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ELIZABETH PALMIER, Recorder
WASATCH COUNTY CORPORATION
For: L & M PARTNERS

RESOLUTION 2014-01

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE FARM SPRINGS SUBDIVISION

WHEREAS, Utah law authorizes municipalities to enter into development agreements for the use and development of land within the municipality; and

WHEREAS, the Midway City Council finds it in the public interest for the City of Midway to enter into a development agreement with the developer of the proposed Farm Springs Subdivision for the use and development of land included within that proposed subdivision.


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

Section 1: The Midway City Council approves the development agreement attached hereto and authorizes the Mayor of Midway City to execute the agreement on behalf of the City.

Section 2: The effect of this resolution is subject to all conditions of the land use approval granted by the City for the proposed project.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah this 8th day of January, 2014.

APPROVED:


Colleen Bonner, Mayor



ATTEST:

A handwritten signature in cursive script, appearing to read "Brad Wilson", is written over a horizontal line.

City Recorder

FARM SPRINGS SUBDIVISION DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this 28 day of May, 20 14, by and between L&M PARTNERS, 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 entered into by and between Developer and the City involving the same Property (defined below) 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 Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Farm Springs Subdivision 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 has a legal interest in certain real property located in the City as described in Exhibit A attached hereto.

C. Developer intends to develop the real property described in Exhibit A as a subdivision consisting of 14 lots. This subdivision is commonly known as Farm Springs Subdivision.

D. 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 both Developer and the City (the "Effective Date"). Prior to recordation of the Agreement, 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 in Section 1.1 of this Agreement.

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

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

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

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

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

Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

3.1 Obligations of Developer.

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

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

- (1) ***Payment of Fees:*** Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such 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) **Water:** Developer agrees to provide a total of 45 acre feet of water for the benefit of the Project, to satisfy both culinary and irrigation use. The water provided by Developer shall meet all City policies and ordinances for culinary and irrigation use, respectively. Any areas within the Project that are restricted from being irrigated will be so designated on the plat.
- (3) **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 current City standards. Developer will satisfactorily complete construction of all project improvements no later than two (2) years after the recording of the plat for the Project. Developer also agrees to comply with the following:
 - (a) Developer agrees to utilize the City's Rural Cross-Section Number 4 along the roads within the Project pursuant to City standards and specifications. Each homeowner will be obligated to landscape, maintain and clean the shoulder and trail in front of each home. The homeowner's association for the Project will also be responsible to landscape, maintain and clean the shoulder and trails within the Project if a homeowner does not do so. The City shall have the authority, but not the responsibility, to perform such work and bill the applicable lot owners and/or homeowner's association, and lien the applicable property, for the costs of such work upon failure of the responsible parties to perform the work after notice by the City.
 - (b) Developer agrees to construct and install eight-foot-wide asphalt public trails in the Project as shown on the approved plans, including an eight-foot-wide asphalt public trail in the public right-of-way along the north side of Farm Springs Road.
 - (c) To minimize the possibility of disturbing the underground hydrology of the area, Developer agrees to the following: Developer will utilize a saw-cut method rather than hammering for all hard-rock excavation in the Project. The excavation of pot rock for foundations of buildings will be limited because of the hydrology of the area. Pot rock

excavation is defined as material not capable of being excavated by normal excavation equipment. Normal excavation equipment is defined as material which can be excavated with the use of a 60,000-pound track hoe. Otherwise, foundations will be placed directly on the pot rock as needed, with final grade at a depth to meet frost depth requirements. Clay dams will be constructed as needed during construction when ground water is encountered to serve as a barrier to prevent water from leaving the area, as directed by the City Engineer.

- (d) Developer has reached an agreement with Midway Irrigation Company to allow the existing irrigation ditch running through the Property to remain open. Responsibility for the ditch will rest with the Project's lot owners and homeowner's association and/or Midway Irrigation Company. The City will have no responsibility for maintenance or cleaning of the ditch, but will have the right to access the ditch if necessary for health or safety purposes.

- (4) **Weed Control Plan.** Developer will submit and obtain City approval of a weed and vegetation control plan, including but not limited to noxious weeds. The plan will require Developer to eradicate, mow or trim weeds and vegetation on each lot until the lot is sold, and in all open space and common areas.

- (5) **Landscape Plan.** Developer will submit and obtain City approval of a landscape plan for all open space and common areas. Furthermore, as part of the Project's construction bond, Developer will post sufficient amounts to guarantee appropriate installation of said landscaping.

- (6) **Boundary Line Agreements.** Prior to recording the plat for the Project, Developer will resolve and/or record boundary agreements with any surrounding property owners as may be determined necessary by the Wasatch County Surveyor.

- (7) **Escrow for Road Connection.** A portion of Farm Springs Road will be initially constructed as a temporary cul-de-sac until it connects in the future to 600 North Street. Therefore, Developer will pay to the City, to be placed in escrow, an amount of funds sufficient to construct this road connection. The City will then become entitled to all of the funds in escrow and will assume the responsibility for constructing the road connection in the future.

- (8) **Lot 4 Access.** Developer agrees that the primary driveway access for the home on Lot 4 will be required to be on Farm Springs Road. The City will allow a secondary access to the lot from Center Street.
- (9) **Storm Drainage.** Easements for storm drainage basins will cover portions of Lots 2, 3 and 5, as indicated on the plat. The purpose of the basins is to contain the surface water and allow it to drain away from the public roadway. No owner will be allowed to build any structures, install any fences, place any rocks, plant any trees, bushes or shrubs, or otherwise take any actions that might impede vehicular access to the drainage basins, or interfere with the proper functioning of the basins. The homeowner's association for the Project will be responsible to maintain the drainage basins and enforce the provisions contained in this paragraph. In the event the homeowner's association fails to properly maintain the drainage basins or enforce these provisions, the City will have the right, but not the responsibility, to enforce the provisions and enter onto the easement areas to perform any necessary work in conjunction therewith, after giving notice and demand to the homeowner's association to comply with these provisions. If the City exercises this right, the City will be entitled to charge any costs of such work and enforcement to the homeowner's association, and will have the ability to record liens against any or all lots or property in the Project for collection of such charges.
- (10) **Lot A Non-Buildable.** Developer agrees that Lot A shown on the plat is a non-buildable lot.
- (11) **Wetlands.** Developer agrees that no delineated wetlands in the Project may be disturbed now or in the future, unless they are designated as non-jurisdictional by a consultant recognized by the U.S. Army Corps of Engineers to delineate property in the State of Utah. Each lot that includes wetlands will show on the Project plat a setback area prohibiting any building construction within 25 feet of the wetlands. A general note will also be included on the Project plat explaining all wetlands restrictions.
- (12) **Ridgelines.** Developer agrees that, pursuant to City ordinances, no construction will be allowed on the area known as The Mound that would cause any part of the structure to rise above the ridgeline as defined in City ordinances in effect at the time this Agreement is executed.
- (13) **Durable Construction Materials.** Developer will advise owners of structures adjacent to and facing the golf course to utilize durable building materials to minimize damage from golf balls, and will include this advisory on the Project plat.

- (14) ***Island Entrance Feature.*** The Project's homeowner's association will be responsible for all care, maintenance and possible damage and repair to the island entrance feature that Developer will install at the intersection of Farm Springs Road and Center Street. The homeowner's association will provide all maintenance and water for the island, and will landscape and repair the island on a continuing basis to maintain proper sight distance from the intersection and to avoid any obstruction to traffic or damage to the public roadway. The City will not be responsible for, or have any obligation to repair, any damage that may occur to the island due to City snowplows, utility vehicles or other causes. In the event the homeowner's association fails to properly maintain the island, the City will have the right, but not the responsibility, to perform any necessary maintenance work on the island, after giving notice and demand to the homeowner's association to comply with the provisions in this paragraph. If the City exercises this right, the City will be entitled to charge any costs of such work and enforcement to the homeowner's association, and will have the ability to record liens against any or all lots or property in the Project for collection of such charges.
- (15) ***Warranty:*** Consistent with City standards, Developer will provide a one-year warranty for the operation of all improvements.
- (16) ***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.

3.2 Obligations of the City.

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

(b) ***Conditions to Current Approvals.*** The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Project plat, unless agreed to in writing by the Parties.

(c) ***Acceptance of Improvements.*** The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; (2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements

during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

(d) **Road Connection.** The City agrees to assume the responsibility for constructing the future road connection of Farm Springs Road to 600 North Street using the funds placed in escrow by Developer.

Section 4. VESTED RIGHTS AND APPLICABLE LAW

4.1 Vested Rights.

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

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

4.2 Applicable Law.

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

(b) **State and Federal Law.** Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws,

regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

Section 5. AMENDMENT.

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

Section 6. COOPERATION-IMPLEMENTATION

6.1 Processing of Subsequent Approvals.

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

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

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any

conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

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

6.2 Other Governmental Permits.

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

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

Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

7.1 General Provisions.

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

(b) ***Termination.*** If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration

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

7.2 Review by City

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

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

7.3 Default by the City.

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

7.4 Enforced Delay; Extension of Time of Performance.

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

Section 8. NOTICE OF COMPLIANCE

8.1 Timing and Content.

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

8.2 Failure to Deliver.

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

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

The rights of the Developer under this agreement may be transferred or assigned, in whole or in part, with the written consent of the City. 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 assignment. The City shall not unreasonably refuse consent to transfer or assignment.

Section 10. MISCELLANEOUS

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

10.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or

unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

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

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

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

10.6 Covenants Running with the Land and Manner of Enforcement.

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

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. The City may, but is not required to, perform any obligation of Developer that Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to 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 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 attorneys' fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).

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

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

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

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

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

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

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

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

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

Section 11. NOTICES

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

If to the City:

**Director
Planning Department
Midway City
P.O. Box 277
Midway, UT 84049**

With Copies to:

**POWELL POTTER, PLLC
c/o KRAIG J. POWELL
Midway City Attorneys
2 South Main, Suite 2-D
Heber City, UT 84032**

If to Developer:

**L & M Partners, LLC
c/o Craig A. Hoggan
257 East 200 South, Suite 1050
Salt Lake City, UT 84111**

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. SIGNING AND RECORDATION OF AGREEMENT


Unless City and Developer mutually agree otherwise, this Agreement must be signed by both Developer and the City no later than one-hundred-fifty (150) days after the Agreement is approved by a vote of the Midway City Council, or else the City's approval will be rescinded. The City Recorder shall cause to be recorded, at Developer's expense, a fully- executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.

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

CITY OF MIDWAY:

Attest:


COLLEEN BONNER
Mayor


BRAD WILSON
City Recorder

BOUNDARY DESCRIPTION

BEGINNING AT A POINT 269.28 FEET SOUTH AND 72.39 FEET WEST FROM THE 1999 WASATCH COUNTY MONUMENT FOR THE NORTHEAST CORNER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARINGS BEING S89°17'40"W BETWEEN MONUMENTS FOR THE NORTHEAST AND NORTH QUARTER CORNERS OF SECTION 34); AND RUNNING THENCE S00°17'41"E 81.45 FEET; THENCE TO AND ALONG A FENCE LINE THE FOLLOWING FIVE COURSES: (1) S87°36'26"W 176.59 FEET, (2) S00°45'20"E 132.01 FEET, (3) S86°55'50"W 36.31 FEET, (4) S00°17'41"E 100.91 FEET, (5) N89°55'18"W 104.43 FEET; THENCE LEAVING SAID FENCE LINE AND FOLLOWING A BOUNDARY LINE AGREEMENT WITH K&N LAND (ENTRY 399209 WASATCH CO. RECORDS) THE FOLLOWING SIX COURSES: (1) S85°31'39" W 54.40 FEET, (2) N01°35'37" E 81.61 FEET, (3) S85°17'01"W 398.24 FEET, (4) ALONG A FENCE LINE S13°59'48"W 116.47 FEET, (5) ALONG A FENCE LINE S24°27'20"W 65.90 FEET, (6) ALONG A FENCE LINE S84°41'38" E 192.83 FEET, THENCE S01°18'56" W 471.46 FEET; THENCE ALONG A FENCE AND BOUNDARY LINE AGREEMENT WITH SIGGARD (ENTRY 398996 WASATCH CO. RECORDS) N79°43'39"W 371.94 FEET; THENCE ALONG A BOUNDARY LINE AGREEMENT WITH TEN STAR DEVELOPMENT, INC. (ENTRY 398832 WASATCH CO. RECORDS) THE FOLLOWING FOUR COURSES: (1) N13°31'59"E 57.18 FEET, (2) N86°06'49"W 456.06 FEET TO A POINT ON AN EXISTING FENCE LINE, (3) THENCE ALONG SAID FENCE N16°01'32"E 534.31 FEET, (4) THENCE LEAVING SAID FENCE LINE N00°21'12"E 538.36 FEET TO THE SOUTHERLY BOUNDARY OF MIDWAY FARMS SUBDIVISION; THENCE N89°42'19"E ALONG SAID SUBDIVISION BOUNDARY 1292.98 FEET; THENCE S00°17'41"E 50.00 FEET TO THE NORTHERLY BOUNDARY OF THE POPE SMALL SUBDIVISION; THENCE ALONG SAID BOUNDARY THE FOLLOWING THREE COURSES AND DISTANCES: (1) S89°42'19"W 212.62 FEET, (2) S00°17'41"E 220.29 FEET, (3) N89°42'19"E 212.62 FEET TO THE POINT OF BEGINNING.

CONTAINS 23.52 ACRES.

Ent 402307 Bk 1107 Pg 1788