

**PLEASE RETURN TO:**

**Melanie Briggs  
City Recorder  
8000 S. Redwood Rd.  
West Jordan, UT 84088**

**DEVELOPMENT COMPLIANCE DEFERRAL AGREEMENT**

THIS DEVELOPMENT COMPLIANCE DEFERRAL AGREEMENT ("Agreement") is made and entered into as of April 23, 2009, by and between the CITY OF WEST JORDAN, a Utah municipal corporation (the "City"), GATOR WASH, LLC and COREY BRUSE, JASON BRUSE, TODD BRUSE and LINSDAY SAWYER (hereafter jointly and severally referred to as "Developer").

**RECITALS**

WHEREAS, Developer applied to the City to construct a car wash facility at approximately 1377 West 7800 South in the City (the "Property"); and

WHEREAS, throughout the development review process at the City, Developer was apprised in writing of the Municipal Code requirement that overhead utilities needed to be placed underground as part of the development process for the Property, and this requirement was acknowledged in filings made by Developer with the City; and

WHEREAS, the Property has been developed and is operating as a car wash facility pursuant to building and occupancy permits and business licenses from the City; and

WHEREAS, Developer has not placed the overhead utilities, being communications lines only, underground, and because of circumstances inherent in the Property and its neighboring properties, Developer has sought a deferral of the obligation to underground these utilities serving the Property; and

WHEREAS, the City and Developer (collectively referred to herein as the "Parties") anticipate future construction by one or more third parties on one or more neighboring properties to the Property, and also anticipate possible future City construction in the area, any or all of which construction activities would provide good reason for Developer to proceed to underground the existing utilities; and

WHEREAS, the Parties have agreed to enter into this Agreement to set forth the conditions of the future undergrounding of the overhead utilities adjacent to and/or running through the Property;

NOW, THEREFORE, in consideration of the foregoing recitals and the following mutual promises, the parties agree to the following:

**TERMS****I. PROJECT DESCRIPTION.**

A. Project Name: Gator Wash automated car wash.

B. Project Location: approximately 1377 West 7800 South in West Jordan City.

Sidwell #21-34-227-001

C. Description of Future Improvements:

The Future Improvements are: the design and excavation, repositioning and undergrounding, and reconnecting and related work all associated with the placing of existing overhead utilities adjacent to or running across the Property underground.

II. **DEVELOPER'S CONSTRUCTION OF THE FUTURE IMPROVEMENTS.**

A. Required Future Improvements. Developer shall be required, at Developer's sole expense, to design and excavate, reposition and underground, and reconnect and related work associated with the placing of existing overhead utilities adjacent to or running across the Property into underground conduits.

B. Approved Plans. Developer shall prepare and submit for the City's review, construction drawings which shall be prepared in accordance with City ordinances and standards in effect at the time of the Future Improvements as and when the Future Improvements are required in this Agreement.

C. Construction Standards. The Future Improvements shall be constructed in compliance with: the Approved Plans; all applicable federal, state and local laws and regulations; and the City of West Jordan Public Improvement Standards, Specifications, and Plans.

III. **FEES.**

All fees associated with permits and applications associated with the Future Improvements shall be paid as provided in the applicable City Fee Schedule in effect at the time.

IV. **COMMENCEMENT AND COMPLETION OF CONSTRUCTION.**

A. Commencement and Completion Dates. Construction of the Future Improvements shall be commenced immediately at the time of, and in coordination with, the development of any adjacent neighboring property or City street reconstruction project involving the undergrounding of utilities adjacent to or in the immediate vicinity of the Property, and the Future Improvements shall be completed at substantially the same time as the completion of the event of undergrounding of utilities that triggered the Future Improvements. If Developer fails to commence/complete construction of the Future Improvements within the time period set forth herein for commencement/completion, the City may notify Developer that Developer will have 60 days to commence/complete the Future Improvements. If Developer fails to commence/complete the Future Improvements within the allotted time, City, in its discretion, may complete the construction of the Future Improvements. The City may recover the full cost and expense of such completion from Developer's Security Device (defined hereafter) or, if not recovered therefrom, from Developer personally.

B. Compliance with City Ordinances and Standards. Developer's construction and installation of Future Improvements shall comply with all applicable laws, ordinances, rules, regulations and standards in effect at the time of construction. For example, prior to construction of the Future Improvements, Developer shall obtain one or more soil disturbance/excavation permits from the City.

**V. COMMENCEMENT/COMPLETION EXTENSION.**

A. Notification to City. If for any reason Developer determines that the Future Improvements will not be commenced/completed within the time period specified in this Agreement, Developer shall promptly notify the City of the delay, the reasons therefore, and the anticipated completion date.

B. Extension Request. Developer may request that the City extend the time, but such a request shall not affect City's right to pursue any remedy available at law or by the terms of this Agreement based on Developer's failure to commence/complete the Future Improvements according to the time periods set forth herein.

C. Grant or Denial of Extension. The City, in its sole discretion, may grant or deny Developer's request for an extension. If the extension is denied, the City may, at its sole discretion, pursue any remedy available at law or by the terms of this Agreement based on Developer's failure to commence/complete the Future Improvements within the required time periods. If the extension is granted, all of the terms of this Agreement shall remain in full force and effect except as modified by the new completion date.

D. Remedies Non-Exclusive. The City's extension of the completion date under this Article shall not preclude the City from exercising any rights or remedies available to the City pursuant to this Agreement.

**VI. IMPROVEMENT GUARANTEE.**

A. General. Prior to construction of the Future Improvements, Developer shall obtain one or more soil disturbance/excavation permits from the City. In connection with seeking such permit(s), Developer shall post an improvement guarantee for the completion of the Future Improvements.

B. Form of Improvement Guarantee. Developer shall file with the City Engineer an improvement guarantee, in a form acceptable to the City Attorney, which secures the performance of Developer's obligations to construct and install the Future Improvements and comply with ordinances and standards of the City.

C. Replacement of Improvement Guarantee. With the consent of the City Attorney, Developer may replace an improvement guarantee. At the request of Developer, the City may, at its sole discretion, accept a replacement improvement guarantee of a type

and form permitted by the West Jordan Municipal Code and approved by City (the "Replacement Guarantee"). If a Replacement Guarantee is accepted, City shall release the improvement guarantee for which the Replacement Guarantee was submitted. Thereafter, the person providing the Replacement Guarantee shall be responsible for any substandard or defective Future Improvements if the proceeds of said Replacement Guarantee are inadequate to cover any such Improvements.

D. Amount of Improvement Guarantee. The amount of the improvement guarantee shall be not less than one hundred percent of the estimated cost of the Future Improvements. The estimated cost of the Future Improvements shall be prepared by the City Engineer.

E. No Third Party Beneficiaries to Performance Improvement Guarantee. Neither this nor any other provision requiring an improvement guarantee shall be construed to create any rights in any third party claimant as against the City for construction of the Future Improvements.

F. Improvement Guarantee Reductions, Retainage and Releases. Reductions, retainage and release of the improvement guarantee shall be in accordance with the terms of the improvement guarantee and the City ordinances and standards in effect at the time of construction of the Future Improvements for which the improvement guarantee was posted.

## VII. INDEMNIFICATION AND RISK.

A. Developer to Indemnify the City. Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of any act or failure to act, work or other activity related in any way to the Future Improvements, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work contemplated by this Agreement.

B. Builder's Risk of Loss. Developer assumes the risk of loss for any damage or loss to the Future Improvements by any means or occurrence until final acceptance of the Future Improvements as evidenced by resolution of the City Council.

## VIII. INSURANCE.

Required policies of insurance shall be provided in accordance with the City ordinances and standards in effect at the time of subdivision or development approval.

**IX. THIS AGREEMENT TO RUN WITH THE LAND.**

The terms of this Agreement are intended to run with and be a burden on the Property. To accomplish this, this Agreement will be notarized as needed and will be filed with the Salt Lake County Recorder's office.

**X. GIVING NOTICE.**

A. General. Notices provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, by hand-delivery, or by overnight delivery service for which a delivery receipt is required.

B. Effectiveness. Notices sent as provided in sub-paragraph "A" above shall be effective on the date on which such notice was sent.

C. Facsimile. Notice may be sent by facsimile. Facsimile notice shall be effective on the date of transmission provided that a confirmation establishing the successful transmission of the notice is sent by first-class mail, postage prepaid, along with a copy of the notice transmitted, no later than twenty-four hours after the facsimile notice is transmitted.

D. Notice to Provider of Improvement Guarantee. A provider of a required improvement guarantee shall receive notice at the business address shown on the improvement guarantee.

**XI. MISCELLANEOUS.**

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Any court action arising from this Agreement shall be brought in an appropriate federal or state court with appropriate jurisdiction in the Salt Lake County, State of Utah.

B. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and may not be modified except in a writing signed by both parties.

C. Assignment. The obligations of the Parties hereunder shall not be assignable without the express written approval of the other Party.

D. Effect of Agreement; Release of Claims. Nothing in this Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal, State or local laws, ordinances, regulations, or standards. It is the intent of the Parties that this Agreement serves as a complete release and waiver by Developer of any and all claims Developer has or may have to challenge the City's application of City Code requirements on the Property, including but not limited to those requirements

pertaining to the Future Improvements. Moreover Developer releases and waives any and all claims Developer may have against the City with respect to prior application filings or processing with respect to the Property.

**XII. EXECUTION.**

A. Effective Date. This Agreement shall be deemed effective as of the day and year first written above.

B. Developer's Subscription and Acknowledgement.

1. **GATOR WASH, LLC, a Utah Limited Liability Company**

2. Authorized Signature: *Corey S. Bruse*

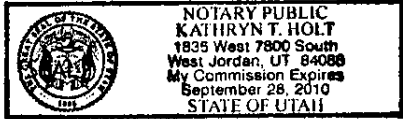
3. Please print name of signer: Corey S. Bruse

4. Title of signer: Owner

5. Business Entity Acknowledgement:

STATE OF UTAH             )  
   : ss.  
 COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 10, day of <sup>JUNE</sup>~~April~~, 2009 by COREY S BRUSE, the OWNER, of GATOR WASH, LLC, a Utah limited liability company.



*Kathryn T. Holt*  
 NOTARY PUBLIC  
 residing in: SALT LAKE CO.

6. **COREY BRUSE**

7. Signature: *Corey S. Bruse*

8. Individual Acknowledgement:

STATE OF UTAH             )  
   : ss.  
 COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 10, day of <sup>JUNE</sup>~~April~~, 2009 by COREY BRUSE, an individual.



*Kathryn T. Holt*  
 NOTARY PUBLIC  
 residing in: SALT LAKE CO.

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9. JASON BRUSE

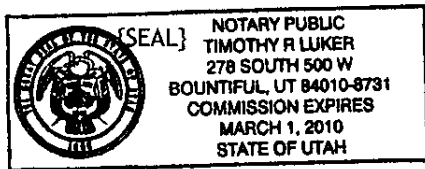
10. Signature: \_\_\_\_\_

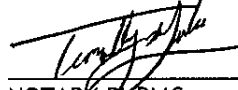


11. Individual Acknowledgement:

STATE OF UTAH )  
                  *Davis* : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 10 day of <sup>JUNE</sup>~~April~~, 2009 by JASON BRUSE, an individual.



  
NOTARY PUBLIC  
residing in: 278 S. 500 W., Bountiful, UT - 84010

12. TODD BRUSE

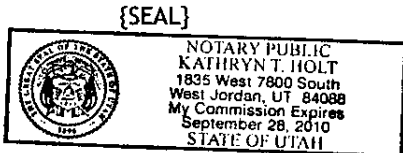
13. Signature: \_\_\_\_\_

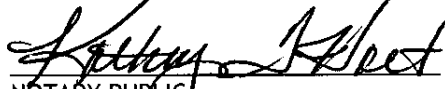


14. Individual Acknowledgement:

STATE OF UTAH )  
                  : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 10 day of <sup>JUNE</sup>~~April~~, 2009 by TODD BRUSE, an individual.



  
NOTARY PUBLIC  
residing in: SALT LAKE CO.

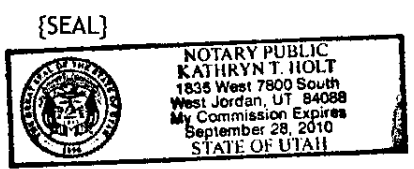
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- 15. LINDSAY SAWYER
- 16. Signature: \_\_\_\_\_
- 17. Individual Acknowledgement: \_\_\_\_\_

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF SALT LAKE )

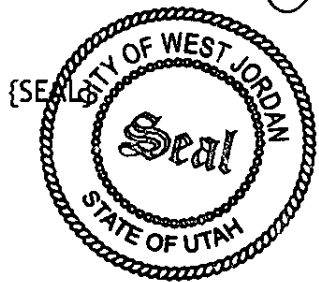
The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of JUNE, 2009 by LINDSAY SAWYER, an individual.

*Kathryn T. Holt*  
NOTARY PUBLIC  
residing in: SALT LAKE CO.



C. CITY'S SUBSCRIPTION AND ATTESTATION.

- 1. Approval as to form: \_\_\_\_\_ (City's attorney)
- 2. City's signature: *David Newton*
- 4. Name and title: Mayor David Newton
- 6. Attest: *Melanie Brown*  
(Signature of City Recorder or designee)





## Legal Description

All of Lot 8, West Jordan Industrial Park, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

21-34-227-001

CITY OF WEST JORDAN, UTAH

RESOLUTION NO. 09- 110

**A RESOLUTION APPROVING A DEVELOPMENT COMPLIANCE  
DEFERAL AGREEMENT WITH GATOR WASH, LLC.**

**WHEREAS**, through a Development Compliance Deferral Agreement, Gator Wash, LLC and the City Development Department have agreed to the postponement of the undergrounding of certain utility lines now serving the Gator Wash property until and unless certain currently planned City construction takes place in the same area; and

**WHEREAS**, the Development Compliance Deferral Agreement produces the eventual undergrounding of utilities in compliance with current City policy, while providing some breathing room for the developer until the City gets its plans in order for anticipated construction in the same area; and

**WHEREAS**, the duly elected governing authority of the City is the Mayor and City Council thereof

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of West Jordan, Utah as follows:

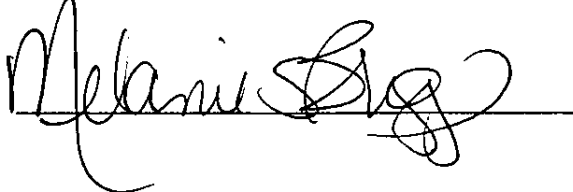
1. The Development Compliance Deferral Agreement, the form of which is attached as Exhibit A, is hereby adopted and approved.
2. This Resolution shall be in full force and effect upon its passage and adoption.

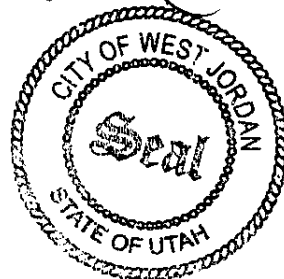
**PASSED, APPROVED and MADE EFFECTIVE** this 23rd day of June, 2009.

CITY OF WEST JORDAN

  
MAYOR

ATTEST:





CITY RECORDER

Voting by the City Council

"AYE"

"NAY"

Councilmember Kathy Hilton

Councilmember Melissa K. Johnson

Councilmember Jim J. Lems

Councilmember Kim V. Rolfe

Councilmember Ben Southworth

Councilmember Lyle C. Summers

Mayor David B. Newton