

## TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this “Agreement”) is entered into effective as of \_\_\_\_\_, 2022, between **Bluff Dwellings**, a Utah Limited Liability Company (the “Company”) and the **Community Reinvestment Agency of San Juan County**, a Utah political subdivision (the “Agency”) as follows

A. The Company and its affiliates are the owner of approximately 16.08 acres of real property generally located East of Highway 191 near 2625 South Highway 191 and particularly described in the attached **Exhibit A** (the “Property”).

B. The Property is located within the boundaries of an urban renewal project area created by the Agency and known as the Bluff Dwellings Community Reinvestment Project Area (the “Project Area”).

C. The Company has prepared a concept plan included in their project area plan and budget for a resort development on the Property (the “Project”) substantially as depicted in the concept plan attached hereto as **Exhibit B** (the “Plan”).

D. The Company has presented to the Agency and its consultants sufficient information, including development plans and alternatives, financial statements, and other information, showing justification for the Agency’s participation in the development of the Project as described below.

E. The Agency has adopted the Bluff Dwellings Community Reinvestment Project Area Plan (the “Plan”), and a related Bluff Dwellings Community Reinvestment Project Area Budget (the “Budget”), which together permit the Agency to collect a portion of the tax increment from the Project Area as permitted under Title 17C of the Utah Code Ann.

F. The Agency has negotiated various Interlocal Cooperation Agreements with some or all of the taxing entities within the Project Area (each an “Interlocal Agreement”) in order to permit the Agency to collect a portion of the tax increment from the Project Area as permitted under Title 17C of the Utah Code Ann.

G. Due to its location within the Project Area, the Property generates tax increment revenues that are diverted to the Agency under the Plan and as provided in each of the Interlocal Agreements.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree as follows:

#### 1. **Definitions Relating to Tax Increment.**

- a. *Tax Increment.* This Agreement refers to “tax increment” which is a term defined by Utah Code Ann. § 17C-1-102(2021) *et seq.* The parties acknowledge that tax increment

generally refers to the additional *ad valorem* tax revenues generated by the increase in value of taxable real and personal property from the Base Tax Year (as defined in the Interlocal Agreements).

- b. *Agency's Share.* The Agency is entitled to collect a portion of tax increment from the Project Area as expressly provided under each of the Interlocal Agreements, respectively. The parties acknowledge that as of the Effective Date, the Agency has entered into an Interlocal Agreement with each of the following taxing entities, respectively: San Juan County Health District, San Juan County Water Conservation District and San Juan County. Each of those Interlocal Agreements provides that the Agency may receive and retain specified percentages of tax increment from the Project Area during the 20-year tax increment collection period. A copy of each of the Interlocal Agreements is attached hereto as **Exhibit C** and incorporated herein by this reference.

2. **Company Commitments.** The Company agrees to develop Project on the Property substantially according to the Project Area Plan attached hereto as **Exhibit B**. Any such development undertaken will be pursued substantially in accordance with plans approved by San Juan County. Notwithstanding the foregoing, however, the Company retains sole discretion to make, without any requirement for Agency approval, revisions to the Concept Plan (i) to accommodate demands or requests from San Juan County administrative staff arising during plat review and finalization; (ii) that reconfigure the size and location of building lots and development parcels, and buildings and improvements located thereon; or (iii) that do not “substantially amend” the Project Area Plan. The term “substantially amend” for purposes of this paragraph means to reduce the square footage of any building by more than 50% or to reduce the total units or square footage of any particular use by more than 75%, below the amounts described in the Project Area Plan attached hereto as **Exhibit B**.

3. **Tax Increment Financing.**

- a. *Generally.* The Company is solely responsible for all the costs of development, construction, maintenance, ownership, repair, infrastructure, and UDOT turn lane, etc. of the Project. The Agency will participate with the Company in the cost of certain infrastructure improvements for the Project solely by paying a maximum amount of \$450,000 (the “Maximum Reimbursement Amount”) to the Company as reimbursement for costs actually incurred by the Company in the construction of the turn lane and infrastructure defined in the Plan and Budget and as follows: Subject to subsections 3.b and 3.c below, the Agency will pay to the Company annually an amount equal to 75% of the Agency’s Portion of the tax increment share (each an “Annual Tax Increment Payment”) over a 20 year period. The Agency will retain the remaining amount of the Agency’s Share for other Agency uses/obligations as permitted under the Plan and/or the Interlocal Agreements.
- b. *Limitations* – The Agency will continue making Annual Tax Increment Payments until the first to occur of either (i) the Agency has paid to the Company the Maximum Reimbursement Amount, or (ii) the Agency no longer has the right to receive tax increment from the Project Area because the final year of the Tax Increment collection

period for the Project Area has passed and from the time that the Agency opted to begin tax increment reimbursement not to exceed or go beyond the year 2042.. Notwithstanding anything in this Agreement to the contrary, the Agency has no obligation to pay any more than the Maximum Reimbursement Amount; accordingly, if and when the Maximum Reimbursement Amount has been paid, the Agency will have no further payment obligations of any kind to the Company. However, the Agency does not guarantee payment of the full Maximum Reimbursement Amount; both parties acknowledge the total amount paid to the Company is contingent on, among other things, the amount of Tax Increment received by the Agency each year from the Property and the Project.

- c. *Post-Performance Limitation.* The Company acknowledges the Agency's participation is provided solely on a post-performance basis, meaning the Company must first increase the assessed value of the Property by improving the Property, then pay the applicable taxes, and only then will the Agency have Tax Increment funds to pay to the Company.
- d. *Taxes – Condition Precedent.* In spite of anything in this Agreement to the contrary, all obligations of the Agency to pay from any Tax Increment to the Company arising from any parcel within the Property are conditional on the Company (or its respective successor in the ownership of a parcel within the Property) paying taxes assessed on or generated from the respective parcel, including but not necessarily limited to real property, personal property, *ad valorem*, and sales taxes, to the appropriate taxing authorities. The Company, for itself and its successors in the ownership of any parcels within the Property, reserves all, and does not waive or relinquish any, rights available at law or in equity to appeal or contest any taxes or assessments on the Property.
- e. *No Existing Encumbrance and No Further Encumbrance.* The Agency has not encumbered or pledged Tax Increment from the Project. The Agency agrees that the Agency shall not, without the prior written consent of the Company, issue any bonds and other indebtedness that are secured by Tax Increment from the Project until such time as Company has been reimbursed the Maximum Reimbursable Amount as provided in this Agreement, unless such obligations are subordinate to the rights of Company under this Agreement.
- f. *Acceptance and Preservation of Interlocal Agreements.* The Company acknowledges receipt of each of the Interlocal Agreements *attached hereto for reference* and accepts the Interlocal Agreements in their condition as-is, with all faults, and without representation or warranty of the Agency. All rights of the Company under this Agreement are subject to the terms and limitations of each of the Interlocal Agreements. The Agency agrees that the Agency shall not, without the prior written consent of the Company, until such time as Company has been reimbursed the Maximum Reimbursement Amount as provided in this Agreement, cause, permit or consent to any modifications or amendments to any of the Interlocal Agreements in a manner that reduces the amount of Tax Increment to be paid to the Agency, on either an annual or cumulative basis, from the Project Area.

4. **Timing of Annual Incentive Payments.** Subject to Sections 2 and 3 *above*, the Agency will

make the first Annual Tax Increment Payment within sixty days after the Agency receives from the San Juan County Treasurer the final Tax Increment payment for the first year for which collection of Tax Increment collection is triggered, which is expected during April of the calendar year immediately following that trigger year, and, subject to Section 3 *above*, the Agency will continue making the Annual Tax Increment Payments each successive year within the same sixty-day period for so long as the Agency is entitled to collect Tax Increment from the Project Area (as may be extended, if at all, from time to time). For informational purposes, the Agency typically receives Tax Increment payments from the County Treasurer in March or April for the preceding tax year.

5. **Agency Authority.** The Company acknowledges that the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from San Juan County, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the County. The Company acknowledges that San Juan County is not a party to this Agreement and San Juan County will not have any duties, liabilities or obligations under this Agreement. The Company understands that the Agency has no independent taxing power, and therefore the Agency's sole source of revenue is Tax Increment financing as provided under Utah law and the Interlocal Agreements. If Utah law is amended or superseded by new law so as to reduce or eliminate the amount of Tax Increment revenue to be paid to the Agency, the Agency's obligation to pay Annual Tax Increment Payments to the Company shall be adjusted according to the change in the law. Similarly, if a court of competent jurisdiction declares that the Agency cannot receive Tax Increment revenues, or make payments to the Company from Tax Increment revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of Tax Increment revenues paid to the Agency, the Agency's obligation to make Annual Tax Increment Payments to the Company shall be accordingly reduced or eliminated.

6. **Agreement Term/Breach/Termination.** This Agreement will automatically terminate and expire upon payment of the final Annual Tax Increment Payment as described in Section 3 *above*, or as provided in Section 2 relating to performance of the Company Commitments. This Agreement may also be terminated earlier as follows: Upon the material breach of this Agreement by either party, the non-breaching party may provide notice to the breaching party. The breaching party shall have 30 days to cure the breach, and if the breach is not timely cured, the non-breaching party may then terminate this Agreement by providing final notice to the breaching party.

7. **Successors and Assigns.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither party may assign its rights or obligations under this Agreement without the advance written consent of the other party, each in their sole discretion. Any assignment made without the consent of the other party is void.

8. **Amendments.** Except as otherwise provided herein, this Agreement may be modified or amended by, and only by, a written instrument duly authorized and executed by the Company and the Agency.

9. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court

having jurisdiction in San Juan County, Utah.

10. **Integrated Agreement.** The above recitals, and all attached exhibits and schedules, are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed. There are no other contracts or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than those expressly set forth in this Agreement.

11. **Further Assurances.** The parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

12. **Indemnification.** The Company shall indemnify, defend (with counsel of the indemnitee's choosing), and hold the Agency and San Juan County (including their respective officers, directors, agents, employees, contractors, and consultants) harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Company (including its officers, directors, agents, employees, contractors, and consultants) upon or in connection with the Property or in connection in any way with this Agreement, except in each case to the extent arising out of the negligence, willful misconduct, illegal acts, bad faith or breach of this Agreement by the Agency or San Juan County (including their respective officers, directors, agents, employees, contractors, and consultants).

13. **Third-Party Beneficiaries.** Except for San Juan County which is an intended third-party beneficiary as described in the immediately preceding paragraph regarding indemnification, this Agreement is intended solely for the benefit of the Agency and the Company and there are no intended third party beneficiaries.

14. **No Liability of Officials or Employees.** No director, officer, agent, employee, or consultant of the Agency or the Company shall be personally liable to the other party hereto, or any successor in interest, in the event of any default or breach by the Agency or Company or for any amount which may become due to the Company or its successors or on any obligations under the terms of this Agreement.

15. **No Legal Relationships.** The parties disclaim any partnership, joint venture, fiduciary, agency or employment status or relationship between them. No party has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party, nor shall they make any representation to any third party inconsistent with this paragraph.

*[End of Terms – Signature Page Follows]*

THIS PARTICIPATION AGREEMENT IS EXECUTED effective as of the day and year first above written, by:

COMPANY:

By: \_\_\_\_\_  
Name:  
Title:

AGENCY: COMMUNITY REINVESTMENT AGENCY OF  
SAN JUAN COUNTY,  
a Utah Political Subdivision

By: \_\_\_\_\_  
*Executive Director*

Attest:

\_\_\_\_\_  
*County Clerk/Auditor*

**Exhibit A**

*Property*

*[insert]*

**Exhibit B**

*Interlocal Agreements*

*[attached]*



**Exhibit C**

*Project Area Plan and Budget*

*[attached]*