

Resolution No. RD 23-03

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY APPROVING AN SIB LOAN AGREEMENT, AND ASSOCIATED SECURITY INSTRUMENT AND LOAN GUARANTY, WITH RIVERDALE CENTER OWNER, L.C., TO HELP FUND A PARKING STRUCTURE AND RELATED TRANSPORTATION IMPROVEMENTS FOR THE DEVELOPMENT PROJECT IN THE CIVIC CENTER NORTH REDEVELOPMENT PROJECT AREA ON CERTAIN VACANT LAND LOCATED BETWEEN MONROE STREET AND I-15, JUST SOUTH OF SEGO LILY DR.

WHEREAS, the Redevelopment Agency of Sandy City (the “Agency”) has been created by the Sandy City Council to transact the business and exercise all of the powers provided for by Title 17C of the Utah Code Annotated, known as the Limited Purpose Local Government Entities — Community Reinvestment Agency Act (the “RDA Act”);

WHEREAS, Sandy City, Utah (“Sandy City”) has obtained a loan from the Utah State Infrastructure Bank (the “SIB Loan”), via the Utah Department of Transportation (“UDOT”), as provided under Title 72, Chapter 2, Part 2 of the Utah Code Annotated 1953, as amended (the “SIB Act”), to fund certain transportation project improvements in the Civic Center North Project Area (the “Project Area”) to the extent permitted by the SIB Act and the applicable SIB Loan documents with UDOT.

WHEREAS, pursuant to an Interlocal Cooperation Agreement, Sandy City has agreed to transfer 100% of the proceeds of the SIB Loan to the Lender, and the Lender agrees to in turn loan 100% of those SIB Loan Proceeds to Borrower, as provided below, for use by Borrower in financing certain transportation project improvements within the Project Area as authorized by the SIB Act and this Agreement.

WHEREAS, the Agency, in furtherance of the purposes of the RDA Act and the Project Area Plan for the Civic Center North Redevelopment Project Area (the “Project Area”), desires to encourage and promote the private development of an office, retail and other use development project, and associated parking structure, within the Project Area.

WHEREAS, the Agency desires to enter into an SIB Loan Agreement (the “Agreement”) with Riverdale Center Owner, L.C. (“Developer”), substantially in the form attached hereto as **Exhibit A** along with an associated Secured Promissory Note substantially in the form attached as an exhibit to the SIB Loan Agreement, to be secured by a Deed of Trust, Assignment of Rents and Fixture Filing (“Security Instrument”) substantially in the form attached hereto as **Exhibit B**, and further secured by Loan Guaranty documents (each a “Guaranty”) substantially in the form attached hereto as **Exhibit C**, pursuant to which the Agency will loan the SIB Loan proceeds to Developer, for use by Developer as provided in the SIB Loan Agreement (generally, to help fund a parking structure to serve office and retail improvements within the Project Area).

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE REDEVELOPMENT AGENCY OF SANDY CITY:

1. The SIB Loan Agreement in substantially the form attached hereto and incorporated herein as **Exhibit A**, including the Secured Promissory Note attached as an exhibit to the SIB Loan Agreement, is approved, and the Executive Director of the Agency is authorized and directed to execute the Agreement for and on behalf of the Agency. The Executive Director may approve any minor modifications, amendments, or revisions to the SIB Loan Agreement as may be in the Agency's best interest and in harmony with the intent and purpose of the SIB Loan Agreement as substantially set forth in the attached **Exhibit A**. The form of Security Instrument, in substantially in the form attached hereto as **Exhibit B**, is also approved. The form of Guaranty, in substantially in the form attached hereto as **Exhibit C**, is also approved. The Executive Director may approve any minor modifications, amendments, or revisions to the Security Instrument or Guaranty as may be in the Agency's best interest and in harmony with the intent and purpose of the SIB Loan Agreement as substantially set forth in the attached **Exhibit B** and **Exhibit C**, respectively.

2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED on March 21, 2023.

Chair

Attest:

Secretary

Exhibit A
Form of SIB Loan Agreement

SIB LOAN AGREEMENT

THIS SIB LOAN AGREEMENT (“Agreement”) is made effective as of March 31, 2023 (“Effective Date”), by and between Riverdale Center Owner, L.C., a Utah limited liability company (“Borrower”), and the Redevelopment Agency of Sandy City, Utah, a Utah political subdivision (“Lender”). Throughout this Agreement Lender and Borrower, may individually be referred to as “Party” and collectively as “the Parties”.

A. WHEREAS, Sandy City, Utah (“Sandy City”) has obtained a \$5,300,000.00 loan from the Utah State Infrastructure Bank (the “SIB Loan”), via the Utah Department of Transportation (“UDOT”), as provided under Title 72, Chapter 2, Part 2 of the Utah Code Annotated 1953, as amended (the “SIB Act”), to fund certain transportation project improvements in the Civic Center North Project Area (the “Project Area”) to the extent permitted by the SIB Act and the applicable SIB Loan documents (including the final signed UDOT Loan Agreement described *below*).

B. WHEREAS, pursuant to an Interlocal Cooperation Agreement substantially in the form attached hereto as Exhibit B, Sandy City has agreed to transfer 100% of the proceeds of the SIB Loan to the Lender, and the Lender agrees to in turn loan 100% of those SIB Loan Proceeds to Borrower, as provided below, for use by Borrower in financing certain transportation project improvements within the Project Area as authorized by the SIB Act and this Agreement.

C. WHEREAS, generally, the repayment terms of this Loan will mirror the repayment obligation of Sandy City under an underlying Loan Agreement between Sandy City and the Utah Department of Transportation attached in substantially final form hereto as Exhibit C (the “UDOT Loan Agreement”), with a balloon payment in 2034.

D. WHEREAS, the Lender previously sold to the Borrower certain vacant land located between Monroe Street and I-15, just South of Seago Lily Dr. (the “Property”) as further and more particularly described in the attached Exhibit A.

E. WHEREAS, the Borrower intends to construct certain improvements on the Property, including certain parking structure facilities (the “Parking Facilities”).

NOW, THEREFORE, Lender and Borrower, in consideration of the foregoing and the mutual promises, covenants, conditions and agreements hereinafter set forth, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby confessed and acknowledged, do hereby agree as follows:

1. Intentionally Deleted.
2. Loan of Funds/Use of Proceeds. Lender agrees to loan to Borrower and Borrower hereby agrees to borrow from Lender the SIB Loan Proceeds, with repayment terms and security as provided below. Borrower covenants and agrees to use the SIB Loan proceeds solely for expenditures within the Project Area, located upon or benefitting the Property (defined below), that are Approved Costs. For purposes hereof, the term Approved Costs means any expenditure

permitted by the SIB Act, which the parties agree generally means, collectively, but without duplication, the sum of (a) costs incurred by Borrower or its affiliates to acquire the real property on which the Parking Facilities will be constructed, including, without limitation, the purchase price paid by Borrower or its affiliates for each Phase, and (ii) all hard and soft costs and expenses incurred by Borrower or its affiliates in engineering, designing and constructing one or both of the Parking Facilities on each Phase, including offsite costs which are required to be performed in connection with the construction of the Parking Facilities. Borrower assumes all responsibility to spend the SIB Loan Proceeds as required by the SIB Act.

3. Loan Amount/Note. Lender shall loan to Borrower the maximum principal sum of Five Million Three Hundred Thousand Dollars (\$5,300,000.00) (“Loan Amount”). Attached hereto as Exhibit D is a form of Secured Promissory Note (“Note”) to be executed by the Borrower in favor of Lender in connection with the execution of this Agreement.

4. Security. As further described in a Deed of Trust dated the same date as the Effective Date, made by Borrower in favor of Lender (the “Deed of Trust”), Borrower shall and hereby does grant to Lender a lien and security interest upon each Phase of the Property owned by Borrower or its affiliate (the “Property” as further described in the Deed of Trust and as described in the attached Exhibit A) in order to secure Borrower’s obligations under this Agreement and the Note. Lender acknowledges that such lien is intended to be a junior priority lien subject to any Senior Loan (defined in Section 13 below) and shall be subject to the provisions of Section 13 below.

5. Guaranty. Borrower shall cause its affiliated entities, KC Gardner Company, L.C., a Utah limited liability company, and Mountain West Capital Partners LLC, a Utah limited liability company (“Guarantor”) to execute a Loan Guaranty, guaranteeing the full payment and performance of the Note by the Borrower.

6. Disbursement of the Loan. The entire Loan Amount is considered fully funded as of the date Sandy City first received the SIB Loan Proceeds and interest begins accruing on the full Loan Amount as of that same date. However, notwithstanding the foregoing, the Lender will hold the Loan proceeds in Lender’s account and Lender agrees to disburse the Loan Proceeds periodically from time to time as requested by Borrower for Approved Costs incurred by Borrower or its affiliates, no more than 10 calendar days after a duly submitted request from Borrower, as follows and subject to the following conditions (Lender may, in Lender’s sole discretion, waive any of the following conditions on a case-by-case basis with respect to any disbursement request, and such waiver, if any, will be a one-time-only waiver and will not be applicable with respect to any additional disbursement request):

- a. Borrower has caused the Deed of Trust to be recorded against the Property.
- b. A request for a disbursement must be in email from Borrower to the Redevelopment Director and Secretary of the Lender.
- c. The disbursement must not cause the total disbursed amount to be in excess of the Loan Amount.

- d. The disbursement will be used solely to pay for Approved Costs.
- e. Either (i) Borrower or its affiliates have incurred hard and soft costs and expenses for the acquisition, design, construction or engineering of improvements within the Project Area, or serving the Project Area, which (A) have not been reimbursed under this Agreement and (B) are in an amount which is not less than the aggregate amount of disbursements made to Borrower under this Agreement, or (ii) Borrower shall have delivered evidence to Lender that Borrower has obtained a commitment for a loan, equity funding and/or other financing, the aggregate proceeds of which are (x) not less than the Loan Amount and (y) are required to be used to pay for, or reimburse Borrower for, costs incurred by Borrower or its affiliates in connection with the acquisitions, design, construction or engineering of improvements within the Project Area.
- f. An Event of Default shall not have occurred and be uncured under this Loan Agreement, the Note or the Deed of Trust.
- g. Borrower shall continue to be in regular business operations.
- h. All of the representations and warranties of Borrower remain true as of the date of the disbursement.
- i. The request for disbursement must:
 - i. If the Borrower has already paid for certain Approved Costs, provide evidence of payment of those Approved Costs, in which case the requested proceeds will be delivered directly to Borrower as reimbursement for those Approved Costs already paid, or
 - ii. If the Borrower has not already paid for certain Approved Costs, identify the payee(s), by name and payment delivery information, along with an itemization of each Approved Cost provided or to be provided by the respective payee(s).

7. Advice of Counsel. Each Party hereto confirms that such party has had the opportunity to read, review and consider all of the provisions of this Agreement, and to discuss this Agreement with whomever such party desired, including attorneys of such Party's own choosing, and if such Party has not consulted with an attorney, such Party acknowledges having had the opportunity to have done so and that such party chose voluntarily and knowingly not to consult with an attorney, with respect to this Agreement and all matters related thereto. The Parties each confirm that they understand the provisions of this Agreement and its final and binding effect on them and that they are entering into this Agreement freely, voluntarily, and without duress or coercion.

8. Representations and Warranties. Borrower represents and warrants to Lender as follows:

- a. Borrower is a limited liability company, validly existing under the laws of its state of organization set forth in the opening paragraph of this Agreement and the laws of the United States, with requisite power and authority to (a) incur the indebtedness evidenced by the Note; (b) enter into this Agreement and all other Loan Documents; (c) enter into any other agreements included in the Loan Documents executed and delivered to Lender concurrently herewith; and (d) conduct its business and to own and lease its assets in each jurisdiction in which Borrower conducts business or owns assets, including without limitation the State of Utah.
- b. No approval, authorization, bond, consent, certificate, franchise, license, permit, registration, qualification, or other action or grant by or filing with any person is required in connection with the execution, delivery, or performance by Borrower of the Loan Documents, except those which have been obtained.
- c. Borrower has full power and authority to own its properties and assets and to carry on its businesses as now being conducted. Borrower is, and the person signing on behalf of Borrower is, fully authorized and permitted to enter into this Agreement and the other Loan Documents, as applicable, to execute any and all documentation required in the Loan Documents, to borrow the amounts contemplated in the Loan Documents upon the terms set forth in the Loan Documents and to perform the terms of the Loan Documents, none of which require the consent or approval of any third person, except to the extent such consent has been obtained, or will conflict with or violate any law or legal obligation applicable to Borrower. The Loan Documents constitute valid and binding legal obligations of Borrower, except to the extent such enforceability may be limited by bankruptcy laws, general principles of equity and other laws generally applicable to creditors, and are enforceable, to the extent permitted by applicable law, in accordance with their terms, free from any setoff, claim or defense of any nature.
- d. The liens, security interests, and assignments created by the Loan Documents will, when granted and duly filed or recorded, constitute valid, effective, properly perfected, and enforceable second priority lien (subject to any Senior Loan (defined below) the Borrower has obtained or may obtain from time to time).
- e. Borrower is not a party to any pending suit or proceeding by or before any tribunal (whether judicial, administrative, or otherwise) which, if adversely determined, could reasonably be expected have a material adverse effect on the operation of the Borrower's business, the Borrower's performance of Borrower's obligations under this Agreement, or the transactions contemplated under this Agreement. To Borrower's knowledge, there are no claims or actions threatened against Borrower which may become the subject of litigation which might have a similar material adverse effect on Borrower's ability to perform its obligations under the Loan Documents.

- f. Borrower has filed all required federal, state and local tax returns and each of them has paid all of its taxes, assessments and all other obligations under federal, state or local law before they became delinquent. Borrower has no knowledge of any pending audit or investigation by any taxing authority or of any pending but unassessed tax liability of such party.
- g. Borrower has not at any time (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, (c) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (d) suffered the attachment or other judicial seizure of all or substantially all of its assets, (e) admitted in writing its inability to pay its debts as they come due, or (f) made an offer of settlement, extension or composition to its creditors generally.
- h. Borrower is, after consummation of the transactions contemplated in the Loan Documents and giving effect to the Loan borrowed hereunder, solvent. As used in the preceding sentence, “solvent” means that at the time of determination (a) the fair value of its assets, both at fair valuation and at present fair saleable value, is in excess of the total amount of its liabilities, including, without limitation, contingent claims; and (b) it is then able and expects to be able to pay its debts as they mature; and (c) it has capital sufficient to carry on its business as conducted and as proposed to be conducted. Contingent liabilities (such as litigation, guarantees and pension plan liabilities) shall be computed at the amount which, in light of all the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

9. Negative Covenant of Borrower. Borrower represents and warrants that it and its controlling members and managers (collectively for purposes of this paragraph, the “Borrower Parties”) currently do, and for so long as the Loan is outstanding, shall comply with the following:

- a. Borrower Parties shall not seek the dissolution or winding up in whole, or in part, of Borrower, or file a voluntary petition for reorganization under the Federal Bankruptcy Code of the United States.
- b. Borrower shall not fail to comply with all laws, ordinances, regulations, and rules (federal, state, and local) and all judgments, orders, and decrees of any arbitrator, other private adjudicator, or governmental authority relating to it, or the assets, business, operations, or property of such entity. Borrower shall comply in all material respects with all material agreements, documents, and instruments to which each is a party or by which it or any of its assets or properties are bound or affected. Borrower shall obtain and maintain in full force and effect all approvals and permits and shall comply in all material respects with all conditions and requirements of all approvals and permits affecting or related to the business activities of the Borrower.

10. Event of Default. The occurrence of any one or more of the following will constitute an “Event of Default” under this Loan Agreement:

- a. A default, beyond all applicable notice and cure periods, occurs under the Note or the Deed of Trust.
- b. Any representation or warranty by or on behalf of Borrower under this Loan Agreement, the Note, or the Deed of Trust, is false, incorrect, incomplete or misleading in any material respect when made or delivered.
- c. The failure at any time of the Deed of Trust to create a valid lien in favor of Lender upon the Collateral.

Subject to the provisions of Section 13 below, upon the occurrence and during the continuance of an Event of Default and at all times thereafter, the Lender shall be entitled, in addition to all other remedies available at law or in equity or under this Loan Agreement, the Note, or the Deed of Trust, to the immediate appointment of a receiver for all or any part of the Borrower’s business operations. Borrower hereby consents to the appointment of such a receiver without notice or bond, to the full extent permitted by applicable statute or law; and waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by the Lender, but nothing herein is to be construed to deprive the Lender of any other right, remedy, or privilege the Lender may have under law to have a receiver appointed, provided, however, that, the appointment of such receiver shall not impair or in any manner prejudice the rights of the Lender to receive any payments provided for herein. Such receivership shall at the option of the Lender, continue until full payment of all the Note. Additionally, Lender has the option, but not the obligation, at any time to cure any Event of Default and Borrower agrees to reimburse Lender for all actual out of pocket costs incurred in enforcing the Loan Documents, which amounts will be due upon demand and are in addition to the Note and all other amounts due under this Loan Agreement.

11. [Reserved].

12. Miscellaneous.

a. Should any Party default in any of the covenants, warranties, representations or agreements herein contained, that defaulting Party shall pay all actual out of pocket costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

b. All notices or communications to be given under this Agreement shall be given in writing and shall be deemed given when emailed to the other party. The initial email addresses of the respective parties are as follows (each Party may update the official email address from time to time by email to the other Party using the last-designated email address):

Lender: kdunlavy@sandy.utah.gov (Redevelopment Director)
rsant@sandy.utah.gov
with a copy to
kyle@mcdonaldfielding.com (Attorney)

Borrower: howard.cooke@gardnergroupp.com
Mark.murdock@gardnergroupp.com

c. Time is of the essence in performance of any obligation hereunder.

d. All negotiations, understandings, representations and preliminary agreements are merged herein. The Parties intend this document to be the final and exclusive expression of their agreement. This Agreement may not be modified, amended or revoked unless by a writing signed by all the Parties hereto.

e. This Agreement shall be governed, interpreted and construed by the laws of the State of Utah.

f. The Parties agree to execute such additional documents as shall be reasonably necessary, from time to time, to consummate the transaction contemplated by this Agreement.

g. Subject to any consent required pursuant to documents entered into by Lender with the Senior Lender, Lender may assign its interest in this Agreement and in any or all of the documents referred to herein at any time, for any reason, with no requirement for consent from Borrower. In the event of assignment by Lender, all of the provisions of this Agreement and the documents referred to herein shall continue to apply.

h. Nothing contained herein or within any of the other documents referred to herein shall be construed as creating a joint venture or partnership between Lender and Borrower.

i. A default under the terms of this Agreement or under the terms of any of the other documents referred to herein shall constitute a default under this Agreement and under all other documents referred to herein.

j. This Agreement shall apply to, inure to the benefit of and bind all Parties hereto, their assigns, heirs, personal representatives and other successors.

k. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

l. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

m. Feminine or neutral pronouns shall be substituted for those masculine form or vice versa, and the plural shall be substituted for the single number or vice versa in any place or places in which the context may require such substitution.

n. This Agreement, the Note and Deed of Trust may be executed in counterparts, that when put together, shall constitute one complete integrated document. This Agreement may be executed by facsimile signature.

o. Borrower is not entitled to set off any amount owed by Lender to Borrower against any amount owed under this Note.

p. From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement.

q. The parties expressly and irrevocably waive the right to a trial by jury in any and all actions or proceedings brought with respect to this Agreement and the other Loan Documents and with respect to any claims arising out of or related to this Agreement or any other Loan Document.

r. The Loan Documents constitute a complete integration of the agreement of Lender and Borrower respecting the Loan and may be amended or modified in the future only by written amendment signed by Lender and Borrower. Any and all prior oral and/or written commitments from Lender to Borrower, any affiliate or any predecessor in interest of Borrower, any affiliate or any principals or agents thereof with respect to all or any portion of the financing described in this Agreement (including without limitation all term sheets) have been merged in the Loan Documents, and the other documentation executed and delivered concurrently herewith, and shall, except as expressly provided in the Loan Documents and the other documentation executed and delivered concurrently herewith, be of no further force or effect following recordation of the Deed of Trust. No representations, promises, warranties, understandings or agreements, express or implied, verbal or written, exist with respect to the Loan except those expressly set forth in the Loan Documents. Borrower acknowledges that its execution and delivery of the Loan Documents is its free and voluntary act and deed, and that its execution and delivery have not been induced by, or done in reliance upon, any representations, promises, warranties, understandings or agreements made by Lender or its agents, officers, employees or representatives that are not set forth in the Loan Documents.

s. This Agreement may be executed in any number of counterparts, each such counterpart shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement. An emailed document, PDF or other electronic document, including the signatures thereon, shall be treated in all respects as an original instrument bearing an original signature; however, Lender may require original "wet" signatures on the Loan Documents at any time and the Borrower agrees to provide the same.

t. Lender shall be entitled, in its sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, and items and records governing, arising from or relating to any of Borrower's loans, including, without limitation, this Agreement and the other Loan Documents, and Lender may destroy or archive the paper originals. The parties hereto (a) waive any right to insist or require that Lender produce paper originals, (b) agree that such images shall be accorded the same force and effect as the paper originals, (c) agree that Lender is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (d) further agree that any executed facsimile (faxed), emailed, scanned, or other imaged copy of this document or any other Loan Document shall be deemed to be of the same force and effect as the original manually executed document.

u. Subject to the provisions of Section 13 below, the rights and remedies provided to Lender by the Loan Documents and the other documents executed and delivered in connection with the Loan are for Lender's sole and exclusive benefit, shall be cumulative and shall not preclude the exercise of rights and remedies that may otherwise be available. Subject to the provisions of Section 13 below, Lender may exercise any such right, power or remedy, at its option and in its sole and absolute discretion, without any obligation to do so, including without limitation, the right to offset any amounts to which Borrower may be entitled under any agreement. Subject to the provisions of Section 13 below, if Lender is given two or more alternative courses of action, Lender may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. Notwithstanding Section 13 below or anything else herein or in any other Loan Document to the contrary, expressed or implied, Lender has the first position lien upon and right of setoff, against all amounts due from the Lender to KC Gardner Company, L.C., a Utah limited liability company under that certain Tax Increment Participation Agreement dated December 19, 2017, as amended, between KC Gardner Company, L.C., a Utah limited liability company and Lender. Borrower shall ensure that KC Gardner Company, L.C., a Utah limited liability company shall not make any pledge of such tax increment that is or purports to be senior in priority to the lien and setoff rights of Lender in and upon such tax increment. Notwithstanding anything else herein or in any other Loan Document to the contrary, express or implied, in the event that an Event of Default occurs under the Note, Lender may immediately and without required notice or cure period apply any such tax increment otherwise payable by Lender to KC Gardner Company, L.C., a Utah limited liability company to the outstanding payment obligation(s) of Borrower under the Note, for so long as such Event of Default remains uncured. No single or partial exercise of any right, power or remedy shall preclude any other or further exercise thereof or of any other right, power or remedy. All actual out of pocket moneys advanced by Lender under the terms of the Loan Documents and all amounts paid, suffered or incurred by Lender in exercising any authority granted in the Loan Documents, including court costs and reasonable attorneys' fees and the expenses, shall be immediately due and payable by Borrower, be added to the outstanding balance of the Note, and bear interest at the default rate set forth in the Note until paid.

13. Subordination.

- a. Lender acknowledges and agrees that Borrower, or any subsequent owner of the Property which is an affiliate of Borrower, may at any time, and from time to time, obtain one or more construction loans, equity loans, mezzanine loans, permanent financing loans or any other loan which is secured by all or any portion of the Property or interest in Borrower or such owner of the Property (each such loan, together with any and all refinancings, replacements, extensions, or renewals thereof, the “Senior Loan”), to be made by one or more third party lenders (individually and collectively, as the context may require, the “Senior Lender”) and evidenced by such documents as are required by the Senior Lender (individually and collectively, as the context may require, as amended, restated, replacement, supplemented or otherwise modified from time to time, the “Senior Loan Documents”).
- b. The Loan, and each of the Loan Documents and the liens, assignments, encumbrances and security interests created hereunder and under each of the Loan Documents, and all rights of the Lender and all obligations of Borrower to Lender hereunder and under each of the Loan Documents, are and shall continue to be subject and subordinate in all respects to each Senior Loan and the respective Senior Loan Documents, including any amendment, modification, supplement, extension, renewal, restatement, replacement or refinancing of any Senior Loan.
- c. Without limiting the generality of the foregoing, unless and until all obligations under the Senior Loan Documents have been paid in full, the Lender shall not be permitted to exercise any rights or remedies under this Loan Agreement or any of the other Loan Documents.
- d. The Lender hereby agrees that the Lender will enter into such additional agreements as may be required by each Senior Lender to further evidence such subordination and standstill, which agreements may include, at Senior Lender’s sole discretion, standstill provisions, limitations or prohibitions on Lender’s ability to receive payments if a default has occurred under the applicable Senior Loan Documents, limitations on Lender’s ability to take enforcement actions, and such additional provisions as may be required by such Senior Lender, as each such Senior Lender determines are necessary or desirable in its sole discretion.

[End of Terms – Signature Page Follows]

THIS SIB LOAN AGREEMENT AGREED TO AS OF THE EFFECTIVE DATE BY AND BETWEEN:

LENDER:

REDEVELOPMENT AGENCY OF SANDY CITY, UTAH

By: ~~Form only - do not sign~~
Executive Director

ATTEST:

By: Form only - do not sign
Secretary

BORROWER:

Riverdale Center Owner, L.C.,
a Utah limited liability company,
by its manager

KC Gardner Company L.C.
a Utah limited liability company

By: Form only - do not sign
Printed Name:
Title:

Exhibit A

Property Description

A parcel of land, located in the Southeast quarter of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian, in the City of Sandy, Salt Lake County, Utah described as follows:

Beginning at a point which lies North 89°51'37" East 92.36 feet to a monument marking the centerline of State Street, North 00°08'34" West along the monument line in State Street, 1,296.656 feet, South 89°56'30" West 2,309.468 feet, South 03°49'28" East 313.06 feet to the Northwest corner of Lot 7, Sandy City Centre Final Plat First Amendment and Extended, according to the official plat thereof which was recorded October 27, 2004 as Entry No. 9207823 in Book 2004P of Plats at Page 315 in the Office of the Salt Lake County Recorder from the Southeast corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running

thence North 89°56'08" East 373.84 feet along the northerly boundary line of said Lot 7;
thence South 00°00'36" West 14.26 feet;
thence South 21°12'47" West 7.84 feet;
thence Southwesterly 200.59 feet along the arc of a 545.00 foot radius curve to the left (center bears South 68°46'43" East and the chord bears South 10°40'39" West 199.46 feet with a central angle of 21°05'16");
thence South 00°08'41" West 326.45 feet;
thence North 88°47'44" West 149.92 feet;
thence North 89°44'24" West 148.83 feet;
thence North 03°33'44" West 350.32 feet to the southwest corner of said Lot 7;
thence North 03°49'48" West 190.56 feet along the westerly boundary line of said Lot 7 to the point of beginning.

Contains 174,401 Square Feet or 4.004 Acres and 1 Lot

Exhibit B

ILA

[attached]

Resolution No. RD 23-01

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH SANDY CITY, REGARDING STATE INFRASTRUCTURE BANK LOAN PROCEEDS FROM THE CITY TO THE AGENCY AND A CORRESPONDING PLEDGE OF CERTAIN TAX INCREMENT REVENUES FROM THE AGENCY TO THE CITY.

WHEREAS the Redevelopment Agency of Sandy City (the “Agency”) has been created by the Sandy City Council to transact the business and exercise all of the powers provided for by Title 17C of the Utah Code Annotated, known as the “Limited Purpose Local Government Entities — Community Reinvestment Agency Act”;

WHEREAS under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, public agencies, such as the City and the Agency, are authorized to enter agreements for joint and cooperative actions, including the sharing of tax and other revenues;

WHEREAS, the City has applied for and received approval from the Utah Department of Transportation and its Transportation Commission to receive a state infrastructure bank loan in the amount of \$5,300,000.00 (the “SIB Loan”); and

WHEREAS, the City and the Agency desire to enter into an Interlocal Cooperation Agreement, substantially in the form attached hereto as **Exhibit A** and incorporated by this reference (the “Agreement”), providing, generally for the City to loan the SIB Loan funds to the Agency, and the Agency to pledge certain tax increment revenues to the City for repayment of the SIB Loan and corresponding City loan under the Agreement, all as further provided in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE REDEVELOPMENT AGENCY OF SANDY CITY:

1. The Agreement in substantially the form attached hereto and incorporated herein as **Exhibit A** is approved, and the Executive Director of the Agency is authorized and directed to execute the Agreement for and on behalf of the Agency. The Executive Director may approve any minor modifications, amendments, or revisions to the Agreement as may be in the Agency’s best interest and in harmony with the intent and purpose of the Agreement as substantially set forth in the attached **Exhibit A**.

2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED on February 21, 2023.

DocuSigned by:
Alison Stroud

Chair 7BA48C9903AC456...

Attest:
DocuSigned by:
Hannah Krudson

Secretary B68D3FEB2EA1464...



Exhibit A
Form of Interlocal Cooperation Agreement

EXHIBIT A

INTERLOCAL COOPERATION AGREEMENT

This INTERLOCAL COOPERATION AGREEMENT (the “Agreement”) is entered into as of February 21, 2023, by and between SANDY CITY, UTAH, a municipal corporation and political subdivision of the State of Utah (the “City”), and the REDEVELOPMENT AGENCY OF SANDY CITY, UTAH (the “Agency”), political subdivision of the State of Utah under the Limited Purpose Local Government Entities—Community Reinvestment Agency Act, Title 17C, Chapter 1, Utah Code Annotated 1953, as amended (the “Reinvestment Act”).

WHEREAS, the Agency has been established by the City for the purpose of developing and redeveloping certain areas within the City to accomplish the purposes of the Reinvestment Act; and

WHEREAS, the City and the Agency have previously authorized the establishment of the Civic Center North Project Area (the “Project Area”) pursuant to a redevelopment plan adopted by the City and the Agency; and

WHEREAS, the City intends to obtain a loan in the amount of \$5,300,000.00 from the Utah State Infrastructure Bank (the “SIB Loan”), as provided under Title 72, Chapter 2, Part 2 of the Utah Code Annotated 1953, as amended (the “SIB Act”), to fund certain transportation project improvements in the Project Area to the extent permitted by the SIB Act and the applicable SIB Loan documents; and

WHEREAS, the City intends to transfer 100% of the proceeds of the SIB Loan (the “Loan Proceeds”) to the Agency, and the Agency then intends to loan 100% of the Loan Proceeds to Riverdale Center Owner, LLC, a Utah limited liability company (the “Developer”), pursuant to a loan agreement and related documents to be entered into by and between the Agency and the Developer (the “Developer Loan Documents”), for use by the Developer in financing certain transportation project improvements within the Project Area as authorized by the SIB Act; and

WHEREAS, the Developer Loan Documents will outline the loan repayment commitments from the Developer (“Developer’s Repayment Obligation”), along with a deed of trust lien interest upon all land owned by the Developer within the Project Area to secure the Developer’s Repayment Obligation (the “Developer Lien”), along with the Agency’s right of setoff—for background purposes, the Agency has entered into a Tax Increment Participation Agreement with the Developer’s affiliate, relating to tax increment generated within the Project Area, and the Agency will have the right to setoff any Developer’s Repayment Obligation with the tax increment otherwise payable to the Developer under that Tax Increment Participation Agreement (the “Setoff Rights”);

WHEREAS, the Agency anticipates that the available tax increment revenue from the Project Area will be sufficient to pay the principal and interest on the SIB Loan, and the Agency desires to pledge to the City all legally available and presently unencumbered tax increment from the Project Area for the purpose of securing repayment of the SIB Loan,

along with all rights and remedies relating to the Developer's Repayment Obligation and/or the Developer Lien and/or arising under the Developer Loan Documents and/or the Setoff Rights; and

WHEREAS, under the Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code (the "Cooperation Act"), the parties have the authority to enter into this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, the covenants contained herein, and other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

Section 1. Pledge by Agency. The Agency covenants and agrees to fully indemnify and hold the City harmless from and against all obligations, claims, or actions arising under or out of the SIB Loan. Without limiting the generality of the foregoing, (i) the Agency agrees to timely provide to the City, or on behalf of the City, all funds necessary for the City to timely make all payments due in connection with the SIB Loan, (ii) the Agency pledges all legally available and presently unencumbered tax increment revenue from the Project Area to the City (the "Pledged Revenues") for purposes of timely repaying the SIB Loan, and (iii) the Agency hereby assigns to the City all rights under the Developer Loan Documents including all enforcement rights and remedies relating to the Developer's Repayment Obligation and the Developer Lien, whether now existing or arising at any time between now and the date the SIB Loan has been repaid in full, including without limitation the Setoff Rights. The Agency agrees and covenants that, until the SIB Loan has been repaid in full by the City, the Agency will not, without the City's consent by amendment to this Agreement, (i) incur any additional obligations relating to or payable from the Pledged Revenues, on a parity with or with priority to the pledge of the Pledged Revenues hereunder, or (ii) extinguish, release, diminish, or waive any of the Agency's rights or remedies relating to the Developer's Repayment Obligation and/or the Developer Lien and/or arising under the Developer Loan Documents and/or the Setoff Rights.

Section 2. Loan Proceeds. The City agrees to transfer the Loan Proceeds to the Agency promptly upon receipt of the same by the City, subject to the terms of this Agreement. The Agency will determine (i) how and when to loan the Loan Proceeds to the Developer, and (ii) the final terms and provisions of the Developer Loan Documents.

Section 3. No Third-Party Beneficiary. Nothing in this Agreement creates or may be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except as otherwise specifically provided herein, no person or entity is an intended third-party beneficiary under this Agreement.

Section 4. Due Diligence. Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts upon which this Agreement is based and each of the Parties relies on its own understanding of the relevant facts, information, and representations, after having completed its own due diligence and investigation.

Section 5. Interlocal Cooperation Act. In satisfaction of the requirements of the Cooperation Act as relates to this Agreement, the Parties agree as follows:

- a) This Agreement must be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;
- b) This Agreement must be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;
- c) A duly executed original counterpart of this Agreement must be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;
- d) This Agreement does not create an interlocal entity. The Redevelopment Director of the Agency is hereby designated the administrator for all purposes of this Agreement and the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;
- e) The term of this Agreement will commence on the Effective Date and will remain in full force and effect until the SIB Loan has been repaid in full. Notwithstanding the previous sentence, as required by Section 11-13-216 of the Cooperation Act, this Agreement will terminate no later than 50 years after its Effective Date. Notwithstanding any of the foregoing, this Agreement will terminate immediately and automatically if the City has not entered into a loan agreement with the Utah Department of Transportation, relating to the SIB Loan, by December 31, 2023, which fact may be conclusively established by a written and signed statement of the Redevelopment Director of the Agency.
- f) Immediately after execution of this Agreement by both Parties, the Agency may publish a joint notice, regarding this Agreement pursuant to Section 11-13-219 of the Cooperation Act.
- g) It is not anticipated that either party will acquire any new property in connection with this Agreement; however, the purchaser of any property acquired in connection with this Agreement will be entitled to keep such property upon the termination of this Agreement.

Section 6. Modification and Amendment. Any modification of or amendment to any provision contained herein will be effective only if the modification or amendment is in writing and signed by the Parties. Any oral representation or modification concerning this Agreement will be of no force or effect.

Section 7. Further Assurance. Each of the Parties agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

By: Form only - do not sign
City Attorney

REDEVELOPMENT AGENCY OF
SANDY CITY, UTAH

(SEAL)

By: Form only - do not sign
Executive Director

ATTEST:

By: Form only - do not sign
Secretary

APPROVED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:

Form only - do not sign
Redevelopment Agency Attorney

Exhibit C

UDOT Loan Agreement

[attached]



Loan Agreement

State Infrastructure Bank Loan Fund

THIS LOAN AGREEMENT made and entered into on [Date], by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as “UDOT”, and **Sandy City**, a political subdivision of the State of Utah, hereinafter referred to as the “Public Entity.”

RECITALS

WHEREAS, the Public Entity has applied for an infrastructure loan from the Utah State Infrastructure Bank Fund.

WHEREAS, the purpose of this infrastructure loan is to facilitate the construction of a parking structure within the Public Entity jurisdiction.

WHEREAS, the Transportation Commission has approved the infrastructure loan application on September 16, 2022 at a loan rate of 3.25%, and a 15 year term.

THIS LOAN AGREEMENT is made to set out the terms and conditions of UDOT loaning the money from the Transportation Infrastructure Loan Fund to the Public Entity.

AGREEMENT

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. UDOT will loan the Public Entity \$5,300,000.00 from the State Infrastructure Bank Loan Fund to enable the Public Entity to finance the construction of the parking structure facilities referenced above within the Public Entity jurisdiction.
2. The Public Entity shall only use funds for transportation projects as described in Utah Code Section 72-2-201.
3. At the end of the transportation project, all unused funds will be applied to the principal amount.
4. The interest rate will be 3.25% with a loan duration of FIFTEEN years.
5. Public Entity will pay the principal and interest according to Exhibit A, which is incorporated by reference. The Public Entity intends to use funds from project tax increment to pay the loan. The first payment referenced in Exhibit A will be made on or before one year after the date of closing. All subsequent payments will be made on or before April 30 of each year until the loan is paid in full.
6. In the event the Public Entity is 30 days delinquent after a due date as shown in Exhibit A, UDOT shall have the right to pursue the remedies contained in Utah Code Section 72-2-204. UDOT will not issue any more loans to Public Entity while the loan is in default.
7. If Public Entity breaches any terms of this Agreement, UDOT may seek any legal or equitable remedy to obtain compliance or payment of damages. In the event an action is filed in district court, the venue shall be Salt Lake County, Third District Court.
8. Public Entity represents that notice was published of its intention to obtain an infrastructure loan at least once in accordance with the publication of notice requirements under Section 11-14-316; and

adopted an ordinance or resolution authorizing the infrastructure loan in compliance with Utah Code Section 72-2-204(4).

9. Each party to this Agreement shall designate a representative as the contact to address questions and issues as they arise under this agreement.

10. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

11. This Agreement may be executed in counter parts by the parties.

12. Each party represents that it has the authority to enter into this Agreement.

13. This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by an authorized representatives of each party.

This Agreement will become effective when all parties have signed. The effective date of this agreement is the date this Agreement was signed by the last party.

[PUBLIC ENTITY]				[Utah Department of Transportation]			
By	Form only - do not sign	Date		By		Date	
[[Shara Hillier, UDOT Finance Director			
By		Date		By		Date	
[[Recommended for approval Lyle McMillan, UDOT Director of Strategic Investments			
By		Date		By		Date	
[Title/Signature of additional official if required				[UDOT Comptroller Office			

Exhibit D

Form of Secured Promissory Note

[attached]

SECURED PROMISSORY NOTE

\$5,300,000.00

March 31, 2023 (“Effective Date”)

FOR VALUE RECEIVED, Riverdale Center Owner, L.C., a Utah limited liability company (“Borrower”) promises to pay to the order of the Redevelopment Agency of Sandy City, Utah, a Utah political subdivision (“Lender”), at such other place as the Lender may designate, the principal sum of \$5,300,000.00 (“Note Amount”), payable on the following terms:

1. Interest. The outstanding principal balance shall bear simple interest at the rate of 3.25% per annum from the Effective Date, except that upon the occurrence and during the continuance of an Event of Default, the interest rate will increase immediately and automatically, without any requirement for notice or demand, to simple interest at the rate of 5.50% per annum (the “Default Rate”) from the date of occurrence of the Event of Default (beyond all applicable notice and cure periods) and continuing until the Event of Default is fully cured.

2. Payments and Maturity Date. Borrower agrees, subject to the provisions of Section 4 below, to pay all payments as specified under the attached Exhibit A, which shows minimum annual payments of \$452,029.47 due by March 31 of each year beginning March 31, 2024 and continuing until the Maturity Date. Notwithstanding anything herein expressed or implied to the contrary, Borrower agrees to pay the full outstanding balance under this Note by March 31, 2034 (the “Maturity Date”).

3. Late Charge. In the event any payment due under this Note is not made by the due date (other than a payment due on the Maturity Date, whether by acceleration or otherwise), and such failure continues for five (5) days after written notice thereof to Borrower, Borrower agrees to pay, in addition to all other amounts due hereunder, a late charge in the amount of five percent (5%) of the amount of the delinquent amount (the “Late Charge”).

4. Defeasance/Pre Payment Penalty. Borrower may prepay part, or all of, the Note Amount. There shall be no prepayment or defeasance penalty for payment of all amounts due under this Note prior to the Maturity Date. Any prepayments of the Loan Amount (a) will be promptly paid by Lender to UDOT to be applied to amounts owing under the UDOT Loan Agreement, and (b) and will be credited to the Note Amount in the same order and priority as such payments are applied by UDOT to the the SIB Loan pursuant to the UDOT Loan Agreement. In connection with any such prepayments, the Lender and Borrower will adjust Exhibit A to this Note as may be required to reflect any adjustments as a result of such prepayment (which adjustments will continue to mirror the payment schedule under the UDOT Loan Agreement). Any prepayment will not excuse future minimum annual payments due.

5. Collection Costs/Fees. Borrower agrees to pay all costs incurred by the Lender in enforcing this Note, including, without limitation, court costs and reasonable attorneys' fees, with or without suit.

6. Acceleration/Waiver. Time is of the essence under this Note. Subject to the provisions of Section 14 below, if an Event of Default occurs and is continuing, Lender, at its option and without notice or demand, may declare the entire principal balance, all accrued interest, and all other amounts

due under the terms of this Note, immediately due in full. The Borrower(s) waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals or waivers that may be granted by the Lender hereof with respect to the payment or other provisions of this Note, and to the release of any security, or any part thereof, with or without substitution and to the addition to or release of any party. No waiver of any payment under this Note will operate as a waiver of any other payment. No course of dealing between the Borrower and Lender in exercising any rights will operate as a waiver of rights of Lender or of any of the terms of this Note.

7. Default. Subject to the provisions of Section 14 below, each of the following constitutes an event of default ("Event of Default") under this Note: (a) Borrower fails to make any payment when due under this Note and such failure continues for five (5) business days after written notice thereof, or (b) breach or default in performance of any term, covenant, condition or agreement under this Note, the Deed of Trust or under any of the other Loan Documents and such failure continues for thirty (30) days after notice to Borrower, provided, however, if such default cannot be cured within such thirty (30) day period, Borrower shall have such additional time as is necessary to cure such default so long as Borrower has commenced the cure of the same within such thirty (30) day period and is diligently prosecuting the same to completion

8. Waiver of Rights. The Borrower and all sureties, guarantors and endorsers hereof waive presentment for payment, demand and notice of dishonor and nonpayment of this Note, and consent to any and all extensions of time, renewals, or waivers that may be granted by the Lender hereof with respect to the payment or other provisions of this Note.

9. Waiver by Lender. No failure or delay of Lender in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

10. Partial Invalidity. In the event that any one or more provisions of this Note shall be held to be illegal, invalid or otherwise unenforceable, the same shall not affect any other provision of this Note and the remaining provisions of this Note shall remain in full force and effect.

11. Notice. All notices required or permitted in connection with this Note shall be given at the place and in the manner provided in the Loan Agreement.

12. Security Instrument. This Note and the payment of the Note Amount are secured by the terms of a Deed of Trust, Assignment of Rents and Fixture Filing dated the same date as this Note executed by Borrower in favor of Lender, which secures the Property (as defined therein).

13. Miscellaneous. This Note shall be governed in all respects by the laws of the State of Utah as they apply to agreements entered into and to be performed entirely within Utah between Utah residents, without regard to conflict of law provisions. Any claim or dispute that may arise shall be adjudicated by a court of competent jurisdiction located in Salt Lake County, State of Utah. Borrower and Lender agree to submit to the personal jurisdiction of the Utah State Courts located within Salt Lake County, State of Utah for the purpose of litigating all such claims or disputes. Borrower agrees to pay all costs incurred by the Lender in enforcing this Note, including, without limitation, court costs and reasonable attorneys' fees, with or without suit. Borrower waives its rights to a trial by jury as to

any matter arising out of or concerning the subject matter of this Note. **PURSUANT TO UTAH CODE SECTION 25-5-4, BORROWER IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

14. Subordination. The provisions of Section 13 of the SIB Loan Agreement between Borrower and Lender and dated as of the date hereof (the “SIB Loan Agreement”) are incorporated herein by reference.

THIS SECURED PROMISSORY NOTE IS AGREED TO BY:

Riverdale Center Owner, L.C.
a Utah limited liability company,
by its Manager

KC Gardner Company, L.C.,
a Utah limited liability company

By: Form only - do not sign
Printed Name:
Title: Manager

Exhibit A to Secured Promissory Note

Payment Date	Period	Payment Amount	Interest	Cumulative Interest	Principal	Principal Paid	Balance
							\$ 5,300,000.00
3/31/2024	1	452,029.47	172,250.00	172,250.00	279,779.47	279,779.47	5,020,220.53
3/31/2025	2	452,029.47	163,157.17	335,407.17	288,872.31	568,651.78	4,731,348.22
3/31/2026	3	452,029.47	153,768.82	489,175.98	298,260.66	866,912.43	4,433,087.57
3/31/2027	4	452,029.47	144,075.35	633,251.33	307,954.13	1,174,866.56	4,125,133.44
3/31/2028	5	452,029.47	134,066.84	767,318.17	317,962.64	1,492,829.20	3,807,170.80
3/31/2029	6	452,029.47	123,733.05	891,051.22	328,296.42	1,821,125.62	3,478,874.38
3/31/2030	7	452,029.47	113,063.42	1,004,114.64	338,966.05	2,160,091.67	3,139,908.33
3/31/2031	8	452,029.47	102,047.02	1,106,161.66	349,982.45	2,510,074.12	2,789,925.88
3/31/2032	9	452,029.47	90,672.59	1,196,834.25	361,356.88	2,871,431.00	2,428,569.00
3/31/2033	10	452,029.47	78,928.49	1,275,762.74	373,100.98	3,244,531.98	2,055,468.02
3/31/2034	11	2,122,270.73	66,802.71	1,342,565.45	2,055,468.02	5,300,000.00	-
3/31/2035	12						
3/31/2036	13						
3/31/2037	14						
3/31/2038	15						
TOTALS:		6,642,565.45	1,342,565.45		5,300,000.00		

Exhibit B

Form of Deed of Trust, Assignment of Rents and Fixture Filing

RECORDING REQUESTED BY AND WHEN

RECORDED RETURN TO:

Redevelopment Agency of Sandy City

Attn: Secretary

10000 Centennial Parkway

Sandy, Utah 84070

Tax Parcel Nos.

27-12-453-058

27-12-453-059

27-12-453-060

27-12-453-061

27-12-453-066

DEED OF TRUST, ASSIGNMENT OF RENTS AND FIXTURE FILING

This Deed of Trust, Assignment of Rents and Fixture Filing (“**Deed of Trust**”) is dated effective as of March 31, 2023, by Riverdale Center Owner, L.C., a Utah limited liability company with an address at 201 South Main Street, Suite 2000, Salt Lake City, Utah 84111 (“**Trustor**”); to Kyle C. Fielding, a Utah attorney, 230 N 1680 E, Suite W2, St. George UT 84790 (“**Trustee**”); for the benefit of the Redevelopment Agency of Sandy City, Utah, a Utah political subdivision with an address at 10000 Centennial Parkway, Sandy, Utah 84070 (“**Beneficiary**”).

ARTICLE 1 GRANT IN TRUST

1.1. **Grant.** Subject to the provisions of Section 7.12 below, Trustor hereby irrevocably grants, conveys, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in Salt Lake County, State of Utah, particularly described in the attached **Exhibit A**, together with all buildings and other improvements, and fixtures now or hereafter located on the real property, all right, title, interest, and privileges of Trustor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, (including stock or other evidence of ownership in irrigation, canal and other stock water companies), minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, and rights and rights of way related thereto, all air rights, development rights and credits, licenses, and permits related to the real property, and all proceeds and claims arising on account of any damage to or taking of the real property or any portion of the real property, and all causes of action and recoveries for any loss to or diminutions in the value of the real property. All interest or estate that Trustor may hereafter acquire in the

property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing are collectively referred to as the “**Property.**” The listing of specific rights will not be interpreted as a limit of general terms.

ARTICLE 2 OBLIGATIONS SECURED

2.1. **Obligations Secured.** Subject to the provisions of Section 7.12 below, Trustor makes this Deed of Trust for the purpose of securing the following: (a) the payment of indebtedness of Trustor in the principal amount of \$5,300,000.00 (the “**Loan**”), with interest thereon, according to the terms of the Secured Promissory Note (the “**Note**”) and/or related SIB Loan Agreement (the “**Loan Agreement**”) each dated approximately the same day as this Deed of Trust, executed by Trustor as Borrower, and payable to Beneficiary as Lender; (b) payment of all other sums advanced to Trustor (including additional loans or advances as may be made to Trustor after the date of this Deed of Trust, whether or not evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust); (c) performance of every obligation of Trustor contained in the Loan Documents (as defined below) and as those documents may be amended or modified from time to time, including an increase in the amount of the Loan; and (d) performance of every obligation of Trustor contained in any agreement, document, or instrument executed by Trustor stating that the applicable obligations are secured by this Deed of Trust (collectively, the “**Secured Obligations**”) “**Loan Documents**” means this Deed of Trust, the Note and the Loan Agreement.

2.2. **Incorporation.** The term “obligations” is used in this Deed of Trust in its broadest and most comprehensive sense and includes, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated into this Deed of Trust by this reference. All persons who may have or acquire an interest in the Property will be deemed to have notice of the terms of the Secured Obligations, and the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3 ASSIGNMENT OF LEASES, RENTS, AND OTHER CONTRACTS

3.1. **Assignment.** Subject to the provisions of Section 7.12 below, Trustor hereby irrevocably assigns to Beneficiary all of Trustor’s right, title, and interest in, to, and under (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, or operation of the Property, whether such leases, licenses, and agreements are now existing or entered into after the date of this Deed of Trust (collectively, “**Leases**”); and (b) all the income, rents, issues, deposits, and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (“**Payments**”). The term “Leases” will also include all guarantees of and security for the tenant’s performance thereunder, and all amendments, extensions, renewals, or modifications thereto which are permitted hereunder. Subject to the provisions of Section 7.12 below, this is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Leases and Payments is not contingent upon and may be exercised without

possession of the Property, except that all such Payments received by Beneficiary will be applied to the balance due and owing under the Secured Obligations. Subject to the provisions of Section 7.12 below, Trustor also hereby irrevocably assigns to Beneficiary all other contracts related to the Property to the extent assignable without the consent of a third party. Upon Trustor's satisfaction of or release from its Secured Obligations under the Loan Documents, Beneficiary the assignment hereunder will automatically terminate.

3.2. **Grant of License.** Beneficiary confers upon Trustor a license (“**License**”) to enforce and manage the Leases, collect and retain the Payments as they become due and payable, and enjoy the benefit of the other contracts that were assigned by Trustor to Beneficiary pursuant to this Deed of Trust until the occurrence of a Default (as defined below). Subject to the provisions of Section 7.12 below, upon the occurrence and during the continuance of a Default, the License will be automatically revoked and Beneficiary may collect and apply the payments pursuant to the terms of this Deed of Trust without notice and without taking possession of the Property. Subject to the provisions of Section 7.12 below, all payments thereafter collected by Trustor during the continuance of a Default, will be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Subject to the provisions of Section 7.12, below Trustor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums that may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants will have no duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Subject to the provisions of Section 7.12 below, Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation under the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary will not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. Subject to the provisions of Section 7.12 below Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby irrevocably consenting to the appointment a receiver by a Court of competent jurisdiction), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect said rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

3.3. **Effect of Assignment.** The foregoing irrevocable assignment will not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management, or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants, and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee, or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Trustor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies, or

powers granted to Beneficiary under this Deed of Trust or to perform or discharge any obligation, duty, or liability of Trustor arising under the Leases.

ARTICLE 4
INTENTIONALLY DELETED

ARTICLE 5
RIGHTS, DUTIES, AND WARRANTIES OF THE PARTIES

5.1. **Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation when due.

5.2. **Taxes and Assessments.** Subject to Trustor's contest rights as set forth below, Trustor shall pay prior to delinquency all taxes, assessments, levies, and charges imposed upon the Property by any public authority or upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation, except that Trustor will have no obligation to pay taxes that may be imposed from time to time upon Beneficiary and that are measured by and imposed upon Beneficiary's net income. Trustor shall have the right to contest any taxes by appropriate legal means conducted in good faith.

5.3. **Title, Liens, Encumbrances, and Charges.** Trustor represents and warrants to Beneficiary that Trustor is the sole owner of good, marketable, and unencumbered title to the Property, subject to all matters of record (the "Permitted Exceptions"). Except for the lien of the Senior Loan Documents, Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Trustor represents and warrants that Beneficiary shall have no less than a junior-lien priority position on the Property, junior in interest only to Senior Loan Documents and the Permitted Exceptions.

5.4. **Obligation to Maintain Property; Compliance with Laws.** Trustor shall at all times keep the Property in good order, condition, and repair. Trustor shall cause the Property, and all activities on the Property, to comply at all times with all applicable laws. Trustor shall promptly complete any improvements to be constructed on the Property and ensure that all construction on the Property is done in accordance with applicable law in a good and workmanlike manner.

5.5. **Insurance.** Trustor shall keep the Property insured against loss by fire, flood, theft, and other hazards and risks reasonably associated with the Property due to its type and location.

5.6. **Due on Sale or Encumbrance.** If the Property or any interest in the Property is sold, transferred, including, without limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock or general partnership interests, limited liability partnership interests, or limited liability company interests of a managing member of Trustor, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, then Beneficiary, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable. Notwithstanding the foregoing, (a) any

transfer of the direct or indirect interest in the Property or Trustor are not subject to Beneficiary's consent so long as Kem C. Gardner, his spouse and lineal descendants continue to own not less than 40% of the economic and managerial interests in the Trustor or the successor to Trustor which owns the Property, and (b) nothing herein shall limit or impair the rights of Trustor to obtain a Senior Loan or subject the Property to the lien of the Senior Loan Documents nor limit or impair the rights of the Senior Lender (defined below) under the Senior Loan Documents to exercise a foreclosure, or receive a deed in lieu of foreclosure or take any other enforcement actions with respect to Trustor or the Property. Without limiting the generality of the foregoing, Trustor may transfer the Property, without Lender's consent, to WG Sandy Apartments, LLC, a Utah limited liability company.

5.7. Damages; Insurance; and Condemnation Proceeds

(a) Subject to the provisions of Section 7.12 below, the following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, will be paid directly to Beneficiary: (a) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (b) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property; (c) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (d) all interest that may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Deed of Trust, all proceeds from any of the foregoing shall be applied as required by the Senior Lender under the Senior Loan Documents. If Trustor has not received a Senior Loan, (i) unless a Default has occurred and is continuing beyond all applicable notice and cure periods, all such proceeds shall be applied to the repair or restoration of the Property, or (ii) if a Default has occurred and is continuing beyond all applicable notice and cure periods, Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and shall apply the balance, if any, to the Secured Obligations in any order acceptable to Beneficiary, or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Subject to the provisions of Section 7.12 below, Beneficiary may commence, appear in, defend, or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary, except that in no event will Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

(b) Subject to the provisions of Section 7.12 below, if Beneficiary is required to or otherwise permit insurance or condemnation proceeds to be used for repair or restoration, Beneficiary may condition such application upon reasonable conditions.

5.8. Defense and Notice of Losses, Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve, and defend the Property and title to and right of possession of the Property, the security hereof, and the rights and powers of Beneficiary and Trustee hereunder, against all adverse claims except (a) against the Senior Loan and Senior Loan Documents, (b) Permitted Exceptions, and (c) claims arising by, through or under Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of

any action or proceeding, of any material damage to the Property, and of any condemnation offer or action.

5.9. **Compensation; Exculpation; Indemnification.** Trustor shall pay all statutory Trustee's fees and reimburse Trustee immediately upon demand for expenses in the administration of this trust, including attorneys' fees. To induce Beneficiary to make the Loan, Trustor shall indemnify, defend, and hold Beneficiary and Trustee harmless on demand for, from, and against any liability, loss, costs, damages, and expenses (including attorneys' fees) that Beneficiary or Trustee may sustain arising out of or related to the Loan Documents, except to the extent arising as a result of Beneficiaries or Trustee's negligence, willful misconduct, illegal acts or breach of the Loan Documents. This indemnity will survive any foreclosure, trustee's sale, or deed in lieu related to the Property, will benefit any foreclosure purchaser, and will not be subject to any otherwise applicable statutory or contractual anti-deficiency limitation or nonrecourse provision.

5.10. **Hazardous Materials**

(a) **"Hazardous Materials"** means (i) any chemical, material, or substance defined or included in the definition of "hazardous substances," "hazardous materials," "toxic substances," or words of similar import under any Hazardous Materials Laws (as defined below); (ii) any oil, petroleum, flammable substances, explosives, asbestos; or (iii) any other chemical, material or substance which may or could pose a hazard to health or safety. Without limitation of the foregoing, the term "Hazardous Materials" includes all substances, materials, and wastes considered "hazardous waste" under all applicable federal, state, and local laws.

(b) Trustor represents and warrants that from and after the date hereof (i) no Hazardous Materials are or will be used, generated, stored, or disposed of on, under, or about the Property in violation of Hazardous Materials Laws; and (ii) the Property and all present, and future uses of the Property are, and will be in compliance with all relevant local, state, and federal laws, rules, regulations, policies, ordinances, court decisions, settlement orders, and consent decrees relating to the protection of the environment on, under, or about the Property (collectively, the **"Hazardous Materials Laws"**). At Trustor's expense, Trustor shall comply with and will cause any tenants or occupants of the Property to comply with the Hazardous Materials Laws. If any Hazardous Materials are found to exist on, under, or about the Property in violation of Hazardous Materials Laws, Trustor shall at Trustor's expense take all necessary and appropriate remedial action to remediate such Hazardous Material in accordance with Hazardous Materials Laws. Trustor shall immediately advise Beneficiary in writing of any governmental or regulatory communications or proposed or instituted actions with regard to Hazardous Materials and the Property, and will immediately provide Beneficiary with copies of any written communications to and from the authorities. Upon any Default under this Deed of Trust, Beneficiary will have the right, at Trustor's expense, to obtain or require Trustor to obtain an environmental survey or study of the Property from a qualified independent environmental engineer, all to the satisfaction of Beneficiary.

(c) To induce Beneficiary to make the Loan secured by this Deed of Trust, Trustor agrees to indemnify, defend, and hold Beneficiary and Trustee harmless on demand for, from, and against any liability, loss, costs, damages, and expenses (including attorneys' fees) that

Beneficiary or Trustee may sustain in any way related to any Hazardous Materials on, under, or about the Property which were first released from and after the date Trustor acquired title to the Property. This indemnity will survive any foreclosure, trustee's sale, or deed in lieu of the Property, will benefit any foreclosure purchaser, and will not be subject to any otherwise applicable statutory or contractual anti-deficiency limitation or nonrecourse provision.

(d) The indemnity provided in this Deed of Trust for Hazardous Materials is intended to be in addition to, and not in lieu, limitation, or modification of, any separate environmental indemnity contained in any of the other Loan Documents.

5.11. **Right of Inspection.** Beneficiary, its agents, and employees, may enter the Property at any reasonable time and upon prior reasonable notice for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms thereof, and regardless of whether or not a default has occurred. Any such entry shall, at the request of Trustor, be accompanied by a representative of Trustor and shall not interfere with the operations of the Property.

ARTICLE 6 DEFAULT PROVISIONS

6.1. **Default.** For purposes of this Agreement, the term "**Default**" means any default under the Note, or any of the other Loan Documents, including this Deed of Trust. The occurrence of any of the following events shall constitute a default:

(a) breach or default in payment of any principal, interest, or any other indebtedness or payments of money evidenced by the Note or any other indebtedness or payments of money secured hereby which continues for five (5) business days after written notice thereof;

(b) breach or default in performance of any term, covenant, condition or agreement under the Note, this Deed of Trust or under any of the other Loan Documents and such failure continues for thirty (30) days after written notice to Trustor, provided, however, if such default cannot be cured within such thirty (30) day period, Trustor shall have such additional time as is necessary to cure such default so long as Trustor has commenced the cure of the same within such thirty (30) day period and is diligently prosecuting the same to completion;

(c) Trustor applies for or consents to the appointment of a receiver or trustee for it or any portion of its assets, or if such a receiver or trustee is appointed for Trustor or its property, or Trustor makes an assignment for the benefit of creditors, or a petition is filed by Trustor pursuant to any of the provisions of the United States Bankruptcy Code or any similar or successor statute or such a petition is filed against Trustor and such petition is not dismissed within ninety (90) days of the filing of the same; or

(d) there is an attachment to any of the assets of Trustor and the same is not discharged within sixty (60) days;

(e) Trustor is dissolved;

(f) any representation, warranty or disclosure made to Beneficiary by Trustor pursuant to the Loan Documents proves to be materially false or misleading on the date as of which made; or

(g) all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Trustor is sold or transferred) without Lender's prior written consent to the extent such consent is required hereunder.

6.2. **Rights and Remedies.** Subject to the provisions of Section 7.12 below, at any time after the occurrence and during the continuance of a Default, Beneficiary and Trustee will each have all rights available at law or in equity.

6.3. **No Cure or Waiver.** Subject to the provisions of Section 7.12 below, neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver will cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other Defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.

6.4. **Payment of Costs, Expenses and Attorneys' Fees.** Subject to the provisions of Section 7.12 below, Trustor shall pay to Beneficiary immediately and without demand all actual out of pocket costs and expenses incurred by Trustee and Beneficiary pursuant to this Article 6 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Trustor will pay to Trustee all Trustee's fees hereunder and will reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any actual out of pocket attorneys' fees.

6.5. **Power to File Notices and Cure Defaults.** Subject to the provisions of Section 7.12 below, Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect, or preserve Beneficiary's security interests and rights in or to any of the Property.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1. **Additional Provisions.** This Deed of Trust and the Loan Documents contain the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further

agreements and affirmative and negative covenants by Trustor that apply to this Deed of Trust and to the Property, and such further rights and agreements are incorporated herein by this reference.

7.2. **Attorneys' Fees.** Subject to the provisions of Section 7.12 below, if the Note and/or this Deed of Trust is/are placed with an attorney for collection or if an attorney is engaged by Beneficiary to exercise rights or remedies or otherwise take actions to collect thereunder, hereunder, or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Trustor agrees to pay all of Lender's actual out of pocket costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.

7.3. **No Waiver.** No previous waiver and no failure or delay by Beneficiary in acting with respect to the terms of the Deed of Trust or any Loan Document will constitute a waiver of any breach, Default, or failure of condition under the Deed of Trust, Loan Documents, or the obligations secured thereby. A waiver of any term of the Deed of Trust, Loan Documents, or of any of the obligations secured thereby must be made in writing and will be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Note and the terms of any other document related to the Loan evidenced by the Note, the terms of the Note will prevail.

7.4. **Merger.** No merger will occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.

7.5. **Successors in Interest.** The terms, covenants, and conditions herein contained will be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

7.6. **Governing Law.** This Deed of Trust will be construed in accordance with the laws of the state where the Property is located, except to the extent that federal law preempts the laws of such state.

7.7. **Notices.** Each party giving or making any notice, request, demand, or other communication (each, a "**Notice**") pursuant to this Deed of Trust must give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Deed of Trust is a writing: personal delivery, Registered Mail or Certified Mail (in each case, return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid), facsimile, or email (with a clear notation at the top of the email in conspicuous type indicating that the email constitutes notice under this Deed of Trust with a specific reference to the full title of this Deed of Trust). Any party giving a Notice must address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the address first set forth above or to another Addressee or another address as designated by a party in a Notice pursuant to this section. Except as provided elsewhere in this Deed of Trust, a Notice is effective only if the party giving the Notice has complied with this section and the Addressee has received the Notice. If the Addressee rejects or otherwise refuses to accept the Notice, or If the Notice cannot be delivered because of a change in address for which no Notice was given, then the Notice is

deemed delivered upon the rejection, refusal, or inability to deliver. If any Notice is received after 5:00 p.m. on a business day where the Addressee is located, or on a day that is not a business day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next business day where the Addressee is located.

7.8. **Waiver of Marshaling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property hereby waives all rights to have the Property or any other property marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien securing the Secured Obligations. Beneficiary will have the right to sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Beneficiary may designate.

7.9. **Substitute Trustee.** Beneficiary, at its option, may from time to time remove Trustee and appoint a successor or substitute trustee by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee will succeed to all the title, power, and duties conferred upon the Trustee under this Deed of Trust and by applicable law.

7.10. **Waivers.** Trustor waives all right of homestead, equity of redemption, and statutory right of redemption and relinquishes all other rights and exemptions of every kind, including, without limitation, a statutory right to an elective share in the Property.

7.11. **Foreclosure.** Subject to the provisions of Section 7.12 below, upon default beyond all applicable notice and cure periods, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose upon the Property in any manner provided by law for the foreclosure of mortgages, trust deeds, or security agreements, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees.

7.12. **Subordination and Standstill.** The provisions of Section 13 of the Loan Agreement are incorporated herein by reference. *[Remainder of page intentionally left blank]*

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

A parcel of land, located in the Southeast quarter of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian, in the City of Sandy, Salt Lake County, Utah described as follows:

Beginning at a point which lies North 89°51'37" East 92.36 feet to a monument marking the centerline of State Street, North 00°08'34" West along the monument line in State Street, 1,296.656 feet, South 89°56'30" West 2,309.468 feet, South 03°49'28" East 313.06 feet to the Northwest corner of Lot 7, Sandy City Centre Final Plat First Amendment and Extended, according to the official plat thereof which was recorded October 27, 2004 as Entry No. 9207823 in Book 2004P of Plats at Page 315 in the Office of the Salt Lake County Recorder from the Southeast corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running

thence North 89°56'08" East 373.84 feet along the northerly boundary line of said Lot 7;

thence South 00°00'36" West 14.26 feet;

thence South 21°12'47" West 7.84 feet;

thence Southwesterly 200.59 feet along the arc of a 545.00 foot radius curve to the left (center bears South 68°46'43" East and the chord bears South 10°40'39" West 199.46 feet with a central angle of 21°05'16");

thence South 00°08'41" West 326.45 feet;

thence North 88°47'44" West 149.92 feet;

thence North 89°44'24" West 148.83 feet;

thence North 03°33'44" West 350.32 feet to the southwest corner of said Lot 7;

thence North 03°49'48" West 190.56 feet along the westerly boundary line of said Lot 7 to the point of beginning.

Contains 174,401 Square Feet or 4.004 Acres and 1 Lot

Exhibit C
Form of Loan Guaranty

LOAN GUARANTY

THIS LOAN GUARANTY ("**Guaranty**") is dated as of March 31, 2023 and is made and entered into by KC Gardner Company, L.C., a Utah limited liability company and Mountain West Capital Partners, LLC, a Utah limited liability company (each a "**Guarantor**" jointly and severally).

RECITALS

A. This Guaranty is being executed and delivered by Guarantor as an essential inducement to that certain SIB Loan Agreement dated as of March 21, 2023 (the "**Loan Agreement**") and related Promissory Note also dated as of March 21, 2023 in the principal amount of \$5,300,000.00 (the "**Note**"), between the Redevelopment Agency of Sandy City as Lender (the "**Lender**"), and Riverdale Center Owner, L.C., a Utah limited liability company as Borrower (the "**Borrower**").

B. Unless otherwise defined in this Guaranty, all capitalized terms used in the Guaranty have the same definitions as are set forth in the Note and Loan Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees, covenants, represents and warrants as set forth below.

1. Guaranty. Guarantor hereby unconditionally guarantees the timely payment and performance of all obligations of and amounts owed by Borrower under the Note and Loan Agreement and all other documents evidencing or securing the obligations under the Note and Loan Agreement (collectively, the "**Guaranteed Obligations**"). This Guaranty is an absolute guaranty of payment and performance and not of collection.

2. Rights of Lender. Guarantor authorizes Lender to, at any time and from time to time, in Lender's discretion, (a) take and hold, and apply, any security for the Guaranteed Obligations; (b) accept additional or substituted security; (c) subordinate, compromise or release any security; (d) release Borrower or any other person from its liability for all or any part of the Guaranteed Obligations; (e) participate in any settlement offered by Borrower or any guarantor, whether in liquidation, reorganization, receivership, bankruptcy or otherwise; (f) release, substitute or add any one or more guarantors or endorsers; (g) assign this Guaranty and/or the Guaranteed Obligations in whole or in part in connection with the assignment of the Note, Loan Agreement and Deed of Trust; or (h) modify, extend and/or amend the Guaranteed Obligations. Lender may take any of the foregoing actions upon any terms and conditions as Lender may elect, without giving notice to Guarantor or obtaining the consent of Guarantor and without affecting the liability of Guarantor to Lender.

3. Independent Obligations. Guarantor's obligations under this Guaranty are independent of those of Borrower or of any other guarantor. Lender may bring a separate action against Guarantor without proceeding (either before, after or concurrently) against Borrower or any other guarantor or person or any security held by Lender and without pursuing any other

remedy. Lender's rights under this Guaranty shall not be exhausted by any action of Lender until all of the Guaranteed Obligations have been fully performed.

4. Waiver of Defenses. Guarantor waives all of the following, whether created or imposed by or under statute, common law, or otherwise:

4.1 Any right to require Lender to proceed against Borrower or any other person or any security now or hereafter held by Lender or to pursue any other remedy whatsoever.

4.2 Any defense based upon any legal disability of Borrower or any guarantor, or any discharge or limitation of the liability of Borrower or any guarantor to Lender (other than a defense of payment or performance), or any restraint or stay applicable to actions against Borrower or any other guarantor, whether such disability, discharge, limitation, restraint or stay is consensual, or by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor-relief proceeding, or from any other cause.

4.3 All setoffs, counterclaims, presentment, demand, protest or notice of any kind, except for any notice which may be expressly required by the provisions of this Guaranty.

4.4 Any defense based upon the modification, renewal, extension or other alteration of the Guaranteed Obligations, or of the documents executed in connection therewith.

4.5 Any defense based upon the negligence of Lender, including, without limitation, the failure to file a claim in any bankruptcy of the Borrower or any guarantor.

4.6 Any defense based upon a statute of limitations and any defense based upon Lender's delay in enforcing this Guaranty.

4.7 All rights of subrogation, reimbursement, indemnity, all rights to enforce any remedy that Lender may have against Borrower, and all rights to participate in any security held by Lender for the Guaranteed Obligations until the Guaranteed Obligations have been paid and performed in full.

4.8 Any defense based upon or arising out of any defense that the Borrower or any other person may have to the performance of any part of the Guaranteed Obligations other than Lender's prior material breach.

4.9 Any defense based upon the death, incapacity, lack of authority or termination of existence or revocation hereof by any person or entity or persons or entities, or the substitution of any party hereto.

4.10 Any defense based upon or related to Guarantor's lack of knowledge as to Borrower's financial condition.

4.11 Any and all rights to revoke this Guaranty in whole or in part.

4.12 Any defense based upon any action taken or omitted by Lender in any bankruptcy or other insolvency proceeding involving Borrower, including any election to have

Lender's claim allowed as secured, partially secured or unsecured, any action taken by the Lender in connection with a motion to assume, assign or reject the Note and Loan Agreement, any extension of credit by the Lender to the Borrower in any such proceeding, and the taking and holding by the Lender of any security for any such extension of credit.

4.13 All rights and defenses arising out of an election of remedies by Lender, even though that election of remedies impairs or destroys Guarantor's right of subrogation and/or reimbursement against Borrower.

5. Bankruptcy.

5.1 Until all of the Guaranteed Obligations have been paid and performed in full, Guarantor shall not, without the prior written consent of Lender, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Borrower. The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Borrower, or by any defense Borrower may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. No limitation upon or stay of the enforcement of any obligation of Borrower by virtue of any such proceeding shall limit or stay Lender's enforcement of Guarantor's payment or performance of such obligation under this Guaranty. In furtherance of the foregoing, Guarantor agrees that if acceleration of the time for payment of any amount payable by Borrower under the Note and Loan Agreement or in respect of the other Guaranteed Obligations is stayed for any reason, all such amounts which would be subject to acceleration shall nonetheless be deemed to be accelerated for purposes of this Guaranty and the full amount thereof shall be payable by Guarantor hereunder forthwith upon demand.

5.2 Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor, and will upon request assign to Lender all rights of Guarantor thereunder. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Lender the amount payable on such claim. Guarantor hereby assigns to Lender all of the Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

6. Costs and Expenses. Guarantor agrees to pay, upon Lender's demand, Lender's reasonable out-of-pocket costs and expenses, including but not limited to attorneys' fees, costs and disbursements, incurred in any effort to collect or enforce any of the Guaranteed Obligations or this Guaranty, regardless whether any lawsuit is filed, and in the representation of Lender in any insolvency, bankruptcy, reorganization or similar proceeding relating to Borrower or Guarantor. Until paid to Lender, such sums will bear interest from the date such costs and expenses are incurred at the rate set forth in the Note and Loan Agreement for past due obligations. The obligations of the Guarantor under this Section shall include payment of all such costs and expenses incurred by Lender in enforcing any judgments.

7. Reinstatement. The liability of Guarantor hereunder shall be reinstated and revived, and the rights of Lender will continue, with respect to any amount at any time paid on account of the Guaranteed Obligations which Lender is thereafter required to restore or return or which is avoided in connection with the bankruptcy, insolvency or reorganization of Borrower or otherwise, all as though such amount had not been paid. The determination as to whether any such payment or performance must be restored or returned will be made by Lender in its sole discretion. Further, upon demand from Lender, Guarantor will restore or return such payment or performance directly on Lender's behalf in furtherance of Guarantor's obligations hereunder. Lender will be under no obligation to return or deliver this Guaranty to Guarantor, notwithstanding the payment of the Guaranteed Obligations. If this Guaranty is nevertheless returned to Guarantor or is otherwise released, then the provisions of this Guaranty shall survive such return or release, and the liability of Guarantor under this Guaranty shall be reinstated and continued under the circumstances provided herein notwithstanding such return or release.

8. Subordination. Any indebtedness of Borrower to Guarantor now or hereafter existing shall be, and such indebtedness hereby is, subordinated to payment and performance of the Guaranteed Obligations; provided, however, so long as a Default has not occurred and is continuing at the time of the making of any payment of such indebtedness, Guarantor shall be entitled to receive and retain any payments on such indebtedness, if any. Any payment made to Guarantor by Borrower or any third party with respect to the indebtedness subordinated hereunder at any time when an Event of Default exists under the Note and Loan Agreement or while any Guaranteed Obligations are otherwise then payable or performable shall be held in trust by Guarantor for the benefit of Lender and shall be turned over to Lender immediately upon receipt thereof for application by Lender against the Guaranteed Obligations. Any lien, charge or claim which Guarantor now has or hereafter may have on or to any real or personal property of Borrower (including without limitation any real property subject of the Note and Loan Agreement, the personal property located thereon, any rights therein and related thereto, and the revenue and/or income realized therefrom) and any security for any loans, advances or other indebtedness of Borrower to Guarantor, shall be, and hereby is, subordinated to the payment and performance of the Guaranteed Obligations.

9. Representations and Warranties. Guarantor, and each of the persons or entities executing this Guaranty as Guarantor in its individual capacity, makes the following representations and warranties, which are deemed to be continuing representations and warranties until payment and performance in full of the Guaranteed Obligations.

9.1 Guarantor has all the requisite power and authority to execute, deliver and be legally bound by this Guaranty on the terms and conditions herein stated.

9.2 Guarantor has all the requisite power and authority to transact any other business with Lender as necessary to fulfill the terms of this Guaranty.

9.3 This Guaranty constitutes the legal, valid and binding obligations of Guarantor enforceable against Guarantor in accordance with its terms except to the extent such enforceability may be limited by bankruptcy laws, general principles of equity and other laws generally applicable to creditors, and are enforceable, to the extent permitted by applicable law, in accordance with their terms, free from any setoff, claim or defense of any nature..

9.4 Neither the execution and delivery of this Guaranty nor the consummation of the transaction contemplated hereby will, with or without notice and/or lapse of time, (a) constitute a breach of any of the terms and provisions of any note, contract, document, agreement or undertaking, whether written or oral, to which Guarantor is a party or to which Guarantor's property is subject; (b) accelerate or constitute any event entitling the holder of any indebtedness of Guarantor to accelerate the maturity of any such indebtedness; (c) conflict with or result in a breach of any writ, order, injunction or decree against Guarantor of any court or governmental agency or instrumentality; or (d) conflict with or be prohibited by any federal, state, local or other governmental law, statute, rule or regulation.

9.5 No consent of any other person not heretofore obtained and no consent, approval or authorization of any person or entity is required in connection with the valid execution, delivery or performance by Guarantor of this Guaranty.

9.6 Guarantor will receive substantial and material benefits from the issuance of the SIB Loan to Borrower and the consideration received by Guarantor for this Guaranty is sufficient in all respects.

9.7 Guarantor presently has and will at all times maintain sufficient assets and tangible net worth to timely pay and perform all of the Guaranteed Obligations, and Guarantor will not take any action nor participate in any transaction which would materially impair Guarantor's ability to so pay and perform the Guaranteed Obligations.

9.8 Neither this Guaranty nor any other statement furnished by Guarantor to Lender in connection with the transactions contemplated hereby (including, without limitation, any financial statements or other business information) contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein true and not misleading.

10. Joint and Several Liability. The obligations, waivers, promises, representations and warranties set forth herein are the joint and several undertakings of each of the persons or entities executing this Guaranty as a Guarantor and of any other guarantors or other persons or entities obligated from time to time with respect to the Guaranteed Obligations. Lender may proceed hereunder against any one or more of said persons or entities without waiving its rights to proceed against any of the others. Any married person who executes this Guaranty agrees that recourse may be had against his or her separate and community property.

11. Inducement; No Assignment. Guarantor acknowledges that the undertakings given in this Guaranty are given in consideration of Lender's entering into the Note and Loan Agreement and that Lender would not enter into the Note and Loan Agreement but for the execution and delivery of this Guaranty. Guarantor's obligations hereunder are personal to Guarantor and Guarantor may not assign or delegate any of its obligations under this Guaranty without Lender's prior written consent, which consent may be withheld in Lender's sole and absolute discretion.

12. Pledge of TIF Revenues. Notwithstanding anything else herein or in any other Guaranteed Obligation to the contrary, expressed or implied, Lender has the first position lien upon

and right of setoff, against all amounts due from the Lender to KC Gardner Company, L.C. under that certain Tax Increment Participation Agreement dated December 19, 2017, as amended, between KC Gardner Company, L.C. and Lender. KC Gardner Company, L.C., a Utah limited liability shall not make any pledge of such tax increment that is or purports to be senior in priority to the lien and setoff rights of Lender in and upon such tax increment. Notwithstanding anything else herein or in any other Guaranteed Obligation to the contrary, express or implied, in the event that an Event of Default occurs under the Note, Lender may immediately and without required notice or cure period apply any such tax increment otherwise payable by Lender to KC Gardner Company, L.C. to the outstanding payment obligation(s) of Borrower under the Note, for so long as such Event of Default remains uncured.

13. Borrower's Financial Condition. Guarantor is relying upon its own knowledge and has made such investigation as Guarantor has deemed necessary with respect to Borrower's financial condition. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Borrower and all other circumstances affecting Borrower's ability to pay and perform its obligations under the Note and Loan Agreement, and agrees that Lender will have no duty to report to Guarantor any information which Lender receives about Borrower's financial condition or any circumstances bearing on Borrower's ability to perform. Guarantor agrees that Lender has made no representations or assurances regarding Borrower's financial condition or Borrower's ability to pay and perform Borrower's obligations under the Note and Loan Agreement.

14. Default. The occurrence of any one or more of the following events shall, at the election of Lender, be deemed an event of default under this Guaranty: (a) Guarantor fails to pay any monetary Guaranteed Obligation within five days after demand from Lender; (b) Guarantor fails to perform any non-monetary Guaranteed Obligation within 15 days after demand therefor from Lender (or, if Guarantor is not able through the use of commercially reasonable efforts to perform such Guaranteed Obligation within a 15 day period, if Guarantor does not commence to perform such obligation within such 15 day period and diligently pursue such performance to completion within an additional sixty (60) days after the expiration of the initial 15 day period); (c) Guarantor fails or neglects to perform, keep or observe any other term, provision, agreement or covenant contained in this Guaranty; (d) the commencement of any liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other similar proceeding by or against Guarantor; (e) if any representation or warranty made in this Guaranty is false in any material respect at the time made; or (f) the death, legal incapacity, dissolution or termination of the Guarantor. Upon the occurrence of an event of default under this Guaranty, at the option of Lender, the Guaranteed Obligations shall be accelerated and shall all be due and payable and enforceable against Guarantor (regardless whether the Guaranteed Obligations are then due and payable under the Note and Loan Agreement or otherwise) and Lender may, in its sole discretion, in addition to any other right or remedy provided by law or at equity, all of which are cumulative and non-exclusive, proceed to suit against the Guarantor.

15. [Reserved]

16. Severability. If any one or more of the covenants, provisions or terms of this Guaranty is, in any respect, held to be invalid, illegal or unenforceable for any reason, the remaining portion thereof and all other covenants, conditions, provisions, and terms of this

Guaranty will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

17. Notices. All notices, demands and other communications with, to, from or upon the Guarantor and the Lender required or permitted hereunder shall be in writing, addressed to the parties at their respective addresses as follows: (a) with respect to Lender, to the notice addresses for Lender under the Note and Loan Agreement; and (b) with respect to Guarantor, unless a separate notice address is specified on the signature page of this Guaranty, to Guarantor in care of Borrower at the notice addresses for Borrower under the Note and Loan Agreement; or (c) as to either, at such other address as shall be designated in a written notice to the other complying with the terms of this Section. All such communications shall be deemed effective upon the earliest of (i) actual delivery if delivered by personal delivery; (ii) four (4) Business Days following deposit, first class postage prepaid, with the United States mail; (iii) if sent by certified postage prepaid mail, upon the earliest to occur of (A) four (4) Business Days following deposit thereof in the United States mail, or (B) receipt (or refusal to accept delivery); or (iv) on the next Business Day after deposit with an overnight air courier with request for next business day delivery.

18. [Reserved].

19. Miscellaneous. No provision of this Guaranty or Lender's rights hereunder may be waived or modified nor can Guarantor be released from its obligations hereunder except by a writing executed by Lender or upon payment in full of all amounts owing under the Note and Loan Agreement. No such waiver shall be applicable except in the specific instance for which given. No delay or failure by Lender to exercise any right or remedy against Borrower or Guarantor will be construed as a waiver of that right or remedy. All remedies of Lender against Borrower and Guarantor are cumulative. This Guaranty shall be governed by and construed under the laws of the State of Utah. Venue for any action arising under or relating to this Guaranty will be exclusively in the courts located in or serving Salt Lake County, Utah. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Lender. The term "**Borrower**" will mean not only the Borrower named herein but also any other person or entity at any time occupying all or any portion of the Premises or assuming or otherwise becoming liable (other than as a guarantor) for all or any part of the Guaranteed Obligations. This Guaranty constitutes the entire agreement between Guarantor and Lender with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings. All headings in this Guaranty are for convenience only and shall be disregarded in construing the substantive provisions of this Guaranty.

[End of Terms – Signature Page Follows]

IN WITNESS WHEREOF, this Guaranty has been duly executed on behalf of Guarantor and delivered to Lender and to be effective as of the date set forth above.

KC Gardner Company L.C., a Utah limited liability company

By: Form only - do not sign
Name:
Title:

Mountain West Capital Partners, LLC, a Utah limited liability company

By: Form only - do not sign
Name:
Title: