



**Midway**

**CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** December 3, 2024

**AGENDA ITEM:** Open Space Bond Funding Extension Request and review for clarification and/or revision of conditions precedent for grant of Open Space Bond Funds and Review of Language of Proposed Conservation Agreement

**NAME OF PROJECT:** Lundin Farms

**PROPERTY OWNER:** Lundin Farms LLC

**NAME OF APPLICANT:** Utah Open Lands

**LOCATION OF ITEM:** Approximately 950 West Bigler Lane

**ITEM: 5**

Utah Open Lands, on behalf of Lundin Farm LLC, requests an extension in time to complete conditions precedent set by the City Council in its resolutions dated June 20, 2023, and January 16, 2024, and review for clarification and/or possible revision of such conditions precedent, with respect to approval to use up to \$1,000,000 from the Midway Open Space Bond to help fund a conservation easement on the 119 acres of the Lundin Farm that lies within the Midway Growth Boundary (annexation area). The property is located at approximately 950 West Bigler Lane.

**BACKGROUND:**

Utah Open Lands, on behalf of Lundin Farms, LLC, applied for funding through the 2018 Midway Open Space Bond Funds. The Open Space Advisory Committee recommended that the City Council commit up to One Million dollars toward placement of a

conservation easement on the 119 acres known as the Lundin Farm and located at approximately 950 Bigler Lane in Midway.

### **CITY COUNCIL APPROVAL AT ITS JUNE 20, 2023, MEETING**

At its regularly scheduled meeting held June 20, 2023, the City Council took the following action:

**Motion:** Council Member Payne moved to approve a commitment using bond funds to preserve open space on the property owned by the Lundin family, located at approximately 900 West Bigler Lane, in the amount of \$1 million subject to the following conditions:

- An application was submitted to the LeRay McCallister Fund by June 30th,
- A commitment was received from the Lundin family from their August 25th meeting,
- The contribution was for a period of three years then an extension would be needed from the City Council,
- There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family,
- An MOU contained these conditions and identified the property that was a conservation easement separate and apart from the rest of the family's property,
- The required water for irrigation would be encumbered as part of the conservation easement,
- The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access,
- The form of the conservation easement would comply with the MOU.

**Second:** Council Member Orme seconded the motion.

**Vote:** The motion was approved unanimously.

### **CITY COUNCIL EXTENSION AT ITS JANUARY 16, 2024, MEETING**

At its regularly scheduled meeting held January 16, 2024, the City Council took the following action:

**Motion:** Council Member Simonsen moved to grant an extension of the previous approval with the following findings and conditions:

- The land was used for open space as discussed and proposed to the Council.
- The extension would be until May 15<sup>th</sup>.
- Hoped that the Lundin family could work out their remaining issues.

- This project and funding request remained consistent with the vision of the Open Space Element of the General Plan.
- The committed funds from Wasatch County and from other potential sources would maximize Midway's contribution through leveraging, and the continuation of an important agricultural business was an added benefit.
- The project was visible from much of Midway and from many areas of the Heber Valley.
- Preservation of the farm would keep valuable agricultural land as open space and the farm would continue to provide agricultural products to the community.
- If the connector road was built on the Lundin property, the community, and particularly the communities serviced by Swiss Alpine and Lime Canyon, would benefit from the safety it would provide.
- The applicant stated that the community would benefit because of public trail easements that would be provided that would connect to the existing trail network.
- There were Midway Irrigation Company shares that were being used on the property which needed to be identified, included in any agreement, and dedicated to Midway City so they remained with the property.
- Public trail easements were clarified before approval.
- Continued the conditions set forth on June 20, 2023, while adjusting dates to accommodate the extension through May 15, 2024:
  - An application was submitted to the LeRay McCallister Fund by June 30th,
  - A commitment was received from the Lundin family from their August 25th meeting,
  - The contribution was for a period of three years then an extension would be needed from the City Council,
  - There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family,
  - An MOU contained these conditions and identified the property that was a conservation easement separate and apart from the rest of the family's property,
  - The required water for irrigation would be encumbered as part of the conservation easement,
  - The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access,
  - The form of the conservation easement would comply with the MOU.

**Second:** Council Member Drury seconded the motion.

**Discussion:** None

**Vote:** Unanimously approved.

## MOTION AMENDMENT ON JANUARY 16, 2024:

At the same City Council meeting on January 16, 2024, Councilman Simonsen indicated that the motion for the Lundin properties needed to be amended to clarify that the water rights would not be dedicated to Midway City.

**Motion:** Council Member Simonsen moved to grant an extension of the previous approval with the following findings and conditions:

- The land was used for open space as discussed and proposed to the Council.
- The extension would be until May 15<sup>th</sup>.
- Hoped that the Lundin family could work out their remaining issues.
- This project and funding request remained consistent with the vision of the Open Space Element of the General Plan.
- The committed funds from Wasatch County and from other potential sources would maximize Midway's contribution through leveraging, and the continuation of an important agricultural business was an added benefit.
- The project was visible from much of Midway and from many areas of the Heber Valley.
- Preservation of the farm would keep valuable agricultural land as open space and the farm would continue to provide agricultural products to the community.
- If the connector road was built on the Lundin property, the community, and particularly the communities serviced by Swiss Alpine and Lime Canyon, would benefit from the safety it would provide.
- The applicant stated that the community would benefit because of public trail easements that would be provided that would connect to the existing trail network.
- **The water rights necessary for agriculture and other uses be encumbered as part of the conservation easement in perpetuity.**
- Public trail easements were clarified before approval.
- Continued the conditions set forth on June 20, 2023, while adjusting dates to accommodate the extension through May 15, 2024:
  - An application was submitted to the LeRay McCallister Fund by June 30<sup>th</sup>,
  - A commitment was received from the Lundin family from their August 25<sup>th</sup> meeting,
  - The contribution was for a period of three years then an extension would be needed from the City Council,
  - There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family,
  - An MOU contained these conditions and identified the property that was a conservation easement separate and apart from the rest of the family's property,
  - The required water for irrigation would be encumbered as part of the conservation easement,

- The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access,
- The form of the conservation easement would comply with the MOU.

**Second:** Council Member Drury seconded the motion.

**Discussion:** None.

**Vote:** Unanimously approved.

## **CURRENT STATUS AND ISSUES FOR REVIEW:**

- **Extension:** The City Council motions on January 16, 2024, which continued the conditions of June 20, 2023, detailed several conditions to be completed by May 15, 2024. While most conditions appear to have been met, the condition that *“the applicants entered into an agreement with Utah Open Lands committing to sell the development rights for 119 acres of property by May 15, 2024”* appears to be in process but has not yet been completed.

Utah Open Lands, on behalf of Lundin Farms, LLC, has requested an extension of time through and inclusive of December 31, 2024, to complete the Purchase Agreement referenced in the above stated condition.

- **Water Shares:**

### **CITY COUNCIL RESOLUTION DATED JUNE 20, 2023**

The resolution approved by the City Council on June 20, 2023, with respect to water, provided: *“The required water for irrigation would be encumbered as part of the conservation easement”*.

### **CITY COUNCIL RESOLUTION DATED JANUARY 16, 2024**

City Council granted an extension by resolution dated January 16, 2024, which provided, with respect to water shares, that:

*“There were Midway Irrigation Company shares that were being used on the property which needed to be identified, included in any agreement, and dedicated to Midway City so they remained with the property.”*

At the same meeting, City Council amended the resolution with respect to water shares to provide that water shares would NOT be dedicated to the City of Midway, but rather:

*“The water rights necessary for agriculture and other uses be encumbered as part of the conservation easement in perpetuity”.*

The Lundins have advised that the irrigation required for farming and livestock is less than 64 shares and has proposed 40 Midway Irrigation Company shares be encumbered in perpetuity as part of the conservation easement for the 119 acres, and an additional 10 Midway Irrigation Company shares (40 shares + 10 additional shares = total of 50 shares) be encumbered in a manner acceptable to the parties and the municipalities as security to the City of Midway and Wasatch County for their investments of open space funds in the amount of \$1,000,000 and \$2,000,000 respectively pending recording of the Conservation Easement. The 40 shares will remain permanently encumbered after recordation of the easement and be bound to the property in the conservation easement in perpetuity.

**Discussion Items:**

1. 40 shares to be encumbered with the conservation easement.
  2. An additional 10 shares (40+10=50 total water shares) to be used as security for the bond funds from the City of Midway (\$1 Million) and Wasatch County (\$2 Million) pending recordation of the conservation easement (at which point only 40 of the shares will remain encumbered as part as part of the conservation easement), should be restricted to serving as security for the City and County contributions of open space funds only.
- **Agricultural Access Road** (with easement for emergency access and evacuation). Midway’s Master Street Plan shows a road across the Lundin property that would connect Bigler Lane to Olympic Drive, creating an emergency access for the lots located in the City that access on Swiss Alpine Road.

Current Fire Code regulations would allow up to 30 units on one access and current City regulations would allow up to 11 on one access. Current units, and certainly potential entitled unity, greatly exceed the current standards.

Staff reports dating back to September 6, 2022, include the following language:

*The connecting road is very important to address the safety concern of the ability for residents and visitors to evacuate the area in case of an emergency. Currently, there are hundreds of units in the area that include the neighborhoods of Sunburst, Alpenhof, Maisons De Saint Prex, and Swiss Mountain Estates that only have one access which is Swiss Alpine Road. If the connector road is built on the*

*Lundin property, the community will benefit from the safety it will provide. It may be that only a road base emergency access road is built which will only be used in an emergency. The road could be built on the edge of the field to limit disturbance of the agricultural operations. The City has approximately \$110,000 in place to build the road.*

The Lundins agreed as part of the original approval process to allow an agricultural access road with an emergency access and evacuation route on the property. At the City Council meeting on June 20, 2023, the Lundins expressed a preference to locate the road along the Probst Ditch on the west side of the property. Hearing this for the first time and in the absence of specific details about the proposed route or whether it was feasible and would meet City standards, the resolution approved by the City Council on June 20, 2023, with respect to the emergency access road, provided there be: *“a floating easement to deal with emergency access point with a preferred location, **if it could be worked out**, on the west boundary which was favored and had been summarized by the family.”* (emphasis added)

“Workable” is understood to mean compliant with applicable laws, City Code, including road standards, acceptable grade, and sensitive lands provisions of the Code.

#### **CITY COUNCIL RESOLUTION DATED JUNE 20, 2023**

City Council, by resolution dated June 20, 2023, granted approval for use of \$1,000,000 in Midway Open Space Bond Funds toward a conservation easement on 119 acres of the Lundin property, provided several conditions were met, including an easement for an emergency road, the required water for irrigation would be included with the land, and the Lundins would allow a trail and firebreak for public and scenic access.

With respect to the emergency road, the resolution provided: *“There was a floating easement to deal with the emergency access point with a preferred location, if it could be worked out, on the west boundary which was favored and had been summarized by the family”.*

#### **CITY COUNCIL RESOLUTION DATED JANUARY 16, 2024**

City Council granted an extension by resolution dated January 16, 2024, which provided, with respect to the Emergency access, that a condition of approval was: continuation of the conditions set by the Council on June 20, 2023 (i.e., a floating easement with preference for western route if it was workable), as well as that “Public trail easements were clarified before approval.”

## PROPOSALS:

The parties have agreed that the Agricultural Access with emergency access/evacuation will be located along one of the following routes:

- a. Seller has expressed a preference for a route to access the Lundin property from the South near the Sunburst Phase 3 development(\*) and follow the Probst Ditch northward to the northern boundary of the Property, continue northward along the Probst Ditch on property owned by Swiss Oaks, and exit Swiss Oaks to Lime Canyon Road across Swiss Oaks or other property to the North of the Property, which route (hereinafter the “Seller’s Preferred Route” as further described in Exhibit “ F “) requires easements across property not owned or controlled by the Seller.
- b. Recognizing this, Seller has proposed an alternative route in the event the Seller’s Preferred Route is not feasible. Such alternative route (hereinafter “Seller’s Default Northern Route” as further described in Exhibit “F”) would follow the same route as Seller’s Preferred Route until it reached at or about the intersection of the Probst Ditch with the northern boundary of the Property, at which point it would run generally eastward along the Northern boundary of the Property from the Probst Ditch to the West Bench Ditch to Lime Canyon Road, the grade of which route will likely involve switchback(s). The parties agree in good faith to continue working with landowners to the north and south of the Property to effectuate Seller’s Preferred Route. Seller’s Default Northern Route shall be the default option in the event that easements along the Probst Ditch and exiting to Lime Canyon Road through properties north and/or south of the Property cannot be accommodated through agreement(s) or other regulatory means. (\*)

(\*) The parties agree that the preferred southern access to both Seller’s Preferred Route and Seller’s Northern Default Route would access the Property from the South near the Sunburst Phase 3 development, however the parties recognize that this would involve easements from other landowners not controlled by Seller which have not been granted. However, there is currently southern access to the Property along the northern bend of Lucerne Drive. Seller agrees to provide access across the Property from either southern access (Sunburst Phase 3 (Preferred) and Lucerne Drive (Default), understanding that it may take time to determine if access is feasible through Sunburst Phase 3. The parties will work in good faith to obtain access through Sunburst Phase 3, but until or unless such access is acquired on terms acceptable to the parties, will continue to accommodate access from Lucerne Drive.

The parties shall work together cooperatively to identify, determine, and pursue solutions that could provide for the Preferred Northern Route and preferred southern access which comply with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement



being recorded. If not, the parties will work in good faith to proceed with the default northern route which complies with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded. Once the access route is identified and finalized, the particulars shall be specified in the conservation easement for recordation.

Midway City administrative staff, engineering, planning, and building staff met with County Fire officials last week who expressed willingness to work toward achieving the above options, recognizing that it would be beneficial to access Lime Canyon and for access to be high.

#### **ANALYSIS:**

- An agricultural access road may help the Lundins access different portions of their farming operations. Including an emergency/evacuation access provides safety benefits to Midway residents, particularly those along Swiss Alpine and Lime Canyon.
- The Seller's Preferred Route is preferred by all parties because it would provide access on both Swiss Alpine/Lucerne and Lime Canyon Road with the most minimal disruption to the Lundin farming operations. While this option is a goal to work toward, it involves other properties not owned nor controlled by the Lundins and to which they cannot guarantee access. The Lundins' ability to grant an access/evacuation easement is necessarily limited to land they own.
- Recognizing this, the Lundins proposed the Seller's Northern Default Route. The advantage of this default is that it allows access to Lime Canyon Road across the Lundin property, which they control, so it is effective as a default option, but not the preferred option for any party.
- There is also some work to be done for the southern access to the Lundin Property. The Seller's preferred route would have access from the south coming from Sunburst Phase 3, but again, this would cross land the Lundins do not own and the City does not have an easement for this purpose. It appears there is present access from Lucerne to a spot higher on the mountain (farther west) on the Lundin property. The Lundins have agreed to provide either access to the City, recognizing that the Sunburst access is preferable, but less certain and will take time to determine if an agreement may be made with the developer.
- The Lundins have authorized Midway City to proceed with obtaining a topography map of the property in question to confirm grade and a traversable route. A route cannot be finalized until the City obtains the topography map and engineering review and determines if routes outside the Property are feasible. The City is willing to accept the Seller's Northern Default Route proposed by the

Lundins in place of the Bigler Road Extension as default. The parties will continue to explore ways to make the preferred routes happen. The importance of the default route and that it is primarily restricted to land the Lundins own so is a more realistic and reliable default than the preferred route which crosses land belonging to others.

- **Pedestrian Trail:** As part of the open space grant fund, the Lundins agreed to permit access by the public for a trail across the property.

#### **CITY COUNCIL ACTION AT ITS JUNE 20, 2023, MEETING**

At its regularly scheduled meeting held June 20, 2023, the City Council passed a resolution which provided, with respect to a trail and firebreak, the following:

*“The parties would diligently work together to create the trail and firebreak as mentioned for public and scenic access.”*

#### **CITY COUNCIL ACTION AT ITS JANUARY 16, 2024, MEETING**

The City Council granted the Lundins an extension on January 16, 2024. The resolution, with respect to a trail and firebreak, provided the following:

“Public trail easements were clarified before approval”.

Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, would be ideal.

- A public trail and firebreak across the Lundin property will benefit residents and was a condition of approval. Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, is desirable. Since timing is less critical than it is with emergency access, the City could continue to work with the Lundins and Utah Open Lands on trail options with the understanding that a public trail easement will be granted, with location to be set forth in the conservation easement.

## **POSSIBLE FINDINGS:**

1. This project and funding request remain consistent with the vision of the Open Space Element of the General Plan.
2. The committed funds from Wasatch County and from other potential sources will maximize Midway's contribution through leveraging, and the continuation of an important agricultural business is an added benefit.
3. The project is visible from much of Midway and from many areas of the Heber Valley.
4. Preservation of the Lundin farm will keep valuable agricultural land as open space and the farm will continue to provide agricultural products to the community.
5. Extending the May 15, 2024, deadlines set forth in the January 16, 2024, motions through December 31, 2024, will not cause unreasonable delay but will allow the parties time to complete the conditions precedent, including finalizing the purchase agreement for the conservation easement.
6. 40 Shares of unencumbered Midway Irrigation will be encumbered and restricted to use of the land subject to the Conservation Easement, which the Lundins represent covers their historic irrigation and livestock watering uses on the Property as well as expected future water use associated with the conservation easement.
7. An additional 10 shares of Midway Irrigation (the 40 shares encumbered with the conservation easement plus 10 additional shares for a total of 50 Midway Irrigation Shares) will be escrowed or otherwise encumbered to the satisfaction of the City of Midway and Wasatch County as security for their respective Open Space Bond Fund grants pending recordation of the Conservation Easement. These shares will be free and clear of encumbrances and not be used as security for other investors.
8. The grant of Open Space funds is conditioned upon a conservation easement including emergency access/wildfire evacuation route in conjunction with an agricultural access road across the Lundin property. The Preferred Route would access the Lundin property from the South near the Sunburst Phase 3 development(\*) and follow the Probst Ditch northward to the northern boundary of the Lundin Property, continue northward along the Probst Ditch on property owned by Swiss Oaks, and exit Swiss Oaks to Lime Canyon Road across Swiss Oaks or other property to the North of the Property, which route requires easements across property not owned or controlled by the Seller.

9. Recognizing this, the Lundins have proposed an alternative route in the event the Seller's Preferred Route is not feasible. Such alternative route would follow the same route as Seller's Preferred Route until it reached at or about the intersection of the Probst Ditch with the northern boundary of the Property, at which point it would run generally eastward along the Northern boundary of the Property from the Probst Ditch to the West Bench Ditch to Lime Canyon Road, the grade of which route will likely involve switchback(s). The parties agree in good faith to continue working with landowners to the north and south of the Property to effectuate Seller's Preferred Route. Seller's Default Northern Route shall be the default option in the event that easements along the Probst Ditch and exiting to Lime Canyon Road through properties north and/or south of the Property cannot be accommodated through agreement(s) or other regulatory means. (\*)

(\*) The parties agree that the preferred southern access to both Seller's Preferred Route and Seller's Northern Default Route would access the Property from the South near the Sunburst Phase 3 development, however the parties recognize that this would involve easements from other landowners not controlled by Seller which have not been granted. However, there is currently southern access to the Property along the northern bend of Lucerne Drive. Seller agrees to provide access across the Property from either southern access (Sunburst Phase 3 (Preferred) and Lucerne Drive (Default), understanding that it may take time to determine if access is feasible through Sunburst Phase 3. The parties will work in good faith to obtain access through Sunburst Phase 3, but until or unless such access is acquired on terms acceptable to the parties, will continue to accommodate access from Lucerne Drive.

10. The parties shall work together cooperatively to identify, determine, and pursue solutions that could provide for the Preferred Northern Route and preferred southern access which comply with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded. If not, the parties will work in good faith to proceed with the default northern route which complies with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded. Once the access route is identified and finalized, the particulars shall be specified in the conservation easement for recordation.
11. The Lundins have authorized Midway City to proceed with obtaining a topography map of their farm to confirm grade and a traversable route and have expressed willingness to work with the City in providing access and easements across the western portion of their property and from the northwestern quadrant east to Lime Canyon Road. While location cannot be finalized until the City obtains the topography map and engineering

review, the City is willing to accept the Default Route proposed by the Lundins in place of the Bigler Road Extension as default, provided that the actual route is specified in the conservation easement. There is nothing which would prevent the parties to continue exploring ways to continue the western route across outside properties, but since the Default Route proposed by the Lundins is primarily restricted to land the Lundins own, it is a more realistic and reliable route at this time.

12. A public trail and firebreak across the Lundin property will benefit residents and was a condition of approval. Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially if it could connect with State Park trails, is desirable. Since timing is less critical than it is with emergency access, the City may continue to work with the Lundins and Utah Open Lands on trail options with the understanding that a public trail easement will be granted, with location to be set forth with particularity in the conservation easement.

#### **ALTERNATIVE ACTIONS:**

1. Approval (Conditional). This action can be taken if the City Council finds the proposal is acceptable and in the best interest of the community.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s)
2. Continuance. This action can be taken if the City Council finds there are unresolved issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council finds that the request is not acceptable and not in the best interest of the community.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

**RESOLUTION extending the May 15, 2024, deadlines set in the January 16, 2024, City Council motions, through and inclusive of December 31, 2024, to allow the parties time to complete the purchase agreement for the conservation easement and any other outstanding conditions precedent for use of Midway Open Space Bond funds, and authorizing the Mayor to sign the Conservation Easement Purchase Agreement with the Lundins, Utah Open Lands, and Wasatch County, subject to attorney approval as to form.**

**PROPOSED CONDITIONS:**

1. 40 Shares of unencumbered Midway Irrigation shares will be encumbered in a form acceptable to Midway City and Wasatch County and restricted in perpetuity to use in connection with the property subject to the Conservation Easement, which the Lundins represent covers their historic irrigation and livestock watering uses on the Property and anticipated future water uses associated with the conservation easement. The Lundins represent they own title to the shares and that the shares are free of liens and encumbrances and the Lundins will ensure they remain free from liens and encumbrances.
2. The 40 shares of Midway Irrigation referenced in condition 1, plus an additional 10 shares of Midway Irrigation owned by the Lundins and warranted to be free and clear of liens or encumbrances, will be escrowed or otherwise encumbered to the satisfaction of the City of Midway and Wasatch County as security for their respective Open Space Bond Fund grants pending recordation of the Conservation Easement. These 50 shares shall not be used as security for any other funding sources.
3. The grant of Open Space funds is conditioned upon a conservation easement including emergency access/wildfire evacuation route in conjunction with an agricultural access road across the Lundin property. The Preferred Route would access the Lundin property from the South near the Sunburst Phase 3 development(\*) and follow the Probst Ditch northward to the northern boundary of the Lundin Property, continue northward along the Probst Ditch on property owned by Swiss Oaks, and exit Swiss Oaks to Lime Canyon Road across Swiss Oaks or other property to the North of the Property, which route requires easements across property not owned or controlled by the Seller. Recognizing this, the Lundins have proposed an alternative route in the event the Seller's Preferred Route is not feasible. Such alternative route would follow the same route as Seller's Preferred Route until it reached at or about the intersection of the Probst Ditch with the northern boundary of the Property, at which point it would run generally eastward along the Northern boundary of the Property from the Probst Ditch to the West Bench Ditch to Lime Canyon Road, the grade of which route will likely involve switchback(s). The parties agree in good faith to continue working with landowners to the north and south of the Property to effectuate

Seller's Preferred Route. Seller's Default Northern Route shall be the default option in the event that easements along the Probst Ditch and exiting to Lime Canyon Road through properties north and/or south of the Property cannot be accommodated through agreement(s) or other regulatory means. (\*)

4. (\*) The parties agree that the preferred southern access to both Seller's Preferred Route and Seller's Northern Default Route would access the Property from the South near the Sunburst Phase 3 development, however the parties recognize that this would involve easements from other landowners not controlled by Seller which have not been granted. However, there is currently southern access to the Property along the northern bend of Lucerne Drive. Seller agrees to provide access across the Property from either southern access (Sunburst Phase 3 (Preferred) and Lucerne Drive (Default), understanding that it may take time to determine if access is feasible through Sunburst Phase 3. The parties will work in good faith to obtain access through Sunburst Phase 3, but until or unless such access is acquired on terms acceptable to the parties, will continue to accommodate access from Lucerne Drive.
5. The parties shall work together cooperatively to identify, determine, and pursue solutions that could provide for the Preferred Northern Route and preferred southern access which comply with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded. If not, the parties will work in good faith to proceed with the default northern route which complies with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded. Once the access route is identified and finalized, the particulars shall be specified in the conservation easement for recordation.
6. The Lundins have authorized Midway City to proceed with obtaining a topography map of their farm to confirm grade and a traversable route and have expressed willingness to work with the City in providing access and easements across the western portion of their property and from the northwestern quadrant east to Lime Canyon Road. While location cannot be finalized until the City obtains the topography map and engineering review, the City is willing to accept the Default Route proposed by the Lundins in place of the Bigler Road Extension as default, provided that the actual route is specified in the conservation easement. There is nothing which would prevent the parties to continue exploring ways to continue the western route across outside properties, but since the Default Route proposed by the Lundins is primarily restricted to land the Lundins own, it is a more realistic and reliable route at this time.
7. A public trail and firebreak across the Lundin property will benefit residents and was a condition of approval. Like the emergency access, the Lundins have expressed a preference for a western trail option running along the Probst Ditch, and the parties are in agreement that a higher trail on the western side, especially

if it could connect with State Park trails, is desirable. Since timing is less critical than it is with emergency access, the City may continue to work with the Lundins and Utah Open Lands on trail options with the understanding that a public trail easement will be granted, with location to be set forth with particularity in the conservation easement. The parties will also work together in pursuit of any available sources of funding to aid in creation and funding of the trail and any other improvements (e.g., fencing) associated with the trail.

8. While the City Master Plan calls for a paved road meeting City standards, since the road is for emergency access and wildfire evacuation, the road need not be paved and can be the minimum width required by fire and engineering, with crash gates and appropriate signage.
9. The remaining conditions set forth in the June 20, 2023, and January 16, 2024, motions, as set forth below, will be continued while adjusting dates to accommodate the extension through December 31, 2024:
  - Application submitted to the LeRay McCallister Fund by May 1, 2024,
  - A commitment received from the Lundin family and applicants enter into an agreement with Utah Open Lands committing to sell the development rights for 119 acres of property by May 1, 2024,
  - The contribution continues for a period of three years from June 20, 2023, then an extension would be needed from the City Council,
  - An MOU containing these conditions and identifying the property that was a conservation easement separate and apart from the rest of the family's property prior to any final approval of funding.
  - The form of the conservation easement would comply with the MOU.



## CONSERVATION EASEMENT PURCHASE AGREEMENT

This Conservation Easement Purchase Agreement (hereinafter the “Agreement”) is made and entered into effective this \_\_\_\_ day of November, 2024 (the “Effective Date”), by and between Utah Open Lands Conservation Association a Utah non-profit corporation, (hereinafter “UOL”); the City of Midway, a municipal corporation duly organized under Utah law (hereinafter “Midway”); Wasatch County, a municipal corporation duly organized under Utah law (hereinafter “County”), and Lundin Farms, LLC, a Utah limited liability company (hereinafter “Seller”). UOL, Midway, and the County shall be collectively referred to as “Buyers”.

### 1. Recitals. The Parties recite as follows:

1.1 Buyers wish to purchase and Seller wishes to sell a Conservation Easement the form of which is attached hereto as Exhibit A and by this reference made a part hereof (hereinafter the “Conservation Easement”), on certain real property located in Wasatch County, Utah, described as and depicted on a map and associated legal description in Exhibit A (hereinafter the “Property”).

1.2 UOL is a Utah non-profit corporation, one of whose purposes is the protection and preservation of important scenic, agricultural, natural, recreational and open lands throughout Utah. UOL is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, is a “qualified organization” as described under 170(h)(c) and is classified for federal income tax purposes as “public charity” and not as a “private foundation”. UOL is a qualified non-profit conservation organization whose mission is to preserve and protect the scenic, historic, agricultural, wildlife and recreational values of open land in Utah. Midway and the County are exempt from taxation as government entities.

1.3 Seller warrants it is the owner of the Property and all shares of Midway Irrigation referenced in this Agreement.

### 2. Sale and Purchase

2.1 Subject to and upon the terms and conditions of this Agreement, Seller hereby agrees to sell to Buyers, and Buyers hereby agree to purchase from Seller, the Conservation Easement as follows:

2.2 The amount to be paid by Buyers for the purchase of the Conservation Easement in accordance with the terms and conditions of this Agreement is up to \$6,000,000, provided that a qualified conservation easement appraisal substantiates this value (hereinafter the “Purchase Price”). The Purchase

Price is dependent on and includes appurtenant water necessary for irrigation use on the Property being encumbered by the conservation easement, which the Seller has agreed shall include 40 shares of Midway Irrigation, which is considered to be commensurate with historic irrigation practices on the Property as well as future irrigation and livestock needs on the Property, and the Property being free from all liens and encumbrances other than easements and rights of way of record or as otherwise waived or accepted by Buyer as provided in Section 4 below, and the Midway Irrigation Shares similarly being free from all liens and encumbrances.

- 2.3 Seller has provided the Buyers with up to 3 years to close on the conservation easement and pay the Purchase Price (the "Closing"), provided that the conditions in paragraph 5 of this Agreement are met by all Parties. The closing may be changed upon mutual written agreement of the Parties. The Parties acknowledge that any appraised value above the final Purchase Price as considered in Paragraphs 2.2 and 5 of this Agreement shall be considered a charitable contribution and will be made as a gift by Seller.

3. Brokerage Commission. No party hereto has used the services of a real estate agent or brokerage relative to this Agreement; therefore there are no brokerages or other commissions due relative to the transaction described herein.

4. Title Insurance, Conveyance, and Requirements for Delivery of Merchantable and Insurable Title.

- 4.1 Seller agrees to pay for a standard coverage owner's policy of title insurance insuring Buyers in the amount of the Purchase Price. Any additional title insurance coverage shall be at UOL's expense. Buyers and Seller acknowledge that the Buyers shall be provided with the commitment for title insurance.
- 4.2 Maintenance of Title. Seller agrees to fully satisfy and pay or otherwise cause to be released all mortgages, trust deeds and similar liens on the Property and Midway Irrigation Shares, if any, before Closing. Seller shall not further encumber, or permit others to encumber or lien (except for the current lien for property taxes not yet due) the Property or Shares, nor shall Seller convey or transfer any rights or interests in the Property to third parties until after Closing, nor shall Seller convey or transfer any rights or interests in the 40 Midway Irrigation Shares to be encumbered with the Property in the Conservation Easement.

4.3. Seller's Warranties and Representations. Seller makes the following warranties and representations:

4.3.1 Seller warrants and represents that Seller is unaware of any claims of third parties that would affect Seller's ability to freely convey the Conservation Easement on the Property. Seller further warrants and represents that during the Purchase Period, which is defined as the period ending upon the recordation of the Conservation Easement on the Property, Seller shall take no action which would give rise to rights, interests, or claims of third parties and/or which would adversely affect Buyers' ability to preserve and protect the Property in accordance with the Conservation Easement.

4.3.2 Notwithstanding section 4.3.1, Seller has disclosed the pending litigation of *Fuller v. Lundin Farms, LLC, et al.* Utah Fourth District Court Case No. 240500116 (the "Fuller Litigation"). The Fuller Litigation currently states no claim affecting title to the Property, nor has the plaintiff filed and recorded a lis pendens on the Property. The potential effects of the Fuller Litigation are addressed in section 5.7 below.

5. Conditions of Sale and Purchase. The obligation of Buyers to acquire the Conservation Easement and Seller's obligation to sell is conditioned upon the following:

- 5.1 Buyers' satisfaction with the condition of title to the Property.
- 5.2 Seller shall encumber in perpetuity, in a form standard to the language associated with a conservation easement transaction where some or all of the Property is irrigated, 40 Shares of Midway Irrigation water owned by Seller that is associated with the agricultural operation of the property as part of the Conservation Easement purchase.
- 5.3 The accuracy of each of Seller's representations and warranties set forth in Paragraph 4 as of the Closing date;
- 5.4 UOL's ability to fund the purchase price through a good faith effort on the part of the Buyer to obtain funding approval from NRCS or other applicable programs and funding sources.
- 5.5 The Buyers' and Seller's satisfaction with the qualified appraisal and the representations and value conclusions made therein.
- 5.6 Wasatch County and Midway City obligating a total of \$3,000,000 ("Obligated Funds"), funded by \$2,000,000 from Wasatch County open space bond funds and \$1,000,000 from Midway City open space bond funds respectively,

which represents the total funds payable from Midway and the County, the sum of which shall be paid no later than December 15, 2024, or if through mutual written agreement a date agreed to by Buyers and Seller, and shall be considered part or potentially the total of the purchase price of the Conservation Easement. Buyers and Seller agree that the effective date of the recording of the Conservation Easement shall be conditioned upon the following (a) the good faith effort of UOL to obtain additional funding for the Purchase Price within a period of 36 months from the effective date of this agreement, or (b) a determination by the U.S. Natural Resources Conservation Service regarding subsequent application(s) for funding, whichever is shorter. In addition to providing the 40 Midway Irrigation water shares associated with the agricultural operation of the Property as part of the Conservation Easement, Seller shall encumber an additional 10 water shares to the City and County, in the form of a Trust deed such that the Trust Deed secures the Obligated Funds against the Fuller Litigation or Fuller First Right of Refusal affecting the transfer of good title to the Conservation Easement and as a guarantee for the public funds provided to Lundin Farm LLC. During the Purchase Period, all 50 Midway Irrigation shares (40 to be encumbered in the Conservation Easement plus 10 additional security shares) shall be security for Midway and the County's respective contributions pending recordation of the Conservation Easement and shall not be used as security for any other funding sources other than the Obligated Funds. In the event that additional funding from sources other than the Obligated Funds cannot be obtained within 36 months from the effective date of this agreement, Seller may elect to either (a) repay the Obligated Funds, including interest at the respective bond rates, within 180 days, in which case Buyers shall destroy all copies of the Conservation Easement and release any Deed of Trust under Section 5.7, or (b) accept the \$3,000,000 as the entire consideration for the Conservation Easement and its associated 40 Midway Irrigation water shares for agricultural operation on the 119 acres described as and depicted on a map and associated legal description in Exhibit A and the Buyers shall release the additional 10 shares of water and Deed of Trust described under Section 5.7.

- 5.7 Should the Fuller Litigation or Fuller First Right of Refusal cause the Conservation Easement to become void or otherwise adversely affect the transfer of good title when Buyers seek to record the Conservation Easement, Seller

shall have 180 days from any final court ruling finding the Conservation Easement to be void or from the date Buyers may first record the Conservation Easement to repay the Obligated Funds to Midway and the County. Seller shall repay the Obligated Funds, including interest at the respective bond rates, in which case Midway and the County shall destroy all copies of the Conservation Easement and release any Deed of Trust under this Section. To secure repayment, Midway and the County shall be entitled to record a Deed of Trust upon the Property in the form set forth in Exhibit E. Should Seller fail to repay the Obligated Funds to Buyers within 180 days, Midway and the County shall be entitled to foreclose the Deed of Trust to obtain repayment of the Obligated Funds, together with interest at the respective bond rates. Alternatively, once Midway and the County record the Conservation Easement with good title to transfer, Midway and the County shall release the Deed of Trust. Seller and Buyers recognize the time periods and deadlines set forth in Sections 5.6 and 5.7 may be affected by the actions of third parties not within their control and will consider reasonable extensions as necessary on a case-by-case basis.

- 5.8 Seller and Buyers have agreed as part of the Conservation Easement to establish an emergency access and wildfire evacuation route associated with an agricultural farm access across the Property for the benefit of adjacent subdivisions. As defined within the terms of the Conservation Easement, this emergency access and wildfire evacuation route shall provide an emergency access wildfire evacuation route serving Swiss Alpine Road at least as far west as Olympic Way and ideally provide access to Lime Canyon Road. The surface shall remain pervious to the soil while supporting emergency vehicles, shall not unreasonably impair cultivation of crops, and shall have a width of 20 feet unless engineering and fire officials and standards approve less in limited areas. The access will follow one of the following routes:
  - a. Seller has expressed a preference for the Route to access the Lundin property from the South near the Sunburst Phase 3 development(\*) and follow the Probst Ditch northward to the northern boundary of the Property, continue northward along the Probst Ditch on property owned by Swiss Oaks, and exit Swiss Oaks to Lime Canyon Road across Swiss Oaks or other property to the North of the Property, which route (hereinafter the "Seller's Preferred Route" as further described in Exhibit " F ") requires easements across property not owned or controlled by the Seller.

- b. Recognizing this, Seller has proposed an alternative route in the event the Seller's Preferred Route is not feasible. Such alternative route (hereinafter "Seller's Default Northern Route" as further described in Exhibit "F") would follow the same route as Seller's Preferred Route until it reached at or about the intersection of the Probst Ditch with the northern boundary of the Property, at which point it would run generally eastward along the Northern boundary of the Property from the Probst Ditch to the West Bench Ditch to Lime Canyon Road, the grade of which route will likely involve switchback(s). The parties agree in good faith to continue working with landowners to the north and south of the Property to effectuate Seller's Preferred Route. Seller's Default Northern Route shall be the default option in the event that easements along the Probst Ditch and exiting to Lime Canyon Road through properties north and/or south of the Property cannot be accommodated through agreement(s) or other regulatory means. (\*)

(\*) The parties agree that the preferred southern access to both Seller's Preferred Route and Seller's Northern Default Route would access the Property from the South near the Sunburst Phase 3 development, however the parties recognize that this would involve easements from other landowners not controlled by Seller, which have not been granted. However, there is currently southern access to the Property along the northern bend of Lucerne Drive. Seller agrees to provide access across the Property from either southern access (Sunburst Phase 3 (Preferred) and/or Lucerne Drive (Default)), understanding that it may take time to determine if access is feasible through Sunburst Phase 3. The parties will work in good faith to obtain access through Sunburst Phase 3, but until or unless such access is acquired on terms acceptable to the parties, will continue to accommodate access from Lucerne Drive.

The parties shall work together cooperatively to identify, determine, and pursue solutions that could provide for the Preferred Northern Route and preferred southern access which comply with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded. If not, the parties will work in good faith to proceed with the default northern route which complies with applicable laws and regulations, budget and engineering constraints, and required easements prior to a conservation easement being recorded.

Once the access route is identified and finalized, the particulars shall be specified in the conservation easement for recordation.

- 5.9 Seller and Buyers have agreed, as part of the Conservation Easement, that a trail and firebreak across the Property shall permit access by the public for trail use across the property provided fencing necessary to keep livestock separate from public use is installed, which is not Seller's obligation. This fencing shall not be game proof fencing. The trail shall be soft surface.

Seller has expressed preference for a western route along the Probst Ditch, and the parties agree that a higher trail on the western side, particularly with interconnectivity to Lime Canyon Road and the State Park, is desirable. Seller and UOL have identified multiple options as potential trail sites which may be acceptable to the City and County if required easements could be obtained and budgetary and engineering constraints met. Since timing of a trail is not as essential as that of emergency access, the parties will continue to collaborate in good faith on a trail location acceptable to the parties, which shall be specified in the recorded Conservation Easement.

6. Taxes, Assessments and Charges. Taxes, assessments and charges levied and assessed against the Property prior to and after the Closing shall be the obligation of the Seller.

7. Right of Entry. After the execution of this Agreement and until the Closing, Buyers shall have right of access to the Property for purposes of conducting any final due diligence, to perform engineering assessment necessary to determine feasibility of access routes, and to assure that the physical condition of the Property remains unchanged prior to the Closing. After the Conservation Easement is recorded, the Buyers shall have reasonable access for construction and maintenance of any access road, trail, and any appurtenance fencing or other requirements.

8. Default. If Seller defaults under any provision of this Agreement, Buyers shall be entitled to a refund of all money deposited pursuant to the Agreement and/or paid toward the Conservation Easement. If Buyers default under any provision of this Agreement, Seller will be entitled to void the Agreement.

9. Exclusive Remedy. Buyers and Seller hereby mutually agree that the foregoing remedies for default, as defined in prior paragraph, shall be and constitute their exclusive remedy for a breach of this Agreement. Buyers and Seller hereby further expressly agree to forego any and all litigation or other action in the event of a breach of this Agreement.

10. Costs and Fees. Seller shall pay recording fees attributable to any curative title documentation. UOL shall be responsible for the recording costs of the Conservation Easement Deed. The cost of the owners' policy of title insurance and updated preliminary title insurance commitment, as set forth in Section 4, shall be borne by the Seller and paid at Closing. UOL shall be responsible for the closing fee, exclusive of title insurance of the closing agent and the recordation costs associated with recording the conservation easement.

11. Governing Law. This agreement shall be construed according to the laws of the State of Utah.

12. Modification or Alteration. No modifications, alterations, extensions or renewals of this Agreement shall be valid unless evidenced by writing, signed by the parties hereto, and acknowledged. This Agreement supersedes any and all other previous agreements or memorandums of understanding or letters of intent.

13. Time of the Essence. Time is hereby expressly made of the essence of this Purchase Agreement.

14. Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A: Legal Description and Map of the Property

Exhibit B: Commitment for Title Insurance

Exhibit C: Water Rights Associated with the agricultural operation of the Property

Exhibit D: Conservation Easement Agreement

Exhibit E: Deed of Trust

Exhibit F: Proposed Routes for Access Road/Trail

15. Benefit and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Seller and shall inure to the benefit of and be binding upon the Buyers' successors and assigns.

16. Assignment. This Agreement may not be assigned, in whole or in part, by either Seller or Buyer, without the express written approval of such assignment by the non-assigning party to this Agreement.

17. Termination. This Agreement shall terminate at the expiration of the Purchase Period, or as set forth in this document.

18. Notices. Any notice required to be given hereunder, shall be in writing and completed when delivered by expedited delivery service or when deposited in the United States mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the



other party at the following addresses (each party is responsible for advising the other in writing of changes of address):

To Buyers: Utah Open Lands Conservation Association  
1488 South Main Street  
Salt Lake City, UT. 84115

City of Midway  
Celeste Johnson, Mayor  
75 N 100 W  
P.O. Box 277  
Midway, Utah 84049

Wasatch County  
Dustin Grabau, County Manager  
25 North Main  
Heber City, Utah 8403

To Seller: Nora Lundin  
c/o Brandon J Mark  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111

19. Execution and Counterparts. This Agreement or facsimile thereof may be executed in counterparts, each of which shall have the force of the original and all of which together shall constitute one and the same Agreement.

20. Miscellaneous. If any provision of this Agreement is held invalid, the other provisions herein shall not be affected thereby. This Agreement represents the entire Agreement of the parties and may not be amended except by in writing signed by each party hereto.

21. Authority. Buyers warrant that Buyers and their respective signatories hereon have the full right and authority to enter into and consummate this Agreement and all related documents. Seller warrants that it is duly vested with fee title to the Property; and further that it is the owner of the property and referenced water shares and authorized to enter into and consummate this agreement.

22. Charitable Contribution. To the extent the appraised value of the Property, as rendered by a qualified third-party appraiser retained by Seller, exceeds the Purchase Price,

Seller and Buyers acknowledge the Excess amount may be claimed as a charitable contribution for the purpose of open space, and the parties shall regard the transaction contemplated by this Agreement as part sale, part charitable gift.

IN WITNESS WHEREOF, of the parties have duly executed this Agreement the day and year written below, but effective as of the date and year first written above.

Date: \_\_\_\_\_

Utah Open Lands Conservation Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

City of Midway

By: \_\_\_\_\_

Name: Celeste Johnson, Mayor

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Wasatch County

By: \_\_\_\_\_

Name:

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Lundin Farms LLC

By: \_\_\_\_\_

Name:

\_\_\_\_\_

Its:

\_\_\_\_\_

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Exhibit A – Legal Description and Property Map

Exhibit B – Commitment for Title Insurance

## Exhibit C – Water Rights

Exhibit D – Conservation Easement

Exhibit E – Deed of Trust