

Midway City Council
19 March 2019
Regular Meeting

Resolution 2019-07 /
Amendment to Sunburst Ranch
Development Agreement



RESOLUTION 2019-07

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING AN AMENDMENT TO THE AGREEMENT FOR THE SUNBURST RANCH PLANNED UNIT DEVELOPMENT

WHEREAS, the Midway City Council is granted authority under Utah law to make agreements in the public interest and to further the business of Midway City; and

WHEREAS, the City Council deems it appropriate to adopt an amendment to the agreement for the Sunburst Ranch Planned Unit Development.

NOW THEREFORE, be it hereby RESOLVED by the City Council of Midway City, Utah, as follows:

Section 1: The attached Amended Agreement for the Sunburst Ranch Planned Unit Development is hereby approved and adopted.

Section 2: The Mayor is authorized to sign the document on behalf of Midway City.

PASSED AND ADOPTED by the Midway City Council on the day of 2019.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

Exhibit A

**MIDWAY CITY SUNBURST RANCH P.U.D.
AMENDED DEVELOPMENT AGREEMENT**

THIS AMENDED DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this _____ day of _____, 2019, by _____ and _____ between _____ (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property (defined below) and is the entire, complete Agreement between the Parties.

RECITALS

A. On August 10, 1998, Midway City and Developer entered into the "Annexation Agreement" recorded in the Wasatch County Recorder's office at Entry 00201690, Book 00376, Page 00461-00472.

B. The Annexation Agreement included all of the property involved in the Sunburst Ranch P.U.D. ("Development") with the legal description attached as Exhibit A.

C. The parties acknowledge that no formal Development Agreement was ever entered into between the parties, and that Phase 1 and Phase 2 of the Development were built in accordance with the terms of the Annexation Agreement.

D. The parties acknowledge that an "Amended Development Agreement" was entered into on February 10, 2010 and recorded in the Wasatch County Recorder's Office at Entry 369778, Book 1036, Page 503-509. Both parties acknowledge this document is binding on phase 3 of the Development.

E. In the "Amended Development Agreement" the Developer agreed to build phase 3 of the Sunburst Ranch P.U.D. in accordance with the Exhibit attached as Exhibit B ("Approved Plan").

F. Developer now desires to amend Exhibit B with the plan attached as Exhibit C ("Amended Plan").

G. City is willing to grant the amendment in accordance with the terms and conditions set forth below.

H. Each Party acknowledges that it is entering into this Agreement voluntarily. Developer consents to all of the terms of the Agreement as valid conditions of development under all circumstances.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. EFFECTIVE DATE AND TERM

1.1 Effective Date.

This Agreement shall become effective on the date it is executed by Developer and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

1.2 Term.

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 5 years. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, 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.

Section 2. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Governing Body" shall mean the Midway City Council.

"Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"City" shall mean the City of Midway and shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

"City General Plan" or "General Plan" shall mean the General Plan of the City of Midway.

"Developer" shall have that meaning set forth in the preamble, and shall also include Developer's successors and/or assigns, including but not limited to any homeowners' association which may succeed to control of all or any portion of the Project.

"Director" shall mean the Director of the Midway City Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Notice of Compliance" shall have that meaning set forth in Section 8.1 of this Agreement.

"Planning Commission" shall mean the Midway City Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

"Subsequent Approval" means a City approval or permit, which is not otherwise provided for in this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the City.

Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

3.1 Obligations of Developer.

(a) **Generally.** The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

(b) **Amendment of Resolution 2010-07.** This document adopts in its entirety the provisions contained in Resolution 2010-07 (adopted by the City on February 10, 2010 and attached as Exhibit XX), except for Section 2, which is replaced in its entirety with the provisions of subsection (c) below. All remaining provisions and obligations contained in Resolution 2010-07 remain in place and are binding on both parties.

(c) **Conditions to Current Approvals.** Section 2 of Resolution 2010-07 is hereby amended as follows: Section 2: Developer shall comply with all of the following Conditions to Current Approvals:

- (1) ***Amended Plan:*** Developer agrees to build Phase 3 in accordance with the plan attached as Exhibit C. Phase 3 shall consist of 36 units, open space as designated on the plans, trails as set forth on the plans, and the following amenities: a pickle ball court, a full basketball court, and a bowery/tot lot. All roads and infrastructure shall be installed by Developer at its own cost prior to any building permits being issued in Phase 3. The parties acknowledge that Exhibit C does not constitute final plans for Phase 3. Developer acknowledges and agrees that it will still be required to go through preliminary and final approval of Phase 3, and that Exhibit C is an agreed upon conceptual plan that will require greater detail before final approval will be granted.
- (2) ***Trails.*** Developer shall build trails as set forth in Exhibit C. Further, Developer shall, in its submission for final approval, include an updated trail plan that increases connectivity to Phase 1 and Phase 2, and especially to the amenities and open space contained in Phase 3. The trails shall meet all City trail standards and guidelines. The trails will be owned and maintained by Developer and/or its successors and assigns and shall be subject to an easement to allow public access, which shall be noted on the plat. The HOA shall have all obligations to remove snow from the trails within the Development and shall also have the obligation to remove snow in a three-foot radius around all fire hydrants within the Development.
- (3) ***Landscaping Design Plan.*** Prior to the commencement of construction on Phase 3, Developer shall submit to the City Planning department a Landscape Design Plan, that shall demonstrate the agreed upon landscaping around the units, as well as in the open space, and around the amenities. The Landscaping Design Plan shall be subject to approval by the City Director.

- (4) **Retention Pond:** Approval of the Amendment attached as Exhibit C is contingent upon Developer resubmitting engineered plans that include a concrete lined retention pond in the southwest corner of Phase 3, in size and design sufficient to handle run-off from Swiss Alpine Estates. The City Engineer shall review and approve the plans prior to the commencement of any construction work on Phase 3. The retention pond shall be installed and maintained by the Developer and/or its successors and assigns at its own cost and expense. The plat shall contain a note disclosing that the maintenance and repair of the retention pond remains with the Developer and ultimately the HOA. The plat shall also contain an access and maintenance easement from the road to the retention pond that shall be in the favor of both Midway City and Swiss Alpine Estates. The City agrees to work in good faith to negotiate a maintenance deal with Swiss Alpine Estates/Wasatch County to assume all on-going costs, liability, and maintenance of the retention pond.
- (5) **Home Owners Association.** There is currently a lawsuit pending between the Developer and the Sunburst Ranch Homeowner's Association regarding the legal rights of the Developer to create a new HOA for just Phase 3. The City acknowledges that its existing agreements with the Developer are silent on the issue, and that the issue is a civil matter regarding the enforcement of CC&R's to which the City is not a party. Developer agrees to comply with any court ruling issued by the District Court in the pending case and has also expressed a willingness to explore combining the new HOA with the existing HOA once construction of the units is complete. With this said, if the District Court rules that the Developer can create its own HOA for Phase 3, and Developer chooses to do so, it shall include as a note on the plat for Phase 3 that the new HOA shall be solely responsible for all costs associated with the roads, trails, amenities, infrastructure and landscaping within Phase 3, and shall have no right to impose any cost on Phase 1 or 2 for these costs. Further, it shall include on the plat a note stating clearly that Phase 3 shall have no legal right to exclude any owner or visitor to Phase 1 or Phase 2 from any of the amenities, trails, roads or open space included in Phase 3, and shall designate all open space, trails, amenities and roads as containing an easement for the use of owners and visitors in Phase 1 and Phase 2. It is reiterated that the fundamental willingness of the City Council to grant the amendment, was the agreement that the owners in Phase 1 and Phase 2 would have full access to all trails, roads and amenities in Phase 3. Any attempt by the Developer or future HOA to restrict access in any way is a material breach of this agreement.
- (6) **Private Storm Drains.** Developer agrees to construct and install a private storm drain system as shown on the construction drawings to be maintained in perpetuity by Developer and/or its successors or assigns and not by the City.
- (7) **Construction and/or Dedication of Project Improvements:** Developer agrees to construct and/or dedicate project improvements as directed by the City, including but not limited to roads, landscaping, water, sewer, storm drains, trails and other utilities as shown on the approved final plans and in accordance with City standards. All improvements set forth on the final plans shall be completed at the beginning of the project, regardless of whether the project is divided into phases. No building permits

shall be issued until all project improvements are complete.

- (8) **Warranty:** Consistent with City standards, Developer will provide a two-year warranty for the operation of all improvements.
- (9) **Bonding:** Developer agrees to post bonds in amounts and types established by the City related to the performance of Developer's construction obligations for the Project, pursuant to current City ordinances and resolutions. Bonding amounts shall include costs for all infrastructure, amenities, and landscaping for both the units, and the open space.

3.2 **Obligations of the City.**

(a) **Generally.** The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

(b) **Conditions to Current Approvals.** The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Project plat, unless agreed to in writing by the Parties.

(c) **Acceptance of Improvements.** The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; (2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

Section 4. VESTED RIGHTS AND APPLICABLE LAW

4.1 **Vested Rights.**

(a) **Generally.** As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property only in accordance with this Agreement and Applicable Law.

(b) **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify 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 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.

4.2 Applicable Law.

(a) **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in the Conditions to Current Approvals set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the date the City Council granted preliminary approval to Developer. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

(b) **State and Federal Law.** Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. AMENDMENT.

Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. COOPERATION-IMPLEMENTATION

6.1 Processing of Subsequent Approvals.

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The City's obligations under Section 6.1(a) of this Agreement are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans, and other information necessary for the City to meet such obligations. It is the express intent of Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals.

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state

law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

(d) If the City denies any application for a Subsequent Approval, the City must specify the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1(b) of this Agreement). The City shall approve the application if subsequently resubmitted for the City's review and the application complies with the specified modifications.

6.2 Other Governmental Permits.

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.

(b) The City shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.1(b) of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

7.1 General Provisions.

(a) **Defaults.** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

(h) **Termination.** If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. The City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

7.2 Review by City

(a) **Generally.** The City may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.

(b) **Determination of Non-Compliance.** If the City Council finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to Section 7.1(a) of this Agreement. If the default is not cured timely by Developer, the City may terminate this Agreement as provided in Section 7.1(b) of this Agreement.

7.3 Default by the City.

In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 7.1 of this Agreement and provided under Applicable Law.

7.4 Enforced Delay; Extension of Time of Performance.

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

7.5 Limitation on Liability.

No owner, director or officer of the Developer, when acting in his or her capacity as such, shall have any personal recourse, or deficiency liability associated with this Agreement, except to the extent that liability arises out of fraud or criminal acts of that owner, director, or officer.

Section 8. NOTICE OF COMPLIANCE

8.1 Timing and Content.

Within fifteen (15) days following any written request which Developer may make from time to time, the City shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

8.2 Failure to Deliver.

Failure to deliver a Notice of Compliance within the time set forth in Section

8.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

Section 9. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER and NOTICE.

The rights of the Developer under this agreement may be transferred or assigned, in whole or in part. Developer shall give notice to the City of any assignment at least fourteen (14) days prior to the effective date of the assignment.

Section 10. MISCELLANEOUS

10.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

10.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

10.3 Other Necessary Acts. Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

10.4 Construction. Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and 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.

10.5 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

10.6 Covenants Running with the Land and Manner of Enforcement.

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens

of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the City to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project

10.7 Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

10.8 Remedies. Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorneys' fees in any legal or equitable action instituted to enforce the terms of this Agreement.

10.9 Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

10.10 Other Public Agencies. The City shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

10.11 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

10.12 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

10.13 Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s)

represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

10.14 No Third-Party Beneficiaries. This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

Section 11. NOTICES

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

Director
Planning Department
Midway City
P.O. Box 277
Midway, UT
84049

With Copies to:

GORDON LAW GROUP c/o
CORBIN B. GORDON
Midway City Attorneys
345 West 600 South
Suite 108
Heber City, UT 84032

If to Developer:

Crystal Springs Land and Cattle Company, Inc.

Section 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the City and Developer.

Section 13. RECORDATION OF DEVELOPMENT AGREEMENT

No later than ten (10) days after the City enters into this Agreement, the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

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

CITY OF MIDWAY:

Attest:

CELESTE JOHNSON
Mayor

BRAD WILSON
City Recorder

STATE OF UTAH)

ss:

COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this__ day of _____, 2019, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of the City of Midway, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as the Midway City Recorder.

Crystal Springs Land and Cattle Company, Inc.

By: Steve Condie
Its: Member/Manager

STATE OF UTAH)

ss:

COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this__ day of _____, 2019, by Steve Condie, who executed the foregoing instrument in the capacity as Member/Manager of Crystal Springs Land and Cattle Company, Inc.
