



ENT 66914:2015 PG 1 of 9
JEFFERY SMITH
UTAH COUNTY RECORDER
2015 Jul 27 11:41 am FEE 37.00 BY CLS
RECORDED FOR JAUSSI, HAL

WHEN RECORDED, RETURN TO:
Mapleton City Recorder
Mapleton City
125 West Community Center Way
Mapleton, UT 84664

**FIRST AMENDMENT TO THE
BOUNDARY ADJUSTMENT AND DEVELOPMENT AGREEMENT
HARMONY RIDGE DEVELOPMENT PROJECT**

THIS FIRST AMENDMENT TO THE BOUNDARY ADJUSTMENT AND DEVELOPMENT AGREEMENT (“1st Amendment”), is made and entered into as of this 15th day of April, 2015, by and between The Ensign-Bickford Company, a Connecticut corporation (“EBCo”), and Mapleton City, a Utah municipal corporation (the “City”). EBCo and the City are sometimes referred to herein individually as a “Party” and collectively as the “Parties.” All Code references, unless otherwise indicated, are to the Mapleton City Code (the “City Code”)

RECITALS

A. Capitalized terms used in this 1st Amendment which are not otherwise defined herein shall have the meanings assigned to them in the Development Agreement, as defined in Recital B. Capitalized terms expressly defined in any section of this 1st Amendment shall have the meaning set forth therein.

B. Pursuant to Title 18, Chapter 84, Section 400 of the City Code, EBCo and the City entered into that certain Boundary Adjustment and Development Agreement dated June 7, 2011 (the “Development Agreement”), which sets forth the terms, conditions, procedures and time parameters to be applied in connection with the development of the Harmony Ridge Development Project (the “Harmony Ridge Project:”). The Harmony Ridge Project is to be developed on EBCo’s property situated immediately adjacent to the southern boundary of the City, north of U.S. Highway 6 and east of U.S. Highway 89, as described the Development Agreement, and more particularly described in EXHIBIT “A” hereto (the “Property”).

C. Due to events which have arisen since the execution of the Development Agreement, and the Parties having otherwise renegotiated certain terms thereof, the Parties are now desirous of amending certain provisions of the Development Agreement as set forth herein and subject to the terms hereof.

NOW, THEREFORE, to these ends, and in consideration of the mutual covenants contained herein and the mutual benefits to be derived herefrom, the Parties agree as follows:

TERMS

I. AMENDMENTS. By the execution and delivery hereof, the Parties agree to amend the Development Agreement as follows:

I. Amendment to Section 5.1.

Section 5.1 of the Development Agreement is revised and restated in its entirety to read as follows:

5.1. Water Rights. As a condition to the City's agreement to adjust its municipal boundaries to include the Property within the City and in satisfaction of the water rights conveyance requirements of Section 17.24.080 of the City Code, EBCo shall be obligated to convey to the City title to water rights sufficient to serve the Property upon the development of the Harmony Ridge Project. Section 5.1.1 (2) and (3) below reference certain East Bench Canal Company shares of water stock and certain Strawberry Water rights administered through the Mapleton Irrigation District, as potentially being conveyed and dedicated to the City in satisfaction of the referenced requirements of the City Code. The Parties hereby acknowledge and agree that in the event EBCo is unable to acquire said water shares or Strawberry Water rights as provided herein, other equivalent water shares and/or water rights, acceptable to the City, may be substituted in their place, subject to and in satisfaction of the water right conveyance requirements of the City Code. Subject to the terms and provisions of this Agreement, EBCo hereby agrees to transfer, assign and dedicate to the City, and the City hereby agrees to accept the transfer, assignment and dedication of water rights, as follows:

II. Amendment to Section 5.2.4. (2)(B).

Subsection (B) of the Development Agreement is revised and restated in its entirety to read as follows:

(B) Secondary Irrigation Water Storage. The Parties hereby acknowledge and agree that initially the entirety of the Property within the Harmony Ridge Project shall be irrigated using City culinary water from the Crowl Canyon Reservoir, which shall continue until such time as Central Utah Water Conservancy District ("CUWCD") completes the construction of its secondary irrigation water storage reservoir (the "CUWCD Secondary Irrigation Reservoir"), which reservoir is being constructed pursuant to a separate agreement for such by and among the City, EBCo and CUWCD. At such time as the CUWCD Secondary Irrigation Reservoir is completed and available for service, secondary irrigation water service will be provided by the City to the Secondary Irrigation Service Area through the secondary irrigation water system improvements to be constructed as set forth in Section 5.2.4(1) above.

(i) Notwithstanding the foregoing, in the event: (i) storage capacity in the CUWCD Secondary Irrigation Reservoir is, for any reason, not made available within five (5) years from the date of this 1st Amendment for use by the City sufficient to serve the entirety of the Secondary Irrigation Service Area, and (ii) the capacity in the Crowl Canyon Reservoir is not sufficient, as determined according to standard engineering practices, to enable the City to continue to provide water for irrigation use within the Secondary Irrigation Service Area, then EBCo shall be obligated to construct, at its sole expense, within the Property at a location satisfactory to EBCo and the City, a secondary irrigation water storage reservoir ("*EBCo Secondary Irrigation Reservoir*"), having a capacity sufficient to satisfy all secondary irrigation water requirements within the Secondary Irrigation Service Area, as set forth in the "Water Demand Forecasting Table," attached as EXHIBIT "J-3" hereto and incorporated by reference herein.

(ii) The five year period provided for in Subsection (B)(i) immediately above may be extended in good faith upon the mutual agreement of the Parties.

(iii) The EBCo Secondary Irrigation Reservoir, upon completion of construction, shall be conveyed by appropriate instrument of conveyance to the City and thereafter be dedicated by the City for service to the entirety of the Secondary Irrigation Service Area on a first priority basis.

III. Amendment to Section 5.5.

Subsections 5.5.1(1) and 5.5.1(2) are deleted in their entirety.

Subsection 5.5.1. of the Development Agreement is revised and restated in its entirety to read as follows:

5.5.1. Compensation for Upsized Capacity of Offsite Improvements. The Offsite Culinary Water Main Line and the Offsite Sewer Trunk Line Improvements to be constructed by EBCo to serve the Harmony Ridge Project (collectively, the "Offsite Improvements"), are being upsized with additional capacity, and are being located, by requirement of the City, so as to enable the City to provide service to future development projects on lands serviceable by the Offsite Improvements in addition to the Harmony Ridge Project (the "Benefitted Lands"). Notwithstanding the provisions of Section 8 herein pertaining to assignment of EBCo's interests herein, in recognition of the upfront expenditure by EBCo of the additional cost of upsizing the Offsite Improvements for which EBCo receives no benefit (the "Upsize Cost"), the City agrees that EBCo, and only EBCo, shall be entitled to a credit against the Boundary Adjustment Fee, as defined in, and which EBCo is obligated to pay to the City pursuant to, the provisions of Section 6.2 herein (the "Boundary Adjustment Fee Credit"), subject to and in conformance with the following:

(1) Application of the Credit. The Boundary Adjustment Fee Credit shall be applied against the first 600 ERUs developed.

(2) Determination of the Upsize Cost.

(A) The Benefitted Lands are identified in Exhibits "J" and "M" hereto. The Parties hereby acknowledge that said exhibits identify projected Benefitted Lands and ERUs, which may change as actual development of said lands occurs.

(B) The Upsize Cost shall be equal to the pro-rata share (calculated based upon of the total front footage and capacity of the Offsite Improvements not dedicated to the Harmony Ridge Project and Mapleton Village Project (as referenced in Exhibits J and M, and available for use in serving the Benefitted Lands), of the actual total cost incurred by EBCo in the design, construction, and installation of the Offsite Improvements, including all related

fees and charges, and excluding interest and carrying costs. The Upsize Cost as of the date hereof is estimated, for purpose of illustration, to be \$2,600,000, which amount is subject to change as the actual costs are determined.

(C) Upon completion of the construction and installation of the Offsite Improvements, EBCo shall submit to the City an itemized statement, with accompanying evidence, of the actual total costs incurred by EBCo, including an itemized breakdown of the actual Upsize Cost.

(3) Determination of the Boundary Adjustment Fee Credit.

(A) The Boundary Adjustment Fee Credit shall be calculated by dividing the actual Upsize Cost by 600 ERUs, representing the number of ERUs as to which said credit shall be applied as provided in Section 5.5.1(1) herein. By way of example, based upon a current estimated Upsize Cost of \$2,600,000, the Boundary Adjustment Fee Credit shall be \$4,333.33, calculated as follows:

$$\$2,600,000 \div 600 \text{ ERUs} = \$4,333.33 \text{ credit per ERU}$$

(B) The Boundary Adjustment Fee Credit per ERU shall be subtracted from the Boundary Adjustment Fee per ERU due as set forth in Section 6.2 herein, to determine the net Boundary Adjustment Fee due and payable per ERU. Boundary Adjustment Fee Credit shall be given until EBCo has been compensated for the full amount of the Upsize Cost.

(C) The full amount of the Boundary Adjustment Fee shall be due and payable in full for all ERUs developed within the Harmony Ridge Project beyond 600 ERUs.

(D) Notwithstanding the foregoing, in the event the actual Upsize Cost exceeds \$3,600,000, the above methodology for determining the amount of the Boundary Adjustment Fee Credit shall be subject to review by the City Council and possible adjustment as mutually agreed upon by the City and EBCo.

(4) Boundary Adjustment Fee revenues that the City would otherwise have received but for the application of the Boundary Adjustment Fee Credit as provided for herein, will be paid to the City by the developers of the Benefitted Lands through the collection of Impact Fees and/or other applicable fees and charges required under the City Code to be paid in connection with the development of the Benefitted Lands.

Subsection 5.5.2 is deleted in its entirety.

IV. Amendment to Section 6.2.

Subsection 6.2. of the Development Agreement is amended by adding a new Section 6.2.5 as follows:

6.2.5. Notwithstanding anything herein to the contrary, Boundary Adjustment Fees due hereunder, and EBCo's obligation to pay the same, shall be expressly subject to the provisions of Section 5.5.1. herein which provides for a Boundary Adjustment Fee Credit in favor of EBCo to be applied against the first 600 ERUs to be developed within the Harmony Ridge Project. The Boundary Adjustment Fee Credit shall be applied and payments made by the City to EBCo in conformance with the following:

(1) The amount of the Boundary Adjustment Fee Credit shall be subtracted from the Boundary Adjustment Fee due, and the difference shall be the net amount be due and payable by EBCo to the City under this Section. By way of example, if the amount of the Boundary Adjustment Fee due is \$6,000 per ERU, and the Boundary Adjustment Fee Credit, as determined under Section 5.5.1(3), is \$4,333.33 per ERU, the amount due and payable by EBCo to the City is \$1,666.67 per ERU, calculated as follows:

$$\$6,000 - \$4,333.33 = \$1,666.67$$

(2) In the event the Harmony Ridge Project is developed by a successor-in-interest to EBCo as provided for in Section 8 herein (a "Successor Developer"), and EBCo shall, by agreement with the Successor Developer, remain responsible at its sole expense for the design, construction and installation of the Offsite Improvements, then the Successor Developer shall pay and the City shall collect the full amount of the Boundary Adjustment Fee then due for all ERUs beginning with the first ERU developed, and the City shall upon receipt of each such Boundary Adjustment Fee payment deduct the applicable Boundary Adjustment Fee Credit and remit payment of said credit amount to EBCo. Boundary Adjustment Fee Credits collected and due and owing pursuant hereto shall be remitted by the City to EBCo on a quarterly basis. This procedure shall continue until the full amount of Boundary Adjustment Fee Credits due and owing to EBCo has been paid in full.

2. RECORDATION; AGREEMENT TO RUN WITH THE LAND. This 1st Amendment shall be recorded against the Property, and the Development Agreement and this 1st Amendment and all covenants, rights, terms, conditions and obligations contained therein and herein pertaining to the development of the Harmony Ridge Project shall run with the land and shall inure to the benefit of and be binding upon EBCo and all successors-in-interest of EBCo in the ownership of the Property and development of the Harmony Ridge Project thereon; except that all covenants, rights, terms, conditions and obligations contained herein pertaining to the development of the Harmony Ridge Project shall cease to burden and run with that portion of the Property that is subdivided into individual lots pursuant to the applicable subdivision ordinances of the City Code and each said lot shall be released herefrom at the time of recordation of the subdivision plat pursuant to which such lot is created.

3. FORCE AND EFFECT. Except as specifically modified by this 1st Amendment, all of the terms and conditions set forth in the Development Agreement shall remain unchanged and in full force and effect.

4. **CONFLICTING TERMS.** In the event of a conflict between the provisions of the Development Agreement and this 1st Amendment, the provisions of this 1st Amendment shall govern.

5. **COUNTERPART SIGNATURES.** This 1st Amendment may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same original.

IN WITNESS WHEREOF, the Parties have executed this 1st Amendment as of the day and year first above written.

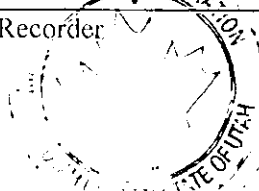
THE ENSIGN-BICKEORD COMPANY

By: [Signature]
Its: PRESIDENT

MAPLETON CITY

By: [Signature]
Mayor

ATTEST:

[Signature]
City Recorder


APPROVAL AS TO FORM:

N/A
City Attorney

ACKNOWLEDGMENTS

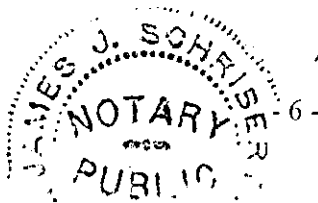
STATE OF CONNECTICUT)

County of Hartford)
:SS.

On the 31st day of March, 2015, personally appeared before me Scott Deakin, known to me, or proved to me on the basis of satisfactory evidence, to be the persons who executed the within instrument as the President, of the corporation therein named, who duly acknowledged to me that the corporation executed the same.

[Signature]
NOTARY PUBLIC

{00670020-1 }



JAMES J. SCHRIBERT
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2017

Exhibit "A"
Legal Description

Parcel #: 27:036:0016

COM N 1346.2 FT & W 3.54 FT FR SW COR. SEC. 26, T8S, R3E, SLB&M.; N 0 DEG 9' 3" W 987.63 FT; S 89 DEG 59' 54" E 73.49 FT; N 1 DEG 29' 59" E 48 FT; S 88 DEG 30' 0" E 1212.81 FT; S 0 DEG 10' 7" W 984.32 FT; S 89 DEG 7' 36" W 1281.8 FT TO BEG. AREA 29.710 AC.

Parcel #: 27:036:0017

COM AT SW COR. SEC. 26, T8S, R3E, SLB&M.; N 0 DEG 8' 57" W 1346.21 FT; N 89 DEG 7' 36" E 1281.76 FT; S 0 DEG 10' 7" W 112.9 FT; N 89 DEG 29' 9" E 15 FT; S 17 DEG 29' 47" E 245.02 FT; S 54 DEG 32' 32" W 91.14 FT; S 89 DEG 57' 45" W 15.27 FT; S 0 DEG 10' 7" W 948.24 FT; S 89 DEG 10' 58" W 1274.27 FT TO BEG. AREA 39.833 AC.

Parcel #: 27:037:0094

COM AT S 1/4 COR. SEC. 27, T8S, R3E, SLB&M.; N 0 DEG 11' 9" W 1345.66 FT; N 89 DEG 58' 0" E 1325.41 FT; S 0 DEG 10' 5" E 24.28 FT; S 0 DEG 10' 53" E 1333.79 FT; N 89 DEG 29' 50" W 1325.39 FT TO BEG. AREA 41.108 AC.

Parcel #: 27:037:0096

COM AT SE COR. SEC. 27, T8S, R3E, SLB&M.; N 89 DEG 29' 51" W 1324.62 FT; N 0 DEG 10' 53" W 1333.79 FT; N 89 DEG 58' 3" E 1325.46 FT; S 0 DEG 8' 31" E 1346.16 FT TO BEG. AREA 40.736 AC.

Parcel #: 27:056:0009

COM N 89 DEG 56' 58" E 2687.84 FT & S 128 FT FR NW COR. SEC. 34, T8S, R3E, SLB&M.; N 87 DEG 33' 0" W 362.5 FT; ALONG A CURVE TO L (CHORD BEARS: S 26 DEG 4' 0" E 772 FT, RADIUS = 2662.8 FT); N 86 DEG 3' 0" E 23 FT; N 676.4 FT TO BEG. AREA 3.331 AC.

Parcel #: 27:056:0045

COM N .17 FT & W 922.12 FT FR NE COR. SEC. 34, T8S, R3E, SLB&M.; E 924.05 FT; S 1320 FT; W 1320 FT; N 217.85 FT; ALONG A CURVE TO L (CHORD BEARS: S 83 DEG 14' 50" E 86.96 FT, RADIUS = 797 FT); ALONG A CURVE TO L (CHORD BEARS: N 82 DEG 4' 26" E 138.97 FT, RADIUS = 347 FT); N 70 DEG 31' 16" E 12.86 FT; ALONG A CURVE TO L (CHORD BEARS: N 41 DEG 33' 24" E 336.09 FT, RADIUS = 347 FT); S 77 DEG 24' 32" E 20 FT; ALONG A CURVE TO L (CHORD BEARS: N 1 DEG 5' 7" W 173.54 FT, RADIUS = 367 FT); N 14 DEG 45' 42" W 311.55 FT; ALONG A CURVE TO R (CHORD BEARS: N 4 DEG 15' 40" W 262.41 FT, RADIUS = 719.92 FT); N 39 DEG 54' 42" W 6.79 FT; N 50 DEG 5' 16" E 7.16 FT; ALONG A CURVE TO R (CHORD BEARS: N 10 DEG 53' 55" E 97.28 FT, RADIUS = 719.92 FT) TO BEG. AREA 29.558 AC.

Parcel #: 27:056:0046

COM S 412.61 FT & E 8.1 FT FR N 1/4 COR. SEC. 34, T8S, R3E, SLB&M.; E 888.57 FT; S 16 DEG 13' 0" W 93.61 FT; ALONG A CURVE TO R (CHORD BEARS: S 39 DEG 32' 47" W 41.37 FT, RADIUS = 52.57 FT); S 62 DEG 44' 32" W 10.09 FT; ALONG A CURVE TO R (CHORD BEARS: S 70 DEG 24' 45" W 166.65 FT, RADIUS = 767.15 FT); ALONG A CURVE TO L (CHORD BEARS: S 44 DEG 29' 14" W 162.58 FT, RADIUS = 778.48 FT); ALONG A CURVE TO L (CHORD BEARS: N 75 DEG 19' 17" E 327.46 FT, RADIUS = 797.3 FT); S 27 DEG 17' 11" E 40.01 FT; ALONG A CURVE TO L (CHORD BEARS: S 56 DEG 25' 11" W 131.55 FT, RADIUS = 600 FT); S 36 DEG 54' 22" E 170.02 FT; ALONG A CURVE TO L (CHORD BEARS: S 48 DEG 34' 1" E 241.33 FT, RADIUS = 597 FT); ALONG A CURVE TO L (CHORD BEARS: S 70 DEG 2' 14" E 271.58 FT, RADIUS = 797 FT); S 219.04 FT; E 1320 FT; S 2640 FT; W 435 FT; N 34 DEG 55' 30" W 2767 FT; S 24 DEG 38' 0" W 172 FT; N 32 DEG 25' 16" W 1024.34 FT; N 594 FT TO BEG. AREA 104.032 AC.

{00670020-1}

Parcel #: 27:056:0047

COM S 389 FT FR N 1/4 COR. SEC. 34, T8S, R3E, SLB&M.; N 89 DEG 58' 0" E 903.69 FT; N 16 DEG 13' 0" E 395.3 FT; N 89 DEG 29' 50" W 1014.13 FT; S 389 FT TO BEG. AREA 8.460 AC.

Parcel#: 27:057:0001

COM N 398.96 FT & E 28.85 FT FR SW COR. SEC. 35, T8S, R3E, SLB&M.; N 4 DEG 8' 12" E 927.68 FT; S 89 DEG 53' 15" E 1245.24 FT; S 2 DEG 34' 12" W 1331.71 FT; N 89 DEG 36' 57" W 1029.32 FT; N 29 DEG 6' 56" W 458.6 FT TO BEG. AREA 37.348 AC.

Parcel #: 27:057:0002

COM AT W 1/4 COR. SEC. 35, T8S, R3E, SLB&M.; N 1 DEG 48' 53" W 1320.96 FT; N 89 DEG 29' 43" E 1394.76 FT; S 17 DEG 31' 5" W 2237.06 FT; S 42 DEG 31' 8" E 696.23 FT; S 2 DEG 34' 12" W 12.8 FT; N 89 DEG 53' 15" W 1245.24 FT; N 4 DEG 8' 12" E 1327.68 FT TO BEG. AREA 62.756 AC.

Parcel #: 27:057:0003

COM AT NW COR. SEC. 35, T8S, R3E, SLB&M.; S 1 DEG 48' 53" E 1320.96 FT; N 89 DEG 29' 43" E 1241.96 FT; N 0 DEG 23' 34" W 1327.56 FT; S 89 DEG 10' 58" W 1274.77 FT TO BEG. AREA 38.251 AC.

Parcel #: 27:057:0010

COM S 1341.84 FT & W 836.23 FT FR N 1/4 COR. SEC. 35, T8S, R3E, SLB&M.; N 89 DEG 30' 31" E 812.9 FT; S 0 DEG 59' 38" W 1334.58 FT; S 89 DEG 48' 23" W 1208.9 FT; N 0 DEG 26' 43" W 3.42 FT; N 17 DEG 31' 5" E 1392.66 FT TO BEG. AREA 30.904 AC.