Midway City Council
19 April 2022
Regular Meeting

Resolution 2022-15 /
Appenzell PUD
Master Plan Amendment

Midway

CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING:	April 19, 2022
NAME OF PROJECT:	Appenzell PUD
NAME OF APPLICANT:	David Tew, representing the Appenzell Owners' Association
OWNER OF RECORD:	Appenzell Owners' Association
AGENDA ITEM:	Development Agreement Amendment
LOCATION OF ITEM:	646 South Center Street
ZONING DESIGNATION:	R-1-22

David Tew, agent for Appenzell Owners' Association, is requesting an amendment to the Appenzell PUD development agreement. The proposed amendment would allow the Homeowners Association to adjust their subdivision boundary and sale a portion of their common area, resulting in a reduction of open space. The property is located at approximately 646 South Center Street in the R-1-22 zone.

BACKGROUND:

David Tew is proposing an amendment to the Appenzell Development agreement, adjusting the boundary of the development, allowing them to sale a portion of what is currently both common area and open space, to an adjacent property owner. The homeowner's association (HOA) has represented the purpose for selling the property is to help finance improvements to the common area of the development. The request is that the development boundary is reduced by approximately 0.57 acres, allowing the HOA to sell the excess parcel, located along Center Street, to an adjacent property owner. The

applicants have not indicated what the adjacent property owner intends on doing with the property.

Originally, the property where Appenzell is located was approved and recorded as High Valley Ranch. High Valley Ranch consisted of two plats that included a 24-unit PUD centered around equestrian use and a four-lot subdivision that fronted on Center Street. The two plats were recorded on August 8, 2007. Construction then commenced and much of the infrastructure was completed but some items were not completed which included much of the pavement and concrete work, to name a few. By 2008, recession has set in, and the project was abandoned in an unfinished state. The property could not be farmed because it was dissected by partially finished roads and other improvements and building permits could not be issued because of the unfinished state of the development. The area looked very neglected in this unfinished state and weeds become a problem that neighbors frequently complained about. In 2014, Aliya Development acquired the property and proposed a master plan amendment that would vacate the two plats and create a new development called Deer Creek Estates. The idea was to move the four lots that fronted Center Street to the center of the property which would leave the area along Center Street as open space. The City felt that opening up the area along Center Street was important for a number of reasons. First, it created more open space on one of the main entry corridors into Midway. Second, the open space would be landscaped which would beautify the corridor and the neighbors would not have weeds to look at but a landscaped area. Third, it would remove four potential driveways on to Center Street which, being an arterial street, should have minimum access points. Besides moving the four lots from Center Street, the developer was also granted additional density, so the development total increased from 28 units/lots to 39 units. Again, all this was approved to beautify a property that had been an eyesore and problem for Midway for several years. Around 2016, Newport Reset LLC acquired the property and renamed it Appenzell and they are the developers to this day. Since all but one or two lots have been sold by the developers, the HOA has been turned over to the residents and the HOA is proposing the current Master Plan Amendment. Staff sees the proposed adjustment as a step back from what was gained by approving the additional building pads.

LAND USE SUMMARY:

- 23.54-acres (existing)
- R-1-22 zoning
- Development contains 39 building pads of which 14 are located in phase I and 25 pads are located in phase II
- Project is a Planned Unit Development
- Roads are private and maintained by the HOA

- Common area owned by all the property owners in the Appenzell

- The lots are connected to the Midway Sanitation District sewer and to the City's water line.

- 8' paved public trail has been constructed along Center Street and 6' paved private trails have been constructed in the development with a public access easement

ANALYSIS:

Amending the Development Agreement – The City entered into a development agreement with Newport Reset, LLC (Regal Homes) when the Appenzell PUD was originally developed in 2016. This agreement applies to its successors and has provisions outlining when an amendment to the development agreement can occur. In section 5, it states:

> "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 and specific lot, unit or other portion of the Project."

Based on the language in the development agreement, staff feels that the City Council has broad discretion on whether they approve an amendment to the development agreement. While the HOA is well within their right to make the request, there are other options for them to pay for the improvements that they are proposing. Other options wouldn't necessitate City approval, and also wouldn't put the city in the position of allowing developments to sell off what is currently viewed as important open space. Staff feels that allowing a reduction in open space could set a bad precedence and could open the door for other developments in the city to propose doing something similar with open space that is deemed as excess, or not necessary. It seems it would be tempting for some developments to sell open space to others for a influx of money and the cost savings of then not having to maintain the open space that has been sold. Many developments in Midway have open space and staff is worried that Midway will receive other similar proposals.

Open Space – Currently, phase one and phase two of the Appenzell PUD have 18.87 acres of combined open space (common area) that is owned in common by the residents. The applicant is proposing that 0.57-acres of the common area, directly abutting Center Street, is removed and sold to an adjacent property owner.

In recent years, Midway City has made some significant changes to help preserve open space, especially in areas that are highly visible to residents and those visiting Midway. For instance, in 2018, the residents of Midway approved a $5 million bond,

allowing the city to purchase development rights off properties for the preservation of open space. That same year, Midway approved increased structure setbacks, restricted vehicular access (where possible) and 50' open space buffers along many of the main transportation corridors, including Center Street. These adjustments came after initial entitlements were received for Appenzell.

When Appenzell was approved in 2017 it covered 23.54 acres, of which 11.83 acres qualified as open space. 50% was required and the developer was providing 50.25%. Using the code that was in place in 2017, the current proposal would not comply with the open space requirement of a PUD by only providing 47.8%. The reason that the developer can meet the current requirement is because of an amendment in March of 2018 that was made because of the Remund Farms PUD proposal. Midway approved a code amendment that increased the setbacks for PUDs to 60' on peripheral property lines and allowed all peripheral setback areas to count as open space to create more buffer for surrounding property owners. Before the amendment, only areas of 100' or greater could qualify as open space. When the amendment to the code was proposed in 2018, the idea was that this code would not be used retroactively, but only on future projects. The language was tailored the way it was because it worked moving forward but it was never intended to be used backwards on already approved PUDs. For example, with the current code, there would never be a setback less than 60' and that area would count as open space. What that applicant is proposing is to use a current nonconforming setback (as low as 30' in width) and count that area as required open space even though that area could not be created using the current code. It was never the intent that anything less than 60' would count as required open space but staff (and most likely the City Council of 2018) never imagined that we would have a proposal to revisit an approved project using the new code.

If the City council were to approve this adjustment, the applicant would also be required to amend the subdivision plat. With those adjustments, staff would recommend that the 0.57 acres is deed restricted so that there is a limit on what could be put on the property, similar to what is required now. We would also recommend that it is attached to an adjacent parcel and is deed restricted from ever being developed into a separate building lot.

ITEMS OF CONSIDERATION:

- Approval if this proposal creates a precedence for future developments that would also like to sell open space and remove the financial burden of maintenance while receiving money for selling the property.

- One of the main goals in the General Plan is to create open space, especially in entry corridors, the proposal does not seem to align with that goal.

- If open space is sold to a neighbor and encumbered with any restriction, enforcement may be difficult.

- Midway has already provided incentives in the form of density to the developer to create open space that is proposed to be sold.

- The HOA has other means to finance their desired improvements including a HOA special assessment that would require the members of the community to pay for the improvements.

- The City has a landscaping bond that covers all the landscaped areas of the development.

POSSIBLE FINDINGS:

- The amendment would allow the HOA to sell some open space to a neighbor

- Midway has no control of how the money would be spent

- Per the current development agreement, Midway is under no obligation to approve the adjustment

- If the amendment is approved, the HOA would need to amend the subdivision plat to vacate the 0.54 acres from the plat

- The City would have no control over the use of the property that would be sold which could possibly be built on (accessory structure) or it could possibly be developed as its own lot in the future

ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council finds the proposal complies with the requirements of the Land Use Code.

    a. Accept staff report
    b. List accepted findings
    c. Place condition(s) if needed

2. Continuance. This action can be taken if the City Council finds that there are unresolved issues.

    a. Accept staff report
    b. List accepted findings

c. Reasons for continuance
    i. Unresolved issues that must be addressed
d. Date when the item will be heard again

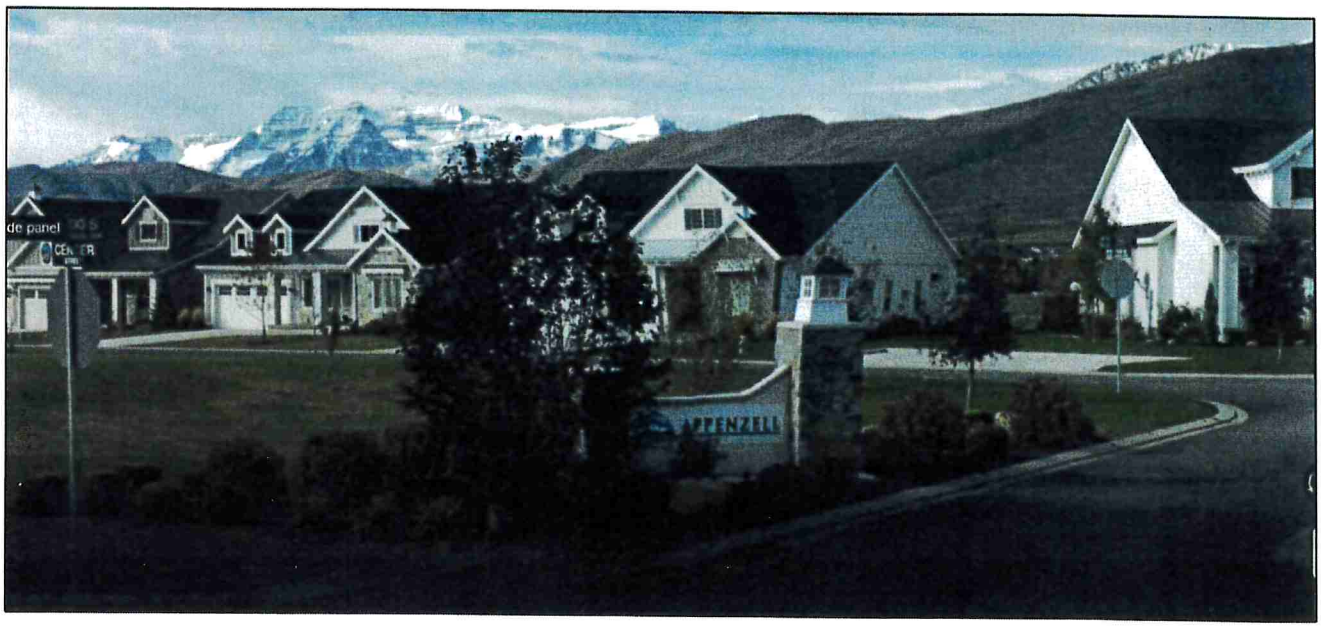
3. Denial. This action can be taken if the City Council finds that the request does not meet the requirements of the code.

    a. Accept staff report
    b. List accepted findings
    c. Reasons for denial

PROPOSED CONDITIONS:

1. If approved, the property should be connected to an adjoining parcel and remain undeveloped.

2. Require the vacated property to be restricted to no further development including subdividing and approval of building permits



Appenzell Owners' Association Proposal

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30,000-foot View

Applications (Pre-requisites to Sell Lots)

1. Homeowner Approval
2. Development Agreement Amendment Application
3. PUD Plat Amendment Application and Checklist
4. Open Space Plan and Calculations

30,000-foot View

General Plan Themes and Points of Emphasis: There are multiple recurring themes and points of emphasis in the latest version of the Midway City General Plan (2017), as well as in the recommendations approved by the Planning Commission, December 14, 2021, to make Code amendments to Section 16.16, "Planned Unit Developments and Standard Subdivisions."

These themes and points of emphasis include, but are not limited to:

- Surveys of the City's population that found that 1) rural atmosphere, 2) quietness, and 3) preserving open space were important to 2/3 or more of the respondents
- Midway will retain a rural atmosphere through open space [area] preservation
- Open spaces [areas] will be accessible, visible, appropriately landscaped and aesthetically pleasing
- Developments and City entryways will be landscaped, aesthetically pleasing and reinforce a Swiss/European theme
- Effective clustering and setbacks will help Midway preserve its view corridors
- Protecting entry corridors and collector roads from crowding will benefit the entire community
- Limiting the size of building pads could assure that dwellings built match the vision of the General Plan

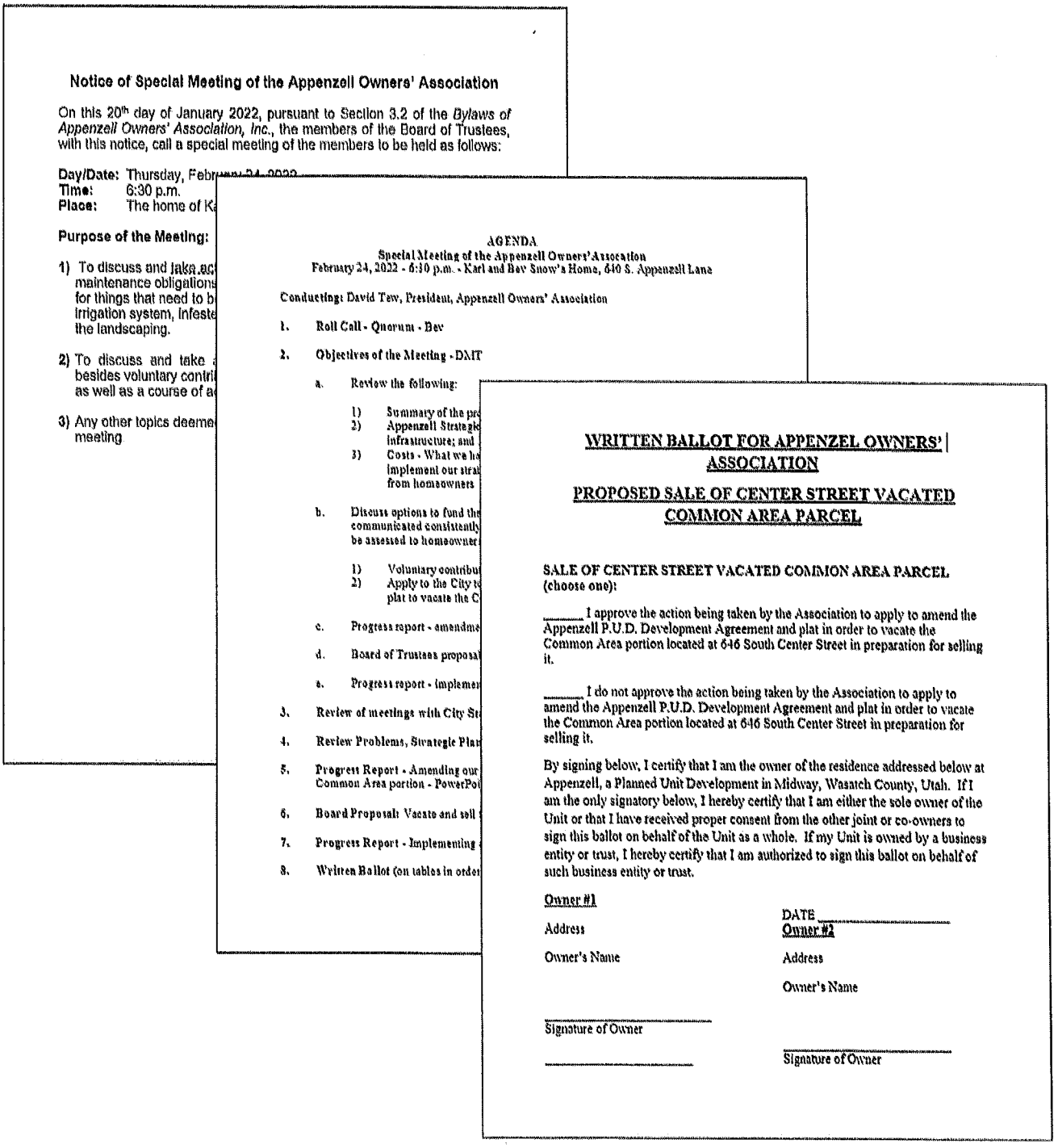
"We Are All In": We as Appenzell Owners are unanimous in our support of the City's Vision Statement

- Appenzell already helps implement many elements of the Vision Statement
- City Council approval of our proposed Development Agreement and PUD Plat amendments will help us implement our strategic plan to:
    - Correct problems we inherited from Regal so we bring our development up to the standard set in the General Plan
    - Upgrade our infrastructure and make it more efficient (e.g., more efficient use of our community's water resources)
    - Beautify our development, so it becomes the jewel in the Midway City crown it has the potential to be

The Key Question
Return on Investment (ROI)

Bottom-line: We believe the ROI to the City of our proposed Development Agreement and PUD plat amendments is significant enough to warrant the City's approval of our applications to vacate a portion of Common Area from our PUD and sell the property to help finance the proposed projects to fix problems inherited from Regal and to upgrade and beautify our Development

1. Appenzell Owners' Association Approval



Notice of Special Meeting of the Appenzell Owners' Association

On this 20th day of January 2022, pursuant to Section 3.2 of the *Bylaws of Appenzell Owners' Association, Inc.*, the members of the Board of Trustees, with this notice, call a special meeting of the members to be held as follows:

Day/Date: Thursday, Febr
Time: 6:30 p.m.
Place: The home of K

Purpose of the Meeting:

1) To discuss and take ac
maintenance obligations
for things that need to b
irrigation system, infeste
the landscaping.

2) To discuss and take
besides voluntary contri
as well as a course of a

3) Any other topics deeme
meeting

AGENDA
Special Meeting of the Appenzell Owners' Association
February 24, 2022 - 6:30 p.m. - Karl and Bev Snow's Home, 640 S. Appenzell Lane

Conducting: David Tew, President, Appenzell Owners' Association

1. Roll Call - Quorum - Bev
2. Objectives of the Meeting - DMT
   a. Review the following:
      1) Summary of the pr
      2) Appenzell Strategic
      Infrastructure; and
      3) Costs - What we ha
      Implement our strat
      from homeowners
   b. Discuss options to fund th
      communicated consistently
      be assessed to homeowner
      1) Voluntary contribu
      2) Apply to the City t
      plat to vacate the C
   c. Progress report - amendme
   d. Board of Trustees proposal
   e. Progress report - implemen
3. Review of meetings with City St
4. Review Problems, Strategic Plan
5. Progress Report - Amending our
   Common Area portion - PowerPo
6. Board Proposal: Vacate and sell
7. Progress Report - Implementing
8. Written Ballot (on tables in order

WRITTEN BALLOT FOR APPENZEL OWNERS' ASSOCIATION

PROPOSED SALE OF CENTER STREET VACATED COMMON AREA PARCEL

SALE OF CENTER STREET VACATED COMMON AREA PARCEL (choose one):

_____ I approve the action being taken by the Association to apply to amend the Appenzell P.U.D. Development Agreement and plat in order to vacate the Common Area portion located at 646 South Center Street in preparation for selling it.

_____ I do not approve the action being taken by the Association to apply to amend the Appenzell P.U.D. Development Agreement and plat in order to vacate the Common Area portion located at 646 South Center Street in preparation for selling it.

By signing below, I certify that I am the owner of the residence addressed below at Appenzell, a Planned Unit Development in Midway, Wasatch County, Utah. If I am the only signatory below, I hereby certify that I am either the sole owner of the Unit or that I have received proper consent from the other joint or co-owners to sign this ballot on behalf of the Unit as a whole. If my Unit is owned by a business entity or trust, I hereby certify that I am authorized to sign this ballot on behalf of such business entity or trust.

Owner #1

DATE _____

Address

Owner's Name

_____
Signature of Owner

Owner #2

Address

Owner's Name

_____
Signature of Owner

1. Homeowner Approval

- "The powers of the Board [of Trustees] shall include ... The power or authority to convey or transfer any interest in real property so long as any vote or consent necessary under the circumstances has been obtained: (Appenzell Owners' Association Bylaws, Section 4.1(d)).

- The Utah Land Use Management Act (LUDMA) requires that 67% of the voting interests in the association vote in the affirmative to sell a common area that the association owns (LUDMA Section 10-9a-606(5)(b)(1)).

- The Board has scheduled a Special Meeting for February 24 to review and vote on our plan to vacate the portion of our Common Area located at 646 S. We anticipate our Owners will cast affirmative ballots exceeding the super majority (67%) required by LUDMA to authorize the Board to apply to amend our Development Agreement and PUD plat in preparation for selling the vacated parcel.

1. Homeowner Approval - 1-page Summary

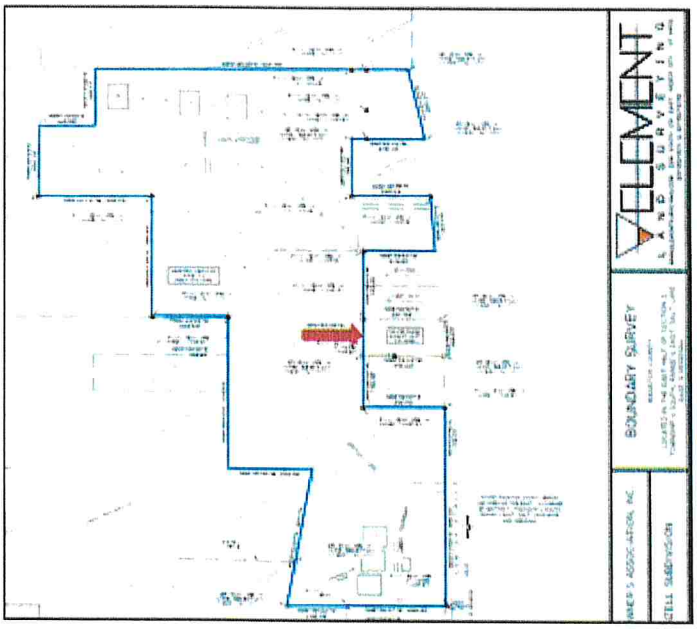
APPENZELL OWNERS' ASSOCIATION

WRITTEN BALLOT

PROPOSED SALE OF CENTER STREET VACATED COMMON AREA PARCEL

The Association is in the process of submitting an application to amend its Development Agreement and Planned Unit Development (PUD) plat to take advantage of an amendment made in 2018 to the Midway City Code, which will allow the Association to meet the PUD open space requirement without the Common Area portion of open space that fronts on Center Street at 646 South next to Dr. Kraig Ford's property.

Accordingly, the Association is proposing to amend the Appenzell P.U.D. plat to vacate that portion of our Common Area, which we have referred to in the past as Parcel B in order to prepare for a sale of that vacated parcel. (See the parcel to be vacated outlined in orange on the plat below with the red arrow pointing to it)



The Association will hold the proceeds from the sale of this vacated portion of Common Area in trust, with the Board of Trustees of the Association as trustee, to be used to help pay for the cost of fixing the problems inherited from the developer, upgrading the infrastructure, and beautifying the development.

1. Homeowner Approval - Ballot

WRITTEN BALLOT FOR APPENZEL OWNERS' ASSOCIATION

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Owner #1

Address

Owner's Name

_____
Signature of Owner

_____

DATE _____

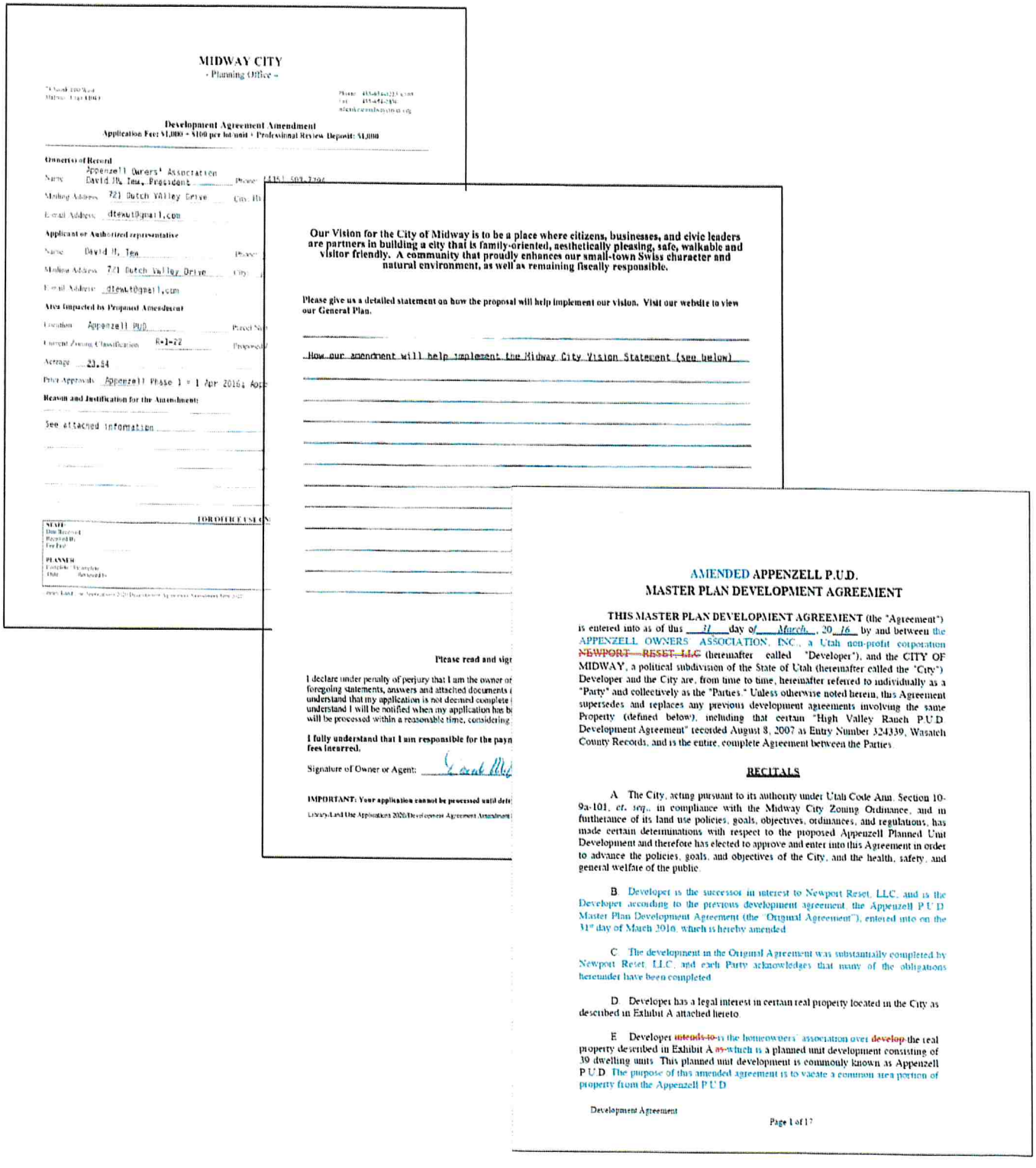
Owner #2

Address

Owner's Name

_____
Signature of Owner

2. Appenzell Development Agreement Application



MIDWAY CITY
- Planning Office -

Development Agreement Amendment
Application Fee: $1,000 + $100 per lot/unit + Professional Review Deposit: $1,000

Owner(s) of Record
Name: Appenzell Owners' Association
David H. Tew, President
Mailing Address: 721 Dutch Valley Drive
E-mail Address: dtewut@gmail.com

Applicant or Authorized representative
Name: David H. Tew
Mailing Address: 721 Dutch Valley Drive
E-mail Address: dtewut@gmail.com

Area Impacted by Proposed Amendment
Location: Appenzell PUD
Current Zoning Classification: R-1-22
Acreage: 23.84
Prior Approvals: Appenzell Phase 1 - 1 Apr 2016; Appe

Reason and Justification for the Amendment:
See attached information

FOR OFFICE USE ON

STAFF
Date Received:
Received By:
Fee Paid:

PLANNER
Complete / Incomplete
Date: Reviewed By:

Our Vision for the City of Midway is to be a place where citizens, businesses, and civic leaders are partners in building a city that is family-oriented, aesthetically pleasing, safe, walkable and visitor friendly. A community that proudly enhances our small-town Swiss character and natural environment, as well as remaining fiscally responsible.

Please give us a detailed statement on how the proposal will help implement our vision. Visit our website to view our General Plan.

How our amendment will help implement the Midway City Vision Statement (see below)

Please read and sign

I declare under penalty of perjury that I am the owner of
foregoing statements, answers and attached documents
understand that my application is not deemed complete
understand I will be notified when my application has b
will be processed within a reasonable time, considering

I fully understand that I am responsible for the payn
fees incurred.

Signature of Owner or Agent:

IMPORTANT: Your application cannot be processed until dete

Library-Land Use Applications-2020-Development Agreement Amendment

AMENDED APPENZELL P.U.D.
MASTER PLAN DEVELOPMENT AGREEMENT

THIS MASTER PLAN DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this 31 day of March, 20 16 by and between the APPENZELL OWNERS ASSOCIATION, INC., a Utah non-profit corporation ~~NEWPORT RESET, LLC~~ (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City") Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements involving the same Property (defined below), including that certain "High Valley Ranch P.U.D. Development Agreement" recorded August 8, 2007 as Entry Number 324339, Wasatch County Records, and is the entire, complete Agreement between the Parties.

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9a-101, *et. seq.*, in compliance with the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Appenzell Planned Unit Development and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer is the successor in interest to Newport Reset, LLC, and is the Developer according to the previous development agreement, the Appenzell P.U.D. Master Plan Development Agreement (the "Original Agreement"), entered into on the 31st day of March 2016, which is hereby amended.

C. The development in the Original Agreement was substantially completed by Newport Reset, LLC, and each Party acknowledges that many of the obligations hereunder have been completed.

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

E. Developer ~~intends to~~ is the homeowners' association over ~~develop~~ the real property described in Exhibit A ~~as~~ which is a planned unit development consisting of 39 dwelling units. This planned unit development is commonly known as Appenzell P.U.D. The purpose of this amended agreement is to vacate a common area portion of property from the Appenzell P.U.D.

Development Agreement

Page 1 of 17

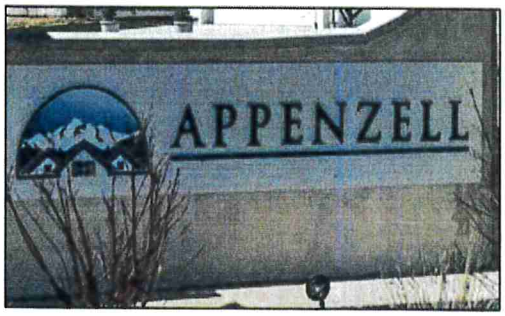
Development Agreement Application How it Helps Implement the Vision

- **Current Status.** Elements of Appenzell that already help implement Midway City's General Plan Vision
- **Inherited Problems.** Problems left us by Regal which cause some of our development open areas not to meet the standard set in the General Plan
- **Appenzell Strategic Plan.** Problem fixes, infrastructure upgrades and projects to beautify our development that will remedy the inherited problems and make our development more efficient and beautiful
- **What We Need from the City.** Support from the City Planner and the Mayor and City Council to help us navigate the City's political and legal landscape to amend our Development Agreement and PUD development plat to vacate a portion of our Common Area and sell it to help finance implementation of our strategic plan

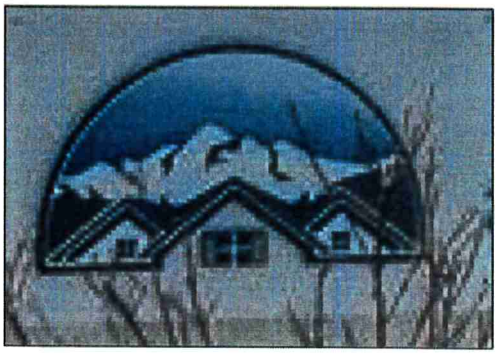
Appenzell already helps implement many elements of the General Plan Vision Statement

Architecture. The farmhouse-style architecture of each of the "cottages" contributes to Midway's rural ambiance

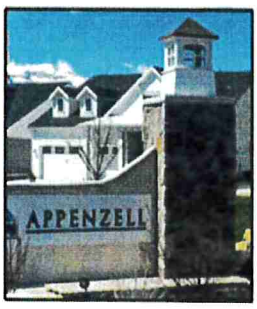
Iconic features of Appenzell maintain and enhance the City's Swiss/European identity



"Appenzell" is the name of a Canton on the northeastern border of Switzerland



The picture that accompanies the Appenzell name plate on each of the "gates" of the main entryway is an image of the Swiss Alps



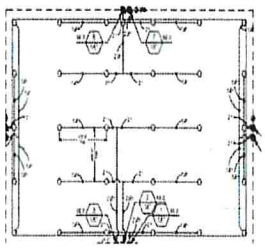
The cupolas on each of the two pillars of the main entryway and on each of the cottages represent a modern-day version of the iconic cupolas of Switzerland

Problems Inherited from Regal and Other Neighborhood Challenges

Inherited Problems. We inherited a number of problems from Regal. These problems cause some of our open areas to fall short of the standard set in the General Plan.

Legal Problems. Regal wrote veto powers into the CC&Rs and Bylaws which prevented us from fixing the problems

Soils/Nutrients. There is little or no topsoil in most of the Common Areas and all Common Areas are nutrient deficient



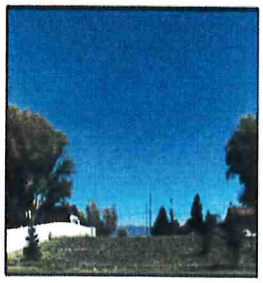
Irrigation System. The irrigation system was installed by three different contractors without any engineering design or coordination between them

Infested Berm. A berm consisting of basement excavation subsoil was as high as 10 feet and infested with Marmots

Noxious Weeds. Patches of noxious weeds infest nearly all 20 soil sampling zones (Scotch and Musk Thistle, Field Bindweed ["morning glory"])

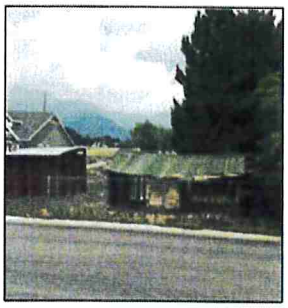
Inherited Problems (continued)

Struggling Landscaping. Hydro seeded farm grass and bluegrass have been replaced by weeds because of poor soil, missing nutrients and improper irrigation



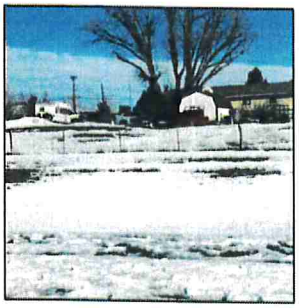
Gaps in Fencing. There are three large gaps (440', 300' and 250') in the fences between our property and our neighbors

In addition to the problems inherited from Regal, we have dealt or are trying to deal diplomatically with neighbors to correct some neighborhood challenges



Dilapidated Sheds

Metal Pipe Fences



Cluttered Lot

Appenzell Strategic Plan

—

Fixes, Upgrades, Beautification

Appenzell Strategic Plan — Fixes, Upgrades and Beautification

With City Council approval of our proposed Development Agreement amendment, we will place the proceeds from the sale of the portion of our Common Area vacated in a trust to help pay for implementation of our strategic plan projects, including:

- Bringing our Common Areas up to the standards set in the General Plan by correcting the problems we inherited from Regal and dealing diplomatically with our with neighbors to correct challenges as opportunities present themselves

- Upgrade our infrastructure to make it more efficient (e.g., make more efficient use of our community's water resources)

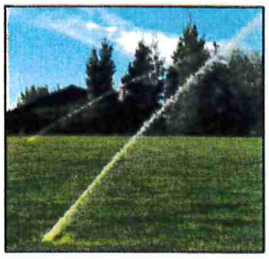
- Beautify our development, so it becomes the jewel in the Midway City crown it has the potential to be

Strategic Plan. Here is a summary of strategic plan projects already undertaken and those yet to be undertaken, together with their associated costs

Legal Problems. We amended the Articles of Incorporation and restated the Bylaws and CC&Rs to remove Regal's former veto powers

Berm Reconfiguration. We have removed boulders, excavated dens, reconfigured, graded and contoured the berm to bring it down to a rational height and gentle 5:1 slope

Other Excavation. We are excavating subsoil from catch basins and UDOT weed areas, building raised beds around Center Street neighbors' lots and grading and contouring the Monte Rosa Lane entryway



Irrigation System. We are repairing, reconfiguring, replacing and integrating the three independent systems into a single balanced system with SMART controllers

Topsoil. We have procured 3,800 cubic yards of topsoil which has been delivered to three stockpiles. It will be used to cover the reconfigured berm and to replace excavated subsoil in areas where landscape is dead/dying

Strategic Plan (continued)

Noxious Weeds. We have hired a noxious weed expert to make three applications per year of weed abatement chemicals for two years, then twice per year thereafter

Landscaping. Our landscaper will do final grading and contouring, procure and plant trees and shrubs, install drip irrigation, hydro seed blue grass and fescue cultivars, place boulders in target areas and xeriscape UDOT weed areas

Fence Installation. We will install 440' of 4-rail, round-dowel, 300' of 3 rail, round -dowel and 250' of white vinyl privacy fencing to blend in with existing fences of our neighbors

Strategic Plan Costs. Cost to fix the inherited problems and eyesores, upgrade the infrastructure, and beautify our development

PROJECT DESCRIPTION	CONTRACTOR(S)	DOCUMENTATION - RECOMMENDATION	IMPLEMENTATION	
		SPENT TO DATE	SPENT TO DATE	TO BE SPENT
Legal Consultation, Analysis, Document Production	Miller Harrison	$ 3,223	$ 17,617	$ 1,000
Soils - Documentation, Analysis and Recommendations	Ecology Bridge	$ 4,900		
Secondary Water Irrigation system	Mountain Water and Irrigation	$ 3,459	$ 70,956	$ 152,626
Landscape Master Plan	Carl Berg, E.A. Lyman, Vision Graphics	$ 1,182	$ 7,780	
Surveying and Engineering	Element Land and Epic Engineering		$ 3,950	$ 1,000
Clean-up Projects - Internal and External	Multiple		$ 3,012	
Excavation	K&Z Group		$ 75,000	$ 100,400
Topsoil	DJ Concrete		$ 41,885	(est)
Noxious Weed Abatement	Ground Solutions			$ 9,464
Landscape Installation	Schramm Landscaping and Sprinkler			$ 385,493
Fence Installation	Stonehenge Fence and Deck			$ 29,909

SUMMARY	DOCUMENTATION - RECOMMENDATION	IMPLEMENTATION	
TOTAL SPENT TO DATE	$ 12,763	$ 220,201	$ 232,964
TOTAL YET TO BE SPENT			$ 679,893
GRAND TOTAL - SPENT TO DATE + YET TO BE SPENT			$ 912,857

$ Spent to Date: **$232,964** **Total Cost:** **$912,857**

- **Documentation and Recommendations:** What we spent to have third-party experts document the problems we inherited and make recommendation re how to fix them
- **Implementation:** What we have **spent to date** and what we **plan to spend** on implementing the projects to fix the problems, upgrade the infrastructure and beautify our development

What We Need from the City

What We Need from the City

No Direct Financial Help. We are not asking for any direct financial help from the City to fix the problems, upgrade the infrastructure and beautify our property

Help Negotiating the Political and Legal Landscape. We are requesting support from the City Planner, the Mayor, and City Council to help us navigate the City's political and legal landscape so we can

1. Amend our Development Agreement and our Appenzell PUD plat for purposes of vacating a portion of Common Area from the PUD

2. Use the proceeds from the sale of the vacated parcel to supplement the voluntary contributions from our Homeowners (sole source of funding to date) in paying for the fixes and improvement projects

Our Commitment to the City

"We Are All In". We are fully supportive of the agenda and plan of our City officials including, for example –

- Open spaces [areas] will be accessible, visible, appropriately landscaped and aesthetically pleasing
- Developments and City entryways will be landscaped, aesthetically pleasing and reinforce a Swiss/European theme
- Effective clustering and setbacks will help Midway preserve its view corridors
- Protecting entry corridors and collector roads from crowding will benefit the entire community
- Limiting the size of building pads helps assure that dwellings built match the vision of the General Plan

Center Street Corridor
Gateway to the City

Current State of Center Street Corridor. During the past six years during which Regal has had administrative control, they have —

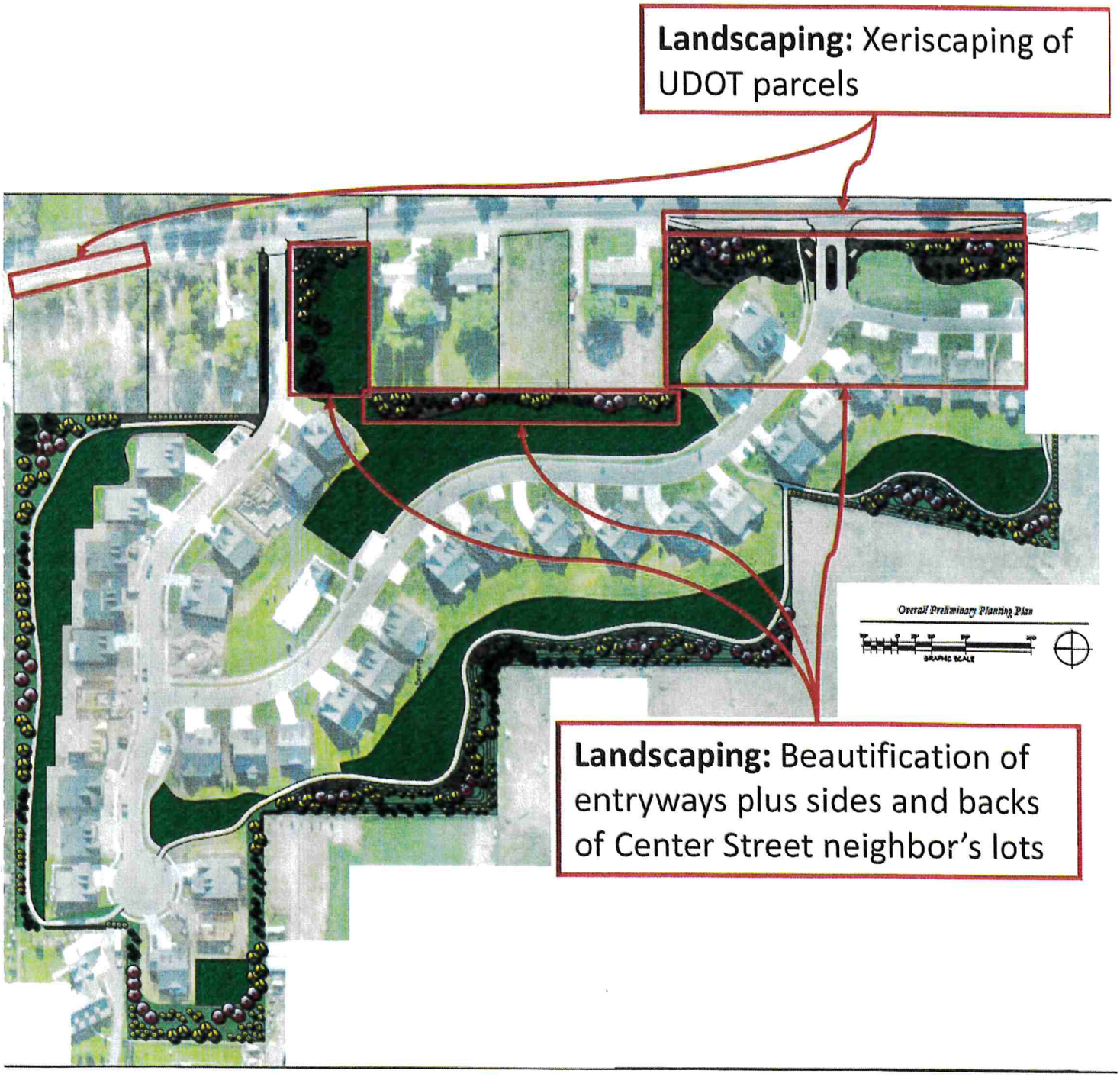
- Been delinquent in maintaining the two vacant lots and the Monte Rosa Lane entryway such that they are covered with unsightly regular weeds, are infested with noxious weeds, and have a number of dead trees on the larger lot
- Have improperly deposited subsoil from basement excavations on the larger vacant lot and on the Monte Rosa Lane entryway

Center Street Corridor
Gateway to the City

Appenzell Strategic Plan. Our strategic plan includes significant beautification of the Center Street corridor, including:

- Adoption and xeriscaping of the weed ridden UDOT areas
- Upgrading the landscaping on the berm on either side of the main entryway on Appenzell Lane
- Adding Swiss/European pillar features to the Monte Rosa Lane entryway (smaller version of main entryway)
- Grading, contouring and planting Kentucky bluegrass in the Monte Rosa Lane entryway
- Installing a small berm with trees, shrubs and fescue grasses along the back and side boundaries of our Center Street neighbors' lots to enhance the Center Street view corridors

Center Street Corridor
Gateway to the City



Pre-requisites to Vacate the Common Area Parcel

1. **Homeowner Approval.** Ballots for Homeowners to vote on whether to vacate and sell the Common Area portion of the PUD (need 67% super majority of affirmative votes)

2. **Development Agreement Amendment.** Description of how the Development Agreement and PUD plat amendments help implement the City's General Plan and Vision Statement

3. **Plat Amendment.** The Appenzell PUD plat amendment, which implements the Development Agreement, including checklist items

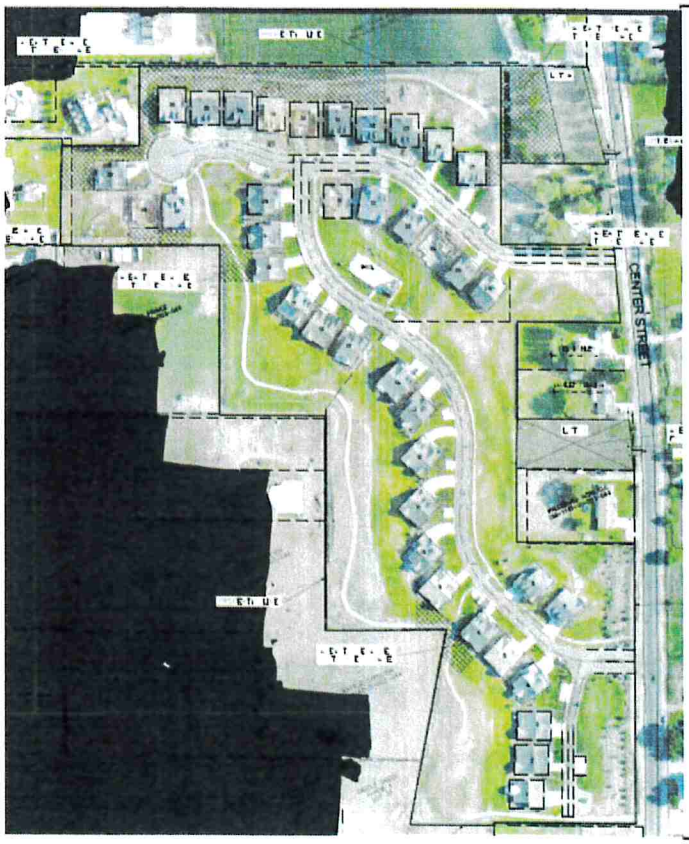
4. **Open Space Plan and Calculations.** Documentation of $\geq$ 50% qualifying open space absent the vacated parcel

4. Open Space Plan and Calculations

- **50% Open Space Requirement.** If Appenzell is allowed to avail itself of the ***peripheral property line setback*** exception provision* through the Development Agreement and Master Plan amendments, we will be able to meet the 50% open space requirement without needing any of the open space from the Open Space area on Center Street we plan to vacate*

  *Midway City Code, Section 16.16.11-B as amended Feb-Mar 2018)

- **Epic Engineering:** Open Space Plan and Calculations: after removal of vacated parcel and application of peripheral boundary exception provision



OPEN SPACE CALCULATIONS

OPEN SPACE BEFORE REMOVAL OF LOTS A & B	11.83 ACRES
OPEN SPACE REMOVAL: LOT B	.57 ACRES
OPEN SPACE AFTER REMOVAL OF OPEN SPACE INCLUDED FROM LOT B	11.26 ACRES
OPEN SPACE ADDED FROM REMAINDER OF LOT A	.50 ACRES
OPEN SPACE ACREAGE ADDED UNDER EXCEPTION PROVISION	1.53 ACRES
TOTAL OPEN SPACE ACREAGE REMOVAL OF LOTS AND APPLICATION OF EXCEPTION PROVISION	13.29 ACRES

TOTAL ACREAGE

BEFORE REMOVAL OF LOT B	23.54 ACRES
AFTER REMOVAL OF LOT B	22.97 ACRES

RATIO OF OPEN SPACE TO TOTAL ACREAGE AFTER REMOVAL OF LOTS AND EXCEPTION PROVISION

TOTAL ACREAGE OF DEVELOPMENT AFTER REMOVAL OF LOT B	22.97 ACRES
TOTAL OPEN SPACE AFTER REMOVAL OF LOT AND EXCEPTION PROVISION	13.29 ACRES
OPEN SPACE / TOTAL ACREAGE X 100 (OPEN SPACE PERCENT)	57.86 %
CURRENT OPEN SPACE PERCENT	50.25%

* NOTE: THIS SCENARIO ST[illegible] MEETS THE REQUIREMENTS OF SECTION 16.16.8-2 OF THE MU[illegible]OR A PUD SHALL BE TEN ACRES"

57.86%

AMENDED APPENZELL P.U.D.
MASTER PLAN DEVELOPMENT AGREEMENT

THIS MASTER PLAN DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this *31* day of *March.*, 20*16* by and between the APPENZELL OWNERS' ASSOCIATION, INC., a Utah non-profit corporation ~~NEWPORT RESET, LLC~~ (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements involving the same Property (defined below), including that certain "High Valley Ranch P.U.D. Development Agreement" recorded August 8, 2007 as Entry Number 324339, Wasatch County Records, and is the entire, complete Agreement between the Parties.

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9a-101, *et. seq.,* in compliance with the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Appenzell Planned Unit Development and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer is the successor in interest to Newport Reset, LLC, and is the Developer according to the previous development agreement, the Appenzell P.U.D. Master Plan Development Agreement (the "Original Agreement"), entered into on the 31st day of March 2016, which is hereby amended.

C. The development in the Original Agreement was substantially completed by Newport Reset, LLC, and each Party acknowledges that many of the obligations hereunder have been completed.

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

E. Developer ~~intends to~~ is the homeowners' association over ~~develop~~ the real property described in Exhibit A ~~as~~ which is a planned unit development consisting of 39 dwelling units. This planned unit development is commonly known as Appenzell P.U.D. The purpose of this amended agreement is to vacate a common area portion of property from the Appenzell P.U.D.

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

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

AGREEMENT

Section 1. EFFECTIVE DATE AND TERM

1.1 Effective Date.

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

1.2 Term.

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

Section 2. DEFINITIONS

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

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

"Governing Body" shall mean the Midway City Council.

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

Agreement.

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

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

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

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

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

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

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

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

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

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

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

Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

3.1 Obligations of Developer.

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

and obligations of Developer set forth herein.

(b) ***Conditions to Current Approvals.*** Developer shall comply with all of the following Conditions to Current Approvals:

(1) ***Payment of Fees:*** Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

(2) ***Phasing:*** Developer will develop the Project in two (2) phases. Phase I will contain 14 units. Phase II will contain 25 units, for a total of 39 units in all phases. Total combined acreage for Phase I and Phase II is ~~23.54~~22.97 acres. Developer will be required to apply for and obtain separate approval from the City's land use authority for each phase of the Project. The timing for developing each phase will determined by Developer. The plat for Phase I will be recorded prior to recording the plat for Phase II.

(3) ***Plat Vacations.*** The plat for Phase I of the Project will explicitly vacate the previously recorded plats for the High Valley Ranch Equestrian P.U.D. and the High Valley Ranch Subdivision, consistent with the development terms and conditions of this Agreement.

(4) ***Water:*** Developer (or its predecessors in interest) has previously provided a total of 37.5 acre feet of water rights to the City for use in the Project. This dedication of water rights is sufficient for use by the units in Phase I of the Project and for the Project's open space and common areas. Upon making application for preliminary and final approval of Phase II of the Project, Developer will apply for and receive a determination by the City of the amount of additional water rights, if any (after being credited for the amount of any excess water previously provided), that will be required to be dedicated to serve the units in Phase II of the Project.

(5) ***Construction and/or Dedication of Project Improvements:*** Developer agrees to construct and/or dedicate project improvements as directed by the City, including but not limited to roads, landscaping, water, sewer, storm drains, and other utilities as shown on the approved final plans and in accordance with City standards. Developer understands and acknowledges that substantial infrastructure improvements have been installed in the Project

previously, and that it may be necessary to remove and re-install many of these improvements to conform with the proposed new plans for the Project as described in this Agreement. The City and Developer agree that during construction of the Project, any infrastructure that was already installed previously will be subject to the City standards that were in effect when the infrastructure was installed. Any infrastructure that has not yet been installed will be subject to current City standards in effect at the time of installation. Developer also agrees to comply with the following:

(a) Developer agrees to construct and improve Center Street (SR-113) from the north boundary of the Project to the south boundary of the project in the locations and manner approved by the City Engineer as shown on the approved plans and pursuant to City and UDOT standards. These road improvements to Center Street will be constructed and completed as part of the construction of Phase II of the Project.

(b) Developer agrees to dedicate right-of-way from the Property to the City along Center Street (SR-113) sufficient to construct and install road, sidewalk and trails, pursuant to City standards and the approved plans.

(c) Developer agrees to construct all roads required for the Project pursuant to City standards and the approved plans. Roads within the project will be private and will be owned and maintained by the Project's homeowner's association, but will be covered by an easement to allow access by the public.

(d) Developer agrees to construct and install trails, at Developer's expense, pursuant to City standards as shown on the construction drawings, including but not limited to trails shown on the City trails master plan. As part of this obligation, Developer will dedicate a 20-foot public trail easement along the full length of the Property adjacent to Center Street. Developer will build and install, at Developer's expense, a 10-foot public trail in this easement along Center Street in all locations where the easement crosses the Project boundaries. The City will pay for construction by Developer of the public trail in other locations along Center Street adjacent to the Project. Developer will also construct a trail stubbing to the north boundary line of the Project in Phase II for future connectivity to other property or projects. Developer, for itself and its successors and/or assigns, agrees to assume the responsibility and expense of maintaining all trails in and around the Project.

(e) Developer agrees to construct and install a private storm drain system as shown on the construction drawings, to be

maintained in perpetuity by Developer and/or its successors or assigns and not by the City.

(6) ***Weed Control Plan.*** Developer will submit, and obtain City approval of, a weed control plan for all areas in all proposed phases of the project prior to the recording of the plat for Phase I. Beginning on the date this Agreement is recorded, Developer will trim and control weeds on the Property on all parcels in all proposed phases of the Project, maintaining a height of one foot or less, until the parcel is transferred to a successor owner.

(7) ***Warranty:*** Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.

(8) ***Bonding:*** Developer agrees to post bonds in amounts and types established by the City related to the performance of Developer's construction obligations for the Project, pursuant to current City ordinances and resolutions.

(9) ***Water Line Extension Agreement:*** Developer agrees to be subject to any and all Water Line Extension Agreements executed by the City to reimburse third parties for the installation of water line(s) which facilitate water service to the Project. Specifically, Developer agrees to pay, prior to recording the plat for each phase of the Project, the amount of $1,436.61 per unit to the legal owner of the rights under the Water Line Extension Agreement.

(10) ***Building Pads.*** Developer agrees to comply with all City ordinances and standards requiring inclusion of all improvements within building pads, as in effect on the date of plat recording.

(11) ***Easement and Improvements for Road Covering Phase Two.*** As part of the required improvements for Phase I, Developer agrees to finish construction and installation of the paved road and curb and gutter that provides a second access to the Project from Center Street. In addition, when the plat for Phase I is recorded, Developer will record an easement to allow immediate and perpetual access across this improved road by the public until the time that Phase II is built. Developer will at all times keep open and maintain this road, including snow removal, to provide safe and consistent public access across the road.

(12) ***Relocation of Barn.*** Developer agrees to relocate a barn that was previously constructed in the central part of the Property to a location near the northeast comer of the Property. Developer agrees

that the barn, in its new location, will meet all road setback requirements and will be screened from view by landscaping.

3.2 Obligations of the City.

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

(b) Conditions to Current Approvals. The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Project plat, unless agreed to in writing by the Parties. The City agrees that the acreage, pad sizes and densities for the 39 P.U.D. units covered by this Agreement are accepted, approved and conforming for land use and zoning purposes.

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

(d) Release of Recorded Notice. Upon approval, execution and recording of this Agreement, and compliance by Developer with all of its provisions, the City will record a Release of that certain Notice of Non-Compliance recorded June 19, 2012 as Entry Number 379851, Wasatch County Records.

(e) Construction of Trail. The City will pay for constructing the public trail along Center Street adjacent to the Project's boundary in those locations where Developer is not required to construct said trail, pursuant to paragraph 3.1(b)(5)(d) above.

Section 4. VESTED RIGHTS AND APPLICABLE LAW

4.1 Vested Rights.

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

and Applicable Law.

(b) Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulation safter the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

4.2 Applicable Law.

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

(b) State and Federal Law. Notwithstanding any other prov1s10n of this Agreement, this Agreement shall not preclude the application of changes **in** laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. AMENDMENT.

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

5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. COOPERATION-IMPLEMENTATION

6.1 Processing of Subsequent Approvals.

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

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

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

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

6.2 Other Governmental Permits.

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

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

Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

7.1 General Provisions.

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

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

7.2 Review by City

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

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

7.3 Default by the City.

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

7.4 Enforced Delay; Extension of Time of Performance.

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

7.5 Limitation on Liability.

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

Section 8. NOTICE OF COMPLIANCE

8.1 Timing and Content.

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

default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

8.2 Failure to Deliver.

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

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

The rights of the Developer under this agreement may not be transferred or assigned, in whole or in part, without the City's written consent, which consent the City shall not unreasonably withhold.

Section 10. MISCELLANEOUS

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

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

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

10.4 **Construction.** Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

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

10.6 **Covenants Running with the Land and Manner of Enforcement.**

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

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

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

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

10.9 **Utah Law.** This Agreement shall be construed and enforced in

accordance with the laws of the State of Utah.

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

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

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

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

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

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

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

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

Section 11. NOTICES

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent,

or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:
Director
Planning Department
Midway City
P.O. Box 277
Midway, UT 84049

With Copies to:

CORBIN GORDON
Midway City Attorney
55 W. Center St., Suite 1
Heber City, UT 84032

If to Developer:
Appenzell Owners' Association, Inc
c/o David M Tew
721 Dutch Valley Drive
Midway, UT 84049-6960

Section 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

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

Section 13. EXECUTION AND RECORDATION OF DEVELOPMENT AGREEMENT

The City shall have the right to unilaterally revoke its approval of this Agreement if Developer fails to sign and execute the Agreement within 90 days of the public meeting at which the City approves the Agreement. No later than ten (10) days after the City executes the Agreement, the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

IN WITNESS WHEREOF, this Amendment has been entered into by and between Developer and the City on this ___ day of ____, 2022.

CITY OF MIDWAY: **Attest:**

_____ _____
CELESTE JOHNSON BRAD WILSON
Mayor City Recorder

State of Utah)
:ss.
County of _____)

On this ___ day of _____, in the year 2022, before me appeared Celeste Johnson who executed the foregoing instrument in her capacity as the Mayor of the City of Midway, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as the Midway City Recorder.

_____
Notary Signature

APPENZELL OWNERS' ASSOCIATION, INC:

_____
Signature

By: David M. Tew

Its: President

State of Utah)
:ss.
County of _____)

On this ___ day of _____, in the year 2022, before me appeared David M. Tew who executed the foregoing instrument in their capacity as the President of Appenzell Owners' Association, Inc.

_____
Notary Signature

BOUNDARY DESCRIPTION

AMENDED APPENZELL PUD PHASE 1 AND PHASE 2

BEGINNING AT A POINT LOCATED SOUTH 00°06'16" EAST ALONG THE SECTION LINE 231.15 FEET AND WEST 64.74 FEET FROM THE EAST 1/4 CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°59'57" WEST 294.39 FEET; THENCE SOUTH 00°05'51" EAST 3.85 FEET; THENCE NORTH 89°59'22" WEST 176.19 FEET; THENCE NORTH 10°43'27" EAST 407.75 FEET; THENCE SOUTH 89°35'39" WEST 252.00 FEET; THENCE NORTH 00°00'03" EAST 334.62 FEET; THENCE NORTH 00°04'00" EAST 108.97 FEET; THENCE NORTH 89°43'28" WEST 222.54 FEET; THENCE NORTH 00°01'29" EAST 349.93 FEET; THENCE SOUTH 89°41'12" WEST 335.75 FEET; THENCE NORTH 00°40'43" EAST 204.19 FEET; THENCE NORTH 89°19'02" EAST 165.08 FEET; THENCE NORTH 00°15'09" EAST 165.17 FEET; THENCE NORTH 89°46'26" EAST 927.78 FEET; THENCE SOUTH 13°41'37" EAST 207.17 FEET; THENCE SOUTH 89°54'10" WEST 218.13 FEET; THENCE SOUTH 00°01'29" WEST 128.26 FEET; THENCE NORTH 89°39'46" EAST 234.03 FEET; THENCE SOUTH 04°56'44" EAST 161.15 FEET; THENCE NORTH 89°59'57" WEST 214.30 FEET; THENCE SOUTH 00°00'03" WEST 199.26 FEET; THENCE SOUTH 00°57'16" WEST 105.14 FEET; THENCE SOUTH 00°00'03" WEST 150.98 FEET; THENCE SOUTH 89°59'57" EAST 243.72 FEET; THENCE SOUTH 00°03'45" EAST 178.77 FEET; THENCE SOUTH 00°17'57" EAST 399.54 FEET TO THE PONT OF BEGINNING.

AREA = 22.97 ACRES

VACATED PARCEL

BEGINNING AT A POINT LOCATED NORTH 497.65 AND WEST 67.89 FEET FROM THE EAST 1/4 CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°53'10" WEST 242.43 FEET; THENCE NORTH 00°57'16" EAST 105.14 FEET; THENCE SOUTH 89°59'57" EAST 231.54 FEET; THENCE SOUTH 04°56'44" EAST 106.00 FEET TO THE POINT OF BEGINNING.

AREA = 0.57 ACRE

RESOLUTION
2022-15

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING AN AMENDMENT TO THE APPENZELL PUD MASTER PLAN AGREEMENT

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

WHEREAS, the City Council deems it appropriate to adopt An amendment to the master plan agreement for the Appenzell PUD.

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

Section 1: The attached Amended Master Plan Agreement for the Appenzell PUD 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 2022.

MIDWAY CITY

_____

Celeste Johnson, Mayor

ATTEST:

_____

Brad Wilson, Recorder

(SEAL)

Exhibit A

AMENDED APPENZELL P.U.D.
MASTER PLAN DEVELOPMENT AGREEMENT

THIS MASTER PLAN DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this *31* day of *March.*, 20*16* by and between the APPENZELL OWNERS' ASSOCIATION, INC., a Utah non-profit corporation NEWPORT RESET, LLC (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements involving the same Property (defined below), including that certain "High Valley Ranch P.U.D. Development Agreement" recorded August 8, 2007 as Entry Number 324339, Wasatch County Records, and is the entire, complete Agreement between the Parties.

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9a-101, *et. seq.,* in compliance with the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Appenzell Planned Unit Development and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer is the successor in interest to Newport Reset, LLC, and is the Developer according to the previous development agreement, the Appenzell P.U.D. Master Plan Development Agreement (the "Original Agreement"), entered into on the 31st day of March 2016, which is hereby amended.

C. The development in the Original Agreement was substantially completed by Newport Reset, LLC, and each Party acknowledges that many of the obligations hereunder have been completed.

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

E. Developer is the homeowners' association over the real property described in Exhibit A which is a planned unit development consisting of 39 dwelling units. This planned unit development is commonly known as Appenzell P.U.D. The purpose of this amended agreement is to vacate a common area portion of property from the Appenzell P.U.D.

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

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

AGREEMENT

Section 1. EFFECTIVE DATE AND TERM

1.1 Effective Date.

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

1.2 Term.

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

Section 2. DEFINITIONS

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

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

"Governing Body" shall mean the Midway City Council.

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

Agreement.

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

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

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

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

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

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

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

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

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

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

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

Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

3.1 Obligations of Developer.

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

and obligations of Developer set forth herein.

(b) Conditions to Current Approvals. Developer shall comply with all of the following Conditions to Current Approvals:

(1) ***Payment of Fees:*** Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

(2) ***Phasing:*** Developer will develop the Project in two (2) phases. Phase I will contain 14 units. Phase II will contain 25 units, for a total of 39 units in all phases. Total combined acreage for Phase I and Phase II is 22.97 acres. Developer will be required to apply for and obtain separate approval from the City's land use authority for each phase of the Project. The timing for developing each phase will determined by Developer. The plat for Phase I will be recorded prior to recording the plat for Phase II.

(3) ***Plat Vacations.*** The plat for Phase I of the Project will explicitly vacate the previously recorded plats for the High Valley Ranch Equestrian P.U.D. and the High Valley Ranch Subdivision, consistent with the development terms and conditions of this Agreement.

(4) ***Water:*** Developer (or its predecessors in interest) has previously provided a total of 37.5 acre feet of water rights to the City for use in the Project. This dedication of water rights is sufficient for use by the units in Phase I of the Project and for the Project's open space and common areas. Upon making application for preliminary and final approval of Phase II of the Project, Developer will apply for and receive a determination by the City of the amount of additional water rights, if any (after being credited for the amount of any excess water previously provided), that will be required to be dedicated to serve the units in Phase II of the Project.

(5) ***Construction and/or Dedication of Project Improvements:*** Developer agrees to construct and/or dedicate project improvements as directed by the City, including but not limited to roads, landscaping, water, sewer, storm drains, and other utilities as shown on the approved final plans and in accordance with City standards. Developer understands and acknowledges that substantial infrastructure improvements have been installed in the Project

previously, and that it may be necessary to remove and re-install many of these improvements to conform with the proposed new plans for the Project as described in this Agreement. The City and Developer agree that during construction of the Project, any infrastructure that was already installed previously will be subject to the City standards that were in effect when the infrastructure was installed. Any infrastructure that has not yet been installed will be subject to current City standards in effect at the time of installation. Developer also agrees to comply with the following:

(a) Developer agrees to construct and improve Center Street (SR-113) from the north boundary of the Project to the south boundary of the project in the locations and manner approved by the City Engineer as shown on the approved plans and pursuant to City and UDOT standards. These road improvements to Center Street will be constructed and completed as part of the construction of Phase II of the Project.

(b) Developer agrees to dedicate right-of-way from the Property to the City along Center Street (SR-113) sufficient to construct and install road, sidewalk and trails, pursuant to City standards and the approved plans.

(c) Developer agrees to construct all roads required for the Project pursuant to City standards and the approved plans. Roads within the project will be private and will be owned and maintained by the Project's homeowner's association, but will be covered by an easement to allow access by the public.

(d) Developer agrees to construct and install trails, at Developer's expense, pursuant to City standards as shown on the construction drawings, including but not limited to trails shown on the City trails master plan. As part of this obligation, Developer will dedicate a 20-foot public trail easement along the full length of the Property adjacent to Center Street. Developer will build and install, at Developer's expense, a 10-foot public trail in this easement along Center Street in all locations where the easement crosses the Project boundaries. The City will pay for construction by Developer of the public trail in other locations along Center Street adjacent to the Project. Developer will also construct a trail stubbing to the north boundary line of the Project in Phase II for future connectivity to other property or projects. Developer, for itself and its successors and/or assigns, agrees to assume the responsibility and expense of maintaining all trails in and around the Project.

(e) Developer agrees to construct and install a private storm drain system as shown on the construction drawings, to be

maintained in perpetuity by Developer and/or its successors or assigns and not by the City.

(6) ***Weed Control Plan.*** Developer will submit, and obtain City approval of, a weed control plan for all areas in all proposed phases of the project prior to the recording of the plat for Phase I. Beginning on the date this Agreement is recorded, Developer will trim and control weeds on the Property on all parcels in all proposed phases of the Project, maintaining a height of one foot or less, until the parcel is transferred to a successor owner.

(7) ***Warranty:*** Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.

(8) ***Bonding:*** Developer agrees to post bonds in amounts and types established by the City related to the performance of Developer's construction obligations for the Project, pursuant to current City ordinances and resolutions.

(9) ***Water Line Extension Agreement:*** Developer agrees to be subject to any and all Water Line Extension Agreements executed by the City to reimburse third parties for the installation of water line(s) which facilitate water service to the Project. Specifically, Developer agrees to pay, prior to recording the plat for each phase of the Project, the amount of $1,436.61 per unit to the legal owner of the rights under the Water Line Extension Agreement.

(10) ***Building Pads.*** Developer agrees to comply with all City ordinances and standards requiring inclusion of all improvements within building pads, as in effect on the date of plat recording.

(11) ***Easement and Improvements for Road Covering Phase Two.*** As part of the required improvements for Phase I, Developer agrees to finish construction and installation of the paved road and curb and gutter that provides a second access to the Project from Center Street. In addition, when the plat for Phase I is recorded, Developer will record an easement to allow immediate and perpetual access across this improved road by the public until the time that Phase II is built. Developer will at all times keep open and maintain this road, including snow removal, to provide safe and consistent public access across the road.

(12) ***Relocation of Barn.*** Developer agrees to relocate a barn that was previously constructed in the central part of the Property to a location near the northeast comer of the Property. Developer agrees

that the barn, in its new location, will meet all road setback requirements and will be screened from view by landscaping.

3.2 Obligations of the City.

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

(b) Conditions to Current Approvals. The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Project plat, unless agreed to in writing by the Parties. The City agrees that the acreage, pad sizes and densities for the 39 P.U.D. units covered by this Agreement are accepted, approved and conforming for land use and zoning purposes.

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

(d) Release of Recorded Notice. Upon approval, execution and recording of this Agreement, and compliance by Developer with all of its provisions, the City will record a Release of that certain Notice of Non-Compliance recorded June 19, 2012 as Entry Number 379851, Wasatch County Records.

(e) Construction of Trail. The City will pay for constructing the public trail along Center Street adjacent to the Project's boundary in those locations where Developer is not required to construct said trail, pursuant to paragraph 3.1(b)(5)(d) above.

Section 4. VESTED RIGHTS AND APPLICABLE LAW

4.1 Vested Rights.

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

and Applicable Law.

(b) Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulation safter the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

4.2 Applicable Law.

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

(b) State and Federal Law. Notwithstanding any other prov1s10n of this Agreement, this Agreement shall not preclude the application of changes **in** laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. AMENDMENT.

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

5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. COOPERATION-IMPLEMENTATION

6.1 Processing of Subsequent Approvals.

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

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

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

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

6.2 Other Governmental Permits.

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

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

Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

7.1 General Provisions.

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

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

7.2 Review by City

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

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

7.3 Default by the City.

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

7.4 Enforced Delay; Extension of Time of Performance.

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

7.5 Limitation on Liability.

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

Section 8. NOTICE OF COMPLIANCE

8.1 Timing and Content.

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

default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

8.2 Failure to Deliver.

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

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

The rights of the Developer under this agreement may not be transferred or assigned, in whole or in part, without the City's written consent, which consent the City shall not unreasonably withhold.

Section 10. MISCELLANEOUS

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

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

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

10.4 **Construction.** Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

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

10.6 **Covenants Running with the Land and Manner of Enforcement.**

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

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

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

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

10.9 **Utah Law.** This Agreement shall be construed and enforced in

accordance with the laws of the State of Utah.

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

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

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

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

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

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

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

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

Section 11. NOTICES

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent,

or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:
Director
Planning Department
Midway City
P.O. Box 277
Midway, UT 84049

With Copies to:

CORBIN GORDON
Midway City Attorney
55 W. Center St., Suite 1
Heber City, UT 84032

If to Developer:
Appenzell Owners' Association, Inc
c/o David M Tew
721 Dutch Valley Drive
Midway, UT 84049-6960

Section 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

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

Section 13. EXECUTION AND RECORDATION OF DEVELOPMENT AGREEMENT

The City shall have the right to unilaterally revoke its approval of this Agreement if Developer fails to sign and execute the Agreement within 90 days of the public meeting at which the City approves the Agreement. No later than ten (10) days after the City executes the Agreement, the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

IN WITNESS WHEREOF, this Amendment has been entered into by and between Developer and the City on this ___ day of ____, 2022.

CITY OF MIDWAY: **Attest:**

_____ _____
CELESTE JOHNSON BRAD WILSON
Mayor City Recorder

State of Utah)
:ss.
County of _____)

On this ___ day of _____, in the year 2022, before me appeared Celeste Johnson who executed the foregoing instrument in her capacity as the Mayor of the City of Midway, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as the Midway City Recorder.

_____
Notary Signature

APPENZELL OWNERS' ASSOCIATION, INC:

_____
Signature

By: David M. Tew

Its: President

State of Utah)
:ss.
County of _____)

On this ___ day of _____, in the year 2022, before me appeared David M. Tew who executed the foregoing instrument in their capacity as the President of Appenzell Owners' Association, Inc.

_____
Notary Signature

BOUNDARY DESCRIPTION

AMENDED APPENZELL PUD PHASE 1 AND PHASE 2

BEGINNING AT A POINT LOCATED SOUTH 00°06'16" EAST ALONG THE SECTION LINE 231.15 FEET AND WEST 64.74 FEET FROM THE EAST 1/4 CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°59'57" WEST 294.39 FEET; THENCE SOUTH 00°05'51" EAST 3.85 FEET; THENCE NORTH 89°59'22" WEST 176.19 FEET; THENCE NORTH 10°43'27" EAST 407.75 FEET; THENCE SOUTH 89°35'39" WEST 252.00 FEET; THENCE NORTH 00°00'03" EAST 334.62 FEET; THENCE NORTH 00°04'00" EAST 108.97 FEET; THENCE NORTH 89°43'28" WEST 222.54 FEET; THENCE NORTH 00°01'29" EAST 349.93 FEET; THENCE SOUTH 89°41'12" WEST 335.75 FEET; THENCE NORTH 00°40'43" EAST 204.19 FEET; THENCE NORTH 89°19'02" EAST 165.08 FEET; THENCE NORTH 00°15'09" EAST 165.17 FEET; THENCE NORTH 89°46'26" EAST 927.78 FEET; THENCE SOUTH 13°41'37" EAST 207.17 FEET; THENCE SOUTH 89°54'10" WEST 218.13 FEET; THENCE SOUTH 00°01'29" WEST 128.26 FEET; THENCE NORTH 89°39'46" EAST 234.03 FEET; THENCE SOUTH 04°56'44" EAST 161.15 FEET; THENCE NORTH 89°59'57" WEST 214.30 FEET; THENCE SOUTH 00°00'03" WEST 199.26 FEET; THENCE SOUTH 00°57'16" WEST 105.14 FEET; THENCE SOUTH 00°00'03" WEST 150.98 FEET; THENCE SOUTH 89°59'57" EAST 243.72 FEET; THENCE SOUTH 00°03'45" EAST 178.77 FEET; THENCE SOUTH 00°17'57" EAST 399.54 FEET TO THE PONT OF BEGINNING.

AREA = 22.97 ACRES

VACATED PARCEL

BEGINNING AT A POINT LOCATED NORTH 497.65 AND WEST 67.89 FEET FROM THE EAST 1/4 CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°53'10" WEST 242.43 FEET; THENCE NORTH 00°57'16" EAST 105.14 FEET; THENCE SOUTH 89°59'57" EAST 231.54 FEET; THENCE SOUTH 04°56'44" EAST 106.00 FEET TO THE POINT OF BEGINNING.

AREA = 0.57 ACRE