

WHEN RECORDED, RETURN TO:

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36 S STATE STREETSALT LAKE CITY, UT 84111

DECLARATION OF PAYMENT IN LIEU OF TAXES

THIS DECLARATION OF PAYMENT IN LIEU OF TAXES (this "**Declaration**") is made as of September 1, 2022, by BRC ADG QOZB 1 JV, LLC, a Utah limited liability company ("**Declarant**"), for the benefit of DOWNTOWN EAST STREETCAR SEWER PUBLIC INFRASTRUCTURE DISTRICT, a political subdivision and body corporate and politic duly of the State of Utah formed pursuant to Title 17B, Chapter 1 and Title 17D, Chapter 4, Utah Code Annotated (the "**District**").

RECITALS

A. Except as otherwise expressly provided herein or unless the context requires otherwise, capitalized terms used in this Declaration shall have the meanings set forth in Section 1 of this Declaration, and references to Sections and Exhibits shall refer to Sections and Exhibits of this Declaration unless expressly stated otherwise.

B. Declarant owns approximately 1.68 acres of real property described in Exhibit A, attached hereto and incorporated herein (the "**Property**"), which is located in the City.

C. Declarant intends to develop and construct or cause to be constructed a multifamily residential / retail development on the Property.

D. Significant investment will be required in order to bring sewer systems in the vicinity of the Project up to appropriate standards to accommodate the Project and the development of other properties in the District to include a mix of uses generally comprised of commercial, office, research, educational, retail, hotel, industrial, and a variety of residential uses, together with related amenities and uses, and to provide necessary sewer infrastructure which benefits this area of the community as a whole.

E. The District was organized pursuant to Utah law in order to provide for the acquisition, financing, and construction of the Eligible Improvements.

F. The completion of the Eligible Improvements and the funding of ongoing Administrative Expenses will benefit the Property. The District has the authority, under the laws of the State, its Governing Document, and the property owners' consent (including by the Declarant), to issue bonds and other indebtedness (including bonds and other obligations for the refinancing of such indebtedness) for the purpose of, among other things, paying the costs to

acquire, finance, refinance, construct, and complete the Eligible Improvements and to impose property taxes to pay the foregoing costs and the Administrative Expenses.

G. For the purpose of financing (or refinancing) all or a portion of the costs of the acquisition and construction of the Eligible Improvements, the District will issue one or more series of District Bonds, which are payable, in part, from revenue derived from taxation of the Property.

H. Pursuant to the District Bond Documents, the District will pledge the District Mill Levy as District Pledged Revenue.

I. Repayment of the District Bonds and payment of the Administrative Expenses is dependent, in part, on property tax revenue derived from the Property. A sale or transfer of any Interest in the Property, or any portion thereof, to an entity which is exempt from property taxation (or an entity eligible to apply for such exemption) would result in a reduction of the property tax revenue, including the property taxes which would otherwise be paid to the District, on which the District is relying in order to pay the District Bonds, costs for the Eligible Improvements, and the Administrative Expenses benefiting the Property.

J. Subject to and in accordance with the terms of this Declaration, Declarant desires to impose upon the Property the covenants and restrictions set forth below to secure the repayment of the District Bonds and the payment of the Administrative Expenses and the cost of Eligible Improvements benefiting the Property.

DECLARATION

NOW THEREFORE, for and in consideration of the foregoing, Declarant declares and grants, as follows:

1. Defined Terms. Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term, and any reference herein to a Section is to a Section of this Declaration. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture. The following terms, when used in this Declaration, shall have the following meanings:

(a) “Administrative Expenses” means an amount reasonably determined by the District as being necessary to pay the District’s expenses reasonably incurred in connection with the administration and operation of the District, including accounting fees, audit expenses, legal fees, insurance premiums, management expenses, board member compensation, and generally all expenses, under which generally accepted accounting practices are properly allocable to administration; however, only such expenses as are reasonably and properly necessary to the efficient administration and operation of the District and permitted under the District Act shall be included.

(b) “Change in Taxable Status” shall have the meaning set forth in Section 3 below.

(c) “City” means the City of South Salt Lake, Utah.

- (d) “**County**” means Salt Lake County, Utah.
- (e) “**District**” means the Downtown East Streetcar Sewer Public Infrastructure District, and its successors and assigns.
- (f) “**District Act**” means, collectively, the Local District Act, Title 17B, Limited Purpose Local Government Entities - Local Districts, and the Public Infrastructure District Act, Title 17D, Chapter 4.
- (g) “**District Bond Documents**” means, collectively, any indenture, resolution, loan agreement, custodial agreement, pledge agreement, and any other documents pursuant to which the District Bonds are issued and secured as to repayment.
- (h) “**District Bond Trustee**” means the trustee and/or lender in connection with the issuance of any District Bonds.
- (i) “**District Bonds**” means, collectively, one or more series of bonds or other evidences of indebtedness, which may be in the form of a note, loan, or other financial obligation, issued or incurred by the District to finance or refinance the Eligible Costs, including any bonds, notes, loans, or other financial obligations issued by the District to refund District Bonds. The definition of District Bonds shall not include any reimbursement agreement entered into between the District and any developer of property within the District.
- (j) “**District Mill Levy**” means the property tax mill levy to be levied by the District on the taxable property within such District pursuant to the District Bond Documents and the Governing Document and the District Act.
- (k) “**District Pledged Revenue**” means the revenue pledged to the payment of District Bonds under the District Bond Documents.
- (l) “**Effective Date**” means the date on which this Declaration is recorded with the Office of the Recorder of Salt Lake County, Utah.
- (m) “**Eligible Costs**” means any costs eligible to be paid by the District from proceeds of District Bonds or other revenues pursuant to the District Act and the Governing Document..
- (n) “**Eligible Improvements**” means a part of all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the District Act, except as specifically limited in the Governing Document.
- (o) “**Governing Document**” means the Amended Governing Document for the District, approved by the City Council of the City on August 10, 2022, as may be amended and supplemented from time to time.
- (p) “**Interest**” means any and all partial or total legal right to property or for the use of property, including a fee interest, leasehold or other right to use, possess or occupy.

(q) “**Owner(s)**” means a Person that has an Interest in any portion of the Property, whether by contract or otherwise, including without limitation Declarant and its successors and assigns, and such Person has the legal obligation to pay property tax on such Interest. If more than one Person owns an Interest in a particular portion of the Property and the legal obligation to pay property tax is allocated among such Persons, for purposes of this Declaration, such Persons shall be jointly and severally liable for the payments required under this Declaration with regard to such Interest.

(r) “**Person(s)**” means an individual, firm, corporation, partnership, company, association, joint stock company, trust, body politic, or any other incorporated or unincorporated organization, or any trustee, receiver, assignee, or other similar representative thereof.

(s) “**PILOT**” shall have the meaning set forth in Section 6 below.

(t) “**Project**” means the development of the Property for multifamily residential and retail uses.

(u) “**State**” means the State of Utah.

(v) “**Tax-Exempt Entity**” means any organization or other Person that is legally exempt from paying ad valorem property taxes in the State.

(w) “**Tax-Exempt Property**” means any property which the county assessor has deemed to be exempt from the payment of ad valorem taxes.

(x) “**Users**” means a Tax-Exempt Entity that builds, constructs or improves any building, structure or improvement on any portion of the Property for which use tax would be due were the entity not tax-exempt.

2. Use Restriction. Except as hereinafter provided, any Person that is a Tax-Exempt Entity and that acquires an Interest in the Property, or any portion thereof, and any Tax-Exempt Property, effective on the date that such Person becomes the Owner of such Interest, or that such Tax-Exempt Property becomes tax exempt, shall be subject to the payment of PILOTs.

3. Change in Taxable Status. Any Owner that, during the period of its ownership, becomes a Tax-Exempt Entity shall, as of the date that it becomes a Tax-Exempt Entity, or Owner who receives a determination that its property is Tax-Exempt Property, be subject to the payment of PILOTs. Further, immediately upon the happening of any event, act, omission or other occurrence (whether voluntary or involuntary) that results in the Property or any portion thereof being exempt from taxation, the Owner of such Property shall be subject to the payment of PILOTs. The terms of this Section 3 shall collectively be referred to herein as a “**Change in Taxable Status**”.

4. Notice. ANY OWNER TRANSFERRING AN INTEREST IN ANY PORTION OF THE PROPERTY TO A TAX-EXEMPT ENTITY SHALL PROVIDE NOTICE OF THIS DECLARATION TO SUCH TAX-EXEMPT ENTITY PRIOR TO CONVEYING TITLE AND INCLUDE NOTICE IN THE DEED CONVEYING TITLE THAT SUCH TAX-EXEMPT ENTITY VOLUNTARILY ASSUMES AND WILL BE BOUND BY THE OBLIGATION TO

PAY THE PILOTS PURSUANT TO THE TERMS OF THIS DECLARATION. ANY OWNER TRANSFERRING AN INTEREST IN ANY PORTION OF THE PROPERTY TO A TAX-EXEMPT ENTITY SHALL PROVIDE NOTICE OF SUCH TRANSFER TO THE DISTRICT, IN WRITING, IDENTIFYING THE PORTION OF THE PROPERTY BEING TRANSFERRED. ANY OWNER THAT BECOMES A TAX-EXEMPT ENTITY DURING THE PERIOD OF ITS OWNERSHIP, OR WHO HAS AN INTEREST IN PROPERTY THAT BECOMES EXEMPT FROM TAXATION, SHALL PROVIDE NOTICE TO THE DISTRICT, IN WRITING, OF THE CHANGE IN TAXABLE STATUS. SUCH NOTICES SHALL BE DELIVERED TO THE DISTRICT, AT THE ADDRESS SET FORTH BELOW, NOT LATER THAN THE DATE SUCH TRANSFER OF INTEREST OR CHANGE IN TAXABLE STATUS IS EFFECTIVE.

To the District: Downtown East Streetcar Sewer
Public Infrastructure District
c/o Snow Jensen & Reece, PC
912 West 1600 South, Ste. B200
St. George, UT 84770
Attn: Matthew J. Ence

5. Failure to Give Notice. Failure of an Owner to give notice as required by Section 4, shall in no way affect or eliminate the requirement of a Tax-Exempt Entity or an Owner of a Tax-Exempt Property to pay PILOTs pursuant to Section 6.

6. Payment of PILOTs. District payment in lieu of taxes ("**PILOTs**") shall be made on an annual basis. The PILOTs shall be prorated for any portion of a year during which a Tax-Exempt Entity acquires an Interest in the Property or in which an Owner becomes a Tax-Exempt Entity. For so long as the District Bonds are outstanding, the PILOTs shall be paid to the District Bond Trustee, or, in the event there is no District Bond Trustee, at the direction of the District, at such time or times as property taxes are due and payable in accordance with State law. Once the District Bonds are paid in full or defeased, the PILOTs shall be paid to the District.

PILOTs not paid when due shall accrue interest at the same rate at which unpaid property taxes accrue interest, in accordance with State law (including the additional property penalty for public infrastructure districts). Any Owner required to pay a PILOT hereunder specifically authorizes the pledge of revenues derived from the PILOT to payment of debt service on the District Bonds and for application to payment of Administrative Expenses of the District. Revenue derived from the PILOTs shall be used for any purpose which the District is authorized to use the revenue under State law. **The obligation of a Tax-Exempt Entity to make PILOT payments as required in this Section 6 shall remain until termination of this Declaration pursuant to Section 9 hereof.**

7. Enforcement. All PILOTs, together with accrued interest and costs, shall be secured by a continuing lien against the Tax-Exempt Property with respect to which such PILOT was due and unpaid (a "**PILOT Lien**"). The lien shall attach from the date that a PILOT was not paid when due and may, but need not be, evidenced by the recordation of a separate statement of lien (other than the notice evidenced by this Declaration, when recorded) in connection therewith and shall be enforceable in any judicial or non-judicial proceeding allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or deed of trust under the

applicable provisions of the laws of the State. Declarant hereby conveys and warrants to the District Bond Trustee, with power of sale, the Property for the purpose of securing payment of all PILOTs, together with amounts owing provided herein, under the terms of this Declaration. In order to facilitate the foreclosure of any such PILOT Lien in the manner provided at law for the foreclosure of deeds of trust, the District Bond Trustee or the District may designate a trustee with full power of sale, to foreclose any such PILOT Lien as directed by the District and District Bond Trustee, subject to the provisions of the District Bond Documents, shall have the right and authority to enforce this Declaration by proceedings at law or in equity against any Person or Persons violating or attempting to violate the covenants set forth herein. Such right and authority of the District and the District Bond Trustee includes the ability to enforce this Declaration by restraining such violation, compelling compliance or recovering damages.

8. Governing Law and Venue. This Declaration will be governed by, and enforced in accordance with, the laws of the State. Venue for legal proceedings shall be proper in the jurisdiction where the Property is located.

9. Termination. This Declaration shall terminate upon the later of dissolution of both the District or repayment of all obligations under the District Bonds.

10. Run with the Land: Reasonableness. This Declaration, as recorded, shall run with the land, and shall be binding upon all Owners and Users of the Property and their respective successors and assigns. If and to the extent that any of the restrictions or covenants herein would otherwise be unlawful or void for violation of (i) the rule against perpetuities, (ii) the rule restricting restraints on alienation, or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of ninety (90) years after the Effective Date. The covenants set forth herein are reasonable and necessary to the effect the financing, provision, and maintenance of the Eligible Improvements and the payment of Administrative Expenses benefitting the Property and the Owners and Users thereof. Declarant, on behalf of its successors and assigns, covenants that it will not contest the effectiveness or enforceability of this Declaration by any legal proceedings in any forum.

11. Assignment. Any and all of the rights, powers, and reservations of the District herein contained may be assigned (in whole or in part) to any Person, and such assignment shall be evidenced by a recorded document executed by both the assignor and the assignee. Upon such assignment, the assignee shall, to the extent of such assignment, have the same rights and powers as are given to the District herein and shall assume the obligations of the District hereunder.

12. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions of this Declaration or the application thereof to any other Person or circumstance, and the remainder of this Declaration will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the intentions of the Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intent of the Declarant, which includes the payment of property tax revenue

(or the payment of the PILOTS in lieu thereof), to or at the direction of the District as applicable for payment of District Bonds and for payment of the Administrative Expenses and costs for the Eligible Improvements benefitting the Property.

13. No Association. This Declaration does not create an “association of unit owners,” “homeowners association” or “association,” as defined in Title 57 Chapters 8 and 8a, Utah Code Annotated 1953, as amended, (collectively, the “**Association Act**”). Therefore, the Association Act does not apply to this Declaration or to the Declarant or the District, and the terms of this Declaration shall be read, construed and interpreted accordingly. Accordingly, Declarant is not hereunder a “declarant,” and this Declaration is not a “declaration,” as such terms are used and defined in the Association Act.

14. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Declaration, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the District Bond Trustee, and their duly authorized successors and assigns, and nothing contained in this Declaration shall give or allow any claim or right of action by any other Person with respect to this Declaration. However, if any of the rights, powers, and reservations of the District are assigned, pursuant to Section 11, the assignee shall be considered a third party beneficiary with enforcement rights hereunder as if it were an original party hereto.

15. Amendment by Declarant. Declarant may make amendments to the provisions of this Declaration only with the prior written consent of (i) the District and (ii) the District Bond Trustee, to the extent the consent of the District Bond Trustee is required by the District Bond Documents, but without the consent of any Owner, User, or other Person, and Declarant may record any such amendments in the real property records of Salt Lake County, Utah even if Declarant does not own all of the Property at the time of such recording; provided, however, if the proposed amendment would result in the reduction of the revenue pledged to the District Bonds, in addition to the foregoing, such proposed amendment shall also require the prior written consent of the owners of the District Bonds then outstanding in the same percentage and manner as would be required, as provided in the District Bond Documents, for an amendment to the District Bond Documents that would have the effect of reducing or impairing the revenue pledged to the District Bonds or the security pledged thereto; provided, further, that no amendment shall obligate the City or the City Redevelopment Agency to pay any PILOTs hereunder without the prior written consent of the City, which shall be evidenced by a resolution of the City Council. Additionally, Declarant may take the necessary and appropriate action to cause additional real property to be subject to this Declaration (including without limitation recording this Declaration against title to real property(ies) annexed or to be annexed by the District) without the prior consent of any other Person, including the District.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has made and executed this Declaration as of the date first set forth above.

BRC ADG QOZB 1 JV, LLC,
a Utah limited liability company

By: *[Signature]*

Name: D. Bryce BAKON

Title: Authorized Signer

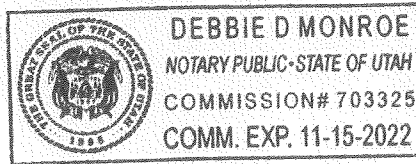
STATE OF UTAH)

) ss.

COUNTY OF SALT LAKE)

On the 1st day of AUGUST, 2022, personally appeared before me D. Bryce BAKON, who being by me duly sworn did say that he/she is the Authorized Signer of BRC ADG QOZB 1 JV, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said company.

[Signature]
Notary Public



IN WITNESS WHEREOF, the District has made and executed this Declaration to be effective as of the date first set forth above.

DISTRICT:

DOWNTOWN EAST STREETCAR SEWER
PUBLIC INFRASTRUCTURE DISTRICT, a
political subdivision and body corporate and politic
duly of the State of Utah

By: Jeffrey L. Gochnour

Name: Jeffrey L. Gochnour
Title: Chair

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 15 day of August, 2022, by Jeffrey Gochnour as Chair of Downtown East Streetcar Sewer Public Infrastructure District, a political subdivision and body corporate and politic duly of the State of Utah.

Hayley B. Grayson
Notary Public

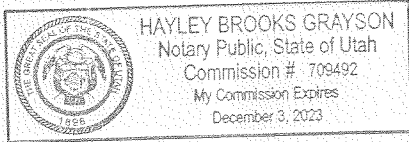


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Beginning at the Northeast Corner of Lot 11, Block 39, Ten Acre Plat "A", Big Field Survey; and running thence South 125.00 feet; thence West 130.00 feet; thence South 162.10 feet; thence West 200.00 feet; thence North 287.10 feet; thence East 330.00 feet to the point of beginning.

(Parcel Nos. 15-24-229-006; 15-24-229-010; 15-24-229-016; 15-24-229-017; 15-24-229-018; 15-24-229-007; 15-24-230-017; 15-24-230-018)