

# Santaquin City Resolution 04-07-2019

## A RESOLUTION APPROVING AN OPTION AGREEMENT FOR THE POTENTIAL PURCHASE OF PROPERTY AT APPROXIMATELY 700 WEST MAIN STREET

**WHEREAS**, Santaquin City has conducted research regarding the potential development of a recreation center and has determined, through community wide surveys, that a majority of the residents would support the construction of a recreation center through a proposition on the November, 2019 ballot; and

**WHEREAS**, the costs of constructing a recreation center could be significantly reduced through the potential acquisition of an existing structure and its surrounding property which would both increase the overall potential square footage of a recreation center as well as lower the overall construction costs per square foot; and

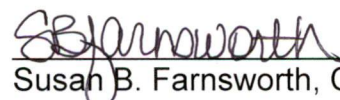
**WHEREAS**, it would be beneficial for Santaquin City to secure an "Option Agreement" for the potential purchase of an existing structure, as well as its surrounding property, while the City conducts its due diligence and develops conceptual renderings and estimated construction budgets in preparation for the November 2019 election.

**NOW, THEREFORE, BE IT RESOLVED**, the Santaquin City Council does hereby approve the attached Option Agreement with W. M. Ercanbrack Company, Inc. for the potential purchase of real property at approximately 700 West Main Street, Santaquin, Utah.

Approved and adopted by the Santaquin City Council this 27<sup>th</sup> day of April, 2019.

  
Kirk Hunsaker, Mayor

Attest:

  
Susan B. Farnsworth, City Recorder



## OPTION AGREEMENT

This Option Agreement is made and entered into effective as of the 10<sup>th</sup> day of May, 2019, by and between Santaquin City, a political subdivision of the State of Utah whose mailing address is 275 West Main Street, Santaquin, UT 84655 ("City") and W. M. Ercanbrack Company, Inc., a Utah corporation ("Ercanbrack") with a mailing address of 2336 N. Lake Road, Genola, Utah 84655.

**WHEREAS**, Ercanbrack is the owner of certain real property located at approximately 580 West Main Street, Santaquin, Utah, including all improvements located thereon (the "Property"), more particularly described in Exhibit A hereto;

**WHEREAS**, the improvements located on the Property include a building and certain facilities related to the operation and use of the building;

**WHEREAS**, City desires to obtain the right and option to purchase the Property, including the building and all improvements thereon ;

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree and represent as follows:

1. **Option to Purchase.** In consideration of the sum of Fifteen Thousand Dollars per month (the "Option Payments"), which shall be delivered to Ercanbrack on or before the first business day of each month following the execution of this Agreement, Ercanbrack gives and grants to City the exclusive right, privilege and Option to purchase the Property described in Exhibit A upon the terms and conditions contained herein. At Closing, all Option Payments shall be applied toward payment of the purchase price.

2. **Term of Option.**

- a. City's right to exercise this Option shall commence upon the date hereof and shall end at such time as the sale of the Property to the City is closed; at such time as the City notifies Ercanbrack that the Option is relinquished; but in no event later than 5:00 p.m. on March 31, 2020 (the "Option Period").
- b. If City fails to provide the monthly Option payment to Ercanbrack by the first business day of each month following the execution of this Agreement, the, City's Option shall expire and the parties rights, duties and obligations under this Agreement shall terminate.
- c. If City fails to provide to Ercanbrack a written notice of City's election to exercise the Option and purchase the Property as provided in paragraph 3 before the end of the Option Period, City's Option shall expire and the parties rights, duties and obligations under this Agreement shall terminate. Conversely, should City deliver the written notice of exercise of Option before the end of the Option Period, City's and Ercanbrack's rights and duties shall continue as provided in this Option Agreement.



3. **Exercise of Option.** If City desires to exercise the Option to purchase the Property, City shall deliver or mail to Ercanbrack written notice of City's exercise of the Option on or before the end of the Option Period. To be effective, any mailed notice of exercise of Option must be postmarked on or before the end of the Option Period. If so postmarked with correct postage prepaid, it shall be timely and shall be deemed actual notice to Ercanbrack. If City timely exercises this Option, the Closing shall take place on any date specified by City which shall be at least five (5) and not more than fifteen (15) days after delivery of the notice of exercise of Option and shall be on a week day which is not a holiday during normal business hours, at the office of Provo Abstract Company, Inc., 105 East 300 South, Provo, Utah 84606.

4. **Option Purchase Price.** Upon timely exercise of this Option, City shall pay, as the purchase price for the Property, the total of Two Million Three Hundred Thousand Dollars (\$2,300,000.00) (the "Option Purchase Price"). The entire Option Purchase Price shall be due and payable in cash or its equivalent at Closing. All monthly option payments paid shall be credited against the Option Purchase Price.

5. **Deliveries At Closing.** Upon exercise of this Option by City, at Closing the parties shall respectively execute and deliver to each other the following:

a. Ercanbrack shall:

i. execute and deliver to City, in recordable form, a warranty deed conveying marketable fee title in and to the Property to City or City's designate, free and clear of all liens and encumbrances thereon, except for any liens or encumbrances attaching as a result of the actions or neglect of City;

ii. deliver to City, at Ercanbrack's expense, a policy of title insurance in the principal amount hereunder insuring title in that property to City or City's designate, free and clear of all liens and encumbrances except for the standard exclusions from title insurance policies in the State of Utah.

b. City shall deliver to Ercanbrack or to Ercanbrack's designate the total purchase price in cash or equivalent.

i. City specifically understands and agrees that Ercanbrack may desire to handle the sale of the Property as a tax-deferred exchange pursuant to Section 1033 of the Internal Revenue Code of 1986, as amended. City shall fully cooperate with such transaction.

6. **Delivery of Possession.** City shall take possession of the Property at the Closing. City shall take possession of the Property in "as is with all faults" condition and Ercanbrack makes no warranty, either expressed or implied, concerning the condition of the Property or any of the present improvements thereon. Prior to Closing, risk of loss shall be solely borne by Ercanbrack. After Closing, risk of loss, damage to, or destruction of the Property shall solely be borne by City, anything to the contrary notwithstanding. Should Ercanbrack fail to deliver possession of the Property as provided in this Agreement, Ercanbrack shall pay to the City, as a rental payment for the Property, the sum of Five Hundred and No/100 Dollars (\$500.00) per day during the period that delivery is delayed.



7. **Lapse of Option.** Provided that the failure to Close is not due to any breach or default by Ercanbrack under this Option Agreement or other failure to perform of Ercanbrack, subject to paragraph 14, if City does not exercise this Option strictly according to its terms and timely Close on the purchase of the Property as provided herein, the Option shall lapse and terminate, the parties' respective rights and obligations shall cease and terminate, and Ercanbrack shall be entitled to retain the Option Payment and to place the Property on the market and sell or otherwise dispose of it as Ercanbrack sees fit.

8. **Real Estate Commissions.**

- a. Neither party has retained the services of a real estate agent, broker or the like in connection with the purchase of the Property by City pursuant to this Option. City may, however, retain the services of a broker or agent in City's effort to resell the Property. City shall solely be responsible for any commission or other fee which may result from such listing and Ercanbrack shall have no obligation or responsibility to join in the listing.
- b. Each party agrees to defend, indemnify and hold the other party free and harmless from and against any real estate brokers, finders or similar fee claimed as a result of the conduct of the indemnifying party respecting this transaction.

9. **Notices.** Any notices required or permitted to be delivered to either of the parties hereunder shall be in writing and either personally delivered or sent by mail, certified or registered (unless otherwise specified in this Agreement), return receipt requested, postage prepaid, addressed to the party to be notified at the address stated at the beginning of this Agreement or, in the case of Provo Abstract Company, Inc., the office address stated in paragraph 3. The parties may change their respective addresses for notification purposes by providing a written notice of the change in accordance with the requirements of this paragraph 9.

10. **Attorney's Fees.** In case suit should be brought to interpret or enforce this Agreement, the prevailing party shall be entitled to recover costs incurred in connection with such action, including a reasonable attorney's fee.

11. **Assigns, Successors.** The parties acknowledge that City may assign its rights, duties and responsibilities hereunder and that, provided such assignee accepts the assignment and agrees in writing to be bound by the terms of this Option Agreement, City shall thereafter be relieved of any liability or responsibility subsequently arising under this Option Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

12. **Entire Agreement.** This Option Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, arrangements and understandings, whether oral or written, between the parties. This Agreement may be modified only by a writing signed by both parties.

13. **Paragraph Numbers and Headings - Tense.** Headings and paragraph numbers have been inserted herein solely for convenience and reference and shall not be construed to affect the meanings, construction or effect of this Agreement. As used herein, the singular shall include the plural and vice versa, and each gender shall include all other genders.



14. **Survival.** All provisions of this Agreement which, by their terms, are intended to survive the delivery of any deed or other document of conveyance and/or the termination of this Agreement shall continue to be in full force and effect thereafter until fully performed.

15. **Waiver/Damages.** A waiver by either party of any breach or default shall not constitute a waiver of any other breach or default. The liability of Ercanbrack with respect to any breach of or liability under this Agreement, whether in contract, in tort, or otherwise, shall not exceed the Option Purchase Price.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

17. **Counterparts.** This Agreement may be executed in any number of originals, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one instrument. An executed version of this Option Agreement which has been signed and transmitted by facsimile or other electronic or mechanical means shall be deemed an original.

18. **Time of the Essence.** Time is of the essence to the performance of each and every obligation under this Agreement.

19. **No Recordation.** No notice or other document respecting this Option, or the exercise of the same, may be recorded with the Utah County Recorder.

20. **Taxes.** Ercanbrack shall pay all property taxes due or accrued through the Closing Date, at Closing. In the event that any sales tax shall be determined to be payable in connection with any of the transactions contemplated by this Agreement, then such sales tax shall be paid by City.

21. **Inspection.** City acknowledges that City is entering into this Option Agreement after, and in complete reliance upon, City's full and entire inspection of the Property and not by reason of any representation made by or on behalf of Ercanbrack as to the condition, merchantability, specific attributes or otherwise of the Property or any structure thereon.

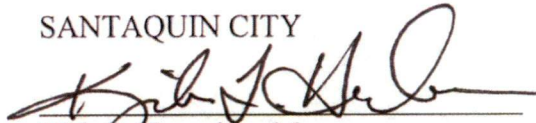
22. **Interpretation.** This Agreement has been negotiated at arms length and each party has been represented or has had the opportunity to be represented by independent legal counsel in this transaction. Accordingly, each party hereby waives any benefit under any rule of law or legal decisions that would require interpretation of any ambiguity in this Agreement against the drafting party.

23. **Severability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, the term or provision shall not affect any other term or provision of this Agreement.

24. **Further Assurances.** Each Party agrees to execute such other and further documents and instructions as may be reasonably necessary or proper in order to consummate the transactions contemplated by this Agreement.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first hereinabove written.

SANTAQUIN CITY

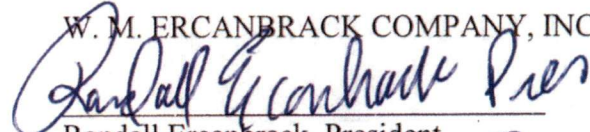
  
Kirk E. Hunsaker, Mayor



ATTEST:

  
Susan B. Farnsworth, City Recorder

W. M. ERCANBRACK COMPANY, INC.

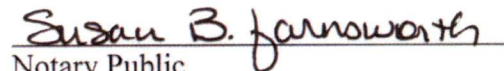
  
Randall Ercanbrack, President  
W. M. Ercanbrack Co. Inc.

STATE OF UTAH

ss:

COUNTY OF UTAH

On this 10 day of May, 2019, personally appeared before me, Randall Ercanbrack, who affirmed that he is the President of W. M. Ercanbrack Company, Inc. and is authorized to execute the foregoing agreement on behalf of W. M. Ercanbrack Company, Inc. and that he executed the same.

  
Notary Public



**EXHIBIT A**  
**(Description of the Property)**

Commencing South 00°08'21" East 1818.06 feet and West 195.33 feet from the North quarter corner of Section 2, Township 10 South, Range 1 East, Salt Lake Base and Meridian; thence North 04°20'10" East 321.57 feet; thence North 85°48'18" West 312.74 feet; thence South 04°10'32" West 128.56 feet; thence South 65°59'45" West 153.15 feet; thence South 40°06'12" West 55.68 feet; thence South 55°08'50" East 137.75 feet; thence South 84°57'48" East 361.08 feet to the point of beginning.

AREA=2.72 acres