



**BLUFFDALE CITY COUNCIL  
MEETING AGENDA  
Wednesday, September 28, 2016**

Notice is hereby given that the Bluffdale City Council will hold a meeting Wednesday, September 28, 2016 at the Bluffdale City Fire Station, 14350 South 2200 West, Bluffdale, Utah scheduled to begin promptly at **6:30 p.m.** or as soon thereafter as possible. Notice is further given that access to this meeting by the Mayor and or City Council may be by electronic means via telephonic conference call.

**BLUFFDALE CITY COUNCIL REGULAR BUSINESS MEETING 6:30 P.M.**

1. Roll Call, Invocation, Pledge of Allegiance\*
2. **PUBLIC FORUM** – (4 minute maximum per person to bring items not already on the agenda before the Council. Participants are encouraged to submit a written statement (1 copy) for items that are complex or that may require more than 4 minutes to present).
3. **CONSENT AGENDA** –
  - 3.1 Approve a resolution of the Bluffdale City Council authorizing the City Manager to enter into agreements awarding a contract for the Concrete for the Parry Farms Park.
  - 3.2 Approve a resolution appointing a Board of Adjustment Member.
4. **PUBLIC HEARING** – Consideration and vote on an Amendment to the Zoning Map from Heavy Commercial (HC) to General Commercial (GC-1) for 4.66 acres shown as Plat J, located at approximately 15200 South Pony Express Road, 4 Independence, LLC, applicant, staff presenter, Jennifer Robison.
5. Consideration and vote on a resolution approving Porter’s Point Townhomes Major Change to Development Agreement and Project Plan for 4.09 acres in the Mixed Use Zone as part of the Independence Project, Newman Construction, applicant, staff presenter, Jennifer Robison.
6. Consideration and vote on an ordinance amending Section 5-1-2 of the Bluffdale City Code Prohibiting the Discharge of Firearms within the City of Bluffdale, staff presenter, Vaughn Pickell.
7. Consideration and vote on an ordinance amending Section 1-10-3 of the Bluffdale City Code related to Source Selection of Purchase Contracts from Cooperative Purchasing Alliances, staff presenter, Vaughn Pickell.
8. Consideration and vote on an ordinance adopting Section 6-1-5 of the Bluffdale City Code Prohibiting Impacts to Bridge Structures, staff presenter, Vaughn Pickell.
9. Consideration and vote on a resolution authorizing execution of an Interlocal Cooperation Agreement with Salt Lake County providing for the Transfer of up to \$1,579,000 of County Transportation Funds to the City of Bluffdale, staff presenter, Vaughn Pickell.

10. Mayor's Report
11. City Manager's Report and Discussion

**PLANNING SESSION**

12. Please Note: The planning session is for identifying future items and other council discussion in accordance with Utah Code § 52-4-201(2)(a). While the meeting may be open to the public, there will not be any opportunity for public input during the planning session.
13. Assisted Living: Potential Zoning Text Amendment to Neighborhood Commercial (NC) Zone at approximately 13974 South 2700 West, Roy Bartee/Ridgemark, applicant.
14. Closed meeting pursuant to Utah Code § 52-4-205(1) to discuss the character, professional competence, or health of an individual, collective bargaining, pending or imminent litigation, strategies to discuss real property acquisition, including any form of a water right or water shares, security issues, or any alleged criminal misconduct (if needed).
15. Adjournment

**Dated this 23<sup>rd</sup> day of September, 2016**

I HEREBY CERTIFY THAT THE FOREGOING NOTICE AND AGENDA WAS FAXED TO THE SOUTH VALLEY JOURNAL, THE SALT LAKE TRIBUNE, AND THE DESERET MORNING NEWS; POSTED AT THE BLUFFDALE CITY HALL, BLUFFDALE CITY FIRE STATION, AND THE COMMUNITY BULLETIN BOARD AT THE BLUFFS APARTMENTS; EMAILED OR DELIVERED TO EACH MEMBER OF THE BLUFFDALE CITY COUNCIL; ON THE CITY'S WEBSITE AT [WWW.BLUFFDALE.COM](http://WWW.BLUFFDALE.COM) AND ON THE PUBLIC MEETING NOTICE WEBSITE, [WWW.PMN.UTAH.GOV](http://WWW.PMN.UTAH.GOV)



**Wendy L. Deppe, CMC**  
**City Recorder**

Note: The Bluffdale City Council will take a recess at approximately 9:30 p.m. and will evaluate the time needed to complete items not yet heard on the evening's agenda. Items the Council determines may take the meeting past 10:00 p.m. may be removed from the agenda and re-scheduled for the next regularly scheduled meeting. In compliance with the American with Disabilities Act, individuals needing assistance or other services or accommodation for this meeting should contact Bluffdale City Hall at least 24 hours in advance of this meeting at 801-254-2200. TTY 7-1-1. \*Contact the City Recorder if you desire to give the Invocation.

# Agenda Item 3.1

# Agenda Item 3.2

**RESOLUTION NO. 2016-**

**RESOLUTION APPOINTING A  
BOARD OF ADJUSTMENT MEMBER**

**WHEREAS**, there are vacancies for members on the Board of Adjustment; and

**WHEREAS**, Bluffdale City Council has determined that it is in the public interest to appoint members to the Bluffdale City Board of Adjustment; and

**WHEREAS**, the Board of Adjustment members serve at the pleasure of the Bluffdale City Council and are appointed by the Mayor with a majority vote of the Bluffdale City Council;

**NOW, THEREFORE, BE IT RESOLVED BY THE BLUFFDALE CITY COUNCIL:**

**Section 1. Appointment of Board of Adjustment Member.** That the following person be appointed to the Bluffdale City Board of Adjustment to serve until the time indicated by their name:

<u>NAME</u>	<u>TO SERVE UNTIL</u>
<b>JOSEPH L. SARTORI</b>	<b>FEBRUARY 1, 2020</b>

**Section 2. Effective Date.** This Resolution shall become effective immediately upon its passage and authorizes and directs the Mayor to execute and cause to be delivered the same.

**PASSED, ADOPTED AND APPROVED** by the Bluffdale City Council this 28th day of September, 2016.

By: \_\_\_\_\_  
Mayor Derk P. Timothy

ATTEST:

By: \_\_\_\_\_  
Wendy L. Deppe, City Recorder

Voting by the City Council:

Aye

Nay

Councilmember Jackson

\_\_\_\_\_

\_\_\_\_\_

Councilmember Nielsen

\_\_\_\_\_

\_\_\_\_\_

Councilmember Preece

\_\_\_\_\_

\_\_\_\_\_

Councilmember Westwood

\_\_\_\_\_

\_\_\_\_\_

Councilmember Wingate

\_\_\_\_\_

\_\_\_\_\_



# REQUEST FOR CITY COUNCIL ACTION

---

**To:** Mayor and City Council  
**From:** Jennifer Robison, Senior Planner  
**Date:** 8 September 2016  
**Business Date:** 28 September 2016  
**Subject:** Zone Map Amendment for 4.66 acres located at 15200 South Pony Express Road from HC Heavy Commercial to GC-1 General Commercial to allow storage units to be developed on the proposed property.  
**Staff Presentation:** Jennifer Robison

**RECOMMENDATION:** To approve the Zone Map Amendment Application as recommended by the Planning Commission on September 7, 2016.

## **BACKGROUND:**

The 4.66 acres is a small portion of the overall area planned as Future Commercial for the Independence at the Point project. The applicant addressed the Planning Commission on March 27, 2015 to amend the zoning from SG-1 Sand and Gravel and received approval for the HC Heavy Commercial zoning by the City Council on April 22, 2015 when the applicant had a potential buyer for the property requesting commercial uses. The buyers eventually chose an alternative site in Bluffdale. The applicant has another potential buyer for the property at this time and is proposing storage units to be developed on this site. Storage units are not an allowed use in the Heavy Commercial zone, but are allowed as a conditional use in the General Commercial zone.

The City Council also adopted new standards for storage units in Title 11-16-26 of the City Code including the style, design, landscaping and other requirements to be addressed with a future Site Plan Application if zoning is approved.

The Planning Commission recommended approval with the following findings:

1. That the application complies with the General Plan for commercial uses for the subject property.
2. That the application complies with the Independence at the Point Development Agreement for development of property.
3. That the development of the subject property will provide opportunities to the City to provide necessary road connections and infrastructure to support future development consistent with the Bluffdale City Master Transportation Plan and Vehicular Circulation Master Plan of the Independence at the Point project.

## **PREVIOUS ACTIONS**

- September 7, 2016: Planning Commission conducted a public hearing and recommended approval of the application 5-0.
- March 27, 2015: City Council zoned proposed property from SG-1 Sand and Gravel to HC Heavy Commercial.

## **SUPPORTING DOCUMENTS**

- DRC Staff Report for Planning Commission – Dated September 2, 2016
- Map and Use Table (shown for comparison of uses only – not all uses are listed)



HERITAGECREST WY

GALLANT DR

FREEDOM POINT WY

PORTER ROCKWELL BLVD

INVERLEITH CV

SKYFALL DR

WHITE HART LN

ROYAL MILE RD

Plat J

Future Commercial

MOUNT JORDAN PKWY

PONY EXPRESS RD

INTERSTATE 15

INTERSTATE 15



**Development Review Committee**

14175 South Redwood Road

Bluffdale, UT 84065

801.254.2200(o) 801.446.8642(f) TTY 7-1-1

---

**STAFF REPORT**

**02 September 2016**

**To:** City of Bluffdale Planning Commission

**Prepared By:** Jennifer Robison, Senior Planner

**Re:** Zoning Map Amendment from HC Heavy Commercial to GC-1 General Commercial

Application No.: 2016-35

Applicant: Nate Shipp/4 Independence, LLC

Location: 15200 South Pony Express Road

Acreage: 4.66 acres

General Plan: Regional Commercial

Requests: To amend the City of Bluffdale Zoning Map from HC to GC-1

**SUMMARY & BACKGROUND**

The applicant currently owns the property located at 15200 South Pony Express Road. The property is within the boundary of the Independence at the Point Master Plan (IP) and identified as Future Commercial on the Comprehensive Land Use Master Plan exhibit to the Development Agreement (DA) approved on November 27, 2012.

The 4.66 acres is a small portion of the overall area planned as Future Commercial for the Independence at the Point project. The applicant addressed the Planning Commission on March 27, 2015 to amend the zoning from SG-1 Sand and Gravel and received approval for the HC Heavy Commercial zoning by the City Council on April 22, 2015 when the applicant had a potential buyer for the property requesting commercial uses. The buyers eventually chose an alternative site in Bluffdale. The applicant has another potential buyer for the property at this time and is proposing storage units to be developed on this site. Storage units are not an allowed use in the Heavy Commercial zone, but are allowed as a conditional use in the General Commercial zone.

The City Council also adopted new standards for storage units in Title 11-16-26 of the City Code including the style, design, landscaping and other requirements to be addressed with a future Site Plan Application if zoning is approved.

**ANALYSIS**

The Bluffdale City General Plan supports commercial uses for this area identified as Regional Commercial land use designation on the General Plan Map. With the approval of the DA for the Independence project, commercial uses are anticipated for this area consistent with the General Plan and designation of General

Commercial zoning. The consideration for the Planning Commission is for the Zoning Map Amendment from the current zoning of Heavy Commercial to General Commercial for this application. Applications for Preliminary and Final Subdivision Plat, Permitted or Conditional Use, and Site Plan will be considered at a future date(s). The request is consistent with the DA and overall City ordinances.

Location and Infrastructure Analysis. The subject property is accessed by a state frontage road and City road which has utilities available to serve the property and can potentially accommodate a variety of commercial uses with appropriate site and engineering designs.

Approval Criteria and Process. Zoning Map amendments are a legislative decision of the City Council, after receiving a recommendation from the Planning Commission. Broad discretion is given to the City Council when making zoning decisions. Compliance with the general plan, adequate infrastructure, land use rights, and neighborhood compatibility are all valid considerations when making zoning decisions. Adequate findings in support of a positive or negative outcome are recommended for the application.

### **RECOMMENDATION ON PROPOSED MAP CHANGES**

Staff recommends approval of the Zoning Map Amendment Application 2016-35, based on the following findings:

1. That the application complies with the General Plan for commercial uses for the subject property.
2. That the application complies with the Independence at the Point Development Agreement for development of property.
3. That the development of the subject property will provide opportunities to the City to provide necessary road connections and infrastructure to support future development consistent with the Bluffdale City Master Transportation Plan and Vehicular Circulation Master Plan of the Independence at the Point project.

### **MODEL MOTIONS FOR MAP CHANGES**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Zoning Map Amendment Application 2016-35, based on the findings presented in the staff report dated September 2, 2016, *(and as modified by the additional or revised findings):*”

1. List any additional findings...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Zoning Map amendment, application 2016-35, based on the following findings:”

1. List all findings...

**CITY OF BLUFFDALE, UTAH**

**ORDINANCE NO. 2016-\_\_\_**

**AN ORDINANCE AMENDING THE BLUFFDALE CITY OFFICIAL ZONING MAP BY CHANGING THE ZONING DESIGNATION OF APPROXIMATELY 4.66 ACRES OF LAND LOCATED AT 15200 SOUTH PONY EXPRESS ROAD, BLUFFDALE CITY, STATE OF UTAH, FROM HEAVY COMMERCIAL (HC) TO GENERAL COMMERCIAL (GC-1).**

**WHEREAS** the subject property was approved and complies with the Independence at the Point Master Plan (IP) and Development Agreement which allows the rezoning of property within the development consistent with the Project Plan;

**WHEREAS** the Bluffdale City General Plan identifies this area for commercial uses which is consistent with the General Commercial (GC-1) Zone;

**WHEREAS** the future development of the subject property will provide opportunities to the City to provide necessary road connections and infrastructure to support future development consistent with the Bluffdale City Master Transportation Plan and Master Plan of the Independence at the Point project.

**WHEREAS** the proposed changes will not be detrimental to the health, safety, or general welfare of persons or property within the area.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLUFFDALE, UTAH:**

**Section 1. Official Zoning Map Amendment.** The Bluffdale City Official Zoning Map is hereby amended to change the zoning designation from Heavy Commercial (HC) to General Commercial (GC-1) for approximately 4.66 acres of property within the City of Bluffdale, located at 15200 South Pony Express Road as shown in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 2. Effective Date.** This Ordinance shall take effect upon recording in the office of the City Recorder, publication, posting, or thirty (30) days after passage, whichever occurs first.

APPROVED, ADOPTED AND PASSED and ordered published by the Bluffdale City Council, this 14th day of September, 2016.

CITY OF BLUFFDALE

---

Mayor

ATTEST: [SEAL]

---

Wendy Deppe  
Bluffdale City Recorder

Council members	Voting:	
	AYE	NAY
Alan Jackson	_____	_____
Ty Nielsen	_____	_____
Boyd Preece	_____	_____
Justin Westwood	_____	_____
James Wingate	_____	_____

EXHIBIT A

Legal Description

Independence at the Point, Plat J

A PORTION OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, LOCATED IN SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PHASE 2, BLUFFDALE HEIGHTS COMMERCIAL PARK SUBDIVISION, SAID POINT BEING LOCATED S89°39'39"E ALONG THE SECTION LINE 437.36 FEET AND SOUTH 1388.40 FEET FROM THE NORTHWEST CORNER OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG SAID SUBDIVISION THE FOLLOWING (5) FIVE COURSES; N17°30'08"E 59.14 FEET; THENCE ALONG THE ARC OF A 700.00 FOOT RADIUS CURVE TO THE RIGHT 71.30 FEET THROUGH A CENTRAL ANGLE OF 5°50'10" (CHORD: N20°25'13"E 71.27 FEET); THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE TO THE RIGHT 72.27 FEET THROUGH A CENTRAL ANGLE OF 92°00'55" (CHORD: N69°20'45"E 64.75 FEET); THENCE ALONG THE ARC OF A 275.00 FOOT RADIUS CURVE TO THE LEFT 63.98 FEET THROUGH A CENTRAL ANGLE OF 13°19'49" (CHORD: S71°18'42"E 63.84 FEET); THENCE S77°58'36"E 389.71 FEET; THENCE S30°08'53"W 131.59 FEET; THENCE ALONG THE ARC OF A 800.00 FOOT RADIUS CURVE TO THE RIGHT 191.59 FEET THROUGH A CENTRAL ANGLE OF 13°43'18" (CHORD: S37°00'32"W 191.13 FEET); THENCE S43°52'11"W 298.58 FEET; THENCE ALONG THE ARC OF A 530.00 FOOT RADIUS NON-TANGENT CURVE (RADIUS BEARS: S59°14'24"W) TO THE LEFT 322.23 FEET THROUGH A CENTRAL ANGLE OF 34°50'05" (CHORD: N48°10'39"W 317.29 FEET); THENCE N65°35'41"W 4.07 FEET; THENCE ALONG THE ARC OF A 5.00 FOOT RADIUS CURVE TO THE RIGHT 7.85 FEET THROUGH A CENTRAL ANGLE OF 90°00'00" (CHORD: N20°35'41"W 7.07 FEET); THENCE N24°24'19"E 115.72 FEET; THENCE ALONG THE ARC OF A 354.00 FOOT RADIUS CURVE TO THE LEFT 42.65 FEET THROUGH A CENTRAL ANGLE OF 6°54'11" (CHORD: N20°57'13"E 42.62 FEET); THENCE N17°30'08"E 75.71 FEET TO THE POINT OF BEGINNING.

CONTAINS: 4.66± ACRES

Property Location  
Independence at the Point, Plat J



<b>Proposed Uses</b>	<b>GC-1</b>	<b>HC</b>
Construction sales and service	N	C
Data center	N	P
Hospital	N	C
Hotel	N	P
Loan center	N	C
Manufacturing, general	N	C
Manufacturing, limited	N	P
Movie theater	N	P
Nursery	N	P
Nursing home	N	P
Open storage	N	C
Reception center	N	P
Recreation and entertainment (indoor)	N	P
Recreation and entertainment (outdoor)	N	C
Research and development laboratories	N	C
<b>Storage units</b>	<b>C</b>	<b>N</b>
Tattoo establishment	N	C
Tobacco specialty business	N	C
Trade or technical schools	N	P
Wholesale and warehousing	N	P



**Legal Department**  
14350 South 2200 West  
Bluffdale, UT 84065  
(801) 254-2200 Fax (801) 253-3270

---

To: Mayor and City Council Members  
From: Vaughn R. Pickell, AICP, City Attorney  
Date: September 23, 2016  
Re: Newman Porter's Point Townhomes Development Agreement

---

Mayor and City Council Members:

William Jeff Newman has applied to amend the Independence at Bluffdale development agreement (Original Agreement). The Developer's proposal is to construct a 32-unit townhome project on land that is south of the East Jordan Canal, but north of the Westgate project. It will connect to the Westgate project road system and to Noell Nelson Drive. The proposed project plan, attached as an exhibit to the development agreement amendment, sets forth the concept plan for the development.

The proposed development agreement amends the Original Agreement to allow this project. The Original Agreement had small-lot single-family units planned for this area.

Sample Motion

I move to approve a Resolution Authorizing Execution of an Amended Development Agreement with William Jeff Newman for Porter's Point Townhomes.

Sincerely,

Vaughn R. Pickell, AICP  
City Attorney

**CITY OF BLUFFDALE, UTAH**

**RESOLUTION No. 2016-**

**A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED DEVELOPMENT AGREEMENT WITH WILLIAM JEFF NEWMAN FOR PORTER'S POINT TOWNHOMES.**

**WHEREAS** on December 11, 2007, the City of Bluffdale ("City") and Artemis Investments, LLC, entered into a development agreement with for the Independence at Bluffdale project ("Artemis Development Agreement");

**WHEREAS** William Jeff Newman ("Developer") has purchased a portion of the Artemis project and now desires to amend the Artemis Development Agreement to allow a townhome project on a portion of Mr. Newman's property;

**WHEREAS** the parties to the attached Development Agreement for Porter's Point Townhomes desire to memorialize the terms of the agreement between them; and

**WHEREAS** the Bluffdale City Council finds that proposed agreement will further the public health, welfare, and safety;

**NOW, THEREFORE, BE IT RESOLVED BY THE BLUFFDALE CITY COUNCIL AS FOLLOWS:**

**Section 1. Authorization to Execute Development Agreement.** The City Council hereby authorizes and directs the Mayor to execute the Development Agreement for Porter's Point Townhomes in substantially the same or similar form attached hereto.

**Section 2. Effective Date.** This Resolution shall become effective immediately upon passage.

PASSED AND APPROVED: September 28, 2016.

**CITY OF BLUFFDALE**

\_\_\_\_\_  
Mayor

**ATTEST:**

[seal]

\_\_\_\_\_  
City Recorder

Voting by the City Council:	Yes	No
Councilmember Jackson	_____	_____
Councilmember Nielsen	_____	_____
Councilmember Preece	_____	_____
Councilmember Westwood	_____	_____
Councilmember Wingate	_____	_____



# REQUEST FOR CITY COUNCIL ACTION

---

**To:** Mayor and City Council  
**From:** Jennifer Robison, Senior Planner  
**Date:** 22 September 2016  
**Business Date:** 28 September 2016  
**Subject:** Porter's Point Townhomes Major Change to Project Plan and Development Agreement for 4.09 acres in the Mixed Use Zone as part of the Independence Project  
**Staff Presentation:** Jennifer Robison

**RECOMMENDATION:** To approve the Porter's Point Townhomes Major Change and Project Plan as recommended by the Planning Commission on April 20, 2016. The Development Agreement is only reviewed and approved or denied by the City Council.

Since the recommendation given by the Planning Commission, the applicant has prepared civil engineered construction drawings which modified the configuration and layout of the building lots and open space areas. Staff has reviewed these revisions and they did not change the number of units or significantly alter the project as recommended. The main purpose of the revision was to align the sewer easements and locations for utility connections from the Westgate subdivision to service this area. The revised Project Plan is included for the Council to review the modifications.

The important policy issues for the Porter's Point project are as follows:

1. The types of units originally approved for this area were part of the overall Westgate area. The units were single family detached units either front or alley loaded. The Council did allow the unit types to be amended for the Westgate Aclaime at Independence Project Plan and the applicant is proposing similar unit types to be amended to allow townhomes (attached – front loaded). With townhome units immediately adjacent to the south and the property being constrained on the north by the canal, allowing townhome units would be a consistent and compatible land use pattern with the project in this area.
2. The Project Plan identifies 0.53 acres of open spaces as privately owned and maintained by the Homeowners Association including the trail. The original Independence Plan did not require additional public open space in this area. These areas are small and will provide enjoyment for the residents more than providing a public interest other than a trail connection. Whether the trail is owned by the City as a separate parcel or by the home owners, it would be important for a public easement be included on the final plat to ensure public access to the trail.
3. The portion of trail that will connect the Westgate Aclaime neighborhood and provide an access across the canal to the remaining portion of the original Westgate area is also owned by the Newman family. The Development Agreement states the developer shall construct the pedestrian bridge across the East Jordan Canal as shown in the Project Plan (page 4 - 5.b.ii.). A decision about the funding and timing of the the trail connection access over the canal should be part of the final plat approval process. Staff believes this trail connection is vital to allow public access between neighborhoods to enhance the City trail system in Independence and future connections.
4. The Planning Commission was concerned about the safety along the canal and recommended the Council address this issue with developer with the development agreement.

The Planning Commission recommendation of approval was based on the Project Plan dated April 13, 2016 with the following conditions:

1. That this recommendation is based on the April 13, 2016, Porter's Point Townhomes Project Plan and Design Guidelines.
2. That the final ownership and maintenance of open spaces and trails and other landscaped areas (private or public) is determined during the plat approval process and consistent with an approved development agreement.
3. That the Planning Commission is the Land Use Authority to approve the Site Plan Application including, but not limited to; design and architectural elements, building materials and colors, and landscaping.
4. That the project follows all applicable City ordinances throughout platting and development.
5. That the trail connection allows public access and connects neighborhoods.
6. That Section 3b of the Project Plan shall be revised to discuss when the review of the PPTDRC should be completed.
7. That the fencing along the canal and the potential of a bridge over the canal, and the corresponding financial obligations for the bridge, be addressed during the negotiation process of the Development Agreement.

In review of the revised Project Plan and Development Agreement, the Council may move to approve the Porter's Point Townhome Major Change as recommended by Staff and Planning Commission.

**PREVIOUS ACTIONS:**

- April 20, 2016: Planning Commission conducted a public hearing and recommended approval of the Major Change and Project Plan **5-0**.

**SUPPORTING DOCUMENTS:**

- Updated Project Plan – dated August 30, 2016
- Development Agreement for the Porter's Point Townhomes
- DRC Staff Report for Planning Commission – dated April 15, 2016

Exhibit B  
Porter's Point Townhomes  
Major Change Amendment Project Plan  
Design Guidelines



Newman Construction, LLC

Attn: Mark Newman

13331 S Redwood Road

Riverton, UT 84065

Revised from 4/13/16

Prepared by:

**stevemplan, llc**

Steve McCutchan

1750 East Janella Way

Sandy, UT 84093

stevemplan@gmail.com

Draft: August 30, 2016

# 1. MAJOR CHANGE PROJECT PLAN AMENDMENT

Newman Construction proposes a Major Change Project Plan Amendment to obtain approval to construct 32 townhomes on approximately **5.83 overall acres and 4.09 net development acres (1.74 acres associated with the East Jordan Canal)** ~~4.1 acres~~ located within the original Independence at Bluffdale's Westgate neighborhood. The Project Plan, Exhibit B to a Development Agreement between the property owners and Bluffdale City, will replace the Independence at Bluffdale Development Agreement adopted in December 2007 pertaining to the subject property.

# 2. PORTERS' POINT CONCEPTUAL PROJECT PLAN

## a. Conceptual Site Plan

Figure 1 is the proposed Porter's Point Conceptual Site Plan. The Project Plan area includes approximately **4.09 net development** ~~4.1~~ acres located west of Noell Nelson Drive (1000 West) and north of the recently approved Aclaime at Independence Westgate development. The **4.09 net development** ~~4.1~~ acres is located between the northerly boundary of the new Westgate development and the south boundary of the East Jordan Canal. The **4.09 net development** ~~4.1~~ acres does not include the East Jordan Canal.

The approximately **4.09 net development** ~~4.1~~ acres is part of a roughly 20.2 parcel owned by the William J & Shirley Newman. It is difficult to determine the exact number of dwelling units permitted by the original Independence at Bluffdale Development Agreement and Project Plan on the **4.09 net development** ~~4.1~~ acres because the original plan proposed to move the canal along the boundary that separates the Newman's property from the new Westgate development. The concept plan for the Westgate Neighborhood from the original Project Plan is shown in the right. However, the 32 units is part of the 147 units permitted on the entire property owned by the Newman Family.



It is roughly estimated that the **4.09 net development** ~~4.1~~ acres would have permitted 32 35' x 70' single family detached lots. The Conceptual Plan illustrates the development of 32 single family attached units, or townhomes. The units are accessed either by fronting onto the continuation of Chimney Pass Drive, a public street as it exits the Westgate development or on a 24-foot-wide private

drive that extends north from the public street. The public street continues east to intersect with Noell Nelson Drive (1000 West).

The Conceptual Plan also illustrates active public and private open spaces and the continuation of the City trail north from the Westgate development



**Porters Point Townhomes**  
Newman Construction

Overall Acres:	5.83
East Jordan Canal Acres:	1.74
Net Development Acres:	4.09
Number of Units:	32
Req'd Off-Street Parking:	75
Garage Parking:	64
Driveway Parking:	64
Parking Spaces:	2
Total Off-Street Parking:	130
Private Active Open Space (Acres):	0.53

August 30, 2016

**stevemplan** 1750 East Janella Way  
Sandy, UT 84093  
Stephen G. McCutchan (801) 557-6945  
land planning urban design stevemplan@gmail.com

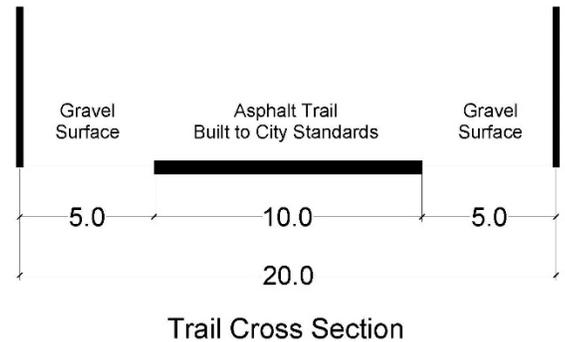


**Table 1**  
**Porter's Point Townhomes**  
**Concept Plan Statistical Summary**

Land Use	Acres	Residential Density (DU/Ac)	No. of Units
Townhome Units	2.40 2.20	13.33 14.54	32
Public Active (Trail)	0.08 0.07		
Private Active (Recreation Areas)	0.45 0.66		
Total Active Open Space	0.53 0.73		
Public Street	1.18		
<b>Total Open Space</b>	<b>1.4</b>	<b>7</b>	<b>32</b>

**b. Open Space and Trails Plan**

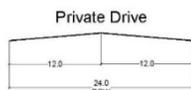
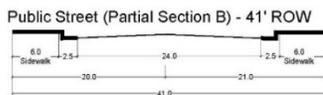
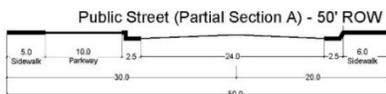
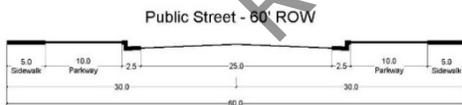
The original Independence Project Plan proposed 1.3 acres of “Active Open Space” for all of the Newman’s property. Porter’s Point Townhomes proposes ~~0.08~~ ~~0.07~~ Acres of ~~Public~~ Active open space within the extension of the trail from the Westgate neighborhood and ~~0.45~~ ~~0.66~~ acres of ~~Private~~ Active open space for other open spaces. The connection across the canal will link all of the Newman’s property to the entire Independence trail and park system and the future Jordan School District sites in the Day property. The Public Active open spaces would be owned and maintained by the City. The Private Active open space areas will be owned and maintained by a homeowner’s association. The figure to the right is a conceptual trail cross section.



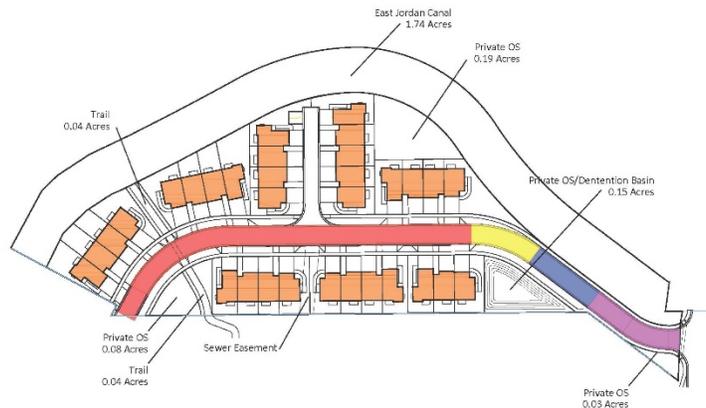
**c. Street Cross Sections**

Porter’s Point Townhomes streets include a public street and a private drive. The public street will be constructed with three similar cross sections because as the street proceeds east toward Noell Nelson Drive, the width of the land between the north boundary of the Westgate development and the prescriptive easement of the East Jordan Canal narrows from 60, to 50 and finally to 41 feet immediately prior to the intersection with Noell Nelson Drive. We are proposing to maintain the standard Independence curb to curb section of 30 feet (25 feet of asphalt) for most of the street. The curb section will narrow to 29 feet (24 feet of asphalt) in the 50 foot and 41 foot lengths. In the 50-foot area, the parkway on the north side of the street is deleted and the six-foot sidewalk is placed directly behind the curb. In the 41-foot area, the south side parkway is deleted and the sidewalk moved to the back of curb. The sidewalks are 6 feet on both sides of the street. As a result, the sidewalks are located on both sides of the street for the entire length.

A short, 24-foot-wide private drive is also used to access eight units. There are five off-street parking spaces at the end of the private drive and room for snow removal.



These figures illustrate both the street sections proposed and the location of the varying public street sections.



**d. On-Street and Off-Street Parking and Snow Removal**

Porter's Point Townhomes is primarily served by a public street, the continuation of Chimney Pass Way. ~~The City's recent parking ordinance revisions require a total of 75 off-street parking spaces, two per unit and one guest space for every three units. There are two spaces in each garage or 64 spaces, two spaces in each driveway or 64 spaces and two parking spaces for a total of 130 off-street parking spaces. Therefore, it will have both on street and off street parking. On street parking is allowed where permitted by City ordinance. The figure at right shows that there are 38 on street parking spaces available on Chimney Pass Way (shown in red).~~

~~Each unit has an enclosed two car garage and a minimum 20 foot or longer driveway. Therefore, each unit also has four off street parking spaces available, or two guest parking spaces per unit. There are also five off street parking spaces at the end of the private drive. The total number of guest parking spaces (on street parking, driveways and dedicated parking spaces) is 107, or 3.34 guest spaces per unit.~~

Snow removal of the private drive can be stored at the end of the private drive in HOA maintained private open space areas.

**3. DESIGN GUIDELINES**

Porter's Point Townhomes proposes a single unit type, a front loaded, two story townhome. Variety in the appearance of the townhomes will be achieved by both varying the unit mix within buildings and varying the number of units per building. The figure to the right is a conceptual perspective view of the front elevation of a typical building.



**a. Setbacks**

- (1) Front yard setbacks shall be a minimum of ten (10) feet. Front accessed garages facing a street shall be setback a minimum of twenty (20) feet either from the back of sidewalk of the edge of the private drive.
- (2) Interior side yard setbacks shall be a minimum of five (5) feet. Sideyards adjacent to a street or alley shall be setback a minimum of ten (10) feet. There shall be a minimum of ten (10) feet between buildings.
- (3) Rear yards shall be setback a minimum of ten (10) feet.

All other development standards shall be subject to the requirements of Section 11-11G-12 Table 2 of the Mixed Use (MU) Zone.

**b. Architectural Guidelines**

As required by the Independence at Bluffdale Development Agreement and Project Plan, Porters Point Townhomes will have architectural guidelines to ensure the quality of the public visible building elevations. The following architectural guidelines shall be used to design and construct the homes.

- Stucco, masonry, fiber cement siding and / or similar construction products shall be used on all exterior walls. No vinyl siding shall be permitted.
- Rear or side facades that are exposed to a street or common open space (excluding the canal area), public or private, shall include additional treatments such as a minimum six (6) inch wood or wood-like window and door surrounds that are painted a complementary color.

All townhome units require approval of the Porter’s Point Townhomes Design Review Committee.

A detailed fence plan including type, construction and locations shall be included with the required Site Plan approval.

**c. Street Tree Plan**

The Autumn Blaze Maple is being planted as the street tree for Chimney Pass Way in the Westgate neighborhood. Therefore, the same tree will be planted on the street continuation within Porters Point Townhomes. ~~The figure below is a conceptual street tree planting plan.~~ It is estimated that 31 street trees can be planted in the neighborhood. All street trees shall be planted as mandated in Bluffdale City Code Title 7 Chapter 4.

Revised from 4/29/16

**DEVELOPMENT AGREEMENT**  
**FOR**  
**PORTER'S POINT TOWNHOMES**

THIS DEVELOPMENT AGREEMENT FOR PORTER'S POINT TOWNHOMES ("Agreement") is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between CITY OF BLUFFDALE, a Utah municipal corporation ("City"), and WILLIAM JEFF NEWMAN. As used herein, the term "Developer" shall include all successors, transferees, affiliates, or assigns. The City and the Developer are hereinafter collectively referred to as "Parties".

**RECITALS**

A. The Developer owns, or has the right to develop, approximately 4.1 acres of ground located within the original Independence at Bluffdale's West Gate neighborhood. Said property is more particularly described in as Exhibit A attached hereto, "Property."

B. At present, that 4.1 acres is subject to a prior Development Agreement entered into between Artemis ("Artemis") Investments LLC, and City on or about December 11, 2007. A Memorandum of the same was filed in the public record on or about July 2, 2008.

C. On February 27, 2007, the City council approved the design guidelines for the Project.

D. Concurrent with the adoption of this Agreement, the parties desire to approve a more detailed project plan and to the extent set forth herein modify all prior concepts, plans, agreements, approvals, or entitlements for the subject property contemplated by this agreement as set forth herein including but not limited to density, general configuration, phasing, review and approval.

E. The City has the authority to enter into this Agreement pursuant to Section 10-9a-102(2) of the Utah Code and Chapter, 11-11G of the Bluffdale City Code, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Project in accordance with the terms and conditions of this Agreement and in accordance with published City Ordinances, rules and regulations, land use policies, standards, and legislative approval conditions.

F. The Parties intend to be bound by the terms of this Agreement as set forth herein.

G. The Parties desire to rescind and revoke and replace any prior Development Agreement affecting the Property with this new Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Property Development. Subject to city council approval, the Project, which consists of the 4.1 acres identified previously herein and as more particularly set forth in attachments hereto, shall be developed as a townhome condominium project consistent with a project plan attached hereto, Bluffdale Zoning Ordinance (Title 11 of the Bluffdale City Code), the Bluffdale Standard Drawings and Specifications, all as adopted by the city and in existence as of the date of this Agreement (“City Ordinances”) as well as design guidelines, project plans and the Agreement itself. For purposes of this Agreement, the term “Bluffdale Standard Drawings and Specifications” shall include the City’s own standards as well as all adopted codes, including but not limited to the Utah State Construction Code, the Utah State Fire Code, American Association of State Highway Transportation Officials (AASHTO) standards, American Public Works (APWA) and American Water Works Association (AWWA) standards, as such standards exist and have been adopted by the City on the Effective Date.

3. Project Plan and Design Guidelines.

a. Approval of the Project Plan. The “Project Plan,” attached hereto and incorporated herein as Exhibit B, establishes the land use and development rights for the Property, maximum density, and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Project Plan, Design Guidelines and City Ordinances. The City’s approval and execution of this Agreement grants the Developer the right to develop the Property and construct the Project in accordance with the uses, maximum densities, approval processes, improvements and general configuration of development set forth in this Agreement, the Project Plan and the Design Guidelines. All Developer submittals must comply with the Design Guidelines and Project Plan. The Design Guidelines and Project Plan may be amended from time to time with the approval of the City Council and the Developer after receiving a recommendation from the Planning Commission as set forth in Section 3(b) below. Developer acknowledges and agrees that the Developer's ability to develop the Property according to the general configurations set forth in the Project Plan and Design Guidelines is contingent upon the Developer providing all engineering required by the City under the Subdivision Ordinance and the City's approval of such engineering in accordance with the City Ordinances.

b. Amendment to Project Plan or Design Guidelines. The Project Plan satisfies the concept plat requirement for each Phase of the Project. If, however, the Developer is seeking to make a Major Change (as defined below), the Developer shall be required to obtain a recommendation from the Planning Commission and approval from the City Council to amend the Design Guidelines and Project Plan. Planning Commission recommendation and City Council approval of an amendment will not require a public hearing. For purposes of this Agreement, a “Major Change” shall be limited to the Developer's request to: (i) change

the width of a road within the Project identified in the Project Plan if a proposed road width in a preliminary or final plat differs from the road widths approved in the Design Guidelines and Project Plan, (ii) change the connection points of collector or major roads within the Project as identified in the Project Plan (i.e. changes in the location of intersections and connection points as opposed to changes in the location or alignment of collector or major roads), or (iii) change the location of land uses within the Project (i.e. single to multifamily).

4. Subdivision of the Property. The Design Guidelines and Project Plan do not constitute a subdivision of the Property or any portion thereof. All subdivisions of the Property shall comply with the City Ordinances, Design Guidelines, Project Plan, and this Agreement. The Developer shall work with the City staff to create the final plat and construction drawings for the Project. The City Staff shall submit the Developer's proposed preliminary and final plats to the Planning Commission for recommendation and the City Council for review and approval at such time as the Developer (i) has submitted a preliminary plat and construction drawings that comply with the Design Guidelines, Project Plan, this Agreement and City Ordinances and (ii) has received initial comments from the Bluffdale City Development Review Committee ("DRC") on its submissions, provided, however, that if the DRC identifies any significant design or engineering problems in the plat or construction drawings, the Developer shall be required to resolve such problems to the reasonable satisfaction of the DRC prior to having the Planning Commission or City Council review such plat and construction drawings. The Developer shall be entitled to apply for approval of the preliminary and final plats concurrently for a subdivision if such plats are documented and approved in accordance with City Ordinances.

5. Development of the Property. The Property shall be developed by the Developer in accordance with the requirements contained herein:

a. Compliance with City Ordinances and Development Standards. The Property, all portions thereof, and each Phase shall be developed in accordance with this Agreement, the Design Guidelines and Project Plan, and the City Ordinances. Specifically, the Project Plan shall act as the concept plan for the Project, and the Design Guidelines establish the specific standards for the Project.

b. Open Space Requirements. The Developer shall preserve certain open space within the Property consistent with the density approved by the City herein (the "Open Space"), and in accordance with the open space plan attached hereto and incorporated herein by reference (the "Open Space Plan"). The Developer shall dedicate or convey by deed to the City such portions of the Open Space identified on the Open Space Plan as City-owned Open Space, as determined by the Parties on plat-by-plat basis. The City, or other appropriate party(ies) approved by the City, shall not use City-owned designated Open Space for purposes inconsistent with the Design Guidelines or City Ordinances. The Open Space shall be maintained by the party holding title thereto (or another party designated by such owner), unless otherwise set forth herein. In addition, the Developer, and all subsequent owners of any Open Space not dedicated to the City, shall enjoy the rights and protections set forth in Sections 57-14-101 through 57-14-401 of the Utah Code.

i. Developer's Reservation of Certain Open Space. The Developer will not retain ownership of any Open Space, except as set forth on the Open Space Plan,

or as otherwise determined by the City on a plat-by-plat basis. The Developer has designated certain Open Space area on the Open Space Plan as areas for construction of community amenities such as recreational amenities to be owned and maintained by homeowners' associations within the Project (the "Amenities"), which Amenities are described in the Project Plan attached hereto.

ii. Construction of Public Improvements by Developer. The Developer shall construct the Amenities contemplated by the Design Guidelines and Project Plan in Open Space areas within the Property to be dedicated to the City or for public use. However, **the Developer shall construct the pedestrian bridge across the East Jordan Canal as shown in the Project Plan.**

iii. Construction of Public improvements by the City. The City shall have the right to construct public improvements and facilities in the City's Open Space areas (those dedicated or conveyed by deed to the City or another entity designated by the City), after their dedication or conveyance to the City (or another entity designated by the City), provided such improvements and facilities are consistent with the Design Guidelines and Project Plan.

iv. No Assessments on Dedicated Open Space; Open Space Governed by Design Guidelines. Any Open Space dedicated or conveyed to the City (or another entity designated by the City) shall be free from regulation and assessment by the Developer, or other homeowners' associations, with the exception that any improvement to such Open Space shall be subject to the Design Guidelines.

v. Private vs. Public Open Space. The parties acknowledge and agree the open space provided for in this townhome project does not constitute public open space and does not offset the need for public parks and recreation facilities elsewhere in the City.

c. Density Requirements:

i. Existing Property in the Project: The maximum number of residential units for the Property is 32.

ii. Additional Property. If the Developer elects to include additional property within the map boundaries of the Project or additional property contiguous or adjacent to the Property in the Project (the "Additional Property"), this Agreement may be amended subject to approval by the City Council to include such Additional Property as part of the Property. The City shall act in good faith in considering the Developer's request for the inclusion of Additional Property in the Project.

d. Roads and Traffic.

i. Street Plan. The general layout and location of the roads as depicted in the Project Plan constitute general guiding principles the Developer shall observe in establishing the layout and design for each Phase of the Project. All roads within the boundaries of the Property shall provide service to the general areas depicted in the

Concept Master Street Plan contained in the Project Plan and shall be constructed with the widths set forth therein, unless changes to the connection points, intersections or widths constituting Minor Changes (i.e., changes not requested by the Developer) are required, in which case roads may be realigned with approval of the City staff. The final location and design of all roads in the Project is subject to the Developer's submission to the City staff of all engineering required under the City Ordinances and the City engineer's review and approval of such engineering. Signage and traffic signals relating to roads constructed by the Developer shall comply with the City Ordinances. Except as otherwise provided in the Design Guidelines and Project Plan or in this Agreement, all required streets within the Project shall be designed and constructed according to the Design Guidelines and Project Plan, and the asphalt and road base requirements set forth in the City Ordinances as of the Effective Date. The Developer agrees to use commercially reasonable efforts to work with the City, the canal companies and relevant utility companies to coordinate the alignment of roads accessing the Property.

ii. Road Dedications. The roads designated in the Project Plan for dedication shall be dedicated to and accepted by the City as required for development and shall be constructed by the Developer according to the Design Guidelines and Project Plan and the asphalt and road base requirements set forth in the City Ordinances as of the Effective Date.

e. Trail Connections: Except as otherwise set forth in this Agreement, the following general provisions shall apply to the trails in the Property.

i. Location: The Project Plan outlines the general location of the trails within the Project. Trails in the Property shall be located in the places approved by the City on the final plats pertaining to a phase.

ii. Construction. The Developer shall construct that portion of the Property designated for trails in the Design Guidelines and Project Plan and/or final plats for a Phase of the Property. The Developer shall construct the trails as part of the improvements for a given Phase as other improvements for such Phase are constructed. Notwithstanding the foregoing, the City shall only require the Developer to construct trails in a specific Phase under construction. All trails shall be constructed and preserved in accordance with the Design Guidelines and Project Plan and the City Ordinances. The Developer shall pay, or cause to be paid, the construction costs for all trails required under the Project Plan.

iii. Maintenance. The Developer shall dedicate by plat recordation or convey by deed to the City (or another entity designated by the City) all trails located on property in the Project, which are at least 10' wide with a base of 8" covered by 3" of AC-20 or better asphalt. The City agrees to accept the dedication of trails that meet the foregoing requirements, and to assume the responsibility for maintaining such trails in the condition the City receives such trails, from and after any applicable warranty period or as otherwise set forth in the City Ordinances as determined by the City on a

plat-by-plat basis. If the Developer constructs portions of the trails on property owned by the City or any third party (after receiving appropriate easements or permission), the City agrees to assume the responsibility for maintaining such trails in the condition the City receives such trails, from and after any applicable warranty period or as otherwise set forth in the City Ordinances. In addition, the Developer, and all subsequent owners of any trails not dedicated to the City, shall enjoy the rights and protections set forth in Sections 57-14-101 through 57-14-401 of the Utah Code.

f. Architectural Requirements; Design Guidelines. Attached to this Agreement as an exhibit and incorporated herein are the Design Guidelines for the Property, which are consistent with the standards set forth in the Mixed Use Zone. All structures erected in the Project shall comply with the Design Guidelines.

g. Utilities and Infrastructure.

i. General. The Developer shall install or pay for the installation by the appropriate entity of the following utilities and infrastructure: roads, curb, gutter, sidewalks, natural gas, underground electrical service, telephone, cable, storm drain, flood control, sewer, and culinary water for each Phase when developed. In addition, the Developer shall install or pay for installation of a secondary water system. Installations shall be done in accordance with the City's design requirements and construction standards in existence as of the Effective Date, and the design and construction standards imposed by the relevant service provider, except as such standards or specifications are modified by the Design Guidelines or Project Plan. The Developer shall be responsible to pay for all required inspections of such improvements by the City (exclusive of any inspections involving third-party cable service providers).

ii. Culinary Water System Development. Developer shall install or pay for the installation of a culinary water supply system to serve the Property in accordance with the final plats submitted by the Developer and approved by the City, which shall include water transmission and distribution lines within the boundaries of the Property. The culinary water system shall connect to and become part of the City's water system, and shall comply with the City Ordinances.

iii. Storm Drain Facilities. The Developer shall install such on-site storm drains and detention ponds within Open Space as required by the standards and specifications of the City in existence as of the Effective Date, and indicated in the final plat for each Phase. Subsequent to the Developer's installation of storm drain improvements within the City and dedication of such improvements to the City, and the expiration of any warranty period, the City shall accept maintenance responsibilities for the storm drain infrastructure in the public street rights-of-way.

iv. Maintenance of Private Drives. The Developer or a homeowners' association shall assume full responsibility for the maintenance of any and all private drives in the Project owned by a homeowners' association or designated as common area. The Developer or a homeowners' association shall also assume full responsibility for snow removal within all private drives in the Project, The Developer or homeowners' association shall contract with a professional maintenance company for such responsibilities, and shall require the snow removal provider to not place snow from any private drive within any public right-of-way. If snow is placed in a public right-of-way, the City shall have the right to remove such snow and bill the relevant homeowners' association for the removal costs.

v. Secondary Water. The Developer shall construct a secondary water system and dedicate the amount of secondary water required by the City Ordinances to the City, to be held in co-ownership with the applicable homeowners' association, so the open space areas of the Project can be irrigated with secondary water.

vii. Dedication or Donation. The Developer shall dedicate to the City all public streets and public improvements in each Phase as such Phase is developed together with public utility easements as required by the City. The City shall accept such dedication as provided herein and agrees that the following dedication language shall be acceptable to the City:

KNOW ALL MEN BY THESE PRESENTS that the undersigned owner(s) of all the hereon described tract of land hereafter known as \_\_\_\_\_, for good and valuable consideration received, does/do hereby dedicate and convey to Bluffdale City for perpetual use of the public, all parcels of land shown on this plat as a public roadway, and does/do hereby dedicate and convey to Bluffdale City and to each public utility providing utility services, non-exclusive easements for installation and maintenance of public utilities over, on under and across the utility easements as shown on this plat. This dedication is subject to any easements of record as of the date hereof.

6. Payment of Fees.

a. General Fees. The Developer, or the subject property owner, as applicable, shall pay to the City in a timely manner all required fees, including, but not be limited, to all subdivision processing and recording fees, and inspection fees, which are due or which may become due in the ordinary course pursuant to the City ordinances. Such fees shall be based on the city's fee schedule as adopted and amended by City ordinance from time to time. The Developer and all owners of any portion of the Property shall have a duty to pay all standard required fees assessed by the City in those amounts which are approved and in effect at the time the fees are actually paid to the City.

7. City Obligations. Subject to compliance with the terms of this Agreement by Developer, Permitted Transferees (as defined in Section 17 below) or Developer Affiliates (as defined in Section 17 below), the City agrees as follows:

a. Public Improvements. To maintain the public improvements associated with the Project and dedicated to the City following satisfactory completion thereof by the Developer, its Permitted Transferees or Developer Affiliates, and acceptance of the same by the City and commencement of the warranty period in the manner set forth in city ordinance or rule.

b. Standard Services. To provide standard municipal services to the project including, without limitation, snow removal on public streets, garbage pickup and disposal, and police and fire protection, subject to the payment of all fees and charges charged or levied therefore by the City that are generally applicable to other similar properties in the City.

c. Culinary Water Service. To provide culinary water service o after culinary water systems are constructed by Developer and inspected and approved by the City.

d. Secondary Water. To provide secondary water service after final plats are recorded and the Secondary Water System is constructed by the Developer and approved by the City, utilizing Draper Irrigation Company as the secondary water service provider.

e. Acceptance of Improvements. To maintain project and/or the Improvements dedicated to the City following satisfactory completion thereof by the Developer, a Permitted Transferee or Developer Affiliate, acceptance of the same by the City, subject to all applicable warranty work required by the Developer under the City's Subdivision Ordinance in existence as of the Effective Date.

8. Construction Standards and Requirements.

a. General. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances as of the Effective Date, the Design Guidelines, Project Plan and this Agreement. Prior to final City release of construction security for the infrastructure on any Phase of the Property, "as built" drawings in both hard copy and electronic format shall be provided without cost to the City. The electronic format of such "as-builts" shall be designated by the City. Improvements and landscaping for the Property shall be constructed at least to the level of the Design Guidelines and Project Plan, The Developer shall cause to be constructed public improvements, as indicated in this Agreement, the Design Guidelines and the Project Plan, as such improvements are required to provide necessary and customary access and municipal services to each Phase of the Property.

b. Security for Infrastructure. Security to guarantee the installation and completion of all public improvements located within the Property on a Phase-by-Phase basis for each final plat shall be provided by the Developer, Developer Affiliates or Permitted Transferees as required by the City Ordinances. The Developer, Developer Affiliates or Permitted Transferees shall provide an escrow bond for the final plat of the Project, which

security shall be reduced periodically upon written request by the Developer and proportionately in a timely manner as such improvements are built by the Developer and are thereafter inspected and approved by the City, following the City's standard practice for such reductions, which inspection and approval shall not be unreasonably withheld, conditioned or delayed. In addition, the Developer shall post revegetation/restoration security on passive Open Space areas as reasonably required by the City to secure completion of any required revegetation and restoration to passive Open Space areas constructed upon by the Developer.

c. Required Studies. The City may require further and/or updated soil and geological studies, which the City, in its sole and reasonable discretion, shall determine are necessary.

d. Indemnification and Insurance during Construction.

i. Developer Indemnification. The Developer agrees to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorneys' fees and court costs incurred or arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person (a) which shall occur within the Property during the Developer's construction of infrastructure improvements or occur in connection with any off-site work done for or in connection with the Property and (b) which shall be directly, substantially and proximately named by any negligent or intentional acts of the Developer or its agents, servants, employers, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) the negligent or intentional acts of contractors who are not in the Developer's employ, nor to acts of third parties.

ii. Insurance. During the period from the commencement of work on the Property and ending on the date when all work is inspected and approved by the City, the Developer shall furnish or cause to be furnished to the City by general or subcontractors under the Developer's employ satisfactory certificates of liability insurance from reputable insurance companies evidencing commercial general liability insurance policies in the amount of at least \$1,000,000.00 single limit, naming the City as an additional insured. Developer shall maintain or require all contractors and other employers performing any work on the Property to maintain adequate general liability insurance, worker's compensation insurance and public liability coverage.

e. City and Other Governmental Agency Permits. Before commencement of construction or development of any buildings, structures or other improvements upon any portion of the Property by the Developer, the Developer shall, at its expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental entity having jurisdiction over the Developer's work. The City shall reasonably cooperate with the Developer in seeking to secure such permits from other governmental entities, canal companies, and public or private utility companies.

f. Rights of Access. Representatives of the City shall have a reasonable right of access to the Property and any portion thereof during the period of any construction to inspect or observe any work or proposed development on the Property. For purposes of this provision, “reasonable right of access” shall mean access during normal business hours, or at other such times as necessary to inspect or observe work.

g. Compliance with Law. The Developer shall comply with all applicable federal, state and local laws pertaining to the Developer’s activities in connection with the Property, and any Phase thereof.

h. Inspection and Approval by the City. The City may, at its option, perform periodic inspections and quality assurance tests of any public improvements, such as streets and utilities, being installed and constructed by the Developer or its contractors. No work involving excavations shall be covered until the same has been inspected by the City’s representatives and the representatives of any other entities having jurisdiction over the particular improvements involved. The City shall promptly inspect any such excavations after notice by the Developer. The Developer shall warrant the materials and workmanship of all infrastructure improvements installed by Developer, for a period that is twelve (12) months, or as otherwise provided by Utah law, from and after the date of approval by the City of the improvements in that Phase and commencement of the warranty period. The City shall, at the time of acceptance and/or commencement of the warranty period, if requested by the Developer in writing, provide written confirmation of the date of acceptance and commencement of the warranty period for the improvements for each Phase, and written confirmation of the end of the warranty period.

i. Use and Maintenance during Construction. The Developer covenants and agrees that, during construction, it shall develop the Property for the uses set forth in the Design Guidelines and Project Plan, as restricted and limited by the Agreement. From the commencement of construction until the City’s acceptance of infrastructure improvements constructed by the Developer and the commencement of the warranty period (the “Developer’s Construction Period”), the Developer shall keep the subject portion of the Property free and clear from any unreasonable accumulation of debris, waste materials and any nuisances, and shall make its best efforts to contain its construction debris so as to prevent its scattering, due to reasonably anticipated events of wind and water. The Developer shall likewise keep the streets reasonably free from mud, snow, and erosion debris during the Developer’s Construction Period.

9. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date of this Agreement Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible density, intensity, and general configuration of development established in the Design Guidelines and Project Plan, as supplemented by this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence as of the Effective Date.

b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

10. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder where due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete. Notwithstanding the foregoing, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; war; civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

i. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages as to the defaulting party.

ii. The right to withhold all further approvals, licenses, permits, including building permits, or other rights associated with the Project or development activity as described in this Agreement until such default has been cured.

ii. The right to draw upon any security posted or provided in connection with the Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

11. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Newman Construction  
c/o William Jeff Newman  
13331 S. Redwood Road  
Riverton, UT 84065

With a copy to: James Dunn  
1108 West South Jordan Parkway Ste A  
South Jordan, UT 84095

To the City: City Manager  
Bluffdale City  
14350 South 2200 West  
Bluffdale, UT 84065

With a copy to: Vaughn Pickell  
Bluffdale City Attorney  
14350 South 2200 West  
Bluffdale, UT 84065

All Developer Affiliates and Permitted Transferees shall receive notice in the manner set forth in This Section, and their addresses shall be included in this Agreement at the time that they become parties to this Agreement. Any party may change its address for notice by giving written notice to the other party in accordance with the provisions of this Section.

12. General Term and Conditions.

a. Attorney's Fees. In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or the Project, the prevailing party or parties shall be entitled in addition to the remedies and damages, if any awarded in such proceeding, to recover its or their costs and reasonable attorneys' fees.

b. Integration. This Agreement, together with the Exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the Parties hereto.

c. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

d. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted).

e. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach, by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions

f. No Third Party Rights. The obligations of the Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City, the Developer and any Permitted Transferees or Developer Affiliates.

g. Further Documentation. This Agreement is entered into by the parties with the recognition and -anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate in good faith with respect to all such future agreements.

h. Relationship of Parties. This Agreement does not create any joint venture, partnership; undertaking, business arrangement or fiduciary relationship between the City and the Developer.

i. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on all successors in the ownership of any portion of the Property.

j. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

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

l. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

m. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall

be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement, the Design Guidelines, Project Plan and the City Ordinances.

n. Approval and Authority to Execute. Each of the parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

o. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Project has not been recorded in the Office of the Salt Lake County Recorder within ten (10) years from date of this Agreement (the "Term"), or upon the occurrence of an Event of Default that is not cured as set forth in this Agreement, the City shall have the right, but not the obligation at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (i.e., the Developer, a Permitted Transferee or Developer Affiliate, as the case may be.

ii. Any termination may be effected by the City by giving written notice of intent to terminate to the defaulting party. Whereupon the defaulting party shall have sixty (60) days during which such party shall be given an opportunity to correct any alleged deficiencies and to take appropriate steps to complete its Phase of the Project (or in the case of the Developer, the remainder, of the Project). Such notice and cure period shall be in addition to any notice and cure period provided under Section 14, the "Default" Section., above. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete. In the event of a default by a party other than the Developer, the City shall provide a notice of default to the Developer upon the defaulting party's failure to cure within the notice and cure period and the Developer shall have the right, but not the obligation, to cure such default(s) bring an additional thirty (30) day period or such additional time as reasonably necessary provided that the Developer commences and diligently pursues such cure within the 30-day period. In the event the defaulting party fails to satisfy the concerns of the City with regard to such matters, and the Developer declines in writing to cure such default(s), the City shall be released from any further obligations under this Agreement to the specific defaulting party and the same shall be terminated as to such defaulting party.

iii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner. This Agreement shall remain in full force and effect as to the non-defaulting parties.

13. Developer's Assignment of Ownership or Development of Any Portion of the Project.

a. Assignment of Obligation to Construct the Infrastructure Improvements on Property. The Developer shall not assign its obligation to construct infrastructure improvements to any unaffiliated third party without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve an assignee, the City shall limit its inquiry to whether the proposed assignee has a sufficient amount of development experience and sufficient financial capacity to perform the obligations of the Developer under this Agreement. If the City does not object in writing to a proposed assignment within fifteen (15) calendar days of receiving the Developer's notice of a proposed assignment, the City shall be deemed to have provided consent hereunder. Nothing in this Section shall be construed as limiting the Developer's right to enter into a contract with an unaffiliated third party for the construction or installation of such infrastructure improvements on behalf of the Developer.

b. Sale or Transfer of Parcel(s) Prior to Construction of Project Improvements. The Developer shall not sell or transfer all or any portion of the Property to an unaffiliated third party (each, a "Permitted Transferee") prior to the City's (i) recordation of the final plat(s) for the property subject to the sale or transfer, and (ii) acceptance of the infrastructure improvements for the property subject to the sale or transfer, unless the Developer obtains an assumption by such Permitted Transferee of the Developer's obligations under this Agreement that pertain to the parcel(s) sold or transferred, and, in such event, the Permitted Transferee shall be fully substituted as the "Developer" under this Agreement as to the parcel(s) so sold or transferred, and shall assume the obligations to construct the infrastructure improvements in the Phase(s) acquired, and the party executing this Agreement as the Developer shall be released from any further obligations with respect to this Agreement as to the parcel(s) so sold or transferred. Any default by a Permitted Transferee shall affect the rights, benefits and obligations under the Agreement of such Permitted Transferee only, and not the rights, benefits and obligations under the Agreement retained by the Developer, or transferred, by the Developer to other Permitted Transferees or Developer Affiliates as defined below).

c. Sale or Transfer of Parcels or Lots by Developer after Completion of Project Improvements. The Developer shall not be required to notify the City with regard to the sale or transfer of any platted lot or parcel in the Property after completion of project improvements for a given Phase and purchasers of such platted lots and parcels shall not accede to any of the rights of the Parties hereto. Any conveyances to the City, an entity designated by the City, any other governmental entity or homeowners' association as contemplated in the Design Guidelines and Project Plan and this Agreement shall also be exempt from any notice requirement to the City.

d. Transfer of All or Any Portion of the Property to an Affiliate. Nothing in this Agreement shall be construed as prohibiting the Developer from transferring all or any portion of the Property, or any of its obligations with regard to the construction of infrastructure improvements, to one or more affiliates of the Developer (each, a "Developer Affiliate"). Developer Affiliate means a legal entity whose members or shareholders include some of the same persons or entities as the members of the Developer. In such an event, the Developer shall be entitled to make such transfer upon written notice to the City, provided, that such Developer Affiliate(s) assume the obligations of the Developer under this Agreement that pertain to the property transferred, as evidenced by such Developer Affiliate(s) execution of an assignment and assumption agreement to that effect.

e. Developer's Control Over Remaining Property. In the event of a transfer or sale by the Developer of less than all of the Property, the Developer shall, nevertheless, retain exclusive control over the portions of the Property not sold or transferred, and the transferee(s) shall have no right to control or object to any subsequent amendment of this Agreement, and the Developer may make any modifications thereto without notice to, or the consent of, any such transferee(s).

f. No Transfer of City Obligations. The City shall not have the right to convey, assign or be released from its obligations under this Agreement.

g. Transfer of Assets; Continuing Obligation. If the Developer sells or transfers all or any portion of the Property, then (i) the City shall require the purchaser of the assets to assume the Developer's obligations under this Agreement; and (ii) the City shall be named as third party beneficiary of (and shall be permitted to enforce directly against the purchaser) such assumed obligations.

14. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

15. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

16. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

17. Priority and Subordination. The Developer agrees to use commercially reasonable efforts to obtain subordination from all lenders with liens senior to the encumbrance created by this Agreement on the property.

18. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

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

“CITY”

CITY OF BLUFFDALE

By: \_\_\_\_\_

Derk Timothy

Its: Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

“DEVELOPER”

William Jeff Newman

\_\_\_\_\_

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

On the \_\_\_\_ day of May, 2016, personally appeared before me, Derk Timothy, signer of the foregoing Development Agreement, who duly acknowledged to me that he executed the same.

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

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

On the \_\_\_\_ day of May, 2016, personally appeared before me, William Jeff Newman, signer of the foregoing Development Agreement, who duly acknowledged to me that he executed the same.

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

EXHIBIT A  
PROPERTY

EXHIBIT B  
PROJECT PLAN



**Development Review Committee**

14175 South Redwood Road  
Bluffdale, UT 84065  
801.254.2200(o) 801.446.8642(f) TTY 7-1-1

---

**DRC STAFF REPORT**  
**15 April 2016**

**To:** City of Bluffdale Planning Commission

**Prepared By:** Jennifer Robison, Senior Planner

**Re:** Porter's Point Townhomes Major Change to the Project Plan in Independence

Application No.: 2016-08

Applicant(s): Newman Construction

Project Location: Approximately 14700 South Noell Nelson Drive (1000 W)

General Plan: Mixed Use

Zoning: Mixed Use

Acreage: 4.14 acres

Request: Major change Project Plan approval for a portion of the Independence Master Planned Community – originally shown as the Westgate Development Area.

**SUMMARY & BACKGROUND**

Summary. Subject to the DRC staff's recommendations, the proposed request modifies the project plan for a portion of the Independence at Bluffdale Master Planned Community as it pertains to a portion of the former Westgate Neighborhood. This neighborhood will now be known as the Porter's Point Townhomes Neighborhood. The developer is proposing to replace the portion of the original Westgate Neighborhood plan that they own with a new set of project plan and development agreement documents.

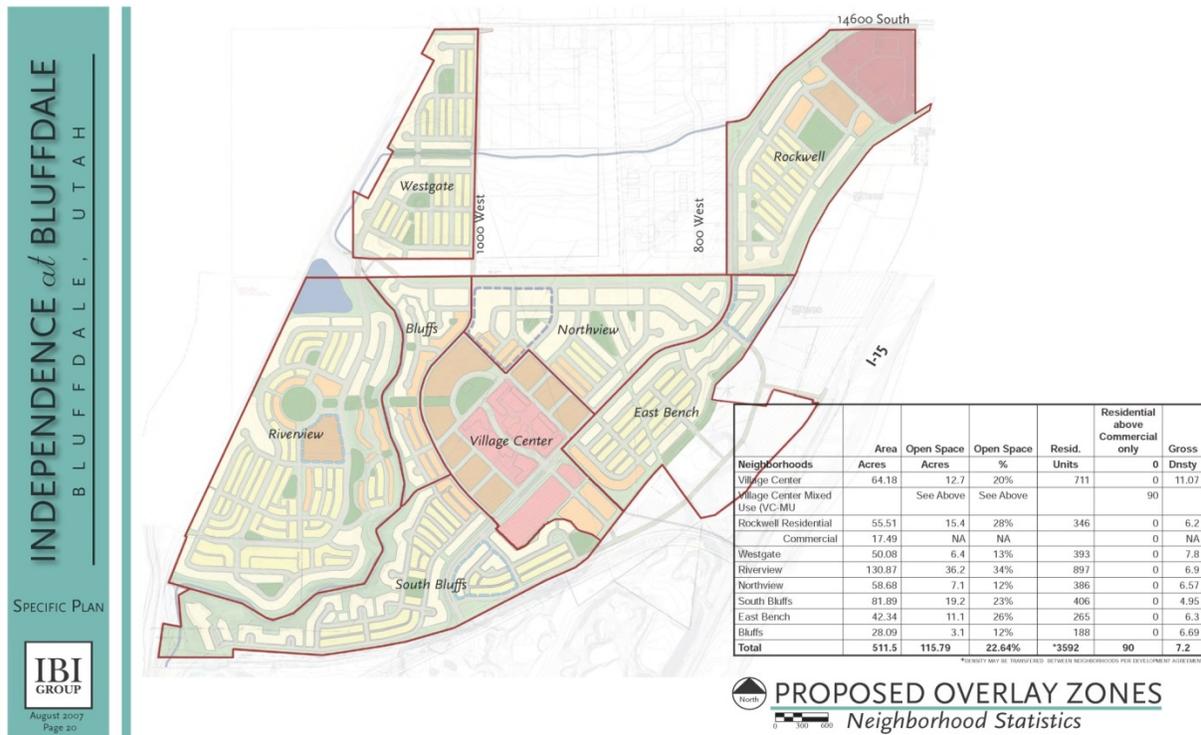
For 4.14 acres in the subject property, the developer is proposing 32 townhome units, along with an overall 0.73 acres of privately owned open space which includes 0.07 acres of a public trail to connect to the City trail system. Overall in this section of the Independence project, the gross residential density is approximately 7.73 units per acre.

In order to fully effectuate the new Porter's Point Townhomes Project Plan, Mark Newman is also working with the City on revising the development agreement for this area. The project plan is a key exhibit to the development agreement and requires a Planning Commission review and recommendation, prior to City Council approval.

Background. The subject property is part of a larger 518.58 acre area which was rezoned on December 14, 2004, to Mixed Use (MU). On April 12, 2005, Independence at Bluffdale received approval of its

project plan. On December 11, 2007, the City executed a DA for the project with Artemis Investments, LLC. The original specific land use plan for the project is depicted in Exhibit A. Other development within the original Independence area, such as that which is controlled by DAI and Mt. Jordan property interests, along with the Marketplace Aclaime at Independence and a portion of this area known as the Westgate Aclaime at Independence developments replaced their specific project plans and development agreements during the last two years. Once adopted, the new provisions of the Porter's Point Project Plan and development agreement will control and replace another portion of the original plans for the Westgate property.

Exhibit A. Original Overall Independence Specific Project Plan



## ANALYSIS

**General Plan.** The previous approvals of the zone changes and development agreement by the City Council were in accordance with General Plan Land Use designation for mixed use. The proposed plan fits within the scope of the mixed use land use designation

**Zoning.** The Mixed Use (MU) zoning on the original Westgate property was approved in conjunction with the original Independence project plan. The adopted intent of the MU zone is to provide a land use pattern that provides for a complimentary and compatible mix of uses and a diversity of dwelling unit types. It is the intent of this Chapter to allow for flexibility and creativity in the arrangement of uses while promoting efficiencies in the delivery of services.

**Development Agreement (DA) and Relevant Exhibits.** The Independence at Bluffdale project and all property within the original 518 acres (including the subject property) is primarily governed by a comprehensive set of project master plans and development guidelines. This contract documents sets forth basic agreed upon provisions which address overall project design, including road, utility,

parcs and trails infrastructure; density and open space requirements; allowed and anticipated land uses; architectural control provisions; reimbursement considerations; plat processing requirements; vesting language; and provisions for transfer of ownership of the project, among other things. The contractual language is being amended along with this key project plan exhibit.

Project Density and Anticipated Uses. The Development Agreement vests certain aspects of neighborhood unit allocation and overall density for the project. Staff has taken the approach of reviewing new proposals in Independence neighborhood by neighborhood to compare as closely as possible with the original neighborhood plans. Exhibit B shows the original Westgate neighborhood. The subject application only covers a portion north of the Westgate Aclaime at Independence neighborhood area and south of the East Jordan Canal shown in the original plan. The original Westgate area allowed for 393 units. The number of units available for the property owned by the Newman family is 147 units for the remainder of the Westgate area not utilized by Westgate Aclaime at Independence. The types of units originally approved were single family detached units either front or alley loaded. The City did allow the unit types to be amended for the Westgate Aclaime at Independence Project Plan and the Newman’s are proposing the unit type to be amended to allow townhomes (attached – front loaded) which would be consistent with the property to the south.

*Exhibit B – Original Westgate Neighborhood Plan*



The following unit and open space analysis has been compiled by the applicant and verified by Staff to be consistent with the original Westgate plan and previous agreements and can be reasonably applied to the new proposal.

**Porter's Point Townhomes  
Concept Plan Statistical Summary**

<b>Land Use</b>	<b>Acres</b>	<b>Residential Density (DU/Ac)</b>	<b>No. of Units</b>
Overall Gross Density	4.14	7.73	32
Townhome Units	2.20	14.54	32
Public Active (Trail)	0.07		
Private Active Open Space	0.66		
Total Active OS	0.73		
Public Street	1.18		

The new project plan contains all relevant standards for future plat and site plan development, with a few recommendations and clarifications as noted in the conditions of approval.

Layout, Road, Access, Parking and Setbacks. The proposed plan will be primarily be accessed from Noell Nelson Drive (1000 West) and on the west side from Chimney Pass Drive to provide connectivity to the Westgate Aclaime neighborhood. All units will access the public street with the exception of 8 units which will be accessed from a 20 foot wide private drive. All driveways for all units are required to be 20 feet in length measured from the public right of way or private drive to the garage.

The off-street requirements will be met by providing 2 spaces within the garage and 2 spaces in the driveway. An additional 5 guest parking spaces are provided at the end of the private drive. Recent discussions with the Planning Commission and a pending ordinance text amendment would require 11 guest parking spaces. The project plan provides an exhibit for parking and snow removal. On street parking is anticipated in various locations throughout the project, similar to other areas within Independence.

Proposed setbacks and design guidelines for the project are found within the project plan. The proposed setbacks conform substantially to the Independence development requirements and address staff's concerns about allowing ample space between the sidewalk and the garage for an additional off street parking option.

Due to constraints with the alignment of the canal and connection to Noell Nelson Drive, the public street cross-section is modified in portions to provide a sidewalk but the park strips have been removed to provide for adequate asphalt widths. The City Engineer has approved this modification due to the topography constraints and the cross-sections are identified in the project plan. Additional safety measures for the street will be conditions of approval of the Preliminary and Final Plat and Site Plan applications.

Open Space and Trails. The original Independence plans present a variety of open space types. This portion of Westgate required 2.3 acres of open space in the original plan. 5.2 acres of public and private open space have provided with the Westgate Aclaime neighborhood exceeding the original requirement. The open spaces provided within this portion of the project is 0.73 of an acre and is intended to be smaller areas provided for the enjoyment of the residents of the development and will be privately owned and maintained by the Homeowner's Association.

There is a portion of trail that will connect the Westgate Aclame neighborhood and provide an access across the canal to the remaining portion of the original Westgate area also owned by the Newman family. Discussions and negotiations to fund the trail connection access over the canal should be addressed in the development agreement. Staff believes this trail connection is vital to allow public access between neighborhoods to enhance the City trail system in Independence and future connections.

Design/Architecture. Another item of specific concern within the original DA for the project was architectural design and theme. The project plan provides some design and architecture details for this project. The Planning Commission will review the design, materials, colors, architectural features, and landscaping as part of the Site Plan Application review. A separate review by the Porter's Point Townhomes Design Review Committee (PPTDRC) is required as the City has done with other projects within the Independence project. Section 3b of the project plan should be revised to discuss when the review of the PPTDRC should be completed. Typically, the approval of the review committee is with the Site Plan Application and prior to a building permit being issued.

Street Trees. The project plan requires street trees in all parkstrips, at a minimum of 2" caliper. The street tree for this project is the Autumn Blaze Maple and an exhibit for tree spacing and planting is provided in the project plan.

#### **DRC REVIEW AND COMMENTS**

On behalf of the City Manager, the City's staff involved in development review and administration meets together as a Development Review Committee (DRC). The DRC generally consists of the City Manager, City Attorney, City Engineer, Public Works Operations Manager, the City Planner, Fire Chief, and other outside consultants as needed from time to time. The comments of the DRC members have been incorporated within this staff report and the recommended conditions of approval for the project.

#### **DRC STAFF RECOMMENDATION**

DRC Staff recommends that the Planning Commission forward a positive recommendation to the City Council for the Porter's Point Townhomes Project Plan, application 2016-08, subject to the following conditions:

1. That this recommendation is based on the April 13, 2016, Porter's Point Townhomes Project Plan and Design Guidelines.
2. That the final ownership and maintenance of open spaces and trails and other landscaped areas (private or public) is determined during the plat approval process and consistent with an approved development agreement.
3. That the Planning Commission is the Land Use Authority to approve the Site Plan Application including, but not limited to; design and architectural elements, building materials and colors, and landscaping.
4. That the project follows all applicable City ordinances throughout platting and development.
5. That the trail connection allows public access and connects neighborhoods.
6. That 6 additional guest parking spaces are provided consistent with a pending ordinance text amendment.
7. That Section 3b of the Project Plan shall be revised to discuss when the review of the PPTDRC should be completed.

This recommendation is based on the following findings:

1. That this application conforms with the original context and intent of the original Independence at Bluffdale Project Plan, to extent practicable, and the requirements of the Mixed Use zone.
2. That the proposed changes are necessary to incorporate market changes and more specific engineering analysis that have occurred since the original approval of the Independence at Bluffdale Master Planned Community.
3. That the proposed plan will not be detrimental to the health, safety, or general welfare of persons or property within the area.

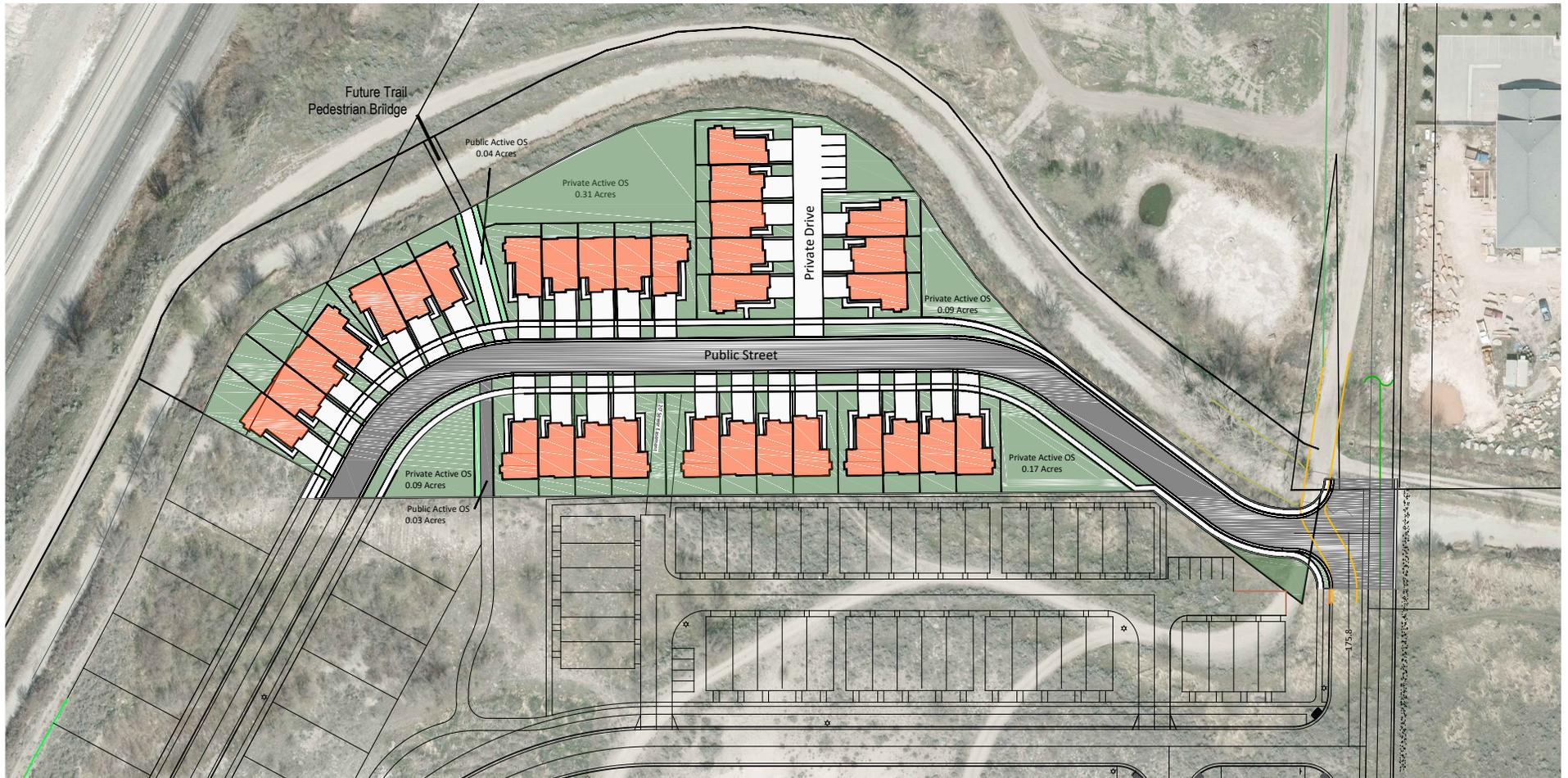
### **MODEL MOTIONS**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Porter’s Point Townhomes Project Plan, application 2016-08, subject to the conditions and based on the findings presented in the staff report dated April 15, 2016, and as modified by the conditions below:”

1. List any additional findings and/or conditions...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Porter’s Point Townhomes Project Plan, application 2016-08, based on the following findings:”

1. List all findings...



# Porters Point Townhomes

## Newman Construction

Acres: 4.14  
 Number of Units: 32

April 11, 2016

**stevemplan** 1750 East Janella Way  
 Sandy, UT 84093  
 Stephen G. McCutchan (801) 557-6945  
 land planning urban design stevemplan@gmail.com

Public Active Open Space (Acres): 0.09  
 Private Active Open Space (Acres): 0.66

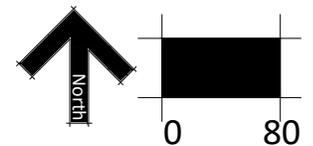


Exhibit B

Porter's Point Townhomes

Major Change Amendment Project Plan

Design Guidelines



Newman Construction, LLC

Attn: Mark Newman

13331 S Redwood Road

Riverton, UT 84065

Prepared by:

**stevemplan, llc**

Steve McCutchan

1750 East Janella Way

Sandy, UT 84093

stevemplan@gmail.com

Draft: April 13, 2016

# 1. MAJOR CHANGE PROJECT PLAN AMENDMENT

Newman Construction proposes a Major Change Project Plan Amendment to obtain approval to construct 32 townhomes on approximately 4.1 acres located within the original Independence at Bluffdale neighborhood. The Project Plan, Exhibit B to a Development Agreement between the property owners and Bluffdale City, will replace the Independence at Bluffdale Development Agreement adopted in December 2007 pertaining to the subject property.

## 2. PORTERS’S POINT CONCEPTUAL PROJECT PLAN

### a. Conceptual Site Plan

Figure 1 is the proposed Porter’s Point Conceptual Site Plan. The Project Plan area includes approximately 4.1 acres located west of Noell Nelson Drive (1000 West) and north of the recently approved Aclaime at Independence Westgate development. The 4.1 acres is located between the northerly boundary of the new Westgate development and the south boundary of the East Jordan Canal. The 4.1 acres does not include the East Jordan Canal.

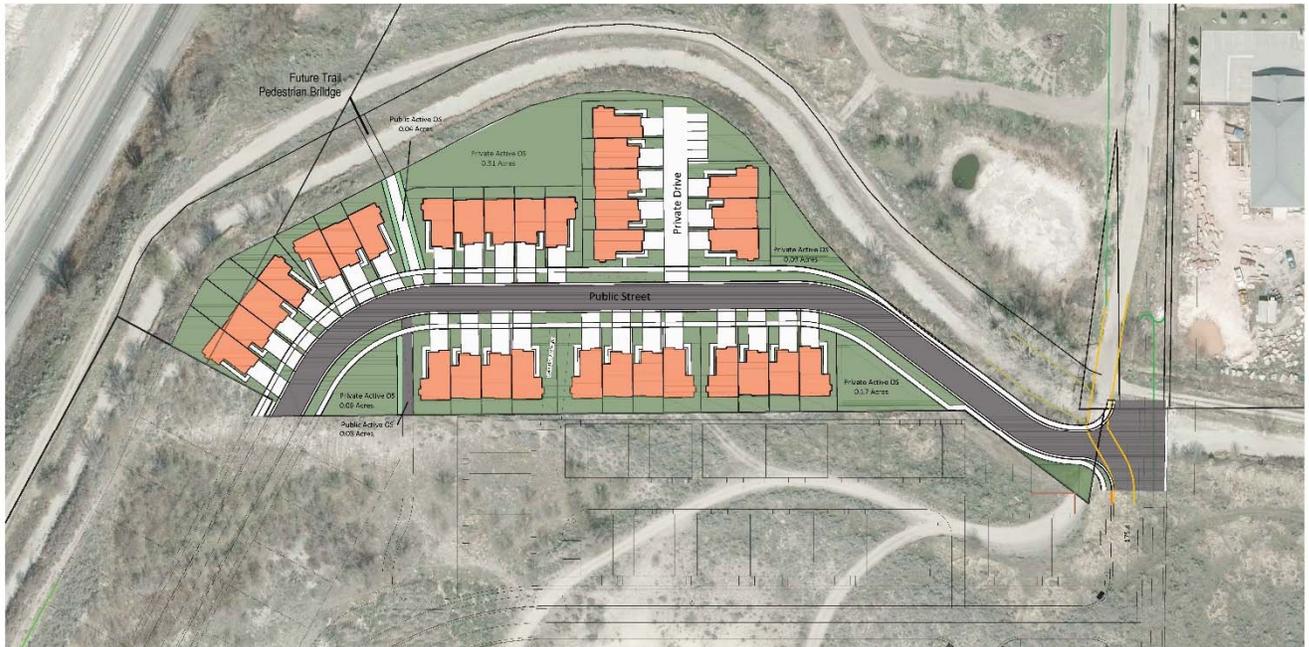
The approximately 4.1 acres is part of a roughly 20.2 parcel owned by the William J & Shirley Newman. It is difficult to determine the exact number of dwelling units permitted by the original Independence at Bluffdale Development Agreement and Project Plan on the 4.1 acres because the original plan proposed to move the canal along the boundary that separates the Newman’s property from the new Westgate development. The concept plan for the Westgate



Neighborhood from the original Project Plan is shown in the right. However, the 32 units is part of the 147 units permitted on the entire property owned by the Newman Family.

It is roughly estimated that the 4.1 acres would have permitted 32 35’ x 70’ single family detached lots. The Conceptual Plan illustrates the development of 32 single family attached units, or townhomes. The units are accessed either by fronting onto the continuation of Chimney Pass Drive, a public street as it exits the Westgate development or on a 24-foot-wide private drive that extends north from the public street. The public street continues east to intersect with Noell Nelson Drive (1000 West).

The Conceptual Plan also illustrates active public and private open spaces and the continuation of the City trail north from the Westgate development



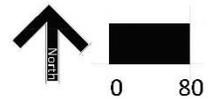
**Porters Point Townhomes**  
Newman Construction

Acres: 4.14  
Number of Units: 32

April 11, 2016

**stevemplan** 1750 East Janella Way  
Sandy, UT 84093  
Stephen G. McCutchan (801) 557-6945  
land planning urban design stevemplan@gmail.com

Public Active Open Space (Acres): 0.09  
Private Active Open Space (Acres): 0.66

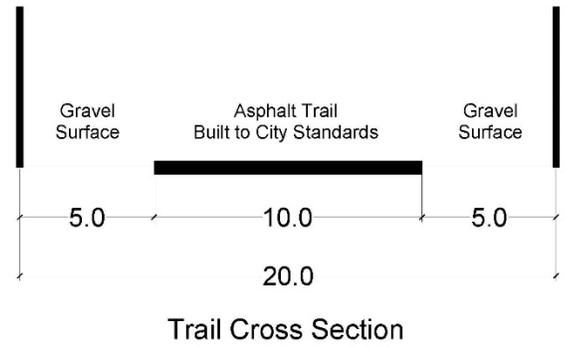


**Table 1**  
**Porter's Point Townhomes**  
**Concept Plan Statistical Summary**

Land Use	Acres	Residential Density (DU/Ac)	No. of Units
Townhome Units	2.20	14.54	32
Public Active (Trail)	0.07		
Private Active (Recreation Areas)	0.66		
Total Active Open Space	0.73		
Public Street	1.18		
<b>Total Open Space</b>	<b>4.14</b>	<b>7</b>	<b>32</b>

**b. Open Space and Trails Plan**

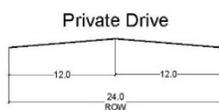
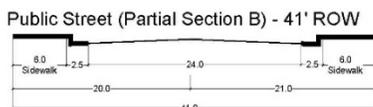
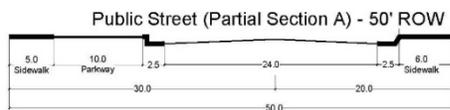
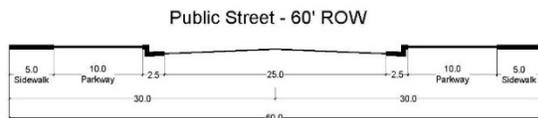
The original Independence Project Plan proposed 1.3 acres of “Active Open Space” for all of the Newman’s property. Porter’s Point Townhomes proposes 0.07 Acres of Public Active open space within the extension of the trail from the Westgate neighborhood and 0.66 acres of Private Active open space for other open spaces. The connection across the canal will link all of the Newman’s property to the entire Independence trail and park system and the future Jordan School District sites in the Day property. The Public Active open spaces would be owned and maintained by the City. The Private Active open space areas will be owned and maintained by a homeowner’s association. The figure to the right is a conceptual trail cross section.



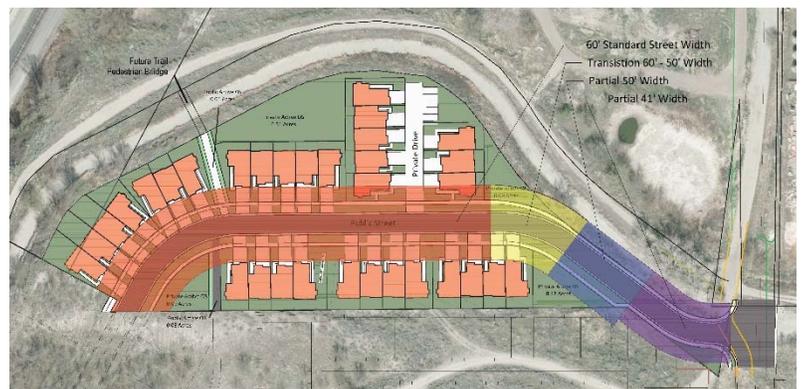
**c. Street Cross Sections**

Porter’s Point Townhomes streets include a public street and a private drive. The public street will be constructed with three similar cross sections because as the street proceeds east toward Noell Nelson Drive, the width of the land between the north boundary of the Westgate development and the prescriptive easement of the East Jordan Canal narrows from 60, to 50 and finally to 41 feet immediately prior to the intersection with Noell Nelson Drive. We are proposing to maintain the standard Independence curb to curb section of 30 feet (25 feet of asphalt) for most of the street. The curb section will narrow to 29 feet (24 feet of asphalt) in the 50 foot and 41 foot lengths. In the 50-foot area, the parkway on the north side of the street is deleted and the six-foot sidewalk is placed directly behind the curb. In the 41-foot area, the south side parkway is deleted and the sidewalk moved to the back of curb. The sidewalks are 6 feet on both sides of the street. As a result, the sidewalks are located on both sides of the street for the entire length.

A short, 24-foot-wide private drive is also used to access eight units. There are five off-street parking spaces at the end of the private drive and room for snow removal.



These figures illustrate both the street sections proposed and the location of the varying public street sections.



#### d. On-Street and Off-Street Parking and Snow Removal

Porter's Point Townhomes is primarily served by a public street, the continuation of Chimney Pass Way. Therefore, it will have both on-street and off-street parking. On street parking is allowed where permitted by City ordinance. The figure at right shows that there are 38 on-street parking spaces available on Chimney Pass Way (shown in red).



Each unit has an enclosed two car garage and a minimum 20 foot or longer driveway. Therefore, each unit also has four off-street parking spaces available, or two guest parking spaces per unit. There are also five off-street parking spaces at the end of the private drive. The total number of guest parking spaces (on-street parking, driveways and dedicated parking spaces) is 107, or 3.34 guest spaces per unit.

Snow removal of the private drive can be stored at the end of the private drive in HOA maintained private open space areas.

### 3. DESIGN GUIDELINES

Porter's Point Townhomes proposes a single unit type, a front loaded, two story townhome. Variety in the appearance of the townhomes will be achieved by both varying the unit mix within buildings and varying the number of units per building. The figure to the right is a conceptual perspective view of the front elevation of a typical building.



#### a. Setbacks

- (1) Front yard setbacks shall be a minimum of ten (10) feet. Front accessed garages facing a street shall be setback a minimum of twenty (20) feet either from the back of sidewalk of the edge of the private drive.
- (2) Interior side yard setbacks shall be a minimum of five (5) feet. Sideyards adjacent to a street or alley shall be setback a minimum of ten (10) feet. There shall be a minimum of ten (10) feet between buildings.
- (3) Rear yards shall be setback a minimum of ten (10) feet.

All other development standards shall be subject to the requirements of Section 11-11G-12 Table 2 of the Mixed Use (MU) Zone.

**b. Architectural Guidelines**

As required by the Independence at Bluffdale Development Agreement and Project Plan, Porters Point Townhomes will have architectural guidelines to ensure the quality of the public visible building elevations. The following architectural guidelines shall be used to design and construct the homes.

- Stucco, masonry, fiber cement siding and / or similar construction products shall be used on all exterior walls. No vinyl siding shall be permitted.
- Rear or side facades that are exposed to a street or common open space (excluding the canal area), public or private, shall include additional treatments such as a minimum six (6) inch wood or wood-like window and door surrounds that are painted a complementary color.

All townhome units require approval of the Porter’s Point Townhomes Design Review Committee.

A detailed fence plan including type, construction and locations shall be included with the required Site Plan approval.

**c. Street Tree Plan**

The Autumn Blaze Maple is being planted as the street tree for Chimney Pass Way in the Westgate neighborhood. Therefore, the same tree will be planted on the street continuation within Porters Point Townhomes. The figure below is a conceptual street tree planting plan. It is estimated that 31 street trees can be planted in the neighborhood. All street trees shall be planted as mandated in Bluffdale City Code Title 7 Chapter 4.



The Planning Commission recommendation of approval was based on the Project Plan dated April 13, 2016 with the following conditions:

1. That this recommendation is based on the April 13, 2016, Porter's Point Townhomes Project Plan and Design Guidelines.
2. That the final ownership and maintenance of open spaces and trails and other landscaped areas (private or public) is determined during the plat approval process and consistent with an approved development agreement.
3. That the Planning Commission is the Land Use Authority to approve the Site Plan Application including, but not limited to; design and architectural elements, building materials and colors, and landscaping.
4. That the project follows all applicable City ordinances throughout platting and development.
5. That the trail connection allows public access and connects neighborhoods.
6. That Section 3b of the Project Plan shall be revised to discuss when the review of the PPTDRC should be completed.
7. That the fencing along the canal and the potential of a bridge over the canal, and the corresponding financial obligations for the bridge, be addressed during the negotiation process of the Development Agreement.

In review of the revised Project Plan and Development Agreement, the Council may move to approve the Porter's Point Townhome Major Change as recommended by Staff and Planning Commission.

**PREVIOUS ACTIONS:**

- April 20, 2016: Planning Commission conducted a public hearing and recommended approval of the Major Change and Project Plan **5-0**.

**SUPPORTING DOCUMENTS:**

- Updated Project Plan – dated August 30, 2016
- Development Agreement for the Porter's Point Townhomes
- DRC Staff Report for Planning Commission – dated April 15, 2016

Exhibit B  
Porter's Point Townhomes  
Major Change Amendment Project Plan  
Design Guidelines



Newman Construction, LLC

Attn: Mark Newman

13331 S Redwood Road

Riverton, UT 84065

Revised from 4/13/16

Prepared by:

**stevemplan, llc**

Steve McCutchan

1750 East Janella Way

Sandy, UT 84093

stevemplan@gmail.com

Draft: August 30, 2016

# 1. MAJOR CHANGE PROJECT PLAN AMENDMENT

Newman Construction proposes a Major Change Project Plan Amendment to obtain approval to construct 32 townhomes on approximately **5.83 overall acres and 4.09 net development acres (1.74 acres associated with the East Jordan Canal)** ~~4.1 acres~~ located within the original Independence at Bluffdale's Westgate neighborhood. The Project Plan, Exhibit B to a Development Agreement between the property owners and Bluffdale City, will replace the Independence at Bluffdale Development Agreement adopted in December 2007 pertaining to the subject property.

# 2. PORTERS' POINT CONCEPTUAL PROJECT PLAN

## a. Conceptual Site Plan

Figure 1 is the proposed Porter's Point Conceptual Site Plan. The Project Plan area includes approximately **4.09 net development** ~~4.1~~ acres located west of Noell Nelson Drive (1000 West) and north of the recently approved Aclaime at Independence Westgate development. The **4.09 net development** ~~4.1~~ acres is located between the northerly boundary of the new Westgate development and the south boundary of the East Jordan Canal. The **4.09 net development** ~~4.1~~ acres does not include the East Jordan Canal.

The approximately **4.09 net development** ~~4.1~~ acres is part of a roughly 20.2 parcel owned by the William J & Shirley Newman. It is difficult to determine the exact number of dwelling units permitted by the original Independence at Bluffdale Development Agreement and Project Plan on the **4.09 net development** ~~4.1~~ acres because the original plan proposed to move the canal along the boundary that separates the Newman's property from the new Westgate development. The concept plan for the Westgate Neighborhood from the original Project Plan is shown in the right. However, the 32 units is part of the 147 units permitted on the entire property owned by the Newman Family.



It is roughly estimated that the **4.09 net development** ~~4.1~~ acres would have permitted 32 35' x 70' single family detached lots. The Conceptual Plan illustrates the development of 32 single family attached units, or townhomes. The units are accessed either by fronting onto the continuation of Chimney Pass Drive, a public street as it exits the Westgate development or on a 24-foot-wide private

drive that extends north from the public street. The public street continues east to intersect with Noell Nelson Drive (1000 West).

The Conceptual Plan also illustrates active public and private open spaces and the continuation of the City trail north from the Westgate development

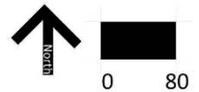


**Porters Point Townhomes**  
Newman Construction

Overall Acres:	5.83
East Jordan Canal Acres:	1.74
Net Development Acres:	4.09
Number of Units:	32
Req'd Off-Street Parking:	75
Garage Parking:	64
Driveway Parking:	64
Parking Spaces:	2
Total Off-Street Parking:	130
Private Active Open Space (Acres):	0.53

August 30, 2016

**stevemplan** 1750 East Janella Way  
Sandy, UT 84093  
Stephen G. McCutchan (801) 557-6945  
land planning urban design stevemplan@gmail.com

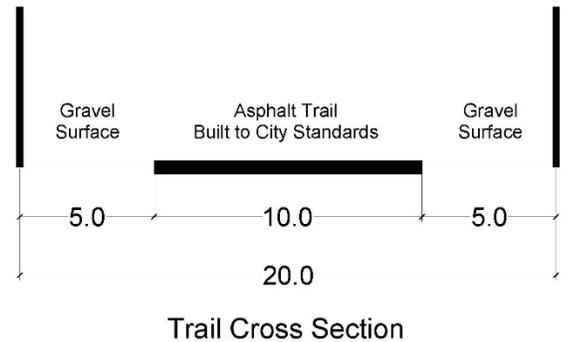


**Table 1**  
**Porter's Point Townhomes**  
**Concept Plan Statistical Summary**

Land Use	Acres	Residential Density (DU/Ac)	No. of Units
Townhome Units	2.40 2.20	13.33 14.54	32
Public Active (Trail)	0.08 0.07		
Private Active (Recreation Areas)	0.45 0.66		
Total Active Open Space	0.53 0.73		
Public Street	1.18		
<b>Total Open Space</b>	<b>1.4</b>	<b>7</b>	<b>32</b>

**b. Open Space and Trails Plan**

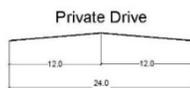
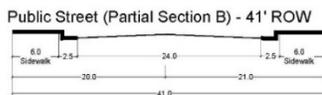
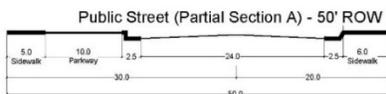
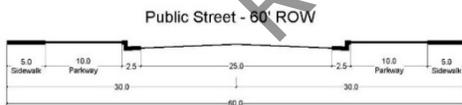
The original Independence Project Plan proposed 1.3 acres of “Active Open Space” for all of the Newman’s property. Porter’s Point Townhomes proposes ~~0.08~~ ~~0.07~~ Acres of ~~Public~~ Active open space within the extension of the trail from the Westgate neighborhood and ~~0.45~~ ~~0.66~~ acres of ~~Private~~ Active open space for other open spaces. The connection across the canal will link all of the Newman’s property to the entire Independence trail and park system and the future Jordan School District sites in the Day property. The Public Active open spaces would be owned and maintained by the City. The Private Active open space areas will be owned and maintained by a homeowner’s association. The figure to the right is a conceptual trail cross section.



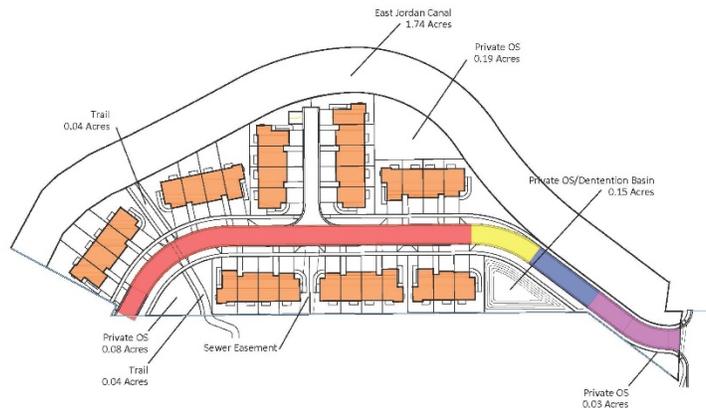
**c. Street Cross Sections**

Porter’s Point Townhomes streets include a public street and a private drive. The public street will be constructed with three similar cross sections because as the street proceeds east toward Noell Nelson Drive, the width of the land between the north boundary of the Westgate development and the prescriptive easement of the East Jordan Canal narrows from 60, to 50 and finally to 41 feet immediately prior to the intersection with Noell Nelson Drive. We are proposing to maintain the standard Independence curb to curb section of 30 feet (25 feet of asphalt) for most of the street. The curb section will narrow to 29 feet (24 feet of asphalt) in the 50 foot and 41 foot lengths. In the 50-foot area, the parkway on the north side of the street is deleted and the six-foot sidewalk is placed directly behind the curb. In the 41-foot area, the south side parkway is deleted and the sidewalk moved to the back of curb. The sidewalks are 6 feet on both sides of the street. As a result, the sidewalks are located on both sides of the street for the entire length.

A short, 24-foot-wide private drive is also used to access eight units. There are five off-street parking spaces at the end of the private drive and room for snow removal.



These figures illustrate both the street sections proposed and the location of the varying public street sections.



**d. On-Street and Off-Street Parking and Snow Removal**

Porter’s Point Townhomes is primarily served by a public street, the continuation of Chimney Pass Way. ~~The City’s recent parking ordinance revisions require a total of 75 off-street parking spaces, two per unit and one guest space for every three units. There are two spaces in each garage or 64 spaces, two spaces in each driveway or 64 spaces and two parking spaces for a total of 130 off-street parking spaces. Therefore, it will have both on street and off street parking. On street parking is allowed where permitted by City ordinance. The figure at right shows that there are 38 on street parking spaces available on Chimney Pass Way (shown in red).~~

~~Each unit has an enclosed two car garage and a minimum 20 foot or longer driveway. Therefore, each unit also has four off street parking spaces available, or two guest parking spaces per unit. There are also five off street parking spaces at the end of the private drive. The total number of guest parking spaces (on street parking, driveways and dedicated parking spaces) is 107, or 3.34 guest spaces per unit.~~

Snow removal of the private drive can be stored at the end of the private drive in HOA maintained private open space areas.

**3. DESIGN GUIDELINES**

Porter’s Point Townhomes proposes a single unit type, a front loaded, two story townhome. Variety in the appearance of the townhomes will be achieved by both varying the unit mix within buildings and varying the number of units per building. The figure to the right is a conceptual perspective view of the front elevation of a typical building.



**a. Setbacks**

- (1) Front yard setbacks shall be a minimum of ten (10) feet. Front accessed garages facing a street shall be setback a minimum of twenty (20) feet either from the back of sidewalk of the edge of the private drive.
- (2) Interior side yard setbacks shall be a minimum of five (5) feet. Sideyards adjacent to a street or alley shall be setback a minimum of ten (10) feet. There shall be a minimum of ten (10) feet between buildings.
- (3) Rear yards shall be setback a minimum of ten (10) feet.

All other development standards shall be subject to the requirements of Section 11-11G-12 Table 2 of the Mixed Use (MU) Zone.

**b. Architectural Guidelines**

As required by the Independence at Bluffdale Development Agreement and Project Plan, Porters Point Townhomes will have architectural guidelines to ensure the quality of the public visible building elevations. The following architectural guidelines shall be used to design and construct the homes.

- Stucco, masonry, fiber cement siding and / or similar construction products shall be used on all exterior walls. No vinyl siding shall be permitted.
- Rear or side facades that are exposed to a street or common open space (excluding the canal area), public or private, shall include additional treatments such as a minimum six (6) inch wood or wood-like window and door surrounds that are painted a complementary color.

All townhome units require approval of the Porter’s Point Townhomes Design Review Committee.

A detailed fence plan including type, construction and locations shall be included with the required Site Plan approval.

**c. Street Tree Plan**

The Autumn Blaze Maple is being planted as the street tree for Chimney Pass Way in the Westgate neighborhood. Therefore, the same tree will be planted on the street continuation within Porters Point Townhomes. ~~The figure below is a conceptual street tree planting plan.~~ It is estimated that 31 street trees can be planted in the neighborhood. All street trees shall be planted as mandated in Bluffdale City Code Title 7 Chapter 4.

Revised from 4/29/16

**DEVELOPMENT AGREEMENT**  
**FOR**  
**PORTER'S POINT TOWNHOMES**

THIS DEVELOPMENT AGREEMENT FOR PORTER'S POINT TOWNHOMES ("Agreement") is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between CITY OF BLUFFDALE, a Utah municipal corporation ("City"), and WILLIAM JEFF NEWMAN. As used herein, the term "Developer" shall include all successors, transferees, affiliates, or assigns. The City and the Developer are hereinafter collectively referred to as "Parties".

**RECITALS**

A. The Developer owns, or has the right to develop, approximately 4.1 acres of ground located within the original Independence at Bluffdale's West Gate neighborhood. Said property is more particularly described in as Exhibit A attached hereto, "Property."

B. At present, that 4.1 acres is subject to a prior Development Agreement entered into between Artemis ("Artemis") Investments LLC, and City on or about December 11, 2007. A Memorandum of the same was filed in the public record on or about July 2, 2008.

C. On February 27, 2007, the City council approved the design guidelines for the Project.

D. Concurrent with the adoption of this Agreement, the parties desire to approve a more detailed project plan and to the extent set forth herein modify all prior concepts, plans, agreements, approvals, or entitlements for the subject property contemplated by this agreement as set forth herein including but not limited to density, general configuration, phasing, review and approval.

E. The City has the authority to enter into this Agreement pursuant to Section 10-9a-102(2) of the Utah Code and Chapter, 11-11G of the Bluffdale City Code, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Project in accordance with the terms and conditions of this Agreement and in accordance with published City Ordinances, rules and regulations, land use policies, standards, and legislative approval conditions.

F. The Parties intend to be bound by the terms of this Agreement as set forth herein.

G. The Parties desire to rescind and revoke and replace any prior Development Agreement affecting the Property with this new Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Property Development. Subject to city council approval, the Project, which consists of the 4.1 acres identified previously herein and as more particularly set forth in attachments hereto, shall be developed as a townhome condominium project consistent with a project plan attached hereto, Bluffdale Zoning Ordinance (Title 11 of the Bluffdale City Code), the Bluffdale Standard Drawings and Specifications, all as adopted by the city and in existence as of the date of this Agreement (“City Ordinances”) as well as design guidelines, project plans and the Agreement itself. For purposes of this Agreement, the term “Bluffdale Standard Drawings and Specifications” shall include the City’s own standards as well as all adopted codes, including but not limited to the Utah State Construction Code, the Utah State Fire Code, American Association of State Highway Transportation Officials (AASHTO) standards, American Public Works (APWA) and American Water Works Association (AWWA) standards, as such standards exist and have been adopted by the City on the Effective Date.

3. Project Plan and Design Guidelines.

a. Approval of the Project Plan. The “Project Plan,” attached hereto and incorporated herein as Exhibit B, establishes the land use and development rights for the Property, maximum density, and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Project Plan, Design Guidelines and City Ordinances. The City’s approval and execution of this Agreement grants the Developer the right to develop the Property and construct the Project in accordance with the uses, maximum densities, approval processes, improvements and general configuration of development set forth in this Agreement, the Project Plan and the Design Guidelines. All Developer submittals must comply with the Design Guidelines and Project Plan. The Design Guidelines and Project Plan may be amended from time to time with the approval of the City Council and the Developer after receiving a recommendation from the Planning Commission as set forth in Section 3(b) below. Developer acknowledges and agrees that the Developer's ability to develop the Property according to the general configurations set forth in the Project Plan and Design Guidelines is contingent upon the Developer providing all engineering required by the City under the Subdivision Ordinance and the City's approval of such engineering in accordance with the City Ordinances.

b. Amendment to Project Plan or Design Guidelines. The Project Plan satisfies the concept plat requirement for each Phase of the Project. If, however, the Developer is seeking to make a Major Change (as defined below), the Developer shall be required to obtain a recommendation from the Planning Commission and approval from the City Council to amend the Design Guidelines and Project Plan. Planning Commission recommendation and City Council approval of an amendment will not require a public hearing. For purposes of this Agreement, a “Major Change” shall be limited to the Developer's request to: (i) change

the width of a road within the Project identified in the Project Plan if a proposed road width in a preliminary or final plat differs from the road widths approved in the Design Guidelines and Project Plan, (ii) change the connection points of collector or major roads within the Project as identified in the Project Plan (i.e. changes in the location of intersections and connection points as opposed to changes in the location or alignment of collector or major roads), or (iii) change the location of land uses within the Project (i.e. single to multifamily).

4. Subdivision of the Property. The Design Guidelines and Project Plan do not constitute a subdivision of the Property or any portion thereof. All subdivisions of the Property shall comply with the City Ordinances, Design Guidelines, Project Plan, and this Agreement. The Developer shall work with the City staff to create the final plat and construction drawings for the Project. The City Staff shall submit the Developer's proposed preliminary and final plats to the Planning Commission for recommendation and the City Council for review and approval at such time as the Developer (i) has submitted a preliminary plat and construction drawings that comply with the Design Guidelines, Project Plan, this Agreement and City Ordinances and (ii) has received initial comments from the Bluffdale City Development Review Committee ("DRC") on its submissions, provided, however, that if the DRC identifies any significant design or engineering problems in the plat or construction drawings, the Developer shall be required to resolve such problems to the reasonable satisfaction of the DRC prior to having the Planning Commission or City Council review such plat and construction drawings. The Developer shall be entitled to apply for approval of the preliminary and final plats concurrently for a subdivision if such plats are documented and approved in accordance with City Ordinances.

5. Development of the Property. The Property shall be developed by the Developer in accordance with the requirements contained herein:

a. Compliance with City Ordinances and Development Standards. The Property, all portions thereof, and each Phase shall be developed in accordance with this Agreement, the Design Guidelines and Project Plan, and the City Ordinances. Specifically, the Project Plan shall act as the concept plan for the Project, and the Design Guidelines establish the specific standards for the Project.

b. Open Space Requirements. The Developer shall preserve certain open space within the Property consistent with the density approved by the City herein (the "Open Space"), and in accordance with the open space plan attached hereto and incorporated herein by reference (the "Open Space Plan"). The Developer shall dedicate or convey by deed to the City such portions of the Open Space identified on the Open Space Plan as City-owned Open Space, as determined by the Parties on plat-by-plat basis. The City, or other appropriate party(ies) approved by the City, shall not use City-owned designated Open Space for purposes inconsistent with the Design Guidelines or City Ordinances. The Open Space shall be maintained by the party holding title thereto (or another party designated by such owner), unless otherwise set forth herein. In addition, the Developer, and all subsequent owners of any Open Space not dedicated to the City, shall enjoy the rights and protections set forth in Sections 57-14-101 through 57-14-401 of the Utah Code.

i. Developer's Reservation of Certain Open Space. The Developer will not retain ownership of any Open Space, except as set forth on the Open Space Plan,

or as otherwise determined by the City on a plat-by-plat basis. The Developer has designated certain Open Space area on the Open Space Plan as areas for construction of community amenities such as recreational amenities to be owned and maintained by homeowners' associations within the Project (the "Amenities"), which Amenities are described in the Project Plan attached hereto.

ii. Construction of Public Improvements by Developer. The Developer shall construct the Amenities contemplated by the Design Guidelines and Project Plan in Open Space areas within the Property to be dedicated to the City or for public use. However, **the Developer shall construct the pedestrian bridge across the East Jordan Canal as shown in the Project Plan.**

iii. Construction of Public improvements by the City. The City shall have the right to construct public improvements and facilities in the City's Open Space areas (those dedicated or conveyed by deed to the City or another entity designated by the City), after their dedication or conveyance to the City (or another entity designated by the City), provided such improvements and facilities are consistent with the Design Guidelines and Project Plan.

iv. No Assessments on Dedicated Open Space; Open Space Governed by Design Guidelines. Any Open Space dedicated or conveyed to the City (or another entity designated by the City) shall be free from regulation and assessment by the Developer, or other homeowners' associations, with the exception that any improvement to such Open Space shall be subject to the Design Guidelines.

v. Private vs. Public Open Space. The parties acknowledge and agree the open space provided for in this townhome project does not constitute public open space and does not offset the need for public parks and recreation facilities elsewhere in the City.

c. Density Requirements:

i. Existing Property in the Project: The maximum number of residential units for the Property is 32.

ii. Additional Property. If the Developer elects to include additional property within the map boundaries of the Project or additional property contiguous or adjacent to the Property in the Project (the "Additional Property"), this Agreement may be amended subject to approval by the City Council to include such Additional Property as part of the Property. The City shall act in good faith in considering the Developer's request for the inclusion of Additional Property in the Project.

d. Roads and Traffic.

i. Street Plan. The general layout and location of the roads as depicted in the Project Plan constitute general guiding principles the Developer shall observe in establishing the layout and design for each Phase of the Project. All roads within the boundaries of the Property shall provide service to the general areas depicted in the

Concept Master Street Plan contained in the Project Plan and shall be constructed with the widths set forth therein, unless changes to the connection points, intersections or widths constituting Minor Changes (i.e., changes not requested by the Developer) are required, in which case roads may be realigned with approval of the City staff. The final location and design of all roads in the Project is subject to the Developer's submission to the City staff of all engineering required under the City Ordinances and the City engineer's review and approval of such engineering. Signage and traffic signals relating to roads constructed by the Developer shall comply with the City Ordinances. Except as otherwise provided in the Design Guidelines and Project Plan or in this Agreement, all required streets within the Project shall be designed and constructed according to the Design Guidelines and Project Plan, and the asphalt and road base requirements set forth in the City Ordinances as of the Effective Date. The Developer agrees to use commercially reasonable efforts to work with the City, the canal companies and relevant utility companies to coordinate the alignment of roads accessing the Property.

ii. Road Dedications. The roads designated in the Project Plan for dedication shall be dedicated to and accepted by the City as required for development and shall be constructed by the Developer according to the Design Guidelines and Project Plan and the asphalt and road base requirements set forth in the City Ordinances as of the Effective Date.

e. Trail Connections: Except as otherwise set forth in this Agreement, the following general provisions shall apply to the trails in the Property.

i. Location: The Project Plan outlines the general location of the trails within the Project. Trails in the Property shall be located in the places approved by the City on the final plats pertaining to a phase.

ii. Construction. The Developer shall construct that portion of the Property designated for trails in the Design Guidelines and Project Plan and/or final plats for a Phase of the Property. The Developer shall construct the trails as part of the improvements for a given Phase as other improvements for such Phase are constructed. Notwithstanding the foregoing, the City shall only require the Developer to construct trails in a specific Phase under construction. All trails shall be constructed and preserved in accordance with the Design Guidelines and Project Plan and the City Ordinances. The Developer shall pay, or cause to be paid, the construction costs for all trails required under the Project Plan.

iii. Maintenance. The Developer shall dedicate by plat recordation or convey by deed to the City (or another entity designated by the City) all trails located on property in the Project, which are at least 10' wide with a base of 8" covered by 3" of AC-20 or better asphalt. The City agrees to accept the dedication of trails that meet the foregoing requirements, and to assume the responsibility for maintaining such trails in the condition the City receives such trails, from and after any applicable warranty period or as otherwise set forth in the City Ordinances as determined by the City on a

plat-by-plat basis. If the Developer constructs portions of the trails on property owned by the City or any third party (after receiving appropriate easements or permission), the City agrees to assume the responsibility for maintaining such trails in the condition the City receives such trails, from and after any applicable warranty period or as otherwise set forth in the City Ordinances. In addition, the Developer, and all subsequent owners of any trails not dedicated to the City, shall enjoy the rights and protections set forth in Sections 57-14-101 through 57-14-401 of the Utah Code.

f. Architectural Requirements; Design Guidelines. Attached to this Agreement as an exhibit and incorporated herein are the Design Guidelines for the Property, which are consistent with the standards set forth in the Mixed Use Zone. All structures erected in the Project shall comply with the Design Guidelines.

g. Utilities and Infrastructure.

i. General. The Developer shall install or pay for the installation by the appropriate entity of the following utilities and infrastructure: roads, curb, gutter, sidewalks, natural gas, underground electrical service, telephone, cable, storm drain, flood control, sewer, and culinary water for each Phase when developed. In addition, the Developer shall install or pay for installation of a secondary water system. Installations shall be done in accordance with the City's design requirements and construction standards in existence as of the Effective Date, and the design and construction standards imposed by the relevant service provider, except as such standards or specifications are modified by the Design Guidelines or Project Plan. The Developer shall be responsible to pay for all required inspections of such improvements by the City (exclusive of any inspections involving third-party cable service providers).

ii. Culinary Water System Development. Developer shall install or pay for the installation of a culinary water supply system to serve the Property in accordance with the final plats submitted by the Developer and approved by the City, which shall include water transmission and distribution lines within the boundaries of the Property. The culinary water system shall connect to and become part of the City's water system, and shall comply with the City Ordinances.

iii. Storm Drain Facilities. The Developer shall install such on-site storm drains and detention ponds within Open Space as required by the standards and specifications of the City in existence as of the Effective Date, and indicated in the final plat for each Phase. Subsequent to the Developer's installation of storm drain improvements within the City and dedication of such improvements to the City, and the expiration of any warranty period, the City shall accept maintenance responsibilities for the storm drain infrastructure in the public street rights-of-way.

iv. Maintenance of Private Drives. The Developer or a homeowners' association shall assume full responsibility for the maintenance of any and all private drives in the Project owned by a homeowners' association or designated as common area. The Developer or a homeowners' association shall also assume full responsibility for snow removal within all private drives in the Project, The Developer or homeowners' association shall contract with a professional maintenance company for such responsibilities, and shall require the snow removal provider to not place snow from any private drive within any public right-of-way. If snow is placed in a public right-of-way, the City shall have the right to remove such snow and bill the relevant homeowners' association for the removal costs.

v. Secondary Water. The Developer shall construct a secondary water system and dedicate the amount of secondary water required by the City Ordinances to the City, to be held in co-ownership with the applicable homeowners' association, so the open space areas of the Project can be irrigated with secondary water.

vii. Dedication or Donation. The Developer shall dedicate to the City all public streets and public improvements in each Phase as such Phase is developed together with public utility easements as required by the City. The City shall accept such dedication as provided herein and agrees that the following dedication language shall be acceptable to the City:

KNOW ALL MEN BY THESE PRESENTS that the undersigned owner(s) of all the hereon described tract of land hereafter known as \_\_\_\_\_, for good and valuable consideration received, does/do hereby dedicate and convey to Bluffdale City for perpetual use of the public, all parcels of land shown on this plat as a public roadway, and does/do hereby dedicate and convey to Bluffdale City and to each public utility providing utility services, non-exclusive easements for installation and maintenance of public utilities over, on under and across the utility easements as shown on this plat. This dedication is subject to any easements of record as of the date hereof.

6. Payment of Fees.

a. General Fees. The Developer, or the subject property owner, as applicable, shall pay to the City in a timely manner all required fees, including, but not be limited, to all subdivision processing and recording fees, and inspection fees, which are due or which may become due in the ordinary course pursuant to the City ordinances. Such fees shall be based on the city's fee schedule as adopted and amended by City ordinance from time to time. The Developer and all owners of any portion of the Property shall have a duty to pay all standard required fees assessed by the City in those amounts which are approved and in effect at the time the fees are actually paid to the City.

7. City Obligations. Subject to compliance with the terms of this Agreement by Developer, Permitted Transferees (as defined in Section 17 below) or Developer Affiliates (as defined in Section 17 below), the City agrees as follows:

a. Public Improvements. To maintain the public improvements associated with the Project and dedicated to the City following satisfactory completion thereof by the Developer, its Permitted Transferees or Developer Affiliates, and acceptance of the same by the City and commencement of the warranty period in the manner set forth in city ordinance or rule.

b. Standard Services. To provide standard municipal services to the project including, without limitation, snow removal on public streets, garbage pickup and disposal, and police and fire protection, subject to the payment of all fees and charges charged or levied therefore by the City that are generally applicable to other similar properties in the City.

c. Culinary Water Service. To provide culinary water service o after culinary water systems are constructed by Developer and inspected and approved by the City.

d. Secondary Water. To provide secondary water service after final plats are recorded and the Secondary Water System is constructed by the Developer and approved by the City, utilizing Draper Irrigation Company as the secondary water service provider.

e. Acceptance of Improvements. To maintain project and/or the Improvements dedicated to the City following satisfactory completion thereof by the Developer, a Permitted Transferee or Developer Affiliate, acceptance of the same by the City, subject to all applicable warranty work required by the Developer under the City's Subdivision Ordinance in existence as of the Effective Date.

8. Construction Standards and Requirements.

a. General. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances as of the Effective Date, the Design Guidelines, Project Plan and this Agreement. Prior to final City release of construction security for the infrastructure on any Phase of the Property, "as built" drawings in both hard copy and electronic format shall be provided without cost to the City. The electronic format of such "as-builts" shall be designated by the City. Improvements and landscaping for the Property shall be constructed at least to the level of the Design Guidelines and Project Plan, The Developer shall cause to be constructed public improvements, as indicated in this Agreement, the Design Guidelines and the Project Plan, as such improvements are required to provide necessary and customary access and municipal services to each Phase of the Property.

b. Security for Infrastructure. Security to guarantee the installation and completion of all public improvements located within the Property on a Phase-by-Phase basis for each final plat shall be provided by the Developer, Developer Affiliates or Permitted Transferees as required by the City Ordinances. The Developer, Developer Affiliates or Permitted Transferees shall provide an escrow bond for the final plat of the Project, which

security shall be reduced periodically upon written request by the Developer and proportionately in a timely manner as such improvements are built by the Developer and are thereafter inspected and approved by the City, following the City's standard practice for such reductions, which inspection and approval shall not be unreasonably withheld, conditioned or delayed. In addition, the Developer shall post revegetation/restoration security on passive Open Space areas as reasonably required by the City to secure completion of any required revegetation and restoration to passive Open Space areas constructed upon by the Developer.

c. Required Studies. The City may require further and/or updated soil and geological studies, which the City, in its sole and reasonable discretion, shall determine are necessary.

d. Indemnification and Insurance during Construction.

i. Developer Indemnification. The Developer agrees to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorneys' fees and court costs incurred or arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person (a) which shall occur within the Property during the Developer's construction of infrastructure improvements or occur in connection with any off-site work done for or in connection with the Property and (b) which shall be directly, substantially and proximately named by any negligent or intentional acts of the Developer or its agents, servants, employers, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) the negligent or intentional acts of contractors who are not in the Developer's employ, nor to acts of third parties.

ii. Insurance. During the period from the commencement of work on the Property and ending on the date when all work is inspected and approved by the City, the Developer shall furnish or cause to be furnished to the City by general or subcontractors under the Developer's employ satisfactory certificates of liability insurance from reputable insurance companies evidencing commercial general liability insurance policies in the amount of at least \$1,000,000.00 single limit, naming the City as an additional insured. Developer shall maintain or require all contractors and other employers performing any work on the Property to maintain adequate general liability insurance, worker's compensation insurance and public liability coverage.

e. City and Other Governmental Agency Permits. Before commencement of construction or development of any buildings, structures or other improvements upon any portion of the Property by the Developer, the Developer shall, at its expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental entity having jurisdiction over the Developer's work. The City shall reasonably cooperate with the Developer in seeking to secure such permits from other governmental entities, canal companies, and public or private utility companies.

f. Rights of Access. Representatives of the City shall have a reasonable right of access to the Property and any portion thereof during the period of any construction to inspect or observe any work or proposed development on the Property. For purposes of this provision, “reasonable right of access” shall mean access during normal business hours, or at other such times as necessary to inspect or observe work.

g. Compliance with Law. The Developer shall comply with all applicable federal, state and local laws pertaining to the Developer’s activities in connection with the Property, and any Phase thereof.

h. Inspection and Approval by the City. The City may, at its option, perform periodic inspections and quality assurance tests of any public improvements, such as streets and utilities, being installed and constructed by the Developer or its contractors. No work involving excavations shall be covered until the same has been inspected by the City’s representatives and the representatives of any other entities having jurisdiction over the particular improvements involved. The City shall promptly inspect any such excavations after notice by the Developer. The Developer shall warrant the materials and workmanship of all infrastructure improvements installed by Developer, for a period that is twelve (12) months, or as otherwise provided by Utah law, from and after the date of approval by the City of the improvements in that Phase and commencement of the warranty period. The City shall, at the time of acceptance and/or commencement of the warranty period, if requested by the Developer in writing, provide written confirmation of the date of acceptance and commencement of the warranty period for the improvements for each Phase, and written confirmation of the end of the warranty period.

i. Use and Maintenance during Construction. The Developer covenants and agrees that, during construction, it shall develop the Property for the uses set forth in the Design Guidelines and Project Plan, as restricted and limited by the Agreement. From the commencement of construction until the City’s acceptance of infrastructure improvements constructed by the Developer and the commencement of the warranty period (the “Developer’s Construction Period”), the Developer shall keep the subject portion of the Property free and clear from any unreasonable accumulation of debris, waste materials and any nuisances, and shall make its best efforts to contain its construction debris so as to prevent its scattering, due to reasonably anticipated events of wind and water. The Developer shall likewise keep the streets reasonably free from mud, snow, and erosion debris during the Developer’s Construction Period.

9. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date of this Agreement Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible density, intensity, and general configuration of development established in the Design Guidelines and Project Plan, as supplemented by this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence as of the Effective Date.

b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

10. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder where due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete. Notwithstanding the foregoing, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; war; civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

i. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages as to the defaulting party.

ii. The right to withhold all further approvals, licenses, permits, including building permits, or other rights associated with the Project or development activity as described in this Agreement until such default has been cured.

ii. The right to draw upon any security posted or provided in connection with the Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

11. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Newman Construction  
c/o William Jeff Newman  
13331 S. Redwood Road  
Riverton, UT 84065

With a copy to: James Dunn  
1108 West South Jordan Parkway Ste A  
South Jordan, UT 84095

To the City: City Manager  
Bluffdale City  
14350 South 2200 West  
Bluffdale, UT 84065

With a copy to: Vaughn Pickell  
Bluffdale City Attorney  
14350 South 2200 West  
Bluffdale, UT 84065

All Developer Affiliates and Permitted Transferees shall receive notice in the manner set forth in This Section, and their addresses shall be included in this Agreement at the time that they become parties to this Agreement. Any party may change its address for notice by giving written notice to the other party in accordance with the provisions of this Section.

12. General Term and Conditions.

a. Attorney's Fees. In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or the Project, the prevailing party or parties shall be entitled in addition to the remedies and damages, if any awarded in such proceeding, to recover its or their costs and reasonable attorneys' fees.

b. Integration. This Agreement, together with the Exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the Parties hereto.

c. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

d. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted).

e. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach, by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions

f. No Third Party Rights. The obligations of the Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City, the Developer and any Permitted Transferees or Developer Affiliates.

g. Further Documentation. This Agreement is entered into by the parties with the recognition and -anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate in good faith with respect to all such future agreements.

h. Relationship of Parties. This Agreement does not create any joint venture, partnership; undertaking, business arrangement or fiduciary relationship between the City and the Developer.

i. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on all successors in the ownership of any portion of the Property.

j. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

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

l. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

m. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall

be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement, the Design Guidelines, Project Plan and the City Ordinances.

n. Approval and Authority to Execute. Each of the parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

o. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Project has not been recorded in the Office of the Salt Lake County Recorder within ten (10) years from date of this Agreement (the "Term"), or upon the occurrence of an Event of Default that is not cured as set forth in this Agreement, the City shall have the right, but not the obligation at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (i.e., the Developer, a Permitted Transferee or Developer Affiliate, as the case may be.

ii. Any termination may be effected by the City by giving written notice of intent to terminate to the defaulting party. Whereupon the defaulting party shall have sixty (60) days during which such party shall be given an opportunity to correct any alleged deficiencies and to take appropriate steps to complete its Phase of the Project (or in the case of the Developer, the remainder, of the Project). Such notice and cure period shall be in addition to any notice and cure period provided under Section 14, the "Default" Section., above. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete. In the event of a default by a party other than the Developer, the City shall provide a notice of default to the Developer upon the defaulting party's failure to cure within the notice and cure period and the Developer shall have the right, but not the obligation, to cure such default(s) bring an additional thirty (30) day period or such additional time as reasonably necessary provided that the Developer commences and diligently pursues such cure within the 30-day period. In the event the defaulting party fails to satisfy the concerns of the City with regard to such matters, and the Developer declines in writing to cure such default(s), the City shall be released from any further obligations under this Agreement to the specific defaulting party and the same shall be terminated as to such defaulting party.

iii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner. This Agreement shall remain in full force and effect as to the non-defaulting parties.

13. Developer's Assignment of Ownership or Development of Any Portion of the Project.

a. Assignment of Obligation to Construct the Infrastructure Improvements on Property. The Developer shall not assign its obligation to construct infrastructure improvements to any unaffiliated third party without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve an assignee, the City shall limit its inquiry to whether the proposed assignee has a sufficient amount of development experience and sufficient financial capacity to perform the obligations of the Developer under this Agreement. If the City does not object in writing to a proposed assignment within fifteen (15) calendar days of receiving the Developer's notice of a proposed assignment, the City shall be deemed to have provided consent hereunder. Nothing in this Section shall be construed as limiting the Developer's right to enter into a contract with an unaffiliated third party for the construction or installation of such infrastructure improvements on behalf of the Developer.

b. Sale or Transfer of Parcel(s) Prior to Construction of Project Improvements. The Developer shall not sell or transfer all or any portion of the Property to an unaffiliated third party (each, a "Permitted Transferee") prior to the City's (i) recordation of the final plat(s) for the property subject to the sale or transfer, and (ii) acceptance of the infrastructure improvements for the property subject to the sale or transfer, unless the Developer obtains an assumption by such Permitted Transferee of the Developer's obligations under this Agreement that pertain to the parcel(s) sold or transferred, and, in such event, the Permitted Transferee shall be fully substituted as the "Developer" under this Agreement as to the parcel(s) so sold or transferred, and shall assume the obligations to construct the infrastructure improvements in the Phase(s) acquired, and the party executing this Agreement as the Developer shall be released from any further obligations with respect to this Agreement as to the parcel(s) so sold or transferred. Any default by a Permitted Transferee shall affect the rights, benefits and obligations under the Agreement of such Permitted Transferee only, and not the rights, benefits and obligations under the Agreement retained by the Developer, or transferred, by the Developer to other Permitted Transferees or Developer Affiliates as defined below).

c. Sale or Transfer of Parcels or Lots by Developer after Completion of Project Improvements. The Developer shall not be required to notify the City with regard to the sale or transfer of any platted lot or parcel in the Property after completion of project improvements for a given Phase and purchasers of such platted lots and parcels shall not accede to any of the rights of the Parties hereto. Any conveyances to the City, an entity designated by the City, any other governmental entity or homeowners' association as contemplated in the Design Guidelines and Project Plan and this Agreement shall also be exempt from any notice requirement to the City.

d. Transfer of All or Any Portion of the Property to an Affiliate. Nothing in this Agreement shall be construed as prohibiting the Developer from transferring all or any portion of the Property, or any of its obligations with regard to the construction of infrastructure improvements, to one or more affiliates of the Developer (each, a "Developer Affiliate"). Developer Affiliate means a legal entity whose members or shareholders include some of the same persons or entities as the members of the Developer. In such an event, the Developer shall be entitled to make such transfer upon written notice to the City, provided, that such Developer Affiliate(s) assume the obligations of the Developer under this Agreement that pertain to the property transferred, as evidenced by such Developer Affiliate(s) execution of an assignment and assumption agreement to that effect.

e. Developer's Control Over Remaining Property. In the event of a transfer or sale by the Developer of less than all of the Property, the Developer shall, nevertheless, retain exclusive control over the portions of the Property not sold or transferred, and the transferee(s) shall have no right to control or object to any subsequent amendment of this Agreement, and the Developer may make any modifications thereto without notice to, or the consent of, any such transferee(s).

f. No Transfer of City Obligations. The City shall not have the right to convey, assign or be released from its obligations under this Agreement.

g. Transfer of Assets; Continuing Obligation. If the Developer sells or transfers all or any portion of the Property, then (i) the City shall require the purchaser of the assets to assume the Developer's obligations under this Agreement; and (ii) the City shall be named as third party beneficiary of (and shall be permitted to enforce directly against the purchaser) such assumed obligations.

14. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

15. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

16. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

17. Priority and Subordination. The Developer agrees to use commercially reasonable efforts to obtain subordination from all lenders with liens senior to the encumbrance created by this Agreement on the property.

18. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

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

“CITY”

CITY OF BLUFFDALE

By: \_\_\_\_\_

Derk Timothy

Its: Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

“DEVELOPER”

William Jeff Newman

\_\_\_\_\_

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

On the \_\_\_\_ day of May, 2016, personally appeared before me, Derk Timothy, signer of the foregoing Development Agreement, who duly acknowledged to me that he executed the same.

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

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

On the \_\_\_\_ day of May, 2016, personally appeared before me, William Jeff Newman, signer of the foregoing Development Agreement, who duly acknowledged to me that he executed the same.

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

EXHIBIT A  
PROPERTY

EXHIBIT B  
PROJECT PLAN



**Development Review Committee**

14175 South Redwood Road  
Bluffdale, UT 84065  
801.254.2200(o) 801.446.8642(f) TTY 7-1-1

---

**DRC STAFF REPORT  
15 April 2016**

**To:** City of Bluffdale Planning Commission

**Prepared By:** Jennifer Robison, Senior Planner

**Re:** Porter's Point Townhomes Major Change to the Project Plan in Independence

Application No.: 2016-08

Applicant(s): Newman Construction

Project Location: Approximately 14700 South Noell Nelson Drive (1000 W)

General Plan: Mixed Use

Zoning: Mixed Use

Acreage: 4.14 acres

Request: Major change Project Plan approval for a portion of the Independence Master Planned Community – originally shown as the Westgate Development Area.

**SUMMARY & BACKGROUND**

Summary. Subject to the DRC staff's recommendations, the proposed request modifies the project plan for a portion of the Independence at Bluffdale Master Planned Community as it pertains to a portion of the former Westgate Neighborhood. This neighborhood will now be known as the Porter's Point Townhomes Neighborhood. The developer is proposing to replace the portion of the original Westgate Neighborhood plan that they own with a new set of project plan and development agreement documents.

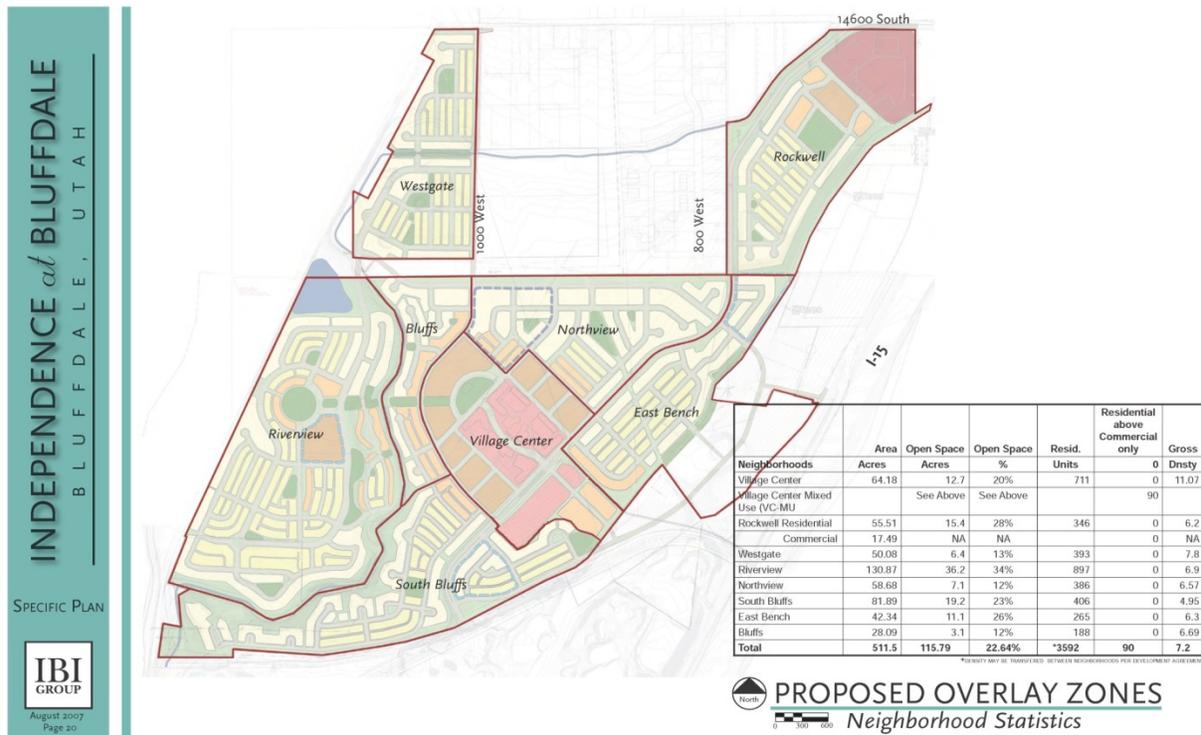
For 4.14 acres in the subject property, the developer is proposing 32 townhome units, along with an overall 0.73 acres of privately owned open space which includes 0.07 acres of a public trail to connect to the City trail system. Overall in this section of the Independence project, the gross residential density is approximately 7.73 units per acre.

In order to fully effectuate the new Porter's Point Townhomes Project Plan, Mark Newman is also working with the City on revising the development agreement for this area. The project plan is a key exhibit to the development agreement and requires a Planning Commission review and recommendation, prior to City Council approval.

Background. The subject property is part of a larger 518.58 acre area which was rezoned on December 14, 2004, to Mixed Use (MU). On April 12, 2005, Independence at Bluffdale received approval of its

project plan. On December 11, 2007, the City executed a DA for the project with Artemis Investments, LLC. The original specific land use plan for the project is depicted in Exhibit A. Other development within the original Independence area, such as that which is controlled by DAI and Mt. Jordan property interests, along with the Marketplace Aclaime at Independence and a portion of this area known as the Westgate Aclaime at Independence developments replaced their specific project plans and development agreements during the last two years. Once adopted, the new provisions of the Porter’s Point Project Plan and development agreement will control and replace another portion of the original plans for the Westgate property.

Exhibit A. Original Overall Independence Specific Project Plan



**ANALYSIS**

General Plan. The previous approvals of the zone changes and development agreement by the City Council were in accordance with General Plan Land Use designation for mixed use. The proposed plan fits within the scope of the mixed use land use designation

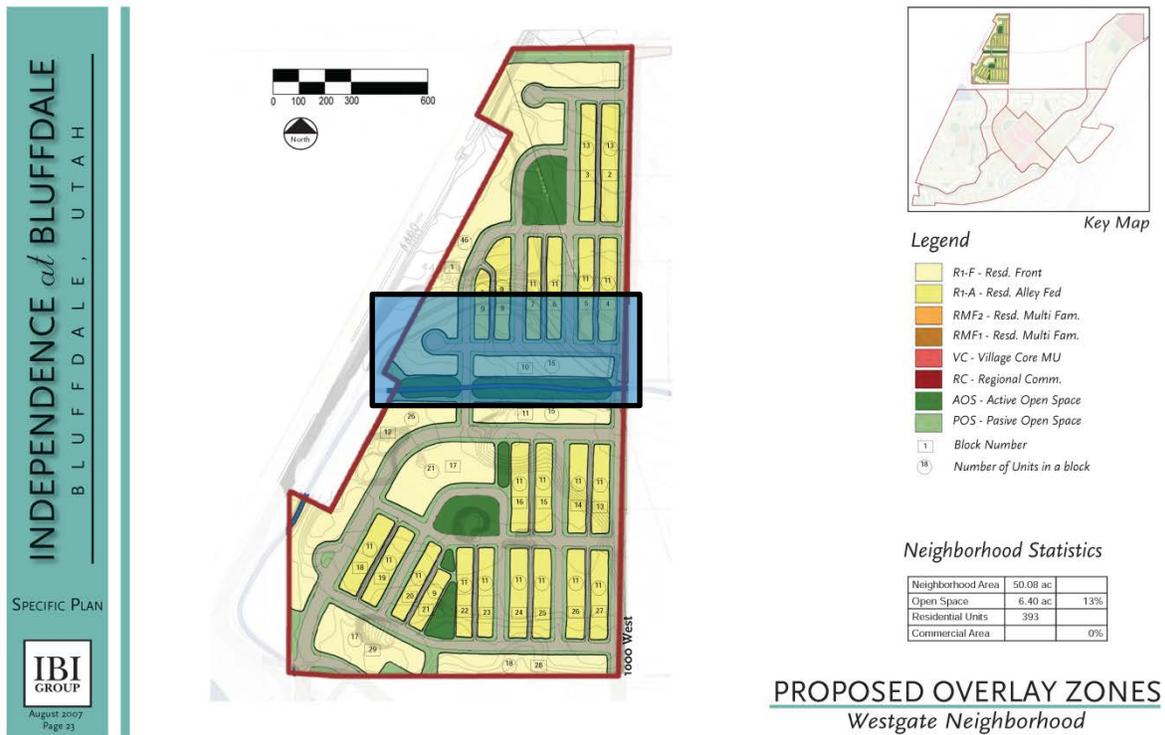
Zoning. The Mixed Use (MU) zoning on the original Westgate property was approved in conjunction with the original Independence project plan. The adopted intent of the MU zone is to provide a land use pattern that provides for a complimentary and compatible mix of uses and a diversity of dwelling unit types. It is the intent of this Chapter to allow for flexibility and creativity in the arrangement of uses while promoting efficiencies in the delivery of services.

Development Agreement (DA) and Relevant Exhibits. The Independence at Bluffdale project and all property within the original 518 acres (including the subject property) is primarily governed by a comprehensive set of project master plans and development guidelines. This contract documents sets forth basic agreed upon provisions which address overall project design, including road, utility,

parcs and trails infrastructure; density and open space requirements; allowed and anticipated land uses; architectural control provisions; reimbursement considerations; plat processing requirements; vesting language; and provisions for transfer of ownership of the project, among other things. The contractual language is being amended along with this key project plan exhibit.

Project Density and Anticipated Uses. The Development Agreement vests certain aspects of neighborhood unit allocation and overall density for the project. Staff has taken the approach of reviewing new proposals in Independence neighborhood by neighborhood to compare as closely as possible with the original neighborhood plans. Exhibit B shows the original Westgate neighborhood. The subject application only covers a portion north of the Westgate Aclaime at Independence neighborhood area and south of the East Jordan Canal shown in the original plan. The original Westgate area allowed for 393 units. The number of units available for the property owned by the Newman family is 147 units for the remainder of the Westgate area not utilized by Westgate Aclaime at Independence. The types of units originally approved were single family detached units either front or alley loaded. The City did allow the unit types to be amended for the Westgate Aclaime at Independence Project Plan and the Newman’s are proposing the unit type to be amended to allow townhomes (attached – front loaded) which would be consistent with the property to the south.

*Exhibit B – Original Westgate Neighborhood Plan*



The following unit and open space analysis has been compiled by the applicant and verified by Staff to be consistent with the original Westgate plan and previous agreements and can be reasonably applied to the new proposal.

**Porter's Point Townhomes  
Concept Plan Statistical Summary**

<b>Land Use</b>	<b>Acres</b>	<b>Residential Density (DU/Ac)</b>	<b>No. of Units</b>
Overall Gross Density	4.14	7.73	32
Townhome Units	2.20	14.54	32
Public Active (Trail)	0.07		
Private Active Open Space	0.66		
Total Active OS	0.73		
Public Street	1.18		

The new project plan contains all relevant standards for future plat and site plan development, with a few recommendations and clarifications as noted in the conditions of approval.

Layout, Road, Access, Parking and Setbacks. The proposed plan will be primarily be accessed from Noell Nelson Drive (1000 West) and on the west side from Chimney Pass Drive to provide connectivity to the Westgate Aclaime neighborhood. All units will access the public street with the exception of 8 units which will be accessed from a 20 foot wide private drive. All driveways for all units are required to be 20 feet in length measured from the public right of way or private drive to the garage.

The off-street requirements will be met by providing 2 spaces within the garage and 2 spaces in the driveway. An additional 5 guest parking spaces are provided at the end of the private drive. Recent discussions with the Planning Commission and a pending ordinance text amendment would require 11 guest parking spaces. The project plan provides an exhibit for parking and snow removal. On street parking is anticipated in various locations throughout the project, similar to other areas within Independence.

Proposed setbacks and design guidelines for the project are found within the project plan. The proposed setbacks conform substantially to the Independence development requirements and address staff's concerns about allowing ample space between the sidewalk and the garage for an additional off street parking option.

Due to constraints with the alignment of the canal and connection to Noell Nelson Drive, the public street cross-section is modified in portions to provide a sidewalk but the park strips have been removed to provide for adequate asphalt widths. The City Engineer has approved this modification due to the topography constraints and the cross-sections are identified in the project plan. Additional safety measures for the street will be conditions of approval of the Preliminary and Final Plat and Site Plan applications.

Open Space and Trails. The original Independence plans present a variety of open space types. This portion of Westgate required 2.3 acres of open space in the original plan. 5.2 acres of public and private open space have provided with the Westgate Aclaime neighborhood exceeding the original requirement. The open spaces provided within this portion of the project is 0.73 of an acre and is intended to be smaller areas provided for the enjoyment of the residents of the development and will be privately owned and maintained by the Homeowner's Association.

There is a portion of trail that will connect the Westgate Aclame neighborhood and provide an access across the canal to the remaining portion of the original Westgate area also owned by the Newman family. Discussions and negotiations to fund the trail connection access over the canal should be addressed in the development agreement. Staff believes this trail connection is vital to allow public access between neighborhoods to enhance the City trail system in Independence and future connections.

Design/Architecture. Another item of specific concern within the original DA for the project was architectural design and theme. The project plan provides some design and architecture details for this project. The Planning Commission will review the design, materials, colors, architectural features, and landscaping as part of the Site Plan Application review. A separate review by the Porter's Point Townhomes Design Review Committee (PPTDRC) is required as the City has done with other projects within the Independence project. Section 3b of the project plan should be revised to discuss when the review of the PPTDRC should be completed. Typically, the approval of the review committee is with the Site Plan Application and prior to a building permit being issued.

Street Trees. The project plan requires street trees in all parkstrips, at a minimum of 2" caliper. The street tree for this project is the Autumn Blaze Maple and an exhibit for tree spacing and planting is provided in the project plan.

#### **DRC REVIEW AND COMMENTS**

On behalf of the City Manager, the City's staff involved in development review and administration meets together as a Development Review Committee (DRC). The DRC generally consists of the City Manager, City Attorney, City Engineer, Public Works Operations Manager, the City Planner, Fire Chief, and other outside consultants as needed from time to time. The comments of the DRC members have been incorporated within this staff report and the recommended conditions of approval for the project.

#### **DRC STAFF RECOMMENDATION**

DRC Staff recommends that the Planning Commission forward a positive recommendation to the City Council for the Porter's Point Townhomes Project Plan, application 2016-08, subject to the following conditions:

1. That this recommendation is based on the April 13, 2016, Porter's Point Townhomes Project Plan and Design Guidelines.
2. That the final ownership and maintenance of open spaces and trails and other landscaped areas (private or public) is determined during the plat approval process and consistent with an approved development agreement.
3. That the Planning Commission is the Land Use Authority to approve the Site Plan Application including, but not limited to; design and architectural elements, building materials and colors, and landscaping.
4. That the project follows all applicable City ordinances throughout platting and development.
5. That the trail connection allows public access and connects neighborhoods.
6. That 6 additional guest parking spaces are provided consistent with a pending ordinance text amendment.
7. That Section 3b of the Project Plan shall be revised to discuss when the review of the PPTDRC should be completed.

This recommendation is based on the following findings:

1. That this application conforms with the original context and intent of the original Independence at Bluffdale Project Plan, to extent practicable, and the requirements of the Mixed Use zone.
2. That the proposed changes are necessary to incorporate market changes and more specific engineering analysis that have occurred since the original approval of the Independence at Bluffdale Master Planned Community.
3. That the proposed plan will not be detrimental to the health, safety, or general welfare of persons or property within the area.

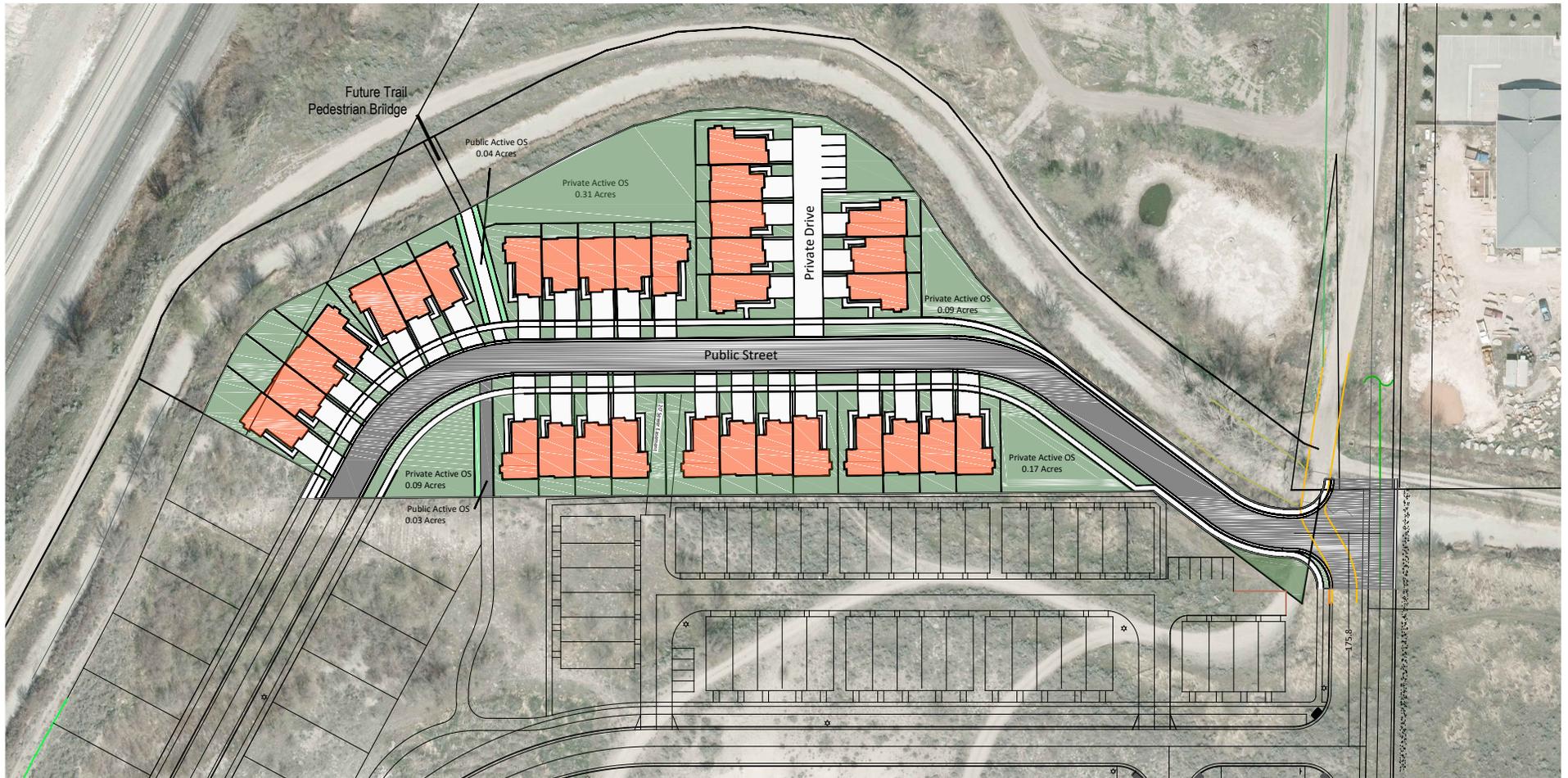
### **MODEL MOTIONS**

Sample Motion for a Positive Recommendation – “I move we forward a positive recommendation to the City Council for the Porter’s Point Townhomes Project Plan, application 2016-08, subject to the conditions and based on the findings presented in the staff report dated April 15, 2016, and as modified by the conditions below:”

1. List any additional findings and/or conditions...

Sample Motion for a Negative Recommendation – “I move we forward a negative recommendation to the City Council for the Porter’s Point Townhomes Project Plan, application 2016-08, based on the following findings:”

1. List all findings...



# Porters Point Townhomes

## Newman Construction

Acres: 4.14  
 Number of Units: 32

April 11, 2016

**stevemplan** 1750 East Janella Way  
 Sandy, UT 84093  
 Stephen G. McCutchan (801) 557-6945  
 land planning urban design stevemplan@gmail.com

 Public Active Open Space (Acres): 0.09  
 Private Active Open Space (Acres): 0.66

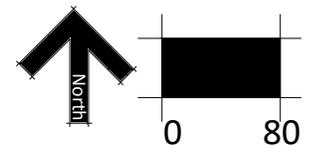


Exhibit B

Porter's Point Townhomes

Major Change Amendment Project Plan

Design Guidelines



Newman Construction, LLC

Attn: Mark Newman

13331 S Redwood Road

Riverton, UT 84065

Prepared by:

**stevemplan, llc**

Steve McCutchan

1750 East Janella Way

Sandy, UT 84093

stevemplan@gmail.com

Draft: April 13, 2016

# 1. MAJOR CHANGE PROJECT PLAN AMENDMENT

Newman Construction proposes a Major Change Project Plan Amendment to obtain approval to construct 32 townhomes on approximately 4.1 acres located within the original Independence at Bluffdale neighborhood. The Project Plan, Exhibit B to a Development Agreement between the property owners and Bluffdale City, will replace the Independence at Bluffdale Development Agreement adopted in December 2007 pertaining to the subject property.

## 2. PORTERS’S POINT CONCEPTUAL PROJECT PLAN

### a. Conceptual Site Plan

Figure 1 is the proposed Porter’s Point Conceptual Site Plan. The Project Plan area includes approximately 4.1 acres located west of Noell Nelson Drive (1000 West) and north of the recently approved Aclaime at Independence Westgate development. The 4.1 acres is located between the northerly boundary of the new Westgate development and the south boundary of the East Jordan Canal. The 4.1 acres does not include the East Jordan Canal.

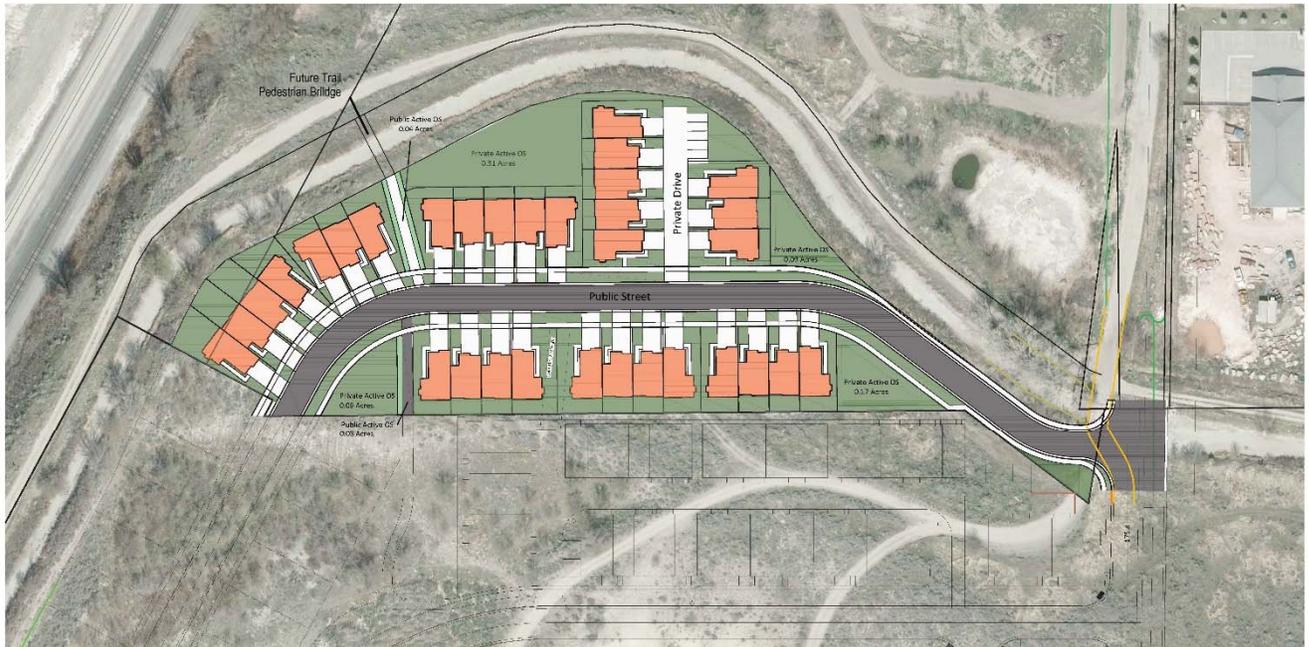
The approximately 4.1 acres is part of a roughly 20.2 parcel owned by the William J & Shirley Newman. It is difficult to determine the exact number of dwelling units permitted by the original Independence at Bluffdale Development Agreement and Project Plan on the 4.1 acres because the original plan proposed to move the canal along the boundary that separates the Newman’s property from the new Westgate development. The concept plan for the Westgate



Neighborhood from the original Project Plan is shown in the right. However, the 32 units is part of the 147 units permitted on the entire property owned by the Newman Family.

It is roughly estimated that the 4.1 acres would have permitted 32 35’ x 70’ single family detached lots. The Conceptual Plan illustrates the development of 32 single family attached units, or townhomes. The units are accessed either by fronting onto the continuation of Chimney Pass Drive, a public street as it exits the Westgate development or on a 24-foot-wide private drive that extends north from the public street. The public street continues east to intersect with Noell Nelson Drive (1000 West).

The Conceptual Plan also illustrates active public and private open spaces and the continuation of the City trail north from the Westgate development



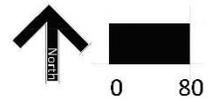
**Porters Point Townhomes**  
Newman Construction

Acres: 4.14  
Number of Units: 32

April 11, 2016

**stevemplan** 1750 East Janella Way  
Sandy, UT 84093  
Stephen G. McCutchan (801) 557-6945  
land planning urban design stevemplan@gmail.com

Public Active Open Space (Acres): 0.09  
Private Active Open Space (Acres): 0.66



**Table 1**  
**Porter's Point Townhomes**  
**Concept Plan Statistical Summary**

Land Use	Acres	Residential Density (DU/Ac)	No. of Units
Townhome Units	2.20	14.54	32
Public Active (Trail)	0.07		
Private Active (Recreation Areas)	0.66		
Total Active Open Space	0.73		
Public Street	1.18		
<b>Total Open Space</b>	<b>4.14</b>	<b>7</b>	<b>32</b>

**b. Open Space and Trails Plan**

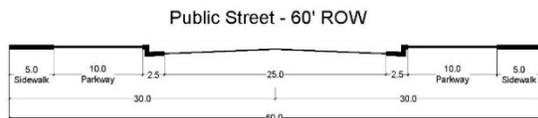
The original Independence Project Plan proposed 1.3 acres of “Active Open Space” for all of the Newman’s property. Porter’s Point Townhomes proposes 0.07 Acres of Public Active open space within the extension of the trail from the Westgate neighborhood and 0.66 acres of Private Active open space for other open spaces. The connection across the canal will link all of the Newman’s property to the entire Independence trail and park system and the future Jordan School District sites in the Day property. The Public Active open spaces would be owned and maintained by the City. The Private Active open space areas will be owned and maintained by a homeowner’s association. The figure to the right is a conceptual trail cross section.



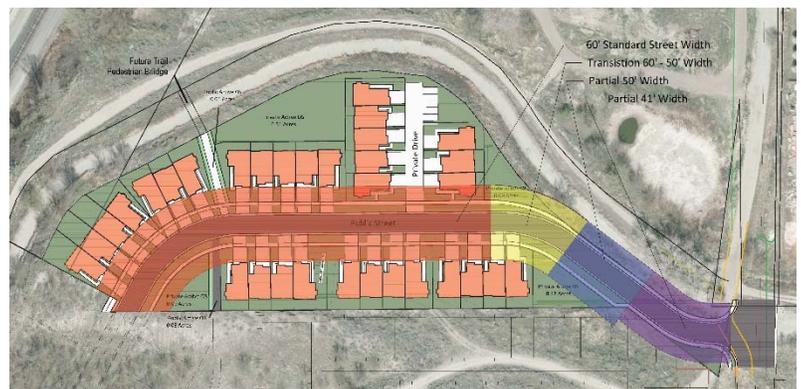
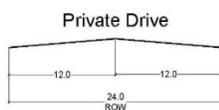
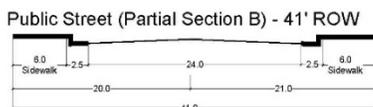
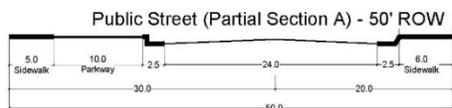
**c. Street Cross Sections**

Porter’s Point Townhomes streets include a public street and a private drive. The public street will be constructed with three similar cross sections because as the street proceeds east toward Noell Nelson Drive, the width of the land between the north boundary of the Westgate development and the prescriptive easement of the East Jordan Canal narrows from 60, to 50 and finally to 41 feet immediately prior to the intersection with Noell Nelson Drive. We are proposing to maintain the standard Independence curb to curb section of 30 feet (25 feet of asphalt) for most of the street. The curb section will narrow to 29 feet (24 feet of asphalt) in the 50 foot and 41 foot lengths. In the 50-foot area, the parkway on the north side of the street is deleted and the six-foot sidewalk is placed directly behind the curb. In the 41-foot area, the south side parkway is deleted and the sidewalk moved to the back of curb. The sidewalks are 6 feet on both sides of the street. As a result, the sidewalks are located on both sides of the street for the entire length.

A short, 24-foot-wide private drive is also used to access eight units. There are five off-street parking spaces at the end of the private drive and room for snow removal.



These figures illustrate both the street sections proposed and the location of the varying public street sections.



#### d. On-Street and Off-Street Parking and Snow Removal

Porter's Point Townhomes is primarily served by a public street, the continuation of Chimney Pass Way. Therefore, it will have both on-street and off-street parking. On street parking is allowed where permitted by City ordinance. The figure at right shows that there are 38 on-street parking spaces available on Chimney Pass Way (shown in red).



Each unit has an enclosed two car garage and a minimum 20 foot or longer driveway. Therefore, each unit also has four off-street parking spaces available, or two guest parking spaces per unit. There are also five off-street parking spaces at the end of the private drive. The total number of guest parking spaces (on-street parking, driveways and dedicated parking spaces) is 107, or 3.34 guest spaces per unit.

Snow removal of the private drive can be stored at the end of the private drive in HOA maintained private open space areas.

### 3. DESIGN GUIDELINES

Porter's Point Townhomes proposes a single unit type, a front loaded, two story townhome. Variety in the appearance of the townhomes will be achieved by both varying the unit mix within buildings and varying the number of units per building. The figure to the right is a conceptual perspective view of the front elevation of a typical building.



#### a. Setbacks

- (1) Front yard setbacks shall be a minimum of ten (10) feet. Front accessed garages facing a street shall be setback a minimum of twenty (20) feet either from the back of sidewalk of the edge of the private drive.
- (2) Interior side yard setbacks shall be a minimum of five (5) feet. Sideyards adjacent to a street or alley shall be setback a minimum of ten (10) feet. There shall be a minimum of ten (10) feet between buildings.
- (3) Rear yards shall be setback a minimum of ten (10) feet.

All other development standards shall be subject to the requirements of Section 11-11G-12 Table 2 of the Mixed Use (MU) Zone.

**b. Architectural Guidelines**

As required by the Independence at Bluffdale Development Agreement and Project Plan, Porters Point Townhomes will have architectural guidelines to ensure the quality of the public visible building elevations. The following architectural guidelines shall be used to design and construct the homes.

- Stucco, masonry, fiber cement siding and / or similar construction products shall be used on all exterior walls. No vinyl siding shall be permitted.
- Rear or side facades that are exposed to a street or common open space (excluding the canal area), public or private, shall include additional treatments such as a minimum six (6) inch wood or wood-like window and door surrounds that are painted a complementary color.

All townhome units require approval of the Porter’s Point Townhomes Design Review Committee.

A detailed fence plan including type, construction and locations shall be included with the required Site Plan approval.

**c. Street Tree Plan**

The Autumn Blaze Maple is being planted as the street tree for Chimney Pass Way in the Westgate neighborhood. Therefore, the same tree will be planted on the street continuation within Porters Point Townhomes. The figure below is a conceptual street tree planting plan. It is estimated that 31 street trees can be planted in the neighborhood. All street trees shall be planted as mandated in Bluffdale City Code Title 7 Chapter 4.



# Agenda Item 6



**Legal Department**  
14350 South 2200 West  
Bluffdale, UT 84065  
(801) 254-2200 Fax (801) 253-3270

---

To: Mayor and City Council Members  
From: Vaughn R. Pickell, AICP, City Attorney  
Date: September 23, 2016  
Re: Ordinance Prohibiting the Discharge of Firearms

---

Mayor and City Council Members:

The State Legislature has granted cities the authority to regulate the discharge of firearms within their city boundaries. Utah Code Ann. § 10-8-47. The City has taken a step-by-step approach to regulation in the past, only doing as much as was felt necessary at the time, trying to balance the interests of property owners, public safety, sportsmen, and enthusiasts. The most recent amendment in 2013 prohibited the discharge of rifles in the City, acknowledging their range of fire. Even without City regulation, it is difficult to legally discharge a firearm within the City due to the State regulations that apply. In 2013, City staff created a map showing the impact of these State regulations. The restrictions due to the State regulations are even more restricted today due to increasing development. It is difficult to enforce the current law by reference to the map and the State regulations.

Sample Motion

I move to approve an Ordinance Amending Section 5-1-2 of the Bluffdale City Code Prohibiting the Discharge of Firearms within the City of Bluffdale, finding that it is in the public interest and will promote the public safety, health, and general welfare.

Sincerely,

Vaughn R. Pickell, AICP  
City Attorney

**CITY OF BLUFFDALE, UTAH**

**ORDINANCE NO. 2016-**

**AN ORDINANCE AMENDING SECTION 5-1-2 OF THE BLUFFDALE CITY CODE PROHIBITING THE DISCHARGE OF FIREARMS WITHIN THE CITY OF BLUFFDALE.**

**WHEREAS** Utah municipalities are granted the power to regulate and prevent the discharge of firearms pursuant to Section 10-8-47 of the Utah Code,

**WHEREAS** the City of Bluffdale has a responsibility to promote the public health, safety and welfare throughout the City, and

**WHEREAS**, following due consideration of relevant information, the Bluffdale City Council has determined that there is a need for an ordinance regulating and preventing the discharge of firearms within the City of Bluffdale;

**NOW, THEREFORE, THE BLUFFDALE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Amendment of Bluffdale City Code Prohibiting the Discharge of Firearms.** Section 1-10-3 of the Bluffdale City Code is hereby amended as follows:

**5-1-2: DISCHARGE OF FIREARMS:**

A. Definitions: Unless the context otherwise indicates, as used in this section:

**DISCHARGE:** To shoot or fire a firearm.

**FIREARM:** Any weapon from which a missile or projectile, such as a single slug or bullet, is hurled by an explosive. The term "firearm" includes, but is not limited to, muzzle loading weapons.

**LOOSE SHOT:** Multiple spherical type projectiles to be discharged from a shotgun.

**MUZZLE LOADING WEAPON:** Rifles, shotguns, pistols or cannons incapable of being loaded through the breech without the use of tools.

**PISTOL:** A small firearm having a stock to fit the hand, and a short barrel, and fired from one hand.

**PROJECTILE:** A missile or missiles projected or thrown by force from a firearm.

**REVOLVER:** A type of pistol having a revolving cylinder in the breech chambered to hold several cartridges that may be fired in succession without reloading.

RIFLE: A firearm having a rifled or spirally grooved bore, usually fired from the shoulder and loaded from the breech.

SHOOT: To discharge a projectile from a firearm.

SHOT: A spherical missile, such as a ball of iron, or a bullet or pellet of lead, to be discharged from a firearm; also, such pellets collectively.

SHOTGUN: A smooth bore gun, either single or double barreled, adapted for the discharge of shot.

B. Discharge Limitations:

1. No person may discharge a ~~rifle~~firearm within the city of Bluffdale.
2. ~~No person shall discharge a firearm, including, but not limited to, a pistol, revolver, shotgun or muzzle loading weapon within the city of Bluffdale:~~
  - a. ~~From an automobile or other vehicle;~~
  - b. ~~From, upon or across any highway;~~
  - c. ~~At any road signs placed upon any highways of the state;~~
  - d. ~~At any communications equipment or property of public utilities, including facilities, lines, poles or devices of transmission or distribution;~~
  - e. ~~At railroad equipment or facilities, including any sign or signal;~~
  - f. ~~Within public parks and/or public buildings, designated camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches; or~~
  - g. ~~Without written permission to discharge the firearm from the owner or person in charge of the property within six hundred feet (600') of:~~
    - (1) ~~A house, dwelling or any other building; or~~
    - (2) ~~Any structure in which a domestic animal is kept or fed, including a barn, poultry yard, corral, feeding pen or stockyard;~~
  - h. ~~In any part of the city, except for the following specific locations: as set forth in appendix A attached to ordinance 2011-07 and on file in the city office.~~

C. Exemptions: This section shall not apply to the discharge of firearms by:

1. A person in defense of self, another or property as permitted by law;
2. A person performing official duties as provided in Utah Code Annotated sections 23-20-1.5 and 76-10-523, or as otherwise provided by law.

D. Penalty: Any person who discharges a firearm in violation of this section shall be guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code.

**Section 2. Effective Date.** This Ordinance shall take effect upon publication or posting, or thirty (30) days after passage, whichever occurs first.

PASSED AND ADOPTED: September 28, 2016.

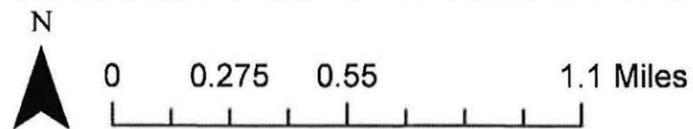
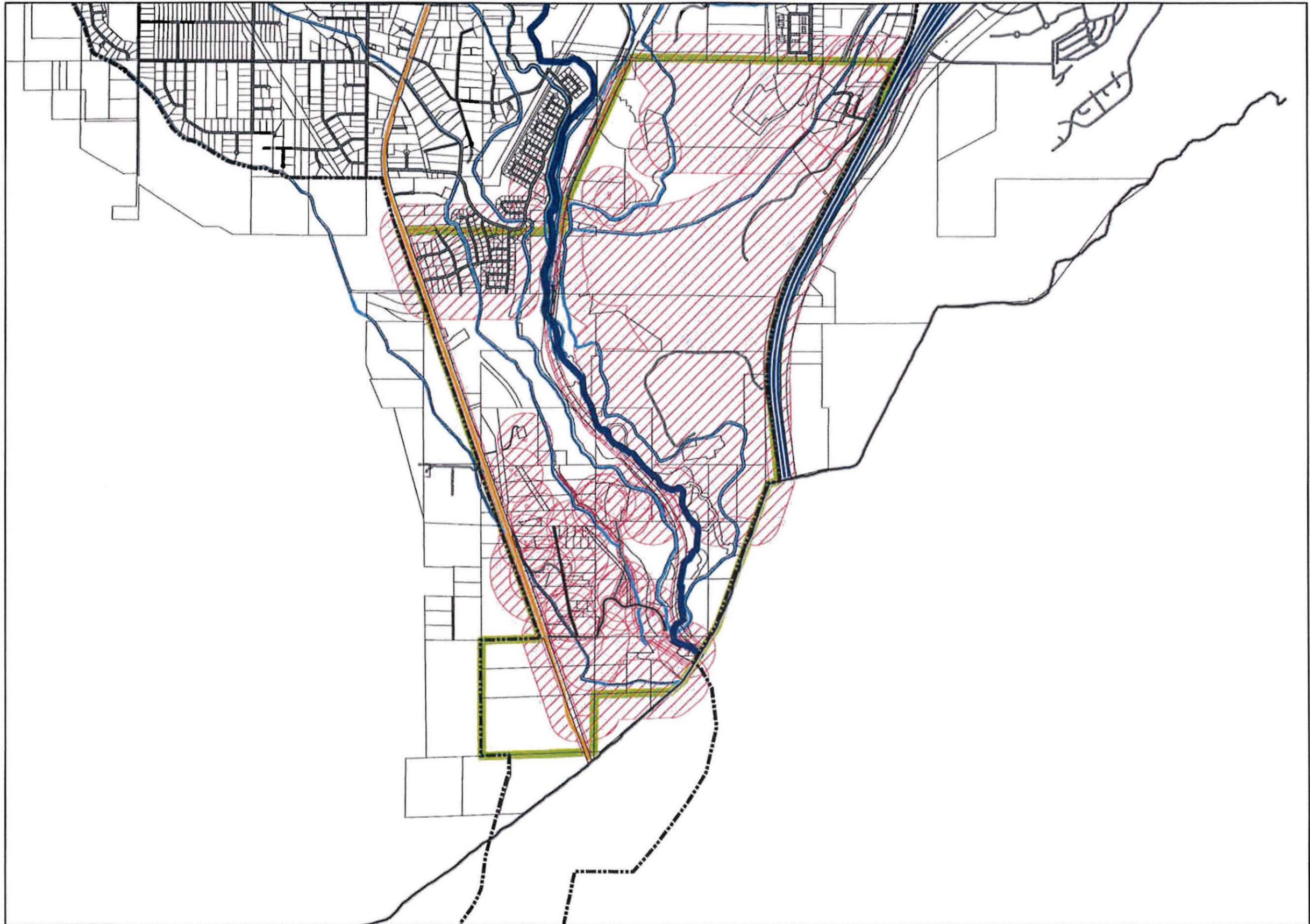
\_\_\_\_\_  
Mayor

Attest:

[seal]

\_\_\_\_\_  
City Recorder

Voting by the City Council:	Yes	No
Councilmember Jackson	_____	_____
Councilmember Nielsen	_____	_____
Councilmember Preece	_____	_____
Councilmember Westwood	_____	_____
Councilmember Wingate	_____	_____



Designated Shooting Area  
(Hatch Designates No Shooting per Utah Gun Laws)



# Agenda Item 7



**Legal Department**  
14350 South 2200 West  
Bluffdale, UT 84065  
(801) 254-2200 Fax (801) 253-3270

---

To: Mayor and City Council Members  
From: Vaughn R. Pickell, AICP, City Attorney  
Date: September 22, 2016  
Re: Ordinance Amending Procurement Policy to Allow Cooperative Purchasing Alliances

---

Mayor and City Council Members:

The City undertakes procurements from various sources. Typically, procurements are based upon the lowest quote, bid, or proposal. Bids are not required in certain circumstances such as when they are procured pursuant to a contract from the State Division of Purchasing. In some cases, even better buying power is available if we purchase from a vendor who has negotiated a contract with a nationwide purchasing alliance. These types of contracts are similar to those negotiated by the State Division of Purchasing, but can potentially yield better prices because they have are negotiated for a nationwide market. I recommend allowing the City to purchase from other cooperative purchasing alliances without the need to obtain bids so long as the cooperative purchasing alliance contract is based upon request for proposals competitive solicitation.

Sample Motion

I move to approve an Ordinance Amending Section 1-10-3 of the Bluffdale City Code Related to Source Selection of Purchase Contracts from Cooperative Purchasing Alliances.

Sincerely,

Vaughn R. Pickell, AICP  
City Attorney

**CITY OF BLUFFDALE, UTAH**

**ORDINANCE NO. 2016-**

**AN ORDINANCE AMENDING SECTION 1-10-3 OF THE BLUFFDALE CITY CODE RELATED TO SOURCE SELECTION OF PURCHASE CONTRACTS FROM COOPERATIVE PURCHASING ALLIANCES.**

**WHEREAS** the City of Bluffdale (“City”) has adopted a Procurement Policy, codified as Title 1, Chapter 10, of the Bluffdale City Code;

**WHEREAS** the City desires to amend its Procurement Policy to allow procurements from cooperative purchasing alliances, and

**WHEREAS**, following due consideration of relevant information, the Bluffdale City Council has determined that procurements from cooperative purchasing alliances shall not require production of other bids so long as the cooperative purchasing alliances have formed their agreements through a request for proposal competitive solicitation;

**NOW, THEREFORE, THE BLUFFDALE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Amendment of Bluffdale City Code Related to Source Selection of Purchase Contracts from Cooperative Purchasing Alliances.** Section 1-10-3 of the Bluffdale City Code is hereby amended as follows:

**1-10-3: SOURCE SELECTION AND CONTRACT FORMATION; GENERAL PROVISIONS:**

...  
B. Procurements Requiring No Bid:

1. Procurements with a dollar amount of five hundred dollars (\$500.00) or less shall not require bids of any type. However, two (2) telephone and/or e-mail quotes are encouraged.
2. Procurements made through the cooperative purchasing contracts administered by the state division of purchasing or through cooperative purchasing alliances provided that such cooperative purchasing alliances have formed their agreements through request for proposal (RFP) competitive solicitation.
3. Procurements made from a single source provider. Documented explanation of single source shall be provided.
4. Procurements required during an emergency, e.g., an imminent threat to the public health, welfare or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to the resolution of the emergency.
5. Procurements shall not be artificially divided so as to constitute a small procurement under this section. Written justification is required for any provisions

in this section for which compliance cannot be met.

...

**Section 2. Effective Date.** This Ordinance shall take effect upon publication or posting, or thirty (30) days after passage, whichever occurs first.

PASSED AND ADOPTED: September 28, 2016.

\_\_\_\_\_  
Mayor

Attest:

[seal]

\_\_\_\_\_  
City Recorder

Voting by the City Council:	Yes	No
Councilmember Jackson	_____	_____
Councilmember Nielsen	_____	_____
Councilmember Preece	_____	_____
Councilmember Westwood	_____	_____
Councilmember Wingate	_____	_____

# Agenda Item 8

**CITY OF BLUFFDALE, UTAH**

**ORDINANCE NO. 2016-**

**AN ORDINANCE ADOPTING SECTION 6-1-5 OF THE BLUFFDALE CITY CODE PROHIBITING IMPACTS TO BRIDGE STRUCTURES.**

**WHEREAS** bridge structures in the City of Bluffdale (“City”) are of extreme value to the public safety and welfare, by allowing efficient circulation and prompt emergency response, while allowing rivers, canals, and railroads to pass by unobstructed,

**WHEREAS** the City of Bluffdale has a responsibility to promote the public health, safety and welfare throughout the City, and

**WHEREAS**, pursuant to Utah Code Ann. § 10-8-50, the City “may provide for the punishment of any person or persons disturbing the peace or good order of the city”;

**NOW, THEREFORE, THE BLUFFDALE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Adoption of Section 6-1-5 of Bluffdale City Code Prohibiting Impacts to Bridge Structures.** The Bluffdale City Code is hereby amended to adopt Section 6-1-5, Impacts to Bridge Structures, as follows:

**6-1-5: Impacts to Bridge Structures:**

A. Definition:

**BRIDGE STRUCTURE:** A structure carrying a road, path, railroad, or canal across a river, ravine, road, railroad, trail, canal or other obstacle.

B. Impact Prohibited: It is unlawful for any person to impact a bridge structure in any way, whether by driving a vehicle, towing a trailer, flying a craft, cycling, or operating any boat or floating craft.

C. Exemptions: This section shall not apply to the repair or replacement of a bridge structure or as otherwise provided by law.

D. Penalty: Any person who violates this section shall be guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code. In addition to any imprisonment, a violator shall pay a fine not less than \$750.

**Section 2. Effective Date.** This Ordinance shall take effect upon publication or posting, or thirty (30) days after passage, whichever occurs first.

PASSED AND ADOPTED: September 28, 2016.

---

Mayor

Attest:

[seal]

---

City Recorder

Voting by the City Council:

Yes    No

Councilmember Jackson	_____	_____
Councilmember Nielsen	_____	_____
Councilmember Preece	_____	_____
Councilmember Westwood	_____	_____
Councilmember Wingate	_____	_____

# Agenda Item 9

**CITY OF BLUFFDALE, UTAH**

**RESOLUTION No. 2016-**

**A RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT WITH SALT LAKE COUNTY PROVIDING FOR THE TRANSFER OF UP TO \$1,579,000 OF COUNTY TRANSPORTATION FUNDS TO THE CITY OF BLUFFDALE.**

**WHEREAS**, pursuant to Utah Code Ann. § 72-2-121, provides for the transfer of certain funds from the County of the First Class Highway Projects Fund to Salt Lake County (the “County”) to be used for certain transportation purposes;

**WHEREAS** the County desires to transfer to the City of Bluffdale (“City”) up to \$1,579,000 for planned transportation projects; and

**WHEREAS** Salt Lake County has proposed an interlocal agreement to govern the disbursement of these funds pursuant to the statute;

**NOW, THEREFORE, BE IT RESOLVED BY THE BLUFFDALE CITY COUNCIL AS FOLLOWS:**

**Section 1. Authorization to Interlocal Cooperation Agreement.** The City Council hereby authorizes and directs the Mayor to execute an Interlocal Cooperation Agreement in substantially the same or similar form attached hereto.

**Section 2. Effective Date.** This Resolution shall become effective immediately upon passage.

PASSED AND APPROVED: September 28, 2016.

**CITY OF BLUFFDALE**

\_\_\_\_\_  
Mayor

**ATTEST:**

[seal]

\_\_\_\_\_  
City Recorder

Voting by the City Council:

Yes No

Councilmember Jackson	_____	_____
Councilmember Nielsen	_____	_____
Councilmember Preece	_____	_____
Councilmember Westwood	_____	_____
Councilmember Wingate	_____	_____

**INTERLOCAL COOPERATION AGREEMENT**

*between*

**SALT LAKE COUNTY**

*and*

**BLUFFDALE CITY**

This Interlocal Cooperation Agreement (this “Agreement”) is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “County”) and **BLUFFDALE CITY**, a municipal corporation of the State of Utah (the “City”). The County and the City may each be referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS:**

A. The County and the City are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the “Interlocal Act”), and, as such, are authorized by the Interlocal Act to enter into this Agreement to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers. Additionally, Section 11-13-215 of the Interlocal Act authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, local political subdivisions, or the state.

B. During the 2015 General Session, the State Legislature amended Section 72-2-117.5 of the Utah Transportation Code (Utah Code Ann. §§ 72-1-101 *et seq.*) to provide corridor preservation funds to local counties for disbursement to various cities and governmental entities, as recommended and endorsed by a council of governments (hereinafter “Corridor Preservation Funds”).

C. By letter dated August 29, 2016, the Salt Lake County Council of Governments (COG), an association of local governments in Salt Lake County, requested that the County Council approve its recommended distribution to the City from the Salt Lake County Corridor Preservation Fund to enable the City to purchase the last remaining parcels needed for the construction of Porter Rockwell Boulevard located in the southern portion of the Salt Lake Valley.

D. The County and the City now desire to enter into this Agreement providing for the transfer of One Million Five Hundred Seventy-Nine Thousand Dollars and No Cents (\$1,579,000.00) of Corridor Preservation Funds to the City to be used by the City as provided in this Agreement and in accordance with Section 72-2-117.5 of the Utah Transportation Code.

## **A G R E E M E N T:**

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

### **ARTICLE 1 - DISBURSEMENT OF COUNTY TRANSPORTATION FUNDS**

1.1. County Transportation Funds. The County shall allocate and disburse One Million Five Hundred Seventy-Nine Thousand Dollars and No Cents (\$1,579,000.00) of Corridor Preservation Funds to the City from the Salt Lake County Corridor Preservation Fund, all on the terms and subject to the conditions of this Agreement.

1.2. City. The City shall use the Corridor Preservation Funds allocated and disbursed to it under this Agreement (a) for the purpose of acquiring the last remaining parcels needed for the construction of Porter Rockwell Boulevard located in the southern portion of the Salt Lake Valley, and (b) in accordance with Section 72-2-117.5 of the Utah Transportation Code and all other applicable federal, state and local laws, rules and regulations.

### **ARTICLE 2 — COVENANTS AND AGREEMENTS**

2.1. Indemnification and Liability.

(a) Liability. Both Parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann. §§ 63G-7-101 *et seq.* (the “Immunity Act”). Neither Party waives any defenses or limits of liability available under the Immunity Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(b) Indemnification. The City agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third Parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of (i) the City’s breach of this Agreement; (ii) any acts or omissions of or by the City, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or (iii) any improper use of the Corridor Preservation Funds. The City agrees that its duty to defend and indemnify the County under this Agreement includes all attorney’s fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of the County. The City further agrees that the City’s indemnification obligations in this Section 5.1 will survive the expiration or termination of this Agreement.

2.2. Recordkeeping. The City agrees to maintain its books and records in such a way that any Corridor Preservation Funds received from the County will be shown separately on the City’s books. The City shall maintain records adequate to identify the use of the Corridor

Preservation Funds for the purposes specified in this Agreement. The City shall make its books and records available to the County at reasonable times.

2.3. Assignment and Transfer of Corridor Preservation Funds. The City shall not assign or transfer its obligations under this Agreement nor its rights to the Corridor Preservation Funds under this Agreement without prior written consent from the County. The City shall use the Corridor Preservation Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

### **ARTICLE 3 – DEFAULTS AND REMEDIES**

3.1. City Event of Default. The occurrence of any one or more of the following shall constitute an “Event of Default” as such term is used herein:

(a) Failure of the City to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the City on or before the expiration of a sixty (60) day period (or, if the County approves in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such longer period as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be cured within 60 days) commencing upon the County’s written notice to the City of the occurrence thereof.

3.2. County’s Remedies in the Event of Default. Upon the occurrence of any Event of Default, the County may, in its sole discretion, and in addition to all other remedies conferred upon the County by law or equity or other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) Withhold disbursement of Corridor Preservation Funds to the City; and/or
- (b) Reduce the amount of any future disbursement of Corridor Preservation Funds to the City by the amount incurred by the County to cure such default; and/or
- (c) Terminate this Agreement.

### **ARTICLE 4 – MISCELLANEOUS**

4.1. Interlocal Cooperation Act. In satisfaction of the requirements of the Interlocal Act in connection with this Agreement, the Parties agree as follows:

- (a) This Agreement shall be approved by each Party pursuant to Section 11-13-202.5 of the Interlocal Act.
- (b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with Section 11-13-202.5 of the Interlocal Act.

(c) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Interlocal Act.

(d) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

(e) No separate legal entity is created by the terms of this Agreement. Pursuant to Section 11-13-207 of the Interlocal Act, to the extent this Agreement requires administration other than as set forth herein, the County Mayor and the City Mayor are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

4.2. Term of Agreement. This Agreement shall take effect immediately upon the completion of the following: (a) the approval of the Agreement by the governing bodies of the County and the City, including the adoption of any necessary resolutions or ordinances by the County and the City authorizing the execution of this Agreement by the appropriate person or persons for the County and the City, respectively, (b) the execution of this Agreement by a duly authorized official of each of the Parties, (c) the submission of this Agreement to an attorney for each Party that is authorized to represent said Party for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5 of the Interlocal Act, and the approval of each respective attorney, and (d) the filing of a copy of this Agreement with the keeper of records of each Party. This Agreement shall terminate upon the earlier of: (a) the date the Parties have performed all of the material obligations described herein, or (b) three (3) years from the date the Agreement is executed by both Parties. The Parties intend that the distribution described herein will be made promptly following execution of this Agreement and that the City will expend such distribution for the purposes stated in this Agreement promptly following receipt.

4.3. Non-Funding Clause.

(a) The County has requested or intends to request an appropriation of Corridor Preservation Funds to be paid to the City for the purposes set forth in this Agreement. If Corridor Preservation Funds are not appropriated and made available beyond December 31 of the county fiscal year in which this Agreement becomes effective, the County's obligation to contribute Corridor Preservation Funds to the City under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to contribute Corridor Preservation Funds to the City in succeeding fiscal years. The County's obligation to contribute Corridor Preservation Funds to the City under this Agreement will terminate and become null and void on the last day of the county fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds are budgeted and appropriated. The Parties agree that such termination of the County's obligation under this Paragraph will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligation under this Paragraph will be without penalty and that no right of action for damages or other relief will accrue to the benefit of the City, its successors, or its assigns as to this

Agreement, or any portion thereof, which may terminate and become null and void.

(b) If Corridor Preservation Funds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify the City of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the City of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which Corridor Preservation Funds were last appropriated for contribution to the City under this Agreement.

4.4. Force Majeure. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. “Event of Force Majeure” means an event beyond the control of the County or the City that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: (i) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (ii) war, acts or threats of terrorism, invasion, or embargo; or (iii) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty (60) days, the County may terminate this Agreement without liability or penalty, effective upon written notice to the City.

4.5. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed to the Parties at their respective addresses.

4.6. Ethical Standards. The City represents that it has not: (a) provided an illegal gift in connection with this Agreement to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07, Salt Lake County Code of Ordinances; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

4.7. Entire Agreement. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

4.8. Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

4.9. Governing Law and Venue. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for the County of Salt Lake, State of Utah.

4.10. No Obligations to Third Parties. The Parties agree that the City's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to the City. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided for under this Agreement.

4.11. Agency. No officer, employee, or agent of the City or the County is intended to be an officer, employee, or agent of the other Party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the officers, employees, or agents of the other Party. The City and the County will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

4.12. No Waiver. The failure of either Party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

4.13. Severability. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

4.14. Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

4.15. Counterparts. This Agreement may be executed in counterparts and all so executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

IN WITNESS WHEREOF, each Party hereby signs this Agreement on the date written by each Party on the signature pages attached hereto.

*[Intentionally Left Blank - Signature Page Follows]*

**INTERLOCAL AGREEMENT - SIGNATURE PAGE FOR THE COUNTY**

**SALT LAKE COUNTY**

By \_\_\_\_\_  
Mayor Ben McAdams or Designee

Dated: \_\_\_\_\_, 20\_\_\_\_

**Administrative Approval:**

By \_\_\_\_\_  
Wilf Sommerkorn  
Office of Regional Development

Dated: \_\_\_\_\_, 20\_\_\_\_

***Approved as to Form and Legality:***

By \_\_\_\_\_  
Deputy District Attorney

**INTERLOCAL AGREEMENT – SIGNATURE PAGE FOR CITY**

**BLUFFDALE CITY**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Attest:

\_\_\_\_\_  
\_\_\_\_\_, City Recorder  
Date signed: \_\_\_\_\_

*Approved as to Form and Legality:*

CITY ATTORNEY

By \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_