

Midway City Council  
7 May 2019  
Work Meeting

Saddle Creek Ranch /  
Master Plan



## **CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** May 7, 2019

**NAME OF PROJECT:** Saddle Creek Subdivision

**NAME OF APPLICANT:** DPW Heber Inc.

**AGENDA ITEM:** Master Plan

**LOCATION OF ITEM:** 970 South 250 West

**ZONING DESIGNATION:** R-1-22

### **ITEM: 9**

Paul Berg, agent for DPW Heber Inc., is requesting a Master Plan amendment for the Saddle Creek Ranch Planned Unit Development. The proposal is a large-scale subdivision that is 32 acres in size that would be developed in four phases containing a total of 36 lots. The property is located at 970 South 250 West and is in the R-1-22 zone.

### **BACKGROUND:**

Paul Berg is proposing Master Plan approval of Saddle Creek which will replace the existing recorded plat of Saddle Creek Planned Unit Development (PUD). They would like to vacate the existing recorded plat from a PUD that contains 57 building pads to a standard subdivision that would contain 36 half-acre lots and open space. The proposal is 31.99 acres and will be developed as a large-scale standard subdivision which will be developed in four phases. There will also be 6.18 acres of open space (19.32%) that will mostly be placed along the frontages of 250 West and 970 South that will help create a more open corridor and help preserve a rural atmosphere for the area. The proposal also contains less acreage than the recorded plat because the developer would like to sell 2.36 acres to a neighboring property owner.

The plat for Saddle Creek Ranch PUD was recorded on September 5, 2007. A development agreement was also recorded that same day which contains obligations such as the following:

- Affordable housing - \$2,800 per unit
- Off-site improvements – construction of improvements to 970 South and Center Street along with the City reimbursing the developer up to \$156,750 that would be collected from transportation impact fees from the 57 building permits in the development.
- Water line extension payments – a payment for the water line in 250 West for \$5,776.38 and a payment for the water line in Center Street for \$40,943.39. Both payments would be a pass through to the holders of the extension line agreements.
- Construction of the half of 250 West along the development frontage.
- Construction of the full road along 970 South along the development frontage.
- A center turn lane on Center Street
- Moving the transmission lines along 970 South to accommodate the full width road for 970 South
- Other requirements listed in the agreement.

According to the development agreement under Section 5, the agreement may only be amended by mutual consent. Therefore, the City has no obligation to allow the developer to change the approved and recorded plat or development agreement.

The proposed plan contains four phases. Phase 1 consists of nine lots. Also, 31% of the open space for the entire development will be dedicated in the first phase. The second phase contains 13 lots. The third phase contains four lots. And the final phase contains 10 lots.

There are four roads and four cul-de-sacs planned in the subdivision. One road will access from 250 West and another road connects to 970 South. One temporary turnaround will be required as part of phase 1.

The Land Use Code requires that a Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases.

#### **LAND USE SUMMARY:**

- 31.99 acres
  - 2.36 acres will be sold to a neighbor
  - The recorded plat contains 34.35 acres

- R-1-22 zoning
- Proposal contains 36 lots
- Four phases
  - Phase 1 – 9 lots
    - 3.26 acres of open space
  - Phase 2 – 13 lots
    - 2.92 acres of open space
  - Phase 3 – 4 lots
  - Phase 4 – 10 lots
- Project is a standard subdivision
- Public roads maintenance will be the responsibility of the City
- The lots will connect to the Midway Sanitation District sewer and to the City's water line.
- No sensitive lands have been identified on the property

## ANALYSIS:

*Open Space* – The code requires that with each phase that is approved there is enough open space to comply with the requirements of the code. For example, phase I must have at least 15% open space for that phase. If phase 1 has 75% open space, then phase 2 only needs to have 25% open space as long as both phases are equal in acreage. The proposal shows 6.18 acres as open space that will mostly be placed along the frontages of 250 West and 970 South that will help create a more open corridor and help preserve a rural atmosphere for the area. All the open space will be dedicated in phases one and two which complies with the requirements of the code.

*Water* – The original developer of the property tendered 109.5-acre feet to the City to comply with the culinary and secondary water requirements. Using current City water requirements, the proposal water requirement is in the range of about 106-109-acre feet (developer has not provided an acreage amount in the park strip making an exact calculation not possible as of the writing of this report).

*Sensitive lands* – Per the recorded plat, no sensitive lands have been identified. A geotechnical study was submitted to the City that Horrocks Engineers is reviewing.



*Potential view impacts from surrounding property owners* – The current recorded plat has 57 pads and a structure can be as high as 35' on each pad. Each pad is surrounded by open space and no structures can be located in that open space except for the clubhouse that is shown on the plat. A neighboring property owner can easily see the view corridor based on the recorded plat. If the master plan is approved, then the view corridor is not as certain. Since the proposal is a standard subdivision then the setback requirements for the code will apply. Accessary structures will be allowed on all lots if the structure complies with the setbacks and height requirements. This will make surrounding neighbors less certain what the view corridor will be.

*Timing of off-site improvements* – The current recorded plat has no phasing. All on-site and off-site improvements are required in one construction period. The developer will need to build all infrastructure in the subdivision at one time along with all off-site improvements that include the widening of 250 West, construction of 970 South, moving the existing transmission lines, and improvements to Center Street. Staff recommends that all the off-site improvements are constructed with phase 1 to assure that those improvements will be made. It is possible that if the improvements are not required with phase 1 then the improvements will not be constructed if future phases are never constructed.

*Timing of approvals* – Staff is recommending that the plat is not recorded, or a preconstruction meeting held until the transmission lines along 970 South are moved or buried. Approvals for master plan would be allowed and preliminary and final approvals per phases would be allowed but no construction would be allowed until the transmission lines are moved or buried. Staff is concerned that if construction is allowed before the transmission lines have been accommodated for the road then homes will be constructed and sold before improvements are made along 970 South.

*Setbacks from 250 West and 970 South* – The current plat has a large setback from the two surrounding collector roads. If the plan is changed, the large setback should remain intact to help create a more open corridor and help preserve a rural atmosphere for the area.

*Trails* – Midway's Master Trail Plan requires 8' wide paved public trails along 970 South and 250 West. The developer will also build 5' wide sidewalks in the development which in some areas will meander much like a trail. The approved plat from 2007 had a public trail along the north boundary of the property that will be removed with the proposed plan. All the proposed trails and sidewalks are public except the trails between lots 7 & 17 and the trail from the cul-de-sac to lot 24. These trails will be private and will be maintained by the HOA.

*Removal of 2.36 acres* – The developer is proposing to reduce the acreage in the proposal from 34.35 acres to 31.99 acres. This is a reduction of 2.36 acres. With the recording of the 2007 plat, water was tendered to the City for the entire development including the 2.36 acres. If the proposal is approved, then the 2.36 acres will not be included in a recorded plat, but the City owns the water to the area. The Water Board

discussed this situation and arrived at two suggestions of how to proceed. The first is to have a perpetual lease recorded towards the property that will assure the water is always assigned to the 2.36 acres. If the 2.36 acres is ever developed, then the water will be credited to the future development. Option two is to swap the water from the property with a future development somewhere in the City. The City will credit 2.36 acres of irrigated area and the developer of the future subdivision will give the equivalent water rights to the owner of the 2.36 acres. The City, in almost every circumstance, only owns water in recorded subdivisions and option two would allow follow the same precedent.

#### **PLANNING COMMISSION RECOMMENDATION:**

**Motion:** Commissioner Ream: I move to recommend approval to city council a Master Plan amendment for the Saddle Creek Ranch Planned Unit Development. The proposal is a large-scale subdivision that is 32 acres in size that would be developed in four phases containing a total of 36 lots. The property is located at 970 South 250 West and is in the R-1-22 zone. Incorporate staff findings with the two conditions in the staff report, modifying the trail condition that the interior trails will not have a public access easement. Water extension agreements reflect the current number of units and that the lots on 250 W and 970 South do not have solid fencing. That the Affordable housing fee be waived but no traffic impact fees would be reimbursed, developer disclose to prospective buyers the plan of Rocky Mountain Power and Heber Light and Power.

**Second:** Commissioner Nicholas

**Chairman Kohler:** Any discussion on the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Nicholas, O'Toole, Whitney, Ream, Bouwhuis

**Nays:** Payne

**Motion: Passed**

#### **PROPOSED FINDINGS:**

- The proposed master plan appears to meet the requirements of the code except for street lengths.
- The proposal does meet the vision as described in the General Plan for the R-1-22 zone.
- The General Plan supports reducing density in Midway wherever appropriate
- The proposal contains 21 less lots than the recoded PUD subdivision

### **ALTERNATIVE ACTIONS:**

1. Approval (conditional). This action can be taken if the City Council feels there is good cause to approve the proposal.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s) if needed
2. Continuance. This action can be taken if the City Council feels that there are unresolved issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council feels that the request does not meet the intent of the ordinance.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

### **PROPOSED CONDITIONS:**

1. All off-site improvements are constructed with phase 1 which includes all required improvements to 250 West, 970 South, and Highway 113.
2. No plats are recorded, or any construction of improvements are made until the transmission lines along 970 South are moved or buried so that the required improvements for 970 South may be constructed.

April 9, 2019

Midway City  
Attn: Michael Henke  
75 North 100 West  
Midway, Utah 84049

**Subject: Saddle Creek Master Plan Amendment**

Dear Michael:

Horrocks Engineers recently reviewed the Saddle Creek Master Plan Amendment. The following issues should be addressed.

**General Comments**

- The proposed development is West of 250 West and north of 970 South. The proposed plan includes 36 units. This plan would replace the existing 57 unit PUD. The timing of each of the off-site improvements should be addressed with the Master Plan Amendment.

**Water**

- An extension line agreement is in place for the existing 12-inch water line within 250 West and the 12-inch line in Center Street. Reimbursement of the fees should be addressed with Master Plan approval.

**Roads**

- The following comment are a part of the May 16, 2007 Final Engineering Review letter. *"Due to the amount of traffic this subdivision will generate, both entering and exiting Center Street, the traffic study has determined that off-site street improvements will be required. A left hand turning lane will be required on 970 south. Center Street will require both a center left hand turning lane and a right hand deceleration lane, as approved by UDOT. The developer will be required to construct the off-site improvements as the development is constructed. The developer will then be credited the transportation impact fee as building permits are issued... the developer will be credited the full off-site street cost, or the street impact fee will be credited for all the street impacts within this development."*

However, City Council has agreed to not require the low income housing fee, in exchange the street impact fee will not be credited back to the developer.

**Trails:**

- The trails outside the standard 5' sidewalk should be private trail with a public easement. An easement should be provided over any sidewalk outside the standard 56' right-of-way.

Storm Drain

- The proposed Master Plan amendment will be required to meet the current Midway City standard stormdrain requirements.

Landscaping

- A landscaping bond will be required as part of phase 1 and 2 within the proposed subdivision.

Please feel free to call our office with any questions.

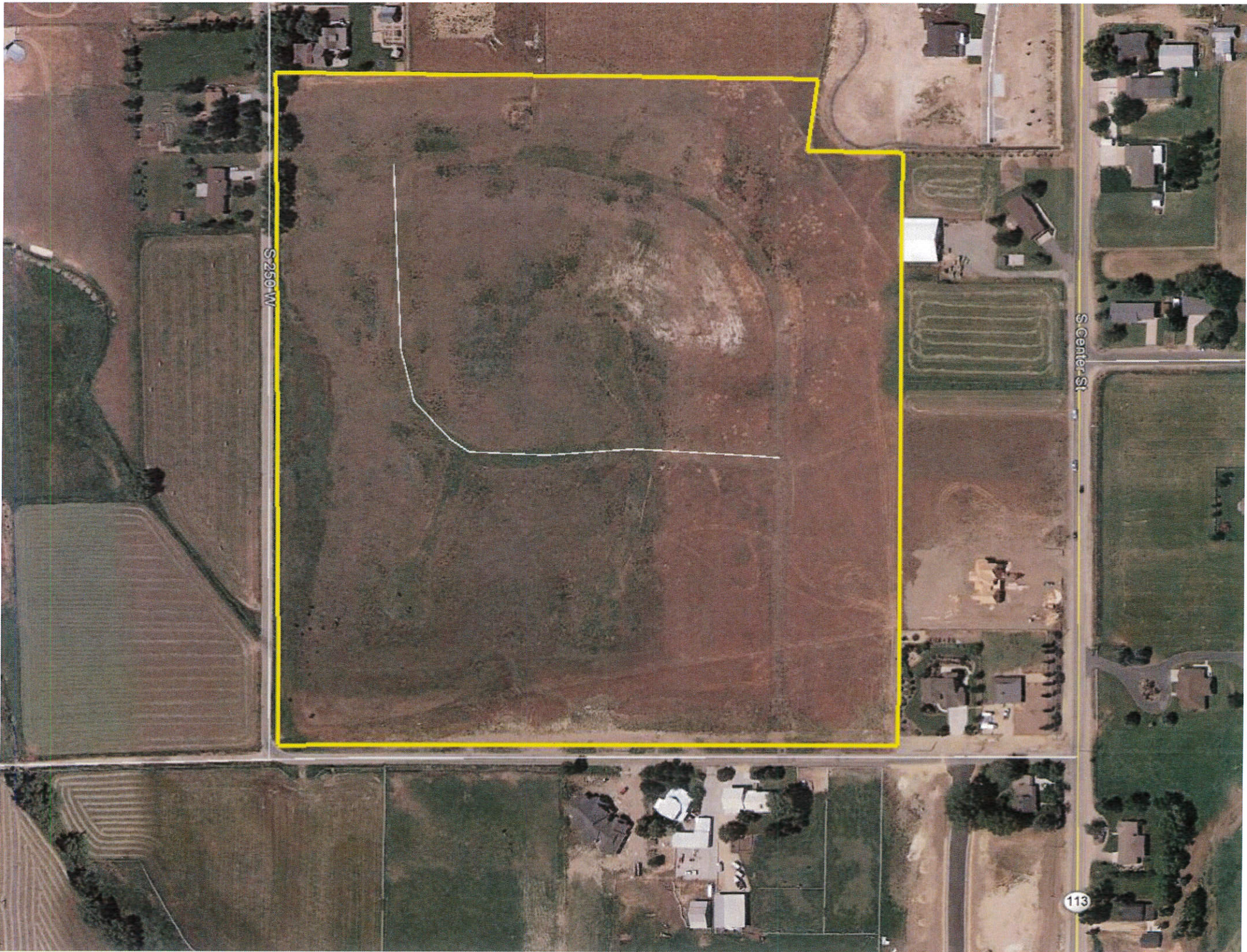
Sincerely,  
HORROCKS ENGINEERS



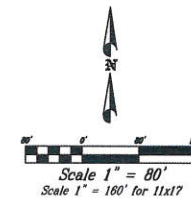
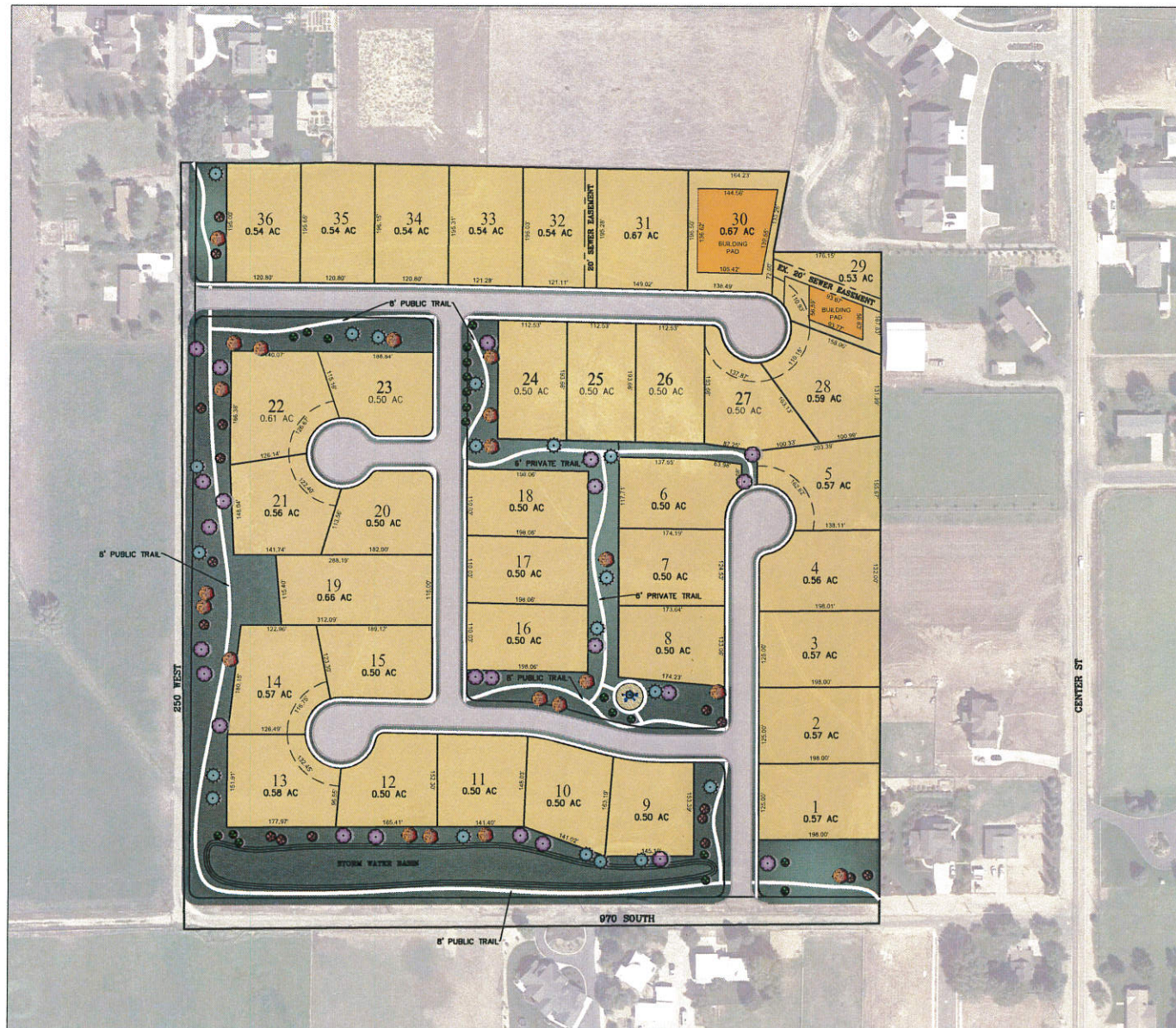
Wesley Johnson, P.E.  
Midway City Engineer

cc: Paul Berg Berg Engineering, (sent by Email)









#### LAND USE CALCULATIONS:

TOTAL AREA	31.99 AC
# OF LOTS	36 LOTS
OPEN SPACE	6.18 AC (19.32%)(15% REQUIRED)
ZONE	R-1-22
MIN. LOT SIZE	0.50
MIN. FRONTAGE	110.03'
(FRONTAGE REDUCED BY 4.32% ADDITIONAL OPEN SPACE ABOVE 15%)	

NOTE:  
REQUIRED 115' OF FRONTAGE IN R-1-22 ZONE HAS BEEN REDUCED BY THE EXTRA 4.32% OF OPEN SPACE. ALLOWED MINIMUM FRONT AGE IS 110.13'

THIS DOCUMENT IS RELEASED  
FOR REVIEW ONLY. IT IS NOT  
INTENDED FOR CONSTRUCTION  
UNLESS SIGNED AND SEALED.  
PAUL A. BERG P.E.  
SERIAL NO. 23088  
DATE: 13 MAR 2019

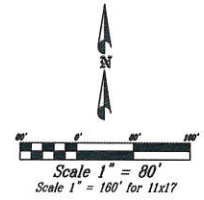
WATKINS  
SADDLE CREEK SUBDIVISION

SITE PLAN



DESIGN BY: PDB DATE: 13 MAR 2019 SHEET  
DRAWN BY: CNB REV: 2





PHASE	LOTS
1	1-9
2	10-19 & 34-36
3	20-23
4	24-33

**PHASING PLAN:**

PHASE	LOTS	TOTAL AREA	OPEN SPACE/PHASE	TOTAL OPEN SPACE
1	1-9	10.37 AC	3.26 AC	3.26 AC (31.44%)
2	10-19 & 34-36	12.67 AC	2.92 AC	6.18 AC (26.82%)
3	20-23	2.60 AC	0.00 AC	6.18 AC (24.10%)
4	24-33	6.35 AC	0.00 AC	6.18 AC (19.32%)
<b>TOTAL</b>	<b>36</b>	<b>31.99 AC</b>	<b>6.18 AC</b>	

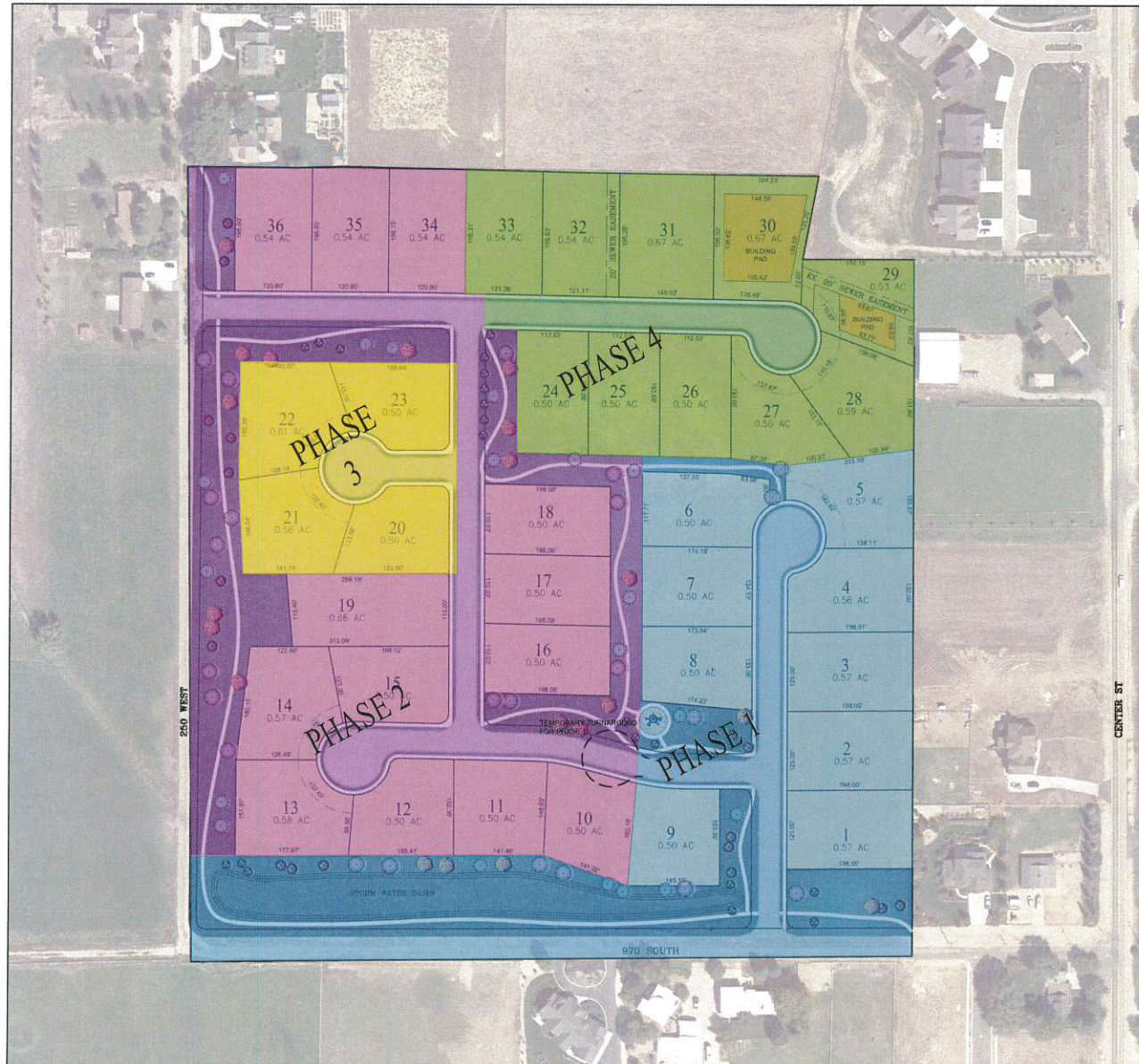
THIS DOCUMENT IS RELEASED  
FOR REVIEW ONLY. IT IS NOT  
INTENDED FOR CONSTRUCTION  
UNLESS SIGNED AND SEALED.  
PAUL S. BERG P.E.  
SERIAL NO. 285589  
DATE: 13 MAR 2019

WATKINS  
SADDLE CREEK SUBDIVISION

PHASING PLAN



DESIGN BY: PMB DATE: 13 MAR 2019 SHEET  
DRAWN BY: CNB REV: 3



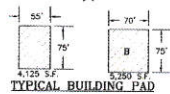


LINE TABLE	
LINE	LENGTH
L1	124.50
L2	21.52
L3	144.48
L4	152.00
L5	26.87
L6	32.31
L7	263.69
L8	13.79
L9	7.17
L10	133.95
L11	47.00
L12	223.95
L13	40.29
L14	57.65
L15	33.87
L16	117.24
L17	3.40
L18	136.40
L19	73.61
L20	76.24
L21	83.66
L22	24.86

PART OF THE NORTHEAST QUARTER AND SOUTHEAST  
QUARTER OF SECTION 3,  
TOWNSHIP 4 SOUTH, RANGE 4 EAST  
SALT LAKE BASELINE AND MERIDIAN  
MIDWAY, UTAH



SCALE 1"=100'



ADDRESS TABLE		
LOT	ADDRESS	LOT ADDRESS
287	805 S. SAGOLE CREEK DR.	30 815 S. SCENIC VIEW CT.
288	805 S. SAGOLE CREEK DR.	31 919 S. SCENIC VIEW CT.
31	811 S. SAGOLE CREEK DR.	32 920 S. SCENIC VIEW CT.
32	811 S. SAGOLE CREEK DR.	33 920 S. SCENIC VIEW CT.
5	825 S. SAGOLE CREEK DR.	34 990 S. SCENIC VIEW CT.
6	825 S. SAGOLE CREEK DR.	35 988 S. SCENIC VIEW CT.
7	837 S. SAGOLE CREEK DR.	36 990 S. THUNDERLINE DR.
8	843 S. SAGOLE CREEK DR.	36 980 S. THUNDERLINE DR.
9	843 S. SAGOLE CREEK DR.	37 980 S. THUNDERLINE DR.
10	857 S. SAGOLE CREEK DR.	38 820 S. THUNDERLINE DR.
11	857 S. SAGOLE CREEK DR.	39 816 S. THUNDERLINE DR.
12	861 S. SAGOLE CREEK DR.	40 820 S. THUNDERLINE DR.
13	886 S. SAGOLE CREEK DR.	40 787 S. SAGOLE CREEK DR.
14	886 S. SAGOLE CREEK DR.	41 801 S. THUNDERLINE DR.
15	933 S. SAGOLE CREEK DR.	42 875 S. THUNDERLINE DR.
16	933 S. SAGOLE CREEK DR.	43 815 S. THUNDERLINE DR.
17	933 S. SAGOLE CREEK DR.	44 877 S. THUNDERLINE DR.
18	920 S. SAGOLE CREEK DR.	45 794 S. SAGOLE CREEK DR.
18	920 S. SAGOLE CREEK DR.	46 850 S. SAGOLE CREEK DR.
19	105 W. WATGASH WAY	46 812 S. SAGOLE CREEK DR.
20	105 W. WATGASH WAY	47 820 S. SAGOLE CREEK DR.
21	121 W. WATGASH WAY	48 835 S. SAGOLE CREEK DR.
21	889 S. BARBARO CT.	49 835 S. SAGOLE CREEK DR.
22	889 S. BARBARO CT.	50 835 S. SAGOLE CREEK DR.
23	917 S. BARBARO CT.	51 854 S. SAGOLE CREEK DR.
24	920 S. BARBARO CT.	52 854 S. SAGOLE CREEK DR.
25	917 S. BARBARO CT.	53 124 W. WATGASH WAY
26	917 S. BARBARO CT.	53 841 S. BARBARO CT.
27	910 S. BARBARO CT.	54 835 S. BARBARO CT.
28	910 S. BARBARO CT.	55 830 S. BARBARO CT.
29	910 S. BARBARO CT.	56 830 S. BARBARO CT.
30	151 W. WATGASH WAY	57 850 S. BARBARO CT.
31	151 W. WATGASH WAY	58 124 W. WATGASH WAY
32	177 W. WATGASH WAY	59 825 S. THUNDERLINE DR.
33	177 W. WATGASH WAY	60 124 W. WATGASH WAY
34	101 S. SCENIC VIEW CT.	61 825 S. THUNDERLINE DR.

CURVE	LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	50.00	500.00	5°49'59"	N87°20'04"E	50.00
C2	146.61	680.00	16°06'42"	N87°31'31"E	146.61
C3	100.00	333.00	16°06'42"	N87°31'31"E	177.64
C4	251.11	250.00	10°20'20"	S23°29'41"W	84.79
C5	191.7	250.00	5°29'34"	N87°50'07"W	191.7
C6	234.53	250.00	6°33'01"	N87°50'07"W	234.53
C7	258.41	250.00	5°20'20"	S23°29'41"W	258.41
C8	96.78	250.00	2°43'49"	S281°42'42"E	95.84
C9	259.58	500.00	1°29'27"	S285°40'40"E	259.58
C10	197.50	450.00	N0°00'00"	N0°00'00"E	197.50
C11	97.62	150.00	3°17'12"	N12°57'43"E	95.91
C12	201.95	250.00	2°33'37"	N82°02'06"E	201.95
C13	260.00	250.00	0°00'00"	N0°00'00"E	260.00
C14	35.94	150.00	12°12'12"	N89°50'26"E	35.88
C15	252.64	250.00	13°49'13"	N09°38'31"E	252.61
C16	51.80	250.00	0°00'00"	S181°49'49"E	51.49
C17	26.30	250.00	4°29'58"	N82°26'58"E	26.30

### UTILITY APPROVAL

APPROVED BY THE FOLLOWING UTILITIES

*Steve Farrell* 8/6/2007  
MIDWAY IRRIGATION COMPANY DATE

*Alan Califf* 8/7/2007  
MIDWAY IRRIGATION COMPANY DATE

## ACCEPTANCE BY MIDWAY CITY

THE CITY COUNCIL OF MIDWAY CITY, WASATCH COUNTY, STATE OF UTAH, HEREBY APPROVES THIS  
PLANNED UNIT DEVELOPMENT AND ACCEPTS THE DEDICATION OF EASEMENTS AND PUBLIC  
RIGHTS-OF-WAY HEREON SHOWN.

THIS 30<sup>TH</sup> DAY OF JULY, 2007

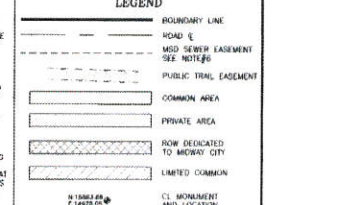
APPROVED: Carina Fatta ATTEST: Paul Wilson

APPROVED: *K. Craig Powell* ATTEST: *James E. Jones*  
CITY ATTORNEY CITY ENGINEER  
APPROVED BY: *James E. Jones* 7.05.07  
*KIMMEL COUNTY SHERIFF*

## NOTES

1. ALL STREETS, DRIVEWAYS, AND COMMON AREAS ARE PUBLIC AND PRIVATE UTILITY EASEMENTS AND ACCESS EASEMENTS FOR MAINTENANCE OF SAID UTILITIES.
2. THE AREA OF THE PROJECT SHALL BE A MINIMUM OF 100 FEET FROM ANY HIGHWAY, TURNING AND SIDE FOR THE CLUBHOUSE AND LOT, WILL BE DETERMINED BY THE CITY.
3. TOTAL AREA: 34.36 ACRES
4. TOTAL PROJECTED POPULATION: 1,000 RESIDENTS
5. DISTANCE: 200 FEET FROM SIDEWALK.
6. THE PROJECTED POPULATION OF THE PROJECT WITHIN SADDLE CREEK RANCH PHASE I IS A PRIVATE UTILITY TO BE MAINTAINED, OPERATED AND REPAIRED BY THE HOMEOWNERS ASSOCIATION.
7. MONROE SCHOOL DISTRICT (MSD) SHALL HAVE THE RIGHT TO INSTALL, MAINTAIN, OPERATE AND REPAIR AND BELOW GROUND AND ALL OTHER PUBLIC UTILITIES AND FACILITIES WITHIN THE PROJECT AREA. THE PROJECT AREA IS NOT NECESSARILY OR DESIRABLE IN PROVIDING SEWER SERVICE WITHIN AND WITHOUT THE PROJECT AREA. THE PROJECT AREA IS NOT NECESSARILY OR DESIRABLE AND THE RIGHT TO REMOVE OR REMOVE OF ANY OBSTRUCTIONS INCLUDING BUT NOT LIMITED TO TREES, BUSHES, AND OTHER OBSTRUCTIONS WITHIN THE PROJECT AREA AT THE COST OF THE PROJECTOR, OR THE UTILITY MAY REMOVE SUCH STRUCTURES AT THE COST OF THE PROJECTOR. THE PROJECTOR SHALL BE RESPONSIBLE FOR THE PLACEMENT WITHIN THE EASEMENT OF ANY OBSTRUCTION WHICH INTERFERES WITH THE PROJECTOR'S EASEMENT.

### LEGEND



## SURVEYOR'S CERTIFICATE

I, Brian C. Lyon, a Registered Land Surveyor, hold Certificate No. 275617, as prescribed by the laws of the State of Utah, and do hereby certify that by authority of the owners, I have made a survey of the tract of land shown on this plat, which is accurately described therein, and have subdivided said tract of land into lots and streets to be hereafter known as SADDLE CREEK RANCH, PUD



### LEGAL DESCRIPTION

Part of the Southeast Quarter and Northeast Quarter of Section 3, Township 4 South, Range 4 East of the Soil Lake Meridian, and Mapping described as follows:

[illegible]

## RESERVATION OF COMMON AREA

THE OWNER, HAS DESIGNATED HEREIN CERTAIN COMMON AREAS INTENDED FOR THE  
USE BY THE OWNERS, THEIR GUESTS, AND INVITEES, AND AREA HEREBY RESERVED  
FOR THEIR COMMON USE AND ENJOYMENT AS PROVIDED IN THE DECLARATION OF  
COVENANTS AND RESTRICTIONS OF SADDLE CREEK RANCH PLUD RECORDED  
AS ENTRY NO. \_\_\_\_\_ IN BOOK \_\_\_\_\_

## OWNERS DEDICATION

KNOW ALL BY THESE PRESENTS THAT WE THE UNDERSIGNED OWNERS OF THE ABOVE-DESCRIBED TRACT OF LAND, HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, PUBLIC STREETS, PRIVATE STREETS, EASEMENTS, LIMITED COMMON, AND COMMON AREA AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECLARATIONS HEREBY DEDICATE THOSE AREAS LABELED AS PUBLIC STREETS, PRIVATE STREETS, SEW EASEMENTS, PUBLIC TRAIL EASEMENTS, AND COMMON AREAS, FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC UTILITIES AND EMERGENCY VEHICLE ACCESS.


IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HAND THIS 20th DAY OF August, 2007

Sneak Creek Ranch, L.C.

### LIMITED LIABILITY ACKNOWLEDGEMENT

STATE OF UTAH CO.  
COUNTY OF JANSEN  
ON this 24th day of February 2007  
Richard R. Arnold, Jr. do hereby certify that he is the Manager/Member of SHIMKE, SMITH, RANCH, LLC, a Utah Limited Liability Company and that the within and foregoing instrument was signed and acknowledged by authority of its directors of Organization and made duly acknowledged to me that said Limited Liability Company executed the same.

NOTARY PUBLIC Widirk Knudsen

 **HEIDI KNUDSEN**  
77 WEST 1000 SOUTH  
SALT LAKE CITY, UT 84119  
408-222-2222

## PLANNING COMMISSION APPROVAL \_\_\_\_\_

APPROVED THIS 30<sup>TH</sup> DAY OF JULY, 2007 BY  
THE MIDWAY CITY PLANNING COMMISSION

Robert A. Mott Logan S. Long  
DIRECTOR - SECRETARY CHAIRMAN, PLANNING COMMISSION

## WASATCH COUNTY RECORDER

ENTRY NO. 325552 DATE: 9-05-07 TIME: 11:12 AM.  
FEE PAID RT  
RECORDED FOR SNAKE CREEK RANCH LC  
BOOK NO. 949 PAGE NO. 181-190  
M. GILES Liz PALMER  
DEPUTY COUNTY RECORDER COUNTY RECORDER

**SADDLE CREEK RANCH**  
PART OF THE NORTHEAST QUARTER AND SOUTHEAST  
QUARTER OF SECTION 3,  
TOWNSHIP 4 SOUTH, RANGE 4 EAST  
SALT LAKE BASIN AND MERRIDIAN  
MURRAY, UTAH  
**FINAL PLAT**

**ALLIANCE CONSULTING  
ENGINEERS**  
760 WEST 200 NORTH SUITE 8  
LOGAN, UTAH 84321  
(435) 755-5121

SHEET  
**1**  
OF  
1 SHEETS

**MIDWAY CITY  
SADDLE CREEK RANCH P.U.D.  
DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of this 10 day of AUGUST, 2007, by and between SNAKE CREEK RANCH LC (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property (defined below) and is the entire, complete Agreement between the Parties.

**RECITALS**

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9a-101, *et. seq.*, in compliance with the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Saddle Creek Ranch Planned Unit Development and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer has a legal interest in certain real property located in the City as described in Exhibit A attached hereto.

C. Developer intends to develop the real property described in Exhibit A as a planned unit development consisting of 57 units. This planned unit development is commonly known as Saddle Creek Ranch P.U.D.

D. Each Party acknowledges that it is entering into this Agreement voluntarily. Developer consents to all of the terms of the Agreement as valid conditions of development under all circumstances.

**NOW, THEREFORE**, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **Section 1. EFFECTIVE DATE AND TERM**

#### **1.1 Effective Date.**

This Agreement shall become effective on the date it is executed by Developer and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

#### **1.2 Term.**

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

### **Section 2. DEFINITIONS**

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Governing Body" shall mean the Midway City Council.

"Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"City" shall mean the City of Midway and shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

"City General Plan" or "General Plan" shall mean the General Plan of the City of Midway.



"Developer" shall have that meaning set forth in the preamble, and shall also include Developer's successors and/or assigns, including but not limited to any homeowners' association which may succeed to control of all or any portion of the Project.

"Director" shall mean the Director of the Midway City Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Notice of Compliance" shall have that meaning set forth in Section 8.1 of this Agreement.

"Planning Commission" shall mean the Midway City Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

"Subsequent Approval" means a City approval or permit, which is not otherwise provided for in this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the City.

### **Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY**

#### **3.1 Obligations of Developer.**

(a) **Generally.** The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

(b) **Conditions to Current Approvals.** Developer shall comply with all of the following Conditions to Current Approvals:

- (1) ***Payment of Fees:*** Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat

or the issuance of any building permit for the Project or any portion thereof.

- (2) **Water:** Developer agrees to provide a total of 108.5 acre feet of water for the benefit of the Project, to satisfy both culinary and irrigation use. The water provided by Developer shall meet all City policies and ordinances for culinary and irrigation use, respectively.
- (3) **Water Line Upsizing.** Developer agrees to install a 12-inch water line to the Project and then receive reimbursement from the City for the cost of the line over and above the cost of an 8-inch line.
- (4) **Trails.** Developer shall build trails accessible to the public along the south and west boundaries of the Project and connecting to the High Valley Ranch P.U.D. in the northeast corner of the Project, as shown on the Project plans and as approved by the City Trails Committee and City Council. The trails shall meet all City trails standards and guidelines. The trails will be owned and maintained by Developer and/or its successors and assigns, but will be subject to an easement to allow public access.
- (5) **Private Streets.** Roads within the Project will be privately owned and maintained by Developer and/or its successors and assigns.
- (6) **Private Storm Drains.** Developer agrees to construct and install a private storm drain system as shown on the construction drawings to be maintained in perpetuity by Developer and/or its successors or assigns and not by the City.
- (7) **Construction and/or Dedication of Project Improvements:** Developer agrees to construct and/or dedicate project improvements as directed by the City, including but not limited to roads, landscaping, water, sewer, storm drains, and other utilities as shown on the approved final plans and in accordance with City standards.
- (8) **Weed Control Plan:** Developer has submitted and has obtained City approval of a noxious weed control plan which Developer will follow.
- (9) **Affordable Housing.** Developer, for itself and for its successors and assigns, including all owners of units in the project, agrees that an affordable housing fee-in-lieu of \$2,800.00 per unit will be required to be paid to the Wasatch County Housing Authority in satisfaction of the City's affordable housing requirement prior to issuance of a building permit for each unit.

- (10) **Warranty:** Consistent with City standards, Developer will provide a two-year warranty for the operation of all improvements.
- (11) **Bonding:** Developer agrees to post bonds in amounts and types established by the City related to the performance of Developer's construction obligations for the Project, pursuant to current City ordinances and resolutions.
- (12) **Off-site Street Improvements.** Developer agrees to construct off-site improvements to 970 South and Center Street to increase the capacity of said streets as directed by the City Engineer, and then to be credited by the City for up to \$156,750 of any actual costs expended in constructing said improvements from traffic impact fees collected by the City for the Project as said fees are collected.
- (13) **Water Line Extension Payments:** Prior to recording the plat for the Project, Developer shall reimburse the parties who are responsible for installing the water line in 250 West in the amount of \$5,776.38 and the parties who are responsible for installing the water line in Center Street in the amount of \$40,943.39 pursuant to the City's Line Extension Agreements with said parties.

### 3.2 Obligations of the City.

(a) **Generally.** The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

(b) **Conditions to Current Approvals.** The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Project plat, unless agreed to in writing by the Parties.

(c) **Acceptance of Improvements.** The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; (2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.



(d) **Water Line Reimbursement.** The City agrees to pay Developer the cost difference between the 8-inch water line required for the Project and the 12-inch line the Developer has agreed to install.

(e) **Off-Site Street Improvements Reimbursement.** The City agrees to credit Developer up to \$156,750 of Developer's actual costs expended in constructing off-site improvements to 970 South and Center Street from traffic impact fees collected by the City for the Project as said fees are collected.

#### **Section 4. VESTED RIGHTS AND APPLICABLE LAW**

##### **4.1 Vested Rights.**

(a) **Generally.** As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property only in accordance with this Agreement and Applicable Law.

(b) **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

##### **4.2 Applicable Law.**

(a) **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in the Conditions to Current Approvals set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the date the City Council granted preliminary approval to Developer. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

(b) **State and Federal Law.** Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law")

applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

#### **Section 5. AMENDMENT.**

Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

#### **Section 6. COOPERATION-IMPLEMENTATION**

##### **6.1 Processing of Subsequent Approvals.**

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The City's obligations under Section 6.1(a) of this Agreement are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans, and other information necessary for the City to meet such obligations. It is the express intent of Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals.

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to

Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

(d) If the City denies any application for a Subsequent Approval, the City must specify the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1(b) of this Agreement). The City shall approve the application if subsequently resubmitted for the City's review and the application complies with the specified modifications.

## **6.2 Other Governmental Permits.**

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.

(b) The City shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.1(b) of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

## **Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW**

### **7.1 General Provisions.**

(a) **Defaults.** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

(b) **Termination.** If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting.

If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. The City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

## **7.2 Review by City**

(a) **Generally.** The City may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.

(b) **Determination of Non-Compliance.** If the City Council finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to Section 7.1(a) of this Agreement. If the default is not cured timely by Developer, the City may terminate this Agreement as provided in Section 7.1(b) of this Agreement.

## **7.3 Default by the City.**

In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 7.1 of this Agreement and provided under Applicable Law.

## **7.4 Enforced Delay; Extension of Time of Performance.**

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

## **7.5 Limitation on Liability.**

No owner, director or officer of the Developer, when acting in his or her capacity as such, shall have any personal recourse, or deficiency liability associated with this Agreement, except to the extent that liability arises out of fraud or criminal acts of that owner, director, or officer.

## **Section 8. NOTICE OF COMPLIANCE**

### **8.1 Timing and Content.**

Within fifteen (15) days following any written request which Developer may make from time to time, the City shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

### **8.2 Failure to Deliver.**

Failure to deliver a Notice of Compliance within the time set forth in Section 8.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

## **Section 9. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND NOTICE.**

The rights of the Developer under this agreement may be transferred or assigned, in whole or in part. Developer shall give notice to the City of any assignment at least fourteen (14) days prior to the effective date of the assignment.

## **Section 10. MISCELLANEOUS**

**10.1 Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

**10.2 Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement,

or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

**10.3 Other Necessary Acts.** Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

**10.4 Construction.** Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**10.5 Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

**10.6 Covenants Running with the Land and Manner of Enforcement.**

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the City to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project

**10.7 Waiver.** No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any

provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

**10.8 Remedies.** Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorneys' fees in any legal or equitable action instituted to enforce the terms of this Agreement.

**10.9 Utah Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

**10.10 Other Public Agencies.** The City shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

**10.11 Attorneys' Fees.** In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

**10.12 Covenant of Good Faith and Fair Dealing.** Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

**10.13 Representations.** Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.



(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

**10.14 No Third-Party Beneficiaries.** This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

#### **Section 11. NOTICES**

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

**If to the City:**

**Director  
Planning Department  
Midway City  
P.O. Box 277  
Midway, UT 84049**

**With Copies to:**

**TESCH LAW OFFICES, P.C.  
c/o KRAIG J. POWELL  
Midway City Attorneys  
2 South Main, Suite 2-D  
Heber City, UT 84032**

**If to Developer:**

**Snake Creek Ranch, LC  
2975 W. Executive Pkwy, Ste 515  
Lehi, Utah 84043**

**Section 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS**

Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the City and Developer.

**Section 13. RECORDATION OF DEVELOPMENT AGREEMENT**

No later than ten (10) days after the City enters into this Agreement, the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and the City as of the date and year first above written.

CITY OF MIDWAY:

Attest:

Connie Tatton  
CONNIE TATTON  
Mayor

Brad Wilson  
BRAD WILSON  
City Recorder

STATE OF UTAH            )  
                                  ss:  
COUNTY OF WASATCH    )

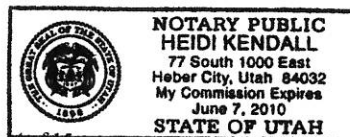
The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August, 20 07, by Connie Tatton, who executed the foregoing instrument in her capacity as the Mayor of the City of Midway, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as the Midway City Recorder.

Heidi Kendall  
NOTARY PUBLIC  
Residing at: Heber City, UT

My Commission Expires:

6-7-10

Development Agreement



Snake Creek Ranch, LC

Signature



By: (Print Name) Richard R. Arnold, Jr.

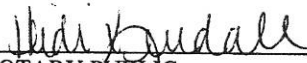
Its: (Title) Member Manager

STATE OF UTAH )

:SS

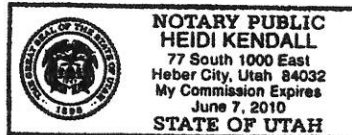
COUNTY OF Wasatch )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2007, by Richard R. Arnold, Jr., who executed the foregoing instrument in his/her capacity as Member Manager of Snake Creek Ranch PUD.

  
NOTARY PUBLIC  
Residing at: Heber City UT

My Commission Expires:

6-7-10



## LEGAL DESCRIPTION

Part of the Southeast Quarter and Northeast Quarter of Section 3, Township 4 South, Range 4 East of the Salt Lake Baseline and Meridian described as follows:

Commencing at the Southeast Corner of Section 3, Township 4 South, Range 4 East, Salt Lake Baseline and Meridian monumented with a Wasatch County Surveyor Brass Cap (East Quarter Corner monumented in 2000 bears N 00°05'19" W 2664.26 feet—Basis of Bearing) thence N 00°28'40" W 1333.50 along the east line of the Southeast Quarter of said Section 3 to the Southeast Corner of the Northeast Quarter of the Southeast Quarter of said Section 3; thence S 89°30'01" W 350.05 feet along the south line of the North Half of the Southeast Quarter of said Section 3 to the point of beginning and running thence S 89°30'01" W 1134.95 feet (West 1134.95 feet, By Record) along said south line of the north half of the Southeast Quarter of said Section 3; thence N 00°28'40" W 1253.76 feet (North 1084.38 feet, By Record); thence along an existing fence line the next four courses: 1) thence S 89°34'27" E 175.19; 2) thence N 88°36'34" E 67.76 feet; 3) thence N 00°05'54" E 119.00 feet; 4) thence N 01°22'37" W 129.54 feet; thence N 89°35'33" E 407.26 feet; thence S 00°05'19" E 258.21 feet; thence S 89°11'03" E 344.66 feet; thence S 10°43'24" W 133.26 feet; thence S 89°59'25" E 176.15 feet (East 160.05', By Record); thence S 00°05'19" E 1099.23 feet to the point of beginning, containing 34.35 acres.

## Michael Henke

---

**From:** Syndi <syndic\_0826@yahoo.com>  
**Sent:** Tuesday, April 30, 2019 11:14 AM  
**To:** Michael Henke; Celeste Johnson; Syndi Cummings Parker; Dave Parker  
**Subject:** Saddle Creek Ranch Development

Dear City Officials,

We received a letter stating there was going to be a meeting on the changes to the master plan of the Saddle Creek Ranch development on May 7th. We are going to be out of town on that day so we wanted the City Council know our feeling on the changes.

We are in 100% favor of the change from 57 lots to the new 36 1/2 acre lots. This will allow more Open Space and less traffic density for center street and surrounding roads.

We hope the City Council is in favor of this requested changed to the Saddle Creek Development.

We know all the members of the Council take great pride in keeping Midway the beautiful community that we all love. Thank you for your service.

Syndi and Dave Parker  
750 S Appenzell Ct  
Midway, UT 84049  
435-671-3738