Midway City Council
19 July 2022
Regular Meeting

Resolution 2022-24 /
Ameyalli Master Plan Agreement

RESOLUTION
2022-24

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

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 Ameyalli Resort.

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 Ameyalli Resort (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 2022.

MIDWAY CITY

_____
Celeste Johnson, Mayor

ATTEST:

_____
Brad Wilson, Recorder

(SEAL)

Exhibit A

MASTER PLAN AGREEMENT FOR THE AMEYALLI RESORT (fka MT. SPA) 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 Mtn. Spa, 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 28.87 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."

RECITALS

A. 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.

B. The Developer is the owner of certain real property legally described in Exhibit "A" of this 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 "Ameyalli Resort" or the "Property".

C. 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 this Master Plan Agreement, and the Development Agreement which applies to that specific Phase.

D. The Midway City Land Use Code requires that a Master Plan 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.

E. The Property is, and shall remain, subject to the Midway City 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 this Agreement.

F. The improvements and changes to be made to the Property shall be consistent with the current ordinances and standards of the City, the terms and conditions of this Agreement, any applicable Development Agreement, and any changes to international building codes or construction standards.

G. 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.

H. The City's governing body has authorized the execution of this Agreement by Resolution 2022-___, attached hereto as Exhibit B.

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 28.87 acres.

The Project is located at approximately 800 North 200 East.

The Project is in the Resort Zone (RZ).

The Project contains 229,938 total square feet and 237 bedrooms, including:

- 80 hotel rooms

- 23 cottages
- Presidential suite
- Resort building/spa
- 24 duplex units
- 2 family lodges
- Farm kitchen

The Project shall be built in four Phases.

The Project contains 16.06 acres of open space (8.81 acres preserved in a conservation easement).

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* – Master plans require that water rights be 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 reviewed the project on May 2, 2022, to preliminarily determine the water required for the proposal. In that meeting, the Water Board recommended that 119.62 acre feet (106.72 culinary and 12.97 outside irrigation) will be required for the entire project. Since that meeting, plans have been revised and updated, making the current recommendation no longer accurate. Applicant must return to the Water Board with more accurate information based on current plans. The water

requirement must be accurate per phase, which currently has not been submitted to the City.

c) *Building Area* – The proposed plan includes a gross building floor area of 229,938 square feet (250,000 square feet is the maximum allowed by the Memorandum of Understanding). The resort zone requires 20% of the gross floor area to be designated as commercial (45,988 square feet). Of that 20%, 25% must be for such uses as retail, restaurants, clubs/taverns, or art galleries/showrooms (11,497 square feet).

d) *Density* – The proposed development includes the following types and quantities of density, totaling 229,938 square feet and 237 bedrooms:
   a. 80 hotel rooms – 41,270 SF
   b. 23 cottages – 40,020 SF
   c. 1 presidential suite – 3,210 SF
   d. 1 resort building/spa – 48,510 SF
   e. 24 duplex units – 81,756 SF
   f. 2 family lodges – 12,672 SF
   g. 1 farm kitchen – 2,500 SF

e) *Open Space* – The City Code requires 55% open space, which is being met by Developer with 16.06 acres of open space. Only areas that are a minimum of 100 feet wide qualify as open space, and these areas shall not be developed except for uses specifically permitted in the code. The open space areas that will be noted on the plat will include the 100-foot setback area along the adjoining property boundaries.

f) *Access* – The development has three access points, two of which will be built to City standards: one from Burgi Lane and one from 600 North via 200 East. The third access is an emergency access from Sunflower Lane.

g) *Traffic Study* – The Developer has submitted a traffic study to the City which has been reviewed by Horrocks Engineers. Horrocks' recommendations for improvements are attached as Exhibit "C".

h) *Public Participation Meeting* – The Developer held a public participation meeting on May 4, 2022, as required by the ordinance for master plan applications. This requirement is designed to provide developers an opportunity to present the development to surrounding residents of the proposed development.

i) *Sensitive Lands* – The property contains some wetlands and geologically sensitive lands that cannot be disturbed through the development process. If any wetlands are proposed to be disturbed, approval must first be received from the Army Corps of Engineers. The craters on the property are defined as a "major geologic feature" in the sensitive lands ordinance and cannot be developed or disturbed. The Developer is limited in using the area because the pot rock essentially cannot be modified in any way. There is also an area of the property that contains "minor geologic features," meaning an area that is developable except for pot rock outcroppings over three (3) feet in height. A few trails are planned in the cratered area that must be constructed within the guidelines of the sensitive land ordinance.

j) *Trails* – There is a trail planned to connect from Valais Park to the north to the Watts Remund Farms PUD to the south. This trail will connect the north end of the City down to Main Street, and will create a trail that does not parallel roads, creating a safe environment for pedestrians to travel from one side of Midway to the other. The City has also planned a trail along River Road and has recently installed a temporary trail in the River Road right-of-way. It is anticipated that in the future, the City will rebuild the River Road trail in the public trail easement that has been dedicated to the City as part of the Mountain Spa Rural Preservation Subdivision with funds the Developer has already given to the City. The future River Road trail will be constructed in the trail easement along the River Road right-of-way that will be farther from the road and will create a safer pedestrian experience. The City has also secured an easement and funding to connect the River Road trail with the linear park trail on the property that would run east and west on an easement along the Lacy Lane Estates' southern boundary.

k) *Architectural Theme* – Typically, the architectural theming for new structures in the Resort Zone must comply with the Swiss-European guidelines outlined in Section 16.13.37 of the City Land Use Code. In Chapter 16.15 (Resort Zone), the building design guideline section (16.15.4(G)(3)) states that the building design shall reflect "The community's architectural character choices emphasizing Swiss/European Alpine themes (or other themes as approved by the City Council after a recommendation from the Visual Architectural Committee (VAC) and Planning Commission)." The Developer is proposing a theme that some may interpret as a departure from the typical Swiss/European Alpine themes. The City Council has discretion on whether a departure is allowed.

l) *Setbacks* – The proposed development is designed with the setbacks found in the Resort Zone section of the City Land Use Code. The code requires 100-foot setbacks from all boundary lines surrounding the original Mountain Spa property. This includes the areas along the southern boundary, Sunflower Farms, property to the west fronting Center Street, and along the boundary with Lacy Lane Estates. The four Mountain Spa Rural Preservation lots that were developed by the Applicant and were part of the original Mountain Spa Resort property all have minimal setbacks because those properties are part of the master proposal and are considered part of the resort property as approved in the previous plan (2008 master plan approval).

m) *Height of Structures* – Structures in the development cannot exceed 35 feet in height, measured from natural grade.

n) *Building Area Dimensional Limitations* – The City Land Use Code requires that building coverage may not exceed 12,000 square feet per acre or be greater than 27.5% of an acre. The Developer has submitted a plan that states the average building coverage within the proposed development is 18.3% per acre.

o) *Memorandum of Understanding Requirements* – Summit Land Conservancy and Chuck Heath entered into a Memorandum of Understanding (MOU) regarding development of the Mountain Spa Property. The MOU dictates previously mentioned items such as building footprint area and height. It also requires the following:
    a. Restore and maintain the historic "Mountain Spa" pole sign;
    b. Construct the previously mentioned trails;
    c. Restore natural hot spring water to at least one of the craters in the protected hot pot area;
    d. Demolish and clean up the old buildings and derelict swimming pools in and around the protected pot rock area, leaving the two-story historic stone building intact;
    e. Provide for the preservation of wildlife habitat, particularly the wetland areas on the northwest of the property.

p) *Parking Plan Proposal* – The Applicant has submitted a site plan with parking stalls included. A parking plan is required at the master plan stage of the process as part of the dimensional limitation plan. With the scale of the master plan, it is impossible to review every stall and access for code compliance. This will happen at the preliminary review of each phase. It is possible that buildings will need to be adjusted and/or removed to meet parking requirements. Midway City Code allows for the reduction of parking stalls for mixed-use developments. Preliminary calculations show that 680 parking stalls are required for the development. The Developer has submitted

a parking analysis, using recognized studies, that reduces the required parking to 302 stalls. The resort site plan includes 335 stalls. The City Council must decide if the provided analysis is acceptable to reduce the required parking.

q) *Landscaping Plan* – A detailed landscaping plan has been submitted showing irrigated areas, ground covers, and types and quantities of trees. City Code requires 15 trees per acre for non-hard-surface common areas. Based on the plan, 326 trees are required and the plan shows 358 total trees. The plan also shows the area that will be landscaped, which will be used to obtain a more accurate calculation for the water rights required for the project.

r) *Geotechnical Report* – The City has received a geotechnical report for the property that was prepared by Earthtec which will be reviewed by Horrocks Engineers. The City has also received a report on ground penetrating radar of the site.

s) *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.

t) *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.

u) *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.

v) *Culinary/Sewer Connections* – The Project shall be connected to the City water and Midway Sanitation District's sewer lines as shown on the approved plans.

w) *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 common landscaped areas, in a size and type approved by Midway Irrigation Company.

x) *Additional Conditions* - This Master Plan Agreement also incorporates all other conditions officially adopted and imposed by the City Council at the time of approval of this Master Plan Agreement.

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 may impose additional conditions regarding the mitigation of the impacts of this development as it comes before the City Council for preliminary and final approval. 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 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. 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
322 E. Gateway Dr., #201
Heber City, Utah 84032

If to Developer:

Midway Mtn. Spa, LLC:
c/o Chuck Heath
_____
_____

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.

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[*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 _____, 2022, 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 AMEYALLI RESORT

Midway Mtn. Spa, LLC

_____

By: _____

Its: _____

STATE OF UTAH)
:ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by _____, who executed the foregoing instrument in his capacity as the _____ of the Developer, Midway Mtn. Spa, LLC.

_____
NOTARY PUBLIC