



**Midway**

**RESOLUTION**

**2024-22**

**A RESOLUTION APPROVING A DEVELOPMENT  
AGREEMENT FOR THE HOMESTEAD PHASE 2**

**WHEREAS**, Utah law authorizes municipalities to enter into development agreements for the use and development of land within the municipality; and

**WHEREAS**, the Midway City Council finds it in the public interest of the City of Midway to enter into a development agreement with the developer of the proposed Homestead Phase 2 for the use and development of the land included within that proposed project;

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

Section 1: The Midway City Council approves the development agreement attached hereto and authorizes the Mayor of Midway City to execute the agreement on behalf of the City.

Section 2: The effect of this Resolution is subject to all conditions of the land use approval granted by the City for the proposed project.

**PASSED AND ADOPTED** by the Midway City Council on the \_\_\_\_ day of \_\_\_\_\_, 2024.

**MIDWAY CITY**

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

**ATTEST:**

\_\_\_\_\_  
Brad Wilson, City Recorder

## **HOMESTEAD RESORT – PHASE 2 DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between THE HOMESTEAD GROUP, LLC (hereinafter called the “Developer”) and MIDWAY CITY, UTAH, a political subdivision of the State of Utah (hereinafter called the “City”). Developer and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.” Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

### **RECITALS**

- A. The City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.*, in compliance with the Midway City Land Use Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the proposed Homestead Resort – Phase 2, located at approximately 700 North Homestead Drive in Midway, Utah (hereinafter referred to as the “Project”), and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.
- B. The Developer has a legal interest in certain real property located in the City, as described in Exhibit “A”, (hereinafter referred to as the “Property”) attached hereto and incorporated herein by this reference. Developer warrants and represents that it has the legal authority to sign this Agreement and bind the Property as set forth herein.
- C. The Developer intends to develop the Property as part of the Homestead Resort. The proposal is located on 71.97 acres and includes 68 condominium units, seven residential units, seven resort amenity buildings, open space, and all existing resort buildings and accompanying facilities. The Project is in the Resort Zone. There are two (2) total phases in the development. Both phases encompass a total of 71.97 acres and contains a total of 55.79 acres of open space. Phase 2 encompasses 20.35 acres. Some of the property will be subdivided into condominium units and building pads for single-family residences. Per the Applicant, all the condominium units and single-family residences will be in a rental pool for short-term rental.
- D. The Homestead Resort also has a contract with Marriot that would brand the resort as part of the Marriot Autograph Collection. As part of the contract, the Homestead is

pursuing condominiums and single-family residences that will be for sale. The Resort Zone allows the ability to sell property. There is a maximum number of 453 allowed rooms and a maximum building footprint of 367,750 square feet.

- E. All roads in the development will be private roads. There will also be a mix of public and private trails throughout the development. Sensitive land areas 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, wetlands, and Snake Creek stream corridor and associated floodplains.
- F. Each Party acknowledges that it is entering into this Agreement voluntarily. The Developer consents to all the terms and conditions of this Agreement and acknowledges that they are valid for development of the Project. Unless otherwise specifically agreed to herein, the terms and conditions contained herein are in addition to any conditions or requirements of any other legally adopted ordinances, rules, or regulations governing the development of real property in Midway City.

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

## **AGREEMENT**

**Section 1. Effective Date and Term.** The term of this Agreement shall commence upon the signing of this Agreement (the “Effective Date”) by both Parties and shall continue for a period of ten (10) years. Unless otherwise agreed between the City and the Developer, the Developer’s vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.

**Section 2. Definitions.** Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including the Exhibits.

“Applicable Law” shall have the definition set forth in Section 4A of this Agreement.

“Governing Body” shall mean the Midway City Council.

“City” shall mean the Midway City, and shall include, unless otherwise provide, any and all of the City’s agencies, departments, officials, employees or agents.

### **Section 3. Obligations of the Developer and the City.**

#### **A. Obligations of the Developer:**

- i. **General Obligations:** The Parties acknowledge and agree that the City’s agreement to perform and abide by the covenants and obligations of the City set forth herein is conditioned upon and in material consideration of the Developer’s agreement to perform and abide by the covenants and obligations of the Developer set forth herein.
- ii. **Construction and/or Dedication of Project Improvements:** The Developer agrees to construct and/or dedicate Project improvements as set forth below as directed by the City, including but not limited to, driveways, landscaping, water, sewer, and other utilities as shown on the approved final plans and in accordance with current City standards. The Developer shall satisfactorily complete construction of all Project improvements no later than ten (10) years after the recording of the plats for the Project. All costs associated with the Project improvements shall be borne by the Developer. The Developer also agrees to comply with the terms of the Midway City Staff Report, as approved and adopted by the Midway City Planning Commission and as accepted by the Midway City Council, attached hereto and incorporated herein by this reference.
- iii. **Conditions for Current Approvals:** The Developer shall comply with all of the following conditions:
  - a) **Payment of Fees:** Developer agrees to pay all applicable Midway City fees as a condition of developing the Project on the Property, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.
  - b) **Water Rights and Water Service:** The required water rights for each phase will be dedicated to the City before the recording of each plat. The Water Advisory Board has approved an estimated 87.19 acre-feet for both phases of the project. Of the 87.19 acre feet requirement, 21.25 acre feet must be dedicated for Phase 2.
  - c) **Open Space:** The City Code requires 55% open space within the entirety of the Property. A total of 55.79 acres of open space (77.5%) is planned within both phases of the Project. The open space areas that will be noted on the plat include the 100-foot setback area along Homestead Drive, the Crater, and golf course areas that are required open space as per the Master Plan Agreement. Open space areas in the resort core will not be noted on the plat except for the

Crater, the 100-foot setback area, and the area east of the Crater noted in the Master Plan. Open space areas shall not be developed and will be noted on the plat.

- d) Density: The proposed development includes 68 condominiums and seven single-family dwellings, along with all of the existing hotel rooms currently in the resort. The number of rooms that will be added to the resort will be approximately 139, which brings the total number to approximately 264 once construction is complete (this number is approximate because it is unknown how many rooms will be in the single-family dwellings).
- e) Building Area: The proposed plan includes a building footprint area of 238,376 square feet. The maximum amount of building footprint is limited to 367,750 square feet. Per the Master Plan Agreement, the Developer is allowed to increase the building area through the preliminary and final approval process of each phase.
- f) Access: The development has four access points 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 will be built as part of Phase 1 and has specific restrictions described in an access easement. There is another access to Pine Canyon Road that will continue to be a maintenance road.
- g) Traffic Study: The Developer has submitted a revised traffic study with Horrocks Engineers has reviewed. (Letter attached as Exhibit B).
- h) Public Participation Meeting: The Developer held a public participation meeting on March 7, 2024. This requirement is to give the Developer an opportunity to present the proposed development to the surrounding residents.
- i) Sensitive Lands: The Property contains some wetlands and geologically sensitive lands that cannot be disturbed through the development process. If any wetlands are proposed to be disturbed, approval must first be obtained from the Army Corps of Engineers. The Crater is defined as a major geological 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 limited in the approved Master Plan regarding Crater development in that pot rock cannot be modified in any way. Sand and pavers can be placed on the pot rock to create safe and walkable surfaces. There is also a FEMA floodplain that crosses the property. Any improvements in the floodplain require Army Corps of Engineers approval.
- j) Trails: The Trails Master Plan contains one public trail that will parallel Homestead Drive. Per the current Master Plan Agreement, this trail was to be built before October 31, 2021, but the trail has not yet been built. The City has since built the trails to the north and south of the Homestead property,

which has left this as the only section of trail along Homestead Drive yet to be built. This trail must be built as soon as possible. This trail will help complete the Master Trail Plan that will benefit both residents and tourists.

- k) Architectural Theme: The Developer has received approval 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. All buildings will be reviewed by the Visual and Architectural Committee (VAC) and staff before building permits are issued. Additionally, per the 2008 Master Plan, “Building materials and colors that are compatible with the natural environment and the existing buildings in the Homestead are encouraged.”
- l) 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-foot setback along Homestead Drive. There are 30-foot setbacks on the north, south and east boundaries.
- m) Height of Structures: Structures cannot exceed 35 feet in height unless the building is a hotel or conference building and that building is located at least 500 feet east of the right-of-way of Homestead Drive. The height of any structure over 35-feet cannot exceed an elevation of 5680 feet, two feet lower than the highest elevation of the Crater. All future elevation certificates will be based on natural grade and will need to comply with the provisions of the Master Plan Agreement. The Developer received approval for one proposed building to be a maximum of 40 feet in height, measured from natural grade, to be within 500 feet of Homestead Drive. The proposed wedding barn is setback approximately 150 feet from the right-of-way line from Homestead Drive. The VAC reviewed this issue and gave direction that the 40-foot height would be acceptable based on the following: the relatively large distance from Homestead Drive to the proposed structure, 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.
- n) 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’s plan has an average building coverage of 3,312 square feet per acre which is 9% per acre.
- o) Parking: The Applicant is seeking to expand the number of parking stalls from the required 424 to a proposed 465 stalls. The Developer is proposing that, at a minimum, 510 stalls would be built onsite. They also plan to have the option to build 609 stalls if there is additional demand for parking stalls. The current agreement gives the City the ability to require parking stalls to be

constructed if it is determined by the Planning Director and the City Engineer that there is a lack of parking.

- p) Landscaping: Once Phases 1 and 2 are approved, they will take years to construct. The City has received concerns, comments, and complaints about the construction and related debris from neighbors. A landscaping border will be required next to The Links on the south and The Kantons on the north to help buffer and mitigate the construction on the resort property. While landscaping is typically installed last in a development, it will be installed first here because the landscaping is on the periphery of the development.
- q) Southern Parking Lot: A light mitigation plan must be submitted to the City for shielding the light from the southern parking area to the residences in The Links. The plan must 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.
- r) Homestead Drive/State Route 222 Improvements: Homestead Drive is a UDOT road and UDOT approval and improvements are required because of the proposed further development of the Homestead property. Proposed improvements to Homestead Drive include acceleration/deceleration lanes and a center turn lane. UDOT approval is required before construction commences for Phases 1 and 2.
- s) Sewer Connection: The development will connect to existing Midway Sanitation District sewer lines located in the area.
- t) Weed Control: Developer and its successors and assigns shall eradicate, mow or trim all noxious weeds (as this term is defined by the Wasatch County Weed Board) at all times in all areas of the Project.
- u) Construction Traffic: All construction traffic for all Project improvements will meet the requirements imposed by the Midway City Planning and Engineering Departments.
- v) Duration of Final Approval: The duration of final approval shall be for one (1) year from the date of final approval of the development by the City Council. Should a final plat not be recorded by the County Recorder within this one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. The granting or denying of an extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has not right to receive such an extension. Such conditions may include, but are not limited to, provisions requiring that:
  - a. Construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded;

- b. The property must be maintained in a clean, dust-free, and weed-free condition at all times;
  - c. Each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or
  - d. No more than three one-year extensions will be allowed.
- w) Warranty: Consistent with City standards, the Developer will provide a one-year warranty for the operation of all improvements.
  - x) Bonding: Developer agrees to post performance and other bonds in amounts and types established by the City related to the performance of the Developer's construction obligations for the Project, pursuant to current City Ordinances and Regulations.
  - y) City's Right to Draw From Construction Bond: If the Developer is required to perform any work within the public right-of-way, and the work is not completed by the City's established deadlines, the City shall have the right to draw funds from the Developer's performance and other bonds.

B. Obligations of the City:

- i. General Obligations: The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is conditioned upon and in material consideration of the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.
- ii. Conditions of Approval: The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on the Project Plats, unless agreed to in writing by the Parties. Developer shall remain bound by all legally adopted ordinances, resolutions and policies of the City unless specifically agreed to otherwise herein.
- iii. Acceptance of Improvements: The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that 1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; 2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; 3) the Project improvements are inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and 5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

#### **Section 4. Vested Rights and Applicable Law.**

- A. Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the “Applicable Law”) shall be in accordance with those set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City Ordinances and Resolutions, in force and effect on the date the City Council granted preliminary approval to Developer for the Project. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of the plat, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.
- B. State and Federal Law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations (“Changes in the Law”) applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

**Section 5. Amendment.** Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent, which will not unreasonably be withheld. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in the specific lot, or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or Developer.

#### **Section 6. Cooperation and Implementation.**

- A. Processing of Subsequent Approvals. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, 1) the notice and holding of all required public hearings, and 2) the

granting of the Subsequent Approval as set forth herein. The City's obligations under this Section 6 are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans and other information necessary for the City to meet such obligations. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny the application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

**B. Other Governmental Permits.**

1. The Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.
2. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.B of this Agreement. However, the City shall not be required by this Agreement to join or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

**Section 7. Default and Termination.**

**A. General Provisions.**

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

2. Termination. If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, Developer does not waive any and all remedies available to the Developer at law or in equity.
  3. Review by the City. The City may, at any time and in its sole discretion, request that the Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information reasonably requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.
  4. Determination of Non-Compliance. If the City Council finds and determines that Developer has not complied with the terms of this Agreement, and non-compliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to section 7.A of this Agreement. If the default is not cured in a timely manner by Developer, the City may terminate this agreement as provided in Section 7 of this Agreement and as provided under Applicable Law.
- B. Default by the City. In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 7 of this Agreement, and as provided under Applicable Law.
- C. Enforced Delay; Extension of Time of Performance. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

## **Section 8. Notice of Compliance.**

- A. Timing and Content. Within fifteen (15) days following any written request which Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to Developer a written “Notice of Compliance,” in recordable form, duly executed and acknowledged by the City, certifying that 1) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.
- B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 8.A shall constitute a presumption that as of fifteen (15) days from the date of Developer’s written request: 1) this Agreement was in full force and effect without modification except as represented by Developer; and 2) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 7, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 7 for defaults which commence prior to the presumption created under this Section 8, and which have continued uncured.

**Section 9. Change in Developer, Assignment, Transfer and Required Notice.** The rights of Developer under this Agreement may be transferred or assigned, in whole or in part, with the written consent of the City, which shall not be unreasonably withheld. Developer shall give notice to the City of any proposed transfer or assignment at least thirty (30) days prior to the proposed date of the transfer or assignment.

## **Section 10. Miscellaneous Terms.**

- A. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- B. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written consent of the Parties. Notwithstanding the foregoing, if any material provision of

this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

- C. Other Necessary Acts. Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions of Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.
- D. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.
- E. Covenants Running with the Land and Manner of Enforcement. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of Developer that Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.
- F. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.
- G. Remedies. Either Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and

rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement; provided, however, that no action for monetary damages may be maintained by either Party against the other Party for any act or failure to act relating to any subject covered by this Agreement (with the exception of actions secured by liens against real property), notwithstanding any other language contained elsewhere in this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorney's fees in any action instituted to enforce the terms of this Agreement (with the exception of actions secured by liens against real property).

- H. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
- I. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.
- J. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.
- K. Representations. Each Party hereby represents and warrants to the other Party that the following statements are true, complete and not misleading as regards to the representing and warranting Party:
1. Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.
  2. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individuals represent.
  3. This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium, and equitable principles.
- L. No Third-Party Beneficiaries. This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

**Section 11. Notices.**

Any notice or communication required hereunder between the City and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United State mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses as set forth below:

If to Midway City:

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

With Copies to:

Corbin B. Gordon  
Midway City Attorney  
322 E. Gateway Dr., Ste. 201  
Heber City, Utah 84032

If to Developer:

The Homestead Group, LLC  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 12. Entire Agreement, Counterparts and Exhibits.** Unless otherwise noted herein, this Agreement, including its Exhibits, along with the Annexation Agreement, as amended, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and of Developer.

**Section 13. Signing and Recordation of Agreement.** Unless the City and Developer mutually agree otherwise in writing, this Agreement must be signed by both Developer and the City no

later than ninety (90) days after the Agreement is approved by a vote of the Midway City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to be recorded, at Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.

*[Signatures on Following Page]*

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

MIDWAY CITY

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 \_\_\_\_\_, 2024, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

\_\_\_\_\_  
NOTARY PUBLIC

THE HOMESTEAD GROUP, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Manager

STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, who executed the foregoing instrument in his/her capacity as the Manager of the Developer.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

(Legal Description of the Property)