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**WHEN RECORDED MAIL TO:**

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03/10/2006 04:58 PM \$219.00  
Book - 9265 Pg - 4714-4816  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: ZJM, DEPUTY - WI 103 P.

Parcel I.D. Nos. 21234760030000  
21262000150000  
21264010030000

**DECLARATION FOR BINGHAM JUNCTION**

See Exhibit A for description of property.

*LTC #37980.*

BK 9265 PG 4714

**DECLARATION**  
**FOR**  
**BINGHAM JUNCTION**

THIS DECLARATION FOR BINGHAM JUNCTION ("Declaration") is made on the date hereinafter set forth by Littleton, Inc., a Delaware corporation with an address of 2100 East Bengal Blvd., #F203, Salt Lake City, Utah 84121 Attn: Robert L. Soehnen, President ("Founder").

**RECITALS**

A. Founder owns certain real estate in the City of Midvale, State of Utah (the "City"), more particularly described in Exhibit A attached hereto (the "Property") (Unless otherwise defined, capitalized terms used in these Recitals shall have the meaning set forth in Section 1.1).

B. The Property is currently zoned pursuant to the City's zoning ordinance as the Bingham Junction Zone ("BJ Zone") as set forth in § 17-7-9 of the Midvale City Code, as amended. The BJ Zone establishes both the procedural and substantive requirements for approval of development within the Property.

C. The Founder currently plans to facilitate the development of the Property in accordance with the Master Plan (defined below) and the BJ Zone by facilitating the development of 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 and other amenities (the "Project").

D. The City and the Founder have entered into a Master Development Agreement dated April 6, 2005 pursuant to which the City has approved the Bingham Junction Large Scale Master Plan (the "Master Plan") for the development of the Project.

E. The Project encompasses a portion of the Midvale Slag Superfund site which has been, in the case of the North Parcel, or will be, in the case of the remaining Property, remediated in accordance with requirements of the U.S. Environmental Protection Agency ("EPA") and the Utah Department of Environmental Quality ("DEQ"). Project development will occur in accordance with applicable institutional controls as set forth in the Institutional Control Process Plans approved by the EPA and the DEQ and adopted by the City on July 13, 2004, as they may be amended from time to time, and the Explanation of Significant Difference for OU1 (hereafter "Institutional Control Process Plans"), attached as Exhibits B1-B3 hereto.

F. Founder, by this Declaration, desires:

(i) to allow for and encourage the purposes of the Master Plan, including affordable housing, sustainable development and parks and open space;

(ii) to allow for and encourage diversity of residential housing and mixed uses within the Project, including residential uses, office uses, retail uses, light industrial and related uses, community uses, and public and private uses;

(iii) to provide for the implementation of design and development guidelines and criteria throughout the Project;

(iv) to further and promote the interests, health, safety and welfare of the residents, occupants, tenants and guests of the Project;

(v) to preserve, protect, maintain, and enhance the Property; and

(vi) to provide for the implementation of the powers and duties of the Board as set forth in this Declaration and the other Governing Documents of the Property.

G. Founder has caused the “Bingham Junction Master Property Owners’ Association, Inc.,” a Utah nonprofit corporation (the “Master Association”), to be incorporated under the laws of the State of Utah, as a master property owners’ association, for the purpose of exercising the functions set forth in this Declaration.

H. Founder has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of the Property.

Now, therefore, Founder hereby declares as follows:

## I.

### DEFINED TERMS

1.1 **Defined Terms.** Each capitalized term in this Declaration shall have the meaning set forth in the Recitals or as set forth below, unless the context requires otherwise:

(a) “Affordable Housing Plan” means that certain plan agreed to by the City and Founder or its affiliates as Exhibit C to the Reimbursement Agreement, respecting *development and preservation of affordable housing in the Project, and any amendments thereto.*

(b) “Affordable Housing Restrictions” means those restrictions and/or covenants imposed by or at the discretion of Founder on a portion of the Property, as specifically designated by Founder, to comply with the terms of the Affordable Housing Plan, pursuant to applicable provisions of this Declaration.

(c) “Articles” means the Articles of Incorporation for the Bingham Junction Master Property Owners’ Association, Inc., as may be amended from time to time. The initial Articles are attached hereto as Exhibit C.

(d) "Assessment(s)" means an assessment for expenditures made or liabilities incurred by or on behalf of the Master Association in carrying out its responsibilities under this Declaration and including late charges, attorneys' fees, and interest charged by the Master Association.

(e) "Board" means the body described in Section 3.1 to act on behalf of the Master Association, as provided more fully in the Articles and the Bylaws.

(f) "Builder" means any developer, builder, general contractor, or other party (other than the Founder), who acquires one or more unimproved Units for the purpose of (i) constructing any initial Improvements upon the Unit or (ii) otherwise subdividing or developing the Unit in the ordinary course of its business in accordance with any applicable Small Scale Master Plan.

(g) "Bylaws" means the Bylaws adopted by the Master Association, as may be amended from time to time.

(h) "Declaration" means this Declaration for Bingham Junction, as amended and supplemented from time to time

(i) "DEQ" means the Utah Department of Environmental Quality.

(j) "Development Agreement" means the Master Development Agreement dated April 6, 2005 between Littleton, Inc. and Midvale City respecting the Property and all documents and agreements attached thereto or referred to therein.

(k) "Development Policies" refer to: (1) the RD/RA Consent Decree effective as of November 16, 2004 by the United States District Court for the District of Utah in Case 2:99-CV-757TS, and all documents and agreements attached thereto or referred to therein; (2) the Agreement, Grant of Access to UDEQ and Covenant Not to Sue Decree effective as of November 16, 2004 by and between the State of Utah, Department of Environmental Quality and Littleton, Inc. and all documents and agreements attached thereto or referred to therein; (3) the Development Agreement; (4) the Reimbursement Agreement; (5) the Records of Decision for OU1 and OU2 of the Midvale Slag Site, and all documents and agreements attached thereto or referred to therein, and any amendments or Explanations of Significant Difference thereto; and (6) any approved Small Scale Master Plans.

(l) "Development Rights" means those development rights reserved by Founder as set forth in Article IX.

(m) "EPA" means the United States Environmental Protection Agency.

(n) "Founder" means Littleton, Inc. a Delaware corporation and any successor and/or assignee designated by written notice or assignment executed by the then Founder and executed by the transferee and recorded in the office of the Salt Lake County Recorder, to the extent of any rights or powers reserved to Founder are transferred or assigned to that party.

(o) "Governing Documents" means those documents listed in Section 2.4, as they may be amended from time to time.

(p) "Improvement(s)" means any and all buildings, structures, site work, landscaping, improvements, and other items placed on a Unit or installed within or upon a Unit.

(q) "Initial Small Scale Master Plan" means the initial Small Scale Master Plan submitted by a Builder for approval of the Master Association and the City with respect to any portion in the Project, but expressly does not include any subsequent Small Scale Master Plans (whether submitted by such Builder or a transferee of such Builder) that further subdivides such property and that are consistent with the initial Small Scale Master Plan.

(r) "Institutional Control Process Plans" refer to (1) the documents attached hereto as Exhibits B1 and B2, and including documents described therein, any of which may be amended from time to time as provided in the Institutional Control Process Plans, and (2) any modification of the Institutional Control requirements by EPA amendment of or explanation of significant difference to the Records of Decision for OU1 or OU2, including without limitation the Explanation of Significant Differences for OU1, dated February 14, 2006, attached hereto as Exhibit B3.

(s) "Institutional Controls" mean the institutional controls and restrictions on the development and use of the Property set forth in the Institutional Control Process Plans.

(t) "Master Association" or "Association" means the Bingham Junction Master Property Owners' Association, Inc., a Utah nonprofit corporation, and its successors and/or assigns. The Master Association is the same entity referred to as the "Master Property Owners' Association" in Section 5.1 of the Development Agreement. The Master Association, through the Master Association Chair (as defined in the Development Agreement and in the Bylaws), is vested with all of the rights and subject to all of the duties as the entity referred to in the BJ Zone as the "Property Owners Association" or "POA" for purposes of the BJ Zone.

(u) "Master Design Guidelines" means the standards, criteria and/or guidelines for design, landscaping, or aesthetics imposed upon any portion of the Project as set forth on Exhibit D.

(v) "Member" shall have the definition provided in the Bylaws.

(w) "Mercer" means Mercer Bingham Junction, LLC, a Utah limited liability company as the immediate transferee of a portion of the North Parcel from the Founder.

(x) "Neighborhood Association" means any association organized and established by Supplemental Declaration.

(y) "Neighborhood Design Guidelines" means the standards, criteria and/or guidelines for design, landscaping, or aesthetics imposed upon any portion of the Project by any Neighborhood Association pursuant to a Supplemental Declaration.

(z) "Neighborhood Design Review Committee" means the committee, the board or other group or body designated under a Supplemental Declaration as having the primary responsibility of review and approval of any Small Scale Master Plan within a Neighborhood Association.

(aa) "North Parcel" means the portion of the Property more particularly described on Exhibit E attached hereto consisting of that portion of the Property north of Jordan River Boulevard in Salt Lake County.

(bb) "OU1" means that portion of the Property identified in the Development Policies as "Operable Unit No. 1."

(cc) "OU2" means that portion of the Property identified in the Development Policies as "Operable Unit No. 2."

(dd) "Owner" means any person or entity that owns a fee interest in any Unit.

(ee) "Period of Founder Control" means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of (i) December 31, 2015; (ii) at such time as Founder is no longer the Owner of at least ten percent (10%) of the Property; or (iii) at the written election of the Founder to terminate the Period of Founder Control.

(ff) "Property" means the real property described in Exhibit A attached hereto, together with all easements, rights and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(gg) "Reimbursement Agreement" means the Tax Increment Reimbursement Agreement for the Bingham Junction Project between Littleton, Inc. and Midvale City respecting the Property and all documents and agreements attached thereto or referred to therein.

(hh) "Small Scale Master Plan" shall have the meaning provided in the Development Agreement and the BJ Zone.

(ii) "South Parcel" means the portion of the Property not comprising the North Parcel.

(jj) "Supplemental Declaration" means a written recorded instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof.

(kk) "Unit" means any portion of the Property that is independently owned, including condominium units, lots, or separate parcels. In order to qualify as a Unit, the Unit must be to be shown on an applicable plat map or deed.

## II.

### SCOPE OF DECLARATION; PROPERTY

2.1 Submission of Property to the Declaration. The Founder hereby submits the Property to the provisions of this Declaration.

2.2 Purpose and Intent. Founder declares that this Declaration is made for the purposes set forth in the Recitals. Founder intends that this Declaration shall provide a flexible and reasonable procedure for the general future development of the Property. Subject to the express provisions of this Declaration, Founder anticipates that the Master Association's role will be limited to the implementation and enforcement of the Development Policies and the Institutional Control Process Plans.

2.3 Binding Effect. Founder hereby declares that all of the Property shall be held, sold, and conveyed subject to the easements, restrictions, powers, covenants and conditions of this Declaration, except such portions of the Property as are a part of or are subsequently dedicated to the City or to other governmental agencies as a right-of-way, a public street, road or highway or dedicated as and used as a public parks and open space. Founder declares that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

2.4 Governing Documents. The Governing Documents consist of the following (as may be amended from time to time): (a) this Declaration; (b) Articles; (c) Bylaws; (d) plats, maps, and deeds, as applicable; (e) Rules and Regulations; (f) Board resolutions and actions; and (5) the Development Policies. Portions of the Property may be subject to additional covenants, restrictions and easements, which a Neighborhood Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Neighborhood Association, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Property from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control.

## III.

### MASTER PROPERTY OWNERS' ASSOCIATION

3.1 Master Association—Membership and Board. This Declaration will be managed, implemented, and enforced through the Master Association. Except as required by law or the Governing Documents, the Master Association will be managed by a Board of Directors ("Board"). The initial Board will consist of three members. Founder shall have the right to appoint each member of the Board during the Period of Founder Control, after which the Board will be dissolved and its members elected as provided in the Bylaws. So long as Mercer owns ten percent (10%) or more of the North Parcel, one of the members appointed by Founder shall be a person selected by Mercer.

3.2 Master Association Powers. As provided more fully in the Articles and Bylaws (which may be amended from time to time), the Master Association, acting through the Board, shall have powers consistent with the intent and purposes of this Declaration to perform functions to benefit some or all of the Owners, as provided for in the Governing Documents. Without limiting these general powers, the Master Association, acting through the Board, shall have the specific power to, in its sole discretion:

- (a) enter into contracts;
- (b) employ staff, contractors, accountants, legal counsel, or other consultants as the Board deems desirable;
- (c) exercise such powers as authorized by the Articles, the Bylaws, or by Utah law;
- (d) provide initial approval or denial of any large or small scale master plans, or any revisions, changes or amendments thereto, for any portion of the Project or impose reasonable conditions for approval as provided in Article V;
- (e) provide initial approval or denial of any Neighborhood Design Guidelines or standards, or any material revisions, changes or amendments thereto, for any portion of the Project or impose such conditions for approval as it deems appropriate;
- (f) follow, institute, and enforce Institutional Control Process Plans to the fullest extent applicable to property owners' associations;
- (g) follow, institute, and enforce the requirements of the Development Policies;
- (h) levy and collect Assessments as provided in this Declaration.

3.3 In exercising the powers described in section 3.2, the Master Association may take actions even where such actions may not directly benefit all of the Owners.

3.4 Governing Documents. The Master Association shall be governed by the Governing Documents, as all of the same may be amended from time to time. Copies of the Governing Documents then in effect (as amended) shall be made available to all Owners at the Master Association offices during normal business hours.

3.5 Assent, Ratification and Approval. All Owners shall be deemed to have assented to, ratified and approved the general purposes of this Declaration and the power, authority, management responsibility and designation of the Master Association, acting through the Board as permitted under this Declaration.

3.6 Indemnification. To the fullest extent permitted by law, each officer of the Master Association and member of the Board shall be and is hereby indemnified by the Master Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such officer or director in any proceeding to which he or she may be a party, or



in which he or she may become involved, by reason of being or having been an officer or director of the Master Association, or any settlements thereof, whether or not he or she is an officer or director of the Master Association at the time such expenses are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification provided for in this Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Master Association.

3.7 Neighborhood Associations - Supplemental Declarations. The Master Association may delegate any of its powers, rights or authorities pursuant to this Declaration to one or more Neighborhood Associations within the Project.

#### IV.

### COVENANT FOR ASSESSMENTS

#### 4.1 Assessments—Authorization and Covenant.

(a) The Master Association is hereby authorized to levy Assessments on the South Parcel, on an as needed basis, for the purpose of funding the implementation and enforcement of this Declaration, including without limitation funds to retain legal, engineering, accounting and other professional services as needed

(b) The Master Association is also hereby authorized to levy separate Assessments on the North Parcel, on an as needed basis, for the sole purpose of funding the implementation and enforcement of this Declaration on the North Parcel, including without limitation funds to retain legal, engineering, accounting and other professional services as needed.

(c) Unless otherwise provided in the Bylaws, the Master Association shall provide written notice of the levy of an Assessment to each Owner being assessed at the last address provided in writing by such Owner to the Master Association.

4.2 Statements of Account. The Master Association shall furnish to any Owner, upon written request, delivered personally or by certified mail, first class, postage prepaid, return receipt requested, to the Master Association's registered agent, a written statement setting forth the amount of all unpaid Assessments, if any, currently levied against such Owner's Unit. The statement shall be furnished within ten (10) calendar days after receipt of the request and shall be binding on the Master Association, the Board, and every Owner.

4.3 No Exemptions, Offsets, or Reductions. No Owner may become exempt from liability for payment of any Assessment to the Master Association by abandonment of Owner's Unit, by the Owner's failure or alleged failure to receive direct benefits related to any Assessment, or by operation of any form of waiver, including waiver of the Owner's right to vote or the Owner's use or enjoyment of common facilities. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Master Association or the Board or any other entity is not properly exercising its duties and powers under this Declaration.

4.4 Personal Obligation to Pay Assessments. The Owner of any Unit shall be deemed to covenant and agree to pay, in a timely manner, any and all Assessments as imposed by the Master Association pursuant to this Declaration. Assessments provided for in this Declaration, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Master Association shall be the personal obligation of the Owner of such Unit at the time when the assessment or other charges become due.

4.5 Creation of Lien; Enforcement. The Owner of any Unit hereby agrees that (i) the Master Association may record in the office of the Salt Lake County Recorder a lien in the amount of any past due sums owing to the Master Association pursuant to this Declaration (including, without limitation, fees, charges, assessments as set forth in Section 4.1 above, late charges, attorneys' fees, and interest); and (ii) the Master Association may enforce such lien in the same manner and to the same extent as a mechanics' lien pursuant to Section 38-1-1 *et seq.*, Utah Code Ann.

4.6 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board, shall bear interest at the rate of interest, not to exceed ten percent per annum, as may be determined, from time to time, by the Board, and the Master Association may assess a reasonable late charge thereon as determined by the Board. Further, the Master Association may bring an action at law or in equity, or both, against the person(s) obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and/or may also proceed to foreclose its lien. An action at law or in equity by the Master Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments, thereof, may be commenced and pursued by the Master Association without foreclosing, or in any way waiving, the Master Association's lien. Foreclosure or attempted foreclosure by the Master Association of its lien shall not be deemed to estop or otherwise preclude the Master Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Master Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Master Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. The rights of the Master Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents).

## V.

### APPROVAL RIGHTS

5.1 Small Scale Master Plans. The Master Association shall have the right to approve any Small Scale Master Plan and may refuse to grant such approval if the Master Association is not satisfied that the Small Scale Master Plan meets the requirements and/or intentions of any Development Policy or the BJ Zone as then in effect. The Master Association may impose such reasonable conditions as the Master Association deems appropriate as a prerequisite to receiving the approval of the Master Association and any such Small Scale Master plan being submitted to the City for approval. The Master Association shall also have the right

to approve or disapprove any material amendment, change or substitution of any such Small Scale Master Plan as a prerequisite to any such amendment, change or substitution being submitted to the City for approval.

5.2 Design Guidelines. As a prerequisite to approval of any Small Scale Master Plan by the Master Association, the Master Association will require compliance with the Master Design Guidelines. Furthermore, the Master Association shall have the right to approve or disapprove any Neighborhood Design Guidelines, or any material amendment, change or substitution of any such Neighborhood Design Guidelines, which such approval shall not unreasonably be withheld.

5.3 Alternative Approval Procedure for Neighborhood Associations. In lieu of complying with the provisions of 5.1 and 5.2, each Neighborhood Association may elect, at its option, the following alternative procedure for receiving approval of Small Scale Master Plans:

(a) The Master Association shall have the approval rights described in section 5.1 only with respect to the Initial Small Scale Master Plan.

(b) The Neighborhood Association Supplemental Declaration shall have been approved by the Master Association as complying with the Development Policies, the Institutional Control Process Plans and the BJ Zone.

(c) The Neighborhood Association shall have adopted Neighborhood Design Guidelines substantially consistent with the Master Design Guidelines. The Master Association shall have approved or disapproved, in the Master Association's sole reasonable discretion, the Neighborhood Design Guidelines prior to the adoption of such guidelines by the Neighborhood Association. Following the approval and adoption of such Neighborhood Design Guidelines, the Master Association shall thereafter have the right to approve or disapprove, in advance, any material amendment, addition or change to such Neighborhood Design Guidelines, which approval will not be unreasonably withheld.

(d) The governing documents of the Neighborhood Association shall provide for a Neighborhood Design Review Committee consisting of at least three persons: one appointed by the Neighborhood Association, one licensed design professional appointed by the Neighborhood Association and one person appointed by the Master Association. The design professional shall have experience in designing developments in scope similar to the Project.

(e) Each Small Scale Master Plan (other than the Initial Small Scale Master Plan) shall be reviewed by the Neighborhood Design Review Committee. In the event that the Master Association appointee approves any Small Scale Master Plan as being in compliance with the Neighborhood Design Guidelines, neither the Founder, the Master Association, nor any other Owner shall have any right thereafter to challenge such compliance and the Founder, the Master Association, and all other Owners hereby waive any such right. However, nothing in this section 5.2 shall waive or modify any existing rights of the Founder, the Master Association or the City to independently enforce the provisions of the Development Policies, the Institutional Control Process Plans and the BJ Zone.

(f) If the Master Association's appointee determines that the Small Scale Master Plan does not meet the Neighborhood Design Guidelines, the dispute shall be resolved by a panel of three licensed design professionals: one appointed by each of the Neighborhood Association and the Master Association within five (5) days of the dispute arising. These two panel members shall within five (5) business days jointly appoint a third independent panel member. Each such design professional shall have experience in designing developments in scope similar to the Project. In the event that a third panel member cannot be jointly agreed upon, a state court shall appoint the third panel member on an expedited basis. The decision of the panel shall be rendered within thirty (30) days of the appointment of the panel and such decision shall be binding upon the parties and may be treated as a binding arbitration award under Utah law.

(g) The Neighborhood Association and the Master Association shall each pay all fees, costs and expenses of their respective attorneys, professionals, representatives and

appointees under this section 5.23 and shall split equally the cost of the third panel member's fees and expenses.

5.4 Mercer Approval Rights. The Master Association shall not materially modify or change the Master Design Guidelines without the approval of any affected Neighborhood Association, which consent may not be unreasonably withheld. As part of the Master Association's right to review and approve Neighborhood Design Guidelines, the Master Association hereby grants Mercer a one time right to review the Neighborhood Design Guidelines for any Neighborhood Association adjacent to the North Parcel (i.e., separated from the North Parcel by 7200 South Street) for the purpose of determining that such guidelines are substantially consistent with the Master Design Guidelines. Furthermore, the Master Association grants Mercer a similar right to review any material amendment, change or substitution of any such Neighborhood Design Guidelines that require approval of the Master Association. In the event that Mercer disputes that such Neighborhood Design Guidelines are substantially consistent with the Master Design Guidelines, the dispute shall be resolved in accordance with section 5.3(f).

## VI.

### MAINTENANCE AND INSTITUTIONAL CONTROLS

6.1 Institutional Controls. All Owners and Members shall at all times comply with applicable Institutional Controls developed under the Institutional Control Process Plans. As explained in the Institutional Control Process Plans, the City is responsible, through its planning, zoning, and building permit processes, for the oversight and enforcement of most of the Institutional Controls that apply to the Property. The Master Association, however, will have the responsibility for implementing, enforcing, and overseeing certain Institutional Controls (such as, for example, the oversight of certain construction activities that do not require a building permit), insofar as such Institutional Controls have been designed to be implemented through a property owners' association. The Master Association may delegate authority over Institutional Control compliance to one or more Neighborhood Associations but the Master Association cannot delegate its ultimate compliance and oversight responsibilities. Without limiting the Master Association's other remedies as provided herein, in the event any Owner fails to comply with applicable Institutional Controls, the Master Association shall be entitled, upon reasonable notice under the circumstances, to enter the Unit and perform such work as may be necessary in order to comply with such Institutional Controls, as the Master Association may deem reasonable. In that event, the Master Association will charge such Owner for such work through a Assessment against such Owner for, without limitation, the costs of such work and such additional fees, fines, and penalties as the Board may deem fit, in its sole discretion. The City is hereby authorized to enforce applicable Institutional Controls in the event that the Master Association fails to do so and shall have the same remedies as available to the Master Association, including without limitation any lien or assessments rights set forth in this Declaration. Furthermore EPA, in accordance with its authority under the RD/RA Consent Decree for the Midvale Slag Site, and DEQ, in accordance with its authority to enforce Institutional Controls in the form of restrictive covenants under the Utah Environmental Institutional Control Act, Utah Code § 19-10-101, *et seq*, are hereby authorized to enforce applicable Institutional Controls in the event and to the extent that both the Master Association

and the City fail to do so.

## VII.

### GENERAL RESTRICTIONS

7.1 Safety and Security. Each Owner and occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Property. Neither the Master Association nor Founder shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants that the Master Association, its officers, Board and committees, and Founder are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including Units and the contents of Improvements, resulting from acts of third parties or latent property defects or conditions.

7.2 Access. Each Owner hereby covenants and agrees to provide the Master Association, any applicable Neighborhood Association, EPA, DEQ, the City, and each of their respective employees, agents, and contractors, with the right of access to all real property owned by such person to the extent such access is reasonably required to implement and enforce this Declaration.

7.3 Changes in Circumstances Anticipated. Founder has promulgated a Master Plan for the purposes stated in the recitals of this Declaration; provided, however, that in all cases and events such Master Plan shall be subject to the Master Association's ability to respond to changes in circumstances, conditions, needs and desires within the Property, except as expressly provided for in this Declaration.

7.4 Owner Acknowledgment. Each Owner is subject to this Declaration and the covenants and restrictions contained in this Declaration. By acceptance of a deed, or other instrument establishing title, ownership or other interest, each Owner acknowledges that such Owner has been given notice of this Declaration and that use of a Unit is subject to the provisions of this Declaration.

7.5 Restrictions on Subordinate Covenants, Maps and Planned Unit Developments on Residential Units. With regard to the South Parcel, or unless otherwise agreed by the Master Association, the prior written consent of the Master Association, or the applicable Neighborhood Design Review Committee, shall be required before any planned unit development, map, plat or re-subdivision may be filed of record against all or any portion of a Unit. In the event an Owner records covenants against all or any part of a Unit without the written consent required by the provisions of this Section, or in the event an Owner records any planned unit development, map, plat or re-subdivision against all or any part of any Unit without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed void by the Master Association, or the applicable Neighborhood Association, upon recording a notice to that effect.

7.6 Right of Owners Regarding Rules and Regulations. With regard to the South Parcel, or unless otherwise agreed by the Master Association, the Board may adopt, amend or repeal rules and regulations concerning and governing the Community or any portion thereof in furtherance of the purposes of this Community Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Master Association, Owners and Members. The Board may establish and enforce penalties for the infraction thereof. Notwithstanding the foregoing, the Master Association's rules and regulations shall not be applicable to any portion of the Property that are subject to rules and regulations of a Neighborhood Association pursuant to a Supplemental Declaration.

7.7 Construction Use. It is expressly permissible for Founder and Builders to, consistent with the requirements of the Development Policies, perform construction and such other reasonable activities, and to maintain upon portions of the Property such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Property, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

7.8 Reasonable Rights to Develop. None of the covenants and restrictions in this Declaration, nor any rule or regulation promulgated by the Board, shall unreasonably impede Founder's or Mercer's right to develop any portion of the Property.

## VIII.

### MASTER ASSOCIATION INSURANCE

8.1 Insurance Coverage. The Master Association may, at its discretion, obtain and maintain in effect any insurance coverage it deems necessary to effectuate the purposes of this Declaration.

8.2 Waiver of Claims Against Master Association. The Master Association and the Owners hereby waive and release all claims against one another, the officers, the Board and Founder, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

8.3 Adjustments by the Master Association. Any property or casualty loss covered by an insurance policy described above shall be adjusted by the Master Association, and the insurance proceeds for that loss shall be payable to the Master Association. The Master Association shall hold any insurance proceeds in trust for the Master Association and the Owners.

8.4 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record.

## IX.

### RESERVED DEVELOPMENT RIGHTS

9.1 Reserved Development Rights. The Founder reserves the following Development Rights with respect to any and all property within the Project that Founder owns or controls at the time of their exercise, provided that these rights are discretionary with Founder and nothing in this Section shall be construed to impose any affirmative obligation upon Founder:

- (a) The right to add Units and designate uses;
- (b) The right to subject portions of the Property owned by the Founder to additional covenants, conditions, terms and restrictions, as Founder may determine;
- (c) The right to relocate boundaries between adjoining Units, enlarge Units, enlarge or reduce or diminish the size of Units, subdivide Units, or complete or make improvements on Units, to the extent such Units are owned by Founder and/or with the consent of the Owner;
- (d) The right to designate portions of the Property (owned by the Founder, or with the consent of the Owner), as being subject to the Affordable Housing Plan and further to record Affordable Housing Restrictions against such property;
- (e) The right to amend the Declaration, maps or plats in connection with the exercise of any Development Right;
- (f) The right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA or other applicable law;
- (g) The right to amend the Governing Documents, as provided therein;
- (h) The right, for itself and for the Builders, to maintain signs, sales offices, mobile offices, temporary buildings, parking lots, management offices and models in Units of the Founder or of a Builder;
- (i) The right, for itself and for the Builders, to maintain signs and advertising on the Property to advertise the Property or other communities developed or managed by, or affiliated with the Founder;
- (j) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions;
- (k) Founder expressly reserves the right to itself, and to Builders, to perform warranty work, repairs and construction work and to store materials in secure areas, in Units and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security



interest. Founder expressly reserves such easement through the Property as may be reasonably necessary for exercising reserved rights in this Declaration;

(l) The right to exercise any additional reserved right created by any other provision of this Declaration;

(m) Any rights created or reserved under this Article for the benefit of Founder, for the express benefits of a Builder, may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the appropriate county. Such instruments shall be executed by the transferor and the transferee. The rights transferred may then be exercised without the consent of the Master Association, any Owners or any holders of a security interest;

(n) The consent of Owners or holders of security interests shall not be required for exercise of any Development Rights, and Founder or its assignees may proceed without limitation at its sole option. Founder or its assignees may exercise any Development Rights on all or any portion of the Property in whatever order determined.

(o) The recording of amendments to the Declaration and the map or plat pursuant to Development Rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded and to any additional Improvements, and the same shall be added to and become a part of the Property for all purposes. Reference to the Declaration plat or map in any instrument shall be deemed to include all amendments to the Declaration, plat or map without specific reference thereto;

(p) The rights reserved to Founder, for itself and for Builders, their successors and assigned, shall not expire unless terminated by written instrument executed by the Founder and recorded in the real property records of the appropriate county; and

(q) Additions of Units to the Property may be made by persons other than the Founder, or its successors and assignees or Owners, upon approval of the Master Association pursuant to a majority vote of the Board. Such approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, recorded in the real property records of the appropriate county.

#### 9.2 Designating Property as Subject to the Affordable Housing Plan.

(a) Without limiting any other rights provided herein, Founder specifically reserves the right to subject portions of the Project to Affordable Housing Restrictions by (i) recording, or causing to be recorded, such restrictions against such property prior to the conveyance of the property to an Owner or Builder, or (ii) requiring such restrictions as a prerequisite to approval of any Small Scale Master Plan.

(b) To the extent provided by any applicable Small Scale Master Plan, each Builder shall cause to be prepared and recorded, temporary and permanent Affordable Housing Restrictions against a Unit prior to the transfer of that property, or any portion thereof or any

Unit thereon, to an Owner. In the event the Builder fails to do so, the Master Association shall have the right to cause to be prepared and recorded such temporary and permanent Affordable Housing Restrictions against such Unit.

(c) A Builder or Owner may modify the Affordable Housing Restrictions on property owned by such Builder or Owner with the written consent of the Midvale City Redevelopment Agency and the Master Association, provided that the consent of the Master Association shall be granted if such modification does not increase the necessity for, increase the burden of, or have an adverse impact on, existing or future Affordable Housing Restrictions affecting other property within the Project.

(d) Upon written assurance of the Midvale City Redevelopment Agency acceptable to the Master Association that modification of Affordable Housing Restrictions on the North Parcel shall not increase the necessity for, increase the burden of, or have an adverse impact on, existing or future Affordable Housing Restrictions applicable to the South Parcel, the provisions of this Section 9.2 shall not apply to the North Parcel.

## X.

### COMPLIANCE AND ENFORCEMENT

#### 10.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Development Policies, and each Owner shall have the right to enforce applicable covenants in this Declaration.

(b) The Master Association, acting through the Board, may enforce all applicable provisions of this Declaration. Without limiting other remedies available at law, the Master Association may levy Assessments to cover costs incurred by the Master Association to bring a Unit into compliance with the Development Policies.

(c) In addition, the Master Association, acting through the Board, may take the following enforcement procedures to ensure compliance with the Development Policies:

(i) exercising self-help in any emergency situation; or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) In addition to any other enforcement rights, if an Owner fails to comply with the Institutional Control Process Plans or the Development Policies, the Master Association may record a notice of violation and assess all costs incurred by the Master Association against the Unit and the Owner as an Assessment. The Master Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action, as the Board may establish from time to time.

(e) All remedies set forth in the Development Policies, the Governing Documents, or this Declaration shall be cumulative of any remedies available at law or in equity.

In any action to enforce the Development Policies, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(f) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) The Master Association's position is not strong enough to justify taking any or further action;
- (ii) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Master Association's resources; or
- (iv) That it is not in the Master Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver or estoppel of the Master Association's right to enforce such provisions at a later time under other circumstances or preclude the Master Association from enforcing any other covenant, restriction or rule.

#### 10.2 Joint Right to Enforce Junior or Subordinate Covenants.

(a) The Master Association shall have the right to enforce, by any proceeding at law or in equity, any and all subordinate or junior restrictions, incidents, covenants, reservations, rules, regulations or architectural guidelines now or hereafter imposed by any Neighborhood Association on all or any portion of a Unit in this Community (including covenants for the payment of Assessments established in such subordinate or junior declaration if expressly permitted or delegated), to the extent necessary to implement and enforce the requirements of the Development Policies. Further, the Master Association shall be entitled to enjoin any violation thereof, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any such condition, covenant, restriction, reservation, rule, regulation or guideline shall give to the Master Association the right to enter upon the portion of the Unit wherein said violation or breach exists and to summarily abate and remove, at the expense of the violator, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the applicable provisions of such subordinate or junior governing documents. No such entry by the Master Association or its agent shall be deemed a trespass, and the Master Association and its agents shall not be subject to liability for such reentry or any action taken to remedy or remove such a violation. The cost of any abatement, remedy or removal thereunder shall be a binding personal obligation on the violator.

All remedies provided herein or at law or in equity shall be cumulative and are nonexclusive. Failure by the Master Association to enforce any covenant or restriction contained in any subordinate or junior governing documents shall in no event be deemed a waiver or estoppel of the right to do so thereafter.

(b) Notwithstanding the foregoing, the Master Association shall not be entitled to the enforcement rights described in section 10.2(a) as to any portion of the Project that is subject to a Small Scale Master Plan which has been approved by the Master Association under the alternative approval procedure provided in section 5.3 of this Declaration.

10.3 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Declaration.

10.4 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and nonexclusive.

## XI.

### GENERAL PROVISIONS

11.1 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

11.2 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity; provided that following the Period of Founder Control:

(a) After the expiration of all Development Policies applicable to any of the Property within a Neighborhood Association, such Neighborhood Association may elect to remove the portion of the Property within the Neighborhood Association from this Declaration. The Neighborhood Association shall provide the Board with all documents reasonably required by the Board to certify the termination of the Period of Founder Control and the expiration of all applicable Development Policies, including but not limited to written certification from all applicable governmental agencies; and

(b) After the expiration of all applicable Development Policies, the Board may dissolve the Master Association in accordance with the Bylaws and applicable law, and record a termination of this Declaration.

11.3 Amendment of Declaration by Owners. With the exception of section 5.2 and 6.1, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time with the written consent of the Master Association. Amendment to Section 6.1 of this Declaration abridging or

modifying the obligations of the Master Association, or the rights of the City, to enforce Institutional Control Process Plans shall only be allowed if, in addition to meeting the foregoing requirements, the City consents to any such amendment. Any amendment of this Declaration shall become effective upon the recordation by the Master Association in the real property records of Salt Lake County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above. Notwithstanding any other provision of the Declaration, neither the Founder nor the Master Association may amend this Declaration to expand the powers of the Founder or Master Association beyond those expressly granted herein (i) with respect to property owned by a Builder without the consent of the Builder and (ii) with respect to property within a Neighborhood Association, without the consent of such Neighborhood Association.

11.4 Required Consent of Founder to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving Development Rights or otherwise for the benefit of the Founder or its assignees, shall not be effective unless Founder, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Founder or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate upon the expiration of the Period of Founder Control.

11.5 Validity of Amendments. Any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of Salt Lake County.

11.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes set forth in the recitals of this Declaration.

11.7 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Founder or its agents or employed in connection with any portion of the Property, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

11.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

11.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

11.10 Recitals; Exhibits. The Recitals and the Exhibits to this Declaration are an integral part of this Declaration and are hereby incorporated by reference.

11.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Utah.

SO DECLARED this 8<sup>th</sup> day of March, 2006 by:

Robert L Soehnen

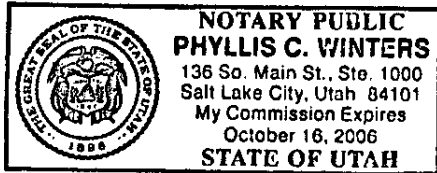
Robert L. Soehnen, President  
Littleson, Inc.

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

On this 8 day of March, 2006, personally appeared before me ROBERT L. SOEHNEN, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Phyllis C. Winters  
Notary Public  
Residing in Salt Lake County

My Commission Expires:



# Exhibit A

September 17, 2004

Description of Littleton 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.

(CONTINUED)

**FURTHER EXCEPTING FROM PARCEL "C" DESCRIBED HEREIN THE FOLLOWING TWO (2) PARCELS OF LAND:**

**EXCEPTED PARCEL 1:**

BEGINNING at a point located South 0°18'00" West 1312.73 feet along the section line and North 89°42'00" West 33.00 feet and South 89°28'44" West 1534.75 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°31'16" East 491.76 feet; thence North 89°43'55" West 62.87 feet; thence Southwesterly 168.65 feet along the arc of a 215.00 foot radius curve to the left (center bears South 0°16'05" West and the long chord bears South 67°47'48" West 164.36 feet with a central angle of 44°56'34"); thence South 45°19'31" West 24.79 feet; thence Southwesterly 157.92 feet along the arc of a 50.00 foot radius curve to the left (center bears South 68°54'12" West and the long chord bears South 68°25'27" West 100.00 feet with a central angle of 180°57'30"); thence Southwesterly 17.64 feet along the arc of a 15.00 foot radius curve to the right (center bears South 67°56'42" West and the long chord bears South 11°38'06" West 16.64 feet with a central angle of 67°22'48"); thence South 45°19'31" West 216.98 feet; thence Southwesterly 74.00 feet along the arc of a 210.00 foot radius curve to the left (center bears South 44°40'29" East and the long chord bears South 35°13'49" West 73.62 feet with a central angle of 20°11'24"); thence North 44°40'29" West 145.89 feet; thence North 89°30'38" West 511.62 feet; thence Southwesterly 322.41 feet along the arc of a 200.00 foot radius curve to the left (center bears South 0°29'22" West and the long chord bears South 44°18'28" West 288.62 feet with a central angle of 92°21'47"); thence South 1°52'25" East 364.68 feet; thence North 89°20'39" East 166.35 feet; thence South 3°30'25" East 60.00 feet; thence North 89°20'39" East 84.05 feet; thence Southeasterly 778.10 feet along the arc of a 1544.90 foot radius curve to the right (center bears South 0°39'21" East and the long chord bears South 76°13'38" East 769.90 feet with a central angle of 28°51'27"); thence South 29°41'07" West 27.43 feet to the North line of Jordan River Boulevard; thence South 73°43'56" West 32.50 feet along the North line of Jordan River Boulevard; thence Northwesterly 729.01 feet along the arc of a 1494.90 foot radius curve to the left (center bears South 27°17'07" West and the long chord bears North 76°41'07" West 721.81 feet with a central angle of 27°56'28"), said curve following along the North line of Jordan River Boulevard; thence South 89°20'39" West 301.06 feet along the North line of Jordan River Boulevard to the East bank of the Jordan River; thence North 1°52'25" West 304.56 feet along the East bank of the Jordan River; thence North 6°04'00" West 75.87 feet along the East bank of the Jordan River; thence North 4°21'00" East 76.80 feet along the East bank of the Jordan River; thence North 10°40'00" West 83.60 feet along the East bank of the Jordan River; thence North 1°51'00" East 102.10 feet along the East bank of the Jordan River; thence North 11°55'00" West 81.60 feet along the East bank of the Jordan River; thence North 1°51'00" East 145.00 feet along the East bank of the Jordan River; thence North 16°29'00" West 61.10 feet along the East bank of the Jordan River; thence North 3°03'00" West 25.70 feet along the East bank of the Jordan River; thence North 14°24'00" West 27.80 feet along the East bank of the Jordan River; thence North 5°36'00" West 108.70 feet along the East bank of the Jordan River; thence North 4°26'00" West 128.00 feet along the East bank of the Jordan River; thence North 69°25'00" East 16.70 feet along the East bank of the Jordan River; thence North 5°28'00" West 22.10 feet along the East bank of the

Jordan River; thence North 88°57'00" West 13.90 feet along the East bank of the Jordan River; thence North 18°00'00" West 28.60 feet along the East bank of the Jordan River; thence North 5°09'00" West 130.02 feet along the East bank of the Jordan River; thence North 89°28'44" East 1475.12 feet to the point of BEGINNING.

**EXCEPTED PARCEL 2:**

BEGINNING at a point located South 0°17'31" West 282.10 feet along the section line and West 1813.22 feet from the Southeast Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence Southeasterly 448.65 feet along the arc of a 1544.90 foot radius curve to the right (center bears South 31°10'08" West and the long chord bears South 50°30'42" East 447.08 feet with a central angle of 16°38'21"); thence South 42°11'31" East 215.55 feet; thence Southeasterly 260.97 feet along the arc of a 1160.74 foot radius curve to the left (center bears North 47°48'29" East and the long chord bears South 48°37'58" East 260.42 feet with a central angle of 12°52'55"); thence South 33°04'16" West 25.03 feet; thence South 79°14'43" West 34.61 feet; thence Northwesterly 248.84 feet along the arc of a 1210.74 foot radius curve to the right (center bears North 36°01'56" East and the long chord bears North 48°04'48" West 248.40 feet with a central angle of 11°46'33"), said curve following along the North line of Jordan River Boulevard; thence North 42°11'31" West 215.55 feet along the North line of Jordan River Boulevard; thence Northwesterly 409.45 feet along the arc of a 1494.90 foot radius curve to the left (center bears South 47°48'29" West and the long chord bears North 50°02'19" West 408.17 feet with a central angle of 15°41'35"), said curve following along the North line of Jordan River Boulevard; thence North 14°19'55" West 33.64 feet along the North line of Jordan River Boulevard; thence North 29°41'07" East 26.63 feet to the point of BEGINNING.

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# Exhibit B-1

## INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 1  
Midvale Slag Site  
Midvale, Utah

### I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public institutional controls for the Operable Unit No. 1 ("OU1") portion of the Midvale Slag Site (the "Site"). This Plan does not supercede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purpose of the controls described in this Plan is to prevent unacceptable human and environmental exposure to contaminants that may be present on the surface or subsurface within OU1. Institutional controls relating to (i) water management over an arsenic plume area located within a portion of OU1; and (ii) organic vapor mitigation controls over another plume area within a portion of OU1 are both addressed in the OU2 Institutional Control Plan. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except pertaining to certain aspects of residential uses, as described below. All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU1. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of City Ordinance, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale Ordinances, an information packet will be developed for potential land and business owners. The information provided will include a history of the site, the remedy

implemented and any restrictions on or additional requirements of the land owner related to a location on a former Superfund site.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU1 ROD.
- To establish controls on the handling and disposal of OU1 soils and wastes, as necessary, during and after Site development.
- To establish controls on groundwater use.
- To establish the requirements through which residential uses will be allowed.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers, as applicable, that may be installed as part of residential development.
- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, deed restrictions, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

Remedial actions on the OU1 portion of the Site were initiated in 1996 and construction completion was achieved in 1998. The statutory five-year review was initiated in 2003, but focused on OU1, since the OU2 ROD has yet to be implemented. EPA recently issued a final Five-Year Review Report. The primary purpose of the Report was to determine whether the remedy at the Site is protective of human health and the environment. The Five Year Review Report indicated that the OU1 ROD (i) may have to be modified to require, among other things, additional work within the Jordan River riparian area within OU1; and (ii) may have to be clarified to permit residential uses in the area within the limits of Midvale City. In response to the Five-Year Review Report, EPA may issue an Explanation of Significant Differences or other form of modification to the OU1 ROD ("ESD"). It is anticipated that through the ESD and the related administrative record (e.g., technical memoranda and related documents), specific standards and procedures will be identified through which unrestricted residential use may be achieved within OU1. For purposes of this Plan, these



standards and procedures are referred to generally as the "Unrestricted Use Protocol". In areas where the requirements of the Unrestricted Use Protocol, if adopted through the ESD process, have not been implemented, residential use may still be achieved by implementing the institutional controls set forth in Section III of this Plan.

## **II. GROUNDWATER MONITORING WELL MANAGEMENT**

The shallow aquifer beneath a portion of OU1 is contaminated, primarily with arsenic and perchloroethylene (PCE). The sources for arsenic originate on OU2 and the source for PCE originates east of OU2 and certain specific institutional controls relating to these plumes are addressed in the OU2 IC Plan.

In addition to the institutional controls identified in the OU2 IC Plan, in order to monitor these contamination plumes, a number of groundwater monitoring wells are located within OU1. In the future, these wells may be replaced and new wells constructed.

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To protect existing and future groundwater monitoring wells.

### **A. Description of Specific Institutional Controls:**

1. Prohibit all new water wells on OU1, (except for groundwater monitoring wells, Murray City Municipal Well, and the well owned by Littleton, Inc.).
2. Prohibit the disturbance of existing groundwater monitoring wells without the prior approval of EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well.

### **B. Mechanism of Implementation:**

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II. A. 1 and 2 of this Plan.

## **III. MATERIALS MANAGEMENT**

With respect to the Midvale portion of OU1, the OU1 ROD includes a prohibition on residential use without additional property remediation to residential soil cleanup levels (a contingency addressed pursuant to this Plan)

and the requirement that waste soils, if any, transported off-Site would be disposed in a RCRA Subtitle D facility.

Soil management requirements for commercial or industrial development are limited to requiring that if any waste soils generated in the Midvale City portion of OU1 are to be disposed of off-Site, they will be taken to a RCRA Subtitle D facility. The requirements of the receiving facility must also be satisfied. No soils management requirements exist for the Murray City portion of OU1. Limited quantities of slag are also present in certain areas of OU1. This Plan requires that all visible slag encountered during construction activities on OU1 be managed in accordance with this Plan, as described below.

The objective of the institutional control relating to soils management is to ensure that in areas where residential uses will occur, soils that may have contaminant concentrations above residential clean-up goals are appropriately managed. The objective of slag management is to limit exposures to human and ecological receptors.

Specific soil management requirements for residential development of the Midvale City portion of OU1 are discussed in Section III.

**A. Description of Specific Institutional Controls:**

2. All excess excavated soils, not otherwise relocated within non-residential areas of OU1, that the landowner or developer elects to haul off-Site for disposal, will be disposed of in a RCRA Subtitle D facility, as provided in the OU1 ROD.
3. Slag visible at the surface either prior to or after site grading will be excavated and handled by one of the following methods: (i) placed under roadways constructed in City rights-of-way, in parking lots, or in similar areas; (ii) relocated to OU2 if practicable, in accordance with the requirements of the OU2 Institutional Control Process Plan; (iii) covered with a minimum of 2-feet of clean soil; or (iv) disposed in a RCRA Subtitle D landfill.
4. Contractors performing earthwork on OU1 will be informed of the presence of contamination and provided access to the administrative record for OU1. Contractors would be required to comply with applicable environmental laws and regulations, including OSHA.

**B. Mechanism of implementation:**

1. Midvale City Construction Specifications provide for project review, soils testing and disposal requirements for excavations within the Sharon Steel OU2 area. Because contaminants of concern and proposed controls are similar at the Midvale Slag Superfund Site,

Section 12.12.150 of the Midvale City Municipal Code will be amended by Ordinance of the City Council to include Midvale Slag OU1 within the control area currently identified as Sharon Steel OU2. Section 12.12.150 of the Midvale City Municipal Code and Midvale City Construction Specifications will be amended by Ordinance of the City Council to include the controls identified in Section III. A. 1-3 of this Plan.

#### **IV. RESIDENTIAL USE**

Unrestricted residential use is permitted within the portion of OU1 located within Murray City. In the area of OU1 located within Midvale City, certain areas of the native surface contain lead and arsenic above the residential clean-up goals adopted in the OU1 ROD. However, the native surface on most of OU1 was modified significantly in the mid-1980s when a large amount of fill was brought onto OU1. Fill soil was placed in a wedge across the eastern  $\frac{3}{4}$  of the Midvale City portion of OU1. Fill thickness ranges from 18-feet tapering gradually to the fill limits on the western side of OU1. Placement of additional fill is contemplated under a development plan for OU1. The cleanup standards for residential use within OU1 are as follows: Arsenic (73 parts per million); cadmium (49 parts per million); and lead (650 parts per million).

As explained in the Introduction, it is anticipated that through the ESD process and the associated administrative record (e.g., technical memoranda and related documents), unrestricted residential use may be achieved within the portion of OU1 located in Midvale City through the "Unrestricted Use Protocol." In areas of OU1 within Midvale City where the requirements of the Unrestricted Use Protocol (if adopted through the ESD process), have been implemented, the Institutional Controls identified in this Section III will not apply. In areas of OU1 within Midvale City where the Residential Use Protocol has not been implemented, residential use may still be achieved through compliance with the institutional controls set forth in Section III of this Plan. These institutional controls focus on excavation and grading restrictions. The restrictions differ based on the depth of clean fill placed over potentially contaminated soils.

The objectives of the institutional controls relating to restricted residential use within the portion of OU1 located within Midvale City are as follows:

- To minimize human exposure to contaminants in soils at levels that result in an unacceptable risk to human health (e.g., contaminants that occur at concentrations above the relevant residential cleanup goals).
- To effectively manage excavated material, including wastes, during construction.

- To insure that appropriate final covers are installed, inspected, and maintained during and after development of residential uses, if a two-foot minimum cover method is utilized.

With respect to any and all residential development within OU1, developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. These requirements will be enforced generally through the building permit process, by requiring building permit applicants to provide independent compliance certification through a special inspector. The special inspector will certify to Midvale City that the requirements of this Plan have been satisfied in connection with residential uses in areas subject to institutional controls.

The special inspector will also certify whether the depth of clean cover on residential lots subject to institutional controls is in excess of or less than four feet. On residential lots where the depth of cover exceeds four feet, Midvale City's building permit process will function as the enforcement mechanism for excavation and materials management controls after initial home construction. With respect to residential lots where the depth of cover is less than four feet, Midvale City's building permit process will apply but in addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). With respect to residential development within OU1 in areas that are subject to institutional controls, Midvale City will require, as part of the planned development review process, that new residential developments provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within the OU1 boundaries that are subject to institutional controls, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and that the POA follow, implement, and enforce the specific institutional controls described below.

**A. Description of Specific Institutional Controls:**

1. New Residential Developments

- (a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:
  - (i) Grading plans which indicate the depth of clean fill on residential and recreational lots. At the time that the Conditional Use Permit ("CUP") for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the

specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.

- (ii) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below

2. Activities Subject to Building Permit

- (a) Special Inspector. All building permit applicants for construction work within residential areas will be required to retain, at their sole cost, a special inspector with appropriate experience and knowledge to oversee the implementation of this Plan. The special inspector will certify to the City that the institutional controls set forth in this Plan (as then applicable to such property and activity) have been followed in connection with such construction activities.
- (b) Excavation and Materials Management. For all activities after initial home construction that require a building permit and involve excavations below the CUP Approved Depth, a materials management plan and a special inspector will be required as part of the Midvale City Building Permit and Inspection process. The Special Inspector will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the Special Inspector will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (c) All materials from excavations deeper than the CUP Approved Depth ("Restricted Materials") will be segregated to prevent mixing with the clean barrier soils; except that any excavated materials that the special inspector certifies do not contain contaminants at levels above residential cleanup levels applicable to OU1 will not be considered "Restricted Materials."
- (d) All Restricted Materials will be (i) placed back in the excavation (where feasible) at or below the applicable depth, compacted as appropriate, and the clean cover replaced at an elevation not less than the original CUP Approved Depth;

(ii) relocated to areas within OU1 intended for uses other than residential; or (iii) disposed of in a RCRA Subtitle D landfill.

3. Activities Not Subject to Building Permits

(a) In residential areas subject to institutional controls where the CUP Approved Depth is equal to or greater than four feet, no additional institutional controls will apply with respect to activities not otherwise subject to building permits. In residential areas subject to institutional controls where the CUP Approved Depth is less than four feet, the following institutional controls will apply to certain activities that do not otherwise require a building permit:

(i) All property owners must submit a landscape and, if applicable, grading plan to the POA prior to beginning any landscaping or grading activities. The POA shall ensure that the CUP Approved Depth is maintained and preserved through the landscaping process.

(ii) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.

**B. Mechanism of Implementation:**

1. Section 17-7-9 of the Midvale City Zoning Ordinance, and Title 16, Subdivisions, will be amended by Ordinance of the City Council to include the provisions of Section III of this Plan.

**V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES:  
AMENDMENT OF PLAN**

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, contractors and subcontractors working within OU1.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council.

Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

**A. Midvale City Responsibilities:**

- Develop and process required ordinance changes to implement provision of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments, including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

**B. EPA and UDEQ Responsibilities:**

- Perform monitoring of groundwater quality to assess performance of remedial action as required by the OU1 and OU2 RODs.
- Perform oversight of unrestricted residential use option under the Unrestricted Use Protocol, if adopted through the ESD process.

**C. Landowner / POA Responsibilities:**

- Relocating excess soils within OU1 in a manner consistent with the OU1 ROD and this Plan.
- Compliance with disposal facility requirements for off-Site soil disposal.
- Compliance with OU2 IC Plan (as applicable).

- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan (owner/developer).
- Oversight and enforcement of regulated excavation activities and other landscaping and grading controls (POA).

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.



## Exhibit B-2

## INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 2  
Midvale Slag Site  
Midvale, Utah

### I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public Institutional Controls ("ICs") for the Operable Unit No. 2 ("OU2") portion of the Midvale Slag Site (the "Site") as illustrated in Figure 1. This Plan does not supersede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purposes of these controls are (i) to prevent unacceptable human exposure to contaminants that will remain within OU2 after completion of remedial action by ensuring the protection, maintenance, and improvement of physical barriers that have been or will be placed on the Site; and (ii) to prevent or limit activities in certain areas of OU2 that may increase or exacerbate groundwater contamination. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except as pertaining to certain aspects of residential uses, as described below. The public controls outlined in this Plan will not apply until after the completion of the initial cover system selected as the remedy for OU2 in the Record of Decision (October 29, 2002) ("OU2 ROD"). All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of all applicable City Ordinances, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale

Ordinances, an information packet will be developed for potential land and business owners. The information provided will include an history of the site, the remedy implemented and any restrictions or additional requirements of the land owner related to a location on a former Superfund site.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU2 ROD.
- To establish controls relating to the management and disposal of OU2 soils and wastes during and after Site development.
- To establish controls on the replacement of the vegetated soil cover system with other types of development-oriented covers and barriers.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers that are installed in lieu of the vegetated soil cover system.
- To establish water management controls to minimize adverse effects on the groundwater remedy selected in the OU2 ROD. These water management ICs will apply to storm water, irrigation, and wet utilities within certain defined areas of OU2 (and a portion of OU1).
- To establish controls on future construction-related activities (deep excavations, borings, or foundations) to prevent cross-contamination between aquifers within a defined area of OU2.
- To establish controls on groundwater use.
- To establish the requirements through which single family residential uses will be allowed.
- To establish vapor mitigation controls relating to buildings within defined areas of OU2 (and a portion of OU1).

- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

## II. COVERS AND MATERIALS MANAGEMENT

To reduce the risk of exposure to contaminants present at OU2, a vegetated soil cover system designed to achieve positive surface water drainage will be constructed over existing smelter wastes, native soils, and slag located on OU2. Operation and maintenance activities associated with this soil cover system will be provided for in a separate Operation and Maintenance Plan. If and when redevelopment occurs within the boundaries of OU2, it is anticipated that in certain redeveloped areas, the cover system will be replaced with other forms of development-oriented covers, such as structures (*i.e.*, building footprints), hardscape (*i.e.*, sidewalks, parking lots, roads, etc.), and vegetated landscaped areas. This Plan establishes the process through which the final vegetated soil cover system will be replaced and modified as necessary for redevelopment and describes how long-term operation and maintenance will be accomplished on redeveloped parcels of land within the Site.

In order to facilitate materials management in relation to any future excavation activities, a demarcation layer, consisting of a minimum of 24-inches of slag or other bright, geotextile fabric, will be installed beneath all barriers and covers. This demarcation layer marks the interface between the barriers and covers and materials that is potentially impacted from historic smelter operations. In any future excavation operations, excavated materials must be managed appropriately and any disturbed demarcation materials must be replaced at the appropriate level to ensure that all potentially impacted materials remain beneath a permanent demarcation layer.

The objectives of the institutional controls relating to cover systems and solid media left at the site are as follows:

- To minimize human exposure during and after construction to wastes remaining in place.
- To effectively manage excavated material, including wastes, during construction.
- To ensure that appropriate final covers are installed, inspected and maintained during and after Site development (except that the vegetated soil cover is not required to be installed within the Union Pacific or UTA Property).

- To prevent cross-contamination from the shallow perched aquifer to the upper sand and gravel and deep principal aquifers through future construction or investigation activities (such as deep excavations, borings, or foundations) within the Source Area defined on Exhibit A.
- To prevent cross-contamination from the upper sand and gravel aquifer to the deep principal aquifer within the Plume Area defined on Exhibit A.

**A. Description of Specific Institutional Controls:**

1. Cover Maintenance. The individual landowners will be responsible for maintenance and repair of covers and barriers upon their property. The City shall have the right to make necessary repairs to covers and barriers if the landowner fails to do so in a timely or appropriate manner. In that event, the City shall have the right to recover its costs from the landowner. The City shall also have the right, in its sole discretion, to charge the landowner a surcharge for the costs of the City's work related to the property, in an amount established by ordinance. This requirement does not apply to the Union Pacific or UTA Property.
2. Storage of Excavated Materials. Materials excavated from beneath final covers or other barriers must be segregated from clean cover and barrier materials. Slag materials must also be segregated from materials underlying the slag. Materials excavated from below the demarcation layer may be stored on plastic and covered with plastic or cloth tarp for a single 8-hour work shift. Storage for up to 24 hours adjacent to the work area is permitted if the storage area is secured by temporary fencing. Storage beyond 24 hours must be in roll off bins with secured tops or equivalent. Storage of slag materials must limit or prevent human and environmental exposure (e.g. limited access, dust suppression, etc.). Storage and management of excavated materials must be described in reasonable detail and performed in accordance with the Materials Management Plan discussed below.
3. Replacement of Excavated Materials. Reasonable efforts should be used to return excavated materials to the original excavation. If excavated materials are returned to the excavation, any materials beneath the demarcation layer must be placed first, with the demarcation layer being replaced to the excavation and compacted as appropriate, followed by restoration of an appropriate final barrier or cover. To the extent practicable, any new demarcation layers must tie into existing demarcation layers prior to the placement of covers or barriers. If the demarcation layer consists of slag, the minimum thickness must be 24-inches; otherwise a

brightly-colored geotextile fabric must be used. Worn or damaged geotextile demarcation material in an excavated area must be replaced with new material. Any left over waste material must be managed in accordance with this Plan.

4. Relocation of Excavated Materials. Reasonable efforts should be used to appropriately re-distribute excess excavation materials within the impacted property, in accordance with the requirements of this Plan. However, except for calcine wastes (described below), excess excavation materials may also be relocated to any area within OU2. In connection with any material relocation activities, a demarcation layer consisting of a minimum 24-inch layer of slag or other appropriate demarcation material shall be placed on top of any potentially impacted materials, followed by an appropriate cover consistent with the OU2 ROD. Worn or damaged geotextile demarcation material must be replaced with new material. Any new demarcation layers shall tie into existing demarcation layers prior to placement of final covers and barriers. Compaction requirements from the City of Midvale must be satisfied. If the final barrier consists of a vegetated soil cover, the minimum depth must be 18-inches (24-inches for residential use) and the area must be re-seeded and vegetation re-established. Relocation of materials to undeveloped areas of OU2 must not result in slopes exceeding the maximum slope established in the Remedial Design for OU2 or otherwise adversely affect storm water management systems.
  - (a) Calcine Material. Calcine waste materials consist of dense, fine-grained, purple-colored material. Calcine wastes will generally be consolidated in areas to the immediate north and west of the Pioneer Cemetery and will be covered with a minimum 24-inch layer of slag or other demarcation material. Calcine waste materials may not be relocated within OU-2 without the approval of EPA and DEQ, except that calcine waste materials may be relocated, subject to the requirements of this Plan, within the original Calcine Waste Area designated in the OU2 ROD and the Remedial Design without further approval.
5. Off-Site Disposal. Any soils or smelter waste that must be disposed off-site must be disposed in a permitted landfill. Wastes must be characterized in accordance with the requirements of the permitted disposal facility. Off-site disposal of Waste Material in excess of 10 cubic yards must also comply with Paragraph 13 of the Consent Decree. "Waste Material," as defined under the Consent Decree, includes any hazardous substances, any pollutant or contaminant, or any solid waste.

6. Plans and Approvals. Site plan approval as defined and required by chapter 17-7-3 and regulated by 17-7-9 of the Midvale City Zoning Ordinance shall be obtained before initial site development, future redevelopment or change in land use. Applications shall be made available through the City Community and Economic Development Department. The application shall disclose the presence of hazardous substances on the Site and identify the type and location of reports pertaining to the location and type of hazardous substances on the Site. In conjunction with the submittal of the preliminary site plan application, the applicant shall submit documentation that shall include an attestation that the applicant is aware of the current Site condition and will comply with all Institutional Controls. Applicant submittals and requirements under the site plan approval process are summarized below which are in addition to and in conjunction with the requirements identified in 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance:
- (a) Applicant shall submit a plan illustrating the proposed construction and development. Preliminary and final site plans of development shall be submitted for review and approval. Preliminary and final development plans must designate the type and location of final barriers.
  - (b) A materials management plan must be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The materials management plan must demonstrate that all such construction activities will be in compliance with this Plan.
  - (c) An air quality monitoring and dust suppression plan shall be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The plan will ensure that National Ambient Air Quality Standards are met for site contaminants at the boundary between the construction area and the developed areas in addition to State or local air quality requirements. Applicant may request a waiver of the air monitoring requirements by submitting relevant data demonstrating compliance with all air quality standards under similar circumstances (similar weather conditions, construction operations, site materials).
  - (d) Grading and drainage plans will be required and shall specifically demonstrate the protection of final barriers from erosion and ensure that drainage patterns are appropriate

and consistent with the groundwater remedy adopted by EPA.

- (e) A proposed monitoring and maintenance plan must be provided by applicant to ensure that all barriers on the proposed development site will be maintained in accordance with this Plan.
- (f) A road cut permit shall be required for any work in the public right-of-way that breaches final site covers, per ordinance 12.12.150 of the Midvale City Municipal Code.

7. Intrusive Activities. If any intrusive exploratory activities (such as excavations, borings, CPT soundings) or foundations (such as piles or drilled shafts) are proposed for the Source or Plume Areas (as defined on Exhibit A) at depths greater than 20 feet, approval must first be obtained from the City of Midvale. The request for approval must include a detailed description of the proposed exploration or construction activity as well as the mechanism(s) that will be used to prevent cross contamination between the two aquifers. The request must be approved by the City of Midvale prior to implementation of the work. An application process will be established to enforce these restrictions.

**B. Mechanism of implementation:**

- 1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II.A.1 and 6 of this Plan.
- 2. Section 12.12.150 of the Midvale City Municipal Code, which addresses excavations within the public right of way, will be amended by Ordinance of the City Council to include Midvale Slag OU2 within the control area currently identified as Sharon Steel OU2.
- 3. Midvale City's Construction Specifications will be amended to include the provisions of Section II.A.2-5 and 7 of this Plan.

**III. WATER MANAGEMENT**

The shallow aquifer beneath a portion of the OU2 and OU1 areas of the Site is contaminated, primarily with arsenic, as well as other substances. Significant arsenic source areas are located in certain areas of OU2. Water management on a portion of OU2 will focus on preventing new sources of water from infiltrating water over and near the Source Areas depicted in Exhibit A. Water management on portions of OU2 and OU1 will also focus on preventing new sources of water from affecting the extent, direction, and flow of the arsenic



plume within the Source and Plume Areas depicted on Exhibit A. The Source and Plume Areas depicted on Exhibit A are merely illustrative.<sup>1</sup> At the time that Subdivision (as defined by the Midvale City Code) occurs on any property within a Source or Plume Area, the boundaries of these areas will be further defined, surveyed, and demarcated on the *small scale master plan, subdivision plat, and/or other permanent record* maintained by Midvale City for purposes of enforcement. These institutional controls are in part based upon the conclusions reached in a document prepared for EPA entitled: Technical Memorandum Evaluation of Impact of Residential Irrigation on Arsenic Plume, Midvale Slag Superfund Site, Operable Unit 2 (CDM 2004).

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To effectively manage contaminated construction wastewater (pumped groundwater).
- To minimize adverse impacts to the groundwater remedy selected in the OU2 ROD by minimizing potential infiltration of water through Source and Plume Areas.

**A. Description of Specific Institutional Controls:**

1. Prohibit all water wells on OU2 (excluding groundwater monitoring wells).
2. Prohibit the disturbance of any groundwater monitoring wells without prior approval by EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a *monitoring well*.
3. Prohibit unlined storm water detention basins within the boundaries of or within 100 feet of a Source or Plume Area (Exhibit A). Liners of detention basins must be impervious (*detention basins will be shown on construction plans relative to source area boundaries and will be included in site plan applications*).

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<sup>1</sup>A more specific description of the "Source Area" is the point beginning at the north east corner of the intersection of 7800 South and Bingham Junction Boulevard (to be constructed), thence north along the eastern edge of the right-of-way for the Bingham Junction Boulevard to the Union Pacific right-of-way, thence east along the Union Pacific right-of-way to the western edge of the right-of-way for Holden Street, thence south along such right-of-way to the southern edge of the public railroad dock property, thence west to the eastern edge of the right-of-way for Bingham Junction Boulevard; and also including the Calcine Waste Area as defined in the Remedial Design. A more specific description of the "Plume Area" will be developed through the subdivision process.

4. Prohibit the bedding of wet utilities in slag.
5. Require that all wet utilities traversing Source and Plume Areas be bedded in flowable concrete (flowfil). (Wet utility locations will be shown on construction plans relative to source area boundaries and will be included in site plan applications.)
6. Require low-permeability collars for all wet utilities within 100-feet of the Source Area or Plume Area and that traverse a Source Area or Plume Area somewhere along the utility alignment. Collars will be installed at 50-foot intervals. Collar designs will be submitted with the construction permit and site plan application discussed in Section II.
7. Require a mechanism to limit infiltration of irrigation water within Source Areas. *Minimum measures for Source Areas may include installing a buried impermeable barrier with drain system beneath irrigated areas (or alternative with equivalent performance); large trees or shrubs may be placed in sealed planter boxes (the location of irrigated areas and piping will be shown on construction plans relative to source areas and will be included in site plan applications).*
8. For non-residential development within Source Areas, all building permit applicants will be required to submit to the City an irrigation plan in compliance with the provisions of this Plan. The City will have the responsibility of approving and overseeing the implementation of the irrigation plan. For residential development within Source Areas, Property Owners' Associations will have the responsibility of reviewing, approving, and overseeing the implementation of irrigation plans, as described more fully in Section IV, below.
9. Prohibit the use of concrete rubble as fill material below the historic high water table within 100-feet of a Source or Plume Area (except as may be done during remedial action).
10. Require disposal of contaminated construction wastewater in accordance with applicable environmental regulations (*to be included in site plan application*).

**B. Mechanism of implementation:**

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section III.A. 1, 7, and 8 of this Plan. This provision will also include a requirement that private covenants and deed

restrictions will acknowledge this Plan and require compliance therewith.

2. The Midvale City Standard Construction Specifications will be amended by Ordinance of the City Council to include the provisions of Section III.A.2-6, 9 and 10 of this Plan.
3. All subdivision plats and site plans for development within the Source and Plume areas identified on Exhibit A shall be created and managed in accordance with the Midvale City Zoning Ordinance and enforced through existing laws.

#### **IV. MEASURES TO ALLOW SINGLE FAMILY RESIDENTIAL USES**

The OU2 ROD permits residential development in the form of multi-family dwellings. Such development requires the placement of two-feet of clean soils as a final cover. Although the OU2 ROD does not anticipate single-family residential homes, it does not prohibit this type of development. The following controls have been developed to permit single-family residential development on OU2. This Section IV does not apply to the Union Pacific or UTA Property.

With respect to any and all single-family housing that will be constructed on OU2 (including traditional detached units, twin homes, duplexes, triplexes, and townhouses), developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. The clean fill barrier portion of the materials must be at least 24 inches for single-family residential use. The City will also impose restrictions on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes. These ICs will generally be enforced through the City's building permit process.

Midvale City's building permit process will function as the primary enforcement mechanism for excavation and materials management controls after initial home construction. In addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). Midvale City will require, through the planned development review process, that new residential developments within OU2 provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within OU2, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and the restrictions concerning excavations identified in Section II of this Plan are disclosed to and followed by the POA. All landscape plans as to all residential properties within OU2 shall be reviewed and approved by the POA to ensure that applicable landscaping

limitations are met as well as that covers and barriers are maintained and that excavated materials are managed in accordance with the requirements of Section II of this Plan.

In addition to materials management issues, the presence of chlorinated organic contaminants including perchloroethylene in the Upper Sand & Gravel Aquifer creates the potential for migration of contaminant vapors into future structures. Mitigation measures to address potential vapor intrusion will be required only for buildings within the area designated on Exhibit B, unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA. Mitigation measures may include vapor barriers or other engineering methods commonly employed to reduce risks from radon. The areas of OU2 (and part of OU1) subject to this requirement are illustrated on Exhibit B.

**A. Specific Institutional Controls:**

1. New Residential Developments

- (a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:
- (b) Grading plans which indicate the depth of clean fill on residential and recreational lots. The OU2 ROD requires a minimum two-foot depth but developers may install additional cover. At the time that the Conditional Use Permit for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.
- (c) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below.
- (d) The City will develop limitations on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes.
- (e) Unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA, for all buildings within the area depicted in Exhibit B, appropriate vapor mitigation measures will be implemented, including vapor barriers or other engineering methods, such as venting systems, commonly employed to reduce risks from radon.

2. Activities Subject to Building Permit

- (a) For all activities after initial home construction that require a building permit which involve excavations exceeding the CUP Approved Depth, a materials management plan will be required as part of the Midvale City Building Permit and Inspection process. The City will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the owner or developer will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (b) All materials from excavations deeper than the CUP Approved Depth will be segregated to prevent mixing with the clean barrier soils and will be managed, and demarcation materials and covers replaced, in accordance with Section II of this Plan.

3. Activities Not Subject to Building Permits

- (a) All property owners must submit a landscape and excavation plan to the POA prior to beginning any excavation or grading activities.
- (b) All property owners within any Source Area as depicted on Exhibit A will be required to submit to the POA an irrigation plan in compliance with the provisions of Section III of this Plan. The POA will have the responsibility of approving and overseeing the implementation of the irrigation plan.
- (c) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.
- (d) All excavations deeper than the cover soil layer (minimum 24-inches) will be prohibited except through the POA. All such excavation activities must be performed in compliance with the requirements of Section II of this Plan.

**B. Mechanism of Implementation:**

- 1. Section 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section IV A of this Plan.

**V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES: MODIFICATION OF PLAN**

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, property owners associations, contractors and subcontractors working within the Site. The type and frequency of inspections and required maintenance of remedy components and related Site security, will be detailed in an O&M Plan to be developed in connection with the remedial action.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council. Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

**A. Midvale City responsibilities:**

- Develop and process required ordinance changes to implement the provisions of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

**B. EPA and UDEQ Responsibilities:**

- Review proposed provisions of Midvale City Code implementing this plan.
- Review groundwater pumping and discharge plan if construction pumping is necessary.

- Perform monitoring of groundwater quality to assess performance of remedial action.

**C. Landowner/POA Responsibilities:**

- Control Site access.
- Implement the operation and maintenance plan for OU2.
- Repair covers and barriers as necessary.
- Comply with provisions of construction permit, including air quality monitoring requirements.
- Comply with disposal facility requirements for off-Site waste disposal.
- Comply with appropriate regulations for disposition of construction wastewater.
- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan.
- Prohibit disturbances of monitoring wells.
- Oversee and enforce excavation, irrigation, and landscaping controls.
- Oversee maintenance of landscaped areas.
- Provide access to EPA, UDEQ, Midvale City relating to environmental issues, including institutional controls and groundwater monitoring.

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.

## Exhibit B-3



**EXPLANATION OF SIGNIFICANT DIFFERENCES  
MIDVALE SLAG SUPERFUND SITE  
MIDVALE, UTAH  
OPERABLE UNIT #1**

**I. Introduction**

This Explanation of Significant Differences ("ESD") presents the details of a second change to the remedy selected in the May, 1995 Record of Decision ("ROD") for Operable Unit 1 (OU1). EPA issued the first ESD in May, 1998, to eliminate the compacted soil cover and Institutional Control requirements for an undeveloped portion of the residential area.

The Midvale Slag Superfund Site ("Site") is located 12 miles south of Salt Lake City. The northern portion of the site extends into Murray City, Utah, but the majority of the site is in Midvale, Utah. The Site has an area of approximately 446 acres and is divided into two operable units, Midvale Slag OU1 and Midvale Slag OU2. OU1 contains the northern portion of the Site and includes the Winchester Estates Mobile Home Park and OU2 covers the southern 180 acres of the Site. The Site is bounded by 7800 South Street on the south, the Jordan River on the west, 6400 South Street on the north, 700 West Street on the northeast and east, and Holden Street on the southeast. A fence in line with 7200 South Street and just north of where the former smelter slag deposits were located defines the boundary between OU1 and OU2. Included within OU2 are the Silver Refinery Area, located in the southeast portion of OU2, and the Butterfield Lumber property, which lies in the northeast portion of OU2.

The Utah Department of Environmental Quality (UDEQ) was the lead agency for the investigations, feasibility studies, design and remedial action of OU1, and EPA was the support agency.

This ESD is issued in accordance with Section 117 (c) of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. 9617(c) and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). Section 300.435(c)(2)(i). The changes described in this ESD significantly change, but do not fundamentally alter, the remedy selected in the ROD with respect to scope, performance, or cost of the selected remedy.

This document will be incorporated into the Administrative Record maintained for this Site, as required by NCP Section 300.825(a)(2). This Administrative Record is available for review at:

Tyler Branch Library  
8041 South Wood  
Midvale, UT 84047  
801-944-7641

EPA Region 8  
999 18th Street  
Suite 300  
Denver, CO 80202-2466  
303-312-6473

The ESD and its supporting documentation will be available for public review at these locations and a notice containing a brief summary of the action will be published in a major local newspaper, as required by NCP Section 300.432(c)(2)(i)(A) & (B).

## **II. Site History**

Ore processing and smelting took place in the Midvale area for nearly 100 years. Milled ores were smelted to produce lead, arsenic, copper and other metals. The Midvale Slag site was the location of a large smelter that created wastes that were left on the site. Some of these substances are hazardous and must be cleaned up before the property can be reused.

EPA placed both the Midvale Slag smelter site and the adjacent Sharon Steel mill site, on the National Priorities List in February 1991. By 1999, EPA and UDEQ had cleaned up the Sharon Steel site by capping the tailings pile, building a wetlands, and cleaning up soil at 600 properties in Midvale City.

EPA and UDEQ issued a ROD for OU1 on April 28, 1995, which provided for the excavation of contaminated soils in the Winchester Estates residential development, placement of a soil cap over the undeveloped portion of the residential area, deed restrictions or other institutional controls to protect the integrity of the cap and to prohibit future residential use on other portions of the OU1 property absent additional cleanup to residential standards, and ground water monitoring. EPA and UDEQ issued an Explanation of Significant Differences (ESD) in May, 1998, to eliminate the compacted soil cover and Institutional Control requirements for an undeveloped portion of the residential area. UDEQ implemented the OU1 remedy under a cooperative agreement with EPA.

On October 29, 2002, EPA issued and UDEQ concurred on a ROD for OU2. This ROD addressed slag, mixed smelter wastes, contaminated soils and ground water. Information gathered during the OU2 studies confirmed that the main source of contamination was located on OU2 and provided further information regarding the ground water plume and downstream riparian zone.

## **III. Basis for the ESD**

In 2003, EPA conducted a Five Year Review of the remedial actions implemented at the Site. The recommendations of the Five Year Review and additional sampling and analysis done during the course of developing the OU2 ROD warrant the issuance of this ESD to clarify certain alterations of the OU1 remedy decision. This ESD covers three general areas: land use restrictions, the riparian zone and the ground water remedy.

### **Land Use**

The OU1 ROD required the implementation of Institutional Controls (ICs) for the undeveloped portions of OU1 in order to restrict future land use to commercial/industrial unless additional

remediation was conducted. At the time of that ROD, residential land use was not anticipated. Since the time of that ROD, the zoning for OU1 has changed to allow for multiple uses, including residential, recreational, commercial and light industrial. As a result, EPA conducted a review of the residential Preliminary Remediation Goals (PRGs) for protectiveness under the new zoning options. This document established a decision making process for determining if a parcel of land within OU1 was suitable for development for residential or recreational land use, and whether any restrictions or institutional controls were needed.

### **Riparian Zone**

The Five Year Review points out changes in zoning that impact the riparian zone, which will be used as an ecological park/ recreation area in the future. Additional sampling on both sides of the Jordan River and in OU1 and OU2 indicates that similar levels and types of contamination exist on both sides of the River, throughout OU1 and OU2. As such, the ecological risk assessment conclusions in the OU2 ROD also apply to OU1.

### **Ground Water**

The ROD for OU1 did not establish Remedial Action Objectives (RAOs) for ground water. Additional monitoring conducted during the OU2 investigative process verified OU2 as the source of the ground water contamination and shed further light on which contaminants were driving the ground water remedy.

## **IV. Description of Significant Differences**

### **Land Use**

The land use requirements for the undeveloped portion of OU1 can be changed to accommodate multiple land uses as allowed under the new zoning for this area with the incorporation of the *Technical Memorandum for Preliminary Remediation Goals and Decision-Making Process at Midvale Slag OU1*, dated March 2005 (hereinafter *Technical Memo*) into the decision-making process. In addition, the *Institutional Control Process Plan, Operable Unit No. 1, Midvale Slag Site ("ICPP")*, attached to the RD/RA Consent Decree, Civil No. 2:04 CV-843, shall control the process of implementing institutional controls, when needed.

The ICPP identified the "unrestricted use protocol" to achieve "unrestricted residential use" in a portion of OU1. If this protocol is met, the IC's do not apply.

### **Riparian Zone**

As a result of the above-mentioned information, EPA believes that a consistent approach to remediation between OU1 and OU2, on both sides of the river in the riparian zone is required. The *Technical Memo* and the *ICPP* addressed requirements for maintaining protectiveness with recreational uses and those requirements should also be used for the riparian zone. The ROD for

OU2 sets out general requirements for the riparian zone. The Riparian Zone remedy will include some bank stabilization and/or possible revegetation to minimize site contaminated material from sloughing into the Jordan River. In addition, the OU2 ROD anticipated the formation of a riparian stakeholder group to focus on additional restoration work for the Jordan River.

The applicable or relevant and appropriate federal and state requirements (ARARs) specific to the riparian zone, as written in the OU2 ROD and added to this OU1 BSD, are:

*Fish and Wildlife Coordination Act, 16 U.S.C. § 1531, et seq., 40 CFR 6.302(g).* This statute and its implementing regulations require that federal agencies or federally funded projects ensure that any modification of any stream or other water body affected by any action authorized or funded by the federal agency provides for adequate protection of fish and wildlife resources. U.S. Fish and Wildlife is actively involved in activities related to the Jordan River and its riparian corridor.

*Migratory Bird Treaty Act, 16 U.S.C. §§ 703, et seq.* This act establishes a federal responsibility for the protection of the international migratory bird resource and requires continued consultation with the U.S. Fish and Wildlife Service during remedial design and remedial construction to ensure that the cleanup of the Site does not unnecessarily impact migratory birds. EPA's consultation requirements are being met (1) through direct participation by U.S. Fish and Wildlife Service representatives on the inter-agency site investigation and remedial action planning and management team and (2) through continued consultation during remedial design and remedial construction.

*Floodplain Management Regulations, 40 CFR 6.302(b), Executive Order No. 11988.* These regulations require that actions be taken to avoid, to the extent possible, adverse effects associated with direct or indirect development of a floodplain or to minimize adverse impacts if no practicable alternative exists.

*Protection of Wetlands, 33 USC Sec. 1344.* The discharge of dredged or fill materials into waters of the United States is prohibited without a permit. Adverse impacts associated with the destruction or loss of wetlands and other special aquatic sites are to be avoided. Measures will be developed during remedial design to avoid, restore, or mitigate impacts to wetlands.

*Protection of Wetlands, Executive Order 11990 - Protection of Wetlands.* This order directs federal agencies to take actions to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agencies' responsibilities. In addition, this Executive Order requires the agencies to consider factors relevant to the remedy's effect on the survival and quality of the wetlands. The remedy will meet the requirements of this order through the implementation of proper surface water run-off controls from remedial action areas near wetlands.

*Fugitive Dust Control, UAC R307-101.* General requirements for compliance with National Ambient Air Quality Standards (NAAQS). Earth moving, grading, and excavating activities may produce fugitive dust and emissions. These requirements will be met during earth moving

activities through the implementation of an air monitoring and dust suppression program.

*Fugitive Emissions and PM10, UAC 307-309.* Specific requirements for fugitive dust control in Salt Lake County: Opacity caused by fugitive dust shall not exceed: (1) 10 percent at the property boundary and (2) 20 percent on site unless an approval order is issued. Earth moving, grading, and excavating activities may produce fugitive dust and emissions. These requirements will be met during earth moving activities through implementation of an air monitoring and dust suppression program.

*Air Pollution Prohibited, UAC R307-102-1.* Emission of air contaminants in sufficient quantities to cause air pollution is prohibited. The movement of wastes may result in the release of contaminants to air. These requirements will be met during earth moving activities through implementation of an air monitoring and dust suppression program.

### **Ground Water**

The OUI ROD required semi-annual monitoring of the ground water in OU1 for a period of 5 years after the implementation of the remedy. The additional ground water sampling indicates that a comprehensive ground water plan for the plume that underlies both OU1 and OU2 would be more effective. As such, the OU2 ROD selected a comprehensive ground water monitoring plan and developed RAOs for ground water that will apply to both OU1 and OU2.

The RAOs specific for ground water as written in the OU2 ROD and added to this OUI ESD are:

- Prevent unacceptable risk of exposure to current and future human populations presented by direct contact, inhalation, or ingestion of contaminated ground water;
- Protect water quality of previously uncontaminated portions of the US&G Aquifer and the Deep Principal Aquifer as these aquifers are sources of drinking water;
- Provide that future discharge of contaminated ground water from the Site to the Jordan River is protective of the aquatic environment and designated uses;
- Restore ground water to beneficial use (if possible).

In addition, the ARARs selected in the OU2 ROD, as they apply to ground water, shall supercede those ARARs discussed and/or selected in the OUI ROD.

The ARARs specific to the ground water remedy as written in the OU2 ROD and added to this OUI ESD are:

*SDWA National Primary Drinking Water Standards, 40 CFR 141, and Utah Primary Drinking Water Standards, UAC R309-103-2.* These standards establish the MCL, MCLGs, national action levels, and state primary drinking water standards and/or action levels. See Table 9-5 in the OU2

ROD for a list of standards and action levels for COCs. These standards are relevant and appropriate for the remediation of ground water and will serve as long-term goals for the restoration of the contaminated portion of the US&G Aquifer. ACLs have been established for the contaminated portion of the US&G Aquifer as applicable standards.

*Utah Ground Water Quality Standards, UAC R317-6-2.* These standards establish state ground water quality standards. These standards are relevant and appropriate for the remediation of ground water and will serve as long-term goals for the restoration of the contaminated portion of the US&G Aquifer. ACLs have been established for the contaminated portion of the US&G Aquifer as applicable standards.

*Standards of Quality for Waters of the State of Utah, UAC R317-2-6, R317-2-13.5, and R317-2-14.* These standards establish use designations and numeric criteria for the segment of the Jordan River that borders the Midvale Slag site (from confluence with Little Cottonwood Creek to Narrows Diversion). Protection classes include:

- Class 2B - for secondary contact recreation, such as boating, wading
- Class 3A - for cold water species of game fish and aquatic life
- Class 4 - for agricultural uses and stock watering

See Table 9-5 in the OU2 ROD for a list of numeric criteria for COCs based on these designations. The remedy will meet these criteria to the extent that such criteria are not presently exceeded upstream of the Site. ACLs have been developed for contaminated ground water in the US&G Aquifer using these surface water criteria.

*Definitions and General Requirements of Utah Water Quality Act, UAC R317-1.* Provides definitions and general requirements for waste discharges to waters of the State of Utah. These requirements are applicable to the section of the Jordan River passing through OU2. The remedial action will meet these requirements by prohibiting the discharge of wastewaters generated during construction to the Jordan River.

*Utah Ground Water Classes and Class Protection Levels, UAC R317-6-3 and UAC317-6-4.* These standards provide for the establishment of classes and corresponding protection levels based on ground water characteristics. The US&G Aquifer has not been formally classified; however, these standards will be used as a guide for potential future use of the aquifer and as long-term goals for the restoration of the contaminated portion of the US&G Aquifer. ACLs have been established for the contaminated portion of the US&G Aquifer as applicable standards.

*Well Drilling and Completion Standards, UAC R655-4.* Establishes standards for drilling and abandonment of wells. The installation and abandonment of monitoring wells during the remedial action will meet these requirements.

**V. Support Agency Comments**

The State of Utah concurs with this ESD.

**VI. Statutory Determinations**

In accordance with CERCLA Section 121, 42 U.S.C. § 9621, EPA believes that the revised remedy improves the protection of human health and the environment, and completes the identification of applicable or relevant and appropriate federal and state requirements that were originally identified in the ROD. This ESD makes no changes to the remedy's use of permanent solutions and alternative treatment and resource recovery technologies.

**VII. Public Participation Requirements**

The public participation requirements set out in NCP section 300.435(2)(c)(i) have been met.

**AUTHORIZING SIGNATURE**

This Explanation of Significant Differences (ESD) documents the second significant modification to the 1995 Record of Decision for Midvale Slag, Operable Unit 1.

The following authorized official at EPA Region 8 approves the modification as described in this ESD.





Max H. Dodson  
Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation  
U.S. Environmental Protection Agency, Region 8

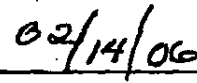
Date



The following authorized official at the State of Utah concurs with the modifications to the remedy selected in the 1995 Record of Decision for the Midvale Slag NPL site, Operable Unit 1, as described in this Explanation of Significant Differences (ESD).



Dianne R. Nielson  
Executive Director  
Utah Department of Environmental Quality



Date

# Exhibit C

**ARTICLES OF INCORPORATION  
FOR  
BINGHAM JUNCTION MASTER PROPERTY OWNER'S ASSOCIATION, INC.  
(A Nonprofit Corporation)**

RECEIVED  
JAN 06 2006  
Utah Div. Of Corp. & Comm. Code

The undersigned hereby signs and acknowledges these Articles of Incorporation for the purpose of forming a nonprofit corporation under the Utah Revised Nonprofit Corporation Act.

CLS

**I.**

**NAME**

The name of this corporation is BINGHAM JUNCTION MASTER PROPERTY OWNER'S ASSOCIATION, INC. ("Master Association").

**II.**

**DURATION**

The duration of the Master Association shall be perpetual.

**III.**

**DEFINITIONS**

The definitions set forth in the Community Declaration for Bingham Junction, as may be amended from time to time ("Community Declaration") shall apply to all capitalized terms set forth herein, unless otherwise defined herein.

**IV.**

**NONPROFIT**

The Master Association shall be a nonprofit corporation, without shares of stock.

**V.**

**PURPOSES AND POWERS OF MASTER ASSOCIATION**

5.1 Purposes. The purposes for which the Master Association is formed are as follows:

(a) To be and constitute the Master Association to which reference is made in the Community Declaration, as recorded or to be recorded, in the records of the Recorder of Salt Lake County, Utah. The Community Declaration, relates to the real estate in Midvale City, County of Salt Lake, State of Utah subject to all or portions of the Community Declaration (the "Real Property").

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(b) To operate and manage the planned community created by the Community Declaration and to operate and manage the Real Property and Common Elements included within the Community, situated in Midvale Cite, County of Salt Lake, State of Utah, subject to the Community Declaration, Bylaws, and such rules and regulations as the Master Association Board may, from time to time, adopt, for the purposes of enhancing and preserving the value of the Real Property and Common Elements for the benefit of the Owners.

(c) To perform all acts and services and exercise all powers and duties in accordance with the requirements for a master association of owners charged with the administration of the Real Property and Common Elements as set forth in the Community Declaration or any amendment to the Community Declaration.

(d) To act for and on behalf of the Master Association in all matters deemed necessary and proper for the protection, maintenance and improvement of the lands and improvements owned by the Master Association and to act for and on behalf of the Real Property and Common Elements, including without limitation, representing the Master Association before any governmental body having jurisdiction over the Master Association or services provided to or from the Master Association.

(e) To eliminate or limit the personal liability of Board members or officers to the Master Association or to the Members or Owners for monetary damages for breach of fiduciary duty as Board member, as allowed by law.

(f) To promote the health, safety and welfare of all Members of the Association and of the Community and to provide and maintain a desirable community and environment for all Owners, tenants, guests and members of the public within the Community.

(g) To do any and all permitted acts suitable or incidental to any of the foregoing purposes to the fullest extent permitted by law, and do any and all acts that in the opinion of the Board will promote the common benefit and enjoyment of the occupants, residents and Members of the Community, and to have and to exercise any and all powers, rights and privileges which are granted under the Act, the Community Declaration, the Bylaws and the laws applicable to a nonprofit corporation of the State of Utah.

5.2 Purposes and Powers. The foregoing statements of purpose shall be construed as a statement of both purposes and powers. The purposes and powers stated in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. The Master Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Master Association.

5.3 Restrictions Upon Purposes and Powers/Campaigns. The Master Association shall not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

5.4 Dividends, Distribution, etc. The Master Association shall not pay any dividends. No distribution of the corporate assets to Members (as such) shall be made. Upon dissolution of

the Master Association, the assets shall be distributed as provided in these Articles of Incorporation.

## VI.

### DELEGATES, MEMBERSHIP RIGHTS AND QUALIFICATIONS

Voting members of the Master Association shall be as provided in the Community Declaration and the Bylaws. Any person who holds title to a Unit in Project Area shall be a Member of the Master Association as provided in the Bylaws. Voting rights and other rights of the Members may be vested in Delegates, as provided for in the Community Declaration, the Bylaws and as allowed for under the Utah Revised Nonprofit Corporation Act. In such event, the term "Members," as used in Utah nonprofit law, including the Utah Revised Nonprofit Corporation Act (as, for example, in statutory provisions requiring an annual meeting of members, permitting removal of directors by members or relating to voting on amendments to these Articles of Incorporation), shall be the Delegates, as applicable, elected as provided in the Community Declaration and Bylaws.

The Members may be of such classes of membership as established by the Community Declaration or the Bylaws.

## VII.

### REGISTERED AGENT

The current principal office of the Master Association is 100 East Bengal Blvd. #F203, Salt Lake City, UT 84121. The initial registered agent of the Master Association is Robert L. Soehnen, at the registered address of 100 East Bengal Blvd. #F203, Salt Lake City, UT 84121. The principal office and the registered agent and office of the Master Association may change from time to time, by action of the Board.

## VIII.

### BOARD OF DIRECTORS/EXECUTIVE BOARD

The business and affairs of the Master Association shall be conducted, managed and controlled by a Board of Directors. The initial Board shall consist of not less than three (3) persons, the specific number to be set forth in the Bylaws. The duties, qualifications, number and term of the members of the Executive Board and the manner of their election, appointment and removal shall be set forth in the Bylaws. The Board shall exercise the powers granted to the Master Association, except those expressly reserved to the Members or Delegates, and the Board shall also administer the affairs of the Master Association in accordance with the provisions of these Articles, Bylaws, the Community Declaration and laws relating to and governing nonprofit corporations of Utah.

The Founder of the Community shall have additional rights and qualifications as provided under the Act and the Community Declaration, including the right to appoint members of the Board during the Period of Founder Control. The Founder or the Members may establish

such classes of membership of the Members and of the Board so as to reasonably allow for representation of the various communities included within the Community. With such classifications, the Members within a class may then elect only specified members of their class to the Board.

These Articles may not be amended in any manner that would modify any right of the Founder as defined in the Governing Documents without Founder's prior written consent.

## **IX.**

### **AMENDMENT**

Amendment of these Articles shall require the assent of at least two-thirds (2/3) of the total votes allocated to residential Units and two-thirds (2/3) of the votes allocated to non-residential Units by the Community Declaration at a meeting of the Members at which a quorum is present, in person or by proxy, or by mail provided, however, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Community Declaration, and provisions within these Articles requiring the consent of the Founder for certain amendments must be complied with. Amendments may also be made pursuant to the assent of at least two-thirds (2/3) of the Delegates.

## **X.**

### **ADDITIONS TO AND DELETIONS FROM THE REAL ESTATE**

Additions to and deletions from the Real Property of the Community allowed for in the Community Declaration may be made only in accordance with the Act and the Community Declaration.

## **XI.**

### **DISSOLUTION**

In the event of the dissolution of the Master Association as a corporation, either voluntarily or involuntarily by the members hereof, by operation of law or otherwise, then the assets of the Master Association shall be deemed to be owned by the Members at the date of dissolution, in proportion to their allocated interests, unless otherwise agreed or provided by law, except that in the event of dissolution by the Secretary of State of Utah (for failure to file administrative or other documents with the Utah Secretary of State), the Master Association may be reinstated as allowed by law, in which event, assets of the Master Association shall remain assets of the Master Association.

## **XII.**

### **INTERPRETATION**

Express reference is hereby made to the terms and provisions of the Community Declaration, which shall be referred to when necessary to interpret, construe or clarify the

provisions of these Articles. In the event of conflict, the terms of the Community Declaration shall control over these Articles of Incorporation.

**XIII.**

**INCORPORATOR**

The name and address of the incorporator is as follows:

Robert L. Soehnen, President  
Littleton, Inc.  
100 East Bengal Blvd. #F203  
Salt Lake City, UT 84121

IN WITNESS WHEREOF, the undersigned has signed these Articles of Incorporation in duplicate this 5<sup>th</sup> day of January, 2006

Robert L Soehngen

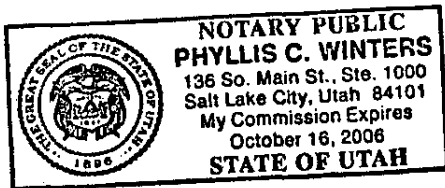
STATE OF UTAH )  
 ) :ss  
COUNTY OF SALT LAKE )

On this 5 day of Jan 2005, personally appeared before me \_\_\_\_\_, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Phyllis C. Winters

Notary Public  
Residing in Salt Lake County

My Commission Expires:



\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



**CONSENT OF REGISTERED AGENT**

The undersigned hereby consents to the appointment as registered agent for the Community Association.

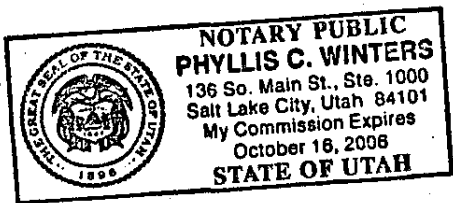
Robert L Soelund  
Authorized Agent

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

On this 6 day of January, 2007, personally appeared before me \_\_\_\_\_, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Phyllis C. Winters  
Notary Public  
Residing in Salt Lake County

My Commission Expires:



\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**Exhibit D**

**Riverwalk at Bingham Junction Design Criteria– Midvale, UT**  
February 8, 2006

**Design Criteria**

Introductory text.....

**1.0 General**

**1.1 Development Patterns**

1.1.1 Development Concept

The design of Riverwalk at Bingham Junction shall contribute to the Bingham Junction neighborhood development concept which encourages multiple uses, transit access, walk to work possibilities, public services, and public spaces within one-half mile of all residential areas.

1.1.2 Convenient Transportation

Design pedestrian, bicycle, and public transportation facilities for convenience and comfort, providing good access and increasing the likelihood of use. Preferential treatment of these alternative modes, as well as car and van pool vehicles, will assist in meeting this objective.

1.1.3 Compatible Scale

Compatible scale should be considered in terms of lot size and building dimensions. Similar sized lots or buildings shall adjoin each other or face each other across local streets. Transitions of development scale are best accomplished across side streets, side and rear lot lines, and across collector or arterial streets or natural features.

1.1.4 Edges

Use the site's open space, parkway, and trail systems wherever possible to define neighborhood and district edges.

1.1.5 Trail System

Provide a continuous trail system throughout Bingham Junction, connecting it to the regional trails and bikeways serving the site such as the Jordan River. Sidewalks may be considered as trail linkages if minimum AASHTO Standards for dual use sidewalks are met.

**1.2 Mixed-Use Considerations**

Mixed-use, or residential unit type developments that incorporate a variety of building types, forms or and scales are required. Poorly integrated "islands" of a single residential product or model type are prohibited.

1.2.1 Minimize Impacts

Site plans shall be arranged to respect the privacy of residents and to minimize infringement on the privacy of adjoining land uses. Site plans should create opportunities for interaction among neighbors.

## **2.0 Streets and Alleys**

### **2.1 Local and Collector Streets**

All local and collector streets, whether public or private, shall provide a detached sidewalk at least five (5) feet wide, a planting strip between the sidewalk and the back of curb at least eight (8) feet wide, and street trees approximately forty (40) feet on center either grouped or spaced at reasonable intervals, where allowed by the Institutional controls.

The number and width of curb cuts shall be minimized on residential and commercial streets so as to reduce the number of conflicts between vehicles and pedestrians. Driveways to individual residential garages shall not be wider than 14 feet at property line, and should not be closer than 25 feet apart.

Where a local or collector street is bordered by ground floor commercial uses with shop fronts oriented to the street, the planting strip may be replaced by at least a five (5) foot wide hard surface amenity zone with street trees in grates or cut-outs where allowed by the Institutional Controls. Other street furniture such as waste baskets, bicycle racks, pedestrian lights, and newspaper boxes may be located within this amenity zone. The sidewalk should be wide enough to provide at least five (5) feet of width for a walking zone and at least a five (5) foot wide zone next to the shop fronts for window shopping, sidewalk cafes, and the temporary display of goods.

Local and collector streets shall be designed to accommodate the minimum widths for travel lanes and on-street parking lanes.

Parallel on-street parking should be encouraged on all local and collector streets. Diagonal and head-in parking off of local or collector streets shall be used only in commercial or mixed-use areas, not in residential areas.

### **2.2 Primary Conducting Streets**

Pedestrians shall be buffered from the travel lane next to the curb by at least an eight (8) foot planting strip with street trees no more than 40 feet on center apart where allowed by the Institutional Controls, or by at least a five (5) foot amenity zone between back of curb and walking zone with street trees in grates or planted cut-outs. Where feasible, on-street parallel parking is also encouraged to provide additional buffering to the pedestrian environment, and pedestrian activity on the street.

The pedestrian walking zone shall be at least eight (8) feet wide and clear of obstructions.

### **2.3 Alleys**

Alleys shall be provided for at least two residential.

### **3.0 Site Planning and Access**

#### **3.1 General**

##### **3.1.1 Coordinated Plan**

Site Planning should provide for a balance between the functional and visual needs of the property. Land development should follow an organized, coordinated plan that, to the extent possible, incorporates all current, proposed, and anticipated development, on and off-site.

##### **3.1.2 Phased Development**

Where development is phased, early phases shall clearly establish the long-term image of the project and its relationship to streets and open spaces, reserving rear and side areas of the lot for expansions where practicable. Where early development is not appropriate on the street or open space frontages, plans shall indicate how a beneficial street or open space relationship will be achieved in subsequent phases.

#### **3.2 Transit Access and Circulation**

##### **3.2.1 Bus Stop Locations**

Site development, other than single-family detached housing, shall provide a bus shelter or bench at each bus stop. Bus shelter and bench design shall be consistent with the design used throughout Bingham Junction. Multiple building and campus development shall incorporate bus stop locations and benches within their site plan if transit service is available, particularly large employers and retail centers. Each bus stop must be designed to accommodate a bus shelter according to the transit requirements of the Utah Transit Authority and Midvale City Code.

#### **3.3 Building Location and Orientation**

##### **3.3.1 Active Building Frontage**

To the maximum extent feasible, development plans shall orient active building frontage including windows, doors, and activity areas toward streets and open spaces to encourage pedestrian activity and provide over-sight of open spaces.

##### **3.3.2 Off Site Relationships**

Site plans and building placement shall consider adjoining sites as opportunities to share access, amenities, and relationships that will create a stronger identity and efficiency that benefits all properties.

##### **3.3.3 Corner Buildings**

Special attention shall be given to corner buildings that are highly visible, that may serve as landmarks, and provide a sense of enclosure at intersections. Special attention can be achieved by architecture, landscape, and public place.

### **3.4 Accessory and Service Structures**

Shared access and co-location of accessory and service areas and structures shall be emphasized wherever practicable between sites and adjoining uses.

### **3.5 Storm Drainage**

#### **3.5.1 Basin Design**

The shape, grading, side-slopes, and location of detention or retention areas within the landscape shall be designed to integrate into the overall landscape design of the site.

### **3.6 Organizing Features and Open Spaces**

Organizing features such as creeks, formal public spaces, streets, parks, and parkways shall be included in Sub-Area Development Plans to utilize natural open space and, to organize and coordinate development patterns. They may qualify as required open space dedications and may be utilized to justify variation of required street alignments.

#### **3.6.1 Open Space**

Utilize defined natural open spaces as features around which to arrange block, lot, and circulation patterns.

#### **3.6.2 Open Space Access**

Public access shall be provided to all open space, directly from the public street/sidewalk system or through off-street pedestrian and/or bicycle paths.

#### **3.6.3 Amenity**

Open space should be used to enhance the value and amenity of surrounding development. Left over, inaccessible, or non-usable open space shall be prohibited to the greatest degree practical.

### **3.7 Screening of Mechanical Equipment, Service Areas, and Trash Receptacles**

3.7.1 For non-residential and mixed-use structures, all roof mounted mechanical and electrical equipment, communication antennae or dishes shall be screened from the view of a pedestrian at the far side of adjoining right of way or 100 feet from the front property line whichever is less, or designed and/or located as part of the overall architectural design.

3.7.2 For residential structures, roof-top mechanical equipment, vents, flues, fans and other pieces of equipment shall be screened and/or organized to leave sloped roofs as simple and uncluttered as possible, or, where roofs are flat, to be screened from view of a pedestrian at the far side of the adjoining right of way or 100 feet from the front property line whichever is less. Where such appurtenances are visible, they shall be painted a color that matches the roof color or other architectural features so that their visual impact is minimized.

3.7.3 Refuse containers shall be screened from view on all sides. Screen walls and fences shall be one foot higher than the object to be screened. An opaque gate shall be included where required to complete screening.

3.7.4 Loading docks and/or service areas shall be located to the side or rear of buildings. Where they are directly visible from streets, and nearby residential buildings, they shall be screened by walls at least eight (8) feet high, or densely and continuously massed landscaping that maintains its screening capabilities in the winter. Raised planters, berms or other land forms may also be used in conjunction with landscaping or walls. A combination of dense, continuous landscaping and walls may allow the use of lower walls, but no lower than four (4) feet high from finished grade.

#### **4.0 Parking**

##### **4.1 Parking Lot Design**

Sites requiring large areas of surface parking shall distribute parking into smaller areas broken up by intervening areas of landscaping, open space, and buildings wherever possible rather than aggregating parking into continuous strips.

Surface parking areas shall be screened by low perimeter landscaping, walls or railings to minimize the impact of vehicles and headlights onto adjoining residential structures and streets.

##### **4.2 On-Street Parking**

On street parking shall be considered wherever practicable on local, collector and private streets in order to reduce the need for off street parking, encourage pedestrian activity, and slow traffic. Mixed-use areas may be most conducive to on street parking options. Where on street parking is provided, adequate street width to meet Fire Codes is required.

#### **5.0 Non-Residential, Mixed Use, and Selected Residential Architecture**

The following criteria shall apply to all non-residential, mixed-use, or residential buildings of four or more stories.

##### **5.1 Building Materials and Colors**

###### **5.1.1 Preferred Materials**

All buildings shall use one or more of the following durable materials as significant finish: architectural precast concrete, architecturally treated concrete masonry units, brick cladding, natural and cast stone, architectural metals, and glazing. Architectural site-cast concrete may be allowed if designed, articulated, and colored for a finished appearance on all buildings. At least 50% of all buildings visible from 7200 South shall be composed of brick, stone, architecturally treated CMU, and/or architectural precast concrete.

High standards for exterior materials, exterior building systems, and their application are expected. In particular, the design, and application of EIFS or synthetic stucco is expected to be of a high enough quality to allow for crisp detailing and substantial relief. The use of EIFS on ground floor walls shall be limited to the surface area three or more feet above finished grade. The wall area from finished grade to where the use of EIFS begins shall be clad by a hard durable material such as brick, stone, architectural pre-cast concrete, or architecturally treated concrete masonry units.

### 5.1.2 Masonry and Concrete Finishes

All vertical concrete surfaces visible from a public street shall be integrally colored or stained with architectural finishes and may be surfaced to permit easy removal of graffiti.

### 5.1.3 Exterior Color

Buildings shall use a cohesive palette of colors, which complement nearby buildings. Without limiting the use of color, large areas of wall shall be subdued in color and not reflective. Intense colors shall be used as accent only.

### 5.1.4 Roof Forms

Roof forms which are normally associated with a residential architectural expression (gable, hip, mansard, etc.) shall not be used as the primary roof form for any commercial, institutional, and/or industrial building. Primary roof forms shall appear to be flat as seen from all property lines. Architectural features and roofs at entryways may take other roof forms. Parapet walls or roof curbs that provide a level line(s) along the top of building walls are required..

## 5.2 Building Form and Character

All buildings shall provide variety and detail through such devices as human scale, interest, and variation in their overall form. Create texture and relief in facades, taking advantage of Utah's strong sunlight to bring out changes in plane, material, and detail through light and shadow. .

### 5.2.1 Adjacent Buildings

Buildings that together form a larger place, such as a street, square, center, district or a special intersection shall relate to each other. Techniques may include aligning roof lines, aligning windows, or using similar materials or related palettes of colors. In multiple building development, each building should include predominant characteristics shared by all buildings to form a cohesive place.

### 5.2.2 Building Design

Building architecture shall reflect the technologies and activities conducted within the buildings. Building facades and forms should utilize contemporary design forms, concepts, and materials (not historical styles), and current construction techniques, while maintaining human scale and the sense of activity within the buildings. This is particularly important in areas where pedestrian and bicycling activity is located adjacent to a lot.

### 5.2.3 Edges and enclosures

Building design shall be carefully coordinated with site and context design objectives, such as providing edges or enclosure to streets and open space, creating linkages and gateways, or framing or terminating views.



#### 5.2.4 Change in Vertical or Horizontal Plane

Buildings shall provide variation in the form of facades that adjoin streets. Variations should result from significant dimensional changes in plane, color or detail as accomplished by such devices as protruding bays, recessed entries, upper level step-backs, arcades, off-sets in the general plane of the façade, changes in materials or color, bay windows, vestibules, porches, balconies, exterior shading devices, non-retractable canopies or awnings, projecting cornices, or eaves.

#### 5.2.5 Important Corners

Building corners at important entries into neighborhoods or at key intersections shall be emphasized as important places through appropriate articulation such as changes in horizontal or vertical wall plane, roof plane, material, and/or color while still being integrated into the architectural character of the building.

#### 5.2.6 Façade Detail, Variety, and Scale

Human scale and detail shall be incorporated into street facing façades by the use of methods such as reveals, belt courses, cornices, expression of structural or architectural bays, recessed windows and/or storefronts, material or material module changes, color and/or texture differences, or strongly expressed mullions.

#### 5.2.7 Primary Entries

Primary public entry(s) shall be architecturally emphasized so that pedestrians can easily find them.

#### 5.2.8 Canopies and Awnings

Use awnings or canopies to reduce glare on storefront glass and to shelter the pedestrians standing near the storefront. Cantilever awnings and canopies from the building face so as to keep sidewalks as clear and unobstructed as possible.

#### 5.2.9 Arcades

Where used, arcades shall be proportioned to be higher and narrower, rather than lower and deeper in order to maximize the penetration of natural light. The width of the wall or column segments between arcade openings shall not be so extensive as to create significant areas that are concealed from views from the street.

#### 5.2.10 Penthouse Design

Screening elements and/or penthouse enclosures shall be composed of forms, materials and colors that are either: 1) an extension of the building's exterior form, material, and color palette, or 2) neutral forms, materials, and colors designed to minimize their visual impact.

#### 5.2.11 Drive-Through Uses

Drive through windows shall be located at the side or rear of buildings. While not desirable, a drive aisle may be located between the building and the street so long as it's width is minimized,

any pedestrian crossings of it are clearly delineated with special paving treatments, no parking spaces occur off of it and a low wall, railing with landscaping, or a continuous hedge at least three feet high between stacked cars and the sidewalk.

#### 5.2.12 Parking between the street and building

As much as possible, parking shall be located to the side or rear of buildings. Where parking is located to the rear of buildings, rear entries shall not be allowed unless equally primary street oriented entries are also provided. Parking in the rear of retail buildings should be connected to front, street oriented entries by attractive, convenient, and well-lit passageways unless site conditions warrant special conditions.

Uses providing side entries with direct connections to the street and its public sidewalk are not required to provide other entries oriented to the street.

Large format (30,000 GSF or greater) retail uses and their attendant in-line retail buildings may orient to parking fields rather than streets. A clear and comfortable pedestrian system shall connect all of the retail uses together, either around or through the parking fields. This system shall also connect to adjoining streets.

### 5.3 Pedestrian Access and Façade Transparency

Buildings shall encourage pedestrian activity along public and private streets through architecture, ground level uses, and glazing to increase the informal over-sight of street activity, creating a friendlier street environment.

#### 5.3.1 Storefront Security Enclosures

Opaque (solid) storefront security closures (rolling doors, etc.) are not allowed.

#### 5.3.2 Window Bars

The use of visible or exterior window security bars is not permitted. Obscured window security or use of laminated type security glass is acceptable.

#### 5.3.3 Continuity of building form and ground floor active uses

As much as possible, building frontages shall be located next to the street to focus activity along the street. Where it may be necessary to locate sides and backs of buildings next to the street, the facades shall be designed and detailed to provide human scale and interest. Exposed mechanical and electrical equipment, service areas, and trash enclosures which may be related to these facades shall be screened by walls and/or landscaping from the street. As much as possible, buildings shall orient either parallel or perpendicular to the street.

## 6.0 Landscaping

### 6.1 Landscape Articulation

Landscaping shall maximize visual framing of buildings, the buffering of parking, garage, and service areas and the coordination of landscape character from one lot to another.

## **6.2 Street Tree Species**

Street tree species shall be selected from the City of Midvale's approved street tree list to maximize the cohesiveness of each block without creating large area mono-cultures that may be susceptible to disease.

## **6.3 Screening, Walls, and Fences**

The design and location of walls and fences should maximize the positive interrelationships of buildings, site design, public streets, and open space.

### **6.3.1 Design**

The materials and design of walls and fences shall relate to the color, materials, scale and style of the adjacent buildings and site improvements. Gates are to be of materials and color compatible with their walls. On lots where there are several buildings, walls may be used to help unify the entire lot. Barbed wire, concertina wire, razor wire style security barriers and galvanized finish fences are not allowed.

### **6.3.2 Walls**

Walls shall be used to enclose elements which require screening such as waste/storage areas or where landscape grades can not be developed at 3:1 or lesser slopes. Architectural treatment site walls are a desirable device for unifying the visual appearance of a site as well as for screening purposes. Low walls of four feet height or less are preferred and walls shall not exceed a height of six feet without specific approval from the City of Midvale, Board of Adjustment in the form of a "Special Exception."

## **7.0 Special Criteria for Residential Uses**

### **7.1 Housing Product Mix**

#### **7.1.1 Pattern of Housing products**

Alley served residential development is encouraged.

##### **7.1.1a Large Lot, Single-Family, Detached, and Duplex Housing**

This type of housing has the highest percentage of walking-age children and commuters. It should be sized and located for walking to educational facilities, day care, public areas (park, square, community garden, etc.), and retail, and transit within ¼ - ½ mile.

##### **7.1.1b Accessory Dwellings, Patio Homes, Townhouse, and Small Buildings Under Four Attached Units**

This type of housing should be located between single-family residential and higher intensity activity areas. These are households with comparatively fewer walking-age children, but with an increasing demand for close proximity to neighborhood centers and related services.

7.1.1c Higher Density Dwellings: Townhouse, Rowhouses, and Courtyard Units Ranging between 4 to 12 Attached Units

This type of neighborhood housing should be located such as attached housing above, but closer to larger roadways and transit services. The larger numbers of residents also help support viable neighborhood centers.

7.1.1d Mid/High Rise Apartment/Condominium Buildings (assumes structured parking)

This type of development should be located nearest adequate roadway and transit capacity and, at the same time, within comfortable walking distances of neighborhood retailing and services. Elderly housing and related residential development also favor close proximity to larger community parks and open space.

7.1.2 Characteristics of Housing Product

In support of a diversity of housing types, the intent is to achieve a significant proportion of alternatively loaded garages, and housing that includes front porches and relates to the street, and show variety.. The following requirements are established to set the initial criteria to create the desired character.

*Minimum Number of Models for Single Family, Duplex, Triplex, Fourplex, or other multi-unit combinations that appear to be a single large house* Any development of 50 or more units in any of the above listed configurations shall have at least three different types of housing models. Any development of fewer than 50 units of the above listed configurations shall have at least two different types of housing models.

7.1.2b Minimum Model Characteristics for Single Family, Duplex, Triplex, Fourplex, or other multi-unit combinations that appear to be a single large house

Each housing model shall have at least three characteristics, which clearly and obviously distinguish it from the other housing models, such as different floor plans, exterior materials and colors, roof shapes, garage placement, window size / proportion / pattern, placement of the footprint on the lot, and/or overall building façade design.

Only a maximum of 50% of street accessed garages shall have garage doors facing the street with the balance being alternative side or rear-loaded and/or detached rear yard garages, etc., except that all opposing block faces shall duplicate the opposite side of the street; only front driveway block faces will face each other, only alley-loaded block faces will face each other. Each such alternatively loaded garage plan will constitute a distinct model for the purposes here. Minimize the visibility of garage doors as described in 7.4.

7.1.2c Rowhouses (Townhouses, Townhomes)

The development of contiguous rowhouses is limited to 50 units (i.e. in any single location) and in groupings no larger than eight units each. Any additional development over 50 rowhouses may be developed so long as 1/3 of the total approved units are located on uncontiguous lots, a minimum of 150 feet or 3 lots apart in all directions and in groupings no larger than eight units each. Any rowhouse development larger than eight units shall provide at least two different unit models. Each unit model shall have at

least three characteristics that clearly distinguish it from the other townhouse models. See criterion 7.1.2b for a description of these characteristics.

#### 7.1.2d Walk-up, and Multi-Family Housing

Any walk-up or multi-family housing development larger than 50 units and less than 100 units shall provide at least three different building models. Each building model shall have at least three characteristics that clearly distinguish it from the other models. See criterion 7.1.2b for a description of these characteristics. Any such development larger than 100 units and less than 150 units shall provide at least four different models following the same criteria listed above. Any development over 150 units may be developed, so long as the development includes at least two buildings of a housing type differing substantially in density, height and form, and that such a development provide at least five different models following the same criteria listed above. No two separate developments of 50 units or less may adjoin each other or face each other across a street or open space without providing at least three different building models following the same criteria listed above.

#### 7.1.3 Brick Cladding and Porches

The following treatments are intended to reflect the street-oriented character and quality of the surrounding neighborhoods. The minimum standards contained in subparagraphs 7.1.3.a through 7.1.4 are in lieu of Midvale City Standards requiring 60% front façade and 40% side façade brick or stone scladding.

##### 7.1.3a Single Family Detached Home Brick or Stone Application and Type

All brick or stone (including manufactured stone) cladding must be applied to and at logical places on the building façade, at logical breaks such as ground floor window sill level, ceiling lines, or at the interior corners of projecting bays or similar elements. All brick or stone cladding must wrap all outside building corners a minimum of 4 feet and must wrap all sides of a column where used as such. Transitions from brick or stone to other materials shall include a belt coursing such as rowlock, header, and/or other suitable course pattern or architectural element. Where brick is provided, traditional brick sizes, colors, and patterns shall be used.

##### 7.1.3b Minimum Percentage Brick or Stone Façades

A minimum of 25% of all single family homes (measured by number of buildings, not façade area) shall have an all-brick or stone front façade up to the eave line (required corner brick buildings described below will be counted in meeting this requirement).

##### 7.1.3c Minimum Covered Porches or Stoops

A minimum of 25% of the total single family homes shall have a covered front porch.

##### 7.1.3d Balance of Homes

No more than 25% of the total homes shall have neither brick or stone cladding nor a porch and no less than 75% of the total shall have either brick or stone fronts or covered front porches.

## 7.1.4 Duplex, Rowhouse, Walk-up, and Multi-Family Housing Brick or Stone Cladding

### 7.1.4a Minimum Percentage of Brick or Stone Facades

All duplex / triplex / fourplex ( or other multi-unit combinations that appear to be a single large house) shall include a substantial use of brick, brick cladding, natural or manufactured stone. Bay windows and other architectural elements protruding from the facades may be clad in other materials.

All rowhouses shall include a substantial use of brick, brick cladding, natural or manufactured stone. Bay windows and other architectural elements protruding from the facades may be clad in other materials.

All walk-up and multi-family residential building types shall include a substantial use of brick, brick cladding, natural or manufactured stone. Bay windows and other architectural elements protruding from the facades may be clad in other materials.

## 7.2 Residential Architecture

### 7.2.1 Roof Design

#### 7.2.1a Roof Form

For residential structures over 40 feet high, live-work structures, and mixed-use structures that include residential, flat roofs may be allowed. See 7.2.1c for structures lower than 40 feet.

#### 7.2.1b Long Roof Form

Roof forms shall be designed in ways, and/or used in combinations to break up large, continuous building forms, particularly for cluster and multiple dwelling structures. Where flat roofs are used, other techniques to provide scale and interest shall be used to refine large, continuous building forms. Long unbroken ridgelines are prohibited.

#### 7.2.1c Roof Shapes and Gables

Generally, for structures lower than 40 feet high, gable or hip roofs are preferred for the primary roof form. The primary gable roof slope shall not be less than 5:12 and for single-family or duplex residences not less than 6:12.

Secondary roof structures such as porch roofs, roofs over bay extensions, bay windows, etc. may include other roof forms such as shed roofs, and hip roofs in combination with gable roofs. However, the secondary roofs shall be consistent or complementary with the primary roof form. Secondary roofs that slope should not be less than 4:12. Flat roofs may be also appropriate for small areas.

#### 7.2.1d Dormers

Dormer roof forms should generally match the form or pitch of the primary roof or significant secondary roof form. Exceptions may include the stylistic use of eyebrow windows, barrel-vaulted dormers, shed roofed dormers, and similar detailing.

#### 7.2.1e Accessory Dwelling

Accessory dwelling form (including the roof) shall be reasonably consistent with the form (including the roof) of the primary structure. This does not mean that the forms should be the same. Some variation may be desirable to reduce scale and articulate the accessory dwelling from the primary dwelling.

#### 7.2.1f Accessory Dwelling Separate from Main House

The accessory dwelling primary roof form shall be physically separated by at least 3 feet from the roof structure of the primary dwelling. However, the garage and the accessory dwelling may be attached to the primary dwelling by a secondary roof structure.

### 7.2.2 Façades

#### 7.2.2a Architecturally Defined Entries

The front entry of any purely residential structure with no porch shall be emphasized by the use of at least three of the following: (1) the design of the door, (2) the design of its surrounding elements, (3) the inclusion of side-lights (glazed openings to the side of the door), and transom-lights (glazed opening above the door) in the entry design, (4) the location of the front door in a visually prominent location, (5) landscaping and paths which focus on the front entry, or (6) lighting. All front entries shall be at least one foot above grade of the nearest public sidewalk, provided accessibility requirements can be met.

#### 7.2.2b Side Façade Treatment

Where a side façade abuts a street and the setback is less than eight feet, the façade shall be designed to provide human scale by at least two of the following approaches:

- interrupting the mass of the wall with either a change in the vertical or horizontal wall plane;
- change in the color or material of the wall;
- provision of a bay window, porch or balcony;
- detailing the wall with reveals, belt courses, cornices, projections or other devices; or
- provision of windows or glazed doors to overlook the street.

### 7.2.3 Windows

#### 7.2.3a Locations

In order to preserve privacy, a neighboring house should avoid direct relationships between neighboring windows.

#### 7.2.3b Size

With the exception of windows that overlook an adjoining unit's private side yard open space, windows shall be generously sized.

#### 7.2.3c Mullions

Windows may include simulated mullions on the exterior of the glass surface to create a smaller scale. However, if simulated mullions are used, then they shall be located on the exterior surface of the glass, not between the glass panes of an insulated unit. Interior spacers between the panes shall be provided to make the mullions appear whole.

#### 7.2.3d Proportions

Windows are encouraged to be more vertically than horizontally proportioned. Window openings that may be more horizontally proportioned may be divided into vertically proportioned segments. Separate, small windows (6 sq. ft. or less in area) may be excepted from this guideline.

### 7.2.4 Single Family Detached Dwelling Porches and Decks

#### 7.2.4a Requirement

Where porches are provided, a roofed, unenclosed porch shall be at least 6 feet in depth and at least 8 feet long. Porches shall be at least 1 to 2 feet above grade and defined by a railing, wall, columns or similar architectural features, provided accessibility requirements are met.

#### 7.2.4b Steps

Porch steps shall be solid in appearance, avoiding open risers. Construction may be primarily wood, concrete, or masonry.

#### 7.2.4c Design

Porches are encouraged to reflect the design of traditional porches found in older neighborhoods. Railings and porch supports shall be composed of relatively substantial members, preferably wood, metal and/or masonry or other materials that complement the design.

#### 7.2.4d Balcony and Deck Design

If projecting balconies are provided, the same design elements as that used for the front porch of the building shall be applied. If no front porch is provided for a building with balconies, then the design vocabulary shall be consistent with the architectural vocabulary of the building. Supports may be either columns or brackets.

Incorporating upper level balconies into patterns that create variety in building massing is encouraged. Stacking balconies into larger architectural features is encouraged, but monotonous vertical stacking of balconies only is prohibited.

### 7.2.5 Exterior Color

Large areas of wall shall be subdued in color and not reflective. However, deep, rich colors for walls or entire buildings may be appropriate to provide variety within a neighborhood.



Monotonous color palettes are prohibited. Bright or intense hues shall be used sparingly and limited to accenting a building.

The skillful use of color variation in single- and multi-family housing is especially important. Variety in color schemes shall be used to create visual interest as well as to deter monotony of similar façade treatments. This does not mean that buildings need to drastically vary in color. Rather, vary wall and trim colors in the same "range" of colors versus the use of identical colors for a substantial number of buildings.

### **7.3 Multi-Family Housing Architecture (stacked non-elevator buildings containing 3 or more units)**

Design multi-family housing to reflect the same level of quality, detail, and craftsmanship similar to single-family housing to aid in its compatibility and seamless appearance with the surrounding residential neighborhood(s).

In addition to the above criteria for residential architecture, multi-family housing shall also observe the following criteria:

#### **7.3.1 Site Planning**

##### **7.3.1a observation**

Arrange dwelling units and landscaping so the common open areas, circulation paths, and points of common access can be easily observed by residents.

#### **7.3.2 Exterior Building Design**

##### **7.3.2a General**

All building elevations shall create visual interest. The use of wall relief, textures, complementary colors, rhythm, and pedestrian-scale detailing that establish a residential scale, style and character is required. The use of a single color scheme, minimal detailing, or blank (or largely blank) walls is not permitted. The use of exterior staircases is discouraged.

##### **7.3.2b Building Massing**

Buildings that are uniformly three stories or more must step the roof form or interrupt it with other roof elements. The building mass of the elevation can be reduced by off-setting dwelling units, and varying building setbacks and heights.

##### **7.3.2c Balconies and Porches**

Provide each dwelling unit with at least one private outdoor area, be it a yard, patio, or balcony. Ideally, this will be a minimum area of seven percent of the floor area of the dwelling with a minimum 5-foot depth for balconies.

7.3.2c(1) Roof Materials

Where architectural shingle roofing is used, only high profile textured asphalt should be used on multi-family roofs.

7.3.2c(2) Wood Materials

The use of exposed true wood surfaces should be limited to trim, which will be well maintained or easily replaced.

7.3.2d Multi-Family Housing

Good proportion, balance, and style shall be apparent in the detailing of multi-family buildings, such as contrasting base lines, belt courses or sills, column caps, wall caps, lintels, door surrounds, exposed rafters or porch beams, etc. Special attention shall be paid to railings, roof eaves, trim areas, gutters, downspouts, and miscellaneous hardware.

7.3.2e Accessory Structures

The façade design and materials of the principle buildings shall be recalled throughout the site development within such structures as recreation buildings, trash enclosures, mail kiosks, patio walls, raised planters, and other walls. The development's character shall be carried through site furnishings and details such as the style of lighting fixtures, walkway design and texture, fencing, and choice of landscape materials.

**7.4 Single-Family Residential Garages**

Single-family residential development shall minimize the visibility of garage doors dominating the appearance of residential streets. This can be done through locating the garage doors beyond the main building line, rear and side loaded garages and providing detached garages at the back of the house.

7.4.1 Location of Driveways

If single-family detached or two-dwelling residential lots in a subdivision are adjacent to an arterial street, no access to individual lots from such arterial street shall be permitted.

7.4.2 Driveway Width

Where no alleys occur and garages are served from the street, the width of the driveway is limited to 14 feet. The driveway curb cut and apron design is subject to the review and standards of the City of Midvale when such elements are in a public right-of-way.

7.4.3 Separate Driveways

Where access to single-dwelling lots is from the street, driveways shall not be combined in the front 40 feet of the lot but should remain separate in order to reduce the width of curb-cuts and to maintain regular tree spacing.

#### 7.4.4 Garage Doors

##### 7.4.4a Garage Door Recess

Street-facing garage doors must be set back a minimum of 20 feet from property line or sidewalk and, in all cases, be recessed a minimum of two feet behind the front line of the building living area (porches, large windows, driveways, and similar projections not included.)

##### 7.4.4b Building Design

Attached garages must be equal in quality and match the principle structure in materials, doors, walls, roof, and openings.

##### 7.4.4c Side Loaded Parking

When garage doors are located on another side of the dwelling, the side of the garage fronting the street shall have windows or other architectural details that blends with the features of the living portion of the dwelling.

##### 7.4.4d Maximum Street Frontage

Garage frontage shall not comprise more than 40% of the building frontage (linear footage). Corner lots are exempt from this standard.

##### 7.4.4e Attached and Multi-Family Parking

Attached and multi-family dwellings which also face a second street internal "green court" or a connecting walkway spine may orient to the second street or walkway spine and shall include windows, doorways and a clear transition from public to private areas using built elements such as porch features, pediments, arbors, low walls, fences, trellis work, and/or similar elements integrated with plantings.

#### 7.5. Multi-family garages

As much as possible, garage entries, carports, parking lots and parking structures shall be internalized within building groupings, or located away from street frontages.

Parking areas, detached garages and carports shall not occupy more than 30% of a public street frontage.

Garage doors of attached front-loaded garages shall not comprise more than 50% of the total length of a duplex, townhouse, walk-up or multi-family building's front, street-oriented façade.

Front loaded garages that extend beyond the primary front façade toward the street shall not be permitted, but shall be recessed from the primary front façade by at least two feet.

Side loaded garages are allowed in any proportion of the front façade, provided that the side of the garage that faces the street has windows, or other architectural features as described in criterion 7.4.4c

## **7.6 Residential Alley Frontages**

The design of alleys shall soften the preponderance of hard horizontal surfaces and walls with landscaping and should encourage a balance of privacy for yards with opportunities for social interaction.

### **7.6.1 Alley Trees**

Shade trees should be provided at frequent intervals along both sides of a typical alley within rear yards.

### **7.6.2 Abutting Open Space**

Where an alley abuts a public open space, special effort shall be applied to insure that the alley has an attractive appearance. For example, additional landscaping shall be provided within the alley to blend its appearance with the open space; all refuse areas shall be screened from view from the open space.

### **7.6.3 Multi-Family Next to Alleys**

Where multi-family or cluster housing provide limited areas between garages or dwelling units for landscaping, other approaches to create scale and variation through landscape elements shall be utilized. For example, cutouts for trees, shrubs, or vines could be provided between garage doors or along wall surfaces. Trellises or pots could be used to provide planting opportunities. Differing pavement treatments could break down the scale of the hard surfaces of the alley and driveways. Landscaping in pavement cutouts shall be provided with an automatic irrigation system.

## **7.7 Residential Screening, Walls, and Fences**

### **7.7.1 Design**

The materials and design of walls and fences shall relate to the color, materials, scale, and style of the adjacent buildings and site improvements. Gates are to be of materials and colors compatible with their walls. On lots where there are several buildings, walls may be used to help unify the entire lot.

### **7.7.2 Fences/Wall Materials**

Exterior Insulated Finish Systems (synthetic stucco) shall not be used as a cladding material for any site fencing or ground level screen wall unless the coating is used over a hard, durable substrate such as masonry or cast-in-place concrete. Wood and interior finish systems should not be used on exterior enclosures. Architectural security fences may be allowed in front of buildings with approval.

### **7.7.3 Single-Family Walls and Fences**

Fences should encourage informal socialization and oversight of public spaces while allowing for privacy and the control of pets; but at the same time avoid the creation of continuous and opaque walls near or above eye-level along the rear portions of lots that adjoin alleys.

7.7.3a **Maximum Front Fence Heights**

Match City of Midvale requirements.

7.7.3b **Alley Fencing**

Alley fencing four feet or more in height should be softened by shrubs, hedges, and/or vines at frequent locations on the alley side of the fence, but only when such vegetation will receive maintenance by a common association. Fencing over 48 inches high should include elements of transparency, such as lattice.

7.7.3c **Side Yard Fencing**

All side yard fencing shall be designed to maintain proper surface drainage and prevent unwanted water on neighboring property. Under no circumstances shall the side yards be used for animal pens, dog runs, or similar confinements within the front half of a lot or adjoining public streets.

7.7.3d **Fence and Wall Design**

The materials and design of fences and walls shall relate to the color, materials, scale, and style of the adjacent residential structures.

**7.8 Residential Alley Lighting**

Residential lighting shall:

- Provide safe access to property at sight.
- Provide protection from break-ins and property damage.
- Avoid objectionable glare onto private property, particularly residential property.
- Design fixtures that relate to the character of the architecture to which it is attached or adjoins.

7.8.1 **Requirement**

Every garage or building, which adjoins an alley shall have at least one wall-mounted light equipped with a lighting sensing device facing the alley.

7.8.2 **Type**

Light sources shall be incandescent or fluorescent bulbs.

7.8.3 **Glare**

Light sources shall not produce objectionable glare onto adjoining property. Where the light source is directly visible from an adjoining property or from a public or private street, alley or common open space, the luminaire shall be designed to incorporate elements to reduce glare such as translucent, obscure, or refracting lenses, low wattage light sources, or shielding devices. In no case shall exposed flood or spot lights be allowed.

#### 7.8.4 Fixture Design

Light fixture design shall complement the architecture of the building to which it is attached.

### **7.9 Single-Family Accessories, Single Family, duplex, Triplex, Fourplex and other Multi-unit Combinations that Appear to be a Single Large House**

#### 7.9.1 Air-conditioning Equipment

Air-conditioning and cooling devices shall not be located in the front yard, side yards, or in any area in front of the front façade. They shall be screened from streets by landscaping.

#### 7.9.2 Refuse Collection

All private service and sanitation facilities must be screened by fences, walls, or landscaping so as not to be visible from a residential street, except on trash pick-up days.

### **8.0 Special Criteria for Retail Uses**

#### **8.1 Large Retail Centers (30,000 GSF Buildings)**

##### 8.1.1 Site Planning

###### 8.1.1a Central features and Public Space

For each site or complex that includes one or more large retail buildings, planning shall establish public spaces by providing at least one of the following: pedestrian plaza with seating; walks next to retail frontages wide enough for window shopping, landscaping and seating; or a similar open space amenity that enhances public comfort and use. All areas shall have direct access to public street sidewalks.

8.1.1b To the maximum extent feasible, transit stops shall be located adjacent to the main commercial activity area.

##### 8.1.2 Weather Protection

Weather protection features such as awnings, canopies, doors inset by at least three feet, or arcades shall be provided at all customer entrances.

##### 8.1.3 Façade Features

All large retail building facades visible from public streets shall include architectural treatments that add detail, character, and reduce the appearance of massive blank walls. Techniques such as color and material changes, expression of structure, shifts in plane, offsets and projections, belt courses, reveals, pilasters, windows, doors, arcades, canopies, and other similar elements may achieve this standard.

##### 8.1.4 Parapets

Large building roofs shall have parapets and enclosures concealing flat roofs and rooftop equipment from public view. Parapet and enclosure materials shall match the building in quality and detail.

### 8.1.5 Entryways

Each large retail building on a site shall have clearly defined, highly visible customer entrances featuring a combination of several elements such as:

1. Canopies, awnings or porticos
2. Projecting eaves and cornices
3. Recesses/projections of wall surfaces
4. Arcades
5. Raised parapets over the door
6. Peaked roof forms
7. Lighting features
8. Entry plazas
9. Display windows
10. Architectural details such as masonry tile work and moldings which are integrated into the building structure and design
11. Integral planters or wing walls that incorporate landscaping
12. Signs integrated with the building architecture

### 8.1.6 Building Orientation

Building facades that face the street but do not have entries and transparent storefronts shall be composed of high quality materials such as brick or stone, and shall provide variety and interest in the façade through the introduction of such elements as pilasters, recessed or protruding bays, changes in materials and/or colors, building lighting elements, display windows with products or product graphics, transparent windows or clerestories, and well designed signs and graphics. Service areas, mechanical equipment, meters and trash containers shall be completely screened from the street.

## 9.0 Special Criteria for Sustainable Development

To the extent practicable, redevelopment of the site shall focus on the principles of sustainability, which seek to manage natural, economic and social systems and resources in a fashion that enhances quality of life yet does not diminish the ability of future generations to also meet their needs.

### 9.1 Minimize Demand for Resources

Minimize the demand for resources and maximize the on-site supply of resources. Resource management should follow the hierarchy of consumption:

1. eliminate the need of the resource
2. reduce the use of the resource
3. reuse resources
4. recycle resources

### 9.2 Site Development

Maximize the use of renewable and indigenous resources in site development and management.

### **9.3 Green Builder Programs**

Builders within the Riverwalk at Bingham Junction development are encouraged to meet or exceed the requirements of the Home Builder's Association Green Builder, U.S. Green Building Council, and Leadership in Energy and Environmental Design programs to the extent possible.

### **9.4 Recycling**

Existing recycling programs shall be supported by the new development through the fulfillment of membership obligations, and/or the provision of recycling bins, screened recycling areas, or other equipment or facilities. New or supplementary recycling programs initiated by the development's property owners are encouraged.

### **10.0 Signs**

In the event that the following criterion conflicts with any City of Midvale ordinance, the ordinance will regulate..

#### **10.1 Sign Plan**

Proposed plans for signage, temporary and permanent, including details of design, materials, lettering, location, mounting, size, color and lighting are to be submitted to the POA for approval.

#### **10.2 Sign Design**

Signs throughout the Bingham Junction development are intended to be principally for identification and directional purposes and not advertising. The emphasis is to minimize the amount of signs to avoid visual clutter.

Sign/graphic systems, both temporary and permanent, are to be compatible with the desired character and quality of Bingham Junction as a whole. Signs shall be of simple, clean design and constructed of durable materials, which are consistent and compatible with the building architecture. The emphasis will be qualitative as well as quantitative and adherence to the minimum standards herein will not necessarily assure POA approval.

Flags and/or color banners may be used as site landscaping accent features and as permitted under zoning rules; however, they may not be used in any way to supplement site signs.

### **10.3 General**

#### **10.3.1 Electrical Service**

All conduits, bus bars, transformers, and other elements of electrical service shall be concealed from external view or integrated into the design of the sign. However, solar-powered lighting screen are exempt from this rule.

#### **10.3.2 Wall Sign Design**

Signs shall fit within the architectural features of the façade and complement the building's architecture. Signs shall not overlap and conceal architectural elements.



### 10.3.3 Sign Typography

Sign type faces shall be simple, legible, and well proportioned. For signs along arterial and larger streets, type faces should be designed to be legible from a moving vehicle.

### 10.3.4 Sign Lighting

Sign lighting shall be coordinated with the lighting of building elements and storefront lighting.

### 10.3.5 Internal Illumination

Internally illuminated, translucent sign faces as part of a sign box are discouraged, particularly when they are lighter than the sign's typography. However, internally illuminated opaque sign faces with translucent typography or internally illuminated individual channel letters with translucent faces, halo channel letters, and externally illuminated signs are encouraged. Internally illuminated awnings are not allowed.

### 10.3.6 Advertising Signs

No advertisements other than identification signs for owners and tenants shall be permitted.

### 10.3.7 Sign Lighting Impacts

In residential areas and mixed use developments that include residential uses, signs shall be located and illuminated in such a way as to avoid adverse impact such as light or glare into residential units or yards.

## 11.0 Lighting

### 11.1 Lighting Plan

Lighting design for individual lots shall be developed according to an overall Lighting Plan developed by the property owner and approved by the POA. Each building or cluster of buildings shall provide an exterior lighting plan that indicates all types of lighting equipment, locations for each fixture, all light sources, and photometric analysis of the site. All private outdoor lighting should follow the efficiency levels described in ASHRAE 90.1.

#### 11.1.1 Type

All non-residential and residential lighting shall be white metal halide light, incandescent or fluorescent lighting on private property.

#### 11.1.2 Glare

All site lighting, building lighting, including canopy, loading, and service areas, shall not produce objectionable glare onto adjoining property. All building and parking lot light sources shall be equipped with cut-off fixtures.

## **11.2 Pedestrian Lighting**

Pedestrian lighting is encouraged but not required. Pedestrian lighting should create identity and comfort for the development. Design lighting to avoid objectionable glare onto adjoining residential property. Design lighting systems are to be organized and simple. Avoid a variety of different lighting types. Provide the ability to safely walk along pathways and in common open spaces at night. The use of solar-powered lighting is encouraged.

### **11.2.1 Placement**

If provided, pedestrian lighting shall have consistent fixtures, source colors, and illumination levels. Pedestrian lights shall be placed at least 3 feet from the face of the curb to allow space of car bumpers and door swings. Pedestrian lights shall be located at least 5 feet from the edge of the curb transition point nearest a driveway, curb cut, or alley, and at least 20 feet from the extended flow line of the nearest intersection.

### **11.2.2 Pedestrian Location**

Pedestrian lighting should be provided along commercial and mixed use drives, open space paths, and open space areas designed for gatherings or events. Private path lighting should use a greater number of low fixtures in a well-organized pattern.

### **11.2.3 Quantity**

Paths on private property leading to primary building entries and whose length is generally greater than 50 feet shall be lighted. Such lighting is particularly needed at steps or ramps along the path. Low, glare-controlled light fixtures mounted on building or landscape walls or low ground-mounted landscape lights are preferred.

### **11.2.4 Lighting Levels**

#### **11.2.4a Illumination**

Single rather than multiple luminaires should be generally used. Multiple luminaires may be considered at important entries.

#### **11.2.4b Intensity and Glare**

Where the light source is directly visible, the luminaire shall be designed to incorporate elements to reduce glare, such as translucent, obscure, or refracting lenses; low wattage light sources, or shielding devices.

## **11.3 Building Lighting**

### **11.3.1 Building Entrances**

Building entrances shall be well lit, using fixtures compatible with the architecture of the building. Consider lighting to enhance specific architectural features, help establish human scale, or provide visual interest. Building lighting may only be used to highlight specific architectural features. Lighting of architectural features must be designed with the intent of providing accent and interest and not to exhibit or advertise buildings or their lots.

### 11.3.2 Landscape Lighting

Accent lighting of the landscape should be low level and background in appearance. Colored accent lighting is not permitted except for temporary holiday applications. Uplighting should be selected to blend with planting, be waterproof and directional. Uplighting shall be fixtures which shield the light source from passing motorists.

## CC&R's – Not in Design Guidelines

### 12.0 Maintenance Standards

#### 12.1 Structures

##### 12.1.1 Requirement

All owners and occupants shall maintain their improvements in good and sufficient repair and in an esthetically pleasing manner. Improvements, which are damaged by the elements, vehicles, fire or any other cause, shall be repaired as promptly as the extent of damage will permit.

##### 12.1.2 Vacant Property

Buildings which happen to be vacant for any reason shall be kept locked and in good repair, the windows shall be glazed (not boarded) in order to prevent entrance by vandals.

##### 12.1.3 Debris

All sites shall be maintained in a safe, clean and neat condition free of rubbish and weeds.

##### 12.1.4 Painting

Painted areas shall be repainted every seven years or more frequently, if the condition of the painted areas exhibits *significant signs of peeling, fading, or patches*. *Factory applied finishes* may be reapplied less frequently as long as they are maintained in excellent condition.

#### 12.2 Signs

##### 12.2.1 Supports

Signs and sign supports shall be maintained in excellent condition with respect to appearance, structural soundness and electrical function.

##### 12.2.2 Repairs

Repairs, replacement or removal of signs shall be made within 30 days from date of damage or within 10 days of receipt of notification for repair, whichever is less.

### 12.2.3 Vacant Property

The owner/lessee of any location where services are no longer provided or where business is no longer conducted shall remove all exterior identification within 15 days of the last day of business at that location.

### 12.3 Recycling

Each property owner shall continuously maintain in good order for the convenience of its tenants, clearly marked, durable and separate bins on each floor to facilitate the deposit of aluminum, cardboard, paper, newspaper, glass, and plastic therein, and maintain accessibility to such bins at all times, for mechanized collection of such wastes for transport to on- or off-site recycling plants.

### 12.4 Maintenance of Landscaping

#### 12.4.1 Requirement

All landscape areas, site furnishings and pedestrian lighting shall be maintained by the individual property owners or an Association.

#### 12.4.2 Plant Health

All plantings shall be maintained in healthy growing condition. Fertilization, cultivation, and pruning shall be carried out on a regular basis.

#### 12.4.3 Dead Plants

Replacement of dead and unhealthy plant materials (including street trees) with materials of comparable size and species shall be accomplished as quickly as possible or 30 days maximum unless conditions prohibit).

#### 12.4.4 Irrigation

Irrigation systems are to be monitored and adjusted periodically to insure that the water demands of all plant materials are being met.

#### 12.4.5 Irrigation Repairs

Irrigation system repairs are to be made within 7 days of damage.

#### 12.4.6 Weed Control

All irrigated lawns shall be kept neat and mowed to between 3 and 4 inches in height.

### 12.5 Maintenance Compliance

If minimum maintenance standards are not met by any individual property owner, the POA may issue a letter demanding action. If the maintenance deficiency is not remedied within 10 days of receipt of such notification, the POA shall have the maintenance work performed and charge the owner all costs incurred.

# Exhibit E

River Walk at Bingham Junction  
Net Subdivision—Remainder

Beginning at a point on the west line of 700 West Street, said point being located South  $0^{\circ}18'00''$  West 1312.73 feet along the section line and North  $89^{\circ}42'00''$  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  $0^{\circ}18'00''$  West 1311.77 feet;  
thence South  $0^{\circ}17'31''$  West 312.21 feet;  
thence North  $89^{\circ}42'29''$  West 20.00 feet;  
thence South  $0^{\circ}17'31''$  West 821.40 feet;  
thence South  $45^{\circ}13'12''$  West 35.40 feet to the North line of Jordan River Boulevard;  
thence North  $89^{\circ}51'08''$  West 384.09 feet along the North line of Jordan River Boulevard;  
thence Northwesterly 632.27 feet along the arc of a 1210.74 foot radius curve to the right (center bears North  $0^{\circ}08'52''$  East and the long chord bears North  $74^{\circ}53'30''$  West 625.11 feet with a central angle of  $29^{\circ}55'15''$ ), said curve following along the North line of Jordan River Boulevard;  
thence North  $13^{\circ}08'41''$  West 34.61 feet along the North line of Jordan River Boulevard;  
thence North  $56^{\circ}56'59''$  West 76.00 feet;  
thence North  $33^{\circ}04'16''$  East 25.03 feet;  
thence Northwesterly 260.97 feet along the arc of a 1160.74 foot radius curve to the right (center bears North  $34^{\circ}55'34''$  East and the long chord bears North  $48^{\circ}37'58''$  West 260.42 feet with a central angle of  $12^{\circ}52'55''$ );  
thence North  $42^{\circ}11'31''$  West 215.55 feet;  
thence Northwesterly 448.65 feet along the arc of a 1544.90 foot radius curve to the left (center bears South  $47^{\circ}48'29''$  West and the long chord bears North  $50^{\circ}30'42''$  West 447.08 feet with a central angle of  $16^{\circ}38'21''$ );  
thence South  $29^{\circ}41'07''$  West 26.63 feet;  
thence North  $14^{\circ}19'55''$  West 2.31 feet;  
thence North  $60^{\circ}18'00''$  West 76.00 feet;  
thence South  $73^{\circ}43'56''$  West 3.45 feet;  
thence North  $29^{\circ}41'07''$  East 27.43 feet;  
thence Northwesterly 778.10 feet along the arc of a 1544.90 foot radius curve to the left (center bears South  $28^{\circ}12'06''$  West and the long chord bears North  $76^{\circ}13'38''$  West 769.90 feet with a central angle of  $28^{\circ}51'27''$ );  
thence South  $89^{\circ}20'39''$  West 84.05 feet;  
thence North  $3^{\circ}30'25''$  West 60.00 feet;  
thence South  $89^{\circ}20'39''$  West 166.35 feet;  
thence North  $1^{\circ}52'25''$  West 364.68 feet;

thence Northeasterly 322.41 feet along the arc of a 200.00 foot radius curve to the right (center bears North 88°07'35" East and the long chord bears North 44°18'28" East 288.62 feet with a central angle of 92°21'47");  
thence South 89°30'38" East 511.62 feet;  
thence South 44°40'29" East 145.89 feet;  
thence Northeasterly 74.00 along the arc of a 210.00 foot radius curve to the right (center bears South 64°51'53" East and the long chord bears North 35°13'49" East 73.62 feet with a central angle of 20°11'24");  
thence North 45°19'31" East 216.98 feet;  
thence Northeasterly 17.64 feet along the arc of a 15.00 foot radius curve to the left (center bears North 44°40'29" West and the long chord bears North 11°38'06" East 16.64 feet with a central angle of 67°22'48");  
thence Northeasterly 157.92 feet along the arc of a 50.00 foot radius curve to the right (center bears North 67°56'42" East and the long chord bears North 68°25'27" East 100.00 feet with a central angle of 180°57'30");  
thence North 45°19'31" East 24.79 feet;  
thence Northeasterly 168.65 feet along the arc of a 215.00 foot radius curve to the right (center bears South 44°40'29" East and the long chord bears North 67°47'48" East 164.36 feet with a central angle of 44°56'34");  
thence South 89°43'55" East 62.87 feet;  
thence North 0°31'16" West 492.24 feet;  
thence North 89°28'44" East 1534.75 feet to the Point of Beginning.

Said parcel contains 4,538,511 square feet or 103.78 acres.