



SUBDIVISION IMPROVEMENT AND GUARANTEE AGREEMENT

This Subdivision Improvement and Guarantee Agreement (the "Agreement") is entered into as of the Effective Date (defined below), by and between the parties described below for the purpose of guaranteeing completion of improvements hereinafter described and securing a right of way.

PARTIES

- "Developer":** Cocolalla, LLC
5513 West 11000 North #301, Highland, Utah, 84003
(801)319-0554
- "City":** Alpine City, a municipal corporation of the State of Utah,
20 North Main Street, Alpine, Utah, 84004
(801)756-6347

RECITALS

- A. Developer desires to record the subdivision plat and to post required bonds or provide other financial guarantees pursuant to City ordinances for Phase 1 of Cherrypoint Subdivision; (herein "Subdivision").
- B. The Subdivision will be constructed in multiple phases.
- C. City has approved Final Plat for Phase 1 of the Subdivision.
- D. The recording of the Final Plat for Phase 1 of the Subdivision requires Developer to complete both on and off site improvements that are intended to be dedicated for public use (hereinafter the "Public Improvements"), including (i) those specified in the approved engineering drawings for the Subdivision, incorporated herein by this reference; (ii) that have been made a condition of approval of the subdivision as reflected by the minutes of the meetings approving Phase 1 of the Subdivision, which are hereby incorporated herein by this reference; and (iii) those set forth in the Cost Estimates for Public Improvements shown in Exhibit "A," attached hereto and incorporated herein by this reference ("Cost Estimates").
- E. To date, no improvements have been made to any portion of the Subdivision on or near Grove Drive.
- F. Rather than require Developer to construct and complete the Public Improvements in conjunction with the development of Phase 1 of the Subdivision, Developer shall deliver to City all funds required for the construction and completion of the Public Improvements so that such Public Improvements may be installed in a manner that is consistent and compatible with the

installation of future improvements anticipated on or near Grove Drive.

G. City will not allow recording of the Final Plat of Phase 1 of the Subdivision until Developer has provided City with all funds required to cover the costs for the construction and completion of the Public Improvements, which shall be installed at a later date in accordance with the ordinances, standards and specifications of City.

Now, therefore, in consideration of the promises and other valuable consideration, Developer and City (each a "Party," and collectively the "Parties") agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement and are made a part hereof. Exhibits and addenda attached hereto are hereby incorporated into this Agreement by reference.

2. **Additional Definitions.**

(a) "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean the non-performance in a timely manner by a Party of any obligation, in whole or in part, required of such Party by the terms of this Agreement or required by City ordinance or other applicable law. A Failure to Perform shall occur after 30 days written notice and opportunity to cure is given to the Party which has failed to perform, describing with sufficient specificity, the failure the nature of the non-performance. The non-performing Party shall then have 30 days from the date of notice to cure any non-performance. In addition, Developer's Failure to Perform shall also include: (i) abandonment of the Project as determined in the reasonable discretion of City; (ii) Developer's insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy and failure to dismiss such proceedings within 90 days of such filing or proceeding; (iii) the commencement of a foreclosure proceeding against the Project property; or (iv) conveyance of the Project or property in lieu of foreclosure.

(b) "Financial Guarantee" as used in this agreement shall mean one of the following: an escrow agreement with a financial institution in a form approved by the City; a bank letter of credit; a surety bond; or a cash deposit with the City in the amount of One Hundred Ten Percent (110%) of the City Engineer's Cost Estimates of the public improvements required for the Subdivision, or the remainder thereof as reductions are allowed.

(c) "Warranty Commencement Date," as used in this Agreement, shall mean the date specified in writing by the City Engineer, or if not so specified, the date on which the City Engineer executes the written authorization for the release of ninety percent of the Financial Guarantee upon acceptance of the Future Required Improvements, as hereinafter described.

(d) "Warranty Period," as used in this Agreement, shall mean the period of time commencing on the Warranty Commencement Date and terminating on the same month and day of the following year.

3. **Payment of Public Improvements.** Upon the Effective Date, Developer shall deliver to City the amount of \$23,080 (the "Improvement Payment") in cash or by wire transfer of

immediately available funds, which represents the estimated total costs and expenses required for the construction and completion of the Public Improvements, and which is set forth more fully as the Cost Estimates in Exhibit A hereto. City shall use the Improvement Payment towards future development and improvements on or near Grove Drive. Developer will not be responsible for additional payments or costs beyond the defined Improvement Payment of \$23,080, for Public Improvements along Grove Drive associated with Phase 1.

4. **Developer's Obligation for Costs.** Should Developer Fail to Perform in any degree, Developer agrees to compensate City for all costs for construction and completion of Public Improvements or Future Required Improvements (defined below) related to Developer's Failure to Perform, except to the extent that the City has received compensation from the Improvement Payment.

5. **Improvements for Next Phase of Subdivision.** Developer and City acknowledge that necessary on and off site improvements that are intended to be dedicated for public use (including installing curb, gutter, sidewalk, and roadway, and removing trees and other impediments) have not been made to the Phase 2 of the Subdivision on or near Grove Drive (the "Future Required Improvements"). Developer intends to develop the Subdivision in two Phases. The Parties agree that Developer may defer the construction and completion of the Future Required Improvements until development of Phase 2 of the Subdivision (as set forth in Exhibit B) begins. Developer shall construct and complete, at its own expense, the Future Required Improvements within two (2) years after the date of recording of the Final Plat for Phase 2 of the Subdivision. All construction shall comply with the City requirements and specifications for this project. Should Developer Fail to Perform its obligations related to the Future Required Improvements in any degree, Developer agrees to compensate City for all costs for construction or repair of Future Required Improvements related to Developer's Failure to Perform. In the event City decides to finish improving Grove Drive before Developer records the Final Plat of Phase 2 of the Subdivision, however, City shall construct and complete the Future Required Improvements at its own cost and Developer will not be responsible to install the Future Required Improvements or assume or pay for any costs associated with the Future Required Improvements.

6. **Financial Guarantee.** As an independent guarantee to City for the purpose of insuring and warranting installation of the Future Required Improvements, prior to recordation of the Final Plat of Phase 2 of the Subdivision, Developer shall provide a Financial Guarantee of at least One Hundred Ten Percent (110%) of the City Engineer's Cost Estimates of the public improvements required for Phase 2 of the Subdivision. Developer shall not be required to provide a Financial Guarantee, however, if the City provides written notice to Developer that it intends to initiate improvements on Grove Drive itself before Developer submits the Final Plat of Phase 2 of the Subdivision to City for approval.

7. **Dedication of Right of Way.** Developer shall deed to City a certain right of way on Grove Drive as set forth in Exhibit C (the "Right of Way"). Developer will deed the Right of Way to the City within thirty (30) days of either (i) receipt of written notice from City that it intends to initiate improvements on Grove Drive, or (ii) completion of the Phase 2 of the Subdivision.

8. **Recordation.** Upon execution of this Agreement, the Parties shall immediately record the Agreement in the Utah County Recorder's Office against all parcels of record contemplated in the Subdivision, including Parcel Nos. 11:045:0283 & 11:045:0285.

9. Reduction and Release of Financial Guarantee.

(a) Compliance Required. Reduction in Financial Guarantee shall be determined in the reasonable discretion of City and as otherwise provided by this Agreement and by existing City ordinance. No reduction or release shall be authorized until such time as City has inspected and found the Future Required Improvements to satisfactorily comply with the requirements of the City, as provided by City ordinance as of the Effective Date, and the approved plans and specifications for the Subdivision.

(b) System Reductions. Developer may request a partial release of the Financial Guarantee upon completing the Future Required Improvements for a System category specified in Exhibit A, and upon satisfactory inspection and testing. The reduction shall not exceed 80% of the Cost Estimates for the system category described at Exhibit A for which reduction is sought. System reductions shall be evidenced by the written authorization of the City Engineer.

(c) Acceptance of Improvements/ Warranty Period Retainage. Developer may request a reduction in the Financial Guarantee down to ten percent (10%) of the original amount after all Future Required Improvements for the Project are complete and upon acceptance by the City Engineer. The City may retain ten percent (10%) of the Estimated Cost ("Retainage") during the Warranty Period. The release of Financial Guarantee down to the ten percent (10%) shall be evidenced by written authorization of the City Engineer, and shall constitute the Warranty Commencement Date if no other notice is given.

(d) Final Release; Release of Retainage. After Final Acceptance, as described below, City agrees to release the Retainage (the "Final Release").

10. **Final Acceptance.** Final Acceptance shall occur after completion of the 1-year applicable warranty period, inspection, and verification by the City Engineer that Future Required Improvements were completed in accordance with the requirements of the City as of the Effective Date, and have been properly repaired where required under the City ordinances. Upon Final Acceptance, the City will release the balance of the Financial Guarantee to the Developer.

11. **Use of Financial Guarantee.** In the event Developer Fails to Perform, City may use and expend all the Financial Guarantee, or such lesser amount as may be necessary, to complete and/or repair the Future Required Improvements to the condition anticipated under this Agreement. To the extent that the Financial Guarantee exceeds the cost to complete the construction and/or repair of the Future Required Improvements, the City shall return any excess to the Developer, the same as if the Developer performed the work.

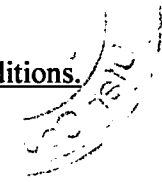
12. **Failure to Perform.** A Party's Failure to Perform shall give the other Party the right to pursue any and all remedies available at law, in equity, or otherwise available pursuant to the terms of this Agreement.

13. **Other Requirements.** Developer shall, as a pre-condition to recording the plat, do the following:

- (a) Water Policy Developer shall comply with the City water policy by providing _____ acre-feet of water in Alpine Irrigation Company shares or other water acceptable to the City as provided for in City

ordinances.

- (b) Fees. All subdivision and impact fees shall be paid.
- (c) Title Report. A current Title Report shall be submitted to the City.
- (d) Tax Clearance. A Tax Clearance letter from Utah County shall be submitted to the City.
- (e) Roll Back Taxes. The Developer shall go to the Utah County Assessor's Office to determine if any rollback/greenbelt taxes exist on the property, and shall pay any and all rollback/greenbelt taxes associated with the property to the Utah County Treasurer's Office. The Developer shall provide proof to the City that all rollback/greenbelt taxes are paid.

- (f) Conditions.  1) Developer agree to the terms of the Development Agreement as proposed by the city. 2) The Developer provides funds for the improvements of curb/gutter and sidewalk along the frontage of Lot 1 to recording the plat.

14. **No Third-Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to City and Developer and not to third parties.

15. **Attorney Fees.** In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any Party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing Party to the controversy shall pay to the successful Party reasonable attorney fees incurred by such Party, and such costs and expenses as are incurred in enforcing this Agreement.

16. **Notice.** Notice to Developer or City shall be mailed or delivered to the address shown in this Agreement. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished.

17. **Applicability of Ordinance.** This agreement does not supersede, but implements, the Alpine City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances, provided that Developer's obligations will not exceed what is expressly agreed to in this Agreement. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

18. **Successors' Enforcement.** The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties' interest through foreclosure, trust deed, sale, bankruptcy or otherwise.

IN WITNESS WHEREOF, the Parties have executed this Subdivision Improvement and Guarantee Agreement as of this 13th day of July 2021 (the "Effective Date").

ALPINE CITY

By [Signature]
Mayor Troy Stout

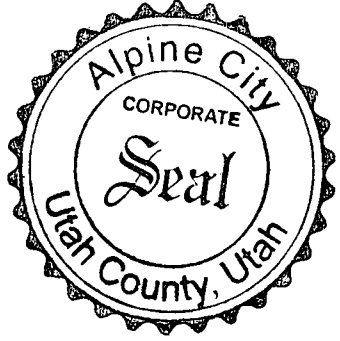
APPROVED AS TO LEGAL FORM:
[Signature]
City Attorney Craig Hall

DEVELOPER

By _____

Title _____

ATTEST:
[Signature]
City Recorder Bonnie Cooper



DEVELOPER

Cocolalla, LLC
a Utah limited liability company
By: JOSHUA G. JAMES

By *JGJ*
Title *Manger*

STATE OF *Utah*)
: ss.
COUNTY OF *Utah*)

On this *14th* day of *June*, in the year 2021, personally appeared before me Joshua G. James, whose identity is personally known to me or proven on the basis of satisfactory evidence and who by me duly sworn, did say that he is the owner of Cocolalla, LLC and that said document was sign by him in behalf of said Limited Liability Company by Authority of its Operating Agreement, and said Joshua G. James acknowledged to me that said Limited Liability Company Executed the same.

Witness my hand and official seal,

Bonnie B. Cooper
Notary Signature



EXHIBIT A

(ESTIMATED COST OF PUBLIC IMPROVEMENTS)



July 12, 2021

Austin Roy
 Alpine City Planner
 20 North Main
 Alpine, Utah 84004

Subject: Cherrypoint Phase 1 Bond & Escrow Requirements

Dear Austin:

I have reviewed the Cherrypoint plans and recommend the following bond & escrow costs:

BOND REQUIREMENT (CONSTRUCTION ITEMS)

ITEM	Quantity	Unit	Quantity Price	Total Price
1 Toilet Rental	1	MO @	\$ 500.00	\$ 500.00
2 Mobilization	1	LS @	\$ 2,000.00	\$ 2,000.00
3 4" PVC Sanitary Sewer Lateral	1	EACH @	\$ 2,750.00	\$ 2,750.00
4 Lot 1 Retention Pond Grading	1	LS @	\$ 1,850.00	\$ 1,850.00
5 1" CTS Poly Culinary Services	1	EACH @	\$ 2,200.00	\$ 2,200.00
6 1" CTS Poly PI Services	1	EACH @	\$ 2,500.00	\$ 2,500.00

BOND SUBTOTAL: \$ 11,800.00
BOND TOTAL (110%): \$ 12,980.00

The bond required is a 110% performance of the above estimated cost. The above estimate is for determining the required bond amount only. The developer is responsible to fully comply with the Alpine City Construction Standards and City Ordinances. The City does not require some utilities such as power, telephone, gas and others to be included in the bond. However, the developer is financially responsible for these improvements. Approved cut sheets are required prior to any construction. If you have any questions please call me.

PUBLIC IMPROVEMENT FUNDING REQUIREMENT

ITEM	Quantity	Unit	Quantity Price	Total Price
8 24" Curb & Gutter Prep (6" Road Base)	200	LF @	\$ 5.00	\$ 1,000.00
9 24" Curb and Gutter APWA Type A	200	LF @	\$ 14.50	\$ 2,900.00
10 Sidewalk Prep (6" Road Base)	1000	SF @	\$ 0.95	\$ 950.00
11 Concrete Sidewalk (5' Wide X 5" Thick)	1000	SF @	\$ 5.25	\$ 5,250.00

STREET IMPROVEMENTS TOTAL: \$ 10,100.00

The developer is financially responsible for frontage improvements. Because it does not make sense to construct frontage improvements at this time for this phase of development, the developer is required to provide the funds to the City in lue of constructing the improvements. These funds are non-refundable. If you have any questions please call me.

Sincerely,
 ALPINE CITY

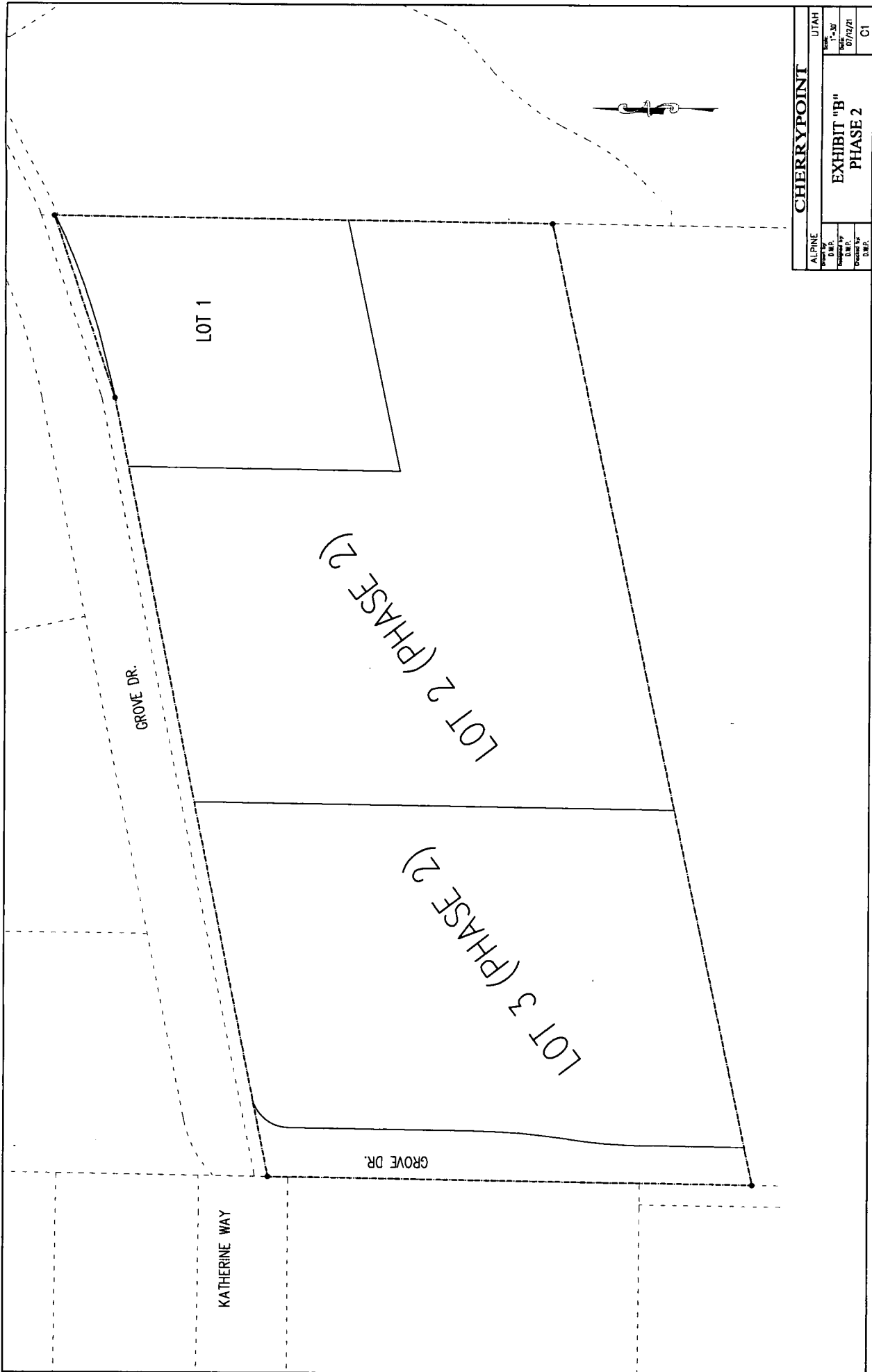
Jed Muhlestein, P.E.
 City Engineer

cc: File

EXHIBIT B

(PHASE 2 OF THE SUBDIVISION)

*** The attached depiction of Phase 2 of the Subdivision may be modified or altered by Developer. Notwithstanding this, Phase 2 of the Subdivision shall include additional development and/or lots beyond what currently exists on Parcel No. 11:045:0283 as of the July 13, 2021. In other words, Phase 2 of the Subdivision must contemplate further development than what exists on Parcel No. 11:045:0283 as of the July 13, 2021.**

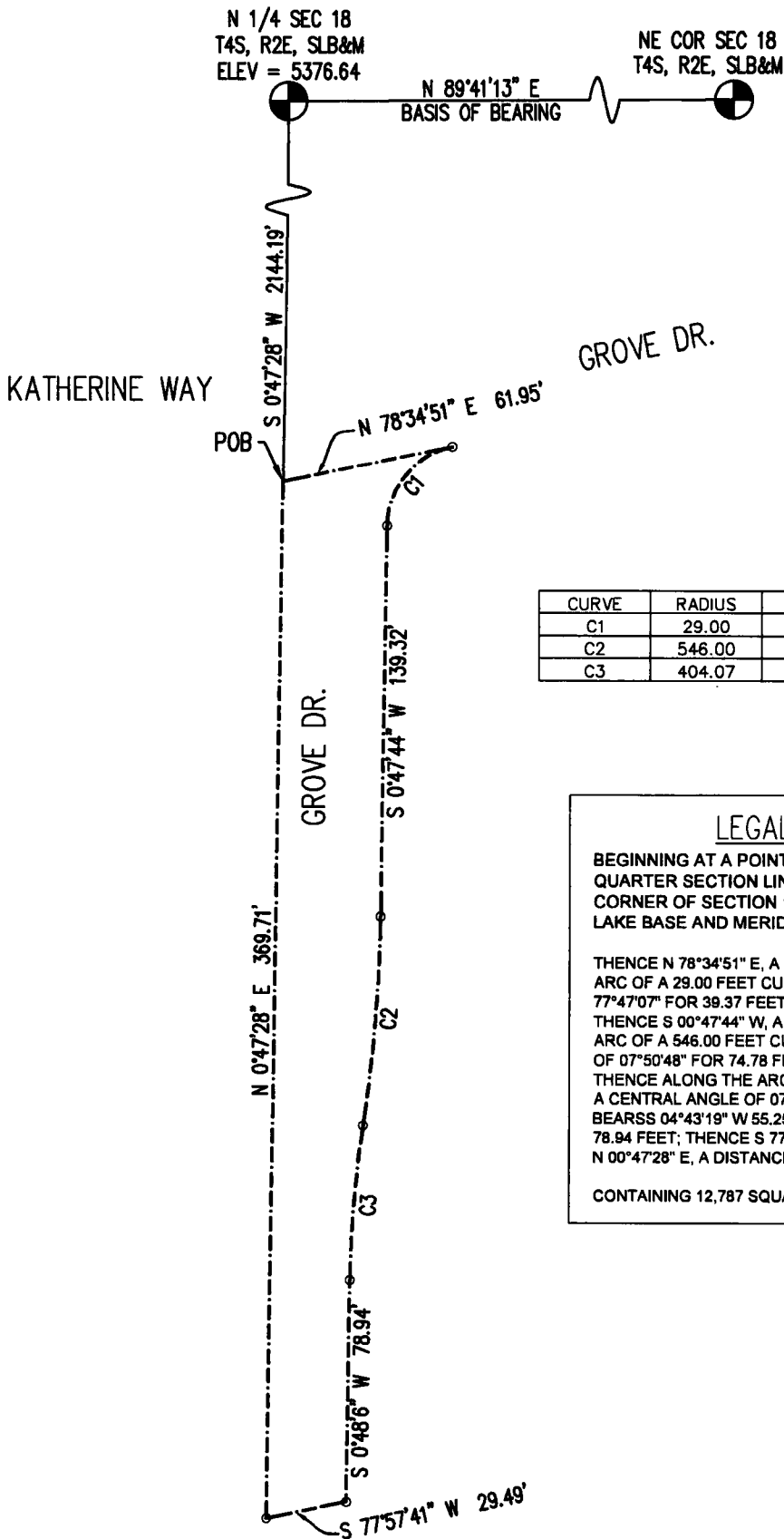


ALPINE		UTAH	
Drawn by	D.M.P.	Scale	1"=30'
Checked by	D.M.P.	Date	07/02/21
Designed by	D.M.P.	C1	

CHERRY POINT
EXHIBIT "B"
PHASE 2

EXHIBIT C

(RIGHT OF WAY)



CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	CHORD	BEARING
C1	29.00	39.37	77°47'7"	36.42	S 39°41'18" W
C2	546.00	74.78	7°50'48"	74.72	S 4°43'8" W
C3	404.07	55.30	7°50'26"	55.25	S 4°43'19" W

LEGAL DESCRIPTION

BEGINNING AT A POINT LOCATED SOUTH 0°47'28" WEST ALONG QUARTER SECTION LINE 2144.19 FEET FROM THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 4 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE N 78°34'51" E, A DISTANCE OF 61.95 FEET; THENCE ALONG THE ARC OF A 29.00 FEET CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 77°47'07" FOR 39.37 FEET (CHORD BEARS S 39°41'17" W 36.42 FEET); THENCE S 00°47'44" W, A DISTANCE OF 139.32 FEET; THENCE ALONG THE ARC OF A 546.00 FEET CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 07°50'48" FOR 74.78 FEET (CHORD BEARS S 04°43'08" W 74.72 FEET); THENCE ALONG THE ARC OF A 404.07 FEET CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 07°50'26" FOR 55.30 FEET (CHORD BEARS S 04°43'19" W 55.25 FEET); THENCE S 00°48'06" W, A DISTANCE OF 78.94 FEET; THENCE S 77°57'41" W, A DISTANCE OF 29.49 FEET; THENCE N 00°47'28" E, A DISTANCE OF 369.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 12,787 SQUARE FEET OR 0.2935 ACRES, MORE OR LESS.

CHERRYPOINT - EXHIBIT "C"