Midway City Council
7 May 2019
Regular Meeting

Resolution 2019-10 /
Amended Homestead Master Plan
Agreement

RESOLUTION
2019-10

A RESOLUTION OF THE MIDWAY CITY COUNCIL APPROVING AN AMENDMENT TO THE HOMESTEAD MASTER PLAN 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 master plan agreement for the Homestead Resort.

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

Section 1: The attached Amended Master Plan 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 2019.

MIDWAY CITY

_____
Celeste Johnson, Mayor

ATTEST:

_____
Brad Wilson, Recorder

(SEAL)

Exhibit A

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 _____, 2019, by and between THE HOMESTEAD, NC. (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 50.09 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.

"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) Phasing: Developer agrees to build the Project in accordance with the Phasing Plan set forth as Exhibit C.

a. Phase 1 will consist of a hotel, 15 townhomes, 5 estate homes, 15 spa condominiums, 15 glamping pads, and amenities in accordance with approve site plan adjustments.

b. Phase 2 will consist of 15 townhomes, 5 estate homes, 15 spa condominiums, 15 glamping pads, and amenities in accordance with approve site plan adjustments.
c. Phase 3 will consist of 5 estate homes, 15 spa condominiums, 12 bungalows, 15 townhomes, and amenities in accordance with approve site plan adjustments.
d. Phase 4 will consist of 30 family condominiums, 3 estate homes, 15 townhomes, 15 spa condominiums, and amenities in accordance with approve site plan adjustments.
e. Phase 5 will consist of 30 family condominiums, and 12 units of employee housing, and amenities in accordance with approve site plan adjustments.
f. This phasing sequence is a material condition of this Agreement. However, the phasing sequence may be modified by the inclusion or removal of phases with mutual agreement of the parties, not to be unreasonably withheld, conditioned or delayed by the City.
g. The parties agree that the Developer can change the number of units within any asset type, class or use included in each phase without the need for additional approval. However, if Developer proposes a change in the type of use in any phase, mutual agreement will be required, with said agreement not to be unreasonably withheld, conditioned or delayed.
h. If the timing for completion of any requirement set forth in this Amended Agreement or in another approval granted by the City is not specified herein, said requirement may be included in the conditions of any phase of the project at the time the City considers and grants approval of any such phase. It is contemplated that the parties will likely execute amendments to this Agreement to embody the approvals granted for each successive phase of the project.

(3) **Open Space.** The Open Space approved for the Project is _____ acres as set forth in the Open Space Plan attached as Exhibit D.

a. At the time each new phase of expansion is submitted to the City for Preliminary approval prior to building, the Homestead will reconcile the land used for the expansion with this approval and show how the remaining Open Space in the Resort Center is protected from building.
b. Resort amenities as shown on the Resort Master Plan may extend into Open Space. However, 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.

c. Sensitive Lands. Within the Property, as identified in the Existing Conditions / Sensitive Land Map in Exhibit D, two parcels are identified as Sensitive Lands subject to regulation under the Midway City Zoning Ordinance and are identified as follows:

i. Wetland. No development or other disturbance to the wetland is permitted under this agreement unless approval is first obtained from the United States Army Corps of Engineers and the City. The City agrees to allow the event barn to be placed within the 25' buffer zone, with final placement requiring mutual agreement between the parties.

ii. Mound. Identified as the "Hot Pot," also referred to as the "Homestead Mound" or the "Crater" in other parts of this agreement and the Master Plan, on the Existing Conditions / Sensitive Land Map in Exhibit E.

iii. The Homestead Mound's historical uses and disturbances are recognized as valid uses which continue under this agreement. The protected uses are identified as follows:

a. The Mound has a commercial operation within the grotto under the Mound 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.

b. A portion of the natural water flow from the Mound is currently diverted for other uses by the Homestead as permitted by the Homestead 's historical water rights. It is agreed that the Mound may be altered to expand the flow of natural water out of the Mound into swimming and soaking pools. This alteration would be limited solely to increasing the size of existing pipes coming out of the Mound, 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 Mound in any way. The existing infrastructure and piping plan for the Mound is attached as Exhibit F.

c. The Mound has stairs constructed to allow pedestrian access to the top of the Mound along with a protective fence on the top of the Mound. It is agreed that the top of

the Mound may be beautified with plant boxes, benches etc., but no permanent structure shall be allowed on the top of the Mound (excepting the existing bridge and cover over the hole). The parties acknowledge that the top of the Mound is uneven, and agree that sand and pavers shall be installed to make the area safe to walk, with the caveat that the pot rock is not to be damaged or altered in any way during the installation of the pavers.

d. There is a trail that circumvents the base of the Mound 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 Mound and native flora or fauna except as follows: Irrigated landscaping of the mound surface is permitted up to 10 feet above the existing trail at the base of the Mound, above that line landscaping shall be limited to native plant material using surface or drip irrigation equipment.

(4) 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.

(5) Construction of Project Improvements: Developer agrees to construct and/or dedicate Project improvements as directed by the City. Specifically, Developer agrees as follows:

i. Entrance to Homestead Resort. Developer agrees to realign the entrance to the Homestead Resort as set forth in the approved Master Plan and Phasing Plan attached hereto.

ii. Trails. Developer agrees to construct, at its own expense, trails in and around the project as shown on the Trail Plan attached as Exhibit H, as follows:

a. South Offsite Trail: Developer agrees to build an off-site trail from 200 North at the crossing of Snake Creek to the Southern corner of the Homestead Resort as part of Phase 1.
b. Interior and East/West Trail: Developer agrees to build the interior trail extending along state highway 222 from north to south as part of Phase 1. Developer also agrees to build the west to east trail from the Highway 222 trail to Pine Canyon Road as part of Phase 3.
c. North Offsite Trail: Developer agrees to build the North Offsite Trail over hole #1 and #8 as part of Phase 1.
d. The Trail Plan includes the approved specifications for the width, location, and type of material for the trails.
e. Upon completion, all off-site trails will be dedicated to the City by the respective property owner, with the City assuming all on-going operation, maintenance and control of the off-site trails.
f. Trails internal to the Property shall be open to the public and designated as such on the final approved plat of each phase. Developer, at its sole expense, shall be responsible for maintenance, replacement, and repair of the trails internal to the resort. Developer agrees to maintain the trails in a safe condition, and also agrees the City may regulate these trails and require maintenance be performed by the Developer.

iii. 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.

(6) Rental Pool. Developer agrees that no less than 90% of all unites within the Development will be restricted from permanent residence, and required to be in a rental pool operated by the Master Property Owner's Association. Restrictions on permanent residents shall be included on the recorded plat of each phase and also included in the CC&Rs of the development. At no time

shall there be more than 10% of units utilized for permanent residence within the Resort. Those units available for permanent residence shall be designated on the plat of each Phase.

(7) Public Access to Certain Amenities. The pool and splash pad designated at number 12 and 13 on the Homestead Resort Master Plan attached as Exhibit XX, shall be kept open for public use, regardless of whether the person or patron is staying at the resort. Developer agrees to make these facilities available to the general public at reasonable hours and reasonable admission costs. I

(8) Master Property Owner's Association. Developer will propose and obtain City approval for the formation, without debt, of a Master Property Owner's Association entity, 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. All phases of the Resort shall be subject to the Master Property Owner's Association. Multiple Property Owner's Associations that are not subject to the Master Property Owner's Association are strictly prohibited.

(9) Resort Operator. As part of the approval for Phase 1, Developer will submit, and obtain City approval of an Operations Plan for the Resort, which shall define the role of the Resort Operator, specify the respective rights and duties of said Resort Operator and the Master Homeowner's Association, and outline which portions of the Project are to be owned by the Resort Operator and not by an Owner's Association.

(10) Building Height:

a. All buildings contained within the Resort Master Plan shall be less than 35 feet in height above the pre-developed or natural grade except for any hotel, condo-hotel, lodging facility or conference center building that is greater than 400 feet from the east right-of-way line of Homestead Drive (State Road 222).
b. Any hotel, condo-hotel, chapel, barn, or conference center building that is greater than 400 feet from the east right-of-way line of Homestead Drive (State Road 222) must comply with the following if the building heights are to be greater than 35 feet:
    i. The parties stipulate that the proposed hotels in the Development will not exceed an absolute elevation of 5680 feet in height

above grade, which is two feet below the top of the Mound near the center of the resort.

ii. All other buildings, excepting hotels condominium hotel products will be limited to 35 feet in height.

iii. No building within the resort can be taller than the absolute elevation 5680, which is two feet below the top of the Mound near the center of the resort.

iv. The design of the building will have relief and depth that creates architectural interest in the building. Gable, rooflines, parapets, columns, facades, windows, doors, etc. will be incorporated into the building design to create a sense of mass and scale.

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

vi. The developer shall seek approval of each of the preceding five items as part of the Preliminary Application for any phase where such buildings are proposed.

(11) 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, dated April 15, 2019 Consisting of Sheet Numbers:

(0) Vicinity Map
(l) Master Site Plan
(2)Existing Conditions / Sensitive Lands Map
(3)Land Use Plan

c. Exhibit I — Parking Calculations dated April 15, 2019, 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.

d. Exhibit J – 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.

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

(13) 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.

(14) 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.

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 terns 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 tern 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 (l) 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, NC.
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, INC.

_____
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_____.

_____