

When Recorded Mail To:
MIDA Executive Director
450 Simmons Way, Suite 400
PO Box 112
Kaysville, UT 84037

Ent 471309 Bk 1274 Pg 12-20
Date: 25-NOV-2019 3:43:23PM
Fee: \$40.00 Check Filed By: TC
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
For: WESTERN STATES VENTURES LLC

PRE-CERTIFICATE OF OCCUPANCY PAYMENT CONTRACT

THIS PRE-CERTIFICATE OF OCCUPANCY CONTRACT (“**Contract**”) is entered into as of the 21st day of November 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 Holmes Western Deer Springs LLC, a Utah limited liability company (“**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 within 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:

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.

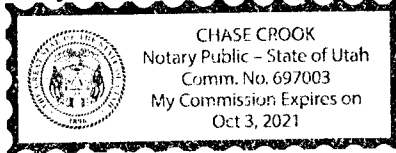
MIDA: MILITARY INSTALLATION DEVELOPMENT AUTHORITY

By: [Signature]
Paul Morris
Acting Executive Director

STATE OF UTAH
COUNTY OF SALT LAKE

On the 21 day of NOVEMBER, 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: _____

By: _____
Name:
Title:

STATE OF UTAH
COUNTY OF _____

On the _____ day of _____, 20____, personally appeared before me _____ who, being by me duly sworn, did say that he executed the foregoing Contract.

Notary Public

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

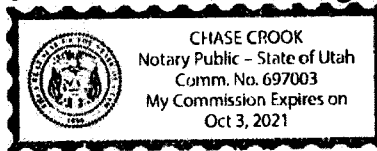
MIDA: MILITARY INSTALLATION DEVELOPMENT AUTHORITY

By: [Signature]
Paul Morris
Acting Executive Director

STATE OF UTAH
COUNTY OF SALT LAKE

On the 21 day of NOVEMBER, 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:

Holmes Western Deer Springs, LLC
By: [Signature]
Name: Patrick Holmes
Title: General Manager

STATE OF UTAH
COUNTY OF Salt Lake

On the 22 day of November, 2019, personally appeared before me Patrick Holmes, who, being by me duly sworn, did say that he executed the foregoing Contract. General manager of Holmes Western Deer Springs, LLC

[Signature]
Notary Public



EXHIBIT A**Wasatch County Parcel Tax ID Numbers
and Legal Description**

Parcel 1: [00-0021-3162 & 00-0021-3164]

A parcel of land lying and situate in the North Half of Section 7, Township 2 South, Range 5 East, Salt Lake Base and Meridian. Comprising the remaining 8.98 acres of Wasatch County Tax Parcels 00-0021-3162 and 00-0021-3164, described in that certain Warranty Deed recorded as Entry 453230, in Book 1226, at Pages 1230 - 1232 of the Wasatch County Records. Excepting therefrom those portions lying in the legal bounds of the Jordanelle Parkway Right of Way Dedication, Entry 447875, Book 1213, Page 1519 of Wasatch County Records. Basis of bearing for subject parcel being South 89°04'46" West 2641.14 feet measured with the north line of the Northeast Quarter of said Section 7.

Subject parcel being more particularly described as follows:

Commencing at the North Quarter Corner of Section 7, Township 2 South, Range 5 East, Salt Lake Base and Meridian, thence South 89°05'03" West 248.07 feet coincident with the north line of the Northwest Quarter of said Section 7 to a point on the westerly Right of Way line of Jordanelle Parkway (Dedication Plat, Recorded January 30, 2018 as Entry 447875 of the Wasatch County Records) and the True Point of Beginning; thence the following five (5) courses coincident with said right of way 1) Southeasterly 331.80 feet along the arc of a 1080.37 foot radius curve to the left (center bears North 55°35'52" East) through a central angle of 17°35'48" to a point of reverse curvature; 2) Southerly 376.16 feet along the arc of a 462.50 foot radius curve to the right (center bears South 38°00'04" West) through a central angle of 46°35'59" to a point of compound curvature; 3) Southerly 89.63 feet along the arc of a 666.78 foot radius curve to the right (center bears South 84°36'03" West) through a central angle of 07°42'07" to a point of tangency; 4) South 02°18'10" West 427.16 feet to a point of curvature; 5) Southerly 43.39 feet along the arc of a 1005.37 foot radius curve to the left (center bears South 87°41'50" East) through a central angle of 02°28'22"; thence departing said right of way South 89°53'38" West 83.72 feet; thence North 28°16'22" West 135.68 feet; Thence North 26°20'22" West 1114.00 feet; thence North 04°23'00" East 503.14 feet to a point on the westerly right of way of Jordanelle Parkway recorded January 30, 2018 as Entry #447875, in Book 1213 at Pages 1519 through 1598 of the Wasatch County Records; thence the following three (3) courses coincident with said right of way 1) Southerly 10.06 feet along the arc of a 594.78 foot radius curve to the right (center bears South 69°01'38" West) through a central angle of 00°58'10"; 2) South 20°00'11" East 263.39 feet; 3) Southerly 271.51 feet along the arc of a 1080.37 foot radius curve to the left (center bears North 69°59'49" East) through a central angle of 14°23'57" to the point of beginning.

Parcel 2: [00-0021-3161 & 00-0021-3163]

A parcel of land lying and situate in Section 7, and the South Half of Section 6, Township 2 South, Range 5 East, Salt Lake base and Meridian. Comprising the following two (2) Wasatch County Tax Parcels 1) 00-0021-3161 and 2) 00-0021-3163, described in that certain Warranty Deed recorded as Entry 453693, in book 1227, at pages 1627 - 1633 of the Wasatch County records. Excepting therefrom that particular parcel of land described in that certain Warranty

Deed recorded as Entry 454822, in book 1230 at pages 1206 - 1208 of said county records. Basis of bearing for subject parcel being South 89°04'46" West 2641.14 feet measured with the north line of the Northeast Quarter of said Section 7. Subject parcel being more particularly described as follows:

Commencing at the Northeast Corner of Section 7, Township 2 South, Range 5 East, Salt Lake Base and Meridian, thence South $89^{\circ}04'46''$ West 2094.25 feet to a point on the southwesterly Right of Way line of SR 248 and the True Point of Beginning:

Thence the following three (3) courses coincident with said right of way 1) South $48^{\circ}59'43''$ East 465.48 feet to a number 5 rebar and aluminum cap stamped "PLS 356548"; 2) South $65^{\circ}52'29''$ East 259.50 feet to a point of curvature to a number 5 rebar and aluminum cap stamped "PLS 356548"; 3) Southerly 1636.16 feet along the arc of a 3709.72 foot radius curve to the right (center bears South $48^{\circ}39'09''$ West) through a central angle of $25^{\circ}16'13''$ to a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence continuing along said curve and the old right of way line of U.S Highway 189, Highway 40, Southerly 704.10 feet along the arc of said 3709.72 foot radius curve to the right (center bears South $73^{\circ}55'23''$ West) through a central angle of $10^{\circ}52'29''$; Thence departing said old right of way, South $26^{\circ}22'31''$ West 276.72 feet to a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence North $88^{\circ}03'26''$ West 367.00 feet along an ancient fence line and Agreement line recorded as Entry 186252 of the Wasatch county Records to a number 5 rebar and cap stamped "McNeil"; Thence the following eight (8) courses coincident with the perimeter of that particular parcel of land described in that certain Warranty Deed recorded as Entry #220324 of the Wasatch County Records and depicted upon that certain Record of Survey performed by McNeil Engineering, filed with the Wasatch County Surveyor as Survey #1237, 1) North $11^{\circ}18'22''$ East 459.43; 2) North $81^{\circ}59'52''$ West 8.62 feet; 3) North $78^{\circ}32'09''$ West 38.85 feet; 4) North $89^{\circ}38'58''$ West 53.64 feet; 5) North $81^{\circ}33'13''$ West 326.73 feet; 6) North $83^{\circ}24'39''$ West 154.75 feet; 7) North $85^{\circ}09'53''$ West 155.77 feet to a number 5 rebar and cap stamped "McNeil"; 8) South $00^{\circ}34'00''$ West 516.71 feet to a point on the aforesaid Agreement Line and a number rebar and cap stamped "McNeil"; Thence North $88^{\circ}02'03''$ West 850.24 feet coincident with said agreement line and the prolongation thereof to a point on the easterly right of way line of Jordanelle Parkway and a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence the following Eight (8) courses coincident with said east right of way line, 1) North $62^{\circ}53'59''$ East 171.88 feet to a point of curvature and a number 5 rebar and aluminum cap stamped "PLS 356548"; 2) Northerly 973.14 feet along the arc of a 598.68 foot radius to the left (center bears North $27^{\circ}06'01''$ West) through a central angle of $93^{\circ}07'52''$ to a point of tangency to a number 5 rebar and aluminum cap stamped "PLS 356548"; 3) North $30^{\circ}13'53''$ West 228.80 feet to a point of curvature and a number 5 rebar and aluminum cap stamped "PLS 356548"; 4) Northerly 528.29 feet along the arc of a 930.37 foot radius curve to the right (center bears North $59^{\circ}46'07''$ East) through a central angle of $32^{\circ}32'03''$ to a point of tangency and a number 5 rebar and aluminum cap stamped "PLS 356548"; 5) North $02^{\circ}18'10''$ East 427.16 feet to a point of curvature and a number 5 rebar and aluminum cap stamped "PLS 356548"; 6) Northerly 99.71 feet along the arc of a 741.78 foot radius curve to the left (center bears North $87^{\circ}41'50''$ West) through a central angle of $07^{\circ}42'07''$ to a point to a point of compound curvature and a number 5 rebar and aluminum cap stamped "PLS 356548"; 7) Northwesterly 437.16 feet along the arc of a 537.50 foot radius curve to the left (center bears South $84^{\circ}36'03''$ West) through a central angle of $46^{\circ}35'59''$ to a point on the arc of a non-tangent curve; 8) Northerly 438.88 feet along the arc of a 1005.37 foot radius curve to the right (center bears North $38^{\circ}00'07''$ East) through a central angel of $25^{\circ}00'42''$ to a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence departing said easterly right of way line, North $62^{\circ}56'24''$ East 48.90 feet along a radial line to a number 5 rebar and cap stamped "PLS 356548"; Thence northwesterly 106.28 along the arc of a 955.37 foot radius curve to the right (center bears North $62^{\circ}56'24''$ East) through a central angle of $06^{\circ}22'30''$ to a point of tangency and a number 5 rebar and aluminum

cap stamped "PLS 356548"; Thence North 20°41'09" West 282.00 feet to a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence North 69°08'44" East 50.00 feet to a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence South 20°41'09" East 87.08 feet to a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence North 45°03'33" East 105.30 feet to a point on the westerly right of way of SR-248 and a number 5 rebar and aluminum cap stamped "PLS 356548"; Thence the following two (2) courses coincident with said right of way 1) South 56°09'40" East 687.17 feet to a number 5 rebar and aluminum cap stamped "PLS 356548"; 2) South 48°59'44" East 232.72 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM: (FRISBEY PARCEL, Entry 454822)

A parcel of land lying and situate in the Northeast Quarter of Section 7 Township 2 South, Range 5 East, Salt Lake base and Meridian. Comprising 2.00 acres of Wasatch County Tax Parcel 00-0007-2004. Basis of bearing for subject parcel being South 00°18'57" East 2736.61 feet measured coincident with the east line of the Northeast Quarter of said Section 7. Subject parcel being more particularly described as follows:

Commencing at the East Quarter Corner of Section 7, Township 2 South, Range 5 East, Salt Lake Base and Meridian, thence South 89°51'40" West 778.41 feet coincident with the Center Quarter Section Line to the True Point of Beginning; Thence South 26°03'25" West 28.96 feet; Thence North 88°13'46" West 222.61 feet; Thence North 07°22'24" East 407.95 feet; Thence South 83°03'58" East 150.15 feet; Thence South 15°28'44" East 176.66 feet to a point of curvature; Thence southerly 97.71 feet along the arc of a 330.00 foot radius curve to the left (center bears North 74°31'16" East) through a central angle of 16°57'51"; Thence South 26°03'25" West 120.34 feet to the point of beginning.