Midway City Council
21 May 2019
Regular Meeting

Pelo Subdivision /
Culinary Water Will Serve Letter

Memo

Date: May 21, 2019

To: Midway City Council

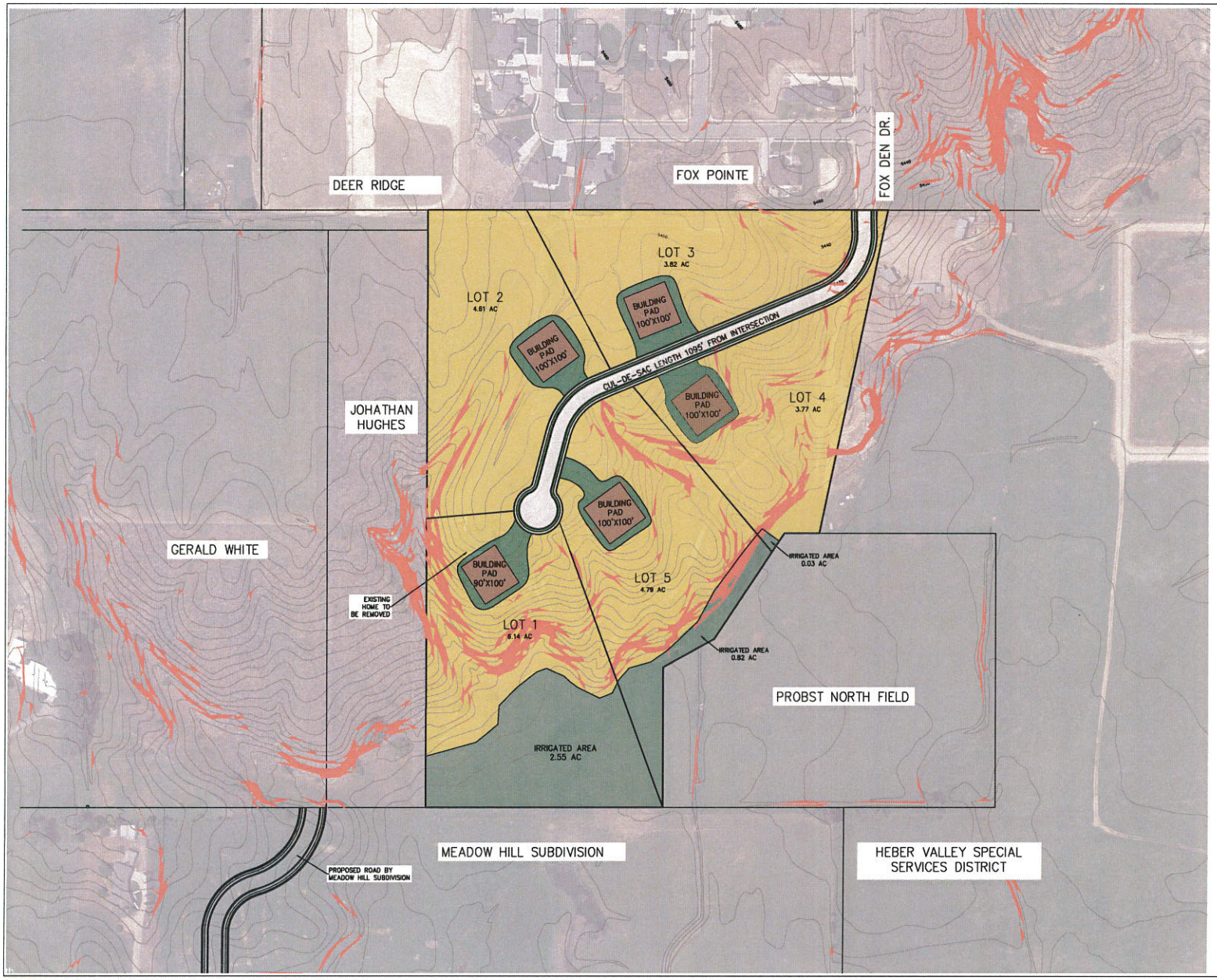
From: Michael Henke

Re: Brad Pelo Annexation culinary water connection petition

Brad Pelo has requested culinary connections to the City's water system, though his property is not located within the Midway City limits. His property is located south of the Fox Pointe subdivision and is 24 acres. Currently there is one dwelling on the property that is connected to a well. Mr. Pelo would like to develop the property into a relatively low density five lot subdivision. He would like to demolish the existing dwelling and build a new home on the property while he pursues approval of the subdivision in Wasatch County. For the County to approve the subdivision, culinary water and fire flow must be confirmed. Mr. Pelo is petitioning the Midway for ability to provide both culinary service and fire flow so he can proceed with his plans.

The City Council discussed this item during the March 23rd City Council Work Meeting. Based on that discussion, City Attorney, Corbin Gordon, drafted a will serve letter (please see attached) with the conditions discussed by the City Council. The draft letter has been sent to Brad Pelo for his review.

Recently, staff had a meeting with Brad Pelo and both Jonathon and Constance Hughes. The Hughes own a six-acre parcel directly to the west of the Pelo parcel. The Hughes parcel is in Wasatch County jurisdiction and they are currently constructing a dwelling on their property. Their access is across the Hughes parcel and there is a recorded easement to that effect. During construction of their home, contractors began using 300 East as an access though 300 East has never been approved as an access for the Hughes parcel. The City notified the Hughes about the access issue which is still an issue that has not yet reached a conclusion. Mr. Pelo is interested in securing access for the Hughes from 300 East so the easement across his property may be removed. Staff discussed with the Hughes possible annexation of their six acres along with future trail plans and road connection possibilities. The Hughes would benefit from annexation by securing access from 300 East and by connecting to the City's culinary system whereas currently they are connected to an aging well. Mr. Pelo would like to discuss with the City Council all these issues to gather information that will help both him and the Hughes plan for the future of their properties.



LEGEND

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

LAND USE TABLE

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

HISTORICALLY IRRIGATED AREA

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

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

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

THIS PROPERTY HAS 8 SHARES OF MIDWAY IRRIGATED OR 18.00 AF. PROJECT REQUIRES 17.95 AF.

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

PAUL D. BERG P.E.
SERIAL NO. 293585
DATE: 22 MAR 2018

NORTH

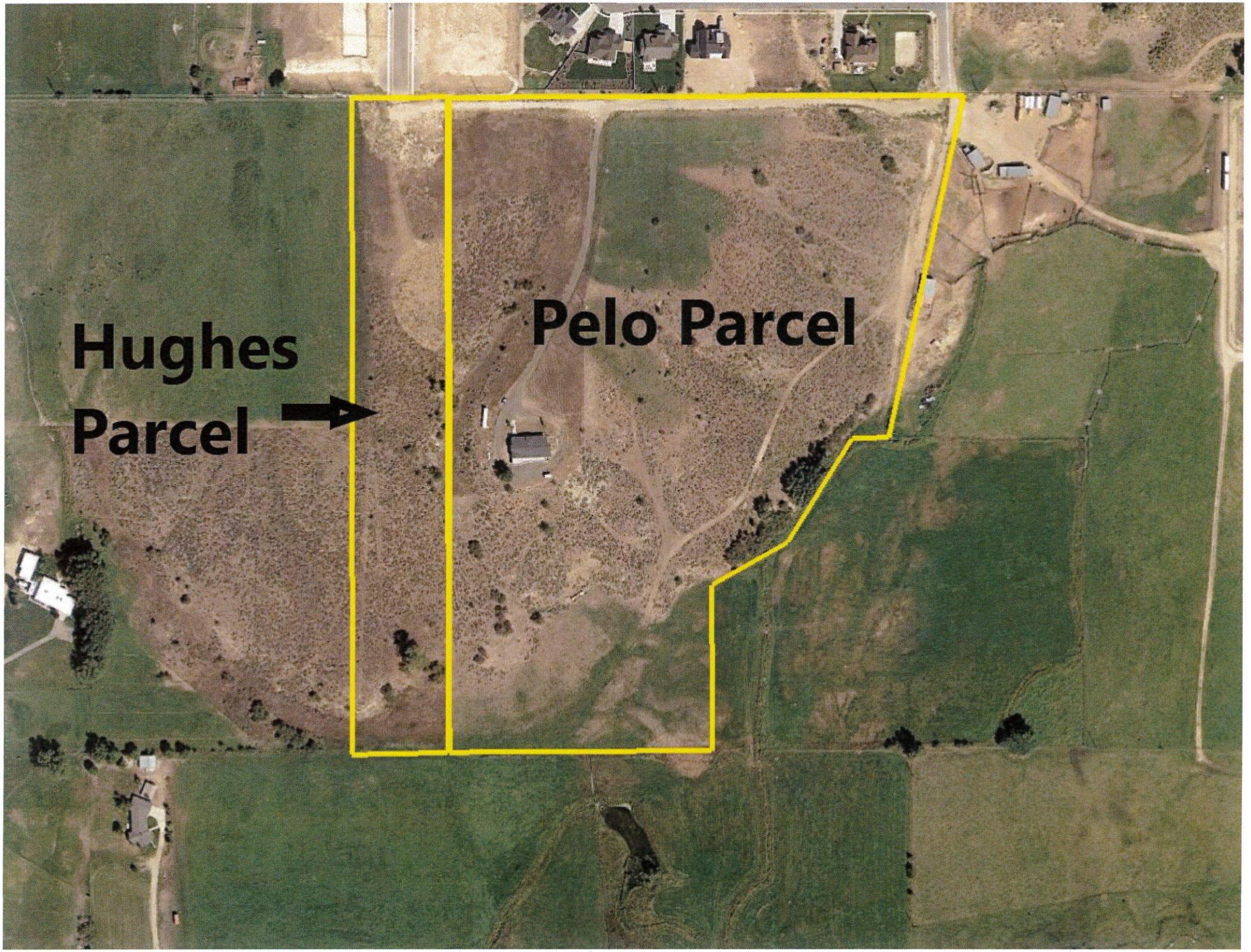
0 50' 100' 200' 300'

SCALE: 1"= 100'

BRAD PELO
STUBBS PROPERTY
CONCEPT PLAN #2

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

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


Hughes
Parcel
Pelo Parcel

WILL SERVE LETTER

THIS WILL SERVE LETTER (the "Agreement") is entered into as of this ____ day of _____, 2017, by and between BENEVOLENCE, LLC, (hereinafter called the "Developer") and the CITY OF MIDWAY, UTAH, a political subdivision of the State of Utah (hereinafter called the "CITY"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between the Developer and the City involving the same Property (defined below) and is the entire, complete Agreement between the Parties.

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.,* in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to providing culinary water service to property owned by the Developer (hereinafter call the "Project") that is currently outside of city limits, and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.

B. The Developer has a legal interest in a 24 acre piece of real property that is not located in the City, as described in Exhibit "A", (hereinafter referred to as the "Property") attached hereto and incorporated herein by this reference.

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

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

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

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

AGREEMENT

Section 1. Effective Date and Term. The term of this Agreement shall commence upon the signing of this Agreement (the "Effective Date") by both Parties, and shall continue indefinitely.

Section 2. Definitions. Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including the Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Governing Body" shall mean the Midway City Council.

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

Section 3. Obligations of the Developer and the City.

A. Obligations of the Developer:
   i. General Obligations: The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein.
   ii. Conditions for Culinary Water Service. The City agrees to provide culinary water service to the Property, subject to the following requirements:
      a) The Developer shall extend at its own expense the culinary water line to Developer's Property, including a water meters for the Property and fire hydrants in a number and location as required by current code. The Developer shall submit all plans to extend the line to the City engineer for approval before starting construction.
      b) The size, type, and location of the culinary water meters shall be determined and approved by the City Engineer before installation.
      c) The Developer agrees that for so long as the Property remains in the unincorporated area of the County, the Property owner shall be charged 1 ½ times the rate that Midway residents pay for culinary service.
      d) Developer agrees to allow Midway City to require the following as part of the plat approval process in Wasatch County:

1. In accordance with standards set by Midway City, sufficient water to meet the culinary and irrigation needs of the development shall be deeded to Midway City prior to the plat being recorded.
2. Meters that meet the specifications of Midway Irrigation Company shall be installed on all irrigation line connections within the subdivision at the time the infrastructure is installed.
3. Developer agrees to install infrastructure to the standards required by Midway City, even if these standards exceed those required by Wasatch County.

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

f) Installation of the Culinary Water Line and other infrastructure:
   1. Construction and/or Dedication of Culinary Line: The Developer agrees to construct the Culinary Line as directed and approved by the City, in accordance with current City standards, and upon completion to dedicate the line to the City.
   2. Construction Traffic: All construction traffic for the Culinary Line improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
   3. Warrant: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
   4. Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for installing the Culinary Line, pursuant to current City Ordinances and Regulations.
   5. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City involving culinary water service unless specifically agreed to otherwise herein.

g) The Project plat shall include the following notations or dedications:
   1. A restriction noting that irrigation water sufficient for solely a ¼ acre of irrigation around the homes was deeded to the City, that this constitutes a restriction on the amount of irrigated landscaping the

homeowner can install, and that the homeowner understands the bulk of the lot must remain in its natural condition without irrigation water.

2. A note requiring the lot owner to comply with all weed control ordinances of Midway City in regards to the unirrigated portion of their lot.
3. A note that states the following: "NOTICE TO PROPERTY PURCHASERS: Be advised that this subdivision is adjacent t the Heber Valley Special Service District Wastewater Treatment Facility. The Wastewater Treatment Plan often operates twenty-four (24) hours a day. The operations of the facility may produce noises and odors that may be objectionable to some residents. Expansion of the facilities is planned on District property for future sanitary wastewater treatment."
4. The dedication of a public trail, at a minimum of 10 feet wide, that runs from the northeast boundary of the property to the southwest corner of the property. The specific location of the easement shall be addressed during the plat approval process. Developer will construct the trail concurrently with all other subdivision infrastructure improvements at a width and surface determined by city staff.
5. A restriction on the future or further subdivision of the lots within the subdivision. This restriction shall include a note on the plat and deed restrictions recorded towards each of the five lots in the subdivision. The deed restrictions must be reviewed and approved by Midway City staff and must be recorded at the time the subdivision plat is recorded.

h) Developer agrees to allow Midway City to inspect all infrastructure as it is installed and shall have a duty to provide timely notice to the Midway City engineer of needed inspections.

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

j) At the time Developer applies for annexation, the parties agree that an annexation agreement shall be entered into that shall include the following provisions:

1. Developer will pay a park fee commensurate with the per lot fee required of other approved subdivisions within Midway City.

B. Obligations of the City:

i. General Obligations: The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

ii. Conditions of Approval: The City agrees that it shall provide culinary water service to the Property subject to the conditions detailed in this Agreement.

iii. Acceptance of Improvements: The City agrees to accept all Project improvements constructed by the Developer, or the Developer's contractors, subcontractors, agents or employees, provided that 1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; 2) the Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; 3) the Project improvements are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) the Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

Section 4. Vested Rights and Applicable Law.

A. Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City Ordinances and Resolutions, in force and effect on the date the City Council granted preliminary approval to the Developer for the Project. The Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve the Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable Ordinances, Resolutions, regulations, policies and procedures of the City.

B. State and Federal Law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. Amendment. Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity

(other than the City and the Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. Cooperation and Implementation.

A. Processing of Subsequent Approvals. Upon submission by the Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein.

The City's obligations under this Section 6 are conditioned on the Developer's provision to the City, in a timely manner, of all documents, applications, plans and other information necessary for the City to meet such obligations. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny an application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

B. Other Governmental Permits.
   1. The Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.
   2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.B of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

Section 7. Default and Termination.

A. General Provisions.
   1. Defaults by Developer. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of

thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

2. Termination. If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give to the Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly notice public meeting. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any and all remedies available to the Developer at law or in equity.
3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that the Developer is in full compliance with the terms and conditions of this Agreement. The Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.
4. Determination of Non-Compliance. If the City Council finds and determines that the Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. If the default is not cured in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement an as provided under Applicable Law.

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

C. Enforced Delay; Extension of Time of Performance. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 8. Notice of Compliance.

A. Timing and Content. Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver toe the Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledge by the City, certifying that 1) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.

B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of the Developer's written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

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

Section 10. Miscellaneous Terms.

A. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

B. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

C. Other Necessary Acts. Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions of Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

E. Covenants Running With the Land and Manner of Enforcement. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Property. The parties agree that this Agreement shall be filed with the County Recorder and be binding on title of the Property.

F. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.

G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and

rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).

H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.

J. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.

K. Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing and warrantying Party:

1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.
2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.

L. No Third-Party Beneficiaries. This Agreement is between the City and the Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

Section 11. Notices.

Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days

after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United State mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses as set forth below:

If to the City of Midway:

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

With Copies to:

Corbin B. Gordon
Midway City Attorney
345 West 600 South
Heber City, Utah 84032

If to Developer:

Benevolence, LLC
1064 N Mill Road
Heber City, UT 84032

Section 12. Entire Agreement, Counterparts and Exhibits. Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing, and signed by the appropriate authorities of the City and of the Developer.

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

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

CITY OF MIDWAY

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 _____, 2019, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

_____
NOTARY PUBLIC

BENEVOLENCE, LLC

_____
By: Brad Pelo
Its: Manager

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2019, by Brad Pelo, who executed the foregoing instrument in his capacity as the Manager of Benevolence, LLC.

_____
NOTARY PUBLIC