

**RESOLUTION NO. 21-16**

**A RESOLUTION OF THE MILLCREEK COMMUNITY REINVESTMENT AGENCY  
APPROVING A PARTICIPATION AGREEMENT WITH NORTHERN UTAH  
HEALTHCARE CORPORATION OPERATING AS ST. MARKS HOSPITAL**

**WHEREAS**, the Millcreek Community Reinvestment Agency met in special open and public meeting on December 13, 2021, to consider, among other things, approving a participation agreement with Northern Utah Healthcare Corporation operating as St. Marks Hospital; and

**WHEREAS**, the Agency was created to transact the business and exercise all of the powers provided for in the former Utah Redevelopment Agencies Act and the current Utah Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the "Act"); and

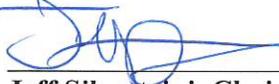
**WHEREAS**, pursuant to the Act, and more particularly Utah Code Section 17C-1-202, the Agency is authorized enter into participation agreements with developers or property owners; and

**WHEREAS**, Northern Utah Healthcare Corporation and the Agency have negotiated a contract for repayment of certain property tax increment the terms of which are set forth in the participation agreement ("Agreement") attached hereto as exhibit "A."

**NOW THEREFORE BE IT RESOLVED** by the Millcreek Reinvestment Agency as follows:

1. that the Agreement be approved, with such minor changes and recommendations as deemed necessary by the Agency.
2. that the Chair and Recorder are hereby authorized and directed to execute and deliver the Agreement on behalf of the Agency.
3. that this resolution takes effect upon adoption.

**MILLCREEK COMMUNITY  
REINVESTMENT AGENCY**



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**Jeff Silvestrini, Chair**



ATTEST:

  
\_\_\_\_\_  
Elyse Sullivan, Recorder

Roll Call Vote:

Silvestrini	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Marchant	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Jackson	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Catten	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Uipi	<input checked="" type="radio"/> Yes	<input type="radio"/> No

**EXHIBIT A**  
to Resolution No. 21-16  
*Participation Agreement*

**PARTICIPATION AGREEMENT BY AND BETWEEN THE MILLCREEK  
COMMUNITY REINVESTMENT AGENCY AND PARTICIPANT FOR  
THE  
MEDTECH COMMUNITY REINVESTMENT PROJECT AREA PROJECT  
AREA**

This Participation Agreement (the “**Agreement**”) is made and entered into as of this 13 day of <sup>December</sup> ~~July~~, 2021 (the “**Effective Date**”), by and between the Millcreek Community Reinvestment Agency (the “**Agency**”), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Act**”; § 17C-1-101 *et seq.*) and Northern Utah Healthcare Corporation (together with its successors and assigns, “**Participant**”). Participant and the Agency may from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

**1. SUBJECT OF AGREEMENT**

**1.1. Purpose of the Agreement**

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Project Area Plan (the “**Plan**”) for the MedTech Community Reinvestment Project Area (the “**Project Area**”) by providing for reimbursements to entice Participant to develop and construct a new patient tower at St. Mark’s Hospital (the “**Hospital**”) in the Project Area including an enhanced façade and related exterior improvements (such new patient tower, and related improvements, the “**Facility**”), and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in Participant’s development of the Facility, which will benefit the entire Project Area.

**1.2. Agreement in the Best Interests of the City and Residents**

This Agreement is in the vital and best interests of the Millcreek, Utah (the “**City**”), and the health, safety, and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

**1.3. The Project Area**

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

**1.4. The Project Area Plan and Budget**

This Agreement is subject to the provisions of the Plan, as adopted and ordained on April 12, 2021 by the Agency and the City Council (the “**Council**”) in accordance with the Act and is incorporated herein by this reference. This Agreement is also subject to the provisions of the project area budget (the “**Budget**”), as adopted by the Agency on April 12, 2021.

**1.5. “Interlocal Agreements”; “Agency Share”; Certain Other Defined Terms**

Subject to the terms of various interlocal agreements between the Agency and certain taxing entities (such interlocal agreements pertain to payments the Agency is entitled to receive based on property tax payments with respect to the property within the Project Area, collectively, “**Interlocal Agreements**”, and such taxing entities that are parties to the Interlocal Agreements, the “**Taxing Entities**”), the Agency is entitled to receive, for a period of up to 20 years, a portion of the Tax Increment (as such term is defined in such Interlocal Agreements) from the Project Area, including from the Site and the real property improvements and personal property located within the Site, for the purpose of providing funds to the Agency to carry out the Plan (such payments with respect to the entire Project Area being defined in the Interlocal Agreements as the “Agency Share”, but for purposes of this Agreement, such payments with respect to the entire Project Area are defined as the “**Interlocal Agreements Agency Share**”).

**1.5.1. “Agency Share”**

The term “Agency Share” means the portion of the Interlocal Agreements Agency Share that is attributable to property taxes (a) paid with respect to real and personal property within the Project Area and (b) assessed and payable with respect to the Reimbursement Term (as defined in Section 1.5.2, below) (or any portion of the Reimbursement Term). For clarity, the Parties acknowledge that (i) the Agency Share “applicable to” or “with respect to” a given Tax Year (as defined in Section 1.5.4, below) means the portion of the Agency Share that is attributable to property taxes assessed and payable with respect to such Tax Year, regardless of when such property taxes are paid and regardless of when the Agency receives payment of the Agency Share attributable to such property taxes and (ii) the term “Agency Share” does not include any funds received by the Agency pursuant to the Interlocal Agreements attributable to taxes assessed and payable with respect to any period other than the Reimbursement Term (or any portion of the Reimbursement Term).

**1.5.2. “Reimbursement Term”**

The term “Reimbursement Term” means a period of ten years beginning on the Reimbursement Term Commencement Date (as defined in Section 1.5.3, below).

**1.5.3. “Reimbursement Term Commencement Date”**

The term “**Reimbursement Term Commencement Date**” means the date designated by Participant in a written notice to the Agency as the date on which the Reimbursement Term will commence; provided, however, that if the Project Area Funds Collection Period (as defined in the Interlocal Agreements) has not commenced as of such date designated by Participant and the Agency has not or does not take such actions as are necessary to commence the Project Area Funds Collection Period so that it has commenced or will commence on or before Participant’s designated date (as contemplated by Section 2.1.2), Participant will have the right to designate another date as the Reimbursement Term Commencement Date

**1.5.4. “Tax Year”**

The term “**Tax Year**” means each of the ten calendar years during the Reimbursement Term.

**1.6. Description of the Site**

The new patient tower and the renovations and other improvements that are, collectively, the Facility are being (or will be) developed and constructed on property that is a portion of the Project Area consisting of approximately 17.80 acres (the “**Site**”).

**1.7. Description of the Investment**

Pursuant to the terms of this Agreement, Participant will develop and construct the new patient tower with an enhanced façade and will make related exterior improvements that, collectively, constitute the “Facility” (such development, construction, and improvement and the costs and expenses thereof as set forth on **Exhibit A** attached hereto and are collectively, the “**Investment**”). As part of such development, construction, renovation and improvement, Participant plans to construct such new patient tower structure and make such renovations and improvements, thereby adding to the taxable value of the property.

**1.8. The Reimbursement**

As used in this Agreement, the term “**Reimbursement**” means eighty seven and one tenth percent (87.1%) of the Agency Share. For clarity, the Parties acknowledge that the Reimbursement “applicable to” or “with respect to” a Tax Year”, means eighty seven and one tenth percent (87.1%) of the Agency Share with respect to such Tax Year. Participant acknowledges that the Agency shall use two and nine tenths percent (2.9%) of the Agency Share for application to Agency administrative and overhead costs relating (“**Administrative Allocation**”) and ten percent (10%) of the Agency Share for housing as required by the Act (the “**Housing Allocation**”).

**1.9. Parties to the Agreement**

**1.9.1. The Agency**

The address of the Agency for purposes of this Agreement is:

Millcreek Community Reinvestment Agency  
Attn: Executive Director  
3330 South 1300 East  
Millcreek, UT 84106

With a copy to:

John Brems  
3330 South 1300 East  
Millcreek, UT 84106

**1.9.2. The Participant**

Participant's address for purposes of this Agreement is:

NORTHERN UTAH HEALTHCARE CORPORATION  
d/b/a MountainStar Healthcare - St. Mark's Hospital  
c/o Deborah H. Mullin, Assistant Secretary  
One Park Plaza, B1-2E  
Nashville, TN 37203

With a copy to:

St. Mark's Hospital  
3200 East 3900 South  
Millcreek, UT 84124  
Attention: Chief Financial Officer

## **1.10. Prohibition against Certain Changes**

### **1.10.1. Acknowledgement by Participant**

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the Investment within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section 1.10, may be considered, for practical purposes, a transfer or disposition of the Investment, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant. The Parties agree that neither this Section 1.10 nor any other provision of this Agreement includes a prohibition that would make a change in the identity of Participant to a Permitted Assign a significant change in the identity of Participant, it also being agreed, however, that no such change in the identity of Participant would affect the obligations of any such Permitted Assign, or the rights of the Agency, under the provisions of Sections 1.10.2 - 1.10.5.

### **1.10.2. Representation as to Investment Intent**

Participant represents and agrees that its Investment in and use of the Site, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of Participant's further development of and in the Site, is for the purpose of further investment in Participant's business and is not for speculation in land holding or otherwise.

### **1.10.3. Assignment or Transfer of Agreement**

Participant acknowledges and agrees that (a) Participant may not assign or transfer all or any part of this Agreement, assign or transfer any of its rights herein or delegate any of its obligations hereunder during the term of this Agreement except (i) to Permitted Assigns, or (ii) with the express written consent of the Agency (and Participant acknowledges and agrees that the Agency may withhold its consent to such an assignment, transfer or delegation if, in the sole discretion of

the Agency, such assignment, transfer or delegation would result in the economic development goals of the Agency and the Project area not being met) and (b) except as provided in clauses (a)(i)-(ii), above, any such assignment, transfer or delegation by Participant will be deemed a Default that shall be subject to the provisions of Article 5 of this Agreement. The term “**Permitted Assign**” means any (1) person or entity that acquires all or substantially all of the assets of the Hospital, (2) any successor of Participant or any Permitted Assign, (3) any Affiliate of Participant or any Permitted Assign and (4) any person or entity that acquires any of the assets within the Site in a sale-leaseback transaction in which Participant or any Permitted Assign described in clauses (1)-(3), above, is the lessee, sublessee, master lessee, licensee or sublicensee of all or a substantial portion of such assets (or, in the case of real property, all or a substantial portion of the improvements on such real estate). For purposes of clause (4), above, if, pursuant to an agreement (including without limitation, a lease, sublease, master leases or sublease, license or sublicense), use restrictions, or covenants or restrictions in the agreements or instruments pursuant to which the applicable assets were transferred (x) Participant or a Permitted Assign described in clauses (1)-(3), above, has the right to direct such acquiring person or entity to persons or entities designated by Participant or such a Permitted Assign or approve the persons or entities that may lease, sublease, license or sublicense all or a substantial portion of the applicable improvements or (y) such acquiring person or entity may only lease, sublease, license or sublicense all or a substantial portion of the such improvements to persons or entities for use or related health care operational purposes (a portion of which may include retail operations related to the operations of the Facility and the Hospital, including the need of patients, staff and visitors), such acquiring person or entity shall be eligible to be a Permitted Assign. Participant shall provide Agency written notice of any transfer, assignment or delegation of obligations to a Permitted Assign promptly following the effective date thereof.

#### **1.10.4. Transfer to Tax-Exempt Organization**

Notwithstanding anything in this Agreement to the contrary, if Participant transfers fee title to any of the real property or any material portion of the personal property that, in either case (a) is within the Site, (b) is owned by Participant Affiliates and (c) is subject to *ad valorem* property tax (all such property, “**Taxable Property**”) to a tax-exempt organization or otherwise to exempt Taxable Property from *ad valorem* property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant. Transfers of title to personal property that Participant has determined is inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary property for its operations within the Site are not subject to the provisions of this Section 1.10.4.

#### **1.10.5. Continuing Obligations**

Any permitted assignment or transfer of this Agreement, in whole or in part, with the written consent of the Agency, shall relieve Participant from any and all duties, obligations and liabilities under this Agreement as and to the extent that an assignee has agreed in writing to assume any such duties, obligations and liabilities under this Agreement. Except as otherwise provided herein, all of the duties, obligations and liabilities of Participant under this Agreement are and will remain binding upon Participant until the expiration or termination of this Agreement.

## **2. OBLIGATIONS OF THE PARTIES**

### **2.1. Payment of Reimbursement**

#### **2.1.1. Payment Obligation**

Subject to the applicable terms and provisions of this Agreement, including, without limitation, the terms and provisions in Subsections 2.2.1-2.2.7, below, or elsewhere in this Agreement that condition or limit the Agency's obligation to remit, or the amount the Agency is obligated to remit, to Participant as Reimbursement with respect to a given Tax Year, (a) the Agency shall remit payment of the Reimbursement with respect to each given Tax Year within thirty (30) days after the date on which all conditions precedent included in Section 2.2 applicable to the Reimbursement with respect to such Tax Year have been satisfied, (b) to the extent the Agency receives any additional amounts of Agency Share with respect to a given Tax Year after making its initial Reimbursement payment with respect to such Tax Year, the Agency will remit the Reimbursement portion of such additional Agency Share to Participant on or before the May 31 or November 30, as applicable, following receipt of such additional amounts of Agency Share, and (c) to the extent the Agency has not remitted any of the Reimbursement portion of Agency Share payments it has received with respect to any Tax Year to Participant by the applicable date set forth in clauses (a) and (b), above, for any reason, including, without limitation, due to any issues, claims (including competing claims to such Reimbursement) or disputes that give the Agency the right to withhold such Reimbursement payment (e.g., issues, claims, competing claims or disputes as to whether the Agency is legally entitled to receive all or any portion of the Agency Share with respect to such Tax Year, as contemplated by Section 2.2.1, or disputes as to the person or entity entitled to a particular portion of Reimbursement as contemplated by Section 2.9), the Agency will remit such withheld Reimbursement (or the applicable portion thereof) to Participant promptly following the date that the applicable issue, claim, competing claim, dispute or other matter is resolved, in whole or in part (and in no event more than ten business days after such resolution date). With respect to Reimbursement payments to be made pursuant to clause (c), above, if the resolution of the applicable matter is resolved through judicial proceedings or another form of dispute resolution proceeding and such resolution may be appealed by any party to such proceedings, the matter will not be considered to have been resolved for purposes of clause (c) until the resolution under such proceedings is final and non-appealable. Nothing in this Section 2.1.1 shall be deemed to limit the parties' respective rights and obligations under Section 2.4.3.

#### **2.1.2. Triggering of Payments of Agency Share**

The Agency has the sole authority under the Interlocal Agreements to commence the Project Area Funds Collection Period (as defined in the Interlocal Agreements) under each of the Interlocal Agreements, thereby beginning, or "triggering," the Agency's collection or receipt of the Interlocal Agreements Agency Share pursuant to the applicable Interlocal Agreement (provided, however, that the Interlocal Agreements provide that if not commenced prior thereto, the Project Area Funds Collection Period will commence of January 1, 2025).

#### **2.1.3. Sole Source of Funding for the Reimbursement**

The entirety of the Reimbursement payments to Participant contemplated in this Agreement will

be funded solely by the Reimbursement portion of the Agency Share payments received by the Agency pursuant to the Interlocal Agreements.

**2.2. Conditions Precedent to the Payment of the Reimbursement or the Reimbursement Applicable to Given Tax Year to Participant; Certain Limitations on the Amount of the Reimbursement Applicable to a Given Tax Year Payable to Participant**

The Parties acknowledge that certain of the provisions of Subsections 2.2.1 - 2.2.7, below, constitute conditions precedent to the Agency's obligation to remit any Reimbursement payments with respect to a given Tax Year to Participant and that other provisions of such subsections may limit the amount of Reimbursement the Agency is obligated to remit to Participant with respect to a given Tax Year based on applicable facts circumstances. In addition to other provisions in this Agreement that condition or limit the Agency's obligation to remit Reimbursement payments or limit the amount of Reimbursement the Agency is required to remit, (a) the Agency has no obligation to remit to Participant the Reimbursement with respect to a given Tax Year unless and until all conditions precedent included in any of Subsections 2.2.1-2.2.7 applicable to the Reimbursement with respect to such Tax Year are satisfied and (b) the amount of the Reimbursement the Agency shall be required to remit to Participant with respect to a given Tax Year will be subject to any of the limitations in Subsections 2.2.1-2.2.7 that are applicable to the Reimbursement with respect to such Tax Year based on applicable facts circumstances.

**2.2.1. Agency is Entitled to Receive the Agency Share**

The Agency is only obligated to pay to Participant the Reimbursement amount that arises out of Agency Share payments received by the Agency if and to the extent the Agency is legally entitled to receive such Agency Share payments pursuant to the applicable Interlocal Agreement(s).

**2.2.2. Agency has Actually Received the Agency Share Payment**

The Agency is obligated to make Reimbursement payments with respect to a particular Tax Year to Participant only to the extent the Agency has actually received Agency Share payment(s) from Salt Lake County or a Taxing Entity with respect to such particular Tax Year; provided, however, that nothing in this sentence is intended to limit the Agency's obligations under Section 2.4.3. The Agency will use commercially reasonable efforts to pursue payment in full of the Agency Share for a particular Tax Year if it does not receive payment in full on a timely basis.

**2.2.3. Continued Operation of the Facility**

The Agency is not obligated to pay to Participant the Reimbursement with respect to a particular Tax Year unless Participant has continuously Operated the Facility (as described in Section 2.12) for the entirety of such Tax Year (or, if the Facility commences operations after January 1 of a Tax Year, continuously for the period between the date the Facility commences Operations and the end of such Tax Year).

**2.2.4. Payment of Taxes**

Participant shall not receive any payments from the Agency for any particular Tax Year until the Agency has received documentation from Participant that all real and personal property taxes attributable to land, improvements and personal property within the Site owned by Participant have been paid for such Tax Year.

#### **2.2.5. Request for Payment by Participant**

The Agency is not obligated to pay the Reimbursement with respect to a particular Tax Year to Participant unless Participant has made a Request for Payment in writing for the Reimbursement with respect to such Tax Year.

#### **2.2.6. Facility Operations Have Commenced**

The Agency is not obligated to pay the Reimbursement to Participant unless Participant has commenced Operating as contemplated and described in Section 2.12 and met any requirement included in Section 3.1.

#### **2.2.7. Investment**

Reimbursement is available to the Participant only upon verification of actual costs incurred by Participant for the development and construction of the Facility. Such actual costs may be verified by permits, incremental taxable value of the Site and the improvements located at the Site, copies of contracts, work orders, invoices or other documents, writings, emails with respect to actual costs incurred by Participant for developing and constructing the Facility or doing the renovations and improvements contemplated by this Agreement and of the payments of such actual costs.

### **2.3. Effect of Failure to Meet Conditions Precedent to Payment of Reimbursement**

In the event that the conditions precedent to the payment of any Reimbursement with respect to a particular Tax Year as included in Section 2.2 are not met for such Tax Year and Participant is thus not entitled to receive the Reimbursement with respect to such Tax Year, such failure shall not constitute a Default under this Agreement. Such failure shall result in the forfeiture by Participant of the Reimbursement with respect to such Tax Year.

### **2.4. Limitations on Reimbursement**

The amount of Reimbursement paid to Participant pursuant to this Agreement shall be limited as follows:

#### **2.4.1. Verified Costs**

Reimbursement payments will be limited to the amount of verified costs (as described in Section 2.2.7) incurred by Participant.

#### **2.4.2. Total Cap on Reimbursement**

The total Reimbursement paid to Participant under this Agreement shall not exceed \$1,000,000

(the “Maximum Reimbursement Amount”) unless addition amounts are approved in writing by the Agency for reimbursement.

### **2.4.3. Cap on Annual Amount of Reimbursement**

Except as provided below in this Section 2.4.3, notwithstanding the amount of Agency Share the Agency receives with respect to a given Tax Year, the total net amount of Reimbursement the Agency shall be required to pay to Participant under this Agreement with respect to such Tax Year (i.e., the aggregate amount of Reimbursement payments received by Participant with respect to such Tax Year net of any amounts of such Tax Year’s Reimbursement that Participant has had to return to the Agency pursuant to this Agreement) shall not exceed \$100,000 (such amount, such Tax Year’s “**Annual Reimbursement Cap**”). Notwithstanding the foregoing, from and after the time that the Agency has made Reimbursement payments with respect to any Tax Year that are less than the Annual Reimbursement Cap (such shortfall being a “**Reimbursement Shortfall**”), then, to the extent the Agency has previously received or thereafter receives additional Agency Share payments with respect to any Tax Year (such additional Agency Share for any given Tax Year, the “**Excess Agency Share**”), the Agency will make Reimbursement payments to Participant with respect to such Tax Year where there was a Reimbursement Shortfall from any Excess Agency Share to the extent of all cumulative Reimbursement Shortfalls. Additionally, Agency reserves the right to prepay its Reimbursement obligations hereunder by paying to Participant an amount equal to difference between the amount of Reimbursements previously paid to Participant and the Maximum Reimbursement Amount.

#### **2.4.3.1. No Limitation on Reimbursement Payments During a Calendar Year**

The Parties acknowledge and agree that the provisions of this Section 2.4.3 limit the amount of Reimbursement the Agency shall be required to remit to Participant with respect to a given Tax Year to the Annual Reimbursement Cap, but they shall not limit the amount of the Reimbursement the Agency may or is obligated to remit to Participant during any given calendar year.

### **2.4.4. No Agency Guarantee of Amounts of Reimbursement, etc.**

Participant acknowledges that the Reimbursement paid by the Agency to Participant under this Agreement is limited by the amount of Agency Share actually received by the Agency with respect to the Reimbursement Term or any portion thereof. Participant further acknowledges that (a) the Agency does not guarantee that Participant will receive a minimum dollar amount with respect to the Reimbursement Term or a particular taxable value of the Facility and Site, (b) the taxable value of Participant’s property and other within the Site is determined by the Salt Lake County Assessor and/or the Utah State Tax Commission and (c) the Agency does not control or influence such taxable values.

### **2.4.5. Certain Amendments to the Interlocal Agreements**

The Reimbursement Term and the Reimbursement shall not be increased by any future extension

of or modification to the Budget or the Interlocal Agreements; for purposes of clarification, if the Agency were to amend the Interlocal Agreements at some point in the future so that the Agency receives a greater percentage of Tax Increment from the Project Area or from a greater portion of the Project Area, the Agency shall not be obligated to pay to Participant any amount greater than Participant would have received under the terms of this Agreement and the Interlocal Agreements as effective as of the date of this Agreement. The Agency shall not support any modification or amendment to the Interlocal Agreements that would reduce the amount of Reimbursement that Participant is entitled to receive under this Agreement or the term during which Participant is entitled to receive the Reimbursement.

## **2.5. Request for Reimbursement**

Participant shall submit to the Agency by May 1st of the year following each Tax Year a written request for payment of the Reimbursement with respect to such Tax Year (each, a “**Request for Payment**”). The Participant shall include in the Request for Payment for a given Tax Year proof of payment of all real and personal property taxes subject to and as described in Section 2.7 for such Tax Year. Participant’s Request for Payment also shall include written documentation of actual costs incurred for the Investment for which the Reimbursement is sought. Unless the Agency sends written notice to Participant of deficiency in the Request for Payment (which notices of must specify in reasonable detail all alleged deficiencies) within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period. If Participant has timely delivered (or is deemed to have timely delivered) a Request for Payment with respect to a given Tax Year and there is a Reimbursement Shortfall with respect to such Tax Year, Participant will not be required to deliver any additional Request for Payment with respect to such Tax Year as a condition to the Agency’s obligation to remit any remaining Reimbursement with respect to such Tax Year to Participant.

## **2.6. Payment of Taxes**

During the term of this Agreement, to the extent applicable, Participant agrees to pay (and to cause any of its applicable Affiliates to pay), prior to delinquency, all undisputed real and personal property taxes and other *ad valorem* taxes and assessments assessed against any portion of the Site, the Facility or any other taxable property, including real property improvements and personal property, located within the Site, to the extent owned by Participant or any of its Affiliates; provided, however, that Participant and any of its applicable Affiliates expressly retain any and all rights they have to (a) challenge, object to, or appeal any real property or personal property and other *ad valorem* taxes and assessments; and (b) petition for the reduction thereof, and may exercise such rights.

## **2.7. Reduction or Elimination of Reimbursement**

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, rule, regulation or other law, or adjudication rendering unlawful the collection, receipt, disbursement, or application of the Agency Share to the Agency or the Reimbursement to Participant as contemplated in and by this Agreement. If the provisions of Utah law which govern

the payment of the Agency Share to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to pay Participant the Reimbursement will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the validity, enforceability, legality or constitutionality of any change in any Federal or State statute, rule, regulation or other law that reduces or eliminates the payment of Agency Share to the Agency and/or the payment of Reimbursement to Participant (any such change, a "**Change in Law**"), including, without limitation, by (a) bringing, either individually or with other persons or entities, legal proceedings challenging the validity, enforceability, legality or constitutionality of any Change in Law or (b) joining (as a party or otherwise) any such legal proceedings that have been brought by others (any such legal proceedings, "**Reimbursement Proceedings**"); and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of Agency Share to the Agency and/or payment of Reimbursement to Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, legality or constitutionality of a Change in Law or to otherwise indemnify or reimburse Participant for its actions to independently do so. Notwithstanding the foregoing, (i) the Agency agrees that, at the request of Participant and at Participant's cost and expense (and at no cost to the Agency), the Agency will cooperate with Participant in all reasonable respects in connection with Participant's challenge of a Change in Law as contemplated above, (ii) the Agency (A) acknowledges and agrees that (I) Participant is not a party to any of the Interlocal Agreements or any other agreements to which the Agency is a party that relate to the Agency Share and the Reimbursement, (II) the Interlocal Agreements include (and such other agreements may include) provisions in which the parties expressly agree that other persons and entities are not third party beneficiaries to such agreements and (III) due to the facts described in clauses (A)(I) and (II), above, and other possible factual or legal matters, Participant may not have standing to challenge a Change in Law or join in a Reimbursement Proceeding in a manner that could prevent or mitigate the reduction or elimination of the payment of Agency Share to the Agency and/or the payment of Reimbursement to Participant at all or to the same degree as the Agency, and (B) agrees that, at the request of Participant and at Participant's cost and expense (and at no cost to the Agency), it will (I) challenge a Change in Law and/or join in a Reimbursement Proceeding in its own name, (II) join, in its own name, Participant in challenging a Change in Law or in joining in a Reimbursement Proceeding and/or (III) authorize Participant to challenge a Change in Law and/or join in a Reimbursement Proceeding in the Agency's name, and (iii) in connection with its agreements in clauses (i) and (ii), above, at the request of Participant and at Participant's cost and expense (and at no cost to the Agency), the Agency will take such actions in connection with any such challenge of a Change in Law or Reimbursement Proceeding as Participant (A) reasonably believes the Agency must or may be required to take in connection with such challenge or Reimbursement Proceeding and/or (B) reasonably directs the Agency to take, including, without limitation, (I) taking any such action for or on behalf of Participant or itself, (II) joining Participant in taking any such action, (III) authorizing Participant to act for, on behalf of or in the name of the Agency with respect to any such action and/or (IV) executing such documents as Participant reasonably requests the Agency to execute.

## **2.8. Declaration of Invalidity**

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the

Project Area or this Agreement or any Interlocal Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Agency Share to the Agency (any such action, an “**Invalidation Action**”), the Agency shall provide written notice of such Invalidation Action to Participant. In the event an Invalidation Action is filed, the Agency shall have no obligation to challenge that Invalidation Action or defend itself against such Invalidation Action. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such Invalidation Action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Agency Share to the Agency or the Reimbursement to Participant as contemplated in and by this Agreement. Participant specifically reserves and does not waive any right it may have to intervene, at Participant’s cost and expense, in any such Invalidation Action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Reimbursement to the Agency and/or Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Agency Share to the Agency and/or the Reimbursement to Participant. Notwithstanding the foregoing, (a) the Agency agrees that, at the request of Participant and at Participant’s cost and expense (and at no cost to the Agency), the Agency will cooperate with Participant in all reasonable respects in connection with Participant’s intervention in an Invalidation Action and bringing the challenges described above in this Section 2.8, (b) the Agency (i) acknowledges and agrees that (A) Participant is not a party to any of the Interlocal Agreements or any other agreements to which the Agency is a party that relate to the Agency Share and the Reimbursement, (B) the Interlocal Agreements include (and such other agreements may include) provisions in which the parties expressly agree that other persons and entities are not third party beneficiaries to such agreements and (C) due to the facts described in clauses (i)(A) and (B), above, and other possible factual or legal matters, Participant may not have standing to intervene in any or all Invalidation Actions or challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Reimbursement to the Agency and/or Participant in a manner that could prevent or mitigate the reduction or elimination of the payment of Agency Share to the Agency and/or the payment of Reimbursement to Participant at all or to the same degree as the Agency, and (ii) agrees that, at the request of Participant and at Participant’s cost and expense (and at no cost to the Agency), it will (A) challenge an Invalidation or defend itself in an Invalidation Action in its own name, (B) join, in its own name, Participant in challenging or defending an Invalidation Action and/or (C) authorize Participant to challenge an Invalidation Action or defend the Agency in an Invalidation Action in the Agency’s name, and (c) in connection with its agreements in clauses (a) and (b), above, at the request of Participant and at Participant’s cost and expense (and at no cost to the Agency), the Agency will take such actions in connection with any such challenge of an Invalidation Action or defense of an Invalidation Action as Participant (i) reasonably believes the Agency must or may be required to take in connection with such challenge or defense and/or (ii) reasonably directs the Agency to take, including, without limitation, (A) taking any such action for or on behalf of Participant or itself, (B) joining Participant in taking any such action, (C) authorizing Participant to act for, on behalf of or in the name of the Agency with respect to any such action and/or (D) executing such documents as Participant reasonably requests the Agency to execute. In the event that the court declares that the Agency cannot receive the Agency Share and/or cannot remit Reimbursement to Participant, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Agency Share paid to the Agency and/or the Reimbursement paid to Participant, and the grounds for the legal determination

cannot reasonably be addressed by the Agency, the Agency's obligation to pay to Participant the Reimbursement in accordance with this Agreement will be reduced or eliminated to the extent that the Agency Share is not received by the Agency.

### **2.9. Dispute over Receipt of Payment of the Reimbursement**

In the event a dispute arises as to the person or entity entitled to receive all or any portion of the Reimbursement under this Agreement with respect to a given Tax Year due to a claimed assignment or claimed successor-in-interest to such portion of the Reimbursement or otherwise, the Agency may withhold payment of the portion of the Reimbursement in dispute and may refrain from taking any other action required of it by this Agreement with respect to such portion of the Reimbursement until the dispute is resolved either by agreement of the persons or entities claiming to be entitled to such portion of the Reimbursement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The foregoing provisions of this Section 2.9 with respect to the timing of the Agency's payment of withheld Reimbursement amounts described above are subject to the provisions of Section 2.1.1. the Agency shall be entitled to deduct from its payment of the Reimbursement any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute, except in the instance that the dispute arises due to the act, error or omission of the Agency, in which case the Agency shall be responsible for all costs and expenses including reasonable and actual attorney fees.

### **2.10. Operation of the Facility**

For purposes of this Agreement, "**Operate**", "**Operated**", "**Operating**", "**Operational**" or "**Operations**" of the Facility shall mean when the following conditions are satisfied: (1) any required permits, licenses, or other approval have been obtained for Participant to occupy the Facility and (2) Participant shall have received a business license issued by the City. For purposes of this Section 2.10 and this Agreement, Participant shall be deemed to have continuously Operated the Facility if the foregoing standards are substantially met or exceeded, notwithstanding temporary cessation of Operations for inspection, maintenance, repair, replacement, down-time or not using portions of the Facility that are not material in size in the ordinary course of business and operations for comparable facilities owned or operated by Affiliates of Participant, Events of Force Majeure, and/or damage or destruction.

### **2.11. Commencement of Operations**

For purposes of this Agreement, Operations of the Facility shall be deemed to have commenced if the applicable conditions and standards in Section 2.10 are met. If Participant fails to commence Operations of the Facility on or before December 31, 2025 for any reason other than Events of Force Majeure, the Agency shall have the right to terminate this Agreement upon written notice to Participant at any time prior to commencement of Operations of the Facility, subject, however, to any notice requirements, cure periods, limitations or requirements set forth in Article 5.

### **2.12. Continuing Operations**

Operations of the Facility as described in Section 2.10 shall continue throughout the term of this Agreement as set forth in Article 4. If Participant ceases to Operate the Facility as described in Section 2.10 for a continuous period of more than one year for any reason other than Events of Force Majeure and/or damage or destruction, the Agency shall have the right to terminate this Agreement upon written notice to Participant at any time during such cessation of Operations.

### **2.13. Funding Responsibility**

The Parties understand and agree that funding for the Investment comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

### **2.14. Potential Shortfall**

Participant agrees and acknowledges that (a) the only funds available to the Agency for compensation or reimbursements to Participant are those funds received by the Agency as the Agency Share under the Interlocal Agreements, and (b) the amount of such Agency Share is a direct function of the amount of the Tax Increment generated by the real and personal property within the Project Area during the Reimbursement Term which, in turn, is a direct function of the value of real and personal property within the Project Area for property tax purposes.

### **2.15. Audits, Appeals, and Reassessments**

As noted in Section 2.7, Participant may object to, challenge, or appeal any *ad valorem* property taxes that may be owed by Participant for property within the Site. However, in the event that such an action is pursued by Participant and is eventually successful in reducing the taxable valuation of Participant's and/or any of its Affiliates' property within the Site with respect to a given Tax Year, and such reduction has the effect of reducing the Agency Share for such Tax Year below the amount of the Reimbursement previously paid to Participant for such Tax Year, Participant shall immediately repay to the Agency an amount equal to the amount of Reimbursement Participant has received with respect to such Tax Year to the extent that the Agency is required to return such amount to Salt Lake County or the Taxing Entities in accordance with the terms and provisions of such Interlocal Agreements as a result of such revaluation. In the event that Participant does not timely make such payment to the Agency, the Agency may correspondingly reduce the Reimbursement paid to Participant for the next Tax Year of the Reimbursement Term. The Agency, at its sole discretion, may withhold payment of the Reimbursement for the final year of the Reimbursement Term until such date as Participant can no longer appeal or contest the assessed value of Participant's property within the Site.

## **3. ADDITIONAL TERMS**

### **3.1. Investment**

Participant will at all times be responsible for its Investment at the Facility. Recognizing the level of Investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Reimbursement to Participant as a Reimbursement to develop the Facility on the Site and undertake the Investment and the continued Operation requirements

with respect to the Facility as contemplated in this Agreement.

### **3.2. Responsibility for Development Plans and Permits**

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for Participant's Operation of the Site.

### **3.3. Other Terms**

#### **3.3.1. City Land Use Authority**

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

#### **3.3.2. Restriction Against Parcel Splitting.**

If applicable, during the term of this Agreement, Participant shall not, without the prior written approval of the Agency, (a) convey its fee title to the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion of the Facility or structure would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels.

#### **3.3.3. Deannexation**

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Site or any portion thereof from the City during the Reimbursement Term. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Reimbursement from Agency Share payments that are attributable to property taxes (a) paid with respect to real and personal property within the that portion of the Site that is no longer within the City and (b) assessed and payable with respect to any period after the effective date of the disconnection, deannexation, disincorporation, or other removal of such portion of the Site from the municipal boundaries of the City

#### **3.3.4. Limits on Liability**

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such

damages at the time of contracting or otherwise.

### **3.3.5. Local, State, and Federal Laws**

Participant shall make the Investment and utilize the Facility in material conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law, the applicability of any such law or allegations of non-compliance with any such law.

### **3.3.6. Rights of Access**

Representatives of the Agency shall have the right of reasonable access to the Facility for purposes of inspection, with reasonable and prior written notice (but in no event less than 48 hours prior), and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant, subject, however, to the rules, regulations, security protocols and other access limitations for safety and security purposes as required by Participant.

### **3.3.7. Responsibility of the Agency**

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

### **3.3.8. Non-waiver of Governmental Immunity**

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code 63G-7-101, *et seq.*

### **3.3.9. Agency and City Publicity**

Throughout the term of this Agreement and notwithstanding any agreements to the contrary, the Agency shall have the right to freely use the following facts and information in Agency and City marketing, promotional, and publicity materials (together, "**Promotional Materials**"): (i) the presence of Participant's operations in the City, (ii) the approximate square footage of the Facility, (iii) Participant's approximate total Investment relating to the Facility within the City, (iv) timing of Participant's initial and subsequent investments within the City, (v) the details of the Reimbursement and the expected benefits to the City, (vi) the location of the Facility, and (vii) publicly-available information about Participant and its operations and history.

Except as specifically allowed in this Subsection 3.3.10, the Agency shall not disclose any nonpublic information about Participant or Participant's operations within the Project Area as part of any Promotional Materials or press releases.

## **4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT**

The covenants by either of the Parties established in this Agreement, including but not limited to covenants with respect to conformance with federal, local, and state laws, shall, without regard to technical classification and designation, be binding on such Party and any of its successors and assigns for the benefit of the other Party and its successors and assigns during the term of this Agreement. The term of this Agreement shall commence on the date first written above in this Agreement and, unless earlier terminated in accordance with the terms and provisions of this Agreement, shall end upon the later of: (a) the Agency's final payment of all Reimbursement to which Participant is entitled under the terms and provisions of this Agreement (including such terms and provisions that condition the obligation of the Agency to make Reimbursement payments with respect to a given portion of any such Tax Year or limit the amount of Reimbursement the Agency is required to make with respect to a given Tax Year) or (b) upon the written agreement signed by the Parties hereto.

## **5. DEFAULTS, REMEDIES, AND TERMINATION**

### **5.1. Default**

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement ("**Default**").

### **5.2. Notice**

If a Default under this Agreement occurs, the non-defaulting Party may give written notice (a "**Default Notice**") of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any right or remedy hereunder with respect to such Default without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

### **5.3. Cure Period**

The non-defaulting Party shall have no right to exercise any right or remedy hereunder with respect to the other Party's Default unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the Default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days; provided, however, that this sentence shall not be construed to limit Participant's right to challenge a claim that Participant is obligated to make a payment that is alleged in a Default Notice or the amount claimed in a Default Notice. If the Default is not cured by such Party within thirty (30) days of delivery of the Default Notice, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, such failure to cure shall be an Event of Default.

**5.3.1. Rights and Remedies**

Upon the occurrence of an Event of Default, the non-defaulting Party shall have, and may pursue, all remedies provided for in this Agreement with respect to such Event of Default and shall have the right to obtain specific performance, unless otherwise limited by the express provisions set forth in this Agreement. Such remedies are cumulative and, unless otherwise limited by the express provisions set forth in this Agreement, the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting Party. Notwithstanding the foregoing, if Participant fails to commence or continue Operations as contemplated by Sections 2.10 and 2.11, above, or fails to cure or commence to cure, as applicable, a Default within the applicable period described in Section 5.3 such that the applicable Default gives rise to an Event of Default, then in such case Agency's sole remedy shall be to terminate this Agreement upon payment of any amounts that may be due from Participant to the Agency and/or from the Agency to Participant under this Agreement (for clarity, Agency may not commence an action against Participant for specific performance to commence or continue Operations, make the Investment or cure any other Default by Participant Party, provided, however, if Participant (a) commences Operations or resumes Operations after a failure to commence or continue Operations or (b) cures (or, when applicable, commence to cure) a Default that has led to an Event of Default (other than a Default contemplated by clause (a), above) before Agency notifies Participant that it is terminating this Agreement as a result of any of the failures on Participant's part described in clauses (a) and (b), above, Agency may not terminate this Agreement, but Agency may withhold any and all Reimbursement Payments otherwise payable to Participant that relate to or arise out of any Agency Share that Agency receives at any time to the extent such Agency Share is based on property taxes paid or payable with respect to (i) the period prior to commencement of Operations, (ii) the period during which Participant's failure to continue the Operations would give Agency the right not to deliver Reimbursement payments to Participant as a result of such failure or (iii) the period between the time a Default described in clause (b), above, has become an Event of Default and the time Participant has cured or commenced to cure, as applicable, such Default. Additionally, nothing in this Section 5.3.1 or elsewhere in this Agreement will limit Agency's right to assert claims or initiate actions against Participant to collect, or pursue a judgment against Participant for, amounts Participant has failed to pay Agency pursuant to the terms and provisions of this Agreement.

**5.3.2. Legal Actions**

**5.3.2.1. Venue**

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Third District Court for the State of Utah located in Salt Lake County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

**5.3.2.2. Service of Process**

Service of process on the Agency shall be made by personal service upon the Chairman or

Executive Director of the Agency or in such other manner as may be provided by law. Service of process on Participant shall be by personal service upon its Registered Agents, or in such other manner as may be provided by law, whether made within or without the State of Utah.

**5.3.2.3. Applicable Law**

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

**5.3.2.4. Waiver of Trial by Jury.**

EACH PARTY ABSOLUTELY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**6. GENERAL PROVISIONS**

**6.1. Authority**

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

**6.2. Notices, Demands, and Communications between the Parties**

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.8.1 and 1.8.2. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

**6.3. Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

**6.4. No Liability of Officials and Employees**

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

#### **6.5. Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's Executive Director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

#### **6.6. Approvals**

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

#### **6.7. Attorney Fees**

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

#### **6.8. Interpretation**

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall be construed as creating the relationship of principal and agent, or a partnership, or a joint venture, or an enterprise between the Parties hereto.

#### **6.9. No Third-Party Beneficiaries**

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

#### **6.10. Mediation**

In the event a dispute arises between the parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the parties, the parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner. Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Millcreek, Utah.

**6.11. Divisions; Headings; Cross References**

The division of this Agreement into Articles, Sections and Subsections and the use of titles, headings or captions in connection therewith are only for convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof and shall have no legal effect in construing the provisions of this Agreement. Unless indicated otherwise, references in this Agreement to Articles, Sections, Schedules and Exhibits are to articles, sections, schedules and exhibits of this Agreement.

**6.12. Contra Proferentum**

This is an arm's-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be construed against either Party based on which Party drafted the provision in question.

**6.13. 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.

**6.14. Incorporation of Recitals and Exhibits**

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

**6.15. Governmental Records and Management Act**

The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement is protected under the Utah Governmental Records Access and Management Act, § 63G-2-101 *et seq.* (“GRAMA”) under a claim of “business confidentiality” so long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B).

**6.16. Force Majeure; Events of Force Majeure**

If, by reason of an Event of Force Majeure (as defined below), Participant is unable in whole or in part to (a) carry out any of its obligation or agreements under this Agreement or (b) cure (or, when applicable, commence to cure) any Default by Participant (whether such Default occurred, or the Agency delivered a Default Notice with respect to such Default, prior to or after an applicable Event of Force Majeure), (i) Participant shall be deemed to not be in Default during the continuance of such inability and for the duration of any delay caused by such inability (any such period, a “**Force Majeure Period**”) and (ii) the period within which Participant may cure (or, when applicable, commence to cure) a Default before such Default gives rise to an Event of Default shall be extended by a length of time that is equal in duration to the applicable Force Majeure Period. Additionally, if, by reason of an Event of Force Majeure, any of the conditions to the Agency’s delivery of any portion of the Reimbursement with respect to a given period have not been satisfied by the date or within the period contemplated in this Agreement with respect to such condition, the date by which, or the period during which, such unfulfilled condition must be satisfied and all dates and periods relevant to the applicable Reimbursement shall be extended by a length of time that is equal in duration to the applicable Force Majeure Period. The term “**Event of Force Majeure**” as used herein shall mean an event that is either not reasonably foreseeable or anticipated or cannot reasonably be controlled by Participant or, in the case of conditions to delivering Reimbursement payments, that prohibits, precludes, delays or materially interferes with (x) the performance of the relevant agreement or obligation of Participant or with Participant’s satisfaction of any conditions or limitations in this Agreement to the Agency’s delivery of any portion of the Reimbursement with respect to any period (including, without limitation, the development and construction of the new patient tower, making any or all of the renovations or improvements contemplated hereby, making the Investment, obtaining or receiving any of the licenses, permits or other approvals contemplated by Section 2.10, or the taking of any other action that may be required to commence or continue Operations of the Facility) or (y) the satisfaction of any condition to the Agency’s delivery of any portion of the Reimbursement with respect to any period that is not within the control of Participant (including, without limitation, any of the conditions or limitations included in Sections 2.2.1 and 2.2.2), which events include, without limitation strikes; lockouts; the enactment, imposition or modification of any orders of any governmental body, including the government of the United States, the State of Utah, Salt Lake County, the City or any of their departments, agencies, or officials, or any civil or military authority which occurs after the Effective Date and prohibits, precludes, delays or materially interferes with the performance of the relevant agreement of Participant or the satisfaction of any condition on its part; war; terrorist activities; sabotage; acts of public enemies; insurrections; riots; epidemics; pandemics; fire (whether or not an act of nature); landslides, earthquakes, sinkholes, floods, hurricanes, tornadoes, lightning, other unusually inclement weather or other natural disasters of acts of nature; or explosions; it being agreed that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of Participant, and Participant shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of Participant, unfavorable to Participant.

## **7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS**

### **7.1. Duplicate Originals**

This Agreement may be executed in duplicate originals, each of which shall be deemed an original.

Electronic pdf signatures shall be considered original signatures and scans of original documents shall be treated as original documents.

**7.2. Integration**

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter thereof.

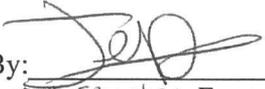
**7.3. Waivers and Amendments**

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

*[Remainder of page intentionally left blank; signature pages to follow]*



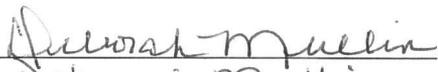
**MILLCREEK COMMUNITY  
REINVESTMENT AGENCY**

By:   
Jeff Silvestrini, Executive Director

Attest:

By:   
Elyse Sullivan, Secretary Recorder

**NORTHERN UTAH HEALTHCARE  
CORPORATION d/b/a MountainStar  
Healthcare - St. Mark's Hospital**

By:   
Name: Deborah Mullin  
Title: Assistant Secretary

**EXHIBIT A**  
(List of Investments)

**St. Mark's Hospital**  
*New Patient Tower*

*Exhibit A*

	<u>Total Cost*</u>
Building materials for Exterior Façade of Tower	\$1,228,630
Windows along the ground floor of street-facing facades	\$205,000
Entrance Canopy	\$819,391
Entrances to Main Hospital/North MOB and ER/Central MOB	\$773,009
Landscaped Buffers	\$100,000
New Tower Signage	\$62,105
Additional costs associated with curb appeal	\$105,250
	<b><u>\$3,293,385</u></b>

\*Cost includes labor and materials