

WHEN RECORDED RETURN TO:
Payson City Recorder
439 West Utah Avenue
Payson City, Utah 84651

Space above for County Recorder's use only

PARCEL I.D. 30-060-0055

**AGREEMENT TO DELAY AND DEFER POSTING OF PERFORMANCE
GUARANTEE
AND COMPLETION OF IMPROVEMENTS**

THIS AGREEMENT is made this ____ day of _____, 2016.

PARTIES

“APPLICANT”: Stephanie Staheli, owner of property, whose address is 950 South 730 West, Payson, UT 84651.

AND

“CITY”: PAYSON CITY, (PAYSON), a municipal corporation, whose address is 439 West Utah Avenue, Payson, Utah 84651.

RECITALS

WHEREAS, APPLICANT desires the following permits, approvals or agreements:

Approval to subdivide an existing parcel of land located along the North side of 800 South at approximately

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1600 West in Payson, Utah 84651; and,

A Delay Agreement for required off-site improvements and for required on-site improvements, including but not limited to all legally required performance guarantees, permits, and infrastructure improvements including disconnection of any existing utilities and services and the installation, competition of, and connection to the City utilities, services infrastructure (i.e. drinking water, pressurized irrigation, sewer, power, etc.) located within 300 feet of the Applicants existing parcel located at the proposed SX3 Subdivision, North of 800 South at approximately 1600 West in Payson, Utah 84651.

The legal description of land where the improvements described herein are to be installed and/or constructed is more particularly described as follows, to wit:

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BOUNDARY DESCRIPTION:

BEGINNING AT A POINT ON THE NORTH LINE OF 800 SOUTH STREET, SAID POINT BEING NORTH 89°42'17" EAST 2308.06 FEET AND NORTH 1809.29 FEET FROM THE SOUTHWEST CORNER OF SECTION 18, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE SOUTH 84°57'35" WEST 191.48 FEET; THENCE 44.93 FEET ALONG THE ARC OF A 641 FOOT RADIUS CURVE TO THE LEFT THRU A CENTRAL ANGLE OF 4°00'58" (CHORD BEARS SOUTH 77°51'35" WEST 44.92 FEET); THENCE SOUTH 76°07'52" WEST 378.53 FEET; THENCE NORTH 13°52'08" WEST 271.00 FEET; THENCE NORTH 76°07'52" EAST 679.79 FEET; THENCE SOUTH 1°19'19" EAST 309.12 FEET TO THE POINT OF BEGINNING.

TOTAL AREA CONTAINS: 4 lots, 4.114 ACRES, 179,210 SQUARE FEET, MORE OR LESS

WHEREAS, the terms of the issuance of said permits, approvals or agreements require APPLICANT to install and complete the following improvements:

All required off-site improvements and all required on-site improvements, including but not limited to Curb, Gutter and Sidewalk, Sewer, Municipal Power and all legally required performance guarantees, permits, and infrastructure improvements including disconnection of any existing utilities and the installation, competition of, and connection to the City utilities, services and infrastructure (i.e. drinking water, pressurized irrigation, sewer, power, etc.) located within 300 feet of the Applicants existing parcel above-described.

WHEREAS, CITY cannot grant delay of said permit(s) and/or approval(s) and agreements until APPLICANT agrees to the conditions set forth hereunder regarding the above-described improvements.

NOW THEREFORE, in consideration of the premises, the parties agree as follows:

1. CITY agrees to permit APPLICANT to defer completion of the improvements until such time as:

DELAY AGREEMENT

- a. development commences on any one of the lots created by and contained in the above mentioned SX3 Subdivision. Application for development of any lot in the subdivision that is not fronted on 800 South shall also require all improvements that extend from 800 South or elsewhere to the interior lot to be installed in its entirety and completed prior to development of that lot.
- b. written notice is sent to APPLICANT demanding installation and/or completion of any or of all the improvements; or, to reimburse CITY for CITY's installation and/or completion of the improvements at such time as CITY, through written notice to APPLICANT, demands reimbursement.
2. Unless otherwise expressly agreed in paragraph 1 above, 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
 3. Installation of the improvements by the APPLICANT shall commence within 30 days of the date of the written notice or other time mentioned in paragraph 1 above, and shall be completed within ninety (90) days of the written notice.
 4. The cost of the improvements and their installation and completion shall be completely and wholly borne by APPLICANT.
 5. APPLICANT shall not be relieved from the obligation to install the improvements until such installation has been performed to the satisfaction of CITY.
 6. Notwithstanding the provisions set forth above, if prior to the deferred time period set out in paragraph 1 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 approval is given to develop the adjacent property.
 7. If APPLICANT sells or leases property adjacent to the property described above and the buyer or lessee applies to CITY for approval to develop the adjacent property, CITY may require the improvements to be installed at the same time approval is given to develop the adjacent property.
 8. The parties expressly agree that CITY may at any time, at its option, install and/or complete the improvements for the property described above. Should CITY exercise its option, APPLICANT shall reimburse to CITY, within 30 days of the date of notice costs resulting from said installation and/or completion.
 9. APPLICANT expressly agrees that should APPLICANT fail to install and complete the improvements as required by CITY pursuant to the terms of this Agreement or reimburse CITY for the costs to install and complete the improvements, or otherwise fail to perform its obligation pursuant to the terms of this Agreement, APPLICANT agrees and 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 or obtain reimbursement therefore through any lawful means.
 10. Parties agree that the property described herein is located in the S-1, Special Highway Service Zone, and is located along an existing public street or existing public right-of-way.
 11. APPLICANT agrees a performance guarantee shall be provided prior to commencement of any construction.
 12. This Deferral Agreement and Release shall be signed by the owner(s) of property described herein and recorded in the office of the Utah County Recorder.

13. The deferral process does not waive or modify any other regulations or requirements of Title 19, Title 20, or any other portion of the Payson City Municipal Code or the Municipal Land Use Development and Management Act, Utah Code Annotated, 10-9a-101 et seq.
14. Notwithstanding the provisions set forth above, if an applicant applies to CITY for approval to develop the property adjacent to the property described herein, CITY may require said deferred improvements to be installed at the same time approval is given to develop the adjacent property.
15. If APPLICANT sells or leases the property described above, and the buyer or lessee applies to CITY for approval to develop or improve the property, CITY may require the improvements to be installed at the same time approval is given to develop the property.
16. If a special 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, APPLICANT expressly agrees not to oppose the forming of the special improvement district or the cost thereof. APPLICANT expressly acknowledges that its obligation for completion of or reimbursement for any improvements which are the subject of this Agreement, but are not or will not be installed as part of the special improvement district, shall not be affected by said special improvement district.
17. Any and all of the obligations of APPLICANT as outlined in this Agreement shall run with the land described herein 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.
18. 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.
19. This Agreement contains the complete Agreement concerning the arrangement between the parties with respect to the posting of an infrastructure performance guarantee and/or completion of any or of all the improvements for the infrastructure described herein, and shall supersede all other agreements between the parties, written or oral. This agreement does not waive other conditions of approval for the subdivision.
20. 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.
21. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not be affected thereby, but shall remain in full force and effect.
22. 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 and the Ordinances of Payson City.
23. 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 term 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.
24. 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.

RICHARD D. MOORE, MAYOR

STATE OF UTAH)
: ss
COUNTY OF UTAH)

On this _____ day of May, 2014, personally appeared before me, a Notary Public in and for the State of Utah, RICHARD D. MOORE, Mayor of Payson City, and the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC