

Midway City Council  
7 July 2020  
Regular Meeting

Homestead Resort /  
Master Plan Amendment



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**MEMORANDUM**

**TO:** Celeste Johnson, Mayor, Midway City Council  
**FROM:** Corbin B. Gordon, City Attorney  
**DATE:** June 30, 2020  
**RE:** Homestead Master Plan Amendment

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I have been asked to review the existing Master Plan on the Homestead Resort in the context of the letter received from the Homestead on June 25, 2020 attached as Exhibit A.

I want to begin by stating the Mayor and Planning Staff are excited to work with the Homestead, and look forward to this project coming to fruition. With that said, the Mayor and Planning Staff are concerned about the request by the Homestead to be allowed to move directly to preliminary approval under the existing Master Plan, when the Developer is proposing substantive changes to the map approved in 2008. Both the Mayor and Planning Staff want to be as accommodating as possible, within the strictures of the existing agreement.

The agreed upon map in the Master Plan agreement is attached as Exhibit B. The Homestead is proposing to add additional buildings to the Master Plan, move buildings to different locations than established in the Master Plan map, and to reduce the amount of square footage and the number of keys agreed to in the Master Plan. See Exhibit C.

I have been asked to analyze the agreement to determine if the proposed changes by the Homestead can be accomplished without seeking formal amendment of the Master Plan agreement from the City Council, or if amendment is necessary.

My conclusion is the movement of buildings to new locations, adding additional amenities, and reducing the amount of square footage and number of keys all requires an amendment to the Master Plan Agreement.

With this said, the Developer appears to be concerned that seeking amendment will be a lengthy process that will hold up the project. As explained below, the only thing needed to amend the

Master Plan is City Council approval. As such, I have suggested that the proposed changes to the Master Plan be presented to the City Council at its next meeting so that the process can be as efficient as possible.

#### RIGHTS OF THE HOMESTEAD UNDER THE MASTER PLAN AGREEMENT

The following is an outline of the rights held by the Homestead under the Master Plan Agreement:

1. The Homestead can build in accordance with the existing Master Plan and could take any portion of the existing plan to the Planning Commission for preliminary approval. The Homestead can increase the “footprint” of the agreed upon buildings to increase the square footage from 294,200 to 367,750, and to increase the number of keys accordingly. Increasing the footprint is not the same as adding additional buildings or moving buildings to new locations. There is nothing in the Master Plan agreement that allows for the addition of new buildings not included in Exhibit B of the Master Plan without a formal amendment. The same holds true for moving existing buildings on the Master Plan to a different location. Both of these items require amending the Master Plan agreement as set forth in paragraph 5.
2. The Homestead has the right to “increase” the building footprints and the number of keys, but there is nothing in the agreement that allows for a decrease of the total footprint of 294,200 and a minimum of 453 keys. Any proposed reduction of the total footprint or number of keys will need to be agreed to through an amendment of the Master Plan. *See Recital D.* This is of particular importance as the City relies on the transient room tax and the reduction of keys puts the City at risk of losing its capacity to recover this tax.
3. Under § 3.1(b)(2) the Developer can alter the phasing on the project. This, however, does not allow the Developer to propose a different plan than is already agreed to in Exhibit B. The Developer can choose the order of how it wants to build the resort, but any alterations to Exhibit B requires mutual consent in writing. This is stated clearly under subparagraph (e): “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.” It was never contemplated that the Developer could simply propose altering the Master Plan without seeking and obtaining approval of the amendment from the City Council.
4. Amendment is allowed under § 5, which requires mutual consent. It is important to note that since this is an agreement entered into between the parties, the City does not have an obligation to follow its standard process of public hearings in order to amend the Master Plan. With that said, because the City’s consent is required, the proposed amendments

need to be presented to and approved by the City Council. The City Council can choose to follow whatever process it feels best meets its needs, which may involve public hearings if the City Council so desires.

5. Remodeling of the existing buildings can proceed at any time but will require building permits prior to any work being performed. This will also require the Developer to appear before the Visual and Architectural Committee to approve the renovations.
  
6. Regarding which buildings are and are not existing, the City takes the following position:
  - a. Event Barn – new
  - b. Golf Clubhouse – pre-existing
  - c. Golf Cart Storage Barn – new
  - d. Golf Maintenance Building – new
  - e. Restaurant and Greenhouse – new
  - f. Pool Grill – new
  - g. Spa – pre-existing
  - h. Center House – pre-existing
  - i. Existing Guest Cottages – pre-existing
  - j. Animal Stable – new
  - k. Public Trail through resort core – must be completed as part of the first phase (whatever the Developer chooses that to be)

To be clear, renovations can occur on anything designated as pre-existing. Anything designated as “new” will require an amendment to the Master Plan Agreement approved by both parties.