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W2369855

C2008-198
**ENCROACHMENT AGREEMENT
 BY AND BETWEEN
 BEN TOONE AND WEBER COUNTY**

EB 2369855 PG 1 OF 4
 ERNEST D ROWLEY, WEBER COUNTY RECORDER
 14-OCT-08 116 PM FEE \$.00 DEP LF
 REC FOR: WEBER COUNTY PLANNING

This Agreement is made and entered into this 14 day of October, 2008, by and between Weber County, a body politic, corporate and political subdivision of the State of Utah, hereinafter referred to as "County," and Ben Toone, owner of the Eden General Store, hereinafter referred to as "Toone."

WITNESSETH

d.s.

WHEREAS, Toone's property, located in the upper valley of Weber County, which property is more fully described in Exhibit "A," with certain parts of that property encroaching upon a 99 foot county road right-of-way, which encroachment is more fully described in Exhibit "B;" and

WHEREAS, County has determined that the level of traffic at the present time does not require the expansion of the county road to the full dedicated right-of-way; and

WHEREAS, Toone expanded his facilities into the dedicated right-of-way without permission or approval of the County; and

WHEREAS, County is willing to allow Toone's encroachment upon the County right-of-way until such time as the County determines it is in the interest of the public health, safety and welfare to terminate the encroachment and expand the roadway;

NOW THEREFORE, Toone and County agree as follows:

1. County hereby agrees to allow Toone's building and facilities to encroach upon county right-of-way, which area of encroachment is described in Exhibit "B," which is attached hereto and incorporated herein by reference, the Encroachment Area.
2. Toone may continue to encroach upon the County's right-of-way until such time as the County determines that it is in the best interest of the public health, safety and welfare to terminate such encroachment. Upon a decision to terminate the encroachment, the County shall give 180 days written notice of the termination of this encroachment agreement. Thereafter, Toone shall remove any and all encroaching facilities including buildings and appurtenances thereto. The term of this agreement shall not exceed thirty (30) years.
3. Upon removal of Toone's facilities, Toone shall restore the property in the right-of-way to its state prior to Toone's improvements on the property.

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- 4. Should Toone fail to remove all encroachments within the 180 day period after Notice of Termination, County shall have the right to enter the property and remove any encroaching facilities and bill Toone for the reasonable costs thereof. Further, should legal action be necessary to effect the removal, Toone shall pay all costs related thereto including reasonable attorney's fees.
- 5. Miscellaneous:
 - A. Amendments. This Agreement may only be amended by a written amendment approved and signed by all Parties to this Agreement.
 - B. Authorization. The individuals signing this Agreement on behalf of the Parties confirm that they are the duly authorized representatives of the Parties and are lawfully enabled to sign this Agreement on behalf of the Parties.
 - C. Entire Agreement. This Agreement shall constitute the entire Agreement by and among the Parties.
 - D. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the United States and the State of Utah.
 - E. Successors and Assigns. This Agreement shall be binding on any successor, assignee or purchaser to the property described in Exhibit "A" and this Agreement shall be recorded to give notice thereof.

Dated this 14 day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By Jan M. Zogmaister
Jan M. Zogmaister, Chair

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

ATTEST:

Alan D. McEwan
Alan D. McEwan, CPA
Weber County Clerk/Auditor

Ben Toone
Ben Toone

EXHIBIT "A"

PROPERTY DESCRIPTION

A PART OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT THE SOUTHWEST CORNER OF THE E.P. SUBDIVISION; RUNNING THENCE NORTH 88°30' WEST 185.86 FEET; THENCE NORTH 1°30' EAST 4.52 CHAINS; THENCE SOUTH 88°30' EAST 185.86 FEET TO THE NORTHWEST CORNER OF E.P. SUBDIVISION; THENCE SOUTH 01°30'00" WEST 293.93 FEET TO BEGINNING.

22-051-0034 = A.

EXHIBIT "B"

ENCROACHMENT DESCRIPTION

PART OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, BETTER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT FALLS SOUTH 0°18' 55" WEST ALONG THE SECTION LINE 491.51 FEET AND SOUTH 89°41' 05" EAST 161.47 FEET FROM THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 7 NORTH, RANGE 1 EAST, SAID POINT OF BEGINNING FALLS ON THE EAST RIGHT OF WAY LINE OF A 99 FOOT RIGHT OF WAY AS DESCRIBED IN BOOK C PAGE 390 OF THE WEBER COUNTY CLERK'S RECORDS AND DEPICTED GRAPHICALLY WITHIN THE WEBER COUNTY RECORDER/SURVEYOR'S OFFICE AS INDEX NUMBER 000148 OF THE COUNTY ROAD PLAT FILINGS, AND RUNNING:

THENCE: SOUTH 2°15'12" WEST ALONG SAID EAST LINE 70.21 FEET TO THE NORTH RIGHT OF WAY LINE OF 2200 NORTH STREET ALSO BEING A 99 FOOT RIGHT OF WAY AS DESCRIBED IN SAID BOOK C PAGE 390,

THENCE SOUTH 88°07'44" EAST ALONG SAID NORTH LINE 58.17 FEET, THENCE RUNNING ALONG THE OUTSIDE JOGS OF AN EXISTING BUILDING AT AN APPROXIMATE 1.5 FOOT OFFSET SOUTH AND WEST OF THE SAID JOGS THE FOLLOWING 9 COURSES:

THENCE SOUTH 1°52'16" WEST 2.00 FEET,
THENCE NORTH 88°07'44" WEST 16.22 FEET,
THENCE SOUTH 1°52'16" WEST 6.00 FEET,
THENCE NORTH 88°07'44" WEST 39.29 FEET,
THENCE NORTH 41°54'07" WEST 13.22 FEET,
THENCE NORTH 2°15'12" EAST 26.98 FEET,
THENCE NORTH 87°44'48" WEST 12.50 FEET,
THENCE NORTH 2°15'12" EAST 41.73 FEET,
THENCE SOUTH 87°44'48" EAST 19.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.03 ACRES.

22-051-0034=A

Surveyor:

1. Property Corners are required around the Subdivision Boundary
 - a. Property corners are shown and will be set prior to recording.
2. Date of Survey Noted in the Heading
 - a. A Month and Year have been shown on the Heading.
3. Label Adjoining property owners
 - a. Adjoining property owners have been shown.
4. Label any Part or portion of the subdivision to be reserved (WCC-106-1-5(a)(9)).
 - a. Convertible space has been shown and labeled.
5. Correct the Owners Dedication to include appropriate portions of WCC 106-7-1.
 - a. The Owners dedication has been modified and should address the requested information.
6. Show buildings within 30' of Exterior Boundaries.
 - a. Only one building falls within this buffer area and is shown along the East boundary
7. Location of Withdrawable lands
 - a. None
8. Location of Leased Lands
 - a. None on record.
9. Show Any Encroachments by or on any portion of the project.
 - a. Encroachments into the County right of ways have been shown and labeled on the drawing.
10. Update the County Commissioner Approval Block
 - a. This has been corrected.
11. Linear dimensions and location of measurements to the exterior boundaries of the buildings.
 - a. The location and dimensions have been added to the plat.
12. Line Table for Common Areas
 - a. Line tables have been added as needed for the Common Area.
13. Show the Angles or Bearings of the Building Lines.
 - a. All the building dimensions have had bearings added to them
14. What are the dashed lines at the Bottom of Page 3
 - a. A Sidewalk
 - b. Concrete mow strip with fence line
15. Verify Dimensions on Elevation for Unit 2
 - a. Elevations have been adjusted coincide with the dimensions.
16. Text is hard to read on Unit 4 Plan View
 - a. Text has been moved for clarity
17. Verify Dimensions on Elevation for Unit 4
 - a. Elevations have been adjusted coincide with the dimensions.

Planning:

1. Please provide a vicinity map on page one of the plat.
 - a. A Vicinity map has been added to the plan set.
2. Please remove the wording "tentative final plat". Currently the plat is in the preliminary stage and has not been approved to move forward for final plating.
 - a. The "tentative final" is a stamp we use to ensure the incorrect files are not used. However, I understand your confusion and we have removed to stamp for clarity.
3. Please add the correct ownership vesting per the title report to the "Owner's Dedication" and Notary acknowledgment.
 - a. These have been updated to Old Town Eden LLC the current vesting.
4. All improvements must be located within the subdivision boundary. If the improvements are encroaching in the County and State right of ways, they need to be removed or the right of way needs to be realigned.
 - a. Property is Subject to an Encroachment agreement between Weber County and Ben Toone, allowing existing improvements to remain until such time as the County determines it is in the best interest of the public to terminate the encroachment, recorded as Entry #2369855 on October 14th 2008 in Weber County Recorder's Office.