

Midway City Council  
3 November 2020  
Regular Meeting

Resolution 2020-29 /  
Mountain Spa  
Rural Preservation Subdivision  
Development Agreement



## RESOLUTION 2020-29

### **A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR THE MOUNTAIN SPA RURAL PRESERVATION SUBDIVISION**

**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 a development agreement for the Mountain Spa Rural Preservation Subdivision.

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

Section 1: The attached Mountain Spa Rural Preservation Subdivision Development Agreement 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            2020.

MIDWAY CITY

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Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

Exhibit A

# **MOUNTAIN SPA RURAL PRESERVATION SUBDIVISION DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between MOUNTAIN SPA INVESTORS, LLC (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 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 the proposed Mountain Spa Rural Preservation Subdivision, located at 600 North 200 East, in Midway, Utah (hereinafter referred to as 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. Developer warrants and represents that it has the legal authority to sign this Agreement and bind the Property as set forth herein.
- C. The Developer intends to develop the Property as a large-scale subdivision containing five (5) lots. Preliminary approval was granted by the City Council on October 13, 2020. This Project is commonly known as the Mountain Spa Rural Preservation Subdivision. The original parcel is 52.45 acres in size. The subdivision is located at approximately 600 North 200 East, in the R-1-22 zone, which allows for single family dwellings. The lots vary in size from 1.01 acres to 21.53 acres. The property, including all five lots, will be deed restricted so that no further subdividing of any kind will be allowed within the subdivision plat. The density on the 52.45 acres will never be more than five dwelling units. Furthermore, 34.6 acres will be restricted from development and limited in use by a conservation easement that will be held by Summit Land Conservancy.

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 for development of the Project. 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 ten years (10) years. However, the terms of this Agreement shall lapse if final plat approval is not obtained within two 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, deed restrictions, 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 the definition set forth in Section 4A 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 conditioned upon and in material consideration of the Developer’s agreement to perform and abide by the covenants and obligations of the Developer set forth herein.

- ii. Construction and/or Dedication of Project Improvements: The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to streets, driveways, landscaping, 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. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto and incorporated herein by this reference.
- iii. Roads, Streets: All roads in the Project shall be public roads which will require City maintenance once the roads are accepted by the City.
- 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 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 and Water Service: The required water rights for the culinary and secondary water for the Project shall be officially transferred to the City in writing before the recording of the plat for the Project. A change application will also need to be approved by the State Engineer's Office before the plat is recorded. Once the State has approved the change application to transfer the water rights to the City's sources, the lots will connect to the City's water lines located under the surrounding streets. The water rights provided by the Developer shall meet all City policies and Ordinances for culinary and secondary use. The total quantity of water rights to be dedicated to the City for the entire Project, for both culinary and secondary use, is 70.3 acre feet. Culinary water service shall be provided by the City according to the rules, regulations and requirements of the City. Developer shall be responsible for construction of the culinary water lines as per the approved plans, which shall be subject to final approval and acceptance by the City. For secondary water service, Developer shall follow the City's Foreign Water ordinance and work with Midway Irrigation Company ("MIC") to connect to MIC's system. Additionally, each lot will be required to install a secondary water meter.

- c) Access: Access for the lots will be from private driveways, though some of the private driveways will become public or private roads as the resort area of the Property develops. Lots 1 and 2 will have access from 200 East. Lots 3 and 4 will have access from Burgi Lane on the provided easement. Lot 5 will have an access from 200 East. Because Burgi Lane and River Road are collector roads, the City Council must approve any direct access from these roads to Lot 4 or 5. If direct access is not permitted for Lot 4 from Burgi Lane or for Lot 5 from River Road, access may be considered for agricultural uses on the two large agricultural parcels. No other access will be allowed from River Road or Burgi Lane. The private driveways will be maintained by the Homeowners' Association. Codes, covenants and restrictions ("CCRs") must be submitted to the City for review and must include a driveway maintenance clause.
- d) Driveways: The driveways for the lots will be 20' wide, which complies with the rural preservation driveway standards.
- e) Deed Restrictions: The 52.45 acres within the plat shall be deed restricted so that no further subdividing of any kind will be allowed within the subdivision plat. The density of the 20.78 acres making up the five lots will never contain more than five dwelling units. A note shall also be placed on the plat indicating the restriction. Deed restrictions shall be recorded towards each lot immediately after the plat is recorded so that all future landowners in the subdivision will know of the restrictions before any property is purchased.
- f) Geotechnical Study: A Geotechnical Study has been submitted to the City and approved by planning and engineering staff.
- g) Sensitive Lands: There are sensitive lands present in the development area, including wetlands, slopes greater than 25 percent, major geologic features and minor geologic features. The Property contains geothermal springs and craters filled with warm water. There are large areas of pot rock surrounding the springs and craters which are considered major geologic features by the City, and these areas are protected as part of the sensitive lands code. These sensitive lands will be noted on the plat and will be left undeveloped and undisturbed as per the sensitive lands code.
- h) Sewer Connection: Lots 1, 2, and 5 will connect to Midway Sanitation District's sewer line located under Center Street. Lots 3 and 4 will install septic tanks. Developer shall comply with the Wasatch County Health Department requirements for septic tanks, which include a percolation test performed on Lots 3 and 4 before the plat is recorded to ensure the ground is suitable for septic drain fields. Lots 3 and 4 may connect to the sewer system in the future if all requirements are met.

- i) Trails: Developer shall dedicate a 20' public trail easement along River Road. Developer will provide the public trail easement and the City may require construction of the trail at a future date. Developer will pay an amount equal to the cost of constructing the trail to the general trail fund. Once the current River Road trail deteriorates and needs replacement, the City will construct the trail on the dedicated easement, moving the trail farther away from the road.
- j) Open Space: 34.6 acres within the subdivision shall be restricted from development and limited in use by a conservation easement that will be held by Summit Land Conservancy. This will leave large areas of open space next to River Road and Burgi Lane.
- k) 30' Setback Requirement: The rural preservation subdivision code requires that all structures comply with the requirements of the zone in which the lot is located. The R-1-22 zone requires that all buildings and structures be set back at least 30' from the front lot line or projected street right-of-way. The setback line will be noted on the plat so no structures, including accessory structures, are placed in this area.
- l) 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. Developer shall be responsible for weed control on the remainder parcel described herein.
- m) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- n) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
- o) 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.
- p) City's Right to Draw From Construction Bond: If the Developer is required to perform any work within the public right-of-way, and the work is not completed by the City's established deadlines, the City shall have the right to draw funds from the Developer's performance and other bonds.

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 Developer set forth herein is conditioned upon and in material consideration of 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 the 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 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 to the Developer a written “Notice of Compliance,” in recordable form, duly executed and acknowledged 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 the other Party that the following statements are true, complete and not misleading to 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:

Chuck Heath  
Mountain Spa Investors, LLC  
[Redacted]  
[Redacted]

**Section 12. Entire Agreement, Counterparts and Exhibits.** Unless otherwise noted herein, this Agreement, including its Exhibits, along with the Annexation Agreement, as amended, 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 in writing, 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.

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*[Signature on following page]*

IN WITNESS HEREOF, 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 MOUNTAIN SPA RURAL PRESERVATION SUBDIVISION

\_\_\_\_\_  
\_\_\_\_\_  
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/her capacity as the \_\_\_\_\_ of the Developer.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A

(Legal Description of the Property)

### PARCEL 1:

BEGINNING NORTH 634.24 FEET FROM THE SOUTH ONE-QUARTER CORNER OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SAID CORNER BEING LOCATED SOUTH 85°33'10" WEST 1.98 FEET FROM A 1995 WASATCH COUNTY BRASS CAP REFERENCE MONUMENT; AND RUNNING THENCE SOUTH 89°23'27" WEST 359.16 FEET ALONG AN EXISTING FENCE LINE AND FENCE LINE EXTENDED, SAID FENCE LINE LYING ON THE NORTHERLY BOUNDARY OF THAT CERTAIN PARCEL REFERENCED AS ENTRY NUMBER 161678, ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, WASATCH COUNTY UTAH; THENCE ALONG AN EXISTING FENCE LINE THE FOLLOWING THREE COURSES (SAID FENCE LINE LYING ON THE NORTHERLY AND WESTERLY BOUNDARY OF THAT CERTAIN PARCEL REFERENCED AS ENTRY NO. 198225 [PARCEL 1] OF OFFICIAL RECORDS); SOUTH 89°33'35" WEST 160.00 FEET, NORTH 89°50'25" WEST 109.67 FEET, AND SOUTH 04°19'21" WEST 2.51 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF PARCEL 2, OF THE MOUNTAIN SPA, REFERENCED AS ENTRY NO. 78264, OF OFFICIAL RECORDS; THENCE WEST 31.01 FEET ALONG SAID SOUTHERLY BOUNDARY TO THE NORTHEAST CORNER OF PARCEL 4, OF THE MOUNTAIN SPA; THENCE SOUTH 328.20 FEET ALONG THE EASTERLY BOUNDARY OF SAID PARCEL TO A POINT INTERSECTING THE EASTERLY EXTENSION OF THE NORTHERLY BOUNDARIES OF THOSE CERTAIN PARCELS REFERENCED AS ENTRY NUMBERS 198225 (PARCEL 3) AND 177388 OF OFFICIAL RECORDS; THENCE WEST 660.00 FEET ALONG SAID NORTHERLY BOUNDARY AND BOUNDARY EXTENDED TO A POINT ON THE WESTERLY BOUNDARY OF PARCEL 4, OF THE MOUNTAIN SPA, THENCE NORTH 372.00 FEET ALONG THE WESTERLY BOUNDARY OF PARCELS 4 AND 2, OF THE MOUNTAIN SPA TO A POINT INTERSECTING THE EASTERLY EXTENSION OF AN EXISTING FENCE LINE; THENCE WEST 456.28 FEET ALONG SAID FENCE LINE AND FENCE LINE EXTENDED; THENCE ALONG AN EXISTING FENCE LINE THE FOLLOWING TWO COURSES (SAID FENCE LINE LYING ON THE NORTHERLY BOUNDARY OF THAT CERTAIN PARCEL REFERENCED AS ENTRY NO. 126738, OF OFFICIAL RECORDS): NORTH 61°20'05" WEST 93.60 FEET AND NORTH 59°13'48" WEST 96.31 FEET; THENCE LEAVING SAID FENCE LINE NORTH 64°41'20" WEST 222.93 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF THAT CERTAIN PARCEL REFERENCED AS ENTRY NO. 141987 (PARCEL 1), OF OFFICIAL RECORDS; THENCE NORTH 58°41'00" WEST 152.57 FEET ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL AND THE NORTHERLY BOUNDARY OF THAT CERTAIN PARCEL REFERENCED AS ENTRY NO. 137201 OF OFFICIAL RECORDS, TO A POINT

INTERSECTING THE SOUTHERLY EXTENSION OF AN EXISTING FENCE LINE, SAID FENCE LINE LYING ON THE EASTERLY BOUNDARY OF THAT CERTAIN PARCEL REFERENCED AS ENTRY NO. 131500, OF OFFICIAL RECORDS; THENCE NORTH  $00^{\circ}46'36''$  WEST 374.35 FEET ALONG SAID FENCE LINE AND FENCE LINE EXTENDED; THENCE SOUTH  $89^{\circ}59'25''$  WEST 377.67 FEET ALONG AN EXISTING FENCE LINE AND FENCE LINE EXTENDED, SAID FENCE LINE AND FENCE LINE EXTENSION LYING ON THE NORTHERLY BOUNDARY OF SAID PARCEL, TO A POINT INTERSECTING THE EASTERLY BOUNDARY OF MIDWAY FARMS SUBDIVISION, PLAT NO. 2 (AMENDED), REFERENCED AS ENTRY NO. 105690, OF OFFICIAL RECORDS; THENCE NORTH  $00^{\circ}17'00''$  WEST 658.39 FEET ALONG THE EASTERLY BOUNDARY OF SAID SUBDIVISION TO A POINT INTERSECTING THE WESTERLY EXTENSION OF AN EXISTING FENCE LINE; THENCE NORTH  $89^{\circ}36'32''$  EAST 1328.60 FEET ALONG SAID FENCE LINE AND FENCE LINE EXTENDED TO A POINT ON THE WESTERLY BOUNDARY OF LACY LANE ESTATES SUBDIVISION, PLAT "B", REFERENCED AS ENTRY NO. 196634, OF OFFICIAL RECORDS; THENCE SOUTH  $00^{\circ}12'33''$  EAST 657.62 FEET ALONG THE WESTERLY BOUNDARY AND BOUNDARY EXTENSION OF SAID SUBDIVISION; THENCE NORTH  $89^{\circ}39'54''$  EAST 44.83 FEET ALONG THE SOUTHERLY BOUNDARY AND BOUNDARY EXTENSION OF SAID SUBDIVISION; THENCE SOUTH  $11^{\circ}05'47''$  EAST 0.49 FEET ALONG SAID SOUTHERLY BOUNDARY; THENCE NORTH  $89^{\circ}57'19''$  EAST 1283.14 FEET ALONG SAID SOUTHERLY BOUNDARY AND THE SOUTHERLY BOUNDARY AND BOUNDARY EXTENDED OF LACY LANE ESTATES SUBDIVISION, PLAT "A", REFERENCED AS ENTRY NO. 196633, OF OFFICIAL RECORDS, TO A POINT INTERSECTING THE NORTHERLY EXTENSION OF THE EASTERLY BOUNDARY OF PARCEL 2, OF THE MOUNTAIN SPA; THENCE SOUTH 690.21 FEET ALONG THE EASTERLY BOUNDARY AND BOUNDARY EXTENSION OF SAID PARCEL TO THE POINT OF BEGINNING.

SITUATE IN WASATCH COUNTY, STATE OF UTAH

PARCEL 2:

THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN.

LESS AND EXCEPTING ANY PORTION OF THE PROPERTY CONVEYED BY THAT CERTAIN SPECIAL WARRANTY DEED GRANTED IN FAVOR OF MIDWAY CITY RECORDED JANUARY 6, 2006, AS ENTRY NO. 294904, IN BOOK 820 AT PAGE 263 OF OFFICIAL RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BURGI LANE RIGHT-OF-WAY WHICH IS SOUTH  $00^{\circ}21'29''$  EAST ALONG THE SECTION LINE, 2665.81 FEET AND NORTH  $89^{\circ}38'31''$  EAST, 1273.75 FEET FROM THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE

NORTH 89°53'12" EAST, 55.48 FEET; THENCE SOUTH 00°18'20" EAST TO A POINT ON SAID RIGHT-OF-WAY, 4.29 FEET TO A POINT OF NON CURVATURE WITH A 389.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID CURVE AND SAID RIGHT-OF-WAY, 55.71 FEET THROUGH A CENTRAL ANGLE OF 08°12'18" (CHORD BEARS NORTH 85°41'29" WEST, 55.66 FEET) TO THE POINT OF BEGINNING.

SITUATE IN WASATCH COUNTY, STATE OF UTAH.

AND

WATER RIGHTS:

55-8245

55-8246

55-11997

55-11237

55-9664

55-3978

55-1288

55-1510