



Midway

**RESOLUTION
2024-15**

**A RESOLUTION ADOPTING A WATER LINE ASSUMPTION
AGREEMENT BETWEEN MIDWAY CITY AND COTTAGE CREEK HOA**

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

WHEREAS, the Midway City Council finds it in the public interest of the City of Midway to enter into a water line assumption agreement with the homeowner association of Cottage Creek Court P.U.D. regarding the water line that runs the length of the Cottage Creek development and connects to Midway’s main culinary line located in Pine Canyon Road;

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

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

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

PASSED AND ADOPTED by the Midway City Council on the ____ day of _____, 2024.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

WATER LINE ASSUMPTION AGREEMENT

THIS WATER LINE ASSUMPTION AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 2024, (the “**Effective Date**”) by and between CITY OF MIDWAY, a Utah municipal corporation (“**Midway**”), and COTTAGE CREEK HOMEOWNERS ASSOCIATION, a Utah non-profit corporation (“**CCHA**”). Midway and CCHA are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. CCHA is a homeowner’s association with authority over Cottage Creek Court (“Cottage Creek”), a planned unit development located in Midway City, Utah consisting of 25 homes/units/residences.

B. At the time of approval of Cottage Creek it was agreed with Midway that the culinary service to the development would be provided from a water line that runs the length of the Cottage Creek development (see the defined term “Cottage Creek Water Line” included below) and would connect to Midway’s main culinary line located in Pine Canyon Road.

C. It was agreed that the Cottage Creek Water Line would be considered the private property of CCHA which retained all obligations and responsibilities to maintain and manage the line and all culinary connections within Cottage Creek.

D. A master meter was placed on the Cottage Creek Water Line and the City has billed CCHA on a monthly basis since the Cottage Creek Water Line was installed with CCHA dealing internally with the payment of the bill amongst its several unit owners.

E. It was recently discovered that CCHA could not obtain liability insurance on the Cottage Creek Water Line because Midway has the obligation of maintaining several fire hydrants on the line, creating problematic jurisdictional issues that are better dealt with by having Midway simply assume ownership of the line.

F. As such, the Parties desire to enter into this Agreement transferring ownership of the Cottage Creek Water Line to Midway, which will assume all on-going maintenance and control of the Cottage Creek Water Line subject to the conditions set forth below.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged Midway and CCHA agree as follows:

1. Recitals/Survival. The recitals set forth above are true, correct, and complete in all material respects, and the Parties incorporate the above recitals by this reference.

2. Definition of Infrastructure. CCHA currently owns the Cottage Creek Water Line that is connected (by master meter) to Midway’s main water line located within the utility easement along Pine Canyon Road. The “Cottage Creek Water Line” is approximately 600 feet in length and six (6) inches in diameter and includes all fire hydrants connected thereto. The Cottage Creek

Water Line services 25 residences in six separate buildings with culinary water. Laterals off of the Cottage Creek Water Line that service individual homes, residences or units are expressly excluded from the definition of the Cottage Creek Water Line and shall be the responsibility of CCHA, except as discussed herein.

3. Assumption of Ownership of the Cottage Creek Water Line. Midway shall assume ownership and control of the Cottage Creek Water Line, as defined above, subject to the following conditions:

- 3.1.** CCHA has surveyed and recorded an express easement in favor of Midway for the length of the Cottage Creek Water Line in a width of 20 feet (10 feet on both sides from the centerline of the existing pipe) with a perpetual temporary construction easement of 10 additional feet that Midway City may use if/when the line ever needs to be replaced. See survey and Water Line Easement Description attached as Exhibit A and B. CCHA recognizes that the Cottage Creek Water Line was intended to run along the side of private roadway; however, it may run under the front yards and driveways of certain homes in the subdivision, and that maintaining and replacing the water line may cause damage to the private driveways, lawns, landscaping and sprinkler systems of certain homes within CCHA. The express easement shall include language, approved by Midway City, that assigns the obligation to repair the damage caused by maintenance and repair of the Cottage Creek Water Line as follows: Midway City shall be responsible to repair at its sole cost all surface damage caused from the back of the curb into the street (“Additional Work”) including backfill and compaction. Any damage caused from the back of the curb into the common area property of the CCHA shall be backfilled, leveled and compacted by Midway City at its sole cost. Once backfilled, leveled and compacted, Midway City shall have no additional repair obligation. CCHA shall be responsible for repairing at its sole cost all damaged softscape (lawn, sprinkler systems, landscaping, trees, etc.) and all hardscape (driveways, walkways, etc.) from the back of the curb into the common area property of the CCHA. This is expressly agreed to by the CCHA because the Cottage Creek Water Line, while running within the common area of the Planned Unit Development, is presently located on the edge of the roadway and may inconveniently run close to or under the front yards and driveways, common area of the CCHA of certain homes within the Planned Unit Development. Midway gave the option to the CCHA to pay to reinstall the line within the roadway which the CCHA chose not to do due to cost. As such, it is agreed that the CCHA shall retain all obligation to repair all softscape and hardscape from the back of the curb into the common area of the CCHA property at its own cost.
- 3.2.** Midway is accepting ownership solely of the Cottage Creek Water Line and accepts no liability/responsibility for laterals off of the Cottage Creek Water Line that serve individual units, except for Additional Work (as this term is defined in 3.1 and the parties agree is only applicable to a replacement of the Cottage Creek Water Line and not applicable to Private Laterals which are the responsibility of the CCHA). Midway City will install six meters on the lines that serve the respective buildings within the CCHA. For purposes of this Agreement the Cottage Creek Water Line shall include the line itself and the lateral up to the residential meter installed by Midway City. The Cottage Creek Water Line shall

also include the laterals to the existing fire hydrants and the fire hydrants themselves that shall be owned and operated by Midway. All lines and connections beyond the residential meter shall be defined as “Private Laterals” and CCHA and home/unit/residence owners shall be responsible for all maintenance, repair and liability associated with the Private Laterals and shall retain the obligation to maintain and repair these Private Laterals at their own cost, including costs incurred to cut into the road if necessary to repair or replace a Private Lateral.

3.3. Midway, at its option and sole expense, shall be allowed to install a meter and a meter box to allow access to the meter on any Private Lateral off of the Main Line, which Midway shall own and maintain.

3.4. Cottage Creek was developed with a master meter that is located on the Cottage Creek Water Line as it enters into the Planned Unit Development. This master meter will become the property of Midway City and will no longer be used as the measuring device for CCHA. Midway City shall install 6 meters on the lines that serve the separate buildings within CCHA. Midway has historically billed CCHA directly for its culinary water usage as measured through the master meter and left the splitting of the bill amongst the unit/residence/home owners to CCHA. Billing will no longer be done as one master meter but based on six separate meters. The bills for each meter will continue to be sent to CCHA which will be responsible for payment. Given the fact that each meter will serve multiple units within a building, Midway will not undertake any enforcement action against any unit/home/residence owner within Cottage Creek for non-payment and will not turn off any unit/home/residence owner’s water due to non-payment. Should CCHA choose to undertake such an enforcement action, which it recognizes is a highly regulated area of the law due to the potential for loss of health and life, it will indemnify Midway for any liability and/or damages Midway incurs, including defense costs, should an action be brought against Midway, upon a final, non-appealable order or judgment by a court of competent jurisdiction, for wrongful termination of utility services of reasonable and documented legal fees and expenses incurred in connection with such litigation. Each meter will be billed per the number of units connected to that meter at Midway City’s standard water rates.

4. **No Third-Party Beneficiary.** No term or provision of this Agreement or the Exhibits attached hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity not a Party hereto, and no such other person, firm, corporation, or entity shall have any right or cause of action hereunder.

5. **Notices.** Any notice required or permitted to be given or transmitted between the Parties pursuant to this Agreement shall be: (i) personally delivered; (ii) mailed, postage prepaid by certified mail, return receipt requested; (iii) sent for next Business Day delivery by a recognized overnight carrier; or (iv) sent by email/.pdf; addressed as follows:

If to CCHA: Cottage Creek Homeowners Association
Attn: Stefani Sanatar
376 Cottage Creek Ct.
Midway City, UT 84049
Email: stefani.sanatar@gmail.com
Email: stefani.sanatar@pacificlife.com

If to Midway: Midway City
Attn: Michael Henke
75 N. 100 W., PO Box 277
Midway, Utah 84049
Phone: (435) 654-3223
Email: mhenke@midwaycityut.org

With a copy to: Gordon Law Group
Attn: Corbin B. Gordon
322 E Gateway Drive, Suite 201
Heber City, UT 84032
Phone: 435-657-0984
Email: cgordon@utglg.com

Either Party may designate a different address for itself by giving written notice in the manner required by this paragraph.

6. Miscellaneous.

6.1. Successors and Assigns. This Agreement shall be recorded against the Cottage Creek Court Subdivision Plat in the office of the Wasatch County Recorder, State of Utah. Subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be considered a covenant that runs with the land herein described and as such the terms, conditions, and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the Parties hereto.

6.2. Interpretation. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party.

6.3. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

6.4. Severability. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof so long as removing the severed portion does not materially alter the overall intent of this Agreement.

6.5. Applicable Law. This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of the State of Utah.

6.6. Attorneys' Fees and Costs. If any action at law or in equity, or any special proceeding (including bankruptcy proceedings and appeals from lower court rulings), be instituted by either party against the other party to enforce this Agreement or any rights arising hereunder, or in connection with the subject matter hereof, the prevailing party shall be entitled to recover all costs of suit and reasonable attorneys' fees upon a final, non-appealable order or judgment by a court of competent jurisdiction. For purposes of this Paragraph, the term "prevailing party" shall, in the case of a claimant, be the party who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the party who is successful in denying substantially all of the relief sought by the claimant.

6.7. Time is of the Essence. Time is expressly made of the essence of each and every provision of this Agreement.

6.8. Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

6.9. Non-Fiduciary or Agency Relationship. The Parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an "arms-length" transaction. No Party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other party hereto, nor shall they make any representation to any third party inconsistent with this Paragraph.

6.10. Counterparts. The Parties may sign this Agreement in multiple identical counterparts, all of which taken together shall constitute one and the same agreement. Further, the Parties shall treat a copy of an original signature to this Agreement for all purposes as an original signature. The Parties shall consider a copy of the signed Agreement for all purposes as an original of the Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of this Agreement that contains original signatures in order to enforce this Agreement, or for any other purpose.

[signatures to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MIDWAY:

CITY OF MIDWAY,
a Utah municipal corporation

By: _____
Name: Celeste Johnson
Its: Mayor

COTTAGE CREEK HOMEOWNERS ASSOCIATION:

By: _____
Name: Stefani Sanatar
Its: President

WATER LINE ASSUMPTION AGREEMENT

THIS WATER LINE ASSUMPTION AGREEMENT (this "Agreement") is made and entered into this 26th day of April, 2024, (the "Effective Date") by and between CITY OF MIDWAY, a Utah municipal corporation ("Midway"), and COTTAGE CREEK HOMEOWNERS ASSOCIATION, a Utah non-profit corporation ("CCHA"). Midway and CCHA are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. CCHA is a homeowner's association with authority over Cottage Creek Court ("Cottage Creek"), a planned unit development located in Midway City, Utah consisting of 25 homes/units/residences.
- B. At the time of approval of Cottage Creek it was agreed with Midway that the culinary service to the development would be provided from a water line that runs the length of the Cottage Creek development (see the defined term "Cottage Creek Water Line" included below) and would connect to Midway's main culinary line located in Pine Canyon Road.
- C. It was agreed that the Cottage Creek Water Line would be considered the private property of CCHA which retained all obligations and responsibilities to maintain and manage the line and all culinary connections within Cottage Creek.
- D. A master meter was placed on the Cottage Creek Water Line and the City has billed CCHA on a monthly basis since the Cottage Creek Water Line was installed with CCHA dealing internally with the payment of the bill amongst its several unit owners.
- E. It was recently discovered that CCHA could not obtain liability insurance on the Cottage Creek Water Line because Midway has the obligation of maintaining several fire hydrants on the line, creating problematic jurisdictional issues that are better dealt with by having Midway simply assume ownership of the line.
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4. **No Third-Party Beneficiary.** No term or provision of this Agreement or the Exhibits attached hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity not a Party hereto, and no such other person, firm, corporation, or entity shall have any right or cause of action hereunder.
5. **Notices.** Any notice required or permitted to be given or transmitted between the Parties pursuant to this Agreement shall be: (i) personally delivered; (ii) mailed, postage prepaid by certified mail, return receipt requested; (iii) sent for next Business Day delivery by a recognized overnight carrier; or (iv) sent by email/.pdf; addressed as follows:

If to CCHA:

Cottage Creek Homeowners Association
Attn: ~~Denton Rogers~~ *Stefani Sanatar*
~~415 Cottage Creek Ct~~ *376 Cottage Creek Ct.*
Midway City, UT 84049
Email: ~~dentonrogers@gmail.com~~ *stefani.sanatar@gmail.com*
Email: ~~vestbr@earthlink.net~~ *stefani.sanatar@pacificlifec.com*

If to Midway:

Midway City
Attn: Michael Henke
75 N. 100 W., PO Box 277
Midway, Utah 84049
Phone: (435) 654-3223
Email: mhenke@midwaycityut.org

With a copy to:

Gordon Law Group
Attn: Corbin B. Gordon
322 E Gateway Drive, Suite 201
Heber City, UT 84032
Phone: 435-657-0984
Email: cgordon@utglg.com

Either Party may designate a different address for itself by giving written notice in the manner required by this paragraph.

6. Miscellaneous.

6.1. Successors and Assigns. This Agreement shall be recorded against the Cottage Creek Court Subdivision Plat in the office of the Wasatch County Recorder, State of Utah. Subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be considered a covenant that runs with the land herein described and as such the terms, conditions, and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the Parties hereto.

6.2. Interpretation. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party.

6.3. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

6.4. Severability. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof so long as removing the severed portion

does not materially alter the overall intent of this Agreement.

6.5. Applicable Law. This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of the State of Utah.

6.6. Attorneys' Fees and Costs. If any action at law or in equity, or any special proceeding (including bankruptcy proceedings and appeals from lower court rulings), be instituted by either party against the other party to enforce this Agreement or any rights arising hereunder, or in connection with the subject matter hereof, the prevailing party shall be entitled to recover all costs of suit and reasonable attorneys' fees upon a final, non-appealable order or judgment by a court of competent jurisdiction. For purposes of this Paragraph, the term "prevailing party" shall, in the case of a claimant, be the party who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the party who is successful in denying substantially all of the relief sought by the claimant.

6.7. Time is of the Essence. Time is expressly made of the essence of each and every provision of this Agreement.

6.8. Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

6.9. Non-Fiduciary or Agency Relationship. The Parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an "arms-length" transaction. No Party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other party hereto, nor shall they make any representation to any third party inconsistent with this Paragraph.

6.10. Counterparts. The Parties may sign this Agreement in multiple identical counterparts, all of which taken together shall constitute one and the same agreement. Further, the Parties shall treat a copy of an original signature to this Agreement for all purposes as an original signature. The Parties shall consider a copy of the signed Agreement for all purposes as an original of the Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of this Agreement that contains original signatures in order to enforce this Agreement, or for any other purpose.

[signatures to follow]

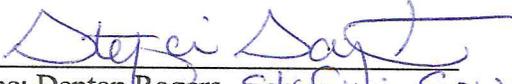
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MIDWAY:

CITY OF MIDWAY,
a Utah municipal corporation

By: _____
Name: Celeste Johnson
Its: Mayor

COTTAGE CREEK HOMEOWNERS ASSOCIATION:

By: 
Name: ~~Denton Rogers~~ Stefani Savatae
Its: President