



Redevelopment Agency of Sandy City

Alison Stroud
Chair

Cyndi Sharkey
Vice-Chair

MEMORANDUM

To: RDA Board
From: Nick Duerksen, Director
Date: October 29, 2021
RE: Gardner #2 – The Gardner Company

On August 29, 2017, the RDA Board approved the Purchase Sale Agreement (PSA) and on December 19, 2017, the RDA Board approved the Participation Agreement for the Gardner #2 project on property located at 10115 Centennial Parkway. Due to COVID and changing market dynamics related to the development, staff presented changes to the design and uses of the project to the Board on April 20, 2021. The Board approved these changes and requested that staff move forward with any needed amendments to applicable agreements.

Since the April meeting, RDA staff has been working with the developer on finalizing designs, reviewing funding, and revising applicable agreements.

Attached are strikethrough drafts of the Purchase / Sale Agreement and Participation Agreement and a financial summary of the Gardner #2 project. These changes are based upon the Board's approved concept changes of April 20, 2021. The amendment includes the changes in square foot by use and a new provision to use RDA Increment to provide 10 affordable housing units in the project. Also attached are the current agreements and addenda that are in place. Staff's intention is for the RDA Board to act on the agreement amendments on November 16, 2021.

Additionally, staff has submitted to the Utah Department of Transportation's (UDOT) State Infrastructure Bank (SIB) to secure a loan to assist in the financing of the parking structure. This is a "pass-through" loan where the City/RDA secures the loan from UDOT, but the developer pays the debt service on the loan. In the current market, funding for parking structures is extremely difficult. This loan will assist the project in meeting the Cairns District parking requirements, including public parking, as approved by the RDA Board. Notification of award of the SIB loan is expected in the Spring 2022.

GARDNER MIXED-USE DEVELOPMENT FEASIBILITY & GAP ANALYSIS

KEY FINDINGS AND TAKEAWAYS

In its capacity as financial advisor to Sandy City (the “City”) and the Redevelopment Agency of Sandy City (the “Agency”), Lewis Young Robertson & Burningham, Inc. (“LYRB”) has been asked to conduct an analysis related to the financial viability and necessity of Agency and City participation on the proposed limited-commercial and residential mixed-use Gardner Company (the “Developer”, or “Gardner”) development (the “Development”). Below are the key findings and takeaways of the analysis.

KEY FINDINGS AND TAKEAWAYS

- The Development is estimated to create **\$59.47M** in new taxable assessed value. The Development is estimated to generate **\$4.72M** of tax increment during the remaining 13-years of the Civic Center North RDA.
- The Developer will build a parking structure which is estimated to cost **\$10.40M**. Without the parking structure, Gardner would be able to only build 120 units on the 4-acre site. This low-density development would create **\$19.83M** in assessed value and generate considerably less, with an estimated **\$1.83M** of tax increment. This would be **64.71%** less than the proposed high-density Development.
- The Developer has identified **\$7.00M** as the difference in equity to do the High-Density Development, and the financing gap needed to start the Development. While the gap is **\$7.00M**, the Developer has requested **\$3.25M** in public assistance to offset a portion of the parking structure gap.
- The Agency has requested the Developer deed restrict **10-units** for AMI qualified tenants. These units will generate **\$4,926 less** in monthly rates than the market rate equivalent units.

UNIT TYPE	NO. OF UNITS	MARKET RENT (MONTHLY)	TAX CREDIT RENT (MONTHLY)	DIFFERENCE
Studio	2	\$1,299	\$902	(\$794)
1 Bed/1 Bath (A1)	2	\$1,449	\$964	(\$970)
1 Bed/1 Bath (A2)	2	\$1,449	\$964	(\$970)
2 Bed/2 Bath (B1)	4	\$1,699	\$1,151	(\$2,192)
Total/Average	10	\$1,519	\$1,026	(\$4,926)

- This equates to an average annual difference of **\$62,474** and a difference of **\$749,688** during the remaining 12-years of the Project Area, assuming a 1% annual increase on monthly rents.

UNIT TYPE	NO. OF UNITS	DIFFERENCE (MONTHLY)	DIFFERENCE (ANNUALLY)	DIFFERENCE (12-YEAR TIF PERIOD)
Studio	2	(\$794)	(\$10,070)	(\$120,839)
1 Bed/1 Bath (A1)	2	(\$970)	(\$12,302)	(\$147,624)
1 Bed/1 Bath (A2)	2	(\$970)	(\$12,302)	(\$147,624)
2 Bed/2 Bath (B1)	4	(\$2,192)	(\$27,800)	(\$333,601)
Total	10	(\$4,926)	(\$62,474)	(\$749,688)

- 85% of the TIF equals **\$4.01M**. The Developer has suggested a subsidy of **\$3.25M** for the parking structure. The remaining portion of Gardner tax increment, currently estimated to be **\$762,295**, can be used to offset the loss of revenue of rents from the AMI units.

**ADDENDUM NO. 3 TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

THIS ADDENDUM NO. 3 TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this “**Addendum**”) is dated effective as of November 16, 2021 (the “**Effective Date**”), by and between the Redevelopment Agency of Sandy City, a Utah political subdivision (“**Seller**”) and Riverdale Center Owner, L.C., a Utah limited liability company, as successor in interest to KC Gardner Company, L.C., a Utah limited liability company (“**Buyer**”). This Addendum is to be attached to, and is made an integral part of, the Purchase and Sale Agreement and Escrow Instructions dated August 29, 2017, entered into by and between the Seller and the Buyer, relating to a vacant parcel of land located along Monroe Street, south of 10000 South, in Sandy City (the “**Original Agreement**” and as amended by this Addendum, and any other prior addenda, the “**Agreement**”). If there is a conflict between the terms of this Addendum and the terms of the Original Agreement or any prior addendum, the terms in this Addendum will control. The Original Agreement is modified as follows:

1. **Revised Concept Plan.** Due to changed market conditions, driven in large part by the effects of the COVID-19 pandemic, the use of the office exclusively or even primarily for office space is no longer economically viable. The Participant has prepared a new concept plan for the Property, a copy of which is attached hereto as Exhibit 3-A (the “2021 Concept Plan”). The Property will now be developed substantially as set forth in the 2021 Concept Plan. The Agency agrees that the 2021 Concept Plan represents the highest and best use of the Property under current market conditions. Any reference in the Agreement to “Office Building” now refers to, collectively, all of the building structures substantially as depicted in the 2021 Concept Plan. Any reference in the Agreement to “Office Plans” now refers to the plans and specifications for the Office Building (*i.e.*, the building structures substantially as depicted in the 2021 Concept Plan) according to the 2021 Concept Plan. Without limiting the generality of the foregoing, it is agreed and understood that at least 10,000 rentable square feet of office or retail will be constructed on the Property.

[End of Addendum terms]

**THIS ADDENDUM NO. 3 TO PURCHASE AND SALE AGREEMENT AND ESCROW
INSTRUCTIONS IS AGREED TO BY AND BETWEEN:**

SELLER: Redevelopment Agency of Sandy City

Executive Director

Attest:

RDA Secretary

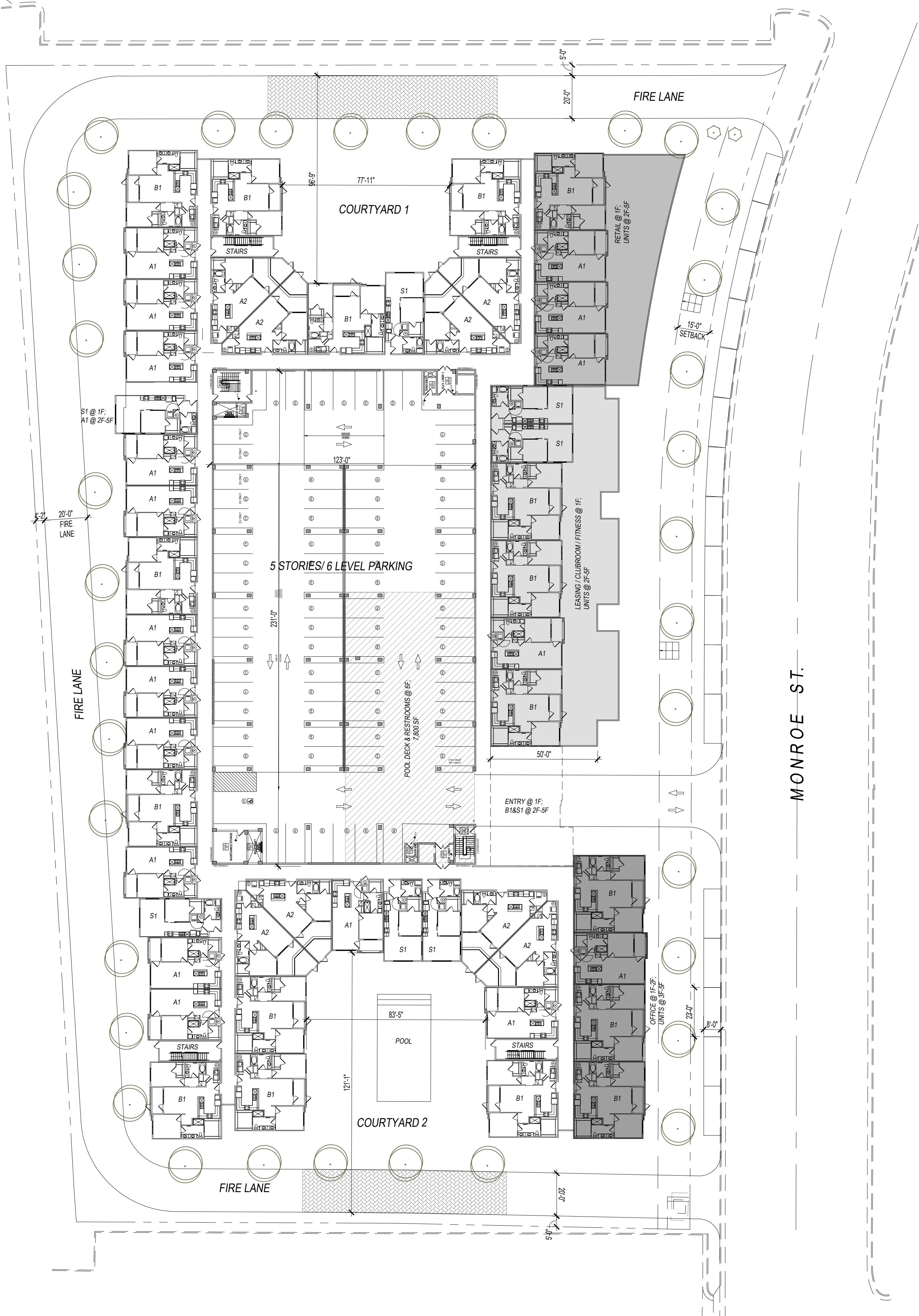
BUYER: Riverdale Center Owner, L.C., a
Utah limited liability company, by its manager

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

Name:

Title:

Exhibit 3-A



5 STORY RESIDENTIAL									
UNIT NAME	UNIT TYPE	NET AREA(SF)	GROSS AREA(SF)	UNIT COUNT	TOTAL NET AREA	TOTAL GROSS AREA	UNIT PERCENTAGE	% BREAKDOWN	DESIRED PARKING
S1	studio	630	679	33	20,790	22,407	13.8%	13.8%	50
A1	1br/1ba	692	743	88	60,896	65,384	36.7%	53.3%	132
A2	1br/1ba	685	754	40	27,400	30,160	16.7%	60	
B1	2br/2ba	1,039	1,116	79	82,081	88,164	32.9%	32.9%	119
TOTALS		3,046	3,292	240	191,167	206,115	100%	100%	360
							TOTAL	360	

UNIT AVERAGE NET SF : 797 S.F.

* NET AREA IS COMPUTED TO INCLUDE SQUARE FOOTAGE FROM EXTERIOR FACE OF ALL EXTERIOR FRAME WALLS THAT ENCLOSE A/C SPACE. IT DOES NOT INCLUDE PATIOS, BALCONIES, PATIO/BALCONY STORAGE.

PROJECT DATA

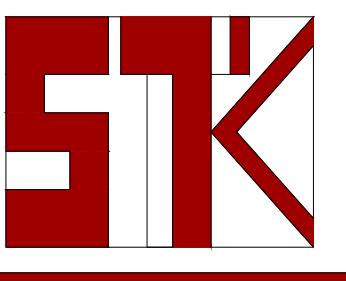
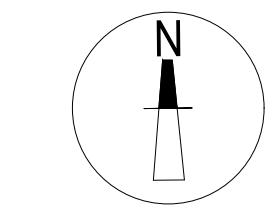
ACREAGE:	4.00	GROSS ACRES
TOTAL UNITS:	240	UNITS
DENSITY:	60.0	DU/AC
LEASING / CLUBHOUSE / FITNESS	9,700	S.F.
POOL DECK & BATHROOMS	7,800	S.F.
RETAIL:	6,300	S.F.
OFFICE:	8,800	S.F.
PARKING:		
DESIRED	360	STALLS
PROVIDED	402	STALLS
GARAGE	385	STALLS
PARALEL PARKING	17	STALLS
	1.50	STALLS/UNIT
	1.68	STALLS/UNIT
	1.60	STALLS/UNIT
	5 FUTURE TENANT STALLS	

ARCHITECTURAL SITE PLAN

scale: 1" = 30'-0" on 24x36 sheet



Sandy Shulsen
Wasatch



August 31, 2021

A-1.0

www.stkarch.com

Resolution No. RD 17-06

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY APPROVING A PURCHASE AND SALE AGREEMENT PROVIDING, GENERALLY, FOR THE SALE OF CERTAIN VACANT LAND LOCATED BETWEEN MONROE STREET AND I-15, JUST SOUTH OF SEGO LILY DR., TO THE KC GARDNER COMPANY, L.C.

WHEREAS the Redevelopment Agency of Sandy City (the "Agency") has been created by the Sandy City Council to transact the business and exercise all 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 under the authority granted by, among other things, Section 17C-1-202(1)(d) of the Act, the Agency desires to enter into a Purchase and Sale Agreement and Escrow Instructions (the "Agreement"), substantially in the form attached hereto as **Exhibit A**, with KC Gardner Company, L.C., relating to the sale by the Agency of certain unimproved and vacant real property located between Monroe Street and I-15, just south of Sego Lily Dr. (the "Property");

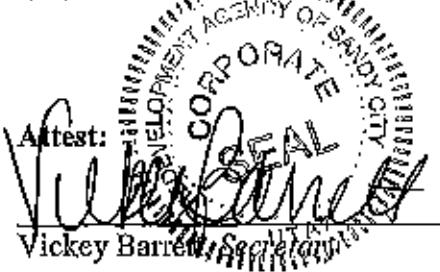
WHEREAS, the Agency presently owns a portion of the Property, and Sandy City owns the other portion of the Property; the Agency and Sandy City have entered into an Interlocal cooperation agreement ("ILA"), on or about the same date hereof, providing, in general, that Sandy City will convey the City land to the Agency at the time of closing under the Agreement, and then the Agency and Sandy City will proportionally split the net sales proceeds, all as provided in the ILA;

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 August 29, 2017.

Attest: 
Vickey Barrett, Secretary

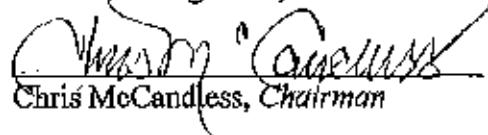

Chris McCandless, Chairman

Exhibit A
Form of Agreement

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of August 29, 2017, by and between the Redevelopment Agency of Sandy City, a Utah political subdivision ("Seller"), and KC Gardner Company, L.C., a Utah limited liability company ("Buyer"). Buyer and Seller agree as follows:

1. **Definitions.** For the purpose of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to any Person, a Person that directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, such Person. For these purposes, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management of any Person, whether through the ownership of voting securities, by contract or otherwise.

"Breached Condition" is defined in Section 3.3.

"Buyer" is defined in the opening paragraph of this Agreement.

"Cash Balance" means an amount equal to the Purchase Price minus the Deposit, plus all other costs required to be paid by Buyer hereunder prior to or at Closing.

"Certification" means a Certification of Non-Foreign Status.

"Claims" is defined in Section 27.

"Closing" means the consummation of the purchase and sale for the Property, as evidenced by the delivery of all required funds and documents to Escrow Agent.

"Closing Deadline" means the earlier to occur of (a) thirty (30) days after Buyer has received a building permit for the Office Building, or (b) February 1, 2019.

"Deed" means a special warranty deed in substantially the form attached hereto as Exhibit "A".

"Deposit" means the amount of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$75,000.00).

"Development Conditions" is defined in Section 3.2.

"Effective Date" means the date on which Seller delivers a copy of this Agreement to Escrow Holder executed by both Buyer and Seller, which shall not be later than fourteen (14) days after the date first shown above.

"Escrow Account" means an interest-bearing account with a federally insured state or national bank, held by Escrow Holder.

"Escrow Holder" means Cottonwood Title Insurance Agency, Inc., Attn: Frank Ivory, 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, which is an affiliate/agent of the Title Company.

"Executive Director" means the person serving as executive director of the Seller, as elected from time to time (who is, by statute, the same person who serves as Mayor of Sandy City).

"Hazardous Substances" means any and all substances, materials and wastes which are regulated as hazardous or toxic under applicable local, state or federal law or which are classified as hazardous or toxic under local, state or federal laws or regulations, including, without limitation, (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste," "pollutant" or "contaminant" as such terms are defined by or listed in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) ("RCRA"), the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Control Act (7 U.S.C. § 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616 Nov. 9, 1984), the Federal Clean Air Act (42 U.S.C. § 7401 et seq.), and in the regulations promulgated pursuant to such laws, all as amended, (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101) or 40 CFR Part 302, both as amended, and (iii) any material, waste or substance which is (A) oil, gas or any petroleum or petroleum by-product, (B) asbestos, in any form, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended, (E) flammable explosives, or (F) radioactive materials.

"Indemnified Parties" is defined in Section 10.2(f).

"Inspection Period" means the period commencing on the Effective Date and expiring at 5:00 p.m. on December 1, 2017.

"Land" means that certain vacant parcel of land located in Sandy City, Utah, and particularly described in Exhibit 1 of the Deed.

"Land Use Approvals" is defined in Section 26.

"Lender" is defined in Section 3.6.

"Major Casualty" means any damage or destruction to the Land where the cost of repair or replacement is estimated to be equal to or greater than twenty percent (20%) of the total value of the Land (as reasonably determined by Seller, but in no event shall there ever be any delay of the Closing Deadline as a result of this paragraph).

"Mortgage" is defined in Section 3.6.

“New Title Exceptions” is defined in Section 5.1.3.

“Office Building” is defined in Section 3.1.

“Office Plans” is defined in Section 3.1.

“Permitted Exceptions” is defined in Section 5.1.1.

“Permitted Recapture Encumbrances” is defined in Section 3.3.

“Person” means and includes all natural persons, corporations, limited partnerships, general partnerships, limited liability companies, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and branches agencies and political subdivisions thereof.

“Property” means the Land, all improvements on the Land (if any, it being acknowledged that Seller is not aware of any improvements on the Land), and all appurtenances relating to the Land, including, but not necessarily limited to, any assignable licenses, permits, mineral rights, easements, rights-of-way or other items, to the extent such items relate to and benefit the Land.

“Property Files” means copies of various documents and files materially relating to the Property in the possession of Seller, provided that the Property Files will exclude the following to the extent the same are not so made available: (i) internal memoranda, correspondence or analyses prepared by or for Seller, its property managers and/or advisors and/or any Affiliate(s) of any thereof, (ii) communications between or among any of Seller, its property managers and/or advisors and/or any Affiliate(s) of any thereof and their attorneys, and (iii) appraisals, assessments or other valuations of the Property. The Parties acknowledge that the only Property Files of which the Seller is currently aware are: (1) a Limited Site Investigation Report dated November 15, 2010 (Terracon Project No. 61107192), (2) a letter dated June 4, 2015, from the Utah Department of Environmental Quality, and (3) a Notice of Prescriptive Easement for Water Conveyance recorded on April 4, 2014, as Entry No. 11835853 in the office of the Salt Lake County Recorder.

“PTR” means a preliminary title report for title insurance to be issued by the Title Company with respect to the Property, together with copies of all underlying title documents described in such preliminary title report.

“Property Studies” is defined in Section 10.2.

“Purchase Price” means the amount of \$3,052,070.00, which shall be ALL CASH in US Dollars.

“Released Parties” is defined in Section 27.

“Seller” is defined in the opening paragraph of this Agreement.

"Seller Encumbrances" is defined in Section 5.1.1.

"Survey" means an ALTA/ACSM Land Title Survey of the Property.

"Tax Increment Participation Agreement" means a Tax Increment Participation Agreement to be mutually agreed upon by Buyer and Seller prior to Closing, each in their sole discretion, which agreement will set forth, generally, Seller's agreement to reimburse Buyer for certain construction and improvement costs using legally available tax increment funds generated from new construction on the Property, contingent on, among other things, (i) Buyer's construction of the Office Building according to the Office Plans, (ii) Buyer's payment of all ad valorem taxes on the Property, (iii) Buyer's obligation to first provide such financial information as Seller reasonably requests in order for Seller to analyze and justify the use, and amount, of tax increment participation, including, without limitation, an Office Building development pro forma that identifies, among other things, sources of funding, projected costs and cash flows, and anticipated rate of return, and (iv) Buyer's agreement to participate in a downtown association if and when established (as described in Section 3.8). An initial draft of the Tax Increment Participation Agreement is attached hereto as Exhibit "D".

"Title Company" means First American Title Insurance Company.

"Title Policy" means an ALTA Standard Coverage Owner's Policy of Title Insurance written with liability in the amount of the Purchase Price.

2. Sale of Property; Purchase Price.

2.1. Sale of Property. Subject to the terms, covenants and conditions of this Agreement, on or, if mutually agreeable to the parties, before the Closing Deadline, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in and to the Property.

2.2. Purchase Price. The Purchase Price shall be payable as follows:

2.2.1. Deposit. Buyer shall deliver the Deposit to Escrow Holder within three (3) business days after the Effective Date. The Deposit shall be fully earned by Seller, and shall not be refunded to Buyer for any reason, after the expiration of the Inspection Period Deadline except as otherwise provided in this Section 2.2.1. If Buyer has not made the Deposit in the timeframe set forth above, Seller may, at Seller's option, at any time prior to the time Buyer delivers such Deposit, elect to terminate this Agreement, in which case the parties shall have no further obligations hereunder except for any such obligations which expressly survive such termination. The Deposit shall be in the form of immediately available United States federal funds and shall be deposited by Escrow Holder pursuant to terms hereof. The Deposit shall be distributed to and retained by Seller pursuant to Section 10.1 without any further instructions by the parties if this Agreement is terminated or if the Closing does not occur by the Closing Deadline for any reason other than (a) upon the failure of a condition contained in Section 4.3 (Buyer's Conditions to Closing) other than through the fault of Buyer, or (b) if this Agreement is terminated by Buyer in accordance with any of Sections 5.1, 7.1, 7.2, 10.2, or 11.2.

Upon the occurrence of an event described in clauses (a) and (b), the Deposit, less Buyer's share of any escrow cancellation fees, shall be refunded to Buyer as provided herein.

2.2.2. Balance of Purchase Price. Buyer shall deposit into Escrow the Cash Balance in the form of immediately available United States federal funds no later than the Closing Deadline or such earlier date as may be required by the Escrow Holder so that Escrow Holder will be in a position to disburse the cash proceeds to Seller on the Closing Deadline. The Deposit shall be credited against the Purchase Price of the Property.

2.3. Interest. All funds received from or for the account of Buyer shall be deposited by Escrow Holder into the Escrow Account. All interest accrued on the Deposit shall be deemed part of the Deposit and shall be delivered to the party to which the Deposit is released per the terms hereof.

3. Buyer's Post-Closing Obligations; Development Requirements; Seller's Re-Purchase Option. The provisions of this Section 3 shall survive the Closing.

3.1. Buyer acknowledges that the Property is of unique and particular importance to the Seller, given, among other things, its location within the Seller's "Cairns District" and its location within the Civic Center North Redevelopment Project Area. To that end, Buyer acknowledges that Seller is, as material consideration to this Agreement, significantly interested in the construction of an office building containing a minimum of 250,000 rentable square feet together with a parking garage (collectively, the "Office Building"), on the Property substantially according to plans and specifications to be approved by Seller's governing body (the "Office Plans" as further described in section 4.4.4 *below*). Any failure of Buyer to complete the construction of the Office Building according to the Seller-approved Office Plans would be significantly detrimental to the Seller. Upon completion of the Office Building (as evidenced by Buyer's receipt of a certificate of occupancy), Buyer shall not be required to obtain Seller's approval for any additional improvements, or the removal, construction or alteration of any improvements, relating to the Office Building or any other portion of the Property; provided, the foregoing shall not modify the obligation of the Buyer to obtain all approvals by Seller as required by applicable law.

3.2. Seller shall have the option, but not the obligation, to re-purchase the Property from Buyer, exercisable if, and only if, Buyer fails to timely satisfy any one of the following conditions precedent (the "Development Conditions"):

3.2.1. Buyer must commence the construction of the Office Building on the Property within fifteen (15) months after the Closing Date, and

3.2.2. Buyer must diligently prosecute and complete construction of the Office Building substantially in accordance with the Office Plans together with changes to the plans and specifications approved by the Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed.

To clarify, Seller shall have no right to re-purchase any portion of the Property for any reason if Buyer timely satisfies each of the Development Conditions. The option to repurchase the

Property will be Seller's exclusive remedy if Buyer does not satisfy the Development Conditions,

3.3. To exercise its conditional option to purchase any portion of the Property back from Buyer, Seller shall provide written notice of such intent to Buyer, which written notice shall indicate which of the Development Conditions Seller believes Buyer has not satisfied (each a "Breached Condition"). Buyer shall have four calendar months from the date of receipt of Seller's notice in which to satisfy the Breached Condition(s). If Buyer does not satisfy the Breached Condition(s) within that four-month period, then the closing of the Agency's purchase of the Property shall occur within twenty-eight (28) days after the expiration of that four-month period, at a title or escrow company of Seller's choosing. At that closing, each party shall bear its own expenses relating in any way to the transaction and closing. At that closing, Buyer shall provide a special warranty deed to Seller, conveying good, marketable and indefeasible fee simple title to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, other than (i) any liens, encumbrances, conditions, easements, assessments, reservations and restrictions that existed and/or encumbered the Property at the time of Buyer's acquisition of the Property from Seller, and (ii) any covenants, conditions, easements and restrictions reasonably imposed on the Property as part of Buyer's development process for the Office Building (collectively, the "Permitted Recapture Encumbrances"). The sale of the Property under this Section 3 shall be as-is, with all faults, and without any representations or warranties of any kind.

3.4. The purchase price to be paid by Seller pursuant to this Section 3 shall be an amount equal to the Purchase Price paid by Buyer for the Property, plus all hard and soft costs reasonably incurred by Buyer in developing the Property, including, without limitation, all amounts reasonably incurred by Buyer in constructing the Office Building, *less* a reduction in the amount of any costs reasonably incurred by Seller in order to clear any clouds, liens or encumbrances on title other than the Permitted Recapture Encumbrances, if any. In no event shall the recapture purchase price include any interest charges. Buyer shall execute all instruments as are reasonably and customarily needed and requested to effectuate the conveyance of the Property and issuance of an owner's policy of title insurance with only the Permitted Recapture Encumbrances listed as exceptions to coverage.

3.5. Seller may, in its discretion and at its sole expense, record with the Salt Lake County Recorder's Office a Notice of Conditional Purchase Option in substantially the form attached hereto as Exhibit "B". Upon satisfaction of each of the Development Conditions, Buyer may deliver a written request to Seller for Seller to record, and Seller will record, with the Salt Lake County Recorder's Office a Release of Notice of Conditional Purchase Option, in substantially the form attached hereto as Exhibit "C".

3.6. All rights of Seller under this Section are subject and subordinate to any bona fide deeds of trust, mortgages or other instruments of security that now or hereinafter may cover all or any part of the Property (each a "Mortgage"), and all advances under any Mortgage. This provision is self-operative and no further instrument shall be required to effect such subordination. Seller shall, however, upon demand at any time or times execute, acknowledge and deliver to the any lender under a Mortgage (each a "Lender") any and all

instruments and certificates that in the judgment of the Lender may be necessary or proper to confirm or evidence such subordination.

3.7. The rights and obligations of Seller and Buyer under this Section 3 survive the Closing, and are a burden upon and will run with the Property, and all successors and assigns of the Property, until the termination of Seller's rights according to the express terms of this Section 3.

3.8. The Seller and Sandy City are currently considering promoting and/or establishing a downtown association, the purview of which will likely include the Property. Buyer agrees to participate in the downtown association if and when it is promoted or created, upon request from the Seller or Sandy City, provide the terms of such participation are reasonably acceptable to Buyer and do not materially increase Buyer's obligations or decrease Buyer's rights with respect to the Property or otherwise. The provisions of this Section 3.8 shall survive the closing.

4. Escrow; Obligations During Inspection Period; Closing Conditions and Other Closing Matters.

4.1. **Escrow.** Upon the execution of this Agreement by Buyer and Seller, and the acceptance of this Agreement by Escrow Holder in writing, this Agreement shall constitute the joint escrow instructions of Buyer and Seller to Escrow Holder to open the Escrow. Upon Escrow Holder's receipt of the Deposit and written acceptance of this Agreement, Escrow Holder is instructed to act in accordance with the terms of this Agreement. In connection with Closing, Buyer and Seller shall promptly execute general escrow instructions based upon this Agreement at the request of Escrow Holder; provided, however, that if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Upon the occurrence of Closing, Escrow Holder shall pay any sum owed to Seller with immediately available United States federal funds.

4.2. **Closing Deadline.** The Closing shall occur on or, upon a written election of Buyer which must be delivered to Seller at least fourteen (14) days before the date of Closing, before the Closing Deadline, but only if all conditions to the Closing set forth in this Agreement have been satisfied or waived in writing by the party intended to be benefited thereby. Buyer may elect, upon at least fourteen (14) days prior written notice, to cause the Closing to occur prior to the Closing Deadline as described in this Section 4.2.

4.3. **Buyer's Conditions to Closing.** Closing is subject to and contingent on the satisfaction of only the following conditions or the waiver of the same by Buyer in writing:

4.3.1. Accuracy of Seller's Representations and Warranties.

All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date made and as of the Closing.

4.3.2. Seller's Performance. Seller shall have performed,

satisfied and complied in all material respects with all material covenants, agreements and

conditions required by this Agreement to be performed or complied with by Seller on or before Closing.

4.3.3. Title Policy. The Title Company is willing to issue the Title Policy complying with the requirements of Section 5.2 upon the payment of the premium therefor and the provision of any information or assurances from Seller required by the Title Company.

4.3.4. Government Approvals. Buyer has obtained all governmental approvals that Buyer, in its sole discretion, believes to be necessary for Buyer's intended development of the Property, including, without limitation, those mentioned in Section 26 below.

4.3.5. Tax Increment Participation Agreement. Buyer and Seller shall have executed the Tax Increment Participation Agreement in a form mutually agreed to by Buyer and Seller.

If any of the foregoing conditions contained in subsections 4.3.1 thru 4.3.5 are not satisfied, as determined by Buyer, or waived in writing by Buyer, by the Closing Deadline, Buyer may at any time thereafter and until such time as such conditions are satisfied, terminate this Agreement, in which event this Agreement shall terminate with respect to all parties, except those obligations which expressly survive the termination of this Agreement, and the Deposit, if applicable, shall be returned to Buyer.

4.4. Seller's Conditions to Closing. The obligations of Seller to consummate the transactions provided for herein are subject to and contingent upon the satisfaction only of the following conditions or the waiver of same by Seller in writing:

4.4.1. Accuracy of Buyer's Representations and Warranties. All of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date made and as of the Closing.

4.4.2. Buyer's Performance. Buyer shall have performed, satisfied and complied in all material respects with all material agreements, covenants and conditions required hereby to be performed or complied with by Buyer on or before the Closing, including without limitation, payment in full of the Purchase Price.

4.4.3. Approval of Office Plans. Seller's governing body shall have approved, by motion or resolution in an open and public meeting, and in Seller's reasonable discretion, Buyer's proposed Office Plans. Buyer acknowledges that, in light of the material consideration identified in Section 3.1 above, Seller's decision to approve, or not approve, Buyer's proposed Office Plans is discretionary and is different from standard regulatory approval required from a governmental body.

In the event the foregoing conditions are not satisfied, as determined by Seller, or waived in writing by Seller, by the Closing Deadline, Seller may at any time thereafter and until such time as such conditions are satisfied, terminate this Agreement, in which event this Agreement shall terminate with respect to all parties, except those obligations which expressly survive the

termination of this Agreement, and (a) in the event of a termination and provided the Inspection Period has expired, except in the event of a termination as a result of the failure of the Seller to approve plans and specifications submitted by Buyer as set forth in Section 4.4.4, the Deposit shall be paid to Seller, and (b) if the Inspection Period has not expired, or in the event of a termination as a result of the failure of the Seller to approve plans and specifications submitted by Buyer as set forth in Section 4.4.4, the Deposit shall be returned to Buyer.

4.5. Closing Costs and Charges.

4.5.1. Seller's Costs. At Closing, Seller shall pay (a) one-half of Escrow Holder's fees in connection with the Escrow (including any cancellation fees), (b) all prepayment penalties and other amounts necessary to release all existing notes, liens and security interests against the Property, (c) all of Seller's attorney's fees and costs, (d) the cost of recording the Deed and Notice of Conditional Purchase Option, (e) that portion of the cost of the Title Policy payable by Seller hereunder pursuant to Section 5.2, and (f) such other incidental costs and fees customarily paid by sellers in land transactions of this nature in the county in which the Property is situated.

4.5.2. Buyer's Costs. At Closing, Buyer shall pay (a) one-half of Escrow Holder's fees in connection with the Escrow (including any cancellation fees), (b) all of Buyer's attorney's fees and costs, (c) that portion of the cost of the Title Policy payable by Buyer hereunder pursuant to Section 5.2, (d) the cost of the Survey, and (e) such other incidental costs and fees customarily paid by buyers in land transactions of this nature in the county in which the Property is situated.

4.5.3. Taxes and Utilities. All ad valorem and excise taxes and utilities shall be prorated to the Closing. If the current year's taxes are not known as of the Closing, the proration shall be based upon the previous year's taxes with an adjustment made between Seller and Buyer when the current year's taxes are known. In the event any greenbelt or farmland assessment taxes are payable with respect to the Property, Seller shall pay for all such taxes at the Closing. Seller shall pay in full all special assessments or personal property taxes on the Property. Seller shall pay all transfer, deed or similar taxes payable with respect to the transfer of the Property to any governmental authority.

4.5.4. Corrections. If any errors or omissions are made regarding adjustments and prorations as set forth herein, the parties shall make the appropriate corrections promptly upon discovery thereof. If any estimates are made at Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto. The provisions of this Section 4.5.4 shall survive the Closing for a period of one (1) year.

4.6. Deposit of Documents by Seller. On or before the Closing, Seller shall deposit, or cause to be deposited, the following items into Escrow, each of which shall be duly executed and acknowledged by Seller where appropriate (notwithstanding anything to the contrary herein or elsewhere, if Buyer fails to timely deposit any documents or funds when required, then Seller may immediately (or later) withdraw its documents and funds from Escrow

without further instructions, and despite any contrary instructions from Buyer, and Escrow Holder will comply with any request by Seller in this regard):

- (a) The Deed;
- (b) The Notice of Conditional Purchase Option;
- (c) The Tax Increment Participation Agreement;
- (d) The Certification;
- (e) Such title affidavits and indemnities required by the Title Company in order for the Title Company to issue the Title Policy; and
- (f) All other documents as may reasonably be required by Escrow Holder to close the Escrow in accordance with this Agreement.

4.7. Deposit of Documents and Funds by Buyer. On or before the Closing, Buyer shall deposit the following items into Escrow, each of which shall be duly executed and acknowledged by Buyer where appropriate (notwithstanding anything to the contrary herein or elsewhere, if Seller fails to timely deposit any documents or funds when required, then Buyer may immediately (or later) withdraw its documents and funds from Escrow without further instructions, and despite any contrary instructions from Seller, and Escrow Holder will comply with any request by Buyer in this regard):

- (a) The Cash Balance;
- (b) The Tax Increment Participation Agreement; and
- (c) All other funds and documents as may reasonably be required by Escrow Holder or Seller to close the Escrow in accordance with this Agreement.

4.8. Delivery of Documents and Funds at Closing. Provided that all conditions to the Closing set forth in this Agreement have been satisfied or, as to any condition not satisfied, waived by the party intended to be benefited thereby, on the date of Closing, Escrow Holder shall conduct the Closing by recording and/or distributing the following documents and funds in the following manner:

4.8.1. Recorded Documents. Record the Deed and the Notice of Conditional Purchase Option in the Official Records of Salt Lake County, Utah.

4.8.2. Purchase Price. Deliver to Seller (a) amounts shown in the Settlement Statement, and (b) copies of all documents deposited with Escrow Agent pursuant to this Agreement.

4.8.3. Buyer's Documents. Deliver to Buyer: (a) the original Title Policy (within twenty-eight (28) days after Closing); (b) the original Certification; and (c) copies of all other documents deposited with Escrow Agent pursuant to this Agreement.

5. Title Matters; Conveyance of the Property.

5.1. Preliminary Title Report.

5.1.1. By or before the date that is twenty-one (21) days after the Effective Date, (i) Seller shall cause to be provided to Buyer a PTR, and (ii) Buyer will, at its own cost and effort, obtain a Survey. On or before the date which is twenty-eight (28) days before the expiration of the Inspection Period (as applicable, the "Title and Survey Objection Period"), Buyer may elect to deliver written notice to Seller (the "Objection Notice") of any objections to matters disclosed in the PTR and/or Survey (the "Objections") to which Buyer objects; provided, Seller shall be deemed to have received Buyer's objection to all Seller Encumbrances (defined below), regardless of whether or not Buyer actually notifies Seller of the same. If Buyer does not expressly object in writing to any exception or other matter in the PTR and the Survey before 5:00 p.m. (Mountain Time) on the last day of the Title and Survey Objection Period, then Buyer shall be deemed to have approved the matters set forth in the PTR and/or the Survey. If Buyer disapproves of any item in the PTR and/or the Survey, then Buyer shall deliver an Objection Notice before 5:00 p.m. (Mountain Time) on the last day of the Title and Survey Objection Period. Any matters set forth in the PTR or Survey which Buyer does not object to prior to the expiration of the Title and Survey Objection Period shall be deemed "Permitted Exceptions." Seller shall have the right, but not the obligation, to notify Buyer in writing within seven (7) days after Seller's receipt of the Objection Notice (the "Title Cure Period") whether or not Seller will remove or cure such disapproved items, and/or to obtain a bond or title commitment (or endorsement, subject to Buyer's approval, which will not be unreasonably withheld or delayed, and shall be deemed given to the extent the endorsement is consistent with customary practice) curing such Objections prior to the Closing. Seller's failure to deliver such notice to Buyer with respect to any disapproved item shall be deemed to be an election by Seller not to so remove or to cure such item or obtain such a bond, title commitment or endorsement. Notwithstanding anything set forth herein to the contrary, any mortgages, deeds of trust, mechanic's liens or other encumbrances which can be removed by the payment of money (the "Seller Encumbrances") shall, without exception, be removed by Seller at or prior to the Closing. Except as contemplated by this Agreement, Seller shall not create new exceptions to title on the Property after the date of the PTR.

5.1.2. If Seller elects not to remove all or any of the Objections (other than Seller Encumbrances which Seller shall be obligated to remove) or fails to notify Buyer prior to the expiration of the Title Cure Period that Seller will remove or cure all such Objections or obtain a bond or title commitment or endorsement removing the effect of such items as exceptions to the Title Policy prior to the Closing, then Buyer shall have, as Buyer's sole and exclusive remedy, the right exercisable on or before the date which is fourteen (14) days after the expiration of the Title Cure Period to either (i) waive those Objections which Seller has not agreed to cure (in which event such Objections shall be Permitted Exceptions), or (ii) to terminate this Agreement and the Escrow by giving written notice of such termination to Seller and to Escrow Holder in which case the Deposit shall be returned to Buyer and all of the parties

rights and obligations under this Agreement shall terminate, except those surviving the termination of this Agreement. Buyer's failure to provide Seller or Escrow Holder with written notice of termination within said 14-day period shall be deemed to constitute an election by Buyer to terminate this Agreement under clause (ii) above. Additionally, after giving notice of Seller's election to remove or cure any Objections, in the event Seller is unable prior to the date of Closing to so remove or to cure any disapproved item or to obtain such a bond or a title commitment or endorsement prior to or at the Closing in accordance with Seller's notification, Seller shall so notify Buyer, and Buyer shall have the right, exercisable on or before fourteen (14) days after Seller's notice to exercise either of the options described in clause (i) or (ii) above; provided, in the event Buyer exercise the right to terminate this Agreement, Seller shall reimburse Buyer for Buyer's out-of-pocket costs and expenses incurred in connection with the transactions contemplated by this Agreement. Buyer's failure to provide Seller or Escrow Holder with written notice of termination within said 14-day period shall constitute Buyer's election under clause (ii) above.

5.1.3. If exceptions to title are created after the date of the PTR (the "New Title Exceptions"), at Buyer's election, Seller shall remove such New Title Exceptions on or prior to the Closing. In the event Seller fails to remove the New Title Exceptions on or prior to the Closing, Buyer shall have the right to either (i) accept such New Title Exceptions and proceed to Closing, or (ii) terminate this Agreement. In the event Buyer terminates this Agreement as a result of New Title Exceptions, then in addition to the return of the Deposit to Buyer, Seller shall reimburse Buyer for Buyer's out-of-pocket costs and expenses incurred in connection with the transactions contemplated by this Agreement.

5.2. Buyer's Title Policy. At the Closing, Escrow Holder shall cause the Title Company, at Seller's cost, to issue to Buyer the Title Policy. If Buyer elects to obtain an ALTA Owner's Extended Coverage Policy of Title Insurance, Buyer shall pay any amount in excess of such cost of a Standard Owner's Policy and shall also be responsible for the cost of any endorsements not included in a Standard Owner's Policy, except for such endorsements as are required to cure any Objections which Seller has agreed to cure pursuant to Section 5.1 above, which endorsements shall be paid by Seller at the Closing. Seller shall provide such additional documents as reasonably required by Title Company in connection with such Extended Coverage Policy.

5.3. Deed. Seller shall convey title to the Property to Buyer by the Deed, subject only to the Permitted Exceptions.

5.4. Delivery of Possession. Seller shall deliver possession of the Property to Buyer at the Closing.

6. Commissions. Buyer and Seller each represent and warrant to the other that there are no commissions, finder's fees or brokerage fees arising out of the transactions contemplated by this Agreement as a result of Seller's or Buyer's actions. Seller shall indemnify and hold Buyer harmless from and against any and all liabilities, claims, demands, costs and expenses, including, without limitation, reasonable attorneys' fees and costs in connection with claims for any such commissions, finders' fees or brokerage fees arising out of Seller's actions.

Buyer shall indemnify and hold Seller harmless from and against any and all liabilities, claims, demands, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in connection with claims for any such commissions, finders' fees or brokerage fees arising out of Buyer's actions.

7. Damage or Destruction; Condemnation.

7.1. Casualty Damage. If any of the improvements on the Land are damaged by any casualty which constitutes a Major Casualty, Buyer shall have the right, by giving notice to Seller before the date of Closing, to terminate this Agreement. If the improvements or any of them are damaged by any casualty which does not constitute a Major Casualty or if Buyer has the right to terminate this Agreement pursuant to the preceding sentence but does not exercise such right, then this Agreement shall remain in full force and effect and, at the Closing, Buyer shall take title to the Property subject to such casualty without any reduction or offset to the Purchase Price, except that Seller shall assign and/or pay all proceeds of insurance payable as a result of such casualty to Buyer.

7.2. Eminent Domain. If, prior to Closing, written notice from a governmental entity is received by Seller evidencing notice of intent to exercise its power of eminent domain of all or any portion of the Property, or proceedings are commenced for the taking by exercise of the power of eminent domain of all or any portion of the Property, Buyer shall have the right, by giving notice to Seller to terminate this Agreement. If there is any right to terminate this Agreement pursuant to the preceding sentence but Buyer does not exercise such right, then this Agreement shall remain in full force and effect, and Buyer shall take title to the Property subject to such taking without any reduction or offset to the Purchase Price provided any condemnation proceeds shall be paid at Closing to Buyer (and/or assigned to Buyer at Closing if such condemnation proceeds have not been paid in full prior to the Closing).

7.3. Notice to Buyer. Seller shall give written notice to Buyer of the occurrence of any casualty or threat of condemnation within seven (7) days of Seller obtaining knowledge of such casualty or condemnation. For purposes of this subsection, the knowledge of Seller shall be limited to the actual knowledge of Nick Duerksen, Economic Development Director, and any replacement of Nick Duerksen as Economic Development Director.

8. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer as of the Effective Date and as of date of Closing, as follows:

8.1. This Agreement and all agreements required to be executed and delivered under this Agreement have been duly authorized by requisite action and is enforceable against Seller in accordance with its terms; neither the execution and delivery of this Agreement nor the consummation of the sale or transactions provided for herein will constitute a violation or breach by Seller of any provision of any agreement or other instrument to which Seller is a party or to which Seller may be subject although not a party, or will result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against or binding upon Seller or the Property;

8.2. There is no action, suit, proceeding or claim affecting the Property, or any portion thereof, nor affecting Seller and relating to the ownership, operation, use or occupancy of the Property, pending or being prosecuted in any court or by or before any federal, State, county or municipal department, commission, board, bureau or agency or other governmental entity, nor, to Seller's knowledge, is any such action, suit, proceeding or claim threatened or asserted;

8.3. Seller is not a foreign person or entity as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and Buyer is not obligated to withhold portions of the Purchase Price for the benefit of the Internal Revenue Service;

8.4. No attachment, execution, assignment for the benefit of creditors, receivership, conservatorship or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws is contemplated or has been filed by or against Seller or the Property, nor is any such action pending by or against Seller or the Property;

8.5. Seller is the legal fee simple titleholder of the Property and has good and indefeasible title to the Property;

8.6. No lease, contract, instrument or agreement which is not disclosed in the Property PTR exists relating to the Property or any portion thereof;

8.7. No person, firm or entity, other than Buyer, has any right to purchase, lease or otherwise acquire or possess the Property or any part thereof;

8.8. Seller has no knowledge that, and has not received any written or other notice that, the Property is in breach of any law, ordinance or regulation, or any order of any court, or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality wherever located, including, without limitation, those relating to environmental matters and hazardous waste, and no claim, action, suit or proceeding is pending, or, to Seller's knowledge, threatened against or affecting Seller or the Property, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or entity wherever located, with respect to the Property or Seller's use and operation of the Property; and

8.9. There is no pending or, to Seller's knowledge, threatened condemnation of any portion of the Property.

For purposes hereof, the knowledge of Seller shall mean the actual knowledge of the person serving as Redevelopment Director for the Seller, which at the time of this Agreement is Nick Duerksen, based on a reasonable review of Seller's files, but without any obligation for or assurance of additional investigation.

9. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller, as of the Effective Date and as of the date of Closing, that: this Agreement and all agreements required to be executed and delivered under this Agreement have been duly authorized by requisite action and is enforceable against Buyer in accordance with its terms;

neither the execution and delivery of this Agreement nor the consummation of the sale provided for herein will constitute a violation or breach by Buyer of any provision of any agreement or other instrument to which Buyer is a party or to which Buyer may be subject although not a party, or will result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against or binding upon Buyer; Buyer's offer and decision to purchase the Property is based upon its own independent evaluation of the Property and such materials as are deemed relevant by Buyer and its agents. Buyer further acknowledges that neither Seller nor any employee, agent, legal counsel or other representative of Seller have been authorized to make and Buyer has not relied upon, any statement or representation other than those specifically set forth in this Agreement.

10. Inspection and Review; Access to the Property; Notice of Defects.

10.1. Inspection. Promptly after the Effective Date, Seller will make available to Buyer (whether or not the same are actually reviewed by Buyer) the Property Files which shall continue to be maintained by Seller at a location to be specified to Buyer in writing, and to which Buyer shall have access as set forth below.

10.2. Right of Inspection. From and after the Date hereof and continuing until the termination of this Agreement, Buyer shall have the right to enter on and make physical inspections of the Property and to otherwise have its consultants, architects or engineers conduct such investigations or prepare such materials as deemed advisable by Buyer. If Buyer determines, for any reason, or for no reason, that Buyer does not desire to purchase the Property, Buyer may, subject to the terms of this Section 10.2, terminate this Agreement by delivering written notice of its intent to terminate this Agreement to Seller before the expiration of the Inspection Period, in which event the Escrow Holder shall promptly return the Deposit to Buyer without further instructions, and despite any contrary instructions from Seller. If Buyer elects to terminate this Agreement, Buyer must, upon written request by Seller, and provided Seller reimburses Buyer for the out of pocket costs of performing the Property Studies, cause any reports, investigations, studies or other materials hired or prepared by or for Buyer relating to the Property ("Property Studies") to be furnished to Seller; provided Buyer shall not be deemed to have provided any representation or warranty as to the accuracy of any information contained in the Property Studies. Access to the Property shall be subject to the following additional limitations and conditions:

(a) All employees, agents, independent contractors and invitees conducting such inspections and examinations shall possess worker's compensation insurance to the extent required by local law, and proof thereof shall be promptly provided to Seller upon request prior to the commencement of any such activities.

(b) Buyer shall deliver to Seller a certificate of insurance naming Seller as an additional insured, evidencing public liability insurance issued by an insurance company having a rating of at least "A. VIII" by A.M. Best Company, with limits of at least \$2,000,000 per occurrence for bodily or personal injury or death and \$1,000,000 per occurrence for property damage, provided that in lieu of such certificate, Buyer may instead retain engineers, inspectors and consultants that carry such insurance;

(c) All inspections shall be upon reasonable advance notice to Seller and a representative of Seller shall have the right to be present when Buyer or its representatives conducts its or their investigations of the Property;

(d) Neither Buyer nor its agents or representatives shall unreasonably interfere with the use, occupancy or enjoyment of the Property by Seller;

(e) Buyer must, at its own expense, promptly repair any damage caused by its investigation of the Property;

(f) Buyer must protect, indemnify, defend (with counsel approved by the Indemnified Party(ies), which approval shall not be unreasonably withheld, conditioned, or delayed) and hold the Property, Seller and Seller's officers, directors, shareholders, participants, affiliates, employees, representatives, invitees, tenants, agents and contractors (the "Indemnified Parties") free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including attorneys' fees and court costs, resulting from acting out of or related to Buyer's inspection and testing of the Property, or other work done on the Property, including, without limitation, repairing any and all damages to any portion of the Property to the extent resulting out of Buyer's conducting such due diligence, inspections, surveys, tests, plans, drawings and studies. The indemnification set forth in this Section shall not apply to (i) Buyer's discovery of any pre-existing condition (including, without limitation, the existence of any hazardous or toxic substances in, on, under or about the Property or any adjoining property seller's adjoining property), (ii) any exacerbation of a pre-existing condition in, on, under or about the Property, except to the extent, if any, said pre-existing condition was disclosed by Seller in writing to Buyer and such exacerbation results from the willful or negligent act or omission of Buyer, its agents, contractors or employees, or (iii) any acts or omissions of an Indemnified Party. Buyer shall keep the Property free and clear of any mechanics' liens or materialmen's liens related to Buyers' right of inspection and the activities contemplated by Section 10.2 of this Agreement. Buyer's indemnification obligations set forth herein shall survive the Closing, shall not be merged with the Deed, and shall survive any termination of this Agreement and/or the Escrow prior to the Closing;

(g) Buyer may drill test wells or engage in any other invasive testing or sampling of the Property; and

(h) No amounts expended by Buyer for or in connection with its inspections and/or due diligence or otherwise in connection with the acquisition of the Property herein shall, except as otherwise expressly provided herein to the contrary, be reimbursed to Buyer or credited to or against the Purchase Price.

(i) Buyer acknowledges that prior to the Closing: (i) Buyer has or will have conducted such surveys and inspections, and made such tests and other studies of the Property to the extent Buyer deems necessary or advisable, and (ii) Seller has or will have provided Buyer with adequate opportunity to make such inspections and investigations concerning the Property, to the extent Buyer has, in Buyer's discretion, deemed necessary or

advisable as a condition precedent to Buyer's purchase of the Property and to determine the physical, environmental, land use and other characteristics of the Property (including, without limitation, its subsurface) and its suitability for Buyer's intended use.

11. Default.

11.1. Seller's Remedies. LIQUIDATED DAMAGES - DEPOSIT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF BUYER HAS NOT TERMINATED THIS AGREEMENT IN WRITING PRIOR TO THE EXPIRATION OF THE INSPECTION PERIOD AND BUYER MATERIALLY BREACHES OR FAILS TO COMPLY WITH ANY COVENANT OR OBLIGATION HEREUNDER, INCLUDING, WITHOUT LIMITATION, IF THE SALE OF THE PROPERTY TO BUYER IS NOT CONSUMMATED AS AND WHEN CONTEMPLATED HEREIN, FOR ANY REASON OTHER THAN (A) SELLER'S MATERIAL DEFAULT UNDER THIS AGREEMENT WHICH IS NOT PROMPTLY CURED AS PROVIDED IN SECTION 11.2 BELOW, OR (B) A TERMINATION PURSUANT TO AND IN ACCORDANCE WITH ANY OF SECTIONS 4.3, 5.1, 7.1, 7.2, 10 OR 11.2 (IN WHICH EVENT THE DEPOSIT SHALL BE APPLIED IN ACCORDANCE WITH SUCH SECTIONS), THEN SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT BY DELIVERING WRITTEN NOTICE TO BUYER AND THEREAFTER SELLER SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES TO BUYER UNDER THIS AGREEMENT AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT (INCLUDING ANY INTEREST THEREON) AS SELLER'S LIQUIDATED DAMAGES AND ESCROW HOLDER SHALL IMMEDIATELY PAY THE DEPOSIT TO SELLER WITHOUT THE NEED FOR ANY FURTHER INSTRUCTIONS OR DEMANDS BY SELLER OR BUYER (AND NOTWITHSTANDING ANY INSTRUCTIONS OR DEMANDS BY BUYER TO THE CONTRARY). THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHTS TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT SELLER'S RIGHTS WITH RESPECT TO BUYER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

11.2. Buyer's Remedies. In the event Seller breaches or defaults with respect to any provision of this Agreement (for the purposes of this Section 11.2, collectively, a "breach"), then Buyer shall be entitled to deliver to Seller written notice of such breach, which notice shall set forth complete information about the nature of the breach. Seller shall have a

period of twenty-eight (28) days to cure such breach. If such breach remains uncured beyond the 28-day period described above, then Buyer may elect to pursue any remedies available at law or in equity, including commencing an action for specific performance, provided Buyer shall not be entitled to any damages whatsoever in connection with such action for specific performance, except for the reimbursement of attorneys' fees as provided below and payment of indemnification obligations as expressly provided herein.

12. Certain Occurrences May Affect the Condition of the Property.

Buyer represents and warrants that Buyer has, or shall have as of the expiration of the Inspection Period, inspected and conducted tests and studies of the Property to the satisfaction of Buyer and that Buyer is familiar with the general condition of the Property. Buyer understands and acknowledges that the Property may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil conditions, hazardous substances and similar occurrences that may alter its condition or affect its suitability for any proposed use. Seller shall have no responsibility or liability with respect to any such occurrence and such occurrences shall not affect Buyer's obligations hereunder except as set forth in Sections 7 and 14 hereof.

13. Property "AS IS"

13.1. No Side Agreements or Representations. No person acting on behalf of Seller or Buyer is authorized to make any representation, warranty, agreement, statement, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property except as may be expressly set forth in this Agreement or another agreement executed by Seller or Buyer and delivered to the other party and, by executing this Agreement, each of Buyer and Seller acknowledges that no person has made any such statement, agreement warranty, guarantee or promise. No representation, warranty, agreement, statement, guarantee or promise, if any made by any person acting on behalf of Seller or Buyer which is not specifically contained in this Agreement will be valid or binding on Seller or Buyer, as applicable.

13.2. AS-IS CONDITION. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR ANY OTHER DOCUMENTS EXECUTED OR REQUIRED TO BE EXECUTED PURSUANT TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE DEED, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO ANY MATTER, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE (I) VALUE OF THE PROPERTY; (II) INCOME TO BE DERIVED FROM THE PROPERTY; (III) SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY; (IV) HABITABILITY, MERCHANTABILITY, MARKETABILITY, TITLE, OWNERSHIP, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (V) NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT

LIMITATION, THE WATER, SOIL AND GEOLOGY OF THE PROPERTY; (V) COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (VI) MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (VII) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING; (IX) PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY; (X) CONTENT, COMPLETENESS OR ACCURACY OF ANY INFORMATION OR DOCUMENTS RELATING TO THE PROPERTY OR TITLE REPORT OR SURVEY; (XI) CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER; (XII) CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (XIII) DEFICIENCY OF ANY UNDERSHORING; (XIV) DEFICIENCY OF ANY DRAINAGE; (XV) FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; OR (XVI) EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY.

BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND REVIEW INFORMATION AND DOCUMENTATION AFFECTING OR RELATING TO THE PROPERTY, AND EXCEPT WITH RESPECT TO THE REPRESENTATION, WARRANTIES, AGREEMENTS AND COVENANTS OF SELLER EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DOCUMENTS REQUIRED TO BE DELIVERED HEREUNDER, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND REVIEW OF SUCH INFORMATION AND DOCUMENTATION. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION MADE AVAILABLE TO BUYER OR PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND PROVIDERS AND THAT SELLER, HAVING RECENTLY ACQUIRED THE PROPERTY AS SUCCESSOR TO A FORECLOSING BANK, HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, EXCEPT THAT SELLER DOES REPRESENT AND WARRANT THAT SELLER HAS PROVIDED TRUE, CORRECT AND COMPLETE COPIES OF ALL SUCH INFORMATION IN SELLER'S POSSESSION OR CONTROL. BUYER AGREES TO FULLY AND IRREVOCABLY RELEASE ALL SUCH SOURCES AND PROVIDERS OF INFORMATION AND

PREPARERS OF INFORMATION AND DOCUMENTATION AFFECTING THE PROPERTY RETAINED OR PROVIDED BY SELLER FROM ANY AND ALL CLAIMS THAT THEY MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST SUCH SOURCES AND PROVIDERS AND PREPARERS OF INFORMATION FOR ANY COSTS, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM SUCH INFORMATION OR DOCUMENTATION EXCEPT, WITH RESPECT TO SELLER, AS A RESULT OF SELLER FAILING TO DELIVER TRUE, CORRECT AND COMPLETE COPIES OF SUCH DOCUMENTS WHICH ARE IN SELLER'S POSSESSION OR CONTROL.

SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, SERVANT OR OTHER PERSON OR ENTITY (OTHER THAN WRITTEN STATEMENTS PROVIDED BY SELLER'S EMPLOYEES AND OFFICERS). BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT SELLER NOR HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN.

14. Additional Covenants and Agreements.

14.1. Operating Covenants. From the Effective Date through the date of Closing, Seller shall cause the Property to be operated and maintained in a manner consistent with Seller's current practice.

14.2. Termination of Insurance. The policies of insurance currently in effect with respect to the Property (with such modifications as Seller deems appropriate) shall be terminated at or after the Closing, at Seller's option in its sole and absolute discretion.

14.3. Additional Agreements. During the term of this Agreement, Seller shall not, without the prior written consent of Buyer, which consent Buyer shall have no obligation to grant and which consent, if granted, may be conditioned in such manner as Buyer shall deem to be appropriate in the sole discretion of Buyer: (i) grant any licenses, easements or other uses affecting any portion of Property; (ii) permit any work to be done on, or any mechanic's or materialman's lien to attach to, any portion of the Property; (iii) place or permit to be placed on, or remove or permit to be removed from the Property, any buildings, structures or other improvements of any kind; (iv) place or permit to be placed on the Property any trash, refuse or fill materials of any kind; or (v) excavate or permit the excavation of the Property or any portion thereof.

15. Attorney's Fees. If any action or proceeding is commenced by either party to enforce their rights under this Agreement (in accordance with its terms) or to collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings,

shall be entitled to recover all reasonable out of pocket costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court.

16. Notices. Any notice or designation to be given hereunder shall be given (a) by personal delivery, (b) by placing the notice or designation in the United States mail, certified or registered, properly stamped, or (c) via overnight delivery by a nationally recognized courier service, and addressed to the address shown below or such other address as the respective party may direct in writing to the other, or by personal delivery to such address by a party, or by a delivery service which documents delivery, and such notice or designation shall be deemed to be received (i) if by personal delivery, on the date actually delivered, (ii) if by delivery in the United States Mail, three (3) business days after deposit with the United States Mail, and (iii) one (1) business day after such notice was delivered to a national courier service. The following addresses may be changed by written notice given in accordance with this Section:

With a copy to:

Sandy City
10000 Centennial Parkway, Suite 301
Sandy, UT 84070
Attn: City Attorney

If to Buyer: KC Gardner Company, L.C.
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111
Attention: Christian Gardner

With a copy to:

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Lamont Richardson

17. **Amendment; Complete Agreement.** All amendments and supplements to this Agreement must be in writing and executed by Buyer and Seller. This Agreement, including the exhibits, attachments, documents and agreements to be delivered pursuant hereto, contains the entire agreement and understanding between Buyer and Seller concerning the subject matter of this Agreement and supersedes all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or Seller.

concerning the Property or the other matters which are the subject of this Agreement, including, without limitation, matters contained in any offering circular or marketing materials relating to the Property.

18. Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the Utah without regard to rules concerning conflicts of law.

19. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those with respect to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

20. Counterparts, Headings and Defined Terms. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement. Execution may be made electronically.

21. Time of Essence. Time is of the essence of this Agreement.

22. Waiver. Except as expressly stated that a failure to act shall constitute to a waiver, no waiver by Buyer or Seller of any of the terms or conditions of this Agreement or any of their respective rights under this Agreement shall be effective unless such waiver is in writing and signed by the party charged with the waiver.

23. Third Parties. This Agreement is entered into for the sole benefit of Buyer and Seller and their respective permitted successors and assigns. No party other than Buyer and Seller and such permitted successors and assigns shall have any right of action under or rights or remedies by reason of this Agreement.

24. Additional Documents. Each party agrees to perform any further acts and to execute and deliver such further documents which may be reasonably necessary to carry out the terms of this Agreement.

25. Independent Counsel. Buyer and Seller each acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; and (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement may have been prepared by Seller's counsel or Buyer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Seller because Seller's counsel prepared this Agreement or Buyer because Buyer's counsel prepared this Agreement.

26. **Land Use Approvals.** At any time during the term of this Agreement, Buyer may seek the rezoning and/or subdivision of the Property, including any and all permits, licenses and other land use approvals (both preliminary and final) required for the development of the Project (collectively, the "Land Use Approvals"). However, Buyer cannot obtain such Land Use Approvals which are effective prior to date of Closing or which will be binding on Seller if this Agreement is terminated prior to the date of Closing. Seller shall reasonably cooperate with Buyer in obtaining the Land Use Approvals, which cooperation may include, but not be limited to, joining in applications, providing information, data, and other reports in Seller's possession and control, attending and testifying in favor of (or if permitted by the local authority, indicating by written correspondence that Seller has no objection to) such Land Use Approvals at meetings and hearings, and providing such other assistance as Buyer may reasonably request from time to time.

27. **Release.** Except for Seller's express representations, warranties and covenants contained herein, Buyer shall rely solely upon Buyer's own knowledge of the Property based on its investigation of the Property and its own inspection of the Property in determining the Property's physical condition. Buyer and anyone claiming by, through or under Buyer hereby waives its right to recover from and fully and irrevocably releases Seller, and Seller's direct and indirect owners, employees, officers, directors, representatives, agents, servants, lenders, attorneys, affiliates, parent, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations acting on its behalf (the "Released Parties") from any and all claims that it may now have or hereafter acquires against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action and attorneys' fees and costs and claims therefor, whether direct or indirect, known or unknown, or foreseen or unforeseen (collectively, "Claims") arising from or related to any construction defects, structural defects, errors, omissions or other conditions, latent or otherwise, including environmental matters, affecting the Property, or any portion thereof. This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release hereunder, but does not constitute a release of Seller's obligations to comply with and perform under the express terms of this Agreement.

28. **Hazardous Substances.** If Buyer discovers any Hazardous Substances or other environmental condition subject to legal requirements for corrective action or affecting the Property, Buyer shall immediately notify Seller.

29. **Indemnification.**

29.1. Buyer shall indemnify, defend, protect and hold harmless the Released Parties from and against any and all Claims which may arise from or be related to (a) subject to the provisions of Section 37 hereof, any inaccuracy in any representation or warranty made by Buyer in this Agreement, and (b) Buyer's breach of any covenant or agreement contained in this Agreement (provided any such indemnification under this subsection (b) shall be limited to recovery of the Deposit, unless such termination occurs prior to the expiration of the Inspection Period in which event Seller's remedy shall be limited solely to the termination of this Agreement). Buyer's indemnification obligations hereunder shall survive the Closing and shall survive any termination of this Agreement and/or the Escrow prior to the Closing.

29.2. Seller shall indemnify, defend, protect and hold harmless Buyer and Buyer's direct and indirect owners, employees, officers, directors, representatives, agents, servants, lenders, attorneys, affiliates, parent, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations acting on its behalf from and against any and all Claims which may arise from or be related to (a) subject to the provisions of Section 37 hereof, any inaccuracy in any representation or warranty made by Seller in this Agreement, and (b) Seller's breach of any covenant or agreement contained in this Agreement.

30. Assignment. Buyer shall neither assign its rights nor delegate its obligations hereunder without obtaining Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. For purposes of this Section 30, "Seller's prior written consent" shall mean a writing executed by the Seller's Executive Director, in the Executive Director's sole discretion. Any purported or attempted assignment or delegation in without obtaining Seller's prior written consent shall be void and of no effect. Notwithstanding the foregoing, however, Buyer shall have the right to assign its rights and obligations under this Agreement, by giving prior written notice to Seller prior to the date of Closing and further provided that such assignee assume the obligations of Buyer hereunder, to any affiliate entity that controls Buyer or that is controlled by Buyer or under common control with Buyer. For the purposes of this Section 30, "control" shall mean any person or entity with (i) ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or the possession of the right to vote in the ordinary direction of its affairs at least fifty-one percent (51%) of the voting interest in Buyer, or (ii) the power to direct or cause the direction of the management and policies of Buyer, whether through the ownership of voting shares, by contract or otherwise. Seller shall neither assign its rights nor delegate its obligations hereunder without obtaining Buyer's prior written consent, which may be withheld in Buyer's sole and absolute discretion. Any purported or attempted assignment or delegation in without obtaining Buyer's prior written consent shall be void and of no effect.

31. Successors and Assigns. Subject to the restrictions on transfer set forth in Section 30, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto. In no event shall Buyer have any right to delay or postpone the Closing to create a partnership, corporation or other form of business association or to obtain financing to acquire title to the Property or to coordinate with any other sale, transfer, exchange or conveyance.

32. Exhibits. Each reference to a Section, Exhibit or Schedule in this Agreement shall mean the sections of this Agreement and the exhibits and schedules attached to this Agreement, unless the context requires otherwise. Each such exhibit and schedule is incorporated herein by this reference.

33. Business Days. If the date on which any act or event hereunder is to occur falls on a Saturday, Sunday or legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday.

34. Consents and Approvals. Whenever the consent or approval of Seller or Buyer is required under the terms of or in connection with the transaction contemplated under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless expressly provided in this Agreement to the contrary.

35. No Reservation of Property. The preparation and/or delivery of unsigned drafts of this Agreement shall not create any legally binding rights in the Property and/or obligations of the parties, and Buyer and Seller acknowledge that this Agreement shall be of no effect until it is duly executed by both Buyer and Seller. Upon the full execution of this Agreement by both Buyer and Seller, Seller shall not market the Property and/or to negotiate with other potential purchasers of the Property.

36. Duty of Confidentiality. Buyer and Seller each represents and warrants to that other party that it shall keep confidential this Agreement and all information and/or reports obtained from Seller, Buyer or any other source, related to or connected with the Property, the other party's identity and identifying characteristics of Seller, Buyer or their respective Affiliates, or this transaction, and will not disclose any such information to any person or entity without obtaining the prior written consent of the other party; provided, no such consent shall be required in connection with disclosure (a) to Buyer's or Seller's accountants, attorneys, employees, agents or lenders, (b) to potential purchasers or users of the Property, or (c) as may otherwise be particularly required by applicable law.

37. Survival of Certain Provisions. The representations and warranties made herein shall survive the Closing and shall not merge into the Deed and the recordation thereof in the official records of Salt Lake County; provided, that a party asserting a breach must give the other party written notice of any claim it may have against the such other party for a breach by the respective representation or warranty within one (1) year after the Closing. Any claim which the asserting party may have at any time, whether known or unknown, which is not asserted within such one-year period shall not be valid or effective, and such other party shall have no liability with respect thereto. The provisions of this Section shall survive the Closing.

38. 1031 Exchange. If Buyer desires to structure an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, in connection with this transaction, then Seller agrees to cooperate in completing such exchange, subject to the following terms and conditions:

38.1. Seller shall not be obligated to delay the Closing;

38.2. Any additional out of pocket cost in connection with the exchange shall be borne by Buyer;

38.3. Seller shall not be obligated to take title to any property in connection with any such exchange or to execute any note, contract, or other document providing for any personal liability whatsoever;

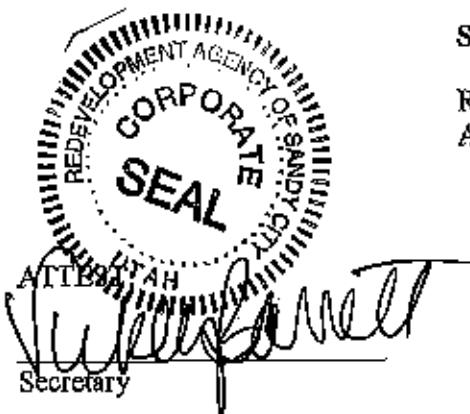
38.4. Buyer shall defend (with counsel reasonably acceptable to the other), indemnify, and hold the other party harmless from and against any and all claims, demands, liabilities, costs, expenses, damages, and losses (including, without limitation, attorney fees, and costs) in any way arising out of or in connection with or resulting from the indemnified party's participation in any such exchange;

38.5. The conveyance of the Property to Buyer and the Closing shall not be conditioned upon either party's ability to effectuate an exchange; and

38.6. Buyer's rights and obligations under this Agreement may be assigned to an intermediary of said party's choice for the sole purpose of completing such an exchange. The other party agrees to reasonably cooperate with the party initiating the exchange and any such intermediary in a manner reasonably necessary to complete the exchange.

[End of Agreement – Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Escrow Instructions as of the date first above written.



SELLER:

REDEVELOPMENT AGENCY OF SANDY CITY,
A Utah political subdivision

A handwritten signature of Tom Dolan, Executive Director.

Tom Dolan, Executive Director

BUYER:

KC GARDNER COMPANY, L.C., a Utah limited liability company

By: Chris Gardner
Name: Chris Gardner
Its: Manager

ACCEPTANCE BY ESCROW HOLDER:

Dated: 13 September, 2017.

Cottonwood Title Insurance Agency, Inc.

By: Cortney G. Ashton
Name: CORTNEY G. ASHTON
Title: VP

EXHIBIT "A"

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

[]
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111

Escrow No.
Tax Parcel No.

SPECIAL WARRANTY DEED

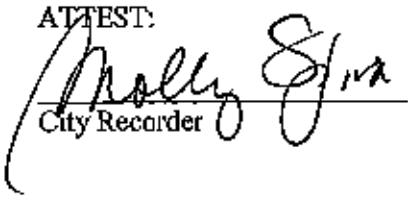
FOR VALUE RECEIVED, the receipt and sufficiency of which are hereby acknowledged, the Redevelopment Agency of Sandy City, a Utah political subdivision (the "Grantor"), hereby conveys and warrants against all who claim by, through, or under the Grantor and no one else, to [], L.C., a Utah limited liability company (the "Grantee"), whose address is 201 South Main Street, Suite 2000, Salt Lake City, Utah 84111, that certain parcel of real property in the County of Salt Lake, State of Utah, more particularly described as follows:

See Exhibit 1 attached hereto and incorporated herein.

SUBJECT ONLY TO: those certain Permitted Encumbrances described in "Exhibit 1" hereto and incorporated herein by reference.

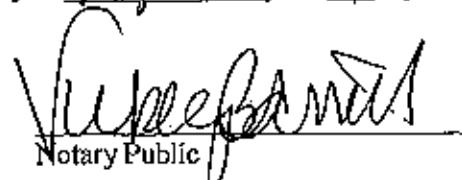
Grantor has executed this Deed on this 31 day of August, 2017.

REDEVELOPMENT AGENCY OF SANDY CITY,
A Utah political subdivision

ATTEST:

Tom Dolan, Executive Director



In the County of Salt Lake, State of Utah, the foregoing instrument was
acknowledged before me, a Notary Public, this 31 day of August, 2017, by Tom
Dolan, Executive Director of the Grantor.


VICKIE BARRETT
Notary Public

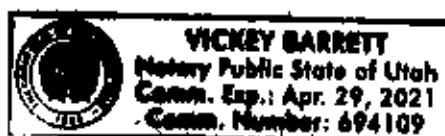


Exhibit 1 to Special Warranty Deed

Parcel No. 27-12-453-006 REMAINDER DESCRIPTION

A parcel of land, being the remainder portion of Parcel No. 27-12-453-006, 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 by metes and bounds 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 0°08'34" West along the monument line in State Street, 1296.656 feet, South 89°56'30" West 2309.468 feet, South 3°49'28" East 503.616 feet to the southwest 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 and South 3°32'28" East 114.22 feet from the Southeast Corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence East 313.99 feet to the westerly right-of-way line of Monroe Street; thence along said westerly right-of-way line, South 0°08'41" West 119.50 feet; thence West 306.30 feet to the easterly right-of-way line of Frontage Road No. 5, State Road Project No. I-15-7 (3) 289; thence along said easterly right-of-way line, North 3°32'28" West 119.73 feet to the point of beginning.

The above described parcel contains approximately 37,063 square feet in area or 0.851 acre.

Parcel No. 27-12-453-007 REMAINDER DESCRIPTION

A parcel of land, being the remainder portion of Parcel No. 27-12-453-007, 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 by metes and bounds 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 0°08'34" West along the monument line in State Street, 1296.656 feet, South 89°56'30" West 2309.468 feet, South 3°49'28" East 503.616 feet to the southwest 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 and South 3°32'28" East 233.95 feet from the Southeast Corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence East 306.30 feet to the westerly right-of-way line of Monroe Street; thence along said westerly right-of-way line, South 0°08'41" West 102.816 feet; thence North 89°51'19" West 299.72 feet to the easterly right-of-way line of Frontage Road No. 5, State Road Project No. I-15-7 (3) 289; thence along said easterly right-of-way line, North 3°32'28" West 102.25 feet to the point of beginning.

The above described parcel contains approximately 31,037 square feet in area or 0.713 acre.

Parcel No. 27-12-453-009 REMAINDER DESCRIPTION

A parcel of land, being the remainder portion of Parcel No. 27-12-453-009, 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 by metes and bounds as follows:

Beginning at the southwest 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; said point lies North 89°51'37" East 92.36 feet to a monument marking the centerline of State Street, North 0°08'34" West along the monument line in State Street, 1296.656 feet, South 89°56'30" West 2309.468 feet and South 3°49'28" East 503.616 feet from the Southeast Corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence along the southerly line of said Lot 7, East 322.01 feet to the westerly right-of-way line of Monroe Street; thence along said westerly right-of-way line the following two (2) courses: (1) Southwesterly 27.065 feet along the arc of a 545.00 foot radius non-tangent curve to the left whose center bears South 87°00'45" East 545.00 feet, has a central angle of 2°50'34" and a chord bearing and length South 1°33'58" West 27.062 feet; (2) South 0°08'41" West 86.95 feet; thence West 313.99 feet to the easterly right-of-way line of Frontage Road No. 5, State Road Project No. I-15-7 (3) 289; thence along said easterly right-of-way line, North 3°32'29" West 114.22 feet to the point of beginning.

The above described parcel contains approximately 36,221 square feet in area or 0.831 acre.

Parcel No. 27-12-453-014 REMAINDER DESCRIPTION

A parcel of land, being the remainder portion of Parcel No. 27-12-453-014, 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 by metes and bounds as follows:

Beginning at a point on the westerly right-of-way line of Monroe Street which lies North 89°51'19" West along the section line 546.20 feet, North 0°08'41" East 433.80 feet and North 88°47'44" West 1.24 feet from the Southeast Corner of the Southwest Quarter of the Southeast Quarter of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said corner being North 89°51'19" West along the section line 1319.96 feet from the Southeast Corner of said Section 12; thence North 88°47'44" West 149.92 feet; thence North 89°44'24" West 148.84 feet to the east right-of-way line of the I-15 frontage road; thence North 3°53'15" West along said east right-of-way line 14.14 feet; thence South 89°51'19" East 299.72 feet to said westerly right-of-way line of Monroe Street; thence along said westerly right-of-way line, South 0°08'41" West 17.18 feet to the point of beginning.

The above described parcel contains approximately 4,496 square feet in area or 0.103 acre.

**Lot 7, SANDY CITY CENTRE FINAL PLAT FIRST AMENDMENT AND EXTENDED
REMAINDER DESCRIPTION**

A parcel of land, being the remainder portion 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, 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 by metes and bounds as follows:

Beginning 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, said point lies North 89°51'37" East 92.36 feet to a monument marking the centerline of State Street, North 0°08'34" West along the monument line in State Street, 1296.656 feet, South 89°56'30" West 2309.469 feet to the northwest corner of said SANDY CITY CENTRE FINAL PLAT FIRST AMENDMENT AND EXTENDED and South 3°49'28" East 313.06 feet along the westerly boundary of said SANDY CITY CENTRE FINAL PLAT FIRST AMENDMENT AND EXTENDED from the Southeast Corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence along the lot line common to Lots 7 and 8 of said SANDY CITY CENTRE FINAL PLAT FIRST AMENDMENT AND EXTENDED, North 89°56'30" East 373.78 feet to the northeast corner of said Lot 7; thence along the easterly line of said Lot 7, South 0°00'36" West 14.26 feet to intersect the westerly right-of-way line of Monroe Street; thence along said westerly right-of-way line the following two (2) courses: (1) South 21°12'47" West 7.84 feet to a point of curvature; (2) Southwesterly 173.520 feet along the arc of a tangent 545.50 foot radius curve to the left whose center bears South 68°47'13" East 545.50 feet, has a central angle of 18°13'32" and a chord bearing and length of South 12°06'01" West 172.790 feet; thence along the southerly line of said Lot 7, West 322.01 feet to the southwest corner of said Lot 7; thence along the westerly line of said Lot 7, North 3°49'28" West 190.56 feet to the point of beginning.

The above described parcel contains approximately 65,588 square feet in area or 1.506 acres.

PERMITTED ENCUMBRANCES:

[to be inserted]

Exhibit "B"

[Form of] Notice of Conditional Purchase Option

[attached]

Recording requested by:
Redevelopment Agency of Sandy City
10000 Centennial Parkway
Sandy, UT 84070

Tax ID No(s).

NOTICE OF CONDITIONAL PURCHASE OPTION

Notice is hereby given to all persons of the rights of the Redevelopment Agency of Sandy City, a Utah political subdivision (the "Agency"), relating to the property described in Exhibit 1 attached hereto and incorporated by this reference (the "Property"), under a certain Purchase and Sale Agreement and Escrow Instructions dated as of August 29, 2017 (the "Agreement"), between the Agency and K.C. Gardner Company, L.C. (the "Property Owner"), as such Agreement may be amended or assigned. Under the Agreement, the Property Owner has agreed to develop and construct certain building and parking improvements upon the Property, and the Agency has a conditional option to recapture/purchase the Property if there is a failure of the Property Owner to timely do so. The Agreement further provides that the obligations concerning the development and improvement of the Property touch and concern, and are a burden upon and will run with, the Property, and all successors and assigns of the Property, until the termination of the Agreement according to the terms of the Agreement. Nothing in this document modifies or amends the Agreement and if there is a conflict in terms between this document and the Agreement, the terms of the Agreement shall prevail. As provided in Section 3 of the Agreement, the option of the Agency, and all rights of the Agency under the Agreement, are hereby made subject and subordinate to the rights of any bona fide third party mortgagee, lender, trustee, and/or beneficiary of the Property.

Executed this ____ day of _____, 201____, by:

REDEVELOPMENT AGENCY OF SANDY CITY

[FORM ONLY – DO NOT SIGN]

Attest: Executive Director

[FORM ONLY – DO NOT SIGN]

Secretary

In the State of Utah, County of _____, the foregoing instrument was acknowledged before me this ____ day of _____, 201____, by _____, Executive Director, who acknowledged to me that he/she executed the same in his/her authorized capacity on behalf of the Redevelopment Agency of Sandy City.

[FORM ONLY – DO NOT SIGN]
Notary Public

Exhibit 1
Legal Description of the Property

Exhibit "C"

[Form of] Release of Notice of Conditional Purchase Option

[attached]

Recording requested by:

Tax ID No(s).

**RELEASE OF NOTICE OF CONDITIONAL
PURCHASE OPTION**

THIS RELEASE OF NOTICE OF CONDITIONAL PURCHASE OPTION gives notice of the termination and release of a Notice of Conditional Purchase Option (the "Notice"), which Notice was filed for record as Entry No. _____ in Book _____ at page _____ in the Office of the Salt Lake County Recorder. The Notice provided notice of a certain conditional purchase option under Section 3 of the Purchase and Sale Agreement and Joint Escrow Instructions dated as of August 29, 2017, between the Redevelopment Agency of Sandy City and K.C. Gardner Company, L.C. (as amended or assigned, the "Agreement"), which Agreement is described in the Notice and relates to the property described in Exhibit 1 attached hereto and incorporated by this reference (the "Released Property"). The Agreement has terminated with respect to the Released Property, and the Redevelopment Agency of Sandy City no longer has a right to purchase the Released Property. Accordingly, the Notice is terminated, and the burdens and obligations of the Agreement and the Notice are hereby and forever released and discharged from the Released Property, and are of no further force or effect with respect to the Released Property.

IN WITNESS WHEREOF, the undersigned has executed this Release of Notice of Conditional Purchase Option.

[FORM ONLY – DO NOT SIGN]

Name:

Title:

In the State of Utah, County of _____, the foregoing instrument was acknowledged before me this _____ day of _____, 20____, by who acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) on behalf of _____.

[FORM ONLY – DO NOT SIGN]

Notary Public

Exhibit 1
Legal Description of the Released Property

Exhibit "D"

[Form of] Tax Increment Participation Agreement

[attached]

[FORM OF] TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this "Agreement") is entered into as of _____, 201_____, between [KC Gardner Company, L.C.] (the "Company") and the Redevelopment Agency of Sandy City, a Utah political subdivision (the "Agency") as follows:

A. WHEREAS the Agency is the owner of certain real property generally known as the Lot 7/Shulsen/Lindlow property and is more particularly described in the attached Exhibit A (as described in Exhibit A, the "Property");

B. WHEREAS the Agency and the Company entered into a Purchase and Sale Agreement and Escrow Instructions dated August 29, 2017 (the "PSA") providing for the sale of the Property by the Agency to the Company;

C. WHEREAS contemporaneous with the closing under the PSA, the parties are executing this Agreement as required by the PSA, and this Agreement becomes enforceable and effective immediately upon, and only upon, the recording of a special warranty deed from the Agency to the Company for the Property;

D. WHEREAS the Property is located within the boundaries of a redevelopment project area created by the Agency and known as the Civic Center North Redevelopment Project Area (the "Project Area");

E. WHEREAS as the PSA requires the Company to do, the Company is currently constructing an office building (the "Office Building") and associated parking structure (the "Parking Structure) and other related improvements on the Property (collectively, the "Office Project"), which Office Project will be of great benefit to the Project Area and to Sandy City and its residents;

F. WHEREAS the Company has presented to the Agency and its consultants sufficient information, including development plans and alternatives, financial statements, and other information, showing justification for the Agency's participation in the construction of the Parking Structure to serve the Office Building;

G. WHEREAS the Agency has adopted the Civic Center North Redevelopment Project Area Plan (the "Plan"), which, in connection with Utah Code Ann. § 17C-1-403, authorizes the Agency to collect and use tax increment for, among other things, the purposes of this Agreement; and

H. WHEREAS due to its location within the Project Area, the Property generates tax increment revenues that are diverted to the Agency under the Plan and as provided in Utah Code Ann. § 17C-1-403 (2017).

I. WHEREAS the Agency's collection of tax increment from the Project Area according to the Plan and Utah Code Ann. § 17C-1-403 (2017) was set to expire after the tax year 2022, but the Agency has negotiated, and is still in the process of negotiating, various Interlocal Cooperation Agreements with some or all of the taxing entities within the Project Area (each an

“Interlocal Agreement”) in order to extend the Agency’s collection of a portion of the tax increment from the Project Area as permitted under Utah Code Ann. § 17C-2-207 (2017) for an additional ten years (until 2032).

AGREEMENT

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

1. Tax Increment Definition.

- a. *Definition.* This Agreement refers to “tax increment” which is a term defined by Utah Code Ann. § 17C-1-102(60) (2017). The term tax increment has the same meaning as defined by that statute (as amended, replaced or superseded from time to time). The parties acknowledge that tax increment generally refers to the additional *ad valorem* tax revenues generated by the increase in value of taxable ~~real~~ and personal property from the calendar year ending December 31, 1990.
- b. *Agency’s Share.* Under the Plan as originally adopted, the Agency is entitled to collect tax increment from the Project Area as provided in the schedule under Utah Code Ann. § 17C-1-403(2)(a) (2017), until and including the tax year 2022. Then, after that, the Agency is entitled to collect a portion of tax increment from the Project Area as expressly provided under each of the Interlocal Agreements, respectively. The parties acknowledge that as of the Effective Date, the Agency has entered into an Interlocal Agreement with each of the following taxing entities, respectively: Central Utah Water Conservancy District; Metropolitan Water District of Salt Lake & Sandy; Sandy Suburban Improvement District; South Salt Lake Valley Mosquito Abatement District; and Canyons School District. Each of those Interlocal Agreements provides that the Agency may receive 60% of tax increment from the Project Area during the ten-year extension period (tax years 2023-2032, inclusive). The parties acknowledge that as of the Effective Date, the Agency has not yet entered into Interlocal Agreement with either Salt Lake County or South Valley Sewer District; the Agency intends to pursue Interlocal Agreements with these remaining entities, but the Agency makes no guarantees, the Agency reserves absolute discretion as to whether or not to enter into Interlocal Agreements with these remaining two taxing entities, and the Company acknowledges that each of these remaining two taxing entities has independent discretion to approve or not approve an Interlocal Agreement.

2. Company’s Commitments. As a condition to all obligations of the Agency under this Agreement, the Company agrees (i) by _____, 201____, substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of the Office Project on the Property according to the “Office Plans” as defined and specified in, and required by, the PSA, and (ii) the Agency and Sandy City are currently considering promoting and/or establishing a downtown association, the purview of which will likely include the Property; the Company agrees to participate in the downtown association if and when it is promoted or created, upon request from the

Agency or Sandy City, provided the terms of such participation are reasonably acceptable to the Company and do not materially increase the Company's obligations or decrease the Company's rights with respect to the Property or otherwise (the "Company Commitments"). If the Company does not complete the Company Commitments, the Agency may deliver notice to the Company. The Company shall have four calendar months from the date of receipt of the Agency's notice in which to satisfy the Company's Commitments. If the Company does not satisfy the Company Commitments within that four-month period, then, this Agreement will terminate immediately and automatically.

3. Parking Structure Financing.

- a. *Generally.* The Company is solely responsible for all the costs of development, construction, maintenance, ownership, repair, etc., of the Office Project (including the Office Building and the Parking Structure). However, subject to the performance of the Company Commitments by the Company first, the Agency will participate with the Company in financing the construction of the Parking Structure solely by paying a maximum amount of \$ _____ (the "Maximum Reimbursement Amount") to the Company as reimbursement for expenses actually incurred by the Company in the construction of the Parking Structure, as follows: The Agency will pay to the Company annually, beginning with a payment for the first year in which the Office Building is assessed and appears on the tax rolls for Salt Lake County, and ending with (at the latest) a final payment for the final year of the remaining tax increment collection period for the Project Area, which is 2032 (each, an "Annual Tax Increment Payment"), an amount equal to 85% of the tax increment actually received by the Agency from the Salt Lake County Treasurer pursuant to the Plan and Utah Code Ann. § 17C-1-403, and arising from the Office Project. The Agency will retain the remaining 15% of tax increment revenues from the Office Project for other Agency uses/obligations as permitted under the Plan and/or the Interlocal Agreements. The Agency will continue making Annual Tax Increment Payments until the first to occur of either (i) the Agency has paid to the Company the Maximum Reimbursement Amount, or (ii) the Agency no longer has the right to receive tax increment from the Project Area because the final year of the tax increment collection period for the Project Area has passed. Notwithstanding anything in this Agreement to the contrary, the Agency has no obligation to pay any more than the Maximum Reimbursement Amount; accordingly, if and when the Maximum Reimbursement Amount has been paid, the Agency will have no further payment obligations of any kind to the Company. However, the Agency does not guarantee payment of the full Maximum Reimbursement Amount; both parties acknowledge the total amount paid to the Company is contingent on, among other things, the amount of tax increment actually received by the Agency each year from the Property and the Office Project.
- b. *Limitation.* Notwithstanding anything in this Agreement to the contrary, if the Company does not satisfy the Company Commitments within the periods set forth in Section 2 hereof, then the Agency will have no obligation to pay any Annual Tax Increment Payments to the Company; instead, the Agency will then be entitled to retain all tax increment generated from the Office Project for other legal and authorized purposes of

the Agency.

- c. *Taxes - Condition Precedent.* Notwithstanding anything in this Agreement to the contrary, all obligations of the Agency to pay any tax increment to the Company are conditional on the Company paying all taxes assessed on or generated from the Property, including but not necessarily limited to real property, personal property, *ad valorem*, and sales taxes, to the appropriate taxing authorities. The Company reserves all, and does not waive or relinquish any, rights available at law or in equity to appeal or contest any taxes or assessments on the Property.
- d. *No Existing Encumbrance and No Further Encumbrance.* The Agency has not encumbered or pledged tax increment from the Office Project. The Agency agrees that the Agency shall not, without the prior written consent of the Company, which may be withheld in the Company's sole discretion, issue any bonds and other indebtedness that are secured by tax increment from the Office Project until such time as Company has been reimbursed the Maximum Reimbursable Amount as provided in this Agreement, unless such obligations are subordinate to the rights of Company under this Agreement.
- e. *Preservation of Interlocal Agreements.* The Agency agrees that the Agency shall not, without the prior written consent of the Company, until such time as Company has been reimbursed the Maximum Reimbursable Amount as provided in this Agreement, cause, permit or consent to any modifications or amendments to any of the Interlocal Agreements in a manner that reduces the amount of tax increment to be paid to the Agency, on either an annual or cumulative basis, from the Project Area.

4. **Timing of Annual Incentive Payments.** Subject to Sections 2 and 3 *above*, the Agency will make the first Annual Tax Increment Payment within thirty days after the Agency receives from the Salt Lake County Treasurer the final tax increment payment for the calendar year in which the Office Project is assessed and appears on the tax rolls for Salt Lake County, and, subject to Section 3 *above*, the Agency will continue making the Annual Tax Increment Payments each successive year within the same thirty-day period for so long as the Agency is entitled to collect tax increment from the Project Area (as may be extended, if at all, from time to time). For informational purposes, the Agency typically receives tax increment payments from the Salt Lake County Treasurer in March or April (for the preceding tax year), which means the Agency will likely pay the first Annual Tax Increment Payment to the Company around April or May of the year following the calendar year during which the Company obtains the required temporary certificates of occupancy for the Office Building and Parking Structure, and then the successive payments in April or May of each succeeding year.

5. **Agency Authority.** The Company acknowledges that the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from Sandy City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City. The Company acknowledges that Sandy City is not a party to this Agreement and Sandy City will not have any duties,

liabilities or obligations under this Agreement. The Company understands that the Agency has no independent taxing power, and therefore the Agency's sole source of revenue is tax increment financing as provided under Utah law. If Utah law is amended or superseded by new law so as to reduce or eliminate the amount of tax increment revenue to be paid to the Agency, the Agency's obligation to pay Annual Tax Increment Payments to the Company shall be accordingly reduced or eliminated. Similarly, if a court of competent jurisdiction declares that the Agency cannot receive tax increment revenues, or make payments to the Company from tax increment revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of tax increment revenues paid to the Agency, the Agency's obligation to make Annual Tax Increment Payments to the Company shall be accordingly reduced or eliminated.

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

7. **Successors and Assigns.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither party may assign its rights or obligations under this Agreement without the advance written consent of the other party.

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

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

10. **Integrated Agreement/PSA.** The above recitals, and all attached exhibits and schedules, are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed. There are no other contracts or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than those expressly set forth in this Agreement. Notwithstanding the foregoing, however, the parties acknowledge that certain provisions of the PSA survive and will continue to exist according to their terms as written, and will be read harmoniously with this Agreement. If there is any conflict between the PSA and the terms of this Agreement, the terms of this Agreement will prevail.

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

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

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

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

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

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

COMPANY:

By: [FORM ONLY – DON'T SIGN]

Name:

Title:

AGENCY:

REDEVELOPMENT AGENCY OF SANDY CITY,
a Utah political subdivision

By: [FORM ONLY – DON'T SIGN]

Executive Director

Attest:

[FORM ONLY – DON'T SIGN]
Secretary

[Exhibit A to be attached]

Resolution No. RD 19-03

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY AUTHORIZING THE EXECUTION OF AN ADDENDUM TO THE PURCHASE AND SALE AGREEMENT WITH THE KC GARDNER COMPANY, L.C., RELATING TO 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, "Limited Purpose Local Government Entities—Community Reinvestment Agency Act" (the "Act");

WHEREAS, the Agency, in furtherance of the purposes of the Act and the Project Area Plan for the Civic Center North Redevelopment Project Area (the "Project Area"), entered into a Purchase and Sale Agreement and Escrow Instructions with KC Gardner Company, L.C. dated August 29, 2017 (the "Agreement"), relating to the sale by the Agency of certain unimproved and vacant real property located between Monroe Street and I-15, just south of Sego Lily Dr.; and

WHEREAS, the Agency has determined that the Agreement needs to be modified as set forth in the Addendum No. 1 attached hereto in substantially final form as **Exhibit A**.

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

1. The Addendum in substantially the form attached hereto as **Exhibit A** is hereby approved, and the Executive Director of the Agency is authorized and directed to execute the same for and on behalf of the Agency. The Executive Director is authorized to approve any minor modifications, amendments, or revisions to the Addendum as may be in the Agency's best interest and in harmony with the intent and purpose of the Addendum, and the Executive Director's signature upon the final Addendum shall constitute the Agency Board's acceptance of all such minor modifications, amendments, or revisions.

2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED BY THE REDEVELOPMENT AGENCY OF SANDY CITY on this January 8, 2019.

Attest:


Vickie Bennett
Secretary


Chair

Exhibit A
Form of Addendum

ADDENDUM NO. 1 TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS ADDENDUM NO. 1 TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this “Addendum”) is dated effective as of January 8, 2019 (the “Effective Date”), by and between the Redevelopment Agency of Sandy City, a Utah political subdivision (“Seller”) and KC Gardner Company, L.C., a Utah limited liability company (“Buyer”). This Addendum is to be attached to, and is made an integral part of, the Purchase and Sale Agreement and Escrow Instructions dated August 29, 2017, entered into by and between the Seller and the Buyer, relating to a vacant parcel of land located along Monroe Street, south of 10000 South, in Sandy City (the “Original Agreement” and as amended by this Addendum, and any other addenda, the “Agreement”). If there is a conflict between the terms of this Addendum and the terms of the Original Agreement, the terms in this Addendum will control. The Original Agreement is modified as follows:

1. The term “Closing Deadline” means the earlier to occur of (a) 30 days after Buyer has received a building permit for the Office Building, or (b) February 1, 2020.
2. As a condition to the enforceability and effectiveness of this Addendum, Buyer agrees to pay an additional \$500,000 as Deposit, by delivery directly to Seller. Accordingly, the term “Deposit” now means the amount of \$575,000 (\$75,000 initially, plus \$500,000 added today). Despite anything in the Original Agreement to the contrary, the Deposit (i) is fully earned by Seller immediately upon receipt, (ii) any amount held in escrow by the Escrow Holder must be immediately paid to Seller, (iii) will not be refunded for any reason other than an uncured material breach by Seller (after Buyer has provided notice and opportunity for Seller to cure as provided under Section 11.2 of the Original Agreement), and (iv) will be applied as a credit against the Purchase Price at Closing.
3. The term “Purchase Price” means the amount of \$3,052,070, plus interest calculated on \$2,477,070 of that amount (\$3,052,070 *less* \$575,000 Deposit) at the rate of 2.7% annually beginning on February 1, 2019 and continuing until the actual date of Closing.

SELLER: Redevelopment Agency of Sandy City

Attest: 
Vickie Farren
RDA Secretary

REDEVELOPMENT AGENCY OF SANDY CITY
CORPORATE
SEAL


ZH Bell
Executive Director

BUYER: KC Gardner Company, L.C.

Name:

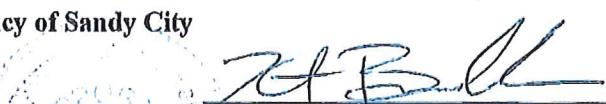
Title:

ADDENDUM NO. 1 TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS ADDENDUM NO. 1 TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Addendum") is dated effective as of January 8, 2019 (the "Effective Date"), by and between the Redevelopment Agency of Sandy City, a Utah political subdivision ("Seller") and KC Gardner Company, L.C., a Utah limited liability company ("Buyer"). This Addendum is to be attached to, and is made an integral part of, the Purchase and Sale Agreement and Escrow Instructions dated August 29, 2017, entered into by and between the Seller and the Buyer, relating to a vacant parcel of land located along Monroe Street, south of 10000 South, in Sandy City (the "Original Agreement" and as amended by this Addendum, and any other addenda, the "Agreement"). If there is a conflict between the terms of this Addendum and the terms of the Original Agreement, the terms in this Addendum will control. The Original Agreement is modified as follows:

1. The term "Closing Deadline" means the earlier to occur of (a) 30 days after Buyer has received a building permit for the Office Building, or (b) February 1, 2020.
2. As a condition to the enforceability and effectiveness of this Addendum, Buyer agrees to pay an additional \$500,000 as Deposit, by delivery directly to Seller. Accordingly, the term "Deposit" now means the amount of \$575,000 (\$75,000 initially, plus \$500,000 added today). Despite anything in the Original Agreement to the contrary, the Deposit (i) is fully earned by Seller immediately upon receipt, (ii) any amount held in escrow by the Escrow Holder must be immediately paid to Seller, (iii) will not be refunded for any reason other than an uncured material breach by Seller (after Buyer has provided notice and opportunity for Seller to cure as provided under Section 11.2 of the Original Agreement), and (iv) will be applied as a credit against the Purchase Price at Closing.
3. The term "Purchase Price" means the amount of \$3,052,070, plus interest calculated on \$2,477,070 of that amount (\$3,052,070 less \$575,000 Deposit) at the rate of 2.7% annually beginning on February 1, 2019 and continuing until the actual date of Closing.

SELLER: Redevelopment Agency of Sandy City



Mike Barrett

Executive Director

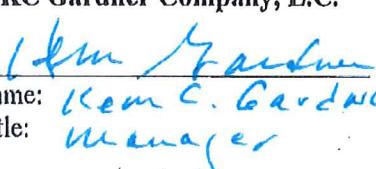
Attest:



Mike Barrett

RDA Secretary

BUYER: KC Gardner Company, L.C.



KC Gardner

Name: KC Gardner
Title: Manager

ADDENDUM NO. 2 TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS ADDENDUM NO. 2 TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Addendum") is dated effective as of June 8, 2020 (the "Effective Date"), by and between the Redevelopment Agency of Sandy City, a Utah political subdivision ("Seller") and Riverdale Center Owner, L.C., a Utah limited liability company, as successor in interest to KC Gardner Company, L.C., a Utah limited liability company ("Buyer"). This Addendum is to be attached to, and is made an integral part of, the Purchase and Sale Agreement and Escrow Instructions dated August 29, 2017, entered into by and between the Seller and the Buyer, relating to a vacant parcel of land located along Monroe Street, south of 10000 South, in Sandy City (the "Original Agreement" and as amended by this Addendum, and any other addenda, the "Agreement"). If there is a conflict between the terms of this Addendum and the terms of the Original Agreement, the terms in this Addendum will control. The Original Agreement is modified as follows:

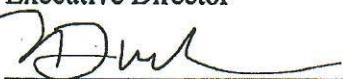
1. Section 3.2.1 of the Original Agreement is deleted in its entirety and is replaced with the following:
 - 3.2.1 Buyer must commence construction of the Office Building on the Property within twenty-seven (27) months after the Closing Date, and

[End of Addendum terms]

SELLER: Redevelopment Agency of Sandy City

Attest:

Vince Barrett
RDA Secretary


Executive Director

Redevelopment Director

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

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


Name: Christian Gardner
Title: Manager