

E 2903634 B 6389 P 506-512
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/06/2015 01:46 PM
FEE \$22.00 Pgs: 7
DEP RTT REC'D FOR CENTERVILLE CITY

WHEN RECORDED, RETURN TO:

Centerville City Recorder
250 North Main Street
Centerville, Utah 84014

Affects Parcel No.: 03-~~001~~-0206

**PUBLIC IMPROVEMENTS DEFERRAL AGREEMENT
OBLIGATION FOR FUTURE CONSTRUCTION OF IMPROVEMENTS**

(461 South 800 West)

THIS AGREEMENT ("Agreement") is made and entered into this 4 day of November, 2015, by and between **CENTERVILLE CITY**, a municipal corporation, whose address is 250 North Main Street, Centerville, Utah, 84014 (hereinafter referred to as "City"), and **MASON FAMILY PARTNERSHIP**, whose address is P.O. Box 518, Centerville, Utah, 84014 (hereinafter referred to as "Owner").

RECITALS:

WHEREAS, Owner has applied for land use approvals to further develop property located at approximately 461 South 800 West, 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 further 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 400 South (Porter Lane) in exchange for Owner's promise to pay for and install such public improvements and landscaping in the future 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. **Installation of 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 108.84 lineal feet of asphalt with road base materials, curb, gutter, sidewalk and landscaping along the eastern portion of the Property's street frontage along Porter Lane (400 South), Centerville City, Davis County, Utah ("Public Improvements"). The location of the required Public Improvements is represented on

Exhibit "B," attached hereto and incorporated by this reference. Such deferral is granted until such time that the City provides written request and demand to the Owner to install the Public Improvements or to pay the City the actual cost of installing the Public Improvements, as determined by the City. Owner, or Owner's successor in interest as owner(s) of the Property, hereby agrees to immediately 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. If installed by the Owner, Owner, or its authorized agent, representative or contractor, shall install the Public Improvements in strict accordance with the approved site plan for the Property and all applicable City standards, specifications, ordinances, rules, and regulations regarding asphalt, curb, gutter, sidewalks, 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. 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 promised 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.

2. Failure to Install. 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 90 days after having been requested in writing by City to do so, the City is hereby authorized to install and 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 do so, 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

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

11. 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.

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

13. 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.

14. Other Security. This Agreement does not alter the obligation of Developer to provide security in acceptable form under applicable ordinances or rules of the City or any other governmental entity having jurisdiction over Developer.

15. 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.

16. **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.

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"

Mason Family Partnership

By: _____

Its: _____



PARTNER

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

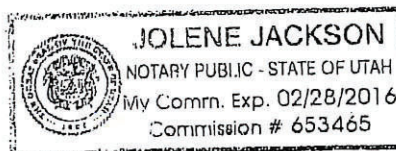
On the 4 day of November, 2015, personally appeared before me, **PAUL A. CUTLER**, who being duly sworn, did say that he is the Mayor of Centerville City, a municipal corporation, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Paul A. Cutler acknowledged to me that said municipal corporation executed the same.


Notary Public

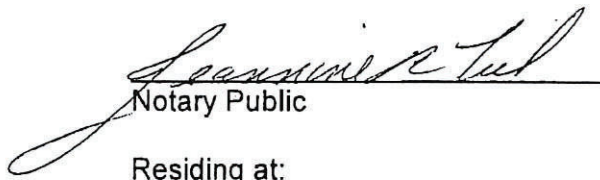
My Commission Expires
2/28/16

Residing at:
Centerville City

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)



On the 5 day of November, 2015, personally appeared before me Robert Mason, who being duly sworn, did say that he/she is the Managing Partner of the **MASON FAMILY PARTNERSHIP**, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held by authority of its by-laws and signed in behalf of said partnership.


Notary Public

My Commission Expires
May 15, 2016

Residing at:
Centerville City

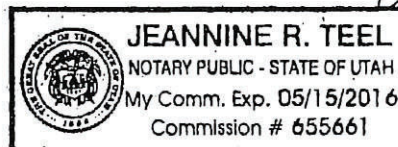


EXHIBIT "A"

Legal Description of Property

BEG 6.99 CHAINS E & 1279.31 FT N FR SW COR NW 1/4 SEC 18-T2N-R1E, SLM; TH N 453.19 FT; TH E 37.62 FT; TH N 0°41' E 264.50 FT; TH W 190.0 FT, M/L, TO E LINE OF PPTY CONV TO STATE ROAD COMMISSION IN 143-214; TH S'LY 718 FT ALG SD HWY TO A PT W OF POB; TH E 161.50 FT TO POB. CONT. 2.85 ACRES; ALSO, BEG AT A PT 1,732.46 FT N & 513.76 FT E OF SW COR OF NW 1/4 OF SEC 18-T2N-R1E, SLM; TH N ALG AN EXIST FENCE 280 FT TO S LINE OF A STR KNOWN AS PORTER LANE; TH E ALG SD S LINE 108.84 FT; TH S 230 FT, M/L; TH SW'LY 31.26 FT, M/L, ALG CENTER CURVE LINE OF A RD TO A PT DUE E OF THE POB; TH W 87.38 FT TO THE POB. TOGETHER WITH RW. CONT. 0.69 ACRES. TOTAL ACREAGE 3.54 ACRES.

