



## RESOLUTION 2022-39

### A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE BONNER MEADOWS SUBDIVISION

**WHEREAS**, Utah law authorizes municipalities to enter into development agreements for the use and development of land within the municipality; and

**WHEREAS**, the Midway City Council finds it in the public interest of the City of Midway to enter into a development agreement with the developer of the proposed Bonner Meadows Subdivision for the use and development of the land included within that proposed project;

**NOW, THEREFORE**, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Midway City Council approves the development agreement attached hereto and authorizes the Mayor of Midway City to execute the agreement on behalf of the City.

Section 2: The effect of this Resolution is subject to all conditions of the land use approval granted by the City for the proposed project.

**PASSED AND ADOPTED** by the Midway City Council on the     day of             2022.

MIDWAY CITY

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Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

Exhibit A

## BONNER MEADOWS SUBDIVISION DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between ~~COLTON CHRONISTER, agent for~~ JOHNSON’S LANDING LLC, ~~it successors-in-interest, heirs, and assigns~~ (hereinafter called the “Developer”), and the CITY OF MIDWAY, UTAH, 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 the Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

### RECITALS

- A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.*, in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the proposed Bonner Meadows Subdivision, located at 100 East 100 South in Midway, Utah (hereinafter referred to as the “Project”), and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.
- B. The Developer has a legal interest in certain real property located in the City, as described in Exhibit “A”, (hereinafter referred to as the “Property”) attached hereto and incorporated herein by this reference. Developer warrants and represents that it has the legal authority to sign this Agreement and bind the Property as set forth herein.
- C. The Developer intends to develop the Property as a large-scale subdivision with eighteen (18) building lots. This Project is commonly known as the Bonner Meadows Subdivision. The proposed subdivision is on two parcels totaling 5.99 acres wholly owned by the ~~Applicant~~Developer. The ~~subdivision~~Project is located at approximately 100 East 100 South, in the R-1-9 zone. Most of the proposed lots will obtain frontage along new roads built within the subdivision (100 South and 180 East). Four lots will front the existing 100 East. While the R-1-9 zone allows for single-family dwellings and duplex dwellings, none of the proposed lots qualify as duplex lots.
- D. Each Party acknowledges that it is entering into this Agreement voluntarily. The Developer consents to all the terms and conditions of this Agreement and acknowledges

that they are valid for development of the Project. Unless otherwise specifically agreed to herein, the terms and conditions contained herein are in addition to any conditions or requirements of any other legally adopted ordinances, rules, or regulations governing the development of real property in the City of Midway.

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

### AGREEMENT

**Section 1. Effective Date and Term.** The term of this Agreement shall commence upon the signing of this Agreement (the "Effective Date") ~~by both Parties and shall continue for a period of two (2) years.~~ The Developer shall have one (1) years from the Effective Date to record this Development Agreement and the approved plat for the Bonner Meadows subdivision with the Wasatch County Recorder's office. Unless otherwise agreed between the City and the Developer, the 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, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner if this Agreement and the approved plat are not recorded within the one (1) year time limit. Once this Agreement and the subdivision plat are recorded this Agreement is binding and has no expiration date, and all rights and obligations contained herein shall run with the land.~~

**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 the Exhibits.

"Applicable Law" shall have the definition set forth in Section 4A of this Agreement.

"Governing Body" shall mean the Midway City Council.

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

### Section 3. Obligations of the Developer and the City.

#### A. Obligations of the Developer:

- i. General Obligations: 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 conditioned upon and in material consideration of the Developer's

- agreement to perform and abide by the covenants and obligations of the Developer set forth herein.
- ii. Construction and/or Dedication of Project Improvements: The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall ~~satisfactorily~~ complete construction of all public Project improvements, in substantial accordance with the approved final plans and current City standards, no later than two (2) years after the recording of the plat for the Project. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto as Exhibit "B" and incorporated herein by this reference.
- iii. Conditions for Current Approvals: The Developer shall comply with all of the following Conditions:
- a) Payment of Fees: Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees actually incurred by the City in relation to the Project, as evidenced by documentation provided by the City to Developer. All fees 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.
- b) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the ~~developmentProject~~ Project by the ~~City Council-Governing Body~~. Should a final plat not be recorded by the County Recorder within the one-year period, the ~~development'sProject's~~ approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the ~~City Council-Governing Body~~ extends the time limit for plat recording, with or without reasonable conditions.
- c) Access: Access will be from 100 South, 100 East and 180 East. The proposed 100 South will provide access to 200 East from the north of Lot 17 of Timpanogos View Estates, where the City owns a 60-foot wide area it was deeded for purposes of a future road when the Timpanogos View Estates plat was recorded in 1973. The new cul-de-sac complies with the maximum cul-de-sac length of 1,300 feet and maximum cul-de-sac lot count of 11. ~~ApplicantDeveloper~~ will be required to improve all existing roads abutting the development to match the City-standard half-width.

- d) **Frontage:** The City Land Use Code requires all lots to meet the minimum frontage requirements for the zone. The R-1-9 zone requires 90 feet of frontage for detached single family lots (non-duplex lots), but allows a reduction to 60 feet if 75% of the frontage is contained within the bulb of a cul-de-sac. ~~All~~The City confirms that all lots in the ~~development appear to meet~~Project fully satisfy these requirements.
- e) ~~Single Family Dwellings: Only single family dwellings will be allowed on the 18 lots, even though the R-1-9 zone allows for both detached and attached duplexes.~~**Prohibition on Duplexes:** Duplexes are not allowed in the development because the lots do not comply with the minimum code requirements for duplexes, which includes additional water for a secondary culinary connection, adequate frontage, and minimum lot sizes. A note ~~should~~shall be included on the plat advising future lot owners of the limitation.
- f) **Sidewalks and Connectivity:** Developer will install 5-foot sidewalks throughout the ~~development~~Project and along existing street frontages contiguous to the ~~development~~Project in substantial accordance with the approved final plans and current City standards. The new sidewalks will benefit pedestrian traffic—especially school children—in the area. Many children use 200 East to access Midway Elementary School, which does not have a sidewalk. Developer has also included an 8-foot asphalt trail that will extend from the end of the cul-de-sac to 185 South. This trail will become ~~school~~City property ~~upon completion~~.
- g) **Construction Hours and Access:** Construction access will only be taken from 200 East. No construction access will be taken from 100 East or 185 South. To ensure the safety of school children during active construction of the development, Developer and the Midway Elementary School Principal met and decided on limitations regarding construction hours and access. The agreed upon limitations—which were approved by the City Council as part of preliminary approval—are outlined in the table below. Any additional requirements from the City regarding construction operation hours will be addressed upon City approval and a contract signed with a general contractor.

<b>Weekday</b>	<b>Morning Construction Start Time</b>	<b>Afternoon Construction Stop Time</b>	<b>Afternoon Construction Restart Time</b>
Monday	No earlier than 9:00 a.m.	No later than 1:45 p.m.	No earlier than 2:45 p.m.

Tuesday - Friday	No earlier than 9:00 a.m.	No later than 2:45 p.m.	No earlier than 3:45 p.m.
Weekends	Construction per City standards and in accordance with agreed upon hours of operation.		
*During construction hours, a drivable lane on 100 East and 185 South will be maintained in a clean and operable manner, outside of the construction area.			

~~h) 100 East Construction: One of the main routes to access Midway Elementary School is 100 East. Buses, vehicles carrying students, and pedestrians all access the school along this road. Construction on 100 East must take place during the summer months when school is not in session for safety reasons. The other roads in the development (100 South and 180 East) do not present the same safety concerns as 100 East.~~

~~h) Intentionally omitted.~~

- i) City and School District Agreement on 185 South: The City and Wasatch County School District agreed to a property exchange in 2017 allowing for the construction of Michie Lane (300 South). As part of this agreement, the School District deeded Michie Lane to the City on the condition that at a later date, the City would deed 185 South to the School District. The prerequisite for deeding 185 South was the construction of 100 South. The deeding of 185 South to the School District will allow the School District flexibility regarding future plans for Midway Elementary and its surrounding property. Once 100 South is built and deeded to the City, the City must vacate ~~the road~~ 185 South and deed it to the School District.
- j) Geotechnical Study: A geotechnical study has been submitted to the City and has been reviewed by Horrocks Engineers. The City acknowledges receipt of said and that the study does not contain any information that would preclude full development of the Project and the construction of single-family residences thereon.
- k) Sensitive Lands: ~~Applicant~~ Developer has submitted an environmental assessment which does not identify any sensitive lands within the proposed development. The City acknowledges receipt of the environmental assessment.
- l) Water Rights and Water Service: The required water rights for the culinary and secondary water for the Project shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer shall meet all City policies and ordinances for culinary and secondary use. Culinary water service shall be provided by the



City according to the rules, regulations and requirements of the City. The total quantity of water rights to be dedicated to the City for the entire Project, for both culinary and secondary use, is 22.99 acre feet. The lots will connect to the City's existing culinary water lines located in the area. The lots will connect to Midway Irrigation Company's secondary, which is already servicing the property. Secondary water meters are required for each lateral.

~~Applicant has submitted a will serve letter from Midway Irrigation Company. There is an issue with the relocation of an irrigation company ditch within the development and final plat approval shall not be issued without the Developer submitting to the City an executed agreement with Midway Irrigation Company resolving this issue.~~

- m) Storm Water: Storm water runoff will be captured and retained onsite in a pond located on Lot 11. ~~Applicant~~Developer must ensure that the storm drain easement on Lot 11 is clearly marked on the plat. The City will maintain the right to access the pond for future emergency access. The plat must include a note requiring the owner of Lot 11 to provide a 10-foot minimum access gate if a fence or other type of barrier or obstruction is proposed to be erected on the lot that would inhibit access through the access easement. Before deeding ~~the road 185 South~~ to the School District, ~~Applicant~~Developer must work with the City to ensure there is an access easement over the road allowing for future access to the pond on the rear of Lot 11.
- n) Sewer Connection: The lots will connect to Midway Sanitation District's sewer line located in the area.
- o) Fire Flow: A fire hydrant will be located within 500' of any future structures, measured by the route of a fire hose from the fire hydrant to the future building sites.
- p) Traffic Study: A traffic study is required because there are more than 15 lots proposed in the ~~development. Applicant has submitted a study to the City.~~Project. ~~Developer has submitted a study to the City, and the City acknowledges its receipt. The assessment does not find any adverse effects that would preclude full development of the Project and the construction of single-family residences thereon.~~
- q) Weed Control: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project. ~~Developer shall be responsible for weed control on the remainder parcel described herein.~~
- r) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments and those requirements set forth above in 3(A)(iii)(c) above.

- s) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
- t) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.
- u) Gate for Retention Pond. The Final Plat shall contain a designation and note requiring the installation of a 10 foot gate for access to the retention pond.
- v) City's Right to Draw From Construction Bond: If Developer is required to perform any work within the public right-of-way, and the work is not completed by the City's established deadlines, subject in all respects to force majeure and other events beyond Developer's control, the City shall have the right to draw funds from the Developer's performance and other bonds.

**B. Obligations of the City:**

- i. General Obligations: The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is conditioned upon and in material consideration of the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.
- ii. Conditions of Approval: The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on the Project Plats, unless agreed to in writing by the Parties. The Developer shall ~~remain~~have the right, in its sole discretion, to elect whether to be bound by all legally adopted Ordinances, Resolutions and policies of the City ~~unless specifically agreed to otherwise herein~~following the effective date hereof.
- iii. 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 are inspected by a licensed engineer who certifies that the Project improvements have been constructed in substantial accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments for a period of one (1) year; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

**Section 4. Vested Rights and 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 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 for the Project. 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 the subdivision plat, 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 only (“Changes in the Law”) which are identified as being applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more of the 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 the specific lot, or other portion of the Project. Each person or entity (other than the City and the 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 fifteen (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 and Implementation.**

- A. Processing of Subsequent Approvals. 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, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein. The City’s obligations under this Section 6 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 the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny the application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with this Agreement, does not comply with existing law, (unless such existing law conflicts with the terms and provisions of this Agreement), or violates a City Ordinance or Resolution, (unless such City Ordinance or Resolution conflict with the terms and provisions of this Agreement). If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

**B. Other Governmental Permits.**

1. The 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.
2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.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 and Termination.**

**A. General Provisions.**

1. Defaults by Developer. 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 agreement, 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 may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time 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 thirty (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.

2. Termination. If the City elects to consider terminating this Agreement due to an uncured material default of the Developer, then the City shall give to the 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. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. Subject to Section 7(A)(i) above, if the City Council determines that a material default has occurred and is continuing, without being addressed by Developer, and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any and all remedies available to the Developer at law or in equity.
3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that the Developer is in full compliance with the terms and conditions of this Agreement. The Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.
4. Determination of Non-Compliance. If the City Council finds and determines, which finding and determination is supported by reasonable documentation, that the Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. If the default is not cured, or curing activities have not been undertaken by Developer, in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.

B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.

C. 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, pandemics, 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.

**Section 8. Notice of Compliance.**

- A. Timing and Content. Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to the Developer a written “Notice of Compliance,” in recordable form, duly executed and acknowledge by the City, certifying that 1) 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; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.
  
- B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of the Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

**Section 9. Change in Developer, Assignment, Transfer and Required Notice.** The rights of the Developer under this Agreement may be transferred or assigned, in whole or in part, with the written consent of the Planning Department of the City, which shall not be unreasonably withheld, conditioned, or delayed. The Developer shall give notice to the City of any proposed transfer or assignment at least thirty (30) days prior to the proposed date of the transfer or assignment.

## Section 10. Miscellaneous Terms.

- A. 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.
- B. 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 written 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.
- C. Other Necessary Acts. Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions of 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.
- D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.
- E. 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 the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien

on the Project, including prorated portions to the individual lots or units in the Project.

- F. 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 or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.
- G. Remedies. Either Party may 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; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).
- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. 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 to the other Party through this Agreement can be enjoyed.
- K. Representations. Each Party hereby represents and warrants to the other Party that the following statements are true, complete and not misleading as regards to the representing and warranting Party:
  - 1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.



2. 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 individuals represent.
3. 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.

L. No Third-Party Beneficiaries. This Agreement is between the City and the 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 the 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 (1) 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 State 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 as set forth below:

#### If to the City of Midway:

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

#### With Copies to:

Corbin B. Gordon  
Midway City Attorney  
322 E. Gateway Dr. #201  
Heber City, Utah 84032

If to Developer:

~~Colton Chronister~~

\_\_\_\_\_  
\_\_\_\_\_

With Copies to:

Johnson's Landing LLC

\_\_\_\_\_  
\_\_\_\_\_

**Section 12. Entire Agreement, Counterparts and Exhibits.** Unless otherwise noted herein, this Agreement, including its Exhibits, along with the Annexation Agreement, as amended, 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 must be in writing and signed by the appropriate authorities of the City and of the Developer.

**Section 13. Signing and Recordation of Agreement.** Unless the City and the Developer mutually agree otherwise in writing, this Agreement must be signed by both the Developer and the City no later than ninety (90) days after the Agreement is approved by a vote of the Midway City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.

*[Signatures on Following Page]*

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

CITY OF MIDWAY

Attest:

\_\_\_\_\_  
Celeste Johnson, Mayor

\_\_\_\_\_  
Brad Wilson, City Recorder

STATE OF UTAH            )  
                                      :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

\_\_\_\_\_  
NOTARY PUBLIC

THE DEVELOPER OF BONNER MEADOWS SUBDIVISION  
JOHNSON'S LANDING, LLC

By: \_\_\_\_\_Matthew R. Johnson  
Its: \_\_\_\_\_Member

STATE OF UTAH            )  
                                      :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, who executed the foregoing instrument in his/her capacity as the \_\_\_\_\_ of the Developer.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

(Legal Description of the Property)

Beginning at a point West 2145.29 feet and North 733.73 feet from the South Quarter corner of Section 35, Township 3 South, Range 4 East, Salt Lake Base and Meridian; thence North 0°05'57" East 454.83 feet; thence South 89°07'04" East 104.01 feet; thence South 89°07'58" East 358.44 feet; thence South 02°14'09" West 459.99 feet; thence North 88°28'34" West 445.5 feet to the point of beginning.

Parcel Number: 00-0006-5172

Serial Number: OMI-0451-0-035-034

Beginning at a point North 1146.52 feet and West 1683.05 feet from the South Quarter corner of Section 35, Township 3 South, Range 4 East; thence North 89°8'5" West 358.44 feet; thence North 0°5'1" East 130.33 feet; thence South 89°44'58" East 90 feet; thence North 0°40'51" East 72.03 feet; thence South 89°46'24" East 75.09 feet; thence South 0°10'58" West 72.01 feet; thence South 88°40'18" East 196.74; thence South 1°50'35" West 130.58 feet to the beginning.

Parcel Number 00-0020-5404

Serial Number: OMI-0001-3-~~02002~~-034

**EXHIBIT B**  
**(City Staff Report)**

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# BONNER MEADOWS SUBDIVISION DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between JOHNSON’S LANDING LLC, its successors-in-interest, heirs, and assigns (hereinafter called the “Developer”), and the CITY OF MIDWAY, UTAH, 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 the Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

## RECITALS

- A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.*, in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the proposed Bonner Meadows Subdivision, located at 100 East 100 South in Midway, Utah (hereinafter referred to as the “Project”), and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.
- B. The Developer has a legal interest in certain real property located in the City, as described in Exhibit “A”, (hereinafter referred to as the “Property”) attached hereto and incorporated herein by this reference. Developer warrants and represents that it has the legal authority to sign this Agreement and bind the Property as set forth herein.
- C. The Developer intends to develop the Property as a large-scale subdivision with eighteen (18) building lots. This Project is commonly known as the Bonner Meadows Subdivision; provided, however, Developer may elect to change such name and, notwithstanding such change, this Agreement shall continue in full force and effect. The proposed subdivision is on two parcels totaling 5.99 acres wholly owned by the Developer. The Project is located at approximately 100 East 100 South, in the R-1-9 zone. Most of the proposed lots will obtain frontage along new roads built within the subdivision (100 South and 180 East). Four lots will front the existing 100 East. While the R-1-9 zone allows for single-family dwellings and duplex dwellings, none of the proposed lots qualify as duplex lots.

D. Each Party acknowledges that it is entering into this Agreement voluntarily. The Developer consents to all the terms and conditions of this Agreement and acknowledges that they are valid for development of the Project. Unless otherwise specifically agreed to herein, the terms and conditions contained herein are in addition to any conditions or requirements of any other legally adopted ordinances, rules, or regulations governing the development of real property in the City of Midway.

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

## **AGREEMENT**

**Section 1. Effective Date and Term.** The term of this Agreement shall commence upon the signing of this Agreement (the “Effective Date”). The Developer shall have one (1) years from the Effective Date to record this Development Agreement and the approved plat for the Bonner Meadows subdivision, or such other subdivision name chosen by Developer if applicable, with the Wasatch County Recorder’s office. Unless otherwise agreed between the City and the Developer, the Developer’s vested interests and rights contained in this Agreement expire if this Agreement and the approved plat are not recorded within the one (1) year time limit. Once this Agreement and the subdivision plat are recorded this Agreement is binding and has no expiration date, and all rights and obligations contained herein shall run with the land.

**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 the Exhibits.

“Applicable Law” shall have the definition set forth in Section 4A of this Agreement.

“Governing Body” shall mean the Midway City Council.

“City” shall mean the City of Midway, and shall include, unless otherwise provide, any and all of the City’s agencies, departments, officials, employees or agents.

### **Section 3. Obligations of the Developer and the City.**

A. Obligations of the Developer:

- i. General Obligations: 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 conditioned upon and in material consideration of the Developer’s agreement to perform and abide by the covenants and obligations of the Developer set forth herein.

- ii. Construction and/or Dedication of Project Improvements: The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall complete construction of all public Project improvements, in substantial accordance with the approved final plans and current City standards, no later than two (2) years after the recording of the plat for the Project. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto as Exhibit “B” and incorporated herein by this reference.
- iii. Conditions for Current Approvals: The Developer shall comply with all of the following Conditions:
- a) Payment of Fees: Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees actually incurred by the City in relation to the Project, as evidenced by documentation provided by the City to Developer. All fees 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.
  - b) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the Project by the Governing Body. Should a final plat not be recorded by the County Recorder within the one-year period, the Project’s approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the Governing Body extends the time limit for plat recording, with or without reasonable conditions.
  - c) Access: Access will be from 100 South, 100 East and 180 East. The proposed 100 South will provide access to 200 East from the north of Lot 17 of Timpanogos View Estates, where the City owns a 60-foot wide area it was deeded for purposes of a future road when the Timpanogos View Estates plat was recorded in 1973. The new cul-de-sac complies with the maximum cul-de-sac length of 1,300 feet and maximum cul-de-sac lot count of 11. Developer will be required to improve all existing roads abutting the development to match the City-standard half-width.
  - d) Frontage: The City Land Use Code requires all lots to meet the minimum frontage requirements for the zone. The R-1-9 zone requires 90 feet of frontage for detached single family lots (non-duplex lots), but allows a reduction to 60 feet if 75% of the frontage is contained within the bulb of a



cul-de-sac. The City confirms that all lots in the Project fully satisfy these requirements.

- e) **Prohibition on Duplexes:** Duplexes are not allowed in the development because the lots do not comply with the minimum code requirements for duplexes, which includes additional water for a secondary culinary connection, adequate frontage, and minimum lot sizes. A note shall be included on the plat advising future lot owners of the limitation.
- f) **Sidewalks and Connectivity:** Developer will install 5-foot sidewalks throughout the Project and along existing street frontages contiguous to the Project in substantial accordance with the approved final plans and current City standards. Such 5-foot sidewalks will be constructed and installed in accordance with Developer’s construction schedule and such construction and installation will not be accelerated under any circumstances. The new sidewalks will benefit pedestrian traffic—especially school children—in the area. Many children use 200 East to access Midway Elementary School, which does not have a sidewalk. Developer has also included an 8-foot asphalt trail that will extend from the end of the cul-de-sac to 185 South. This trail will become City property upon completion.
- g) **100 East and 185 South Construction Hours and Access:** Construction access will only be taken from 200 East. No construction access will be taken from 100 East or 185 South. To ensure the safety of school children during active construction of the development, Developer and the Midway Elementary School Principal met and decided on limitations regarding construction hours and access solely with respect to construction and access pertaining directly to 100 East and 185 South. The agreed upon limitations for 100 East and 185 South—which were approved by the City Council as part of preliminary approval—are outlined in the table below. Any additional requirements from the City regarding construction operation hours will be addressed upon City approval and a contract signed with ~~a general contractor~~ Developer. For the avoidance of doubt, construction within the Project shall not be subject the the limitations established in this Section 3(A)(iii)(g).

<b>Weekday</b>	<b>Morning Construction Start Time</b>	<b>Afternoon Construction Stop Time</b>	<b>Afternoon Construction Restart Time</b>
Monday	No earlier than 9:00 a.m.	No later than 1:45 p.m.	No earlier than 2:45 p.m.
Tuesday - Friday	No earlier than	No later than	No earlier than

	9:00 a.m.	2:45 p.m.	3:45 p.m.
Weekends	Construction per City standards and in accordance with agreed upon hours of operation.		
*During construction hours, a drivable lane on 100 East and 185 South will be maintained in a clean and operable manner, outside of the construction area.			

- h) Intentionally omitted.
- i) City and School District Agreement on 185 South: The City and Wasatch County School District agreed to a property exchange in 2017 allowing for the construction of Michie Lane (300 South). As part of this agreement, the School District deeded Michie Lane to the City on the condition that at a later date, the City would deed 185 South to the School District. The prerequisite for deeding 185 South was the construction of 100 South. The deeding of 185 South to the School District will allow the School District flexibility regarding future plans for Midway Elementary and its surrounding property. Once 100 South is built and deeded to the City, the City must vacate 185 South and deed it to the School District.
- j) Geotechnical Study: A geotechnical study has been submitted to the City and has been reviewed by Horrocks Engineers. The City acknowledges receipt of said [study](#) and that the study does not contain any information that would preclude full development of the Project and the construction of single-family residences thereon.
- k) Sensitive Lands: Developer has submitted an environmental assessment which does not identify any sensitive lands within the proposed development. The City acknowledges receipt of the environmental assessment [and that it does not contain any information that would preclude full development of the Project and the construction of single-family residences thereon.](#)
- l) Water Rights and Water Service: The required water rights for the culinary and secondary water for the Project shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer shall meet all City policies and ordinances for culinary and secondary use. Culinary water service shall be provided by the City according to the rules, regulations and requirements of the City. The total quantity of water rights to be dedicated to the City for the entire Project, for both culinary and secondary use, is 22.99 acre feet. The lots will connect to the City’s existing culinary water lines located in the area. The lots will connect to Midway Irrigation Company’s secondary, which is already servicing the property. Secondary water meters are required for each lateral.

There is an issue with the relocation of an irrigation company ditch within the development and final plat approval shall not be issued without the Developer submitting to the City an executed agreement with Midway Irrigation Company resolving this issue. Notwithstanding the foregoing, in the event Developer and Midway Irrigation Company are using good faith and commercially reasonable efforts to finalize an agreement but are unable to finalize the same prior to expiration of the one (1) year plat recording requirement established herein, then said plat recording expiration established herein shall be automatically extended and shall expire on the date which is ten (10) days following full execution of the Developer and Midway Irrigation Company agreement.

- m) Storm Water: Storm water runoff will be captured and retained onsite in a pond located on Lot 11. Developer must ensure that the storm drain easement on Lot 11 is clearly marked on the plat. The City will maintain the right to access the pond for future emergency access. The plat must include a note requiring the owner of Lot 11 to provide a 10-foot minimum access gate if a fence or other type of barrier or obstruction is proposed to be erected on the lot that would inhibit access through the access easement. Before deeding 185 South to the School District, Developer must work with the City to ensure there is an access easement over the road allowing for future access to the pond on the rear of Lot 11.
- n) Sewer Connection: The lots will connect to Midway Sanitation District's sewer line located in the area.
- o) Fire Flow: A fire hydrant will be located within 500' of any future structures, measured by the route of a fire hose from the fire hydrant to the future building sites.
- p) Traffic Study: A traffic study is required because there are more than 15 lots proposed in the Project. Developer has submitted a study to the City, and the City acknowledges its receipt. The assessment does not find any adverse effects that would preclude full development of the Project and the construction of single-family residences thereon.
- q) Weed Control: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project.
- r) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments and those requirements set forth above in 3(A)(iii)(c) above.
- s) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.

- t) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.
- u) Gate for Retention Pond. The Final Plat shall contain a designation and note requiring the owner of Lot 11 to ~~installation of~~ install a 10 foot gate for access to the retention pond. When applicable, said gate shall be installed along and only accessible from 185 South.
- v) City's Right to Draw From Construction Bond: If Developer is required to perform any work within the public right-of-way, and the work is not completed by the City's established deadlines, subject in all respects to force majeure and other events beyond Developer's control, the City shall have the right to draw funds from the Developer's performance and other bonds.

B. Obligations of the City:

- i. General Obligations: The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is conditioned upon and in material consideration of the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.
- ii. Conditions of Approval: The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on the Project Plats, unless agreed to in writing by the Parties. The Developer shall have the right, in its sole discretion, to elect whether to be bound by all legally adopted Ordinances, Resolutions and policies of the City following the ~~effective date hereof~~Effective Date.
- iii. 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 are inspected by a licensed engineer who certifies that the Project improvements have been constructed in substantial accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments for a period of one (1) year; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

**Section 4. Vested Rights and 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 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 for the Project. 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 the subdivision plat, 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 only (“Changes in the Law”) which are identified as being applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more of the 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 the specific lot, or other portion of the Project. Each person or entity (other than the City and the 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 fifteen (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 and Implementation.**

- A. Processing of Subsequent Approvals. 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, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein. The City’s obligations under this Section 6 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 the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny the application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with this Agreement, does not comply with existing law (unless such existing law conflicts with the terms and provisions of this Agreement), or violates a City Ordinance or Resolution (unless such City Ordinance or Resolution conflict with the terms and provisions of this Agreement). If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

**B. Other Governmental Permits.**

1. The 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.
2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.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 and Termination.**

**A. General Provisions.**

1. Defaults by Developer. 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 agreement, 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 may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time 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 thirty (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.

2. Termination. If the City elects to consider terminating this Agreement due to an uncured material default of the Developer, then the City shall give to the 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. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. Subject to Section 7(A)(~~1~~) above, if the City Council determines that a material default has occurred and is continuing, without being addressed by Developer, and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any ~~and~~or all remedies available to the Developer at law or in equity.
  3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that the Developer is in full compliance with the terms and conditions of this Agreement. The Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.
  4. Determination of Non-Compliance. If the City Council finds and determines, which finding and determination is supported by reasonable documentation, that the Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. If the default is not cured, or curing activities have not been undertaken by Developer, in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.
- B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.
- C. 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, pandemics, 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.

#### **Section 8. Notice of Compliance.**

- A. Timing and Content. Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to the Developer a written “Notice of Compliance,” in recordable form, duly executed and acknowledged by the City, certifying that 1) 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; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.
- B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of the Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

**Section 9. Change in Developer, Assignment, Transfer and Required Notice.** The rights of the Developer under this Agreement may be transferred or assigned, in whole or in part, with the written consent of the Planning Department of the City, which shall not be unreasonably withheld, conditioned, or delayed. The Developer shall give notice to the City of any proposed transfer or assignment at least thirty (30) days prior to the proposed date of the transfer or assignment.

#### **Section 10. Miscellaneous Terms.**

- A. 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.



- B. 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 written 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.
- C. Other Necessary Acts. Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions of 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.
- D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.
- E. 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 the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.
- F. 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 or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.

- G. Remedies. Either Party may 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; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).
- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. 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 to the other Party through this Agreement can be enjoyed.
- K. Representations. Each Party hereby represents and warrants to the other Party that the following statements are true, complete and not misleading as regards to the representing and warranting Party:
1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.
  2. 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 individuals represent.

3. 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.

L. No Third-Party Beneficiaries. This Agreement is between the City and the 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 the 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 (1) 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 State 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 as set forth below:

If to the City of Midway:

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

With Copies to:

Corbin B. Gordon  
Midway City Attorney  
322 E. Gateway Dr. #201  
Heber City, Utah 84032

If to Developer:

Johnson's Landing LLC

\_\_\_\_\_

\_\_\_\_\_

**Section 12. Entire Agreement, Counterparts and Exhibits.** Unless otherwise noted herein, this Agreement, including its Exhibits, along with the Annexation Agreement, as amended, 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 must be in writing and signed by the appropriate authorities of the City and of the Developer.

**Section 13. Signing and Recordation of Agreement.** Unless the City and the Developer mutually agree otherwise in writing, this Agreement must be signed by both the Developer and the City no later than ninety (90) days after the Agreement is approved by a vote of the Midway City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.

*[Signatures on Following Page]*

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

CITY OF MIDWAY

Attest:

\_\_\_\_\_  
Celeste Johnson, Mayor

\_\_\_\_\_  
Brad Wilson, City Recorder

STATE OF UTAH            )  
                                      :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

\_\_\_\_\_  
NOTARY PUBLIC

THE DEVELOPER OF BONNER MEADOWS SUBDIVISION  
JOHNSON’S LANDING, LLC

\_\_\_\_\_  
By: Matthew R. Johnson  
Its: Member

STATE OF UTAH            )  
                                      :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, who executed the foregoing instrument in his/her capacity as the \_\_\_\_\_ of the Developer.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A

(Legal Description of the Property)

Beginning at a point West 2145.29 feet and North 733.73 feet from the South Quarter corner of Section 35, Township 3 South, Range 4 East, Salt Lake Base and Meridian; thence North  $0^{\circ}05'57''$  East 454.83 feet; thence South  $89^{\circ}07'04''$  East 104.01 feet; thence South  $89^{\circ}07'58''$  East 358.44 feet; thence South  $02^{\circ}14'09''$  West 459.99 feet; thence North  $88^{\circ}28'34''$  West 445.5 feet to the point of beginning.

Parcel Number: 00-0006-5172

Serial Number: OMI-0451-0-035-034

Beginning at a point North 1146.52 feet and West 1683.05 feet from the South Quarter corner of Section 35, Township 3 South, Range 4 East; thence North  $89^{\circ}8'5''$  West 358.44 feet; thence North  $0^{\circ}5'1''$  East 130.33 feet; thence South  $89^{\circ}44'58''$  East 90 feet; thence North  $0^{\circ}40'51''$  East 72.03 feet; thence South  $89^{\circ}46'24''$  East 75.09 feet; thence South  $0^{\circ}10'58''$  West 72.01 feet; thence South  $88^{\circ}40'18''$  East 196.74; thence South  $1^{\circ}50'35''$  West 130.58 feet to the beginning.

Parcel Number 00-0020-5404

Serial Number: OMI-0001-3-002-034

**EXHIBIT B**  
(City Staff Report)