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**MASTER DEVELOPMENT AGREEMENT  
FOR THE BINGHAM JUNCTION PROJECT  
MIDVALE CITY, UTAH**

See Exhibit A for description of property.

*LTC # 3998*

**MASTER DEVELOPMENT AGREEMENT  
FOR THE BINGHAM JUNCTION PROJECT  
MIDVALE CITY, UTAH**

This Master Development Agreement ("Agreement") is entered into and effective as of this 6<sup>th</sup> day of April, 2005 (the "Effective Date"), by and between **Littleton, Inc.**, a Delaware corporation ("**Master Developer**"), as the owner and master developer of a long term, large scale master planned project known as Bingham Junction, and **Midvale City**, a municipality and political subdivision of the State of Utah ("**City**").

**RECITALS:**

A. Master Developer is the owner of approximately 345 acres of real property located within the municipal boundaries of the City, as more particularly described in Exhibit A (the "**Property**").

B. The Property is currently zoned pursuant to the City's zoning ordinance as the Bingham Junction Zone as set forth in § 17-7-9 of the Midvale City Code, as amended by ordinance of the City Council on September 21, 2004 ("**Amended BJ Zone**"), which will become effective as provided in this Agreement. The Amended BJ Zone establishes both the procedural and substantive requirements for approval by the City of development on the Property.

C. Pursuant to § 17-7-9, Master Developer has submitted to the City for approval the Bingham Junction Large Scale Master Plan (the "**Master Plan**") in the form attached as Exhibit B to this Agreement.

D. The Master Developer plans to develop the Property in accordance with the Master Plan and the Amended BJ Zone by developing the Property for a variety of mixed uses, which may include residential (single and multi-family), commercial, office, retail and industrial, sites for public open space and recreational amenities (such as parks, pedestrian and bicycle trail systems, water features) and other amenities (the "**Project**").

E. Master Developer is willing to design and construct the Project in a manner that is consistent with and intended to promote the purpose, goals and objectives of the Amended BJ Zone in order to receive the benefit of vesting for certain zoning designations and other benefits under the terms of this Agreement as more fully set forth below.

F. The City, acting pursuant to its authority under Utah Code Ann. §10-9-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

G. The Property is the location of the Midvale Slag Superfund Site which has been or will be remediated in accordance with Records of Decision issued by the Environmental Protection Agency ("**EPA**"). Redevelopment of the Property will occur in accordance with the

Records of Decisions, applicable Explanations of Significant Differences and applicable institutional controls as set forth in the Institutional Control Process Plans approved by the EPA, the Utah Department of Environmental Quality and adopted by the City on July 13, 2004, as they may be amended from time to time (hereafter "**Institutional Control Process Plans**"). Attached hereto as Exhibit C is a brief description and notice regarding the Institutional Control Process Plans, exhibits and related documents which establish environmental controls governing the future development of the Project. References to the "Institutional Control Process Plans" in this Agreement include all documents described in Exhibit C.

H. The Master Developer and the City desire to enter into this Agreement to ensure the orderly development of the Property consistent with the Master Plan. This Agreement contains various general requirements and conditions for the design and development of the Property that are in addition to the other applicable ordinances and regulations of the City.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, conditions, and terms as more fully set forth below, Master Developer and the City hereby agree as follows:

1. **Incorporation of Recitals.** The recitals and exhibits are hereby incorporated by reference as part of this Agreement.
2. **Definitions.** As used in this Agreement, undefined terms shall have the meaning set forth in the Amended BJ Zone and the following terms shall have the following meanings:
  - 2.1. "**Amended BJ Zone**" shall have the meaning specified in the Recitals and as used in this Agreement.
  - 2.2. "**Bingham Junction Boulevard**" means a 100-foot right-of-way along the general alignment as depicted in the Master Plan and intended for use as a roadway as more fully described in Section 6.2.1.
  - 2.3. "**Bingham Junction Park**" means a 100 foot wide area adjacent to the Bingham Junction Boulevard intended for use as a park as depicted in the Master Plan and more fully described in Section 4.4.2.
  - 2.4. "**City**" means the City of Midvale, Utah, a municipal corporation and political subdivision of the State of Utah.
  - 2.5. "**Developer**" means any successor in interest to Master Developer on any undeveloped portion of the Property under the provisions of Section 11.2. The phrase "applicable Developer(s)" means the Developer(s) that is the current owner in interest of such discrete portion of the Property.
  - 2.6. "**Institutional Controls**" mean the institutional controls described generally in the Institutional Control Process Plans for Operable Unit 1 (OU1) and Operable Unit 2 (OU2) of the Midvale Slag Superfund Site (as may be amended from time to time) and as adopted and enforced by the City.

2.7. **“In-Tract Open Space”** means any landscaped or other open space areas other than Master Open Space otherwise required by the Amended BJ Zone or other applicable ordinances and regulations of the City for development within the Project (e.g. minimum landscape requirements for multi-family housing).

2.8. **“Jordan River Park”** means the area of land within the Property described generally as extending from the western boundary of the Property along the Jordan River east fifty (50) feet.

2.9. **“Master Developer”** means Littleton, Inc., a Delaware corporation, and, unless otherwise provided to the contrary, its successors and assigns to any portion of the Property under the provisions of Section 11.2.

2.10. **“Master Open Space”** means land within the Property that is conveyed or otherwise dedicated to the City pursuant to Section 4 hereof. Without limitation, the following areas will qualify as Master Open Space: Active and passive recreational areas, pedestrian and bicycle trails, regional and neighborhood parks, wildlife habitat areas, parkways, and commonly maintained natural or landscaped areas, wetlands, the Jordan River Park, and the Bingham Junction Park, as approved by the City. Other areas such as: lakes, water features, appropriate storm water management, sedimentation and retention or detention facilities, features and areas may qualify as part of Master Open Space if they meet the criteria set forth in Section 4.4.3 and criteria established in the Master Open Space Plan. However, unless otherwise agreed by the City, the following areas will not qualify as Master Open Space: roads, parking lots, setbacks, any portion of a platted lot or parcel on which any structure, parking lot, or other such feature is located, or any In-Tract Open Space; provided, however, that Master Open Space may contain structures and manmade features associated with utilities and serving other purposes (such as stormwater retention), as approved by City, which approval shall not be unreasonably withheld.

2.11. **“Municipal Improvement District”** shall mean a municipal improvement district created pursuant to the provisions of the Utah Municipal Improvement District Act, Title 17 A, Chapter 3, Part 3, Utah Code Annotated (as amended), or pursuant to other applicable Utah laws in effect from time to time governing the creation of special districts.

2.12. **“Municipal Improvement District Assessment Area”** means all or any portion of the Property which the Master Developer and the City jointly agree to include in the Municipal Improvement District Assessment Area.

2.13. **“Sub Areas”** refer to those six Sub-Areas as defined in Amended BJ Zone and as generally represented on the Sub-Area Plan described therein.

### 3. **Amended BJ Zone and Master Plan Approval.**

3.1. **Property Affected by this Agreement.** This Agreement applies solely to the Property and no additional property may be added except by written amendment to this Agreement.

3.2. Effective Date of Amended BJ Zone. The City agrees that the Amended BJ Zone will become effective on or before, and shall be in effect on, the Effective Date of this Agreement. To the extent that there is any direct conflict between the terms and conditions of the Amended BJ Zone and this Agreement, the Amended BJ Zone will control.

3.3. Large Scale Master Plan Approval. Pursuant to the provisions of § 17-3-5 and § 17-7-9 of the Midvale City Code and the Amended BJ Zone as part of this Agreement the City has approved the Master Plan for the Project in the form attached as Exhibit "B" to this Agreement. The Master Plan shall govern development of the Project as more fully described in the Amended BJ Zone and this Agreement.

**4. Master Open Space Dedication, Improvement, and Maintenance.**

4.1. Master Open Space Dedication and Conveyance. Master Developer voluntarily and irrevocably agrees to convey, dedicate, and donate (whether directly or indirectly) to the City, at no cost to the City, and the City agrees to accept and receive, at no cost to the City, a minimum of 69 acres of the Property (representing twenty percent (20%) of the total gross acreage of the Property) as Master Open Space. Conveyance of Master Open Space to the City (i) will be accomplished through special warranty deed, as provided in Section 12.7, except that in the City's sole discretion, the City may also accept some other form of dedication or conveyance; and (ii) may be effected through a direct conveyance from Master Developer, or indirectly through a conveyance from Master Developer's successors and/or assigns to the Property.

4.2. Master Open Space Plan. Master Developer agrees to submit a Master Open Space Plan to the City, for its review and approval in connection with the submittal of the first Small Scale Master Plan submitted in accordance with this Agreement and the Amended BJ Zone. The Master Open Space Plan shall include not only those areas intended to be conveyed to the City for Master Open Space, consistent with the Master Plan, but also anticipated improvements and a timetable for construction of the improvements and conveyance of the improved Master Open Space to the City. The Parties acknowledge and agree that some flexibility shall be allowed to shift the final location of Master Open Space from that depicted on the Master Open Space Plan to conform to the final design and engineering plans for the Project but it is recognized that such a shift may or may not take place. In the event that the parties are unable to reach agreement on a Master Open Space Plan within ninety (90) days of the time it is submitted to the City as provided in this section (the "Master Open Space Termination Date"), then either party may terminate this Agreement; provided notice of such termination must be given by the party desiring to terminate this Agreement following the Master Open Space Termination Date and within thirty (30) days following the Master Open Space Termination Date ("Master Open Space Termination Period"). In the event neither party terminates this Agreement within the Master Open Space Termination Period, this Agreement shall continue in full force and effect and pursuant to its terms, except that the Master Open Space Termination Date may be extended by the mutual agreement of the parties. Each party agrees that it shall not unreasonably withhold its

consent to a request by the other party to extend the Master Open Space Termination Date so long as negotiation of the Master Open Space Plan is proceeding in good faith.

4.3. Master Open Space Compliance. Master Developer's duty to dedicate 69 total acres of Master Open Space, as provided in Section 4.1, will be reduced upon conveyance or other dedication, by the total number of acres of Master Open Space (i) located within each Small Scale Master Plan approved by the City; and (ii) Master Open Space areas that are otherwise conveyed or dedicated to the City as provided in Section 4.4. In order to monitor compliance with the Master Open Space requirements of this Agreement, each Small Scale Master Plan submitted in accordance with the requirements of the Amended BJ Zone for any sub-area or phase of the Project shall include (i) a detailed description of the nature, location, and amount of Master Open Space located within the Small Scale Master Plan Area; (ii) a detailed description of how the Master Open Space areas will be linked to the overall Master Open Space system identified in the Master Plan; and (iii) a detailed description of how and when the relevant Master Open Space areas shown on the Master Plan will be improved and conveyed to the City as required herein.

4.4. Master Open Space Amenities. As defined herein, Master Open Space includes certain specific features and other improvements and amenities ("**Amenities**"). The parties agree that the Amenities will be improved, dedicated, and otherwise maintained pursuant to the following terms and conditions:

4.4.1. Jordan River Park. Master Developer agrees to convey to the City the Jordan River Park, at the time of submittal of the first Small Scale Master Plan application; provided, however, that in the event that the first Small Scale Master Plan application is filed prior to the time that Master Developer has completed all remedial action required by EPA with respect to the Jordan River Park, then Master Developer will not be required to convey the Jordan River Park to the City until sixty (60) days after Master Developer has completed all remedial action required by EPA as to such property. The City further agrees to provide Master Developer with access to the Jordan River Park in order to build and maintain any stormwater retention or detention facilities, including outfall structures, as may be necessary to develop the Property. The City and Master Developer each recognize that in the southern portion of the Jordan River Park, certain stormwater retention or detention facilities have already been designed and will be partially constructed (excavated and backfilled with clean fill material) during the implementation of the remedial action.

4.4.2. Bingham Junction Park.

4.4.2.1. Master Developer agrees to dedicate to the City the Bingham Junction Park as follows: (i) for the area south of Jordan River Boulevard, in a location along the general alignment shown for the Bingham Junction Boulevard in the Master Plan; and (ii) for the area north of Jordan River Boulevard, in a location which may not necessarily be adjacent to the Bingham Junction Boulevard as it extends north of Jordan River

Boulevard, to be determined jointly by the Master Developer and City at the time of review and approval of a Master Open Space Plan.

4.4.2.2. The final design and alignment of Bingham Junction Park, along with dedication and conveyance of these Amenities, will be in phases, consistent with the Small Scale Master Plan process as provided in the Amended BJ Zone. The Parties acknowledge and agree that some flexibility shall be allowed to shift the final alignment of Bingham Junction Park from that depicted on the Master Plan in order to conform to available funding and the final engineering design, and agree that the final alignment will be accomplished at the time of Small Scale Master Plan approval, subdivision plat approval, or other development approval for the adjoining property as part of the Project.

4.4.3. Water Features. In the event that Master Developer elects to construct one or more lakes or other water features as part of Storm Water Detention Facilities for the Project, any such lake or water feature must be supplemented with an appropriate water source provided by Master Developer and/or include a water circulation method adequate to maintain water quality appropriate for recreational uses.

4.5. Improvement and Conveyance of Master Open Space. The Parties intend that the improvement of Master Open Space will be implemented and funded by the Developers as required by the provisions of the Amended BJ Zone and this Agreement. The specific requirements for improvements to Master Open Space and time table for construction of such improvements and conveyance of the improved Master Open Space to the City shall be established at the time of and in connection with the applicable Small Scale Master Plan process, except that the City agrees to assume responsibility for funding and making improvements with respect to the Jordan River Park. If agreed by the parties, the City may in its discretion also assume responsibility for making improvements with respect to other Master Open Space areas. The City agrees to provide the Master Association Chair with notice as set forth in Section 5.1 and an opportunity to comment on any improvement plans by the City. Unless otherwise agreed, to the extent that improvements to Master Open Space are made and funded by a Developer, such improvements will be completed prior to the time that the Master Open Space property is conveyed or otherwise dedicated to the City as provided herein.

4.6. Maintenance of Master Open Space. After the date of completion of construction, inspection, acceptance and conveyance of any Amenities or other required improvements, the City shall be responsible for maintenance of Master Open Space areas and any improvements thereto. Master Open Space areas that are dedicated but not conveyed to the City shall be maintained, repaired and improved by the applicable property owner's association. Following the construction, completion, inspection, and acceptance of any required improvements and conveyance of Master Open Space areas to the City, the City shall perform standard and routine maintenance on such Master Open Space areas. Following the expiration of the one-year guaranty or warranty period that applies to all public improvements accepted by the City as provided in Section 01005 of the City's

Standard Construction Specifications, the City shall also be responsible for repair and future improvement of any such Master Open Space areas. Upon request, the City will permit the Master Property Owners' Association or a designated owner of property within the Project to perform maintenance activities or other improvements.

**5. Declaration of Covenants.** In order to implement the goals and objectives of the Master Plan and Amended BJ Zone, prior to or concurrent with the first application for development of any phase or portion of the Project, Master Developer shall prepare and submit for review, comment and approval by the City, one or more master declarations of covenants, conditions, and restrictions (as amended from time to time) (the "**Protective Covenants**") for such portions of the Property as Master Developer wishes to include in the Protective Covenants, which provide for, among other things, the matters set forth below. Master Developer shall record the Protective Covenants at the Salt Lake County Recorder's Office. Master Developer acknowledges that the City has no legal obligation to enforce the Protective Covenants established by the Master Developer or by any Property Owners' Association, except as such Protective Covenants may pertain to Institutional Controls.

5.1. Property Owners' Association(s). The Protective Covenants will establish one or more Property Owners' Associations for the purpose of preserving the quality of development, the maintenance of the private and any common properties in the Project, implementation of any applicable Institutional Controls (as described in the Institutional Control Process Plans) or such other purposes as may be mutually approved by the City and the Master Developer. It is anticipated that, among other things, the Protective Covenants will create a Master Property Owner's Association ("**Master Association**"), which will be managed by a Chair (the "**Master Association Chair**"), to be elected by the members of the Master Association as provided in the Protective Covenants. The Master Association Chair will be vested with all of the rights and subject to all of the duties as the entity referred to in the Amended BJ Zone as the "Property Owner's Association" or "POA" for purposes of the Amended BJ Zone. Further, the Master Association may consist of a single association covering the entire Project, several associations covering different portions of the Project, or a combination thereof. The Protective Covenants may establish the structure, procedures, authority, and remedies of the Master Association, including the right to make assessments and to lien defaulting properties and owners. The Protective Covenants may require the successors and assigns of Master Developer to perform certain duties of Master Developer in connection with the Master Association, such as institutional controls, where such duties pertain to the respective portions of the Project, if any, owned by such successors and assigns.

5.2. Design Guidelines and Review. The Protective Covenants may designate the review authority of, and the procedures to be administered by, the Master Association with respect to the Design Guidelines and design and architectural review. Such guidelines may include, without limitation, elements of site planning, building design, landscape design, trash, storage, screening, lighting, signs, and other matters.



6. **Public Facilities and Infrastructure.**

6.1. **Public Utilities and Public Utility Off-site Improvements.** The City agrees to provide municipal water, sewage and wastewater services to the Property, with sufficient capacity to service the Project. The City agrees to allow Master Developer or applicable Developer to connect the Project to the City's municipal water systems, City's off-site wastewater lines and mains and sewer interception lines traversing the Property in conformance with applicable design, construction and engineering standards and requirements. Master Developer or the applicable Developer shall dedicate land or otherwise provide easements, as necessary and as long as required by the City, to connect to said City's municipal water systems, off-site wastewater lines and mains and sewer interception lines. The City further agrees to fund and construct certain infrastructure and public utility improvements ("Off-Site Improvements") as necessary to service the Project as more fully described in Exhibit "G".

6.2. **Roads.** Except as provided in Section 6.2.1, Master Developer acknowledges and agrees that it (or applicable Developers, as the case may be) shall be responsible for financing and construction of roads within the Property of an adequate size and in conformance with Midvale City Construction Standards and Specifications to handle traffic generated by the Project. To the extent that road facilities are required by the City to be sized to accommodate traffic generated off-site, the City agrees to pay for the additional costs necessary to create sufficient excess capacity to handle traffic generated off-site. Master Developer agrees to improve, dedicate and convey, or cause the applicable Developer to improve, dedicate, and convey, to the City (or to such other public entity as agreed by the parties), at no charge to City, such land and rights-of-way (including temporary construction easements) as necessary for all roads, sidewalks, and curbs/gutters located on the Property ("**Roads**"). The time and place of conveyance, and improvement, of such land and rights-of-way, will be established in connection with the approval of the applicable Small Scale Master Plan required by the Amended BJ Zone. Upon satisfactory completion of construction, inspection, and acceptance by the City of any Roads that are constructed by Master Developer or the applicable Developer, such Roads shall be transferred to the City. It is anticipated by the Parties that the Reimbursement Agreement will provide for financing for the design and construction of certain improvements relating to certain Roads.

6.2.1. **Bingham Junction Boulevard.** Master Developer hereby agrees to dedicate to the City the Bingham Junction Boulevard along the general alignment shown in the Master Plan. The parties acknowledge and agree that some flexibility shall be allowed to shift the final alignment of Bingham Junction Boulevard from that depicted on the Master Plan in order to conform to the final engineering and design as long as the alignment is coordinated at the intersection of 7800 South with the alignment of Bingham Junction Boulevard within the Jordan Bluffs Project, and agree that the final alignment will be established at the time of Small Scale Master Plan approval, Subdivision Plat approval, or other development approval for the adjoining property as part of the Project. The conveyance of Bingham Junction Boulevard may be accomplished in phases in connection with the approval of the applicable Small Scale Master Plan. The parties further

acknowledge that the full 100 foot right-of-way for Bingham Junction Boulevard will be necessary for the area south of Jordan River Boulevard but may be reduced in width north of Jordan River Boulevard as long as it is designed in a manner to accommodate traffic generated by the Project and complies with the City's Standard Construction Specifications. The City agrees, at its sole cost and expense, to use its best reasonable efforts as follows: (i) to assist in securing approval from the Utah Department of Transportation ("UDOT") for a permanent, at-grade railroad crossing as described in the Midvale Slag Superfund Site Settlement and Release Agreement by and among Union Pacific Railroad Company, Master Developer and the City ("Union Pacific Agreement"), including the satisfaction of other reasonable conditions imposed by UDOT; and (ii) to construct and install a public at-grade railroad crossing and all required safety devices, as described in the Union Pacific Agreement. The parties also acknowledge that outside funding has been sought to design and build Bingham Junction Boulevard. In the event that outside funding is not made available within a reasonable time, the parties agree that the provisions of Section 6.2 will govern, including the negotiation of an appropriate size of road and dedication to accommodate the same.

6.3. Storm Water Detention Facilities. Master Developer acknowledges and agrees that it shall be responsible for financing and construction of storm water detention facilities of an adequate size to handle on-site storm water runoff generated by the Project. To the extent that storm water detention facilities are required by the City to be sized to accommodate storm water runoff generated off-site, the City agrees to pay for the additional costs necessary to create sufficient excess capacity to handle storm water runoff generated off-site. Master Developer further agrees to allow, contingent upon the availability of adequate funding, a regional storm water detention facility, of approximately 20 acres ("**Detention Facility**") on the northern portion of the Property, as depicted on the Master Plan. The Parties agree that the Detention Facility will be designed, improved, and dedicated as follows:

6.3.1.1. The final design and configuration of the Detention Facility shall be subject to approval by the City and Master Developer as part of the first Small Scale Master Plan.

6.3.1.2. The Parties agree that the 84-inch storm drain (the "**Storm Drain**") currently located west of 700 West and south of Jordan River Boulevard may be re-routed to the Detention Facility at Master Developer's option. Master Developer may also, at its option, allow a portion of flow from the Storm Drain to be maintained at or near its current outfall.

6.3.1.3. The City agrees to work with the Master Developer and any applicable Developer(s) to obtain necessary approvals and funding from third-parties relating to design and construction of the Detention Facility and the re-routing of the Storm Drain, including, without limitation, Salt Lake County and Murray City.

6.3.1.4. The parties agree that Master Developer or designated Developer(s) shall be entitled to use all excavation spoil material arising from excavation of the Detention Facility.

6.4. Other Easements. Master Developer hereby agrees to provide, or cause the Applicable Developer to provide, the City, at no cost to the City, such additional easements and access, including temporary construction easements, as may be reasonably necessary for the construction, maintenance, and repair of public infrastructure and other improvements to be constructed by the City in connection with the Project. The location and terms of such easements shall be subject to the reasonable approval of the City, the Master Developer, and any applicable Developer.

6.5. Other Infrastructure and Utilities. Master Developer and each Developer shall be responsible for complying with all applicable City, State, and federal laws, regulations, and rules with respect to all other on-site infrastructure and utilities installed to service the Property, including electrical lines, natural gas lines, telecommunication and cable television lines, and so forth. The City agrees to use reasonable efforts to assist Master Developer and any applicable Developer(s) in the procurement and installation of other utility services for the Project. Master Developer or the applicable Developer shall install conduit or fiber optics according to the design specifications set forth in Exhibit D attached hereto (the "Fiber Optics Improvements") at the time of and in conjunction with construction of streets and other public utilities within the Project. After the construction, inspection and acceptance by the City of the Fiber Optics Improvements (or any portion thereof), the City shall reimburse Master Developer or the applicable Developer for the costs of the Fiber Optics Improvements within thirty (30) days of the receipt of invoices that detail the costs incurred for such improvements. The Parties hereby recognize that any obligations of Master Developer or applicable Developer(s) with regard to the Fiber Optic Improvements shall be contingent upon the continued funding of, and the City's continuing participation in, the Utah Telecommunications Open Infrastructure Agency (UTOPIA). In no case shall the costs of the Fiber Optics Improvements be reimbursed from those tax increment funds described in Section 7.1 below without the prior approval of Master Developer.

6.6. Compliance with City Construction Standards and Specifications. Master Developer and each Developer shall comply with all applicable federal, state, and city laws, regulations and rules with respect to the installation of infrastructure and public facilities to service the Project, including City Standard Construction Specifications. In the event a particular development standard is not addressed in the City Standard Construction Specifications, the American Public Works Association (APWA) and American Water Works Association (AWWA) design standards and specifications shall apply.

## **7. Infrastructure Financing.**

7.1. Reimbursement Agreement. Contemporaneously with this Agreement, Master Developer and the Redevelopment Agency of Midvale City ("Agency") are in the process of negotiating a Reimbursement Agreement whereby Agency will reimburse Master

Developer or appropriate Developer(s) from tax increment revenues generated by the Property for agreed upon reimbursable improvements. A Term Sheet reflecting the conceptual framework of those negotiations to date is attached hereto as Exhibit E, but Master Developer and the City understand and acknowledge that any such terms are not final and binding unless and until a Reimbursement Agreement has been approved by the Agency in an open and public meeting following all necessary notice and hearings. This Agreement is not intended to and does not bind the Agency in the independent exercise of its discretion with respect to the potential approval of any Reimbursement Agreement. Reimbursement shall occur only from tax increment generated by the Property in connection with its redevelopment. In the event the Reimbursement Agreement is not approved by the Agency on or before December 31, 2005 ("Termination Date"), then either party may terminate this Agreement; provided notice of such termination must be given by the party desiring to terminate this Agreement following the Termination Date and within thirty (30) days following the Termination Date ("Termination Period"). In the event neither party terminates this Agreement within the Termination Period, this Agreement shall continue in full force and effect and pursuant to its terms, except that the Termination Date may be extended by the mutual agreement of the parties. Each party agrees that it shall not unreasonably withhold its consent to a request by the other party to extend the Termination Date so long as negotiation of the Reimbursement Agreement is proceeding in good faith.

7.2. Other Financing; Special Improvement Districts. In addition to the Reimbursement Agreement, the City and Master Developer agree to cooperate in good faith to evaluate and realize as appropriate the use of other forms of public financing, including utility system revenue bonds and/or the creation and approval of one or more special improvement districts, pursuant to the provisions of the Utah Municipal Improvement District Act, Utah Code Ann. § 17A-3-301, *et seq.*, to provide additional financing alternatives for the construction of infrastructure and publicly owned improvements including all work necessary or appropriate to service the Project. Notwithstanding the foregoing, the City retains its right to object to any forms of public financing that, in the City's reasonable judgment, are not financially viable or that place an undue burden on the City or pose an undue financial risk to the City. The City and Master Developer further agree that the creation of any Municipal Improvement Districts in connection with the Project will be subject to the following terms and conditions:

7.2.1. The Municipal Improvement District may include, among other things, publicly owned landscaping, public streets, public street lighting, storm drains, water distribution system, water treatment facility, sanitary treatment facility, trails, restroom facilities, fencing, public parking, public traffic signal lights, acceleration and deceleration lanes, retention ponds, land for parks and open space, and/or any other improvements reasonably designated for inclusion by Master Developer including all financing, design, administration or oversight costs reasonably necessary or appropriate to complete these improvements.

7.2.2. The parties acknowledge and agree that the amount of Project costs to be financed through a Municipal Improvement District will vary based on the designation of the Municipal Improvement District Assessment Area, the actual

cost of the proposed improvements, the benefits attributable to landowners and property interests to be included therein, the further discussions and agreements between the City and Master Developer, and the applicability of any limitations imposed by statutory provisions or practical financial limitations.

7.2.3. With regard to any Municipal Improvement District advocated by Master Developer, the City and Master Developer agree to use reasonable efforts to cooperate in the designation of improvements to be included in Municipal Improvement District Assessment Areas, the formation of Municipal Improvement Districts, the documentation of any reimbursement agreements and other written agreements pertaining to a Municipal Improvement District (including without limitation such waiver and disclaimer agreements as the City and Master Developer may mutually approve), and otherwise in fulfillment of any rights or obligations in connection therewith.

7.2.4. The Master Developer, or its successors and assigns, that request the City to consider the creation of any Municipal Improvement District shall pay for any reasonably necessary appraisals, fiscal analysis or feasibility studies necessary prior to the issuance of warrants or bonds and shall coordinate any such appraisals, analysis, or feasibility studies with the City and a fiscal agent mutually acceptable to the City and Master Developer.

7.2.5. If requested by Master Developer, to the extent reasonable and possible the City will assist Master Developer in utilizing the maximum potential funding of improvements and related items available through a Municipal Improvement District, including by means of purchasing from Master Developer at fair market value any public infrastructure improvements and associated interests in land, or land itself, using funds that may be made available from financing and utilizing the Municipal Improvement District. Nothing in this provision is intended to obligate the City to expend other funds to purchase such improvements or land other than such funds as may be available from utilizing a Municipal Improvement District established for such purpose.

7.3 Impact Fees. The parties acknowledge that the City does not currently charge impact fees. The parties further acknowledge and agree that in the event the City adopts impact fees at any time in the future, the Project is entitled to a credit, because Master Developer will be providing the facilities necessary to service the proposed development under the terms of this Agreement which might otherwise be financed by other means and therefore, no impact fees will be assessed in connection with future development approvals for or related to the Project. The City retains the right to assess all other fees which are applicable to the Project.

## **8. Vested Rights and Reserved Legislative Powers.**

8.1. Vested Rights. The City agrees and acknowledges that Master Developer and each applicable Developer shall have the vested right to develop and construct the Project in accordance with the Master Plan, the Amended BJ Zone, this Agreement, and other

applicable ordinances and regulations of the City to the fullest extent permitted by Utah law.

8.2. Reserved Legislative Powers. Notwithstanding the provisions of Section 8.1, Master Developer and every Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the City all of its police power that cannot, as a matter of law, be limited by contract. The City further agrees that notwithstanding the retained power of the City to enact legislation under its police powers, such legislation shall only be applied to modify the vested rights of Master Developer or any Developer under the terms of this Agreement if such legislation is based upon policies, facts, and circumstances that are sufficient to satisfy the compelling, countervailing public interest exception to the vested rights doctrine of the State of Utah. The City further agrees that any such proposed legislative changes that may affect the vested rights of the Project shall be of general application to all development activity within the City. The City further agrees that unless in good faith the City declares an emergency, Master Developer and any applicable Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed legislative change that may modify vested rights under this Agreement under the compelling, countervailing public interest exception to the vested rights doctrine.

9. Phasing and Density. The City and Master Developer agree that the Project will be developed in phases. Phasing of the development of the Project will be subject to the following provisions.

9.1. Infrastructure Phasing. Phasing of the development of the Project will take into account logical and orderly development activities, coordination in connection with the installation of infrastructure improvements, future utility capacity needs, availability of access, adequacy of utilities and related considerations, the City's capital improvements program, as approved by the City in compliance with the terms of this Agreement and the other applicable ordinances and regulations of the City.

9.2. Density Limitations, Phasing, and Recording. Maximum densities for the Project shall be Twenty-Six Hundred (2,600) residential dwelling units as provided in Exhibit F attached hereto. In order to track and monitor compliance with the maximum overall residential density limit as set forth in the Amended BJ Zone and this Agreement, each application for approval of any individual phase or subdivision plat within the Amended BJ Zone, including the component of a residential development, shall be accompanied by a statement of approval from Master Developer for the density requested in the particular development phase. The application for approval will also set forth the following information: (1) the total number of residential dwelling units and densities requested in that particular development phase; (2) the cumulative total number of residential dwelling units previously approved for all of the Project; and (3) the balance of remaining residential dwelling units available to Master Developer and other Developers for the Project. In the event that Littleton, Inc., as Master Developer, sells all of the Property, the responsibility to provide a statement of approval under this Section will transfer to the Master Association.

**10. Separate Development Agreements Required for Each Small Scale Master Planned Area.** In accordance with the provisions of the Amended BJ Zone, a Small Scale Master Plan shall be required as a condition precedent for development of any portion of the Property within the Project. Each of the separate Small Scale Master Plans, and any related development agreements, shall be consistent with this Agreement, the Master Plan, and the other provisions of the Amended BJ Zone.

**11. Parties Bound; Assignment.**

11.1. **Binding Effect; Running with the Property.** This Agreement shall be binding upon and inure to the benefit of Master Developer and any and all successors and assigns of Master Developer in the ownership or development of any portion of the Project. This Agreement shall be recorded against and shall run with the Property, senior to any Protective Covenants, Master Association covenants, or any debt security instruments encumbering the Property.

11.2. **Assignment and Transfer of Development Rights and Obligations.** It is contemplated that Master Developer may sell, or facilitate the sale of, all or a substantial portion of the Property and assign and transfer the rights and obligations under this Agreement with respect to all or portions of the Project, and will sell, or facilitate the sale of, various portions of the Property to one or more third parties or developers who will prepare and submit Small Scale Master Plans for sub areas or phases of the Project. Master Developer shall be entitled to cause the sale or transfer any portion of the Property and/or Project subject to the terms and conditions of this Agreement, without the prior written consent of the Midvale City Council. In the event the buyer or transferee of all or any portion of the Property enters into an agreement with Master Developer whereby Master Developer assigns, and the buyer or transferee assumes the obligations of Master Developer under this Master Agreement with respect to all or any portion of the Property transferred, and Master Developer desires to be released from all future obligations in connection with such Property under this Agreement, City shall have the right to approve such assignment and assumption agreement, which approval shall not be unreasonably withheld or delayed. The review by and approval of the City is intended to verify the ability of the proposed transferee or assignee to assume all of the obligations of the Master Developer under the terms of this Agreement with respect to the applicable portion of the Property or Project. No approval of assignment or assumption shall be required in connection with (i) an assignment by operation of law, such as including, but not limited to, merger, reorganization, or foreclosure; (ii) an assignment to a Qualified Mortgagee (defined below); or (iii) an assignment to a wholly owned subsidiary or affiliate of Master Developer.

**12. General Provisions.**

12.1. **Term of Agreement.** The term of this Agreement shall be for a period of twenty five (25) years following the date of its adoption by the City Council unless the Agreement is earlier terminated or its term modified by written amendment to this Agreement, except as set forth below.

12.2. **Agreement to Run With the Land; Priority.** This Agreement shall be recorded in the office of the Salt Lake County Recorder against the Property as described in Exhibit A and is intended to and shall be deemed to run with the land, and shall be binding on all successors and assigns of Master Developer in the ownership or development of any portion of the Property or Project. The benefits of this Agreement shall inure to successors-in-interest and/or subsequent owners only if the Agreement is transferred or assigned in accordance with the provisions of Section 11 above.

12.3. **Default.** Neither party shall be in default under this Agreement unless such party fails to perform an obligation required under this Agreement within thirty (30) days after written notice is given to the defaulting party by the other party, reasonably setting forth the respects in which the defaulting party has failed to perform such obligation. If the nature of the defaulting party's obligation is such that more than thirty (30) days are reasonably required for performance or cure, the defaulting party shall not be in default if such party commences performance within such thirty (30) day period (or, if such commencement is impossible due to Events of Force Majeure (defined in the following sentence), commences performance when the Events of Force Majeure terminate) and after such commencement diligently prosecutes the same to completion. "**Events of Force Majeure**" means any event or circumstance beyond the reasonable control of the Master Developer (or Developer) or the City, as the case may be, which delays or prevents the performance by Master Developer (or Developer) or City, as the case may be, of its obligations under this Master Agreement despite the parties' reasonable best efforts to fulfill the obligation. The requirement that the parties exercise "reasonable best efforts to fulfill the obligation" includes using reasonable best efforts to anticipate any potential force majeure event and reasonable best efforts to address the effects of any potential force majeure event (i) as it is occurring and (ii) following the potential force majeure event, such that the delay is minimized. "Events of Force Majeure" do not include financial inability of Master Developer (or Developer) to complete any obligation under the provisions of this Agreement.

12.3.1. **Developer Property.** In the event that a Developer is the party in default under Section 12.3 above, the City agrees to provide Master Developer and the Master Association Chair with a copy of such default notice. Master Association Chair shall have the right, but not the obligation, to cure the default of any Developer hereunder. In the event the Developer fails to cure such default as provided in Section 12.3, the City hereby agrees to forebear any action against such Developer to terminate this Agreement for so long as the Master Association Chair is using reasonable efforts to cure such default, or to exercise any rights the Master Association may have against Developer, including any rights to reacquire the Developer Property (or such portion thereof then owned by the Developer).

12.4. **Cooperation by City; Processing Permits.** The City shall cooperate with Master Developer and Developers in their endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Property or portions thereof (such as, by way of example, public utilities or utility districts or agencies) and, at the request of Master Developer, in



the execution of such permit applications and agreements as may be required to be entered into with such other agency, which request shall not be unreasonably denied.

12.5. **Mortgagee Protections.** The Parties hereto agree that this Agreement shall not prevent or limit Master Developer's right to encumber the Property or any portion thereof or any improvements thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. The parties acknowledge that should the City create a special improvement district and levy an assessment against properties to pay for the cost of improvements constructed within the district, the assessment lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien or other encumbrance and shall be equal to and on a parity with the lien for general property taxes as provided by statute.

12.5.1. As used in this Section 12.5, the following terms shall have the following meaning:

12.5.1.1. "**Mortgage**" means a mortgage, or a deed of trust, or other security agreement recorded in the Official Records.

12.5.1.2. "**Mortgagee**" means the mortgagee under a mortgage, the beneficiary under a deed of trust or the secured party under any security agreement recorded with respect to the Property or any portion thereof in the Official Records.

12.5.1.3. "**Official Records**" means the official records of the Salt Lake County Recorder, State of Utah.

12.5.1.4. "**Qualified Mortgagee**" means a Mortgagee of which City has been given written notice, including such Mortgagee's name and address. A Qualified Mortgagee shall be a Mortgagee of public record as evidenced by a title report delivered to the City.

12.5.2. **Impairment of Mortgage or Deed of Trust.** Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage on the Property made in good faith and for value.

12.5.3. **Obligations of Mortgagee.** Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Qualified Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.

12.5.4. **Notices; Right to Cure.** On delivering to Master Developer (or, as applicable in this Section 12.5, the Master Association Chair) any notice, demand or other communication pursuant to the provisions of this Agreement, City shall at the same time deliver copies of such notice to each Qualified Mortgagee at the latest address provided to City by such Qualified Mortgagee. Although otherwise

effective with respect to Master Developer, no notice delivered to Master Developer shall affect any rights or remedies of a Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to Master Developer, plus, in the case of monetary defaults, an additional thirty (30) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure (or commencement or completion of cure within the specified period is impossible due to an Event of Force Majeure), each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee promptly commences such cure and thereafter diligently prosecutes such cure to completion.

12.5.5. **Performance.** A Qualified Mortgagee shall have the right to act for and in the place of Master Developer (or, as the case may be, the Applicable Developer) to the extent permitted by the applicable Mortgage or otherwise agreed to by Master Developer (or, as the case may be, the Applicable Developer) in writing. City shall accept performance by or on behalf of a Qualified Mortgagee as if the same had been performed by Master Developer (or the Applicable Developer). A Qualified Mortgagee shall have the right, to the extent Master Developer (or the Applicable Developer) agrees in writing, to appear in a legal action or proceeding on behalf of Master Developer (or the Applicable Developer) in connection with the Property.

12.5.6. **Recognition.** Within thirty (30) days of a written request therefore, together with evidence as City may reasonably require, that a proposed Qualified Mortgagee in fact meets the requirements of a Qualified Mortgagee as set forth herein, City agrees to execute, acknowledge and deliver to such Qualified Mortgagee an instrument stating that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this section.

12.5.7. **Estoppel Certificate.** Within thirty (30) days after a request by Master Developer, a Qualified Mortgagee, or a proposed Qualified Mortgagee, City shall issue a certificate confirming that: (i) this Agreement is in full force and effect; (ii) no default (or event which with the giving of notice or passage of time, or both) exists on the part of Master Developer or City under this Agreement; and (iii) such other matters pertaining to this Agreement as may reasonably be requested. The person requesting the certificate shall be entitled to rely on the certificate.

12.6. **Notices.** Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the Master Developer:

Robert L. Soehnlen  
Littleton, Inc.  
2100 East Bengal Blvd. #F203  
Salt Lake City, UT 84121

With a copy to:

Kevin R. Murray  
Mabey & Murray LC  
136 S. Main Street, Suite 1000  
Salt Lake City, Utah 84101

If to the City:

Christine Richman  
Director of Community and Economic Development  
Midvale City  
655 W. Center Street  
Midvale, UT 84047

With a copy to:

Rori Clark  
City Recorder  
655 W. Center Street  
Midvale, UT 84047

Any Party may change its address by giving written notice to the other party in accordance with these provisions.

12.7. **Conveyances**. All conveyance of property to the City, as contemplated herein, shall be made by special warranty deed, free and clear of all financial liens and encumbrances, such as mortgages, deeds of trust, mechanic or materialmen's liens, but otherwise subject to all matters of record except as the parties may otherwise reasonably agree. City shall pay the cost of recording the deed conveying property to City. Any escrow fees pertaining to the closing shall be paid equally by the parties. General real property taxes shall be prorated as of the date of closing. The premium for the policies of title insurance desired by City shall be paid by City. Any conveyance of property shall restrict the conveyed property to the purposes for which it is conveyed. The time and place of the conveyances contemplated in this Master Agreement shall be agreed upon in connection with the approval of the applicable Small Scale Master Plan required by the Amended BJ Zone.

12.8. **Approval of Agreement**. The Parties hereby represent and warrant as follows:

12.8.1. Master Developer certifies that the person executing this Agreement on behalf of Master Developer is duly authorized and fully empowered to execute the same for and on behalf of the Master Developer;

12.8.2. The City certifies that the execution and delivery hereof has been approved at a duly convened meeting of the City Council and the same is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

12.9. **Construction of Agreement.** This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest while providing reasonable assurances of continuing vested development rights as defined in Section 8.

12.10. **Non-liability of City Officials or Employees.** No officer, representative, agent or employee of the City shall be personally liable to Master Developer or any successor-in-interest or assignee of Master Developer in the event of any default or breach by the City or for any amount which may become due to Master Developer or its successors or assigns for any obligation arising out of the terms of this Agreement

12.11. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

12.12. **Annual Status Report.** Master Developer and the staff of the City shall give an annual status report to the City Council with regard to the matters contemplated by this Agreement.

12.13. **State and Federal Law.** The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

12.14. **Relationship of Parties and No Third-Party Rights.** This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor, unless otherwise stated, create any rights or benefits to third parties, except that the parties acknowledge that Developers are intended beneficiaries of certain rights and benefits as provided herein.

12.15. **Laws of General Applicability.** Where this Agreement refers to laws of general applicability to the Project, this Agreement shall be deemed to refer to other laws of Midvale City.

12.16. **Entire Agreement; Amendments; Counterparts.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto. This Agreement may be executed in multiple counterparts, which together shall constitute one and the same document.

12.17. **Exemption of City.** Neither this Agreement nor the obligations imposed upon the Agency hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City.

12.18. **Applicable Law.** This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

12.19. **Court Costs and Attorneys' Fees.** In the event of any legal action or defense between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and a reasonable attorneys' fee.

12.20. **Reasonableness.** Notwithstanding anything to the contrary in this Agreement, when the consent, approval or agreement of any party hereto is required or contemplated, such consent, approval or agreement shall not be unreasonably withheld or delayed; provided, this provision shall not bind the City with respect to its legislative actions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

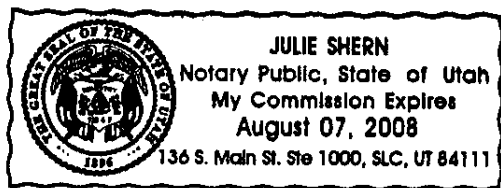
"Master Developer"

**LITTLESON, INC.,**  
a Delaware corporation

By: Robert L Soehnlen  
Its: President

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE    )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 6th day of April, 1005, by Robert Soehnlen, acting in the capacity of President for Littlelson, Inc., a Delaware corporation.



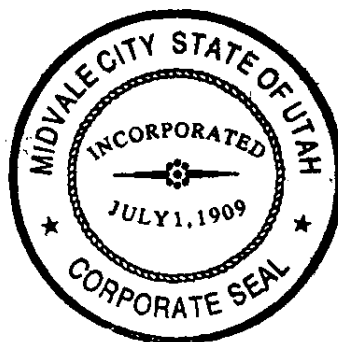
"City"

Julie Shern  
Notary Public

**MIDVALE CITY**

By: Joleen Beighun  
Its: Mayor

Attest:  
Roi L. Clark  
Midvale City Recorder



List of Exhibits

Exhibit A: Legal Description of Property

Exhibit B: Master Plan

Exhibit C: Institutional Control Process Plans

Exhibit D: Fiber Optics Improvements Specifications

Exhibit E: Reimbursement Agreement Term Sheet

Exhibit F: Maximum Project Densities

Exhibit G: Off-site improvements to be Installed by City

119996.1

## Exhibit A

September 17, 2004

### Description of Littleson Property in Midvale City Limits

#### MIDVALE PARCEL "A", FROM 7800 SOUTH, NORTH TO RAILROAD RIGHT OF WAY

BEGINNING South 0°08'36" West along the Section line 345.595 feet and West 670.489 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 1°43'31" West 1016.338 feet; thence South 89°52'31" West 526.000 feet; thence South 0°07'29" East 983.650 feet to the North right of way line of Utah Highway 48 (7800 South); thence North 89°34'30" West along said North right of way line 45.630 feet; thence South 85°46'23" West along said North right of way line 208.990 feet; thence North 33°13'37" East 67.555 feet; thence North 56°46'23" West 50.000 feet; thence South 33°13'37" West 105.857 feet to the North right of way line of Utah Highway 48 (7800 South); thence South 85°46'23" West along said North right of way line 28.720 feet; thence South 84°41'58" West along said North right of way line 149.070 feet; thence South 81°39'53" West along said North right of way line 50.150 feet; thence South 85°21'15" West along said North right of way line 199.020 feet; thence North 85°48'46" West along said North right of way line 103.290 feet to a point on a 2936.900 foot radius curve to the left, the center of said curve to the left being South 6°28'04" East; thence along the arc of said curve, and said North right of way line through a central angle of 8°43'56", 447.601 feet; thence South 74°48'00" West along said North right of way line 559.220 feet to a point which is said to be on the East bank of the Jordan River; thence North 2°17'00" East along said East bank 175.330 feet; thence North 0°51'00" West along said East bank 218.400 feet; thence North 1°40'00" East along said East bank 75.100 feet; thence North 3°47'00" East along said East bank 150.600 feet; thence North 5°44'00" East along said East bank 142.600 feet; thence North 11°16'00" East along said East bank 74.100 feet; thence North 43°20'00" East along said East bank 285.400 feet; thence North 18°52'00" East along said East bank 78.800 feet; thence North 1°48'00" East along said East bank 77.700 feet; thence North 25°02'00" West along said East bank 52.200 feet; thence North 20°02'00" West along said East bank 99.000 feet; thence North 0°50'00" East along said East bank 338.800 feet; thence North 5°12'00" East along said East bank 160.100 feet; thence North 5°34'00" West along said East bank 88.000 feet; thence North 27°04'23" West along said East bank 52.017 feet to the South right of way line of the Union



Pacific Railroad (formerly Denver & Rio Grande Western Railroad) and a point on a 1382.400 foot radius curve to the right, the center of said curve being South 55°09'56" East; thence departing from said East bank of the Jordan River Northeasterly along the arc of said curve to the right, and said South right of way line through a central angle of 49°00'56", 1182.620 feet; thence North 83°51'00" East along said South right of way line 696.511 feet; thence South 7°50'31" West 257.241 feet; thence South 80°29'54" East 369.390 feet; thence South 11°11'23" East 11.600 feet; thence South 84°51'35" East 168.820 feet to the point of BEGINNING. Contains 99.89 acres.

EXCEPTING FROM SAID PARCEL "A" any portion lying below the mean high water mark of the Jordan River.

MIDVALE PARCEL "B", 7200 SOUTH, SOUTH TO RAILROAD RIGHT OF WAY BEGINNING on the West right of way line of 700 West Street at a point which is North 0°17'31" East along the Section line 174.467 feet and North 89°42'29" West 53.00 feet from the East quarter corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 86°33'00" West along the Northerly right of way line of the Union Pacific Railroad (formerly Denver & Rio Grande Western Railroad) 311.026 feet to a point of a 2889.79 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line 136.18 feet; and through a central angle of 2°42'00"; thence South 83°51'00" West along said Northerly right of way line 188.153 feet; thence North 6°09'00" West along said Northerly right of way line 25.000 feet; thence South 83°51'00" West along said Northerly right of way line 1193.047 feet; to a point of a 1482.400 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 47°16'49", 1223.27 feet to a point which is said to be on the East bank of the Jordan River; thence South 83°00'00" West along said East bank 40.061 feet; thence North 25°19'00" West along said East bank 38.600 feet; thence North 16°07'00" East along said East bank 62.200 feet; thence North 30°53'00" East along said East bank 101.900 feet; thence North 27°10'00" East along said East bank 175.600 feet; thence North 18°42'00" East along said East bank 35.600 feet; thence North 23°22'00" East along said East bank 96.200 feet; thence North 5°23'00" East along said East bank 96.600 feet; thence North 6°25'00" East along said East bank 234.300 feet; thence North 13°20'00" West along said East bank 131.180 feet; thence North 2°00'00" West along said East bank 14.870 feet; thence departing from the said East bank of the Jordan River, and running thence North 25°00'00" East 132.00 feet; thence North 44°00'00" East 99.000 feet; thence North 37°00'00" West 132.00 feet; thence North 29°00'00" West 131.070 feet to a point which is said to be on the East bank of the Jordan River; thence North 5°54'00" West along said East bank 151.080 feet; thence North 2°42'00" West along said East bank 215.900 feet; thence North 4°40'00" West along said East bank 258.300 feet; thence North 2°28'00" West along said East bank 267.000 feet; thence North 4°31'00" West

along said East bank 129.500 feet; thence North 4°23'00" West along said East bank 3.63 feet; thence North 5°36'01" West along said East bank 211.677 feet; thence North 0°01'31" West along said East bank 40.00 feet; thence North 4°03'48" West along said East bank 362.429 feet to the Southerly right of way line of said 7200 South Street (Jordan River Boulevard) ; thence departing said East bank of the Jordan River, and running thence North 89°20'39" East along said Southerly right of way line 275.460 feet to a point of a 1369.900 foot radius tangent curve to the right; thence Southeasterly along the arc of said curve and said Southerly right of way line, through a central angle of 27°43'14", 662.775 feet; thence South 16°21'22" East along said Southerly right of way line 34.700 feet; thence South 60°18'00" East along said Southerly right of way line 76.00 feet; thence North 75°45'23" East along said Southerly right of way line 34.700 feet to a point on a 1369.900 foot radius curve to the right, the center of said curve being South 32°20'07" West; thence Southeasterly along the arc of said curve to the right, and said Southerly right of way line 369.940 feet; thence South 42°11'31" East 215.550 feet to a point of a 1335.740 foot radius tangent curve to the left; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 12°03'18", 281.038 feet; thence South 10°51'59" East along said Southerly right of way line 36.020 feet; thence South 56°56'59" East along said Southerly right of way line 75.99 feet; thence North 76°58'02" East along said Southerly right of way line 36.010 feet to a point on a 1335.740 foot radius curve to the left, the center of said curve being North 30°20'51" East; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 30°11'59", 704.050 feet; thence South 89°51'08" East along said Southerly right of way line 383.770 feet; thence South 44°46'48" East along said Southerly right of way line 35.310 feet to the West right of way line of 700 West Street; thence South 0°17'31" West along said West right of way line 1158.073 feet to the point of BEGINNING. Contains 115.28 acres.

EXCEPTING FROM SAID PARCEL "B" any portion lying below the mean high water mark of the Jordan River.

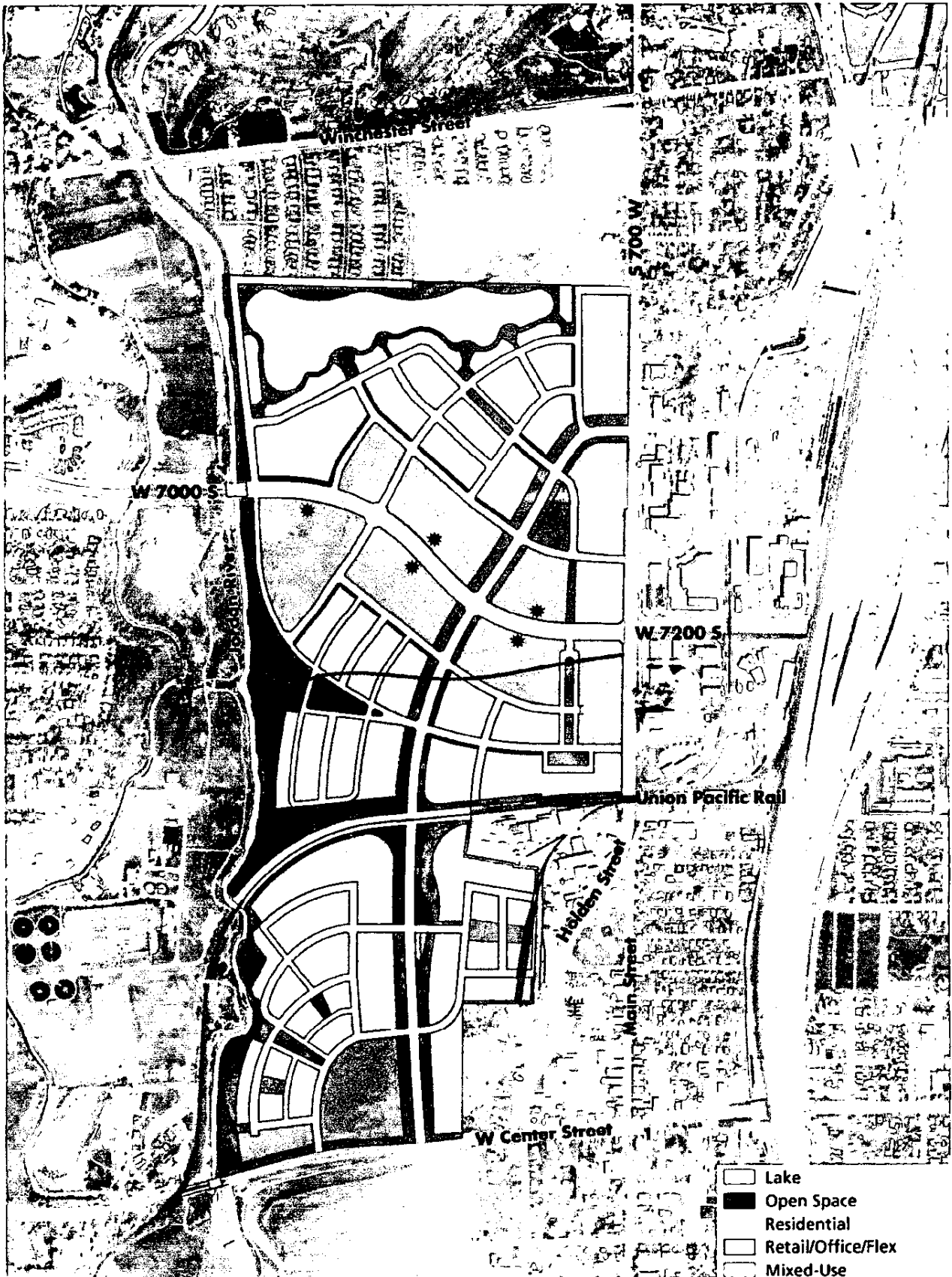
**MIDVALE PARCEL "C", FROM 7200 SOUTH, NORTH TO MURRAY CITY LIMITS**

BEGINNING on the West right of way line of 700 West Street and the city limit line dividing Midvale and Murray Cities said point being South 0°18'00" West 1312.73 feet along the Section line, and North 89°42'00" West 33.00 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°18'00" West along said West right of way line 1311.77 feet; thence South 0°17'31" West along said West right of way line 312.210 feet; thence North 89°42'29" West along said West right of way line 20.00 feet; thence South 0°17'31" West along said West right of way line 821.401 feet to the Northerly right of way line of 7200 South Street (also known as "Jordan River Boulevard" per some instruments of record) ; thence South 45°13'12" West along said Northerly right of way line 35.400 feet; thence

North 89°51'08" West along said Northerly right of way line 384.090 feet to a point of a 1210.740 foot radius tangent curve to the right; thence Northwesterly along the arc of said curve and said Northerly right of way line through a central angle of 29°55'15", 632.27 feet; thence North 13°08'41" West along said Northerly right of way line 34.610 feet; thence North 56°56'59" West along said Northerly right of way line 76.000 feet; thence South 79°14'43" West along said Northerly right of way line 34.610 feet to a point on a 1210.740 foot radius curve to the right, the center of said curve being North 36°01'56" East; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 11°46'33", 248.840 feet; thence North 42°11'31" West along said Northerly right of way line 215.55 feet to a point of a 1494.900 foot radius tangent curve to the left; thence Northwesterly along the arc of said curve, and said Northerly right of way line, through a central angle of 15°41'35", 409.449 feet; thence North 14°19'55" West along said Northerly right of way line 35.950 feet; thence North 60°18'00" West along said Northerly right of way line 76.00 feet; thence South 73°43'56" West along said Northerly right of way line 35.950 feet to a point on a 1494.900 foot radius curve to the left, the center of said curve being South 27°17'07" West; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 27°56'28", 729.010 feet; thence South 89°20'39" West along said Northerly right of way line 301.060 feet to a point said to be on the East bank of the Jordan River; thence North 1°52'25" West along said East bank 304.559 feet; thence North 6°04'00" West along said East bank 75.870 feet; thence North 4°21'00" East along said East bank 76.800 feet; thence North 10°40'00" West along said East bank 83.600 feet; thence North 1°51'00" East along said East bank 102.100 feet; thence North 11°55'00" West along said East bank 81.600 feet; thence North 1°51'00" East along said East bank 145.000 feet; thence North 16°29'00" West along said East bank 61.100 feet; thence North 3°03'00" West along said East bank 25.700 feet; thence North 14°24'00" West along said East bank 27.800 feet; thence North 5°36'00" West along said East bank 108.700 feet; thence North 4°26'00" West along said East bank 128.00 feet; thence North 69°25'00" East along said East bank 16.700 feet; thence North 5°28'00" West along said East bank 22.100 feet; thence North 88°57'00" West along said East bank 13.900 feet; thence North 18°00'00" West along said East bank 28.600 feet; thence North 5°09'00" West along said East bank 130.02 feet to the city limit line dividing Midvale and Murray Cities; thence departing from said East bank of the Jordan River, and running thence North 89°28'44" East along said limit line 3009.85 feet to the point of BEGINNING. Contains 129.70 acres

EXCEPTING FROM SAID PARCEL "C" any portion lying below the mean high water mark of the Jordan River.

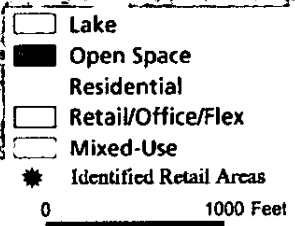
RBJ:kgb



# Illustrative Land Use Plan

## Bingham Junction, Midvale, Utah

EXHIBIT B



WHEN RECORDED MAIL TO:

Rori Clark  
Midvale City Recorder  
655 W. Center Street  
Midvale, UT 84047

## EXHIBIT C

### NOTICE OF INSTITUTIONAL CONTROLS

Pursuant to this Notice of Institutional Controls ("Notice"), **Littleton, Inc.**, a Delaware corporation ("Master Developer") of that certain project known as Bingham Junction to be developed on real property located in Midvale City, Salt Lake County, Utah, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Project"), hereby provides notice of the matters described herein to all subsequent owners, developers and other persons who may hereafter acquire any interest in the Project.

### RECITALS

WHEREAS, the Project is located on the Midvale Slag Superfund Site which has been or will be remediated under the supervision of the Environmental Protection Agency ("EPA"); and

WHEREAS, the EPA has permitted the redevelopment of the Project subject to compliance with certain institutional controls as set forth in the Institutional Control Process Plans approved by the EPA, the Utah Department of Environmental Quality and adopted by the Midvale City Council on July 13, 2004, as they may be amended from time to time ("Institutional Control Process Plan"); and

WHEREAS, future development of the Project is subject to compliance with the Institutional Control Process Plans, which are on file and available for review with Midvale City.

NOW, THEREFORE, Master Developer hereby provides notice to all persons interested in acquiring any interest in the Project that all future development within the Project is subject to compliance with the Institutional Control Process Plans and shall demonstrate conformance with the applicable provisions of the Institutional Control Process Plans;

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.



**EXHIBIT D**  
**FIBER-OPTIC CONDUIT SPECIFICATIONS**

**\_\_\_\_\_.010. Materials.**

Conduit.

All conditions shall be communication grade conduit. Conduit shall be SDR 11 HDPE pipe or equivalent, meeting ASTM-3035 specifications unless otherwise specified by the City. "Fiber" shall be permanently marked on all conduits at a minimum three foot (3') interval. At no time shall the pipe be deformed to make any bend. The minimum radius for any bend or sweep in the conduit shall be thirty-six inches (36"). The total number of bends in any conduit run shall not exceed three hundred sixty degrees (360°).

**\_\_\_\_\_.020. Installation.**

**\_\_\_\_\_.021. General.**

A licensed contractor shall construct all communication facilities in a development except for the following which shall be completed by the Utility:

- (1) Pulling underground or overhead cable;
- (2) Installing communication cable terminations;
- (3) Setting of large communications pedestals which house Nodes, and Fiber Optic Equipment;
- (4) Installing communication connections and terminations;
- (5) All overhead facilities, including extension of risers.

**\_\_\_\_\_.022. Underground Lines.**

All new facilities shall be constructed underground unless otherwise expressly authorized by the City. No overhead communication lines will be allowed unless required by the Utility and authorized by the City.

**\_\_\_\_\_.023. Depth.**

Conduit depth shall be a minimum of eighteen inches (18") to tope of pipe. When installed with electric conduit it shall be installed twelve inches (12") above electric conduit.

\_\_\_\_\_.024. Tracer Wire and Pull Strings.

A twelve (12) gauge solid THHN tracer wire shall be installed with all subbed conduits according to standard drawings. Wire shall be pulled tight along the pipe. All fiber and main communication conduits shall have a pull string in the conduit securely tied off in each pad or enclosure.

\_\_\_\_\_.024. Caution Tape and Stud Markers.

All conduits shall have a yellow "Caution – Fiber Optic or Communication Cable" tape at least four inches (4") wide, one foot below grade. The end of each stubbed conduit, including service laterals, shall be marked to the surface according to the standard drawings.

\_\_\_\_\_.030. **Inspection - Communication.**

\_\_\_\_\_.031. Conduit Inspection.

The City must inspect all conduit before the trench is backfilled.

\_\_\_\_\_.032. Service Stub Inspection.

The City must inspect all service studs before backfilling.

\_\_\_\_\_.040. **Service.**

\_\_\_\_\_.041. Underground Service Requirements.

For new development activity, the developer shall install all conduit laterals from the public right-of-way to the building, structure, or use to be serviced. For new service to an existing building, structure, or use, the lateral conduit and any required appurtenances thereto, shall be installed by the person or entity requesting that service. The conduit and required appurtenances thereto, shall be installed according to City standards.



## EXHIBIT E

### TERMS OF A REIMBURSEMENT AGREEMENT WITH LITTLESON, INC.

**PARTIES:** Redevelopment Agency of Midvale City, Utah ("Agency") and Littleson, Inc. ("Owner"). Agency and Owner shall execute a standard Reimbursement Agreement ("Agreement") in a form that can be assigned in whole or in part to individual developers ("Developer(s)"), subject only to minor modifications.

**OWNER REQUIREMENTS:** As an attachment to the Agreement, Owner shall prepare for Agency approval a schedule of Reimbursable Costs which shall define the expenses eligible for reimbursement including the following: 1) the extraordinary site work, grading and lake creation necessitated by the environmental condition of the property; 2) installation of trunk roadway, sewer, water and drainage infrastructure; and 3) providing low income housing in accordance with the Housing Plan. The Owner shall also attach a Project Budget, which will provide a breakdown of the total Reimbursable Costs based on the anticipated work and estimated costs over time as allocated among the sub-areas identified in the Bingham Junction Ordinance. The Owner shall also attach a Housing Plan, which shall include, among other things, a general description of the type and number of affordable units overall, number of units in the income target ranges overall, identification of the length and terms of the affordability requirements associated with the type of units, as well as a general description of the location and phasing for such housing. Owner will obligate Developers to abide by the Housing Plan in any contracts for sale Owner may enter into with Developers, as appropriate. The Project Budget and Housing Plan will be adjusted as necessary by Owner or its designee (*i.e.*, the Bingham Junction Property Owners Association), with Agency concurrence, as the project work progresses and as the Developer's Tax Increment Share is paid out.

**DEVELOPER REQUIREMENTS:** The Agency will reimburse Developer for Reimbursable Costs solely from the Tax Increment from the Project as defined in the Development Agreement and in accordance with the Bingham Junction Ordinance. Notwithstanding Developer's eligibility for reimbursement as provided in the Agreement, Developers will be responsible for the Project development costs and understand that they do so at their own risk.

**CONDITIONS FOR REIMBURSEMENT:** The Tax Increment available to reimburse Developer ("Developer's Tax Increment Share") and/or be pledged for repayment of any debt is defined as the amount of property taxes collected by the Agency from the Project and available for payment after deduction of the lesser of five-percent

(5%) of the then available Tax Increment or \$150,000/year for Agency administration fees.

Each Developer shall be eligible for reimbursement from the Developer's Tax Increment Share in an amount equal to seventy-five percent (75%) of the Developer's total incurred Reimbursable Costs plus reasonable carrying costs as provided in the Agreement. The Developer may receive an additional five percent (5%) of its incurred Reimbursable Costs at the Agency's discretion to equalize costs that may extend over multiple areas.

The Developer may also be entitled to receive the remaining twenty percent (20%) of its incurred Reimbursable Costs ("Housing Share") as Affordable Housing Credits, as provided more fully below. Entitlement to reimbursement from the Developer's Tax Increment Share shall be subject to proper assignment of the Agreement as approved by the Agency and application for reimbursement as provided in the Agreement.

Each Developer will be eligible to receive reimbursement from the Developer's Tax Increment Share in an amount proportionate to each Developer's incurred Reimbursable Costs as a percentage of the total of Reimbursable Costs eligible for reimbursement as of the date the Agency accepts the reimbursement request. (For example, if an individual Developer has incurred \$10 million dollars of a total \$25 million dollars in approved Reimbursable Costs for the Project, then the Agency shall reimburse that Developer 40% of the Developers' Tax Increment Share. Furthermore, if an individual Developer has incurred \$10 million dollars of a total \$10 million dollars in approved Reimbursable Costs for the Project, then the Agency shall reimburse the Developer 100 % of the Developer's Tax Increment Share). The total costs and percentages shall be adjusted as the Project is completed and as the reimbursement is paid out.

Agency has no obligation to reimburse Developer except from Tax Increment generated by the Project or by proceeds available from the issuance of bonds. Agency has no obligation to reimburse Developers for costs that exceed the Project Budget but may do so in its discretion, with consent of the Owner or its designee, if the Developer's Tax Increment Share is sufficient to make such additional reimbursements.

**FINANCING STRUCTURE:**

In terms of structuring the financing for the Project, the Agency's disbursement of Tax Increment will generally fall within one of the following options or some combination thereof subject to feasibility and at the sole discretion of the Agency:

- 1) Regular Tax Increment – During the Reimbursement Term, the Agency could provide Developer with annual reimbursements of the Tax Increment as it is generated by the Project.
- 2) Bond Anticipation Notes – In the initial years of the Project Area, the Agency could issue one or more bonds in anticipation of the Tax

Increment. The proceeds would be used to fund the upfront construction costs and the debt would most likely be taken out later by Tax Increment Bonds.

- 3) Special Improvement District Bonds – The City may choose to initiate the creation of a Special Improvement District and issue bonds secured by assessments on all real property within the Project benefiting from improvements. The Developers could choose to utilize their Tax Increment revenues pursuant to Item (1) above to make all or a portion of the assessment payments but will be required to make the full assessment payments due from other sources even if the Tax Increment is insufficient to make the payment.
- 4) Tax Increment Bonds – After the project reaches a certain tax value and has provided a stable history for generating increment, the Agency could issue bonds that would be serviced from the ongoing Tax Increment payments. The amount of bonds issued will be limited by debt service coverage requirements demanded by the bond market.

It is the intention of the Agency to issue bonds (“Project Bond(s)”); however, issuance of any debt will be in the sole discretion of the Agency or Midvale City and will be affected by, but not limited to, a minimum taxable value and other relevant factors sufficient to support the issuance of debt, completion or reasonable schedule for completion of necessary improvements, and timing of Agency’s taking of increment.

**SUBORDINATION:**

Payment of Developer’s Tax Increment Share shall be subordinate to Agency’s payment of the following: (i) Bonds or other indebtedness issued in relation to the Project and secured by a pledge of the Tax Increment, and (ii) the lesser of five-percent (5%) of the then available Tax Increment or \$150,000/year for Agency administration fees.

**AFFORDABLE HOUSING REQUIREMENT:**

In accordance with the Redevelopment Act, 20% of the total Tax Increment shall go towards housing costs. The Agency has further required that Developers shall make 20% of the housing units affordable to a mix of income levels at or below 80% Area Median Income for Salt Lake County in accordance with the Housing Plan. Accordingly, Developer shall be required to abide by the requirements of the approved Housing Plan.

For every unit of affordable housing provided, the Developer shall be eligible to receive an additional reimbursement credit (“Affordable Housing Credit”). The Affordable Housing Credit will be calculated by dividing the Developer’s Housing Share by the number of affordable units assigned to that Developer by the Housing Plan (e.g. 20% of Developer’s total residential units or as otherwise provided in the Housing Plan). This credit will then be multiplied by a percentage that is based on the level of affordability as approved in the Housing Plan. For example:

$$\frac{\text{Housing Share}}{\text{Number of Developer's affordable units}} = \text{Per Unit Credit}$$

- then -

$$\text{Affordability level} \times \text{Per Unit Credit} = \text{Affordable Housing Credit}$$

Developers are only eligible to receive a maximum of Affordable Housing Credits in an amount equal to their Housing Share. The Agency shall only be required to disburse the Affordable Housing Credits to the extent the units are provided. Any Housing Share funds not eligible for reimbursement to Developers after final completion of the Project shall be retained by the Agency for use to provide affordable units either within the Project or throughout Midvale City.

**ASSIGNMENT AND TRANSFER:** Owner and Developers shall not assign or transfer any obligations or rights to the Agreement without the prior written approval of the Agency.

**CITY APPROVALS:** Developers are responsible for obtaining required City approvals and Building Permits.

**REIMBURSEMENT  
COMMENCEMENT DATE:** The Commencement Date shall be the earlier of (i) the date the assessed valuation of the Project is at least \$80,000,000, (ii) seven years from the execution date of the first assignment to the Agreement, or (iii) as determined by the Agency in its sole discretion. Notwithstanding the foregoing, the Commencement Date may be modified by the Parties in the final Agreement.

**DISBURSEMENT OF  
INCREMENT:** Provided that the Commencement Date has occurred prior to October 15<sup>th</sup> or after January 1<sup>st</sup>, the Agency shall pay the first disbursement by March 31<sup>st</sup> following the first full tax year after the Commencement Date. If the Commencement Date occurs between October 15<sup>th</sup> and January 1<sup>st</sup>, then the Agency shall pay the first disbursement by March 31<sup>st</sup> following the second full tax year after the Commencement Date. For each year thereafter, the Agency shall disburse the reimbursement by March 31<sup>st</sup>. If the Agency has not received the Tax Increment by March 31<sup>st</sup>, then the Agency shall pay the disbursement within ten (10) days of receiving the increment.

The Developers Reimbursable Costs shall become eligible for reimbursement following Agency's acceptance of formal requests for reimbursement from Developer. Provided that Developer has submitted a request for reimbursement prior to October 15<sup>th</sup> or after January 1<sup>st</sup>, then

the reimbursement shall be included in the next disbursement following the first full tax year after the submission. If the request is submitted between October 15<sup>th</sup> and January 1<sup>st</sup>, then the reimbursement shall be included in the disbursement following the second full tax year after the submission.

**REIMBURSEMENT TERM:**

Beginning with the Commencement Date, the term for reimbursement shall expire upon the earlier of: (i) payment in full of an amount equal to the total of all Reimbursable Costs at Project completion; (ii) termination of the Reimbursement Agreement; or (iii) twenty-five years from the date the first disbursement of Tax Increment is made.

Notwithstanding anything above, in the event an individual Developer fails to initiate construction of residential or commercial buildings within their sub-area, as evidenced by the issuance of a building permit, within 24 months of executing an assignment to the Agreement with the Agency, Agency may terminate the Agreement and have no future obligation to the Developer.

**INDEMNITY:**

Developers shall indemnify both the Agency and the City from any action or claim caused by the acts of the Developer as further provided in the Agreement.

**MISCELLANEOUS:**

Such other terms and conditions as recommended by Agency's or Owner's legal counsel.

Bingham Junction Dwelling Units by Sub-Area  
Exhibit "F"

Sub-area	Minimum Density	Maximum Density	Acreage	Maximum Units
1	s.f. 4	13	38.8	504
2	s.f. 5	13	8.1	105
	m.f. 24	30	8.1	243
3	s.f. 5	15	28	420
	s.f. 5	15	19.6	294
	m.f. 24	30	8.4	252
4	s.f. 5	15	39.2	588
	s.f. 5	15	21.1	317
	m.f. 24	30	18.1	543
5	m.f. 24	30	19.9	597
6	m.f. 24	30	23.6	708
Maximum Units				2,600

Black numbers indicate straight development of single or multi-family in the sub-area.  
 Blue numbers indicate a mix of single and multi-family development in the sub-area.  
 Maximum units are calculated by multiplying maximum density by the noted acreage.  
 Maximum units sum greater than the limit of 2,600 units.

## **EXHIBIT G**

### **Bingham Junction Off-Site Improvements**

#### **Sewer System**

- **Furnish and install sewer lift station and outfall line**
- **Purchase additional treatment capacity in South Valley Water Reclamation Facility**

#### **Water System**

- **Construct metering station at Jordan Valley Water Conservancy District transmission line**
- **Construct 12" transmission line to project**