Midway City Council
4 May 2021
Regular Meeting

Resolution 2021-09 /
The Village
Master Plan Agreement

RESOLUTION
2021-09

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A MASTER PLAN AGREEMENT FOR THE VILLAGE

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

WHEREAS, the City Council deems it appropriate to adopt a master plan agreement for The Village.

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

Section 1: The attached Master Plan Agreement for The Village (Exhibit A) is hereby approved and adopted.

Section 2: The Mayor is authorized to sign the document on behalf of Midway City.

PASSED AND ADOPTED by the Midway City Council on the day of 2021.

MIDWAY CITY

_____

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

Exhibit A

MASTER PLAN AGREEMENT
FOR "THE VILLAGE"
MIDWAY CITY, UTAH

This Master Plan Agreement ("Agreement") is made and entered into by and between Midway City, a political subdivision of the State of Utah, (hereinafter referred to as the "City"), and Midway Heritage Developments, LLC (hereinafter referred to as the "Developer"). The property which is included in the Master Plan, and which is the subject of this Agreement, includes 27.47 acres, which are owned or controlled by the Developer. The 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, the requirements and terms of this Agreement are in addition to the terms and conditions in the Annexation Agreement involving the same Property.

RECITALS

A. Midway City, acting pursuant to its authority under Utah Code Annotated (UCA) §10-9a-101 *et seq.,* and UCA § 10-2-401 *et seq.,* and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has entered into an Annexation Agreement with respect to the Property.

B. The City has authorized the negotiation of and adoption of master plan agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies, goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements, which substantially benefit the City.

C. The Developer is the owner of certain real property which is described in Exhibit "A", the Master Plan, attached hereto and incorporated herein by this reference. All of the real property described in Exhibit A is included and subject to this Master Plan Agreement. Hereinafter, the entire parcel described in the Master Plan is referred to as "The Village" or the "Property".

D. Each Phase shall be subject to a Development Agreement, entered into by the City and the developer of that Phase. All Phases, regardless of the developer, shall be subject to the terms, conditions and restrictions of the Annexation Agreement, this Master Plan Agreement, and the Development Agreement which applies to that specific Phase.

E. The Midway City Land Use Code requires that a Master Plan must demonstrate that approval of the Project in multiple phases can occur such that the Project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection and open space are committed to in the first phase to allow the Project to function and meet Code requirements without subsequent phases. The City Council finds that this Master Plan meets that requirement.

F. The Property is, and shall remain, subject to the City of Midway Zoning Ordinance and other City Ordinances and Resolutions. The Developer and the City desire to allow Developer and others to make improvements to the Property pursuant to applicable ordinances, resolutions and the terms and conditions of the Annexation Agreement and this Agreement.

G. The improvements and changes to be made to the Property shall be consistent with the current ordinances and standards of the City, this Master Plan Agreement, and any future changes to the ordinances and standards of the City and the Midway City General Plan.

H. The Developer and the City acknowledge and agree that the development and improvement of the Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents, and will provide certainty useful to the Property and the City in ongoing future communications and relations with the community.

I. The City's governing body has authorized the execution of this Agreement by Resolution 2021-___, to which this Agreement is attached.

AGREEMENT

Section 1. Effective Date and Term. The term of this Agreement shall commence upon the signing of this Agreement (the "Effective Date") by both Parties, and shall run with the land. The terms and conditions contained herein shall inure to the benefit of, and be binding upon, the successors in interest, heirs or assigns, of the Developer.

Section 2. Definitions. Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including the Exhibits.

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

"Governing Body" shall mean the Midway City Council.

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

Section 3. General Description of Project.

The Project consists of 24.47 acres.

The Project contains three zones: C-2, R-1-11, and R-1-22.

The proposal includes 63,250 square feet of commercial space in multiple buildings including 26,737 square foot sports club and pool, 131 townhomes, 25 cottage homes, park, trails, and clubhouse to be developed in six phases. The master plan is on 27.47 acres and contains 9.7 acres of open space.

Section 4. Obligations of the Developer and the City.

A. Obligations of the Developer:

i. General Obligations: The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein.

ii. Conditions for Master Plan Approval. The Developer shall comply with all of the following Conditions:

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

b) *Water Rights* – Midway City Code requires the water rights required in the Master Plan Agreement held in escrow with the City before the Master Plan Agreement can be recorded. The required water rights per phase are then dedicated to the City before the recording of each plat. The Water Advisory Board has approved an estimated 192.16 acre-feet which will need to be held by the City in escrow before the master plan can be recorded. The calculation of 192.16 acre-feet was calculated before the removal of some residential and the addition of the Midway Swim & Racquet Club, which may alter the final amount of water required for the development.

c) *Roads and Traffic Circulation* – Each phase of the project must meet all applicable access requirements under Midway City Code.

d) *Traffic Study* – The Developer has submitted a traffic study to the City as part of the Master Plan. Horrocks Engineers has reviewed that study to determine what road improvements are required, and a copy of their recommendation is attached hereto as Exhibit "___" and incorporated herein by this reference. The Developer is required, as a term and condition of the Annexation Agreement, to make all improvements included in the Horrocks Engineers report. The study has determined the impact of traffic generated from the proposal on the surrounding UDOT and City streets. One significant finding is a third access is required for better traffic distribution and to lower the impact on the intersection of River Road and Main Street. The third access will be from River Road. There are off-site improvements required based on the traffic study that include improvements to Main Street required by UDOT, and improvements to the intersection of River Road and Main Street, which includes the costs to widen the intersection and install a street light. These requirements are included as part of the Horrocks Engineers report.

e) *Alley Access* – The proposed plan has street access to each unit but there is also additional alley access proposed for parking access. The alley access areas will be private and will be owned and maintained by the HOA or POA. Snow removal and storage from the alley is a concern and staff has asked that a snow removal and storage plan is prepared for review and approval. The developer is developing a plan to assure functionality of the proposed master plan. The developer has also provided a will-serve letter from Wasatch County Solid Waste. The County will enter private alley areas to unload trash containers. The Fire District has submitted a letter to the City regarding concerns for access in the alley areas. A copy of the letter has been provided as part of this report.

f) *Sensitive Lands* – Sensitive land area located on the property will be left undisturbed as required by the land use ordinance. These sensitive lands include the sloped areas at the base of Memorial Hill. No building pads shall be located on any slopes 25% or greater.

g) *Open Space* – The proposal has no required open space except for the area of the PUD where 50% is required. The application indicates that the PUD has 55% open space as presented on the Open Space Plan (please see attached). The code requires that with each phase there is enough open space to comply with the 50% requirement of the code. If phase I has 75% open space, then phase II only needs to have 25% open space if both phases are equal in acreage. Since some of the units included in the PUD are in phase 3, some of

the open space currently planned for phase 6 will need to be dedicated as part of phase 3. Unless otherwise approved by the City the open space/common area shall be owned by the HOA, who shall maintain the same.

h) Public Participation Meeting – The developers held a public participation meeting on March 4, 2021 as required by the ordinance for master plan applications. This requirement is to give the developer an opportunity to present the development to the surrounding residents of the proposed project. The developer did provide a report of that meeting, as required by code, to planning staff that outlined discussions and concerns that were addressed that night. Many of those issues have been addressed through the approval process but others will need to be considered in the master plan approval process and the preliminary and final approval process of each phase.

i) *Density* – The southern portion of the property is in the C-2 zone and covers 13.29 acres. The C-2 zone allows for mixed use development if the developer has more than 200' of frontage and at least one acre. If those two thresholds are met, then the density of the mixed-use project can be up to 20 units per acre if a minimum of 20% of the gross square feet of all structures are deed restricted as commercial. The area of the property in the R-1-11 zone is 5.77 acres and the area of the property in the R-1-22 zone is 7.64 acres. This area and a small portion of the C-2 zone will be developed as a planned unit development (PUD). The densities allowed in this area for a PUD development is three units per acre in the R-1-11 zone and two units per acre in the R-1-22 zone. Density has been reduced in the R-1-22 because of density reduction based on sloped areas. Normally this area would have a maximum density of 15 units but, because part of the property is in a sloped area, maximum density has been reduced 8.08 units. The Developer, its successors or assigns, are bound to that density limitation. No request for additional density may be made by the Developer, its successors or assigns, unless an amendment is made to the Annexation Agreement.

j) *Parking* – Developer acknowledges that current plans show a requirement for 173 parking stalls for the commercial portion of the development. The parties agree that this number is a preliminary number and will be adjusted based on the proposed use of each commercial building. Developer acknowledges that a particular proposed use could increase the amount of parking in the commercial area to a point where buildable pads could be lost in order to meet the parking requirements for that particular use.

k) *Requirement of 20% Commercial*: Midway City Code requires that the Project must, at all times, have a 20% commercial to 80% residential mix of

use. Developer shall not be allowed to build residential units without the corresponding commercial use. This is specifically to avoid a situation where the Developer attempts to build out all of the residential units in the area, and then simply does not developer the commercial component of the Project.

l) *Trails* – There are no planned trails on the property as per the Trails Master Plan. Staff has asked the developer to consider a trail connection from the development to Memorial Hill. Wasatch County, owner of Memorial Hill, would need to approve the trail. It is anticipated that if a trail is built, it would be a backcountry soft surface trail to eliminate impact on Memorial Hill and to limit a visual impact when looking at the hill. Staff's concern is that without a trail plan and design, the public will create their own trails that may have a visual impact and an erosion impact on Memorial Hill.

m) *Architecture Theme* – The developer is required to receive architectural approval of all structures in the mixed-use development, this includes all commercial and residential buildings, along with any other features that require architectural approval. The developer has attached concept renderings (please see attached) that appear to match the general theme of Midway. Specific review of each building will be required through the approval process.

n) *Parking* – The developer is providing 173 parking stalls for the commercial uses in the project. At master plan, calculating the exact number of stalls is not realistic because until the exact use and size of a structure is known, the exact amount of parking cannot be calculated. The goal at master plan is to make sure there is the possibility of enough parking for future planned uses. The typical amount of parking required is one stall for every 250 square feet for areas accessible to the public. Generally, this should be an adequate number of stalls for master plan but as each individual permit is submitted, parking will need to be reviewed. The developer is providing the required parking for the residential uses as outlined on page 3 of the submitted plans dated March 31, 2021.

o) *Required Commercial Square Footage* – The mixed-use code requires 20% of the gross square footage of all structures is deed restricted as commercial. The plan presented appears to meet the requirements of the code as outlined on page 3 of the submitted plans dated March 31, 2021. The developer is proposing 63,250 square feet of commercial and 252,998 square feet of residential. To assure that the commercial square feet requirement is met, staff

is proposing that approvals of phases 4 and 5 (which are fully residential) are not approved for preliminary approval until the commercial structures are built. The details to this provision will need to be outlined in the master plan agreement.

p) *Setbacks* – The proposed development is required to meet the setback requirements for the mixed-use code. All commercial buildings are required to have an 8' setback and all residential structures are required to have a 10' setback. The minimum setback for any structure in the PUD is 60'.

q) *Height of structures* – Structures cannot exceed 35' in height, measured from natural grade to the roof. Architectural elements may exceed the 35' limit as per code.

r) *Transient Rental Overlay District* – The mixed-use area of the proposal is in the transient rental overlay district (TROD) and, if the units comply with all requirements, may be rented on a short-term basis.

s) Home Owner's Association / Property Owners Association – The Project is divided into two primary uses: commercial and residential. Developer shall establish a Home Owners Association (HOA) that shall have control over all residential components of the Project. The Developer shall also create a Property Owners Association (POA) that shall have control over all commercial components of the Project. The controlling documents of both the HOA and POA shall require that the boards of each entity will be required to meet at least annually to coordinate efforts to maintain their respective private/open areas, private roads, parking lots, etc.

t) *Geotechnical Report* **–** The City has received two geotechnical reports for the property. One from 2017 and one from 2021. The geotechnical report from 2017 found water in some of the test pits on the west side of the property. The report from 2021 did not find water in any of the test pits, including pits dug near the test pits with water from 2017. A high-water table is a concern because the proposed plan is dependent on below grade parking. Without the below grade parking, the master plan would need to be amended. Staff is recommending piezometers are installed in multiple areas of the development to monitor water levels over the next few years, especially in the areas of phases 2-6. The piezometers will provide information regarding the water table over multiple years. This will give information regarding the ability to develop future phases. If the water table is a problem for some phases, then the master plan will need to be amended to continue to comply with code requirements.

u) *Landscaping* **–** The proposed development has a significant amount of frontage along Main Street. The view of Midway along Main Street is of high

importance for the City for a couple of reasons. First, it is important to the residents of Midway that Main Street is aesthetically beautiful. Most residents of Midway use Main Street at least once a day and maintaining a beautiful corridor through town is of high priority. Second, the Midway economy is dependent on tourism and a clean and orderly Main Street is vital for creating the atmosphere needed to create a beautiful community that will attract tourists. For these reasons staff is proposing a requirement that the commercial areas of the development be either kept in agricultural production until constructed or, once those areas are developed, the commercial pads and surrounding area are landscaped until the structures are built. The landscaping may be minimal with grass and an irrigation system, but they will need to be kept orderly and maintained. There are many examples of commercial developments where the commercial pads are not maintained and become weed infested and an eyesore for the community. It is important that this situation is avoided along Midway's main corridor.

v) *Construction and/or Dedication of Project Improvements*: The Developer agrees to construct and/or dedicate Project improvements as directed by the City, including but not limited to roads, driveways, amenities, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the particular Phase of the Project.

w) *Weed Control/Overburden*: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project.

x) *Storm water control system*: The Developer shall install, at its sole cost and according to plans and specifications approved by the City, a storm water control system. On dedicated public roads, the ownership, maintenance, repair and replacement of the storm water system shall be the responsibility of the City.

y) *Culinary/Sewer Connections*: The Project shall be connected to the City water and sewer lines as shown on the approved plans.

z) *Secondary Water Connections*: The secondary water (outside irrigation) shall be provided by Midway Irrigation Company. Developer shall connect to Midway Irrigation Company's secondary system, as shown on the approved plans, and shall comply with all applicable rules and regulations of Midway

Irrigation Company. Secondary water laterals and meters shall be installed by Developer for all lots.

B. Obligations of the City:

i. General Obligations: The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

ii. Conditions of Approval: The City shall not impose any further Master Plan Conditions on the Project other than those detailed in this Agreement, unless agreed to in writing by the Parties hereto. Additional requirements not in conflict with the terms and conditions of this Agreement shall be contained in a specific Development Agreement for each Phase. The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.

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

Section 4. Vested Rights and Applicable Law.

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

compliance with all other applicable Ordinances, Resolutions, regulations, policies and procedures of the City.

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

Section 5. Amendment. Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and the Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

Section 6. Cooperation and Implementation.

A. Processing of Subsequent Approvals. Upon submission by the Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein.

The City's obligations under this Section 6 are conditioned on the Developer's provision to the City, in a timely manner, of all documents, applications, plans and other information necessary for the City to meet such obligations. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny an application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

B. Other Governmental Permits.

1. The Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.
2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.B of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

Section 7. Default and Termination.

A. General Provisions.

1. Defaults by Developer. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.
2. Termination. If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give to the Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly notice public meeting. The Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to the Developer by certified mail and this Agreement shall thereby be

terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any and all remedies available to the Developer at law or in equity.

3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that the Developer is in full compliance with the terms and conditions of this Agreement. The Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.
4. Determination of Non-Compliance. If the City Council finds and determines that the Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. IF the default is not cured in a timely manner by the Developer, the City may terminate this agreement as provided in Section 7 of this Agreement an as provided under Applicable Law.

B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.

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

Section 8. Notice of Compliance.

A. Timing and Content. Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver toe the Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledge by the City, certifying that 1) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;

and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.

B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of the Developer's written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

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

Section 10. Miscellaneous Terms.

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

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

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

D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

E. Covenants Running With the Land and Manner of Enforcement. The provisions of this Agreement shall constitute real covenants, contract and properoty rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall 1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and 2) have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.

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

G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).

H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.

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

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

1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.
2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.

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

Section 11. Notices.

Any notice or communication required hereunder between the City and the Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United State mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses as set forth below:

If to the City of Midway:

Director
Planning Department
Midway City
P.O. Box 277

Midway, Utah 84049

With Copies to:

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

If to Developer:

Midway Heritage Development, LLC
_____
_____

Section 12. Entire Agreement, Counterparts and Exhibits. Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and of the Developer.

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

SIGNATURE PAGE FOLLOWS

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

CITY OF MIDWAY

_____
Celeste Johnson, Mayor

Attest:

_____
Brad Wilson, City Recorder

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

_____
NOTARY PUBLIC

THE DEVELOPER OF THE VILLAGE

Midway Heritage Development, LLC

_____
By: _____
Its: _____

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by Dan Luster, who executed the foregoing instrument in his capacity as the Manager of the Developer, Midway Heritage Development, LLC.

_____
NOTARY PUBLIC