



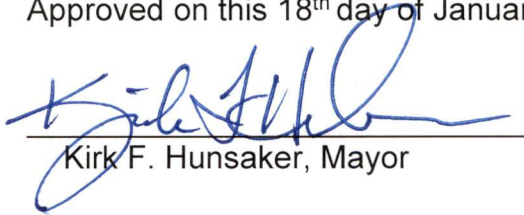
**RESOLUTION 01-03-2017**  
**A RESOLUTION APPROVING A WATER AGREEMENT**  
**WITH RANDALL EARCANBRACK**

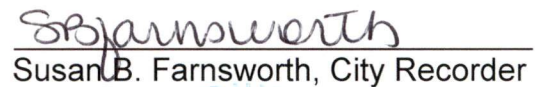
**BE IT HEREBY RESOLVED:**

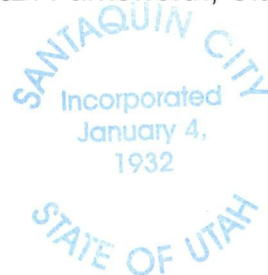
**SECTION 1:** The attached document represents the Water Agreement with Randall Ercanbrack.

**SECTION 2:** This Resolution shall become effective upon passage.

Approved on this 18<sup>th</sup> day of January, 2017.

  
Kirk F. Hunsaker, Mayor

  
Susan B. Farnsworth, City Recorder



## AGREEMENT

THIS AGREEMENT is made and entered into on this 18 day of January, 2017, by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah, hereinafter (“City”) and W. M. Ercanbrack Co. Inc., a Utah corporation, hereinafter referred to as (“Ercanbrack”).

### RECITALS:

**WHEREAS**, the City owns and operates a water system, including water sources, and infrastructure for the delivery of culinary and irrigation, or secondary, water to residents, businesses and other entities in and near Santaquin City; and

**WHEREAS**, Ercanbrack owns certain real property within City’s municipal boundaries, upon which Ercanbrack has grown fruit for commercial purposes; and

**WHEREAS**, although Ercanbrack’s real property is not adjacent to the City’s system for the delivery of irrigation/secondary water, Ercanbrack desires to purchase secondary water from City to enable the continued production of fruit on its property; and

**WHEREAS**, the City is willing to sell water it receives pursuant to its ownership of three shares in Summit Creek Irrigation & Canal Company (“Summit Creek”), in an amount equal to the water the City receives pursuant to its ownership of three Summit Creek shares, to Ercanbrack for use on Ercanbrack’s property, subject to the terms and conditions of this agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is herein acknowledged, the parties agree as follows:

**1. Sale of Water to Ercanbrack.** During the term of this Agreement the City shall sell irrigation water to Ercanbrack, for Ercanbrack’s use on the Property. The amount of water sold to Ercanbrack shall be equal to the amount that the City is allotted by Summit Creek, pursuant to the City’s ownership of ten Summit Creek shares.

**2. Delivery of Water.** Ercanbrack understands and agrees that the City does not have either the ability or the obligation under this agreement, to deliver irrigation water to the Property. Ercanbrack shall be solely responsible to arrange for and pay all costs associated with the delivery of the water that it receives pursuant to this agreement, from the Summit Creek distribution system to the Property. In the event that Ercanbrack is unable to arrange delivery of the water to the Property, Ercanbrack may terminate this agreement by giving written notice to City within ninety days of the scheduled expiration of this Agreement, without liability for payment to the City for water not delivered to or used by Ercanbrack.

**3. Water Supply Not Guaranteed.** Neither a definite water supply, nor a specific amount of water is guaranteed by this Agreement. In the event of a water shortage resulting from drought, prior or superior claims, breakage of the lines, or other causes not within the reasonable control of City, no liability shall accrue against City, or any of its officers, agents or employees, for any damage, direct or indirect, arising therefrom, and the payments to the City

provided for herein shall not be reduced because of any such shortage or damage. Whenever feasible, deliveries of water allotted pursuant to this Agreement shall be reduced in the proportion that the number of acre-feet of such shortage, as determined by Summit Creek, bears to the total number of acre-feet allocated or subscribed for irrigation use of Summit Creek shareholders.

**4. Ownership of Water Shares.** Nothing in this agreement shall be construed to constitute either the sale or lease of water rights or water shares. City shall retain title and ownership of all Summit Creek Shares and any and all water rights associated with its Summit Creek Shares. Ercanbrack shall assure timely payment of all fees, including assessment fees of said shares to the Summit Creek Irrigation Company, which have been or will be assessed during the term of this Agreement. Ercanbrack shall indemnify, hold harmless and reimburse the City for any costs, fees or expenses incurred by the City to assure the continued delivery of water to as contemplated by this Agreement.

**5. Payment of Water Assessments.** City shall timely pay all regular annual assessments of Summit Creek Irrigation Company that are incurred during the term of this Agreement, together with any and all special assessments, other assessments and fees that are assessed to all owners of Summit Creek shares.

**6. Irrigation Company Voting Rights.** Ercanbrack shall not be entitled to any voting rights in Summit Creek.

**7. Compliance with Rules and Regulations.** Ercanbrack agrees to abide by all lawful rules and regulations of City and Summit Creek as they are from time to time in effect governing the distribution and use of irrigation water and other matters. The provisions of all applicable laws of the State of Utah and the United States shall be binding upon Ercanbrack.

**8. Waiver of Base Rate.** The City shall waive all Santaquin City Irrigation Base Water Rates, which rates are established by the City Council as the minimum irrigation water usage rates charged to users of the Santaquin City Irrigation System.

**9. Water Fees.** The City shall waive all Santaquin City Irrigation Usage Water Fees up to an amount equal to the volume of water delivered to the Secondary System from the shares of Summit Creek Irrigation Company as outlined above. Ercanbrack shall pay the City an annual fee of Six Hundred Dollars (\$600.00) for all water delivered to the Property pursuant to this Agreement during that same water year. Ercanbrack shall deliver the first annual water fee to the City on or before January 31, 2017 and each subsequent annual water fee on or before each January 1 for the duration of this Agreement.

**10. Term.** This Agreement shall continue in full force and effect from the effective date hereof through December 31, 2017, and shall thereafter automatically renew for ten additional one year periods, unless terminated by either party by written notice to the other party on or before the ninetieth day prior to the end of a term. Notwithstanding the foregoing, this Agreement shall terminate on the day Ercanbrack transfers or conveys any ownership interest in the Property to any other party.

**11. Default and Remedies.** Except as otherwise provided in this Agreement, if either Party fails to perform any of its obligations under this Agreement or if either Party's representations or warranties contained in this Agreement shall be untrue, inaccurate or incomplete at any time, and that failure continues for ten (10) days after receipt by such Party (the "defaulting Party") of written notice from the other Party, such defaulting Party shall be in default and the other Party may: (i) cancel this Agreement; (ii) bring an appropriate action for specific performance of this Agreement; and/or (iii) pursue any other remedy available under this Agreement, at law or in equity.

**12. Entire Agreement; Amendments.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by any one acting on behalf of a Party, shall be deemed to be merged in this Agreement and shall be of no further force or effect. No amendment, modification, or change in this Agreement shall be valid or binding unless reduced to writing and signed by both of the Parties hereto.

**13. Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding.

**14. Notices.** Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight courier service, confirmed facsimile, or United States certified or registered mail, return receipt requested, postage prepaid, addressed to Ercanbrack or City as follows (or at another physical or electronic address as Ercanbrack or City may designate in writing):

**Ercanbrack:** W. M. Ercanbrack Co., Inc.  
P.O. Box 187  
Santaquin, Utah 84655  
ercanbrackfruit@gmail.com

With a copy to:

**City:** Santaquin City  
Attention: City Manager  
275 West Main  
Santaquin, Utah 84655

With a copy to: Nielsen & Senior  
Attention: Brett B. Rich  
15 W. South Temple, Suite 1700  
Salt Lake City, Utah 84101  
Email: bbr@ns-law.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or confirmed electronic transmission, on the date of delivery to the overnight courier service, if that service is used, and on the date of deposit in the mail, if mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

**15. Waiver.** The failure to enforce at any time any provision of this Agreement or to require the performance of any provision hereof shall not constitute a waiver of any such provision or affect either the validity of this Agreement or any part hereof or the right of either Party hereto to thereafter enforce each and every provision of this Agreement in accordance with the terms of this Agreement.

**16. Time of Essence; Dates of Performance.** Time is expressly declared to be of the essence of this Agreement. In the event that any date for performance by either Party of any obligation hereunder required to be performed by such Party falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be deemed extended until the next business day following such date.

**17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all such counterparts, when taken together, shall be deemed to constitute one and the same instrument.

**18. Electronic Transmission.** Electronic transmission of this Agreement, signed by a Party, and retransmission of any signed electronic transmission, shall be the same as delivery of an original hereof.

**19. Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Any third party acquiring an interest in the Property after the execution of the Agreement shall be a permitted assignee of Ercanbrack. Neither Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party.

**20. Further Acts.** The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.

**21. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah.

**22. Submission to Jurisdiction.** Each of the Parties submits to the jurisdiction of the Fourth Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in such court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Each Party agrees

that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity.

**23. Interpretation.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement. This Agreement has been divided into paragraphs and subparagraphs for convenience only and the paragraph headings contained herein are for purposes of reference only, which shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof.

**24. Authority of Signers.** Each person executing this Agreement hereby warrants his or her authority to do so, on behalf of the entity for which he or she signs, and to bind such entity.

**25.** The recitals are hereby incorporated into this agreement.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement on the dates set forth below.

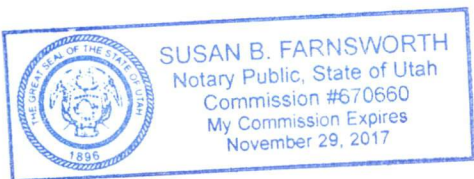
**ERCANBRACK**

Randall Ercanbrack

Date: 1-23-2017

STATE OF UTAH        )  
  )ss:  
COUNTY OF UTAH    )

On this 23 day of January, 2017, personally appeared before me, Randall Ercanbrack, who after being duly sworn, stated that he executed the foregoing document, pursuant to the authority and on behalf of W.M. Ercanbrack CO Inc



Susan B Farnsworth  
Notary Public

**CITY OF SANTAQUIN**

Kyle J. Nelson  
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KIRK F. HUNSAKER, Mayor

Date: 1-18-17

ATTEST:

Susan B. Farnsworth  
SUSAN B. FARNSWORTH, Recorder

