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**PUBLIC NOTICE**

Notice is Hereby Given that the Board of the Redevelopment Agency of Tooele City, Utah, (RDA) will Meet in a Business Meeting on Wednesday, February 5, 2020, at the Approximate Hour of 8:00 p.m. The Meeting will be Held at the Tooele City Hall Council Chambers, Located at 90 North Main Street, Tooele, Utah.

1. **Open Meeting**
2. **Roll Call**
3. **Resolution 2020-01** A Resolution of the Redevelopment Agency of Tooele City, Utah, Approving Amendment #1 to Addendum #6 to a Purchase and Sale Agreement for 33 Acres of Land Located at Main Street and 1000 North Street  
Presented by Mayor Debbie Winn
4. **Resolution 2020-02** A Resolution of the Redevelopment Agency of Tooele City, Utah, Approving a Development and Participation Agreement with Interline Group, LLC, Tally Three, LLC, MRI Investment, LLC, and 1030 Salt Lake City, LLC, for 33 Acres of Land Located at Main Street and 1000 North Street  
Presented by Mayor Debbie Winn
5. **Adjourn**

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Michelle Y. Pitt,  
Tooele City Recorder/RDA Secretary

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 435-843-2113 or [michellep@tooelecity.org](mailto:michellep@tooelecity.org), Prior to the Meeting.

## REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH

### RESOLUTION 2020-01

#### **A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH APPROVING AMENDMENT #1 TO ADDENDUM #6 TO A PURCHASE AND SALE AGREEMENT FOR 33 ACRES OF LAND LOCATED AT MAIN STREET AND 1000 NORTH STREET.**

WHEREAS, the Redevelopment Agency of Tooele City, Utah (the "RDA"), owns approximately 33 acres of commercially-zoned property (the "Property") upon which Tooele City, through the RDA, desires to establish a vibrant, quality retail commercial development (the "Project"); and,

WHEREAS, by RDA Resolution 2018-03, approved by the RDA Board on April 4, 2018, the RDA entered into a purchase and sale agreement ("Agreement") to sell the Property to M-53 Associates ("Kimball") to realize the Project; and,

WHEREAS, Kimball has assigned the Agreement to four Kimball-affiliated companies named Interline Group, LLC, Tally Three, LLC, MRI Investment, LLC, and 1030 Salt Lake City, LLC (collectively the "Companies"); and,

WHEREAS, on August 1, 2018, the RDA Board approved an Addendum #1 to the Agreement in order to extend the due diligence deadline to October 15, 2018, and the closing deadline to November 1, 2018; and,

WHEREAS, the RDA Board rejected a proposed Addendum #2 to the Agreement; and,

WHEREAS, by RDA Resolution 2018-07, approved on November 7, 2018, the RDA Board approved and ratified Agreement Addendum #3, which extended the due diligence deadline to December 21, 2018, and the closing deadline to 15 days following the execution of a development agreement for the Project; and,

WHEREAS, by RDA Resolution 2018-09, approved on December 19, 2018, the RDA Board approved Agreement Addendum #4, which extended the due diligence period until February 8, 2019, and further defined the closing deadline; and,

WHEREAS, by RDA Resolution 2019-04, approved on February 8, 2019, the RDA Board approved Agreement Addendum #5, which extended the due diligence period until March 29, 2019, and further define the closing terms; and,

WHEREAS, by RDA Resolution 2019-05, approved on March 4, 2019, the RDA Board approved Agreement Addendum #6, which implemented an RDA buy-back or "put" provision in the Agreement; and,

WHEREAS, Kimball has requested an Amendment to Agreement Addendum #6 to extend the “put” for 24 months from June 4, 2020, to June 4, 2022; and,

WHEREAS, the Project is anticipated to bring increased sales tax revenues, increased property tax revenues, increased employment opportunities, and increased local shopping and dining options, as well as eliminate a blighted, vacant commercial area in what has become a focal point in Tooele City, namely, the confluence of Main Street (State Road 36) and 1000 North Street (State Road 112); and,

WHEREAS, the RDA Board makes a finding that approving the Amendment to Addendum #6 is in the best fiscal and economic development interest of Tooele City:

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH that the Amendment to Agreement Addendum #6, attached as Exhibit A, is hereby approved.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Board of the Redevelopment Agency of Tooele City, Utah, this \_\_\_\_ day of \_\_\_\_\_, 2020.

TOOELE CITY RDA

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

RDA CHAIRMAN

(Approved)

(Disapproved)

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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, RDA Secretary

S E A L

Approved as to Form: \_\_\_\_\_  
Roger Evans Baker, RDA Attorney

# EXHIBIT A

Amendment to Addendum #6  
to  
Purchase and Sale Agreement

**AMENDMENT TO ADDENDUM NO. 6  
TO REAL ESTATE PURCHASE CONTRACT**

THIS AMENDMENT (the "Amendment") is made and entered into effective as of the \_\_\_\_\_ day of January, 2020 (the "Effective Date"), by and between the REDEVELOPMENT AGENCY OF TOOELE CITY, a political subdivision of the State of Utah ("Seller"), and INTERLINE GROUP, LLC, TALLY THREE, LLC, MRI INVESTMENT, LLC and 1030 SALT LAKE CITY, LLC, all as assignees of M-53 Associates, LLC (collectively "Buyer"), each a "Party, and collectively the "Parties" herein.

**RECITALS**

A. Seller and Buyer's predecessor in interest entered into that certain Real Estate Purchase Contract dated as of April 4, 2018, as amended and modified, including by an Addendum No. 6 to Real Estate Purchase Contract dated as of March 4, 2019 (collectively the "Contract"). The Contract pertains to approximately 31 acres of undeveloped real property located at approximately 1000 North and Main Street in Tooele City, Tooele County, Utah (the "Property").

B. Pursuant to paragraph 3 of Addendum No. 6 to the Contract, Buyer has the right to "put" the Property back to the Seller and require the Seller to repurchase the Property from Buyer, during the time period that expires fifteen (15) months following the recording of the deed to the Property from Seller to Buyer (e.g., such "put" currently expiring June 4, 2020).

C. Seller and Buyer desire to extend the time period in which Buyer may elect to "put" the Property back to Seller, and are entering into this Amendment to set forth their agreement to do so.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants set forth herein, and Ten Dollars and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Paragraph 3 of Addendum No. 6 to the Contract is hereby amended to provide that Buyer shall have two (2) years from the currently scheduled expiration of the "put" (e.g., until June 4, 2022) to "put" the Property back to Seller, and to require Seller to repurchase the Property from Buyer, in accordance with the other terms and conditions of paragraph 3 of Addendum No. 6.

2. Except as expressly modified by paragraph 1 above of this Amendment, all other terms and conditions of the Contract, including Addendum No. 6 to the Contract, remain in full force and effect.

3. This Amendment survives the Closing of Buyer's purchase of the Property, as do the other provisions of Addendum No. 6 to the Contract which are specified therein to survive the Closing.



4. The terms of this Amendment may only be amended, modified or waived by a written agreement signed by all of the Parties.

5. Each Party to this Amendment represents and warrants to each of the other Parties to this Amendment that execution and delivery of this Amendment, and the transactions contemplated hereby, have been duly authorized by all necessary governmental and company actions.

6. This Amendment may be executed in counterparts which taken together shall constitute an original document.

Executed to be effective as of the date first listed above.

*[Signature page to Amendment follows.]*

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a checkmark-like flourish.

**SIGNATURE PAGE TO AMENDMENT**

**SELLER:**

REDEVELOPMENT AGENCY OF TOOELE CITY,  
a Utah political subdivision

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
RDA Secretary

Approved as to Form:

\_\_\_\_\_  
Attorney for RDA

**BUYER:**

INTERLINE GROUP, LLC

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

TALLY THREE, LLC

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

MRI INVESTMENT, LLC

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

1030 SALT LAKE CITY, LLC

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

(as assignor to Buyer)

M-53 ASSOCIATES, LLC

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





**REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH**

**RESOLUTION 2020-02**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH, APPROVING A DEVELOPMENT AND PARTICIPATION AGREEMENT WITH INTERLINE GROUP, LLC, TALLY THREE, LLC, MRI INVESTMENT, LLC, AND 1030 SALT LAKE CITY, LLC, FOR 33 ACRES OF LAND LOCATED AT MAIN STREET AND 1000 NORTH STREET.**

WHEREAS, the Redevelopment Agency of Tooele City, Utah (the "RDA"), owned approximately 33 acres of commercially-zoned property (the "Property") upon which Tooele City, through the RDA, desires to establish a vibrant, quality retail commercial development (the "Project"); and,

WHEREAS, the RDA entered into a Purchase and Sale Agreement and seven addenda and amendments to that agreement (collectively the "Agreement") to sell the Property to M-53 Associates ("Kimball") to realize the Project, and the conveyance contemplated by the Agreement has closed; and,

WHEREAS, Kimball assigned its interest in the Agreement to Interline Group, LLC, Tally Three, LLC, MRI Investment, LLC, and 1030 Salt Lake City, LLC, (collectively the "Companies"); and,

WHEREAS, the Agreement left unaddressed development and tax increment participation questions that the RDA and the Companies believe are best addressed through a Development and Participation Agreement (see Exhibit A, without exhibits); and,

WHEREAS, the Project is anticipated to bring increased sales tax revenues, increased property tax revenues, increased employment opportunities, and increased local shopping and dining options, as well as eliminate a blighted, vacant commercial area in what has become a focal point in Tooele City, namely, the confluence of Main Street (State Road 36) and 1000 North Street (State Road 112); and,

WHEREAS, the RDA Board makes a finding that approving the Development and Participation Agreement is in the best fiscal and economic development interest of Tooele City:

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH that the Development and Participation Agreement is hereby approved substantially in the form of Exhibit A, and that the RDA Executive Director is hereby authorized to execute the same.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Board of the Redevelopment Agency of Tooele City, Utah, this \_\_\_\_ day of \_\_\_\_\_, 2020.

TOOELE CITY RDA

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

RDA CHAIRMAN

(Approved)

(Disapproved)

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ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, RDA Secretary

S E A L

Approved as to Form: \_\_\_\_\_  
Roger Evans Baker, RDA Attorney

# EXHIBIT A

## Development and Participation Agreement

## DEVELOPMENT AND PARTICIPATION AGREEMENT

THIS DEVELOPMENT AND PARTICIPATION AGREEMENT (this “**Agreement**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”) by and between: (i) **INTERLINE GROUP, LLC**, a Utah limited liability company (ii) **TALLY THREE, LLC**, a Utah limited liability company, (iii) **MRI INVESTMENT, LLC**, a Utah limited liability company, and (iv) **1030 SALT LAKE CITY, LLC**, a Utah limited liability company (collectively, the “**Company**”) and the **Redevelopment Agency of Tooele City, Utah, a political subdivision of the State of Utah** (the “**Agency**”). The Agency and the Company agree as follows:

1. Background.

1.1. Under a Real Estate Purchase Contract dated April 4, 2018 (as modified or amended from time to time, the “**REPC**”), the Company acquired from the Agency, certain unimproved land described in the attached **Exhibit A** (the “**Property**”).

1.2. The Company agrees to develop the Property substantially according to the master site plan (the “**Approved Site Plan**”) attached as **Exhibit B** (as described in the Approved Site Plan, the “**Project**”). Except as otherwise provided below, and except as may be required by Tooele City during the entitlement process, the Approved Site Plan may not be substantially amended in any manner that adversely affects the interests of the Agency without the consent of the Agency’s Board and Executive Director. As a condition to all payment obligations of the Agency under this Agreement, the Company agrees that it will not develop, or permit to be developed, the Property in any way that is not consistent with the Approved Site Plan, as it may be amended and modified. Notwithstanding the foregoing, however, the Company retains sole discretion to make, without any requirement for Agency approval, revisions to the Approved Site Plan (i) in order to accommodate demands or requests from City administrative staff, (ii) reconfigure the size and location of building lots and development parcels, and buildings and improvements located thereon; or (iii) that do not “substantially amend” the Site Plan. For purposes of this section 1.2, the term “substantially amend” means to reduce the combined square footage of commercial building improvements by more than 25% of the square footage shown in the attached **Exhibit B**. Regarding the undefined lots shown in the Approved Site Plan, the Company agrees to provide the Agency with written notice of the intended use of those Lots within thirty days after the Company has identified the use for the Lot. However, the Company agrees that no additional residential development is permitted on the Property other than as expressly shown on the original Approved Site Plan without the prior consent of the Agency’s governing board by resolution. The construction or development of any residential improvements beyond what is expressly shown on the original Approved Site Plan, without such a resolution first being approved by the Board in the Board’s sole discretion, will result in the immediate and permanent termination of all further payment obligations of the Agency to the Company.

1.3. The Agency has created the 1000 North Retail Community Reinvestment Project Area (the “**Project Area**”), through the adoption of the 1000 North Retail Community Reinvestment Project Area Plan (the “**Project Area Plan**”). The Property is located within the boundaries of the Project Area.

1.4. Due to its location within the Project Area, the Property generates tax increment revenues that are diverted to the Agency under various interlocal cooperation agreements (the

“ILAs” as further described *below*) entered into by and between the Agency and various taxing entities, respectively, within the Project Area.

1.5. The Company has presented to the Agency and its consultants sufficient information, including development plans and alternatives, financial statements, and other information, showing justification for the Agency’s participation in certain development costs for the Project, as provided *below*.

2. Tax Increment.

2.1. This Agreement refers to “tax increment” which is a term defined by Utah Code Ann. § 17C-1-102(60) (2018). The term “tax increment” in this Agreement has the same meaning as defined by that statute (as amended, replaced, or superseded from time to time). The parties acknowledge that tax increment generally refers to the additional ad valorem tax revenues generated by the increase in value of taxable real and personal property resulting from new development and construction within the Project Area.

2.2. The Agency is entitled to collect a portion of tax increment from the property located within the Project Area boundaries as expressly provided under the ILAs. A copy of each of the ILAs is attached hereto as **Exhibit C**. For informational purposes, the Agency has entered into ILAs with each of the following taxing entities within the Project Area: (i) Tooele City (the “City”), and (ii) Tooele School District. All provisions, terms, conditions and obligations under the ILAs are hereby incorporated into this Agreement and the Company assumes, subject to receiving all necessary City approvals, permits and entitlements for the Project, all the risk relating to the development of the Project necessary for satisfaction of those provisions, terms, conditions and obligations, relating to tax increment under this Agreement.

2.3. The Agency represents and warrants that it has not encumbered or pledged tax increment from the Property. The Agency agrees that the Agency will not, without the prior written consent of the Company, which may be withheld in the Company’s sole discretion, issue any bonds and other indebtedness that are secured by tax increment from the Property until such time as Company has been reimbursed all amounts required under this Agreement, unless such obligations are subordinate to the rights of the Company under this Agreement.

2.4. The Agency agrees that the Agency will not, without the prior written consent of the Company, which may be withheld in the Company’s sole discretion, until such time as Company has been reimbursed all amounts required under this Agreement, cause, permit, or consent to any modifications or amendments to any of the ILAs 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. Project Financing. The Company is solely responsible for all the costs of acquisition, development, construction, maintenance, ownership, repair, etc., of the Project. However, the Agency agrees to participate with the Company in financing certain development costs solely by paying the following:

3.1. *Guaranteed Payment:* Upon commencement of construction (“Construction”) of any portion of the Project by the Company (including, without limitation, site prep work), the Agency agrees to pay the Company the amount of \$150,000 per year for 15 years (each an “Annual \$150K Payment”). This totals \$2,250,000. The Agency will make the first Annual \$150K Payment within 60

days after the date on which the Company commences Construction and will continue annually by the same date of each succeeding year, for 14 additional years. The Agency will provide the Annual \$150K Payments from any legally-available funds of the Agency, other than from the tax increment generated by the Property; to be clear, the obligation to pay the Annual \$150K Payments is in addition to the obligations of the Agency under subsection 3.2 immediately *below*; the obligation of the Agency to pay each of the Annual \$150K Payments is not conditional on the Agency receiving tax increment from the Property.

### 3.2. *Tax Increment:*

3.2.1. This subsection 3.2.1 is subject to the “Reimbursement Cap Amount” limitations described in subsection 3.2.2. As a condition to all obligations of the Agency under this subsection 3.2, the Company agrees that it must first obtain a temporary or permanent certificate of occupancy for the building shell (meaning the completed structure before specific tenant improvements) for at least 20,000 square feet of commercial development according to the Approved Site Plan (the “Development Condition”). Upon satisfaction of the Development Condition, the Agency will pay to the Company 95% of all tax increment revenues generated by, and actually received by, the Agency annually under the ILAs from the Property within the Project Area (each an “Annual TIF Payment”), for a period of 20 years; *i.e.*, for a total of 20 Annual TIF Payments, or until the Reimbursement Cap Amount described in subsection 3.2.2 has been paid (whichever occurs first). The Agency will trigger its right to collect tax increment from the Project, and thus will make the first Annual TIF Payment to the Company, beginning with the first full calendar year after the date on which the Company has commenced construction (including, without limitation, site prep work) on the Project. The Agency will make each Annual TIF Payment within 30 days after the Agency has received the final payment of tax increment for the applicable year from the Tooele County Treasurer. Despite anything in this Agreement to the contrary: all obligations of the Agency to pay any tax increment to the Company are conditional on the Company or the property owner timely and properly paying all taxes assessed on or generated from the Property, including but not necessarily limited to real property, personal property, ad valorem, and sales taxes, to the appropriate taxing authorities; and 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 Agency will retain for its administrative expenses the remaining 5% of the tax increment revenues generated by the Property. For informational purposes, the Agency typically receives final tax increment payments from the Tooele County Treasurer in April or May (for the preceding tax year), which means the Agency will likely pay the first Annual Increment Payment to the Company around May or June of the year following the calendar year during which the Company obtains the required certificates of occupancy for the Project, and then the successive payments in May or June of each following year.

3.2.2. The maximum total amount of tax increment that the Agency will pay to the Company under subsection 3.2.1 is \$4,754,000.00 (the “Reimbursement Cap Amount”). In no event will the Agency pay more tax increment to the Company under subsection 3.2.1 than the Reimbursement Cap Amount. If any Annual TIF Payment would otherwise be in an amount that would cause the total payments to the Company under subsection 3.2.1 to exceed the Reimbursement Cap Amount then that Annual TIF Payment shall be reduced to an amount that will cause the total amount of all Annual TIF Payments made by the Agency to the Company to equal to the Reimbursement Cap Amount. If the Company receives any payment(s) of tax increment under subsection 3.2.1 in excess of the Reimbursement Cap Amount whether by mistake of the Agency or

for any other reason, the Company agrees to immediately refund the excess back to the Agency upon discovery by the Company or request by the Agency (whichever occurs first).

4. Satisfaction of City Water Requirements and Impact Fees. All payment obligations of the Agency under this Section 4 are in addition to all other payment obligations of the Agency under this Agreement.

4.1. *Direct Payment for Water Rights:* The parties acknowledge that when the Company obtains a building permit for any commercial development activity on the Property, the Company will be obligated to provide an adequate number and quantity of water rights from the City for each such commercial development, as required by the City. The Agency agrees to pay immediately when due, or to otherwise make arrangements with the City for payment of, adequate and sufficient water rights to meet the requirements imposed by the City (and no more) on each portion or phase of the commercial development within the Project. The Company will bear full responsibility for all water rights associated with any residential development; the Agency will not participate in payment for any water rights for residential use. The obligation of the Agency to provide and pay for the commercial water rights as specified in this paragraph is not conditional on the Agency receiving tax increment from the Property.

4.2. *Participation In Impact Fees on Commercial Development:* The maximum amount of impact fees that the Company will be required to pay to the City in connection with the development of any commercial improvements on the Property will be \$2.00 per square foot of finished floor area (the "Maximum Commercial Impact Fee"). If the actual impact fees charged by the City on any portion of the commercial development exceed the Maximum Commercial Impact Fee, the Agency will pay to the City the amount in excess of the Maximum Commercial Impact Fee. The obligation of the Agency, if any, in this paragraph is not conditional on the Agency receiving tax increment from the Property. The Company will bear full responsibility for all impact fees associated with any residential development; the Agency will not participate in payment for any impact fees for residential use.

5. Sewer Line Relocation. All payment obligations of the Agency under this Section 5 are in addition to all other payment obligations of the Agency under this Agreement, and are not conditional on the Agency receiving tax increment from the Property. The parties acknowledge that an existing sewer line crosses through the Property and may, as determined by the City Engineer, need to be relocated to accommodate commercial development on the Property. The Agency agrees to pay all costs required to relocate the sewer line in order to accommodate commercial (not residential) development on the Property. For avoidance of doubt, the Agency's obligations under this Section 5 do not include any costs for sewer connections, hookups, services, manholes, service laterals, or other costs required to serve the Property or any development on the Property; the Agency's obligation is solely limited to paying the cost to relocate the existing line, if and when required. If, however, the City Engineer determines that the sewer line does not need to be relocated, then the Agency will pay to the Company cash in the amount estimated by the City Engineer as the cost that would have been required to relocate the sewer line, up to a maximum of \$250,000.00 (the "Sewer Line Cash Payment"). If the Sewer Line Cash Payment is required to be paid by the Agency, the Agency will pay it (i) only after satisfaction of the Development Condition specified in Subsection 3.1, and (ii) at the time the Agency pays the Company the first Annual \$150K Payment.



6. Residential Densities. The Agency agrees to cooperate with the Company in seeking all land use approvals from the City, in order for the Company to develop residential units, substantially according to the Approved Site Plan, at a density of 25 units per acre.

7. Limitations on Agency Authority. The Company acknowledges that:

7.1. 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;

7.2. 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;

7.3. the Agency has no independent taxing power, and therefore the Agency's sole source of revenue, at least for purposes of this Agreement, is tax increment financing as provided under Utah law;

7.4. if Utah law is amended or superseded by new law that has the effect of reducing or eliminating the amount of tax increment revenue to be paid to the Agency, the Agency's obligation to pay tax increment to the Company will be accordingly reduced or eliminated;

7.5. if a court of competent jurisdiction declares that the Agency cannot legally receive tax increment revenues, or make payments to the Company from tax increment revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of tax increment revenues paid to the Agency, the Agency's obligation to make Annual Increment Payments to the Company shall be accordingly reduced or eliminated; and

7.6. the Agency has no power or authority to grant any land use approvals;

7.7. nothing in this Agreement creates, implies, or guarantees any land use approvals; and

7.8. all land use approvals are subject to the standard requirements of applicable state and City laws and regulations.

8. Agreement Term/Breach/Termination. Despite anything else in this Agreement to the contrary, this Agreement will immediately and automatically terminate upon the satisfaction of all payment and performance obligations of the Agency to the Company.

9. 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 death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Company, including its officers, directors, agents, employees, contractors, and consultants, upon or in connection with the Property or in connection in any way with this Agreement, except in each case to the extent arising out of the gross negligence, willful misconduct, illegal acts, bad faith, or breach of this Agreement by the Indemnitees.

10. Parties; Successors and Assigns.

10.1. Except for the 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 other intended third-party beneficiaries.

10.2. The limited liability companies comprising the Company may convey or contribute their ownership interests in the Property to a newly created joint venture or limited liability company (a "Consolidated Owner") in exchange for corresponding partnership or membership interests in such Consolidated Owner upon written notice to the Agency, but without any requirement of prior Agency approval. In the event the Property is transferred by the Company to a Consolidated Owner, the Company may, without the need for the Agency's prior written approval, assign this Agreement, and all or some of its rights and obligations hereunder, to the Consolidated Owner, which shall assume in writing the Company's obligations hereunder. No such assignment by the Company to a Consolidated Owner shall release the limited liability companies now comprising the Company from their respective obligations hereunder.

10.3. The Company's, or the Consolidated Owner's selling or conveying of lots or parcels in any approved subdivision or plat with respect to the Property in connection with its development and/or buildout of the Project to any entity that they control, or are controlled by, or are under common control with, including single purpose entities, or to builders, users, or subdevelopers, shall not be deemed to be an "assignment" subject to the approval by the Agency as set forth below.

10.4. The Company's transfer of all or any part of the Property to any entity "related" to the Company (as defined by regulations of the Internal Revenue Service), the Company's entry into a joint venture for the development of the Project, or the Company's pledging of part or all of the Project as security for financing, shall also not be deemed to be an "assignment" subject to the approval by the Agency. The Company shall give written notice to the Agency of any event specified in this section 10 within twenty (20) business days after the event has occurred. Such notice shall include providing the Agency with all necessary contact information for the assignee or grantee.

10.5. Except as set forth in sections 10.2, 10.3 and 10.4 above, the Company has no right to assign this Agreement or its obligations under this Agreement without the Agency's prior written consent, which may be withheld in the Agency's sole discretion.

10.6. The Company shall give notice to the Agency of any proposed assignment that requires Agency approval as set forth in section 10.5 above, and provide such information regarding the proposed assignee that the Agency may reasonably request. Such notice shall include providing the Agency with all necessary contact information for the proposed assignee.

10.7. Any assignee of the Company approved by the Agency shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

10.8. If the Company sells or conveys lots or parcels of land to affiliates, third parties, subdevelopers or related parties, the lots or parcels so sold and conveyed shall bear the same rights and privileges as when owned by the Company and as set forth in this Agreement without any required approval, review, or consent by the Agency except as otherwise provided herein. In no event shall the Company or the Consolidated Owner assign the tax increment or any other rights to payment from the Agency under this Agreement to a third party in any manner which would require direct payment of such tax increment by the Agency to such third party, nor shall the Agency be required to pay the tax increment or any other amount to any party other than the Company, or the Consolidated Owner if so created, and the rights to the tax increment and any other Agency payments shall not be assigned in a manner requiring the Agency to deal with such third party in connection with the tax increment payments in connection with the sale or conveyance of lots or parcels of land. Notwithstanding the foregoing, the Agency acknowledges that the Company or the Consolidated Owner may enter into agreements with third parties to “pass through” all or a portion of the applicable tax increment payments received by the Company or the Consolidated Owner subsequent to their receipt by the Company or the Consolidated Owner.

10.9. Subject to the limitations set forth above in this section 10 of the Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

11. No Liability of Officials/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.

12. No Legal Relationship. 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.

13. 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 the Project, for the general public or for any public purpose whatsoever.

14. 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.

15. Governing Law. The laws of the State of Utah will govern this Agreement. Any action pertaining to or arising under this Agreement must be brought in the applicable state or federal court having jurisdiction in, and located in, Tooele County, Utah, and nowhere else.

16. 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.

17. Amendment. This Agreement may be modified or amended only by a written instrument authorized and executed by the Company and the Agency, respectively, each in their sole discretion.

18. Entire Agreement/Amendment/Counterparts. The Recitals, and all exhibits, schedules and attachments attached hereto, are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed; however, the parties acknowledge the continued existence and enforceability of certain provisions of the REPC which survived the closing of the purchase of the Property. Except for those provisions of the REPC which survived the closing of the purchase of the Property, 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.

19. Traffic Light Study. The Company has commissioned or intends to commission a traffic light study relating to the Project. The Agency agrees to pay one-half of the Company's actual out-of-pocket cost for that traffic study (in addition to all other amounts agreed to be paid by the Agency under this Agreement).

20. Construction/ Headings. The parties waive the application of any rule of law relating to the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the party who prepared this Agreement or any earlier draft thereof. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

21. Severability. If any provision (or portion of any provision) of this Agreement shall be deemed to be invalid or unenforceable, such invalidity or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof provided the removal of same does not materially alter the overall intent of this Agreement.

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

23. Further Assurances/Estoppels. 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. The Company may request from the Agency an estoppel certificate, in order to assist the Company with any third party seeking to purchase all or a portion of the Property or lend funds against the same certifying that the Company, or its permitted assignee, grantee or subdeveloper, as the case may be, at that time is not in default of the terms of this Agreement. The Agency's Executive Director retains sole and absolute discretion to provide or not provide such requested estoppel certificate(s) and the Agency will have no liability for refusing to provide any requested estoppel certificate(s).

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. Company as a Collective. All obligations of the Company under this Agreement are joint and several. Any one entity that is part of the collective definition of the Company may communicate with the Agency regarding this Agreement, and the Agency will be entitled to treat any one entity as the Company collectively, and all other entities that are part of the collective definition of the Company hereby release the Agency from all liabilities, claims, and damages associated with the Agency's actions taken in reliance on this paragraph. By way of example only, and without limitation, the Agency may pay any one of the Company entities any amount due under this Agreement in full satisfaction of the obligations of the Agency to the Company collectively with respect to that payment. The purpose of this paragraph is to simplify administration of this Agreement by the Agency; the Company assumes all risks associated with the fact that there are several entities on the Company side of the transactions.

27. 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.

28. 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.

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.

30. 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:

**The Company:**

Attention: Victor Kimball  
1000 South Main Street #104  
Salt Lake City, Utah 84101

**The Agency:**  
RDA Executive Director  
90 North Main Street  
Tooele, UT 84074

With copy to:  
City Attorney  
90 North Main Street  
Tooele, UT 84074

IN WITNESS WHEREOF, the Agency and the Company have executed this Development and Participation Agreement effective as of the date shown above.

**INTERLINE GROUP, LLC**

By: \_\_\_\_\_  
Printed Name:  
Title:

**TALLY THREE, LLC**

By: \_\_\_\_\_  
Printed Name:  
Title:

**MRI INVESTMENT, LLC**

By: \_\_\_\_\_  
Printed Name:  
Title:

**1030 SALT LAKE CITY, LLC**

By: \_\_\_\_\_  
Printed Name:  
Title:

**REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Executive Director

*Attest:*

\_\_\_\_\_  
RDA Secretary

*Approved as to Form:*

\_\_\_\_\_  
RDA Attorney

1506777v2

*[Exhibits A, B, and C to be attached]*

## Exhibit A

### *Legal Description of the Property*

#### Parcel 1:

A parcel of land located within the Northeast quarter of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, Tooele City, Tooele County, Utah more particularly described as follows:

Commencing at the North quarter corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, thence North 89°43'06" East 149.82 feet along the North line of said Section 21 to the point of beginning of the parcel herein described. Thence continuing North 89°43'06" East 1124.94 feet along the North line of Section 21 to the West boundary of Utah State Highway No. 36; thence the following 2 courses along said West boundary of Highway No. 36, South 06°34'56" West 34.33 feet to the point of curvature of a curve to the left; thence along said curve having a radius of 2914.80 feet through a central angle of 3°03'11", a distance along the arc of 155.31 feet to the Northeast corner of the Walker Investments Parcel; thence North 89°20'48" West 315.51 feet to a point on an existing fence line and the Northwest corner of the Walker Investments Parcel; thence South 00°35'28" West 603.70 feet along said fence line to the Southwest corner of the IHC Health Services, Inc. Parcel; thence South 85°11'32" West 77.78 feet; thence South 89°47'24" West 705.18 feet; thence North 00°12'36" West 792.26 feet to the point of beginning.

Less and excepting therefrom any portion lying within the bounds of 1000 North Street further described as:

From the Northwest corner of the Northeast quarter of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian proceed North 89°43'06" East 149.82 feet along the North line of said Section 21 to a point of beginning; thence continuing North 89°43'06" East 1124.94 feet along the North line of Section 21; thence South 6°34'56" West 34.33 feet; thence along the arc of a 2914.80 foot radius curve to the left 155.31 feet through a central angle of 3°03'11" the chord of which bears South 5°03'21" West 155.30 feet; thence North 89°20'48" West 6.73 feet; thence North 0°35'31" East 112.15 feet; thence along the arc of a 39.0 foot radius curve to the left 25.84 feet, through a central angle of 37°58'01", the chord of which bears North 50°37'41" West 25.37 feet; thence South 89°45'43" West 1081.92 feet; thence North 0°12'43" West 59.40 feet to the point of beginning.

#### Parcel 2:

A parcel of land located within the Northeast quarter of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, Tooele City, Tooele County, Utah more particularly described as follows:

Commencing at the North quarter corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, thence North 89°43'06" East 1274.76 feet along the North line of said Section 21 to the West boundary of Utah State Highway No. 36; thence the following three courses along said West boundary of Highway 36, South 06°34'56" West 34.33 feet to the point of curvature of a curve to the left; thence along said curve having a radius of 2914.80 feet through a central angle of 5°02'24", a distance along the arc of 256.40 feet; thence South 01°32'32" West 202.70 feet to the point of beginning of the parcel herein described. Thence continuing along the West boundary of Highway No. 36, South 01°32'32" West 300.04 feet; thence North 89°20'48" West 303.74 feet; thence North 00°35'28" East 300.00 feet along an existing fence line; thence the following 5 courses: South 89°20'48" East 68.04 feet; South 00°39'12" West 25.00 feet; South 89°20'48" East 180.00 feet; North 00°39'12" East 25.00 feet; South 89°20'48" East 60.68 feet to a point on the West boundary of Utah State Highway No. 36 and the point of beginning.

**Parcel 3:**

**A parcel of land located within the Northeast quarter of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, Tooele City, Tooele County, Utah more particularly described as follows:**

**Commencing at the North quarter corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, thence South 00°12'36" East 792.26 feet along the West line of the Northeast quarter of said Section 21 to the point of beginning; thence North 89°47'24" East 855.00 feet; thence North 85°11'32" East 77.78 feet; thence South 89°20'48" East 303.74 feet to a point on the West boundary of Utah State Highway No. 36; thence South 01°32'32" West 412.51 feet along said West boundary of Highway No. 36 to the Northeast corner of the Lee & G Investments, L.L.C. Parcel; thence North 89°14'26" West 301.31 feet to the Northwest corner of the Lee & G Investments, L.L.C. Parcel; thence South 01°43'04" West 163.83 feet to the Southwest corner of the Lee & G Investments, L.L.C. Parcel; thence South 89°45'09" West 916.85 feet to a point on the West line of said Northeast quarter of Section 21; thence North 00°12'36" West 569.90 feet along the West line of the Northeast quarter of said Section 21 to the point of beginning.**

**Less and excepting any portion lying within the bounds of 200 West Street.**



**Exhibit B**

*Approved Site Plan*

**Exhibit C**

*ILAs*