Midway City Council
7 December 2021
Regular Meeting

Resolution 2021-36 /
Mill Canyon Farms
Development Agreement

RESOLUTION
2021-36

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT FOR THE MILL CANYON FARMS SUBDIVISION

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

WHEREAS, the City Council deems it appropriate to adopt a development agreement for the Mill Canyon Farms Subdivision.

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

Section 1: The attached Mill Canyon Farms Subdivision Development Agreement is hereby approved and adopted.

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

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

MIDWAY CITY

_____

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

Exhibit A

MILL CANYON FARMS SUBDIVISION
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2021, by and between BERG ENGINEERING, agent for JORDAN LAW (hereinafter called the "Developer"), and the CITY OF MIDWAY, UTAH, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between the Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.,* in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the proposed Mill Canyon Farms Subdivision, located at 250 West 850 South in Midway, Utah (hereinafter referred to as the "Project"), and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.

B. The Developer has a legal interest in certain real property located in the City, as described in Exhibit "A", (hereinafter referred to as the "Property") attached hereto and incorporated herein by this reference. Developer warrants and represents that it has the legal authority to sign this Agreement and bind the Property as set forth herein.

C. The Developer intends to develop the Property as a standard subdivision with four (4) platted building lots. This Project is commonly known as The Mill Canyon Farms Subdivision. The proposed subdivision is on one 10.16 acre parcel that is wholly owned by the Applicant, and which has historically been in agricultural production. The subdivision is located at approximately 250 West 850 South, in the R-1-22 zone, which allows for single family dwellings. The existing parcel has frontage along 250 West (Street Lane), which also provides frontages for the four proposed building lots. The existing parcel is bordered along its west and north sides by existing homes on non-platted lots, ranging from 0.42 acres to over 6.00 acres in size. To the east is the Saddle Creek Ranch development, and to the south is agricultural land, a part of which is included in the Double C Ranch Master Plan. No new roads are proposed to be constructed as part of the development application.

D. Each Party acknowledges that it is entering into this Agreement voluntarily. The Developer consents to all the terms and conditions of this Agreement and acknowledges that they are valid for development of the Project. Unless otherwise specifically agreed to herein, the terms and conditions contained herein are in addition to any conditions or requirements of any other legally adopted ordinances, rules, or regulations governing the development of real property in the City of Midway.

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

AGREEMENT

Section 1. Effective Date and Term. The term of this Agreement shall commence upon the signing of this Agreement (the "Effective Date") by both Parties and shall continue for a period of two (2) years. Unless otherwise agreed between the City and the Developer, the Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.

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

"Applicable Law" shall have the definition set forth in Section 4A of this Agreement.

"Governing Body" shall mean the Midway City Council.

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

Section 3. Obligations of the Developer and the City.

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

ii. Construction and/or Dedication of Project Improvements: The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to, driveways, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than two (2) years after the recording of the plat for the Project. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto and incorporated herein by this reference.

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

a) Payment of Fees: Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

b) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within the one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions.

c) Water Rights and Water Service: The required water rights for the culinary and secondary water for the Project shall be officially transferred to the City in writing before the recording of the plat for the Project. The water rights provided by the Developer shall meet all City policies and ordinances for culinary and secondary use. Culinary water service shall be provided by the City according to the rules, regulations and requirements of the City. The total quantity of water rights to be dedicated to the City for the entire Project, for both culinary and secondary use, is 25.82 acre feet. The lots will connect to existing City culinary water lines located in the area. The lots will connect to Midway Irrigation Company's secondary water system, which is already servicing the property. Laterals will be created for all four (4) lots. Secondary water meters are required for each lateral. Developer must provide a will-serve letter from Midway Irrigation Company along with its application for final approval.

d) Access: The existing parcel has frontage along 250 West. The Applicant will be required to dedicate their portion of the right-of-way needed for both 250 West (60' right-of-way) and the continuation of 970 South (56' right-of-way), which is shown on the Midway City Master Street Plan. The property to the south and west of Snake Creek, known as Double C Ranches, has been master planned by Berg Engineering, who has confirmed that the dedications from both projects will equal the 56' required for 970 South. Additionally, the Applicant has committed to dedicating a 50' right-of-way east of the Snake Creek channel for 970 South for a single lot subdivision that was platted when it was located within Wasatch County boundaries and did not include a right-of-way dedication for 970 South. The City Engineer is supportive of this dedication and believes it will be sufficient for the future road. The Applicant will improve its portion of 250 West to match current road standards. 970 South will remain unimproved for the time being, but will likely be improved by the property owners to the south when they develop their future phases.
e) Geotechnical Study: A Geotechnical Study has been submitted to the City and approved by planning and engineering staff.
f) Sensitive Lands: A FEMA floodway and floodplain, as well as an irrigation ditch, traverse the property. The FEMA floodway and floodplain are associated with the Snake Creek stream channel, and both are unbuildable. Per the City's Sensitive Lands Code, the Applicant must show building envelopes precluding residential building within fifty feet (50') of the floodway and floodplain. The Applicant is proposing to pipe and reroute the irrigation ditch within Lot 4 to lessen its impact on the buildable area of the Lot. The new ditch easement must be shown on the plat. Any existing easements on the property must be released prior to the plat being recorded.
g) Sewer Connection: The lots will connect to existing Midway Sanitation District sewer lines located in the area.
h) Fire Flow: A fire hydrant will be located within five hundred feet (500') of any future dwellings, measured by the route of a fire hose from the fire hydrant to the future home site.
i) Trails: The Midway City Trails Master Plan shows three (3) eight foot (8') asphalt public trails in proximity to the development. One trail parallels 250 West and will be installed within the Saddle Creek Ranch development. The second trail parallels both the existing and future 970 South, requiring the applicant to dedicate a fifteen foot (15') public trail easement on the north side of the 970 South right-of-way the Applicant is dedicating. Because 970 South will not be constructed with this subdivision, the Applicant will construct the eight foot (8') asphalt trail within the right-of-way that the Applicant is dedicating for 970 South, near the existing farm road. When 970 South is

built in the future, the trail will then be relocated to the dedicated trail easement. The third trail will run along the Snake Creek channel, requiring the Applicant to dedicate a twenty foot (20') public trail easement that parallels the creek channel. The Applicant has shown the easement on the east side of the channel. This trail will be built in the future by others once additional trail easements are secured and the necessary funding is in place.

j) Open Space: Standard subdivisions greater than ten (10) acres in size are required to provide a minimum of fifteen percent (15%) open space. The Applicant has elected to incorporate the required 1.52 acres of open space into Lot 4, which satisfies the requirement of a minimum lot size of two (2) acres. The portion of Lot 4 designated as the open space area must be identified on the plat with a note stating that the open space area is unbuildable, and clarifying what uses are allowed in the open space area. Additionally, the Applicant's application is vested under the Land Use Code that allows them to use sensitive lands as 100% of their required open space.

k) Storm Water: The development does not include the creation of new streets, but will utilize existing frontage along 250 West. All storm water will be captured in the improved swales that will run along 250 West.

l) Utilities: The proposal indicates that the distribution poles along 250 West must be moved to accommodate the improvement and widening of 250 West. The Applicant will be required to bury the distribution lines along their frontage. Any costs associated with moving and burying the poles will be borne by the Applicant.

m) Setback Requirements: All structures must comply with the City Code setback provisions for the R-1-22 zone.

n) Weed Control: The Developer and its successors and assigns shall eradicate, mow or trim weeds and vegetation at all times in all areas of the Project. Developer shall be responsible for weed control on the remainder parcel described herein.

o) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.

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

q) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.

r) City's Right to Draw From Construction Bond: If Developer is required to perform any work within the public right-of-way, and the work is not

completed by the City's established deadlines, the City shall have the right to draw funds from the Developer's performance and other bonds.

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 Developer set forth herein is conditioned upon and in material consideration of the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

ii. Conditions of Approval: The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on the Project Plats, unless agreed to in writing by the Parties. 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 Developer, or Developer's contractors, subcontractors, agents or employees, provided that 1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; 2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; 3) the Project improvements are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

Section 4. Vested Rights and Applicable Law.

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

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

Section 5. Amendment. Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in the specific lot, or other portion of the Project. Each person or entity (other than the City and 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 Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein. The City's obligations under this Section 6 are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans and other information necessary for the City to meet such obligations. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny the application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

B. Other Governmental Permits.

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

Section 7. Default and Termination.

A. General Provisions.

1. Defaults by Developer. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.
2. Termination. If the City elects to consider terminating this Agreement due to a material default of 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 noticed 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 and 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, pandemics, 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 to 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 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 property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of 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 the other Party that the following statements are true, complete and not misleading as regards to 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
322 E. Gateway Dr. #201
Heber City, Utah 84032

If to Developer:

Berg Engineering
_____
_____

With Copies to:

Jordan Law
_____
_____

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

Section 13. Signing and Recordation of Agreement. Unless the City and the Developer mutually agree otherwise in writing, 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.

[*Signatures on Following Page*]

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 MILL CANYON FARMS SUBDIVISION

_____
By: _____
Its: _____

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

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

_____
NOTARY PUBLIC

EXHIBIT A

(Legal Description of the Property)

BEGINNING AT A POINT IN STRINGTOWN ROAD, SAID POINT BEING NORTH 00°24'22" WEST ALONG THE SECTION LINE 1338.08 FEET FROM THE SOUTH QUARTER CORNER SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 00°24'22" WEST 26.89 FEET; THENCE NORTH 88°00'40" EAST 197.79 FEET; THENCE NORTH 01°59'20" WEST 99.00 FEET; THENCE NORTH 01°57'23" EAST 29.07 FEET; THENCE NORTH 88°00'40" EAST 396.00 FEET; THENCE NORTH 01°59'20" WEST 116.00 FEET; THENCE NORTH 88°00'40" EAST 83.00 FEET; THENCE NORTH 01°59'20" WEST 194.00 FEET; THENCE MORE OR LESS ALONG A FENCE LINE NORTH 88°00'40" EAST 235.69 FEET TO A FENCE CORNER; THENCE ALONG A FENCE THE FOLLOWING TWO COURSES: (1) NORTH 01°14'50" WEST 327.93 FEET; (2) THENCE NORTH 00°59'38" WEST 153.77 FEET; THENCE NORTH 88°00'40" EAST 245.90 FEET TO THE WESTERLY BOUNDARY LINE OF THE SADDLE CREEK RANCH SUBDIVISION; THENCE ALONG SAID BOUNDARY LINE SOUTH 00°29'39" EAST 976.20 FEET TO THE NORTHERLY BOUNDARY LINE OF THE SNAKE CREEK SUBDIVISION; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89°48'33" WEST 475.34 FEET TO THE NORTHWEST CORNER OF SAID SUBDIVISION; THENCE SOUTH 29°25'25" EAST ALONG THE WESTERLY BOUNDARY LINE OF SAID SUBDIVISION 13.68 FEET TO THE NORTHEAST CORNER OF THE REBECCA AND JAY PRICE PROPERTY (SEE RS#2318); THENCE WEST ALONG THE NORTHERLY BOUNDARY LINE OF SAID PROPERTY 674.28 FEET TO THE POINT OF BEGINNING.

Subject to easements, restrictions and rights of way appearing of record and general property taxes for the year 2020 and thereafter and matters that would be shown on an ALTA survey or visual inspection of the property.