



W2689530

When Recorded Return To:
~~XXXXX~~ REBOOT, L.L.C.
3333 N. 425 E.
No. Ogden, Utah 84414

E# 2689530 PG 1 OF 12
ERNEST D ROWLEY, WEBER COUNTY RECORDER
06-Jun-14 0333 PM FEE \$32.00 DEP JC
REC FOR: MOUNTAIN VIEW TITLE - OGDEN
ELECTRONICALLY RECORDED

**WEBER COUNTY SURVEY
MONUMENTATION IMPROVEMENT
AGREEMENT**

11-401-0001-thru-0053

1. **Parties:** The parties to the Survey Monumentation Improvement Agreement ("the Agreement") are ~~XXXXX~~ ("the Developer") and the Weber County Surveyor ("the County Surveyor"). REBOOT, L.L.C. a UTAH LIMITED LIABILITY COMPANY *[Signature]*

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

~~PLUSHNET~~

WHEREAS, the Developer seeks permission to subdivide property within the area of Weber County, to be known as PLUSHNET 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 106-4-3 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 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 the time period required by County Ordinance 26-4-3 paragraph 7 which states, "... *the subdivider's surveyor shall install such monuments 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 developer's 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)
(Address)


REBOOT, L.L.C.
3333 N. 425 E.
No. Ogden, Utah 84414

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.

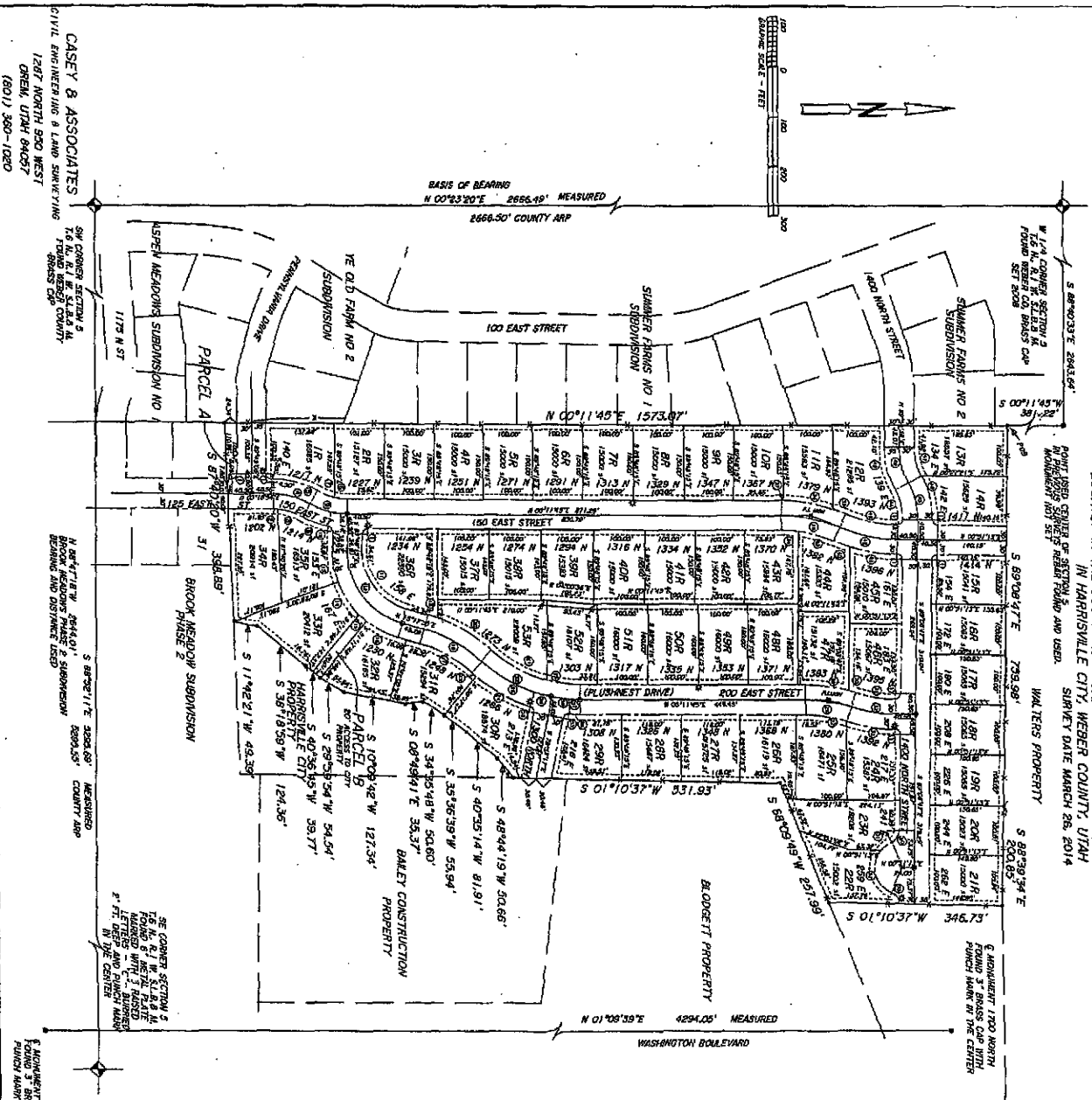
EXHIBIT 'A' - Description of Property Being Subdivided.

(Attach a reduced 8.5" x 11" copy of the submitted plat. Note: This attached plat will be superseded and replaced by the Approved Final Subdivision Plat upon recording of the Plat.)

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN.
BEGINNING AT A POINT SOUTH 88 DEG 40 MIN 33 SEC EAST 2643.64 FEET ALONG THE QUARTER SECTION LINE AND SOUTH 00 DEG 11 MIN 45 SEC WEST 381.22 FEET FROM THE WEST QUARTER CORNER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEG 08 MIN 47 SEC EAST 759.98 FEET; THENCE SOUTH 88 DEG 39 MIN 34 SEC EAST 200.85 FEET; THENCE SOUTH 01 DEG 10 MIN 37 SEC WEST 346.73 FEET; THENCE SOUTH 68 DEG 09 MIN 49 SEC WEST 257.99 FEET; THENCE SOUTH 01 DEG 10 MIN 37 SEC WEST 531.93 FEET; THENCE SOUTH 48 DEG 44 MIN 19 SEC WEST 50.66 FEET; THENCE SOUTH 40 DEG 35 SEC 14 MIN WEST 81.91 FEET; THENCE SOUTH 35 DEG 36 MIN 39 SEC WEST 55.94 FEET; THENCE SOUTH 34 DEG 35 MIN 48 SEC WEST 50.60 FEET; THENCE SOUTH 08 DEG 49 MIN 41 SEC EAST 35.37 FEET; THENCE SOUTH 10 DEG 09 MIN 42 SEC WEST 127.34 FEET; THENCE SOUTH 29 DEG 59 MIN 54 SEC WEST 54.54 FEET; THENCE SOUTH 40 DEG 36 MIN 45 SEC WEST 39.77 FEET; THENCE SOUTH 38 DEG 18 MIN 59 SEC WEST 124.36 FEET; THENCE SOUTH 11 DEG 42 MIN 21 SEC WEST 49.39 FEET TO THE NORTH BOUNDARY LINE OF BROOK MEADOW SUBDIVISION PHASE 2; THENCE SOUTH 87 DEG 40 MIN 20 SEC WEST 398.89 FEET ALONG SAID NORTH BOUNDARY LINE TO THE NORTHWEST CORNER OF SAID SUBDIVISION; THENCE NORTH 00 DEG 11 MIN 45 SEC EAST 1573.07 FEET ALONG THE EAST BOUNDARY LINES OF YE OLD FARM NO 2 SUBDIVISION AND SUMMER FARMS NO 1 AND 2 SUBDIVISION TO THE POINT OF BEGINNING.
CONTAINING 25.413 ACRES AND 53 LOTS.

38.5L

NOTE: ANY PART OF THIS SURVEY SET IN THIS AREA IS LOCATED FROM THE SURVEY RECORDS OF THE PUBLIC RECORDS OFFICE OF THE STATE OF UTAH.



PUSHNEST SUBDIVISION
 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 5, T.6 N., R.1 W., S.L.B. & M.
 IN HARRISVILLE CITY, WEBER COUNTY, UTAH
 SURVEY DATE MARCH 28, 2014

CASEY & ASSOCIATES
 CIVIL ENGINEERING & LAND SURVEYING
 1287 NORTH 530 WEST
 OREM, UTAH 84407
 (801) 360-1020

SURVEYOR'S CERTIFICATE

I, Jeffery D. Hensley, being duly sworn, am a Registered Professional Land Surveyor in the State of Utah in accordance with Title 56, Chapter 22, Professional Land Surveyors, of the Utah Code. I have personally supervised the survey and the preparation of this plat and I have verified the measurements, and have placed my name and seal on this plat in accordance with the provisions of the Utah Code. I have also verified the accuracy of the measurements and the location of the monuments shown on this plat. I have also verified the accuracy of the measurements and the location of the monuments shown on this plat. I have also verified the accuracy of the measurements and the location of the monuments shown on this plat.

BOUNDARY DESCRIPTION 5/23/2014

345602
 Utah License Number

NARRATIVE

Project in preparation for subdivision. The original survey of this property was made by John Hensley on 10/28/93. Since that time several subdivisions have been completed along the north and east boundaries of the Hensley property. A copy of the original survey plat is on file in the Surveyor's Office. The original survey plat is on file in the Surveyor's Office. The original survey plat is on file in the Surveyor's Office.

LEGEND

- 10' P.U.S. D.E. (PUBLIC UTILITY & DRAINAGE EASEMENT)
- STREET LIGHT
- SURVEY MONUMENTS
- SET BOUNDARY WITH 88 BAR 2" LONG

WEBER COUNTY RECORDER
 Jeffery D. Hensley
 2014

Ember A. Bohlert
 COUNTY CLERK

SHEET 1 OF 2

75.83

The foregoing being hereby approved at a regular meeting of the Harrisville City Commission on

5 day of June 2014

Bruce Richins
Bruce Richins, Mayor

ATTEST: Jennie Knight