

WHEN RECORDED, RETURN TO:
Deer Valley Resort Company, LLC
PO Box 889
Park City, Utah 84060
Attention: President

Ent 538360 Bk 1457 Pg 1366-1391
Date: 02-NOV-2023 1:58:08PM
Fee: \$102.00 Check Filed By: KM
MARCY M MURRAY, Recorder
WASATCH COUNTY CORPORATION
For: EX UTAH DEVELOPMENT LLC

Affects Parcel No(s): See Exhibit A

DECLARATION OF RESTRICTIVE COVENANT REGARDING EXCLUSIVITY

THIS DECLARATION OF RESTRICTIVE COVENANT REGARDING EXCLUSIVITY (this "**Declaration**") is executed by RS21 MAYFLOWER LLC, a Delaware limited liability company (the "**Declarant**") and Resort Landlord (defined below), this ___ day of October, 2023, for the benefit of Deer Valley Resort Company, LLC, a Utah limited liability company ("**Deer Valley**"), to be effective as of the date of recording in the Wasatch County, Utah Recorder's Office (the "**Effective Date**").

RECITALS

WHEREAS, Declarant is the owner of certain real property located in Wasatch County, Utah, more particularly described on Exhibit A (the "**Restricted Property**"), which Restricted Property is generally identified on the site map attached hereto as Exhibit B) and incorporated herein;

WHEREAS, Deer Valley manages and operates the ski terrain located immediately adjacent to the Restricted Property more specifically described on Exhibit B-1 attached hereto (hereinafter the "**Resort**"), pursuant to that certain Ground Lease (the "**Ski 2 Lands Ground Lease**") executed on August 24, 2023 by and between Deer Valley as "Tenant" and BLX Lease 2 LLC, a Delaware limited liability company as "Landlord" ("**Resort Landlord**");

WHEREAS, Deer Valley has an interest in applying standards to the areas within the Restricted Property to maintain a top of class resort experience for Deer Valley guests;

WHEREAS, the Deer Valley name and brand have amassed significant value and goodwill and are valuable intellectual property assets, the use of which may be allowed through separate agreements only, and not this Declaration;

WHEREAS, this Declaration and the Restrictive Covenant (defined below) apply to the Restricted Property, and its owner(s), which may change from time to time ("**Owner**" as further defined below); and

WHEREAS, Declarant intends to execute and record this Declaration for the purpose of limiting certain commercial and other mountain uses on the Restricted Property and enforcing

certain exclusivity obligations with respect to each Owner and the Restricted Property, as more particularly set forth below.

COVENANTS

NOW THEREFORE, for good and valuable consideration, Declarant hereby declares that the Restricted Property shall be held, occupied, and used and shall be transferred, conveyed, leased, or otherwise disposed of subject to the following restrictive covenants, which covenants and restrictions are for the benefit of Deer Valley as holder, and which covenants and restrictions shall run with the land and be binding on all heirs, successors, assigns, lessees, other occupiers and users (all of which shall be included in the defined terms "Declarant" and/or "Owner"), as follows:

1. Recitals. The Recitals set forth above are true and correct, are hereby incorporated into this Declaration as a part hereof, and may be used in the interpretation hereof.

2. Restrictive Covenant. Declarant hereby declares that the Restricted Property shall be subject to the applicable restrictive covenants (collectively, the "**Restrictive Covenant**" and "**Exclusivity Restrictions**") which are set forth on the attached Exhibit C, with such exhibit being incorporated herein. Notwithstanding anything to the contrary set forth in this Declaration, upon the sale of any residential condominium, cooperative apartment, townhome, single family home, estate lot or any other type of individual residential and/or dwelling unit(s) within a Restricted Property to any person or party which is not an Affiliate of Declarant or the transferring Owner (each, a "**Residential Unit**") and where either (x) such Residential Unit is subject to a recorded restrictive covenant (or condominium declaration) mandating that the Residential Unit only be constructed and used as a Residential Unit, with Declarant hereby agreeing not to consent to any variance to, or waiver of, such restrictions, or (y) (a) a temporary or permanent certificate of occupancy has issued for the Residential Unit (each a "**Transferred Residential Unit**", or (b) if the Residential Unit is sold prior to issuance of a temporary or permanent certificate of occupancy, but later obtains a temporary or permanent certificate of occupancy for residential use (each a "**Later Completed Residential Unit**"), such Transferred Residential Unit or, as applicable, Later Completed Residential Unit shall automatically, and without the need for any action, consent or approval of, and/or notice to, Deer Valley or any other person or party, be released from this Declaration and from the Restrictive Covenant as to the Residential Unit only, such that such Transferred Residential Unit or Later Completed Residential Unit shall no longer be subject to this Declaration and/or the Restrictive Covenant or be required to comply with the Exclusivity Restrictions and, upon the request of Declarant or the applicable Owner, Deer Valley shall confirm the release of such Transferred Residential Unit or Later Completed Residential Unit in a document which may thereafter be recorded against the Transferred Residential Unit or Later Completed Residential Unit. For the avoidance of any doubt, the term "Transferred Residential Unit" and "Later Completed Residential Unit" shall not apply to: (i) any property that is designated on a plat or site plan for nonresidential uses or any area, unit, lots or space that has otherwise received a certificate of occupancy for, primarily, a nonresidential use within a Restricted Property or (ii) any common areas or open space areas within a Restricted Property.

3. Holder; Declarant Exclusives. Deer Valley is the exclusive holder of all the rights and benefits associated with this Declaration and the Restrictive Covenant, other than those set forth in the following sentence. By its signature below, Deer Valley and Declarant acknowledge and agree that only Resort Landlord and/or any fee owner of any of the Restricted Property shall have the sole and exclusive right, which rights shall be appurtenant to their respective fee title interest in the Resort and/or the Restricted Property, to offer any of the activities, offerings and/or amenities which are identified on Exhibit D or Exhibit F attached hereto as "Resort Landlord" exclusives (collectively, the "**Landlord Exclusive Activities**") on the Restricted Property and Deer Valley shall not offer any of the Landlord Exclusive Activities on the Restricted Property, except as, and subject to, the terms provided herein. The right to offer Landlord Exclusive Activities shall be appurtenant to Resort Landlord's fee title ownership to the Resort and to any other party(ies) fee ownership of Restricted Property and shall run with such fee title ownership, but shall not be assignable to, or enforceable, by any person or party other than Resort Landlord or any successor-in-title fee owner of the Resort.

4. Binding Obligation. This Declaration and the Restrictive Covenant touch, concern, and run with the Restricted Property (other than any Transferred Residential Unit or Later Completed Residential Unit), benefit Deer Valley (including, for the avoidance of doubt, each of Deer Valley's successors and assigns) as the holder, and are binding upon all current and future Owners of the Restricted Property (other than any owner of a Transferred Residential Unit or Later Completed Residential Unit). The Restrictive Covenant is in addition to, and not limited by, the restrictive covenants, conditions, restrictions and easements set forth in that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Mountainside Village and Resort recorded August 21, 2020 as Entry No. 483149 in the Wasatch County Recorder's Office, as the same has been amended or supplemented from time to time, including by any sub-associations created therein.

5. Remedies. Declarant and Resort Landlord acknowledge that Deer Valley has expended significant effort and resources in establishing and building the Deer Valley brand and resort elements and that the failure of Owner to comply with this Declaration and the Restrictive Covenant would have a material impact on the Deer Valley brand and Deer Valley's goodwill in such Deer Valley brand. As a result, any failure by any Owner to comply with this Declaration and the Restrictive Covenant shall result in Deer Valley having the immediate right to seek damages from the applicable Owner for any harm resulting to the Deer Valley brand or otherwise. Deer Valley shall be entitled to exercise any available remedies at law or in equity against the applicable Owner arising out of a breach or failure to comply with this Declaration and/or the Restrictive Covenant, which remedies shall include, but not be limited to, injunctive relief, specific performance, a declaratory action, damages, or other remedies, including equitable relief, without the requirement to post a bond or other surety, together with attorney fees and costs incurred with respect to exercising such remedies.

6. Amendments to the Declaration. Owner and Deer Valley may amend this Declaration from time to time. Any amendment to this Declaration shall be in a writing executed by both the applicable Owner and Deer Valley and shall be recorded in the Wasatch County, Utah Recorder's Office.

7. Priority.

(a) This Declaration is and shall remain senior in priority to any mortgage, deed of trust, lien, security agreement or other similar agreement or instrument ("**Security Instrument**") that now exists or may in the future exist upon all or any portion of the Restricted Property. Owner has not, and will not, enter into any agreement to subordinate this Declaration to any Security Instrument on all or any portion of the Restricted Property. This Declaration shall continue to bind the Restricted Property unless modified or terminated by holder in writing, or terminated in accordance with the terms of Section 2 as to a Transferred Residential Unit or Later Completed Residential Unit, and shall not be terminated or disturbed by reason of any foreclosure upon any Security Instrument or any deed, assignment or similar agreement in lieu of a foreclosure, and this Declaration shall continue in full force and effect notwithstanding such foreclosure, deed, assignment or similar agreement in lieu of foreclosure.

(b) Notwithstanding anything to the contrary set forth in this Declaration, in the event: (i) as of the date hereof or as of the date of recordation of this Declaration, there are matters of record that prohibit any Declarant from granting the Restrictive Covenant as described herein, or that would impact the enforceability of this Restrictive Covenant for the purposes intended as set forth in this Declaration, as reasonably determined by Deer Valley, or there is any existing Security Instrument of record (an "**Unidentified Title Matter**"); or (ii) there is any Security Interest of record or any lien or encumbrance, including, without limitation, a Security Instrument is recorded against any Restricted Property prior to recordation of this Declaration (the "**Intervening Liens**"), then any such Unidentified Title Matter and Intervening Liens shall be automatically subordinate to this Declaration and Declarant shall cause the beneficiaries under any such Unidentified Title Matter or Intervening Liens (together, "**Intervening Lien Holders**") within thirty (30) days of the written request of either Deer Valley to execute and deliver to Deer Valley a subordination agreement in substantially the form attached hereto as Exhibit E, with such non-substantive modifications thereto as may be reasonably requested by Intervening Lien Holders and are reasonably acceptable to Deer Valley, in recordable form confirming the subordination of such Intervening Liens. Notwithstanding the foregoing, for Intervening Liens existing as of the date of recordation of this Declaration, Resort Landlord and/or Declarant for the applicable Restricted Property(ies) shall, within sixty (60) days of recordation of the Declaration, either (x) cause such Intervening Lien Holder to execute a subordination agreement substantially in the form attached hereto as Exhibit E, with such non-substantive modifications thereto as may be reasonably requested by Intervening Lien Holders (except to the extent signed and delivered to Deer Valley on or prior to the date hereof), or (y) cause any debt identified in such Intervening Lien to be either discharged in full from the applicable Restricted Property or be refinanced with debt that is subordinated to this Declaration in accordance with the foregoing provisions.

8. Governing Law. This Declaration and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Utah.

9. Severability. To the extent any term or provision hereof is determined by a court of competent jurisdiction to be unenforceable, invalid, or illegal, such term or provision shall be deemed severed herefrom and shall not render this Declaration or the remainder of its terms


unenforceable, invalid, or illegal.

10. Entire Agreement. This Declaration, including the exhibits attached hereto, contains the entire understanding between Declarant and Deer Valley relating to the matters contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect. For the avoidance of doubt, none of the Declarant, any Owner and/or Deer Valley may terminate, modify, surrender, amend, cancel, waive, or add to this Declaration except by an instrument in writing signed by both Deer Valley and the applicable Owner. Each Owner by accepting an instrument of conveyance to a Restricted Property agrees to be subject to the provisions of this Declaration.

[Signature and Acknowledgment on Following Page]

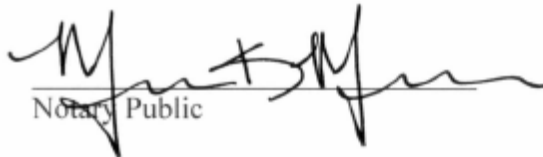
Signing solely to acknowledge and confirm its agreement to fulfill its obligations to Declarant and comply with the restrictions imposed on it pursuant to Section 3 of this Declaration

DEER VALLEY RESORT COMPANY, LLC
a Utah limited liability company

By: 
Name: Todd Bennett
Title: President and Chief Operating Officer

STATE OF Utah)
) ss.
COUNTY OF Summit)

The foregoing Declaration of Restrictive Covenant was acknowledged before me, Marissa Marleau, Notary Public, this 23rd day of October 2023, by Todd Bennett as the President and Chief Operating Officer of Deer Valley Resort Company, LLC, a Utah limited liability company, on behalf of such company.


Notary Public



**EXHIBIT A
TO
DECLARATION OF RESTRICTIVE COVENANT
REGARDING EXCLUSIVITY**

LEGAL DESCRIPTION OF THE RESTRICTED PROPERTY

That certain real property located in Wasatch County and Summit County, State of Utah, more particularly described as follows:

Lot 18, MIDA Master Development Plat, recorded June 30, 2020, as Entry No. 480155 of the official records in the office of the Wasatch County Recorder.

APN: 00-0021-4988

Exhibit A

**EXHIBIT B
TO
DECLARATION OF RESTRICTIVE COVENANT
REGARDING EXCLUSIVITY**

DEPICTION OF THE AREA OF RESTRICTED PROPERTIES

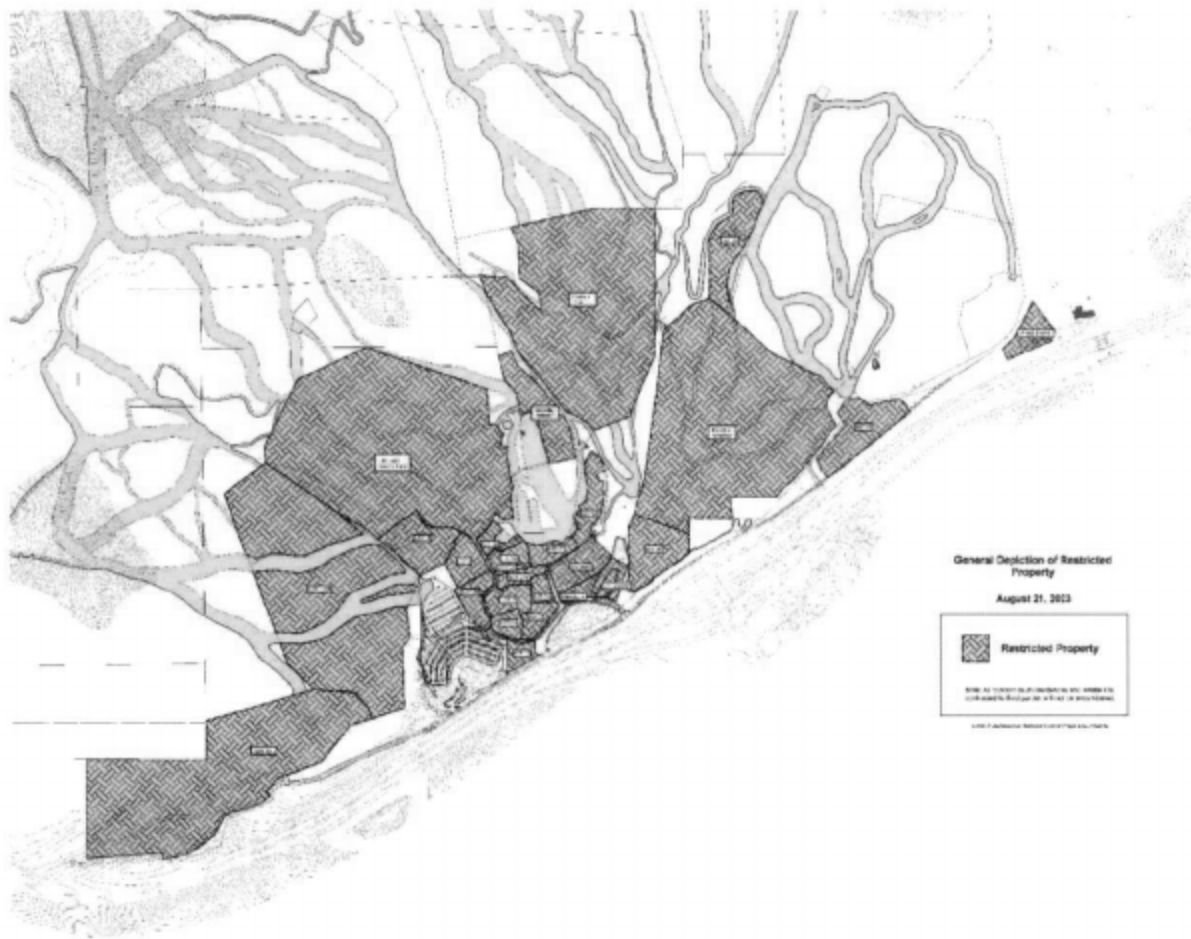


Exhibit B

**EXHIBIT B-1
TO
DECLARATION OF RESTRICTIVE COVENANT
REGARDING EXCLUSIVITY**

DESCRIPTION OF THE RESORT

Parcels B, C, D, E, F, G, H, I, M, O, P, U, Z, AA, BB, CC, DD, EE, FF, GG, HH, 1E1, 1E2, 6A1 and 6B1, **MIDA Mountain Plat Amending the Park Peak Assessment Plat** on file and of record in the Wasatch County Recorder's Office as such parcels are depicted by metes & bounds on said MIDA Mountain Plat recorded June 9, 2023 as Entry No. 533309 in Book 1444 at Page 142-149 of the official records.

Parcels 1A, 1B, 1C, 1D, and 1F, **MIDA Master Development Plat Amended 2022**, according to the official plat thereof, recorded July 27, 2022 as Entry No. 522596 in Book 1417 at Page 852 of the official records in the office of the Wasatch County Recorder.

Parcels A, B & C, **McHenry Estates Subdivision**, according to the official plat thereof on file and of record in the office of the Wasatch County Recorder, recorded April 18, 2023 as Entry No. 531622 at Book 1439 Page 1070-1082.

Parcels E, H & J, **Overlook Estates Subdivision**, according to the official plat thereof on file and of record in the office of the Wasatch County Recorder, recorded April 20, 2023 as Entry No. 531683 at Book 1439 Page 1377-1390.

Lot 29, 30 & 32, **MIDA Master Development Plat Amended 2023**, according to the official plat thereof on file and of record in the office of the Wasatch County Recorder, recorded April 18, 2023 as Entry No. 531618 at Book 1439 at Page 1055.

The **Rattler No. 2 Patented Lode Mining Claim, Lot No. 154**, as the same is more particularly described in that certain United States Mineral Entry Patent recorded April 14, 1922 as Entry No. 38392 in Book 9 of Mining Deeds at Page 420 of the official records in the office of the Wasatch County Recorder.

Wasatch County Parcel IDs:

00-0021-5543, 00-0021-7757, 00-0021-7758, 00-0021-7759, 00-0021-7760, 00-0021-7762, 00-0021-8446, 00-0021-8447, 00-0021-8449, 00-0021-8481, 00-0021-8482, 00-0021-8483, 00-0021-8544, 00-0021-8547, 00-0021-8549, 00-0021-8632, 00-0012-5380, 00-0021-8636, 00-0021-8638, 00-0021-8640, 00-0021-8642, 00-0021-8644, 00-0021-8646, 00-0021-8652, 00-0021-8655, 00-0021-8656, 00-0021-8658, 00-0021-8662, 00-0021-8631, 00-0021-8633, 00-0021-8635, 00-0021-8637, 00-0021-8639, 00-0021-8641, 00-0021-8643, 00-0021-8645, 00-0021-8626, 00-0021-8627, 00-0021-8628, 00-0021-8629

Exhibit B-1

Parcels Q, R & T as created pursuant to that certain **Boundary Line Agreement and Consolidation with Quit Claim**, recorded June 21, 2023 as Entry No. 01206048, in Book 2785 Page 0088 on file and of record in the Summit County Recorder's Office, with reference to that certain Record of Survey titled **Summit County Mountain Parcels**, recorded in the office of the Summit County Surveyor on June 20, 2023 and bearing Survey No. S00112526.

Summit County Parcel IDs:

PCA-85-D, PCA-S-85, PCA-S-81-A, PCA-S-98-R

Exhibit B-1

**EXHIBIT C
TO
DECLARATION OF RESTRICTIVE COVENANT
REGARDING EXCLUSIVITY**

EXCLUSIVITY RESTRICTIONS

A. Prohibited Items.

Unless otherwise allowed by Deer Valley, as holder, in a writing delivered to the applicable Owner of the applicable portion(s) of the Restricted Property, and expressly waiving a prohibited item below, the following activities and uses are prohibited in accordance with the additional terms below, regardless of changes in regulations imposed by owner associations or governmental entities:

1. **Snowboarding.** The use on, and/or rental/sale from, any part of the Restricted Property of any snowboards and ancillary snowboarding equipment is strictly prohibited; provided, however, and except to the extent otherwise expressly prohibited pursuant to this Declaration, nothing in this Section 1 shall restrict or prohibit the sale, rental or use of any helmets, jackets, coats, gloves and other soft goods regardless of whether or not they are marketed towards snowboarders and/or generally intended for use in connection with snowboarding activities.

2. **Shuttle Routes within Restricted Property.** No shuttle or other private transportation services may be run by, or operated from, any Restricted Property to any property owned or controlled by Deer Valley, including, but not limited to, the Day Skier Parking Area, except as allowed by Deer Valley, as holder, in the exercise of Deer Valley's discretion, in a writing Deer Valley delivers to the applicable Owner of the applicable portion(s) of the Restricted Property approving an exception from this restriction. The foregoing notwithstanding, and without violating the foregoing restriction on shuttle and other private transportation services, users from a Restricted Property may use shuttles and other private transportation services originating from and/or ending at any of the following paired locations: (i) a Restricted Property and the Transit Hub; (ii) a Restricted Property and the public drop-off/pick-up on Lot 6A on Ski Beach Way, as may be further limited or restricted by the owner of such Lot 6A; or (iii) a Restricted Property and private drop-off(s)/pick-up(s) at Lot 1A, Lot 24, or Lot 25 as may be further limited or restricted by the owner of such Lot 1A, Lot 24 or Lot 25. Nothing in this shuttle or private transportation section shall operate to interfere with any MIDA or MIDA/Wasatch County interlocal agreements concerning public transit and public access requirements.

B. Exclusive Use Items.

Exhibit C

The following activities and uses are exclusive to Deer Valley and are expressly prohibited from being undertaken or performed on each Restricted Property, in accordance with the additional terms below:

1. **Alpine Sport Mountain Activities**. No person or entity other than Deer Valley may offer, or make available, from any part of the Restricted Property, Alpine Sport Mountain Activities (as such term is defined in subsection (F)(1) below). At all times, the overall quality and rates charged for similarly situated rental equipment and rental services must be substantially the same as the corresponding quality levels and rates being charged elsewhere at the Resort.
2. **Nordic Skiing**. Only Deer Valley may allow Nordic Skiing on a Restricted Property; provided, however, that nothing in this Section B-2 shall prohibit or restrict any ski-in, ski-out access, including via skiing, from any and all areas of the Restricted Property to and from the appropriate lifts and/or entry points of the Resort.
3. **Cafeteria Food and Beverage Services**. Except as allowed in subsections 3(a), 3(b) or 3(c) herein, no person or entity other than Deer Valley may offer Cafeteria Food and Beverage Services on a Restricted Property. Notwithstanding the foregoing, the following services are exempt from the foregoing Cafeteria Food and Beverage Services restriction:
 - a. *Subsidized Employee Food Service*. One or more cafeteria style food and beverage services provided by one or more hotels and/or residential communities located within the Restricted Property for the benefit of its employees at either no cost or a deeply discounted/subsidized cost;
 - b. *Grab-and-go*: One or more “grab-and-go” food and beverage operations within one or more hotels or residential communities, for the benefit of such hotel’s or residential communities’ overnight guests, owners, tenants or patrons rather than the public; and/or
 - c. *Premium Food Hall*. One or more multi-outlet “food halls” may be located within one or more areas within the Restricted Property so long as each such food hall has no fewer than three (3) separate premium food operators, franchisors or licensors, each of which must offer, primarily, premium food and beverage options to guests and/or the public in a format with available seating for patrons of the premium food operators, franchisors or licensors.
4. **Rental Equipment and Rental Services/Limited Hotel Exceptions**. Except as allowed and limited in Section C below, and then subject to the additional restrictions in subsection C(1) below, no person or entity other than Deer Valley may offer to lease or rent to the public, at or from the Restricted Property, any “hard good” ski equipment and/or related services, including the delivery of rental equipment (but excluding (i) any ski valet or other delivery services offered by one or more hotel managers and/or operators or residential

Exhibit C

communities for the benefit of their respective guests and/or owners/occupants (and without any separate store, shop or outlet promoting these services to the general public) and (ii) any deliveries arranged by individuals with a third-party service provider located outside any of the Restricted Property(ies) solely for their personal use and/or use by their family, all of which shall be permitted), used for Alpine Sport Mountain Activities, including by way of example, and not by way of limitation, skis, boots, poles, bindings, helmets and other similar snow sport-related equipment, mountain bikes, helmets and other similar mountain biking-related equipment, and any similar equipment intended to be used on the Resort or rented in connection with Alpine Sport Mountain Activities or other similar mountain activities. The foregoing exclusivity and rental restriction does not impair the ability of parties other than Deer Valley to (x) sell or rent, at or from the Restricted Property, "soft goods", including sport apparel and clothing or (y) sell, at or from the Restricted Property, hard goods (including ski equipment) used for Alpine Sport Mountain Activities. At all times, the quality levels and rates charged for similarly situated rental equipment and rental services must be substantially the same as the quality levels and corresponding rates being charged elsewhere at the Resort.

5. **Mountain and Luxury Clubs.** No Restricted Property may include a club or facility for a club (with club defined as a private, members-only social or other club providing its members and their guests and/or invitees the use of specified facilities and/or provision of services), except that the foregoing restriction shall not apply only to (i) the club identified as the "Central Park Tower Club" or the "Central Park Club", which is currently owned and/or operated by an affiliate of Declarant, or, in the event that, from time to time, no such club exists or is not utilizing any space on the Restricted Property, one alternative club that is associated with one or more residential condominium projects (which is owned by, and/or has been developed, or is being developed, by any affiliate of Declarant), so long as such alternative club has its primary location, multiple additional locations or headquarter club location outside of Utah (an "Extell Club"), or (ii) any one club located in the area identified as the "Marcella" lands on Exhibit B, and/or (iii) any hotel manager or hotel operator of a 5 Star Hotel Project using space within its hotel located on the Restricted Property as club space, and/or for club activities, for the benefit of members of clubs which are operated primarily for the benefit of patrons and guests of multiple hotels (e.g., a hotel guest loyalty program/club which is operated across the applicable hotel brand's system, as opposed to a club operated in connection solely with a single hotel on the Restricted Property) which are each operated under the same, or a related group of, hotel names, brands, flags, chains or similar hotel oriented affiliations and/or associations (e.g. The Aman Club) (each a "Branded Hotel Club") and provided that (x) memberships in Branded Hotel Clubs may not be specifically marketed (as opposed to national and/or regional marketing and/or solicitations) Summit County or Wasatch County, Utah residents or residential unit owners at the Resort, other than, as to each Branded Hotel Club, owners of residences branded and managed by the manager or operator of the hotel located on the Restricted Property in which a specific Branded Hotel Club is located) and (y) Memberships in the Extell Club may not be specifically marketed to (as opposed to national

Exhibit C

and/or regional marketing and/or solicitations), or sold to, Utah residents or residential unit owners at the Resort.

C. Right of First Offer Other Mountain Activities and Hotel Rentals.

Deer Valley, as holder, is hereby granted a "Right of First Offer" (an "OMA and Hotel Rentals ROFO") with respect to (i) providing or operating "Other Mountain Activities" (as defined below) on any Restricted Property ("OMA Services"), and (ii) rental, and rental related services, of equipment used in Alpine Sports Mountain Activities within a hotel, or residential community, on a Restricted Property ("Hotel Rentals"). If any Owner of a Restricted Property desires to provide OMA Services or Hotel Rentals, such Owner of such Restricted Property ("Offeror") must first provide Deer Valley the right to provide such OMA Services or Hotel Rentals by first offering in writing to Deer Valley a right of first offer to provide such OMA Services or Hotel Rentals (a "ROFO Offer"). Offeror's written notice must include all material terms for the service intended to be offered on the Restricted Property, including any terms the Offeror intends to offer to third party or other internal operator of such OMA Services or Hotel Rentals. Within thirty (30) days of Deer Valley receiving all information reasonably requested and necessary for Deer Valley to evaluate the opportunity to operate such OMA Services or Hotel Rentals within such Restricted Property, Deer Valley may notify the Offeror of its intention to provide the requested OMA Services or Hotel Rentals on the terms described in the notice. If Deer Valley declines to provide the OMA Services or Hotel Rentals (or if Deer Valley fails to commence offering such OMA Services and/or Hotel Rentals within six (6) months of accepting such ROFO Offer), such Offeror may offer the OMA Services or Hotel Rentals, but only on the terms described in the written notice delivered to Deer Valley in accordance with this section (or on terms more favorable to the Offeror) and expressly subject to the following specific additional and continuing restrictions:

1. **Additional Hotel Rentals Restrictions.** If Deer Valley elects not to provide Hotel Rentals at any hotel, such hotel may provide Hotel Rentals so long as there is no outside-of-the-hotel advertising or marketing for the Hotel Rentals and no more than 25% of revenues derived from Hotel Rentals are from persons other than guests of the hotel. Upon the written request of Deer Valley, any hotel operating Hotel Rentals in accordance with this Covenant must keep records sufficient to establish its percentage of non-hotel guest revenue and provide, but not more frequently than on a semi-annual basis, a certification of compliance with this clause (1), signed by the general manager of the hotel.
2. **Additional OMA Services Restrictions.** If Deer Valley elects not to provide OMA Services to any Restricted Property, such Restricted Property may provide such OMA Services so long as the OMA Services are not performed on the Resort or by Deer Valley.
3. **Recreation Center.** Notwithstanding anything to the contrary herein, Deer Valley's OMA and Hotel Rentals ROFO shall not apply to the Recreation Center (as defined below) but only with regard to OMA Services that are conducted exclusively within the Recreation Center. For the avoidance of any doubt, no Hotel Rentals may be operated within the

Exhibit C

Recreation Center except as expressly provided herein and subject to Deer Valleys OMA and Hotel Rental ROFO.

4. **Continuing ROFO.** Any right of first offer held by Deer Valley, as holder, in this Declaration shall continue and apply to any change of operator of any Property Management Services (as defined below), Hotel Rental, Resi Leasing Services (as defined below), Rental Management ROFO, or OMA Services within a Restricted Property. Prior to any such change, Deer Valley shall first be allowed to provide the Hotel Rental, Resi Leasing Services or OMA Services as set forth herein.

D. Right of First Offer Resi Rental Services.

1. **Resi Leasing Services.** Deer Valley, as holder, is hereby granted a "Right of First Offer" (a "Resi Leasing Services ROFO") with respect to any residential real estate rental services ("Resi Leasing Services"), but not any sales/listing services, which may hereafter be offered by, or to, any provider of residential real estate rental services other than (i) Declarant, any one or more affiliates of Declarant and/or any joint venture (a "BLX/Marcella JV") between Declarant (and/or one or more of its affiliates) and Marcella (or one of its affiliates) with respect to any or all of the Restricted Property, (ii) Marcella, any one or more affiliates of Marcella and/or any BLX/Marcella JV with respect to the portions of the Restricted Property identified as the Marcella lands on Exhibit B and/or (iii) any hotel brand, manager or operator (each, a "Hotel Rental Agent") with respect to rental, marketing and/or rental management services with respect to residential units branded and/or managed or operated by such hotel brand or manager on or within any one or more Restricted Properties (collectively, the "Contemplated Rental Services Providers"). Before Declarant or any Owner may use a provider of Resi Leasing Services other than any one or more of the Contemplated Rental Services Providers with respect to any Restricted Property, the Owner of such Restricted Property (or any related association formed for the purpose of operation and management of any Restricted Property) (as applicable, the "Leasing Services Offeror") must first provide to Deer Valley, in writing, the right to provide such Resi Leasing Services (a "Leasing Services ROFO Offer") on the terms set forth in the Leasing Services ROFO Offer, which terms shall include all material terms which the Leasing Services Offeror intends to offer to any third party provider of such Resi Leasing Services. Within thirty (30) days of Deer Valley receiving all information reasonably requested and necessary for Deer Valley to evaluate the opportunity to provide such Resi Leasing Services within such Restricted Property, Deer Valley may notify the Leasing Services Offeror of its intention to provide the requested Resi Leasing Services on the terms described in the Leasing/Sales ROFO Offer but only if Deer Valley, or an affiliate, holds all applicable licenses required to provide such Resi Leasing Services. If Deer Valley declines to provide the Resi Leasing Services (or if Deer Valley (or its affiliate) does not have the required license and/or fails to commence offering such Resi Leasing Services within sixty (60) days of accepting such Leasing Services ROFO Offer), such Leasing Services Offeror may engage a third-party Resi Leasing Services provider, but only on substantially the same terms described in the Leasing Services ROFO Offer

Exhibit C

delivered to Deer Valley in accordance with this section (or terms which are more favorable to the Leasing Services Offeror) and expressly subject to subsection C(3) above regarding the continuation of the Resi Leasing Services ROFO. For the avoidance of doubt, during the aforesaid election period and, following Deer Valley's timely exercise of its Resi Leasing Services ROFO, until such time as Deer Valley actually commences offering Resi Leasing Services, any Contemplated Rental Services Provider may continue to provide Resi Leasing Services for the applicable residential projects.

2. **Leasing Services Business.** Deer Valley, as holder, is hereby granted a "Right of First Offer" (a "Rental Management ROFO") with respect to any proposed sale by Declarant and/or any affiliate of Declarant (each a "BLX Rental Manager" and, collectively, the "BLX Rental Managers") to any third person or party other than an affiliate of such BLX Rental Manager(s) of all or any portion of the BLX Rental Managers' business operations related to the Restricted Property(ies) (as to each BLX Rental Manager, respectively, its "Rental Services Business") to the extent involving rental management, marketing, listing or leasing services ("Rental Services") to the extent such Rental Services are provided to the Restricted Property(ies). Before any such BLX Rental Manager (each, as applicable, a "RSB Offeror") may sell its Rental Services Business to any person other than Declarant or an affiliate of Declarant, such RSB Offeror must first provide Deer Valley the right to purchase such Rental Services Business by first offering in writing to Deer Valley a right of first offer to purchase such Rental Services Business (a "RSB ROFO Offer"). RSB Offeror's written notice must include all material terms for the Rental Services Business intended to be offered to one or more third parties with respect to the Restricted Property, including the purchase price, the closing date, any contingencies, the amount of the deposits and a summary of the business terms set forth in all agreements relating to Rental Services being provided to the applicable owners associations, and/or owners. Within thirty (30) days of Deer Valley receiving all information reasonably requested, in writing, and necessary for Deer Valley to evaluate the opportunity to purchase such Rental Services Business, Deer Valley may notify the RSB Offeror of its intention to purchase and acquire the applicable Rental Services Business on the terms described in the RSB ROFO Offer, but only if Deer Valley, or an affiliate, holds all applicable licenses required to provide such Rental Services. If Deer Valley declines to timely exercise its right to purchase the applicable Rental Services Business (or if Deer Valley exercises such right but thereafter fails to purchase such Rental Services Business within the time period specified in the RSB ROFO Offer, then the RSB Offeror may sell the applicable Rental Services Business to a third-party Rental Services provider, so long as the applicable purchase price is at least ninety-five (95%) of the purchase price set forth in the RSG ROFO Offer and otherwise on terms not materially less favorable to such RSB Offeror than the terms described in the RSB ROFO Offer delivered to Deer Valley in accordance with this section (or on terms more favorable to the Management Offeror). The Rental Management ROFO held by Deer Valley, as holder, in this section shall not be applicable to any successor owner of any Rental Services Business which is not an affiliate of BLX Rental manager. For the avoidance of doubt, at all times when any BLX Rental Manager is providing Rental Services to any one or more property or owners' associations, and/or the applicable unit

Exhibit C

owners, within the Restricted Property, Deer Valley shall not offer to provide, or actually provide, any Rental Services to such property or owners' associations, and/or the applicable unit owners.

E. **Declarant Exclusivity.** Deer Valley may not offer or provide, anywhere on the Restricted Property and/or any of the lands leased to Deer Valley pursuant to that certain Ground Lease by and between Resort Landlord, as Landlord, and Deer Valley, as Tenant, dated as of the date hereof, any of the activities, offerings and/or amenities which are identified as Resort Landlord Exclusives on the Exclusivity Matrix attached hereto as Exhibit D.

F. **Scope.** For the avoidance of any doubt, the scope of the prohibitions and covenants provided in this Declaration shall not apply to any commercial activities other than those explicitly subjected to such prohibitions and covenant herein.

G. **General Definitions.**

Any capitalized term not defined elsewhere in this Declaration shall have the following meanings:

1. "Alpine Sport Mountain Activities" means (x) skier services (including, by way of example, ski school, ski lessons, any lessons or guide services, day lockers, public ski storage, ski instruction, tours, and similar types of services offered in connection with alpine skiing and other alpine winter sports and/or activities being conducted at the Resort and, (y) similar services offered in connection with other mountain activities being conducted at the Resort, including mountain biking, hiking and other mountain based summer activities which, from time to time, are made available at the Resort, Competitor Resorts or other resorts offering alpine skiing and mountain based summer activities.
2. "Cafeteria Food and Beverage Services" means the operation of multi-outlet cafeteria-style food and beverage services, including in a "food hall" or similar format seen at ski resorts such as the Resort.
3. "Competitor Resort" means any mountain resort being operated by any person that, together with its affiliates, at the time in question, (i) is currently operating and/or managing at least one (1) mountain resort that has, on average, 250,000 or more visits per year, including, but not limited to, skier and snowboard visits, to engage in on-mountain activities substantially similar to the on-mountain activities engaged in at the Resort (including, without limitation, skiing and snowboarding even though snowboarding may not be permitted at the Resort) and (ii) has at least five (5) years' experience operating and/or managing at least one mountain resort of the size described in clause (i) of this definition, including, without limitation, Vail Resorts and its successors and assigns.
4. "Day Skier Parking Area" shall mean the parking area located on Lots 30 and 32 of MIDA Master Development Plat Amended 2023, recorded on April 18, 2023 as Entry No. 531618.

Exhibit C

5. "Lot 1A" means Lot 1A of MIDA Master Development Plat Lots 1 and 15b, and Parcels 1 and 2 Amended, recorded on February 10, 2021 as Entry No. 493880.
6. "Lot 6A" means MIDA Master Development Plat Amended 2022, recorded on July 27, 2022 as Entry No. 522596.
7. "Lot 24" means MIDA Lot 3A Subdivision plat, recorded May 26, 2023, as Entry No. 532857.
8. "Lot 25" means MIDA Lot 3A Subdivision plat, recorded May 26, 2023, as Entry No. 532857.
9. "Nordic Skiing" means trails or uses involving Nordic or cross-country skis and equipment.
10. "Other Mountain Activities" does not include Alpine Sport Mountain Activities, and does not include retail sales of retail goods ("**Excluded Retail Activities**"), but does mean and includes:

(a) each of the activities, offerings and/or amenities, identified as Deer Valley Exclusives on the Exclusivity Matrix attached hereto as **Exhibit F**, and including but in no way limited to: (i) public photography, including sharpshooters, but excluding weddings and other private event photography services provided on the Restricted Property only; (ii) climbing walls and bungee jumping; (iii) miniature golf; (iv) goldmining; and (v) zip-lines and mountain adventure courses; and

(b) any additional activities, offerings and/or amenities (other than Excluded Retail Activities), which are similar to the activities, offerings and/or amenities identified as Deer Valley Exclusives on **Exhibit F** and, as of the date of recordation of this Declaration, are currently made available or offered by (x) Deer Valley and/or its affiliates as outdoor activities and/or as active indoor activities (i.e., those involving at least moderate physical exertion) at (i) the village areas of the Resort, or (ii) village areas at other Deer Valley resorts and its affiliates, or (y) by the operator and/or its affiliates of at least two (2) Competitor Resorts, as outdoor activities and/or active indoor activities at such Competitor Resorts (including the village areas of such Competitor Resorts), in which case **Exhibit F** shall not require amendment; and

(c) any additional similar activities, offerings and/or amenities (other than Excluded Retail Activities) that may, following the date of recordation of this Declaration, be generally offered or which may hereafter generally be made available or offered to skiers and other resort guests at (i) the village areas of the Resort, or (ii) village areas at other Deer Valley resorts and its affiliates, and at least two (2) Competitor Resorts (including the village areas of such Competitor Resorts) but only as to which any Owner of a Restricted Property has delivered to Deer Valley a ROFO Offer under Section C of this Exhibit C above and then only to the extent Deer Valley timely accepts such ROFO Offer and thereafter provides the

Exhibit C

additional activities, offerings and/or amenities, at the applicable Restricted Property, within six (6) months of Deer Valley's acceptance of such ROFO Offer, in which case **Exhibit F** shall be amended by the Resort Landlord and Deer Valley (which shall not require the consent of any other parties to this Declaration), to reflect the addition of such additional activities, offerings and/or amenities with respect to the applicable Restricted Property(ies); and

(d) any additional similar activities, offerings and/or amenities which may hereafter be generally offered or which may hereafter generally be made available or offered to skiers and other resort guests at the Resort and at least two (2) Competitor Resorts, but only to the extent Deer Valley procures Resort Landlord's prior written approval (which approval shall not be unreasonably, withheld, conditioned or delayed) to include such services and activities within the definition of Other Mountain Activities, in which case **Exhibit F** shall be amended by the Resort Landlord and Deer Valley (which shall not require the consent of any other parties to this Declaration).

11. "Recreation Center" shall mean that certain real property more particularly described as Lots 23A MIDA Master Development Plat Amended 2023, recorded on April 18, 2023 as Entry No. 531618.
12. "Resort" is defined in the recital above.
13. "Transit Hub" means the transit facilities located on Lot 31 of MIDA Master Development Plat Amended 2023, recorded on April 18, 2023 as Entry No. 531618.

Exhibit C

**EXHIBIT D
TO
DECLARATION OF RESTRICTIVE COVENANT
RESORT LANDLORD EXCLUSIVE ITEMS**

1. Resort Landlord has the exclusive right to conduct hotel and residential development on any of the Restricted Properties, unless otherwise agreed to or allowed in writing by Resort Landlord.
2. Resort Landlord also has the exclusive right to conduct property or owner association management on the Restricted Property or property rental management on the Restricted Property, subject to Deer Valley's Rental Management ROFO and Resi Leasing Services ROFO, as set forth on Section D of Exhibit C of this Declaration. Notwithstanding the foregoing, if Declarant or any Owner has transferred a Restricted Property (including any Transferred Residential Unit or Later Completed Residential Unit) other than to Resort Landlord or Declarant, or their respective affiliates, and neither Declarant nor Resort Landlord has elected to provide such rental or property management services on the Restricted Property so transferred to a third-party, then nothing in this Declaration shall prevent Deer Valley from offering and seeking to provide Resi Leasing Services, and/or property management services with respect to the applicable Restricted Property.
3. Resort Landlord also has the exclusive right to operate commercial laundry service on a Restricted Property, unless otherwise agreed to or allowed in writing by Resort Landlord.

Exhibit D

**EXHIBIT E
TO
DECLARATION OF RESTRICTIVE COVENANT
FORM OF SUBORDINATION AGREEMENT**

WHEN RECORDED RETURN TO:
Snell & Wilmer
15 South West Temple, Suite 1200
Salt Lake City, UT 84101
Attention: Wade R. Budge

CONSENT AND SUBORDINATION

THIS CONSENT AND SUBORDINATION (this "**Subordination**") is entered into as of October [___], 2023, (the "**Effective Date**") by [_____] ("**Lender**"), with reference to the following facts:

- A. Lender is the holder of that certain Deed of Trust dated [_____] and recorded on [___] as Entry No. [_____] in Book [_____] at Page [_____] in the Office of the Wasatch County Recorder, State of Utah, [and recorded on [_____] as Entry No. [_____] in Book [_____] at Page [_____] in the Office of the Summit County Recorder, State of Utah]¹, together with related loan documents (the "**Deed of Trust**") which constitute a lien of record against the Property described in Exhibit A attached hereto (the "**Deed of Trust Property**").
- B. [BLX LEASE 2 LLC]², a Delaware limited liability company ("**BLX**"), is the debtor under the Deed of Trust and is the record owner of the Deed of Trust Property.
- C. On August 24, 2023, BLX and DEER VALLEY RESORT COMPANY, LLC, a Utah limited liability company ("**DV**") entered into that certain Ground Lease (the "**Ski 2 Lands Ground Lease**"), pursuant to which DV agreed to lease from BLX, and BLX agreed to lease to DV, certain real property located in both Wasatch County and Summit County, Utah (the "**Ski 2 Lands Leased Property**"), as more particularly described in the Ski 2 Lands Ground Lease.
- D. In consideration of BLX leasing to DV the Ski 2 Lands Leased Property pursuant to the Ski 2 Lands Ground Lease, BLX, its affiliates and/or certain other third parties have executed those certain Declarations of Restrictive Covenants Regarding [Exclusivity/Development and Operations Standards] dated [_____] and recorded on [_____] as Entry No. [_____] in Book [_____] at Page [_____] in the Office of the Wasatch County Recorder, State of Utah, (as amended and/or modified from time to time, the "**Restrictive Covenant**") creating certain [exclusivity/development and operations standards] obligations with respect to and for the benefit of DV and the Restricted Property, as such term is defined in the Restrictive

¹ NTD: Include if the applicable Deed of Trust was recorded in Summit County.

² NTD: Owner name to be confirmed and modified as applicable.

Covenant, and its owner(s), which may change from time to time as more specifically described in the Restrictive Covenant (each an "Owner", and collectively the "Owners").

NOW, THEREFORE, Lender hereby agrees as follows:

1. Lender hereby (i) consents to the Restrictive Covenant, (ii) agrees that the Deed of Trust and the lien and encumbrance against the Deed of Trust Property created by the Deed of Trust shall be and shall at all times remain junior, subordinate and subject to the Restrictive Covenant, (iii) agrees that any and all obligations created by the Restrictive Covenant shall be and shall at all times remain prior and superior to the Deed of Trust and the lien created thereby, and (iv) the foreclosure of the Deed of Trust, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder, shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms, provisions, rights or interests granted by the Restrictive Covenant.
2. In furtherance of the foregoing, Lender hereby expressly acknowledges the provisions of Section [7/9] of the Restrictive Covenant and agrees that, notwithstanding anything to the contrary contained in the Deed of Trust and any other documents secured by the Deed of Trust, Lender shall, within ten (10) days of the written request of BLX, DV or any of the Owners of the Restricted Property (the "**Mayflower Parties**"), execute and deliver to the Mayflower Parties, at any time and from time to time, such further subordinations and other documents in recordable form reasonably determined by the Mayflower Parties to be necessary to further evidence the subordination of the Deed of Trust and any other security lien of Lender, including, if required, modifications to revise or correct the legal description of the Restricted Property encumbered by the Restrictive Covenant.
3. By hereby subordinating the lien and operation of the Deed of Trust to the Restrictive Covenant and the rights created therein, the undersigned does not undertake or assume any of the obligations of any party under or to the Restrictive Covenant until such time as the undersigned or any successor or assign becomes an Owner pursuant to the provisions of the Restrictive Covenant. This Subordination shall not be construed as a joinder to the Restrictive Covenant by the undersigned. Except to the extent of the subordination given herein, this Subordination shall not impair, abridge or otherwise affect the terms and conditions of the Deed of Trust (or the rights and remedies of the beneficiary thereunder), all of which shall remain in full force and effect.
4. This Subordination and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Utah.

[Signature on Following Page]

IN WITNESS WHEREOF, Lender has executed this Subordination on the date first above written, to be effective as of the Effective Date.

LENDER:

[_____]

By: _____

Name: _____

Its: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing Consent and Subordination was acknowledged before me this _____ day of _____, 2023, by _____, as _____ of [_____], on behalf of such company.

Notary Public

**EXHIBIT F
TO
DECLARATION OF RESTRICTIVE COVENANT
EXCLUSIVITY MATRIX**

The following matrix (the “**Exclusivity Matrix**”) is a non-exhaustive listing of commercial activities that, pursuant to the Declaration, may be exclusive to either Resort Landlord or Deer Valley, subject to the terms, rights and conditions identified in the Declaration. This Exclusivity Matrix is intended to be used for informational purposes only. In the event of any inconsistency between this Exclusivity Matrix and the Declaration, the Declaration shall control. For the avoidance of any doubt, the following rights are subject to terms and conditions of the Declaration.

EXCLUSIVITY MATRIX

ACTIVITY	CONDITIONS	RESORT LANDLORD EXCLUSIVE	DEER VALLEY EXCLUSIVE
Snowsport Rentals; skis, snowboards, toboggans, snow bikes, snowshoes, and snow blades	Pursuant to Section B(4) of Exhibit C.	No	Yes
Non-Snow Sports Mountain Rentals; mountain bike rentals	Pursuant to Section B(4) of Exhibit C.	No	Yes
Mountain Lessons within Demised Premises; ski school, etc.	Pursuant to Section B(1) of Exhibit C.	No	Yes
On Mountain Guiding within Demised Premises; ski, snowshoe, hiking, and mountain biking	Pursuant to Section B(1) of Exhibit C.	No	Yes
Snowsport Soft Goods; Gloves, Clothing, Helmets, Goggles, and Sunglasses	Pursuant to Section B(1) of Exhibit C.	No	No
Daycare/Childcare (non-ski)	N/A	No	No
Non-Cafeteria Dining	Pursuant to Section B(3) of Exhibit C.	No	No
Public Cafeterias (Day Lodge; excludes employee cafeterias for hotels and premium brand vendors)	Pursuant to Section B(3) of Exhibit C.	No	Yes
On Mountain Public Ski Storage (Public Ski Beach ski valet)	Pursuant to Section B(1) of Exhibit C.	No	Yes
Public Day Lockers	Pursuant to Section B(1) of Exhibit C.	No	Yes
Public on Mountain Photography (e.g., sharp shooters, not weddings/private)	Pursuant to Section B(1) of Exhibit C.	No	Yes
Nordic Ski Center and Trails on Demised Premises Only	Pursuant to Section B(2) of Exhibit C.	No	Yes
Zip-lines and Mountain Adventure Courses on Demised Premises Only	Pursuant to Section B(1) of Exhibit C.	No	Yes
Property and HOA Management (excluding rental activities)	None	Yes	No
Property and HOA Rental	Subject to Deer Valley's ROFOs pursuant to Section D(1) and Section D(2) of Exhibit C.	Yes	No
Hotel and Residential Development	Pursuant to Exhibit D.	Yes	No
Mountain and Luxury Clubs	Pursuant and subject to Section B(5) of Exhibit C	No	Yes
Climbing walls, Bungee-jumping, Mini-golf, Ziplines, Goldmining	Subject to Deer Valley's ROFO pursuant to Section C of Exhibit C.	No	No
Festivals, Music/Concerts, Farmer's market, Live Performances	N/A	No	No
Private Day-Skier Shuttle Services from Parking Lots and Transit Hub to Ski Beach Drop-off	Subject to Section A(2) of Exhibit C.	No	Yes
Public Transit and Transit Center	Subject to Section A(2) of Exhibit C.	No	No
Parking (Owner, Employee, and Public - non day-skier parking); Structured, Retail, Surface, Club, etc.	Subject to Section A(2) of Exhibit C.	No	No
Commercial Laundry	Pursuant to Exhibit D.	Yes	No
Delivery Services	N/A	No	No

Exhibit