

## INFRASTRUCTURE DEFERRAL AGREEMENT

THIS AGREEMENT, is made and entered into, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah, hereinafter “City” and, Race Ostler hereinafter referred to as “Property Owners,” the City and Property Owners may hereinafter be referred to individually as a “Party” or together as “Parties” to this Agreement.

### 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 Owners own 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 into three 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 infrastructure in connection with the approval of any subdivision within the City; and

WHEREAS, Property Owners 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 Parties agree that the property proposed for subdivision by Property Owners 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 such 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 Owners’ request for a deferral of the obligation to complete the following infrastructure improvements associated with the Bello Corner Subdivision (215 South Center Street, 229 South Center Street and 30 East 200 South) (the “Deferred Improvements”):

- a. Curb and Gutter along Center Street and 200 South;
- b. Sidewalk along Center Street and 200 South;

- c. ADA Ramp at the corner of Center Street and 200 South;
- d. Extension of road base and asphalt paving between the curb and gutter and the existing paved surface of Center Street and 200 South; and
- e. Landscaping within the public right-of-way along Center Street and 200 South.

3. City shall defer Property Owners' requirement to post an infrastructure performance guarantee bond for the completion of the Deferred Improvements until such time as notice is sent to Property Owners 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 recordation of this agreement, the City shall adopt a plan for the construction of infrastructure improvements adjacent to the Property and shall notify Property Owners, in accordance with paragraph 18, to commence construction of the Deferred Improvements as provided in the City's adopted improvement plans.

5. Property Owners agree and commit to the following terms and conditions regarding the construction of the Deferred Improvements:

a. Property Owners shall commence construction of the Deferred Improvements within 30 days of the notice described in paragraph 4 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 Owners 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 Owners.

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

9. If Property Owners sell or lease 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 Owners 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 Owners 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 Owners recognize and agree that City may 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 Owners expressly agree not to oppose the forming of the improvement district or any of the costs thereof. Property Owners expressly acknowledge that their 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 installation of said improvements by the improvement district.

13. Property Owners shall have the right to satisfy their 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 Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Property Owners from their 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 Owners as outlined in this Agreement shall run with the Property 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 Property or any portion thereof resulting from a subdivision of the same.

16. This Agreement has been reviewed and revised by legal counsel for Property Owners 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 Daniel M. Olson, Mayor  
110 South Center Street  
Santaquin, UT 84655

Copy to:

Brett B. Rich, Esq.  
Nielsen & Senior  
1145 South 800 East, Suite 110  
Orem, Utah 84097

If to Property Owners to:

Race Ostler  
215 South Center Street  
Santaquin, UT 84655

If to subsequent owner(s) of the Property or any portion thereof, the City shall provide notice to the owners of record and to the mailing address of record for such owners, which is deemed sufficient by the Parties hereto.

19. This Agreement is 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 (containing 1 page)  
Exhibit B      Subdivision Plat (containing 1 page)

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 the other Party or Parties 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 City or Property Owners 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 Owners agree 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 by the City within 10 business days of the execution hereof.

IN WITNESS THEREOF, this Agreement has been executed by a person(s) duly authorized by Property Owners 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 \_\_\_\_\_.

CITY OF SANTAQUIN

\_\_\_\_\_  
Daniel M. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Amalie Ottley, City Recorder

STATE OF UTAH        )  
                                  :SS  
COUNTY OF UTAH    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, Daniel M. Olson who, after being duly sworn, acknowledged to me that he is authorized to execute this document and who executed the same.

\_\_\_\_\_  
Notary Public

PROPERTY OWNERS

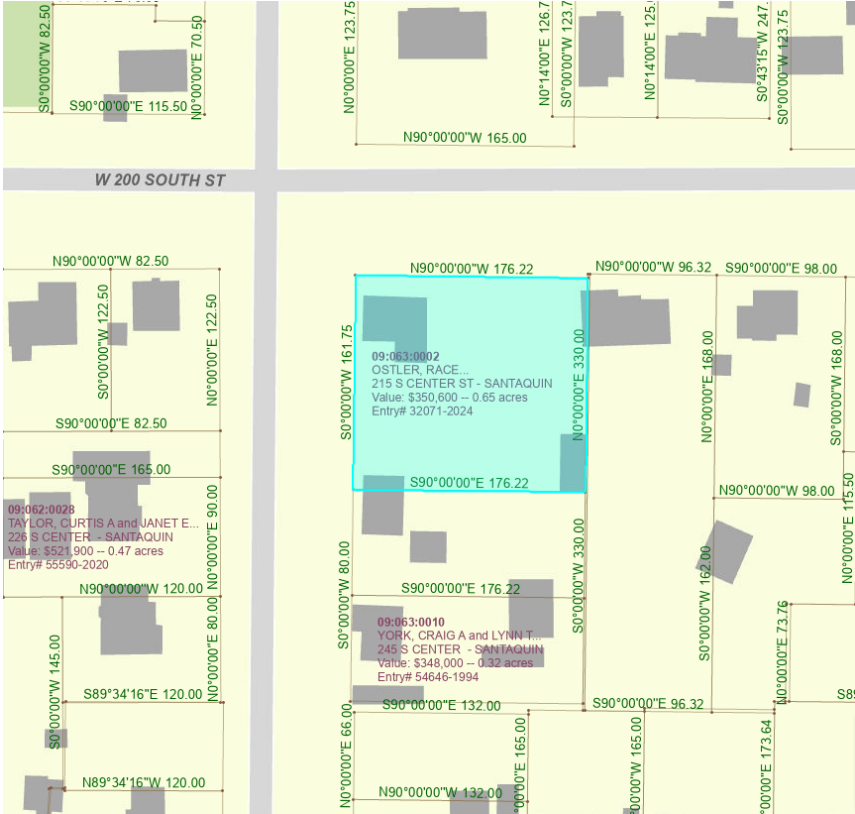
\_\_\_\_\_  
Race Ostler

STATE OF UTAH        )  
                              :ss  
COUNTY OF UTAH    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, Race Ostler who, after being duly sworn, acknowledged to me that he is authorized to execute this document and who executed the same.

Notary Public \_\_\_\_\_

Exhibit A: Property Identifier



The Property is identified by Utah County Recorder Parcel Serial Numbers 09:063:0002 as depicted in the above figure.

Legal Description: COM. AT NW COR BLK 6, PLAT A, SANTAQUIN TOWNSHIP SUR; S 161.75 FT; E 10.68 RDS; N 161.75 FT; W 10.68 RDS TO BEG.

**Exhibit B: Subdivision Plat**

[ Insert copy of DRAFT or FINAL subdivision plat for the Property ]