

When Recorded Mail To:

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

Ent 471308 Bk 1274 Pg 5-11
Date: 25-NOV-2019 3:38:31PM
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 Lakeview Estates, 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.

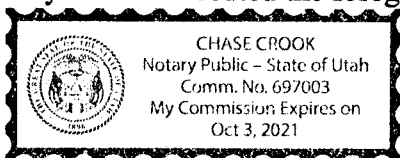
MIDA: MILITARY INSTALLATION DEVELOPMENT AUTHORITY

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.

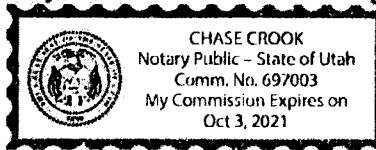
MIDA: MILITARY INSTALLATION DEVELOPMENT AUTHORITY

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 Lakeview Estates, 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 Lakeview Estates, LLC

[Signature]
Notary Public



EXHIBIT A

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

A parcel of land located in the East one-half of the Northwest quarter of Section 17, Township 2 South, Range 5 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point South 89°33'19" West along the section line 3996.525 feet and South 00°15'12" West 880.56 feet from the Northeast corner of Section 17, Township 2 South, Range 5 East, Salt Lake Base and Meridian and running thence North 89°28'38" East 1110.39 feet; thence South 00°05'38" West 877.09 feet; thence South 89°23'57" West 1112.85 feet to the West line of the East one-half of the Northwest quarter of said Section 17; thence North 00°15'12" East along said West line 878.64 feet to the point of beginning.

ALSO being described by survey as follows:

A parcel of land lying and situate in the East half of the Northwest quarter of Section 17, Township 2 South, Range 5 East, Salt Lake Base and Meridian. Comprising the 22.95 acre parcel of land described in that certain Quit Claim Deed recorded as Entry No. 352528, in Book 1000, at Page 1189 of the Wasatch County Records. Basis of bearing for subject description being South 89°36'36" West 5328.77 feet (measured) between the Northeast and Northwest corners of said Section 17.

Beginning at a point South 89°33'19" West along the section line 3996.525 feet and South 00°15'12" West 880.56 feet from the Northeast corner of Section 17, Township 2 South, Range 5 East, Salt Lake Base and Meridian, (South 89°36'36" West 2709.23 feet coincident with the North line of the Northeast quarter of said section to the North quarter corner thereof and South 89°36'52" West 1309.68 feet coincident with the North line of the Northwest quarter of said section to the West sixteenth corner thereof and South 00°29'05" West 880.53 feet coincident with said West sixteenth line from the Northeast corner of said Section 17, measured) and running thence North 89°28'38" East 1110.39 feet (North 89°31'55" West 1135.49 feet, measured); thence South 00°05'38" West 877.09 feet (South 00°08'33" West 877.41 feet, measured); thence South 89°23'57" West 1112.85 feet (South 89°26'52" West 1140.77 feet, measured) to the West line of the East one-half of the Northwest quarter of said Section 17; thence North 00°15'12" East along said West line 878.64 feet (North 00°29'05" East 879.16 feet coincident with said West sixteenth section line, measured) to the point of beginning.

Tax Id No.: 00-0020-8159