

RESOLUTION NO. 05-02-2016

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE DEFERRAL OF CONSTRUCTION OF IMPROVEMENTS ASSOCIATED WITH PROPERTY DEVELOPMENT

WHEREAS, Santaquin City is a municipality and political subdivision of the State of Utah; and

WHEREAS, the City has adopted certain land use ordinances, which govern the uses of real property and the construction of building and infrastructure improvements on real property within the municipal boundaries; and

WHEREAS, Clint L. Ercanbrack and Carol J. Ercanbrack (Owners) own certain real property in the City and have requested that their obligation to complete certain infrastructure improvements be deferred pursuant to Santaquin City Ordinance No. 09-01-2015, which provides for deferral of the obligation to complete certain infrastructure improvements prior to final inspection or a certificate of occupancy, on lots or parcels meeting the criteria established in said ordinance; and

WHEREAS, the City agrees that the property proposed for construction by Owners meets the criteria set forth in Ordinance No. 09-01-2015.


NOW, THEREFORE, BE IT RESOLVED by the Santaquin City Council as follows:

Section 1. The terms and conditions of the agreement titled "Infrastructure Deferral Agreement" ("the Agreement"), a copy of which is attached hereto as Exhibit A, are in the best interests of Santaquin City, Utah.

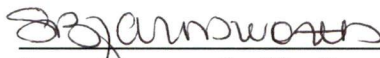
Section 2. The Mayor and City Recorder of the City are hereby authorized to execute the Agreement and all documents reasonably necessary to accomplish the purposes thereof.

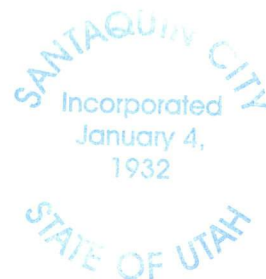
Section 3. This Resolution shall take effect upon adoption by the City Council.

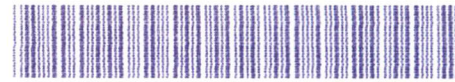
Adopted and approved this 4th day of May, 2016.


Kirk F. Hunsaker, Mayor

ATTEST:


Susan Farnsworth, City Recorder





ENT 42916:2016 PG 1 of 8
JEFFERY SMITH
UTAH COUNTY RECORDER
2016 May 16 2:20 pm FEE 0.00 BY CS
RECORDED FOR SANTAQUIN CITY CORPORATION

INFRASTRUCTURE DEFERRAL AGREEMENT

THIS AGREEMENT, is made and entered into, effective as of the 4th day of May, 2016, by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah, hereinafter (“City”) and Clint L. Ercanbrack and Carol J. Ercanbrack, hereinafter referred to as (“Property Owner”).

WITNESSETH:

WHEREAS, Santaquin City is a municipality and political subdivision of the State of Utah; and

WHEREAS, the City has adopted certain land use ordinances, which govern the uses of real property and the construction of building and infrastructure improvements on real property within the municipal boundaries; and

WHEREAS, Property Owner owns certain real property located in the City, which real property is more particularly described in Exhibit A hereto (the “Property”), and has submitted an application to subdivide the Property in order to create two new lots for single family homes on the Property (the “Application”); and

WHEREAS, City land use ordinances require the completion of infrastructure improvements along City streets and connection to City sewer infrastructure in connection with the approval of any subdivision with the City; and

WHEREAS, Property Owner has requested that its obligation to complete certain infrastructure improvements be deferred pursuant to Santaquin City Ordinance No. 09-01-2015, which provides for deferral of the obligation to complete certain infrastructure improvements prior to final inspection or a certificate of occupancy, on lots or parcels meeting the criteria established in said ordinance; and

WHEREAS, the parties agree that the property proposed for subdivision by Property Owner meets the criteria set forth in Ordinance No. 09-01-2015; and

WHEREAS, the parties now desire to enter into this Agreement in order to establish the terms and conditions of their agreement.

NOW, THEREFORE, in consideration of mutual covenants, agreements and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. City shall review the Application in a timely manner and, upon the City’s determination that the Application meets all of the requirements for a subdivision and that all appropriate fees have been paid, shall approve the Application and record the related subdivision plat, which was submitted with the Application, a copy of which is attached hereto as Exhibit B, (the “Plat”), in final form after review and approval.
2. Upon recordation of the Plat the City shall grant Property Owner’s request for a deferral of the obligation to complete the following infrastructure improvements (the “Deferred Improvements”):
 - a. Curb and Gutter along 400 North;
 - b. Sidewalk along 400 North;

- c. Extension of road base and asphalt or other hard surface paving between the Property and the existing paved surface of the adjacent street(s); and
- d. Landscaping within the public right-of-way along 400 North.
- e. Connection of anticipated residential structures on the two proposed lots to the public sanitary sewer system.

3. City shall defer Property Owner's requirement to post an infrastructure performance guarantee bond for the completion of the Deferred Improvements until such time as notice is sent to Property Owner demanding installation and/or completion of any or all improvements; or, to reimburse the CITY for CITY'S installation and/or completion of the improvements at such time as CITY, through written notice to Property Owner, demands reimbursement.

4. Within ten years of the execution of this Agreement, the City shall adopt a plan for the construction of infrastructure improvements adjacent to the Property and shall notify Property Owner to commence construction of the Deferred Improvements.

5. Property Owner agrees and commits to the following terms and conditions regarding the construction of the Deferred Improvements:

a. Property Owner shall commence construction of the Deferred Improvements within 30 days of the notice described in paragraph 3 above, and shall complete the Deferred Improvements within 90 days of said notice.

b. Deferred Improvements shall be constructed in accordance with the Santaquin City Development Standards in place at the time of construction of the improvements.

c. Property Owner shall assure that all Deferred Improvements are inspected and approved by the City in accordance with the City's requirements.

d. All costs and expenses associated with the Deferred Improvements shall be borne solely by Property Owner.

e. Each new residential dwelling constructed on the Property shall be serviced by a private sanitary sewer system until such time as gravity flow potential is made available to the north of the Plat. Private sanitary sewer systems under this part will be constructed at the sole expense of the building permit applicant, and will be designed to be north of the dwellings. Property Owners will record easements with the Plat which enable future owners of each platted lot to run sanitary sewer laterals through neighboring lots and/or other portions of the Property sufficient to make connections with infrastructure in the future 600 East road. Each such dwelling shall be connected to the City's wastewater treatment collection infrastructure within 90 days of written notice from the City that access to that infrastructure is available to the Property.

6. CITY may require any or all of the improvements to be partially or wholly completed, in any order or pursuant to any timetable deemed appropriate by CITY.

7. Property Owner shall not be relieved of the obligation to install the improvements until such installation has been performed to the satisfaction of CITY.

8. Notwithstanding the provisions set forth above, if prior to the deferred time period set out in paragraphs 1 and 4 above, an applicant applies to CITY for approval to develop the property adjacent to the property described above, CITY may require said Deferred Improvements

to be installed at the same time as the improvements on the adjacent property.

9. If Property Owner sells or leases the Property or any property adjacent thereto and the buyer or lessee applies to CITY for approval to develop all or any portion of said property, the CITY may require the Deferred Improvements to be installed at the same time as the improvements on said adjacent properties.

10. Notwithstanding the provisions of this Agreement, the parties expressly agree that CITY may at any time, at its option, install and/or complete the Deferred Improvements. Should CITY exercise such option, Property Owner shall reimburse the City, within 30 days of an invoice from the City, for all costs resulting from said installation and/or completion.

11. Should Property Owner fail to install and complete the improvements as required by CITY pursuant to the terms of this Agreement or reimburse CITY as herein agreed, or otherwise fail to perform its obligation pursuant to the terms of this Agreement, Property Owner recognizes City's right to recover the costs necessary to install the improvements or obtain reimbursement therefore through foreclosure proceedings on the property described above, and shall not contest the same.

12. If an improvement district is proposed, which district would in whole or in part finance the installation of any or of all the improvements required under this Agreement, Property Owner expressly agrees not to oppose the forming of the improvement district or any of the costs thereof. Property Owner expressly acknowledges that its obligation for completion of or reimbursement for any improvements which are the subject of this Agreement, but which are not or will not be installed as part of the improvement district, shall not be affected by the said installation of improvements by the improvement district.

13. Property Owner shall have the right to satisfy its responsibilities under the Agreement for guarantee of the Deferred Improvements by delivering to the City a bond that will assure the completion of and payment for all Deferred Improvements, which bond shall be in an amount equal to no less than 125% of the City Engineer's estimated cost of said Deferred Improvements, and which shall be held and released by the City in accordance with development guarantee ordinances adopted by the City.

14. Property Owner expressly acknowledges that nothing in this Agreement shall be deemed to relieve Property Owner from its obligations to comply with all applicable requirements of the City necessary for any use of the Property including payment of fees, the approval of all building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City. Furthermore, this Agreement does not imply or guarantee that the City will approve a building permit on or development of the Property, except where provided by law.

15. Any and all of the obligations of Property Owner as outlined in this Agreement shall run with the land described above and shall constitute an encumbrance thereon. The rights, duties and obligations herein shall inure to the benefit of and be binding upon the heirs, successors-in-interest, assigns, transferees, and any subsequent purchaser of the parties.

16. This Agreement has been reviewed and revised by legal counsel for Property Owner and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

17. Each of the parties hereto agrees to cooperate in good faith with the other, and to execute and deliver such further documents, and to take all further actions reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

18. Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to City to:

*Santaquin City
c/o Benjamin Reeves, City Manager
275 West Main Street
Santaquin, UT 84655*

Copy to:

*Brett B. Rich, Esq.
Nielsen & Senior
15 W. South Temple, Suite 1700
Salt Lake City, Utah 84101*

If to Property Owner to:

Clint L. & Carol J. Ercanbrack
605 East 400 North
Santaquin, UT 84655

19. This Agreement may be executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of six (6) pages, including notary acknowledgment forms, and an additional two (2) exhibits, which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal description of the Property
Exhibit B	Proposed Plat: Ercanbrack Acres

20. This Agreement shall continue in force and effect until all obligations hereunder have been satisfied, or for a period of 12 years from the execution hereof, whichever is later.

21. In the event CITY commences legal action to enforce or interpret any term of this Agreement, CITY shall be entitled to recover from APPLICANT reasonable attorney's fees, court costs, and any other costs in connection with said action.

22. This Agreement contains the complete Agreement concerning the arrangement between the parties with respect to the posting of an infrastructure performance guarantee, and shall supersede all other agreements between the parties, written or oral. This Agreement does not waive other conditions of approval for the subdivision.

23. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party.

24. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision of this Agreement. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall remain in full force and effect.

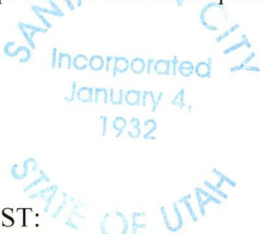
25. This Agreement, performance hereunder and enforcement of the terms contained herein shall be construed in accordance with and pursuant to the laws of the State of Utah.

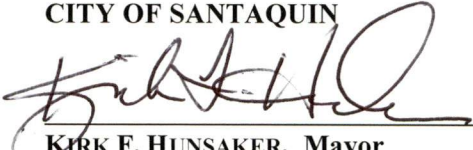
26. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions contained herein, or the waiver of any breach of any of the terms and conditions contained herein, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver has occurred.

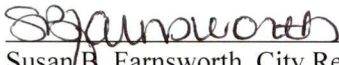
27. In the event that any person challenges this Agreement or any of the provisions herein, Property Owner agrees to indemnify the City for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City upon presentation of an itemized list of costs, expenses, and fees.

28. A Notice of Agreement shall be filed in the office of the Utah County Recorder.

IN WITNESS THEREOF, this Agreement has been executed by a person duly authorized by PROPERTY OWNER to execute the same and by the duly elected Mayor of the City of Santaquin, with the approval of the Santaquin City Council as of the 4th day of May, 2016.



CITY OF SANTAQUIN

KIRK F. HUNSAKER, Mayor

ATTEST:

Susan B. Farnsworth, City Recorder

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On this 4 day of May, 2016, personally appeared before me, Kirk F. Hunsaker who, after being duly sworn, acknowledged to me that he is authorized to execute this document and who executed the same.



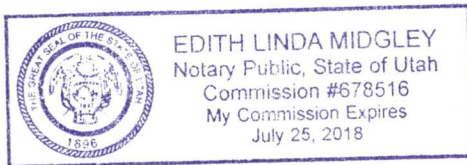
Susan B. Farnsworth
Notary Public

PROPERTY OWNER

Clint L. Ercanbrack
Clint L. Ercanbrack

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On this 5th day of May, 2016, personally appeared before me, Clint L. Ercanbrack who, after being duly sworn, acknowledged to me that he is authorized to execute this document and who executed the same.

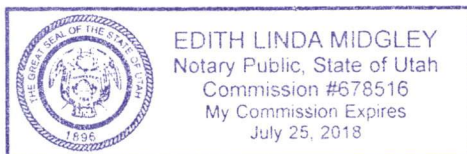


Edith Linda Midgley
Notary Public

Carol J. Ercanbrack
Carol J. Ercanbrack

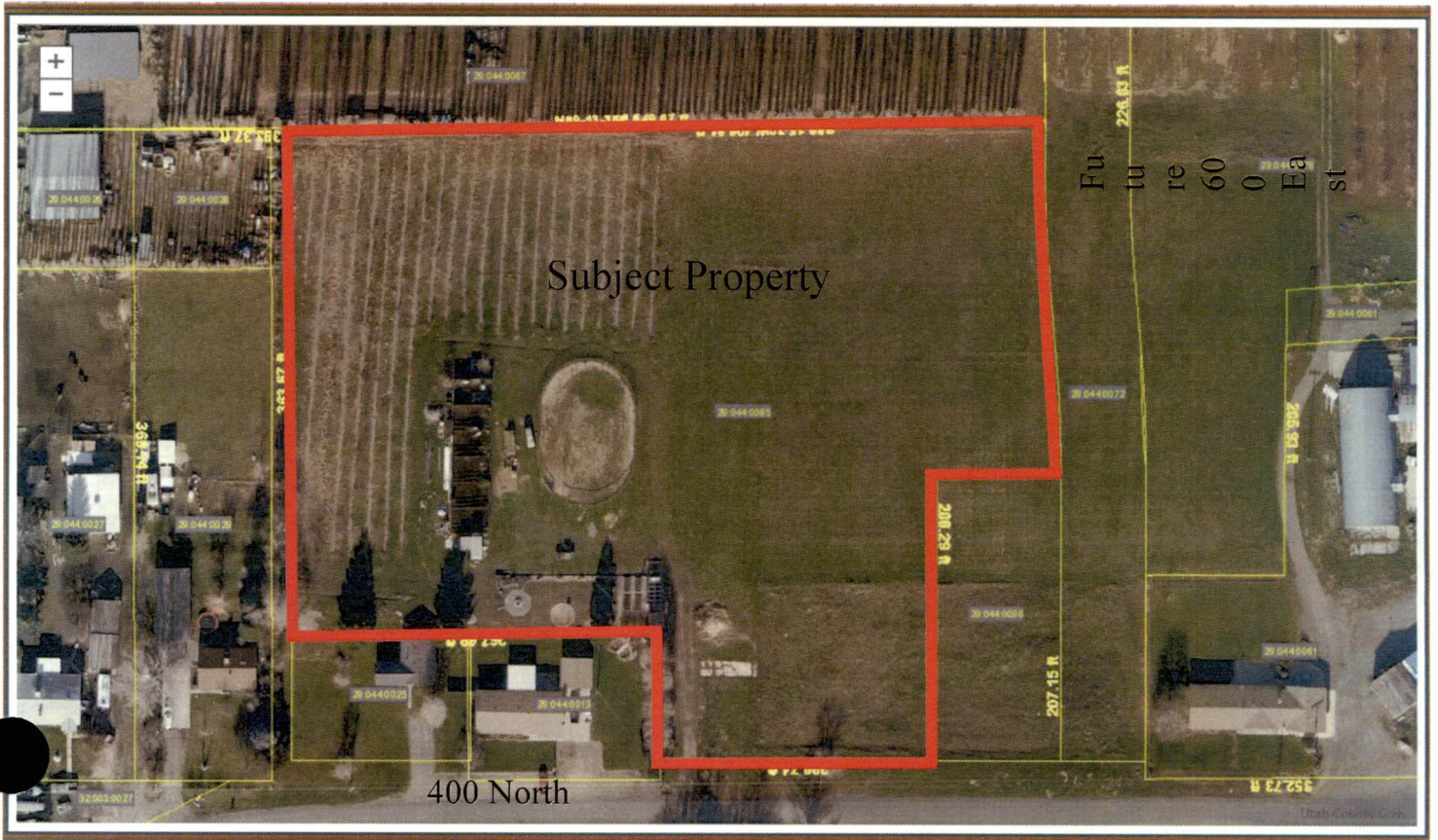
STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On this 5th day of May, 2016, personally appeared before me, Carol J. Ercanbrack who, after being duly sworn, acknowledged to me that she is authorized to execute this document and who executed the same.



Edith Linda Midgley
Notary Public

Exhibit A: Property Identifier



The Property is identified by Utah County Recorder Parcel Serial Number 29:044:0085 as depicted in the above figure.

Exhibit B: Proposed Plat: Ercanbrack Acres

