

## DEVELOPMENT AGREEMENT Midway Village

This Agreement regarding the development of Midway Village Planned Unit Development is entered into this 25<sup>th</sup> Day of January 2005 by and between the City of Midway, a Utah municipal corporation, hereafter referred to as "City" and Village Communities, LC, hereafter referred to as "Developer"

### RECITALS

- A. Midway City, acting pursuant to its authority under Utah Code Annotated 10-9-101 *et seq.*, in compliance with section 02.100603 F. 3. of the Midway City Zoning Ordinance and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Midway Village Planned Unit Development and, in exercise of its legislative discretion, has elected to enter into this agreement.
- B. Developer is the owner of certain real property known as Assessor's Parcel Number \_\_\_\_\_ hereafter referred to as the "Property". This property is legally described on Exhibit "A" attached hereto and incorporated herein by reference.
- C. The property is subject to the City of Midway Zoning Ordinance and is currently zoned "R15", Developer and City desire to allow Developer to make improvements to the property.
- D. The improvements and changes to be made to the Property shall be consistent with the current Zoning Ordinance of the City of Midway, any future changes to the Zoning Ordinance of the City of Midway, and the City of Midway General Plan.
- E. The City's governing body has authorized execution of this Agreement by Resolution No. \_\_\_\_\_, to which this Agreement is attached.
- G. The City has authorized the negotiation of and adoption of development agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements which substantially benefit the City.

### **NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

- I. **Recitals.** The recitals set forth above are incorporated herein by this reference.
- II. **Conditions Precedent.** Developer understands, acknowledges and agrees that the City is not a party to any third party agreement nor are any of the terms, conditions or benefits conferred by this Development Agreement intended to be of any benefit to the current owner or any prospective lender or any party that is not a signator of this agreement. Reliance upon this agreement by any third party is at risk and the City makes absolutely no representation that the benefits herein are assignable or for the benefit of any third party without the expressed written approval of the Mayor and Council of the City of Midway.
- III. **Permitted Uses of Property.** The permitted uses for the Property shall be those uses specifically listed in the City of Midway Zoning Ordinance.
- IV. **Term.** This Agreement shall be effective as of the date of recordation and shall continue in full force and effect from that time forward.
- V. **General Provisions.**
  - A. **Notices.** All Notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in

writing and delivered personally or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to:

If to City:           The City of Midway  
75 North 100 WEST  
P.O. Box 277  
Midway City, Utah 84049  
Attention: Mayor

If to Developer: Village Communities-LC  
1265 East Fort Union Blvd. #100  
Midvale, Utah 84047  
Attention : Kelly Sheppard or Bob Tippetts

or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective.

- B. Mailing Effective. Notices given by mail shall be deemed delivered seventy-two (72) hours following deposit with the U.S. Postal Service in the manner set forth above.
- C. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same of any other provision of this Agreement.
- D. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any provision within this Agreement.
- E. Authority. The parties to this agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. City and Developer represent and warrant to each other that each party is fully formed and validly exists under the Laws of the State of Utah, and that each party is duly qualified to do business in the State of Utah and each is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing. Developer represents to the City that by entering into this Agreement, Developer has bound the property and all persons and entities having a legal or equitable interest to the terms of the Agreement.
- F. Entire Agreement. This Agreement, including exhibits, constitutes the entire agreement between the parties.
- G. Amendment of this Agreement. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the Mutual written consent of the parties to this Agreement or by their successors in interest or assigns. Any such amendment of this agreement shall be recorded in the official records of the Wasatch County Recorder's Office.
- H. Severability. If any of the provisions of this agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purpose of this Agreement and the Developer's ability to complete the project is not defeated by such severance.
- I. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in connection

with this Agreement shall be proper only in a court of competent jurisdiction located in Wasatch County, Utah, and the Parties hereby waive any right to object to such venue.

- J. Remedies. If any party to this agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.
- K. Attorney's Fee and Costs. If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.
- L. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.
- M. Assignment. The rights of the Developer under this agreement may not be transferred or assigned, in whole or in part except by written approval of the City. Developer shall give notice to the City of any proposed or requested assignment at least thirty (30) days prior to the effective date of the assignment. City shall not unreasonably withhold its consent to assignment
- N. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.
- O. No Agency Created. Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.
- P. Termination by Developer In the event that the developer, within one year of the date hereof, elects not to, or is unable to, proceed with the development outlined in this Agreement, the Developer may terminate this Agreement.

#### VI. City's Obligations

The City assures that the Developer may construct a residential Planned Unit Development on Assessor's Parcel Number OM \_\_\_\_\_ under the ordinances of the City and the Laws of the State of Utah.

#### VII. Developer's Obligations

##### A. Property Maintenance:

In addition to the provisions of the Midway Village Conditions, Covenants, and Restrictions documents, recorded in the Office of the Wasatch County, Utah Recorder, Developer agrees to the following:

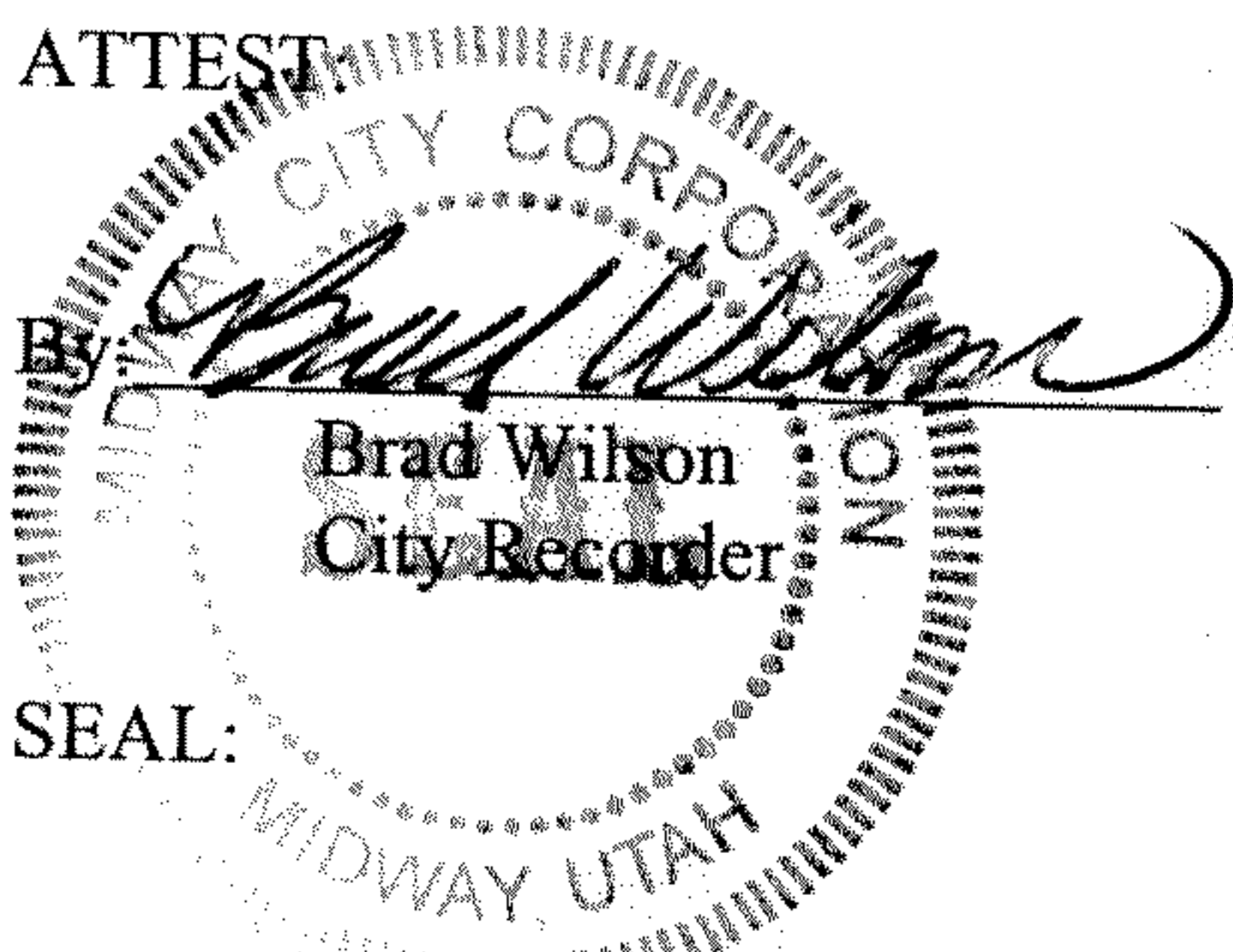
1. That in the event of failure or neglect on the part of the owners, successors, or assigns to maintain the water and sewage facilities, common areas, landscaping or other improvements in good condition, the city may perform the necessary work and for that purpose may enter upon the land and do the work and charge the cost thereof, including reasonable attorney fees, to the owners or their successors or assigns.
2. That the owners, successors, or assigns will reimburse the city for all costs which the city incurs in performing the necessary work.
3. That the developer will construct and maintain the project in accordance with approved plans and in accordance with city standards.
4. That the terms of the contract shall be binding upon the heirs, assigns, receivers, and successors

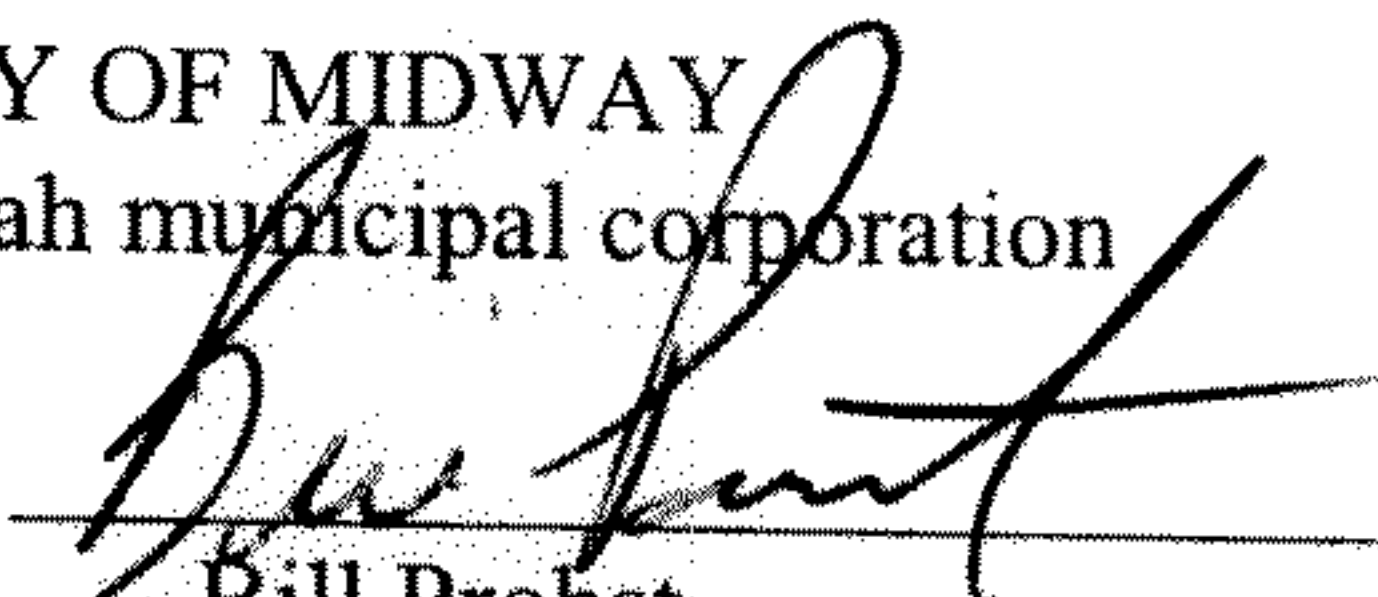
of the project for the life of the project or buildings.

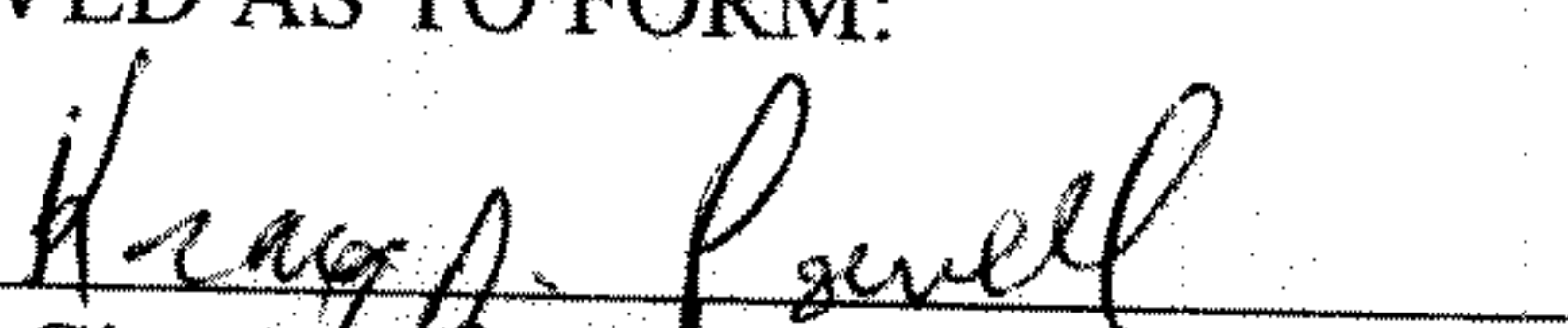
B. Plans and Permits for Development and Improvements. The Developer agrees and understands that Developer will supply plans and obtain any and all required permits under City, County, State or Federal regulations before commencing any work or improvements and that the Developer will pay all applicable fees as required.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written:

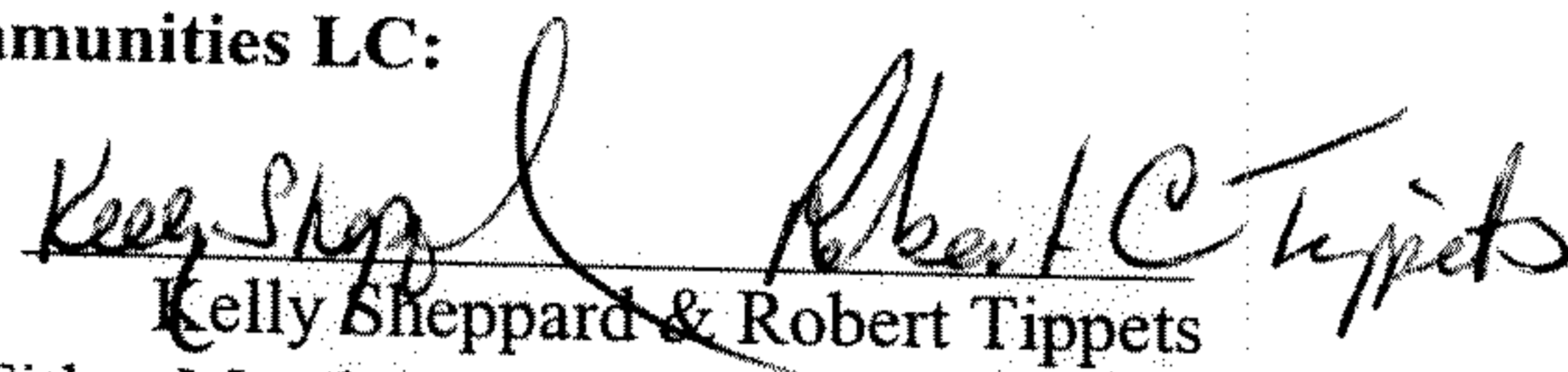
**For Midway City:**

ATTEST:  
  
Brad Wilson  
City Recorder

CITY OF MIDWAY  
a Utah municipal corporation  
By:   
Bill Probst  
Mayor


APPROVED AS TO FORM:  
By:   
Craig Powell  
City Attorney

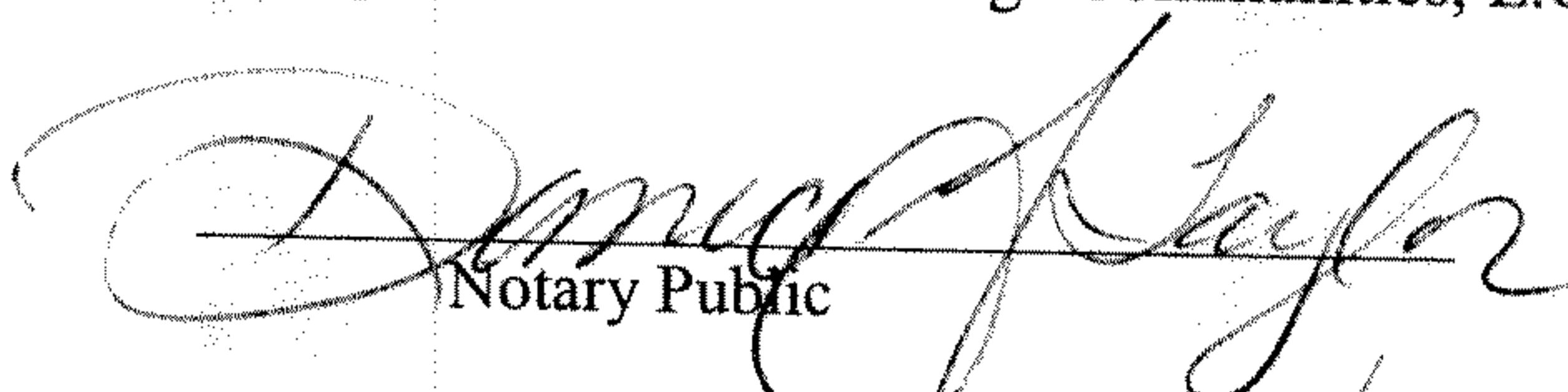
**Village Communities LC:**

By:   
Kelly Sheppard & Robert Tippets  
Title: Member  
Persons authorized by Village Communities, L.C., a Utah  
Limited Liability company

STATE OF UTAH                    )  
  )ss  
County of Wasatch            )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of January 2005, by Kelly Sheppard and Robert Tippets, on behalf of Village Communities, L.C.

 DANICE A. TAYLOR  
NOTARY PUBLIC - STATE OF UTAH  
4623 BEECHWOOD ROAD  
TAYLORSVILLE, UT. 84123  
COMM. EXP. 12-28-2005

  
Notary Public  
My Commission Expires: 12/28/2005

## BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE DEDICATED WEST RIGHT-OF-WAY LINE FOR PINE CANYON ROAD. SAID POINT BEING NORTH 803.53 FEET AND EAST 549.09 FEET FROM THE FOUND WASATCH COUNTY SURVEYORS BRASS CAP FOR THE SOUTH QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

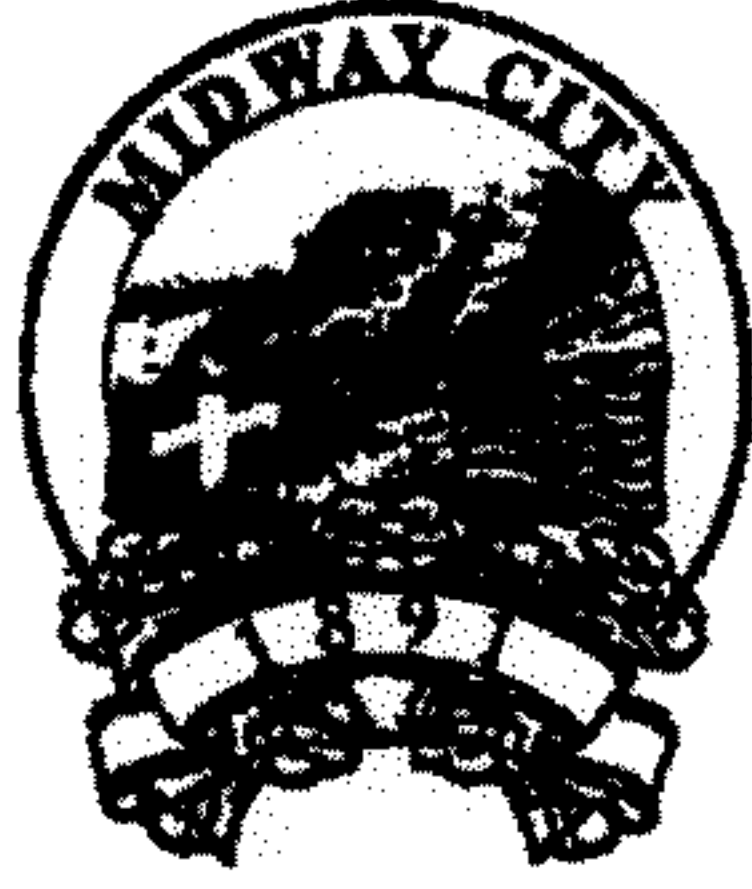
SOUTH 89°26'11" WEST 491.36 FEET; THENCE NORTH 62°42'08" WEST 69.10 FEET; THENCE NORTH 372.26 FEET; THENCE NORTH 88°44'14" WEST 388.38 FEET; THENCE NORTH 13°34'51" WEST 144.43 FEET; THENCE NORTH 06°38'54" EAST 85.73 FEET; THENCE NORTH 79°18'10" EAST 80.27 FEET; THENCE SOUTH 17°10'44" EAST 62.21 FEET; THENCE SOUTH 26°13'24" EAST 89.02 FEET; THENCE SOUTH 68°10'59" EAST 73.11 FEET; THENCE SOUTH 12°50'41" WEST 53.61 FEET; THENCE SOUTH 89°13'28" EAST 348.22 FEET; THENCE NORTH 14°01'50" WEST 295.32 FEET; THENCE NORTH 26°54'27" WEST 45.31 FEET; THENCE SOUTH 89°12'00" EAST 521.23 FEET ALONG THE PROPERTY LINE WITH BRINTON TO THE WEST RIGHT-OF-WAY FOR PINE CANYON ROAD; THENCE SOUTH 00°22'03" WEST 744.34 FEET ALONG THE DEDICATED RIGHT-OF-WAY FOR PINE CANYON ROAD TO THE POINT OF BEGINNING.

CONTAINING 9.79 ACRES

*Midway Village PUD A*

*Lots 1-19*

*Lots A-H*



# REPORT OF ACTION of the Midway City Council

**Item: Consent Agenda Item D:** Grant Final Approval to Midway Village at The Homestead with the Findings of Fact that the Project Meets the Objectives and Intent of the Following: 1. The General Plan; 2. The RR-1-15 Zone; and 3. The Zoning Ordinance Regarding Planned Unit Developments and also Meets the Conditions of Preliminary Approval: 1. Final Approval shall be Subject to Changes Required by the City Planner, Engineer & Attorney; 2. Any Additional Requirements of the Planning Commission. Also that the Curb be Changed to End at the Right-of-Way

**Action:** Approved

**Date of Action:** 22 September 2004

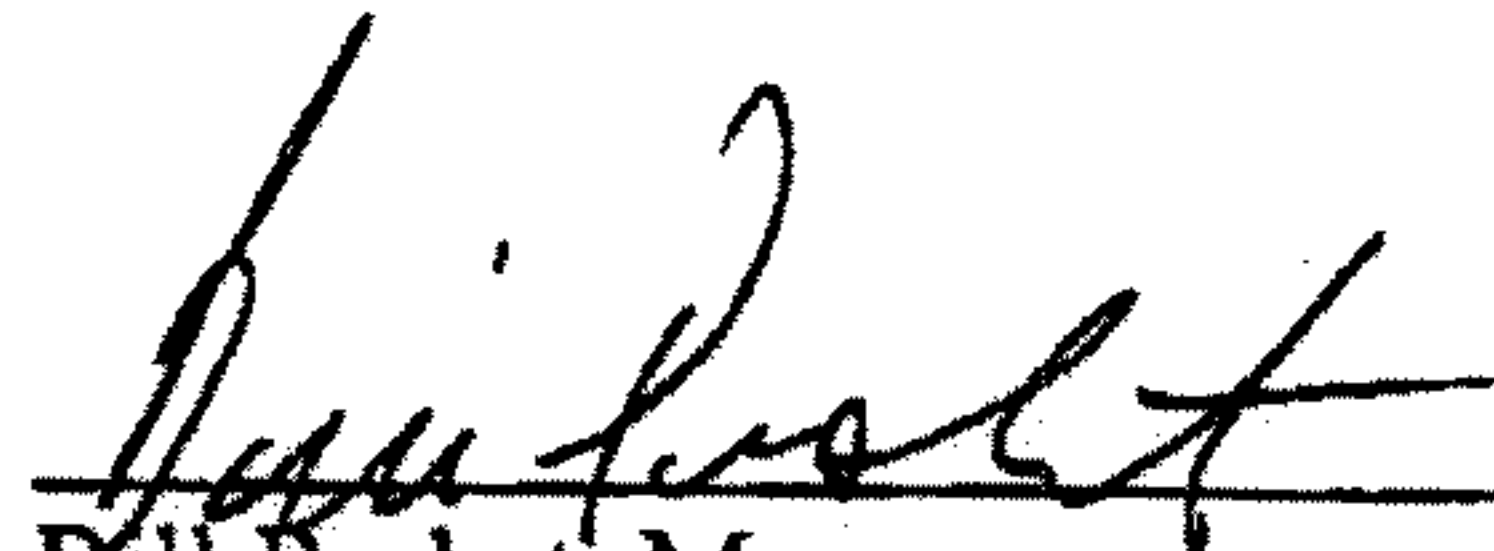
**Motion:** Council Member Tatton moved to approve the consent agenda.

**Second:** Council Member Thacker seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the council voting as follows:

Council Member Huggard	Aye
Council Member Bonner	Aye
Council Member Hayward	Aye
Council Member Thacker	Aye
Council Member Tatton	Aye

  
Bill Probst, Mayor

**Midway City Corporation**

Mayor Bill Probst

City Council Members:

Don Huggard • Colleen Bonner • Gerald Hayward  
Doug Thacker • Rick Tatton

75 North 100 West, P.O. Box 277  
Midway, Utah 84049

Phone: 435-654-3223 Fax: 435-654-4120



# RESOLUTION 2005-09

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDWAY, COUNTY OF WASATCH, UTAH, EXECUTING THE DEVELOPMENT AGREEMENT FOR THE MIDWAY VILLAGE PLANNED UNIT DEVELOPMENT (PUD)

**WHEREAS**, Village Communities, LC ("Developer") has requested the City of Midway ("City") enter into a development agreement pursuant to Utah Code Annotated 10-9-101 *et seq.*, in order to allow for the improvement of the Midway Village PUD ("Property"); and

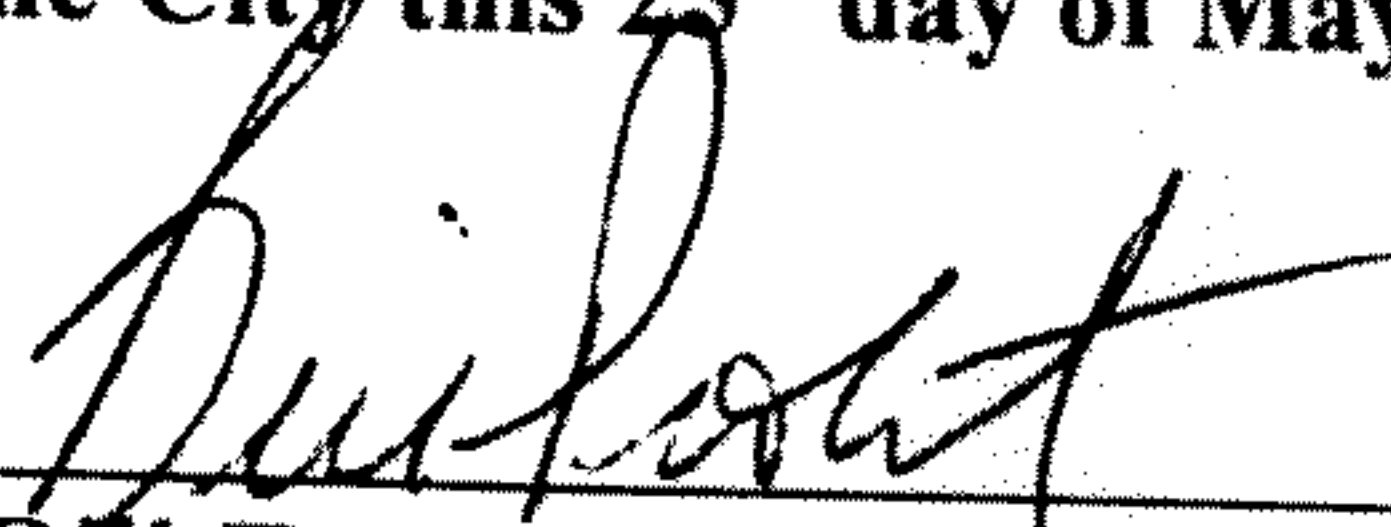
**WHEREAS**, Property is within the municipal boundaries of the City described on and attached to the development agreement as Exhibit "A"; and

**WHEREAS**, the Council of the City finds that the development and maintenance of the Property are in the interest of the health, safety, and general welfare of the city and the surrounding property owners.

**NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIDWAY, COUNTY OF WASATCH, UTAH:**

**Section I** That pursuant to Utah Code Annotated 10-9-101 *et seq.*, the Developer is hereby granted a development agreement attached hereto, for the development and improvement of the Midway Village Planned Unit Development.

**PASSED AND ADOPTED** by the Council of the City this 25<sup>th</sup> day of May, 2005

  
\_\_\_\_\_  
Bill T. Probst, Mayor

ATTEST:

  
\_\_\_\_\_  
Brad Wilson, City Recorder



Mayor Bill Probst

City Council Members:

Don Huggard • Colleen Bonner • Gerald Hayward  
Doug Thacker • Rick Tatton

75 North 100 West, P.O. Box 277

Midway, Utah 84049

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