



Monument Improvement Agreement

The Monument Improvement Agreement ("Agreement") identifies the requirements and process for establishing new survey control monumentation within land development projects in the jurisdiction of the Weber County Surveyor's Office.

It is the responsibility of the developer, of the land development project, to know and understand the terms of the Agreement. If any part of this Agreement is not clear, please contact the Surveyor's Office prior to the execution of the Agreement.

The Agreement will only be valid upon receipt of the following:

- Payment of the monument construction fees and escrows.
- A copy of the approved subdivision plat, engineered plans, or construction drawings for the land development project.
- An executed monument improvement agreement.
- An executed right of entry and perpetual easement, when applicable.

The valid Agreement shall constitute a signed contract that the developer will comply with the terms of the Agreement, county ordinance, and state law. When an agreement is valid the Weber County Surveyor's Office will assign a monument construction manager and proceed with the following process.

Process

Step 1 - The Developer shall install the asphalt (or other equivalent improvements) within two years of the execution of the Agreement.

The Developer shall complete the installation of all monuments within one year of the installation of the asphalt (or other equivalent improvements) in the land development project.

After asphalt (or other equivalent improvements) has been installed in the new roadways, the Developer shall cause the Professional Licensed Land Surveyor responsible for the land development project to set each monument location and four offset straddles per location to enable proper construction of the monuments. Each monument location shall be installed within 0.07' plus 50 parts per million from the record locations shown and described on the approved subdivision plat, engineered plans, or construction drawings for the land development project. Offset straddles shall be set, one per quadrant, eighteen inches or more from the monument location, in a manner that allows for intersecting lines connecting the straddles to mark the monument location during construction of the monuments.

Step 2 - When every monument position and their offset straddles have been set and are ready for inspection of their location, the Developer shall give a written request to the monument construction manager to inspect the monument positions.



Step 3 - Upon receipt of the written request for an inspection from the developer, the County Surveyor's Office will, within five (5) business days, inspect the monument locations and offset straddles and:

- A) issue a written statement of compliance and notice to proceed to the developer.
or
- B) issue a written statement of non-compliance to the developer requiring necessary corrections to the monument positions and straddles. Upon receipt of a written statement of non-compliance, the developer shall repeat steps one and two and shall pay (or have withheld from the escrow) an additional inspection fee to the county for each instance.

If the inspection requested cannot be performed within five (5) business days due to unforeseen workloads or circumstances, the monument construction manager shall notify the developer of the intended date to perform the inspection.

Step 4 - Upon approval of the monument positions and offset straddles the County Surveyor's Office will provide one monument cap and one monument frame and cover per monument location. It is the Developers responsibility to coordinate with the monument construction manager for the pick up/delivery of the provided items.

Step 5 - After the provided materials have been picked up/delivered, the Developer shall have a qualified contractor construct the appropriate monuments at the appropriate locations. Monuments shall be constructed:

- A) in accordance with the Weber County Public Works Standards Plans SRV1 – SRV7 as applicable;
- B) **so that the center of the constructed monument and cap does not exceed 0.04' (approx. ½") in any direction from the surveyed position of the monument;**
- C) so that the monument caps are oriented correctly and remain unmarked and clean; and
- D) in accordance with any other additional requirements as directed by the County Surveyor's monument construction manager.

Construction of the monuments shall be completed within three years of the execution of the agreement. Construction of the monuments shall be completed at the sole expense of the developer and shall not be financially conditioned on the sale of any lots or improvements within the development.

Step 6 - After the construction of the monuments, the monument cap shall be clearly marked by the Licensed Land Surveyor responsible for the surveying of the land development project. Monument caps shall be marked per the Weber County Public Works Standards Plan SRV8.

Step 7 - After the monument cap is marked, and when all construction work around the monument is complete, the developer shall give a written request for an inspection to the monument



construction manager to inspect the monuments for compliance to the construction standards and position. **Monuments constructed but not marked by the Licensed Land Surveyor will not be approved and will result in additional inspection fees. Monuments not built to all required specifications will not be approved and will result in additional fees and/or monument re-construction. *It is the Developers responsibility to ensure that the monuments are completed to all standards, and properly marked before requesting an inspection.***

- Step 8 - Upon receipt of the written request for an inspection from the developer, the County Surveyor's Office will, within five (5) business days, inspect the monuments and:
- A) issue a written statement of compliance to the developer.
or
 - B) issue a written statement of non-compliance to the developer and require necessary corrections. Upon receipt of the statement of non-compliance, the Developer shall repeat steps four through six and shall pay (or forfeit from the escrow) an additional inspection fee to the county for each instance.

If the inspection requested cannot be performed within five (5) business days due to unforeseen workloads or circumstances, the monument construction manager shall notify the developer of the intended date to perform the work.

- Step 9 - After issuance of the written statement of compliance, the Weber County Surveyor's Office will process the refund of any remaining monument construction escrow, to be refunded to the developer.

Fee Schedule

The developer shall deposit with the County Surveyor's Office a non-refundable monument construction fee, to cover the costs incurred by the initial inspections, at or before the time of the execution of the Agreement, for each monument. The developer shall also deposit with the County Surveyor's Office a refundable monument construction escrow, at or before the time of the execution of the agreement, for each monument. When the terms of the Agreement have been fulfilled, any remaining escrow deposit shall be refunded to the developer.

It should be noted that in the event that additional inspections are required for monuments which were not approved after the initial inspection, the developer will be charged an additional inspection fee for each monument per occurrence. Additional inspection fees shall be paid by the developer before the inspection or the fee will be retained from the monument improvement agreement escrow deposited with the County for that monument.

In the event that the terms of the Agreement have not been fulfilled, the County Surveyor shall deem the Developer to be in default and the escrow deposit shall become forfeited funds and be the property of the County Surveyors Office.

Any escrow refund issued will only be given to the developer and shall be sent to the address listed in the following legal documents.



<u>Non-Refundable monument construction fee:</u>	\$400.00 each Monument
<u>Refundable monument construction escrow:</u>	\$600.00 each Monument
<u>Each Additional Monument inspection fee:</u>	\$150.00 each Monument

Agreement Deadline

In all cases the monuments shall be built to the Weber County Public Works Standards Plans within three years of the execution of the Agreement. In the event that the monuments are not properly constructed within three years, the County Surveyor shall deem the Developer to be in default and the escrow deposit shall become forfeited funds and be the property of the County Surveyors Office.

For Your Information

Excepting the monument cap and monument frame and cover, all materials, safety equipment, and labor necessary to construct the monuments shall be provided by the developer. Contact the monument construction manager to coordinate for the pick up/ delivery of the county provided items.

By executing a monument improvement agreement, the developer indemnifies Weber County and the Weber County Surveyor's Office of any and all claims, demands, losses, damages, injury, or liabilities incurred by the public or employees of the permittee as a result of work activities related to this agreement and is hereby responsible for all work, employees, safety procedures, safety equipment, and liability associated with this agreement.

Agreement Legal Documents

The legal documents in the subsequent pages are to be executed by the County Commission, the County Surveyor, and the Developer. The executed documents may be recorded in the Weber County Recorder's Office. The Agreement cannot be transferred or assigned to another party.

When Recorded Return To:

**WEBER COUNTY SURVEY
MONUMENT IMPROVEMENT AGREEMENT**

PARTIES: The parties to the Monument Improvement Agreement (“Agreement”) are _____ the Developer of the herein described land development project (“Developer”), with a mailing address of _____ and the Weber County Surveyor (“County Surveyor”).

RECITALS

WHEREAS, the Developer has entered the process of developing property within the Weber County (“County”), to be known as _____ (“the Development”), which property is shown and described on Exhibit “A” attached hereto; and

WHEREAS, the County seeks to protect the health, safety, and general welfare of the residents of Weber County by requiring the adequate expansion of the survey control systems necessary to provide special control upon which land boundaries, public infrastructure, and real property improvements rely; and

WHEREAS, the purpose of this Agreement is to protect the County from the cost of completing said survey control systems and is not executed for the benefit of any individual, corporation, or entity; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County’s Ordinance 106-4-1, and 45-6;

THEREFORE, the Parties hereby agree as follows:

DEVELOPER’S OBLIGATIONS

Improvements: The Developer will construct and install, at his own expense, the monuments as required by the County Surveyor as shown and described on Exhibit “A” attached hereto (“the Improvements”). The Developer’s obligation to complete the Improvements will arise upon execution of this Agreement, independent of any obligations of the County contained herein, and will not be financially conditioned on the commencement of construction in the Development or sale of any lots or improvements within the Development.

Security: To secure the performance of their obligations hereunder, the Developer shall comply with County Ordinance 106-4-3-(f) and 45-6 by depositing with the County Surveyor, on or prior to the date of the execution of this Agreement, the monument improvement agreement fee and escrow.

Standards: The Developer shall cause the Improvements to be constructed according to the Weber County Public Works Standards Plans SRV1 – SRV7 as applicable. The Improvements shall be installed within 0.07’ from the record locations shown and described on the approved subdivision plat, engineered plans, or construction drawings for the Development described on Exhibit “A” of this agreement.

Completion Periods: The Developer shall install Improvements which meet compliance within a one year time period, after the asphalt (or other equivalent improvements) is installed. The Developer shall install the asphalt (or other equivalent improvements) within two years from the date of the execution of the Agreement. The

Developer shall install Improvements which meet compliance within three years of the execution of the Agreement.

Request for Inspection: Once the Improvements have been constructed to the standards and specifications of the Agreement, the Developer shall give a written request for inspection of the Improvements to the County Surveyor.

Notice to Reconstruct: Whenever an inspection reveals that the Improvements do not conform to the standards and specifications required by this Agreement the Developer shall reconstruct the non-conforming Improvements within six months of the notice to reconstruct.

Events of Default: The following conditions, occurrences or actions will constitute a default by the Developer:

- a. Developer's failure to install Improvements which meet compliance within three years of the execution of the Agreement.
- b. Developer's failure to complete construction of the Improvements which meet compliance within one year of the installation of the asphalt (or other equivalent improvements);
- c. Developer's failure to install the asphalt (or other equivalent improvements) within two years from the date of the execution and recordation of the Agreement;
- d. Developer's failure to reconstruct non-compliant Improvements within six months of the notice to reconstruct;
- e. 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;
- f. Foreclosure of any lien against the Development or a portion of the Development or assignment or conveyance of the Development in lieu of foreclosure.

Forfeited Funds: If the County Surveyor deems the Developer to be in default of any part of the monument improvement agreement the escrow and inspection fees shall be forfeited and become the property of the County Surveyor to be deposited in the Public Land Corner Preservation Fund.

Compliance with Law: The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of the execution and recordation of the Agreement. When necessary to protect the 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 Agreement and before the completion of Improvements and Notice of Compliance.

Right of Entry and Perpetual Easement: When the Improvements are located outside of a publicly dedicated right of way, the Developer hereby agrees to execute and record a Right of Entry and Perpetual Easement. The Right of Entry and Perpetual Easement shall grant the County Surveyor, his successors, assigns, agents contractors, and employees a nonexclusive right to access the private property of the Development to conduct future surveying activities on, maintain, or replace the Improvements that are the subject of this agreement and any government monuments that may exist on or near the development. The Right of Entry and Perpetual Easement shall run with the land and shall be effective upon recording of the easements with the County Recorder.

Initials

Ownership: The Developer hereby expressly agrees that upon completion and acceptance of the Improvements, that the Improvements automatically become property of the County, or other applicable agency as designated by the location of the Improvements. The Developer hereby expressly agrees that, at the time of completion and acceptance, the Improvements themselves will be entirely owned by the Developer in fee simple and will be free of any liens, encumbrances, or other restrictions, and the Developer will quit claim all ownership, rights, or interest in the Improvements themselves. The quit claim of the Improvements shall not constitute a waiver of the Developers obligation to warranty the improvements for one year.

Initials

Warranty: The Developer warrants that all Improvements will be free from defects for a period of one year from

the date that the County Surveyor accepts the Improvements by issuing the Notice of Compliance.

Burden: 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.

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.

COUNTY SURVEYOR'S OBLIGATIONS

Inspection of Improvements: Upon written request for an inspection by the Developer, the County Surveyor will inspect the Improvements in a timely manner. If acceptable to the County Surveyor, he shall issue a Notice of Compliance and authorize a release of the available escrow deposit (which deposit does not include the inspection fee). Whenever inspection reveals that the Improvements do not comply with the standards and specifications required by this Agreement the County Surveyor will provide a Notice to Reconstruct to the Developer in a timely manner.

Notice of Compliance: The County Surveyor shall issue a Notice of Compliance in a timely manner after:

- a. all of the Improvements are installed and meet compliance to the standards and specifications required by this Agreement.
- b. the Right of Entry and Perpetual Easement has been properly executed and recorded in the County Recorder's Office.
- c. the Developer provides adequate documentation that the Improvements installed by the Developer are free of any liens, encumbrances, or other restrictions.

Issuance of a Notice of Compliance does not constitute a waiver of the warranty guaranteed by the Developer on the Improvements.

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

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 Improvements have been installed or whether installation ever commenced. No partial release of funds will be authorized for any partial completion of the Improvements.

No Waiver: No Waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision. The waiver of any default under this Agreement shall not 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.

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.

Vested Rights: The County does not warrant by this Agreement that the Developer is entitled to any other approvals required by the County, if any, before the Developer is entitled to commence development of the Development or to transfer ownership of property in the Development.

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.

Scope: This Agreement constitutes the entire agreement between the parties and no statements, promises or inducements that are not contained in this Agreement will be binding on the parties.

Time: For the purpose of computing the 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 Surveyor from performing their obligations under the Agreement.

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.

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. Release of the escrow deposit will only be made to the Developer and shall be sent to the address as follows:

If to Developer:

If to County:

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

Recordation: It is the intent of the Parties that this Agreement encumbers only the property shown and described on Exhibit "A". Either Developer or County may record a copy of this Agreement in the County Recorder's Office.

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

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 the 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 _____ day of _____ 20____.

Developer: _____

INDIVIDUAL ACKNOWLEDGMENT

State of Utah)

County of Weber ^{SS})

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

The foregoing being hereby approved at a regular meeting of the Weber County Commission on
_____ day of _____ 20____

James Ebert, Chair

ATTEST: _____

Ricky Hatch, CPA
Weber County Clerk / Auditor

EXHIBIT A

Legal Description of the Development