

Ent 532581 Bk 1442 Pg 132-152  
Date: 18-MAY-2023 4:20:17PM  
Fee: \$40.00 Check Filed By: KM  
MARCY M MURRAY, Recorder  
WASATCH COUNTY CORPORATION  
For: EX UTAH DEVELOPMENT LLC

AFTER RECORDING, PLEASE RETURN TO:

Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Attn: Robert A. McConnell

Tax Parcel Nos. 00-0021-7765 & 00-0021-8444

Space above for Recorder's use

**AGREEMENT  
FOR AND GRANT OF  
SUBTERRANEAN EASEMENT**  
[Pedestrian Tunnel—Ski Beach Way]

THIS AGREEMENT FOR AND GRANT OF SUBTERRANEAN EASEMENT (this “**Agreement**”), is entered into as of May 17, 2023, by and between BLX MAYFLOWER LLC, a Delaware limited liability company (“**Declarant**”), having an address at 805 Third Avenue, 7th Floor, New York, New York 10022, and BLX LOT 23 LLC and BLX LOT 3 LLC, each a Delaware limited liability company (collectively, “**Grantees**”) having an address at 805 Third Avenue, 7th Floor, New York, New York 10022.

**RECITALS**

WHEREAS, Declarant owns that certain parcel of real property located in Wasatch County, Utah, which real property is more particularly described on Exhibit A attached hereto (the “**Declarant Parcel**”);

WHEREAS, Grantees own those certain parcels of real property located in Wasatch County, Utah, which real property is more particularly described on Exhibit B attached hereto (the “**Grantee Parcels**”);

WHEREAS, the Grantee Parcels are separated by Ski Beach Way, a planned public street right-of-way (the “**Ski Beach Way ROW**”);

WHEREAS, Grantees require an easement under, across and below that portion of the Declarant Parcel located within or adjacent to the Ski Beach Way ROW more particularly described on Exhibit C attached hereto (the “**Subterranean Easement Area**”) for the purpose of constructing, maintaining, repairing, replacing, operating and inspecting a Pedestrian Tunnel and related utilities, systems and improvements (the “**Pedestrian Tunnel**”) to be constructed upon and/or providing access to and from the Grantee Parcels; and

WHEREAS, Declarant has determined to create and grant to Grantees a perpetual easement and right-of-way under, across and below the Subterranean Easement Area for the purpose of constructing, maintaining, repairing, replacing, operating and inspecting the Pedestrian Tunnel, all as more particularly set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and further agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Declarant hereby grants to Grantees the following (collectively, the "**Easements**"): (a) a perpetual and exclusive right to construct, install, operate, maintain, inspect, repair and replace the Pedestrian Tunnel within the Subterranean Easement Area (the "**Subterranean Easement**"). The Subterranean Easement Area is sometimes referred to herein as the "**Easement Area**" and is described on Exhibit C attached hereto and depicted generally on Exhibit D attached hereto.

The Easement is granted with and subject to the following rights, restrictions and conditions:

1. **Scope.** The Subterranean Easement includes the right to construct, install, operate, maintain, inspect, repair and replace the Pedestrian Tunnel in accordance with the grant set forth above, including the use of the same for pedestrian ingress and egress. Except in the event of an emergency, whereupon Grantees shall endeavor to provide Declarant with as much advance notice as is reasonably practicable, Grantees agree to provide Declarant, not less than fifteen (15) days in advance of any proposed construction, repair or replacement of the Pedestrian Tunnel that would unreasonably interfere in any material way with the usual and customary operation of the Ski Beach Way ROW (other than temporary delays to such use), a written notice describing the proposed construction, repair or replacement, including the proposed need for ingress and egress over and across the Ski Beach Way ROW in connection with such construction, repair or replacement. In connection with the exercise of its rights pursuant to the Easement, Grantees may permit their contractors, subcontractors, employees, patrons, guests, invitees and agents to enter upon the Easement Area for the purposes set forth above.

2. **Limitations.** Except as expressly provided herein, Grantees will not make any use of the Easement that will unreasonably interfere in any material way with the usual and customary operations of the Ski Beach Way ROW or the maintenance or repair of the Pedestrian Tunnel and other installations located on the Ski Beach Way ROW outside of the Easement Area. Declarant acknowledges and agrees that the location of the Pedestrian Tunnel as depicted on Exhibit C hereof does not interfere with the usual and customary use of the Ski Beach Way ROW for its intended purpose and are hereby approved.

3. **Reservation by Declarant.** Subject to compliance by Declarant with all Governmental Requirements and this Agreement, Declarant shall have the right to construct in the future any improvements over and upon the Ski Beach Way ROW so long as such improvements

do not unreasonably interfere with the use of the Easement Area by Grantees for the uses permitted hereunder. Declarant shall not attempt to remove, alter, modify, or attempt to repair, maintain or service the Pedestrian Tunnel except as expressly provided in Section 6(c) below.

4. **Construction.**

- a. **Construction in Accordance with Governmental Requirements.** The construction of the Pedestrian Tunnel by Grantees shall be performed in accordance with Governmental Requirements (defined below). Grantees may redesign and reconstruct the Pedestrian Tunnel at any time and from time to time as it deems appropriate, subject to Governmental Requirements. For purposes of this Agreement, the term "**Governmental Requirements**" shall mean all laws, ordinances, rules, requirements, resolutions, procedures and regulations of governmental authorities bearing on the construction, alteration, rehabilitation, maintenance, use, or operation, of Pedestrian Tunnel in the Easement Area.
- b. **Excavation—Lateral Support.** Excavation by Grantees will be required in connection with the installation of certain structural components supporting the Pedestrian Tunnel (the "**Structural Components**") that may affect the sub-adjacent and lateral support of right-of-way improvements within the Ski Beach Way ROW. Grantees shall employ all means and methods necessary to protect, support, and maintain the structural integrity, functionality and serviceability of the existing right-of-way improvements within the affected portion of the Ski Beach Way ROW for so long as this Agreement shall be in force and effect.
- c. **Use of Ski Beach Way ROW.** In addition to the easement, rights, and privileges herein conveyed, Grantees shall have the right to temporarily use so much of the Ski Beach Way ROW surface (including reasonable access thereto) as may be reasonably necessary to install, repair, maintain and replace the Pedestrian Tunnel within the Easement Area. Upon completion of construction, maintenance or repair, Grantees, at its their cost and expense, shall restore to its condition prior to such construction, maintenance, or repair, such portions of the Ski Beach Way ROW as were utilized by Grantees in connection with the installation, construction or repair of the Pedestrian Tunnel.

5. **Required Street Closures.** In connection with the Easement granted herein, Declarant acknowledges and agrees that Ski Beach Way may occasionally need to be temporarily closed to through traffic in and around the Easement Area, either in whole or in part. Declarant or the public entity to which the Ski Beach Way right-of-way is ultimately dedicated upon acceptance, together with Grantees, shall jointly coordinate the schedule for such street closures to minimize, to the extent reasonably possible, the frequency, scope and duration of such street closures. Except in the event of an emergency closure, Grantees shall provide

Declarant or such public entity with not less than 24 hours prior notice of a required street closure.

6. **Maintenance of Pedestrian Tunnel.** Grantees shall maintain the Pedestrian Tunnel in good condition and repair at their sole cost and expense.

- a. **General Maintenance.** With such prior written notice to Grantees as may be reasonable in connection with the proposed activities, Declarant shall have the right to temporarily enter the Easement Area for the purpose of maintaining, altering, replacing, removing or relocating improvements within the Ski Beach Way ROW, subject to Governmental Requirements. With such prior written notice to Declarant as may be reasonable in connection with the proposed activities, Grantees shall have the right to temporarily enter the Ski Beach Way ROW and any tracts of land owned by Declarant adjacent thereto for the purpose of maintaining, altering, replacing, removing or relocating the Pedestrian Tunnel, subject to Governmental Requirements. Notwithstanding the foregoing, notification of Grantees or Declarant, as the case may be, shall not be required in the case of an emergency requiring immediate access; provided that Grantees or Declarant, as the case may be, shall notify the other party entitled to notice of such entry verbally and in writing as soon as reasonably possible.
- b. **Maintenance of Surface Right-of-Way Pedestrian Tunnel.** Grantees shall not be responsible for, nor shall they bear any portion of, the costs of maintaining and repairing the right-of-way improvements within the Ski Beach Way ROW, except as otherwise provided in this Agreement. Except for periods of construction or reconstruction, which may require temporary closure of Ski Beach Way, Grantees agree that their development or use of the Pedestrian Tunnel shall not materially jeopardize the integrity or condition of the public streets or sidewalks located within the Ski Beach Way ROW. Any material deterioration of the Pedestrian Tunnel or any deterioration impacting the structural integrity of the Pedestrian Tunnel shall be corrected by Grantees prior to any adverse long-term impact on any right-of-way improvements within the Easement Area.
- c. **Remedies for Failure to Maintain.** In the event Grantees shall fail to reasonably maintain, repair or replace the Pedestrian Tunnel in accordance with this Agreement, Declarant may give written notice of such failure to Grantees and each Mortgagee (defined below) demanding that corrective action be undertaken. Should Grantees or such Mortgagees not begin to correct the failures or breaches within thirty (30) days or such other shorter time as reasonably necessary to cure an exigent circumstance, Declarant, upon notice to Grantees and such Mortgagees, shall have the right, but not the obligation, to maintain, repair and replace the Pedestrian Tunnel at Grantees' cost and expense. However, if Grantee or any Mortgagee is pursuing corrective action with commercially reasonable diligence, the foregoing thirty

(30) day period shall be automatically extended, as reasonably necessary to allow completion of maintenance, repair or replacement by Grantees or any Mortgagee. If Declarant performs such maintenance, repair or replacement for Grantees in accordance with the terms of this Section, Grantees shall reimburse Declarant within thirty (30) days after written demand for payment is made. This remedy is in addition to any and all other legal and equitable remedies of Declarant at law or in equity, which are hereby all expressly reserved; provided that Declarant shall not have the right to terminate Agreement for any reason, which right of termination is hereby intentionally and knowingly waived for all purposes. For purposes of this Agreement, the term "**Mortgagee**" means mortgagee under a recorded mortgage, the beneficiary under a recorded deed of trust or the secured party under any security instrument, in each case recorded on or against the Ski Beach Way ROW or any portion thereof and, with respect to which, actual written notice has been provided to Grantees pursuant to Section 10 hereof.

7. **Maintenance of Support.** Each of Declarant and Grantees covenant and agree that they will not take any action with respect to the Ski Beach Way, Grantee Parcels or the Ski Beach Way ROW that will jeopardize the soundness or safety of the improvements located upon the adjoining Ski Beach Way, Grantee Parcels or Ski Beach Way ROW, nor shall Declarant or Grantees otherwise impair the structural integrity, electrical systems, or mechanical systems or lessen the sub-adjacent or lateral support of any portion of the improvements located on the Ski Beach Way, the Grantee Parcels or the Ski Beach Way ROW including, without limitation, the existing improvements to Ski Beach Way, the Grantee Parcels or the Ski Beach Way ROW, as the case may be.

8. **Damage or Destruction.**

- a. **Damage to Pedestrian Tunnel and Ski Beach Way ROW.** If the Pedestrian Tunnel shall be damaged or destroyed by any cause whatsoever, Grantees shall proceed with due diligence to remove any debris and restore the right-of-way improvements to substantially the same condition as immediately prior to such damage or destruction.
- b. **Insurance.** Grantees shall obtain and maintain or cause to be obtained and maintained by the operator of the Pedestrian Tunnel commercial general liability and property damage insurance against liability for any Claims (defined below) or Losses (defined below) arising out of any damage to property or injuries to persons or loss of life in connection with the construction, operation, use or maintenance of the Pedestrian Tunnel. Such insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate and with such customary terms as Declarant may reasonably approve. Declarant shall be named as an additional insured on all commercial general liability policies procured pursuant to this Section 10(b). For purposes of this Agreement "**Claims**" shall mean any and all claims, liens, demands,

causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, without limitation, any action, omission, misrepresentation or other basis for liability founded either in tort, contract or otherwise and the duties arising thereunder, whether currently existing or which may hereafter accrue, whether known or unknown, whether anticipated or unanticipated, whether in law or in equity, whether liquidated or unliquidated, contingent or otherwise, and a "Loss" means any award, cost, expense or loss including, without limitation, attorneys' fees and reasonable investigative and discovery costs, liabilities and judgments. Notwithstanding anything to the contrary in this Agreement, Declarant and Grantees each hereby assumes all responsibility for insuring, and waives its entire right of recovery against the other for, any and all loss of or damage to real and personal property of the other party and its loss of business income, caused by or arising out of a cause of loss insured or that could have been insured against by a Causes of Loss – Special Form policy of property insurance with additional flood and loss of business income coverage, even if this loss or damage is due to the negligence of the other party, or their respective agents, employees or contractors. These waivers include a waiver by each of Declarant and Grantees of all rights of subrogation that its property insurers may have against the other. If either party's insurance covering property loss or damage does not permit a named insured to waive the insurer's rights of subrogation, then that policy must include an endorsement in which the insurer waives all of its rights of subrogation against the other party.

- c. **Indemnification.** Grantees hereby indemnify, hold harmless and agree to defend Declarant from and against all Claims and Losses on account of injury to persons, loss of life, or damage to property occurring in connection with or arising from the construction, operation, use or maintenance of the Pedestrian Tunnel; provided, however, the foregoing indemnification and agreement to hold harmless and defend does not extend to any Claims or Losses which are caused by the negligence or intentional wrongful act of Declarant or its agents, servants or employees, or claims or losses which are not caused by or arise as a result of the construction, operation, use or maintenance of the Pedestrian Tunnel. Declarant hereby indemnifies, holds harmless and agrees to defend Grantees from and against all Claims and Losses on account of injury to persons, loss of life, or damage to property occurring in connection with or arising from the construction, operation, use or maintenance of the Ski Beach Way ROW; provided, however, the foregoing indemnification and agreement to hold harmless and defend does not extend to any Claims or Losses which are caused by the negligence or intentional wrongful act of Grantees or their agents, servants or employees, or claims or losses which are not caused by or arise as a result of the construction, operation, use or maintenance of Ski Beach Way. Nothing in this Section shall be construed as a waiver of any defense, claim or right of immunity on the part of the public entity to which the Ski Beach Way ROW is dedicated and accepted, existing

at common law or by statute, and Grantees shall not be obligated to indemnify or hold any such public entity harmless against any claim as to which such public entity is finally determined to be immune.

9. **Title.** Title in and to the Pedestrian Tunnel shall at all times remain exclusively with Grantees, or their assignees, successors or assigns, and no portion of the Pedestrian Tunnel will be deemed to be a fixture of the Ski Beach Way ROW, notwithstanding any applicable law or doctrine relating to fixtures.

10. **Mortgages; Mortgage Protection.** Grantees and any successor owner of the Grantee Parcels may execute and record one or more mortgages, deeds of trust or other security instruments with respect to Grantees' interest in the Grantee Parcels or the Easement Area or any portion of the Grantee Parcels or the Easement Area, and Grantees' or such successor owner's interest under this Agreement. Each Mortgagee of record with respect to the Grantee Parcels, the Easement Area or the rights of Grantees or its successor owner's interest under this Agreement which provides written notice of its mortgage, deed of trust or security instrument and its address to Declarant, shall be given a copy of any notice to Grantees or such successor owner under this Agreement, including, without limitation, any notice of default, and an opportunity to cure any default as provided in this Agreement. Failure to deliver the required notice to a particular Mortgagee shall not operate to extend or suspend the effectiveness of any notice which was properly delivered to any other Mortgagee or to Grantees or their successor in interest. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any mortgage, deed of trust or security instrument affecting the Grantee Parcels or Easement Area or any portion of the Grantee Parcels or Easement Area shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Agreement.

11. **Duration; Abandonment.** This Agreement and each easement, covenant, restriction and undertaking of this Agreement shall be perpetual. Grantees, acting collectively, shall have the right to abandon the Easement, or any portion thereof, by filing a written notice of abandonment, in form and substance satisfactory to Declarant, in the official records of the Wasatch County Recorder. Grantees shall promptly remove all improvements or other facilities installed by Grantees and located on, over, or under any portion of the Easement Area for which the Easement have been abandoned or for which the Easement has terminated as set forth above in this Section 11.

12. **Encroachments.** In the event that any portion of the Pedestrian Tunnel or Structural Components encroach or come to encroach upon the Ski Beach Way ROW outside of the Easement Area as a result of errors or inadequacies in plans, as a result of minor errors in construction, or as a result of repair, shifting, settlement, or movement of the Pedestrian Tunnel, there shall be an exclusive easement for such encroachment and for the continuance and maintenance thereof so long as such encroachment exists.

13. **Runs with Land.**

- a. **Appurtenant to Grantee Parcels; Transfers.** Each and all of the Easements, restrictions, covenants and rights granted or created herein are appurtenances to the Grantee Parcels and each portion of the Grantee Parcels, and none of the Easements, restrictions, covenants and rights may be transferred, assigned, or encumbered except as an appurtenance to the Grantee Parcels and each portion of the Grantee Parcels. For the purposes of the Easement, restrictions, and rights, the Grantee Parcels and each portion of the Grantee Parcels shall constitute the dominant estate, and the Easement Area shall constitute the servient estate.
- b. **Equitable Servitude.** Each and all of the covenants, restrictions, conditions, and provisions contained in this Agreement, whether affirmative or negative in nature:
  - i. are made for the direct, mutual and reciprocal benefit of the Grantee Parcels and each portion of the Grantee Parcels;
  - ii. will create mutual equitable servitude upon the Easement Area in favor of the Grantee Parcels and shall constitute covenants running with the land;
  - iii. will bind every person or entity having any fee, leasehold, or other interest in any portion of the Easement Area, the Grantee Parcels and the Grantee Parcels at any time or from time to time to the extent that such portion is affected or bound by the covenant, restriction, condition, or provision in question, or that the covenant, restriction, condition or provision is to be performed on such portion; and
  - iv. will inure to the benefit of the Grantees and their respective successors and assigns as to the Grantee Parcels and each portion of the Grantee Parcels.

14. **Modification.** Subject to Section 11 hereof, this Agreement and any right-of-way, easement, covenant or restriction contained in this instrument may not be terminated, extended, modified, or amended without the consent of Declarant and Grantees, and any such termination, extension, modification, or amendment shall be effective only on recordation in the official records of Wasatch County, Utah, of a written document effecting the same, executed and acknowledged by Declarant and Grantees; provided, however, that no such termination, extension, modification, or amendment shall affect the rights of any Mortgagee unless such Mortgagee consents to the same in writing.

15. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. Whenever possible, each provision of this instrument shall be interpreted in a manner as to be valid under applicable law; but if any provision of this instrument shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.



16. **Attorneys' Fees.** If any legal action or proceeding arising out of or relating to this Agreement is brought by any party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding by the prevailing party.

17. **Taxes.** If and to the extent that real property taxes, assessments or privilege taxes or other similar charges are levied on Grantees' interest in the Easement Area as created pursuant to this Agreement, Grantees shall pay such taxes, assessments or charges.

18. **No Obligation to Construct or Operate Pedestrian Tunnel.** Nothing set forth in this Agreement shall obligate Grantees to construct or operate any Pedestrian Tunnel in the Easement Area. Grantees retain the right to determine in its sole discretion whether to construct, operate or to continue to operate the Pedestrian Tunnel. Grantees shall have the sole and exclusive control over the Pedestrian Tunnel and all operational policies relating to the Pedestrian Tunnel including policies relating to operation, maintenance and snow removal.

19. **Notice.** All notices, requests, demands or other communications hereunder shall be in writing and deemed to have been given only if hand delivered or sent by nationally recognized overnight courier service (e.g., Federal Express) or certified or registered mail, return receipt requested, through the United States Postal Service with sufficient postage prepaid, or by email (provided that a copy is also sent by any of the other methods set forth in this Section 19) to the parties as follows:

To Grantee: BLX Lot 3 LLC  
BLX Lot 23 LLC  
Attn: President  
805 Third Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
Email: Notices@extell.com

With a copy to: BLX Lot 3 LLC  
BLX Lot 23 LLC  
Attn: General Counsel  
805 Third Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
Email: Notices@extell.com

and

BLX Lot 3 LLC  
BLX Lot 23 LLC  
Attn: Senior Vice President  
9143 Mayflower Mine Road  
Park City, Utah 84060  
Email: Kkrieg@extell.com

and

Parr Brown Gee & Loveless  
Attention: Roger D. Henriksen  
Robert A. McConnell  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Email: rhenriksen@parrbrown.com  
rmcconnell@parrbrown.com

To Declarant: BLX Mayflower LLC  
Attn: President  
805 Third Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
Email: Notices@extell.com

With a copy to: BLX Mayflower LLC  
Attn: General Counsel  
805 Third Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
Email: Notices@extell.com

and

BLX Mayflower LLC  
Attn: Senior Vice President  
9143 Mayflower Mine Road  
Park City, Utah 84060  
Email: Kkrieg@extell.com

and

Parr Brown Gee & Loveless  
Attention: Roger D. Henriksen  
Robert A. McConnell  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Email: rhenriksen@parrbrown.com  
rmcconnell@parrbrown.com

or such other address as either party shall designate by notice pursuant to this paragraph. Notices given by hand delivery shall be effective when so delivered, notices given by overnight courier service shall be effective upon the date of delivery, whereby delivery is deemed to have occurred on the business day following deposit with the courier, notices given by certified or registered mail shall be effective on the third business day following the date of mailing, and notices given

by email transmission shall be deemed given upon receipt, except when received on day other than a business day, in which case same shall be effective on the next business day. Legal counsel for a party may provide notice on behalf of such party.

20. **Miscellaneous Provisions.**

- a. **No Partnership.** The parties do not by this Agreement, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise.
- b. **No Deemed Waivers.** Failure of a party to insist upon the strict performance of any provision or to exercise any election under this Agreement shall not be construed as a waiver for the future of any such provision or election.
- c. **Waivers in Writing.** No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing signed by each other party.
- d. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- e. **Successors and Assigns.** All provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, heirs, successors and assigns.
- f. **Authorization.** Each person executing this Agreement individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the party for which it is signing (whether it be a corporation, general or limited partnership or otherwise), and that this Agreement is binding upon said party in accordance with its terms.
- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which, when taken together, constitute one and the same instrument.
- h. **No Third-Party Beneficiaries.** The rights in favor of Declarant and Grantees set forth in this Agreement shall be for the exclusive benefit of Declarant and Grantees, respectively, and their respective permitted successors, assigns, tenants and license holders, it being the express intention of the Parties that in no event shall such rights be conferred upon or for the benefit of any third party.

- i. **Force Majeure.** No party hereto will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts or materials.
- j. **Jury Trial Waiver.** Each of Declarant and Grantees hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right now or hereafter exists with regard to the loan documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by Declarant and Grantees, and is intended to encompass, individually, each instance and each issue as to which the right to a trial by jury may otherwise accrue.
- k. **Further Action.** Declarant will take such further actions and execute and deliver such further documents as the Grantees may reasonably require for the purpose of assuring and confirming unto the Grantees the rights created under this Agreement, or for carrying out the intention or facilitating the performance of the terms of this Agreement.

[Signatures appear on the next two pages.]





## Consent and Acknowledgment of the MIDA PID

IN WITNESS WHEREOF, the MIDA Mountain Village Public Infrastructure District, a political subdivision of the State of Utah (the "MIDA PID"), has executed this Agreement for and Grant of Subterranean Easements as of the day and year first set forth above for the express purpose of acknowledging and confirming the MIDA PID's acceptance of the Easement and other rights and obligations set forth herein, which easements, rights and obligations shall be applicable to and burden the public rights-of-way and roadway improvements constructed within such rights-of-way upon the MIDA PID's acceptance of the same.

MIDA MOUNTAIN VILLAGE PUBLIC  
INFRASTRUCTURE DISTRICT, a political  
subdivision of the State of Utah

By:   
Heather Kruse, Executive Director

APPROVED AS TO FORM:


By:   
Richard Catten, for Catten Law, P.C.,  
Legal Counsel for the MIDA Mountain Village  
Public Infrastructure District

EXHIBIT A  
TO  
AGREEMENT FOR AND GRANT OF SUBTERRANEAN EASEMENT

(Legal Description of the Ski Beach Way)

Ski Beach Way, MAYFLOWER VILLAGE ROADS PHASE I, according to the official plat thereof on file and of record in the office of the Wasatch County Recorder.



EXHIBIT B  
TO  
AGREEMENT FOR AND GRANT OF SUBTERRANEAN EASEMENT

(Legal Description of Grantee Parcels)

Lot 23A, MIDA MASTER DEVELOPMENT PLAT AMENDED 2023, Recorded April 18, 2023 as Entry No. 531618 on file and of record in Wasatch County Recorder's Office.

Tax Serial No. 0IX-L23A-A-025-024

Tax Parcel No. 00-0021-8444

Lot 3A, MIDA MASTER DEVELOPMENT PLAT AMENDED 2022 recorded July 27, 2022 as Entry No. 522596 on file and of record in the Wasatch County Recorder's Office.

Tax Serial Number: 0IX-L03A-A-025-024.

Tax Parcel No. 00-0021-7765

EXHIBIT C

TO

AGREEMENT FOR AND GRANT OF SUBTERRANEAN EASEMENT

(Legal Description of Subterranean Easement Area)

**LEGAL DESCRIPTION  
PEDESTRIAN TUNNEL EASEMENT  
APRIL 6, 2023**

An easement located in the northeast Quarter of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, Wasatch County, State of Utah, more particularly described as follows:

BEGINNING at a point being North 26°11'47" West 3680.94 feet and South 63°48'13" West 385.13 from the southeast corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing for the herein described easement being South 26°11'47" East 5917.16 feet between the North Quarter Corner of Section 25 and the Southeast Corner of Section 25, the North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647, 3058 & 3759 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters), and running thence South 61°07'14" West 23.00 feet; thence North 28°52'46" West 79.00 feet; thence North 61°07'14" East 23.00 feet; thence South 28°52'46" East 79.00 feet to the POINT OF BEGINNING.

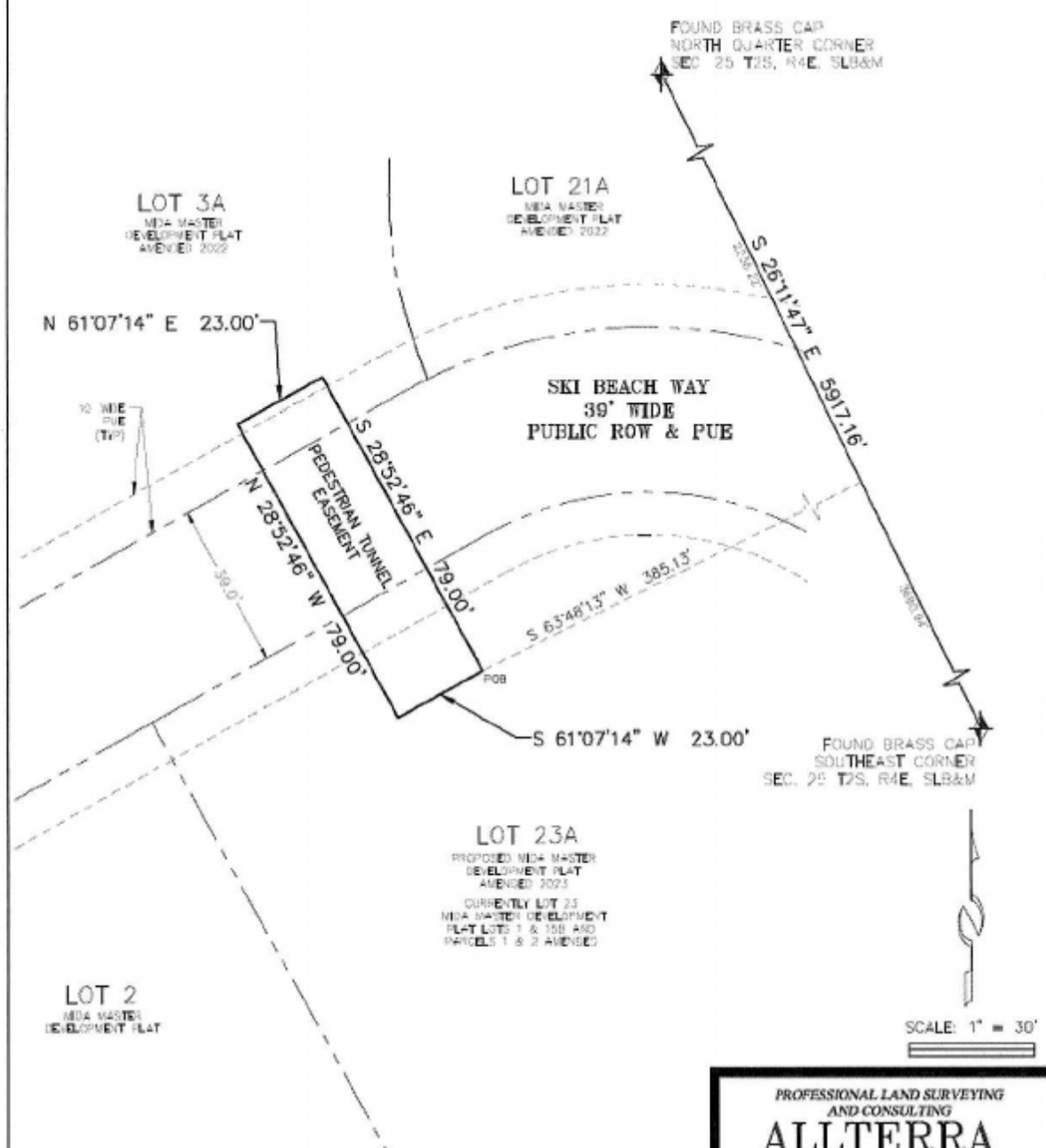
EASEMENT CONTAINS 0.04 ACRES or 1,817 SQ. FT. MORE OR LESS

EXHIBIT D  
TO  
AGREEMENT FOR AND GRANT OF SUBTERRANEAN EASEMENT

(General Depiction of Easement Area)

(See attached.)

# PEDESTRIAN TUNNEL EASEMENT EXHIBIT



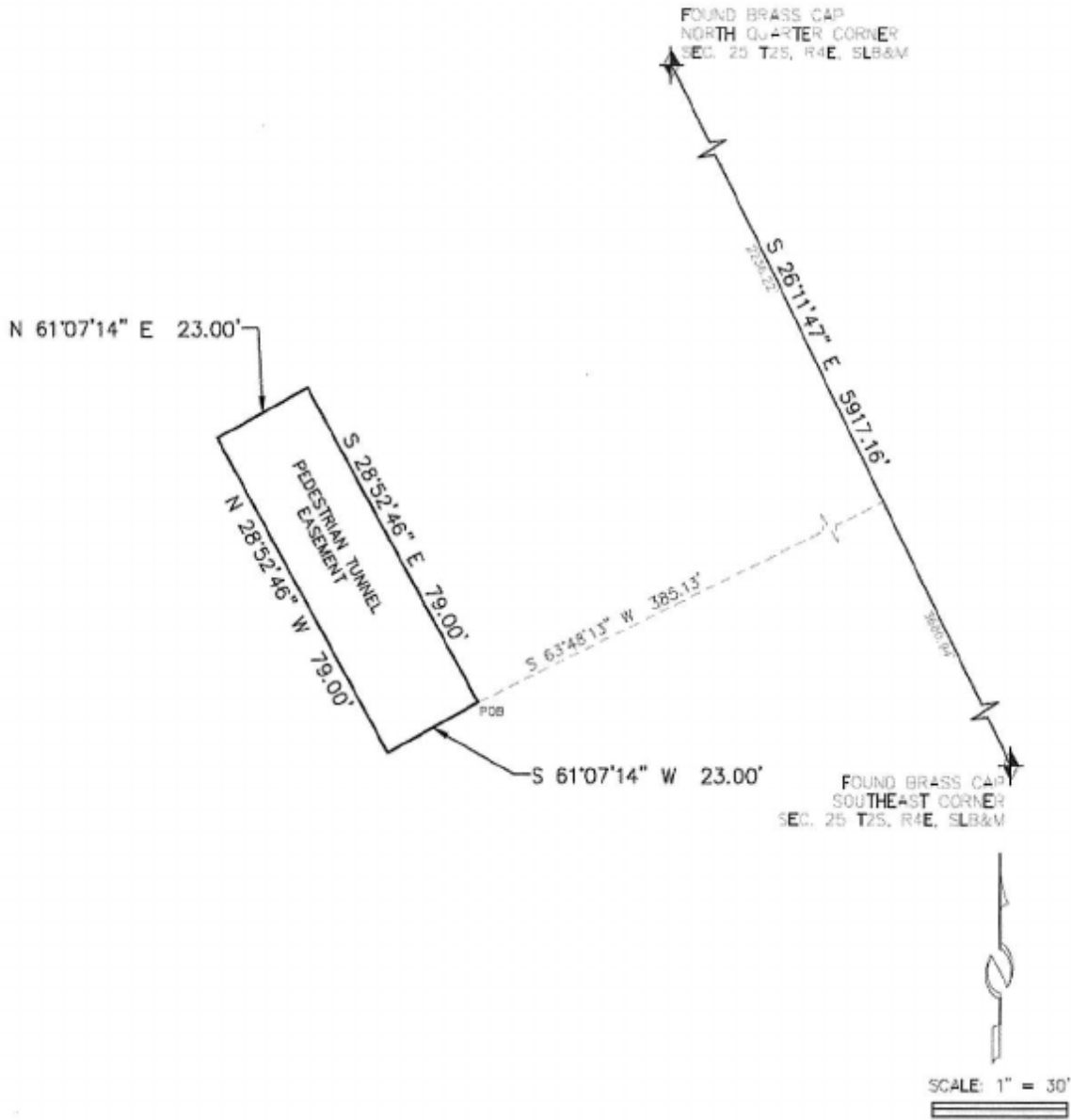
PROFESSIONAL LAND SURVEYING  
AND CONSULTING

## ALLTERRA UTAH, LLC

435-649-4200  
403 KENNY BERRIDGE ROAD, FRANCOIS, UTAH 84003

Date: 4.0.23  
Project No.: 22074  
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# PEDESTRIAN TUNNEL EASEMENT EXHIBIT



Date: 4.6.23  
Project No: 22074  
E. Waters/D. H. Adams/Allterra/All - JORS/22574 - E. H. N. W. W. W. W.  
Easement/Pedestrian Tunnel Easement April 2023/22074 - Pedestrian Tunnel  
Easement 8/20

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