

Midway City Council
2 March 2021
Regular Meeting

Resolution 2021-02 /
Homestead Master Plan
Amendment



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: March 2, 2021

NAME OF PROJECT: The Homestead Resort

NAME OF APPLICANT: The Homestead Group, LLC

AUTHORIZED REPRESENTATIVE: Scott Jones

AGENDA ITEM: Amendment to The Homestead Master Plan Amendment

LOCATION OF ITEM: 700 North Homestead Drive

ZONING DESIGNATION: RZ

ITEM: 5

Scott Jones, agent for The Homestead Group LLC, is proposing is proposing to amend the Homestead Master Plan Amendment that was approved by the City Council on September 1, 2020. The proposed amendment includes the revised and additional language in the agreement, addition of an Ice Cream Shop along with updated and revised exhibits. The master plan is 72.01 acres and contains 64.26 acres of open space. The property located at 700 North Homestead Drive and is in the Resort Zone (RZ).

BACKGROUND:

The Homestead Group, LLC is proposing an amendment to the approved, but not recorded, master plan amendment which was approved by the City Council on September 1, 2020. There are several reasons for the amendment, some driven by The Homestead and some by staff. Staff has found, through review of the document, that there are items

that need to be better defined and the processes that need to be followed need to be better described. Corbin wrote the following regarding the proposed changes:

- 1. The original Master Plan was poorly written and did not include a process to deal with expansion of existing buildings or addition of new buildings.*
- 2. It approves "up to" 367,750 square feet with no process on how to deal with potential changes along the way.*
- 3. As we discussed this issue with Paul Berg, he pointed out that even some of the alterations approved to existing buildings may alter water and parking calculations.*
- 4. We agreed that we needed to put in place a process to address these issues.*
- 5. The redlines create a process where the City Planner and City Engineer will address potential parking and water issues at the time building permits are pulled on existing buildings.*
- 6. Further, for new buildings, the Developer will have to apply and go through preliminary and final approval, similar to a phase in a subdivision.*
- 7. Finally, the City Planner and City Engineer can raise issues with parking AT ANY TIME even if the Developer is not seeking to alter anything. The process states that if the Developer disagrees with the City Planner's determination on parking it can appeal the decision to the City Council.*

I feel the process outlined clarifies areas in the Master Plan that were too loose, and assures the City has on-going jurisdiction to require additional parking if problems arise in the future. I ask that you read the redlines closely and let me know of any thoughts or suggestions before next Wednesday so I can get the changes into the agreement prior to our next Council meeting.

The proposed amendments are the following:

- Updates involving building permits to renovate existing structures.
 - Issues regarding water, parking, and architectural review will be handled with the building permit for any buildings proposed for renovation.
- The Milk House building will be converted into an ice cream shop.
 - This will not reduce the number of hotel rooms allowed per the agreement.
 - Water rights dedication requirements have been updated in Exhibit G.
 - Parking has also been addressed in Exhibit J.
- When parking lots and existing roads need to be upgraded will be determined during the building permit approval process.

- The addition of new building or expansion of existing facilities is also addressed in the proposed amendment.
- Future parking problems that may occur is also addressed and gives the City the right to require more parking in the future if needed.
 - Staff is recommending that any potential future parking area sites are identified and a map identifying them is included in the master plan.
- Exhibit C has been revised to clearly define the resort area and designate permanent open space in the resort core. The open space will be delineated on the plat.
- Exhibit H has been revised to clearly state the required and permanent open space outside the resort core. The open space will be delineated on the plat.
- Exhibit G: Resort Master Plan Parking Calculations has a minor modification addressing the conversion of the Milk House to an Ice Cream Parlor.

The applicant has asked for combined parking approval by the City Council for the proposed plan. This item has been discussed by the City Council in a previous meeting and it was planned that parking would be addressed during the preliminary approval stage of each phase. Since then, Exhibit J has been added to the Amended Master Plan Agreement which proposes that the required parking stalls are reduced based on combined uses and nationally recognized studies for resort development. The City Council must specifically approve and proposals to combine parking. Section 16.13.39 (D) states the following:

D. Combined Parking Areas. The required off-street parking and loading facilities may be provided collectively for two (2) or more buildings or uses, provided that the total number of parking spaces shall not be less than the sum of the requirements for each of the individual uses. Nevertheless, if the applicant can show, by using recognized studies a lower parking requirement or parking need based on noncurrent use, the City Council may reduce the amount of parking. If any modification is proposed to the approval, then the combined parking will be reassessed, and additional parking may be required based on the proposed change or use.

Exhibit J (please see attached) contains the parking requirement and the proposal to decrease the parking stall requirement based on combined parking, peak day factor, peak hour factor, and hotel factor. The basis for reducing the parking is based on the principle that if guests visit the resort, many of them will be eating at restaurants on-site, attending conferences on-site, golfing, and using other amenities, such as the swimming pools, so the number of parking stalls can be reduced. The peak day factor and peak hour factor

also reduce parking based on the principle that peak parking demand for different uses do not occur at the same time or same day so parking can be reduced.

Staff has reviewed the proposal and agrees with the general idea of combined parking and reducing the number of stalls required on site, though, staff does not agree with the reduction of stalls in three categories which include Estate Homes, Existing Guest Rooms, and New Guest Rooms. The proposal reduces the required stalls for these uses by approximately 20%. Staff recommends that the required number of stalls should remain at 100% for these uses and not the reduced number as shown below under proposed stalls.

	<u>Required stalls</u>	<u>Proposed stalls</u>
Estate Homes	10	8
Existing Guest Rooms	125	100
New Guest Rooms	49	39

If proposed stalls are not approved and the required stalls is the still required, the development will still have the required amount of parking stalls (assuming all other combined parking is approved by the City Council). The parking in the master plan proposal is 428 stalls. If the proposed combined parking plan is approved, then 387 stalls would be required which will leave 41 extra stalls. If staff's recommendation is required, then the number of required stalls would increase by 37 to 424. This would still exceed the number of required stalls by four stalls. Ultimately, the City Council will need to decide if they will allow combined parking and by what amount. If future parking problems are identified, then parking may be required to address a lack of parking giving the City some flexibility to adjust to future issues.

POSSIBLE FINDINGS:

- The proposed amendments clarify items that have been discovered since the agreement was approved in September of last year.
- Parking and water rights have been considered and adjusted for the addition of the Milk House building being converted to an ice cream shop.
- A provision has been added that will allow the City to require construction of more parking if parking issues occur.

ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council finds the proposal is in the best interest of the City.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s) if needed
2. Continuance. This action can be taken if the City Council finds that 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 in the best interest of the City.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

**SECOND AMENDMENT
TO THE
HOMESTEAD RENOVATION AND EXPANSION
MASTER PLAN DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO THE HOMESTEAD RENOVATION AND EXPANSION MASTER PLAN DEVELOPMENT AGREEMENT (the "**Second Amendment**") is entered into effective as of the ____ day of _____, 2020 (the "**Second Amendment Effective Date**"), by and between THE HOMESTEAD GROUP, LLC, a Utah limited liability company ("**Developer**"), and CITY OF MIDWAY, a political subdivision of the State of Utah ("**City**").

RECITALS

A. City and Developer, as assignee of Legacy Resorts, LLC, assignee of The Homestead, Inc., entered into that certain Homestead Renovation and Expansion Master Plan Development Agreement dated September 18, 2008, recorded October 3, 2008, as Entry No. 340720, in Book 975, at Pages 2–43 in the office of the Wasatch County Recorder, as amended by First Amendment to the Homestead Renovation and Expansion Master Plan Development Agreement dated November 10, 2010, recorded December 6, 2010, as Entry No. 365137, in Book 1026, at Pages 1944–1954 in the office of the Wasatch County Recorder (collectively, the "**Development Agreement**").

B. The Development Agreement affects certain real property located in Wasatch County, Utah, as more fully described on Exhibit A attached hereto and incorporated herein by reference (the "**Property**").

C. The Development Agreement further concerns a proposed renovation and expansion of the Homestead Resort located on the Property (the "**Project**").

D. Developer has requested that certain provisions of the Development Agreement be amended.

E. After applicable public hearing, City has agreed to amend the Development Agreement as set forth herein.

AMENDMENTS

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer agree to amend the Development Agreement as follows:

1. **Recitals; Defined Terms.** The recitals above are hereby incorporated herein by this reference as if fully set forth in this paragraph. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement.

2. **Term.** City and Developer agree that City shall have no right to terminate the Agreement as otherwise provided for in the first sentence of Section 1.2 of the Agreement as long as Developer applies for a building permit or files any other application for preliminary approval within five (5) years of the Second Amendment Effective Date.

3. **Conditions to Current Approvals.** Section 3.1(b) of the Development Agreement is amended as follows:

a. **The Homestead Mound.** Subsection (3)d.iii.c. is amended to add the following at the end of this subsection: "It is agreed that the top of the Mound may be beautified with plant boxes, benches, etc., but no permanent structure shall be allowed on the top of the Mound (excepting the existing bridge and cover over the hole). The Parties acknowledge that the top of the Mound is uneven, and agree that sand and pavers shall be installed to make the area safe to walk, with the caveat that the pot rock is not to be damaged or altered in any way during the installation of the pavers."

b. **Water.** Section 3.1(b)(4) is amended to add the following after the last sentence in the paragraph:

If, in the future, Developer and/or its successors and assigns proposes to use M&I water shares to cover its water requirements under this Agreement, Developer and/or its successors and assigns shall be required to enter into an agreement acknowledging that M&I water requires a lease payment on an annual basis that will continue into perpetuity, and that even though these shares shall be dedicated to the City, the on-going liability of the lease amounts will be billed to Developer and/or its successors and assigns, who shall have the obligations to pay the lease payments on the M&I water as they come due.

c. **Trails.** Section 3.1(b)(5)iii. is replaced in its entirety with the following:

iii. **Trails.** On or before October 31, 2021, Developer agrees to construct, at its own expense, an eight (8) foot wide trail and provide the necessary trail easement along Homestead Drive as depicted in the Master Site Plan; provided, however, a portion of said trail will be installed and maintained by the City in accordance with the "Quitclaim Deed" attached as Exhibit F (see Exhibit F for the legal description of that portion of the trail to be installed and maintained by the City). In furtherance of the City's Trails Master Plan, Developer also agrees to contribute to the City Fifty Thousand and No/100 Dollars (\$50,000.00) to be used by the City to construct and install an offsite public trail that will connect the City's existing trails located along 200 North and Homestead Drive. Developer will pay said amount to the City within sixty (60) days after notice from the City of its intended start date of construction of this offsite public trail.

d. **Resort Operator.** The first sentence of Subsection (7) is amended to replace, "The Homestead" with "Developer" as the current Resort Operator.

e. **Building Height.** Subsection (8) is amended to include the follow additional subsection (8)c:

c. Developer shall be allowed to build one building that is 40' feet tall, measured from natural grade, within 500' feet of Homestead Drive. This building shall be known as the "Wedding Barn" and shall have a setback of approximately 150' from the right-of-way line from Homestead Drive. The City Council and the VAC have reviewed this issue and agree that the 40' height is acceptable based on the following: the distance from Homestead Drive, elevation drop from Homestead Drive to the location of

the Wedding Barn, and that the location of the Wedding Barn does not greatly impact views of the Mound from Homestead Drive. Based on the foregoing, City shall permit construction of the Wedding Barn but shall also require that the Wedding Barn be taken through preliminary and final approval.

f. Project Plans. The Projects Plans set forth in Subsection (9) that were originally attached to and incorporated in the Development Agreement as Exhibits are amended with the following Exhibits that are attached to this Second Amendment and which replace in their entirety those corresponding Exhibits of the Development Agreement:

- a. Exhibit A – Legal Description of the Property
- b. Exhibit B – Resort Master Plans, Consisting of Sheet Numbers:
 - (0) Vicinity Map
 - (1) Master Site Plan
 - (2) Existing Conditions/Sensitive Lands Map
 - (3) Land Use Plan
 - (4) Golf Course Cottages
- c. Exhibit C – Resort Core Designations
- d. Exhibit D – Copy of Kantons Easement
- e. Exhibit E – Existing Infrastructure of the Mound
- f. Exhibit F – Quitclaim Deed (for portion of trail along Homestead Drive)
- g. Exhibit G – Water Rights
- h. Exhibit H – Open Space Designation
- i. Exhibit I – Operations Plan for Resort (as long as the Resort is owned by one owner this shall not be required but if multiple owners own the Resort in the future, Developer shall comply with Section 3.1(b)(7) of the Development Agreement)
- j. Exhibit J – Parking Plan (showing running total required for parking in each phase, demonstrating parking based on square footage which complies with the 2006 Code, and a disclosure that applicant understands that should any additional density be requested in the future (i.e. additional square footage) additional parking shall be required as well)

Developer and City agree that Developer shall also submit the following Project Plans with each phase: (1) a Lighting Plan, demonstrating dark sky compliance, with fixtures that accomplish a full cut off of sky glare; and (2) a construction mitigation plan.

g. Access. The following provision shall be added to Section 3.1 as a new subsection (13):

(13) *Access*: Each phase of the Project must meet the access requirements. The Project has four points of access that will be built to City standards, two from Homestead Drive, one from The Kantons (existing) and one from The Links (existing). The access from The Links is governed by that certain Declaration of Grant and Easement dated December 29, 2005, and recorded on January 11, 2006, as Entry No. 295086, in Book 821, at Pages 117–128, as amended that certain Amendment to Declaration and Grant of Easement dated July 23, 2007, and recorded July 27, 2007, as Entry No. 323813, in Book 946, at Pages 526–533, which documents provide legal access for five (5) lots through the streets and roads in The Links subdivision. The proposed master plan has five (5) single family homes accessing through The Links subdivision. There is another access to Pine

Canyon Road that will be a maintenance road. There is also an emergency access that is in the southwest area of the proposed plan that exits onto Homestead Drive. This access may also be used to connect to the Homestead Trail for guests of the resort. One proposed change from the 2008 plan is to move the south entrance from Homestead Drive farther to the south by 300'. The 2008 plan shows the entrance aligning with Bigler Lane, but the new entrance would create a new intersection. Developer feels that this change will create a better entry to the Resort and will help save trees on the Property.

h. Traffic Study. The following provision shall be added to Section 3.1 as a new subsection (14):

(14) ***Traffic Study***: Developer shall submit a traffic study as part of its application for preliminary approval. The traffic study shall take into account the maximum number of rooms, and the maximum amount of square footage allowed under this Development Agreement, and not just the traffic created by the present proposal.

i. Public Participation Meeting. The following provision shall be added to Section 3.1 as a new subsection (15):

(15) ***Public Participation Meeting***: Developer held a public participation meeting in May 2020, as required by the ordinance for master plan applications. This requirement was to give Developer an opportunity to present the development to the surrounding residents of the proposed development, which has been complied with.

j. Southern Parking Lot: The following provision shall be added to Section 3.1 as a new subsection (17):

(17) ***Light Mitigation***: The Parties recognize the potential for headlights from the southern parking lot in the Resort to shine into the homes at The Links. Developer agrees, through preliminary and final approval, to mitigate this potential impact through a combination of a berm, landscaping, and a non-sight obtrusive fence that is agreeable to the City. All costs of mitigation shall be borne by the Developer.

4. Obligations of the City. Section 3.2 of the Development Agreement is amended to add the following two additional subsections:

(d) ~~***Building Permits***~~ ~~Based upon the current plans for the Project submitted to the City by Developer –~~ ***Renovations of Existing Buildings***. ~~As renovations of existing buildings that do not change the size of the existing facility or the nature of use of the existing facility,~~ the City approves Developer applying for building permits for the following improvements within the Project without the need to submit any additional preliminary and/or final plat documents:

- (1) Guest room renovations.
- (2) Main lobby and current meeting room building improvements

(e) ~~***Building Permits – Alteration of Use or Expansion of Existing Facilities***~~. ~~The parties recognize that the following alterations expand the size of the facility or alter the~~

nature of the use of the facility, and as such, will need to be analyzed at the time each building permit is pulled to address issues regarding water, parking, and architectural review. The parties agree that these issues will be addressed in the building permit process, and that the Developer will not be required to submit any additional preliminary and/or final plat documents to obtain the issuance of a building permit for the renovations/alterations below, but will be required to submit documentation acceptable to the City Planner and City Engineer regarding water, parking, and architectural review:

- ~~(3)~~(1) Golf course clubhouse and cart barn improvements.
- ~~(4)~~(2) Indoor and outdoor swimming pools and activities center improvements and/or replacements.
- ~~(5)~~(3) Indoor and outdoor swimming pools and activities center improvements and/or replacements.
- ~~(6)~~(4) Poolside grill.
- ~~(7)~~(5) Relocation of existing back-of-house operations to current cart barn.
- ~~(8)~~(6) Conversion of current golf maintenance building to a spa building.
- ~~(7)~~ Conversion of the Milk House building into an ice cream shop

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The Parties agree that any building permits that involve/require altering the existing parking lots or existing roads within the Resort Core to what is shown on the Master Plan will require site plan approval from the City Planner and City Engineer before the alterations may proceed.

(f) *Addition of New Buildings or Expansion of Existing Facilities not included in subparagraph (d) and (e).* Developer has the right to build up to 367,750 square feet of building footprint, which may involve expanding the footprint of existing buildings or proposing additional buildings within the Resort Core. Any square footage proposed above that currently shown in the approved Master Plan will be addressed through preliminary and final approval of each phase of the Development, and will not require amendment to the Master Plan. The Parties agree that required parking beyond that currently shown in the Master Plan may be considered and required during preliminary and final approval of the additional square footage in order to meet parking needs created by the expanded use. Request for additional square footage shall require recalculation of water needs, parking, demonstration of conformity with existing zoning code and set-backs, and be subject to architectural review.

5. **Notices.** Section 11 of the Development Agreement is amended to replace the notice information for each party with the following:

If to City:

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

If to Developer:

The Homestead Group, LLC
Attn: Scott Jones
2696 N. University Ave., Ste. 210
Provo, UT 84604

With copy to:

Gordon Law Group, P.C.
c/o Corbin Gordon
Midway City Attorneys

With copy to:

Kirton McConkie, P.C.
Attn: Bryce K. Dalton
50 East South Temple, Suite 400

345 West 600 South, Suite 108
Heber City, UT 84032

Salt Lake City, UT 84111

6. **Confirmation.** Except as amended and revised by this Second Amendment, all terms and conditions in the Development Agreement remain unchanged and in full force and effect. In the event of any conflict between the terms of this Second Amendment and the Development Agreement, this Second Amendment shall control. This Second Amendment may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, City and Developer have executed this Second Amendment as of the Second Amendment Effective Date.

[Signatures and Acknowledgments Follow]

DEVELOPER:

THE HOMESTEAD GROUP, LLC,
a Utah limited liability company

By: _____
Name: Scott Jones
Its: Manager

STATE OF UTAH)
 ss
COUNTY OF _____)

On this _____ day of _____, 2020, before me personally appeared Scott Jones, personally known to me or whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed the foregoing document, as the Manager of THE HOMESTEAD GROUP, LLC, a Utah limited liability company.

Notary Public

CITY:

CITY OF MIDWAY,
a political subdivision of the State of Utah

By: _____
Name: Celeste Johnson
Its: Mayor

ATTEST:

By: _____
Brad Wilson, City Recorder

STATE OF UTAH)
 ss
COUNTY OF WASATCH)

On this _____ day of _____, 2020, before me personally appeared Celeste Johnson and Brad Wilson, personally known to me or whose identities were proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to this document, and who acknowledged that they signed the foregoing document as Mayor and City Recorder, respectively, of CITY OF MIDWAY, a political subdivision of the State of Utah.

Notary Public

[ATTACH EXHIBITS]



RESOLUTION 2021-02

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING A SECOND AMENDMENT TO THE HOMESTEAD RENOVATION AND EXPANSION MASTER PLAN DEVELOPMENT AGREEMENT

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

WHEREAS, the City Council deems it appropriate to adopt a second amendment to the Homestead Renovation and Expansion Master Plan Development Agreement.

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

Section 1: The attached Second Amendment to the Renovation and Expansion Master Plan Development Agreement for the Homestead Resort is hereby approved and adopted.

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

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

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

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D. Developer has requested that certain provisions of the Development Agreement be amended.

E. After applicable public hearing, City has agreed to amend the Development Agreement as set forth herein.

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c. **Trails.** Section 3.1(b)(5)iii. is replaced in its entirety with the following:

iii. **Trails.** On or before October 31, 2021, Developer agrees to construct, at its own expense, an eight (8) foot wide trail and provide the necessary trail easement along Homestead Drive as depicted in the Master Site Plan; provided, however, a portion of said trail will be installed and maintained by the City in accordance with the “Quitclaim Deed” attached as Exhibit F (see Exhibit F for the legal description of that portion of the trail to be installed and maintained by the City). In furtherance of the City’s Trails Master Plan, Developer also agrees to contribute to the City Fifty Thousand and No/100 Dollars (\$50,000.00) to be used by the City to construct and install an offsite public trail that will connect the City’s existing trails located along 200 North and Homestead Drive. Developer will pay said amount to the City within sixty (60) days after notice from the City of its intended start date of construction of this offsite public trail.

d. **Resort Operator.** The first sentence of Subsection (7) is amended to replace, “The Homestead” with “Developer” as the current Resort Operator.

e. **Building Height.** Subsection (8) is amended to include the follow additional subsection (8)c:

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the Wedding Barn, and that the location of the Wedding Barn does not greatly impact views of the Mound from Homestead Drive. Based on the foregoing, City shall permit construction of the Wedding Barn but shall also require that the Wedding Barn be taken through preliminary and final approval.

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(13): g. Access. The following provision shall be added to Section 3.1 as a new subsection

(13) **Access**: Each phase of the Project must meet the access requirements. The Project has four points of access that will be built to City standards, two from Homestead Drive, one from The Kantons (existing) and one from The Links (existing). The access from The Links is governed by that certain Declaration of Grant and Easement dated December 29, 2005, and recorded on January 11, 2006, as Entry No. 295086, in Book 821, at Pages 117–128, as amended that certain Amendment to Declaration and Grant of Easement dated July 23, 2007, and recorded July 27, 2007, as Entry No. 323813, in Book 946, at Pages 526–533, which documents provide legal access for five (5) lots through the streets and roads in The Links subdivision. The proposed master plan has five (5) single family homes accessing through The Links subdivision. There is another access to Pine

Canyon Road that will be a maintenance road. There is also an emergency access that is in the southwest area of the proposed plan that exits onto Homestead Drive. This access may also be used to connect to the Homestead Trail for guests of the resort. One proposed change from the 2008 plan is to move the south entrance from Homestead Drive farther to the south by 300'. The 2008 plan shows the entrance aligning with Bigler Lane, but the new entrance would create a new intersection. Developer feels that this change will create a better entry to the Resort and will help save trees on the Property.

h. Traffic Study. The following provision shall be added to Section 3.1 as a new subsection (14):

(14) ***Traffic Study***: Developer shall submit a traffic study as part of its application for preliminary approval. The traffic study shall take into account the maximum number of rooms, and the maximum amount of square footage allowed under this Development Agreement, and not just the traffic created by the present proposal.

i. Public Participation Meeting. The following provision shall be added to Section 3.1 as a new subsection (15):

(15) ***Public Participation Meeting***: Developer held a public participation meeting in May 2020, as required by the ordinance for master plan applications. This requirement was to give Developer an opportunity to present the development to the surrounding residents of the proposed development, which has been complied with.

j. Southern Parking Lot: The following provision shall be added to Section 3.1 as a new subsection (17):

(17) ***Light Mitigation***: The Parties recognize the potential for headlights from the southern parking lot in the Resort to shine into the homes at The Links. Developer agrees, through preliminary and final approval, to mitigate this potential impact through a combination of a berm, landscaping, and a non-sight obtrusive fence that is agreeable to the City. All costs of mitigation shall be borne by the Developer.

4. **Obligations of the City**. Section 3.2 of the Development Agreement is amended to add the following four additional subsections:

(d) **Building Permits – Renovations of Existing Buildings**. As renovations of existing buildings that do not change the size of the existing facility or the nature of use of the existing facility, the City approves Developer applying for building permits for the following improvements within the Project without the need to submit any additional preliminary and/or final plat documents:

- (1) Guest room renovations.
- (2) Main lobby and current meeting room building improvements

(e) **Building Permits – Alteration of Use or Expansion of Existing Facilities**. The parties recognize that the following alterations expand the size of the facility or alter the nature of the use of the facility, and as such, will need to be analyzed at the time each

building permit is pulled to address issues regarding water, parking, and architectural review. The parties agree that these issues will be addressed in the building permit process, and that the Developer will not be required to submit any additional preliminary and/or final plat documents to obtain the issuance of a building permit for the renovations/alterations below, but will be required to submit documentation acceptable to the City Planner and City Engineer regarding water, parking, and architectural review:

- (1) Golf course clubhouse and cart barn improvements.
- (2) Indoor and outdoor swimming pools and activities center improvements and/or replacements.
- (3) Indoor and outdoor swimming pools and activities center improvements and/or replacements.
- (4) Poolside grill.
- (5) Relocation of existing back-of-house operations to current cart barn.
- (6) Conversion of current golf maintenance building to a spa building.
- (7) Conversion of the Milk House building into an ice cream shop

The Parties agree that any building permits that involve/require altering the existing parking lots or existing roads within the Resort Core to what is shown on the Master Plan will require site plan approval from the City Planner and City Engineer before the alterations may proceed.

(f) **Parking:** The Parties acknowledge that there has been an agreement to reduce required parking from approximately 900 stalls to 428 stalls. The Parties agree that if, at any time, the reduced number of stalls creates parking problems either within the Resort Core or to surrounding areas, the City, through the City Planner and City Engineer can require additional parking to be installed within the Resort Core. The Parties agree that should the Developer disagree with the requirements of City Staff, it can appeal Staff's decision to the City Council.

(g) **Addition of New Buildings or Expansion of Existing Facilities not included in subparagraph (d) and (e).** Developer has the right to build up to 367,750 square feet of building footprint, which may involve expanding the footprint of existing buildings or proposing additional buildings within the Resort Core. Any square footage proposed above that currently shown in the approved Master Plan will be addressed through preliminary and final approval of each phase of the Development and will not require amendment to the Master Plan. The Parties agree that required parking beyond that currently shown in the Master Plan may be considered and required during preliminary and final approval of the additional square footage in order to meet parking needs created by the expanded use. Request for additional square footage shall require recalculation of water needs, parking, demonstration of conformity with existing zoning code and set-backs, and be subject to architectural review.

5. **Notices.** Section 11 of the Development Agreement is amended to replace the notice information for each party with the following:

If to City:

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

If to Developer:

The Homestead Group, LLC
Attn: Scott Jones
2696 N. University Ave., Ste. 210
Provo, UT 84604

With copy to:

Gordon Law Group, P.C.
c/o Corbin Gordon
Midway City Attorneys
345 West 600 South, Suite 108
Heber City, UT 84032

With copy to:

Kirton McConkie, P.C.
Attn: Bryce K. Dalton
50 East South Temple, Suite 400
Salt Lake City, UT 84111

6. **Confirmation.** Except as amended and revised by this Second Amendment, all terms and conditions in the Development Agreement remain unchanged and in full force and effect. In the event of any conflict between the terms of this Second Amendment and the Development Agreement, this Second Amendment shall control. This Second Amendment may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, City and Developer have executed this Second Amendment as of the Second Amendment Effective Date.

[Signatures and Acknowledgments Follow]

DEVELOPER:

THE HOMESTEAD GROUP, LLC,
a Utah limited liability company

By: _____
Name: Scott Jones
Its: Manager

STATE OF UTAH)
 ss
COUNTY OF _____)

On this _____ day of _____, 2020, before me personally appeared Scott Jones, personally known to me or whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed the foregoing document, as the Manager of THE HOMESTEAD GROUP, LLC, a Utah limited liability company.

Notary Public

CITY:

CITY OF MIDWAY,
a political subdivision of the State of Utah

By: _____
Name: Celeste Johnson
Its: Mayor

ATTEST:

By: _____
Brad Wilson, City Recorder

STATE OF UTAH)
 ss
COUNTY OF WASATCH)

On this _____ day of _____, 2020, before me personally appeared Celeste Johnson and Brad Wilson, personally known to me or whose identities were proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to this document, and who acknowledged that they signed the foregoing document as Mayor and City Recorder, respectively, of CITY OF MIDWAY, a political subdivision of the State of Utah.

Notary Public

[ATTACH EXHIBITS]