

BINDING MEMORANDUM OF UNDERSTANDING

This Binding Memorandum of Understanding is hereby entered into this 1st day of June, 2010 by and between Western America Holding, LLC, a Utah limited liability company and owner of the property commonly known as Powder Mountain ("WAH"), and Weber County, a body politic in the State of Utah ("County") (WAH and County are collectively referred to as the "Parties").

R E C I T A L S

WHEREAS, WAH is the owner of that certain real property in Weber County commonly known as Powder Mountain and more specifically described on Exhibit A which is attached hereto and incorporated into this Agreement (the "Property"); and

WHEREAS, certain litigation (Appellate Case No.20090897) is presently pending before the Utah Supreme Court relating to the incorporation of the Town of Powder Mountain and Eden Heights (the "Litigation"); and

WHEREAS, the Parties each have an interest in finalizing a Development Agreement ("DA") for the Property (relating to the incorporation of the Town of Powder Mountain and Eden); and

WHEREAS, the Parties recognize that significant effort and expense is required to negotiate and memorialize a DA that is suitable to the Parties; and

WHEREAS, the Parties are each individually willing and able to finalize a DA with the key terms set forth herein, subject to standard and customary terms, and have agreed to work in good faith to finalize the DA as soon as practicable; and

WHEREAS, to facilitate the completion of the DA on a timely basis, the Parties have come to a binding agreement on the issues set forth below;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the deal points set forth below as a method for facilitating the completion of the DA, staying the Litigation and withdrawing the pending petition for the incorporation of the Town of Powder Mountain:

A G R E E M E N T

- 1. Property.** The Property covered by this Memorandum of Understanding is more specifically described in Exhibit A and includes the terms and conditions contained herein.

- 2. Density-Powder Mountain in Weber County.** In Weber County, Powder Mountain shall be entitled to the following density on the following terms and conditions:
- 2.1 Phase 1:** 1,477 units, meaning single-family dwelling units with hotel rooms being counted as the equivalent of one-third $1/3$ of a single family dwelling unit. In other words, a 100 unit hotel would count as 33 units. Commercial development is not included in the density number. Recreational and commercial uses shall be developed as needed to support the resort (ski lifts, lodges). Phase 1 may proceed in accordance with this Memorandum and adoption of the DA, which shall not otherwise impair, burden or delay implementation of Phase 1 as long as the development complies substantially with the approved concept plan.
- 2.2 Phase 2:** Upon the completion of Phase 1, County shall issue a scoping letter and WAH shall pay for a traffic safety/impact study by an entity acceptable to the Parties (the "Traffic Study" or "Study"). The Study shall address the existing access road for the Property and shall make recommendations for improvements to the existing access road and related safety issues, including but not limited to guard rails, additional signage, flashing lights in dangerous areas, and runaway ramps. The Parties shall forward the Study to the Utah Department of Transportation ("UDOT") and actively seek UDOT's implementation of the Study's recommendations. The study shall also determine whether a secondary access is necessary for emergency purposes and/or general use and provide cost estimates for both improvements to the "Powder Mountain Road" and the secondary access. Upon completion of the Traffic Study and in consultation with UDOT, the available Road Improvement Funds (as described in Section 4 below) shall be used to begin implementation of the recommendations set forth in the Traffic Study.
- 2.3 Phase 2 Density.** Upon meeting the requirements specified in 2.2 above and the conditions and benchmarks to be specified in the DA, WAH shall be entitled to proceed with Phase 2, an additional 1,323 units, which shall include SDUs, MDUs, and hotel rooms. Hotels, commercial and recreation uses shall count as described in 2.1 above.
- 2.4 Infrastructure.** Density shall be specifically limited by the provision of the necessary water, sewer and infrastructure to support such density. No density shall be allowed unless and until WAH demonstrates the ability to provide water, sewer and necessary infrastructure in accordance with state laws, rules and regulations and county ordinances.

2.5 Open Land Donation: In connection with the development, WAH or its nominee shall make the following donations to the County, which sums shall be used solely for the benefit of the local community by purchasing and maintaining open lands or other community projects, as determined by the County: I) upon completion of the 1st unit, WAH or its nominee shall donate \$100,000; ii) completion of the 1000th unit, WAH or its nominee shall donate \$250,000; ii) upon completion of the 2000th unit, WAH or its nominee shall donate \$500,000; and iii) upon completion of the 2800th unit, WAH or its nominee shall donate \$500,000. Failure of WAH to complete the agreed upon donation at any stage will be deemed to be sufficient reason for County to deny additional building permits until the donation is received.

3. Golf. WAH shall be entitled to develop one 18-hole golf course on the Property.

4. 1.5% Transfer Fee. WAH voluntarily agrees to the imposition of a One and one half Percent (1.5 %) real estate transfer fee ("Transfer Fee") that shall be applied to all transfers of real property within the Powder Mountain project to any Retail Buyer. The Transfer Fee requirement shall be recorded against the Property. At the time of the closing on any real property sale to a Retail Buyer as defined in the DA, the Transfer Fee shall be collected by the closing agent and shall be escrowed into a special account of the County. One half of the funds from the Transfer Fee shall be used as determined by the County to acquire or expand open space, and/or improve parks and recreation areas in the Ogden Valley. ("Open Space Funds"). One half of the funds from the Transfer Fee shall be used to improve the safety of the Powder Mountain Road and/or towards the construction of a secondary access ("Road Improvement Funds"). Upon completion of the improvements set forth in the Traffic Study, one hundred percent of the Transfer Fee shall be used as Open Space Funds. (The parties recognize that Senate Bill 161 enacted in the general session of the 2010 Utah State Legislature may prohibit the assessment and use of transfer fees as contemplated in this section. The parties agree to seek amendment of the legislation to permit the use of fees as described herein or to use their best efforts to accomplish the objectives stated herein through other means or in accordance with the intent and language of the Senate Bill 161.) Notwithstanding Senate Bill 161, and if the parties are unable to obtain the amendment to Senate Bill 161, then the parties will set up a trust or other mechanism to hold 1.5% of the sales proceeds from any sale of real property to from the developer to retail buyers and shall further create an advisory committee consisting of representatives from the Powder Mountain community, the Ogden Valley community, and the Weber County Planning Division to determine the best and most appropriate use of the Road Improvement Funds and the Open Space Funds held within the trust or other fund holding mechanism.

5. **Pending Litigation/Incorporation.** Upon execution of this MOU, the Parties agree to immediately seek a stay of the Litigation, and to use their best efforts to obtain the cooperation and agreement of any additional parties to such Litigation to the aforementioned stay. Such stay shall remain in place until the DA is completed and executed. Upon completion and execution of the DA, WAH shall immediately cause the Incorporation Petition to be withdrawn.
6. **Construction Traffic.** The Parties will work together collectively and with local residents to set reasonable limitations on construction traffic to provide a safe working environment on the existing access road and surrounding roads. WAH shall make reasonable accommodations to ease construction traffic, such as placing staging areas in appropriate areas and providing lower level parking areas and shuttles for construction workers.
7. **Binding Nature of this MOU.** This MOU shall be binding on the Parties.
8. **Development Agreement.** The parties shall use their best efforts to complete the DA as quickly as reasonably practicable. The terms set forth herein shall be the key terms set forth in the DA. If the parties are unable to reach agreement on ancillary terms in the DA, the parties shall use standard and customary terms used in similar developments within the State of Utah. This Agreement and the DA shall be binding upon any successors and/or assigns of WAH.
9. **Capacity.** Each person signing on behalf of one of the Parties below has full authority to do so, and the Parties themselves have the sole and full right, power, authority and capacity to execute, deliver and perform this Memorandum.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Kenneth A. Bischoff, Chair

Commissioner Bischoff voted _____
Commissioner Dearden voted _____
Commissioner Zogmaister voted _____

ATTEST:

Alan D. McEwan, CPA
Weber County Clerk/Auditor

WESTERN AMERICA HOLDINGS, LLC

By _____
Its _____