

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** BROADMEADOW SUBDIVISION - SETTLEMENT AGREEMENT

**SUMMARY:** Bach Homes, the developer of the proposed Broadmeadow Subdivision, requested City contribution for a roundabout.

**FISCAL:**  
**IMPACT:** \$100,000.00 from road capital support funds.

**STAFF RECOMMENDATION:**

Staff recommends that City Council approve the settlement agreement as prepared, after the agreement has been approved to legal form by the City Attorney.

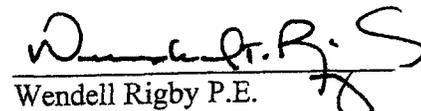
**MOTION RECOMMENDED:**

I move to approve Resolution 14-105 authorizing the Mayor to execute the Settlement, Release and Waiver Agreement between the City of West Jordan and Bach Investments, LLC and Broadmeadow Subdivision, LLC, after the agreement is approved to legal form by the West Jordan City Attorney, and authorizing expenditure of \$100,000.00 of road capital support funds in compliance with the agreement.

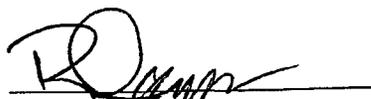
**Prepared by:**

  
Darien Alcorn  
Deputy City Attorney

**Reviewed by:**

  
Wendell Rigby P.E.  
Public Works Director

**Recommended by:**

  
Richard L. Davis  
City Manager

## **BACKGROUND DISCUSSION:**

Among other things, Bach Homes claimed that the requirement for the Broadmeadow Subdivision developer to construct a roundabout at 8200 South and Fall Oak Drive was disproportionate to their traffic impact and an unlawful exaction. West Jordan denied that it was unlawful or disproportionate. Consequently, Bach Homes contacted the Office of the Property Rights Ombudsman for the State of Utah. Representatives of the City and Bach Homes attended a confidential informal mediation with the Property Rights Ombudsman. The confidential discussions resulted in the preparation of the proposed Settlement, Release and Waiver Agreement that is presented to City Council at this time.

As additional background information an aerial photo is attached. The proposed location of more than half of the roundabout is within existing public right-of-way for 8200 South. The City owns property at one corner of the intersection, and a portion of the roundabout will be located upon that property. One corner of the intersection is already developed. Fall Oak, widened portions of 8200 South (i.e. sidewalk and parkstrip) and the roundabout will be dedicated to the City with recordation of the Broadmeadow Subdivision plat. The proposed settlement agreement provides a waiver of all claims of disproportionate/unlawful exactions that Bach Homes may have otherwise pursued.

For these reasons, and primarily because the location of the roundabout will likely result in approximately \$100,000.00 of improvements within existing City right-of-way for 8200 South, staff and management support the proposed settlement agreement that provides for a financial contribution from the City of \$100,000.00.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 14-105

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT, RELEASE, AND WAIVER AGREEMENT BETWEEN THE CITY OF WEST JORDAN AND BACH INVESTMENTS, LLC, AND BROADMEADOW SUBDIVISION, LLC

WHEREAS, the City Council of the City of West Jordan received a requested City contribution for a roundabout at 8200 South and Fall Oak Drive; and

WHEREAS, Bach Homes contacted the Office of the Property Rights Ombudsman for the State of Utah, which resulted in confidential discussions resulting in the preparation of the proposed Settlement, Release and Waiver Agreement; and

WHEREAS, the City Council and staff has determined that the proposed Agreement will likely result in approximately \$100,000 of improvements within existing City right-of-way for 8200 South,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is hereby authorized to execute the Settlement, Release, and Waiver Agreement between the City Of West Jordan and Bach Investments, LLC, and Broadmeadow Subdivision, LLC, in an amount not to exceed \$100,000.00

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this 25th day of June 2014.

KIM V. ROLFE
Mayor

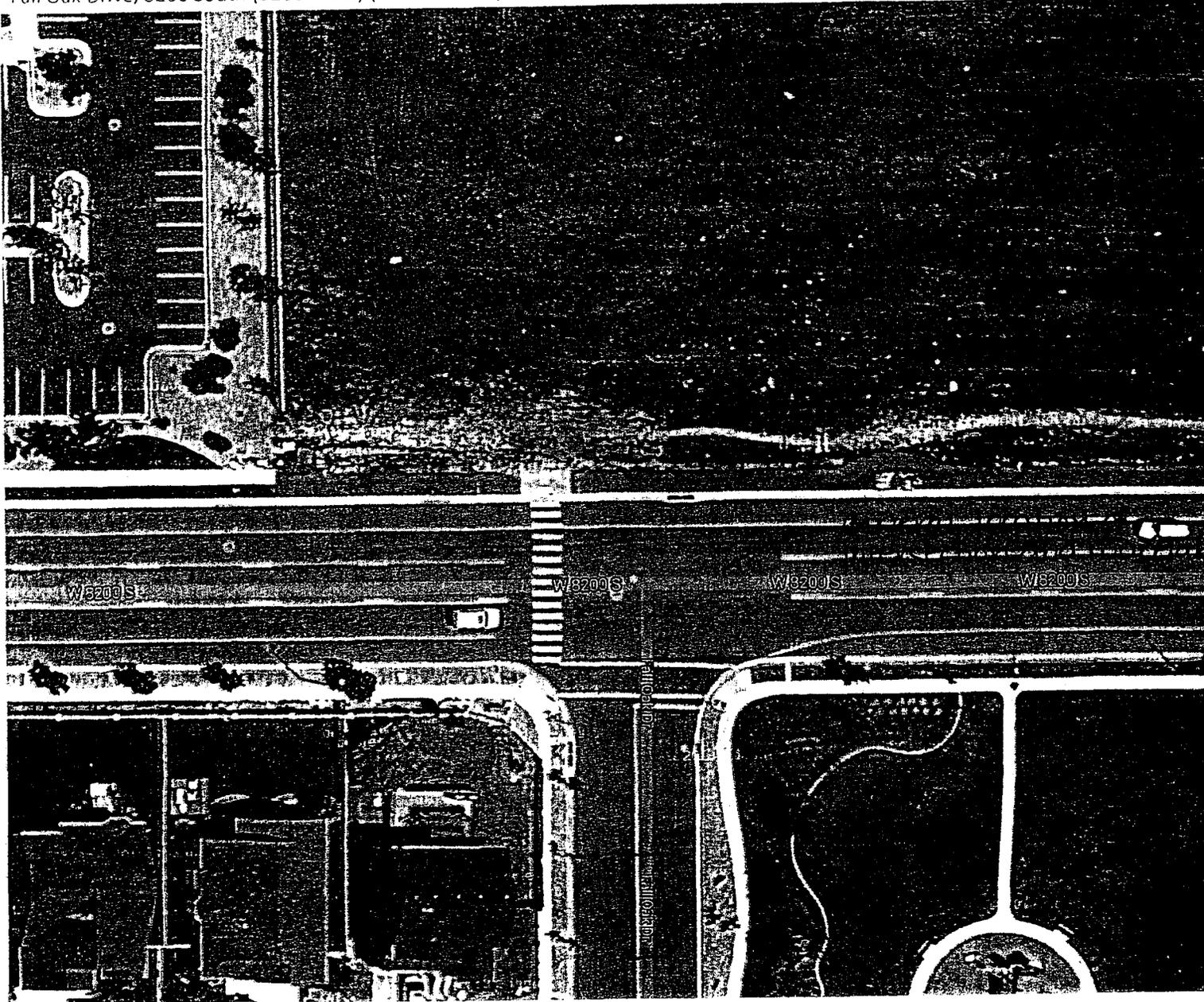
ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council
Council Member Jeff Haaga
Council Member Judy Hansen
Council Member Chris McConnehey
Council Member Chad Nichols
Council Member Ben Southworth
Council Member Justin D. Stoker
Mayor Kim V. Rolfe
"AYE"
"NAY"

Fall Oak Drive/8200 South (6200 West) (BACH Homes)

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## SETTLEMENT, RELEASE AND WAIVER AGREEMENT

This Settlement, Release and Waiver Agreement ("Agreement") is entered into by and among Bach Investments, LLC, a Utah limited liability company, and Broadmeadow Subdivision, LLC, a Utah limited liability company (collectively, "Bach/Broadmeadow") and West Jordan City, a Utah municipal corporation ("City"). Bach/Broadmeadow and the City are sometimes referred to below as the "Parties" or individually as a "Party."

### RECITALS AND ACKNOWLEDGMENTS

A. Bach/Broadmeadow are developing a subdivision within the jurisdiction of the City known as Broadmeadow Subdivision ("Subdivision");

B. A dispute has arisen between Bach/Broadmeadow and the City regarding the installation of certain public improvements in and adjacent to the Subdivision.

C. Specifically, Bach/Broadmeadow has claimed that the City's requirement for Bach/Broadmeadow to construct a street known as Fall Oak Drive to a "collector" class width and profile with utilities under Fall Oak Drive at a size larger than needed to only service the Subdivision and, also, a requirement to construct a mostly off-site roundabout were improper exactions unless Bach/Broadmeadow was compensated by the City for such improvements ("Dispute").

D. The City specifically denied any impropriety in the infrastructure requirements and any requirement to compensate Bach/Broadmeadow related to the Dispute.

E. Bach/Broadmeadow filed an appeal to the City Council regarding the Dispute and also sought intervention of the Office of the Private Property Rights Ombudsman.

F. After an informal mediation with the Ombudsman the parties desire to settle the Dispute pursuant to the terms specified below.

NOW, THEREFORE, in consideration of the foregoing Recitals, which by this reference are incorporated herein, and the following mutual promises and other consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, Bach/Broadmeadow and the City agree to the following:

### TERMS

1. The Parties acknowledge that they understand the meaning and effect of each provision contained in this Agreement.

2. The Parties acknowledge that they have voluntarily and knowingly entered into this Agreement.

3. The Parties acknowledge and understand that by signing this Agreement they are giving up any and all rights or claims they have or may have against each other related to the Dispute.

4. The Parties acknowledge that this Agreement is not an admission of any fault, liability or wrongdoing by either Party, and that the Parties expressly deny any fault, liability or wrongdoing.

5. The Parties represent and warrant that neither they nor any officer, director, shareholder, agent, servant, successor, heir, personal representative, assign, or attorney of or for each other has made any statement or representation to the undersigned regarding any fact relied upon in executing this Agreement, and the undersigned do not rely upon any such statement, representation or promise in signing this Agreement.

6. Bach/Broadmeadow shall complete the improvements that are the subject of the Dispute pursuant to the plans and specifications for such improvements that have been previously approved by the City. Provided that the improvements are completed to the City's standards and the final Plat for the Subdivision is recorded, the City shall accept the completed improvements pursuant to standard process of the City.

7. The City shall inspect the work on the roundabout as it is being completed. Within fifteen (15) days after the City Engineer determines that the work on the portion of the roundabout that is on property owned by the City is substantially completed the City Engineer, upon reviewing the invoices from Bach/Broadmeadow, shall determine the actual and reasonable costs of the portion of the roundabout on the City's property. The City shall pay that amount to Bach/Broadmeadow within fifteen days of that determination up to a maximum of One Hundred Thousand Dollars (\$100,000.00).

8. The term "Bach/Broadmeadow Releasees" shall mean, jointly and severally, Bach Investments, LLC, a Utah limited liability company, and Broadmeadow Subdivision, LLC, a Utah limited liability company and their agents, officers, representatives, subsidiaries, affiliates, attorneys, heirs, and all persons acting through, in connection with, or on behalf of Bach/Broadmeadow.

9. The term "City Releasees" shall mean, jointly and severally, West Jordan City and its affiliated entities, elected and appointed officers, employees, agents, representatives, attorneys, heirs, and all persons acting through, in connection with, or on behalf of the City

10. Except for the rights and obligations created by this Agreement, the Bach/Broadmeadow Releasees hereby release, acquit, withdraw and forever discharge any and all claims, manner of actions, causes of action (in law or in equity), suits, judgments, debts, liens, contracts, agreements, promises, liabilities, demands, damages, losses, costs, expenses or disputes, known or unknown, fixed or contingent, which they now have or may hereafter discover, directly or indirectly, personally or in a representative capacity, against the City Releasees related to the Dispute.

11. Except for the rights and obligations created by this Agreement, the City Releasees hereby release, acquit, withdraw and forever discharge any and all claims, manner of actions, causes of action (in law or in equity), suits, judgments, debts, liens, contracts, agreements, promises, liabilities, demands, damages, losses, costs, expenses or disputes, known or unknown, fixed or contingent, which they now have or may hereafter discover, directly or indirectly, personally or in a representative capacity, against the Bach/Broadmeadow Releasees related to the Dispute.

12. This Agreement shall be subject to and governed by the laws of the State of Utah.

13. Except as expressly provided to the contrary herein, each paragraph, term and provision of this Agreement, and any portion thereof, shall be considered severable and if, for any reason, any such provision of this Agreement is held to be invalid, such other portions of this Agreement as may remain otherwise intelligible, shall continue to be given full force and effect and bind the parties hereto.

14. In the event it becomes necessary to enforce either party's rights under this Agreement, the prevailing party shall be entitled to all reasonable legal fees, including court costs and reasonable attorneys' fees, required to enforce the party's rights under the Agreement.

15. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

16. Bach/Broadmeadow and the City understand and agree that this Agreement shall constitute the entire agreement between them concerning the Dispute and that both have carefully read the entire foregoing Agreement and know the contents thereof and sign the same of their own free will.

Bach Investments, LLC

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

West Jordan City

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

Broadmeadow Subdivision, LLC

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

Attest:

\_\_\_\_\_  
City Clerk/Recorder

Approved as to form:

\_\_\_\_\_  
City Attorney