

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (this "Agreement") is entered into this 20th day of December, 2023, by and between **SUMMIT COUNTY**, a political subdivision of the State of Utah, acting under the authority of the Summit County Manager (the "County Manager") in accordance with Utah Code Section 11-42a-302 (the "County") and **GREENWORKS LENDING LLC**, a Delaware limited liability company, and its designee, successor and assigns (including its designee, successors and assigns, the "Lender"). The County and Lender are referred to herein as a "Party" or collectively, as the "Parties."

RECITALS:

A. Pursuant to the Commercial Property Assessed Clean Energy Act, Title 11 Chapter 42a, Section 302, Utah Code Annotated 1953, as amended (the "Act"), the County Manager, acting in his capacity as the County's chief executive officer, may authorize the designation of an Energy Assessment Area and the levying of an assessment within such Energy Assessment Area to facilitate the financing of the costs of acquiring, constructing and installing certain Energy Efficiency Upgrades, Renewable Energy Systems and/or Electric Vehicle Charging Infrastructure and related improvements (collectively, the "Improvements"), to be owned by one or more fee owners of the property on which such Improvements will be located and assign to a third-party lender the County's rights in its Assessment Lien (*defined below*). Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Act.

B. The County Manager hereby determines that it will be in the best interests of the County to designate an area to finance the costs of constructing and installing the Improvements at the Ascent Park City, a full-service condominium hotel, Parcel Nos., as further defined in Exhibit B, located at 4080 North Cooper Lane, Snyderville Basin, Summit County, Utah (the "Property"), and to complete said Improvements in a proper and workmanlike manner. The County Manager further determines that it is in the best interests of the County to levy assessments against the Property benefited by the Improvements to finance the costs of said Improvements.

C. The County Manager now desires to designate the Energy Assessment Area, to levy assessments and to assign to the Lender the County's rights in the Assessment Lien, all in accordance with this Agreement.

NOW, THEREFORE, in consideration of the premises stated herein, the designation of the Energy Assessment Area (*as defined below*), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Section 1. Owner's Consent. Pursuant to the Act, Beehive Hospitality Ascent PC, LLC (the "Owner") of the Property to be assessed within the designated assessment area has provided written consent to the County to (a) designate an Energy Assessment Area, (b) levy an assessment for the purposes of financing the Improvements, and (c) create an assessment lien on the Property, which consent shall be substantially in the form attached hereto as Exhibit A (the "Consent").

Section 2. Owner's Disclosures. Pursuant to Section 11-42a-202 of the Act, the Owner has provided the following to the County:

(a) Consent of the Owner and the written consent from each person or institution holding a lien on the Property;

(b) evidence that there are no delinquent taxes, special assessments, or water or sewer charges on the Property;

(c) evidence that the Property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency, that has not been cured; and

(d) evidence that there are no involuntary liens, including a lien on the Property, or on the proceeds of a contract relating to the Property, for services, labor, or materials furnished in connection with the construction or improvement of the Property.

Section 3. Designation of Energy Assessment Area. Pursuant to Section 11-42a-302 of the Act, the County hereby designates an Energy Assessment Area, which shall be known as the "Ascent Energy Assessment Area" (the "Energy Assessment Area"). A description of the Energy Assessment Area and its boundaries are more particularly described in Exhibit B attached hereto.

Section 4. Levy of Assessment. Pursuant to Sections 11-42a-203 and 11-42a-302(2) of the Act, the County hereby levies an assessment against the Property identified on Exhibit B, attached hereto in an aggregate principal amount not to exceed \$ 30,000,000.00 (the "Assessment Levy"). The final terms of the Assessment Levy shall be as set forth in a financing agreement between the Lender and the Owner (the "Financing Agreement") and shall be deemed approved by the County provided that such final terms are within the parameters set forth in this Agreement. Per Section 11-42a-204 of the Act, the Assessment Levy will not exceed in the aggregate the sum of: (a) the Contract Price or estimated Contract Price of the Improvements; (b) Overhead Costs not to exceed fifteen percent (15%) of the sum of the Contract Price or estimated Contract Price; (c) an amount for contingencies of not more than ten percent (10%) of the sum of the Contract Price or estimated Contract Price; (d) capitalized interest; and (e) an amount sufficient to fund a reserve fund. If Lender and the Owner fail to agree on the Financing Agreement, or do not close the financing for any other reason, then the Lender's sole obligation hereunder shall be the release of the Assessment Lien (*defined below*).

Section 5. Assessment Lien. Pursuant to Sections 11-42a-201(4), 11-42a-301, and 11-42a-302(3) of the Act, within five (5) days after the Effective Date (*as defined*

below), the Lender, on behalf of the County, will cause to be filed with the Summit County Recorder a copy of this Agreement and a "Notice of Assessment Interest" with respect to this Agreement, stating that the County has an assessment interest in the Ascent Energy Assessment Area, describing the Energy Assessment Area by legal description and tax identification number, and containing any other information required by Section 11-42a-201 of the Act, which recording establishes the assessment lien (the "Assessment Lien") pursuant to Section 11-42a-301 of the Act.

Section 6. Assignment of Assessment Lien. Pursuant to Section 11-42a-302 of the Act, the County hereby assigns to the Lender all its rights and interests in the Assessment Lien, including but not limited to the right to directly bill and collect from the Owner and/or the right to collect by inclusion on a property tax notice issued pursuant to Utah Code Section 59-2-1317 any amounts owed pursuant to the Assessment Levy as provided under Sections 11-42a-203 and 11-42a-303 of the Act, and the rights and powers of the County, at law or in equity, to enforce the Assessment Lien, including those set forth in Sections 11-42a-303 and 11-42a-304 of the Act. The County hereby acknowledges that, pursuant to Section 11-42a-303(1)(a)(ii) of the Act, the Lender may sell the Property on which the Assessment Levy applies, pursuant to the assigned Assessment Lien, for the amount due plus interest, penalties, and costs:

(a) in the manner provided in Title 59, Chapter 2, Part 13 (Collection of Taxes), Utah Code Annotated 1953, as amended, for the sale of the property for delinquent general property taxes;

(b) by judicial foreclosure; or

(c) in the manner provided in Title 57, Chapter 1 (Conveyances), Utah Code Annotated 1953, as amended, as though the Property were the subject of a trust deed in favor of the Lender if the owner of record of the Property at the time the Lender initiates the process to sell the Property in accordance with Title 57, Chapter 1 (Conveyances) has executed a property owner's consent form.

In the event of a delinquency on amounts owned pursuant to the Assessment Levy and Assessment Lien, the County instructs Lender, pursuant to Section 11-42a-303(2) of the Act, to pursue any of the methods of enforcement described above.

Section 7. Requirements for Written Agreement. In connection with the assignment of the Assessment Lien to the Lender as set forth herein and pursuant to Sections 11-42a-201 and -302 of the Act, the Lender agrees that:

(a) It shall be subject to an audit by the auditor of the State of Utah (the "State Auditor") regarding the Assessment Lien;

(b) It shall submit to the County monthly reports, including information regarding payments received by the Lender in connection with the Financing Agreement, Assessment Levy and Assessment Lien;

(c) The County shall in no event be liable for any actions taken by the Lender in connection with the Financing Agreement, Assessment Levy, and Assessment Lien; and

(d) The County is not liable to pay the Assessment Levy, and the financing in connection with this Agreement is not an obligation of the County or a charge against the County's general credit or taxing power.

Section 8. Written Agreement. This Agreement shall constitute the written agreement in compliance with Section 11-42a-104 and Section 11-42a-302(1)(b) of the Act.

Section 9. Representations and Warranties of the County. The County represents and warrants that:

(a) the County is public body corporate and politic duly organized and existing under the laws of the State of Utah;

(b) the execution and delivery of this Agreement by the County does not materially conflict with, violate, or constitute on the part of the County a material breach or violation of any of the terms and provisions of, or constitute a material default under (i) any existing constitution, law, or administrative rule or regulation, decree, order, or judgment; (ii) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement, or other instrument to which the County is party or by which the County is or may be bound or to which any of the County's property or assets is or may be subject; or (iii) the creation and governing instruments of the County;

(c) there is no action, suit, proceeding, inquiry, or investigation at law or in equity, with merit, by or before any court or public board or body to which the County is a party, or threatened against the County wherein an unfavorable decision, ruling, or finding would adversely affect the validity or enforceability or the execution and delivery by the County of this Agreement;

(d) this Agreement (i) does not conflict with or create a material breach or default under the Utah Constitution, or any existing law, regulation, order, or agreement to which the County is subject, and (ii) after expiration of the 30-day statute of repose (or challenge period) under Section 11-42a-104 of the Act, will be a legal, valid, and binding obligation of the County enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, or other similar laws generally affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases; and

(e) In order to evidence the assignment of the Assessment Lien made by the County to the Lender pursuant to this Agreement, the County shall cause an assignment of the Assessment Lien to be fully executed and delivered to the Lender upon the execution and delivery of this Agreement.

Section 10. Representations and Warranties of Lender: Release and Indemnification.

(a) The Lender represents and warrants that:

(i) The Lender is validly organized and existing under the laws of the United States of America;

(ii) Assuming the due authorization, execution and delivery by the County, this Agreement constitutes a valid and binding obligation of the Lender, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

(b) Lender does hereby release, acquit, and forever discharge the County and its officers and employees of and from any claims and demands whatsoever arising from this Agreement, which said Lender shall or may have, against the County and its officers and employees by reason of this Agreement.

(c) The Lender shall indemnify and hold harmless the County from and against any and all losses, liabilities, penalties, fines, damages, and claims, and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from or in connection with any dispute, claim, demand, action, citation, or legal proceeding (i) arising out of or related to the financing, by Lender, of the Improvements, (ii) arising out of or related to the enforcement of the Assessment Levy and the Assessment Lien, or (iii) to the extent caused by the Lender related to the foregoing. Notwithstanding anything to the contrary contained in this Section 10, no indemnification shall be required by the Lender for any losses, liabilities, penalties, fines, damages or claims incurred by the County solely as the result of the gross negligence or willful misconduct of the County.

Section 11. Effective Date. Upon the execution of this Agreement, the County shall cause a copy of this Agreement to be published as a Class A notice under Utah Code Section 63G-30-102, for at least 21 days. Pursuant to Section 11-42a-201(3) of the Act, this Agreement shall take effect on the date of such publication.

Section 12. Severability. The invalidity or un-enforceability in particular circumstances of any provision of this Agreement will not extend beyond such provision or circumstances and no other provision hereof will be affected by such invalidity or un-enforceability.

Section 13. Headings. The headings of the sections of this Agreement are inserted for convenience only and will not affect the meaning or interpretation hereof.

Section 14. Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their successors and assigns. Lender may assign its rights and obligations under this Agreement to any person, firm, corporation, partnership (limited or

general) or other entity without the prior written consent of the County. Lender's assignee shall become a party to this Agreement and shall have all the rights and obligations of Lender hereunder to the extent that such rights and obligations have been assigned by Lender pursuant to the assignment documentation between Lender and such assignee, and Lender shall be released from its obligations hereunder to a corresponding extent.

Section 15. Governing Law and Jurisdiction; No Third-Party Beneficiaries. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. The Parties consent to the jurisdiction of the courts of the State of Utah and further agree that any action arising out of or relating to this Agreement may only be commenced in the courts of the State of Utah. The terms and provisions of this Agreement are for the benefit of the Parties only and no other person shall have any rights or cause of action on account thereof as a third-party beneficiary or otherwise.

Section 16. Entire Agreement; Modification. This Agreement represents the full and complete agreement between the Parties regarding the subject matter hereof, and all Parties executing this instrument have received a copy of the same. The terms and conditions of this Agreement supersede any prior or contemporaneous, oral or written, statements or agreements. This Agreement may not be modified except by an instrument in writing signed by all the Parties.

Section 17. Counterparts. This Agreement may be executed by electronic or digital means, including signature software applications such as DocuSign and in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same instrument. Any Party's facsimile, digital or electronic signature and any emailed copy of a Party's signature shall be deemed a binding signature.

IN WITNESS WHEREOF, Summit County, by the undersigned, and the Lender have executed this Agreement all as on the date first set forth above.

DATED this DECEMBER 20, 2023.

SUMMIT COUNTY, a political subdivision of the State of Utah

By: Shayne Scott
Shayne C. Scott
County Manager

STATE OF UTAH)
) ss
SUMMIT COUNTY)

The foregoing instrument was acknowledged before me this 20 day of December, 2023, by SHAYNE SCOTT . COUNTY MANAGER .



[Signature]
NOTARY PUBLIC

Residing at: MORGAN, UT
My Commission Expires: 2-27-2024

Lender:

GREENWORKS LENDING LLC,
a Delaware limited liability company

By: 

Name: Linda Baxter

Title: Legal Assistant and Contracts
Administrator

STATE OF CONNECTICUT)

) ss: Darien

COUNTY OF FAIRFIELD)

The foregoing instrument was acknowledged before me this 17th day of
December, 2023, by Linda Baxter, Legal Assistant and Contracts Administrator of
Greenworks Lending LLC.


NOTARY PUBLIC

Residing at: Stamford, Connecticut

My Commission Expires ~~MAC~~ **KENLEY COLINET**
NOTARY PUBLIC
My Commission Expires Nov. 30, 2025

(Signature Page to Memorandum of Agreement)

EXHIBIT A

WRITTEN CONSENT OF PROPERTY OWNER

This CONSENT OF PROPERTY OWNER (this “*Consent*”) is made and entered into effective as of December 16, 2023, by **BEEHIVE HOSPITALITY ASCENT PC LLC**, a Delaware limited liability company (the “*Property Owner*”).

R E C I T A L S:

A. As of the date hereof the Property Owner owns the real property described in Exhibit A, attached hereto (the “*Property*”), which constitutes property which has been assessed within an Energy Assessment Area, described herein.

B. The Property Owner desires that Summit County, a political subdivision of the State of Utah (the “*County*”), designate an energy assessment area (the “*Energy Assessment Area*”), levy an energy assessment on the Property (the “*Assessment Levy*”), and create an energy assessment lien on the Property (the “*Assessment Lien*”), pursuant to the Commercial Property Assessed Clean Energy Act, Title 11, Chapter 42a, Utah Code Annotated 1953, as amended (the “*Act*”), for the purpose of financing the costs of acquiring, constructing and/or installing certain Energy Efficiency Upgrades, Renewable Energy Systems, and/or Electric Vehicle Charging Infrastructure (as such terms are defined in the Act) (collectively, the “*Improvements*”) on the Property (the “*C-PACE Financing*”).

C. The Property Owner has obtained a title report or commitment for title insurance (the “*Title Commitment*”), which Title Commitment provides the following evidence required by Section 11-42a-202 of the Act:

(i) there are no existing delinquent taxes, special assessments, or water or sewer charges on the Property;

(ii) the Property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured;

(iii) there are no involuntary liens, including a lien on the Property or on the proceeds of a contract relating to the Property, for services, labor, or materials furnished in connection with the construction or improvement of the Property; and

(iv) there are no liens on the Property requiring consent of lienholders as described in Section 11-42a-202(4) of the Act except for those liens whose lienholders have provided consent.

NOW, THEREFORE, in consideration of the premises stated herein, the designation of the Energy Assessment Area, the levy of the Assessment Levy, and the creation of the Assessment Lien, the Property Owner agrees as follows:

Section 1. Representations, Covenants and Warranties of Property Owner. The Property Owner hereby represents, covenants and warrants that:

(a) the Property Owner is the owner of the Property identified as such in Exhibit A attached hereto;

(b) the Property Owner has taken all action necessary to execute and deliver this Consent;

(c) the execution and delivery of this Consent by the Property Owner does not conflict with, violate, or constitute on the part of the Property Owner a breach or violation of any of the terms and provisions of, or constitute a default under (i) any existing constitution, law, or administrative rule or regulation, decree, order, or judgment; (ii) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement, or other instrument to which the Property Owner is a party as a result of the C-PACE Financing, or by which the Property Owner is or may be bound as a result of the C-PACE Financing, or to which any of the property or assets of the Property Owner is or may be subject as a result of the C-PACE Financing; or (iii) the creation and governing instruments of the Property Owner, if applicable; and

(d) there is no action, suit, proceeding, inquiry, or investigation at law or in equity by or before any court or public board or body and to which the Property Owner is a party, or threatened against the Property Owner wherein an unfavorable decision, ruling, or finding would adversely affect the validity or enforceability or the execution and delivery by the Property Owner of this Consent.

Section 2. Acknowledgment by Property Owner. The Property Owner hereby acknowledges that:

(a) the undersigned, on behalf of the Property Owner, is a duly qualified representative of the Property Owner with the power and authority to execute this Consent for and on behalf of the Property Owner; and

(b) the consents set forth herein will benefit the Property Owner by providing for the financing of the Improvements.

Section 3. Consent by Property Owner. The Property Owner hereby consents to:

(a) the designation by County of the Energy Assessment Area, which includes the Property;

(b) the levy of the Assessment Levy against the Property within said Energy Assessment Area for the purpose of financing the costs of the Improvements that benefit said Property;

(c) the prior filing of a copy of that certain Memorandum of Agreement, dated December __, 2023, (which is intended to constitute the Written Agreement)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY TO BE ASSESSED

Parcel A:

UNITS 101 THROUGH 114, INCLUSIVE, 116, 118, 120, 122, 124, 126, 139, 141, 143 THROUGH 156, INCLUSIVE, 201 THROUGH 214, INCLUSIVE, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 235, 237, 239, 241, 243 THROUGH 256, INCLUSIVE, 301 THROUGH 314, INCLUSIVE, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 335, 337, 339, 341, 343 THROUGH 356, INCLUSIVE, D-1 AND H-1, CONTAINED WITHIN THE ASCENT PARK CITY, A CONDOMINIUM PROJECT AS THE SAME IS IDENTIFIED IN THE RECORD OF SURVEY MAP RECORDED ON DECEMBER 31, 2019 IN SUMMIT COUNTY, AS [ENTRY NO. 1124627](#), IN BOOK 2548, AT PAGE 240 (AS SAID RECORD OF SURVEY MAP MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED) AND IN THE DECLARATION RECORDED ON DECEMBER 31, 2019 IN SUMMIT COUNTY, AS [ENTRY NO. 1124628](#) IN BOOK 2548 AT PAGE 241 AND IN THE FIRST AMENDMENT TO DECLARATION FOR THE ASCENT PARK CITY RECORDED ON JULY 22, 2021 IN SUMMIT COUNTY, AS [ENTRY NO. 1169049](#) IN BOOK 2680 AT PAGE 1652 AND IN THE SECOND AMENDMENT TO DECLARATION FOR THE ASCENT PARK CITY RECORDED ON JANUARY 27, 2023 IN SUMMIT COUNTY, AS [ENTRY NO. 1200009](#) IN BOOK 2769 AT PAGE 1830 AND IN THE AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE ASCENT PARK CITY RECORDED ON JULY 28, 2023 IN SUMMIT COUNTY, AS [ENTRY NO. 1207383](#) IN BOOK 2788 AT PAGE 819 (AS SAID DECLARATION MAY HAVE HERETOFORE BEEN AMENDED OR SUPPLEMENTED.)

TOGETHER WITH THE APPURTENANT UNDIVIDED INTEREST IN SAID PROJECT'S COMMON AREAS AS ESTABLISHED IN SAID DECLARATION AND ALLOWING FOR PERIODIC ALTERATION BOTH IN THE MAGNITUDE OF SAID UNDIVIDED INTEREST AND IN THE COMPOSITION OF THE COMMON AREAS AND FACILITIES TO WHICH SAID INTEREST RELATES.

TOGETHER WITH ALL RIGHTS OF THE "DECLARANT" AS SET FORTH IN SECTION XVI OF SAID DECLARATION.

Parcel B:

TOGETHER WITH AN APPURTENANT Non-Exclusive Easement Agreement for Roadways and Utilities, by and between Park West Associates, LLC and the "West Willow Draw Parties", as defined therein, recorded December 22, 2006 as [Entry No. 799963](#) in Book 1837 at Page 1353 of Official Records

Parcel C:

TOGETHER WITH AN APPURTENANT Easement Agreement for natural drainage of storm water runoff, and incidental purposes recorded December 22, 2006 as [Entry No. 799964](#) in Book 1837 at Page 1362 of Official Records

Parcel D:

TOGETHER WITH AN APPURTENANT Agreement by and between Park West Associates, LLC and The Canyons Resort Village Association, Inc recorded December 22, 2006 as [Entry No. 799967](#) in Book 1837 at Page 1389 of Official Records

EXHIBIT B

TAX IDENTIFICATION NUMBERS

APC-101, APC-102, APC-103, APC-104, APC-105, APC-106, APC-107, APC-108,
APC-109, APC-110, APC-111, APC-112, APC-113, APC-114, APC-116, APC-118,
APC-120, APC-122, APC-124, APC-126, APC-139, APC-141, APC-143, APC-144,
APC-145, APC-146, APC-147, APC-148, APC-149, APC-150, APC-151, APC-152,
APC-153, APC-154, APC-155, APC-156, APC-201, APC-202, APC-203, APC-204,
APC-205, APC-206, APC-207, APC-208, APC-209, APC-210, APC-211, APC-212,
APC-213, APC-214, APC-216, APC-218, APC-220, APC-222, APC-224, APC-226,
APC-228, APC-230, APC-232, APC-234, APC-235, APC-237, APC-239, APC-241,
APC-243, APC-244, APC-245, APC-246, APC-247, APC-248, APC-249, APC-250,
APC-251, APC-252, APC-253, APC-254, APC-255, APC-256, APC-301, APC-302,
APC-303, APC-304, APC-305, APC-306, APC-307, APC-308, APC-309, APC-310,
APC-311, APC-312, APC-313, APC-314, APC-316, APC-318, APC-320, APC-322,
APC-326, APC-328, APC-330, APC-332, APC-334, APC-335, APC-337, APC-339,
APC-341, APC-343, APC-344, APC-345, APC-346, APC-347, APC-348, APC-349,
APC-350, APC-351, APC-352, APC-353, APC-354, APC-356, APC-D-1, APC-H-1,
APC-324 and APC-355

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