

ADDENDUM NO. 1 TO
TAX INCREMENT PARTICIPATION AGREEMENT

THIS ADDENDUM NO. 1 TO TAX INCREMENT PARTICIPATION AGREEMENT (this “**Addendum**”) is dated effective as of November 9, 2021 (the “**Effective Date**”), by and between the Redevelopment Agency of Sandy City, a Utah political subdivision (“**Agency**”) and Raddon Summit, LLC, a Utah limited liability company (“**Company**”). This Addendum is to be attached to, and is made an integral part of, Tax Increment Participation Agreement dated October 22, 2019 (the “**Original Agreement**” and as amended by this Addendum, and any other addenda, the “**Agreement**”), entered into by and between the Agency and the Company, relating to land located at or near the intersections of Monroe Street, Mall Ring Rd, and 10200 South and Centennial Pkwy, as applicable, in Sandy City (the “**Property**” as described in the Original 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. **PSA.** The Original Agreement references a PSA. The PSA has been amended prior to the Effective Date of this Addendum, and is also being amended on or about the Effective Date of this Addendum. All references in the Agreement to the PSA include any amendments to the PSA, including all past, contemporaneous, or future amendments to the PSA.
2. **Phasing.** The Original Agreement referred to three Phases, Phases 1, 2 and 3, respectively. The Development Project now will consist of only two Phases, known now as the “**Hotel/Residential Phase**” and the “**Office Phase**”, respectively. The “Office Phase” is generally what was previously known as “Phase 1” and the “Hotel/Residential Phase” is generally what was previously known as “Phase 2” and “Phase 3” collectively. The “Office Phase” refers to the portion of the Development Project to be located on all of the portion of the Land located West of Monroe Street, while the “Hotel/Residential Phase” refers to the portion of the Development Project to be located on all the portion of the Land located East of Monroe Street. Any reference in the Original Agreement to “Phase 2” now means the “Hotel/Residential Phase” and any reference in the Original Agreement to “Phase 1” now means the “Office Phase”. Any reference in the Original Agreement to the “Phase 1 Parking Structure” now means the “Office Parking Structure” and any reference in the Original Agreement to the Phase 2 Parking Structure now means the “Hotel/Residential Parking Structure”.
3. **Occupiable Sky Floor.** The Original Agreement referred to certain “Occupiable Sky Floor” anticipated to be constructed over Monroe Street. That Occupiable Sky Floor is no longer a part of the Development Project. Any obligation relating to the Occupiable Sky Floor is hereby terminated, and any condition relating to the Occupiable Sky Floor is likewise hereby eliminated from the Agreement.
4. **Company Commitments.** Subsection 1.a, 1.b and 1.c of the Original Agreement are each deleted and entirely replaced with the following, respectively (any language shown in ~~strike~~through is shown solely for purposes of illustrating the difference from the Original Agreement language; any language shown in ~~strike~~through is no longer a part of the Agreement):

- a. The Company must, by or before the deadline for completion as specified in the PSA (and the expiration of all applicable notice and cure periods), substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of a parking structure (the “~~Phase 1~~ Office Parking Structure”) with at least (i) if the Company elects to construct ~~Phase 1 before Phase 2, 500~~ 400 parking stalls in Phase 1 of the Project, or (ii) if the Company elects to construct ~~Phase 2 before Phase 1, the number of stalls required to have at least 1,500~~ 400 parking stalls.
- b. The Company must, by or before the deadline for completion as specified in the PSA (and the expiration of all applicable notice and cure periods), substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of a parking structure (the “~~Phase 2~~ Hotel/Residential Parking Structure”), with at least: (i) if the Company elects to construct ~~Phase 2 before Phase 1, 1,000~~ parking stalls in Phase 2 of the Project, or (b) if the Company elects to construct ~~Phase 1 before Phase 2, the number of stalls required to have at least 900~~ parking stalls.
- c. The Company must make the entire Office Phase 1-Parking Structure and Hotel/Residential Phase 2-Parking Structure available for use by Sandy City and/or the general public on at all times outside of normal business hours as reasonably determined by the Company; provided, the Company may reserve stalls for uses by the Hotel, including valet parking and exclusive hotel guest parking, up to 700 stalls for residential/condominium units and limited reserved office parking. Despite anything in this Agreement to the contrary, the rights of Sandy City and/or the general public to use the Phase 1 Parking Structure and Hotel/Residential Phase 2- Parking Structure survive perpetually for as long as either of those structures remain in operation.

5. **Post Performance Reimbursement.** Subsection 2.a, 2.b, 2.c and 2.d of the Original Agreement are each deleted and entirely replaced with the following, respectively (any language shown in ~~strikethrough~~ is shown solely for purposes of illustrating the difference from the Original Agreement language; any language shown in strikethrough is no longer a part of the Agreement):

- a. Within 60 days after the date the Company has timely obtained a temporary or permanent certificate of occupancy for all of the improvements included within the “Office Phase” “~~Phase 1~~” as defined by the PSA (including, without limitation, the Office Phase 1-Parking Structure), the Agency will make a one-time cash payment to the Company in the amount of \$662,354, as reimbursement for a portion of the Company’s expenses in constructing the Office Phase 1-Parking Structure. Upon request by the Agency, the Company must first provide evidence of payment of at least \$662,354 in costs towards the construction of the parking facilities. To be clear, this one-time payment is not conditional on the receipt of any tax increment by the Agency. The foregoing is conditioned only on satisfaction of the obligations under Sections 1a., c. (with respect to the Office Phase 1- Parking Structure), e (if applicable), f. and g.

- b. Within 60 days after the date the Company has timely obtained a temporary or permanent certificate of occupancy for the hotel and parking structure ~~all of the improvements~~ included within the “Hotel/Residential Phase 2” as defined by the PSA (including, without limitation, the Hotel/Residential ~~Phase 2~~ Parking Structure), the Agency will make a one-time cash payment to the Company in the amount of \$3,495,548, as reimbursement for a portion of the Company’s expenses in constructing the parking facilities associated with the Hotel/Residential Phase 2. Upon request by the Agency, the Company must first provide evidence of payment of at least \$3,495,548 in costs towards the construction of those parking facilities. To be clear, this one-time payment is not conditional on the receipt of any tax increment by the Agency.
- c. In addition to each of the two one-time cash payments specified in subsections 2.a. and 2.b. *above*, the Agency will pay to the Company annually, beginning with a payment for the first year in which construction commences on any improvement in the Office Phase or the Hotel/Residential Phase ~~Phase 1~~ and ending with a final payment for the final year of the remaining tax increment collection period for the Project Area under the Interlocal Agreements, which is currently 2034 ~~2032~~ (each such annual payment is referred to as an “Annual Increment Payment”), 85% of all tax increment revenues generated, and actually received by the Agency from Salt Lake County, in any year from the Project. The Agency will retain the remaining 15% of tax increment revenues for other Agency uses/obligations as permitted under the Plan and/or the Interlocal Agreements. Until a Phase 2-is required to be complete pursuant to the PSA, the foregoing payments are conditioned only on satisfaction of the obligations under Sections 1a. (if the Company has completed the Office Phase), 1.b. (if the Company has completed the Hotel/Residential Phase, 1c. (with respect to the parking structure constructed on the applicable phase, ~~Phase 1~~ **Parking Structure**), e (if applicable), f. and g.
- d. The Agency will continue making Annual Increment Payments until 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 (2034~~2032~~), has passed.

[End of Terms – Signature Page Follows]

**THIS ADDENDUM NO. 1 TO TAX INCREMENT PARTICIPATION AGREEMENT IS
AGREED TO BY AND BETWEEN:**

SELLER: Redevelopment Agency of Sandy City

Executive Director

Attest:

RDA Secretary

BUYER: Raddon Summit, LLC

Name:

Title:

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this "Agreement") is entered into as of October 22, 2019, between **Raddon Summit, LLC**, a Utah limited liability company (the "Company") and the **Redevelopment Agency of Sandy City**, a Utah political subdivision (the "Agency"), on the following terms:

Recitals

A. The Agency is the owner of, and/or has the right to acquire, certain real property located in Sandy City, Utah, described and depicted in the attached **Exhibit A** (the "Property"), and the Agency has entered into a Purchase and Sale Agreement and Escrow Instructions dated on or about the same date of this Agreement (the "PSA") with the Company providing for the sale of the Property by the Agency to the Company;

B. Pursuant to the PSA, the Company will acquire the Property from the Agency;

C. The Property is located within the boundaries of a redevelopment project area created by the Agency and known as the Civic Center North Neighborhood Development (*i.e.*, Redevelopment) Project Area (the "Project Area");

D. The PSA requires the Company to construct multiple development improvements on the Property, in two or three distinct phases (depending on the Company obtaining certain approvals) as specified in the PSA (the "Project"), which Project will be of great benefit to the Project Area and to Sandy City and its residents;

E. The Company has presented to the Agency and its consultants sufficient information, including development plans and alternatives, and other information, showing justification for the Agency's participation in the cost of construction of the parking structure and other related improvements, including an occupiable sky floor over Monroe street (the "Occupiable Sky Floor"), that will be part of the Project;

F. The Agency has adopted the Civic Center North Neighborhood Development 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;

G. Due to its location within the Project Area, the Property will generate tax increment revenues that will be diverted to the Agency under the Plan and as provided in Utah Code Ann. § 17C-1-403 (2017);

H. 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 various Interlocal Cooperation Agreements with some or all of the taxing entities within the

Project Area (each an “Interlocal Agreement”) which are attached hereto as Exhibit B 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. **Company Commitments.** Despite anything else in this Agreement to the contrary, the Company’s right to receive any future payment(s) from the Agency under this Agreement are conditional on the Company timely satisfying each of the following conditions precedent (the parties acknowledge that the Company will have the right to collect and, subject to Section 5 *below*, retain certain payments as specified in Section 2 *below* after the completion of some, but not all of the following commitments) (each a “Company Commitment”):

- a. The Company must, by or before the deadline for completion as specified in the PSA (and the expiration of all applicable notice and cure periods), substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of a parking structure (the “Phase 1 Parking Structure”) with at least (i) if the Company elects to construct Phase 1 before Phase 2, 500 parking stalls in Phase 1 of the Project, or (ii) if the Company elects to construct Phase 2 before Phase 1, the number of stalls required to have at least 1,500 parking stalls in the entire Project.
- b. The Company must, by or before the deadline for completion as specified in the PSA (and the expiration of all applicable notice and cure periods), substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of a parking structure (the “Phase 2 Parking Structure”), will provide at least: (i) if the Company elects to construct Phase 2 before Phase 1, 1,000 parking stalls in Phase 2 of the Project, or (b) if the Company elects to construct Phase 1 before Phase 2, the number of stalls required to have at least 1,500 parking stalls in the entire Project.
- c. (i) Subject to subsection (ii), the Company must make the entire Phase 1 Parking Structure and Phase 2 Parking Structure available for use by Sandy City and/or the general public at all times outside of normal business hours as reasonably determined by the Company; provided, the Company may reserve stalls for uses by the Hotel, including valet parking and exclusive hotel guest parking, residential/condominium units and limited reserved office parking. Despite anything in this Agreement to the contrary, the rights of Sandy City and/or the general public to use the Phase 1 Parking Structure and Phase 2 Parking Structure survive perpetually for as long as either of those structures remain in operation. (ii) Beginning as of January 1, 2033, the Company may, in the Company’s sole discretion, charge Sandy City a parking fee in exchange for the continued right of the public to use the parking structure as described. The parking fee shall not exceed the amount of actual expenses (overhead and administration) of the Company for the operation of the Phase 1

Parking Structure and Phase 2 Parking Structure for the benefit of the public during the times of public use, as substantiated by information provided by the Company to Sandy City upon request by the Mayor of Sandy City or his/her designee.

- d. The Company will grant the Agency and Sandy City, and their invitees/guests/permittees (collectively, the "City Guests"), the use of meeting space in Phase 2 for up to four days annually through and including the calendar year 2032, at no charge to the City Guests for rent or utilities (but acknowledging the City Guests will be responsible for incidental and event-specific costs such as food, beverages and entertainment), which use shall be subject to such meeting space not being previously reserved by third parties as determined at the time the City Guests request the use of such meeting space, provided, the City Guests, unless otherwise agreed by the hotel operator, may only request the use of such meeting space if such request for a calendar year is made on or before November 30th of the prior calendar year, and in no event will a request in a calendar year be made for a reservation that is beyond the next calendar year.
- e. Sandy City is 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 Company's rights with respect to the Property or otherwise.
- f. The Company must timely comply with all other obligations and deadlines as specified in the PSA.
- g. The Company must timely and properly pay, or cause to be paid, all taxes assessed on or generated from the Property and the Project which are owned by the Company or its affiliates, including but not necessarily limited to real property, personal property, *ad valorem*, and sales taxes, to the appropriate taxing authorities. To the extent such taxes are not paid by any owner of the Property, the Company understands that amounts payable to the Company which are dependent on the payment of such taxes shall be reduced until such taxes are paid. 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. The Company acknowledges that the Agency will not have any tax increment funds to pay to the Company if the Company does not first pay the taxes on the Property.

2. **Post-Performance Reimbursement.** The Agency agrees to contribute to the Company the following payments, on a post-performance reimbursement basis after timely completion of each of the respective Company Commitments, for a portion of the extraordinary costs of developing the Phase 1 Parking Structure, the Phase 2 Parking Structure, and the Occupiable Sky Floor, within the Project:

- a. Within 60 days after the date the Company has timely obtained a temporary or permanent certificate of occupancy for all of the improvements included within

“Phase 1” as defined by the PSA (including, without limitation, the Phase 1 Parking Structure), the Agency will make a one-time cash payment to the Company in the amount of \$662,354, as reimbursement for a portion of the Company’s expenses in constructing the Phase 1 Parking Structure. Upon request by the Agency, the Company must first provide evidence of payment of at least \$662,354 in costs towards the construction of the parking facilities. To be clear, this one-time payment is not conditional on the receipt of any tax increment by the Agency. The foregoing is conditioned only on satisfaction of the obligations under Sections 1a., c. (with respect to the Phase 1 Parking Structure), e (if applicable), f. and g.

b. Within 60 days after the date the Company has timely obtained a temporary or permanent certificate of occupancy for all of the improvements included within “Phase 2” as defined by the PSA (including, without limitation, the Phase 2 Parking Structure), the Agency will make a one-time cash payment to the Company in the amount of \$3,495,548, as reimbursement for a portion of the Company’s expenses in constructing the parking facilities associated with Phase 2. Upon request by the Agency, the Company must first provide evidence of payment of at least \$3,495,548 in costs towards the construction of those parking facilities. To be clear, this one-time payment is not conditional on the receipt of any tax increment by the Agency.

c. In addition to each of the two one-time cash payments specified in subsections 2.a. and 2.b. *above*, the Agency will pay to the Company annually, beginning with a payment for the first year in which construction commences on any improvement in Phase 1 and ending with a final payment for the final year of the remaining tax increment collection period for the Project Area under the Interlocal Agreements, which is currently 2032 (each such annual payment is referred to as an “Annual Increment Payment”), 85% of all tax increment revenues generated, and actually received by the Agency from Salt Lake County, in any year from the Project. The Agency will retain the remaining 15% of tax increment revenues for other Agency uses/obligations as permitted under the Plan and/or the Interlocal Agreements. Until Phase 2 is required to be complete pursuant to the PSA, the foregoing payments are conditioned only on satisfaction of the obligations under Sections 1a., c. (with respect to the Phase 1 Parking Structure), e (if applicable), f. and g.

d. The Agency will continue making Annual Increment Payments until 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 (2032), has passed.

e. Notwithstanding anything in this Agreement to the contrary, if the Company does not timely satisfy each of the Company Commitments by the respective deadline specified in Section 1 *above*, as applicable, then the Agency will retain all tax increment generated from the Property until such condition(s) is/are satisfied, in which event the Agency will make such retained payments to the Company in a partial amount as follows: for every 30 days that passes beyond the stated deadline, the Agency will reduce the amount of the Annual Increment Payment for a particular year by 5% of the total initial Annual Increment Payment (*i.e.*, after 600 days, the Annual Increment Payment for a particular year

would be reduced to zero). In addition to the foregoing, if the Company or hotel operator refused to permit the City Guests to use available meeting space on the terms described herein, and if as a result of such failure the City Guests do not use meeting space on four (4) separate occasions in a calendar year, the Agency will be entitled to withhold and retain \$50,000 from the tax increment generated during such calendar year.

f. Notwithstanding anything in this Agreement to the contrary, all obligations of the Agency to pay any Annual Increment Payment(s) to the Company are conditional on the Company timely and properly paying all taxes assessed on or generated from the Property which is owned by the Company and its affiliates, 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. The Company acknowledges that the Agency will not have any tax increment funds to pay to the Company if the Company does not first pay the taxes on the Property. In the case of the Company paying property taxes for the Property on a delinquent basis, the Agency shall be required to pay tax increment from such delinquent payments only to the extent tax increment from such delinquent taxes are reasonably identifiable as being tax increment from the Property.

g. The Agency agrees that the Agency shall not, without the prior written consent of the Company, 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.

3. **Default under PSA.** All obligations of the Agency under this Agreement, including without limitation the Agency's obligation to continue to pay any amounts to the Company, are conditional on the Company not materially breaching or being in default of its obligations under the PSA (strictly after expiration of any applicable notice and cure period(s) provided in the PSA). If the Company materially breaches or defaults under the PSA (after expiration of any applicable cure period(s) provided in the PSA), then the Company will be considered in material breach of this Agreement and, if elected by the Agency pursuant to a written notice by the Agency, the Company will immediately and automatically forfeit the right to any future payment of funds from the Agency under this Agreement. Except as expressly provided in Section 5 *below*, the Company will not be obligated to refund any amounts already received at the time of material default/breach. The notice and cure provisions in Section 8 *below* do not apply to any default under this Section 3; in other words, once the cure period(s) under the PSA have expired, there are no further cure periods or notice requirements under this Agreement.

4. **Timing of Annual Incentive Payments.** Subject to Sections 1, 2 and 3 *above*, the Agency will make the first Annual 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 Phase 1 improvements are assessed and appear on the tax rolls for Salt Lake County, and, subject to Section 5 *above*, the Agency will continue making the Annual 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 Increment Payment to the Company around April or May for the preceding calendar year.

5. **Repayment Obligation.** If the Company elects to construct Phase 1 before Phase 2 and fails to substantially complete construction of all improvements in Phase 2 by the deadline specified in the PSA (and after expiration of any applicable cure period(s) in the PSA), then the Company agrees to promptly reimburse the Agency the \$662,354 paid by the Agency to the Company under subsection 2.a *above*. If the Company elects to construct Phase 2 before Phase 1 and fails to substantially complete construction of all improvements in Phase 1 by the deadline specified in the PSA (and after expiration of any applicable cure period(s) in the PSA), then the Company agrees to promptly reimburse the Agency the \$3,495,548 paid by the Agency to the Company under subsection 2.b *above*.

6. **Agency Authority.** The Company acknowledges that:

- a. 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 the City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City;
- b. the City is not a party to this Agreement, and the City will not have any commitments, obligations, duties, liabilities or obligations under this Agreement;
- c. the Agency has no independent taxing power, and therefore the Agency's sole source of revenue, at least for purposes of this Agreement, is the sales tax revenues pledged by the City under the City Interlocal Agreement;
- d. if Utah law is amended or superseded by new law that has the effect of reducing or eliminating the amount of sales tax revenue to be paid to the Agency, the Agency's payment obligations will be accordingly reduced or eliminated. The Company, however, specifically reserves and does not waive hereunder any right it may have to challenge any law change that would reduce or eliminate the payment of tax increment to the Agency. The Company acknowledges, understands and agrees that the Agency is under no obligation to challenge a change in law that reduces or eliminates the payment of tax increment to the Agency; provided, the Agency will not oppose the Company, if Company challenges a change in the law that reduces or eliminates the payment of tax increment to the Agency. In the event any change in law invalidates the tax increment provided in support of the Project, the Company is hereby released from any and all obligations made by the Participant to Agency and City Guests;
- e. if a court of competent jurisdiction declares that the Agency cannot legally receive sales tax revenues, or make payments to the Company from sales tax

revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of sales tax revenues paid to the Agency, the Agency's payment obligations shall be accordingly reduced or eliminated. The Company, however, specifically reserves and does not waive hereunder any right it may have to challenge any ruling that would reduce or eliminate the payment of tax increment to the Agency. The Company acknowledges, understands and agrees that the Agency is under no obligation to challenge a ruling that reduces or eliminates the payment of tax increment to the Agency; provided, the Agency will not oppose the Company, if Company challenges a ruling that reduces or eliminates the payment of tax increment to the Agency. In the event any ruling invalidates the tax increment provided in support of the Project, the Company is hereby released from any and all obligations made by the Participant to Agency and City Guests; and

- f. the Agency has no power or authority to grant any land use approvals;
- g. nothing in this Agreement creates, implies, or guarantees any land use approvals; and
- h. all land use approvals are subject to the standard requirements of applicable state and City laws and regulations.

7. **Encumbrance of Tax Increment.** The Agency represents that no tax increment generated from the Project has been pledged to any other person or entity. The Agency agrees that, except in connection with a repayment pursuant to Section 5, the Agency shall not, without the prior written consent of the Company, which may be withheld in the Company's sole and absolute discretion, issue any bonds or other indebtedness that are secured by tax increment generated from the Project and payable to the Company pursuant to the terms hereof or otherwise take any action which could restrict or impede the payment of the amounts hereunder to the Company, in each case, in whole or in part, until the expiration of increment period (2032); provided, however, the foregoing will not prevent the Agency from retaining or using the portion of the tax increment payable to the Agency (and not required to be paid to Developer) for any lawful and authorized purpose.

8. **Default.** If a default under this Agreement occurs other than as provided in Section 1.a, 1.b, 2.c or 3 *above*, the non-defaulting party shall give written notice of the default (a "Default Notice") to the party in default, specifying the nature of the default. Failure or delay in giving a Default Notice shall not constitute a waiver of any default or operate as a waiver of any rights or remedies of the non-defaulting party; but the non-defaulting party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either party in asserting any right or remedy hereunder shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. The non-defaulting party shall have no right to exercise a right or remedy hereunder unless the subject default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto or, where the default is of a nature which cannot be cured

within such thirty (30) day period, the defaulting party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. This Section 8 does not apply to (i) the 30-day periods for 5% reductions in the Annual Increment Payments specified in Section 2.e *above*, or (ii) a default under the PSA beyond all applicable notice and cure periods as described in Section 3 *above*, or (iv) the deadlines for completion under Sections 1.a and 1.b *above*.

9. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Property or Project for the general public or for any public purpose whatsoever.

10. **Agreement Term.** This Agreement will remain in force until the parking rights of Sandy City under subsection 1.c *above* terminate. When the parking rights of Sandy City under subsection 1.c *above* terminate, this Agreement will immediately and automatically terminate.

11. **Successors and Assigns.** This Agreement is binding upon the parties and their respective successors and assigns. Neither party may assign or delegate any of its rights or duties under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, (a) the Company may assign this Agreement to any entity which is controlled by, controlling or under common control with the Company, and (b) the Company may assign the right to receive payments hereunder to a lender of the Company (including any lender making a loan to finance the project), without the consent of the Agency.

12. **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.

13. **Waiver.** The waiver by any party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason of the matter previously waived.

14. **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.

15. **Indemnification.** The Company agrees to indemnify, defend (with counsel of the Indemnitees' choosing), and hold the Agency and the City, including their respective officers, directors, agents, employees, contractors, and consultants (the "Indemnitees"), harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of (a) death, injury, accident, loss or damage of any kind to the extent arising out of the negligence or willful misconduct of the Company with respect to the Property, or (b) any claim by a third party that the Agency or the City is acting as a joint venture or partnership with the Company.

16. **Incorporation of Recitals and Exhibits/Integration.** The above recitals and the City Interlocal Agreement are hereby incorporated and made an integral and binding part of this Agreement. There are no other contracts, understandings, representations, 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 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

17. **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.

18. **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.

19. **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.

20. **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.

21. **Attorneys' Fees.** In the event of litigation between the parties related to this Agreement, the Court must award the prevailing party its costs, expenses, and reasonable attorneys' fees, such fees to be determined by the court sitting without a jury.

22. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

- a. such holding or action shall be strictly construed;
- b. such provision shall be fully severable;
- c. this Agreement shall be construed and enforced as if such provision had

never comprised a part hereof;

d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and

e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

23. **Time is of the Essence.** Time is of the essence with respect to each and every term, condition, obligation and provision hereof.

24. **Waiver of Jury Trial.** The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

25. **Force Majeure.** The Agency or the Company shall be excused, without penalty, for the period of any delay in the performance of any obligations hereunder when prevented from doing so by causes beyond its control, which shall include without limitation acts of God, governmental restrictions, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain reasonable substitutes, and actions or inactions of governmental authorities (a "Force Majeure Event"). In connection with any Force Majeure Event, the party claiming such Force Majeure Event must use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. Nothing contained in this paragraph shall excuse either party from paying in a timely fashion any payments due under the terms of this Agreement.

26. **Limitation of Remedies.** The Company's sole and exclusive remedy for any non-performance or breach of the Agency's express or implied covenants of this Agreement is declaratory relief construing this Agreement's rights and obligations and specific performance of this Agreement. Under no circumstances shall the Agency be liable to the Company or its successors-in-interest for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except as otherwise expressly stated herein. Nothing in this Agreement shall relieve the Company or its successors-in-interest of the requirement to exhaust available administrative remedies. The Agency's sole and exclusive remedy for any non-performance or breach of the Company's express or implied covenants of this Agreement is declaratory relief construing this Agreement's rights and obligations and specific performance of this Agreement. Under no circumstances shall the Company be liable to the Agency or its successors-in-interest for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except as otherwise expressly stated herein.

27. **Authority.** The individuals executing this Agreement represent and warrant to the Parties

that they possess the legal authority to execute this Agreement pursuant to the terms herein.

28. **Notices.** All notices, demands, requests, or other communications required or permitted by this Lease shall be in writing and effective when received, and delivery shall be made personally, or by registered or certified mail, return receipt requested, postage prepaid, or overnight courier, addressed as follows:

With a copy to:

Sandy City Attorney's Office
10000 Centennial Parkway
Sandy, UT 84070

And with a copy to:

McDonald Fielding, PLLC
Attn: Kyle Fielding
175 W Canyon Crest Road, Suite 204
Alpine UT 84004

If to Buyer: Raddon Summit, LLC
1111 South Draper Parkway
Suite 101
Draper, Utah 84020
Attention: Ron Raddon

With a copy to:

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

29. **Mutual Preparation in Document Preparation.** Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, both parties will be deemed to have jointly drafted this Agreement and the rule of construction to the effect

that certain ambiguities are to be construed against the party drafting a document will not apply.

THIS PARTICIPATION AGREEMENT IS EXECUTED effective as of the date written above:

COMPANY: RADDON SUMMIT, LLC, a Utah limited liability company

By:

Name: RONALD A. RADDON
Title: MANAGING MEMBER



AGENCY: REDEVELOPMENT AGENCY OF SANDY CITY,
a Utah political subdivision

By:

KG Bell
Executive Director

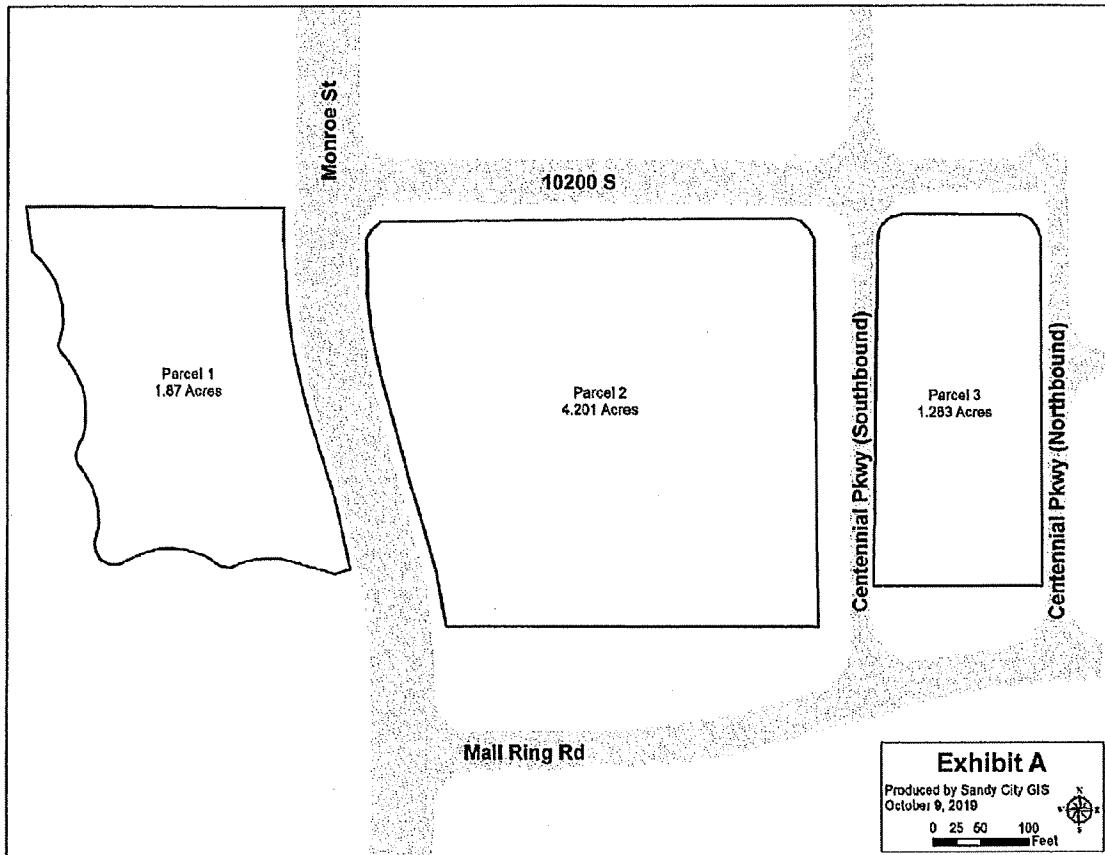
Attest:

Vukee Bennett
Secretary

[Exhibit A attached]

Exhibit A

Map/Legal Description of the Property



Parcel 1

A parcel of land located in the Northeast Quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, being Lot 1 of the proposed Carins South Subdivision, described by metes and bounds as follows:

Beginning at a point which lies South $0^{\circ}01'50''$ East 27.90 feet along the monument line in State Street and West 1973.864 feet from a Salt Lake County monument on the centerline of State Street at 10200 South, which is located North $89^{\circ}53'20''$ East 92.33 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South $0^{\circ}01'50''$ East 2599.11 feet along the monument line in State Street between the monuments found marking the intersections of 10200 South and 10600 South Streets),

thence along the westerly right-of-way line of Monroe Street the following four (4) courses: (1)

South $0^{\circ}09'41''$ West 54.42 feet to a point of curvature;

(2) Southeasterly 153.96 feet along the arc of a tangent curve to the left having a radius of 559.50 feet, a central angle of $15^{\circ}45'58''$ and a chord bearing and length of South $7^{\circ}43'18''$ East 153.47 feet to a point of tangency;

(3) South $15^{\circ}36'17''$ East 166.77 feet to a point of curvature;

(4) Southeasterly 5.126 feet along the arc of a tangent curve to the right having a radius of 460.50 feet, a central angle of $0^{\circ}38'16''$ and a chord bearing and length of South $15^{\circ}17'09''$ East 5.126;

thence along the northerly and easterly edge of an existing concrete sidewalk the following twenty (20) courses:

(1) Northwesterly 25.339 feet along the arc of a non-tangent curve to the right whose center bears North $1^{\circ}48'02''$ West 51.00 feet, has a central angle of $28^{\circ}28'02''$ and a chord bearing and length of North $77^{\circ}34'01''$ West 25.079 feet to a point of reverse curvature;

(2) Northwesterly 66.516 feet along the arc of a reverse curve to the left whose center bears South $26^{\circ}40'00''$ West 101.00 feet, has a central angle of $37^{\circ}44'00''$ and a chord bearing and length of North $82^{\circ}12'00''$ West 65.320 feet to a point of reverse curvature;

(3) Northwesterly 25.662 feet along the arc of reverse curve to the right whose center bears North $11^{\circ}04'00''$ West 47.00 feet, has a central angle of $31^{\circ}17'00''$ and a chord bearing and length of North $85^{\circ}25'30''$ West 25.344 feet to a point of reverse curvature;

(4) Northwesterly 9.032 feet along the arc of a reverse curve to the left whose center bears South $20^{\circ}13'00''$ West 150.00 feet, has a central angle of $3^{\circ}27'00''$ and a chord bearing and length of North $71^{\circ}30'30''$ West 9.031 feet to a point of tangency;

(5) North $73^{\circ}14'00''$ West 10.50 feet to a point of curvature;

(6) Northwesterly 66.157 feet along the arc of a tangent curve to the left whose center bears South $16^{\circ}46'00''$ West 180.00 feet, has a central angle of $21^{\circ}03'30''$ and a chord bearing and length of North $83^{\circ}45'45''$ West 65.785 feet to a point of compound curvature;

(7) Southwesterly 40.841 feet along the arc of a compound curve to the left whose center bears South $4^{\circ}17'30''$ East 120.00 feet, has a central angle of $19^{\circ}30'00''$ and a chord bearing and length of South $75^{\circ}57'30''$ West 40.644 feet to a point of reverse curvature;

(8) Northwesterly 14.148 feet along the arc of a reverse curve to the right whose center bears North $23^{\circ}47'30''$ West 8.00 feet, has a central angle of $101^{\circ}19'30''$ and a chord bearing and length of North $63^{\circ}07'45''$ West 12.375 feet to a point of compound curvature;

(9) Northwesterly 27.860 feet along the arc of a compound curve to the right whose center bears North $77^{\circ}32'00''$ East 75.00 feet, has a central angle of $21^{\circ}17'00''$ and a chord bearing and length of North $1^{\circ}49'30''$ West 27.700 feet to a point of reverse curvature;

(10) Northwesterly 39.567 feet along the arc of a reverse curve to the left whose center bears North $81^{\circ}11'00''$ West 60.00 feet, has a central angle of $37^{\circ}47'00''$ and a chord bearing and length of North $10^{\circ}04'30''$ West 38.854 feet to a point of tangency;

(11) North $28^{\circ}58'00''$ West 11.87 feet to a point of curvature;

(12) Northwesterly 13.398 feet along the arc of a tangent curve to the right whose center bears North $61^{\circ}02'00''$ East 70.00 feet, has a central angle of $10^{\circ}58'00''$ and a chord bearing and length of North $23^{\circ}29'00''$ West 13.378 feet to a point of compound curvature;

(13) Northwesterly 15.197 feet along the arc of a compound curve to the right whose center bears North $72^{\circ}00'00''$ East 27.00 feet, has a central angle of $32^{\circ}15'00''$ and a chord bearing and length of North $1^{\circ}52'30''$ West 14.998 feet to a point of tangency;

(14) North $14^{\circ}15'00''$ East 11.87 feet to a point of curvature;

(15) Northwesterly 48.846 feet along the arc of a tangent curve to the left whose center bears North $75^{\circ}45'00''$ West 80.00 feet, has a central angle of $34^{\circ}59'00''$ and a chord bearing and length of North $3^{\circ}14'30''$ West 48.091 feet to a point of compound curvature;

(16) Northwesterly 17.125 feet along the arc of a compound curve to the left whose center bears South $69^{\circ}16'00''$ West 290.00 feet, has a central angle of $3^{\circ}23'00''$ and a chord bearing and length of North $22^{\circ}25'30''$ West 17.122 feet to a point of tangency;

(17) North $24^{\circ}07'00''$ West 10.00 feet to a point of curvature;

(18) Northwesterly 33.190 feet along the arc of a tangent curve to the right whose center bears North $65^{\circ}53'00''$ East 100.00 feet, has a central angle of $19^{\circ}01'00''$ and a chord bearing and length of North $14^{\circ}36'30''$ West 33.038 feet to a point of tangency;

(19) North $5^{\circ}06'00''$ West 26.50 feet to a point of curvature;

(20) Northwesterly 66.004 feet along the arc of a tangent curve to the left whose center bears South $84^{\circ}54'00''$ West 115.00 feet, has a central angle of $32^{\circ}53'06''$ and a chord bearing and length of North $21^{\circ}32'33''$ West 65.102 feet;

thence Northwesterly 40.947 feet along the arc of a non-tangent curve to the right whose center bears North $84^{\circ}07'06.1''$ East 34,179.50 feet, has a central angle of $0^{\circ}04'07.11''$ and a chord bearing and length of North $5^{\circ}50'50''$ West 40.947 feet;

thence South 89°50'19" East 250.70 feet to the Point of Beginning.

The above-described parcel of land contains approximately 81,467 square feet in area or 1.870 acres.

Parcel 2

A parcel of land located in the Northeast Quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah being Lot 2 of the proposed Carins South Subdivision, described by metes and bounds as follows:

Beginning at a point which lies South 0°01'50" East 60.137 feet along the monument line in State Street and West 1402.775 feet from a Salt Lake County monument on the centerline of State Street at 10200 South, which is located North 89°53'20" East 92.33 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South 0°01'50" East 2599.11 feet along the monument line in State Street between the monuments found marking the intersections of 10200 South and 10600 South Streets),

thence along the westerly right-of-way line of Centennial Parkway, South 0°01'34" West 391.13 feet;

thence North 89°49'53" West 9.693 feet, more or less, to a northeasterly corner of AMENDED LOT 1 SOUTHTOWNE CENTER MALL SUBDIVISION, recorded August 15, 2005 as Entry No. 9461246 in Book 2005P of plats at Page 250 in the office of the Salt Lake County Recorder;

thence along the northerly boundary of said subdivision and beyond, North 89°49'53" West 384.179 feet to intersect the easterly right-of-way line of Monroe Street;

thence along said easterly right-of-way line the following five (5) courses:

(1) Northwesterly 83.43 feet along the arc of a non-tangent curve to the left whose center bears South 82°56'19" West 559.50 feet, has a central angle of 8°32'36" and a chord bearing and length of North 11°19'59" West 83.35 feet to a point of tangency;

(2) North 15°36'17" West 166.77 feet to a point of curvature;

(3) Northwesterly 126.72 feet along the arc of a tangent curve to the right whose center bears North 74°23'43" East 460.50 feet, a central angle of 15°45'58" and a chord bearing and length of North 7°43'18" West 126.32 feet to a point of tangency;

(4) North 0°09'41" East 22.29 feet to a point of curvature;

(5) Northeasterly 39.185 feet along the arc of a tangent curve to the right whose center bears

South $89^{\circ}50'19''$ East 25.00 feet, has a central angle of $89^{\circ}48'19''$ and a chord bearing and length of North $45^{\circ}03'50''$ East 35.295 feet to a point of tangency with the southerly right-of-way line of 10200 South Street;

thence along said southerly-right-of-way line, North $89^{\circ}58'00''$ East 422.20 feet to a point of curvature;

thence Southeasterly 39.296 feet along the arc of a tangent curve to the right whose center bears South $0^{\circ}02'00''$ East 25.00 feet, has a central angle of $90^{\circ}03'34''$ and a chord bearing and length of South $45^{\circ}00'13''$ East 35.374 feet to the Point of Beginning.

The above-described parcel of land contains approximately 183,013 square feet in area or 4.201 acres.

Parcel 3

A parcel of land located in the Northeast Quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah being more particularly described as follows:

Beginning at a point which lies North $89^{\circ}49'53''$ West 1027.21 feet, South $0^{\circ}00'36''$ West 62.87 feet and North $89^{\circ}59'24''$ West 71.44 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South $0^{\circ}01'50''$ East 2599.11 feet along the monument line in State Street between the monuments found marking the intersections of 10600 South and 10200 South Streets), said Northeast Corner of Section 13 being South $89^{\circ}53'20''$ West 92.33 feet from the monument at the intersection of 10200 South and State Streets;

thence South $0^{\circ}01'34''$ West 347.76 feet;

thence South $88^{\circ}45'00''$ West 150.04 feet;

thence North $0^{\circ}01'34''$ East 351.00 feet to a point of curvature;

thence Northeasterly 39.24 feet along the arc of a tangent curve to the right having a radius of 25.00 feet, a central angle of $89^{\circ}56'25''$ and a chord bearing and length of North $44^{\circ}59'47''$ East 35.34 feet to a point of tangency;

thence North $89^{\circ}58'00''$ East 100.00 feet to a point of curvature;

thence Southeasterly 39.30 feet along the arc of a tangent curve to the right having a radius of 25.00 feet, a central angle of $90^{\circ}03'35''$ and a chord bearing and length of South $45^{\circ}00'13''$ East 35.37 feet to the Point of Beginning.

The above-described parcel of land contains approximately 55,889 square feet in area or 1.283 acres.