

Midway City Council  
3 August 2021  
Regular Meeting

Warrants

Report Criteria:

- Detail report.
- Invoices with totals above \$0 included.
- Paid and unpaid invoices included.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
<b>305</b>								
305	COLONIAL FLAG & SPECIALTY	0249683-IN	Administrative Bldg Rotations	07/21/2021	98.40	.00		
Total 305:					98.40	.00		
<b>735</b>								
735	LES OLSON COMPANY	SU035034R	RETURN OF STAPLES	07/19/2021	64.00-	.00		
Total 735:					64.00-	.00		
<b>795</b>								
795	MIDWAY BOOSTERS, INC	07132021	MERCH FOR SS	07/13/2021	1,408.00	.00		
Total 795:					1,408.00	.00		
<b>845</b>								
845	MOUNTAINLAND SUPPLY COMP	S104203814.0	WATER FIRE HYD	07/13/2021	7.78	.00		
845	MOUNTAINLAND SUPPLY COMP	S104203814.0	WATER-FIRE HYD	07/23/2021	31.12	.00		
845	MOUNTAINLAND SUPPLY COMP	S104203814.0	WATER-FIRE HYD	07/23/2021	7.78	.00		
845	MOUNTAINLAND SUPPLY COMP	S104207839.0	SHOP	07/14/2021	11.76	.00		
845	MOUNTAINLAND SUPPLY COMP	S104208281.0	WATER-HYDRANT	07/15/2021	1,210.38	.00		
845	MOUNTAINLAND SUPPLY COMP	S104208281.0	WATER-HYDRANT	07/20/2021	1,182.79	.00		
845	MOUNTAINLAND SUPPLY COMP	S104208281.0	WATER-HYDRANT	07/20/2021	311.79	.00		
845	MOUNTAINLAND SUPPLY COMP	S104208281.0	WATER-HYDRANT	07/20/2021	746.43	.00		
845	MOUNTAINLAND SUPPLY COMP	S1042092922.	SAN ANGELO BAR	07/12/2021	41.42	.00		
845	MOUNTAINLAND SUPPLY COMP	S104219670.0	WATER-METER JUMPER	07/21/2021	77.56	.00		
845	MOUNTAINLAND SUPPLY COMP	S104219690.0	PARKS	07/21/2021	360.84	.00		
845	MOUNTAINLAND SUPPLY COMP	S104219690.0	PARKS	07/21/2021	1,443.34	.00		
845	MOUNTAINLAND SUPPLY COMP	S104219936.0	WATER	07/22/2021	64.39	.00		
Total 845:					5,497.38	.00		
<b>930</b>								
930	Dominion Energy	2731063797 7/	2731063797 Community Center	07/14/2021	24.63	.00		
930	Dominion Energy	5770020000 7/	5770020000 TOWN HALL	07/14/2021	8.44	.00		
930	Dominion Energy	6558550000 7/	6558550000 Gas Service	07/14/2021	15.99	.00		
930	Dominion Energy	680102000 7/1	6801020000 Admin Office	07/14/2021	11.54	.00		
Total 930:					60.60	.00		
<b>1045</b>								
1045	STANDARD PLUMBING SUPPLY	MXJP58	BUILDINGS	07/07/2021	36.74	.00		
1045	STANDARD PLUMBING SUPPLY	MYMN94	WATER	07/19/2021	26.51	.00		
1045	STANDARD PLUMBING SUPPLY	MYNX35	FLOWERS	07/20/2021	48.48	.00		
1045	STANDARD PLUMBING SUPPLY	MYQV43	CEMETERY	07/20/2021	22.60	.00		
1045	STANDARD PLUMBING SUPPLY	MYRK85	DOG PARKS	07/21/2021	1.78	.00		
1045	STANDARD PLUMBING SUPPLY	MZGH98	BUILDINGS	07/27/2021	9.49	.00		
1045	STANDARD PLUMBING SUPPLY	MZGK09	VALAIS PARK	07/27/2021	124.99	.00		
1045	STANDARD PLUMBING SUPPLY	SC4509	SERVICE	07/14/2021	7.00	.00		
Total 1045:					277.59	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
<b>1170</b>								
1170	TIMBERLINE ACE HARDWARE	144164	FLOWERS	07/15/2021	32.98	.00		
1170	TIMBERLINE ACE HARDWARE	144274	BARK	07/20/2021	299.40	.00		
1170	TIMBERLINE ACE HARDWARE	144297	NOZZLE TWIST BRASS	07/21/2021	8.99	.00		
Total 1170:					341.37	.00		
<b>1255</b>								
1255	UTAH LOCAL GOVERNMENTS T	15918505	Liability deductible-2nd qt fqj9451	07/13/2021	1,402.23	.00		
1255	UTAH LOCAL GOVERNMENTS T	1592116	Auto Physical Damage	07/13/2021	9,858.99	.00		
1255	UTAH LOCAL GOVERNMENTS T	1592117	Liability INVOICE	07/13/2021	30,553.00	.00		
1255	UTAH LOCAL GOVERNMENTS T	1592118	Building/Contractor Equipment/Eq	07/13/2021	14,273.04	.00		
1255	UTAH LOCAL GOVERNMENTS T	1592119	WORKERS COMP Policy - Monthl	07/13/2021	1,887.71	.00		
Total 1255:					57,974.97	.00		
<b>1310</b>								
1310	WASATCH AUTO PARTS	227939	PARTS	07/15/2021	283.42	.00		
1310	WASATCH AUTO PARTS	228260	PARTS	07/19/2021	35.01	.00		
Total 1310:					318.43	.00		
<b>1365</b>								
1365	WAVE PUBLISHING	C61078	ADMIN ASSISTANT-EMPLOYME	06/30/2021	51.50	.00		
1365	WAVE PUBLISHING	C61079	SOUVENIR SHOP=EMPLOYME	06/30/2021	71.50	.00		
1365	WAVE PUBLISHING	C61080	JANITORAL SERVICES-EMPLOY	06/30/2021	45.00	.00		
1365	WAVE PUBLISHING	L17310	OPEN SPACE NOTICE	07/07/2021	32.38	.00		
1365	WAVE PUBLISHING	L17311	PLANNING COMMISSION	07/07/2021	161.88	.00		
1365	WAVE PUBLISHING	L17314	PUBLIC HEARING	07/14/2021	97.12	.00		
Total 1365:					459.38	.00		
<b>1603</b>								
1603	ROCKY MOUNTAIN POWER	07122021	SWISS MOUNTAIN PUMP	07/12/2021	12.58	.00		
Total 1603:					12.58	.00		
<b>1917</b>								
1917	HOSE & RUBBER SUPPLY LLC	01561379	PARTS	07/21/2021	20.25	.00		
Total 1917:					20.25	.00		
<b>1931</b>								
1931	KW ROBINSON CONSTRUCTIO	2019-165	PARTIAL PAYMENT #1 RIVER R	07/15/2021	180,203.75	.00		
Total 1931:					180,203.75	.00		
<b>2164</b>								
2164	POINT S	0181327	2018 RAM 3500	07/14/2021	821.85	.00		
Total 2164:					821.85	.00		
<b>2244</b>								
2244	PEAK ALARM CO, INC	1132985	280 E 850 S PUBLIC WORKS IN	07/21/2021	99.00	.00		
Total 2244:					99.00	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
<b>2302</b>								
2302	DIAMOND K WASTE	27140	30 YD CONTAINER-CEMETERY	07/15/2021	636.00	.00		
Total 2302:					636.00	.00		
<b>2364</b>								
2364	PARK CITY LOCK & KEY	32618B	KEYS	07/21/2021	54.45	.00		
Total 2364:					54.45	.00		
<b>2479</b>								
2479	BUILDING RENTAL DEPOSIT RE	07212021	PARK RENTAL REFUND - PER C	07/21/2021	25.00	.00		
Total 2479:					25.00	.00		
<b>2509</b>								
2509	Building Permit Refund	07212021	21-0286 - INTERLAKEN PERMIT	07/21/2021	1,000.00	.00		
Total 2509:					1,000.00	.00		
<b>2636</b>								
2636	CenturyLink ACCT# 88239224	234646375	435-654-4120 Phone Services	07/12/2021	1,024.42	.00		
Total 2636:					1,024.42	.00		
<b>2700</b>								
2700	Car Quest Auto Parts	15341-98053	PARTS	07/20/2021	512.21	.00		
Total 2700:					512.21	.00		
<b>2709</b>								
2709	Celeste Johnson	07202021	DINNER BEFORE CITY COUNCI	07/20/2021	40.48	.00		
Total 2709:					40.48	.00		
<b>2748</b>								
2748	ENFUSION TECHNOLOGIES	190148	LICENSE FEE/MAINTENANCE &	06/01/2021	2,500.00	.00		
Total 2748:					2,500.00	.00		
<b>2787</b>								
2787	ULINE	136230043	RECTANGLE NAME BADGE	07/16/2021	154.73	.00		
Total 2787:					154.73	.00		
<b>2806</b>								
2806	SUPERIOR LOCKSMITH	I68820	SHELTER/RESTROOM KEYS	07/14/2021	186.00	.00		
Total 2806:					186.00	.00		
<b>2816</b>								
2816	COMCAST	07062021	8495 44 104 0300361 THE HALL	07/06/2021	84.78	.00		
Total 2816:					84.78	.00		
<b>2881</b>								
2881	IBI Group	10012997	Professional Service Rendered thr	07/21/2021	3,959.25	.00		

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
Total 2881:					3,959.25	.00		
<b>2885</b>								
2885	RITUAL CHOCOLATE	HS-62491	CHOCOLATE ORDER	07/19/2021	186.00	.00		
Total 2885:					186.00	.00		
<b>2891</b>								
2891	RUBY JENSEN GALLERY	102	MERCH FOR SS	07/19/2021	302.00	.00		
Total 2891:					302.00	.00		
<b>2903</b>								
2903	COWBELLS.COM	21042	Swiss Style Cowbells	06/24/2021	1,264.50	.00		
Total 2903:					1,264.50	.00		
<b>2904</b>								
2904	PEPPERLANE PRODUCTS	11055	ASSORTED JELLY	07/26/2021	126.00	.00		
Total 2904:					126.00	.00		
<b>2908</b>								
2908	JEREMY HORROCKS	07222021	CDL PHYSICAL	07/22/2021	120.00	.00		
Total 2908:					120.00	.00		
<b>2909</b>								
2909	STEVE NIELSON	07282021	FIREWORKS EXPENSE	07/28/2021	265.61	.00		
Total 2909:					265.61	.00		
<b>2910</b>								
2910	KOWALLIS LANDSCAPE	0000004	DISPLAY ART	07/19/2021	340.00	.00		
Total 2910:					340.00	.00		
<b>2911</b>								
2911	L.A. DRESDEN'S	4014	MERCH SS	07/24/2021	60.00	.00		
Total 2911:					60.00	.00		
<b>2912</b>								
2912	JUST BE RAD	100	STICKERS FOR SS	07/13/2021	150.00	.00		
Total 2912:					150.00	.00		
Grand Totals:					260,520.98	.00		

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Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid	Voided
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Dated: \_\_\_\_\_

Mayor: \_\_\_\_\_

City Council: \_\_\_\_\_

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City Recorder: \_\_\_\_\_

City Treasurer: \_\_\_\_\_

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Report Criteria:

Detail report.

Invoices with totals above \$0 included.

Paid and unpaid invoices included.

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Midway City Council  
3 August 2021  
Regular Meeting

Minutes of the  
20 July 2021  
Work Meeting



# Memo

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**Date:** 29 July 2021

**To:**

**Cc:**

**From:** Brad Wilson, City Recorder

**RE:** Minutes of the 20 July 2021 City Council Work Meeting

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Please note that the following minutes are awaiting formal approval and are in draft or unapproved form.

**MINUTES OF THE  
MIDWAY CITY COUNCIL  
(Work Meeting)**

**Tuesday, 20 July 2021, 5:00 p.m.  
Midway Community Center, Council Chambers  
160 West Main Street, Midway, Utah**

**Note:** Notices/agendas were posted at 7-Eleven, Ridley’s Express, the United States Post Office, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City’s website. A copy of the public notice/agenda is contained in the supplemental file.

**1. Call to Order**

Mayor Johnson called the meeting to order at 5:14 p.m.

**Members Present:**

Celeste Johnson, Mayor  
Steve Dougherty, Council Member  
Lisa Orme, Council Member  
Kevin Payne, Council Member  
JC Simonsen, Council Member

**Staff Present:**

Corbin Gordon, Attorney  
Michael Henke, Planning Director  
Wes Johnson, Engineer  
Brad Wilson, Recorder/Financial Officer

**Members Excused:**

Jeff Drury, Council Member

**Note:** A copy of the meeting roll is contained in the supplemental file.

**2. Ordinance 2021-13 / Non-Conforming Buildings and Uses** (City Planner – Approximately 10 minutes) – Discuss Ordinance 2021-13 amending Section 16.26.8 (Non-Conforming Buildings and Uses) of the Midway City Municipal Code regarding non-conforming buildings and uses. Recommended without conditions by the Midway City Planning Commission.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Reasons for the ordinance
- Proposed language
- Diagrams
- Changes since the previous meeting

Mr. Henke also made the following comments:

- A survey was the only way to avoid incorrect property lines.
- Requiring a survey had advantages and disadvantages.
- The City had 30 days to stop construction once it started.
- Marking just the front property line would still require a survey.
- Commercial was discretionary so the ordinance focused on residential structures.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- Engineered drawings from the improving of Main Street could be used to determine property lines along that street.
- An engineer could verify a property line without needing a new survey.
- Would the City want a setback along Main Street of six feet from the sidewalk and then another ten feet from there?

**3. Ordinance 2021-14 / Off-Street Parking and Loading Uses** (City Planner – Approximately 10 minutes) – Discuss Ordinance 2021-14 amending Section 16.13.39 (Off-Street Parking and Loading Uses) of the Midway City Municipal Code allowing narrower commercial driveways for existing structures. Recommended without conditions by the Midway City Planning Commission.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Proposed language
- Diagrams

Mr. Henke also made the following comments:

- The ordinance would apply to a limited number of properties.

**4. Resolution 2021-13 / Street Cross-Sections** (City Engineer – Approximately 30 minutes) – Discuss Resolution 2021-13 amending the Midway City Standard Specifications and Drawings regarding reducing the width of street cross-sections.

Wes Johnson gave a presentation regarding the proposed resolution and reviewed the following items:

- Cross-sections and changes

Mr. Johnson also made the following comments:

- Should the fourth cross-section discussed be optional?
- Should the engineer be allowed discretion on the drainage, etc.?

- The widths were set and not a minimum.
- The fourth cross-section needed a ribbon curb to meet the width.
- Park strips were usually in the public right-of-way but HOAs or the adjoining property owners usually maintained them.
- Greater lot frontages would reduce the need for street parking.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- Roads should not be too narrow for service vehicles. These vehicles could park off the road if there was a ribbon curb.
- Emergency vehicles and traffic could not use a road if it was too narrow, and vehicles were parked on both sides. Off-street parking should be required to address this issue.

**5. Resolution 2021-24 / Cemetery Moratorium** (City Attorney – Approximately 10 minutes) – Discuss moratorium on the sale of spaces in the Midway City Cemetery to allow for a review of rates and services.

Corbin Gordon made the following comments:

- There were problems determining the ownership of some existing spaces in the City's cemetery. Families were fighting over the spaces. The City was starting an adjudication of these burial rights.
- Deeds for burial spaces were a right that had to go through probate.
- Recommended a moratorium on the sale of spaces for the next six months. The only exception would be for a death. In this case a space could be purchased for the deceased plus a space for their spouse.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Mayor Johnson made the following comments:

- The goal of the moratorium was to set limits on the number of spaces that could be purchased while other issues with the cemetery were being addressed.
- The City needed to track the ownership of spaces from generation to generation.
- The moratorium would give staff time to complete the GIS system for the cemetery.

## 6. Adjournment

**Motion:** Council Member Orme moved to adjourn the meeting. Council Member Payne seconded the motion. The motion passed unanimously.

The meeting was adjourned at 5:53 p.m.

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Celeste Johnson, Mayor

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Brad Wilson, Recorder

DRAFT

Midway City Council  
3 August 2021  
Regular Meeting

Minutes of the  
20 July 2021  
Regular Meeting



# Memo

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**Date:** 30 July 2021  
**To:**  
**Cc:**  
**From:** Brad Wilson, City Recorder  
**RE:** Minutes of the 20 July 2021 City Council Regular Meeting

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Please note that the following minutes are awaiting formal approval and are in draft or unapproved form.

**MINUTES OF THE  
MIDWAY CITY COUNCIL  
(Regular Meeting)**

**Tuesday, 20 July 2021, 6:00 p.m.  
Midway Community Center, Council Chambers  
160 West Main Street, Midway, Utah**

**Note:** Notices/agendas were posted at 7-Eleven, Ridley's Express, the United States Post Office, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City's website. A copy of the public notice/agenda is contained in the supplemental file.

**1. Call to Order; Pledge of Allegiance; Prayer and/or Inspirational Message**

Mayor Johnson called the meeting to order at 6:02 p.m.

**Members Present:**

Celeste Johnson, Mayor  
Steve Dougherty, Council Member  
Lisa Orme, Council Member  
Kevin Payne, Council Member  
JC Simonsen, Council Member

**Staff Present:**

Corbin Gordon, Attorney  
Michael Henke, Planning Director  
Wes Johnson, Engineer  
Brad Wilson, Recorder/Financial Officer

**Members Excused:**

Jeff Drury, Council Member

**Note:** A copy of the meeting roll is contained in the supplemental file.

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. Council Member Orme gave the prayer and/or inspirational message.

**2. Consent Calendar**

- a. Agenda for the 20 July 2021 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 1 July 2021 City Council Meeting
- d. Minutes of the 6 July 2021 City Council Work Meeting
- e. Minutes of the 6 July 2021 City Council Regular Meeting
- f. Glen Lent as an alternate member of the Midway City Open Space Advisory Committee
- g. Rene Holm as a full member of the Midway City Open Space Advisory Committee to replace Ameer Armour

- h. A second one-year extension of final approval for the Raynor Subdivision located at 565 North River Road (Zoning is R-1-15)

**Note:** Copies of items 2a through 2h are contained in the supplemental file.

**Motion:** Council Member Dougherty moved to approve the consent calendar.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**3. Public Comment** – Comments were taken for items not on the agenda.

Mayor Johnson asked if there were any comments from the public for items not on the agenda.

Scotch Fields, Phases 1 and 2 / Landscaping

Gary Blake made the following comments:

- Bill Probst, who was one of the developers for the project, did not follow the landscaping plan approved by the City. There was a large area where the developer did not put in the specified bluegrass. The developer was not being held accountable.
- The City was still holding a portion of the bond for the project.
- Who was responsible for inspecting the landscaping?
- The developer, not the HOA, should pay to correct the landscaping.
- No more money from the bond should be released until the issue was fixed.

Mayor Johnson made the following comments:

- Tex Couch, Midway City Building Official, did not offer an opinion on the grading in the development.
- Time had not been budgeted to discuss the two phases.
- The City would speak with Mr. Probst or put the item on a future agenda.
- The homeowners in the project needed to be involved.

Wes Johnson indicated that inspecting the landscaping was a grey area, but his office was willing to assume that responsibility.

Erin Malan agreed that the landscaping plan included bark or mulch around the units. The

homeowners who wanted that should have it.

Bob Garretson indicated that Dennis Higley was also a developer for the project and should be held accountable.

No further comments were offered.

#### **4. Department Reports**

##### Housing Authority / Restructuring

Council Member Payne reported that the Wasatch County Housing Authority would hire a consultant to help restructure the organization. He added that the Mountainland Association of Governments would also be involved in the restructuring.

##### Water / Community Meeting

Council Member Dougherty suggested August 5<sup>th</sup> or 12<sup>th</sup> for a community meeting regarding water and water conservation. He thought that it would help residents become educated on these issues. He recommended that the Council attend.

##### Midway Business Alliance / Shortage of Workers

Council Member Dougherty indicated that he wanted to survey members of the Midway Business Alliance. He wanted to know why restaurants did not have sufficient employees and had to leave tables empty.

##### HL&P / Drought / Rates

Council Member Dougherty indicated that the Heber Light & Power Company (HL&P) was generating less power at the Jordanelle Dam because of the drought. He also indicated that HL&P was studying its rates.

##### Animal Control / Wasatch County

Council Member Simonsen reported that Wasatch County might become responsible for animal control, rather than Heber City, because of the growth in the area.

##### River Road Project / Update

Wes Johnson reported that Main Street might be closed for another two weeks because of the River Road Project. Mayor Johnson reported that the Sheriff's Department was doing speed control on Michie Lane which was the detour for the project. Council Member Dougherty indicated that the speed trailers would be more effective in the middle rather than the ends of the blocks.

## Fire District / Transfer Van

Brad Wilson reviewed a presentation from the Wasatch County Fire District. It thanked Midway for funding a new patient transfer van.

**Note:** A copy of the presentation is contained in the supplemental file.

### **5. Ordinance 2021-13 / Non-Conforming Buildings and Uses** (City Planner – Approximately 5 minutes) – Discuss and possibly adopt Ordinance 2021-13 amending Section 16.26.8 (Non-Conforming Buildings and Uses) of the Midway City Municipal Code regarding non-conforming buildings and uses. Recommended without conditions by the Midway City Planning Commission. **Public Comment**

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Pictures
- Houses
- Garages
- Diagrams
- Possible findings

Mr. Henke also made the following comments:

- The ordinance applied just to setbacks.
- It would allow flexibility and help preserve existing structures.
- It was based on Summit County's code.
- An addition to a non-conforming building was allowed if the addition met the current setbacks.
- Side setbacks were minimal and would not be impacted.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Mayor Johnson pointed out that non-conforming structures were not necessarily illegal.

## **Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

**Motion:** Council Member Simonsen moved to approve Ordinance 2021-13 regarding non-conforming buildings and uses with the following findings:

- The proposed code would address when and how certain nonconforming buildings and structures could be enlarged.
- The proposed code would allow for legally conforming additions to structures that were legally built but were now nonconforming due to current land use code requirements.
- The proposed code would only allow the enlargement of residential buildings and structures that were nonconforming due to height and/or setback requirements and agricultural or accessory structures that were non-conforming due to side and rear setbacks (must comply with current front setbacks). Structures that were deemed nonconforming due to other current land use code requirements would not qualify.
- The proposed amendment would allow for the enlargement of some nonconforming historic buildings and structures that otherwise would not be possible.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**6. Ordinance 2021-14 / Off-Street Parking and Loading Uses** (City Planner – Approximately 5 minutes) – Discuss and possibly adopt Ordinance 2021-14 amending Section 16.13.39 (Off-Street Parking and Loading Uses) of the Midway City Municipal Code allowing narrower commercial driveways for existing structures. Recommended without conditions by the Midway City Planning Commission. **Public Comment**

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the following items:

- Background
- Proposed code
- Diagrams
- Possible findings

Mr. Henke also made the following comments:

- The ordinance addressed access areas for commercial parking.
- It did not affect the actual parking.
- It created flexibility and preserved existing structures.

**Note:** A copy of Mr. Henke’s presentation is contained in the supplemental file.

**Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public. She

closed the hearing when no public comment was offered.

**Motion:** Council Member Orme moved to approve Ordinance 2021-14 regarding off-street parking and loading uses with the following findings:

- The proposed amendment would create additional flexibility for driveway access widths for properties with historic homes in the C-2 and C-3 zones.
- The proposed language helped promote the preservation of historic structures while allowing for increased economic development in Midway's commercial zones, which was a goal described in the General Plan.

**Second:** Council Member Simonsen seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**7. Resolution 2021-13 / Street Cross-Sections** (City Engineer – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-13 amending the Midway City Standard Specifications and Drawings regarding reducing the width of street cross-sections.

Wes Johnson gave a presentation regarding the proposed resolution and reviewed the following items:

- Road classifications
- Proposed cross-sections.

Mr. Johnson also made the following comments:

- A driver's speed was relative to their comfort level.
- Four cross-sections were proposed.
- A developer would need to request, and the Council would have to approve, the use of cross-section number three in a development.
- Usually, only service vehicles parked on the street when there were larger lots.
- Cross-sections three and four differed in the width of the asphalt.
- Concrete curbs helped asphalt from failing.

**Note:** A copy of Mr. Johnson's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- Developers would choose the least costly cross-section. Should cross-section number

- four be required instead of a choice with number three?
- Front setbacks should be increased for larger lots. This would increase the driveways which would provide additional parking.
- The Cascades at Soldier Hollow had a rural cross-section and there was not a parking problem on its streets.
- The width of the asphalt should be decreased to reduce heating and runoff.
- Larger lots and houses had more cars and service vehicles. There should be a requirement for off-street visitor parking for both public and private streets.
- River Road was too narrow and did not have a concrete curb to protect the asphalt. A lot of trucks used the road. The road was being widened.
- Increased front setbacks would only be effective if the lots were deep.

**Note:** Council Member Orme left at 7:24 p.m.

- Cross-section number four should come back to the Council for revisions.

**Motion:** Council Member Simonsen moved to approve Resolution 2021-13 as is, regarding street cross-sections, and instruct the staff to get feedback from the Council for additional changes.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** Council Member Payne asked if cross-section number four was still discretionary under the motion. Council Member Simonsen responded that it remained discretionary.

**Note:** Council Member Orme returned at 7:27 p.m.

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**8. Ordinance 2021-21 / Parking Violations** (City Attorney – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2021-21 amending the Midway City Municipal Code regarding parking violations.

Mr. Gordon made the following comments:

- The ordinance was modeled after Provo's code.
- It would decriminalize parking violations and make them civil infractions.
- Violators would not have to go to court, but the City had to establish an appeals process. The City's administrative law judge could be the appeal authority.

- It allowed law enforcement officers to issue a violation and City to enforce it.
- Received comment from the Council and some things needed to be reviewed.
- If a violator did not pay or dispute the fine, then it would become a criminal offense.
- Both the Sheriff's Department and the City could write fines.
- Did not know if the City could have a vehicle towed without involving the Sheriff's Department.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- More review and feedback were needed before the ordinance should be adopted.
- The Wasatch County Sheriff made several suggestions for the ordinance.
- Currently the City did not have a mechanism to enforce its parking laws.
- Some violators might not live in Utah or may disregard the fine.
- A mechanism would be needed to track the violations.

**Motion:** Council Member Simonsen moved to table Ordinance 2021-21 to the next meeting, or next best meeting for the Council, so that some of the issues could be resolved and the Council could be ready to discuss it. He further moved that staff make recommendations on how to administer the ordinance.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**9. Resolution 2021-24 / Cemetery Moratorium** (City Attorney – Approximately 5 minutes) – Discuss and possibly adopt Resolution 2021-24 enacting a moratorium on the sale of spaces in the Midway City Cemetery to allow for a review of rates and services.

Corbin Gordon gave a presentation regarding the request and made the following comments:

- The resolution enacted a moratorium on the sale of cemetery spaces until some pressing issues were resolved.
- The transfer of ownership and family disputes needed to be resolved.
- Two spaces could still be sold for someone who had recently passed away and their spouse.

Council Member Orme recommended that the extra space be for anyone not just the spouse.

**Motion:** Council Member Orme moved to approve the moratorium with the addition of the right to buy two spaces because of a recently deceased person.

**Second:** Council Member Payne seconded the motion.

**Discussion:** Council Member Orme noted that the Council needed to discuss the cemetery issues at a work meeting.

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**10. Main Street and River Road / Traffic Light** (Council Member Simonsen – Approximately 15 minutes) – Discuss and possibly approve a letter authorizing a traffic light at the intersection of Main Street and River Road.

Council Member Simonsen made the following comments:

- Met with UDOT several times
- The intersection of Main Street and River Road was a safety issue and had been a problem for some time. It needed to be fixed.
- A roundabout was too large for the intersection and would require condemning property.
- UDOT wanted a unified message from the Council.
- If the Council supported a signal light at the intersection, then UDOT would prioritize it.
- A signal light had been warranted for some time.
- UDOT would not object to the City also requesting that area of Main Street be widened because the developer, for The Village, would do a lot of the work.

**Note:** A copy of slides regarding the intersection is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- The signal light and intersection would be like the intersection of Main Street and Center Street including turn lanes.
- The Mayor, Council and City Engineer should all sign the letter.
- The issue had been brought before the Council so that residents could be informed. It was noted that some residents did not want additional signal lights.

**Motion:** Council Member Dougherty moved to formalize the draft letter and get signatures from the Mayor, all council members, and the City Engineer. He further noted that the City had truly considered the issue.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**11. Rising Ranch Subdivision / Final Approval** (Summit Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval for the Rising Ranch Subdivision located at 425 North Homestead Drive (Zoning is R-1-22). Recommended with conditions by the Midway City Planning Commission.

Michael Henke gave a presentation regarding the request and reviewed the following items:

- Land use summary
- Location of the project
- Pictures of the project
- Trails
- Existing home
- Proposed plat map
- Open space
- Easements
- Trail cross-section
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The project would complete the trail on Swiss Alpine Road that went to Homestead Drive and a school bus stop.
- Lot eight would only be built when Kohler Lane became an improved city street.
- The corner lot would only have access on Swiss Alpine Road.
- The other lots on Homestead Drive would share driveways.
- There would be a 100-foot setback from Homestead Drive.
- The open space would remain as agriculture in the short-term but could have amenities in the future.
- There was access to the open space for all owners in the project.
- The developer would provide funds for a future bike lane.
- Approving lot eight for development, once Kohler Lane was a city street, could be done by staff instead of the Council. The deed restriction would be released at that time.
- If lot eight was never buildable it would remain as agriculture. Water rights would be

turned in for the lot.

- The property had two existing culinary water connections.
- Lot eight would have to be maintained to the standard required by the Municipal Code.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Sam Castor applicant, made the following comments:

- Infrastructure for lot eight would be extended when the project was built or later.
- Every lot owner had a vote on what could be done with the open space.

Council Member Dougherty recommended that the open space be called community space or something else to avoid confusion.

Tom Horrocks, who owned property on Kohler Lane, made the following comments:

- His father-in-law owned Kohler Lane and gave it to Wasatch County as a road.
- He had maintained the road.
- The City should consider having its own police department.

**Motion:** Council Member Dougherty moved to grant final approval to the Rising Ranch Subdivision as presented with the following findings and conditions:

- The proposal met the intent of the General Plan for the R-1-22 zone.
- The proposal complied with the land use requirements of the R-1-22 zone.
- A public trail would be built as part of the subdivision that would benefit members of the community.
- 0.956 acres of open space would be created as part of the development.
- The Homestead Drive half width adjacent to the development would be widened to 26 feet.
- The duration of final approval would be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within the one-year period of time, the development's approval would be voided, and both preliminary and final approvals would have to be re-obtained, unless, on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions.
- A plat note would be included that precluded access to lot three from Homestead Drive.
- Funds to build the five-foot bike lane along Homestead Drive adjacent to this project would be added to the general trails fund and would be used when the bike lane was completed in the future as part of a larger improvement project.
- The plat and development agreement would clearly state that parcel eight was not currently considered a building lot and what needed to occur for the parcel to become buildable. This would include at a minimum the need for additional planning approval, possibly amending the development agreement, obtaining a minimum of 115 feet of frontage along a road built to city standards, lot improvements that included a sewer connection, culinary water connection, irrigation connection, adequate access to a fire hydrant, etc.
- The trail easement along Swiss Alpine Road would be a minimum of 15 feet wide.

- A different name would be used on the plat map for the area shown as open space.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**12. Rising Ranch Subdivision / Transient Rentals Conditional Use Permit** (Summit Engineering – Approximately 15 minutes) – Discuss and possibly grant a conditional use permit for transient rentals in the Rising Ranch Subdivision located at 425 North Homestead Drive (Zoning is R-1-22). Recommended without conditions by the Midway City Planning Commission. **Public Hearing**

Michael Henke gave a presentation regarding the requested permit and reviewed the following items:

- Overview
- Transient rental requirements
- Tax benefits
- Planning commission motion
- Possible findings

Mr. Henke also made the following comments:

- The request was for the conditional use permit (CUP) to apply to all lots in the development.
- The existing home had been a transient rental.
- The property was included in the Transient Rental Overlay District (TROD).
- Each lot owner would have to apply for a transient rental business license.
- A CUP was permitted with conditions to mitigate impacts on the neighbors.
- An entire house had to be rented as a transient rental. They could not be bed and breakfasts.
- There could be separate property managers for each house.
- Staff would review the license requests.
- The City Attorney would review the CC&Rs for the project.

**Note:** A copy of Mr. Henke’s presentation is contained in the supplemental file.

The Council, staff and meeting attendees discussed the following items:

- Both the CUP and transient rental regulations governed the request.

- Should the CUP be conditioned on revisiting future impacts?
- Would there be the appropriate amount of parking for transient rentals?
- The transient rentals should not bother the neighbors. There should be limitations on alcohol, ATVs, etc.

### **Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public.

### **Rene Horrocks**

Ms. Horrocks was concerned about the transient rentals being noisy and becoming hotels. Council Member Dougherty responded that events were not allowed at transient rentals.

Mayor Johnson closed the hearing when no further public comment was offered.

Sam Castor, applicant, made the following comments:

- The CC&Rs would state that any additional parking had to be in a garage.

The Council, staff and meeting attendees discussed the following items:

- A property owner could hold a wedding if they did not charge for it.
- The Council should mitigate concerns when the CUP was granted.
- A transient rental license could be revoked in certain circumstances.
- Could the CUP be granted with a one-year review?
- The license was the best way to address future problems.

**Motion:** Council Member Orme moved to approve the transient rental condition use permit for the Rising Ranch Subdivision with the following findings and conditions:

- The proposed use was a conditional use in the R-1-22 zone and was in the Transient Rental Overlay Zone.
- The proposal met the vision for residential development the R-1-22 zone within the TROD in the General Plan.
- Every licensed rental unit helped the City to comply with State requirements that allowed the City to collect the resort tax.
- Each property would be required to obtain their own individual transient rental business license previous to renting their property on a nightly basis.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty                      Aye

Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**13. Resolution 2021-19 / Rising Ranch Subdivision Development Agreement** (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-19 adopting a development agreement for the Rising Ranch Subdivision located at 425 North Homestead Drive (Zoning is R-1-22).

Corbin Gordon made the following comments regarding the development agreement:

- It included what had been approved for the project.
- Would increase the required width of the trail.
- Would add provisions regarding weed control and the open space.

**Motion:** Council Member Payne moved to approve Resolution 2021-19 adopting a development agreement for the Rising Ranch Subdivision with the changes summarized by the City Attorney.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**Motion:** Without objection, Mayor Johnson recessed the meeting at 8:45 p.m. She reconvened the meeting at 8:53 p.m.

**14. Resolution 2021-25 / Scotch Fields PUD, Phases 3, 4, and 5 Development Agreement Amendment** (City Attorney – Approximately 30 minutes) – Discuss and possibly approve Resolution 2021-25 adopting an amended development agreement for Phases 3, 4, and 5 of the Scotch Fields PUD located at approximately 1400 North Canyon View Road (Zoning is R-1-22).

Michael Henke gave a presentation regarding the proposed amendment and reviewed the following items:

- Master plan summary
- Items to consider
- Location of the project
- Phasing

- Approved landscaping plan
- Proposed landscaping plan

Mr. Henke also made the following comments:

- The resolution would change the approved plan but not the language in the development agreement.
- It would not affect phases one and two.
- All plat maps for the project had been recorded.
- Some units in phase three had been sold.
- Notices had been mailed to all the owners in phase three, four, and five. None of these owners had contacted the City.
- The amended plan would not include bark or mulch.
- There were sufficient water rights for the project.
- A petition had been sent to the City Council.
- Some owners wanted mulch others did not.
- The request was a discretionary decision.
- The bond for phases one and two had not been released because of the landscaping.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Mayor Johnson indicated that any issues with phased two and three would be addressed separately.

### **Public Hearing**

Mayor Johnson opened the hearing and asked if there were any comments from the public.

### **Jennifer Barnes**

Ms. Barnes made the following comments:

- The notice to the property owners had only gone out that week.
- Bought her unit when there was snow on the ground and was unable to see the landscaping in the other phases.
- The landscapers disagreed with how they were told to install the landscaping.
- Phases one and two did not have basements like the other phases.
- The development was not as charming with flat landscaping and less grass.
- Wanted a barrier between her basement and the grass.
- Bill Probst, one of the developers, said that putting in the bark would raise the HOA dues by \$80 a month. She could maintain the bark around her house and replace it once a year.
- Having the bark should at least be an option.
- Did not know what those circulating the petition said to the signers.
- The developer still ran the HOA.
- Did not speak to Thom Wright when she bought her house.

Jenny Strangis

Ms. Strangis made the following comments:

- She did not receive a notice because she had not yet moved into her house.
- Wanted to be aware of what was happening.
- There was some bark in front of the houses in phases one and two.
- Did the homeowners have an option?
- Would the bark be removed completely or partially?
- The homes in the development were expensive.

Jane Cornelius

Ms. Cornelius made the following comments:

- The landscaping plan should stay the same as when she purchased her house.
- The owners in the previous phases were upset that they would have to pay for the mulch in the later phases.
- Less grass was beneficial because of the drought.
- The development looked dystopian because of no landscaping.

Bob Garretson

Mr. Garretson made the following comments:

- Lived in phase one.
- Did not want to pay for the mulch in other phases.
- Did not have bark around his house and did not want it.
- Added that the bark would raise the HOA dues.
- Some homeowners were on a fixed income.
- The *New York Times* recommended against putting bark next to your house.

Russ Rauhauser

Mr. Rauhauser made the following comments:

- Lived in phase two.
- Over 50% of the residents in the first two phases did not want mulch.
- The developer would install it, but the HOA would have to maintain it.
- Dues would increase.
- Was happy without mulch.

Paul Berg, Berg Engineering Resource Group

Mr. Berg read the landscaping section and requirements of the Municipal Code. He made the following comments:

- Represented the applicant.
- One person from phases three, four, and five had signed the petition.
- The landscaping plan had been submitted as a concept as part of the master plan approval.
- Changing the landscaping was like moving a fire hydrant and should be approved administratively.
- The request complied with the Municipal Code.
- The majority of the homeowners wanted the grass instead of the bark.
- The request should be approved.
- The petition was done by homeowners and not his firm.
- The complaints were better dealt with by the HOA.
- A developer should be able to change their mind.

#### Thom Wright

Mr. Wright made the following comments:

- Sold units in the project.
- Met with 49 owners and they never asked for the landscaping plan.
- Told them there landscaping would be the same as in the first two phases which was grass up to the foundations.
- Phases three, four, and five had greater slopes which was problematic for mulch.

Mayor Johnson closed the hearing when no further public comment was offered.

The Council, staff and meeting attendees discussed the following items:

- Planters and a drip system were better around a house.
- The wind blew the mulch away and into windows.
- The HOA, not the individual property owners, owned the property around the units in a PUD.
- The developer still ran the HOA.
- The property owners should get what they purchased.
- Basements had flooded because of sprinklers next to houses.
- It was not good to plant Kentucky blue grass when there was a drought.
- Other developers had honored requests from buyers.
- The HOA should resolve the issue, but the developer was still in charge of the HOA.
- Some people purchased houses in the project know that bark would be put around them.
- The bark was proposed by the developer and not required by the City.
- The developer had a fiduciary responsibility to build what he showed buyers.
- There was not a compelling reason to change the landscaping plan.
- The developer was asking the homeowners to change something they had agreed upon.
- The HOA, once it was run by the homeowners, could come back and request a change in the landscaping plan.
- It felt like the City was getting between the developer and homeowners.

- It was an issue for the City because it had signed the development agreement.

Bill Probst, applicant, made the following comments:

- None of the buyers had asked to see a landscaping plan.
- Did not show a plan to any buyers.
- The owners in the last three phases had to drive by the first two phases. They could see the landscaping in those phases.
- He was not doing a “bait and switch”.
- The additional grass would only be three feet deep and would not require more water.
- The Canyon View PUD was removing its mulch.
- A drip line would use more water than a sprinkler.
- His and other houses had grass up to the foundations and did not have a problem with flooding.
- Did the project have area drains?
- The developer and homeowners should try to reach an agreement.

**Motion:** Council Member Simonsen moved to continue Resolution 2021-25, for the developer and homeowners to come back with more information to help the Council resolve the issue.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** Council Member Payne encourage the developer and the homeowners to workout the issue without coming back to the Council. Council Member Dougherty responded that would be good but he was not looking for them to reach an agreement.

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Nay
Council Member Payne	Aye
Council Member Simonsen	Aye

**15. Saddle Creek Subdivision, Phases 2 and 3 / Final Approval** (Berg Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval to Phases 2 and 3 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22). Recommended with conditions by the Midway City Planning Commission.

Michael Henke gave a presentation regarding the request and reviewed the following items:

- Land use summary
- Location of the project
- Proposed plat maps
- Trails
- Master plan
- Phasing plan
- Street cross-sections

- Improvement of 250 West
- Letter from City Engineer
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed condition
- Water line extension agreements

Mr. Henke also made the following comments:

- Phases two and three would be built together.
- The landscaping plan was part of the master plan approval.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Paul Berg, Berg Engineering Resource Group and representing the applicants, indicated that the applicant wanted the same cross-section for the entire project.

**Motion:** Council Member Payne moved to grant final approval for Saddle Creek Subdivision, Phases 2 and 3, located at 970 South 250 West, with the following findings and condition:

- The proposed plans for phases two and three complied with the requirements of the land use code.
- The proposal met the vision as described in the General Plan for the R-1-22 zone.
- Road improvements along 250 West would benefit the community in general.
- The public trail built along 250 West would help complete the master trail plan that would benefit members of the community.
- No plat map could be recorded until the existing plat was vacated by the County Recorder.
- The duration of final approval would be for one year from the date of final approval of the development by the City Council. Should a final plat map not be recorded by the County Recorder within the one-year period of time, the development's approval would be voided, and both preliminary and final approvals would have to be re-obtained, unless, on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions. Such conditions could include, but were not limited to, provisions requiring that: (a) construction must be conducted according to any new City standards in effect at the time the plat was ultimately recorded; (b) the property would be maintained in a clean, dust-free, and weed-free condition at all times; (c) each extension would be for a one-year period only, after which time an annual review would be presented to the City Council; and/or (d) no more than three one-year extensions would be allowed. The granting or denying of any extension, with or without conditions, was within the sole discretion of the City Council, and an applicant had no right to receive such an extension.
- Any required water extension line agreement fees would be paid for before the recording of the plat map.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**Motion:** Council Member Dougherty moved to consider the next item on the agenda.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**16. Resolution 2021-21 / Saddle Creek Subdivision, Phase 2 Development Agreement**

(City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-21 adopting a development agreement for Phase 2 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22).

Paul Berg, representing the applicant, asked that the items be tabled if the applicant's comments had not been addressed.

**Motion:** Council Member Simonsen moved to table Resolution 2021-22.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**Motion:** Council Member Simonsen moved to consider the next item on the agenda.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**17. Resolution 2021-22 / Saddle Creek Subdivision, Phase 3 Development Agreement**  
(City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-22 adopting a development agreement for Phase 3 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22).

**Motion:** Council Member Simonsen moved to table Resolution 2021-22.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**Motion:** Council Member Orme moved to consider Item 18.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**18. The Reserve at Midway, Phase 2 / Final Approval** (Berg Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval for Phase 2 of The Reserve at Midway located at 285 West Luzern Road (Zoning is RA-1-43). Recommended with conditions by

the Midway City Planning Commission.

Michael Henke gave a presentation regarding the request and reviewed the following items:

- Land use summary
- Location of the project
- Sensitive lands map
- Master plan
- Master plan with phases
- Trails
- Open space
- Water rights
- Unirrigated areas
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The dumpsters for Interlaken Town would be next to the town's well house.
- The unirrigated areas were on a steep slope and could not be mowed or cut.
- There was a list of the trees that would be planted in the development.
- The ownership and maintenance of the trails was indicated in the development agreement and staff reports.

**Note:** A copy of Mr. Henke's presentation is contained in the supplemental file.

Paul Berg, Berg Engineering Resource Group and representing the applicants, indicated that the roads in the project could be used to collect Interlaken's garbage. He noted that they had public access easements.

The Council, staff and meeting attendees discussed the following items:

- The City Attorney should review the easements in the development to ensure that the roads could be used to collect Interlaken's garbage.
- Goats could be used to maintain the unirrigated areas.
- The City Engineer's office would inspect the trails and let the HOA know when there was a problem.
- The issue regarding the water tank had been resolved.

**Motion:** Council Member Payne moved to grant final approval for The Reserve at Midway, Phase 2, located at 285 West Luzern Road (Zoning was RA-1-43) with the following findings and conditions:

- The proposal complied with the requirements of the code for standard subdivisions.
- The proposal met the vision of the area as described in the General Plan for the RA-1-43

zone.

- The public trails would be an amenity to the entire community.
- The duration of final approval would be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within the one-year period of time, the development's approval would be voided, and both preliminary and final approvals would have to be re-obtained, unless, on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions
- All approved non-irrigated areas would be noted on the plat
- Private roads in the development would have a public access easement which would be noted on the plat map and in the development agreement.
- All asphalt trails would be built and maintained by the developer and would have public access easements.
- Included a plat note that addressed the retention pond along the common property line of lots nine and ten. It would address access, allowable uses, limits on disturbances and limits on fencing along the common fence line.
- Extend the asphalt trail along the frontage of lots 19 and 20 and connect to the trail in Common Area F.

**Second:** Council Member Orme seconded the motion.

**Discussion:** Council Member Simonsen asked if a trail would continue to use Luzern Road. Mr. Henke responded that it would use the road and be along the hillside.

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**Motion:** Council Member Dougherty moved to consider Item 19.

**Second:** Council Member Payne seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**19. Resolution 2021-23 / The Reserve at Midway, Phase 2 Development Agreement** (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-23 adopting a development agreement for Phase 2 of The Reserve at Midway located at 285

West Luzern Road (Zoning is RA-1-43).

Paul Berg, Berg Engineering Resource Group and representing the applicant, indicated that the applicant had several changes to the agreement. He asked to receive the agreements sooner so that they could be reviewed by the applicants.

**Motion:** Council Member Payne moved to continue Resolution 2021-23.

**Second:** Council Member Orme seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

## 20. Adjournment

**Motion:** Council Member Dougherty moved to adjourn the meeting. Council Member Orme seconded the motion. The motion passed unanimously.

The meeting was adjourned at 10:28 p.m.

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Celeste Johnson, Mayor

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Brad Wilson, Recorder

Midway City Council  
3 August 2021  
Regular Meeting

Resolution 2021-21 /  
Saddle Creek Subdivision,  
Phase 2  
Development Agreement



## RESOLUTION 2021-21

### **A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR THE SADDLE CREEK SUBDIVISION, PHASE TWO**

**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 Saddle Creek Subdivision, Phase Two.

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

Section 1: The attached the Saddle Creek Subdivision, Phase Two 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             2021.

MIDWAY CITY

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Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

Exhibit A

## **SADDLE CREEK RANCH SUBDIVISION - PHASE 2 DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between DPW HEBER, INC. (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 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 Saddle Creek Ranch Subdivision Phase 2, located at approximately 970 South 250 West, 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 is in the process of developing the Property as part of the Saddle Creek Ranch Subdivision, which will replace the existing Saddle Creek Ranch PUD plat that is being or has been vacated. Phase 2 includes thirteen (13) building lots located on 12.08 acres, designated for the lots and internal roads, with 3.24 acres of total open space. The Project is in the R-1-22 zone. The original Master Plan was approved on May 7, 2019. Phase 1 previously received final approval and is currently under construction. There are four (4) total phases in the development.
- D. Phases 2 and 3 will make up the western half of the proposed development. The two Phases together include seventeen (17) lots, public streets, public and private trails, improvements to 250 West and landscaped open space that will be owned by the HOA. The construction of these Phases will require the reclamation of the temporary cul-de-sac

(900 South) that will be constructed as part of Phase 1. Because Phase 3 depends entirely on access and other improvements that are to be completed as part of Phase 2, all Phase 2 improvements, conditions and requirements must be completed before any Phase 3 lots can be sold.

E. 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 four (4) 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, 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 four (4) 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.
- 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 original developer of the Project tendered 109.5 acre feet of water to the City in compliance with culinary and secondary water requirements. The proposed water requirement for the entire Project is in the range of approximately 106-109 acre feet. Thus, the Developer has tendered enough water to the City for the entire four-phase Project. The required water rights for the culinary and secondary water for the Project have been or shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer appear to meet all City policies and Ordinances for culinary and secondary use. 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. Secondary water service shall be provided by Midway Irrigation Company, and a secondary water meters and laterals will be required for each of the lots. Secondary meters, laterals and service shall be installed pursuant to Midway

Irrigation Company standards and policies. The applicant has received a will-serve letter from Midway Irrigation Company for secondary irrigation.

- c) Water Extension Line Agreements: Developer is required to pay all fees associated with a water extension line agreement for a water line beneath 250 West for \$202.68 per connection and a payment for the water line beneath Center Street for \$1,436.61 per connection. Both of these payments will be pass-throughs to the extension line agreement holders. All water line extension agreement fees must be paid in full before the recording of the Plat.
- d) Access: In addition to the other road improvements required herein, the Developer shall reclaim and reconfigure the temporary cul-de-sac (900 South) that was constructed as part of Phase I. The Developer shall dedicate 0.48 acres for the 250 West dedication, which shall be shown on the Plat. Once completed, the roads shall be dedicated to the City, whereupon the City shall be responsible for the maintenance thereof.
- e) Phase 2 Improvements: As part of the Phase 2 improvements, Developer is required to improve the full width of 970 South. This requires the existing transmission line along the north side of 970 South to be moved or buried by Developer or Heber Light & Power. Developer is also required to make improvements to the intersection of 970 South and Center Street. Developer's Phase 2 obligations also include improving the half width of 250 West bordering the west boundary of the development, overlaying the entirety of 250 West and the improvement of the remaining open space in the development.
- f) Timing of Approvals: Developer may continue to receive approvals for any phase of the development but will be unable to record a plat map or begin improvements until the transmission line along 970 South is in the process of being buried or moved so that 970 South can be expanded to its planned width.
- g) Open Space: Phase 2 includes 3.24 acres of open space, which is twenty-five percent (25%) of the total open space acreage. This fulfills the remaining open space required for the entire development. Phases 3 and 4 will not contain any additional open space. The open space will be landscaped by Developer and maintained by the Developer/HOA. The applicant has provided a copy of the development's CC&Rs, which City staff, including the City Attorney, will review to ensure that adequate language is included to clarify that the development's common spaces and their associated improvements will be maintained in perpetuity by the HOA. Approval of the CC&Rs is a condition of this Agreement.
- h) Geotechnical Study: A Geotechnical Study was previously submitted to the City that has been reviewed by City planning and engineering staff.

- i) Sensitive Lands: Per the recorded plat, no sensitive lands have been identified in the proposed development.
- j) Sewer Connection: The lots will connect to existing Midway Sanitation District sewer lines located in the area. Sanitary sewer service shall be provided by Midway Sanitation District, according to their rules, policies and procedures.
- k) Fire Flow: Fire hydrants will be located within five hundred feet (500') of any future dwellings, measured by the route of a fire hose from the fire hydrant to the future home sites.
- l) Trails: As part of Phases 2 and 3, Developer will construct an eight foot (8') wide paved public trail along 250 West from 970 South to 800 South. Developer will then dedicate a public trail easement for a future trail along 250 West from 800 South to its northern property line. In lieu of constructing this portion of trail, Developer has committed to constructing the offsite portion of trail needed to connect its 970 South trail all the way to Center Street. Developer shall construct a combination of public and private trails along with public sidewalks within the development as shown on the plat and the approved plans. Private trails will be those trails that do not border roads. All private trails will be maintained by the HOA. Additionally, Developer received approval from the City Council to continue the eight foot (8') asphalt trail along the frontage of Lots 16-18. The Developer shall construct this section of trail along with dedicating an additional three foot (3') public trail easement along the frontages of Lots 16-18 to accommodate the additional trail width.
- m) Setback Requirements: A note shall be added to the Phase 2 plat restricting the placement of any structures within the thirty foot (30') rear setback on Lot 36. All structures shall comply with the City Code setback provisions for the R-1-22 zone.
- n) Weed Control: 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.
- o) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- p) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within this one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of

extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. The granting or denying of an extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has not right to receive such an extension. Such conditions may include, but are not limited to, provisions requiring that:

- a. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;
  - b. The property must be maintained in a clean, dust-free, and weed-free condition at all times;
  - c. Each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or
  - d. No more than three one-year extensions will be allowed.
- q) Warranty: Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.
- r) Bonding: Developer agrees to post performance and other 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 Regulations.
- s) City's Right to Draw From Construction Bond: If 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 Developer's performance and other bonds.
- t) Plat Recording: No plat for Phase 2 can be recorded until the existing plat has been vacated by the Wasatch County Recorder.

B. Obligations of the City:

- i. General Obligations: The Parties acknowledge and agree that 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. 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 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 are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

#### **Section 4. Vested Rights and Applicable Law.**

- 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 Developer for the Project. 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 the subdivision plat, 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 the specific lot, 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 fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or Developer.

## **Section 6. Cooperation and Implementation.**

A. Processing of Subsequent Approvals. 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, 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 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 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. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, 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 Developer is in full compliance with the terms and conditions of this Agreement. 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 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 Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.
- B. 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 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 Developer may make from time to time, and to the extent that it is true, 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 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 Developer. 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 Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by Developer; and 2) 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, 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 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. 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 the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to Developer, its successors and/or assigns, or the lot owners 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 Developer that 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 as regards 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 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 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:

DPW Heber, Inc.

\_\_\_\_\_  
\_\_\_\_\_

**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 Developer.

**Section 13. Signing and Recordation of Agreement.** Unless the City and Developer mutually agree otherwise in writing, this Agreement must be signed by both 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 recorded, at 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 HEREOF, this Agreement has been entered into by and between Developer and the City as of the date and year first above written.

CITY OF MIDWAY

Attest:

\_\_\_\_\_  
Celeste Johnson, Mayor

\_\_\_\_\_  
Brad Wilson, City Recorder

STATE OF UTAH            )  
  :SS  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, 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 SADDLE CREEK RANCH SUBDIVISION – PHASE 2

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

STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, who executed the foregoing instrument in his/her capacity as the \_\_\_\_\_ of the Developer.

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

**EXHIBIT A**

(Legal Description of the Property)

Midway City Council  
3 August 2021  
Regular Meeting

Resolution 2021-22 /  
Saddle Creek Subdivision,  
Phase 3  
Development Agreement



## RESOLUTION 2021-22

### **A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR THE SADDLE CREEK SUBDIVISION, PHASE THREE**

**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 Saddle Creek Subdivision, Phase Three.

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

Section 1: The attached the Saddle Creek Subdivision, Phase Three 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             2021.

MIDWAY CITY

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Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

Exhibit A

## **SADDLE CREEK RANCH SUBDIVISION - PHASE 3 DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between DPW HEBER, INC. (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 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 Saddle Creek Ranch Subdivision Phase 3, located at approximately 970 South 250 West, 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 is in the process of developing the Property as part of the Saddle Creek Ranch Subdivision, which replaces the existing Saddle Creek Ranch PUD plat that is being or has been vacated. Phase 3 includes four (4) building lots located on 2.51 acres designated for the lots only (Phase 3 does not include any new roads or open space). The Project is in the R-1-22 zone. The original Master Plan was approved on May 7, 2019. Phase 1 previously received final approval and is currently under construction. There are four (4) total phases in the development.
- 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 four (4) 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, 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 four (4) 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.

- 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 original developer of the Project tendered 109.5 acre feet of water to the City in compliance with culinary and secondary water requirements. The proposed water requirement for the entire Project is in the range of approximately 106-109 acre feet. Thus, the Developer has tendered enough water to the City for the entire four-phase Project. The required water rights for the culinary and secondary water for the Project have been or shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer appear to meet all City policies and Ordinances for culinary and secondary use. 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. Secondary water service shall be provided by Midway Irrigation Company, and a secondary water meters and laterals will be required for each of the lots. Secondary meters, laterals and service shall be installed pursuant to Midway Irrigation Company standards and policies. The applicant has received a will-serve letter from Midway Irrigation Company for secondary irrigation.
  - c) Water Extension Line Agreements: Developer is required to pay all fees associated with a water extension line agreement for a water line beneath 250 West for \$202.68 per connection and a payment for the water line beneath Center Street for \$1,436.61 per connection. Both of these payments will be pass-throughs to the extension line agreement holders. All water line extension agreement fees must be paid in full before the recording of the Plat.
  - d) Access: No new roads are required as part of Phase 3. However, since Phase 3 relies entirely upon the improvements to be completed as a condition of

Phase 2, the Phase 2 improvements must be completed before Phase 3 lots can be sold.

- e) Phase 2 Improvements to benefit Phase 3: As part of the Phase 2 improvements, Developer is required to improve the full width of 970 South. This will require the existing transmission line along the north side of 970 South to be moved or buried by Developer or Heber Light & Power. Developer is also required to make improvements to the intersection of 970 South and Center Street. Developer's Phase 2 obligations also include improving the half width of 250 West bordering the west boundary of the development, overlaying the entirety of 250 West and the improvement of the remaining open space in the Development. Since these improvements are required to be completed as part of Phase 2, no additional road improvements are required in Phase 3.
- f) Timing of Approvals: Developer may continue to receive approvals for any phase of the development but will be unable to record a plat map or begin improvements until the transmission line along 970 South is in the process of being buried or moved so that 970 South can be expanded to its planned width.
- g) Open Space: The open space requirements for the entire project have been, or will be, met as part of the conditions of Phases 1 and 2. No additional open space is required as part of Phase 3. The open space will be landscaped by Developer and maintained by the Developer/HOA. The applicant has provided a copy of the development's CC&Rs, which City staff, including the City Attorney, will review to ensure that adequate language is included to clarify that the development's common spaces and their associated improvements will be maintained in perpetuity by the HOA. City approval of the CC&Rs is a condition of this Agreement.
- h) Geotechnical Study: A Geotechnical Study was previously submitted to the City that has been reviewed by City planning and engineering staff.
- i) Sensitive Lands: Per the recorded plat, no sensitive lands have been identified in the proposed development.
- j) Sewer Connection: The lots will connect to existing Midway Sanitation District sewer lines located in the area. Sanitary sewer service shall be provided by Midway Sanitation District, according to their rules, policies and procedures.
- k) Fire Flow: Fire hydrants will be located within five hundred feet (500') of any future dwellings, measured by the route of a fire hose from the fire hydrant to the future home sites.
- l) Trails: As part of Phases 2 and 3, Developer will construct an eight foot (8') wide paved public trail along 250 West from 970 South to 800 South.

Developer will then dedicate a public trail easement for a future trail along 250 West from 800 South to its northern property line. In lieu of constructing this portion of trail, Developer has committed to constructing the offsite portion of trail needed to connect its 970 South trail all the way to Center Street. Developer is proposing a combination of public and private trails along with public sidewalks within the development. Private trails will be those trails that do not border roads. All private trails will be maintained by the HOA. Additionally, Developer received approval from the City Council to continue the eight foot (8') asphalt trail along the frontage of Lots 16-18. Developer shall construct this section of trail along with dedicating an additional three foot (3') public trail easement along the frontages of Lots 16-18 to accommodate the additional trail width.

- m) Setback Requirements: All structures shall comply with the City Code setback provisions for the R-1-22 zone.
- n) Weed Control: 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.
- o) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- p) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within this one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. The granting or denying of an extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has not right to receive such an extension. Such conditions may include, but are not limited to, provisions requiring that:
  - a. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;
  - b. The property must be maintained in a clean, dust-free, and weed-free condition at all times;
  - c. Each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or
  - d. No more than three one-year extensions will be allowed.
- q) Warranty: Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.

- r) Bonding: Developer agrees to post performance and other 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 Regulations.
- s) City's Right to Draw From Construction Bond: If 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 Developer's performance and other bonds.
- t) Plat Recording: No plat for Phase 3 can be recorded until the existing plat has been vacated by the Wasatch County Recorder. Since Phase 3 depends entirely upon the completion of the Phase 2 improvements, the Phase 3 Plat cannot be recorded prior to the recording of the Plat for Phase 2.

B. Obligations of the City:

- i. General Obligations: The Parties acknowledge and agree that 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. 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 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 are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

#### **Section 4. Vested Rights and Applicable Law.**

- 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 Developer for the Project. 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 the subdivision plat, 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 the specific lot, 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 fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or Developer.

#### **Section 6. Cooperation and Implementation.**

- A. Processing of Subsequent Approvals. 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, 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 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 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. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, 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 Developer is in full compliance with the terms and conditions of this Agreement. 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 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 Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.
- B. 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 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 Developer may make from time to time, and to the extent that it is true, 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 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 Developer. 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 Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by Developer; and 2) 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, 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 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. 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 the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to Developer, its successors and/or assigns, or the lot owners 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 Developer that 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 as regards 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 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 (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:

DPW Heber, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

**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 Developer.

**Section 13. Signing and Recordation of Agreement.** Unless the City and Developer mutually agree otherwise in writing, this Agreement must be signed by both 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 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 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 \_\_\_\_\_, 2021, 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 SADDLE CREEK RANCH SUBDIVISION – PHASE 2

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

STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, who executed the foregoing instrument in his/her capacity as the \_\_\_\_\_ of the Developer.

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

**EXHIBIT A**

(Legal Description of the Property)

Midway City Council  
3 August 2021  
Regular Meeting

Resolution 2021-23 /  
The Reserve at Midway,  
Phase 2  
Development Agreement



## RESOLUTION 2021-23

### **A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR THE RESERVE AT MIDWAY SUBDIVISION, PHASE TWO**

**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 Reserve at Midway Subdivision, Phase Two.

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

Section 1: The attached The Reserve at Midway Subdivision, Phase Two 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             2021.

MIDWAY CITY

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Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

Exhibit A

## THE RESERVE AT MIDWAY SUBDIVISION – PHASE 2 DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between [MVWATTS, LLC, a Utah limited liability company](#) as agent for MIDWAY VISTAS DEVELOPMENT, INC., (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 Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

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### 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 The Reserve at Midway Subdivision Phase 2, located at 285 Luzern Road, 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 part of The Reserve at Midway large-scale subdivision. [Phase 2 will contain](#) 22 lots located on [36.7](#) acres, which includes [11.4](#) acres of open space. The Project is in the RA-1-43 zone [which allows for single family dwellings](#). The original Master Plan was approved on July 7, 2020 with 49 lots to be developed in three phases. Developer has combined Phases 2 and 3 with its preliminary application to create a larger second phase. There are two total phases in the development.
- D. The Project is a large-scale standard subdivision. However, unlike most standard subdivisions, the roads in The Reserve at Midway will be private. There will be a public access easement.

Commented [AW2]: Paul Berg to confirm

Commented [AW3]: Paul Berg to confirm

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E. Each Party acknowledges that it is entering into this Agreement voluntarily. 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 (10) 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.

Commented [AW4]: Why are we changing this? Should match the 25 year term for phase 1 so no mismatch in timing.

**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, driveways, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. All costs associated with the Project Improvements shall be borne by the Developer. ↓

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ii. Conditions for Current Approvals: The Developer shall comply with all of the following Conditions:

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Deleted: 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.

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) One HOA for Both Phases: Both phases of the development will be managed by one Homeowners' Association (the "Association"). The HOA shall be responsible for maintenance of the streets, private trails (as described below), storm drain system, and any amenities provided.

c) Density: The annexation agreement limits density to 49 total lots. Phase 2 will contain 22 of the total allowed lots.

d) Water Rights and Water Service: The required water rights for the culinary and secondary water needed for the Project have been officially transferred to the City by Developer prior to the recording of the plat for Phase 1 of the Project. The water rights provided by Developer comply with all City policies and ordinances for culinary and secondary use. Culinary water service shall be provided by the City according to the rules, regulations and requirements of the City. The Water Board reviewed the Master Plan and determined that 191.24 acre feet of water is required for the entire project which Developer has already transferred to Midway City and which Midway City accepted with the recordation of the plat for Phase 1 of the Project. Developer shall be responsible for construction of the culinary water lines in the Project as per the approved plans, which shall be subject to final approval and acceptance by the City. Additionally, Developer will provide secondary water meters to Midway Irrigation Company to be installed by MIC at the time the dwellings are constructed on the lots. Developer will also construct a water storage tank that will supply the lots with sufficient water pressure for irrigation water with said storage tank having been reviewed and approved as to size, location and delivery by Midway City and Horrocks Engineering.

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Deleted: Phase 1 dedicated 120.18 acre feet. Phase 2 will be required to dedicate 71.06 acre feet.

e) Access: Phase 2 has two points of access and complies with City Code requirements. The three access points for the development are Canyon View

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Road (public), Interlaken Drive (private) and Luzern Road (Interlaken public road). Developer has reached an agreement with the owners of Interlaken Drive to allow use of the private road to access the development.

- f) Traffic Study: A traffic study was submitted to the City on May 27, 2020 and has been reviewed and approved by City planners and engineering staff.
- g) Open Space: City Code requires that with each phase of a development, there is enough open space to comply with the fifteen percent (15%) requirement. Phase 1 of the development contains 46.89 total acres, 13.63 of which is open space (29.1%). Phase 2 of the development will contain 36.7 total acres, 11.4 of which will be open space (31.1%). In total, the development consists of 83.19 acres, 25 of which will be open space (30.56%). Part of the open space will not be irrigated because they never have been historically or because the area is too sloped. Those areas that will not be irrigated shall be noted on the plat. All lots, with the exception of Lot 30, have water rights that allow the entire lots to be irrigated.
- h) Lot Acreage: The City Land Use Code allows the area of lots to be reduced in size based on the amount of open space provided in the subdivision. The Code requires fifteen percent (15%) open space for this development. Developer has provided thirty percent (30%) open space. Because Developer has fifteen percent (15%) extra open space, the lots may be reduced in size by fifteen percent (15%). Therefore, the minimum allowable lot size shall be 0.85 acres. Required street frontage for lots has also been reduced due to the amount of extra open space provided. Because of the extra fifteen percent (15%) open space being provided, the minimum lot frontage shall be 127.5 feet, except on the bulb of the cul-de-sac where the minimum lot frontage shall be 60 feet.
- i) Geotechnical Study: Developer has submitted a geotechnical study to the City as part of its application. Horrocks Engineers has reviewed and approved the study as it relates to any special requirements needed for construction of the roads and future structures in the development.
- j) Sensitive Lands: The Project does contain slopes greater than twenty-five percent (25%). Dwellings are not allowed to be constructed on areas of slope greater than twenty-five percent (25%). The proposed plan complies with this requirement.
- k) Sewer Connection: The lots will connect to existing Midway Sanitation District sewer lines located in the area.
- l) Fire Flow: A fire hydrant will be located within five hundred feet (500') of any future dwellings, measured by the route of a fire hose from the fire hydrant to the future home site as indicated on the approved plans as previously reviewed and approved by Midway City engineering staff.

**Commented [AW6]:** This was already agreed on in Phase 1 so not sure why it was taken out  
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**Commented [AW7]:** Paul Berg confirm

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**Commented [AW8]:** Again this has already been submitted and is done so we should state as much to avoid confusion  
**Deleted:** to determine if any  
**Deleted:** are  
**Deleted:** The report is available for viewing in the City planning office or by request.

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m) Trails: The Trails Master Plan contains two planned public trails that cross through the development. One trail runs north from Canyon View Road to Interlaken, and the other runs from the center of the development to Interlaken Drive. These trails shall have a minimum of width of eight (8) feet and be paved and will be maintained by the HOA. The Association shall maintain, repair, and replace the trails and keep them in a clean, safe and functional condition, at the sole cost and expense of the Association and at a standard equivalent to public trails maintained by the City or according to written policies of the City applicable to all City trails, as the same exist from time to time. In the event that the Association fails and/or refuses to maintain, repair and/or replace the Trails, or portions thereof, in accordance with the requirements of this Section, the City shall provide written notice to the Association of any such failure specifying the location and nature of such failure or failures including a description of the required repairs needed. In the event that the Association fails or refuses to correct such deficiency within a period of thirty (30) business days following the date of such notice, the City shall have the right to perform all or some portion of such maintenance and/or repairs and shall thereafter have the right to obtain reimbursement from the Association of the actual costs incurred, plus ten percent (10%) for administrative costs. If the Association wishes to dispute any demand for maintenance, repair or replacement, it shall provide its reasons for such dispute in writing to the City within thirty (30) days of receiving notice from the City that maintenance of the trails is required. Failure to present such dispute in writing within the agreed upon time is a waiver of the Association to challenge the scope of the work claimed necessary by the City. All costs incurred by the City maintaining, repairing, or replacing the trails shall be submitted in writing, with supporting documentation, to the Association and in the absence of any challenge to the amount of such costs, the Association shall have fifteen (15) business days to pay the amounts in full. In the event of a dispute between the Association and the City regarding the need for work or the amount of the costs incurred by the City, the matter shall be resolved by mediation to be conducted within thirty (30) days of either the City's or the Association's request for mediation, by a mutually acceptable mediator. The proposal will also dedicate a public trail easement for a backcountry trail that will take the place of an existing similar trail which currently crosses the northern end of the development. The trail easement will be ten feet (10') wide and will be located in the 50 foot common area along the north end of the development running west to southwest from Interlaken's pump station to the west end of the development. It will be the City's responsibility to build the trail and it is anticipated that volunteers will complete the construction.

**Commented [AW9]:** This was a point of contention that we agreed to so we need to leave it in as we already agreed to it in Phase 1. Again, unsure why we are changing.

**Deleted:** If the HOA fails to maintain the trails to City standards, the City will provide

**Deleted:** written notice to the HOA. If the HOA fails or refuses to correct such deficiencies within thirty (30) days, the City shall have the right to perform the maintenance and repairs and bill the HOA for the work performed. ...

The general alignment of the trail is shown on the plans. Developer will also be required to extend the paved trail through the frontage of Lots 19 and 20 to the back of the cul-de-sac, connecting to the trail in the open space.

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- n) **Roads and Roadside Trails:** While the proposal is for a standard subdivision, the annexation agreement specifies that the roads in the development will be private, not public. The approved annexation agreement amendment requires that a public access easement be granted for the roads and trails in the subdivision. The easement shall be noted on the plats of both Phases.
- o) **Setback Requirements:** All structures in the proposed development must comply with RA-1-43 standards.
- p) **Height of Structures:** All structures in the development shall be no taller than thirty-five feet (35') to the roof measured from natural grade.
- q) **Storm Water Pond:** A storm water retention pond has been proposed that would straddle the common lot line between Lots 9 and 10. The plat must address the following:
  - a. Show an emergency access easement extending from the pond to the right-of-way;
  - b. Limit disturbances and uses within the pond;
  - c. Require the installation of a gate for emergency access if a fence or other barrier is installed;
  - d. Limit the type of fencing that can be installed through the pond.
- r) **Weed Control:** 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.
- s) **Construction Traffic:** All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- t) **Warranty:** Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.
- u) **Bonding:** Developer agrees to post performance and other 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 Regulations.
- v) **City's Right to Draw From Construction Bond:** If 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 Developer's performance and other bonds.

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#### B. Obligations of the City:

- i. **General Obligations:** The Parties acknowledge and agree that 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. 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 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 are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

#### **Section 4. Vested Rights and Applicable Law.**

- 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 Developer for the Project. 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 the subdivision plat, 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 (other than the City and the Developer or its assignees/successor) having any interest in the specific lot, or other portion of the Project. Each person or entity (other than the City and Developer or its assignees/successor) 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 Developer and/or its assignees/successor.

Commented [AW12]: Again already approved in Phase 1.

**Section 6. Cooperation and Implementation.**

A. Processing of Subsequent Approvals. 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, 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 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 in a timely manner. 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.

Commented [AW13]: Already approved in Phase 1

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 Parties. 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 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 refuting said material default. If the City Council reasonably 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. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, 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 in writing that the Developer demonstrate that Developer is in full compliance

Commented [AW14]: Already approved in Phase 1

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with the terms and conditions of this Agreement as enumerated in the City's request. Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the written request, or at a later date as agreed between the Parties.

4. Determination of Non-Compliance. Subject to this Section 7, if the City Council finds and determines that Developer has not reasonably 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 Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.

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Commented [AW15]: All prior comments already approved for Phase 1 so let's not try and re-write it now.

- B. 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 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, pandemics, 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 Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to 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 Developer. Developer shall be permitted to record the Notice of Compliance in its sole and absolute discretion.

Commented [AW16]: See comments above.

- 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 Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by Developer; and 2) 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, 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 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, conditioned or delayed. 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. Notwithstanding the above, Developer shall have the unilateral right to assign this Agreement, in whole or in part, to a company, trust, partnership, or limited liability company in which Developer or its members, owners, shareholders, directly or indirectly, hold a legal, beneficial, or equitable interest subject to the obligations and covenants of the Agreement.

Commented [AW17]: See comments above.

**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 the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to Developer, its successors and/or assigns, or the lot owners 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 Developer that 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 as regards 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 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 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:

MVWatts, LLC  
c/o Watts Enterprises  
5200 South Highland Drive, Suite 101  
SLC, Utah 84117

With copies to:

The McCullough Group, LLC  
450 South Main Street, Ste 800  
Salt Lake City, UT 84111  
Zenger-Malmrose Family, LLC  
285 Luzen Road  
Midway City, UT 84049

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**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 Developer.

**Section 13. Signing and Recordation of Agreement.** Unless the City and Developer mutually agree otherwise in writing, this Agreement must be signed by both 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 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.

*[Signatures on Following Page]*

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

CITY OF MIDWAY

Attest:

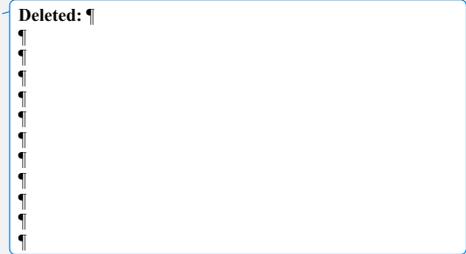
\_\_\_\_\_  
Celeste Johnson, Mayor

\_\_\_\_\_  
Brad Wilson, City Recorder

STATE OF UTAH            )  
                                      :ss  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, 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 THE RESERVE AT MIDWAY SUBDIVISION – PHASE 2

MVWATTS, LLC

By: W&W Midway, LLC

Its: Manager

By: Russell K. Watts

Its: Manager

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STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH        )

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The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, who executed the foregoing instrument in his/her capacity as the \_\_\_\_\_ of the Developer.

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

**EXHIBIT A**  
(Legal Description of the Property)

