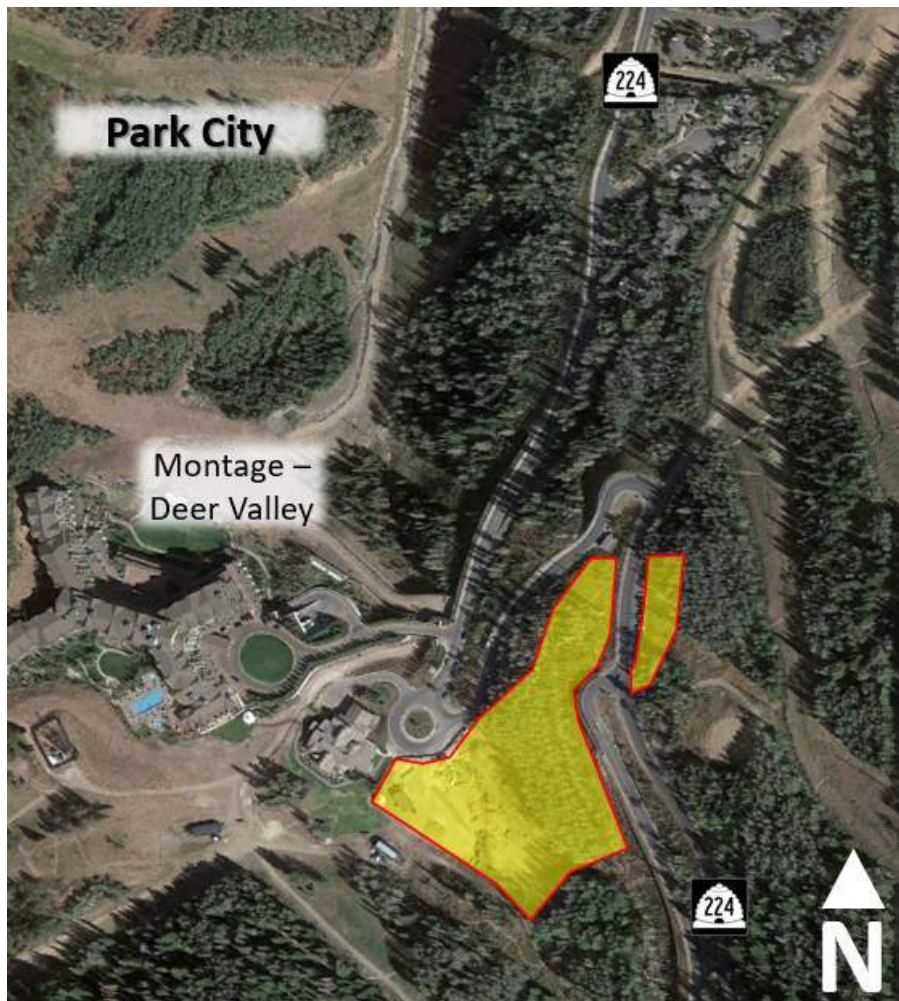


Figure 1: Vicinity map of the proposed development in Park City, Utah

Background

The proposed Sommet Blanc development is located on along SR-224 near the Montage Hotel at Deer Valley Resort in Park City. The project includes 47 residential condominium units, with an additional 6 affordable units for a total of 53 units, and a 3,600 sq. ft. restaurant. Access to the project will be gained at two points along SR-224. The project will also reconstruct the adjacent Mid Mountain Trail parking lot to improve safety. A site plan for the proposed development is included in Appendix A.

The proposed land use for the development has been identified as follows:

- Multi-family Housing (Low-rise) 47 units
- Affordable Multi-family Units (Low-rise) 6 units
- Fine Dining 3,600 sq. ft.

Trip Generation

Trip generation for the development was calculated using trip generation rates published in the Institute of Transportation Engineers (ITE) *Trip Generation (10th Edition, 2017)*. Trip generation for the proposed project is included in Table 1.

As shown in Table 1, it is anticipated that the proposed condominiums and restaurant will generate approximately 442 trips on an average weekday, including 28 trips during the morning peak hour, and 48 trips during the evening peak hour.

Table 1: Trip Generation for Updated Site Plan

Trip Generation Park City - Sommet Blanc											
Weekday Daily Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Reductions	New Trips Entering	New Trips Exiting	Total New Daily Trips
Multifamily Housing (Low-Rise) (220)	47	Dwelling Units	316	50%	50%	158	158	0%	158	158	316
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	6	50%	50%	3	3	0%	3	3	6
Quality Restuaruant (931)	3.6	1,000 Sq. Ft. GFA	302	50%	50%	151	151	60%	60	60	120
Total			624			312	312		221	221	442
Morning Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Reductions	New Trips Entering	New Trips Exiting	Total New AM Trips
Multifamily Housing (Low-Rise) (220)	47	Dwelling Units	24	23%	77%	6	18	0%	6	18	24
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	4	23%	77%	1	3	0%	1	3	4
Quality Restuaruant (931)	3.6	1,000 Sq. Ft. GFA	3	50%	50%	2	1	100%	0	0	0
Total			31			9	22		7	21	28
Evening Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Reductions	New Trips Entering	New Trips Exiting	Total New PM Trips
Multifamily Housing (Low-Rise) (220)	47	Dwelling Units	31	63%	37%	20	11	0%	20	11	31
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	5	63%	37%	3	2	0%	3	2	5
Quality Restuaruant (931)	3.6	1,000 Sq. Ft. GFA	29	67%	33%	19	10	60%	8	4	12
Total			65			42	23		31	17	48

1. Land Use Code from the Institute of Transportation Engineers (ITE) *Trip Generation*, 10th Edition, 2017.

SOURCE: Hales Engineering, October 2021

It is important to note that the owner anticipates the restaurant usage will be 100% internal in the morning peak hour. For the evening peak, it is anticipated that 30% of restaurant usage will be generated on-site, 30% from the Empire Pass shuttle, and 40% from outside users. With the anticipated usage, the internal and shuttle users would not be contributing to the new trips generated. Therefore, the total new evening peak hour trips generated would be reduced from 65 to 48.

Comparison to Previous Site Plan

Changes have been made to the Sommet Blanc development since the original 2007 site plan. The original plan included 81 residential condominiums plus an additional 6 affordable units for a total of 87 units and no on-site restaurant. The original trip generation is included in Table 2.

The original site plan included the following land uses:

- Multi-family Housing (Low-rise) 81 units
- Affordable Multi-family Units (Low-rise) 6 units

Table 2: Trip Generation for Previous Site Plan

Trip Generation Park City - Sommet Blanc										
Weekday Daily Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	New Trips Entering	New Trips Exiting	Total New Daily Trips
Multifamily Housing (Low-Rise) (220)	81	Dwelling Units	572	50%	50%	286	286	286	286	572
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	6	50%	50%	3	3	3	3	6
Total			578			289	289	289	289	578
Morning Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	New Trips Entering	New Trips Exiting	Total New AM Trips
Multifamily Housing (Low-Rise) (220)	81	Dwelling Units	40	23%	77%	9	31	9	31	40
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	4	23%	77%	1	3	1	3	4
Total			44			10	34	10	34	44
Evening Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	New Trips Entering	New Trips Exiting	Total New PM Trips
Multifamily Housing (Low-Rise) (220)	81	Dwelling Units	49	63%	37%	31	18	31	18	49
Multifamily Housing - Affordable Units (Low-Rise) (220)	6	Dwelling Units	5	63%	37%	3	2	3	2	5
Total			54			34	20	34	20	54

1. Land Use Code from the Institute of Transportation Engineers (ITE) Trip Generation, 10th Edition, 2017.

SOURCE: Hales Engineering, October 2021

Safety Improvements

The Mid Mountain Trail parking currently has 25 stalls and is accessed directly on SR-224 with vehicles backing out directly onto the roadway. The proposed plan will reconstruct the parking lot with one-way traffic flow and a guard rail separating the parking lot from SR-224. This will reduce conflict points and eliminate the backing of vehicles directly onto SR-224.

Conclusions

The findings of this study are as follows:

- The proposed development includes 47 residential condominiums with 6 affordable units.
- It is anticipated that the proposed project will generate approximately 442 trips on an average weekday, including 28 trips during the morning peak hour, and 48 trips during the evening peak hour. The owner anticipates internal and shuttle riders to account for the majority of patrons at the restaurant. This will reduce the total number of trips generated. These are the trips that will use the project access points.
- With the anticipated patronage, the morning peak hour trips generated will be reduced by 36% under the new plan, the evening peak hour trips generated will be reduced by 11%, and the daily trips will be reduced by 24%.
- The Mid Mountain Trail parking will be reconstructed to improve safety by eliminating the 90-degree parking and the side friction created by those turning in and backing out of the stalls. The new trail parking will be accessible via a driveway and a parking lot on the northeast side of the road, see site plan in Appendix A.

APPENDIX A

Site Plan

