

STATE OF UTAH

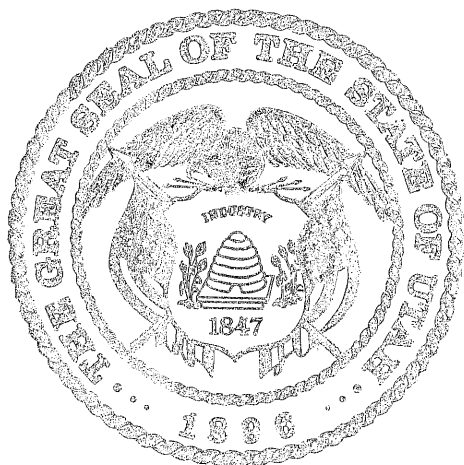


OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE OF ANNEXATION

I, SPENCER J. COX, LIEUTENANT GOVERNOR OF THE STATE OF UTAH, HEREBY CERTIFY THAT there has been filed in my office a notice of annexation from MIDWAY CITY, dated December 13<sup>th</sup>, 2017, complying with Section 10-2-425, Utah Code Annotated, 1953, as amended.

NOW, THEREFORE, notice is hereby given to all whom it may concern that the attached is a true and correct copy of the notice of annexation, referred to above, on file with the Office of the Lieutenant Governor pertaining to MIDWAY CITY, located in Wasatch County, State of Utah.



IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Great Seal of the State of Utah this 28<sup>th</sup> day of December, 2017 at Salt Lake City, Utah.

A handwritten signature in black ink, appearing to read "Spencer J. Cox".

SPENCER J. COX  
Lieutenant Governor

# Midway City Corporation

Mayor

Colleen Bonner

City Council

Ken Van Wagoner

Karl Dodge • Kent Kohler

Lisa Christen • Bob Probst



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

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

midwaycityut.org

20 December 2017

The Honorable Spencer J. Cox  
Lieutenant Governor of the State of Utah  
Utah State Capitol Complex  
P.O. Box 142325  
Salt Lake City, Utah 84114-2325

Dear Lieutenant Governor Cox:

This is a written notice of an impending boundary action. The action is an annexation into Midway City of 162.62 acres of land currently in Wasatch County.

All requirements applicable to the boundary action have been met.

Enclosed are a certified copy of the ordinance that effectuated the boundary change and a copy of the approved final annexation plat.

Please contact me if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen Bonner'.

Colleen Bonner  
Midway City Mayor

Enclosures

Cc: File



Our vision for the City of Midway is to be a place where citizens, businesses and civic leaders are partners in building a city that is family-oriented, aesthetically pleasing, safe, walkable and visitor friendly. A community that proudly enhances its small town Swiss character and natural environment, as well as remaining fiscally responsible.

# Midway City Corporation

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## Certification

I certify that the attached document (Amended Ordinance 2017-04) is a full, true and correct copy.

A handwritten signature in cursive script that reads "Brad Wilson".

Brad Wilson, City Recorder

12/20/17  
Date



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## AMENDED ORDINANCE 2017-04

### AN ORDINANCE APPROVING THE WHITAKER FARM ANNEXATION AND DESIGNATING ZONING TO APPLY TO THE ANNEXATION PROPERTY

**WHEREAS**, Title 10, Chapter 2, Part 4 of the Utah Code authorizes a municipality to annex unincorporated areas into the municipality; and

**WHEREAS**, on November 30, 2016, a petition was filed with Midway City to annex approximately 178.27 acres of land known as the Whitaker Farm Annexation into Midway City; and

**WHEREAS**, the City has reviewed the annexation petition and has verified that it meets all applicable legal requirements; and

**WHEREAS**, on March 3, 2017, the Midway City Council held a duly-noticed public hearing to receive public input on the proposed annexation; and

**WHEREAS**, the Midway City Council finds it desirable and in the public interest to approve the proposed annexation at this time, subject to obligations and requirements set forth in an Annexation Agreement attached hereto as Exhibit A, which has been materially changed since the approval of Ordinance 2017-04 on November 8, 2017, thus requiring an amendment to Ordinance 2017-04 to assure the annexation is subject to the provisions of the Annexation Agreement.

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

Section 1: The real property described in Exhibit B is hereby annexed to Midway City, Utah, and the corporate limits of the City are hereby extended accordingly.

Section 2: The real property subject to this Ordinance is described in the legal description attached as Exhibit B.

Section 3: In accordance with Section 9.04.080 of the Midway City Code, Midway City shall have no obligation to record the Amended Annexation Ordinance until the Annexation Agreement attached as Exhibit A is executed by both the Applicant and Midway City. When executed the Annexation Agreement shall be recorded against all properties within the Annexation Area at the time the Amended Ordinance 2017-04 is recorded with the Wasatch County Recorder. Failure of the Applicant to execute the Annexation Agreement within 30 days of the adoption of this Amended Ordinance 2017-04 shall result in a lapse of the Annexation Approval, wherein the City shall have no obligation to record the Amended Ordinance 2017-04, the Annexation Application shall be deemed denied, the Annexation Agreement shall be deemed null and void, and the Applicant shall be required to reapply for annexation if it so chooses.

Section 4: The real property described in Exhibit B shall be classified as being in the zones set forth in the Annexation Agreement attached as Exhibit A, and pursuant to the Midway City Municipal Code, the official Zoning Map of Midway City shall be amended accordingly.


Section 5: The real property described in Exhibit B shall be subject to all laws, ordinances and policies of Midway City

Section 6: This Ordinance shall take effect as and when provided by Utah Code Title 10, Chapter 2, Part 4.

**PASSED AND ADOPTED** by the City Council of Midway City, Wasatch County, Utah this 13<sup>th</sup> day of December 2017.

	AYE	NAY
Council Member Ken Van Wagoner	<u>Excused from the Meeting</u>	
Council Member Karl Dodge	<u>  X  </u>	<u>          </u>
Council Member Kent Kohler	<u>  X  </u>	<u>          </u>
Council Member Lisa Christen	<u>  X  </u>	<u>          </u>
Council Member Bob Probst	<u>  X  </u>	<u>          </u>

APPROVED:

  
Colleen Bonner, Mayor

ATTEST:

  
Brad Wilson, City Recorder

APPROVED AS TO FORM:

  
Corbin Gordon, City Attorney



Exhibit A

**ANNEXATION AGREEMENT FOR THE  
WHITAKER FARM ANNEXATION  
MIDWAY CITY, UTAH**

This Annexation Agreement (“Agreement”) is made and entered into by and between Midway City, a political subdivision of the State of Utah, (hereinafter referred to as the “City”), and the following: Thomas Whitaker and Linda Whitaker, individually; Midway Meadows Ranch, LLC, a Utah Limited Liability Company; and Thomas S. and Linda P. Whitaker, trustees of The Thomas and Linda Whitaker Trust, dated the 25<sup>th</sup> day of March, 1999 (hereinafter collectively referred to as the Applicant”). The property which is included in the Annexation Petition, and which is the subject of this Agreement, includes 19 separate parcels, 11 of which are owned by the Applicant. Applicant, therefore, represents 11 parcels of land located in Wasatch County, Utah, as further described herein, which parcels, along with ten other parcels not owned by Applicant, are proposed for Annexation into the City. The Applicant and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.” Unless otherwise noted herein, this Agreement supersedes and replaces any previous Annexation agreements entered into by and between the Applicants and the City involving the same Annexation Property (defined below) and is the entire, complete Agreement between the Parties.

**RECITALS**

A. Midway City, acting pursuant to its authority under Utah Code Annotated (UCA) §10-9a-101 *et seq.*, and UCA § 10-2-401 *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 annexation and, in the exercise of its legislative discretion, has elected to enter into this Agreement.

B. The City has authorized the negotiation of and adoption of annexation agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies, goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements which substantially benefit the City.

C. The Applicant is the owner of certain real property which is described in Exhibit “A”, the Annexation Petition, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is proposed for annexation into Midway City, including parcels not owned by Applicant. Hereinafter, the entire parcel described in the Annexation Petition is referred to as the “Annexation Property” or the “Annexation Parcel”. The Annexation Parcel includes the following parcels:



1. The "Development Parcel", consisting of approximately 60 acres, which will be developed into single family lots according to the terms of this Agreement, a future development agreement, and the rules and regulations of Midway City;
  2. The "Whitaker Parcel", consisting of approximately 14 acres, and which will be developed into one of the following options: a) a maximum of four total residential building lots (with one of the lots including the existing Whitaker home), with no location restrictions except compliance with the required 100 foot setback from River Road, and compliance generally with the lot size and setbacks for lots in the RA-1-43 zone; or b) a planned unit development of no more than 12 units, that may be built no closer to River Road than the west side of the existing Whitaker Residence, and clustered generally to the north and west of the Whitaker Residence.
  3. The "Open Space Parcel", consisting of approximately 20 acres, which will remain as agricultural open space, according to the terms and conditions of this Agreement. No further subdivision or development will be allowed on the Open Space Parcel.
  4. The "Museum Parcel", consisting of approximately 6 acres, which may be a Rural Preservation Subdivision with one building unit if applied for by the owner, subject to the restrictions set forth below.
  5. The County's Memorial Hill parcel ("County Parcel").
  6. The White September parcel, and the Luster Development Parcel ("Peninsula Parcels").
  7. The Medby and the Salazar parcels located on the northwest corner of the annexation.
- D. The Annexation Property, once annexed into Midway City, will be subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Applicant and the City desire to allow Applicant and others to make improvements to the Annexation Property pursuant to applicable ordinances, resolutions and the terms and conditions of this Agreement.
- E. Improvements made to the Annexation Property shall be consistent with the existing ordinances and engineering standards of the City at the time of application, and the terms and conditions of this Annexation Agreement.
- F. The Applicant and the City acknowledge and agree that the development and improvement of the Annexation Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents, and will provide

certainty useful to the Annexation Property and the City in ongoing future communications and relations with the community.

G. The City's governing body has authorized the execution of this Agreement by Resolution 2017-04, to which this Agreement is attached.

H. It is the intent of Whitaker to donate the 20 acre Open Space Parcel for open space.

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

1. **Recitals:** The preamble and recitals set forth above are incorporated herein as part of the Agreement.
2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the annexation of real property into the City, to designate zoning that will apply to the Annexation Property upon annexation, and to provide for future development of the Annexation Property, in accordance with the adopted Ordinances and Resolutions of the City, terms and conditions of this Annexation Agreement, the Midway City General Plan, and the laws of the State of Utah, as they may be from time to time amended.
3. **Conditions Precedent:** The City and the Applicant agree, understand and acknowledge that this Agreement is for the annexation of the Annexation Property. Further, the City and the Applicant agree and understand that this Agreement shall be a covenant running with the Annexation Property, and shall bind any future developers, owners, heirs or assigns.
4. **Permitted Uses on Annexation Parcel:** The permitted uses for the Annexation Property shall be those uses specifically listed this Agreement and in the Zoning Ordinance of the City, as amended from time to time.
5. **Term:** This Agreement shall become effective as of the date of annexation of the Annexation Property into the City, and shall continue in full force and effect from that time onward.
6. **Annexation:** The City, pursuant to the Annexation Petition filed by the requisite number of land owners and land area within the area proposed for annexation, and in accordance with the authority granted by statute, hereby agrees to adopt an Ordinance of Annexation, and thereby to annex into the City the Annexation Property described in the attached Exhibits. The Annexation Property shall be subject to the terms and conditions of this Agreement as well as the annexation laws and other Ordinances, Resolutions or laws of the City of Midway and the State of Utah. It is further agreed that this Annexation

Property meets all the requirements for annexation, including but not limited to the following:

- A. Contiguity: The Annexation Property is contiguous to the existing boundaries of the City, as shown on Exhibit "B", attached hereto and incorporated herein by this reference.
  - B. Within Declaration Area: The Annexation Property is within the area identified by the City in its Annexation Policy Declaration Statement for possible annexation into the City.
  - C. Not Within Another City: The Annexation Property is not included within the boundaries of any other incorporated municipality.
  - D. No Pending Incorporation. There are no pending annexation petitions to incorporate any of the Annexation Property into any other municipality.
  - E. No Unincorporated Islands. The annexation of the Annexation Property will not create or leave any islands of unincorporated property requiring municipal type services.
  - F. Not Solely for Revenue Purposes. The proposed annexation is not being pursued by the City solely for the purpose of gaining revenues or to gain a jurisdictional advantage over another municipality or to restrict annexation by some other municipality.
  - G. Services Available. The City intends to provide the same level of municipal services within the Annexation Property as it provides in all other areas within its boundaries, except as otherwise provided for in this Agreement.
  - H. Petition. The Petition for Annexation was properly signed by the requisite number of land owners of the land area within the proposed Annexation Property
  - I. No Fiscal Burden Created. The City has determined that annexation of this area will not create a fiscal burden on the City that will not be offset by the revenues expected to be generated by virtue of this annexation.
  - J. Compatibility. The proposed annexation is a compatible land use within the community.
  - K. Illegal Peninsulas. The proposed annexation does not create any illegal peninsulas of unincorporated property projecting into or out of the City.
- 7. General Character of Land to Be Annexed.**
- A. Description of the Annexation Property. The Annexation Property is located on the East side of River Road at approximately 510 North, as shown in the Annexation Petition and on the Annexation Concept Plan. The annexation contains 19 separate parcels, 11 of which are owned by the petitioner. The petitioner owns 63% of the land included and 60% of the taxable value. The other ten parcels are owned by individuals not associated with the annexation and none of them have signed the annexation petition. The petition does comply with State

- Code that requires the owners of most of the land sign the petition and that the signers also own at least 1/3 of the taxable value of land in the annexation area.
- B. The Annexation Property consists of approximately 164.22 acres. It is currently zoned RA-1 by Wasatch County.
  - C. The Annexation Concept Plan is attached hereto as Exhibit "C", and is incorporated herein by this reference.

**8. Conditions of Annexation.**

- A. The Annexation Property shall be annexed into the City of Midway under several different zones as follows:
  - a. The Development Parcel, Whitaker Parcel, Museum Parcel, Open Space Parcel, and County Parcel shall be zoned RA-1-43, subject to the restrictions and conditions contained herein.
  - b. The Peninsula Parcels shall be zoned R-1-22, subject to the conditions and restrictions contained herein.
  - c. The Whitaker Parcel currently identified as Tax ID number: 00-0012-1322, shall be included in the RA-1-43 zone, but Whitaker shall have two options on the development of its property as set forth below.
  - d. The Museum Parcel shall be zoned for one Rural Preservation Subdivision, with restrictions on the building envelope to preserve the view corridor, as set forth below.
- B. Additional Conditions:
  - 1) Access: As a condition of this Annexation Agreement, Applicant shall be required to improve River Road and construct other roads and trails at the time of development as follows:
    - i. Applicant/Developer, at its sole cost and expense, shall construct a center turn lane (12 feet wide) on River Road. The turn lane shall meet the following requirements;
      - a. The center turn lane shall be designed and constructed according to plans approved by the City Engineer;
      - b. The center turn lane shall be constructed entirely within the existing River Road easement. Midway City shall work with the developer to insure that the necessary improvements to River Road fit within that existing easement;
      - c. The center turn lane shall continue from 200 feet north of the North entrance at the intersection of River Road and 600 North, and shall continue southerly along River Road to 200 feet south of the South property line.
    - ii. Applicant, at its sole cost and expense, shall construct paved bicycle lanes on both sides of River Road, within the existing easement, and in a length identical to the River Road center turn lane. (Bicycle lanes

shall be five (5) feet on each side of the Road). Once completed the City shall have full obligation to maintain the bicycle lanes.

- iii. All roads within the Annexation Parcel shall be dedicated to the City, and shall become public roads.
- iv. The western loop road (from the intersection of River Road and 6<sup>th</sup> North, through the western portion of the Annexation Parcel, through the roundabout, and both back to River Road and to the Stub Road to the South), as shown on the Annexation Concept Plan, shall be a full width City road, and shall meet all the design and construction standards of the City. This Road shall be built to the rural cross section standards of the City, and shall be dedicated to the City as a public road.
- v. Applicant, at its sole cost and expense, shall construct other roads for the development parcels according to the design and construction standards of the City at the time of application for development.
- vi. Applicant, at its sole cost and expense, shall construct detached paved trails in the following locations:
  - a. Starting on the north and east side of the Western Loop Road in the subdivision, and continuing the full length of the Western Loop Road to where the road stubs into the White September parcel, as shown on the Annexation Concept Plan and future development plats.
  - b. Starting at the south access road and continuing east along the southern access until it intersects with the trail running north and south along the Western Loop Road.
  - c. Starting at the location where the stub road to Memorial Hill turns south off of the southern access, and continuing south until it connects with the road on Memorial Hill.
  - d. All of these trails will be shall be dedicated to the City, open to the public, and shall become a part of the dedicated public trail system. The City shall have all obligation to maintain the dedicated trails.
  - e. A ten (10') foot wide trail easement shall be dedicated to the City for all of the above trails. The Applicant or the developer shall construct a paved eight (8') foot wide trail within the easements. This trail shall be dedicated to the City, and shall be maintained by the City.
  - f. The remaining trail associated with the Development Parcel, that runs along the road through the subdivision, shall be private, and shall be maintained by the HOA.

- vii. Two points of access are required as per the applicable section of the Code. There shall be two access points to River Road, as shown on the Annexation Concept Plan and on future development plats. The first point of access shall be at or in the vicinity of the intersection of River Road and 6<sup>th</sup> North. The second access point shall be at or in the vicinity of approximately 400 North and River Road. Applicant shall also stub a road to the South on the East side of Memorial Hill, as generally shown on the attached Annexation Concept Plan. The actual location of the south stub road shall be flexible, depending upon the development plans of the parcels to the south of the Annexation Parcel. All access points, including the two along River Road and the stub road to the South, which shall eventually be completed, shall meet all applicable City standards that are in place at the time application is submitted for approval. All roadway improvements shall be designed and constructed according to City standards, and shall be approved by the City engineer.
  - viii. The Developer shall be responsible to build a city standard road that connects Memorial Hill to the Southern Access of the development, so that access to Memorial Hill can be closed from River Road, and accessed through the southern access point of the development. Developer shall also be responsible to replace lost parking at the base of Memorial Hill, and any and all costs necessary to meet City requirements for access to Memorial Hill.
  - ix. All required easements and/or rights of way that are within the Annexation Parcel shall be granted in the name of the City. The expanded road design, including trails and access stub roads, shall be approved by the City Engineer prior to commencement of construction.
  - x. The City and the Applicant agree that the road cross sections within the Annexation Parcel shall include a ribbon-curb, with a trail on one side of the road. There shall be a grass swale in between the curb and the trail, which grass swale shall be maintained by the HOA.
  - xi. Applicant, at its sole cost and expense, shall construct a safe and adequate Pedestrian Crossing at existing grade level of the intersection of River Road and 6<sup>th</sup> North Streets according to plans and specifications approved by the City. The requirements for the Pedestrian Crossing may include, but are not limited to pavement markings, signs, flashing lights, etc.
- 2) Exclusion of Haueter Parcels: The two Haueter parcels will not be included in the Annexation.

- 3) Park Annexation Fee and Annexation Application Fee: The Park and Annexation Application fee is required to be paid by the Applicant prior to final signature by Applicant and recording by the City. Failure to pay the required fees in a timely manner shall void the Annexation approval. The fees have been calculated based on the actual acreage annexed into the City (excluding the acreage for the County Parcel). The amount owed and the calculations for the fees under this sub-section are shown on the attached Exhibit "D".
- 4) Limitation on number of lots on the Development Parcel: The Development Parcel shall be limited to no more than fifty (50) residential lots.
- 5) Limitation on number of lots and location of lots on Whitaker Parcel: The parcel of property from the existing Whitaker driveway north to the north access road as shown on the Annexation Concept Plan shall be referred to as Whitaker Parcel. The Whitaker Parcel may be further subdivided by the property owner as follows: either a) a maximum of four total residential building lots (with one of the lots including the existing Whitaker home), with no location restrictions except compliance with the required 100 foot setback from River Road, and compliance generally with the lot size and set-backs for lots in the RA-1-43 zone; or b) a planned unit development of no more than 12 units, that may be built no closer to River Road than the west side of the existing Whitaker Residence, and clustered generally to the north and west of the Whitaker Residence. If Whitaker chooses to build a PUD it will be required that the PUD units be made members of the HOA established on the Development Parcel. Further, Whitaker desires to reserve the right to change the use of his existing residence, into a commercial bed and breakfast, which is a conditional use in the agreed zone. The City agrees that a Bed and Breakfast shall be approved, but shall require Whitaker to apply for a conditional use permit, and comply with all requirements set forth in the code at the time of application to approve such use.
- 6) Potential to adjust location of certain lots: The Applicant or the developer may choose to reconfigure or relocate lots 34, 35, 38, 39, 40 and 41 on the Development Parcel which are currently shown on the Annexation Concept Plan. No such relocation or reconfiguration is allowed without an amendment to this Agreement, signed by both the property owner and the City. Any such amendment must be approved by the City Council. The City may consider any proposed amendment under this sub-section only if such proposal does not alter the Open Space Parcel, and does not relocate residential lots to the southern end of the Annexation Parcel in such a manner that it would adversely impact the view corridor to the north and east as viewed from Memorial Hill and River Road.

- 7) Covenants, Conditions and Restrictions: The Applicant agrees that as a condition of Annexation, the developer of the project shall be required to adopt Covenants, Conditions and Restrictions (“CC&Rs”) that shall apply to the Development Parcel and Open Space Parcel. As stated above, if the Whitaker Parcel is developed into a PUD, the Whitaker Parcel shall be required to become a part of the HOA. The CC&Rs shall include the following terms and conditions:
- i. All lots in the Development Parcel and the Open Space Parcel shall be included in one HOA.
  - ii. The Whitaker Parcel shall not be included in the HOA, unless and until the Whitaker Parcel is developed into a PUD, at which time the Whitaker Parcel shall be required to become a part of the HOA.
  - iii. Nightly or short term rentals shall be expressly prohibited within the HOA. The restrictions on nightly rentals within the Development Parcel, as contained in this sub-section, shall be included in the recorded CC&Rs and shall be noted on the Plat.
- 8) Agricultural Open Space Parcel: The Agricultural Open Space Parcel as shown on the Annexation Concept Plan, shall be either subject to an open lands easement (through the Utah Open Lands group or a similar entity), which shall insure that the Agricultural Open Space Parcel shall remain open space and shall not be further subdivided or developed, or subject to a deed restriction prohibiting further subdivision and development, and requiring the HOA to maintain the Agricultural Open Space Parcel as open and agricultural land. The Agricultural Open Space Parcel shall remain in agricultural production, with sufficient water rights remaining with the Agricultural Open Space Parcel to conduct normal agricultural practices thereon. Approved agricultural practices shall include cultivated crops, pasturing of animals, and community gardens. Structures that are strictly agricultural in nature may be constructed on the Agricultural Open Space Parcel, including a community barn, but shall require a building permit and compliance with all building codes and height restrictions in existence at that time of application. Commercial use of any structures built on the Agricultural Open Space Parcel is strictly prohibited. Members of the HOA may use the barn for family gatherings, and receptions, but only for those children within one generation of the owner.
- 9) Museum Parcel: Applicant agrees to include in the final Annexation Concept Plan and any development plat, a parcel, to be known as the Museum Parcel. This parcel shall include approximately six acres and shall include all the property from the existing Whitaker driveway south to the south access road as shown on the Annexation Concept Plan. No street entrance for the



Museum Parcel shall be allowed on to River Road. The Museum Parcel shall be accessed from the southern loop road, east of the intersection with River Road. Buildings on the Museum Parcel shall be limited to the existing barn/museum. It is expressly agreed that the existing barn/museum is not a residential unit, has not been approved as such, and will not be used as such until a certificate of occupancy is issued by the City for the building. However, it is agreed that Whitaker and/or assigns shall be allowed to apply for one Rural Preservation Subdivision on the Museum Parcel under chapter 16.18 of the existing Midway City code. The application shall be subject to the following restrictions, but shall be approved if it complies: 1) the Museum Parcel shall have a restricted building envelope to preserve the view corridor, which shall start on the west side of the existing barn/museum, running 134 feet north and south consistent with the existing fencing, and extending east 150 feet (*see* Exhibit E); 2) buildings within the building envelope shall be restricted to 25 feet in height; 3) the residential unit on the Museum Parcel shall count as one of the approved residential units on the Whitaker Parcel (meaning that if a residential unit is built on the Museum Parcel the Whitaker Parcel shall be restricted to either 3 residential units (including the Whitaker home) or 11 units in a PUD). No further subdivision or development beyond the Rural Preservation Subdivision shall be allowed on the Museum Parcel. The Museum Parcel shall not be included in the HOA, but the owner of the parcel shall have the on-going obligation to maintain the property in approved agricultural uses which are limited to cultivated crops, pasturing of animals, and community gardens.

- 10) Access to Provo River: The Applicants have been deeded an access to the Provo River as shown on the Annexation Concept Plan, in accordance with the legal rights granted to Tom Whitaker in the document attached as Exhibit F. Applicant shall cause to be put on the development plat, a note which shall indicate the following:
- i. The access to the Provo River is not a public access. (Appropriate signage shall be placed near the access point alerting the public to this limitation).
  - ii. Midway City in no way guarantees or implies access to the Provo River to lot owners within the Annexation Parcel, or any subdivision thereof. Midway City has no authority to grant access across property owned by the Provo River Mitigation Commission.
  - iii. The rights of access granted under this agreement can in no way exceed those rights granted to Tom Whitaker. Neither the public nor the property owners in the subdivision shall have any claim for access that exceeds the current rights of Tom Whitaker. This restriction shall be noted in the CC&Rs and placed as a note on the Plat.

11) Time to Record: Upon execution of the Annexation Agreement, the City shall record the appropriate and required documents with Wasatch County and the State of Utah according to the time limits and requirements set forth in Utah Code. If the Annexation Agreement is not executed by the applicant within 30 days of adopting the ordinance, the annexation application shall be deemed to be denied, this Annexation Agreement shall be null and void, and applicant will be required to reapply for annexation.

**9. Miscellaneous Provisions:**

- A. **Headings.** The descriptive headings of the paragraphs of this Agreement are for convenience only, and shall not control or affect the meaning or construction of any provision of this Agreement.
- B. **Authority.** The Parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, the City Council and/or Mayor on behalf of the City and the Applicant on behalf of the property within the Annexation Parcel. The parcels of property that are not signatories to this Agreement but that are included in the Annexation are bound by the terms of this Agreement pursuant to State Law. The Applicant represents and warrants that each Party is fully authorized and validly existing under the laws of the State of Utah, if applicable. The Applicant and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Parties on whose behalf each individual is signing. The Applicant represents to the City that by entering into this Agreement, the Applicants have bound themselves, all the owners of the Annexation Property, and all persons and entities having any current or future legal or equitable interest in the Annexation Property, to the terms of this Agreement.
- C. **Entire Agreement.** This Agreement, including Exhibits, constitutes the entire agreement between the Parties, except as supplemented by Midway City Ordinances, Resolutions, policies, procedures and plans. Unless specifically provided herein, nothing in this Agreement shall relieve the Applicant or Developer from meeting all other applicable City ordinances, rules, regulations and standards. Prior to actual development, the Applicant or Developer will be required to enter into a development agreement with the City, and to meet all other City requirements.
- D. **Amendment of this Agreement.** This Agreement may not be amended, in whole or in part, except by the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. Any such amendment to this Agreement shall be recorded in the official records of the Wasatch County Recorder's Office.
- E. **Severability.** If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which Agreement shall otherwise remain in full force and effect.

- F. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement. The Parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Wasatch County, Utah, and the Parties hereby waive any right to object to such venue.
- G. Remedies. If any Party to this Agreement breaches any provision of this Agreement, the non-defaulting Party shall be entitled to all remedies available at both law and in equity.
- H. Attorney's Fees and Costs. If any Party brings legal action either because of a breach of the Agreement or in order to enforce a provision or term of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and court costs.
- I. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective heirs, legal representatives, successors in interest and assigns, including all successive owners of the Annexation Property. The Agreement shall be incorporated by reference in any instrument purporting to convey an interest in any portion of the Annexation Property. The terms of this Agreement and the obligations of the Applicant hereunder shall be binding upon all present and future owners of the Annexation Property and shall be appurtenant to, and shall run with, said land.
- J. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a Party hereto shall have any right or cause of action hereunder.
- K. No Agency or Partnership Created. Nothing contained in this Agreement shall be construed to create any partnership, joint venture, or agency relationship between the Parties.
- L. Recording. Upon execution, this Agreement shall be recorded in the official records of the Wasatch County Recorder.

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

*Remainder of Page Intentionally Left Blank*

*Signature Page Follows*

CITY OF MIDWAY

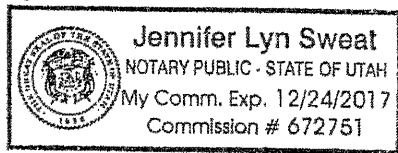
Attest:

Colleen C Bonner  
Colleen Bonner, Mayor

Brad Wilson  
Brad Wilson, City Recorder

STATE OF UTAH )  
 ) :SS  
COUNTY OF WASATCH )

The foregoing instrument was acknowledged before me this 20 day of December 2017, by Colleen Bonner, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.



Jennifer Lyn Sweat  
NOTARY PUBLIC

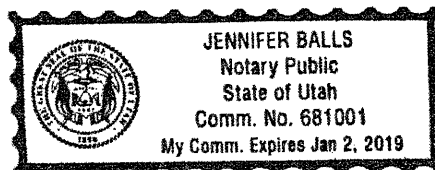
APPLICANT

Thomas S. Whitaker  
Thomas S. Whitaker, Individually

STATE OF UTAH )  
 ) :SS  
COUNTY OF WASATCH )

The foregoing instrument was acknowledged before me this 19 day of DECEMBER 2017, by Thomas S. Whitaker, who executed the foregoing instrument in his individual capacity as the Applicant.

Jennifer Balls  
NOTARY PUBLIC

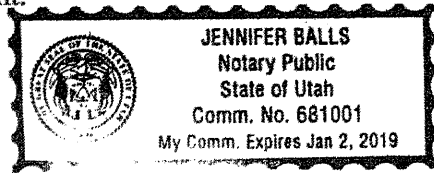


APPLICANT

Linda Whitaker  
Linda Whitaker, Individually

STATE OF UTAH            )  
                                      :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this 19 day of DECEMBER 2017, by Linda Whitaker, who executed the foregoing instrument in her individual capacity as the Applicant.

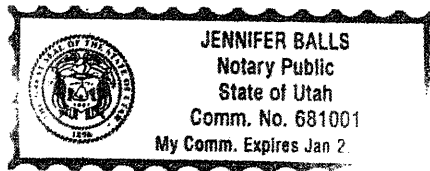


Jennifer Balls  
NOTARY PUBLIC

Midway Meadows Ranch, LLC  
Thomas Whitaker  
By: Thomas Whitaker  
Its: Manager

STATE OF UTAH            )  
                                      :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this 19 day of DECEMBER 2017, by Thomas Whitaker, who executed the foregoing instrument in his capacity as the Manager of Midway Meadows Ranch, LLC.



Jennifer Balls  
NOTARY PUBLIC

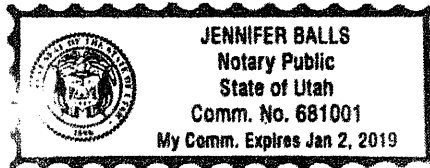
Thomas S. Whitaker, trustee of The Thomas and Linda Whitaker Trust, dated the 25<sup>th</sup> day of March, 1999

*Thomas S. Whitaker*

By: Thomas Whitaker  
Its: Trustee

STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH         )

The foregoing instrument was acknowledged before me this 19 day of DECEMBER 2017, by Thomas Whitaker, who executed the foregoing instrument in his capacity as the Trustee of the The Thomas and Linda Whitaker Trust, dated the 25<sup>th</sup> day of March, 1999.



*Jennifer Balls*  
NOTARY PUBLIC

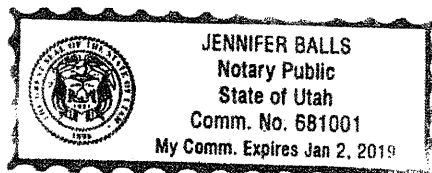
Linda P. Whitaker, trustee of The Thomas and Linda Whitaker Trust, dated the 25<sup>th</sup> day of March, 1999

*Linda P. Whitaker*

By: Linda P. Whitaker  
Its: Trustee

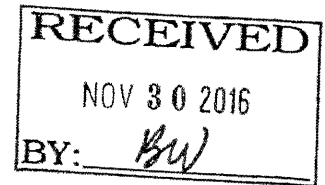
STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH         )

The foregoing instrument was acknowledged before me this 19 day of DECEMBER 2017, by Linda P. Whitaker, who executed the foregoing instrument in her capacity as Trustee of The Thomas and Linda Whitaker Trust, dated the 25<sup>th</sup> day of March, 1999.



*Jennifer Balls*  
NOTARY PUBLIC

**Exhibit "A"**  
**ANNEXATION PETITION**



## PETITION FOR ANNEXATION INTO MIDWAY CITY

We the undersigned owners of certain real property lying contiguous to the present municipal limits of Midway City hereby submit this Petition for Annexation and respectfully represent the following:

1. This petition is made pursuant to the requirements of Section 10-2-403, Utah Code Annotated;
2. The property subject to this petition is an unincorporated area contiguous to the boundaries of Midway City, and the annexation thereof will not leave or create an unincorporated island or peninsula;
3. The signatures affixed hereto are those of the owners of private real property that:
  - a. is located within the area proposed for annexation;
  - b. covers a majority of the private land area within the area proposed for annexation;
  - c. is equal in value to at least 1/3 of the value of all private real property within the area proposed for annexation; and
  - d. lies contiguous to the present boundary of Midway City's corporate limits and is described in the attached *Exhibit A*, and is particularly located  
  
between River Road and the Provo River, including Memorial Hill, at approximately 510 North River Road in Wasatch County, UT
4. Title to the property by those signing this petition is as shown in the deeds or title report attached hereto as *Exhibit B*. (Copies of the deed accompanies this petition.)
5. The manner in which it was established that at least 1/3 of the value of all the private property sought to be annexed is owned by the signers of this petition is shown in the attached *Exhibit C*.
6. The total acres of private land and total assessed value of all private lands sought to be annexed are 164.52 acres and \$9,415,500 assessed value. The ownership interests and assessed values of the privately-owned lands included in this annexation petition are shown in *Exhibit C*. *The total acreage of the entire annexation may contain more acreage due to the inclusion of public roads, public lands, or minor deed and title issues.*
7. The petitioners have caused an accurate plat or map of the above-described property to be prepared by Bing Christensen, P.L.S. a licensed surveyor, and Summit Engineering Group, Inc., which plat or map is attached herewith;



8. This petition does not propose annexation of all or a part of an area proposed for annexation in a previously filed petition that has not been denied, rejected, or granted;
9. This petition does not propose annexation of all or a part of an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103 U.C.A. or a petition under Section 10-2-125, U.C.A. if:
  - a. the request or petition was filed before the filing of the annexation petition, and
  - b. the request, a petition under Section 10-2-109 based on that request, or a petition under Section 10-2-125 is still pending on the date the annexation petition is filed;
10. The petitioners request the property, if annexed, be zoned **Residential Agriculture RA-1-43 and/or Recreation Resort RZ** as per the Midway City Land Use Map

WHEREFORE, the Petitioners hereby request that this Petition be considered by the Midway City Council at its next regular meeting, December 14, 2016, that a resolution be adopted as required by law accepting this Petition for Annexation for further consideration, and that the governing body take such steps as required by law to complete the annexation herein petitioned.

Dated this 29<sup>th</sup> day of November, 2016.

**PETITIONERS**

Thomas S. Whitaker

PO Box 777, Midway, UT 84049

Thomas S Whitaker,  
Trustee of  
The Thomas and Linda Whitaker Trust  
Dated March 25, 1999  
**Contact Sponsor/Petitioner**

Phone No. 801-836-9965  
Email WHITAKERS777@GMAIL.COM

Thomas S Whitaker

PO Box 777, Midway, UT 84049

Thomas S Whitaker, Manager  
Midway Meadows Ranch, LLC  
**Petitioner**

Phone No. 801-836-9965