Execution Version

DONATION AGREEMENT

by and between

BLX MWR HOTEL LLC,
a Delaware limited liability company

and

MILITARY INSTALLATION DEVELOPMENT AUTHORITY,
a political subdivision of the State of Utah

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DONATION AGREEMENT

THIS DONATION AGREEMENT (this "**Agreement**") is entered into this 20th day of August, 2020 (the "**Effective Date**"), by and between BLX MWR HOTEL LLC, a Delaware limited liability company ("**BLX MWR**"), and MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah ("**MIDA**"). The foregoing entities are sometimes referred to individually as a "**Party**" or collectively as the "**Parties**".

RECITALS

WHEREAS, MIDA was created pursuant to the Military Installation Development Authority Act (Utah Code § 63H-1-101, *et seq.*) (the "**MIDA Act**") to create project areas and to promote the development of military land within such project areas, among other powers and authorities established by the MIDA Act; and

WHEREAS, pursuant to the MIDA Act, and with the consent of Wasatch County ("**County**") granted through the adoption of Resolution 2011-04, as required by the MIDA Act, on August 23, 2012 MIDA created the Military Recreation Facility Project Area – Part 1 applicable to certain real property located in unincorporated Wasatch County, Utah (the "**Part 1 Project Area Plan**"); and

WHEREAS, on December 17, 2018, MIDA followed all requirements of the MIDA Act and adopted the Military Recreation Facility Project Area Plan – Part 2 applicable to additional real property located in unincorporated Wasatch County, Utah (the "**Part 2 Project Area Plan**"); and

WHEREAS, on July 2, 2019, MIDA followed all statutory requirements of the MIDA Act and adopted the Military Recreation Facility Project Area Plan – Part 3 applicable to additional real property located in unincorporated Wasatch County, Utah (the "**Part 3 Project Area Plan**"; together with the Part 1 Project Area Plan and the Part 2 Project Area Plan, the "**Project Area Plans** (the area included within Part 1 Project Area Plan, the Part 2 Project Area Plan, and the Part 3 Project Area Plan, and any future property added to the MIDA project area for which Wasatch County has granted consent, is collectively referred to herein as the "**Project Area**"); and

WHEREAS, MIDA intends to use funds generated from development within the Project Area, to further state and federal legislation and the viability of creating a four-season resort that is both a public and military amenity; and

WHEREAS, MIDA entered into the West Side Interlocal Cooperation Agreement and the East Side Interlocal Cooperation Agreement with Wasatch County, both dated December 17, 2018, as amended on March 18, 2020 (collectively, the "**Interlocal Agreements**") following all requirements of the MIDA Act and the Utah Interlocal Cooperation Act, Utah Code Ann. §11-13-101 *et seq.* The Interlocal Agreements, among other things, set forth certain regulatory and tax allocation matters relating to real property located in the Project Area; and

WHEREAS, BLX MWR and its affiliates are the owners of certain surface rights in and to real property in Wasatch County within the Project Area, and more particularly described on Exhibit A hereto (the "**Mountainside Property**") that is in the process of being developed into a four-season recreational resort (the "**Mountainside Resort Development**") that will, among other uses, include a resort village and multiple ski lifts; and

WHEREAS, immediately prior to the Closing (as defined herein) but in consideration hereof, BLX MWR intends to create upon approximately 4.78 contiguous acres of its surface rights to property within

the Mountainside Resort Development, as more particularly described on Exhibit B hereto (the "**Subject Property**"), a hotel condominium project (the "**MWR Condominium Project**") as reflected on that certain MWR Conference Hotel Condominium Plat dated March 12, 2020 and approved by the MIDA Board on March 17, 2020, as such plat was adjusted on March 25, 2020 and may be further adjusted prior to recording with the approval of BLX MWR and MIDA's Executive Director (the "**Condominium Plat**") and that certain Declaration of Condominium for MWR Conference Hotel Condominiums provided to MIDA on June 25, 2020, as such Declaration may be adjusted prior to recording with the approval of BLX MWR and MIDA's Executive Director (the "**Condominium Declaration**", together with the Condominium Plat, the "**Condominium Documents**"); and

WHEREAS, BLX MWR has agreed that among the condominium units to be created in the MWR Condominium Project will be a hotel condominium unit consisting of approximately 387 hotel rooms, a convention center, front desk and related food, beverage and service areas (the "**MWR Hotel Unit**"), certain commercial condominium units (the "**Commercial Units**"), and a military concierge condominium unit (the "**Military Concierge Unit**", together with the Commercial Units and the MWR Hotel Unit, the "**MIDA Condominium Units**"), as more specifically identified in the Condominium Documents; and

WHEREAS, BLX MWR is willing to donate to MIDA the MIDA Condominium Units pursuant to this Agreement, and MIDA is willing to lease to BLX MWR the MIDA Condominium Units pursuant to the MWR Hotel Condominium Lease (as defined below); and

WHEREAS, among other things, the MWR Hotel Condominium Lease assures that Department of Defense personnel and retirees (defined in the MWR Hotel Condominium Lease as "Eligible Military Personnel) will be extended the benefit of discounted hotel room rates for a specified number of hotel rooms and certain other morale, welfare, and recreation benefits associated with the MIDA Condominium Units (the "**Military Benefits**"); and

WHEREAS, in addition to the Military Benefits of the MIDA Condominium Units, MIDA desires to obtain an option (the "**Option**") to acquire from BLX MWR (and its affiliates) certain surface interests in and to 1.74 acres, more or less, of the real property identified on Exhibit C hereto (the "**Military Option Parcel**") for use in an exchange with the United States Air Force for the Red Maple Parcel (as defined below); and

WHEREAS, Section 2862 of the Fiscal Year 2002 Department of Defense Authorization Act ("**Exchange Act**") authorized the Secretary of the Interior to transfer approximately 35 acres of real property in Park City, Utah from the Bureau of Land Management to the administrative jurisdiction of the Secretary of the Air Force (as such property is more particularly described on Exhibit D hereto, the "**Red Maple Parcel**"). The Exchange Act authorized the Secretary of the Air Force to convey the Red Maple Parcel to the State of Utah, a local government, or a private entity in exchange for other property to be used in connection with "an Air Force morale, welfare, and recreation facility."

WHEREAS, the Air Force is interested in obtaining the Military Benefits of certain discounts for rooms within the MWR Hotel Unit and the use of the Military Concierge Unit for Eligible Military Personnel, and having a morale, welfare and recreation facility located within the Mountainside Resort Development. Consequently, in consideration thereof, together with the value of the Military Option Parcel, MIDA believes that the Air Force is authorized by the Exchange Act to exchange the Red Maple Parcel for the Military Option Parcel and the Military Benefits that MIDA will make available to Eligible Military Personnel under the MWR Hotel Condominium Lease, which exchange will occur, if at all, subsequent to the exercise of the Option by MIDA;

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals and the promises of the Parties as set forth herein, BLX MWR hereby agrees to donate to MIDA, and MIDA agrees to accept from BLX MWR, the MIDA Condominium Units pursuant to the following covenants, conditions, terms and obligations:

1. **DONATION; VALUATION.**

(a) Donation. At the Closing (defined below), but subject to Section 4 hereof, BLX MWR shall donate and convey to MIDA, and MIDA shall receive and accept from BLX MWR, title to the MIDA Condominium Units (the "**Donation**"), on the terms and conditions set forth in this Agreement. For avoidance of doubt, the MIDA Condominium Units shall not include any right, title, estate or interest in or to any residential condominium units included in the MWR Condominium Project.

(b) Valuation. If BLX MWR determines that it desires to use the donation as a federal or state income tax deduction, and BLX MWR provides to MIDA a third party appraisal, independent of MIDA, setting forth the fair market value of the MIDA Condominium Units and Military Benefits, and corresponding value of the Donation, then, at the Closing, MIDA shall deliver to BLX MWR a completed Section B, Part IV of the IRS Form 8283, the contemporaneous written acknowledgement of the Donation required by Section 170(f)(8) of the Internal Revenue Code, and such other forms and information reasonably requested by BLX MWR, to acknowledge the Donation. The Parties further agree that MIDA has not made any independent determination of value, any representation or warranty as to value, nor any representation or warranty as to whether any appraisal is a "qualified appraisal," as defined in Section 1.468B-3(b)(3) of the Treasury Regulations. MIDA does not make any representation or warranty regarding use of the Donation as a tax deduction. BLX MWR shall consult its own tax advisors.

2. **MWR HOTEL CONDOMINIUM LEASE; DONATION DOCUMENTS.**

(a) MWR Hotel Condominium Lease. At the Closing, MIDA, as the Landlord, and BLX MWR, as the Tenant, shall enter into a lease of the MIDA Condominium Units substantially in the form of Exhibit E hereto (the "**MWR Hotel Condominium Lease**").

(b) Other Donation Documents. At the Closing, the Parties will enter into the following agreements related to the Donation (the following, together with the MWR Hotel Condominium Lease, the "**Donation Documents**"):

(i) A Master Development Agreement relating to the development of the Mountain Village & Resort Development, in the form of Exhibit F hereto (the "**Master Development Agreement**");

(ii) A Tax Sharing and Reimbursement Agreement, in the form of Exhibit G hereto (the "**Tax Sharing and Reimbursement Agreement**"); and

(iii) A Military Parcel Option Agreement for the Military Option Parcel in the form of Exhibit H hereto (the "**Military Option Parcel Agreement**").

3. **TITLE.**

(a) Deed. At the Closing, BLX MWR shall convey fee title to the MIDA Condominium Units by providing a Special Warranty Deed in the form of Exhibit I hereto (the "**Deed**") to MIDA, subject only to the Permitted Exceptions (defined below).

(b) Title Review. BLX MWR has caused High County Title, 1729 Sidewinder Drive, Suite 200, P.O. Box 714, Park City, Utah 84060, Attention: Scott Buchanan (the "**Escrow Agent**") to provide the Parties with a Commitment for Title Insurance dated as of February 19, 2020 (with an issue date of April 18, 2020) as Commitment No. 26190 Seventh Amended, reflecting the status of title to the Subject Property and showing all encumbrances and other matters affecting the Subject Property (the "**Commitment**"). At the Closing, BLX MWR shall cause the Escrow Agent to amend the Commitment to replace the Subject Property with the MIDA Condominium Units, thereby committing to issue an ALTA standard coverage owner's policy of title insurance based upon the amended Commitment (the "**Owner's Title Insurance**") in an amount not to exceed the value of the Donation, as determined by agreement of the Parties or by appraisal, insuring that upon recording the Deed, MIDA shall be the owner of good and marketable title to the MIDA Condominium Units, subject to all Permitted Exceptions.

(c) Title Insurance. MIDA shall be entitled to request that, at Closing, with respect to the MIDA Condominium Units, the Escrow Agent (i) issue to MIDA the Title Insurance, and (ii) provide such endorsements (or amendments) to such Title Insurance as MIDA may reasonably require; provided that, the Title Insurance and any endorsements thereto shall impose no additional liability on BLX MWR.

(d) Permitted Exceptions. Title to the MIDA Condominium Units is to be conveyed hereunder subject to the following (collectively, the "**Permitted Exceptions**"):

(i) all declarations, easements, rights-of-way, restrictions, covenants and other matters of public record, identified in the Commitment;

(ii) the Master Development Agreement;

(iii) the Master Declaration of Covenants, Conditions, Restrictions and Easements for the Mountainside Resort, in the form of Exhibit J hereto (the "**Master Declaration**");

(iv) the Declaration of Covenants, Conditions, Restrictions and Easements for the Village at Mountainside, in the form of Exhibit K hereto (the "**Village Declaration**");

(v) a Notice of Reinvestment Fee Covenant as required by Utah Code Ann. §57-1-46(b), in a form contemplated by the Master Declaration and attached as Exhibit L hereto (the "**Notice**");

(vi) all gas, water, and mineral rights of others;

(vii) all matters disclosed on the Condominium Plat and on that certain ALTA/NSPS Land Title Survey of the Subject Property performed by Charles Galati of Alliance Engineering, identified as Project No. 18-8-18, dated January 29, 2020;

(viii) the lien of ad valorem real property taxes for the then-current year;

(ix) the VCP Agreement (as defined in Section 9 hereof); and

(x) the Condominium Documents.

(e) MWR Hotel Condominium Lease. Immediately after recordation of the documents contemplated by Section 5(a)(iii), and as a first priority over any other encumbrances created by, through or under MIDA, the MIDA Condominium Units will be subjected to the MWR Hotel Condominium Lease, a memorandum of which in the form of Exhibit E to the Lease Agreement (the "**Memorandum of Lease**") shall be recorded in the official records of Wasatch County, Utah.

4. CONDITIONS PRECEDENT TO CLOSING.

(a) MIDA's Conditions Precedent. The obligation of MIDA to receive the Donation shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived in writing by MIDA in its sole and absolute discretion (the "**MIDA Conditions Precedent to Closing**"):

(i) The representations, warranties and covenants of BLX MWR set forth in this Agreement shall be true and correct as of the Closing Date.

(ii) BLX MWR shall have performed and complied with all covenants and agreements set forth herein which are to be performed or complied with by BLX MWR at or prior to the Closing Date, including without limitation being prepared to deliver title to the MIDA Condominium Units as provided for in this Agreement, and MIDA shall be reasonably satisfied that BLX MWR has the requisite authority to perform the actions to be performed by BLX MWR at the Closing.

(iii) BLX MWR shall have executed and delivered to MIDA any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

(iv) Each of the Donation Documents to which MIDA is a party shall be finalized in form and substance acceptable to MIDA in its sole discretion and shall be executed and acknowledged by the appropriate parties thereto.

(v) MIDA shall have received all required approvals necessary to execute this Agreement and perform in accordance with the terms and conditions hereof.

In the event that any of the foregoing MIDA Conditions Precedent to Closing are not satisfied and are not waived in writing by MIDA on or before the Closing Date, MIDA, as its exclusive remedy, may terminate this Agreement by written notice to BLX MWR.

(b) BLX MWR's Conditions Precedent. The obligation of BLX MWR to donate the MIDA Condominium Units shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived in writing by BLX MWR in its sole and absolute discretion (the "**BLX MWR Conditions Precedent to Closing**"):

(i) The representations, warranties and covenants of MIDA set forth in this Agreement shall be true and correct as of the Closing Date.

(ii) MIDA shall have performed and complied with all covenants and agreements set forth herein which are to be performed or complied with by MIDA at or prior to the Closing Date and BLX MWR shall be reasonably satisfied that MIDA has the requisite authority to perform the actions to be performed by MIDA at the Closing.

(iii) MIDA shall have executed and delivered to BLX MWR any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

(iv) Each of the Donation Documents shall be finalized in form and substance acceptable to BLX MWR in its sole discretion and shall be executed and acknowledged by the appropriate Parties thereto.

In the event that any of the foregoing BLX MWR Conditions Precedent to Closing are not satisfied and are not waived by BLX MWR on or before the Closing Date, BLX MWR, as its exclusive remedy, may terminate this Agreement by written notice to MIDA.

5. **CLOSING.**

(a) Closing. Subject to Section 6 hereof, the closing (the "**Closing**") of the Donation and conveyance of the MIDA Condominium Units to MIDA shall occur on or before August 31, 2020 (the "**Closing Date**"). The Closing shall be held at the offices of the Escrow Agent or such other location as the Parties shall mutually designate. Time is of the essence with respect to the Closing Date. At the Closing:

(i) BLX MWR shall execute, acknowledge, and deliver to MIDA (A) the Deed; (B) BLX MWR's counterpart of the Donation Documents; and (C) any other documents or instruments required to be executed pursuant to the provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby;

(ii) MIDA shall execute, acknowledge, and deliver to BLX MWR (A) the donation receipt and documents pursuant to Section 1(b), if requested by BLX MWR; (B) MIDA's counterpart of the Donation Documents; and (C) any other documents or instruments required to be executed pursuant to provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby;

(iii) Escrow Agent shall record the Master Declaration, and then the Notice, and then the Village Declaration, and then Deed, and then the Memorandum of Lease, with the Wasatch County Recorder's Office and, subject to Section 4(c) hereof, shall cause to be provided to MIDA the Owner's Title Insurance, insuring that upon recording the Deed, MIDA shall be the owner of title to the MIDA Condominium Units; and

(iv) At the request of BLX MWR, Escrow Agent shall issue to BLX MWR a leasehold policy of title insurance in an amount to be determined by BLX MWR insuring that BLX MWR is the owner of the leasehold interest of Tenant under the MWR Hotel Condominium Lease, subject only to the Permitted Exceptions.

(b) Closing Expenses. Expenses for preparation and recording of the Deed and any escrow or other fees of the Escrow Agent shall be equally shared between the Parties. BLX MWR shall pay the cost of the standard coverage Owner's Title Insurance, the premium for the leasehold policy of title insurance, if any, and the cost of recording the Master Declaration, the Notice, the Village Declaration, and the Condominium Documents. MIDA shall pay the cost of any extended title coverage or endorsements. Except as otherwise provided for in this Agreement or any other written agreement between the Parties, each Party will each be solely responsible for and bear all of its own respective expenses.

(c) Prorations. BLX MWR shall be responsible for all real property taxes, assessments or other charges accruing prior to the date of the Closing, including any taxes payable on or before the Closing under the Utah Farmland Assessment Act of 1969, *Utah Code Ann.* §59-2-501, et seq. At the Closing, all other real property taxes and other charges payable on an annual or periodic basis shall be prorated to the date of Closing based on the most recent available tax information.

(d) Irrevocable. Upon the recording of the Deed, the Donation shall be irrevocable.

6. **DEFAULT; LIABILITY OF PARTIES.**

(a) Default Before Closing. Notwithstanding anything to the contrary contained herein, in the event either Party breaches this Agreement prior to the Closing (which breach, failure or default is not remedied or cured by the breaching Party pursuant to any applicable provisions hereof), the non-breaching Party's sole and exclusive remedy shall be to terminate this Agreement by written notice to the non-breaching Party. Thereafter, the Parties shall be relieved of further liability hereunder, at law or in equity, except those obligations which expressly survive termination of this Agreement, it being the agreement of the Parties that in no event shall either Party be entitled to specific performance of this Agreement, or any other equitable remedies.

(b) Commissions. Each Party acknowledges and represents that it has not dealt with any broker, consultant, and/or representative to whom a commission might be owed in connection with the donation of the MIDA Condominium Units to MIDA. If any claim for commission is asserted or established, the Party in breach of its representation in this Section 6(b) hereby expressly agrees to hold the other harmless with respect to all costs relating thereto (including reasonable attorneys' fees) to the extent that the breaching Party is shown to have been responsible for the creation of such claim. Anything to the contrary in this Agreement notwithstanding, such agreement of each Party to hold the other harmless shall survive the Closing and any termination of this Agreement.

(c) Cure Period. No failure(s) or default(s) by a Party shall result in the termination or limitation of any right hereunder or the exercise of any rights or remedies with respect to such failure(s) or default(s) unless and until the defaulting Party shall have been notified in writing of such default and shall have failed to remedy the specified failure(s) or default(s) within fifteen (15) days after the receipt of said written notice (or, if the cure thereof cannot be completed within fifteen (15) days, then a reasonable period of time, not to exceed an additional thirty (30), days provided the Party diligently and continuously pursues such cure). The provisions of this Section 6(c) shall not apply to a default by MIDA for failure to close on the Donation of the MIDA Condominium Units as and when required hereunder.

7. **BREACH**. If BLX MWR breaches this Agreement, and the breach is discovered prior to Closing, MIDA's sole remedy is described in Section 6(a) of this Agreement. Except as to a breach by BLX MWR of any warranty, representation or covenant contained in Section 8(a) and Section 9 of this Agreement, if BLX MWR breaches this Agreement, and such breach is discovered after Closing, MIDA shall have no remedy or recourse against BLX MWR. MIDA has factored this risk into its decision to accept the Donation. If BLX MWR breaches any warranty, representation or covenant contained in Section 8(a) or Section 9 of this Agreement, MIDA's sole remedy shall be one of the following: (i) cure of the breach by or on account of BLX MWR; or (ii) payment of appropriate monetary compensation by BLX MWR to MIDA for such breach; provided that, subject to the provisions of Section 10 hereof, BLX MWR shall have no liability for any such breach unless MIDA notifies BLX MWR in writing of any such breach within six (6) months of when MIDA finds out about such breach.

8. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

(a) BLX MWR hereby represents, warrants and covenants to MIDA that:

(i) BLX MWR has power and authority to consummate this transaction, make the Donation, enter into the Donation Documents to which it is identified as a Party, and make the representation set forth herein without need for the further consent or approval of any other person.

(b) MIDA hereby represents, warrants and covenants to BLX MWR that:

(i) As of the date of the Closing no manager of MIDA or member of its board is employed by BLX MWR or any of its affiliates and that the closing of the transaction contemplated by this Agreement will not result in any employee of BLX MWR, or family member of an employee of BLX MWR, obtaining an interest in the MIDA Condominium Units. For purposes of this representation "family member" is defined as a spouse, a domestic partner, parents, grandparents, children, grandchildren, brothers and sisters, including in all cases, step-family members.

(ii) MIDA has power and authority to consummate this transaction, accept the Donation, enter into the Donation Documents to which it is identified as a Party, and make the representations set forth herein without need for the further consent or approval of any other person.

(iii) All prior agreements between MIDA and any third party relating to the donation of property for a MWR Hotel in Wasatch County have been terminated or have expired, and the development of the Subject Property in Wasatch County for a MWR Hotel is not subject to any limitation, restriction, right of first refusal or any other restriction enforceable by any third party.

9. **AS-IS**. MIDA ACKNOWLEDGES TO AND AGREES WITH BLX MWR THAT EXCEPT AS SET FORTH HEREIN MIDA IS ACCEPTING THE MIDA CONDOMINIUM UNITS IN AN "AS IS" CONDITION "WITH ALL FAULTS" AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF BLX MWR OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT OR IN THE MWR HOTEL CONDOMINIUM LEASE.

MIDA ACKNOWLEDGES THAT EXCEPT AS SET FORTH HEREIN MIDA HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS, SKETCHES, DRAWINGS, PLANS, PROJECTION, PROFORMA, STATEMENT, REPRESENTATION, GUARANTEE OR WARRANTY (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF BLX MWR.

MIDA HEREBY ACKNOWLEDGES THAT IT SHALL NOT BE ENTITLED TO, AND SHALL NOT, RELY ON BLX MWR, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES EXCEPT AS PROVIDED HEREIN OR IN THE MWR HOTEL CONDOMINIUM LEASE. BLX MWR HEREBY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EITHER UNDER COMMON LAW, BY STATUTE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT OR IN THE MWR HOTEL CONDOMINIUM LEASE AS TO (I) THE ACREAGE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE SUBJECT PROPERTY AND MWR CONDOMINIUM PROJECT INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURAL ELEMENTS, FOUNDATION, ACCESS, LANDSCAPING, SEWAGE OR UTILITY SYSTEMS AT THE SUBJECT PROPERTY AND MWR CONDOMINIUM PROJECT, IF ANY; (II) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF SOILS AND GROUND WATER OR THE EXISTENCE OF GROUND WATER; (III) THE EXISTENCE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE SUBJECT PROPERTY AND MWR CONDOMINIUM PROJECT; (IV) THE DEVELOPMENT POTENTIAL OF THE SUBJECT PROPERTY AND MIDA CONDOMINIUM UNITS OR THEIR VALUE, PROFITABILITY, HABITABILITY, MERCHANTABILITY OR FITNESS, SUITABILITY OR ADEQUACY OF THE SUBJECT PROPERTY AND CONDOMINIUM UNITS FOR ANY PARTICULAR PURPOSE; (V) THE ZONING OR OTHER LEGAL STATUS OF THE SUBJECT PROPERTY; (VI) THE COMPLIANCE OF THE SUBJECT PROPERTY AND MWR CONDOMINIUM PROJECT OR ITS OPERATIONS WITH ANY APPLICABLE CODE, STATUTE, LAW, ORDINANCE,

RULE, REGULATION, COVENANT, PERMIT, AUTHORIZATION, STANDARD, CONDITION OR RESTRICTION OF ANY GOVERNMENTAL OR REGULATORY AUTHORITY; (VII) THE QUALITY OF ANY LABOR OR MATERIALS RELATING IN ANY WAY TO THE MWR CONDOMINIUM PROJECT; OR (VIII) THE SQUARE FOOTAGE OR ACREAGE OF THE SUBJECT PROPERTY AND MIDA CONDOMINIUM UNITS.

OTHER THAN BLX MWR'S REPRESENTATION TO MIDA THAT BLX MWR BELIEVES THAT THE SUBJECT PROPERTY IS SUITABLE FOR THE LOCATION AND OPERATION OF THE MWR CONDOMINIUM PROJECT, AND EXCEPT AS SET FORTH IN THIS AGREEMENT OR IN THE MWR HOTEL CONDOMINIUM LEASE, MIDA ACKNOWLEDGES THAT BY THE CLOSING, MIDA WILL HAVE HAD AN ADEQUATE OPPORTUNITY TO MAKE SUCH LEGAL, FACTUAL AND OTHER INQUIRIES AND INVESTIGATIONS AS MIDA DEEMS NECESSARY, DESIRABLE OR APPROPRIATE WITH RESPECT TO THE SUBJECT PROPERTY AND MIDA CONDOMINIUM UNITS. SUCH INQUIRIES AND INVESTIGATIONS OF MIDA SHALL BE DEEMED TO INCLUDE REVIEW OF ENVIRONMENTAL AUDIT(S) OF THE SUBJECT PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE SUBJECT PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION WOULD SHOW, THE PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS APPLICABLE TO WHERE THE SUBJECT PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE MIDA CONDOMINIUM UNITS.

MIDA ACKNOWLEDGES THAT EXCEPT AS MAY BE PROVIDED IN THE MWR HOTEL CONDOMINIUM LEASE, DONATION DOCUMENTS OR EXPRESSLY STATED IN THIS AGREEMENT, THERE HAVE BEEN NO REPRESENTATIONS OR AGREEMENTS REGARDING BLX MWR'S OBLIGATION TO PROVIDE OR COMPLETE ROADS, SEWER, WATER, ELECTRIC OR OTHER UTILITY SERVICES, RECREATIONAL AMENITIES, OR ANY OTHER IMPROVEMENTS TO THE SUBJECT PROPERTY MADE BY BLX MWR OR RELIED UPON BY MIDA WHATSOEVER.

WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE PRECEDING, MIDA SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT AS MAY BE PROVIDED HEREIN OR IN THE MWR HOTEL CONDOMINIUM LEASE, INCLUDING BUT NOT LIMITED TO SECTION 14.1 OF THE MWR HOTEL CONDOMINIUM LEASE, MIDA HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE IN THE FUTURE AGAINST BLX MWR WITH RESPECT TO COSTS, DAMAGES, OBLIGATIONS, PENALTIES, CAUSES OF ACTION AND OTHER LIABILITIES (WHETHER ACCRUED, CONTINGENT, ARISING BEFORE OR AFTER THIS AGREEMENT, OR OTHERWISE) ARISING AS A RESULT OF (I) THE CONDITION OF THE SUBJECT PROPERTY AND MIDA CONDOMINIUM UNITS, EITHER PATENT OR LATENT, (II) ITS ABILITY OR INABILITY TO OBTAIN OR MAINTAIN BUILDING PERMITS, EITHER TEMPORARY OR FINAL CERTIFICATES OF OCCUPANCY OR OTHER LICENSES FOR THE USE OR OPERATION OF THE SUBJECT PROPERTY AND MIDA CONDOMINIUM UNITS, AND/OR CERTIFICATES OF COMPLIANCE FOR THE SUBJECT PROPERTY AND MIDA CONDOMINIUM UNITS, (III) THE ACTUAL OR POTENTIAL INCOME OR PROFITS TO BE DERIVED FROM THE SUBJECT PROPERTY OR THE MIDA CONDOMINIUM UNITS, (IV) THE REAL PROPERTY TAXES OR ASSESSMENTS NOW OR HEREAFTER PAYABLE THEREON, (V) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE SUBJECT PROPERTY, OR COMPLIANCE OF PAST OWNERS AND OPERATORS OF THE SUBJECT PROPERTY, IN REGARD TO ANY PAST, PRESENT AND FUTURE FEDERAL, STATE AND LOCAL ENVIRONMENTAL PROTECTION, POLLUTION CONTROL, POLLUTION CLEANUP, AND CORRECTIVE ACTION LAWS, RULES, REGULATIONS, ORDERS, AND REQUIREMENTS (INCLUDING WITHOUT LIMITATION CERCLA, RCRA, AND OTHERS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE, RELEASE,

DISPOSAL, REMOVAL, REMEDIATION OR RESPONSE TO, OR NOTIFICATION OF GOVERNMENTAL ENTITIES CONCERNING, TOXIC, HAZARDOUS, OR OTHERWISE REGULATED WASTES, SUBSTANCES, CHEMICALS, POLLUTANTS OR CONTAMINANTS), OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (VI) THE PRESENCE ON, IN, UNDER OR NEAR THE SUBJECT PROPERTY OF (INCLUDING WITHOUT LIMITATION ANY RESULTANT OBLIGATION UNDER CERCLA, THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), 42 U.S.C. § 6973 et seq., ANY STATE STATUTE OR REGULATION, OR OTHERWISE, TO REMOVE, REMEDIATE OR RESPOND TO) ASBESTOS CONTAINING MATERIAL, RADON, UREA FORMALDEHYDE OR ANY OTHER TOXIC, HAZARDOUS OR OTHERWISE REGULATED WASTE, SUBSTANCE, CHEMICAL, POLLUTANT OR CONTAMINANT, AND (VII) ANY OTHER STATE OF FACTS WHICH EXIST WITH RESPECT TO THE SUBJECT PROPERTY OR THE MIDA CONDOMINIUM UNITS.

MIDA ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS OF THIS SECTION 9 SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT AND/OR THE RECORDATION OF THE DEED FOR THE MIDA CONDOMINIUM UNITS.

THE PARTIES ACKNOWLEDGE THAT THE SUBJECT PROPERTY IS AND WILL REMAIN SUBJECT TO A VOLUNTARY CLEANUP AGREEMENT (THE "**VCP AGREEMENT**") BETWEEN BLX MAYFLOWER LLC, A DELAWARE LIMITED LIABILITY COMPANY ("**BLXM**") AND THE UTAH STATE DEPARTMENT OF ENVIRONMENTAL QUALITY ("**UDEQ**"). BLXM, AND NOT BLX MWR OR MIDA, SHALL HAVE THE OBLIGATION TO COMPLY WITH THE VCP AGREEMENT. BLXM shall indemnify, defend, and hold MIDA harmless from and against and all claims, losses, costs (including but not limited to attorney's fees), expenses, damages, and liabilities related to the VCP Agreement or to failure by BLXM to adhere to the requirements thereof.

10. **ASSIGNMENT; SURVIVAL.** MIDA may not assign this Agreement to any person without the express written consent of BLX MWR, which consent may be withheld for any reason or no reason. This Agreement shall be binding upon the Parties hereto and each of their respective heirs, executors, administrators, successors and assigns. The provisions of this Agreement and the obligations of the Parties shall survive the execution and delivery of the Deed executed hereunder and shall not be merged therein, except that any representations and warranties of the Parties hereunder shall survive Closing for only six (6) months.

11. **ESCROW AGENT.** The terms and conditions set forth in this Agreement shall constitute both an agreement between the Parties and instructions for Escrow Agent, which Escrow Agent shall acknowledge and agree to be bound by, as evidenced by its execution of this Agreement. The Parties shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly agreed by mutual consent of the Parties. Escrow Agent shall be relieved from any responsibility or liability and held harmless by both Parties in connection with the discharge of Escrow Agent's duties hereunder provided that Escrow Agent exercises ordinary and reasonable care in the discharge of such duties.

12. **MISCELLANEOUS.**

(a) Notices. All notices, demands, requests, or other writings pursuant to this Agreement provided to be given or made or sent, or which may be given or made or sent, by either Party hereto to the other shall be in writing and may be given personally or may be delivered by depositing the same in the United States mails, certified, registered or equivalent, return receipt requested, confirmed

facsimile, or nationally-recognized overnight courier service, in any case postage prepaid, properly addressed, and sent to the following addresses:

If to MIDA:
Military Installation Development Authority
450 Simmons Way, Suite 400
Kaysville, Utah 84037
Attention: Paul T. Morris, Acting Executive Director
paultmorris@outlook.com

with a copy to:
Michael Best & Friedrich
170 South Main Street, Suite 1000
Salt Lake City, Utah 84101
Attn: Lyndon Ricks
llricks@michaelbest.com

If to BLX MWR:
BLX MWR Hotel LLC
805 Third Avenue, 7th Floor
New York, NY 10022
Attention: Gary Barnett, President
Notices@extell.com

with a copy to:
BLX MWR Hotel LLC
2750 Rasmussen, Suite 206
Park City, Utah 84098
Attention: Kurt Krieg, Senior Vice President – Development
KKrieg@extell.com

and
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Roger D. Henriksen
rhenriksen@parrbrown.com

If to Escrow Agent:
High Country Title
1729 Sidewinder Drive, Suite 200
Park City, Utah 84060
Attn: Scott Buchanan
scott@highcountrytitle.com

or to such other address as either Party may from time to time designate by written notice to the other. Notices given by mail shall be deemed received and effective on the third business day following deposit with the U.S. Postal Service or by overnight courier as aforesaid shall be deemed received and effective on the first business day following such dispatch; provided, however, that if any such notice or other communication shall also be sent electronic mail, such notice shall be deemed given at the time and on the date of such transmittal if the sending Party also provide notice by mail or overnight courier as set forth above.

(b) Severability. If any term, covenant or condition of this Agreement, or the application thereof to any Party or circumstance, shall be invalid or unenforceable, the Agreement shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

(c) Dates. Any deadline date specified in this Agreement which falls on a Saturday, Sunday or legal holiday on which commercial banks in Utah or New York are closed for business, along with Rosh Hashanah, Yom Kippur, Shavuot, the first, second, seventh and eighth days of Passover, and the first, second, eighth and ninth days of Sukkot (any days other than the foregoing to be considered "business days" for all purposes hereunder) shall be extended to the first regular business day after such deadline date.

(d) Miscellaneous. This Agreement, together with the Exhibits attached hereto, contains the final and entire agreement between the Parties hereto. The recitals set forth in the beginning of this Agreement are incorporated herein as if restated in full. No change or modification of this Agreement, or any waiver of the provisions hereof, shall be valid unless the same is in writing and signed by the Parties hereto. Waiver from time to time of any provision hereunder will not be deemed to be a waiver of such provision in the future, or a waiver of any other provisions hereunder. The terms of this Agreement are mutually agreed to be clear and unambiguous, shall be considered the workmanship of all of the Parties and shall not be construed against the drafting Party. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

(e) Interpretation. Titles to Articles and Sections are for convenience only, and are not intended to limit or expand the covenants and obligations expressed thereunder. Unless otherwise indicated, references to Sections or Exhibits herein are references to the Sections in this Agreement or Exhibits attached to this Agreement.

(f) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Attorneys' Fees. In addition to any other relief to which it may be entitled, the prevailing Party in any dispute or controversy relating to this Agreement shall be entitled to recover its attorneys' fees and costs incurred in regard to such dispute or controversy. **THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS OF TRIAL BY JURY.**

(h) Knowledge. For purposes of this Agreement and any document delivered at Closing, all references to BLX MWR's knowledge, including, without limitation, whenever the phrase "to BLX MWR's actual knowledge," or the "knowledge" of BLX MWR or words of similar import are used, they shall be deemed to refer to facts within the actual, personal knowledge of BLX MWR's Representative only, and no others, only at the times indicated, without investigation or inquiry, or obligation to make investigation or inquiry, and in no event shall the same include any knowledge imputed to BLX MWR by any other person or entity. "**BLX MWR's Representative**" means and shall be limited to Gary Barnett, who is the President of BLX MWR, Kurt Krieg, Senior Vice President of BLX MWR, and Brooke Hontz, Vice President of BLX MWR.

(i) No Recording. Neither this Agreement nor a memorandum hereof shall be filed or recorded by either Party.

(j) Governing Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF UTAH. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF UTAH IN ANY ACTION OR PROCEEDING ARISING OUT OF OR

RELATING TO THIS AGREEMENT AND HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT SITTING IN THE STATE OF UTAH. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED TO PROVIDE ANY GREATER RIGHTS OR ADDITIONAL CLAIMS TO MIDA OR BLX MWR THAN AS OTHERWISE PROVIDED IN THIS AGREEMENT. BLX MWR ACKNOWLEDGES THAT MIDA IS A UTAH GOVERNMENTAL ENTITY AND SUBJECT TO AND PROTECTED BY THE UTAH GOVERNMENTAL IMMUNITY ACT. NOTHING CONTAINED IN THIS AGREEMENT SHALL CONSTITUTE A WAIVER BY MIDA OF ANY PROTECTIONS PROVIDED TO GOVERNMENTAL ENTITIES, INCLUDING THOSE CONTAINED IN THE UTAH GOVERNMENT IMMUNITY ACT.

(k) Public Record. BLX MWR and MIDA acknowledge that once executed this Agreement is a public record under the Utah Government Records Access and Management Act.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above, intending to be legally bound hereby.

BLX MWR:

BLX MWR HOTEL LLC

By: _____
Gary Barnett, President

Date: August 20, 2020

MIDA:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

ATTEST:

By: _____
Paul T. Morris, Acting Executive Director

_____
MIDA Staff

Date: August ___, 2020

ACKNOWLEDGEMENT AND AGREEMENT OF BLX MAYFLOWER LLC

BLX Mayflower LLC, a Delaware limited liability company hereby joins this Agreement for the sole purpose of being bound by the last sentence of Section 9 hereof but not otherwise.

BLX MAYFLOWER LLC

By: _____
Gary Barnett, President

Date: August 20, 2020

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above, intending to be legally bound hereby.

BLX MWR:

BLX MWR HOTEL LLC

By: _____
Gary Barnett, President

Date: August ___, 2020

MIDA:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

ATTEST:

By: _____
Paul T. Morris, Acting Executive Director

Ariana Farber
MIDA Staff

Date: August 20, 2020

ACKNOWLEDGEMENT AND AGREEMENT OF BLX MAYFLOWER LLC

BLX Mayflower LLC, a Delaware limited liability company hereby joins this Agreement for the sole purpose of being bound by the last sentence of Section 9 hereof but not otherwise.

BLX MAYFLOWER LLC

By: _____
Gary Barnett, President

Date: August ___, 2020

Signature: _____
Ariana Farber (Aug 20, 2020 13:46 MDT)

Email: ariana.m.farber@gmail.com

ACKNOWLEDGEMENT AND AGREEMENT OF ESCROW AGENT

The undersigned Escrow Agent executes this Agreement for the sole purpose of evidencing its agreement to the matters set forth in Section 11 hereof.

ESCROW AGENT:

HIGH COUNTRY TITLE

By: _____
Its: _____

Date: August ___, 2020

EXHIBIT A
to
DONATION AGREEMENT

Legal Description of Mountainside Property

The "Mountainside Property" referred to in the foregoing Donation Agreement is located in Wasatch County, Utah and consists of real property owned by BLX MWR and its affiliates situated west of US Highway 40 and within the Project Area.

EXHIBIT B
to
DONATION AGREEMENT

Legal Description of Subject Property

The "Subject Property" is located in Wasatch County, Utah and is more particularly described as follows:

The surface rights to all of Lot 1 MIDA / AIR FORCE PLAT SUBDIVISION, recorded December 19, 2019 as Entry Number 472208 in Book 1276 page 874-883 on file and of record in the office of the Wasatch County Recorder, State of Utah.

EXHIBIT C
to
DONATION AGREEMENT

Legal Description of Military Option Parcel

A parcel of land located in Sections 30 and 31 Township 2 South, Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, MIDA Jurisdiction, said parcel of land being described as follows:

All of Lot 20, MIDA MASTER DEVELOPMENT PLAT as recorded on Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, more particularly described as follows:

Beginning at a point where the section line common to Sections 30 and 31, Township 2 South, Range 5 East, Salt Lake Base and Meridian intersects with the westerly right of way line of US Highway 40, said point being South 89°53'28" East 1017.25 feet from the Section Corner common to Sections 25 and 26, Township 2 South, Range 4 East, Salt Lake Base and Meridian and Sections 30 and 31, Township 2 South, Range 5 East, Salt Lake Base and Meridian , monumented with a 1937 brass cap stamped MS-7163 (Basis of Bearings for the herein described parcel being South 26°11'47" East 5917.16 feet from the North Quarter Corner of said Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); thence coincident with said westerly right of way the following three (3) courses; 1) South 19°25'56" East 287.14 feet; thence 2) South 4°34'47" East 195.62 feet; thence 3) South 86°15'31" West 26.02 feet more or less to a point 15 feet from the easterly edge of an existing dirt road; thence coincident with a line 15 feet from said easterly edge of an existing dirt road the following eight (8) courses; 1) northwesterly 433.81 feet along the arc of a 850.00 foot radius non-tangent curve to the left through a central angle of 29°14'31" (chord bears North 19°40'28" West 429.12 feet); thence 2) North 34°17'44" West 111.33 feet; thence 3) northwesterly 205.88 feet along the arc of a 352.50 foot radius curve to the left through a central angle of 33°27'50" (chord bears North 51°01'38" West 202.96 feet); thence 4) North 67°45'33" West 65.84 feet; thence 5) northwesterly 136.88 feet along the arc of a 139.50 foot radius curve to the right through a central angle of 56°13'13" (chord bears North 39°38'56" West 131.46 feet); thence 6) North 11°32'20" West 101.23 feet; thence 7) northwesterly 255.50 feet along the arc of a 775.00 foot radius curve to the left through a central angle of 18°53'21" (chord bears North 20°59'00" West of 254.34 feet); thence 8) northwesterly 114.29 feet along the arc of a 425.00 foot radius curve to the left through a central angle of 15°24'28" (chord bears North 38°07'54" West 113.95 feet) to said westerly right of way line of US Highway 40; thence coincident with said westerly right of way the following four (4) courses; 1) North 43°16'53" East 50.82 feet; thence 2) southeasterly 554.14 feet along the arc of a 5269.58 foot radius curve to the right through a central angle of 6°01'31" (chord bears South 22°36'07" East 553.89 feet); thence 3) South 76°42'19" East 309.34 feet; thence 4) South 19°25'56" East 173.01 feet to the point of beginning.

Description contains 75,885 square feet or 1.74 acres more or less.

EXHIBIT D
to
DONATION AGREEMENT

Legal Description of Red Maple Parcel

The "Red Maple Parcel" is located in Summit County, Utah and is more particularly described as follows:

The entire portion of the south half of the southeast quarter of Section 3, Township 2 South, Range 4 East, Salt Lake Base and Meridian, lying north of Highway 248. Also described as: Lot 8 and Lot 10 as found on the supplemental plat of Section 3 & 10, Township 2 South, Range 4 East, Salt Lake Base and Meridian, one hundred seventh Congress of the United States of America, by Act of January 3, 2001, under Section 2862.

Contains: 26.5 acres, more or less.

EXHIBIT E
to
DONATION AGREEMENT

Form of MWR Hotel Condominium Lease

MWR HOTEL CONDOMINIUM LEASE AGREEMENT

by and between

MILITARY INSTALLATION DEVELOPMENT AUTHORITY,
a political subdivision of the State of Utah

as

"Landlord"

and

BLX MWR HOTEL LLC,
a Delaware limited liability company

as

"Tenant"

August [__], 2020

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MWR HOTEL CONDOMINIUM LEASE AGREEMENT

THIS MWR HOTEL CONDOMINIUM LEASE AGREEMENT (the "**Lease**") is entered into as of August [__], 2020 (the "**Effective Date**"), between the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah ("**Landlord**" or "**MIDA**"), and BLX MWR HOTEL LLC, a Delaware limited liability company ("**Tenant**"). MIDA and Tenant are sometimes referred to herein as a "**Party**" or together as the "**Parties**."

RECITALS:

WHEREAS, on August [____], 2020, Tenant, as Declarant, created upon the Real Property more particularly described in Exhibit A, a condominium project known as the MWR Conference Hotel Condominiums (the "**Condominium Hotel Project**") pursuant to that certain Declaration of Condominium for MWR Conference Hotel Condominiums (the "**Condominium Declaration**") recorded as Entry number _____ in Book _____ at Page _____ of the official records of the Wasatch County, Utah Recorder, and that certain Condominium Plat of the MWR Conference Hotel Condominiums (the "**Condominium Plat**") recorded as Entry number _____ in Book _____ at Page _____ of the official records of the Wasatch County, Utah Recorder,

WHEREAS, the Condominium Hotel Project includes (i) a Hotel Unit, (ii) fifty-five (55) Residential Units, (iii) ten (10) Commercial Units, (iv) a Military Concierge Unit, and (v) the Common Elements, as such terms are defined herein;

WHEREAS, pursuant to that certain Donation Agreement dated as of August [__], 2020 (the "**Donation Agreement**"), MIDA acquired from Tenant (i) the Hotel Unit, (ii) the Commercial Units, and (iii) the Military Concierge Unit; and

WHEREAS, pursuant to the MIDA Documents, as defined herein, among other things MIDA agreed to provide certain financial and other assistance to Tenant for the purpose of facilitating Tenant's construction and development of the Condominium Hotel Project, all as more particularly described herein; and

WHEREAS, in accordance with the Donation Agreement, and subject to the terms and conditions stated herein, Tenant desires to lease from MIDA, and MIDA desires to lease to Tenant the Hotel Unit, Commercial Units and the Military Concierge Unit (collectively, the "**Leased Premises**") on the terms and conditions set forth therein;

TERMS AND CONDITIONS:

NOW, THEREFORE, in consideration of the donation of the Leased Premises to MIDA pursuant to the Donation Agreement and in consideration of the terms and conditions of this Lease, as well as the benefits to be derived from this Lease, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1. Definitions. Capitalized terms used in this Lease and not otherwise defined herein shall have the meanings set forth in Exhibit B.

1.2. Interpretation. Matters relating to the interpretation of this Lease are set forth in Exhibit C.

ARTICLE II
LEASED PREMISES

2.1 Leased Premises; Reservations and Limitations.

(a) For and in consideration of Tenant's covenant to pay and deliver the Rent and the other sums and items provided for herein, and Tenant's performance of its other obligations hereunder, MIDA leases to Tenant, and Tenant leases from MIDA, the Leased Premises. As of the Effective Date, the Real Property on which the Condominium Hotel Project has been created is unimproved. Pursuant to the terms and conditions of Section 4.2, Tenant has agreed to cause the completion on the Real Property of the Hotel Improvements in the Condominium Hotel Project and related Common Elements pursuant to the Drawings to be approved pursuant to Section 4.3.

(b) Nothing contained in this Lease shall be deemed a gift or dedication of all or any portion of the Leased Premises for the general public or for any other public purpose whatsoever, it being the intention of MIDA that this Lease be strictly limited to the purposes expressed herein.

(c) MIDA acknowledges, subject to the provisions of Applicable Law, that the Leased Premises shall not constitute a public forum even though the fee estate in and to the Leased Premises shall be owned by MIDA.

(d) AS-IS. TENANT ACKNOWLEDGES TO AND AGREES WITH MIDA THAT TENANT IS ACCEPTING THE LEASED PREMISES IN AN "AS IS" CONDITION "WITH ALL FAULTS" AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF MIDA OTHER THAN THOSE EXPRESSLY STATED IN THIS LEASE.

TENANT ACKNOWLEDGES THAT EXCEPT AS PROVIDED IN THIS LEASE AND THE MIDA DOCUMENTS TENANT HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS, SKETCHES, DRAWINGS, PLANS, PROJECTION, PROFORMA, STATEMENT, REPRESENTATION, GUARANTEE OR WARRANTY (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF MIDA.

TENANT HEREBY ACKNOWLEDGES THAT EXCEPT TENANT SHALL NOT BE ENTITLED TO, AND SHALL NOT, RELY ON MIDA, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, AND MIDA HEREBY DISCLAIMS ANY REPRESENTATIONS OR

WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EITHER UNDER COMMON LAW, BY STATUTE, OR OTHERWISE, AS TO (I) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE REAL PROPERTY AND LEASED PREMISES INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURAL ELEMENTS, FOUNDATION, ACCESS, ACREAGE, LANDSCAPING, SEWAGE OR UTILITY SYSTEMS AT THE REAL PROPERTY AND LEASED PREMISES, IF ANY; (II) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF SOILS AND GROUND WATER OR THE EXISTENCE OF GROUND WATER AT THE REAL PROPERTY AND LEASED PREMISES; (III) THE EXISTENCE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE REAL PROPERTY AND LEASED PREMISES; (IV) THE DEVELOPMENT POTENTIAL OF THE REAL PROPERTY AND LEASED PREMISES, ITS VALUE, ITS PROFITABILITY, ITS HABITABILITY, MERCHANTABILITY OR FITNESS, SUITABILITY OR ADEQUACY OF THE REAL PROPERTY AND LEASED PREMISES FOR ANY PARTICULAR PURPOSE; (V) EXCEPT AS PROVIDED IN THIS LEASE AND THE MIDA DOCUMENTS, THE ZONING OR OTHER LEGAL STATUS OF THE REAL PROPERTY AND LEASED PREMISES; (VI) THE COMPLIANCE OF THE REAL PROPERTY AND LEASED PREMISES OR ITS OPERATIONS WITH ANY APPLICABLE CODE, STATUTE, LAW, ORDINANCE, RULE, REGULATION, COVENANT, PERMIT, AUTHORIZATION, STANDARD, CONDITION OR RESTRICTION OF ANY GOVERNMENTAL AUTHORITY; (VII) THE QUALITY OF ANY LABOR OR MATERIALS RELATING IN ANY WAY TO THE REAL PROPERTY AND LEASED PREMISES; (VIII) THE SQUARE FOOTAGE OR ACREAGE OF THE REAL PROPERTY AND LEASED PREMISES; OR (IX) THE OPERATION OF THE REAL PROPERTY AND LEASED PREMISES.

TENANT ACKNOWLEDGES THAT TENANT HAS HAD AN ADEQUATE OPPORTUNITY TO MAKE SUCH LEGAL, FACTUAL AND OTHER INQUIRIES AND INVESTIGATIONS AS TENANT DEEMS NECESSARY, DESIRABLE OR APPROPRIATE WITH RESPECT TO THE REAL PROPERTY AND LEASED PREMISES. SUCH INQUIRIES AND INVESTIGATIONS OF TENANT SHALL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE REAL PROPERTY AND LEASED PREMISES, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE REAL PROPERTY AND LEASED PREMISES, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION WOULD SHOW, THE PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF MIDA, WASATCH COUNTY AND THE STATE OF UTAH AND THE VALUE AND MARKETABILITY OF THE REAL PROPERTY AND LEASED PREMISES.

TENANT ACKNOWLEDGES THAT EXCEPT AS MAY BE PROVIDED IN THIS LEASE AND THE MIDA DOCUMENTS THERE HAVE BEEN NO REPRESENTATIONS OR AGREEMENTS REGARDING ANY MIDA OBLIGATION TO PROVIDE OR COMPLETE ROADS, SEWER, WATER, ELECTRIC OR OTHER UTILITY SERVICES, RECREATIONAL AMENITIES, OR ANY OTHER IMPROVEMENTS TO THE REAL PROPERTY AND LEASED PREMISES MADE BY MIDA OR RELIED UPON BY TENANT WHATSOEVER.

WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE PRECEDING, TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT AS MAY BE PROVIDED IN THIS LEASE AND THE MIDA DOCUMENTS IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE IN THE FUTURE AGAINST MIDA IN ITS PROPRIETARY CAPACITY AS "LANDLORD" AND LANDOWNER BUT NOT OTHERWISE, WITH RESPECT TO COSTS, DAMAGES, OBLIGATIONS, PENALTIES, CAUSES OF ACTION AND OTHER LIABILITIES (WHETHER ACCRUED, CONTINGENT, ARISING BEFORE OR AFTER THIS

LEASE, OR OTHERWISE) ARISING AS A RESULT OF (I) THE CONDITION OF THE REAL PROPERTY AND LEASED PREMISES, EITHER PATENT OR LATENT, (II) ITS ABILITY OR INABILITY TO OBTAIN OR MAINTAIN BUILDING PERMITS, EITHER TEMPORARY OR FINAL CERTIFICATES OF OCCUPANCY OR OTHER LICENSES FOR THE USE OR OPERATION OF THE REAL PROPERTY AND LEASED PREMISES, AND/OR CERTIFICATES OF COMPLIANCE FOR THE REAL PROPERTY AND LEASED PREMISES, (III) THE ACTUAL OR POTENTIAL INCOME OR PROFITS TO BE DERIVED FROM THE REAL PROPERTY AND LEASED PREMISES, (IV) THE REAL PROPERTY TAXES OR ASSESSMENTS NOW OR HEREAFTER PAYABLE THEREON, (V) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE REAL PROPERTY AND LEASED PREMISES, OR COMPLIANCE OF PAST OWNERS AND OPERATORS OF THE REAL PROPERTY AND LEASED PREMISES, IN REGARD TO ANY PAST, PRESENT AND FUTURE FEDERAL, STATE AND LOCAL ENVIRONMENTAL PROTECTION, POLLUTION CONTROL, POLLUTION CLEANUP, AND CORRECTIVE ACTION LAWS, RULES, REGULATIONS, ORDERS, AND REQUIREMENTS (INCLUDING WITHOUT LIMITATION CERCLA, RCRA, AND OTHERS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE, RELEASE, DISPOSAL, REMOVAL, REMEDIATION OR RESPONSE TO, OR NOTIFICATION OF GOVERNMENTAL AUTHORITIES CONCERNING, TOXIC, HAZARDOUS, OR OTHERWISE REGULATED WASTES, SUBSTANCES, CHEMICALS, POLLUTANTS OR CONTAMINANTS), OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (VI) THE PRESENCE ON, IN, UNDER OR NEAR THE REAL PROPERTY AND LEASED PREMISES OF (INCLUDING WITHOUT LIMITATION ANY RESULTANT OBLIGATION UNDER CERCLA, THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), 42 U.S.C. § 6973 et seq., ANY STATE STATUTE OR REGULATION, OR OTHERWISE, TO REMOVE, REMEDIATE OR RESPOND TO) ASBESTOS CONTAINING MATERIAL, RADON, UREA FORMALDEHYDE OR ANY OTHER TOXIC, HAZARDOUS OR OTHERWISE REGULATED WASTE, SUBSTANCE, CHEMICAL, POLLUTANT OR CONTAMINANT, AND (VII) ANY OTHER STATE OF FACTS WHICH EXIST WITH RESPECT TO THE REAL PROPERTY AND LEASED PREMISES.

THIS SECTION 2.1 SHALL NOT APPLY TO ANY ACTS OR OMISSIONS BY MIDA IN ITS GOVERNMENTAL CAPACITY. TENANT ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS OF THIS SECTION 2.1 SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS LEASE.

2.2 Term.

(a) Preliminary Term. The preliminary term of this Lease (the "**Preliminary Term**") shall commence on the Effective Date and shall continue, subject to the terms and conditions of this Lease, through and including the date on which Substantial Completion of the Hotel Improvements occurs.

(b) Initial Term. The initial term of this Lease (the "**Initial Term**") shall commence on the expiration of the Preliminary Term (the "**Commencement Date**") and shall expire on the date that is ninety-nine (99) years after the expiration of the Preliminary Term, unless sooner terminated under the provisions of this Lease. Within ten (10) Business Days after the commencement of the Initial Term, the Parties shall endeavor, in good faith, to execute an acknowledgement of Commencement Date for the purpose of evidencing the date on which the Initial Term of this Lease commenced; provided, that failure of the Parties to execute such acknowledgement shall not delay the commencement of the Initial Term or affect the rights and obligations of the Parties as otherwise set forth herein.

(c) Extension Term. Subject to and in accordance with the terms and conditions of this Lease, Tenant shall have the option to extend the Initial Term for three (3) additional periods of fifty (50) years each (each such period being referred to herein as an "**Extension Term**"). Tenant's option to extend the Initial Term of this Lease must be exercised by Tenant giving MIDA written notice of the exercise of such option not later than twelve (12) months prior to the end of the Initial Term or the preceding Extension Term, as the case may be; provided, however, that Tenant's exercise of such option shall not be effective if at the time such notice of exercise is given or on the first day of the Extension Term, an Event of Default shall be continuing beyond any applicable notice and cure periods. The Extension Term, if timely and properly exercised in accordance herewith, shall commence immediately upon the expiration date of the Initial Term or preceding Extension Term, as the case may be. All of the terms, conditions and provisions of this Lease shall apply to each Extension Term, including without limitation, Tenant's obligation to timely pay Rent to MIDA in accordance with this Lease. The Preliminary Term, the Initial Term and the Extension Terms, if any, are collectively referred to herein as the "**Term**."

2.3 Net Lease. This Lease is an absolute net lease. Tenant shall pay as Additional Rent all expenses of every kind and nature whatsoever relating to or arising from the Leased Premises, including Impositions and all expenses arising from the leasing, operation, management, maintenance, repair or use and occupancy of the Leased Premises, except as otherwise expressly provided in this Section 2.3. Notwithstanding the foregoing but subject to Article XVII, MIDA agrees to pay the following expenses: (a) any expenses expressly agreed to be paid by MIDA in this Lease, including any debt service and other payments with respect to any Fee Mortgage; (b) expenses incurred by MIDA to monitor and administer this Lease; (c) expenses incurred by MIDA prior to the Commencement Date; (d) expenses that are personal to MIDA, and (e) any amounts that are the responsibility of MIDA pursuant to Article VI.

2.4 Title. MIDA shall not create or permit to be created any covenants, restrictions, conditions or easements affecting the Leased Premises, without the prior approval of Tenant.

ARTICLE III
CONDOMINIUM HOTEL PROJECT; OWNERSHIP OF CONDOMINIUM UNITS; LEASE

3.1 Condominium Hotel Project. The Condominium Hotel Project includes the following, all as depicted on the Condominium Plat:

(a) fifty-five (55) residential condominium units (the "**Residential Units**");

(b) the Hotel Unit including guest rooms for short-term overnight lodging, in such number as may be determined by Tenant from time to time (but in no event less than 100 guest rooms) plus certain service areas, and food and beverage facilities, for the unit to operate as a hotel (the "**Hotel Unit**");

(c) ten (10) Commercial Units;

(d) the Military Concierge Unit; and

(e) related setbacks, access, parking, project landscaping, amenity areas, and other general and limited common areas, facilities and improvements identified in the Condominium Documents (collectively, the "**Common Elements**").

3.2 Declarant Rights. For avoidance of doubt, concurrently with the creation of the Condominium Hotel Project, Tenant became, and after the signing of this Lease and the MIDA Documents remains, the holder all of the rights of the "Declarant" under the Condominium Documents.

3.3 Resort Master Declaration. MIDA acknowledges and agrees that the Condominium Hotel Project is within the boundaries of the Resort and the Village and is subject to the Resort Master Declaration and the Village Declaration. The Resort Master Declaration and Village Declaration contemplate, among other things, the formation of the Master Association and the Village Association, design guidelines and standards, restrictions on certain uses, property assessments, and other provisions determined to be necessary or desirable to ensure uniform design, quality, marketing, identification, common amenities and infrastructure related to the Resort and the Village, and the operation of the Master Association and the Village Association.

3.4 Cooperation. The Parties acknowledge that as of the Effective Date, the Condominium Hotel Project and Resort have not been fully designed and finalized. Each Party shall cooperate with the reasonable requests of the other Party in connection with the design and finalization of the Condominium Hotel Project and, to the extent it relates to the Condominium Hotel Project, the Resort; provided that subject to the design requirements of Section 4.1(c)(i), the decision of Tenant as to the design of the Condominium Hotel Project and/or the Resort shall be final and binding.

3.5 Amendments of Condominium Documents, Resort Master Declaration, and Village Declaration.

(a) Amendments of Condominium Documents. The Condominium Documents provide that certain actions pursuant to, and amendments of, the Condominium Documents will require the vote or approval of the owners of Condominium Units located within the Condominium Hotel Project. MIDA hereby grants to Tenant for the Term the irrevocable right and power-of-attorney to exercise such vote on behalf of MIDA for all purposes; provided that MIDA's consent to the exercise of such vote shall be required if any such action or amendment would result in a material adverse effect on (a) the general availability of Discounted Rooms to Eligible Military Patrons or the Discount provided pursuant to Section 4.2(c)(i) with respect to any Lease Year, (b) the financial viability of the Hotel, or (c) the use of the Military Concierge Unit as contemplated herein. Tenant shall provide reasonable advance notice to MIDA regarding any proposed amendment of the Condominium Documents to the extent Tenant has advance knowledge of such amendment.

(b) Amendments of Resort Master Declaration and Village Declaration. As between Tenant, its Affiliates and MIDA, the "Declarant" under the Resort Master Declaration and/or the Village Declaration, as the case may be, shall have the exclusive right to amend, modify, replace, or restate any provision(s) of the Resort Master Declaration and/or Village Declaration without the consent or approval of MIDA unless any such amendment, modification, replacement, or restatement would result in a material adverse effect on (a) the general availability of Discounted Rooms to Eligible Military Patrons or the Discount provided pursuant to Section 4.1(c) with respect to any Lease Year, (b) the financial viability of the Hotel, or (c) the use of the Military Concierge Unit as contemplated herein. Tenant shall provide reasonable advance notice to MIDA regarding any proposed amendment of the Resort Master Declaration or the Village Declaration to the extent Tenant has advance knowledge of such amendment.

(c) Reasonableness. Any consent or approval of MIDA required by this Section 3.5 shall not be unreasonably withheld, conditioned or delayed. If MIDA believes that any proposed amendment would require the consent or approval of MIDA pursuant to Section 3.5(a) or Section 3.5(b), MIDA shall provide written notice to Tenant within five (5) days after receiving notice of any such proposed amendment. Such notice shall include detailed reasons for such belief and include suggested modifications to the proposed amendment that MIDA believes would eliminate any such material adverse effect. If the Parties are unable to agree to a modification of the amendment that would eliminate any material adverse effect, or are unable to agree as to whether a proposed amendment would have a material adverse effect pursuant to Section 3.5(a) or Section 3.5(b), the matter shall be referred to dispute resolution pursuant to Article XVIII.

3.6 Hotel Management Agreements. Tenant shall have the right to enter into hotel management agreements and hotel license agreements as may be necessary or desirable to operate the Hotel as a Four Star Hotel, including such agreements with one or more branded hotel operators (a "**Branded Hotel Operator**"); provided that such agreements shall be subject to the terms and conditions of this Lease. MIDA agrees to cooperate with Tenant in adjusting the terms of this Lease as may be requested by a Branded Hotel Operator so long as such adjustments do not reduce the availability of Discounted Rooms or the Discount applicable thereto, as contemplated by Section 4.1(c)(i), or decrease the amounts to be paid to MIDA or materially increase the risk of MIDA under this Lease. By way of clarification, the hotel management agreements or hotel license agreements contemplated in this Section 3.6 are separate and apart from the Hotel Management Agreement, defined in Article XIX, which may replace this Lease.

3.7 MIDA as a Governmental Entity. MIDA's obligations under Section 3.4 and Section 3.6 regarding cooperation and approval of the Condominium Hotel Project refer to MIDA in its proprietary capacity as Landlord and not its governmental capacity as the land use authority responsible for approving the Condominium Documents. MIDA, in its governmental capacity, must follow a public process to approve the Condominium Documents under Applicable Law.

ARTICLE IV
USES; MAINTENANCE AND CONSTRUCTION OF IMPROVEMENTS

4.1 Uses.

(a) Use. The Leased Premises are leased to Tenant primarily for the purpose of Tenant's creating, designing and constructing the Condominium Hotel Project, including the design and construction of the Hotel as a Four Star Hotel, and thereafter operating the Hotel in a manner consistent with the operation of a Four Star Hotel, all at Tenant's sole cost and expense. The primary use of the Leased Premises shall be for the Condominium Hotel Project and related uses, including, without limitation, conventions, conferences, cultural, sporting or athletic events, day-user parking, concerts, or other events and activities for the public and Eligible Military Patrons, all in accordance with the terms and conditions of this Lease, together with such parking facilities, other facilities and improvements as may be reasonably related and incidental thereto (such as administrative offices, retail concessions, and vendor kiosks and offices) (the "**Primary Use**"), and, so long as the Hotel is being used for the Primary Use (subject to an event of Force Majeure), the use, construction and operation of all other buildings and improvements allowed by Applicable Law (collectively, the "**Use**"), and for no other use except with MIDA's prior

written consent, which shall not be unreasonably conditioned, withheld, or delayed. Subject to the foregoing and Section 20.15:

(i) Tenant shall not conduct or permit to be conducted on the Leased Premises any business or any act which is contrary to or in violation of Applicable Law;

(ii) Tenant shall act in accordance with and not violate the Condominium Documents, Resort Master Declaration, the Village Declaration or any restrictions or covenants of record encumbering the Leased Premises as of the date hereof and affecting the Leased Premises, or, if approved in writing by MIDA (which approval shall not be unreasonably withheld, conditioned or delayed) or otherwise permitted by this Lease, arising through Tenant and encumbering the Leased Premises after the date hereof;

(iii) Tenant shall not use or operate the Leased Premises in violation of Applicable Law or the certificate of use or occupancy issued for the Hotel Improvements, and, subject to Tenant's right to contest the same within the period and in the manner prescribed by Applicable Law, and following such contest, upon a final, nonappealable adjudication that Tenant is in fact operating the same in violation of Applicable Law or of the certificate of use or occupancy for the Hotel Improvements, or absent such timely or proper contest, upon the expiration of such contest period, Tenant shall immediately discontinue any use or operation of the Leased Premises which is lawfully declared by any Governmental Authority to be a violation of any Applicable Law or a violation of said certificate of use or occupancy;

(iv) Tenant shall comply with any lawful direction of any Governmental Authorities which shall be given by reason of the nature of Tenant's use or operation of the Leased Premises, or with respect to the use or occupancy thereof;

(v) Tenant covenants not to commit or permit to be committed on the Leased Premises, any waste; and

(vi) Tenant covenants not to create or allow any nuisance created by the Tenant, or any subtenant, invitee or licensee of the Tenant, to exist on the Leased Premises.

(b) Notwithstanding the foregoing to the contrary, at any time, from time to time, during the Term, Tenant may, at Tenant's sole cost and expense, contest by appropriate legal proceeding, commenced, in good faith, within the period and in accordance with the manner prescribed by Applicable Law the validity or application of any determination that Tenant is violating any Applicable Law, the Condominium Documents, Resort Master Declaration, Village Declaration, or any restrictions or covenants of record, certificate of occupancy, or is required to comply with the direction of any Governmental Authority.

(c) Military Recreational Use.

(i) The Hotel to be operated on the Leased Premises shall offer at least 100 hotel rooms (the "**Discounted Rooms**") during the Standard Occupancy Period and Peak Occupancy Period at discounted rates (the "**Discount**") for Department of Defense ("**DoD**") personnel and retirees (each, an "**Eligible Military Patron**"). Eligible Military Patrons shall be DoD personnel and retirees on active duty serving (or having served) in the Reserve, National

Guard, Army, Navy, Air Force and Coast Guard, and Cadets of Armed Forces Academies, Public Health Service, and National Oceanic and Atmospheric Administration Commissioned Corps, and current and retired (APF and NAF) DoD and Coast Guard ("**CG**") civilian employees. A valid DoD or CG identification card, a valid retired identification card, or a current leave and earnings statement with photo identification will be required for check-in and for immediate family members accompanying an Eligible Military Patron. The Discount applicable to Eligible Military Patrons will be based on military rank or civilian grade at the time of check-in. If an Eligible Military Patron is a retired military member, the Discount will be based on the rank achieved at the time of the Eligible Military Patron's retirement. In the event of a question regarding whether a Person is an Eligible Military Patron or the level of Discount to which an Eligible Military Patron is entitled, Tenant's determination of such eligibility or Discount shall be final and binding absent manifest error. Any Person claiming that such issue has been improperly handled by Tenant must advise Tenant in writing prior to the desired date for occupying a Discounted Room or such claim shall be deemed waived.

(ii) Discounted Room rates for Eligible Military Patrons will be based on the following three categories (the "**Military Categories**").

A Category = E-1 through E-6;

B Category = E-7 through E-9, O-1 through O-3, WO-1 to CW-3; and

C Category = O-4 through O-10 CW-4 and CW-5, active and retired DoD civilians, foreign military assigned to a U.S. military installation.

(iii) MIDA may allocate the Discount among the Military Categories in such manner as MIDA may determine and as provided in Section 4.1(c)(v).

(iv) During the first calendar year when the Hotel is open for business to the general public (the "**Initial Opening Year**"), the average discounted room rate for Eligible Military Patrons shall not be less than $148 per night (the "**Average Rate Floor**"). For each calendar year after the Initial Opening Year, the Average Rate Floor will be increased or decreased based upon the percentage increase or decrease in the average daily room rate for non-military-discounted rooms in the Hotel for the prior calendar year. The percentage increase or decrease from the previous calendar year shall be provided to MIDA by April 1 each year, together with a summary of the revenue received from the Discounted Rooms for the prior calendar year, sorted, to the extent practicable, by Military Category.

(v) Tenant or the Branded Hotel Operator shall deliver written notice to MIDA ("**Opening Date Notice**") of the anticipated date on which the Hotel will open for business to the general public, on or before the earlier to occur of (1) eight (8) months prior to such date or (2) sixty (60) days or later after the retention of a Branded Hotel Operator. The Discount for each Military Category for the partial calendar year in which the Hotel opens for business and the following complete calendar year shall be provided by MIDA within sixty (60) days of receipt of such Opening Date Notice. If MIDA has not provided the Discount within sixty (60) days of receipt of such Opening Date Notice, then, except as provided in Section 4.1(c)(vii) for Peak Occupancy Periods, the Discount for the partial calendar year in which the Hotel opens for business and the following complete calendar year shall be as follows for the indicated Military Categories:

$112 per night for the A Category (assumes 10% occupancy of Discounted Rooms);

$142 for the B Category (20% occupancy of Discounted Rooms); and

$155 for the C Category (70% occupancy of Discounted Rooms).

By May 31 of each calendar year, commencing in the year following the calendar year in which the Initial Opening Year occurs, MIDA shall provide Tenant with the Discount allocation for the Military Categories for the next calendar year. If MIDA does not provide the Discount allocation by May 31 then the Discount allocation among the Military Categories for the following calendar year shall be the same as the then-current calendar year, as adjusted pursuant to Section 4.1(c)(vi), but shall be further adjusted on a percentage basis for each Military Category based on the percentage increase or decrease in the average daily room rate for non-military-discounted rooms in the Hotel during the previous calendar year. In the event of a question regarding the adjustment of the Discount allocation among the Military Categories pursuant to the immediately foregoing sentence, Tenant's determination of such allocation shall be final and binding absent manifest error.

(vi) At any time and from time to time during any calendar year, if Tenant or the Branded Hotel Operator determines in good faith that the actual average room rate for all Eligible Military Patrons after application of the then current Discount for Eligible Military Patrons is likely to cause such actual average room rate to be less than the Average Rate Floor, then Tenant or the Branded Hotel Operator shall have the right to increase the actual room rates being charged to Eligible Military Patrons (and thus decrease the Discount) for the balance of such calendar year so that such actual average room rate paid by Eligible Military Patrons during such calendar year is not less than the Average Rate Floor for such calendar year. Such increase may be implemented through the room booking software system(s) used for the Hotel or in any other manner as Tenant or the Branded Hotel Operator may determine. Within forty-five (45) days after the end of each calendar quarter during the Term, Tenant shall provide MIDA with a report setting forth the revenue received by Tenant from Discounted Rooms during such calendar quarter, the percentage occupancy of Discounted Rooms for each of the Military Categories, and any adjustment to the Discount pursuant to this Section 4.1(c)(vi).

(vii) The following four (4) time periods are outside of the Standard Occupancy Period (the "**Peak Occupancy Periods**"):

(A) Festive Weeks, meaning the two (2) full weeks within which Christmas and New Year's Day occur, recognizing a Saturday to Saturday or Friday to Friday duration for minimums.

(B) Sundance Film Festival (or any similar or successor festival) (i.e. the Sunday prior to the opening of the festival through the Sunday after the last showing at the festival; typically, two weeks in duration).

(C) Presidents Day (i.e. the Friday through Monday of the long weekend that concludes with Presidents Day).

(D) Martin Luther King Day (i.e. the Friday through Monday of the long weekend that concludes with Martin Luther King Day).

During the Peak Occupancy Periods, Eligible Military Patrons may receive only the following Discount off of the standard public room rates for the Hotel: 20% for the A Category; 25% for the B Category; and 30% for the C Category.

(viii) If a venue in Utah is ever selected for the International Olympics, then the period of time during the International Olympics (the "**Olympic Blackout Period**") is blacked out and there are neither military Discounts nor any military rights to utilize any Discounted Rooms in the Hotel during the Olympic Blackout Period. The Olympic Blackout Period shall also include a reasonable lead up and breakdown time for vendors, e.g. federations, media, television, etc. and shall include federation and other national and international qualifying or competitive events leading up to or preceding the period during which the International Olympics are held.

(ix) The location of the Discounted Rooms within the Hotel, including any future alteration or annex of the Hotel, shall be determined, and may be modified, by Tenant at any time and from time to time, in Tenant's sole discretion so long as the requirements of this Section 4.1(c) are satisfied and the quality of the Discounted Rooms meets the Four Star Hotel standard. This Section 4.1(c)(ix) is not intended to require the segregation of Eligible Military Patrons from the other guests or to less-desirable rooms. Its purpose is to recognize that Eligible Military Patrons may be placed in any rooms that are part of the Hotel in the same manner and to the same extent as other guests of the Hotel.

(x) Any Discounted Rooms that have not been reserved by Eligible Military Patrons at least one hundred twenty (120) days ahead of the date such Discounted Room would be occupied will no longer be eligible for a Discount and may be released by the Tenant or Branded Hotel Operator for use by others on such terms and conditions, and at such rates, as the Tenant or Branded Hotel Operator may reasonably determine.

(xi) The Military Concierge Unit shall be held by Tenant for use as a business or visitor center by Hotel guests that are Eligible Military Patrons without additional rent or fees payable to Tenant or the Branded Hotel Operator by any Eligible Military Patron, MIDA, or the Military Entity; provided that the Military Concierge Unit shall be subject to reasonable rules and regulations to preserve the quality of the Military Concierge Unit and its use consistent with the quality and service level of the Hotel generally, will not be staffed or otherwise provided with guest services, equipment or furniture unless otherwise agreed in writing by Tenant or the Branded Hotel Operator, and shall be used by Eligible Military Patrons, MIDA, and the Military Entity in compliance with Applicable Law and the standards for a Four Star Hotel. If the Tenant or Branded Hotel Operator does not agree to provide guest service, computer equipment, or furniture for the Military Concierge Unit, MIDA shall have the right, but not the obligation to provide such guest service, computer equipment, and furniture for the Military Concierge Unit at MIDA's sole cost and expense so long as any such guest service, computer equipment, and furniture (i) meets the quality requirements for a Four Star Hotel and the Branded Hotel Operator, (ii) shall not at any time interfere with the operation of the Hotel, including any system(s) installed in or serving the Hotel, and (iii) shall be installed with contractors approved by Tenant and providing Tenant and the Branded Hotel Operator with such indemnification, insurance and lien protection as Tenant or the Branded Hotel Operator or their respective lenders may reasonably require from time to time.

MIDA will not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens to attach to the Leased Premises or any part of the Condominium Hotel Project, or any interest therein, for work or materials furnished to MIDA in connection with any construction, improvement, or maintenance or repair thereof made by MIDA or any agents thereof. MIDA shall cause any such claim of lien to be discharged within sixty (60) days after the date of filing thereof; provided that in the event that MIDA, in good faith, disputes the validity or amount of any such claim of lien, and if MIDA shall bond over, or otherwise give to Tenant such security as Tenant may reasonably require, to ensure payment thereof and prevent any sale, foreclosure or forfeiture of the Leased Premises, or of any interest therein by reason of any such nonpayment. Any other issues related to the use of the Military Concierge Unit shall be submitted to the Military Conference Committee.

4.2 Hotel Improvements.

(a) Subject to Section 4.3, Tenant shall, at its sole cost and expense, make changes, improvements, alterations and additions to the Leased Premises necessary to make the Leased Premises suitable for the Primary Use to the extent contemplated by this Lease (collectively, the "**Hotel Improvements**"). MIDA, in its proprietary capacity as Landlord shall have the right, at its sole cost and expense, to monitor the construction of the Hotel Improvements solely to determine that the same are being completed in accordance with the provisions of this Lease; provided that MIDA's right to so monitor shall be solely for MIDA's own benefit and MIDA shall have no duty to ensure that the same comply with any legal or insurance requirements. This Section 4.2(a) shall not apply to MIDA or its contactors, acting in its governmental capacity to inspect and enforce building codes and other regulations, pursuant to Applicable Law.

(b) Once construction has commenced, subject to Section 4.4 and Section 20.15, Tenant shall diligently prosecute the construction of the Hotel Improvements to completion in accordance with Applicable Law. Tenant agrees to carry such insurance as required by this Lease covering any such Hotel Improvements.

(c) Notwithstanding anything herein to the contrary, this Lease does not obligate Tenant to construct the Residential Units or perform any alterations to the Residential Units, such decisions to be made by Tenant from time to time in its sole discretion based on market, financing and other considerations.

(d) Tenant agrees that Tenant will not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens to attach to the Real Property, or any interest in or to the Leased Premises, for work or materials furnished to Tenant in connection with any construction, improvement, or maintenance or repair thereof made by Tenant or any agents thereof upon the Leased Premises. Tenant shall cause any such claim of lien to be discharged within sixty (60) days after the date Tenant is notified of the filing thereof; provided that in the event that Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall bond over, or otherwise give to MIDA such security as MIDA may reasonably require, to ensure payment thereof and prevent any sale, foreclosure or forfeiture of the Leased Premises, or of any interest therein by reason of any such nonpayment, Tenant shall not be deemed to be in breach of this Section so long as Tenant is diligently pursuing a resolution of such dispute and, upon entry of final judgment resolving the dispute, if litigation or arbitration result therefrom, discharges said lien. Further, MIDA shall have the right, at any time and from time to time, to post and maintain on

the Leased Premises such notices as MIDA deems necessary or appropriate to protect the Leased Premises and/or MIDA from the liens of mechanics, laborers, materialmen, suppliers, and/or vendors.

(e) All maintenance, repairs or construction of the Hotel Improvements shall be performed in a good and workmanlike manner and in accordance with requirements set forth in Section 4.3. Tenant shall upon request provide to MIDA periodic progress reports on the design and construction of any part or all of the Hotel Improvements.

4.3 Submissions of Drawings. Notwithstanding any other term or condition of this Lease, and in furtherance of the requirements set forth in Section 4.2, the Parties agree as follows:

(a) Prior to construction of the Condominium Hotel Project, or any Alterations of the Hotel Improvements the cost of which exceeds Five Million Dollars ($5,000,000) (the "**Alterations Threshold**") in any given calendar year, Tenant shall comply with or procure MIDA's written waiver of all the following conditions:

(i) Tenant shall deliver to MIDA, for MIDA review and, subject hereto, approval or disapproval, two (2) sets of the preliminary plans, drawings and specifications prepared by an architect or engineer licensed to practice as such in Utah, all sufficient to enable MIDA to make an informed judgment about the design and quality of construction. Approval or disapproval shall be communicated in the manner set forth in Section 4.3(b), and disapproval shall be accompanied by written specification of the grounds for disapproval and the changes which, if made, would cause approval to be granted. MIDA acknowledges that as of the Effective Date it has received and approved, solely in its capacity as "Landlord", the preliminary plans, drawings and specifications for the initial construction of the Condominium Hotel Project as submitted to MIDA on November 1, 2019, together with any modifications to such submission provided to MIDA between such date and the Effective Date.

(ii) Tenant shall prepare final working plans and specifications substantially conforming to the preliminary plans, drawings and specifications previously approved by MIDA, submit them to the appropriate Governmental Authorities for approval, and deliver to MIDA one (1) complete set as approved by such Governmental Authorities (the "**Final Plans**") for final approval by MIDA pursuant to Section 4.3(b) below. Changes from the preliminary plans, drawings and specifications shall be considered to be within the scope of the preliminary plans if:

(A) they are made to comply with requirements of a Governmental Authority in connection with the application for any Governmental Approvals; or

(B) they do not depart substantially in size, utility, or value from the preliminary plans, drawings, and specifications described in subsection (i) (such preliminary plans, drawings, specifications and the Final Plans being referred to herein as the "**Drawings**").

(iii) No improvements shall be constructed on the Leased Premises and no modifications to or Alterations of the Leased Premises which require the submission of Drawings shall be commenced unless the Drawings therefor have been reviewed and approved or deemed approved by MIDA in accordance with this Section 4.3, and, in addition, the improvements and any such modifications to or Alterations of the Leased Premises shall be designed and constructed

in a first class manner and in accordance with Applicable Law, using licensed contractors and good quality materials and otherwise in accordance with construction standards for similar projects located in Wasatch County, Utah. Any changes or modifications in the Drawings shall meet the quality standards set forth in the immediately foregoing sentence, as determined by Tenant in its sole discretion reasonably exercised.

(b) Approvals by MIDA under this Section 4.3 shall not be unreasonably conditioned, withheld or delayed, so long as any improvements, modifications to or Alterations of the Leased Premises shall be consistent with the Use and do not otherwise conflict with the terms and conditions of this Lease. Approvals shall be deemed given unless MIDA shall notify Tenant in writing within five (5) days of the written request thereof stating the reasons for withholding such approval and what changes, if made, would cause MIDA to give its approval. In the event MIDA fails to provide such disapproval within such five (5) day period, MIDA consent shall be deemed granted. Notwithstanding anything in this Section 4.3 to the contrary, MIDA approval of the Final Plans shall be granted unless the Drawings are not within the general scope of or fail to substantially conform to the preliminary plans, drawings, and specifications as set forth in Section 4.3(a)(ii). Such process of submittal, review and comment by MIDA, and resubmittal by Tenant, shall continue until such time as the Drawings have been approved by MIDA or until the Parties are unable to reach agreement on the Drawings, in which case, such dispute shall be submitted to arbitration in accordance with the provisions of Article XVIII. Any and all improvements constructed or installed upon the Leased Premises shall comply with and conform to the approved Drawings in all material respects.

(c) MIDA acknowledges that as of the Effective Date it has received and approved the Final Plans and Drawings for the initial construction of the Condominium Hotel Project, as reflected in the building permit application and plans received and approved by MIDA and Wasatch County as of the Effective Date as MIDA Building Permit Application No. 19-526 and MIDA Infrastructure Permit – MWR Hotel as Permit No. 19-014.

4.4 Commencement and Substantial Completion of Hotel Improvements.

(a) Subject to the provisions of Sections 4.3 and Section 20.15, Tenant shall use commercially reasonably efforts to Commence Construction of the Hotel Improvements within thirty-six (36) Months after the last to occur of the receipt by Tenant of (i) the Resort Entitlement Approvals, (ii) final Governmental Approvals for the Condominium Hotel Project; (iii) MIDA final approval of the Drawings pursuant to Section 4.3, and (iv) the execution of the Tax Sharing and Reimbursement Agreement by MIDA and Tenant, as such date may be adjusted for delays attributable to MIDA or Force Majeure (the "**Construction Commencement Date**").

(b) Tenant shall use commercially reasonable efforts to achieve Substantial Completion of the Hotel Improvements by the date occurring forty-eight (48) months after the Construction Commencement Date, subject to adjustment for delays attributable to MIDA or Force Majeure (the "**Target Substantial Completion Date**").

(c) In the event that Substantial Completion of the Hotel Improvements does not occur by the date occurring twelve (12) Months after the Target Substantial Completion Date, subject to adjustment for delay attributable to MIDA or Force Majeure (the "**Outside Substantial Completion Date**"), then Tenant agrees to pay to MIDA, as MIDA's exclusive remedy for such delay, the following sums for each calendar day or portion thereof that Substantial Completion of the Hotel Improvements has

not occurred by the Outside Substantial Completion Date and as a result the Discounted Rooms cannot be occupied by Eligible Military Patrons:

Calendar Days of Delay	Dollars Per Day
1 through 45	$ 0
46 through 90	$1,161
91 and beyond	$1,742

Tenant further acknowledges that the foregoing sums constitute agreed upon and liquidated damages and not a penalty, and represent reasonable and good faith attempts by MIDA and Tenant to ascertain the damages that would be suffered by MIDA in the event Substantial Completion of the Hotel Improvements that prevents the occupation of the Discounted Rooms by Eligible Military Patrons is not timely achieved.

4.5 Hold Harmless. Tenant shall indemnify (with counsel reasonably acceptable to MIDA), protect, defend and hold harmless MIDA and the Leased Premises from and against all claims and liabilities arising by virtue of or relating to Tenant's construction of the Condominium Hotel Project and/or use, occupation or operation of the Hotel Improvements or the Leased Premises or any repairs, alterations and/or modifications made by Tenant at any time to the Leased Premises, including, without limitation repairs, restoration and rebuilding and all other activities of or through Tenant on or with respect to the Leased Premises except to the extent arising out of MIDA acting in its governmental capacity or arising out of the negligence or willful misconduct of MIDA or the MIDA Parties; provided that, if Tenant is required to defend any action or proceeding pursuant to this Section 4.5, to which action or proceeding MIDA is made a party, MIDA, at its sole cost and expense, also shall be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing.

4.6 Permits; Compliance With Applicable Law.

(a) Permits and Other Governmental Approvals. All building permits and other permits, licenses, determinations, permissions, consents, approvals and agreements (collectively, the "**Governmental Approvals**") required to be obtained from Governmental Authorities or third parties in connection with construction of the Condominium Hotel Project and Hotel Improvements and any subsequent alterations to the Leased Premises shall be secured as required by Applicable Law, at the sole cost and expense of Tenant. MIDA agrees to cooperate reasonably with Tenant and to the extent reasonably required by Tenant and all Governmental Authorities having jurisdiction.

(b) Compliance with Applicable Law. During the Term, Tenant shall cause all work to be performed by Tenant on the Condominium Hotel Project and the Leased Premises to comply with all applicable laws, rules, ordinances, orders, and regulations of (i) federal, state, county, municipal, and other governmental or quasi-governmental agencies or bodies having jurisdiction, all respective departments, bureaus, and officials, and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction over any part or all of the Leased Premises (collectively, the "**Governmental Authorities**"), (ii) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction, (iii) all insurance companies insuring all or any part of the Leased Premises, and (iv) MIDA acting in its governmental capacity (so long as MIDA is a political body authorized by statute to enact laws, rules, ordinances or regulations or to issue orders or to commence proceedings or actions in connection therewith), as may be in effect from time to time (collectively, the "**Applicable Law**").

4.7 Ownership of Hotel Improvements and Personal Property. During the Term, the Hotel Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment (except for Tenant's Personal Property, trade fixtures and equipment) installed therein shall be the property of MIDA, subject to the Leasehold Estate of Tenant hereunder; provided that the Common Elements shall be owned by the respective Condominium Unit owners in undivided interests as more fully set forth in the Condominium Documents and the Utah Condominium Act. As between MIDA and Tenant, all Personal Property shall be and remain the property of Tenant. Tenant may acquire Personal Property pursuant to equipment leases, conditional bills of sale or other procedures pursuant to which a third party retains a lien upon or title to the Personal Property in order to finance its purchase by Tenant, and MIDA shall not have any lien of any kind on the Personal Property. MIDA shall execute in favor of any lessor, lender or other party providing financing to Tenant for or related to the Personal Property, documents in customary form that permit the lessor, lender or financing party access to the Leased Premises to inspect and recover possession of the same.

4.8 Control. During the Term, Tenant shall have exclusive control and possession of the Leased Premises, and, except as set forth expressly in this Lease, MIDA shall have no liabilities, obligations or responsibilities whatsoever with respect thereto.

4.9 Surrender Upon Termination. Upon the expiration or earlier termination of this Lease in accordance with its terms, Tenant shall remove any and all Personal Property, trade fixtures and equipment owned by Tenant, and repair any damage caused by such removal so as to restore the Leased Premises to its condition immediately prior to such removal, and surrender the Leased Premises and all Hotel Improvements, fixtures (other than trade fixtures), attached thereto, and all utility facilities, mechanical systems, HVAC systems and other permanent systems and facilities owned by Tenant and solely serving the Leased Premises to MIDA, free and clear of all liens of any kind, all at no cost or expense to MIDA.

4.10 Management of Hotel Improvements. Tenant may enter into one or more agreements with managers or operators for the management and operation of the Leased Premises, which will set forth the requirements, procedures, and standards for the management and operation of the Leased Premises, which operating standards shall conform to the requirements of this Lease in all material respects.

4.11 Tax Sharing Agreement. Concurrently with the signing of this Lease by MIDA and Tenant, Tenant and MIDA will enter into a Tax Sharing and Reimbursement Agreement which will govern the Parties relationship with regard to financing and bonding for infrastructure and the Condominium Hotel Project and other development and improvements within the Resort ("**Tax Sharing and Reimbursement Agreement**"). The Tax Sharing and Reimbursement Agreement includes, among other things, the possible issuance of lease revenue bonds, Commercial Property Assessment Clean Energy ("**CPACE Bonds**") and Assessment Area or Public Infrastructure District Bonds ("**Assessment Bonds**").

4.12 Use of Names. Tenant shall have the exclusive right to name, and rename from time to time, and market the Resort, Village, and the Condominium Hotel Project, or any portion thereof, including the Hotel. MIDA shall enter into a separate written license agreement with Tenant and, if required by Tenant, the Hotel Operator, on mutually acceptable terms and conditions, prior to using the name of the Resort, Village, Condominium Hotel Project or the Hotel. The license agreement shall provide that MIDA and the Military Entity may use the name of the Condominium Hotel Project solely for the purpose of advertising and promoting the Discounted Rooms and the amenities associated with the MIDA Project Area

(as defined in the Tax Sharing and Reimbursement Agreement) to Eligible Military Patrons and subject to such customary limitations as Tenant or the Hotel Operator may impose from time-to-time.

ARTICLE V
RENT

5.1 Rent. Tenant covenants and agrees to pay and/or deliver to MIDA the following rent, without notice, demand, offset or deduction (collectively, as specified below, "**Rent**"):

(a) Base Rent. Commencing on the first day of the Initial Term, Tenant shall pay and/or deliver to MIDA as base rent an amount equal to ten dollars ($10.00) per Lease Year. Amounts required to be paid by Tenant pursuant to this Section 5.1(a) are referred to herein as the "**Base Rent**." Tenant may prepay the Base Rent for all or any portion of the Term at any time.

(b) Additional Rent. Commencing on the first day of the Initial Term, Tenant shall pay, as "**Additional Rent**," all other sums required to be paid by Tenant to any third person or entity pursuant to this Lease, including the late charges and default interest set forth in Section 5.1(c). MIDA shall have the same rights and remedies for the nonpayment of Additional Rent as it has with respect to the nonpayment and/or non-delivery of Base Rent. For clarity, "Additional Rent" does not include amounts payable to third parties in connection with the design and construction of the Condominium Hotel Project, provided that nothing in this Section 5.1(b) shall relieve Tenant of its obligations under Section 4.2.

(c) Default Interest. If any installment, amount or part of Base Rent or Additional Rent is not received by MIDA from Tenant within ten (10) days after Tenant's receipt of MIDA written notice of such failure, interest shall accrue thereon (in any case, a "**Delinquent Amount**"), at the Default Interest Rate. MIDA and Tenant agree that any such Default Interest Rate represents a reasonable estimate of the costs and expenses MIDA will incur and is fair compensation to MIDA for its loss suffered by reason of late payment or performance by Tenant; provided that the foregoing shall not affect MIDA's other rights and remedies for any breach of this Lease as set forth in Article XVII.

5.2 Payments; Deliveries. All monetary amounts comprising Rent, and other sums to be paid by Tenant hereunder shall be payable in lawful money of the United States of America. All such monetary payments to be made by Tenant to MIDA and delivered by Tenant to MIDA under this Lease shall be delivered by Tenant to MIDA at the address set forth in Section 20.9.

5.3 Pro Rata Portions of a Month or Year. If the Term commences or ends, or there is to be a permitted adjustment or partial abatement of Rent pursuant hereto, or an end to such abatement, effective on a date other than at the end or start of a Month or a Lease Year, the Rent for such Month or Lease Year shall be prorated for the Month or Lease Year involved on the basis of the actual days in such Month or Lease Year.

ARTICLE VI
ASSESSMENTS AND UTILITIES; TAXES; IMPOSITIONS

6.1 Assessments. During the Term, Tenant shall pay when due all assessments applicable to the Leased Premises imposed pursuant to the Condominium Documents, the Master Declaration, or the Village Declaration.

6.2 Utilities. During the Term, Tenant shall pay when due all charges for public or private utility services to or for the Leased Premises that are not the responsibility of the Condominium Owners Association, including without limiting the generality of the foregoing, all charges for heat, light, electricity, water, gas, telecommunications services, garbage collection, sewage and drainage service (collectively, "**Utility Fees**").

6.3 Real Property Taxes. Pursuant to *Utah Code Ann.* §63H-1-501(7), as of the Effective Date of this Lease the Leased Premises, and the Leasehold Estate created by this Lease, are exempt from all real property taxes or other ad valorem taxes, assessments or payments of every kind or nature (including, but not limited to, general and special assessments (except as provided in Section 6.4(a)) and from any privilege tax pursuant to *Utah Code Ann.* §59-4-101 *et seq.*, whether foreseen or unforeseen or ordinary or extraordinary) and any other taxes levied as a substitute, in whole or in part, for any of the foregoing (collectively, the "**Real Property Taxes**"). The Parties have reasonably and materially relied on the tax exemptions described in the immediately preceding sentence in entering into this Lease. Landlord shall refrain from taking or omitting to take any action which would jeopardize or be reasonably expected to jeopardize the property tax exemption applicable to the Leased Premises. In the event, for any reason, the Leased Premises, or the Leasehold Estate created by this Lease, or any portion thereof, are or become not exempt from any Real Property Tax, Tenant and Landlord shall work together to challenge the imposition of the Real Property Taxes and find solutions to mitigate this additional financial burden and will view such imposition as a constitutionally prohibited impairment of this Lease.

6.4 Other Impositions. Subject to Section 6.3, beginning on the first day of the Initial Term, except as may be otherwise specified in this Lease, Tenant shall pay as and when due, directly to the applicable taxing authority and, concurrently therewith, with written confirmation of any and all such payments to MIDA, each and every one of the following arising during the Term (collectively, the "**Impositions**"):

(a) Any special assessments levied by a Governmental Authority against the Leased Premises relating to the installation of roadways, utility systems, and other public improvements to the extent assessed against the Leased Premises in accordance with Applicable Law. This expressly includes Assessment Bonds and CPACE Bonds issued by MIDA.

(b) Taxes due or which may be due upon or with respect to the activities, business or operations of Tenant on the Leased Premises.

(c) All taxes imposed on or with respect to Personal Property and intangibles owned by Tenant and located in or used in connection with the Leased Premises; and

(d) All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, confirmed or imposed on or in respect of any occupancy, use or possession of or activity conducted on the Leased Premises or any part thereof.

The foregoing shall not require Tenant to pay Real Property Taxes or to pay taxes on any income, inheritance, franchise, transfer, excess profits, corporate, privilege, or other similar tax payable by MIDA, if any.

6.5 Installments. If by law any Imposition may at the option of the payee be paid in installments, Tenant may exercise such option, and shall pay all such installments (and interest, if any), in the manner provided in this Article VI, becoming due during the Term as the same become due (including any installment with respect to any assessment which may be payable following the first day of the Initial Term).

6.6 Proof of Payment. Upon either Party's written request, the other Party will furnish to the requesting Party official receipts of the appropriate taxing authority or other proof satisfactory to the requesting Party evidencing the payment of all Real Property Taxes, if any, and Impositions, as applicable, on or before the date any such Real Property Taxes, if any, or Imposition would become delinquent (unless being contested in conformity with Section 6.7).

6.7 Permitted Contests. MIDA or Tenant, at its sole cost and expense, may by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Real Property Tax, in the case of MIDA, or Imposition, in the case of Tenant, or lien therefor, or any other lien, encumbrance or charge against the Leased Premises arising from work done or materials provided to or for such Party. The Party responsible for the payment of any such Real Property Tax or Imposition shall indemnify, protect and hold harmless the other Party and the Leased Premises from any lien or liability with respect to any such Real Property Tax or Imposition or contest thereof, including all costs and expenses related thereto. If Applicable Law requires that the other Party join any such proceeding, such other Party shall cooperate and join any application which is required by the requesting Party to contest such Real Property Tax(es) or Imposition(s) in accordance with the provisions of this Section; provided, however, so long as MIDA is a political body authorized by statute to enact laws, rules, ordinances and regulations or to issue orders or to commence proceedings in connection therewith, MIDA shall not be obligated to so cooperate or to so join any such application relating to an Imposition if the subject matter of such proceeding concerns MIDA's exercise of such authority.

6.8 Tax Treatment. MIDA and Tenant agree and acknowledge that Tenant, for federal, state and local income tax purposes and for all other income tax purposes, is intended to be and shall be deemed to be the owner of the Hotel Improvements and Tenant shall be entitled to claim the benefit of such ownership, if any, allowed or allowable with respect thereto under applicable law and/or the Internal Revenue Code of 1986, as amended, and other income tax statutes. The Parties agree to not take any public or private position that is inconsistent with the foregoing.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

7.1 MIDA Warranties. MIDA represents and warrants, as of the Effective Date (and with the understanding that Tenant shall rely thereon), that:

(a) Power and Authority. MIDA has the requisite authority and power to enter into this Lease and to consummate the transaction provided for herein and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Lease. The execution and delivery by MIDA of this Lease has been duly authorized. This Lease constitutes the valid and binding obligation of MIDA, subject to bankruptcy laws, general principals of equity and other rights generally affecting the rights of creditors, and has been duly executed and delivered by MIDA. MIDA has not entered into any agreements or contracts which would prevent the Use of the Leased Premises by Tenant; and

(b) Quiet Enjoyment. So long as no Event of Default exists beyond all applicable notice and cure periods under this Lease, Tenant shall at all times during the Term of this Lease have the right to peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms of this Lease without interference, hindrance, or ejection from MIDA or any Person claiming by, through or under MIDA.

7.2 Tenant's Warranties. Tenant represents, covenants and warrants, as of the Effective Date (and with the understanding that MIDA shall rely thereon), that:

(a) Power and Authority. Tenant has the requisite authority and power to enter into this Lease and to consummate the transaction provided for herein and this Lease has been duly executed and delivered by Tenant; and

(b) Enforceability. The execution and delivery by Tenant of this Lease has been duly authorized and constitutes the valid and binding obligation of Tenant enforceable against Tenant, subject to bankruptcy laws, general principals of equity and other rights generally affecting the rights of creditors, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Lease.

ARTICLE VIII
TENANT FINANCING

8.1 Leasehold Mortgages Authorized.

(a) Subject to the terms of this Article VIII, Tenant shall have the unrestricted right, without the consent of the MIDA, to mortgage, pledge, or otherwise encumber Tenant's Leasehold Estate and any ownership interest of Tenant in any Improvements or Personal Property to one or more Qualified Lender(s) and assign this Lease as security for any such Leasehold Mortgage.

(b) Subject to the provisions of this Article VIII, any Leasehold Mortgage shall be subordinate and subject to MIDA's fee interest in the Leased Premises.

(c) MIDA agrees to cooperate reasonably with any Qualified Lender and with Tenant in Tenant's negotiations with prospective lenders, and to accommodate the reasonable requirements of such lenders. Notwithstanding the foregoing, MIDA's obligations of cooperation or accommodation shall not require MIDA to modify the terms of this Lease in any manner that would increase in any material way MIDA's obligations, risk or liability under this Lease or increase MIDA's costs or expenses under this Lease; provided that this sentence shall not apply, and MIDA shall not refuse to enter into any such accommodation, if Tenant agrees to pay such increased costs or expenses of MIDA under this Lease, and/or indemnify MIDA for any such increased obligations, risk, or liability. Tenant shall reimburse MIDA for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by MIDA in connection with the drafting, review and execution of any amendment or other document pursuant to this Section 8(c).

8.2 Notice to MIDA. At such time as Tenant shall mortgage Tenant's Leasehold Estate to a Qualified Lender, Tenant or Leasehold Mortgagee shall provide MIDA with notice of such Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee

of such Leasehold Mortgage Tenant or Leasehold Mortgagee shall provide MIDA with notice of the new name and address of such Leasehold Mortgagee or assignee.

8.3 Protection of Leasehold Mortgagee. So long as any Leasehold Mortgage shall remain unsatisfied, the following provisions shall apply:

(a) Consent. No voluntary cancellation, surrender, amendment, termination, assignment, restatement or other modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee.

(b) Notice of Default. MIDA, simultaneously with providing Tenant any notice ("**Default Notice**") of: (a) a default or Event of Default under this Lease, or (b) a matter on which MIDA may predicate or claim a default or Event of Default, shall simultaneously provide a written copy of such Default Notice to each Leasehold Mortgagee. MIDA shall have no liability for the failure to provide any such Default Notice, except that no such Default Notice by MIDA to Tenant shall be deemed effective or to have been duly given unless and until a written copy thereof has been provided in accordance with the terms and conditions of this Lease to each Leasehold Mortgagee. From and after the date that such Default Notice has been given to each Leasehold Mortgagee, each Leasehold Mortgagee shall have the same period, after the delivery of such Default Notice upon it, plus in each instance, the additional period of time specified in Section 8.3(c) to cure, commence to cure or cause to be cured the default(s), Events of Default or acts or omissions which are specified in such Default Notice or if such cure cannot be effected without possession of the Leased Premises to commence a proceeding to obtain such possession. If a cure cannot be effected without possession, once possession has been obtained, Leasehold Mortgagee shall also have the same period for cure as Tenant had after the delivery of such Default Notice. MIDA shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. MIDA authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Leased Premises by the Leasehold Mortgagee for such purpose at any time. Nothing in this Section 8.3(b) shall be interpreted to expand, reduce, or alter in any way the rights of the holders of any bonds related to the Hotel, including the holders of any CPACE Bonds or Assessment Bonds, irrespective of whether such bondholders are also Leasehold Mortgagees.

(c) Curative Rights of Leasehold Mortgagees. In addition to the rights granted to each Leasehold Mortgagee under Section 8.3(b), each Leasehold Mortgagee shall have an additional period ("**Additional Cure Period**") of ninety (90) days to: (i) cure, commence to cure or cause to be cured any default or Event of Default of which it receives a Default Notice, or (ii) commence a proceeding to obtain possession of the Leased Premises in the case of a default or Event of Default that can only be cured once Leasehold Mortgagee obtains possession of the Leased Premises. If a cure cannot be effected without possession, once possession has been obtained, Leasehold Mortgagee shall also have the same period for cure as Tenant had after the delivery of such Default Notice.

(d) Obligations of Leasehold Mortgagee. The provisions of Section 8.3(b) and 8.3(c) shall apply only if Leasehold Mortgagee:

(i) Notifies MIDA of Leasehold Mortgagee's desire to cure such default or Event of Default within sixty (60) days of receipt of the Default Notice;

(ii) On or before the termination of the Additional Cure Period, pays, or causes to be paid, to MIDA all Rent and Additional Rent (a) then due and in arrears under this Lease as

specified in the notice to such Leasehold Mortgagee, and (b) any Rent and Additional Rent which becomes due during the Additional Cure Period as and when due; and

(iii) Cures, or in good faith, with reasonable commercial diligence and continuity, commences to cure all of Tenant's non-monetary requirements of this Lease then in default and reasonably susceptible of being cured by such Leasehold Mortgagee, including without limitation any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's Leasehold Estate or the Leased Premises junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee or any subordinate Leasehold Mortgagee. Notwithstanding Section 8(b) and Section 8(c) above, in the event of any non-monetary default under the Lease, so long as the Leasehold Mortgagee commences efforts to effect a cure and thereafter provides MIDA reasonable evidence from time to time, as requested in writing by MIDA, that the Leasehold Mortgagee is diligently pursuing such efforts, Leasehold Mortgagee shall have a commercially reasonable period of time within which to effect such cure of any such non-monetary default; provided that the Leasehold Mortgagee shall be obligated only to cure Tenant's non-monetary obligations reasonably capable of being cured by Leasehold Mortgagee and which do not require access to the Leased Premises or the use and operation thereof, provided that Leasehold Mortgagee shall diligently seek to acquire such access or such use or operation (either directly or through receivership), and provided further that upon securing such access, use or operation (either directly or through receivership), Leasehold Mortgagee promptly shall commence the cure of any such non-monetary default and shall prosecute same to completion with all commercially reasonable due diligence.

Any notice to be given by MIDA to a Leasehold Mortgagee pursuant to any provision of this Section 8.3 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 8.2 unless notice of a change of Leasehold Mortgage ownership has been given to MIDA in writing.

Nothing in this Section 8.3, however, shall be construed to extend this Lease beyond the then applicable Term hereof, nor to require a Leasehold Mortgagee to continue any Foreclosure after the default or Event of Default has been cured. If the default or Event of Default has been cured and the Leasehold Mortgagee shall discontinue any Foreclosure, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(e) If a Leasehold Mortgagee is complying with Section 8.3(d) upon the acquisition of Tenant's Leasehold Estate by such Leasehold Mortgagee or its designee or any other purchaser at a Foreclosure and the discharge of any lien, charge or encumbrance against Tenant's Leasehold Estate or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease and MIDA shall recognize such Leasehold Mortgagee or its designee or any other purchaser as "Tenant" for all purposes under this Lease.

(f) The making of a Leasehold Mortgage pursuant to the terms and conditions hereof shall not be deemed to constitute an assignment or transfer of this Lease or the Leasehold Estate under Section 15.1 requiring MIDA consent under this Lease, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. Any purchaser at any sale of this Lease and

of the Tenant's Leasehold Estate in a Foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the Tenant's Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be a assignee or transferee within the meaning of Section 15.1 of this Lease without any requirement to obtain the consent of MIDA, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment only for as long as such purchaser or assignee is the holder of such Leasehold Estate. If the Leasehold Mortgagee or its designee shall become the holder of Tenant's Leasehold Estate and if the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase and assignment, the Leasehold Mortgagee or such designee shall be obligated to repair, replace or reconstruct the Hotel Improvements as and to the extent Tenant is required to do so by the terms of Article IX. Should the Leasehold Mortgagee not so fully reconstruct the Hotel Improvements, the net insurance proceeds shall be distributed to the Parties as provided in Section 10.6; provided that the Leasehold Mortgagee shall not be entitled to receive insurance proceeds in excess of the then outstanding balance of the debt secured by the Leasehold Mortgagee.

(g) Any Leasehold Mortgagee or other acquirer of the Tenant's Leasehold Estate pursuant to Foreclosure, and any tenant under a "New Lease" (as defined in Section 8.4), may, upon acquiring the Tenant's Leasehold Estate, sell and assign the Tenant's Leasehold Estate on such terms and to a person or entity ("**Subsequent Assignee**") subject to and in accordance with the terms and conditions of this Lease, and, thereafter, be relieved of all obligations under this Lease; provided that such Subsequent Assignee has delivered to MIDA its written agreement to be bound by all of the provisions of this Lease, in a form reasonably acceptable to MIDA; provided, however, MIDA consent shall not be required for any transfer of an interest in this Lease as a result of a Foreclosure.

8.4 New Lease. In the event of the termination of this Lease for any reason, including, without limitation, a rejection of the Lease in bankruptcy, MIDA shall, within five (5) days thereof, provide each Leasehold Mortgagee with written notice that the Lease has been terminated ("**New Lease Notice**"), together with a statement of all sums and other deliverables which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to MIDA. MIDA agrees to enter into a new lease ("**New Lease**") of the Leased Premises with such Leasehold Mortgagee or its designee for the remainder of the then applicable Term of this Lease, effective as of the date of termination, upon the same terms, covenants and conditions of this Lease (including the then remaining balance of the Initial Term and the unexpired and unexercised Extension Term(s) provided for in Section 2.2(c) above and without any increase in Base Rent); provided:

(a) Request. Such Leasehold Mortgagee shall make written request upon MIDA for such New Lease within ninety (90) days after the date such Leasehold Mortgagee receives MIDA's New Lease Notice given pursuant to this Section 8.4.

(b) Cure. Such Leasehold Mortgagee or such designee shall agree to cure any of Tenant's defaults or Events of Default of which such Leasehold Mortgagee was notified by MIDA's New Lease Notice in accordance with Sections 8.3(c) and 8.3(d) above. Any of Tenant's non-monetary defaults which are not reasonably capable of being cured shall be deemed waived with respect to a New Lease, provided, the foregoing shall not limit any rights or remedies MIDA may have against Tenant under this Lease.

(c) Priority. Any New Lease made pursuant to this Section 8.4 shall have the same priority with respect to any mortgage or other lien, charge or encumbrance on the Real Property and Leased

Premises as this Lease, and the lessee under such New Lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease as of the date of the New Lease.

8.5 New Lease Priorities. If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 8.4, MIDA shall enter into such New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. MIDA, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business in the state where the Leased Premises is located (which shall be issued in favor of MIDA at the sole cost and expense of any such Leasehold Mortgagee) as the basis for determining the appropriate Leasehold Mortgagee which is entitled to such New Lease.

8.6 Insurance. A standard mortgagee clause naming each Leasehold Mortgagee may be added, at Tenant's sole cost and expense, to any and all insurance policies required to be carried by Tenant hereunder. Any and all insurance proceeds shall be applied to the repair and restoration of the Hotel Improvements in accordance with Section 10.5; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant pursuant to the provisions of this Lease. Subject to the foregoing, the Leasehold Mortgagee shall have the right to participate in the adjustment and settlement of any and all insurance claims.

8.7 No Merger. So long as any Leasehold Mortgage is in existence, the fee title to the Leased Premises and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said Leasehold Estate by MIDA or by a third party, by purchase or otherwise.

8.8 Notices. Notices from MIDA to the Leasehold Mortgagee shall be mailed, hand delivered, sent by certified mail (return receipt requested), sent by confirmed facsimile, or sent by nationally-recognized, overnight courier service, in any case to the address furnished MIDA pursuant to Section 8.2 and those from the Leasehold Mortgagee to MIDA shall be mailed, hand delivered, sent by certified mail (return receipt requested), sent by confirmed facsimile, or sent by nationally-recognized, overnight courier service, in any case to the address designated pursuant to the provisions of Section 20.9. Such notices, demands, and requests shall be given in the manner described in Section 20.9 and shall in all respects be governed by the provisions of that Section. Any notice from MIDA to a Leasehold Mortgagee shall be deemed conclusively delivered if sent using the address provided MIDA pursuant to Section 8.2.

8.9 Third Party Beneficiary. Subject to the provisions of this Article VIII, each Leasehold Mortgagee is an intended third-party beneficiary of the provisions of this Lease specifically giving rights to a Leasehold Mortgagee. In the event of a conflict between (a) the provisions of this Article VIII and any other provisions in this Lease specifically giving rights to a Leasehold Mortgagee and (b) any other provisions of this Lease, this Article VIII will control. Except as set forth in Section 8.3(d) above, MIDA agrees that no Leasehold Mortgagee shall in any manner or respect whatsoever be liable or responsible for any of Tenant's obligations or covenants under this Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), unless and until such Leasehold Mortgagee becomes the owner of the Leasehold Estate by Foreclosure, sale in lieu of Foreclosure or otherwise, in which event such Leasehold Mortgagee shall remain liable for such obligations and covenants only so long as it remains the owner of the Leasehold Estate.

8.10 Assignment by Leasehold Mortgagee. If a Leasehold Mortgagee or its designee shall (i) acquire title to Tenant's interest in this Lease by foreclosure, assignment in lieu of foreclosure or otherwise, (ii) or obtain a New Lease pursuant to Section 8.4, or (iii) shall acquire control of Tenant by foreclosure on ownership interests pledged to Leasehold Mortgagee, conversion of amounts owed to any Leasehold Mortgagee(s) into ownership interests in Tenant or by otherwise taking possession of or exercising ownership interests in Tenant granted to Leasehold Mortgagee, Leasehold Mortgagee or its designee may assign this Lease or such New Lease in accordance with the terms and conditions of Article XV.

ARTICLE IX
MAINTENANCE, REPAIRS AND ALTERATIONS; DAMAGE OR DESTRUCTION

9.1 General Maintenance and Repair. Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Leased Premises in first-class condition and repair and in accordance with Applicable Law. Except as otherwise specified in this Lease, in the event of damage or destruction of all or any part of the Leased Premises, Tenant shall promptly and diligently repair, restore, and replace the Hotel Improvements or remedy all damage to or destruction of all or any part of the Leased Premises. After completion of the repair, restoration, or replacement, the Hotel Improvements shall be at least equal in quality and use to the condition of the improvements before the damage or destruction occurred, except as expressly provided to the contrary in this Lease. This Lease shall not be construed to require MIDA, under any circumstances, to furnish any services or facilities or to make any improvements, repairs or alterations of any kind in or on the Leased Premises. MIDA's election to perform any obligation of Tenant under this provision on Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant's default, and Tenant shall promptly reimburse, defend, and indemnify MIDA against all liability, loss, cost, and expense arising from it.

9.2 Tenant's Obligation to Repair. In the event of damage to or destruction of the Hotel Improvements to be covered by the insurance described in Article X below, Tenant shall effect, and the Parties agree that the funds derived from insurance acquired pursuant to Article X below, together with any deductibles, which are the sole obligation of Tenant therefor, shall be made available to effect, such repair and reconstruction of the structure or improvement so damaged or destroyed to substantially its condition prior to said damage or destruction. Tenant shall be solely responsible for paying any shortfall between the available insurance proceeds and the cost of such repair and reconstruction. All such work shall be carried on in accordance with Drawings prepared by a licensed architect. Tenant shall make no material changes to the Drawings without the prior written approval of MIDA, which shall be subject to the same process set forth in Section 4.3(b).

9.3 Prompt Repair. Tenant shall diligently commence and continuously carry out the repairs, replacement, reconstruction or rebuilding of the Hotel Improvements required pursuant to Section 9.2, to full completion as soon as reasonably practicable, except to the extent of delays attributable to MIDA or Force Majeure after the exercise of due diligence, including diligence in contracting, and the exercise of rights under contracts, with contractors and suppliers.

9.4 No Termination. This Lease and the Term shall not terminate or be terminated because of damage to or destruction of any structure or improvement on or in the Leased Premises except under and in accordance with the provisions set forth in Section 9.5.

9.5 Damage During Last Two (2) Years of Term. Notwithstanding anything to the contrary in this Article IX, if there occurs during the last two (2) years of the Term damage or destruction to any

structure or improvement on or in the Leased Premises and the costs of repairing, restoring, replacing or rebuilding the same exceed FIVE MILLION AND NO/100 DOLLARS ($5,000,000) (adjusted every fifth (5th) anniversary date during the Term as provided in Section 20.1) then Tenant may, with the written approval of each Leasehold Mortgagee, elect to terminate the Lease and, in such event, Tenant shall give notice to MIDA of its election within sixty (60) days after the determination by the insurance surveyor of the amount of damage and receipt of such Leasehold Mortgagee approval, and the Lease shall thereupon terminate as of the date of such notice; provided that, in the event Tenant shall elect to terminate this Lease pursuant to this Section 9.5 in lieu of satisfying Tenant's obligations under Section 9.2, Tenant shall cause the insurance proceeds attributable to any such damage or destruction after payment of the Leasehold Mortgage in full to forthwith be paid in accordance with the provisions of Section 10.6.

9.6 Alterations and Further Improvements. At all times during the Term, Tenant shall have the right to make alterations, additions and improvements (collectively, "**Alterations**") to the interior or exterior of the Leased Premises. Tenant shall have the right to make Alterations in its reasonable business judgment at any time to the extent such Alterations cost less than the Alterations Threshold. Alterations that will cost in excess of the Alterations Threshold shall be subject to the review and approval process set forth in Section 4.3. Any Alterations that may be made by Tenant shall remain upon the Leased Premises and, at the expiration or earlier termination of this Lease, shall be surrendered with the Leased Premises to MIDA, except to the extent involving Tenant's Personal Property. All Alterations shall be accomplished by Tenant in a good and workmanlike manner, in conformity with applicable laws, regulations and covenants, conditions and restrictions encumbering the Leased Premises, and in accordance with the quality of a Four Star Hotel. Any Alterations shall be made at Tenant's cost and expense with as little hindrance to the operation of the Hotel (including the availability of Discounted Rooms for Eligible Military Patrons) as reasonably possible, and shall be consistent with the use of the Military Concierge Unit as contemplated by this Lease. MIDA will cooperate with Tenant as Tenant may reasonably request and execute any documents required for such purpose; provided that MIDA is satisfied that facts set forth in such documents are accurate and that such execution and cooperation does not impose additional liability, obligations, or costs on MIDA.

ARTICLE X
INSURANCE

10.1 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, during the entire Term the insurance described in this Article X (or its then available equivalent), and shall name MIDA as an additional insured. Policy limits shall be reviewed annually by Tenant and MIDA and shall be adjusted, if reasonably required by MIDA, considering levels of inflation, risk of loss, premium expenses, governmental immunity and other related factors; provided, however, if Tenant does not agree that MIDA's determination is reasonable, Tenant shall not be required to adjust such insurance unless and until (i) MIDA and Tenant agree to such adjustment, or (ii) such dispute is resolved by arbitration as provided in Article XVIII; provided, however, that the amount of property damage insurance which Tenant shall maintain with respect to the Leased Premises shall never be less than the full replacement cost of the Hotel Improvements (as determined by an independent, qualified appraisal selected in the manner set forth in Section 10.7 (and obtained at no cost to MIDA) and provided to MIDA not less than once every five (5) years that this Lease is in effect, commencing as of the Commencement Date) as required in accordance with Section 10.2(b) hereof.

10.2 Types of Required Insurance. Tenant shall procure and maintain, or cause to be procured and maintained, the following:

(a) Commercial General Liability Insurance. Commercial general liability insurance insuring against injuries, damages or liabilities to persons or property (including bodily injury, personal injury and death) arising out of the Tenant's activities on or use or possession of the Leased Premises, including without limitation, those sustained in, on or about the Leased Premises and the appurtenances thereto, the sidewalks and the alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 10.1) no less than the following:

(i) Personal Injury, Death, Bodily Injury and Property Damage Liability. ONE MILLION DOLLARS ($1,000,000) for each occurrence and TWO MILLION DOLLARS ($2,000,000) in the aggregate.

(ii) Umbrella Liability Insurance. Umbrella liability insurance in the amount of TEN MILLION DOLLARS ($10,000,000).

(b) Property Insurance. Upon Substantial Completion of the Hotel Improvements, property insurance covering all real and Personal Property, located on or in, or constituting a part of, the Leased Premises, in an amount equal to the new replacement cost of all such property (or such lesser amount as MIDA may approve in writing). Such insurance shall (a) be provided on an "all risk" form of property coverage or special form-causes of loss policy, (b) cover explosion of steam and pressure boilers and similar apparatus located in the Leased Premises, and (c) contain business interruption and extra-expense coverage, including rental interruption (inclusive of Rent) for a period of twelve (12) months, subject in each case to deductibles no greater than for similar properties in similar markets. Tenant shall not be required to maintain insurance for war or terrorism risks.

(c) Builder's Risk Insurance. During construction of the Hotel Improvements and during any subsequent restorations, alterations or changes in the Leased Premises that may be made by Tenant at a cost in excess of FIVE MILLION AND NO/100 DOLLARS ($5,000,000) per job (adjusted every fifth anniversary date during the Term as provided in Section 10.1), contingent liability and builder's risk insurance upon the entire work on the Leased Premises to the current 100% replacement value thereof against "all risks" of physical loss or damage to the property insured, including earthquake and/or other earth movements and flood.

(d) Workers Compensation Insurance. If applicable, workers compensation insurance and employer's liability insurance to the extent and with the limits required by law, rule or regulation. Tenant shall also cause all contractors and subcontractors to procure and maintain identical coverage during construction of the Hotel Improvements and during any subsequent restorations, alterations, or changes in the Leased Premises that may be made by Tenant.

(e) Contractor's Liability Insurance. During construction of the Hotel Improvements and during any subsequent restorations, alterations or changes in the Leased Premises that may be made by Tenant, Tenant shall cause its general contractor to procure and maintain the following insurance coverage:

(i) Commercial general liability or an occurrence form for (i) bodily injury and (ii) property damage liability with limits of One Million Dollars ($1,000,000) combined single limit each occurrence, including the following: Comprehensive Form, Premises-Operation, Explosion, Collapse, Underground Hazard (and during the initial construction of the Hotel Improvements, Products/Completed Operations coverage and, for projects exceeding the Alteration

Threshold, if then available on commercially reasonable terms, for a three-year extension beyond completion of work, on an annually renewable basis, or until the expiration of the applicable statute of repose, whichever is sooner), Blanket Contractual Coverage, Broad Form Property Damage, Independent Contractors and Personal Injury.

(ii) Comprehensive form automobile liability covering owned, hired and non-owned vehicles with limits of One Million Dollars ($1,000,000), combined single limit each occurrence.

(iii) For projects exceeding the Alternation Threshold, excess Liability (Umbrella) insurance with limits of Ten Million Dollars ($10,000,000).

10.3 Terms of Insurance. The policies required under Section 10.2 shall name MIDA as an additional insured as to liability policies and loss payee as to property insurance policies. Tenant shall provide to MIDA certificates of insurance (in form reasonably acceptable to MIDA) and copies of policies obtained by Tenant hereunder concurrently with Tenant's execution and delivery of this Lease. Upon MIDA's reasonable request, but not more often than twice each Lease Year, Tenant will provide MIDA with an updated certificate of insurance. At least fifteen (15) days prior to the expiration of any such policy, Tenant shall deliver to MIDA satisfactory written evidence of the renewal or replacement of such policy. Further, all policies of insurance described in Section 10.2 shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that MIDA may carry.

(b) Contain an endorsement providing that the amount of coverage will not be reduced with respect to MIDA except after thirty (30) days prior written notice from the insurance company to MIDA and such coverage may not be canceled with respect to MIDA except after ten (10) days prior written notice from the insurance company to MIDA, such notice to be given by certified mail to MIDA.

(c) Be written by insurance companies having a Financial Strength Rating of "A-" or better, and a Financial Size Category of "IX" or larger, based on the most recent published ratings of the A.M. Best Company.

(d) With respect to the liability policies, contain the following cross liability language:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

10.4 MIDA's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain insurance required hereunder or to pay the premiums therefor within ten (10) days' prior written notice to Tenant, MIDA shall have the right to procure the same and to pay any and all premiums thereon, and any amounts paid by MIDA in connection with the acquisition of insurance shall be immediately due and payable as Additional Rent, and Tenant shall pay to MIDA upon demand the full amount so paid and expended by MIDA. Any policies of insurance obtained by MIDA covering physical damage to the Leased Premises shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to MIDA on demand the additional costs, if any, incurred in obtaining such waiver.

10.5 Insurance Money and Other Funds Held in Trust. All insurance proceeds pursuant to Section 10.2(b) or 10.2(c), or condemnation proceeds as provided in Article XI, received by Tenant shall be held in trust by Tenant, or if required by the Leasehold Mortgage, the Leasehold Mortgagee, and, except as provided otherwise in Section 10.6, shall be applied as follows: first, for the purpose of defraying the cost of repairing, restoring, replacing and/or rebuilding the Hotel Improvements as provided in Section 10.6 hereof; second, to any Leasehold Mortgagee as required under the terms of its Leasehold Mortgage provided that such Mortgage was of record and secured a loan made or committed to Tenant in compliance with all of the terms and conditions of this Lease (including the provisions of Article VIII hereof) prior to the occurrence of such loss; and third, if the damaged or destroyed structure or improvement is not repaired, restored, replaced or rebuilt as hereinafter provided, said funds shall be disposed of as provided in Section 10.6. Any excess insurance funds in the hands of Tenant or the Leasehold Mortgagee at the end of the Term hereof shall be disposed of as set forth in Section 10.6.

10.6 Application of Proceeds of Property Insurance. In case of any insurance policies as described in Sections 10.2(b) and 10.2(c) ("**Property Insurance**") the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 10.5 and, in the event of any such repair, replacement, restoration or rebuilding, Tenant or the Leasehold Mortgagee shall apply the proceeds of the insurance collected to the cost of such work upon certificate of satisfactory progress and/or completion in form satisfactory to Tenant and the Leasehold Mortgagee (if applicable) by the licensed architect or engineer in charge of the work. Upon completion of such repair, replacement, restoration or rebuilding in accordance with the provisions of this Lease, and the full payment therefor (so no liens, encumbrances or claims with respect thereto can be asserted against the Leased Premises, this Lease, MIDA or Tenant), any insurance proceeds received by the Tenant with respect to the damage or destruction involved, and not used, shall remain the property of Tenant. If this Lease is terminated pursuant to Section 9.5, such insurance proceeds received and held by Tenant or the Leasehold Mortgagee and not applied to the payment in full of the Leasehold Mortgage and not used by MIDA for repair, replacement or reconstruction ("**Available Proceeds**"), shall be disposed as follows:

(a) First, MIDA shall be awarded an amount sufficient to remove any improvements not repaired; and

(b) Second, any remainder shall be paid to Tenant.

10.7 Insurance Surveyor. The determinations with regard to property damage insurance required under Section 10.2(b) shall be made not less than once every five (5) years that this Lease is in effect by an independent qualified insurance appraiser selected by the Parties, whose decision shall not be subject to arbitration. If the Parties cannot agree on the insurance appraiser within thirty (30) days after the date of such damage or destruction, then the same shall be appointed by the Presiding Judge of the Fourth Judicial District Court in and for Wasatch County, State of Utah, upon the application of either Party.

10.8 Waiver of Subrogation. The Parties hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to real or Personal Property on the Leased Premises caused by fire or any other peril insured hereunder (or peril required to be insured hereunder), even if such fire or other casualty shall have been caused by the fault or negligence of the other Party or anyone for whom such Party may be responsible. The Parties shall each procure insurance policies with such a waiver of subrogation and with a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasing Party to recover thereunder; provided, however, if, after commercially reasonable

diligence, policies with such a clause or endorsement shall not be obtainable or shall be obtainable only at a premium that exceeds by more than ten percent (10%) of the premium chargeable without such waiver (any dispute regarding which shall be subject to arbitration pursuant to Article XVIII), the Party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter either (a) to procure such insurance in companies reasonably satisfactory to the other Party or (b) to agree to pay such additional premium. If neither (a) nor (b) are done, this Section shall have no effect during such time as such policies shall not be obtainable or the Party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but shall be subsequently obtainable, neither Party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other Party.

ARTICLE XI
CONDEMNATION

11.1 Total Taking. In the event of the taking or condemnation by any competent authority for any public or quasi-public use or purpose of the whole of the Leased Premises or materially all of the Leased Premises (which, as used herein is defined in Section 11.2) at any time during the Term, the right of MIDA and Tenant to share in the proceeds of any award for the Leased Premises, the Real Property and damages upon any such taking, shall be as follows:

(a) Termination of Lease. The Term shall cease as of the date of possession by the condemnor and all rental and other payments shall be apportioned as of the date of possession.

(b) MIDA and Tenant's Shares. Any award payable as a result of such total taking shall be paid as follows: (i) first, to each Leasehold Mortgagee, if any, in the amount necessary to release all liens and encumbrances held by each Leasehold Mortgagee (but the aggregate amount of such payment shall be limited to the portion of the award attributable to the value of Tenant's Leasehold Estate, (ii) second, to MIDA based on the portion of the award attributable to the value of MIDA fee interest in the Leased Premises as encumbered by this Lease and the rights granted to Tenant hereunder, and (iii) third, any remaining sums, if any, to Tenant. Notwithstanding the foregoing to the contrary, in the event MIDA, or any of its agencies or officers, is instituting such taking, the entire award for such taking shall belong to Tenant and be applied in accordance with clause (i) and then (iii) above.

11.2 Substantial Taking. In the event of the taking in condemnation of less than the whole of the Leased Premises but materially all of the Leased Premises so that the remaining portion of the Leased Premises is not capable of any substantial income-producing functions, as reasonably determined by Tenant, then, at Tenant's option, and with the consent of each Leasehold Mortgagee, such taking shall be treated as a total taking under Section 11.1 and this Lease shall terminate as provided in Section 11.1(a). After satisfaction of the distribution set forth in clause (i) of Section 11.1(b), there shall, so long as MIDA is not the condemning authority, be paid to MIDA from the condemnation award any expenses required with respect to the repair, demolition or removal of any remaining Hotel Improvements on the Leased Premises upon termination of the Lease and any balance of the award shall be distributed in accordance with Section 11.1(b). The fair market value of the Leased Premises and any improvements thereon which become the property of MIDA upon such termination shall be treated as a share in the award received by MIDA for the purposes of Section 11.1(b).

11.3 Partial Taking. In the event of a partial taking or condemnation, e.g., a taking or condemnation of less than materially all of the Leased Premises;

(a) The award shall be applied first to the repair and restoration of the Hotel Improvements, as applicable, and any remaining amounts shall be divided and shared by the Parties as provided in Section 11.1(b).

(b) If the remaining part of the Leased Premises not so taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete functional unit of property of substantially the same usefulness, design and construction, having regard to the taking, as immediately before such taking, then Tenant shall have the right, to be exercised by written notice to the MIDA within ninety (90) days after the date of taking, and with the written consent of each Leasehold Mortgagee, to terminate this Lease as to such remaining part of the Leased Premises not so taken on a date to be specified, in said notice not earlier than the date of such taking (and not later than ninety (90) days following any such notice). In such case the Tenant shall pay and satisfy all Rent due and accrued hereunder up to such date of such termination and all other charges and shall perform all of the obligations of the Tenant hereunder to such date and thereupon this Lease shall terminate. Should the Parties be unable to agree as to whether the part not taken is susceptible of adequate restoration, repair or reconstruction as aforesaid, such controversy shall be determined by arbitration in the manner provided in Article XVIII.

(c) If this Lease is not terminated as hereinabove provided, and if such taking occurs prior to the last two (2) years of the Term, then, as to the Leased Premises not taken in such condemnation proceeding, the Tenant shall proceed diligently, to make an adequate restoration, repair or reconstruction of the part of the Hotel Improvements not taken so as to restore, repair or reconstruct the Hotel Improvements to the extent practicable to a functional unit of substantially the same usefulness, design, construction, quality, and to a condition prior to such taking.

(d) All such work shall be performed in accordance with Drawings approved by MIDA to the extent required and in accordance with Section 4.3. No material changes in Drawings shall be made by Tenant without first giving written notice of such changes to MIDA and obtaining MIDA approval thereof in accordance with Section 4.3.

11.4 Successive Takings. In case of a second or any other additional partial taking or takings from time to time, the provisions hereinabove contained shall apply to each partial taking.

11.5 Temporary Taking. If the whole or any part of the Leased Premises or of the Tenant's Leasehold Estate be taken or condemned by any competent authority for its temporary use or occupancy and Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the Base Rent, Additional Rent and other charges payable by Tenant hereunder, this Lease shall continue in full force and effect, except that Tenant shall be temporarily excused from any required obligations hereunder to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority; provided that Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking or condemnation, Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the expiration date of the Term of this Lease (including, without limiting the definition of "Term," any Extension Term), in which case such award shall be apportioned between the Parties as of such date of expiration of the Term and MIDA shall be entitled to the portion of the award attributable to the period following the expiration of this Lease.

11.6 Leasehold Mortgagee. Subject to the terms and conditions of this Lease, each Leasehold Mortgagee shall have the right to participate in the adjustment and settlement of any claims relating to a condemnation, including, without limitation, claims relating to the condemnation award.

ARTICLE XII
COMPLIANCE WITH LAWS

Tenant shall at all times during the Term, at Tenant's sole cost and expense perform and comply with Applicable Law pertaining to the Leased Premises and the business of Tenant conducted with respect thereto, including the Use and the payment of all taxes and assessments when due. MIDA shall, at all times during the Term of this Lease when MIDA is exercising its inspection rights pursuant to Article XIII or taking any other action as the "Landlord" under this Lease, perform and comply with any and all Applicable Law pertaining to the Leased Premises.

ARTICLE XIII
INSPECTION BY MIDA; MILITARY CONFERENCE COMMITTEE

13.1 Inspection of Leased Premises. MIDA and MIDA agents and representatives (solely in its capacity as the owner of the Leased Premises) shall be entitled, from time to time, upon reasonable notice to Tenant and at reasonable times during normal business hours, and subject to the rights of any then existing rental agreements, management agreements, licenses and leases (except in exigent circumstances, when no such notice shall be required), to go upon and into the Leased Premises, which entry shall, if required by Tenant, be accompanied by a representative of Tenant, for the purpose of:

(a) Inspecting the same; or

(b) Inspecting the performance by Tenant of the agreements and conditions of this Lease; or

(c) Performing any obligation or exercising any right or remedy of MIDA under this Lease, including the right to maintain, repair or replace items or elements of the Leased Premises or improvements in the event Tenant fails to perform same within thirty (30) days following written notice from MIDA (or such longer period as may be reasonably necessary to effect such cure, provided Tenant commences such cure within such thirty (30) day period and diligently pursues such cure to completion). Notwithstanding the foregoing, MIDA shall assume no duty or liability with respect to the Leased Premises or their maintenance as a result of such inspection.

13.2 Military Conference Committee. From time to time during the Term, but not less than annually (unless otherwise agreed by the Parties), MIDA may schedule a meeting to be attended by a representative of each of MIDA, Tenant and the Military Entity (the "**Military Conference Committee**") to coordinate the use of the Discounted Rooms, the Discount, the use of the Military Concierge Unit, and other related matters relating to the use of the Hotel by the Eligible Military Patrons. Tenant, MIDA, and the Military Entity shall mutually agree on the date and time of meetings and a tentative agenda for the meeting, and if such agreement cannot be reached, the date and time of the applicable meeting shall be established by Tenant with not less than ten (10) days prior written notice to MIDA and the Military Entity. Such meetings shall be at the Hotel or at such other location as may be designated by Tenant in Wasatch County, Summit County, Salt Lake County or Davis County, Utah, or may be conducted telephonically or

virtually over the internet. Any decision or recommendation made by the Military Conference Committee is nonbinding.

ARTICLE XIV
INDEMNIFICATION

14.1 Tenant to Indemnify MIDA. Tenant shall and hereby agrees to indemnify, defend, hold harmless and reimburse MIDA, and all associated, affiliated, allied, and subsidiary entities of MIDA, now existing or hereafter created, and their respective elected and non-elected officials, boards, commissions, officers, representatives, employees, contractors, and agents (collectively, "**MIDA Parties**") from and against and for any and all liabilities, obligations, penalties, fines, suits, claims, demands, actions, judgments, costs and expenses of any kind or nature, including without limitation reasonable architects', engineers', and attorneys' fees (collectively, "**Claims**"), which may be imposed upon or asserted against MIDA by reason of (a) Tenant's failure to comply with the terms and conditions of this Lease and/or satisfy Tenant's obligations hereunder, except to the extent Tenant's failure was a result of a breach of this Lease by MIDA or the negligence or willful misconduct of MIDA or MIDA Parties, and/or (b) Tenant's occupancy and/or use of the Leased Premises, including any environmental contamination found on the Real Property or the violation of any Environmental Laws, regardless of when the environmental contamination occurred, even if it was prior to Tenant's previous ownership of the Real Property. The foregoing indemnity shall not apply to any Claim to the extent caused by MIDA's breach of this Lease or MIDA's or any MIDA Parties' negligence or willful misconduct and shall be net of proceeds recoverable from any insurance policy provided for in Article X.

14.2 MIDA to Indemnify Tenant. MIDA shall and hereby agrees to indemnify (with counsel reasonably acceptable to Tenant), defend, hold harmless and reimburse Tenant and any Leasehold Mortgagee, and all associated, affiliated, allied or subsidiary entities of Tenant and such Leasehold Mortgagees, now existing or hereafter created, and their respective managers, members, officers, representatives, employees, contractors and agents (collectively, "**Tenant Parties**") from and against and for any and all Claims which may be imposed upon or asserted against Tenant by reason of (a) MIDA's failure to comply with the terms and conditions of this Lease and/or satisfy MIDA's obligations hereunder and/or (b) MIDA's entry upon the Leased Premises for the purposes identified in Article XIII, except to the extent such Claims arise due to Tenant's breach of this Lease or the negligence or willful misconduct of Tenant, the Tenant Parties, or Tenant's subtenants or licensees.

14.3 Legal Proceedings. If a Party is required to defend any action or proceeding pursuant to this Article XIV to which action or proceeding to which the other Party is made a party, such other Party shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent such other Party is indemnified under this Article XIV, the defending Party shall bear the cost of such other Party's defense, including reasonable attorneys' fees.

14.4 Governmental Immunity. Tenant acknowledges that MIDA is a body corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act (the "**Immunity Act**"), Utah Code Ann. §§ 63-30d-101, *et seq.* (1953, as amended). Tenant further acknowledges and agrees that nothing contained in this Lease shall be construed in any way, to modify (whether to increase or decrease), the limits of liability set forth in the Immunity Act, the timing for bringing an action against a governmental entity under the Immunity Act, or the basis for liability as established in the Immunity Act.

ARTICLE XV
ASSIGNMENT; SUBLEASE; NON-DISTURBANCE

15.1 Assignment, Transfer and Major Sublease. Tenant shall have the right, subject to the applicable provisions of this Article XV, without the consent of MIDA, to enter into an Assignment, Transfer or Major Sublease with (a) an Affiliate of Tenant, (b) a Leasehold Mortgagee or Subsequent Assignee as provided in Article VIII, or (c) any other Person (hereinafter called the "**Transferee**") provided that with respect to a Transferee that is not an Affiliate or a Leasehold Mortgagee of Tenant: (i) the Hotel Improvements have achieved Substantial Completion (provided that this subpart (i) shall not apply to an Assignment or Transfer to a single purpose entity to facilitate equity investments in the Hotel where Tenant or its Affiliate retain Control of such special purpose entity); (ii) the Transferee is not a debtor or debtor-in-possession in a voluntary or involuntary bankruptcy proceeding; (iii) with respect to an Assignment or a Transfer, the Transferee assumes all of Tenant's obligations under this Lease thereafter arising and MIDA is provided with a fully executed copy of the assignment and assumption agreement; and (iv) the Transferee or at least one of its principal or controlling parties either (A) is at the time of such transaction one of the ten (10) largest hotel management or hotel franchise companies in the United States that include in their portfolios other Four Star Hotels (such as Hilton Hotel and Resorts, Hyatt Hotel Corporation, Marriott, IHG Hotel and Resorts, Wyndham, Mandarin Oriental or Auberge Resorts, or their successors) or (B) possesses management ability and experience and a well-established reputation for quality management or the Transferee has provided by contract (the terms of which shall be furnished to MIDA) for the management of the Hotel by a hotel manager who possesses such ability, experience and reputation.

15.2 Release of Tenant.

(a) Subject to Section 15.2(b), neither any Assignment, Transfer nor any subleasing, occupancy or use of the Leased Premises or any part thereof by any Person, nor any collection of Rent by MIDA from any Person other than Tenant, nor any application of any such Rent shall, in any circumstances, relieve Tenant of its obligations under this Lease on Tenant's part to be observed and performed.

(b) Notwithstanding Section 15.2(a), if a proposed Transferee is not an Affiliate or a Leasehold Mortgagee of Tenant, and either

(i) meets the requirements of Section 15.1(c), and the Transferee or the Person controlling the Transferee immediately prior to such Assignment, Transfer or Major Sublease, has a Net Worth that is not less than ONE HUNDRED MILLION U.S. DOLLARS ($100,000,000), or

(ii) the Transferee or the Person controlling the Transferee is one of the ten (10) largest hotel management or hotel franchise companies in the United States, as defined in Section 15.1(c)(iv)(A),

then upon any such Assignment, Transfer or Major Sublease, Tenant shall be released from its obligations under this Lease to the extent such obligations have been assumed by such Transferee. Upon MIDA's reasonable request, Tenant shall deliver or cause to be delivered to MIDA information relating to ability, experience, reputation, and, in the case of a Transferee under Section 15.2(b)(i), financial responsibility of such Transferee, to evidence that such Assignment, Transfer or Major Sublease meets the requirements of this Section 15.2(b). Upon Tenant's reasonable request, MIDA shall confirm in writing that the Transferee meets the requirements of this Section 15.2(b) or, if MIDA does not agree, indicate in what way the Transferee fails

to meet the requirements of this Section 15.2(b).

15.3 Ordinary Course Subleases.

(a) Notwithstanding anything to the contrary in this Article XV, Tenant shall have the right, without the consent of MIDA, to Sublease to any store, merchandise shop, restaurant or similar space in or about the Hotel, or to grant concessions, for beauty or barber shops, airline ticketing, automobile rental, recreational tour, ticket and equipment providers, newsstands, gift shops, apparel shops, arcades, or for other commercial or retail activities customarily found in hotels with a management standard consistent with the Hotel, or to Hotel guests, operators, subtenants or licensees in the ordinary course of Tenant's business in accordance with the Use; provided, however no such Sublease shall relieve the Tenant of any obligation to be performed by the Tenant under this Lease.

(b) Each Sublease for a period of more than ninety (90) days shall provide that: (a) it is subordinate and subject to this Lease; (b) the fixed expiration date thereunder shall not extend beyond the expiration date of the Term; and (c) at MIDA's option, on the earlier termination of this Lease pursuant to this Lease, the Subtenant shall attorn to, or shall enter into a direct lease on the terms of its Sublease with, MIDA for the balance of the unexpired term of the Sublease.

(c) Tenant shall not, without MIDA consent, amend or modify any Sublease in a manner which would cause such Sublease (as amended or modified) to violate the provisions of this Article XV.

15.4 Other Subleases. Except as otherwise provided in this Article XV or Article VIII, Tenant shall not Transfer or Assign any interest in this Lease or sublet the entire Leased Premises, voluntarily, involuntarily, by operation of law or otherwise, without in each case first obtaining MIDA's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

15.5 Notice. Tenant shall notify MIDA of its intention to enter into any Assignment, Transfer or Major Sublease at least thirty (30) days prior to the proposed effective date or commencement date of such Assignment, Transfer or Major Sublease, and with respect to any such Assignment, Transfer or Major Sublease which Tenant shall not have notified MIDA, Tenant shall notify MIDA of the Assignment, Transfer or Major Sublease at least thirty (30) days after the effective date of such Assignment, Transfer, or Major Sublease, but failure to give such notice shall not invalidate the Assignment, Transfer or Major Sublease.

15.6 Copies to MIDA. Tenant shall deliver to MIDA, or shall cause to be delivered to MIDA, within thirty (30) days after the effective date of an Assignment or the commencement date of a Major Sublease: (a) in the case of an Assignment, a fully executed copy of the instrument of assignment and assumption; or (b) in the case of a Major Sublease, a fully executed copy of the Major Sublease.

15.7 Subordination. Upon the request of Tenant or any Leasehold Mortgagee as provided in Article VIII, MIDA shall within fifteen (15) Business Days execute, acknowledge and deliver a non-disturbance agreement with any Leasehold Mortgagee and with any subtenant (including a Hotel User) of space in the Leased Premises (in a form reasonably acceptable to MIDA) to the effect that, in the event of termination of this Lease for any reason, (a) such subtenant shall be entitled to continued occupancy in the Leased Premises in accordance with its Sublease, as a direct lease between MIDA and such subtenant, as long as such Sublease is not terminated in accordance with its terms (including termination for default upon

expiration of all applicable periods to cure by Tenant or Leasehold Mortgagee), and (b) such subtenant agrees to attorn to MIDA under the applicable Sublease (including the payment of all rental and other charges without offset for prepayments previously made other than rental and other charges paid not more than one month in advance) and agrees not to effect the termination of the same due to any termination of this Lease, and upon such other terms and conditions as are customarily required by mortgage lenders in similar circumstances.

15.8 Assignment to Leasehold Mortgagee. Any other provisions of this Lease to the contrary notwithstanding, Tenant, and its permitted successors and assigns, shall have the right to Transfer this Lease or any interest herein or any right or privilege appurtenant hereto which Tenant desires to Transfer to a Leasehold Mortgagee, to the extent permitted in Article VIII. MIDA agrees to recognize any Leasehold Mortgagee as Tenant for the performance of all duties and obligations arising by reason of the interest of this Lease being so Transferred; provided, however, it is hereby agreed and acknowledged by MIDA and Tenant that Tenant and its permitted successors and assigns shall not be relieved of its liability for the performance of such duties or obligations by any such Transfer.

ARTICLE XVI
STATEMENTS

16.1 MIDA Statement. MIDA, within ten (10) Business Days after written request to MIDA from Tenant or any Leasehold Mortgagee or prospective Leasehold Mortgagee (provided that MIDA shall not be required to so comply more than twice during any twelve (12) month period), will furnish a written statement, duly acknowledged, as to the following items:

(a) The amount of or the nature of the Rent due or to be delivered, if any;

(b) Whether or not the Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);

(c) Whether or not to MIDA's actual knowledge Tenant or MIDA is in default and specifying the nature of any such default; and

(d) Such other matters as Tenant or the Leasehold Mortgagee may reasonably request and which relate to the actual knowledge of MIDA.

16.2 Tenant Statement. Tenant, within ten (10) Business Days after written request of the MIDA (provided that Tenant shall not be required to so comply more than twice during any twelve (12) month period), will furnish a written statement, duly acknowledged, as to:

(a) The amount of or the nature of the Rent due or to be delivered, if any;

(b) Whether the Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);

(c) Whether there are any defaults thereunder on the part of MIDA or Tenant to the actual knowledge of Tenant and specifying the nature of such defaults, if any; and

(d) Such other matters as MIDA may reasonably request and which relate to the actual knowledge of Tenant.

ARTICLE XVII
DEFAULT

17.1 Event of Default; Notice and Cure.

(a) Event of Default. The occurrence of any of the following shall constitute an "**Event of Default**" under this Lease:

(i) Payments or Deliveries to MIDA. Failure of Tenant to make any payment or delivery owing to MIDA hereunder within ten (10) days after Tenant's receipt of notice from MIDA of such failure, or to pay any Imposition, fee or expense prior to delinquency or any other payment which if not paid results in a lien on the Leasehold Estate or any portion of the Leased Premises (except as and to the extent permitted under Article VI), or the failure to pay any of the premiums required to be paid with respect any of the insurance coverage required hereunder, in each case for a period of ten (10) days after Tenant receives written notice of such failure.

(ii) Other Covenants. Tenant being in breach of, or Tenant failing to perform, comply with, or observe any non-monetary term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Lease, including without limitation the unexcused failure of Tenant to commence, complete, repair and/or maintain the Hotel Improvements, as required hereunder, and such failure continues for a period of sixty (60) days after written notice thereof is given by the MIDA to Tenant; provided, however, that if the default is the subject of ongoing insurance claims or cannot reasonably be rectified or cured within such sixty (60) day period, the default shall be deemed to be rectified or cured if the Tenant, within such sixty (60) day period, shall have commenced pursuit of such insurance claims and/or commenced to rectify or cure the default and shall thereafter diligently prosecute same to resolution and completion.

(iii) Insolvency. Tenant making a general assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or if there shall have been filed any such petition or application, or any such proceeding shall have been commenced against it, in which an order for relief is entered or which remains undismissed for a period of ninety (90) days or more, or Tenant by any act or omission indicating its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties, or suffering any such custodianship, receivership or trusteeship to continue undischarged for a period of ninety (90) days or more.

(iv) Fraudulent Conveyances. Tenant having concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or making or suffering a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or suffering or permitting, while

insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or restraint which is not vacated within ninety (90) days from the date thereof or being contested by Tenant in accordance with the provisions of this Lease.

Notwithstanding any language in this Section 17.1(a), the cancellation of a special event scheduled for the Hotel shall not constitute an Event of Default.

(b) Notices of Default. In the event of a default which with the giving of notice to Tenant and the passage of time would constitute an Event of Default, as provided in Section 17.1(c), MIDA's notice of default to Tenant shall state with reasonable specificity the provision this Lease under which the default is claimed, the nature and character of such default, the date by which such default must be cured, and the failure of the Tenant to cure such default by the date set forth in such notice will result in MIDA having the right to pursue its remedies under this Lease. MIDA's allegation of a default hereunder shall be subject to arbitration in accordance with the provisions of Article XVIII; provided that Tenant shall initiate any such arbitration within the applicable grace period provided in this Section 17.1 or within ten (10) days after the giving of MIDA's notice with respect to a default under Section 17.1(a)(iii) or Section 17.1(a)(iv).

(c) Event of Default Notice. If, after the giving of the written notice(s) to Tenant provided for in this Section 17.1 and the expiration of the applicable cure period provided for herein, MIDA determines that Tenant has not cured the default of which Tenant was given notice as required by this Section 17.1, MIDA shall give Tenant a notice of the occurrence of an Event of Default (an "**Event of Default Notice**"); provided that no such Event of Default shall become effective for ten (10) days after such notice during which period Tenant may submit to arbitration, pursuant to Article XVIII, any dispute related to Tenant's cure of such default. If Tenant does not submit such dispute to arbitration within such ten (10) day period or, if Tenant has initiated arbitration of a dispute related to Tenant's cure of such default, upon a decision of an arbitrator that Tenant did not cure such default, the Event of Default shall become effective immediately after the end of such ten (10) day period or such arbitration, as the case may be. An Event of Default Notice shall state which remedy Landlord is electing from among the remedies section forth in Section 17.2.

17.2 Remedies. Should an Event of Default occur pursuant to an Event of Default Notice and so long as such Event of Default is continuing, then MIDA, in addition to any other rights or remedies MIDA may have at law or in equity, but subject to the provisions of Section 17.3, Section 17.8, and Article VIII, shall have the right to take any or all of the following actions:

(a) Collect by suit or otherwise any unpaid Rent, other sums or other deliverables as they become due for the account of Tenant; or

(b) Enforce by suit any term of the Lease required to be kept or performed by Tenant (including the right and remedy of injunction); or

(c) Subject to Section 4.4(c), recover from Tenant any amount necessary to compensate MIDA for actual damages proximately caused by Tenant's failure to perform its obligations under this Lease, including, but not limited to, (i) the loss, if any, of the value of the Discounted Rooms or Military Concierge Unit for use by Eligible Military Patrons, and (ii) any costs or expenses incurred by Landlord (A) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering, remodeling or rehabilitating the Leased Premises or any affected portions of the Leased Premises, or (B) in carrying the Leased Premises, including taxes, insurance premiums, utilities and security costs;

(d) Recover from Tenant reasonable attorneys' fees and expenses incurred by MIDA as a result of Event of Default, and court costs in the event suit is filed by MIDA to enforce the terms of this Lease.

Without any previous notice or demand, separate actions may be maintained by MIDA against Tenant from time to time to recover any Rent or damages which, at the commencement of any such action, has become due and payable to MIDA, without waiting until the end of the Term of this Lease.

17.3 No Termination of Lease. Notwithstanding anything in this Lease or Applicable Law to the contrary, in no event shall an Event of Default on the part of Tenant result in the termination of this Lease or the taking of possession of the Leased Premises, which remedies MIDA hereby expressly waives. Notwithstanding the foregoing provisions of this Section 17.3 or the provisions of Section 17.1(b) except with respect to disputes concerning the payment of money (which may, in connection with such disputes, be paid under protest and subject to reservation of rights to dispute the obligation for the payment of same in the first instance), if the asserted default is subject to arbitration pursuant hereto, and the existence of such default is being contested by the Party purportedly in default, if and so long as such Party is cooperating and acting in good faith to complete the arbitration proceeding with respect thereto as expeditiously as possible, the time for curing such default shall commence upon the rendering of the arbitration decision with respect thereto, or other resolution thereof, whichever occurs first; provided, however, if the matter being arbitrated is capable of performance to the extent not in dispute (e.g., the undisputed portion of monies owing), performance to the extent not in dispute shall be a condition precedent to the effectiveness of this sentence.

17.4 No Waivers. No failure by any Party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial Rent and/or other sums during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any Party hereto with respect to any other then existing or subsequent breach.

17.5 Payment by MIDA of Tenant's Defaulted Payments. In case of default beyond all applicable notice and cure periods on the part of Tenant to pay any money, or do any act to satisfy any of the obligations or covenants which it is required to pay, do, or satisfy under the provisions of this Lease, MIDA may, at its option, in addition to any and all other rights and remedies MIDA may have in this Lease, and subject to Section 17.3, after notice to Tenant, pay any or all such sums, or do any or all such acts which require the payment of money, or incur any expense whatsoever to remedy the failure of Tenant to perform any one or more of the covenants herein contained. Tenant shall repay the same to MIDA on demand together with interest at the Default Interest Rate, such interest to be calculated from the date payment is made by MIDA.

17.6 Rights Cumulative. Notwithstanding anything to the contrary contained in this Lease or elsewhere, but subject to the provisions of this Article XVII, and Articles VIII, XVIII, and XX, upon any Event of Default by a Party under this Lease, the non-defaulting Party shall have the right to exercise all or any of the rights and remedies afforded the non-defaulting Party by Applicable Law including, but not limited to, in the case of MIDA, the right to recover damages against Tenant in the amount of the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award, exceeds the amount of such rental loss for the same period that the Tenant proves could be

reasonably avoided or to seek Tenant's specific performance of the obligations to be performed by Tenant under this Lease. In addition, MIDA shall have the right to continue this Lease in effect after an Event of Default by Tenant and abandonment of the Leased Premises and recover Rent and/or other sums as they become due.

17.7 Default by MIDA.

(a) MIDA shall be in default under this Lease in the event MIDA breaches or fails to perform, comply with, or observe any term, covenant, warranty, condition, agreement or undertaking of MIDA contained in or arising under this Lease, and such failure continues for a period of thirty (30) days after written notice thereof is given by the Tenant to MIDA; provided, however, that if the subject default cannot reasonably be rectified or cured within such thirty (30) day period, the default shall be deemed to be rectified or cured if MIDA, within such thirty (30) day period, shall have commenced to rectify or cure the default and shall thereafter diligently and continuously prosecute same to completion.

(b) Remedies of Tenant. In the event of a default by MIDA under this Lease beyond all applicable notice and cure periods, Tenant may seek redress of such default in accordance with Article XVIII, or pursue any other action which Tenant may have at law or in equity.

17.8 No Consequential Damages. The Parties agree that notwithstanding the remedies provided for in this Lease or under Applicable Law, in the event of a default in or breach of this Lease, neither Party shall be liable to the other Party for consequential damages, punitive or special damages.

ARTICLE XVIII
ARBITRATION

18.1 Applicability. When so specified in this Lease (as provided in Sections 3.5(c), 4.3(b), 10.1, 10.8, 11.3(b), Article XVII, 19.2, 20.18, 20.23 and Exhibit B), but not otherwise, such dispute, controversy or claim arising out of such sections of this Lease shall be settled by expedited mandatory arbitration as set forth in this Article XVIII. Any such arbitration shall be conducted in accordance with the Utah Uniform Arbitration Act then in effect except as may be modified by this Article XVIII.

18.2 Notice of Demand. Either Party may demand arbitration by notifying the other Party in writing in accordance with the notice provisions of Section 20.9. The notice shall describe the reasons for such demand, the amount involved, if any, and the particular remedy sought. The notice shall also list the name of one arbitrator qualified in accordance with Section 18.4.

18.3 Response. The Party that has not demanded arbitration shall respond to the notice of demand within ten (10) calendar days of receipt of such notice by delivering a written response in accordance with the notice provisions of Section 20.9. The response shall list the name of a second arbitrator qualified in accordance with Section 18.4. The response shall also describe counterclaims, if any, the amount involved, and the particular remedy sought. If a Party fails to respond timely to the notice of demand, the arbitrator selected by the Party making such demand under Section 18.2 shall resolve the dispute, controversy or claim within thirty (30) calendar days of the deadline for response.

18.4 Qualified Arbitrator. Any arbitrator selected in accordance with Sections 18.2 and 18.3 shall be a natural person not employed by either of the Parties or any affiliate, parent or affiliated partnership, company, corporation or other enterprise thereof.

18.5 Appointment of Third Arbitrator. If a Party responds timely to a notice of demand for arbitration under Section 18.3, the two arbitrators shall appoint a third arbitrator who shall be qualified in accordance with Section 18.4. Such third arbitrator shall be appointed within ten (10) calendar days of receipt by the Party demanding arbitration of notice of response provided for under Section 18.3. If the two arbitrators fail to timely appoint a third arbitrator, the third arbitrator shall be appointed by the Parties if they can agree within a period of ten (10) calendar days. If the Parties cannot timely agree, then either Party may request the appointment of such third arbitrator by the Presiding Judge of the Fourth Judicial District Court in Wasatch County, State of Utah; provided that the other Party shall not raise any question as to the Court's full power and jurisdiction to entertain such application and to make such appointment.

18.6 Arbitration Hearing; Discovery; Venue. The arbitration hearing shall commence within thirty (30) calendar days of appointment of the third arbitrator as described in Section 18.5. The hearing shall in no event last longer than two (2) calendar days. There shall be no discovery or dispositive motion practice (such as motions for summary judgment or to dismiss or the like) except as may be permitted by the arbitrators; and any such discovery or dispositive motion practice permitted by the arbitrators shall not in any way conflict with the time limits contained herein. The arbitrators shall be bound by the substantive law and rules of discovery, evidence and civil procedure of the State of Utah, and may require the Parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrators may determine to be appropriate. It is the intention of the Parties to limit live testimony and cross examination to the extent reasonably necessary to insure a fair hearing to the Parties on significant and material issues. Venue of any arbitration hearing pursuant to this Article XVIII shall be in Salt Lake County, Utah.

18.7 Decision. The arbitrators' decision shall be made in no event later than thirty (30) calendar days after the commencement of the arbitration hearing described in Section 18.6. The award of the arbitrators shall be accompanied by a statement of the reasons upon which the award is based. The arbitrators shall not have the power to modify this Lease. The award shall be final and judgment may be entered in any court having jurisdiction thereof. The arbitrators may award specific performance of this Lease. The arbitrators may also require remedial measures as part of any award. The arbitrators in their discretion may award reasonable attorneys' fees and costs to the more prevailing Party.

18.8 Emergency Relief. Notwithstanding any provision of this Lease to the contrary, the Parties may seek injunctive relief at any time from any court of competent jurisdiction in Wasatch County, Utah.

18.9 Expedited Proceedings. The Parties agree that it is important to be able to clarify certain disputes under this Lease quickly. Accordingly, if either Party submits to arbitration a dispute under Section 3.5(c) of this Lease, arbitration under this Article XVIII shall be conducted in the same manner and subject to the same terms and conditions as arbitration under Sections 18.1 through 18.8, provided that: (i) the Parties shall designate in writing a single arbitrator within three (3) Business Days after written notice of the dispute, and such arbitrator shall be an individual with at least ten (10) years' experience and expertise in creation and operation of condominium hotel projects in master planned developments; (ii) the Parties shall each submit to the arbitrator, and to one another, a written statement of their respective positions on the issue to be resolved and their specific proposed resolution of the issue within five (5) Business Days after the appointment of the arbitrator, (iii) each Party shall have three (3) Business Days from receipt of

the other Party's submission to provide to the arbitrator a written response thereto, (iv) at a hearing lasting no more than two (2) Business Days and to commence no later than three (3) Business Days after delivery of the written rebuttals, each Party shall have an opportunity to submit evidence and argue for its position before the arbitrator, subject to reasonable time limitations to be determined by the arbitrator. (v) the arbitrator shall use his or her best efforts to rule on each disputed issue within five (5) Business Days after completion of such hearing; and (vi) the Parties shall use good faith efforts to complete arbitration under this Section 18.9 within thirty (30) days (or longer if extended in writing by the Parties) following a request by any Party for such arbitration.

ARTICLE XIX
CONVERSION TO HOTEL MANAGEMENT AGREEMENT

19.1 Optional Conversion to Hotel Management Agreement. Tenant shall have the right, but not the obligation, (the "**Conversion Option**") to convert this Lease into a hotel management agreement (the "**Hotel Management Agreement**") at any time. The Conversion Option may be exercised by Tenant giving MIDA written notice of such exercise (the "**Exercise Notice**"). Upon receipt of the Exercise Notice, MIDA and Tenant shall negotiate and enter into a mutually acceptable Hotel Management Agreement, which shall include the following terms and conditions, together with such other terms and conditions as the Parties may agree upon once the Conversion Option is exercised:

(a) The term of the Hotel Management Agreement shall be the same as the Term of this Lease, inclusive of all options to extend;

(b) During the term of the Hotel Management Agreement, MIDA shall own the Leased Premises;

(c) Subject to Section 19.1(j), Tenant or its Affiliate (the "**Hotel Operator**") shall be the sole operator of the Hotel Improvements as an independent contractor;

(d) The Hotel shall be operated by Hotel Operator as a Four Star Hotel and the Hotel Management Agreement shall include the same provisions for military recreational use as is provided in Section 4.1(c) of this Lease;

(e) Hotel Operator shall pay out of the gross revenue from the Hotel all costs and expenses incurred in connection with the operation, maintenance, repair and replacement of the Hotel Improvements, including any assessments due to the Condominium Owners Association, the Village Association, or Master Association with respect to the Hotel Unit and the MIDA Commercial Units;

(f) Hotel Operator shall establish reasonable reserves for furniture, fixtures and equipment, structural repairs, and capital refurbishment of the Hotel. Such reserves shall be released to Hotel Operator at the end of the term of the Hotel Management Agreement;

(g) Any amount of gross revenue remaining after payment of the amounts set forth in in Sections 19.1(e) and (f) shall be paid and belong to Tenant;

(h) Hotel Operator shall have the right to assign or otherwise enter into such other hotel management agreements and hotel license agreements as may be necessary or desirable to operate the Hotel as a Four Star Hotel, including such agreements with Branded Hotel Operators; provided that such other agreements shall be subject to the terms and conditions of the Hotel Management Agreement. MIDA agrees to cooperate with Tenant in adjusting the terms of the Hotel Management Agreement as may be requested by a Branded Hotel Operator so long as such adjustments do not decrease the amounts to be paid to MIDA or materially increase the risk of MIDA under the Hotel Management Agreement;

(i) Hotel Operator shall have the right to grant a security interest in or otherwise encumber all or any part of its right to any payments to which it is entitled under the Hotel Operating Agreement;

(j) Hotel Operator shall have the right to own and/or operate other properties, including other resort and hotel facilities in or near the Condominium Hotel Project; and

(k) The Hotel Management Agreement shall include the terms and conditions of this Lease, including in all material respects the indemnification, insurance, financial obligations, allocation of risk, and other provisions hereof, except to the extent not applicable to a hotel management relationship.

19.2 Reasonableness. The Parties shall work together in good faith to agree upon the terms of a Hotel Management Agreement following Tenant's delivery of an Exercise Notice. Any consent or approval of MIDA required by this Article XIV shall not be unreasonably withheld, conditioned or delayed. If the Parties are unable to agree upon a Hotel Management Agreement pursuant to Section 19.1, the matter shall be referred to dispute resolution pursuant to Article XVIII.

19.3 Effect on Lease. This Lease shall be entirely superseded, automatically terminate and be of no further force or effect upon the signing of the Hotel Management Agreement by the Parties.

ARTICLE XX
MISCELLANEOUS

20.1 Escalation. The dollar amounts stated in Sections 4.1(c)(iv) (for the initial Average Rate Floor), 4.1(c)(v) (initial Discounted Room rates), 9.5, 10.2(a) and 10.2(c) shall be adjusted on the fifth (5^{th}) anniversary following the first Lease Year and every fifth (5^{th}) anniversary date thereafter during the Term of this Lease and any Extension Term to a dollar amount which bears the same ratio to the original dollar amount set forth therein as the Consumer Price Index figure published for the latest date prior to the date of such adjustment is to be effective bears to the Consumer Price Index published for the latest month prior to the date hereof. In no event shall such adjustments increase by more than three percent (3%) for any five (5)-year reassessment period. Any provision in this subsection notwithstanding, under no circumstances shall the dollar amounts identified above be less than stated in the referenced Sections of this Lease.

20.2 No Partnership; Responsibility. Nothing herein contained shall be deemed or construed as creating a relationship of principal and agent, partnership or joint venture between the Parties, it being agreed that neither the method of computation of Rent nor any other provision contained herein, nor any acts of the Parties hereto, shall be deemed to create any relationship between the Parties other than the relationship of landlord and tenant. No member, manager, partner, officer, director, shareholder, board

member, as applicable, of either Party shall be liable for the obligations of such Party under this Lease. Without limiting the foregoing, neither Party shall be deemed to be a fiduciary of the other Party, and shall owe no fiduciary duty to the other Party. This Lease is between MIDA, solely in its proprietary capacity as Landlord, and Tenant and no obligations hereunder shall be enforceable against the officers, directors, members, managers, owners, employees, agents, affiliates, board members, or contractors of MIDA or Tenant.

20.3 Time of the Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

20.4 Lease Construed as a Whole. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against MIDA or Tenant.

20.5 Severability. If any provision of this Lease (other than those relating to payment of Rent) or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by Applicable Law.

20.6 Survival. Each provision of this Lease which may require the payment of money by, to or on behalf of MIDA or Tenant or third Persons after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

20.7 Memorandum of Lease. The Parties agree to execute and acknowledge a memorandum of this Lease for public recordation purposes in the form attached as Exhibit D, in order to give public notice of the Lease; provided that, except as may be otherwise agreed, in writing, by MIDA and Tenant, this Lease shall not be recorded. Recording costs shall be the responsibility of the Party requesting recordation of the memorandum of lease. In the event a memorandum of lease is recorded, Tenant shall immediately deliver to MIDA, suitable for recording, following the expiration or earlier termination of this Lease, a deed or termination of interest in a form satisfactory to MIDA relating to this Lease and Tenant's interest in the Property and Leased Premises and confirming MIDA title thereto.

20.8 Amendment. This Lease may be amended only in writing, signed by both MIDA and Tenant. Notwithstanding the foregoing, recognizing that the implementation of the provisions hereof may require the execution of supplemental documents the precise nature of which cannot now be anticipated, each of the Parties agrees to assent (subject, in the case of Tenant, to the consent of any Eligible Mortgagee to the extent required by Article VIII) to, execute and deliver such other and further documents as may be reasonably requested or required by the other Party hereto (or any Eligible Mortgagee) so long as such other and further documents are consistent with the terms and provisions hereof, shall not impose additional material obligations on any Party, shall not deprive any Party of the privileges herein granted to it and shall be in furtherance of the intent and purposes of this Lease. If a Party believes any such document would cause such Party to incur additional costs or obligations, and such costs or obligations can be ascertained and reduced to a monetary amount, the requesting Party may tender to the responding Party such amount and the responding Party shall execute such document.

20.9 Notices. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either Party hereto to the other, or by any Mortgagee to either Party shall be in writing and may be given personally or may be delivered by depositing

the same in the United States mails, certified, registered or equivalent, return receipt requested, electronic transmission, or nationally-recognized overnight courier service, in any case postage prepaid, properly addressed, and sent to the following addresses:

If to MIDA: Military Installation Development Authority
450 Simmons Way, Suite 400
P.O. Box 112
Kaysville, Utah 84037
Attention: Executive Director
Email: paultmorris@outlook.com

with a copy to: Michael Best & Friedrich
170 South Main Street, Suite 1000
Salt Lake City, Utah 84101
Attn: Lyndon Ricks and Paul Morris
Email: llricks@michaelbest.com

If to Tenant: BLX MWR Hotel LLC
850 Third Avenue, 7th Floor
New York, NY 10022
Attention: President
Email: Notices@extell.com

with a copy to: BLX MWR LLC
2750 W. Rasmussen Rd., Suite 206
Park City, Utah 84098
Attention: Senior Vice President
Email: kkrieg@xtell.com

and

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Roger D. Henriksen
Robert A. McConnell
Email: rhenriksen@parrbrown.com and
rmcconnell@parrbrown.com

or to such other address as either Party may from time to time designate by written notice to the other or to any Leasehold Mortgagee. Notices given by mail shall be deemed received and effective on the third business day following deposit with the U.S. Postal Service or by overnight courier as aforesaid shall be deemed received and effective on the first business day following such dispatch; provided, however, that if any such notice or other communication shall also be sent electronic mail, such notice shall be deemed given at the time and on the date of such transmittal if the sending Party also provide notice by mail or overnight courier as set forth above.

20.10 Interest. Except as otherwise specifically provided herein, any amounts due from one Party to the other pursuant to the terms of this Lease, including Rent, Additional Rent, and amounts to be reimbursed one to the other, shall bear interest from the due date or the date the right to reimbursement

accrues at the Default Interest Rate. For purposes of interest calculations, the due date of amounts or the date the right to reimbursement accrues shall be deemed the date that it originally was owing but may have been disputed, as distinguished from the date of final settlement or the making of a judicial or arbitration award.

20.11 Hazardous Materials. Tenant, at its sole cost and expense, shall comply with all Environmental Laws and any other governmental requirements and restrictions of any kind relating to any environmental condition of the Leased Premises caused by Tenant or its agents, employees, subtenants, licensees, contractors or invitees (the "**Tenant Related Parties**") and/or the storage, use, handling and disposal of Hazardous Materials on the Leased Premises by the Tenant Related Parties. Tenant shall notify MIDA and provide to MIDA a copy or copies of any environmental entitlements, inquiries, notices, orders, or requests for information related to the Leased Premises. The remediation of any environmental condition and/or the clean-up and disposal of any Hazardous Materials located on or released onto or about the Leased Premises (the "**Contamination**"), (i) by the Tenant Related Parties by reason of the Hotel Improvements and/or the alterations, as applicable, or (ii) by reason of the Tenant Related Parties', or any of their, use and occupancy of the Leased Premises or otherwise, or (iii) by any third Parties, except to the extent caused by the MIDA Parties, shall be performed by Tenant at Tenant's sole cost and expense and shall be performed in accordance with all Environmental Laws, pursuant to a site assessment and removal/remediation plan prepared by a licensed and qualified environmental consultant or engineer and submitted to and approved in writing by MIDA prior to the commencement of any work; provided that such submittal and approval to MIDA (in its capacity as "Landlord" hereunder) shall not be required with respect to the participation of Tenant and/or Tenant's Affiliates in any voluntary clean-up program with a Government Authority related to Contamination that exists or may be existed on the Real Property prior to the Effective Date. In the event Tenant fails to clean-up Contamination as may be required by Governmental Authorities (other than MIDA), and fails upon reasonable written notice from MIDA to diligently take steps to clean-up Contamination, MIDA may elect, by written notice to Tenant, to perform the clean-up and disposal of such Hazardous Materials from the Leased Premises and/or any property owned by MIDA and near, adjacent or contiguous to the Leased Premises. In such event, Tenant shall pay to MIDA the reasonable cost of same upon receipt from MIDA of MIDA's written invoice therefor. Notwithstanding any other term or provision of this Lease, Tenant shall permit MIDA or MIDA's agents or employees to enter the Leased Premises, upon reasonable notice, during reasonable hours, and, if required by Tenant, accompanied by a representative of Tenant, to inspect, monitor and/or take emergency remedial action with respect to Hazardous Materials on or affecting the Leased Premises or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials when Tenant has failed, after demand by MIDA, to do so as may be required by Governmental Authorities (other than MIDA); provided that, in the event of any such failure after at least thirty (30) days' prior written demand from MIDA, concurrently with the availability or provision thereof to Tenant, MIDA shall be entitled to and shall receive, and have the unrestricted right to use any and all non-privileged data, assessments, information, studies, and reports regarding any Contamination (whether in draft and/or final form), together with any supporting documentation and information therefor; and provided that, in connection with the delivery of any such data, assessments, studies, and reports Tenant shall advise MIDA, in writing, as and to the extent known by Tenant, if any such data, studies, reports, assessments, and/or information is inaccurate or incomplete in any material respect. Reasonable, actual, out of pocket costs and expenses incurred by MIDA (after Tenant's default beyond all applicable notice and cure periods) in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to MIDA within thirty (30) days of Tenant's receipt of written request therefor.

20.12 Holding Over. Should Tenant hold over in the Leased Premises beyond the expiration or earlier termination of this Lease, the holding over shall not constitute a renewal or extension of this Lease or give Tenant any rights under this Lease. In such event, MIDA may, in its sole discretion, treat Tenant as a tenant at will, subject to all of the terms and conditions in this Lease, except that Base Rent shall be market rent and Tenant shall indemnify, defend, and hold MIDA harmless from and against all costs, expenses, claims, damages, losses, or liabilities arising from or related to such holding over, including but not limited to, any claim by a succeeding tenant in the Leased Premises, and Tenant shall reimburse MIDA for same immediately upon receipt from MIDA for same. Nothing contained in this Section 20.12 shall be construed as consent by MIDA to any holding over by Tenant, and MIDA expressly reserves the right to require Tenant to surrender possession of the Leased Premises to MIDA as provided in this Lease upon the expiration or other termination of this Lease. In no event shall Tenant be liable to MIDA for any consequential, punitive or special damages arising out of or related to such holding over.

20.13 Governing Law. This Lease shall be construed according to and governed by the laws of the State of Utah.

20.14 Broker's Fees, Etc. Tenant hereby represents to MIDA that Tenant has not taken or caused to be taken any action or actions giving rise to any brokerage fee, commission or similar payment. Tenant hereby agrees that, if for any reason a brokerage fee, commission, or other similar payment is or becomes due in connection with this Lease or any renewal or extension of the term of this Lease by reason of the actions or omissions of Tenant, as the case may be, then, unless otherwise agreed to in writing by MIDA, Tenant shall be solely responsible for the cost of such fee, commission or other similar payment.

20.15 Force Majeure. Except as otherwise provided in this Lease, whenever a period of time is in this Lease prescribed for action to be taken by a Party, said Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to Force Majeure. For purposes of this Lease, "**Force Majeure**" means any act or event, whether foreseen or unforeseen, that meets all three of the following tests:

(a) The act or event delays, hinders or prevents a Party, in whole or in part, from:

(i) performing its obligations under this Lease or another specified agreement; or

(ii) satisfying any conditions to the obligations under this Lease.

(b) The act or event is beyond the reasonable control of and not primarily the fault of a Party.

(c) A Party has been unable to avoid or overcome the act or event by the exercise of commercially reasonable efforts.

In furtherance of such definition, and not in limitation of such definition, each of the following acts and events is deemed to be an event of Force Majeure: war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist acts, military action, epidemic, pandemic, famine or plague, shipwreck, action of a court or public authority, or strike, and work-to-rule action, go-slow or similar labor difficulty (so long as the conditions in (b) and (c) above are satisfied). The foregoing list of events of Force Majeure is not

exhaustive, and the principle of ejusdem generis is not to be applied in determining whether a particular act or event qualifies as an event of Force Majeure. Notwithstanding the foregoing, an event of Force Majeure shall not mean or include economic hardship, changes in market conditions, insufficiency of revenues or funds, or the financial condition of a Party, or the sale, transfer, liquidation, insolvency, failure, secession, disbandment, dissolution or termination of any person owning any interest in a Party.

20.16 Fee Mortgages. If one or more Leasehold Mortgages is or comes to be in effect, the following shall apply: (a) all Fee Mortgages shall be expressly subject and subordinate to this Lease, any Mortgagee Lease, and all amendments, modifications, and extensions thereof and shall include the Fee Mortgagee's agreement to execute and deliver to Leasehold Mortgagee an agreement in accordance with Article VIII; (b) MIDA shall not enter into any Fee Mortgage that violates this Section 20.16; (c) Tenant shall not subordinate this Lease without the prior written consents of all Leasehold Mortgagees; and (d) MIDA shall cause any Fee Mortgagees to execute and deliver to Tenant a subordination agreement that is in recordable form and that contains such terms as are reasonably acceptable to Tenant and each Leasehold Mortgagee. MIDA shall not place any Fee Mortgage without prior written notice to Tenant and its Leasehold Mortgagees (which notice to a Leasehold Mortgagee shall be delivered in the same manner specified in Section 8.8). Neither Tenant's nor any subtenant's interest in the Lease and/or the Leased Premises shall under any condition be subordinate to, and in no event shall Tenant or any subtenant be required to subordinate its interest in the Leased Premises, to, any mortgage, lien or other encumbrance placed upon MIDA's fee interest in the Leased Premises or MIDA's interest in this Lease. In no event shall Tenant be permitted to consent to any subordination of this Lease to an encumbrance upon MIDA's fee interest in the Property or MIDA's interest in this Lease without the prior written consent of a Leasehold Mortgagee. If any such Fee Mortgage, lien or other encumbrance which purports to be superior to this Lease is filed against all or any portion of MIDA's fee interest in the Subject Property or MIDA's interest in this Lease in violation of the provisions of this Section 20.16 or Section 20.17(a), MIDA shall cause the Fee Mortgage, lien or other encumbrance to be discharged, and shall initiate such discharge process within thirty (30) days of such Fee Mortgage, lien or other encumbrance being filed against MIDA's fee interest in the Leased Premises or MIDA's interest in this Lease, as applicable, and shall diligently prosecute such process to completion.

20.17 MIDA Conveyance Restriction; Right of First Offer.

(a) Proposal to Sell. MIDA shall not sell, convey or transfer all or any portion of the Leased Premises, or grant a Fee Mortgage, to any entity that is not a Governmental Authority that is a property tax-exempt entity, without the prior written consent of Tenant, which consent may be withheld in Tenant's sole discretion. Any such approved transfer to a Governmental Authority shall be subject to and such transferee shall assume and agree to be bound by the terms and conditions of this Lease and the Tax Sharing and Reimbursement Agreement. If MIDA, after receiving the consent of Tenant pursuant to the first sentence of this Section 20.17(a), proposes to sell, convey or transfer all or a portion of the Leased Premises (such property, the "**ROFO Property**") to a tax exempt third party which is not a Governmental Authority (which shall include a transfer of a controlling interest in the "Landlord" (if "Landlord" at such time is not a property tax-exempt Governmental Authority) to a party which does not have a controlling interest in such "Landlord" as of the date hereof), MIDA shall first notify Tenant in writing (the "**Written Notice of Proposed Sale**") of its bona fide intention to offer the ROFO Property and clearly and accurately

setting forth all of the proposed terms and conditions upon which MIDA proposes to make such sale, including, without limitation, the amount and type of consideration offered.

(b) Exercise of Right of First Offer. Unless the proposed conveyance or transfer is to another property tax-exempt Governmental Authority (but only if the "Landlord" at such time is a property tax-exempt Governmental Authority), Tenant shall have the right (the "**Tenant Right of First Offer**") for a period of ninety (90) days from and after its receipt of the Written Notice of Proposed Sale to elect to purchase the portion of the ROFO Property described in the Written Notice of Proposed Sale upon the same terms and conditions and for the same consideration (or for the reasonable monetary equivalent, if non-monetary terms are included) as are set forth in the Written Notice of Proposed Sale, except as provided in this Section 20.17(b). Tenant may exercise the Tenant Right of First Offer with respect to the ROFO Property by giving written notice thereof to MIDA within such ninety (90) day period. If Tenant so exercises the Tenant Right of First Offer, the Parties shall proceed to consummate the purchase of the ROFO Property within ninety (90) days after Tenant provides such notice of exercise; provided, however, that such purchase shall not take place until five (5) Business Days after the receipt of all government approvals required by all Applicable Laws, if any, but otherwise shall be in accordance with the terms and conditions set forth in the Written Notice of Proposed Sale. Failure of Tenant to so elect to purchase the portion of the Leased Premises described in the Written Notice of Proposed Sale within such period by giving such notice to MIDA shall be deemed to be an election not to purchase the portion of the Leased Premises described in the Written Notice of Proposed Sale. If the proposed transfer or conveyance is consummated, such transferee shall assume, in writing, MIDA obligations under this Lease and shall be subject to all obligations of MIDA and rights of Tenant under this Lease including, without limitation, this Section 20.17.

(c) Failure to Exercise Tenant Right of First Offer. If Tenant elects, or is deemed to have elected, not to exercise the Tenant Right of First Offer, MIDA may sell and convey the portion of the Leased Premises described in the Written Notice of Proposed Sale, but only strictly in accordance with all of the terms and conditions and for the consideration set forth in the Written Notice of Proposed Sale or on terms not materially more favorable to the purchaser. In the event that Tenant declines to exercise the Tenant Right of First Offer after receipt of the Written Notice of Proposed Sale, and thereafter MIDA proposes to reduce the sale price by more than three percent (3%) or if the non-economic terms are more favorable to such third party in any material respect, from those initially presented to Tenant pursuant hereto, the ROFO Property shall be reoffered to Tenant in accordance with this Section 20.17, based on such revised terms; and, provided, further, that, if MIDA does not sell the ROFO Property that is the subject of the Written Notice of Proposed Sale to such third party within one hundred eighty (180) days, the right provided under this Section 20.17 shall be deemed to be revived and the ROFO Property shall not be sold unless first reoffered to Tenant in accordance herewith. It shall be a condition to any such sale to any third party that such third party assume all of MIDA's obligations under this Lease by a written instrument, in recordable form, delivered to Tenant on the date of the closing of such sale. If Tenant elects, or is deemed to have elected, not to exercise the Tenant Right of First Offer, and MIDA transfers the ROFO Property described in the Written Notice of Proposed Sale (or a controlling interest in MIDA) to a third party in accordance with the provisions of this Section 20.17, the Tenant Right of First Offer shall survive and continue to apply to any and all subsequent transfers of all or any part of the Leased Premises (or a controlling interest in any and all subsequent landlords).

(d) Limitations on Tenant Right of First Offer. The Tenant Right of First Offer shall not be subordinate to any Fee Mortgage, but shall not be exercisable with respect to a Foreclosure of such a Fee Mortgage placed on MIDA's fee interest in the Leased Premises in accordance with the provisions

hereof. Tenant shall execute any document for the sole purpose of confirming the provisions of this Article required by a mortgage lender to MIDA.

(e) Subsequent Dispositions. Any third party purchaser of any portion of the ROFO Property shall take title subject to and shall be bound by the Tenant Right of First Offer on any subsequent sale, conveyance, or transfer of all or part of the ROFO Property.

20.18 Purchase Option for Subject Property. At any time during the term of the Lease, if all or any portion of the Leased Premises is determined by any Governmental Authority or judicial authority to be or become subject to Real Property Taxes, Tenant may elect to purchase (the "**Purchase Option**") all of MIDA's interest in the Leased Premises, this Lease and the Real Property, excluding the Military Concierge Unit (the "**Landlord's Interest**"), for an amount equal to the fair market value of the Landlord's Interest (determined after taking into account the Leasehold Estate of Tenant created by this Lease) as of the date of such election (the "**Purchase Price**"). The Purchase Option may be exercised by Tenant giving written notice to MIDA as provided in Section 20.9, which notice shall identify the Purchase Price for the Landlord's Interest, supported by an appraisal performed by a licensed MAI appraiser with at least ten years' experience in valuing leasehold interests in real property ("**Option Exercise Notice**"). Any objection to the Purchase Price, or the right of Tenant to exercise the Purchase Option, shall be made by MIDA giving written notice to Tenant as provided in Section 20.9, within forty-five (45) days after MIDA receives the Option Exercise Notice, which objection notice shall state the detailed bases for such objection and, if such objection relates to the Purchase Price, include an appraisal performed by a licensed MAI appraiser with at least ten years' experience in valuing leasehold interests in real property. Any dispute regarding any such timely objection shall be subject to arbitration as provided in Article XVIII. If MIDA does not timely object to the exercise of the Purchase Option or the Purchase Price as set forth in the Option Exercise Notice, the Parties will proceed to consummate the transfer of the purchase of Landlord's Interest (the "**Closing**") on a date selected by Tenant occurring within ninety (90) days after the receipt by MIDA of the Option Exercise Notice or, if MIDA has timely objected to such exercise or Purchase Price, within ninety (90) days after the final resolution of such objection pursuant to Article XVIII. Conveyance of the Landlord's Interest shall be by an assignment of lease (as to this Lease) and a statutory special warranty deed (as to the Leased Premises) to Tenant or to a Person designated by Tenant. Such conveyance will be free and clear of all encumbrances, liens, security interests or other matters (including any Fee Mortgage) except those of record as of the Effective Date, those created by, through or under Tenant, or those consented to by Tenant prior to the Closing. Notwithstanding the foregoing, the obligations set forth in Section 4.1(c) (Military Recreational Use) shall survive any such conveyance, and at the Closing the Parties shall record a mutually acceptable notice of such continuing obligations to provide such Military Recreational Use. At the Closing, MIDA, at its cost, shall provide Tenant with a policy of owner's title insurance policy (standard coverage) in the amount of the purchase price subject only to those exceptions permitted hereunder. Closing costs and prorations shall be equally shared by the Parties.

20.19 Counterpart. This Lease may be executed in counterparts, all of which taken together shall constitute one agreement binding on the Parties.

20.20 Further Assurances. MIDA and Tenant each acknowledge that in entering into and effecting the transactions contemplated under this Lease each of MIDA and Tenant has foregone the opportunity to undertake other transactions. In furtherance of the foregoing the Parties hereby agree, subject to the terms as hereinafter set forth, to take or refrain from taking in each case as requested in writing by the other Party, such further acts (including the execution and delivery of further documents and instruments) as may be reasonably necessary to fully effectuate the transactions contemplated under this

Lease. MIDA and Tenant agree that the obligations of each of them, as set forth above in this Section 20.19, are subject to the following:

(a) The Party requesting that the other Party take or perform (or not take or perform, as the case may be) such act shall pay all out-of-pocket costs and expenses incurred by the requested Party in connection with or arising out of such Party taking or performing (or not taking or performing, as the case may be) such act;

(b) Neither Party shall be required to take or perform (or not take or perform, as the case may be) any act which (i) is reasonably likely to be in violation of any laws, codes, ordinances, rules or regulations of any Governmental Authority or (ii) is inconsistent with any material provision of this Lease, or (iii) effectively results in a waiver, relinquishment, amendment or modification of any provision of this Lease or of any right, remedy of such Party hereunder.

(c) The provisions of this Section 20.19 shall not be deemed to impair or diminish the rights of each of the Parties to enforce this Lease (including the exhibits and/or schedules annexed hereto or thereto) or any other instruments or agreements delivered in connection therewith in accordance with their respective terms and Applicable Law.

20.21 Binding Effect. This Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and shall be deemed and treated as covenants running with the Leased Premises and Real Property during the Term. Whenever a reference to the Parties hereto is made, such reference shall be deemed to include the legal representatives, successors and assigns of said Party, the same as if in each case expressed.

20.22 Lease is a Public Record—Confidential Information. Upon execution by MIDA and Tenant, this Lease is a "Public Record" within the meaning of Utah's Government Records and Management Act and is available to a member of the public. Notwithstanding the foregoing, except to the extent required by Applicable Law, neither Party shall knowingly or intentionally disclose the Confidential Information (hereinafter defined) and no publicity or press release to the general public with respect to the Confidential Information shall be made by either Party without the prior written consent of the other. Each Party agrees that, except as otherwise provided by Applicable Law, or in connection with the evaluation, sale or financing of the Premises, such Party (including its officers, directors, employees, representatives, brokers, attorneys and advisers) shall keep any information related to the proprietary business operations of the Condominium Hotel Project confidential, whether or not marked as "confidential" (collectively, the "**Confidential Information**"). The Confidential Information shall not include any information publicly known, or which becomes publicly known, other than through the acts of a Party to the Lease, or any of their respective officers, directors, employees, representatives, brokers, attorneys or advisers. Tenant may retain possession of all or any part of the Confidential Information to the extent such Confidential Information relates solely to the Leased Premises and the operations thereon.

20.23 Waiver of Jury Trial. **MIDA AND TENANT EACH WAIVE ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF MIDA AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES.**

20.24 Consents. Unless expressly stated herein to be in the sole discretion of a Party hereto, all consents and approvals which may be given by a Party under this Lease shall not (whether or not so indicated elsewhere in this Lease) be unreasonably withheld or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, which is not in the consenting or approving Party's sole discretion, the disapproving Party shall, together with notice of such disapproval, submit to the requesting Party a written statement setting forth with specificity its reasons for such disapproval. If, pursuant to the terms of this Lease, any consent or approval by either MIDA or Tenant is alleged to have been unreasonably withheld, conditioned or delayed, then any dispute as to whether such consent or approval has been unreasonably withheld, conditioned or delayed shall be settled by arbitration in accordance with Article XVIII. If there shall be a final determination that the consent or approval was unreasonably withheld, conditioned or delayed so that the consent or approval should have been granted, the consent or approval shall be deemed granted. Such deemed grant of consent or approval shall not be deemed to be satisfaction of any obligation under this Lease of the Party from whom such consent or approval was requested to give such consent or approval reasonably, unconditionally and/or without delay and shall not prejudice any rights under this Lease of the Party seeking such consent or approval to seek damages for such failure by the other Party to so perform as required hereunder. No fees or charges of any kind or amount shall be required by either Party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

20.25 Limitations on Liability. It is specifically understood and agreed that there shall be absolutely no personal liability on the part of MIDA or Tenant or on the part of any of MIDA Parties or Tenant Parties, as the case may be, in respect of any of the terms, covenants and conditions of this Lease, and Tenant or MIDA, as the case may be, shall look solely to the interest of MIDA or Tenant, as the case may be, in the Leased Premises for the satisfaction of each and every remedy of Tenant or MIDA, as the case may be, in the event of any breach or default by MIDA or Tenant, as the case may be, or by any successor in interest to MIDA or Tenant, as the case may be, of any of the terms, covenants and conditions of this Lease to be performed by MIDA or Tenant, as the case may be.

[Signature Pages on Next Page]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

MIDA:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

ATTEST:

By: _____
Name: Paul Morris
Title: Acting Executive Director

By:_____
MIDA Staff

TENANT:

BLX MWR HOTEL LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

EXHIBIT A
TO
MWR HOTEL CONDOMINIUM LEASE AGREEMENT

(Legal Description of the Real Property)

The "Real Property" referred to in the foregoing Lease is situated in Wasatch County, Utah and consists of the surface rights to a parcel of land located in the northeast quarter of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

All of Lot 1, MIDA/AIRFORCE PARCEL PLAT, according to the official plat thereof recorded December 19, 2019 as Entry No. 472208 on file and of record in the Wasatch County Recorder's office.

Containing 208,032 Sq. Ft. or 4.78 Acres

EXHIBIT B
TO
MWR HOTEL CONDOMINIUM LEASE AGREEMENT

Definitions

"**Additional Cure Period**" has the meaning set forth in Section 8.3(c).

"**Additional Rent**" has the meaning set forth in Section 5.1(b).

"**Affiliate**" means with respect to any Person, any other Person that Controls, is Controlled by or is under common Control with such first Person.

"**Alterations**" has the meaning set forth in Section 9.6.

"**Alterations Threshold**" has the meaning set forth in Section 4.3(a).

"**Applicable Law**" has the meaning set forth in Section 4.6(b).

"**Assessment Bonds**" has the meaning set forth in Section 4.11.

"**Assignment**" means the sale, exchange, assignment or other disposition of all of Tenant's Leasehold Estate, whether by operation of Applicable Law or otherwise.

"**Available Proceeds**" has the meaning set forth in Section 10.6.

"**Average Rate Floor**" has the meaning set forth in Section 4.1(c)(iv).

"**Base Rent**" has the meaning set forth in Section 5.1(a).

"**Branded Hotel Operator**" has the meaning set forth in Section 3.6.

"**Business Days**" means any day when commercial banks are open for business in the State of Utah and the State of New York, and shall not include New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day following Thanksgiving, Christmas and any other day which shall be observed by the government of the United States of America and/or the Utah State government as a legal holiday, along with Rosh Hashanah, Yom Kippur, Shavuot, the first, second, seventh and eighth days of Passover, and the first, second, eighth and ninth days of Sukkot.

"**CG**" has the meaning set forth in Section 4.1(c)(i).

"**Claims**" has the meaning set forth in Section 14.1.

"**Closing**" has the meaning set forth in Section 20.18.

"**Commence Construction**" means the commencement of footings and foundations for the Hotel Improvements to be constructed on the Leased Premises.

"**Commencement Date**" means the date on which the Initial Term commences as provided in Section 2.2(b).

"**Commercial Units**" means each condominium unit designated as a "Commercial Unit" on the Condominium Plat, and includes commercial unit nos. B-1-1, B-1-2, and C-1-1 through C-1-8 as identified on the Condominium Plat.

"**Common Elements**" has the meaning set forth in Section 3.1(e).

"**Condominium Declaration**" has the meaning set forth in the Recitals, including any amendments, replacements, or supplements thereof.

"**Condominium Documents**" means the Condominium Declaration and the Condominium Plat, as they may be modified, amended, replaced and supplemented from time to time.

"**Condominium Hotel Project**" has the meaning set forth in the Recitals.

"**Condominium Owners Association**" means the association of unit owners for the Condominium Hotel Project created pursuant to the Condominium Documents.

"**Condominium Plat**" has the meaning set forth in the Recitals, including any amendments, replacements, or supplements thereof.

"**Condominium Units**" means the Hotel Unit, Residential Units, Commercial Units, Military Concierge Unit, and the appurtenant Common Elements, collectively.

"**Confidential Information**" has the meaning set forth in Section 20.22.

"**Consumer Price Index**" means the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (1982-84=100), reported monthly by Bureau of Labor Statistics of the United States Department of Labor and published on Bloomberg screen CPURNSA or any successor service; provided, however, that (a) in the event the Consumer Price Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversation factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication by any other nationally recognized publisher of similar statistical information. In the event the Consumer Price Index and/or conversion factor shall cease to be published, then, for the purposes of this Lease, there shall be substituted for the Consumer Price Index such other index as MIDA and Tenant shall agree upon, and if they are unable to agree within ninety (90) days after the Consumer Price Index ceases to be published, such matter shall be determined by arbitration in accordance with Article XVIII of this Lease.

"**Construction Commencement Date**" has the meaning set forth in Section 4.4(a).

"**Contamination**" has the meaning set forth in Section 20.11.

"**Control**" or "**Controlled**" means the ownership of more than twenty percent (20%) of the outstanding voting ownership interests of the Person in question or the power to direct the management of the Person in question (subject to any required approvals for major decisions by Persons holding equity interests in the Person in question).

"**Conversion Option**" has the meaning set forth in Section 19.1.

"**CPACE Bonds**" has the meaning set forth in Section 4.11.

"**Default Interest Rate**" means an interest rate equal to the sum of (a) three percent (3%) per annum, plus (b) the annual "Prime Rate" of interest established and maintained by JP Morgan Chase Bank (or its successor), but in no event greater than the highest lawful rate from time to time in effect. In the event that JP Morgan Chase Bank or its successor no longer establishes and maintains such a Prime Rate, then Tenant may, with MIDA consent (which consent shall not be unreasonably withheld), select either (x) a reasonably equivalent rate of interest that is commonly used in substantially similar situations as the Prime Rate is currently used or (y) another bank or similar financial institution to substitute for JP Morgan Chase Bank for purposes of this definition, which bank or similar institution shall be a member of the Federal Reserve (or its successor). Any dispute over a proposed substitute rate of interest and/or a replacement bank or financial institution for JP Morgan Chase Bank shall be resolved by arbitration pursuant to Article XVIII hereof.

"**Default Notice**" has the meaning set forth in Section 8.3(b).

"**Delinquent Amount**" has the meaning set forth in Section 5.1(c).

"**Discount**" has the meaning set forth in Section 4.1(c)(i).

"**Discounted Rooms**" has the meaning set forth in Section 4.1(c)(i).

"**DoD**" has the meaning set forth in Section 4.1(c)(i).

"**Donation Agreement**" has the meaning set forth in the Recitals.

"**Drawings**" has the meaning set forth in Section 4.3(a)(ii)(B).

"**Effective Date**" has the meaning set forth in the Preamble.

"**Eligible Military Patron**" has the meaning set forth in Section 4.1(c)(i).

"**Environmental Laws**" means any Applicable Law adopted by any local governmental authority, the State of Utah or the United States Government regulating substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 5 § 1801, et seq. the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; all corresponding and related State of Utah and local statutes, ordinances and regulations, including without limitation any dealing with underground storage tanks; and in any other environmental law, regulation or ordinance now existing or hereinafter enacted.

"**Event of Default**" has the meaning set forth in Section 17.1(a).

"**Event of Default Notice**" has the meaning set forth in Section 17.1(c).

"**Exercise Notice**" has the meaning set forth in Section 19.1.

"**Extension Term**" has the meaning set forth in Section 2.2(c).

"**Fee Mortgage**" means any financing obtained by MIDA, as evidenced by any mortgage, indentures, deed of trust, assignment of leases and rents, financing statement or other instruments, and secured by the interest of MIDA in the Leased Premises, including any extensions, modifications, amendments, replacements, supplements, renewals, refinancings and consolidations thereof.

"**Final Plans**" has the meaning set forth in Section 4.3(a)(ii).

"**Force Majeure**" has the meaning set forth in Section 20.15.

"**Foreclosure**" with respect to a Leasehold Mortgage means a judicial sale, non-judicial sale, trustee's sale and other similar realization proceeding.

"**Four Star Hotel**" means a hotel for short-term overnight lodging of guests that includes an on-site restaurant, conference center and access to other amenities such as a fitness center, concierge desk, and other guest services, and well-appointed lobby with public restrooms, that is operated and managed in a manner to earn a four star rating from a recognized travel and rating organization (under standards applicable as of the commencement of the Initial Term) consistent with (a) the physical condition of the Hotel as of the commencement of the Initial Term, reasonable wear and tear excepted, and (b) then current prudent business and management practices applicable to the maintenance and operation of other four star hotels within the greater Park City area that are comparable in size, character and location to the Hotel as of the Effective Date, such as the Wyndham Park City Hotel, Zermatt Utah Resort & Spa, Grand Summit Hotel, Westgate Park City Resort & Spa, or Silverado Lodge. Notwithstanding the foregoing, if the hotel industry market changes such that amenities currently offered in Four Star Hotels are no longer generally offered by such hotels, or if Four Star Hotels generally begin offering amenities that are not currently offered by such hotels and such additional amenities are necessary to maintain the four star rating of such hotels, then in either case the amenities required by the foregoing definition shall be similarly adjusted, with any disagreement regarding such amenities subject to arbitration as provided in Article XVIII hereof.

"**Governmental Approvals**" has the meaning set forth in Section 4.6(a).

"**Governmental Authorities**" has the meaning set forth in Section 4.6(b).

"**Hazardous Materials**" means any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including, without limitation, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any Environmental Laws.

"**Hotel**" means the Hotel Unit, the Commercial Units, the Military Concierge Unit and appurtenant Common Elements.

"**Hotel Improvements**" has the meaning set forth in Section 4.2(a).

"**Hotel Management Agreement**" has the meaning set forth in Section 19.1.

"**Hotel Operator**" has the meaning set forth in Section 19.1(c).

"**Hotel Unit**" has the meaning set forth in Section 3.1(b).

"**Hotel User**" means any Person who has a reservation to rent a room or hold an event in the Hotel at the time in question.

"**Immunity Act**" has the meaning set forth in Section 14.4.

"**Impositions**" has the meaning set forth in Section 6.4.

"**Initial Opening Year**" has the meaning set forth in Section 4.1(c)(iv).

"**Initial Term**" has the meaning set forth in Section 2.2(b).

"**Landlord**" has the meaning set forth in the Preamble, and such Person's successor in interest.

"**Lease**" has the meaning set forth in the Preamble, including any extensions, modifications, amendments, replacements, supplements, renewals, and consolidations thereof.

"**Lease Year**" means each twelve (12) month period that this Lease is in effect, commencing on the first day of the Initial Term.

"**Leased Premises**" has the meaning set forth in the Recitals. For clarity, the Leased Premises does not include the Residential Units.

"**Leasehold Estate**" means, collectively, the leasehold estate of Tenant in the Leased Premises created by this Lease, subject to and in accordance with all the terms and conditions of this Lease.

"**Leasehold Mortgage**" means a mortgage, a deed of trust, and any other security instrument or instruments by which Tenant's Leasehold Estate is directly or indirectly mortgaged, pledged (including any pledge of a direct or indirect interest in Tenant or other "mezzanine" or preferred equity loan), conveyed, assigned, or otherwise transferred, to secure a debt or other obligation, which shall not have a term in any event greater than the Term.

"**Leasehold Mortgagee**" and "**Mortgagee**" means a holder of a Leasehold Mortgage who has given notice to MIDA and whose notice has been received by MIDA as provided in Section 8.2. A "designee" of a Mortgagee shall mean any Person designated by a Leasehold Mortgagee to acquire any interest in the Leasehold Estate or any direct or indirect equity interest in Tenant as contemplated by Article VIII.

"**Major Sublease**" means a Sublease of not less than thirty-three percent (33%) of the total usable square feet of the Leased Premises.

"**Master Association**" means an association of owners associations organized pursuant to the Resort Master Declaration for the purpose of providing governance, advice, rules and regulations with respect to the Resort.

"**Master Development Agreement**" means that certain Mountainside Resort Master Development Agreement dated as of August [__], 2020 between MIDA and Tenant, including any extensions, modifications, amendments, replacements, supplements, renewals, and consolidations thereof.

"**Master Plan Approval**" has the meaning set forth in the definition of Resort Entitlement Approvals.

"**MIDA**" has the meaning set forth in the Preamble.

"**MIDA Documents**" means the Donation Agreement, the Master Development Agreement, and the Tax Sharing and Reimbursement Agreement, including any extensions, modifications, amendments, replacements, supplements, renewals, and consolidations thereof.

"**MIDA Parties**" has the meaning set forth in Section 14.1.

"**Military Categories**" has the meaning set forth in Section 4.1(c)(ii).

"**Military Concierge Unit**" means the Military Concierge Unit identified on the Condominium Plat.

"**Military Conference Committee**" has the meaning set forth in Section 13.2.

"**Military Entity**" means the United States Air Force or such other military organization MIDA may designate from time to time.

"**Month**" means each calendar month during each Lease Year.

"**Net Worth**" means the sum of all of a party's assets, less liabilities as determined by the use of generally accepted accounting principles.

"**New Lease**" has the meaning set forth in Section 8.4.

"**New Lease Notice**" has the meaning set forth in Section 8.4.

"**Official Records**" means the official records of the Wasatch County Recorder and, to the extent required, the official records of the Summit County Recorder.

"**Olympic Blackout Period**" means the period described in Section 4.1(c)(viii).

"**Opening Date Notice**" has the meaning set forth in Section 4.1(c)(v).

"**Option Exercise Notice**" has the meaning set forth in Section 20.18.

"**Outside Substantial Completion Date**" has the meaning set forth in Section 4.4(c).

"**Party**" and "**Parties**" has the meaning set forth in the Preamble.

"**Peak Occupancy Periods**" has the meaning set forth in Section 4.1(c)(vii).

"**Person**" means any individual, partnership, corporation, limited liability company, Governmental Authority, trust, trustee, unincorporated association, and the heirs, executors, administration, or other legal representatives of any individual.

"**Personal Property**" means all personal property (of any kind or nature) owned by Tenant or its Affiliates and kept or maintained at the Leased Premises, but not affixed or attached thereto, including maintenance equipment (in each case solely to the extent not affixed or attached to the Leased Premises) and any vehicles.

"**Preliminary Term**" has the meaning set forth in Section 2.2(a).

"**Primary Use**" has the meaning set forth in Section 4.1(a).

"**Property Insurance**" has the meaning set forth in Section 10.6.

"**Purchase Option**" has the meaning set forth in Section 20.18.

"**Purchase Price**" has the meaning set forth in Section 20.18.

"**Qualified Lender**" means: (1) a bank, trust company, insurance company, investment company, hedge fund, private equity fund, real estate equity fund, money management fund, credit union, savings bank, pension, welfare or retirement fund or system or real estate investment trust; (2) a trustee or issuer of collateralized mortgage obligations or similar investment entity; (3) any Person engaged in commercial real estate financing or real estate investment; (4) any Person that is a "qualified institutional buyer" within the meaning of Rule 144A under the United States Securities Act of 1933, as amended, or an entity that is an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended; (5) any other fund that owns real estate assets and/or loans secured by real estate assets; or (6) any Person that is a subsidiary of any one of the foregoing entities, so long as in all cases under parts (1), (2), (3), (4), (5) and (6) (w) such Person is not an Affiliate of the Tenant, (x) such Person is subject to the jurisdiction of the federal courts of the United States of America and the courts of the State of Utah and (y) such Person is not immune to suit.

"**Real Property**" means the real property identified in Exhibit A.

"**Real Property Taxes**" has the meaning set forth in Section 6.3.

"**Rent**" has the meaning set forth in Section 5.1.

"**Residential Units**" has the meaning set forth in Section 3.1(a).

"**Resort**" means the multi-use planned development to be located on property owned or leased, now or in the future, by Tenant and its Affiliates and located near the Jordanelle Reservoir and west of U.S. Highway 40 in Wasatch County, Utah, and which is the subject of the Master Development Agreement.

"**Resort Entitlement Approvals**" means final, non-appealable (a) Governmental Approvals acceptable to Tenant from MIDA (in its governmental capacity) and, to the extent required by Applicable Law, Wasatch County and applicable special service districts for (i) development of the Resort in accordance with that certain Application for Master Plan, Physical Constraints Analysis and Density Determination –JSPA submitted to Wasatch County dated October, 2015, as amended by Tenant on May 16, 2018, and approved by MIDA on December 17, 2018, and as such application may be further amended from time to time (the "**Master Plan Approval**"), and (ii) development agreements vesting in Tenant and its Affiliates the right to develop the Resort in conformity with the Master Plan Approval including the Master Development Agreement.

"**Resort Master Declaration**" means that certain Master Declaration of Covenants, Conditions, Restrictions and Limitations for Mountainside Resort dated as of August [__], 2020 and recorded in the Official Records of Wasatch County, Utah, as such declaration may be adopted, modified, amended, replaced, and superseded from time to time.

"**ROFO Property**" has the meaning set forth in Section 20.17(a).

"**Standard Occupancy Period**" means each calendar day during a calendar year that the Hotel is open for lodging rental to the general public and that is not a Peak Occupancy Period or Olympic Blackout Period.

"**Sublease**" means any lease, sublease, occupancy, license, or concession agreement for the use or occupancy of space in the Hotel (other than this Lease).

"**Subsequent Assignee**" has the meaning set forth in Section 8.3(g).

"**Substantial Completion**" means, with respect to the initial construction of the Hotel Improvements, the stage in the construction of the Hotel Improvements when the Hotel Improvements are sufficiently complete (with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration) in accordance with the applicable Drawings so that Tenant can occupy or utilize the Hotel Improvements for their intended use, as reasonably determined by Tenant's architect.

"**Target Substantial Completion Date**" has the meaning set forth in Section 4.4(b).

"**Tax Sharing and Reimbursement Agreement**" has the meaning set forth in Section 4.11.

"**Tenant**" has the meaning set forth in the Preamble, and such Person's successors in interest.

"**Tenant Parties**" has the meaning set forth in Section 14.2.

"**Tenant Related Parties**" has the meaning set forth in Section 20.11.

"**Tenant Right of First Offer**" has the meaning set forth in Section 20.17(b).

"**Term**" has the meaning set forth in Section 2.2(c).

"**Transfer**" means any transaction or series of transactions (including any assignment, transfer, issuance or redemption of any ownership interest, or any merger, consolidation or dissolution) which results in a change of Control of Tenant. Notwithstanding the foregoing, a Transfer shall not be deemed to include an issuance or a transfer of stock through the "over the counter" market or through any recognized national stock exchange.

"**Transferee**" has the meaning set forth in Section 15.1.

"**Utah Condominium Act**" means the Utah Condominium Ownership Act, *Utah Code Ann.* §57-8a-101 *et seq.*, as amended, replaced, or superseded from time to time.

"**Use**" has the meaning set forth in Section 4.1(a).

"**Utility Fees**" has the meaning set forth in Section 6.2.

"**Village**" means the area of the Resort now located or hereafter to be located within the Village at Mountainside, as identified in the Village Declaration.

"**Village Association**" means an association of owners associations organized pursuant to the Village Declaration for the purpose of providing governance, advice, rules, and regulations with respect to the Village.

"**Village Declaration**" means the Declaration of Covenants, Conditions, Restrictions and Easements for the Village at Mountainside recorded concurrently with this Resort Master Declaration, as such declaration may be adopted, modified, amended, replaced, and superseded from time to time.

"**Written Notice of Proposed Sale**" has the meaning set forth in Section 20.17(a).

EXHIBIT C
TO
MWR HOTEL CONDOMINIUM LEASE AGREEMENT

Interpretation

As used in this Lease, unless a clear contrary intention appears:

(a) any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other gender;

(b) the words "hereof", "hereby", "herein", and "hereunder" and words of similar import, when used in this Lease, shall refer to this Lease as a whole and not to any particular provision of this Lease;

(c) any reference to Articles, Sections and Exhibits are, unless otherwise stated, references to Articles, Sections and Exhibits of or to this Lease, and references in any Section or definition to any clause means such clause of such Section or definition;

(d) the headings in this Lease have been inserted for convenience only and shall not be taken into account in its interpretation;

(e) reference to any agreement (including this Lease), document or instrument means such agreement, document, or instrument as amended, modified, superseded, replaced or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Lease;

(f) the Exhibits hereto form an integral part of this Lease and are equally binding therewith, and any reference to "this Lease" shall include such Exhibits;

(g) references to a Person shall include any permitted assignee or successor to such Party in accordance with this Lease and reference to a Person in a particular capacity excludes such Person in any other capacity;

(h) if any period is referred to in this Lease by way of reference to a number of days, the days shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a Business Day in which case the last day shall be the next succeeding Business Day;

(i) the use of "or" is not intended to be exclusive unless explicitly indicated otherwise;

(j) references to "$" or to "dollars" shall mean the lawful currency of the United States of America;

(k) this Lease shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted and

(l) the words "includes," "including," or any derivation thereof shall mean "including without limitation" or "including, but not limited to."

EXHIBIT D
TO
MWR HOTEL CONDOMINIUM LEASE AGREEMENT

Memorandum of Lease

After Recording Return To:

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Roger D. Henriksen, Esq.
Robert A. McConnell, Esq.

MEMORANDUM OF LEASE

This Memorandum of Lease is executed by the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah (together with its successors and/or assigns, the "MIDA"), having a mailing address at 450 Simmons Way, Suite 400, P.O. Box 112 Kaysville, Utah 84037, Attention: Executive Director, and BLX MWR HOTEL LLC, a Delaware limited liability company (together with its successors and/or assigns, the "Tenant"), having a mailing address at 850 Third Avenue, 7th Floor, New York, NY 10022 Attention: President.

1. MIDA, as lessor, and Tenant, as lessee, have entered into that certain MWR Condominium Lease Agreement, dated as of August [___], 2020 (the "Lease"), covering certain real property located in Wasatch County, State of Utah, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Leased Premises").

2. The term of the Lease commences on the date hereof and continues for a period of ninety-nine (99) years after the commencement of the Initial Term (as defined in the Lease). Tenant has three (3) options of fifty (50) years each to extend the term of the Lease.

3. MIDA and Tenant hereby provide notice to third Parties of the Lease and the terms, conditions, limitations, and restrictions thereof, by recording this Memorandum of Lease in the official real estate records of Wasatch County, State of Utah.

4. The Leased Premises is subject to the terms, conditions, limitations and restrictions set forth in the Lease, which are incorporated herein by this reference.

5. Pursuant to the terms of the Lease, MIDA has granted Tenant an option and a right of first offer to purchase the Leased Premises.

6. Reference should be made to the Lease for the particular terms, conditions, limitations, and restrictions thereof.

7. This Memorandum of Lease shall be governed by and construed in accordance with the laws of the State of Utah.

[Signature Pages Follow]
[Signature Page to Memorandum of Lease]

DATED this ____ day of _____, 2020.

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

By: _____
Paul Morris, Acting Executive Director

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

On the _____ day of _____, 2020, personally appeared before me Paul Morris, who being by me duly sworn did say, that he is the Acting Executive Director of the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the Military Installation Development Authority, by authority of law.

_____
NOTARY PUBLIC
Residing in _____

[Signature Page to Memorandum of Lease]

BLX MWR HOTEL LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF NEW YORK)
ss
COUNTY OF NEW YORK)

On the _____ day of _____, 2020, before me, the undersigned, personally appeared Gary Barnett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as President of BLX MWR Hotel LLC, a Delaware limited liability company, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC
Residing in _____

EXHIBIT A
TO
MEMORANDUM OF LEASE

(Legal Description of Leased Premises)

The Leased Premises are situated in Wasatch County, Utah and consists of the surface rights to a parcel of land located in the northeast quarter of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Commercial Units B-1-1, B-1-2 and C-1-1 through C-1-8, inclusive, The Hotel Unit, and The Military Concierge Unit, **MWR CONFERENCE HOTEL CONDOMINIUMS, a Utah Expandable Condominium Project**, together with their appurtenant undivided ownership interests in the common elements of the project, as the same are identified and established in the Record of Survey Map of MWR Conference Hotel Condominiums recorded _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records, and the Declaration of Condominium for MWR Conference Hotel Condominiums, recorded _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder.

4831-6799-9405, v. 19

EXHIBIT F
to
DONATION AGREEMENT

Form of Master Development Agreement

Execution Version

WHEN RECORDED, PLEASE RETURN TO:

Roger D. Henriksen
Robert A. McConnell
Parr Brown Gee & Loveless
101 South 200 East, Suite 100
Salt Lake City, Utah 84111

Tax Parcel Nos. (See Exhibit A)

(Space above for Recorder's use only)

MOUNTAINSIDE RESORT
MASTER DEVELOPMENT AGREEMENT

by and between

EX UTAH DEVELOPMENT LLC
BLX LLC
BLX MAYFLOWER LLC
BLX PIOCHE LLC
BLX LAND LLC
BLX MWR HOTEL LLC
RH MAYFLOWER LLC
32 DOM MAYFLOWER LLC
and

MILITARY INSTALLATION DEVELOPMENT AUTHORITY

TABLE OF CONTENTS

MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

This MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT (this "**Agreement**") is dated as of this ____ day of August, 2020, by and between the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah ("**MIDA**"), on the one hand, and BLX LLC ("**BLX**"), BLX MAYFLOWER LLC ("**BLXM**"), BLX PIOCHE LLC ("**BLX Pioche**"), BLX LAND LLC ("**BLX Land**"), BLX MWR HOTEL LLC ("**BLX MWR**"), RH MAYFLOWER LLC ("**RH Mayflower**"), and 32 DOM MAYFLOWER LLC ("**32 DOM**"), each of which is a Delaware limited liability company (collectively, the "**Landowners**") and EX UTAH DEVELOPMENT LLC, a Delaware limited liability company ("**Master Developer**", and with the Landowners, the "**BLX Entities**"), on the other hand. Each of the BLX Entities and MIDA may hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. WHEREAS, pursuant to Utah Code Ann. Section 63H-1-101, et seq., as amended (the "**MIDA Act**"), MIDA is "independent, nonprofit, separate body corporate and politic, with perpetual succession and statewide jurisdiction, whose purpose is to facilitate the development of land within a project area or on military land associated with a project area."

B. WHEREAS, pursuant to the MIDA Act, MIDA has "exclusive police power within a project area to the same extent as though the authority were a municipality, including the collection of regulatory fees," and neither MIDA nor any land included in a project area is subject to "Title 17, Chapter 27a, County Land Use, Development and Management Act" ("**CLUDMA**"), nor is MIDA or any such land subject to "ordinances or regulations of a county or municipality including those relating to land use, health, business license, or franchise" (collectively referred to herein as "**MIDA' s Exclusive Authority**").

C. WHEREAS, BLX, BLXM, BLX MWR, BLX Land, BLX Pioche, RH Mayflower and 32 DOM, each as the case may be, collectively hold legal title to the real property located in unincorporated Wasatch County, as legally described in Exhibit A and depicted on Exhibit A-1 attached hereto (together with associated recreational property, the "**Mountainside Property**").

D. WHEREAS, Master Developer has been retained by Landowners to assist in developing the Mountainside Property, the Pioche Property (as defined herein), the JSSD Parcel (as defined herein), the Blue Ledge Parcel (as defined herein), the East Overlook Parcel (as defined herein), and the Mayflower Mountain Lands (as defined herein), into a four-season recreational resort that will, among other uses, include a ski village and multiple ski lifts (the "**Mountainside Resort**"), and will include a parcel on which the MWR Hotel (as defined herein) is to be located, and have authorized Master Developer to act on Landowners' behalf for the purposes of developing the Mountainside Resort and entering into this Agreement.

E. WHEREAS, pursuant to the MIDA Act, MIDA created the MIDA Project Area (as defined herein) in portions of Wasatch and Summit Counties that includes, among other real property, the Mountainside Property and certain military land for the purpose of promoting high quality development that will provide recreational opportunities to military personnel and the general public.

F. WHEREAS, MIDA entered into the West Side Interlocal Cooperation Agreement and the East Side Interlocal Cooperation Agreement with Wasatch County, both dated December 17, 2018, as amended by the First Amendment to such agreements, both dated as of March 18, 2020 (collectively, the "**County Interlocal Agreements**") following all requirements of the MIDA Act and the Utah Interlocal Cooperation Act, Utah Code Ann. §11-13-101 *et seq.* The Interlocal Agreements, among other things, allow MIDA to create a development fund ("**Development Fund**") and set forth how the Development Fund will be used on the east side of US Highway 40 ("**East Side**") and the west side of eastern right-of-way line for US Highway 40 ("**West Side**").

G. WHEREAS, MIDA has entered into several other interlocal cooperation agreements with Jordanelle Special Service District, Wasatch County Solid Waste District, and Wasatch County Fire District (collectively the "**District Interlocal Agreements**"). The District Interlocal Agreements, together with the County Interlocal Agreements, provide for the provision of governmental services to the MIDA Project Area, including the Mountainside Resort.

H. WHEREAS, pursuant to the County Interlocal Agreements, MIDA create the DRC (as defined herein) and adopted the MIDA Development Standards (as defined herein) which establish the role of the DRC with respect to various land use reviews and recommendations required in connection with the development of the Mountainside Resort.

I. WHEREAS, MIDA, acting pursuant to MIDA's Exclusive Authority, and in furtherance of its land use policies, goals, objectives, and the MIDA Development Standards, in the exercise of its discretion, has elected to approve and enter into this Agreement with Master Developer pertaining to the development of the Mountainside Resort.

J. WHEREAS, on August 29, 2018, following review and recommendation by Wasatch County's Development Review Committee, Wasatch County's Planning Department and the JSPA Planning Commission, the Wasatch County Council reviewed and approved, following duly–noticed public hearings, the BLXM Master Plan (as defined herein).

K. WHEREAS, BLXM submitted the BLXM Master Plan to MIDA for review and on December 17, 2018 the MIDA Board (as defined herein) approved the BLX Master Plan by adopting amendments to Chapter 5 of the MIDA Development Standards pursuant to Resolution 18-27.

L. WHEREAS, pursuant to Section 5.04 of the MIDA Development Standards, MIDA and Master Developer desire to enter into this Agreement to memorialize conditions and agreements which were established as part of MIDA's approval of the BLXM Master Plan, to help clarify the future development review and approval process for the Mountainside Resort, and to ensure that Master Developer may proceed with development of the Mountainside Resort in accordance with Applicable Law (as defined herein) and the BLXM Master Plan, the Pioche Master Plan (as defined herein) and the Blue Ledge Development Agreement (as defined herein).

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

AGREEMENT

SECTION 1. EFFECTIVE DATE; DEFINITIONS; INTERPRETATION

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

1.2 **Definitions.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in Exhibit B attached hereto.

1.3 **Interpretation.** Matters relating to the interpretation of this Agreement are set forth in Exhibit C attached hereto.

SECTION 2. TERM AND FINDINGS

2.1 **Term**. The term of this Agreement (as it may be extended hereunder, the "**Term**") shall commence upon the Effective Date and continue for a period of forty (40) years. At the request of Master Developer, MIDA shall extend the Term for up to two (2) extension terms of ten (10) additional years each if Master Developer has made commercially reasonable efforts to develop the Mountainside Resort during the initial forty (40) year Term and, if applicable, the first extension Term, and is not otherwise in default (after the expiration of all applicable notice and cure periods) with respect to the terms of this Agreement. Unless otherwise agreed between the Parties, Master Developer's vested interest(s) and right(s) set forth in this Agreement expire at the end of the Term (as the same may be extended), or upon termination of this Agreement in accordance with the terms hereof. MIDA agrees to process complete submissions and to recommend approval of compliant submissions to MIDA Board with reasonable diligence and in accordance with the MIDA Development Standards. Upon the expiration or termination of this Agreement, for any reason, the obligations of the Parties to each other hereunder shall terminate with regard to any obligations accruing after such termination, but none of the Master Development Plans, Project Site Plans, Project Specific Development Agreements, Subdivision Plats, approved licenses, approved building permits, or certificates of occupancy granted prior to expiration or termination of this Agreement may be rescinded or limited in any manner due to the expiration or termination of this Agreement. Easements, maintenance requirements, infrastructure improvement obligations, or other agreements intended to run with the land, including obligations that were based upon the approvals granted pursuant to this Agreement or Applicable Law, shall not expire upon expiration or termination of this Agreement. If the Mountainside Resort is not fully developed upon the expiration of the Term, the Parties agree that they shall negotiate in good faith an additional development agreement pertaining to the completion of the Mountainside Resort on the terms and conditions provided for herein (as may be adjusted as mutually agreed upon by the Parties], which agreement shall take into account the remaining elements of the Mountainside Resort to be completed and the amount of reimbursement potentially available to Master Developer pursuant to the Tax Sharing and Reimbursement Agreement.

2.2 **Findings**. MIDA, following all requisite legal requirements and after careful review of evidence submitted and such other investigation as MIDA has deemed proper, finds and declares as follows:

2.2.1 Comprehensive Planning. It is the intent of MIDA to encourage strong commitment to comprehensive and capital facilities planning and ensure the provision of adequate public facilities for development in the MIDA Project Area.

2.2.2 Need to Advance Public Facilities. The lack of certain public facilities, including, but not limited to, streets, sewer, culinary water, and utility facilities and systems is a serious impediment

to growth in the MIDA Project Area, and the development of the Mountainside Resort could result in the construction and improvement of such facilities and systems in the applicable portion of the MIDA Project Area.

2.2.3 Development Within Purposes of MIDA Act. The development of the MIDA Project Area as contemplated by this Agreement will promote the development of military, private and related land within such project area in accordance with the MIDA Act, including the development of the MWR Hotel as a part of a four season multi-use resort that will include certain benefits for military purposes.

2.2.4 Exercise of Police Power. MIDA's entry into and adoption of this Agreement is necessary in order to provide for the health, safety, and welfare of the public, including military personnel, in the MIDA Project Area, and promotes the prosperity, improves the peace and good order, comfort, convenience, and aesthetics of the MIDA Project Area and its present and future residents, businesses and military personnel who will recreate in the MIDA Project Area, protects the tax base within the MIDA Project Area, secures economies of scale in governmental expenditures, fosters industry, protects urban and nonurban development, protects property values, and constitutes the present exercise by MIDA of its power granted pursuant to MIDA's Exclusive Authority.

2.2.5 Considerations by MIDA. In preparing and adopting this Agreement and approving the BLXM Master Plan and the pending approval of the North Mayflower Master Plan, MIDA considered the health, safety and welfare of the existing and future residents and populations of Wasatch County, the MIDA Project Area, the general carrying capacity of the Mountainside Property, the appropriateness of the number of structures to be developed, and the density and intensity of the potential development comprising the Mountainside Resort.

2.2.6 Fire District Approval of Emergency Access Plan. In connection with Wasatch County's review and approval of the BLXM Master Plan, the Chief of the Wasatch County Fire District reviewed an emergency access plan for the portion of the Mountainside Resort served by the roadways shown on the Village Core Roadway Plat (as defined herein) and indicated that it set forth a functional plan for emergency ingress and egress for such portion of the Mountainside Resort. The Chief of the Wasatch County Fire District has also approved specific requirements for emergency vehicle access routes for the Mountainside Resort, which requirements are memorialized on the Village Core Roadway Plat.

2.2.7 Access to the Mountainside Resort. In connection with MIDA's review and approval of the BLXM Master Plan, MIDA reviewed and approved the proposed roadway network for the Mountainside Resort and determined that it satisfies all primary, secondary and emergency access requirements for the portion of the Mountainside Resort served by the roadways shown on the Village Core Roadway Plat under Applicable Law, including, as applicable, any secondary and emergency access requirements for such portions of the Mountainside Resort. In addition, pursuant to the MIDA Development Standards, MIDA has approved the Village Core Roadway Plat, which Village Core Roadway Plat creates a road right-of-way network within the portion of the Mountainside Resort served by the roadways shown on the Village Core Roadway Plat that connects to the public frontage road located west of US Highway 40 and adjacent to the Mountainside Resort.

2.2.8 Moderate Income Housing. In connection with MIDA's review and approval of the BLXM Master Plan, MIDA reviewed and approved that certain "Moderate Income/Employee Housing Program," dated as of November 21, 2018, and determined that the affordable/employee/workforce housing identified in that plan, upon construction of the same, would provide a reasonable amount of affordable/employee/workforce housing proportional to the impact that development of the Mountainside Property would have on the Project Area.

SECTION 3. OBLIGATIONS OF MASTER DEVELOPER AND MIDA

To assist in the expeditious realization of the benefits identified in the Findings set forth above, and consistent with MIDA's approval of the BLXM Master Plan, the Parties agree as follows:

3.1 **Generally**. The Parties acknowledge and agree that MIDA's agreement to perform and abide by the covenants and obligations of MIDA set forth herein is material consideration for Master Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

3.2 **Maximum Residential Density.**

3.2.1 Mountainside Property Located Within BLXM Master Plan. This Agreement is intended to implement the approved BLXM Master Plan as a MDP (as defined in the MIDA Development Standards) and also to specify the Maximum Residential Density for the Mountainside Property. This Agreement is also intended to clarify and add detail to the development approvals authorized in the BLXM Master Plan. In the event of any inconsistency between the terms of this Agreement and the provisions of the BLXM Master Plan, the terms and provisions of this Agreement shall control. Consistent with Section 5.04 of the MIDA Development Standards, to the extent, if any, that the terms of this Agreement clarify or effectively interpret the MIDA Development Standards, then the terms of this Agreement shall control. The MIDA Board's approval of the BLXM Master Plan includes its approval of the various attachments thereto, including the roadways, Trails and other infrastructure improvements shown thereon and contemplated thereby. In connection with its approval of this Development Agreement, MIDA has approved the Mountainside Resort Land Use Plan and the Mountainside Resort Utility and Infrastructure Plans, which are updated versions of the land use and infrastructure planning documents included in the BLXM Master Plan. The Mountainside Resort Land Use Plan identifies the general location and configurations of various land uses within the Mountainside Resort. As applicable, approved permitted uses, conditional uses, densities per acre, building heights, roof slopes, setbacks, and other similar land use rules and regulations within each of the land use areas identified in the BLXM Master Plan shall be those uses, densities and other development standards allowed or otherwise approved pursuant to the MIDA Development Standards. As of the Acceptance Date and subject to this Agreement and Applicable Law, Master Developer's vested development rights for the Mountainside Property within the BLXM Master Plan include the right to develop such Mountainside Property in accordance with the BLXM Master Plan and the Mountainside Resort Land Use Plan for any and all of the approved uses identified in the MIDA Development Standards; provided, however, that the maximum number of Residential Development ERUs developed on the Mountainside Property shall not exceed the number of Residential Development ERUs' shown on the "**Development ERU—Density Allocation Schedule**" attached hereto as Exhibit D.

3.2.2 Property Located Outside of BLXM Master Plan. With respect to those portions of the Mountainside Property that are not included in the BLXM Master Plan, and with respect to real property added to this Agreement by Master Developer pursuant to Section 3.5 of this Agreement, the Parties agree that Master Developer shall obtain MDP approval with respect to such real property prior to advancing Development Applications with respect to such real property. The foregoing requirement for MDP approval shall not apply, however, to the Blue Ledge Parcel, nor shall it apply to the installation of Mountain Improvements or the completion of the East Overlook Improvements. In addition, the Parties agree that the Maximum Residential Density for the Pioche Property, Blue Ledge Parcel, JSSD Parcel, East Overlook Property, MWR Parcel, and the Mayflower Mountain Lands shall not exceed the number of Residential Development ERUs' shown on the "**Development ERU—Density Allocation Schedule**" attached hereto as Exhibit D.

3.2.3 Allocation of Residential Development ERUs Among Various Parcels. Subject to MIDA's approval of a newly approved MDP or any required amendment of an existing MDP, or, as applicable under the MIDA Development Standards, a Site Plan, which approval shall not be unreasonably withheld, Residential Development ERUs allocated to the Mountainside Property, the Pioche Property, the Blue Ledge Parcel, the JSSD Parcel, the East Overlook Property, the MWR Parcel and the Mayflower Mountain Lands may be transferred among the foregoing properties so long as the aggregate number of Residential Development ERUs does not exceed the sum of the Residential Development ERUs provided for in Sections 3.2.1 and 3.2.2.

3.2.4 Non-Residential ERUs. The Parties acknowledge and agree that, consistent with the MIDA Development Standards, there are no limits on the Resort-Lodging Development ERUs and/or the Commercial Development ERUs that may be developed on the Mountainside Property, the Pioche Property, the Blue Ledge Parcel, the JSSD Parcel, the East Overlook Property, the MWR Parcel or the Mayflower Mountain Lands.

3.3 **Phasing.** The Parties acknowledge that the most efficient and economic development of the Mountainside Resort depends on numerous factors, such as permitting, market orientation and demand, interest rates, competition, market impact of the COVID-19 pandemic, and other factors. Master Developer may in its discretion and in conformity with the MIDA Development Standards and Section 2.2, develop the Mountainside Resort in phases or Projects. The timing, sequencing, relative size and phasing of development of the various Projects in the Mountainside Resort shall be as determined by Master Developer in its sole subjective business judgment and discretion; provided that in developing each Project, Master Developer shall ensure the logical extension of infrastructure through each Project and throughout the Mountainside Resort, all in conformance with the requirements of this Agreement, Applicable Law, and the requirements imposed by MIDA in connection with specific Project approvals pursuant to the MIDA Development Standards. Master Developer understands that additional studies, as set forth in Section 3.11, may be required for such future Projects. Subject to Section 4 and the other provisions of this Agreement, each Project must comply with the requirements of the MIDA Development Standards. MIDA and the applicable Project Developer (including Master Developer, if applicable) may, at the request of the applicable Project Developer, enter into a Project Specific Development Agreement with respect to a given Project contemporaneously with MIDA's approval of each such Project.

3.4 **MIDA Project Area**. The Mountainside Resort is included in the MIDA Project Area created pursuant to the MIDA Act, as previously approved by the MIDA Board and consented to by the Wasatch County Council. To this end, the MIDA Board previously passed such resolutions as are necessary for the Mountainside Resort to be included in the MIDA Project Area and approved MIDA's amendment of the project area plan and budget for the MIDA Project Area to include the Mountainside Resort, such that the Mountainside Resort is eligible to receive property tax allocation funds and other taxes and benefits associated with its inclusion into the MIDA Project Area, all as more specifically set forth in in the Tax Sharing and Reimbursement Agreement.

3.5 **Additional Property.** If any of the BLX Entities presently owns or subsequently acquires additional real property in the West Side or adjacent to the West Side and located within Wasatch County approved for inclusion pursuant to its resolution approving the County Interlocal Agreements, Master Developer may elect to include such property in this Agreement, subject to MIDA's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Such later-added property must be located within the MIDA Project Area to be included in this Agreement. With respect to other real property not owned by a BLX Entity or their Affiliates that MIDA elects to include within the MIDA Project Area from and after the date hereof, which is located in unincorporated in Wasatch County and is subject to the JSPA Code, MIDA agrees that such real property shall, as applicable, not be approved for Development

ERU densities that exceed the Development ERU densities that would have been allowed for such real property pursuant to the JSPA Code as of December 17, 2018.

3.6 **Approval and Construction of MWR Hotel and Mayflower Village Drive**. MIDA and Master Developer acknowledge that BLX MWR has entered into that certain Donation Agreement, pursuant to which BLX MWR has agreed to contribute to MIDA the Military Concierge Unit, the Hotel Unit and the Commercial Units located within the MWR Conference Hotel Condominium Project, as defined in the MWR Lease Agreement. MIDA further confirms that, in addition to the approvals granted to Master Developer pursuant to MIDA's approval of the BLXM Master Plan, MIDA has approved and granted those approvals related to the MWR Hotel and the Village Core Roadway Plat as are set forth on Exhibit E. Such approvals fully satisfy the master planning, subdivision and site plan requirements imposed pursuant to the MIDA Development Standards and this Agreement relating to the MWR Hotel. MIDA further acknowledges and agrees that Residential Development ERUs allocated to the MWR Hotel pursuant to the BLXM Master Plan but not actually utilized in the MWR Hotel may be transferred by the Master Developer to any parcel within the Mountainside Property, including the Military Option Parcel, that Master Developer may convey to MIDA in furtherance of the overall development of the MIDA Project Area and the use and enjoyment of the same by Eligible Military Patrons as defined in the MIDA Lease Agreement.

3.7 **Emergency Vehicle Access Standards and Improvements**. In connection with its approval of this Development Agreement, by way of clarification and elaboration of the MIDA Development Standards, the MIDA Board has, in the exercise of its legislative discretion, approved the Emergency Vehicle Access Standards for the Mountainside Resort. Except for the roads shown on the Village Core Roadway Plat and the Project specific "Emergency Vehicle Access" or "EVAs" identified on the Village Core Roadway Plat, MIDA agrees that no further roadways or other access ways are required in connection with the development and construction of the portion of the Mountainside Resort served by the roadways shown on the Village Core Roadway Plat. Except for the portion of Mayflower Village Drive from the frontage road to Glencoe Mountain Way, which must be completed prior to the issuance of a certificate of occupancy for the MWR Hotel, all improvements to be constructed pursuant to the Emergency Vehicle Access Standards for a given Project within the portion of the Mountainside Resort served by the roadways shown on the Village Core Roadway Plat, including the primary access road(s) for such Project and any EVA, shall be constructed on a Project-by-Project basis prior to the issuance of a certificate of occupancy within the applicable Project. With respect to Projects outside of the portion of the Mountainside Resort served by the roadways shown on the Village Core Roadway Plat, MIDA agrees that MIDA will not impose standards for "Emergency Vehicle Access" or "EVAs" that are more stringent than the Emergency Vehicle Access Standards and the provisions of the MIDA Development Standards pertaining to such maintenance. Such Projects shall also require the approval of the Wasatch County Fire District.

3.8 **Roads Within and Near the Mountainside Resort**.

3.8.1 **Roads/Streets**. The roads shown on the Village Core Roadway Plat are public roads. Other roads in the Mountainside Resort will be private roads, or, if agreed by MIDA, public roads, as determined on a Project-by-Project basis, which determination shall be set forth in writing on the applicable Subdivision Plat or any amendment thereto. Public and private roads shall be constructed in accordance with the MIDA Development Standards, but shall allow for "mountain design" as set forth in the AASHTO "Green Book": A Policy on Geometric Design of Highways and Streets (AASHTO GBHS), 2018 7th Edition, AASHTO Guidelines for Geometric Design of Low-Volume Roads (AASHTO GBLVR), 2019 2nd Edition, and AASHTO Roadside Design Guide, 2011 4th Edition. The Master Developer or applicable Project Developer shall maintain the private roads located within the Mountainside Resort, providing the same or better level of maintenance provided to Class B roads in the MIDA Project Area. The Master Developer or Project Developer may transfer the obligation to maintain the private roads to the applicable Owners Association. The transfer of the road maintenance obligation to the Owners Association

will be memorialized by a Transfer Acknowledgment executed by Master Developer, MIDA, and such Owners Association, approval of which not to be unreasonably withheld, conditioned or delayed. Public road(s) in the Mountainside Resort shall be dedicated to a Public Entity, as directed by the Director, pursuant to the applicable Subdivision Plat or a separate written instrument signed by the Director at the time of dedication. After a public road dedicated to a Public Entity has been constructed in accordance with the MIDA Development Standards and such Public Entity has accepted such road, such Public Entity shall maintain or cause such road to be maintained as a public road, providing the same level of service provided to other Class B roads in the MIDA Project Area. Except to the extent provided in connection with PID Provided Services or by a special service district, MIDA may use Wasatch County to provide such maintenance for public roads pursuant to the West Side Interlocal Agreement without any additional cost or expense to Master Developer, the Mountainside Resort or the owners thereof. The priority and method of maintenance shall be determined in the reasonable discretion of MIDA. Any road constructed by the Master Developer or a Project Developer that is not specifically accepted by a Public Entity as a public road shall remain a private road until the time of such acceptance.

3.8.2 **Snow Removal**. The Master Developer or applicable Project Developer shall provide snow removal on all private roads in the Mountainside Resort. The Master Developer or Project Developer may transfer the obligation to plow the private roads to the applicable Owners Association. The transfer to the Owners Association, approval of which not to be unreasonably withheld, conditioned or delayed will be memorialized by a Transfer Acknowledgment executed by Master Developer, MIDA, and such Owners Association. MIDA (or another Public Entity, as applicable) shall provide or cause to be provided snow removal on public roads owned by MIDA or such Public Entity in the Mountainside Resort. Except to the extent provided in connection with PID Provided Services or by a special service district, MIDA may use Wasatch County to provide such snow removal pursuant to the West Side Interlocal Agreement. MIDA shall provide the same level of service provided to other Class B, Priority 1 roads in the MIDA Project Area. The priority and method of snow removal shall be determined in the reasonable discretion of MIDA or its service provider. If the Master Developer or an applicable Owners Association elects, it may supplement snow removal provided by a Public Entity with respect to such public roads. Snow removal and storage methods and locations will be modified on an annual basis and depending on services and technique of removal (e.g. plow, blowing, hauling) snow may be stored, mechanically melted or off hauled. The Master Developer, HOA, or Village PID providing service shall refresh and install signs to ensure snow storage or associated techniques are not causing harm or overwhelming public improvements. During the final landscape phase of a Project, permanent, semi-permanent or seasonal restrictive devices shall be installed to protect major public infrastructure improvements from damage, such as removable bollards on catch basins or guardrails above or below a retention pond.

3.8.3 **West Side Frontage Road Improvements**. In connection with the development of the Mountainside Resort, Master Developer and MIDA desire to reconfigure portions of the western frontage road adjacent to US Highway 40 in specific locations that are both north and south of the Mayflower Interchange in order to facilitate traffic circulation through the Portal Improvements and to and from the Mountainside Resort and the East Side, which reconfiguration and associated improvements are referred to herein as the West Side Frontage Road Improvements and are generally described and depicted on Exhibit F attached hereto (as such plans may be modified with the approval of the Parties). MIDA and Master Developer agree to reasonably cooperate in accomplishing such reconfiguration. The West Side Frontage Road Improvements will be Class B roads maintained by Wasatch County and will be constructed according to the Wasatch County road improvement standards more particularly set forth on Exhibit F. MIDA shall seek UDOT's approval and the approval of affected adjoining property owners of such reconfiguration and accomplish such reasonable property exchanges or property acquisitions as will facilitate such reconfiguration and the contemplated traffic circulation pattern for the Mountainside Resort and the MIDA Project Area generally. If the required rights-of-way are secured and following the issuance of certificates of occupancy for 500 or more Residential Development ERUs, Master Developer shall, at a

time determined by Master Developer, but taking into account the traffic demands caused by the development of the Mountainside Resort, construct or cause to be constructed at Master Developer's cost and expense (but subject to reimbursement, if applicable, pursuant to this Agreement and/or the Tax Sharing and Reimbursement Agreement) the West Side Frontage Road Improvements. Master Developer shall pay MIDA One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00) for the engineering plans for the West Side Frontage Road Improvements previously completed by MIDA's engineer, which payment shall be paid to MIDA upon such engineer's completion of the applicable drawings and acceptance of such plans by all applicable Public Entities having jurisdiction, but not sooner than March 1, 2021.

3.8.4 **East Side Frontage Road Improvements**. The Parties agree that UDOT's completion of the Portal Improvements and MIDA's construction of the East Side Frontage Road Improvements will provide enhanced emergency and secondary access to the Mountainside Resort. MIDA therefore agrees that, subject to available funding which MIDA will pursue with reasonable diligence, MIDA will complete or cause to be completed the construction of: the Portal Improvements (South) and the East Side Frontage Road Improvements (South) not later than the date a certificate of occupancy should issue for any residential or commercial Project within the Mountainside Resort and South of the Mayflower Interchange; the Portal Improvements (North) and the East Side Frontage Road Improvements (North) not later than a certificate of occupancy should issue for any residential or commercial Project within the Mountainside Resort and North of the Mayflower Interchange.

3.9 **Transit Center.** Master Developer agrees that it shall install or cause to be installed, at Master Developer's cost and expense (but subject to reimbursement, if applicable, pursuant to this Agreement and/or the Tax Sharing and Reimbursement Agreement) a transit facility in or adjacent to the Village Core as generally described and depicted on Exhibit G (the "**MV Transit Facility**") at such time as MIDA and Master Developer reasonably determine, with such determination being based on traffic demand and the County's development of a transit system for the portion of Wasatch County subject to the JSPA Code that is capable of providing transit services to the MV Transit Facility and the balance of the MIDA Project Area (the "**Project Area Transit System**"). Notwithstanding the foregoing sentence, Master Developer may unilaterally elect to install the MV Transit Facility at such earlier time as Master Developer may determine, without regard to current traffic demand or the County's development of a Project Area Transit System.

3.10 **Affordable/Employee/Workforce Housing.** In connection with its approval of this Development Agreement, MIDA has approved the Housing Program for the Mountainside Resort attached hereto as Exhibit H, and determined that the affordable/employee/workforce housing generally proposed in the Housing Program represents a proportional contribution to the low and moderate income and other similar housing needs of the MIDA Project Area created by the development of the Mountainside Resort. Except for the construction of the affordable/employee/workforce housing identified in the Housing Program, neither Master Developer nor any Project Developer shall have any obligation to construct or otherwise fund any additional affordable/employee/workforce housing in connection with the development of the Mountainside Resort, as generally depicted on the Mountainside Resort Land Use Plan, unless the total Development ERUs constructed in the Mountainside Resort exceed Master Developer's entitlements set forth in this Agreement. Unless otherwise agreed by MIDA and Master Developer, Master Developer shall construct affordable/employee/workforce housing in accordance with the Housing Program. MIDA further agrees that in lieu of constructing the housing identified in the Housing Program, Master Developer may pay the required payment-in-lieu fees imposed pursuant to Applicable Law, if any.

3.11 **Conditions of Future Approvals—Benchmark Conditions.** Development of the Mountainside Property identified in the BLXM Master Plan may require the installation of certain infrastructure or other improvements ultimately necessary to the completion of the Mountainside Resort. MIDA has established the following benchmark conditions that must be satisfied in connection with the

Project-by-Project development of the Mountainside Property identified in the BLXM Master Plan and the timetable or benchmark for their satisfaction (i.e. those conditions set forth in Sub-sections 3.11.1 through 3.11.6 below) contemporaneously with or prior to development within a specific Project or some other development milestone) (collectively, the "**Benchmark Condition(s)**"):

3.11.1 EVA Improvements: If identified on the Village Core Roadway Plat for a given Project, any EVA required for such Project shall be constructed prior to the issuance of a certificate of occupancy within the applicable Project in accordance with the standards set forth on the Village Core Roadway Plat.

3.11.2 JSSD Will-Serve Letters: As applicable and consistent with the requirements of the Water and Sewer Services Agreement, such Project shall receive a will-serve letter or other evidence confirming JSSD's commitment to provide the applicable water and sewer services contemporaneously with or before the applicable Subdivision Plat or Project Site Plan Approval.

3.11.3 Execution of Project Specific Development Agreements: If required pursuant to Section 3.3, a Project Developer shall enter into a Project Specific Development Agreement contemporaneously with or before Subdivision Plat approvals for each Project, as applicable and pursuant to Section 3.29.

3.11.4 Project Specific Trail Plans: As applicable to each Project, contemporaneously with or before Subdivision Plat or Site Plan approvals for each Project, a Project Developer shall submit to MIDA a Project Specific Trail Plan as applicable and pursuant to Section 3.29. Some Project's may not include Trails.

3.11.5 Shared Parking Programs—Periodic Updates: On a Project-by-Project basis contemporaneously with or before Project Site Plan submission with respect to only those Projects participating in a shared parking program, a Project Developer shall submit to MIDA a Shared Parking Program as more fully set forth in Section 3.24.2.

3.11.6 Roundabout at Ski Beach Way and Mayflower Village Drive. The right of way necessary for the roundabout located at the intersection of Ski Beach Way and Mayflower Village Drive, as shown on the Village Core Roadway Plat, shall be engineered, dedicated and installed by Master Developer pursuant to its final approved design when such roundabout is warranted by existing and anticipated traffic demand, as determined pursuant to a traffic study applying generally accepted traffic standards for mountain developments and evaluating both completed projects and proposed projects with respect to which MIDA has received final subdivision or site plan applications that are directly served by Ski Beach Way and Mayflower Village Drive.

Except for the Benchmark Conditions, and subject to Article 4, MIDA agrees that it shall not impose further conditions to commence and advance development of the Mountainside Resort or any Project within Mountainside Resort. Notwithstanding the foregoing, if: (a) a Project is advanced by Master Developer or a Project Developer that materially deviates from the concept for roads, utilities and other infrastructure identified on the Mountainside Resort Utility & Infrastructure Plan; (b) materially increases the overall Residential Development ERU density designated for a Project as shown on the Proposed Village Use Plan, except to the extent that such additional density is allowed pursuant to a transfer of Residential Development ERU density allowed pursuant to this Agreement; (c) requires additional Project level studies due to newly discovered geological conditions or constraints; or (d) as otherwise provided in Section 4.1.2; then MIDA may modify the applicable Benchmark Condition or impose such additional conditions to such Project as MIDA determines in the exercise of it administrative discretion to be necessary. The foregoing prohibition shall not prevent MIDA from imposing Project specific conditions necessary to assure the functionality of

the infrastructure proposed for a particular Project or other physical constraints or conditions that exist within such Project, as well as all Project level approvals required by Applicable Law.

3.12 **MIDA Processed Land Use Applications; Payment of Fees**. In connection with MIDA's processing of any land use development for any given Project within the Mountainside Resort, Master Developer agrees to pay those MIDA administrative, review and inspection fees imposed pursuant to MIDA Resolution No. 2019-14 and the reasonable executive orders and cost-based fee schedules lawfully issued pursuant thereto, as the same may be adjusted from time-to-time. MIDA agrees to process, reasonably consider and complete any land use development application submitted by Master Developer or any Project Developer in a timely manner in accordance with the MIDA Development Standards.

3.13 **MIDA Processed Grading and Infrastructure Permit Fees; Payment of Fees**. In connection with MIDA's processing of any grading or infrastructure development application for any given Project within the Mountainside Resort, Master Developer agrees to pay those MIDA administrative, review and inspection fees imposed pursuant to MIDA Resolution No. 2019-14 and the reasonable executive orders and cost-based fee schedules lawfully issued pursuant thereto, as the same may be adjusted from time-to-time. MIDA agrees that any executive orders and cost-based fee schedules shall be approved in a form that prohibits double-billing or duplicative fees, limits any percentage based fee or deposit to not more than two and one-half percent (2.5%) of the infrastructure improvement value, and, to the degree possible given the timing of the applicable Project, eliminates or substantially reduces the fees charged by MIDA for review and approval of Projects principally constructed in order to provide affordable/employee/workforce housing.

3.14 **Payment of Impact Fees**. Subject to adjustments approved by the Director and/or the MIDA Board, Master Developer agrees to pay generally applicable, uniformly applied impact fees legally imposed pursuant to the requirements of the Utah Impact Fees Act that are due and payable in connection with any structure built by Master Developer, or Master Developer's agent, employee, contractor, or subcontractor. Notwithstanding the foregoing, nothing in this Section shall in any way be deemed a waiver of Master Developer's right to contest the determination of the specific impact fee required for a given Project by Master Developer, or Master Developer's agent, employee, contractor, or subcontractor in the Mountainside Resort.

3.15 **Special Service Districts, Fees and Charges**. The following services will be provided to the Mountainside Resort by special service districts pursuant to the District Interlocal Agreements pursuant to which such districts have agreed to provide the requisite services pursuant to the terms thereof. Copies of the District Interlocal Agreements are attached hereto as Exhibit I and incorporated by reference herein:

Service	Entity Providing Service
Culinary Water	Jordanelle Special Service District
Raw/Untreated Water	Jordanelle Special Service District
Trash Removal	Wasatch County Solid Waste Special Service District
Sanitary Sewer	Jordanelle Special Service District
Fire & Emergency Medical Services	Wasatch County Fire District

Master Developer agrees to pay any and all generally applicable and uniformly applied fees imposed by the Districts in connection with development of a Project, as the same may be modified or more specifically set forth in any agreement between Master Developer and such Districts, including, without limitation, the Water and Sewer Services Agreement.

MIDA shall provide or cause to be provided culinary water and sanitary sewer services, solid waste disposal services, and fire suppression and emergency medical services, to the Mountainside Resort on a timely basis and at such a level of service so as to support the timely development of the Mountainside Resort and the operation of the Mountainside Resort as contemplated in the District Interlocal Agreements with the applicable service provider and any phasing plan being implemented pursuant to Section 3.3. Pursuant to the District Interlocal Agreement with the applicable service provider, and except for culinary water, raw/untreated water and sanitary sewer service, MIDA may provide the foregoing services to the Mountainside Resort utilizing, each as applicable, Wasatch County Solid Waste District and Wasatch County Fire District as the service provider or such other providers as MIDA may determine from time-to-time with respect to the given service. MIDA agrees that upon Master Developer's request, MIDA will enforce on Master Developer's behalf the District Interlocal Agreements or such other agreements as MIDA may from time-to-time enter into with respect to the provision of the applicable services by a public or private provider.

3.16 **Municipal and Other Services, Permitting and Inspection Services, Fees and Charges.**

3.16.1 Provision of Municipal Services. MIDA shall provide or cause to be provided Municipal Services to the Mountainside Resort on a timely basis and at such a level of service so as to support the timely development of the Mountainside Resort and the operation of the Mountainside Resort as contemplated in the West Side Interlocal Agreement, any other agreement between Master Developer and MIDA, and any phasing plan being implemented pursuant to Section 3.3. Pursuant to the West Side Interlocal Agreement, MIDA may provide Municipal Services to the Mountainside Resort utilizing Wasatch County as the service provider or such other providers as MIDA may determine from time-to-time with respect to a given Municipal Service. MIDA agrees that upon Master Developer's request, MIDA will enforce on Master Developer's behalf the West Side Interlocal Agreement or such other agreements as MIDA may from time-to-time enter into with respect to the provision of the Municipal Services by a public or private provider. The Village PID (as defined herein) will provide certain Municipal Services within the boundaries of the Village PID, including the maintenance of public roads and storm water facilities owned by the Village PID.

3.16.2 Municipal Services Revenue Fund. Except for PID Provided Services, the cost of providing Municipal Services (as defined in the West Side Interlocal Agreement) to the Mountainside Resort shall be paid for utilizing available funds generated from various taxes and collected in the Municipal Services Revenue Fund (as defined in the West Side Interlocal Agreement). As of the Effective Date, MIDA pays these to Wasatch County who provides the Municipal Services. MIDA shall not charge Master Developer or any other property owner within the Mountainside Resort any further fee or charge in connection with the delivery of Municipal Services to the Mountainside Resort.

3.16.3 Permitting and Inspection Services; Payment of Fees. MIDA shall provide or cause to be provided Permitting and Inspection Services to the Mountainside Resort on a timely basis and at such a level of service so as to support the timely development of the Mountainside Resort and the operation of the Mountainside Resort as contemplated in the West Side Interlocal Agreement and any phasing plan being implemented pursuant to Section 3.3. Pursuant to the West Side Interlocal Agreement, MIDA may provide Permitting and Inspection Services to the Mountainside Resort utilizing Wasatch County as the service provider or such other providers as MIDA may determine from time-to-time with respect to a given Permitting and Inspection Service. MIDA agrees to process or cause to be processed, reasonably considered and completed any permit review and/or required inspection requested by Master Developer or any Project Developer in a timely manner in accordance with the MIDA Development Standards. Master Developer agrees to pay any and all fees lawfully imposed by MIDA for Permitting and Inspection Services, including (but not limited to) fees for plan check and engineering review and the surcharge for MIDA described in the West Side Interlocal Agreement (i.e. 2.5% of the permit fee charged

by Wasatch County or other provider of Permitting and Inspection Services). Pursuant to Resolution 2019-14, the MIDA Board adopted Wasatch County's fee schedule, a copy of which is attached hereto as Exhibit J (the "**Existing Fee Schedule**"). Unless otherwise agreed by MIDA and Master Developer, MIDA agrees that it shall not charge more than those amounts set forth on the Existing Fee Schedule for the Permitting and Inspection services rendered, as the same may be adjusted from time-to-time based on the costs of providing such services and compliance with Applicable Law.

3.16.4 MIDA Review. If Master Developer believes modifications to the Existing Fee Schedule are unreasonable, unlawful or that Wasatch County has failed to timely provide any of the Municipal Services or Permitting and Inspection Services for the West Side in accordance with the West Side Interlocal Agreement, Master Developer may provide MIDA with written notice of such unreasonableness, unlawfulness or failure. Upon receipt of any such notice, MIDA shall promptly initiate and conduct a reasonably thorough review of the Municipal Services and/or Permitting and Inspection Services being provided by Wasatch County, including the cost thereof, responsiveness, capacity, quality and other aspects of such Municipal Services and/or Permitting and Inspection Services. MIDA shall provide Master Developer written notice of such review and allow Master Developer a reasonable period to provide MIDA with information, data and other evidence relating to the Municipal Services and/or Permitting and Inspection Services required for the Mountainside Property, including the costs thereof, and Wasatch County's performance in providing such Municipal Services and/or Permitting and Inspection Services. If MIDA reasonably determines, in the exercise of its reasonable judgment based on such review, that Wasatch County has failed to timely provide the required level and timeliness for such Municipal Services and/or Permitting and Inspection Services at a reasonable cost, in whole or in part, MIDA shall promptly provide written notice to the County, as provided in the West Side Interlocal Agreement, and take such actions as are permitted by the West Side Interlocal Agreement, to ensure that Municipal Services and/or Permitting and Inspection Services are provided to the West Side at such levels, at such cost, and with such timeliness at least equal to the level of Municipal Services and/or Permitting and Inspection Services required by the West Side Interlocal Agreement.

3.16.5 No Binding of Legislative Authority. Nothing set forth in this Section 3.16 is intended to or shall bind MIDA in the exercise of its legislative authority or require MIDA to act in any manner that would be a breach of the West Side Interlocal Agreement or the District Interlocal Agreements with Jordanelle Special Service District, Wasatch County Solid Waste District or Wasatch County Fire District. Notwithstanding the foregoing sentence, in no event shall any amendment or modification of the West Side Interlocal Agreement or the District Interlocal Agreements adversely affect the rights and obligations of the Parties hereto except to the extent expressly set forth in an amendment to this Agreement signed by MIDA and the Master Developer (on its own behalf and on behalf of the Landowners).

3.17 **Construction or Dedication of Master Infrastructure Improvements**. Except as specifically provided below, the Master Developer shall be responsible for the completion of certain fundamental infrastructure improvements that are deemed to be critical for the development of the entirety of the Mountainside Resort (excluding system infrastructure improvements provided by MIDA, Wasatch County, JSSD and other entities funded by, *inter alia*, impact fees, if any) ("**Master Infrastructure Improvements**"). Master Infrastructure Improvements include but are limited to the following: (i) all roads and other improvements within the road rights-of-way within the Mountainside Resort that are not part of the improvements for a specific Project (i.e. excluding infrastructure improvements located within the perimeter boundary of a Project or Development Lot directly necessary for only such Project or Development Lot), including the street lighting, signage (including way-finding, informational kiosks and similar directional/information components), all to at least one point along the perimeter boundaries of all Projects; (ii) all emergency access to the Common Areas of the Mountainside Resort (but not the Project Common Areas); (iii) utility services to at least one point along the perimeter or boundary of all Projects and to common improvements within the Mountainside Resort; (iv) plazas available for the use of two or

more Projects; (v) Trails shown on the Mountainside Resort Master Trail Plan attached hereto as Exhibit K; (vi) the dedication, conveyance or other action to manage Open Space within the Mountainside Resort but lying outside of any Project; and (vii) landscaping situated within the Resort but outside of any Project. The responsibility and liability for the construction of all Master Infrastructure Improvements shall rest with Master Developer, unless responsibility and liability for such construction is undertaken by a PID or specifically assigned by Master Developer to one or more Project Developers pursuant to a Transfer Acknowledgment signed by MIDA. Excepting those Master Infrastructure Improvements completed by a PID, the Master Infrastructure Improvements shall be completed as Projects are developed, in the Master Developer's reasonable discretion and subject to the reasonable approval of MIDA as reflected in the specific approvals for a given Project. Master Developer acknowledges and agrees that the Mayflower Village Drive is a Master Infrastructure Improvement that will be required to be completed and accepted by MIDA or with respect to which completion assurances shall be provided (in either case, as acceptable to MIDA in the exercise of its administrative discretion exercised consistently with the provisions found in Section 17-27a-604.5 of the Utah Code), prior to or in connection with the issuance of the first certificate of occupancy within Mountainside Resort.

3.18 **Construction or Dedication of Project Specific Improvements**. Infrastructure improvements associated with a Subdivision Plat or Project Site Plan shall be completed by the Project Developer owning the real property included within the boundaries of such Project, and in conformance with this Agreement, as delineated on the Subdivision Plat or Project Site Plan approval therefore ("**Project Specific Improvements**"). Project Specific Improvements include: (i) all roads and other improvements within the road rights-of-way within the Project, street lighting, signage (including directional/information components), and wet and dry utilities within such rights-of-way, within the perimeter or boundary of the applicable Project; (ii) all emergency and secondary access to the Project boundary as set forth on the Village Core Roadway Plat, if any, and unless such emergency or secondary access has been previously completed by others; (iv) utility services within the perimeter or boundary of the Project; (vi) dedication and construction of Trails shown on the Subdivision Plat or Project Site Plan for the Project; (vii) dedication, conveyance or other action to manage the Open Space lying within the Subdivision Plat or Project Site Plan for the Project; (viii) landscaping of Common Areas within the Project; and (ix) all other improvements or dedications that are required within the Project or adjacent to the Project required by the MIDA Development Standards. Project Specific Improvements shall be inspected and accepted by MIDA (or a Reviewer appointed or approved by MIDA) in writing prior to the issuance of the first certificate of occupancy within that Project (which reviews shall be completed by MIDA in the exercise of its administrative discretion exercised consistently with the provisions found in Section 17-27a-604.5 of the Utah Code). Issuance of a building permit does not waive any improvement requirements.

3.19 **Construction and Maintenance of Trails and Day Skier Parking**. Master Developer shall construct certain Trails and day skier parking areas in conjunction with the Mountainside Resort as generally shown on the Mountainside Resort Trail Plan and Mountainside Resort Parking Plan attached hereto as Exhibit L in accordance with the following schedule:

Recreational Facility	**Date of Substantial Completion**
Trails	When required by Mountainside Resort Master Trail Plan, Project Site Plan approval and Section 3.20 of this Agreement
Day Skier Parking—Phase I Surface Lots (or suitable temporary parking)	When required by Mountainside Resort Parking Plan or Project Site Plan approval

Day Skier Parking—Phase II Parking Structure Near Transit Center	When required by Mountainside Resort Parking Plan or Project Site Plan approval
Day Skier Parking—Phase III Parking Structure Near Ski Beach	When required by Mountainside Resort Parking Plan or Project Site Plan approval

Master Developer shall construct and maintain or cause to be constructed and maintained the foregoing Trails and day skier parking areas in all respects. The obligation to construct and/or maintain such facilities may be transferred by written agreement to an Owners Association, a Project Developer or the Village PID, subject to execution of a Transfer Acknowledgment signed by Master Developer, MIDA, and the Project Developer or such Owners Association or the Village PID. The Parties further anticipate that one or more of the day skier parking areas may be publicly owned by either MIDA or the Village PID and operated by the Master Developer pursuant to a lease, operating or other form of agreement. The Parties agree that they will negotiate or, to the extent within their reasonable control, cause to be negotiated in good faith such agreements as are necessary to facilitate the construction, financing, ownership and operation of such day skier parking areas.

3.20 **Trail Development.** In connection with its approval of this Development Agreement, MIDA has approved the Mountainside Resort Trail Plan, which Mountainside Resort Trail Plan is in furtherance of, among other things, the mobility element of the BLXM Master Plan and the North Mayflower Master Plan. The Mountainside Resort Trail Plan identifies various proposed/conceptual trail systems consisting of All Season Trails and Soft Surface Trails within the Mountainside Resort, including proposed connections to adjoining properties outside of the Mountainside Resort, where applicable. With respect to the construction of All Season Trails, Master Developer shall comply with the Trail construction requirements set forth in the MIDA Development Standards, and all Trails constructed within the Village Core shall be constructed by a professional trail contractor in accordance with Section 4.04 of the MIDA Development Standards or as otherwise approved by the Director.

3.20.1 Connections to Adjoining Properties. Where approximately shown on the Mountainside Resort Trail Plan, Master Developer and MIDA desire to have the trail systems within Mountainside Resort connect to adjoining properties to facilitate ultimate connection to potential regional trail systems located outside of the Mountainside Resort, and which shall be separately maintained by other entities, as applicable.

3.20.2 Soft Surface Trail Construction; No Project Site Plan Approval. Soft Surface Trails are permitted uses under the MIDA Development Standards and do not require Project Site Plan Approval, infrastructure permits or grading permits. Soft Surface Trails will be constructed in accordance with International Mountain Bicycling Association standards or comparable standards mutually acceptable to MIDA and the Master Developer. Notwithstanding the foregoing, any Soft Surface Trails located within a particular Project shall be shown on the Subdivision Plat or Project Site Plan. The Parties acknowledge that the location for the installation of Soft Surface Trails may be adjusted during construction to address topography, vegetation, geology, wildlife and other matters that become apparent during construction.

3.20.3 Soft Surface Trails; Notification; Permits. Soft Surface Trails identified on the Mountainside Resort Trail Plan may be separately constructed and installed without a permit; provided, however, the Master Developer or the applicable Project Developer shall provide ten (10) days prior written notice to MIDA of intent to construct and a notice of completion of construction with respect to each Soft Surface Trail located on the Mountainside Resort Trail Plan. Soft Surface Trails that are not shown on the Mountainside Resort Trail Plan shall require a Soft Surface Trail Construction Permit. Application for a Soft Surface Trail Construction Permit requires submission of: a vicinity map; and a location map showing

the general location of the proposed Soft Surface Trail relative to the Trails identified on the Mountainside Resort Trail Plan. Upon submission of an application containing the items above, the Director shall review and approve or reject the application within ten (10) days of submittal. If the Director rejects the application, the Director shall state the reasons for rejection and, if applicable, identify those items that if included in a subsequent application would result in approval of the same. Upon approval of a Soft Surface Trail Construction Permit, the subject Soft Surface Trail shall become a part of the Mountainside Resort Trail Plan.

3.20.4 Construction of Trailheads. Construction of Trailheads shall require a grading permit only if such permit, by reason of the total area disturbed, is required pursuant to the MIDA Development Standards.

3.20.5 Timing of and Responsibility for Trail Construction. The Trails identified in red on the Mountainside Resort Trail Plan are the proposed main circulation locations for the Mountainside Resort committed to by the Master Developer, and the exact location and construction timing will be determined by the Master Developer or applicable Project Developer. The red Trails shall be constructed prior to or commensurate with the opening of the ski lifts for the entirety of all ski areas within the Mountainside Resort from time to time or the third hotel constructed in the Village Core, whichever comes first. All other Trails (which also may act as ski runs and/or ski access roads) are proposed by the Master Developer and may be constructed at such time as is determined by the Master Developer, in its sole discretion. Construction of the Trails identified on the Mountainside Resort Trail Plan and located within the Mountainside Resort but outside of any identified Project shall be the responsibility of Master Developer, and the timing for the construction of such Trails shall be directed by the Master Developer or applicable Project Developer, based on the needs for Trail development as different Projects are developed. Construction of the Trails identified on the Mountainside Resort Trail Plan and located within an identified Project or Projects shall be the responsibility of the applicable Project Developers, and the timing for the construction of such Trails shall be concurrent with the construction of the applicable Project. Additional Trails, located entirely within the boundaries of a specific Project, may be approved as part of the Project Site Plan approval process and shall be completed by the Project Developer. Unless otherwise approved by the Director, the proposed connections between Trails within a given Project to Trails that were constructed in an earlier completed Project shall be established as part of the Trail construction for the subsequently completed Project. All Subdivision Plats that are not intended to be further subdivided shall show the location and dimensions of public Trails, if any.

3.21 **Maintenance of Open Space, Trails and Common Areas**. Public Trails and Open Space conveyed or otherwise dedicated to a non-profit entity, if any, shall be maintained by such entity, in all respects, including but not limited to landscaping, irrigation, and weed control to the extent such Open Space is not intended to be left in its natural state; provided, however, Master Developer or the Master Association may elect, from time-to-time to perform such maintenance. Except as provided below, Master Developer shall maintain the Open Space (as applicable), private Trails and Common Areas located within the Mountainside Resort but outside of a particular Project in all respects, including but not limited to landscaping, irrigation, and weed control. Except as provided below, Project Developer shall maintain the Open Space (as applicable), private Trails and Common Areas located within a particular Project in all respects, including but not limited to landscaping, irrigation, and weed control. Notwithstanding the foregoing, the obligations of Master Developer or a Project Developer in this Section 3.21 may be transferred by written agreement to the Village PID or an Owners Association, subject to execution of a Transfer Acknowledgment signed by Master Developer, MIDA, and the Village PID or such Owners Association. Maintenance provided by MIDA, Master Developer, Project Developer, or an Owners Association shall meet or exceed a standard of reasonableness and safety as reasonably established by MIDA and uniformly applied to other Trails and Open Space within the MIDA Project Area. Nothing set forth in this Section 3.21 shall: (a) prohibit the preservation of Open Space in its natural condition pursuant

to a deed, easement or other restriction imposed by Master Developer in favor of a non-profit association or any other Person; or (b) prohibit the construction of Trails or other Common Areas prior to the construction of any given Project in the Mountainside Resort.

3.22 **Detention Pond Maintenance**. All detention ponds located within the Mountainside Resort but outside of a Project and constructed by Master Developer will remain the property and responsibility of the Master Developer, applicable Owners Association, or a Public Entity created, in whole or in part, for the purpose of providing storm water detention services. All detention ponds located within a Project will remain the property and responsibility of the Project Developer who receives the initial permit for development of the Project, the Owners Association for such Project, or a Public Entity created, in whole or in part, for the purpose of providing storm water detention services. The Master Developer, Project Developer, applicable Owners Association, or Public Entity shall be responsible for all inspection, maintenance, and repair of the detention areas and drainage swales leading to detention ponds constructed in connection with the Mountainside Resort. The Person responsible for such maintenance shall inspect the applicable detention areas for erosion and any changes after every major storm event but at least monthly (weather permitting (i.e. inspections and maintenance do not occur during winter months)), including inspection of embankments for any visible signs of erosion, seepage, sloughing, sliding, or other instability. Outlet structures shall be inspected for flow obstructions, cracks, vandalism, or erosion. Regular maintenance shall include those items identified on Exhibit M attached hereto. The maintenance and/or construction obligations of the Master Developer or a Project Developer under this Section may be transferred to the applicable Owners Association or Public Entity, subject to execution of a Transfer Acknowledgment signed by Master Developer, MIDA, and such Owners Association or Public Entity. Maintenance performed by the maintaining Person shall meet or exceed a standard of reasonableness and safety as established by MIDA and uniformly applied to other detention improvements within the MIDA Project Area.

3.23 **Additional Development Requirements and Restrictions.**

3.23.1 Development on Slopes. Development of the Mountainside Resort necessarily implicates development activities that impact and/or will be located upon steep slopes and the MIDA Development Standards require Master Developer or an applicable Project Developer to identify average slopes in excess of thirty percent (30%) on various Development Applications. Development of such identified areas, including the construction of roads and other infrastructure, is permissible provided Master Developer or the applicable Project Developer demonstrates: (a) with respect to roadways in areas with average slopes in excess of thirty percent (30%) compliance with the applicable MIDA Development Standards; and (b) with respect to buildings or other structures in such areas requiring a building permit, compliance with building codes applicable to average slopes in excess of thirty percent (30)%) and the Director's written confirmation that the requisite engineering drawings addressing development on such slopes (as opposed to other areas of the Development Lot or building envelope upon which building improvements are not being constructed) have been approved and stamped by a civil or structural engineer licensed in Utah certifying that the structure has been engineered in compliance with building codes applicable to average slopes in excess of thirty percent (30%) for the particular structure in such area. The foregoing requirement pertaining to MIDA Development Standards or the Director's confirmation of engineering review do not apply to the development of ski runs, ski lifts and associated equipment and structures or Soft Surface Trails.

3.23.2 Noise Requirements. The MIDA Development Standards do not address noise abatement or other nuisances. Notwithstanding the foregoing, the Parties agree that the following sounds shall at all time be exempt from any such limitations: sounds created by emergency response vehicles and equipment; sounds created during daytime hours by construction equipment and vehicles when operated at designated constructions sites within the Mountainside Resort; sounds created during daytime hours by the

installation, maintenance or repair of residential or commercial properties and any other public or private facilities and utilities; sounds caused by the necessary and emergency repair or maintenance of residential or commercial properties and any other public or private facilities and utilities; sounds created during daytime hours by outdoor recreation activities such as snow mobiles and helicopter skiing; sounds generated by snow-making equipment, snow-grooming equipment and/or helicopter rescue activities; sounds caused by fire alarms being used as such; sounds created by the normal operation of licensed motor vehicles on public and private roadways; and sounds generated by outdoor concerts, movies, Olympic and Special Olympic event and other outdoor and special events (including Alpine Coaster activities).

3.23.3 Residential Siting and Building Pad Location. Development of the Mountainside Resort necessarily requires flexibility in the siting of single-family residential structures and associated accessory buildings. For that reason, the MIDA Development Standards do not include specific set back or other similar restrictions for single-family residential Development Lots. Master Developer or the applicable Project Developer shall nevertheless be required to identify on the applicable Subdivision Plat for each single-family residential Project the proposed building envelope(s) for each Development Lot identified on such Subdivision Plat, which building envelope(s) shall be subject to the review and approval of MIDA in connection with the review and approval of the applicable Subdivision Plat. Architectural standards for single-family residences and accessory structures shall follow the Materials and Design Guidelines Handbook adopted pursuant to the MIDA Development Standards and be established by the Master Developer or applicable Project Developer pursuant to the Master CC&Rs or such Project specific covenants, conditions and restrictions as are imposed upon the applicable Project by the Project Developer in accordance with the Master CC&Rs.

3.24 **Flexibility and Amendments.** The Parties acknowledge and agree that the BLXM Master Plan, Pioche Master Plan (as modified by the North Mayflower Master Plan) and the Blue Ledge Development Agreement, together with the various elements comprising the same are a conceptual depiction providing general guidelines for the development of the Mountainside Resort into one or more Projects and generally designating proposed land uses and allocating density among such Projects and establishing a conceptual plan for traffic circulation, land use and infrastructure development. While depicting roadways, certain utility locations and potential property boundaries between the Projects, such roadways and property boundaries may be adjusted by the Master Developer as necessary in connection with development of the Mountainside Resort into one or more Projects. In addition, Master Developer may propose Development ERU density allocations and land uses within the various Projects comprising the Mountainside Resort that differ from those shown on the BLXM Master Plan, Pioche Master Plan (as modified by the North Mayflower Master Plan) and the Blue Ledge Development Agreement, provided that land uses and density allocations are consistent with the requirements of the MIDA Development Standards. MIDA may require that Subdivision Plats include a statement of the Maximum Residential Density for the platted area, or for specific Development Lots shown on such plats, if the maximum Development ERU density for any Subdivision Plat or Development Lot is determined at the time such Subdivision Plat is approved. In order to monitor the allocation of Development ERU density throughout the Mountainside Resort, MIDA and Master Developer shall cooperate in establishing a master density list that summarizes the allocation of Development ERU density among all of the Development Lots in the Mountainside Resort but which shall not exceed the Maximum Residential Density ("**Master Density List**"). The Master Density List shall be amended from time to time as Subdivision Plats or Project Site Plans are approved that specify Maximum Residential Density for specific Development Lots or Projects. MIDA agrees to consider in good faith, without requiring amendment of the approved BLXM Master Plan of the North Mayflower Master Plan, Master Developer's applications for Subdivision Plat and Project Site Plan approvals unless the proposed application proposes a use that is not a permitted or conditional use allowed pursuant to the MIDA Development Standards, proposes residential densities that will cause the Maximum Residential Density for the Mountainside Resort to be exceeded, or materially deviates from the general land use designations and general areas shown on the Mountainside Resort Land Use Plan. To the

extent that MIDA determines that an amendment to the BLXM Master Plan or North Mayflower Master Plan is required before a given subsequent application may be approved by MIDA, MIDA agrees to consider such proposed amendments in good faith. Notwithstanding the foregoing, the Maximum Residential Density for the Mountainside Resort and the parking ratios set forth in Section 3.24 below shall not be altered except with MIDA approval, which approval shall be timely granted or withheld in MIDA's legislative discretion following the process established in the MIDA Development Standards. In all cases, the requirements of Chapter 2 of the MIDA Development Standards shall be read to mean "if applicable" and "where appropriate" when taking into account the application to which such requirements pertain as reasonably determined by the MIDA Executive Director. For example, the "call before you dig" logo and related information is not applicable to every sheet of a Site Plan and common sense should prevail, requiring the placement of the information where appropriate. In addition, if an item/condition does not exist - it is not required to be highlighted or shown as non-existing.

3.25 **Mountainside Resort Parking Plan—Shared Parking Program.**

3.25.1 Parking Plan. The conceptual parking plan included in the BLXM Master Plan, as updated pursuant to the Mountainside Resort Parking Plan approved by MIDA in connection with this Agreement, identifies the off-street parking for residential, hotel and retail shops and other commercial facilities in the Mountainside Resort. Pursuant to the Mountainside Resort Parking Plan, parking is provided with a combination of structured and/or surface parking. Each Project is currently proposed to be parked in accordance with the off-street parking standards set forth in the Mountainside Resort Parking Plan, which standards are hereby approved by MIDA for purposes of the portion of the Mountainside Resort that is the subject of the BLXM Master Plan and, subject to MIDA's Approval of the North Mayflower Master Plan, the portion of the Mountainside Resort that is the subject of the North Mayflower Master Plan (the "**Standard Parking Requirements**"). In connection with a Project specific request for Subdivision Plat or Project Site Plan approval, Master Developer or a Project Developer may submit, or MIDA may require a Project specific parking study (each a "**Project Specific Parking Study**") to be performed by a qualified engineer to ascertain whether the Standard Parking Requirements for such Project should be adjusted based on generally accepted industry standards and the projected parking demands for such Project. Master Developer or a Project Developer, as applicable, shall complete the subject Project Specific Parking Study at such Developer's sole cost and expense. If a Project Specific Parking Study indicates that the Standard Parking Requirements should be adjusted for such Project, an amendment to this Agreement shall be adopted reflecting such adjustment, the approval of which shall not be unreasonably withheld, conditioned or delayed. From and after such amendment, the term "**Standard Parking Requirements**" as used herein shall mean and refer to the foregoing standards as amended with respect to the Project that is the subject of the Project Specific Parking Study.

3.25.2 Shared Parking Program. In addition to the Standard Parking Requirements, the Mountainside Resort Parking Plan also contemplates a potential shared parking program (a "**Shared Parking Program**") designed to provide for cross-parking between Projects as needed in order to reduce the overall number of parking spaces required to serve the Mountainside Resort. A Project is not required to participate in the Shared Parking Program. For those Project's electing to participate in the Shared Parking Program, Master Developer or an applicable Project Developer shall, upon request of MIDA in connection with a specific request by Master Developer or such applicable Project Developer for approval of a Subdivision Plat or Site Plan for a Project utilizing the Shared Parking Program to satisfy its parking requirements, have the Shared Parking Program reviewed and updated by a qualified independent professional in connection with the applicable Project's election to participate in the Shared Parking Program ("**Periodic Update(s)**"), which Periodic Updates shall evaluate all available parking within the proposed and "as constructed" Shared Parking Program, as well as any potential mitigating effects of proposed public transportation, shuttle services, etc. If a Periodic Update demonstrates the need for additional or reduced parking for the proposed Project as part of the Shared Parking Program, as reasonably

determined by MIDA, the parking requirements for the proposed Project will be adjusted to address the expected parking needs of the proposed Project, taking into account the current parking demand for all Projects then developed and participating in the Shared Parking Program. Any parking deficiency or surplus identified by MIDA pursuant to a Periodic Update shall be addressed in connection with the development of the Project triggering the need for the Periodic Update or future Projects participating in the Shared Parking Program, as approved by MIDA. Any additional parking required by MIDA to be built in connection with a proposed Project for the benefit of previously constructed Projects pursuant to the foregoing sentence must be within a reasonable walking distance and a safe path to those Projects expecting to utilize such parking pursuant to the Shared Parking Program.

3.25.3 Reciprocal Parking Agreements. As part of the initial submission of the Project Site Plan for a given Project to MIDA, the applicable Project Developer shall elect, in writing, to either comply with the Standard Parking Requirements for such Project or to participate in the Shared Parking Program. A Project Developer electing to participate in the Shared Parking Program will be required to grant perpetual reciprocal parking easements over their parking facilities to adjacent and other reasonably proximate properties participating in the Shared Parking Program in order to legally provide for the shared use of facilities upon which the Shared Parking Program is based. Such easement(s) shall be in form and substance satisfactory to Master Developer and shall include, among other provisions, requirements relating to ingress, egress, maintenance, replacement, signage, insurance, indemnity, and other provisions customary to shared parking arrangements.

3.25.4 Modification of Parking Requirements. Master Developer and individual Project Developers are hereby notified that the mechanism set forth above for determining parking ratios for various Projects may result in parking requirements for specific Projects to be constructed in the future that are less than or exceed the parking requirements for Projects previously developed, and which may be different from the parking requirements presented in the Project Specific Parking Study, as reasonably determined by MIDA based upon actual parking use and other factors considered in the Periodic Updates. However, in no event shall a Project Developer be obligated to construct more parking for a specific Project to be constructed in the future than would be required by the Standard Parking Requirements, as adjusted pursuant to a Project Specific Parking Study. Master Developer acknowledges that such risk is the result of the benefit from having parking requirements determined through the Shared Parking Program and Periodic Update process, as permitted by the MIDA Development Standards, in lieu of requiring compliance with the Standard Parking Requirements.

3.26 **Open Space.** The MIDA Development Standards do not set forth a specific Open Space requirement. Project specific Open Space shall be shown on the Project Site Plan for the applicable Project and approved as part of the Project Site Plan for the applicable Project. Where applicable, restrictions limiting the use of Project Specific Open Space to Open Space Purposes and/or conservation purposes may be imposed by the Master Developer or a Project Developer pursuant to easement or other forms of deed restriction. Project specific Open Space dedicated to recreational or other similar Open Space Purposes shall be identified on the applicable Subdivision Plat, which may include restrictions set forth on the face thereof for a given Project or Projects or pursuant to a separate deed restriction or other instrument of record, provided that such deed restriction or other instrument of record allows for Master Developer to make periodic adjustments of such designated Open Space areas as are needed to facilitate the development of the Mountainside Resort or a particular Project or for conservation purposes. Open Space may be preserved pursuant to its dedication to an Owners Association or such other method as Master Developer may determine.

3.27 **Duration of Approved Master Plans.** The BLXM Master Plan, the Blue Ledge Development Agreement, the North Mayflower Master Plan and Pioche Master Plan (as each of the same may be amended from time-to-time, including, without limitation and with respect to the Pioche Master

Plan, as amended by the North Mayflower Master Plan) shall remain in full force and effect during the Term of this Agreement.

3.28 **MIDA Development Standards and Guidelines Compliance.** Development of a Project may not proceed until Master Developer, or Master Developer's successor or assign, with respect to a given Project, has demonstrated compliance with the applicable Sections of the MIDA Development Standards and the BLXM Master Plan or North Mayflower Master Plan applicable to such Project. Compliance with the applicable requirements of the MIDA Development Standards shall be demonstrated on a Project-by-Project basis in connection with the submission of, as applicable, an MDP, Subdivision Plat or Project Site Plan for a given Project; provided, however, that the design elements, architectural guidelines and community regulations advanced for approval in connection with a Project Site Plan shall, unless specifically approved by MIDA, be consistent with the illustrative depictions, precedential pictures and textual representations approved in connection with the BLXM Master Plan, North Village Master Plan, the MIDA Development Standards and the Master CC&Rs.

3.29 **Subdivision Approvals.** Development of the Mountainside Resort will require the Mountainside Property to be subdivided into one or more subdivision lots. MIDA agrees to process complete submissions as set forth in the MIDA Development Standards and to recommend approval of complete submissions to the DRC and MIDA Board with reasonable diligence and in accordance with the time frames set forth in the MIDA Development Standards. MIDA and Master Developer further agree that the subdivision approval process may occur on a Project-by-Project basis as follows:

3.29.1 Plat Submission Requirements. Master Developer or the applicable Project Developer shall submit a Subdivision Plat application for a Project (the "**Subdivision Plat**") consistent with the provisions of the MIDA Development Standards including, if applicable, a Conceptual Subdivision Plat submission, subject to the Director's right to waive or modify such requirements as appropriate in a given circumstances.

3.29.2 MIDA Approval of Subdivision Plat. Upon submission of a complete Subdivision Plat application, each of the Reviewers, DRC and MIDA Board shall promptly review within the timeframes established in the MIDA Development Standards the Subdivision Plat application for a given Project to determine compliance with the applicable requirements of the MIDA Development Standards, the BLXM Master Plan, North Mayflower Master Plan, other applicable MDP and any applicable Benchmark Condition applicable to the given Project, and approve or deny such Subdivision Plat. The Master Developer acknowledges and agrees that prior to construction of any improvements pursuant to an approved Subdivision Plat, the Master Developer or applicable Project Developer shall be required to provide each Public Entity the information required for each public improvement to be constructed or installed in connection with or prior to the recordation of such Subdivision Plat. Upon recordation of the Subdivision Plat, each subdivided lot created by such Subdivision Plat shall be referred to herein as a "**Development Lot**."

3.29.3 Intentionally Deleted.

3.29.4 Conveyance by Transfer Deed. As provided in the MIDA Development Standards, to the extent that a conveyance is in anticipation or furtherance of future land use approvals and development of the Mountainside Resort or a particular Project therein, MIDA agrees that Master Developer may convey portions of the Mountainside Property by metes and bounds prior to recordation of a Subdivision Plat for such portions, and MIDA agrees, upon approval of the Director or other land use authority designated by MIDA for such purpose, to execute such deeds of conveyance (each a "**Transfer Deed**") for the purposes of acknowledging only MIDA's consent to the conveyance by metes and bounds of the real property that is the subject of the applicable Transfer Deed. In furtherance of the foregoing,

Master Developer processed for approval and MIDA has approved the Assessment Parcel Map, identifying various lots and parcels for purposes of consolidating a large number of historic parcel descriptions and mining claims comprising the Mountainside Property. MIDA expressly acknowledges that conveyances by Transfer Deed of the lots and parcels identified on the Assessment Parcel Map may be by and among Master Developer and its affiliated entities for the purpose of, among other things, consolidating multiple tax parcels, and creating lots of record for assessment purposes. Master Developer expressly acknowledges that MIDA's approval of the Assessment Parcel Map and/or execution of a Transfer Deed shall not in any way be deemed a waiver of the requirement that all Projects, including any Project located upon a lot or parcel created pursuant to the Assessment Parcel Map, obtain MIDA's approval of a Subdivision Plat and/or a Project Site Plan Approval, each as applicable.

3.30 **Project Site Plan Approval.** Development of each Project in the Mountainside Resort will require site plan approval ("**Project Site Plan Approval**") pursuant to the requirements of Section 2.03 of the MIDA Development Standards. A Project Site Plan Approval may not be granted except with respect to a Development Lot; provided, however, that the Master Developer or applicable Project Developer may seek Project Site Plan Approval and Subdivision Plat approval for a given Development Lot on a concurrent basis. The Project Site Plan Approval process for each Project and/or Development Lot shall be as set forth in the MIDA Development Standards (each a "**Project Site Plan**"). Upon submission of a Project Site Plan, each of the Reviewers, the DRC and the MIDA Board shall review the Project Site Plan's consistency with the applicable requirements of the MIDA Development Standards, as well as the BLXM Master Plan, North Mayflower Master Plan or other applicable MDP and applicable Subdivision Plat, and approve or deny the same. The Project Site Plan shall demonstrate compliance with the applicable requirements of Section 2.03 of the MIDA Development Standards (or demonstrate confirmation or clarification of those requirements in connection with the BLXM Master Plan or the applicable Subdivision Plat). By way of clarity, the purpose of a Site Plan as contemplated in Section 2.03 of the MIDA Development Standards is to show, to scale, the proposed uses and structures to be located on a parcel of land. The Site Plan is intended to show the significant features of the parcel to be developed, and how the uses relate to the surrounding area (developed, undeveloped or unknown). A Site Plan does not require the infrastructure, civil engineering or grading information for the site or the surrounding area and the location of specific items, like sprinkler heads and other incidental design elements, will be shown at a high-level approximate location, and are not required to be shown at the level of detail or specificity required for a Building Permit. In some cases, the design of adjacent infrastructure improvements (e.g. roadways, utility infrastructure, etc.) will not be completed prior to the approval of a Site Plan and Site Plan approval should not be delayed for that information to become available.

3.31 **Mountain Improvements—Tax Sharing and Reimbursement Agreement**. The Parties agree that Master Developer may identify and shall have the right to construct or cause to be performed, constructed or installed various Mountain Improvements in connection with the development of one or more Projects in the Mountainside Resort, and that pursuant to the terms of the Tax Sharing and Reimbursement Agreement, MIDA shall reimburse Master Developer for those Mountain Improvements constructed and installed by or on behalf of Master Developer that are Eligible Expenses pursuant to the Tax Sharing and Reimbursement Agreement. The Mountain Improvements are and for all purposes shall remain permitted uses pursuant to the MIDA Development Standards. Accordingly, except as otherwise specifically agreed in writing by Master Developer, the identification of all Mountain Improvements and the timing of their construction shall be in Master Developer's sole and absolute discretion, except as otherwise required pursuant to a Subdivision Approval or Project Site Plan Approval.

3.32 **Other Mechanisms for Financing and Reimbursement of Public Improvements**. On the request of Master Developer, MIDA may also consider the use of impact fees, pioneering agreements, assessment areas and other similar project-related public procedures and institutions for contemporaneously financing or reimbursing developers for costs of the construction, improvement, or acquisition of

infrastructure, facilities, lands, and improvements to serve the MIDA Project Area, whether located within or outside the Mountainside Resort. MIDA may also consider the possibility of combining methods of reimbursement. For example, a pioneering agreement pursuant to which Master Developer is reimbursed by adjoining landowners or through the collection of impact fees for Mountain Improvements benefitting such adjoining landowners, but that is back-stopped, in the event such landowners do not develop in the near future, by reimbursement of Eligible Expenses pursuant to the Tax Sharing and Reimbursement Agreement; provided, however, that in no event shall Master Developer be entitled to receive duplicative reimbursement for any Mountain Improvement, nor shall any BLX Entity be subject to an MIDA imposed impact fee or other assessment pursuant to which such BLX Entity is subject to an impact fee or other assessment without the express prior written consent of such BLX Entity. As of the Effective Date, the Village PID is in the process of issuing assessment bonds to fund, construct and/or provide public facilities and services set forth in this Agreement or otherwise required in connection with the development of the Mountainside Resort, all in accordance with the governing documents of the Village PID. In the future, the Village PID may further assist in the development of Mountain Improvements, including but not limited to parking facilities, streets, water, sewer and drainage, within or otherwise serving all or a portion of the Mountainside Resort. In addition, at the request of Master Developer, MIDA shall assist Master Developer, to the extent allowed by Applicable Law and subject to the consent of the Village PID board as provided by Applicable Law, in financing the parking facilities by transferring the parking facilities to the Village PID and leasing them back at a nominal rent to facilitate the Mountainside Resort Parking Plan. MIDA agrees that it will exercise any rights reserved to the MIDA under the PID Act in connection with the creation, organization or operation of the Village PID for the Mountainside Resort in accordance with the requirements of the PID Act, or any portion thereof, such that the Master Developer shall always have a designated representative serving on the board of the Village PID and such that the creation and operation of the Village PID shall otherwise be consistent with the terms and conditions of this Agreement. The Parties agree that any obligation set forth in this Agreement for the financing and construction of public improvements that are required to serve the Mountainside Resort and that will be owned by MIDA, the Village PID or any other Public Entity may be undertaken, performed and completed by Master Developer or any Project Developer and then transferred to MIDA, or by MIDA, the Village PID or Public Entity, subject to the requirements of the PID Act or other Applicable Law and the approval of the Parties consistent therewith. The Village PID created for the Mountainside Resort, or any portion thereof, shall not create any financial liabilities for MIDA.

3.33 **Cooperation with MIDA**. MIDA acknowledges that a significant incentive for Master Developer to proceed with the development of the Mountainside Resort as contemplated by the BLXM Master Plan is MIDA's willingness to provide financial support to the development in the form of reimbursements or other payments made pursuant to the Tax Sharing and Reimbursement Agreement, assessments, and bonding for infrastructure completion or reimbursement, and other financial incentives (the "**MIDA Financing Support**"). Upon request of the Master Developer, MIDA agrees to facilitate such MIDA Financing Support, including providing Master Developer, bondholders, lenders and others (collectively, "**Lenders**"), with customary certifications, assurances, and estoppel certificates, and in entering into agreements or amendments to this Agreement to address the concerns of such Lenders. Notwithstanding the foregoing, MIDA's obligations of cooperation or accommodation shall not require MIDA to modify the terms of this Agreement in any manner that would materially decrease Master Developer's obligations hereunder or materially increase MIDA's obligations, risk or liability under this Agreement or increase MIDA's costs or expenses under this Agreement without MIDA's consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that this sentence shall not apply, and MIDA shall not refuse to enter into any such accommodation, if Master Developer agrees to pay at the time of such modification the net present value (as reasonably determined by Master Developer and MIDA) of any such increased costs or expenses of MIDA under this Agreement, or, if MIDA reasonably determines that there are non-monetary obligations, risks or liabilities to MIDA created by the modification, MIDA is provided an indemnification for any such increased obligations, risk, or liability pursuant to an

indemnification agreement in form and substance reasonably satisfactory to MIDA provided by an entity having sufficient credit worthiness to support the indemnification provided, which entity may be Master Developer, as reasonably determined by MIDA acting in good faith. Notwithstanding the forgoing, Master Developer acknowledges that any issuance of bonds by MIDA requires a public process and the MIDA Board has full, complete, and sole discretion to issue or not issue bonds. Any decision regarding the issuance of any bonds shall not be a breach of this Agreement and there shall be no liability of any nature to MIDA resulting from such decisions. MIDA further agrees that with respect to each Transfer Acknowledgment requested pursuant to this Agreement, MIDA shall timely review each such request in good faith and that it will not unreasonably withhold, condition or delay MIDA's approval of such Transfer Acknowledgment.

3.34 **Permitting and Construction of Ski Lifts**. MIDA acknowledges and agrees that the MIDA Development Standards do not regulate the construction of ski lifts, gondolas, rope tows, tramways and other similar facilities and related towers and mechanical systems (collectively, "**Ski Related Improvements**") and that all such construction is subject to the exclusive jurisdiction of the Utah Passenger Ropeway Safety Committee (the "**Tram Board**"). Accordingly, so long as Master Developer has obtained the required approvals from the Tram Board and the location of the proposed Ski Related Facilities occurs in the general areas identified on the Mountainside Resort Land Use Plan as "Recreation" or "Ski Terrain," Master Developer may develop, install and construct its Ski Related Improvements without any further permitting or approval from MIDA. Master Developer agrees to provide to MIDA, for MIDA's review but not approval, drawings or other plans for such facilities in advance of constructing the same. MIDA further agrees that the Ski Related Improvements, together with detention ponds, snow making facilities and storage ponds, yurts, ski runs, mountain biking and hiking Trails, are approved and permitted uses in all Ski Terrain areas on the Mountainside Property.

3.35 **Prohibition on Mining Uses**. Master Developer and MIDA covenant and agree that Mining Uses on the West Side shall be strictly prohibited. The Master CC&Rs shall include an express prohibition of Mining Uses. The foregoing provisions of this Section 3.34 shall not prohibit any action by Master Developer or its affiliated entities that are necessary to simply preserve any unpatented mining claims owned by Master Developer or such affiliated entities.

SECTION 4. VESTED RIGHTS AND APPLICABLE LAW

4.1 **Vested Rights**.

4.1.1 Generally. As of the Acceptance Date of this Agreement, Developer shall have the vested right to develop the Mountainside Resort in accordance with this Agreement, the Development Entitlements, and Applicable Law. Master Developer additionally reserves the right, in its reasonable discretion, to name and/or change or otherwise modify the name of the Mountainside Resort from time-to-time throughout the Term of this Agreement. Any prior land use entitlements or restrictions arising with respect to the Density Determination and any documents entered into in connection therewith that relate to or affect the Mountainside Property are hereby agreed by the Parties to be subsumed into the Development Entitlements and shall be of no further force or effect. For the avoidance of doubt, the foregoing statement is not intended to affect the validity and continuing effectiveness of the BLXM Master Plan, the Blue Ledge Development Agreement or the Pioche Master Plan, each of which shall continue to be in full force and effect pursuant to their respective terms, as the same may be amended from time to time, notwithstanding any subdivision or combination of parcels within the Mountainside Resort or any assignment of development rights or Development ERUs with respect to a particular Project or Development Lot within the Mountainside Resort to a Project Developer pursuant to the terms of this Agreement. The Parties will

cooperate in filing whatever is necessary to evidence the release of prior instruments of record that are no longer applicable to the Mountainside Resort.

4.1.2 Reserved Legislative Powers. Subject to Master Developer's vested rights under this Agreement, nothing in this Agreement shall limit the future exercise of the police power by MIDA in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, standards, guidelines, and regulations after the Acceptance Date of this Agreement. Notwithstanding the retained power of MIDA to enact such legislation under its police power, such legislation shall not modify Master Developer's rights 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 Equites, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), as further clarified in Utah Code Ann. 17-27a-508, or any other exception or basis for inapplicability of the doctrine of vested rights, recognized under state or federal law.

4.2 **Applicable Law**.

4.2.1 Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the development of the Mountainside Property (the "**Applicable Law**"), including rules, regulations, official policies, standards, specifications, the MIDA Development Standards and other applicable MIDA ordinances, resolutions, state law, and federal law in effect as of the Acceptance Date. Notwithstanding the foregoing, any Person applying for a building permit within the Mountainside Resort shall be subject to MIDA's Future Laws identified in Section 4.2.3(b), in effect at the time the Person files with MIDA a complete application for building permit.

4.2.2 Federal Law. Notwithstanding any other provision of this Agreement but subject to Section 4.2.3, 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 federal laws or regulations ("**Changes in the Law**") applicable to the Mountainside Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

4.2.3 MIDA's Future Laws. MIDA's Future Laws with respect to development or use of the Mountainside Property shall not apply except as follows:

(a) MIDA's Future Laws that Master Developer agrees in writing to the application thereof to the Mountainside Property;

(b) MIDA's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments, are required to meet legitimate concerns related to public health, safety or welfare unless, and only to the extent that facts and circumstances are present which meet the exceptions to the vested rights doctrine as described in Section 4.1.2;

(c) MIDA's Future Laws that are health and environmental standards based on MIDA's obligations to comply with Federal or State environmental laws, and only to the extent that facts and circumstances are present which meet the exceptions to the vested rights doctrine as described in Section 4.1.2;

(d) Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by MIDA to all properties, applications and Persons similarly situated and are not in violation of the Tax Sharing and Reimbursement Agreement;

(e) Changes to the amounts of fees (but not changes to the times provided in the Applicable Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within MIDA's jurisdiction (or a portion of the MIDA Project Area as specified in the lawfully adopted fee schedule) and which are lawfully adopted pursuant to State law and are not in violation of the Tax Sharing and Reimbursement Agreement;

(f) Impact fees or modifications thereto which are lawfully adopted, imposed and collected and are not in violation of the Tax Sharing and Reimbursement Agreement; or

(g) Amendments to the MIDA Development Standards presently contemplated and under review by the DRC pertaining to a "Conceptual Subdivision Plat Requirements" and clarification of the definition of "Infrastructure Improvements" and the process pursuant to which such improvements are approved by MIDA.

4.2.4 Applications Under MIDA's Future Laws. Without waiving any rights granted or benefits imparted by this Agreement, Master Developer may at any time, choose to submit a Development Application for some or all of the Mountainside Property under MIDA's Future Laws in effect at the time of the Development Application. Except as otherwise agreed by MIDA and Master Developer, any Development Application filed for consideration under MIDA's Future Laws shall be governed by all portions of MIDA's Future Laws related to the Development Application. The election by Master Developer at any time to submit a Development Application under MIDA's Future Laws shall not be construed to prevent or limit Master Developer from submitting other Development Applications relying on the Applicable Laws.

4.2.5 Exclusion from Moratoria. The Mountainside Property shall be excluded from any moratorium adopted pursuant to Applicable Law unless such moratorium is found on the record by the MIDA Board to be necessary to avoid jeopardizing a compelling, countervailing public interest.

SECTION 5. AMENDMENT

Unless otherwise stated in this Agreement, the Parties may amend this Agreement by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any Person having any interest in any specific lot, parcel, unit or other portion of the Mountainside Resort.

SECTION 6. DEFAULT; TERMINATION; ANNUAL REVIEW

6.1 General Provisions.

6.1.1 Defaults. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party (a "**Default Notice**"), 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 60-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 60-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may, as its sole and exclusive remedy, institute legal proceedings to enforce the terms of this Agreement. By way of clarity, neither Party shall have a right to terminate this Agreement nor shall either Party have the right to pursue, claim or collect money damages with respect to a violation or breach of this Agreement in any federal or state court or other legal proceeding. Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not be cross-defaulted with any other agreement, including, without limitation, any Project Specific Development Agreement and this Agreement.

6.2 **Review by MIDA**.

6.2.1 Generally. MIDA may at any time and in its reasonable discretion and in writing request that Master Developer demonstrate that Master Developer is in full compliance with the terms and conditions of this Agreement, which writing shall specify the particular issues with which MIDA is concerned. Master Developer shall use commercially reasonable efforts to provide any and all information reasonably necessary to demonstrate compliance with this Agreement as requested by MIDA within thirty (30) days of the request, or at a later date as agreed between the Parties.

6.2.2 Determination of Non-Compliance. If MIDA finds and determines that Master Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then MIDA may deliver a Default Notice pursuant to Section 6.1.1 of this Agreement. If the default is not cured timely by Master Developer, MIDA may exercise its remedies as provided in Section 6.1.1 of this Agreement.

6.2.3 Notice of Compliance. Within thirty (30) days following any written request which Master Developer may make from time to time, but nor more often than once a calendar year unless waived by the Director, accompanied by a $750 processing fee, the Director shall execute and deliver to Master Developer a written "Notice of Compliance" substantially in the form of Exhibit N, duly executed and acknowledged by MIDA, 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 Master Developer.

6.3 **Default by MIDA**. In the event MIDA defaults under the terms of this Agreement, Master Developer shall have all rights and remedies provided in Section 6.1.1 of this Agreement.

6.4 **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, terrorist acts, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, epidemics, pandemics, 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. Changes in the financial standing of the Parties shall not serve as a basis for excused performance. 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.

6.5 **Annual Review**. Master Developer and the Director shall, at either Party's written request, meet annually to review the status of the Mountainside Resort and to review compliance with the terms and conditions of this Agreement.

SECTION 7. DEFENSE AND INDEMNITY

7.1 **Master Developer's Actions**. As of the Effective Date, the BLX Entities agree to release any existing claims, known and unknown, against MIDA and its elected and appointed officers, agents, employees, and representatives, arising directly out of the formation or approval of this Agreement, except for violations of Applicable Law, willful misconduct, or fraudulent acts by MIDA. Nothing in this Agreement shall be construed to mean that MIDA shall defend, indemnify, or hold the BLX Entities or their respective officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the BLX Entities or their respective boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the BLX Entities for which the BLX Entities, each as applicable, retain the obligation to maintain.

7.2 **MIDA's Actions**. As of the Effective Date, MIDA agrees to release any existing claims, known and unknown, against the BLX Entities and their respective officers, agents, employees, and representatives, arising directly out of the formation or approval of this Agreement, except for violations of Applicable Law, willful misconduct, or fraudulent acts by the BLX Entities. Nothing in this Agreement shall be construed to mean that the BLX Entities shall defend, indemnify, or hold MIDA or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of MIDA, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by MIDA of improvements that have been offered for dedication and accepted by MIDA for maintenance.

7.3 **Voluntary Clean-up Program**.

7.3.1 Jurisdiction. All environmental remediation, clean-up, or mitigation of the Mountainside Property is subject to the jurisdiction and control of UDERR and UDWQ through the Voluntary Clean-up Program. The USACE has jurisdiction and control over any action that may relate to impacts to the waters of the United States. MIDA shall defer to the decisions of the UDERR, UDWQ, and the USACE, and MIDA shall not impose any environmental restrictions or obligations or require any action by Master Developer or any Project Developer relating to the environmental condition of the Mountainside Property not required or contemplated by the UDERR, UDWQ, or USACE in connection with the VCP.

7.3.2 VCP Activities. VCP Activities, as defined in the MIDA Development Standards, are exempt from regulation by MIDA. However, Master Developer or other Project Developer shall provide written notice to MIDA of VCP Activities, and if any such VCP Activity involves the installation of Public Improvements that would have required a MIDA Public Infrastructure Permit (as defined in the MIDA Development Standards) pursuant to the MIDA Development Standards, Master Developer or the applicable Project Developer shall provide evidence that the work was properly reviewed and inspected by an independent regulatory body or qualified testing firm, including written reports which demonstrate that the applicable work was properly performed and completed. MIDA acknowledges that VCP Activities are frequently time-sensitive. Accordingly, if a given VCP Activity requires an associated infrastructure review by MIDA (as opposed to the except VCP activity itself), the review shall be provided by a qualified engineer agreed to by the Master Developer and shall be completed within ten (10) working days. In emergency situations, the applicable reviewing engineer shall work with the Master Developer to respond as quickly as possible. If a VCP Activity is subject to public comment, any MIDA related input pertaining to the VCP Activity is required within the State provided notice period.

SECTION 8. ASSIGNMENT; TRANSFER OF MAINTENANCE OBLIGATIONS

8.1 **Assignment**. The rights and responsibilities of Master Developer under this Agreement may be assigned in whole or in part by Master Developer so long as a Transfer Acknowledgment with respect to such assignment is executed by MIDA, Master Developer, and such assignee or transferee; provided, however, that Master Developer's rights and obligations under this Agreement shall be appurtenant to and run with the land, and such rights and obligations shall only be transferrable along with the land to which such rights and obligations relate. Any assignee, including all Project Developers, shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment. If the Master Developer, with the consent of the applicable Landowners, assigns, transfers or otherwise conveys the entire Mountainside Property or any portion thereof to a subsequent owner, and intends to transfer any of the rights and obligations under this Agreement in connection with such transfer, Master Developer and the applicable assignee shall execute and deliver a "**Transfer Acknowledgment**" substantially in the form attached hereto as Exhibit O, together with the information required thereby, for the purpose of notifying MIDA of the transfer and assignment and seeking MIDA's acceptance of the proposed assignee. Upon delivery of a fully executed Transfer Acknowledgment and accompanying documentation, MIDA shall evaluate the assignee identified therein, and if such assignee is a reputable and experienced developer with the financial wherewithal to complete the obligations assigned to and assumed by such assignee, MIDA shall execute the Transfer Acknowledgment, indicating MIDA's written acceptance of such assignee, which acceptance shall not be unreasonably withheld, conditioned or delayed. If MIDA executes the Transfer Acknowledgment and delivers the same to Master Developer, the obligations of Master Developer assigned pursuant to such Transfer Acknowledgment shall be assigned to and assumed by the identified assignee and Master Developer shall be released from all such obligations that are assumed by the identified assignee. Until Master Developer delivers a fully executed Transfer Acknowledgment to MIDA and MIDA provides its written acceptance of the proposed transferee, the Master Developer shall, in addition to the identified assignee, remain jointly and severally liable for the obligations of the Master Developer arising under this Agreement expressly assumed by the identified assignee pursuant to the applicable Transfer Acknowledgment. For avoidance of doubt, the failure of MIDA to accept a Transfer Acknowledgment shall not affect the validity of any transfer by Master Developer.

8.2 **Assignment to Affiliates**. Master Developer's transfer of all or any part of the Mountainside Property to any Affiliate of Master Developer; Master Developer's entry into a joint venture for the development of all or any part of the Mountainside Property; or Master Developer's pledging of part or all of the Mountainside Property as security for financing shall not be deemed to be an "assignment" subject to the acceptance process by MIDA contemplated by Section 8.1 unless specifically designated as such an assignment by the Master Developer. If not a matter of public record, Master Developer shall endeavor to give MIDA notice of any event specified in this Section 8.2 within ten (10) days after the event has occurred. Such notice shall include providing MIDA with all necessary contact information for the newly responsible party. Master Developer shall remain responsible for all obligations of this Agreement in such a transfer to a related entity, joint venture, or as security for financing except as may be provided in Section 8.1 with respect to MIDA's acceptance of a Transfer Acknowledgment.

8.3 **Creation of Owners Association**. Master Developer will create, or cause to be created, the Master Association for the Mountainside Resort contemporaneously with the recordation of the Master CC&Rs. The Master Developer agrees MIDA may enforce this obligation by refusing to issue any certificates of occupancy after the deadline for creating the Master Association until such Master Association has been created. The Master Developer or applicable Project Developer may create various other Owners Associations to govern one or more Projects. The Master Developer or an applicable Project Developer may transfer certain maintenance obligations to the applicable Owners Association, whereupon Master Developer or the applicable Project Developer shall be relieved of such obligation, provide the

applicable Owners Association has the authority to impose fees or other assessments sufficient to perform the maintenance obligations transferred to such association.

8.4 **Written Transfer Agreement Required**. When the Master Developer or an applicable Project Developer transfers maintenance obligations to an Owners Association, Master Developer or the applicable Project Developer shall do so by Transfer Acknowledgment with respect thereto executed by MIDA, Master Developer, and such Owners Association pursuant to Section 8.1.

8.5 **Annexation by a Municipality**. The Parties acknowledge the possibility that at some point during the Term of this Agreement, one or more municipalities may undertake to annex some or all of the Mountainside Resort into their municipal boundaries, which annexation may not presently occur without MIDA's consent. Subject to Applicable Law, MIDA agrees that MIDA will not consent to any such annexation unless MIDA consults with Master Developer to determine which of those rights and obligations of MIDA under this Agreement shall be assumed by the applicable municipality, and those rights and obligations shall be maintained by MIDA, as well as the manner in which any such assignment and assumption of rights should be adequately documented. The Parties further agree that the express objective of such discussions shall be, to the extent reasonably possible, to preserve all of the rights and obligations of MIDA as well as the Master Developer under this Agreement following any such municipal annexation.

SECTION 9. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the Parties that: (1) the Mountainside Resort is a private development; (2) MIDA has no interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, if any, that MIDA accepts the dedication of the same pursuant to the provisions of this Agreement; (3) Master Developer shall have full power over and exclusive control of the Mountainside Property and Mountainside Resort herein described, subject only to the limitations and obligations of Master Developer under this Agreement; and (4) MIDA and Master Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership express or implied between MIDA and Master Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between MIDA and Master Developer.

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 **Subjection and Subordination**. Each Person that holds any beneficial, equitable, or other interest or encumbrances in all or any portion of Mountainside Resort 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 hereof. Each such Person 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, MIDA.

10.3 **Severability**. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. In the event a court determines that the Term of this Agreement, or the rights

granted to Master Developer hereunder, exceed the power of MIDA to make such agreements, this Agreement shall be enforced to the fullest extent Applicable Law would allow such rights to be granted hereunder, and this Agreement shall not be deemed to be void or voidable. The Parties shall enter into good faith negotiations to modify this Agreement as to any offending provision in an effort to accomplish the intent of such offending provision within the requirements of Applicable Law.

10.4 **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, including, without limitation, execution of such documents as may be reasonably necessary to facilitate the removal of historic matters of record that the Parties determine are no longer applicable to the Mountainside Resort.

10.5 **Construction**. This Agreement has been reviewed and revised by legal counsel for both MIDA and Master 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.

10.6 **Covenants Running with the Land**. The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with the Mountainside Property. 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, as opposed to Subdivision Plats or Development Lots, in the Mountainside Resort shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise. For purposes of clarity, if a right or obligation of the Master Developer under this Agreement pertains to a specific lot or parcel within the Mountainside Resort, such right or obligation shall also be a right or obligation of the applicable Landowner or Landowners that is or are the record owners of such lot or parcel.

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 specifically provided for in this Agreement, 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, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. Neither Party shall not be subject to any claim or award of any money damages, of any nature, in federal or state court or other legal proceeding. In the event either Party shall bring any suit or action to enforce this Agreement, the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

10.9 **Agreement to Encourage Resolution of Disputes Without Litigation**.

(a) Each of the Parties and their respective officers, directors, and committee members, all Persons subject to this Agreement, and any Person not otherwise subject to this Agreement who agrees to submit to this Section 10.9 (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Mountainside Resort without litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim

described in Section 10.9(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 10.10 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of this Agreement; or

(ii) the rights, obligations, and duties of any Bound Party under this Agreement;

except that the following shall not be considered "**Claims**" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 10.10:

(i) any suit in which any indispensable party is not a Bound Party; and

(ii) any suit arising in connection with any other agreement between the Parties or their Affiliates with respect to the Mountainside Resort or any portion thereof, whether or not some or all of the parties to such other agreement are also Parties to this Agreement.

10.10 **Dispute Resolution Procedures**.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely;

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and the Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Mediation. If the Claimant and the Respondent have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 10.10(a) (or within such other period as the Claimant and the Respondent may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an independent agency, reasonably acceptable to the Bound Parties, providing dispute resolution services in Utah. If the Claimant and the Respondent do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Claimant and the Respondent are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Claimant and the Respondent shall bear its own costs of the mediation,

including attorneys' fees, and each Claimant and the Respondent shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Claimant and the Respondent. If any party to the settlement thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 10.10. In such event, the party taking action to enforce the settlement agreement or award shall upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such settlement agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Right to File Suit. At any time before or during the pendency of any Claim with respect to which the Bound Parties are seeking a resolution pursuant to this Section 10.10, any of the Bound Parties may file such suit or other judicial action as is required in order to satisfy the requirements of any applicable statute of limitations to which the Claim may be subject if such suit or other judicial proceeding is not filed prior to the resolution of such Claim pursuant to this Section 10.10, whereupon the party or parties to any such Claim shall, to the extent allowed by Applicable Law, stay the proceedings in such suit or other judicial action during the pendency of any Claim with respect to which the Bound Parties are seeking a resolution pursuant to this Section 10.10.

10.11 **Utah Law**. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. Any dispute regarding this Agreement that cannot be resolved by the Parties shall be resolved in a court of competent jurisdiction in Salt Lake County or Wasatch County, State of Utah.

10.12 **Covenant of Good Faith and Fair Dealing**. Each Party shall use its commercially reasonable 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 MIDA and Master Developer. Except as provided in Section 8 pertaining to an assignment and Section 10.13 pertaining to Mortgagee Protections, no other Person shall be deemed a third-party beneficiary or have any rights under this Agreement.

10.15 **Mortgagee Protections; Estoppel Certificate**.

10.13.1 Mortgages. The Parties agree that this Agreement shall not prevent or limit any of the BLX Entities from encumbering the Mountainside Property or any estate or interest therein (including this Agreement), or any portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, assignments, pledges, and any or other form of secured financing by which a BLX Entity's interest in the Mountainside Property is directly or indirectly mortgaged, pledged (including any pledges of a direct or indirect interest in a BLX Entity, or other "mezzanine" or preferred equity loans) (each, a "**Mortgage**") with respect to the construction, development, use or operation of the Mountainside Property or the Mountainside Resort, or any part thereof. MIDA acknowledges that the lender(s) or prospective lender(s) providing such Mortgages (each, together with any successor holder of such Mortgage, a "**Mortgagee**") may require certain interpretations and modifications to this Agreement and MIDA agrees, upon request, from time to time, to meet with the BLX Entities and representatives of such Mortgagee(s) to negotiate in good faith any such request for interpretation or modification. MIDA will not unreasonably withhold its consent to any requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

10.13.2 No Mortgagee Obligations. Notwithstanding any of the provisions of this Agreement to the contrary, no Mortgagee shall have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of any BLX Entity or other affirmative covenants of any BLX Entity hereunder, or to guarantee such performance unless and until such Mortgagee has become the owner in place of a BLX Entity as provided in Section 10.13.6, and then only to the extent of such BLX Entity's obligations under this Agreement.

10.13.3 Default Notices. Any Mortgagee of any Mortgage encumbering the Mountainside Property, or part or interest thereof, that has submitted a request in writing to MIDA in the manner specified herein for giving notices (each, an "**Eligible Mortgagee**"), shall be entitled to receive written notification from MIDA of any notice of non-compliance by any BLX Entity in the performance of such BLX Entity's obligations under this Agreement. MIDA simultaneously with providing any BLX Entity with a notice ("**Default Notice**") of: (i) a default under this Agreement, or (ii) a matter on which MIDA may predicate or claim a default, shall simultaneously provide a written copy of such Default Notice to each Eligible Mortgagee. MIDA shall have no liability for the failure to provide any such Default Notice, except that no such Default Notice by MIDA to a BLX Entity shall be deemed effective or to have been duly given unless and until a written copy thereof has been provided in accordance with the terms and conditions of this Agreement to each Eligible Mortgagee. From and after the date that such Default Notice has been given to each Eligible Mortgagee, each Eligible Mortgagee shall have the same period, after the delivery of such Default Notice upon it, plus in each instance, the additional period of time specified in Section 10.13.4 to cure, commence to cure or cause to be cured the default(s), acts or omissions which are specified in such Default Notice or if such cure cannot be effected without possession of the Mountainside Property, or portion thereof to which the Default Notice applies, commence a proceeding to obtain such possession. If a cure cannot be effected without possession, once possession has been obtained, Eligible Mortgagee shall also have the same period for cure as any BLX Entity had after the delivery of such Default Notice. MIDA shall accept such performance by or at the instigation of such Eligible Mortgagee(s) as if the same had been done by a BLX Entity. MIDA authorizes each Eligible Mortgagee to take any such action at such Eligible Mortgagee's option at any time.

10.13.4 Curative Rights of Mortgagees. In addition to the rights granted to each Eligible Mortgagee under Section 10.13.3, each Eligible Mortgagee shall have an additional period ("**Additional Cure Period**") of ninety (90) days to: (i) cure, commence to cure or cause to be cured any default of which it receives a Default Notice, or (ii) commence a proceeding to obtain possession of the Leased Premises in

the case of a default that can only be cured once an Eligible Mortgagee obtains possession of the property to which the Notice of Default applies. The provisions of this Section 10.13.4 shall apply only if an Eligible Mortgagee:

(a) Notifies MIDA of Eligible Mortgagee's desire to cure such default within sixty (60) days of receipt of the Default Notice;

(b) On or before the termination of the Additional Cure Period, pays, or causes to be paid, to MIDA any amounts (A) then due and in arrears under this Agreement as specified in the Default Notice to such Eligible Mortgagee, and (B) any amount which becomes due during the Additional Cure Period as and when due; and

(c) Cures, or in good faith, with reasonable commercial diligence and continuity, commences to cure Master Developer's non-monetary requirements of this Agreement then in default and reasonably susceptible of being cured by such Eligible Mortgagee. Notwithstanding this Section 10.13.4, in the event of any non-monetary default under this Agreement, so long as the Eligible Mortgagee commences efforts to effect a cure and thereafter provides MIDA reasonable evidence from time to time, as requested in writing by MIDA, that the Eligible Mortgagee is diligently pursuing such efforts, Eligible Mortgagee shall have a commercially reasonable period of time within which to effect such cure of any such non-monetary default; provided that the Eligible Mortgagee shall be obligated only to cure any BLX Entities' non-monetary obligations reasonably capable of being cured by Eligible Mortgagee and which do not require access to the Mountainside Property or the use and operation thereof, provided that Eligible Mortgagee shall diligently seek to acquire such access or such use or operation (either directly or through receivership), and provided further that upon securing such access, use or operation (either directly or through receivership), Eligible Mortgagee promptly shall commence the cure of any such non-monetary default and shall prosecute same to completion with all commercially reasonable due diligence. Notwithstanding the foregoing, an Eligible Mortgagee shall have no obligation to cure any default that is personal to a BLX Entity.

Any notice to be given by MIDA to a Mortgagee pursuant to any provision of this Section 10.13.4 shall be deemed properly addressed if sent to the Mortgagee who served the notice referred to in Section 10.13.3 unless notice of a change of Mortgage ownership has been given to MIDA in writing

Nothing in this Section 10.13.4, however, shall be construed to extend this Agreement beyond the then applicable Term hereof, nor to require an Eligible Mortgagee to continue any foreclosure after the default has been cured. If the default has been cured and the Eligible Mortgagee shall discontinue any foreclosure, this Agreement shall continue in full force and effect as if the BLX Entities had not defaulted under this Agreement. If an Eligible Mortgagee is complying with this Section 10.13.4, upon the acquisition of Mountainside Property, or portion thereof, by such Eligible Mortgagee or its designee or any other purchaser at a foreclosure, this Agreement shall continue in full force and effect as if the BLX Entities had not defaulted under this Agreement and MIDA shall recognize such Eligible Mortgagee or its designee or any other purchaser as the "Master Developer" for all purposes under this Agreement.

10.13.5 New Agreement. If this Agreement is terminated as to any portion of the Mountainside Property for any reason, including a bankruptcy proceeding of any BLX Entity, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for a BLX Entity or its property, MIDA, if requested by any Eligible Mortgagee, shall negotiate in good faith with such Eligible Mortgagee or its designee for a new master development agreement for the Mountainside Property, or portion thereof, with the most senior Eligible Mortgagee requesting such new agreement. Such new agreement shall be for the

remainder of the ten applicable Term of this Agreement, effective as of the date of termination, upon the same terms, covenants and conditions of this Agreement; provided:

(a) such Eligible Mortgagee shall make written request upon MIDA for such new agreement within ninety (90) days after the date that this Agreement is terminated and notice of such termination is given by MIDA to the Eligible Mortgagee; and

(b) such Eligible Mortgagee or such designee shall agree to cure any of the BLX Entities' defaults of which such Eligible Mortgagee was notified by MIDA. Any of a BLX Entity's non-monetary defaults which are not reasonably capable of being cured shall be deemed waived with respect to a new agreement, provided, the foregoing shall not limit any rights or remedies MIDA may have against the BLX Entities under this Agreement.

If more than one Eligible Mortgagee shall request a new agreement pursuant to this Section 10.13.5, MIDA shall enter into such new agreement with the Eligible Mortgagee whose Mortgage is prior in lien, or with the designee of such Eligible Mortgagee. MIDA, without liability to any BLX Entity or any Eligible Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business in the state where the Mountainside Property is located (which shall be issued in favor of MIDA at the sole cost and expense of any such Eligible Mortgagee) as the basis for determining the appropriate Eligible Mortgagee which is entitled to such new agreement.

10.13.6 Third Party Beneficiary. Subject to the provisions of this Section 10.13, each Eligible Mortgagee is an intended third-party beneficiary of the provisions of this Agreement specifically giving rights to an Eligible Mortgagee. In the event of a conflict between (i) the provisions of this Section 10.13 and (ii) any other provisions of this Agreement, this Section 10.13 will control. Except as set forth in Section 10.13.5, MIDA agrees that no Eligible Mortgagee shall in any manner or respect whatsoever be liable or responsible for any obligations or covenants of any BLX Entity under this Agreement (nor shall any rights of such Eligible Mortgagee be contingent on the satisfaction of such obligations or covenants), unless and until such Eligible Mortgagee becomes the owner of the Mountainside Property by foreclosure, sale in lieu of foreclosure or otherwise, in which event such Eligible Mortgagee shall remain liable for such obligations and covenants only so long as it remains the owner of the Mountainside Property and then only to the extent of such BLX Entity's obligations under this Agreement

10.13.7 Estoppel Certificates. At any time, and from time to time, any BLX Entity may deliver written notice to MIDA, and MIDA may deliver written notice to Master Developer, requesting that such Party certify in writing that, to the knowledge of the certifying Party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, (iii) the requesting Party is not then in breach of this Agreement, or if in breach, a description of each such breach, and (iv) any other factual matters reasonably requested (an "**Estoppel Certificate**"). The MIDA Executive Director shall execute and deliver, on behalf of MIDA, any Estoppel Certificate requested by any BLX Entity which complies with this Section 10.13.7 within fifteen (15) days after a written request for such Estoppel Certificate. MIDA's failure to furnish an Estoppel Certificate within such fifteen (15) day period shall be conclusively presumed that (A) this Agreement is in full force and effect without modification in accordance with the terms set forth in the request; and (B) there are no breaches or defaults on the part of any BLX Entity. MIDA acknowledges that an Estoppel Certificate may be relied upon by transferees or successors in interest of any BLX Entity and by Mortgagees holding an interest in the Mountainside Property.

SECTION 11. NOTICES

Any notice or communication required hereunder between MIDA and Master Developer shall be sufficiently given or delivered if given in writing (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail (or acknowledgment of receipt or reply by the recipient) if sent during normal business hours of the recipient; if not, then on the next business day, or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. 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 MIDA:

Military Installation Development Authority
50 Simmons Way, No. 400
Kaysville, UT 84037-6722
Attn: Executive Director
Email: paultmorris@outlook.com

With copies to:

Michael Best & Friedrich
170 South Main Street, Suite 1000
Salt Lake City, Utah 84101
Attn: Lyndon Ricks
Email: llricks@michaelbest.com

Catten Law, P.C.
P.O. Box 9805
Millcreek City, Utah 84109-9805
Attn: Richard Catten
Email: attycatten@yahoo.com

If to Master Developer or Landowners:

C/O Ex Utah Development LLC
805 Third Avenue, 7th Floor
New York, New York 10022
Attn: President
Email: Notices@extell.com

and:

Ex Utah Development LLC
2750 W. Rasmussen Road, Suite 206
Park City, Utah 84098
Attn. Senior Vice President
Email: kkrieg@extell.com

With copies to:

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Roger D. Henriksen
Robert A. McConnell
Email: rhenriksen@parrbrown.com
rmcconnell@parrbrown.com

and:

Ex Utah Development LLC
805 Third Avenue, 7th Floor
New York, New York 10022
Attn. General Counsel
Email: Notices@extell.com

SECTION 12. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

Unless otherwise noted herein, this Agreement 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 MIDA and Master Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal Description of the Mountainside Property
Exhibit A-1	Depiction of the Mountainside Property
Exhibit B	Definitions
Exhibit C	Interpretations
Exhibit D	Development ERU—Density Allocation Schedule
Exhibit E	MWR Approvals
Exhibit F	Plans: West Side Frontage Road Improvements
Exhibit G	MV Transit Facility
Exhibit H	Housing Program
Exhibit I	District Interlocal Agreements
Exhibit J	Existing Fee Schedule
Exhibit K	Mountainside Resort Trail Plan
Exhibit L	Mountainside Resort Parking Plan
Exhibit M	Detention Pond Maintenance Requirements
Exhibit N	Notice of Compliance
Exhibit O	Form of Transfer Acknowledgment
Exhibit P	Additional Legal Descriptions
Exhibit Q	Emergency Vehicle Access Standards
Exhibit R	Mountainside Resort Land Use Plan
Exhibit S	Mountainside Resort Utility and Infrastructure Plan
Exhibit T	Village Core Roadway Plat

SECTION 13. RECORDATION OF DEVELOPMENT AGREEMENT

No later than ten (10) days after MIDA enters into this Agreement, MIDA shall cause to be recorded an executed copy of this Agreement in the Official Records of Wasatch County.

[Balance of page left blank intentionally]

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

MIDA:

Military Installation Development Authority

_____

Paul Morris
Acting Executive Director

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

On the _____ day of _____, 2020, personally appeared before me Paul Morris, who being by me duly sworn did say, that he is the Acting Executive Director of the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the Military Installation Development Authority, by authority of law.

_____

NOTARY PUBLIC
Residing in _____

MASTER DEVELOPER:

EX UTAH DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of EX Utah Development LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

LANDOWNERS:

BLX LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of BLX LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

BLX MAYFLOWER LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of BLX Mayflower LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

BLX PIOCHE LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of BLX Pioche LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

BLX LAND LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of BLX Land LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

BLX MWR HOTEL LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of BLX MWR Hotel LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

RH MAYFLOWER LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of RH Mayflower LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

32 DOM MAYFLOWER LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

STATE OF _____)
: ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Gary Barnett, who executed the foregoing instrument in his capacity as the President of 32 DOM Mayflower LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

CONSENT AND SUBORDINATION

Subject to the conditions set forth hereinbelow, Centennial Bank ("**Centennial**"), as the Beneficiary under that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (the "**Deed of Trust**"), dated March 31, 2020, and recorded on March 31, 2020 as Entry No. 476275 in Book 1287 at Page 1248 of the Official Records of Wasatch County, State of Utah, and on March 31, 2020 as Entry No. 1129881 in Book 2562 at Page 1950 of the Official Records of Summit County, State of Utah, hereby consents to that certain Mountainside Resort Master Development Agreement dated as of August ____, 2020, and made by and between MIDA, on the one hand, and BLX, BLXM, BLX PIOCHE, BLX LAND, BLX MWR, RH MAYFLOWER, and EX UTAH DEVELOPMENT LLC, on the other hand (the "**Master Development Agreement**"), and further subordinates all of its right, title, and interest in and to the real property encumbered by the Deed of Trust to the Master Development Agreement (collectively, the "**Consent**"). Centennial's execution and delivery of this Consent is expressly conditioned on the acknowledgement and agreement by each of the parties to the Master Development Agreement, including without limitation, MIDA (which acknowledgement and agreement is hereby deemed given by such parties having entered into the Master Development Agreement with this Consent attached, and shall be binding on each of their respective successors and assigns), that (i) such Consent shall in no way affect, diminish, or act as a waiver by Centennial of any rights granted or benefits imparted to Centennial as a Mortgagee or Eligible Mortgagee under the Master Development Agreement, and that such rights and benefits shall also inure to any party that is a Centennial designee or successor in interest to, or any other purchaser in a foreclosure, sale in lieu of foreclosure, or otherwise of, any portion of the Mountainside Property or any estate or interest therein in which Centennial has an interest (each of the foregoing parties, a "**Successor**"), (ii) Centennial and any Successor is hereby recognized to be and shall continue to remain an Eligible Mortgagee under the Master Development Agreement, and (iii) the notice requirement specified in Section 10.15 of the Master Development Agreement for Centennial to be identified as an Eligible Mortgagee for all purposes under the Master Development Agreement, including without limitation, the right to receive a copy of any Default Notice from MIDA, is hereby deemed satisfied. Centennial hereby acknowledges and agrees that any notice to be provided to it as a Mortgagee or Eligible Mortgage under or pursuant to the Master Development Agreement shall be deemed properly addressed if sent to Centennial Bank at 12 East 49th Street - 28th Floor New York, New York 10017 Attention: Francillia LeBlanc, with a copy to Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016 Attention: Jonathan M. Markowitz, Esq., unless and until notice of a change of Mortgage (Deed of Trust) ownership or Mortgagee address has been given to MIDA in writing in the manner specified in the Master Development Agreement for giving notices. All capitalized terms used and not defined in this Consent shall have the meanings ascribed to them in the Master Development Agreement.

DATED the ___ day of August, 2020.

Centennial Bank, an Arkansas state chartered bank

By: _____
Name: Sanjay Maridev Ramakrishna
Title: Director – Portfolio Manager

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

On the ____ day of August in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Sanjay Maridev Ramakrishna, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

_____
NOTARY PUBLIC Notary Public currently located in _____ County via video teleconference in accordance with New York State Executive Order No. 202.

EXHIBIT A
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Legal Description of Mountainside Property]

Parcel 1: PIOCHE Y (Wasatch County)

Parcel No. JDR-HY-40-19:21:S
A parcel of land situate in Thurman No. 155 Mining Claim in the Blue Ledge Mining District located in the West half of the Northwest quarter of Section Twenty-Four (24), Township Two (2) South, Range Four (4) East, Salt Lake Base and Meridian, County of Wasatch, State of Utah, more particularly described as follows:
Beginning 249.39 feet South 7°10' East (South 7°11'44" East highway bearing) from the Northwest corner of said Thurman No. 155 Mining Claim; said corner is approximately 839.06 feet South 36°25'44" East (highway bearing) from the Northeast corner of Section 23, of Township 2 South Range 4 East, Salt Lake Base and Meridian; thence South 7°10' East (South 7°11'44" East highway bearing) 410.61 feet, more or less, along the Westerly sideline of said Thurman No. 155 Mining Claim to the Southerly sideline of said Thurman No. 155 Mining Claim; thence South 72°30' East (South 72°19'16" East highway bearing) 193.57 feet, more or less, along said Southerly sideline to the Westerly right-of-way line of U.S. Highway 40; thence North 21°45'44" West (highway bearing) 312.66 feet, more or less, along said Westerly right-of-way line to an angle point; thence North 34°18'22" West 212.80 feet, more or less, continuing along said Westerly right-of-way line to the point of beginning.

Parcel 2: PIOCHE Y (Wasatch County)

Parcel No. JDR-HY-40-19:21:2S
An undivided three-quarters (3/4) interest in a parcel of land situate in Pioche No. 4 Mining Claim of the Blue Ledge Mining District located in the West half of the Northwest quarter (W1/2NW1/4) of Section Twenty-Four (24), Township Two (2) South Range Four (4) East, Salt Lake Base and Meridian, County of Wasatch, State of Utah, more particularly described as follows:
Beginning at Corner No. 2, Lot No. 174, of Mineral Survey No. 138 for Pioche No. 4 Mining Claim, surveyed in 1889 of record; thence South 80°45' West (South 80°55'52" West highway bearing) 178.71 feet, more or less, along the Northerly mining claim line of said Pioche No. 4 Mining Claim to a point on the right-of-way line of the "L" Line frontage road 50.0 feet perpendicularly distant Northeasterly from the centerline of a frontage road known as "L" Line; thence South 71°13'00" East (highway bearing) along said right-of-way line 71.10 feet, more or less, to a point of tangency with a 622.96 foot radius curve to the right, to a point opposite "L": Line Engineer Station 21+49.51; thence Southeasterly 425.85 feet along the arc of said curve; thence North 34°22'12" East 65.76 feet along said right-of-way line to the Westerly no-access line of U.S. Highway 40; thence North 22°02'00" West (highway bearing) 165.77 feet along said Westerly no-access line; thence North 21°45'44" West 50.16 feet, more or less, continuing along said Westerly no-access line to the Northeasterly sideline of said Pioche No. 4 Mining Claim; thence North 72°30' West (North 72°19'16" West highway bearing) 182.97 feet, more or less, along said sideline of said Pioche No. 4 Mining Claim to the point of beginning.

Parcel 3: Government Lots (Wasatch County)

All of Government Lots 17, 18 and 34 in Section 26, Township 2 South Range 4 East, Salt Lake Base and Meridian.

Excepting from the above described Lot 34, those portions conveyed to Deer Valley Resort Company, LLC, a Utah limited liability company, by that certain Quit Claim Deed recorded October 11, 2017 as Entry No. 443791 in Book 1203 at Page 1487 of the official records in the office of the Wasatch County Recorder.
All of Government Lots 21, 23, 24 and 25 in Section 33, Township 2 South Range 4 East, Salt Lake Base and Meridian.

All of Government Lots 18 through 24, inclusive, in Section 34, Township 2 South Range 4 East, Salt Lake Base and Meridian.

All of Government Lots 1, and 13 through 24, inclusive, in Section 35, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 4 - Island No. 1: (Wasatch County)

The following patented lode mining claims lying within Section 2, Township 3 South, Range 4 East, Salt Lake Base and Meridian:

Parcel 4-1:
The **Big Hill Patented Lode Mining Claim, M.S. 6973**, as the same is more particularly described in that certain United States Patent recorded September 2, 1931 as Entry No. 48157 in Book 10 of Mining Deeds at Page 263 of the official records in the office of the Wasatch County Recorder.

Parcel 4-2:
The **Green Stone Patented Lode Mining Claim, M.S. 6973**, as the same is more particularly described in that certain United States Patent recorded September 2, 1931 as Entry No. 48157 in Book 10 of Mining Deeds at Page 263 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying with the Southeast quarter of the Northeast quarter, and the Southeast quarter of Section 3, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 5 - Island No. 2: (Wasatch County)

The following patented lode mining claims lying within Section 2, Township 3 South, Range 4 East, Salt Lake Base and Meridian:

Parcel No. 5-1:
The **Buckeye Patented Lode Mining Claim, Lot No. 4297**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 15, 1926 as Entry No. 42509 in Book 10 of Mining Deeds at Page 53 of the official records in the office of the Wasatch County Recorder.

Parcel No. 5-2:
The **Eclipse Patented Lode Mining Claim, Lot No. 5130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 28, 1906 as Entry No. 14910 in Book 5 of Mining Deeds at Page 404 of the official records in the office of the Wasatch County Recorder.

Parcel No. 5-3:
The **Plantic Patented Lode Mining Claim, Lot No. 5130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 28, 1906 as Entry No. 14910 in Book 5 of Mining Deeds at Page 404 of the official records in the office of the Wasatch County Recorder.

Parcel No. 5-4:
The **Rising Star Patented Lode Mining Claim, Lot No. 5130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 28, 1906 as Entry No. 14910 in Book 5 of Mining Deeds at Page 404 of the official records in the office of the Wasatch County Recorder.

Parcel No. 5-5:
The **Susie G Patented Lode Mining Claim, Lot No. 4297**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 15, 1926 as Entry No. 42509 in Book 10 of Mining Deeds at Page 53 of the official records in the office of the Wasatch County Recorder.

Parcel No. 5-6:
The **Susie G No. 2 Patented Lode Mining Claim, Lot No. 4297**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 15, 1926 as Entry No. 42509 in Book 10 of Mining Deeds at Page 53 of the official records in the office of the Wasatch County Recorder.

Parcel No. 5-7:
The **Undine Patented Lode Mining Claim, Lot No. 5130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 28, 1906 as Entry No. 14910 in Book 5 of Mining Deeds at Page 404 of the official records in the office of the Wasatch County Recorder.

Parcel 6 - Island No. 3: (Wasatch County)

The following patented lode mining claims lying within Sections 34 and 35, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and Section 2, Township 3 South, Range 4 East, Salt Lake Base and Meridian:

Parcel 6-1:
The **Adla Patented Lode Mining Claim, Lot No. 3916**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 12, 1925 as Entry No. 41691 in Book 10 of Mining Deeds at Page 2 of the official records in the office of the Wasatch County Recorder.

Parcel 6-2:
The **Fram Patented Lode Mining Claim, Lot No. 3915**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 12, 1925 as Entry No. 41691 in Book 10 of Mining Deeds at Page 2 of the official records in the office of the Wasatch County Recorder.

Parcel 6-3:
The **Gerda Patented Lode Mining Claim, Lot No. 3917**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 12, 1925 as Entry No. 41691 in Book 10 of Mining Deeds at Page 2 of the official records in the office of the Wasatch County Recorder.

Parcel 6-4:
The **Hebe Patented Lode Mining Claim, Lot No. 3920**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 12, 1925 as Entry No. 41691 in Book 10 of Mining Deeds at Page 2 of the official records in the office of the Wasatch County Recorder.

Parcel 6-5:
The **Valkyrien Patented Lode Mining Claim, Lot No. 3918**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 12, 1925 as Entry No. 41691 in Book 10 of Mining Deeds at Page 2 of the official records in the office of the Wasatch County Recorder.

Parcel 6-6:
The **Vista Patented Lode Mining Claim, Lot No. 3919**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 12, 1925 as Entry No. 41691 in Book 10 of Mining Deeds at Page 2 of the official records in the office of the Wasatch County Recorder.

Parcel 7 - PATENTED CLAIMS: (Summit and Wasatch Counties)

Parcel 7-1:
The **Acme Patented Lode Mining Claim, Lot No. 5403**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 20, 1916 as Entry No. 32445 in Book 9 of Mining Deeds at Page 69 of the official records in the office of the Wasatch County Recorder.

Parcel 7-2:
The **Amanda Patented Lode Mining Claim, Lot No. 3768**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 7-3
The **Amanda J. Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying within Section 36, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-4:
The **American Boy Patented Lode Mining Claim, Lot No. 5328**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 20, 1916 as Entry No. 32447 in Book 9 of Mining Deeds at Page 79 of the official records in the office of the Wasatch County Recorder.

Parcel 7-5:
The **American Chief Patented Lode Mining Claim, Lot No. 5403**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 20, 1916 as Entry No. 32445 in Book 9 of Mining Deeds at Page 69 of the official records in the office of the Wasatch County Recorder.

Parcel 7-6:
The **American Queen Patented Lode Mining Claim, M.S. 5458**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 20, 1916 as Entry No. 32446 in Book 9 of Mining Deeds at Page 75 of the official records in the office of the Wasatch County Recorder.

Parcel 7-7
The **Autumn Gold Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-8
The **Barbara Patented Lode Mining Claim, Lot No. 5403**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 20, 1916 as Entry No. 32445 in Book 9 of Mining Deeds at Page 69 of the official records in the office of the Wasatch County Recorder.

Parcel 7-9
The **Ben Butler Patented Lode Mining Claim, M.S. 6642**, as the same is more particularly described in that certain United States Patent recorded October 25, 1924 as Entry No. 40765 in Book 9 of Mining Deeds at Page 590 of the official records in the office of the Wasatch County Recorder.

Parcel 7-10
The **Black Rock Patented Lode Mining Claim, Lot No. 449**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 2, 1928 as Entry No. 41377 in Book F of Mining Deeds at Page 391 of the official records in the office of the Summit County Recorder.

Parcel 7-11
The **Black Rock Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-12
The **Blue Bell Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying within Section 36, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-13
The **Blue Bell No. 3 Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-14
The **Callico Patented Lode Mining Claim, M.S. 5929**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 19, 1935 as Entry No. 52714 in Book 10 of Mining Deeds at Page 406 of the official records in the office of the Wasatch County Recorder, and recorded October 17, 1918 as Entry No. 28895 in Book F of Mining Deeds at Page 222 of the official records in the office of the Summit County Recorder.

Parcel 7-15
The **Clarissa No. 1 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions of said Clarissa No. 1 lying within Government Lot 13, and the North half of the Southeast quarter of Section 4, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-16
The **Clarissa No. 2 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

Parcel 7-17
The **Clark Patented Lode Mining Claim, Lot No. 5302**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 11, 1926 as Entry No. 42674 in Book 10 of Mining Deeds at Page 64 of the official records in the office of the Wasatch County Recorder.

Parcel 7-18
The **Columbus Patented Lode Mining Claim, Lot No. 4108**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 3, 1929 as Entry No. 45796 in Book 10 of Mining Deeds at Page 192 of the official records in the office of the Wasatch County Recorder.

Parcel 7-19
The **Contact No. 4 Patented Lode Mining Claim, M.S. 7164**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 26, 1962 as Entry No. 83009 in Book 11 of Mining Deeds at Page 266 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM any portions of said Contact No. 4 lying within Government Lot 16 of Section 35, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-20
The **Contact No. 8 Patented Lode Mining Claim, M.S. 7285**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 15, 1960 as Entry No. 80936 in Book 5 of Patents at Page 250 of the official records in the office of the Wasatch County Recorder.

Parcel 7-21
The **Coolidge Patented Lode Mining Claim, M.S. 6952**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 21, 1935 as Entry No. 52333 in Book 10 of Mining Deeds at Page 325 of the official records in the office of the Wasatch County Recorder, and recorded June 30, 1941 as Entry No. 68494 in Book G of mining deeds at Page 237 of the official records in the office of the Summit County Recorder.

Parcel 7-22
The **Copper King Patented Lode Mining Claim, Lot No. 4436**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 7, 1929 as Entry No. 46218 in Book 10 of Mining Deeds at Page 204 of the official records in the office of the Wasatch County Recorder.

Parcel 7-23
The **Copper Queen Patented Lode Mining Claim, Lot No. 2981**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 7, 1929 as Entry No. 46220 in Book 10 of Mining Deeds at Page 206 of the official records in the office of the Wasatch County Recorder.

Parcel 7-24
The **Crescent Patented Lode Mining Claim, Lot No. 5087**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 12, 1906 as Entry No. 14791 in Book 5 of Mining Deeds at Page 384 of the official records in the office of the Wasatch County Recorder.

Parcel 7-25
The **D & H Patented Lode Mining Claim, Lot No. 5404**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 20, 1916 as Entry No. 32447 in Book 9 of Mining Deeds at Page 79 of the official records in the office of the Wasatch County Recorder lying within Wasatch County, Utah.

Parcel 7-26
The **Ethel Patented Lode Mining Claim, M.S. 7130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 24, 1957 as Entry No. 77623 in Book 11 of Mining Deeds at Page 213 of the official records in the office of the Wasatch County Recorder.

Parcel 7-27
The **Fisher No. 1 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-28
Those portion of the **Fisher No. 2 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder, which lie within Wasatch County.

Parcel 7-29
The **Fisher No. 3 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-30
The **Fisher No. 4 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.
Parcel 7-31
The **Fisher No. 5 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-32
The **Fisher No. 6 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-33
The **Fisher No. 7 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-34
The **Fisher No. 8 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 9, 1956 as Entry No. 75768 in Book 5 of Patents at Page 242 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions of said Fisher No. 8 lying with the Northwest quarter of Section 4, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-35
The **Fisher No. 9 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-36
The **Fisher No. 10 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-37
The **Fisher No. 11 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-38
The **Fisher No. 12 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder, and recorded January 3, 1947 as Entry No. 75666 in Book G of mining deeds at Page 351 of the official records in the office of the Summit County Recorder.

Parcel 7-39
Those portions of the **Flagstaff Mine Patented Lode Mining Claim, Lot No. 38**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 2, 1928 as Entry No. 41379 in Book F of Mining Deeds at Page 394 of the official records in the office of the Summit County Recorder, which lie within Wasatch County.

Parcel 7-40
The **Forty-Fifth Star Patented Lode Mining Claim, M.S. 5929**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 19, 1935 as Entry No. 52714 in Book 10 of Mining Deeds at Page 406 of the official records in the office of the Wasatch County Recorder, and recorded October 17, 1918 as Entry No. 28895 in Book F of Mining Deeds at Page 222 of the official records in the office of the Summit County Recorder.

Parcel 7-41
The **Fourth of July No. 2 Patented Lode Mining Claim, Lot No. 112**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 27, 1884 in Book D at Page 620 of the official records in the office of the Wasatch County Recorder.

Parcel 7-42
The **Fourth of July No. 5 Patented Lode Mining Claim, M.S. 7182**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 23, 1944 as Entry No. 62371 in Book 10 of Mining Deeds at Page 529 of the official records in the office of the Wasatch County Recorder.

Parcel 7-43
The **General Jackson Patented Lode Mining Claim, Lot No. 3768**, as the same is patented by that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 7-44
The **George H. C. Patented Lode Mining Claim, Lot No. 2956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 11, 1901 in Book 3 of Mining Deeds at Page 215 of the official records in the office of the Wasatch County Recorder.

Parcel 7-45
The **George Washington Patented Lode Mining Claim, Lot No. 4108**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 3, 1929 as Entry No. 45796 in Book 10 of Mining Deeds at Page 192 of the official records in the office of the Wasatch County Recorder.

Parcel 7-46
The **Gladys Patented Lode Mining Claim, M.S. 5929**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 19, 1935 as Entry No. 52714 in Book 10 of Mining Deeds at Page 406 of the official records in the office of the Wasatch County Recorder, and recorded October 17, 1918 as Entry No. 28895 in Book F of Mining Deeds at Page 222 of the official records in the office of the Summit County Recorder.

Parcel 7-47
The **Glenco Patented Lode Mining Claim, Lot No. 98**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 20, 1939 as Entry No. 57237 in Book 10 of Mining Deeds at Page 452 of the official records in the office of the Wasatch County Recorder.

Parcel 7-48
The **Golden Age Patented Lode Mining Claim, Lot No. 113**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 25, 1884 in Book D of Mining Deeds at Page 616 of the official records in the office of the Wasatch County Recorder.

Parcel 7-49
The **Golden Age No. 2 Patented Lode Mining Claim, M.S. 7182**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 23, 1944

as Entry No. 62371 in Book 10 of Mining Deeds at Page 529 of the official records in the office of the Wasatch County Recorder.

Parcel 7-50
Those portions of the **Golden Rule Patented Lode Mining Claim, Lot No. 5100**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 5, 1973 as Entry No. 99153 in Book 88 of Mining Deeds at Page 122 of the official records in the office of the Wasatch County Recorder, more particularly described as follows:

Beginning at corner no. 4 of the Golden Rule Lode, Survey No. 5100 (being the Northeast corner of said claim); and running thence on a true course South 2°56' West 100 feet along the Easterly line of said Golden Rule lode claim; thence on a true course North 87°04' West 605 feet to a point on the Westerly end line of the Clark lode mining claim; thence along said Westerly end line of the Clark lode mining claim on a true course North 14°27' East 102.1 feet to its intersection with the Northerly sideline of said Golden Rule claim, Survey No. 5100; thence on a true course South 87°04' East 584 feet to corner no. 4 of said Golden Rule Claim, the place of beginning.

Parcel 7-51
The **Gold Standard Patented Lode Mining Claim, Lot No. 205**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 16, 1925 as Entry No. 41990 in Book 10 of Mining Deeds at Page 35 of the official records in the office of the Wasatch County Recorder.

Parcel 7-52
The **Great Hopes Patented Lode Mining Claim, M.S. 5911**, as the same is more particularly described in that certain United States Patent recorded July 7, 1910 as Entry No. 20746 in Book 8 of Mining Deeds at Page 275 of the official records in the office of the Wasatch County Recorder.

Parcel 7-53
The **Hardup Patented Lode Mining Claim, Lot No. 5128**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 25, 1924 as Entry No. 40764 in Book 9 of Mining Deeds at Page 585 of the official records in the office of the Wasatch County Recorder.

Parcel 7-54
The **Hill Top No. 1 Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-55
The **Homestead Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-56
The **Hornet Patented Lode Mining Claim, M.S. 7130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 24, 1957 as Entry No. 77623 in Book 11 of Mining Deeds at Page 213 of the official records in the office of the Wasatch County Recorder.

Parcel 7-57
The **Johnston Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-58
The **Johnston No. 1 Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-59
The **Johnston No. 2 Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-60
The **Lake View No. 2 Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-61
The **Levary Patented Lode Mining Claim, Lot No. 3768**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 7-62
The **Lion Patented Lode Mining Claim, Lot No. 3768**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 7-63
The **Lone Pine Patented Lode Mining Claim, Lot No. 4956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 21, 1904 in Book 5 of Mining Deeds at Page 257 of the official records in the office of the Wasatch County Recorder.

Parcel 7-64
The **Lone Pine No. 2 Patented Lode Mining Claim, M.S. 5911**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 7, 1910 as Entry No. 20746 in Book 8 of Mining Deeds at Page 275 of the official records in the office of the Wasatch County Recorder.

Parcel 7-65
The **Lookout Mountain No. 2 Patented Lode Mining Claim, M.S. 7130**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 24,

1957 as Entry No. 77623 in Book 11 of Mining Deeds at Page 213 of the official records in the office of the Wasatch County Recorder.

Parcel 7-66
The **Lucky Star Patented Lode Mining Claim, M.S. 5929**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 19, 1935 as Entry No. 52714 in Book 10 of Mining Deeds at Page 406 of the official records in the office of the Wasatch County Recorder, and recorded October 17, 1918 as Entry No. 28895 in Book F of Mining Deeds at Page 222 of the official records in the office of the Summit County Recorder.

Parcel 7-67
An undivided twenty nine-thirtieths interest in and to the **Magnet Patented Lode Mining Claim, Lot No. 41**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 5, 1973 as Entry No. 99151 in Book 89 at Page 115 of the official records in the office of the Wasatch County Recorder.

Parcel 7-68
The **Marcella Patented Lode Mining Claim, M. S. 6760**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 22, 1925 as Entry No. 41555 in Book 9 of Mining Deeds at Page 637 of the official records in the office of the Wasatch County Recorder.

Parcel 7-69
The **Mary Jane Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-70
The **Meadow Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-71
Those portions of the **Miriam No. 1 Patented Lode Mining Claim, Lot No. 206**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 29, 1906 as Entry No. 15301 in Book 5 of Mining Deeds at Page 454 of the official records in the office of the Wasatch County Recorder, which lie within Wasatch County.

Parcel 7-72
The **Miriam No. 2 Patented Lode Mining Claim, Lot No. 206**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 29, 1906 as Entry No. 15301 in Book 5 of Mining Deeds at Page 454 of the official records in the office of the Wasatch County Recorder.

Parcel 7-73
The **Monitor Patented Lode Mining Claim, Lot No. 3768**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 7-74
The **Monno Patented Lode Mining Claim, Lot No. 4108**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 3, 1929 as Entry No. 45796 in Book 10 of Mining Deeds at Page 192 of the official records in the office of the Wasatch County Recorder.

Parcel 7-75
The **Monno No. 2 Patented Lode Mining Claim, Lot No. 4108**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 3, 1929 as Entry No. 45796 in Book 10 of Mining Deeds at Page 192 of the official records in the office of the Wasatch County Recorder.

Parcel 7-76
The **Monno No. 3 Patented Lode Mining Claim, Lot No. 4114**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 3, 1929 as Entry No. 45796 in Book 10 of Mining Deeds at Page 192 of the official records in the office of the Wasatch County Recorder.

Parcel 7-77
The **Morning Star Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-78
The **Mountaineer Patented Lode Mining Claim, Lot No. 211**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 20, 1896 in Book N at Page 483 of the official records in the office of the Wasatch County Recorder.

Parcel 7-79
The **New Discovery Patented Lode Mining Claim, Lot No. 5302**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 11, 1926 as Entry No. 42674 in Book 10 of Mining Deeds at Page 64 of the official records in the office of the Wasatch County Recorder.

Parcel 7-80
The **North Side No. 3 Patented Lode Mining Claim, Lot No. 100**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 20, 1939 as Entry No. 57239 in Book 10 of Mining Deeds at Page 455 of the official records in the office of the Wasatch County Recorder.

Parcel 7-81
The **Overlooked Fraction Patented Lode Mining Claim, M.S. 6026**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 9, 1912 as Entry No. 22362 in Book F of Mining Deeds at Page 65 of the official records in the office of the Summit County Recorder.

Parcel 7-82
The **Park City Patented Lode Mining Claim, Lot No. 5067**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 20, 1926 as Entry

No. 42704 in Book 10 of Mining Deeds at Page 65 of the official records in the office of the Wasatch County Recorder.

Parcel 7-83
The **Pearl J. C. Patented Lode Mining Claim, Lot No. 2956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 11, 1901 in Book 3 of Mining Deeds at Page 215 of the official records in the office of the Wasatch County Recorder.

Parcel 7-84
The **Phyllis Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-85
The **Poor Man Patented Lode Mining Claim, Lot No. 5128**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 25, 1924 as Entry No. 40764 in Book 9 of Mining Deeds at Page 585 of the official records in the office of the Wasatch County Recorder.

Parcel 7-86
The **Prince Patented Lode Mining Claim, M.S. 5911**, as the same is more particularly described in that certain United States Patent recorded July 7, 1910 as Entry No. 20746 in Book 8 of Mining Deeds at Page 275 of the official records in the office of the Wasatch County Recorder.

Parcel 7-87
The **Ray Patented Lode Mining Claim, M.S. 6952**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 21, 1935 as Entry No. 52333 in Book 10 of Mining Deeds at Page 325 of the official records in the office of the Wasatch County Recorder, and recorded June 30, 1941 as Entry No. 68494 in Book G of Mining Deeds at Page 237 of the official records in the office of the Summit County Recorder.

Parcel 7-88
The **Red Bird Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-89
The **Red Horse Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-90
The **Red Pine Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-91
The **Red Rock Patented Lode Mining Claim, M.S. 6973**, as the same is more particularly described in that certain United States Patent recorded September 2, 1931 as Entry No. 48157 in Book 10 of Mining Deeds at Page 263 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying within the Southeast quarter of the Northeast quarter, and the Southeast quarter of Section 3, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-92
The **Reward Patented Lode Mining Claim, Lot No. 3792**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1901 as Entry No. 7771 in Book 3 of Mining Deeds at Page 267 of the official records in the office of the Wasatch County Recorder.

Parcel 7-93
The **Rose Bud Patented Lode Mining Claim, Lot No. 201**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 20, 1893 in Book N at Page 376 of the official records in the office of the Wasatch County Recorder.

Parcel 7-94
The **Rosebud Fraction Patented Lode Mining Claim, M. S. 7280**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded January 14, 1959 as Entry No. 78998 in Book 5 of Patents at Page 245 of the official records in the office of the Wasatch County Recorder.

Parcel 7-95
The **Sardsfield Patented Lode Mining Claim, Lot No. 196**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 5, 1973 as Entry No. 99154 in Book 88 at Page 125 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying in Section 36, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-96
The **Silver Age Patented Lode Mining Claim, Lot No. 114**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 27, 1884 in Book D at Page 624 of the official records in the office of the Wasatch County Recorder.

Parcel 7-97
The **Silver Shield Patented Lode Mining Claim, Lot No. 5128**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 25, 1924 as Entry No. 40764 in Book 9 of Mining Deeds at Page 585 of the official records in the office of the Wasatch County Recorder.

Parcel 7-98
The **Silver Standard Patented Lode Mining Claim, Lot No. 205**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 16,

1925 as Entry No. 41990 in Book 10 of Mining Deeds at Page 35 of the official records in the office of the Wasatch County Recorder.

Parcel 7-99
The **Silver Star Patented Lode Mining Claim, Lot No. 3768**, as the same is patented by that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 7-100
The **Small Hopes Patented Lode Mining Claim, Lot No. 4956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 21, 1904 in Book 5 of Mining Deeds at Page 251 of the official records in the office of the Wasatch County Recorder.

Parcel 7-101
The **Snowflake Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-102
The **Snow Flake No. 1 Patented Lode Mining Claim, M.S. 6810**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 11, 1944 as Entry No. 62197 in Book 10 of Mining Deeds at Page 523 of the official records in the office of the Wasatch County Recorder.

Parcel 7-103
The **Sofia Patented Lode Mining Claim, Lot No. 99**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded May 20, 1939 as Entry No. 57238 in Book 10 of Mining Deeds at Page 454 of the official records in the office of the Wasatch County Recorder.

Parcel 7-104
The **South Star Patented Lode Mining Claim, M.S. 5929**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded September 19, 1935 as Entry No. 52714 in Book 10 of Mining Deeds at Page 406 of the official records in the office of the Wasatch County Recorder, and recorded October 17, 1918 as Entry No. 28895 in Book F of Mining Deeds at Page 222 of the official records in the office of the Summit County Recorder.

Parcel 7-105
The **Spotted Fawn Patented Lode Mining Claim, Lot No. 205**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 16, 1925 as Entry No. 41990 in Book 10 of Mining Deeds at Page 35 of the official records in the office of the Wasatch County Recorder.

Parcel 7-106
The **Sultan Patented Lode Mining Claim, Lot No. 5087**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 12, 1906 as Entry No. 14791 in Book 5 of Mining Deeds at Page 384 of the official records in the office of the Wasatch County Recorder.

Parcel 7-107
The **Thurman Junior Patented Lode Mining Claim, M. S. 6899**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded March 5, 1973 as Entry No. 99152 in Book 88 of Mining Deeds at Page 119 of the official records in the office of the Wasatch County Recorder.

Parcel 7-108
The **Toronto Patented Lode Mining Claim, Lot No. 5068**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 7, 1929 as Entry No. 46219 in Book 10 of Mining Deeds at Page 205 of the official records in the office of the Wasatch County Recorder.

Parcel 7-109
The **Troy Patented Lode Mining Claim, Lot No. 4956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 21, 1904 in Book 5 of Mining Deeds at Page 257 of the official records in the office of the Wasatch County Recorder.

Parcel 7-110
The **Tug of War Patented Lode Mining Claim, Lot No. 5067**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 20, 1926 as Entry No. 42704 in Book 10 of Mining Deeds at Page 65 of the official records in the office of the Wasatch County Recorder.

Parcel 7-111
Those portions of the **Uncle Charles Patented Lode Mining Claim, Lot No. 448**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded October 2, 1928 as Entry No. 41381 in Book F of Mining Deeds at Page 398 of the official records in the office of the Summit County Recorder, which lie within Wasatch County.

Parcel 7-112
The **Valeo No. 5 Patented Lode Mining Claim, Lot No. 3766**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 30, 1904 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 7-113
The **Vancover Patented Lode Mining Claim, Lot No. 4956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 21, 1904 in Book 5 of Mining Deeds at Page 257 of the official records in the office of the Wasatch County Recorder.

Parcel 7-114
The **Viola Patented Lode Mining Claim, Lot No. 4956**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 21, 1904 in Book 5 of Mining Deeds at Page 257 of the official records in the office of the Wasatch County Recorder.

Parcel 7-115
The **Viola No. 2 Patented Lode Mining Claim, M.S. 5911**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded July 7, 1910 as Entry No.

20746 in Book 8 of Mining Deeds at Page 275 of the official records in the office of the Wasatch County Recorder.

Parcel 7-116
The **Virgo Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying within Government Lot 13, and the North half of the Southeast quarter of Section 4, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-117
The **Virgo No. 2 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

Parcel 7-118
The **Wildflower Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

Parcel 7-119
The **Wildflower No. 2 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying within Government Lot 13, and the North half of the Southeast quarter of Section 4, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-120
The **Wildflower No. 3 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

Parcel 7-121
The **Wildflower No. 4 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13, 1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

Parcel 7-122
The **Wildflower No. 11 Patented Lode Mining Claim, M.S. 6980**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded December 13,

1946 as Entry No. 65152 in Book 10 of Mining Deeds at Page 559 of the official records in the office of the Wasatch County Recorder.

EXCEPTING THEREFROM those portions lying within Government Lot 13, and the North half of the Southeast quarter of Section 4, Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 7-123
The **Woodchuck Patented Lode Mining Claim, Lot No. 3768**, as the same is patented by that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL 7, those portions lying within the following:

Exception 1:
Demised Premises No. 2 - Sections 26, 27, 34, & 35:
A parcel of land located in the Southwest Quarter of Section 26, the Southeast Quarter of Section 27, the Northeast Quarter of Section 34, and the Northwest Quarter of Section 35 all in Township 2 South, Range 4 East, Salt Lake Base and Meridian, Wasatch County, Utah described as follows: BEGINNING at a mound of stones with an ancient wood post lying down marking Cor. No. 1 of the Dew Drop claim (MS 7130) identical with Cor. No. 3 of the Lookout Mountain claim (MS 7130) and Cor. No. 4 of the Lookout Mountain No. 2 claim (MS 7130), said Cor. No. 1 being South 60°51'44" East 1,238.77 feet from the 1935 steel pipe cap marking county line Monument No. 51; said Cor. No. 1 also being South 67°26'06" West 2,299.38 feet from the 2016 Wasatch Co. aluminum pipe cap marking the Northeast Corner of Section 34, Township 2 South, Range 4 East, Salt Lake Base and Meridian, (Basis of Bearings for the herein described parcel being North 88°36'37" East 8,030.00 feet from the 2006 Wasatch/Summit Co. aluminum pipe cap marking the North Quarter Corner of Section 33 of said Township and Range to said Northeast Corner of Section 34, See Record of Survey Maps S-7976 & S-8175 both on file with the Summit County Recorder's office for PLSS, Mineral Survey, and County Line retracement information and for the Flagstaff LDP coordinate system projection parameters); thence along Line 3-4 of said Lookout Mountain North 06°12'30" West 532.79 feet to Line 2-1 of the Sitka claim (MS 7126); thence along said Line 2-1 South 89°28'41" East 598.62 feet to Cor. No. 1 of said Sitka; thence along Line 1-5 of said Sitka North 12°50'30" West 155.52 feet to Line 4-1 of said Lookout Mountain; thence along said Line 4-1 North 82°05'30" East 923.17 feet to Cor. No. 1 of said Lookout Mountain; thence along Line 1-2 of said Lookout Mountain South 06°12'30" East 35.86 feet to Cor. No. 2 of the Hornet claim (MS 7130); thence along Line 2-1 of said Hornet North 87°34'30" East 4.69 feet to Line 2-1 of the Ben Butler claim (MS 6642); thence along said Line 2-1 North 56°50'08" East 550.45 feet to Line 2-3 of the Riseing Star claim (Lot 170); thence along said Line 2-3 North 13°24'13" West 83.43 feet to Cor. No. 3 of said Riseing Star identical with Cor. No. 2 of the Mazzeppa No. 2 claim (Lot 169), said Cor. No. 3 being North 43°22'16" West 367.76 feet from said 2016 Wasatch Co. aluminum pipe cap marking the Northeast Corner of Section 34; thence along Line 2-3 of the Mazzeppa No. 2 continuing North 13°24'13" West 200.02 feet to Cor. No. 3 of said Mazzeppa No. 2; thence along Line 3-4 of said Mazzeppa No. 2 North 82°10'47" East 556.62 feet to Line 3-2 of the Ammie claim (Lot 202); thence along said Line 3-2 North 11°28'52" West 204.49 feet to Cor. No. 2 of said Ammie identical with Cor. No. 3 of the W.H.C. claim (Lot 200); thence along Line 3-4 of said W.H.C. continuing North 11°28'52" West 326.32 feet to Line 5-6 of the Lucy claim (Lot 152); thence along said Line 5-6 North 88°25'21" East 1,304.32 feet to Cor. No. 6 of said Lucy; thence along Line 6-1 of said Lucy North 46°49'39" West 729.86 feet to a point on Line 1-2 of the Gardo claim (Lot 165), said point

being the following two courses from an existing pipe cap marking Cor. No. 4 of said Gardo (1) South 08°28'52" East 612.36 feet along Line 4-1 of said Gardo to Cor. No. 1 of said Gardo; and (2) North 70°01'08" East 56.14 feet along said Line 1-2 of said Gardo; thence along said Line 1-2 North 70°01'08" East 1,113.32 feet to a point, said point being South 58°53'44" West 1,342.21 feet from Mineral Monument No. 2 as marked by an existing 3.25" aluminum cap; thence along the new boundary line of the herein described Demised Premises No. 2 the following three courses (1) South 23°34'24" East 632.68 feet; (2) South 19°38'20" West 2,414.77 feet; and (3) South 89°58'21" West 3,529.52 feet to the POINT OF BEGINNING.

Exception 2:
All Lots and Parcels contained within the MIDA Master Plat Development Subdivision, according to the official plat thereof, recorded June 30, 2020 as Entry No. 480155 in Book 1299 at Page 1122 of the official records in the office of the Wasatch County Recorder.

Exception 3:
All of Lot 1, Park Peak Assessment Plat Subdivision, according to the official plat thereof, recorded June 16, 2020 as Entry No. in Book 1297 at Page 534 of the official records in the office of the Wasatch County Recorder.

Exception 4:
Those portions contained in the Mayflower Village Roads Phase I Subdivision, according to the official plat thereof, recorded May 28, 2020 as Entry No. 478579 in Book 1294 at Page 1379 of the official records in the office of the Wasatch County Recorder.

Parcel 8: Blue Ledge Mining District (Wasatch County)

Parcel 8-1
The Buck Horn Patented Lode Mining Claim, M.S. 6923, as the same is more particularly described in that certain United States Mineral Entry Patent recorded = as Entry No. = in Book = at Page = of the official records in the office of the Wasatch County Recorder.

Parcel 8-2
The Rams Horn Patented Lode Mining Claim, M.S. 6923, as the same is more particularly described in that certain United States Mineral Entry Patent recorded = as Entry No. = in Book = at Page = of the official records in the office of the Wasatch County Recorder.

Parcel 9: (Wasatch County)

All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, and all of Parcels 1, 2, 3, 4, 5 and 6 in the MIDA Master Plat Development Subdivision, according to the official plat thereof, recorded June 30, 2020 as Entry No. 480155 in Book 1299 at Page 1122 of the official records in the office of the Wasatch County Recorder.

Parcel 10: (Wasatch County)

All of Lot 1, Park Peak Assessment Plat Subdivision, according to the official plat thereof, recorded June 16, 2020 as Entry No. in Book 1297 at Page 534 of the official records in the office of the Wasatch County Recorder.

Parcel 11: (Wasatch County)

All of Lot 1 - MIDA Parcel and All of Lot 2 - Air Force Parcel, of the **MIDA / Air Force Parcel Plat**, according to the official plat thereof, recorded December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874 of the official records in the office of the Wasatch County Recorder.

Parcel 12: (Wasatch County)

Parcel 12-1
The **Primrose Patented Lode Mining Claim, Lot No. 3768**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 12-2
The **Leonard Patented Lode Mining Claim, Lot No. 3768**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 13: (Wasatch County)

Parcel 13-1
The **Alma Patented Lode Mining Claim, Lot No. 3341**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 13-2
The **Dagmar Patented Lode Mining Claim, Lot No. 3372**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 13-3
The **King Ledge Patented Lode Mining Claim, Lot No. 3372**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 13-4
The **Mono Patented Lode Mining Claim, Lot No. 3341**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 13-5
The **North Star Patented Lode Mining Claim, Lot No. 3208**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 13-6
The **Toledo Patented Lode Mining Claim, Lot No. 3208,** as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 13-7
The **Torpedo Patented Lode Mining Claim, Lot No. 3208,** as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 13-8
The **Valeo Patented Lode Mining Claim, Lot No. 3208**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 13-9
The **Valeo No. 2 Patented Lode Mining Claim, Lot No. 3765**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38177 in Book 9 of Mining Deeds at Page 367 of the official records in the office of the Wasatch County Recorder.

Parcel 13-10
The **Valeo No. 3 Patented Lode Mining Claim, Lot No. 3765,** as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38177 in Book 9 of Mining Deeds at Page 367 of the official records in the office of the Wasatch County Recorder.

Parcel 13-11
The **Valeo No. 7 Patented Lode Mining Claim, Lot No. 3962**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38176 in Book 9 of Mining Deeds at Page 363 of the official records in the office of the Wasatch County Recorder.

Parcel 13-12
The **Valeo No. 8 Patented Lode Mining Claim, Lot No. 3964**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38176 in Book 9 of Mining Deeds at Page 363 of the official records in the office of the Wasatch County Recorder.

Parcel 13-13
The **Valeo No. 9 Patented Lode Mining Claim, Lot No. 3963**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry

No. 38176 in Book 9 of Mining Deeds at Page 363 of the official records in the office of the Wasatch County Recorder.

Parcel 13-14
The **Vega Patented Lode Mining Claim, Lot No. 3208**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 14: (Wasatch County)

All of Government Lots 1, 2 and 7; the Southeast quarter of the Northeast quarter; and the Southeast quarter of Section 2, Township 3 South Range 4 East, Salt Lake Base and Meridian.

Parcel 15: (Wasatch County)

All of Mayflower Village Roads Phase I Subdivision, according to the official plat thereof, recorded May 28, 2020 as Entry No. 478579 in Book 1294 at Page 1379 of the official records in the office of the Wasatch County Recorder.

Parcel 16: (Wasatch County)

A parcel of land situated in Government Lot 2 and Government Lot 3 of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, lying North and West of the Westerly right-of-way line of US Highway 40, for which the Basis of Bearing is North 00°15'52" East a distance of 2696.95 feet between the found monuments marking the West line of the Southwest Quarter of said Section 31, more particularly described as follows:

Beginning at the West Quarter Corner of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as evidenced by the found Bureau of Land Management 3.25 inch aluminum cap set in 1994; thence along the West line of the Northwest Quarter of said Section 31, North 00°13'42" West a distance of 399.02 feet, more or less, to a point of intersection of the West line of the Northwest Quarter of said Section 31 and a natural drainage course; thence, more or less, along said natural drainage course the following three (3) courses: (1) South 82°52'20" East a distance of 96.23 feet; (2) thence South 65°56'04" East a distance of 420.28 feet; (3) thence South 47°35'30" East a distance of 270.44 feet, more or less, to the Westerly right of way line of US Highway 40; thence along said Westerly right-of-way line the following four (4) courses: (1) South 20°00'55" West a distance of 34.65 feet to a point of intersection of said Westerly Right of Way line and the North line of Government Lot 3, said point being North 89°56'05" East a distance of 665.46 feet along the North line of said Government Lot 3 from the West Quarter Corner of said Section 31 (North 89°52'24" East a distance of 665.22 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (2) thence South 20°00'55" West a distance of 128.07 feet to a point 330 feet Offset from US Highway 40 Engineering Station 694.00 as evidenced by the found 3 inch brass cap monument set in 1988 (South 19°58'09" West a distance of 127.45 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (3) thence South 28°31'39" West a distance of 430.16 feet to a point 300 feet Offset from US Highway 40 Engineering Station 698.30 as evidenced by the found 3 inch brass cap monument set in 1988 (South 28°30'00" West a distance of 430.00 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (4) thence South 31°27'42" West a distance of 807.91 feet, more or less, to a

point of intersection of the said Westerly Right of Way line and of the West line of the Southwest Quarter of said Section 31, said point lies North 0.31 feet and East 0.19 feet of a point 340.6 feet Offset from US Highway 40 Engineering Station 706.3759 as evidenced by the found 3 inch brass cap monument set in 1988 (South 31°22'41" West a distance of 808.61 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); thence leaving said Westerly right of way line and running along the West line of the Southwest Quarter of said Section 31, North 00°15'52" East a distance of 1186.66 feet to the point of beginning of this Lot 2 description.

The above described land, also known as Lot 2, as shown on the Deer Springs at Jordanelle - Lot Line Rearrangement Plat (recorded as Entry No. 222708 at Page 279, Book 456 on March 22, 2000, of the official records of Wasatch County).

Wasatch County Tax Serial Number	Wasatch County Assessor's Parcel Number
OWC-0026-6-023-024	00-0012-4516
OWC-0026-H-023-024	00-0020-1442
OWC-0027-C-024-024	00-0020-0954
OWC-0028-0-024-024	00-0012-3211
OWC-0028-2-024-024	00-0013-8235
OWC-0029-0-025-024	00-0007-1477
OWC-0029-1-025-024	00-0012-3229
OWC-0030-1-025-024	00-0012-3336
OWC-0030-3-025-024	00-0013-0182
OWC-0030-4-025-024	00-0013-3251
OWC-0031-0-026-024	00-0007-1493
OWC-0031-1-026-024	00-0012-3237
OWC-0031-2-026-024	00-0012-3245
OWC-0031-4-026-024	00-0012-7535
OWC-0031-5-026-024	00-0012-7543
OWC-0031-6-026-024	00-0012-9259
OWC-0040-0-033-024	00-0007-1576
OWC-0040-2-033-024	00-0021-2823
OWC-0051-0-034-024	00-0007-1709
OWC-0051-1-034-024	00-0012-7527
OWC-0052-0-035-024	00-0007-1717
OWC-0052-1-035-024	00-0012-3260
OWC-0052-2-035-024	00-0021-2708
OWC-0052-3-035-024	00-0021-2769
OWC-0053-0-036-024	00-0007-1725
OWC-0053-1-036-024	00-0000-3892
OWC-0151-2-030-025	00-0012-1215
OWC-0153-1-031-025	00-0007-3044
OWC-0155-0-031-025	00-0007-3069
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OWC-0198-1-002-034	00-0000-4668
OWC-0198-3-002-034	00-0021-2709
OWC-0198-4-002-034	00-0021-2710
OWC-0199-0-003-034	00-0007-3606
OWC-0201-0-004-034	00-0007-3622
OWC-3113-0-034-024	00-0020-1737

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OWC-3116-0-034-024	00-0020-1740
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OWC-3118-0-034-024	00-0020-1742
OWC-3119-0-035-024	00-0020-1743
OWC-3127-0-035-024	00-0020-1750
OWC-3140-0-034-024	00-0020-2760
OWC-3141-0-033-024	00-0020-2761
OWC-3142-0-033-024	00-0020-2762
OWC-3143-0-033-024	00-0020-2763
OWC-3190-0-026-024	00-0020-2810
OWC-3191-0-026-024	00-0020-2811
OWC-3192-0-026-024	00-0020-2812
OWC-3199-0-026-024	00-0020-2819
OWC-3200-0-026-024	00-0020-2820
STA-0183-0-000-000	90-0000-1269
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0IX-L015-B-025-024	00-0021-4985
0IX-L016-0-025-024	00-0021-4986
0IX-L017-0-025-024	00-0021-4987
0IX-L018-0-025-024	00-0021-4988
0IX-L019-0-025-024	00-0021-4989
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0IX-L021-0-025-024	00-0021-4991
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0IX-P002-0-025-024	00-0021-4993

0IX-P003-0-025-024	00-0021-4994
0IX-P004-0-025-024	00-0021-4995
0IX-P005-0-025-024	00-0021-4996
0IX-P006-0-025-024	00-0021-4997
0IU-0001-033-024	00-0021-4969

* * *

EXHIBIT A-1
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Depiction of Mountainside Property]

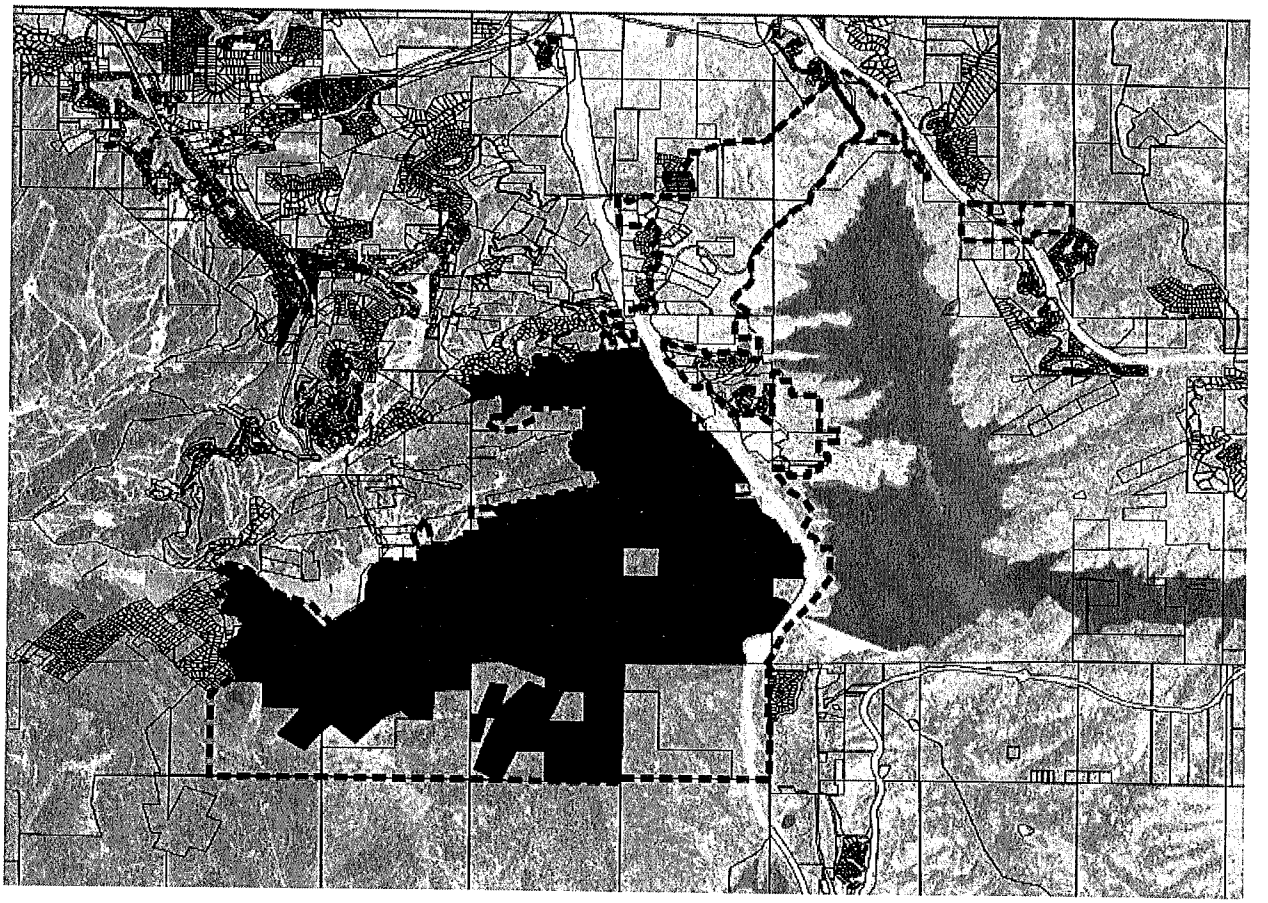


EXHIBIT B
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

Definitions

"**32 DOM**" has the meaning set forth in the preamble of this Agreement.

"**Acceptance Date**" means December 17, 2018, the date MIDA approved the BLXM Master Plan.

"**Additional Cure Period**" shall have the meaning set forth in Section 10.13.4.

"**Affiliate**" means with respect to any Person, any other Person that Controls, is Controlled by or is under common Control with such first Person.

"**Agreement**" has the meaning set forth in the preamble, as this Agreement may be amended, superseded or replaced from time to time.

"**All Season Trails**" shall mean a Trail shown on the Mountainside Resort Trail Plan that is paved or surfaced with another non-dirt surface.

"**Applicable Law**" shall have that meaning set forth in Section 4.2.1, including those laws identified in Exhibit C.

"**Assessment Parcel Map**" means a map of various parcels and patented mining claims of record owned by the Master Developer or its affiliated entities approved by MIDA for recording in the office of the Wasatch County Recorder for the purpose of consolidating various parcels of records and associated tax parcel numbers.

"**Benchmark Condition(s)**" has that meaning set forth in Section 3.11.

"**Blue Ledge Development Agreement**" means that certain Development Agreement and Project Area Consent, dated June 5, 2012, between Blue Ledge Resort, LLC and MIDA (as amended by that certain First Amendment to Development Agreement and Project Area Consent, dated January 15, 2015), as the same may be amended, supplemented or otherwise modified from time to time.

"**Blue Ledge Parcel**" means that certain real property identified as the "Property" in the Blue Ledge Development Agreement.

"**BLX**" has the meaning set forth in the preamble of this Agreement.

"**BLX Land**" has the meaning set forth in the preamble of this Agreement.

"**BLXM**" has the meaning set forth in the preamble of this Agreement.

"**BLX MWR**" has the meaning set forth in the preamble of this Agreement.

"**BLX Pioche**" has the meaning set forth in the preamble of this Agreement.

"**BLXM Master Plan**" has the meaning set forth in Recital H, as such BLXM Master Plan is amended by Master Developer and approved by MIDA from time to time. A copy of the BLXM Master Plan is on file with MIDA.

"**Bound Parties**" has the meaning set forth in Section 10.9.

"**Changes in the Law**" has that meaning set forth in Section 4.2.2.

"**Claim**" has the meaning set forth in Section 10.9.

"**Claimant**" has the meaning set forth in Section 10.10.

"**CLUDMA**" has the meaning set forth in Recital B.

"**Commercial Development ERU**" means a Development ERU attributed to a commercial use, including, without limitation, retail sales, food service and restaurant facilities, service buildings, community buildings and clubhouses, places of worship, laundromats, transit facilities, office uses, sales centers and governmental buildings.

"**Common Area**" means land which is dedicated to being used perpetually by the owners or the public for purposes consistent with the development of the Mountainside Resort and is or will be owned by an Owners Association, in common by applicable Project owners, or another entity as designated by the Master Developer. Open Space can also be a Common Area, but Open Space need not be a Common Area.

"**Completion Assurance**" has the meaning set forth in Section 3.23.

"**Condo Hotel**" means a facility that, among other condominium units, (a) has individual residential condominium units, (b) a front desk on site, or on an adjacent property, common hallways for room access, and (c) centralized hospitality management that is available to all residential condominium unit owners who elect to participate in a rental program.

"**Control**" means the ownership of more than twenty percent (20%) of the outstanding voting ownership interests of the Person in question or the power to direct the management of the Person in question.

"**County Interlocal Agreements**" has the meaning set forth in Recital E.

"**Day Skier Parking**" means permanent and/or interim parking facilities available for day skier parking, which Day Skier Parking shall be in such amounts and locations as Master Developer shall reasonably determine from time to time, whether on or off the Mountainside Property.

"**Default Notice**" has the meaning set forth in Section 6.1.1.

"**Density Determination**" means the following, each adopted in 1985:

a. Second Revised Findings and Order, revised August 2, 1985 and executed September 18, 1985 *In the Matter of the Application for Density Determination for Mayflower Mountain Resort*;

b. Density Determination Conditions for the Mayflower Mountain Resort, revised August 2, 1985 (the "Density Determination Conditions");

c. Notice of Density Standards dated September 18, 1985 and recorded in the Official Records on January 27, 1987 as Entry 1411141 in Book 187 at Page 319.

Together with, Wasatch County Resolution No. 02-31, Resolution Adopting Suspension of Density Determination Conditions for Mayflower Mountain Resort and Mayflower South in the Deer Valley Lakeside Resort Specially Planned Area (RSPA), Jordanelle Basin, Wasatch County, Utah, pursuant to which the Density Determination Conditions were suspended, waived or eliminated, subject to all of the terms, conditions, rights, densities, limitations, duties and obligations set forth therein.

"**Development Activity**" means the development, installation, construction and operation of buildings, amenities, infrastructure and other improvements pursuant to and consistent with Development Entitlements on the Mountainside Property.

"**Development Application(s)**" means an application to MIDA for development of a portion of the Mountainside Property, including, but not limited to applications for site plan, subdivision, building permit or other permit, certificate or authorization from MIDA required for Development Activity to occur with respect to a given Project.

"**Development Entitlements**" means the BLXM Master Plan and the Pioche Master Plan and all other plans, permits, consents, commitments, or agreements by or with MIDA necessary for the commencement and completion of Development Activity for or with respect to the Mountainside Resort, including those previously approved Development ERUs, commercial densities and other development rights, entitlements and parameters set forth in Section 3.2.

"Development ERU" means the number of residential equivalents used to determine density based on sewer, water and square footage of a structure. For purpose of this Agreement, Development ERUs are categorized as Residential Development ERUs, Resort-Lodging Development ERUs and Commercial ERUs.

"**Development ERU—Density Allocation Schedule**" means the schedule of Development ERUs that are allowed to be developed on the Mountainside Property and the Mayflower Mountain Lands, which schedule is attached hereto as Exhibit D.

"**Development Fund**" has the meaning set forth in Recital F.

"**Development Lot**" has the meaning set forth in Section 3.29.2.

"**Director**" means the Executive Director of MIDA, or his or her designee.

"**District Interlocal Agreements**" has the meaning set forth in Recital G.

"**Donation Agreement**" means that certain Donation Agreement of even date herewith between BLX MWR Hotel LLC, an Affiliate of Master Developer, and MIDA.

"**DRC**" means the Development Review Committee established by MIDA pursuant to the MIDA Development Standards, as set forth in Recital H.

"**East Overlook Improvements**" means those certain improvements planned for the East Overlook Parcel and shown on the depiction of the East Overlook Parcel reviewed by the DRC on April 21, 2020,

together with such other improvements as are installed on the East Overlook Parcel from time-to-time pursuant to subsequently obtained development approvals pursuant to the MIDA Development Standards.

"**East Overlook Parcel**" means that certain real property identified at the "East Overlook Parcel" on Exhibit P.

"**East Side**" has the meaning set forth in Recital E.

"**East Side Interlocal Agreement**" means that certain Interlocal Cooperative Agreement-East Side, dated December 17, 2018 and amended by that certain First Amendment to Interlocal Cooperative Agreement-East Side, dated March 18, 2020, between Wasatch County and MIDA as set forth in Recital E, as such agreement is amended, superseded or replaced from time to time.

"**East Side Frontage Road Improvements**" means those frontage road improvements to be constructed by MIDA pursuant to Section 3.8(c), which East Side Frontage Road Improvements include: (a) the construction of a roadway running from the western opening of the Southern Portal of the Portal Improvements and continuing thereafter until it connects with Highway 319 on the East Side; and (b) frontage road improvements commencing on the western opening of the Northern Portal of the Portal Improvements and continuing thereafter on the East Side and connecting to the Jordanelle Parkway.

"**Effective Date**" has that meaning set forth in Section 1.1.

"**Eligible Expenses**" has the meaning set forth in the Tax Sharing and Reimbursement Agreement.

"**Eligible Mortgagee**" has the meaning set forth in Section 10.13.3.

"**Emergency Vehicle Access Standards**" means those standards set forth in Note 8 of the Village Core Roadway Plat, which standards are replicated on Exhibit Q attached hereto, as the same may be amended, superseded, supplemented or replace from time to time by MIDA and the Master Developer.

"**Estoppel Certificate**" has the meaning set forth in Section 10.13.7.

"**Existing Fee Schedule**" has the meaning set forth in Section 3.16.4.

"**Grading Permit**" means such permits as are required by MIDA for any sort of clearing, grading, or excavation, or any other permit enabling the disturbance of the land from its current condition; provided, however, MIDA hereby acknowledges that a Grading Permit is not required by MIDA for removal of vegetation or other clearing of land in connection with the creation of fire breaks or other defensible spaces.

"Housing Program" means that certain Housing Program attached hereto as Exhibit H, as the same may be amended, superseded, supplemented or replaced from time-to-time by MIDA and the Master Developer. The Housing Program is a further refinement of that certain "Moderate Income/Employee Housing Program," dated as of November 21, 2018.

"**JSPA Code**" means Chapter 16.41 of the Wasatch County Development Code in effect as of November 20, 2015.

"**JSSD**" means the Jordanelle Special Service District or any successor thereto or other similar entity providing culinary water and sanitary sewer services to the Mountainside Resort.

"**JSSD Parcel**" means that certain real property identified as the "JSSD Parcel" on Exhibit P.

"**Lenders**" has the meaning set forth in Section 3.32.

"**Master Association**" means the Master Association contemplated by the Master CC&R's.

"**Master CC&Rs**" means that certain Master Declaration of Covenants, Conditions, Restrictions and Easements dated as of August 20, 2020, as amended, superseded, supplemented or replaced from time to time.

"**Master Density List**" has the meaning set forth in Section 3.24.

"**Master Developer**" has the meaning set forth in the preamble, and shall include Master Developer's successors in interest and assigns of all of Master Developer's rights and obligations under this Agreement as provided in Section 8.1, but does not include a Project Developer unless expressly so provided in an instrument signed by Master Developer and recorded in the Official Records.

"**Master Development Plan**" means and master development plan approved with respect to the Mountainside Resort pursuant to the MIDA Development Standards including, without limitation, the BLXM Master Plan and the Pioche Master Plan (as updated by the North Mayflower Master Plan).

"**Master Infrastructure Improvements**" has the meaning set forth in Section 3.17.

"**Maximum Residential Density**" means the maximum number of Residential Development ERUs that can be developed or otherwise located on: (a) that portion of the Mountainside Property that is included within the BLXM Master Plan in accordance with the requirements of, each as applicable, the MIDA Development Standards, the West Side Interlocal Agreement, and the BLXM Master Plan; and (b) the that portion of the Mountainside Property that is not included within the BLXM Master Plan, but is described in Section 3.2.2, including, specifically, the Mayflower Mountain Lands. Master Developer is entitled to use all Maximum Residential Density subject to compliance with Applicable Law, including the MIDA Development Standards. Unused density may not be transferred or sold off of the Mountainside Property but may be transferred in connection with conservation efforts on the Mountainside Property, as contemplated in Section 3.26. Resort-Lodging Development ERUs and Commercial ERUs are not counted against Maximum Residential Density.

"**Mayflower Mountain Lands**" means the SITLA, Lincoln, Valeo, Primrose, Rams Horn and Buck Horn properties, together with such other properties as were owned by BLXM as of December 17, 2018, but were not included within the BLXM Master Plan. The Mayflower Mountain Lands are more particularly defined and described on Exhibit P.

"**Mayflower Village Drive**" means the main entrance road to and through the Village Core identified on the Village Core Roadway Plat as "Mayflower Village Drive."

"**MDP**" has the meaning given to such term in the MIDA Development Standards.

"**MIDA**" has the meaning set forth in the preamble to this Agreement.

"**MIDA Act**" means the Military Installation Development Authority Act, Utah Code Ann. § 63H-1-101 *et seq.*, as amended, superseded or replaced from time to time.

"**MIDA Board**" means the governing board of MIDA, as provided in the MIDA Act.

"**MIDA Development Standards**" means the "Development Standards and Guidelines for the MIDA Control Area" adopted by MIDA for the MIDA Project Area on or about October 1, 2019 pursuant to Resolution 2019-13 (as supplemented by the MIDA Materials and Design Handbook, adopted pursuant to Resolution 2019-18, and as amended on May 26, 2020 by Resolution 2020-15). As of the Effective Date, the DRC is in the process of reviewing for recommendation to the MIDA Board "Conceptual Subdivision Plat Requirements" and clarifications to the definition of "Infrastructure Improvements" and the process pursuant to which such improvements are approved by MIDA; once approved by the MIDA Board, such amendments shall be part of the MIDA Development Standards and included in Applicable Law.

"**MIDA Financing Support**" has the meaning set forth in Section 3.33.

"**MIDA Project Area**" means those portions of Wasatch County or, if approved in the future by MIDA and Park City Municipal Corporation, Summit County that are included in the "**Project Area**," as the said term is defined in the Tax Sharing and Reimbursement Agreement, including any future land that may be added thereto from and after the Effective Date pursuant to the terms of the said Tax Sharing and Reimbursement Agreement.

"**MIDA's Exclusive Authority**" has the meaning set forth in Recital B.

"**MIDA's Future Laws**" means the laws, ordinances, policies, standards, guidelines, directives, procedures, and processing fee schedules of MIDA which may be in effect in the future at any time when a Development Application is submitted and which do not apply to such Development Application, because of the Vested Rights described in Section 4.1, except as may be provided in Sections 3.4, 4.2.2 or 4.2.3.

"**Military Option Parcel**" has the meaning set forth in the Donation Agreement.

"**Mining Uses**" means the use of all or any portion of the Mountainside Property for commercial extraction or production of sand, gravel, aggregate or any other earth product for export off of the Mountainside Property. For purposes of clarity, "Mining Uses" do not include work performed by Master Developer or others in connection with the remediation of pre-existing historical mining claims, activities and uses, nor do "Mining Uses" include the mining and use on the Mountainside Property of sand, gravel and other aggregate.

"**Mortgage**" has the meaning set forth in Section 10.13.1.

"**Mortgagee**" has the meaning set forth in Section 10.13.1.

"**Mountain Improvements**" has the meaning set forth in the Tax Sharing and Reimbursement Agreement.

"**Mountainside Property**" means the parcel or parcels of land identified in Recital C and which are the subject of this Agreement and which are more particularly described in Exhibit A.

"**Mountainside Resort**" has the meaning set forth in Recital D and means the Mountainside Property and the development on the Mountainside Property that is the subject of this Agreement, including all Projects approved by MIDA and any ancillary and additional improvements or endeavors incident to the development of the Mountainside Resort or any such Project, as applicable.

"**Mountainside Resort Land Use Plan**" means that certain land use plan attached hereto as Exhibit R, as the same may be amended, superseded, supplemented or replaced from time-to-time by MIDA and the Master Developer.

"**Mountainside Resort Parking Plan**" means that certain parking plan attached hereto as Exhibit L, as the same may be amended, superseded, supplemented or replaced from time-to-time by MIDA and the Master Developer.

"**Mountainside Resort Master Trail Plan**" means that certain Mountainside Resort Master Trail Plan attached hereto as Exhibit K, as the same may be amended, superseded, supplemented or replaced from time-to-time by MIDA and the Master Developer.

"**Mountainside Resort Utility and Infrastructure Plan**" means that certain utility and infrastructure plan attached hereto as Exhibit S, as the same may be amended, superseded, supplemented or replaced from time-to-time by MIDA and the Master Developer.

"**Municipal Services**" means those normal and customary municipal and county services identified as "Municipal Services" in the West Side Interlocal Agreement. Municipal Services does not include Permitting and Inspection Services, nor does it include PID Provided Services.

"**MV Transit Facility**" has the meaning set forth in Section 3.9.

"**MWR Hotel**" means a condominium hotel project to be developed within the Mountainside Resort with certain rooms available for use on a discounted basis by active duty and retired military personnel in conjunction with MIDA, which MIDA Hotel will be owned, in part, by MIDA and which portion owned by MIDA will be leased to BLX MWR.

"**MWR Lease Agreement**" means that certain MWR Condominium Hotel Lease Agreement between BLX MWR Hotel LLC and MIDA, dated August 21, 2020, as amended, superseded, supplemented or replaced from time-to-time.

"**MWR Parcel**" means, Lot 1 (MIDA Parcel), MIDA / Air Force Parcel Plat, according to the official plat thereof, on file and of record in the office of the Wasatch County Recorder, recorded on December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874-883.

"**Northern Portal**" means the transportation portal located North of the Mayflower Exit on US Highway 40, as the same is being reconstructed as part of the Portal Improvements.

"**North Mayflower Master Plan**" means a master plan for the portion of the Mountainside Resort located generally north of the property subject to the BLXM Master Plan, which Mayflower North Master Plan is presently in the approval process with MIDA pursuant to the MIDA Development Standards. Once approved, the Mayflower North Master Plan replaces the Pioche Master Plan; provided, however, such replacement shall not reduce the number of Development ERU's allocated to the Pioche Property pursuant to the West Side Interlocal Agreement.

"**Official Records**" means the official records of the Wasatch County Recorder.

"**Open Space**" means land which is not covered by dwellings or by pavement or other impervious material (except for public plazas and Trails which may be covered with pavement or other impervious surfaces) which is dedicated to be used perpetually by the owners or the public for Open Space Purposes

(as defined below) and is or will be owned by an Owners Association or another entity as designated by the Master Developer.

"**Open Space Purposes**" means the use of Open Space for year round recreational purposes (e.g., Trails, ski runs, ski lifts, mountain operations, common area plazas, fields and other outdoor recreation facilities), conservation, grazing, view shed and other similar purposes.

"**Owners Association**" means, as applicable, the Resort Foundation, the Master Association or a Project specific owners association, in each case formed in accordance with state and federal law and authorized to impose fees or assessments sufficient to perform the maintenance obligations assumed or otherwise required to be performed by such Owners Association in accordance with its governing documents.

"**Party**" and "**Parties**" have the meanings set forth in the preamble of this Agreement.

"**Periodic Update(s)**" has the meaning set forth in Section 3.25.2.

"**Permitting and Inspection Services**" means government approvals or services for which a government permit or inspection is typically required and a corresponding fee is charged by the governmental entity under applicable ordinances to pay for the service provided, including footing and foundation permits, building permits, certificates of occupancy, business licenses and such customary plan review and inspection services as are customarily and uniformly provided pursuant to or in connection with the issuance thereof.

"**Person**" means an individual or other legal entity, including a partnership, limited liability company, corporation, PID, special improvement district or other governmental or quasi-governmental authority.

"PID" means a Public Infrastructure District formed by MIDA for the portion of the MIDA Project Area governed by the West Side Interlocal Agreement pursuant to the requirements of the PID Act, and includes but is not limited to, the Mountainside Public Improvement District.

"PID Act" means the Utah Public Infrastructure Act set forth in Utah Code Ann. Section 17B-2a-12, et seq., as amended.

"PID Provided Services" means those services provided to the Mountainside Resort by the Village PID.

"**Pioche Master Plan**" means that certain 2010 Master Plan, Density Determination, and Physical Constraints Analysis, as referenced in that certain Pioche – South Master Plan Agreement, dated June 21, 2010, and recorded in the office of the Wasatch County Recorder on July 8, 2010 and Entry No. 360688 at Book 1017, as the same may be amended, supplemented or otherwise modified from time to time, including, without limitation, such amendments and other modifications as are approved pursuant to the Mayflower North Master Plan. The Pioche Master Plan was approved by Wasatch County but it has not been separately approved by MIDA; provided, however, MIDA acknowledges that Master Developer and/or BLX Pioche shall have the vested right to development the number of Development ERU's allocated to the Pioche Property pursuant to the West Side Interlocal Agreement.

"**Pioche Property**" means that certain real property identified as the "Pioche Property" on Exhibit P.

"**Portal Improvements**" means the two (2) transportation portals, to be constructed by UDOT, providing vehicular connectivity under US Highway 40 between the East Side and the West Side, one of which is to be located near the existing Deer Crest Gondola and the other of which is to be located near the existing utility underpass, and both of which shall be in locations determined by UDOT. Portal Improvements shall also include the roads and related utilities connecting such portals to applicable public roads on both sides of US Highway 40.

"**Project(s)**" means a specifically delineated development project located on a portion of the Property, which delineation shall be accomplished by one or more Subdivision Plats or Project Site Plans.

"**Project Area Transit**" has the meaning set forth in Section 3.9.

"**Project Developer**" means the developer of a Project, and may include Master Developer's successors in interest and assigns of Master Developer's rights and obligations under this Agreement pertaining to one or more Projects to be developed by such Project Developer.

"**Project Site Plan**" has that meaning set forth in Section 3.30.

"**Project Site Plan Approval**" has that meaning set forth in Section 3.30.

"**Project Specific Development Agreement**" means a development agreement entered into between MIDA and a Project Developer with respect to a specific Project within the Mountainside Resort.

"**Project Specific Improvements**" means, as further described in Section 3.18, all infrastructure improvements intended for public or private use and located within the boundaries of a Project, including but not limited to sewer lines, water lines, roads, electricity, gas, communications, detention basins, Trails, recreational facilities, and, as applicable, Common Areas for the Project and Open Space.

"**Project Specific Parking Study**" has the meaning set forth in Section 3.25.1.

"**Public Entity**" means MIDA, Wasatch County, a PID, a special or local service district, or another public entity.

"**Residential Development ERU**" means a Development ERU attached to a residential use, including any single-family or multi-family residence than an end-user may buy to occupy or rent, including but not limited to: condominium units, lofts, townhomes or other multiplex units, single-family residences, cottages and mother-in-law units, but specifically not including: (a) affordable/employee/workforce housing (as described in the Housing Program, as defined herein); (b) any Resort-Lodging Development ERU; and (c) any Commercial Development ERU. For avoidance of doubt, a Residential Development ERU shall not include any hotel, commercial or other hospitality or recreational use, but does include any residential condominium units located within a Condo Hotel. Residential Development ERUs are calculated with respect to the size of a given dwelling (excluding garage space in the case of a single-family residence, and excluding common spaces and garages in the case of any condominium or other multi-family residences) as follows:

Residential Development ERUs	
Dwelling Size	**ERUs**
Up to 500 sf	0.25
501 sf to 700 sf	0.33
701 sf to 1,000 sf	0.50

1,001 sf to 1,500 sf	0.75
Over 1,500 sf	1.00

"**Respondent**" has the meaning set forth in Section 10.10.

"**Resort Foundation**" means the Mountainside Resort Foundation, a non-profit organization created to ensure the preservation and protection of the Mountainside Resort's environment, cultural, history, and recreational values. The Resort Foundation functions include, but are not limited to, management of certain preserves and open spaces at or in the vicinity of the Mountainside Resort, educational programs for Owners, Guests, and members of the public, the implementation of development and land management plans in coordination with the Master Developer and the Master Association, and providing support to regional environmental, educational, athletic, cultural, and housing endeavors. The Resort Foundation's mission is to serve as a catalyst for community enhancement by providing leadership and funding which will enrich the quality of life in the Mountainside Resort. The foundation is intended to cultivate the region's vital spirit and augment private business and public initiatives.

"**Resort-Lodging Development ERU**" means a Development ERU attached to a unit created for transient lodging or multi-family occupancy and rented out on a commercial basis, including but not limited to hotel and motel rooms, apartments, dormitory rooms, work force housing, yurts and multiplex units.

"**RH Mayflower**" has the meaning set forth in the preamble of this Agreement.

"**Reviewer(s)**" means a professional retained by MIDA for the purpose of reviewing Development Applications for and on behalf of MIDA submitted with respect to the West Side, including all Development Applications submitted by Master Developer and Project Developers with respect to one or more Projects.

"**Soft Surface Trail**" shall mean a Trail shown on the Mountainside Resort Trail Plan that is not paved or surfaced with concrete, cement, asphalt or other non-permeable surface.

"**Shared Parking Program**" has the meaning set forth in Section 3.25.2.

"**Ski Related Improvements**" has the meaning set forth in Section 3.34.

"**Soft Surface Trail Construction Permit**" means a permit issued by the Director pursuant to which the Director approves the construction of a Soft Surface Trail that is not identified on the Mountainside Resort Trail Plan prior to any applicable approval of a Subdivision Plat or Project Site Plan.

"**Southern Portal**" means the portal or underpass located near the southern-end of the Mountainside Resort designed to provide vehicular east to west access under US Highway 40.

"**Standard Parking Requirements**" has the meaning set forth in Section 3.25.1.

"**Subdivision Plat**" has the meaning set forth in Section 3.29.1.

"**Tax Sharing and Reimbursement Agreement**" means that certain agreement entered into between MIDA, Master Developer and certain Master Developer Affiliates identified therein, dated as of August 19, 2020, as such agreement may be amended, supplemented, superseded or replaced from time to time.

"**Term**" has the meaning set forth in Section 1.2.

"**Trail**" shall mean a Soft Surface Trail or an All Season Trail.

"**Tram Board**" has the meaning set forth in Section 3.34.

"**Transfer Acknowledgment**" has the meaning set forth in Section 8.1.

"**Transfer Deed**" has the meaning set forth in Section 3.29.4.

"**UDERR**" means the Utah Division of Environmental Response and Remediation.

"**UDWQ**" means the Utah Division of Water Quality.

"**USACE**" means the United States Army Corps of Engineers.

"**VCP**" means the Voluntary Clean-up Program applicable to the Mountainside Property, or applicable portions thereof, and administered by the UDERR and UDWQ.

"**Village Core**" means the central portion of the Mountainside Resort generally surrounding the Mayflower Village Drive and generally within the ¼ mile walking radius of the center of the Village Core.

"**Village Core Roadway Plat**" means a subdivision plat titled "Mayflower Village Roads Phase I" approved by MIDA pursuant to Resolution 2020-05 for the purpose of establishing the main roadways in the Village Core, a copy of which is attached hereto as Exhibit T.

"**Village PID**" means the MIDA Mountain Village Public Infrastructure District created by MIDA pursuant to the PID Act and providing certain Municipal Services to the Mountainside Resort pursuant to Section 3.16.1.

"**Water and Sewer Services Agreement**" means that certain Water and Sewer Development and Service Agreement, dated February 7, 2020, between Master Developer and its Affiliates and JSSD pursuant to which Master Developer and its Affiliates and JSSD identify the terms pursuant to which water and sanitary sewer and culinary water services will be provided to the Mountainside Resort, including the identification of such improvements as Master Developer is required to install in connection with the development of the Mountainside Resort and the timing of such installations.

"**West Side**" has the meaning set forth in Recital E.

"**West Side Frontage Road Improvements**" means the frontage road improvements to be constructed by Master Developer on the West Side pursuant to Section 3.8.3 that connect to the East Side Frontage Road Improvements at the western opening of the Portal Improvements.

"**West Side Interlocal Agreement**" means that certain Interlocal Cooperative Agreement-West Side, dated December 17, 2018 and amended by that certain First Amendment to Interlocal Cooperative Agreement-West Side, dated March 18, 2020, between Wasatch County and MIDA as set forth in Recital E, as such agreement is amended, superseded or replaced from time to time.

EXHIBIT C
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Interpretations]

As used in this Agreement, unless a clear contrary intention appears:

(a) any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other gender;

(b) the words "hereof", "hereby", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) any reference to Articles, Sections and Exhibits are, unless otherwise stated, references to Articles, Sections and Exhibits of or to this Agreement, and references in any Section or definition to any clause means such clause of such Section or definition;

(d) the headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;

(e) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended, modified, superseded, replaced or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement;

(f) the Exhibits and Schedules hereto form an integral part of this Agreement and are equally binding therewith, and any reference to "this Agreement" shall include such Exhibits and Schedules;

(g) references to a Person shall include any permitted assignee or successor to such Party in accordance with this Agreement and reference to a Person in a particular capacity excludes such Person in any other capacity;

(h) if any period is referred to in this Agreement by way of reference to a number of days, the days shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a business day in which case the last day shall be the next succeeding business day;

(i) the use of "or" is intended to be exclusive and lists alternatives while the use of "and" is intended to be exclusive and each listed item is required;

(j) references to "$" or to "dollars" shall mean the lawful currency of the United States of America;

(k) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted and

EXHIBIT D
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Development ERU—Density Allocation Schedule]

Mountainside Property	
Residential Development ERUs	**1,498**
Resort-Lodging Development ERUs	**non-restricted**
Commercial Development ERUs	**non-restricted**
MWR Parcel and Alt. USAF Parcel	
Residential Development ERUs	**62**
Resort-Lodging Development ERUs	***non-restricted***
Commercial Development ERUs	***non-restricted***
Pioche Property	
Residential Development ERUs	**432**
Resort-Lodging Development ERUs	***non-restricted***
Commercial Development ERUs	***non-restricted***
JSSD Parcel	
Residential Development ERUs	**8**
Resort-Lodging Development ERUs	***non-restricted***
Commercial Development ERUs	***non-restricted***
Mayflower Mountain Lands	
Residential Development ERUs	**200**
Resort-Lodging Development ERUs	***non-restricted***
Commercial Development ERUs	***non-restricted***
East Overlook Parcel	
Residential Development ERUs	**1**
Resort-Lodging Development ERUs	***non-restricted***
Commercial Development ERUs	***non-restricted***
TOTAL RESIDENTIAL DEVELOPMENT ERUs	**2,201**

Blue Ledge	*Separate Development Agreement*
Residential Development ERUs	157
Resort-Lodging Development ERUs	*non-restricted*
Commercial Development ERUs	*non-restricted*

EXHIBIT E
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[MWR Approvals]

Resolution 2019-02, A RESOLUTION OF THE MILITARY DEVELOPMENT AUTHORITY ("MIDA") APPROVING THE SITE PLAN FOR THE MWR HOTEL IN THE MILITARY RECREATION FACILITY PROJECT AREA, pursuant to the recommendation of the DRC and associated Staff Report, dated March 26, 2019.

Resolution 2020-06, A RESOLUTION OF MIDA APPROVING THE CONDOMINIUM DECLARATION AND CONDOMINIUM PLAT FOR THE MWR HOTEL IN THE MILITARY RECREATION FACILITY PROJECT AREA, pursuant to the recommendation of the DRC and associated Staff Report, dated March 17, 2020.

MIDA Infrastructure Permit--MWR Conference Hotel (Permit No. 19-014), approved June 24, 2020.

MIDA Building Permit--MWR Conference Hotel (Permit No. 19-526)

EXHIBIT F
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[West Side Frontage Road Improvements]

The Parties anticipate that the West Side Frontage Road Improvements will ultimately be accepted by Wasatch County for maintenance as Class B Roads. The Parties further agree that the general description of the West Side Frontage Road Improvements set forth below is consistent with the anticipated traffic demand for the Mountainside Resort and adjoining properties as reflected in the various traffic studies prepared in connection with the Mountainside Resort. Accordingly, the Parties agree that they will use commercially reasonable efforts to cause Wasatch County to accept the standards set forth below for the West Side Frontage Road Improvements as the applicable build-out standard for the subject roadways; provided that the Parties acknowledge that the engineering standards for the West Side Frontage Road Improvements are ultimately subject to final approval by the County pursuant to applicable Wasatch County ordinances.

North Portal Improvement Area: Connector Road to Deer Hollow Road as shown on Exhibit F-1 (the "North Portal Connector Road").

The North Portal Connector Road will be a newly constructed road connection between the North Portal and Deer Hollow Road. Limits of construction begin at the North Portal's western edge and extend to Deer Hollow Road a distance of approximately 1,700 linear feet.

Specification and improvements will be as follows:

i) Roadway Pavement:
   - 35' of pavement, (2 travel lanes @ 12' wide each with 5'paved shoulder.)
   - 12' clear zone for snow storage and emergency
   - 5' Roadside drainage swale (in lieu of concrete curb).
   - 66' Right of Way

ii) Trails:
   - 10' wide paved multi-use trail detached from roadway connecting Deer Hollow Drive to the western edge of the North Portal.

iii) Transit bump-out at or close to the Jordanelle Gondola (on public land).

iv) A streetlight will be installed at the entrance to Pioche Development off of Deer Hollow Road, however no other streetlight or other lighting is specified, intended or required.

v) No utility installations or relocations have been specified in the current plan set other than the relocation of the JSSD raw/culinary water line. Developer will work with utility providers and provide reasonable improvements as required.

South Frontage Road Improvement Area: Connector Road to Mayflower Mine Road and South Portal as shown on Exhibit F-2 (the "South Portal Connector Road").

The South Portal Connector Road is the reconstruction and enhancement of the existing frontage road and the construction of a connection to the South Portal. Limits of construction begin at the South Portal's western side and extend to the Mayflower Mine Road, together with the expansion and improvement of Mayflower Mine Road for a distance of approximately 1,250 linear feet.

Specification and improvements will be as follows:

i) Roadway Pavement:

- Increase pavement width on Mayflower Mine Road from 28' to 35' to accommodate turn lanes into the South Portal, Mayflower Village Road and the Mayflower Interchange.
- 5' Roadside drainage swale (in lieu of concrete curb).

ii) Trails:

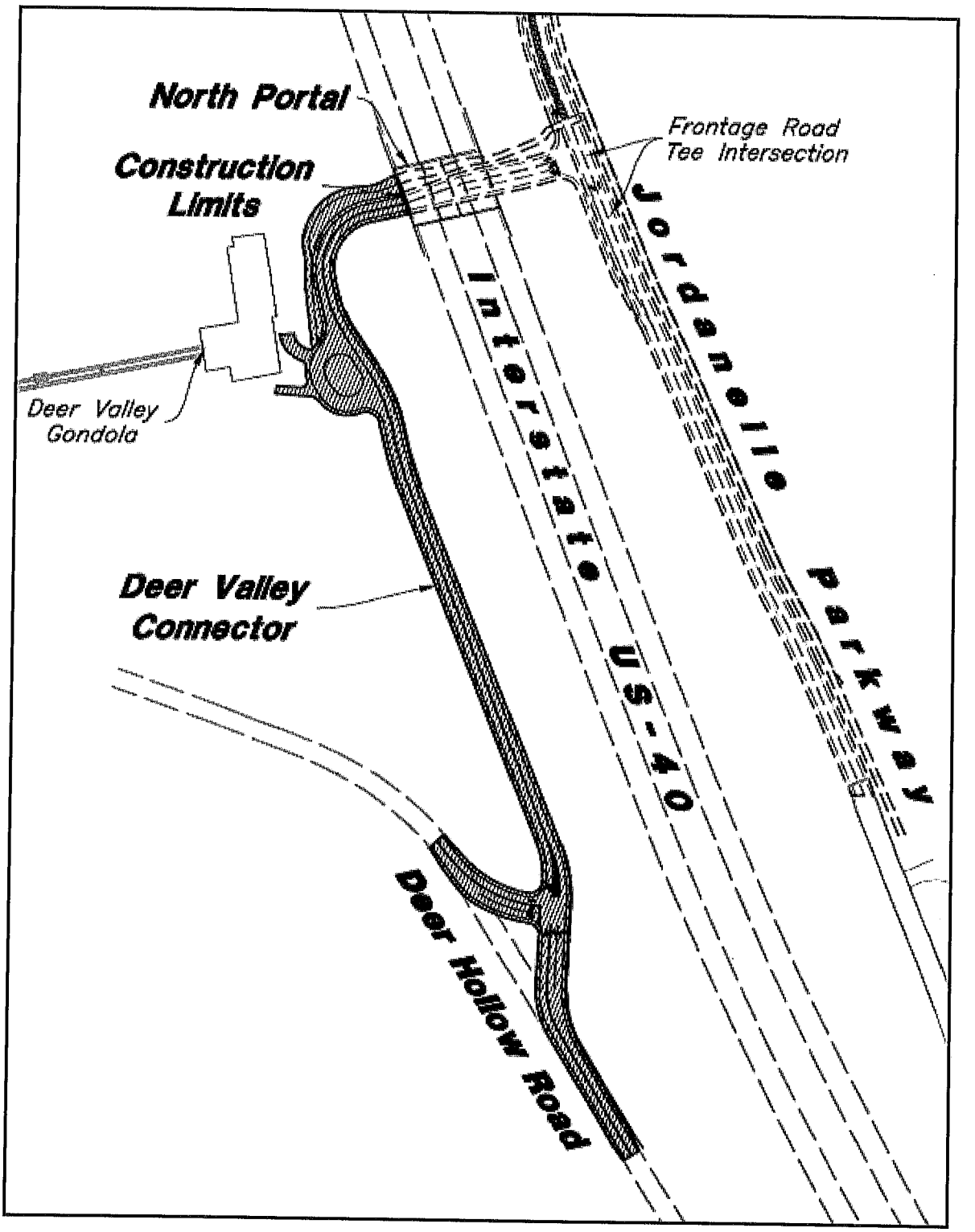
- 10' wide paved multi-use trail detached from roadway adjacent to Mayflower Development and connecting to the South Portal trail at construction limit on western edge of the South Portal.

iii) No streetlights are specified, intended or required.

iv) No utility installations or relocations have been specified. Developer will work with utility providers and provide reasonable improvements as required.

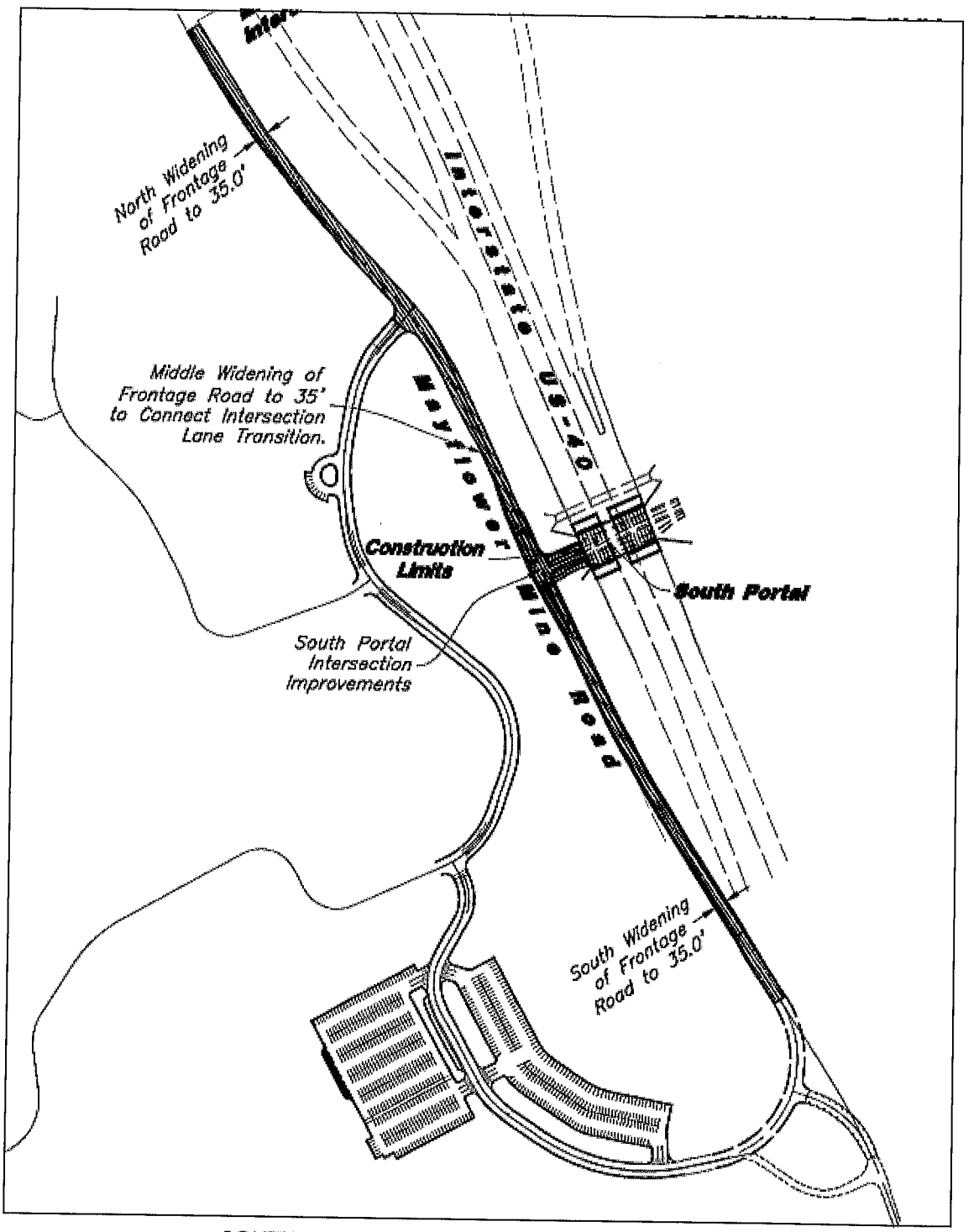
Rights-of Way: Pursuant to Section 63H-1-207 of the Utah Code, MIDA shall obtain from UDOT and any other necessary parties the necessary rights-of-way for the West Side Frontage Road Improvements. It is not currently contemplated that additional rights-of-way will be required from the BLX Entities.

Exhibit F-1



NORTH PORTAL IMPROVEMENT AREA

Exhibit F-2



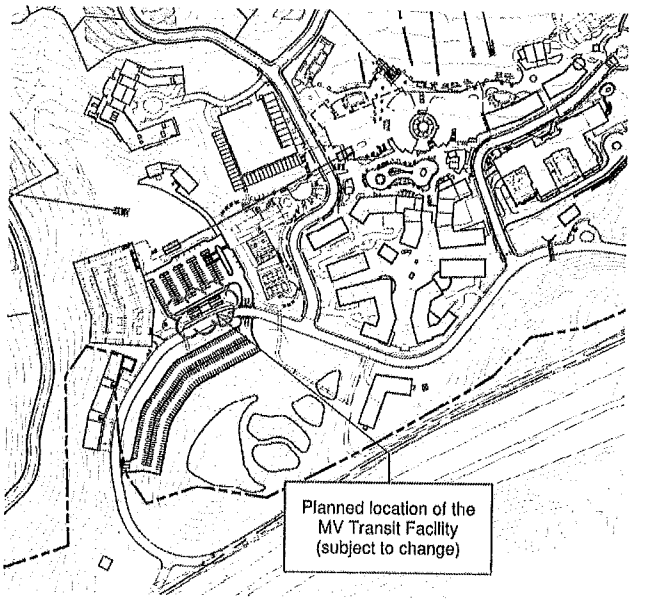
SOUTH FRONTAGE ROAD IMPROVEMENT AREA

EXHIBIT G
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

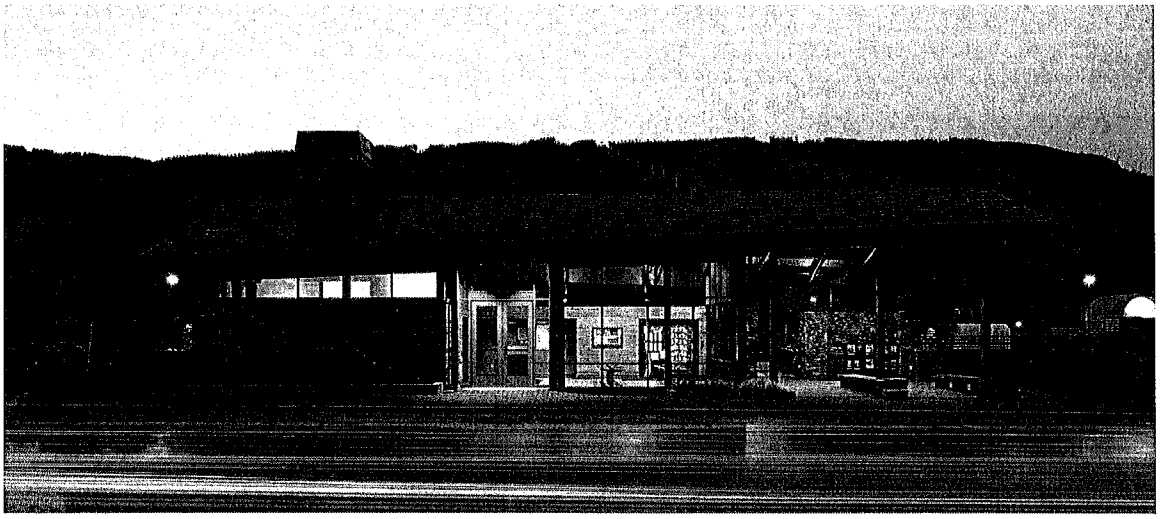
[MV Transit Facility]

The MV Transit Facility is envisioned to be a single-story building approximately 900 to 1,400 square feet in size. Utilizing a simple yet inviting design, the MV Transit Facility is intended to provide protection from the elements while at the same time maintaining a sense of openness and connection to the Resort. The MV Transit Facility will have outdoor and indoor seating for transit participants with applicable signage, lighting, heating, vending machines, drinking fountains, and refuse receptacles. The facility will be heated during the winter months and may be open air during the summer, fall, and spring months. Public restrooms will be included for transit participants. It is contemplated that once constructed, the MV Transit Facility will likely be maintained and owned by either the Mayflower Village Association or the MIDA Mountain Village Public Improvement District.

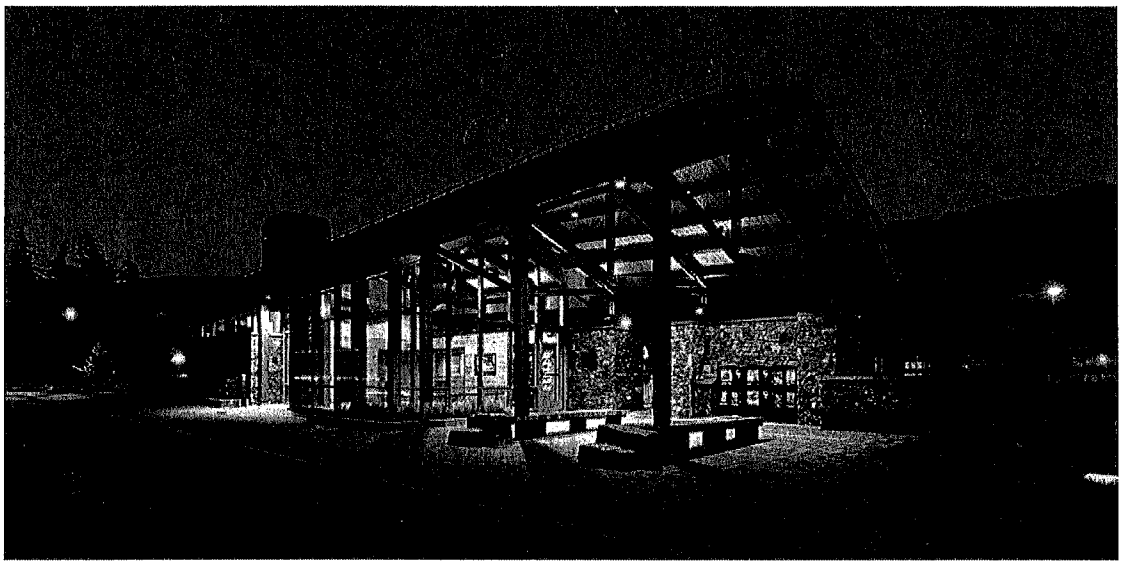
For illustration purposes only, sample photos with general configuration and public spaces, and proposed location follow.



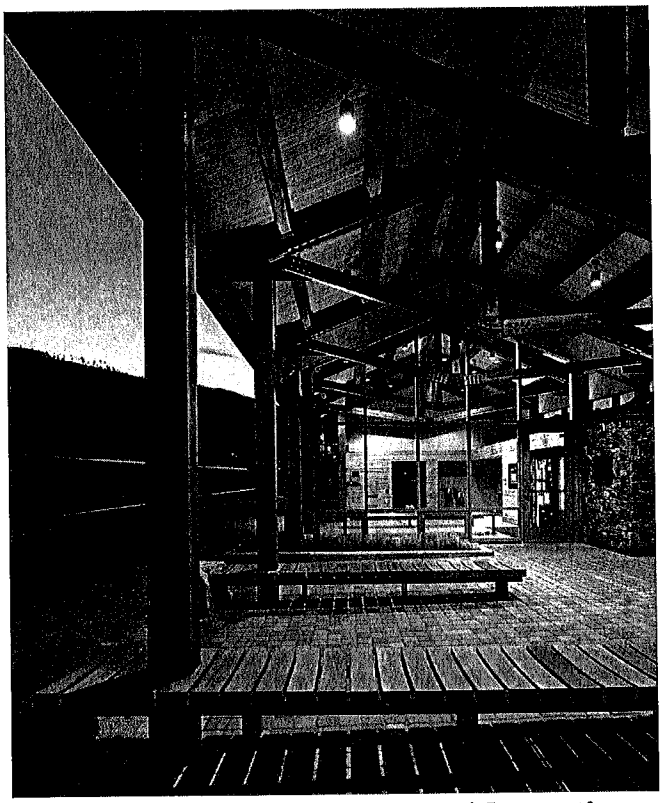
Planned location.



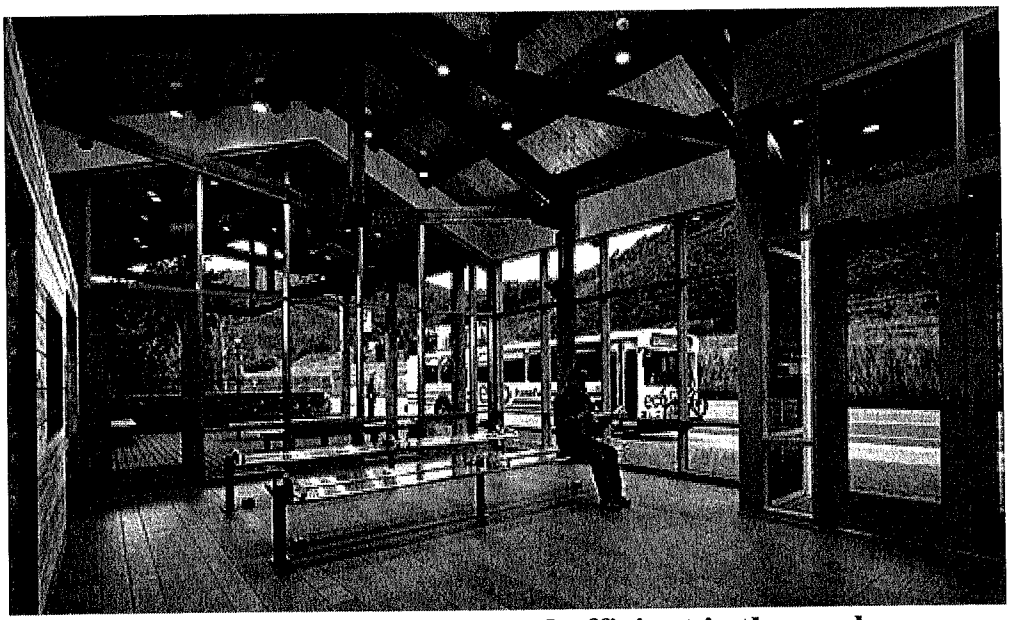
Single-story structure approximately 900 sf to 1,400 sf.



Inviting yet easy to maintain with adequate lighting.



Will include inside and outside seating.



Clean, basic, durable, and efficient is the goal.

EXHIBIT H
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Housing Program]

See Attached.

MIDA West Side Project Area, Housing Program, dated June 15, 2020

EXHIBIT I
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[District Interlocal Agreements]

See attached.

Interlocal Cooperation Agreement, dated September 11, 2012, between JSSD and MIDA.

Interlocal Cooperation Agreement, dated September 11, 2012, between MIDA and the Wasatch County Fire District, as amended by the First Amendment to the Intelocal Cooperation Agreement, dated March 18, 2020.

Interlocal Cooperation Agreement, dated September 11, 2012, between MIDA and the Wasatch County Solid Waste District.

EXHIBIT J
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Existing Fee Schedule Pursuant to MIDA Resolution 2019-14]
(Subject to adjustment as set forth in the Agreement)

Footing, Foundation and Vertical Construction Permits

- Currently processed by Wasatch County pursuant to West Side Interlocal Agreement
- Inspection fees are based on the value of the structure. $5,608.75 for the first $1,000,000.00, plus $3.65 for each additional $1,000.00, or fraction thereof. Section 4.09.02 G(1)
- Plan Review Fees are 65% of Building Permit (Inspection) fee - Section 4.09.02 G(2)
- Utah State Surcharge. – 1% of Inspection Fees
- MIDA Admin Fee 2.5% of Inspection and Plan Review Fees

Grading and Infrastructure Permits

- Processed by MIDA.
- Plan Review and Inspection at MIDA's actual cost
- MIDA Admin Fee 2.5% of Inspection and Plan Review Fees

EXHIBIT K
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Mountainside Resort Trail Plan]

EXHIBIT L
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Mountainside Resort Parking Plan]

[attached]

MAYFLOWER MOUNTAIN RESORT
Mountainside Resort Parking Plan
August 11, 2020

The goal of the Developer of the Mayflower Mountain Resort is to create a high-quality accommodations, recreation, and retail experience through the creation of an operationally efficient resort. Mayflower has a unique opportunity to build such a resort from inception as it is the first major four-season/ski resort erected in the US in over 40 years and the land massing is contiguous and undeveloped.

Mayflower is no different than other mountain resorts where there is an influx of visitors, seasonal demands, and a resort cannot solely plan for peak capacity, rather comfortable carrying capacity (CCC) or referenced also as daily carry capacity. The Resort Plan is evaluated by calculating the projected capacities of the resort's various facilities and comparing those facilities to the resort's CCC. CCC includes is: i) alpine trail capacity, ii) lodging and retail, and iii) service and support personnel. Recommendations for each of these capacities will produce a well-balanced resort and a pleasant guest experience.

The anticipated CCC of the Mayflower Resort at full buildout is calculated to be 10,720 guests. These guests will arrive at the resort from various means including directly from Village accommodations, shuttle/public transit, drop-off/ride-share and day parking. For the purposes of this parking plan the breakdown between day-use and destination guests is approximately 50/50. This was calculated based on development plans for residential and hotel units in the Village core and ancillary development to the north and south, e.g. Pioche, Hailstone and JSSD parcel, as day guests.

These guests originate from ski-in/ski-out accommodations or within walking distance of the lift network. Overnight accommodations in ski resort towns enact managed parking during festive weeks and other peak weekends as well as nearly 37% of guests use transit services when arriving and departing, e.g. shuttles, Uber, taxis, etc. Due to the seasonal nature in resort operations managed parking is common and is seen in various forms, e.g. valet, stacked parking, off-site shuttling for valets, etc. With the village design for a pedestrian based system this is not uncommon and allows various management systems and actions to be enacted.

Off-property destination guests were considered day-use visitors as they would arrive at Mayflower via car or other transportation. The primary day use parking is planned approximately 0.15 mile southeast of the Village core. A shuttle service and walking path will provide pedestrian access to the Village from these parking lots and a cabriolet/gondola is planned as part of Phase 2.

The planned day use parking is approximately 1,440 parking spaces and an additional 420 to the north at the base of Lot 13. Mayflower is projected to need 1,570 day use parking spaces, thus provides an 18.5% cushion/surplus of parking spaces on a busy weekend day. These numbers do not include any potential parking at the Overlook, Blue Ledge, JSSD parcel or off-site parking, e.g. State Parks.

Project Requirements Ratios:

The Developer will provide the minimum stalls as outlined by the ratios set forth below or, if a different ratio is desire, as supported by a parking study by a qualified engineer to ascertain the ratios/standard parking requirements can be adjusted meeting industry standards. The engineer's report will be remitted at building permit or development plat depending on product type.

Ski Hotel	0.75 spaces per unit
Five-star/Luxury Hotel	1.0 spaces per unit
Mine Hotel	0.75 spaces per unit
Boutique Hotel	1.0 spaces per unit
Recreation Hotel	0.75 spaces per unit
Park Peak	0.75 spaces per unit
Row Homes	0.75 spaces per unit
Ski Beach Condominiums	1.25 spaces per unit
Ice Ribbon Condominiums	1.25 spaces per unit
Lower Village Condominiums	1.25 spaces per unit
Mining Townhouses	2.0 spaces per unit
Hailstone Townhouses	2.0 spaces per unit
Estate Lots	4.0 spaces per unit
Pioche Estate Lots	4.0 spaces per unit
Pioche Townhomes	2.0 spaces per unit
Pioche Apartments	0.75 spaces per unit
Pioche Hotel	0.75 spaces per unit
Floating/Unassigned Hotel Rooms	0.75 spaces per unit
Employee/Workforce Housing	0.75 spaces per unit
Dormitory/Seasonal Employee Housing	0.50 spaces per unit

MAYFLOWER MOUNTAIN RESORT

Parking Breakout

August 11, 2020

Development Parking *

Parcel	Name	Type	Hotel Keys	Non-Hotel Keys	Parking Stalls	Ratio
MWR	MWR	Hotel	387	55	260	
3	Skier Hotel	Hotel	135	51	140	0.75
5	Five-Star	Hotel	121	89	210	1.00
1	Mine Hotel	Hotel	200	65	199	0.75
11	Boutique	Hotel	80	25	105	1.00
13	Water Park	Hotel	280	25	229	0.75
Park Peak	Park Peak	Hotel	85	150	177	0.75
South Portal	South Portal	n/a	n/a	n/a	n/a	
2	Row Homes	TH	0	30	23	0.75
4	Ski Beach	Condo	0	122	153	1.25
6	Ice Ribbon #1	Condo	0	87	109	1.25
7	Ice Ribbon #2	Condo	0	59	74	1.25
8	Village #1 Condo	Condo	0	62	78	1.25
9	Village #2 Condo	Condo	0	72	90	1.25
10	Climbing Tower	Condo	0	52	65	1.25
18	Mining TH	TH	0	38	76	2.00
19	Hailstone	TH	0	78	156	2.00
19	Hailstone Lots	Lots	0	82	164	2.00
14	Estate Lots	Lots	0	30	120	4.00
15	Estate Lots	Lots	0	39	156	4.00
16	Estate Lots	Lots	0	31	124	4.00
17	Estate Lots	Lots	0	37	148	4.00
12	Estate Lots	Lots	0	29	116	4.00
12	Townhomes	TH	0	52	104	2.00
12	Apartments	APTS	0	423	318	0.75
12	Select Service	Hotel	150	0	113	0.75
			1438	1783	**3507**	

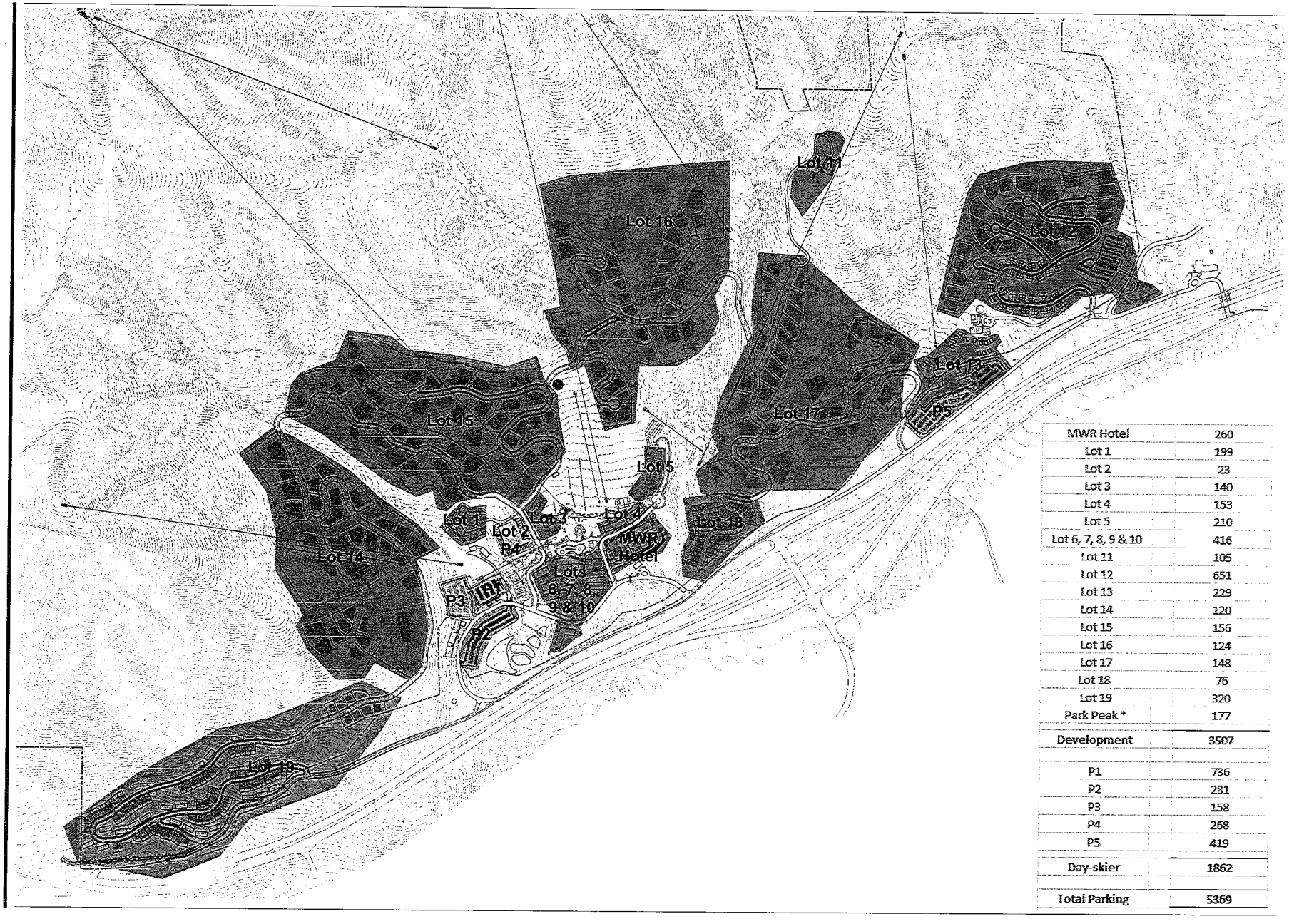
The Developer will work w/ Ski Operator to provide day-skier stalls to meet mountain demands, below is forecasted, not guaranteed. Interim parking is anticipated during construction.

Day-Skier

Parking - P1	Day-skier surface: mine portal	736
Parking - P2	Day-skier surface: pond site	281
Parking - P3	Day-skier structure: mine portal	158
Parking - P4	Village structure	268
Parking - P5	Blue Ledge/Pioche Parcel	419
		1862

Misc.

Future Parking	Additional mtn employee parking: Ventana	48
Event Parking	Day-skier surface: State Parks	655
		703



MWR Hotel	260
Lot 1	199
Lot 2	23
Lot 3	140
Lot 4	153
Lot 5	210
Lot 6, 7, 8, 9 & 10	416
Lot 11	105
Lot 12	651
Lot 13	229
Lot 14	120
Lot 15	156
Lot 16	124
Lot 17	148
Lot 18	76
Lot 19	320
Park Peak *	177
Development	**3507**
P1	736
P2	281
P3	158
P4	268
P5	419
Day-skier	**1862**
Total Parking	**5369**

LDG

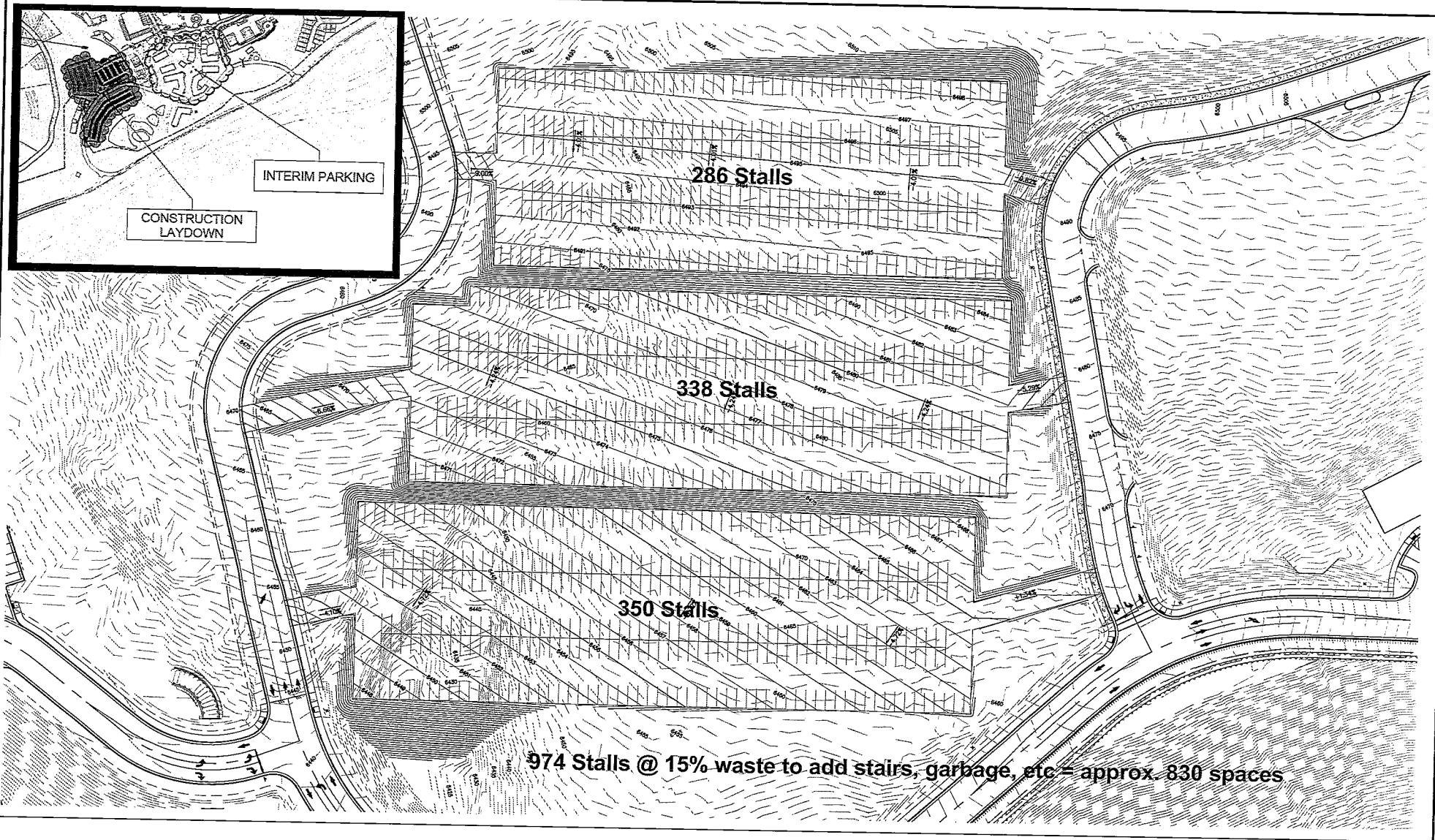
Mayflower
Master Plan

MIDA PROJECT AREA - UTAH

DATE:	07.15.2020
PROJECT:	000.0000.00
DRAWN BY:	EL
REVIEW BY:	EL
VERSION:	
REVISIONS:	

SHEET TITLE:
VILLAGE MASTER PLAN

SHEET NUMBER:
L2



MAYFLOWER MOUNTAIN RESORT

INTERIM PARKING AREA EXHIBIT

40 0 40 80
SCALE OF FEET
FULL SIZE (22x34) 1"=40'

PSOMAS
4179 S. Riverboat Rd., Suite 200
Salt Lake City, UT 84123
(801) 270-5777

4/16/2019 3:09 PM U:\DEXTOID\ODD\ENGR\DRAWINGS\PHASE--FUTURE\EXHIBITS\MAYFLOWER--INTERIM PARKING LOT.DWG BRIAN STARK

EXHIBIT M
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Detention Pond Maintenance Requirements]

1. Proceed with corrective measures for observed problems immediately or as soon as weather conditions permit.

2. Mow grass as required. Remove undesirable vegetation such as trees, bushes, and vines from embankments and pond area.

3. Fill all eroded gullies and vehicle ruts and compact soil. Backfill any hollow spots under concrete spillways or outlet structures and compact soil. Replace any riprap that has washed away from spillways and pipe outlets. Determine the cause of any slides or sloughs and repair. Take corrective action to prevent future recurrence.

4. Remove all trash, debris, tree limbs, or other flow obstructions from detention pond, outlet structures, and pipes. Fill all animal burrows and compact soil. Repair vandalism. Maintain pond and outlet structures in good working order.

5. Do not use pesticides, herbicides, or fertilizers in or around the detention pond. These products will leach from the pond and pollute streams and river.

6. Make sure that the detention pond is draining properly. Detention ponds are designed to release storm water slowly not hold the water permanently. Improperly maintained ponds can harbor breeding areas for mosquitoes and reduce the storage volume of the pond.

7. Do not place yard waste such as leaves, grass clippings or brush in ponds.

8. Remove vegetation from any cracks in concrete spillways or outlet structures and seal with mastic joint filler. Lubricate and test moving parts on gates, valves, etc. Repaint metal parts to prevent rust. Replace badly rusted parts. Remove any accumulated sediment to restore pond to design volume. Reseed with MIDA approved seed mix as necessary to maintain good vegetative cover on exterior of embankments.

EXHIBIT N
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Notice of Compliance]

COMPLIANCE CERTIFICATE
[Mountainside Resort Master Development Agreement]

THIS COMPLIANCE CERTIFICATE is made and entered into on or before the ____ day of _____, 20__, by MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah ("MIDA"), in favor of BLX LLC ("BLX"), BLX MAYFLOWER LLC ("BLXM"), BLX PIOCHE LLC ("BLX Pioche"), BLX LAND LLC ("BLX Land"), BLX MWR HOTEL LLC ("BLX MWR"), RH MAYFLOWER LLC ("RH Mayflower"), and 32 DOM MAYFLOWER LLC ("32 DOM"), each of which is a Delaware limited liability company (collectively, the "Landowners") and EX UTAH DEVELOPMENT LLC, a Delaware limited liability company ("Master Developer" and, together with the Landowners, the "BLX Entities").

RECITALS:

A. MIDA and the BLX Entities entered into that certain Mountainside Resort Master Development Agreement (the "Development Agreement") dated as of [_____].

Pursuant to Section 6.2.3 of the Development Agreement, MIDA agreed to execute and deliver to Master Developer a certification of the compliance of the BLX Entities with the Development Agreement

Master Developer has requested that MIDA certify the compliance of the BLX Entities with the Development Agreement, and MIDA desires to make such certification herein.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MIDA hereby represents to and covenants with BLX Entities:

The Master Development Agreement is unmodified and in full force and effect; Exhibit A sets forth a true, complete and correct copy of the Master Development Agreement; and the Master Development Agreement has not been modified, changed, altered, supplemented or amended in any respect except as set forth below:

[_____].

To MIDA's knowledge, the BLX Entities are not in violation or default under any provision of the Master Development Agreement except as set forth below; and there is no fact or condition which, with notice or lapse of time, would constitute a default by the BLX Entities under the Master Development Agreement:

[_____].

[Insert additional specific certifications, as applicable].

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed and delivered this Compliance Certificate as of the day and year first above written.

MIDA:

Military Installation Development Authority

_____

Paul Morris
Acting Executive Director

ATTEST:

_____

MIDA Staff

STATE OF UTAH)
: ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Paul Morris, who executed the foregoing instrument in his capacity as the Acting Executive Director of the Military Installation Development Authority, a political subdivision of the State of Utah.

_____

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

EXHIBIT A
TO
COMPLIANCE CERTIFICATE

Copy of Master Development Agreement

[see attached]

EXHIBIT O
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Form of Transfer Acknowledgment]

WHEN RECORDED, RETURN TO:

Extell Development Company
Summit Center, Suite #206
2750 W. Rasmussen Road
Park City, Utah 84098
Attention: Kurt Krieg, VP Development

Tax Parcel Nos. (See Exhibit "A")

(Space above for Recorder's use only.)

TRANSFER ACKNOWLEDGMENT

This Transfer Acknowledgment (the "Acknowledgment") is made as of the ____th day of [_____], 20__, (the "Effective Date"), by and between [Extell owner of Transfer Property], a Delaware limited liability company ("Landowner") and EX UTAH DEVELOPMENT LLC, a Delaware limited liability company ("Master Developer", together with the Landowner, collectively "Assignor"), and [_____] ("Assignee"). Assignor and Assignee are alternatively referred to as the "Parties."

RECITALS

A. Assignor is a party to that certain Mountainside Resort Master Development Agreement, dated as of [_____], 2020 (the "Agreement"), by and between Assignor and Military Installation Development Authority, a political subdivision of the State of Utah, concerning certain real property located in Wasatch County, Utah (the "Mountainside Property") and more particularly described on Exhibit "A" attached hereto.

B. In connection with the Landowner's conveyance of a portion of the Mountainside Property more particularly described on Exhibit "B" attached hereto (the "Transfer Property") to Assignee, Assignor desires to assign certain of its rights and obligations under the Agreement pertaining specifically to the Transfer Property as more particularly described in this Acknowledgment to Assignee, Assignee desires to accept such assignment.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Assignment and Assumption. Effective upon the Effective Date, Assignor hereby assigns to Assignee its rights and obligations under Section[(s) ___] of the Agreement pertaining specifically to the Transfer Property only, specifically, Assignor's right to [_____] (the "Assigned Rights"), and Assignee hereby accepts such assignment and assumes and agrees to be bound by all of the terms and conditions of the Agreement with respect to the Assigned Rights and the Transfer Property.

2. Release. From and after the Effective Date, Assignor shall be released from all obligations under the Agreement arising after the Effective Date with respect to the Assigned Rights and the Transfer Property.

3. Reservation. Assignor reserves all rights and obligations arising under the Agreement that are not expressly included in the Assigned Rights. In the event of any dispute as to whether certain rights or obligations arising under the Agreement are included in the Assigned Rights, Master Developer's determination as to the scope of the Assigned Rights shall be binding on the Parties, absent manifest error.

4. Representations and Warranties of Assignor. Assignor represents and warrants to Assignee that it has full power and authority (including full corporate power and authority) to assign the Assigned Rights to Assignee pursuant to this Acknowledgment. These representations and warranties shall survive any cancellation of this Acknowledgment.

5. Representations and Warranties of Assignee. Assignee represents and warrants to Assignor that it has full power and authority (including full corporate power and authority) to assume the Assigned Rights pursuant to this Acknowledgment. These representations and warranties shall survive any cancellation of this Acknowledgment.

6. Indemnification. Assignee agrees to indemnify, defend and hold Assignor harmless against any claims arising under the Agreement and pertaining specifically to the Assigned Rights and the Transfer Property from and after the Effective Date. Assignor agrees to indemnify, defend and hold Assignor harmless against any claims arising under the Agreement and pertaining specifically to the Assigned Rights and the Transfer Property on and before the Effective Date.

7. Ratification and Survival. Other than those specific provisions amended by this Acknowledgment, all other provisions, rights, and obligations contained in the Agreement are hereby ratified by the Parties, and all of the representations, warranties, covenants and agreements of the Parties as set forth herein shall survive the consummation of the transactions set forth herein. In the event of any conflict between the Agreement and this Acknowledgment, this Acknowledgment shall govern. Any terms not defined herein shall carry those definitions set forth in the Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Acknowledgment as of the date first above written.

ASSIGNOR:

MASTER DEVELOPER:

EX UTAH DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

LANDOWNER:

[_____]
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

ASSIGNEE:

[_____]

By: _____
Name: _____
Its: _____

STATE OF NEW YORK)
ss
COUNTY OF NEW YORK)

On the ____ day of _____ in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Gary Barnett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged himself to be the President of each of EX UTAH DEVELOPMENT LLC and [_____], each a Delaware limited liability company, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself as such officer.

Notary Public
(SEAL)

STATE OF _____)
ss
COUNTY OF _____)

On the ____ day of _____ in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged himself to be the _____ of _____, a _____, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by [himself/herself] as such officer.

Notary Public
(SEAL)

AGREEMENT OF MIDA

THE FOREGOING Acknowledgment is accepted and agreed to on this ____ day of _____, 20__, by MIDA.

MIDA:

Military Installation Development Authority

_____
Paul Morris
Acting Executive Director

ATTEST:

_____
MIDA Staff

STATE OF UTAH)
: ss
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Paul Morris, who executed the foregoing instrument in his capacity as the Acting Executive Director of the Military Installation Development Authority, a political subdivision of the State of Utah.

_____
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

_____

Exhibit A
to
Transfer Acknowledgement

Legal Description of Mountainside Property

(See Attached)

Exhibit B
to
Transfer Acknowledgement

Legal Description of Transfer Property

(See Attached)

EXHIBIT P
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Additional Legal Descriptions]

Blue Ledge Parcel:

All of Lot 13 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such LOTS are depicted and described by metes and bounds on the MIDA Master Development Plat.

East Overlook Parcel:

Parcel 1
A parcel of land situated in Government Lot 2 and Government Lot 3 of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, lying North and West of the Westerly right-of-way line of US Highway 40, for which the Basis of Bearing is North 00°15'52" East a distance of 2696.95 feet between the found monuments marking the West line of the Southwest Quarter of said Section 31, more particularly described as follows:

Beginning at the West Quarter Corner of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as evidenced by the found Bureau of Land Management 3.25 inch aluminum cap set in 1994; thence along the West line of the Northwest Quarter of said Section 31, North 00°13'42" West a distance of 399.02 feet, more or less, to a point of intersection of the West line of the Northwest Quarter of said Section 31 and a natural drainage course; thence, more or less, along said natural drainage course the following three (3) courses: (1) South 82°52'20" East a distance of 96.23 feet; (2) thence South 65°56'04" East a distance of 420.28 feet; (3) thence South 47°35'30" East a distance of 270.44 feet, more or less, to the Westerly right of way line of US Highway 40; thence along said Westerly right-of-way line the following four (4) courses: (1) South 20°00'55" West a distance of 34.65 feet to a point of intersection of said Westerly Right of Way line and the North line of Government Lot 3, said point being North 89°56'05" East a distance of 665.46 feet along the North line of said Government Lot 3 from the West Quarter Corner of said Section 31 (North 89°52'24" East a distance of 665.22 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (2) thence South 20°00'55" West a distance of 128.07 feet to a point 330 feet Offset from US Highway 40 Engineering Station 694.00 as evidenced by the found 3 inch brass cap monument set in 1988 (South 19°58'09" West a distance of 127.45 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (3) thence South 28°31'39" West a distance of 430.16 feet to a point 300 feet Offset from US Highway 40 Engineering Station 698.30 as evidenced by the found 3 inch brass cap monument set in 1988 (South 28°30'00" West a distance of 430.00 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (4) thence South 31°27'42" West a distance of 807.91 feet, more or less, to a point of intersection of the said Westerly Right of Way line and of the West line of the Southwest Quarter of said Section 31, said point lies North 0.31 feet and East 0.19 feet of a point 340.6 feet Offset from US Highway 40 Engineering Station 706.3759 as evidenced by the found 3 inch brass cap monument set in 1988 (South 31°22'41" West a distance of 808.61 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); thence leaving said Westerly right of way line and running along the West line of the Southwest Quarter of said Section 31, North 00°15'52" East a distance of 1186.66 feet to the point of beginning of this Lot 2 description.

The above described land, also known as Lot 2, as shown on the Deer Springs at Jordanelle - Lot Line Rearrangement Plat (recorded as Entry No. 222708 at Page 279, Book 456 on March 22, 2000, of the official records of Wasatch County).

Parcel 2

TOGETHER WITH an approximate 50 foot wide non exclusive easement for access and utility purposes lying westerly of the westerly no-access line of an expressway known as Project No. NF-19 that was granted to the United States of America by that certain Warranty Deed, recorded March 18, 1987 as Entry No. 141672 in Book 189 at Page 12 of the official records, over portions of Government Lot 2, Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as shown on Record of Survey Map filed as OWC-025-031-1-0962 March 6, 2000, Wasatch County Records of Survey, also being portions of Lot 1, as shown on the Deer Springs at the Jordanelle - Lot Line Rearrangement Plat recorded as Entry No. 222708 in Book 456 at Page 279 on March 22, 2000, Official Records of Wasatch County, over an existing paved private driveway, the centerline of which is described as follows:

Beginning at a point in the northerly line of said Government Lot 2 distant thereon North 89°55'10" East 1141.20 feet from the northwest corner of said Government Lot 2; thence South 04°51'39" East 44.58 feet to the beginning of a tangent curve concave to the west and having a radius of 200.00 feet; thence southerly along said curve an arc length of 131.91 feet; thence tangent to said curve South 32°55'45" West 53.77 feet to the beginning of a tangent curve concave to the East and having a radius of 100.00 feet; thence southerly along said curve an arc length of 59.32 feet; thence tangent to said curve South 01°03'40" East 59.54 feet to the beginning of a tangent curve concave to the west and having a radius of 200 feet; thence southerly along said curve an arc length of 29.42 feet; thence continuing southerly along said curve an arc length of 37.65 feet; thence tangent to said curve South 18°09'16" West 116.67 feet; thence South 18°09'16" West 39.81 feet to the beginning of a tangent curve concave to the west and having a radius of 1000.00 feet; thence southerly along said curve an arc length of 150.92 feet; thence South 26°48'06" West 49.23 feet; thence South 26°48'06" West 217.21 feet; thence South 26°48'06" West 62.15 feet to the beginning of a tangent curve concave to the northwest and having a radius of 100.00 feet; thence southwesterly along said curve an arc length of 45.20 feet; thence continuing southwesterly along said curve an arc length of 45.73 feet; thence tangent to said curve South 78°54'07" West 36.32 feet to the beginning of a tangent curve concave to the north and having a radius of 100.00 feet; thence westerly along said curve an arc length of 113.84 feet; thence tangent to said curve North 35°52'11" West 116.09 feet to the end of the common use multiple access driveway easement; thence continuing along the private easement to serve Parcel 1 described above the following: South 54°07'49" West 48.55 feet to the beginning of a tangent curve concave to the northwest and having a radius of 200 feet; thence southwesterly along said curve an arc length of 54.70 feet; thence tangent to said curve South 69°48'01" West 97.92 feet to the beginning of a tangent curve concave to the southeast and having a radius of 75 feet; thence southwesterly along said curve an arc length of 49.81 feet to the northerly line of Parcel 1 described above, also being the end of the 50 foot wide easement.

The side lines of said 50 foot wide easement at its northerly terminus to be prolonged or shortened so as to terminate in the northerly line of said Government Lot 2. The side lines of said 50 foot wide easement at its southerly terminus to be prolonged or shortened so as to terminate in the northerly line of Parcel 1.

Wasatch County Tax Serial Number: OWC-0155-0-031-025.

Wasatch County Assessor's Parcel Number: 00-0007-3069.

JSSD Parcel:

All of Lot 11 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such LOTS are depicted and described by metes and bounds on the MIDA Master Development Plat.

Pioche Property:

All of Lot 12 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such LOTS are depicted and described by metes and bounds on the MIDA Master Development Plat.

Mayflower Mountain Lands:

The **Lincoln Patented Lode Mining Claim, Lot No. 3278**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 28, 1908 as Entry No. 17722 in Book 8 of Mining Deeds at Page 63 of the official records in the office of the Wasatch County Recorder.

Portions of Wasatch County Tax Serial Number: OWC-0028-0-024-024.
Portions of Wasatch County Assessor's Parcel Number: 00-0012-3211.
Portions of Wasatch County Tax Serial Number: OWC-0029-1-025-024.
Portions of Wasatch County Assessor's Parcel Number: 00-0012-3229.
Portions of Wasatch County Tax Serial Number: OWC-0031-6-026-024.
Portions of Wasatch County Assessor's Parcel Number: 00-0012-9259.
Portions of the subject property do not appear on the Wasatch County tax assessment rolls.

Parcel 1:
The Primrose Patented Lode Mining Claim, Lot No. 3768, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

The Leonard Patented Lode Mining Claim, Lot No. 3768, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

The West one-half of the Valeo No. 5 Patented Lode Mining Claim, Lot No. 3766, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 30, 1904 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

The East one-half of the Woodchuck Patented Lode Mining Claim, Lot No. 3768, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

The East one-half of the General Jackson Patented Lode Mining Claim, Lot No. 3768, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

The East one-half of the Silver Star Patented Lode Mining Claim, Lot No. 3768, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 15, 1900 as Entry No. 5911 in Book T at Page 566 of the official records in the office of the Wasatch County Recorder.

Parcel 2:
All of Government Lots 19, 20, 21, 22, 23 and 24, in Section 34, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Parcel 3:
All of Government Lots 1, 17, 18, 19, 20, 21, 22, 23 and 24, in Section 35, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Wasatch County Tax Serial Numbers: OWC-3113-0-034-024, OWC-3114-0-034-024, OWC-3115-0-034-024, OWC-3116-0-034-024, OWC-3117-0-034-024, OWC-3118-0-034-024, OWC-3119-0-035-024, and OWC-3127-0-035-024.

Wasatch County Assessor's Parcel Numbers: 00-0020-1737, 00-0020-1738, 00-0020-1739, 00-0020-1740, 00-0020-1741, 00-0020-1742, 00-0020-1743 and 00-0020-1750.

Blue Ledge Mining District (Wasatch County)

Parcel 1
The Buck Horn Patented Lode Mining Claim, M.S. 6923, as the same is more particularly described in that certain United States Mineral Entry Patent filed March 29, 1929 as Patent Number 1025383 of the official records in the office of the Bureau of Land Management.

Parcel 2
The Rams Horn Patented Lode Mining Claim, M.S. 6923, as the same is more particularly described in that certain United States Mineral Entry Patent filed March 29, 1929 as Patent Number 1025383 of the official records in the office of the Bureau of Land Management.

Wasatch County Tax Serial Number: STA-0183-0-000-000.
Wasatch County Assessor's Parcel Number: 90-0000-1269.

Parcel 1
All of Government Lots 1, 2 and 3; the South half of the North half; the East half of the Southwest quarter; and the Southeast quarter of Section 36, Township 2 South Range 4 East, Salt Lake Base and Meridian.

EXCEPTING THEREFROM any portions lying within the following:

EXCEPTION PARCEL 1:
Parcel No. JDR-HY-40-19:43:A

A parcel of land, being part of an entire tract of property, situate in the East half of the Southeast quarter (E1/2SE1/4) of Section Thirty-six (36), Township Two (2) South Range Four (4) East, Salt Lake Base and Meridian, Wasatch County, Utah, being more particularly described as follows:

Beginning in the South line of said Section 36 at a point 230.0 feet perpendicularly distant southeasterly from the centerline of said project, which point is 166.19 feet West (South 89°07'53" West highway bearing) from the Southeast corner of Section 36; thence West (South 89°07'53" West highway bearing) 781.79 feet along the South line of said Section 36; thence North 4°35'43" East 366.92 feet to a point 600.0 feet perpendicularly distant northwesterly from the centerline of said project at Engineer Station 720+96.76; thence North 28°14'25" West 358.77 feet; thence North 1°56'06" East 223.61 feet; thence North 19°02'16" East 304.14 feet; thence North 63°29'31" East 366.20 feet; thence North 75°42'09" East 680.60 feet to the East line of said Section 36; thence South (South 0°13'05" West highway bearing) 1204.28 feet along said East line to a point 230.0 feet perpendicularly distant southeasterly from said centerline; thence South 28°30'00" West 350.68 feet to the point of beginning, as shown on the official map of said project on file in the office of the Utah Department of Transportation.

EXCEPTION PARCEL 2:
Parcel No. JDR-HY-40-19:43:S

A parcel of land situate in the Southeast Quarter of said Section 36, and beginning at the Southeast corner of said Section; thence West (South 89°07'53" West highway bearing) 166.19 feet along the South line of said Section 36 to the southeasterly no-access line of an expressway known as Project No. NF-19; thence North 28°30'00" East 350.68 feet along said southeasterly no-access line to the East line of said Section 36; thence South (South 0°13'05" West highway bearing) 305.67 feet along said East line to the point of beginning.

For informational purposes only:
Wasatch County Tax Serial Number: OWC-0053-1-036-024.
Wasatch County Assessor's Parcel Number: 00-0000-3892.

Parcel 2
All of Government Lots 1, 2 and 7; the Southeast quarter of the Northeast quarter; and the Southeast quarter of Section 2, Township 3 South Range 4 East, Salt Lake Base and Meridian.

For informational purposes only:
Wasatch County Tax Serial Number: OWC-0198-1-002-034.
Wasatch County Assessor's Parcel Number: 00-0000-4668.

Parcel 1
The **Alma Patented Lode Mining Claim, Lot No. 3341**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 2
The **Dagmar Patented Lode Mining Claim, Lot No. 3372**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 3
The **King Ledge Patented Lode Mining Claim, Lot No. 3372**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry

No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 4
The **Mono Patented Lode Mining Claim, Lot No. 3341**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 5
The **North Star Patented Lode Mining Claim, Lot No. 3208**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 6
The **Toledo Patented Lode Mining Claim, Lot No. 3208,** as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 7
The **Torpedo Patented Lode Mining Claim, Lot No. 3208,** as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 8
The **Valeo Patented Lode Mining Claim, Lot No. 3208**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Parcel 9
The **Valeo No. 2 Patented Lode Mining Claim, Lot No. 3765**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38177 in Book 9 of Mining Deeds at Page 367 of the official records in the office of the Wasatch County Recorder.

Parcel 10
The **Valeo No. 3 Patented Lode Mining Claim, Lot No. 3765,** as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38177 in Book 9 of Mining Deeds at Page 367 of the official records in the office of the Wasatch County Recorder.

Parcel 11
The West one-half of the Valeo No. 5 Patented Lode Mining Claim, Lot No. 3766, as the same is more particularly described in that certain United States Mineral Entry Patent recorded June 30, 1904 as Entry No. 38178 in Book 9 of Mining Deeds at Page 371 of the official records in the office of the Wasatch County Recorder.

Parcel 12
The **Valeo No. 7 Patented Lode Mining Claim, Lot No. 3962**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38176 in Book 9 of Mining Deeds at Page 363 of the official records in the office of the Wasatch County Recorder.

Parcel 13
The **Valeo No. 8 Patented Lode Mining Claim, Lot No. 3964**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38176 in Book 9 of Mining Deeds at Page 363 of the official records in the office of the Wasatch County Recorder.

Parcel 14
The **Valeo No. 9 Patented Lode Mining Claim, Lot No. 3963**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38176 in Book 9 of Mining Deeds at Page 363 of the official records in the office of the Wasatch County Recorder.

Parcel 15
The **Vega Patented Lode Mining Claim, Lot No. 3208**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded February 4, 1922 as Entry No. 38175 in Book 9 of Mining Deeds at Page 358 of the official records in the office of the Wasatch County Recorder.

Wasatch County Tax Serial Number: STA-0404-0-000-000.
Wasatch County Assessor's Parcel Number: 90-0000-3129.

Parcel 1
A parcel of land situated in Government Lot 2 and Government Lot 3 of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, lying North and West of the Westerly right-of-way line of US Highway 40, for which the Basis of Bearing is North 00°15'52" East a distance of 2696.95 feet between the found monuments marking the West line of the Southwest Quarter of said Section 31, more particularly described as follows:

Beginning at the West Quarter Corner of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as evidenced by the found Bureau of Land Management 3.25 inch aluminum cap set in 1994; thence along the West line of the Northwest Quarter of said Section 31, North 00°13'42" West a distance of 399.02 feet, more or less, to a point of intersection of the West line of the Northwest Quarter of said Section 31 and a natural drainage course; thence, more or less, along said natural drainage course the following three (3) courses: (1) South 82°52'20" East a distance of 96.23 feet; (2) thence South 65°56'04" East a distance of 420.28 feet; (3) thence South 47°35'30" East a distance of 270.44 feet, more or less, to the Westerly right of way line of US Highway 40; thence along said Westerly right-of-way line the following four (4) courses: (1) South 20°00'55" West a distance of 34.65 feet to a point of intersection of said Westerly Right of Way line and the North line of Government Lot 3, said point being North 89°56'05" East a distance of 665.46 feet along the North line of said Government Lot 3 from the West Quarter Corner of said Section 31 (North 89°52'24" East a distance of 665.22 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (2) thence South 20°00'55" West a distance of 128.07 feet to a point 330 feet Offset from US Highway 40 Engineering Station 694.00 as evidenced by the found 3 inch brass cap monument set in 1988 (South 19°58'09" West a distance

of 127.45 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (3) thence South 28°31'39" West a distance of 430.16 feet to a point 300 feet Offset from US Highway 40 Engineering Station 698.30 as evidenced by the found 3 inch brass cap monument set in 1988 (South 28°30'00" West a distance of 430.00 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (4) thence South 31°27'42" West a distance of 807.91 feet, more or less, to a point of intersection of the said Westerly Right of Way line and of the West line of the Southwest Quarter of said Section 31, said point lies North 0.31 feet and East 0.19 feet of a point 340.6 feet Offset from US Highway 40 Engineering Station 706.3759 as evidenced by the found 3 inch brass cap monument set in 1988 (South 31°22'41" West a distance of 808.61 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); thence leaving said Westerly right of way line and running along the West line of the Southwest Quarter of said Section 31, North 00°15'52" East a distance of 1186.66 feet to the point of beginning of this Lot 2 description.

The above described land, also known as Lot 2, as shown on the Deer Springs at Jordanelle - Lot Line Rearrangement Plat (recorded as Entry No. 222708 at Page 279, Book 456 on March 22, 2000, of the official records of Wasatch County).

Parcel 2

TOGETHER WITH an approximate 50 foot wide non exclusive easement for access and utility purposes lying westerly of the westerly no-access line of an expressway known as Project No. NF-19 that was granted to the United States of America by that certain Warranty Deed, recorded March 18, 1987 as Entry No. 141672 in Book 189 at Page 12 of the official records, over portions of Government Lot 2, Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as shown on Record of Survey Map filed as OWC-025-031-1-0962 March 6, 2000, Wasatch County Records of Survey, also being portions of Lot 1, as shown on the Deer Springs at the Jordanelle - Lot Line Rearrangement Plat recorded as Entry No. 222708 in Book 456 at Page 279 on March 22, 2000, Official Records of Wasatch County, over an existing paved private driveway, the centerline of which is described as follows:

Beginning at a point in the northerly line of said Government Lot 2 distant thereon North 89°55'10" East 1141.20 feet from the northwest corner of said Government Lot 2; thence South 04°51'39" East 44.58 feet to the beginning of a tangent curve concave to the west and having a radius of 200.00 feet; thence southerly along said curve an arc length of 131.91 feet; thence tangent to said curve South 32°55'45" West 53.77 feet to the beginning of a tangent curve concave to the East and having a radius of 100.00 feet; thence southerly along said curve an arc length of 59.32 feet; thence tangent to said curve South 01°03'40" East 59.54 feet to the beginning of a tangent curve concave to the west and having a radius of 200 feet; thence southerly along said curve an arc length of 29.42 feet; thence continuing southerly along said curve an arc length of 37.65 feet; thence tangent to said curve South 18°09'16" West 116.67 feet; thence South 18°09'16" West 39.81 feet to the beginning of a tangent curve concave to the west and having a radius of 1000.00 feet; thence southerly along said curve an arc length of 150.92 feet; thence South 26°48'06" West 49.23 feet; thence South 26°48'06" West 217.21 feet; thence South 26°48'06" West 62.15 feet to the beginning of a tangent curve concave to the northwest and having a radius of 100.00 feet; thence southwesterly along said curve an arc length of 45.20 feet; thence continuing southwesterly along said curve an arc length of 45.73 feet; thence tangent to said curve South 78°54'07" West 36.32 feet to the beginning of a tangent curve concave to the north and having a radius of 100.00 feet; thence westerly along said curve an arc length of 113.84 feet; thence tangent to said curve North 35°52'11" West 116.09 feet to the end of the common use multiple access driveway easement; thence continuing along the private easement to serve Parcel 1 described above the following: South 54°07'49" West 48.55 feet to the beginning of a tangent

curve concave to the northwest and having a radius of 200 feet; thence southwesterly along said curve an arc length of 54.70 feet; thence tangent to said curve South 69°48'01" West 97.92 feet to the beginning of a tangent curve concave to the southeast and having a radius of 75 feet; thence southwesterly along said curve an arc length of 49.81 feet to the northerly line of Parcel 1 described above, also being the end of the 50 foot wide easement.

The side lines of said 50 foot wide easement at its northerly terminus to be prolonged or shortened so as to terminate in the northerly line of said Government Lot 2. The side lines of said 50 foot wide easement at its southerly terminus to be prolonged or shortened so as to terminate in the northerly line of Parcel 1.

Wasatch County Tax Serial Number: OWC-0155-0-031-025.
Wasatch County Assessor's Parcel Number: 00-0007-3069.

EXHIBIT Q
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Emergency Vehicle Access Standards]

THE EMERGENCY VEHICLE ACCESS (EVA) STANDARDS ARE AS FOLLOWS:

A. EVA ROAD SURFACES WITH A VERTICAL GRADE OF LESS THAN OR EQUAL TO 12% SHALL BE CONSTRUCTED WITH ROAD BASE, AND MAINTAINED WITH MAG WATER TO PREVENT DUST AND REDUCE SURFACE DETERIORATION. THE EVA ROAD SURFACE SHALL HAVE A 20' HORIZONTAL WIDTH.

B. EVA ROAD SURFACES WITH A VERTICAL GRADE GREATER THAN 12% SHALL BE BUILT WITH 6" OF ROAD BASE AND 3" ASPHALT AND A 20' HORIZONTAL WIDTH.

C. MAXIMUM EVA VERTICAL GRADE SHALL BE UP TO AND INCLUDING 14% ON STRAIGHT SECTIONS OF ROADWAY WITH A HORIZONTAL WIDTH OF 20'.

D. EVA ROADWAY CURVES WITH LESS THAN ONE HUNDRED FOOT RADIUS AND 150 DEGREES OR GREATER TURNING RADIUS, SHALL BE BUILT TO A HORIZONTAL WIDTH OF 26' AND SHALL NOT EXCEED A VERTICAL GRADE OF 6% THROUGH THE CURVE.

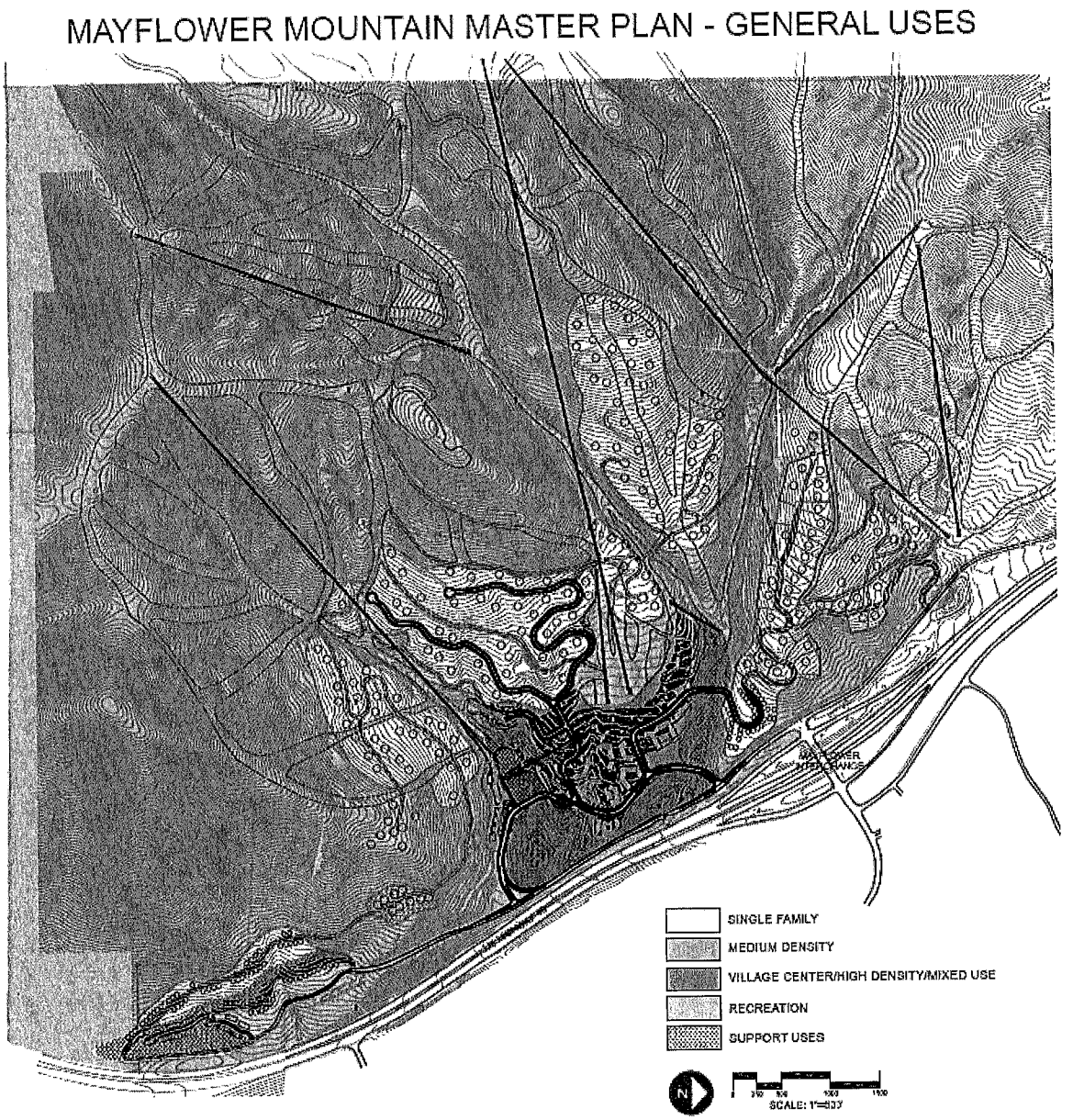
E. EVA(s) SHALL PROVIDE INGRESS/EGRESS FOR EMERGENCY VEHICLES ONLY; THIS ENTRANCE SHALL BE GATED AT ALL ACCESS POINTS AND THE USE OF AN AUTO-ENTRY GATE SYSTEM FOR EMERGENCY VEHICLES THAT HAS BEEN APPROVED BY WASATCH COUNTY FIRE DISTRICT SHALL BE INSTALLED.

F. ON THE APPLICABLE PLAT, A DESCRIPTION OF THE EVA(s) PRESENT ON THE PLAT WILL BE NOTED AS AN EASEMENT AND THE EASEMENT WILL BE DESCRIBED IN A SEPARATE RECORDED DOCUMENT THAT DESCRIBES: SURFACE, WIDTH, LOCATION AND GRADE.

G. BUILDING PERMITS WILL BE ISSUED WHEN RELEVANT EVA(s) HAVE BEEN CONSTRUCTED ACCORDING TO PLANS WHICH HAVE BEEN APPROVED BY THE WASATCH COUNTY FIRE DISTRICT.

EXHIBIT R
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Mountainside Resort Land Use Plan]



MAYFLOWER MASTER PLAN

AUGUST 2020

EXHIBIT S
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Mountainside Resort Utility and Infrastructure Plan]

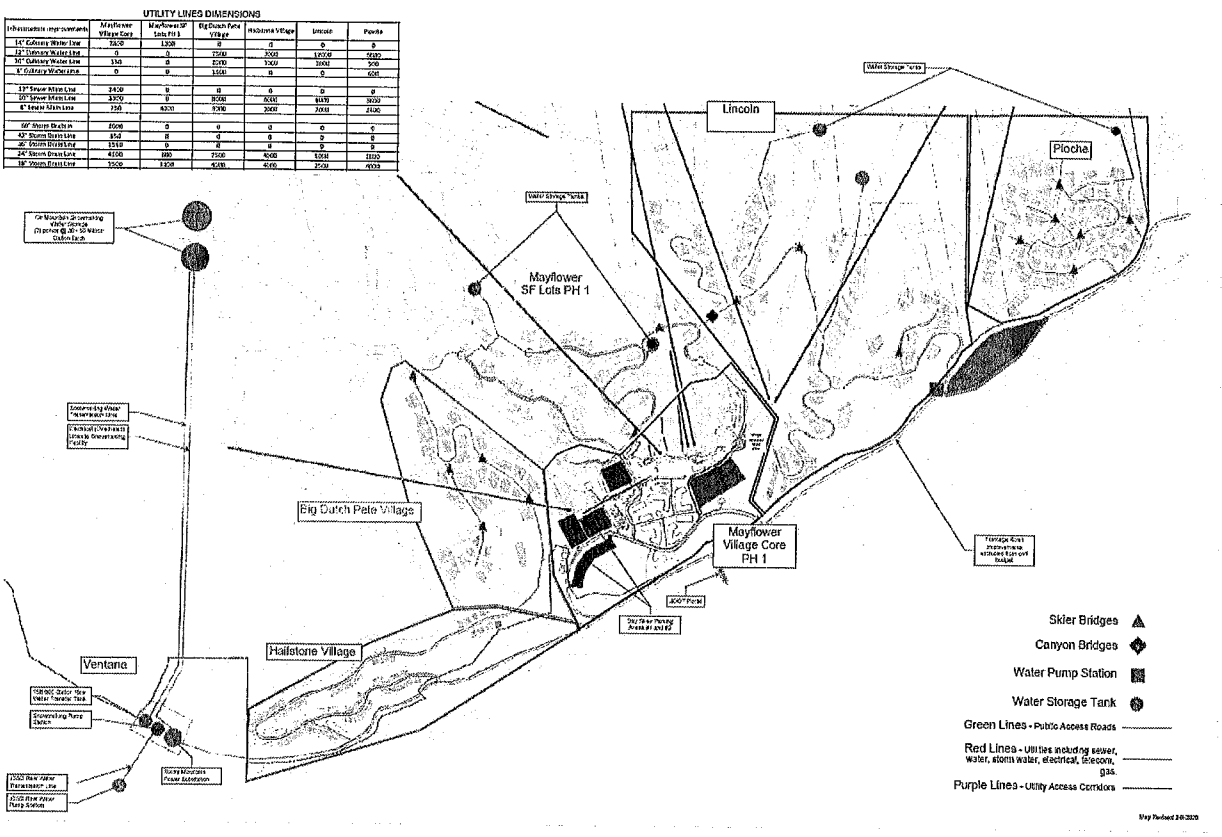
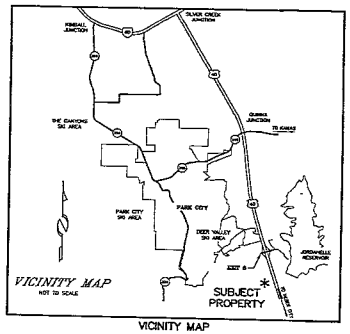


EXHIBIT T
to
MOUNTAINSIDE RESORT MASTER DEVELOPMENT AGREEMENT

[Village Core Roadway Plat]

[attached]



VICINITY MAP

OWNER'S DEDICATION AND CONSENT TO RECORD

KNOW ALL PEOPLE BY THESE PRESENTS that the undersigned is the owner of the herein described tract of land, and hereby cause the same to be divided into streets, together with easements as set forth to be hereafter known as MAYFLOWER VILLAGE ROADS PHASE I.

The undersigned owner dedicates the roads to the MIDA Mountain Village Public Infrastructure District ("MIDA PID"), such dedication to become effective when they are constructed and after the roads are accepted by the MIDA PID, and hereby dedicates to any and all public and government utility companies a perpetual, non-exclusive easement over the public utility easements shown on this plat, the same to be used for the installation, maintenance and operation of utility lines and facilities. The undersigned owner also hereby conveys a ten foot wide snow storage easement as describe in note 6

In witness whereof, the undersigned set his hand this

21 day of May 2020.

SLX MAYFLOWER, LLC, a Delaware limited liability company

By: KURT KRIEG Its SENIOR VICE PRESIDENT and authorized signer

ACKNOWLEDGEMENT

State of Utah)
: ss
County of Summit)

On this 21st day of May 2020, Kurt Krieg personally appeared before me, whose identity is personally known to me or proven on the basis of satisfactory evidence, and who by me duly sworn/affirmed, did say that he is the SENIOR VICE PRESIDENT and authorized signer for SLX MAYFLOWER LLC, a Delaware limited liability company, and that said document was signed freely and voluntarily by him on behalf of said limited liability company.

Jamie Fidler
Notary Public
Jamie Fidler
Printed Name

Residing in: Summit County, UT

My commission expires: Oct 29, 2022

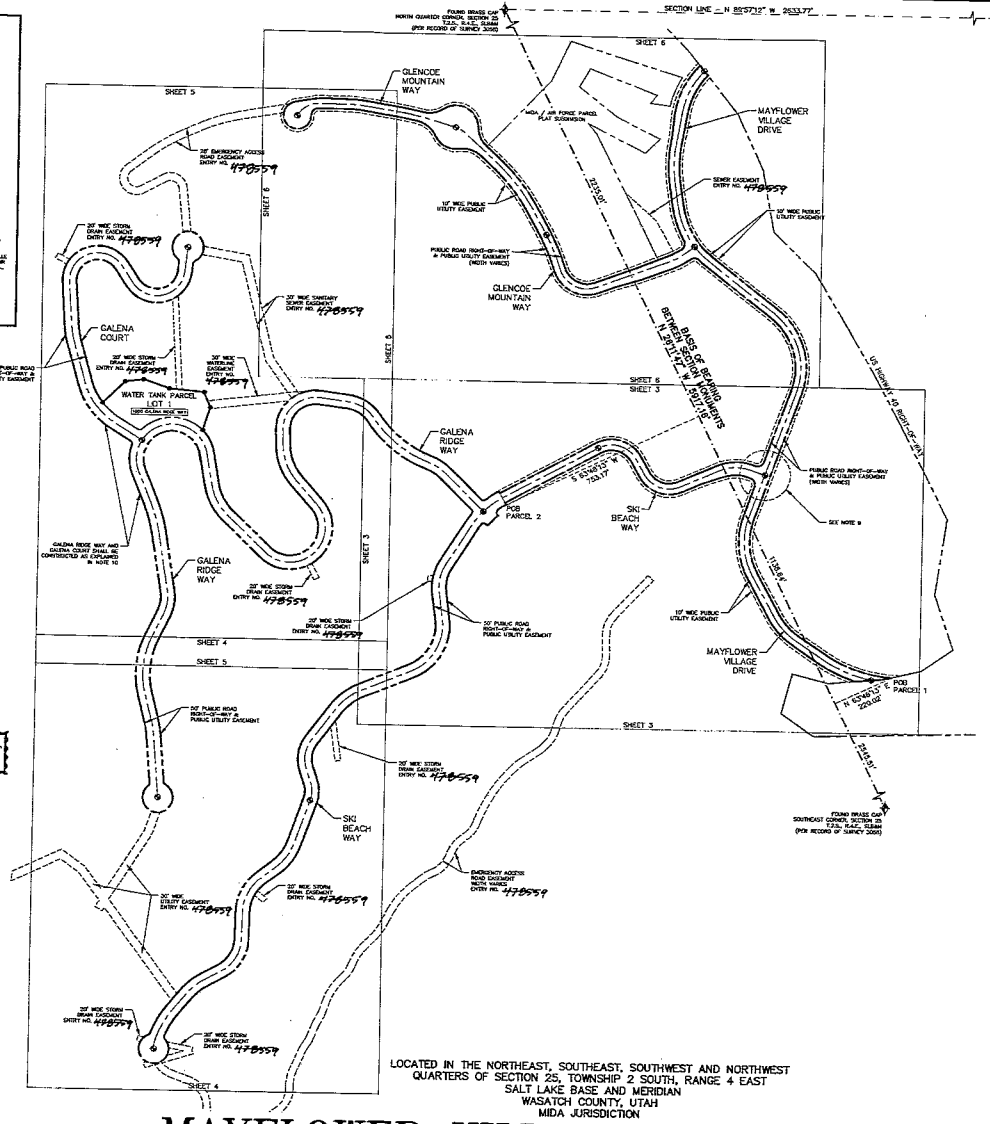
Commission No. 703090

JAMIE FIDLER
Notary Public State of Utah
Comm. No. 703090
My Commission Expires on
Oct 29 2022

LEGEND

- Set 5/8" rebar w/cap "ALLIANCE ENGINEERING" (Unless noted otherwise)
- Set street monument Brass cap in street con
- Found Section monument (As-Noted)

200' 0 200' 400'



LOCATED IN THE NORTHEAST, SOUTHEAST, SOUTHWEST AND NORTHWEST QUARTERS OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 4 EAST SALT LAKE BASE AND MERIDIAN WASATCH COUNTY, UTAH MIDA JURISDICTION

SURVEYOR'S CERTIFICATE

I, Charles Galati, do hereby certify that I am a Professional Land Surveyor and that I hold License No. 7248891 as prescribed under the laws of the State of Utah. I further certify that by the authority of the owners, I have made a survey of the tract of land shown on this plat and described hereon, and have subdivided said tract into streets, together with easements, hereafter to be known as MAYFLOWER VILLAGE ROADS PHASE I and that the same has been surveyed and will be monumented on the ground as shown on this plat.

PROFESSIONAL LAND SURVEYOR No. 7248891 CHARLES GALATI STATE OF UTAH

NOTES:

1. FLOOD ZONE CLASSIFICATION: SITE IS IN ZONE X, AREA OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, PER FEMA PANEL 49043C0125E EFFECTIVE MARCH 15, 2012.
2. SEE RECORD OF SURVEY 3058, PREPARED BY MATT CLARK OF MOUNTAIN LAND SURVEYS IN CONJUNCTION WITH ALLIANCE ENGINEERING, ON FILE IN THE WASATCH COUNTY RECORDER'S OFFICE.
3. BASIS OF BEARINGS FOR THE HEREIN DESCRIBED PARCEL BEING SOUTH 29°11'42" EAST 3917.16 FEET FROM SAID NORTH QUARTER CORNER OF SECTION 25, TO THE SOUTHEAST CORNER OF SAID SECTION 25, SAID NORTH QUARTER CORNER ALSO BEING NORTH 89°57'12" WEST 2633.77 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 25, SEE RECORD OF SURVEY MAPS 3047 & 3058 ON FILE WITH THE WASATCH COUNTY SURVEYOR'S OFFICE FOR SAID SECTION 25 RETRACEMENT AND THE MAYFLOWER LDP COORDINATE SYSTEM PROJECTION PARAMETERS.
4. STREET MONUMENTS AND PROPERTY CORNER MONUMENTS WILL BE SET UPON COMPLETION OF IMPROVEMENTS CURRENTLY UNDERWAY ON THE SUBJECT PROPERTY.
5. THE PUBLIC UTILITY EASEMENTS ARE DEDICATED BY THIS PLAT.
6. ALL ROADS BUILT AS PART OF THIS PLAT WILL HAVE A TEN FOOT WIDE SNOW STORAGE EASEMENT FROM THE BACK OF CURB AS CONSTRUCTED, WHICH EASEMENTS ARE DEDICATED PURSUANT TO THIS PLAT.
7. ALL OTHER EASEMENTS SHOWN OUTSIDE THE ROAD RIGHT OF WAY WITH A BLANK ENTRY NO. ARE NOT CONVEYED AT THIS TIME BUT ARE INTENDED TO BE CONVEYED IN THE FUTURE BY SEPARATE DOCUMENT OR AS PART OF FUTURE SUBDIVISION PLATS OF ADJOINING LAND.
8. THE EMERGENCY VEHICLE ACCESS (EVA) STANDARDS ARE AS FOLLOWS:
   A. EVA ROAD SURFACES WITH A VERTICAL GRADE OF LESS THAN OR EQUAL TO 12% SHALL BE CONSTRUCTED WITH ROAD BASE, AND MAINTAINED WITH MAG WATER TO PREVENT DUST AND REDUCE SURFACE DETERIORATION. THE EVA ROAD SURFACE SHALL HAVE A 20' HORIZONTAL WIDTH.
   B. EVA ROAD SURFACES WITH A VERTICAL GRADE GREATER THAN 12% SHALL BE BUILT WITH 6" OF ROAD BASE AND 3" ASPHALT AND A 20' HORIZONTAL WIDTH.
   C. MAXIMUM EVA VERTICAL GRADE SHALL BE UP TO AND INCLUDING 14% ON STRAIGHT SECTIONS OF ROADWAY WITH A HORIZONTAL WIDTH OF 20'.
   D. EVA ROADWAY CURVES WITH LESS THAN ONE HUNDRED FOOT RADIUS AND 150 DEGREES OR GREATER TURNING RADIUS, SHALL BE UP TO A HORIZONTAL WIDTH OF 26' AND SHALL NOT EXCEED A VERTICAL GRADE OF 6% THROUGH THE CURVE.
   E. EVA(S) SHALL PROVIDE INGRESS/EGRESS FOR EMERGENCY VEHICLES ONLY. THIS ENTRANCE SHALL BE GATED AT ALL ACCESS POINTS AND THE USE OF AN AUTO-ENTRY GATE SYSTEM FOR EMERGENCY VEHICLES THAT HAS BEEN APPROVED BY WASATCH COUNTY FIRE DISTRICT SHALL BE INSTALLED.
   F. ON THE APPLICABLE PLAT, A DESCRIPTION OF THE EVA(S) PRESENT ON THE PLAT WILL BE NOTED AS AN EASEMENT AND THE EASEMENT WILL BE DESCRIBED IN A SEPARATE RECORDED DOCUMENT THAT DESCRIBES: SURFACE, WIDTH, LOCATION AND GRADE.
   G. BUILDING PERMITS WILL BE ISSUED WHEN RELEVANT EVA(S) HAVE BEEN CONSTRUCTED ACCORDING TO PLANS WHICH HAVE BEEN APPROVED BY THE WASATCH COUNTY FIRE DISTRICT.
9. THE ROADS WILL BE CONSTRUCTED CONSISTENT WITH THE MAYFLOWER VILLAGE TRANSPORTATION PLANNING/ENGINEERING CONSENSUS MEMORANDUM FROM LSC TRANSPORTATION CONSULTANTS, INC TO KENT FAWCETT, DATED APRIL 18, 2020. THE RIGHT OF WAY NECESSARY FOR THE ROUNDABOUT AT THE INTERSECTION OF SKI BEACH WAY AND MAYFLOWER VILLAGE DRIVE SHALL BE ENGINEERED, DEDICATED AND INSTALLED PURSUANT TO A TRAFFIC STUDY APPLYING GENERALLY ACCEPTED TRAFFIC STANDARDS FOR MOUNTAIN DEVELOPMENTS AND EVALUATING BOTH COMPLETED PROJECTS AND PROPOSED PROJECTS WITH RESPECT TO WHICH MIDA HAS RECEIVED FINAL SUBDIVISION OR SITE PLAN APPLICATIONS THAT ARE DIRECTLY SERVED BY SKI BEACH WAY AND MAYFLOWER VILLAGE DRIVE.
10. GALENA RIDGE WAY AND GALENA COURT WILL BE CONSTRUCTED CONSISTENT WITH THE MAYFLOWER PHASE 1 MOUNTAIN ROADS DESIGN REVIEW MEMORANDUM FROM HALEY-HORN ASSOCIATES, INC TO KENT FAWCETT, DATED APRIL 8, 2020 (REVISED APRIL 22, 2020).

INTERSECTION COORDINATE TABLE

ROAD INTERSECTION	MAYFLOWER LDP COORDINATE SYSTEM		US STATE PLANE NORTH		US STATE PLANE CENTRAL	
	NORTHING	EASTING	NORTHING	EASTING	NORTHING	EASTING
GALENA COURT / GALENA RIDGE WAY	53123.33	197583.10	1655106.74	3384685.46	1655106.38	7393988.84
GLENCOE MOUNTAIN WAY / MAYFLOWER VILLAGE DRIVE	55064.57	198319.31	1657047.05	3385422.39	1657046.64	7396725.71
SKI BEACH WAY / MAYFLOWER VILLAGE DRIVE	55326.98	197501.88	1657309.77	3384605.33	1657309.35	7393908.66
GALENA RIDGE WAY / SKI BEACH WAY	54338.07	197351.41	1656316.22	3384454.42	1656315.82	7393757.78

MAYFLOWER LDP COORDINATE SYSTEM PROJECTION PARAMETERS

PROJECTION	= TRANSVERSE MERCATOR
DATUM	= NAD83(2011)
REALIZATION/EPOCH	= 2010.0000
FALSE NORTHING	= 200,000.0000
FALSE EASTING	= 50,000.0000
ORIGIN LATITUDE	= 40°37'30.0000" N
SCALE REDUCTION	= 1.000317000
CENTRAL MERIDIAN	= 111°27'30.0000" W
PROJECT ELEVATION	= 6,700.00 (NAVD88)
ZONE UNIT (N/E/U)	= U.S. SURVEY FOOT

MIDA ATTORNEY

APPROVED AS TO FORM THIS 22 DAY OF May 2020.

MIDA ATTORNEY

WASATCH COUNTY SURVEYOR

APPROVED AS TO FORM ON THIS 26 DAY OF May 2020.

ROS# 3058

Wasatch County Surveyor

MAYFLOWER VILLAGE ROADS PHASE I

SHEET 1 OF 6

(435) 649-9467 Alliance Engineering CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664	MILITARY INSTALLATION DEVELOPMENT AUTHORITY "MIDA" Approved and accepted on this 20th day of May 2020. By: Acting Executive Director	JORDANELLE SPECIAL SERVICE DISTRICT AND SPECIAL IMPROVEMENT DISTRICT Approved this 20th day of May 2020. General Manager	WASATCH COUNTY FIRE DISTRICT Approved this 21 day of May 2020. Fire Chief	MIDA MOUNTAIN VILLAGE PUBLIC INFRASTRUCTURE DISTRICT APPROVED THIS 20 DAY OF May 2020. Executive Director	ROCKY MOUNTAIN POWER APPROVED THIS 20th DAY OF May 2020. BY ROCKY MOUNTAIN POWER, A DIVISION OF PACIFICORP., AUTHORIZED AGENT	DOMINION ENERGY APPROVED THIS 20 DAY OF May 2020. BY: TITLE: Pre Construction

5/14/20 JOB NO.: 18-8-13 FILE: X:\WasatchCounty\dwg\srv\plat2018\180818-ph1_ext.dwg

RECORDED

STATE OF UTAH, COUNTY OF WASATCH, AND FILED AT THE REQUEST OF EXTELL DEVELOPMENT COMPANY

DATE 05-28-2020 TIME 10:41 AM BOOK 1044 PAGE 1374-1438

$304.00 FEE

PAMELA FIX SOLSER-WASATCH COUNTY RECORDER

478579 ENTRY NO.

LEGAL DESCRIPTION

PARCEL 1

A parcel of land located in Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being described as follows:

Beginning at a point that is North 26°11'47" West 2545.51 feet and North 63°48'13" East 220.02 feet from a brass cap at the southeast corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being North 26°11'47" West 5917.16 feet from said Southeast Corner of Section 25, to the North Quarter Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters), said point being on the westerly right-of-way of US Highway 40; and running thence coincident with the right-of-way of said US Highway 40 the following two (2) courses: 1) South 76°01'53" West 21.73 feet; thence 2) South 84°32'35" West 107.73 feet to a point on a non tangent curve to the right having a radius of 519.65 feet, of which the radius point bears North 17°37'21" East; thence northwesterly along the arc of said curve 142.06 feet through a central angle of 15°39'48"; thence North 56°42'51" West 108.66 feet to a point on a curve to the right having a radius of 269.57 feet, of which the radius point bears North 33°17'09" East; thence along the arc of said curve 130.15 feet through a central angle of 27°38'43"; thence North 29°03'08" West 166.84 feet to a point on a curve to the right having a radius of 269.57 feet, of which the radius point bears North 60°56'52" East; thence along the arc of said curve 227.71 feet through a central angle of 48°23'50"; thence North 19°20'42" East 112.03 feet to a point on a curve to the left having a radius of 25.00 feet, of which the radius point bears North 70°39'18" West; thence along the arc of said curve 39.27 feet through a central angle of 90°00'00"; thence North 70°39'18" West 10.08 feet to a point on a curve to the left having a radius of 122.54 feet, of which the radius point bears [illegible]

Description contains 235,325 square feet / 5.40 acres.

LEGAL DESCRIPTION CONTINUED

PARCEL 2

A parcel of land located in Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel being described as follows:

Beginning at a point that is South 26°11'47" East 2235.01 feet and South 63°48'13" West 753.17 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being South 26°11'47" East 5917.16 feet from said North Quarter Corner of Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); and running thence South 60°56'35" West 0.03 feet to a point on a non tangent curve to the left having a radius of 271.29 feet, of which the radius point bears South 29°02'49" East; thence along the arc of said curve 31.34 feet through a central angle of 06°37'06" to a point on a non tangent curve to the left having a radius of 15.01 feet, of which the radius point bears South 35°43'19" East; thence along the arc of said curve 26.01 feet through a central angle of 99°18'29"; thence South 44°49'28" West 52.52 feet; thence North 45°08'58" West 6.43 feet to a point on a curve to the left having a radius of 12.00 feet, of which the radius point bears South 44°51'02" West; thence along the arc of said curve 20.54 feet through a central angle of 98°05'06" to a point of compound curve to the left having a radius of 275.00 feet, of which the radius point bears South 53°14'04" East; thence along the arc of said curve 22.13 feet through a central angle of 04°36'40"; thence South 32°09'16" West 163.10 feet to a point on a curve to the left having a radius of 125.00 feet, of which the radius point bears South 57°50'44" East; thence along the arc of said curve 87.82 feet through a central angle of 40°15'10"; thence South 08°05'54" East 93.88 feet to a point on a curve to the [illegible]

LEGAL DESCRIPTION CONTINUED

[illegible] through a central angle of 290°43'49" to a point of reverse curve to the left having a radius of 14.50 feet, of which the radius point bears South 28°20'31" East; thence along the arc of said curve 14.01 feet through a central angle of 55°21'54"; thence South 06°17'34" West 29.69 feet to a point on a curve to the right having a radius of 125.00 feet, of which the radius point bears North 83°42'26" West; thence along the arc of said curve 306.07 feet through a central angle of 140°17'29"; thence North 33°24'57" West 72.07 feet to a point on a curve to the left having a radius of 75.00 feet, of which the radius point bears South 56°35'03" West; thence along the arc of said curve 196.34 feet through a central angle of 149°59'21"; thence South 03°24'18" East 147.21 feet to a point on a curve to the left having a radius of 325.00 feet, of which the radius point bears North 86°35'42" East; thence along the arc of said curve 69.69 feet through a central angle of 12°17'13"; thence South 15°41'30" East 148.12 feet to a point on a curve to the left having a radius of 225.00 feet, of which the radius point bears North 74°18'30" East; thence along the arc of said curve 85.57 feet through a central angle of 21°47'28"; thence North 45°23'03" East 109.75 feet; thence North 81°47'14" East 65.73 feet; thence South 71°25'32" East 96.86 feet; thence South 84°56'01" East 122.36 feet; thence South 21°12'50" East 59.16 feet; thence South 16°06'52" West 86.69 feet to a point on a non tangent curve to the right having a radius of 150.00 feet, of which the radius point bears South 45°21'47" West; thence along the arc of said curve 91.30 feet through a central angle of 34°52'28"; thence South 09°45'46" East 112.01 feet to a point on a curve to the left having a radius of 175.00 feet, of which the radius point bears North 80°14'14" East; thence along the arc of said curve 112.88 feet through a central angle of 36°57'23"; thence South 46°43'08" East 183.44 feet to a point on a curve to the left having a radius of 100.00 feet, of which the radius point bears North 43°16'52" East; thence along the arc of said curve 305.16 feet through a central angle of 174°50'47"; thence North 41°33'55" West 109.72 feet to a point on a curve to the right having a radius of 225.00 feet, of which the radius point bears North 48°26'05" East; thence along the arc of said curve 157.43 feet through a central angle of 40°05'20"; thence North 01°28'36" West 58.79 feet to a point on a curve to the right having a radius of 140.00 feet, of which the radius point bears North 88°31'24" East; thence along the arc of said curve 241.25 feet through a central angle of 98°43'58"; thence South 82°44'38" East 100.38 feet to a point on a curve to the right having a radius of 150.00 feet, of which the radius point bears South 07°15'22" West; thence along the arc of said curve 130.10 feet through a central angle of 49°41'42" to a point of reverse curve to the left having a radius of 375.00 feet, of which the radius point bears North 56°57'04" East; thence along the arc of said curve 240.63 feet through a central angle of 36°45'54" to a point of reverse curve to the right having a radius of 200.00 feet, of which the radius point bears South 20°11'11" West; thence along the arc of said curve 86.09 feet through a central angle of 24°39'51"; thence South 45°08'58" East 151.87 feet to a point on a curve to the left having a radius of 12.00 feet, of which the radius point bears North 44°51'02" East; thence along the arc of said curve 17.54 feet through a central angle of 83°44'37" to a point of reverse curve to the right having a radius of 327.50 feet, of which the radius point bears South 38°53'36" East; thence along the arc of said curve 56.23 feet through a central angle of 09°50'15"; thence North 60°56'39" East 0.03 feet; thence South 29°03'21" East 55.00 feet to the point of beginning.

Description contains 438,241 square feet / 10.06 acres.

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	S 76°01'53" W	21.73'
L2	N 70°39'18" W	10.08'
L3	S 74°58'55" W	18.23'
L4	S 70°32'01" W	67.24'
L5	S 65°46'12" W	89.83'
L6	N 29°02'59" W	60.02'
L7	S 29°03'21" E	8.00'
L8	S 60°56'35" W	0.03'
L9	S 44°49'28" W	52.52'
L10	N 45°08'58" W	8.43'
L11	S 18°58'17" E	48.81'
L12	S 53°25'20" W	57.62'
L13	S 24°15'13" W	13.86'
L14	N 24°15'13" E	28.26'
L15	N 53°25'20" E	57.62'
L16	N 18°58'17" W	48.81'
L17	S 1°28'36" E	58.79'
L18	S 25°31'49" W	97.18'
L19	N 6°17'34" E	29.69'
L20	S 6°17'34" W	29.69'
L21	N 81°47'14" E	65.73'
L22	S 21°12'50" E	59.16'
L23	N 1°28'36" W	58.79'
L24	N 60°56'39" E	0.03'
L25	S 29°03'21" E	8.00'
L26	S 70°39'18" E	10.08'
L27	S 72°46'30" W	95.39'
L28	S 69°20'15" W	52.40'
L29	N 17°38'58" W	9.97'
L30	N 79°51'50" E	65.03'
L31	S 17°38'58" E	9.97'
L32	N 69°20'15" E	29.48'
L33	N 8°49'37" W	80.64'
L34	N 9°54'19" E	24.45'
L35	N 5°08'30" E	72.25'
L36	N 9°54'19" E	12.06'
L37	N 38°38'37" E	23.59'
L38	S 38°30'49" E	45.98'
L39	S 38°38'37" W	14.15'
L40	S 8°49'37" E	80.64'
L41	N 39°38'37" E	18.24'
L42	N 70°39'18" W	54.58'
L43	S 60°56'39" W	0.03'
L44	S 53°25'20" W	57.62'
L45	S 24°15'13" W	29.22'
L46	S 52°17'44" W	30.16'
L47	N 17°38'58" W	9.97'

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD LENGTH
C1	25.00'	39.27'	90°00'00"	N 25°39'18" W	35.36'
C2	122.54'	73.50'	34°21'47"	N 87°50'12" W	72.40'
C3	85.53'	6.64'	4°26'54"	S 72°45'28" W	6.64'
C4	78.00'	6.49'	4°45'49"	S 68°09'06" W	6.48'
C5	271.29'	31.34'	6°37'06"	S 57°38'38" W	31.32'
C6	15.01'	26.01'	99°18'29"	S 4°37'27" W	22.87'
C7	12.00'	20.54'	98°05'06"	S 85°48'29" W	18.12'
C8	275.00'	22.13'	4°36'40"	S 34°27'36" W	22.13'
C9	125.00'	87.82'	40°15'10"	S 12°01'41" W	86.02'
C10	90.00'	86.88'	55°18'36"	S 8°41'01" W	83.55'
C11	125.00'	83.94'	38°28'34"	S 0°16'00" W	82.37'
C12	190.00'	74.91'	22°35'21"	S 50°18'28" W	74.42'
C13	275.00'	70.84'	14°45'34"	S 31°38'00" W	70.65'
C14	12.00'	13.73'	65°33'58"	S 8°31'46" E	13.00'
C15	12.00'	9.12'	43°32'47"	N 46°01'37" E	8.90'
C16	325.00'	83.72'	14°45'34"	N 31°38'00" E	83.49'
C17	240.00'	94.62'	22°35'21"	N 50°18'28" E	94.01'
C18	110.00'	116.34'	60°35'55"	N 31°18'12" E	110.99'
C19	75.00'	50.36'	38°28'34"	N 0°16'00" E	49.42'
C20	175.00'	122.95'	40°15'10"	N 12°01'41" E	120.43'
C21	325.00'	36.26'	6°23'32"	N 35°21'02" E	36.24'
C22	12.00'	17.53'	83°41'46"	N 3°18'05" W	16.01'
C23	150.00'	64.57'	24°39'51"	N 57°28'54" W	64.07'
C24	100.00'	86.73'	49°41'42"	N 57°53'47" W	84.04'
C25	175.00'	122.44'	40°05'20"	S 21°31'16" E	119.96'
C26	325.00'	53.00'	9°20'39"	S 9°29'37" E	52.94'
C27	14.50'	13.71'	54°11'02"	S 31°54'48" E	13.21'
C28	14.50'	13.71'	54°11'02"	N 22°16'14" E	13.21'
C29	275.00'	44.85'	9°20'39"	N 9°29'37" W	44.80'
C30	100.00'	61.19'	35°03'34"	N 8°00'02" E	60.24'
C31	475.00'	103.66'	12°30'12"	N 15°46'51" W	103.45'
C32	150.00'	105.38'	40°15'09"	N 1°54'22" W	103.23'
C33	12.00'	15.97'	76°15'47"	N 19°54'41" W	14.82'
C34	14.50'	14.01'	55°21'54"	N 21°23'23" W	13.47'
C35	14.50'	14.01'	55°21'54"	S 33°58'31" W	13.47'
C36	325.00'	69.69'	12°17'13"	S 9°32'54" E	69.56'
C37	225.00'	85.57'	21°47'28"	S 26°35'14" E	85.06'
C38	150.00'	91.30'	34°52'28"	S 27°11'59" E	89.90'
C39	12.00'	17.54'	83°44'37"	S 87°01'17" E	16.02'
C40	327.50'	56.23'	9°50'15"	N 56°01'32" E	56.16'
C41	80.53'	119.72'	85°10'49"	S 71°38'24" E	109.00'
C42	169.54'	128.94'	43°34'30"	N 87°33'27" E	125.86'
C43	25.00'	39.27'	90°00'00"	N 64°20'42" E	35.36'
C44	319.59'	31.70'	5°41'01"	N 49°19'02" W	31.69'
C45	23.00'	31.97'	79°38'20"	N 86°17'41" W	29.46'
C46	277.58'	74.86'	15°27'06"	S 61°36'42" W	74.63'
C47	82.00'	4.92'	3°26'15"	S 71°03'23" W	4.92'
C48	78.00'	4.68'	3°26'15"	S 71°03'23" W	4.68'
C49	578.68'	115.22'	11°24'27"	N 23°21'12" W	115.02'
C50	96.00'	85.65'	51°07'10"	N 72°42'49" W	82.84'
C51	96.00'	87.47'	52°12'26"	N 50°49'38" W	84.48'
C52	1002.88'	77.57'	4°25'54"	N 79°08'48" W	77.55'
C53	232.50'	31.98'	7°52'56"	N 85°18'13" W	31.96'
C54	182.56'	16.18'	5°04'46"	S 88°12'56" W	16.18'
C55	25.50'	38.30'	86°03'42"	S 42°38'42" W	34.80'
C56	101.20'	6.96'	3°56'30"	N 81°50'05" E	6.96'
C57	217.56'	26.39'	6°56'59"	N 87°16'49" E	26.37'
C58	267.50'	36.80'	7°52'56"	S 85°18'13" E	36.77'
C59	1037.88'	90.54'	4°59'54"	S 78°51'48" E	90.52'
C60	96.00'	78.94'	47°06'57"	N 80°04'41" E	76.74'
C61	96.00'	76.88'	45°53'11"	S 24°19'38" E	74.85'
C62	617.68'	122.98'	11°24'27"	S 23°21'12" E	122.78'
C63	82.53'	133.98'	93°00'47"	S 84°09'21" E	119.74'
C64	230.58'	55.50'	13°47'29"	N 62°26'31" E	55.37'
C65	25.00'	37.56'	86°05'06"	N 12°30'13" E	34.13'
C66	100.00'	67.15'	38°28'34"	S 0°16'00" W	65.90'
C67	100.00'	45.36'	25°59'25"	S 11°15'31" W	44.97'
C68	300.00'	48.93'	9°20'39"	S 9°29'37" E	48.87'
C69	80.00'	36.49'	26°07'54"	N 60°20'11" W	36.17'
C70	250.00'	34.39'	7°52'56"	N 85°18'13" W	34.36'
C71	200.06'	24.27'	6°56'59"	S 87°16'49" W	24.25'
C72	12.00'	16.20'	77°19'50"	N 83°17'30" E	14.99'
C73	225.00'	80.74'	20°33'37"	S 47°45'46" E	80.31'

Alliance Engineering Inc
(435) 649-9467
CONSULTING ENGINEERS LAND PLANNERS SURVEYORS
323 Main Street P.O. Box 2664 Park City, Utah 84060-2664

MAYFLOWER VILLAGE ROADS PHASE I

5/19/20 JOB NO.: 18-8-18 FILE: X:\WasatchCounty\dwg\srv\plat2018\180818-ph1_ext.dwg

BY:TC

RECORDED

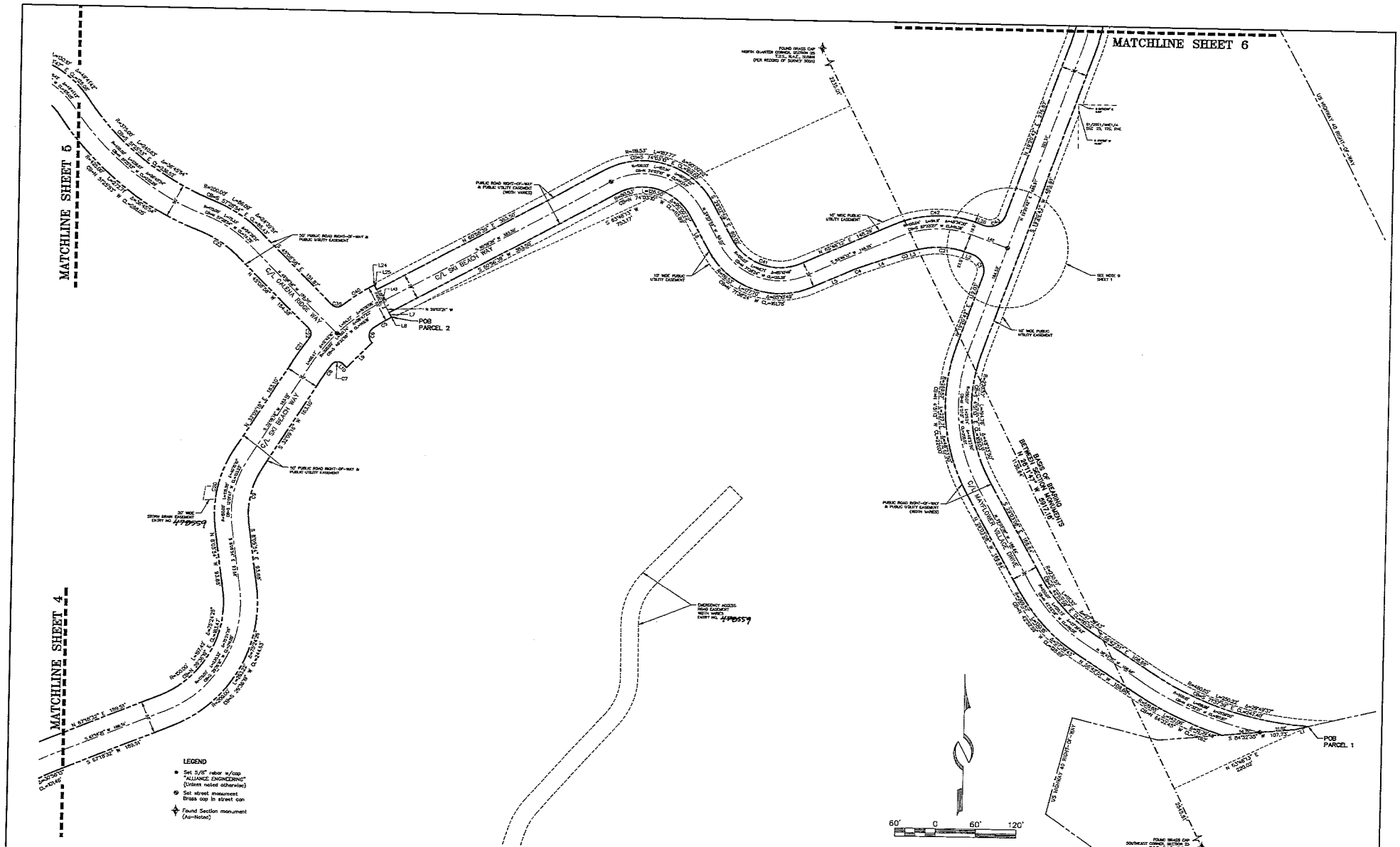
STATE OF UTAH, COUNTY OF WASATCH, AND FILED AT THE REQUEST OF EXTELL DEVELOPMENT COMPANY

DATE 05-28-2020 TIME 10:41AM BOOK 1294 PAGE 1379-1938

$304.00 FEE

PEGGY FOY SULSER-WASATCH COUNTY RECORDER

478579 ENTRY NO.



MAYFLOWER VILLAGE ROADS PHASE I

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Alliance Engineering
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SHEET 3 OF 6

5/16/20 JOB NO.: 18-8-18 FILE: X:\WasatchCounty\dwg\srv\plat2018\180818-ph1_ext.dwg

BY:TC RECORDED
STATE OF UTAH, COUNTY OF WASATCH, AND FILED
AT THE REQUEST OF EXTELL DEVELOPMENT COMPANY
DATE 05-28-2020 TIME 10:41 AM BOOK 1294 PAGE 1379-1438
$ 304.00 FEE
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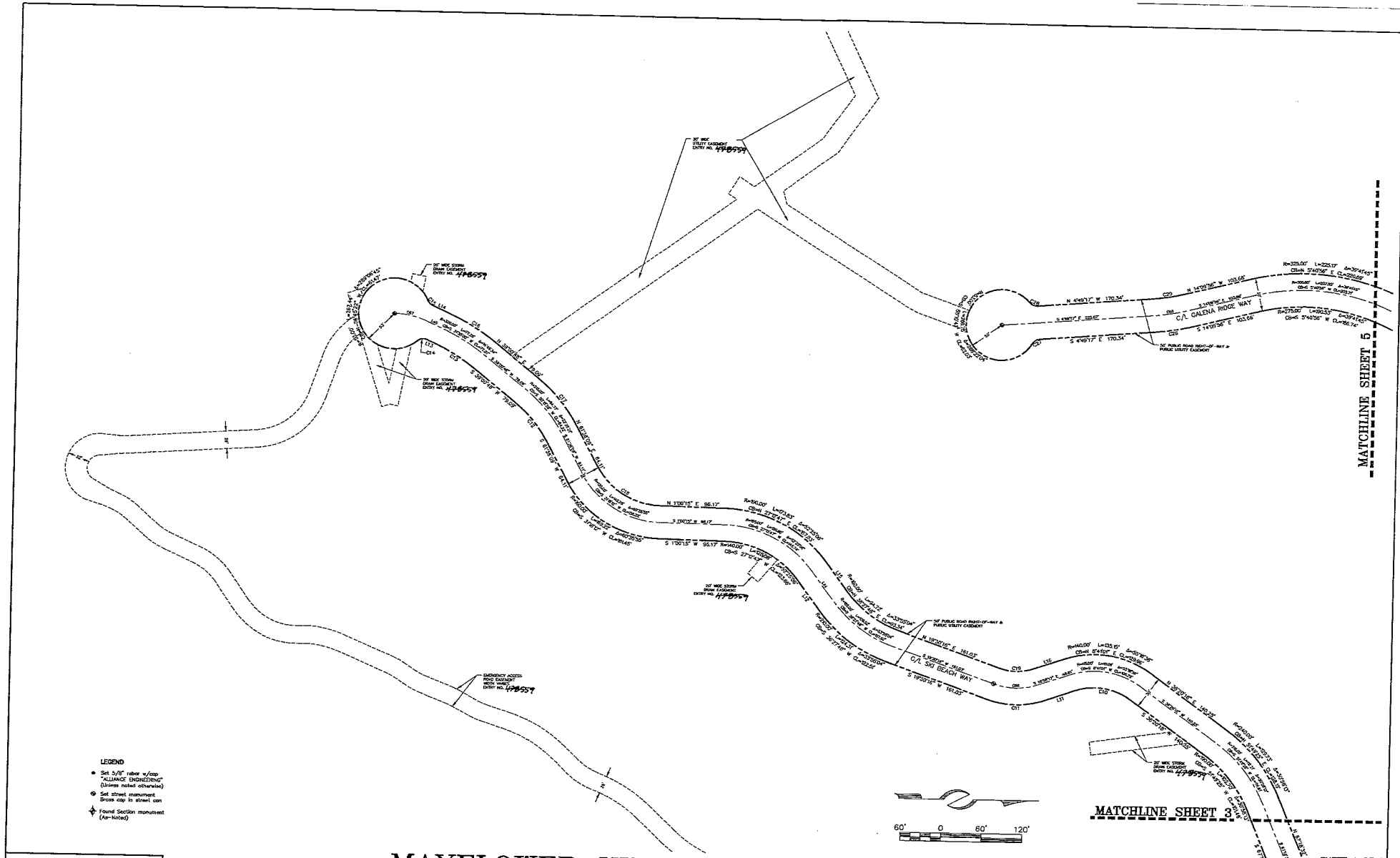

MAYFLOWER VILLAGE ROADS PHASE I

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SHEET 4 OF 6

5/19/20 JOB NO.: 18-8-16 FILE: X:\WasatchCounty\dwg\srv\plat2018\180818-ph1_ext.dwg

BY: TC
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STATE OF UTAH, COUNTY OF WASATCH, AND FILED
AT THE REQUEST OF EXTELL DEVELOPMENT COMPANY
DATE 05-28-2020 TIME 10:41 AM BOOK 1294 PAGE 1379-1438
$304.00 FEE
PEGGY FOY SULSER-WASATCH COUNTY RECORDER
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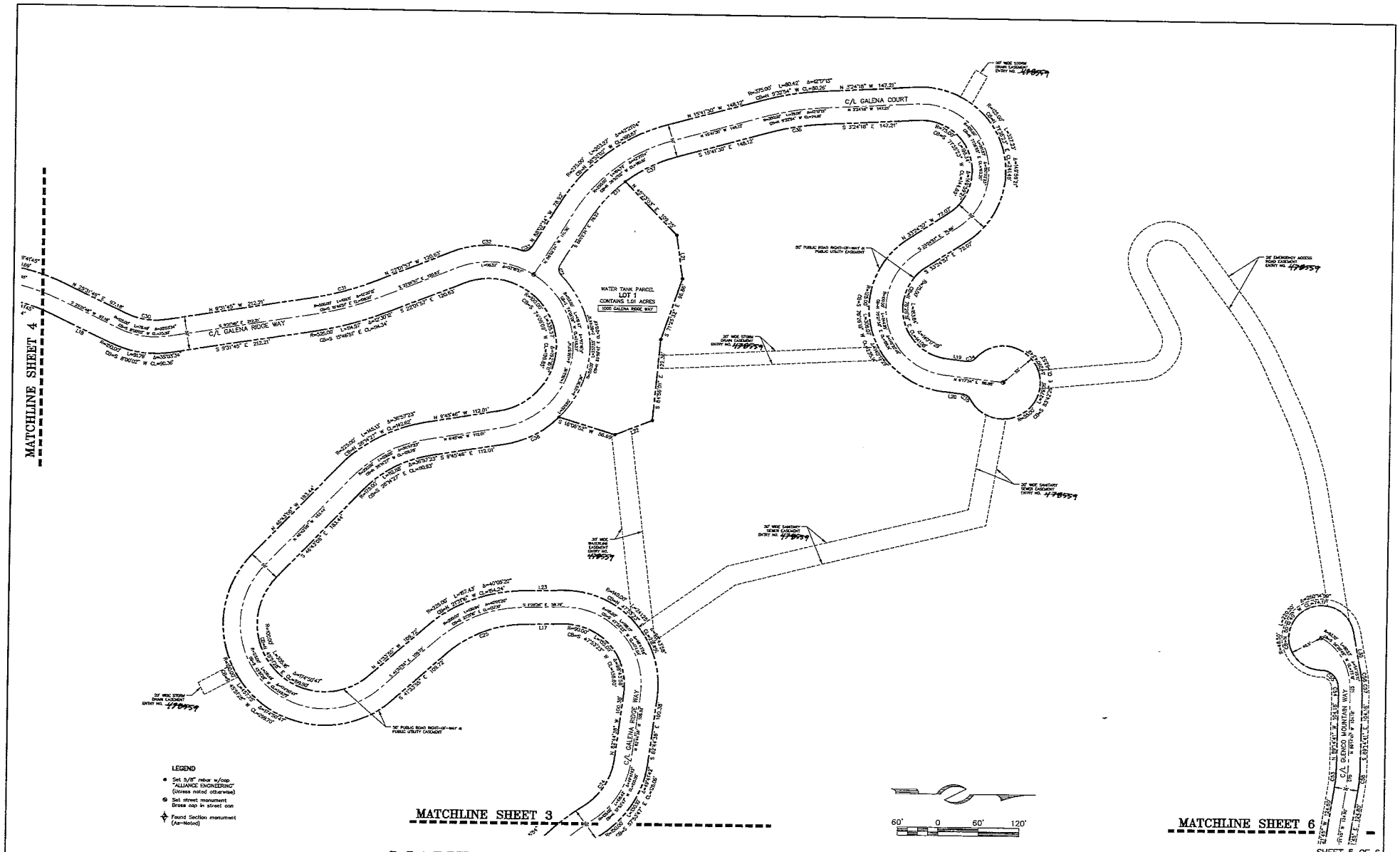

MAYFLOWER VILLAGE ROADS PHASE I

SHEET 5 OF 6

(435) 649-9467
Alliance Engineering Inc.
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333 Main Street P.O. Box 2664 Park City, Utah 84060-2664

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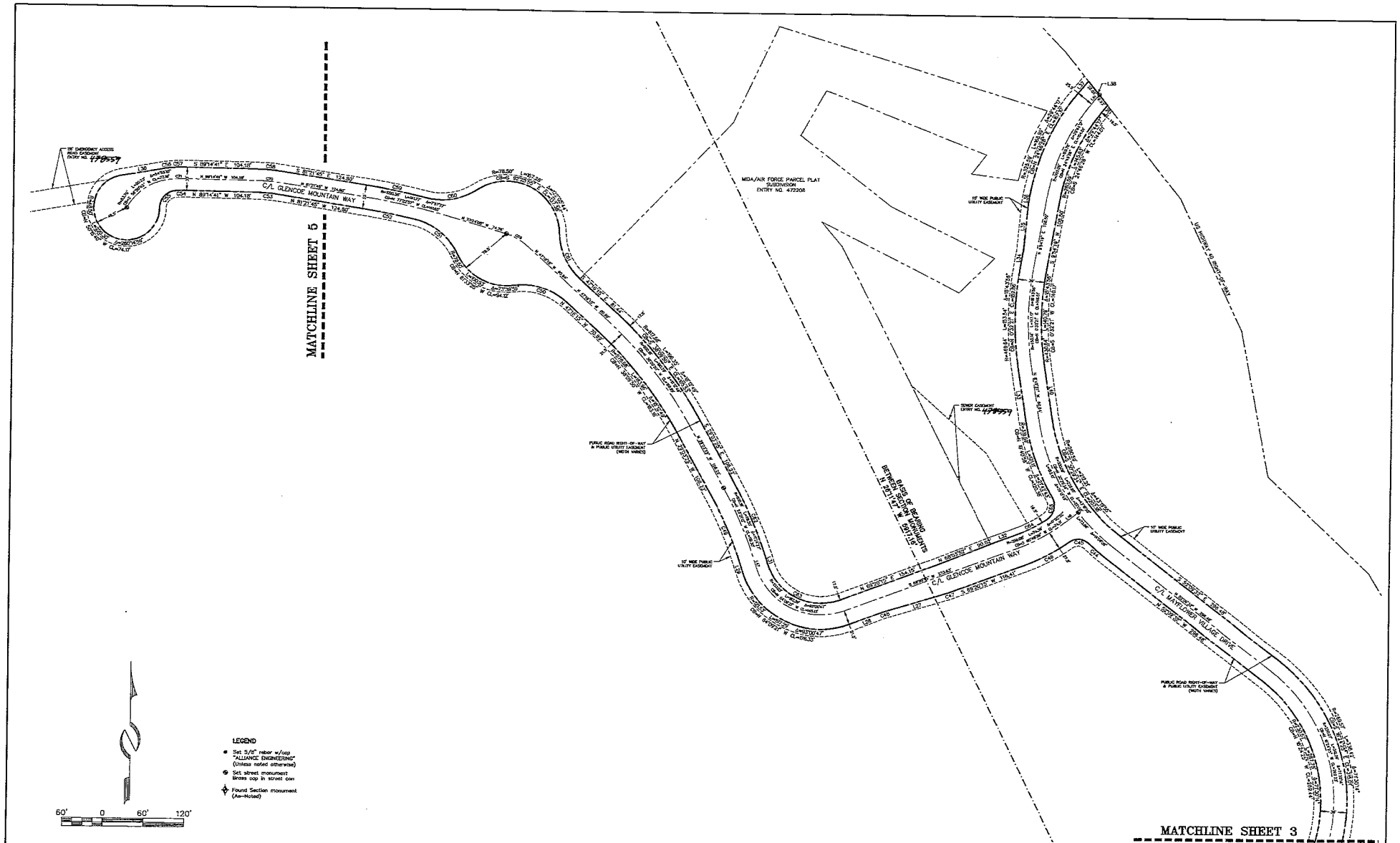
BY: TC

RECORDED
STATE OF UTAH, COUNTY OF WASATCH, AND FILED
AT THE REQUEST OF EXTELL DEVELOPMENT COMPANY
DATE 05-28-2020 TIME 10:41AM BOOK 1394 PAGE 1379-1438
$ 304.00 FEE
PEGGY FOY SULSER-WASATCH COUNTY RECORDER
478579 ENTRY NO.



MAYFLOWER VILLAGE ROADS PHASE I

SHEET 6 OF 6

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333 Main Street P.O. Box 2664 Park City, Utah 84060-2664

BY: TC RECORDED
STATE OF UTAH, COUNTY OF WASATCH, AND FILED
AT THE REQUEST OF EXTELL DEVELOPMENT COMPANY
DATE 05-30-2000 TIME 10:41AM BOOK 1294 PAGE 879-938
$ 304.00 FEE
PEGGY FOY SULSER-WASATCH COUNTY RECORDER
478579 ENTRY NO.

EXHIBIT G
to
DONATION AGREEMENT

Form of Tax Sharing and Reimbursement Agreement

Execution Version

TAX SHARING AND REIMBURSEMENT AGREEMENT

by and among

MILITARY INSTALLATION DEVELOPMENT AUTHORITY,

and

EX UTAH DEVELOPMENT LLC,
as Master Developer,
and
BLX LLC,
BLX MAYFLOWER LLC,
BLX PIOCHE LLC,
BLX LAND LLC,
BLX MWR HOTEL LLC,
RH MAYFLOWER, LLC
32 DOM MAYFLOWER, LLC,
as Landowners

TABLE OF CONTENTS

TAX SHARING AND REIMBURSEMENT AGREEMENT

This Tax Sharing and Reimbursement Agreement ("**Agreement**") is entered into as of the ___ day of _____ 2020 (the "**Effective Date**"), by and among the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a body politic of the State of Utah ("**MIDA**"), on the one hand, and BLX LLC ("**BLX**"), BLX MAYFLOWER LLC ("**BLXM**"), BLX PIOCHE LLC ("**BLX Pioche**"), BLX LAND LLC ("**BLX Land**"), BLX MWR HOTEL LLC ("**BLX MWR**"), RH MAYFLOWER LLC, and 32 DOM MAYFLOWER LLC, each of which is a Delaware limited liability company, (collectively, the "**Landowners**") and EX UTAH DEVELOPMENT LLC, a Delaware limited liability company ("**Master Developer**", together with the Landowners, the "**BLX Entities**"), on the other hand. Each of MIDA and the BLX Entities are referred to in this Agreement separately as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, MIDA was organized and is governed by Utah Code Ann. §63H-1-101 *et seq.* (as amended or any successor or replacement provisions, the "**MIDA Act**") to create project areas and to promote the development of military and related land within such project areas, among other powers and authorities established by the MIDA Act;

WHEREAS, Landowners are the owners of certain surface rights in and to real property in Wasatch County, Utah and more particularly described on Exhibit A attached hereto (the "**Mountainside Property**"); and

WHEREAS, Master Developer has been retained by Landowners to assist in developing the Mountainside Property into a four-season recreational resort that will, among other uses, include a ski village and multiple ski lifts (the "**Mountainside Resort**"), and will include a parcel on which the MWR Hotel (as defined herein) is to be located, and have authorized Master Developer to act on Landowners' behalf for the purposes of developing the Mountainside Property and entering into this Agreement; and

WHEREAS, on July 18, 2012 MIDA followed all requirements of the MIDA Act and adopted the Military Recreation Facility Project Area Plan – Part 1 (the "**Part 1 Project Area Plan**"), which included certain real property located in Wasatch County known as Blue Ledge (the "**Blue Ledge Parcel**"), which is the subject of the Blue Ledge Development Agreement (as defined herein); and

WHEREAS, BLX has acquired the Blue Ledge Parcel and is entitled to the benefits of the provisions of the Blue Ledge Development Agreement; and

WHEREAS, MIDA entered into the West Side Interlocal Cooperation Agreement and the East Side Interlocal Cooperation Agreement with Wasatch County, both dated December 17, 2018, as amended by the First Amendment to such agreements, both dated as of March 18, 2020 (collectively, the "**Interlocal Agreements**") following all requirements of the MIDA Act and the Utah Interlocal Cooperation Act, Utah Code Ann. §11-13-101 *et seq.* The Interlocal Agreements, among other things, allow MIDA to create a development fund and set forth how the development fund will be used on the east side of US Highway 40 ("**East Side**") and the west side of eastern right-of-way line for US Highway 40 ("**West Side**"); and

WHEREAS, a portion of the Development Fund, as defined herein, is available for reimbursement to Master Developer and for payment of Debt Service, as provided herein; and the remaining portion of the Development Fund is available for other uses by MIDA, as provided herein; and

WHEREAS, on December 17, 2018, MIDA followed all requirements of the MIDA Act and adopted the Military Recreation Facility Project Area Plan – Part 2 (the "**Part 2 Project Area Plan**") which included portions of the Mountainside Property; and

WHEREAS, on July 2, 2019, MIDA followed all statutory requirements of the MIDA Act and adopted the Military Recreation Facility Project Area Plan – Part 3 (the "**Part 3 Project Area Plan**"; together with the Part 1 Project Area Plan and the Part 2 Project Area Plan, the "**Project Area Plans**") that entirely includes property that is part of the Mountainside Property (the area included within Part 1 Project Area Plan, the Part 2 Project Area Plan, and the Part 3 Project Area Plan, and any future property added to the MIDA project area in unincorporated Wasatch County within the Wasatch County Consent Area shown in Exhibit A to the Interlocal Agreements, is collectively referred to herein as the "**Project Area**"); and

WHEREAS, concurrently with the entry into this Agreement, MIDA and BLX MWR are entering into a Donation Agreement ("**Donation Agreement**") and a MWR Hotel Condominium Lease Agreement ("**MWR Hotel Condominium Lease Agreement**"), wherein certain property, which is part of the Mountainside Resort, as more particularly described in the Donation Agreement, will be donated to MIDA, and pursuant to the MWR Hotel Condominium Lease Agreement, BLX MWR will construct (or cause to be constructed) and operate a convention hotel condominium project (defined herein as the MWR Hotel) that will include, among other improvements, certain benefits and amenities for military personnel commonly described as a morale, welfare, and recreation facility; and

WHEREAS, the development of the Project Area will generate incremental property taxes and other taxes and fees that may be used to for the development of infrastructure for the Project Area and for the development, construction and operation of the MWR Hotel under the terms and conditions described in this Agreement; and

WHEREAS, the Interlocal Agreements allow MIDA to use certain tax revenue, described below, to create the MWR Hotel Fund (as defined herein), which will assist in the development, construction and operation of the MWR Hotel; and

WHEREAS, the Mountain Improvements Fund, the Blue Ledge Fund (as defined herein), the MWR Hotel Fund, and the Pre-Co Fee Fund (as defined herein) are independent of each other and each fund applies to different property in the Project Area and different taxes and fees are generated from the specific property associated with each fund; and

WHEREAS, on October 1, 2019, MIDA followed all requirements of the MIDA Act and extended the Property Tax Allocation Period for the MWR Hotel to be forty (40) years pursuant to MIDA Resolution 2019-22; and

WHEREAS, on May 26, 2020, MIDA followed all requirements of Section 405 of the MIDA Act and adopted a project area budget for the Project Area (the "**Project Area Budget**") that is consistent with the Interlocal Agreements and this Agreement; and

WHEREAS, on March 17, 2020, MIDA followed all requirements of the MIDA Act and extended the Property Tax Allocation Period for the balance of the Project Area to be forty (40) years, consisting of the initial 25 year period and an additional 15 year period, pursuant to MIDA Resolution 2020-01; and

WHEREAS, MIDA has determined that the execution and delivery of this Agreement, the Donation Agreement, the MWR Hotel Condominium Lease Agreement and the other documents related thereto, and the development, construction and operation of the MWR Hotel in connection with Mountainside Resort, will, among other things, benefit both the public and military personnel; and

WHEREAS, MIDA, in accordance with its statutory authority under the MIDA Act and other Utah statutory provisions, desires to provide the BLX Entities with certain assurances as to availability and use of the Mountain Improvements Fund, Blue Ledge Fund, the MWR Hotel Fund, and the Pre-Co Fee Fund in exchange for BLX Entities fulfilling their obligations, as provided herein; and

WHEREAS, the Parties have determined that the availability and use of the funds described in this Agreement are necessary in order to develop the Mountainside Property, and to develop and operate the Mountainside Resort and the MWR Hotel;

TERMS AND CONDITIONS

NOW, THEREFORE, for and in consideration of the promises and performances set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1. Definitions. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in Exhibit B attached hereto.

1.2. Interpretation. Matters relating to the interpretation of this Agreement are set forth in Exhibit C attached hereto.

ARTICLE II
PROJECT AREA, PROJECT AREA BUDGET AND AVAILABLE FUNDS

2.1 Project Area, Project Area Plan and Project Area Budget.

(a) *Establishment of Project Area.* MIDA has adopted the Project Area Plans establishing the Project Area so as to include the Mountainside Property and other property in the vicinity of the Mountainside Property. The Project Area is intended to produce incremental taxes and fees available for the purposes described in this Agreement, the Project Area Plans, and Project Area Budget, and other purposes as set forth in future agreements relating to the development of the Mountainside Property.

(b) *Amendments and Modifications.* The adoption of the Project Area Plans and Project Area Budget constitute a present exercise of MIDA's legislative authority for the benefit of the Mountainside Property in accordance with all applicable laws. MIDA acknowledges that in the absence of the Project Area Plans and Project Area Budget, as adopted, the BLX Entities would not enter into the Donation Agreement, MWR Hotel Condominium Lease Agreement and related agreements with MIDA, and that the BLX Entities are materially relying on the terms and conditions of the Project Area Plans, and Interlocal Agreements in undertaking the development of the Mountainside Resort. In the event MIDA believes that an amendment to the Project Area Plans or the Interlocal Agreements is necessary to accomplish the purposes of the Project Area Plans in effect as of the Effective Date, MIDA shall ensure that the taxes, priorities, percentages and maximum costs set forth in the Interlocal Agreements are not changed and that any such amendment does not adversely affect the rights of the BLX Entities under this Agreement. Without limiting the foregoing, in no event shall any amendment or modification of the Project Area Plans or Interlocal Agreements adversely affect the rights and obligations of the Parties hereto except to

the extent expressly set forth in an amendment to this Agreement signed by MIDA and the Master Developer (on its own behalf and on behalf of the Landowners). MIDA covenants that it will comply with the requirements of this Agreement as a contractual obligation without regard to any amendment or modification of the Project Area Plans that is not included in an amendment to this Agreement as provided in the immediately foregoing sentence.

(c) *Project Area Budget Amendments.* The BLX Entities acknowledge that it will be necessary for MIDA to amend the Project Area Budget from time to time as more information and data becomes available including without limitation, the dollar amount of base year property taxes, developments constructed, Property Tax Allocation payments and projections, and assessed taxable property valuations. Based on this future data, the adopted Project Area Budget, as of the Effective Date, will change, including possible decreases in the dollar amount of Available Funds. However, MIDA agrees that the taxes to be included in the Development Fund and the priorities, percentages and maximum costs for the Jordanelle Parkway Improvements, East Side Frontage Road Improvements, West Side Day Skier Parking, Designated Uses, and Mountain Improvements, as set forth in Section 3.2 of this Agreement and in the Interlocal Agreements, shall not be changed and shall be reflected in all Project Area Budget amendments. The Parties acknowledge that the BLX Entities are relying on the fact that the Project Area Plan was adopted and triggers MIDA's right to receive and use Property Tax Allocation payments (subject to the requirements of the MIDA Act), and that the BLX Entities are not relying on the actual dollar amounts shown in the Project Area Budget remaining the same or increasing.

2.2 Available Funds. The funds available from the Project Area for reimbursement of Eligible Expenses or payment of Debt Service hereunder are the Blue Ledge Fund, the Mountain Improvements Fund, the MWR Hotel Fund, and the Pre-Co Fee Fund (collectively, the "**Available Funds**").

2.3 Use of Available Funds. Once the Available Funds have been actually received by MIDA, the Available Funds shall be used and disbursed by MIDA only as provided in Article III, Section 4.2 and Section 4.3 of this Agreement and shall not be used or disbursed for any other purpose.

2.4 No Guarantee of Available Funds. The BLX Entities assume the risk that no Available Funds will be generated or, even if generated, that such Available Funds will be paid to MIDA. MIDA makes no representation to the BLX Entities or to any other Person that the Available Funds received by MIDA will be in any particular amount or during any particular time period, or in the amount Master Developer may be expecting to receive. The BLX Entities understand and agree that:

(a) MIDA has no power to levy a property tax on real or personal property located within the Project Area;

(b) MIDA has no power to set a mill levy or rate of tax levy on real or personal property; and

(c) MIDA is entitled to receive and use Property Tax Allocation only for the period established by law pursuant to the MIDA Act.

Notwithstanding the foregoing, MIDA represents and warrants to Master Developer that the Project Area and Project Area Plan were properly adopted by MIDA; and in the event that any Person fails to timely pay any tax or fee that would become a part of the Available Funds, MIDA shall take, and use best efforts to cause any other governmental entities to take, all actions authorized by law to collect Available Funds from such Person(s) in the manner provided by law.

2.5 Pledge of Available Funds. MIDA hereby pledges to Master Developer as a first position security interest all Available Funds that are payable to MIDA from the Project Area, if any, which pledge serves as security for the payment to Master Developer of the Available Funds required by this Agreement.

ARTICLE III
ENTITLEMENT TO AND USE OF AVAILABLE FUNDS

This Article III governs the use and distribution of the Available Funds:

3.1 Blue Ledge Fund.

(a) *Background.* Pursuant to the Blue Ledge Development Agreement, (i) eighty percent (80%) of the property taxes, sales taxes, and resort community taxes generated from the Blue Ledge Parcel received by MIDA is defined as "Tax Increment" and can be used for certain improvements defined as a "Ski Lift" and "other infrastructure" and (ii) the remaining 20% of the taxes generated can be used at MIDA's sole discretion for operations and/or to benefit the MWR Hotel, all as more fully set forth in the Blue Ledge Development Agreement.

(b) *Amendment of Blue Ledge Development Agreement.* MIDA and BLX agree that the Blue Ledge Development Agreement is hereby amended to provide that, notwithstanding anything in the Blue Ledge Development Agreement to the contrary:

(i) the definition of "Ski Lift" and "other infrastructure" is replaced with "Mountain Improvements" and it has the same definition as provided in this Agreement;

(ii) the 80% of the "Tax Increment" allocated to BLX may be used by any of the BLX Entities for any Mountain Improvements, whether or not on the Blue Ledge Parcel or connecting to the Deer Valley Ski Resort, in such amounts and with such priorities as may be determined from time to time in Master Developer's sole discretion. (the "**Blue Ledge Fund**"); and

(iii) The "Tax Increment Period" shall be the entire Development Period as defined in this Agreement.

(c) *Reaffirmation.* Except as amended by this Section 3.1, the Parties hereby affirm, ratify and agree that the Blue Ledge Development Agreement is and remains in full force and effect.

3.2 Development Fund. The Development Fund excludes the Blue Ledge Fund, the MWR Hotel Fund, and the Pre-CO Fee Fund. MIDA agrees that the Development Fund established by the Interlocal Agreements shall be segregated into two distinct accounts as follows:

(a) *30% of Development Fund.* 30% of the Development Fund ("**30% DF**") shall be used as follows:

(i) *Initial Development Period.* The 30% DF generated during the Initial Development Period is available to each owner of the property from which the funds are generated, whether on the East Side or West Side, for reimbursement to such property owner for development of infrastructure that will assist the property owner in the development of the property owner's property. Therefore, Master Developer shall be reimbursed by MIDA for Eligible Expenses incurred by any of the BLX Entities from the

30% DF generated from the Mountainside Property which MIDA actually receives (the "**30% BLX DF**"). The 30% BLX DF is part of the Mountain Improvements Fund and is available for reimbursement of Eligible Expenses. This Section 3.2(a)(i) shall not apply to the MWR Hotel Fund (which is addressed in Section 3.4 of this Agreement) and the Blue Ledge Fund (which is addressed in Section 3.1 of this Agreement).

(ii) *Secondary Development Period.* The 30% DF generated during the Secondary Development Period shall not be available to owners of the property from which the funds are generated, whether on the East Side or West Side, but shall be allocated among MIDA, Wasatch County and the Wasatch County Fire District as provided in the Interlocal Agreements.

(b) *70% of Development Fund.* 70% of the Development Fund ("**70% DF**") is to be used as provided in this Section 3.2(b) in connection with development in the Project Area and surrounding JSPA during the Development Period. MIDA agrees that subject to Section 3.2(c), the priority for the use of the 70% DF set forth in the Interlocal Agreements and required by this Agreement, is as follows, and shall not be changed without the written consent of Master Developer:

(i) The acquisition and construction of the Jordanelle Parkway road and related improvements (collectively, the "**Jordanelle Parkway Improvements**") from the 70% DF generated solely from the East Side; then

(ii) Construction of the East Side frontage road improvements from and through the southern portal of the Portal Improvements to State Highway 319 from the 70% DF generated from the East Side, and for the East Side frontage road improvements to and from the northern portal of the Portal Improvements to the Jordanelle Parkway (the "**East Side Frontage Road Improvements**") from the 70% DF generated from the East Side, in the aggregate not to exceed Two Million Dollars ($2,000,000); then

(iii) Public parking used for day skiers to be located on West Side from the 70% DF generated from the East Side, not to exceed Eight Million Dollars ($8,000,000) (the "**West Side Day Skier Parking**"); then

(iv) Uses within the Project Area consistent with the MIDA Act, as agreed upon by MIDA and Wasatch County (the "**Designated Uses**") from the 70% DF generated from the East Side, not to exceed Five Million Dollars ($5,000,000); then

(v) Mountain Improvements, including but not limited to, the West Side Frontage Road Improvements, and the West Side Day Skier Parking, from the 70% DF generated from the East Side and West Side during the Development Period (the "**70% BLX DF**" which is part of the Mountain Improvements Fund); provided that the West Side Day Skier Parking will be funded from 70% DF generated from the West Side only to the extent that the funding generated from the 70% DF the East Side provided for in Section 3.2(b)(iii) is insufficient); then

(vi) East Side Trails and West Side Trails and recreational facilities, from the 70% DF generated from the East Side and West Side.

(c) *70% BLX DF during the Development Period.* The Parties acknowledge that not all of the projects identified in Section 3.2(b) and funded from the 70% DF will be developed at

the same time. For cash flow management and funding purposes, but without affecting the priorities set forth in Section 3.2(b), the Parties agree as follows for each year during the Development Period:

(i) MIDA shall retain from the 70% DF generated from the East Side in an amount not to exceed the annual debt service to be applied by MIDA to retire the Jordanelle Parkway Loans plus any reasonably anticipated warranty, litigation, or settlement costs that are not the responsibility of third parties and are not actually paid by such third parties after diligent effort by MIDA. In no event shall any funds generated from the West Side be used to fund the Jordanelle Parkway Improvements without the prior written consent of Master Developer in each instance, which consent may be withheld in the sole discretion of Master Developer.

(ii) MIDA shall retain from the 70% DF generated from the East Side an amount not to exceed the lesser of (A) annual debt service to be applied by MIDA to retire any debt incurred by MIDA for the reasonable aggregate cost incurred by MIDA for the East Side Frontage Road Improvements; or (B) Two Million Dollars ($2,000,000) in the aggregate.

(iii) Once the funding priority set forth in Section 3.2(b)(iii) has been satisfied, MIDA shall retain from the 70% DF generated from the East Side an amount not to exceed the lesser of (A) an amount not to exceed the annual debt service to be applied by MIDA to retire any debt incurred by MIDA, MIDA's subsidiary, or Wasatch County for the reasonable aggregate costs incurred by MIDA, MIDA's subsidiary or Wasatch County for the Designated Uses, or (B) $5,000,000 in the aggregate;

(iv) Subject only to the reserved funding contemplated in Sections 3.2(c)(i), 3.2(c)(ii), and 3.2(c)(iii), during each year of the Development Period the 70% BLX DF shall be used to reimburse Master Developer for Eligible Expenses incurred by any BLX Entity for Mountain Improvements;

(v) Once the funding contemplated in Sections 3.2(c)(i), 3.2(c)(ii), 3.2(c)(iii), and 3.2(c)(iv) has been fully satisfied, MIDA shall use the balance of the 70% DF to pay for the improvements contemplated in Section 3.2(b)(v). If there are any funds remaining in the 70% DF after payment of the improvements contemplated in Section 3.2(b)(v), then Wasatch County shall have the right to determine such use to the extent provided in the Interlocal Agreements.

(vi) MIDA does not guarantee that there will be any 70% DF from the East Side after funding of the Jordanelle Parkway Improvements, East Side Frontage Road Improvements and the Designated Uses.

(d) *Jordanelle Parkway Funding.* As of the Effective Date, MIDA's budget for the completed cost of the Jordanelle Parkway Improvements is $26,000,000, plus interest as provided in the Jordanelle Parkway Loans (the "**Jordanelle Parkway Budget**"). The costs may increase if there are any warranty issues or litigation costs that are not the responsibility of third parties and are not actually paid by such third parties after diligent effort by MIDA. MIDA will strive to keep the costs within the Jordanelle Parkway Budget.

(e) *Portals.* As of the Effective Date, UDOT has agreed to fund the north and south underpasses that are a part of the Portal Improvements. Subject to UDOT providing such funding,

none of the 70% DF shall be expended on the two portals that are a part of the Portal Improvements.

(f) *Mountain Improvements Budget.* Within one hundred eighty (180) days after the Effective Date, Master Developer will prepare and submit to MIDA an estimate of the projected costs of the Mountain Improvements to be funded from Blue Ledge Fund and the Mountain Improvements Fund (the "**Mountain Improvements Budget**"). The Mountain Improvements Budget will be updated from time to time by Master Developer based on the ongoing development of the Mountainside Property, but not less often than every five (5) years. No part of the 70% DF shall be used for the improvements identified in Section 3.2(b)(vi) until the then current Mountain Improvements Budget has been exceeded by reimbursement by MIDA of Eligible Expenses to Master Developer.

3.3 Beach View Recreation Facility and Golf Academy. Pursuant to Section 10(d)(i)(E) of the Interlocal Agreements, the Parties agree as follows:

(a) *Beach View Recreation Facility.* Deer Cove owns certain property on the East Side near the western shore of the Jordanelle Reservoir that may be developed under the MIDA Act in the future for a military morale, welfare, and recreation facility to be primarily used during the non-winter months for recreation near the Jordanelle Reservoir ("**Beach View Recreation Facility**"). If Deer Cove donates to MIDA the property on which the Beach View Recreation Facility may be developed and the Master Developer, in its sole discretion, agrees to construct and operate the Beach View Recreation Facility shall be deemed to be a part of the Mountain Improvements and in addition Master Developer shall have the right to all Development Funds generated from the Beach View Recreation Facility to be used to assist in the construction and operation of the Beach View Recreation Facility.

(b) *Golf Academy.* SkyRidge owns certain property on the East Side where it plans to construct a facility for the instruction and playing of golf and related uses, including a 20 unit residential condominium project, instead of developing twenty (20) townhome units ("**Golf Academy**"). SkyRidge has approached MIDA and offered to provide two condominium units to MIDA for MIDA to use to fulfill its purposes. The Parties agree that MIDA may, at its option, use Development Funds during the Development Period generated from the Golf Academy to assist in the construction of the Golf Academy so long as $120,000 per year in Property Tax Allocation generated from the Golf Academy during the Development Period is first paid into the 70% BLX DF.

3.4 MWR Hotel Fund.

(a) *MWR Hotel Fund.* As used herein the term "**MWR Hotel Fund**" means all of the following funds received by MIDA pursuant to the MIDA Act:

(i) *40 Year Property Tax Allocation.* 75% of the Property Tax Allocation generated from the Residential Units located within the MWR Hotel for a period of forty (40) years commencing as to each such Residential Unit on the date on which MIDA first receives Property Tax Allocation from such Residential Unit;

(ii) *Sales and Use Tax.* The sales and use tax collected from taxable activities occurring at the MWR Hotel;

(iii) *Resort Communities Tax.* The Resort Communities Tax collected from taxable activities occurring at the MWR Hotel;

(iv) *Municipal Energy Tax.* The Municipal Energy Tax collected from the MWR Hotel;

(v) *Telecommunication Tax.* The Telecommunications Tax collected from the MWR Hotel;

(vi) *Accommodations Tax.* The MIDA Accommodations Tax, less the sum total of (i) an amount equal to the tax revenue that would be generated if the MIDA Accommodations Tax was two percent (2%), which amount shall be paid to Wasatch County; plus (ii) an amount equal to the tax revenue that would be generated if the MIDA Accommodations Tax was two percent (2%), which amount shall be retained by MIDA for its operations and administrative expenses, plus (iii) an amount equal to the tax revenue that would be generated if the MIDA Accommodations Tax was one percent (1%), which amount may be retained by MIDA or all or a portion thereof may remitted by MIDA to the military entity described in the MWR Hotel Condominium Lease Agreement pursuant to a written agreement between MIDA and such military entity;

(vii) *Pre-Co Fee Fund.* The Pre-Co Fee Fund generated from the MWR Hotel; and

(viii) *Hotel Property Tax Allocation.* In the event for any reason any of the Hotel Unit, Commercial Units, and/or the Military Concierge Unit and their associated common areas owned by MIDA are determined by any governmental or judicial authority to be or become subject to Property Taxes, the MWR Hotel Fund shall also include 75% of the Property Tax Allocation generated from such Hotel Unit, Commercial Units, and/or the Military Concierge Unit and their associated common areas (the "**Hotel Property Tax Allocation**") for a period of forty (40) years (or any longer period then allowed under the MIDA Act), commencing for each such Unit on the date on which MIDA first receives Property Tax Allocation from any such Unit.

(b) *Master Developer Allocation of the MWR Hotel Fund.* The MWR Hotel Fund shall be disbursed by MIDA to Master Developer for use in the Development, construction and operation of the MWR Hotel ("**MWR Hotel Purpose**"). If bonds are issued to finance all or a portion of the MWR Hotel, as provided in Section 4.2, the MWR Hotel Fund required for Debt Service with respect to such Bond financing shall be used as provided in Section 4.3. If there are MWR Hotel Funds in excess of what is needed to for such bond financing and/or after such bond obligations are paid in full, Master Developer shall be entitled to receive for an MWR Hotel Purpose in perpetuity from the MWR Hotel Fund the amount not needed for such financing of the MWR Hotel so long as this Agreement remains in effect (except for the funds under Section 3.4(a)(i) and Section 3.4(a)(vii) which shall only be available for the periods provided in such subsections).

3.5 Pre-Co Fee Fund.

(a) *Allocation of the Pre-Co Fee Fund.* Master Developer shall be entitled to receive from MIDA annually in perpetuity, so long as this Agreement remains in effect, an amount equal to the Pre-Co Fee Fund generated from any portion of the West Side located outside of the MWR Parcel, to be used by Master Developer for any purpose permitted by the MIDA Act, less One

Million Dollars ($1,000,000) (as adjusted pursuant to Section 3.5(b), the "**MIDA Pre-Co Fee Portion**"), beginning the first year a Pre-Co Fee is paid by any of the BLX Entities and thereafter.

(b) *Adjustment of MIDA Pre-Co Fee Portion.* The MIDA Pre-CO Fee Portion shall be adjusted on the first anniversary of the Effective Date and every anniversary date thereafter to a dollar amount which bears the same ratio to the original dollar amount set forth therein as the Consumer Price Index figure published for the latest date prior to the date of such adjustment is to be effective bears to the Consumer Price Index published for the latest month prior to the date hereof. In no event shall such adjustments increase by more than three percent (3%) in any year. Any provision in this section notwithstanding, under no circumstances shall the MIDA Pre-Co Fee Portion be less than One Million Dollars ($1,000,000). Notwithstanding anything in this Agreement to the contrary, in the event that the provisions of Section 3.4(a)(viii) become applicable, Master Developer shall be entitled to receive that amount of the MIDA Pre-Co Fee Portion sufficient to pay any Property Taxes not covered by the Hotel Property Tax Allocation generated from any portion of the West Side located outside of the MWR Parcel, to be used by Master Developer for any purpose permitted by the MIDA Act.

(c) *Pre-Co Fee Notice.* As provided in the MIDA Act, MIDA may record against the Mountainside Property a notice of the Pre-CO Fee, which notice is attached hereto as Exhibit C ("**Pre-Co Fee Notice**"). MIDA shall similarly require each property owner within the Project Area to enter into either an agreement to pay the Pre-Co Fee or record a Pre-Co Fee Notice against such property owners' property within the Project Area in accordance with the MIDA Act. The Pre-Co Fee will be due each year based on the taxable value of the applicable property as of January 1 of such year. No Pre-Co Fee shall be applicable to a parcel of property, and the Landowner of such parcel shall not be liable for the payment of a Pre-Co Fee, for any period prior to the recording of the Pre-Co Fee Notice.

(d) *Minimum MIDA Pre-Co Fee Portion.* Master Developer acknowledges that if the amount of the Pre-Co Fee Fund generated in any given year from any portion of the West Side located outside of the MWR Parcel is less than the MIDA Pre-Co Fee Portion, then Master Developer shall not be entitled to receive any portion of the Pre-Co Fee Fund for such year. In no event will Master Developer or any Landowner be required to fund any part of the MIDA Pre-Co Fee Portion beyond its statutorily required contribution to the Pre-Co Fee Fund pursuant to the MIDA Act.

ARTICLE IV
PIONEERING AGREEMENTS, BONDS, AND OTHER METHODS FOR REIMBURSING COSTS

4.1 Pioneering Agreements. MIDA and Master Developer shall enter into pioneering agreements for any infrastructure that is a Mountain Improvement, including System Improvements, where Master Developer and MIDA have mutually determined that a pioneering agreement will facilitate reimbursement for Eligible Expenses incurred by Master Developer in developing and improving the Mountainside Property as set forth in such pioneering agreements. Such pioneering agreements shall include provisions requiring others connecting to infrastructure built with excess capacity to pay for their share of such capacity, including land value and construction costs, and other reasonable costs and expenses incurred in developing the excess capacity. Nothing in a pioneering agreement shall preclude expenses from being reimbursed from more than one revenue source so long as Master Developer is only reimbursed once for Eligible Expenses.

4.2 Bonds and Assessment Areas. Master Developer may request that, in lieu of some or all of the payments under Article III from Available Funds, MIDA, or a MIDA subsidiary, issue bonds or other types of debt ("**Bonds**") the proceeds of which shall be used to reimburse, according to the Bond documents, Master Developer (or, at Master Developer's request, any of the other BLX Entities) for the prior payment of Eligible Expenses (including, but not limited to, Eligible Expenses expended for the prior development, construction and operation of the MWR Hotel), fund certain Mountain Improvements, or fund the MWR Hotel development, and use some or all of the Available Funds to pay the principal and interest on such Bonds ("**Debt Service**"). The Parties agree to evaluate and, where financially feasible, explore the creation of assessment areas and other financial mechanisms that may be, or become, available in the future, and consider the appropriateness of issuing Bonds to the extent such actions will facilitate development of the Mountainside Property in accordance with this Agreement and the Project Area Plan. For avoidance of doubt, Bonds may be issued after the initial construction of the MWR Hotel and/or Mountain Improvements to, among other things, retire or refinance any indebtedness incurred by Master Developer or any of its Affiliates in connection with the development and construction of the MWR Hotel or Mountain Improvements, for the development, construction, installation, repair, maintenance, remodeling, replacement and potential expansion remodeling, repair, replacement expansion or upgrade of the MWR Hotel or Mountain Improvements, or for any other Eligible Expense incurred in connection with the MWR Hotel or Mountain Improvements.

(a) *Types of Bonds.* The Bonds that MIDA, or its subsidiary, may consider issuing include assessment bonds, public infrastructure district bonds, C-PACE bonds or assignable liens, lease revenue bonds, tax increment bonds, and loans from the Utah Transportation Infrastructure Loan Fund, together with such other bonds or other financial mechanisms available to MIDA, now or in the future.

(b) *No Obligation to Issue Bonds.* MIDA, or its subsidiary, shall consider requests to issue Bonds but is under no obligation to issue any Bonds. The issuance of Bonds requires certain statutory public notices and procedures, and financial viability. Failure by MIDA, or its subsidiary, to issue Bonds is not a breach of this Agreement and there shall not be any liability whatsoever to MIDA, or its subsidiary, or any of their officers, directors, employees, agents, or contractors because Bonds are not issued by MIDA, or its subsidiary.

(c) *Security for Bonds.* Any Available Funds are contingent on decisions and investments by landowners, developers, and consumers. MIDA does not control these decisions or investments. Consequently, before issuing any Bonds, MIDA may require other security, besides, or in addition to, the Available Funds to ensure the timely payment of Debt Service on terms mutually agreeable to MIDA, Bond underwriters and Master Developer. This security may include assessments on property and/or guarantees ("**Assessments**").

4.3 MWR Hotel and Mountain Improvements Financing. The Parties are considering various ways to finance and refinance the development, construction, installation, repair, maintenance, remodeling, replacement and potential expansion of the MWR Hotel and Mountain Improvements, which may be used separately or in combination, including:

(a) *Private Financing Pledge.* Master Developer or BLX MWR may obtain private financing of the MWR Hotel and/or Mountain Improvements. To facilitate the ability of Master Developer and BLX MWR to obtain more favorable terms and conditions for such private financing, the BLX Entities are authorized to pledge as security their right to receive all or any part of the Mountain Improvements Fund or MWR Hotel Fund to lender's and others in connection with such financing. Upon Master Developer's request, MIDA hereby agrees at such time to pledge or join in the pledge, as additional security to the BLX Entities' private lender(s), all or a portion (as

designated by Master Developer) of (i) the MWR Hotel Fund for the MWR Hotel; and (ii) the Mountain Improvements Fund for the MWR Hotel and/or Mountain Improvements, as applicable.

(b) *Public Debt.* Without limiting MIDA's discretion under Section 4.2(b), at Master Developer's request, MIDA may agree to issue C-PACE bonds or assignable liens, lease revenue bonds or a similar debt instrument and retain the MWR Hotel Fund and enter into an amendment of the MWR Hotel Condominium Lease Agreement wherein the tenant therein is obligated to make lease payments to MIDA sufficient to cover the Debt Service for such Bonds. Master Developer acknowledges that such Bonds may require Master Developer, BLX MWR and/or related parties to provide certain guarantees to the bondholders to ensure timely payment of the Debt Service.

(c) *Assignability of Reimbursement Rights.* From time to time, for financing, refinancing, security or other purposes the BLX Entities may assign to the holders of any Bonds or private financing instruments, or their designees, the BLX Entities' right, in whole or in part, to be reimbursed by MIDA hereunder for some or all of Eligible Expenses incurred by the BLX Entities in connection with the MWR Hotel or Mountain Improvements. If the BLX Entities assign any such right(s), Master Developer shall promptly notify MIDA of such assignment, and provide to MIDA a copy of such assignment, and thereafter MIDA shall be authorized to deal directly with the assignee of such right(s) in connection with such reimbursement.

ARTICLE V
REIMBURSEMENT FROM AVAILABLE FUNDS

5.1 Reimbursement. Subject only to the satisfaction of the Conditions Precedent, to the extent Available Funds have not been pledged or set aside to pay Debt Service on Bonds, MIDA shall reimburse Master Developer for Eligible Expenses incurred by any of the BLX Entities within the time period provided in the Reimbursement Policy defined in Section 5.2. MIDA shall have no obligation to reimburse Master Developer from sources or monies that MIDA has or might receive other than from Available Funds; provided that MIDA shall take all commercially reasonable actions to timely collect Available Funds from Persons responsible for the payment thereof. If there are insufficient monies in the Available Funds to pay the Eligible Expense at the time of the request for reimbursement, MIDA shall have no liability to Master Developer or any BLX Entity in connection therewith, nor shall the insufficiency of such funds give rise to any additional rights of Master Developer or BLX Entity beyond those expressly set forth in this Agreement; provided that MIDA shall make payment to the extent of such Available Funds and shall make the balance of such payment if and when such monies become available through the Available Funds, if ever. Interest shall be paid by MIDA on Eligible Expenses incurred by Master Developer at the Interest Rate from the date incurred until reimbursed in full. MIDA understands that Master Developer needs prompt determinations. The Executive Director of MIDA shall work closely with Master Developer to make such determinations and is authorized to negotiate, sign and deliver to Master Developer or any other Person any agreements, certificates, and other documents deemed necessary or appropriate to evidence MIDA approval of Eligible Expenses. Payments for Debt Service on Bonds shall be deemed to satisfy MIDA's obligations pursuant to Article III to the extent of such payments. To be clear, and notwithstanding any other provisions of this Agreement, to the extent that this Agreement might be construed to require payment of an Eligible Expenses under different provisions, MIDA shall be required to utilize Available Funds and pay such Eligible Expenses only once and such payment shall satisfy in full all other obligations for such Eligible Expenses under all other provisions. The payment of Eligible Expenses to Master Developer shall satisfy any obligation of MIDA to reimburse Landowners for such Eligible Expenses to the extent of such payment made.

5.2 Project Area Reimbursement Policy. Within three (3) months after the Effective Date of this Agreement, MIDA's Executive Director will adopt a reimbursement policy (the "**Reimbursement**

Policy") for the Project Area that is consistent with this Agreement. The Reimbursement Policy shall include the following provisions:

(a) *Reimbursement Applications.* MIDA staff shall review each application for reimbursement for particular Eligible Expenses and, unless MIDA's Executive Director rejects any requested reimbursement as not being an Eligible Expense, MIDA shall issue payment of such Eligible Expenses within thirty (30) days after receipt, but only if there are sufficient Available Funds to pay the Eligible Expenses for which reimbursement is requested, with any shortfall being subject to future payment pursuant to Section 5.1.

(b) *Dispute Resolution.* The Reimbursement Policy will also establish a procedure for resolving any questions or disputes relating to Eligible Expenses within sixty (60) days after submission of an application.

ARTICLE VI
CONDITIONS PRECEDENT TO PAYMENT

MIDA's obligations to pay any monies to Master Developer pursuant to this Agreement is conditioned upon the following (the "**Conditions Precedent**"):

6.1 MIDA's Receipt of Funds. MIDA's actual receipt and deposit in its account of Available Funds that are not set aside for Debt Service and provided further that MIDA's ability to pay is not reduced, curtailed or limited in any way as a result of any cause outside the control of MIDA, including, without limitation, any lawful enactment, initiative, referendum or judicial decree; and

6.2 Eligible Expense. MIDA's receipt of sufficient written evidence, as reasonably determined by MIDA's Executive Director pursuant to the Reimbursement Policy, that Master Developer or the applicable BLX Entity has incurred Eligible Expenses.

ARTICLE VII
ADDITIONAL PROPERTY INCLUSION

If the BLX Entities or their Affiliates acquire additional real property on the West Side, Master Developer may elect to include such later acquired properties in this Agreement, subject to MIDA's approval, which approval shall not be unreasonably withheld, delayed, or conditioned. Such later acquired properties must be located within the Project Area in order to be included in this Agreement, which inclusion must comply with the requirements set forth in Section 2.1.

ARTICLE VIII
MASTER DEVELOPER OBLIGATIONS

8.1 Cost of Construction of Project. Other than the reimbursements or issuance of Bonds contemplated by this Agreement, the cost of developing, redeveloping, and constructing the Mountainside Resort and all other costs related thereto shall be borne solely by BLX Entities except to the extent MIDA has agreed to participate in such cost pursuant to other separate written agreements.

8.2 De-annexation. MIDA, and each BLX Entity agrees that, without the approval of the other Parties, neither MIDA nor any BLX Entity will cooperate with any Person in any effort to remove, de-annex or disconnect all or any portion of the Project Area from MIDA's jurisdiction during the period that MIDA and Master Developer may receive Available Funds. MIDA and each BLX Entity further agrees that it will use commercially reasonable efforts to resist any efforts to remove, de-annex or disconnect the

Project Area in whole or in part from MIDA's Project Area so long as MIDA has any outstanding Bonds issued pursuant to this Agreement; provided that such efforts shall not require the participation by a BLX Entity in any formal proceedings. If the entirety of the Mountainside Property is de-annexed or disconnected in whole or in part from MIDA's jurisdiction by any existing or future actions, MIDA's right to receive Available Funds may cease, notwithstanding the provisions of this Agreement. If the right of MIDA to receive Available Funds from a portion of the Project Area ceases permanently as a result of such de-annexation or disconnection, MIDA's obligation to reimburse Master Developer from such de-annexed or disconnected portion of the Project Area shall automatically and immediately cease and terminate as of the date of such de-annexation or disconnection, without liability of MIDA and without claim by Master Developer or any BLX Entity for further reimbursements from such area but subject to any pending applications for reimbursement and pioneering agreements entered into pursuant to Section 4.1 for which Available Funds are available. This provision shall not be applied retroactively to reimbursements pending or already paid or to Available Funds pledged in support of financing or Bonds already secured or issued. MIDA agrees to include provisions similar to this Section 8.2 in any other reimbursement, tax sharing or similar agreement with any other Person owning land in the Project Area.

8.3 Payment of Taxes, Fees and Assessments. Each Landowner shall pay or to cause to be paid in a timely manner all Property Taxes, other taxes, fees, and Assessments levied or imposed on such Landowner's property, and any personal property owned by such Landowner and located in the Project Area; provided, however, that each Landowner shall have the right to protest or appeal the amount of assessed taxable value levied against its property by the Wasatch County Assessor, State Tax Commission or any lawful entity authorized by law to determine the assessed taxable value against such property or any portion thereof in the same manner as any other taxpayer as provided by law, so long as the Property Taxes are paid under protest and subject to any limitations thereon set forth in any Bonds for which MIDA is the issuing entity. A Landowner shall, however, notify MIDA in writing within thirty (30) calendar days after such Landowner's filing of any protest or appeal to such assessment determination which could impact the taxable value of such property, and provide copies to MIDA of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, such Landowner shall give to MIDA written notice at least fifteen (15) calendar days prior to the date on which such protest or appeal is to be heard. MIDA shall have the right, without objection by such Landowner, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment which should or should not be assessed against such property and the amount of MIDA's Project Area Bonds, indebtedness, or outstanding obligations. MIDA's obligation to reimburse the Master Developer or BLX Entities for Eligible Expenses are suspended while Property Taxes or other taxes, fees, or Assessments are outstanding and unpaid when due but only to the extent of such unpaid amount(s). If an assessed taxable value of a property is subject to a protest or appeal and MIDA has received the protested or appealed portion of the Property Taxes paid under protest, MIDA shall reserve such funds until such protest or appeal has been finally resolved and has no obligation to use that portion to reimburse for Eligible Expenses until the protest or appeal is resolved.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES OF MIDA

MIDA makes the following representations and warranties for the benefit of each of the BLX Entities and their successors and assigns:

9.1 Approvals. All necessary approvals, authorizations and consents have been obtained in connection with the execution by MIDA of this Agreement, and with the performance by MIDA of MIDA's obligations under this Agreement. The execution of this Agreement by MIDA and the performance by MIDA of MIDA's obligations under this Agreement do not require the consent of any third party that has not been obtained.

9.2 Authorization. MIDA is a public entity, duly organized, validly existing and in good standing under the laws of the State of Utah and has been duly and validly authorized to enter into this Agreement. The person or persons executing and delivering this Agreement on behalf of MIDA have been duly authorized to execute and deliver this Agreement and to take such other actions as may be necessary or appropriate to consummate the transactions contemplated by this Agreement. All requisite action has been taken to make this Agreement valid and binding on MIDA.

ARTICLE X
REPRESENTATIONS AND WARRANTIES OF BLX ENTITIES

Each BLX Entity makes the following representations and warranties on its own behalf for the benefit of MIDA:

10.1 Approvals. All necessary approvals, authorizations and consents have been obtained in connection with the execution by the BLX Entity of this Agreement, and with the performance by the BLX Entity of its obligations under this Agreement. The execution of this Agreement by such BLX Entity and the performance by BLX Entity of its obligations under this Agreement do not require the consent of any third party that has not been obtained.

10.2 Authorization. Each of the BLX Entities is a properly created entity, duly organized, validly existing and in good standing under the laws of the State of Delaware, qualified to do business in the State of Utah, and has been duly and validly authorized to enter into this Agreement. The person or persons executing and delivering this Agreement on behalf of each of the BLX Entities have been duly authorized to execute and deliver this Agreement and to take such other actions as may be necessary or appropriate to consummate the transactions contemplated by this Agreement. All requisite action has been taken to make this Agreement valid and binding on each of the BLX Entities.

ARTICLE XI
DEFAULT; REMEDIES

11.1 Default; Remedies.

(a) Default. The occurrence of any of the following shall constitute an "**Event of Default**" under this Agreement: (i) the failure of a Party to make any payment owing to the other Party hereunder within ten (10) days after such receipt of notice from the other Party of such failure, or (ii) a Party being in breach of, or failing to perform, comply with, or observe any non-monetary term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Agreement, and such failure continues for a period of sixty (60) days after written notice thereof is given by the other Party to breaching Party; provided, however, that if the default cannot reasonably be rectified or cured within such sixty (60) day period, the default shall be deemed to be rectified or cured if the defaulting Party, within such sixty (60) day period, shall have commenced to rectify or cure the default and shall thereafter diligently prosecute same to resolution and completion.

(b) Notices of Default. In the event of a default which with the giving of notice to Master Developer and the passage of time would constitute an Event of Default, as provided in Section 11.1(a), the non-defaulting Party shall provide written notice of such default to the other Party, which notice shall state with reasonable specificity the provision this Agreement under which the default is claimed, the nature and character of such default, the date by which such default must be cured, and the failure of defaulting Party to cure such default by the date set forth in such notice will result in the non-defaulting Party having the right to pursue its remedies under this Agreement. Any allegation of a default hereunder

shall be subject to arbitration in accordance with the arbitration procedures set forth in Article XVIII of the MWR Hotel Condominium Lease Agreement; provided that a Party shall initiate any such arbitration within the applicable grace period provided in this Section 11.1.

(c) Event of Default Notice. If, after the giving of the written notice(s) to the defaulting Party provided for in this Section 11.1 and the expiration of the applicable cure period provided for herein, the non-defaulting Party determines that the defaulting Party has not cured the default of which the defaulting Party was given notice as required by this Section 11.1, the non-defaulting Party shall give the defaulting Party a notice of the occurrence of an Event of Default (an "**Event of Default Notice**"); provided that no such Event of Default shall become effective for ten (10) days after such notice during which period the defaulting Party may submit to in accordance with the arbitration procedures set forth in Article XVIII of the MWR Hotel Condominium Lease Agreement any dispute related to the defaulting Party's cure of such default. If the defaulting Party does not submit such dispute to arbitration within such ten (10) day period or, if the defaulting Party has initiated arbitration of a dispute related to such Party's cure of such default, upon a decision of an arbitrator that the defaulting Party did not cure such default, the Event of Default shall become effective immediately after the end of such ten (10) day period or such arbitration, as the case may be. An Event of Default Notice shall state which remedy the non-defaulting Party is electing from among the remedies section forth in Section 11.1(d).

(d) Remedies. Should an Event of Default occur pursuant to an Event of Default Notice and so long as such Event of Default is continuing, then the non-defaulting Party, in addition to any other rights or remedies such non-defaulting Party may have at law or in equity, but subject to the limitation set forth in Section 11.2, Section 11.3, and Section 13.18, shall have the right to take any or all of the following actions:

(i) Collect by suit or otherwise sums as they become due for the account of the non-defaulting Party; or

(ii) Enforce by suit any term this Agreement required to be kept or performed by the non-defaulting Party (including the right and remedy of injunction); or

(iii) Recover from the defaulting Party any amount necessary to compensate the non-defaulting Party for actual damages proximately caused by the defaulting Party's failure to perform its obligations under this Agreement;

(iv) Recover from defaulting Party reasonable attorneys' fees and expenses incurred by defaulting Party as a result of Event of Default, and court costs in the event suit is filed by non-defaulting to enforce the terms of this Agreement.

(e) Extensions. A non-defaulting Party may in writing extend the time for a defaulting Party's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of the non-defaulting Party's obligations, nor constitute a waiver of the non-defaulting Party's rights, with respect to any other term, covenant, or condition of this Agreement or any other default in, or breach of, this Agreement.

11.2 No Termination. Notwithstanding anything in this Agreement or Applicable Law to the contrary, in no event shall an Event of Default on the part of a Party result in the termination of this Agreement, which remedy the Parties hereby expressly waive. Notwithstanding the foregoing provisions of this Section 11.3 or the provisions of Section 11.1 except with respect to disputes concerning the payment

of money (which may, in connection with such disputes, be paid under protest and subject to reservation of rights to dispute the obligation for the payment of same in the first instance), if the asserted default is subject to arbitration pursuant hereto, and the existence of such default is being contested by the Party purportedly in default, if and so long as such Party is cooperating and acting in good faith to complete the arbitration proceeding with respect thereto as expeditiously as possible, the time for curing such default shall commence upon the rendering of the arbitration decision with respect thereto, or other resolution thereof, whichever occurs first; provided, however, if the matter being arbitrated is capable of performance to the extent not in dispute (e.g., the undisputed portion of monies owing), performance to the extent not in dispute shall be condition precedent to the effectiveness of this sentence.

11.3 No Consequential Damages. The Parties agree that notwithstanding the remedies set forth in Section 11.1, in the event of a default in or breach of this Agreement, neither Party shall be liable to the other Party for consequential damages, punitive or special damages.

ARTICLE XII
ASSIGNMENT AND TRANSFER

12.1 Assignment and Transfer of Development. If a Landowner or Landowners assign, transfer, or otherwise convey the entire Mountainside Property or any portion thereof to a subsequent owner, and intends to transfer any of the rights and obligations under this Agreement in connection with such transfer, Master Developer and such Landowner shall execute and deliver a "Transfer Acknowledgement" in the form attached hereto as Exhibit E for the purpose of advising MIDA of such transfer. Upon delivery of a fully executed Transfer Acknowledgement the obligations of Master Developer and the applicable Landowners shall automatically be assigned and assumed to the identified assignee, and Master Developer and the applicable Landowners shall be released from the obligations that are assumed by the identified assignee accruing from and after the date of such assignment. The assignor shall remain responsible for obligations and liabilities accruing prior to the date of such assignment. In the absence of a Transfer Acknowledgement it shall be conclusively presumed that Master Developer and the Landowner(s) have not assigned their rights under this Agreement.

12.2 Reservation of Reimbursement Rights. Master Developer reserves to itself, and Landowners hereby assign to Master Developer, the right to all payments and reimbursements for items constructed within the Mountainside Property or by any of the BLX Entities even if a BLX Entity sells any portion of the Mountainside Property to a third party. Any assignment of the right to receive payments and reimbursements under this Agreement by Master Developer must be in writing, signed by Master Developer, and must include specific details regarding the right or amount of reimbursement transferred to a third party. In the event of a transfer of any reimbursement or payment right under this Agreement, both assignor and assignee must provide written notice to MIDA in accordance with this Agreement. Upon receipt of such notice, MIDA shall promptly confirm in writing the receipt of such notice and its recognition of the rights of the assignee to such reimbursement or payment right, such writing to be in form and substance reasonably acceptable to MIDA, Master Developer and such assignee.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1 Indemnities. Each Party agrees to hold harmless, defend, and indemnify the other Party and its past, present and future managers, members, partners, directors, officers, employees, representatives, contractors, subsidiaries, and agents (**"Covered Parties"**) harmless from all liability, loss, damage, costs, or expenses (including attorneys' fees and court costs) (each, a **"Claim"**) to the extent arising from or as a result of the death of a Person or any accident, injury, loss, or damage caused to any Person or the property of any Person which shall occur during the term of this Agreement, and for Master Developer on the

portions of the Mountainside Property, to the extent directly or indirectly caused by the negligent acts, errors, or omissions of its Covered Parties, except in each case to the extent arising out of the negligence, willful misconduct, illegal acts, bad faith or breach of this Agreement by the other Party or its Covered Parties. The indemnifying Party shall defend the other Party and the other Party's Covered Parties in any action or claim for which such Party or Covered Parties are indemnified hereunder, with counsel selected by the applicable Covered Parties. The provisions of this Section 13.1 shall not apply to any Claim which is not the result of the negligence or willful misconduct of any of the Covered Parties.

13.2 No Personal Liability. No manager, member, shareholder, director, official, employee, consultant, contractor, agent, subsidiary, or representative of any Party shall be personally liable to the other Party or any successor in interest in the event of any default or breach by the first Party for any amount that may become due to the other Party or their respective successor or on any obligations under the terms of this Agreement.

13.3 Notices. A notice or communication given under this Agreement by any Party to another Party shall be sufficiently given or delivered if given in writing (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail (or acknowledgement of receipt or reply by the recipient) if sent during normal business hours of the recipient; if not, then on the next business day, or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be addressed to such other Party as follows:

If to MIDA:
Military Installation Development Authority
450 Simmons Way, Suite 400
P.O. Box 112 Kaysville, Utah 84037
Attention: Executive Director
Email: paultmorris@outlook.com

with a copy to:
Michael Best & Friedrich
170 South Main Street, Suite 1000
Salt Lake City, Utah 84101
Attn: Lyndon Ricks
Email: llricks@michaelbest.com

If to BLX Entities:
Ex Utah Development LLC
850 Third Avenue, 7th Floor
New York, NY 10022
Attention: President
Email: Notices@extell.com

with a copy to:
Ex Utah Development LLC
2750 W. Rasmussen Rd., Suite 206
Park City, Utah 84098
Attention: Senior Vice President
Email: kkrieg@extell.com

and
Ex Utah Development LLC
Notices @ extell.com

and

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Roger D. Henriksen
Robert A. McConnell
Email: rhenriksen@parrbrown.com and
rmcconnell@parrbrown.com

Notice to any Party may be addressed in such other commercially reasonable way that such Party may, from time to time, designate in writing and deliver to the other Parties.

13.4 Exhibits/Recitals. All Exhibits to this Agreement and all Recitals are incorporated in this Agreement and made a part of this Agreement as if set forth in full and are binding upon the Parties to this Agreement.

13.5 Headings. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

13.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

13.7 Governing Law. This Agreement is intended to be performed in the State of Utah and shall be interpreted and enforced according to the laws of the State of Utah.

13.8 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, and the remaining provisions of this Agreement shall remain in full force. The Parties agree that in the event any Person files or threatens to file a Claim that all or any portion of this Agreement fails to comply with applicable law, the Parties shall use best and cooperative efforts to defend against any such Claim, including, but not limited to, pursuit of any legal or legislative remedy to resolve such Claim in a manner that would preserve the economic allocations set forth in this Agreement.

13.9 Counterparts. This Agreement may be executed by electronic signature and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. Counterparts may be delivered by electronic mail (including pdf) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

13.10 Time. Time is of the essence of this Agreement.

13.11 Complete Agreement; Amendments. This Agreement and its exhibits contain the complete agreement of the Parties, and supersede all prior and contemporaneous negotiations, representations and agreements of the Parties with respect to the subject matter hereof. This Agreement may be amended or modified only in writing, executed by MIDA and Master Developer. Master Developer shall not be required to obtain the consent of the Landowners or any subsequent owner of a portion of the Mountainside Property in order to amend this Agreement.

13.12 No Recording. Except as expressly provided in this Agreement, neither this Agreement nor any notice or memorandum of this Agreement may be recorded in the official records of Wasatch County.

13.13 No Waiver. Nothing in this Agreement shall be construed to be a waiver of any of Master Developer's or MIDA's rights or obligations under United States and Utah Constitutions, the MIDA Act, or any laws of the State of Utah or the United States.

13.14 No Third Party Rights. Unless otherwise specifically provided herein, the obligations of the Parties set forth in this Agreement shall not create any rights in or obligation to any other persons or third parties.

13.15 Force Majeure. Any prevention, delay, or stoppage of the performance of any obligation pursuant to this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires, floods, earthquakes or other casualties; or other causes beyond the reasonable control of the Party obligated to perform hereunder, shall excuse performance of the obligation by that Party a period equal to duration of that prevention, delay or stoppage. Any Party seeking relief under the provisions of this Section shall notify the other Party in writing of a force majeure event within sixty (60) days following occurrence of the claimed event.

13.16 Further Actions. The Parties hereby agree to execute and deliver such additional documents and to take all further actions as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

13.17 Rights of Successors. The agreement contained herein shall be deemed to be binding on and shall inure to the benefit of all successors in ownership of the Mountainside Property except as otherwise provided herein. Notwithstanding the forgoing, each successor in interest shall accede only to the benefits and burdens of this Agreement pursuant to an assignment by Master Developer which pertains to that specific portion of the Mountainside Property to which such successor holds fee title or a leasehold estate, and shall not be deemed to be a "Landowner" or "Master Developer" or a third party beneficiary of any of the rights, interest, or benefits relating to other portions of the Mountainside Property. The provisions, responsibilities and benefits relating or appertaining to a specific portion of the Mountainside Property may be assigned to such portion of the Mountainside Property, or the owner thereof, by specific written instrument executed by Master Developer and approved by MIDA, which approval shall not be unreasonably withheld, delayed or conditioned.

13.18 Limitation of Liability. The liability of the BLX Entities is several and not joint. In no event shall a BLX Entity's liability under this Agreement, whether for breach, tort, strict liability or otherwise, exceed the amount of any Debt Service related to such BLX Entity and the amount such BLX Entity has actually received from MIDA as Available Funds, plus the actual documented out-of-pocket costs and expenses incurred by MIDA in enforcement of this Agreement against such BLX Entity following a default by Master Developer if MIDA is the prevailing party in an enforcement action. The only BLX Entity that may bring an action against MIDA is Master Developer. In no event shall MIDA's liability under this Agreement, whether for breach, tort, strict liability or otherwise, exceed the amount of the Eligible Expenses from Available Funds which the Master Developer was found to be entitled to under this Agreement, plus costs and expenses (including reasonable attorneys' fees) incurred in the enforcement of this Agreement.

13.19 Relationship of Parties. The relationship between the Parties is and shall at all times be that of independent contractors and in no way shall the Parties hereto, in any way or for any purpose, become a partner of the other Party in the conduct of its/their business, or otherwise, or a member of joint venture or other enterprise with the other Party. The Parties shall under no circumstances be deemed to be

in a relationship of confidence or trust or a fiduciary relationship with the other Party or owe any fiduciary duty to the other Party.

13.20 Confidentiality. The Parties understand and agree that access to records prepared, owned, received, or retained by MIDA is governed by the Utah Governmental Records Access and Management Act ("**GRAMA**"), Utah Code Ann. §63G-2-101, *et seq*. The BLX Entities may protect the confidentiality of any document, including, but not limited to, any report or financial documents it supplies to MIDA pursuant to this Agreement to the extent allowed by GRAMA if: (a) Master Developer makes written claim of business confidentiality under GRAMA, and (b) one or more of the exceptions noted in GRAMA apply. Master Developer hereby requests notice under Utah Code Ann §63G-2-309(1)(b) of any and all public records request seeking a copy of any information covered by this claim of business confidentiality and of any determination by any governmental agency that such information or any part thereof shall be released to anyone other than the BLX Entities. MIDA hereby acknowledges that it may not, absent a court order, disclose any information covered by this section until the exhaustion and expiration of all procedures and appeal periods set forth in GRAMA. Nothing in this Section 13.20 shall be deemed an acknowledgement or admission that any of the information covered by this Section 13.20 is or should be subject to any provision of GRAMA, except that Parties acknowledge that this Agreement, including the Exhibits are a public record under GRAMA.

13.21 Mortgagee Protections; Estoppel Certificate.

(a) *Mortgages.* The Parties agree that this Agreement shall not prevent or limit any of the BLX Entities from encumbering the Mountainside Property or any estate or interest therein (including this Agreement), or any portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, assignments, pledges, and any or other form of secured financing by which a BLX Entity's interest in the Mountainside Property is directly or indirectly mortgaged, pledged (including any pledges of a direct or indirect interest in a BLX Entity, or other "mezzanine" or preferred equity loans) (each, a "**Mortgage**") with respect to the construction, development, use or operation of the Mountainside Property or the Mountainside Resort, or any part thereof. MIDA acknowledges that the lender(s) or prospective lender(s) providing such Mortgages (each, together with any successor holder of such Mortgage, a "**Mortgagee**") may require certain interpretations and modifications to this Agreement and MIDA agrees, upon request, from time to time, to meet with the BLX Entities and representatives of such Mortgagee(s) to negotiate in good faith any such request for interpretation or modification. MIDA will not unreasonably withhold its consent to any requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

(b) *No Mortgagee Obligations.* Notwithstanding any of the provisions of this Agreement to the contrary, no Mortgagee shall have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of any BLX Entity or other affirmative covenants of any BLX Entity hereunder, or to guarantee such performance unless and until such Mortgagee has become the owner in place of a BLX Entity as provided in Section 13.21(f), and then only to the extent of such BLX Entity's obligations under this Agreement.

(c) *Default Notices.* Any Mortgagee of any Mortgage encumbering the Mountainside Property, or part or interest thereof, that has submitted a request in writing to MIDA in the manner specified herein for giving notices, shall be entitled to receive written notification from MIDA of any notice of non-compliance by any BLX Entity in the performance of such BLX Entity's obligations under this Agreement (each, an "**Eligible Mortgagee**"). MIDA simultaneously with providing any BLX Entity with a notice ("**Default Notice**") of: (i) a default under this Agreement, or (ii) a matter on which MIDA may predicate or claim a default, shall simultaneously provide a

written copy of such Default Notice to each Eligible Mortgagee. MIDA shall have no liability for the failure to provide any such Default Notice, except that no such Default Notice by MIDA to a BLX Entity shall be deemed effective or to have been duly given unless and until a written copy thereof has been provided in accordance with the terms and conditions of this Agreement to each Eligible Mortgagee. From and after the date that such Default Notice has been given to each Eligible Mortgagee, each Eligible Mortgagee shall have the same period, after the delivery of such Default Notice upon it, plus in each instance, the additional period of time specified in Section 13.21(d) to cure, commence to cure or cause to be cured the default(s), acts or omissions which are specified in such Default Notice or if such cure cannot be effected without possession of the Mountainside Property, or portion thereof to which the Default Notice applies, commence a proceeding to obtain such possession. If a cure cannot be effected without possession, once possession has been obtained, Eligible Mortgagee shall also have the same period for cure as any BLX Entity had after the delivery of such Default Notice. MIDA shall accept such performance by or at the instigation of such Eligible Mortgagee(s) as if the same had been done by a BLX Entity. MIDA authorizes each Eligible Mortgagee to take any such action at such Eligible Mortgagee's option at any time.

(d) *Curative Rights of Mortgagees.* In addition to the rights granted to each Eligible Mortgagee under Section 13.21(c), each Eligible Mortgagee shall have an additional period ("**Additional Cure Period**") of ninety (90) days to: (i) cure, commence to cure, or cause to be cured any default of which it receives a Default Notice, or (ii) commence a proceeding to obtain possession of the Leased Premises in the case of a default that can only be cured once an Eligible Mortgagee obtains possession of the property to which the Notice of Default applies. The provisions of this Section 13.21(d) shall apply only if an Eligible Mortgagee:

(i) Notifies MIDA of Eligible Mortgagee's desire to cure such default within sixty (60) days of receipt of the Default Notice;

(ii) On or before the termination of the Additional Cure Period, pays, or causes to be paid, to MIDA any amounts (A) then due and in arrears under this Agreement as specified in the Default Notice to such Eligible Mortgagee, and (B) any amount which becomes due during the Additional Cure Period as and when due; and

(iii) Cures, or in good faith, with reasonable commercial diligence and continuity, commences to cure BLX Entities' non-monetary requirements of this Agreement then in default and reasonably susceptible of being cured by such Eligible Mortgagee. Notwithstanding this Section 13.21(d), in the event of any non-monetary default under this Agreement, so long as the Eligible Mortgagee commences efforts to effect a cure and thereafter provides MIDA reasonable evidence from time to time, as requested in writing by MIDA, that the Eligible Mortgagee is diligently pursuing such efforts, Eligible Mortgagee shall have a commercially reasonable period of time within which to effect such cure of any such non-monetary default; provided that the Eligible Mortgagee shall be obligated only to cure any BLX Entities' non-monetary obligations reasonably capable of being cured by Eligible Mortgagee and which do not require access to the Mountainside Property or the use and operation thereof, provided that Eligible Mortgagee shall diligently seek to acquire such access or such use or operation (either directly or through receivership), and provided further that upon securing such access, use or operation (either directly or through receivership), Eligible Mortgagee promptly shall commence the cure of any such non-monetary default and shall prosecute same to completion with all commercially reasonable due diligence.

Any notice to be given by MIDA to a Mortgagee pursuant to any provision of this Section 13.21(d) shall be deemed properly addressed if sent to the Mortgagee who served the notice referred to in Section 13.21(c) unless notice of a change of Mortgage ownership has been given to MIDA in writing.

Nothing in this Section 13.21(d), however, shall be construed to extend this Agreement beyond the term hereof, nor to require an Eligible Mortgagee to continue any foreclosure after the default has been cured. If the default has been cured and the Eligible Mortgagee shall discontinue any foreclosure, this Agreement shall continue in full force and effect as if the BLX Entities had not defaulted under this Agreement. If an Eligible Mortgagee is complying with this Section 13.21(d), upon the acquisition of Mountainside Property, or portion thereof, by such Eligible Mortgagee or its designee or any other purchaser at a foreclosure, this Agreement shall continue in full force and effect as if the BLX Entities had not defaulted under this Agreement and MIDA shall recognize such Eligible Mortgagee or its designee or any other purchaser as the "Master Developer" for all purposes under this Agreement.

(e) *New Agreement.* If this Agreement is terminated as to any portion of the Mountainside Property for any reason, including a bankruptcy proceeding of any BLX Entity, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for a BLX Entity or its property, MIDA, if requested by any Eligible Mortgagee, shall negotiate in good faith with such Eligible Mortgagee or its designee for a new Tax Sharing and Reimbursement Agreement for the Mountainside Property, or portion thereof, with the most senior Eligible Mortgagee requesting such new agreement. Such new agreement shall be for the remainder of the term of this Agreement, effective as of the date of termination, upon the same terms, covenants and conditions of this Agreement; provided:

(A) such Eligible Mortgagee shall make written request upon MIDA for such new agreement within ninety (90) days after the date that this Agreement is terminated and notice of such termination is given by MIDA to the Eligible Mortgagee; and

(B) such Eligible Mortgagee or such designee shall agree to cure any of the BLX Entities' defaults of which such Eligible Mortgagee was notified by MIDA. Any of a BLX Entity's non-monetary defaults which are not reasonably capable of being cured shall be deemed waived with respect to a new agreement, provided, the foregoing shall not limit any rights or remedies MIDA may have against the BLX Entities under this Agreement.

If more than one Eligible Mortgagee shall request a new agreement pursuant to this Section 13.21 (e), MIDA shall enter into such new agreement with the Eligible Mortgagee whose Mortgage is prior in lien, or with the designee of such Eligible Mortgagee. MIDA, without liability to any BLX Entity or any Eligible Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business in the state where the Mountainside Property is located (which shall be issued in favor of MIDA at the sole cost and expense of any such Eligible Mortgagee) as the basis for determining the appropriate Eligible Mortgagee which is entitled to such new agreement.

(f) *Third Party Beneficiary.* Subject to the provisions of this Section 13.21, each Eligible Mortgagee is an intended third-party beneficiary of the provisions of this Agreement specifically giving rights to an Eligible Mortgagee. In the event of a conflict between (i) the provisions of this Section 13.21 and (ii) any other provisions of this Agreement, this Section 13.21 will control. Except as set forth in Section 13.21(e), MIDA agrees that no Eligible Mortgagee shall

in any manner or respect whatsoever be liable or responsible for any obligations or covenants of any BLX Entity under this Agreement (nor shall any rights of such Eligible Mortgagee be contingent on the satisfaction of such obligations or covenants), unless and until such Eligible Mortgagee becomes the owner of the Mountainside Property by foreclosure, sale in lieu of foreclosure or otherwise, in which event such Eligible Mortgagee shall remain liable for such obligations and covenants only so long as it remains the owner of the Mountainside Property and then only to the extent of such BLX Entity's obligations under this Agreement.

(g) *Estoppel Certificates.* At any time, and from time to time, any BLX Entity may deliver written notice to MIDA, and MIDA may deliver written notice to Master Developer, requesting that such Party certify in writing that, to the knowledge of the certifying Party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, (iii) the requesting Party is not then in breach of this Agreement, or if in breach, a description of each such breach, and (iv) any other factual matters reasonably requested (an "**Estoppel Certificate**"). The MIDA Executive Director shall be authorized to execute, on behalf of MIDA, any Estoppel Certificate requested by any BLX Entity which complies with this Section 13.21(g) within fifteen (15) days after a written request for such Estoppel Certificate. MIDA's failure to furnish an Estoppel Certificate within such fifteen (15) day period shall be conclusively presumed that (A) this Agreement is in full force and effect without modification in accordance with the terms set forth in the request; and (B) there are no breaches or defaults on the part of any BLX Entity. MIDA acknowledges that an Estoppel Certificate may be relied upon by transferees or successors in interest of any BLX Entity and by Mortgagees holding an interest in the Mountainside Property.

[Balance of page is intentionally blank; signature page(s) follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, on or as of the date first above written.

MIDA:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

By: _____
Name: Paul T. Morris
Title: Acting Executive Director

ATTEST:

By:_____
MIDA Staff

MASTER DEVELOPER:

EX UTAH DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

LANDOWNERS:

BLX LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

BLX MAYFLOWER LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

BLX PIOCHE LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

BLX LAND LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

BLX MWR HOTEL LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

RH MAYFLOWER LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

32 DOM MAYFLOWER LLC
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

Exhibit A
to
Tax Sharing and Reimbursement Agreement

Mountainside Property Legal Description

The "Mountainside Property" referred to in the foregoing Donation Agreement is located in Wasatch County, Utah and consists of real property owned by BLX MWR and its affiliates situated west of US Highway 40 and within the Project Area.

Exhibit B
to
Tax Sharing and Reimbursement Agreement

Definitions

"**30% DF**" has the meaning set forth in Section 3.2(a).

"**30% BLX DF**" has the meaning set forth in Section 3.2(a)(i).

"**32 Dom Mayflower**" means 32 Dom Mayflower LLC, a Delaware limited liability company and its successors and assigns.

"**70% DF**" has the meaning set forth in Section 3.2(b).

"**70% BLX DF**" has the meaning set forth in Section 3.2(b)(v).

"**Additional Cure Period**" has the meaning set forth in Section 13.21(d).

"**Affiliate**" means with respect to any Person, any other Person that Controls, is Controlled by or is under common Control with such first Person.

"**Agreement**" means this Tax Sharing and Reimbursement Agreement, as such agreement may be supplemented, amended, modified, superseded, restated, or replaced from time to time.

"**Assessments**" has the meaning set forth in Section 4.2(c).

"**Available Funds**" has the meaning set forth in Section 2.2.

"**Beach View Recreation Facility**" has the meaning set forth in Section 3.3(a).

"**Blue Ledge Development Agreement**" means that certain Development Agreement and Project Area Consent dated June 5, 2012 by and between Blue Ledge Resort, LLC and MIDA, as amended by the certain First Amendment to Development Agreement and Project Area Consent dated January 15, 2015 by and between Blue Ledge Resort, LLC and MIDA, as assigned to BLX with MIDA's consent on January, 23, 2015, as such agreement may be amended, modified, superseded and replaced from time to time.

"**Blue Ledge Fund**" means the 80% portion of revenue generated from the Blue Ledge Parcel as provided in the Blue Ledge Development Agreement and as defined in Section 3.1(b)(ii).

"**Blue Ledge Parcel**" has the meaning set forth in the Recitals.

"**BLX**" means BLX LLC, a Delaware limited liability company and its successors and assigns to the Blue Ledge Development Agreement.

"**BLX Entities**" means Master Developer, BLX LLC, BLX Mayflower LLC, BLX Pioche LLC, BLX Land LLC and BLX MWR Hotel LLC and their respective Affiliates, and their respective successors and assigns.

"**BLX LAND**" means BLX Land LLC, a Delaware limited liability company and its successors and assigns.

"**BLX MWR**" means BLX MWR Hotel, LLC, a Delaware limited liability company and its successors and assigns.

"**BLX PIOCHE**" means BLX Pioche LLC, a Delaware limited liability company and its successors and assigns.

"**BLXM**" means BLX Mayflower LLC, Delaware limited liability company and its successors and assigns.

"**Bonds**" has the meaning set forth in Section 4.2.

"**Business Day**" means any day when commercial banks are open for business in the State of Utah and the State of New York, and shall not include New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day following Thanksgiving, Christmas and any other day which shall be observed by the government of the United States of America and/or the Utah State government as a legal holiday, along with Rosh Hashanah, Yom Kippur, Shavuot, the first, second, seventh and eighth days of Passover, and the first, second, eighth and ninth days of Sukkot.

"**Claim**" has the meaning set forth in Section 13.1.

"**Commercial Units**" has the meaning set forth in the MWR Hotel Condominium Lease Agreement.

"**Conditions Precedent**" has the meaning set forth in Article VI.

"**Control**" means the ownership of more than twenty percent (20%) of the outstanding voting ownership interests of the Person in question or the power to direct the management of the Person in question.

"**Covered Parties**" has the meaning set forth in Section 13.1.

"**Consumer Price Index**" means the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (1982-84=100), reported monthly by Bureau of Labor Statistics of the United States Department of Labor and published on Bloomberg screen CPURNSA or any successor service; provided, however, that (a) in the event the Consumer Price Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversation factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication by any other nationally recognized publisher of similar statistical information. In the event the Consumer Price Index and/or conversion factor shall cease to be published, then, for the purposes of this Agreement, there shall be substituted for the Consumer Price Index such other index as MIDA and Master Developer shall agree upon, and if they are unable to agree within ninety (90) days after the Consumer Price Index ceases to be published, such matter shall be determined by arbitration in same manner as set forth in Article XVIII of the MIDA Hotel Lease Agreement.

"**Debt Service**" has the meaning set forth in Section 4.2.

"**Default Notice**" has the meaning set forth in Section 13.21(c).

"**Designated Uses**" has the meaning set forth in Section 3.2(b)(iv).

"**Development**" has the meaning ascribed to such term in the MIDA Act as in effect on the Effective Date.

"**Development Fund**" means the Development Fund as specifically defined in the Interlocal Agreements as of the Effective Date and includes, but is not limited to, Property Tax Allocation, MIDA's share of the sales and use taxes and the resort communities tax (all as defined in the MIDA Act and other Utah statutes) generated from property within the Project Area other than the Blue Ledge Parcel and the MWR Hotel. For avoidance of doubt, as used in this Agreement the Development Fund excludes the Blue Ledge Fund, the MWR Hotel Fund, and the Pre-Co Fee Fund.

"**Development Period**" means the Initial Development Period and the Secondary Development Period, collectively.

"**Donation Agreement**" has the meaning set forth in the Recitals.

"**East Side**" has the meaning set forth in the Recitals, as such East Side may be expanded by MIDA pursuant to the MIDA Act and the Interlocal Agreements.

"**East Side Frontage Road Improvements**" the meaning set forth in Section 3.2(b)(ii).

"**East Side Interlocal Cooperation Agreement**" means that certain Interlocal Cooperation Agreement dated December 17, 2018 between MIDA and Wasatch County as approved by MIDA on December 17, 2018 by Resolution 2018-24, as amended by the First Amendment, dated March 18, 2020.

"**East Side Trails**" means non-motorized hiking, biking and other trails traversing property located on the East Side.

"**Effective Date**" means the date shown in the Preamble of this Agreement.

"**Eligible Expenses**" means the sum of the following, without duplication: (1) all costs of development, financing, refinancing, construction, installation, operation, repair, maintenance, remodeling, replacement and potential expansion of the MWR Hotel and Mountain Improvements that are eligible for reimbursement pursuant to the MIDA Act and this Agreement; (2) the Interest Rate for such Mountain Improvements and MWR Hotel, as applicable, and (3) amounts, if any, paid by BLX Entities to MIDA for Debt Service on Bonds. Eligible Expenses include, but are not limited to, actual costs and expenses for design, legal, insurance, construction management fees, environmental assessment, characterization and remediation, and land and easement costs of the Mountain Improvements and MWR Hotel, as applicable.

"**Eligible Mortgagee**" has the meaning set forth in Section 13.21(c).

"**Estoppel Certificate**" has the meaning set forth in Section 13.21(g).

"**Event of Default**" has the meaning set forth in Section 11.1(a).

"**Event of Default Notice**" has the meaning set forth in Section 11.1(c).

"**Golf Academy**" has the meaning set forth in Section 3.3(b).

"**GRAMA**" has the meaning set forth in Section 13.20.

"**Hotel Property Tax Allocation**" has the meaning set forth in Section 3.4(a)(viii).

"**Hotel Unit**" has the meaning set forth in the MWR Hotel Condominium Lease Agreement.

"**Initial Development Period**" means, as to any parcel within the Project Area, the period commencing on the day on which MIDA receives the first Property Tax Allocation for such parcel (which shall occur upon the issuance of a certificate of occupancy for an improvement on such parcel) and expiring 25 years later, as provided in the MIDA Act.

"**Interest Rate**" means the lesser of (a) the actual interest rate/carry cost of the financing of the MWR Hotel or Mountain Improvements, as the case may be, or (b) four percent (4%) per annum.

"**Interlocal Agreements**" means the Interlocal Agreements identified in the Recitals, as such Interlocal Agreements may be amended, modified, superseded and replaced from time to time with the consent of Master Developer.

"**Jordanelle Parkway Improvements**" has the meaning set forth in Section 3.2(b)(i).

"**Jordanelle Parkway Loans**" means the UDOT Loan, the MIDA Loan, and the SkyRidge Loan.

"**JSPA**" has the meaning set forth in the Interlocal Agreements in effect on the date hereof.

"**Landowners**" has the meaning set forth in the Preamble to this Agreement, and their respective successors and assigns.

"**Master Developer**" has the meaning set forth in the Preamble, and its successors and assigns.

"**Master Development Agreement**" means the Mountainside Resort Master Development Agreement among the Parties, dated _____, 2020, as such agreement may be amended, superseded or replaced from time to time.

"**MIDA**" means the Military Installation Development Authority, a body politic of the State of Utah.

"**MIDA Accommodations Tax**" means a tax levied by pursuant to §63H-1-205 of the MIDA Act, as such section may be amended, superseded or replaced from time to time.

"**MIDA Act**" has the meaning set forth in the Recitals.

"**MIDA Development Standards**" means the Development Standards adopted by MIDA as of the Effective Date.

"**MIDA Loan**" means the internal loan created by MIDA from the $10 million provided to MIDA from UDOT pursuant to SB 6 adopted by the 2020 Utah Legislature for the Jordanelle Parkway Improvements.

"**MIDA Pre-Co Fee Portion**" has the meaning set forth in Section 3.5(a).

"**Military Concierge Unit**" has the meaning set forth in the MWR Hotel Condominium Lease Agreement.

"**Mortgage**" has the meaning set forth in Section 13.21(a).

"**Mortgagee**" has the meaning set forth in Section 13.21(a).

"**Mountain Improvements**" means ski and four season recreational resort improvements in the West Side, including, but not limited to: passenger ropeways, gondolas, warming huts, and other ski development

systems and equipment; ski runs; food service, entertainment, conference and retail supporting recreational use within the Mountainside Property; snowmaking; skier parking and transit facilities and systems; ice skating; central plant; environmental assessment and remediation; maintenance systems and facilities; transportation access on, to and from the West Side, including the West Side Frontage Road Improvements; and related ancillary systems and facilities. For avoidance of doubt, MIDA, in its sole discretion reasonably exercised, as authorized by Section 10(d)(ii) of the Interlocal Agreements, hereby finds that the following are "Mountain Improvements" within the meaning of the Interlocal Agreements and this Agreement:

Ski Improvements: structures, facilities, and improvements for ski patrol "huts"; chair lifts; passenger ropeway housing/facades; power/back-up power systems; terrain improvements; water transmission and delivery systems (including associated water rights); grading; signage; forestry management; shoring and retaining; ski bridges and tunnels; and other related ancillary systems and facilities for a four season recreational resort;

Skier Services, Village, and Mountain Facilities at various entry recreation points, on mountain or in the village so long the improvements are within 2,000 feet of recreational use areas, e.g. ski, hiking or mountain bike trails: structures, facilities, and improvements for skier support; turnstiles/pass readers; operations; ice sheets and related maintenance equipment; flow courses; food, conference and retail facilities supporting recreational use of the Mountainside Resort; yurts; mountain restrooms; communications improvements; fuel tanks; cat barns; maintenance facilities; medical/patrol support; medical heliport; signage; displays and kiosks; ski racks and trash receptacles; etc. for a four season recreational resort.

Transit, Parking, Roads, Trails, and Property Maintenance: structures, facilities, and improvements for local and regional transportation improvements, transit centers; parking; maintenance centers; roads; trails and water features; retention walls; signage; and, sidewalks. This category also includes the West Side Day Skier Parking.

Special Events: structures, facilities, and improvements for recreational events (for example, Olympics, Paralympics, Special Olympics, World Cups/Championships, kids adventure races, nordic races, other recreation related events); temporary pads; security improvements and equipment; communications and media compounds; waxing rooms; medical support facilities; warehousing; and, transit facilities and parking.

Environmental: environmental assessment, remediation, cleanup, containment, and monitoring; whether voluntary or mandatory, related to or arising out of the environmental condition of the Mountainside Property.

Infrastructure and Utilities: all public or private utilities, infrastructure, facilities and improvements associated with all of the uses listed above, including without limitation, energy, electric, street lighting, gas, water, secondary water, water conservation, sewer, storm water, and communications.

"**Mountain Improvements Budget**" has the meaning set forth in Section 3.2(f).

"**Mountain Improvements Fund**" is the 30% BLX DF and the 70% BLX DF combined.

"**Mountainside Property**" has the meaning set forth in the Recitals, together with such other property owned or acquired by any of the BLX Entities on the west side of US Highway 40 and added to the Project Area from time to time.

"**Mountainside Resort**" has the meaning set forth in the Recitals, as such development may be modified from time to time by the BLX Entities.

"**Municipal Energy Tax**" has the meaning given to such term in the MIDA Act.

"**MWR Hotel**" means the Hotel Unit, the Commercial Units, the Military Concierge Unit, and the Residential Units and associated common areas as defined in the MWR Hotel Condominium Lease Agreement.

"**MWR Hotel Fund**" has the meaning set forth in Section 3.4(a), generated from the MWR Hotel.

"**MWR Hotel Condominium Lease Agreement**" means the MWR Hotel Condominium Lease Agreement identified in the Recitals, as such MWR Hotel Condominium Lease Agreement is amended, modified, superseded and replaced from time to time.

"**MWR Hotel Purpose**" has the meaning set forth in Section 3.4(b).

"**Part 1 Project Area Plan**", "**Part 2 Project Area Plan**", and "**Part 3 Project Area Plan**" have the respective meanings set forth in the Recitals.

"**Party**" or "**Parties**" have the meaning set forth in the Preamble to this Agreement.

"**Person**" means any individual, partnership, corporation, limited liability company, governmental authority, trust, trustee, unincorporated association, and the heirs, executors, administration, or other legal representatives of any individual.

"**Portal Improvements**" means the two (2) transportation portals, to be constructed by UDOT, providing vehicular connectivity under US Highway 40 between the East Side and the West Side, one of which is to be located near the existing Deer Crest Gondola and the other of which is to be located near the existing utility underpass, and both of which shall be in locations determined by UDOT. Portal Improvements shall also include the roads and related utilities connecting such portals to applicable public roads on both sides of US Highway 40.

"**Pre-Co Fee**" means the fee imposed by §63H-1-501(4) of the MIDA Act on the taxable value of property in excess of the property's base year payable by a property owner within the Project Area as provided in the MIDA Act.

"**Pre-Co Fee Fund**" means the aggregate of the Pre-Co Fees received by MIDA.

"**Pre-Co Fee Notice**" has the meaning set forth in Section 3.5(c).

"**Project Area**" has the meaning set forth in the Recitals, as such Project Area may be expanded from time to time by MIDA pursuant to the MIDA Act.

"**Project Area Budget**" has the meaning set forth in the Recitals, as such Project Area Budget may be amended, modified, superseded, and replaced from time to time as permitted by the MIDA Act and in accordance with this Agreement.

"**Project Area Plans**" has the meaning set forth in the Recitals.

"**Property Taxes**" includes the privilege tax and each levy on an ad valorem basis on real property and any tangible or intangible personal property in the Project Area, as set forth in the MIDA Act.

"**Property Tax Allocation**" has the meaning given to such term in the MIDA Act in effect as of the date hereof. For avoidance of doubt, with respect to the Blue Ledge Parcel the term "Property Tax Allocation" as used herein shall be the same as the term formerly referred to as "tax increment" in the MIDA Act and the Blue Ledge Development Agreement.

"**Reimbursement Policy**" has the meaning set forth in Section 5.2.

"**Residential Units**" has the meaning set forth in the MWR Hotel Condominium Lease Agreement.

"**Resort Communities Tax**" has the meaning given to such term in the MIDA Act.

"**RH Mayflower**" means RH Mayflower LLC, a Delaware limited liability company, and its successors and assigns.

"**Secondary Development Period**" means, as to any parcel within the Project Area, the period commencing on the expiration of the Initial Development Period as to such parcel and expiring on the day occurring fifteen (15) years later, as such period may be further extended pursuant to future amendments of the MIDA Act.

"**SkyRidge Loan**" means the existing loan from SkyRidge Development, LLC to MIDA for the Jordanelle Parkway Improvements.

"**System Improvements**" means public facilities, as defined in Utah Code Ann. §11-36(a)-102(21) that are owned or operated by or on behalf of a state or local political body or private entity.

"**Telecommunications Tax**" has the meaning given to such term in the MIDA Act.

"**Transfer Acknowledgement**" has the meaning set forth in Section 12.1.

"**UDOT**" means the Utah Department of Transportation.

"**UDOT Loan**" means that certain Transportation Infrastructure Loan Fund Agreement dated October 26, 2018, as amended, between MIDA and UDOT, in the principal amount of $14,000,000, which is secured by the Property Tax Allocation to be generated solely from property located on the East Side.

"**Wasatch County**" means Wasatch County, a political subdivision of the State of Utah.

"**West Side**" has the meaning set forth in the Recitals, as the West Side may be expanded from time to time by MIDA pursuant to the MIDA Act and the Interlocal Agreements.

"**West Side Day Skier Parking**" has the meaning set forth in the Master Development Agreement and Section 3.2(b)(iii).

"**West Side Frontage Road Improvements**" has the meaning set forth in the Master Development Agreement.

"**West Side Interlocal Cooperation Agreement**" means that certain Interlocal Cooperation Agreement dated December 17, 2018 between MIDA and Wasatch County as approved by MIDA on December 17, 2018 by Resolution 2018-24, as amended by the First Amendment dated March 18, 2020.

"**West Side Trails**" means non-motorized hiking, biking and other trails traversing property located on the West Side.

Exhibit C
To
Tax Sharing and Reimbursement Agreement

Interpretation

As used in this Agreement, unless a clear contrary intention appears:

(a) any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other gender;

(b) the words "hereof", "hereby", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) any reference to Articles, Sections and Exhibits are, unless otherwise stated, references to Articles, Sections and Exhibits of or to this Agreement, and references in any Section or definition to any clause means such clause of such Section or definition;

(d) the headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;

(e) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended, modified, superseded, replaced or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement;

(f) the Exhibits and Schedules hereto form an integral part of this Agreement and are equally binding therewith, and any reference to "this Agreement" shall include such Exhibits and Schedules;

(g) references to a Person shall include any permitted assignee or successor to such Party in accordance with this Agreement and reference to a Person in a particular capacity excludes such Person in any other capacity;

(h) if any period is referred to in this Agreement by way of reference to a number of days, the days shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day that is not a Business Day in which case the last day shall be the next succeeding Business Day;

(i) the use of "or" is intended to be exclusive and lists alternatives while the use of "and" is intended to be exclusive and each listed item is required;

(j) references to "$" or to "dollars" shall mean the lawful currency of the United States of America;

(k) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted and

Exhibit D
To
Tax Sharing and Reimbursement Agreement

Pre-Co Fee Notice

AFTER RECORDING, RETURN TO:

Military Installation Development Authority
450 Simmons Way, Suite 400
P.O. Box 112 Kaysville, Utah 84037
Attention: Executive Director

NOTICE OF PRE-CO FEE

This Notice of Pre-Co Fee (this "Notice") is executed by the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah (together with its successors and/or assigns, the "MIDA"), having a mailing address at 450 Simmons Way, Suite 400, P.O. Box 112 Kaysville, Utah 84037, Attention: Executive Director.

BE IT KNOWN TO ALL SELLERS, BUYERS AND TITLE COMPANIES that:

The real property described on the attached Exhibit A (the "Subject Property") is located in the MIDA Military Recreation Facility Project Area and is subject to an annual payment of a fee pursuant to Utah Code Ann. §63H-1-501(4) on the taxable value of property in excess of the property's base year, payable by the owner(s) of such property. Such fee is payable with respect to any portion of the Subject Property ("Parcel") until January 1 immediately following the day on which MIDA or an entity designated by MIDA issues a certificate of occupancy with respect to improvements located on the Parcel, at which time the fee is no longer payable with respect to such Parcel and this Notice shall be of no further force or effect and shall terminate with respect to such Parcel without any further action by MIDA or the owner(s) of such Parcel.

[Signature Page Follows]

DATED: August ___, 2020

MIDA:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

By: _____
Name: Paul T. Morris
Title: Acting Executive Director

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

On the _____ day of _____, 2020, personally appeared before me Paul Morris, who being by me duly sworn did say, that he is the Acting Executive Director of the MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the Military Installation Development Authority, by authority of law.

_____
NOTARY PUBLIC
Residing in _____

EXHIBIT A

Legal Description of the Subject Property

[attached]

Exhibit E
To
Tax Sharing and Reimbursement Agreement

Form of Transfer Acknowledgement

WHEN RECORDED, RETURN TO:

Extell Development Company
Summit Center, Suite #206
2750 W. Rasmussen Road
Park City, Utah 84098
Attention: Kurt Krieg, VP Development

Tax Parcel Nos. (See Exhibit "A")

(Space above for Recorder's use only.)

TRANSFER ACKNOWLEDGMENT

This Transfer Acknowledgment (the "Acknowledgment") is made as of the ____th day of [_____], 20__, (the "Effective Date"), by and between [Extell owner of Transfer Property], a Delaware limited liability company ("Landowner") and EX UTAH DEVELOPMENT LLC, a Delaware limited liability company ("Master Developer", together with the Landowner, collectively "Assignor"), and [_____] ("Assignee"). Assignor and Assignee are alternatively referred to as the "Parties."

RECITALS

A. Assignor is a party to that certain Tax Sharing and Reimbursement Agreement, dated as of [_____], 2020 (the "Agreement"), by and between Assignor and Military Installation Development Authority, a political subdivision of the State of Utah, concerning certain real property located in Wasatch County, Utah (the "Mountainside Property") and more particularly described on Exhibit "A" attached hereto.

B. In connection with the Landowner's conveyance of a portion of the Mountainside Property more particularly described on Exhibit "B" attached hereto (the "Transfer Property") to Assignee, Assignor desires to assign certain of its rights and obligations under the Agreement pertaining specifically to the Transfer Property as more particularly described in this Acknowledgment to Assignee, Assignee desires to accept such assignment.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

the Parties agree as follows:

1. Assignment and Assumption. Effective upon the Effective Date, Assignor hereby assigns to Assignee its rights and obligations under Section[(s) ___] of the Agreement pertaining specifically to the Transfer Property only, specifically, Assignor's right to [_____] (the "Assigned Rights"), and Assignee hereby accepts such assignment and assumes and agrees to be bound by all of the terms and conditions of the Agreement with respect to the Assigned Rights and the Transfer Property.

2. Release. From and after the Effective Date, Assignor shall be released from all obligations under the Agreement arising after the Effective Date with respect to the Assigned Rights and the Transfer Property.

3. Reservation. Assignor reserves all rights and obligations arising under the Agreement that are not expressly included in the Assigned Rights. In the event of any dispute as to whether certain rights or obligations arising under the Agreement are included in the Assigned Rights, Master Developer's determination as to the scope of the Assigned Rights shall be binding on the Parties, absent manifest error.

4. Representations and Warranties of Assignor. Assignor represents and warrants to Assignee that it has full power and authority (including full corporate power and authority) to assign the Assigned Rights to Assignee pursuant to this Acknowledgment. These representations and warranties shall survive any cancellation of this Acknowledgment.

5. Representations and Warranties of Assignee. Assignee represents and warrants to Assignor that it has full power and authority (including full corporate power and authority) to assume the Assigned Rights pursuant to this Acknowledgment. These representations and warranties shall survive any cancellation of this Acknowledgment.

6. Indemnification. Assignee agrees to indemnify, defend and hold Assignor harmless against any claims arising under the Agreement and pertaining specifically to the Assigned Rights and the Transfer Property from and after the Effective Date. Assignor agrees to indemnify, defend and hold Assignor harmless against any claims arising under the Agreement and pertaining specifically to the Assigned Rights and the Transfer Property on and before the Effective Date.

7. Ratification and Survival. Other than those specific provisions amended by this Acknowledgment, all other provisions, rights, and obligations contained in the Agreement are hereby ratified by the Parties, and all of the representations, warranties, covenants and agreements of the Parties as set forth herein shall survive the consummation of the transactions set forth herein. In the event of any conflict between the Agreement and this Acknowledgment, this Acknowledgment shall govern. Any terms not defined herein shall carry those definitions set forth in the Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Acknowledgment as of the date first above written.

ASSIGNOR:

MASTER DEVELOPER:

EX UTAH DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

LANDOWNER:

[_____],
a Delaware limited liability company

By: _____
Name: Gary Barnett
Title: President

ASSIGNEE:

[_____]

By: _____
Name: _____
Its: _____

STATE OF NEW YORK)
ss
COUNTY OF NEW YORK)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared Gary Barnett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged himself to be the President of each of EX UTAH DEVELOPMENT LLC and [_____], each a Delaware limited liability company, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself as such officer.

Notary Public
(SEAL)

STATE OF _____)
ss
COUNTY OF _____)

On the ____ day of _____ in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged himself to be the _____ of _____, a _____, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by [himself/herself] as such officer.

Notary Public
(SEAL)

Exhibit A
To
Transfer Acknowledgement

Legal Description of Mountainside Property

(See Attached.)

Exhibit B
To
Transfer Acknowledgement

Legal Description of Transfer Property

(See Attached.)

4848-0275-2418, v. 25

EXHIBIT H
to
DONATION AGREEMENT

Form of Military Option Parcel Agreement

Execution Version

MILITARY PARCEL OPTION AGREEMENT

by and between

BLX Mayflower LLC,
a Delaware limited liability company

and

MILITARY INSTALLATION DEVELOPMENT AUTHORITY,
a political subdivision of the State of Utah

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Execution Version

MILITARY PARCEL OPTION AGREEMENT

THIS MILITARY PARCEL OPTION AGREEMENT (this "**Agreement**") is entered into this _____ day of August, 2020 (the "**Effective Date**"), by and between BLX MAYFLOWER LLC, a Delaware limited liability company ("**BLX Mayflower**"), and MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah ("**MIDA**"). The foregoing entities are sometimes referred to individually as a "**Party**" or collectively as the "**Parties**".

RECITALS

WHEREAS, MIDA was created pursuant to the Military Installation Development Authority Act (Utah Code § 63H-1-101, *et seq.*) (the "**MIDA Act**") to create project areas and to promote the development of military land within such project areas, among other powers and authorities established by the MIDA Act; and

WHEREAS, pursuant to the MIDA Act, and with the consent of Wasatch County, Utah ("**Wasatch County**"), MIDA has created the Military Recreation Facility Project Area in Wasatch County (the "**Project Area**"), and intends to use funds generated from development within the Project Area, to further state and federal legislation and the viability of creating a four-season resort that is both a public and military amenity; and

WHEREAS, BLX Mayflower and its affiliates are the owners of certain surface rights in and to real property in Wasatch County within the Project Area, that is in the process of being developed into a four-season recreational resort (the "**Mountainside Resort**") that, among other uses, includes the MWR Conference Hotel Condominiums (the "**MWR Condominium Project**") as reflected on that certain MWR Conference Hotel Condominium Plat dated July 23, 2020 and of record in the official records of the Wasatch County Recorder; and

WHEREAS, the MWR Condominium Project includes, among other condominium units, a hotel condominium unit, certain commercial condominium units, and a military concierge condominium unit (the "**Military Concierge Unit**") (collectively, the "**MIDA Condominium Units**"), all of which are owned by MIDA and leased to BLX MWR Hotel LLC ("**BLX MWR**"), an affiliate of BLX Mayflower, pursuant to a MWR Hotel Condominium Lease Agreement of even date herewith (the "**MWR Hotel Condominium Lease**"); and

WHEREAS, among other things, the MWR Hotel Condominium Lease assures that Department of Defense personnel and retirees (defined in the MWR Hotel Condominium Lease as "Eligible Military Personnel") will be extended the benefit of discounted hotel room rates for a specified number of hotel rooms, the use of the Military Concierge Unit, and certain other morale, welfare, and recreation benefits associated with the MIDA Condominium Units (the "**Military Benefits**"); and

WHEREAS, as part of the Military Benefits to be made available to the military, MIDA desires to obtain an Option (as defined herein) to acquire from BLX Mayflower certain surface interests in and to approximately 1.74 acres of the surface of real property identified on Exhibit A hereto (the "**Military Option Parcel**") for use as a part of the morale, welfare, and recreation facility and to facilitate an exchange with the United States Air Force (the "**Air Force**") for the Red Maple Parcel (as defined below); and

WHEREAS, Section 2862 of the Fiscal Year 2002 Department of Defense Authorization Act ("**Exchange Act**") authorized the Secretary of the Interior to transfer property in Park City, Utah from the Bureau of Land Management to the administrative jurisdiction of the Secretary of the Air Force (as such

property is more particularly described on Exhibit B hereto, the "**Red Maple Parcel**"). The Exchange Act authorized the Secretary of the Air Force to convey the Red Maple Parcel to the State of Utah, a local government, or a private entity in exchange for other property to be used in connection with an Air Force morale, welfare, and recreation facility; and

WHEREAS, the Air Force is interested in obtaining the Military Benefits of the MIDA Condominium Units and the Military Option Parcel for Eligible Military Personnel as part of a morale, welfare and recreation facility as contemplated by the Exchange Act. Consequently, in consideration thereof together with the value of the Military Option Parcel, MIDA believes that the Air Force is authorized by the Exchange Act to exchange the Red Maple Parcel for the Military Option Parcel and the Military Benefits available to Eligible Military Personnel under the MWR Hotel Condominium Lease, which exchange will occur, if at all, subsequent to the exercise of the Option by MIDA.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals and the promises of the Parties as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BLX Mayflower hereby agrees to grant to MIDA, and MIDA agrees to accept from BLX Mayflower, the Option pursuant to the following covenants, conditions, terms and obligations:

1. **DEFINITIONS**. As used in this Agreement, each of the following terms shall have the indicated meaning:

"Agreement" has the meaning set forth in the Preamble.

"Air Force" has the meaning set forth in the Recitals.

"Air Force Commitment" has the meaning set forth in Section 2 hereof.

"Appraisal" has the meaning set forth in Section 3(c) hereof.

"Appraised Value" means Two Million Dollars ($2,000,000) to be established by the Appraisal.

"BLX Mayflower" has the meaning set forth in the Preamble.

"BLX Mayflower Conditions Precedent to Closing" has the meaning set forth in Section 5(b).

"BLX MWR" has the meaning set forth in the Recitals.

"Closing" means the consummation of the purchase and sale of the Military Option Parcel between BLX Mayflower and MIDA pursuant to the provisions of this Agreement.

"Closing Date" has the meaning set forth in Section 6(a) hereof.

"Deed" means a special warranty deed, dated as of the Closing Date, conveying title of the Military Option Parcel to MIDA, subject to the Permitted Exceptions, substantially in the form of Exhibit C hereto.

"Due Diligence" means to make such legal, factual and other inquiries and investigations as MIDA deems necessary, desirable or appropriate with respect to the Military Option Parcel.

"Effective Date" has the meaning set forth in the Preamble.

"Exchange Act" has the meaning set forth in the Recitals.

"Exercise Notice" has the meaning set forth in Section 2 hereof.

"Indemnity Period" has the meaning set forth in Section 10(b) hereof.

"Master Development Agreement" means that certain Mountainside Resort Master Development Agreement dated as of August [___], 2020 among MIDA, BLX Mayflower, BLX MWR and their affiliates, including any extensions, modifications, amendments, replacements, supplements, renewals or consolidations thereof.

"Master Development Plat" has the meaning set forth in Section 3(e) hereof.

"MIDA" has the meaning set forth in the Preamble.

"MIDA Act" has the meaning set forth in the Recitals.

"MIDA Condominium Units" has the meaning set forth in the Recitals.

"MIDA Conditions Precedent to Closing" has the meaning set forth in Section 5(a) hereof.

"Military Benefits" has the meaning set forth in the Recitals.

"Military Concierge Unit" has the meaning set forth in the Recitals.

"Military Option Parcel" has the meaning set forth in the Recitals.

"Mountainside Resort" has the meaning set forth in the Recitals.

"MWR Condominium Project" has the meaning set forth in the Recitals.

"MWR Hotel Condominium Lease" has the meaning set forth in the Recitals.

"New Title Exception" has the meaning set forth in Section 4(c)(ii) hereof.

"New Title Objection Notice" has the meaning set forth in Section 4(c)(ii) hereof.

"New Title Objection Election Notice" has the meaning set forth in Section 4(c)(iii) hereof.

"New Title Objection Response Notice" has the meaning set forth in Section 4(c)(iii) hereof.

"Option" has the meaning set forth in Section 2 hereof.

"Option Term" means the period commencing on the Effective Date and expiring on the earlier to occur of (a) the date that the Air Force permanently abandons negotiations relating to an exchange with MIDA of the Military Option Parcel for the Red Maple Parcel, or (b) December 15, 2021, as such date may be extended from time to time by the mutual agreement of the Parties.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Permitted Exceptions" means title to the Military Option Parcel is to be conveyed hereunder subject to the following (collectively, the "**Permitted Exceptions**"):

(i) all declarations, easements, rights-of-way, restrictions, covenants and other matters of public record identified in the Title Commitment (but not including Exception Nos. 30, 31 and 32) or permitted pursuant to Sections 4(c) or 4(e) hereof,.

(ii) the Master Development Agreement;

(iii) all gas, water, and mineral rights of others; and

(iv) the lien of ad valorem real property taxes for the then-current year.

"Project Area" has the meaning set forth in the Recitals.

"Purchase Price" shall be One Million and No/100 Dollars ($1,000,000.00), which shall be due and payable to BLX Mayflower in cash at Closing. The Parties acknowledge that the difference between the Purchase Price and the Appraised Value shall be deemed to be a donation by BLX Mayflower to MIDA.

"Red Maple Parcel" has the meaning set forth in the Recitals.

"Title Commitment" has the meaning set forth in Section 4(b) hereof.

"Title Company" shall mean High County Title, 1729 Sidewinder Drive, Suite 200, P.O. Box 714, Park City, Utah 84060, Attention: Scott Buchanan.

"Title Policy" has the meaning set forth in Section 4(c)(i) hereof.

"Updated Title Commitment" has the meaning set forth in Section 4(c)(i) hereof.

"Wasatch County" has the meaning set forth in the Recitals.

2. **OPTION**. Subject to the terms and conditions of this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, BLX Mayflower grants to MIDA an option (the "**Option**") during the Option Term, to purchase the Military Option Parcel for the Purchase Price. MIDA shall have the right to exercise the Option at any time prior to

the expiration of the Option Term subject to the condition precedent that the Air Force shall be irrevocably committed to exchanging the Military Option Parcel for the Red Maple Parcel immediately after the Closing (the "**Air Force Commitment**"). MIDA shall exercise the Option by delivering written notice to BLX Mayflower of MIDA's election to exercise the Option and purchase the Military Option Parcel, in the form of Exhibit D attached hereto (the "**Exercise Notice**") in accordance with the manner for notices set forth in Section 13(a) hereof; provided that the Closing Date shall not be more than thirty (30) days after the date the Exercise Notice is delivered to BLX Mayflower. The delivery of the Exercise Notice by MIDA shall constitute a representation and warranty by MIDA that it has completed all due diligence that MIDA desires in connection with the Military Option Parcel and all matters related to the title, purchase, development, use and ownership of the Military Option Parcel, and that MIDA has accepted the Military Option Parcel in its then current condition, with all faults and defects, subject only to the provisions of Section 4(c) and Section 10 hereof and BLX Mayflower's undertakings and representations under this Agreement. During the Option Term, MIDA shall keep BLX Mayflower reasonably informed as to MIDA's efforts to reach an agreement with the Air Force relating to the exchange between MIDA and the Air Force of the Red Maple Parcel for the Military Option Parcel.

3. **DUE DILIGENCE; SUBDIVISION.**

(a) Exercise of Option Constitutes Acceptance of Condition of Military Option Parcel. The Parties acknowledge that the transaction contemplated by this Agreement is not contingent upon MIDA's Due Diligence. The exercise of the Option by MIDA shall constitute MIDA's acknowledgement and agreement that it is satisfied with its Due Diligence and its review and investigation of the condition of the Military Option Parcel.

(b) BLX Mayflower Disclosures. MIDA acknowledges that prior to the Effective Date, in addition to materials submitted to MIDA in its governmental capacity in connection with the Master Development Agreement and related Master Plan, BLX Mayflower has also provided MIDA with the following (collectively, the "**BLX Mayflower Disclosures**"): (a) a copy of a USAF Phase I ESA environmental report dated January 29, 2020, rev. 2 pertaining to the Military Option Parcel and prepared by Intermountain GeoEnvironmental Services, Inc. (IGES), together with an August 9, 2020 draft "Phase I Environmental Baseline Survey: 1.74-Acre Parcel, Wasatch County, Utah" prepared by IGES; (b) a copy of a survey drawing dated April 10, 2020 pertaining to the Military Option Parcel prepared by Alliance Engineering as Project No. 18-08-18; and (c) the Title Commitment with active electronic links to all exception documents referenced therein.

(a) Appraisal. Once MIDA receives the Air Force Commitment (subject only to the receipt of the Appraisal) and has advised BLX Mayflower in writing of such receipt, BLX Mayflower shall procure and deliver to MIDA an appraisal of the Military Option Parcel to be prepared by Newmark Knight Frank in accordance with the appraisal standards required for such appraisal to be accepted by the Air Force (the "**Appraisal**"). The Parties contemplate that the fair value of the Military Option Parcel will be at least equal to the Appraised Value of Two Million Dollars ($2,000,000), which Appraised Value shall be a condition precedent to the obligation of the Parties to proceed to Closing, as provided in Section 5 below.

(b) Pre-Exercise Access to Military Option Parcel. During the Option Term BLX Mayflower will provide MIDA reasonable access to enter upon the Military Option Parcel, sufficient to complete MIDA's Due Diligence. The Parties further agree that unless otherwise agreed by BLX Mayflower such access must be with prior notice to BLX Mayflower at least 48 hours before the proposed inspection and investigation and be accompanied by BLX Mayflower personnel. Any testing, inspection or investigation shall be conducted in such a manner as to be non-invasive and shall not interfere with any use by BLX

Mayflower of the Military Option Parcel. For avoidance of doubt, and taking into consideration the indemnity by BLX Mayflower provided in Section 10 hereof, no drilling, sampling or other invasive testing shall be permitted on the Military Option Parcel prior to Closing. MIDA will be responsible to restore the Military Option Parcel to substantially its prior condition and to restore or repair any damage to the Military Option Parcel resulting from such Due Diligence. MIDA agrees to indemnify, defend and hold harmless BLX Mayflower and its affiliates from and against any claim, loss, damage, cost or expense (including reasonable attorneys' fees) arising out of the presence of MIDA on the Military Option Parcel. The obligations of MIDA under this Section 3(d) will survive any termination of this Agreement and/or any Closing.

(c) Subdivision. The legal description for the Military Option Parcel has been previously approved by MIDA pursuant to that certain MIDA Master Development Plat recoded as Entry No. 480155 at Book 1299 at Page 1122-1221 in the records of the Wasatch County Recorder (the "**Master Development Plat**"). MIDA agrees that no further approval will be needed pursuant to the applicable provisions of the MIDA Development Standards and Guidelines for the MIDA Control Area for the Military Option Parcel to be transferred to MIDA at the Closing pursuant to this Agreement.

4. **TITLE.**

(a) Deed. At the Closing, BLX Mayflower shall convey fee title to the Military Option Parcel by delivering to MIDA the Deed, subject only to the Permitted Exceptions.

(b) Title Commitment. BLX Mayflower has caused the Title Company to provide the Parties with a Title Commitment for Title Insurance dated as of July 10, 2020 (with an issue date of July 21, 2020) as Title Commitment No. 26602, together with a copy all documents referenced therein, reflecting the status of title to the Military Option Parcel and showing all encumbrances and other matters affecting the Military Option Parcel (the "**Title Commitment**"). MIDA hereby accepts the status of title of the Military Option Parcel as reflected in the Title Commitment, and agrees to take title to the Military Option Parcel subject to all exceptions disclosed thereon, but not including Exception Nos. 30, 31 and 32.

(c) Updated Title Commitment.

(i) After the exercise of the Option, BLX Mayflower shall cause the Title Company to update the Title Commitment (the "**Updated Title Commitment**"), thereby committing to issue an ALTA standard coverage owner's policy of title insurance based upon the amended Title Commitment (the "**Title Policy**") in an amount not to exceed the Purchase Price, insuring that upon recording the Deed, MIDA shall be the owner of good and marketable title to the Military Option Parcel, subject to all Permitted Exceptions.

(ii) If the Updated Title Commitment discloses any title exception which is not disclosed in the Title Commitment or otherwise a Permitted Exception herein (a "**New Title Exception**"), and such New Title Exception (1) is unacceptable to MIDA in its reasonable discretion, (2) was not authorized pursuant to Section 4(e) below or was not otherwise consented to by MIDA in writing, (3) reduces the fair market value of the Military Option Parcel below the Appraised Value (as established by MIDA pursuant to the Appraisal), and (4) was not caused by the acts or omissions of MIDA, the Air Force or any person acting on behalf of MIDA or the Air Force, then MIDA shall have the right to request BLX Mayflower to remove or cure such New Title Exception at or prior to Closing by providing written notice to BLX Mayflower within the earlier of seven (7) days after receiving such Updated Title Commitment (the "**New Title**

Objection Notice"), and the Closing shall be extended if and as necessary to account for such objection and cure by BLX Mayflower as set forth below.

(iii) If MIDA timely provides a New Title Objection Notice to BLX Mayflower, BLX Mayflower shall use commercially reasonable efforts to cause such New Title Exception to be removed or cured by BLX Mayflower at its sole cost and expense at or prior to Closing. If BLX is unable through the exercise of commercially reasonable efforts to cause such New Title Exception to be removed or cured prior to Closing, then BLX shall provide written notice of such inability (the "**New Title Objection Election Notice**") to MIDA on or before the date occurring three (3) Business Days before the Closing Date. Upon receipt of a New title Objection Election Notice, MIDA shall have the right to elect, by providing written notice (the "**New Title Objection Response Notice**") to BLX Mayflower within the earlier of seven (7) days after MIDA's receipt of the New Title Objection Election Notice or the Closing to (I) terminate this Agreement, in which case the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive termination in accordance with the terms of this Agreement, or (II) proceed to Closing pursuant to this Agreement and accept title to the Military Option Parcel subject to such New Title Exception which thereafter shall be deemed to constitute a Permitted Exception. If MIDA does not provide a New Title Objection Response Notice to BLX Mayflower within such time period, MIDA shall be deemed to have elected to accept such New Title Exception Defect to clause (II) of the preceding sentence.

(iv) Notwithstanding anything to the contrary contained herein, BLX Mayflower shall have an absolute obligation to cure by removing from title at Closing any title exceptions (whether an exception appearing on the original Title Commitment or a New Title Exception) that are monetary encumbrances (including but not limited to mortgages, deeds of trust, promissory notes, and liens for taxes due and payable on or before the Closing). Except for monetary encumbrances (which shall be cured and removed from title at Closing as set forth in the previous sentence), BLX Mayflower may cure any New Title Exception by removing such New Title Exception from title or causing the Title Company to commit to remove or insure over such New Title Exception in the Title Policy in a manner reasonably acceptable to MIDA at any time prior to or at Closing. If BLX Mayflower is unable, despite BLX Mayflower's good faith efforts, to remove or cure any New Title Exception prior to the scheduled Closing, BLX Mayflower shall have the right to postpone the Closing for up to thirty (30) days by providing written notice to MIDA no later than three (3) business days prior to the then scheduled closing date.

(d) Title Policy. At Closing, with respect to the Military Option Parcel, the Title Company shall (i) issue to MIDA the Title Policy, and (ii) provide such endorsements (or amendments) to such Title Policy as MIDA may reasonably require; provided that except for representations made in any owner's affidavit or other affidavit required to be provided by BLX Mayflower in order for the Title Company to issue the Title Policy as required hereunder, the Title Policy and any endorsements thereto shall impose no additional liability on BLX Mayflower and the receipt of any such endorsement shall not be a condition to MIDA's obligation to proceed to Closing.

(e) Encumbrances During Option Term. MIDA acknowledges that the Military Option Parcel is located near the infrastructure hub for the Mountainside Resort. Due to its location, it may be necessary or desirable for BLX Mayflower to grant easements or adjust the right-of-way adjacent to the Military Option Parcel. BLX Mayflower may take any such action as it determines is the best interest of developing the Mountainside Resort, and MIDA shall take title subject to any such encumbrances and adjustment so long as such encumbrances or adjustment do not unreasonably restrict access to the Military

Option Parcel, materially affect the Appraised Value of the Military Option Parcel (as established by this Agreement) or otherwise prevent the use of the Military Option Parcel as a part of a military morale, welfare and recreation facility.

5. **CONDITIONS PRECEDENT TO CLOSING.**

(a) MIDA's Conditions Precedent. Once MIDA has delivered the Exercise Notice to BLX Mayflower pursuant to Section 2 hereof, the obligation of MIDA to proceed to the Closing shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived by MIDA in its sole and absolute discretion (the "**MIDA Conditions Precedent to Closing**"):

(i) The representations, warranties and covenants of BLX Mayflower set forth in this Agreement shall be true and correct as of the Closing Date;

(ii) The Appraisal shall reflect the Appraised Value contemplated herein;

(iii) BLX Mayflower shall have performed and complied with all covenants and agreements set forth herein which are to be performed or complied with by BLX Mayflower at or prior to the Closing Date including without limitation being prepared to deliver title to the Military Option Parcel as provided for in this Agreement and MIDA shall be reasonably satisfied that BLX Mayflower has the requisite authority to perform the actions to be performed by BLX Mayflower at the Closing; and

(iv) BLX Mayflower shall have executed and delivered to MIDA any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

In the event that any of the foregoing MIDA Conditions Precedent to Closing are not satisfied and are not waived in writing by MIDA on or before the Closing Date, MIDA shall have the remedies provided in Section 6(b) hereof.

(b) BLX Mayflower's Conditions Precedent. Once MIDA has timely delivered the Exercise Notice to BLX Mayflower pursuant to Section 2 hereof, the obligation of BLX Mayflower to proceed to the Closing shall be conditioned upon satisfaction of the following at or prior to Closing, or such earlier period indicated below, any of which may be waived in writing by BLX Mayflower in its sole and absolute discretion (the "**BLX Mayflower Conditions Precedent to Closing**"):

(i) The representations, warranties and covenants of MIDA set forth in this Agreement shall be true and correct as of the Closing Date:

(ii) The Appraisal shall reflect the Appraised Value as contemplated herein;

(iii) MIDA shall have performed and complied with all covenants and agreements set forth herein which are to be performed or complied with by MIDA at or prior to the Closing Date and BLX Mayflower shall be reasonably satisfied that MIDA has the requisite authority to perform the actions to be performed by MIDA at the Closing:

(iv) MIDA shall have approved the Subdivision of the Military Option Parcel:

(v) MIDA shall have executed and delivered to BLX Mayflower any and all documents required or necessary to consummate the transactions contemplated by this Agreement; and

(vi) MIDA shall have delivered the Purchase Price to BLX Mayflower.

In the event that any of the foregoing BLX Mayflower Conditions Precedent to Closing are not satisfied and are not waived by BLX Mayflower on or before the Closing Date, BLX Mayflower shall have the remedies provided in Section 7(a) hereof.

6. **CLOSING.**

(a) Closing. Subject to Section 5 hereof, the Closing shall occur immediately prior to and on the same day as the exchange of the Military Option Parcel for the Red Maple Parcel with the Air Force, but in no event later than ninety (90) days after MIDA provides written notice to BLX Mayflower that it is exercising the Option (the "**Closing Date**"). The Closing shall be held at the offices of the Title Company or such other location as the Parties shall mutually designate. Time is of the essence with respect to the Closing Date. At the Closing:

(i) BLX Mayflower shall execute, acknowledge, and deliver to MIDA (A) the Deed; and (B) all other documents or instruments required to be executed pursuant to the provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby;

(ii) MIDA shall execute, acknowledge, and deliver to BLX Mayflower all documents or instruments required to be executed pursuant to provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby;

(iii) MIDA shall deliver the Purchase Price to BLX Mayflower; and

(iv) Title Company shall record the Deed in the official records of the Wasatch County and, subject to Section 4 hereof, shall cause to be provided to MIDA the Title Policy, insuring that upon recording the Deed, MIDA shall be the owner of title to the Military Option Parcel.

(b) Closing Expenses. Expenses for any escrow or other fees of the Title Company shall be equally shared between the Parties. BLX Mayflower shall pay the cost of the standard coverage Title Policy and the cost of recording the Deed. MIDA shall pay the cost of any extended title coverage or endorsements. Except as otherwise provided for in this Agreement or any other written agreement between the Parties, each Party will each be solely responsible for and bear all of its own respective expenses.

(c) Prorations. BLX Mayflower shall be responsible for all real property taxes, assessments or other charges accruing prior to the date of the Closing, including any taxes payable on or before the Closing under the Utah Farmland Assessment Act of 1969, *Utah Code Ann.* §59-2-501, et seq. At the Closing, all other real property taxes and other charges payable on an annual or periodic basis shall be prorated to the date of Closing based on the most recent available tax information.

(d) Valuation. If BLX Mayflower determines that it desires to use the donation (as provided in the definition of "Purchase Price" herein) as a federal or state income tax deduction, then, at the Closing, MIDA shall deliver to BLX MWR a completed Section B, Part IV of the IRS Form 8283, the contemporaneous written acknowledgement of the donation required by Section 170(f)(8) of the Internal Revenue Code, and such other forms and information reasonably requested by BLX Mayflower to acknowledge the donation. The Parties further agree that MIDA has not made any independent determination of value, any representation or warranty as to value, nor any representation or warranty as to whether any appraisal is a "qualified appraisal," as defined in Section 1.468B-3(b)(3) of the Treasury Regulations. MIDA does not make any representation or warranty regarding use of the Donation as a tax deduction. BLX Mayflower shall consult its own tax advisors.

(e) Further Assurances. At the Closing, the Parties shall deliver to the Title Company and to each other such further documents and instruments as may be reasonably necessary or appropriate to consummate the transactions contemplated by this Agreement.

7. **BREACH**.

(a) Default by MIDA. If MIDA materially defaults hereunder, BLX Mayflower shall deliver written notice thereof to MIDA and the Title Company. If MIDA does not cure such default within thirty (30) days after receiving written notice thereof, BLX Mayflower, as its exclusive remedy shall be entitled to either terminate this Agreement or, in the alternative, to bring an action for specific performance of this Agreement.

(b) Default by BLX Mayflower. If BLX Mayflower materially defaults hereunder, which default results in a failure of the transaction contemplated by this Agreement to close, MIDA shall deliver written notice thereof to MIDA and the Title Company. If BLX Mayflower does not cure such default within thirty (30) days after receiving written notice thereof, MIDA, as its exclusive remedy shall be entitled to either terminate this Agreement or, in the alternative, to bring an action for specific performance of this Agreement.

8. **REPRESENTATIONS AND WARRANTIES**.

(a) BLX Mayflower hereby represents, warrants and covenants to MIDA as follows:

(i) *Authority.* BLX Mayflower has power and authority to consummate this transaction, convey the Military Option Parcel on the terms of this Agreement, and make the representation set forth herein without need for the further consent or approval of any other person.

(ii) *No Violation.* BLX Mayflower has no actual knowledge, and has not received any written notice from any governmental authority, of any material violation of any zoning, Environmental Law or other law, ordinance or regulation with respect to any of the Military Option Parcel or the use of the Military Option Parcel.

(iii) *No Conflict.* The consummation of the terms of this Agreement shall not result in or constitute a material violation or breach of any agreement, covenant or obligation to which BLX Mayflower is a party or which may bind or affect any of the Military Option Parcel.

(iv) *No Claims.* To BLX Mayflower's knowledge, (A) there is no material suit, claim in writing, action or proceeding now pending against BLX Mayflower involving the Military Option Parcel, or any part thereof, before any court, administrative or regulatory body, or any governmental agency; (B) there are no outstanding orders, rulings, decrees, judgments or stipulations to which BLX Mayflower is a party or by which the Military Option Parcel is bound by any court, arbitration or administrative agency materially and adversely affecting the Military Option Parcel; and (C) there are no mechanic's or materialman's liens or similar claims or liens now asserted against the Military Option Parcel for work performed or commenced prior to the date hereof, BLX Mayflower shall timely satisfy and discharge any and all obligations relating to work performed on or conducted at or materials delivered to the Military Option Parcel prior to Closing in order to prevent the filing of any claim or mechanic's lien with respect thereto.

(v) *No Foreign Taxpayers.* No non-resident foreign taxpayers, or domestic corporations owned by non-resident foreign taxpayers, or any other similar person or entity, will be entitled to all or any of the proceeds from the sale or exchange of the Military Option Parcel hereunder such that the withholding requirements set forth in Sections 1445 of the Internal Revenue Code are or will be applicable to all or a portion of the Purchase Price to be paid pursuant to this Agreement.

(b) MIDA Representations and Warranties. MIDA hereby represents, warrants and covenants to BLX Mayflower as follows:

(i) MIDA has power and authority to consummate this transaction, acquire the Military Option Parcel on the terms and conditions of this Agreement, and make the representations set forth herein without need for the further consent or approval of any other person.

(ii) No development of the Military Option Parcel shall occur unless and until it is finally determined (after the expiration of all appeal periods and/or resolution of all appeals) by a court with jurisdiction that BLX MWR has failed to provide the Military Benefits or the use of the Military Concierge Unit as required by the MWR Hotel Condominium Lease. This covenant shall survive the Closing indefinitely.

9. **AS-IS**. MIDA ACKNOWLEDGES TO AND AGREES WITH BLX MAYFLOWER THAT EXCEPT AS SET FORTH HEREIN MIDA IS ACCEPTING THE MILITARY OPTION PARCEL IN AN "AS IS" CONDITION "WITH ALL FAULTS" AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF BLX MAYFLOWER OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.

MIDA ACKNOWLEDGES THAT EXCEPT AS SET FORTH HEREIN MIDA HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS, SKETCHES, DRAWINGS, PLANS, PROJECTION, PROFORMA, STATEMENT, REPRESENTATION, GUARANTEE OR WARRANTY (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF BLX MAYFLOWER.

MIDA HEREBY ACKNOWLEDGES THAT IT SHALL NOT BE ENTITLED TO, AND SHALL NOT, RELY ON BLX MAYFLOWER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES EXCEPT AS PROVIDED HEREIN. BLX MAYFLOWER HEREBY DISCLAIMS ANY REPRESENTATIONS OR

WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EITHER UNDER COMMON LAW, BY STATUTE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT AS TO (I) THE ACREAGE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE MILITARY OPTION PARCEL INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURAL ELEMENTS, FOUNDATION, ACCESS, LANDSCAPING, SEWAGE OR UTILITY SYSTEMS AT THE MILITARY OPTION PARCEL, IF ANY; (II) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF SOILS AND GROUND WATER OR THE EXISTENCE OF GROUND WATER; (III) THE EXISTENCE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE MILITARY OPTION PARCEL; (IV) THE DEVELOPMENT POTENTIAL OF THE MILITARY OPTION PARCEL OR ITS VALUE, PROFITABILITY, HABITABILITY, MERCHANTABILITY OR FITNESS, SUITABILITY OR ADEQUACY OF THE MILITARY OPTION PARCEL FOR ANY PARTICULAR PURPOSE; (V) THE ZONING OR OTHER LEGAL STATUS OF THE MILITARY OPTION PARCEL; (VI) THE COMPLIANCE OF THE MILITARY OPTION PARCEL WITH ANY APPLICABLE CODE, STATUTE, LAW, ORDINANCE, RULE, REGULATION, COVENANT, PERMIT, AUTHORIZATION, STANDARD, CONDITION OR RESTRICTION OF ANY GOVERNMENTAL OR REGULATORY AUTHORITY.

EXCEPT AS SET FORTH IN THIS AGREEMENT, MIDA ACKNOWLEDGES THAT BY THE CLOSING, MIDA WILL HAVE HAD AN ADEQUATE OPPORTUNITY TO MAKE SUCH LEGAL, FACTUAL AND OTHER INQUIRIES AND INVESTIGATIONS AS MIDA DEEMS NECESSARY, DESIRABLE OR APPROPRIATE WITH RESPECT TO THE MILITARY OPTION PARCEL. SUCH INQUIRIES AND INVESTIGATIONS OF MIDA SHALL BE DEEMED TO INCLUDE REVIEW OF ENVIRONMENTAL AUDIT(S) OF THE MILITARY OPTION PARCEL, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE MILITARY OPTION PARCEL, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION WOULD SHOW, THE PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS APPLICABLE TO WHERE THE MILITARY OPTION PARCEL IS LOCATED AND THE VALUE AND MARKETABILITY OF THE MILITARY OPTION PARCEL.

MIDA ACKNOWLEDGES THAT EXCEPT AS MAY BE EXPRESSLY STATED IN THIS AGREEMENT, THERE HAVE BEEN NO REPRESENTATIONS OR AGREEMENTS REGARDING BLX MAYFLOWER'S OBLIGATION TO PROVIDE OR COMPLETE ROADS, SEWER, WATER, ELECTRIC OR OTHER UTILITY SERVICES, RECREATIONAL AMENITIES, OR ANY OTHER IMPROVEMENTS TO THE MILITARY OPTION PARCEL MADE BY BLX Mayflower OR RELIED UPON BY MIDA WHATSOEVER.

WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE PRECEDING, MIDA SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT AS MAY BE PROVIDED HEREIN (INCLUDING, BUT NOT LIMITED TO THE ENVIRONMENTAL INDEMNITY PROVIDED FOR IN SECTION 10 HEREOF), MIDA HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE IN THE FUTURE AGAINST BLX MAYFLOWER WITH RESPECT TO COSTS, DAMAGES, OBLIGATIONS, PENALTIES, CAUSES OF ACTION AND OTHER LIABILITIES (WHETHER ACCRUED, CONTINGENT, ARISING BEFORE OR AFTER THIS AGREEMENT, OR OTHERWISE) ARISING AS A RESULT OF (I) THE CONDITION OF THE MILITARY OPTION PARCEL, EITHER PATENT OR LATENT, (II) ITS ABILITY OR INABILITY TO OBTAIN OR MAINTAIN BUILDING PERMITS, EITHER TEMPORARY OR FINAL CERTIFICATES OF OCCUPANCY OR OTHER LICENSES FOR THE USE OR OPERATION OF THE

MILITARY OPTION PARCEL, AND/OR CERTIFICATES OF COMPLIANCE FOR THE MILITARY OPTION PARCEL, (III) THE ACTUAL OR POTENTIAL INCOME OR PROFITS TO BE DERIVED FROM THE MILITARY OPTION PARCEL, (IV) THE REAL PROPERTY TAXES OR ASSESSMENTS NOW OR HEREAFTER PAYABLE THEREON, (V) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE MILITARY OPTION PARCEL, OR COMPLIANCE OF PAST OWNERS AND OPERATORS OF THE MILITARY OPTION PARCEL, IN REGARD TO ANY PAST, PRESENT AND FUTURE FEDERAL, STATE AND LOCAL ENVIRONMENTAL PROTECTION, POLLUTION CONTROL, POLLUTION CLEANUP, AND CORRECTIVE ACTION LAWS, RULES, REGULATIONS, ORDERS, AND REQUIREMENTS (INCLUDING WITHOUT LIMITATION CERCLA, RCRA, AND OTHERS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE, RELEASE, DISPOSAL, REMOVAL, REMEDIATION OR RESPONSE TO, OR NOTIFICATION OF GOVERNMENTAL ENTITIES CONCERNING, TOXIC, HAZARDOUS, OR OTHERWISE REGULATED WASTES, SUBSTANCES, CHEMICALS, POLLUTANTS OR CONTAMINANTS), OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (VI) THE PRESENCE ON, IN, UNDER OR NEAR THE MILITARY OPTION PARCEL OF (INCLUDING WITHOUT LIMITATION ANY RESULTANT OBLIGATION UNDER CERCLA, THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), 42 U.S.C. § 6973 et seq., ANY STATE STATUTE OR REGULATION, OR OTHERWISE, TO REMOVE, REMEDIATE OR RESPOND TO) ASBESTOS CONTAINING MATERIAL, RADON, UREA FORMALDEHYDE OR ANY OTHER TOXIC, HAZARDOUS OR OTHERWISE REGULATED WASTE, SUBSTANCE, CHEMICAL, POLLUTANT OR CONTAMINANT, (COLLECTIVELY, THE "ENVIRONMENTAL LAWS") AND (VII) ANY OTHER STATE OF FACTS WHICH EXIST WITH RESPECT TO THE MILITARY OPTION PARCEL.

MIDA ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS OF THIS SECTION 9 SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT AND/OR THE RECORDATION OF THE DEED FOR THE MILITARY OPTION PARCEL.

10. **ENVIRONMENTAL INDEMNITY.**

(a) BLX Mayflower hereby agrees to protect, defend, indemnify and hold harmless MIDA and its successors and assigns from and against any third party liabilities, claims, suits, costs and expenses (including reasonable attorneys' fees) incurred by MIDA as a result of the condition or compliance of the Military Option Parcel, or compliance of BLX Mayflower or past owners and operators of the Military Option Parcel, with Environmental Laws prior to the Closing; provided that the obligation of BLX Mayflower set forth in this Section 10 shall not apply to the extent caused or in any way contributed to by MIDA or its contractors, employees, officers, successor or assigns.

(b) The provisions of this Section 10 shall survive the Closing and any termination of this Agreement for a period (the "Indemnity Period") that will automatically terminate upon any drilling, sampling, invasive testing, excavation on the Military Option Parcel by MIDA or any other person or federal, state or local governmental authority, or their contractors, licensees, tenants, successors or assigns.

(c) Any claim pursuant to this Section 10 must be given in writing (the "Claim Notice") to BLX Mayflower within ninety (90) days after MIDA first becomes aware of any such claim or such claim shall be deemed waived. In no event may a claim be asserted after the expiration of the Indemnity Period provided for in the immediately foregoing sentence. The Claim Notice shall include a copy of any such claim, and describe in detail the bases for the claim.

11. **ASSIGNMENT; SURVIVAL**. MIDA may not assign this Agreement prior to Closing to any person without the express written consent of BLX Mayflower, which consent may be withheld for any reason or no reason. This Agreement shall be binding upon the Parties hereto and each of their respective heirs, executors, administrators, successors and assigns. The provisions of this Agreement and the obligations of the Parties shall survive the execution and delivery of the Deed executed hereunder and shall not be merged therein, provided that except as otherwise expressly stated in this Agreement any representations and warranties of the Parties hereunder shall survive Closing for only six (6) months.

12. **ESCROW**. The terms and conditions set forth in this Agreement shall constitute both an agreement between the Parties and instructions for Title Company, which Title Company shall acknowledge and agree to be bound by, as evidenced by its execution of this Agreement. The Parties shall promptly execute and deliver to Title Company any separate or additional escrow instructions requested by Title Company which are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly agreed by mutual consent of the Parties. Title Company shall be relieved from any responsibility or liability and held harmless by both Parties in connection with the discharge of Title Company's duties hereunder provided that Title Company exercises ordinary and reasonable care in the discharge of such duties.

13. **MISCELLANEOUS**.

(a) Notices. All notices, demands, requests, or other writings pursuant to this Agreement provided to be given or made or sent, or which may be given or made or sent, by either Party hereto to the other shall be in writing and may be given personally or may be delivered by depositing the same in the United States mails, certified, registered or equivalent, return receipt requested, confirmed facsimile, or nationally-recognized overnight courier service, in any case postage prepaid, properly addressed, and sent to the following addresses:

If to MIDA:
Military Installation Development Authority
450 Simmons Way, Suite 400
Kaysville, Utah 84037
Attention: Executive Director
paultmorris@outlook.com

with a copy to:
Michael Best & Friedrich
170 South Main Street, Suite 1000
Salt Lake City, Utah 84101
Attn: Lyndon Ricks
llricks@michaelbest.com

If to BLX Mayflower:
BLX Mayflower LLC
805 Third Avenue, 7th Floor
New York, NY 10022
Attention: Gary Barnett, President
Notices@extell.com

with a copy to:

BLX Mayflower LLC
2750 Rasmussen, Suite 206
Park City, Utah 84098
Attention: Senior Vice President – Development
KKrieg@extell.com

and

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Roger D. Henriksen and Robert A. McConnell
rhenriksen@parrbrown.com
rmcconnell@parrbrown.com

If to Title Company: High Country Title
1729 Sidewinder Drive, Suite 200
Park City, Utah 84060
Attn: Scott Buchanan
scott@highcountrytitle.com

or to such other address as either Party may from time to time designate by written notice to the other. Notices given by mail shall be deemed received and effective on the third business day following deposit with the U.S. Postal Service or by overnight courier as aforesaid shall be deemed received and effective on the first business day following such dispatch; provided, however, that if any such notice or other communication shall also be sent electronic mail, such notice shall be deemed given at the time and on the date of such transmittal if the sending Party also provide notice by mail or overnight courier as set forth above.

(b) Severability. If any term, covenant or condition of this Agreement, or the application thereof to any Party or circumstance, shall be invalid or unenforceable, the Agreement shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

(c) Dates. Any deadline date specified in this Agreement which falls on a Saturday, Sunday or legal holiday on which commercial banks in Utah or New York are closed for business, along with Rosh Hashanah, Yom Kippur, Shavuot, the first, second, seventh and eighth days of Passover, and the first, second, eighth and ninth days of Sukkot (any days other than the foregoing to be considered "business days" for all purposes hereunder) shall be extended to the first regular business day after such deadline date.

(d) Commissions. Each Party acknowledges and represents that it has not dealt with any broker, consultant, and/or representative to whom a commission might be owed in connection with the Option. If any claim for commission is asserted or established, the Party in breach of its representation in this Section 13(d) hereby expressly agrees to hold the other harmless with respect to all costs relating thereto (including reasonable attorneys' fees) to the extent that the breaching Party is shown to have been responsible for the creation of such claim. Anything to the contrary in this Agreement notwithstanding, such agreement of each Party to hold the other harmless shall survive the Closing and any termination of this Agreement.

(e) Miscellaneous. This Agreement, together with the Exhibits attached hereto, contains the final and entire agreement between the Parties hereto. The recitals set forth in the beginning of this Agreement are incorporated herein as if restated in full. No change or modification of this Agreement, or any waiver of the provisions hereof, shall be valid unless the same is in writing and signed by the Parties hereto. Waiver from time to time of any provision hereunder will not be deemed to be a waiver of such provision in the future, or a waiver of any other provisions hereunder. The terms of this Agreement are mutually agreed to be clear and unambiguous, shall be considered the workmanship of all of the Parties and shall not be construed against the drafting Party. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

(f) Interpretation. Titles to Articles and Sections are for convenience only, and are not intended to limit or expand the covenants and obligations expressed thereunder. Unless otherwise indicated, references to Sections or Exhibits herein are references to the Sections in this Agreement or Exhibits attached to this Agreement.

(g) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(h) Attorneys' Fees. In addition to any other relief to which it may be entitled, the prevailing Party in any dispute or controversy relating to this Agreement shall be entitled to recover its attorneys' fees and costs incurred in regard to such dispute or controversy. **THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS OF TRIAL BY JURY.**

(i) No Recording. Neither this Agreement nor a memorandum thereof shall be filed or recorded by either Party.

(j) Governing Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF UTAH. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF UTAH IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT SITTING IN THE STATE OF UTAH. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED TO PROVIDE ANY GREATER RIGHTS OR ADDITIONAL CLAIMS TO MIDA OR BLX MAYFLOWER THAN AS OTHERWISE PROVIDED IN THIS AGREEMENT. BLX MAYFLOWER ACKNOWLEDGES THAT MIDA IS A UTAH GOVERNMENTAL ENTITY AND SUBJECT TO AND PROTECTED BY THE UTAH GOVERNMENTAL IMMUNITY ACT. NOTHING CONTAINED IN THIS AGREEMENT SHALL CONSTITUTE A WAIVER BY MIDA OF ANY PROTECTIONS PROVIDED TO GOVERNMENTAL ENTITIES, INCLUDING THOSE CONTAINED IN THE UTAH GOVERNMENT IMMUNITY ACT.

(k) Public Record. BLX Mayflower and MIDA acknowledge that once executed this Agreement is a public record under the Utah Government Records Access and Management Act.

(l) Construction. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The

provisions of this Agreement shall be construed as to the fair meaning and not for or against any Party based upon any attribution of such Party as the sole source of the language in question.

(m) Relationship of Parties. The Parties agree that their relationship is that of BLX Mayflower and MIDA and that nothing contained herein shall constitute either Party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization or joint venture between the Parties hereto, nor is either Party granted the right or authority to assume or create any obligation or responsibility on behalf of the other Party, nor shall either Party be in any way liable for any debt of the other.

(n) No Third Party Beneficiaries. The obligations of the Parties set forth in this Agreement shall not create any rights in or obligation to any persons or third parties other than the Parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above, intending to be legally bound hereby.

BLX Mayflower:

BLX MAYFLOWER LLC

By: _____
Gary Barnett, President

Date: August ____, 2020

MIDA:

MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah

ATTEST:

By: _____
Paul T. Morris, Acting Executive Director

_____
MIDA Staff

Date: August ___, 2020

ACKNOWLEDGEMENT AND AGREEMENT OF TITLE COMPANY

The undersigned Title Company executes this Agreement for the sole purpose of evidencing its agreement to the matters set forth in Section 12 hereof.

TITLE COMPANY:

HIGH COUNTRY TITLE

By: _____
Scott Buchanan, President

Date: August ___, 2020

EXHIBIT A
to
OPTION AGREEMENT

Legal Description of Military Option Parcel

The surface interests in a parcel of land located in Sections 30 and 31 Township 2 South, Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, MIDA Jurisdiction, said parcel of land being described as follows:

All of Lot 20, MIDA MASTER DEVELOPMENT PLAT as recorded on Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, more particularly described as follows:

Beginning at a point where the section line common to Sections 30 and 31, Township 2 South, Range 5 East, Salt Lake Base and Meridian intersects with the westerly right of way line of US Highway 40, said point being South 89°53'28" East 1017.25 feet from the Section Corner common to Sections 25 and 26, Township 2 South, Range 4 East, Salt Lake Base and Meridian and Sections 30 and 31, Township 2 South, Range 5 East, Salt Lake Base and Meridian , monumented with a 1937 brass cap stamped MS-7163 (Basis of Bearings for the herein described parcel being South 26°11'47" East 5917.16 feet from the North Quarter Corner of said Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); thence coincident with said westerly right of way the following three (3) courses; 1) South 19°25'56" East 287.14 feet; thence 2) South 4°34'47" East 195.62 feet; thence 3) South 86°15'31" West 26.02 feet more or less to a point 15 feet from the easterly edge of an existing dirt road; thence coincident with a line 15 feet from said easterly edge of an existing dirt road the following eight (8) courses; 1) northwesterly 433.81 feet along the arc of a 850.00 foot radius non-tangent curve to the left through a central angle of 29°14'31" (chord bears North 19°40'28" West 429.12 feet); thence 2) North 34°17'44" West 111.33 feet; thence 3) northwesterly 205.88 feet along the arc of a 352.50 foot radius curve to the left through a central angle of 33°27'50" (chord bears North 51°01'38" West 202.96 feet); thence 4) North 67°45'33" West 65.84 feet; thence 5) northwesterly 136.88 feet along the arc of a 139.50 foot radius curve to the right through a central angle of 56°13'13" (chord bears North 39°38'56" West 131.46 feet); thence 6) North 11°32'20" West 101.23 feet; thence 7) northwesterly 255.50 feet along the arc of a 775.00 foot radius curve to the left through a central angle of 18°53'21" (chord bears North 20°59'00" West of 254.34 feet); thence 8) northwesterly 114.29 feet along the arc of a 425.00 foot radius curve to the left through a central angle of 15°24'28" (chord bears North 38°07'54" West 113.95 feet) to said westerly right of way line of US Highway 40; thence coincident with said westerly right of way the following four (4) courses; 1) North 43°16'53" East 50.82 feet; thence 2) southeasterly 554.14 feet along the arc of a 5269.58 foot radius curve to the right through a central angle of 6°01'31" (chord bears South 22°36'07" East 553.89 feet); thence 3) South 76°42'19" East 309.34 feet; thence 4) South 19°25'56" East 173.01 feet to the point of beginning.

Description contains 75,885 square feet or 1.74 acres more or less.

EXHIBIT B
to
OPTION AGREEMENT

Legal Description of Red Maple Parcel

The "Red Maple Parcel" is located in Summit County, Utah and is more particularly described as follows:

The entire portion of the south half of the southeast quarter of Section 3, Township 2 South, Range 4 East, Salt Lake Base and Meridian, lying north of Highway 248. Also described as: Lot 8 and Lot 10 as found on the supplemental plat of Section 3 & 10, Township 2 South, Range 4 East, Salt Lake Base and Meridian, one hundred seventh Congress of the United States of America, by Act of January 3, 2001, under Section 2862. Contains: 26.5 acres, more or less.

EXHIBIT C
to
OPTION AGREEMENT

Form of Deed

WHEN RECORDED, RETURN TO:

Military Installation Development Authority
50 Simmons Way, No. 400
Kaysville, UT 84037-6722
Attn: Executive Director

Tax Parcel Nos. :

(Space above for Recorder's use only.)

SPECIAL WARRANTY DEED

BLX MAYFLOWER LLC ("Grantor"), a Delaware limited liability company with an address of c/o Extell Development Company, 805 Third Avenue, 7th Floor, New York, New York 10022, for Ten Dollars and other good and valuable consideration hereby conveys and warrants, against all claiming by, through or under it, to MILITARY INSTALLATION DEVELOPMENT AUTHORITY ("Grantee"), a political subdivision of the State of Utah, a Delaware limited liability company with an address of 50 Simmons Way, No. 400, Kaysville, UT 84037-6722, all the surface rights in and to the following described property located in Wasatch County, State of Utah (the "Property"):

[See Exhibit A attached hereto and incorporated herein by this reference]

LESS AND EXCEPTING any mineral rights of whatever type, water rights, water reservations, water shares, and any other water interests associated with the Property

SUBJECT TO those easements, rights-of-way and other matters of record set forth on Exhibit B attached hereto and incorporated herein by reference.

[*Signature and Acknowledgement Follow*]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed this _____ day of _____, 20___.

BLX MAYFLOWER LLC

By: _____
Gary Barnett, President

STATE OF NEW YORK)
ss.
County of New York)

The foregoing instrument was acknowledged before me this _____ day of _____ 20___, by Gary Barnett, the President of BLX Mayflower LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing in _____

My Commission Expires:
_____

EXHIBIT A

TO

SPECIAL WARRANTY DEED

Legal Description of Property

The surface interests in a parcel of land located in Sections 30 and 31 Township 2 South, Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, MIDA Jurisdiction, said parcel of land being described as follows:

All of Lot 20, MIDA MASTER DEVELOPMENT PLAT as recorded on Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, more particularly described as follows:

Beginning at a point where the section line common to Sections 30 and 31, Township 2 South, Range 5 East, Salt Lake Base and Meridian intersects with the westerly right of way line of US Highway 40, said point being South 89°53'28" East 1017.25 feet from the Section Corner common to Sections 25 and 26, Township 2 South, Range 4 East, Salt Lake Base and Meridian and Sections 30 and 31, Township 2 South, Range 5 East, Salt Lake Base and Meridian , monumented with a 1937 brass cap stamped MS-7163 (Basis of Bearings for the herein described parcel being South 26°11'47" East 5917.16 feet from the North Quarter Corner of said Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); thence coincident with said westerly right of way the following three (3) courses; 1) South 19°25'56" East 287.14 feet; thence 2) South 4°34'47" East 195.62 feet; thence 3) South 86°15'31" West 26.02 feet more or less to a point 15 feet from the easterly edge of an existing dirt road; thence coincident with a line 15 feet from said easterly edge of an existing dirt road the following eight (8) courses; 1) northwesterly 433.81 feet along the arc of a 850.00 foot radius non-tangent curve to the left through a central angle of 29°14'31" (chord bears North 19°40'28" West 429.12 feet); thence 2) North 34°17'44" West 111.33 feet; thence 3) northwesterly 205.88 feet along the arc of a 352.50 foot radius curve to the left through a central angle of 33°27'50" (chord bears North 51°01'38" West 202.96 feet); thence 4) North 67°45'33" West 65.84 feet; thence 5) northwesterly 136.88 feet along the arc of a 139.50 foot radius curve to the right through a central angle of 56°13'13" (chord bears North 39°38'56" West 131.46 feet); thence 6) North 11°32'20" West 101.23 feet; thence 7) northwesterly 255.50 feet along the arc of a 775.00 foot radius curve to the left through a central angle of 18°53'21" (chord bears North 20°59'00" West of 254.34 feet); thence 8) northwesterly 114.29 feet along the arc of a 425.00 foot radius curve to the left through a central angle of 15°24'28" (chord bears North 38°07'54" West 113.95 feet) to said westerly right of way line of US Highway 40; thence coincident with said westerly right of way the following four (4) courses; 1) North 43°16'53" East 50.82 feet; thence 2) southeasterly 554.14 feet along the arc of a 5269.58 foot radius curve to the right through a central angle of 6°01'31" (chord bears South 22°36'07" East 553.89 feet); thence 3) South 76°42'19" East 309.34 feet; thence 4) South 19°25'56" East 173.01 feet to the point of beginning.

EXHIBIT B

TO

SPECIAL WARRANTY DEED

Permitted Exceptions

[TO BE COMPLETED UPON RECEIPT OF UPDATED TITLE COMMITMENT FOR TITLE INSURANCE]

EXHIBIT D
to
OPTION AGREEMENT

Form of Exercise Notice

EXERCISE NOTICE

[Date]

BLX Mayflower LLC
805 Third Avenue, 7th Floor
New York, NY 10022
Attention: Gary Barnett, President
Notices@extell.com

Re: Exercise Notice with respect to the Military Parcel Option Agreement, dated August ___, 2020

Reference is made to the Military Parcel Option Agreement, dated August ____, 2020 (the "**Option Agreement**") between BLX MAYFLOWER LLC, Delaware limited liability company ("**BLX Mayflower**"), and MILITARY INSTALLATION DEVELOPMENT AUTHORITY, a political subdivision of the State of Utah ("**MIDA**"), which Option Agreement relates to a parcel of real property identified on Exhibit A attached hereto (the "**Military Parcel**"). Any capitalized terms used in this letter shall have the meanings set forth in the Option Agreement.

In accordance with the Option Agreement, MIDA hereby represents and warrants that the Air Force is irrevocably committed to exchanging the Military Option Parcel for the Red Maple Parcel immediately after the Closing, and accordingly hereby unconditionally exercises its option to purchase the Property pursuant to the terms of the Option Agreement. MIDA hereby designates _____, 20___ as the Closing Date.

Sincerely,

MILITARY INSTALLATION DEVELOPMENT AUTHORITY

By _____
Executive Director

c. BLX Mayflower LLC
2750 Rasmussen, Suite 206
Park City, Utah 84098
Attention: Senior Vice President – Development
KKrieg@extell.com

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Roger D. Henriksen and Robert A. McConnell
rhenriksen@parrbrown.com
rmcconnell@parrbrown.com

EXHIBIT I
to
DONATION AGREEMENT

Form of Deed

WHEN RECORDED, RETURN TO:

Military Installation Development Authority
50 Simmons Way, No. 400
Kaysville, UT 84037-6722
Attn: Executive Director

Tax Parcel Nos. :

(Space above for Recorder's use only.)

SPECIAL WARRANTY DEED

BLX MWR HOTEL LLC ("Grantor"), a Delaware limited liability company with an address of c/o Extell Development Company, 805 Third Avenue, 7th Floor, New York, New York 10022, for Ten Dollars and other good and valuable consideration hereby conveys and warrants, against all claiming by, through or under it, to MILITARY INSTALLATION DEVELOPMENT AUTHORITY ("Grantee"), a political subdivision of the State of Utah, a Delaware limited liability company with an address of 50 Simmons Way, No. 400, Kaysville, UT 84037-6722, all the surface rights in and to the following described property located in Wasatch County, State of Utah (the "Property"):

[See Exhibit A attached hereto and incorporated herein by this reference]

LESS AND EXCEPTING any mineral rights of whatever type, water rights, water shares, and any other water interests associated with the Property; and

SUBJECT TO those easements, rights-of-way and other matters of record set forth on Exhibit B attached hereto and incorporated herein by reference.

[*Signature and Acknowledgement Follow*]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed this _____ day of _____ 2020.

BLX MWR HOTEL LLC

By: _____
Gary Barnett, President

STATE OF NEW YORK)
ss.
County of New York)

The foregoing instrument was acknowledged before me this _____ day of _____ 2020, by Gary Barnett, the President of BLX MWR HOTEL LLC, a Delaware limited liability company.

_____
NOTARY PUBLIC
Residing in _____

My Commission Expires:
_____

[Signature and Acknowledgement Page to Special Warranty Deed]

EXHIBIT A

TO

SPECIAL WARRANTY DEED

Legal Description of Property

Commercial Units B-1-1, B-1-2, and C-1-1 through C-1-8, the Hotel Unit and the Military Concierge Unit, contained within [MWR Conference Hotel] Condominiums as the same is identified in the Record of Survey Plat recorded in Wasatch County, Utah, on _____, 2020 as Entry No. _____ (as said Record of Survey Plat shall have heretofore been amended or supplemented) and in the Declaration of Condominium for [MWR Conference Hotel] Condominiums, recorded in Wasatch County, Utah on _____, 2020 as Entry No. _____, in Book No. _____ at Page _____ (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the undivided ownership interest in said Project's Common Elements that is appurtenant to said Unit as more particularly described in said Declaration.

EXHIBIT B

TO

SPECIAL WARRANTY DEED

Permitted Exceptions

- Taxes for the year 2020, now a lien, not yet due and payable.
- Charges and assessments of Wasatch County Water District No. 1, Wasatch County Recreation Special Service District Number 21, Jordanelle Special Service District, Wasatch County Fire Protection Special Service District, and MIDA Military Recreation Facility Project Area Plan - Part 2.
- Jordanelle Special Service District Water Reservation Agreement recorded December 28, 2017 as Entry No. 446856 in Book 1211 at Page 811 of the official records in the office of the Wasatch County Recorder.
- Reservations contained in that certain Patent executed by the United States of America and recorded April 14, 1888 in Book J at Page 591 of the official records in the office of the Wasatch County Recorder.
- Mineral reservations and other reservations contained in that certain Deed executed by Newpark Resources, Inc., a Nevada corporation, and recorded November 16, 1972 as Entry No. 98636 in Book 86 at Page 130 of the official records in the office of the Wasatch County Recorder.
- Assignment of Permits recorded November 2, 2017 as Entry No. 444719 in Book 1206 at Page 160 of the official records in the office of the Wasatch County Recorder.
- Allocation Agreement recorded November 2, 2017 as Entry No. 444737 in Book 1206 at Page 825 of the official records in the office of the Wasatch County Recorder.
- Easement Agreement recorded August 1, 2019 as Entry No. 466266 in Book 1259 at Page 915 of the official records in the office of the Wasatch County Recorder.
- All easements and notes set forth and/or depicted on the Record of Survey Map of MWR Conference Hotel Condominiums, recorded _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder.
- Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided in the Condominium Declarations of **MWR Conference Hotel Condominiums,** recorded _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder.

- Resolution 2020-04 recorded July 9, 2020 as Entry No. 480693 in Book 1301 at Page 273 of the official records in the office of the Wasatch County Recorder.

- Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided in the Declaration of Covenants, Conditions and Restrictions for Mayflower Village, recorded _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder.

- Covenants, Conditions and Restrictions, set forth in that certain Notice of Re-Investment Fee Covenant recorded August _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder, together with transfer fees set forth therein.

- Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided in the Master Declaration of Covenants, conditions and Restrictions, recorded August _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder.

- Master Development Agreement recorded August _____, 2020 as Entry No. _____ in Book _____ at Page _____ of the official records in the office of the Wasatch County Recorder.

- Any other easements, right-of-way and matters of record in the official records of the Wasatch County Recorder.

4813-0918-0353 v.1

EXHIBIT J
to
DONATION AGREEMENT

Form of Master Declaration

Execution Version

AFTER RECORDING, RETURN TO:

PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Roger D. Henriksen
Robert A. McConnell

MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOUNTAINSIDE VILLAGE AND RESORT

BLX MAYFLOWER LLC

Declarant

August ___, 2020

TABLE OF CONTENTS

MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOUNTAINSIDE VILLAGE AND RESORT

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOUNTAINSIDE VILLAGE AND RESORT (the "**Master Declaration**") is made this _____ day of August, 2020, by **BLX MAYFLOWER LLC**, a Delaware limited liability company ("**Declarant**").

RECITALS

A. Declarant owns, controls or has the option to acquire, directly or indirectly through one or more of its affiliated entities, certain real property located in Wasatch County, Utah and more particularly described on Exhibit A hereto (the "**Initial Mountainside Property**"). Declarant and affiliates of Declarant are also owners or hold options to acquire, land adjacent to the Initial Mountainside Property, which is more particularly described on Exhibit B hereto. Portions of such Annexable Property (as defined herein), and other property that may be or come to be owned or leased by Declarant and its affiliates, may be made subject to this Master Declaration by annexation in accordance with the provisions hereof.

B. Declarant desires and intends to develop in phases all or portions of the Initial Mountainside Property, together with such other real property as may be made subject to this Master Declaration by annexation, as a common scheme and planned mixed use mountainside recreational resort to be initially known as the Mountainside Village and Resort (as further defined herein, the "**Resort**"). Declarant desires to organize within the Resort a number of hotel, commercial, recreational, retail, residential and other development areas.

C. The Resort possesses great natural beauty that Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Master Declaration. It is anticipated that the plan will provide for comprehensive land planning, harmonious and appealing landscaping and improvements, and provisions addressing urban and wildlife interface. It is assumed that each purchaser of property in the Resort will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Master Declaration. This Master Declaration does not create a condominium within the meaning of the Utah Condominium Ownership Act.

D. This Master Declaration provides a flexible and reasonable procedure for the Resort's future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Master Association, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Master Declaration and the other Governing Documents referenced in this Master Declaration.

E. One of the projects to be developed on the Initial Mountainside Property is a condominium hotel project (the "**MWR Hotel Condominium Project**") on that certain real property more fully described in Part A of Exhibit C hereto (the "**MIDA Property**"), to be constructed with certain rooms available for use on a discounted basis by active duty and retired military personnel, in conjunction with the Utah Military Installation Development Authority ("**MIDA**") which MWR Hotel Condominium Project will be owned, in part, by MIDA and which portion owned by MIDA will be leased to a

Declarant's Affiliate pursuant to the terms of a MWR Hotel Condominium Lease Agreement (the "**MIDA Hotel Lease**").

F. The Mountainside Ski Property, as defined in this Master Declaration, is located on land owned by the Mountain Operator (as defined herein) and is operated and maintained by the Mountain Operator. Cooperating in the operation, maintenance and continued use of the Mountainside Ski Property is important to the development, use and enjoyment by the Owners of the Units within the Mountainside Village and Resort. The Mountainside Ski Property is not a part of the Resort development and is not subject to this Master Declaration, although the Mountain Operator has certain rights, privileges and obligations with respect to portions of the Master Common Areas pursuant to this Maser Declaration, the Mountain Operator Agreement and the Mountain Easement Agreements referred to herein. The Mountain Operator and its successors and assigns shall have the right but not the duty to enforce the terms and provisions of this Master Declaration as an owner of the lands benefited by its terms and conditions in addition to its rights to enforce the terms of the Mountain Operator Agreements and the Mountain Easement Agreements.

G. Declarant will provide leadership in organizing and administering the Resort during the development period, for a fee, but expects property owners in the Resort will accept the responsibility for community administration after the development period.

H. Property made subject to this Master Declaration also may be subject to Project Declarations (as defined herein) which impose additional or different restrictions on the use of property within individual Projects (as defined herein), including establishing Project open space for the benefit of Owners within such Projects.

I. Declarant desires to subject the Initial Mountainside Property, including the MIDA Property, to the covenants, conditions, restrictions, easements and assessments set forth in this instrument for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that each of the foregoing recitals is incorporated into and made a part of this Master Declaration, and further declares that the Initial Mountainside Property, including, without limitation, the MIDA Property, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and assessments, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS AND INTERPRETATION

As used in this Master Declaration, the terms set forth below shall have the following meanings, and matters relating to the interpretation of this Agreement shall be determined as set forth on Exhibit D:

1.1 "**Additional Property**" means all or any portion of the Annexable Property annexed to the Resort pursuant to a Recorded Annexation Declaration.

1.2 "**Administrative Control Period**" means (a) the period of time during which the Class "B" Member retains authority to appoint and remove members of the Board or (b) exercise power or authority assigned to the Master Association under the Governing Documents. The Administrative Control Period shall terminate on the first to occur of the following:

(a) Sixty (60) days after the date when ninety percent (90%) of the total number of Development ERUs and Commercial Units and Hotel Units (as defined in and permitted by the Mountainside Master Plan) for the Property (as it may be amended from time to time) have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders or Declarant's Affiliates;

(b) December 31, 2070; or

(c) The day the Class "B" Member in its discretion, after giving written notice to all Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Master Association.

1.3 "**Annexable Property**" means that certain real property located in Wasatch County and that certain real property located in Summit County, Utah and more specifically described on Exhibit B, together with any other land acquired by Declarant or any Declarant's Affiliate in the vicinity of such property. Inclusion of property on Exhibit B shall not, under any circumstances, obligate Declarant to subject such property to this Master Declaration, nor shall the omission of property on Exhibit B prohibit its later submission to this Master Declaration as provided in Section 2.2.

1.4 "**Annexation Declaration**" means a declaration annexing all or a portion of the Annexable Property to the Resort, as contemplated in Section 2.2(a).

1.5 "**Annual Assessments**" has the meaning set forth in Section 11.4.

1.6 "**Applicable Law**" means any and all laws, statutes, ordinances, rules, regulations, codes, orders, injunctions, decrees and rulings of any Governmental Authority with jurisdiction, including any amendments or modifications thereto.

1.7 "**Area of Common Responsibility**" means the Master Common Areas, together with such other areas, if any, for which the Master Association has or assumes responsibility pursuant to this terms of this Master Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements.

1.8 "**Assessments**" means all assessments and other charges, fines and fees imposed by the Master Association on an Owner in accordance with this Master Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Project Limited Common Area Assessments, and Individual Assessments, and, as applicable, the Community Reinvestment Fee, all as described in Article 11 below.

1.9 "**Assessment Factor**" means a factor assigned to each Unit in accordance with Section 11.3 below for purposes of determining the pro rata share of Annual Assessments, Special Assessments, Emergency Assessments, and Project Limited Common Area Assessments.

1.10 "**Assumed Risks**" has the meaning set forth in Section 16.9.

1.11 "**Board of Directors**" or "**Board**" mean and refers to the Board of Directors of the Master Association.

1.12 "**Bound Parties**" has the meaning set forth in Section 18.1(a).

1.13 "**Builder**" means any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more Units within the Resort for further subdivision, development, and/or resale in the ordinary course of its business.

1.14 "**Bylaws**" means the Bylaws of the Master Association attached as Exhibit E, and all amendments thereto.

1.15 "**Claim**" has the meaning set forth in Section 18.1(b).

1.16 "**Claimant**" has the meaning set forth in Section 18.2(a).

1.17 "**Class "A" Member**" has the meaning set forth in Section 9.3(b).

1.18 "**Class "B" Member**" has the meaning set forth in Section 9.3(b).

1.19 "**Commercial Unit**" means a Unit or any portion of a Unit that is designed for, or in which is operated or conducted primarily for:

(a) a wholesale, retail or service business;

(b) an office or administrative function;

(c) a maintenance or service facility; or

(d) such other non-residential use or service that is specifically identified as a Commercial Unit in any Annexation Declaration or Project Declaration.

Notwithstanding the foregoing, the term "Commercial Unit" shall not include any parcel that is designated in any Annexation Declaration as a Community Facility or a Resort Support Facility unless otherwise provided in the Annexation Declaration.

1.20 "**Common Expenses**" means the actual and estimated costs incurred or anticipated to be incurred by the Master Association for the general benefit of the Owners, including any reasonable reserve, as the Board finds reasonable and necessary pursuant to the Governing Documents, including: (i) maintenance, management, operation, repair and replacement of the Master Common Areas and Facilities, including those costs not paid by an Owner who is responsible for such payment; (ii) costs of management and administration of the Master Association including, but not limited to, compensation paid by the Master Association to any managers, accountants, attorneys, and other consultants and employees; (iii) the costs of all utilities, landscape maintenance expenses, and other services benefiting the Master Common Areas and Facilities (including any fees, costs or expenses associated with water rights or water shares allocated by any private water company to the Property and collectively billed by such water company to the Master Association); (iv) the costs of security services; (v) the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Master Common Areas and Facilities; (vi) the costs of bonding the directors, officers, agents, employees and managers of the Master Association; (vii) taxes paid by the Master Association; (viii) amounts paid by the Master Association for the discharge of any lien or encumbrance levied against the Master Common Areas and Facilities or any portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Master Common Areas and Facilities; (ix) all reserves; (x) costs and expenses incurred to comply with and perform fully the terms and provisions of the Mountain Operator Agreements and the Mountain Easement Agreements; and (xi) the costs of any other item or items incurred by the Master Association in carrying out its obligations and authorized functions pursuant

to this Master Declaration, any Supplemental Declaration or Annexation Declaration, and the Bylaws, as determined in the reasonable exercise of discretion by the Board of Directors and its managers and agents, pursuant to this Master Declaration.

1.21 "**Community Facility**" means any facility that is operated by a nonprofit, governmental or quasi-governmental entity and that provides athletic, cultural, recreational, entertainment or other services to Owners, Guests or the general public. In order to constitute a Community Facility, the facility must be designated as such in a Supplemental Declaration recorded by or with the consent of Declarant. Community Facilities have no membership rights in the Master Association.

1.22 "**Community Reinvestment Fee**" has the meaning set forth in Section 11.20(b).

1.23 "**Community-Wide Standard**" means the standard of conduct, maintenance, or other activity generally prevailing at the Resort, or the minimum standards established pursuant to the Design Guidelines, Resort Rules, and Board resolutions, whichever is the highest standard. Declarant shall initially establish such standard which may include both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Resort change.

1.24 "**Condominium**" means any property subject to this Master Declaration that has been submitted to the Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et. seq.*, as amended or replaced from time to time.

1.25 "**Condominium Hotel**" means a facility that has (a) individual residential Condominium Units, (b) a front desk on site or on an adjacent property, (c) common hallways for room access, and (d) centralized hospitality management that is available to all Owners of the Condominium Units who elect to participate in a rental program.

1.26 "**Condominium Unit**" means a Unit located in a Condominium.

1.27 "**Declarant**" means and refers to:

(a) BLX Mayflower LLC, a Delaware limited liability company, and any successor or assignee who acquires all or substantially all of its assets by merger, consolidation or purchase.

(b) Any Person to which Declarant has assigned any or all of its rights and obligations as the "Declarant" hereunder by an express assignment which may be incorporated into a Recorded instrument, including, a deed, lease, option agreement, land sale contract, license, Annexation Declaration or Supplemental Declaration, and/or assignment expressly transferring such rights and obligations if such assignee agrees in writing with Declarant to accept such assignment; and

(c) Subject to the foregoing, at any given time there may be more than one Declarant so long as the document or instrument conferring "Declarant" status clearly identifies the Unit(s) over which the designated Declarant has jurisdiction.

1.28 "**Declarant's Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership, or corporation in which Declarant (or another Declarant's Affiliate) is a general partner, managing member or controlling shareholder.

1.29 "**Deposit**" has the meaning set forth in Section 8.2(c).

1.30 "**Design Guidelines**" means those rules, regulations and guidelines adopted from time to time pursuant to Article 8 with respect to structures, landscaping, fences and other Improvements. Design Guidelines may impose different conditions upon various Units or Projects in light of differences in use, topography, visibility or other factors. Design Guidelines shall be effective when they are adopted by the Design Review Committee (or, initially, by Declarant as provided in Section 8.3). Design Guidelines shall interpret and implement the provisions of this Master Declaration by setting forth the standards and procedures for design review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, drainage, lighting, tree removal, fences and similar features which may be used in the Resort; provided, however, that the Design Guidelines shall not be in derogation of the minimum standards established by this Master Declaration or be administered, interpreted or applied in an arbitrary, capricious, or discriminatory manner. The Design Guidelines may include a reasonable schedule of fees for processing submittals and establish the time and manner in which such fees shall be paid, provided that such fees shall not exceed the actual cost of reviewing and approving such submittals. With the prior written approval of the Design Review Committee, additional architectural guidelines and standards may be imposed on a Project by Project basis, including more restrictive architectural design requirements, building placement requirements, approved color schemes, and approved exterior finishes and materials. Such Project specific architectural guidelines and standards shall be set forth within or pursuant to the Project Declaration for the applicable Project and shall be administered only by the architectural review committee established pursuant to such Project Declaration.

1.31 "**Design Review Committee**" means the committee appointed pursuant to Article 8 below.

1.32 "**Eligible Mortgage Holder**" has the meaning set forth in Section 13.6.

1.33 "**Emergency Assessment**" has the meaning set forth in Section 11.6.

1.34 "**Entitlement Documents**" is a collective term that means and refers to each of the following, as they be amended, supplemented, restated, or superseded from time to time:

(a) The Mountainside Master Plan;
(b) The Mountainside Master Development Agreement; and
(c) Tax Sharing and Reimbursement Agreement.

1.35 "**Exclusive Use Master Common Areas**" means those portions of the Master Common Areas the exclusive use of which, subject to the rights of the Master Association and Declarant, has been granted to one or more (but less than all) Owners of particular Units in a Project. Exclusive Use Master Common Areas shall be created pursuant to the terms of this Master Declaration, any Project Declaration, or by being designated as such in an Annexation Declaration or other Recorded instrument.

1.36 "**Governing Documents**" means the Articles of Incorporation and Bylaws of the Master Association, this Master Declaration, any Recorded Annexation Declaration and Supplemental Declaration, the Design Guidelines, any Recorded Project Declaration (to the extent such Declaration is applicable to the particular Project), Resort Rules, and resolutions duly adopted by the Board of Directors of the Master Association, and any amendments or replacements to any of the foregoing documents. If there is a conflict between or among the Governing Documents and any Project Declaration, the other Governing Documents shall control except to the extent the Project Declaration imposes a higher or stricter standard or requirement for the applicable Project.

1.37 "**Governmental Authority**" means the United States of America, the State of Utah, Wasatch County, Summit County, Park City, MIDA, Jordanelle Special Service District, Wasatch County Fire District, and any agency, department, special service district, commission, board, bureau, or instrumentality of any of them, having jurisdiction over the Resort when acting in their governmental not proprietary capacity.

1.38 "**Guest**" means any family member, customer, agent, employee, guest or invitee of an Owner, Lessee, Declarant, or the Mountain Operator, and any Person who has any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee), and any family member, customer, agent, employee, guest or invitee of such Person.

1.39 "**Hotel**" means a building that includes Guest rooms for rental but not sale to Guests.

1.40 "**Improvement**" means any change from natural grade, or the construction or exterior alteration of any structure, building, landscaping and appurtenances thereto of every type and kind, including buildings, outbuildings, walkways, the paint on all exterior surfaces, waterways, sprinkler pipes, irrigation systems, storm drainage systems, garages, hot tubs, spas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, fire breaks, poles, signs, exterior air conditioning and water softener fixtures or equipment, solar equipment, and the creation of trails in any Project Common Area that are proposed for maintenance by the Master Association. The term "Improvement" shall not include, however: (a) any improvement or construction activity undertaken by or on behalf of Declarant or Declarant's Affiliates; (b) any improvement or construction activity confined exclusively to the interior of any Improvement that is constructed on a Unit, unless such activity involves the roof or bearing walls of the building containing the Unit, or (c) any Improvement undertaken by the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

1.41 "**Individual Assessment**" has the meaning set forth in Section 11.8.

1.42 "**Indemnified Party**" has the meaning set forth in Section 10.2.

1.43 "**Initial Mountainside Property**" has the meaning set forth in Recital A.

1.44 "**Interim Easement Area**" has the meaning set forth in Section 14.6.

1.45 "**Lessee**" means any Person who is a lessee under a lease of all or any part of a Unit or the lessees of any space within a building on any Unit. All such leased property is hereinafter referred to as the "Leased Premises." Lessees shall not be Members of the Master Association, but shall, through the Owner of the Leased Premises, be entitled to certain rights and undertake certain obligations with respect to the Resort, as hereinafter provided. Such rights and obligations are appurtenant to Lessee's lease of the Leased Premises. The term "Lessee" shall include Declarant to the extent it is a Lessee as herein defined and shall include a sublessee to the extent the sublessee becomes a Lessee pursuant to Section 3.6, but it shall not include the Master Association or any Governmental Authority.

1.46 "**Lodge**" means:

(a) any Unit or portion of a Unit that is used as a Hotel, motel, inn, apartment hotel, dormitory, or lodge; or

(b) any Unit, other than a Residential Unit, in which short-term overnight accommodations are provided.

1.47 "**Lodge Room**" means a room or suite in a Lodge designed for separate overnight occupancy by one or more Guests.

1.48 "**Losses**" has the meaning set forth in Section 10.2.

1.49 "**Master Association**" means the nonprofit corporation to be formed to serve as the master association of Unit Owners as provided in Article 9 below, and whose Members include, and are limited to, the Owners of the Units in the Resort.

1.50 "**Master Common Areas**" means any portion of the Initial Mountainside Property designated as Master Common Areas on a Recorded plat thereof, or any portion of the Annexable Property identified in an Annexation Declaration as Master Common Areas which are subjected to this Master Declaration, and any other real or personal property, including easements, that the Master Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. Without limiting the foregoing the Master Common Areas shall include:

(a) That portion of the Resort which is owned, leased, controlled or maintained by the Master Association for the common use, enjoyment or benefit of all Owners. If Master Common Area acquired by the Master Association is subject to a prior unaccepted offer of dedication by Declarant to a public agency or is subject to an unrescinded offer of gift to a nonprofit corporation, the Master Association or Declarant, as the case may be, shall complete such dedication or gift at any time upon request by such agency or corporation. Some Master Common Areas may consist of, and be created as, easements in favor of the Master Association over other Units (such areas to be referred to herein or in a Supplemental Declaration as "**Master Easement Common Area**"). Without limiting the generality of the foregoing, portions of the Master Common Areas of the Resort may include, open space areas, recreational facilities, and pedestrian plaza areas, as well as certain easements identified on a subdivision map as "Private Ski Easements" which the Master Association shall be obligated to maintain upon conveyance of those easements from Declarant to the Master Association.

(b) As portions of the Annexable Property become part of the Resort as a result of the Recording of an Annexation Declaration, or if Property already subject to this Master Declaration is further subdivided or developed, additional Master Common Areas may be designated in an Annexation Declaration or Supplemental Declaration to be owned, leased, controlled or maintained by the Master Association for the use, enjoyment or benefit of the Owners pursuant to Section 2.2 below.

(c) Master Common Areas do not mean or include: (i) the Mountainside Ski Property, (ii) Mountain Operations (other than those Mountain Operations that are permitted on Master Common Areas pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements), or (iii) property that is specifically designated and described as Project Common Area in any Project Declaration or Supplemental Declaration.

1.51 "**Master Common Areas and Facilities**" means the Master Common Areas and the Master Common Facilities, collectively.

1.52 "**Master Common Facilities**" means all personal property, equipment and Improvements on real property owned, leased, controlled or maintained by the Master Association, and shall include personal property, equipment and Improvements financed by, or secured by the assets of the Master Association (which assets include the Master Association's right to levy and/or collect Assessments, charges, fines and penalties pursuant to this Master Declaration, and all amounts so collected). Master Common Facilities may include personal property, equipment and Improvements on real property not

owned by the Master Association, but which Declarant, Declarant's Affiliates, or the Master Association has agreed to operate and/or maintain on behalf of any Governmental Authority. Master Common Facilities shall not include the Mountain Operations or any common areas or common facilities of any Project Association.

1.53 "**Master Declaration**" means this Master Declaration of Covenants, Conditions and Restrictions for the Mountainside Village and Resort, as it may be amended, supplemented, restated, or superseded from time to time.

1.54 "**Master Easement Common Area**" has the meaning set forth in Section 1.50(a).

1.55 "**Member**" means and refers to a Person entitled to membership in the Master Association as provided for in this Master Declaration.

1.56 "**Merchant Builder**" means any Person who purchases five or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases five or more Units within the Resort for further subdivision, development, and/or resale in the ordinary course of its business.

1.57 "**MIDA**" has the meaning set forth in Recital E.

1.58 "**MIDA Hotel Lease**" has the meaning set forth in Recital E.

1.59 "**MIDA Property**" has the meaning set forth in Recital E.

1.60 "**Mining Uses**" shall mean the use of all or any portion of the Property for commercial extraction or production of sand, gravel, aggregate or any other earth product for export from the parcel in which it is located. For purposes of clarity, "Mining Uses" do not include work performed by Declarant or others in connection with the remediation of pre-existing historical mining claims, activities and uses, nor do "Mining Uses" include the mining and use on the Property by Declarant or its designees, of sand, gravel and other aggregate.

1.61 "**Moderate Income Housing**" means residential housing units provided pursuant to the Entitlement Documents or units that otherwise meet the definition of moderate income housing units in the Mayflower Mountain Resort Moderate Income/Employee Housing Program dated November 21, 2018 prepared by Declarant, as it may be amended, supplemented, restated, or superseded from time to time.

1.62 "**Mortgage** means a mortgage or a trust deed; "**Mortgagee**" means a beneficiary or holder of a Mortgage; and "**Mortgagor**" means a mortgagor, trustor, or a grantor of a Mortgage.

1.63 "**Mountain Easement Agreements**" means and refers to any Recorded easement in favor of the Ski Terrain Owners or Mountain Operator now in existence or hereafter Recorded relating to Mountain Operations. Declarant and the Master Association are hereby authorized and empowered to grant and to enter into Mountain Easement Agreements with the Mountain Operator, so long as such easements do not (i) impair the rights of ingress or egress to any Unit; or (ii) encumber any Unit owned by a person other than Declarant without the Owner of the Unit joining in the grant of the Mountain Easement Agreement. Upon execution and Recordation in the Official Records, the Mountain Easement Agreement shall be binding on the Master Association and all other Owners of any portion of the Property as successors to Declarant.

1.64 "**Mountain Operations**" means, without limitation, all of the following facilities used in conjunction with the ownership, management, maintenance, replacement or operation of the Mountainside Ski Property as a four season resort, which may or may not be located on the Mountainside Ski Property, and which are owned, leased or operated by the Ski Terrain Owners, Mountain Operator, Declarant or any Person designated by Declarant or the Mountain Operator or to which the Mountain Operator has the right to access, use or enjoy under the Mountain Operator Agreement or the Mountain Easement Agreements: ski tows, lifts tramways, and gondolas (including towers, cables and structures or facilities used in direct connection with operation of such tows, lifts, gondolas and tramways); snowmaking lines, machines or facilities; ski trails or runs; roads used in connection with maintenance or operation of tows, lifts, trails or runs; areas occupied or used for tow or lift lines or skier assembly areas; areas which are occupied by open racks for skis or snowboards which are available for use by the public; ski school meeting areas (for skiers and snowboarders); ski patrol facilities and first aid facilities for skiers and snowboarders; areas or facilities occupied or used for sale of ski, gondola, or lift tickets, for sale of ski school lessons, or for offices of the owner(s) or Mountain Operator of the Mountainside Ski Property; facilities and areas for the transportation drop-off of skiers who desire access to other Mountain Operations; horseback riding facilities; mountain biking and hiking trails and services; flow courses; food service facilities; general skier congregation, assembly and eating facilities for skiers, snowboarders, mountain bikers, and other users of the Mountain Operations; sport shops; day ski lodges; areas for Special Events and any other structures, improvements, operations and activities of the Mountain Operator that are either located on the Mountainside Ski Property or authorized pursuant to the Mountain Operator Agreements.

1.65 "**Mountain Operator**" means Declarant and any Person which acquires and is delegated by written instrument the rights, benefits, duties and obligations of the operator of the Mountainside Ski Property. The written instrument may specify the extent and particular rights, benefits, duties and obligations which are being acquired or delegated, in which case the Mountain Operator shall retain all other rights, benefits, duties and obligations.

1.66 "**Mountain Operator Agreement**" means an agreement(s) between Mountain Operator and the Ski Terrain Owners pertaining to the following, as such agreement(s) may be entered into, amended, modified, superseded or replaced from time to time that provide for, among other things:

(a) joint promotional advertising of the Resort, Village and Mountainside Ski Property by Mountain Operator as a year-round destination resort;
(b) security services;
(c) parking and traffic control within the Resort;
(d) Special Events; and
(e) other activities and rights of the Mountain Operator.

1.67 "**Mountain Operator's Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with Mountain Operator, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership, or corporation in which Mountain Operator (or another Mountain Operator's Affiliate) is a general partner, managing member or controlling shareholder.

1.68 "**Mountainside Master Development Agreement**" means that certain Mountainside Resort Master Development Agreement dated as of August [__], 2020 between Declarant and MIDA, as amended, modified, replaced or superseded from time to time.

1.69 "**Mountainside Master Plan**" means the Mountainside Master Plan Approval dated December 18, 2018, adopted by MIDA based on the Application for Master Plan Approval, Constraints

Analysis and Density Determination dated October 2015, previously submitted to and approved by Wasatch County, as amended, modified, replaced or superseded from time to time.

1.70 "**Mountainside Ski Property**" means the real property owned or leased by Declarant, Declarant's Affiliates, Ski Terrain Owners or by the Mountain Operator, or their respective affiliates, and successors in interest, and improved with year-round recreational amenities, currently existing or hereafter constructed on or adjacent to any portion of the Resort, including, without limitation, lifts, gondolas, ski runs and trails hiking and equestrian trails, mountain biking trails, flow courses, restaurant facilities and other related equipment, improvements and property of the Ski Terrain Owners or by Mountain Operator. The Mountainside Ski Property is not part of the Resort.

1.71 "**MWR Hotel Condominium Project**" has the meaning set forth in the Recitals.

1.72 "**Official Records**" means the official records of the Wasatch County Recorder.

1.73 "**Ongoing Monitoring**" has the meaning set forth in Section 10.7.

1.74 "**Operations Fund**" has the meaning set forth in Section 11.10.

1.75 "**Original Sale**" means (a) the original sale of a Unit built by a Merchant Builder if the Unit was constructed by such Merchant Builder with the intent of selling the same to consumers without any personal use thereof by such Merchant Builder, and (b) in any other case, the first sale of a Unit after the original sale by Declarant or Declarant's Affiliates.

1.76 "**Owner**" means any Person, including Declarant and Declarant's Affiliates, owning of Record a fee simple title interest in and to any Unit in the Resort, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Unit (unless such Mortgagee has acquired fee simple title interest in such Unit pursuant to foreclosure or any proceedings in lieu of foreclosure). The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination. If a Unit is Sold under a Recorded contract of sale, and the contract so provides, the purchaser (rather than the fee owner) will be considered to be the "Owner" for the purposes of this Master Declaration.

1.77 "**Owner's Related Parties**" has the meaning set forth in Section 16.9.

1.78 "**Person**" means any natural person, corporation (including any nonprofit mutual benefit or public benefit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other person or entity recognized as being capable of owning real property under the laws of the State of Utah.

1.79 "**Phase**" means the Initial Mountainside Property, and each Annexable Property identified as a phase in an Annexation Declaration or a Supplemental Declaration.

1.80 "**Planned Development**" means a Project (other than a Condominium Project) having common area owned either by the Project Association or in common by the Owners of the Units within that Project who possess appurtenant rights with respect to the beneficial use and enjoyment of the common areas of such Project by means of an assessment.

1.81 "**Private Amenities**" means any real property, improvements and/or facilities thereon located within the Resort which Persons other than the Master Association own and operate for

recreational and related purposes, on a club membership basis or otherwise, including, without limitation, the Mountainside Ski Property, any non-Master Association owned ski lifts and runs, and all related and supporting facilities and improvements.

1.82 "**Project**" means any separately designated area upon a portion of the Property and comprised of one or more discrete types of development or use, including the following types of uses:

(a) Vacant Land;
(b) Hotel;
(c) Lodge;
(d) Condominium;
(e) Condominium Hotel;
(f) Commercial Units;
(g) Residential Units (single family or multi-family Condominium);
(h) Recreational Units;
(i) Moderate Income Housing Units; or
(j) Any other separately designated area within the Resort devoted to a discrete purpose, as determined by Declarant from time to time.

Any such Project shall be designated as a Project in the Project Declaration, this Master Declaration or an Annexation Declaration annexing such portion of the Property to the Resort.

1.83 "**Project Assessments**" means assessments levied pursuant to a specific Project Declaration.

1.84 "**Project Association**" means any association established for a specific Project pursuant to a Project Declaration.

1.85 "**Project Committee**" means a committee appointed or elected for a Project pursuant to Section 9.12 below.

1.86 "**Project Common Area**" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their Guests, and includes any Project Limited Common Area as may be designated on any plat of any Project. Unless the plat specifically indicates that a tract or parcel located on a tract or parcel of real property is "Master Association Common Area," the tract or parcel designated as common area shall be deemed to be Project Common Area.

1.87 "**Project Declaration**" means a declaration of covenants, conditions, restrictions and easements establishing a plan of Condominium ownership, Planned Development, or townhouse ownership, or otherwise imposing a unified development scheme on a particular Unit or Units.

1.88 "**Project Limited Common Area**" means any Project Common Area established for the exclusive use or enjoyment of certain Units within Project(s) as designated on any plat of any portion of the Property, in this Master Declaration, or in any Annexation Declaration annexing Additional Property to Resort.

1.89 "**Project Limited Common Area Assessment**" has the meaning set forth in Section 11.7.

1.90 "**Property**" means the Initial Mountainside Property and any of the Annexable Property that is included in a Recorded Annexation Declaration. The Mountainside Ski Property is not subject to this Master Declaration and is not part of the Property.

1.91 "**Public Areas**" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Master Declaration or the Annexation Declaration annexing such property to Resort.

1.92 "**Record**" "**Filed**," "**Recorded**" or "**Recordation**" mean, with respect to any document, the recordation or filing of such document within the Official Records.

1.93 "**Recreational Unit**" means a Unit that is developed primarily for recreational uses.

1.94 "**Released Parties**" has the meaning set forth in Section 16.9.

1.95 "**Reserve Fund**" has the meaning set forth in Section 11.11.

1.96 "**Reserve Fund Assessment**" has the meaning set forth in Section 11.11.

1.97 "**Residential Units**" means a Unit, as shown on any subdivision map for any portion of that property that is intended to be improved with a single family residence or a residential Unit in a Condominium Project. The term Residential Unit shall not include a Lodge or Lodge Rooms, but shall include Units used as part of a Vacation Club or Time Share Project.

1.98 "**Resort**" means the master planned community that Declarant intends to develop on the Initial Mountainside Property and such portions of the Annexable Property as Declarant may later annex to the Resort in accordance with Section 2.2.

1.99 "**Resort Area Hazards**" has the meaning set forth in Section 16.1.

1.100 "**Resort Area Uses and Activities**" has the meaning set forth in Section 16.1.

1.101 "**Resort Foundation**" means the Mountainside Resort Foundation, a non-profit organization created by Declarant to ensure the preservation and protection of the Resort's environment, cultural, history, and recreational values. The Resort Foundation functions include, but are not limited to, management of certain preserves and open spaces at or in the vicinity of the Resort, educational programs for Owners, Guests, and members of the public, and the implementation of development and land management plans in coordination with Declarant and the Master Association.

1.102 "**Resort Rules**" means the restrictions and rules adopted by the Master Association, as the same may be supplemented, modified and repealed from time to time by the Master Association in accordance with Section 3.4(b) of this Master Declaration and the Master Association Bylaws. Once the Design Review Committee is comprised of members appointed solely by the Board of Directors, the Resort Rules shall also include the Design Guidelines.

1.103 "**Resort Support Facility**" and "**Resort Support Facilities**" are terms that mean and refer to the amenities and facilities designated as such by Declarant or identified as such in the Mountain Operator Agreement that are located within the Resort or within the Mountainside Ski Property and which are operated for the benefit of, or used in connection with, the Mountain Operations. The term "Resort Support Facility(ies)" include(s), without limitation:

(a) office and administrative facilities;

(b) maintenance and repair facilities;

(c) information facilities;

(d) operational facilities;

(e) employee child care facilities;

(f) facilities that provide services to Guests of the Mountainside Ski Property, such as conference facilities, child care facilities, cultural facilities, recreational facilities, athletic facilities and other entertainment facilities, that meet the criteria described in the preceding sentence;

(g) areas and uses within the Resort that are identified as such in the Mountain Operator Agreement; and

(h) ski lifts and gondolas servicing the Mountain Operations.

1.104 "**Respondent**" has the meaning set forth in Section 18.2(a).

1.105 "**Reviewer**" has the meaning set forth in Section 8.2(c).

1.106 "**Ski Terrain Owners**" means RH Mayflower, LLC, a Delaware limited liability company, and 32 Dom Mayflower, LLC, a Delaware limited liability company, and their respective successors and assigns. To the extent Declarant or Declarant's Affiliates come to own or lease any real property within the Annexable Property that is owned, leased or held for use for Mountain Operations, the term "Ski Terrain Owners" shall include Declarant and such affiliates.

1.107 "**Sold**" means that legal title has been conveyed or that a contract of sale has been executed and Recorded under which the purchaser has obtained the right to possession.

1.108 "**Special Assessment**" has the meaning set forth in Section 11.5.

1.109 "**Special Events**" means special events occurring at the Resort, including concerts, performing arts, festivals, fairs, tournaments, sports federation events, Olympic venues, Paralympic venues, and qualifying events and other events planned or sponsored by the Ski Operator and/or Master Association, in whole or in part.

1.110 "**Supplemental Declaration**" means any declaration which may be Recorded which supplements this Master Declaration and which may affect solely: (i) a Condominium Project, (ii) a Commercial Unit, (iii) a Planned Development, or (iv) Units within a particular Phase of the Resort. Declarant may Record a Supplemental Declaration with respect to any Phase of the Resort at any time prior to the sale of a Unit in that Phase to a third party who is not a Declarant's Affiliate, and at any time thereafter as provided in the Project Declaration or, if not so provided, with the consent of a majority of the Owners of Units in the Phase.

1.111 "**Tax Sharing and Reimbursement Agreement**" means that certain Tax Sharing and Reimbursement Agreement dated as of August [__], 2020 by and among MIDA, Ex Utah Development

LLC, BLX LLC, Declarant, BLX Pioche LLC, BLX Land LLC, BLX MWR Hotel LLC, and the Ski Terrain Owners, as it may be amended, supplemented, restated, or superseded from time to time.

1.112 "**Time Share Project**" means a Project that includes "timeshare interests" as defined in the Utah Timeshare and Camp Resort Act (Utah Code Ann. §§57-19-1 et seq.) as amended or replaced from time to time.

1.113 "**Transfer**" has the meaning set forth in Section 11.20(b).

1.114 "**Transferee**" has the meaning set forth in Section 11.20(b).

1.115 "**Unit**" means a portion of the Resort, whether improved or unimproved, which may be independently owned. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings but which is not a Hotel or Lodge, each dwelling shall be deemed to be a separate Unit. In the case of Vacant Land or a parcel of land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a Recorded plat subdivides all or a portion of the parcel. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding sentence. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph. Unless the Project Declaration or Condominium Plan applicable to a particular Unit otherwise provides, if walls, floors, or ceilings are designated as boundaries of a Unit, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the Unit are part of the Unit and any other portions of the walls, floors, or ceilings are part of the common areas. Notwithstanding the foregoing, any parcel of real property owned, held or used in its entirety (i) by the Master Association, (ii) as Common Areas and Facilities for the Master Association or as common area for a Condominium Project, (iii) by any Governmental Authority (except the MIDA Property), (iv) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, communications, cable television or any other utility service, or (v) solely for access to or through all or any portion of the Resort, shall not be considered a Unit. In addition, the term "Unit" shall not include any portion of the Mountainside Ski Property or any portion of the Resort that is subject to a Mountain Easement Agreement.

1.116 "**Utility Purposes**" has the meaning set forth in Section 5.3(a).

1.117 "**Vacant Land**" means a parcel of land on which no Improvements have occurred with respect to the development of a Project.

1.118 "**Vacation Club**" means a Person (other than a natural Person) that is owned by members, whose ownership/membership interests in such Person are evidenced by points, shares or other interests that entitle the members to occupy Residential Units owned and/or leased by such Person.

1.119 "**Village**" means the Planned Development established by that certain Declaration of Covenants, Conditions, Restrictions and Easements for the Village at Mountainside Recorded in the Official Records, as amended, supplemented, restated or superseded from time to time (the "**Village Declaration**").

1.120 "**Village Common Area**" shall have the meaning set forth in the Village Declaration.

1.121 "**Village Declaration**" shall have the meaning set forth in Section 1.119.

1.122 "**Village Plaza**" shall have the meaning set forth in the Village Declaration.

1.123 "**Voluntary Cleanup Program**" means the environmental remediation of a portion of the Resort contemplated by that certain Voluntary Cleanup Agreement dated as of July 28, 2017 between Declarant and the Utah Department of Environmental Quality, as amended, supplemented or replaced from time to time.

1.124 "**Voting Groups**" has the meaning set forth in Section 9.3(c).

ARTICLE 2

PROPERTY SUBJECT TO THIS MASTER DECLARATION

2.1 **Initial Mountainside Property**. Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Master Declaration:

All that certain real property located in Wasatch County, Utah, more specifically described on Exhibit A to this Master Declaration.

2.2 **Annexation of Additional Property**. Subject to such Governmental Authority approvals as may be required by under Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Resort, Declarant may from time to time and in its sole discretion add to the Resort any Annexable Property, in whole or in part, now or hereafter acquired by it, and may also from time to time and in its sole discretion allow other holders of real property to add real property owned by them to the Resort. The addition of such real property shall be accomplished as follows:

(a) The Owner of such real property shall Record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Master Declaration (each, an "**Annexation Declaration**").

(b) The Additional Property included in any Recorded Annexation Declaration shall thereby become a part of the Resort and this Master Declaration, and Declarant and the Master Association shall have and shall accept and exercise administration of this Master Declaration with respect to such Additional Property.

(c) Notwithstanding any provision herein apparently to the contrary, an Annexation Declaration with respect to any Project or Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants, conditions and easements with respect to the Additional Property as Declarant may deem to be appropriate for the development of the Additional Property;

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants, conditions and easements with respect to such Additional Property as Declarant may deem to be appropriate for the development of such Additional Property; and

(iii) incorporate provisions contained in this Master Declaration with or without modification to become applicable to the Project Common Area, the Project Association, the Project design review committee, Project Assessments or other matters affecting a Project without a requirement that such provisions be repeated in a Project Declaration.

(d) There is no limitation on the number of Units that Declarant may create or annex to the Resort, except as may be established by Applicable Law. Similarly, there is no limitation on the right of Declarant to annex Common Area, except as may be established by Applicable Law.

(e) Declarant does not agree to build any specific future Improvement, and does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation, the Additional Property so annexed shall be entitled to voting rights as set forth in Section 9.3 below. (Prior to annexation, proposed Units shown in the Mountainside Master Plan as being located in the Resort shall be counted as provided in Section 9.3 below for calculating the voting rights of the Class "B" Member.)

(g) The method to be used for reallocating the Common Expenses if additional Units are annexed and the manner of reapportioning the Common Expenses if additional Units are annexed during a fiscal year are set forth in Section 11.9 below.

2.3 **Withdrawal of Property**. Subject to such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Resort, Declarant may withdraw property from the Resort at any time only by duly adopted amendment to this Master Declaration, except that Declarant may withdraw all or a portion of any Additional Property annexed pursuant to an Annexation Declaration at any time prior to the sale to a Person other than one of Declarant's Affiliates of the first Unit in the plat of the Additional Property. Such withdrawal shall be by a Recorded declaration executed by Declarant. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to a Project Association being withdrawn shall be eliminated, and the Common Expenses shall be reallocated as provided in Section 11.9 below. Such right of withdrawal shall not expire except upon sale to a Person other than one of Declarant's Affiliates of the first Unit within the applicable Phase of the Property as described above.

ARTICLE 3

RIGHTS OF DECLARANT, UNIT OWNERS AND LESSEES

3.1 **Purpose of the Master Declaration to Establish a General Plan of Development**. This Master Declaration and any Supplemental Declaration or Annexation Declaration later Recorded with respect to any Phase of the Resort are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Units and Common Area comprising the Resort and are established for the purpose of enhancing, perfecting and maintaining the value, desirability and attractiveness of the Resort as a first-class, year-round destination resort community. This Master Declaration shall run with all land now or hereafter comprising the Resort for all purposes and shall be binding upon and inure to the benefit of Declarant, the Master Association, any Project Association, and all Owners and their Lessees and Guests.

3.2 **Authority of Declarant to Modify Entitlement Documents**. Nothing in this Master Declaration shall be construed in a manner that would prevent Declarant from modifying any or all of the Entitlement Documents or any portions thereof, or from resubdividing any and all of the Additional

Property (whether or not such actions by Declarant increase or decrease the number of Units subject to assessments), or from dedicating or conveying portions of the Property described on any subdivision map, including streets or roadways, for uses other than as Units or Common Area, subject, however, to the receipt of any prior approvals as may be required from applicable Governmental Authorities with jurisdiction. Any statements set forth herein regarding Declarant's future plans for the development of any portion of the Property reflect Declarant's current Mountainside Master Plan for the Resort. However, there is no guarantee that those future development plans will be implemented in the manner currently contemplated or at all.

3.3 **Authority of Declarant to Approve Boundary Line Adjustments**. At any time within twenty (20) years from the date that the first Unit in a Phase is conveyed to an Owner other than Declarant or one of Declarant's Affiliates, the boundaries of any Common Area in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently Recorded survey, parcel map, or subdivision map, provided that the altered boundaries are approved by Declarant and all Owners of the property involved in the boundary adjustment. In the event a boundary line adjustment involves Common Area of the Master Association or Project Common Area of the Project Association, the board of directors of the affected Project Association are authorized to grant approval on behalf of such Project Association and its members. Any such alteration shall be effective upon Recordation of the survey, parcel map, or subdivision map. Upon such Recordation, the boundaries of the altered Common Area or Project Common Area shall be altered for purposes of this Master Declaration to conform to the boundaries as shown on such survey, parcel map, or subdivision map. The authority conferred by this Section 3.3 shall not apply to any Condominium Project within the Resort unless the applicable Project Association also consents to the boundary line adjustment. In addition, no changes shall be made to the Village Plaza areas that would compromise the visibility of any Commercial Unit when viewed from the Village Plaza areas or which might increase the cost of snow removal by impairing access to or within the Village Common Area or otherwise affecting access to or the operation of any businesses in the Commercial Units within the Village.

3.4 **Owners' Nonexclusive Easements of Enjoyment of Master Common Areas**. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Master Common Areas and Facilities, including ingress and egress to and from such Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) **Right of the Master Association to Regulate Common Area Uses**. The right of the Master Association to limit the number of Guests of Owners who may use any recreational Master Common Areas and Facilities situated upon the Master Common Areas, or to impose fees for use of particular recreational Master Common Areas and Facilities. Declarant and the Mountain Operator shall also have certain rights to use the Master Common Areas and Facilities of the Master Association as set forth in the Mountain Operator Agreement, the Mountain Easement Agreements, and Sections 3.4(g), 5.9 and 5.12.

(b) **Right of the Master Association to Adopt Resort Rules**. The right of the Master Association to adopt Resort Rules regulating the use and enjoyment of the Property comprising any portion of the Resort for the benefit and well-being of the Owners in common, and, in the event of the breach of such Resort Rules or any provision of any Governing Document by any Owner or Lessee, including, but not limited to, the nonpayment of any required Assessments, to initiate disciplinary action against the violating Owner or Lessee in accordance with Article 12. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Master Common Areas and Facilities, other than roads, by any Owner and such Owner's Lessees and Guests. The Resort Rules may differentiate between categories of Owners, Lessees, or Guests as established by

the Board of Directors from time to time; however, the Resort Rules must be uniformly applied within such categories.

(c) **Right to Incur Indebtedness**. The right of the Master Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Master Common Areas and Facilities. The right to incur indebtedness shall include the right to assign or pledge the Master Association's right to collect payments or Assessments to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Master Association.

(d) **Mandatory Dedications and Transfers**. Any duty to dedicate or transfer any part of the Master Common Areas and Facilities to a public agency, authority or utility which Declarant or the Master Association may have pursuant to any of the Entitlement Documents or other agreement with any Governmental Authority that is applicable to the Resort. The Master Association shall make any such dedication that may, in the future, be required of it or of Declarant or any Declarant's Affiliate.

(e) **Voluntary Dedications and Transfers**. The right of the Master Association to dedicate or transfer any part of the Master Common Areas and Facilities to any public agency, authority or utility willing to accept the same, for such purposes and subject to such conditions as the Master Association may determine; provided, that any such dedication or transfer pursuant to this subparagraph (e) shall be documented by a Recorded instrument, and shall not impair the ingress and egress to or from any Unit or the Master Common Areas and Facilities.

(f) **Rights of Easement Holders**. All easements affecting the Common Area that are described in Article 5.

(g) **Use by Declarant and the Mountain Operator**. The right of Declarant and the Mountain Operator and its/their employees, sales agents, prospective purchasers, customers and representatives, to enter upon the Master Common Areas and Facilities for the benefit of Declarant or the Mountain Operator, to complete the development and improvement of Units, and the construction of any landscaping or other Improvement or Master Common Facility to be installed on the Master Common Areas, as well as the right (subject to the prior right of the Mountain Operator pursuant to the Mountain Operator Agreement and the Mountain Easement Agreements and to operate the Mountainside Ski Property) of nonexclusive use of the Master Common Areas and Facilities, without charge, for sales, display, access, ingress, egress, exhibition and Special Events, including the right to post signage in and on the Master Common Areas and Facilities in use which right Declarant hereby reserves. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners or Lessees as provided herein, as reasonably determined by the Board of Directors.

(h) **Right to Close Facilities During Maintenance or Renovation**. The right of the Master Association to close or limit the use of the Master Common Areas and Facilities, or portions thereof to access to and use by the Owners, while maintaining, repairing or modifying the same; provided however that with the exception of an emergency situation in which action must be taken by the Master Association in an effort to avoid damage to or destruction of property or injury to persons within the Resort, this reserved right shall not be exercised in a way that adversely affects any Mountain Operations or the Mountain Ski Property.

(i) **Right to Convey Additional Master Common Areas and Facilities to the Master Association**. The right of Declarant to later convey additional Master Common Areas and Facilities in the Initial Mountainside Property or the Annexable Property to the Master Association. Master Common Areas and Facilities, if any, to be owned by the Master Association in any portion of

the Annexable Property that becomes part of the Resort as the result of future annexations, may be conveyed to the Master Association prior to the first transfer to an Owner of a Unit in such annexed area, or may be later conveyed to the Master Association. Additional Master Common Areas and Facilities shall be identified as such in the Annexation Declaration or Supplemental Declaration that brings the Master Common Areas and Facilities into the jurisdiction of the Master Association. With respect to public property that is designated as Master Common Areas and Facilities that is to be maintained by the Master Association, Owners, Lessees, and their respective Guests shall have such rights as the applicable Governmental Authority allows.

(j) **Permits. Licenses and Easements**. The right of the Master Association to grant permits, licenses and easements on, over, under or through the Master Common Areas and Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Resort and/or the Mountainside Ski Property, so long as such future permits, licenses and/or easements do not materially impair ingress or egress to or from any Unit in the Resort.

(k) **Reconstruction of Master Common Areas and Facilities**. The right of the Master Association (by action of the Board of Directors) to reconstruct, replace or refinish any Master Common Areas and Facilities or any portion thereof, in accordance with the Design Guidelines and the Master Declaration.

(l) **Maintenance**. The right of the Master Association to maintain and repair the Master Common Areas and Facilities, including, without limitation, the right to plant trees, shrubs, flowers, ground cover and other vegetation upon any portion of the Master Common Areas and Facilities, and to replace any such vegetation or other landscaping Improvements which have been damaged or destroyed.

(m) **Signage**. The right of the Master Association, subject to the Design Guidelines, to post signage in and on the Master Common Areas and Facilities in connection with Master Association and Resort activities.

(n) **Restricted Areas**. The right of the Master Association to reasonably restrict access to any Master Common Areas and Facilities, slopes and other sensitive landscaped areas and open space areas that are Master Common Areas and Facilities. The Master Association shall have exclusive control over all of the Master Common Areas and Facilities except for public property with respect to which the Master Association has maintenance responsibilities under the Governing Documents.

(o) **Rights of Mountain Operator**. The rights of the Mountain Operator, pursuant to the Mountain Operator Agreement, the Mountain Easement Agreements and this Master Declaration to access portions of the Mountainside Ski Property and the Mountain Operations for maintenance, repair and operational purposes.

3.5 **Owner's Rights and Obligations Appurtenant**. All rights, easements and obligations of an Owner under this Master Declaration and all rights of an Owner with respect to membership in the Master Association are hereby declared to be and shall be appurtenant to the title to the Unit owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Unit. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Unit shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such easements, rights and obligations. Notwithstanding the foregoing, the rights of an Owner under this Master Declaration may be assigned to a Mortgagee as further security for a loan secured by a lien on a Unit, and such rights and obligations may be assigned to and assumed by a Lessee for the period of such Lessee's lease of a Unit so

long as the term of such lease is in excess of one year and the Owner provides written notice of such assignment to the Master Association.

3.6 **Delegation of Use of Units**.

(a) Any Owner may delegate such Owner's rights of use and enjoyment of the Owner's Unit, including any appurtenant right to use Master Common Areas and Facilities, to the Owner's Guests, Lessees and to such other persons as may be permitted by the Governing Documents; provided, however, that if an Owner has transferred such Owner's Unit to a contract purchaser or has leased or rented the Unit to another Person, then that Owner shall not be entitled to use and enjoy any such rights in the Owner's Unit while the Owner's Unit is occupied by the contract purchaser or Lessee (other than to exercise such rights of access and contract enforcement typically reserved to lessors of real property). Instead, the contract purchaser or Lessee, while occupying such Unit, shall be entitled to use and enjoy such rights, including rights to use Master Common Areas and Facilities, and to delegate the rights of use and enjoyment in the same manner as if such contract purchaser or Lessee were an Owner during the period of such contract purchaser's or Lessee's occupancy. The use of a Unit by an equity or non-equity Vacation Club pursuant to its membership plan shall not be considered leasing or rental activity and members of such club shall not be considered Lessees. Nothing in this Section 3.6 shall be construed as limiting the rights that Owner-lessors customarily have as landlords in the supervision of their property or rights to use and enjoy Master Common Areas and Facilities on the same basis as members of the general public to the extent such rights may exist.

(b) Any delegated rights of use and enjoyment are subject to suspension and enforcement by the Master Association to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Master Association or to other Owners for payment of Assessments or performance of the covenants, conditions and restrictions contained in this Master Declaration.

(c) Any lease, rental agreement or contract of sale entered into between an Owner and a Lessee or contract purchaser of a Unit shall require compliance by the Lessee or contract purchaser with all of the covenants, conditions and restrictions contained in this Master Declaration and any applicable Project Declaration, such compliance being for the express benefit of the Master Association and each Owner. The Master Association and each Owner shall have a right of action directly against any Lessee or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Master Declaration to the same extent that such right of action exists against such Owner.

3.7 **Proximity to Snow Equipment, Mountainside Ski Property, the Resort Support Facilities and Roads**.

(a) Disclaimer of Liability and Release. Portions of the Resort may be developed for Private Amenities, recreational use, or may be used for maintenance or servicing of the Mountainside Ski Property and the roads and Master Common Areas parking facilities within the Resort. Such maintenance and servicing may include, without limitation, snowmaking, avalanche control, snow removal, snow storage, and other snow related activities. As such, the matters set forth in Section 3.7(b), may arise from the proximity of Units to the Mountainside Ski Property, the Resort Support Facilities or other recreational facilities, or in connection with snowmaking, avalanche control, snow removal, snow storage, or other snow related activities and functions. Each Owner who acquires, and each Lessee who leases, all or a portion of a Unit acknowledges, accepts and assumes the risk of the costs and burdens associated with such functions and facilities. Accordingly:

(i) Declarant, the Master Association, the Mountain Operator, and the owner(s) of the Mountain Operations, Private Amenities and any other recreational Master Common Areas and Facilities located in the Resort, and each and every employee or agent of any of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the items set forth in Section 3.7(b);

(ii) The owner(s) of any Private Amenities or other Master Common Facility located in the Resort, and each and every member, owner, Guest, skier, employee or agent of any of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the items set forth in Section 3.7(b); and

(iii) Each Owner and Lessee accepts such disclaimers and agrees to release and waive any claims Owner, Lessee or any Guest of Owner or Lessee, may have as a result of any of the items set forth in Section 3.7(b).

(b) Maintenance and Service Activities; Assumption of Risk. The Mountainside Ski Property, the Mountain Operations, and the roads within the Resort require daily seasonal maintenance and servicing, including snow removal, avalanche control, snowmaking, and grooming of the Mountainside Ski Property during various hours, including early morning and late evening hours. Such maintenance and servicing may include, without limitation, the use of snowmaking equipment, blowers and pumps, avalanche control ordnance, snow removal equipment and vehicles, and Mountainside Ski Property grooming equipment, snow cats and vehicles. Owners and Lessees of Units, particularly Owners and Lessees of Units located in proximity to the Mountainside Ski Property or Resort Support Facilities, snowmaking equipment, or roads which are serviced by snow removal equipment, may be exposed to lights, noise, activities or other effects resulting from the maintenance and servicing of such areas and the use of such facilities and equipment, and the Owners and Lessees acknowledge, accept and assume the risk of such light, noise and activities.

(c) Absence of Rights in Privately Owned Club and Similar Facilities. Notwithstanding the use of any of the Property as a private club, spa or other private recreational facility, or the physical proximity of any Unit to any private club, spa or other private recreational facility and notwithstanding any statements or representations by Declarant or any other party, neither ownership of a Unit nor membership in the Master Association shall confer any right or entitlement, now or in the future, upon any Person to membership or voting rights in any private club, spa or other private recreational facility or to any ownership interest, equity interest or right to use any private club, spa or other private recreational facility. The foregoing shall not impact the rights of any Owner to use the Master Common Areas and Facilities subject to the limitations imposed herein, and the other terms and conditions of this Master Declaration.

ARTICLE 4

PROJECT DESIGNATIONS AND LAND CLASSIFICATIONS

4.1 **Project Designation**. The MIDA Property is hereby designated as a Condominium Hotel. The balance of the Initial Mountainside Property shall be classified as Vacant Land until such time as an Improvement is constructed thereon, at which time the classification shall be changed to the appropriate classification, as determined by Declarant.

4.2 **Land Classifications within Initial Development**. All land within the Initial Mountainside Property is included in one or another of the following classifications:

(a) Vacant Land;

(b) Hotel;

(c) Lodge;

(d) Condominium;

(e) Condominium Hotel;

(f) Residential Units;

(g) Commercial Units;

(h) Moderate Income Housing Units;

(i) Recreational Units;

(j) Project Common Area, which shall be the areas marked as landscaped open space, open space and private roads, or other similar designations, on the plats recorded as a part of the Initial Mountainside Property. Unless the plat specifically indicates that a tract or parcel is "Master Common Areas" the tract or parcel shall be deemed to be Project Common Area;

(k) Master Common Areas, which shall be the areas marked as Master Common Areas or other similar designations, on the plats recorded as a part of the Initial Mountainside Property; or

(l) Public Areas, which shall be the areas marked as public parks, trails or streets on the plats recorded as a part of the Initial Mountainside Property.

4.3 **Consolidation of Units**. The Owner of two adjoining Units, with the approval of Declarant and, to the extent required by a Project Declaration, Applicable Law, each Project Association and Governmental Authority with jurisdiction, may elect to consolidate such Units into one Unit. The consolidation shall be effected by the Owner's Recording a declaration stating that the two Units are consolidated and such other documents as are required by Applicable Law, which declaration shall include a written consent executed on behalf of Declarant and any required Project Association and Governmental Authority. Thereafter, the consolidated Units shall constitute one Unit for all purposes of this Master Declaration, including voting rights and assessments. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked without the prior approval of Declarant.

ARTICLE 5

PROPERTY RIGHTS IN MASTER COMMON AREAS

5.1 **Owners' Easements of Enjoyment**. Every Owner shall have a right and easement of enjoyment in and to the Master Common Areas, which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the restrictions and limitations set forth in Article 7 and the easements set forth in this Article 5, and the other provisions of this Master Declaration.

5.2 **Easements for Encroachments**. The Master Common Areas, and all portions of them, are subject to easements hereby created for encroachments of any portion of a Unit, Resort or the Master Common Areas as follows:

(a) In favor of the Master Association so that it shall have no legal liability when any part of the Master Common Areas encroach upon any Project Common Area;

(b) In favor of each Project Association so that the Project Association shall have no legal liability when any part of any Project Common Area encroaches upon any portion of the Master Common Areas; and

(c) In favor of the Project Associations and the Master Association for the existence, maintenance and repair of such encroachments.

Encroachments referred to in this Section 5.2 include, but are not limited to, encroachments of improvements located on the Master Common Areas onto Units, or Project Common Area, encroachments of overhangs or other portions of buildings or other improvements located on the Units onto the Master Common Areas, and other encroachments caused by error or variance from the original plans in the construction of a Project, by error in the subdivision map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of a Project. Such encroachments shall not be considered to be encumbrances upon any Unit, any part of a Project or the Master Common Areas.

5.3 **Utility Easements**.

(a) Declarant reserves for itself and its successors and assigns who are specifically assigned this right and easement and hereby grants to the Master Association and its officers, agents, employees, successors and assigns a general easement on, over, under, above and through (i) those portions of each Unit and Unit shown on any subdivision map being ten (10) feet in width and immediately adjacent and parallel to all property lines of such Unit (other than Units that are Condominium Units located within a building or other Units constituting townhomes or other similar product specifically created to have so-called "zero lot lines"), (ii) those portions of the Property, if any, designated on a subdivision map as a "Utility Easement", "Central Utility Easement," "Access Easement," "Ski Easement," "Private Ski Easement," "Snow Storage Easement," "Sewer Easement," "Water Easement" and "Master Common Areas" and (iii) all roadways, Units depicted on a subdivision map, excluding areas within any designated building envelope, for the purpose of the following, and without limitation: (A) using, installing, constructing, maintaining, improving, repairing and replacing drainage, water and utility facilities of any kind or nature whatsoever, including but not limited to, storm drainage facilities, fire hydrants and related fire protection devices, sanitary sewer lines, water lines, snowmaking lines, snowbell system lines, irrigation lines, systems and facilities, electric lines, gas lines, telephone lines, cable television line, fiber optic lines, and other communication facilities, (B) drainage of water flowing from other lands, (C) water storage and distribution facilities, (D) snow removal and storage, and (E) vehicular and pedestrian access for installation and maintenance of such utilities, together with a perpetual right of ingress and egress to and from such easement (collectively, hereinafter referred to as "**Utility Purposes**").

(b) Declarant reserves the right, but has no obligation, to Record a document specifying the boundaries of specific easements within the above-described easement areas at any time or from time to time after improvements related to such Utility Purposes have been constructed; provided, however, that in no event shall the creation of any such easement adversely affect the intended use of any

Exclusive Use Master Common Area in the area of the designated easement or affect, avoid, extinguish or modify any other Recorded easement on the Property. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Board of Directors shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof, provided that Declarant or the Board of Directors of the Master Association shall give prompt notice of any such specific easement granted to the Owners of any Unit affected thereby.

5.4 **Reservation of Easements and Exclusions**. Declarant reserves for itself and its successors and assigns who are specifically assigned this right, the right to establish from time to time by declaration or otherwise, utility and other easements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues and conduit installation areas, consistent with the ownership of the Property for the best interest of the Owners and the Master Association. Declarant further reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within the Resort to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise. Declarant hereby further reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Master Common Areas for the purposes of enjoyment, use, access, and development of the Annexable Property, whether or not such property is made subject to this Master Declaration. This easement includes, but it not limited to, a right of ingress and egress over the Master Common Areas for construction of roads and for connecting and installing utilities on such property.

5.5 **Emergency Access Easement**. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon any portion of the Property in the proper performance of their duties.

5.6 **Master Association Easements**. An easement is hereby granted to the Master Association and its officers, agents, employees and assigns upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Master Declaration. Notwithstanding the foregoing, the Master Association shall not enter upon or within any Unit without reasonable prior notice to the Owner of the Unit, except in cases of an emergency. In addition, any Master Association easements shall be subject and subordinate to the terms of the Mountain Easement Agreements and the Mountain Operator Agreement.

5.7 **Drainage Easement**. An easement is hereby reserved to Declarant and its successors and assigns who are specifically assigned this right and easement, and is hereby granted to the Master Association and its officers, agents, employees, successors and assigns, to enter on, over, under, above, across and through those portions of the Property designated as a "Drainage Easement" on a subdivision map for the purposes of the following, without limitation: using, installing, improving, maintaining, repairing and replacing drainage facilities of any kind or nature, including, but not limited to, storm drainage, and the drainage of waters and debris flowing from other lands, together with a perpetual right of ingress and egress to and from such easements.

5.8 **Easements of Access for Repair, Maintenance and Emergencies**. Some portions of the Master Common Areas and Facilities are or may be located on or within certain Units or within the Project Common Areas of certain Projects, or may be conveniently accessible only through certain Units or the Project Common Areas. The Master Association shall have the irrevocable right to have access to

each Unit, and to all Project Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Master Common Areas and Facilities or for making emergency repairs therein necessary to prevent damage to any portion of the Master Common Areas and Facilities or to any Unit. Subject to the provisions of Article 11 (relating to the right of the Master Association to recover the cost of making certain repairs), damage to the interior of any part of a Unit or Project resulting from the maintenance, repair, emergency repair, removal, or replacement of any portion of the Master Common Areas and Facilities or as a result of emergency repairs undertaken by the Master Association shall be a Common Expense.

5.9 **Declarant's Rights Incident to Construction and Marketing**. Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of Units and Projects, including construction trailers, temporary construction offices, sales offices and directional and marketing signs. Declarant may designate a portion of the Master Common Areas and Facilities for the foregoing construction and other purposes in connection with the development of a particular Unit or Project. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit (s) as sales offices, construction, sales and business management offices or as models so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit within the Property. The use by Declarant of any Unit as a model, office or other use shall not affect the Unit's designation on the subdivision map or in a Condominium plan as a Unit. Declarant further reserves exclusive easement rights over and across the Property comprising the Resort for the purpose of marketing, sales and rental of Units, or of other projects developed or marketed by Declarant or Declarant's Affiliates from time to time, including, without limitation, the right to show the Property and to display signs, flags, banners and other promotional devices. Declarant also reserves the right to lease unsold Units.

5.10 **Governmental Requirements**. Declarant hereby reserves the right to grant such easements and rights-of-way across the Property, from time to time, as may be required by any Governmental Authority. Such easements and rights-of-way shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental Governmental Authorities, for so long as Declarant holds an interest in any Unit subject to this Master Declaration.

5.11 **Remodeling Easement**. Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, including Owners, retain a right and easement in and about the buildings within any Project Common Area for the construction and installation of any duct work, additional plumbing, or other additional services or utilities serving the Master Common Areas and Facilities in connection with the maintenance, repair, improvement or alteration of the Master Common Areas and Facilities, including the right of access to such areas of the Resort as are reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this section, the decision of the Board of Directors shall be final.

5.12 **Mountain Easement Agreements and the Mountain Operator Agreement**. Declarant hereby reserves the right to grant to the Mountain Operator and/or the Ski Terrain Owners, as the owner and/or operator of the Mountainside Ski Property, an easement for the benefit of employees, customers, guests and patrons of the Mountainside Ski Property, over, across, through, upon, and under certain roads, streets, sidewalks, trails, passageways, and pedestrian and vehicle access ways that are located upon or across the Property for ingress to and egress from the Mountainside Ski Property. In addition, Declarant, the Master Association and the Mountain Operator have entered into, or will enter into, the Mountain

Easement Agreements and the Mountain Operator Agreement which contain certain other benefits and burdens to and on the Master Association and portions of the Master Common Areas and Facilities.

5.13 **Easements in Favor of the Mountain Operator**. There is further granted to the Mountain Operator, for the benefit of the Mountainside Ski Property, an unallocated general easement upon the Property for the following uses and activities conducted on, or resulting from the conduct of, activities of the Mountain Operator, its agents and invitees on the Mountainside Ski Property: (i) noise, light, movement of air, interference with sunlight, and blowing of snow, water mist and water drops relating to ordinary ski and snowmaking; and (ii) dust, debris, or noise resulting from or associated with other recreational activities or Mountain Operations conducted on the Mountainside Ski Property or in any easement areas created by the Mountain Easement Agreements. Each Owner and its Guests accept and assume the risk of the benefits and burdens associated with those reasonable ski and snowmaking and other recreation-related activities conducted upon or in conjunction with the Mountainside Ski Property as a four season resort, and Declarant, Declarant's Affiliates, the Master Association, and the Owners of each Unit, each Project Association, and each and every employee or agent of any of them, and guests and invitees upon the Property, hereby disclaim, waive and give up any claim to liability for personal injury or property damage suffered by them or proximately caused in any way in part or in whole by the activities and uses identified in this Section 5.13.

5.14 **Easements for Vehicular and Pedestrian Traffic**. In addition to the general easements for use of the Master Common Areas and Facilities reserved herein, Declarant hereby reserves to itself, to the Mountain Operator, to each Project Association and to all future Owners within the Resort, and to every Lessee or Guest of an Owner, nonexclusive easements appurtenant to each Unit in the Resort for vehicular and pedestrian traffic over any and all private streets, walkways and trails within the Master Common Areas and Facilities, subject to the parking and other restrictions on use reasonably imposed by the Board of Directors. Declarant reserves the right to grant similar easements to owners of property in the Resort.

5.15 **Easement for Voluntary Cleanup Program**. An easement is hereby reserved to Declarant and granted to Declarant's Affiliates, and their respective officers, agents, employees, contractors, successors and assigns, upon, across, over, in and under the Property in such locations as Declarant may identify from time to time in a Recorded instrument, and a right to make use of such designated portion of the Property as may be necessary or appropriate, to perform the duties and functions required pursuant to the Voluntary Cleanup Program, including any necessary or desired testing and Ongoing Monitoring.

5.16 **Easements for the Resort Foundation**. Declarant hereby grants to the Resort Foundation, its members, employees, designees, and Guests perpetual, non-exclusive easements over the Master Common Areas to the extent reasonably necessary for ingress, egress and access to properties and facilities owned, operated, maintained, and/or managed by the Resort Foundation. However, this easement shall not include a right to enter any enclosed structure or to unreasonably interfere with the use of any Master Common Areas. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

5.17 **Easements Deemed Created**. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article 5 appears in the instrument for such conveyance.

5.18 **Conversion of Streets to Project Limited Common Area**. Upon approval of Declarant and the Owners of a majority of the Units within any Project, any non-public principal road providing

access to the Project and not also providing access to any other Project may be converted from a Master Common Easement Area to a Project Limited Common Area for the exclusive benefit of the Project in question. Any road so converted to Project Limited Common Area may use gated entries to the extent permitted by this Master Declaration and Applicable Law. Thereafter, the costs of maintaining such Project Limited Common Area and gates shall be the responsibility of Owners of Units within the applicable Project.

5.19 **Conveyance of Master Common Areas to Master Association**. Declarant reserves the right to later convey additional Master Common Areas and Facilities to the Master Association. Master Common Areas and Facilities, if any, to be owned by the Master Association in any portion of the Additional Property that becomes a part of the Resort as the result of a future annexations, may be conveyed to the Master Association prior to the first transfer of a Unit in such annexed area, or may be later conveyed to the Master Association.

5.20 **Use of the Master Common Areas**. The Master Common Areas shall not be partitioned or otherwise divided into Units for residential use, and no private structure of any type shall be constructed on the Master Common Areas. Except as otherwise provided in this Master Declaration, the Master Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Master Common Areas and Facilities. Nothing herein shall prevent the placing of a sign or signs upon the Master Common Areas and Facilities identifying the Resort or any Project or identifying pathways or items of interest, provided such signs comply with any applicable sign ordinance. The Board of Directors shall have authority to abate any trespass or encroachment upon the Master Common Areas and Facilities at any time, by any reasonable means and with or without having to bring legal proceedings. An Annexation Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use particular Master Common Areas and Facilities. In such case, those Owners will not be required to share in the costs of maintaining such Master Common Areas and Facilities, as is more particularly described in Section 11.9.

5.21 **Alienation of the Master Common Areas**. The Master Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Master Common Areas and Facilities owned directly or indirectly by the Master Association for the benefit of the Units unless the holders of at least eighty percent (80%) of the Class "A" Membership voting rights and the Class "B" Member, if any, have given their prior written approval. Any such abandonment, partition, subdivision, encumbrance, sale or transfer shall also be subject to the requirements of Section 14.1 and such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and a Governmental Authority applicable to Resort. The foregoing provision shall not apply to Master Easement Common Area or to the easements described in Section 5.4(a) above. The Master Association, upon approval in writing of more than 50 percent of the Class "A" Membership voting rights and the Class "B" Member, if any, and if approved by order or resolution of the applicable Governmental Authority, may dedicate or convey any portion of the Master Common Areas and Facilities to a park, district or other Governmental Authority.

5.22 **Rental Restrictions**. An Owner of a Residential Unit that is not designated as a Condominium Hotel, Hotel or Lodge by Declarant, the Mountainside Master Plan or the Master Association may not lease or rent such Residential Unit to any Person for a period of less than thirty (30) days without the prior written approval of the Board of Directors and Declarant, which approval may be withheld in the sole discretion of either of them. To the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on any approval, including without limitation a requirement that all occupants of a dwelling be members of a single housekeeping unit, limiting the total number of occupants permitted in each Residential Unit on the basis of the Residential Unit's size and facilities and fair use of the Master Common Areas and Facilities, and reasonable limit on the number of

individuals who may use the Master Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit, provided that such conditions shall not include approval of the prospective renter, payment of an additional fee, or, unless the Owner is required to provide the Board of Directors with such documents pursuant to a court order or as part of discovery under the Utah Rules of Civil Procedure, provision of a copy of the rental agreement, provision of the prospective renter's credit information, credit report or background check. As a condition of the ongoing approval for short-term rentals provided for in this Section 5.22, the Owner of any Unit being rented for a period of less than 30 days shall timely remit to the applicable Governmental Authority any taxes or fees (including but not limited to, any transient occupancy taxes) applicable to such Unit or the renting thereof. The failure to timely remit any such taxes and fees shall be a violation of this Master Declaration and subject such Owner to the remedies provided for in Article 12, including, but not limited to, the withdrawal of approval by Board of Director or Declarant for such Owner to conduct short-term rentals from the Unit..

5.23 **Solar Energy Systems**. Without the prior approval of Declarant and the Design Review Committee pursuant to Article 8, no Owner shall install on its Residential Unit a solar energy system that is or may become visible from the exterior of the structure. If Declarant and the Design Review Committee approve such installation of the solar energy system, such approval may be subject to such limitations and restrictions as Declarant and the Master Association may in their discretion determine, subject to Applicable Law.

5.24 **Vacation Clubs; Shared Ownership**. The use of Residential Units in the Resort is intended to be for the primary or secondary residence of an Owner. In the event multiple Owners own a Residential Unit, or a Residential Unit is owned by a Person who is not a natural Person, to the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on the occupancy of the Residential Unit, including a requirement that all occupants of the Residential Unit be members of a single housekeeping unit, a limit on the total number of occupants permitted in each residential dwelling on the basis of the residential Unit's size and facilities and the fair use of the Master Common Areas and Facilities, and a reasonable limit on the number of individuals who may use the Master Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit.

ARTICLE 6

PROPERTY RIGHTS IN UNITS

6.1 **Use and Occupancy**. The Owner of a Unit shall be entitled to the exclusive use and benefit of such Unit, except as otherwise expressly provided in this Master Declaration, but the Unit shall be bound by and the Owner shall comply with the restrictions set forth in the applicable Project Declaration and all other provisions of this Master Declaration, any Supplemental Declaration, and/or any applicable Project Declaration.

6.2 **Easements Reserved**. In addition to any utility and drainage easements shown on any Recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Master Association:

(a) **Adjacent Master Common Areas**. The Owner of any Unit which is adjacent to or blends together visually with any Master Common Areas shall, if the Master Association or Declarant elects from time to time to so require, permit the Master Association or Declarant to enter upon the Unit to perform the maintenance of such Master Common Areas.

(b) **Right of Entry**. Declarant and any representative of the Master Association authorized by it may at any reasonable time, and from time to time at reasonable intervals and upon

reasonable notice to the Owner of the Unit under the circumstances, enter upon any Unit for the purpose of determining whether or not the use and/or improvements of such Unit are then in compliance with this Master Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit.

(c) **Utility Easements**. Easements for installation and maintenance of drainage facilities and public utilities are hereby reserved over ten (10) feet of the front, rear and one side of each Unit (other than Units that are Condominium Units located within a building or other Units constituting townhomes or other similar product specifically created to have so-called "zero lot lines"), and as otherwise identified on the plats for particular Projects. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Reviewer or Design Review Committee may, in its sole discretion, approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Unit and all Improvements in such areas shall be maintained continuously by the Owner of the Unit, except for those Improvements which a public authority or utility company is responsible to maintain. Easements for installation and maintenance of utilities and drainage facilities may also be reserved over portions of certain Units, as shown on any Recorded plat.

(d) **Landscape Maintenance**. Where a Project Declaration or Project plat so provides, the Project Association shall undertake principal responsibility to provide for the maintenance of exterior landscaping on the Units within the Project including watering and the maintenance, repair or replacement of the exterior sprinkling system. If landscape maintenance remains the principal responsibility of the Owners of Units, the Project Association and/or the Master Association shall have the right to enter on the Unit in order to maintain landscaping in the event the Owner fails to adequately maintain the landscaping in accordance with the Community-Wide Standards, including watering and the maintenance, repair or replacement of the exterior sprinkling system. The Project Association's and the Master Association's right of access for maintenance shall include the right of access to a garage or other part of a residence on a Unit containing the automatic sprinkling control box and the right to use the water at the expense of the Owner in any amount deemed necessary and appropriate by the Project Association or the Master Association for maintaining the landscaping on the Unit.

ARTICLE 7

GENERAL USE RESTRICTIONS

7.1 **Structures Permitted on MIDA Property**. Except as may be approved in writing by Declarant, no structures shall be erected or permitted to remain on the MIDA Property except structures containing a Hotel and Condominium Hotel Project and structures normally accessory thereto.

7.2 **Offensive or Unlawful Activities**.

(a) No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to residents. Except for legitimate construction and maintenance purposes, or permitted as contemplated by Section 3.7, no excessively loud noises shall be permitted in the Resort. No unlawful use shall be made of the Property nor any part thereof, and all Applicable Laws of all Governmental Authorities having jurisdiction shall be observed. No oil drilling,

oil development operations, oil refining, or Mining Uses of any kind shall be permitted upon any Unit nor shall oil wells, tunnels, or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted.

(b) Notwithstanding the foregoing restrictions and prohibitions, the following shall not be considered as "noxious or offensive activities": (i) noise, traffic, and odors resulting from proximity to the Mountainside Ski Property and related facilities, roads, ice-skating rinks, Special Events, or from snow or other sports related activities; (ii) any activities of an Owner, Declarant, or their respective designees or contractors which are reasonably necessary to the development of, and construction on, a Unit so long as such activities do not violate the Governing Documents or Applicable Law and do not unreasonably interfere with any Owner's use of such Owner's Unit, or with any Owners ingress and egress to and from a Unit and a roadway; (iii) the reasonable odors, lighting, and noises associated with the authorized Commercial Units, including restaurant noises and odors; or (iv) the reasonable odors, lighting and noises associated with the Master Common Areas and Facilities.

(c) Normal construction activities shall not be considered to violate the terms and conditions of this Section 7.2, although it is noted that many Improvement projects will require the prior review and approval of the Design Review Committee and, in some instances, the Project Association with jurisdiction over the Owner's Unit. By accepting a deed to a Unit, an Owner acknowledges that construction activities may exist on or near the Property, at any time and from time to time. The Design Review Committee shall have the power, but not the obligation, to grant variances from the terms and conditions of this Section 7.2 from time to time as it deems necessary or appropriate to permit certain construction activities to be pursued.

(d) Notwithstanding anything to the contrary contained in this Master Declaration or the Governing Documents, retail stores, restaurants, bars, nightclubs, theaters and other recreational and entertainment facilities conducted within the Commercial Units in the Village may be open for business with the general public during the hours of 5:00 a.m. through 2:00 a.m. Mountain Time. Rental and property management activities within the Commercial Units specifically designated for such purposes may be conducted at all times, twenty-four (24) hours a day. In addition, noise is likely to be experienced by the proximity of the Village to the Mountainside Ski Property and its related lifts, machinery and other facilities, roads, or from snow-related activities. By accepting a deed to a Unit, an Owner acknowledges that the Unit is a part of the Village and that noises, lights and odors common to commercial activities (including restaurant and outdoor dining and cooking), Mountain Operations, and construction activities may exist on or near the Village Plaza and/or other portions of the Property, at any time and from time to time. Accordingly, each Owner takes such Owner's Unit subject to such noises, lights and odors common to commercial activities, concerts, promotional events of the Owners of Commercial Units, Mountain Operations and construction activities and such Owners expressly waive any and all claims arising from such noises, lights and odors. Notwithstanding the foregoing, no restaurant, bar, nightclub or theatre may be operated on the Property unless and until applicable permits, licenses and approvals have been obtained from the appropriate Governmental Authorities. No amendment or modification may be made to this subparagraph (d) without the express written consent of the Owners of any and all Commercial Units that may be affected by any such change.

(e) The Design Review Committee shall provide for and direct the timing, location, and organization of construction of, commercial activity, repair, maintenance, and all other associated or related activities in such a fashion and manner that customers and visitors to the Mountainside Ski Property shall have access to the Mountainside Ski Property in accordance with the terms of the Mountain Operator Agreement and whose use and enjoyment of the Mountainside Ski Property shall not be interfered with. In addition, the Design Review Committee shall take such actions as are necessary to

minimize any interference with, or access or visibility to, the Commercial Units and any tenants in the normal and customary conduct of their business in accordance with the Governing Documents.

7.3 **Maintenance of Structures and Grounds**. Each Owner shall maintain its Unit, and Improvements thereon, in a clean and attractive condition in accordance with the Community-Wide Standard, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the Design Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on its Unit neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7.4 **Parking**. Except as may otherwise be provided in the Resort Rules, parking of boats, trailers, off-road vehicles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed to remain overnight on any part of the Property, excepting only within areas designated for such purposes by the Board of Directors or within the confines of an enclosed garage, the plans of which shall have been reviewed and approved by the Design Review Committee prior to construction, and no portion of the same may extend beyond the screened area. Each Owner by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees to those provisions of this Master Declaration specifically addressing parking and traffic control set forth in Section 9.5(l) of this Master Declaration.

7.5 **Vehicles in Disrepair**. No Owner shall permit any vehicle which is either inoperable or in an extreme state of disrepair or not currently licensed for use on public roadways to be abandoned or to remained parked in the Master Common Areas or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that, by reason of its poor exterior condition, its presence degrades the visual environment of the neighborhood. Should any Owner fail to remove such vehicle within three (3) days following the date on which notice is mailed to such Owner by the Master Association, the Master Association is authorized to have the vehicle removed from the Property and charge the expense of such removal to the Owner.

7.6 **Signs**.

(a) No sign of any kind shall be displayed to the public view on or from any Unit or on any portion of the Resort without the approval of the Design Review Committee except as follows:

(i) one sign of customary and reasonable dimensions advertising a Unit for sale, lease, rent or exchange, displayed from the subject Unit;

(ii) such signs as may be used by Declarant or its assignees in connection with the Resort and sale of Units;

(iii) such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law;

(iv) signs posting applicable speed limits and restricted parking areas;

(v) such other signs as may be permitted or approved by the Board of Directors; and

(vi) those signs that are expressly authorized by, or reasonably incidental to performance of, the rights and privileges of the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreement, so long as the signage is consistent with the Design Guidelines for the Resort (but only insofar as those Guidelines pertain to graphics and other aesthetic presentations so as to maintain a uniform appearance of signs in the Resort.

(b) Without limiting the generality of subparagraph (a), above, posting and maintenance of speed limit signs shall be the responsibility of the Master Association.

7.7 **Rubbish and Trash**.

(a) No part of the Master Common Areas or any Unit shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets or Master Common Areas. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets, the Master Common Areas, or Units within three (3) days following the date on which notice is mailed to such Owner by the Master Association, the Master Association is authorized to have such materials removed and charge the expense of such removal to the Owner. Without limiting the generality of the foregoing, no Owner shall allow any builder, contractor, or subcontractor to wash any cement truck or cement mixer or to dump or deposit any asphalt, concrete or other construction materials or debris which are not part of the Improvements to a Unit upon any part of the Property. An Owner shall be directly responsible for any violation of this Master Declaration or damage to any of the Property by or caused by the Owner's builder(s), contractor(s), or subcontractor(s). The "Deposit" referred to in Article 8 hereof may be retained by the Design Review Committee in accordance with Section 8.2 for any such violation or damage. Nothing contained herein or in Article 8 shall limit the amount of damages for which an Owner may be liable. The foregoing to the contrary notwithstanding, an Owner or the Owner's contractor may, during the period of construction as specified herein, place and maintain upon a Unit no more than one (1) dumpster and one (1) portable toilet facility.

(b) All trash, garbage and other waste materials shall be kept in sanitary containers enclosed and screened from public view and protected from disturbance in such places and manners as may be approved by the Design Review Committee for the Village. Owners shall not, and shall ensure that their Guests do not, litter in the Resort. No burning of trash, garbage or waste materials shall be permitted within the Resort. Each Project Association shall be responsible for refuse collection service to all non-residential facilities within the Project on the same basis and the Master Association shall be responsible for all refuse collection facilities located outside of Project Common Areas.

7.8 **Antennas and Satellite Disks**. Exterior antennas and satellite receiver and transmission disks shall not be permitted to be placed upon any Unit except as approved by the Design Review Committee, except for small dishes attached to a roof not exceeding twenty-four (24) inches in diameter. Any other term or condition hereof to the contrary notwithstanding, no commercial, ham radio, citizens band or radio antenna or other similar electronic receiving or sending device shall be permitted that interferes with the peace and quiet enjoyment of any neighboring Owner's Unit or home entertainment facilities or equipment.

7.9 **Tree Removal**. No Owner or contractor or agent of any Owner or contractor shall remove any of the existing trees from any portion of the Property (other than trees which the Design Review Committee has allowed to be removed in connection with the approval of an Owner's plans and specifications). In the event that an Owner, or contractor or agent of any Owner or contractor shall remove any tree without first obtaining the written consent of the Design Review Committee, the Master Association shall be entitled to require the Owner to replace any and all trees removed with the same species, age, and height of tree or trees as the tree or trees removed, which remedy shall be in addition to all other rights and remedies of the Master Association as set forth in this Master Declaration.

7.10 **Governmental Regulations**. All activities on any Unit shall comply with Applicable Laws. When a particular activity is governed by both this Master Declaration and Applicable Law, the more restrictive requirement shall be applicable.

7.11 **Fire Protection**. All occupants of any Unit shall strictly comply with all Applicable Laws pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by the Resort Rules and Applicable Laws.

7.12 **Environmental Concerns**. All site plans submitted to the Design Review Committee pursuant to Section 8.1 of this Master Declaration shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the Unit, including cuts and fills.

7.13 **Grades, Slopes and Drainage**. Each Owner of a Unit shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over such Unit or the Master Common Areas without the express written permission of the Design Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels. All Persons erecting or constructing Improvements on any Unit shall comply with all Applicable Laws. Construction of berms, channels or other flood control facilities on any Unit is the sole responsibility of the Owner of the Unit and shall be done in accordance with the flood control plans approved by the appropriate Governmental Authority. Such construction shall commence at the time the Unit is graded or otherwise altered from its natural state.

7.14 **Prohibition on Mining Uses**. Mining Uses on the Property are strictly prohibited.

7.15 **Project Restrictions**. Each Owner of a Unit, and such Owner's Guests, shall also comply with any additional use restrictions contained in any Project Declaration applicable to such Unit.

7.16 **Resort Rules**. The Board of Directors from time to time may, at a meeting of the Board of Directors, adopt, modify or revoke such Resort Rules governing the conduct of persons and the operation and use of the Master Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Prior to any action under this Section 7.16 becoming effective, the Board shall, (a) at least fifteen (15) days before meeting to consider such action, deliver notice to all Owners that the Board is considering a change to the Resort Rules, (b) provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors takes such action, and (c) within fifteen (15) days following such meeting, deliver a copy of any such Resort Rule to the Owners or, to the extent permitted by Applicable Law, an

explanation thereof on the Master Association's website, if any, and send a copy thereof to the Class "B" Member. Notwithstanding the foregoing, the Board of Directors may adopt, modify, or revoke the Resort Rules without first giving notice to the Owners as specified in the preceding sentence if there is an imminent risk of harm to Project Common Areas, Master Common Areas and Facilities, an Owner, a Guest, or the occupant of a Unit. A copy of the Resort Rules, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Master Association promptly to each Owner or posted on the Master Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within the sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least 51% of the total Class "A" votes in the Master Association vote to disapprove such modification of the Resort Rules in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Resort Rules as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. No action under this Section 7.16 shall have the effect of modifying, repealing or expanding the Design Guidelines other than the initial Resort Rules. In the event of a conflict between the Resort Rules and the Design Guidelines, the Design Guidelines shall control. To the fullest extent permitted by Applicable Law, the procedure required in this Section 7.16 shall not apply to the enactment and enforcement of administrative rules and regulations governing the use of any Area of Common Responsibility unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules include hours of operation, speed limits, and methods of reserving use of Master Common Areas and Facilities by particular people at particular times, etc.

7.17 **Deviations**. Deviations from the standards set forth in this Master Declaration may be allowed only upon written approval by the Design Review Committee for good cause shown.

7.18 **Exemption of Declarant; Application to Additional Property**. During the Administrative Control Period, Declarant may exempt Declarant from the Resort Rules and the rulemaking procedure set forth in Section 7.16. The provisions of Sections 7.1 through 7.17 shall not apply to any Additional Property if the Annexation Declaration annexing such Additional Property so specifies. The Annexation Declaration annexing such Additional Property to this Master Declaration may establish restrictions governing the use and conduct of such Units that are more or less restrictive than the restrictions contained in this Master Declaration.

7.19 **Applicability of Use Restrictions**. Except as otherwise provided herein, the use restrictions set forth in this Article 7 shall apply to all of the Property and the Owners thereof. In the event that the Master Declaration or a Project Declaration applicable to any Project in the Resort seeks or purports to regulate the same conduct, action or activity as are subject to this Article 7, the Declaration with the most restrictive rule, consistent with Applicable Law, shall prevail. To the extent that a Project Declaration imposes property use restrictions that are in addition to those set forth herein, the restrictions of the Project Declaration shall also apply to the Units within such Project, unless specifically exempted therefrom.

7.20 **Promotion of the Community**.

(a) Declarant has reserved certain rights, as set forth in this Master Declaration, to promote the Resort as a four-season, destination resort community. Promotion of the Resort shall include, among other things, the right of Declarant and the Master Association to promote Special Events designed to provide certain business, professional, cultural, entertainment or recreational opportunities,

among other opportunities, within the Resort to create the lively, energetic community envisioned by this Master Declaration. Accordingly, nothing in this Master Declaration shall be construed as limiting the authority of Declarant or the Master Association to promote the Resort as a four-season, destination resort community.

(b) The Master Association shall negotiate in good faith with the Mountain Operator to enter into agreements pertaining to (i) the Mountain Operator's and the Master Association's joint promotional advertising of Resort as a destination resort area, and (ii) security services for the Resort.

7.21 **Other Sports and Recreation Activities**. The Resort is a year-round destination resort. Accordingly, Owners of Units should anticipate that the Mountainside Ski Property, the Resort Support Facilities and the roads and plaza areas within the Resort will be operated and used on a year-round basis in order to present events and recreational opportunities that are appropriate and common at mountain resorts during particular seasons of the year, such as skiing, snowboarding, golf, hiking, mountain biking, Special Events, and concerts. Those events and activities can create or include lights, noise (associated with the event or activity, itself, or the operation of equipment), odors, and other effects that should be considered in the decision of an Owner to acquire a Unit in the Resort.

7.22 **Compliance With Laws**. Nothing shall be done or kept within the Resort that is in violation of any Applicable Law.

7.23 **Compliance With Insurance Requirements**. Except as may be approved in writing by the Master Association, nothing shall be done or kept within the Resort which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Master Association pursuant to this Master Declaration.

7.24 **Common Interest Ownership and Approval of Project Declarations**.

(a) Prior to the recording in the Wasatch County Records of an instrument subjecting any portion of the Property to a common interest development regime, all Persons, other than the Declarant or a co-Declarant, who are owners of such property shall submit to the Master Association for its review and approval, copies of the proposed Declaration of Covenants, Conditions and Restrictions for the Project, and the Articles of Incorporation and Bylaws of the Project Association. Within thirty (30) days after the submittal of such documents to the Master Association, the Master Association shall approve or disapprove the documents by written notice to such Persons. If such documents are disapproved by the Master Association, the Master Association shall set forth the reasons for such disapproval. If notice of approval or disapproval is not given by the Master Association on or before such thirty (30) day period, such documents shall be deemed to be approved.

(b) The covenants, conditions and restrictions set forth in subparagraph (a), above, shall not apply to the Declarant's or any co-Declarant's development of any Phase of the Property, including, but not limited to, approval of the development of any Residential Units as a Vacation Club, Time Share Project, or Condominium Project.

7.25 **Wells, Water and Sewage**. No water wells shall be permitted on any portion of the Property, without the prior written approval of the Master Association and of Declarant, which will retain all rights to water appurtenant to the Property. All buildings, structures and improvements designed for residential, commercial or lodging purposes shall be connected to such water and sewer services as the Master Association may require.

7.26 **Declarant's Exemption**. Nothing contained in this Master Declaration or any other Governing Document shall be construed to prevent or limit:

(a) Declarant's exercise or enjoyment of any of Declarant rights pursuant to Article 14; or

(b) the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs necessary or convenient to the Resort, construction, marketing and sale of property within the Resort.

7.27 **Storage of Personal Property on Balconies**. Except as permitted by the Resort Rules, personal property shall not be placed on balconies, or other such similar locations within an Owner's Unit, in such manner as to be visible from any street or the Master Common Areas.

ARTICLE 8

ARCHITECTURE AND LANDSCAPING

8.1 **General**. No structure or thing shall be placed, erected, or installed upon any Property located in the Resort and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements, or planting or removal of landscaping) shall take place within the Resort, except in compliance with this Article 8 and the Design Guidelines. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of such Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar improvements visible from outside the structure shall be subject to approval. All structures constructed on any portion of the Resort shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. This Article 8 shall not apply to the activities of Declarant, Declarant's Affiliate, or the Master Association during the Administrative Control Period.

8.2 **Architectural Review**.

(a) Architectural Review by Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any Unit, acknowledges that, as the developer of the Resort and as an owner of portions of the Resort, Declarant has a substantial interest in ensuring that the Improvements within the Resort enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article 8 shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article 8 shall continue so long as Declarant owns any portion of the Property or any real property adjacent to the Resort, unless earlier terminated in a written instrument executed and Recorded by Declarant. Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article 8 to (i) a design review committee appointed by the Board (the "**Design Review Committee**"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Owners. Any such delegation shall be in writing specifying the scope of responsibilities delegated. Any such

delegation shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article 8, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to it, and any reference therein to the "Design Review Committee" shall be deemed to refer to Declarant as to any matter that has not been so delegated to the Design Review Committee.

(b) Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article 8, the Master Association, acting through the Design Review Committee, shall assume jurisdiction over architectural matters. The Design Review Committee, when appointed, shall consist of at least three, but not more than seven, individuals who shall serve and may be removed and replaced in the Board's discretion. The members of the Design Review Committee need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Design Review Committee or Declarant's rights under this Article 8 terminate, Declarant shall have sole jurisdiction over architectural matters.

(c) Fees; Assistance; Deposit. For purposes of this Article 8, the individual(s) appointed by Declarant or on the Design Review Committee having jurisdiction in a particular matter pursuant to Section 8.1(a) shall be referred to as the "**Reviewer**." The Reviewer may employ architects, engineers, or other Persons as deemed necessary to perform the review. Subject to Applicable Law, the Reviewer may establish and charge reasonable fees for review of applications, which fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may also include the compensation of Reviewers and other professionals in the Master Association's annual operating budget. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines. The Reviewer may condition approval on the Owner depositing cash (the "**Deposit**") in the an amount to be determined by Declarant (or the Design Review Committee, as applicable), a portion of which shall constitute a non-refundable fee, for the estimated costs of professionals, e.g. architects and engineers, to review the designs and plans submitted by the Owner; and the remainder of the Deposit for the purpose of insuring that the Owner (1) fulfills its responsibility to keep such Owner's Unit in a condition so as to prevent the rubbish and debris which accumulates during the construction and/or landscaping process from blowing or collecting on neighboring Units and streets, (2) reasonably cleans up its Unit at or near the completion of the construction and/or landscaping process, and (3) complies in all respects with the terms and conditions of this Master Declaration and any conditions of approval. Following completion of such construction in accordance with the foregoing obligations, the balance of the Deposit shall be promptly returned to the Owner. The Deposit may be required at the time of application for approval, prior to the commencement of construction by an Owner, or at any time during the construction period. If the Owner fails in any of these responsibilities, following any notice and cure period required by Applicable Law and in accordance with the procedures set forth in the Governing Documents, the Deposit may be retained by the Master Association as a fine upon such Owner. Additionally, if any such failure is not remedied by the Owner within fourteen (14) days after written notice thereof, the Master Association may remedy such condition itself and in connection therewith, it may have reasonable access to the Unit and shall charge the Owner for the cost of the remedy in which event the provisions of Section 11.8 shall be applicable. Upon the completion of the construction, and the landscaping of the Unit in a satisfactory manner, the remaining balance of the Deposit, if any, shall be returned to the Unit Owner by the Master Association. The Design Review Committee may change the amount of the Deposit at any time or from time-to-time in order to take into account increasing costs and inflation. In all cases in which the Reviewer's consent is required by this Master Declaration or any Project Declaration, the provisions of this Article shall

apply, subject to the provisions of Section 8.9. Nothing contained herein shall prevent Declarant from completing excavation, grading and construction of Improvements to any portion of the Property, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable in the course of development of the Resort so long as any Unit owned by Declarant remains unsold.

8.3 **Guidelines and Procedures**.

(a) Design Guidelines. Declarant shall prepare the initial Design Guidelines, which will contain general provisions applicable to all of the Resort, Community-Wide Standards, as well as specific provisions which vary from Project-to-Project and by land clarification. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application. The Board shall have the authority to amend the Design Guidelines at a meeting of the Board and in accordance with the procedure set forth in this Section 8.3. At least fifteen (15) days before meeting to consider an amendment to the Design Guidelines, the Board shall deliver notice to all Owners that the Board is considering a change to the Design Guidelines. The Board shall provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors enacts such change to the Design Guidelines. Within fifteen (15) days following such meeting, the Board shall deliver a copy of any amendment to the Design Guidelines to the Owners, and send a copy thereof to the Class "B" Member. A copy of the Design Guidelines, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Master Association promptly to each Owner or posted on the Master Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within a sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least 51% of the total Class "A" votes in the Master Association vote to disapprove such modification of the Design Guidelines in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Design Guidelines as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The Reviewer shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Resort. In Declarant's discretion, such Design Guidelines may be Recorded from time to time, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of the Resort until an application for approval has been submitted to and approved by the Reviewer. If the applicable application has previously been reviewed by an architectural review committee for a specific Project, then the applicant shall include with its application a copy of the approval received from such architectural review committee specifically setting forth those requirements of the Design Guidelines reviewed and approved by such architectural review committee. Upon receiving such application and prior approval, the Reviewer shall take such steps as are reasonably necessary to expedite any additional review required and shall limit any additional review to

only those exterior elements of the applicable activity necessary to confirm that the applicable requirements of the Design Guidelines have been appropriately addressed and approved. All applications shall include plans and specifications showing site layout, structural design, exterior elevations and building heights on each elevation, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein. The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. Until expiration of Declarant's rights under this Article 8, the Design Review Committee shall notify Declarant in writing within three business days after the Design Review Committee has approved any application within the scope of matters delegated to the Design Review Committee by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Design Review Committee. The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the Design Review Committee subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the ten (10)-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

(c) Approvals and Time Limits. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 8.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the mail carrier. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. If construction does not commence (defined as footings and foundations poured or otherwise installed) on a Project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Master Association, Declarant or any aggrieved Owner. The Design Review Committee may, by resolution, exempt certain activities from the application and approval requirements of this Article 8, provided such activities are undertaken in strict compliance with the requirements of such resolution.

8.4 **No Waiver of Future Approvals**. Each Owner acknowledges that the Persons reviewing applications under this Article 8 will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features

until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

8.5 **Variances**. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to the express prohibitions of this Master Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section 8.5, the inability to obtain approval of any Governmental Authority, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

8.6 **Limitation of Liability**. The standards and procedures established by this Article 8 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Resort; they do not create any duty to any Person. Review and approval of any application pursuant to this Article 8 is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, for ensuring that all structures are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Declarant, the Master Association, the Board, Reviewers, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Resort; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit or Improvement. In all matters, the Board, the Design Review Committee, Reviewers, Declarant and the members of each shall be defended and indemnified by the Master Association as provided in Section 9.6.

8.7 **Certificate of Compliance**. Any Owner may request that the Design Review Committee issue a certificate of architectural compliance certifying that there are no known violations of this Article 8 or the Design Guidelines. The Design Review Committee shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Master Association from taking enforcement action with respect to any condition as to which the Master Association had notice as of the date of such certificate.

8.8 **Archeological Finds**. In the event that any object, artifact, or structure of possible archeological or historical significance is unearthed or otherwise discovered during construction, landscaping, or other activity on a Unit, the Owner thereof shall immediately cease the activity so as not to further disturb the object or structure and shall notify the Master Association of the discovery. Until such time as the Master Association and all required Governmental Authorities have evaluated the find, provided for its removal and/or preservation, if necessary, and given the Owner notice that activities on the Unit or Improvement may continue, the construction, landscaping, or other activity shall not recommence. Any work stoppage required hereunder shall toll the time limit for completion of an approved project as specified in Section 8.3(c). Each Owner agrees to notify all Persons performing any construction, landscaping, excavation, or other work on such Owner's Unit or Improvement of the obligations hereunder.

8.9 **Exemption of Declarant**. Notwithstanding the foregoing statement of the scope of the Reviewer's or Design Review Committee's jurisdiction, Improvements and construction projects undertaken by Declarant, Declarant's Affiliates, its agents and contractors shall not be subject to the review or approval by the Reviewer or the Design Review Committee.

ARTICLE 9

MASTER ASSOCIATION

Declarant shall organize a Master Association comprised of all of the Owners within the Resort, each of which shall be a Member of the Master Association. The Master Association is the entity responsible for management, maintenance, operation, and control of the Master Common Areas and Facilities. The Master Association, its successors and assigns, shall be organized under the name "Mountainside Master Association" or such other name as Declarant shall designate in an amendment to this Master Declaration, and shall have such property, powers and obligations as are set forth in this Master Declaration for the benefit of the Property and all Owners of property located therein. The Resort is not a cooperative within the meaning of the Utah Community Association Act, U.C.A. Section 57-8a-212.

9.1. **Organization**. Declarant shall, before the MWR Hotel Condominium Project is opened for business, organize the Master Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Master Association shall provide for its perpetual existence, but in the event the Master Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Master Association as if they had been made to constitute the governing documents of the unincorporated association.

9.2. **Membership**. Every Owner of one or more Units within the Property shall, immediately upon creation of the Master Association and thereafter during the entire period of such Owner's ownership of one or more Units within the Property, be a member of the Master Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

9.3. **Voting Rights**. Voting rights within the Master Association shall be allocated as follows:

(a) **Units**. Except as provided in the immediately following sentence, Units shall be allocated one vote per Unit. Projects with Units designated as a Hotel or Lodge shall have one vote for each dwelling unit or room included within such Hotel or Lodge. Commercial Units or Recreational Units shall have one vote for each such Unit without regard to the actual number of rooms or spaces included on or within such Unit.

(b) **Classes of Voting Membership**. The Master Association shall have two classes of voting membership:

Class A. Class "A" Members shall be all Owners of Units with the exception of the Declarant and shall be entitled to voting rights for each Unit owned computed in accordance with Section 9.3(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a) above. Solely for purposes of calculating the voting right of the Class "B" Member, the number of Units owned by the Declarant shall be deemed to include the additional unplatted Units shown on the then current Mountainside Master Plan for the Resort.

Class B. The Class "B" Member shall be Declarant. The Class "B" Member shall have the right to appoint the members of the Board during the Administrative Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member are specified in relevant sections of the Governing Documents. After termination of the Administrative Control Period, Declarant shall have the right to disapprove actions of the Board and committees as provided in the Bylaws. The Class "B" Member shall be entitled to five times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(i) two (2) years after the expiration of the Administrative Control Period; or

(ii) At such earlier time as Declarant in its discretion may elect in writing to terminate the Class "B" membership in a Recorded instrument.

(c) **Voting Groups**.

(i) Declarant may designate voting groups (each, a "**Voting Group**") consisting of the Owners in two or more Projects for the purpose of electing directors to the Board. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid some Projects being able to elect the entire Board due to the number of Units or dwelling units in such Projects. Following termination of the Administrative Control Period, the number of Voting Groups within the Resort shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the Bylaws.

(ii) Each Voting Group shall vote on a separate slate of candidates for election to the Board. Each Voting Group is entitled to elect the number of directors specified in the Bylaws. Each Voting Group shall be entitled to a vote that is equal to the number of Units within the Projects comprising such Voting Group computed as provided in Section 9.3(a).

(iii) Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Administrative Control Period by filing with the Master Association and Recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Administrative Control Period. After expiration of Declarant's right to expand the Resort pursuant to Article 2, the Board shall have the right to Record or amend such Supplemental Declaration upon the vote of a majority of the total number of directors and approval of Members representing a majority of the total Class "A" votes in the Master Association. Neither Recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Master Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph.

(iv) Until such time as Voting Groups are established, all of the Resort shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Resort which are not assigned to a specific Voting Group shall constitute a single Voting Group.

9.4. **General Powers and Obligations**. The Master Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Master Association by this Master Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Master Association pursuant to this Master Declaration or otherwise promoting the general benefit of the Owners within the Resort.

The powers and obligations of the Master Association may from time to time be amended, repealed, enlarged or restricted by changes in this Master Declaration made in accordance with its provisions, accompanied by changes in the Articles of Incorporation or Bylaws of the Master Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

9.5. **Specific Powers and Duties**. The specific powers and duties of the Master Association shall include the following:

(a) Acceptance and Control of Master Association Property.

(i) The Master Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Master Association may enter into leases, licenses, or operating agreements for all or portions of the Master Common Areas and Facilities, for such consideration or no consideration as the Board deems appropriate, to permit use of all or such portions of the Master Common Areas and Facilities by community organizations and by others, whether non-profit or for profit, for the provision of goods or services for the general benefit or convenience of Owners and Guests of the Resort.

(ii) Declarant and its designees may convey to the Master Association, and the Master Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Master Association shall reconvey to Declarant any unimproved portions of the Master Common Areas Declarant originally conveyed to the Master Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(iii) The Master Association shall be responsible for management, operation, and control of the Master Common Areas and Facilities, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Master Association. The Board may adopt such reasonable rules regulating use of the Master Common Areas and Facilities as it deems appropriate.

(b) Maintenance and Services. The Master Association shall provide maintenance, utilities and services for the Property as provided in Article 10 and other provisions of this Master Declaration.

(c) Insurance. The Master Association shall obtain and maintain in force policies of insurance as it determines necessary or appropriate, or as otherwise provided in this Master Declaration, the Bylaws or Applicable Law.

(d) Rulemaking. The Master Association is hereby authorized to and shall have the power to adopt, amend and enforce Resort Rules applicable within the Resort with respect to any Master Common Areas and Facilities, and to implement the provisions of this Master Declaration, the Articles or the Bylaws, including, but not limited to, rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to regulate signs; to regulate use of any and all Master Common Areas and Facilities to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; to promote the general health, safety and welfare of Persons within the Resort; and to protect and preserve property, property values and property rights. All Resort Rules adopted by the Master Association shall be reasonable and shall be uniformly applied, except such Resort Rules may differentiate between categories of Projects, Owners, Lessees or Guests. Upon expiration of the Administrative Control Period, the Design Guidelines shall be considered part of the Resort Rules. In addition, no Resort Rule shall affect the rights of the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements.

(e) Assessments. The Master Association shall adopt budgets and impose and collect Assessments as provided in Article 11 of this Master Declaration.

(f) Charges for Use of Master Common Areas and Facilities. The Master Association may establish and modify charges for the use of any of the Master Common Areas and Facilities to assist the Master Association in offsetting the costs and expenses of the Master Association with respect to such Master Common Areas and Facilities, including depreciation, operation, maintenance, capital replacement and capital expenses. Such charges will include the cost of providing culinary and secondary water to the Master Common Areas and Facilities. All charges established under this Section 9.5(e) shall be reasonable and shall be uniformly applied, except such charges may differentiate between categories of Projects, Owners, Lessees, or Guests, and members of the general public to whom the Master Association may allow access to and use of certain Master Common Areas and Facilities and shall not exceed any limit imposed by Applicable Law. Notwithstanding the foregoing rights and powers, the Master Association shall not manage or operate its Master Common Areas and

Facilities in any manner that interferes, directly or indirectly, with the business operations and ski lift operations of the Mountain Operator and/or the Owners of Commercial Units.

(g) Charges for Services Provided by the Master Association. The Master Association may establish and modify charges for providing any service as required or permitted hereunder on a regular or irregular basis to an Owner, Lessee, or Guest to assist the Master Association in offsetting the costs and expenses of the Master Association, including depreciation, operation, maintenance, capital replacement and capital expenses. Without limiting the foregoing, the Master Association may also charge a fee for providing a written statement indicating the status of payments of Assessments, or Assessment payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of such Owner's Unit, provided such fee shall not (i) be required to be paid prior to closing or (ii) exceed any limit provided by Applicable Law. All charges established under this Section 9.5(g) shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Projects, Owners, Lessees, or Guests. Each Owner, Lessee and Guest shall be obligated to and shall pay any such charges for such services.

(h) Property Taxes and Assessments. To the extent not assessed to or paid directly by the Owners, the Master Association shall pay all real property taxes, special improvement and other assessments (ordinary and extraordinary), personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any Governmental Authority which shall be imposed, assessed or levied upon, or arise in connection with the Master Common Areas and Facilities or any services provided by the Master Association hereunder.

(i) Replacement or Repair. In the event of damage to or destruction insured against by the Master Association, the Master Association shall repair or replace the same from the insurance proceeds payable to it or to the trustee designated by the Board of Directors. If the insurance proceeds are insufficient to cover the costs of repair or replacement thereof, the Master Association may make a Special Assessment as provided in Section 11.5. The Master Association shall not be required to complete such repair or replacement in the event that (i) the Project sustaining damage or destruction requiring such repair or replacement is terminated, (ii) such repair or replacement would be illegal under a state statute or local ordinance governing health or safety, or (iii) Members representing at least 75% of the Class "A" Member votes in the Master Association vote not to complete such repair or replacement and each Owner of a dwelling on a Unit and the Exclusive Use Master Common Areas appurtenant to such Unit that will not be repaired or replaced votes not to complete such repair or replacement.

(j) Marketing. The Master Association may provide a suitable and continuing program to promote the Resort as a desirable, year-round, destination resort, including, but not limited to, advertising the Mountainside Ski Property, organizing and coordinating Special Events, advertising and placing articles in news media, establishing uniform standards for promotional programs and shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers, and buying space for the accommodation of Guests; provided, however, that all advertising and promotion of the Mountainside Ski Property shall be subject the approval of the Mountain Operator. The Master Association may undertake or fulfill the functions contemplated hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area year-round destination resort industry or by engaging the Mountain Operator to promote the Resort.

(k) Recreation. The Master Association may provide year-round recreational programs of suitable variety with such miscellaneous equipment as may be necessary. The recreational

programs may include, informing visitors of recreation available and coordinating their participation therein; conducting, financing, operating, managing and maintaining programs for children, including, but not limited to, daycare facilities and such miscellaneous equipment as may be appropriate for use in connection therewith; constructing, caring for, operating, managing, maintaining, improving, repairing and replacing within the Resort swimming pools, ice-skating rinks, skating ponds, clubhouses, trails (foot, nordic, hiking and bicycle) and related facilities; sauna and steam baths; tennis courts, game courts, game or sports courts; game and Special Events areas; fishing areas and facilities; bobsledding and snow shoeing facilities; outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith; and removing snow from and cleaning such facilities as necessary to permit their use and enjoyment; *provided, however*, that such activities shall not compete with activities undertaken or offered by the Mountain Operator on the Mountainside Ski Property or interfere with the rights of the Mountain Operator under the Mountain Operator Agreement.

(l) Parking and Traffic Control. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees that Declarant and/or the Master Association may implement a shared parking program involving one or more Units within the Resort and that utilization of certain parking facilities within the Resort may at various times be on a "fee to park" basis only. The Master Association may also provide control over vehicular access to the Resort which it deems necessary or desirable for the health, safety or welfare of Persons residing, visiting or doing business within the Resort. Such function may include constructing, operating, maintaining and staffing access road control gates (at such location(s) as the Board may from time to time determine to be appropriate); requiring identification for admission to the Resort; videotaping or otherwise recording and documenting all Persons and vehicles entering the Resort; screening and/or requiring registration of vehicles, Guests, and others entering the Resort; denying entry to the Resort to Persons other than Owners and Guests; restricting non-commercial vehicular traffic within the Resort, except for Owners, Lessees, Guests or visitors who have overnight accommodations within the Resort and who are authorized to park within the Resort; restricting commercial vehicular traffic within the Resort; and establishing "parking" and restricted "guest parking" and "no parking" areas within the Resort, as well as enforcing these parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle by those so empowered. The Master Association's exercise of its rights hereunder shall be consistent with and shall not burden the enjoyment or exercise of the rights provided to the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreements which shall have priority over any Resort Rules pertaining to parking or traffic control and signage.

(m) Other Functions. The Master Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Master Declaration, including providing the following services for some or all Owners: cooperative purchasing service; telephone services; high-speed internet and fiber services; warehousing and delivery, grocery store, gas stations, vehicle repair and towing services; central laundry; property management services; employee training; central communications operation which may include a central dispatch system; a data information center; central monitoring of fire safety; and property security.

(n) Enforcement. The Master Association shall perform such acts, whether or not expressly authorized by this Master Declaration, as may be reasonably necessary to enforce the provisions of this Master Declaration and the Resort Rules adopted by the Master Association. The Master Association may, but shall not be required to, enforce any covenants, restrictions or other provisions in a Project Declaration or other instruments applicable to a Project. Without limiting the foregoing, every Owner and Guest of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after such notice and a hearing in accordance

with the procedures set forth in the Resort Rules and as required by Applicable Law. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines as set forth in the Resort Rules which shall constitute a lien upon the violator's Unit. In the event that any Guest violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. The Board may impose an additional fine each time an Owner or Guest (i) commits a violation of the same provision of the Governing Documents within one (1) year after the day on which the Board assesses a fine for a violation of the same provision or (ii) allows a violation of the Governing Documents to continue for ten (10) days or longer after the day on which the Board assesses the fine;

(ii) suspending any Person's right to use any recreational facilities within the Master Common Areas and Facilities; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) suspending any services provided by the Master Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Master Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor or Guest of an Owner who fails to comply with the terms and provisions of Article 8 and the Design Guidelines from continuing or performing any further activities in the applicable Project; and

(vii) levying Individual Assessments to cover costs incurred by the Master Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform such Owner's maintenance responsibility, the Master Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Master Association against the Unit and the Owner as an Individual Assessment. If a Project Association fails to perform its maintenance responsibilities, the Master Association may perform such maintenance and assess the costs as an Individual Assessment against all Units within such Project. Except in an emergency situation, the Master Association shall provide the Owner or Project Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Master Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action and shall comply with all required procedures under Applicable Law. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Master Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Master Association's resources; or

(iv) that it is not in the Master Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Master Association to enforce such provision at a later time under other circumstances or preclude the Master Association from enforcing any other covenant, restriction, or rule. The Master Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit Governmental Authorities to enforce ordinances within the Resort for the benefit of the Master Association and its Members.

(o) Employment of Agents, Advisers and Contractors. The Master Association may employ the services of any Persons as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Master Association, employ professional counsel and obtain advice from such Persons such as landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Master Common Areas and Facilities and the Master Association.

(p) Borrow Money, Hold Title and Make Conveyances. The Master Association may borrow and repay moneys for the purpose of maintaining and improving the Master Common Areas and Facilities and encumber the Master Common Areas and Facilities as security for the repayment of

such borrowed money. The Master Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including easements across all or any portion of the Master Common Areas and Facilities, and shall accept any real or personal property, leasehold or other property interests within the Resort conveyed to the Master Association by Declarant.

(q) Transfer, Dedication and Encumbrance of Master Common Areas. Subject to the provisions of this Master Declaration requiring the consent of Declarant with respect to Master Common Areas and Facilities furnished by Declarant, the Master Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Master Common Areas and Facilities.

(r) Governmental Successor. Any Master Common Areas and Facilities and any service provided hereunder by the Master Association may be turned over to a Governmental Authority which is willing to accept and assume the same upon such terms and conditions as the Master Association shall deem to be appropriate, subject to the approval of Declarant.

(s) Create Classes of Service and Make Appropriate Charges. The Master Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Master Common Areas, without being required to render such services to those Owners who do not assent to such charges and to such other Resort Rules as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same. Without limiting the generality of the foregoing, the Master Association may provide, or provide for, services and facilities for Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Master Association's budget as a Common Expense and assess it as part of the Annual Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The Master Association, through a concierge service, may also provide services at the request and option of any Owner. The concierge services offered may include housekeeping, home watch, airport shuttle service, landscape maintenance, car care, grocery shopping and delivery, and other personal, home and delivery services. The Master Association shall charge use or service fees for any concierge services provided at the option of an Owner. Nothing in this Section shall be construed as a representation by Declarant or the Master Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

(t) Relationship with Other Properties. The Master Association may enter into contractual agreements or covenants to share costs with any neighboring property or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance for the Master Common Areas and Facilities.

(u) Implied Rights and Obligations. The Master Association shall have and may exercise any right or privilege given to it expressly in this Master Declaration or except to the extent limited by the terms and provisions of this Master Declaration, given to it by Applicable Law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Master Declaration, including the right to engage labor and acquire use of

or purchase property, equipment or facilities; employ personnel; obtain and pay for legal, accounting and other professional services; and to perform any function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable. Except as otherwise specifically provided in the Governing Documents, or by Applicable Law, all rights and powers of the Master Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Master Common Areas and Facilities, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Master Association. In exercising the rights and powers of the Master Association, making decisions on behalf of the Master Association, and conducting the Master Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

(v) Cooperation with Mountain Operator. The Master Association may grant to the Mountain Operator such rights in the Master Common Areas and Facilities as the Board of Directors deems appropriate in order to facilitate the Mountain Operator's use and operation of the Mountainside Ski Property, including the rights of access granted to the Mountain Operator as more fully set forth on any subdivision map and related documents and in the Mountain Operator Agreements and the Mountain Easement Agreements. The rights which may be granted hereunder may be subject to whatever conditions the Board of Directors deems necessary and/or appropriate, including, without limitation, appropriate indemnifications, and the Master Association shall expressly be subject to the obligations with respect to such easements, if any, as described on subdivision maps and in the Mountain Easement Agreements and such other rights of the Mountain Operator referred to above.

(w) Easements and Rights of Way. The Master Association shall have the power but not the duty to grant and convey to any Person easements, licenses or rights of way in, on, over or under the Master Common Areas and Facilities and fee title to Units or strips of land, for purposes consistent with the terms of this Master Declaration, including, without limitation, constructing installing, erecting, operating, maintaining or conducting thereon, therein and thereunder: (i) roads, streets, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devises for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains or retention basis and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (iv) any similar Improvements or uses not inconsistent with the use of such property pursuant to the Master Declaration; provided that no event shall any such easements, licenses or rights of way interfere with any Mountain Operations. The Master Association shall have the power to grant and execute easements, agreements, licenses, covenants, rights of way and maintenance agreements with any country club, spa, recreational facility, district or Project Association that the Master Association determines to be appropriate so long as the same does not materially interfere with the use and enjoyment of Master Common Areas and Facilities by the Master Association or the Owners or interfere in any way with the Mountain Operations.

(x) Powers of the Master Association Relating to Project Associations. The Master Association shall have the right to veto any action taken or contemplated to be taken by any Project Association with the Board reasonably determines to be adverse to the interest of the Master Association or its Members or inconsistent with the Community-Wide Standard. The Master Association shall also have the power to require specific action to be taken by any Project Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made

therefor. A Project Association shall take appropriate action required by the Master Association in a written notice within the reasonable time frame set by the Master Association in the notice. If the Project Association fails to timely comply, the Master Association shall have the right to effect such action on behalf of the Project Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

9.6. **Liability; Indemnification**. A member of the Board of Directors or an officer of the Master Association shall not be liable to any Owner, the Master Association or any Member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Master Association is made a party to any proceeding because the individual is or was a director or officer of the Master Association, the Master Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by Applicable Law. Subject to Utah law and to the fullest extent allowed by Applicable Law, the Master Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then existing Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section 9.6. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Master Association (except to the extent that such officers or directors may also be Members of the Master Association, and then only to extent of such liability in such Person's capacity as a Member). The Master Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Master Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

9.7. **Interim Board; Turnover Meeting**. Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Master Association until replaced by Declarant or until their successors take office at the turnover meeting described in this Section 9.7. Declarant shall call a meeting of the Master Association for the purpose of turning over administrative responsibility for the Property to the Master Association not later than one hundred twenty (120) days after the end of the Administrative Control Period. At the turnover meeting the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Master Declaration and the Bylaws of the Master Association. If Declarant fails to call the turnover meeting required by this Section 9.7, any Owner or mortgagee of a Unit may call the meeting by giving notice as provided in the Bylaws.

9.8. **Appointment of Directors**. Effective as of the turnover meeting described in Section 9.7, the Board of Directors of the Master Association will be composed of one director representing each of the Projects (or the Voting Groups, if any) within the Resort. The Board of Directors shall have an odd number of members and no less than three (3) members. In the event that there are fewer than three (3) Projects or Project Groups within the Resort and/or an even number of Projects or Voting Groups within the Resort, the members of the Board selected in accordance with the preceding sentence shall select such additional member(s) of the Board to meet the requirements of this Section 9.8, with such additional

member(s) selected from among Owners residing in the Resort. In the event a Project has a Project Association that is not otherwise included in a Voting Group, the director for such Project shall be appointed by the Board of Directors of the Project Association. If the Project does not have a Project Association and is not otherwise included in a Project Group, the director for such Project shall be designated by the Owner of the Unit within the Project if the Project has only one Unit, or elected by the Owners of Units within the Project if the Project is composed of more than one Unit. Terms of office of directors shall be as set forth in the Bylaws. If additional Voting Groups are created within the Resort, directors for such Voting Groups shall be added to the Board of Directors of the Master Association in the same manner.

9.9. **Declarant Voting Rights After Turnover**. After the turnover meeting described in Section 9.7, Declarant shall continue to have the voting rights described in Section 9.3(b).

9.10. **Contracts Entered into by Declarant or Prior to Turnover Meeting**. Notwithstanding any other provision of this Master Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by Declarant or the Board of Directors on behalf of the Master Association prior to the turnover meeting described in Section 9.7 above shall have a term of three (3) years or less. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Master Association or Board of Directors upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the turnover meeting described in Section 9.7. For avoidance of doubt, the MIDA Hotel Lease shall not be subject to this Section 9.10, and shall continue in full force and effect notwithstanding any turnover of the Master Association.

9.11. **Project Associations**. Nothing in this Master Declaration shall be construed as prohibiting the formation of Project Associations within the Resort, including, Condominium associations and neighborhood associations. Declarant or, by a majority vote, the Owners of Units within a Project may elect to establish a Project Association for such Project. The Board of Directors of the Master Association shall cooperate with the Project Associations in the performance of their duties and obligations under their respective Project Declarations, if any, and the Master Association shall cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Master Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Master Association for the particular Project or by an item in the Project Association's budget which shall be collected through Project Assessments and remitted to the Master Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Master Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Master Association may charge the Project Association a reasonable fee for the performance of such functions.

9.12. **Project Committees**. With respect to any Project within the Resort that does not have a Project Association, the Board of Directors of the Master Association shall appoint a Project Committee composed of three (3) to five (5) Owners of Units within such Project, which committee shall be responsible for recommending any Resort Rules pertaining to any Project Limited Common Area within such Project, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Project Limited Common Area, and for such other matters pertaining to the Project as the Board of Directors may elect to delegate to the Project Committee. Following the turnover meeting

described in Section 9.7, the Board of Directors of the Master Association shall provide for election of such Project Committee members by Owners of Units within such Project.

ARTICLE 10

MAINTENANCE, UTILITIES AND SERVICES

10.1. **Master Association Maintenance Duties and Responsibilities.**

(a) Maintenance by Master Association. The Master Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(i) All portions of and structures situated on the Master Common Areas;

(ii) Landscaping within the public rights-of-way within or abutting the Project;

(iii) Such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Master Declaration, any Annexation Declaration or Supplemental Declaration, a covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Master Association;

(iv) All ponds, streams and/or wetlands located within the Resort which serve as part of the storm water drainage system for the Resort, including improvements and equipment installed therein or used in connection therewith; and

(v) Any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Master Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Master Association and will remain part of the Area of Common Responsibility maintained by the Master Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Master Association.

The Master Association's responsibility to maintain the Master Common Areas and Facilities shall begin upon conveyance of such Master Common Areas and Facilities to the Master Association.

(b) Other Areas. The Master Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Master Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(c) Continuous Operation. The Master Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" Member votes in the Master Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

(d) Changes in Area of Common Responsibility. Except as provided in Section 10.1(c), the Master Common Areas shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibit A of this Master Declaration (as it may be amended from time to time).

(e) Costs. The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Master Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Master Declaration, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Project Limited Common Areas shall be a Project expense assessed to the Project(s) to which the Project Limited Common Areas are assigned, notwithstanding that the Master Association may be responsible for performing such maintenance hereunder. Said duties may include removal of snow from parking areas, roads, walks, bridges, drives, malls, stairs and other similar Master Common Areas and Facilities and Area of Common Responsibility as necessary for their customary use and enjoyment; maintenance and care of all open space or unimproved areas, and of plants, trees and shrubs in such open space or unimproved areas; maintenance of ski and multi-purpose trails in the open spaces and Master Common Areas within the Resort; maintenance of lighting provided for parking areas, roads, walks, drives, malls, stairs, and other similar common facilities. Said obligations may also include maintenance of roads, walks, bridges, drives and loading areas which are not within the Area of Common Responsibility but are necessary or desirable for access to the boundary of or full utilization of any Unit or any Improvements within the Resort.

(f) Exclusions from Maintenance Obligations. Notwithstanding the foregoing, the Master Association shall have no responsibility to provide the services referred to in this Section 10.1 with respect to (i) any Master Common Areas and Facilities that are accepted for maintenance by any Governmental Authority (unless the Governmental Authority fails to maintain the area to a standard acceptable to the Master Association, or elects to not further maintain the area); or (ii) any Project Common Area, Units or Improvements which are not Master Common Areas and Facilities and are not owned by the Master Association (but the Master Association shall have the right to enforce the maintenance thereof).

(g) Prohibition on Certain Activities Relating to Master Common Areas and Facilities. No Owner, Lessee or Project Association shall place or install any sign, fence or other Improvement or alter or remove the Master Common Areas and Facilities or Improvements on the Master Common Areas owned or maintained by the Master Association (including without limitation any Master Common Areas fence, gate or wall adjacent to a Unit) unless such placement, installation or alterations first approved in writing by the Board of Directors. No Owner, Lessee or Project Association shall affix any object or device to any Master Common Facility or Master Common Areas fence, gate or wall, pierce the surface or otherwise expose the interior portion of such fence, gate or wall to the elements or install landscaping, irrigation systems or other Improvements on the Owner's or Lessee's Unit in such proximity or manner so as to undermine or otherwise impair the structural integrity of any such fence, gate or wall, or impair the weather resistant finish thereon.

10.2. **Snow Removal**. To the extent not the obligation of Governmental Authorities with jurisdiction, the Master Association shall be responsible for the removal and disposition of snow from all private roads and parking areas maintained by the Master Association. The Master Association may contract with the Mountain Operator or any other Person for snow removal operations in the Resort. The Master Association hereby agrees to, indemnify, defend and hold harmless the Mountain Operator and each of the Mountain Operator's Affiliates and each of their respective shareholders, officers, directors, employees, agents, attorneys and representatives (each an "**Indemnified Party**"), from and against any

and all damages, awards, judgments, assessments, fines, sanctions, penalties, charges, costs, expenses, payments and other losses, however suffered or characterized, all interest thereon, all costs and expenses of investigating or defending any such claim, lawsuit or arbitration and any appeal therefrom, all actual attorneys, accountants and investment bankers and expert witness fees incurred in connection therewith, whether or not any such claim, lawsuit or arbitration is ultimately defeated (except as provided below) and amounts paid incident to any compromise or settlement of any such claim, lawsuit or arbitration (but any such compromise or settlement will be subject to the reasonable approval of the Master Association) (collectively "**Losses**"), which may be incurred or suffered by any such Indemnified Party and which may arise out of or result from any claim from any Governmental Authority that the removal or dumping of snow in the manner described above is not permitted by Applicable Law, or any claim by any Guest or other Person that the Mountain Operator's removal and/or dumping of snow constitutes an actionable nuisance or is otherwise illegal, but no such indemnification, defense or hold harmless obligation will apply to the extent that the actions or omissions of the Mountain Operator are found by a court of competent jurisdiction to have constituted gross negligence, or to have been in violation of the terms of any permit of any Governmental Authority.

10.3. **Storm Drainage Maintenance**. The Master Association shall maintain the storm drainage facilities located within the public easement areas adjacent to roads in the Resort, including structural storm water quality enhancement facilities, unless such maintenance is provided by a Governmental Authority or has been delegated to a Project Association.

10.4. **Maintenance of Detention/Water Quality Facilities**. The Master Association shall maintain any detention/water quality facilities initially constructed by Declarant, unless such maintenance is provided by a Governmental Authority or has been delegated to a Project Association.

10.5. **Maintenance of Landscaping**. The Master Association shall be responsible for the maintenance of landscaping and irrigation in the Master Common Areas unless such maintenance is provided by a Governmental Authority or has been delegated to a Project Association. In no event shall landscaping, monuments, or similar installations be permitted, installed or maintained that adversely affect, impede or increase the cost of snow plowing operations, or which adversely affect any easements or other rights of the Mountain Operator.

10.6. **Trail Maintenance**. All multi-purpose trails in the Master Common Areas of the Resort, shall be maintained by the Master Association unless such maintenance is provided by a Governmental Authority or has been delegated to a Project Association. The Mountain Operator shall be entitled to post such signs along trails as may be appropriate to identify Mountainside Ski Property or warn of risks if the trails lead to or traverse Mountainside Ski Property.

10.7. **Voluntary Cleanup Program.** Upon receipt of a Certificate of Completion from the Utah Division of Environmental Response and Remediation for the completion of the Voluntary Cleanup Program on the Property, Declarant or Declarant's Affiliates shall either (1) continue on its own to perform any on-going environmental monitoring, testing, or evaluation and the submission of any reports to the applicable Governmental Authority as required as part of the Certificate of Completion ("**Ongoing Monitoring**"), or (2) delegate, in whole or in part, the responsibility for any such Ongoing Monitoring to the Master Association. If Declarant or Declarant's Affiliates delegate responsibility for any such Ongoing Monitoring to the Master Association, the Master Association shall indemnify Declarant or Declarant's Affiliates for any Losses that may be incurred by Declarant or Declarant's Affiliates for any failure by the Master Association to perform such Ongoing Monitoring. Any costs incurred by the Master Association in connection with the Ongoing Monitoring shall be Common Expenses under this Master Declaration.

10.8. **Master Common Facilities on Property Owned By Declarant**. Unless otherwise agreed in writing, the Master Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Master Common Areas and Facilities consisting of only a portion of, or defined space within, a building or other Improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant a proportionate share of Declarant's costs and expenses relating to such building or Improvement as a whole, including, without limitation, maintenance, taxes and assessments, insurance and depreciation. The proportionate share of the Master Association's costs and expenses relating to such building or Improvement as a whole shall be determined by Declarant based on the actual amount of such costs and expenses relating to such building or Improvement as a whole multiplied by the ratio with a numerator which is the number of square feet of floor area of such defined space within the building or Improvement and a denominator which is the number of square feet of floor area of the entire building or Improvement.

10.9. **Owner's Responsibility**.

(a) Except as otherwise provided in this Master Declaration, applicable Project Declarations, or by written agreement with the Master Association, all maintenance of the Units and all structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in accordance with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility to otherwise assumed by or assigned to the Master Association or a Project Association pursuant to a Supplemental Declaration.

(b) Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Area of Common Responsibility or right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Area of Common Responsibility or right-of-way within ten (10) feet of the Unit boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 8. Each Owner of a Unit adjacent to any channel, wetland, or other body of water shall maintain such property to the water's edge. The Master Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association or the Project in which the Unit is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner and any applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Master Association may proceed. The expenses of such maintenance by the Master Association shall be reimbursed to the Master Association by the Owner, together with interest as provided in Section 12.5. Such charges shall be an Individual Assessment and lien on such Owner's Unit as provided in Section 11.8.

10.10. **Maintenance of Project Common Area**.

(a) Any Project Association shall maintain its Project Common Area and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

(b) Any Project Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Master Common Area or public right-of-way lying between the boundary of its Project Common Area and any wall, fence, or curb located on the Master Common Area or public right-of-way within ten (10) feet of its boundary; provided, there shall be no

right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 8.

(c) Upon resolution of the Board, Owners within each Project shall be responsible for paying, through Project Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Project. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Project and adjacent public roads, private streets within the Project, and ponds within the Project, regardless of ownership and regardless of the fact that such maintenance may be performed by the Master Association; provided, however, all Projects which are similarly situated shall be treated the same.

10.11. **Responsibility for Repair and Replacement**.

(a) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

(b) By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Master Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Unit, less a reasonable deductible, unless either the Project Association (if any) for the Project in which the Unit is located or the Master Association carries such insurance (which they may, but are not obligated to do hereunder). If the Master Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Special Assessment against the benefitted Unit and the Owner.

(c) Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising such Owner's Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 8. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

(d) This Section shall apply to any Project Association responsible for common property within the Project in the same manner as if the Project Association were an Owner and the common property were a Unit. Additional Recorded covenants applicable to any Project may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Project and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

10.12. **Master Association Recovery of Costs of Certain Repairs and Maintenance**.

(a) Master Association Maintenance Caused by Failures or Negligence. If the need for maintenance or repair which would otherwise be the Master Association's responsibility hereunder is caused by the failure of an Owner or Project Association to perform its obligations under this Master Declaration, or through the willful or negligent acts of an Owner, or its Guests, or by the negligent acts of a Project Association, its agents and contractors, and the resulting costs and damage is not covered or paid for by insurance policies or any liability insurance maintained by the Master Association, the responsible Owner, or a Project Association, the cost of such maintenance or repairs shall be subject to recovery by the Master Association through the imposition of an Individual Assessment against the offending Owner in accordance with Section 11.8, or from a Project Association in an action at law, as applicable.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Unit for which such Owner is responsible, the Master Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Master Association may exercise its rights under Section 12.2, to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 12.2.

10.13. **Limitation of Liability**. Declarant, the Master Association, and each and every employee or agent of either of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from their performance of any of the services set forth in this Article.

10.14. **Safety and Security**. **EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE RESORT. THE MASTER ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE RESORT DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR SUCH PERSON AND SUCH PERSON'S PROPERTY. NEITHER THE MASTER ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE RESORT, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE RESORT, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING ITS GUESTS AND ALL OCCUPANTS OF ITS UNIT THAT THE MASTER ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE RESORT ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.**

ARTICLE 11

ASSESSMENTS

11.1. **Purpose of Assessments**. The Assessments levied by the Master Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Resort and for the improvement, operation and maintenance of the Master Common Areas and Facilities.

11.2. **Types of Assessments**. The Master Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Project Limited Common Area Assessments and Individual Assessments, all as more particularly described below.

11.3. **Apportionment of Assessments**. Any Unit owned by Declarant, Declarant's Affiliates, or MIDA shall not be subject to Assessments until such time as the Unit is occupied for a residential use or a commercial use, as applicable, subject to accrual of reserves as described in Section 11.11; provided that when the MIDA Property is developed with a Condominium Hotel Project only the Condominium Units within the Condominium Hotel Project, and not the underlying land comprising the MIDA Property, shall be subject to Assessments. All other Units shall pay a pro rata share of the Annual Assessments, Special Assessments, Emergency Assessments and Project Limited Common Area Assessments commencing upon the date such Units are made subject to this Master Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to assessment.

11.4. **Annual Assessments**. The Board of Directors of the Master Association shall from time to time and at least annually prepare an operating budget for the Master Association, taking into account the current costs of maintenance and services and future needs of the Master Association, any previous overassessment and any common profits of the Master Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by Applicable Law, but not less than the reserves required by Section 11.11, and such reserve or contingency funds shall be a separate line item in the budget. Such line item for the reserve or contingency funds shall be based on the reserve analysis described in Section 11.11 hereof or shall be the amount set forth for such funds, if any, in the Governing Documents, if such amount is greater. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall then be apportioned among the Units as provided in Section 11.3. The Board shall present its prepared budget to the Members at a meeting of the Master Association, and such budget shall be effective if it is not disapproved within forty-five (45) days of the date of such meeting by at least 51% of the total Class "A" votes in the Master Association in a vote held in a special meeting called for the purpose of holding such a vote. Notwithstanding the foregoing, during the Administrative Control Period, the Members shall not have the ability to disapprove the budget. Except as set forth in this Section, the method of adoption of the budget and the manner of billing and collection of Assessments shall be as further provided in the Bylaws.

11.5. **Special Assessments**. In addition to the Annual Assessments authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unbudgeted repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Master Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class "B" Member, if any. Special Assessments shall be apportioned as provided in Section 11.3 above and may be payable in

lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

11.6. **Emergency Assessments**. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Master Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Master Association shall promptly determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Master Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class "B" Member, if any. Emergency Assessments shall be apportioned as set forth in Section 11.3 and payable as determined by the Board of Directors.

11.7. **Project Limited Common Area Assessments**. Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Project Limited Common Area ("**Project Limited Common Area Assessments**") shall be assessed exclusively to the Units having the right to use such Project Limited Common Area.

11.8. **Individual Assessments**. Any Common Expense or any part of a Common Expense benefitting fewer than all of the Units may be assessed exclusively against the Units benefitted (an "**Individual Assessment**"). Individual Assessments shall also include default assessments levied against any Unit to reimburse the Master Association for costs incurred in bringing such Unit or its Owner into compliance with the provisions of this Master Declaration or the Resort Rules and for fines or other charges imposed pursuant to this Master Declaration for violation thereof, including non-payment of any Community Reinvestment Fee. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due thirty (30) days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

11.9. **Annexation of Additional Property**. When Additional Property is annexed to the Resort, the Units included therein shall become subject to Assessments from the date an Annexation Declaration for such Additional Property is Recorded except as otherwise expressly provided herein. Units owned by Declarant or Declarant's Affiliates shall not be subject to Assessments until occupied for residential or commercial use, as applicable. All other Units shall pay such Assessments in the amount then being paid by other Units based upon the number of Assessment Units applicable to the Unit in question. The Board of Directors of the Master Association, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Master Common Areas and Facilities and recompute Annual Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Master Declaration apparently to the contrary, an Annexation Declaration annexing Additional Property may provide that such Additional Property does not have the right to use any particular Master Common Areas and Facilities, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Master Common Areas and Facilities.

11.10. **Operations Fund**. The Master Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.11, separate and apart from its other funds, in an account maintained in the name of the Master Association to be known as the "**Operations Fund.**" The Master Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and

enjoyment of the Master Common Areas and Facilities and of the Units situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 10.

(b) Payment of the cost of insurance as described in the Bylaws of the Master Association.

(c) Payment of taxes assessed against the Master Common Areas and Facilities and any Improvements thereon.

(d) Payment of the cost of other services which the Master Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.11. **Reserve Fund**.

(a) The Master Association shall establish a reserve fund for replacement of those Improvements to be maintained by the Master Association, all or a part of which will normally require functional replacement in more than three (3) and less than thirty (30) years ("**Reserve Fund**"), in compliance with the requirements of Applicable Law. The Reserve Fund shall be funded by Assessments against the Units assessed for maintenance of the items for which the Reserve Fund is being established ("**Reserve Fund Assessment**"). The Assessments under this Section begin accruing against each Unit from the date the Unit is sold by Declarant to a Person who is not a Builder or one of Declarant's Affiliates. Declarant shall not be obligated to contribute to the Reserve Fund at the time of the sale of each Unit by Declarant to a Person who is not a Builder or one of Declarant's Affiliates.

(b) The amount assessed to each Unit shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Master Association and shall be adjusted in accordance with the provisions of this Section 11.11 or otherwise at regular intervals to recognize changes in current replacement costs over time.

(c) Except during the Administrative Control Period, during which the following provisions shall not apply, the Master Association shall: (i) no less frequently than every six (6) years conduct a reserve analysis to determine the need for the Reserve Fund to accumulate reserve funds and the appropriate amount of the Reserve Fund, (ii) no less frequently than every three (3) years review and, if necessary, update a previously conducted reserve analysis, (iii) provide the Members a summary of the most recent reserve analysis or update annually and (iv) provide a complete copy of the most recent reserve analysis or update to any Member who requests the same.

(d) The Board may conduct the reserve analysis provided for in Section 11.11(c) itself or engage a reliable person or organization to conduct the reserve analysis, provided the reserve analysis shall, at a minimum, include the following: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds, (ii) a statement of the probably remaining useful life, as of the date of such reserve analysis, of each component identified in the reserve analysis, (iii) an estimate of the cost to repair, replace or restore each component identified in the reserve analysis, (iv) an estimate of the total annual contribution to the Reserve Fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life, and (v) a reserve funding plan that recommends how the Master Association may fund such annual contribution.

(e) The Reserve Fund shall be used only for replacement of Master Common Areas or Master Common Facilities as determined by the Board of Directors and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 9.7, however, if at least 51% of the total Class "A" votes in the Master Association approve, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Project Limited Common Area Assessments.

(f) The budget line item for future Assessments for the Reserve Fund may be disapproved within forty-five (45) days of the day on which the budget is adopted by at least 51% of the total Class "A" votes in the Master Association in a vote held in a special meeting called for the purpose of holding such a vote. In the event such budget line item is disapproved, the Reserve Fund shall be funded pursuant to the line item for Reserve Fund Assessments from a previous budget that was not disapproved, if any. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Master Association. Assessments paid into the Reserve Fund are the property of the Master Association and are not refundable Owners of Units.

(g) Nothing in this Section 11.11 shall prohibit prudent investment of the Reserve Fund.

11.12. **Creation of Lien and Personal Obligation of Assessments**. Declarant, for each Unit owned by it within the Property, does hereby covenant, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Master Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Master Declaration or the Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 12.6, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made; provided, however, that no lien shall attach to any Unit owned by Declarant or Declarant's Affiliates until such time as such Unit is subject to Assessment pursuant to the requirements of Section 11.3. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12 below.

11.13. **Partial Exemption for Uncompleted Master Common Facilities**. All Owners, including Declarant and Declarant's Affiliates, shall be exempt from the payment of that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Master Common Facilities that have not completed at the time Assessments commence. The Assessment exemption provided by this Section 11.13 shall be in effect only until the earliest of the following events: (A) a notice of completion of the Master Common Facilities has been recorded; or (B) the Master Common Facilities have been placed in use.

11.14. **Exempt Property**. The following Property subject to this Master Declaration shall be exempt from the Assessments herein: (i) those portions of the Property dedicated in fee and accepted by a Governmental Authority; (ii) all Master Common Areas and such portions of the property owned by Declarant as are included in the Area of Common Responsibility; (iii) all Project Common Areas owned in fee by such Project Association or as lessees-in-common by the Owners of Residential Units within the Project; (iv) any Property owned by the Mountain Operator (or to which the Mountain Operator otherwise has rights by easement or contracts) and used primarily in connection with the operation or maintenance of the Mountainside Ski Property, Mountain Operations and related improvements; (v) any property

owned, held or used in its entirety by Declarant, Declarant's Affiliates, the Master Association, or any Project Association for maintenance, cat barns, or other non-revenue generating facilities; (vi) any Unit or other property that the Resort Foundation owns; and (vii) any property owned, held or used in its entirety by the Mountain Operator, the Master Association, or by any Governmental Authority, or for or in connection with the distribution of electricity, gas, water, sewer, snowmaking, telephone, television or other utility service, or for access to any property within or without the Resort, or for or in connection with the Mountainside Ski Property or Mountain Operations.

11.15. **Mortgage Protection from Liens**. Notwithstanding all other provisions hereof, no lien created under this Article 11, nor any breach of this Master Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Mortgagee under any Recorded Mortgage upon a Unit, made in good faith and for value; provided that (i) such Mortgage is Recorded prior to any notice of lien Recorded pursuant to this Master Declaration, and (ii) after such Mortgagee or some other Person obtains title to such Unit by judicial foreclosure or by means of the powers set forth in such Mortgage; provided that such Unit shall in all events remain subject to the Governing Documents and the payment of all installments of Assessments, fees and other obligations, accruing subsequent to the date such Mortgagee or other Person obtains title.

11.16. **Priority of Assessment Lien**. The lien of the Assessments and fees as provided for herein, including interest thereon and costs of collection (including attorneys' fees) shall be subordinate to the lien of any first Mortgage upon any Unit which was Recorded prior to Recordation of a notice of lien on such Unit. The sale or transfer (including any "deed in lieu" of foreclosure) of any Unit shall not affect the Assessment lien; however, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a notice of lien shall extinguish the lien of such Assessments and fees as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments and fees thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Unit obtains title through judicial or nonjudicial foreclosure of the first Mortgage, the Person who acquires title and such Person's successors and assigns shall not be liable for the share of the Common Expenses, Assessments or fees by the Master Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses, Assessments and fees shall be deemed to become Common Expenses collectible from all of the Units, including the Unit belonging to such Person and such Person's successors and assigns.

11.17. **Declarant Subsidy**. During the Administrative Control Period, Declarant may satisfy its obligation, if any, for Assessments on Units which it owns either by paying such Assessments in the same manner as any other Owner, notwithstanding the commencement date of Assessments set forth in Section 11.14, or by paying the difference between the amount of Assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Master Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year, which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Payment of any such subsidy in any year shall not obligate Declarant to continue such subsidy in future years unless otherwise provided in a written agreement between the Master Association and Declarant. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Administrative Control Period, Declarant shall pay any authorized Assessments on its unsold Units in the same manner as any other Owner.

11.18. **Capitalization of Master Association**. Upon acquisition of Record title to a Unit by the first Owner thereof other than Declarant, a Declarant's Affiliate, or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Master Association in an amount equal to one-sixth of the Annual Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Master Association at the closing for use in covering operating expenses and other expenses incurred by the Master Association pursuant to this Master Declaration and the Bylaws.

11.19. **Conveyance to Trustee**. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to High Country Title, with power of sale, the Units and all Improvements to such Units for the purpose of securing payment of Assessments under the terms of this Master Declaration.

11.20. **Community Reinvestment Fee**.

(a) In order to provide the Resort Foundation with the funding necessary to carry out the purposes for which it was formed, including the purposes set forth in Section 11.20(e), a Community Reinvestment Fee is hereby established in accordance with Utah Code § 57-1-46 applicable to any Transfer, as defined below. The Community Reinvestment Fee shall be payable from such transferring Owner to the Resort Foundation at the closing of each transfer of title to a Unit in the Resort to a Person who is not Declarant, Declarant's Affiliate, or a Builder and shall be secured by the Resort Foundation's lien as described in Section 11.20(f). Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Resort, is deemed to covenant and agree to pay the Community Reinvestment Fee. Each Owner shall notify the Resort Foundation of a pending title transfer to a Person who is not Declarant, Declarant's Affiliate, or a Builder at least seven (7) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as may be required by the Resort Foundation's Board.

(b) Upon the occurrence of any sale, transfer, or conveyance of any Unit after the Original Sale thereof as reflected in the office of the County Recorder, provided such sale, transfer, or conveyance is to a Person who is not Declarant or a Declarant's Affiliate (as applicable, a "**Transfer**"), the Person receiving title to the Unit (the "**Transferee**") shall pay to the Resort Foundation a reinvestment fee (the "**Community Reinvestment Fee**"), which is hereby automatically levied against the subject Unit. The Resort Foundation may set the Community Reinvestment Fee amount by rule. Unless the Board adopts a rule otherwise, the Community Reinvestment Fee shall be equal to (i) 0.50% of the gross sales price thereof, less actual customary expenses of sale, if the Property included in the Resort at the time of such Transfer consists of less than 500 acres or 500 units, or (ii) 1.25% of the gross sales price thereof, less actual customary expenses of sale, if the Property included in the Resort at the time of such Transfer is at least 500 acres or 500 units. In the event the gross sale price is not a cash price, the gross sales price shall be determined by the Resort Foundation calculating the equivalent thereof which would have been received by the transferor had the Transfer been an arms-length, third-party cash transaction. The Community Reinvestment Fee may be adjusted by the Resort Foundation from time to time provided that the Community Reinvestment Fee shall never exceed the maximum amount allowable under Applicable Law. The amount of any Community Reinvestment Fee, as it may be adjusted from time to time by the Resort Foundation, shall be evidenced by a Recorded "Notice of Community Reinvestment Fee Covenant" that meets the requirements of UCA Section 57-1-46, as amended from time to time.

(c) Notwithstanding anything to the contrary set forth in Section 11.20(a), the Resort Foundation shall not levy or collect a Community Reinvestment Fee for any of the following Transfers:

primarily liable and the grantee shall be secondarily liable as between themselves, but they shall be jointly and severally liable to the Resort Foundation for the delinquent Community Reinvestment Fee and other charges. If the grantee pays the delinquent amount due the Resort Foundation, he or she shall be subrogated to the Resort Foundation's cause of action and shall be entitled to recover the amount of the Community Reinvestment Fee, together with any costs, including attorneys' fees, incurred because of the grantor's failure to pay as required hereunder. Sale or transfer of any Unit shall not affect the Resort Foundation's lien or relieve such Unit from the lien for any subsequent fees. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any Community Reinvestment Fees due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for Community Reinvestment Fees on such Unit due prior to such acquisition of title.

ARTICLE 12

ENFORCEMENT

12.1. **Use of Master Common Areas**. In the event any Owner shall violate any provision of this Master Declaration, the Bylaws of the Master Association or the Resort Rules, then the Master Association, acting through its Board of Directors, shall notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend such Owner's voting rights in the Master Association and right to use the Master Common Areas and Facilities for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any minor infraction of the Resort Rules (as reasonably determined by the Board of Directors), (b) impose reasonable fines upon the Owner in accordance with the procedures set forth in the Bylaws and required by Applicable Law, and in the amount set forth in the Resort Rules, which fines shall be paid into the Operations Fund, or (c) bring suit or action against such Owner to enforce this Master Declaration. Nothing in this Section 12.1, however, shall give the Master Association the right to deprive any Owner of ingress and egress to such Owner's Unit.

12.2. **Nonqualifying Improvements and Violation of General Protective Covenants**. In the event any Owner constructs or permits to be constructed on such Owner's Unit an Improvement contrary to the provisions of this Master Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Master Declaration to remain uncorrected or unabated on such Owner's Unit, then the Master Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Master Declaration and shall require the Owner to remedy or abate the same in order to bring such Owner's Unit, the Improvements thereon and such Owner's use thereof, into conformance with this Master Declaration. If the Owner is unable, unwilling or refuses to comply with the Master Association's specific directives for remedy or abatement, or the Owner and the Master Association cannot agree to a mutually acceptable solution within the framework and intent of this Master Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Master Association acting through its Board of Directors, shall have the right to do any or all of the following:

(a) Impose reasonable fines against such Owner in accordance with the procedures set forth in the Bylaws and required by Applicable Law, and in the amount set forth in the Resort Rules, which fines shall constitute Individual Assessments for purposes of this Master Declaration;

(b) Enter the offending Unit and remove the cause of such violation, or alter, repair or change the item which is in violation of this Master Declaration in such a manner as to make it conform thereto, in which case the Master Association may assess such Owner for the entire cost of the

work done, plus a fifteen percent (15%) administrative fee, which amount shall be payable to the Operations Fund, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; or

(c) Bring suit or action against the Owner on behalf of the Master Association and other Owners to enforce this Master Declaration.

12.3. **Default in Payment of Assessments; Enforcement of Lien**. If an Assessment or other charge levied under this Master Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Master Association may exercise any or all of the following remedies:

(a) The Master Association may, in compliance with the notice and other requirements under Applicable Law, if any, suspend such Owner's voting rights and right to use the Master Common Areas and Facilities, including utilities and recreational amenities, until such amounts, plus other charges under this Master Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Master Association deprive any Owner of ingress and egress to such Owner's Unit.

(b) The Master Association shall have a lien against each Unit for any Assessment levied against the Unit and any fines, interest or other fees and charges imposed under this Master Declaration or the Bylaws against the Owner of the Unit. The lien shall be foreclosed in accordance with the provisions of Applicable Law regarding the foreclosure of Mortgages, including the right of sale under provisions of Applicable Law relating to deeds of trust. The Master Association, through its duly authorized agents, may bid on the Unit at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Unit.

(c) The Master Association may bring an action to recover a money judgment against any defaulting Owner for unpaid Assessments, fines and charges under this Master Declaration without foreclosing or waiving the lien described in Section 12.3(b). Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Master Association may require a Person, other than the Owner, who has regular, exclusive occupancy under a lease to pay the Master Association all future lease payments due to the Owner, to the fullest extent allowed by Applicable Law.

(e) The Master Association shall have any other remedy available to it by Applicable Law or in equity.

12.4. **Ownership of Unit by Master Association After Foreclosure**. While a Unit is owned by the Master Association following foreclosure, (a) no Assessment shall be levied on such foreclosed Unit, and (b) each other Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that should have been charged such foreclosed Unit had it not been acquired by the Master Association.

12.5. **Notification of Eligible Mortgage Holder**. The Board of Directors shall notify any Eligible Mortgage Holder of any Unit of any default in performance of this Master Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner.

12.6. **Interest, Expenses and Attorneys' Fees**. Any amount not paid to the Master Association when due in accordance with this Master Declaration shall bear interest from the due date

until paid at a rate three (3) percentage points per annum above the prevailing New York prime rate for Bank of America at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Utah. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors of the Master Association not to exceed fifteen percent (15%) of such Assessment or any limitation imposed by Applicable Law. In the event the Master Association shall file a notice of lien, the lien amount shall also include the Recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors. In the event the Master Association shall bring any suit or action to enforce this Master Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Master Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.7. **Nonexclusiveness and Accumulation of Remedies**. An election by the Master Association to pursue any remedy provided for violation of this Master Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Master Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Master Association. In addition, any aggrieved Owner may bring an action against another Owner or the Master Association to recover damages or to enjoin, abate or remedy any violation of this Master Declaration by appropriate legal proceedings.

ARTICLE 13

PROTECTION OF MORTGAGEES

The provisions of this Article 13 apply to any Mortgage encumbering a Unit within the Resort:

13.1. **Mortgages Permitted**. Any Owner may encumber such Owner's Unit with a Mortgage.

13.2. **Priority of Mortgages**. Any lien created or claimed under the provisions of this Master Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of any Unit, as the case may be, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such first Mortgage unless the first Mortgagee expressly subordinates its interest, in writing, to such lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Unit. All covenants, conditions and restrictions of this Master Declaration, however, shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit.

13.3. **Curing Defaults**. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Master Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board of Directors made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

13.4. **Resale**. It is intended that any loan to facilitate the resale of any Unit after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

13.5. **Relationship With Liens Created Under This Master Declaration.**

(a) The liens created under this Master Declaration shall be subordinate to the lien of any first Mortgage made in good faith and for value which was recorded prior to the date any such Assessment or fee becomes due.

(b) If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a first Mortgage and (i) the foreclosure of any lien allowed by this Master Declaration shall not operate to affect or impair the lien of such first Mortgage, and (ii) the judicial foreclosure of the lien of said first Mortgage or the sale under a power of sale included in such first Mortgage (such events being hereinafter referred to as "events of foreclosure") shall not operate to affect or impair the lien hereof, except that any Persons who obtain an interest through any of the events of foreclosure shall take title free of the lien hereof for all such charges as shall have accrued up to the time of any of the events of foreclosure, but subject to the lien hereof for all of said charges that shall accrue subsequent to the events of foreclosure.

(c) Any first Mortgagee who obtains title to a Unit by reason of any of the events of foreclosure, or any purchaser at a private or judicial foreclosure sale of a first Mortgage, shall take title to such Unit free of any lien or claim for unpaid Assessments or fees against such Unit which accrue prior to the time such first Mortgagee or purchaser comes into possession of the Unit.

(d) Nothing in this Section shall be construed to release any Owner from such Owner's obligation to pay for any Assessment or fee levied pursuant to this Master Declaration.

13.6. **Special Provisions for Eligible Mortgage Holders**. As used in this Section 13.6, an "**Eligible Mortgage Holder**" means a Mortgagee under a first priority Mortgage who provides a written notice of such Mortgage to the Master Association (such request to state the name and address of the Mortgagee and the Unit to which its Mortgage relates). The following provisions are imposed for the benefit of Eligible Mortgage Holders:

(a) Any restoration or repair of the Master Common Areas and Facilities, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(b) Any election to terminate this Master Declaration after substantial destruction or a substantial taking in condemnation of the Property must be approved by Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(c) No reallocation of interests in the Master Common Areas and Facilities resulting from a partial condemnation or partial destruction of the Master Common Areas and Facilities may be effected without the prior approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of such remaining Units subject to Mortgages by Eligible Mortgage Holders.

(d) When professional management has been previously required, any decision to establish self-management by the Master Association shall require the prior consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated and the approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(e) Except as otherwise provided in Sections 13.6(a) through 13.6(d):

(i) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated and the approval of Eligible Mortgage Holders which have at least sixty-seven percent (67%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders, shall be required to terminate this Master Declaration.

(ii) The consent of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated, the consent of sixty-seven percent (67%) of the Owners of Commercial Units, and the approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders, shall be required to add or amend any material provisions of this Master Declaration, the Articles or the Bylaws, which establish, provide for, govern or regulate any of the following:

(A) Voting rights;

(B) Increases in Annual Assessments (excluding any increase due to an Approved Annual Assessment Adjustment) that raise the most recent Annual Assessment amount by more than twenty percent (20%);

(C) Reserves for maintenance, repair and replacement of the Master Common Areas and Facilities;

(D) Insurance or fidelity insurance requirements;

(E) Rights to use of the Master Common Areas and Facilities;

(F) Responsibility for maintenance and repair of the Property;

(G) The interests in the Master Common Areas and Facilities;

(H) The boundaries of any Unit; or

(I) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders of first Mortgages on Units.

Under no circumstances can any Mountain Operator Agreement be terminated or affected by any exercise of the powers set forth in this Section 13.6.

13.7. **Changes Requiring Additional Approval**. Unless otherwise prohibited by Applicable Law, except upon the prior written approval of at least two-thirds of all first Eligible Mortgage Holders

(based on one vote for each first Mortgage owned), neither the Master Association nor the Members shall be entitled to do any of the following:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer Master Common Areas and Facilities either directly or indirectly, except in connection with the annexation of Additional Property or as otherwise authorized by this Master Declaration; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such Master Common Areas and Facilities shall not be deemed a transfer within the meaning of this subsection.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner and such Owner's Unit.

(c) Fail to maintain fire and extended coverage insurance on insurable Master Association property including the Master Common Areas and Facilities on a full current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, or use casualty insurance proceeds for losses to any part of the Master Common Areas and Facilities for other than the repair, replacement and reconstruction of such improvements except as provided by statute in case of substantial destruction.

(d) If professional management is required, effectuate a decision to terminate professional management and assume self-management of the Resort.

(e) Add or amend the material provisions of the Master Declaration, the Articles or Bylaws which are set forth in Section 13.6(e)(ii).

13.8. **Right to Inspect Statements, Attend Meetings**.

(a) All Owners, Lessees, and all holders, insurers or guarantors of any first Mortgage shall be entitled to inspect current copies of the Master Declaration, the Bylaws, the Resort Rules and any other rules concerning the Property and the books, records and financial statements of the Master Association. Such inspection shall be upon request, during normal business hours or under other reasonable circumstances.

(b) All holders, insurers or guarantors of a first Mortgage shall be entitled, upon written request, to receive a copy of the annual financial statement for the immediately preceding fiscal year of the Master Association, subject to a reasonable charge as determined by the Board of Directors to the party so requesting. Such financial statement shall be furnished within a reasonable time following such request.

(c) Any first Mortgagee shall, upon written request to the Master Association, be entitled, subject to a reasonable charge as determined by the Board of Directors, to receive written notice of all annual and special meetings of the Members, and first Mortgagees shall further be entitled to designate a representative to attend all such meetings; provided, however, nothing contained in this Section shall give a first Mortgagee the right to call a meeting of the Board of Directors or of the Members for any purpose or to vote at any such meeting.

13.9. **Conflicts**. In the event of any conflict between any of the provisions of this Article 13 and any of the other provisions of this Master Declaration, the provisions of this Article shall control.

13.10. **Mortgagees' Right to Cure Defaults**. First Mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Master Common Areas and Facilities owned by the Master Association and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Master Common Areas and Facilities, and first Mortgagees making such payments shall be owed prompt reimbursement for the reasonable cost thereof from the Master Association.

13.11. **Distribution Right**. No provision of this Master Declaration, or the Articles or the Bylaws, or any Resort Rules established thereunder, shall be deemed to give an Owner, or any other party, priority over any rights of first Mortgagees of a Unit pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds of condemnation awards for losses to or a taking of Units.

ARTICLE 14

DECLARANT PRIVILEGES AND EXEMPTIONS

14.1 **Interest of Declarant; Material Actions Requiring Declarant Approval**. The Initial Mountainside Property subject to this Master Declaration, constitutes a portion of the Resort, which Declarant intends to be developed. Each Owner of a Unit that is part of the Resort acknowledges by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions, reservations and easements provided for in this Master Declaration and any amendments thereto and any Supplemental Declarations recorded pursuant to this Master Declaration. Notwithstanding any other provisions of the Governing Documents, but subject to the Mountain Operator Agreements and the Mountain Easement Agreements, until such time as Declarant is no longer entitled to unilaterally annex Property to the Resort, the following actions, before being undertaken by the Members or the Master Association, shall first be approved in writing by Declarant and, where specified, by the Mountain Operator:

(a) **Specified Approvals.** Any amendment or action requiring the approval of Declarant (and, as specified herein, by the Mountain Operator) pursuant to this Master Declaration, and any amendment or action requiring the approval of first Mortgagees pursuant to this Master Declaration (the Master Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Master Declaration, provided that Declarant shall be furnished such notices and other documents without making written request);

(b) **Special Assessments.** The levy of a Special Assessment for the construction of new facilities by the Master Association not originally included in the Master Common Areas and Facilities;

(c) **Service/Maintenance Reductions.** Any significant reduction of Master Common Areas and Facilities maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Master Association or the Master Common Areas and Facilities at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services; or

(d) **Design Guidelines.** Any supplement or amendment to the Design Guidelines, including Design Guidelines applicable to a particular Phase within the Resort.

14.2 **Exemptions from Restrictions Otherwise Applicable**.

(a) Declarant's Reserved Rights. Nothing in the Governing Documents shall limit and no Owner, Project Association or the Master Association shall do anything to interfere with: (i) the right of Declarant, either directly or through its agents and representatives, to subdivide, re-subdivide, sell, resell, lease or rent any portion of the Resort, or the right of Declarant as to any Phase that it is developing to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Resort owned by Declarant or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Resort so long as any Unit or any portion of the Resort is owned by Declarant; or (ii) the Mountain Operator under the Mountain Operator Agreements.

(b) Marketing and Sales Activities. Declarant, Declarant's Affiliates, and Builders authorized by Declarant may construct and maintain upon portions of the Master Common Areas such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

(c) Right to Develop. Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Master Common Areas for the purpose of making, constructing, and installing such improvements to the Master Common Areas as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Resort acknowledges that the Resort is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Project in which such Person holds an interest, or (b) changes in the Mountainside Master Plan as it relates to property outside the Project in which such Person holds an interest.

(d) Right to Approve Additional Covenants. As long as Declarant owns property subject to this Master Declaration, no Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Resort without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant. HOWEVER, no portion of the subject Project shall be developed unless there has first been Recorded against the same, unless waived in writing by Declarant, covenants, conditions and restrictions approved in advance in writing by Declarant which shall, among such other things as Declarant may reasonably require, establish architectural and development guidelines for such Project, and which shall not be subject to amendment or modification with Declarant's prior written consent.

(e) Right to Approve Changes in Community Standards. No amendment to or modification of any Resort Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Master Declaration.

(f) Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights and obligations set forth in this Master Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Master Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time, occasional or limited basis, any right reserved to Declarant in this Master Declaration where Declarant does not intend to

transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

(g) Development Activities. The rights reserved to Declarant pursuant to this Section 14.2 shall include, but shall not be limited to, carrying on by Declarant and its agents and representatives of such grading work as may be approved by applicable Governmental Authorities having jurisdiction, and erecting, constructing and maintaining on or within the Master Common Areas and the Resort such structures (including, without limitation, temporary sales and construction offices or trailers, sales offices or model homes), signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise.

(h) View Impairment. Each Owner, by accepting a deed to a Unit, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

14.3 **Rights to Use Master Common Areas and Facilities in Connection With Development and Sales Activities**. Declarant may enter upon the Master Common Areas and Facilities, for the benefit of Declarant, for the benefit of portions of the Property and Annexable Property (whether or not then annexed), or any combination of them, to complete the development, improvement and sale of Units, and the construction of any landscaping or other Improvement to be installed on the Master Common Areas and Facilities, as well as the right of nonexclusive use of the Master Common Areas and Facilities, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Units within the Resort and Declarant's unilateral right to annex portions of the Annexable Property has expired. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein, or the rights of the Mountain Operator pursuant to this Master Declaration, the Mountain Operator Agreement and/or the Mountain Easement Agreements, and all direct costs and expenses associated with Declarant sales and promotional activities shall be borne solely by the sponsor of the activity or event. The rights reserved to Declarant by this Section 14.3 shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant and Declarant's Affiliates.

14.4 **Amendment of Plans**. Declarant may, from time to time as it deems advisable, amend its plans for the Resort, combine or split Units, and apply for changes in any or all of the Entitlement Documents, changes in zoning, use and use permits, for any property within the Resort. Notwithstanding the anticipated development of the Initial Mountainside Property, nothing in this Master Declaration shall be construed or interpreted to commit Declarant to the development of any portion of the Property, or to the annexation of all or any part of the Annexable Property to this Master Declaration or the Property, whether or not it is so developed.

14.5 **Right to Enforce Design Review and Approval Requirements**. Until expiration of the Administrative Control Period, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Master Association if: (a) the Design Review Committee has issued a notice of noncompliance; and (b) the Master Association, after having a reasonable opportunity to do so, is unable or unwilling to initiate enforcement action. In the event that such action is initiated by Declarant and it is later determined by an arbitrator or a court of competent jurisdiction that the Owner of the subject Unit was, in fact, proceeding in violation of the approved plans and specifications, any reasonable costs incurred by Declarant in initiating enforcement action, including reasonable attorney's

fees, which are not the subject of an award of fees and/or costs against the offending Owner may be charged to the Master Association and shall be a Common Expense.

14.6 **Grants and Relocations of Easements**. Declarant shall have the right at any time prior to acquisition of title by a grantee to establish additional easements, reservations and rights-of-way to itself, its successors and assigns in any conveyance of the Property or any portion thereof Declarant or the organization for whose benefit easements, reservations and rights-of-way have been established shall have the right at any time to cut and remove any trees or branches or any other unauthorized object from such easements, reservations or rights-of-way. Any Master Common Areas comprising easements over real property the fee title to which has not been made subject to this Master Declaration ("**Interim Easement Area**") shall be subject to relocation, modification or termination by Declarant in order to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to this Master Declaration and may include the reservation of easements of access, ingress and egress in favor the Master Association to permit access to Master Association facilities. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Unit or within the Resort or affect the rights of the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

14.7 **Termination of Any Responsibility of Declarant**. In the event Declarant conveys all of its rights, title and interest to any Person, in and to the Property, and the acquiring Person is designated as a successor Declarant as to all the property conveyed, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such Person, shall be obligated to perform all such duties and obligations of Declarant. The provisions of this Section 14.7 shall not terminate any responsibility of Declarant for acts or omissions occurring prior to the conveyance to such Person. However, this shall not limit Declarant's right to enter into a contract or agreement dealing with such acts or omissions provided the contract or agreement is enforced by Declarant, if necessary.

14.8 **No Amendment or Repeal**. So long as Declarant owns any Unit within the Resort, the provisions of this Article 14 may not be amended or repealed without the prior written consent of Declarant. Neither the Master Association nor any Owner may take any action or adopt any rule or regulation that interferes with or diminishes any of Declarant's rights under this Article 14 without Declarant's prior written consent, or which interferes with or diminishes any rights of the Mountain Operator under the terms of the Mountain Easement Agreements and the Mountain Operator Agreements without the Mountain Operator's prior written consent, which consent may be given or withheld in the sole and absolute discretion of Declarant and the Mountain Operator.

14.9 **Exclusive Rights to Use Name of Development**. No Person shall use the names "Mayflower" or "Mountainside Village and Resort" or any derivative of such names or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Projects within the Resort may use the names "Mayflower" or "Mountainside Village and Resort" in printed or promotional matter where such term is used solely to specify that such Project is located within the Resort, and the Master Association shall be entitled to use the words "Mayflower" or "Mountainside Village and Resort" in its name.

ARTICLE 15

ENVIRONMENTAL AREAS AND ISSUES

15.1. **Assignment of Responsibilities**. Within and adjacent to the Resort there may be various types of property such as wetlands, drainage areas, conservation areas, open spaces, historical

mining operations, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by Governmental Authorities. Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Master Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such Governmental Authorities. All such areas that are conveyed to the Master Association shall become a portion of the Master Common Areas, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, a foundation, or similar type entity with which the Master Association shall cooperate. Any of the properties and responsibilities within, adjacent to, or benefitting the Resort such as wetlands, drainage areas, conservation areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of the Resort Foundation. The Master Association shall cooperate with and perform the responsibilities delegated to it by the Resort Foundation.

15.2. **Surface Water Management System**.

(a) No Owner, by erection of any structure or otherwise, shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the ditches, canals, channels, ponds, lakes, retention areas, or other bodies of water or waterways reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefore, or plat or instrument of records, without the specific written permission of the Master Association and Declarant.

(b) An Owner or Project Association shall in no way deny or prevent ingress and egress by Declarant or the Master Association to and from such drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefore, are hereby specifically reserved and created in favor of Declarant, the Master Association, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established drainage ways without the prior written consent of the Master Association and Declarant.

(d) Water management for any Unit or Project shall be provided in accordance with the overall drainage system for the Resort. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Resort and meet with the approval of Declarant and applicable Governmental Authorities.

(e) Reservoirs and spillways in any Project, Unit are part of a functioning water management system and any use by an Owner or Project shall be on a non-interfering basis only. Additional on-site storm water treatment areas may be required and constructed in the future.

(f) The use of any wetland or water body within the boundary of a Project, Unit is managed by the Master Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) The use of pesticides in any water body or wetland is prohibited, excepting only any such use by the Master Association and Declarant.

(h) No wells may be drilled, dug, or installed within any Unit or Project except by Declarant or Declarant's Affiliates, or with Declarant's written consent.

15.3. **Conservation Areas**. Except as otherwise provided in writing by Declarant, any portions of the Master Common Areas owned by the Master Association or Declarant and designated as a conservation area shall be maintained and preserved by the Master Association in accordance with the rules and regulations of all applicable Governmental Authorities or the grantee of any applicable conservation easement. The Master Association shall not, and it shall not allow any Person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such Governmental Authorities or the grantee of any applicable conservation easement or as otherwise allowed by the documents creating such conservation area. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area, except as allowed by the documents creating such conservation area. Notwithstanding the foregoing, Declarant shall have the right to reserve from any such conservation area such uses as Declarant in its sole discretion shall determine in Declarant's best interest, including recreational uses relating to the Mountain Operations.

15.4. **Open Space and Buffers**. Any property conveyed or dedicated to the Master Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Master Association in a natural open condition except as may be otherwise provided in the document(s) creating such area. The Master Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space. Notwithstanding the foregoing, Declarant shall have the right to reserve from any such open areas such uses as Declarant in its sole discretion shall determine in Declarant's best interest, including recreational uses relating to the Mountain Operations.

15.5. **Effluent Disposal & Water Supply**. By the act of purchasing or occupying property within the Resort, all Owners understand and irrevocably consent to the possibility of irrigation of the Master Common Areas, other areas within the Resort, and areas adjacent to the Resort with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the appropriate Governmental Authority. Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Resort for any legal purpose, including the distribution and use of such water beyond the Resort. Such right shall include an easement over property for access, and for installation and maintenance of facilities and equipment to capture and transport ground water, surface water, and storm water runoff. The conveyance of any Unit to an Owner or to a Builder by Declarant does not include the right to develop or utilize the ground, surface, or storm water resources within such Unit. Declarant or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the properties and may require Owners and occupants of any Unit to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from such Owner's Unit. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within the Resort.

15.6. **Recycling Program**. The Board may, but shall not be obligated to, establish a recycling program for the Project. In such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Master Association's recycling program is set up to accommodate. The Master Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any costs associated with the implementation or operation of a

recycling program shall be Common Expenses and any income the Master Association receives as a result of such recycling efforts shall be applied to Common Expenses.

ARTICLE 16

MOUNTAINSIDE RESORT PROPERTY HAZARDS, RISKS AND LIABILITIES

16.1. **Resort Area Hazards and Risks**. The Mountainside Ski Property may be used as a public ski area and related improvements, facilities and uses as well as for other seasonal recreational activities such as hiking, trail, bicycling, and other sports activities (collectively, "**Resort Area Uses and Activities**"). By acceptance of a deed to a Unit, each Owner acknowledges and agrees that any such Resort Area Use and Activities will enhance the value of the Unit by providing pleasant surroundings and open space for the Projects and the Units located therein. Each Owner further acknowledges (a) that the use and operation of the Mountainside Ski Property for Resort Area Uses and Activities will involve certain risks to the Units located therein, including, but not limited to, damage to property and improvements and personal injury and death caused by errant skiers, snowboarders, trail bicyclists or other Resort Area users, avalanche control, snowmaking and removal equipment, water runoff, drainage, and land movement, that may enter into the Units located therein, and (b) that while the Units located therein have been designed to minimize these risks to the extent reasonably possible, it would be impossible to render the Units located therein free of all Resort Area Uses and Activity-related risks. Certain of the more common hazards associated with the operation of a year-round resort area are more particularly described, without limitation, in the sections below (collectively the "**Resort Area Hazards**").

16.2. **Errant Skiers, Snowboarders, Trail Bicyclists, and Other Resort Area Users**. Owners acknowledge the inherent risk of errant skiers, snowboarders, trail bicyclists, and other Resort Area users and assume and accept such risk. Owners acknowledge and accept the risk that skiers, snowboarders, trail bicyclists, and other Persons engaged in Resort Area Uses and Activities may errantly stray onto the Units located therein and each Owner agrees to release and waive any claims against Declarant, Declarant's Affiliates and the Master Association such Owner may have as a result of such errant activity.

16.3. **View Impairment/Privacy**. Owners have no guarantee that their view over and across the Mountainside Ski Property or Resort will be forever preserved without impairment or that the view from the Mountainside Ski Property or Resort will not be impaired. The Mountain Operator has no obligation to the Owners to prune trees or other landscaping, and the Mountain Operator may change, add to or reconfigure the Mountainside Ski Property and related facilities and improvements on the Mountainside Ski Property or Resort, including structural improvements, trees, landscaping, drainage patterns, trails, lifts, snowmaking and snow removal equipment and facilities and other improvements and facilities, without liability or obligation to any Owner.

16.4. **Pesticides and Fertilizers**. Pesticides, fertilizers and other chemicals may be utilized in connection with the operation of the Mountainside Ski Property and the maintenance of related landscaping, revegetation, and vegetation, and the Owners acknowledge, accept and assume the risks associated with the use of pesticides, fertilizers and other chemicals.

16.5. **Overspray and Water Runoff**. Owners may experience "overspray" from the Mountainside Ski Property snowmaking system from the Mountainside Ski Property, and such Owners acknowledge, accept and assume the risks associated with such "overspray," drainage and water runoff.

16.6. **Noise and Light: Special Events**. Owners may be exposed to lights, noises, Special Events or other activities resulting from the use, operation, construction, improvements, repair, replacement and maintenance of the Mountainside Ski Property and its improvements, land, and facilities, including snowmaking, avalanche control, and snow removal, and each Owner by accepting title to such Owner's Unit, acknowledges, accepts and assumes the risks associated with such uses.

16.7. **No Access**. Each Owner, by accepting a deed to such Owner's Unit, acknowledges that the Mountain Operator may not permit access to any portion of the Mountainside Ski Property directly from any Unit. Such access will only be permitted through such entry points as the Mountain Operator may from time to time specifically designate, which points, if any, may be closed or relocated from time to time in the sole discretion of the Mountain Operator. Accordingly, each Owner agrees not to access the Mountainside Ski Property directly from such Owner's Unit (unless otherwise expressly permitted by the Mountain Operator), and agrees not to permit any of such Owner's Guests, Lessees or any other Person to do so.

16.8. **Maintenance and Maintenance Equipment**. The Mountainside Ski Property and its related improvements and facilities may require daily maintenance, including grooming, snowmaking, avalanche control, mowing, and irrigation during early morning, evening and late night hours, including the use of tractors, snow ploughs, snowmaking equipment mowers, blowers, pumps, compressors, utility vehicles and over-the-snow vehicles. Owners will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risks associated with such maintenance activities.

16.9. **Waiver of Certain Assumed Risks (Resort Hazards). IN CONSIDERATION FOR THE ABOVE ACKNOWLEDGED ENHANCEMENT IN VALUE, AND WITH FULL AWARENESS OF THESE AND OTHER RISKS, BY ACCEPTING THE DEED TO A UNIT EACH OWNER FOR SUCH OWNER AND ITS GUESTS, INVITEES, LESSEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE "OWNER'S RELATED PARTIES") HEREBY (A) ACKNOWLEDGES, ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH RESORT AREA HAZARDS AND OF ANY DAMAGE TO PROPERTY OR TO THE VALUE OF PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY OR DEATH, OR. THE CREATION OR MAINTENANCE OF A TRESPASS OR NUISANCE, CAUSED BY OR ARISING IN CONNECTION WITH ANY OF THE RESORT AREA HAZARDS OR OTHER RISKS, HAZARDS AND DANGERS ASSOCIATED WITH THE OPERATION OF A RESORT AREA (COLLECTIVELY THE "ASSUMED RISKS"), AND (B) RELEASES, WAIVES, DISCHARGES, COVENANTS NOT TO SUE, INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS DECLARANT, DECLARANT'S AFFILIATES, THE MASTER ASSOCIATION, AND THE MOUNTAIN OPERATOR, AND EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, MEMBERS, AFFILIATES, EMPLOYEES, CONTRACTORS, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OWNER OR OWNER'S RELATED PARTIES FOR ANY DAMAGES, LOSSES, COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES), CLAIMS, DEMANDS, SUITS, JUDGMENTS, ORDINARY NEGLIGENCE, OR OTHER OBLIGATIONS ARISING OUT OF OR CONNECTED IN ANY WAY WITH ANY OF THE ASSUMED RISKS. THIS RELEASE IS INTENDED TO BE A COMPREHENSIVE RELEASE OF LIABILITY BUT IS NOT INTENDED TO ASSERT DEFENSES WHICH ARE PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, THIS SECTION 16.9 SHALL NOT LIMIT THE LIABILITY OF INDIVIDUAL SKIERS, SNOWBOARDERS, OR OTHER MOUNTAINSIDE SKI PROPERTY USERS USING THE MOUNTAINSIDE SKI PROPERTY, NOR SHALL IT LIMIT THE RIGHTS OF MIDA**

UNDER ANY ENTITLEMENT DOCUMENTS OR OTHER AGREEMENTS ENTERED INTO BETWEEN MIDA AND DECLARANT OR ANY OF DECLARANT'S AFFILIATES.

The acknowledgments, assumptions of risk and agreements contained in this Section 16.9 shall be deemed to run with the title to each Unit in the Property.

ARTICLE 17

PRIVATE AMENITIES AND OTHER RESORT ACTIVITIES

17.1. **General**. Neither membership in the Master Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

17.2. **Conveyance of Private Amenities.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Master Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record owner of the Private Amenity. The ownership, operation, existence, location or configuration of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more of Declarant's Affiliates, members, employees, or independent contractors, and/or (d) the decision of the owner or operator to abandon, redevelop (to any extent, which may include any entirely different type of use, such as dwelling units or commercial facilities), or change the location or configuration of, all or any part of any Private Amenity, subject to all required approvals of the Developer and/or the Master Association. Consent of the Master Association, any Project Association, any Project, or any Owner shall not be required to effectuate any change in ownership, operation of any Private Amenity, for or without consideration, and subject to or free of any mortgage, covenant, lien or other encumbrance.

17.3. **View Impairment**. Declarant, the Master Association, or the owner of any Private Amenity does not guarantee or represent that any view over and across the Private Amenity from Units adjacent thereto will be preserved without impairment. Owners of Private Amenities and/or ski runs and other ski-related improvements, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping thereto from time to time. In addition, the owner of any ski-related improvements may, in its sole and absolute discretion, change the location, configuration, size and elevation of the ski lifts, ski runs and other ski-related improvements from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

17.4. **Rights of Access and Parking**. There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Project reasonably necessary to travel between the entrances to the Resort and the Private Amenities and ski-related improvements and over those portions of the Resort (whether Master Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities and ski-related improvements. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities and ski-related improvements shall have the right to park their vehicles on the roadways located within the Resort at reasonable times before, during, and after Special Events and other similar functions held by or at the Private Amenities and ski-related improvements to the extent that the Private Amenities and ski-related improvements, as applicable, have insufficient parking to accommodate such vehicles but at all times subject to applicable Resort Rules.

17.5. **Architectural Control**. Declarant, the Master Association, any Project Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Resort which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least fifteen (15) days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. In the event the Private Amenity disapproves the proposal, the same shall be deemed disapproved by Declarant, the Master Association, any Project Association, and any committee. The failure of the Private Amenity to respond to the notice within the fifteen (15)-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section 17.5 shall also apply to any work on the Master Common Areas and Facilities or any common property or common elements of a Project Association, if any.

17.6. **Limitations on Amendments**. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article 17, and no amendment in derogation of any other provisions of this Master Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

17.7. **Cooperation**. It is Declarant's intention that the Master Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Resort and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Master Association shall have no power to promulgate use restrictions or rules other than those set forth in the Resort Rules affecting activities on or use of the Private Amenity without the prior written consent of Declarant and the Owners of the Private Amenity affected thereby.

17.8. **Assumption of Risk and Indemnification**. Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity, hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of any such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by users of such Private Amenities, (c) use of pesticides, herbicides, and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) use of effluent in the irrigation or fertilization, and (f) reduction in privacy caused by constant traffic on the Private Amenities or the removal or pruning of shrubbery or trees on the Mountainside Ski Property. Each such Owner agrees that neither Declarant, the Master Association, nor any of Declarant's affiliates or agents shall be liable to an Owner or any other person claiming any loss of damage,

including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Unit to any Private Amenity, including without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, or the Master Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Master Association against any and all claims by Owner's visitors, tenants, and others upon such Owner's Unit.

ARTICLE 18

DISPUTE RESOLUTION AND LIMITATIONS ON LITIGATION

18.1. **Agreement to Encourage Resolution of Disputes Without Litigation.**

(a) Declarant, the Master Association and their respective officers, directors, and committee members, all Persons subject to this Master Declaration, and any Person not otherwise subject to this Master Declaration who agrees to submit to this Article 18 (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Resort without litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 18.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to

i. the interpretation, application, or enforcement of the Governing Documents;

ii. the rights, obligations, and duties of any Bound Party under the Governing Documents; or

iii. the design or construction of improvements within the Resort, other than matters of aesthetic judgment under Article 8, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

(i) any suit by the Master Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Master Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association's ability to enforce the provisions of this Master Declaration relating to creation and maintenance of community standards;

(iii) any suit between Owners, which does not include Declarant or the Master Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article 18.

18.2. **Dispute Resolution Procedures**.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely;

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and the Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 18.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Master Association (if the Master Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Utah. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 18. In such event, the party taking action to enforce the Agreement or award shall upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in

equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

18.3. **Initiation of Litigation by Master Association**. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Master Association shall not initiate any judicial or administrative proceeding unless first approved by the majority vote of the Owners in Projects entitled to cast seventy-five percent (75%) of the total Class "A" votes in the Master Association, except that no such approval shall be required for actions or proceedings:

(a) initiated to enforce the provisions of this Master Declaration, including collection of assessments and foreclosure of liens;

(b) initiated to challenge property taxation or condemnation proceedings;

(c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) to defend claims filed against the Master Association or to assert counterclaims in proceedings instituted against it.

This Section 18.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings and Declarant during the Administrative Control Period.

18.4. **Non-Waiver**. The provisions of this Article 18 are intended to be applicable to any dispute arising out of this Master Declaration and shall not affect a Person's rights or remedies arising under any other agreement, including, but not limited to, the MIDA Hotel Lease, the Tax Sharing and Reimbursement Agreement, the Mountainside Master Development Agreement or any other agreement not arising out of this Master Declaration.

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1. **Amendment and Repeal**. Subject to Section 14.8 hereof and any limitation under Applicable Law, this Master Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed (a) prior to the expiration of the Administrative Control Period by the vote or written consent of Members representing seventy-five percent (75%) of the voting power in the Master Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Master Declaration. or (b) after the expiration of the Administrative Control Period, by the vote or consent of Members representing sixty seven percent (67%) of the voting power of the Master Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Master Declaration, in each case, computed in accordance with Sections 9.3. Any such amendment or repeal shall become effective only upon recordation in the Official Records of a certificate of the president or secretary of the Master Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Master Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent. If an Owner consents to any amendment to this Master Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become

effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Master Declaration.

19.2. **Amendments by Declarant**. The planning and land use entitlements for the Resort have not been fully completed and the layout of the Resort, its land classifications, and governing structure and procedures for the Resort are anticipated to change in the future. Notwithstanding the provisions of Section 19.1 above and any limitations under Applicable Law, until termination of the Class "B" Membership Declarant shall have the unilateral right to amend this Master Declaration or the Bylaws of the Master Association for any purpose. Such right to amend shall include, but not be limited to, the right of Declarant to amend this Master Declaration in order to comply with the requirements of any Applicable Law or requirement of MIDA, Wasatch County, the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or Units in a planned community. Any such amendment shall become effective only upon Recordation in the Official Records of a certificate of Declarant setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved by Declarant.

19.3. **Duration**. This Master Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all land included within the Property and the Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is first Recorded. Thereafter, this Master Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Land within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Master Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Members representing sixty-seven percent (67%) of the voting power in the Master Association computed in accordance with Section 9.3(a) and (b) (including for this purpose the unplatted Units contemplated by Section 9.3(a) and (b). Any such termination shall become effective only if (a) a certificate of the president or secretary of the Master Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official Records not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner of ingress and egress to such Owner's Unit unless such Owner and any Mortgagee of such Owner's Unit have consented in writing to such access denial.

19.4. **Joint Owners**. In any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Master Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Master Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

19.5. **Lessees and Other Invitees**. Lessees, Guests, contractors and other Persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Master Declaration restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such Persons in the same manner and to the same extent as if the failure had been committed by such Owner.

19.6. **Nonwaiver**. Failure by the Master Association or by any Owner to enforce any covenant or restriction contained in this Master Declaration shall in no event be deemed a waiver of the right to do so thereafter.

19.7. **Construction; Severability; Number; Captions**. This Master Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Master Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Master Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Master Declaration.

19.8. **Notices and Other Documents**. Any notice or other document permitted or required by this Master Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Master Association, 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098; if to an Owner, at the address given at the time of the Owner's purchase of a Unit, or at the Unit. The address of a party may be changed at any time by notice in writing delivered as provided herein.

[Signature page follows]

IN WITNESS WHEREOF, Declarant has executed this Master Declaration on the date set forth above.

BLX MAYFLOWER LLC,
a Delaware limited liability company

By _____
Kurt Krieg, Authorized Signatory

STATE OF _____)
:ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Kurt Krieg, as an Authorized Signatory of BLX Mayflower LLC, a Delaware limited liability company.

_____
Notary Public

The undersigned parties, as owners of certain portions of the Initial Mountainside Property, hereby acknowledge and consent to the execution and recordation of this Master Declaration.

BLX MWR HOTEL LLC

By: _____
Name: Kurt Krieg
Title: Authorized Signatory

BLX LAND LLC

By: _____
Name: Kurt Krieg
Title: Authorized Signatory

BLX PIOCHE LLC

By: _____
Name: Kurt Krieg
Title: Authorized Signatory

BLX MAYFLOWER LLC

By: _____
Name: Kurt Krieg
Title: Authorized Signatory

BLX LLC

By: _____
Name: Kurt Krieg
Title: Authorized Signatory

STATE OF _____)
ss
COUNTY OF _____)

On the ____ day of _____ in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Kurt Krieg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged himself to be an Authorized Signatory of each of BLX LLC, BLX MAYFLOWER LLC, BLX LLC, BLX LAND LLC, and BLX PIOCHE LLC, each a Delaware limited liability company, being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself as such officer.

Notary Public
(SEAL)

CONSENT AND SUBORDINATION

Subject to the conditions set forth hereinbelow, Centennial Bank ("**Centennial**"), as the Beneficiary under that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (the "**Deed of Trust**"), dated March 31, 2020, and recorded on March 31, 2020 as Entry No. 476275 in Book 1287 at Page 1248 of the Official Records of Wasatch County, State of Utah, and on March 31, 2020 as Entry No. 1129881 in Book 2562 at Page 1950 of the Official Records of Summit County, State of Utah, hereby consents to that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Mountainside Village and Resort dated as of August ____, 2020, and made by BLX MAYFLOWER LLC as Declarant (the "**Master Declaration**") and further subordinates all of its right, title, and interest in and to the real property encumbered by the Deed of Trust to the Master Declaration (collectively, the "**Consent**"). Centennial's execution and delivery of this Consent is expressly conditioned on the acknowledgement and agreement by any and all Persons that shall have or may acquire the right to enforce any of the terms and provisions of the Master Declaration, including without limitation, the Declarant, the Master Association, the Board of Directors, and any Owner (which acknowledgement and agreement to be bound by all conditions of this Consent shall be deemed given by each such Person's acceptance of the benefits of this Master Declaration as if such Person had executed an express acknowledgment thereof, and shall be binding on each of their respective successors and assigns), that (i) such Consent shall in no way affect, diminish, or act as a waiver by Centennial of any rights granted or benefits imparted to Centennial as a Mortgagee or Eligible Mortgage Holder under the Master Declaration, and that such rights and benefits shall also inure to any Person that is a Centennial designee or successor in interest to, or any other purchaser in a foreclosure, sale in lieu of foreclosure, or otherwise of, any portion of the Property or any estate or interest therein in which Centennial has an interest (each of the foregoing parties, a "**Successor**"), (ii) Centennial and any Successor is hereby recognized to be and shall continue to remain an Eligible Mortgage Holder under the Master Declaration, and (iii) the notice requirement specified in Section 13.6 of the Master Declaration for Centennial to be identified as an Eligible Mortgagee for all purposes under the Master Declaration, including without limitation, the right to receive a copy of any notice of default from the Board of Directors, is hereby deemed satisfied. Centennial hereby acknowledges and agrees that any notice to be provided to it as a Mortgagee or Eligible Mortgage Holder under or pursuant to the Master Declaration shall be deemed properly addressed if sent to Centennial Bank at 12 East 49th Street - 28th Floor New York, New York 10017 Attention: Francillia LeBlanc, with a copy to Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016 Attention: Jonathan M. Markowitz, Esq., unless and until notice of a change of Mortgage (Deed of Trust) ownership or Eligible Mortgage Holder address has been given to the Master Association in writing in the manner specified in the Master Declaration for giving notices. All capitalized terms used and not defined in this Consent shall have the meanings ascribed to them in the Master Declaration.

DATED the ___ day of August, 2020.

Centennial Bank, an Arkansas state chartered bank

By: _____
Name: Sanjay Maridev Ramakrishna
Title: Director – Portfolio Manager

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing Consent and Subordination was acknowledged before me this ____ of _____, 2020 by _____, who duly acknowledged to me that he executed the same as _____ of Centennial Bank, a _____.

_____
Notary Public
Residing at _____

EXHIBIT A

Initial Mountainside Property Legal Description

All of Parcels 2 through 5, Lots 1 through 19, and all of Lot 21 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such LOTS are depicted and described by metes and bounds on the MIDA Master Development Plat.

AND

Lot 1 (MIDA Parcel) and Lot 2 (Air Force Parcel), MIDA / Air Force Parcel Plat, according to the official plat thereof, on file and of record in the office of the Wasatch County Recorder, recorded on December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874-883.

Lot	Tax Serial Number	Parcel Numbers
L001	0IX-L001-0-025-024	00-0021-4970
L002	0IX-L002-0-025-024	00-0021-4971
L003	0IX-L003-0-025-024	00-0021-4972
L004	0IX-L004-0-025-024	00-0021-4973
L005	0IX-L005-0-025-024	00-0021-4974
L006	0IX-L006-0-025-024	00-0021-4975
L007	0IX-L007-0-025-024	00-0021-4976
L008	0IX-L008-0-025-024	00-0021-4977
L009	0IX-L009-0-025-024	00-0021-4978
L010	0IX-L010-0-025-024	00-0021-4979
L011	0IX-L011-0-023-024	00-0021-4980
L012	0IX-L012-0-024-024	00-0021-4981
L013	0IX-L013-0-024-024	00-0021-4982
L014	0IX-L014-0-025-024	00-0021-4983
L015A	0IX-L015-A-025-024	00-0021-4984
L015B	0IX-L015-B-025-024	00-0021-4985
L016	0IX-L016-0-025-024	00-0021-4986
L017	0IX-L017-0-024-024	00-0021-4987
L018	0IX-L018-0-025-024	00-0021-4988
L019	0IX-L019-0-031-024	00-0021-4989
L021	0IX-L021-0-025-024	00-0021-4991
P002	0IX-P002-0-025-024	00-0021-4993
P003	0IX-P003-0-025-024	00-0021-4994
P004	0IX-P004-0-025-024	00-0021-4995
P005	0IX-P005-0-025-024	00-0021-4996

EXHIBIT B

Annexable Property Legal Description

All of Parcels 1 and 6 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such PARCELS are depicted and described by metes and bounds on the MIDA Master Development Plat.

P001	0IX-P001-0-025-024	00-0021-4992
P006	0IX-P006-0-036-024	00-0021-4997

AND

All of Lot 1, PARK PEAK ASSESSMENT PLAT, Recorded June 16, 2020 as Entry No. 479404 on file and of record in Wasatch County Recorder's Office, as such Lot is depicted and described by metes and bounds on the PARK PEAK ASSESSMENT PLAT.

Park Peak Lot 1	0IU-0001-0-033-024	00-0021-4969

AND

East Overlook Parcel:

Parcel 1

A parcel of land situated in Government Lot 2 and Government Lot 3 of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian, Wasatch County, Utah, lying North and West of the Westerly right-of-way line of US Highway 40, for which the Basis of Bearing is North 00°15'52" East a distance of 2696.95 feet between the found monuments marking the West line of the Southwest Quarter of said Section 31, more particularly described as follows:

Beginning at the West Quarter Corner of Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as evidenced by the found Bureau of Land Management 3.25 inch aluminum cap set in 1994; thence along the West line of the Northwest Quarter of said Section 31, North 00°13'42" West a distance of 399.02 feet, more or less, to a point of intersection of the West line of the Northwest Quarter of said Section 31 and a natural drainage course; thence, more or less, along said natural drainage course the following three (3) courses: (1) South 82°52'20" East a distance of 96.23 feet; (2) thence South 65°56'04" East a distance of 420.28 feet; (3) thence South 47°35'30" East a distance of 270.44 feet, more or less, to the Westerly right of way line of US Highway 40; thence along said Westerly right-of-way line the following four (4) courses: (1) South 20°00'55" West a distance of 34.65 feet to a point of intersection of said Westerly Right of Way line and the North line of Government Lot 3, said point being North 89°56'05" East a distance of 665.46 feet along the North line of said Government Lot 3 from the West Quarter Corner of said Section 31 (North 89°52'24" East a distance of 665.22 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (2) thence South 20°00'55" West a distance of 128.07 feet to a point 330 feet Offset from US Highway 40 Engineering Station 694.00 as evidenced by the found 3 inch brass cap monument set in 1988 (South 19°58'09" West a distance of 127.45 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (3) thence South 28°31'39" West a distance of 430.16 feet to a point 300 feet Offset from US Highway 40

Engineering Station 698.30 as evidenced by the found 3 inch brass cap monument set in 1988 (South 28°30'00" West a distance of 430.00 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); (4) thence South 31°27'42" West a distance of 807.91 feet, more or less, to a point of intersection of the said Westerly Right of Way line and of the West line of the Southwest Quarter of said Section 31, said point lies North 0.31 feet and East 0.19 feet of a point 340.6 feet Offset from US Highway 40 Engineering Station 706.3759 as evidenced by the found 3 inch brass cap monument set in 1988 (South 31°22'41" West a distance of 808.61 feet per US Highway 40 deed OR 217-290 recorded on April 16, 1990); thence leaving said Westerly right of way line and running along the West line of the Southwest Quarter of said Section 31, North 00°15'52" East a distance of 1186.66 feet to the point of beginning of this Lot 2 description.

The above described land, also known as Lot 2, as shown on the Deer Springs at Jordanelle - Lot Line Rearrangement Plat (recorded as Entry No. 222708 at Page 279, Book 456 on March 22, 2000, of the official records of Wasatch County).

Parcel 2

TOGETHER WITH an approximate 50 foot wide non exclusive easement for access and utility purposes lying westerly of the westerly no-access line of an expressway known as Project No. NF-19 that was granted to the United States of America by that certain Warranty Deed, recorded March 18, 1987 as Entry No. 141672 in Book 189 at Page 12 of the official records, over portions of Government Lot 2, Section 31, Township 2 South Range 5 East, Salt Lake Base and Meridian as shown on Record of Survey Map filed as OWC-025-031-1-0962 March 6, 2000, Wasatch County Records of Survey, also being portions of Lot 1, as shown on the Deer Springs at the Jordanelle - Lot Line Rearrangement Plat recorded as Entry No. 222708 in Book 456 at Page 279 on March 22, 2000, Official Records of Wasatch County, over an existing paved private driveway, the centerline of which is described as follows:

Beginning at a point in the northerly line of said Government Lot 2 distant thereon North 89°55'10" East 1141.20 feet from the northwest corner of said Government Lot 2; thence South 04°51'39" East 44.58 feet to the beginning of a tangent curve concave to the west and having a radius of 200.00 feet; thence southerly along said curve an arc length of 131.91 feet; thence tangent to said curve South 32°55'45" West 53.77 feet to the beginning of a tangent curve concave to the East and having a radius of 100.00 feet; thence southerly along said curve an arc length of 59.32 feet; thence tangent to said curve South 01°03'40" East 59.54 feet to the beginning of a tangent curve concave to the west and having a radius of 200 feet; thence southerly along said curve an arc length of 29.42 feet; thence continuing southerly along said curve an arc length of 37.65 feet; thence tangent to said curve South 18°09'16" West 116.67 feet; thence South 18°09'16" West 39.81 feet to the beginning of a tangent curve concave to the west and having a radius of 1000.00 feet; thence southerly along said curve an arc length of 150.92 feet; thence South 26°48'06" West 49.23 feet; thence South 26°48'06" West 217.21 feet; thence South 26°48'06" West 62.15 feet to the beginning of a tangent curve concave to the northwest and having a radius of 100.00 feet; thence southwesterly along said curve an arc length of 45.20 feet; thence continuing southwesterly along said curve an arc length of 45.73 feet; thence tangent to said curve South 78°54'07" West 36.32 feet to the beginning of a tangent curve concave to the north and having a radius of 100.00 feet; thence westerly along said curve an arc length of 113.84 feet; thence tangent to said curve North 35°52'11" West 116.09 feet to the end of the common use multiple access driveway easement; thence continuing along the private easement to serve Parcel 1 described above the following: South 54°07'49" West 48.55 feet to the beginning of a tangent curve concave to the northwest and having a radius of 200 feet; thence southwesterly along said

curve an arc length of 54.70 feet; thence tangent to said curve South 69°48'01" West 97.92 feet to the beginning of a tangent curve concave to the southeast and having a radius of 75 feet; thence southwesterly along said curve an arc length of 49.81 feet to the northerly line of Parcel 1 described above, also being the end of the 50 foot wide easement.

The side lines of said 50 foot wide easement at its northerly terminus to be prolonged or shortened so as to terminate in the northerly line of said Government Lot 2. The side lines of said 50 foot wide easement at its southerly terminus to be prolonged or shortened so as to terminate in the northerly line of Parcel 1.

Wasatch County Tax Serial Number: OWC-0155-0-031-025.
Wasatch County Assessor's Parcel Number: 00-0007-3069.

EXHIBIT C

Legal Description of MIDA Property

Lot 1 (MIDA Parcel) MIDA / Air Force Parcel Plat, according to the official plat thereof, on file and of record in the office of the Wasatch County Recorder, recorded on December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874-883.

Also being described by metes and bounds as follows:

A parcel of land located in the Northeast Quarter of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Wasatch County, Utah described as follows:

BEGINNING at a point South 26°11'47" East 912.35 feet along the line herein described as the Basis of Bearings and East 41.91 feet from the North Quarter Corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being South 26°11'47" East 5917.16 feet from said North Quarter Corner of Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters) and running thence South 47°37'20" East 65.69 feet; thence South 39°31'10" East 179.55 feet; thence South 26°54'32" East 498.34 feet to the northerly right-of-way line of Glencoe Mountain Drive; thence along said northerly and the easterly right-of-way lines of said Glencoe Mountain Drive the following seven courses (1) South 68°03'52" West 83.60 feet; (2) South 69°20'15" West 154.15 feet; (3) Northwesterly 133.98 feet along a 82.53 feet radius curve to the right through a central angle of 93°00'47" and a long chord of North 64°09'21" West 119.74 feet; (4) North 17°38'58" West 9.97 feet; (5) Northwesterly 122.98 feet along a 617.68 feet radius curve to the left through a central angle of 11°24'27" and a long chord of North 23°21'12" West 122.78 feet; (6) North 29°03'25" West 106.22 feet; (6) Northwesterly 196.35 feet along a 617.68 feet radius curve to the left through a central angle of 18°12'49" and a long chord of North 38°09'50" West 195.53 feet; and (7) North 47°16'15" West 80.99 feet; thence leaving said easterly right-of-way line North 43°30'34" East 326.55 feet to the POINT OF BEGINNING.

Containing 208,163 square feet or 4.78 acres.

EXHIBIT D

Interpretation

As used in this Agreement, unless a clear contrary intention appears:

(a) any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other gender;

(b) the words "hereof", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) any reference to Articles, Sections and Exhibits are, unless otherwise stated, references to Articles, Sections and Exhibits of or to this Agreement and references in any Section or definition to any clause means such clause of such Section or definition. The headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;

(d) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended, modified or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement;

(e) the Exhibits hereto form an integral part of this Agreement and are equally binding therewith. Any reference to "this Agreement" shall include such Exhibits;

(f) references to a Person shall include any permitted assignee or successor to such Party in accordance with this Agreement and reference to a Person in a particular capacity excludes such Person in any other capacity;

(g) the use of "or" is not intended to be exclusive unless explicitly indicated otherwise; and

(h) the words "includes," "including," or any derivation thereof shall mean "including without limitation" or "including, but not limited to."

EXHIBIT E

Bylaws

BYLAWS
OF
MOUNTAINSIDE MASTER ASSOCIATION, INC.

ARTICLE I
NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 **Name**. The name of the corporation is Mountainside Master Association, Inc. (the "Master Association").

1.2 **Principal Office**. The principal office of the Master Association shall be located at 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098. The Master Association may have such other offices, either within or outside the State of Utah, as the Board may determine or as the affairs of the Master Association may require.

1.3 **Definitions**. The words used in these Bylaws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Master Declaration to which these Bylaws are attached unless the context indicates otherwise.

ARTICLE II
MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

2.1 **Membership**. The Master Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Master Declaration. Class "A" Members shall be known as "Members." The provisions of the Master Declaration pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings**. Meetings of the Master Association shall be held at the principal office of the Master Association or at such other suitable place convenient to the Members as the Board may designate.

2.3 **Annual Meetings**. The Master Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the Master Association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Master Association's fiscal year on a date and at a time set by the Board.

2.4 **Special Meetings**. The president of the Master Association (the "President") may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Class "A" Members representing at least 10% of the total Class "A" votes of the Master Association.

2.5 **Notice of Meetings**. Written or printed notice stating the place, day, and hour of any meeting of the Master Association shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the secretary of the Master Association (the "Secretary") or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by

statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with Section 6.5 hereof and addressed to the Member at the Member's address as it appears on the Master Association's records, with postage prepaid.

2.6 **Waiver of Notice**. Waiver of notice of a meeting of the Master Association shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Master Association, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 **Voting**. The voting rights of the Members shall be as set forth in the Master Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

2.8 **Proxies**. Members may not vote by proxy, but only in person.

2.9 **Quorum**. For purposes of any Master Association meeting, a quorum shall consist of the Members actually in attendance at such Master Association meeting.

2.10 **Conduct of Meetings**. The President shall preside over all meetings of the Master Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.11 **Actions Without a Meeting**. Any action required or permitted by law to be taken at a meeting of the Master Association may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Master Association. Such consents, as filed with the minutes of the Master Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III
BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS

A. Composition and Selection

3.1 **Governing Body: Composition**. The Board shall govern the Master Association's affairs. Each director of the Board ("Director") shall have one vote. Except with respect to the Class "B" Member's appointees, Directors shall be Owners owning the majority interest in a Unit or, if the majority Owner of a Unit is not a natural person, the natural person owning a controlling interest in such majority Owner.

3.2 **Number of Directors**. The Board shall initially consist of three (3) Directors. Provided the Board shall at all times consist of an odd number of Directors, the number of Directors comprising the Board may be altered, by the vote of Members holding a majority of the votes entitled to be cast for the

election of Directors, to include between three (3) and seven (7) Directors. The initial Board shall consist of three (3) Directors as identified in the Articles.

3.3 **Directors During Administrative Control Period.** Directors appointed by the Class "B" Member pursuant to Section 3.5 hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 **Nomination and Election Procedures.**

(a) **Nominations and Declarations of Candidacy.** Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position that Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board may also be made by a nominating committee (the "Nominating Committee'). The Nominating Committee, if any, shall consist of a chairperson, who shall be a member of the Board, and three or more representatives of Members. The Board shall appoint members of a nominating committee (the "Nominating Committee") not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate Directors to be elected at large by all Class "A" votes. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations for Directors may also be made by petition filed with the Secretary at least seven (7) days prior to the annual meeting of the Master Association, which petition shall be signed by ten (10) or more Members and signed by the nominee named therein indicating such nominee's willingness to serve as a Director, if elected. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes. In the event that the Class "B" Member designates Voting Groups as set forth in the Master Declaration, a nominee for a Director position elected by the Commercial Voting Group (defined below) must be an Owner of a Commercial Unit and a nominee for a Director position elected by the Residential Voting Group (defined below) must be an Owner of a Residential Unit.

(b) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the candidates nominated by the Nominating Committee. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 **Election and Term of Office.** Except as these Bylaws may otherwise specifically provide, election of Directors shall take place at the Master Association's annual meeting. Notwithstanding any other provision of these Bylaws:

(a) During the Administrative Control Period, the Class "B" Member shall appoint the three (3) Directors comprising the initial Board. If any such Director resigns or is removed from such position prior to the happening of the event described in subsection (b), the Class "B" Member shall appoint a successor Director.

(b) Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to five (5) and the President shall call for an election by which the Members shall be entitled to elect each of the five (5) Directors. Directors elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following their election to the Board.

(c) Notwithstanding the foregoing Subsection 3.5(b), in the event that the Class "B" Member designates Voting Groups as set forth in the Master Declaration, the election of Directors to the Board shall be governed by this Subsection 3.5(c). Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to five (5) and the President shall call for an election by which the Voting Group or Voting Groups designated for Projects comprised of Commercial Units ("Commercial Voting Group") shall be entitled to elect two (2) of the five (5) Directors and the Voting Group or Voting Groups designated for Projects comprised of Residential Units ("Residential Voting Group") shall be entitled to elect two (2) of the five (5) Directors. If the number of Class "A" votes held by Owners of Units in the Commercial Voting Group is greater than the number of Class "A" votes held by Owners of Units in the Residential Voting Group, the Commercial Voting Group shall be entitled to elect the fifth (5th) Director. If the number of Class "A" votes held by Owners of Units in the Residential Voting Group is greater than the number of Class "A" votes held by Owners of Units in the Commercial Voting Group, the Residential Voting Group shall be entitled to elect the fifth (5th) Director.

3.6 **Removal of Directors and Vacancies.** By the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, the Members may remove, with or without cause, any Director elected by Members. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such Director. Any Member-elected Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any Assessment or other charge due the Master Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term. Any Director whom the Board appoints shall be selected from among the Members. This Section shall not apply to Directors the Class "B" Member appoints. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a Director appointed by or elected as a representative of the Class "B" Member. In the event that the Class "B" Member designates Voting Groups as set forth in the Master Declaration, Directors elected by the Commercial Voting Group may be removed only by the vote of Members holding a majority of the votes entitled to be cast in the Commercial Voting Group for the election of Directors, and Directors elected by the Residential Voting Group may be removed only by the vote of Members holding a majority of the votes entitled to be cast in the Residential Voting Group for the election of Directors.

B. Meetings

3.7 **Organizational Meetings.** The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8 **Regular Meetings**. Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 **Special Meetings**. The Board shall hold special meetings when the President or the vice president of the Master Association (the "Vice President") or any two Directors signs and communicates written notice of such.

3.10 **Notice; Waiver of Notice.**

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the Director's telephone number, fax number, electronic mail number, or sent to the Director's address as shown on the records of the Master Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each Director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 **Telephonic Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 **Quorum of Board**. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Master Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 **Conduct of Meetings.** The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board Meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 **Open Meetings; Executive Session.**

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Resort which the Board establishes for the posting of notices relating to the Master Association. Notice of any meeting at which Assessments are to be established shall state that fact and the nature of the Assessment. Subject to the provisions of Section 3.15 hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than Directors may not participate in any discussion or deliberation unless a Director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than Directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15 **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

3.16 **Powers.** The Board shall have all of the powers and duties necessary for the administration of the Master Association's affairs and for performing all responsibilities and exercising all rights of the Master Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Master Association all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the Members or the membership generally.

3.17 **Duties.** Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Master Declaration, an annual budget, which budget shall include a line item for future Assessments for the Reserve Fund, which shall be approved in accordance with the Master Declaration, and establishing each Owner's share of the Common Expenses;

(b) levying and collecting fines or Assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Master Association's rights and responsibilities and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Master Association in a bank depository which it shall approve, and using such funds to operate the Master Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Master Declaration;

(g) opening bank accounts on behalf of the Master Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Master Common Area in accordance with the Master Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Master Association; provided, the Master Association's obligation in this regard shall be conditioned in the manner provided in the Master Declaration;

(j) obtaining and carrying property and liability insurance, as provided in the Master Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Master Association;

(l) keeping books with detailed accounts of the Master Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Master Association as provided in Section 6.4 hereof;

(n) permitting utility suppliers to use portions of the Master Common Areas reasonably necessary to the ongoing development or operation of the Resort;

(o) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Master Association to the extent such indemnity is required by Utah law, the Articles, or the Master Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Master Declaration.

3.18 **Compensation.** Directors shall not receive any compensation from the Master Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Master Association at a regular or special meeting of the Master Association. Any Director may be reimbursed for expenses incurred on behalf of the Master Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Master Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Master Association in a capacity other than as a Director pursuant to a contract or agreement with the Master Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

3.19 **Right of Class "B" Member to Disapprove Actions.** So long as the Class "B"

membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Master Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair the rights of the Class "B" Member or Builders under the Master Declaration or these Bylaws, or interfere with development or construction of any portion of the Resort, or diminish the level of services the Master Association provides.

(a) **Notice**. The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Master Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Master Association, which notice complies, as to Board meetings, with Sections 3.9 and 3.10 hereof and which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to be Heard**. The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or Director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Master Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Master Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 **Management**. The Board may employ for the Master Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services a5 the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i). The Class "B" Member or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21 **Accounts and Reports**. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Master Association shall not be commingled with any other

accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Master Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Master Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Master Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Master Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or complied basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Master Association shall provide an audited financial statement. During the Administrative Control Period, the annual report shall include certified financial statements.

3.22 **Borrowing**. The Master Association shall have the power to borrow money for any legal purpose; provided, the Board shall fulfill the requirements provided in the Master Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Master Association's budgeted gross expenses for that fiscal year.

3.23 **Rights to Contract**. The Master Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or residents associations, within and outside the Resort. Any common management agreement shall require the consent of a majority of the Board.

3.24 **Enforcement**. The Master Association shall have the power, as provided in the Master Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Master Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice**. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, including any fine in an amount set forth in the Resort Rules, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee (as hereinafter defined), if one has been appointed pursuant to Article V hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing**. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal**. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Master Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights**. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Master Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation, if such abatement is sought, shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed a trespass.

3.25 **Board Standards**. In the performance of their duties, Master Association Directors and officers shall he insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a Director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the

continued and successful operation of the Master Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Master Association. A Director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV
OFFICERS

4.1 **Officers.** Officers of the Master Association shall be a President, Vice President, Secretary, and treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable. Such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary.

4.2 **Election and Term Office.** The Board shall elect the Master Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Master Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 **Power and Duties.** The Master Association's officers shall each have such powers and duties as generally pertain to their respective officers, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Master Association. The treasurer shall have primary responsibility for preparation of the budget as provided for in the Master Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any time later specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Master Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 3.18 hereof.

ARTICLE V
COMMITTEES

5.1 **General.** The Board may appoint such committees as it deems appropriate to perform

such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants Committee**. In addition to any other committees which the Board may establish pursuant to Section 5.1 hereof, the Board may appoint a covenants committee (the "Covenants Committee") consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Master Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Master Association and shall conduct all hearings held pursuant to Section 3.24 hereof.

ARTICLE VI
MISCELLANEOUS

6.1 **Fiscal Year**. The Master Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 **Parliamentary Rules**. Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Master Association proceedings when not in conflict with Utah law or the Governing Documents.

6.3 **Conflicts**. If there are conflicts among the provisions of Utah law, the Articles, the Master Declaration, and these Bylaws, the provisions of Utah law, the Master Declaration, the Articles, and the Bylaws (in that order) shall prevail.

6.4 **Books and Records**.

(a) **Inspection by Members and Mortgagees**. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Master Association's office or at such other place within the Project as the Board shall designate

(b) **Rules for Inspection**. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors**. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Master Association and the physical properties owned or controlled by the Master Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Master Association's expense.

6.5 **Notices**. Except as otherwise provided in the Master Declaration or these Bylaws, all notices, demands, bills, statements, or other communications under the Master Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by

U.S. mail. First class postage prepaid:

(a) if to a Member or Members, at the address which the Member or Members have designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Members;

(b) if to the Master Association, the Board, or the managing agent, at the principal office of the Master Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Master Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 **Amendment.**

(a) **By Class "B" Member.** Prior to termination of the Administrative Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51 % of the total Class "A" votes in the Master Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

EXHIBIT K
to
DONATION AGREEMENT

Form of Village Declaration

Execution Version

AFTER RECORDING, RETURN TO:

PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Roger D. Henriksen
Robert A. McConnell

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE AT MOUNTAINSIDE

BLX MAYFLOWER LLC

Declarant

August 20, 2020

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE AT MOUNTAINSIDE

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE AT MOUNTAINSIDE (the "**Village Declaration**") is made this 20th day of August, 2020, by **BLX MAYFLOWER LLC**, a Delaware limited liability company ("**Declarant**").

RECITALS

A. Declarant owns, controls or has the option to acquire, directly or indirectly through one or more of its affiliated entities, certain real property located in Wasatch County, Utah and more particularly described on Exhibit A hereto (the "**Village Property**"). The Village Property is part of the "**Initial Mountainside Property**" and "**Resort**," as such terms are defined in that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Village at Mountainside and Resort (the "**Master Declaration**"), which Master Declaration was recorded in the office of the Wasatch County Recorder on August ___, 2020 as Entry No. _____ in Book _____ at Page _____. Declarant and affiliates of Declarant are also owners or hold options to acquire, Annexable Property (as defined herein) adjacent to the Village Property, which is more particularly described on Exhibit B hereto. Portions of such Annexable Property, and other property that may be or come to be owned or leased by Declarant and its affiliates, may be made subject to this Village Declaration by annexation in accordance with the provisions hereof.

B. Declarant desires and intends to develop in phases all or portions of the Village Property, together with such other Additional Property (defined as the "**Property**" herein) as may be made subject to this Village Declaration by annexation, as a common scheme and planned mixed-use mountainside recreational resort village to be initially known as the Village at Mountainside (as further defined herein, the "**Village**"). Declarant desires to organize within the Village a number of hotel, commercial, recreational, retail, residential and other development areas.

C. The Resort, including the Village Property, possesses great natural beauty that Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Village Declaration and the Master Declaration. It is anticipated that the plan will provide for comprehensive land planning, harmonious and appealing landscaping and improvements, and provisions addressing urban and wildlife interface. It is assumed that each purchaser of property in the Village will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Village Declaration. This Village Declaration does not create a condominium within the meaning of the Utah Condominium Ownership Act.

D. The Village is intended and designed to be, and will operate and be promoted as, a lively, energetic, four-season, destination resort community located adjacent to the Mountainside Ski Property. The Village, as it may be developed in accordance with present planning, will include several hotels, condominium projects, an ice-skating rink, pedestrian plaza areas (referred to herein as the "Village Plaza"), commercial and retail areas, and recreation facilities. The Resort is presently planned to include the property comprising the Village as well as additional properties and projects on other lands owned by the Declarant, Ski Terrain Owners, and others, and located outside of the Village that may later be annexed to the Village and subjected to this Village Declaration in accordance with the annexation provisions of this Village Declaration. Nothing contained in this Recital "D," however, shall be construed

or interpreted in a manner that commits the Declarant, the Master Association, the Village Association or any other person to develop or construct any of the facilities or to provide any services that are authorized in the Entitlements Documents (as defined herein) or currently planned for the Village development by Declarant.

E. This Village Declaration provides a flexible and reasonable procedure for the Village's future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Village Association to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Village Declaration and the other Governing Documents referenced in this Village Declaration.

F. One of the projects to be developed on the Village Property is a condominium hotel project (the "**MWR Hotel Condominium Project**") with certain rooms available for use on a discounted basis by active duty and retired military personnel, to be constructed on that certain real property more fully described in Part A of Exhibit C hereto (the "**MIDA Property**") in conjunction with the Utah Military Installation Development Authority ("**MIDA**") which MWR Hotel Condominium Project will be owned, in part, by MIDA and which portion owned by MIDA will be leased to a Declarant's Affiliate pursuant to the terms of a MWR Hotel Condominium Lease Agreement (the "**MIDA Hotel Lease**").

G. The "**Mountainside Ski Property**," (as defined herein) is located on land owned by the "**Mountain Operator**" (as defined herein) and is operated and maintained by the Mountain Operator. Cooperating in the operation, maintenance and continued use of the Mountainside Ski Property is important to the development, use and enjoyment by the Owners of the Units within the Village. The Mountainside Ski Property is not a part of the Village development and is not subject to this Village Declaration, although the Mountain Operator has certain rights, privileges and obligations with respect to portions of the Village Common Areas pursuant to this Village Declaration, the Mountain Operator Agreement and the Mountain Easement Agreements referred to in Sections 5.12 and 5.13 below. The Mountain Operator and its successors and assigns shall have the right but not the duty to enforce the terms and provisions of this Village Declaration as an owner of the lands benefited by its terms and conditions in addition to its rights to enforce the terms of the Mountain Operator Agreements and the Mountain Easement Agreements.

H. Declarant will provide leadership in organizing and administering the Village during the development period, for a fee, but expects property owners in the Village will accept the responsibility for community administration after the development period.

I. Property made subject to this Village Declaration is subject to the Master Declaration, and may also may be subject to "**Project Declarations**" (defined below) which impose additional or different restrictions on the use of property within individual "**Projects**" (defined below), including establishing Project open space for the benefit of Owners within such Projects.

J. Declarant desires to subject the Village Property, including the MIDA Property, to the covenants, conditions, restrictions, easements and assessments set forth in this instrument for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that each of the foregoing recitals is incorporated into and made a part of this Village Declaration, and further declares that the Village Property, including, without limitation, the MIDA Property, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and assessments, which

shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS AND INTERPRETATION

As used in this Village Declaration, the terms set forth below shall have the following meanings, and matters relating to the interpretation of this Agreement shall be determined as set forth on Exhibit D:

1.1 "**Additional Property**" means all or any portion of the Annexable Property annexed to the Village pursuant to a Recorded Annexation Declaration.

1.2 "**Administrative Control Period**" means (a) the period of time during which the Class "B" Member retains authority to appoint and remove members of the Board or (b) exercise power or authority assigned to the Village Association under the Governing Documents. The Administrative Control Period shall terminate on the first to occur of the following:

(a) Sixty (60) days after the date when ninety percent (90%) of the total number of Development ERUs and Commercial Units and Hotel Units (as defined in and permitted by the Mountainside Master Plan) for the Property (as it may be amended from time to time) have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders or Declarant's Affiliates;

(b) December 31, 2070; or

(c) The day the Class "B" Member in its discretion, after giving written notice to all Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Village Association.

1.3 "**Annexable Property**" means that certain real property located in Wasatch County, Utah and more specifically described on Exhibit B, together with any other land acquired by Declarant or any Declarant's Affiliate in the vicinity of such property. Inclusion of property on Exhibit B shall not, under any circumstances, obligate Declarant to subject such property to this Village Declaration, nor shall the omission of property on Exhibit B prohibit its later submission to this Village Declaration as provided in Section 2.2.

1.4 "**Annexation Declaration**" means a declaration annexing all or a portion of the Annexable Property to the Village, as contemplated in Section 2.2(a).

1.5 "**Annual Assessments**" has the meaning set forth in Section 11.5.

1.6 "**Applicable Law**" means any and all laws, statutes, ordinances, rules, regulations, codes, orders, injunctions, decrees and rulings of any Governmental Authority with jurisdiction, including any amendments or modifications thereto.

1.7 "**Assessment Factor**" means a factor assigned to each Unit in accordance with Section 11.3 below for purposes of determining the pro rata share of Annual Assessments, Special Assessments, Emergency Assessments, and Project Limited Common Area Assessments.

1.8 "**Assessment Units**" means the assessment units allocated to Units in the Village for purposes of determining the fair and equitable allocation of Assessments in accordance with Article 11.

1.9 "**Assessments**" means all assessments and other charges, fines and fees imposed by the Village Association on an Owner in accordance with this Village Declaration, including, without limitation, Annual Assessments (including Cost Center Assessments), Special Assessments, Emergency Assessments, Project Limited Common Area Assessments, and Special Individual Assessments, all as described in Article 11.

1.10 "**Assumed Risks**" has the meaning set forth in Section 16.9.

1.11 "**Board of Directors**" or "**Board**" mean and refers to the Board of Directors of the Village Association.

1.12 "**Bound Parties**" has the meaning set forth in Section 18.1(a).

1.13 "**Builder**" means any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more Units within the Village for further subdivision, development, and/or resale in the ordinary course of its business.

1.14 "**Bylaws**" means the Bylaws of the Village Association attached as Exhibit E, as the same may be amended from time to time.

1.15 "**Claim**" has the meaning set forth in Section 18.1(b).

1.16 "**Claimant**" has the meaning set forth in Section 18.2(a).

1.17 "**Class "A" Member**" has the meaning set forth in Section 9.3(b).

1.18 "**Class "B" Member**" has the meaning set forth in Section 9.3(b).

1.19 "**Commercial Cost Center Assessment**" has the meaning given to that term in Section 11.6(b) below.

1.20 "**Commercial Directors**" means those members of the Board of Directors elected by the Project Associations of Commercial Units and Lodges in accordance with the procedures set forth in the Bylaws of the Village Association.

1.21 "**Commercial Unit**" means a Unit or any portion of a Unit that is designed for, or in which is operated or conducted primarily for:

(a) a wholesale, retail or service business;

(b) an office or administrative function;

(c) a maintenance or service facility; or

(d) such other non-residential use or service that is specifically identified as a Commercial Unit in any Annexation Declaration or Project Declaration.

Notwithstanding the foregoing, the term "Commercial Unit" shall not include any parcel that is designated in any Annexation Declaration as a Community Facility or a Resort Support Facility unless otherwise provided in the Annexation Declaration.

1.22 "**Common Expenses**" means the actual and estimated costs incurred or anticipated to be incurred by the Village Association for the general benefit of the Owners, including any reasonable reserve, as the Board finds reasonable and necessary pursuant to the Governing Documents, including: (i) maintenance, management, operation, repair and replacement of the Village Common Areas and Facilities, including those costs not paid by an Owner who is responsible for such payment; (ii) costs of management and administration of the Village Association including, but not limited to, compensation paid by the Village Association to any managers, accountants, attorneys, and other consultants and employees; (iii) the costs of all utilities, landscape maintenance expenses, and other services benefiting the Village Common Areas and Facilities (including any fees, costs or expenses associated with water rights or water shares allocated by any private water company to the Property and collectively billed by such water company to the Village Association); (iv) the costs of security services; (v) the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Village Common Areas and Facilities; (vi) the costs of bonding the directors, officers, agents, employees and managers of the Village Association; (vii) taxes paid by the Village Association; (viii) amounts paid by the Village Association for the discharge of any lien or encumbrance levied against the Village Common Areas and Facilities or any portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Village Common Areas and Facilities; (ix) all reserves; (x) costs and expenses incurred to comply with and perform fully the terms and provisions of the Mountain Operator Agreements and the Mountain Easement Agreements; and (xi) the costs of any other item or items incurred by the Village Association in carrying out its obligations and authorized functions pursuant to this Village Declaration, any Supplemental Declaration or Annexation Declaration, and the Bylaws, as determined in the reasonable exercise of discretion by the Board of Directors and its managers and agents, pursuant to this Village Declaration.

1.23 "**Community Facility**" means any facility that is operated by a nonprofit, governmental or quasi-governmental entity and that provides athletic, cultural, recreational, entertainment or other services to Owners, Guests or the general public. In order to constitute a Community Facility, the facility must be designated as such in a Supplemental Declaration recorded by or with the consent of Declarant. Community Facilities have no membership rights in the Village Association or the Master Association.

1.24 "**Community-Wide Standard**" means the standard of conduct, maintenance, or other activity generally prevailing at the Village, or the minimum standards established pursuant to the Design Guidelines, Village Rules, and Board resolutions, whichever is the highest standard. Declarant shall initially establish such standard which may include both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Village change.

1.25 "**Condominium**" means any property subject to this Village Declaration that has been submitted to the Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et. seq.*, as amended or replaced from time to time.

1.26 "**Condominium Hotel**" means a facility that has (a) individual residential Condominium Units, (b) a front desk on site or on an adjacent property, (c) common hallways for room access, and (d) centralized hospitality management that is available to all Owners of the Condominium Units who elect to participate in a rental program.

1.27 "**Condominium Unit**" means a Unit located in a Condominium.

1.28 "**Cost Center**" means a particular portion of the Property that is designated as a Cost Center in an Annexation Declaration, a Supplemental Declaration, a Project Declaration or in another Recorded instrument affecting a portion of the Village. Cost Centers are typically established when there are particular services that will be provided by the Village Association to some, but less than all, Unit Owners and the cost of providing those services should, in fairness, be borne only by the Owners of Units within the designated Cost Center. So long as Declarant owns any portion of the Village the creation and designation of Cost Centers shall require the consent of Declarant and thereafter the approval of a majority of the members of the Board of Directors (with the vote to approve the creation of any Cost Center that includes Commercial Units being approved by at least one Commercial Director whose Unit(s) will be within the designated Cost Center and at least one Residential Director).

1.29 "**Cost Center Assessment**" means the Assessment imposed by the Village Association pursuant to Section 11.4, on Owners of Units within a Cost Center in order to recover Cost Center Expenses incurred by the Village Association.

1.30 "**Cost Center Assessment Component**" means those Common Expenses that have been designated as a part of a Cost Center pursuant to Section 11.5.

1.31 "**Cost Center Budget**" means an itemized written estimate of the Cost Center Assessments and the Cost Center Expenses for a particular Cost Center prepared from time to time by the Board of Directors pursuant to the provisions of the Bylaws.

1.32 "**Cost Center Expenses**" means and refers to the actual and estimated costs or expenses incurred by the Village Association for the exclusive benefit of Owners within a particular Cost Center and may include, without limitation, any of the kinds of expenses that are described as Common Expenses hereunder, but which pertain only to the Units or the Owners within the designated Cost Center.

1.33 "**Declarant**" means and refers to:

(a) BLX Mayflower LLC, a Delaware limited liability company, and any successor or assignee who acquires all or substantially all of its assets by merger, consolidation or purchase.

(b) Any Person to which Declarant has assigned any or all of its rights and obligations as "Declarant" hereunder by an express assignment which may be incorporated into a Recorded instrument, including, a deed, lease, option agreement, land sale contract, license, Annexation Declaration or Supplemental Declaration, and/or assignment expressly transferring such rights and obligations if such assignee agrees in writing with Declarant to accept such assignment; and

(c) Subject to the foregoing, at any given time there may be more than one Declarant so long as the document or instrument conferring "Declarant" status clearly identifies the Unit(s) over which the designated Declarant has jurisdiction.

1.34 "**Declarant's Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership, or corporation in which Declarant (or another Declarant's Affiliate) is a general partner, managing member or controlling shareholder.

1.35 "**Deposit**" has the meaning set forth in the Master Declaration.

1.36 "**Design Guidelines**" means those rules, regulations and guidelines for the Village adopted from time to time pursuant to Article 8 with respect to structures, landscaping, fences and other Improvements within the Village. Design Guidelines may impose different conditions upon various Units or Projects in light of differences in use, topography, visibility or other factors. Design Guidelines shall be effective when they are adopted by Declarant as provided in Article 8. Design Guidelines shall interpret and implement the provisions of this Village Declaration by setting forth the standards and procedures for design review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, drainage, lighting, tree removal, fences and similar features which may be used in the Village; provided, however, that the Design Guidelines shall not be in derogation of the minimum standards established by this Village Declaration or the Master Declaration, or be administered, interpreted or applied in an arbitrary, capricious, or discriminatory manner.

1.37 "**Design Review Committee**" means the committee appointed pursuant to Article 8 of the Master Declaration.

1.38 "**Eligible Mortgage Holder**" has the meaning set forth in Section 13.6.

1.39 "**Emergency Assessment**" has the meaning set forth in Section 11.8.

1.40 "**Entitlement Documents**" is a collective term that means and refers to each of the following, as they be amended, supplemented, restated, or superseded from time to time:

(a) The Mountainside Master Plan;
(b) The Mountainside Master Development Agreement; and
(c) Tax Sharing and Reimbursement Agreement.

1.41 "**Exclusive Use Village Common Areas**" means those portions of the Village Common Areas the exclusive use of which, subject to the rights of the Village Association and Declarant, has been granted to one or more (but less than all) Owners of particular Units in a Project. Exclusive Use Village Common Areas shall be created pursuant to the terms of this Village Declaration, any Project Declaration, or by being designated as such in an Annexation Declaration or other Recorded instrument.

1.42 "**Governing Documents**" means the Articles of Incorporation and Bylaws of the Village Association, the Master Declaration and the Master Association rules and regulations, this Village Declaration, any Recorded Annexation Declaration and Supplemental Declaration, the Design Guidelines, any Recorded Project Declaration (to the extent such Declaration is applicable to the particular Project), Village Rules, and resolutions duly adopted by the Board of Directors of the Village Association, and any amendments or replacements to any of the foregoing documents. If there is a conflict between or among the Governing Documents and any Project Declaration, the other Governing Documents shall control except to the extent the Project Declaration imposes a higher or stricter standard or requirement for the applicable Project.

1.43 "**Governmental Authority**" means the United States of America, the State of Utah, Wasatch County, MIDA, Jordanelle Special Service District, Wasatch County Fire District, and any agency, department, special service district, commission, board, bureau, or instrumentality of any of them, having jurisdiction over the Village when acting in their governmental not proprietary capacity.

1.44 "**Guest**" means any family member, customer, agent, employee, guest or invitee of an Owner, Lessee, Declarant or the Mountain Operator, and any Person who has any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee), and any family member, customer, agent, employee, guest or invitee of such Person.

1.45 "**Hotel**" means a building that includes Guest rooms for rental but not sale to Guests..

1.46 "**Improvement**" means any change from natural grade, or the construction or exterior alteration of any structure, building, landscaping and appurtenances thereto of every type and kind, including buildings, outbuildings, walkways, the paint on all exterior surfaces, waterways, sprinkler pipes, irrigation systems, storm drainage systems, garages, hot tubs, spas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, fire breaks, poles, signs, exterior air conditioning and water softener fixtures or equipment, solar equipment, and the creation of trails in any Project Common Area that are proposed for maintenance by the Village Association. The term "Improvement" shall not include, however: (a) any improvement or construction activity undertaken by or on behalf of Declarant or Declarant's Affiliates; (b) any improvement or construction activity confined exclusively to the interior of any Improvement that is constructed on a Unit, unless such activity involves the roof or bearing walls of the building containing the Unit, or (c) any Improvement undertaken by the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

1.47 "**Indemnified Party**" has the meaning set forth in Section 10.2.

1.48 "**Interim Easement Area**" has the meaning set forth in Section 14.6.

1.49 "**Lessee**" means any Person who is a lessee under a lease of all or any part of a Unit or the lessees of any space within a building on any Unit. All such leased property is hereinafter referred to as the "Leased Premises." Lessees shall not be Members of the Village Association, but shall, through the Owner of the Leased Premises, be entitled to certain rights and undertake certain obligations with respect to the Village, as hereinafter provided. Such rights and obligations are appurtenant to Lessee's lease of the Leased Premises. The term "Lessee" shall include Declarant to the extent it is a Lessee as herein defined and shall include a sublessee to the extent the sublessee becomes a Lessee pursuant to Section 3.6, but it shall not include the Village Association or any Governmental Authority.

1.50 "**Lodge**" means:

(a) any Unit or portion of a Unit that is used as a Hotel, motel, inn, apartment hotel, dormitory, or lodge; or

(b) any Unit, other than a Residential Unit, in which short-term overnight accommodations are provided.

1.51 "**Lodge Room**" means a room or suite in a Lodge designed for separate overnight occupancy by one or more Guests.

1.52 "**Losses**" has the meaning set forth in Section 10.2.

1.53 "**Master Association**" has the meaning set forth in the Master Declaration.

1.54 "**Master Declaration**" has the meaning set forth in Recital A.

1.55 "**Member**" means and refers to a Person entitled to membership in the Village Association as provided for in this Village Declaration.

1.56 "**Merchant Association** has the meaning set forth in Section 9.5(x).

1.57 "**MIDA**" has the meaning set forth in Recital F.

1.58 "**MIDA Hotel Lease**" has the meaning set forth in Recital F.

1.59 "**MIDA Property**" has the meaning set forth in Recital F.

1.60 "**Mining Uses**" shall mean the use of all or any portion of the Property for commercial extraction or production of sand, gravel, aggregate or any other earth product for export from the parcel in which it is located. For purposes of clarity, "Mining Uses" do not include work performed by Declarant or others in connection with the remediation of pre-existing historical mining claims, activities and uses, nor do "Mining Uses" include the mining and use on the Property by Declarant or its designees, of sand, gravel and other aggregate.

1.61 "**Moderate Income Housing**" means moderate income or employee housing units provided pursuant to the Entitlement Documents or units that otherwise meet the definition of "inclusionary housing" in the MIDA West Side Project Area, Housing Program, dated June 15, 2020 prepared by Declarant, as it may be amended, supplemented, restated or superseded from time to time.

1.62 "**Mortgage** means a mortgage or a trust deed; "**Mortgagee**" means a beneficiary or holder of a Mortgage; and "**Mortgagor**" means a mortgagor, trustor or a grantor of a Mortgage.

1.63 "**Mountain Easement Agreements**" means and refers to any Recorded easement in favor of the Ski Terrain Owners or Mountain Operator now in existence or hereafter Recorded relating to Mountain Operations. Declarant and the Village Association are hereby authorized and empowered to grant and to enter into Mountain Easement Agreements with the Mountain Operator, so long as such easements do not (i) impair the rights of ingress or egress to any Unit; or (ii) encumber any Unit owned by a person other than Declarant without the Owner of the Unit joining in the grant of the Mountain Easement Agreement. Upon execution and Recordation in the Official Records, the Mountain Easement Agreement shall be binding on the Village Association and all other Owners of any portion of the Property as successors to Declarant.

1.64 "**Mountain Operations**" means, without limitation, all of the following facilities used in conjunction with the ownership, management, maintenance, replacement or operation of the Mountainside Ski Property as a four season resort, which may or may not be located on the Mountainside Ski Property, and which are owned, leased or operated by the Ski Terrain Owners, Mountain Operator, Declarant or any Person designated by Declarant or the Mountain Operator or to which the Mountain Operator has the right to access, use or enjoy under the Mountain Operator Agreement or the Mountain Easement Agreements: ski tows, lifts, tramways and gondolas (including towers, cables and structures or facilities used in direct connection with operation of such tows, lifts, gondolas and tramways); snowmaking lines, machines or facilities; ski trails or runs; roads used in connection with maintenance or operation of tows, lifts, trails or runs; areas occupied or used for tow or lift lines or skier assembly areas; areas which are occupied by open racks for skis and snowboards which are available for use by the public; ski school meeting areas (for skiers and snowboarders); ski patrol facilities and first aid facilities for skiers and snowboarders; areas or facilities occupied or used for sale of ski, gondola, or lift tickets, for sale of ski school lessons, or for offices of the owner(s) or Mountain Operator of the Mountainside Ski Property; facilities and areas for the transportation drop-off of skiers and snowboarders who desire access to other Mountain Operations; horseback riding facilities; mountain biking and hiking trails and services; flow courses; food service facilities; general congregation, assembly and eating facilities for skiers, snowboarders, mountain bikers, and other users of the Mountain Operations; sport shops; day ski lodges; areas for Special Events; and any other structures, improvements, operations and activities of the

Mountain Operator that are either located on the Mountainside Ski Property or authorized pursuant to the Mountain Operator Agreements.

1.65 "**Mountain Operator**" means Declarant and any Person which acquires and is delegated by written instrument the rights, benefits, duties and obligations of the operator of the Mountainside Ski Property. The written instrument may specify the extent and particular rights, benefits, duties and obligations which are being acquired or delegated, in which case the Mountain Operator shall retain all other rights, benefits, duties and obligations.

1.66 "**Mountain Operator Agreement**" means an agreement(s) between Mountain Operator and the Ski Terrain Owners pertaining to the following, as such agreement(s) may be entered into, amended, modified, superseded or replaced from time to time that provide for, among other things:

(a) joint promotional advertising of the Resort, Village and Mountainside Ski Property by Mountain Operator as a year-round destination resort;
(b) security services for the Village;
(c) parking and traffic control within the Resort and Village;
(d) Special Events; and
(e) other activities and rights of the Mountain Operator.

1.67 "**Mountain Operator's Affiliate**" means any Person directly or indirectly controlling, controlled by or under common control with Mountain Operator, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership, or corporation in which Mountain Operator (or another Mountain Operator's Affiliate) is a general partner, managing member or controlling shareholder.

1.68 "**Mountainside Master Development Agreement**" means that certain Mountainside Resort Master Development Agreement dated as of August 19, 2020 between Declarant and MIDA, as amended, modified, replaced or superseded from time to time.

1.69 "**Mountainside Master Plan**" means the Mountainside Master Plan Approval dated December 18, 2018, adopted by MIDA based on the Application for Master Plan Approval, Constraints Analysis and Density Determination previously submitted to and approved by Wasatch County, as amended, modified, replaced or superseded from time to time.

1.70 "**Mountainside Ski Property**" means the real property owned or leased by Declarant, Declarant's Affiliates, Ski Terrain Owners or by the Mountain Operator, or their respective affiliates, and successors in interest, and improved with year-round recreational amenities, currently existing or hereafter constructed on or adjacent to any portion of the Village, including, without limitation, lifts, gondolas, ski runs and trails, hiking and equestrian trails, mountain biking trails, flow courses, restaurant facilities and other related equipment, improvements and property of the Ski Terrain Owners or by Mountain Operator. The Mountainside Ski Property is not part of the Village.

1.71 "**MWR Hotel Condominium Project**" has the meaning set forth in Recital F.

1.72 "**Ongoing Monitoring**" has the meaning set forth in Section 10.7.

1.73 "**Operations Fund**" has the meaning set forth in Section 11.13.

1.74 "**Original Sale**" means (a) the original sale of a Unit built by a Builder if the Unit was constructed by such Builder with the intent of selling the same to consumers without any personal use

thereof by such Builder, and (b) in any other case, the first sale of a Unit after the original sale by Declarant or Declarant's Affiliates).

1.75 "**Owner**" means any Person, including Declarant and Declarant's Affiliates, owning of Record a fee simple title interest in and to any Unit in the Village, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Unit (unless such Mortgagee has acquired fee simple title interest in such Unit pursuant to foreclosure or any proceedings in lieu of foreclosure). The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination. If a Unit is Sold under a Recorded contract of sale, and the contract so provides, the purchaser (rather than the fee owner) will be considered to be the "Owner" for the purposes of this Village Declaration.

1.76 "**Owner's Related Parties**" has the meaning set forth in Section 16.9.

1.77 "**Person**" means any natural person, corporation (including any nonprofit mutual benefit or public benefit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other person or entity recognized as being capable of owning real property under the laws of the State of Utah.

1.78 "**Phase**" means the Village Property, and each Annexable Property identified as a phase in an Annexation Declaration or a Supplemental Declaration.

1.79 "**Planned Development**" means a Project (other than a Condominium Project) having common area owned either by the Project Association or in common by the Owners of the Units within that Project who possess appurtenant rights with respect to the beneficial use and enjoyment of the common areas of such Project by means of an assessment.

1.80 "**Private Amenities**" means any real property, improvements and/or facilities thereon located within the Village which Persons other than the Village Association own and operate for recreational and related purposes, on a club membership basis or otherwise, including, without limitation, the Mountainside Ski Property, any non-Village Association owned ski lifts and runs, and all related and supporting facilities and improvements.

1.81 "**Project**" means any separately designated area upon a portion of the Property and comprised of one or more discrete types of development or use, including the following types of uses:

(a) Vacant Land;
(b) Hotel;
(c) Lodge;
(d) Condominium;
(e) Condominium Hotel;
(f) Commercial Units;
(g) Residential Units;
(h) Recreational Units;
(i) Moderate Income Housing Units; or
(j) Any other separately designated area within the Village devoted to a discrete purpose, as determined by Declarant from time to time.

Any such Project shall be designated as a Project in the Project Declaration, this Village Declaration or an Annexation Declaration annexing such portion of the Property to the Village.

1.82 "**Project Assessments**" means assessments levied pursuant to a specific Project Declaration.

1.83 "**Project Association**" means any association established for a specific Project pursuant to a Project Declaration.

1.84 "**Project Committee**" means a committee appointed or elected for a Project pursuant to Section 9.12 below.

1.85 "**Project Common Area**" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their Guests, and includes any Project Limited Common Area as may be designated on any plat of any Project. Unless the plat specifically indicates that a tract or parcel located on a tract or parcel of real property is "Village Association Common Area," the tract or parcel designated as common area shall be deemed to be Project Common Area.

1.86 "**Project Declaration**" means a declaration of covenants, conditions, restrictions and easements establishing a plan of Condominium ownership, Planned Development or townhouse ownership, or otherwise imposing a unified development scheme on a particular Unit or Units.

1.87 "**Project Limited Common Area**" means any Project Common Area established for the exclusive use or enjoyment of certain Units within Project(s) as designated on any plat of any portion of the Property, in this Village Declaration, or in any Annexation Declaration annexing Additional Property to Village.

1.88 "**Project Limited Common Area Assessment**" has the meaning set forth in Section 11.9.

1.89 "**Property**" means the Village Property and any of the Annexable Property that is included in a Recorded Annexation Declaration. The Mountainside Ski Property is not subject to this Village Declaration and is not part of the Property. At times in this Village Declaration, the Property is referred to by its common name, which is the "Village."

1.90 "**Proposed Commercial Unit**" means any Commercial Unit planned for the Village.

1.91 "**Proposed Residential Unit**" means any of the Residential Units planned for the Village.

1.92 "**Public Areas**" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Village Declaration or the Annexation Declaration annexing such property to Village.

1.93 "**Official Records**" means the official records of the Wasatch County Recorder.

1.94 "**Record**" "**Filed**," "**Recorded**" or "**Recordation**" mean, with respect to any document, the recordation or filing of such document within the Official Records.

1.95 "**Recreational Unit**" means a Unit that is developed primarily for recreational uses.

1.96 "**Released Parties**" has the meaning set forth in Section 16.9.

1.97 "**Reserve Fund**" has the meaning set forth in Section 11.14.

1.98 "**Reserve Fund Assessment**" has the meaning set forth in Section 11.14.

1.99 "**Residential Cost Center Assessment**" has the meaning given to that term in Section 11.6(a).

1.100 "**Residential Director**" means those members of the Board of Directors elected by the Project Associations of Residential Units in accordance with the procedures set forth in the Bylaws of the Village Association.

1.101 "**Residential Unit**" means a Unit in the Village that is intended to be improved with a single-family residence or dwelling unit in a Condominium Project. The term Residential Unit shall not include a Lodge or Lodge Rooms, but shall include Units used as part of a Vacation Club or Time Share Project.

1.102 "**Resort**" has the meaning set forth in Recital A.

1.103 "**Resort Foundation**" shall have the meaning set forth in the Master Declaration.

1.104 "**Resort Support Facility**" and "**Resort Support Facilities**" are terms that mean and refer to the amenities and facilities designated as such by Declarant or identified as such in the Mountain Operator Agreement that are located within the Resort or within the Mountainside Ski Property and which are operated for the benefit of, or used in connection with, the Mountain Operations. The term "Resort Support Facility(ies)" include(s), without limitation:

(a) office and administrative facilities;

(b) maintenance and repair facilities;

(c) information facilities;

(d) operational facilities;

(e) employee child care facilities;

(f) facilities that provide services to Guests of the Mountainside Ski Property, such as conference facilities, child care facilities, cultural facilities, recreational facilities, athletic facilities and other entertainment facilities, that meet the criteria described in the preceding sentence;

(g) areas and uses within the Village that are identified as such in the Mountain Operator Agreement; and

(h) ski lifts and gondolas servicing the Mountain Operations.

1.105 "**Respondent**" has the meaning set forth in Section 18.2(a).

1.106 "**Reviewer**" has the meaning set forth in the Master Declaration.

1.107 "**Ski Terrain Owners**" means RH Mayflower, LLC, a Delaware limited liability company, and 32 Dom Mayflower, LLC, a Delaware limited liability company, and their respective successors and assigns. To the extent Declarant or Declarant's Affiliates come to own or lease any real property within the Annexable Property that is owned, leased or held for use for Mountain Operations, the term "Ski Terrain Owners" shall include Declarant and such affiliates.

1.108 "**Sold**" means that legal title has been conveyed or that a contract of sale has been executed and Recorded under which the purchaser has obtained the right to possession.

1.109 "**Special Assessment**" has the meaning set forth in Section 11.7.

1.110 "**Special Individual Assessment**" has the meaning set forth in Section 11.10(a).

1.111 "**Special Events**" means special events occurring at the Village, including concerts, performing arts, festivals, fairs, tournaments, sports federation events, Olympic venues, Paralympic venues, and qualifying events and other events planned or sponsored by the Ski Operator, Master Association and/or Village Association in whole or in part.

1.112 "**Supplemental Declaration**" means any declaration which may be Recorded which supplements this Village Declaration and which may affect solely: (i) a Condominium Project, (ii) a Commercial Unit, (iii) a Planned Development, or (iv) Units within a particular Phase of the Village. Declarant may Record a Supplemental Declaration with respect to any Phase of the Village at any time prior to the sale of a Unit in that Phase to a third party who is not a Declarant's Affiliate, and at any time thereafter as provided in the Project Declaration or, if not so provided, with the consent of a majority of the Owners of Units in such Phase.

1.113 "**Tax Sharing and Reimbursement Agreement**" means that certain Tax Sharing and Reimbursement Agreement dated as of August 19, 2020 by and among MIDA, Ex Utah Development, LLC, BLX LLC, Declarant, BLX Pioche LLC, BLX Land LLC, BLX MWR Hotel LLC, and the Ski Terrain Owners, as it may be amended, supplemented, restated or superseded from time to time.

1.114 "**Time Share Project**" means a Project that includes "timeshare interests" as defined in the Utah Timeshare and Camp Resort Act (Utah Code Ann. §§57-19-1 et seq.) as amended or replaced from time to time.

1.115 "**Unit**" means a portion of the Village, whether improved or unimproved, which may be independently owned. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings but which is not a Hotel or a Lodge, each dwelling shall be deemed to be a separate Unit. In the case of Vacant Land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a Recorded plat subdivides all or a portion of the parcel. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding sentence. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph. Unless the Project Declaration or Condominium Plan applicable to a particular Unit otherwise provides, if walls, floors, or ceilings are designated as boundaries of a Unit, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the Unit are part of the Unit and any other portions of the walls, floors, or ceilings are part of the common areas. Notwithstanding the foregoing, any parcel of real property owned, held or used in its entirety (i) by the Village Association, (ii) as Village Common Area or as common area for a Condominium Project, (iii) by any Governmental Authority (except the MIDA Property), (iv) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, communications, cable television or any other utility service, or (v) solely for

access to or through all or any portion of the Village, shall not be considered a Unit. In addition, the term "Unit" shall not include any portion of the Mountainside Ski Property or any portion of the Village that is subject to a Mountain Easement Agreement.

1.116 "**Utility Purposes**" has the meaning set forth in Section 5.3(a).

1.117 "**Vacant Land**" means a parcel of land on which no Improvements have occurred with respect to the development of a Project.

1.118 "**Vacation Club**" means a Person (other than a natural Person) that is owned by members, whose ownership/membership interests in such Person are evidenced by points, shares or other interests that entitle the members to occupy Residential Units owned and/or leased by such Person.

1.119 "**Village**" means the master planned community that Declarant intends to develop on the Village Property and such portions of the Annexable Property as Declarant may later annex to the Village in accordance with Section 2.2.

1.120 "**Village Area Hazards**" has the meaning set forth in Section 16.1.

1.121 "**Village Area Uses and Activities**" has the meaning set forth in Section 16.1.

1.122 "**Village Association**" means the nonprofit corporation to be formed to serve as the association of Unit Owners as provided in Article 9 below, and its Members include, and are limited to, the Owners of the Units in the Village.

1.123 "**Village Common Areas**" means any portion of the Village Property designated as Village Common Areas on a Recorded plat thereof, or any portion of the Annexable Property identified in an Annexation Declaration as Village Common Areas which are subjected to this Village Declaration, and any other real or personal property, including easements, that the Village Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. Without limiting the foregoing the Village Common Areas shall include:

(a) That portion of the Village which is owned, leased, controlled or maintained by the Village Association for the common use, enjoyment or benefit of all Owners. If Village Common Area acquired by the Village Association is subject to a prior unaccepted offer of dedication by Declarant to a public agency or is subject to an unrescinded offer of gift to a nonprofit corporation, the Village Association or Declarant, as the case may be, shall complete such dedication or gift at any time upon request by such agency or corporation. Some Village Common Areas may consist of, and be created as, easements in favor of the Village Association over other Units (such areas to be referred to herein or in a Supplemental Declaration as "**Village Easement Common Area**"). Without limiting the generality of the foregoing, the Village Common Areas, include, without limitation, the Village Plaza areas of the Village (other than the ice-skating rink), which are or will be owned in fee simple or will be the subject of easements in favor of the Village Association for the benefit of all Owners of Units in the property that is subject to the Master Declaration, patrons, guests and invitees of the Mountain Operator, and members of the general public. Portions of the Village Common Areas may include, open space areas, recreational facilities, and pedestrian plaza areas, as well as certain easements identified on a subdivision map as "Private Ski Easements" which the Village Association shall be obligated to maintain upon conveyance of those easements from Declarant to the Village Association.

(b) As portions of the Annexable Property become part of the Village as a result of the Recording of an Annexation Declaration, or if Property already subject to this Village Declaration is

further subdivided or developed, additional Village Common Areas may be designated in an Annexation Declaration or Supplemental Declaration to be owned, leased, controlled or maintained by the Village Association for the use, enjoyment or benefit of the Owners pursuant to Section 2.2 below.

(c) Village Common Areas do not mean or include: (i) the Mountainside Ski Property, (ii) Mountain Operations (other than those Mountain Operations that are permitted on Village Common Areas pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements), (iii) Master Common Areas and Facilities (as defined in the Master Declaration), or (iv) property that is specifically designated and described as Project Common Area in any Project Declaration or Supplemental Declaration.

1.124 "**Village Common Areas and Facilities**" means the Village Common Areas and the Village Common Facilities, collectively.

1.125 "**Village Common Facilities**" means all personal property, equipment and Improvements on real property owned, leased, controlled or maintained by the Village Association, and shall include personal property, equipment and Improvements financed by, or secured by the assets of the Village Association (which assets include the Village Association's right to levy and/or collect Assessments, charges, fines and penalties pursuant to this Village Declaration, and all amounts so collected). Village Common Facilities may include personal property, equipment and Improvements on real property not owned by the Village Association, but which Declarant, Declarant's Affiliates, or the Village Association has agreed to operate and/or maintain on behalf of any Governmental Authority. Village Common Facilities shall not include the Mountain Operations or any common areas or common facilities of any Project Association.

1.126 "**Village Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Mountainside Village, as it may be amended, supplemented, restated, or superseded from time to time.

1.127 "**Village Easement Common Area**" has the meaning set forth in Section 1.122(a).

1.128 "**Village Plaza**" means and refers to the common pedestrian plaza areas that are located in and around the Projects in the Village as identified in an Annexation Declaration or Supplemental Declaration. The Village Plaza areas (other than the area intended to be improved as an ice-skating rink) are Village Common Areas.

1.129 "**Village Property**" has the meaning set forth in the Recital A.

1.130 "**Village Rules**" means the restrictions and rules adopted by the Village Association, as the same may be supplemented, modified and repealed from time to time by the Village Association in accordance with Section 3.4(b) of this Village Declaration and the Village Association Bylaws.

1.131 "**Voluntary Cleanup Program**" means the environmental remediation of a portion of the Village contemplated by that certain Voluntary Cleanup Agreement dated as of July 28, 2017 between Declarant and the Utah Department of Environmental Quality, as amended, supplemented or replaced from time to time.

1.132 "**Voting Groups**" has the meaning set forth in Section 9.3(c).

ARTICLE 2

PROPERTY SUBJECT TO THIS VILLAGE DECLARATION

2.1 **Village Property**. Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Village Declaration:

All that certain real property located in Wasatch County, Utah, more specifically described on Exhibit A to this Village Declaration.

2.2 **Annexation of Additional Property**. Subject to such Governmental Authority approvals as may be required by under Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Village, Declarant may from time to time and in its sole discretion add to the Village any Annexable Property, in whole or in part, now or hereafter acquired by it, and may also from time to time and in its sole discretion allow other holders of real property to add real property owned by them to the Village. The addition of such real property shall be accomplished as follows:

(a) The Owner of such real property shall Record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Village Declaration (each, an "**Annexation Declaration**").

(b) The Additional Property included in any Recorded Annexation Declaration shall thereby become a part of the Village and this Village Declaration, and Declarant and the Village Association shall have and shall accept and exercise administration of this Village Declaration with respect to such Additional Property.

(c) Notwithstanding any provision herein apparently to the contrary, an Annexation Declaration with respect to any Project or Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants, conditions and easements with respect to the Additional Property as Declarant may deem to be appropriate for the development of the Additional Property;

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants, conditions and easements with respect to such Additional Property as Declarant may deem to be appropriate for the development of such Additional Property; and

(iii) incorporate provisions contained in this Village Declaration with or without modification to become applicable to the Project Common Area, the Project Association, design review, Project Assessments or other matters affecting a Project without a requirement that such provisions be repeated in a Project Declaration.

(d) There is no limitation on the number of Units that Declarant may create or annex to the Village, except as may be established by Applicable Law. Similarly, there is no limitation on the right of Declarant to annex Common Area, except as may be established by Applicable Law.

(e) Declarant does not agree to build any specific future Improvement, and does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation, the Additional Property so annexed shall be entitled to voting rights as set forth in Section 9.3 below. (Prior to annexation, proposed Units shown in the Mountainside Master Plan as being located in the Village shall be counted as provided in Section 9.3 below for calculating the voting rights of the Class "B" Member.)

(g) The method to be used for reallocating the Common Expenses if additional Units are annexed and the manner of reapportioning the Common Expenses if additional Units are annexed during a fiscal year are set forth in Section 11.12.

2.3 **Withdrawal of Property**. Subject to such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Village, Declarant may withdraw property from the Village at any time only by duly adopted amendment to this Village Declaration, except that Declarant may withdraw all or a portion of any Additional Property annexed pursuant to an Annexation Declaration at any time prior to the sale to a Person other than one of Declarant's Affiliates of the first Unit in the plat of the Additional Property. Such withdrawal shall be by a Recorded declaration executed by Declarant. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to a Project Association being withdrawn shall be eliminated, and the Common Expenses shall be reallocated as provided in Section 11.12. Such right of withdrawal shall not expire except upon sale to a Person other than one of Declarant's Affiliates of the first Unit within the applicable Phase of the Property as described above.

ARTICLE 3

RIGHTS OF DECLARANT, MEMBERS, UNIT OWNERS AND LESSEES

3.1 **Purpose of the Village Declaration to Establish a General Plan of Development**. This Village Declaration and any Supplemental Declaration or Annexation Declaration later Recorded with respect to any Phase of the Village are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Units and Common Area comprising the Village and are established for the purpose of enhancing, perfecting and maintaining the value, desirability and attractiveness of the Village as a first-class, year-round destination recreational village community. This Village Declaration shall run with all land now or hereafter comprising the Village for all purposes and shall be binding upon and inure to the benefit of Declarant, the Village Association, any Project Association, and all Owners and their Lessees and Guests.

3.2 **Authority of Declarant to Modify Entitlement Documents**. Nothing in this Village Declaration shall be construed in a manner that would prevent Declarant from modifying any or all of the Entitlement Documents or any portions thereof, or from resubdividing any and all of the Additional Property (whether or not such actions by Declarant increase or decrease the number of Units subject to assessments), or from dedicating or conveying portions of the Property described on any subdivision map, including streets or roadways, for uses other than as Units or Common Area, subject, however, to the receipt of any prior approvals as may be required from applicable Governmental Authorities with jurisdiction. Any statements set forth herein regarding Declarant's future plans for the development of any portion of the Property reflect Declarant's current Mountainside Master Plan for the Village. However, there is no guarantee that those future development plans will be implemented in the manner currently contemplated or at all.

3.3 **Authority of Declarant to Approve Boundary Line Adjustments**. At any time within twenty (20) years from the date that the first Unit in a Phase is conveyed to an Owner other than Declarant or one of Declarant's Affiliates, the boundaries of any Project Common Area or Village Common Area in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently Recorded survey, parcel map, or subdivision map, provided that the altered boundaries are approved by Declarant and all Owners of the property involved in the boundary adjustment. In the event a boundary line adjustment involves Village Common Area or Project Common Area, the board of directors of the affected Project Association are authorized to grant approval on behalf of such Project Association and its members. Any such alteration shall be effective upon Recordation of the survey, parcel map, or subdivision map. Upon such Recordation, the boundaries of the altered Village Common Area or Project Common Area shall be altered for purposes of this Village Declaration to conform to the boundaries as shown on such survey, parcel map, or subdivision map. The authority conferred by this Section 3.3 shall not apply to any Condominium Project within the Village unless the applicable Project Association also consents to the boundary line adjustment. In addition, no changes shall be made to the Village Plaza areas that would compromise the visibility of any Commercial Unit when viewed from the Village Plaza areas or which might increase the cost of snow removal by impairing access to or within the Village Area or otherwise affecting access to or the operation of any businesses in the Commercial Units within the Village.

3.4 **Owners' Nonexclusive Easements of Enjoyment of Village Common Areas**. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Village Common Areas and Facilities, including ingress and egress to and from such Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) **Right of the Village Association to Regulate Village Common Area Uses**. The right of the Village Association to limit the number of Guests of Owners who may use any recreational Village Common Areas and Facilities situated upon the Village Common Areas, or to impose fees for use of particular recreational Village Common Areas and Facilities. Declarant and the Mountain Operator shall also have certain rights to use the Village Common Areas and Facilities as set forth in the Mountain Operator Agreement, the Mountain Easement Agreements, and Sections 3.4(g), 5.9 and 5.12.

(b) **Right of the Village Association to Adopt Village Rules**. The right of the Village Association to adopt Village Rules regulating the use and enjoyment of the Property comprising any portion of the Village for the benefit and well-being of the Owners in common, and, in the event of the breach of such Village Rules or any provision of any Governing Document by any Owner or Lessee, including, but not limited to, the nonpayment of any required Assessments, to initiate disciplinary action against the violating Owner or Lessee in accordance with Article 12. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Village Common Areas and Facilities, other than roads, by any Owner and such Owner's Lessees and Guests. The Village Rules may differentiate between categories of Owners, Lessees, or Guests as established by the Board of Directors from time to time; however, the Village Rules must be uniformly applied within such categories.

(c) **Right to Incur Indebtedness**. The right of the Village Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Village Common Areas and Facilities. The right to incur indebtedness shall include the right to assign or pledge the Village Association's right to collect payments or Assessments to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Village Association.

(d) **Mandatory Dedications and Transfers**. Any duty to dedicate or transfer any part of the Village Common Areas and Facilities to a public agency, authority or utility which Declarant or the Village Association may have pursuant to any of the Entitlement Documents or other agreement with any Governmental Authority that is applicable to the Village. The Village Association shall make any such dedication that may, in the future, be required of it or of Declarant or any Declarant's Affiliate.

(e) **Voluntary Dedications and Transfers**. The right of the Village Association to dedicate or transfer any part of the Village Common Areas and Facilities to any public agency, authority or utility willing to accept the same, for such purposes and subject to such conditions as the Village Association may determine; provided, that any such dedication or transfer pursuant to this subparagraph (e) shall be documented by a Recorded instrument, and shall not impair the ingress and egress to or from any Unit or the Village Common Areas and Facilities.

(f) **Rights of Easement Holders**. All easements affecting the Village Common Area that are described in Article 5.

(g) **Use by Declarant and the Mountain Operator**. The right of Declarant and the Mountain Operator and its/their employees, sales agents, prospective purchasers, customers and representatives, to enter upon the Village Common Areas and Facilities for the benefit of Declarant or the Mountain Operator, to complete the development and improvement of Units, and the construction of any landscaping or other Improvement or Village Common Facility to be installed on the Village Common Areas, as well as the right (subject to the prior right of the Mountain Operator pursuant to the Mountain Operator Agreement and the Mountain Easement Agreements and to operate the Mountainside Ski Property) of nonexclusive use of the Village Common Areas and Facilities, without charge, for sales, display, access, ingress, egress, exhibition and Special Events, including the right to post signage in and on the Village Common Areas and Facilities which right Declarant and the Mountain Operator hereby reserve. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners or Lessees as provided herein, as reasonably determined by the Board of Directors.

(h) **Right to Close Facilities During Maintenance or Renovation**. The right of the Village Association to close or limit the use of the Village Common Areas and Facilities, or portions thereof to access to and use by the Owners, while maintaining, repairing or modifying the same; provided however that with the exception of an emergency situation in which action must be taken by the Village Association in an effort to avoid damage to or destruction of property or injury to persons within the Village, this reserved right shall not be exercised in a way that adversely affects any Mountain Operations or the Mountain Ski Property.

(i) **Right to Convey Additional Village Common Areas and Facilities to the Village Association**. The right of Declarant to later convey additional Village Common Areas and Facilities in the Village Property or the Annexable Property to the Village Association. Village Common Areas and Facilities, if any, to be owned by the Village Association in any portion of the Annexable Property that becomes part of the Village as the result of future annexations, may be conveyed to the Village Association prior to the first transfer to an Owner of a Unit in such annexed area, or may be later conveyed to the Village Association. Additional Village Common Areas and Facilities shall be identified as such in the Annexation Declaration or Supplemental Declaration that brings the Village Common Areas and Facilities into the jurisdiction of the Village Association. With respect to public property that is designated as Village Common Areas and Facilities that is to be maintained by the Village Association, Owners, Lessees, and their respective Guests shall have such rights as the applicable Governmental Authority allows.

(j) **Permits. Licenses and Easements**. The right of the Village Association to grant permits, licenses and easements on, over, under or through the Village Common Areas and Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Village and/or the Mountainside Ski Property, so long as such future permits, licenses and/or easements do not materially impair ingress or egress to or from any Unit in the Village.

(k) **Reconstruction of Village Common Areas and Facilities**. The right of the Village Association (by action of the Board of Directors) to reconstruct, replace or refinish any Village Common Areas and Facilities or any portion thereof, in accordance with the Design Guidelines and the Village Declaration.

(l) **Maintenance**. The right of the Village Association to maintain and repair the Village Common Areas and Facilities, including, without limitation, the right to plant trees, shrubs, flowers, ground cover and other vegetation upon any portion of the Village Common Areas and Facilities, and to replace any such vegetation or other landscaping Improvements which have been damaged or destroyed.

(m) **Signage**. The right of the Village Association, subject to the Design Guidelines, to post signage in and on the Village Common Areas and Facilities in connection with Village Association and Village activities.

(n) **Restricted Areas**. The right of the Village Association to reasonably restrict access to any Village Common Areas and Facilities, slopes and other sensitive landscaped areas and open space areas that are Village Common Areas and Facilities. The Village Association shall have exclusive control over all of the Village Common Areas and Facilities except for public property with respect to which the Village Association has maintenance responsibilities under the Governing Documents.

(o) **Rights of Mountain Operator**. The rights of the Mountain Operator, pursuant to the Mountain Operator Agreement, the Mountain Easement Agreements and this Village Declaration to access portions of the Mountainside Ski Property and the Mountain Operations for maintenance, repair and operational purposes.

3.5 **Owner's Rights and Obligations Appurtenant**. All rights, easements and obligations of an Owner under this Village Declaration and all rights of an Owner with respect to membership in the Village Association are hereby declared to be and shall be appurtenant to the title to the Unit owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Unit. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Unit shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such easements, rights and obligations. Notwithstanding the foregoing, the rights of an Owner under this Village Declaration may be assigned to a Mortgagee as further security for a loan secured by a lien on a Unit, and such rights and obligations may be assigned to and assumed by a Lessee for the period of such Lessee's lease of a Unit so long as the term of such lease is in excess of one year and the Owner provides written notice of such assignment to the Village Association.

3.6 **Delegation of Use of Units**.

(a) Any Owner may delegate such Owner's rights of use and enjoyment of the Owner's Unit, including any appurtenant right to use Village Common Areas and Facilities, to the Owner's

Guests, Lessees and to such other persons as may be permitted by the Governing Documents; provided, however, that if an Owner has transferred such Owner's Unit to a contract purchaser or has leased or rented the Unit to another Person, then that Owner shall not be entitled to use and enjoy any such rights in the Owner's Unit while the Owner's Unit is occupied by the contract purchaser or Lessee (other than to exercise such rights of access and contract enforcement typically reserved to lessors of real property). Instead, the contract purchaser or Lessee, while occupying such Unit, shall be entitled to use and enjoy such rights, including rights to use Village Common Areas and Facilities, and to delegate the rights of use and enjoyment in the same manner as if such contract purchaser or Lessee were an Owner during the period of such contract purchaser's or Lessee's occupancy. The use of a Unit by an equity or non-equity Vacation Club pursuant to its membership plan shall not be considered leasing or rental activity and members of such club shall not be considered Lessees. Nothing in this Section 3.6 shall be construed as limiting the rights that Owner-lessors customarily have as landlords in the supervision of their property or rights to use and enjoy Village Common Areas and Facilities on the same basis as members of the general public to the extent such rights may exist.

(b) Any delegated rights of use and enjoyment are subject to suspension and enforcement by the Village Association to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Village Association or to other Owners for payment of Assessments or performance of the covenants, conditions and restrictions contained in this Village Declaration.

(c) Any lease, rental agreement or contract of sale entered into between an Owner and a Lessee or contract purchaser of a Unit shall require compliance by the Lessee or contract purchaser with all of the covenants, conditions and restrictions contained in this Village Declaration and any applicable Project Declaration, such compliance being for the express benefit of the Village Association and each Owner. The Village Association and each Owner shall have a right of action directly against any Lessee or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Village Declaration to the same extent that such right of action exists against such Owner.

3.7 **Proximity to Snow Equipment, Mountainside Ski Property, the Resort Support Facilities and Roads**.

(a) Disclaimer of Liability and Release. Portions of the Village may be developed for Private Amenities, recreational use, or may be used for maintenance or servicing of the Mountainside Ski Property and the roads and Village Common Areas parking facilities within the Village. Such maintenance and servicing may include, without limitation, snowmaking, avalanche control, snow removal, snow storage, and other snow related activities. As such, the matters set forth in Section 3.7(b), may arise from the proximity of Units to the Mountainside Ski Property, the Resort Support Facilities or other recreational facilities, or in connection with snowmaking, avalanche control, snow removal, snow storage, or other snow related activities and functions. Each Owner who acquires, and each Lessee who leases, all or a portion of a Unit acknowledges, accepts and assumes the risk of the costs and burdens associated with such functions and facilities. Accordingly:

(i) Declarant, the Village Association, the Mountain Operator, the Master Association and the owner(s) of the Mountain Operations, Private Amenities and any other recreational Village Common Areas and Facilities located in the Village, and each and every employee or agent of any of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the items set forth in Section 3.7(b);

(ii) The owner(s) of any Private Amenities or other Village Common Facility located in the Village, and each and every member, owner, Guest, skier, employee or agent of any of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the items set forth in Section 3.7(b); and

(iii) Each Owner and Lessee accepts such disclaimers and agrees to release and waive any claims Owner, Lessee or any Guest of Owner or Lessee, may have as a result of any of the items set forth in Section 3.7(b).

(b) Maintenance and Service Activities; Assumption of Risk. The Mountainside Ski Property, the Mountain Operations, and the roads within the Village require daily seasonal maintenance and servicing, including snow removal, avalanche control, snowmaking, and grooming of the Mountainside Ski Property during various hours, including early morning and late evening hours. Such maintenance and servicing may include, without limitation, the use of snowmaking equipment, blowers and pumps, avalanche control ordnance, snow removal equipment and vehicles, and Mountainside Ski Property grooming equipment, snow cats and vehicles. Owners and Lessees of Units, particularly Owners and Lessees of Units located in proximity to the Mountainside Ski Property or Resort Support Facilities, snowmaking equipment, or roads which are serviced by snow removal equipment, may be exposed to lights, noise, activities or other effects resulting from the maintenance and servicing of such areas and the use of such facilities and equipment, and the Owners and Lessees acknowledge, accept and assume the risk of such light, noise and activities.

(c) Absence of Rights in Privately Owned Club and Similar Facilities. Notwithstanding the use of any of the Property as a private club, spa or other private recreational facility, or the physical proximity of any Unit to any private club, spa or other private recreational facility and notwithstanding any statements or representations by Declarant or any other party, neither ownership of a Unit nor membership in the Village Association shall confer any right or entitlement, now or in the future, upon any Person to membership or voting rights in any private club, spa or other private recreational facility or to any ownership interest, equity interest or right to use any private club, spa or other private recreational facility. The foregoing shall not impact the rights of any Owner to use the Village Common Areas and Facilities subject to the limitations imposed herein, and the other terms and conditions of this Village Declaration and the Master Declaration.

ARTICLE 4

PROJECT DESIGNATIONS AND LAND CLASSIFICATIONS

4.1 **Project Designation**. The MIDA Property is hereby designated as a Condominium Hotel. The balance of the Village Property shall be classified as Vacant Land until such time as an Improvement is constructed thereon, at which time the classification shall be changed to the appropriate classification, as determined by Declarant.

4.2 **Land Classifications within Initial Development**. All land within the Village Property is included in one or another of the following classifications:

(a) Vacant Land;

(b) Hotel;

(c) Lodge;

(d) Condominium;

(e) Condominium Hotel;

(f) Residential Units;

(g) Commercial Units;

(h) Moderate Income Housing Units;

(i) Recreational Units;

(j) Project Common Area, which shall be the areas marked as landscaped open space, open space and private roads, or other similar designations, on the plats recorded as a part of the Village Property. Unless the plat specifically indicates that a tract or parcel is "Village Common Areas" the tract or parcel shall be deemed to be Project Common Area;

(k) Village Common Area, which shall be the areas marked as Village Common Area or other similar designations, on the plats recorded as a part of the Village Property; or

(l) Public Areas, which shall be the areas marked as public parks, trails or streets on the plats recorded as a part of the Village Property.

4.3 **Consolidation of Units**. The Owner of two adjoining Units, with the approval of Declarant and, to the extent required by the Master Declaration or a Project Declaration, Applicable Law, the Master Association and each Project Association and Governmental Authority with jurisdiction, may elect to consolidate such Units into one Unit. The consolidation shall be effected by the Owner's Recording a declaration stating that the two Units are consolidated and such other documents as are required by Applicable Law, which declaration shall include a written consent executed on behalf of Declarant, the Master Association, the Village Association and any required Project Association and Governmental Authority. Thereafter, the consolidated Units shall constitute one Unit for all purposes of this Village Declaration, including voting rights and assessments. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked without the prior approval of Declarant.

ARTICLE 5

PROPERTY RIGHTS IN VILLAGE COMMON AREAS

5.1 **Owners' Easements of Enjoyment**. Every Owner shall have a right and easement of enjoyment in and to the Village Common Areas, which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the restrictions and limitations set forth in Article 7, the easements set forth in this Article 5, and the other provisions of this Village Declaration.

5.2 **Easements for Encroachments**. The Village Common Areas, and all portions of them, are subject to easements hereby created for encroachments of any portion of a Unit, Project or the Village Common Areas as follows:

(a) In favor of the Village Association so that the Village Association shall have no legal liability when any part of the Village Common Areas encroach upon any Project Common Area;

(b) In favor of each Project Association so that the Project Association shall have no legal liability when any part of any Project Common Area encroaches upon any portion of the Village Common Areas; and

(c) In favor of the Project Associations and the Village Association for the existence, maintenance and repair of such encroachments.

Encroachments referred to in this Section 5.2 include, but are not limited to, encroachments of improvements located on the Village Common Areas onto Units or Project Common Area, encroachments of overhangs or other portions of buildings or other improvements located on the Units onto the Village Common Areas, and other encroachments caused by error or variance from the original plans in the construction of a Project, by error in the subdivision map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of a Project. Such encroachments shall not be considered to be encumbrances upon any Unit, any part of a Project or the Village Common Areas.

5.3 **Utility Easements**.

(a) Declarant reserves for itself and its successors and assigns who are specifically assigned this right and easement and hereby grants to the Village Association and its officers, agents, employees, successors and assigns a general easement on, over, under, above and through (i) those portions of each Unit and Unit shown on any subdivision map being ten (10) feet in width and immediately adjacent and parallel to all property lines of such Unit (other than Units that are Condominium Units located within a building or other Units constituting townhomes or other similar product specifically created to have so-called "zero lot lines"), (ii) those portions of the Property, if any, designated on a subdivision map as a "Utility Easement", "Central Utility Easement," "Access Easement," "Ski Easement," "Private Ski Easement," "Snow Storage Easement," "Sewer Easement," "Water Easement" and "Village Common Areas" and (iii) all roadways, Units depicted on a subdivision map, excluding areas within any designated building envelope, for the purpose of the following, and without limitation: (A) using, installing, constructing, maintaining, improving, repairing and replacing drainage, water and utility facilities of any kind or nature whatsoever, including but not limited to, storm drainage facilities, fire hydrants and related fire protection devices, sanitary sewer lines, water lines, snowmaking lines, snowbell system lines, irrigation lines, systems and facilities, electric lines, gas lines, telephone lines, cable television line, fiber optic lines, and other communication facilities, (B) drainage of water flowing from other lands, (C) water storage and distribution facilities, (D) snow removal and storage, and (E) vehicular and pedestrian access for installation and maintenance of such utilities, together with a perpetual right of ingress and egress to and from such easement (collectively, hereinafter referred to as "**Utility Purposes**").

(b) Declarant reserves the right, but has no obligation, to Record a document specifying the boundaries of specific easements within the above-described easement areas at any time or from time to time after improvements related to such Utility Purposes have been constructed; provided, however, that in no event shall the creation of any such easement adversely affect the intended use of any Exclusive Use Village Common Area in the area of the designated easement or affect, avoid, extinguish or modify any other Recorded easement on the Property. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Board of Directors shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof, provided that Declarant or the Board of Directors of the Village Association shall give prompt notice of any such specific easement granted to the Owners of any Unit affected thereby.

5.4 **Reservation of Easements and Exclusions**. Declarant reserves for itself and its successors and assigns who are specifically assigned this right, the right to establish from time to time by declaration or otherwise, utility and other easements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues and conduit installation areas, consistent with the ownership of the Property for the best interest of the Owners and the Village Association. Declarant further reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within the Village to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise. Declarant hereby further reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Village Common Areas for the purposes of enjoyment, use, access, and development of the Annexable Property, whether or not such property is made subject to this Village Declaration. This easement includes, but it not limited to, a right of ingress and egress over the Village Common Areas for construction of roads and for connecting and installing utilities on such property.

5.5 **Emergency Access Easement**. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon any portion of the Property in the proper performance of their duties.

5.6 **Village Association Easements**. An easement is hereby granted to the Village Association and its officers, agents, employees and assigns upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Village Declaration. Notwithstanding the foregoing, the Village Association shall not enter upon or within any Unit without reasonable prior notice to the Owner of the Unit, except in cases of an emergency. In addition, any Village Association easements shall be subject and subordinate to the terms of the Mountain Easement Agreements and the Mountain Operator Agreement.

5.7 **Drainage Easement**. An easement is hereby reserved to Declarant and its successors and assigns who are specifically assigned this right and easement, and is hereby granted to the Village Association and its officers, agents, employees, successors and assigns, to enter on, over, under, above, across and through those portions of the Property designated as a "Drainage Easement" on a subdivision map for the purposes of the following, without limitation: using, installing, improving, maintaining, repairing and replacing drainage facilities of any kind or nature, including, but not limited to, storm drainage, and the drainage of waters and debris flowing from other lands, together with a perpetual right of ingress and egress to and from such easements.

5.8 **Easements of Access for Repair, Maintenance and Emergencies**. Some portions of the Village Common Areas and Facilities are or may be located on or within certain Units or within the Project Common Areas of certain Projects, or may be conveniently accessible only through certain Units or the Project Common Areas. The Village Association shall have the irrevocable right to have access to each Unit, and to all Project Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Village Common Areas and Facilities or for making emergency repairs therein necessary to prevent damage to any portion of the Village Common Areas and Facilities or to any Unit. Subject to the provisions of Article 11 (relating to the right of the Village Association to recover the cost of making certain repairs), damage to the interior of any part of a Unit or Project resulting from the maintenance, repair, emergency repair, removal, or

replacement of any portion of the Village Common Areas and Facilities or as a result of emergency repairs undertaken by the Village Association shall be a Common Expense.

5.9 **Declarant's Rights Incident to Construction and Marketing**. Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of Units and Projects, including construction trailers, temporary construction offices, sales offices and directional and marketing signs. Declarant may designate a portion of the Village Common Areas and Facilities for the foregoing construction and other purposes in connection with the development of a particular Unit or Project. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit(s) as sales offices, construction, sales and business management offices or as models so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit within the Property. The use by Declarant of any Unit as a model, office or other use shall not affect the Unit's designation on the subdivision map or in a Condominium plan as a Unit. Declarant further reserves exclusive easement rights over and across the Property comprising the Village for the purpose of marketing, sales and rental of Units, or of other projects developed or marketed by Declarant or Declarant's Affiliates from time to time, including, without limitation, the right to show the Property and to display signs, flags, banners and other promotional devices. Declarant also reserves the right to lease unsold Units.

5.10 **Governmental Requirements**. Declarant hereby reserves the right to grant such easements and rights-of-way across the Property, from time to time, as may be required by any Governmental Authority. Such easements and rights-of-way shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental Governmental Authorities, for so long as Declarant holds an interest in any Unit subject to this Village Declaration.

5.11 **Remodeling Easement**. Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, including Owners, retain a right and easement in and about the buildings within any Project Common Area for the construction and installation of any duct work, additional plumbing, or other additional services or utilities serving the Village Common Areas and Facilities in connection with the maintenance, repair, improvement or alteration of the Village Common Areas and Facilities, including the right of access to such areas of the Village as are reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this section, the decision of the Board of Directors shall be final.

5.12 **Mountain Easement Agreements and the Mountain Operator Agreement**. Declarant hereby reserves the right to grant to the Mountain Operator and/or the Ski Terrain Owners, as the owner and/or operator of the Mountainside Ski Property, an easement for the benefit of employees, customers, guests and patrons of the Mountainside Ski Property, over, across, through, upon, and under certain roads, streets, sidewalks, trails, passageways, and pedestrian and vehicle access ways that are located upon or across the Property for ingress to and egress from the Mountainside Ski Property. In addition, Declarant, the Master Association and the Mountain Operator have entered into, or will enter into, the Mountain Easement Agreements and the Mountain Operator Agreement which contain certain other benefits and burdens to and on the Village Association and portions of the Village Common Areas and Facilities.

5.13 **Easements in Favor of the Mountain Operator**. There is further granted to the Mountain Operator, for the benefit of the Mountainside Ski Property, an unallocated general easement upon the Property for the following uses and activities conducted on, or resulting from the conduct of, activities of the Mountain Operator, its agents and invitees on the Mountainside Ski Property: (i) noise,

light, odor, movement of air, interference with sunlight, and blowing of snow, water mist and water drops relating to ordinary ski and snowmaking or other recreation-related activities; and (ii) dust, debris, or noise resulting from or associated with other recreational activities or Mountain Operations conducted on the Mountainside Ski Property as a four-season resort or in any easement areas created by the Mountain Easement Agreements. Each Owner and its Guests accept and assume the risk of the benefits and burdens associated with those reasonable ski and snowmaking activities conducted upon or in conjunction with the Mountainside Ski Property, and Declarant, Declarant's Affiliates, the Master Association, the Village Association, each Project Association and the Owners of each Unit, and each and every employee or agent of any of them, and guests and invitees upon the Property, hereby disclaim, waive and give up any claim to liability for personal injury or property damage suffered by them or proximately caused in any way in part or in whole by the activities and uses identified in this Section 5.13.

5.14 **Easements for Vehicular and Pedestrian Traffic**. In addition to the general easements for use of the Village Common Areas and Facilities reserved herein, Declarant hereby reserves to itself, to the Mountain Operator, to each Project Association and to all future Owners within the Village, and to every Lessee or Guest of an Owner, nonexclusive easements appurtenant to each Unit in the Village for vehicular and pedestrian traffic over any and all private streets, walkways and trails within the Village Common Areas and Facilities, subject to the parking and other restrictions on use reasonably imposed by the Board of Directors. Declarant reserves the right to grant similar easements to owners of property in the Village.

5.15 **Easement for Voluntary Cleanup Program**. An easement is hereby reserved to Declarant and granted to Declarant's Affiliates, and their respective officers, agents, employees, contractors, successors and assigns, upon, across, over, in and under the Property in such locations as Declarant may identify from time to time in a Recorded instrument, and a right to make use of such designated portion of the Property as may be necessary or appropriate, to perform the duties and functions required pursuant to the Voluntary Cleanup Program, including any necessary or desired testing and Ongoing Monitoring.

5.16 **Easements for the Resort Foundation**. Declarant hereby grants to the Resort Foundation, its members, employees, designees, and Guests perpetual, non-exclusive easements over the Village Common Area to the extent reasonably necessary for ingress, egress and access to properties and facilities owned, operated, maintained, and/or managed by the Resort Foundation. However, this easement shall not include a right to enter any enclosed structure or to unreasonably interfere with the use of any Village Common Area. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

5.17 **Easements Deemed Created**. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article 5 appears in the instrument for such conveyance.

5.18 **Conversion of Streets to Project Limited Common Area**. Upon approval of Declarant and the Owners of a majority of the Units within any Project, any non-public principal road providing access to the Project and not also providing access to any other Project may be converted from a Village Common Area to a Project Limited Common Area for the exclusive benefit of the Project in question. Any road so converted to Project Limited Common Area may use gated entries to the extent permitted by this Village Declaration and Applicable Law. Thereafter, the costs of maintaining such Project Limited Common Area and gates shall be a Cost Center, the responsibility for which shall be the Owners of Units within the applicable Project.

5.19 **Conveyance of Village Common Areas to Village Association**. Declarant reserves the right to later convey additional Village Common Areas and Facilities to the Village Association. Village Common Areas and Facilities, if any, to be owned by the Village Association in any portion of the Additional Property that becomes a part of the Village as the result of a future annexations, may be conveyed to the Village Association prior to the first transfer of a Unit in such annexed area, or may be later conveyed to the Village Association.

5.20 **Use of the Village Common Areas**. The Village Common Areas shall not be partitioned or otherwise divided into Units for residential use, and no private structure of any type shall be constructed on the Village Common Areas. Except as otherwise provided in this Village Declaration, the Village Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Village Common Areas and Facilities. Nothing herein shall prevent the placing of a sign or signs upon the Village Common Areas and Facilities identifying the Village or any Project or identifying pathways or items of interest, provided such signs comply with any applicable sign ordinance. The Board of Directors shall have authority to abate any trespass or encroachment upon the Village Common Areas and Facilities at any time, by any reasonable means and with or without having to bring legal proceedings. An Annexation Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use particular Village Common Areas and Facilities. In such case, those Owners will not be required to share in the costs of maintaining such Village Common Areas and Facilities, as is more particularly described in Article 11.

5.21 **Alienation of the Village Common Areas**. The Village Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Village Common Areas and Facilities owned directly or indirectly by the Village Association for the benefit of the Units unless the holders of at least eighty percent (80%) of the Class "A" Membership voting rights and the Class "B" Member, if any, have given their prior written approval. Any such abandonment, partition, subdivision, encumbrance, sale or transfer shall also be subject to the requirements of Section 14.1 and such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and a Governmental Authority applicable to Village. The foregoing provision shall not apply to Village Easement Common Area or to the easements described in Section 5.3(a). The Village Association, upon approval in writing of more than 50 percent of the Class "A" Membership voting rights and the Class "B" Member, if any, and if approved by order or resolution of the applicable Governmental Authority, may dedicate or convey any portion of the Village Common Areas and Facilities to a park, district or other Governmental Authority.

5.22 **Rental Restrictions**. An Owner of a Residential Unit that is not designated as a Condominium Hotel, Hotel or Lodge by Declarant, the Mountainside Master Plan or the Village Association may not lease or rent such Residential Unit to any Person for a period of less than thirty (30) days without the prior written approval of the Board of Directors and Declarant, which approval may be withheld in the sole discretion of either of them. To the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on any approval, including without limitation a requirement that all occupants of a dwelling be members of a single housekeeping unit, limiting the total number of occupants permitted in each Residential Unit on the basis of the Residential Unit's size and facilities and fair use of the Village Common Areas and Facilities, and reasonable limit on the number of individuals who may use the Village Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit, provided that such conditions shall not include approval of the prospective renter, payment of an additional fee, or, unless the Owner is required to provide the Board of Directors with such documents pursuant to a court order or as part of discovery under the Utah Rules of Civil Procedure, provision of a copy of the rental agreement, provision of the prospective renter's credit information, credit report or background check. As a condition of the ongoing approval for short-term rentals provided for in this Section 5.22, the Owner of any Unit being rented for a period of less than 30 days shall timely remit

to the applicable Governmental Authority any taxes or fees (including but not limited to, any transient occupancy taxes) applicable to such Unit or the renting thereof. The failure to timely remit any such taxes and fees shall be a violation of this Village Declaration and subject such Owner to the remedies provided for in Article 12, including, but not limited to, the withdrawal of approval by Board of Director or Declarant for such Owner to conduct short term rentals from the Unit.

5.23 **Solar Energy Systems**. Without the prior approval of Declarant and the Design Review Committee pursuant to Article 8, no Owner shall install on its Residential Unit a solar energy system that is or may become visible from the exterior of the structure. If Declarant and the Design Review Committee approve such installation of the solar energy system, such approval may be subject to such limitations and restrictions as Declarant and the Village Association may in their discretion determine, subject to Applicable Law.

5.24 **Vacation Clubs; Shared Ownership**. The use of Residential Units in the Village is intended to be for the primary or secondary residence of an Owner. In the event multiple Owners own a Residential Unit, or a Residential Unit is owned by a Person who is not a natural Person, to the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on the occupancy of the Residential Unit, including a requirement that all occupants of the Residential Unit be members of a single housekeeping unit, a limit on the total number of occupants permitted in each residential dwelling on the basis of the residential Unit's size and facilities and the fair use of the Village Common Areas and Facilities, and a reasonable limit on the number of individuals who may use the Village Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit.

ARTICLE 6

PROPERTY RIGHTS IN UNITS

6.1 **Use and Occupancy**. The Owner of a Unit shall be entitled to the exclusive use and benefit of such Unit, except as otherwise expressly provided in this Village Declaration or the Master Declaration, but the Unit shall be bound by and the Owner shall comply with the restrictions set forth in the applicable Project Declaration and all other provisions of this Village Declaration, the Master Declaration, any Supplemental Declaration, and/or any applicable Project Declaration.

6.2 **Easements Reserved**. In addition to any utility and drainage easements shown on any Recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Village Association:

(a) **Adjacent Village Common Areas**. The Owner of any Unit which is adjacent to or blends together visually with any Village Common Areas shall, if the Village Association or Declarant elects from time to time to so require, permit the Village Association or Declarant to enter upon the Unit to perform the maintenance of such Village Common Areas.

(b) **Right of Entry**. Declarant and any representative of the Village Association authorized by it may at any reasonable time, and from time to time at reasonable intervals and upon reasonable notice to the Owner of the Unit under the circumstances, enter upon any Unit for the purpose of determining whether or not the use and/or improvements of such Unit are then in compliance with this Village Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit.

(c) **Utility Easements**. Easements for installation and maintenance of drainage facilities and public utilities are hereby reserved over ten (10) feet of the front, rear and one side of each

Unit (other than Units that are Condominium Units located within a building or other Units constituting townhomes or other similar product specifically created to have so-called "zero lot lines"), and as otherwise identified on the plats for particular Projects. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Reviewer or Design Review Committee may, in its sole discretion, approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Unit and all Improvements in such areas shall be maintained continuously by the Owner of the Unit, except for those Improvements which a public authority or utility company is responsible to maintain. Easements for installation and maintenance of utilities and drainage facilities may also be reserved over portions of certain Units, as shown on any Recorded plat.

(d) **Landscape Maintenance**. Where a Project Declaration or Project plat so provides, the Project Association shall undertake principal responsibility to provide for the maintenance of exterior landscaping on the Units within the Project including watering and the maintenance, repair or replacement of the exterior sprinkling system. If landscape maintenance remains the principal responsibility of the Owners of Units, the Project Association and/or the Village Association shall have the right to enter on the Unit in order to maintain landscaping in the event the Owner fails to adequately maintain the landscaping in accordance with the Community-Wide Standards, including watering and the maintenance, repair or replacement of the exterior sprinkling system. The Project Association's and the Village Association's right of access for maintenance shall include the right of access to a garage or other part of a residence on a Unit containing the automatic sprinkling control box and the right to use the water at the expense of the Owner in any amount deemed necessary and appropriate by the Project Association or the Village Association for maintaining the landscaping on the Unit.

ARTICLE 7

GENERAL USE RESTRICTIONS

7.1 **Structures Permitted on MIDA Property**. Except as may be approved in writing by Declarant, no structures shall be erected or permitted to remain on the MIDA Property except structures containing a Hotel and Condominium Hotel Project and structures normally accessory thereto.

7.2 **Offensive or Unlawful Activities**.

(a) No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to residents. Except for legitimate construction and maintenance purposes, or permitted as contemplated by Section 3.7, no excessively loud noises shall be permitted in the Village. No unlawful use shall be made of the Property nor any part thereof, and all Applicable Laws of all Governmental Authorities having jurisdiction shall be observed. No oil drilling, oil development operations, oil refining, or Mining Uses of any kind shall be permitted upon any Unit nor shall oil wells, tunnels, or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted.

(b) Notwithstanding the foregoing restrictions and prohibitions, the following shall not be considered as "noxious or offensive activities": (i) noise, traffic, and odors resulting from proximity to the Mountainside Ski Property and related facilities, roads, ice-skating rinks, Special Events,

or from snow or other sports related activities; (ii) any activities of an Owner, Declarant, or their respective designees or contractors which are reasonably necessary to the development of, and construction on, a Unit so long as such activities do not violate the Governing Documents or Applicable Law and do not unreasonably interfere with any Owner's use of such Owner's Unit, or with any Owners ingress and egress to and from a Unit and a roadway; (iii) the reasonable odors, lighting, and noises associated with the authorized Commercial Units, including restaurant noises and odors; or (iv) the reasonable odors, lighting and noises associated with the Village Common Areas and Facilities.

(c) Normal construction activities shall not be considered to violate the terms and conditions of this Section 7.2, although it is noted that many Improvement projects will require the prior review and approval of the Design Review Committee and, in some instances, the Project Association with jurisdiction over the Owner's Unit. By accepting a deed to a Unit, an Owner acknowledges that construction activities may exist on or near the Property, at any time and from time to time. The Design Review Committee shall have the power, but not the obligation, to grant variances from the terms and conditions of this Section 7.2 from time to time as it deems necessary or appropriate to permit certain construction activities to be pursued.

(d) Notwithstanding anything to the contrary contained in this Village Declaration or the Governing Documents, retail stores, restaurants, bars, nightclubs, theaters and other recreational and entertainment facilities conducted within the Commercial Units in the Village may be open for business with the general public during the hours of 5:00 a.m. through 2:00 a.m. Mountain Time. Rental and property management activities within the Commercial Units specifically designated for such purposes may be conducted at all times, twenty-four (24) hours a day. In addition, noise is likely to be experienced by the proximity of the Village to the Mountainside Ski Property and its related lifts, machinery and other facilities, roads, or from snow-related activities. By accepting a deed to a Unit, an Owner acknowledges that the Unit is a part of the Village and that noises, lights and odors common to commercial activities (including restaurant and outdoor dining and cooking), Mountain Operations, and construction activities may exist on or near the Village Plaza and/or other portions of the Property, at any time and from time to time. Accordingly, each Owner takes such Owner's Unit subject to such noises, lights and odors common to commercial activities, concerts, promotional events of the Owners of Commercial Units, Mountain Operations and construction activities and such Owners expressly waive any and all claims arising from such noises, lights and odors. Notwithstanding the foregoing, no restaurant, bar, nightclub or theatre may be operated on the Property unless and until applicable permits, licenses and approvals have been obtained from the appropriate Governmental Authorities. No amendment or modification may be made to this subparagraph (d) without the express written consent of the Owners of any and all Commercial Units that may be affected by any such change.

(e) The Design Review Committee shall provide for and direct the timing, location, and organization of construction of, commercial activity, repair, maintenance, and all other associated or related activities in such a fashion and manner that customers and visitors to the Mountainside Ski Property shall have access to the Mountainside Ski Property in accordance with the terms of the Mountain Operator Agreement and whose use and enjoyment of the Mountainside Ski Property shall not be interfered with. In addition, the Design Review Committee shall take such actions as are necessary to minimize any interference with, or access or visibility to, the Commercial Units and any tenants in the normal and customary conduct of their business in accordance with the Governing Documents.

7.3 **Maintenance of Structures and Grounds**. Each Owner shall maintain its Unit, and Improvements thereon, in a clean and attractive condition in accordance with the Community-Wide Standard, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and

exterior remodeling shall be subject to prior review and approval by the Design Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on its Unit neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7.4 **Parking**. Except as may otherwise be provided in the Village Rules, parking of boats, trailers, off-road vehicles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed to remain overnight on any part of the Property, excepting only within areas designated for such purposes by the Board of Directors or within the confines of an enclosed garage, the plans of which shall have been reviewed and approved by the Design Review Committee prior to construction, and no portion of the same may extend beyond the screened area. Each Owner by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees to those provisions of this Village Declaration specifically addressing parking and traffic control set forth in Section 9.5(l) of this Village Declaration.

7.5 **Vehicles in Disrepair**. No Owner shall permit any vehicle which is either inoperable or in an extreme state of disrepair or not currently licensed for use on public roadways to be abandoned or to remained parked in the Village Common Areas or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that, by reason of its poor exterior condition, its presence degrades the visual environment of the neighborhood. Should any Owner fail to remove such vehicle within three (3) days following the date on which notice is mailed to such Owner by the Village Association, the Village Association is authorized to have the vehicle removed from the Property and charge the expense of such removal to the Owner.

7.6 **Signs**.

(a) No sign of any kind shall be displayed to the public view on or from any Unit or on any portion of the Village without the approval of the Design Review Committee except as follows:

(i) one sign of customary and reasonable dimensions advertising a Unit for sale, lease, rent or exchange, displayed from the subject Unit;

(ii) such signs as may be used by Declarant or its assignees in connection with the Village and sale of Units;

(iii) such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law;

(iv) signs posting applicable speed limits and restricted parking areas;

(v) such other signs as may be permitted or approved by the Board of Directors; and

(vi) those signs that are expressly authorized by, or reasonably incidental to performance of, the rights and privileges of the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreement, so long as the signage is consistent with the

Design Guidelines for the Village (but only insofar as those Guidelines pertain to graphics and other aesthetic presentations so as to maintain a uniform appearance of signs in the Village.

(b) Without limiting the generality of subparagraph (a), above, posting and maintenance of speed limit signs shall be the responsibility of the Master Association.

7.7 **Rubbish and Trash**.

(a) No part of the Village Common Areas or any Unit shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets or Village Common Areas. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets, the Village Common Areas, or Units within three (3) days following the date on which notice is mailed to such Owner by the Village Association, the Village Association is authorized to have such materials removed and charge the expense of such removal to the Owner. Without limiting the generality of the foregoing, no Owner shall allow any builder, contractor, or subcontractor to wash any cement truck or cement mixer or to dump or deposit any asphalt, concrete or other construction materials or debris which are not part of the Improvements to a Unit upon any part of the Property. An Owner shall be directly responsible for any violation of this Village Declaration or damage to any of the Property by or caused by the Owner's builder(s), contractor(s), or subcontractor(s). The "Deposit" referred to in Article 8 of the Master Declaration may be retained by the Design Review Committee in accordance with Section 8.2 of the Master Declaration for any such violation or damage. Nothing contained herein or in Article 8 of the Master Declaration shall limit the amount of damages for which an Owner may be liable. The foregoing to the contrary notwithstanding, an Owner or the Owner's contractor may, during the period of construction as specified herein, place and maintain upon a Unit no more than one (1) dumpster and one (1) portable toilet facility.

(b) All trash, garbage and other waste materials shall be kept in sanitary containers enclosed and screened from public view and protected from disturbance in such places and manners as may be approved by the Design Review Committee for the Village. Owners shall not, and shall ensure that their Guests do not, litter in the Village. No burning of trash, garbage or waste materials shall be permitted within the Village. Each Project Association shall be responsible for refuse collection service to all non-residential facilities within the Project on the same basis and the Village Association shall be responsible for all refuse collection facilities located outside of Project Common Areas.

7.8 **Antennas and Satellite Disks**. Exterior antennas and satellite receiver and transmission disks shall not be permitted to be placed upon any Unit except as approved by the Design Review Committee, except for small dishes attached to a roof not exceeding twenty-four (24) inches in diameter. Any other term or condition hereof to the contrary notwithstanding, no commercial, ham radio, citizens band or radio antenna or other similar electronic receiving or sending device shall be permitted that interferes with the peace and quiet enjoyment of any neighboring Owner's Unit or home entertainment facilities or equipment.

7.9 **Tree Removal**. No Owner or contractor or agent of any Owner or contractor shall remove any of the existing trees from any portion of the Property (other than trees which the Design Review Committee has allowed to be removed in connection with the approval of an Owner's plans and specifications). In the event that an Owner, or contractor or agent of any Owner or contractor shall remove any tree without first obtaining the written consent of the Design Review Committee, the Village Association shall be entitled to require the Owner to replace any and all trees removed with the same species, age, and height of tree or trees as the tree or trees removed, which remedy shall be in addition to all other rights and remedies of the Village Association as set forth in this Village Declaration.

7.10 **Governmental Regulations**. All activities on any Unit shall comply with Applicable Laws. When a particular activity is governed by both this Village Declaration and Applicable Law, the more restrictive requirement shall be applicable.

7.11 **Fire Protection**. All occupants of any Unit shall strictly comply with all Applicable Laws pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by the Village Rules and Applicable Laws.

7.12 **Environmental Concerns**. All site plans submitted to the Design Review Committee pursuant to Section 8.1 of this Village Declaration shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the Unit, including cuts and fills.

7.13 **Grades, Slopes and Drainage**. Each Owner of a Unit shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over such Unit or the Village Common Areas without the express written permission of the Design Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels. All Persons erecting or constructing Improvements on any Unit shall comply with all Applicable Laws. Construction of berms, channels or other flood control facilities on any Unit is the sole responsibility of the Owner of the Unit and shall be done in accordance with the flood control plans approved by the appropriate Governmental Authority. Such construction shall commence at the time the Unit is graded or otherwise altered from its natural state.

7.14 **Prohibition on Mining Uses**. Mining Uses on the Property are strictly prohibited.

7.15 **Project Restrictions**. Each Owner of a Unit, and such Owner's Guests, shall also comply with any additional use restrictions contained in any Project Declaration applicable to such Unit.

7.16 **Village Rules**. The Board of Directors from time to time may, at a meeting of the Board of Directors, adopt, modify or revoke such Village Rules governing the conduct of persons and the operation and use of the Village Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Prior to any action under this Section 7.16 becoming effective, the Board shall, (i) at least fifteen (15) days before meeting to consider such action, deliver notice to all Owners that the Board is considering a change to the Village Rules, (ii) provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors takes such action, and (iii) within fifteen (15) days following such meeting, deliver a copy of any such Village Rules to the Owners or, to the extent permitted by Applicable Law, an explanation thereof on the Village Association's website, if any, and send a copy thereof to the Class "B" Member. Notwithstanding the foregoing, the Board of Directors may adopt, modify, or revoke the Village Rules without first giving notice to the Owners as specified in the preceding sentence if there is an imminent risk of harm to Project Common Areas, Village Common Areas, an Owner, a Guest or the occupant of a Unit. A copy of the Village Rules, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Village Association promptly to each Owner or posted on the Village Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within the sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least 51% of the total Class "A" votes in the Village

Association vote to disapprove such modification of the Village Rules in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Village Rules as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. No action under this Section 7.16 shall have the effect of modifying, repealing or expanding the Design Guidelines other than the initial Village Rules. In the event of a conflict between the Village Rules and the Design Guidelines, the Design Guidelines shall control.

7.17 **Deviations**. Deviations from the standards set forth in this Village Declaration may be allowed only upon written approval by the Design Review Committee for good cause shown.

7.18 **Exemption of Declarant; Application to Additional Property**. During the Administrative Control Period, Declarant may exempt Declarant from the Village Rules and the rulemaking procedure set forth in Section 7.16. The provisions of Sections 7.1 through 7.17 shall not apply to any Additional Property if the Annexation Declaration annexing such Additional Property so specifies. The Annexation Declaration annexing such Additional Property to this Village Declaration may establish restrictions governing the use and conduct of such Units that are more or less restrictive than the restrictions contained in this Village Declaration.

7.19 **Applicability of Use Restrictions**. Except as otherwise provided herein, the use restrictions set forth in this Article 7 shall apply to all of the Property and the Owners thereof. In the event that the Master Declaration or a Project Declaration applicable to any Project in the Village seeks or purports to regulate the same conduct, action or activity as are subject to this Article 7, the Declaration with the most restrictive rule, consistent with Applicable Law, shall prevail. To the extent that the Master Declaration imposes property use restrictions that are in addition to those set forth herein, the restrictions of the Master Declaration shall also apply to the Units within the Village, unless specifically exempted therefrom.

7.20 **Promotion of the Community**.

(a) Declarant has reserved certain rights, as set forth in this Village Declaration, to promote the Village and the Resort as a four-season, destination resort community. Promotion of the Village shall include, among other things, the right of Declarant and the Village Association to promote Special Events designed to provide certain business, professional, cultural, entertainment or recreational opportunities, among other opportunities, within the Village to create the lively, energetic community envisioned by this Village Declaration. Accordingly, nothing in this Village Declaration shall be construed as limiting the authority of Declarant or the Village Association to promote the Village as a four-season, destination resort community.

(b) The Village Association shall negotiate in good faith with the Mountain Operator to enter into agreements pertaining to (i) the Mountain Operator 's and the Village Association's joint promotional advertising of Resort as a destination resort area, and (ii) security services for the Village.

7.21 **Other Sports and Recreation Activities**. The Resort is a year-round destination resort. Accordingly, Owners of Units should anticipate that the Mountainside Ski Property, the Resort Support Facilities and the roads and Village Plaza areas within the Resort will be operated and used on a year-round basis in order to present events and recreational opportunities that are appropriate and common at mountain resorts during particular seasons of the year, such as skiing, snowboarding, golf, hiking,

mountain biking, Special Events, and concerts. Those events and activities can create or include lights, noise (associated with the event or activity, itself, or the operation of equipment), odors, and other effects that should be considered in the decision of an Owner to acquire a Unit in the Resort.

7.22 **Compliance With Laws**. Nothing shall be done or kept within the Village that is in violation of any Applicable Law.

7.23 **Compliance With Insurance Requirements**. Except as may be approved in writing by the Village Association, nothing shall be done or kept within the Village which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Village Association pursuant to this Village Declaration.

7.24 **Restriction on Subdivision and Rezoning**.

(a) Except as may be permitted under a Supplemental Declaration for a Phase that Declarant Records, no portion of the Property shall be further subdivided without the prior written consent of the Village Association.

(b) Except as provided in the terms of the Mountain Easement Agreements, or such amendments or alterations which may occur hereafter in the Mountain Easement Agreements, no further covenants, conditions or restrictions shall be recorded by any Owner or other Person against any Phase of the Property without the prior written consent of the Boards of Directors of both the Master Association and the Village Association, and any covenants, conditions or restrictions Recorded without such consent evidenced thereon shall be null and void.

(c) Except as may be permitted under a Supplemental Declaration for a Phase that the Declarant Records, no application for rezoning of any Phase of the Property, and no applications for variances or use permits, shall be filed with any Governmental Authority, unless the proposed use of that portion of the Property has been approved by the Boards of Directors of both the Master Association and the Village Association and the proposed use otherwise complies with the Master Plan, this Village Declaration and all other Governing Documents.

(d) The covenants, conditions and restrictions set forth in subparagraphs (a) through (c), above, shall not apply to the Declarant's development of the Property.

7.25 **Common Interest Ownership and Approval of Project Declarations**.

(a) Prior to the recording in the Wasatch County Records of an instrument subjecting any portion of the Property to a common interest development regime, all Persons, other than the Declarant or a co-Declarant, who are owners of such property shall submit to the Village Association for its review and approval, copies of the proposed Declaration of Covenants, Conditions and Restrictions for the Project, and the Articles of Incorporation and Bylaws of the Project Association. Within thirty (30) days after the submittal of such documents to the Village Association, the Village Association shall approve or disapprove the documents by written notice to such Persons. If such documents are disapproved by the Village Association, the Village Association shall set forth the reasons for such disapproval. If notice of approval or disapproval is not given by the Village Association on or before such thirty (30) day period, such documents shall be deemed to be approved.

(b) The covenants, conditions and restrictions set forth in subparagraph (a), above, shall not apply to the Declarant's or any co-Declarant's development of any Phase of the Property,

including, but not limited to, approval of the development of any Residential Units as a Vacation Club, Time Share Project, or Condominium Project.

7.26 **Wells, Water and Sewage**. No water wells shall be permitted on any portion of the Property, without the prior written approval of the Village Association and of Declarant, which will retain all rights to water appurtenant to the Property. All buildings, structures and improvements designed for residential, commercial or lodging purposes shall be connected to such water and sewer services as the Village Association may require.

7.27 **Deliveries**. All deliveries made within the Village shall be made in accordance with the Village Rules. Notwithstanding the foregoing, the Village Rules regarding deliveries adopted by the Village Association shall not limit or impair the access rights described in the Mountain Easement Agreements or burden performance or enjoyment of the Mountain Easement Agreements and the Mountain Operator Agreement.

7.28 **Declarant's Exemption**. Nothing contained in this Village Declaration or any other Governing Document shall be construed to prevent or limit:

(a) Declarant's exercise or enjoyment of any of Declarant rights pursuant to Article 14; or

(b) the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs necessary or convenient to the Village, construction, marketing and sale of property within the Village.

7.29 **Storage of Personal Property on Balconies**. Except as permitted by the Village Rules, personal property shall not be placed on balconies, or other such similar locations within an Owner's Unit, in such manner as to be visible from any street or the Village Common Areas.

ARTICLE 8

ARCHITECTURE AND LANDSCAPING

8.1 **General**. No structure or thing shall be placed, erected, or installed upon any Property located in the Village and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements, or planting or removal of landscaping) shall take place within the Village, except in compliance with this Article 8 and the Master Declaration and the Design Guidelines. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of such Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar improvements visible from outside the structure shall be subject to approval. All structures constructed on any portion of the Village shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. This Article 8 shall not apply to the activities of Declarant, Declarant's Affiliate, or the Village Association during the Administrative Control Period.

8.2 **Architectural Review**. Each Owner, by accepting a deed or other instrument conveying any interest in any Unit, acknowledges that, as the developer of the Village and as an owner of portions of the Village, Declarant has a substantial interest in ensuring that the Improvements within the Village enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market,

sell, or lease its property. In addition to any review and approval required pursuant to Article 8 of the Master Declaration, the review and approval of any activity occurring within the Village (that is otherwise governed by this Article 8 of the Village Declaration) shall be by the Declarant (or if created pursuant to Section 8.2(a) of the Master Declaration, the Design Review Committee of the Master Association) applying the standards and Design Guidelines for the Village contemplated by the Village Association. In performing such review and approval, the Design Review Committee and any Reviewer shall follow the procedure for such review set forth in Article 8 of the Master Declaration, and shall be entitled to the same rights, responsibilities, protection and indemnities provided for therein. Therefore, each Owner agrees that no activity within the scope of this Article 8 or Article 8 of the Master Declaration shall be commenced on such Owner's Unit unless approved pursuant to the provisions set forth in Article 8 of the Master Declaration. Nothing contained herein shall prevent Declarant from completing excavation, grading and construction of Improvements to any portion of the Property, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable in the course of development of the Village so long as any Unit owned by Declarant remains unsold.

8.3 **Design Guidelines**. Declarant shall prepare the initial Design Guidelines for the Village, which will contain general provisions applicable to all of the Village, as well as specific provisions which vary from Project to Project and by land clarification. The review of the Design Guidelines for the Village is intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the said Reviewer and compliance with the Design Guidelines does not guarantee approval of any application. The Board shall have the authority to amend the Design Guidelines for the Village at a meeting of the Board and in accordance with the procedure set forth in this Section 8.3. At least fifteen (15) days before meeting to consider an amendment to the Design Guidelines for the Village, the Board shall deliver notice to all Owners that the Board is considering a change to the Design Guidelines. The Board shall provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors enacts such change to the Design Guidelines. Within fifteen (15) days following such meeting, the Board shall deliver a copy of any amendment to the Design Guidelines to the Owners, and send a copy thereof to the Class "B" Member. A copy of the Design Guidelines, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Village Association promptly to each Owner or posted on the Village Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within the sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least 51% of the total Class "A" votes in the Village Association vote to disapprove such modification of the Design Guidelines in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Design Guidelines as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. Any amendments to the Design Guidelines for the Village shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines for the Village, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines for the Village less restrictive; provided that an Owner must still comply with all applicable requirements of the Master Declaration. The Reviewer shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Village. In Declarant's discretion, such Design Guidelines may be Recorded from time to time, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

8.4 **Limitation of Liability**. The standards and procedures established by this Article 8 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Village; they do not create any duty to any Person. Review and approval of any application pursuant to this Article 8 and Article 8 of the Master Declaration is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, for ensuring that all structures are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Declarant, the Master Association, the Design Review Committee of the Master Association, the Village Association, the Board, Reviewers, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Village; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit or Improvement. In all matters, the Board, the Design Review Committee, Reviewers, Declarant and the members of each shall be defended and indemnified by the Village Association as provided in Section 9.6.

8.5 **Exemption of Declarant**. Notwithstanding the foregoing statement of the scope of the Reviewer's or Design Review Committee's jurisdiction, Improvements and construction projects undertaken by Declarant, Declarant's Affiliates, its agents and contractors shall not be subject to the review or approval by the Reviewer or the Design Review Committee.

ARTICLE 9

VILLAGE ASSOCIATION

Declarant shall organize a Village Association comprised of all of the Owners within the Village, each of which shall be a Member of the Village Association. The Village Association is the entity responsible for management, maintenance, operation, and control of the Village Common Areas and Facilities. The Village Association, its successors and assigns, shall be organized under the name "Village at Mountainside Association" or such other name as Declarant shall designate in an amendment to this Village Declaration, and shall have such property, powers and obligations as are set forth in this Village Declaration for the benefit of the Property and all Owners of property located therein. The Village is not a cooperative within the meaning of the Utah Community Association Act, U.C.A. Section 57-8a-212.

9.1. **Organization**. Declarant shall, before the MWR Hotel Condominium Project is opened for business, organize the Village Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Village Association shall provide for its perpetual existence, but in the event the Village Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Village Association as if they had been made to constitute the governing documents of the unincorporated association.

9.2. **Membership**. Every Owner of one or more Units within the Property shall, immediately upon creation of the Village Association and thereafter during the entire period of such Owner's ownership of one or more Units within the Property, be a member of the Village Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

9.3. **Voting Rights**. Voting rights within the Village Association shall be allocated as follows:

(a) Units Within a Project Association. Except as provided in the immediately following sentences, Project Associations shall be allocated one vote per Unit within the subject Project. Projects with Units that are designated as a Hotel or Lodge shall have one vote for each dwelling unit or room included within such Hotel or Lodge. Commercial Units or Recreational Units shall have one vote for each such Unit without regard to the actual number of rooms or spaces included on or within such Unit.

(b) Classes of Voting Membership. The Village Association shall have two classes of voting membership:

Class "A". Class "A" Members shall be all Owners of Units with the exception of the Declarant and shall be entitled to voting rights for each Unit owned computed in accordance with Section 9.3(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a) above. Solely for purposes of calculating the voting right of the Class "B" Member, the number of Units owned by the Declarant shall be deemed to include the additional unplatted Units shown on the then-current Mountainside Master Plan for the Property.

Class B. The Class "B" Member shall be Declarant. The Class "B" Member shall have the right to appoint the members of the Board during the Administrative Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member are specified in relevant sections of the Governing Documents. After termination of the Administrative Control Period, Declarant shall have the right to disapprove actions of the Board and committees as provided in the Bylaws. The Class "B" Member shall be entitled to five times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(i) two (2) years after the expiration of the Administrative Control Period; or

(ii) At such earlier time as Declarant in its discretion may elect in writing to terminate the Class "B" membership in a Recorded instrument.

(c) Voting Groups.

(i) Declarant may designate voting groups (each, a "**Voting Group**") consisting of the Owners in two or more Projects for the purpose of electing directors to the Board. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid some Projects being able to elect the entire Board due to

the number of Units or dwelling units in such Projects. Following termination of the Administrative Control Period, the number of Voting Groups within the Village shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the Bylaws.

(ii) Each Voting Group shall vote on a separate slate of candidates for election to the Board. Each Voting Group is entitled to elect the number of directors specified in the Bylaws. Each Voting Group shall be entitled to a vote that is equal to the number of Units within the Projects comprising such Voting Group computed as provided in Section 9.3(a).

(iii) Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Administrative Control Period by filing with the Master Association and Recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Administrative Control Period. After expiration of Declarant's right to expand the Village pursuant to Article 2, the Board shall have the right to Record or amend such Supplemental Declaration upon the vote of a majority of the total number of directors and approval of Members representing a majority of the total Class "A" votes in the Master Association. Neither Recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Village Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph.

(iv) Until such time as Voting Groups are established, all of the Village shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Village which are not assigned to a specific Voting Group shall constitute a single Voting Group.

9.4. **General Powers and Obligations**. The Village Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Village Association by this Village Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Village Association pursuant to this Village Declaration or otherwise promoting the general benefit of the Owners within the Village.

The powers and obligations of the Village Association may from time to time be amended, repealed, enlarged or restricted by changes in this Village Declaration made in accordance with its provisions, accompanied by changes in the Articles of Incorporation or Bylaws of the Village Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

9.5. **Specific Powers and Duties**. The specific powers and duties of the Village Association shall include the following:

(a) Acceptance and Control of Village Association Property.

(i) The Village Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Village Association may enter into leases, licenses, or operating agreements for all or portions of the Village Common Areas and Facilities, for such consideration or no consideration as the Board deems appropriate, to permit use of all or such portions of the Village Common Areas and Facilities by community organizations and by others, whether non-profit or for profit, for the provision of goods or services for the general benefit or convenience of Owners and Guests of the Village.

(ii) Declarant and its designees may convey to the Village Association, and the Village Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Village Association shall reconvey to Declarant any unimproved portions of the Village Common Areas Declarant originally conveyed to the Village Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(iii) The Village Association shall be responsible for management, operation, and control of the Village Common Areas and Facilities, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Village Association. The Board may adopt such reasonable rules regulating use of the Village Common Areas and Facilities as it deems appropriate.

(b) Maintenance and Services. The Village Association shall provide maintenance, utilities and services for the Property as provided in Article 10 and other provisions of this Village Declaration.

(c) Insurance. The Village Association shall obtain and maintain in force policies of insurance as it determines necessary or appropriate, or as otherwise provided in this Village Declaration, the Bylaws or Applicable Law.

(d) Rulemaking. The Village Association is hereby authorized to and shall have the power to adopt, amend and enforce Village Rules applicable within the Village with respect to any Village Common Areas and Facilities, and to implement the provisions of this Village Declaration, the Articles or the Bylaws, including, but not limited to, rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to regulate signs; to regulate use of any and all Village Common Areas and Facilities to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; to promote the general health, safety and welfare of Persons within the Village; and to protect and preserve property, property values and property rights. All Village Rules adopted by the Village Association shall be reasonable and shall be uniformly applied, except such Village Rules may differentiate between categories of Projects, Owners, Lessees or Guests. Upon expiration of the Administrative Control Period, the Design Guidelines shall be considered part of the Village Rules. In addition, no Village Rule shall affect the rights of the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements.

(e) Assessments. The Village Association shall adopt budgets and impose and collect Assessments as provided in Article 11 of this Village Declaration.

(f) Charges for Use of Village Common Areas and Facilities. The Village Association may establish and modify charges for the use of any of the Village Common Areas and Facilities to assist the Village Association in offsetting the costs and expenses of the Village Association

with respect to such Village Common Areas and Facilities, including depreciation, operation, maintenance, capital replacement and capital expenses. Such charges will include the cost of providing culinary and secondary water to the Village Common Areas and Facilities. All charges established under this Section 9.5(f) shall be reasonable and shall be uniformly applied, except such charges may differentiate between categories of Projects, Owners, Lessees, or Guests, and members of the general public to whom the Village Association may allow access to and use of certain Village Common Areas and Facilities, and shall not exceed any limit imposed by Applicable Law. Notwithstanding the foregoing rights and powers, the Village Association shall not manage or operate its Village Common Areas and Facilities in any manner that interferes, directly or indirectly, with the business operations and ski lift operations of the Mountain Operator and/or the Owners of Commercial Units.

(g) Charges for Services Provided by the Village Association. The Village Association may establish and modify charges for providing any service as required or permitted hereunder on a regular or irregular basis to an Owner, Lessee, or Guest to assist the Village Association in offsetting the costs and expenses of the Village Association, including depreciation, operation, maintenance, capital replacement and capital expenses. Without limiting the foregoing, the Village Association may also charge a fee for providing a written statement indicating the status of payments of Assessments, or Assessment payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of such Owner's Unit, provided such fee shall not (i) be required to be paid prior to closing or (ii) exceed any limit provided by Applicable Law. All charges established under this Section 9.5(g) shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Projects, Owners, Lessees, or Guests. Each Owner, Lessee and Guest shall be obligated to and shall pay any such charges for such services.

(h) Property Taxes and Assessments. To the extent not assessed to or paid directly by the Owners, the Village Association shall pay all real property taxes, special improvement and other assessments (ordinary and extraordinary), personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any Governmental Authority which shall be imposed, assessed or levied upon, or arise in connection with the Village Common Areas and Facilities or any services provided by the Village Association hereunder.

(i) Replacement or Repair. In the event of damage to or destruction insured against by the Village Association, the Village Association shall repair or replace the same from the insurance proceeds payable to it or to the trustee designated by the Board of Directors. If the insurance proceeds are insufficient to cover the costs of repair or replacement thereof, the Village Association may make a Special Assessment as provided in Section 11.7. The Village Association shall not be required to complete such repair or replacement in the event that (i) the Project sustaining damage or destruction requiring such repair or replacement is terminated, (ii) such repair or replacement would be illegal under a state statute or local ordinance governing health or safety, or (iii) Members representing at least 75% of the Class "A" Member votes in the Village Association vote not to complete such repair or replacement and each Owner of a dwelling on a Unit and the Exclusive Use Village Common Areas appurtenant to such Unit that will not be repaired or replaced votes not to complete such repair or replacement.

(j) Marketing. The Village Association may provide a suitable and continuing program to promote the Village as a desirable, year-round, destination recreational village, including, but not limited to, advertising the Mountainside Ski Property, organizing and coordinating Special Events, advertising and placing articles in news media, establishing uniform standards for promotional programs and shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers, and buying space for the accommodation of Guests; provided, however, that all advertising and promotion of the Mountainside Ski Property shall be subject

the approval of the Mountain Operator. The Village Association may undertake or fulfill the functions contemplated hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area year-round destination village industry or by engaging the Mountain Operator to promote the Village.

(k) Recreation. The Village Association may provide year-round recreational programs of suitable variety with such miscellaneous equipment as may be necessary. The recreational programs may include, informing visitors of recreation available and coordinating their participation therein; conducting, financing, operating, managing and maintaining programs for children, including, but not limited to, daycare facilities and such miscellaneous equipment as may be appropriate for use in connection therewith; constructing, caring for, operating, managing, maintaining, improving, repairing and replacing within the Village swimming pools, ice-skating rinks, skating ponds, clubhouses, trails (foot, nordic, hiking and bicycle) and related facilities; sauna and steam baths; tennis courts, game courts, game or sports courts; game and Special Events areas; fishing areas and facilities; bobsledding and snow shoeing facilities; outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith; and removing snow from and cleaning such facilities as necessary to permit their use and enjoyment; *provided, however*, that such activities shall not compete with activities undertaken or offered by the Mountain Operator on the Mountainside Ski Property or interfere with the rights of the Mountain Operator under the Mountain Operator Agreement.

(l) Parking and Traffic Control. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees that Declarant, the Master Association and/or the Village Association may implement a shared parking program involving one or more Units within the Village and that utilization of certain parking facilities within the Village may at various times be on a "fee to park" basis only. The Village Association may also provide control over vehicular access to the Village which it deems necessary or desirable for the health, safety or welfare of Persons residing, visiting or doing business within the Village. Such function may include constructing, operating, maintaining and staffing access road control gates (at such location(s) as the Board may from time to time determine to be appropriate); requiring identification for admission to the Village; videotaping or otherwise recording and documenting all Persons and vehicles entering the Village; screening and/or requiring registration of vehicles, Guests, and others entering the Village; denying entry to the Village to Persons other than Owners and Guests; restricting non-commercial vehicular traffic within the Village, except for Owners, Lessees, Guests or visitors who have overnight accommodations within the Village and who are authorized to park within the Village; restricting commercial vehicular traffic within the Village; and establishing "parking" and restricted "guest parking" and "no parking" areas within the Village, as well as enforcing these parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle by those so empowered. The Village Association's exercise of its rights hereunder shall be consistent with and shall not burden the enjoyment or exercise of the rights provided to the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreements which shall have priority over any Village Rules pertaining to parking or traffic control and signage.

(m) Other Functions. The Village Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Village Declaration, including providing the following services for some or all Members: cooperative purchasing service; telephone services; high-speed internet and fiber services; warehousing and delivery, grocery store, gas stations, vehicle repair and towing services; central laundry; property management services; employee training; central communications operation which may include a central dispatch system; a data information center; central monitoring of fire safety; and property security.

(n) Enforcement. The Village Association shall perform such acts, whether or not expressly authorized by this Village Declaration, as may be reasonably necessary to enforce the provisions of this Village Declaration and the Village Rules adopted by the Village Association. The Village Association may, but shall not be required to, enforce any covenants, restrictions or other provisions in a Project Declaration or other instruments applicable to a Project. Without limiting the foregoing, every Owner and Guest of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after such notice and a hearing in accordance with the procedures set forth in the Village Rules and as required by Applicable Law. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines as set forth in the Village Rules which shall constitute a lien upon the violator's Unit. In the event that any Guest violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. The Board may impose an additional fine each time an Owner or Guest (i) commits a violation of the same provision of the Governing Documents within one (1) year after the day on which the Board assesses a fine for a violation of the same provision or (ii) allows a violation of the Governing Documents to continue for ten (10) days or longer after the day on which the Board assesses the fine;

(ii) suspending any Person's right to use any recreational facilities within the Village Common Areas and Facilities; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) suspending any services provided by the Village Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Village Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor or Guest of an Owner who fails to comply with the terms and provisions of Article 8 and the Design Guidelines from continuing or performing any further activities in the applicable Project; and

(vii) levying Special Individual Assessments to cover costs incurred by the Village Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform such Owner's maintenance responsibility, the Village Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Village Association against the Unit and the Owner as an Special Individual Assessment. If a Project Association fails to perform its maintenance responsibilities, the Village Association may perform such maintenance and assess the costs as an Special Individual Assessment against all Units within such Project. Except in an emergency situation, the Village Association shall provide the Owner or Project Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Village Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action and shall comply with all required procedures under Applicable Law. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Village Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Village Association's resources; or

(iv) that it is not in the Village Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Village Association to enforce such provision at a later time under other circumstances or preclude the Village Association from enforcing any other covenant, restriction, or rule. The Village Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit Governmental Authorities to enforce ordinances within the Village for the benefit of the Village Association and its Members.

(o) Employment of Agents, Advisers and Contractors. The Village Association may employ the services of any Persons as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Village Association, employ professional counsel and obtain advice from such Persons such as landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Village Common Areas and Facilities and the Village Association.

(p) Borrow Money, Hold Title and Make Conveyances. The Village Association may borrow and repay moneys for the purpose of maintaining and improving the Village Common Areas and Facilities and encumber the Village Common Areas and Facilities as security for the repayment of

such borrowed money. The Village Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including easements across all or any portion of the Village Common Areas and Facilities, and shall accept any real or personal property, leasehold or other property interests within the Village conveyed to the Village Association by Declarant.

(q) Transfer, Dedication and Encumbrance of Village Common Areas. Subject to the provisions of this Village Declaration requiring the consent of Declarant with respect to Village Common Areas and Facilities furnished by Declarant, the Village Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Village Common Areas and Facilities.

(r) Governmental Successor. Any Village Common Areas and Facilities and any service provided hereunder by the Village Association may be turned over to a Governmental Authority which is willing to accept and assume the same upon such terms and conditions as the Village Association shall deem to be appropriate, subject to the approval of Declarant.

(s) Create Classes of Service and Make Appropriate Charges. The Village Association may, in its sole discretion, create various classes of service and make appropriate Special Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Village Common Areas, without being required to render such services to those Owners who do not assent to such charges and to such other Village Rules as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same. Without limiting the generality of the foregoing, the Village Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Village Association's budget as a Common Expense and assess it as part of the Annual Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The Village Association, through a concierge service, may also provide services at the request and option of any Owner. The concierge services offered may include housekeeping, home watch, airport shuttle service, landscape maintenance, car care, grocery shopping and delivery, and other personal, home and delivery services. The Village Association shall charge use or service fees for any concierge services provided at the option of an Owner. Nothing in this Section shall be construed as a representation by Declarant or the Village Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

(t) Relationship with Other Properties. The Village Association may enter into contractual agreements or covenants to share costs with any neighboring property or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of common area maintenance.

(u) Implied Rights and Obligations. The Village Association shall have and may exercise any right or privilege given to it expressly in this Village Declaration or except to the extent limited by the terms and provisions of this Village Declaration, given to it by Applicable Law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to

fulfill its obligations under this Village Declaration, including the right to engage labor and acquire use of or purchase property, equipment or facilities; employ personnel; obtain and pay for legal, accounting and other professional services; and to perform any function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable. Except as otherwise specifically provided in the Governing Documents, or by Applicable Law, all rights and powers of the Village Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Village Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Village Common Areas and Facilities, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Village Association. In exercising the rights and powers of the Village Association, making decisions on behalf of the Village Association, and conducting the Village Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

(v) Cooperation with Mountain Operator. The Village Association may grant to the Mountain Operator such rights in the Village Common Areas and Facilities as the Board of Directors deems appropriate in order to facilitate the Mountain Operator's use and operation of the Mountainside Ski Property, including the rights of access granted to the Mountain Operator as more fully set forth on any subdivision map and related documents and in the Mountain Operator Agreements and the Mountain Easement Agreements. The rights which may be granted hereunder may be subject to whatever conditions the Board of Directors deems necessary and/or appropriate, including, without limitation, appropriate indemnifications, and the Village Association shall expressly be subject to the obligations with respect to such easements, if any, as described on subdivision maps and in the Mountain Easement Agreements and such other rights of the Mountain Operator referred to above.

(w) Easements and Rights of Way. The Village Association shall have the power but not the duty to grant and convey to any Person easements, licenses or rights of way in, on, over or under the Village Common Areas and Facilities and fee title to Units or strips of land, for purposes consistent with the terms of this Village Declaration, including, without limitation, constructing installing, erecting, operating, maintaining or conducting thereon, therein and thereunder: (i) roads, streets, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devises for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains or retention basis and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (iv) any similar Improvements or uses not inconsistent with the use of such property pursuant to the Village Declaration; provided that no event shall any such easements, licenses or rights of way interfere with any Mountain Operations. The Village Association shall have the power to grant and execute easements, agreements, licenses, covenants, rights of way and maintenance agreements with any club, spa, recreational facility, district or Project Association that the Village Association determines to be appropriate so long as the same does not materially interfere with the use and enjoyment of Village Common Areas and Facilities by the Village Association or the Owners or interfere in any way with the Mountain Operations.

(x) Merchant Association. The Owner or Owners of Commercial Units within the Village shall have the right, but not the obligation, to form an association of all of the merchants and owners of Commercial Units within the Village, for the purpose of addressing their particular needs and concerns (the "**Merchant Association**"). The Board shall have the right to grant special use rights, permits and privileges to any such Merchant Association and its members, including without limitation use of Village Common Areas and Facilities and other property maintained by the Village Association and the Village Plaza area for special events, concerts, promotions, Village Plaza dining, street fairs, valet

parking and other usages. In addition, the Village Association shall have the right to enter into agreements with members of the Merchant Association or with tenants of Owners of Commercial Units for purposes relating to the joint or cooperative marketing, advertising and promotion of the Village, regulating and providing parking within the Village, including Special Event parking, and other areas of interest to both the Village Association and its Members, and the Merchant Association and its members.

9.6. **Liability; Indemnification**. A member of the Board of Directors or an officer of the Village Association shall not be liable to any Owner, the Village Association or any Member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Village Association is made a party to any proceeding because the individual is or was a director or officer of the Village Association, the Village Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by Applicable Law. Subject to and to the fullest extent allowed by Applicable Law, the Village Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section 9.6. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Village Association (except to the extent that such officers or directors may also be Members of the Village Association, and then only to the extent of such liability in such Person's capacity as a Member). The Village Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Village Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

9.7. **Interim Board; Turnover Meeting**. Declarant shall have the right to appoint an interim board of three directors, who shall serve as the Board of Directors of the Village Association until replaced by Declarant or until their successors take office at the turnover meeting described in this Section 9.7. Declarant shall call a meeting of the Village Association for the purpose of turning over administrative responsibility for the Property to the Village Association not later than one hundred twenty (120) days after the end of the Administrative Control Period. At the turnover meeting the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Village Declaration and the Bylaws of the Village Association. If Declarant fails to call the turnover meeting required by this Section 9.7, any Owner or mortgagee of a Unit may call the meeting by giving notice as provided in the Bylaws.

9.8. **Appointment of Directors**. Effective as of the turnover meeting described in Section 9.7, the Board of Directors of the Village Association will be composed of one director representing each of the Projects (or the Voting Groups, if any) within the Village. The Board of Directors shall have an odd number of members and no less than three (3) members. In the event that there are fewer than three (3) Projects or Voting Groups within the Village and/or an even number of Projects or Voting Groups within the Village, the members of the Board selected in accordance with the preceding sentence shall select such additional member(s) of the Board to meet the requirements of this Section 9.8, with such additional member(s) selected from among Owners residing in the Village. In the event a Project has a

Project Association that is not otherwise included in a Voting Group, the director for such Project shall be appointed by the Board of Directors of the Project Association. If the Project does not have a Project Association and is not otherwise included in a Voting Group, the director for such Project shall be designated by the Owner of the Unit within the Project if the Project has only one Unit, or elected by the Owners of Units within the Project if the Project is composed of more than one Unit. Terms of office of directors shall be as set forth in the Bylaws. If additional Voting Groups are created within the Village, directors for such Voting Groups shall be added to the Board of Directors of the Village Association in the same manner.

9.9. **Declarant Voting Rights After Turnover**. After the turnover meeting described in Section 9.7, Declarant shall continue to have the voting rights described in Section 9.3(b).

9.10. **Contracts Entered into by Declarant or Prior to Turnover Meeting**. Notwithstanding any other provision of this Village Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by Declarant or the Board of Directors on behalf of the Village Association prior to the turnover meeting described in Section 9.7 above shall have a term of three (3) years or less. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Village Association or Board of Directors upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the turnover meeting described in Section 9.7 above. For avoidance of doubt, the MIDA Hotel Lease shall not be subject to this Section 9.10, and shall continue in full force and effect notwithstanding any turnover of the Village Association.

9.11. **Project Associations**. Nothing in this Village Declaration shall be construed as prohibiting the formation of Project Associations within the Village, including, Condominium associations and neighborhood associations. Declarant or, by a majority vote, the Owners of Units within a Project may elect to establish a Project Association for such Project. The Board of Directors of the Village Association shall cooperate with the Project Associations in the performance of their duties and obligations under their respective Project Declarations, if any, and the Village Association shall cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Village Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Village Association for the particular Project or by an item in the Project Association's budget which shall be collected through Project Assessments and remitted to the Village Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Village Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Village Association may charge the Project Association a reasonable fee for the performance of such functions.

9.12. **Project Committees**. With respect to any Project within the Village that does not have a Project Association, the Board of Directors of the Village Association shall appoint a Project Committee composed of three (3) to five (5) Owners of Units within such Project, which committee shall be responsible for recommending any Village Rules pertaining to any Project Limited Common Area within such Project, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Project Limited Common Area, and for such other matters pertaining to the Project as the Board of Directors may elect to delegate to the Project Committee. Following the turnover meeting described in Section 9.7, the Board of Directors of the Village Association shall provide for election of such Project Committee members by Owners of Units within such Project.

ARTICLE 10

MAINTENANCE, UTILITIES AND SERVICES

10.1. **Village Association Maintenance Duties and Responsibilities.**

(a) Maintenance by Village Association. The Village Association shall maintain, in accordance with the Community-Wide Standard, the Village Common Areas and Facilities, which shall include, but need not be limited to:

(i) All portions of and structures situated on the Village Common Areas;

(ii) Landscaping within the public rights-of-way within or abutting the Project;

(iii) Such portions of any additional property included within the Village Common Areas as may be dictated by this Village Declaration, any Annexation Declaration or Supplemental Declaration, a covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Village Association;

(iv) All ponds, streams and/or wetlands located within the Village which serve as part of the storm water drainage system for the Village, including improvements and equipment installed therein or used in connection therewith; and

(v) Any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Village Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Village Association and will remain part of the area maintained by the Village Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Village Association.

The Village Association's responsibility to maintain the Village Common Areas and Facilities shall begin upon conveyance of such Village Common Areas and Facilities to the Village Association.

(b) Other Areas. The Village Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Village Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(c) Continuous Operation. The Village Association shall maintain the facilities and equipment within the Village Common Areas in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" Members vote in the Village Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

(d) Changes in Area of Common Responsibility. Except as provided above, the Village Common Areas shall not be reduced except with Declarant's prior written approval as long as

Declarant owns any property described in Exhibit A of this Village Declaration (as it may be amended from time to time).

(e) Costs. The costs associated with maintenance, repair, and replacement of the Village Common Areas and Facilities shall be a Common Expense; provided, the Village Association may seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Village Common Areas and Facilities pursuant to this Village Declaration, other Recorded covenants, or agreements with the Owner(s) thereof. Maintenance, repair, and replacement of Project Limited Common Areas shall be a Project expense assessed to the Project(s) to which the Project Limited Common Areas are assigned, notwithstanding that the Village Association may be responsible for performing such maintenance hereunder. Said duties may include removal of snow from parking areas, roads, walks, bridges, drives, malls, stairs and other similar Village Common Areas and Facilities as necessary for their customary use and enjoyment; maintenance and care of all open space or unimproved areas, and of plants, trees and shrubs in such open space or unimproved areas; maintenance of ski and multi-purpose trails in the open spaces and Village Common Areas within the Village; maintenance of lighting provided for parking areas, roads, walks, drives, malls, stairs, and other similar common facilities. Said obligations may also include maintenance of roads, walks, bridges, drives and loading areas which are not Village Common Areas and Facilities but are necessary or desirable for access to the boundary of or full utilization of any Unit or any Improvements within the Village.

(f) Exclusions from Maintenance Obligations. Notwithstanding the foregoing, the Village Association shall have no responsibility to provide the services referred to in this Section 10.1 with respect to (i) any Village Common Areas and Facilities that are accepted for maintenance by any Governmental Authority (unless the Governmental Authority fails to maintain the area to a standard acceptable to the Village Association, or elects to not further maintain the area); or (ii) any Project Common Area, Units or Improvements which are not Village Common Areas and Facilities and are not owned by the Village Association (but the Village Association shall have the right to enforce the maintenance thereof).

(g) Prohibition on Certain Activities Relating to Village Common Areas and Facilities. No Owner, Lessee or Project Association shall place or install any sign, fence or other Improvement or alter or remove the Village Common Areas and Facilities or Improvements on the Village Common Areas owned or maintained by the Village Association (including without limitation any Village Common Areas fence, gate or wall adjacent to a Unit) unless such placement, installation or alterations first approved in writing by the Board of Directors. No Owner, Lessee or Project Association shall affix any object or device to any Village Common Facility or Village Common Areas fence, gate or wall, pierce the surface or otherwise expose the interior portion of such fence, gate or wall to the elements or install landscaping, irrigation systems or other Improvements on the Owner's or Lessee's Unit in such proximity or manner so as to undermine or otherwise impair the structural integrity of any such fence, gate or wall, or impair the weather resistant finish thereon.

10.2. **Snow Removal**. To the extent not the obligation of Governmental Authorities with jurisdiction, the Village Association shall be responsible for the removal and disposition of snow from all private roads and parking areas maintained by the Village Association as well as from the Village Plaza. The Village Association may contract with the Mountain Operator or any other Person for all snow removal operations in the Village, including snow removal from the Village Plaza. The Village Association hereby agrees to, indemnify, defend and hold harmless the Mountain Operator and each of the Mountain Operator's Affiliates and each of their respective shareholders, officers, directors, employees, agents, attorneys and representatives (each an "**Indemnified Party**"), from and against any and all damages, awards, judgments, assessments, fines, sanctions, penalties, charges, costs, expenses, payments and other losses, however suffered or characterized, all interest thereon, all costs and expenses

of investigating or defending any such claim, lawsuit or arbitration and any appeal therefrom, all actual attorneys, accountants and investment bankers and expert witness fees incurred in connection therewith, whether or not any such claim, lawsuit or arbitration is ultimately defeated (except as provided below) and amounts paid incident to any compromise or settlement of any such claim, lawsuit or arbitration (but any such compromise or settlement will be subject to the reasonable approval of the Village Association) (collectively "**Losses**"), which may be incurred or suffered by any such Indemnified Party and which may arise out of or result from any claim from any Governmental Authority that the removal or dumping of snow in the manner described above is not permitted by Applicable Law, or any claim by any Guest or other Person that the Mountain Operator's removal and/or dumping of snow constitutes an actionable nuisance or is otherwise illegal, but no such indemnification, defense or hold harmless obligation will apply to the extent that the actions or omissions of the Mountain Operator are found by a court of competent jurisdiction to have constituted gross negligence, or to have been in violation of the terms of any permit of any Governmental Authority.

10.3. **Storm Drainage Maintenance**. The Village Association shall maintain the storm drainage facilities located within the public easement areas adjacent to roads in the Village, including structural storm water quality enhancement facilities, unless such maintenance is provided by a Governmental Authority or the Master Association, or has been delegated to a Project Association.

10.4. **Maintenance of Detention/Water Quality Facilities**. The Village Association shall maintain any detention/water quality facilities initially constructed by Declarant, unless such maintenance is provided by a Governmental Authority or the Master Association, or has been delegated to a Project Association.

10.5. **Maintenance of Landscaping**. The Village Association shall be responsible for the maintenance of landscaping and irrigation in the Village Common Areas unless such maintenance is provided by a Governmental Authority or the Master Association, or has been delegated to a Project Association. In no event shall landscaping, monuments, or similar installations be permitted, installed or maintained that adversely affect, impede or increase the cost of snow plowing operations, or which adversely affect any easements or other rights of the Mountain Operator.

10.6. **Trail Maintenance**. All multi-purpose trails in the Village Common Areas shall be maintained by the Village Association unless such maintenance is provided by a Governmental Authority or the Master Association, or has been delegated to a Project Association. The Mountain Operator shall be entitled to post such signs along trails as may be appropriate to identify Mountainside Ski Property or warn of risks if the trails lead to or traverse Mountainside Ski Property.

10.7. **Voluntary Cleanup Program.** Upon receipt of a Certificate of Completion from the Utah Division of Environmental Response and Remediation for the completion of the Voluntary Cleanup Program on the Property, Declarant or Declarant's Affiliates shall either (1) continue on its own to perform any on-going environmental monitoring, testing, or evaluation and the submission of any reports to the applicable Governmental Authority as required as part of the Certificate of Completion ("**Ongoing Monitoring**"), or (2) delegate, in whole or in part, the responsibility for any such Ongoing Monitoring to the Village Association. If Declarant or Declarant's Affiliates delegate responsibility for any such Ongoing Monitoring to the Village Association, the Village Association shall indemnify Declarant or Declarant's Affiliates for any Losses that may be incurred by Declarant or Declarant's Affiliates for any failure by the Village Association to perform such Ongoing Monitoring. Any costs incurred by the Village Association in connection with the Ongoing Monitoring shall be Common Expenses under this Village Declaration.

10.8. **Village Common Facilities on Property Owned By Declarant**. Unless otherwise agreed in writing, the Village Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Village Common Areas and Facilities consisting of only a portion of, or defined space within, a building or other Improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant a proportionate share of Declarant's costs and expenses relating to such building or Improvement as a whole, including, without limitation, maintenance, taxes and assessments, insurance and depreciation. The proportionate share of the Village Association's costs and expenses relating to such building or Improvement as a whole shall be determined by Declarant based on the actual amount of such costs and expenses relating to such building or Improvement as a whole multiplied by the ratio with a numerator which is the number of square feet of floor area of such defined space within the building or Improvement and a denominator which is the number of square feet of floor area of the entire building or Improvement.

10.9. **Owner's Responsibility**.

(a) Except as otherwise provided in this Village Declaration, applicable Project Declarations, or by written agreement with the Village Association, all maintenance of the Units and all structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in accordance with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility to otherwise assumed by or assigned to the Village Association or a Project Association pursuant to a Supplemental Declaration.

(b) Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Village Common Area or right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Village Common Area or right-of-way within ten (10) feet of the Unit boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 7. Each Owner of a Unit adjacent to any channel, wetland, or other body of water shall maintain such property to the water's edge. The Village Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association or the Project in which the Unit is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner and any applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Village Association may proceed. The expenses of such maintenance by the Village Association shall be reimbursed to the Village Association by the Owner, together with interest as provided in Section 12.6. Such charges shall be an Special Individual Assessment and lien on such Owner's Unit as provided in Section 11.10.

10.10. **Maintenance of Project Common Area**.

(a) Any Project Association shall maintain its Project Common Area and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

(b) Any Project Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Village Common Area or public right-of-way lying between the boundary of its Project Common Area and any wall, fence, or curb located on the Village Common Area or public right-of-way within ten (10) feet of its boundary; provided, there shall be no

right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 7.

(c) Upon resolution of the Board, Owners within each Project shall be responsible for paying, through Project Assessments, the costs of operating, maintaining, and insuring certain portions of the Village Common Area within or adjacent to such Project. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Project and adjacent public roads, private streets within the Project, and ponds within the Project, regardless of ownership and regardless of the fact that such maintenance may be performed by the Village Association; provided, however, all Projects which are similarly situated shall be treated the same.

10.11. **Responsibility for Repair and Replacement**.

(a) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

(b) By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Village Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Unit, less a reasonable deductible, unless either the Project Association (if any) for the Project in which the Unit is located or the Village Association carries such insurance (which they may, but are not obligated to do hereunder). If the Village Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Special Assessment against the benefitted Unit and the Owner.

(c) Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising such Owner's Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 8. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

(d) This Section shall apply to any Project Association responsible for common property within the Project in the same manner as if the Project Association were an Owner and the common property were a Unit. Additional Recorded covenants applicable to any Project may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Project and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

10.12. **Village Association Recovery of Costs of Certain Repairs and Maintenance**.

(a) Village Association Maintenance Caused by Failures or Negligence. If the need for maintenance or repair which would otherwise be the Village Association's responsibility hereunder is caused by the failure of an Owner or Project Association to perform its obligations under this Village Declaration, or through the willful or negligent acts of an Owner, or its Guests, or by the negligent acts of a Project Association, its agents and contractors, and the resulting costs and damage is not covered or paid for by insurance policies or any liability insurance maintained by the Village Association, the responsible Owner, or a Project Association, the cost of such maintenance or repairs shall be subject to recovery by the Village Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 11.10, or from a Project Association in an action at law, as applicable.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Unit for which such Owner is responsible, the Village Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Village Association may exercise its rights under Section 12.2, to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 12.2.

10.13. **Limitation of Liability**. Declarant, the Village Association, and each and every employee or agent of either of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from their performance of any of the services set forth in this Article 10.

10.14. **Safety and Security**. **EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE VILLAGE. THE VILLAGE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE VILLAGE DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR SUCH PERSON AND SUCH PERSON'S PROPERTY. NEITHER THE VILLAGE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE VILLAGE, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE VILLAGE, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING ITS GUESTS AND ALL OCCUPANTS OF ITS UNIT THAT THE VILLAGE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE VILLAGE ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.**

ARTICLE 11

ASSESSMENTS

11.1. **Purpose of Assessments**. The Assessments levied by the Village Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Village and for the improvement, operation and maintenance of the Village Common Areas and Facilities.

11.2. **Types of Assessments**. The Village Association may levy Annual Assessments (including Cost Center Assessments), Special Assessments, Emergency Assessments, Project Limited Common Area Assessments, and Special Individual Assessments, all as more particularly described below.

11.3. **Apportionment of Assessments**. Any Unit owned by Declarant, Declarant's Affiliates, or MIDA shall not be subject to Assessments until such time as the Unit is occupied for a residential use or a commercial use, as applicable, subject to accrual of reserves as described in Section 11.14; provided that when the MIDA Property is developed with a Condominium Hotel Project only the Condominium Units within the Condominium Hotel Project, and not the underlying land comprising the MIDA Property, shall be subject to Assessments. All other Units shall pay their share of the Annual Assessments, Special Assessments, Emergency Assessments and Project Limited Common Area Assessments as provided in this Article 11 commencing upon the date such Units are made subject to this Village Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to assessment.

11.4. **Designation of Cost Centers**. Declarant shall have the power and authority, pursuant to a Supplemental Declaration, to designate Units, Village Common Areas and, Village Common Facilities, as a Cost Center for purposes of expense accounting and the equitable allocation of Common Expenses in accordance with Section 11.5. In addition, it is anticipated that there may be established one or more residential Cost Centers and one or more commercial Cost Centers to fairly allocate certain commonly recurring Common Expenses as between Residential Units and Commercial Units.

(a) A Cost Center is likely to be designated under any of the following circumstances: (i) when the Village Association will be responsible for maintaining, repairing or replacing a Village Common Area or Village Common Facility that disproportionately benefits some Owners (or is only available to some Owners) to the exclusion of other Owners; (ii) when the Village Association will be responsible for maintaining certain portions of Units that disproportionately benefit some Owners (or is only available to some Owners) to the exclusion of other Owners; or (iii) when certain Owners of Units are receiving services from the Village Association that are in addition to, or significantly greater than, the services provided to other Owners or residents. Under those circumstances, the disproportionately or exclusively benefited Units may be designated as a Cost Center and the Owners of those Units will be obligated to pay a Cost Center Assessment to defray the expenses incurred by the Village Association to provide the special benefits or services.

(b) Ordinarily, a Cost Center shall be established whenever it is reasonable to anticipate that any Owner or group of Owners will derive as much as ten percent (10%) more than the Owners in general in the value of common service(s) supplied by the Village Association.

11.5. **Annual Assessments**. The Board of Directors of the Village Association shall from time to time and at least annually prepare an operating budget for the Village Association, taking into account the current costs of maintenance and services and future needs of the Village Association, any previous overassessment and any common profits of the Village Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by Applicable Law, but not less than the reserves required by Section 11.14, and such reserve or contingency funds shall be a separate line item in the budget. Such line item for the reserve or contingency funds shall be based on the reserve analysis described in Section 11.14 hereof or shall be the amount set forth for such funds, if any, in the Governing Documents, if such amount is greater. The Board shall present its prepared budget to the Members at a meeting of the Village Association, and such budget shall be effective if it is not disapproved within forty-five (45) days of the date of such meeting by at least 51% of the total Class "A" votes in the Village Association in a vote held in a special meeting called for the purpose of holding such a vote. Notwithstanding the foregoing, during the Administrative Control Period, the Members shall not have the ability to disapprove the budget. Except as set forth in this Section, the method of adoption of the budget and the manner of billing and collection of Assessments shall be as further provided in the Bylaws. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall be

apportioned among the Owners and their respective Units for which Annual Assessments have commenced based on the number of Assessment Units allocated to each Unit, as follows:

(a) Assessment Units, and Allocation of Assessments, Generally. The Board of Directors shall conclusively determine the Assessment Unit allocation for all of the Property, based on the following guidelines:

(i) Association Common Expenses. Except as otherwise provided in subparagraph (a)(ii), below, the total estimated Common Expenses, determined in accordance with the first paragraph of this Section 11.5 (other than Common Expenses designated as a Cost Center Assessment Component), shall be allocated among, assessed against, and charged to each Owner of Unit that is subject to Assessment according to the allocation of Assessment Units set forth below. Cost Center Assessments shall be allocated among, assessed against, and charged to each Owner of Unit in the Cost Center according to the ratio of the number of Assessment Units in the Cost Center owned by the assessed Owner to the total number of Assessment Units within the Cost Center that are subject to the Cost Center Assessment so that each such Assessment Unit in the Cost Center bears an equal share of the total Cost Center Assessment Component.

(ii) Partial Exemption for Uncompleted Common Facilities. All Owners, including Declarant, shall be exempt from the payment of that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Village Common Facility that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph shall be in effect only until the earliest of the following events: (A) a notice of completion of the Village Common Facility has been Recorded; or (B) the Village Common Facility has been placed in use.

(iii) Annexation. After annexation of a Phase, the allocation, and Assessment of the Common Expenses in the Village Association's budget shall be reallocated equally among all Units within the Property, including those in the annexed Phase, in accordance with the allocation formulas set forth below.

(iv) Assessment Unit Allocations. Assessment Unit allocation for Units which are subject to assessment shall be based on the designated use, and in the case of Commercial Units, the size of the Units located on the Property, as further specified in subparagraph (b), below:

(b) Assessment Unit Allocation Among Units. The aggregate Common Expenses comprising the Annual Assessment shall be allocated among and assessed against all Units that are subject to assessment in accordance with the allocation of Assessment Units set forth below:

(i) Residential Units and Apartment Units. Residential Units, and apartment dwelling units shall be allocated one (1) Assessment Unit regardless of the size of the Unit or apartment unit;

(ii) Commercial Units. Commercial Units shall be allocated one (1) Assessment Unit for each one thousand five hundred (1500) square feet of retail, commercial or office space (including commercial spaces in a Condominium Project and commercial space in a Hotel, Hotel Condominium, Lodge or other structure), with any fraction being rounded up to the next half Assessment Unit; and

(iii) Lodges and Hotels. Lodges and Hotels shall be allocated one (1) Assessment Unit for every five (5) rooms in the Lodge or Hotel that are available for short-term occupancy.

(c) Annual Assessment Allocation. Annual Assessments shall be allocated among, assessed against, and charged to each Owner of a Unit that has been given one or more Assessment Units according to the ratio of the number of Assessment Units within the Property on account of the Unit(s) that Owner owns chargeable to the assessed Owner (as provided in Sections 11.5(a) through (b), above) to the total number of Assessment Units within the Property subject to assessment.

(d) Calculating the Amount of the Annual Assessment.

(i) Determining the Annual Assessment Amount for Common Expenses Exclusive of Cost Centers. Annual Assessments shall be levied initially against the Owners of Units, (including Declarant) in the amount set forth in the Village Association budget. Thereafter, beginning with the fiscal year immediately following the fiscal year in which Annual Assessments commence, not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Village Association's fiscal year, the Board shall estimate the total amount required to fund the Village Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any Reserve Fund established to defray the costs of future repairs, replacement or additions to the Village Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of this Village Declaration and the Bylaws. Any difference between the amounts actually expended for the maintenance and services described as Common Expenses, and the amounts set forth in the Village Association's budget shall be carried over to the following fiscal year and shall either increase or decrease the amounts allocated to the Units, as appropriate, for the following year. Subject to the Member approval requirements for certain Annual Assessment increases (see Section 11.5(e)) the total estimated Common Expenses shall become the Annual Assessment.

(ii) Cost Center Component of the Annual Assessment. If a Cost Center has been established in accordance with Section 11.4 and Section 11.6, Common Expenses attributable to Cost Centers shall be separately accounted for and disclosed in the Village Association's annual budget. Owners of Units within the Cost Center shall be levied and collected by the Village Association as a component of the Annual Assessment and shall be assessed against each Unit benefited by such Cost Center Common Expenses based on the number of Assessment Units allocated to each Unit so benefited divided by the total number of Assessment Units allocated to all Units that are so benefited. The Village Association shall distribute to Owners of the affected Units in the Cost Center a pro forma operating statement and budget for each upcoming fiscal year which shall estimate the expenses attributable to any such additional Cost Center Assessment Component of the Annual Assessment and shall set forth the amount and payment schedule therefore. Once established, the Board may not, without the vote or written assent of Members constituting a majority of a quorum of the Members who own Units in the assessed Cost Center, impose a Cost Center Assessment per Unit which is more than twenty percent (20%) greater than the Cost Center Assessment for such Cost Center for the immediately preceding fiscal year.

(iii) Effect of Board's Failure to Prepare and Distribute the Annual Budget. If the Board of Directors of the Village Association fails to distribute a budget satisfying the requirements of this Village Declaration and the Bylaws for any fiscal year within the time

period specified herein, the Board shall not be permitted to increase Annual Assessments for that fiscal year unless the Board first obtains the approval of the Members in accordance with Section 11.5(e).

(e) Limitations on Annual Assessment Increases. As provided in Section 11.5(d), the total annual expenses estimated in the Village Association's budget (less projected income from sources other than Assessments) shall become the aggregate Annual Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 11.8, the Board of Directors may not impose an Annual Assessment that is more than twenty percent (20%) greater than the Annual Assessment for the Village Association's immediately preceding fiscal year without the approval of the Members in accordance with Section 11.11.

(f) Supplemental Annual Assessments. Notwithstanding the foregoing limitations on Annual Assessment increases, if the Board determines that the important and essential functions of the Village Association may be properly funded by an Annual Assessment that is less than the maximum Annual Assessment which the Board has authority to impose without Member approval, the Board may levy such lesser Annual Assessment. If the Board levies an Annual Assessment in an amount less than the maximum that the Board has authority to impose for any fiscal year and thereafter during such fiscal year the Board determines that the important and essential functions of the Village Association cannot be funded by the lesser Annual Assessment previously levied, the Board may levy one or more supplemental Annual Assessments, not to exceed one hundred and twenty percent (120%) of the Annual Assessment for the immediately preceding fiscal year.

(g) Commencement of Assessments. Annual Assessments shall commence as to each Unit that is subject to assessment hereunder within a Phase upon the earlier to occur of (i) the date specified in a notice of commencement of Annual Assessments Recorded by the Declarant with respect to the Phase; or (ii) to the first day of the first month following the month in which the first deed is Recorded for the sale of a Unit in the Phase to an Owner who is not a Builder, Declarant or Declarant's Affiliate. Each Unit in the subject Phase shall thereafter be subject to its share of the then established Annual Assessment. The first Annual Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Bylaws. If the Declarant elects to commence to pay Annual Assessments on Units, if any, within a Phase prior to the conveyance of any Unit in such Phase to an Owner who is not a Builder, Declarant or Declarant's Affiliate, the Declarant shall have the voting rights as to the Units in such Phase upon commencement of the payment of Assessments. In no event shall any sale or leaseback to the Declarant of any Unit in the Property being used as a model home, sales office, design center, construction office of similar purpose cause the commencement of Assessments in a Phase for which assessments have not otherwise commenced in accordance with the provisions of this Section 11.5(g).

(h) Payment of Annual Assessments. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board of Directors, at such frequency and on such due dates as the Board of Directors shall determine from time to time in its sole and absolute discretion. Each installment of an Annual Assessment may be paid to the Village Association in one check or in separate checks as the Board of Directors may require. If any payment of an Annual Assessment installment is less than the amount assessed and the payment does not specify the fund or funds into which it should be deposited, the payment received by the Village Association from that Owner shall be credited in order of priority first to the Operations Fund until that portion of the Annual Assessment has been satisfied, then to the Reserve Fund until that portion of the Annual Assessment has been satisfied, then to any other Association funds established by the Village Association.

The Project Associations are hereby empowered and authorized, and upon the request of the Village Association are hereby required, to levy and collect from Owners of Units within their respective Projects the assessments owning to the Village Association as part of such Project Association's own assessment procedures and to promptly remit such Assessments collected by the Project Association to the Village Association. Assessments shall be levied against each Unit; provided, however, that upon formation, each Project Association is hereby designated as the agent of each Owner of Unit within such Project for receipt of notices of Assessments and the collection and remittance of Assessments to the Village Association. In the event that the Assessments collected and remitted to the Village Association by any Project Association are less than the entirety of the Assessments owed by Owners of Units within the Project administered by that Project Association, the Project Association shall provide a written statement to the Village Association identifying the delinquent Owner(s) and itemizing the amount of each such Owner's delinquency concurrently with submission of the Assessments to the Village Association.

11.6. **Cost Center Assessments**.

(a) Residential Cost Center Assessments. After the Board of Directors' adoption of an annual budget, the Village Association shall levy a residential cost center assessment ("**Residential Cost Center Assessment**") to cover expenses incurred by the Village Association in the operation, maintenance, repair and funding of reserves for certain improvements and services exclusively benefiting the Residential Units and Lodges within the Village. The Residential Cost Center Assessments shall be levied only against Residential Units and Lodges. The Residential Cost Center Assessments shall include, but are not limited to, the following:

(i) maintenance, management, operation, repair and replacement of the parking areas designated for use by the Residential Units and Lodges, if any;

(ii) utilities or other services necessary to the operation of the parking areas;

(iii) insurance coverage for the parking areas;

(iv) reasonable reserves deemed appropriate by the Board of Directors for repair and replacement of any improvements maintained by the Village Association within the parking areas;

(v) servicing and disposal of the trash generated by the Residential Units and Lodges within the Village; and

(vi) assessments payable to any Project Association resulting from the Village Association's ownership of the designated parking areas, if any.

The total Residential Cost Center Assessment shall equal the total costs and expenses incurred by the Village Association in the operation, maintenance and repair and funding of reserves for all of the designated parking areas, if any, and for the residential trash services.

Unless determined otherwise by the Board of Directors, the Residential Cost Center Assessments shall be levied and collected by the Village Association as a component of the Annual Assessment and shall be assessed against the Residential Units and Lodges based on the number of Assessment Units allocated to each such Unit divided by the total number of Assessment Units allocated to all such Units. The Village Association shall distribute to the Owners of the Residential Units and Lodges a pro forma operating statement and budget for each upcoming fiscal year which shall estimate

the expenses attributable to the Residential Cost Center Assessments and shall set forth the amount and payment schedule therefore.

(b) Commercial Cost Center Assessments. After the Board's adoption of an annual budget, the Village Association shall levy a commercial cost center assessment (the "**Commercial Cost Center Assessment**") to cover expenses incurred by the Village Association in the operation, maintenance, repair and funding of reserves for certain improvements and services exclusively benefiting Commercial Units. The Commercial Cost Center Assessments shall be levied only against Commercial Units. The Commercial Cost Center Assessments may include, but are not limited to:

(i) servicing and disposal of the trash generated by Commercial Units within the Village, including, but not limited to, any trash compactors, collection equipment and related facilities, but excluding commercial trash services and equipment that serve, and are separately paid for, by a particular Commercial Unit; and

(ii) funding the Village employee parking plan and employee transit system, if any.

Unless determined otherwise by the Board of Directors, the Commercial Cost Center Assessments shall be levied and collected by the Village Association as a component of the Annual Assessment and shall be assessed against each Commercial Unit based on the number of Assessment Units allocated to such Commercial Units divided by the total number of Assessment Units allocated to all Commercial Units. The Village Association shall distribute to Owners of Commercial Units a pro forma operating statement and budget for each upcoming fiscal year which shall estimate the expenses attributable to the Commercial Cost Center Assessments and shall set forth the amount and payment schedule therefore.

(c) Other Cost Centers. Pursuant to the general authority conferred on the Declarant and the Board of Directors of the Village Association to establish Cost Centers pursuant to Sections 11.4 and Section 11.6, Cost Centers may also be established on the basis of identifying Units within a particular Project or Projects as a Cost Center, rather than identifying the Cost Center as being comprised solely of either Residential Units or Commercial Units.

11.7. **Special Assessments**.

(a) Categories of Special Assessments. The Assessments that the Village Association is either required or permitted to levy and collect pursuant to this Section 11.7 are referred to in this Village Declaration as "**Special Assessments**." There shall be three (3) types of Special Assessments, namely: "General Special Assessments," "Mountain Operator Special Assessments," and "Village Association Special Assessments."

(b) General Special Assessments. If, at any time, the Board of Directors believes that Common Expenses of the Village Association will exceed revenues for any fiscal year for any reason other than a failure to adequately budget amounts required to be paid by the Village Association to the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements, the Board of Directors shall cause the Village Association to levy and collect a Special Assessment in an amount equal to the amount of such excess. The type of Special Assessment described in this subparagraph (b) shall be a "General Special Assessment". If the Village Association levies a General Special Assessment, each Owner of Unit shall pay to the Village Association, when and in such

installments as the Board of Directors deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the General Special Assessment, by

(ii) a fraction, the numerator of which shall be the number of Assessment Units allocated to such Owner's Unit(s), and the denominator of which shall be the total number of Assessment Units within the Property during that calendar year.

(c) Mountain Operator Special Assessments. If, at any time, the Board of Directors believes that Common Expenses will exceed revenues for any fiscal year as a result of a failure to adequately budget amounts required to be paid by the Village Association to the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements, then the Board of Directors shall, following consultation with the Mountain Operator regarding the unbudgeted costs and expenses, cause the Village Association to levy and collect a Special Assessment in an amount equal to the amount of such excess. The Mountain Operator Special Assessment shall have priority over and shall be paid prior to the General Special Assessment. The type of Special Assessment described in this subparagraph (c) shall be a "Mountain Operator Special Assessment." If the Village Association levies a Mountain Operator Special Assessment, the Mountain Operator Special Assessment shall be levied in the same manner that amounts are required to be paid by the Village Association pursuant to the terms and conditions of the Mountain Operator Agreement or the Mountain Easement Agreements.

(d) Village Association Special Assessments. In addition to the other Special Assessments described in this Section 11.7, the Village Association may, from time to time, levy and collect from Owners of Units one or more Assessments for any lawful purpose, including, without limitation, new capital improvements in the Village Common Areas (each, a "**Village Association Special Assessment**"), on the condition that each Village Association Special Assessment is approved by the affirmative vote of the Members in accordance with Section 11.11. If the Village Association levies a Village Association Special Assessment, each Owner of Unit shall pay to the Village Association, when and in such installments as the Board of Directors deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the Village Association Special Assessment, by

(ii) a fraction, the numerator of which shall be the amount of the Annual Assessment levied against such Owner's Unit(s) during that calendar year, and the denominator of which shall be the amount of all Annual Assessments levied against all Units during that calendar year.

(e) Special Assessments Requiring Member Approval. No Special Assessment(s) described in this Section 11.7, which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Village Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote or written assent of the Members of the Village Association in accordance with Section 11.11. Notwithstanding the foregoing, the Board of Directors may levy in any fiscal year a Special Assessment applicable to that fiscal year without the vote of the Members if such Special Assessment is necessary for addressing an emergency situation as provided in Section 11.8. All Special Assessments must be fixed for all Units in the same manner and in the same proportions as Annual Assessments are levied, and they shall be collected in the manner and frequency determined by the Board of Directors from time to time.

11.8. **Emergency Assessments**.

(a) Authority of Board to Impose Emergency Assessments. The requirement of a membership vote to approve: (i) Annual Assessment increases in excess of twenty percent (20%) of the previous year's Annual Assessment; or (ii) Special Assessments which, in the aggregate, exceed five percent (5%) of the Village Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations ("**Emergency Assessments**"). For purposes of this Section 11.8, an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court;

(ii) An extraordinary expense necessary to repair or maintain the Village Common Areas and Facilities where a threat to personal safety is discovered; and

(iii) An extraordinary expense necessary to repair or maintain the Village Common Areas and Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 11.5; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(b) Payment of Emergency Assessments. When levied by the Board the Emergency Assessment shall be divided among, assessed against and charged to each Owner and his or her Unit in the same manner prescribed for the allocation of Annual Assessments. The Emergency Assessment so levied shall be recorded on the Village Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and a lien against his or her Unit, and shall be payable in full to the Village Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment.

11.9. **Project Limited Common Area Assessments**. Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Project Limited Common Area ("**Project Limited Common Area Assessments**") shall be assessed exclusively to the Units having the right to use such Project Limited Common Area.

11.10. **Special Individual Assessments**.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by (i) the negligence or misconduct of an Owner or such Owner's Guest (and the expense is not covered by insurance maintained by the Village Association); or (ii) a violation of any covenant or condition of any Governing Document by an Owner or such Owner's Guest, the Village Association may levy an Assessment against such Owner's Unit. Any such Assessment levied by the Village Association and each fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Governing Document by an Owner or such Owner's Guest are each referred to herein as a "**Special Individual Assessment**."

(b) With respect to any Special Individual Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Village Association seeks to levy

the Special Individual Assessment shall be provided notice and an opportunity to be heard in accordance with Section 11.11. Owners of Units against which a Special Individual Assessment has been levied shall pay the Special Individual Assessment when required by the Village Association.

11.11. **Notice and Procedures for Member Approval of Certain Assessments Pursuant to Sections 11.5(e), 11.7 and 11.10**. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 11.5(e), 11.7 and 11.10, the affirmative vote required to approve the increase shall be a majority of a quorum of the Members who are or may be liable for payment of the Assessment. The quorum required for such membership action shall be a majority of the Members, and the required affirmative vote shall be at least (i) in the case of an increase in the Annual Assessment or imposition of a Special Assessment, the affirmative vote of a majority of the Members casting votes at the meeting or by written ballot; and (ii) in the case of an increase in a Cost Center Assessment Component, the affirmative vote of a majority of the Project Associations whose members own Units within the Cost Center that is subject to the increased Cost Center Assessment Component casting votes at the meeting or by written ballot.

11.12. **Annexation of Additional Property**. When Additional Property is annexed to the Village, the Units included therein shall become subject to Assessments from the date an Annexation Declaration for such Additional Property is Recorded except as otherwise expressly provided herein. Units owned by Declarant or Declarant's Affiliates shall not be subject to Assessments until occupied for residential or commercial use, as applicable. All other Units shall pay such Assessments in the amount then being paid by other Units based upon the number of Assessment Units applicable to the Unit in question. The Board of Directors of the Village Association, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Village Common Areas and Facilities and recompute Annual Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Village Declaration apparently to the contrary, an Annexation Declaration annexing Additional Property may provide that such Additional Property does not have the right to use any particular Village Common Areas and Facilities, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Village Common Areas and Facilities.

11.13. **Operations Fund**. The Village Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.14, separate and apart from its other funds, in an account maintained in the name of the Village Association to be known as the "**Operations Fund**." The Village Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Village Common Areas and Facilities and of the Units situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 10.

(b) Payment of the cost of insurance as described in the Bylaws of the Village Association.

(c) Payment of taxes assessed against the Village Common Areas and Facilities and any Improvements thereon.

(d) Payment of the cost of other services which the Village Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.14. **Reserve Fund**. The Village Association shall establish a reserve fund for replacement of those Improvements to be maintained by the Village Association, all or a part of which will normally require functional replacement in more than three (3) and less than thirty (30) years ("**Reserve Fund**"), in compliance with the requirements of Applicable Law. The Reserve Fund shall be funded by Assessments against the Units assessed for maintenance of the items for which the Reserve Fund is being established ("**Reserve Fund Assessment**"). The Assessments under this Section begin accruing against each Unit from the date the Unit is sold by Declarant to a Person who is not a Builder or one of Declarant's Affiliates. Declarant shall not be obligated to contribute to the Reserve Fund at the time of the sale of each Unit by Declarant to a Person who is not a Builder one of Declarant's Affiliates. The amount assessed to each Unit shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Village Association and shall be adjusted in accordance with the provisions of this Section 11.14 or otherwise at regular intervals to recognize changes in current replacement costs over time. Except during the Administrative Control Period, during which the following provisions shall not apply, the Village Association shall: (i) no less frequently than every six (6) years conduct a reserve analysis to determine the need for the Reserve Fund to accumulate reserve funds and the appropriate amount of the Reserve Fund, (ii) no less frequently than every three (3) years review and, if necessary, update a previously conducted reserve analysis, (iii) provide the Members a summary of the most recent reserve analysis or update annually and (iv) provide a complete copy of the most recent reserve analysis or update to any Member who requests the same. The Board may conduct the reserve analysis itself or engage a reliable person or organization to conduct the reserve analysis, provided the reserve analysis shall, at a minimum, include the following: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds, (ii) a statement of the probably remaining useful life, as of the date of such reserve analysis, of each component identified in the reserve analysis, (iii) an estimate of the cost to repair, replace or restore each component identified in the reserve analysis, (iv) an estimate of the total annual contribution to the Reserve Fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life, and (v) a reserve funding plan that recommends how the Village Association may fund such annual contribution. The Reserve Fund shall be used only for replacement of Village Common Areas or Village Common Facilities as determined by the Board of Directors and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 9.7, however, if at least 51% of the total Class "A" votes in the Village Association approve, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Project Limited Common Area Assessments. The budget line item for future Assessments for the Reserve Fund may be disapproved within forty-five (45) days of the day on which the budget is adopted by at least 51% of the total Class "A" votes in the Village Association in a vote held in a special meeting called for the purpose of holding such a vote. In the event such budget line item is disapproved, the Reserve Fund shall be funded pursuant to the line item for Reserve Fund Assessments from a previous budget that was not disapproved, if any. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Village Association. Assessments paid into the Reserve Fund are the property of the Village Association and are not refundable to Owners of Units. Nothing in this Section 11.14 shall prohibit prudent investment of the Reserve Fund.

11.15. **Creation of Lien and Personal Obligation of Assessments**. Declarant, for each Unit owned by it within the Property, does hereby covenant, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Village Association all Assessments or other charges as may be fixed, established and collected

from time to time in the manner provided in this Village Declaration or the Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 12.6, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made; provided, however, that no lien shall attach to any Unit owned by Declarant or Declarant's Affiliates until such time as such Unit is subject to Assessment pursuant to the requirements of Section 11.3. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12 below.

11.16. **Exempt Property**. The following Property subject to this Village Declaration shall be exempt from the Assessments herein: (i) those portions of the Property dedicated in fee and accepted by a Governmental Authority; (ii) all Village Common Areas and Facilities; (iii) all Project Common Areas owned in fee by such Project Association or as tenants-in-common by the Owners of Residential Units within the Project; (iv) any Property owned by the Mountain Operator (or to which the Mountain Operator otherwise has rights by easement or contracts) and used primarily in connection with the operation or maintenance of the Mountainside Ski Property, Mountain Operations and related improvements; (v) any property owned, held or used in its entirety by Declarant, Declarant's Affiliates, the Master Association, the Village Association, or any Project Association for maintenance, cat barns, or other non-revenue generating facilities; (vi) any Unit or other property that the Resort Foundation owns; and (vii) any Property owned, held or used in its entirety by the Mountain Operator, the Master Association, the Village Association, or by any Governmental Authority, or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service, or for access to any property within or without the Village, or for or in connection with the Mountainside Ski Property or Mountain Operations.

11.17. **Mortgage Protection from Liens**. Notwithstanding all other provisions hereof, no lien created under this Article 11, nor any breach of this Village Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Mortgagee under any Recorded Mortgage upon a Unit, made in good faith and for value; provided that (i) such Mortgage is Recorded prior to any notice of lien Recorded pursuant to this Village Declaration, and (ii) after such Mortgagee or some other Person obtains title to such Unit by judicial foreclosure or by means of the powers set forth in such Mortgage; provided that such Unit shall in all events remain subject to the Governing Documents and the payment of all installments of Assessments, fees and other obligations, accruing subsequent to the date such Mortgagee or other Person obtains title.

11.18. **Priority of Assessment Lien**. The lien of the Assessments and fees as provided for herein, including interest thereon and costs of collection (including attorneys' fees) shall be subordinate to the lien of any first Mortgage upon any Unit which was Recorded prior to Recordation of a notice of lien on such Unit. The sale or transfer (including any "deed in lieu" of foreclosure) of any Unit shall not affect the Assessment lien; however, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a notice of lien shall extinguish the lien of such Assessments and fees as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments and fees thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Unit obtains title through judicial or nonjudicial foreclosure of the first Mortgage, the Person who acquires title and such Person's successors and assigns shall not be liable for the share of the Common Expenses, Assessments or fees by the Village Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses, Assessments and fees shall be deemed to become Common Expenses collectible from all of the Units, including the Unit belonging to such Person and such Person's successors and assigns.

11.19. **Declarant Subsidy**. During the Administrative Control Period, Declarant may satisfy its obligation, if any, for Assessments on Units which it owns either by paying such Assessments in the same manner as any other Owner, notwithstanding the commencement date of Assessments set forth in Section 11.5(g), or by paying the difference between the amount of Assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Village Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year, which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Payment of any such subsidy in any year shall not obligate Declarant to continue such subsidy in future years unless otherwise provided in a written agreement between the Village Association and Declarant. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Administrative Control Period, Declarant shall pay any authorized Assessments on its unsold Units in the same manner as any other Owner.

11.20. **Capitalization of Village Association**. Upon acquisition of Record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Village Association in an amount equal to one-sixth of the Annual Assessments per Unit for that year. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Village Association for use in covering operating expenses and other expenses incurred by the Village Association pursuant to this Village Declaration and the Bylaws.

11.21. **Conveyance to Trustee**. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to High Country Title, with power of sale, the Units and all Improvements to such Units for the purpose of securing payment of Assessments under the terms of this Village Declaration.

ARTICLE 12

ENFORCEMENT

12.1. **Use of Village Common Areas**. In the event any Owner shall violate any provision of this Village Declaration, the Bylaws of the Village Association or the Village Rules, then the Village Association, acting through its Board of Directors, shall notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend such Owner's voting rights in the Village Association and right to use the Village Common Areas and Facilities for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any minor infraction of the Village Rules (as reasonably determined by the Board of Directors), (b) impose reasonable fines upon the Owner in accordance with the procedures set forth in the Bylaws and required by Applicable Law, and in the amount set forth in the Village Rules, which fines shall be paid into the Operations Fund, or (c) bring suit or action against such Owner to enforce this Village Declaration. Nothing in this Section 12.1, however, shall give the Village Association the right to deprive any Owner of ingress and egress to such Owner's Unit.

12.2. **Nonqualifying Improvements and Violation of General Protective Covenants**. In the event any Owner constructs or permits to be constructed on such Owner's Unit an Improvement contrary

to the provisions of this Village Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Village Declaration to remain uncorrected or unabated on such Owner's Unit, then the Village Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Village Declaration and shall require the Owner to remedy or abate the same in order to bring such Owner's Unit, the Improvements thereon and such Owner's use thereof, into conformance with this Village Declaration. If the Owner is unable, unwilling or refuses to comply with the Village Association's specific directives for remedy or abatement, or the Owner and the Village Association cannot agree to a mutually acceptable solution within the framework and intent of this Village Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Village Association acting through its Board of Directors, shall have the right to do any or all of the following:

(a) Impose reasonable fines against such Owner in accordance with the procedures set forth in the Bylaws and required by Applicable Law, and in the amount set forth in the Village Rules, which fines shall constitute Special Individual Assessments for purposes of this Village Declaration;

(b) Enter the offending Unit and remove the cause of such violation, or alter, repair or change the item which is in violation of this Village Declaration in such a manner as to make it conform thereto, in which case the Village Association may assess such Owner for the entire cost of the work done, plus a fifteen percent (15%) administrative fee, which amount shall be payable to the Operations Fund, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; or

(c) Bring suit or action against the Owner on behalf of the Village Association and other Owners to enforce this Village Declaration.

12.3. **Default in Payment of Assessments; Enforcement of Lien**. If an Assessment or other charge levied under this Village Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Village Association may exercise any or all of the following remedies:

(a) The Village Association may, in compliance with the notice and other requirements under Applicable Law, if any, suspend such Owner's voting rights and right to use the Village Common Areas and Facilities, including utilities and recreational amenities, until such amounts, plus other charges under this Village Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Village Association deprive any Owner of ingress and egress to such Owner's Unit.

(b) The Village Association shall have a lien against each Unit for any Assessment levied against the Unit and any fines, interest or other fees and charges imposed under this Village Declaration or the Bylaws against the Owner of the Unit. The lien shall be foreclosed in accordance with the provisions of Applicable Law regarding the foreclosure of Mortgages, including the right of sale under provisions of Applicable Law relating to deeds of trust. The Village Association, through its duly authorized agents, may bid on the Unit at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Unit.

(c) The Village Association may bring an action to recover a money judgment against any defaulting Owner for unpaid Assessments, fines and charges under this Village Declaration without foreclosing or waiving the lien described in Section 12.3(b). Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Village Association may require a Person, other than the Owner, who has regular, exclusive occupancy under a lease to pay the Village Association all future lease payments due to the Owner, to the fullest extent allowed by Applicable Law.

(e) The Village Association shall have any other remedy available to it by Applicable Law or in equity.

12.4. **Ownership of Unit by Village Association After Foreclosure**. While a Unit is owned by the Village Association following foreclosure, (a) no Assessment shall be levied on such foreclosed Unit, and (b) each other Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that should have been charged such foreclosed Unit had it not been acquired by the Village Association.

12.5. **Notification of Eligible Mortgage Holder**. The Board of Directors shall notify any Eligible Mortgage Holder of any Unit of any default in performance of this Village Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner.

12.6. **Interest, Expenses and Attorneys' Fees**. Any amount not paid to the Village Association when due in accordance with this Village Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing New York prime rate for Bank of America at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Utah. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors of the Village Association not to exceed fifteen percent (15%) of such Assessment or any limitation imposed by Applicable Law. In the event the Village Association shall file a notice of lien, the lien amount shall also include the Recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors. In the event the Village Association shall bring any suit or action to enforce this Village Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Village Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.7. **Nonexclusiveness and Accumulation of Remedies**. An election by the Village Association to pursue any remedy provided for violation of this Village Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Village Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Village Association. In addition, any aggrieved Owner may bring an action against another Owner or the Village Association to recover damages or to enjoin, abate or remedy any violation of this Village Declaration by appropriate legal proceedings.

ARTICLE 13

PROTECTION OF MORTGAGEES

The provisions of this Article 13 apply to any Mortgage encumbering a Unit within the Village:

13.1. **Mortgages Permitted**. Any Owner may encumber such Owner's Unit with a Mortgage.

13.2. **Priority of Mortgages**. Any lien created or claimed under the provisions of this Village Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of any Unit, as the case may be, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such first Mortgage unless the first Mortgagee expressly subordinates its interest, in writing, to such lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Unit. All covenants, conditions and restrictions of this Village Declaration, however, shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit.

13.3. **Curing Defaults**. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Village Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board of Directors made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

13.4. **Resale**. It is intended that any loan to facilitate the resale of any Unit after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

13.5. **Relationship With Liens Created Under This Village Declaration.**

(a) The liens created under this Village Declaration shall be subordinate to the lien of any first Mortgage made in good faith and for value which was recorded prior to the date any such Assessment or fee becomes due.

(b) If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a first Mortgage and (i) the foreclosure of any lien allowed by this Village Declaration shall not operate to affect or impair the lien of such first Mortgage, and (ii) the judicial foreclosure of the lien of said first Mortgage or the sale under a power of sale included in such first Mortgage (such events being hereinafter referred to as "events of foreclosure") shall not operate to affect or impair the lien hereof, except that any Persons who obtain an interest through any of the events of foreclosure shall take title free of the lien hereof for all such charges as shall have accrued up to the time of any of the events of foreclosure, but subject to the lien hereof for all of said charges that shall accrue subsequent to the events of foreclosure.

(c) Any first Mortgagee who obtains title to a Unit by reason of any of the events of foreclosure, or any purchaser at a private or judicial foreclosure sale of a first Mortgage, shall take title to such Unit free of any lien or claim for unpaid Assessments or fees against such Unit which accrue prior to the time such first Mortgagee or purchaser comes into possession of the Unit.

(d) Nothing in this Section shall be construed to release any Owner from such Owner's obligation to pay for any Assessment or fee levied pursuant to this Village Declaration.

13.6. **Special Provisions for Eligible Mortgage Holders**. As used in this Section 13.6, an "**Eligible Mortgage Holder**" means a Mortgagee under a first priority Mortgage who provides a written notice of such Mortgage to the Village Association (such request to state the name and address of the Mortgagee and the Unit to which its Mortgage relates). The following provisions are imposed for the benefit of Eligible Mortgage Holders:

(a) Any restoration or repair of the Village Common Areas and Facilities, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Village Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(b) Any election to terminate this Village Declaration after substantial destruction or a substantial taking in condemnation of the Property must be approved by Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(c) No reallocation of interests in the Village Common Areas and Facilities resulting from a partial condemnation or partial destruction of the Village Common Areas and Facilities may be effected without the prior approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of such remaining Units subject to Mortgages by Eligible Mortgage Holders.

(d) When professional management has been previously required, any decision to establish self-management by the Village Association shall require the prior consent of Members to which at least sixty-seven percent (67%) of the votes in the Village Association are allocated and the approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(e) Except as otherwise provided in Sections 13.6(a) through 13.6(d):

(i) The consent of Members to which at least sixty-seven percent (67%) of the votes in the Village Association are allocated and the approval of Eligible Mortgage Holders which have at least sixty-seven percent (67%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders, shall be required to terminate this Village Declaration.

(ii) The consent of the Members to which at least sixty-seven percent (67%) of the votes in the Village Association are allocated, the consent of sixty-seven percent (67%) of the Owners of Commercial Units, and the approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders, shall be required to add or amend any material provisions of this Village Declaration, the Articles or the Bylaws, which establish, provide for, govern or regulate any of the following:

(A) Voting rights;

(B) Increases in Annual Assessments (excluding any increase due to an Approved Annual Assessment Adjustment) that raise the most recent Annual Assessment amount by more than twenty percent (20%);

(C) Reserves for maintenance, repair and replacement of the Village Common Areas and Facilities;

(D) Insurance or fidelity insurance requirements;

(E) Rights to use of the Village Common Areas and Facilities;

(F) Responsibility for maintenance and repair of the Property;

(G) The interests in the Village Common Areas and Facilities;

(H) The boundaries of any Unit; or

(I) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders of first Mortgages on Units.

Under no circumstances can any Mountain Operator Agreement be terminated or affected by any exercise of the powers set forth in this Section 13.6.

13.7. **Changes Requiring Additional Approval**. Unless otherwise prohibited by Applicable Law, except upon the prior written approval of at least two-thirds of all first Eligible Mortgage Holders (based on one vote for each first Mortgage owned), neither the Village Association nor the Members shall be entitled to do any of the following:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer Village Common Areas and Facilities either directly or indirectly, except in connection with the annexation of Additional Property or as otherwise authorized by this Village Declaration; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such Village Common Areas and Facilities shall not be deemed a transfer within the meaning of this subsection.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner and such Owner's Unit.

(c) Fail to maintain fire and extended coverage insurance on insurable Master Association property including the Village Common Areas and Facilities on a full current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, or use casualty insurance proceeds for losses to any part of the Village Common Areas and Facilities for other than the repair, replacement and reconstruction of such improvements except as provided by statute in case of substantial destruction.

(d) If professional management is required, effectuate a decision to terminate professional management and assume self-management of the Village.

(e) Add or amend the material provisions of the Village Declaration, the Articles or Bylaws which are set forth in Section 13.6(e)(ii).

13.8. **Right to Inspect Statements, Attend Meetings**.

(a) All Owners, Lessees, and all holders, insurers or guarantors of any first Mortgage shall be entitled to inspect current copies of the Village Declaration, the Bylaws, the Village Rules and any other rules concerning the Property and the books, records and financial statements of the Village Association. Such inspection shall be upon request, during normal business hours or under other reasonable circumstances.

(b) All holders, insurers or guarantors of a first Mortgage shall be entitled, upon written request, to receive a copy of the annual financial statement for the immediately preceding fiscal year of the Village Association, subject to a reasonable charge as determined by the Board of Directors to

the party so requesting. Such financial statement shall be furnished within a reasonable time following such request.

(c) Any first Mortgagee shall, upon written request to the Village Association, be entitled, subject to a reasonable charge as determined by the Board of Directors, to receive written notice of all annual and special meetings of the Members, and first Mortgagees shall further be entitled to designate a representative to attend all such meetings; provided, however, nothing contained in this Section shall give a first Mortgagee the right to call a meeting of the Board of Directors or of the Members for any purpose or to vote at any such meeting.

13.9. **Conflicts**. In the event of any conflict between any of the provisions of this Article 13 and any of the other provisions of this Village Declaration, the provisions of this Article shall control.

13.10. **Mortgagees' Right to Cure Defaults**. First Mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Village Common Areas and Facilities owned by the Village Association and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Village Common Areas and Facilities, and first Mortgagees making such payments shall be owed prompt reimbursement for the reasonable cost thereof from the Village Association.

13.11. **Distribution Right**. No provision of this Village Declaration, or the Articles or the Bylaws, or any Village Rules established thereunder, shall be deemed to give an Owner, or any other party, priority over any rights of first Mortgagees of a Unit pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds of condemnation awards for losses to or a taking of Units.

ARTICLE 14

DECLARANT PRIVILEGES AND EXEMPTIONS

14.1 **Interest of Declarant; Material Actions Requiring Declarant Approval**. The Village Property subject to this Village Declaration, constitutes a portion of the Village, which Declarant intends to be developed. Each Owner of a Unit that is part of the Village acknowledges by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions, reservations and easements provided for in this Village Declaration and any amendments thereto and any Supplemental Declarations recorded pursuant to this Village Declaration. Notwithstanding any other provisions of the Governing Documents, but subject to the Mountain Operator Agreements and the Mountain Easement Agreements, until such time as Declarant is no longer entitled to unilaterally annex Property to the Village, the following actions, before being undertaken by the Members or the Village Association, shall first be approved in writing by Declarant and, where specified, by the Mountain Operator:

(a) Specified Approvals. Any amendment or action requiring the approval of Declarant (and, as specified herein, by the Mountain Operator) pursuant to this Village Declaration, and any amendment or action requiring the approval of first Mortgagees pursuant to this Village Declaration (the Village Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Village Declaration, provided that Declarant shall be furnished such notices and other documents without making written request);

(b) Special Assessments. The levy of a Special Assessment for the construction of new facilities by the Village Association not originally included in the Village Common Areas and Facilities;

(c) Service/Maintenance Reductions. Any significant reduction of Village Common Areas and Facilities maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Village Association or the Village Common Areas and Facilities at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services; or

(d) Design Guidelines. Any supplement or amendment to the Design Guidelines, including Design Guidelines applicable to a particular Phase within the Village.

14.2 **Exemptions from Restrictions Otherwise Applicable**.

(a) Declarant's Reserved Rights. Nothing in the Governing Documents shall limit and no Owner, Project Association or the Village Association shall do anything to interfere with: (i) the right of Declarant, either directly or through its agents and representatives, to subdivide, re-subdivide, sell, resell, lease or rent any portion of the Village, or the right of Declarant as to any Phase that it is developing to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Village owned by Declarant or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Village so long as any Unit or any portion of the Village is owned by Declarant; or (ii) the Mountain Operator under the Mountain Operator Agreements.

(b) Marketing and Sales Activities. Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Village Common Areas such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

(c) Right to Develop. Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Village Common Areas for the purpose of making, constructing, and installing such improvements to the Village Common Areas as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Village acknowledges that the Village is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Project in which such Person holds an interest, or (b) changes in the Mountainside Master Plan as it relates to property outside the Project in which such Person holds an interest.

(d) Right to Approve Additional Covenants. As long as Declarant owns property subject to this Village Declaration, no Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Village without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant. HOWEVER, no portion of the subject Project shall be developed unless there has first been Recorded against the same, unless waived in writing by Declarant, covenants, conditions and restrictions approved in advance in writing by Declarant which shall, among such other things as Declarant may reasonably require, establish architectural and development guidelines

for such Project, and which shall not be subject to amendment or modification with Declarant's prior written consent.

(e) Right to Approve Changes in Community Standards. No amendment to or modification of any Village Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Village Declaration.

(f) Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights and obligations set forth in this Village Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Village Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time, occasional or limited basis, any right reserved to Declarant in this Village Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

(g) Development Activities. The rights reserved to Declarant pursuant to this Section 14.2 shall include, but shall not be limited to, carrying on by Declarant and its agents and representatives of such grading work as may be approved by applicable Governmental Authorities having jurisdiction, and erecting, constructing and maintaining on or within the Village Common Areas and the Village such structures (including, without limitation, temporary sales and construction offices or trailers, sales offices or model homes), signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise.

(h) View Impairment. Each Owner, by accepting a deed to a Unit, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

14.3 **Rights to Use Village Common Areas and Facilities in Connection With Development and Sales Activities**. Declarant may enter upon the Village Common Areas and Facilities, for the benefit of Declarant, for the benefit of portions of the Property and Annexable Property (whether or not then annexed), or any combination of them, to complete the development, improvement and sale of Units, and the construction of any landscaping or other Improvement to be installed on the Village Common Areas and Facilities, as well as the right of nonexclusive use of the Village Common Areas and Facilities, without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Units within the Village and Declarant's unilateral right to annex portions of the Annexable Property has expired. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein, or the rights of the Mountain Operator pursuant to this Village Declaration, the Mountain Operator Agreement and/or the Mountain Easement Agreements, and all direct costs and expenses associated with Declarant sales and promotional activities shall be borne solely by the sponsor of the activity or event. The rights reserved to Declarant by this Section 14.3 shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant and Declarant's Affiliates.

14.4 **Amendment of Plans**. Declarant may, from time to time as it deems advisable, amend its plans for the Village, combine or split Units, and apply for changes in any or all of the Entitlement Documents, changes in zoning, use and use permits, for any property within the Village. Notwithstanding the anticipated development of the Village Property, nothing in this Village Declaration shall be

construed or interpreted to commit Declarant to the development of any portion of the Property, or to the annexation of all or any part of the Annexable Property to this Village Declaration or the Property, whether or not it is so developed.

14.5 **Right to Enforce Design Review and Approval Requirements**. Until the expiration of the Administrative Control Period, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Village Association if: (a) the Design Review Committee has issued a notice of noncompliance; and (b) the Village Association, after having a reasonable opportunity to do so, is unable or unwilling to initiate enforcement action. In the event that such action is initiated by Declarant and it is later determined by an arbitrator or a court of competent jurisdiction that the Owner of the subject Unit was, in fact, proceeding in violation of the approved plans and specifications, any reasonable costs incurred by Declarant in initiating enforcement action, including reasonable attorney's fees, which are not the subject of an award of fees and/or costs against the offending Owner may be charged to the Village Association and shall be a Common Expense.

14.6 **Grants and Relocations of Easements**. Declarant shall have the right at any time prior to acquisition of title by a grantee to establish additional easements, reservations and rights-of-way to itself, its successors and assigns in any conveyance of the Property or any portion thereof Declarant or the organization for whose benefit easements, reservations and rights-of-way have been established shall have the right at any time to cut and remove any trees or branches or any other unauthorized object from such easements, reservations or rights-of-way. Any Village Common Areas comprising easements over real property the fee title to which has not been made subject to this Village Declaration ("**Interim Easement Area**") shall be subject to relocation, modification or termination by Declarant in order to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to this Village Declaration and may include the reservation of easements of access, ingress and egress in favor the Village Association to permit access to Village Association facilities. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Unit or within the Village or affect the rights of the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

14.7 **Termination of Any Responsibility of Declarant**. In the event Declarant conveys all of its rights, title and interest to any Person, in and to the Property, and the acquiring Person is designated as a successor Declarant as to all the property conveyed, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such Person, shall be obligated to perform all such duties and obligations of Declarant. The provisions of this Section 14.7 shall not terminate any responsibility of Declarant for acts or omissions occurring prior to the conveyance to such Person. However, this shall not limit Declarant's right to enter into a contract or agreement dealing with such acts or omissions provided the contract or agreement is enforced by Declarant, if necessary.

14.8 **No Amendment or Repeal**. So long as Declarant owns any Unit within the Village, the provisions of this Article 14 may not be amended or repealed without the prior written consent of Declarant. Neither the Village Association nor any Member or Owner may take any action or adopt any rule or regulation that interferes with or diminishes any of Declarant's rights under this Article 14 without Declarant's prior written consent, or which interferes with or diminishes any rights of the Mountain Operator under the terms of the Mountain Easement Agreements and the Mountain Operator Agreements without the Mountain Operator's prior written consent, which consent may be given or withheld in the sole and absolute discretion of Declarant and the Mountain Operator.

14.9 **Exclusive Rights to Use Name of Development**. No Person shall use the names "Mayflower" or "Village at Mountainside" or any derivative of such names or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Projects within the Village may use the names "Mayflower" or "Village at Mountainside" in printed or promotional matter where such term is used solely to specify that such Project is located within the Village, and the Village Association shall be entitled to use the words "Mayflower" or "Village at Mountainside" in its name.

ARTICLE 15

ENVIRONMENTAL AREAS AND ISSUES

15.1. **Assignment of Responsibilities**. Within and adjacent to the Village there may be various types of property such as wetlands, drainage areas, conservation areas, open spaces, historical mining operations, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by Governmental Authorities. Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Village Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such Governmental Authorities. All such areas that are conveyed to the Village Association shall become a portion of the Village Common Areas, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, a foundation, or similar type entity with which the Village Association shall cooperate. Any of the properties and responsibilities within, adjacent to, or benefitting the Village such as wetlands, drainage areas, conservation areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of the Resort Foundation. The Village Association shall cooperate with and perform the responsibilities delegated to it by the Resort Foundation.

15.2. **Surface Water Management System**.

(a) No Owner, by erection of any structure or otherwise, shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the ditches, canals, channels, ponds, lakes, retention areas, or other bodies of water or waterways reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefore, or plat or instrument of records, without the specific written permission of the Village Association and Declarant.

(b) An Owner or Project Association shall in no way deny or prevent ingress and egress by Declarant or the Village Association to and from such drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefore, are hereby specifically reserved and created in favor of Declarant, the Village Association, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established drainage ways without the prior written consent of the Village Association and Declarant.

(d) Water management for any Unit or Project shall be provided in accordance with the overall drainage system for the Village. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Village and meet with the approval of Declarant and applicable Governmental Authorities.

(e) Reservoirs and spillways in any Project, Unit are part of a functioning water management system and any use by an Owner or Project shall be on a non-interfering basis only. Additional on-site storm water treatment areas may be required and constructed in the future.

(f) The use of any wetland or water body within the boundary of a Project, Unit is managed by the Village Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) The use of pesticides in any water body or wetland is prohibited, excepting only any such use by the Village Association and Declarant.

(h) No wells may be drilled, dug, or installed within any Unit or Project except by Declarant or Declarant's Affiliates, or with Declarant's written consent.

15.3. **Conservation Areas**. Except as otherwise provided in writing by Declarant, any portions of the Village Common Areas owned by the Village Association or Declarant and designated as a conservation area shall be maintained and preserved by the Village Association in accordance with the rules and regulations of all applicable Governmental Authorities or the grantee of any applicable conservation easement. The Village Association shall not, and it shall not allow any Person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such Governmental Authorities or the grantee of any applicable conservation easement or as otherwise allowed by the documents creating such conservation area. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area, except as allowed by the documents creating such conservation area. Notwithstanding the foregoing, Declarant shall have the right to reserve from any such conservation area such uses as Declarant in its sole discretion shall determine in Declarant's best interest, including recreational uses relating to the Mountain Operations.

15.4. **Open Space and Buffers**. Any property conveyed or dedicated to the Village Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Village Association in a natural open condition except as may be otherwise provided in the document(s) creating such area. The Village Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space. Notwithstanding the foregoing, Declarant shall have the right to reserve from any such open areas such uses as Declarant in its sole discretion shall determine in Declarant's best interest, including recreational uses relating to the Mountain Operations.

15.5. **Effluent Disposal & Water Supply**. By the act of purchasing or occupying property within the Village, all Owners understand and irrevocably consent to the possibility of irrigation of the Village Common Areas, other areas within the Village, and areas adjacent to the Village with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the appropriate Governmental Authority. Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Village for any legal purpose, including the distribution and use of such water beyond the Village. Such right shall include an easement over property for access, and for installation and maintenance of facilities and equipment to capture and transport ground water, surface water, and storm water runoff. The conveyance of any Unit to an Owner or to a Builder by Declarant does not include the right to develop or utilize the ground, surface, or storm water resources within such Unit. Declarant or its designee may establish

programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the properties and may require Owners and occupants of any Unit to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from such Owner's Unit. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within the Village.

15.6. **Recycling Program**. The Board may, but shall not be obligated to, establish or participate in a recycling program for the Project. In such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Village Association's recycling program is set up to accommodate. The Village Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any costs associated with the implementation or operation of a recycling program shall be Common Expenses and any income the Village Association receives as a result of such recycling efforts shall be applied to Common Expenses.

ARTICLE 16

VILLAGE AT MOUNTAINSIDE PROPERTY HAZARDS, RISKS AND LIABILITIES

16.1. **Village Area Hazards and Risks**. The Mountainside Ski Property may be used as a public ski area and related improvements, facilities and uses as well as for other seasonal recreational activities such as hiking, trail, bicycling, and other sports activities (collectively, "**Village Area Uses and Activities**"). By acceptance of a deed to a Unit, each Owner acknowledges and agrees that any such Village Area Use and Activities will enhance the value of the Unit by providing pleasant surroundings and open space for the Projects and the Units located therein. Each Owner further acknowledges (a) that the use and operation of the Mountainside Ski Property for Village Area Uses and Activities will involve certain risks to the Units located therein, including, but not limited to, damage to property and improvements and personal injury and death caused by errant skiers, snowboarders, trail bicyclists or other Village Area users, avalanche control, snowmaking and removal equipment, water runoff, drainage, and land movement, that may enter into the Units located therein, and (b) that while the Units located therein have been designed to minimize these risks to the extent reasonably possible, it would be impossible to render the Units located therein free of all Village Area Uses and Activity-related risks. Certain of the more common hazards associated with the operation of a year-round Village area are more particularly described, without limitation, in the sections below (collectively the "**Village Area Hazards**").

16.2. **Errant Skiers, Snowboarders, Trail Bicyclists, and Other Village Area Users**. Owners acknowledge the inherent risk of errant skiers, snowboarders, trail bicyclists, and other Village Area users and assume and accept such risk. Owners acknowledge and accept the risk that skiers, snowboarders, trail bicyclists, and other Persons engaged in Village Area Uses and Activities may errantly stray onto the Units located therein and each Owner agrees to release and waive any claims against Declarant, Declarant's Affiliates and the Village Association such Owner may have as a result of such errant activity.

16.3. **View Impairment/Privacy**. Owners have no guarantee that their view over and across the Mountainside Ski Property or Village will be forever preserved without impairment or that the view from the Mountainside Ski Property or Village will not be impaired. The Mountain Operator has no obligation to the Owners to prune trees or other landscaping, and the Mountain Operator may change, add to or reconfigure the Mountainside Ski Property and related facilities and improvements on the Mountainside Ski Property or Village, including structural improvements, trees, landscaping, drainage

patterns, trails, lifts, snowmaking and snow removal equipment and facilities and other improvements and facilities, without liability or obligation to any Owner.

16.4. **Pesticides and Fertilizers**. Pesticides, fertilizers and other chemicals may be utilized in connection with the operation of the Mountainside Ski Property and the maintenance of related landscaping, revegetation, and vegetation, and the Owners acknowledge, accept and assume the risks associated with the use of pesticides, fertilizers and other chemicals.

16.5. **Overspray and Water Runoff**. Owners may experience "overspray" from the Mountainside Ski Property snowmaking system from the Mountainside Ski Property, and such Owners acknowledge, accept and assume the risks associated with such "overspray," drainage and water runoff.

16.6. **Noise and Light: Special Events**. Owners may be exposed to lights, noises, Special Events or other activities resulting from the use, operation, construction, improvements, repair, replacement and maintenance of the Mountainside Ski Property and its improvements, land, and facilities, including snowmaking, avalanche control, and snow removal, and each Owner by accepting title to such Owner's Unit, acknowledges, accepts and assumes the risks associated with such uses.

16.7. **No Access**. Each Owner, by accepting a deed to such Owner's Unit, acknowledges that the Mountain Operator may not permit access to any portion of the Mountainside Ski Property directly from any Unit. Such access will only be permitted through such entry points as the Mountain Operator may from time to time specifically designate, which points, if any, may be closed or relocated from time to time in the sole discretion of the Mountain Operator. Accordingly, each Owner agrees not to access the Mountainside Ski Property directly from such Owner's Unit (unless otherwise expressly permitted by the Mountain Operator), and agrees not to permit any of such Owner's Guests, Lessees or any other Person to do so.

16.8. **Maintenance and Maintenance Equipment**. The Mountainside Ski Property and its related improvements and facilities may require daily maintenance, including grooming, snowmaking, avalanche control, mowing, and irrigation during early morning, evening and late night hours, including the use of tractors, snow ploughs, snowmaking equipment mowers, blowers, pumps, compressors, utility vehicles and over-the-snow vehicles. Owners will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risks associated with such maintenance activities.

16.9. **Waiver of Certain Assumed Risks (Village Hazards)**. **IN CONSIDERATION FOR THE ABOVE ACKNOWLEDGED ENHANCEMENT IN VALUE, AND WITH FULL AWARENESS OF THESE AND OTHER RISKS, BY ACCEPTING THE DEED TO A UNIT EACH OWNER FOR SUCH OWNER AND ITS GUESTS, INVITEES, LESSEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE "OWNER'S RELATED PARTIES") HEREBY (A) ACKNOWLEDGES, ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH VILLAGE AREA HAZARDS AND OF ANY DAMAGE TO PROPERTY OR TO THE VALUE OF PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY OR DEATH, OR. THE CREATION OR MAINTENANCE OF A TRESPASS OR NUISANCE, CAUSED BY OR ARISING IN CONNECTION WITH ANY OF THE VILLAGE AREA HAZARDS OR OTHER RISKS, HAZARDS AND DANGERS ASSOCIATED WITH THE OPERATION OF A VILLAGE AREA (COLLECTIVELY THE "ASSUMED RISKS"), AND (B) RELEASES, WAIVES, DISCHARGES, COVENANTS NOT TO SUE, INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS DECLARANT, DECLARANT'S AFFILIATES, THE MASTER ASSOCIATION, THE VILLAGE ASSOCIATION, AND THE MOUNTAIN OPERATOR, AND EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, PARTNERS,**

SHAREHOLDERS, MEMBERS, AFFILIATES, EMPLOYEES, CONTRACTORS, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OWNER OR OWNER'S RELATED PARTIES FOR ANY DAMAGES, LOSSES, COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES), CLAIMS, DEMANDS, SUITS, JUDGMENTS, ORDINARY NEGLIGENCE, OR OTHER OBLIGATIONS ARISING OUT OF OR CONNECTED IN ANY WAY WITH ANY OF THE ASSUMED RISKS. THIS RELEASE IS INTENDED TO BE A COMPREHENSIVE RELEASE OF LIABILITY BUT IS NOT INTENDED TO ASSERT DEFENSES WHICH ARE PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, THIS SECTION 16.9 SHALL NOT LIMIT THE LIABILITY OF INDIVIDUAL SKIERS, SNOWBOARDERS, OR OTHER MOUNTAINSIDE SKI PROPERTY USERS USING THE MOUNTAINSIDE SKI PROPERTY, NOR SHALL IT LIMIT THE RIGHTS OF MIDA UNDER ANY ENTITLEMENT DOCUMENTS OR OTHER AGREEMENTS ENTERED INTO BETWEEN MIDA AND DECLARANT OR ANY OF DECLARANT'S AFFILIATES.

The acknowledgments, assumptions of risk and agreements contained in this Section 16.9 shall be deemed to run with the title to each Unit in the Property.

ARTICLE 17

PRIVATE AMENITIES AND OTHER VILLAGE ACTIVITIES

17.1. **General**. Neither membership in the Village Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

17.2. **Conveyance of Private Amenities.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Village Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record owner of the Private Amenity. The ownership, operation, existence, location or configuration of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more of Declarant's Affiliates, members, employees, or independent contractors, and/or (d) the decision of the owner or operator to abandon, redevelop (to any extent, which may include any entirely different type of use, such as dwelling units or commercial facilities), or change the location or configuration of, all or any part of any Private Amenity, subject to all required approvals of Declarant and/or the Village Association. Consent of the Village Association, any Project Association, any Project, or any Owner shall not be required to effectuate any change in ownership, operation of any Private Amenity, for or without consideration, and subject to or free of any mortgage, covenant, lien or other encumbrance.

17.3. **View Impairment**. Declarant, the Village Association, or the owner of any Private Amenity does not guarantee or represent that any view over and across the Private Amenity from Units adjacent thereto will be preserved without impairment. Owners of Private Amenities and/or ski runs and other ski-related improvements, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping thereto from time to time. In addition, the owner of any ski-related improvements may, in its sole and absolute discretion, change the location, configuration, size and elevation of the ski lifts, ski runs and other ski-related improvements from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

17.4. **Rights of Access and Parking**. There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Project reasonably necessary to travel between the entrances to the Village and the Private Amenities and ski-related improvements and over those portions of the Village (whether Village Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities and ski-related improvements. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities and ski-related improvements shall have the right to park their vehicles on the roadways located within the Village at reasonable times before, during, and after Special Events and other similar functions held by or at the Private Amenities and ski-related improvements to the extent that the Private Amenities and ski-related improvements, as applicable, have insufficient parking to accommodate such vehicles but at all times subject to applicable Village Rules.

17.5. **Architectural Control**. Declarant, the Village Association, any Project Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Village which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least fifteen (15) days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. In the event the Private Amenity disapproves the proposal, the same shall be deemed disapproved by Declarant, the Village Association, any Project Association, and any committee. The failure of the Private Amenity to respond to the notice within the fifteen (15)-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section 17.5 shall also apply to any work on the Village Common Areas and Facilities or any common property or common elements of a Project Association, if any.

17.6. **Limitations on Amendments**. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article 17, and no amendment in derogation of any other provisions of this Village Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

17.7. **Cooperation**. It is Declarant's intention that the Village Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Village and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Village Association shall have no power to promulgate use restrictions or rules other than those set forth in the Village Rules affecting activities on or

use of the Private Amenity without the prior written consent of Declarant and the Owners of the Private Amenity affected thereby.

17.8. **Assumption of Risk and Indemnification**. Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity, hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of any such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by users of such Private Amenities, (c) use of pesticides, herbicides, and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) use of effluent in the irrigation or fertilization, and (f) reduction in privacy caused by constant traffic on the Private Amenities or the removal or pruning of shrubbery or trees on the Mountainside Ski Property.

Each such Owner agrees that neither Declarant, the Village Association, nor any of Declarant's affiliates or agents shall be liable to an Owner or any other person claiming any loss of damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Unit to any Private Amenity, including without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, or the Village Association. Each such Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Village Association against any and all claims by Owner's visitors, tenants, and others upon such Owner's Unit.

ARTICLE 18

DISPUTE RESOLUTION AND LIMITATIONS ON LITIGATION

18.1. **Agreement to Encourage Resolution of Disputes Without Litigation**.

(a) Declarant, the Village Association and their respective officers, directors, and committee members, all Persons subject to this Village Declaration, and any Person not otherwise subject to this Village Declaration who agrees to submit to this Article 18 (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Village without litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 18.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Village, other than matters of aesthetic judgment under Article 8, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

(i) any suit by the Village Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Village Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Village Association's ability to enforce the provisions of this Village Declaration relating to creation and maintenance of community standards;

(iii) any suit between Owners, which does not include Declarant or the Village Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article 18.

18.2. **Dispute Resolution Procedures**.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely;

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and the Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 18.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Village Association (if the Village Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Utah. If the Claimant

does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 18. In such event, the party taking action to enforce the Agreement or award shall upon prevailing, be entitled to recover from the non-complying party (or if more than one non- complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

18.3. **Initiation of Litigation by Village Association**. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Village Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Projects entitled to cast seventy-five percent (75%) of the total Class "A" votes in the Village Association, except that no such approval shall be required for actions or proceedings:

(a) initiated to enforce the provisions of this Village Declaration, including collection of assessments and foreclosure of liens;

(b) initiated to challenge property taxation or condemnation proceedings;

(c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) to defend claims filed against the Village Association or to assert counterclaims in proceedings instituted against it.

This Section 18.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings and Declarant during the Administrative Control Period.

18.4. **Non-Waiver**. The provisions of this Article 18 are intended to be applicable to any dispute arising out of this Village Declaration and shall not affect a Person's rights or remedies arising under any other agreement, including, but not limited to, the MIDA Hotel Lease, the Tax Sharing and Reimbursement Agreement, the Mountainside Master Development Agreement or any other agreement not arising out of this Village Declaration.

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1. **Amendment and Repeal**. Subject to Section 14.8 hereof and any limitation under Applicable Law, this Village Declaration, or any provision thereof, as from time to time in effect with

respect to all or any part of the Village Property, may be amended or repealed (a) prior to the expiration of the Administrative Control Period by the vote or written consent of Members representing seventy-five percent (75%) of the voting power in the Village Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Village Declaration. or (b) after the expiration of the Administrative Control Period, by the vote or consent of Members representing sixty seven percent (67%) of the voting power of the Village Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Village Declaration, in each case, computed in accordance with Sections 9.3. Any such amendment or repeal shall become effective only upon recordation in the Official Records of a certificate of the president or secretary of the Village Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Village Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent. If any Member consents to any amendment to this Village Declaration or the Bylaws, it will be conclusively presumed that such Member has the authority to consent, and no contrary provision in any Mortgage or contract between the Owners represented by such Member and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Village Declaration.

19.2. **Amendments by Declarant**. The planning and land use entitlements for the Village have not been fully completed and the layout of the Village, its land classifications, and governing structure and procedures for the Village are anticipated to change in the future. Notwithstanding the provisions of Section 19.1 above, until termination of the Class "B" Membership Declarant shall have the unilateral right to amend this Village Declaration or the Bylaws of the Village Association for any purpose. Such right to amend shall include, but not be limited to, the right of Declarant to amend this Village Declaration in order to comply with the requirements of any Applicable Law or requirement of MIDA, Wasatch County, the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or Units in a planned community. Any such amendment shall become effective only upon Recordation in the Official Records of a certificate of Declarant setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved by Declarant.

19.3. **Duration**. This Village Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all land included within the Property and the Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is first Recorded. Thereafter, this Village Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Land within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Village Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Members representing sixty-seven percent (67%) of the voting power in the Village Association computed in accordance with Section 9.3(a) and (b) (including for this purpose the unplatted Units contemplated by Section 9.3(a) and (b)). Any such

termination shall become effective only if (a) a certificate of the president or secretary of the Village Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official Records not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner of ingress and egress to such Owner's Unit unless such Owner and any Mortgagee of such Owner's Unit have consented in writing to such access denial.

19.4. **Joint Owners**. In any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Village Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Village Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

19.5. **Lessees and Other Invitees**. Lessees, Guests, contractors and other Persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Village Declaration restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such Persons in the same manner and to the same extent as if the failure had been committed by such Owner.

19.6. **Nonwaiver**. Failure by the Village Association or by any Owner to enforce any covenant or restriction contained in this Village Declaration shall in no event be deemed a waiver of the right to do so thereafter.

19.7. **Construction; Severability; Number; Captions**. This Village Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Village Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Village Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Village Declaration.

19.8. **Notices and Other Documents**. Any notice or other document permitted or required by this Village Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Village Association, 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098; if to an Owner, at the address given at the time of the Owner's purchase of a Unit, or at the Unit. The address of a party may be changed at any time by notice in writing delivered as provided herein.

[Signature page follows]

IN WITNESS WHEREOF, Declarant has executed this Village Declaration on the date set forth above.

BLX MAYFLOWER LLC,
a Delaware limited liability company

By _____
Kurt Krieg, Authorized Signatory

STATE OF _____)
:ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Kurt Krieg, as an Authorized Signatory of BLX Mayflower LLC, a Delaware limited liability company.

_____
Notary Public

The undersigned, as owner of a certain portion of the Village Property, hereby acknowledges and consents to the execution and recordation of this Village Declaration.

BLX MWR HOTEL LLC

By: _____
Name: Kurt Krieg
Title: Authorized Signatory

STATE OF _____)
:ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Kurt Krieg, as an Authorized Signatory of BLX MWR Hotel LLC, a Delaware limited liability company.

_____
Notary Public

CONSENT AND SUBORDINATION

Subject to the conditions set forth hereinbelow, Centennial Bank ("**Centennial**"), as the Beneficiary under that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (the "**Deed of Trust**"), dated March 31, 2020, and recorded on March 31, 2020 as Entry No. 476275 in Book 1287 at Page 1248 of the Official Records of Wasatch County, State of Utah, and on March 31, 2020 as Entry No. 1129881 in Book 2562 at Page 1950 of the Official Records of Summit County, State of Utah, hereby consents to that certain Village Declaration of Covenants, Conditions, Restrictions and Easements for Village at Mountainside and Village dated as of August ____, 2020, and made by BLX MAYFLOWER LLC as Declarant (the "**Village Declaration**") and further subordinates all of its right, title, and interest in and to the real property encumbered by the Deed of Trust to the Village Declaration (collectively, the "**Consent**"). Centennial's execution and delivery of this Consent is expressly conditioned on the acknowledgement and agreement by any and all Persons that shall have or may acquire the right to enforce any of the terms and provisions of the Village Declaration, including without limitation, the Declarant, the Village Association, the Board of Directors, any Owner, and any Member (which acknowledgement and agreement to be bound by all conditions of this Consent shall be deemed given by each such Person's acceptance of the benefits of this Village Declaration as if such Person had executed an express acknowledgment thereof, and shall be binding on each of their respective successors and assigns), that (i) such Consent shall in no way affect, diminish, or act as a waiver by Centennial of any rights granted or benefits imparted to Centennial as a Mortgagee or Eligible Mortgage Holder under the Village Declaration, and that such rights and benefits shall also inure to any Person that is a Centennial designee or successor in interest to, or any other purchaser in a foreclosure, sale in lieu of foreclosure, or otherwise of, any portion of the Property or any estate or interest therein in which Centennial has an interest (each of the foregoing parties, a "**Successor**"), (ii) Centennial and any Successor is hereby recognized to be and shall continue to remain an Eligible Mortgage Holder under the Village Declaration, and (iii) the notice requirement specified in Section 13.6 of the Village Declaration for Centennial to be identified as an Eligible Mortgagee for all purposes under the Village Declaration, including without limitation, the right to receive a copy of any notice of default from the Board of Directors, is hereby deemed satisfied. Centennial hereby acknowledges and agrees that any notice to be provided to it as a Mortgagee or Eligible Mortgage Holder under or pursuant to the Village Declaration shall be deemed properly addressed if sent to Centennial Bank at 12 East 49th Street - 28th Floor New York, New York 10017 Attention: Francillia LeBlanc, with a copy to Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016 Attention: Jonathan M. Markowitz, Esq., unless and until notice of a change of Mortgage (Deed of Trust) ownership or Eligible Mortgage Holder address has been given to the Village Association in writing in the manner specified in the Village Declaration for giving notices. All capitalized terms used and not defined in this Consent shall have the meanings ascribed to them in the Village Declaration.

DATED the ___ day of August, 2020.

Centennial Bank, an Arkansas state chartered bank
By: _____
Name: Sanjay Maridev Ramakrishna
Title: Director – Portfolio Manager

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing Consent and Subordination was acknowledged before me this ____ of _____, 2020 by _____, who duly acknowledged to me that he executed the same as _____ of Centennial Bank, a _____.

_____
Notary Public
Residing at _____

EXHIBIT A

Village Property Legal Description

All of Parcels 2 through 5, Lots 1 through 10 and Lot 21 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such LOTS are depicted and described by metes and bounds on the MIDA Master Development Plat.

AND

Lot 1 (MIDA Parcel) and Lot 2 (Air Force Parcel), MIDA / Air Force Parcel Plat, according to the official plat thereof, on file and of record in the office of the Wasatch County Recorder, recorded on December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874-883.

EXHIBIT D

Interpretation

As used in this Agreement, unless a clear contrary intention appears:

(a) any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other gender;

(b) the words "hereof", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(c) any reference to Articles, Sections and Exhibits are, unless otherwise stated, references to Articles, Sections and Exhibits of or to this Agreement and references in any Section or definition to any clause means such clause of such Section or definition. The headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;

(d) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended, modified or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement;

(e) the Exhibits hereto form an integral part of this Agreement and are equally binding therewith. Any reference to "this Agreement" shall include such Exhibits;

(f) references to a Person shall include any permitted assignee or successor to such Party in accordance with this Agreement and reference to a Person in a particular capacity excludes such Person in any other capacity;

(g) the use of "or" is not intended to be exclusive unless explicitly indicated otherwise; and

(h) the words "includes," "including," or any derivation thereof shall mean "including without limitation" or "including, but not limited to."

EXHIBIT E

Bylaws

BYLAWS
OF
VILLAGE AT MOUNTAINSIDE ASSOCIATION, INC.

ARTICLE I
NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 **Name**. The name of the corporation is Village at Mountainside Association, Inc. (the "Village Association").

1.2 **Principal Office**. The principal office of the Village Association shall be located at 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098. The Village Association may have such other offices, either within or outside the State of Utah, as the Board may determine or as the affairs of the Village Association may require.

1.3 **Definitions**. The words used in these Bylaws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Village Declaration to which these Bylaws are attached unless the context indicates otherwise.

ARTICLE II
MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

2.1 **Membership**. The Village Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Village Declaration. Class "A" Members shall be known as "Members." The provisions of the Village Declaration pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings**. Meetings of the Village Association shall be held at the principal office of the Village Association or at such other suitable place convenient to the Members as the Board may designate.

2.3 **Annual Meetings**. The Village Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the Village Association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Village Association's fiscal year on a date and at a time set by the Board.

2.4 **Special Meetings**. The president of the Village Association (the "President") may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Class "A" Members representing at least 10% of the total Class "A" votes of the Village Association.

2.5 **Notice of Meetings**. Written or printed notice stating the place, day, and hour of any meeting of the Village Association shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the secretary of the Village Association (the "Secretary") or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by

statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with Section 6.5 hereof and addressed to the Member at the Member's address as it appears on the Village Association's records, with postage prepaid.

2.6 **Waiver of Notice.** Waiver of notice of a meeting of the Village Association shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Village Association, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 **Voting.** The voting rights of the Members shall be as set forth in the Village Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

2.8 **Proxies.** Members may not vote by proxy, but only in person.

2.9 **Quorum.** For purposes of any Village Association meeting, a quorum shall consist of the Members actually in attendance at such Village Association meeting.

2.10 **Conduct of Meetings.** The President shall preside over all meetings of the Village Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.11 **Actions Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Village Association may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Village Association. Such consents, as filed with the minutes of the Village Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III
BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS

A. Composition and Selection

3.1 **Governing Body: Composition.** The Board shall govern the Village Association's affairs. Each director of the Board ("Director") shall have one vote. Except with respect to the Class "B" Member's appointees, Directors shall be Owners owning the majority interest in a Unit or, if the majority Owner of a Unit is not a natural person, the natural person owning a controlling interest in such majority Owner.

3.2 **Number of Directors.** The Board shall initially consist of three (3) Directors. Provided the Board shall at all times consist of an odd number of Directors, the number of Directors comprising the Board may be altered, by the vote of Members holding a majority of the votes entitled to be cast for the

election of Directors, to include between three (3) and seven (7) Directors. The initial Board shall consist of three (3) Directors as identified in the Articles.

3.3 **Directors During Administrative Control Period.** Directors appointed by the Class "B" Member pursuant to Section 3.5 hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 **Nomination and Election Procedures.**

(a) **Nominations and Declarations of Candidacy.** Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position that Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board may also be made by a nominating committee (the "Nominating Committee'). The Nominating Committee, if any, shall consist of a chairperson, who shall be a member of the Board, and three or more representatives of Members. The Board shall appoint members of a nominating committee (the "Nominating Committee") not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate Directors to be elected at large by all Class "A" votes. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations for Directors may also be made by petition filed with the Secretary at least seven (7) days prior to the annual meeting of the Village Association, which petition shall be signed by ten (10) or more Members and signed by the nominee named therein indicating such nominee's willingness to serve as a Director, if elected. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes. In the event that the Class "B" Member designates Voting Groups as set forth in the Village Declaration, a nominee for a Director position elected by the Commercial Voting Group (defined below) must be an Owner of a Commercial Unit and a nominee for a Director position elected by the Residential Voting Group (defined below) must be an Owner of a Residential Unit.

(b) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the candidates nominated by the Nominating Committee. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 **Election and Term of Office.** Except as these Bylaws may otherwise specifically provide, election of Directors shall take place at the Village Association's annual meeting. Notwithstanding any other provision of these Bylaws:

(a) During the Administrative Control Period, the Class "B" Member shall appoint the three (3) Directors comprising the initial Board. If any such Director resigns or is removed from such position prior to the happening of the event described in subsection (b), the Class "B" Member shall appoint a successor Director.

(b) Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to five (5) and the President shall call for an election by which the Members shall be entitled to elect each of the five (5) Directors. Directors elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following their election to the Board.

(c) Notwithstanding the foregoing Subsection 3.5(b), in the event that the Class "B" Member designates Voting Groups as set forth in the Village Declaration, the election of Directors to the Board shall be governed by this Subsection 3.5(c). Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to five (5) and the President shall call for an election by which the Voting Group or Voting Groups designated for Projects comprised of Commercial Units ("Commercial Voting Group") shall be entitled to elect two (2) of the five (5) Directors and the Voting Group or Voting Groups designated for Projects comprised of Residential Units ("Residential Voting Group") shall be entitled to elect two (2) of the five (5) Directors. If the number of Class "A" votes held by Owners of Units in the Commercial Voting Group is greater than the number of Class "A" votes held by Owners of Units in the Residential Voting Group, the Commercial Voting Group shall be entitled to elect the fifth (5th) Director. If the number of Class "A" votes held by Owners of Units in the Residential Voting Group is greater than the number of Class "A" votes held by Owners of Units in the Commercial Voting Group, the Residential Voting Group shall be entitled to elect the fifth (5th) Director.

3.6 **Removal of Directors and Vacancies**. By the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, the Members may remove, with or without cause, any Director elected by Members. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such Director. Any Member-elected Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any Assessment or other charge due the Village Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term. Any Director whom the Board appoints shall be selected from among the Members. This Section shall not apply to Directors the Class "B" Member appoints. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a Director appointed by or elected as a representative of the Class "B" Member. In the event that the Class "B" Member designates Voting Groups as set forth in the Village Declaration, Directors elected by the Commercial Voting Group may be removed only by the vote of Members holding a majority of the votes entitled to be cast in the Commercial Voting Group for the election of Directors, and Directors elected by the Residential Voting Group may be removed only by the vote of Members holding a majority of the votes entitled to be cast in the Residential Voting Group for the election of Directors.

B. Meetings

3.7 **Organizational Meetings**. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8 **Regular Meetings**. Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 **Special Meetings**. The Board shall hold special meetings when the President or the vice president of the Village Association (the "Vice President") or any two Directors signs and communicates written notice of such.

3.10 **Notice; Waiver of Notice.**

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the Director's telephone number, fax number, electronic mail number, or sent to the Director's address as shown on the records of the Village Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each Director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 **Telephonic Participation in Meetings**. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 **Quorum of Board**. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Village Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 **Conduct of Meetings**. The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board Meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 **Open Meetings; Executive Session.**

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Village which the Board establishes for the posting of notices relating to the Village Association. Notice of any meeting at which Assessments are to be established shall state that fact and the nature of the Assessment. Subject to the provisions of Section 3.15 hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than Directors may not participate in any discussion or deliberation unless a Director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than Directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15 **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

3.16 **Powers.** The Board shall have all of the powers and duties necessary for the administration of the Village Association's affairs and for performing all responsibilities and exercising all rights of the Village Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Village Association all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the Members or the membership generally.

3.17 **Duties.** Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Village Declaration, an annual budget, which budget shall include a line item for future Assessments for the Reserve Fund, which shall be approved in accordance with the Village Declaration, and establishing each Owner's share of the Common Expenses;

(b) levying and collecting fines or Assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Village Common Areas consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Village Association's rights and responsibilities and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Village Association in a bank depository which it shall approve, and using such funds to operate the Village Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Village Declaration;

(g) opening bank accounts on behalf of the Village Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Village Common Area in accordance with the Village Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Village Association; provided, the Village Association's obligation in this regard shall be conditioned in the manner provided in the Village Declaration;

(j) obtaining and carrying property and liability insurance, as provided in the Village Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Village Association;

(l) keeping books with detailed accounts of the Village Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Village Association as provided in Section 6.4 hereof;

(n) permitting utility suppliers to use portions of the Village Common Areas reasonably necessary to the ongoing development or operation of the Village;

(o) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Village Association to the extent such indemnity is required by Utah law, the Articles, or the Village Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Village Declaration.

3.18 **Compensation**. Directors shall not receive any compensation from the Village Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Village Association at a regular or special meeting of the Village Association. Any Director may be reimbursed for expenses incurred on behalf of the Village Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Village Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Village Association in a capacity other than as a Director pursuant to a contract or agreement with the Village Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

3.19 **Right of Class "B" Member to Disapprove Actions**. So long as the Class "B"

membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Village Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair the rights of the Class "B" Member or Builders under the Village Declaration or these Bylaws, or interfere with development or construction of any portion of the Village, or diminish the level of services the Village Association provides.

(a) **Notice**. The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Village Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Village Association, which notice complies, as to Board meetings, with Sections 3.9 and 3.10 hereof and which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to be Heard**. The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or Director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Village Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Village Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 **Management**. The Board may employ for the Village Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services a5 the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i). The Class "B" Member or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21 **Accounts and Reports**. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Village Association shall not be commingled with any other

accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Village Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Village Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Village Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Village Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or complied basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Village Association shall provide an audited financial statement. During the Administrative Control Period, the annual report shall include certified financial statements.

3.22 **Borrowing**. The Village Association shall have the power to borrow money for any legal purpose; provided, the Board shall fulfill the requirements provided in the Village Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Village Association's budgeted gross expenses for that fiscal year.

3.23 **Rights to Contract**. The Village Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or residents associations, within and outside the Village. Any common management agreement shall require the consent of a majority of the Board.

3.24 **Enforcement**. The Village Association shall have the power, as provided in the Village Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Village Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice**. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, including any fine in an amount set forth in the Village Rules, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee (as hereinafter defined), if one has been appointed pursuant to Article V hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing**. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal**. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Village Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights**. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Village Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation, if such abatement is sought, shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed a trespass.

3.25 **Board Standards**. In the performance of their duties, Village Association Directors and officers shall he insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a Director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the

continued and successful operation of the Village Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Village Association. A Director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV
OFFICERS

4.1 **Officers**. Officers of the Village Association shall be a President, Vice President, Secretary, and treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable. Such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary.

4.2 **Election and Term Office**. The Board shall elect the Village Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 **Removal and Vacancies**. The Board may remove any officer whenever in its judgment the best interests of the Village Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 **Power and Duties**. The Village Association's officers shall each have such powers and duties as generally pertain to their respective officers, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Village Association. The treasurer shall have primary responsibility for preparation of the budget as provided for in the Village Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 **Resignation**. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any time later specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Village Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 **Compensation**. Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 3.18 hereof.

ARTICLE V
COMMITTEES

5.1 **General**. The Board may appoint such committees as it deems appropriate to perform

such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1 hereof, the Board may appoint a covenants committee (the "Covenants Committee") consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Village Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Village Association and shall conduct all hearings held pursuant to Section 3.24 hereof.

ARTICLE VI
MISCELLANEOUS

6.1 **Fiscal Year.** The Village Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Village Association proceedings when not in conflict with Utah law or the Governing Documents.

6.3 **Conflicts.** If there are conflicts among the provisions of Utah law, the Articles, the Village Declaration, and these Bylaws, the provisions of Utah law, the Village Declaration, the Articles, and the Bylaws (in that order) shall prevail.

6.4 **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Village Association's office or at such other place within the Project as the Board shall designate

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Village Association and the physical properties owned or controlled by the Village Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Village Association's expense.

6.5 **Notices.** Except as otherwise provided in the Village Declaration or these Bylaws, all notices, demands, bills, statements, or other communications under the Village Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail. First class postage prepaid:

(a) if to a Member or Members, at the address which the Member or Members have designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Members;

(b) if to the Village Association, the Board, or the managing agent, at the principal office of the Village Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Village Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 **Amendment.**

(a) **By Class "B" Member.** Prior to termination of the Administrative Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51 % of the total Class "A" votes in the Village Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.