

Midway City Council  
4 August 2020  
Regular Meeting

Resolution 2020-25 /  
Homestead Resort  
Master Plan Amendment



**Midway**

**CITY COUNCIL MEETING STAFF REPORT**

**DATE OF MEETING:** August 4, 2020

**NAME OF PROJECT:** Homestead Resort Revitalization

**NAME OF APPLICANT:** The Homestead Group, LLC

**AUTHORIZED REPRESENTATIVE:** Scott Jones

**AGENDA ITEM:** Master Plan Amendment

**LOCATION OF ITEM:** 700 North Homestead Drive

**ZONING DESIGNATION:** RZ

**ITEM: 11**

Scott Jones, agent for The Homestead Group LLC, is proposing is proposing to amend the Homestead Master Plan that was approved in 2008. The proposed amendment includes remodeling of existing hotel rooms, building additional hotel rooms, construction of new facilities that include an event barn, golf clubhouse, golf cart storage barn, golf maintenance building, restaurant with greenhouse, amphitheater, pool grill, spa, renovation and expansion of the main building, animal stable and public trail along Homestead Drive. 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 a Master Plan amendment of The Homestead Resort's master plan which was approved by the City Council on August 27, 2008 (2008

Master Plan). The 2008 Master Plan and its accompanying development agreement included hotels, commercial space, cottages, and amenities. The density of the 2008 Master Plan is 245 units with 453 keys (lockout units.) The proposed amendment includes remodeling of existing hotel rooms, building additional hotel rooms, construction of new facilities that include an event barn, golf clubhouse, golf cart storage barn, golf maintenance building, restaurant with greenhouse, amphitheater, pool grill, spa, renovation and expansion of the main building, animal stable and public trail along Homestead Drive. The developer is proposing to amend the master plan to create a greater variety of lodging options and to create more amenities that will attract more visitors on a year-round basis.

The Homestead is a very important heritage landmark in Midway and many tourists associate the names “Midway” and “Homestead” as one. It is important that the essence of The Homestead is preserved in this proposal as it was in the 2008 Master Plan. The developer has included architecture and activities that have been historically associated with The Homestead in the proposal. The Homestead is also an important economic driver in Midway for both economic activity that has a residual impact on other businesses but also an important tax revenue source for the City which, in turn, helps keep property taxes low which is a benefit to all residents of Midway. Some of the items that should be considered are:

- Enhancement of the Homestead property and surrounding neighborhoods
- Impacts of the proposed concept plan on surrounding neighborhoods.
- Economic development
  - Transient room tax
  - Property tax
  - Sales tax
  - Resort tax
  - Residual economic impact on local businesses
- Public trail development

The 2008 Master Plan is entitled under the July 11, 2006 Midway City land use code and the entitlement is effective until August 27, 2058. The 2008 Master Plan contains a provision under section 5 that allows the master plan agreement to be amended if both the City and the developer mutually agree to amend the agreement. The developer has petitioned the City to amend the agreement which leaves vesting rights under the 2006 Midway City zoning ordinance instead of the current RZ code. The City is under no obligation to amend the agreement and should only do so if the proposed plan is more beneficial to the City than the current entitled/vested plan. Because of the nature of mutually agreeing to amend the agreement by both parties, the City and the developer can negotiate terms of the agreement. Items not listed in the 2006 zoning ordinance may be required by the City if the City deems those items necessary to mitigate impacts of the

development and to promote community benefits. The City has included several requirements that will be explained in this report.

The property is 72.01 acres in size and will be developed in two phases. It is anticipated that one plat will be recorded that will identify required open space and any required public easements. Since the property will not be subdivided, ownership of the resort will be by one entity. The applicant is proposing to expand lodging options and amenities in the two phases. All roads in the development will be private roads (staff recommends that all private roads will have a public access easement that will be noted on the plat). There will be 64.26 acres of open space included in the proposed master plan. There will also be a mix of public and private trails throughout the development.

Sensitive land area located on the property will be left undisturbed as required by the land use ordinance. These sensitive lands include the Crater, which is defined as a major geologic feature, and wetlands.

The Land Use Code requires that a Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without the subsequent phase. All water rights required will be dedicated to the City as required per phase.

#### **LAND USE SUMMARY:**

- 72.01 acres
- 64.26 acres of open space
- Resort Zone (RZ)
- Two phases
- Private roads and storm drain system will be maintained by the property owner
- New improvements will connect to the Midway Sanitation District sewer and to the City's culinary water line.
- An 8' paved public trail is planned to run north and south through the length of the property.
- Sensitive lands on the property include The Crater and wetlands



## ANALYSIS:

*Open Space* – The code requires that with each phase there is enough open space to comply with the 55% requirement of the code. If phase I has 75% open space, then phase II only needs to have 25% open space if both phases are equal in acreage.

*Density* – The RZ does not have a density limit. There are requirements that limit density which include required open space, parking, height restrictions, minimum size of rooms, and setbacks. The density of the 2008 Master Plan is 245 units with 453 keys (lockout units.) The density of the proposed plan will reduce density, which could in turn, reduce tax revenue for the City. The proposed new units for the property are 75 which combined with the existing 125 will create a total of 200 units.

*Building Area* – The 2008 plan approved and required at least 294,200 square feet for building area. There was also a provision that building area could increase up to 367,750 square feet. The proposed plan proposes to reduce building area to 189,724 square feet.

*Access* – Each phase of the subdivision must meet the access requirements. The development 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 has specific restrictions that are described in an access easement (see attached) that limits access for five lots through The Links. The proposed master plan has at least four buildings accessing through The Links that contain eight units each. Staff feels that a new agreement must be reached by The Homestead and The Links for the proposed units that access through The Links to proceed. There is another access to Pine Canyon Road that will be a maintenance road and, possibly, public trail. 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. The developers feel that this change will create a better entry to the resort and will help save trees on the property.

*Traffic Study* – The developer has not yet submitted a traffic study. The City can require a traffic study for master plan approval.

*Public Participation Meeting* – The developers held a public participation meeting in May as required by the ordinance for master plan applications. This requirement is to give the developers an opportunity to present the development to the surrounding residents of the proposed development.

*Sensitive Lands* – The property does contain some wetlands and geologic sensitive lands that cannot be disturbed through the development process. The wetlands will

become part of the open space for the development and will be preserved. If any wetlands are disturbed, approval must first be received from the Army Corp of Engineers. The Crater is defined as a major geologic feature in the sensitive lands ordinance and cannot be developed or disturbed, although the crater has been developed in several ways over the past century. The developer is proposing to make the access to the top of the Crater safer. Currently we do not have a proposed plan on how they would like to accomplish this idea. More information is required for the City to evaluate the proposal further. There is also FEMA floodplain that crosses the property. Any improvements in the floodplain will need US Army Corps of Engineers approval.

*Trails* – The Trails Master Plan contains two trails that cross the property. One is the Homestead Trail and the other is a trail connection from Pine Canyon Road to Homestead Drive. The developer will need to discuss the best option for creating both trails. These trails will help complete the Master Trail plan that will benefit residents and tourists alike.

*Architecture Theme* – The developer is petitioning that all structures in the proposal follow the traditional architectural design of The Homestead and not the Swiss and Old European theme the City has adopted. The developer has explained that he would rather follow the historic and traditional Homestead design of the current structures. The current City code does allow for an exception in Section 16.15.4 (G)(3) which states:

*Building Design Guidelines. Building design guidelines shall reflect: The community's architectural character choices emphasizing Swiss/European Alpine themes (or other themes as approved by the City Council after a recommendation from the VAC and Planning Commission).*

Also, the 2008 Master Plan states the following:

*Building materials and colors that are compatible with the natural environment and the existing buildings in The Homestead are encouraged.*

*Setbacks* – The proposed development is designed with the setbacks from the 2006 code in which the current master plan is vested. There is a required 100' setback along Homestead Drive. There are 30' setbacks on the north, south and east boundaries.

*Height of structures* – Structures cannot exceed 35' in height unless the building is a hotel or conference building and that building is located at least 500' east of the right-of-way of Homestead Drive. The height of any structure over 35' cannot exceed an elevation of 5680', two feet lower than the highest elevation of the Crater. The applicant will need to submit a contour and elevation information of the property with the preliminary and final plan submittals. All future elevation certificates will need to be based on that information. The developer is asking to amend the master that

would allow for one proposed building to be 40' within 500' of Homestead Drive. The proposed wedding barn is setback about 150' from the right-of-way line from Homestead Drive. The VAC reviewed this issue and direction was given that the 40' height would be 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 would not greatly impact views of The Crater from Homestead Drive.

*Building Area Dimensional Limitations* – The 2006 code requires that building coverage not exceed 12,000 square feet per acre or greater than 27.5% of an acre. The applicant has submitted a plan that states that the average building coverage 2,635 square feet per acre which is 6% per acre.

#### **VISUAL AND ARCHITECTURAL COMMITTEE RECOMMENDATION:**

The Visual and Architectural Committee (VAC) held their first meeting on July 14<sup>th</sup> to review proposed renderings of three of The Homestead's buildings.

#### **WATER BOARD RECOMMENDATION:**

The Water Board has reviewed the conceptual master plan but has not yet made a recommendation to the City Council.

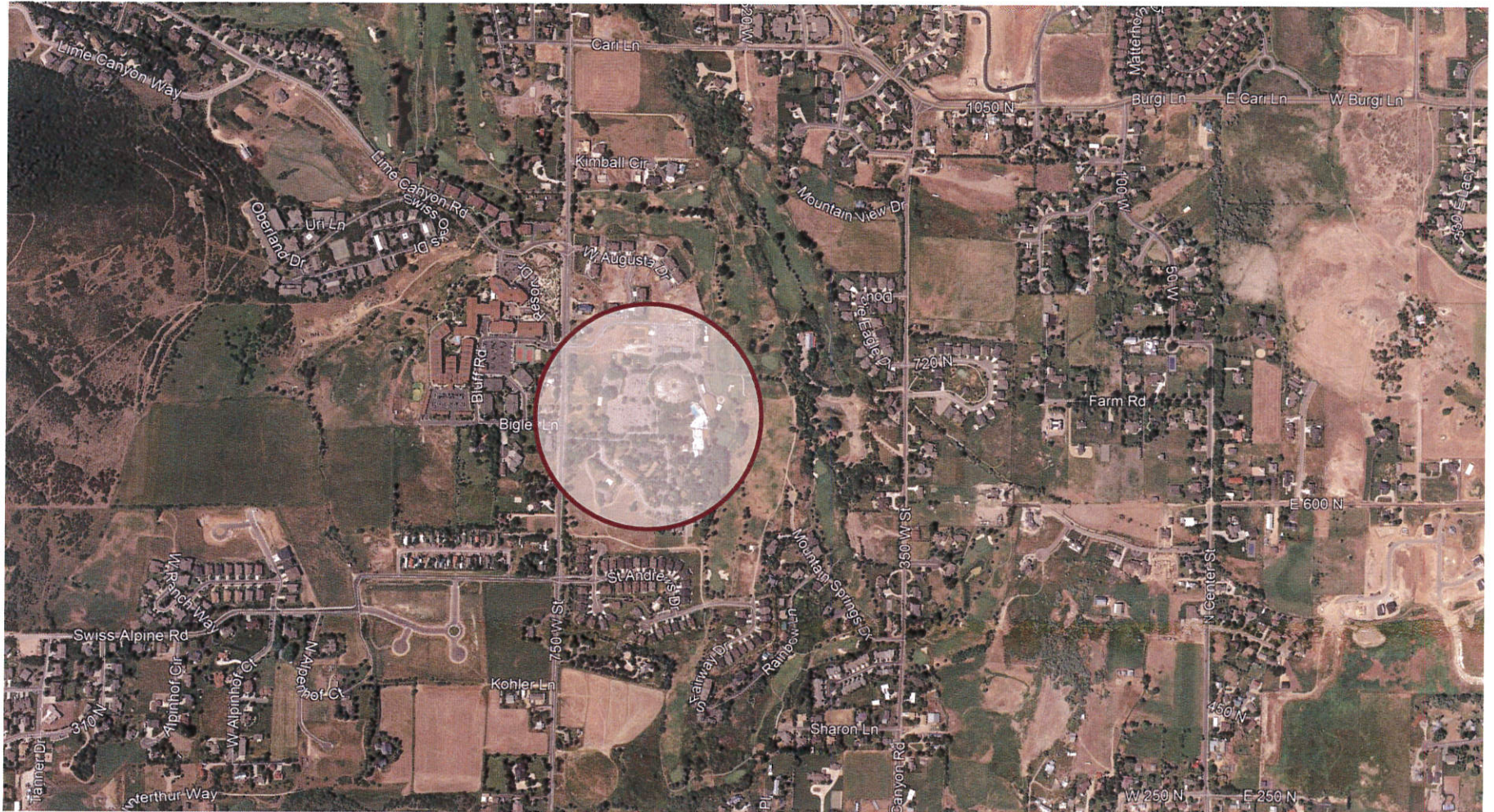
#### **POSSIBLE FINDINGS:**

- The proposal will benefit the City financially by creating a greater tax base.
- The proposal will help the City better comply with State requirements regarding the ability to collect resort tax.
- The public trail system in the development will benefit the entire community by creating public trails along Homestead Drive and from Homestead Drive to Pine Canyon Road.
- Amenities will be created that will be accessible year-round which will invite more tourists to visit the resort in all seasons.
- 62 acres of property, potentially developable golf course area, will be preserved as permanent open space in perpetuity.
- The proposed plan will not increase density from the vested 2008 master plan









## HOMESTEAD RESORT | CONTEXT AERIAL

MAY 21, 2020

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## HOMESTEAD RESORT | PROJECT SITE AERIAL

MAY 21, 2020





# HOMESTEAD RESORT | EXISTING MASTER PLAN

MAY 21, 2020

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# HOMESTEAD RESORT | EXISTING MASTER PLAN

MAY 21, 2020

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# SITE CONCEPT

EXISTING SITE AERIAL

SITE CONCEPT

ARCHITECTURAL SCOPE

PHASING

FIRE ACCESS

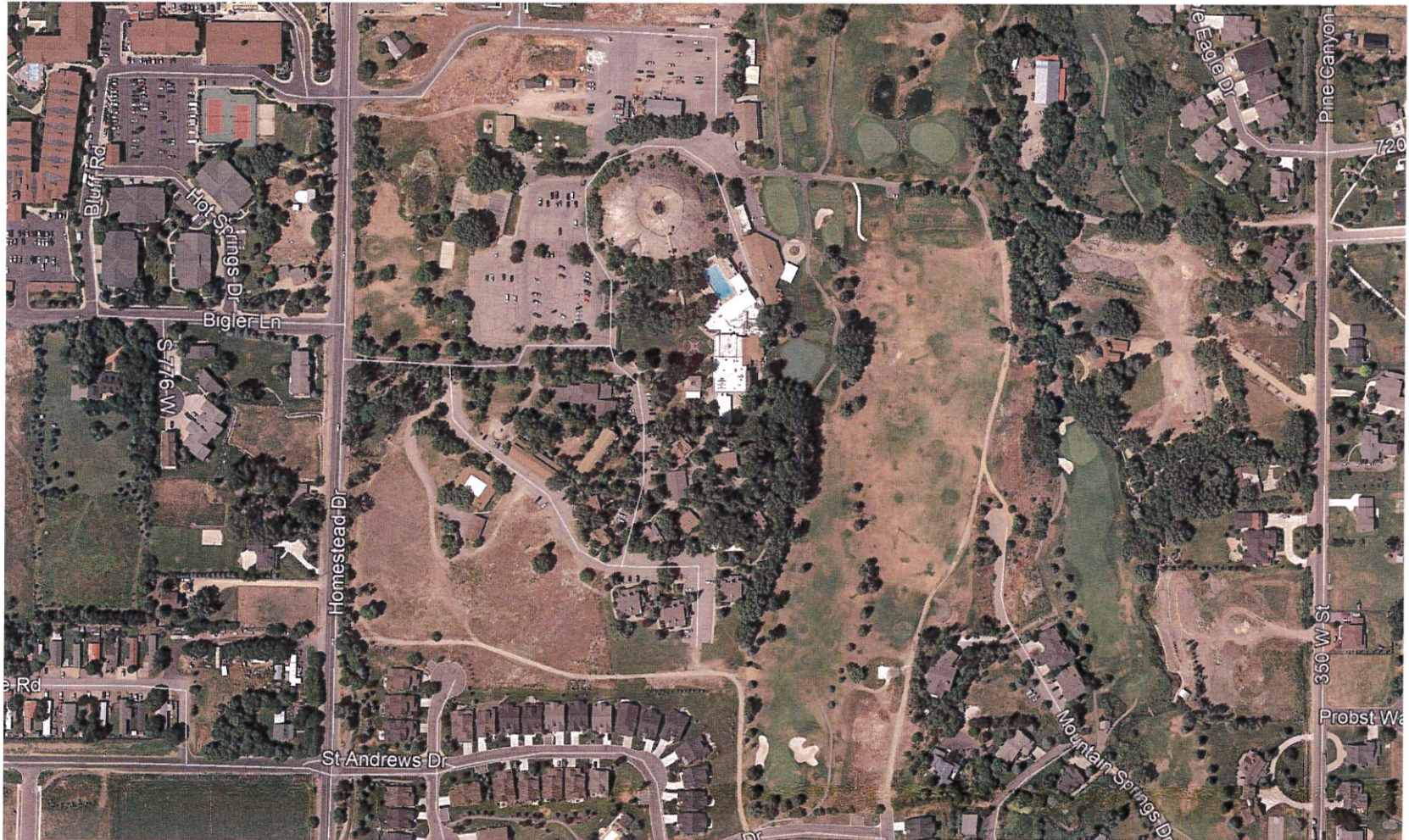
TRAIL CONNECTIONS

OPEN SPACE CALCULATIONS

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# HOMESTEAD RESORT | PROJECT SITE AERIAL MAY 21, 2020

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# HOMESTEAD RESORT | PRELIMINARY SITE CONCEPT

JULY 2, 2020

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# HOMESTEAD RESORT | SITE CONCEPT | TREES

JULY 2, 2020

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## LEGEND:

- 01 Secondary entrance to parking, golf, spa, and dive/activity center
- 02 Boat House with overwater deck
- 03 Pizza Farm Restaurant with Greenhouse and garden area support
- 04 Main parking area: +/- 220 stalls
- 05 Cart + maintenance barn
- 06 Golf Clubhouse and Spa arrival
- 07 Aqua Therapy Spa with Tennis and Pickleball Courts
- 08 Multi-level Conference Center
- 09 Crater with improved view/amenity area at the top
- 10 Pool Amenity area with upper adult pool area with indoor/outdoor pool, spas, infinity edge pool, cabanas, and a lower family pool area with zero-entry pool, waterfalls, toddler area with views of main pool area, slide, fire pits, cabanas, guest services access below fitness, and bar/grille that serves both pool and golf with outdoor dining
- 11 Pasture area along Homestead Drive
- 12 Wedding Barn with access to new pond area
- 13 New Center House with porte cochere arrival
- 14 Main arrival drive relocated to the south to create more meandering approach
- 15 Family Reunion units with open lawn, natural themed splash pad, playground area, and fire pits
- 16 Garden View units with multiple gardens with pathways, water features, and seating
- 17 Ballroom function lawn and Wedding Pavilion
- 18 Future unit development: 7 Buildings with 6 Units each = 42v Additional Units
- 19 Guest parking area: +/- 160 stalls
- 20 Activity View units with central activity area including playground and open lawn for soccer, volleyball, etc.
- 21 Future unit development area: 6 Buildings with 8 Units each = 48 Additional Units
- 22 Horse stable and barn
- 23 Amenity lawn with fire pit, seat walls, and open lawn for bocce, horseshoes, etc.
- 24 Function lawn with rose arbor structure to provide shelter and separation between lawn and adjacent parking
- 25 Amphitheater and stage area
- 26 New Activity Center
- 27 Relocated tee boxes
- 28 Enhanced pond with terraces, water falls and bon fire location
- 29 Virginia House upgrades: = 6 new units
- 30 Golf Maintenance Barn



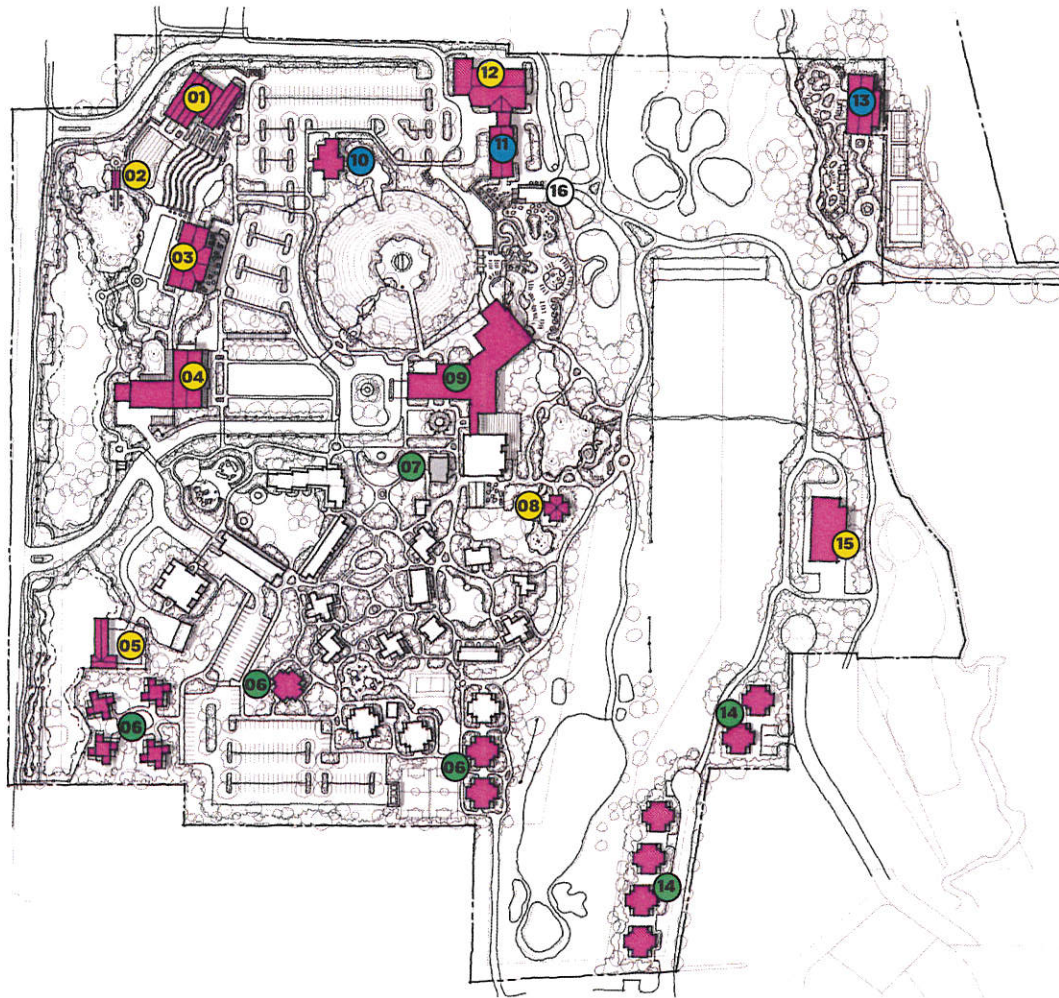
## HOMESTEAD RESORT | SITE CONCEPT | NOTES

JULY 2, 2020

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## LEGEND:

- 01 Pizza Farm Restaurant with Greenhouse support (8,563 ft<sup>2</sup>)
- 02 Boat House (525 ft<sup>2</sup>)
- 03 Conference Center (7,443 ft<sup>2</sup>)
- 04 Event Barn (9,676 ft<sup>2</sup>)
- 05 Stables (3,025 ft<sup>2</sup>)
- 06 New Development: (17,348 ft<sup>2</sup> total)  
7 Buildings with 6 Rooms Each  
= 42 New Units
- 07 Virginia House Upgrades:  
6 New Rooms (1,677 ft<sup>2</sup>)
- 08 Gazebo (1,825 ft<sup>2</sup>)
- 09 Center House (New) with Guest Amenities and Back of House (31,106 ft<sup>2</sup>)
- 10 Activity Center (3,060 ft<sup>2</sup>)
- 11 Golf and Spa Club House (4,584 ft<sup>2</sup>)
- 12 Golf Cart and Maintenance Barn (7,017 ft<sup>2</sup>)
- 13 Aqua Therapy Spa (6,737 ft<sup>2</sup>)
- 14 New Development: (17,952 ft<sup>2</sup> total)  
6 Buildings with 8 Rooms Each  
= 48 New Units
- 15 Golf Maintenance Barn (7,017 ft<sup>2</sup>)
- 16 Golf/Pool Grille (1,035 ft<sup>2</sup>)

Same Use Similar Location (68,083 ft<sup>2</sup>)

Same Use New Location (15,416 ft<sup>2</sup>)

New Use Allowed per Recital D 25% Unplanned Buildings (45,091 ft<sup>2</sup>)

\*2008 Master Plan Allows 73,550 ft<sup>2</sup> of Additional Buildings Not Shown in the 2008 Plan

Total Building Area in Preliminary Concept Plan: 244,786 ft<sup>2</sup>

Total Building Area Allowed per 2008 Master Plan: 367,750 ft<sup>2</sup>

Percentage of Building Area Used in Preliminary Concept: **67%**



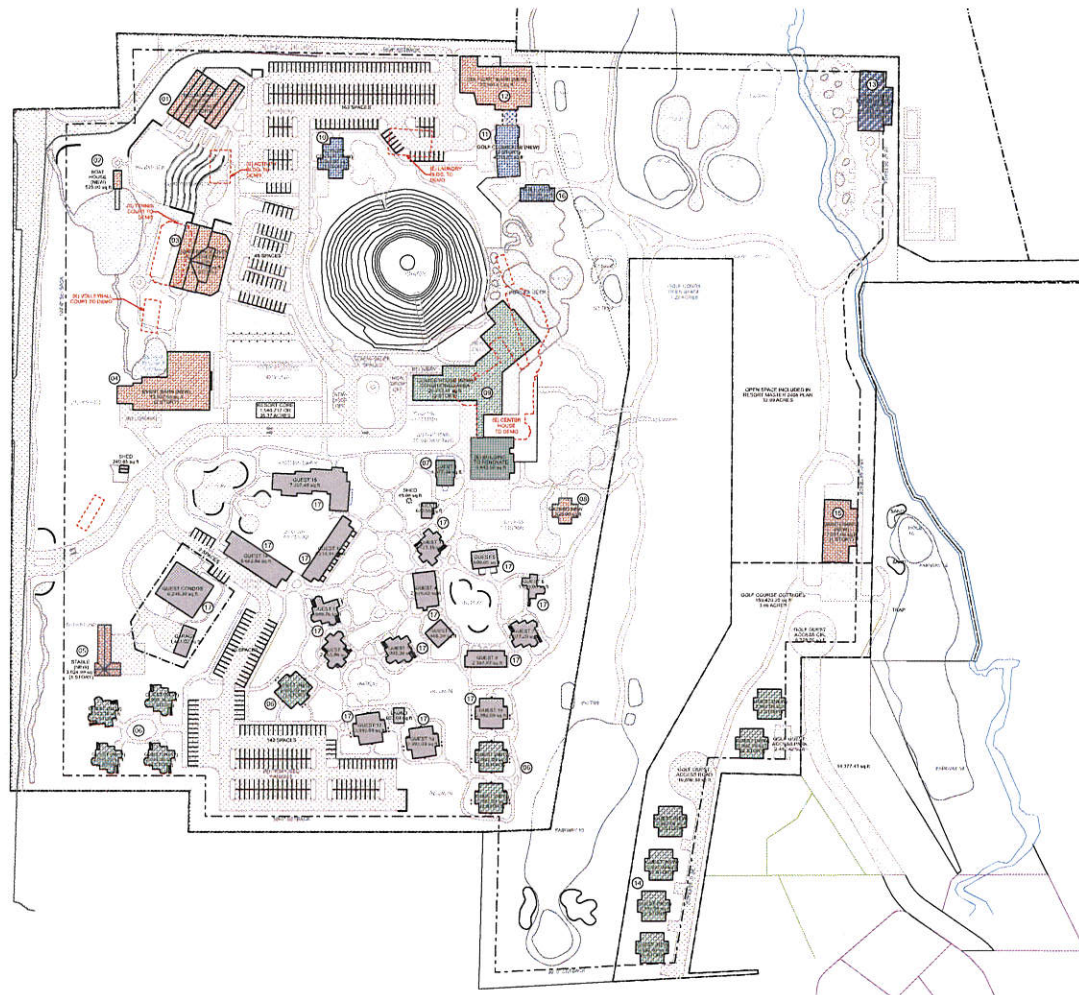
## HOMESTEAD RESORT | NEW BUILDINGS

JULY 2, 2020

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## LEGEND:

### SITE PLAN LEGEND

- (N) ELEMENT
- DEMOLISHED ELEMENT
- SAME USE, SIMILAR LOCATION (64,133 SF)
- SAME USE, NEW LOCATION (16,139)
- NEW USE ALLOWED PER RECITAL D 25% UNIMPAVED BUILDINGS (6,588 SF)
- EXISTING TO REMAIN EVENT-GUEST UNITS
- PROPOSED NEW GUEST UNITS
- PROPOSED NEW ACTIVITY/EVENT SPACE
- PROPOSED NEW SERVICE SPACE
- PROPOSED RENOVATED ACTIVITY SPACE
- PIZZA FARM RESTAURANT W/ GREENHOUSE SUPPORT (8,563 SF)
- BOAT HOUSE (525 SF)
- CONFERENCE CENTER (11,147 SF)
- EVENT BARN (13,998 SF)
- STABLES (3,025 SF)
- NEW DEVELOPMENT (17,348 SF TOTAL)  
7 BUILDINGS W/ 6 ROOMS EA.  
442 NEW UNITS
- VIRGINIA HOUSE UPGRADES:  
4 NEW ROOMS (1,677 SF)
- GAZEBO (1,425 SF)
- CENTER HOUSE (NEW & RENO)  
3 NEW SUITES W/ 7 BEDROOMS TOTAL  
(27,165 SF)
- ACTIVITY CENTER (3,060 SF)
- GOLF CLUBHOUSE (4,215 SF)
- GOLF CART & MAINTENANCE BARN (10,562 SF)
- AQUA THERAPY SPA (6,737 SF)
- NEW DEVELOPMENT (17,962 SF)  
6 NEW BUILDINGS W/ 6 ROOMS EA.  
436 NEW UNITS
- GOLF MAINTENANCE BARN (7,017 SF)
- GOLF/POOL GRILLE (1,960 SF)
- EXISTING GUEST BUILDINGS

### BUILDING FOOTPRINT AREAS

<b>EXISTING BUILDINGS TO REMAIN</b>	
GUEST SUITES	56,678 SF
BLDG. 1-18, CONDOS	319 SF
SHED	56,988 SF
<b>EXISTING SUBTOTAL</b>	
<b>RENOVATED BUILDINGS TO REMAIN</b>	
GOLF CLUBHOUSE	4,215 SF
CENTER HOUSE - SOUTH	6,443 SF
SPA	6,737 SF
<b>RENO SUBTOTAL</b>	
<b>NEW PROPOSED BUILDINGS</b>	
GUEST SUITES	35,302 SF
13 NEW GUEST BLDGS.	
CENTER HOUSE	
CENTER HOUSE (NEW)	20,743 SF
EVENT BARN	13,998 SF
CONFERENCE CENTER	
HOUSEKEEPING (BELOW)	11,147 SF
RESTAURANT/PIZZA FARM	8,563 SF
CART BARN	10,562 SF
STABLE	3,025 SF
MAINTENANCE	7,017 SF
ACTIVITY CENTER	3,060 SF
GRILL	1,960 SF
<b>NEW PROPOSED SUBTOTAL</b>	
<b>TOTAL BUILDING FOOTPRINT: 188,870 SF</b>	
<b>OR 4.35 AC</b>	

### SITE AREAS

<b>TOTAL AREA OF MASTER PLAN</b>	
RESORT CORE AREA:	72.01 ACRES
RESORT CORE PAVING (NON-AMENITY)	35.37 ACRES
ROADWAY AND PARKING AREAS	
<b>RESORT CORE OPEN SPACE &amp; AMENITIES</b>	
LANDSCAPED AREAS	26.25 ACRES
WALKING PATHS	0.38 ACRES
POOL DECKS	0.82 ACRES
<b>AMENITY BUILDINGS</b>	
CLUBHOUSE	0.10 ACRES
ACTIVITY CENTER	0.07 ACRES
<b>CORE AMENITY SUB-TOTAL</b>	
<b>OPEN SPACE OUTSIDE RESORT CORE:</b>	
<b>OPEN SPACE AMENITIES</b>	
SPA POOL DECK	2.7 ACRES
SPA	0.15 ACRES
GOLF/GUEST PATHS	1.4 ACRES
<b>OPEN SPACE AMENITIES SUB-TOTAL</b>	
<b>1.82 ACRES</b>	



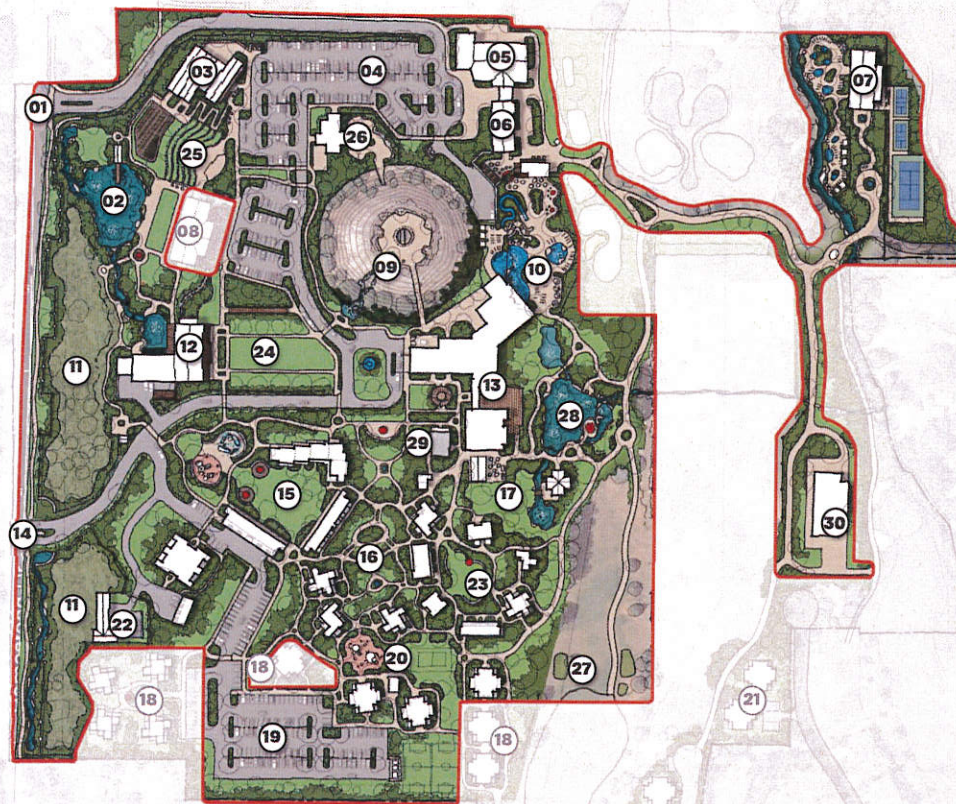
## HOMESTEAD RESORT | ARCHITECTURAL SITE PLAN

JULY 2, 2020

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## LEGEND:

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- 02 Boat House with overwater deck
- 03 Greenhouses and garden area with farmers market and pizza farm restaurant inside greenhouse closest to parking
- 04 Main parking area: +/- 220 stalls
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- 06 Golf Clubhouse and Spa arrival
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- 17 Ballroom function lawn and Wedding Pavilion
- 18 Future unit development: 7 Buildings with 6 Units each = 42 Additional Units
- 19 Guest parking area: +/- 145 stalls
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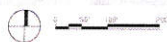
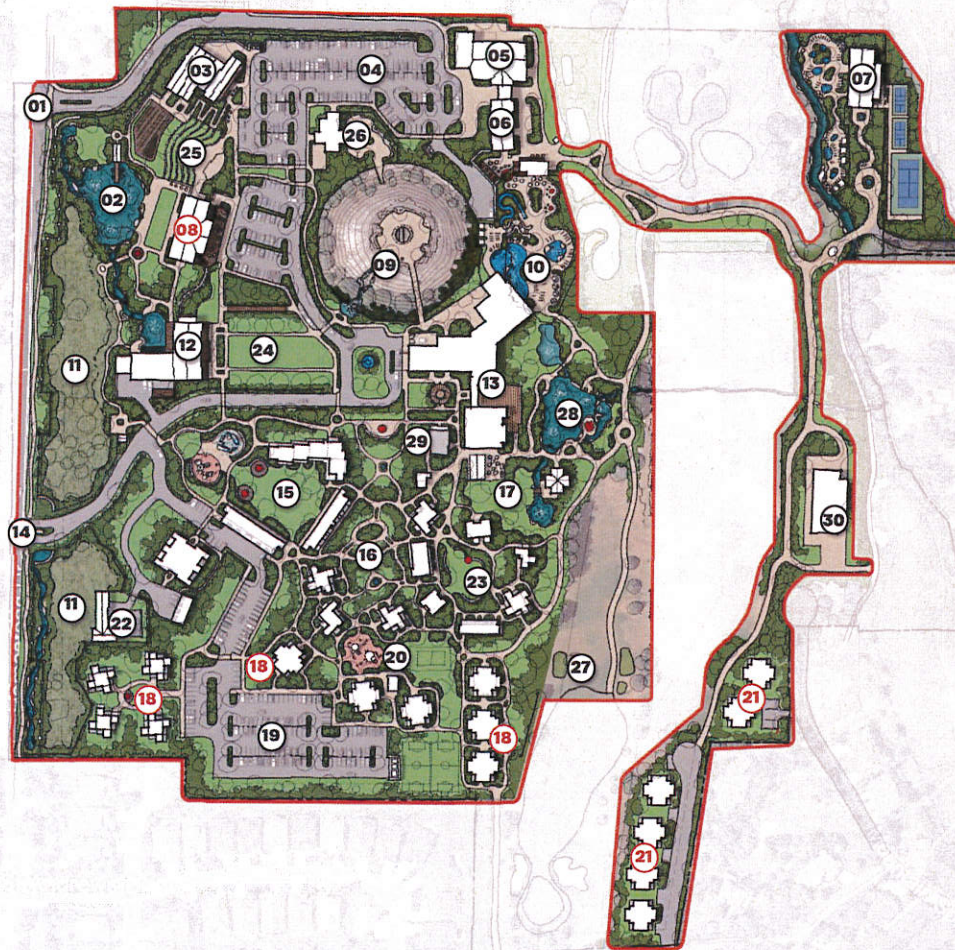
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## HOMESTEAD RESORT | SITE CONCEPT | PHASE 1

JULY 2, 2020





## HOMESTEAD RESORT | SITE CONCEPT | PHASE 2

JULY 2, 2020

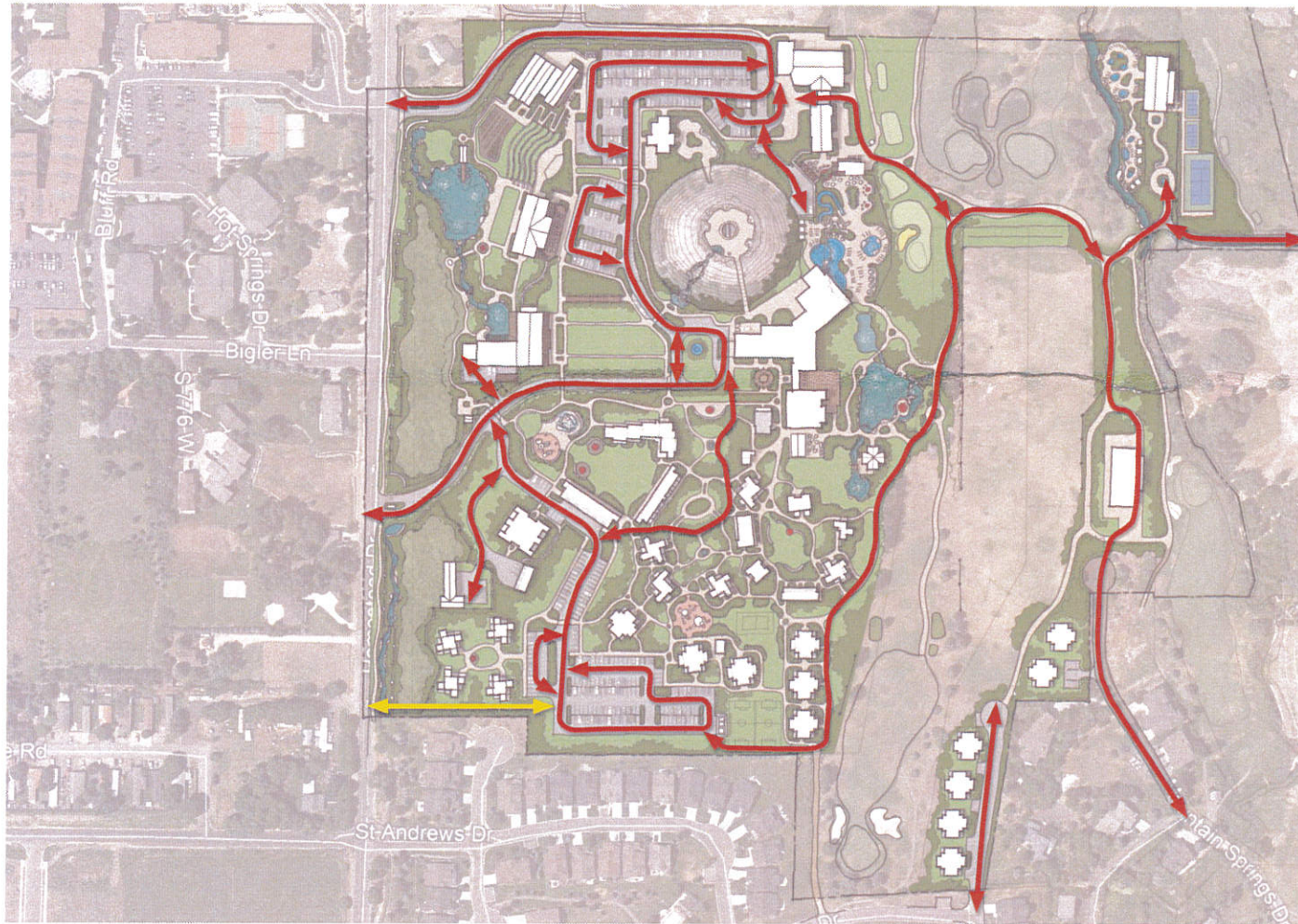
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# **LEGEND:**

 Proposed Fire Access Connection

 Possible Future Fire Access Connection

\* Fire access path to be a minimum 20 ft. width all weather road with minimum 28 ft. radius inside corners and maximum 150 ft. dead end length



## **HOMESTEAD RESORT | FIRE ACCESS** JULY 2, 2020

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# Homestead Resort

## 2008 and 2020 Master Plan Comparison

### Flexibility in the Master Plan

Recital D of the Master Plan Agreement states:

"Developer has approval to increase the building footprint up to 367,750 square feet. In order to increase the building footprint greater than 294,200 square feet or the number of keys included in the Master Site Plan, the Developer shall seek approval from the City as it seeks final approval for particular phases."

### Can the Uses in the Plan Be Moved Around

Section 3.1(b)(9) - Project Plans of the 2008 Master Plan Agreement states:

"Developer hereby agrees to plan, reserve and build the project substantially as shown on the Project Plans, attached hereto as follows, unless a departure there from is agreed to by the City during the approval process for a particular phase."

### Master Plan Comparison

Item	2008 Approved Plan	2020 Master Plan
Total Area	72.01 acres	72.01 acres
Open Space & Amenities	55.46 acres	64.26 acres
Building Area - approved	367,750 square feet	189,724 square feet
Building Area - shown	294,200 square feet	189,724 square feet
Density	5,107 sf/acre	2,635 sf/acre
% of Allowed Density	43%	22%
Existing Units to Remain	45	125
Proposed New Units	200	75
Total Units	245	200
Bedrooms	453	218
Total Beds	453	305
Existing pool	Yes	Yes - with renovation
New Swimming Pools	Yes - near Homestead Drive	Yes - near east side of Crater
New Spa Building	Yes - near tennis courts	Yes - near Snake Creek
New Golf Pro-Shop	Yes - near Hole #1	Yes - near Hole #1
New Cart Storage Building	Yes - part of new proshop	Yes - part of new proshop
New Maintenance Building	Not shown on master plan Part of 25% allowance	Yes - east side of driving range
Wedding Barn	Not shown on master plan Part of 25% allowance	Yes
New Access Road	Yes - at Bigler Lane	Yes - Further South



# Homestead

## RESORT



WELCOME HOME

July 29, 2020

Re: Homestead East/West Path

To Whom It May Concern:

The Homestead has submitted an application to amend the existing, approved 2008 Master Plan, and a condition that Midway City has asked to be included in this approval, which was not in the 2008 Master Plan, is to build a public trail connecting Pine Canyon Road to Homestead Drive, which is an East/West connector that goes right through the middle of our private property and greatly disrupts our ability to operate as a private business.

In all scenarios, this path would have to go directly through a golf course path, along a driving range, or through the main artery of our hotel where our paying guests will be heavily concentrated and golf carts will be heavily used. Each of these options require us to take on significant risk from a non-guest getting injured by golf carts or golf balls, or it severely inhibits our ability to operate as a luxury resort. Having a public trail right through our golf course or resort operation could be equated to requiring a ski resort to have a sidewalk path in the middle of a ski run; this is just not good practice and is very risky.

To illustrate where our concerns are coming from, below is a small sampling of the issues we have encountered on our private property from members of the public roaming through. These examples all come from April 2020 to current.

- A neighbor was walking through our property and fell / broke her arm. An ambulance was called, our staff had to watch over her for a significant time, and ultimately our legal team was pulled in to navigate the claim against the Homestead.
- A wealthy guest arrived on helicopter and landed on our parking lot with our permission. This guest spent significant money throughout the community on tours, food, transportation and golf. As he was preparing to depart, after a fantastic experience in Midway, a neighbor walking her dog on our property approached the guest and asked him "Why the F are you here" and told him "you have 10 minutes to get the F out of Midway or I'm calling the police". This was witnessed directly by one of our employees.
- On a weekly basis, teenagers trespass onto our property and jump from the roof of the hotel into the pool, which poses significant risk to our business.

- Once a day, neighbors work to trespass and use our guest pool with no permission. Once in, they allow various friends and family members to join.
- Just outside of our clubhouse is a practice putting and chipping green. 2 teenagers rode their bikes through on the current "public path", and diverted off the trail to do mountain biking jumps off of our putting green and sand trap. As an employee approached them to ask them to leave, the mother was right there allowing her kids to do this with no regard to our property.
- Frisbee golf being played by neighbors on the fairway of hole 16.
- Soccer game on the tee boxes of hole 5.
- Yoga on the tee box of hole 5.
- A teenage boy walking on the current path, walked off the path, pulled out a fishing pole and started fishing in the pond of hole #9 right next to the green, again posing significant risk of getting hit by a golf ball. We asked him to leave, which he then packed up, walked away, and stopped again to fish on the hole #18 pond.
- A couple enjoying time under a blanket on the side of a fairway
- Grandparents allowing their kids / grandkids to take sand toys out to the bunkers to play in the sand.
- Homeowners yelling at golfers to stay off their property and not search out a ball that strayed into their yard.
- Dogs consistently being walked on the path, golf paths, fairways, and owners refusing to clean up after their dogs.
- Dogs taken off leash on the current path and various cart paths
- Hundreds of neighbors taking the privilege to go onto our course and start playing without paying or checking in, even using their own golf carts on our course.
- Approximately 10 instances in the past month of neighbors coming and interfering in guest areas. When approached and asked to leave, they have refused and indicate that they have the right to be on our private property.
- A neighbor was walking her dog on our property and came running into the lobby claiming a guest attacked her. Once investigated, it turned out that her small dog had been attacked by 2 dogs of one of our guests. As she tried to fight off the 2 dogs, she also got bit. This was not a good situation, and could have been entirely avoided if she was not trespassing.
- Bike riding on the actual golf cart paths in the middle of game play
- Neighbors crossing across active fairways during game play

Again, this is a small sampling of recent issues, and illustrates why we have significant concerns regarding any commitment for a public trail coming right through the main artery of our resort operation, or any golf areas. We have agreed to build paths along Homestead Drive, as was also required in the 2008 Master Plan, but any request to go through the middle of our property provides significant risk to both the Homestead and Midway City.

Regards,

Scott Jones





## RESOLUTION 2020-25

### **A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING AN 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 an 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 Amended 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 2020.

MIDWAY CITY

\_\_\_\_\_  
Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

AMENDED AND RESTATED  
HOMESTEAD RENOVATION AND EXPANSION  
MASTER PLAN DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER PLAN DEVELOPMENT AGREEMENT (the "Amended Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between THE HOMESTEAD GROUP, LLC (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property (defined below) and is the entire, complete Agreement between the Parties.

RECITALS

A. On September 18, 2008, Developer and City entered into the "Homestead Renovation and Expansion Master Plan Development Agreement", ("Agreement") recorded in the Wasatch County Recorder's Office as Entry No. 340720, book 0975, page 2-43.

B. In accordance with Section 5 of the Agreement, the parties agree to amend the terms of the Agreement, as set forth below. This "Amended and Restated Homestead Renovation and Expansion Master Plan Development Agreement" ("Amended Agreement") is a complete restatement of all terms agreed to between Developer and Midway City and is intended to completely replace the original Agreement.

C. Midway City, acting pursuant to its authority under Utah Code Ann. Section 109a-101, et. seq., in compliance with the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Homestead Resort Renovation and Expansion and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public. Developer is the owner and operator of an existing resort commonly referred to as the Homestead Resort and has a legal interest in the certain real property ("the Property") located in the City as described in Exhibit A attached hereto. The Property consists of approximately 72.01 acres within the Homestead Resort. The Property is situated in the Resort Zone (RZ-I).

D. Developer intends to improve and expand the Property as a multi-phase resort project, by expanding its lodging, conference facilities, amenities, and commercial area within the resort; and to improve existing buildings and features within the resort, as more fully set forth in this Agreement. The approved Master Site Plan dated April 15, 2019 and attached as Exhibit B anticipates development with a total building footprint of approximately 435,000 square feet, which encompasses up to 453 Keys. With each phase, Developer will designate the

unit configuration of each building as it applies for final approval. Developer shall seek approval from the City as it seeks final approval for particular phases and site plan adjustments.

E. Each Party acknowledges that it is entering into this Agreement voluntarily. Developer consents to all of the terms of the Agreement as valid conditions of development under all circumstances.

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

## AGREEMENT

### Section 1. EFFECTIVE DATE AND TERM

#### 1.1 Effective Date.

This Agreement shall become effective on the date it is executed by Developer and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

#### 1.2 Term.

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years; provided, however, that if Developer fails to make application for preliminary approval of Phase I of the Project on or before five years from the Effective Date, the Agreement shall terminate and Master Plan Approval shall be rescinded unless the City extends the approval upon request by the Developer for good cause shown. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the approvals, licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner unless expressly provided herein.

Rescission of Master Plan Approval shall in no way impact Developer's historical vested rights and interests that existed prior to the 2008 Master Plan Approval.

### Section 2. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this

Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement. "Governing Body" shall mean the Midway City Council. "Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement. "Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

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

"City General Plan" or "General Plan" shall mean the General Plan of the City of Midway.

"Developer" shall have that meaning set forth in the preamble, and shall also include Developer's successors and/or assigns, including but not limited to any homeowners' association which may succeed to control of all or any portion of the Project.

"Development" shall mean improvements to real property that includes roads, buildings, landscape with exotic plant material and parking spaces.

"Director" shall mean the Director of the Midway City Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Keys" shall mean a hotel room, or any room or space that can be locked out and rented with its own separate external access (i.e. access to the outside).

"Notice of Compliance" shall have that meaning set forth in Section 8.1 of this Agreement.

"Open Space" is defined as a portion of a development site that is permanently set aside for public and/or private use and that will not be sold to individual owners or retained by the developer. All open space shall be owned/managed and maintained by the resort owner (if ownership of the resort is held in one entity) or an HOA. Open Space shall have a minimum dimension of at least 100 feet in each direction. However, entry features such as roundabouts, median planter strips, fountains, etc. may count as open space if the design of such features is recommended by the Planning Commission and approved by the City Council. At least half of the land designated as required open space should be contiguous and as nearly rectangular as is practical.

“Planning Commission” shall mean the Midway City Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

“Resort Core” shall be an area designated on the plat as set forth in Exhibit C, where additional density may be added.

"Subsequent Approval" means a City approval or permit, which is not otherwise provided for in this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the City.

### Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

#### 3.1 Obligations of Developer.

(a) Generally. The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

(b) Conditions to Current Approvals. Developer shall comply with all of the following Conditions to Current Approvals:

(1) *Payment of Fees* – Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof. In addition, Developer agrees that all outstanding City fees will be paid current at the time this Master Plan Development Agreement is executed. Furthermore, all outstanding City fees shall be paid current prior to the Project being placed on the agenda for a public meeting to be held by the City.

(2) *Open Space* – The code requires that with each phase there is enough open space to comply with the 55% requirement of the code. If phase I has 75% open space, then phase II only needs to have 25% open space if both phases are equal in acreage. The



plat will show 64.26 acres of designated open space, with a plat note restricting any future development within the designated open space area. The purpose of Open Space is agreed to be otherwise free from buildings, roads and parking spaces. Open Space, unless specifically prohibited on the Master Plan or in this Agreement, is to be landscaped and maintained to promote a restful park like atmosphere consistent with the existing conditions at the Homestead. Portions of the golf course that are left in a natural condition shall be excluded from the requirement to be landscaped.

(3) *Density* – The RZ does not have a density limit. The density of the 2008 Master Plan is 245 units with 453 keys (lockout units), which is hereby adopted in this Agreement. There are requirements that limit density which include required open space, parking, height restrictions, minimum size of rooms, and setbacks. Also, the parties agree that additional density may only be added to the section demarked as “Resort Core” as set forth in Exhibit C. The present plan proposes 75 new units which combined with the existing 125 will be a total of 200 units. Developer shall have the right to propose additional density in the future, but shall be restricted to putting the density with the Resort Core, and shall not exceed 245 units with 453 keys (lockout units). Additional density shall require an amendment of this Agreement, as well as going through preliminary and final development approval.

(4) *Building Area* – The 2008 plan approved up to 367,750 square feet of building area. The present plan proposes 189,724 square feet of building area. Additional square feet, up to the 367,750 square approved in 2008, may be proposed by Developer in the future, but shall be limited to the Resort Core, and shall require an amendment to this Agreement, and going through preliminary and final development approval.

(5) *Access* – Each phase of the subdivision must meet the access requirements. The development 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 has specific restrictions that are described in an access easement (attached as Exhibit D) that limits access for five lots through The Links. The proposed master plan has at least four buildings accessing through The Links that contain eight units each. Staff feels that a new agreement must be reached by The Homestead and The Links for the proposed units that access through The Links to proceed. There is another access to Pine Canyon Road that will be a maintenance road and, possibly, public trail. 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. The developers feel that this change will create a better entry to the resort and will help save trees on the property.

(6) *Traffic Study* – The 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 agreement, and not just the traffic created by the present proposal.

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

(8) *Sensitive Lands* – The Project does contain some wetlands and geologic sensitive lands that shall be addressed as follows:

a. Wetlands: All areas designated as wetlands will become part of the open space for the development and will be preserved. If any wetlands are disturbed, approval must first be received from the Army Corp of Engineers.

b. The Crater: The Crater is defined as a major geologic feature in the sensitive lands ordinance and cannot be developed or disturbed beyond what is approved in this Agreement. The Crater's historical uses and disturbances are recognized as valid uses which shall continue to be allowed under this Agreement. The protected uses are identified as follows:

i. The Crater has a commercial operation within the grotto under the Crater for bathing and diving. It is agreed that the opening may be expanded and altered sufficient to comply with existing requirements of the Americans with Disabilities Act.

ii. A portion of the natural water flow from the Crater is currently diverted for other uses by the Homestead as permitted by the Homestead 's historical water rights. It is agreed that the Crater may be altered to expand the flow of natural water out of the Crater into swimming and soaking pools. This alteration would be limited solely to increasing the size of existing pipes coming out of the Crater, and Developer will be required to demonstrate the current flow is insufficient for its intended use, and that increasing the size of the current piping will not compromise the structural stability of the Crater in any way. The existing infrastructure and piping plan for the Crater is attached as Exhibit E.

iii. The Crater has stairs constructed to allow pedestrian access to the top of the Crater along with a protective fence on the top of the Crater. It is agreed that the top of the Crater may be beautified with plant boxes, benches etc., but no permanent structure shall be allowed on the top of the Crater (excepting the existing bridge and cover over the hole). The parties acknowledge that the top of the Crater 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.

iv. There is a trail that circumvents the base of the Crater that contains paving, a rock wall and irrigated landscape features. Development to enhance and continue these four uses is limited to repair, replacement, improvement meant to improve safety or to protect and preserve the Crater and native flora or fauna except as follows: Irrigated landscaping of the Crater surface is permitted up to 10 feet above the existing trail at the base of the Crater, above that line landscaping shall be limited to native plant material using surface or drip irrigation equipment.

(9) *Trails* – The Trails Master Plan contains two trails that cross the property. One is the trail along Homestead Drive, which shall be installed and maintained in accordance with “Grant of Trail Easement and Management Plan” attached as Exhibit F. The second trail is designed to extend from Homestead Drive, through the Resort Core, to Pine Canyon Drive (“Resort Core Trail”). The Resort Core Trail shall be a minimum of 6 feet wide, installed with a hard surface (pavement, pavers, or sidewalks), and shall have clear signage establishing that it is a public trail, and clearly marking the path of the trail through the resort so confusion is avoided. The Parties agree that the exact location of the Resort Core Trail will be addressed in preliminary and final approval, with the agreement to work together to establish a route that will be clear and available for public use, but will minimize interference with Resort guests. The installation and maintenance of the Resort Core Trail shall be paid for by Developer.

(10) *Architecture Theme* – The developer is petitioning that all structures in the proposal follow the traditional architectural design of The Homestead and not the Swiss and Old European theme the City has adopted. The developer has explained that he would rather follow the historic and traditional Homestead design of the current structures. The current City code does allow for an exception in Section 16.15.4 (G)(3) which states: *Building Design Guidelines. Building design guidelines shall reflect: The community’s architectural character choices emphasizing Swiss/European Alpine themes (or other themes as approved by the City Council after a recommendation from the VAC and Planning Commission).* Also, the 2008 Master Plan states the following: *Building*

*materials and colors that are compatible with the natural environment and the existing buildings in The Homestead are encouraged.* Developer shall work with the Visual and Architectural Committee to incorporate design elements that remain true to the existing architecture of the Homestead Resort and shall be required to obtain approval of these design elements as part of preliminary and final approval.

(11) *Setbacks* – The proposed development is designed with the setbacks from the 2006 code in which the current master plan is vested. A 100' foot setback along Homestead Drive shall be required. All other boundaries on the north, south and east shall require 30' foot set-backs.

(12) *Height of structures* – Structures cannot exceed 35' in height unless the building is a hotel or conference building and that building is located at least 500' east of the right-of-way of Homestead Drive. The height of any structure over 35' cannot exceed an elevation of 5680', which is two feet lower than the highest elevation of the Crater. The applicant shall submit a contour and elevation information of the property with the preliminary and final plan submittals showing compliance with these restrictions. All future elevation certificates will need to be based on that information. The developer shall be allowed to build one building that is 40' feet tall 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 Crater from Homestead Drive.

(13) Water: Developer shall dedicate the water rights as outlined in Exhibit G. In the event the Developer obtains approval to increase the number of Keys in the Project, Developer shall be required to establish that it owns or leases sufficient water to serve any such increased need. All water rights required for the development will be escrowed with the City at or before the time the Master Plan Agreement is recorded. As part of Final approval for each phase, water sufficient to supply the needs of that Phase shall be released from escrow and formally dedicated to the City.

(14) Other Utilities. Developer agrees to obtain will serve letters and install, at its own expense, facilities necessary to serve the Project with all other utilities not mentioned specifically herein.

(15) Owner's Association. It is not contemplated that there shall be any ownership other than the Developer. Should the Developer ever desire to condominiumize and sell portions of the resort to private owners, it will be required to obtain an amendment of

this Agreement, including the requirement to address a Master Property Owner's Association and associated governing documents. Said documents will outline the responsibility of the Association and any contemplated sub-associations for ownership and maintenance of all areas within the Project.

(16) Project Plans. The site plans, engineering drawings and architectural plans ("Project Plans") attached to this Agreement as exhibits are incorporated herein by reference. Developer hereby agrees to plan, reserve and build the Project substantially as shown on the Project Plans attached hereto as follows, unless the Project Plans are adjusted by the City during the approval process for a particular phase:

- 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
- c. Exhibit C – Resort Core Designation
- d. Exhibit D – Copy of Kantons Easement
- e. Exhibit E – Existing Infrastructure for Crater
- f. Exhibit F – Grant of Trail Easement and Management Agreement (for trail along Homestead Drive)
- g. Exhibit G – Water Rights
- h. Exhibit H – Parking Calculations, as well as a Parking Phasing Plan that outlines the road and parking infrastructure that will be installed per phase, to assure circulation and emergency access through phases that may not yet be built.
- i. Exhibit I – Lighting Plan, demonstrating dark sky compliance, with fixtures that accomplish a full cut off of sky glare. A Lighting Plan shall be submitted with each phase.

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

(18) Bonding: Concurrent with each phase, Developer agrees to post bonds in amounts and types established by the City related to the performance of Developer's obligations to construct any improvements for the benefit of the Public or the City, pursuant to current City ordinances and resolutions.

(19) Maintenance: Developer agrees to maintain, or cause to be maintained, all undeveloped property contained within all undeveloped phases of the Project in a clean and attractive condition at all times, and to comply with local ordinances regarding the removal of noxious weeds, and mowing of weeds to that their height does not exceed 8 inches.

### 3.2 Obligations of the City.

(a) Generally. The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

(b) Conditions to Current Approvals. The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement and on the Project plat, unless agreed to in writing by the Parties.

(c) Acceptance of Improvements. The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; (2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

## Section 4. VESTED RIGHTS AND APPLICABLE LAW

### 4.1 Vested Rights.

(a) Generally. As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property only in accordance with this Agreement and Applicable Law.

(b) Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

#### 4.2 Applicable Law.

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

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

#### Section 5. AMENDMENT.

Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such

person or entity agrees to provide evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

## Section 6. COOPERATION-IMPLEMENTATION

### 6.1 Processing of Subsequent Approvals.

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The City's obligations under Section 6. I (a) of this Agreement are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans, and other information necessary for the City to meet such obligations. It is the express intent of Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals.

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4. I (b) of this Agreement.

(d) If the City denies any application for a Subsequent Approval, the City must specify the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1 (b) of this Agreement). The City shall approve the application if subsequently resubmitted for the City's review and the application complies with the specified modifications.

### 6.2 Other Governmental Permits.

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.



(b) The City shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4. I (b) of this Agreement. However, the City shall not be required by this Agreement to join or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

## Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

### 7.1 General Provisions.

(a) Defaults. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

(b) Termination. If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. The City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

### 7.2 Review by City

(a) Generally. The City may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this

Agreement. Developer shall provide any and all information requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.

(b) Determination of Non-Compliance. If the City Council finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to Section 7.1(a) of this Agreement. If the default is not cured timely by Developer, the City may terminate this Agreement as provided in Section 7.1 (b) of this Agreement.

### 7.3 Default by the City.

In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 7.1 Agreement and provided under Applicable Law.

### 7.4 Enforced Delay; Extension of Time of Performance.

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

### 7.5 Limitation on Liability.

No owner, director or officer of the Developer, when acting in his or her capacity as such, shall have any personal recourse, or deficiency liability associated with this Agreement, except to the extent that liability arises out of fraud or criminal acts of that owner, director, or officer.

## Section 8. NOTICE OF COMPLIANCE

### 8.1 Timing and Content.

Within fifteen (15) days following any written request which Developer may make from time to time, the City shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto,

that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

## 8.2 Failure to Deliver.

Failure to deliver a Notice of Compliance within the time set forth in Section 8.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

## Section 9. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND NOTICE.

The rights of the Developer under this agreement may be transferred or assigned, in whole or in part, with the City's consent, which consent shall not be unreasonably conditioned, withheld, or delayed. Developer shall give notice to the City of any proposed assignment at least thirty (30) days prior to the effective date of the assignment.

## Section 10. MISCELLANEOUS

10.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

10.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

10.3 Other Necessary Acts. Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent

of this Agreement, the Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

10.4 Construction. Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

10.5 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

10.6 Covenants Running with the Land and Manner of Enforcement.

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the City to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project.

10.7 Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

10.8 Remedies. Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the

foregoing and the purpose of this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorneys' fees in any legal or equitable action instituted to enforce the terms of this Agreement.

10.9 Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

10.10 Other Public Agencies. The City shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

10.11 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

10.12 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

10.13 Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

10.14 No Third-Party Beneficiaries. This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

## Section 11. NOTICES

Any notice or communication required hereunder between the City and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

### If to the City:

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

### With Copies to:

GORDON LAW GROUP, P.C. c/o CORBIN GORDON  
Midway City Attorneys  
345 West 600 South, Suite 108, Heber City, UT 84032

### If to Developer:

THE HOMESTEAD GROUP, LLC  
700 Homestead Drive  
P.O. Box 99  
Midway, Utah 84049

## Section 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

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



Section 13. EXECUTION AND RECORDATION OF DEVELOPMENT AGREEMENT

No later than thirty (30) calendar days after the City votes to approve this Agreement, all parties to this Agreement shall sign and execute this Agreement and the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and the City as of the date and year first above written.

CITY OF MIDWAY:

Attest:

CELESTE JOHNSON  
Mayor

BRAD WILSON  
City Recorder

STATE OF UTAH                    )  
  ss:  
COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this\_\_ day of \_\_\_\_\_, 2019, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of the City of Midway, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as the Midway City Recorder.

\_\_\_\_\_

THE HOMESTEAD GROUP, LLC

\_\_\_\_\_  
Signature

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

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

STATE OF UTAH                    )

ss:

COUNTY OF WASATCH    )

The foregoing instrument was acknowledged before me this\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_, who executed the foregoing instrument in  
the \_\_\_\_\_.

\_\_\_\_\_