



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: February 20, 2024

NAME OF PROJECT: Southill Phase II

NAME OF APPLICANT: Midway Heritage Development

AUTHORIZED REPRESENTATIVE: Dan Luster of Southill Development

AGENDA ITEM: Second Amendment to the Southill Master Plan Agreement First Amendment

LOCATION OF ITEM: 565 East Main

ZONING DESIGNATION: C-2

ITEM: 8

Dan Luster, agent for Southill Development, has submitted a Master Plan Amendment for the Southill Master Plan on 28.493-acres (Phase II – 9.4 acres). The proposed Master Plan Amendment would amend the Master Plan Agreement to allow two units in Phase II to be mixed use with commercial on the lower floor and residential on the upper floors. The property is located at approximately 565 East Main and is in the C-2 zone.

BACKGROUND:

Dan Luster, agent for Southill Development, has submitted a Master Plan Amendment for the Southill Master Plan on 28.493-acres (Phase II – 9.4 acres). Southill is a mixed-use planned unit development that consists of both commercial and residential uses. The master plan agreement and approvals for the property limit commercial use to seven buildings and residential uses to 134 townhomes. The applicant is proposing to amend the agreement and the approvals to allow two of the residential units to be commercial on the lower floor and residential on the upper floors. The two units are units 31 and 32 which

are located adjacent to commercial buildings on the south and on the west. The motion to approve a rezone of some of the property from R-1-11 and R-1-22 came with the condition that no commercial would be allowed in the residential units except for Home Occupations. The condition from the rezone approval during the December 7, 2021, City Council meeting stated the following: “

All commercial uses except Home Occupation Businesses, as defined in the City Code, would be located only in the buildings designated as commercial on the revised concept plan.

This decision was based on several items that include parking requirements, harmony of uses, and location of commercial uses and residential uses. One of the concerns was based on the issue that the entire property was zoned commercial to allow for design flexibility in the development, but this would also allow the possibility for commercial uses to be located in the townhomes. This could have been disruptive to the neighborhood because of parking and nuisance issues that could have been an issue with a commercial use surrounded completely by residential uses. For these reasons, the City Council restricted commercial uses to seven specific building sites on the development with no commercial uses being allowed in the town homes. The developer is now petitioning that two of the units that are adjacent to the commercial area of the project are allowed to be mixed-use.

Amending the approved master plan and previous approvals is a discretionary decision. The City Council is under no obligation to amend the approved and recorded agreement unless they feel it is in the best interest of the community. The City Council may also ask for changes to the master plan agreement during this process. If both parties agree to the proposed amendments that either side is petitioning, then the master plan may be amended, and the new agreement may be recorded. If either party does not agree then the existing master plan continues to govern the development.

ANALYSIS:

The applicant’s proposal to allow units 31 and 32 to be mixed-use includes the following reasons and proposal that was submitted with the application:

- *Create two “Live Above-Work Below” units adjacent to businesses and main street.*
- *Units would have OPTION to convert first floor of homes to business space and continue to occupy 2nd and 3rd stories and to share garage space with the business. (Any back patios would remain limited common space under the control of the residential HOA).*
- *Units 131 and 132 are the proposed units and are adjacent to Phase II commercial space.*

- *Commercial and residential space would have to meet all relevant city codes.*

The applicant continues with a benefit and impact analysis:

- *Opportunity for cottage businesses: galleries, coffee shops, etc.*
- *Creates business “corridor” with business on both sides of street*
- *Creates lower-cost residence when combined with business*
- *Does not increase total number of residences*
- *Increases (potentially) tax revenue from commercial business*

There are two main issues to consider with this proposal. The first is the harmony of uses with the development and the surrounding area. The units that are proposed for mixed-use are adjacent to commercial on the south and on the west. The intersection of Bibury Lane and Fresh Pond Road is located to the southwest of units 31 and 32. Currently, the intersection basically has commercial uses on three sides of the intersection and residential uses on the fourth. The proposed amendment would allow a transition from commercial uses to residential use by allowing the two units to be mixed-use. Visually, the intersection has greater appeal with the mixed-use by allowing a transition from commercial to residential.

The City Council has restricted commercial uses in the residential areas of the development to avoid disharmony of uses and nuisance issues that could develop. Because the proposal is next to commercial uses on three sides, the possibility of issues arising is lowered. There are residential uses attached to units 31 and 32 directly north of both units. These two units would be most impacted if an issue arises.

Parking is also of concern if the two units are allowed to have commercial uses on the lower floor. Office and retail parking requirements is one stall for every 250 square feet that is accessible to the public. Restaurants and cafes have the requirement of one stall for every 200 square feet that is accessible to the public. If two-thirds of the lower floor of units 31 and 32 are allowed to be commercial, and the use was either office or retail, then 12 parking stalls would be required. If the commercial use was an eatery, then 14 stalls would be required. The applicant is proposing to create 12 new stalls in Phase II (see attached) to accommodate the parking requirement, therefore, less area for an eatery would be allowed to be accessible to the public than for an office or retail.

If the proposal is approved, more water rights will be required to cover the commercial uses in units 31 and 32. Current water rights requirements for those units are based solely on a residential use with each unit having the requirements of 0.8 acre feet. When a

commercial use is proposed for either of the units, the Water Board will need to review the proposal to determine the amount of water rights that will be required.

POSSIBLE FINDINGS:

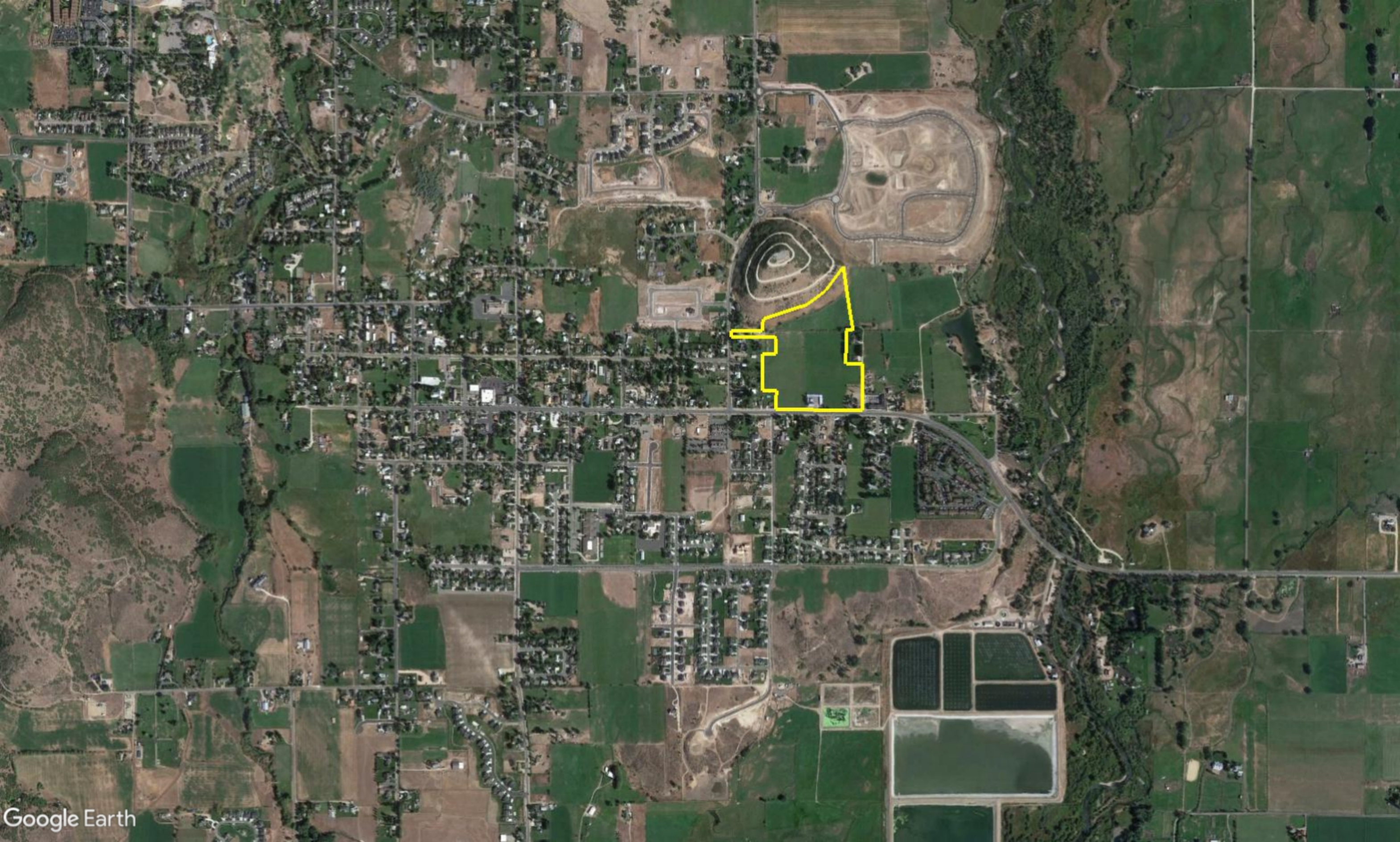
- The proposed amendment will allow units 31 and 32 to have lower floor commercial and upper floors residential.
- More parking stalls will be required if the amendment is approved.
- More vehicular trips per day will be generated by the commercial uses if approved.
- The proposed mixed-use units are adjacent to commercial and residential uses.
- Surrounding residential uses may be impacted by the mixed-use units.
- More water rights will be required if the units are allowed to be mixed-use.

ALTERNATIVE ACTIONS:

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

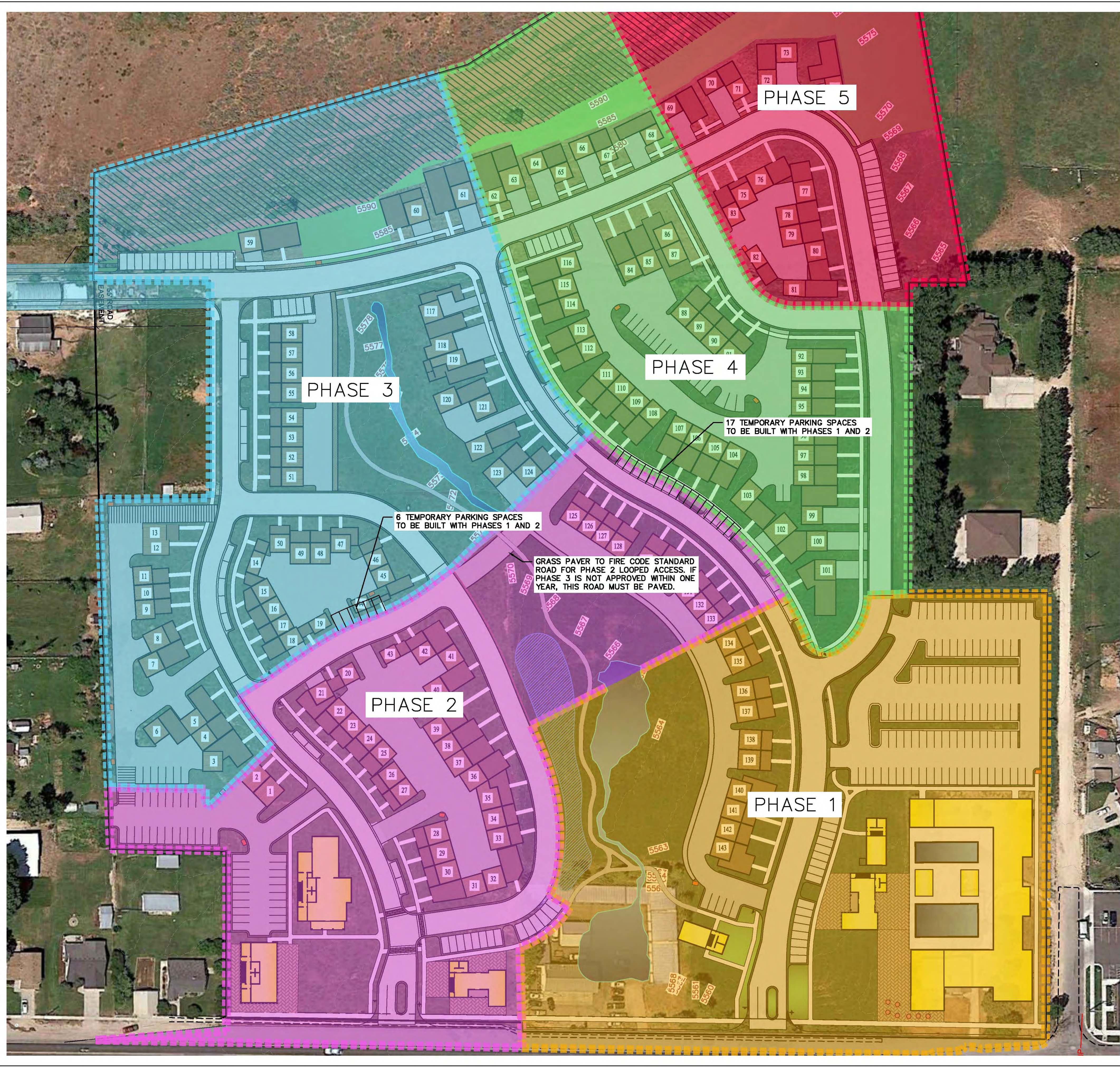
POSSIBLE CONDITIONS:

- The developer is required to build the proposed 12 parking stalls before units 31 and 32 can apply for a business license.
- The owners of units 31 and 32 will be required to dedicate water rights before the units are used as mixed-use.









LEGEND

- NON-BUILDABLE AREA (25%+ SLOPES)
- COMMERCIAL BUILDINGS
- RESIDENTIAL BUILDINGS
- GARAGES

NOTES
 1. RIVER ROAD CONNECTION TO BE COMPLETED WITH PHASE 3.
 2. TRAFFIC LIGHT AT RIVER ROAD AND MAIN MUST BE INSTALLED PRIOR TO PHASE 3. SEE THE MASTER PLAN AGREEMENT FOR ADDITIONAL DETAILS.

PHASING PLAN

PHASE	AREA	COMMERCIAL	RESIDENTIAL	RES UNITS	OPEN SPACE
1	6.55 AC	37,615 SF	10,249 SF	10	2.07 ac
2	5.70 AC	11,285 SF	33,360 SF	35	1.11 ac
3	6.64 AC	0 SF	44,449 SF	43	2.25 ac
4	4.59 AC	0 SF	45,355 SF	40	0.69 ac
5	3.99 AC	0 SF	14,964 SF	15	2.32 ac
	27.47 AC	48,900 SF	148,377 SF	143	8.44 ac

PHASE	IRRIGATED OPEN SPACE	NON-IRRIGATED OPEN SPACE
1	2.07 ac	0 ac
2	1.11 ac	0 ac
3	1.12 ac	1.13 ac
4	0.17 ac	0.52 ac
5	0.97 ac	1.35 ac
	5.44 ac	3.00 ac

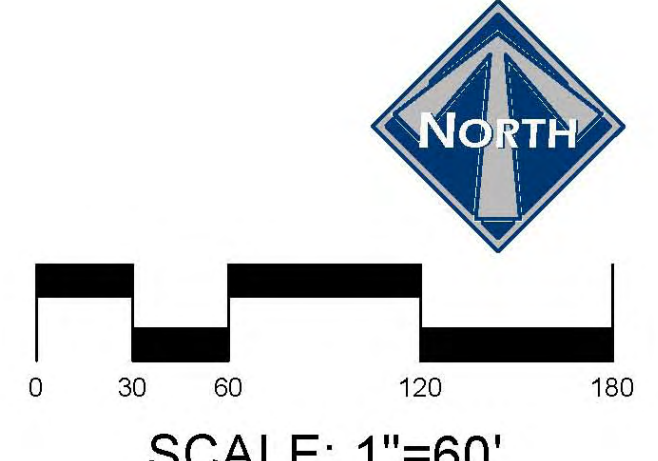
PHASE	TOTAL IRRIGATED AREA
1	2.99 acres
2	1.96 acres
3	2.20 acres
4	1.04 acres
5	1.61 acres
	9.80 acres

GRASS PAVER TO FIRE CODE STANDARD ROAD FOR PHASE 2 LOOPED ACCESS. IF PHASE 3 IS NOT APPROVED WITHIN ONE YEAR, THIS ROAD MUST BE PAVED.

6 TEMPORARY PARKING SPACES TO BE BUILT WITH PHASES 1 AND 2

17 TEMPORARY PARKING SPACES TO BE BUILT WITH PHASES 1 AND 2

15 Village Meadows, High Street/Village Phases 1 & 2, 2022 | plotted by: eger
 Rev: 02/25/2022 10:30 AM



THIS DOCUMENT IS RELEASED FOR REVIEW ONLY. IT IS NOT INTENDED FOR CONSTRUCTION UNLESS SIGNED AND SEALED.
 PAUL D. BERG P.E.
 SERIAL NO. 295595
 DATE: 25 MAY 2022

LUSTER
THE VILLAGE

PHASING PLAN

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

DESIGN BY: PDB DRAWN BY: DEJ	DATE: 25 MAY 2022 REV:	SHEET 6
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Southill Proposal: Two Flexible **Live Above...Work Below** Residential Units

- Create five “Live Above...Work Below” units adjacent to businesses and Main Street.
- Buyers would have OPTION to build out first floor as business space and occupy 2nd and 3rd floors and share garage space with the business.
- Proposed Units 131, and 132 and are adjacent to Phase II commercial space.
- Commercial and residential space would be required to meet all relevant city codes.



31



31



32





Example Retail Storefront: Live Above...Work Below

Cotswolds UK: Live Above...Work Below



Parking for New Commercial Units

Parking Analysis						
Phase	Bldg	Buiding Description	Usable (for Parking)	Required Parking	Provided on Plat	Extra Parking
II	1	Restauraunt	1,877	7.5	20	12
II	2	Retail	3,711	14.8	22	7
II	3	Restauraunt	1,786	7.1	14	7

+26








There are currently 26 more parking spaces than required in the existing Phase 2 Plat.

Benefits & Impact

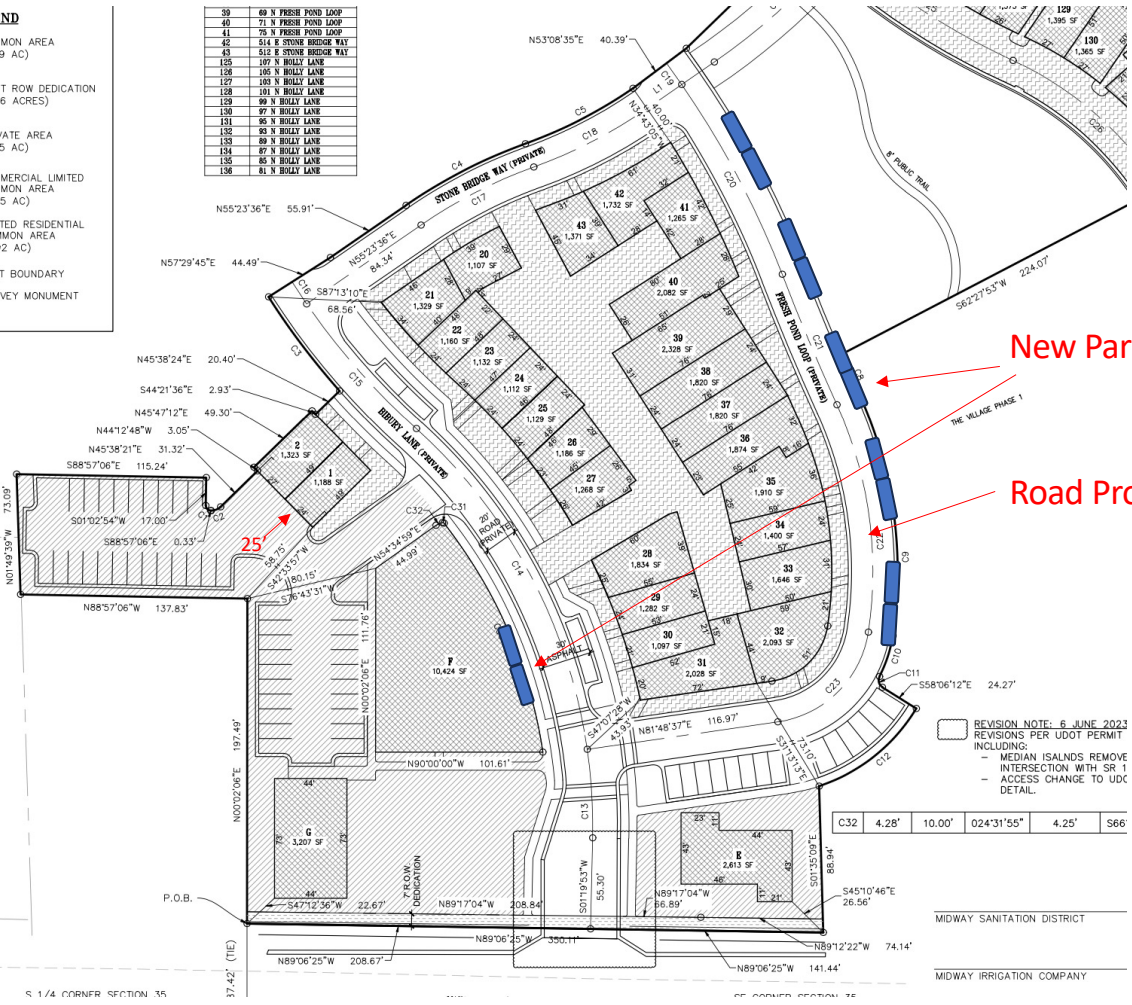
- Opportunity for **cottage businesses**: galleries, coffee shops, etc.
- Creates **business “corridor”** with business on both sides of street
- Creates **lower-cost residence** when combined with business
- **Does not** increase number of residences
- Increases (potentially) **tax revenue** from commercial business

THE VILLAGE PHASE 2 - 27 APRIL 2023

LEGEND

-  COMMON AREA (2.19 AC)
-  UDOT ROW DEDICATION (0.06 ACRES)
-  PRIVATE AREA (1.55 AC)
-  COMMERCIAL LIMITED COMMON AREA (0.95 AC)
-  LIMITED RESIDENTIAL COMMON AREA (0.92 AC)
-  PLAT BOUNDARY
-  SM SURVEY MONUMENT

39	60 N FRESH POND LOOP
40	71 N FRESH POND LOOP
41	75 N FRESH POND LOOP
42	514 E STONE BRIDGE WAY
43	512 E STONE BRIDGE WAY
125	107 N HOLLY LANE
126	105 N HOLLY LANE
127	103 N HOLLY LANE
128	101 N HOLLY LANE
129	99 N HOLLY LANE
130	97 N HOLLY LANE
131	95 N HOLLY LANE
132	93 N HOLLY LANE
133	89 N HOLLY LANE
134	87 N HOLLY LANE
135	85 N HOLLY LANE
136	81 N HOLLY LANE



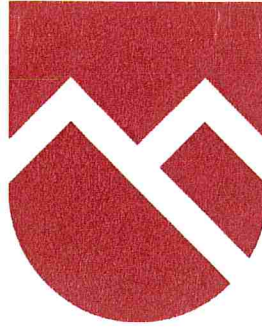
New Parking Pullouts

Road Profile 20' like Bibury Lane

REVISION NOTE: 6 JUNE 2023
 REVISIONS PER UDOT PERMIT
 INCLUDING:
 - MEDIAN ISLANDS REMOVE
 INTERSECTION WITH SR 1
 - ACCESS CHANGE TO UDC
 DETAIL.

C32	4.28'	10.00'	024'31'55"	4.25'	S66'
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MIDWAY SANITATION DISTRICT
 MIDWAY IRRIGATION COMPANY



Ent 534471 Bk 1447 Pl 631-699
Date: 12-JUL-2023 11:50:23AM
Fee: \$40.00 Check Filed By: KM
MARCY M MURRAY, Recorder
WASATCH COUNTY CORPORATION
For: MIDWAY HERITAGE DEVELOPMENT LLC

RESOLUTION 2022-35

A RESOLUTION APPROVING A FIRST AMENDMENT TO THE MASTER PLAN AGREEMENT FOR THE VILLAGE SUBDIVISION

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

WHEREAS, the Midway City Council previously found it in the public interest of Midway City to enter into a master plan agreement with the developer of The Village Subdivision for the use and development of the land included within that proposed project; and

WHEREAS, the Developer has now requested to amend the master plan to include terms and conditions regarding underground parking in the development; and

WHEREAS, the Midway City Council has reviewed the proposed amendments to the master plan regarding underground parking and they appear to meet Midway City Land Use Code requirements; and

WHEREAS, the Midway City Council is exercising its discretion in accepting the terms of the amendment to the master plan of the development.

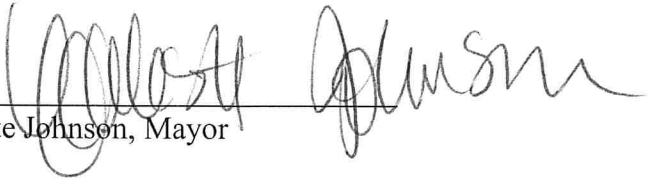
NOW, THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Midway City Council hereby approves the First Amendment to the Village Master Plan 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 1st day of November 2022.

MIDWAY CITY



Celeste Johnson, Mayor

ATTEST:



Brad Wilson, Recorder



**FIRST AMENDED
MASTER PLAN AGREEMENT
FOR “SOUTHILL”
MIDWAY CITY, UTAH**

This First Amended Master Plan 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 Midway Heritage Development, LLC (hereinafter referred to as the “Developer”). The property which is included in the Master Plan, and which is the subject of this Agreement, includes 28.493 acres, which are owned or controlled by the Developer. The Developer and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City has authorized the negotiation of and adoption of master plan 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.
- B. The Developer is the owner of certain real property which is described in Exhibit “A”, the Master Plan, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is included and subject to this Master Plan Agreement. Hereinafter, the entire parcel described in the Master Plan is referred to as “Southill” or the “Property”.
- C. Each Phase shall be subject to a Development Agreement, entered into by the City and the developer of that Phase. All Phases, regardless of the developer, shall be subject to the terms, conditions and restrictions of this Master Plan Agreement, and the Development Agreement which applies to that specific Phase.
- E. The Midway City Land Use Code requires that a Master Plan must demonstrate that approval of the Project in multiple phases can occur such that the Project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection and open space are committed to in the first phase to allow the Project to function and meet Code requirements without subsequent phases. The City Council finds that this Master Plan meets that requirement.

- F. The Property is, and shall remain, subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Developer and the City desire to allow Developer and others to make improvements to the Property pursuant to applicable ordinances, resolutions and the terms and conditions of this Agreement.
- G. The improvements and changes to be made to the Property shall be consistent with this Master Plan Agreement and any changes to international building codes or construction standards.
- H. The Developer and the City acknowledge and agree that the development and improvement of the Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents.
- I. The City's governing body has authorized the execution of this Agreement by Resolution 2022-35, to which this Agreement is attached.

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 run with the land. The terms and conditions contained herein shall inure to the benefit of, and be binding upon, the successors in interest, heirs or assigns, of the Developer.

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 be Midway City Code, Utah State Statute, and all applicable international building codes and requirements.

"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. General Description of Project.

The Project consists of 28.493 acres.

The Project is located entirely in the C-2 zone, which allows for mixed-use development.

The proposal includes, at a minimum, 44,128 square feet of commercial space in multiple buildings, including 143 townhomes, park, public trails, to be developed in five phases. The

master plan is on 28.493 acres and contains 8.81 acres of open space. The requirement for open space is only 8.32 acres and the parties agree that the extra open space can be adjusted and/or reduced but never below 8.32 acres total.

Section 4. 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 Master Plan Approval: The Developer shall comply with all of the following Conditions:
 - a) *Payment of Fees* – Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
 - b) *Water Rights* – Midway City code applicable to Master Plans require that water rights be held in escrow with the City before the master plan agreement can be recorded. All water rights, whether represented by stock certificate or water deed, shall be submitted to Midway City prior to the recording of the master plan agreement. Developer and City acknowledge that several of the proposed water rights to be used in the Project have currently pending change applications with the Utah State Engineer's office which may result in a reduction of these water rights through the approval process. The Parties agree that the deeds for these water rights shall be held in escrow and that the recording of the master plan agreement will be allowed to proceed, with the understanding that should these water rights be reduced by the State Engineer, Developer shall have an obligation to submit to the City replacement water rights sufficient to meet all phases of the Project prior to the plat in phase 3 in the Project. The required water rights for each phase of the development shall be released from escrow and dedicated to the City before the recording of the plat for that phase. The Water Advisory Board has approved an estimated 166.6 acre-feet will need to be held by the City in escrow before the master

plan can be recorded. Developer shall also obtain a Will Serve letter from Midway Irrigation Company for the Development, and, if foreign water is required for the Development, enter into Foreign Water agreements with either Midway Irrigation Company or Midway City, as the need requires. The parties agree that the project will appear before the Water Advisory Board as part of the approval process of each phase. The chart attached as Exhibit B contains the requirements for commercial and residential water for all phases of the Project.

- c) *Roads and Traffic Circulation* – Each phase of the project shall meet all applicable access requirements under Midway City Code. All roads, sidewalks and trails in the subdivision shall be private, with recorded public access easements for all roads, sidewalks and trails within the project included on the plat. All private roads, sidewalks, trails, alleys and parking areas will be maintained by the HOA or POA, including snow removal.
- d) *Traffic Study* – The Developer has submitted a traffic study to the City as part of the Master Plan application process. Horrocks has reviewed the study and its recommendations for improvements are attached as Exhibit C. The study has determined the impact of traffic generated from the proposed development on the surrounding UDOT and City streets. One significant finding of the traffic study is a third access from River Road is required for better traffic distribution and to lower the impact on the intersection of River Road and Main Street. There are off-site improvements required based on the traffic study. More information is provided in Horrocks Engineers' review letter regarding this issue. Developer shall comply with all recommendations made by Horrocks Engineers that are included in the final traffic study.
- e) *Alley Access* – The proposed plan has street access to each unit but there is also additional alley access proposed for parking access. The alley access areas will be private and will be owned and maintained by the HOA or POA. Snow removal and storage from the alley is a concern and Developer shall prepare a snow removal and storage plan as part of the approval process for each phase. The developer has also provided a will-serve letter from Wasatch County Solid Waste (previous concept master plan). The County will enter private alley areas to unload trash containers. The Fire District has met with staff and the Developer to review all fire related issues. The proposed plan has been modified to address concerns raised in that meeting.
- f) *Main Street Improvements* – The Developer will be required to improve Main Street to UDOT requirements where the project is adjacent to Main Street and any requirements imposed by UDOT associated with the improvements.

- g) *Sensitive Lands* – Sensitive land area located on the property will be left undisturbed as required by the Midway City land use ordinance. These sensitive lands include the sloped areas at the base of Memorial Hill. No building pads shall be located on any slopes 25% or greater.
- h) *Open Space* – The proposal is required to provide 8.32 acres of open space as a condition of the zone change – 8.81 acres have been provided.
- i) *Public Participation Meeting* – The developers held a public participation meeting on October 11, 2021 as required by the ordinance for master plan applications.
- j) *Density* – The maximum amount of residential units is 143 as per the conditionally approved rezone of the property. The parties acknowledge that while the maximum number of residential units is capped at 143, the building of these residential units is subject to the 80/20 requirement of residential square footage to commercial square footage set forth in A(ii)(n) below.
- k) *Trails* – A public access easement shall be recorded on all trails and sidewalks within the Project. Trails and sidewalks shall be maintained by the POA. The City and the Developer have agreed to pursue a trail connection from the Development to Memorial Hill. Wasatch County, owner of Memorial Hill, would be required to approve the trail. The parties agree that if approval can be obtained the trail built would be a backcountry soft surface trail to eliminate impact on Memorial Hill and to limit visual impact when looking at the Hill. Prior to final approval on Phase 3 Developer and the City shall approach Wasatch County and in good faith attempt to negotiate a trail easement.
- l) *Architecture Theme* – The developer is required to receive architectural approval of all structures in the mixed-use development, including all commercial and residential buildings, along with any other features that require architectural approval. Specific review of each building will be required through the approval process. City Planner shall have power to approve the recommendations of the Visual and Architectural Committee, and may be appealed to the City Council as set forth in City Code.
- m) *Parking* – The developer is providing 189 commercial stalls and 358 residential stalls for a total of 547 parking stalls. Of the residential stalls, two stalls per unit will be provided in the garage of the unit with the other 72 residential stalls shall be dispersed in the residential area of the development. At master plan, calculating the exact number of commercial stalls is not realistic because until the exact use and size of a structure is known, the exact

amount of parking cannot be calculated. The goal at master plan is to make sure there is the possibility of enough parking for future planned uses. The typical amount of parking required is one stall for every 250 square feet for areas accessible to the public. The parties agree that parking requirements will be revisited at the time of preliminary and final approval of each phase and may be altered based on the actual building proposed in each phase.

Generally, this should be an adequate number of stalls for master plan but as each individual permit is submitted, parking will need to be reviewed.

Developer agrees to install a fence along the east side of the proposed parking for the racquet club to insulate the adjoining residential property from the negative impact of commercial development. Developer also agrees to install berms along the east side of the project where parking lots are currently proposed with the purpose of blocking headlights from adjoining residences. Specifics regarding the height and type of fence, and the height, type and location of the berms will be addressed in the approval of the phase where these improvements will be installed.

Building	Building Description	Overall	Footprint	Usable	Usable 1 st Floor	Retail	Office	Storage
1	Restaurant	6,412	3,206.00	4,132	1,877	0		3,206
2	Retail	10,600	5,300.00	7,422	3,711	5,300		5,300
3	Restaurant	4,786	2,393.00	3,572	1,786	0		2,393
4	Restaurant	2,800	1,400.00	1,784	834	0		1,400
5	Office	4,786	2,393.00	3,572	1,786	0	4,786	0
6	Office	2,800	1,400.00	1,784	834	0	2,800	0
7A	Gym	27,788	13,894	20,016				
7B	Gym Restaurant	6,412	3,206	4,132				3,206
7C	Gym Restaurant	2,800	1,400	1,784				1,400
8	Pool & Patio	14,000	14,000	14,000				
Total		83,184	48,592	62,198		5,300	7,586	16,905

- n) *Required Commercial Square Footage* – The mixed-use code requires 20% of the gross square footage of all structures be deed restricted as commercial.

The plan presented meets the requirements of the code as outlined on page 3 of the submitted plans dated October 4, 2021. The developer is proposing 44,128 square feet of commercial and 81,401 square feet of residential based on building pad area and one-story buildings above grade. Most likely, most structures will be two stories above grade and the commercial building area will be 83,184 square feet and the residential space will be 336,050 square feet (the residential number is based on 143 units at 2,350 square feet and excludes garage area). Phases 4 and 5, which are completely residential, are not allowed to submit for preliminary approval until the correct ratio of commercial square feet has been built for each phase. 60% of the required commercial square feet will need to be built to submit for preliminary approval of phase 4 and 100% of the required commercial will need to be built to submit for the preliminary of phase 5. The following are examples of potential areas of the residential and commercial buildings. It is most likely the actual area of the buildings will be different from what is represented but the 80% and 20% ratios must be met and will be monitored through the building permit approval process.

Ratio of Commercial to Residential				
	Residential Space			
		Units	143	
		Unit Size	2,350	
		Total Residential sf	336,050	
	Ratio Commercial/Residential		(sf)	(%)
		Total Residential Space	336,050	80.2%
		Total Commercial Space	83,184	19.8%
		Total Built Space	419,234	

- o) *Plat designation of restricted commercial space* – As part of the approval of the commercial space in the Project it is proposed that 16,905 square feet of the commercial buildings be installed for the sole purpose of storage. Because storage space does not require the calculation of water usage, these spaces shall be strictly prohibited from being used for anything other than storage. The amount of water dedicated for each commercial building and the areas designated as storage and therefore restricted for alternate use shall be clearly designated on the plat of each phase.
- p) *Setbacks* – The proposed development is required to meet the setback requirements for the mixed-use code and the conditions placed on the project through the rezoning approval. All commercial buildings are required to have an 8' side setback and all residential structures are required to have a 10' side setback. Residential setbacks along the western boundary are a minimum of 36', and residential setbacks along the eastern boundary are a minimum of 100'. All other setbacks are as listed in the C-2 zone.
- q) *Height of structures* – Structures cannot exceed 35' in height, measured from natural grade to the roof. Architectural elements may exceed the 35' limit as per code.
- r) *Transient Rental Overlay District* – The transient rental overlay district (TROD) covers the roughly 600' area of the project north of Main Street. Through exercising its discretion to make transitional determinations, as well as the landowner's voluntary exclusion of buildings within the transient rental overlay district (TROD), the City Council has determined that only those units designated as transient rentals in Exhibit D (attached hereto) may be rented as short-term nightly rentals. Such units must comply with all short-term rental requirements.
- s) *One Property Owners Association* – All phases of the master plan are required to be part of one property owner's association. Developer may create sub-associations for the commercial and residential portions of the Project, but both of these associations shall be subject to one master property owner's association that has final say. The owner's association is required to maintain all private areas including, private roads, alleys, parking areas and common areas. The requirement of one master owner's association is to reduce conflict in the future. In the past, in phased developments, a phase is sold to a different developer and the new developer objects to being part of the master owner's association. This is strictly prohibited, as it creates unneeded conflict between different parts of the project and raises questions as to what entity has final say. This is a master planned development and as such shall have one master owner's association, as required by Midway City Code.

- t) *Geotechnical Report* – The City has received two geotechnical reports for the property, one from 2017 and one from 2021. The geotechnical report from 2017 found water in some of the test pits on the west side of the property. The report from 2021 did not find water in any of the test pits, including pits dug near the test pits with water from 2017. The current proposal does not contemplate below grade parking, but this remains a possibility depending on soil conditions once excavation commences. The parties agree that Developer may amend this Master Plan Agreement to include below grade parking and that approval of only the addition of below grade parking shall be administrative, requiring approval of the City Planner and the City Engineer. However, the amendment to add below grade parking will not be allowed without the following requirements: Piezometers have been installed in multiple areas of the development to monitor water levels, especially in the areas of phases 2-5. The piezometers shall be monitored on a regular basis and at a minimum of four times per year, with monthly monitoring during construction. The City Council may approve, at its sole discretion, below grade parking if data from the piezometers is presented and appropriate engineering is proposed and approved to address water issues. The placement of the piezometers, including the specific locations and depths, shall be reviewed and approved by the Midway City engineer. The location and continued monitoring of each piezometer shall be in place at least until that area receives preliminary approval. Approval of underground parking will require an appearance before the City Council and a written amendment to this Master Plan Agreement agreed to by both the Developer and the City.
- u) *Blasting Prohibited* – Developer recognizes that the proposal to install underground parking will require extensive excavation within the Development, and that a good portion of the development sits on pot rock that may be difficult to remove. Developer is prohibited from blasting pot rock in order to clear and excavate areas for parking. Should removal of pot rock require blasting, or become too costly to justify the expense, the Developer will lose the density associated with the parking that is unavailable unless Developer proposes a redesign that meets existing zoning and setbacks, and replaces the parking lost. Such proposal shall require approval of the Midway City Council. Regardless of circumstance, no building will be allowed to exceed 35' feet in height, meaning that if underground parking is not possible, and above ground parking on the street level is the only option, a loss of one of the stories of livable square footage in that unit will be the natural consequence of not being able to put the parking underground.
- v) *Underground Parking* - Developer has obtained conditional approval from the Midway City Council to install underground parking garages beneath Phases 1 and 2. The conditions for installing the underground parking are as follows: First, a qualified geotechnical engineer or hydrologist must observe foundation, storm drain, and sewer line excavations to the proposed invert elevations for the presence and quantity of shallow groundwater during all

phases of the development. If groundwater is discovered showing conditions are different than those set forth in submitted groundwater reports and these conditions interfere with the plans to construct the underground parking, the Developer must return before the City Council with a plan for remediation that must be considered and approved by the City Council. If the proposed remediation is rejected by the City Council, it shall have authority to revoke permission to install underground parking. Second, perimeter foundation subdrains with cleanout to the lowest slab grade elevations below subgrade floors and garages must be installed. Final sizing of the subdrains can be based on the observations made during the initial excavation phase, but the initial design must be a minimum of eight inches. Third, the retaining areas for the subgrade parking must use landscaping rocks (actual rocks, not concrete blocks, etc.) and fencing, very similar to those found at the Riverwoods in Provo. Fourth, an executed written agreement between the Developer and Midway Irrigation Company granting permission to the Developer to pump water from the project (if needed) into Midway Irrigation Company ditches shall be submitted to the City Planner before any construction may commence on underground parking.

- w) *Landscaping* – The proposed development has a significant amount of frontage along Main Street. The view of Midway along Main Street is of high importance for the City. It is important to the residents of Midway that Main Street is aesthetically beautiful. Most residents of Midway use Main Street at least once a day, and maintaining a beautiful corridor through town is of high priority. Also, the Midway economy is dependent on tourism. A clean and orderly Main Street is vital for creating the atmosphere needed to create a beautiful community that will attract tourists. For these reasons, the commercial areas of the development shall be kept in agricultural production until constructed, and once those areas are developed, the commercial pads and surrounding area shall be landscaped until the structures are built. The landscaping may be minimal with grass and an irrigation system, but shall be kept orderly and maintained. There are many examples of commercial developments where the commercial pads are not maintained and become weed infested and an eyesore for the community. It is important that this situation is avoided along Midway's main corridor.
- x) *Traffic signal at Main Street and River Road* – UDOT has studied the traffic related issues for the intersection of Main Street and River Road. The study concluded that a traffic signal is warranted for the intersection, but UDOT does not have a timeline established for when the signal will be installed. Southhill will increase traffic to the intersection and as such the Developer shall pay 50% of any City costs expended on the installation of the traffic signal for required infrastructure, expansion of pavement, landscaping, etc. (excepting specifically any costs associated with right-of-way acquisition). Because UDOT's timeline for installation of the traffic signal is unknown, and the risk of overloading the intersection from traffic from the Development is likely,

phase 3 of the Project shall not be approved without the installation of the traffic signal. Developer shall have a choice at that time to bear the entire UDOT expense of installing the traffic signal or waiting for UDOT to install the signal. Either way, the plat for phase 3 shall not be recorded without the traffic signal first being installed.

- y) *Construction and/or Dedication of Project Improvements* – The Developer agrees to construct and/or dedicate Project improvements as directed by the City, including but not limited to roads, driveways, amenities, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the particular Phase of the Project.
- z) *Weed Control/Overburden* – The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project.
- aa) *Storm water control system* – The Developer shall install, at its sole cost and according to plans and specifications approved by the City, a storm water control system. On dedicated public roads, the ownership, maintenance, repair and replacement of the storm water system shall be the responsibility of the City. The storm drain system will be private except along Main Street which will be UDOT's responsibility.
- bb) *Culinary/Sewer Connections* – The Project shall be connected to the City water and Midway Sanitation District's sewer lines as shown on the approved plans.
- cc) *Secondary Water Connections* – The secondary water (outside irrigation) shall be provided by Midway Irrigation Company. Developer shall connect to Midway Irrigation Company's secondary system, as shown on the approved plans, and shall comply with all applicable rules and regulations of Midway Irrigation Company. Secondary water laterals and meters shall be installed by Developer for all common land-scaped areas, in a size and type approved by Midway Irrigation Company.

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 may impose additional conditions with regards to mitigation of the impacts of this development as it comes before the City Council for preliminary and final approval. Additional requirements not in conflict with the terms and conditions of this Agreement shall be contained in a specific Development Agreement for each Phase. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.
 - 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 terms and conditions of this Master Plan Agreement shall run with the land and be binding upon the successors and assigns of the Developer. 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. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall 1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and 2) have no right to bring any

action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.

- F. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.
- G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).
- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.
- K. Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing and warranting Party:
1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
 3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.
- L. No Third-Party Beneficiaries. This Agreement is between the City and 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:

Midway Heritage Development, LLC
143 W Farm Springs Lane

Midway, UT 84049

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 the first plat for the Project is recorded.

///

[Remainder of Page Left Intentionally Blank]

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

CITY OF MIDWAY

Attest:



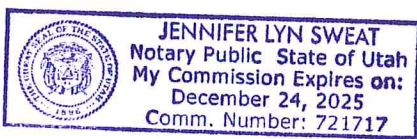
Celeste Johnson, Mayor



Brad Wilson, City Recorder

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

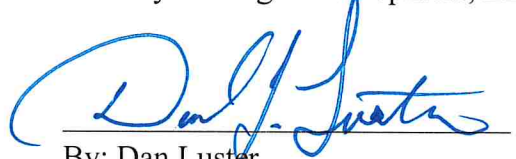
The foregoing instrument was acknowledged before me this 10 day of JUNE, 2023, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.





NOTARY PUBLIC

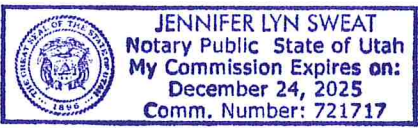
THE DEVELOPER OF SOUTHILL
Midway Heritage Development, LLC



By: Dan Luster
Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 13 day of JUNE, 2023, by Dan Luster, who executed the foregoing instrument in his capacity as the Manager of the Developer, Midway Heritage Development, LLC.





NOTARY PUBLIC

EXHIBIT A

Surveyed Description

BEGINNING NORTH 89°54'33 EAST 140.12 FEET ALONG THE QUARTER SECTION LINE AND NORTH 1771.26 FEET FROM THE 1995 WASATCH COUNTY MOUNUMENT FOR THE SOUTH ONE-QUARTER CORNER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

AND RUNNING THENCE ALONG EXISTING FENCE LINES THE FOLLOWING FOUR COURSES: 1) N00°02'06"E 197.49 FEET; 2) N88°57'06"W 134.85 FEET; 3) N02°14'22"W 414.09 FEET; (4) THENCE N89°20'21"E 131.56 FEET; THENCE N00°00'14"W 258.00 FEET; THENCE S89°48'48"W 137.26 FEET; THENCE S89°24'45"W 357.72 FEET; THENCE N00°35'15"W 20.00 FEET; THENCE N89°24'45"E 323.19 FEET; THENCE N35°24'45"E 24.72 FEET; THENCE N89°24'45"E 19.91 FEET TO A POINT ON A SURVEYED LINE PER THAT CERTAIN RECORD OF SURVEY PERFORMED BY JOHN B. STAHL CIRCA 2001 AND FILED IN THE WASATCH COUNTY SURVEYOR'S OFFICE AS FILE NO. 1597; THENCE ALONG SAID SURVEY THE FOLLOWING FOUR COURSES: 1) N00°33'16"E 87.06 FEET; 2) N73°52'08"E 460.00 FEET; 3) N58°11'08"E 237.00 FEET; 4) N43°06'08"E 351.00 FEET; THENCE N26°14'27"E 60.68 FEET TO A FOUND REBAR & CAP STAMPED 'CORNERSTONE'; THENCE S10°04'51"E 703.60 FEET ALONG A FENCE LINE TO A POINT ON A SURVEYED LINE PER THAT CERTAIN RECORD OF SURVEY PERFORMED ALAN L. SIBSON CIRCA 2008 AND FILED IN THE WASATCH COUNTY SURVEYOR'S OFFICE AS FILE NO. 2236; THENCE ALONG SAID SURVEYED BOUNDARY THE FOLLOWING THREE COURSES: 1) S89°50'30"W 68.46 FEET; 2) S00°11'33"W 368.30 FEET; 3) N89°50'30"E 165.00 FEET; THENCE S00°11'33"W 528.00 FEET; THENCE N89°11'13"W 429.60 FEET; THENCE N02°16'03"W 180.63 FEET; THENCE N88°12'50"W 192.06 FEET; THENCE S02°46'47"E 172.79 FEET; THENCE N89°06'25"W 350.11 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 26.835 ACRES.

Legal Description for Alta Strada Parcel. Entry No. 447467

BEGINNING AT A POINT WHICH IS 7.85 CHAINS EAST AND SOUTH 1 DEGREE 00 MINUTES EAST 14.20 CHAINS FROM THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 35, IN TOWNSHIP 3 SOUTH OF RANGE 4 EAST OF THE SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 80 DEGREES 10 MINUTES EAST 190.00 FEET; THENCE NORTH 1 DEGREE 00 MINUTES WEST 229.26 FEET; THENCE NORTH 80 DEGREES 10 MINUTES WEST 190.00 FEET; THENCE SOUTH 1 DEGREE 00 MINUTES EAST 229.26 FEET TO THE PLACE OF BEGINNING. ALSO KNOWN BY A SURVEY BY BING CHRISTENSEN AS FOLLOWS: COMMENCING AT A POINT ON A FENCE LINE SEPARATING THE MARGARET ALDER PROPERTY AND THE DANIEL BALLSTAEDT PROPERTY, SAID POINT BEING EAST ALONG A FENCE LINE 471.68 FEET AND SOUTH 2 DEGREES 13 MINUTES 06 SECONDS EAST ALONG A FENCE LINE 678. 16 FEET FROM A FENCE CORNER ASSUMED TO BE THE CENTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 80 DEGREES 10 MINUTES EAST 194.71 FEET; THENCE SOUTH 2 DEGREES 13 MINUTES 06 SECONDS EAST 180.63 FEET TO A FENCE LINE ON THE NORTHERLY BOUNDARY OF MAIN STREET, MIDWAY, UTAH; THENCE NORTH 89 DEGREES 05 MINUTES 16 SECONDS WEST ALONG SAID FENCE LINE 190.71 FEET; THENCE NORTH 2 DEGREES 13 MINUTES 06 SECONDS WEST ALONG A FENCE LINE 210.87 FEET TO THE POINT OF BEGINNING.

21-2788 06-6212
 6-6279 06-6261
 14-1502
 21-2599
 6-4720
 15-3440

EXHIBIT B

EXHIBIT C

The Village

Traffic Impact Study



Midway, Utah

December 20, 2021

UT21-1835



EXECUTIVE SUMMARY

This study addresses the traffic impacts associated with the proposed The Village development located in Midway, Utah. The Village project is located on the north side of Main Street, east of River Road.

The purpose of this traffic impact study is to analyze traffic operations at key intersections for existing (2021) conditions with and without the proposed project and to recommend mitigation measures as needed. The evening peak hour level of service (LOS) results are shown in Table ES-1. Recommended storage lengths are shown in Table ES-2.

Table ES-1: Evening Peak Hour Level of Service Results

Intersection	Level of Service		
	Existing (2021)		
	Background	Mitigated Background	Plus Project
1 River Road / Main Street (S.R. 113)	e	A	A
2 Fox Den Road / Main Street (S.R. 113)	b	b	c
3 580 East / Main Street (S.R. 113)	b	b	c
4 670 East / Main Street (S.R. 113)	a	b	b
5 Access 1 / Main Street (S.R. 113)	-	-	c
6 Access 3 / River Road	-	-	a

1. Intersection LOS values represent the overall intersection average for roundabout, signalized, and all-way stop-controlled (AWSC) intersections (uppercase letter) and the worst movement for all other unsignalized intersections (lowercase letter)
 2. BG = Background (w/without project traffic), PP = Plus Project (with project traffic)
 Source: Hales Engineering, December 2021

Table ES-2: Recommended Storage Lengths

Intersection	Recommended Storage Lengths (feet)															
	Northbound				Southbound				Eastbound				Westbound			
	LT		RT		LT		RT		LT		RT		LT		RT	
	E	P	E	P	E	P	E	P	E	P	E	P	E	P	E	P
1 580 East / Main Street (S.R. 113)	-	-	-	-	-	-	-	-	-	100	-	-	-	-	-	50
5 Access 1 / Main Street (S.R. 113)	-	-	-	-	-	-	-	-	-	100	-	-	-	-	-	-

1. Storage lengths are based on 2021 95th percentile queue lengths and do not include required deceleration / taper distances
 2. E= Existing storage length (approximate), if applicable; P= proposed storage length for new turn lanes or changes to existing turn lanes, if applicable
 Source: Hales Engineering, December 2021

SUMMARY OF KEY FINDINGS & RECOMMENDATIONS
Project Conditions

- The development will consist of residential townhome and single-family units and some commercial
- The project is anticipated to generate approximately 4,412 new weekday daily trips, including 302 trips in the morning peak hour, and 395 trips in the evening peak hour

2021	Background	Plus Project
Assumptions	<ul style="list-style-type: none"> • Traffic volumes from Whitaker Farms, Remund Farms, Indian Summer, Alder Meadows, Midway Crest, and St Prex developments added 	<ul style="list-style-type: none"> • 580 East / Main St (S.R. 113): Construct EB left-turn pocket and stripe WB right-turn pocket • West Access / Main St (S.R. 113): Construct EB left-turn pocket
Findings	<ul style="list-style-type: none"> • Poor LOS at the River Rd / Main St (S.R. 113) intersection 	<ul style="list-style-type: none"> • Acceptable LOS
Mitigations	<ul style="list-style-type: none"> • River Rd / Main St (S.R. 113): Install signal, left-turn pockets on all approaches, and right-turn pockets on EB and WB approaches. It is estimated that approximately 11% of volumes through this intersection will be project-related when the project is complete. 	<ul style="list-style-type: none"> • None are needed. While the Access 3 / River Road intersection works well operationally, River Road could benefit from a southbound left-turn pocket to separate these movements.

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I. INTRODUCTION

A. Purpose

This study addresses the traffic impacts associated with the proposed The Village development located in Midway, Utah. The proposed project is located on the north side of Main Street, east of River Road. Figure 1 shows a vicinity map of the proposed development.

The purpose of this traffic impact study is to analyze traffic operations at key intersections for existing (2021) conditions with and without the proposed project and to recommend mitigation measures as needed.



Figure 1: Vicinity map showing the project location in Midway, Utah

B. Scope

The study area was defined based on conversations with the development team. This study was scoped to evaluate the traffic operational performance impacts of the project on the following intersections:

- River Road / Main Street (S.R. 113)
- Fox Den Road / Main Street (S.R. 113)
- 580 East / Main Street (S.R. 113)
- 670 East / Main Street (S.R. 113)

C. Analysis Methodology

Level of service (LOS) is a term that describes the operating performance of an intersection or roadway. LOS is measured quantitatively and reported on a scale from A to F, with A representing the best performance and F the worst. Table 1 provides a brief description of each LOS letter designation and an accompanying average delay per vehicle for both signalized and unsignalized intersections.







The *Highway Capacity Manual* (HCM), 6th Edition, 2016 methodology was used in this study to remain consistent with "state-of-the-practice" professional standards. This methodology has different quantitative evaluations for signalized and unsignalized intersections. For signalized, roundabout, and all-way stop-controlled (AWSC) intersections, the LOS is provided for the overall intersection (weighted average of all approach delays). For all other unsignalized intersections, LOS is reported based on the worst movement.

Using Synchro/SimTraffic software, which follow the HCM methodology, the peak hour LOS was computed for each study intersection. Multiple runs of SimTraffic were used to provide a statistical evaluation of the interaction between the intersections. The detailed LOS reports are provided in Appendix B. Hales Engineering also calculated the 95th percentile queue lengths for the study intersections using SimTraffic. The detailed queue length reports are provided in Appendix D.

D. Level of Service Standards

For the purposes of this study, a minimum acceptable intersection performance for each of the study intersections was set at LOS D. If levels of service E or F conditions exist, an explanation and/or mitigation measures will be presented. A LOS D threshold is consistent with "state-of-the-practice" traffic engineering principles for urbanized areas.

Table 1: Level of Service Description

LOS	Description of Traffic Conditions	Average Delay (seconds/vehicle)	
		Signalized Intersections	Unsignalized Intersections
A	 Free Flow / Insignificant Delay	≤ 10	≤ 10
B	 Stable Operations / Minimum Delays	> 10 to 20	> 10 to 15
C	 Stable Operations / Acceptable Delays	> 20 to 35	> 15 to 25
D	 Approaching Unstable Flows / Tolerable Delays	> 35 to 55	> 25 to 35
E	 Unstable Operations / Significant Delays	> 55 to 80	> 35 to 50
F	 Forced Flows / Unpredictable Flows / Excessive Delays	> 80	> 50

Source: Hales Engineering Descriptions, based on the *Highway Capacity Manual (HCM)*, 6th Edition, 2016 Methodology (Transportation Research Board)

II. EXISTING (2021) BACKGROUND CONDITIONS

A. Purpose

The purpose of the background analysis is to study the intersections and roadways during the peak travel periods of the day with background traffic and geometric conditions. Through this analysis, background traffic operational deficiencies can be identified, and potential mitigation measures recommended. This analysis provides a baseline condition that may be compared to the build conditions to identify the impacts of the development.

B. Roadway System

The primary roadways that will provide access to the project site are described below:

Main Street (S.R. 113) – is a state-maintained roadway (classified by UDOT access management standards as a “Community – Urban Importance” facility, or access category 8 roadway). Main Street (S.R. 113) has one travel lane in each direction. As identified and controlled by UDOT, a “Community – Urban Importance” access classification identifies minimum signalized intersection spacing of one-quarter mile (1,320 feet), minimum unsignalized street spacing of 300 feet, and minimum driveway spacing of 150 feet. The posted speed limit on Main Street (S.R. 113) is 35 mph.

River Road – is a city-maintained roadway. The roadway has one travel lane in each direction. The posted speed limit is 25 mph in the study area.

C. Traffic Volumes

Weekday morning (7:00 to 9:00 a.m.) and evening (4:00 to 6:00 p.m.) peak period traffic counts were performed at the following intersections:

- River Road / Main Street (S.R. 113)
- Fox Den Road / Main Street (S.R. 113)
- 580 East / Main Street (S.R. 113)
- 670 East / Main Street (S.R. 113)

The counts were performed on Thursday, February 4, Tuesday, February 9, and Tuesday, May 25, 2021. The morning peak hour was determined to be between 7:30 and 8:30 a.m., and the evening peak hour was determined to be between 5:00 and 6:00 p.m. The evening peak hour volumes were approximately 22% higher than the morning peak hour volumes. Therefore, the evening peak hour volumes were used in the analysis to represent the worst-case conditions. Detailed count data are included in Appendix A.

The traffic counts were collected during the COVID-19 pandemic when traffic volumes were slightly reduced due to social distancing measures. According to the UDOT Automatic Traffic

Signal Performance Measures (ATSPM) website, the traffic volumes on February 6, 2020 (pre-social distancing) were approximately 17% higher than those on February 4, 2021. Therefore, the collected data were increased by 17% to represent normal conditions.

Traffic volumes were added from other incomplete or planned developments, including the following:

- Whitaker Farms
- Remund Farms
- Indian Summer
- Alder Meadows
- Midway Crest
- St Prex

These additional developments are estimated to generate approximately 188 trips during the evening peak hour, which were assigned to various routes.

Figure 2 shows the existing evening peak hour volumes as well as intersection geometry at the study intersections.

D. Level of Service Analysis

Hales Engineering determined that the River Road / Main Street (S.R. 113) intersection currently operates at a poor LOS during the evening peak hour, as shown in Table 2. These results serve as a baseline condition for the impact analysis of the proposed development during existing (2021) conditions.

E. Queuing Analysis

Hales Engineering calculated the 95th percentile queue lengths for each of the study intersections. No significant queuing was observed during the evening peak hour.

F. Mitigation Measures

According to UDOT guidelines, a traffic signal is warranted at the River Road / Main Street (S.R. 113) intersection. Because it performs at a poor LOS, it is recommended that one be installed. This may require some widening at the intersection to accommodate separate left-turn pockets on all approaches and right-turn pockets on the east- and westbound approaches.

With the proposed improvement, it is anticipated that all study intersections will perform at an acceptable LOS, as shown in Table 3.

Evening Peak Hour
Figure 2

Midway - The Village TIS
Existing (2021) Background



801.766.4343
06/04/2021

Hales Engineering
1220 North 500 West Ste 202, Lehi, UT, 84043

Table 2: Existing (2021) Background Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
River Road / Main Street (S.R. 113)	NB/SB Stop	SBL	41.3	e
Fox Den Road / Main Street (S.R. 113)	NB Stop	NBL	11.2	b
580 East / Main Street (S.R. 113)	NB Stop	NBL	11.3	b
670 East / Main Street (S.R. 113)	SB Stop	SBL	10.0	a

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.
 2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

Source: Hales Engineering, October 2021

Table 3: Mitigated Existing (2021) Background Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
River Road / Main Street (S.R. 113)	Signal	-	8.1	A
Fox Den Road / Main Street (S.R. 113)	NB Stop	NBL	12.3	b
580 East / Main Street (S.R. 113)	NB Stop	NBL	12.8	b
670 East / Main Street (S.R. 113)	SB Stop	SBL	10.9	b

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.
 2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

Source: Hales Engineering, October 2021

III. PROJECT CONDITIONS

A. Purpose

The project conditions discussion explains the type and intensity of development. This provides the basis for trip generation, distribution, and assignment of project trips to the surrounding study intersections defined in Chapter I.

B. Project Description

The proposed The Village development is located on the north side of Main Street, east of River Road. The development will consist of residential townhome and single-family units and some commercial, including retail, restaurant(s), office, and a clubhouse. A concept plan for the proposed development is provided in Appendix C. The commercial square footage used for this study is conservatively high to account for the possibility that additional space may be constructed. The proposed land use for the development has been identified in Table 4.

Table 4: Project Land Uses

Land Use	Intensity
Townhomes	143 Units
Retail	10,200 sq. ft.
Restaurant	23,900 sq. ft.
Office	11,100 sq. ft.
Health/Fitness Club	37,900 sq. ft.

C. Trip Generation

Trip generation for the development was calculated using trip generation rates published in the Institute of Transportation Engineers (ITE), *Trip Generation*, 10th Edition, 2017. Due to the mixed-use nature of the development, it is likely that several trips will be made via walking internally. Based on standard ITE methodology, mixed-use trip reductions of 8% and 38% were calculated for the morning and evening peak hour, respectively. These reductions were applied to all but the clubhouse land use as this type does not have its own field in the methodology. To be conservative, the evening peak hour reduction was lowered to 30%. For the clubhouse, because the HOA is anticipated to include memberships in its fees, it was assumed that approximately 12% of trips to and from it would be internal to keep the number of internal trips consistent with the prior square footage. Trip generation for the proposed project is included in Table 5.

The total new trip generation for the development is as follows:

- Daily Trips: 4,672
- Morning Peak Hour Trips: 300
- Evening Peak Hour Trips: 386

Table 5: Trip Generation

Trip Generation Midway - The Village TIS											
Weekday Daily Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Internal Capture	New Trips Entering	New Trips Exiting	Total New Daily Trips
Multifamily Housing (Low-Rise) (220)	143	Dwelling Units	1,042	50%	50%	521	521	19%	422	422	844
Shopping Center (820)	10.2	1,000 Sq. Ft. GLA	1,274	50%	50%	637	637	19%	516	516	1,032
Quality Restaurant (931)	23.9	1,000 Sq. Ft. GFA	2,004	50%	50%	1,002	1,002	19%	812	812	1,624
General Office Building (710)	11.1	1,000 Sq. Ft. GFA	126	50%	50%	63	63	19%	51	51	102
Health/Fitness Club (492)	37.9	1,000 Sq. Ft. GFA	1,320	50%	50%	660	660	19%	535	535	1,070
Total			5,766			2,883	2,883		2,336	2,336	4,672
Morning Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Internal Capture	New Trips Entering	New Trips Exiting	Total New AM Trips
Multifamily Housing (Low-Rise) (220)	143	Dwelling Units	68	23%	77%	16	52	8%	15	48	63
Shopping Center (820)	10.2	1,000 Sq. Ft. GLA	158	62%	38%	98	60	8%	90	55	145
Quality Restaurant (931)	23.9	1,000 Sq. Ft. GFA	18	50%	50%	9	9	8%	8	8	16
General Office Building (710)	11.1	1,000 Sq. Ft. GFA	38	86%	14%	33	5	8%	30	5	35
Health/Fitness Club (492)	37.9	1,000 Sq. Ft. GFA	50	51%	49%	26	25	20%	21	20	41
Total			332			182	151		164	136	300
Evening Peak Hour Land Use ¹	# of Units	Unit Type	Trip Generation	% Entering	% Exiting	Trips Entering	Trips Exiting	Internal Capture	New Trips Entering	New Trips Exiting	Total New PM Trips
Multifamily Housing (Low-Rise) (220)	143	Dwelling Units	82	63%	37%	52	30	30%	36	21	57
Shopping Center (820)	10.2	1,000 Sq. Ft. GLA	102	48%	52%	49	53	30%	34	37	71
Quality Restaurant (931)	23.9	1,000 Sq. Ft. GFA	188	67%	33%	126	62	30%	88	43	131
General Office Building (710)	11.1	1,000 Sq. Ft. GFA	16	16%	84%	3	13	30%	2	9	11
Health/Fitness Club (492)	37.9	1,000 Sq. Ft. GFA	132	57%	43%	75	57	12%	66	50	116
Total			520			305	215		226	160	386

1. Land Use Code from the Institute of Transportation Engineers (ITE) Trip Generation, 10th Edition, 2017.

SOURCE: Hales Engineering, December 2021

D. Trip Distribution and Assignment

Project traffic is assigned to the roadway network based on the type of trip and the proximity of project access points to major streets, high population densities, and regional trip attractions. Existing travel patterns observed during data collection also provide helpful guidance to establishing these distribution percentages, especially near the site. Based on existing vehicles entering and exiting River Road, 580 East, Fox Den Road, and 670 East from Main Street (S.R. 113), and the fact that Utah County and the center of Midway draw some traffic to and from the west, the east and west ends of Main Street (S.R. 113) were given equivalent distributions. The resulting distribution of project generated trips during the evening peak hour is shown in Table 6.

Table 6: Trip Distribution

Direction	% To/From Project
North	15%
South	5%
East	40%
West	40%

These trip distribution assumptions were used to assign the evening peak hour generated traffic at the study intersections to create trip assignment for the proposed development. Trip assignment for the development is shown in Figure 3.

Midway - The Village TIS
Trip Assignment



Evening Peak Hour
Figure 3

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12/20/2021

E. Access

The proposed access for the site will be gained at the following locations (see also concept plan in Appendix C):

Main Street (S.R. 113):

- Access 1 will be located approximately 200 feet east of the Fox Den Road / Main Street (S.R. 113) intersection. It will access the project on the north side of Main Street (S.R. 113). It is anticipated that the access will be stop-controlled.
- Access 2 will be located directly across from the 580 East / Main Street (S.R. 113) intersection. It will access the project on the north side of Main Street (S.R. 113). It is anticipated that the access will be stop-controlled.

River Road:

- Access 3 will be located approximately 880 feet north of the River Road / Main Street (S.R. 113) intersection. It will access the project on the east side of River Road. It is anticipated that the access will be stop-controlled.

F. Auxiliary Lane Requirements

UDOT Administrative Rule R930-6 outlines minimum turn volumes (measured in vehicles per hour) to warrant auxiliary lanes. It is anticipated that auxiliary lanes are required for these accesses, as shown in Table 7 and Table 8.

Table 7: Auxiliary Lane Summary – Access 1

Auxiliary Lane Type	Minimum Requirement	Measure	Met?	
Left turn	Deceleration (EB-to-NB)	25 vph	67 vph	Yes
Right turn	Deceleration (WB-to-NB)	50 vph	27 vph	No

Table 8: Auxiliary Lane Summary – Access 2

Auxiliary Lane Type	Minimum Requirement	Measure	Met?	
Left turn	Deceleration (EB-to-NB)	25 vph	36 vph	Yes
Right turn	Deceleration (WB-to-NB)	50 vph	63 vph	Yes

IV. EXISTING (2021) PLUS PROJECT CONDITIONS

A. Purpose

The purpose of the existing (2021) plus project analysis is to study the intersections and roadways during the peak travel periods of the day for existing background traffic and geometric conditions plus the net trips generated by the proposed development. This scenario provides valuable insight into the potential impacts of the proposed project on background traffic conditions.

B. Traffic Volumes

Hales Engineering added the project trips discussed in Chapter III to the existing (2021) background traffic volumes to predict turning movement volumes for existing (2021) plus project conditions. Existing (2021) plus project evening peak hour turning movement volumes are shown in Figure 4.

C. Level of Service Analysis

Hales Engineering determined that all study intersections are anticipated to operate at acceptable levels of service during the evening peak hour with project traffic added, as shown in Table 9.

D. Queuing Analysis

Hales Engineering calculated the 95th percentile queue lengths for each of the study intersections. No significant queuing is anticipated during the evening peak hour.

E. Mitigation Measures

No additional mitigation measures are needed. It is estimated that the portion of project-related traffic traveling through the River Road / Main Street (S.R. 113) intersection will be approximately 11%.

While the Access 3 / River Road intersection works well operationally, a southbound left-turn lane could benefit River Road by separating the lefts from the thrus so that the thrus are not impeded.

F. Recommended Storage Lengths

Hales Engineering determined recommended storage lengths based on the 95th percentile queue lengths given in the future (2021) plus project scenario. These storage lengths do not include the taper length. Recommended storage lengths for the study intersections are shown in Table 10. Intersections shown in Table 10 include new intersections and existing intersections that have recommended storage length changes.

Table 9: Existing (2021) Plus Project Evening Peak Hour LOS

Intersection		Level of Service		
Description	Control	Movement ¹	Aver. Delay (Sec. / Veh.)	LOS ²
River Road / Main Street (S.R. 113)	Signal	-	8.5	A
Fox Den Road / Main Street (S.R. 113)	NB Stop	NBL	18.5	c
580 East / Main Street (S.R. 113)	NB/SB Stop	SBL	18.2	c
670 East / Main Street (S.R. 113)	SB Stop	SBL	14.1	b
Access 1 / Main Street (S.R. 113)	SB Stop	SBL	19.5	c
Access 3 / River Road	WB Stop	WBL	8.0	a

1. Movement indicated for unsignalized intersections where delay and LOS represents worst movement. SBL = Southbound left movement, etc.
2. Uppercase LOS used for signalized, roundabout, and AWSC intersections. Lowercase LOS used for all other unsignalized intersections.

Source: Hales Engineering, October 2021

Table 10: Recommended Storage Lengths

Intersection	Recommended Storage Lengths (feet)																
	Northbound				Southbound				Eastbound				Westbound				
	LT		RT		LT		RT		LT		RT		LT		RT		
	E	P	E	P	E	P	E	P	E	P	E	P	E	P	E	P	
1	580 East / Main Street (S.R. 113)	-	-	-	-	-	-	-	-	-	100	-	-	-	-	-	50
5	Access 1 / Main Street (S.R. 113)	-	-	-	-	-	-	-	-	-	100	-	-	-	-	-	-

1. Storage lengths are based on 2021 95th percentile queue lengths and do not include required deceleration / taper distances

2. E= Existing storage length (approximate), if applicable; P= proposed storage length for new turn lanes or changes to existing turn lanes, if applicable

Source: Hales Engineering, December 2021

Midway - The Village TIS
Existing (2021) Plus Project



Evening Peak Hour
Figure 4

Hales Engineering
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12/20/2021

APPENDIX A

Turning Movement Counts

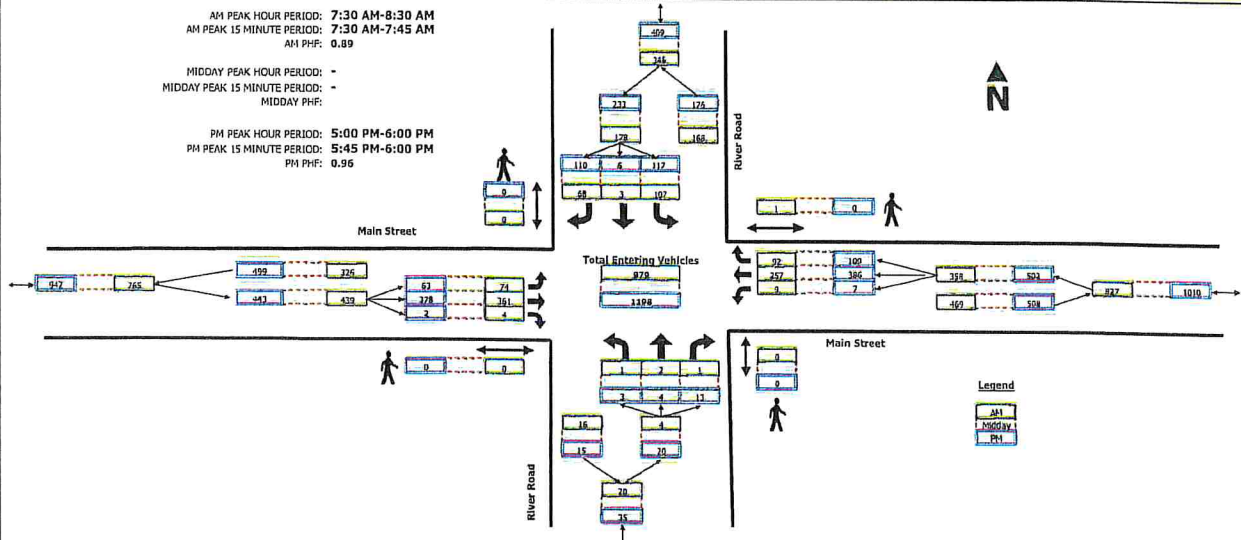
TrafficCounts

2364 North 1450 East
Lehi, UT 84043
801.636.0891

Intersection Turning Movement Summary

Intersection: River Road / Main Street
North/South: River Road
East/West: Main Street
Jurisdiction: Midway
Project Title: Beaugency TIS Update
Project No: UT21-1935
Weather: Clear

Date: 2-2-21, Thu
COVID-19 Adjustment: 85.5%
Month of Year Adjustment: 100.0%
Adjustment Station #: 0
Growth Rate: 0.0%
Number of Years: 0



RAW COUNT SUMMARIES	River Road Northbound				River Road Southbound				Main Street Eastbound				Main Street Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	0	0	2	0	9	1	6	0	12	43	0	0	6	36	18	0	133
7:15 - 7:30	0	0	0	0	25	0	4	0	12	74	0	0	1	32	21	0	169
7:30 - 7:45	0	1	1	0	50	1	13	0	16	117	0	0	2	55	20	0	276
7:45 - 8:00	0	1	0	0	26	1	16	0	16	84	2	0	5	76	34	1	261
8:00 - 8:15	1	0	0	0	12	0	16	0	16	76	1	0	1	65	25	0	213
8:15 - 8:30	0	0	0	0	19	1	23	0	26	84	1	0	1	61	13	0	229
8:30 - 8:45	1	0	2	0	26	0	23	1	30	91	2	0	0	76	18	0	269
8:45 - 9:00	1	0	2	0	30	0	12	0	28	78	0	0	1	82	22	0	256
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
9:00 - 9:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:15 - 9:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:30 - 9:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:45 - 10:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:15 - 15:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:30 - 15:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:45 - 16:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
16:00 - 16:15	0	0	2	0	12	0	16	1	26	92	1	0	1	111	32	0	293
16:15 - 16:30	0	1	1	0	37	0	26	0	11	110	1	0	2	90	13	0	292
16:30 - 16:45	2	1	2	0	28	0	32	0	12	95	0	5	2	106	32	0	302
16:45 - 17:00	0	0	5	0	28	1	25	0	5	76	2	0	2	87	36	0	267
17:00 - 17:15	1	2	7	0	30	2	28	0	16	87	1	0	4	98	33	0	306
17:15 - 17:30	2	1	4	0	26	2	33	0	11	105	0	0	1	102	23	0	310
17:30 - 17:45	0	0	2	0	33	0	27	0	21	101	0	0	0	71	12	0	267
17:45 - 18:00	0	1	0	0	28	2	22	0	15	85	1	0	2	115	41	0	312

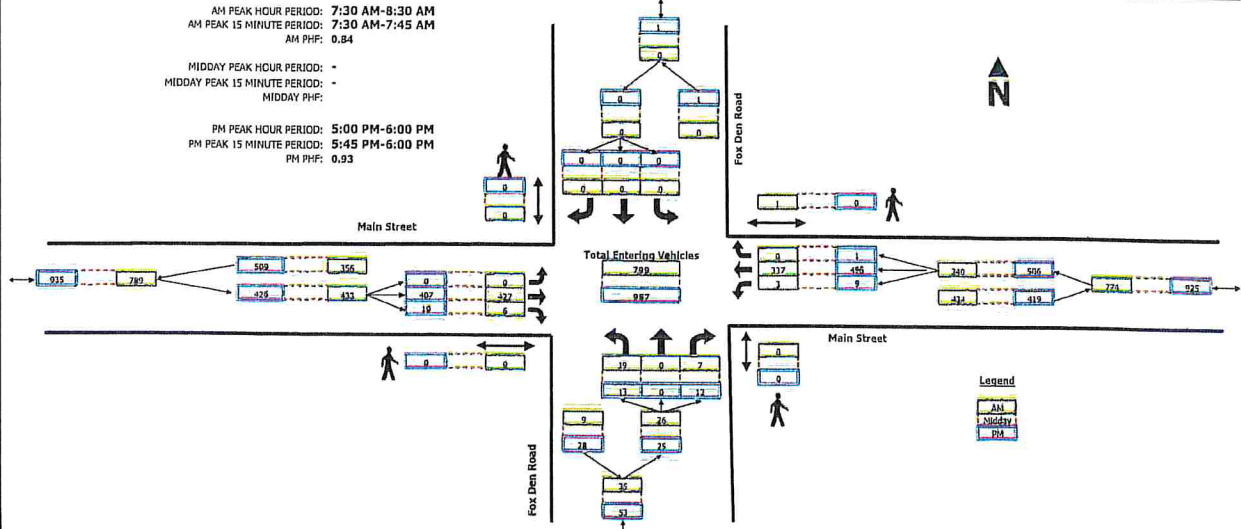
TrafficCounts

2364 North 1450 East
Lehi, UT 84043
801.636.0891

Intersection Turning Movement Summary

Intersection: Fox Den Road / Main Street
North/South: Fox Den Road
East/West: Main Street
Jurisdiction: Midway
Project Title: Beaugency TIS Update
Project No: UT22-1835
Weather: Clear

Date: 2-4-21, Thu
COVID-19 Adjustment: 85.5%
Month of Year Adjustment: 100.0%
Adjustment Station #: 0
Growth Rate: 0.0%
Number of Years: 0



RAW COUNT SUMMARIES	Fox Den Road Northbound				Fox Den Road Southbound				Main Street Eastbound				Main Street Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	2	1	2	0	1	0	0	0	1	44	1	0	1	61	0	0	114
7:15 - 7:30	4	0	2	0	0	0	0	0	0	89	4	0	0	48	0	0	147
7:30 - 7:45	4	0	2	0	0	0	0	0	0	157	0	0	0	75	0	0	238
7:45 - 8:00	6	0	2	0	0	0	0	0	0	98	1	0	1	104	1	0	212
8:00 - 8:15	5	0	1	0	0	0	0	0	0	81	1	0	1	87	0	0	176
8:15 - 8:30	4	0	2	0	0	0	0	0	0	91	4	0	1	71	0	0	173
8:30 - 8:45	1	1	0	0	0	0	0	0	0	102	4	1	5	97	0	0	210
8:45 - 9:00	2	0	5	0	0	0	0	0	0	98	6	0	5	104	0	0	220
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
9:00 - 9:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:15 - 9:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:30 - 9:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:45 - 10:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:15 - 15:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:30 - 15:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:45 - 16:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
16:00 - 16:15	4	0	1	0	0	0	0	0	0	97	4	0	1	139	0	0	246
16:15 - 16:30	4	0	2	0	0	0	0	0	0	129	7	0	2	97	0	1	241
16:30 - 16:45	1	0	2	0	0	0	0	0	0	111	0	4	2	130	0	0	246
16:45 - 17:00	1	0	1	0	0	0	0	0	0	82	1	0	1	132	0	0	218
17:00 - 17:15	1	0	0	0	0	0	0	0	0	104	1	0	0	144	0	0	250
17:15 - 17:30	1	0	6	0	0	0	0	0	0	102	5	0	1	123	1	0	239
17:30 - 17:45	4	0	2	0	0	0	0	0	0	119	5	0	4	78	0	0	212
17:45 - 18:00	7	0	4	0	0	0	0	0	0	82	8	0	4	151	0	0	256

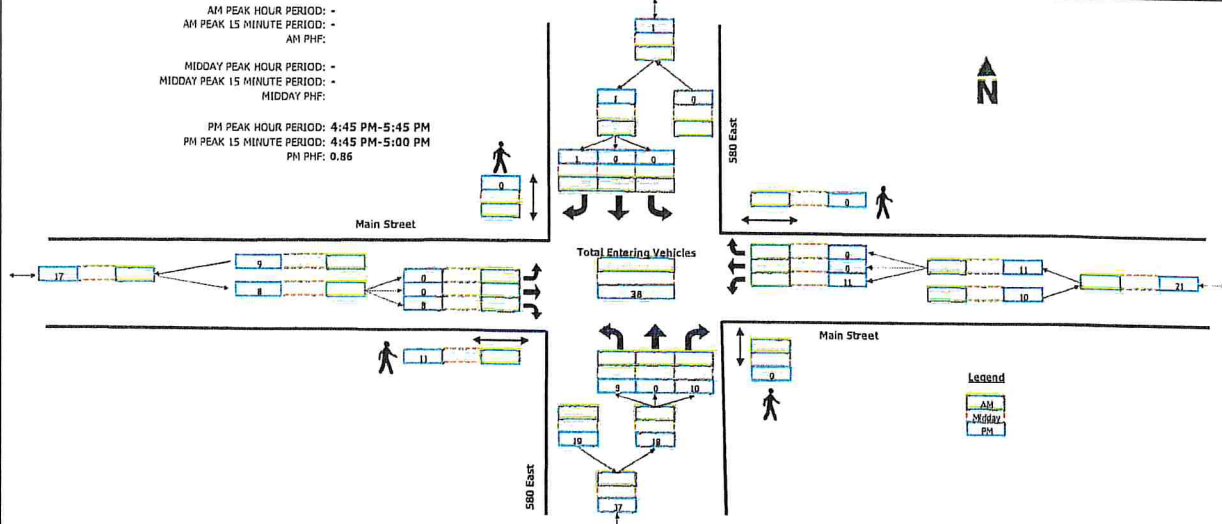
TrafficCounts

2364 North 1450 East
Lehi, UT 84043
801.636.0891

Intersection Turning Movement Summary

Intersection: S80 East / Main Street
North/South: S80 East
East/West: Main Street
Jurisdiction: Midway
Project Title: The Village TIS
Project No: UT21-1835
Weather: Clear

Date: 5-26-21, Tue
COVID-19 Adjustment: 85.5%
Month of Year Adjustment: 100.0%
Adjustment Station #: 0
Growth Rate: 0.0%
Number of Years: 0



RAW COUNT SUMMARIES	S80 East Northbound				S80 East Southbound				Main Street Eastbound				Main Street Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:15 - 7:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:30 - 7:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:45 - 8:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:00 - 8:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:15 - 8:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:30 - 8:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8:45 - 9:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
9:00 - 9:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:15 - 9:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:30 - 9:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:45 - 10:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:15 - 15:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:30 - 15:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:45 - 16:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
16:00 - 16:15	0	0	4	0	0	0	0	1	0	0	0	0	1	0	0	0	5
16:15 - 16:30	0	0	1	0	0	0	0	0	0	0	2	0	5	0	0	0	8
16:30 - 16:45	0	0	0	0	0	0	0	0	0	1	12	2	2	0	0	0	3
16:45 - 17:00	2	0	2	0	0	0	0	0	0	6	6	1	0	0	0	0	11
17:00 - 17:15	2	0	2	0	0	0	0	0	0	0	0	4	0	0	0	0	8
17:15 - 17:30	4	0	1	0	0	0	0	0	0	1	1	2	0	0	0	0	8
17:30 - 17:45	0	0	5	0	0	0	1	0	0	1	4	4	0	0	0	0	11
17:45 - 18:00	2	0	1	0	0	0	0	0	0	2	5	1	0	0	0	0	6

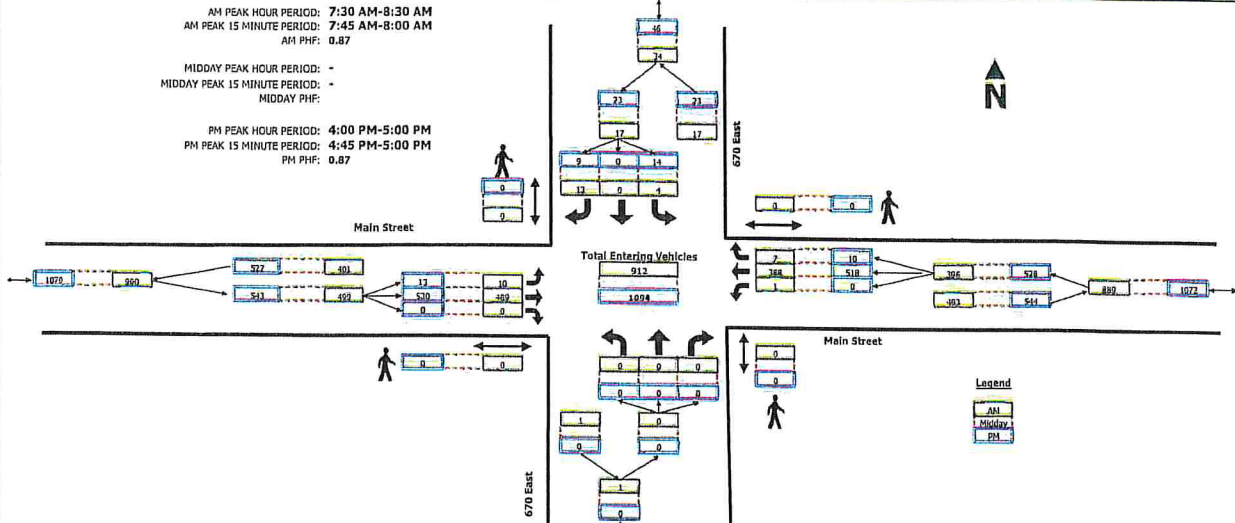
TrafficCounts

2364 North 1450 East
Lahi, UT 84043
801.636.0891

Intersection Turning Movement Summary

Intersection: 670 East / Main Street
North/South: 670 East
East/West: Main Street
Jurisdiction: Midway
Project Title: Seagency TIS Update
Project No: UT21-1835
Weather: Clear

Date: 2-9-21, Tue
COVID-19 Adjustment: 85.5%
Month of Year Adjustment: 100.0%
Adjustment Station #: 0
Growth Rate: 0.0%
Number of Years: 0



RAW COUNT SUMMARIES	670 East Northbound				670 East Southbound				Main Street Eastbound				Main Street Westbound				TOTAL
	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
AM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
7:00 - 7:15	0	0	0	0	0	0	0	0	0	46	0	0	0	47	0	0	93
7:15 - 7:30	0	0	0	0	2	0	0	0	0	108	0	0	0	50	0	0	160
7:30 - 7:45	0	0	0	0	2	0	1	0	0	171	0	0	0	78	1	0	253
7:45 - 8:00	0	0	0	0	2	0	2	0	4	143	0	0	0	109	2	0	262
8:00 - 8:15	0	0	0	0	0	0	5	0	4	87	0	0	1	113	4	0	214
8:15 - 8:30	0	0	0	0	0	0	0	0	2	88	0	0	0	89	0	0	183
8:30 - 8:45	0	0	0	0	1	0	2	0	2	104	0	0	0	97	0	0	206
8:45 - 9:00	0	0	0	0	4	0	0	0	2	143	0	0	0	91	1	0	241
MIDDAY PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
9:00 - 9:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:15 - 9:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:30 - 9:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9:45 - 10:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:00 - 10:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:15 - 10:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:30 - 10:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10:45 - 11:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:00 - 11:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:15 - 11:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:30 - 11:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11:45 - 12:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:00 - 12:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:15 - 12:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:30 - 12:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12:45 - 13:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:00 - 13:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:15 - 13:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:30 - 13:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13:45 - 14:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:00 - 14:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:15 - 14:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:30 - 14:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14:45 - 15:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:00 - 15:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:15 - 15:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:30 - 15:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15:45 - 16:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM PERIOD COUNTS																	
Period	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	TOTAL
16:00 - 16:15	0	0	0	0	1	0	5	0	5	117	0	0	0	135	4	0	267
16:15 - 16:30	0	0	0	0	5	0	2	0	1	131	0	0	0	124	4	0	267
16:30 - 16:45	0	0	0	0	2	0	1	0	1	116	0	0	0	123	1	0	244
16:45 - 17:00	0	0	0	0	6	0	1	0	6	166	0	0	0	136	1	0	316
17:00 - 17:15	0	0	0	0	1	0	2	0	1	125	0	0	0	133	4	0	266
17:15 - 17:30	0	0	0	0	2	0	2	0	1	96	0	0	0	126	4	0	231
17:30 - 17:45	0	0	0	0	1	0	4	0	1	101	0	0	0	133	0	0	240
17:45 - 18:00	0	0	0	0	2	0	4	0	0	132	0	0	0	108	1	0	247

APPENDIX B

LOS Results

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Existing (2021) Background
Time Period: Evening Peak Hour **Project #:** UT21-1835

Intersection: River Road & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	2	67	20.9	C
	T	4	3	75	26.5	D
	R	13	13	98	7.3	A
	Subtotal	20	18	90	12.0	B
SB	L	140	138	99	41.3	E
	T	6	4	67	35.2	E
	R	137	138	101	7.6	A
	Subtotal	283	280	99	24.6	C
EB	L	106	103	97	7.6	A
	T	386	380	98	4.0	A
	R	2	2	100	4.2	A
	Subtotal	494	485	98	4.8	A
WB	L	7	5	71	5.3	A
	T	410	426	104	2.8	A
	R	146	150	103	1.3	A
	Subtotal	563	581	103	2.4	A
Total		1,360	1,364	100	8.0	A

Intersection: Fox Den Road & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	14	14	98	11.2	B
	R	12	12	98	4.9	A
	Subtotal	26	26	100	8.3	A
EB	T	526	520	99	1.3	A
	R	21	20	94	1.0	A
	Subtotal	547	540	99	1.3	A
WB	L	9	7	78	4.1	A
	T	541	556	103	1.0	A
	Subtotal	550	563	102	1.0	A
Total		1,124	1,129	100	1.3	A

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Existing (2021) Background
Time Period: Evening Peak Hour **Project #:** UT21-1835

Intersection: 580 East & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	8	8	100	11.3	B
	R	10	13	130	5.1	A
	Subtotal	18	21	117	7.5	A
EB	T	523	515	99	0.8	A
	R	8	8	100	0.5	A
	Subtotal	531	523	98	0.8	A
WB	L	11	10	91	4.0	A
	T	542	556	103	0.6	A
	Subtotal	553	566	102	0.7	A
Total		1,102	1,110	101	0.9	A

Intersection: Main Street & 670 East
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
SB	L	14	14	98	10.0	A
	R	9	10	111	5.7	A
	Subtotal	23	24	104	8.2	A
EB	L	13	14	106	3.5	A
	T	520	515	99	0.6	A
	Subtotal	533	529	99	0.7	A
WB	T	544	557	102	1.3	A
	R	10	10	100	1.2	A
	Subtotal	554	567	102	1.3	A
Total		1,110	1,120	101	1.2	A

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Mitigated Existing (2021) Background
Time Period: Evening Peak Hour **Project #:** UT21-1835

Intersection: River Road & Main Street
Type: Signalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	3	100	12.6	B
	T	4	4	100	7.1	A
	R	13	14	106	4.6	A
	Subtotal	20	21	105	6.2	A
SB	L	140	140	100	13.4	B
	T	6	7	117	9.0	A
	R	137	132	96	5.4	A
	Subtotal	283	279	99	9.5	A
EB	L	106	107	101	16.5	B
	T	386	386	100	7.3	A
	R	2	3	150	1.5	A
	Subtotal	494	496	100	9.2	A
WB	L	7	6	86	11.7	B
	T	410	395	96	7.5	A
	R	146	147	101	3.3	A
	Subtotal	563	548	97	6.4	A
Total		1,360	1,344	99	8.1	A

Intersection: Fox Den Road & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	14	15	105	12.3	B
	R	12	14	114	4.6	A
	Subtotal	26	29	112	8.6	A
EB	T	526	527	100	1.9	A
	R	21	21	99	1.5	A
	Subtotal	547	548	100	1.9	A
WB	L	9	10	111	4.3	A
	T	541	525	97	1.2	A
	Subtotal	550	535	97	1.3	A
Total		1,124	1,112	99	1.8	A

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Mitigated Existing (2021) Background
Time Period: Evening Peak Hour **Project #:** UT21-1835

Intersection: 580 East & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	8	9	112	12.8	B
	R	10	10	100	5.5	A
	Subtotal	18	19	106	9.0	A
EB	T	523	525	100	0.9	A
	R	8	8	100	0.4	A
	Subtotal	531	533	100	0.9	A
WB	L	11	11	100	4.1	A
	T	542	525	97	0.7	A
	Subtotal	553	536	97	0.8	A
Total		1,102	1,088	99	0.9	A

Intersection: Main Street & 670 East
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
SB	L	14	13	91	10.9	B
	R	9	10	111	5.1	A
	Subtotal	23	23	100	8.4	A
EB	L	13	12	91	3.8	A
	T	520	523	101	0.7	A
	Subtotal	533	535	100	0.8	A
WB	T	544	526	97	1.3	A
	R	10	10	100	0.7	A
	Subtotal	554	536	97	1.3	A
Total		1,110	1,094	99	1.2	A

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Existing (2021) Plus Project
Time Period: Evening Peak Hour **Project #:** UT21-1835

Intersection: River Road & Main Street
Type: Signalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	3	2	67	16.4	B
	T	4	3	75	14.5	B
	R	13	14	106	5.2	A
	Subtotal	20	19	95	7.8	A
SB	L	146	144	99	15.0	B
	T	6	5	83	13.0	B
	R	140	138	99	6.8	A
	Subtotal	292	287	98	11.0	B
EB	L	111	107	97	17.7	B
	T	471	477	101	7.9	A
	R	2	2	100	2.4	A
	Subtotal	584	586	100	9.7	A
WB	L	7	6	86	11.7	B
	T	471	475	101	7.2	A
	R	151	155	103	3.2	A
	Subtotal	629	636	101	6.3	A
Total		1,525	1,528	100	8.5	A

Intersection: Fox Den Road & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	14	14	98	18.5	C
	R	24	25	103	7.9	A
	Subtotal	38	39	103	11.7	B
EB	T	617	624	101	2.2	A
	R	21	20	94	1.6	A
	Subtotal	638	644	101	2.2	A
WB	L	17	15	87	4.5	A
	T	607	613	101	0.8	A
	Subtotal	624	628	101	0.9	A
Total		1,301	1,311	101	1.9	A

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Existing (2021) Plus Project
Time Period: Evening Peak Hour **Project #:** UT21-1835

Intersection: 580 East & Main Street
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	L	8	7	88	14.6	B
	R	10	9	90	5.9	A
	Subtotal	18	16	89	9.7	A
SB	L	42	40	96	18.2	C
	R	38	36	95	8.2	A
	Subtotal	80	76	95	13.5	B
EB	L	36	36	99	4.5	A
	T	545	546	100	0.8	A
	R	8	10	125	0.4	A
	Subtotal	589	592	101	1.0	A
WB	L	11	10	91	4.8	A
	T	573	585	102	0.9	A
	R	63	61	97	0.4	A
	Subtotal	647	656	101	0.9	A
Total		1,334	1,340	100	1.8	A

Intersection: Main Street & 670 East
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
SB	L	14	12	84	14.1	B
	R	9	9	100	5.9	A
	Subtotal	23	21	91	10.6	B
EB	L	13	14	106	5.0	A
	T	584	582	100	0.8	A
	Subtotal	597	596	100	0.9	A
WB	T	634	643	101	1.5	A
	R	10	10	100	1.1	A
	Subtotal	644	653	101	1.5	A
Total		1,265	1,270	100	1.4	A

SimTraffic LOS Report

Project: Midway - The Village TIS
Analysis Period: Existing (2021) Plus Project
Time Period: Evening Peak Hour **Project #: UT21-1835**

Intersection: Main Street & Access 1
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
SB	L	22	21	94	19.5	C
	R	35	38	108	8.4	A
	Subtotal	57	59	104	12.4	B
EB	L	67	67	100	5.3	A
	T	568	574	101	0.4	A
	Subtotal	635	641	101	0.9	A
WB	T	589	591	100	1.3	A
	R	27	33	121	0.5	A
	Subtotal	616	624	101	1.3	A
Total		1,309	1,324	101	1.6	A

Intersection: River Road & Access 3
Type: Unsignalized

Approach	Movement	Demand Volume	Volume Served		Delay/Veh (sec)	
			Avg	%	Avg	LOS
NB	T	261	261	100	0.9	A
	R	5	5	100	0.8	A
	Subtotal	266	266	100	0.9	A
SB	L	28	29	103	2.7	A
	T	289	285	99	0.4	A
	Subtotal	317	314	99	0.6	A
WB	L	3	2	67	8.0	A
	R	20	20	99	3.7	A
	Subtotal	23	22	96	4.1	A
Total		606	602	99	0.9	A

APPENDIX C

Site Plan

APPENDIX D

95th Percentile Queue Length Reports

SimTraffic Queuing Report

Project: Midway - The Village TIS

Analysis: Existing (2021) Background

Time Period: Evening Peak Hour
95th Percentile Queue Length (feet)

HALES ENGINEERING

innovative transportation solutions

Project #: UT21-1835

Intersection	NB		SB		EB		WB			
	LR	LTR	LR	LT	R	LT	LTR	LT	LTR	TR
01: River Road & Main Street	--	43	--	190	107	--	125	--	38	--
02: Fox Den Road & Main Street	46	--	--	--	--	--	--	27	--	--
03: 580 East & Main Street	43	--	--	--	--	--	--	39	--	--
04: Main Street & 670 East	--	--	44	--	--	43	--	--	--	2

SimTraffic Queueing Report

Project: Midway - The Village TIS

Analysis: Mitigated Existing (2021) Background

Time Period: Evening Peak Hour

95th Percentile Queue Length (feet)

HALES ENGINEERING

innovative transportation solutions

Project #: UT21-1835

Intersection	NB			SB			EB			WB				
	L	LR	TR	L	LR	TR	L	LT	R	T	L	LT	R	T
01: River Road & Main Street	13	--	26	92	--	67	85	--	8	137	22	--	80	152
02: Fox Den Road & Main Street	--	46	--	--	--	--	--	--	--	--	--	38	--	--
03: 580 East & Main Street	--	43	--	--	--	--	--	--	--	--	--	40	--	--
04: Main Street & 670 East	--	--	--	--	43	--	--	40	--	--	--	--	--	--

SimTraffic Queuing Report

Project: Midway - The Village TIS

Analysis: Existing (2021) Plus Project

Time Period: Evening Peak Hour

95th Percentile Queue Length (feet)



Project #: UT21-1835

Intersection	NB			SB			EB			WB		
	L	LR	TR	L	LR	TR	L	LR	TR	L	LR	TR
01: River Road & Main Street	12	--	--	28	--	--	94	--	--	--	--	--
02: Fox Den Road & Main Street	--	55	--	--	--	--	--	--	--	8	164	--
03: 580 East & Main Street	--	--	41	--	--	--	--	41	--	--	2	--
04: Main Street & 670 East	--	--	--	--	--	--	--	44	--	52	--	--
05: Main Street & Access 1	--	--	--	--	--	--	--	70	--	--	--	--
06: River Road & Access 3	--	--	--	--	--	38	--	--	--	--	--	42

EXHIBIT D

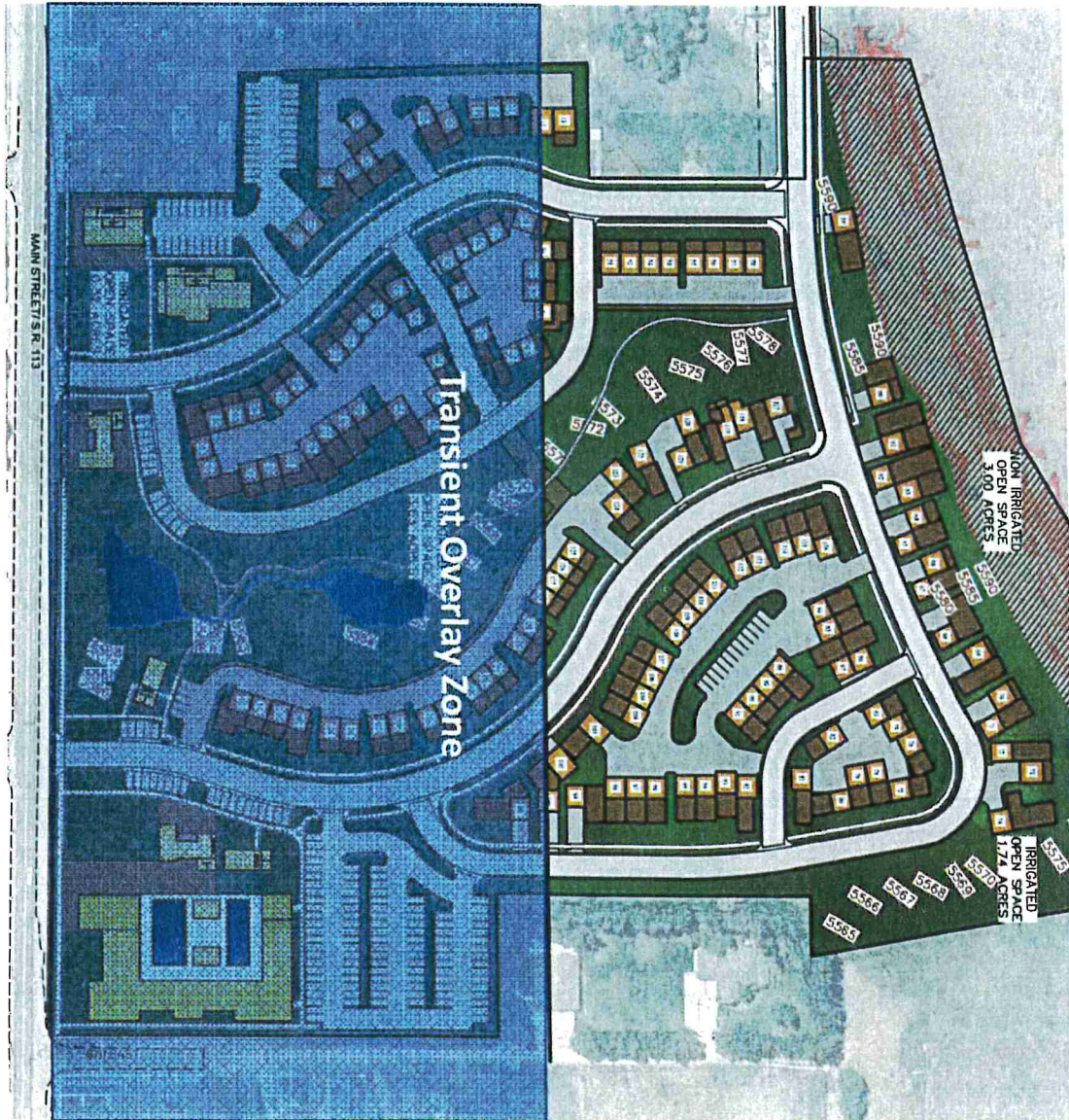


Exhibit D
Transient Overlay Zone

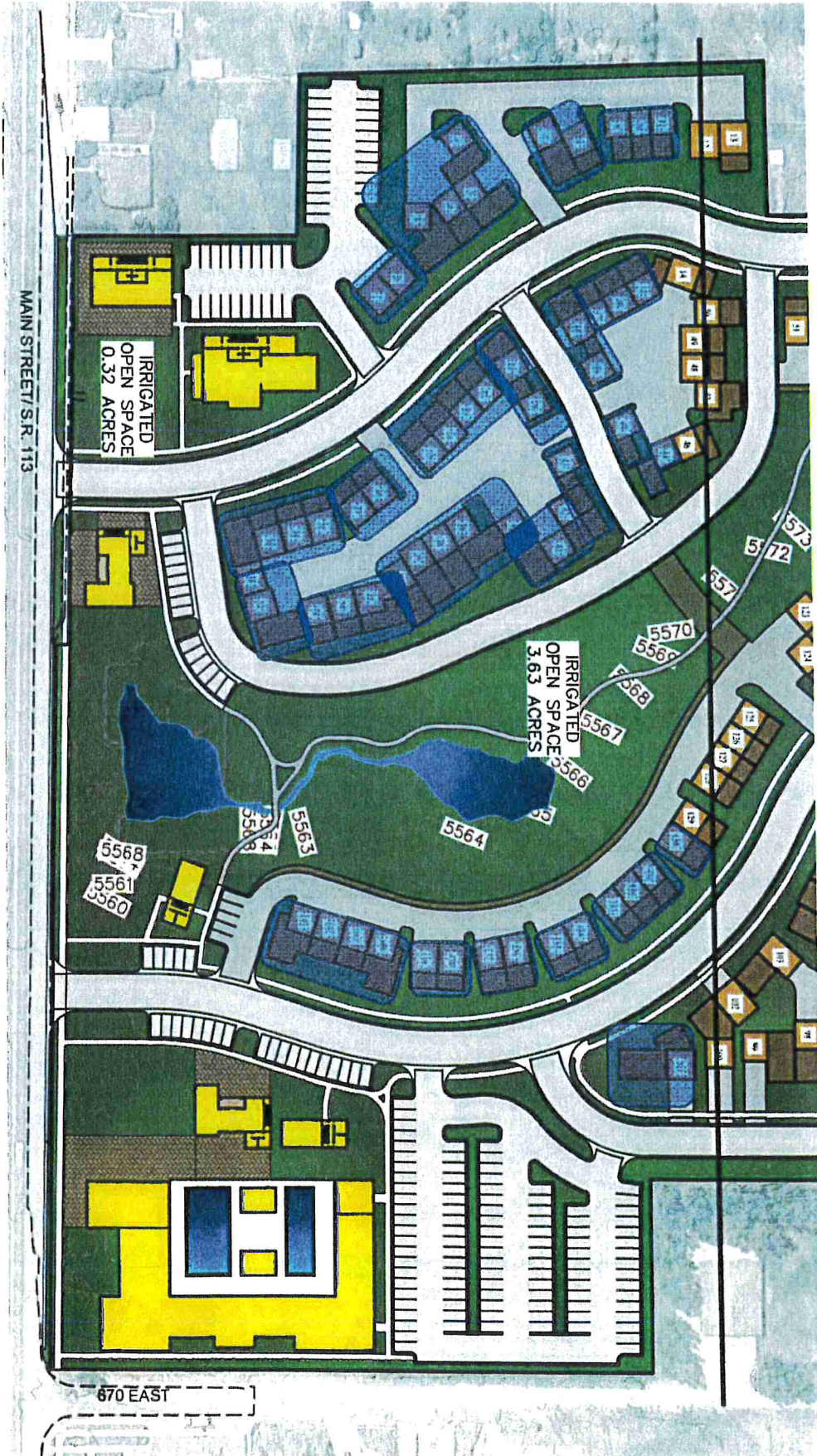


Exhibit D
Transient Overlay Zone
(Residential Units in Transient Overlay Zone)

**SECOND AMENDED
MASTER PLAN AGREEMENT
FOR “SOUTHILL”
MIDWAY CITY, UTAH**

This Second Amended Master Plan 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 Midway Heritage Development, LLC (hereinafter referred to as the “Developer”). The property which is included in the Master Plan, and which is the subject of this Agreement, includes 28.493 acres, which are owned or controlled by the Developer. The Developer and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City has authorized the negotiation of and adoption of master plan 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.
- B. The Developer is the owner of certain real property which is described in Exhibit “A”, the Master Plan, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is included and subject to this Master Plan Agreement. Hereinafter, the entire parcel described in the Master Plan is referred to as “Southill” or the “Property”.
- C. Each Phase shall be subject to a Development Agreement, entered into by the City and the developer of that Phase. All Phases, regardless of the developer, shall be subject to the terms, conditions and restrictions of this Master Plan Agreement, and the Development Agreement which applies to that specific Phase.
- E. The Midway City Land Use Code requires that a Master Plan must demonstrate that approval of the Project in multiple phases can occur such that the Project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection and open space are committed to in the first phase to allow the Project to function and meet Code requirements without subsequent phases. The City Council finds that this Master Plan meets that requirement.

- F. The Property is, and shall remain, subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Developer and the City desire to allow Developer and others to make improvements to the Property pursuant to applicable ordinances, resolutions and the terms and conditions of this Agreement.
- G. The improvements and changes to be made to the Property shall be consistent with this Master Plan Agreement and any changes to international building codes or construction standards.
- H. The Developer and the City acknowledge and agree that the development and improvement of the Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents.
- I. The City's governing body has authorized the execution of this Agreement by Resolution 2022-35, to which this Agreement is attached.

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 run with the land. The terms and conditions contained herein shall inure to the benefit of, and be binding upon, the successors in interest, heirs or assigns, of the Developer.

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 be Midway City Code, Utah State Statute, and all applicable international building codes and requirements.

"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. General Description of Project.

The Project consists of 28.493 acres.

The Project is located entirely in the C-2 zone, which allows for mixed-use development.

The proposal includes, at a minimum, 44,128 square feet of commercial space in multiple buildings, including 143 townhomes (Units 31 and 32 allowed as mixed-use with lower floors

being commercial and upper floors being residential), park, public trails, to be developed in five phases. The master plan is on 28.493 acres and contains 8.81 acres of open space. The requirement for open space is only 8.32 acres and the parties agree that the extra open space can be adjusted and/or reduced but never below 8.32 acres total.

Section 4. 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 Master Plan Approval:** The Developer shall comply with all of the following Conditions:
 - a) *Payment of Fees* – Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
 - b) *Water Rights* – Midway City code applicable to Master Plans require that water rights be held in escrow with the City before the master plan agreement can be recorded. All water rights, whether represented by stock certificate or water deed, shall be submitted to Midway City prior to the recording of the master plan agreement. Developer and City acknowledge that several of the proposed water rights to be used in the Project have currently pending change applications with the Utah State Engineer's office which may result in a reduction of these water rights through the approval process. The Parties agree that the deeds for these water rights shall be held in escrow and that the recording of the master plan agreement will be allowed to proceed, with the understanding that should these water rights be reduced by the State Engineer, Developer shall have an obligation to submit to the City replacement water rights sufficient to meet all phases of the Project prior to the plat in phase 3 in the Project. The required water rights for each phase of the development shall be released from escrow and dedicated to the City before the recording of the plat for that phase. The Water Advisory Board has approved an estimated

166.6 acre-feet will need to be held by the City in escrow before the master plan can be recorded. Developer shall also obtain a Will Serve letter from Midway Irrigation Company for the Development, and, if foreign water is required for the Development, enter into Foreign Water agreements with either Midway Irrigation Company or Midway City, as the need requires. The parties agree that the project will appear before the Water Advisory Board as part of the approval process of each phase. The chart attached as Exhibit B contains the requirements for commercial and residential water for all phases of the Project.

- c) *Roads and Traffic Circulation* – Each phase of the project shall meet all applicable access requirements under Midway City Code. All roads, sidewalks and trails in the subdivision shall be private, with recorded public access easements for all roads, sidewalks and trails within the project included on the plat. All private roads, sidewalks, trails, alleys and parking areas will be maintained by the HOA or POA, including snow removal.
- d) *Traffic Study* – The Developer has submitted a traffic study to the City as part of the Master Plan application process. Horrocks has reviewed the study and its recommendations for improvements are attached as Exhibit C. The study has determined the impact of traffic generated from the proposed development on the surrounding UDOT and City streets. One significant finding of the traffic study is a third access from River Road is required for better traffic distribution and to lower the impact on the intersection of River Road and Main Street. There are off-site improvements required based on the traffic study. More information is provided in Horrocks Engineers’ review letter regarding this issue. Developer shall comply with all recommendations made by Horrocks Engineers that are included in the final traffic study.
- e) *Alley Access* – The proposed plan has street access to each unit but there is also additional alley access proposed for parking access. The alley access areas will be private and will be owned and maintained by the HOA or POA. Snow removal and storage from the alley is a concern and Developer shall prepare a snow removal and storage plan as part of the approval process for each phase. The developer has also provided a will-serve letter from Wasatch County Solid Waste (previous concept master plan). The County will enter private alley areas to unload trash containers. The Fire District has met with staff and the Developer to review all fire related issues. The proposed plan has been modified to address concerns raised in that meeting.
- f) *Main Street Improvements* – The Developer will be required to improve Main Street to UDOT requirements where the project is adjacent to Main Street and any requirements imposed by UDOT associated with the improvements.

- g) *Sensitive Lands* – Sensitive land area located on the property will be left undisturbed as required by the Midway City land use ordinance. These sensitive lands include the sloped areas at the base of Memorial Hill. No building pads shall be located on any slopes 25% or greater.
- h) *Open Space* – The proposal is required to provide 8.32 acres of open space as a condition of the zone change – 8.81 acres have been provided.
- i) *Public Participation Meeting* – The developers held a public participation meeting on October 11, 2021 as required by the ordinance for master plan applications.
- j) *Density* – The maximum amount of residential units is 143 as per the conditionally approved rezone of the property. The parties acknowledge that while the maximum number of residential units is capped at 143, the building of these residential units is subject to the 80/20 requirement of residential square footage to commercial square footage set forth in A(ii)(n) below.
- k) *Trails* – A public access easement shall be recorded on all trails and sidewalks within the Project. Trails and sidewalks shall be maintained by the POA. The City and the Developer have agreed to pursue a trail connection from the Development to Memorial Hill. Wasatch County, owner of Memorial Hill, would be required to approve the trail. The parties agree that if approval can be obtained the trail built would be a backcountry soft surface trail to eliminate impact on Memorial Hill and to limit visual impact when looking at the Hill. Prior to final approval on Phase 3 Developer and the City shall approach Wasatch County and in good faith attempt to negotiate a trail easement.
- l) *Architecture Theme* – The developer is required to receive architectural approval of all structures in the mixed-use development, including all commercial and residential buildings, along with any other features that require architectural approval. Specific review of each building will be required through the approval process. City Planner shall have power to approve the recommendations of the Visual and Architectural Committee, and may be appealed to the City Council as set forth in City Code.
- m) *Parking* – The developer is providing 189 commercial stalls and 358 residential stalls for a total of 547 parking stalls. Of the residential stalls, two stalls per unit will be provided in the garage of the unit with the other 72 residential stalls shall be dispersed in the residential area of the development. At master plan, calculating the exact number of commercial stalls is not realistic because until the exact use and size of a structure is known, the exact

amount of parking cannot be calculated. The goal at master plan is to make sure there is the possibility of enough parking for future planned uses. The typical amount of parking required is one stall for every 250 square feet for areas accessible to the public. The parties agree that parking requirements will be revisited at the time of preliminary and final approval of each phase and may be altered based on the actual building proposed in each phase. Generally, this should be an adequate number of stalls for master plan but as each individual permit is submitted, parking will need to be reviewed. Developer agrees to install a fence along the east side of the proposed parking for the racquet club to insulate the adjoining residential property from the negative impact of commercial development. Developer also agrees to install berms along the east side of the project where parking lots are currently proposed with the purpose of blocking headlights from adjoining residences. Specifics regarding the height and type of fence, and the height, type and location of the berms will be addressed in the approval of the phase where these improvements will be installed.

Building	Building Description	Overall	Footprint	Usable	Usable 1 st Floor	Retail	Office	Storage
1	Restaurant	6,412	3,206.00	4,132	1,877	0		3,206
2	Retail	10,600	5,300.00	7,422	3,711	5,300		5,300
3	Restaurant	4,786	2,393.00	3,572	1,786	0		2,393
4	Restaurant	2,800	1,400.00	1,784	834	0		1,400
5	Office	4,786	2,393.00	3,572	1,786	0	4,786	0
6	Office	2,800	1,400.00	1,784	834	0	2,800	0
7A	Gym	27,788	13,894	20,016				
7B	Gym Restaurant	6,412	3,206	4,132				3,206
7C	Gym Restaurant	2,800	1,400	1,784				1,400
8	Pool & Patio	14,000	14,000	14,000				
Total		83,184	48,592	62,198		5,300	7,586	16,905

n) *Required Commercial Square Footage* – The mixed-use code requires 20% of the gross square footage of all structures be deed restricted as commercial.

The plan presented meets the requirements of the code as outlined on page 3 of the submitted plans dated October 4, 2021. The developer is proposing 44,128 square feet of commercial and 81,401 square feet of residential based on building pad area and one-story buildings above grade. Most likely, most structures will be two stories above grade and the commercial building area will be 83,184 square feet and the residential space will be 336,050 square feet (the residential number is based on 143 units at 2,350 square feet and excludes garage area). Phases 4 and 5, which are completely residential, are not allowed to submit for preliminary approval until the correct ratio of commercial square feet has been built for each phase. 60% of the required commercial square feet will need to be built to submit for preliminary approval of phase 4 and 100% of the required commercial will need to be built to submit for the preliminary of phase 5. The following are examples of potential areas of the residential and commercial buildings. It is most likely the actual area of the buildings will be different from what is represented but the 80% and 20% ratios must be met and will be monitored through the building permit approval process.

Ratio of Commercial to Residential				
	Residential Space			
		Units	143	
		Unit Size	2,350	
		Total Residential sf	336,050	
	Ratio Commercial/Residential		(sf)	(%)
		Total Residential Space	336,050	80.2%
		Total Commercial Space	83,184	19.8%
		Total Built Space	419,234	

- o) *Plat designation of restricted commercial space* – As part of the approval of the commercial space in the Project it is proposed that 16,905 square feet of the commercial buildings be installed for the sole purpose of storage. Because storage space does not require the calculation of water usage, these spaces shall be strictly prohibited from being used for anything other than storage. The amount of water dedicated for each commercial building and the areas designated as storage and therefore restricted for alternate use shall be clearly designated on the plat of each phase.
- p) *Setbacks* – The proposed development is required to meet the setback requirements for the mixed-use code and the conditions placed on the project through the rezoning approval. All commercial buildings are required to have an 8' side setback and all residential structures are required to have a 10' side setback. Residential setbacks along the western boundary are a minimum of 36', and residential setbacks along the eastern boundary are a minimum of 100'. All other setbacks are as listed in the C-2 zone.
- q) *Height of structures* – Structures cannot exceed 35' in height, measured from natural grade to the roof. Architectural elements may exceed the 35' limit as per code.
- r) *Transient Rental Overlay District* – The transient rental overlay district (TROD) covers the roughly 600' area of the project north of Main Street. Through exercising its discretion to make transitional determinations, as well as the landowner's voluntary exclusion of buildings within the transient rental overlay district (TROD), the City Council has determined that only those units designated as transient rentals in Exhibit C (attached hereto) may be rented as short-term nightly rentals. Such units must comply with all short-term rental requirements.
- s) *One Property Owners Association* – All phases of the master plan are required to be part of one property owner's association. Developer may create sub-associations for the commercial and residential portions of the Project, but both of these associations shall be subject to one master property owner's association that has final say. The owner's association is required to maintain all private areas including, private roads, alleys, parking areas and common areas. The requirement of one master owner's association is to reduce conflict in the future. In the past, in phased developments, a phase is sold to a different developer and the new developer objects to being part of the master owner's association. This is strictly prohibited, as it creates unneeded conflict between different parts of the project and raises questions as to what entity has final say. This is a master planned development and as such shall have one master owner's association, as required by Midway City Code.

- t) *Geotechnical Report* – The City has received two geotechnical reports for the property, one from 2017 and one from 2021. The geotechnical report from 2017 found water in some of the test pits on the west side of the property. The report from 2021 did not find water in any of the test pits, including pits dug near the test pits with water from 2017. The current proposal does not contemplate below grade parking, but this remains a possibility depending on soil conditions once excavation commences. The parties agree that Developer may amend this Master Plan Agreement to include below grade parking and that approval of only the addition of below grade parking shall be administrative, requiring approval of the City Planner and the City Engineer. However, the amendment to add below grade parking will not be allowed without the following requirements: Piezometers have been installed in multiple areas of the development to monitor water levels, especially in the areas of phases 2-5. The piezometers shall be monitored on a regular basis and at a minimum of four times per year, with monthly monitoring during construction. The City Council may approve, at its sole discretion, below grade parking if data from the piezometers is presented and appropriate engineering is proposed and approved to address water issues. The placement of the piezometers, including the specific locations and depths, shall be reviewed and approved by the Midway City engineer. The location and continued monitoring of each piezometer shall be in place at least until that area receives preliminary approval. Approval of underground parking will require an appearance before the City Council and a written amendment to this Master Plan Agreement agreed to by both the Developer and the City.
- u) *Blasting Prohibited* – Developer recognizes that the proposal to install underground parking will require extensive excavation within the Development, and that a good portion of the development sits on pot rock that may be difficult to remove. Developer is prohibited from blasting pot rock in order to clear and excavate areas for parking. Should removal of pot rock require blasting, or become too costly to justify the expense, the Developer will lose the density associated with the parking that is unavailable unless Developer proposes a redesign that meets existing zoning and setbacks, and replaces the parking lost. Such proposal shall require approval of the Midway City Council. Regardless of circumstance, no building will be allowed to exceed 35' feet in height, meaning that if underground parking is not possible, and above ground parking on the street level is the only option, a loss of one of the stories of livable square footage in that unit will be the natural consequence of not being able to put the parking underground.
- v) *Underground Parking* - Developer has obtained conditional approval from the Midway City Council to install underground parking garages beneath Phases 1 and 2. The conditions for installing the underground parking are as follows: First, a qualified geotechnical engineer or hydrologist must observe foundation, storm drain, and sewer line excavations to the proposed invert elevations for the presence and quantity of shallow groundwater during all

phases of the development. If groundwater is discovered showing conditions are different than those set forth in submitted groundwater reports and these conditions interfere with the plans to construct the underground parking, the Developer must return before the City Council with a plan for remediation that must be considered and approved by the City Council. If the proposed remediation is rejected by the City Council, it shall have authority to revoke permission to install underground parking. Second, perimeter foundation subdrains with cleanout to the lowest slab grade elevations below subgrade floors and garages must be installed. Final sizing of the subdrains can be based on the observations made during the initial excavation phase, but the initial design must be a minimum of eight inches. Third, the retaining areas for the subgrade parking must use landscaping rocks (actual rocks, not concrete blocks, etc.) and fencing, very similar to those found at the Riverwoods in Provo. Fourth, an executed written agreement between the Developer and Midway Irrigation Company granting permission to the Developer to pump water from the project (if needed) into Midway Irrigation Company ditches shall be submitted to the City Planner before any construction may commence on underground parking.

- w) *Landscaping* – The proposed development has a significant amount of frontage along Main Street. The view of Midway along Main Street is of high importance for the City. It is important to the residents of Midway that Main Street is aesthetically beautiful. Most residents of Midway use Main Street at least once a day, and maintaining a beautiful corridor through town is of high priority. Also, the Midway economy is dependent on tourism. A clean and orderly Main Street is vital for creating the atmosphere needed to create a beautiful community that will attract tourists. For these reasons, the commercial areas of the development shall be kept in agricultural production until constructed, and once those areas are developed, the commercial pads and surrounding area shall be landscaped until the structures are built. The landscaping may be minimal with grass and an irrigation system, but shall be kept orderly and maintained. There are many examples of commercial developments where the commercial pads are not maintained and become weed infested and an eyesore for the community. It is important that this situation is avoided along Midway's main corridor.
- x) *Traffic signal at Main Street and River Road* – UDOT has studied the traffic related issues for the intersection of Main Street and River Road. The study concluded that a traffic signal is warranted for the intersection, but UDOT does not have a timeline established for when the signal will be installed. Southill will increase traffic to the intersection and as such the Developer shall pay 50% of any City costs expended on the installation of the traffic signal for required infrastructure, expansion of pavement, landscaping, etc. (excepting specifically any costs associated with right-of-way acquisition). Because UDOT's timeline for installation of the traffic signal is unknown, and the risk of overloading the intersection from traffic from the Development is likely,

phase 3 of the Project shall not be approved without the installation of the traffic signal. Developer shall have a choice at that time to bear the entire UDOT expense of installing the traffic signal or waiting for UDOT to install the signal. Either way, the plat for phase 3 shall not be recorded without the traffic signal first being installed.

- y) *Construction and/or Dedication of Project Improvements* – The Developer agrees to construct and/or dedicate Project improvements as directed by the City, including but not limited to roads, driveways, amenities, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the particular Phase of the Project.
- z) *Weed Control/Overburden* – The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project.
- aa) *Storm water control system* – The Developer shall install, at its sole cost and according to plans and specifications approved by the City, a storm water control system. On dedicated public roads, the ownership, maintenance, repair and replacement of the storm water system shall be the responsibility of the City. The storm drain system will be private except along Main Street which will be UDOT’s responsibility.
- bb) *Culinary/Sewer Connections* – The Project shall be connected to the City water and Midway Sanitation District’s sewer lines as shown on the approved plans.
- cc) *Secondary Water Connections* – The secondary water (outside irrigation) shall be provided by Midway Irrigation Company. Developer shall connect to Midway Irrigation Company’s secondary system, as shown on the approved plans, and shall comply with all applicable rules and regulations of Midway Irrigation Company. Secondary water laterals and meters shall be installed by Developer for all common land-scaped areas, in a size and type approved by Midway Irrigation Company.

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 may impose additional conditions with regards to mitigation of the impacts of this development as it comes before the City Council for preliminary and final approval. Additional requirements not in conflict with the terms and conditions of this Agreement shall be contained in a specific Development Agreement for each Phase. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.
 - 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 and as provided under Applicable Law.
- B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.
- C. Enforced Delay; Extension of Time of Performance. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 8. Notice of Compliance.

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

7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

Section 9. Change in Developer, Assignment, Transfer and Required Notice. The terms and conditions of this Master Plan Agreement shall run with the land and be binding upon the successors and assigns of the Developer. 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. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall 1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and 2) have no right to bring any

- action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.
- F. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.
- G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).
- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.
- K. Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing and warranting Party:
1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
 3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.
- L. No Third-Party Beneficiaries. This Agreement is between the City and 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:

Midway Heritage Development, LLC
143 W Farm Springs Lane

Midway, UT 84049

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 the first plat for the Project is recorded.

///

[Remainder of Page Left Intentionally Blank]

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

CITY OF MIDWAY

Attest:

Celeste Johnson, Mayor

Brad Wilson, City Recorder

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

NOTARY PUBLIC

THE DEVELOPER OF SOUTHILL
Midway Heritage Development, LLC

By: Dan Luster
Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by Dan Luster, who executed the foregoing instrument in his capacity as the Manager of the Developer, Midway Heritage Development, LLC.

NOTARY PUBLIC



Midway

RESOLUTION

2024-_____

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE MASTER PLAN AGREEMENT FOR THE SOUTHILL DEVELOPMENT

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

WHEREAS, the Midway City Council previously found it in the public interest of Midway City to enter into a master plan agreement with the developer of the Southhill development for the use and development of the land included within that proposed project; and

WHEREAS, the Developer has now requested to amend the master plan a second time to include language regarding the mixed-use status of several of the units within the development; and

WHEREAS, the Midway City Council has reviewed the proposed amendments to the master plan and they appear to meet Midway City Land Use Code requirements; and

WHEREAS, the Midway City Council is exercising its discretion in accepting the terms of the amendment to the master plan of the development.

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 Second Amendment to the Southhill Master Plan 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

**SECOND AMENDED
MASTER PLAN AGREEMENT
FOR “SOUTHILL”
MIDWAY CITY, UTAH**

This Second Amended Master Plan 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 Midway Heritage Development, LLC (hereinafter referred to as the “Developer”). The property which is included in the Master Plan, and which is the subject of this Agreement, includes 28.493 acres, which are owned or controlled by the Developer. The Developer and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City has authorized the negotiation of and adoption of master plan 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.
- B. The Developer is the owner of certain real property which is described in Exhibit “A”, the Master Plan, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is included and subject to this Master Plan Agreement. Hereinafter, the entire parcel described in the Master Plan is referred to as “Southill” or the “Property”.
- C. Each Phase shall be subject to a Development Agreement, entered into by the City and the developer of that Phase. All Phases, regardless of the developer, shall be subject to the terms, conditions and restrictions of this Master Plan Agreement, and the Development Agreement which applies to that specific Phase.
- E. The Midway City Land Use Code requires that a Master Plan must demonstrate that approval of the Project in multiple phases can occur such that the Project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection and open space are committed to in the first phase to allow the Project to function and meet Code requirements without subsequent phases. The City Council finds that this Master Plan meets that requirement.

- F. The Property is, and shall remain, subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Developer and the City desire to allow Developer and others to make improvements to the Property pursuant to applicable ordinances, resolutions and the terms and conditions of this Agreement.
- G. The improvements and changes to be made to the Property shall be consistent with this Master Plan Agreement and any changes to international building codes or construction standards.
- H. The Developer and the City acknowledge and agree that the development and improvement of the Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents.
- I. The City's governing body has authorized the execution of this Agreement by Resolution 2022-35, to which this Agreement is attached.

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 run with the land. The terms and conditions contained herein shall inure to the benefit of, and be binding upon, the successors in interest, heirs or assigns, of the Developer.

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 be Midway City Code, Utah State Statute, and all applicable international building codes and requirements.

"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. General Description of Project.

The Project consists of 28.493 acres.

The Project is located entirely in the C-2 zone, which allows for mixed-use development.

The proposal includes, at a minimum, 44,128 square feet of commercial space in multiple buildings, including 143 townhomes (Units 31 and 32 allowed as mixed-use with lower floors

being commercial and upper floors being residential), park, public trails, to be developed in five phases. The master plan is on 28.493 acres and contains 8.81 acres of open space. The requirement for open space is only 8.32 acres and the parties agree that the extra open space can be adjusted and/or reduced but never below 8.32 acres total.

Section 4. 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 Master Plan Approval:** The Developer shall comply with all of the following Conditions:
 - a) *Payment of Fees* – Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
 - b) *Water Rights* – Midway City code applicable to Master Plans require that water rights be held in escrow with the City before the master plan agreement can be recorded. All water rights, whether represented by stock certificate or water deed, shall be submitted to Midway City prior to the recording of the master plan agreement. Developer and City acknowledge that several of the proposed water rights to be used in the Project have currently pending change applications with the Utah State Engineer's office which may result in a reduction of these water rights through the approval process. The Parties agree that the deeds for these water rights shall be held in escrow and that the recording of the master plan agreement will be allowed to proceed, with the understanding that should these water rights be reduced by the State Engineer, Developer shall have an obligation to submit to the City replacement water rights sufficient to meet all phases of the Project prior to the plat in phase 3 in the Project. The required water rights for each phase of the development shall be released from escrow and dedicated to the City before the recording of the plat for that phase. The Water Advisory Board has approved an estimated

166.6 acre-feet will need to be held by the City in escrow before the master plan can be recorded. Developer shall also obtain a Will Serve letter from Midway Irrigation Company for the Development, and, if foreign water is required for the Development, enter into Foreign Water agreements with either Midway Irrigation Company or Midway City, as the need requires. The parties agree that the project will appear before the Water Advisory Board as part of the approval process of each phase. The chart attached as Exhibit B contains the requirements for commercial and residential water for all phases of the Project.

- c) *Roads and Traffic Circulation* – Each phase of the project shall meet all applicable access requirements under Midway City Code. All roads, sidewalks and trails in the subdivision shall be private, with recorded public access easements for all roads, sidewalks and trails within the project included on the plat. All private roads, sidewalks, trails, alleys and parking areas will be maintained by the HOA or POA, including snow removal.
- d) *Traffic Study* – The Developer has submitted a traffic study to the City as part of the Master Plan application process. Horrocks has reviewed the study and its recommendations for improvements are attached as Exhibit C. The study has determined the impact of traffic generated from the proposed development on the surrounding UDOT and City streets. One significant finding of the traffic study is a third access from River Road is required for better traffic distribution and to lower the impact on the intersection of River Road and Main Street. There are off-site improvements required based on the traffic study. More information is provided in Horrocks Engineers’ review letter regarding this issue. Developer shall comply with all recommendations made by Horrocks Engineers that are included in the final traffic study.
- e) *Alley Access* – The proposed plan has street access to each unit but there is also additional alley access proposed for parking access. The alley access areas will be private and will be owned and maintained by the HOA or POA. Snow removal and storage from the alley is a concern and Developer shall prepare a snow removal and storage plan as part of the approval process for each phase. The developer has also provided a will-serve letter from Wasatch County Solid Waste (previous concept master plan). The County will enter private alley areas to unload trash containers. The Fire District has met with staff and the Developer to review all fire related issues. The proposed plan has been modified to address concerns raised in that meeting.
- f) *Main Street Improvements* – The Developer will be required to improve Main Street to UDOT requirements where the project is adjacent to Main Street and any requirements imposed by UDOT associated with the improvements.

- g) *Sensitive Lands* – Sensitive land area located on the property will be left undisturbed as required by the Midway City land use ordinance. These sensitive lands include the sloped areas at the base of Memorial Hill. No building pads shall be located on any slopes 25% or greater.
- h) *Open Space* – The proposal is required to provide 8.32 acres of open space as a condition of the zone change – 8.81 acres have been provided.
- i) *Public Participation Meeting* – The developers held a public participation meeting on October 11, 2021 as required by the ordinance for master plan applications.
- j) *Density* – The maximum amount of residential units is 143 as per the conditionally approved rezone of the property. The parties acknowledge that while the maximum number of residential units is capped at 143, the building of these residential units is subject to the 80/20 requirement of residential square footage to commercial square footage set forth in A(ii)(n) below.
- k) *Trails* – A public access easement shall be recorded on all trails and sidewalks within the Project. Trails and sidewalks shall be maintained by the POA. The City and the Developer have agreed to pursue a trail connection from the Development to Memorial Hill. Wasatch County, owner of Memorial Hill, would be required to approve the trail. The parties agree that if approval can be obtained the trail built would be a backcountry soft surface trail to eliminate impact on Memorial Hill and to limit visual impact when looking at the Hill. Prior to final approval on Phase 3 Developer and the City shall approach Wasatch County and in good faith attempt to negotiate a trail easement.
- l) *Architecture Theme* – The developer is required to receive architectural approval of all structures in the mixed-use development, including all commercial and residential buildings, along with any other features that require architectural approval. Specific review of each building will be required through the approval process. City Planner shall have power to approve the recommendations of the Visual and Architectural Committee, and may be appealed to the City Council as set forth in City Code.
- m) *Parking* – The developer is providing 189 commercial stalls and 358 residential stalls for a total of 547 parking stalls. Of the residential stalls, two stalls per unit will be provided in the garage of the unit with the other 72 residential stalls shall be dispersed in the residential area of the development. At master plan, calculating the exact number of commercial stalls is not realistic because until the exact use and size of a structure is known, the exact

amount of parking cannot be calculated. The goal at master plan is to make sure there is the possibility of enough parking for future planned uses. The typical amount of parking required is one stall for every 250 square feet for areas accessible to the public. The parties agree that parking requirements will be revisited at the time of preliminary and final approval of each phase and may be altered based on the actual building proposed in each phase. Generally, this should be an adequate number of stalls for master plan but as each individual permit is submitted, parking will need to be reviewed. Developer agrees to install a fence along the east side of the proposed parking for the racquet club to insulate the adjoining residential property from the negative impact of commercial development. Developer also agrees to install berms along the east side of the project where parking lots are currently proposed with the purpose of blocking headlights from adjoining residences. Specifics regarding the height and type of fence, and the height, type and location of the berms will be addressed in the approval of the phase where these improvements will be installed.

Building	Building Description	Overall	Footprint	Usable	Usable 1 st Floor	Retail	Office	Storage
1	Restaurant	6,412	3,206.00	4,132	1,877	0		3,206
2	Retail	10,600	5,300.00	7,422	3,711	5,300		5,300
3	Restaurant	4,786	2,393.00	3,572	1,786	0		2,393
4	Restaurant	2,800	1,400.00	1,784	834	0		1,400
5	Office	4,786	2,393.00	3,572	1,786	0	4,786	0
6	Office	2,800	1,400.00	1,784	834	0	2,800	0
7A	Gym	27,788	13,894	20,016				
7B	Gym Restaurant	6,412	3,206	4,132				3,206
7C	Gym Restaurant	2,800	1,400	1,784				1,400
8	Pool & Patio	14,000	14,000	14,000				
Total		83,184	48,592	62,198		5,300	7,586	16,905

n) *Required Commercial Square Footage* – The mixed-use code requires 20% of the gross square footage of all structures be deed restricted as commercial.

The plan presented meets the requirements of the code as outlined on page 3 of the submitted plans dated October 4, 2021. The developer is proposing 44,128 square feet of commercial and 81,401 square feet of residential based on building pad area and one-story buildings above grade. Most likely, most structures will be two stories above grade and the commercial building area will be 83,184 square feet and the residential space will be 336,050 square feet (the residential number is based on 143 units at 2,350 square feet and excludes garage area). Phases 4 and 5, which are completely residential, are not allowed to submit for preliminary approval until the correct ratio of commercial square feet has been built for each phase. 60% of the required commercial square feet will need to be built to submit for preliminary approval of phase 4 and 100% of the required commercial will need to be built to submit for the preliminary of phase 5. The following are examples of potential areas of the residential and commercial buildings. It is most likely the actual area of the buildings will be different from what is represented but the 80% and 20% ratios must be met and will be monitored through the building permit approval process.

Ratio of Commercial to Residential				
	Residential Space			
		Units	143	
		Unit Size	2,350	
		Total Residential sf	336,050	
	Ratio Commercial/Residential		(sf)	(%)
		Total Residential Space	336,050	80.2%
		Total Commercial Space	83,184	19.8%
		Total Built Space	419,234	

- o) *Plat designation of restricted commercial space* – As part of the approval of the commercial space in the Project it is proposed that 16,905 square feet of the commercial buildings be installed for the sole purpose of storage. Because storage space does not require the calculation of water usage, these spaces shall be strictly prohibited from being used for anything other than storage. The amount of water dedicated for each commercial building and the areas designated as storage and therefore restricted for alternate use shall be clearly designated on the plat of each phase.
- p) *Setbacks* – The proposed development is required to meet the setback requirements for the mixed-use code and the conditions placed on the project through the rezoning approval. All commercial buildings are required to have an 8' side setback and all residential structures are required to have a 10' side setback. Residential setbacks along the western boundary are a minimum of 36', and residential setbacks along the eastern boundary are a minimum of 100'. All other setbacks are as listed in the C-2 zone.
- q) *Height of structures* – Structures cannot exceed 35' in height, measured from natural grade to the roof. Architectural elements may exceed the 35' limit as per code.
- r) *Transient Rental Overlay District* – The transient rental overlay district (TROD) covers the roughly 600' area of the project north of Main Street. Through exercising its discretion to make transitional determinations, as well as the landowner's voluntary exclusion of buildings within the transient rental overlay district (TROD), the City Council has determined that only those units designated as transient rentals in Exhibit C (attached hereto) may be rented as short-term nightly rentals. Such units must comply with all short-term rental requirements.
- s) *One Property Owners Association* – All phases of the master plan are required to be part of one property owner's association. Developer may create sub-associations for the commercial and residential portions of the Project, but both of these associations shall be subject to one master property owner's association that has final say. The owner's association is required to maintain all private areas including, private roads, alleys, parking areas and common areas. The requirement of one master owner's association is to reduce conflict in the future. In the past, in phased developments, a phase is sold to a different developer and the new developer objects to being part of the master owner's association. This is strictly prohibited, as it creates unneeded conflict between different parts of the project and raises questions as to what entity has final say. This is a master planned development and as such shall have one master owner's association, as required by Midway City Code.

- t) *Geotechnical Report* – The City has received two geotechnical reports for the property, one from 2017 and one from 2021. The geotechnical report from 2017 found water in some of the test pits on the west side of the property. The report from 2021 did not find water in any of the test pits, including pits dug near the test pits with water from 2017. The current proposal does not contemplate below grade parking, but this remains a possibility depending on soil conditions once excavation commences. The parties agree that Developer may amend this Master Plan Agreement to include below grade parking and that approval of only the addition of below grade parking shall be administrative, requiring approval of the City Planner and the City Engineer. However, the amendment to add below grade parking will not be allowed without the following requirements: Piezometers have been installed in multiple areas of the development to monitor water levels, especially in the areas of phases 2-5. The piezometers shall be monitored on a regular basis and at a minimum of four times per year, with monthly monitoring during construction. The City Council may approve, at its sole discretion, below grade parking if data from the piezometers is presented and appropriate engineering is proposed and approved to address water issues. The placement of the piezometers, including the specific locations and depths, shall be reviewed and approved by the Midway City engineer. The location and continued monitoring of each piezometer shall be in place at least until that area receives preliminary approval. Approval of underground parking will require an appearance before the City Council and a written amendment to this Master Plan Agreement agreed to by both the Developer and the City.
- u) *Blasting Prohibited* – Developer recognizes that the proposal to install underground parking will require extensive excavation within the Development, and that a good portion of the development sits on pot rock that may be difficult to remove. Developer is prohibited from blasting pot rock in order to clear and excavate areas for parking. Should removal of pot rock require blasting, or become too costly to justify the expense, the Developer will lose the density associated with the parking that is unavailable unless Developer proposes a redesign that meets existing zoning and setbacks, and replaces the parking lost. Such proposal shall require approval of the Midway City Council. Regardless of circumstance, no building will be allowed to exceed 35’ feet in height, meaning that if underground parking is not possible, and above ground parking on the street level is the only option, a loss of one of the stories of livable square footage in that unit will be the natural consequence of not being able to put the parking underground.
- v) *Underground Parking* - Developer has obtained conditional approval from the Midway City Council to install underground parking garages beneath Phases 1 and 2. The conditions for installing the underground parking are as follows: First, a qualified geotechnical engineer or hydrologist must observe foundation, storm drain, and sewer line excavations to the proposed invert elevations for the presence and quantity of shallow groundwater during all

phases of the development. If groundwater is discovered showing conditions are different than those set forth in submitted groundwater reports and these conditions interfere with the plans to construct the underground parking, the Developer must return before the City Council with a plan for remediation that must be considered and approved by the City Council. If the proposed remediation is rejected by the City Council, it shall have authority to revoke permission to install underground parking. Second, perimeter foundation subdrains with cleanout to the lowest slab grade elevations below subgrade floors and garages must be installed. Final sizing of the subdrains can be based on the observations made during the initial excavation phase, but the initial design must be a minimum of eight inches. Third, the retaining areas for the subgrade parking must use landscaping rocks (actual rocks, not concrete blocks, etc.) and fencing, very similar to those found at the Riverwoods in Provo. Fourth, an executed written agreement between the Developer and Midway Irrigation Company granting permission to the Developer to pump water from the project (if needed) into Midway Irrigation Company ditches shall be submitted to the City Planner before any construction may commence on underground parking.

- w) *Landscaping* – The proposed development has a significant amount of frontage along Main Street. The view of Midway along Main Street is of high importance for the City. It is important to the residents of Midway that Main Street is aesthetically beautiful. Most residents of Midway use Main Street at least once a day, and maintaining a beautiful corridor through town is of high priority. Also, the Midway economy is dependent on tourism. A clean and orderly Main Street is vital for creating the atmosphere needed to create a beautiful community that will attract tourists. For these reasons, the commercial areas of the development shall be kept in agricultural production until constructed, and once those areas are developed, the commercial pads and surrounding area shall be landscaped until the structures are built. The landscaping may be minimal with grass and an irrigation system, but shall be kept orderly and maintained. There are many examples of commercial developments where the commercial pads are not maintained and become weed infested and an eyesore for the community. It is important that this situation is avoided along Midway’s main corridor.
- x) *Traffic signal at Main Street and River Road* – UDOT has studied the traffic related issues for the intersection of Main Street and River Road. The study concluded that a traffic signal is warranted for the intersection, but UDOT does not have a timeline established for when the signal will be installed. Southill will increase traffic to the intersection and as such the Developer shall pay 50% of any City costs expended on the installation of the traffic signal for required infrastructure, expansion of pavement, landscaping, etc. (excepting specifically any costs associated with right-of-way acquisition). Because UDOT’s timeline for installation of the traffic signal is unknown, and the risk of overloading the intersection from traffic from the Development is likely,

phase 3 of the Project shall not be approved without the installation of the traffic signal. Developer shall have a choice at that time to bear the entire UDOT expense of installing the traffic signal or waiting for UDOT to install the signal. Either way, the plat for phase 3 shall not be recorded without the traffic signal first being installed.

- y) *Construction and/or Dedication of Project Improvements* – The Developer agrees to construct and/or dedicate Project improvements as directed by the City, including but not limited to roads, driveways, amenities, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the particular Phase of the Project.
- z) *Weed Control/Overburden* – The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project.
- aa) *Storm water control system* – The Developer shall install, at its sole cost and according to plans and specifications approved by the City, a storm water control system. On dedicated public roads, the ownership, maintenance, repair and replacement of the storm water system shall be the responsibility of the City. The storm drain system will be private except along Main Street which will be UDOT’s responsibility.
- bb) *Culinary/Sewer Connections* – The Project shall be connected to the City water and Midway Sanitation District’s sewer lines as shown on the approved plans.
- cc) *Secondary Water Connections* – The secondary water (outside irrigation) shall be provided by Midway Irrigation Company. Developer shall connect to Midway Irrigation Company’s secondary system, as shown on the approved plans, and shall comply with all applicable rules and regulations of Midway Irrigation Company. Secondary water laterals and meters shall be installed by Developer for all common land-scaped areas, in a size and type approved by Midway Irrigation Company.

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 may impose additional conditions with regards to mitigation of the impacts of this development as it comes before the City Council for preliminary and final approval. Additional requirements not in conflict with the terms and conditions of this Agreement shall be contained in a specific Development Agreement for each Phase. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.
 - 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 and as provided under Applicable Law.
- B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.
- C. Enforced Delay; Extension of Time of Performance. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 8. Notice of Compliance.

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

7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

Section 9. Change in Developer, Assignment, Transfer and Required Notice. The terms and conditions of this Master Plan Agreement shall run with the land and be binding upon the successors and assigns of the Developer. 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. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall 1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and 2) have no right to bring any

- action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.
- F. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.
- G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).
- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.
- K. Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing and warranting Party:
1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
 3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.
- L. No Third-Party Beneficiaries. This Agreement is between the City and 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:

Midway Heritage Development, LLC
143 W Farm Springs Lane

Midway, UT 84049

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 the first plat for the Project is recorded.

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[Remainder of Page Left Intentionally Blank]

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

CITY OF MIDWAY

Attest:

Celeste Johnson, Mayor

Brad Wilson, City Recorder

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

NOTARY PUBLIC

THE DEVELOPER OF SOUTHILL
Midway Heritage Development, LLC

By: Dan Luster
Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by Dan Luster, who executed the foregoing instrument in his capacity as the Manager of the Developer, Midway Heritage Development, LLC.

NOTARY PUBLIC