

**RESOLUTION #21-05 C**

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN TRANS JORDAN LANDFILL AND SANDY CITY FOR THE WASTE TRANSFER STATION FOR THE LONG-TERM COLLECTION AND TRANSFER OF SOLID WASTE TO THE LANDFILL.

BE IT KNOWN AND REMEMBERED that the City Council of Sandy City, State of Utah, finds and determines as follows:

WHEREAS, Title 11, Chapter 13, Utah Code Annotated, as amended, permits public agencies to enter into cooperative agreements to provide joint undertakings and services; and

WHEREAS, the attached Agreement has been prepared to accomplish such purpose.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Sandy City, Utah:

1. It does hereby approve the attached Agreement described as an interlocal agreement between Trans Jordan Landfill and Sandy City for the Waste Transfer Station at Public Works for the long-term collection and transfer of solid waste to the landfill. This Transfer Station will serve the residents and business of Sandy City as well as Draper, Midvale, and Murray.

2. The Hon. Kurt Bradburn, Mayor of Sandy City, is hereby authorized to execute the finalized agreement, in substantially the same form as attached hereto, on behalf of Sandy City Corporation and to act in accordance with its terms.

DATED this 26th day of January, 2021.

DocuSigned by:

*Cyndi Sharkey*

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Cyndi Sharkey  
Sandy City Council



ATTEST:

DocuSigned by:

*Wendy R*

688E7E8272014B1...

City Recorder

RECORDED this 27th day of January, 2021.

**GROUND LEASE**

by and between

**Sandy City  
as Landlord**

and

**Trans-Jordan Cities  
as Tenant**



“Business Day” means any weekday on which State-chartered banks are open to conduct regular banking business with bank personnel.

“Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

“City” means Sandy City Corporation.

“City Property” is defined in the recitals as more particularly described in Exhibit A.

“Condemnation” means (a) any temporary or permanent taking, of (or of the right to use or occupy) any Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

“Construction” means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, restoration, or other work affecting any Improvements, including new construction. Construction consists of Minor Construction and Major Construction.

“County” means Salt Lake County.

“Default” means any Monetary Default or Nonmonetary Default. Every covenant of Tenant under this Lease, if not performed or complied with by Tenant, shall give rise to a Default for which Tenant shall have rights to notice and opportunity to cure as this Lease provides.

“District” means Sandy Suburban Improvement District, a special services district created pursuant to the laws of the State of Utah.

“Easement Agreement” means that certain Access Easement Agreement dated [REDACTED], 2021, and recorded [REDACTED], 2021, as Entry No. [REDACTED], with the Salt Lake County Recorder’s Office, by and among Landlord, Tenant, the District and SLCo.

“Environmental Law” means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

“Expiration Date” means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord’s exercise of remedies for an Event of Default, or otherwise.

“Fee Estate” means Landlord’s fee estate in the Premises, including Landlord’s reversionary interest in the Premises after the Expiration Date.

“FF&E” means all movable furniture, furnishings, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the structural integrity of the Premises;

(b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as factory equipment, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

“Fixed Rent” has the meaning specified in Section 3.1 below.

“Government” means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. “Government” shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.

“Hazardous Substances” includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iii) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called “superfund” or “superlien” law; (iv) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); (v) defined as “hazardous waste” under 40 C.F.R. Part 260; (vi) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; or (vii) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

“Hazardous Substances Discharge” means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Premises, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Premises, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

“Improvements” means the Building and all other buildings, structures, and other improvements and appurtenances constructed by Tenant on the Premises.

“Indemnify” means, where this Lease states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular matter (the “Indemnified Risk”), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims,

liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Indemnitor's insurance carrier shall be automatically deemed satisfactory.

“Indemnitee” means any party entitled to be Indemnified under this Lease and its agents, directors, employees, and officers.

“Indemnitor” means a party that agrees to Indemnify any other Person.

“Insubstantial Condemnation” means any Condemnation except a Substantial Condemnation.

“Laws” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

“Lease Year” means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term.

“Leasehold Estate” means Tenant's leasehold estate, and all of Tenant's rights, privileges, and obligations under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

“Legal Costs” of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses.

“Memorandum of Lease” means a memorandum of this Lease, in recordable form, setting forth such provisions of the Lease, except the amount or means of determining Rent, as either party reasonably desires.

“Monetary Default” means Tenant's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

“Nonmonetary Default” means Tenant's: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

“Notice” means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the “Notices” Article of this Lease.

“Notify” means give a Notice.

“Notice of Default” means any Notice claiming or giving Notice of a Default or alleged Default.

“Operating Costs” means all actual costs and expenses incurred by Landlord in connection with the maintenance of improvements within the Shared Use Area, including but not limited to, insurance, snow removal, trash removal, utilities, cost of service of independent contractors, landscaping, security, and sidewalk repair.

“Permitted Exceptions” means only: (1) the recorded title exceptions affecting the Fee Estate and, prior to this Lease as of the Commencement Date, listed as exceptions in Tenant’s leasehold policy of title insurance for this Lease; (2) this Lease and its terms and provisions; and (3) any state of facts an accurate survey would show.

“Permitted Uses” means any lawful use, including without limitation a waste transfer station facility where municipal solid waste may be transported to or from the Premises to its eventual location or any other uses that benefit the citizens of the City, the County, and other surrounding areas that is approved by the Landlord. Such approval may not to be unreasonably withheld, conditioned or delayed.

“Person” means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind. (This does not limit any Transfer restriction.).

“Plans and Specifications” means those certain Drawings, Specifications and Addenda prepared by Tenant’s architect for the Project.

“Premises” is defined in the recitals as more particularly described in Exhibit B.

“Prime Rate” means the prime rate or equivalent “base” or “reference” rate for corporate loans that, at Tenant’s election, by Notice to Landlord, is from time to time: (a) published in the Wall Street Journal; (b) announced by any large United States “money center” commercial bank Tenant designates; or (c) if such rate is no longer so published or announced, then the parties shall reasonably agree upon a reasonably equivalent rate published by an authoritative third party.

“Prohibited Lien” means any mechanic’s, vendor’s, laborer’s, or material supplier’s statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant (or anyone claiming through Tenant), but only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate.

“Property Insurance” means insurance providing coverage for the Premises, the Improvements, and Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of the Improvements and Building Equipment (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with “ordinance or law” coverage.

“Real Estate Taxes” means all general and special real estate taxes and assessments on the Premises.

“Scheduled Expiration Date” has the meaning specified in Section 2.2 below.

“Shared Access Area” means the area adjacent to the SLCo Premises on the north side, which will be used by SLCo to access the SLCo Premises and by Tenant to access the Premises, pursuant to the Easement Agreement. The Shared Access Area is depicted on Exhibit B. The Parties acknowledge that the Shared Access Area may also be used by the District and its permittees as part of the Easement Agreement.

“Shared Use Area” means the area adjacent to the SLCo Premises on the west side which is currently anticipated to be jointly used by Landlord, Tenant, and SLCo and is made available for the general use, convenience and benefit of all Tenant’s, SLCo’s or Landlord’s permittees and/or the public. Without limitation, the Shared Use Area shall include the following areas within City Property: (i) sidewalks and (ii) all landscaped and planted areas, including any detention pond as required by the City; and (v) all lobby and waiting areas. The Shared Use Area is depicted on Exhibit B.

“SLCo” means Salt Lake County, a body corporate and politic of the State of Utah.

“SLCo Premises” means the area of the City Property adjacent to the Premises on the west side, as depicted on Exhibit B, which is leased by SLCo pursuant to that certain Ground Lease dated May 27, 2020, by and between Landlord and SLCo.

“State” means the state of Utah.

“Substantial Condemnation” means any Condemnation that (a) takes the entire Premises; (b) in Tenant’s reasonable determination renders the remaining Premises Uneconomic; or (c) occurs less than five years before the end of the Term.

“Term” has the meaning set forth in Section 2.2 below.

“Transfer” of any property means the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance).

“Waiver of Subrogation” means a provision in, or endorsement to, any property insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either party to this Lease for any loss such policy covers.

## **2. DEMISE OF THE PREMISES; TERM**

2.1 *Demise of the Premises.* Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the Premises. Landlord also grants Tenant the right to use the Shared Use Area as provided herein.



2.2 *Term.* The term of this Lease (the “Term”) shall: (a) commence on the Commencement Date; and (b) continue until 11:59 p.m. on the date that is the last day of the full month following the fiftieth (50<sup>th</sup>) anniversary of the Commencement Date (the “Scheduled Expiration Date”), unless terminated sooner pursuant to Section 19 of this Lease. The Term may be extended only by written agreement signed by both Parties.

### 3. RENT

3.1 *Fixed Rent.* Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, a net annual rental for each Lease Year in an amount specified in **Exhibit C** attached hereto (the “Fixed Rent”).

3.2 *Payment.* Tenant shall pay Fixed Rent in advance on the first day of each Lease Year, or, at its option, prepay up to ten (10) years’ Fixed Rent from time to time. If the Lease is terminated early, pre-paid rent shall be refunded accordingly. Tenant shall pay all Rent payable to Landlord by good and sufficient check payable to Landlord or by wire transfer, at such address as Landlord shall designate from time to time.

3.3 *No Offsets.* Tenant shall pay all Fixed Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

3.4 *Additional Rent.* In addition to the Fixed Rent, in each applicable year, Tenant shall pay Landlord its proportionate share of the Operating Costs of the Shared Use Area. Tenant’s proportionate share shall be determined by the percentage of its stormwater contribution to the detention pond from the Premises and the Shared Access Area. By no later than October of each year, Landlord shall provide Tenant a statement showing the annual Operating Costs for the Shared Use Area for the previous twelve months and an invoice for Tenant’s share of the Operating Costs representing the Additional Rent. Tenant shall have 90 days from the date of receipt of the invoice to submit payment to Landlord for the Additional Rent.

### 4. ADDITIONAL OBLIGATIONS OF TENANT

4.1 *Landlord’s Net Return.* This Lease shall constitute an absolutely “net” lease. The Fixed Rent shall give Landlord an absolutely “net” return for the Term, free of any expenses or charges for the Premises, except as this Lease expressly provides. Tenant shall pay and discharge, before failure to pay creates a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction affecting, the Premises.

4.2 *Real Estate Taxes.* The Premises is exempt from taxation pursuant to Section 59-2-1101(3) of the Utah Code.

4.3 *Assessments in Installments.* To the extent Law allows, Tenant may apply to have any assessment payable in installments. Upon approval of such application, Tenant shall pay and discharge only such installments as become due and payable during the Term.

4.4 *Direct Payment by Landlord.* If any assessments must be paid directly by Landlord, then: (a) Landlord appoints Tenant as Landlord's attorney-in-fact to make such payment; and (b) if the payee nevertheless refuses to accept payment from Tenant, then Tenant shall Notify Landlord and shall pay such amount to Landlord in a timely manner with reasonable instructions on remittance of such payment. Landlord shall with reasonable promptness comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against Landlord's failure to do so.

4.5 *Utilities.* Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Landlord shall have absolutely no liability or responsibility for the foregoing.

4.6 *Premises Costs.* Tenant shall timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises and the provision of services to the Premises.

## 5. USE

5.1 *Permitted Use.* Tenant may use the Premises only for the Permitted Uses.

5.2 *Exclusive Control.* Except as otherwise provided in this Lease, Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises and any Improvements constructed thereon by Tenant, subject only to Permitted Exceptions. Tenant may enter into, terminate, or modify any existing or future contract for management or operation of the Premises or provision of services to the Premises. Tenant shall require that any such contracts shall automatically expire on or before the Expiration Date. Tenant may cancel and terminate any management contracts that exist on the Commencement Date.

5.3 *Shared Access Area.* Tenant may use the Shared Access Area for: (i) the pedestrian and vehicular use of Tenant's employees and permittees; (ii) ingress and egress from the public street to the Premises; (iii) the installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, pipes, gutters and lines, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, power and emergency fire protection lines, and related utility and service facilities serving any part of the Premises, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Shared Access Area (Landlord shall cooperate in the granting of reasonably necessary licenses, easements or other interest in real property to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of these facilities; and (iv) the ingress and egress of delivery and service trucks and vehicles to and from the Premises or any portion thereof and the public street adjacent to the Premises, for the transportation of municipal solid waste.

5.4 *Shared Use Area.* Tenant may use the Shared Use Area for: (i) the installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, pipes, gutters and lines, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, power and emergency fire protection lines, and related utility and service facilities serving any part of the Premises, all of which

(except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Shared Use Area (Landlord shall cooperate in the granting of appropriate and proper easements to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of these facilities (ii) the construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs; and (iii) subject to the prior written approval of Landlord, which will not be unreasonably withheld, the temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings, other improvements and appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work. If Landlord enters into an agreement with the District whereby it may use the Shared Use Area, the parties acknowledge that any change in maintenance obligations of Tenant for the Shared Use Area and any related change to the proportional shares of the Operating Costs will be addressed by Landlord, Tenant and other users of the Shared Use Area to fairly apportion the operating and maintenance obligations of the Shared Use Area.

## 6. COMPLIANCE

6.1 *Generally.* Tenant shall during the Term, at Tenant's expense, in all material respects: (a) comply with all Laws and Permitted Exceptions; and (b) procure and comply with all Approvals required by Law.

6.2 *Copies of Notices.* Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises and any notice of nonrenewal or threatened nonrenewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

## 7. MAINTENANCE AND CONSTRUCTION

7.1 *Obligation to Maintain Premises.* Except to the extent that (a) this Lease otherwise expressly provides or allows or (b) Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises and any Improvements constructed thereon by Tenant in good order, condition, and repair, subject to loss (governed by other provisions of this Lease), reasonable wear and tear, and any other condition that this Lease does not require Tenant to repair. Tenant's obligation to maintain the Premises and any Improvements thereon includes an obligation to make all repairs that the Premises or Improvements (including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises) may require by Law from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating. Tenant shall remove trash, snow, and debris from the Premises and the adjoining sidewalk, and maintain them in a reasonably clean condition. The provisions of this Section 7.1 address only Tenant's obligations for the Premises and do not apply to the Shared Use Area or the Shared Access Area.

### 7.2 *Construction.*

(a) Tenant's Construction Obligations. When they become available and after accepted by Landlord, Tenant shall attach to this Lease, as **Exhibit E**, the approved Plans and Specifications for the Improvements Tenant intends to construct on the Premises, which include, without

limitation, sketches and/or drawings showing substantially the location of the Improvements, including the layout of the buildings, driveways, parking, landscaping, and all ancillary maintenance and operating facilities, fixtures, equipment and improvements.

(b) Development and Construction of the Facility. After a building permit for the work shown on the Plans and Specifications has been issued, Tenant shall, through a contract with a reputable, licensed contractor or contractors, cause the development and construction of the Improvements to be carried out in substantial conformance with the Plans and Specifications and in a good and workmanlike manner using first class materials. Tenant shall be responsible for all costs associated with construction of the Improvements, and shall see that the development and construction of the Facility complies with all applicable land use, building, fire, health and sanitary codes and regulations, the satisfaction of which shall be evidenced by the applicable governmental agencies approving the Improvements for the use described herein.

7.3 *Obligation to Maintain Shared Access Area.* Tenant shall be responsible to construct and maintain any improvements in the Shared Access Area as described in the Easement Agreement, including any driving surface required to access the Premises.

7.4 *Obligation to Maintain Shared Use Area.* Tenant shall be responsible to install or construct any improvements in the Shared Use Area, including curbs and gutters, sidewalks, a detention pond and landscaping that may be required as part of development of the Premises. After the initial construction, Landlord shall be responsible to repair and maintain the improvements within the Shared Use Area. Tenant shall reimburse Landlord for its share of the Operating Costs as provided in Section 3.4. Tenant's obligation to reimburse Landlord for its share of the Operating Costs may be modified as provided in Section 5.4.

## **8. PROHIBITED LIENS**

8.1 *Tenant's Covenant.* If a Prohibited Lien is filed against the City Property then Tenant shall, within 30 days after receiving Notice from Landlord of such filing (but in any case within 15 days after Landlord Notifies Tenant of commencement of foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Lease shall be construed to obligate Tenant regarding any lien that results from any act or omission by Landlord.

8.2 *Protection of Landlord.* NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO

THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT, AND AGAINST ALL PROHIBITED LIENS.

## 9. HAZARDOUS SUBSTANCES

9.1 *Restrictions.* Tenant shall not cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless such action is both: (i) reasonably necessary and customary to conduct any legal business in the Premises in accordance with customary standards in such business or to operate and maintain the Premises for the Permitted Uses and (ii) in compliance with all Environmental Laws.

9.2 *Compliance; Clean-Up.* Tenant shall, at Tenant's expense: (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify Landlord against claims arising out of any Hazardous Substances Discharge or violation of Environmental Law. Any party's obligations under this paragraph shall not limit such party's rights against third parties.

## 10. INDEMNIFICATION

10.1 *Obligations.* Both Parties are governmental entities under the Governmental Immunity Act of Utah, §§ 63G-7-101 to -904 (2019), as amended (the "Act"). Consistent with the terms of the Act, it is mutually agreed that Landlord and Tenant shall be liable for their own wrongful or negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement, and each Party agrees to Indemnify the other Party for the same. Neither Landlord nor Tenant shall have any liability whatsoever for any negligent act or omission of the other Party, its employees, officers, or agents. Neither Party waives any defenses or limits of liability available under the Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Act and all other applicable Law.

## 11. INSURANCE

11.1 *Liability Insurance.* Tenant is to provide liability insurance coverage pursuant to the Act.

11.2 *Tenant to Insure.* Tenant shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent): Property Insurance.

11.3 *Nature of Insurance Program.* All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A-" or better and a financial size category rating by A.M. Best of VIII or higher; and (b) are lawfully doing business in the State. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s)

shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

11.4 *Policy Requirements and Endorsements.* All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

(a) *Insureds.* Liability Insurance policies shall name Landlord as an “additional insured.” Property Insurance policies shall name Landlord as loss payee as its interest may appear. Notwithstanding anything to the contrary in this paragraph, all Property Insurance Proceeds shall be paid and applied as this Lease provides.

(b) *Primary Coverage.* All policies shall be written as primary policies not contributing to or in excess of any coverage that Landlord may carry.

(c) *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage, for Tenant’s indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Tenant’s failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.

(d) *Notice to Landlord.* The insurance carrier shall undertake to give Landlord 30 days’ prior Notice of cancellation or nonrenewal, except for nonpayment of premiums when ten (10) days’ notice may be given, provided that failure to give such Notice shall not adversely affect the rights or increase the obligations of the insurance carrier.

11.5 *Deliveries to Landlord.* On the Commencement Date, and no later than 10 days before any Liability Insurance or Property Insurance expires or is cancelled, Tenant shall deliver to Landlord certificates of insurance evidencing Tenant’s maintenance of all Liability Insurance and Property Insurance this Lease requires, in each case providing coverage for at least one year from the date delivered. In the event of any dispute regarding Tenant’s compliance with the insurance requirements of this Lease, Tenant may at Tenant’s option obtain a certificate from a reputable insurance broker confirming such compliance. Such certificate shall be dispositive.

11.6 *Tenant’s Inability to Obtain Insurance.* So long as (a) any insurance (except Property Insurance) this Lease requires is, after diligent effort by Tenant, unobtainable at commercially reasonable rates through no act or omission by Tenant and (b) Tenant obtains the maximum insurance coverage reasonably obtainable and Notifies Landlord of the extent of Tenant’s inability to obtain the full insurance this Lease requires, Tenant’s obligation to procure and maintain such insurance as is unobtainable shall be excused, but only so long as conditions “a” and “b” are satisfied. Notwithstanding the foregoing, if Landlord at any time can procure for Tenant such insurance at commercially reasonable rates at any time after Tenant’s Notice of inability to do so (and before Tenant has withdrawn such Notice), then Tenant shall obtain and maintain such insurance at Tenant’s expense and pay Landlord a one-time administrative fee equal to 5% of the annual premium for such insurance.

11.7 *Waiver of Certain Claims.* To the extent that Landlord or Tenant purchases any policy of property insurance, the party purchasing such insurance (the “Insurance Purchaser”) shall attempt to cause the insurance carrier to agree to a Waiver of Subrogation, if not already in the policy. If any insurance policy cannot be obtained with a Waiver of Subrogation, or a Waiver of Subrogation is obtainable only by paying an additional premium, then the Insurance Purchaser shall so Notify the other party. The other

party shall then have 10 Business Days after receipt of such Notice either to (a) direct the Insurance Purchaser to place such insurance with a company reasonably satisfactory to the other party and willing to issue the insurance with a Waiver of Subrogation at no greater or additional cost; or (b) agree to pay the additional premium if such a policy can be obtained only at additional cost. To the extent that the parties actually obtain insurance with a Waiver of Subrogation, the parties release each other, and their respective authorized representatives, from any claims for damage to any person or the Premises that are caused by or result from risks insured against under such insurance policies.

11.8 *No Representation.* Neither party makes any representation that the limits, scope, or forms of insurance coverage this Lease requires are adequate or sufficient.

11.9 *Property Insurance Option.* Notwithstanding any other provision of this Lease, with the Tenant's consent, the Landlord may procure the Property Insurance required by Section 11.1 and the Tenant will reimburse the cost of the policy to the Landlord on an annual basis. Tenant will reimburse the cost to Landlord within thirty (30) calendar days of Landlord annually providing a copy of the purchased policy to Tenant.

11.10 *Compliance with Additional Insurance Requirements.* Notwithstanding the foregoing, Tenant shall comply in all material respects with any additional insurance requirements as may be reasonably set forth by an Institutional Lender to the extent that such requirements are not already established herein.

## **12. LOSSES AND LOSS PROCEEDS**

12.1 *Notice.* If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

12.2 *Effect of Casualty.* In the event that, at any time after the Commencement Date, the Improvements shall be destroyed or damaged in whole or in part, Tenant shall repair or remove, as determined at Tenant sole discretion, the Improvements.

12.3 *Substantial Condemnation.* If title to all or substantial portion of the Premises is subject to Condemnation, Tenant shall not be obligated to construct a similar Building; however, Tenant shall be entitled to its portion of the proceeds from such Condemnation.

12.4 *Insubstantial Condemnation.* If any part of the Premises, including the parking area, is subject to Condemnation and, in Tenant's discretion, the remaining part is reasonably suitable for Tenant's continued occupancy Tenant may, in its sole discretion, and at its own cost and expenses, redesign, redevelop and reconstruct the Improvements so as to make the remaining portion of the Premises suitable for Tenant's continued operation and use; however, Tenants shall be entitled to its portion of the proceeds from such Condemnation.

## **13. REPRESENTATIONS AND WARRANTIES**

Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Commencement Date. In addition, Tenant makes, for the benefit of Landlord, certain reciprocal representations and warranties as set forth below.

13.1 *Due Authorization and Execution.* Landlord has full right, title, authority, and capacity to execute and perform this Lease, the Memorandum of Lease, and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the “Lease-Related Documents”); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord’s organizational documents), contract, or other restriction to which Landlord is a party or is bound. Tenant makes to Landlord representations and warranties reciprocal to those in the preceding sentence. Both parties’ representations and warranties in this paragraph shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

13.2 *No Litigation.* To Landlord’s knowledge, no litigation in the State of Utah or federal court has been served on Landlord affecting Landlord or the Premises that would, if adversely determined, materially adversely affect Landlord, the Premises, this Lease, the Leasehold Estate, or Tenant’s ability to develop and operate the Premises for the Permitted Use.

13.3 *No Pending Condemnation.* There is no existing or, to Landlord’s knowledge, pending or threatened Condemnation affecting any portion of the Premises or any pending public improvements in, about, outside, or appurtenant to the Premises that will materially adversely affect the use and operation of the Premises for the Permitted Use, the value of the Premises, or access to the Premises or that will create additional cost to any owner or Tenant of the Premises by means of special assessments or otherwise.

## **14. LANDLORD’S TRANSFERS**

14.1 *Landlord’s Right to Convey.* Landlord may Transfer the Fee Estate from time to time, but only if Landlord promptly Notifies Tenant of such Transfer. Unless otherwise provided for herein, Landlord shall not Transfer the Fee Estate to a non-governmental entity without Tenant’s express written consent, which shall not be unreasonably withheld. In connection with any such Transfer, Landlord shall cause the assignee to agree to assume all of the obligations of this Lease.

14.2 *Release of Landlord.* Upon any Transfer of the entire Fee Estate in compliance with this Lease, the Landlord shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord after the Transfer. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer.

## **15. TENANT’S TRANSFERS**

Tenant may not Transfer this Lease or the Leasehold Estate without Landlord’s prior written consent, which may be granted or withheld in Landlord’s sole discretion. Any assignee of Tenant shall assume all obligations and liabilities of Tenant under this Lease. Tenant shall promptly Notify Landlord of any desire/need to Transfer. After Tenant assigns this Lease and the assignee assumes it, the assignor shall have no obligation or liability under this Lease, except any unperformed obligations that arose before the assignment (unless assumed in writing, in recordable form, by the assignee. If Tenant assigns this Lease, then as between Landlord and Tenant, Tenant shall be deemed to have assigned to the assignee or



transferee all claims against Landlord then existing, and the assignee shall be deemed, by assuming this Lease, to have assumed all liabilities and obligations of Tenant then existing or thereafter arising under this Lease (except as this Lease otherwise expressly states).

## 16. SUBLEASES

16.1 *Tenant's Right.* Tenant may not enter into any sublease without Landlord's prior written consent, which shall not be unreasonably withheld. No Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any sublease shall expire no later than one hour before the Expiration Date. The fact that any subtenant causes any Default shall not relieve Tenant of Tenant's obligation to cure it. Tenant shall take all steps reasonable and necessary to prevent any such Default.

16.2 *Tenant Affiliate.* Tenant may assign this Lease or sublease the Property without Landlord's consent, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from the merger of or consolidation with Tenant ("Tenant's Affiliate"). In such case, as a condition to be performed within 30 days of any such assignment or sublease, Tenant's Affiliate shall assume in writing all of Tenant's obligations under this Lease, without the release of Tenant.

16.3 *Conditions to Effectiveness of Certain Transactions.* No assignment of this Lease or sublease of (substantially) the entire Premises shall be effective or have any validity unless and until such assignment or Sublease otherwise complies with this Lease and Landlord has received: (a) in the case of an assignment, an executed counterpart of the assignment and an assumption of this Lease by the assignee, in recordable form, effective as of the date of assignment; (b) in the case of a sublease of all or substantially all the Premises, a copy of the executed sublease complying with this Lease; and (c) Notice of the assignee or subtenant.

## 17. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS

17.1 *Quiet Enjoyment.* So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

17.2 *Access and Inspection.* Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees may enter the Premises upon reasonable Notice during regular business hours, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective transferee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against any claims arising from Landlord's entry upon the Premises (except upon termination of this Lease or an Event of Default).

17.3 *Title.* Notwithstanding anything to the contrary in this Lease, all Improvements, Building Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises

shall during the Term be owned by, and belong to, Tenant. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant during the Term.

## **18. EVENTS OF DEFAULT; REMEDIES**

18.1 *Definition of "Event of Default"*. An "Event of Default" means the occurrence of any one or more of the following:

(a) *Monetary Default*. If a Monetary Default occurs and continues for 30 days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

(b) *Prohibited Liens*. If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 15 days after Notice from Landlord.

(c) *Nonmonetary Default*. If any other Nonmonetary Default occurs and Tenant does not cure it within 60 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within 60 days from such Notice, if Tenant shall not (1) within 60 days or such lesser or greater time as circumstances may reasonably justify from Landlord's Notice advise Landlord of Tenant's intention to take all reasonable steps to cure such Nonmonetary Default; (2) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (3) complete such cure within a reasonable time under the circumstances (not necessarily limited to 60 days).

18.2 It is understood and agreed by the parties hereto that funds are not presently available for performance of this Lease by Tenant. Tenant's obligation for performance of this Lease beyond that date is contingent upon funds being appropriated for payments and other obligations due under this Lease. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year by Tenant for payments and other obligations due under this Lease for the current or any succeeding fiscal year, this Lease shall create no obligation on Tenant as to such current or succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective, except as to those portions of payments herein then agreed upon for which funds shall have been appropriated and budgeted. Said termination shall not be construed as a breach of this Lease or an Event of Default and said termination shall be without penalty, additional payments, or other expense to the parties of any kind whatsoever; however Tenant must vacate the Premises and title for the property shall merge together with Landlord's ownership of the City Property.

18.3 *Landlord Remedies*. Upon the occurrence of an Event of Default, then Landlord may exercise any remedy available in law or in equity.

18.4 *Tenant Remedies*. If Landlord fails to perform any obligations and duties provided in this Lease after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within sixty (60) days after the date of written demand by Tenant to Landlord to perform such obligation and duty, or, in the case of a default not susceptible of cure within such 60-day period, the Landlord fails promptly to commence to cure such default and thereafter to prosecute diligently such cure

to completion as soon as reasonably practicable (assuming good faith prosecution of the cure), Tenant may seek to specifically enforce this Lease and may seek injunctive relief as necessary to obtain such specific enforcement.

## **19. END OF TERM; EARLY TERMINATION; EXPIRATION**

### *19.1 End of Term.*

19.1.1 Except as expressly set forth herein, upon any Expiration Date, Tenant shall:

- (a) deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any loss that this Lease does not require Tenant to restore;
- (b) surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires;
- (c) deliver the Premises free and clear of all (i) subleases, and (ii) liens except (1) Permitted Exceptions and (2) liens that Landlord or any of its agents caused;
- (d) assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, warranties, and guarantees then in effect for the Premises, and upon written request from Landlord, Tenant shall assign to Landlord assignable contracts identified in the request.

19.1.2 Except as expressly set forth herein, upon any Expiration Date, the Parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires. Notwithstanding anything to the contrary in this paragraph, Tenant may remove from the Premises any FF&E and Building Equipment that (in either case) Tenant acquired after the Commencement Date, but Tenant must do so, if at all, before or within 60 days after the Expiration Date. Tenant shall repair any material damage from any such removal. During such 60-day period: (1) Tenant may enter the Premises for such purposes, without being deemed a holdover; (2) Landlord shall have no obligation to preserve or protect such FF&E or Building Equipment; and (3) when in entering the Premises, Tenant shall comply with Landlord's reasonable instructions. Tenant's FF&E and Building Equipment not removed within 60 days after the Expiration Date shall be deemed abandoned.

19.2 *Landlord's Termination for Cause; Tenant's Termination for Convenience.* If Landlord terminates this Lease for cause due to an Event of Default, or if Tenant terminates this Lease for Convenience, Tenant must vacate the Premises and the ownership of the Building shall merge together with Landlord's ownership of the City Property. Landlord shall have the option to refuse to take ownership of the Building and require Tenant to remove the Building and Improvements and restore the Premises to a condition reasonably similar to the condition existing prior to the Commencement Date or a satisfactory condition agreed upon by Landlord and Tenant. Landlord may exercise its option by providing Notice to Tenant no more than thirty days after the Expiration Date. If Landlord exercises its option to require removal and restoration, Tenant shall be liable for all costs associated with removal, restoration and completing the delivery of the Premises required by section 19.1 of this Lease; Tenant shall not be required to transfer operations to Landlord.

19.3 *Tenant's Termination for Cause; Landlord's Termination for Convenience.* If Tenant terminates this Lease for cause due to an Event of Default, or if Landlord terminates for convenience, Tenant may, in addition to any other available remedies, vacate the Premises without any obligation to remove or restore the Building, and, Landlord shall have the option to purchase the Building from Tenant.

For purposes of this Section 19.3 only, the purchase price of the Building shall equal the straight-line depreciated value of the Building as of the date of termination, with the Building having a value of 100% of actual construction costs on the Commencement Date and 0% on the 50<sup>th</sup> anniversary of the Commencement Date. If Landlord declines to purchase the Building, Tenant shall have the option to purchase the Premises for the Purchase Price (as defined below). If Landlord purchases the Building, operations shall be transferred in accordance with section 19.1.2 of this Lease.

## **20. NOTICES**

All Notices shall be in writing and addressed to Landlord and Tenant (and their designated copy recipients) as set forth in **Exhibit D**. Notices shall be delivered by Federal Express or other overnight (one-night) courier service to the addresses set forth in Exhibit D, in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Notwithstanding the foregoing, Notices for the regular payment of Fixed Rent under this Lease (as opposed to late payments, for example) may be sent by first class mail, in which case they shall be deemed delivered three Business Days after deposit in the United States mail, provided that no postal strike (or other event likely to disrupt postal service) is then in effect. Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

## **21. NO BROKER**

Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease and no person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall Indemnify the other party against any breach of such representation.

## **22. NONRECOURSE**

Notwithstanding anything to the contrary in this Lease except for indemnification obligations set forth herein, the liability under this Lease of Landlord and Tenant for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including the proceeds thereof). No property or assets whatsoever, except Landlord's or Tenant's (as applicable) interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. No officer, agent, or employee of Tenant or Landlord shall have any liability under this Lease. (This Lease sometimes refers to this paragraph as the "Nonrecourse Clause.")

## **23. ADDITIONAL DELIVERIES; THIRD PARTIES**

23.1 *Memorandum of Lease*. Upon request by either, the parties shall promptly execute, acknowledge, and deliver duplicate originals of a Memorandum of Lease. Either party may record such Memorandum of Lease. If the parties amend this Lease, then the parties shall have the same rights and obligations regarding a memorandum of such amendment as they do for the Memorandum of Lease.

Subject to the provisions of Section 19, either party may at any time by Notice to the other party elect to require the Memorandum of Lease to be terminated.

23.2 *Modification.* Any modification of this Lease must be in writing signed by both parties.

23.3 *Successors and Assigns.* This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Landlord and Tenant) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

## 24. RIGHT TO PURCHASE

24.1 At any time during the Term the parties may negotiate in good faith to terminate this Lease so that the Tenant may purchase the Premises (the "Purchase Right"). The purchase price for Tenant's exercise of its Purchase Right shall be as follows (the "Purchase Price"):

(a) The purchase price shall be the appraised fair market value of the Premises, excluding the Improvements (the "FMV Purchase Price"); or

(b) If the Purchase Right is exercise during the last twelve (12) months of the Term, the purchase price shall be One Dollar (\$1.00).

If Tenant has not exercise the Purchase Right before the last twelve (12) months of the Term, Tenant shall be deemed to have exercised the Purchase Right at the expiration of the Term, unless Tenant provides sixty (60) days' prior written notice to Landlord that Tenant does not intend to exercise the Purchase Right.

24.2 All Fixed Rent paid under this Lease through the closing date of the Purchase Right (the "Closing Date") shall be credited against the FMV Purchase Price, if applicable. On the Closing Date of the Purchase Right, Landlord shall convey to Tenant, by warranty deed, fee simple title to the Premises, subject only to the liens of taxes and other charges payable by Tenant under this Lease, all Permitted Exceptions, and such other matters as may be created by Tenant, or by Landlord at Tenant's request. The cost of the premium for the title insurance policy to be issued to Tenant on the Closing Date, all escrow and recording fees payable with respect to the conveyance, and all other costs of the closing shall be paid by Tenant. Tenant shall continue to pay all Fixed Rent and other amounts due hereunder and to comply fully with all provisions of this Lease until and including the Closing Date, prorated for any partial lease period. Except for the warranties of title set forth in the warranty deed and as otherwise provided in this Lease, Tenant agrees that Tenant shall be purchasing the Premises from Landlord on as 'AS IS' basis and that Tenant will not be relying on any representations or warranties of Landlord of any nature whatsoever concerning the Premises in connection with the purchase, including representations and warranties concerning the Premises, the Improvements, development rights, taxes, permissible uses, water or water rights, topography, utilities, zoning, subdivision, and land use laws and regulations, soil, subsoil, the purposes for which the Premises are to be used, drainage, environmental or building laws, rules or regulations or any other representations or warranties.

## 25. MISCELLANEOUS

25.1 *Confidentiality.* Subject to applicable law, including the Utah Government Records Access and Management Act ("GRAMA"), Utah Code Ann. §§ 63G-2-101 *et seq.*, Landlord shall maintain the

confidentiality of any information that Tenant gives Landlord about the Premises. Landlord shall require any actual or prospective transferee to maintain the confidentiality of such materials, all under a direct confidentiality agreement between Tenant and such actual or prospective transferee, in normal and customary form reasonably satisfactory to Tenant.

25.2 *No Consequential Damages.* Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

25.3 *No Waiver by Silence.* Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

25.4 *Performance Under Protest.* If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.

25.5 *Force Majeure.* In the event that Landlord or Tenant shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of riots, insurrection, war, acts of God, or the act, failure to act, or default of the other Party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

25.6 *Survival.* All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

25.7 *Voluntary Surrender.* Landlord shall not accept a voluntary surrender of this Lease.

25.8 *No Merger.* There shall be no merger of this Lease nor of the Leasehold Estate created by this Lease with the Fee Estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate and (b) the Fee Estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities having any interest in (x) this Lease or the Leasehold Estate created by this Lease and (y) the Fee Estate in the Premises or any part thereof or any interest in such Fee Estate shall join in a written instrument effecting such merger and shall duly record the same.

## 26. INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

26.1 *Captions.* The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

26.2 *Counterparts.* This Lease may be executed in counterparts.

26.3 *Delivery of Drafts.* Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

26.4 *Entire Agreement.* This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises, as the case may be.

26.5 *Governing Law.* This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.

26.6 *Partial Invalidity.* If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

26.7 *Principles of Interpretation.* No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

26.8 *Reasonableness.* Wherever this Lease states that a party shall not unreasonably withhold approval: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK – SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE  
GROUND LEASE**

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed as of the date first above written.

**LANDLORD:**

**SANDY CITY CORPORATION,**

By: \_\_\_\_\_

Mayor or Designee

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Darren Alcorn, City Attorney



**COUNTERPART SIGNATURE PAGE  
GROUND LEASE**

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed as of the date first above written.

**TENANT:**

**TRANS-JORDAN CITIES**

By: \_\_\_\_\_  
its Chairman or Designee

APPROVED AS TO FORM:

\_\_\_\_\_  
H. Craig Hall  
Counsel for Trans-Jordan

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE CITY PROPERTY**

That certain real property located in Salt Lake County, Utah more particularly described as follows:

**Sandy City Public Works Property Description**

**Parcel No. 27-01-101-041**

Warranty Deed, Entry No. 1731013, Book 1733, Page 128  
Recorded August 11, 1960:

Commencing at a point 20 rods North of the Southwest corner of the Northwest quarter of Section 1, Township 3 South, Range 1 West, Salt Lake Meridian,  
and running thence East 41.3 rods;  
thence North 17°10' East 5 ½ rods;  
thence North 86°30' East 5.2 rods;  
thence North 108.9 rods;  
thence West 46.6 rods;  
thence South 114.4 rods to the place of beginning.

**LESS AND EXCEPTING** therefrom the following parcel of land described in that certain Deed recorded August 14, 1989 as Entry No. 4810655 in Book 6150 at Page 2653 in the office of the Salt Lake County Recorder described as follows:

Beginning at a point which is 354.13 feet North 0°14'04" East along the section line and 33.00 feet North 89°42'55" East from the West Quarter corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian,  
and running thence North 89°42'55" East 615.73 Feet, to the Galena Canal;  
thence North 44°27'02" East 186.06 Feet,  
thence leaving the canal and running North 0°03'12" East 726.25 Feet;  
thence North 89°58'47" West 743.58 Feet to the East Line of 700 West Street;  
thence South 0°14'04" West 862.70 Feet to the point of beginning.

Also as surveyed in that ALTA/NSPS survey filed with the Salt Lake County Surveyor's Office as S2018-03-208 dated February 21, 2018, performed by Ensign Engineering:

**EXHIBIT A**

GROUND LEASE

AS-SURVEYED DESCRIPTION

Beginning on the Easterly Right-of Way Of 700 West Street, said point also being South 00°13'50" West 425.07 feet and North 89°42'55" East 33.00 feet from the Northwest Corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running:

thence South 89°59'04" East 740.00 feet;

thence South 00°02'58" West 1,002.00 feet;

thence North 89°59'01" West 743.16 feet to a point on the Easterly Right-of Way of 700 West Street;

thence North 00°13'50" East 1,002.00 feet along said Right of Way to the point of beginning.

Contains 743,061 square feet or 17.058 acres.

EXHIBIT A

**EXHIBIT B**

DEPICTION OF THE PREMISES

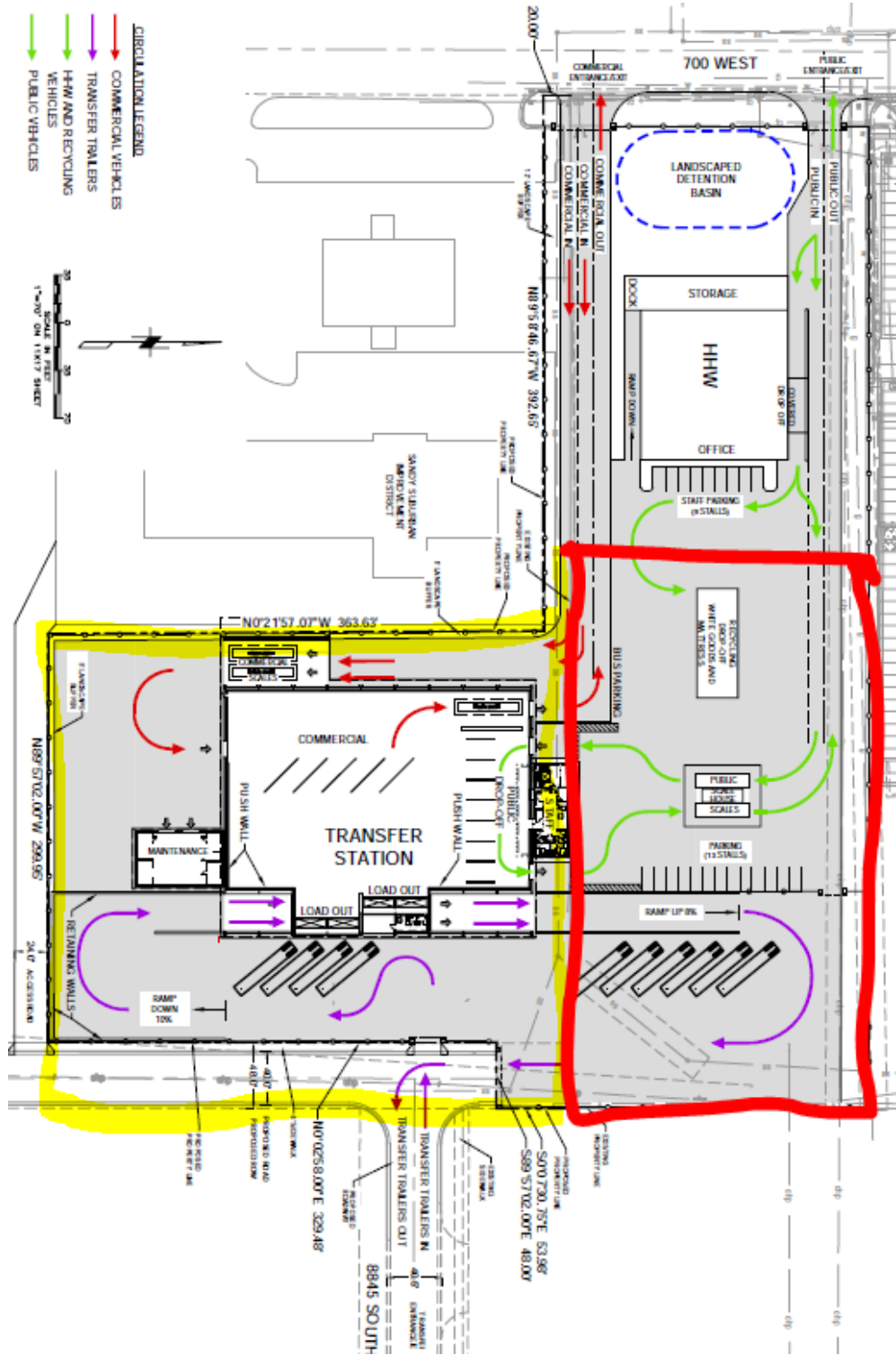
(This Exhibit may be replaced with a new map depicting the Premises, the Shared Access Area, and the Shared Use Area based upon any Plans and Specifications attached to the Lease as Exhibit E.)

That certain real property located in Sandy City, Utah more particularly described as follows:

**EXHIBIT B**

GROUND LEASE

**RED:** outline shows land to be lease-to-own in this Agreement with Sandy City  
**YELLOW:** outline shows land leased-to-own from SSID



**EXHIBIT C**

**FIXED RENT**

\$10.00 on the first day of the term.

One Dollar (\$1.00) per Lease Year.

**EXHIBIT D**

**NOTICE ADDRESSEES  
(INCLUDING REQUIRED COPY RECIPIENTS)**

<b>Party:</b>	<b>Notice Address:</b>	<b>With a Copy to:</b>
Landlord	Sandy City Corporation	
Tenant	Trans-Jordan Cities Attn: Executive Director 10476 South Bacchus Hwy South Jordan, UT 84009-6002	H. Craig Hall Bennett Tueller Johnson & Deere 3165 East Millrock Drive Suite 500 Salt Lake City, UT 84121-5027

**EXHIBIT E**

**PLANS AND SPECIFICATIONS**

(To be inserted when available and approved by Landlord)

**EXHIBIT E**