

**Ordinance 2023.01.26**  
**DEVELOPMENT AND DEFERRAL AGREEMENT**

The "Parties" to this Development and Deferral Agreement ("Agreement") are The WANGSGARDS 41 IRREVOCABLE TRUST, ("Developer" or "Wangsgards") and HUNTSVILLE TOWN ("Town"). The Effective Date of this Agreement is the date signed by the last Party to this Agreement.

**RECITALS**

**WHEREAS**, Utah Code §10-9a-604.5 provides for this Agreement;

**WHEREAS**, the Developer seeks permission to dedicate a Public Right-of-Way (the "ROW") which ROW is more particularly described on Exhibit "A" hereto, which is the "Survey" attached hereto and incorporated herein by this reference;

**WHEREAS**, the Town seeks to protect the health, safety, and general welfare of the residents by requiring the residents to conform to the Town Code when dedicating the ROW;

**WHEREAS**, the purpose of this Agreement is to protect the Town from the cost of completing the ROW improvements which shall be made by the Developer or subsequent development of the property adjoining the ROW specified in the Survey;

**WHEREAS**, the mutual promises, covenants, and obligations contained in this Agreement are authorized by State Law and binding on the Developer, subsequent purchasers and those benefitting from the ROW;

**THEREFORE**, the Parties hereby agree as follows:

**SECTION 1: FINDINGS OF FACT**

The following Findings of Fact are agreed upon by the Parties:

1. On, July 30, 2015, the Huntsville Planning Commission reviewed the plats of the property owned by William and Michaeline Wangsgard (the "W&M Wangsgard Property"), legally identified as Weber County Parcels: 200100022 and 200100041.
2. William Wangsgard explained that in the pre-1970's his father Harold W. Wangsgard annexed approximately four (4) acres located at the end of 6800 East into Huntsville Town (the "Harold Wangsgard Property"). At that time, the portion of 6800 East ending at the Harold Wangsgard Property was a Weber County road, there being county properties between the Harold Wangsgard Property and the Town boundaries. As such, the annexed property was an island, with Weber County property between the Harold Wangsgard Property and the Town boundaries.
3. In the 1970's Jack and Barbara Cox (William Wangsgard's sister) built a house on the western-most quarter of the Harold Wangsgard Property, obtaining permission from

Harold Wangsgard and the Town to access their house via 6800 East, and crossing the Harold Wangsgard Property. The portion of the Harold Wangsgard Property where the Cox house is located (the "Cox Property") is now identified as Weber County Parcel: 20-010-0043.

4. On or about 1991, the Harold Wangsgard Property was divided into four (4) lots, roughly equal in size. These four lots included the Cox Property (Lot 1), and three additional lots to the east of the Cox Property, (Lots 2, 3 and 4), and an additional 45-foot-wide by 389-foot-long rectangular parcel that contains a 25-foot ROW (the "ROW Parcel"), and was recorded as Weber County 20-010-0022. This ROW Parcel fronts the southern portion of lots 1, 2, and 3. Also, on or about 1991, William and Michaeline Wangsgard obtained a building permit from the Town and built a house on the eastern-most lot, (Lot 4), identified as Weber County Parcel 20-010-0031.

Later the Wangsgards acquired the adjacent Lot 3, and a new parcel number was assigned to that lot, (20-010-0040). They also acquired ownership of the ROW Parcel, 20-010-0022, that served as a driveway and contains a 25-foot-right-of-way granted by the Wangsgards.

5. Also in the intervening years, the property between these four (4) parcels and the Town boundary was annexed into the Town and 6800 East was paved up to the SW corner of the properties. The Town's obligation for snow removal only extends to the end of 6800 East, but the Wangsgards have allowed the snowplow to use the ROW and their driveway to turn around.
6. Preston Cox purchased parcel 20-010-0042 (Lot 2) and built a house on this parcel in approximately 2010.
7. In 2008, the Wangsgards platted the two properties (20-010-0031 and 20-010-0040) into one parcel for tax purposes (the "Consolidated Wangsgard Property"). It received a new parcel number (20-010-0041).
8. The Wangsgards submitted an application to the Planning Commission to re-subdivide the Consolidated Wangsgard Property on March 24, 2022. The Planning Commission recommended approval of the subdivision application. The Town Council discussed the subdivision application on July 21, 2022.
9. To comply with the Huntsville Town Code 15.6.5 the frontage for every dwelling shall have the required frontage on a public street or on a right-of-way which has been approved by the Town. This ROW Parcel has been approved by the Town and complies with the Wangsgards frontage requirement for 400 North Street and their share of the ROW dedication requirement for 400 North Street.
10. The Developer proposes to dedicate the ROW Parcel, 20-010-0022, including its 25-foot ROW, to the Town of Huntsville to become the Developer's required share of 400 North Street.

11. To comply with the Huntsville Town Code, the Huntsville Town Council moved to approve the subdivision application of William and Michaeline Wangsgard on July 21, 2022, subject to conditions set forth in this Agreement.

**SECTION 2: RIGHT-OF-WAY**

1. The Developer hereby dedicates to the Town the ROW Parcel, specified on Exhibit "A" (Weber County Parcel 200100022), which will be the Wangsgard's required dedication for 400 North Street, to comply with Huntsville Town Code 15.6.5.
2. The following requirements must be satisfied before subdivision or other development shall be approved on Weber County Parcel 200100010; the property located south of the 400 North ROW:
  - a. Access to Weber County Parcel 200100010 shall be the 400 North ROW.
  - b. Connection to utilities may be made at the most accessible location or locations for utilities along the 400 North ROW to minimize ROW excavation.
  - c. Any future development of what is now Parcel 200100010 requires the dedication of additional right-of-way to complete the southerly portion of 400 North Street fronting Parcel 200100010, sufficient to meet the requirements of the Town's minimum road width standard that are in place at the time of application for subdivision or any other development of Parcel 200100010 whatsoever.
  - d. As a condition of subdivision or development approval of 200100010, or any portion thereof, the developer thereof is required to complete and connect 400 North Street to 6900 East Street, complying with all size, width, and development standards in place at the time of application for subdivision or any other development of Parcel 200100010 whatsoever.
3. The Town shall be responsible for snow plowing the ROW and temporary cul-de-sac.
4. At the time of the completion of the 400 North Street Improvements and the connection of 400 North Street to 6900 East Street, as set forth above, the temporary turnaround cul-de-sac easement on the Consolidated Wangsgard Property created hereby (encumbering the Parcel 20-010-0041, which includes prior Lots 3 and 4), shall expire by its terms.
5. This Agreement shall be recorded by the Town against all affected and adjoining parcels on Exhibit "A" attached hereto and incorporated herein by this reference.
6. Deferral. All ROW improvements required by the Town Code for 400 North Street on the ROW Parcel, 20-010-0022, dedicated by Developer are hereby deferred in accordance with this Paragraph. Such required improvements, by agreement with the Town, do not and will not include curb, gutter and sidewalk. The Town may require the Developer to

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install all deferred improvements within 180 days of written notice from the Town in the event that Parcel 20-010-0010 is subdivided into residential lots. Improvements shall conform to the Town's standards in place at the time the improvements are installed, however such improvements shall not include the improvements specifically excepted earlier in this paragraph. Developer agrees to install and maintain a gravel road surface on the portion of the dedicated ROW in the sufficient width to meet the requirements of Weber Fire District.

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### SECTION 3: GENERAL PROVISIONS

1. **Indemnification.** The Developer and any subsequent purchaser, assign, or any other party hereby expressly agrees to forever indemnify and hold the Town harmless from and against all claims, costs, and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of this Agreement or the performance of any construction or work at the time of development or improvements under this Agreement.
2. **Term.** The term of this Agreement is perpetual, and this Agreement is binding on all heirs, subsequent purchasers, and/or assigns.
3. **Employment.** The Developer is not an agent or employee of the Town.
4. **No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.
5. **Amendment or Modification.** The Parties to this Agreement may amend or modify this Agreement only by written instrument executed by the Town and by the Developer, or authorized agent. Such amendment or modification will be properly notarized before it may be effective.
6. **Attorney's Fees.** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff, or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both Parties, each will bear its own costs in their entirety.
7. **Vested Rights.** Except for the express terms related to the ROW dedicated herein, this Agreement shall not be interpreted to grant any other vested right to the Developer or any other person or entity whatsoever.

8. Third Party Rights. No person or entity not a party to this Agreement has any right of action under this Agreement.
9. Scope. This Agreement constitutes the entire agreement between the Parties and no oral statement(s), promise(s), inducement(s), or otherwise that is/are not expressly contained in this Agreement is binding on the Parties.
10. Severability. If any part, paragraph, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, paragraph, term, or provision of this Agreement.
11. Recordation. The Town shall record this Agreement at any time in the Recorder's Office of Weber County, Utah, for the parcels legally identified and described in Exhibit "B" attached hereto.
12. Referendum. If this Agreement is subject to referendum, it shall be at the sole expense of Developer.
13. Immunity. Nothing contained in this Agreement constitutes a waiver of any of the Town's immunity under any applicable law or otherwise.
14. Jurisdiction and Venue. Jurisdiction and venue for any litigation or action commenced by either Party to this Agreement shall be the Second District Court of and for Weber County. The Parties hereby expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.
15. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:
  - a. Developer: \_\_\_\_\_
  - b. Town: \_\_\_\_\_

**FOR TOWN:**

\_\_\_\_\_  
 Mayor

Date \_\_\_\_\_

Attest:

\_\_\_\_\_  
 Town Clerk

Approved as to Form:

\_\_\_\_\_  
 Town Attorney

State of Utah )  
                          §:  
County of Weber )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, date month year notary public name public, personally appeared \_\_\_\_\_, Mayor, who proved on the basis of satisfactory name of document signer evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

**FOR DEVELOPER:**

\_\_\_\_\_  
Trustee  
Approved as to Form: \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Attorney for Trustee

State of Utah )  
                          §:  
County of Weber )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, date month year notary public name public, personally appeared \_\_\_\_\_, Mayor, who proved on the basis of satisfactory name of document signer evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Exhibit A

