

MILL LEVY CAP AGREEMENT

This **MILL LEVY CAP AGREEMENT** (this “**Agreement**”) is made and entered as of _____, 2024 (the “**Effective Date**”), by and among **MOUNTAIN AREA METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **STEAMBOAT RESORT DEVELOPMENT COMPANY**, a Delaware corporation (“**SRDC**”), referred to herein collectively as a “**Parties**,” and individually as a “**Party**”.

RECITALS

WHEREAS, the District has been duly and validly organized as a quasi-municipal corporation and political subdivision of the State of Colorado, in accordance with the provisions of §§ 32-1-101, *et seq.*, Colorado Revised Statutes (the “**Special District Act**”), with the power to provide for the financing, construction, installation, operation and maintenance of public infrastructure and improvements (“**Public Improvements**”), as described in the Special District Act, within and without its respective boundaries, as authorized and in accordance with the Service Plan for the District, as the same may be amended from time to time (collectively, the “**Service Plan**”); and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, pursuant to the Colorado Constitution Article XIV, Section 18(2)(a), and § 29-1-203, C.R.S., the District may cooperate or contract to provide any function, service or facility lawfully authorized to each, and any such contract may provide the imposition of taxes and the incurring of debt; and

WHEREAS, the District was organized for the purpose of providing for the financing, construction, installation, operation, and maintenance of public infrastructure and improvements serving an approximately 30.418 acre mixed-use development in the City of Steamboat Springs (the “**City**”), Routt County (the “**County**”), Colorado, referred to as “Mountain Area Development” (the “**Development**”); and

WHEREAS, SRDC owns certain development rights under the Declaration of Condominium and Plan of Quarter Share Ownership for the Steamboat Grand Resort Hotel Condominium (the “**Hotel**”) recorded September 20, 2000 at Reception No. 533317 in the Routt County, Colorado real property records, as amended from time to time, which vest in SRDC the right to withdraw from the common elements of the Hotel certain property located immediately adjacent to Mt. Werner Circle, and immediately to the South of the Hotel, and more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the “**Amble Parcel**”), and SRDC anticipates that SRDC or its successor in interest will file a petition to include the Amble Parcel into the District’s boundaries at such time as such withdrawal is consummated; and

WHEREAS, the inclusion of the above-referenced property (the “**Inclusion Parcel**”) into the District’s boundaries and the future development of the Inclusion Parcel will substantially increase the tax base within the District’s boundaries, facilitate the issuance of bonds by the District to help fund public improvements, and the construction of such improvements will in turn support increases in the value of the Inclusion Parcel; and

WHEREAS, in consideration for SRDC’s commitment to include the Inclusion Parcel within the boundaries of the District, the District is willing to commit to a uniform capped mill levy agreement within its boundaries, inclusive of any additional inclusions of property within the boundaries of the District that may occur after the effective date of this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Mill Levy Cap. Notwithstanding any contrary provision or authority in the Consolidated Service Plan for Mountain Area Metropolitan District Nos. 1-6, the District shall not impose a mill levy in excess of thirty (30) mills in the aggregate, inclusive of all taxes of the District, including operations, maintenance and debt service taxes (“**Mill Levy Cap**”). The Mill Levy Cap shall apply uniformly throughout the District. Further, the District shall not impose a debt mill levy that exceeds forty (40) years after the year of the initial imposition of a debt mill levy by the District.

2. Inclusion of the Property. SRDC agrees to file the appropriate petition for inclusion of Amble Parcel within the District’s boundaries simultaneously with the withdrawal of such property from the Hotel common elements.

3. Future Inclusions and Exclusions of Property. The Mill Levy Cap shall apply to all parcels included within the District’s boundaries as of the effective date of this Agreement, and to any inclusion property that is added within the District’s boundaries in the future. This Agreement shall run with the land and shall inure to the benefit of all property owners within the boundaries of the District and their successors and assigns.

4. Recording. This Agreement shall be recorded in the real property records in and for the County.

5. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party, after having given notice to the other Party and a 30-day period to cure said breach or default, shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its/their judgment or award reasonable attorneys’ and expert witness fees and court costs.

7. Amendments. This Agreement may only be amended or modified by a writing executed by the District and SRDC or SRDC's successor-in-interest to the Amble Parcel; provided, however, upon the establishment under Colorado law of any common interest community on all or a portion of the Amble Parcel, the provisions of Section 1 of this Agreement or of this Section 7 may be amended or modified only upon the approval of the owners' association established under the governing documents of such common interest community (the "Amble Owners Association") pursuant to a valid majority vote of the members of the Amble Owners Association in accordance with the governing documents of the Amble Owners Association and Colorado law, with such affirmative vote being certified by the executive board of the Amble Owners Association and, provided further, that any other amendment or modification of this Agreement may be approved by the duly adopted resolution of said executive board alone.

8. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be illegal, void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such illegal, void or unenforceable provision, the Parties agree to work together in good faith to amend the agreement to add a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

9. Governing Law/Venue. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located.

10. Authority. By execution hereof, the District and SRDC represent and warrant that their representative signing hereunder has full power and lawful authority to execute this Agreement and to bind the respective Party to the terms hereof.

11. Entire Agreement. This Agreement constitutes and represents the entire, integrated agreement between the Parties with respect to the matters set forth herein, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to those matters, whether written or oral. This Agreement shall become effective upon the date set forth above.

12. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

13. Negotiated Provisions. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

14. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties and their respective successors and assigns.

15. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

MOUNTAIN AREA METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

Officer of the District

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel for the District

STEAMBOAT RESORT DEVELOPMENT COMPANY

By: _____

Printed Name

Title

Exhibit A

Amble Parcel Legal Description