



ENT 122824:2019 PG 1 of 6
JEFFERY SMITH
UTAH COUNTY RECORDER
2019 Nov 21 3:32 pm FEE 40.00 BY CS
RECORDED FOR SPRINGVILLE CITY CORPORATIO

AGREEMENT

This Agreement is entered this 28 day of October, 2019, by and between, **James Bartley**, an individual, with an address of 98 North 1800 East, Mapleton 84664 ("Bartley"); **Denise Jones**, an individual with an address of 98 North 1800 East, Mapleton 84664 ("Jones"); and **Springville City**, a Utah municipal corporation ("City"). Bartley, Jones, and City may also be individually referred to as "**Party**" and collectively as "**Parties**."

BACKGROUND

- A. Bartley and Jones (collectively known hereafter as "Owner") jointly own property located at 829 West 400 South, Springville, Utah 84664, parcel number 66:698:0001 (the "Property"). A copy of the legal description of the property is attached hereto as Exhibit "A."
- B. In accordance with Section 10-1-105(3) of the Springville City Code, Owner desires to construct a commercial building on the Property with a basement (the "Basement"). The Property is located within 300 feet of 400 South, and Owner may construct the Basement on the property as long as the criteria of Section 10-1-105(3) of the Springville City Code is met.
- C. Before commencing the construction of the Basement, Section 10-1-105(3) requires Owner to enter into an agreement wherein Owner agrees to release and indemnify City for any and all damages associated with having the Basement.
- D. Parties now desire to enter into this Agreement in order to meet the release and indemnification requirements of Section 10-1-105(3).

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Participant, Agency and City agree to the following:

1. Recitals Affirmed. The parties each certify the correctness and accuracy of the facts recited above and adopt the same as a statement of their

principal reasons for entering this Agreement.

2. **Purpose.** The purpose of this Agreement is to set forth the release and indemnification requirements for Owner to construct a commercial building with the basement on the Property.

3. **Groundwater.** Owner acknowledges and agrees that:

- a. The Property has an extremely high groundwater table that fluctuates depending on the season and year;
- b. Even with Owner constructing the Basement higher than four-feet above groundwater, the groundwater may rise in the future;
- c. Groundwater may cause damages to the Basement's structural, Owner's commercial building, the sewer system (including sewer system backups), appliances, electrical work, personal property, storage areas, and people; and
- d. Groundwater may cause damages that may be currently known potential damages or unknown damages.

4. **Release.** Owner hereby waives, releases and forever discharges City and its officers, employees, agents, representatives and all others acting on its behalf from any and all claims or causes of action known or unknown for any and all injuries, illnesses, damages or losses, without limitation, that may occur to Owner, Owner's employees, Owner's personal property, and/or Owner's commercial building or real property as a result of Owner constructing, occupying and/or utilizing the Basement or in any way whatsoever related to the Basement.

5. **Indemnification.** To the fullest extent permitted by law, Owner shall indemnify, release and defend, with counsel of City's choice, and hold City and its officials, employees, officers, departments, divisions, agents, and affiliated people and entities and their respective successors and assigns (collectively, the "Indemnitees") harmless from and against any loss, damage, injury, accident, or other casualty, liability, claim, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, including the property of the Indemnitees (collectively the "Claims", or a "Claim") from or by any unaffiliated third party, City, and/or City's agents, arising from or relating to (i) the Basement, (ii) any bodily injury or illness, property damage, structural damage to Owner's building(s), damage to any property improvements, accident, other casualty or other damages related to or in any way involving groundwater on the Property, (iii) the failure of Owner to maintain the Basement or any groundwater improvements in a safe and operable condition, (vii) any breach by Owner of

its obligations under this Agreement or any other regulations, laws and rules related to groundwater, and (viii) any enforcement by City of any provision of this Agreement against Owner. The indemnity provided by Owner in favor of the Indemnitees in this Agreement shall not require payment as a condition precedent. Except damage caused to the Basement or any property or injury associated with the Basement, this indemnity does not include water related problems associated with City's culinary or secondary water utilities. The terms and conditions of this indemnification provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

6. **Binding Effect.** This Agreement and the terms and conditions of this Agreement shall permanently run with the land and shall both bind and inure to the benefit of City, Owner, all future owners of the Property and their heirs, successors-in-title and assigns in and to the Property. This Agreement shall be recorded in the Utah County Recorder's Office.

7. **Miscellaneous.**

Attorney's Fees: If any Party is required to retain legal counsel in order to enforce this Agreement, with or without the commencement of a formal legal action, such party shall be entitled to recover its attorney's fees and costs from the breaching Party or Parties.

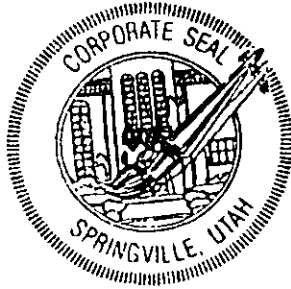
Governing Law: This Agreement shall be governed by the laws of the State of Utah.

Modifications: This Agreement shall not be amended or modified except by written document signed by all Parties.

No Waiver: No failure to exercise, delay in exercising or single or partial exercise of any right, power or remedy by any Party hereto shall constitute a waiver thereof or shall preclude any other or further exercise of the same or any other right, power or remedy.

Section Headings: The headings and captions contained in this Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.



SPRINGVILLE CITY

By: *Richard J. Child*
Richard J. Child, Mayor

Attest:

K Crane
CITY RECORDER

JAMES BARTLEY

By: *James Bartley*
Title: _____

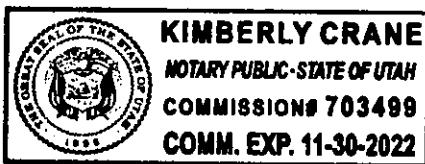
DENISE JONES

By: *Denise Jones*
Title: _____

STATE OF UTAH)

COUNTY OF UTAH)

On this 28 day of October, 2019, before me personally appeared Richard J. Child, known to me to be the person who executed this Agreement on behalf of Springville City and acknowledged to me that he executed the same for the purposes therein stated.



K Crane
Notary Public

STATE OF UTAH)

COUNTY OF UTAH)

On this 25 day of October, 2019, before me personally appeared James Bartley, known to me to be the person who executed this Agreement and acknowledged to me that he executed the same for the purposes therein stated.

Marcie S. Clark
Notary Public



STATE OF UTAH)

COUNTY OF UTAH)

On this 25 day of October, 2019, before me personally appeared Denise Jones, known to me to be the person who executed this Agreement and acknowledged to me that she executed the same for the purposes therein stated.

Marcie S. Clark
Notary Public



Exhibit A

BOUNDARY DESCRIPTION

All of Lot 3A, STONEHENGE OF SPRINGVILLE AMENDED #4, according to the Official Plat thereof recorded November 3, 2016 as Entry No. 110891:2016 of the Official Records of Utah County, more particularly described as follows:

Beginning at a point located N88°33'19"E along the Section line 200.11 feet and North 406.97 feet from the South 1/4 Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence N00°24'56"E 195.42 feet; thence Easterly along the arc of a non-tangent curve to the left having a radius of 20,060.00 feet (radius bears: N01°22'48"E) a distance of 64.45 feet through a central angle of 00°11'03" Chord: S88°42'43"E 64.45 feet; thence S88°48'14"E 130.72 feet; thence S00°58'03"W 249.79 feet; thence Westerly along the arc of a non-tangent curve to the right having a radius of 266.50 feet (radius bears: N06°55'27"E) a distance of 53.65 feet through a central angle of 11°32'01" Chord: N77°18'33"W 53.56 feet; thence N71°32'33"W 147.67 feet to the point of beginning.

Contains: 43,645 square feet or 1.002 acres+/-

2 Lots