

Midway City Council
1 June 2021
Regular Meeting

Dance Property /
Connect to
Culinary Water System

Memo



Date: June 1, 2021
To: Midway City Council
From: Michael Henke
Re: Doug Dance culinary water connection petition

Doug Dance has requested four culinary connections to the City's water system. Initially he would only connect one dwelling but eventually there would be up to four dwellings on the property. The Dance property is not located in the city limits, but it is within the city's growth boundary. The 6.98-acre parcel is located near Cascade Springs Road and Stringtown Road. The Dance parcel is in Wasatch County's jurisdiction and it is currently undeveloped and is in agricultural production.

Current City policy (Resolution 2020-01) requires annexation to connect to the City's water system unless annexation is not possible. Staff has determined that without two points of access built to Midway City standards, development of the parcel would not be possible. If the City were to grant connection to the culinary system, the city could conditionally approve the connections and memorialize the conditions in a will-serve agreement. The conditions of the will-serve agreement could include limiting the maximum development on the property to four lots, paying an increased rate amount for culinary connections (1.5 x the normal rate) as is required for all properties in the County serviced by City water, and an agreement that the property will be annexed if surrounding contiguous properties are annexed into Midway. This would also save Midway the cost of maintaining a road that is not connected to any other roads maintained by Midway. Further, this would not create a new precedence of allowing development on a road over 1,300' in length from having a second access not built to City standards.

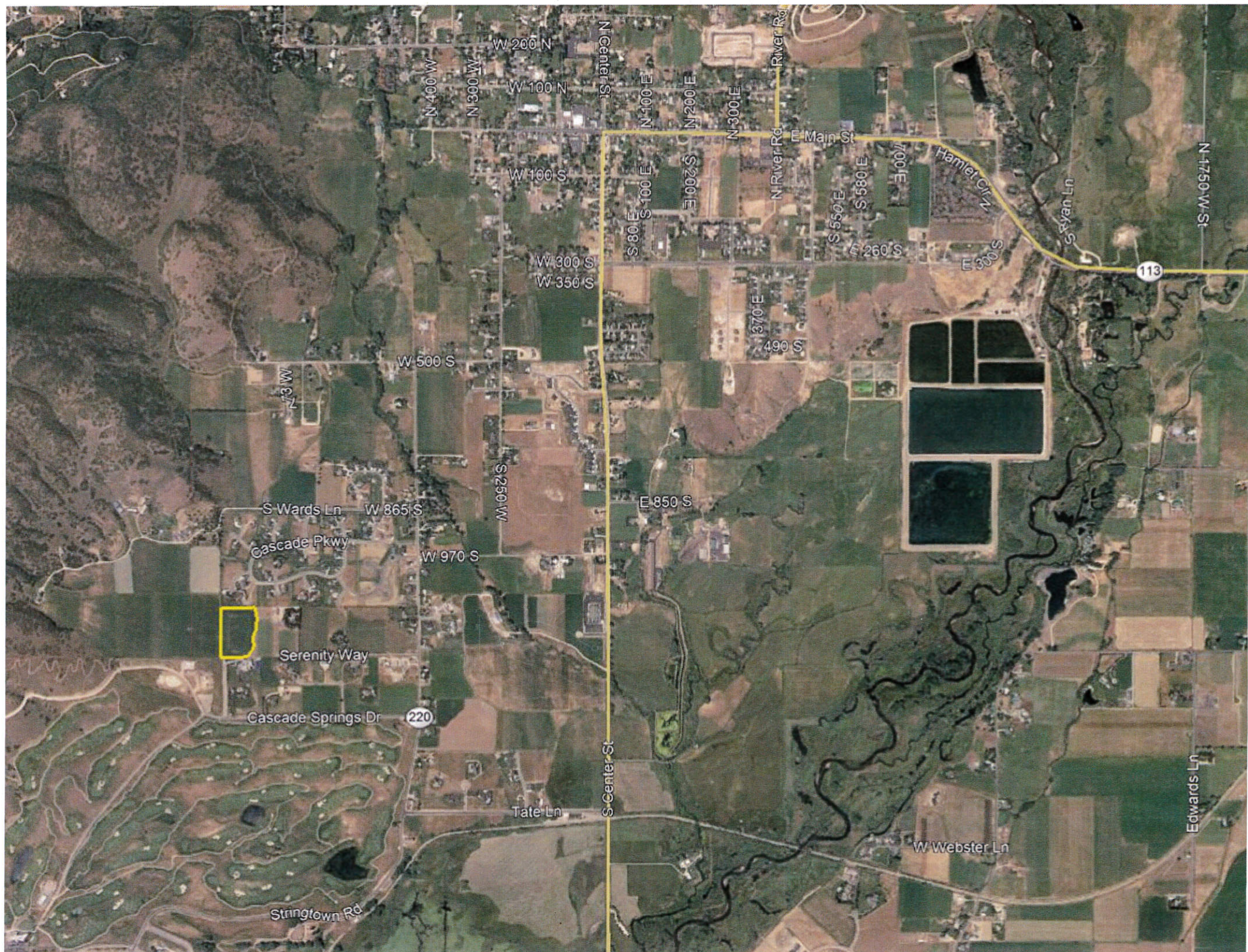
If approved, the applicant would need dedicate water rights, pay water impacts fees, connection and inspection fees to the City. Also, the City requires a rate payer, with property in the County, to pay one and a half times the rate of a rate payer in the City limits. They would also have to comply with any other requirements that the City Council requires.

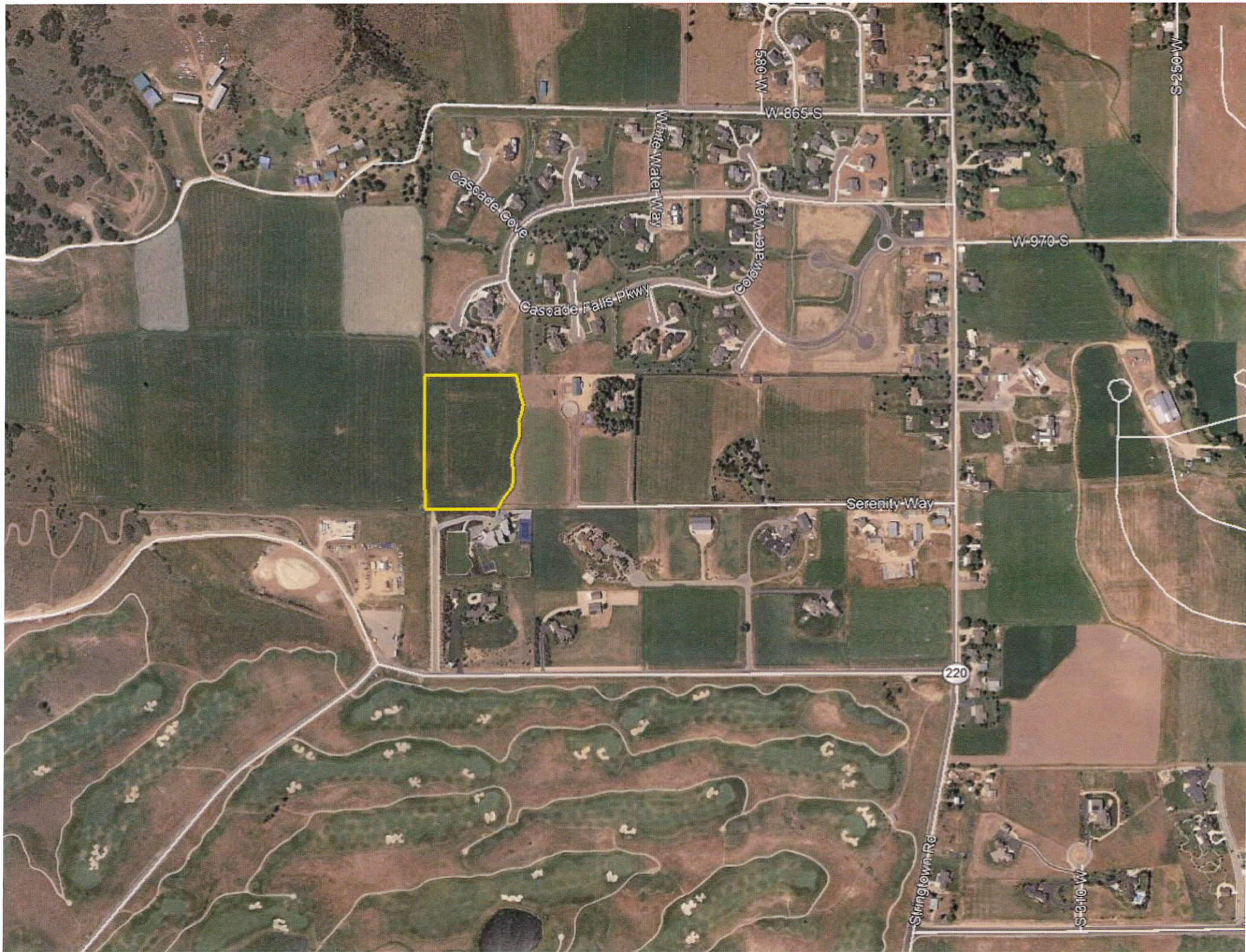
POSSIBLE FINDINGS:

- The City will gain some control over future development of the property through conditions included in the will-serve agreement.
- The proposal is a legislative action.
- The density of the project is relatively low at four dwellings on almost seven acres. This will help promote the vision of the general plan to preserve more open area and a rural atmosphere.

ALTERNATIVE ACTIONS:

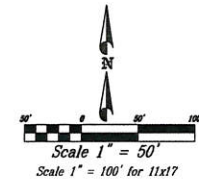
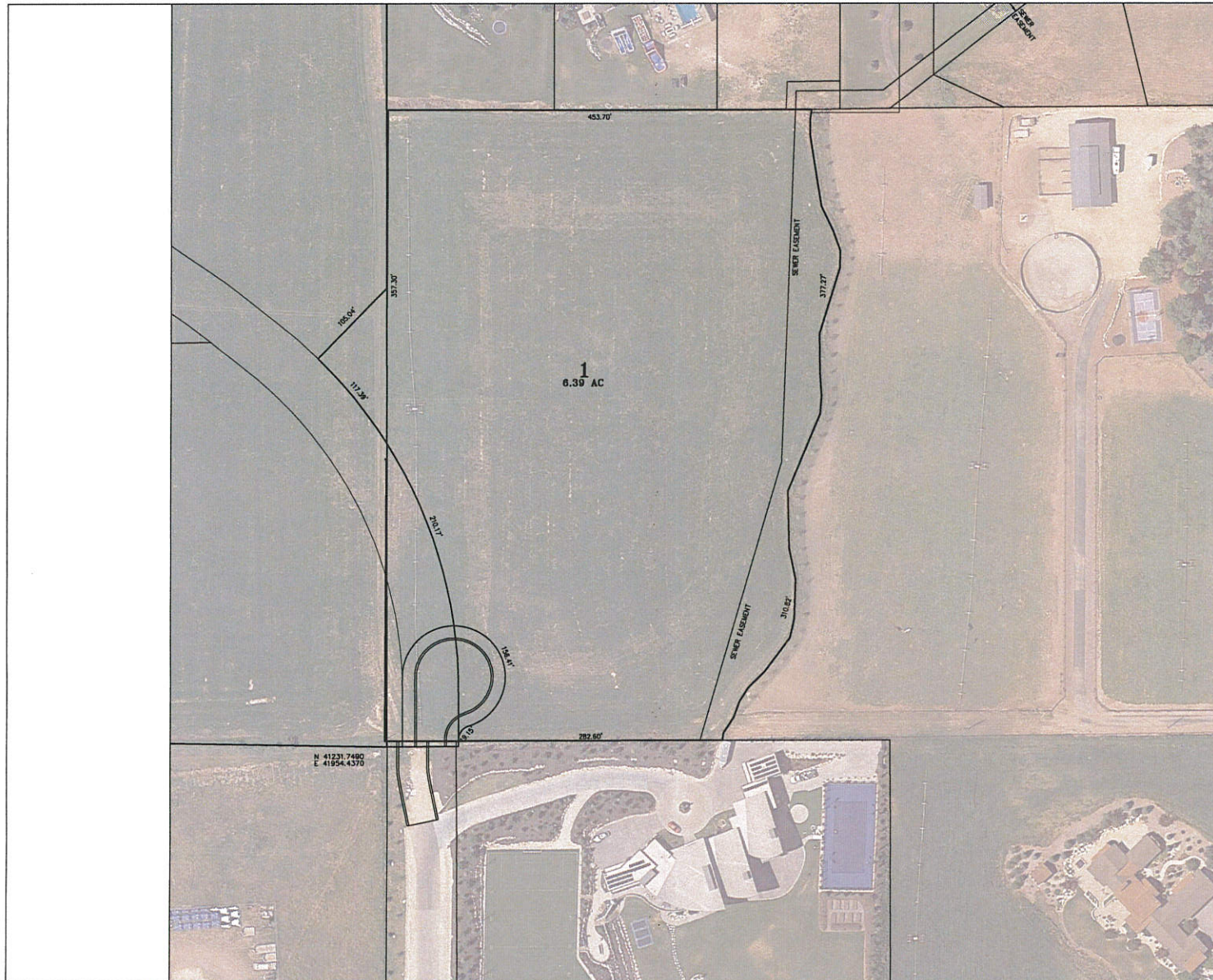
1. Approval. This action can be taken if the City Council finds that the proposal is in the best interest of the community.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)
2. Continuance. This action can be taken if the City Council finds there are unresolved issues.
 - 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 finds that the request is not in the best interest of the community.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial







Serenity Wa



THIS DOCUMENT IS RELEASED
FOR REVIEW ONLY. IT IS NOT
INTENDED FOR CONSTRUCTION
UNLESS SIGNED AND SEALED.
PAUL D. BOWEN P.E.
SERIAL NO. 235085
DATE: 8 OCT 2020

DOUG DANCE
WARD PARCEL SUBDIVISION

CONCEPT PLAN #2

BERG ENGINEERING
RESOURCE GROUP P.C.
380 E Main St. Suite 204
Midway, UT 84049
ph: (435) 657-7249

DESIGN BY: PDB	DATE: 9 OCT 2020	SHEET
DRAWN BY: PDB	REV:	2

WILL SERVE LETTER

This WILL SERVE LETTER (the “Agreement”) is entered into as of this ____ day of _____, 2021, by and between DOUGLAS DANCE AND NANCY DANCE, TRUSTEES OF THE DOUGLAS AND NANCY DANCE LIVING TRUST, DATED JUNE 24, 2015 and DND HOLDINGS CORP., LLC (hereinafter “Dance/DND”) and MIDWAY CITY, UTAH, a political subdivision of the State of Utah (hereinafter called the “City”). Dance 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 agreements entered into by and between Dance 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. §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 providing culinary water service to property owned by Dance (hereinafter called the “Project”) that is currently outside of city limits, 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. Dance has a legal interest in a 6.89 acre piece of real property that is not located in the City, (hereinafter the “Property”) described in Exhibit A and attached hereto and incorporated herein by this reference.
- C. Dance intends to develop the Property, in accordance with Wasatch County standards, into a four (4) lot subdivision and obtain all necessary approvals from the County (where the Property is located).
- D. In order to receive culinary water service, Dance will extend the existing culinary water to Dance’s Property (the “Project”), including a water meter for the Property and fire hydrants in a number and location as required by current Midway City code.
- E. Each Party acknowledges that it is entering into this Agreement voluntarily. Dance consents to all the terms and conditions of this Agreement and acknowledges that they are valid conditions of the development. 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 Midway City.

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 indefinitely.

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 that meaning set forth in Section 4.A of this Agreement.

“Governing Body” shall mean the Midway City Council.

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

Section 3. Obligations of Dance and the City.

A. Obligations of Dance:

- 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 Dance’s agreement to perform and abide by the covenants and obligations of Dance set forth herein.
- ii. Conditions for Culinary Water Service. The City agrees to provide culinary water service to the Property, subject to the following requirements:
 - a) Dance shall extend at their own expense the culinary water line to Dance’s Property, including water meters for the Property and fire hydrants in a number and location as required by current Midway City code. Dance shall submit all plans to extend the line to the City engineer for approval before starting construction.
 - b) The size, type, and location of the culinary water meters shall be determined and approved by the City Engineer before installation.
 - c) Dance agrees that for so long as the Property remains in the unincorporated area of the County, the Property owner shall be charged one and one-half times (1.5) the rate that Midway residents pay for culinary service.
 - d) Dance agrees to establish an out-of-pocket expense account with the City to pay all applicable Midway City fees incurred in installing the Culinary Water Line, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Property. An amount of \$7,000.00 shall be paid into the out-of-pocket account prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
 - e) The culinary and secondary water rights required for the Project shall be determined by the Midway Water Advisory Board and approved by the Midway City Council. Despite the fact that the subdivision will be located in Wasatch County, the water rights must be dedicated to Midway City prior to the plat being recorded, and the City shall hold the secondary water rights.
 - f) Installation of the Culinary Water Line and other infrastructure:

1. Construction and Dedication of Culinary Line: Dance agrees to construct the Culinary Line as directed and approved by the City, in accordance with current City standards, and upon completion to dedicate the line to the City.
 2. Construction Traffic: All construction traffic for the Culinary Line improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
 3. Warranty: Consistent with City standards, Dance will provide a one-year warranty for the operation of all improvements.
 4. Bonding: Dance agrees to post performance and other bonds in amounts and types established by the City related to the performance of Dance's construction obligations for installing the Culinary Line, pursuant to current City Ordinances and Regulations.
 5. Dance shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City involving culinary water service unless specifically agreed to otherwise herein.
- g) Dance agrees to allow Midway City to inspect all infrastructure as it is installed and shall have a duty to provide timely notice to the Midway City engineer of needed inspections.
- B. Obligations of the City:
- i. General Obligations: The Parties acknowledge and agree that Dance's agreement to perform and abide by the covenants and obligations of Dance 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 agrees that it shall provide culinary water service to the Property subject to the conditions detailed in this Agreement, and recordation of a subdivision plat by the County.
 - iii. Acceptance of Improvements: The City agrees to accept all Project improvements constructed by Dance, or Dance'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) Dance 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 constructed in accordance with the approved plans and specifications; 4) Dance 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.

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 Dance for the Project.

- 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 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. Default and Termination.

A. General Provisions.

1. Defaults by Dance. 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 a material default of Dance, then the City shall give to Dance 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. Dance 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 Dance 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, Dance does not waive any and all remedies available to Dance at law or in equity.

3. **Review by the City.** The City may, at any time and in its sole discretion, request that Dance demonstrate that Dance is in full compliance with the terms and conditions of this Agreement. Dance 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 that Dance 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 8 of this Agreement. If the default is not cured in a timely manner by Dance, the City may terminate this Agreement as provided in Section 5 as provided under Applicable Law.
- B. **Default by the City.** In the event the City defaults under the terms of this Agreement, Dance 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, 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 6. Assignment, Transfer and Required Notice.

The rights of Dance under this Agreement may be transferred or assigned, in whole or in part, with written notice to the City of any proposed transfer or assignment at least fifteen (15) days prior to the proposed date of the transfer or assignment.

Section 7. 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. The City may, but is not required to, perform any obligation of Dance that Dance 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 Property. The parties agree that this Agreement shall be filed with the County Recorder and be binding on title of the Property.
- 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 each other that the following statements are true, complete and not misleading as regards 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 Dance. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

Section 8. Notices.

Any notice or communication required hereunder between the City and Dance 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 Midway City:

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

With Copies to:

Corbin B. Gordon
Midway City Attorney
322 E. Gateway Dr. Suite 201
Heber City, UT 84032

If to Dance/DND:

Douglas and Nancy Dance
Trustees of the Douglas and Nancy Dance Living Trust, dated June 24, 2015
809 W. Cascade Falls Pkwy
Midway, UT 84049

and

DND Holdings Corp.
c/o Douglas Dance
809 W. Cascade Falls Pkwy
Midway, UT 84049

Section 9. 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 must be in writing, and signed by the appropriate authorities of the City and of Dance.

Section 10. Signing and Recordation of Agreement.

Unless the City and Dance mutually agree otherwise, this Agreement must be signed by both Dance 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 Dance's expense, a fully executed copy of this Agreement in the Official Records of Wasatch County no earlier than the date on which culinary service is first received.

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[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

MIDWAY CITY

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 _____, 2021, 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 DOUGLAS AND NANCY DANCE LIVING TRUST, DATED JUNE 24, 2015

Douglas Dance, Co-Trustee

Nancy Dance, Co-Trustee

DND HOLDINGS CORP.

Douglas Dance, President

STATE OF UTAH)
 :ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Douglas and Nancy Dance, Trustees of the Douglas and Nancy Dance Living Trust, dated June 24, 2015, and Douglas Dance, President of DND Holdings Corp.

NOTARY PUBLIC

EXHIBIT A

(Legal Description of the Property)

Beginning at a point South 13.88 feet and West 2320.67 feet from the South Quarter corner of Section 3, Township 4 South, Range 4 East, Salt Lake Base and Meridian and running thence North 11°20'07" East 8.10 feet; thence North 33°49'57" East 20.03 feet; thence North 19°23'21" East 18.04 feet; thence North 33°07'55" East 17.82 feet; thence North 45°38'20" East 24.29 feet; thence North 36°19'17" East 45.39 feet; thence North 13°0'40" East 20.34 feet; thence North 01°54'49" East 42.59 feet; thence North 11°36'02" West 34.56 feet; thence North 01°31'53" West 61.1 feet; thence North 22°26'35" East 90.07 feet; thence North 04°23'33" East 18.57 feet; thence North 04°19'00" West 25.26 feet; thence North 0°30'54" West 42.17 feet; thence North 17°09'12" East 73.82 feet; thence North 0°19'25" East 18.59 feet; thence North 19°17'19" West 21.90 feet; thence North 26°02'39" West 30.05 feet; thence North 09°01'34" West 53.25 feet; thence North 08°46'54" West 23.21 feet; thence North 0°22'01" West 17.26 feet; thence North 04°27'24" East 7.98 feet; thence South 89°55'01" West 453.38 feet; thence South 0°09'22" West 674.12 feet; thence North 89°55'42" East 361.53 feet to the point of beginning.

Together with:

A private road in Cascade Hollow Subdivision Amended, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office,

also

A twenty foot (20') wide right of way as described in Quiet Title Decree recorded 15 April 2005 as Entry No. 281900 in Wasatch County Recorder's Office of Official Records.

Tax ID No.: OWC-1172-1