

RESOLUTION No. 12-04-2010

**A RESOLUTION OF THE SANTAQUIN CITY COUNCIL AUTHORIZING
THE EXECUTION OF A SETTLEMENT AGREEMENT WITH IREWOOD
NEVADA LLC**

A. WHEREAS, The City of Santaquin acquired certain property by warranty deed pursuant to the terms of an Annexation and Development Agreement that was executed by the City and the owners of the property; and

B. WHEREAS, the City has constructed a holding pond on the aforementioned property in connection with the construction of the Santaquin City Pressurized Irrigation System; and

C. WHEREAS, Irewood Nevada LLC, a Nevada limited liability company, asserts an interest in the property through a trust deed that was executed by prior owners; and

D. WHEREAS, the parties desire to resolve the issues related to title to the property and also issues related to the dedication of certain water shares;

**NOW THEREFORE, BE IT RESOLVED BY THE SANTAQUIN CITY
COUNCIL THAT:**


1. The Council approves and authorizes the Mayor to execute the settlement agreement between the City and Irewood Nevada LLC, a copy of which is attached hereto as Exhibit A.

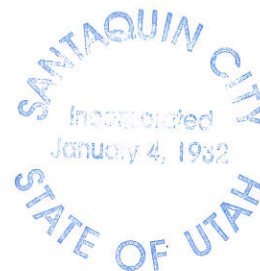
2. This Resolution shall take effect immediately upon its passage.

PASSED AND APPROVED this 2nd day of December, 2010.


James E. DeGraffenried, Mayor

ATTEST:


Susan B. Farnsworth
Santaquin City Recorder



12/6/10 Agreement
has changes which
will be adopted
Ratified 12/15/10

AGREEMENT

This Agreement, entered into on the 2nd day of December, 2010, between **IREWOOD NEVADA**, a Nevada Limited Liability Company (hereinafter referred to as "Irewood") and the City of Santaquin, Utah, a political subdivision of the State of Utah; (referred to herein as "City"):

RECITALS

WHEREAS, Irewood is the successor in interest to Kjolby Properties and Investments, L.C., a Utah Limited Liability Company; Purple Sage Landco, LC, a Utah Limited Liability Company; and Thomson 1979 Trust, a Utah Limited Liability Company (together referred to herein collectively referred to as "Kjolby"), in certain real property located within the City, which real property is described in Exhibit A hereto; and

WHEREAS, Kjolby subsequently sold approximately _____ acres of the aforementioned property to Foothill Village Managers, L.C., a Utah Limited Liability Company (hereinafter "Foothill"), but retained a Trust Deed in the amount of \$3,608,488.33, which Trust Deed is recorded in the office of the Utah County Recorder as ENT 41853:2007; and

WHEREAS, both Kjolby and Foothill commenced the process of developing the property described in Exhibit A, as a residential development; each having obtained approval of one or more preliminary plats from the City; and

WHEREAS, the Annexation and Development Agreement that governs development of the property, requires that certain open space be dedicated and that certain shares of Summit Creek Irrigation Company be placed immediately into escrow for dedication to the City upon development; and

WHEREAS, to satisfy a portion of the open space requirement, Foothill did transfer by Warranty Deed, that portion of the property to the City that is described in the Warranty Deed that is recorded in the office of the Utah County Recorder as Ent 52916:2008 (the "Pond Property"), which was subsequently developed into a holding pond as part of the Santaquin Pressurized Irrigation System; and

WHEREAS, to date no water shares have been placed in escrow as contemplated by the Annexation and Development Agreement; and

WHEREAS, Irewood's Trust Deed described herein includes the Pond Property; and

WHEREAS, the parties desire now to resolve all remaining issues of ownership pertaining to the Pond Property; and to dedicate to the City, the associated Summit Creek Irrigation Company shares;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Delivery of Quit Claim Deed from City. Within two business days of the execution of this Agreement, the City shall deliver to Nielsen & Senior, counsel for City, a Quit Claim Deed to the Pond Property, which Quit Claim Deed shall name Irewood as Grantee.

2. Delivery of Quit Claim Deed and Reconveyance from Irewood. Within two business days of the execution of this Agreement, Irewood shall deliver to Nielsen & Senior: (a) a Quit Claim Deed to the Pond Property, which Quit Claim Deed shall name City as Grantee; and (b) a Reconveyance of the Pond Property to the extent of any interest arising from the aforementioned Trust Deed.

3. Transfer of Water Shares to Irewood. Upon execution of this Agreement, the City shall take reasonable measures to assist Irewood in obtaining the transfer of 73.5 shares in Summit Creek Irrigation Company, represented by Certificate 3717, to Irewood.

4. Transfer of Water Shares to City. Within thirteen months of the transfer of the Summit Creek Irrigation Company shares as provided in paragraph 3 herein, Irewood shall transfer all of said shares to the City, which shares shall be applied to satisfaction of water dedication requirements of Irewood arising from the Annexation and Development Agreement.

5. Water Dedication Obligation. The City shall accept the water that is appropriated by Summit Creek Irrigation Company to the water shares described in paragraph 3 above into the storage facility that has been constructed on the Pond Property and shall deliver that amount of water, less appropriate shrinkage, to Irewood's Property at the City's expense, at reasonable times and in reasonable amounts as agreed by the parties. This obligation to deliver water to Irewood shall expire at the earlier of: (a) recording of a final plat for development of all or part of Irewood's Property; or (b) the failure of Irewood to pay any and all costs, fees and assessments associated with said water shares in a timely manner; at which time Irewood shall have no further right to the water or the use thereof.

6. Recording of Deeds. Upon receipt of the aforementioned Quit Claim Deed and Warranty Deed, Title West shall immediately record the aforementioned Quit Claim Deed in the office of the Utah County Recorder. Title West shall record the aforementioned Warranty Deed in the Office of the Utah County Recorder no earlier than December 31, 2001 and no later than January 30, 2011.

7. Satisfaction of Open Space Requirements. The City shall accept the aforementioned Quit Claim Deed as a donation and shall require no additional dedication of open space as a condition of development of Irewood Property that is described in the aforementioned Trust Deed, except as designated on the preliminary plat(s) that are extended under this agreement.

Each party may change its address or telefax number by written notice in accordance with this paragraph.

13. Compliance. Each party agrees to comply with all applicable federal, state and local laws during the entire term of this Agreement.

14. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Utah.

15. Entire Agreement. This Agreement shall constitute the entire agreement between the parties relating to the subject matter hereof and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof.

16. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

17. No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly so provided herein. Either party may, by notice delivered in the manner provided in this Agreement, but shall not be under obligation to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

18. Persons Bound by Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entity set forth for which he or she signs.

20. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement. Such rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

21. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments reasonably required by this Agreement that are necessary and proper to make effective the provisions of this Agreement.

22. Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. An executed version of this Agreement which has been signed and transmitted by facsimile or other electronic or mechanical means shall be deemed an original.

23. Severability. In the event that any provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be valid to the extent of the scope or breadth permitted by law.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

IREWOOD NEVADA LLC

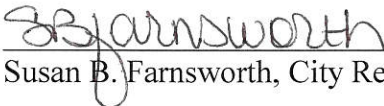
Alan Thomson, Managing Member

SANTAQUIN CITY



James E. DeGraffenried, Mayor

ATTEST:



Susan B. Farnsworth, City Recorder

