



W2769046

**WEBER COUNTY
SUBDIVISION IMPROVEMENT
AGREEMENT**

2769046 PG 1 OF 11
LEANN H KILTS, WEBER COUNTY RECORDER
10-DEC-15 1138 AM FEE \$0.00 DEP JKC
REC FOR: WEBER COUNTY PLANNING

1. **Parties:** The parties to this Subdivision Improvement Agreement ("the Agreement") are HAMBLIN Investments Inc. ("the Developer") and Weber County Corp. ("the County").
2. **Effective Date:** The Effective Date of this Agreement will be the date that final subdivision plat approval is granted by the County Commission ("the Commission").

RECITALS

WHEREAS, the Developer seeks permission to subdivide property within the unincorporated area of Weber County, to be known as Mallard Springs Subdivision (the "Subdivision"), which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the County seeks to protect the health, safety and general welfare of the residents by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

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

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County's Code of Ordinances Part II Land Use Code Title 108 et seq;

THEREFORE, the Parties hereby agree as follows:

DEVELOPER'S OBLIGATIONS

3. **Improvements:** The Developer will construct and install, at his own expense, those on-site and off-site subdivision improvements listed on Exhibit B attached hereto and incorporated herein by this reference ("the Improvements"). The Developer's obligation to complete the Improvements will arise upon final plat approval by the County, will be independent of any obligations of the County contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

4. **Security:** To secure the performance of his obligations hereunder, the Developer will deposit with the County on or prior to the effective date, an irrevocable deposit in Escrow in the amount of \$ 397,192.39.
5. **Standards:** The Developer will construct the Improvements according to the Public Works Standards and Technical Specifications as incorporated herein by this reference.
6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of one year from the date that the County accepts the improvement when completed by the Developer.
7. **Completion Periods:** The Developer will commence work on the Improvements within one year from the Effective Date of this Agreement (the "Commencement Period") and the Improvements, each and every one of them, will be completed within two years from the Effective Date of this Agreement (the "Completion Period").
8. **Compliance with Law:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of final subdivision plat approval when fulfilling his obligations under this Agreement. When necessary to protect public health, the Developer will be subject to laws, ordinances and regulations that become effective after final plat approval.
9. **Dedication:** The developer will dedicate to the County or other applicable agency as designated by the County the Improvements listed on Exhibit B attached hereto and incorporated herein by this reference pursuant to the procedure described in Paragraph 13 below.

COUNTY'S OBLIGATIONS

10. **Plat Approval:** The County will grant final subdivision plat approval to the Subdivision under the terms and conditions previously agreed to by the Parties if those terms and conditions are consistent with all relevant state laws and local ordinances in effect at the time of final plat approval.
11. **Inspection and Certification:** The County will inspect the Improvements as they are being constructed and, if acceptable to the County Engineer, certify such improvement as being in compliance with the standards and specifications of the County. Such inspection and certification, if appropriate, will occur within 7 days of notice by the Developer that he desires to have the County inspect an improvement. Before obtaining certification of any such improvement, the Developer will present to the County valid lien waivers from all persons providing materials or performing work on the improvement for which certification is sought. Certification by the County Engineer does not constitute a waiver by the County of the right to draw funds under the Escrow on account of defects in or failure of any improvement that is detected or which occurs following such certification.
12. **Notice of Defect:** The County will provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on the approved subdivision improvement drawings on file in the Weber County Engineering and Surveyor's Office or is otherwise defective. The Developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The County may not declare a default under this Agreement during the 30 day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect. The Developer will

have no right to cure defects in or failure of any improvement found to exist or occurring after the County accepts dedication of the improvement(s).

13. **Acceptance of Dedication:** The County or other applicable agency will accept the dedication of any validly certified improvement within 30 days of the Developer's offer to dedicate the improvement. The County's or agency's acceptance of dedication is expressly conditioned on the presentation by the Developer of a policy of title insurance, where appropriate, for the benefit of the County showing that the Developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the County in its reasonable judgment. Acceptance of the dedication of any improvement does not constitute a waiver by the County of the right to draw funds under the Escrow on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication. The Improvements must be offered to the County in no more than one dedication per month.
14. **Reduction of Security:** After the acceptance of any improvement, the amount which the County is entitled to draw on the Escrow may be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown on Exhibit B. At the request of the Developer, the County will execute a certificate of release verifying the acceptance of the improvement and waiving its right to draw on the Escrow to the extent of such amount. A Developer in default under this Agreement will have no right to such a certificate. Upon the acceptance of all of the Improvements, the balance that may be drawn under Escrow will be available to the County for 90 days after expiration of the Warranty Period.
15. **Use of Proceeds:** The County will use funds drawn under the Escrow only for the purposes of completing the Improvements or correcting defects in or failures of the Improvements.

OTHER PROVISION

16. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Construction Period:
 - a. Developer's failure to commence construction of the Improvements within one year of final subdivision plat approval;
 - b. Developer's failure to complete construction of the Improvements within two years of final subdivision plat approval;
 - c. Developer's failure to cure the defective construction of any improvement within the applicable cure period;
 - d. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - e. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

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

17. **Measure of Damages:** The measure of damages for breach of this Agreement will be the reasonable cost of completing the Improvements. For improvements upon which construction has not begun, the estimated cost of the Improvements as shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of the Escrow establishes the maximum amount of the developer's liability. The County will be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced.
18. **County's Rights Upon Default:** When any event of default occurs, the County may draw on the Escrow to the extent of the face amount of the credit less 90 percent of the estimated cost (as shown on Exhibit B) of all improvements theretofore accepted by the County. The County will have the right to complete improvements itself or contract with a third party for completion, and the Developer hereby grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such improvements. Alternatively, the County may assign the proceeds of the Escrow to a subsequent developer (or a lender) who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the County if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements. In addition, the County also may suspend final plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey lots or homes within the Subdivision without the express written approval of the County or until the Improvements are completed and approved by the County. These remedies are cumulative in nature except that during the Warranty Period, the County's only remedy will be to draw funds under the Escrow.
19. **Indemnification:** The Developer hereby expressly agrees to indemnify and hold the County harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this Agreement. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.
20. **No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both County and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.
21. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed by the County and by the Developer or his authorized officer. Such amendment or modification will be properly notarized before it may be effective.

22. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.
23. **Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.
24. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement, except that if the County does not exercise its rights within 60 days following knowledge of an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the County to exercise its rights.
25. **Scope:** This Agreement constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.
26. **Time:** For the purpose of computing the Commencement, Abandonment, and Completion Periods, and time periods for County action, such times in which civil disaster, acts of God, or extreme weather conditions occur or exist will not be included if such times prevent the Developer or County from performing his/its obligations under the Agreement.
27. **Severability:** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.
28. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the County. Such approval may not be unreasonable withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the County to assign its rights under this Agreement. The County will release the original developer's Escrow if it accepts new security from any developer or lender who obtains the Property. However, no act of the County will constitute a release of the original developer from this liability under this Agreement.
29. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Developer (Attn:
(Address)

Hamblin Investments Inc.
P.O. Box 625
Roy, UT 84067

if to County:

Attn: County Engineer
The Weber Center
2380 Washington Blvd. Suite 240
Ogden, UT 84401

- 30. **Recordation:** Either Developer or County may record a copy of this Agreement in the Clerk's Office and the Recorder's Office of Weber County, Utah.
- 31. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.
- 32. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement will be deemed to be proper only if such action is commenced in District Court for Weber County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

Dated this 10th day of Dec., 2015

Dayl B. Hamblin Pres.
Developer
Hamblin Investment Inc.

~~INDIVIDUAL ACKNOWLEDGEMENT~~ *DX*

State of Utah)
 ss
County of Weber)

On the _____ day of _____ A.D. 20____ personally appeared before me

and _____

the signer(s) of the within instrument, who duly acknowledged to me that he/she/they executed the same.

Notary Public

Residing at: _____, Utah

CORPORATE ACKNOWLEDGMENT

State of Utah)
) ss
County of Weber)

On the 10th day of December A.D. 2015 personally appeared before me duly sworn, did say that he/she is the President of Hamblin Investments, the corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same.



Kary C. Serrano
Notary Public
Residing at:

APPROVED AS TO FORM:

Chk. Crockett
Weber County Attorney

[Signature]
Chairperson, Weber County Commission

12/8/15
Date

ATTEST:

Ricky Hotel
Weber County Clerk

EXHIBIT A: PROPERTY DESCRIPTION TO BE SUBDIVIDED

MALLARD Springs Subdivision

EXHIBIT B: REQUIRED ON & OFF SITE SUBDIVISION IMPROVEMENTS

See Exhibit B

EXHIBIT C: FINANCIAL GUARANTEE

See Exhibit C



Escrow Certificate

To Weber County, Utah:

The undersigned Escrow Agent does hereby certify that it has in its possession and custody, cash in the sum of \$ 397,192.39 which said sum said Escrow Agent is holding in escrow to guarantee the installation and completion, according to Ordinance, of all on and or off-site improvements, as specified in Exhibit "B" on the following described tracts of land in Weber County, Utah to wit:

LEGAL DESCRIPTION

Mallard Springs Subdivision

In the event the funds so provided herein do not pay for and complete in full all of the specified improvements set forth in Exhibit "B" and as contemplated herein, then and in that event, subdivider/developer agrees to forthwith pay to Weber County all additional amounts necessary to so complete such improvements.

Said Escrow Agent hereby covenants and agrees that it will not release said funds to any person, firm or corporation (other than as is hereinafter provided) without the express written consent and direction from said Weber County, Utah, and that if said improvements are not satisfactorily installed and completed according to Ordinance within one month short of two years from the date hereof, that the said Escrow Agent will upon demand deliver said funds to said Weber County, Utah for the sole purpose of making and/or completing all of said improvements, with said County to return to the said Escrow Agent any and all funds which may prove to be in excess of the actual cost to the County to make and/or complete said improvements.

It is understood that the County may, at its sole option, extend said period of two years for such completion of such improvements upon request of the Escrow Agent or the Subdivider/Developer, if the County Commission determines that such extension is proper.

It is further understood and agreed that all matters concerning this agreement shall be subject to the pertinent provisions of the ordinances of Weber County, Utah.



Weber County

Dated this 8 day of DECEMBER, 20 15.

JARED ANDERSEN
Escrow Agent
[Signature]
Signature
WEBER COUNTY ENGINEER
Title

State Of Utah)
County Of Weber)
ss:

On the 8 day of Dec, 20 15 personally appeared before me _____
Jared Anderson and _____ the signers of the within instrument
and who duly acknowledged to me that they executed the same.

My Commission Expires:



[Signature]
Notary Public

Approved as to form:

[Signature]
Weber County Attorney

12/4/15
Date

Approved:

[Signature]
Chairperson, Weber County Commission

12/8/15
Date

Attest:

[Signature]
Weber County Clerk

12/8/15
Date



Mallard Springs Subdivision								
Item No.	Description	Original Quantity	Unit	Unit Price	Total	Complete at quantity complete	Time of Escrow amount complete	Notes
1	8" PVC Sewer Main	1,764	LF	\$ 20.50	\$ 36,162.00	1,764	\$ 36,162.00	
2	12" PVC Sewer Main & Outfall Line	1,068	LF	25.50	27,234.00	1,068	27,234.00	
3	4" Laterals	21	EA	462.00	9,702.00	21	9,702.00	
4	48" Manholes	7	EA	1,875.00	13,125.00	7	13,125.00	
5	60" Manholes	4	EA	2,140.00	8,560.00	4	8,560.00	
6	Connect to existing	1	EA	1,225.00	1,225.00	1	1,225.00	
7	Collar Manholes	11	EA	375.00	4,125.00	-	-	
8	Boring & placing of 50' of steel casing	50	EA	400.00	20,000.00	50	20,000.00	
9	Compaction	1	EA	1,200.00	1,200.00	1	1,200.00	
10	Camera & air test	1	EA	3,500.00	3,500.00	1	3,500.00	
11	15" RCP Storm Drain	680	LF	21.50	14,620.00	-	-	
12	Inlet Boxes	7	EA	1,350.00	9,450.00	-	-	
13	15" RCP Storm Drain Flared Ends	3	EA	850.00	2,550.00	-	-	
14	Detention Pond	3	EA	3,000.00	9,000.00	-	-	
15	Camera and Clean	1	EA	680.00	680.00	-	-	
16	10" C900 DR14	2,014	LF	22.50	45,315.00	2,014	45,315.00	
17	8" C900 DR14	912	LF	18.50	16,872.00	912	16,872.00	
18	Hot tap existing 8" shockcoat main	1	EA	5,000.00	5,000.00	1	5,000.00	
19	Connect to existing 8" main	1	EA	1,060.00	1,060.00	1	1,060.00	
20	10" valves	3	EA	1,941.32	5,823.96	3	5,823.96	
21	8" valves	2	EA	1,442.85	2,885.70	2	2,885.70	
22	Fire Hydrant	7	EA	3,800.00	26,600.00	7	26,600.00	
23	Water services	21	EA	850.00	17,850.00	21	17,850.00	
24	Bends	1	EA	700.00	700.00	1	700.00	
25	Cap and plug	2	EA	1,598.00	3,196.00	2	3,196.00	
26	Tee's	2	EA	575.00	1,150.00	2	1,150.00	
27	Valve collars	5	EA	325.00	1,625.00	-	-	
28	Saw cut asphalt on 2550 South	1	EA	300.00	300.00	1	300.00	
29	Traffic control for 2550 South	1	EA	2,000.00	2,000.00	1	2,000.00	
30	Asphalt patch	1	EA	500.00	500.00	1	500.00	
31	Pressure test and chlorinate	1	EA	1,500.00	1,500.00	1	1,500.00	
32	8" C900 DR14 (Purple)	2,884	LF	19.38	55,891.92	2,884	55,891.92	
33	Hot tap existing 24" main	1	EA	4,900.00	4,900.00	1	4,900.00	
34	Double service	9	EA	700.00	6,300.00	9	6,300.00	
35	Single service	3	EA	400.00	1,200.00	3	1,200.00	
36	Cap & plug	2	EA	415.00	830.00	2	830.00	
37	8" valves	5	EA	1,484.00	7,420.00	5	7,420.00	
38	Tee's	2	EA	523.00	1,046.00	2	1,046.00	
39	Bend's	1	EA	432.00	432.00	1	432.00	
40	Sump drains	3	EA	2,335.00	7,005.00	3	7,005.00	
41	Saw cut asphalt	1	EA	300.00	300.00	1	300.00	
42	Asphalt patch	1	EA	500.00	500.00	1	500.00	
43	Pressure test	1	EA	1,200.00	1,200.00	1	1,200.00	
44	Traffic control	1	EA	300.00	300.00	-	-	
45	Furnish/Place/Compact 3" Asphalt	103,100	FT	1.16	119,596.00	-	-	
46	Furnish/Place/Compact 6" Roadbase	107,300	FT	0.62	66,526.00	-	-	
47	Furnish/Place/Compact 8" Pit Run	4,872	FT	10.00	48,720.00	-	-	
48	30" Curb/Gutter W/base	5,207	FT	14.05	73,158.35	5,207	73,158.35	
49	4' x 4' Sidewalk with base	5,186	FT	13.50	70,011.00	-	-	
50	ADA Handicap ramps	5	EA	675.00	3,375.00	-	-	
51	Top Inlet boxes w/frame & grates	7	EA	600.00	4,200.00	-	-	
52	Tracking pad - construction entrance	1	EA	950.00	950.00	-	-	
53	Silt Fence - \$2.50 per LF	-	LF	2.50	-	-	-	
54	Gravel Waddles	4	EA	75.00	300.00	-	-	
55	Utility sleeves, includes trenching	-	LF	5.00	-	-	-	
56	Utility Trenches	-	LF	1.40	-	-	-	
ORIGINAL CONTRACT AMOUNT					\$ 767,671.93			
Value of Work Completed to Date:					\$ 411,643.93			
Less 10% Retained:					41,164.39			
Subtotal:					\$ 370,479.54			
Total Improvements Amount:					\$ 767,671.93			
Completed to Date Less Retainage:					370,479.54			
Escrow Amount Required:					\$ 397,192.39			



Weber County



W2769047

EH 2769047 PG 1 OF 1
LEANN H KILTS, WEBER COUNTY RECORDER
10-DEC-15 11:39 AM FEE \$4.00 DEP JKC
REC FOR: WEBER COUNTY PLANNING

Declaration of Deed Covenant to Run with the Land
Concerning Provision of Irrigation Water

WITNESSETH

WHEREAS, Declarant is the owner of real estate situated in Weber County, Utah, more fully described as Mallard Springs Subdivision, and

WHEREAS, Weber County, on behalf of Taylor West Weber culinary water agency, requires irrigation water to be provided to each lot in said subdivision as part of the required improvements,

NOW THEREFORE, for such purposes, Declarant hereby makes the following Declaration of Covenants which shall run with the property:

1. That he holds sufficient irrigation water rights or shares for the lots in the above named subdivision as determined by the Irrigation Water District or Company.
2. That these rights or shares will not be disposed of except to the lots in said subdivision.
3. With the sale of each lot, he will transfer at no cost, the required water rights or shares needed to properly irrigate the lot, to the lot purchaser who is to be responsible for the proper use of the water as outlined in the irrigation water district's or company's distribution schedule and procedures.

This declaration and the rights, duties and obligations thereof shall run with the property in perpetuity unless modified or canceled in writing by the Weber County Planning Commission with said modification or cancellation being recorded in the Weber County Recorder's Office.

In Witness Whereof, the Declarant hereby has executed the foregoing on the 10th day of Dec, 2015.

Douglas B. Hamblin, Pres.
Signed _____ Signed _____
Hamblin Investment Inc.

Printed

Printed

State Of Utah)

ss:

County Of Weber)

On the 10th day of DECEMBER, 2015 personally appeared before me _____
DOUGLAS B. HAMBLIN and _____ the signers of the within instrument and who duly acknowledged to me that they executed the same.

My Commission Expires:

Kary C. Serrano
Notary Public





W2769048

When Recorded Return To:

Hamblin Investments Inc.
928 West 1800 North, Suite J
Clinton, Utah 84015

EN 2769048 PG 1 OF 11
LEANN H KILTS, WEBER COUNTY RECORDER
10-DEC-15 1140 AM FEE \$,00 DEP JKC
REC FOR: WEBER COUNTY PLANNING

**WEBER COUNTY SURVEY
MONUMENTATION IMPROVEMENT
AGREEMENT**

1. **Parties:** The parties to the Survey Monumentation Improvement Agreement (“the Agreement”) are Hamblin Investments Inc. (“the Developer”) and the Weber County Surveyor (“the County Surveyor”).
2. **Effective Date:** The Effective Date of the Agreement will be the date that the County Surveyor or his Authorized Agent signs this agreement or other dates as specified herein.

RECITAL

WHEREAS, the Developer seeks permission to subdivide property within the area of Weber County, to be known as MALLARD SPRNGS SUBDIVISION (“the Subdivision”), which property is shown and described on the submitted plat maps for review by the County Surveyor, and upon final approval of the Subdivision by the County Commission the final approved subdivision plat shall be made a part hereof and incorporated herein (the “Plat”); and

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

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

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County’s Subdivision Ordinance 106-4-1;

THEREFORE, the Parties hereby agree as follows:

DEVELOPER’S OBLIGATIONS

3. **Improvements:** The Developer will construct and install, at his own expense, those on-site and off-site subdivision monuments or improvements as shown on the final approved subdivision plat and/or as specifically required by the County Surveyor (“the Improvements”). The Developer’s obligation to complete the Improvements will arise upon final plat approval by

the Weber County Commission, will be independent of any obligations of the County contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

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

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

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

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

8. **Compliance with Law:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of recording the final subdivision plat with the County Recorder. When necessary to protect public's health, safety, and general welfare the Developer will be subject to laws, ordinances and regulations that become effective after said recording of the final subdivision plat and before the completion and acceptance of the work.


 Initials

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

COUNTY SURVEYOR'S OBLIGATIONS

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

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

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

13. **Acceptance of Improvements:** The County Surveyor shall accept the Relinquishment and Perpetual Easement (see paragraph 9 above) of any validly accepted Improvement(s) which acceptance will be evidenced by the issuance of the Certificate of Escrow Fund Release and Easement Acceptance letter. The County Surveyors acceptance of the Improvement(s) is conditioned on the presentation by the Developer of adequate documentation that the Improvement(s) are owned by the Developer free of any liens, encumbrances, or other restrictions on the Improvement(s) unacceptable to the County Surveyor in his reasonable judgment. Acceptance of the Relinquishment and Perpetual Easement of any Improvement does not constitute a waiver of the County Surveyor to draw funds from the Escrow fund retainer on account of any defect in or failure of the Improvement(s) that is detected within one year after

the date of the release of Escrow funds. Additionally, acceptance of the Improvements(s) is also based on proper execution of and recording of the Perpetual Easement document.

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

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

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

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

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

17. **Measure of Damages:** The measure of damages for breach of this Agreement will be the reasonable cost of completing the Improvements. For Improvements upon which construction has not begun, the amount of Escrow funds on deposit with the County Surveyor will be prima facie evidence of the minimum cost of construction; however, neither that amount or the amount of the Escrow establishes the maximum amount of the developer's liability which may include but not limited to survey costs, as established by the County Surveyor, to retrace and locate the position of the unfinished Improvements. The County Surveyor will be entitled to complete all Improvements at the time of default regardless of the extent to which Improvement(s) have been installed or whether installation ever commenced. **No partial release**

of funds will be authorized for any partial completion of the Improvements.

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

19. **Indemnification:** The Developer hereby expressly agrees to indemnify and hold the County Surveyor harmless from and against all claims, costs and liability of every kind and nature, for the injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to the Agreement. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

20. **No Waiver:** No Waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to the Agreement signed by both County Surveyor and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

21. **Amendment or Modification:** The parties to the Agreement may amend or modify this Agreement only by written instrument executed by the County Surveyor and by the Developer or his authorized agent. Such amendment or modification will be properly notarized before it may be effective.

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

23. **Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the

Subdivision.

24. **Third Party Rights:** No person or entity who or which is not a party to the Agreement will have any right of action under this Agreement, except that if the County does not exercise its rights within 60 days following knowledge of an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the County to exercise its rights.

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

26. **Time:** For the purpose of computing the Commencement, Abandonment, and Completion Periods, and time periods for County action, such times in which civil disaster, acts of God, or extreme weather conditions occur or exist will not be included if such times prevent the Developer or County from performing his/its obligations under the Agreement.

27. **Severability:** If any part, term or provision of the Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

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

29. **Notice:** Any notice of default required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

If to Developer

Attn: Doug Hamblin
Hamblin Investments Inc.
928 West 1800 North Ste. J
Clinton, Utah 84015

If to County

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

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

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

32. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement will be deemed to be proper only if such action is commenced in District Court for Weber County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

EXHIBIT 'A' - Description of Property Being Subdivided.

BOUNDARY DESCRIPTION

PART OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH LIES N89°10'15"W 947.50 FEET AND N00°49'45"E 33.00 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 28; THENCE N89°10'15"W 60.00 FEET; THENCE N00°49'45"E 234.00 FEET; THENCE N89°10'15"W 180.00 FEET; THENCE N00°49'45"E 75.00 FEET; THENCE N89°10'15"W 134.79 FEET; THENCE N00°14'31"E 482.91 FEET; THENCE N89°31'23"W 258.92 FEET; THENCE N00°28'26"E 502.83 FEET; THENCE S89°11'45"E 1190.64 FEET; THENCE S00°42'51"W 731.85 FEET; THENCE S44°28'34"W 310.78 FEET; THENCE S41°48'03"W 26.06 FEET; THENCE S30°57'02"W 44.77 FEET; THENCE S29°01'41"W 55.44 FEET; THENCE N89°17'09"W 32.58 FEET; THENCE S00°42'51"W 18.57 FEET; THENCE N89°10'15"W 237.54 FEET; THENCE S00°49'45"W 211.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,073,821 SQUARE FEET OR 24.652 ACRES

Douglas B. Hamblin, Pres.
(Type capacity or Name of each signatory)
Hamblin Investment Inc.

INDIVIDUAL ACKNOWLEDGMENT

State of Utah)
 SS
County of Weber)

On the _____ day of _____ A.D. 20__ personally appeared before me _____ the signer(s) of the within instrument, who duly acknowledged to me that he/she executed the same.

Notary Public
Residing at: _____, Utah

CORPORATE ACKNOWLEDGMENT

State of Utah)
 SS
County of Weber)

On the 10th day of December A.D. 2015 personally appeared before me Douglas B. Hamblin duly sworn, did say that he/she is the President of Hamblin Investments Inc, the corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same.

Kary C. Serrano
Notary Public
Residing at: Ogden, Utah



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

8 day of December 2015

Kerry Gibson
Kerry Gibson, Chair

ATTEST: _____

Ricky Hatch
Ricky Hatch, CPA
Weber County Clerk / Auditor

When Recorded return to:

Hamblin Investments Inc.
928 West 1800 North, Suite J
Clinton, Utah 84015

PERPETUAL EASEMENT & QUIT CLAIM DEED

Hamblin Investments Inc., Grantor, hereby, **quit claim, grant, and convey** to the Weber County Surveyor, his successors, assigns, and agents, (collectively the "County Surveyor"), **Grantee**, certain and specific street monuments as shown and identified on the final plat of the Subdivision described below. The recording of this Perpetual Easement & Quit Claim Deed constitutes evidence of the fulfillment of a Weber County Survey Monument Improvement Agreement, excepting the one year warranty period provisions of that agreement, which agreement has been recorded as Entry number _____ in the records of the Weber County Recorder.

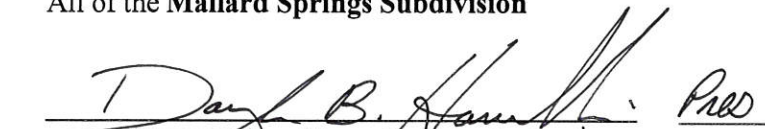
Furthermore, the Grantor, hereby, **grants and conveys** to the County Surveyor a Perpetual Easement and right of way over, under, across, or through the Subdivision as described below, the right to access, inspect, repair, replace, maintain, alter, or adjust said street monuments and county or other government survey monuments that may exist on or near this Subdivision as may be required or necessary by the County Surveyor whether or not the monuments are expressly shown or noted on the Plat.

Furthermore, the Grantor, hereby, **grants and conveys** to the County Surveyor a nonexclusive right and Perpetual Easement on the Subdivision described hereon, reasonable access to enter and access any and all survey monumentation to conduct future surveying activities as may be required or necessary to conduct the business of the County Surveyor. Where utility easements are created on the Subdivision Plat and they can be utilized by the County Surveyor as access to survey monumentation this grant and conveyance is limited to the dedicated easements. In the event that access to survey monumentation cannot be made by use of the dedicated easements the County Surveyor is herein granted reasonable access to conduct the business of the office. When accessing survey monumentation the Grantee will make reasonable efforts to minimize the effect of entry upon the property.

Furthermore, this Perpetual Easement & Quit Claim shall run with the Subdivision and are binding on the Grantor, his successors, heirs, assigns, and agents, in perpetuity. This Perpetual Easement & Quit Claim Deed is not valid without the signature and seal of the County Surveyor or designated agent (Grantee).

DESCRIPTION:

All of the **Mallard Springs Subdivision**



(Type capacity or Name of each signatory)
Hamblin Investment Inc.

INDIVIDUAL ACKNOWLEDGMENT

State of Utah)
 ss
County of Weber)

On the _____ day of _____ A.D. 20____ personally appeared before
me _____ the signer(s) of the within instrument, who duly
acknowledged to me that he/she executed the same.

Notary Public
Residing at: _____, Utah

CORPORATE ACKNOWLEDGMENT

State of Utah)
 ss
County of Weber)

On the 10th day of DECEMBER A.D. 2015 personally appeared before
me DOUGLAS B. HAMBLIN duly sworn, did say that he/she is the _____
of PRESIDENT, the corporation which executed the foregoing instrument,
and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board
of Directors that the said corporation executed the same.

Kary C. Serrano

Notary Public
Residing at: Ogden, Utah

