TO: **Ivins City Council**

DATE: **February 14, 2018**

FROM: **Dale Coulam**
City Manager/City Attorney

RE: **O'Neill Purchase Agreement & Quitclaim Deed**

In February of 2009, the then City Council approved a Purchase Agreement for certain properties abutting City property along the wash at Red Rock Park to purchase land that was being used by them as part of the rear yards but was owned by the City. George & Linda O'Neill owned one of those properties and did execute a Purchase Agreement whereby the City agreed to transfer ownership of the disputed property in exchange for them paying the sum of $2,550.00 to the City. However the purchase price was never paid and the property was never transferred. Both a letter to the O'Neills, among others, and the Purchase Agreement made clear that the payment had to be made within 30 days from the date of the Purchase Agreement or the offer would expire.

Mr. O'Neill has since died and his wife, Linda, discovered that they had never paid the purchase price and the City had never transferred the property in question. She came in to the City offices offering to pay the $2,550.00 purchase price in exchange for a Deed to the affected property in an effort to get her legal affairs in order.

Since the original offer had expired, I asked that this be put on the Amended Agenda for the Council to consider ratifying the Purchase Agreement and authorizing the City to transfer a Quitclaim Deed to the affected property in exchange for payment of the $2,550.00 as had originally been agreed.

COPY

January 26, 2009

Mark & Jaclyn Landon
480 S. Cordero Drive
Ivins, UT 84738

Jeffrey & Nancy Leonard
458 S. Cordero Drive
Ivins, UT 84738

George & Linda O'Neill
466 S. Cordero Drive
Ivins, UT 84738

Debbie Williams-Godville
Taylor Ruark Wiliams
518 S. Cordero Drive
Ivins, UT 84738

Re: Purchase Agreement – Red Rock Park Property

Dear Property Owners:

Please consider this letter as Ivins City's offer to sell to you a portion of City park property adjoining your property pursuant to the terms and conditions of the enclosed Purchase Agreements.

Please be advised that this offer must be accepted by executing and returning one of the enclosed Purchase Agreements on or before February 27, 2009. Please note that in addition to signing the enclosed agreement, you must also initial whether you want to pay cash or construct a block wall as consideration for the purchase.

In the event you do not return the signed Purchase Agreement by February 27, 2009, please be advised that this offer will expire and become void.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Dale T. Coulam
Ivins City Attorney

Ivins City
55 N. Main St.
Ivins, Ut. 84738
(435) 628-0606
www.ivins.com

Mayor
Daren Barney

City Manager
Judy Gubler

City Attorney
Dale Coulam

City Council
Carol Tenczar
Barbara Rusick
George E. Elwell Jr.
Michael Foot
Steve Jolley

WHEN RECORDED, MAIL TO:

KARI JIMENEZ
IVINS CITY RECORDER
55 NORTH MAIN
IVINS, UT 84738

APN: I-PC-7-19

DOC # 20090010687
Agreement Page 1 of 5
Russell Shirts Washington County Recorder
03/24/2009 02:03:56 PM Fee $ 0.00
By IVINS CITY

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made and entered into effective the 2 day of February, 2009, by and between IVINS CITY, a municipal corporation of the State of Utah ("Grantor") and GEORGE H. O'NEILL and LINDA S. O'NEILL ("Grantee"), residing at 466 Cordero Drive, Ivins City, Utah, Parcel No. I- PC-7-19.

RECITALS

WHEREAS, Grantee is the owner of a certain parcel of real property commonly known as 466 Cordero Drive, Ivins City, Utah, designated as Lot 19 on the Final Plat for Padre Canyon Estates Phase 7 recorded in the Washington County Recorder's office on June 2, 1999, in Book 1336, at Page 723 ("Grantee's Property"); and

WHEREAS, Grantor is the owner of a certain parcel of real property directly adjacent to the rear lot line of Grantee's Property that is designated as "City Park" on the recorded Final Plat for Padre Canyon Estates Phase 7; and

WHEREAS, Grantee desires to purchase, and Grantor agrees to sell, the 1,275 square foot portion of the City Park designated on Exhibit "A" attached hereto and incorporated herein by this reference (the "Purchased Property") as part of Grantee's rear yard according to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties hereby agree as follows:

AGREEMENT

1. Consideration. The consideration to be given by Grantee for acquiring title to the Purchased Property shall be one of the following forms of consideration as selected and initialed by Grantee:

    a. Payment of $2.00 per square foot for the purchase of the Purchased Property, totaling $2,550.00 as the full purchase price for the Purchased Property. Grantee shall tender payment of the full purchase price to Grantor within thirty (30) days from the date of this Agreement. By selecting this option, Grantee is not required to enclose the Purchased Property by a block wall.

If selecting this Option (a) initial here: _____

OR

b. Grantee constructs, at its sole expense, a block wall enclosing the Purchased Property that is constructed in a manner acceptable to the Ivins City Engineer. Grantee shall complete the construction of the block wall within twelve (12) months from the date of this Agreement. The block wall shall be a minimum of four feet (4') in height up to a maximum of six feet (6') in height and shall be of a color consistent with existing walls in the area.

If selecting this Option (b) initial here: _____

2. Conveyance. Within sixty (60) days of executing this Agreement, Grantee shall obtain, at its sole expense, a surveyed legal description of the Purchased Property and shall submit same to the City Engineer for verification and approval. Within a reasonable time of the City Engineer's verification and approval of the surveyed legal description and Grantee tendering to Grantor the full purchase price for the Purchased Property or completion of the block wall, whichever form of consideration is elected by Grantee, Grantor shall record a Quitclaim Deed conveying title to the Purchased Property from Grantor to Grantee.

3. Assumption of Risk. Grantee hereby acknowledges that the Purchased Property is directly adjacent to a drainage/wash area and may be exposed to the threat of flooding, erosion or other related injury or damage. Grantee hereby expressly assumes all risk associated with any such flooding, erosion and/or other injury or damage that may occur to the Purchased Property or to Grantee's Property, or the users thereof, as a result of any running or standing water in or around said drainage/wash area adjacent to the Purchased Property.

4. Grantor not Liable. Grantee shall indemnify, defend, and hold Grantor and its employees, officers, divisions, partners, agents, successors and assigns (collectively the "Indemnitees") harmless from and against any loss, damage, injury, accident, 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") arising from or relating to: (a) the construction of a block wall enclosing the Purchased Property; (b) any use of the Purchased Property by Grantee or its guests, agents, successors or assigns; (c) any act or omission of Grantee or its guests, agents, successors or assigns; and (d) any bodily injury, property damage, accident, or casualty to or involving Grantee or its guests, agents, successors or assigns on the Purchased Property and adjacent areas. Grantee, as a material part of the consideration of this Purchase Agreement, waives all claims or demands against Grantor and the other Indemnitees for any such loss, damage or injury of Grantee or Grantee's property.

5. Attorneys' Fees. In the event that this Purchase Agreement or any provision hereof shall be enforced by an attorney employed or retained by Grantor, whether by suit or otherwise, the fees and costs of such attorney shall be paid by Grantee.

6. Assignability. This Purchase Agreement shall be recorded in the Washington County Recorder's office and shall "run with the land" and be binding against all successor or assigns of the parties hereto, including all successors in interest to Grantee's Property.

7. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or within three (3) days of depositing same in the United States mail, by registered or certified mail, addressed as follows:

If to Grantor:

Ivins City Attorney
55 North Main Street
Ivins, Utah 84738

If to Grantee:

George & Linda O'Neill
466 S. Cordero Drive
Ivins, Utah 84738

8. Miscellaneous. This instrument constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement the day and year first above written.

GRANTOR:

R. Daren Barney, Ivins City Mayor

GRANTEE:

GEORGE H. O'NEILL

LINDA S. O'NEILL

Attest:

Kari Jimenez, Ivins City Recorder

IVINS CITY Corporate Seal WASHINGTON COUNTY

STATE OF UTAH)
ss.
County of Washington)

On this 27 day of March, 2009, before me personally appeared R. DAREN BARNEY and KARI JIMENEZ whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and City Recorder of **Ivins City**, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.

MARTHA S WILSON
Notary Public
State Of Utah
My Commission Expires November 12, 2012
COMMISSION NUMBER 576606

Martha S. Wilson
Notary Public

STATE OF UTAH)
ss.
County of Washington)

On the 2ND day of FEBRUARY, 2009, personally appeared before me GEORGE H. O'NEILL AND LINDA S. O'NEILL personally known to or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are signed on the foregoing document and who acknowledged before me that he/she/they executed the document for its stated purpose.

Rachel R Page
Notary Public

RACHEL R PAGE
Notary Public
State of Utah
My Comm. Expires Feb 5, 2009
7181 S Campus View Drive West Jordan UT 84084



SCALE
1" = 30'

-30' -15' 0 30' 60' 90'

N

IVINS CITY
55 N. Main Street
Ivins, Utah 84738
435-634-0689
435-674-5486 (fax)

SCALE: 1"=30'
DATE: 10/8/08
DWG BY: CRG
CKD BY: CRG

466 S. CORDERO DRIVE
(PADRE CANYON ESTATES PHASE 7 & 8)
PROPOSED LOT AJUSTMENTS
EXHIBIT "A"

IVINS UTAH