A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A REIMBURSEMENT AGREEMENT WITH GARDNER JORDAN BLUFFS, L.C.

WHEREAS, Gardner Jordan Bluffs, L.C. ("Developer") is the owner of a parcel of real property located within the Jordan Bluffs Subdivision in Midvale City, Salt Lake County, Utah;

WHEREAS, The Jordan Bluffs Subdivision is located within the project area covered by the Jordan Bluffs Project Area Redevelopment Plan adopted by the City on August 10, 2004;

WHEREAS, Developer is developing portions of the Jordan Bluffs Subdivision pursuant to that certain Amended Master Development Agreement for the Jordan Bluffs Project between Developer and Midvale City ("City"), pursuant to which Developer agreed to construct a portion of the Bingham Junction Boulevard;

WHEREAS, Developer entered into that certain Tax Increment Reimbursement Agreement dated November 9, 2017 (the "TIF Agreement"), with the Redevelopment Agency of Midvale City, a public agency ("Agency"), pursuant to which Agency agreed to reimburse certain costs incurred by Developer in connection with the Jordan Bluffs Subdivision and the construction of a portion of Bingham Junction Boulevard from tax increment generated from the Jordan Bluffs Project;

WHEREAS, The TIF Agreement provides that, if the City or Agency receives funding from the State of Utah for the expansion of Bingham Junction Boulevard, such funding will also be used to reimburse Developer’s costs to construct the portion of Bingham Junction Boulevard;

WHEREAS, The City has or will receive funding from the State of Utah for the construction of the Connector Road in the amount of $6,750,000.00;

WHEREAS, Developer and the City desire to enter into this Agreement to provide for the reimbursement of Developer’s costs to construct the expansion of Bingham Junction Boulevard from the Reimbursement Funds, as set forth below.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve this agreement between Midvale City and Gardner Jordan Bluffs, L.C., and authorizes the Mayor to sign the agreement.

APPROVED AND ADOPTED this 18th day of September 2018.

Robert M. Hale, Mayor

ATTEST:
Rori L. Andreason, MMC
City Recorder
CONNECTOR ROAD REIMBURSEMENT AGREEMENT
(Jordan Bluffs Project Area)

THIS CONNECTOR ROAD REIMBURSEMENT AGREEMENT (this “Agreement”) is made and entered into on September 19, 2018, between MIDVALE CITY, a political subdivision of the State of Utah (the “City”), and GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company (the “Developer”), sometimes collectively referred to as the “Parties,” and individually, as a “Party.”

REcITALS

A. The Developer is the owner of a parcel of real property located in Midvale City, Salt Lake County, Utah, more particularly described on Exhibit A attached hereto and made a part hereof (the “Developer Parcel”).

B. The Developer Parcel is located within the project area covered by the Jordan Bluffs Project Area Redevelopment Plan adopted by the City on August 10, 2004 (the “Jordan Bluffs Project”).

C. Developer is developing the Developer Parcel pursuant to that certain Amended Master Development Agreement for the Jordan Bluffs Project between Developer and the City (the “Development Agreement”), pursuant to which Developer agreed to construct a portion of the Bingham Junction Boulevard (the “Connector Road”).

D. Developer entered into that certain Tax Increment Reimbursement Agreement dated November 9, 2017 (the “TIF Agreement”), with the Redevelopment Agency of Midvale City, a public agency (“Agency”), pursuant to which Agency agreed to reimburse certain costs incurred by Developer in connection with the Jordan Bluffs Project and the Connector Road from tax increment generated from the Jordan Bluffs Project.

E. The TIF Agreement provides that, if the City or Agency receives funding from the State of Utah for the Connector Road, such funding will also be used to reimburse Developer’s costs to construct the Connector Road.

F. The City has or will receive funding from the State of Utah for the construction of the Connector Road in the amount of $6,750,000.00 (the “Reimbursement Funds”).

G. Developer and the City desire to enter into this Agreement to provide for the reimbursement of Developer’s costs to construct the Connector Roads from the Reimbursement Funds, as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions hereby agreed to, and other good and valuable consideration, the Parties hereby agree as follows:
1. **Recitals.** The above Recitals are incorporated herein as material factual context and expressions of intent for this Agreement.

2. **Agreement to Reimburse.** Subject to the terms of this Agreement, and so long as Developer is not in default under the Development Agreement or TIF Agreement beyond all applicable notice and cure periods, the City agrees to reimburse Developer, in an amount equal to the Reimbursement Funds, for all hard and soft costs, including, without limitation, the cost of the land for the Connector Road, incurred by Developer in connection with the construction of the Connector Road.

3. **Supporting Documents.** No Reimbursement Funds shall be paid to Developer until the City receives the following documents:
   
a. Executed contract between Developer and the architect that designed the Connector Road.
   b. Executed contract between Developer and the contractor that constructed Connector Road.
   c. Final plans of Connector Road.

4. **Payment of Reimbursement Funds.** The City agrees to pay the Reimbursement Funds to Developer as follows:
   
a. **Monthly Payments.** Commencing on October 15, 2018, and on the fifteenth (15th) day of each calendar month thereafter until the Final Payment Date, City shall reimburse Developer from the Reimbursement Funds for costs included in Developer’s Reimbursement Report (see #5 below) up to a maximum of $600,000 per month. Any unreimbursed costs shall carry over to the following months until reimbursed and are again subject to the $600,000 monthly maximum amount (other than the payment on the Final Payment Date).
   
b. **Final Payment.** On or before June 30, 2019 (the “Final Payment Date”), the City shall pay Developer all remaining Reimbursement Funds for previously unreimbursed costs included in Developer’s Reimbursement Reports (see #5 below).

5. **Reimbursement Report.** Approval for reimbursement costs require a report that includes the following:
   
a. Document showing progress in construction contract.
   b. Invoice(s) for expenses.
   c. Proof of payment.
   d. Acknowledgement of reduction of TIF reimbursement amount.

6. **Miscellaneous.**
6.1 **Entire Agreement.** This Agreement constitutes the full and entire understanding and agreement among the Parties regarding the matters set forth herein and no party shall be liable or bound to any other Party in any manner by any warranties, representations, or covenants regarding the matters set forth herein except as specifically set forth herein.

6.2 **Successors and Assigns.** Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.3 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Utah without regard to its choice of law provisions.

6.4 **Counterparts.** This Agreement may be executed by facsimile and/or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.6 **Notices.** Unless otherwise provided, all notices and other communications shall be made as set forth in the Development Agreement.

6.7 **Attorney’s Fees.** In the event that any action is filed in relation to this Agreement, the unsuccessful Party in the action shall pay to the successful Party, in addition to all the sums that any party may be called on to pay, a reasonable sum for the successful party’s attorney’s fees.

6.8 **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Parties. Any amendment or waiver effected in accordance with this Section shall be binding upon the successors and assigns of the Parties.

6.9 **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms.
6.10 **Further Assurances.** The Parties each shall execute and deliver such instruments and documents as may be reasonably necessary to carry out the purposes and intent of this Agreement.

[Remainder of Page Intentionally Left Blank]

[Signature Page to Follow]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY: MIDVALE CITY, a political subdivision of the State of Utah

By
Robert M. Hale
Its: Mayor

Attest:
City Recorder

APPROVED: City Attorney

DEVELOPER: GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company, by its Manager

KC Gardner Company, L.C., a Utah limited liability company

By
Christian Gardner
Its Manager
EXHIBIT A

Legal Description of Developer Parcel

LOT 2 JORDAN BLUFFS SUBDIVISION PLAT ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED WITH THE SALT LAKE COUNTY RECORDER’S OFFICE AS INSTRUMENT NO. 12668463.