

**TAX SHARING AND REIMBURSEMENT AGREEMENT**

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**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**

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## TAX SHARING AND REIMBURSEMENT AGREEMENT

This Tax Sharing and Reimbursement Agreement (“**Agreement**”) is entered into as of the 20<sup>th</sup> day of August, 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

"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 19, 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.

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](mailto: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](mailto:llricks@michaelbest.com)

**If to BLX Entities:** Ex Utah Development LLC  
850 Third Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
Attention: President  
Email: [Notices@extell.com](mailto: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](mailto: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](mailto:rhenriksen@parrbrown.com) and  
[rmccconnell@parrbrown.com](mailto:rmccconnell@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 Mortgage 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

ATTEST:

By:   
Name: Paul T. Morris  
Title: Acting Executive Director

By: Ariana Farber  
MIDA Staff

**MASTER DEVELOPER:**

EX UTAH DEVELOPMENT LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Gary Barnett  
Title: President

**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

ATTEST:

By: \_\_\_\_\_  
Name: Paul T. Morris  
Title: Acting Executive Director

By: \_\_\_\_\_  
MIDA Staff

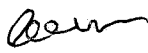
**MASTER DEVELOPER:**

EX UTAH DEVELOPMENT LLC,  
a Delaware limited liability company

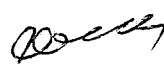
By: \_\_\_\_\_  
Name: Gary Barnett  
Title: President

**LANDOWNERS:**

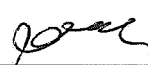
BLX LLC,  
a Delaware limited liability company

By: \_\_\_\_\_   
Name: Gary Barnett  
Title: President

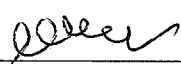
BLX MAYFLOWER LLC,  
a Delaware limited liability company

By: \_\_\_\_\_   
Name: Gary Barnett  
Title: President

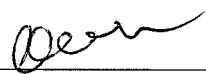
BLX PIOCHE LLC,  
a Delaware limited liability company

By: \_\_\_\_\_   
Name: Gary Barnett  
Title: President

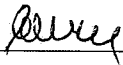
BLX LAND LLC,  
a Delaware limited liability company

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**

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***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**

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*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 conversion 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**

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*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**

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*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:**

**ASSIGNEE:**

**MASTER DEVELOPER:**

EX UTAH DEVELOPMENT LLC,  
a Delaware limited liability company

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: Gary Barnett  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**LANDOWNER:**

[\_\_\_\_\_] ,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Gary Barnett  
Title: President





Exhibit A  
To  
Transfer Acknowledgement

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Legal Description of Mountainside Property

(See Attached.)

Exhibit B  
To  
Transfer Acknowledgement

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Legal Description of Transfer Property

(See Attached.)