

Springville City Corporation
50 South Main
Springville, Utah 84663

ENT 18360:2008 Pg 1 of 13
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2008 Feb 15 3:31 pm FEE 0.00 BY CM
RECORDED FOR SPRINGVILLE CITY CORPORATIO

**COMMERCIAL DEVELOPMENT AGREEMENT
OVERLAND INDUSTRIAL SUBDIVISION**

This **COMMERCIAL DEVELOPMENT AGREEMENT** is entered into as of the 2nd day of July, 2007 by and between Overland Leasing, LLC, (hereinafter referred to as "Developer") located at 321 North Old Highway 91, Hurricane, Utah, 84737, as Developer of certain real property located in Springville, Utah and more particularly described on Exhibit "A" attached hereto and by reference incorporated herein, on which Developer proposes the development of commercial lots entitled **OVERLAND INDUSTRIAL SUBDIVISION** (hereinafter referred to as the "Project"), and **SPRINGVILLE CITY**, a municipality of the State of Utah (hereinafter referred to as "City") located at 50 South Main, Springville, Utah 84663.

RECITALS

A. Developer owns real property located in Springville City, Utah County, Utah, located at approximately 500 North 1650 West, established by the Plat plan in Exhibit "A" that is attached and incorporated by reference ("the Property").

B. Developer is willing to design and develop the Property in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the City's general plan, zoning and development regulations, as more fully set forth below. The Project, as currently anticipated, consists of one phase in the form, design, and plan set forth on the approved preliminary plat attached as Exhibit "B" hereto. The City has issued to Developer final plat approval for Plat "A" of the Project and a copy of the final subdivision plats for Phase 1 is attached hereto as Exhibit "C."

C. The City, acting pursuant to its authority under Utah Code Annotated, §10-9a-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and the City agree to the following:

TERMS

1. **Definitions.**

When used in this Agreement, each term shall have the meaning set forth below or elsewhere in this Agreement unless such meaning is clearly precluded by the context in which the term is used.

(a) "City" means Springville City, a municipality and political subdivision of the State of Utah.

(b) "Developer" means Overland Leasing, LLC, and/or, as applicable, his successors and assigns.

(c) "Property" means the real property described in Exhibit "A" that is incorporated by reference.

(d) "Existing Land Use Regulations" means those Land Use Regulations in effect as of the date of this Agreement, including any modifications that are approved pursuant to the terms of this Agreement as set forth herein.

(e) "Land Use Regulations" means those laws, statutes, ordinances, resolutions, codes, rules, regulations, official policies and actions of the City, including approvals and permits of every kind and character, governing the use, density and intensity of the uses of land within the City, and the design, improvement, and public works construction standards and specifications applicable to the development of land within the City. The term "Land Use Regulations" does not include regulations relating to the conduct of businesses, professions and occupations generally, such as applications for business licensing, taxes and assessments other than development exactions, regulations for the control and abatement of nuisances, encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property, and any exercise of the power of eminent domain.

2. **Improvements**

This is a formal agreement between the Developer and the City for public facilities service to be provided to and within the Project (the "Improvements"). Developer understands, acknowledges and agrees that all public facilities including but not limited to water lines, sewer lines, electric lines, storm drain lines, roads, and other facilities necessary to service the Project must be installed at Developer's sole cost and expense before the City will provide service to the Project. Developer agrees to construct the required Improvements in accordance with Springville City Codes and the Springville City Standard Specifications and Drawings.

3. **Materials**

Developer will furnish all materials, supplies, tools, equipment, labor, and other services necessary for construction and completion of the Project as described herein, excluding primary power infrastructure. City will provide all materials, supplies, tools, equipment, labor, and other services necessary for construction and completion of primary power service.

4. **Commencement**

Developer will not commence the Improvements on the Project until all authority required by Springville City Code is received. Upon the City Council's final subdivision plat approval for a

phase of the Project and the City's approval of construction of the Improvements for such phase, Developer shall have one (1) year to complete Improvements for such approved phase. If the Improvements are not completed within such one (1) year periods, a public hearing will be scheduled and the City Council may declare the performance guarantee forfeited if the improvements or corrections are not complete.

5. **Inspections**

Developer is responsible to request all inspections necessary under the Springville City Code. Developer understands and agrees that failure to request a proper inspection may result in the removal of Improvements at the sole cost and expense of Developer. City shall perform inspections as soon as possible following the applicable request in accordance with its inspection policy.

6. **Ownership**

Developer shall retain ownership of Improvements constructed for the Project and shall remain solely responsible for all necessary maintenance, repairs and replacements of the Improvements prior to final approval of the work by the City. Upon completion of the required Improvements and after acceptance of the Improvements by the City, Developer shall assign and convey to the City all of Developer's right, title and interest in the Improvements, and Developer shall have no further interest in the Improvements. Developer shall be responsible to repair or replace defective or damaged Improvements during the guarantee period (as set forth in Section 8 below). Thereafter, the City shall be responsible to maintain, repair and replace the Improvements.

7. **Connecting to Improvements**

Developer agrees that connections to the Improvements that occur before: (1) The City accepts those Improvements and (2) Developer assigns and conveys such Improvements to the City, are made at the Developer's risk. The City shall not issue use and occupancy permits for residential units within the phase until such time as Developer assigns and/or conveys such Improvements to the City.

8. **Bonds**

Developer acknowledges and agrees that a bond is required for the Project. Developer will furnish to City a Performance Bond in an amount required by Springville City but not to exceed one hundred twenty five percent (125%) of the engineer's estimate price for faithful completion of the Improvements. The engineer's estimated price is attached as Exhibit "D". If the Project is developed in phases, the performance bond shall be furnished with respect to each plat in the amount for the Improvements in such plat at the time of recordation of each such plat. The Bond may be released with respect to each plat in accordance with current City policy with the exception of a durability retainage. A retainage of not less than ten percent

(10%) of the Bond shall be held to guarantee the durability of the Improvements in each plat for two (2) years after the acceptance by the City of the Improvements with respect to each plat.

9. **Reimbursable Improvements**

The City requires larger size Improvements than are necessary to service the Project only.

- (a) *Storm Drain.* Developer has determined that a storm drain line of forty eight inches (48") in diameter is sufficient to provide adequately convey the irrigation/storm drain flows. City has determined that a second line of forty eight inches (48") should be installed for portion of the Project. The parties agree that the cost of upsizing portions of the second line to the size specified herein is Fifty Three Thousand Two Hundred Ninety Five Dollars (\$53,295.00) (Exhibit "E").
- (b) *Payment.* Any amounts set forth herein shall be paid to Developer by City within thirty (30) days after final acceptance of the Strom Drain line by the City and Irrigation Company. If the Developer does not complete the line and receive final approval of the Improvement within one (1) year of the execution of this Agreement, City will not be responsible to pay any upsizing costs to Developer.

The Construction of 1750 West is a funded transportation system facility under Springville City's Capital Transportation System Facility and Service Program Master Plan (the "Master Plan"). As such, the Developer, pursuant to Section 10 of the Transportation Impact Fee Ordinance, shall be given a credit, dollar for dollar, against his transportation impact fees for all amounts the Developer reasonably expends in constructing 1750 West.

In the event the City Council approves an amendment to the Springville City Code that allows for reimbursement of a Capital Transportation System Facility through impact fees, the Developer may enter into a reimbursement agreement with the City. The reimbursement agreement shall be for any amounts spent by the Developer in constructing 1750 West, the cost of which exceeds the transportation impact fees for the Project, but are less than the amount of the Project as allowed under the Master Plan.

10. **Line Extension**

The parties hereto acknowledge and agree that certain off-site extensions of utilities may be needed in order for the Development to proceed. Developer desires to commence the Project prior to the time City would otherwise install these improvements. Therefore, Developer agrees to install off-site extension of utilities at Developer's sole cost. Developer will dedicate these utilities to the City as part of the Project after they have been installed and inspected.

11. **Water Shares**

Developer agrees to provide City with one share of Springville Irrigation Company first class water right, or its equivalent, for each acre developed prior to recording of any plat. The total amount of water shares to be tendered with the development of the Project is 12.098 shares, or its equivalent.

12. **Electrical Extension Fees**

Developer agrees to pay an electrical extension fee as calculated by Springville City and attached as Exhibit "E."

13. **Impact Fees**

Developer acknowledges that the City is currently considering adoption of, or revision to, water, sewer, park, road, storm drain and public safety impact fees ("Impact Fees"). At the time that Developer obtains building permits for commercial buildings within the Project, Developer agrees to pay any Impact Fees in accordance with then applicable City ordinances either by direct payment or by credit/offset for amounts otherwise reimbursable to Developer pursuant to Section 9 above.

14. **Recording Fees**

Developer agrees to pay recording fees of \$44.00 for Plat A. For future phases it is anticipated that recording fees will be thirty dollars (\$30.00) per Vellum and an additional One Dollar (\$1.00) per lot within the Project.

15. **Copies**

Standard photocopies made by the City shall be charged to the Developer at Twenty Cents (\$0.20) per sheet. The City further requires a large (24"x36") and one small (11"x17") copy of the recorded plat. Developer may also request additional copies for Developer's own use. Copies are Four Dollars (\$4.00) for large copies and Two Dollars (\$2.00) for small copies.

16. **Conditions, Covenants and Restrictions (CC&R's)**

CC&R's shall be provided by the Developer, if applicable. Recording fees are including in the recording fees for Plat A set forth in paragraph 14 above.

17. **Landscaping**

Developer agrees to complete all landscaping within the dedicated open spaces and in accordance with Springville City code and specifications. The landscaping and irrigation system will be installed prior to final inspection with respect to each plat. A landscaping plan has been attached as Exhibit "F."

18. **Street Trees**

Developer agrees to provide street trees in accordance with the approved landscaping plan. In lieu of the Developer installing, maintaining and providing a warranty on the trees, Developer desires to pay \$295.00 per street tree shown on the approved landscape plan. Upon payment, Springville City will be responsible to purchase, install and maintain street trees for the first two years after planting. Street trees will be planted during the appropriate planting season after at least 80% of each neighborhood is built.

19. **Point Source Delivery Fee**

In order to access the irrigation company infrastructures for storm drain purposes. Developer agrees to pay a Point Source Delivery fee in the amount of \$2,000.00 per acre of residential development and \$3,000.00 per acre of commercial or industrial development. This fee shall be forwarded to the irrigation company for improvements necessary to accept developments storm drain flows into their canal and drainage system.

20. **Phasing**

The Project shall be completed in a total of one phase(s). Developer agrees to install all Improvements as set forth on the plat for Plat A within one (1) year of this Agreement. Within twelve (12) months of this Agreement, Developer must submit a completed application to commence the next subsequent plat. Likewise, Developer shall submit an application for plat approval for each subsequent phase of the Project within twelve (12) months of final subdivision plat approval and recordation for the immediately preceding phase of the Project.

21. **Variations Approved**

No variations have been approved for this Development.

22. **Notices**

Any notice which is required or which may be given pursuant to this Agreement is sufficient if in writing and sent to a party by certified or registered mail, postage prepaid, addressed as shown below:

Developer:

Overland Leasing, LLC
 c/o Vic Gordon
 321 North Old Highway 91
 Hurricane, UT 84737

City:

Mayor
 Springville City
 50 South Main Street
 Springville, Utah 84663

A party may change the address for notice to it by giving a notice pursuant to this paragraph.

23. **Indemnity**

Developer agrees to indemnify and hold City harmless, including reasonable attorney fees, for any all claims, demands, actions or liability whatsoever resulting from any negligent or defective construction of any Improvements constructed by the Developer or its assigns during construction, and from completion of construction until a time two (2) years after the acceptance of the Improvements by the City. Developer further agrees to indemnify the City, including reasonable attorney fees, from any and all claims, demands, actions, or liability whatsoever resulting from liens or claims on the Improvements by any persons providing materials and/or services related to such Improvements.

24. **Documents**

Developer agrees to provide City with a copy of relevant records and documents relating to the Improvements as requested by the City.

25. **Insurance**

Developer agrees to obtain and maintain general public liability insurance and property damage insurance with the City named as an additional insured, at the rate of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) aggregate throughout the construction period.

26. **Other Laws**

Developer may be responsible to fulfill other federal, state and local laws, including, but not limited to Workers Compensation and Occupational Safety and Health Administration regulations. Developer agrees to comply with all laws during construction of the Project and Improvements.

27. **Future Action**

Nothing in the Agreement shall limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement; provided, however, that subject to Developer's performance of its obligations hereunder, Developer shall have the vested right to develop the Project.

28. **Assignment**

Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities

under this Agreement and without the prior written consent of City, which shall not be unreasonably withheld.

29. Entire Agreement

This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

30. Attorney Fees

If this Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney fees and all costs of enforcement of the non-breaching party.

31. Severability

Should any portion or paragraph of this Agreement be declared invalid or unenforceable, the remaining portions or paragraphs of the Agreement shall remain valid and enforceable.

32. Modification

Modification of this Agreement shall only be effective if agreed upon, in writing, and approved by the City Council and the Developer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

SPRINGVILLE CITY

Attest:

Vernon J. Miller
CITY RECORDER



By:

Gene R. Mangum
Gene R. Mangum, Mayor

DEVELOPER

Overland Leasing LLC

By:

[Signature]

By:

[Signature]
its Members

Parcel 1:

Commencing at a point in a fence intersection 401.68 feet West along the Section line and 446.16 feet South from the Northeast corner of Section 31, Township 7 South, Range 3 East, Salt Lake Base and Meridian, thence along the fence lines as follows: North 71°42' West 83.90 feet, North 89°03' West 1208.95 feet, North 16°46' West 26.40 feet, North 3°27' East 604.85 feet, North 16°01' West 27.35 feet, North 47°02' West 26.40 feet, North 15°47' East 25.10 feet, South 82°40' East 80.00 feet, South 88°33' East 745.30 feet, South 2°44' East 16.50 feet, South 88°59' East 464.40 feet, South 0°49' West 690.10 feet to the point of beginning.

LESS AND EXCEPTING therefrom that portion of the above described property sold to Utah County Drainage District No. 1, a corporation by Warranty Deed dated July 31, 1934, executed by Chillian Packard and Phoebe S. Packard, his wife, recorded April 3, 1935, as Entry No. 3091, in Book 316, Page 50, records of Utah County, Utah.

ALSO, LESS AND EXCEPTING therefrom the following: Beginning on the West line of a railroad right of way at a point South 88°58' West 396.22 feet along the Section line from the Northeast corner of Section 31, Township 7 South, Range 3 East, Salt Lake Base and Meridian, Utah County, Utah, and running thence South 0°12'12" East 422.83 feet along said right of way to the projected line of an East-West fence, thence North 89°52'38" West 595.79 feet, thence North 13°19'38" East 686.92 feet to an East-West fence line, thence South 88°12'43" East 117.40 feet along said fence, thence continuing along the fence North 89°48'39" East 317.73 feet to said railroad right of way, thence South 0°12'12" East 244.26 feet along right of way to point of beginning.

ALSO, LESS AND EXCEPTING therefrom the following: Beginning on the West line of a railroad right of way at a point South 88°58' West 396.22 feet along the Section line and South 0°12'12" East 422.83 feet from the Northeast corner of Section 31, Township 7 South, Range 3 East, Salt Lake Base and Meridian, thence South 0°12'12" East 705.86 feet along said right of way to an existing East-West fence, thence South 89°43'24" West 659.36 feet, thence North 0°24'05" West 710.48 feet along an existing fence to an East-West fence line, thence South 89°52'38" East 661.83 feet to the point of beginning.

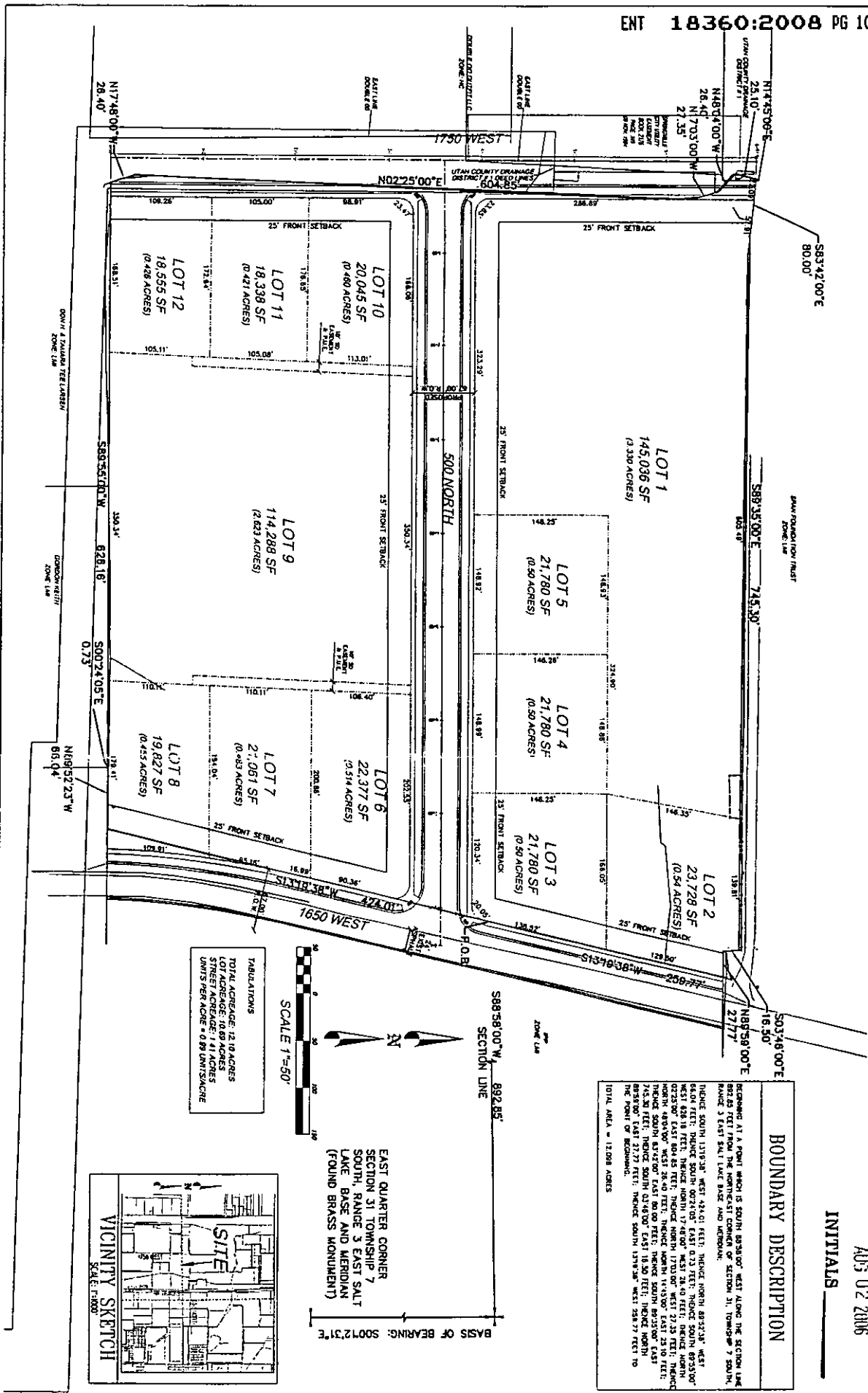
Tax Parcel No.: 23-029-0011

Parcel 2:

Commencing West 1682.99 feet and North 46.84 feet from the Southeast corner of Section 30, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and running thence North 88°30' West 11.90 feet; thence North 26.70 feet; thence East 10.36 feet; thence South 3°27' West 27.27 feet more or less to the point of beginning.

Tax Parcel No.: 23-026-0027

OVERLAND INDUSTRIAL

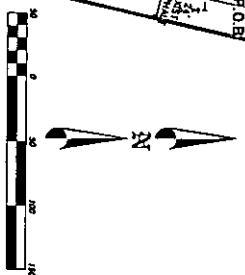


BOUNDARY DESCRIPTION

BEARING AT A POINT WHICH IS SOUTH 89°38'00" WEST ALONG THE SECTION LINE
 BEING 311' 1" BEING THE CORNER OF SECTION 31, TOWNSHIP 7 SOUTH,
 RANGE 3 EAST 3RD, 14TH MERIDIAN AND MONUMENT.
 BEARING SOUTH 13°38' WEST 424.01 FEET; BEARING NORTH 89°32'38" WEST
 84.00 FEET; BEARING SOUTH 00°24'00" EAST 0.73 FEET; BEARING SOUTH 89°35'00"
 WEST 21.780 SF (0.50 ACRES); BEARING NORTH 89°35'00" EAST 23.10 FEET;
 BEARING EAST 16.89 FEET; BEARING NORTH 89°35'00" EAST 21.780 SF
 (0.50 ACRES); BEARING WEST 28.40 FEET; BEARING NORTH 14°30'00" EAST 23.10 FEET;
 BEARING SOUTH 83°27'00" EAST 80.00 FEET; BEARING SOUTH 89°35'00" EAST
 14.289 SF (0.33 ACRES); BEARING SOUTH 03°45'00" EAST 11.50 FEET; BEARING NORTH
 89°35'00" EAST 21.780 SF (0.50 ACRES); BEARING SOUTH 13°38' WEST 238.77 FEET TO
 THE POINT OF BEGINNING.
 TOTAL AREA = 1208 ACRES

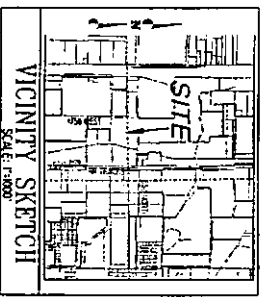
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 INITIALS _____

TABLETIONS
 TOTAL ACRES: 12.10 ACRES
 LOT ACRES: 16.69 ACRES
 STREET ACRES: 1.41 ACRES
 UNITS PER ACRE = 0.89 UNITS/ACRE



EAST QUARTER CORNER
 SECTION 31 TOWNSHIP 7
 SOUTH, RANGE 3 EAST SALT
 LAKE BASE AND MERIDIAN
 (ROUND BRASS MONUMENT)

BASES OF BEARING: S00°24'05"E



RUSH VALLEY FARMS LC
 C/O TAYLOR SMITH
 425 E QUINCY ALPINE, UT 84004
 PHONE: (801) 680-5757

DATE: 24 JULY 2008
 SHEET NUMBER: C1

OVERLAND INDUSTRIAL PRELIMINARY PLAN

SOWBY BERG
 43 West 400 Street
 American Fork, UT 84003
 Phone: (801) 424-1277
 Fax: (801) 424-1278
 Email: info@sowbyberg.com

EXHIBIT 'E'

SPRINGVILLE CITY ELECTRIC DEPARTMENT

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PROJECT FEE ESTIMATE

DATE: 1/22/2007

PROJECT NAME: OVERLAND INDUSTRIAL

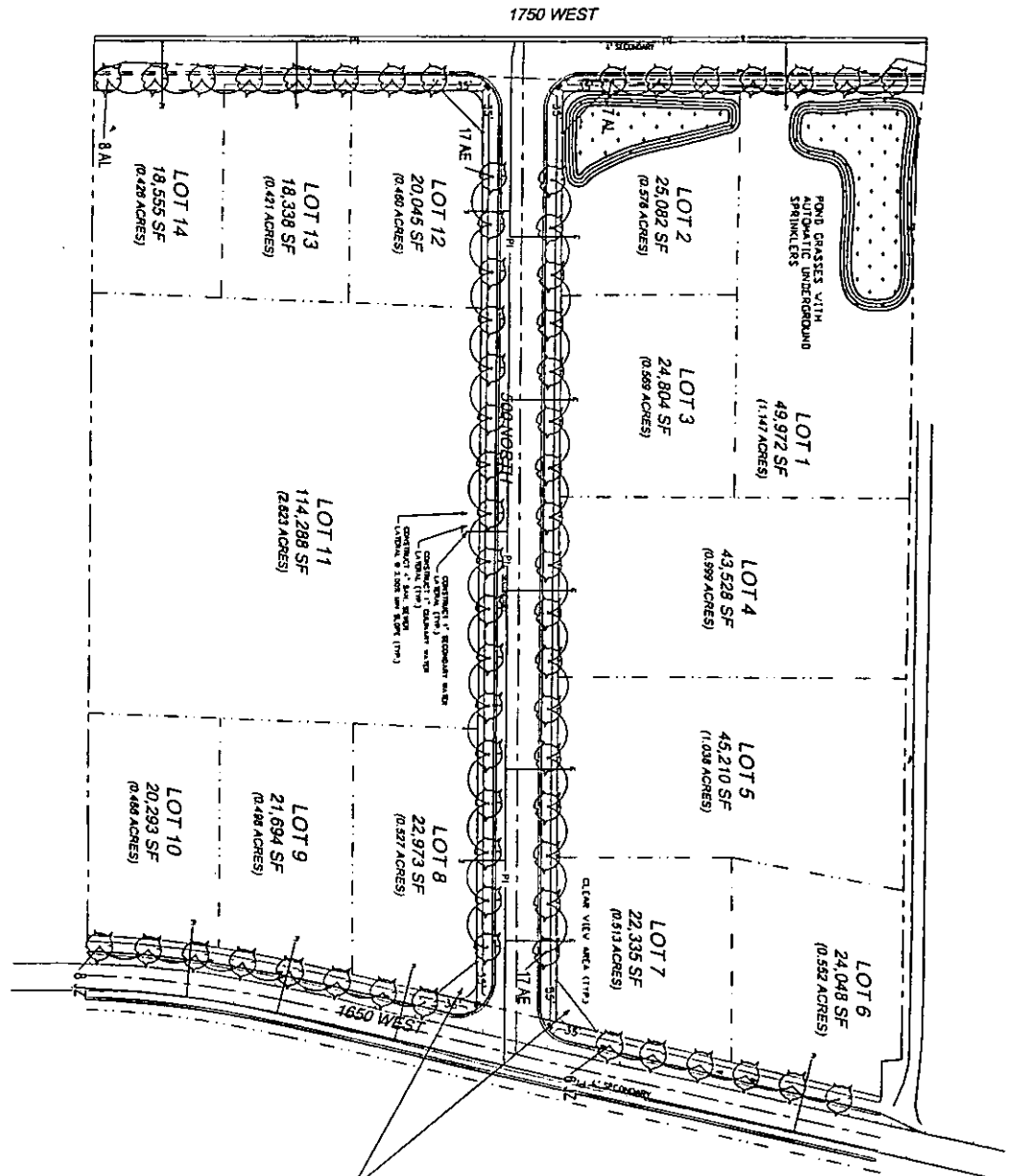
DISTRIBUTION MATERIAL COSTS:

MATERIAL	QUANTITY	COST	EXTENDED
CABLE TERMINATION KITS 4/0	6	\$65.00	\$390.00
CABLE ELBOW TERMINATION KITS 4/0	54	\$55.00	\$2,970.00
CABLE ELBOW TERMINATION KITS 1000	6	\$129.00	\$774.00
INSULATED PROTECTIVE CAPS	45	\$25.28	\$1,137.60
GROUND RODS W/CLAMP	11	\$11.95	\$131.45
CABINET GROUNDING LUGS	22	\$3.20	\$70.40
PRIMARY SWITCH LFS9	2	\$9,990.00	\$19,980.00
PRIMARY SWITCH BASE	2	\$1,100.00	\$2,200.00
200 A PRIMARY JUNCTION CABINET - AL	9	\$450.00	\$4,050.00
200 A PRIMARY JUNCTION CABINET BASE	9	\$200.00	\$1,800.00
200 A 4-PT JUNCTIONS	27	\$125.00	\$3,375.00
TRANSFORMERS-25 KVA 240/120	1	\$2,500.00	\$2,500.00
TRANSFORMER BASE	1	\$200.00	\$200.00
TRANSFORMER SECONDARY BLOCKS	3	\$20.00	\$60.00
PRIMARY CABLE 15KV 175MIL 1/0	500	\$2.25	\$1,125.00
PRIMARY CABLE 15KV 175MIL 4/0 - 1/3 N	10650	\$2.55	\$27,157.50
PRIMARY CABLE 15KV 175MIL 1000 MCM	2400	\$9.25	\$22,200.00
SECONDARY CABLE # 2 URD	2000	\$0.80	\$1,600.00
STREET LIGHT POLES W/FIXTURE	7	\$1,100.00	\$7,700.00
STREET LIGHT JUNCTION BOXES	9	\$55.00	\$495.00
SECONDARY SQUIDS	24	\$15.00	\$360.00
ELECTRICAL TAPE 33+	50	\$3.25	\$162.50
GROUNDING CONNECTORS	121	\$4.90	\$592.90
POLYWATER CABLE LUBE	12	\$27.00	\$324.00
MATERIAL TOTAL			\$101,355.35

	HOURS	RATE	
EQUIPMENT			
SERVICE TRUCK	124	\$50.00	\$6,200.00
LINE TRUCK	80	\$75.00	\$6,000.00
BUCKET TRUCK	12	\$75.00	\$900.00
DUMP-FLAT BED	80	\$35.00	\$2,800.00
SINGLE REEL TRAILER	8	\$18.00	\$144.00
THREE REEL TRAILER	32	\$30.00	\$960.00
CABLE PULLER	40	\$50.00	\$2,000.00
LABOR			
LINECREW SUPERVISOR	124	\$46.05	\$5,710.20
POWER LINE TECHNICIAN-JOURNEY	248	\$38.60	\$9,572.80
POWER LINE TECHNICIAN-APPRENTICE	124	\$26.50	\$3,286.00
DESIGN AND INSPECTION	16	\$55.00	\$880.00
LABOR AND EQUIPMENT TOTAL			\$38,453.00
SUB TOTAL MATERIALS, LABOR, EQUIPMENT			\$139,808.35

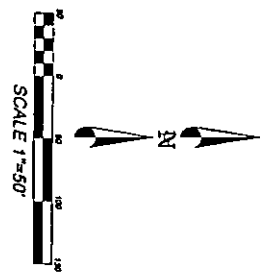
10% Contingency as per Resolution 97-12 \$13,980.84

TOTAL ESTIMATED INSTALLATION COSTS \$153,789.19



PLANT LEGEND

SYMBOL	QUANTITY	ABBR.	SCIENTIFIC NAME	COMMON NAME	SIZE	SPACING
	15	TL	TULIP AMERICANA	AMERICAN LINDEN	3" CAL.	40' O.C.
	34	AL	ALBISIA FRONCOSA	ADONIS BLEM	3" CAL.	40' O.C.
	14	AL	ALBISIA FRONCOSA	ADONIS BLEM	3" CAL.	40' O.C.
	14	AL	ALBISIA FRONCOSA	ADONIS BLEM	3" CAL.	40' O.C.
SHADE TREES						
			SCIENTIFIC NAME	COMMON NAME		
			ALBISIA FRONCOSA	ADONIS BLEM		
			ALBISIA FRONCOSA	ADONIS BLEM		
			ALBISIA FRONCOSA	ADONIS BLEM		



OVERLAND LEASING, LLC
 C/O VIC CORDON
 321 NORTH OLD HIGHWAY 91
 HURRICANE, UT 84737
 PHONE: (801) 404-7987

OVERLAND INDUSTRIAL
 LANDSCAPE PLAN

SOWBY BERG
 Civil Engineering
 Land Planning
 Landscape Architecture

C4