Midway City Council
17 March 2020
Regular Meeting

Resolution 2020-07 /
Midway Crest Annexation
Agreement

RESOLUTION
2020-07

A RESOLUTION APPROVING THE ANNEXATION OF THE MIDWAY CREST ANNEXATION AND AUTHORIZING THE MAYOR TO EXECUTE THE ANNEXATION AGREEMENT THEREFORE

WHEREAS, Utah law authorizes municipalities to enter into annexation agreements governing the annexation of parcels of property into the City boundaries, and prescribing terms and conditions for that annexation; and

WHEREAS, the Midway City Council finds it in the public interest of the City of Midway to approve the Midway Crest Annexation Petition, to Annex the property described therein into Midway City, all according to the terms and conditions of the Annexation Agreement;

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

Section 1: The Midway City Council hereby approves the Midway Crest Annexation Petition, and annexes the property described therein into Midway City, subject to the execution of the Annexation Agreement pertaining thereto.

Section 2: The Midway City Council hereby authorizes the Mayor of Midway City to execute the annexation agreement on behalf of the City.

PASSED AND ADOPTED by the Midway City Council on the day of 2018.

MIDWAY CITY

_____

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

Exhibit A

ANNEXATION AGREEMENT FOR THE MIDWAY CREST ANNEXATION MIDWAY CITY, UTAH

This Annexation Agreement ("Agreement") is made and entered into by and between Midway City, a political subdivision of the State of Utah, (hereinafter referred to as the "City"), and Brad Pelo on behalf of Benevolence, LLC (hereinafter referred to as the Applicant"). The property which is included in the Annexation Petition, and which is the subject of this Agreement is a 24.16 acre parcel owned by the Applicant. The Applicant 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 Annexation agreements entered into by and between the Applicants and the City involving the same Annexation Property (defined below) and is the entire, complete Agreement between the Parties.

RECITALS

A. Midway City, acting pursuant to its authority under Utah Code Annotated (UCA) §10-9a-101 *et seq.,* and UCA § 10-2-401 *et seq.,* in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the proposed annexation and, in the exercise of its legislative discretion, has elected to enter into this Agreement.

B. The Applicant is the owner of certain real property which is described in Exhibit "A", the Annexation Petition, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is proposed for annexation into Midway City. Hereinafter, the entire parcel described in the Annexation Petition is referred to as the "Annexation Property."

C. The Annexation Property, once annexed into Midway City, will be subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Applicant and the City desire to allow Applicant and others to make improvements to the Annexation Property pursuant to applicable ordinances, resolutions and the terms and conditions of this Agreement.

D. The improvements and changes to be made to the Annexation Property shall be consistent with the current ordinances and standards of the City, any future changes to the ordinances and standards of the City and the Midway City General Plan.

E. The Applicant and the City acknowledge and agree that the development and improvement of the Annexation Property pursuant to this Agreement will result in

planning and economic benefits to the City and its residents, and will provide certainty useful to the Annexation Property and the City in ongoing future communications and relations with the community.

F. The City's governing body has authorized the execution of this Agreement by Resolution 2020-___, to which this Agreement is attached.

G. The City has authorized the negotiation of and adoption of annexation agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies, goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements which substantially benefit the City.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Recitals**: The preamble and recitals set forth above are incorporated herein as part of the Agreement.

2. **Purpose of Agreement**: The purpose of this Agreement is to provide for the annexation of real property into the City, to designate zoning that will apply to the Annexation Property upon annexation, and to provide for future development of the Annexation Property, in accordance with the adopted Ordinances and Resolutions of the City, the Midway City General Plan, and the laws of the State of Utah, as they may be from time to time amended.

3. **Conditions Precedent**: The City and the Applicant agree, understand and acknowledge that this Agreement is for the annexation of the Annexation Property. Further, the City and the Applicant agree and understand that this Agreement shall be a covenant running with the Annexation Property, and shall bind any future owners, heirs or assigns.

4. **Permitted Uses on Annexation Parcel**: The permitted uses for the Annexation Property shall be those uses specifically listed in the Zoning Ordinance of the City, as amended from time to time.

5. **Term**: This Agreement shall become effective as of the date of annexation of the Annexation Property into the City, and shall continue in full force and effect from that time onward.

6. **Annexation**: The City, pursuant to the Annexation Petition filed by the requisite number of land owners and land area within the area proposed for annexation, and in accordance

with the authority granted by statute, hereby agrees to adopt an Ordinance of Annexation, and thereby to annex into the City the Annexation Property described in the attached Exhibits. The Annexation Property shall be subject to the terms and conditions of this Agreement as well as the annexation laws and other Ordinances, Resolutions or laws of the City of Midway and the State of Utah. It is further agreed that this Annexation Property meets all the requirements for annexation, including but not limited to the following:

A. Contiguity: The Annexation Property is contiguous to the existing boundaries of the City, as shown on Exhibit "B", attached hereto and incorporated herein by this reference.
B. Within Declaration Area: The Annexation Property is within the area identified by the City in its Annexation Policy Declaration Statement for possible annexation into the City.
C. Not Within Another City: The Annexation Property is not included within the boundaries of any other incorporated municipality.
D. No Pending Incorporation. There are no pending annexation petitions to incorporate any of the Annexation Property into any other municipality.
E. No Unincorporated Islands. The annexation of the Annexation Property will not create or leave any islands of unincorporated property requiring municipal type services.
F. Not Solely for Revenue Purposes. The proposed annexation is not being pursued by the City solely for the purpose of gaining revenues or to gain a jurisdictional advantage over another municipality or to restrict annexation by some other municipality.
G. Services Available. The City intends to provide the same level of municipal services within the Annexation Property as I provides in all other areas within its boundaries, except as otherwise provided for in this Agreement.
H. Petition. The Petition for Annexation was properly signed by the requisite number of land owners of the land area within the proposed Annexation Property
I. No Fiscal Burden Created. The City has determined that annexation of this area will not create a fiscal burden on the City that will not be offset by the revenues expected to be generated by virtue of this annexation.
J. Compatibility. The proposed annexation is a compatible land use within the community.
K. Illegal Peninsulas. The proposed annexation does not create any illegal peninsulas of unincorporated property projecting into or out of the City.

7. **General Character of Land to Be Annexed**.

A. Description of the Annexation Property. The property is located south of the Fox Pointe subdivision and is accessed from Fox Den Road. The proposed zoning for the property is RA-1-43 (rural-agricultural 1 acre).

B. The petition does comply with State Code that requires the owners of most of the land sign the petition and that the signers also own at least 1/3 of the taxable value of land in the annexation area.

C. The Annexation Property consists of approximately 24.16 acres. It is currently zoned RA-1 by Wasatch County.

8. **Conditions of Annexation**.

A. Unless otherwise provided for herein, the Annexation Property shall be annexed into the City of Midway and shall be zoned RA-1-43, which will allow five residential dwellings on the annexed parcel.

B. Developer is seeking plat approval from Wasatch County prior to annexing into Midway City. A Will Serve letter was agreed to between Midway City and Developer on _____, wherein the Developer agreed to have certain notes placed on the subdivision plat, and certain conditions met before Midway City will approve the annexation of the Annexation Property.

C. A copy of the Will Serve letter is attached hereto as Exhibit C and adopted herein in its entirety.

D. As set forth in the Will Serve letter, the Annexation Property will not be annexed into Midway City unless and until a plat approved by Wasatch County is presented to Midway City with the following items:

i. A restriction noting that irrigation water sufficient for solely a ¼ acre of irrigation around the homes was deeded to the City, that this constitutes a restriction on the amount of irrigated landscaping the homeowner can install, and that the homeowner understands the bulk of the lot must remain in its natural condition without irrigation water.

ii. A note requiring the lot owner to comply with all weed control ordinances of Midway City in regards to the unirrigated portion of their lot.

iii. A note that states the following: "NOTICE TO PROPERTY PURCHASERS: Be advised that this subdivision is adjacent to the Heber Valley Special Service District Wastewater Treatment Facility. The Wastewater Treatment Plan often operates twenty-four (24) hours a day. The operations of the facility may produce noises and odors that may be objectionable to some residents. Expansion of the facilities is planned on District property for future sanitary wastewater treatment."

iv. A public trail easement, at a minimum of 10 feet wide, that runs from the north boundary of the property to the southwest corner of the property. The specific location of the easement shall be addressed during the plat approval process. The trail shall be installed by the Developer and shall be to a standard (either gravel or asphalt) as determined in the approval process.
v. A restriction on the future or further subdivision of the lots within the subdivision.

E. In accordance with the Will Serve letter, Developer shall also complete the following prior to annexation:

i. Culinary Water Service. The City agrees to provide culinary water service to the Property, subject to the following requirements:

a) The Developer shall extend at its own expense the culinary water line from Fox Den Road to Developer's Property, including a water meter for the Property and fire hydrants in a number and location as required by current code. The Developer shall submit all plans to extend the line to the City engineer for approval before starting construction.
b) Construction and/or Dedication of Culinary Line: The Developer 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.
c) Construction Traffic: All construction traffic for the Culinary Line improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
d) Warrant: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
e) 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 installing the Culinary Line, pursuant to current City Ordinances and Regulations.
f) The Developer 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) The size, type, and location of the culinary water meter shall be determined and approved by the City Engineer before installation.

ii. In accordance with standards set by Midway City, sufficient water to meet the culinary and irrigation needs of the development shall be deeded to Midway City prior to the plat being recorded.

iii. Meters that meet the specifications of Midway Irrigation Company shall be installed on all irrigation line connections within the subdivision at the time the infrastructure is installed.

iv. Developer agrees to install infrastructure to the standards required by Midway City, even if these standards exceed those required by Wasatch County.

F. Developer shall allow Midway City to review and approve the plat before it is recorded.

G. At the time of signing this Agreement Developer shall submit to Midway City an amount established by the City Planner sufficient to cover all expenses incurred by the City in reviewing the Project (i.e. engineering, legal, etc.). Developer agrees to pay all applicable Midway City fees incurred in installing the Culinary Water Line and other infrastructure, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Property. All fees shall be paid current prior to any culinary water service being provided.

H. Developer 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.

I. Park Annexation Fee and Annexation Application Fee: The Park and Annexation Application fee is required to be paid by the Applicant within two weeks of the approval of this Annexation Agreement. Developer shall pay $4,500.00 ($900.00 per lot) to Midway City.

J. Limitation on number of lots: The development that will occur on the Annexation parcel shall not exceed five lots. All lots will be deed restricted on both the plat and the deeds transferring the lot, prohibiting future subdivision.

9. **Miscellaneous Provisions**:

A. Headings. The descriptive headings of the paragraphs of this Agreement are for convenience only, and shall not control or affect the meaning or construction of any provision of this Agreement.

B. Authority. The Parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, the City Council and/or Mayor on behalf of the City and the Applicant on behalf of its property within the Annexation Property. The parcels of property that are not signatories to this Agreement but that are included in the Annexation are bound by the terms of this Agreement pursuant to State Law. The Applicant represents and warrants that each Party is fully authorized and validly existing under the laws of the State of Utah, if applicable. The Applicant

and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Parties on whose behalf each individual is signing. The Applicant represents to the City that by entering into this Agreement, the Applicants have bound themselves, all the owners of the Annexation Property, and all persons and entities having any current or future legal or equitable interest in the Annexation Property, to the terms of this Agreement.

C. Entire Agreement. This Agreement, including Exhibits, constitutes the entire agreement between the Parties, except as supplemented by Midway City Ordinances, Resolutions, policies, procedures and plans.
D. Amendment of this Agreement. This Agreement may not be amended, in whole or in part, except by the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. Any such amendment to this Agreement shall be recorded in the official records of the Wasatch County Recorder's Office.
E. Severability. If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which Agreement shall otherwise remain in full force and effect.
F. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement. The Parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Wasatch County, Utah, and the Parties hereby waive any right to object to such venue.
G. Remedies. If any Party to this Agreement breaches any provision of this Agreement, the non-defaulting Party shall be entitled to all remedies available at both law and in equity.
H. Attorney's Fees and Costs. If any Party brings legal action either because of a breach of the Agreement or in order to enforce a provision or term of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and court costs.
I. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective heirs, legal representatives, successors in interest and assigns, including all successive owners of the Annexation Property. The Agreement shall be incorporated by reference in any instrument purporting to convey an interest in any portion of the Annexation Property. The terms of this Agreement and the obligations of the Applicant hereunder shall be binding upon all present and future owners of the Annexation Property and shall be appurtenant to, and shall run with, said land.
J. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a Party hereto shall have any right or cause of action hereunder.
K. No Agency or Partnership Created. Noting contained in this Agreement shall be construed to create any partnership, joint venture, or agency relationship between the Parties.

L. Recording. Upon execution, this Agreement shall be recorded in the official records of the Wasatch County Recorder.

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

CITY OF MIDWAY

_____
Colleen Bonner, Mayor

Attest:

_____
Brad Wilson, City Recorder

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Colleen Bonner, 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

(Applicant's signature on following page)

APPLICANT – Benevolence, LLC

_____

By: Brad Pelo

Its: _____

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by _____, who executed the foregoing instrument in his capacity as the _____ of the Applicant.

_____
NOTARY PUBLIC

Exhibit “A”

ANNEXATION PETITION

PETITION FOR ANNEXATION

RECEIVED
DEC 12 2019
BY: Brad Wilson

Application Fee = $200 per acre x 24.16 = $4832
Review Deposit = $200 per acre x 24.16 = $4832

Fees received 12/20/19

We the undersigned owners of certain real property hereby submit this Petition for Annexation and respectfully represent the following:

1. That this petition and the annexation meet the requirements of the Utah Code and the Midway City Municipal Code.

2. That the real property is described as follows:

Approximate location:

600 South Fox Den Road

Legal description:

See attached.

3. That up to five of the signers of this petition are designated as sponsors, one of whom is designated as the contact sponsor, with the name and mailing address of each sponsor indicated as follows:

Contact Sponsor	Mailing Address
Brad Pelo, Benevolence LLC	1064 N. Mill Road, Heber City, UT 84032

Sponsor	Mailing Address

4. That this petition is accompanied by an accurate and recordable map, prepared by a licensed surveyor, of the area proposed for annexation.

5. A copy of this petition and the accompanying map was also delivered or mailed to the Wasatch County Clerk and the chair of the Midway City Planning Commission.

6. That the petitioner(s) request the property, if annexed, be zoned RA-1-43.

7. That this petition contains the following signatures of the owners of private real property that:

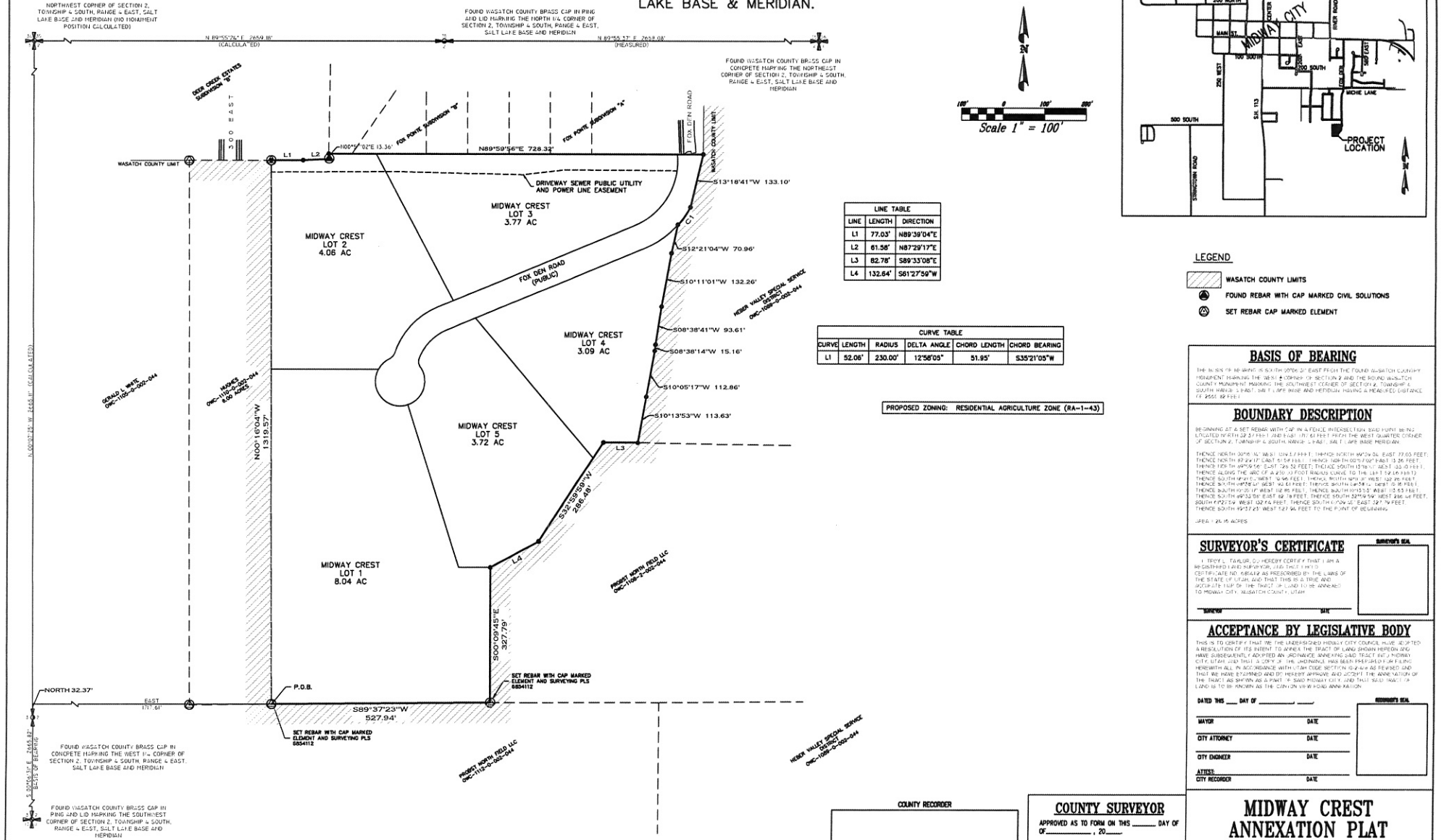
   a. Covers a majority of the private land area within the area proposed for annexation.

   b. Is equal in market value to at least 1/3 of the market value of all private real property within the area proposed for annexation.

Petitioner	Signature	Acres	Market Value	Serial Number
Brad Pelo		24.16	$490,610	OWC-1108-3-002-044

MIDWAY CREST ANNEXATION

LOCATED IN SECTION 2 TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN.



LINE TABLE		
LINE	LENGTH	DIRECTION
L1	77.03'	N89°39'04"E
L2	61.58'	N87°29'17"E
L3	82.78'	S89°33'08"E
L4	132.64'	S61°27'59"W

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA ANGLE	CHORD LENGTH	CHORD BEARING
L1	52.06'	230.00'	12°58'05"	51.95'	S35°21'05"W

PROPOSED ZONING: RESIDENTIAL AGRICULTURE ZONE (RA-1-43)

LEGEND

- WASATCH COUNTY LIMITS
- FOUND REBAR WITH CAP MARKED CIVIL SOLUTIONS
- SET REBAR CAP MARKED ELEMENT

BASIS OF BEARING

THE BASIS OF BEARING IS SOUTH 00°09'45" EAST FROM THE FOUND WASATCH COUNTY MONUMENT MARKING THE WEST 1/4 CORNER OF SECTION 2 AND THE FOUND WASATCH COUNTY MONUMENT MARKING THE SOUTHWEST CORNER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, HAVING A MEASURED DISTANCE OF 2665.82 FEET.

BOUNDARY DESCRIPTION

BEGINNING AT A SET REBAR WITH CAP IN A FENCE INTERSECTION, SAID POINT BEING LOCATED NORTH 32.37 FEET AND EAST 171.61 FEET FROM THE WEST QUARTER CORNER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE MERIDIAN

THENCE NORTH 00°18'04" WEST 1319.57 FEET; THENCE NORTH 89°39'04" EAST 77.03 FEET; THENCE NORTH 87°29'17" EAST 61.58 FEET; THENCE NORTH 00°15'02" EAST 13.36 FEET; THENCE NORTH 89°59'56" EAST 728.32 FEET; THENCE SOUTH 13°18'41" WEST 133.10 FEET; THENCE ALONG THE ARC OF A 230.00 FOOT RADIUS CURVE TO THE LEFT 52.06 FEET; THENCE SOUTH 12°21'04" WEST 70.96 FEET; THENCE SOUTH 10°11'01" WEST 132.26 FEET; THENCE SOUTH 08°38'41" WEST 93.61 FEET; THENCE SOUTH 08°38'14" WEST 15.16 FEET; THENCE SOUTH 10°05'17" WEST 112.86 FEET; THENCE SOUTH 10°13'53" WEST 113.63 FEET; THENCE SOUTH 89°33'08" EAST 82.78 FEET; THENCE SOUTH 32°59'56" WEST 286.49 FEET; SOUTH 61°27'59" WEST 132.64 FEET; THENCE SOUTH 00°09'45" EAST 327.79 FEET; THENCE SOUTH 89°37'23" WEST 527.94 FEET TO THE POINT OF BEGINNING.

AREA = 24.15 ACRES

SURVEYOR'S CERTIFICATE

I, TROY L. TAYLOR, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 6854112 AS PRESCRIBED BY THE LAWS OF THE STATE OF UTAH, AND THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO MIDWAY CITY, WASATCH COUNTY, UTAH.

SURVEYOR'S SEAL

SURVEYOR DATE

ACCEPTANCE BY LEGISLATIVE BODY

THIS IS TO CERTIFY THAT WE THE UNDERSIGNED MIDWAY CITY COUNCIL HAVE ADOPTED A RESOLUTION OF ITS INTENT TO ANNEX THE TRACT OF LAND SHOWN HEREON AND HAVE SUBSEQUENTLY ADOPTED AN ORDINANCE ANNEXING SAID TRACT INTO MIDWAY CITY, UTAH AND THAT A COPY OF THE ORDINANCE HAS BEEN PREPARED FOR FILING HEREWITH ALL IN ACCORDANCE WITH UTAH CODE SECTION 10-2-425 AS REVISED AND THAT WE HAVE EXAMINED AND DO HEREBY APPROVE AND ACCEPT THE ANNEXATION OF THE TRACT AS SHOWN AS A PART OF SAID MIDWAY CITY, AND THAT SAID TRACT OF LAND IS TO BE KNOWN AS THE CANYON VIEW ROAD ANNEXATION

DATED THIS ___ DAY OF _____, ____

RECORDER'S SEAL

MAYOR DATE

CITY ATTORNEY DATE

CITY ENGINEER DATE

ATTEST:
CITY RECORDER DATE

COUNTY RECORDER

COUNTY SURVEYOR

APPROVED AS TO FORM ON THIS _____ DAY OF _____, 20____

ROS # _____

COUNTY SURVEYOR

MIDWAY CREST ANNEXATION PLAT

DATE:	DRAWING NO.	SHEET NO.
10 DECEMBER 2019	01_ANNEX_PLAT	1 OF 1

BOUNDARY DESCRIPTION

BEGINNING AT A SET REBAR WITH CAP IN A FENCE INTERSECTION, SAID POINT BEING LOCATED NORTH 32.37 FEET AND EAST 1717.61 FEET FROM THE WEST QUARTER CORNER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE MERIDIAN;

THENCE NORTH 00°16'04" WEST 1319.57 FEET; THENCE NORTH 89°39'04" EAST 77.03 FEET; THENCE NORTH 87°29'17" EAST 61.58 FEET; THENCE NORTH 00°57'02" EAST 13.36 FEET; THENCE NORTH 89°59'56" EAST 728.32 FEET; THENCE SOUTH 13°18'41" WEST 133.10 FEET; THENCE ALONG THE ARC OF A 230.00 FOOT RADIUS CURVE TO THE LEFT 52.06 FEET); THENCE SOUTH 12°21'04"WEST 70.96 FEET; THENCE SOUTH 10°11'01" WEST 132.26 FEET; THENCE SOUTH 08°38'41" WEST 93.61 FEET; THENCE SOUTH 08°38'14" WEST 15.16 FEET; THENCE SOUTH 10°05'17" WEST 112.86 FEET; THENCE SOUTH 10°13'53" WEST 113.63 FEET; THENCE SOUTH 89°33'08" EAST 82.78 FEET; THENCE SOUTH 32°59'59" WEST 286.48 FEET; SOUTH 61°27'59" WEST 132.64 FEET; THENCE SOUTH 00°09'45" EAST 327.79 FEET; THENCE SOUTH 89°37'23" WEST 527.94 FEET TO THE POINT OF BEGINNING.

AREA = 24.16 ACRES

300' Notices - Midway Crest Annexation

NUMBER	NAME	ADDRESS	CITY	STATE	ZIP
1	BAILEY ROBERT HAL JR TR	7 APPLE HILL CIR	SANDY	UT	84092-5504
2	BINGHAM ALAN W	396 E 500 S	MIDWAY	UT	84049-6542
3	BUCKYS LLC	PO BOX 431	INKOM	ID	83245-0431
4	GARLAND PETER ANDREW TR	380 E 500 S	MIDWAY	UT	84049-6542
5	HEBER VALLEY SPECIAL SERVICE DISTRICT	PO BOX 427	MIDWAY	UT	84049-0427
6	HUGHES JONATHAN S & CONSTANCE	927 MOUNTAIN SIDE DR	FARMINGTON	UT	84025-3202
7	HUNTSMAN LYNDSAY	461 S 360 E	MIDWAY	UT	84049-6319
8	IVORY DEVELOPMENT LLC	978 E WOODOAK LN	SALT LAKE CITY	UT	84117-7265
9	JOHNSON JAMES B	496 S 360 E	MIDWAY	UT	84049-6319
10	NOONAN KEVIN	460 S 360 E	MIDWAY	UT	84049-6319
11	PEERY RICHARD T TR	2450 WATSON CT	PALO ALTO	CA	94303-3216
12	PROBST NORTH FIELDS LLC	3290 W 3500 S	HEBER CITY	UT	84032-3681
13	PROWS JEFFERY	485 S 360 E	MIDWAY	UT	84049-6319
14	REGIUDEL SPENCER	480 S FOX DEN RD	MIDWAY	UT	84049-6737
15	SCHAEFER DOUGLAS L	362 E 500 S	MIDWAY	UT	84049-6542
16	SCHINDELER SHAD M	466 S 420 E	MIDWAY	UT	84049-6646
17	STEVENS GARY WESTON TR	3700 E CERES DR	SALT LAKE CITY	UT	84124-3308
18	STODDARD STERLING D	450 E 500 S	MIDWAY	UT	84049-5507
19	STUBBS BRIAN DARREL TR	PO BOX 846	MIDWAY	UT	84049-0846
20	STUDDERT DAVID J	284 S 300 E	MIDWAY	UT	84049-1215
21	TUCKER JOHN R III	486 S 300 W	MIDWAY	UT	84049-6928
22	VICTOR STEVE C TR	1528 ADDISON AVE EAST	TWIN FALLS	ID	83301-5355
23	VICTOR STEVEN C	211 N TEMPLE DR	TWIN FALLS	ID	83301-5520
24	WHITE GERALD L TR	PO BOX 379	MIDWAY	UT	84049-0379
25	WILLIAMS JESSICA	468 S 300 E	MIDWAY	UT	84049-1304

WILL SERVE LETTER

THIS WILL SERVE LETTER (the "Agreement") is entered into as of this 18th day of June, 2019, by and between Benevolence LLC, (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 (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 the Developer (hereinafter call 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. The Developer has a legal interest in a 24 acre piece of real property that is not located in the City, as described in Exhibit "A", (hereinafter referred to as the "Property") attached hereto and incorporated herein by this reference.

C. The Developer intends to develop the Property in accordance with Wasatch County standards, into a five lot subdivision, obtain all necessary approvals from the County (where the Property is located), and then file for annexation into Midway City.

D. In order to receive culinary water service, the Developer will extend the existing culinary water to Developer's Property (the "Project"), including a water meter for the Property and fire hydrants in a number and location as required by current code.

E. 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 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 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 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 4.2 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 material consideration for the Developer's agreement to perform and abide by the covenants and obligations of the Developer 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) The Developer shall extend at its own expense the culinary water line from Fox Den Road to Developer's Property, including a water meter for each lot on the Property and fire hydrants in a number and location as required by current code. The Developer 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 meter shall be determined and approved by the City Engineer before installation.

c) The Developer agrees that for so long as the Property remains in the unincorporated area of the County, the Property owner shall be charged 1 ½ times the rate that Midway residents pay for culinary service.

d) Developer agrees to allow Midway City to require the following as part of the plat approval process in Wasatch County:

1. In accordance with standards set by Midway City, sufficient water to meet the culinary and irrigation needs of the development shall be deeded to Midway City prior to the plat being recorded.

2. Meters that meet the specifications of Midway Irrigation Company shall be installed on all irrigation line connections within the subdivision at the time the infrastructure is installed.

3. Developer agrees to install infrastructure to the standards required by Midway City, even if these standards exceed those required by Wasatch County.

e) Developer shall allow Midway City to review and approve the plat before it is recorded. At the time of signing this Agreement Developer shall submit to Midway City an amount established by the City Planner sufficient to cover all expenses incurred by the City in reviewing the Project (i.e. engineering, legal, etc.). Developer agrees to pay all applicable Midway City fees incurred in installing the Culinary Water Line and other infrastructure, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Property. All fees shall be paid current prior to any culinary water service being provided.

f) Installation of the Culinary Water Line and other infrastructure:

1. Construction and/or Dedication of Culinary Line: The Developer 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. Warrant: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.

4. 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 installing the Culinary Line and other infrastructure, pursuant to current City Ordinances and Regulations.

5. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City involving culinary water service unless specifically agreed to otherwise herein.

6. The Developer shall install the road as per the rural cross section as presented in Midway's Standard Specifications and Drawings.

g) The Project plat shall include the following notations or dedications:

1. A restriction noting that irrigation water sufficient for solely a ¼ acre of irrigation around the homes was deeded to the City, that this constitutes a restriction on the amount of irrigated landscaping the homeowner can install, and that the homeowner understands the bulk of the lot must remain in its natural condition without irrigation water.

2. A note requiring the lot owner to comply with all weed control ordinances of Midway City in regards to the unirrigated portion of their lot.

3. A note that states the following: "NOTICE TO PROPERTY PURCHASERS: Be advised that this subdivision is adjacent to the Heber Valley Special Service District Wastewater Treatment Facility. The Wastewater Treatment Plan often operates twenty-four (24) hours a day. The operations of the facility may produce noises and odors that may be objectionable to some residents. Expansion of the facilities is planned on District property for future sanitary wastewater treatment."

4. A public trail easement, at a minimum of 10 feet wide, that runs from the north boundary of the property to the southwest corner of the property. The specific location of the easement shall be addressed during the plat approval process. The trail shall be a 4' wide road base back country trail across the Pelo. Developer shall provide a check that will be deposited into the City's trails general fund to cover the cost of the trail in an amount determined by the City Engineer. The trail may be installed by the City at its sole discretion.

5. A deed restriction on the future or further subdivision of the lots within the subdivision.

h) Developer 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.

i) Developer agrees to apply for annexation into Midway City within 30 days of receiving final approval from the County.

j) At the time Developer applies for annexation, the parties agree to enter into an annexation agreement.

k) Developer agrees to pay the Midway City Park Fee in the amount of $900 per residence, or a total of $4,500 prior to recording the Plat.

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 the Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

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.

iii. Acceptance of Improvements: The City agrees to accept all Project improvements constructed by the Developer, or the 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) the 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 accordance with the approved plans and specifications; 4) the Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

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 the Developer for the Project. The Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve the Developer

from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable Ordinances, Resolutions, regulations, policies and procedures of the City.

B. State and Federal Law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more 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 any specific lot, unit 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 the 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 the 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 an application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. 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 a 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 notice public meeting. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this

Agreement, the City Council shall send written notice of termination of this Agreement to 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 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 in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement an 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, 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 toe 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 City, which shall not be unreasonably withheld. 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. 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 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 Party that the following statements are true, complete and not misleading as regards the representing and warrantying 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
345 West 600 South
Heber City, Utah 84032

If to Developer:

Section 12. Entire Agreement, Counterparts and Exhibits. Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement 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, 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 culinary service is first received.

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

Celeste Johnson, Mayor

Attest:

Brad Wilson, City Recorder

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 9 day of July, 2019, 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.

JENNIFER SWEAT
Notary Public, State of Utah
Commission # 698252
My Commission Expires On
December 24, 2021

NOTARY PUBLIC

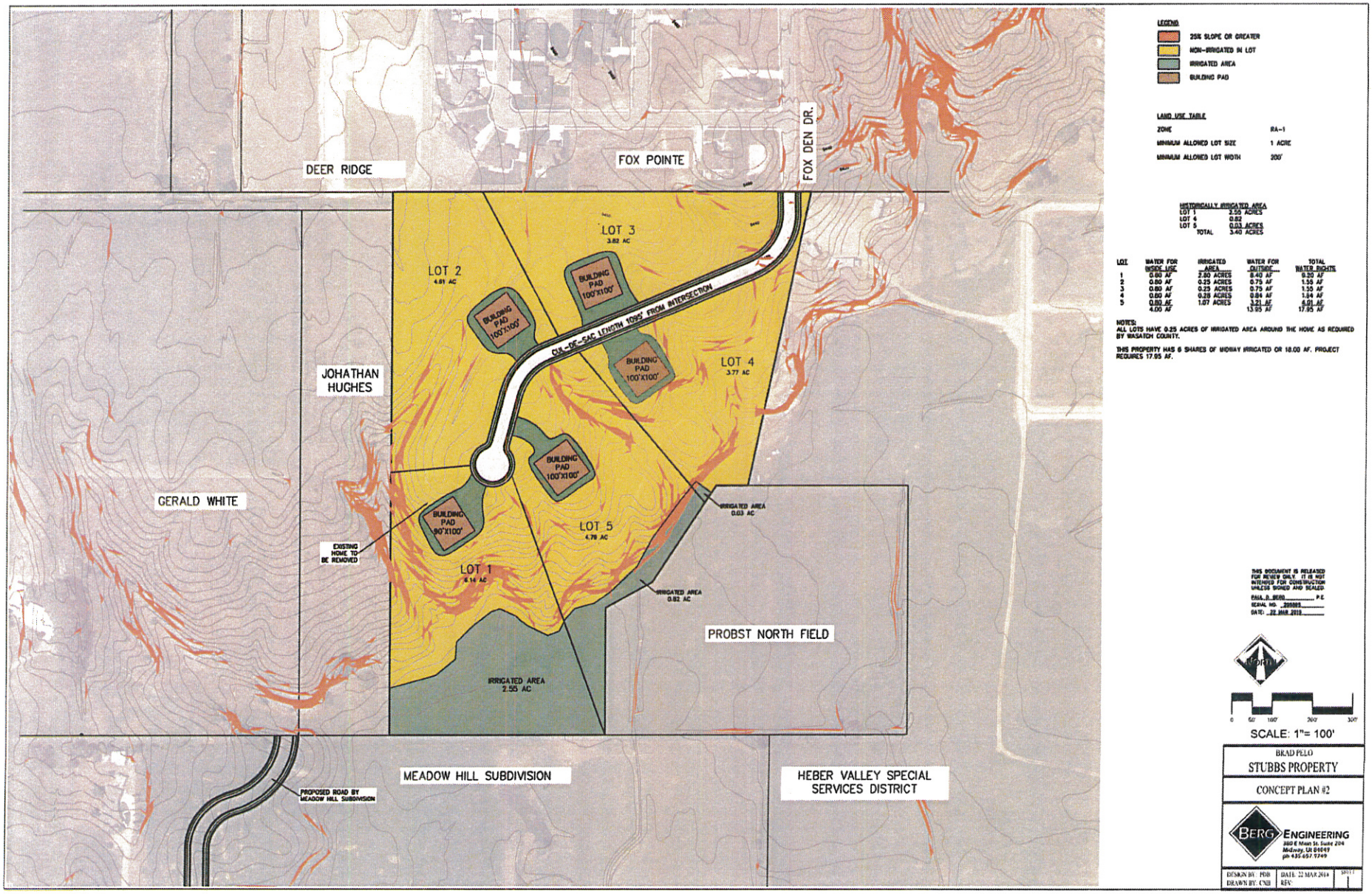
By:
Its: Manager

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 3rd day of July, 2019, by Bradley Pelo, who executed the foregoing instrument in his capacity as the Manager of Benevolence LLC.

BECKY CHATWIN WOOD
Notary Public, State of Utah
Commission #703967
My Commission Expires
Jan 09, 2023

NOTARY PUBLIC



LEGEND

- 25% SLOPE OR GREATER
- NON-IRRIGATED IN LOT
- IRRIGATED AREA
- BUILDING PAD

LAND USE TABLE

ZONE	RA-1
MINIMUM ALLOWED LOT SIZE	1 ACRE
MINIMUM ALLOWED LOT WIDTH	200'

HISTORICALLY IRRIGATED AREA

LOT 1	2.56 ACRES
LOT 4	0.82
LOT 5	0.03 ACRES
TOTAL	3.40 ACRES

LOT	WATER FOR INSIDE USE	IRRIGATED AREA	WATER FOR OUTSIDE	TOTAL WATER RIGHTS
1	0.60 AF	2.20 ACRES	6.40 AF	9.20 AF
2	0.60 AF	0.25 ACRES	0.75 AF	1.35 AF
3	0.60 AF	0.25 ACRES	0.75 AF	1.35 AF
4	0.60 AF	0.28 ACRES	0.84 AF	1.44 AF
5	0.60 AF	1.07 ACRES	3.21 AF	5.01 AF
	4.00 AF		13.95 AF	17.95 AF

NOTES:
ALL LOTS HAVE 0.25 ACRES OF IRRIGATED AREA AROUND THE HOME AS REQUIRED BY WASATCH COUNTY.

THIS PROPERTY HAS 6 SHARES OF MIDWAY IRRIGATED OR 18.00 AF. PROJECT REQUIRES 17.95 AF.

THIS DOCUMENT IS RELEASED FOR REVIEW ONLY. IT IS NOT INTENDED FOR CONSTRUCTION UNLESS SIGNED AND SEALED.

PAUL D. BERG _____ P.E.
SERIAL NO. 299993
DATE: 22 MAR 2016

NORTH

0 50' 100' 200' 300'

SCALE: 1"= 100'

BRAD PELO

STUBBS PROPERTY

CONCEPT PLAN #2

BERG ENGINEERING
360 E Main St. Suite 204
Midway, Ut 84049
ph 435.657.9749

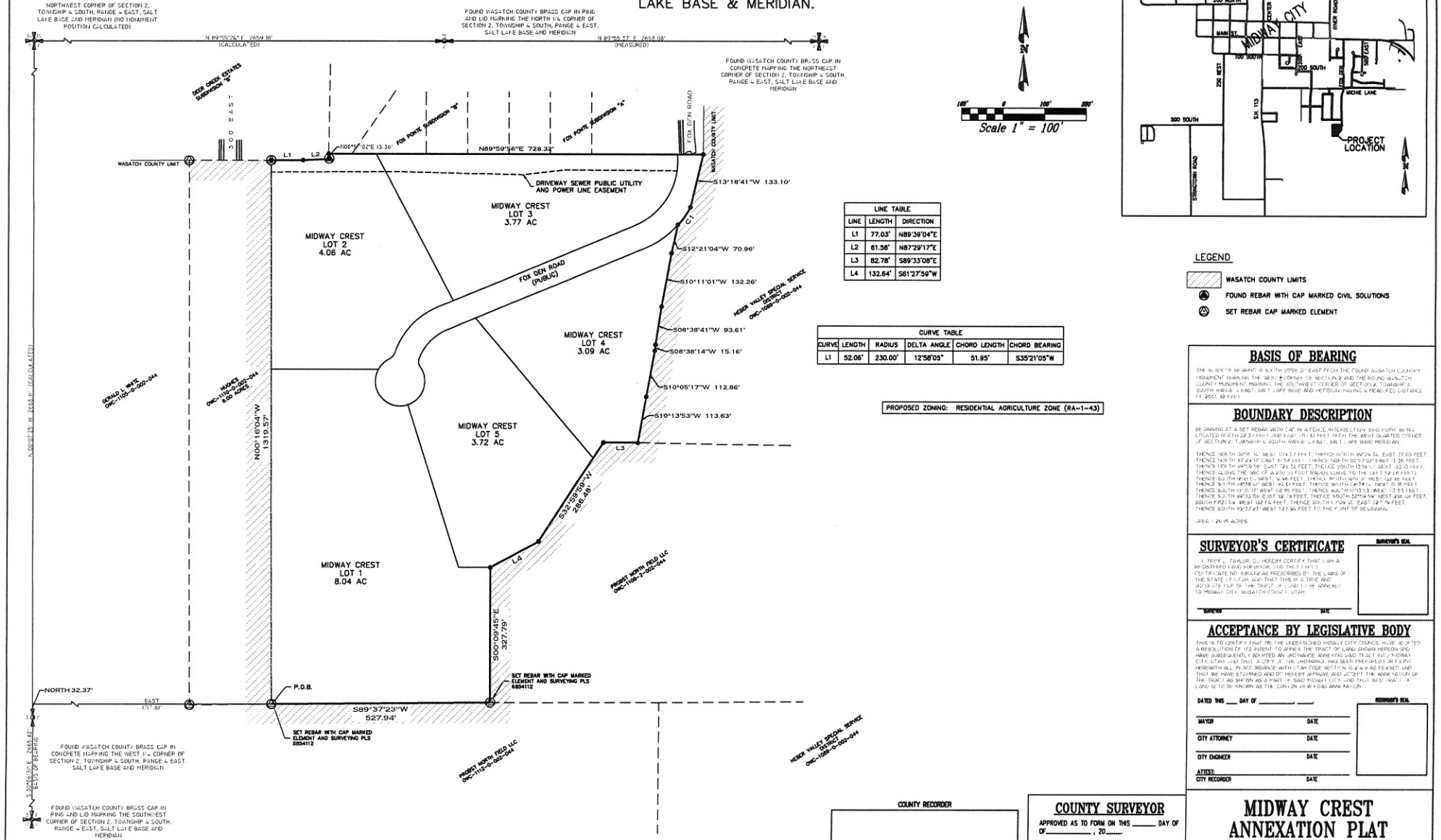
DESIGN BY: PDB	DATE: 22 MAR 2016	3911
DRAWN BY: CNB	REV:	

Exhibit “B”

MAP OF PROPOSED ANNEXATION

MIDWAY CREST ANNEXATION

LOCATED IN SECTION 2 TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN.



LINE TABLE		
LINE	LENGTH	DIRECTION
L1	77.03'	N89°39'04"E
L2	61.58'	N87°29'17"E
L3	82.78'	S89°33'08"E
L4	132.64'	S61°27'59"W

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA ANGLE	CHORD LENGTH	CHORD BEARING
L1	52.06'	230.00'	12°58'05"	51.95'	S35°21'05"W

PROPOSED ZONING: RESIDENTIAL AGRICULTURE ZONE (RA-1-43)

LEGEND

- WASATCH COUNTY LIMITS
- FOUND REBAR WITH CAP MARKED CIVIL SOLUTIONS
- SET REBAR CAP MARKED ELEMENT

BASIS OF BEARING

THE BASIS OF BEARING IS SOUTH 00°09'45" EAST FROM THE FOUND WASATCH COUNTY MONUMENT MARKING THE WEST 1/4 CORNER OF SECTION 2 AND THE FOUND WASATCH COUNTY MONUMENT MARKING THE SOUTHWEST CORNER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, HAVING A MEASURED DISTANCE OF 2665.82 FEET.

BOUNDARY DESCRIPTION

BEGINNING AT A SET REBAR WITH CAP IN A FENCE INTERSECTION, SAID POINT BEING LOCATED NORTH 32.37 FEET AND EAST 171.61 FEET FROM THE WEST QUARTER CORNER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE MERIDIAN

THENCE NORTH 00°18'04" WEST 1319.57 FEET; THENCE NORTH 89°39'04" EAST 77.03 FEET; THENCE NORTH 87°29'17" EAST 61.58 FEET; THENCE NORTH 00°15'02" EAST 13.36 FEET; THENCE NORTH 89°59'56" EAST 728.32 FEET; THENCE SOUTH 13°18'41" WEST 133.10 FEET; THENCE ALONG THE ARC OF A 230.00 FOOT RADIUS CURVE TO THE LEFT 52.06 FEET; THENCE SOUTH 12°21'04" WEST 70.96 FEET; THENCE SOUTH 10°11'01" WEST 132.26 FEET; THENCE SOUTH 08°38'41" WEST 93.61 FEET; THENCE SOUTH 08°38'14" WEST 15.16 FEET; THENCE SOUTH 10°05'17" WEST 112.86 FEET; THENCE SOUTH 10°13'53" WEST 113.63 FEET; THENCE SOUTH 89°33'08" EAST 82.78 FEET; THENCE SOUTH 32°59'56" WEST 286.49 FEET; SOUTH 61°27'59" WEST 132.64 FEET; THENCE SOUTH 00°09'45" EAST 327.79 FEET; THENCE SOUTH 89°37'23" WEST 527.94 FEET TO THE POINT OF BEGINNING.

AREA = 24.15 ACRES

SURVEYOR'S CERTIFICATE

I, TROY L. TAYLOR, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 6854112 AS PRESCRIBED BY THE LAWS OF THE STATE OF UTAH, AND THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO MIDWAY CITY, WASATCH COUNTY, UTAH.

SURVEYOR'S SEAL

SURVEYOR DATE

ACCEPTANCE BY LEGISLATIVE BODY

THIS IS TO CERTIFY THAT WE THE UNDERSIGNED MIDWAY CITY COUNCIL HAVE ADOPTED A RESOLUTION OF ITS INTENT TO ANNEX THE TRACT OF LAND SHOWN HEREON AND HAVE SUBSEQUENTLY ADOPTED AN ORDINANCE ANNEXING SAID TRACT INTO MIDWAY CITY, UTAH AND THAT A COPY OF THE ORDINANCE HAS BEEN PREPARED FOR FILING HEREWITH ALL IN ACCORDANCE WITH UTAH CODE SECTION 10-2-425 AS REVISED AND THAT WE HAVE EXAMINED AND DO HEREBY APPROVE AND ACCEPT THE ANNEXATION OF THE TRACT AS SHOWN AS A PART OF SAID MIDWAY CITY, AND THAT SAID TRACT OF LAND IS TO BE KNOWN AS THE CANYON VIEW ROAD ANNEXATION

DATED THIS ___ DAY OF _____, ____

RECORDER'S SEAL

MAYOR DATE

CITY ATTORNEY DATE

CITY ENGINEER DATE

ATTEST:
CITY RECORDER DATE

COUNTY RECORDER

COUNTY SURVEYOR

APPROVED AS TO FORM ON THIS _____ DAY OF _____, 20____

ROS # _____

COUNTY SURVEYOR

MIDWAY CREST ANNEXATION PLAT

DATE:	DRAWING NO.	SHEET NO.
10 DECEMBER 2019	01_ANNEX_PLAT	1 OF 1

Exhibit “C”

WILL SERVE LETTER

WILL SERVE LETTER

THIS WILL SERVE LETTER (the "Agreement") is entered into as of this 18th day of June, 2019, by and between Benevolence LLC, (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 (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 the Developer (hereinafter call 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. The Developer has a legal interest in a 24 acre piece of real property that is not located in the City, as described in Exhibit "A", (hereinafter referred to as the "Property") attached hereto and incorporated herein by this reference.

C. The Developer intends to develop the Property in accordance with Wasatch County standards, into a five lot subdivision, obtain all necessary approvals from the County (where the Property is located), and then file for annexation into Midway City.

D. In order to receive culinary water service, the Developer will extend the existing culinary water to Developer's Property (the "Project"), including a water meter for the Property and fire hydrants in a number and location as required by current code.

E. 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 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 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 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 4.2 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 material consideration for the Developer's agreement to perform and abide by the covenants and obligations of the Developer 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) The Developer shall extend at its own expense the culinary water line from Fox Den Road to Developer's Property, including a water meter for each lot on the Property and fire hydrants in a number and location as required by current code. The Developer 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 meter shall be determined and approved by the City Engineer before installation.

c) The Developer agrees that for so long as the Property remains in the unincorporated area of the County, the Property owner shall be charged 1 ½ times the rate that Midway residents pay for culinary service.

d) Developer agrees to allow Midway City to require the following as part of the plat approval process in Wasatch County:

1. In accordance with standards set by Midway City, sufficient water to meet the culinary and irrigation needs of the development shall be deeded to Midway City prior to the plat being recorded.

2. Meters that meet the specifications of Midway Irrigation Company shall be installed on all irrigation line connections within the subdivision at the time the infrastructure is installed.

3. Developer agrees to install infrastructure to the standards required by Midway City, even if these standards exceed those required by Wasatch County.

e) Developer shall allow Midway City to review and approve the plat before it is recorded. At the time of signing this Agreement Developer shall submit to Midway City an amount established by the City Planner sufficient to cover all expenses incurred by the City in reviewing the Project (i.e. engineering, legal, etc.). Developer agrees to pay all applicable Midway City fees incurred in installing the Culinary Water Line and other infrastructure, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Property. All fees shall be paid current prior to any culinary water service being provided.

f) Installation of the Culinary Water Line and other infrastructure:

1. Construction and/or Dedication of Culinary Line: The Developer 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. Warrant: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.

4. 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 installing the Culinary Line and other infrastructure, pursuant to current City Ordinances and Regulations.

5. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City involving culinary water service unless specifically agreed to otherwise herein.

6. The Developer shall install the road as per the rural cross section as presented in Midway's Standard Specifications and Drawings.

g) The Project plat shall include the following notations or dedications:

1. A restriction noting that irrigation water sufficient for solely a ¼ acre of irrigation around the homes was deeded to the City, that this constitutes a restriction on the amount of irrigated landscaping the homeowner can install, and that the homeowner understands the bulk of the lot must remain in its natural condition without irrigation water.

2. A note requiring the lot owner to comply with all weed control ordinances of Midway City in regards to the unirrigated portion of their lot.

3. A note that states the following: "NOTICE TO PROPERTY PURCHASERS: Be advised that this subdivision is adjacent to the Heber Valley Special Service District Wastewater Treatment Facility. The Wastewater Treatment Plan often operates twenty-four (24) hours a day. The operations of the facility may produce noises and odors that may be objectionable to some residents. Expansion of the facilities is planned on District property for future sanitary wastewater treatment."

4. A public trail easement, at a minimum of 10 feet wide, that runs from the north boundary of the property to the southwest corner of the property. The specific location of the easement shall be addressed during the plat approval process. The trail shall be a 4' wide road base back country trail across the Pelo. Developer shall provide a check that will be deposited into the City's trails general fund to cover the cost of the trail in an amount determined by the City Engineer. The trail may be installed by the City at its sole discretion.

5. A deed restriction on the future or further subdivision of the lots within the subdivision.

h) Developer 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.

i) Developer agrees to apply for annexation into Midway City within 30 days of receiving final approval from the County.

j) At the time Developer applies for annexation, the parties agree to enter into an annexation agreement.

k) Developer agrees to pay the Midway City Park Fee in the amount of $900 per residence, or a total of $4,500 prior to recording the Plat.

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 the Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

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.

iii. Acceptance of Improvements: The City agrees to accept all Project improvements constructed by the Developer, or the 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) the 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 accordance with the approved plans and specifications; 4) the Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

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 the Developer for the Project. The Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve the Developer

from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable Ordinances, Resolutions, regulations, policies and procedures of the City.

B. State and Federal Law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more 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 any specific lot, unit 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 the 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 the 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 an application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. 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 a 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 notice public meeting. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this

Agreement, the City Council shall send written notice of termination of this Agreement to 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 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 in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement an 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, 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 toe 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 City, which shall not be unreasonably withheld. 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. 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 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 Party that the following statements are true, complete and not misleading as regards the representing and warrantying 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
345 West 600 South
Heber City, Utah 84032

If to Developer:

Section 12. Entire Agreement, Counterparts and Exhibits. Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement 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, 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 culinary service is first received.

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

Celeste Johnson, Mayor

Attest:

Brad Wilson, City Recorder

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 9 day of July, 2019, 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.

JENNIFER SWEAT
Notary Public, State of Utah
Commission # 698252
My Commission Expires On
December 24, 2021

NOTARY PUBLIC

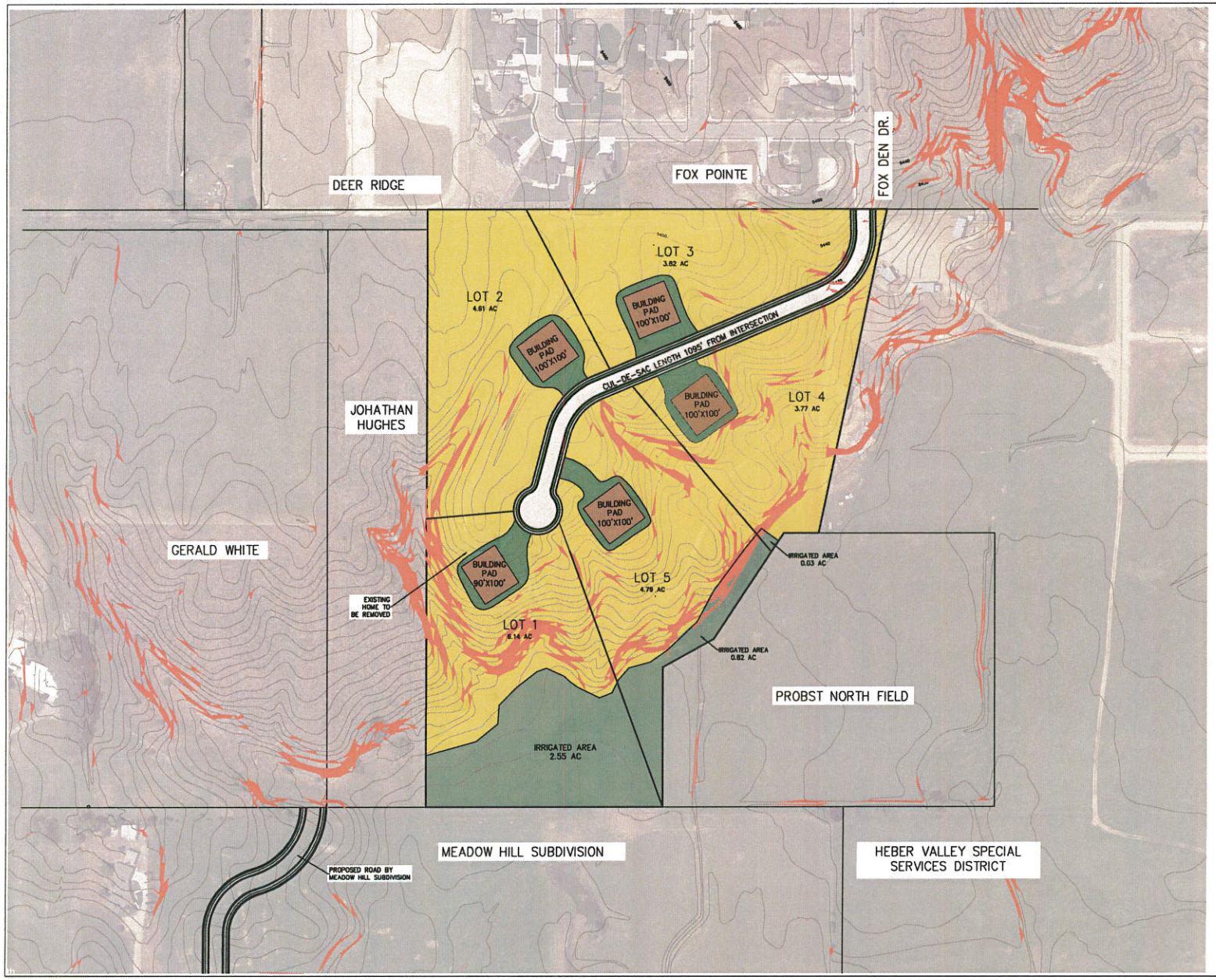
By:
Its: Manager

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 3rd day of July, 2019, by Bradley Pelo, who executed the foregoing instrument in his capacity as the Manager of Benevolence LLC.

BECKY CHATWIN WOOD
Notary Public, State of Utah
Commission #703967
My Commission Expires
Jan 09, 2023

NOTARY PUBLIC



LEGEND

- 25% SLOPE OR GREATER
- NON-IRRIGATED IN LOT
- IRRIGATED AREA
- BUILDING PAD

LAND USE TABLE

ZONE	RA-1
MINIMUM ALLOWED LOT SIZE	1 ACRE
MINIMUM ALLOWED LOT WIDTH	200'

HISTORICALLY IRRIGATED AREA

LOT 1	2.55 ACRES
LOT 4	0.82
LOT 5	0.03 ACRES
TOTAL	3.40 ACRES

LOT	WATER FOR INSIDE USE	IRRIGATED AREA	WATER FOR OUTSIDE	TOTAL WATER RIGHTS
1	0.80 AF	2.80 ACRES	8.40 AF	9.20 AF
2	0.80 AF	0.25 ACRES	0.75 AF	1.55 AF
3	0.80 AF	0.25 ACRES	0.75 AF	1.55 AF
4	0.80 AF	0.28 ACRES	0.84 AF	1.64 AF
5	0.80 AF	1.07 ACRES	3.21 AF	4.01 AF
	4.00 AF		13.95 AF	17.95 AF

NOTES:
ALL LOTS HAVE 0.25 ACRES OF IRRIGATED AREA AROUND THE HOME AS REQUIRED BY WASATCH COUNTY.

THIS PROPERTY HAS 6 SHARES OF MIDWAY IRRIGATED OR 18.00 AF. PROJECT REQUIRES 17.95 AF.

THIS DOCUMENT IS RELEASED FOR REVIEW ONLY. IT IS NOT INTENDED FOR CONSTRUCTION UNLESS SIGNED AND SEALED.

PAUL D. BERG P.E.
SERIAL NO. 255065
DATE: 22 MAR 2018

NORTH

0 50' 100' 200' 300'

SCALE: 1"= 100'

BRAD PELO
STUBBS PROPERTY
CONCEPT PLAN #2

BERG ENGINEERING
380 E Main St. Suite 204
Midway, UT 84049
ph 435.657.9749

DESIGN BY: PDB DRAWN BY: CNB	DATE: 22 MAR 2018 REV:	SHEET 1