

When Recorded Mail To:

MIDA Executive Director
450 Simmons Way, Suite 400
PO Box 112
Kaysville, UT 84037

Ent 468882 Bk 1267 Pg 501-506
Date: 02-OCT-2019 12:02:18PM
Fee: \$40.00 Check Filed By: TC
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
For: MILITARY INSTALLATION DEVELOPME
NT AUTHORITY

PRE-CERTIFICATE OF OCCUPANCY PAYMENT CONTRACT

THIS PRE-CERTIFICATE OF OCCUPANCY CONTRACT (“Contract”) is entered into as of the **16th day September 2019 (“Effective Date”)**, by and between the **MILITARY INSTALLATION DEVELOPMENT AUTHORITY**, a body politic of the State of Utah (“**MIDA**”), organized and governed under §§63H-1-101 et. Seq. Utah Code Annotated 1953, as amended or any successor or replacement provisions (the “**Act**”) and **Mayflower Lakeside Village South, LLC (“Property Owner”)**. MIDA and the Property Owner are occasionally referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

BACKGROUND

WHEREAS, pursuant to the Act, MIDA designated certain property located in the State of Utah as the Military Recreation Facility Project Area (“**MRF Project Area**”); and

WHEREAS, the Property Owner owns certain property in Wasatch County, Utah (“**Property**”) within the MRF Project Area, which Property is identified and legally described in Exhibit A attached hereto, and which Property may now, or in the future, be subdivided into multiple separate parcels of land (each, a “**Parcel**”); and

WHEREAS, §63H-1-501(2) of the Act provides that “Improvements on a parcel within [the MRF Project Area] become subject to property tax on January 1 immediately following the day on which [MIDA] or an entity designated by [MIDA] issues a certificate of occupancy with respect to those improvements.”

WHEREAS, §63H-1-501(3)(a) of the Act provides that if a certificate of occupancy for improvements on a private parcel with the MRF Project Area has not been issued, “the private parcel owner shall enter into a contract with [MIDA] to make an annual payment to [MIDA]: (i) that is equal to 1.2% of the taxable value of the parcel above the base taxable value of the parcel” (“**Pre-CO Payment**”); and that the annual Pre-CO Payment shall continue until the improvements on the Parcel become subject to property taxes pursuant to §63H-1-501(2) of the Act; and

WHEREAS, this Contract is the contract required by §63H-1-501(3)(a) of the Act and shall be recorded and run with the land such that it is binding on all future owners of the Property and any Parcels therein, and payment of the Pre-CO Payment, including any late penalties or interest, shall be required for all years prior to the January 1 after a certificate of occupancy is issued for the Parcel;

TERMS AND CONDITIONS

NOW, THEREFORE, for and in consideration of the mutual promises and performances set forth in this Contract, the Parties agree as follows:

1. **Annual Invoice for Pre-CO Payment.** When MIDA receives the taxable value from the Wasatch County Assessor for a Parcel that is subject to the Pre-CO Payment, MIDA shall prepare and send an invoice to the owner of such Parcel in the amount of such Pre-CO Payment. Depending on when MIDA receives the taxable value of each Parcel from the Wasatch County Assessor, MIDA will make commercially reasonable efforts to send the invoice within 60 days of receipt of the taxable value, but no later than November 1 each year; provided, that failure of MIDA to send an invoice or failure of the Parcel owner to receive the invoice sent shall not relieve the Parcel owner of the obligation to pay the Pre-CO Payment.
2. **Payment of the Pre-CO Payment.** The Pre-CO Payment is due November 30 each year. The payment must be received by November 30 or be U.S. Post Office postmarked by November 30. Late payment shall be subject to the same interest and penalties as are late payments of property taxes in Wasatch County.
3. **Recording and Run with the Land.** This Contract, including but not limited to the obligation of Parcel owners hereunder to pay the Pre-CO Payment, shall be recorded against the Property, shall run with the land, and shall bind the Property Owner and all of Property Owner's successors and assigns (including but not limited to the owner of each Parcel within the Property) just as if such successors or assigns had signed the Contract.
4. **Term.** This Contract shall be binding upon the Parties as of the Effective Date, and shall remain in full force and effect with regard to the entire Property until such time as a certificate of occupancy has been issued for any Parcel in accordance with §63H-1-501(2) of the Act, at which time this Contract shall terminate with respect to such Parcel without need of further action by either Party; provided, that (i) the owner of such Parcel shall remain obligated to pay any Pre-CO Payments payable for such Parcel accruing prior to the issuance of such occupancy permit, including any interest or late penalties associated therewith, and (ii) this Contract shall remain in full force and effect with regard to the remainder of the Property and any Parcels located therein for which a certificate of occupancy has not yet been issued in accordance with §63H-1-501(2) of the Act.
5. **Lien Rights.** The annual Pre-CO Payment, together with interest thereon, and the expenses of any proceedings related thereto, including, without limitation, reasonable attorneys' fees, shall be a lien against the Property and shall be subject to foreclosure by MIDA according to applicable law. MIDA's rights and remedies under this Section 5 shall survive the expiration or termination of this Contract.

6. **Notices.** A notice or communication given under this Contract by any Party to another Party shall be sufficiently given or delivered if given in writing by personal service, express mail, FedEx, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such other Party as follows:

- (a) In the case of a notice or communication to MIDA:

MIDA Executive Director
450 Simmons Way, Suite 400
PO Box 112
Kaysville, UT 84037

- (b) In the case of a notice or communication to a Parcel owner:

**5320 S. 900 E., Suite 230
Murray, UT 84117**

The address provided by the Parcel owner in writing to MIDA or if not provided, the address of the Parcel owner as shown on the records of Wasatch County

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.

7. **Exhibit and Background.** Exhibit A to this Contract and the Background section are incorporated in this Contract and made a part of this Contract as if set forth in full and are binding upon the Parties to this Contract.
8. **Headings.** Any titles of the several parts and sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
9. **Successors and Assigns.** This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
10. **Governing Law.** This Contract shall be interpreted and enforced according to the laws of the State of Utah.
11. **Cost and Attorney's Fees.** The non-prevailing party in any dispute over this Contract or in any action to enforce the terms of this Contract shall pay all costs, expenses and attorney fees that may be incurred or paid by the prevailing party in enforcing the covenants and agreements of this Contract, whether or not litigation is commenced.
12. **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

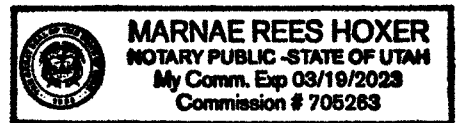
13. **Time.** Time is of the essence of this Contract.
14. **Complete Contract.** This Contract and its exhibit contain the complete agreement of the Parties, and supersede all prior and contemporaneous negotiations, representations and contracts of the Parties with respect to the subject matter hereof. This Contract may be amended or modified only in writing, executed by both Parties.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Parties have duly executed this Contract, on or as of the date first above written.

MIDA: MILITARY INSTALLATION DEVELOPMENT AUTHORITY

By: [Signature]
Paul Morris
Acting Executive Director



STATE OF UTAH
COUNTY OF Davis

On the 1st day of October, 2019, personally appeared before me Paul Morris who, being by me duly sworn, did say that he executed the foregoing Contract.

[Signature]
Notary Public

Parcel Owner: Wynne Plaza Lakeside Valley South, LLC

By: [Signature]
Name: Lee Burbidge
Title: Money Manager

STATE OF UTAH
COUNTY OF Summit

On the 26 day of SEPT., 2019, personally appeared before me Lee Burbidge who, being by me duly sworn, did say that he executed the foregoing Contract.

[Signature]
Notary Public

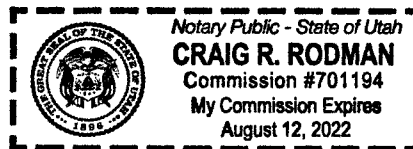


EXHIBIT A

Wasatch County Parcel Tax ID Numbers
and Legal Description

Wasatch County 00-0007-2483 / OWC-0110-0-019-025

BEGINNING AT A POINT ON A NON-TANGENT 2371.61 FOOT RADIUS CURVE TO THE RIGHT, SAID POINT BEING 394.47 FEET NORTH 00°07'04" WEST AND 232.69 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 19, TOWNSHIP 2 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG THE ARC OF SAID 2371.61 FOOT RADIUS CURVE 676.09 FEET (CHORD BEARS SOUTH 40°09'58" EAST 673.80 FEET) THENCE SOUTH 32°00'00" EAST 271.67 FEET; THENCE NORTH 57°09'03" EAST 214.74 FEET TO THE ARC OF A 167.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID 167.00 FOOT RADIUS CURVE 302.59 FEET (CHORD BEARS NORTH 05°14' 37" EAST 262.86 FEET); THENCE NORTH 46°39'50" WEST 111.02 FEET TO THE ARC OF A 583.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID 583.00 FOOT RADIUS 431.30 FEET (CHORD BEARS NORTH 25°28'13" WEST 421.53 FEET); THENCE NORTH 04°16'36" WEST 71.60 FEET TO THE ARC OF A 167.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID 167.00 FOOT RADIUS CURVE 393.82 FEET (CHORD BEARS NORTH 71°50'13" WEST 308.68 FEET); THENCE SOUTH 40°49'37" WEST 340.07 FEET TO THE POINT OF BEGINNING.