

Midway City Council
3 December 2019
Regular Meeting

Resolution 2019-28 /
Saddle Creek Ranch, Phase 1
Development Agreement



RESOLUTION 2019-28

A RESOLUTION APPROVING THE SADDLE CREEK RANCH P.U.D PHASE I 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 Saddle Creek Ranch P.U.D. Phase I Development Agreement with the developer of the Saddle Creek Ranch Development for the use and development of the land included within Phase 1 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 Saddle Creek Ranch P.U.D. Phase I 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 2019.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

(SEAL)

DRAFT

Exhibit A

DRAFT

SADDLE CREEK RANCH SUBDIVISION PHASE 1 DEVELOPMENT AGREEMENT

THIS SADDLE CREEK RANCH SUBDIVISION PHASE 1 DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this _____ day of _____, 2019, by and between DPW Heber Inc. (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 supplements but does not replace the previous Amended Development Agreement entered into by and between Developer and the City involving the same Property.

RECITALS

A. On August 10, 2007, Midway City and Developer entered into the "Saddle Creek Ranch P.U.D. Development Agreement" recorded in the Wasatch County Recorder's office at Entry 325555, Book 949, Page 210-225.

B. On July 8, 2019, Midway City and Developer entered into the Midway City Saddle Creek Ranch Subdivision Amended Development Agreement which has been or shall be recorded in the office of the Wasatch County Recorder's Office.

C. The City and Developer, acting pursuant to Section 5 of the "Development Agreement", do hereby enter into this "Saddle Creek Ranch Subdivision Phase I Development Agreement" which shall supplement but not replace the "Amended Development Agreement" for the Saddle Creek Ranch Subdivision. Any terms or conditions of the Saddle Creek Ranch Subdivision Amended Development Agreement that are not expressly modified by this Agreement shall remain in full force and effect.

D. Developer has a legal interest in certain real property located in the City as described in Exhibit A attached hereto.

E. Developer intends to develop the real property described in Exhibit A as a subdivision consisting of 36 lots. This subdivision development is commonly known as Saddle Creek Ranch Subdivision. Phase I of the Saddle Creek Ranch Subdivision consists of nine (9) lots on 9.12 acres. This will be the first of four phases included in the approved Master Plan. Phase I is located in the southeast section of the Master Plan.

F. Each Party acknowledges that it is entering into this Phase 1 Agreement voluntarily. Developer consents to all of the terms of the Amended Agreement and this Phase 1 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 four (4) 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) **Conditions to Current Approvals.** Developer shall comply with all of the following Conditions to Current Approvals:

- (1) ***Payment of Fees:*** Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, 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 plan 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.

- (2) **Phasing Plan:** The Project shall consist of four phases:

Phase 1 – 9 lots
Phase 2 – 13 lots
Phase 3 – 4 lots
Phase 4 – 10 lots

This Agreement specifically addresses the requirements for Phase 1, and subsequent Phases will be the subject of additional Agreements.

- (3) **Water:** The original developer of the property tendered 109.5-acre feet to the City to comply with the culinary and secondary water requirements. Using current City water requirements, the water needed for the entire Project is in the range of about 106-109-acre feet. It appears the developer has tendered enough water to the City for the entire development
- (4) **Water Line Upsizing.** Developer agrees to install a 12-inch water line to the Project and then receive reimbursement from the City for the cost of the line over and above the cost of an 8-inch line. For purposes of Phase 1, the Developer is required to pay fees for a water extension line agreement for a water line in 250 West for \$202.68 per connection and a payment for the water line in Center Street for \$1,436.61 per connection. Both payments would be a pass through to the holders of the extension line agreements and must be paid as required by the amended water line extension agreement, attached hereto as an Exhibit.
- (5) **Trails.** Developer shall build trails accessible to the public along the south and west boundaries of the Project (“exterior trails”) The trails shall meet all City trails standards and guidelines. The trails will be owned and maintained by Midway City. All interior trails that do not parallel a public road within 50’ shall only be used by the public with permission from the HOA. Trails that parallel public roads within the subdivision that take the place of required sidewalks shall have a public access easement. The HOA shall have all obligations to remove snow from both the interior and exterior 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. The Parties agree that in lieu of building the trail to the west of Lot 36, the Developer shall extend the trail from the southeast corner of the development to Center Street. The Parties agree that an easement will be designated on the plat for a trail to the west of Lot 36, but Developer shall have no obligation to build the trail. The Parties agree that there will be no building allowed in the 30-foot rear setback along the North lot line of Lot 36, and that this restriction shall be shown on the Plat. The Developer shall file a notice of the building restriction on the title to Lot 36 telling the prospective purchaser to refer to the plat on Lot 36 so that it comes up in a title search and puts prospective purchasers on notice of the building restriction. For Phase I, the Developer will construct an 8' wide paved trail along 970 South from Center Street to 250 West. There is also a combination of public trails and sidewalks located in Phase 1. The one trail that is not a public trail, which will be maintained by the HOA, is located between lots 5 and 6 and heads to the west.

- (6) **Public Streets.** Roads within the Project will be publicly owned and maintained by the City.
- (7) **Public Storm Drains.** Developer agrees to construct and install a public storm drain system as shown on the construction drawings to be maintained by the City.
- (8) **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. No building permits shall be issued until all Project improvements are complete. For Phase I, the Developer is required to move or bury the transmission lines (at Developer's option) that run along 970 South. 970 South will also need to be built to its full width as part of Phase 1. Also, improvements to the intersection of Center Street and 970 South are required with this Phase 1.
- (9) **Open Space:** Phase 1 includes 2.91 acres of open space which is 29.57%. Each phase is required to provide a minimum of 15% open space.
- (10) **Sensitive Lands:** No sensitive lands have been identified in Phase 1. A geotechnical study was submitted to the City that Horrocks Engineers has reviewed.

- (11) **Timing of Approvals:** The Developer is allowed to receive approvals for any of the phases in the master plan, but no construction of improvements can be made, until the transmission lines along 970 South is in the process of being buried or being moved so that 970 South can be constructed to its planned width.
- (12) **Weed Control Plan:** Developer has submitted and has obtained City approval of a noxious weed control plan which Developer will follow.
- (13) **Affordable Housing/ Impact Fees.** In the initial Development Agreement, Developer agreed to pay an affordable housing fee-in-lieu of \$2,800.00 per unit within the development. The Parties also agreed that the Developer would improve 970 South and Center Street and would be reimbursed up to \$156,750.00 of any actual costs expended in constructing said improvements from traffic impact fees collected by the City. The Parties agree to amend these provisions to waive the fee-in-lieu requirement for affordable housing in exchange for the City keeping all traffic impact fees collected on the project.
- (14) **Warranty:** Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.
- (15) **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.
- (16) **Water Line Extension Payments:** Prior to recording the plat for each Phase of the Project, Developer shall reimburse the parties who are responsible for installing the water line in 250 West and in Center Street as required in the amended water line extension agreement attached hereto as an Exhibit.
- (17) **970 South and 250 West:** 970 South shall be widened to a fifty-six (56') foot wide easement and a 30-foot cross section of pavement from the intersection of 250 West and 970 South to the intersection of 970 South and Center Street. Developer shall install a half width road from the intersection of 250 West and 970 South to the northern boundary of the subdivision. At the time the half width is installed the developer will chip seal the full width of 250 West. All costs of widening and chip sealing the road shall be borne by the Developer, and a performance bond shall be required

as per City policy. The widening shall occur in front of the Days residence as well at the sole cost of the Developer.

Pre-Construction:

- (18) ***Phasing:*** A phasing plan is attached as Exhibit B. Requirements of each phase are as follows:
- Phase 1: No construction of improvements shall be made until a permit has been issued to Heber Light and Power Company to move or bury the transmission lines along 970 South. Developer shall not be allowed to have a pre-construction meeting until the utility poles located along 970 South are under construction to be moved. All improvements to 970 South shall be completed with Phase 1. All trails shown within Phase 1 shall be completed during the phase, including the trail in front of the Days residence (located at 30 West and 970 South) that connects the development with Center Street. Developer shall also install a center turn-lane on Center Street at the junction of 970 South and Center Street, as approved by UDOT.
 - Phase 2: All improvements to 250 West shall be installed with Phase 2, as well as all trails and landscaping as indicated on the Phasing plan.
 - Phase 3 and 4: All improvements within each phase, as established on the plat and plans, shall be installed with the corresponding phase.

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.

(d) **Water Line Reimbursement.** The City agrees to pay Developer the cost difference between the 8-inch water line required for the Project and the 12-inch line the Developer has agreed to install. Payment to Developer shall be made according to the terms of the Water Line Enlargement Agreement entered into between the Parties.

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.

(b) 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:

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.

*Remainder of Page Intentionally Left Blank
Signature Page Follows*

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, 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.

NOTARY

DPW HEBER INC.

By: Don Watkins.
Its: President

STATE OF UTAH)
 ss:
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this__ day of _____, 2019, by Don Watkins, who executed the foregoing instrument in the capacity as President of DPW Heber, Inc.

NOTARY