



"W2528049"

E# 2528049 PG 1 OF 8
ERNEST D ROWLEY, WEBER COUNTY RECORDER
23-MAY-11 402 PM FEE \$1.00 DEP NHP
REC FOR: WEBER COUNTY

WEBER COUNTY

SURVEY MONUMENTATION IMPROVEMENT AGREEMENT

1. **Parties:** The parties to the Survey Monumentation Improvement Agreement ("the Agreement") are Celtic Bank, Reese S. Howell, Jr., CEO ("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.

RECITALS

WHEREAS, the Developer seeks permission to subdivide property within the unincorporated area of Weber County, to be known as EDGEWATER BEACH RESORT PHASE 1: ("the Subdivision"), which property is shown and described on the submitted plat maps for review by the County Surveyor, said plat being made a part hereof and incorporated herein by this reference and upon final approval of the Subdivision by the County Commission said submitted plat shall be replaced by said final plat and 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 limit the harmful effects of substandard subdivisions, including the eventual loss or obliteration of public and private property lines as dedicated and/or established by the recording of the approved 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, 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 Title 26-4-1 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 26-4-3 paragraph 7 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 only, to the County Surveyor equal to the estimated

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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 Easement Acceptance letter in accordance with paragraph 13 below.
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.
9. **Relinquishment and Granting of a Perpetual Easement:** By signing this Agreement the Developer quit claims, relinquishes, conveys or grants any and all claim(s) of ownership, control, or lien ("the Relinquishment") to the County Surveyor of the Improvements as required herein. The Relinquishment shall be effective upon acceptance of the Improvements by the County Surveyor in accordance with the procedure described in Paragraph 13 below. Furthermore, the Developer hereby grants to the County Surveyor, his successors, assigns, agents, contractors, and employees, a nonexclusive right and perpetual easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements and other survey monumentation which may be on the Property. Furthermore, the perpetual easement shall include future surveying activities of the County Surveyor, his successors, assigns, agents, contractors, and employees.


Initials

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) less a 10% Escrow deposit retainer to the Developer or person that deposited the funds with the County Surveyor by providing the Developer the Certificate of Escrow Fund Release and Easement Acceptance.
12. **Notice of Defect:** The County Surveyor will provide timely notice to the Developer 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 as granted in 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 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.
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 to be used at the discretion of the County Surveyor.
16. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Construction Period:
- 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;
 - Developer's failure to complete construction of the Improvements within one year of the installation of the asphalt as noted in paragraph 7 above;
 - Developer's failure to cure the defective construction of any Improvement within the applicable cure period;
 - 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;
 - 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 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 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 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 development has taken place in the Subdivision or whether development 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. 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 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 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) _____ REESE HOWELL / Celtic Bank
 (Address) _____ 240 E. 400 S.
 _____ SALT LAKE CITY, UT
 _____ 84111

If to County _____ **Attn: County Surveyor**
 _____ **Weber Center**
 _____ **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 copy of the submitted plat. Note: This attached plat will be superceded and replaced as stated in this agreement in the first Recital.)

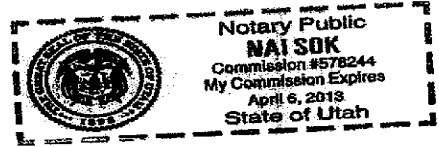
Dated this 6th day of May, 2011.

Rene Howell
Developer by and capacity:

INDIVIDUAL ACKNOWLEDGMENT

State of Utah)

County of ~~Weber~~ ^{SS} Salt Lake



On the 6th day of May A.D. 2011 personally appeared before me Rene S. Howell, Jr. the signer(s) of the within instrument, who duly acknowledged to me that he/she executed the same.

[Signature]
Notary Public
Residing at: Salt Lake city Utah

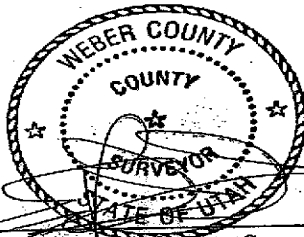
CORPORATE ACKNOWLEDGMENT

State of Utah)

County of Weber) ^{SS}

On the _____ day of _____ A.D. 20____ personally appeared before me _____ duly sworn, did say that he/she is the _____ of _____, 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.

Notary Public
Residing at: _____, Utah



Signature and Seal of the Weber County Surveyor or Authorized Agent

5-17-2001
Date

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

3rd day of May 2011

Jan M Zogmaister
Jan Zogmaister, Chair

ATTEST:

Ricky D Hatch
Ricky D Hatch, CPA
Weber County Clerk / Auditor