

## "EXHIBIT A"

**DEVELOPMENT AGREEMENT  
EAST TOWN VILLAGE DEVELOPMENT  
MIDVALE CITY, UTAH**

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
MIDVALE CITY  
655 W CENTER STREET  
MIDVALE UT 84047  
BY: SAM, DEPUTY - WI 10 P.

THIS DEVELOPMENT AGREEMENT is entered into as of this 9<sup>th</sup> day of June, 2006 by and among East Town Village Development, LC ("Developer") and Midvale City Corporation (the "City") for the East Town Village Development located in Midvale City, Utah at approximately 8250 South State Street. The Developer is the record owner of the East Town Village Development property or has contractual rights to acquire such property.

**Article 1  
The Project**

- 1.1 Legal Description of Property. The property covered by this Development Agreement consists of 14.29 acres of land located at approximately 8400 South State Street in Midvale City, Utah. This property is fully described in Exhibit A, Legal Description (the "Property").
- 1.2 Project Description. The project covered by this Development Agreement consists of 1.08 acres of commercial development and 13.21 acres multi-family residential development consisting of 232 town homes and condominiums specifically shown in Exhibit B.
- 1.3 Project Phasing. The East Town Village Development may be constructed in multiple phases.
- 1.4 Development Approval. Pursuant to the Midvale City Zoning and Subdivision Ordinance, East Town Village Development has been approved under the Large Scale Master Planned Development provision (Section 17-7-1.10) and the Mixed Use Zoning District with the State Street Overlay Zone, (Sections 17-7-5 and 17-7-15). The review and approval process included lawfully advertised public hearings with the Midvale City Planning Commission and City Council on May 24, 2006 and June 6, 2006, respectively.

**Article 2  
Performance and Bonding**

- 2.1 Security for On and Off-Site Public Improvements. The Developer agrees to complete all required on and off-site public improvements in accordance with the Construction Plans approved for each phase of the development. The Developer is guaranteeing such improvements through a Subdivision Improvements Performance Bond, which provides the financial security for the improvements, including, but not limited to, water, sewer, curb and gutter, sidewalk, street improvements, surface drainage, street trees, fiber optic conduit, street lighting, etc. Said bond is attached as Exhibit D, shall be deemed a part of this Development Agreement, and shall be binding upon all parties hereto.

2.2 Security for On Site Improvements as required by the Final Site Plan. On Site Improvements for each phase such as required screening elements, street lights, street trees, landscaping and associated irrigation, trail linkages and open space shall be either installed as required on the approved final site plan or bonded for in cash prior to occupancy of the final 25% of the units in that phase.

### **Article 3 Specific Conditions of Master Planned Development**

3.1 Agreement to Comply with Specific Conditions of Approval. The Developer agrees to the following conditions of approval for each small scale master plan. Each small scale master plan, final site plan and subdivision plat shall be consistent with the large scale master plan and the conditions of master plan approval as follows:

- 3.1.1 Cross Jurisdictional Amenities. The Clubhouse, pool facilities and adjacent open space, located on the Sandy portion of the project shall be installed before the final 25% of the units located in Midvale are approved for construction. In the event the amenities located in Sandy are not approved or completed the developer must use the portion of the Midvale site to be used for the final 25% of the units to build a small scale version of the clubhouse, pool and adjacent open space. If these amenities are constructed in Midvale the square footage of the clubhouse and surface area of the pool shall be at least 40% of those proposed in Sandy. In the event the clubhouse, pool and adjacent open space are constructed in Midvale, the trail system shall be redesigned to link existing units with these amenities. See "Exhibit A".
- 3.1.2 Landscaping. A landscape plan documentation package shall be prepared as part of the final site plan for each phase of the development. This plan shall include all plant materials, sizes and irrigation. The plan shall also address the following:
- Building foundation landscaping shall be included on all units that can be seen from any public area.
  - The required street trees shall be located outside of the clear view zones.
- 3.1.3 Building Exteriors. Earth tone colors and acceptable materials shall be used on the building exteriors. These shall be indicated on the final elevations and site plan.
- 3.1.4 Screening. A six foot high screening fence is required around the east and north perimeter. Existing trees between the development and adjacent property shall be preserved to the greatest extent possible and new evergreen and faster growing deciduous trees shall be planted adjacent to adjoining property to provide both short term and winter screening.
- 3.1.5 Street Lights. The street lighting shall comply with the City's residential lighting standards and the light details shown on the final site plan.
- 3.1.6 Fire Hydrants. Fire Hydrants and other necessary fire related infrastructure shall be installed in accordance with the Fire Marshal's requirements.

- 3.1.7 Engineering. Construction plans for the public streets, private roads, parking area and required utilities shall be prepared and reviewed by the City Engineer. These plans shall include road improvements and curb cuts along State Street, utilities, storm water improvements, streetlights, street signs, conduit for future citywide fiber optics network, and other improvements as required by the City Engineer. No subdivision plat shall be recorded until the City Engineer has approved the construction plans associated with the phase in question.
- 3.1.8 Building Permits. All requirements of the Building Official shall be satisfied.
- 3.1.9 Final Site Plan. The final site plan shall be prepared in accordance with the Zoning Ordinance. Prior to the final subdivision plat approval for each phase, the applicant shall obtain final site plan approval for the master planned development.
- 3.1.10 Final Plat. The applicant shall prepare a final subdivision plat to be reviewed and approved by the City Engineer, Fire Marshal and City Council for each phase of the development.
- 3.1.11 Utility Services. The applicant shall obtain duty to serve letters for water and sewer prior to final site plan approval. The applicant shall provide evidence that a courtesy notice has been sent to Questar Gas, Utah Power, Comcast Cable, UTOPIA, and Qwest Communications regarding the utility easements on the subdivision plat prior to final approval of any subdivision plat.
- 3.1.12 Live/Work Units. The units available as live/work units shall be limited to those units directly adjacent to the retail portion of the project. These units will be designated as live/work units on the final plat.
- 3.1.13 Open Space. The developer shall develop as open space not less than the greater of 35% of the project area or twice the amount of the site area dedicated to parking in accordance with the State Street Overlay Zone. The developer must grant the City a permanent open space easement on and over the common portion of the required open space and active, improved open space in accordance with the State Street Overlay Zone. A minimum of fifteen percent (15%) of the project area shall be developed as active, improved common area to include such uses as mini parks, picnic areas, playgrounds, recreation areas and structures such as club houses, pavilions, swimming pools, etc. Improved, Common Recreational Amenities shall be concentrated into larger, more functional areas as much as possible while continuing to provide each dwelling unit with an amenity within reasonable walking distance.
- 3.1.14 Trail Linkages. Improved, non-motorized trail linkages shall be included on the final site plan and shall connect to the portion of the development located in Sandy.

- 3.1.15 Street Trees. Street trees shall be planted at a rate of one tree per 30 feet of street frontage. Trees may be clustered or spaced linearly in the park strip, provided the total number of trees equals the required rate. Trees shall be installed in accordance with Midvale's Street Tree Selection Guide.
- 3.1.16 Maintenance of Sidewalk and Park Strip. Sidewalks and park strips, for both public and private roads, shall be maintained at all times by the developer or successors in interest. This maintenance shall occur in accordance with Sections 12.08.010, 12.08.020, and 12.08.120 of the Midvale Municipal Code. Included in this requirement is the care and maintenance of the street trees within this section of park strip. These trees shall be maintained in a healthy state at all times, and shall be immediately replaced if diseased or dying.

#### **Article 4 General Terms and Conditions**

- 4.1 Construction of Agreement. This Development Agreement shall be construed and interpreted to ensure that the Developer strictly complies with the requirements and conditions of the Master Planned Development and Subdivision approval for East Town Village Development.
- 4.2 Laws of General Applicability. Where this Development Agreement refers to laws of general applicability to East Town Village Development, that language shall be deemed to refer to laws which apply to all other subdivided properties in the same zoning district that are located within Midvale City.
- 4.3 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns as described in 4.4 below.
- 4.4 Binding Effect. This Development Agreement shall be binding on any and all successors and assigns of the Developer in the ownership or development of any portion of East Town Village Development, including the one-foot protection strip. No individual lot owners shall be responsible for the Developer's obligations hereunder.
- 4.5 Transfer of East Town Village Development. In the event the Developer transfers all or a portion of Developer's interests in East Town Village Development, the transferee shall be deemed and treated in all respects as the Developer for all purposes under this Development Agreement. The Developer shall notify the City in writing of such transfer within thirty (30) days of said transfer becoming final. The transferee shall then be fully substituted as the Developer under this Development Agreement, and the Developer executing this Development Agreement shall be released from any further obligations under said Agreement upon completion of said transfer. This transfer provision does not apply to the transfer of individual lots within the subdivision.
- 4.6 Default. In the event the Developer fails to comply with any of the terms and conditions of this Development Agreement or Midvale Municipal Code, the City shall give the Developer written notice specifying the nature of the alleged default, and, when

appropriate, the time and manner in which the default must be satisfactorily cured. If the Developer fails to respond to the default, the City may employ its enforcement procedures and penalty provisions as found in the Midvale Municipal Code.

4.7 Duration. The term of this Development Agreement shall commence on the date the Development Agreement is executed by both parties. The term of this Development Agreement shall extend for the period of time the Developer or its successors owns any portion of the property or until the required improvements are installed as required herein, whichever is longer.

4.8 Notices. Any notice, confirmation or other communication hereunder shall be given in writing by mail or facsimile at the following addresses or numbers:

Midvale City:

Midvale City Administrator  
655 W. Center St.  
Midvale, UT 84047  
FAX: (801) 567-0518

Midvale City Planner  
655 W. Center St.  
Midvale, UT 84047  
FAX: (801) 567-0518

Midvale City Attorney  
655 W. Center St.  
Midvale, UT 84047  
FAX: (801) 255-1252

Midvale City Recorder  
655 W. Center St.  
Midvale, UT 84047  
FAX: (801) 567-0518

Developer:

East Town Village Development, LC  
758 South 400 East  
Orem, UT 84097  
FAX: (801) 227-0567

4.9 Savings Clause. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of the Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid.

4.10 Recordation of Agreement. This Agreement shall be recorded by the Developer in conjunction with the East Town Village Development plat at the Salt Lake County Recorder's Office, and a copy of the recorded document provided to the City.

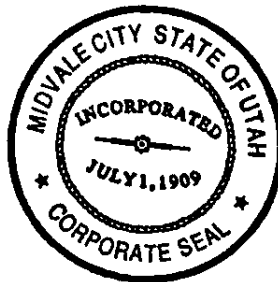
IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, and by a duly authorized representative of the Developer, as of the above stated date.

CITY: MIDVALE CITY CORPORATION

By: JoAnn B. Seghini  
JoAnn B. Seghini, Mayor

ATTEST:

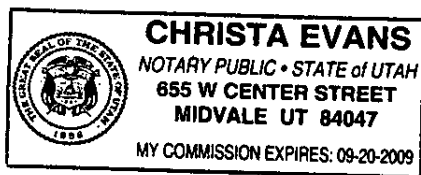
Rori Clark  
Rori Clark  
City Recorder



DEVELOPER:

East Town Village Development, LC  
By: Trophy Homes, LC, Its Manager  
By: Jeffrey D. Southard  
(name/title) Jeffrey D. Southard, Manager

Subscribed and sworn to me this 30<sup>th</sup> day of October, 2006.



Christa Evans  
(Notary)

Residing in Salt Lake County, Utah

My commission expires: 9/20/2009

**MIDVALE CITY, UTAH**

**RESOLUTION NO. 06/06/2006 R-18**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT FOR THE EAST TOWN VILLAGE LARGE SCALE MASTER PLAN**

**WHEREAS**, the City has adopted the State Street Overlay Zone, whose purpose is to: Facilitate the transition of larger, undeveloped, underdeveloped, and underutilized parcels into a more vibrant mix of commercial and residential uses; Provide an identifiable entry corridor for the city by encouraging high quality, distinctive development; Promote economic development by encouraging a mix of commercial, retail, high quality office, open space, entertainment, recreation, residential, public and institutional land uses; Encourage the creation of high quality development including residential, retail, office, and other commercial and public uses in coordinated, visually exciting and durable projects; Improve urban design in the area by providing opportunities for variations in architectural design and housing types including multiple unit living where full amenities are available; Promote pedestrian connections within developments and between adjacent neighborhoods; Coordinate urban design and streetscape elements in order to create a distinctive visual quality for the area; Require thematic landscaping to provide a distinctive visual quality to the area; Manage parking and access in a manner that enhances pedestrian safety, pedestrian mobility and quality urban design; and assure and enhance the investment of property owners in the State Street Corridor; and

**WHEREAS**, the property owner requested and the City Council approved, a rezone of property located at approximately 8250 South State Street from State Street Commercial to Mixed Use with the State Street Overlay Zone; and

**WHEREAS**, the Midvale City Planning Commission has approved the East Town Village Large Scale Master Plan; and

**WHEREAS**, the Subdivision Ordinance requires that the City and the developer enter into a Development Agreement on all Large Scale Master Plans.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, UTAH:**

Section 1. The Midvale City Council hereby adopts the East Town Village Large Scale Master Plan Development Agreement as the guiding document for the East Town Village project and authorizes the Mayor to enter into a contract with East Town Village Development, LC, as follows:

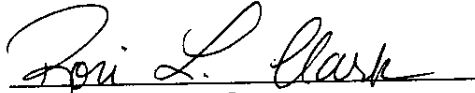
**“Exhibit A”**

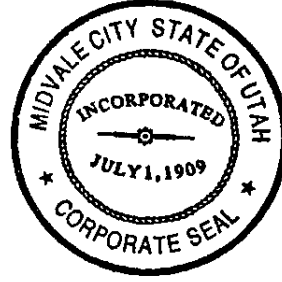
Section 2. This Resolution shall be effective upon execution by all parties.

Passed and Approved by the City Council of Midvale City, Utah, this 6<sup>th</sup> day of June, 2006.

  
Johann B. Seghini, Mayor

ATTEST:

  
Rori L. Clark, CMC  
City Recorder



Voting by the City Council:

	"AYE"	"NAY"
Kelly Bennett	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Colleen Costello	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brent Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wayne Sharp	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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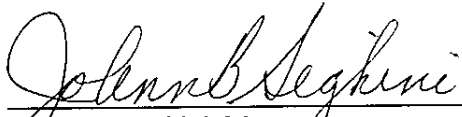
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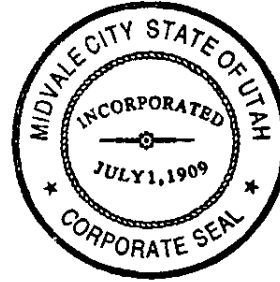
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Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brent Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wayne Sharp	<input checked="" type="checkbox"/>	<input type="checkbox"/>