Midway City Council
17 January 2023
Regular Meeting

Resolution 2023-03 /
Ameyalli Resort,
Phase 1
Development Agreement

RESOLUTION
2023-03

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE AMEYALLI RESORT, PHASE 1

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 of the City of Midway to enter into a development agreement with the developer of the proposed Ameyalli Resort, Phase 1 for the use and development of the land included within that proposed project;

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 Midway City Council on the day of 2023.

MIDWAY CITY

_____
Celeste Johnson, Mayor

ATTEST:

_____

Brad Wilson, Recorder

(SEAL)

AMEYALLI RESORT - PHASE 1
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2023, by and between MIDWAY MTN SPA, LLC (hereinafter called the "Developer") and MIDWAY CITY, 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 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 Ameyalli Resort - Phase 1, located at approximately 800 North 200 East 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 part of Ameyalli Resort, a mixed-use development containing both recreational and residential uses. This Phase 1 proposal is located on 16 acres and includes 24 duplex units, 2 family lodges, private and public trails, open space, and other resort-related amenity improvements. The Project is in the Resort Zone. There are 4 total phases in the development. All 4 phases encompass a total of 28.87 acres, and contains a total of 15.95 acres of open space.

D. The Property contains natural environmental features, including geothermal springs and craters filled with warm water. There are large areas of pot rock around the springs and craters which the City considers major geologic feature areas which are protected as part of the sensitive lands code. There are wetland areas on the Property, as well as a 15-acre

irrigated field and a large pasture located at the north end that is now preserved with a conservation easement.

E. The Resort Zone allows for mixed-use development. The proposal is to create a mixed-use development that will include recreational and short and long term residential uses on the Property. Because mixed-use projects are a conditional use, the City Council may require reasonable conditions to mitigate negative impacts to the neighbors and the area.

F. 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 Midway City.

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 ten (10) 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 Midway City, 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 ten (10) 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) Water Rights and Water Service: The Developer has submitted the required water rights to the City and they are now being held in escrow. The required water rights for each phase will be dedicated to the City before the recording of each plat. The Water Advisory Board has approved an estimated 124.85 acre-feet for all 4 phases of the project, which includes culinary connections and outside irrigation. For Phase 1, 36.50 acre-feet must be dedicated (26 culinary connections, water features, and 3.16 acres of irrigated area). The water rights dedicated for Phase 1 must be cited on the plat.

c) Open Space: The City Code requires 55% open space within the entirety of the Property. A total of 16.06 acres of open space is planned within all 4 phases of the Project, 11.87 of which is in Phase 1. Only areas that are a minimum of 100 feet in width 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.

d) Density: The proposed development includes the following types and quantities of density (items in **bold** are in Phase 1):

80 Hotel Rooms	41,270 SF
23 Cottages	40,020 SF
1 Presidential Suite	3,210 SF
Resort Building/Spa	48,510 SF
24 Duplex Units	**66,393 SF**
2 Family Lodges	**10,542 SF**
Farm Kitchen	2,500 SF
TOTAL SQUARE FEET	212,445 SF
TOTAL BEDROOMS	237 EA

e) Building Area: The proposed plan includes a gross building floor area of 212,445 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 (42,489 square feet). Of that 20%, 25% must be uses such as retail, restaurants, clubs/taverns, or art galleries/showrooms (10,622 square feet).

f) Access: The development has 3 access points, 2 of which will be built to City standards, 1 from Burgi Lane, 1 from 600 North via 200 East. The third is an emergency access from Sunflower Lane. The roads will be private except the existing public road of 200 East which extends about 650 feet north of 600 North.

g) Traffic Study: A traffic study has been submitted to the City and has been reviewed by Horrocks Engineers. A letter from Horrocks Engineers is attached hereto.

h) Sensitive Lands: The Property contains some sloped areas and geologically sensitive lands that cannot be disturbed through the development process. The craters are defined as a "major geologic feature" in the sensitive lands ordinance and cannot be developed or disturbed. The Developer is limited in

use of the area, meaning that the pot rock cannot be modified in any way. There is also an area of the Property that contains "minor geologic features" that is developable except for pot rock outcroppings over 3 feet in height. A few trails are planned in the craters area that must be constructed within the guidelines of the sensitive lands ordinance.

i) Public Trails: There is an 8-foot paved public trail that is planned to connect from the Burgi Hill Park in the north to the Watts Remund Farms PUD in the south. This trail will connect the north end of the City down to Main Street and will create a trail that will generally not parallel roads and will create a safe environment for pedestrians to travel from one area of Midway to another. The City has also planned an 8-foot paved public 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 the 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 a public trail 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. This trail will be a soft surface trail. A log fence will also be built along the north side of the trail by funds already paid to the City by the Developer. There is also a soft-surface public trail that will connect from the linear park trail that will circle the hot pot area in the conservation easement.

j) Private Trails: There are many 6-foot private trails in the Development. These trails will be used by the guests to travel from lodging areas to amenity areas. The plan specifies that the trails will either be concrete or asphalt, which will work better than soft-surface trails that would not be feasible in the varied climate of Midway.

k) Architectural Theme: City Code Section 16.15.4(G)(3) (Resort Zone) 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 Applicant proposed a theme that some may interpret as a departure from the typical Swiss/European Alpine themes. With the approval of the Master Plan, the Developer's proposed theming was approved for the resort. Individual buildings will be presented to the VAC for its review before building permits are submitted.

l) Setbacks: The Development is designed with setbacks in accordance with the Resort Zone sections of the City 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, the property to the west that fronts Center Street, and along the boundary with the 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 they are part of the master proposal and are considered part of the resort property as approved in the previous plan (2008 master plan approval). Internal road setbacks are as approved by the City Council. Most of the units are setback from the private road about 15-20 feet, but there are two buildings that have a minimal setback of about 10 feet from the edge of the private road. The two family lodges are setback about 12 feet.

m) Height of Structures: Structures cannot exceed 35 feet in height measured from natural grade. The Code does allow specific architectural elements to reach a maximum height of 52.5 feet.

n) Building Area Dimensional Limitations: The Code requires that building coverage not exceed 12,000 square feet per acre or greater than 27.5% of an acre. The Applicant has submitted a plan that states that the average building coverage in the Development equates to 16.9% 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 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 pot rock 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 in Phase 1: 13 parking stalls will be built in front of the family pool area. Each of the duplex units and family lodges will include a 2-car garage. Because of the minimal setbacks for some of the structures, there will not be room to park in the driveway areas in front of the garages for some of the units.

q) Landscaping Plan: A detailed landscaping plan has been submitted which shows irrigated areas, ground covers, and types and quantities of trees. The Code requires 15 trees per acre for non-hard-surface common areas. Based on the plan, 326 trees are required. Phase 1 includes 257 of the required 326 trees. All trees in Phase 1 comply with requirements that evergreens are at least 6 feet tall and deciduous trees have a caliper of at least 2 inches. The area at the north end of the resort where the private road makes a 90-degree turn next to Lacy Lane Estates is a concern because of the potential light nuisance created by vehicles leaving the resort to Burgi Lane. The Developer, City Staff, and Lacy Lane Estates HOA members and residents have held several meetings to work on a landscaping and stone wall plan. It is unknown if all Lacy Lane residents agree on the plan, but the feedback received has been positive.

r) Off-Site Storm Drain Basin: The plan to place the Development's storm water basin in the common area of Lacy Lane Estates is currently being voted on by the Lacy Lane Estates HOA. If approved, the HOA must grant an easement to Ameyalli for access and maintenance purposes. If the vote fails, Ameyalli will return to its original plan of an off-site storm drain basin. However, the trail and landscaping would then have to be modified from the proposed plans.

s) Geotechnical Report: The City has received a geotechnical report for the Property that was prepared by Earthtec and which has been reviewed by Horrocks Engineers. The City has also received a report on ground penetrating radar of the site.

t) Sewer Connection: The development will connect to existing Midway Sanitation District sewer lines located in the area.

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

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

w) 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 this 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. The granting or denying of an extension, with or without conditions, is within the sole discretion of the City

Council, and an applicant has not right to receive such an extension. Such conditions may include, but are not limited to, provisions requiring that:

a. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;
b. The property must be maintained in a clean, dust-free, and weed-free condition at all times;
c. Each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or
d. No more than three one-year extensions will be allowed.

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

y) 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.

z) City's Right to Draw From Construction Bond: If the 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 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. 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 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 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 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 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 public meeting, 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 Developer is in full compliance with the terms and conditions of this Agreement. 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 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 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, 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 Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to 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 Developer. 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 Developer's written request: 1) this Agreement was in full force and effect without modification except as represented by Developer; and 2) 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, 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 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. 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 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 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 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 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 (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 Midway City:

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., Ste. 201
Heber City, Utah 84032

If to Developer:

Midway Mtn Spa, LLC
_____
_____

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 Developer.

Section 13. Signing and Recordation of Agreement. Unless the City and Developer mutually agree otherwise in writing, this Agreement must be signed by both 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 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 Developer and the City as of the date and year first above written.

MIDWAY CITY

_____
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 – PHASE 1

_____
_____
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/her capacity as the _____ of the Developer.

_____
NOTARY PUBLIC

EXHIBIT A

(Legal Description of the Property)