

Midway City Council
17 March 2020
Regular Meeting

Resolution 2020-06 /
Watts Remund Farms PUD,
Phases 2 and 3
Development Agreement



RESOLUTION 2020-06

A RESOLUTION APPROVING THE REMUND FARMS P.U.D. PHASE II & III DEVELOPMENT AGREEMENT

WHEREAS, Utah law authorizes municipalities to enter into development agreements for the use and development of land within the municipality; and

WHEREAS, the Midway City Council finds it in the public interest of the City of Midway to enter into this Remund Farms P.U.D. Phase II & III Development Agreement with the developer of the Remund Farms Development for the use and development of the land included within Phase II and III of that proposed project;

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

Section 1: The Midway City Council approves the Remund Farms P.U.D. Phase II & III Development Agreement attached hereto and authorizes the Mayor of Midway City to execute the agreement on behalf of the City.

Section 2: The effect of this Resolution is subject to all conditions of the land use approval granted by the City for the proposed project.

PASSED AND ADOPTED by the Midway City Council on the day of 2020.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

REMUND FARMS SUBDIVISION DEVELOPMENT AGREEMENT (PHASE II & III)

THIS DEVELOPMENT AGREEMENT for Phase II & III of the Remund Farms Subdivision (the “Agreement”) is entered into as of this ____ day of _____, 2020, by and between WATTS ENTERPRISES (hereinafter called the “Developer”) and the CITY OF MIDWAY, UTAH, 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 the Developer and the City involving the same Property (defined below) and is the entire, complete Agreement between the Parties.

RECITALS

- A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.*, in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to Phase II & III of the Remund Farm Planned Unit Development (hereinafter called the “Project”) and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.
- B. The Developer has a legal interest in certain real property located in the City, as described in Exhibit “A”, (hereinafter referred to as the “Property”) attached hereto and incorporated herein by this reference.
- C. The Developer intends to develop the Property as a planned unit development consisting of 41 single family dwelling units, and related appurtenances and improvements. This Project is commonly known as Phase II & III of the Remund Farms Planned Unit Development. The planned unit development is approximately 21.49 acres and is located in the R-1-15 zone.
- D. Each Party acknowledges that it is entering into this Agreement voluntarily. The Developer consents to all the terms and conditions of this Agreement and acknowledges that they are valid conditions of the development. Unless otherwise specifically agreed to herein, the terms and conditions contained herein are in addition to any conditions or requirements of any other legally adopted ordinances, rules, or regulations governing the development of real property in the City of Midway.

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

AGREEMENT

Section 1. Effective Date and Term. The term of this Agreement shall commence upon the signing of this Agreement (the “Effective Date”) by both Parties, and shall continue for a period of ____ (___) years. Unless otherwise agreed between the City and the Developer, the 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 the 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 the Exhibits.

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

“Governing Body” shall mean the Midway City Council.

“City” shall mean the City of Midway, and shall include, unless otherwise provide, any and all of the City’s agencies, departments, officials, employees or agents.

Section 3. Obligations of the Developer and the City.

A. Obligations of the Developer:

- i. **General Obligations:** 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 the Developer’s agreement to perform and abide by the covenants and obligations of the Developer set forth herein.
- ii. **Conditions for Current Approvals.** The Developer shall comply with all of the following Conditions:
 - a) **Payment of Fees:** Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid

current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

- b) **Water Rights:** The required water rights for each phase of the Project shall be officially transferred to the City in writing before the recording of each plat for the Project. Any costs incurred by the City in transferring the water rights, including but not limited to attorney fees and State Engineer fees, shall be paid by the Developer. The water rights provided by the Developer shall meet all City policies and Ordinances for culinary and irrigation use, respectively and shall be approved by the State Engineer. The total quantity of water rights to be dedicated to the City for Phase II & III of the Project, for both culinary and irrigation use, is 45.38 acre feet for Phase II (22.4 acre feet for culinary and 22.98 acre feet for irrigation) and 16.45 acre feet for Phase III (11.2 acre feet for culinary and 5.25 acre feet for irrigation). The clubhouse and pool located in Phase II are included in the culinary water requirements for that phase.
- c) **Construction and/or Dedication of Project Improvements:** The Developer agrees to construct and/or dedicate Project improvements as directed by the City, including but not limited to driveways, landscaping, trails, amenities, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the Project. The Developer also agrees to comply with the terms of the Midway City Staff report, approved and adopted by the Midway City Planning Commission and incorporated herein by this reference.
- d) **Building Pads:** There are 41 pads proposed in these phases, of various sizes ranging from 50' x 70' (3,500 sq. ft.) to 63' x 68' (4,284 sq. ft) as established on the plat. All structural improvements must be located within the building pad for each dwelling including window wells, eave overhangs, bay window, pop outs, decks, pergolas, and other structural items. Also, all units have a height limit of 35' measured from natural grade. 25 of the building pads have private areas located to the rear of each of the pads. The private areas are 12' and allow the units to have items such as a roofed deck, pergola, garden, hot tub, fire pit, etc. or other improvements in these private areas. Pads that do not have private areas would not have the ability to install some or any of these improvements. All private areas are a minimum of 25' from any delineated wetlands.
- e) **Remund Farms Home Owners' Association:** As part of the approval for Phase II & III, the Developer shall cause Phase II & Phase III to join and fully participate in the Remund Farm Home Owners' Association. All of the

Phases of the Remund Farm Project as shown in the approved Master Plan shall be part of the single HOA, and shall be subject to the terms and conditions of the declaration of CCRs, which shall be approved by the City and recorded against Phase II & III along with the official Plat.

- f) Public Participation Meeting: The Developer held a public participation meeting on July 10, 2017 as required by the ordinance for master plan applications.
- g) Density: The applicant is asking for approval for 97 dwellings in the total development and for 41 dwellings in Phases II & III. The density is based on the base density of 2.5 units per acre as allowed for a PUD in the R-1-15 zone. Wetlands and their associated buffer areas receive a density credit of one unit every ten acres. Also, the Developer has been granted a density credit of 2.26 units for the off-site open space that has been or will be deeded to the City.
- h) Weed Control: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project. No dirt or overburden shall be placed by the Developer on any property included in Phase II, or Phase III, as a result of construction work on another Phase.
- i) Open Space: The City Code requires that for each phase that is approved there is enough open space to comply with the requirements of the Code. For example, Phase I must have at least 50% open space as required for that particular phase. If Phase I has 75% open space, then Phase II or subsequent Phases only need to have 25% open space if both phases are equal in acreage. The proposed plan does exceed the open space requirements with a total of 62.29% open space which includes all three approved Phases (Phases I, II and III). All on-site open space will be common area that will be owned and maintained by the HOA.
- j) Open Space Credit: The City Council has approved off-site open space for this proposal. Watts Enterprises owns much of the property around the River Road roundabout. The parcel is OMI-0563-0-026-034 and comprises 1.32 acres that was previously deeded to the City. The property was part of the open space requirement for the Project (Phases I, II and III) and 2.2 units of additional density were granted to the Developer as part of the approval. The Developer has landscaped the off-site open space property and deeded the required water rights to the City as it would if the open space were part of the open space within the proposed Remund Farm Project. The Remund Farm HOA will be required to maintain the landscaping on the roundabout property.
- k) Streets: The streets located within the area of the PUD will be private roads and will be maintained by the HOA. A public access easement shall be recorded on the Plat, which will allow access to all the streets in the PUD.

- l) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- m) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
- n) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.
- o) Access: Each phase of the subdivision must meet the access and cul-de-sac limitation requirements of the code. A cul-de-sac is limited to 500' in length, unless approved otherwise by the City Council. The phasing plan for Phase II & III and all street length and access requirements have been met as presented in the application.
- p) Two Points of Access: The development shall have two points of access onto 600 North. The two points of access on 600 North do meet the City requirements regarding the two points of access ordinance.
- q) Storm water control system: The Developer shall install and maintain, at its sole cost and according to plans and specifications approved by the City, a storm water control system though out the Project. The ownership, maintenance, repair and replacement of the storm water system for all phases of the Project, including Phases I, shall be the responsibility of the HOA.
- r) Traffic Study: The Developer has submitted a traffic study to the City as part of the application. Horrocks Engineers has reviewed that study to determine what road improvements are required. The attached recommendations from Horrocks Engineers are incorporated herein and made conditions hereof by this reference.
- s) Culinary Water and Sewer Service: The Project shall be connected to the City water and sewer lines as shown on the approved plans.
- t) Secondary (Irrigation) Water: The secondary water (outside irrigation) shall be provided by Midway Irrigation Company. Developer shall connect to Midway Irrigation Company's secondary system, as shown on the approved plans, and shall comply with all applicable rules and regulations of Midway Irrigation Company. Secondary water laterals and meters shall be installed by Developer for all irrigated acreage and for the single lot according to standards and specifications imposed by Midway Irrigation Company.
- u) Trails: There will be two public trails and one private trail with a public easement located in this area of the development along with some private trails. One is a trail that will run north and south and is planned as a linear park trail. The other is a trail running along 600 North. Both will be 6' wide

paved public trails that will be constructed by the developer. A third trail will also be 6' wide and installed with slag and will run along the perimeter of the development on the east side and then along the southern boundary of the development. The trail that runs along the west boundary is public and runs the entirety of the property from 250 North to 600 North. This trail will have a paved surface. The trail that runs along the southern and eastern boundary is a privately maintained trail that has a public easement. This trail will have a soft surface. The Developer will also connect the southern trail to 300 North in the Swiss Paradise subdivision with a soft surface trail. The trail will continue to River Road with a soft surface. From River Road and 300 North, the Developer will build a paved trail to the roundabout approved for the entrance to Memorial Hill. This section of the trail will have a hard surface. The public trail that connects the Project to 300 North, River Road and the Memorial Hill roundabout must be constructed as part of Phase II as required by the approved Master Plan.

- v) The Trails Master Plan and the Master Parks Plan calls for a linear park and trail to run north and south across the project. The City feels this is a very important community amenity that will benefit current residents and future residents for generations. The trail shall be of highest priority and careful review of the alignment and landscaping will happen to assure the trail will function and have the effect that it is envisioned to have. The trail shall be built with the first Phase in its entirety, subject to the terms set forth in the Master Plan Agreement, section 4(A)(ii)(s). The trail will be a 6' wide paved public trail that will be constructed by the developer. The trail plan also calls for a connection to the Blackner property that is also part of the linear park trail system that will also be a 6' wide paved or boardwalk trail, depending upon the presence of wetlands. This trail will eventually connect to the Indian Summer subdivision with its part of the linear park trail system.
- w) Sensitive Lands: The property does contain some wetlands that will not be disturbed through the development process. The wetlands will become part of the open space for the development and will be preserved. There is a stream/ditch that runs through the property. It will be impacted by the roads crossing the development because of the culverts that will cover the ditch. Midway Irrigation Company owns an easement to the ditch area and has approved modifications that will be made to the current ditch. Developer shall acknowledge Midway Irrigation Company's easement on the Plat. There is also a water line that will be placed through a portion of the wetlands as shown on the approved plans. The City's approval of that pipeline is expressly contingent upon the Developer applying for and receiving all necessary permits for such construction. If the necessary permits are not

received and complied with, the City's approval of that particular portion of utility infrastructure shall be void. There is a warm spring on the property that will be preserved. There are also acres of wetlands on the property that are included in the open space areas of the Project. A study has been submitted by the Developer and has been reviewed by three organizations that include The Army Corps of Engineers, Horrocks Engineers, and another third-party wetland expert that was selected by the City. The recommendations that result from those studies shall be attached hereto, incorporated herein and made conditions of this Agreement.

- x) Staggered Setbacks for homes: Midway City Code Section 16.16.8.5.c requires variable or staggered setbacks of homes. The Code states the following:

Front setbacks for buildings from all private streets within the PUD shall be staggered at seven and one-half feet variances, with 25 feet the minimum setback. One-third of the buildings containing dwelling units shall be at each of at least three different setbacks as recommended by the Planning Commission and approved by the City Council. For example, one-third at 25 feet, one-third at 32 ½ feet and one-third at 40 feet. Setbacks for accessory buildings shall be as recommended by the Planning Commission and approved by the City Council. Setbacks from private streets shall be measured from top-back of curb or back of sidewalk or trail, whichever is further from the street centerline. The City Council may waive this requirement when a curvilinear street design is used and shown to create the same varying setback effect.

The Code allows setbacks to start at 25 feet from the road. The City and Developer agree that in this Project, the setbacks shall start at 28 feet, and shall be staggered as required by the Code, from 28 feet to 35 feet as mutually agreed to by the Developer and the City. The purpose of the Code and this agreement is to help mitigate the "wall effect" that dwellings with the same setback on a straight street creates. The units on the plat will need to comply with this requirement.

- y) Environmental Study: The Developer has submitted the required Environmental Study and water study. Horrocks Engineers' recommendations are attached hereto, incorporated herein by this reference, and made conditions hereof.
- z) Geotechnical Study: The Developer has submitted a geotechnical study to the City as part of the application. Horrocks Engineers has reviewed that that study to determine if any special requirements are needed for construction of the roads and future structures in the development. Horrocks Engineers' recommendations are attached hereto, incorporated herein by this reference, and made conditions hereof.

B. Obligations of the City:

- i. **General Obligations:** The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of the 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.
- ii. **Conditions of Approval:** The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on the Project Plats, unless agreed to in writing by the Parties. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.
- iii. **Acceptance of Improvements:** The City agrees to accept all Project improvements constructed by the Developer, or the 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) the 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 are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) the 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.

- 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 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 the Developer for the Project. The Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve the 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 of the 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 the 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 fifteen (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 and Implementation.

- A. Processing of Subsequent Approvals. Upon submission by the 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, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein.

The City’s obligations under this Section 6 are conditioned on the 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 the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny an application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

- B. Other Governmental Permits.

1. The 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.

2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.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 and Termination.

A. General Provisions.

1. Defaults by Developer. 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 agreement, 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 may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time 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 thirty (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.
2. Termination. If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give to the 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 notice public meeting. The 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 the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any and all remedies available to the Developer at law or in equity.
3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that the Developer is in full compliance with the terms and conditions of this Agreement. The Developer shall provide any and all

information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.

4. **Determination of Non-Compliance.** If the City Council finds and determines that the Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. IF the default is not cured in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement an as provided under Applicable Law.
- B. **Default by the City.** In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.
- C. **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.

Section 8. Notice of Compliance.

- A. **Timing and Content.** Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver toe the Developer a written “Notice of Compliance,” in recordable form, duly executed and acknowledge by the City, certifying that 1) 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; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.
- B. **Failure to Deliver.** Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of the Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section,

however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

Section 9. Change in Developer, Assignment, Transfer and Required Notice. The rights of the Developer under this Agreement may be transferred or assigned, in whole or in part, with the written consent of the City, which shall not be unreasonably withheld. The Developer shall give notice to the City of any proposed transfer or assignment at least thirty (30) days prior to the proposed date of the transfer or assignment.

Section 10. Miscellaneous Terms.

- A. 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.
- B. 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 written 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.
- C. Other Necessary Acts. Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions of 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.
- D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.
- E. 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. The City may look to the 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 Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.
- F. 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 or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.
- G. Remedies. Either Party may 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; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).
- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. 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 to the other Party through this Agreement can be enjoyed.
- K. 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 and warranting Party:
1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

2. 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 individuals represent.
 3. 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.
- L. No Third-Party Beneficiaries. This Agreement is between the City and the 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 the 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 (1) 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 State 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 as set forth below:

If to the City of Midway:

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

With Copies to:

Corbin B. Gordon
Midway City Attorney
345 West 600 South
Heber City, Utah 84032

If to Developer:

Watts Enterprises, LLC
c/o Russ Watts

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 must be in writing, and signed by the appropriate authorities of the City and of the Developer.

Section 13. Signing and Recordation of Agreement. Unless the City and the Developer mutually agree otherwise, this Agreement must be signed by both the Developer and the City no later than ninety (90) days after the Agreement is approved by a vote of the Midway City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.

IN WITNESS WHEREOF, this Agreement has been entered into by and between the 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 _____, 2020, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

NOTARY PUBLIC

THE DEVELOPER OF PHASE I OF THE
REMUND FARM SUBDIVISION

Watts Enterprises, LLC

By: _____

Its: _____

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____,
2020, by _____, who executed the foregoing instrument in his capacity as the
_____ of the Developer, Watts Enterprises, LLC.

NOTARY PUBLIC

EXHIBIT “A”

REAL PROPERTY DESCRIPTION

EXHIBIT “B”

HORROCKS RECOMMENDATIONS