

WHEN RECORDED, RETURN TO:

Centerville City Recorder
250 North Main Street
Centerville, Utah 84014

Affects Parcel No.:

E 3000971 B 6698 P 843-848
RICHARD T. MALIGHAN
DAVIS COUNTY, UTAH RECORDER
02/07/2017 01:09 PM
FEE \$0.00 Pgs: 6
DEP RTT REC'D FOR CENTERVILLE CITY

**PUBLIC IMPROVEMENTS DEFERRAL AGREEMENT
OBLIGATION FOR FUTURE CONSTRUCTION OF IMPROVEMENTS
AND WAIVER OF PROTEST TO SPECIAL IMPROVEMENT DISTRICT**

02-242-0010

(Lot 10 – Duncan Hill Subdivision Amended)

February **THIS AGREEMENT** ("Agreement") is made and entered into this 7 day of February, 2017, by and between **CENTERVILLE CITY**, a municipal corporation, whose address is 250 North Main Street, Centerville, Utah, 84014 (hereinafter referred to as "City"), and **ENSIGN CONSTRUCTION & DEVELOPMENT, LLC**, whose current address is 837 North 700 East, Centerville, Utah, 84014 (hereinafter referred to as "Owner").

RECITALS:

WHEREAS, Owner has applied for land use approvals to develop property known as Lot 10 of the Duncan Hills Subdivision Amended, located at approximately 480 East Worsley Lane (540 North), Centerville, Utah, which property is more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"); and

WHEREAS, City Ordinances generally require the installation of public improvements along streets fronting property to be subdivided or developed; and

WHEREAS, the City is willing to grant Owner a deferral of the obligation to install public improvements and landscaping along a portion of the Property's street frontage on Worsley Lane (540 North) in exchange for Owner's agreement to pay for and install such public improvements and landscaping in the future and for Owner's agreement to waive the right to vote against a special improvement district in the event the City elects to create such a district in the future to construct public improvements benefitting the Property as more particularly provided in and subject to the terms and conditions set forth in this Agreement.

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

1. Deferral of Installation of Public Improvements. The City hereby grants Owner a temporary deferral of the obligation to install public improvements required for development of the Property to include the deferral of the installation of approximately 161 lineal feet of sidewalk, including road base, parkstrip, and other necessary improvements along the

northern portion of the Property's street frontage along Worsley Lane (540 North), Centerville City, Davis County, Utah ("Public Improvements"). Such deferral is granted until such time: (1) the City provides written request and demand to the Owner to install the Public Improvements; or (2) written notice of the City's intent to proceed with the installation the Public Improvements and to charge the Owner for such costs associated with installation of the Public Improvements. If the City requests the Owner to install the Public Improvements, Owner shall have 180 days from the date of written request and demand from the City to install the improvements. If the City decides to install the improvements and to charge the Owner for the costs associated with installation, the City may proceed with installing such improvements within 30 days from the date of written notice and Owner shall be required to pay the City the actual cost of installing the Public Improvements within 180 days from the date of written notice. Owner, or Owner's successor in interest as owner(s) of the Property, hereby agrees to install the Public Improvements required for the Property at its sole cost and expense upon written request and demand by the City or to pay the City the amount due and owing for the City to install or have installed the Public Improvements, as directed by the City and provided herein.

2. Installation of Public Improvements. If the Public Improvements are installed by the Owner, Owner, or its authorized agent, representative or contractor, shall install the Public Improvements in strict accordance with the approved building permit and site plan for the Property and all applicable City standards, specifications, ordinances, rules, and regulations regarding sidewalks, road base, parkstrip landscaping and public improvements, including compliance with all permit requirements for work within the public right-of-way, which are in effect at the time the Public Improvements are installed. The Public Improvements shall be installed in accordance with the City standard street cross section in effect at the time the Public Improvements are installed. It is expressly understood and agreed that the City is granting this temporary extension of time to install the Public Improvements to Owner conditioned upon and subject to the agreed future performance by Owner to install the Public Improvements or to pay the City to install the Public Improvements as more particularly provided in this Agreement. It is further expressly acknowledged by Owner that in order to install the Public Improvements described herein, certain improvements and work may have to be done on Owner's Property to accommodate the installation of the Public Improvements. Owner's obligation to install the Public Improvements or to pay for such improvements installed by the City shall include any and all work within the public right-of-way as well as on Owner's Property necessary to install the Public Improvements, such as grading, retaining walls, landscaping, irrigation or utility line removal or relocation, etc.

3. Building Plans and Permit Requirements. Owner agrees, as a condition of building permit issuance for construction on the Property, to prepare building plans for development of the Property that show the design, grade, fill and development of the Property to accommodate and provide for the installation of the Public Improvements at a future date. Such plans shall show the design and development of the Public Improvements to be deferred acceptable to the City Engineer. Owner shall design and develop the Property to provide a relatively flat landscaped area at least eight feet back of curb and gutter to be landscaped and maintained by Owner with sod. No vertical landscaping or structures, such as bushes, trees, fences, retaining walls, or retaining slopes, shall be allowed in the public right-of-way or within the area eight feet back of curb and gutter, whichever is greater.

4. Failure to Install or Pay for Public Improvements. If, for any reason, Owner does not install and complete the Public Improvements or pay the City the amount due and owing for the City to install the Public Improvements within 180 days after having been requested in writing by City to do so, the City is hereby authorized to install and/or complete the Public Improvements at the sole expense of the Owner at that time and to charge the Owner

and/or the Property with the cost of said installation and completion. The costs incurred by the City to install and complete the Public Improvements shall be an obligation of the Owner and shall be promptly paid by the Owner. Upon the failure of Owner to install the Public Improvements or to pay the City the amount due for the City's installation, these costs shall become a charge on the Property described herein and shall be a continuing lien upon the Property, together with interest thereon at ten percent (10%) per annum, and all costs and reasonable attorney's fees incurred by the City. The City may commence an action against the Owner to collect the foregoing charges and to foreclose the lien against the Property. Upon foreclosure of the lien provided herein by the City, should any deficiency remain, Owner shall remain liable for payment of the deficiency.

5. Fee Title Owner. Owner hereby represents and warrants that Owner owns fee title interest to the Property and further hereby confess judgment for Owner, Owner's heirs, representatives, successors in interest, future owners, and assigns for the total of any and all amounts expended by City for the installation and completion of the Public Improvements and any expenses related thereto.

6. Covenants to Run with the Land. The foregoing covenants in each and every particular are and shall be construed as real covenants and shall run with the land, and the same are hereby made binding upon the heirs, representative, devisees, assigns, future owners and successors in interest of the parties hereto.

7. Default. The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

8. Amendments. Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

9. Successors. This Agreement shall be binding upon and inure to the benefit of the legal representatives, subsequent owners, successors and assigns of the parties hereto.

10. Notices. Any notice required or desired to be given hereunder shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble or at the respective parties' known address at the time of notice.

11. Severability. If any portion of this Agreement for any reason declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

12. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

13. Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such

provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

14. Captions. The captions preceding the paragraphs of this Agreement are for convenience only, and shall not affect the interpretation of any provision herein.

15. Integration. This Agreement, together with its exhibits, contains the entire and integrated agreement of the parties regarding the deferral and installation of the Public Improvements as of the date hereof, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

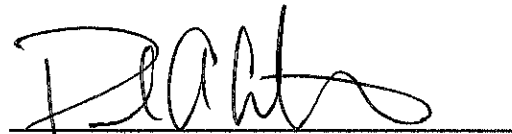
16. Exhibits. Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

17. Recording. This Agreement shall be recorded with the Davis County Recorder's office for all parcels or lots within the Property as notice of the required Public Improvements.

18. Waiver of Protest. Owner agrees to waive the right to vote against a special improvement district in the event the City elects to create such a district to construct public improvements benefitting the Property.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first hereinabove written.

"CENTERVILLE CITY"

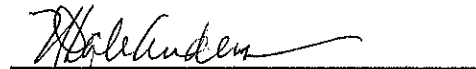


Mayor Paul A. Cutler

ATTEST:


Marsha L. Morrow, City Recorder

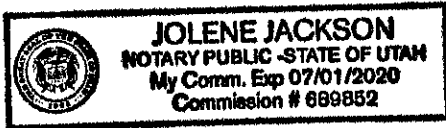
"OWNER"

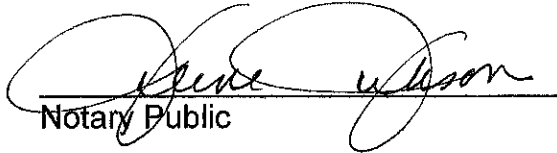


By: N. Dale Anderson
Its: Member

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the 7 day of February, 2017, personally appeared before me, **PAUL A. CUTLER**, who being duly sworn, did say that he is the Mayor of Centerville City, a municipal corporation, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Paul A. Cutler acknowledged to me that said municipal corporation executed the same.




Notary Public

My Commission Expires

7-1-2020

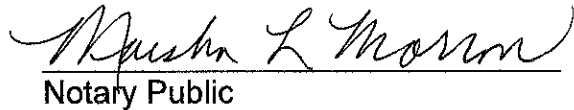
Residing at:

Centerville City

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the 6 day of February, 2017, personally appeared before me **N. DALE ANDERSON**, who being by me duly sworn, did say that he is the Member/Manager of **ENSIGN CONSTRUCTION & DEVELOPMENT, LLC**, a Utah limited liability company, that the limited liability company is the legal property owner of record of the property subject to this agreement, and that the foregoing instrument was duly authorized by the limited liability company by authority of its operating agreement and signed in behalf of said limited liability company.




Notary Public

My Commission Expires

4-5-2020

Residing at:

Centerville

EXHIBIT "A"

Legal Description of Property

ALL OF LOT 10
DUNCAN HILL SUBDIVISION AMENDED
DAVIS COUNTY, UTAH