



RESOLUTION 2024-22

A RESOLUTION ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE HOMESTEAD GROUP, LLC AND MIDWAY CITY REGARDING A HISTORIC BUILDING

WHEREAS, Midway City desires to resolve its concern regarding the removal of a historic building located on the property of The Homestead Group, LLC; and

WHEREAS, Midway City and The Homestead Group, LLC have agreed to enter into a memorandum of understanding regarding the building. and

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

Section 1: The Midway City Council approves the memorandum of understanding regarding the building attached hereto and authorizes the Mayor of Midway City to execute the memorandum on behalf of the City.

PASSED AND ADOPTED by the Midway City Council on the day of
2024.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

Exhibit A

Memorandum of Understanding

This Memorandum of Understanding is entered into this ____ day of August 2024, by and between the City of Midway, a political subdivision of the State of Utah, and The Homestead Group, LLC, a Utah limited liability company, to resolve the City's concerns about the removal of a deteriorated "historic" cabin that had been located on the Homestead property. Each party to this agreement may be referred to as a "Party" and together shall be referred to as the "Parties." The Parties agree as follows:

1. The Homestead Group LLC removed an "historic" cabin, of less than 200 square feet in building area, that was originally located at the Heber Fort in Wasatch County and was moved to the Homestead property sometime between 1952-1972.
2. The City desires, and The Homestead Group LLC has agreed, to re-build a replica of the "historic" cabin, using new materials, in a new location on the property.
3. The exact location of the cabin will be determined prior to construction starting on the replicated cabin.
4. The City desires that the cabin replica be located south of the new South entrance to The Homestead Resort, within the 100' setback along Homestead Drive, in a manner that will allow Midway City residents, guests, and pedestrians on the walking trail to view the cabin replica.
5. The City agrees that the building area associated with the replica cabin will not be counted against the maximum aggregate building area approved for the Homestead in the 2008 Master Plan Development Agreement, as amended.
6. The Homestead Group, LLC shall replicate the cabin with new materials and attempt to match the cabin door-to-door that would have been typical of such structures at its original construction date.
7. The replicated cabin will have a new concrete foundation and perimeter landscape accent lights but will have no electricity or HVAC within the structure.
8. The Homestead Group, LLC may widen Homestead Drive, complete the Homestead Drive trail, landscape the Homestead Drive berm, and complete the South parking area prior to constructing the replica cabin.
9. The Homestead Group, LLC expects to complete the replica cabin before September 1, 2025, but no later than six (6) months after Homestead Drive, the Homestead Drive trail and landscaping, and the South parking area have been completed.
10. General Provisions:
 - a. *Notices.* All Notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to the addresses noted below or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective:

If to City:
ATTN: City Recorder
City of Midway
75 100 West
Midway City, UT 84049

If to The Homestead Group, LLC:
The Homestead Group
37 West 1070 South
St George, Utah 84770

Notices given by mail shall be deemed delivered seventy-two 72 hours following deposit with the U.S. Postal Service in the manner set forth above.

- b. *No Waiver.* Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce any other provision. The provisions may be waived only in writing by the Party intended to be benefited by the provisions, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions. Only the City Council may waive the City's right to enforce.
- c. *Authority.* The Parties represent to one another that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Homestead Group, LLC represents and warrants that it is fully formed and validly existing under the laws of the State of Utah, and that it is duly qualified to do business in the State of Utah and is in good standing under applicable state laws. The Parties warrant to one another that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the Parties on whose behalf each individual is signing.
- d. *Entire Agreement.* This Agreement, including exhibits to this Agreement and all other documents referred to in this Agreement, contains the entire agreement of the Parties with respect to the "historic" cabin.
- e. *Amendment.* This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the Parties to this Agreement.
- f. *Severability.* If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement. This Agreement shall otherwise remain in full force and effect provided the fundamental purpose of this Agreement is not defeated by such severance.
- g. *Governing Law.* The laws of the State of Utah and the laws of the City of Midway approved as of the date of this Agreement shall govern the interpretation and enforcement of the Agreement. The Parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Wasatch County, Utah. The Parties hereby expressly waive any right to object to such choice of law or venue.

- h. *Default.*
 - i. If any Party fails to perform its respective obligations hereunder or to comply with the terms hereof, the party believing that a default has occurred shall provide notice to the other party as provided herein (a “**Notice of Default**”). If a Party believes that the default has been committed by another Party, it shall also provide a courtesy copy of the notice to each affected Party. Each Notice of Default shall:
 - (1) Specify the claimed event of default by identifying with particularity specific provisions of this Agreement, and any applicable law, rule, or regulation that the Party is claimed to be in default;
 - (2) Identify why the default is claimed to be material; and
 - (3) If a Party chooses, in its discretion, propose a method and time for curing the default which shall be of no less than 60 days duration.
 - ii. Upon the issuance of a Notice of Default, all interested Parties shall have the opportunity to meet within 20 business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.
- i. *Remedies.* If, after meeting and conferring, the interested Parties are not able to resolve an alleged default, then the Parties may pursue any of the following remedies:
 - i. The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance, and termination; and
 - ii. The right to draw on any security posted or provided in connection with the Project Area and relating to remedying a default, in accordance with law applicable *Extended Cure Period*. If any default cannot be reasonably cured within 60 days of Notice of Default, then such cure period may be extended as needed, by written agreement of the Parties and for good cause shown, so long as the non-defaulting Party determines the defaulting Party is pursuing a cure with reasonable diligence.
- j. *Cumulative Rights.* The rights and remedies set forth herein are cumulative.
- k. *Force Majeure.* All time periods imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Project Area; or (b) by events reasonably beyond the control of The Homestead Group including, without limitation, inclement weather, war, strikes, unavailability of essential materials at commercially reasonable prices, and acts of God.
- l. *No Third-Party Rights.* The obligations set forth in this Agreement shall not create any rights in, or obligations to, any third parties, except as specifically provided herein.

- m. *No Agency Created.* Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the combined Parties.
- n. *Public Information.* The Parties understand and agree that all documents related to this agreement will be public documents, as provided in Utah Code Ann. § 63G-2-101, *et seq.*
- o. *Counterparts.* This Agreement may be executed in multiple counterparts which shall constitute one and the same document

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the effective date, having been approved by the City of Midway, and by a duly authorized representative of The Homestead Group, LLC.

CITY OF MIDWAY

a Utah municipal corporation

By: _____
Celeste Johnson, Mayor

ATTEST:

City Recorder

APPROVED AS TO FORM

City Attorney

THE HOMESTEAD GROUP, LLC

David Gertsch

Scott Jones