
PUBLIC NOTICE

Notice is Hereby Given that the Board of the Redevelopment Agency (RDA) of Tooele City, Utah, will meet in a Special Meeting on Thursday, December 9, 2021, at 5:30 p.m. The meeting will be held at the Tooele City Hall Council Chambers, Located at 90 North Main Street, Tooele, Utah.

We encourage you to join the meeting electronically by logging on to the Tooele City Facebook page at <https://www.facebook.com/tooelecity>.

1. **Open RDA Meeting**
2. **Roll Call**
3. **Resolution 2021-12** A Resolution of the Redevelopment Agency of Tooele City, Utah Authorizing the Mayor to Execute a Purchase and Sale Agreement with SFG Acquisitions, LLC for the Undeveloped Portions of the Tooele City Commercial Park
Presented by Jared Stewart, Economic Development Coordinator
4. **Adjourn**

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, Prior to the Meeting.

REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH

RESOLUTION 2021-12

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH SFG ACQUISITIONS, LLC FOR THE UNDEVELOPED PORTIONS OF THE TOOELE CITY COMMERCIAL PARK.

WHEREAS, the Redevelopment Agency of Tooele City, Utah, (“RDA”) owns the Tooele City Commercial Park, several phases of which have been subdivided and sold on a per-lot basis to private institutional, commercial, and light-industrial operations, and approximately 184 acres of which remain undeveloped (“Undeveloped Property”), with the stated intention of engaging in successful economic development activities, including education, job creation, commercial property tax base generation, and optimal utilization of non-residential land; and,

WHEREAS, the RDA and SGF Acquisitions LLC (aka Stonemont) agreed to the general terms of a Letter of Intent (LOI) and desire to execute a comprehensive Purchase and Sale Agreement (attached as Exhibit A), for the purchase by SFG Acquisitions of the Undeveloped Property for commercial and light-industrial development and economic development; and,

WHEREAS, the purchase by SFG Acquisitions, and the Purchase and Sale Agreement, put into effect the original purposes for which Tooele City acquired the Commercial Park property, and in turn conveyed the property to the RDA; and,

WHEREAS, the agreed-to purchase price for the Property is \$89,298.00 per acre, for a total estimated price of \$16,430,832.00, minus standard commissions, costs, and fees; and,

WHEREAS, the Purchase and Sale Agreement will protect important Tooele City infrastructure facilities and easements, including for water wells and stormwater conveyance and detention facilities; and,

WHEREAS, the Board of the RDA finds that the sale of the Undeveloped Property to SFG Acquisitions for the stated purchase price is in the best interest of Tooele City and specifically of positive economic development activities in the RDA’s Commercial Park project area and the City in general:

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH, that Mayor Winn as Executive Director of the RDA is hereby authorized to execute the Purchase and Sale Agreement with SFG Acquisitions LLC for the Undeveloped Property, and further to execute all other documents necessary for full conveyance and closing.

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 Redevelopment Agency of Tooele City, Utah, this ____ day of _____, 2021.

TOOELE CITY RDA BOARD

(For)

(Against)

ABSTAINING: _____

EXECUTIVE DIRECTOR

(For)

(Against)

ATTEST:

Michelle Y. Pitt, RDA Secretary

S E A L

Approved as to Form: _____
Roger Evans Baker, RDA Attorney

EXHIBIT A

Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into this 7th day of December, 2021 (the “**Effective Date**”), by and among TOOELE CITY CORPORATION, a Utah municipal corporation and charter city (“**City Seller**”), REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH, a Utah redevelopment agency (“**Agency Seller**”; together with City Seller, the “**Seller**”), SFG ACQUISITIONS, LLC, a Georgia limited liability company (“**Buyer**”), and FIRST AMERICAN TITLE INSURANCE COMPANY (the “**Escrow Agent**”).

W I T N E S S E T H

1. Agreement to Sell and Purchase. For and in consideration of the Earnest Money, hereinafter defined, payable by Buyer to Escrow Agent, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, all that certain lot, tract or parcel of real estate consisting of approximately 184 total acres located at 177 South 1200 W, Tooele, Utah 84047, as depicted on Exhibit “A-1” attached hereto and being more particularly described on Exhibit “A-2” to be attached hereto following completion of the Survey, as described in Section 8, together with all plants, shrubs and trees located thereon, and together with all rights, ways and easements appurtenant thereto, including, without limitation, all of Seller’s right, title and interest in and to the land underlying and the air space overlying any public or private ways or streets crossing or abutting said real estate, except that any and all water rights and water shares shall be excluded and reserved by Seller (the “**Land**”), and all certificates, licenses, permits or similar documents relating to the Land (collectively, the “**Property**”). The Property shall expressly exclude that certain well parcel as illustrated on Exhibit A-1 (the “**Well Parcel**”), which Well Parcel will be retained by Seller, and the sale of the Property is expressly subject to Seller’s reservation, retention or imposition of that certain easement on and over the Property as set forth in Section 36 of this Agreement, and the other reservations by Seller set forth herein.

2. Purchase Price; Method of Payment. The purchase price (the “**Purchase Price**”) for the Property shall be Eighty-Nine Thousand Two Hundred Ninety-Eight and 00/100 Dollars (\$89,298.00) per gross acre to the nearest 1/1000th of an acre, with the acreage determined by the Survey (as defined in Section 8), and without reduction for roadways, canals, ditches, easements, rights-of-way, encroachments, irrigation channels, railways, or other matters which may be revealed by the Survey. The Purchase Price, after crediting the Earnest Money, and subject to the prorations and adjustments hereinafter described, shall be paid by Buyer to Seller on the Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller.

3. Earnest Money. Within four (4) days following the Effective Date, Buyer shall deliver to Escrow Agent the sum One Hundred Seventy-Five Thousand and No/100ths Dollars (\$175,000.00) (the “**Earnest Money**”). Escrow Agent shall hold the Earnest Money in an account reasonably satisfactory to Buyer. On the Closing Date, the Earnest Money shall be applied as partial payment of the Purchase Price. If Buyer shall validly exercise any right or option under this Agreement to rescind, cancel or terminate this Agreement in a manner that permits the return of the Earnest Money to Buyer, Buyer shall notify Escrow Agent, and the Earnest Money shall be immediately delivered and returned to Buyer, whereupon Escrow Agent shall be released of all further duties and obligations hereunder with respect to the Earnest Money.

4. Closing. The consummation of the purchase and sale of the Property contemplated under this Agreement (the “**Closing**”) shall occur on or before the date that is thirty (30) days following the

expiration of the Inspection Period (the “**Closing Date**”). The Closing shall be an escrow-style closing, such that each party may deliver to Escrow Agent in advance of Closing all documents and funds to be delivered by it to the other party at Closing in accordance with this Agreement, and neither Buyer nor Seller is required to personally attend such Closing. Seller shall deliver to Escrow Agent, in escrow, all of Seller’s closing documents (other than the Closing Statement) by no later than 12:00 p.m. on the Closing Date, and Escrow Agent shall, upon Buyer’s request, allow Buyer to review and approve same in advance of Closing. Buyer shall deliver to Escrow Agent, in escrow, all of Buyer’s closing documents (other than the Closing Statement) and the funds necessary to consummate the Closing on the Closing Date, and Escrow Agent shall, upon Seller’s request, allow Seller to review and approve same in advance of Closing.

5. Access and Inspection; Delivery of Documents and Information by Seller; Examination by Buyer.

(a) Between the date of this Agreement and the Closing Date, Buyer and Buyer’s agents and designees shall have the right to enter upon the Property for the purposes of inspecting the Property, conducting soil tests, and making surveys, engineering studies, and any other investigations and inspections as Buyer may reasonably require to assess the condition of the Property; provided, however, that such activities by or on behalf of Buyer on the Property shall not materially damage the Property, or unreasonably interfere with the use and occupancy of the Property. The inspections contemplated under this Section 5 may include a non-invasive Phase I environmental inspection of the Property (“**Phase I**”), but no Phase II environmental inspection or other invasive inspection (“**Phase II**”), either as part of the Phase I or any other inspection, shall be performed except as provided hereunder. In the event that the Phase I reasonably indicates the appropriateness of a Phase II, Buyer may cause a Phase II to be performed subject to first obtaining the prior written consent of Seller, which shall not be unreasonably withheld, conditioned, or delayed.

(b) Within five (5) days following the Effective Date, Seller shall deliver to Buyer, if not previously delivered and to the extent the same are in Seller’s reasonable possession or control, the following documents and information with respect to the Property (collectively, the “**Inspection Materials**”):

- (i) all surveys, plans, specifications, engineering and other data, reports and assessments relating to the Property which are in Seller’s possession or control;
- (ii) all real property and other ad valorem tax bills, notices, appraised valuations, protests, renderings, etc. regarding the Property for the current year and for the immediately preceding three calendar years;
- (iii) all soil studies, investigations, reports and assessments relating to the Property including, but not limited to environmental reports (Phase I and, if applicable, Phase II reports) and boring tests relating to the Property which are in Seller’s possession or control;
- (iv) all leases affecting the Property, if any; and
- (v) all licenses, permits and approvals which affect the Property.

In no event shall Seller be required to provide to Buyer any appraisals, market studies, or materials or documentation that are attorney work product or attorney-client privileged. All materials are furnished to Buyer “AS IS” with no warranty or representations of any kind whatsoever from Seller. All Inspection Materials, and the results of any inspections related to the Property, shall be kept and

maintained strictly confidential by Buyer and the contents thereof shall not be disclosed to any other party, except those contemplated by Section 33, pursuant to the terms of this Agreement. Should this Agreement be terminated for any reason, Buyer shall furnish to Seller within ten (10) days thereafter or promptly destroy any and all Inspection Materials furnished to or obtained by Buyer.

(c) *Assemblage; Entitlements.* Buyer is simultaneously negotiating with the owner of the properties listed on Schedule 5(c) attached hereto and incorporated herein by reference (the “**Assemblage Parcels**”) for the acquisition of the Assemblage Parcels as part of Buyer’s overall plan to develop the Property and the Assemblage Parcels for research and development and light industrial uses (the “**Project**”). Seller shall have no obligations or duties related to Buyer’s acquisition or development of the Assemblage Parcels; provided, however, Seller shall execute reasonable entitlement applications, in its capacity as the owner of the Property only and not in its capacity as a governmental agency. Notwithstanding anything contained herein to the contrary, Seller consents to Buyer processing reasonable entitlement applications with the City of Tooele and other governmental authorities that include the Property, but if any of the entitlements shall become final prior to the Closing, they shall be subject to Seller’s reasonable approval as the owner of the Property, it being the intent that in addition to the foregoing, Seller in its capacity of the governing authority will also retain its rights to process the entitlements according to applicable requirements and laws. If Buyer terminates this Agreement or otherwise fails to close, at the direction of Seller Buyer shall promptly cause the dismissal of any pending government approvals without prejudice and provide Seller with proof of the same.

(d) Buyer shall have until one hundred twenty (120) days following the Effective Date (the “**Inspection Period**”) in which to examine the Property and investigate the Property, and to determine whether the Property is suitable and satisfactory to Buyer. In the event that Buyer shall determine, in Buyer’s sole judgment and discretion, that the Property is in any manner unsuitable or unsatisfactory to Buyer or if Buyer is unable to acquire interests in the Assemblage Parcels to Buyer’s satisfaction, Buyer shall have the right, at Buyer’s option, to terminate this Agreement by giving written notice thereof to Seller on or before the expiration of the Inspection Period, in which event (i) the Earnest Money shall be refunded to Buyer immediately upon request, (ii) all rights and obligations of the parties under this Agreement shall expire, except those rights and obligations that expressly survive termination, and (iii) this Agreement shall become null and void. Seller acknowledges that Buyer will expend time, money and other resources in connection with the examination and investigation of the Property hereinabove described, and that, notwithstanding the fact that Buyer may terminate this Agreement pursuant to this paragraph, such time, money and other resources expended, constitutes good, valuable, sufficient and adequate consideration for Seller’s execution of and entry into this Agreement. Buyer shall indemnify, defend, save and hold Seller harmless from any losses, costs, expenses, damages, injuries, deaths, causes of action, liens, penalties, fines, and liabilities of any and all kinds whatsoever (including, without limitation, reasonable attorneys’ fees and costs) (collectively, “**Losses**”) caused by, or in any way related to, the acts or omissions of Buyer and its employees, contractors and agents during and in connection with the Buyer’s inspections of the Property, which obligation shall survive the termination of this Agreement for one (1) year. The foregoing indemnity shall not apply to any Losses (including, without limitation, Losses that the Property has declined in value) to the extent the same are the direct result of: (i) the negligence or willful misconduct of Seller or any party acting by, through, or under Seller; (ii) the mere discovery by Buyer or its agents, employees, consultants or contractors of any pre-existing conditions on the Property, provided however, that Buyer shall be responsible for any exacerbation of a pre-existing condition; (iii) the mere discovery by Buyer of the presence of any pollutants, hazardous waste, hazardous substance or material located on or about the Property; or (iv) any disclosure or notification made or given by Buyer or any of its employees, agents or consultants to any governmental agency or other party that is required by law based upon the results, findings, tests or analyses of Buyer’s physical investigation of the Property. Buyer shall furnish to Seller a Commercial General Liability Insurance Policy with a limit of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 in the aggregate, covering the

activities of Buyer and its employees, contractors and agents while on the Property, and naming Seller as an additional insured, which policy shall be non-cancelable without thirty (30) days prior written notice to Seller. In the event Buyer does not timely terminate this Agreement prior to the expiration of the Inspection Period, then: (i) Buyer shall be deemed to have waived its right to terminate under this Section 5(d) and to have approved the condition of the Property in all respects, subject to all other terms and conditions set forth in this Agreement.

(e) Prior to the expiration of the Inspection Period, Buyer may provide to Seller a draft, to Seller's reasonable satisfaction, of a letter addressed to the applicable local, state, or federal authorities requesting rail accessibility (provided by Union Pacific) at the Property for Buyer's Project (the "**Rail Letter**"). Within two (2) days of Seller's approval of the Rail Letter and at Buyer's request, Seller will provide its consent to the Rail Letter by countersigning the same, and Buyer may cause the Rail Letter to be delivered to the applicable local, state, or federal authorities. Seller shall use commercially reasonable efforts, at no cost to Seller, to cooperate with Buyer in order for Buyer to receive confirmation of rail accessibility to the Property provided by Union Pacific necessary for the Project.

(f) *Water Rights and Water Credits.* The conveyance of the Property shall exclude any and all water rights and water shares and Seller shall reserve the same, if any, which reservation shall be referenced within the special warranty deed from Seller to Buyer. Furthermore, Buyer acknowledges that prior to the development of the Property for Buyer's Project, or any phase of that development, Tooele City (the "**City**") requires that Buyer convey to the City water rights (the "**Water Rights**") in an amount sufficient to satisfy the anticipated future water needs of any development within the Project, pursuant to Tooele City Code Chapter 7-26. For purposes of this Section, the word "development" shall include a subdivision of, a site plan in, and building permit for any portion of the Project, each as defined in Tooele City Code Sections 7-1-5 and 4-1-2, as amended. In the alternative to conveyance of Water Rights, in the discretion of Seller under Tooele City Code Section 7-26-3(2), as amended, Buyer may pay to the City a fee-in-lieu of conveyance of the Water Rights for certain water credits (the "**Water Credits**") corresponding to the Water Rights in an amount sufficient to satisfy the anticipated future water needs of a development within the Project. If Buyer purchases Water Credits from the City, the City will sell such Water Credits to Buyer for the amount stated below, provided that Buyer will not receive a deed or conveyance instrument for said Water Credits but rather will receive a credit against the City Water Rights conveyance requirements for the amount of the Water Credits purchased, and the City will retain title to the Water Rights corresponding to the Water Credits. The corresponding Water Rights shall not be identified by water rights number but rather by volume measured in acre-feet. If water rights are purchased from other third parties to be used to satisfy Buyer's Water Rights conveyance requirements as part of any development within the Project, Buyer shall be required to convey said Water Rights to the City in accordance with the then existing City requirements. The grantee in any such conveyance of Water Rights shall be the City's receiving entity, the Tooele City Water Special Service District. The purchase price for the applicable Water Credits shall be at the then current price established by the City Council for any third-party purchaser of similar water credits, but shall not be less than \$15,000 per acre-foot of Water Credits. The maximum amount of Water Credits Seller shall be obligated to sell to Buyer shall not exceed 30 acre-feet. Seller, in its sole discretion, may sell Water Credits to Buyer in excess of 30 acre-feet.

6. Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Buyer and Seller at Closing, or thereafter if Buyer and Seller shall agree:

(a) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property (the "**Taxes**"), for the year in which Closing occurs shall be prorated as of the Closing Date. In the event the Taxes for such year are not determinable at the time of

Closing, said taxes shall be prorated on the basis of the best available information, and the parties shall prorate the Taxes for such year promptly upon the receipt of the tax bills for such year and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount of the Taxes used as a basis for the proration at Closing and the actual amount of the Taxes for such year. In the event any of the Taxes are due and payable at the time of Closing, the same shall be paid at Closing. Notwithstanding the foregoing, all special assessments affecting the Property that are due or have accrued prior to the Closing Date shall be paid by Seller at Closing.

(b) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

In making the prorations required by this paragraph, the economic burdens and benefits of ownership of the Property for the Closing Date shall be allocated to Buyer.

7. Title.

(a) Buyer shall order a title insurance commitment for the Property (the “**Commitment**”) committing Escrow Agent to insure to Buyer fee simple title to the Property, together with copies of all documents listed in the Commitment as exceptions or matters required to be corrected prior to Closing.

(b) Buyer shall give written notice (“**Objection Notice**”) to the Seller of any objections to the title (“**Title Objections**”) no later than twenty (20) days prior to the expiration of the Inspection Period. Buyer is not required to object to the existence of any mortgage lien, judgment lien, materialmen or mechanic's lien or notice, lis pendens, development lien, or recorded assessment lien encumbering all or any part of the Property and created by, through, or under Seller (“**Liens**”), all of which are hereby deemed to be included as “**Title Objections**” and shall be satisfied by Seller at Closing. Seller shall, in writing, delivered within seven (7) Business Days after receipt of the Objection Notice, inform Buyer of the Title Objections it will cure at or prior to Closing, and if Seller does not provide such notice timely it will be deemed to have committed to not cure any of the Title Objections. The foregoing notwithstanding, Seller shall be obligated to cause to be removed as exceptions to title all Title Objections Seller commits in writing to cure, and all Liens (collectively, the “**Mandatory Removal Items**”). Upon Seller’s notification to Buyer of its refusal or inability to cure any exception to title (other than the Mandatory Removal Items), or upon Seller being deemed to not cure any Title Objections (other than the Mandatory Removal Items), then Buyer may, prior to the expiration of the Inspection Period, either (i) accept the Title Objections that Seller was unwilling or unable to cure by proceeding with the Agreement after the Inspection Period, or (ii) terminate this Agreement prior to the expiration of the Inspection Period by giving Seller written notice of termination, whereupon the Earnest Money shall be returned to Buyer, and neither Buyer nor Seller shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination. Any item or matter contained in the Title Commitment or on the Survey to which Buyer accepts or is deemed to accept pursuant to this Section 7 shall be deemed a “**Permitted Exception**” and, collectively, “**Permitted Exceptions**”. However, in no event shall the Mandatory Removal Items be deemed a Permitted Exception, and Seller shall have until the Closing Date in which to satisfy all Mandatory Removal Items and all valid objections specified in the Title Objections that Seller has elected to cure.

(c) Buyer shall have the right to have its title examination and the Survey updated through the Closing Date, at Buyer’s expense. If any such update discloses any new title exceptions or survey matters as to which Buyer has an objection and which were not listed in the Commitment, as to title matters, or which were not shown on the Survey, as to survey matters (any such new matter being referred to as a “**New Objection**”), Buyer shall deliver to Seller a statement of any such New Objections (“**New Objection Notice**”). Seller shall in writing, delivered within three (3) Business Days after the New

Objection Notice, inform Buyer of the New Objections it will cure at or prior to Closing, and if Seller does not provide such notice it will be deemed to have committed to not cure any New Objections. The foregoing notwithstanding, Seller shall be obligated to cause to be removed as exceptions to title all New Objections Seller commits in writing to cure.

(d) If Seller fails to cure the Title Objections, Liens, or New Objections it is obligated to cure at or prior to Closing, Buyer may: (A) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void; (B) satisfy the Mandatory Removal Items, after deducting from the Purchase Price the cost of satisfying such Mandatory Removal Items; (C) waive such satisfaction and performance and consummate the purchase and sale of the Property; or (D) extend the Closing Date for a period of up to sixty (60) days, during which time Seller shall cure such Title Objections. In the event of an extension of the Closing Date by Buyer under clause (D) above, and a subsequent failure of Seller to cure any valid title and survey objection, Buyer may then elect between the alternatives specified in clauses (A), (B), and (C) above.

8. Survey. Buyer will cause an ALTA/ACSM survey of the Property to be prepared by a surveyor registered and licensed in the State of Utah and designated by Buyer (the “**Survey**”). The Survey shall depict such information as Buyer shall require and will contain a certified computation of the acreage to the nearest one-thousandth (1/1000th) of an acre. The legal description drawn from the Survey shall be considered incorporated by reference into this Agreement as the description of the Property, shall be attached hereto as Exhibit “A-2”, and shall be used as the legal description in the special warranty deed delivered to Buyer at Closing; provided however, that Seller shall only be obligated to convey to Buyer by special warranty deed the Property vested in Seller pursuant to Seller’s vesting deed. In the event the Survey discloses any title objections, Buyer shall notify Seller in writing of such objections, which shall be subject to the time frames and provisions of Section 7 hereof. The Survey shall be certified to Seller and shall be subject to Seller’s reasonable approval solely in regard to the determination of the legal description and the total acreage of the Property.

9. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Buyer the following documents and instruments, duly executed by Seller, in form and substance satisfactory to Buyer:

(i) a Special Warranty Deed in recordable form conveying and demising the Property as described on Exhibit “A-2”, subject to all Permitted Exceptions;

(ii) a quitclaim deed for the assemblage of the separate tracts comprising the Project, as depicted on the Survey and based upon the overall legal description drawn from the Survey, which shall include the Property and the Assemblage Parcels;

(iii) an owner’s affidavit in the customary reasonable form required by Escrow Agent and reasonably satisfactory to Buyer to enable the title company to issue extended title coverage if required by Buyer;

(iv) if Seller is not a foreign person, a certificate and affidavit of non-foreign status (a FIRPTA affidavit);

(v) Seller shall execute and deliver a blanket transfer, bill of sale, and assignment and assumption conveying to Buyer all licenses, permits, deposits, authorizations, consents, variances, waivers, certificates, and approvals pertaining solely to ownership and/or operation of

the Property and all intangible rights of Seller pertaining solely to the ownership, operation and/or development of the Property, if any, which shall be conveyed in its "AS IS" condition, without any representation or warranty whatsoever by Seller (the "**General Assignment and Assumption**");

(vi) a certificate that the representations and warranties of Seller in this Agreement are true and correct on and as of the Closing Date;

(vii) evidence in form and substance reasonably satisfactory to Escrow Agent that Seller has the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property, and that any and all actions required to authorize and approve the execution of and entry into this Agreement by Seller, the performance by Seller of all of Seller's duties and obligations under this Agreement, and the execution and delivery by Seller of all documents and other items to be executed and delivered to Buyer at Closing have been accomplished;

(viii) Such instruments as shall be required to lawfully exempt Buyer from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder (the "**Code**") and applicable state law;

(ix) a closing statement; and

(x) Such other documents or instruments as Buyer or its title insurer may reasonably require to effect the conveyance of the Property in accordance with this Agreement.

(b) Buyer shall pay the Purchase Price to Seller in accordance with the provisions of this Agreement, deliver such other documents or instruments as Seller or Escrow Agent may reasonably require to effect the conveyance of the Property in accordance with this Agreement, including the Assignment and Assumption (wherein Buyer will assume all obligations related to the matters assigned and assumed), the CC&Rs, the Repurchase Rights Agreement (as herein defined), evidence of Buyer's authority to consummate the transaction, and closing statement, all duly executed and acknowledge (as applicable) by Buyer.

10. Costs of Closing.

(a) Seller shall pay: (i) all state, county and local transfer taxes, state county and local deed fees, recording fees, documentary stamp fees and taxes, and other customary expenses due, payable or incurred with respect to the transfer of the Property; (ii) Seller's attorneys' fees; (iii) the commissions of the brokers reference in Section 21 below; (iv) the premium for the standard owner's policy of title insurance issued in favor of Buyer insuring Buyer's title to the Property; and (v) one-half of the fees of Escrow Agent.

(b) Buyer shall pay: (i) the cost and expense of the Survey; (ii) the premium for the extended portion of the owner's policy (if required by Buyer) any endorsements required by Buyer for the owner's policy of title insurance issued in favor of Buyer insuring Buyer's title to the Property; (iii) all engineers, accountants and other investigation costs; (iv) one-half of the fees of Escrow Agent; (v) any title search and examination fees charged by Buyer's title insurer; and (vi) Buyer's attorneys' fees. All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

11. Warranties, Representations and Additional Covenants of Seller. City Seller, as to the portion of the Property owned by City Seller, and Agency Seller, as to the portion of the Property owned

by Agency Seller, represent, warrant, and covenant (as applicable) to and with Buyer, knowing that Buyer is relying on each such representation, warranty and covenant, that:

(a) Seller has the right, power and authority to enter into this Agreement and to sell the Property to Buyer in accordance with the terms and conditions hereof; this Agreement and all other agreements to be executed by Seller in connection herewith have been (or upon execution will have been) duly executed and delivered by Seller, have been effectively authorized by all necessary action, and constitute (or upon execution will constitute) legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms;

(b) Seller has the lawful right, power, authority and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement; Seller is not a party to any contract, agreement, or commitment to sell, convey, assign, transfer or otherwise dispose of any portion or portions of the Property;

(c) [Intentionally Deleted].

(d) To Seller's actual knowledge, the Property is not occupied, used or operated in violation of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state or other governmental authority having jurisdiction thereof;

(e) To Seller's actual knowledge, there are no actions, suits or proceedings pending or threatened against, by or affecting Seller which affect title to the Property, or which question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign; and there are no pending, threatened or contemplated condemnation actions involving all or any portion of the Property; there are no judgments outstanding against Seller which relate to or which would hinder or prohibit consummation of the transactions contemplated by this Agreement;

(f) To Seller's actual knowledge, there are no management, maintenance, service or other similar contracts with respect to the Property;

(g) On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, material person, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, by, through, or under Seller in connection with the Property for which any such person could claim a lien against the Property;

(h) Within due course of its operations, Seller will pay or cause to be paid promptly when due all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property between the date hereof and the Closing Date, and will pay or cause to be paid all expenses incurred with respect to the Property between the date hereof and the Closing Date;

(i) The execution of and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound;

(j) Between the date hereof and the Closing Date, Seller: shall operate the Property in the ordinary course of business; shall not make or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property without the prior written approval of Buyer;

(k) Except as reserved by Seller herein, there are no leases, temporary occupancy licenses, or other similar occupancy agreements for use, occupancy or possession presently in force with respect to all or any portion of the Property;

(l) To Seller's actual knowledge, there are no violations of any local, state or federal pollution control laws as the Property is presently being used and occupied; if Seller receives notice of any such violation, Seller shall give notice to Buyer;

(m) Seller has the right to convey the maximum amount of Water Credits to Buyer as stated and in accordance with Section 5(f) of this Agreement and Seller, and Seller is not aware of any limitations, other than those imposed by the City, which would affect Buyer's ability to obtain the Water Credits for Buyer's intended use at the Property;

(n) To Seller's actual knowledge, Seller has not received any written complaint, citation, or notice from any person, government, or entity with regard to environmental matters affecting the Property;

(o) To Seller's actual knowledge, all written information and data to be furnished by Seller to Buyer is all of the Inspection Materials in Seller's possession; and

(p) Seller will not cause or permit any action to be taken which will cause any of the foregoing representations, warranties or covenants to be untrue or not to be performed on the Closing Date.

As used in this Agreement, the term "actual knowledge" or "Seller's actual knowledge" as related to Seller, shall mean the current and actual knowledge of Mayor Debra E. Winn, without any duty to investigate and without any personal liability.

The truth of the foregoing representations and warranties on and as of the Effective Date and on and as of the Closing shall be a condition precedent to Buyer's obligations to purchase the Property and otherwise perform under this Agreement. All representations and warranties by Seller set forth in this Agreement shall survive the execution and delivery of this Agreement, the recording of the deed and the Closing for a period of one (1) year (the "**Survival Period**"). All claims for breach of such representations and warranties that are discovered by Buyer during the Survival Period must be made prior to the expiration of the Survival Period. All claims made in writing to Seller during the Survival Period shall survive until settled or resolved.

12. Warranties, Representations and Covenants of Buyer. Buyer represents, warrants and covenants to and with Seller, knowing that Seller is relying on each representation, warranty and covenant, that:

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia;

(b) This Agreement and all other agreements to be executed by Buyer in connection herewith have been (or upon execution will have been) duly executed and delivered by Buyer, and constitute (or

upon execution will constitute) legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms;

(c) Buyer will deliver on the Closing Date all documents and instruments required by this Agreement for the consummation of the purchase and sale of the Property; and

(d) Buyer shall use good faith efforts to consummate the closing on the Assemblage Parcels.

13. Conditions of Buyer's Obligations. Buyer's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived by Buyer, in whole or in part, on or as of the Closing Date:

(a) Seller shall have fully and completely kept, observed, performed, satisfied and complied with all terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date;

(b) The representations and warranties of Seller in this Agreement shall be true and correct, and certified by Seller to Buyer as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date, and, notwithstanding the fact that such representations and warranties may be limited to Seller's knowledge and belief of the truth of the facts, assertions and matters contained therein, the facts, assertions and matters contained in each of such representations and warranties shall be true and correct on and as of the Closing Date;

(c) Buyer shall be capable of simultaneously closing on all Assemblage Parcels (listed on Schedule 5(c)) in connection with the development of the Project;

If any of the foregoing conditions have not been satisfied or performed on or as of the Closing Date, Buyer shall have the right, at Buyer's option, either (i) to terminate this Agreement by giving written notice to Seller on or before the Closing Date, in which event all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void, or (ii) if such failure of condition constitutes a default by Seller under this Agreement, to exercise such rights and remedies as may be provided for in Section 15 of this Agreement. In either of such events, the Earnest Money shall be refunded to Buyer immediately upon request.

14. Possession at Closing. Seller shall surrender possession of the Property to Buyer on the Closing Date.

15. Remedies.

(a) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Buyer under this Agreement, the Earnest Money shall be delivered to Seller, and such amount shall constitute the full liquidated damages for such default. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER UNDER THIS AGREEMENT WILL BE DIFFICULT TO ASCERTAIN, AND THAT SUCH LIQUIDATED DAMAGES REPRESENT THE PARTIES' BEST ESTIMATE OF SUCH DAMAGES. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE FOREGOING ARE LIQUIDATED DAMAGES IN THE EVENT OF BUYER'S DEFAULT AND AS COMPENSATION FOR SELLER'S TAKING THE

PROPERTY OFF THE MARKET DURING THE TERM OF THIS AGREEMENT. SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF SELLER BY REASON OF A DEFAULT BY BUYER UNDER THIS AGREEMENT, AND SELLER HEREBY WAIVES AND RELEASES ANY RIGHT TO SUE BUYER, AND HEREBY COVENANTS NOT TO SUE BUYER, FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TO PROVE THAT SELLER'S ACTUAL DAMAGES EXCEED THE AMOUNT WHICH IS HEREIN PROVIDED SELLER AS FULL LIQUIDATED DAMAGES. This Section shall not be construed to limit any indemnification specifically provided by Buyer to Seller elsewhere in this Agreement.

(b) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement, Buyer shall have the right either (i) to terminate this Agreement, and the Earnest Money shall be refunded to Buyer, immediately upon request, and the parties hereto shall have no further rights or obligations, except for obligations which expressly survive the termination of this Agreement; or (ii) to institute an action against Seller for specific performance. Additionally, in the event in the event of such default by Seller, Seller shall reimburse Buyer, on demand, an amount equal to all third-party costs and expenses (including attorneys' fees) incurred by Buyer with respect to or under this Agreement and the transaction contemplated herein, up to a maximum of One Hundred Thousand and No/100 (\$100,000.00) Dollars. Notwithstanding the foregoing, in the event that specific performance is not available to Buyer, or unattainable, as a result of Seller conveying the Property to a bona fide third party after the Effective Date, then Seller shall be liable to Buyer for actual damages caused by such action (without regard to the foregoing cap on expenses), which actual damages shall include the amount by which the consideration paid or payable with respect to such unauthorized conveyance exceeds the Purchase Price. This Section shall not be construed to limit any indemnification specifically provided by Seller to Buyer elsewhere in this Agreement.

(c) **Waiver of Jury Trial.** THE PARTIES HEREBY INTENTIONALLY, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF THIS AGREEMENT. IN EXTENSION OF THE FOREGOING, THE PARTIES SPECIFICALLY CONSENT TO TRIAL BEFORE A COURT RESPECTING ANY SUCH MATTER. NEITHER OF THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

16. **"AS IS" PURCHASE.**

(a) **Disclaimer.** Except as set forth in Section 11 above, Seller has not made, and Buyer acknowledges that Seller has not made, any warranty or representation, express or implied, written or oral, statutory or otherwise, concerning the Property or the Inspection Materials, including, but not limited to, the following: (i) the condition of title to the Property; (ii) the nature, physical condition or any other aspect of the Property; (iii) the existence of hazardous materials in, on, about, under or affecting the Property; (iv) the compliance of the Property with any laws or any other federal, state or local laws, ordinances, statutes, rules, codes or regulations (including, without limitation, any environmental laws or any zoning codes); (v) the size, dimensions or square footage of the Property; (vi) the fitness of the Property for any particular purpose; (vii) the completeness, adequacy, truthfulness, or accuracy of the Inspection Materials; or (viii) the existence, availability, design, construction, or future installation of infrastructure, improvements, utilities, and the like surrounding or servicing the Property.

(b) Acceptance. SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 11, BUYER ACKNOWLEDGES FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, THAT BUYER WILL BE ACQUIRING THE PROPERTY BASED UPON BUYER'S OWN INVESTIGATION AND INSPECTION THEREOF. SELLER AND BUYER AGREE THAT, EXCEPT AS SET FORTH IN SECTION 11, THE PROPERTY SHALL BE SOLD AND BUYER SHALL ACCEPT TITLE AND POSSESSION OF THE PROPERTY ON THE CLOSING DATE "**AS IS, WHERE IS, WITH ALL FAULTS**" AND THAT EXCEPT AS SET FORTH IN SECTION 11, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY.

(c) Release. EXCEPT WITH RESPECT TO SELLER'S BREACH OF ANY REPRESENTATION, COVENANT, OR WARRANTY SET FORTH IN SECTION 11, BUYER HEREBY EXPRESSLY RELEASES SELLER FROM ANY FAULT, INJURY, DAMAGE, COST, EXPENSE, SUIT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OF ANY KIND WHATSOEVER IN CONNECTION WITH THE PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, EACH OF THE SPECIFIC ITEMS DISCLAIMED BY SELLER IN SECTION 16(a) ABOVE. THE RELEASE DESCRIBED HEREIN WILL SURVIVE THE CLOSING AND DELIVERY OF THE DEED.

(d) ENVIRONMENTAL RELEASE. BUYER EXPRESSLY ASSUMES THE RISK THAT ANY HAZARDOUS MATERIALS ARE OR HEREAFTER MAY BE LOCATED ON THE PROPERTY. FROM AND AFTER THE CLOSING, BUYER HEREBY AGREES TO FOREVER ACQUIT, RELEASE AND DISCHARGE, AND WAIVE, ALL RIGHTS AND CLAIMS TO CONTRIBUTION FROM SELLER, AND SELLER'S AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, FROM AND AGAINST ANY AND ALL JUDGMENTS, CLAIMS, EXPENSES (INCLUDING ATTORNEYS' AND OTHER CONSULTANTS' REASONABLE FEES AND COSTS), CAUSES OF ACTION, DAMAGES, LIABILITIES, INCLUDING WITHOUT LIMITATION, ALL FORESEEABLE AND ALL UNFORESEEABLE CONSEQUENTIAL DAMAGES, DIRECTLY OR INDIRECTLY ARISING OUT OF: (I) THE USE, GENERATION, STORAGE, DISPOSAL, RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIALS ON THE PROPERTY; AND (II) THE COST OF ANY REASONABLY NECESSARY INVESTIGATION, REPAIR, CLEANUP, REMEDIATION OR DETOXIFICATION OF THE PROPERTY AND OTHER AFFECTED PROPERTY AND THE PREPARATION OF ANY CORRECTIVE ACTION, CLOSURE OR OTHER REQUIRED PLANS OR REPORTS TO THE FULL EXTENT THAT SUCH ACTIONS ARE ALLEGED TO BE ATTRIBUTABLE, DIRECTLY OR INDIRECTLY, TO THE PRESENCE OR USE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, OR DISPOSAL OF HAZARDOUS MATERIALS BY ANY PERSON AND RELATED TO OR INVOLVE THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION SHALL NOT MERGE WITH THE DEED AND SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE DEED.

Buyer hereby agrees and acknowledges that the terms and conditions of this Section 16 are a material inducement to Seller's sale of the Property, and that Seller would not sell or transfer all or any part of the Property to Buyer without Buyer's express agreement to the terms and conditions of this Section.

17. Risk of Loss. Between the date of this Agreement and Closing, the risks and obligations of ownership and loss of the Property and the correlative rights against insurance carriers and third parties shall belong to Seller. In the event of damage or destruction of any portion of the Property prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written

notice thereof to Seller prior to Closing, in which event the Earnest Money shall be refunded to Buyer, immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void.

18. Condemnation. In the event of (i) the taking of all or any part of the Property by eminent domain proceedings, (ii) the commencement of any such proceedings, or (iii) the threat of the commencement of any such proceedings, prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing, in which event the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. If Buyer does not so terminate this Agreement, the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking, and, at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds paid or payable thereafter by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

19. Assignment. Buyer shall not have the right to assign, transfer or convey any of its rights, interests or obligations under this Agreement to any other person or entity, without Seller's prior written consent, which consent Seller may grant or withhold in Seller's sole discretion. This prohibition against assignment of this Agreement by Buyer cannot be impliedly waived by Seller, and no waiver by Seller of this prohibition shall be effective without a written amendment to this Agreement signed by the appropriate signatories for Seller. Notwithstanding the preceding sentence, Buyer may assign its rights and obligations under this Agreement to an affiliated entity without the consent of Seller, provided Buyer remain obligated under the terms and conditions of this Agreement and Buyer and approved assignees shall be jointly and severally liable for Buyer's obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

20. Parties. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller and their respective heirs, legal representatives, successors and assigns.

21. Broker and Commission. All negotiations relative to this Agreement and the purchase and sale of the Property as contemplated by and provided for in this Agreement have been conducted by and between Seller and Buyer without the intervention of any person or other party as agent or broker other than SVN Alta, as broker for the Buyer, and Colliers International, as broker for the Seller (collectively, the "**Brokers**"). Seller shall pay the commissions due to the Brokers at the Closing and shall cause the Brokers to each execute and deliver a broker lien waiver in a form reasonably acceptable to Buyer and its title insurer. Seller and Buyer represent and warrant to each other that, other than any commission payable to Brokers by Seller pursuant to the terms of a separate agreements between Seller and the Brokers, there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications. Seller and Buyer shall and do each hereby indemnify, defend and hold harmless each other from and against the claims, demands, actions and judgments of any other brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing, by reason of their respective dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property.

22. Escrow Agent. Escrow Agent shall hold the Earnest Money and shall perform the duties of Escrow Agent hereunder. At such time as Escrow Agent receives written notice from either Buyer or Seller or both setting forth the identity of the party to whom the Earnest Money is to be delivered, Escrow Agent shall deliver the Earnest Money to the party identified. However, if such notice is given by either

Buyer or Seller but not by both, Escrow Agent shall (i) promptly notify the other party that Escrow Agent has received a request for delivery and (ii) withhold delivery for a period of five (5) calendar days after so notifying the other party. If Escrow Agent receives a written notice by Buyer or Seller within said five (5) day period objecting to the earlier notice of delivery, then Escrow Agent shall withhold such delivery until Buyer or Seller agree upon a delivery of the Earnest Money. Buyer and Seller agree to send to the other a duplicate copy of any written notice sent to the Escrow Agent requesting delivery or objecting to a request for disbursement. In the event of dispute between Buyer and Seller sufficient in the sole discretion of Escrow Agent to justify its doing so or in the event Escrow Agent has not delivered the Earnest Money on or before the Closing Date and unless Escrow Agent receives notice from both Buyer and Seller that the date of Closing has been postponed, the Escrow Agent shall be entitled to tender into the registry or custody of any court, which has or would have jurisdiction, the Earnest Money together with such other legal pleading as it may deem appropriate, and thereupon shall be discharged from all duties and liabilities under this Agreement. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses except for willful default or breach of trust; and it shall accordingly, not incur any liability with respect to (i) any action taken or omitted in good faith upon advice of its legal counsel or (ii) any action taken or omitted in reliance upon the instrument, including written notice or instruction provided for in this Agreement not only as to its due execution and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein which Buyer's Escrow Agent shall in good faith believe to be genuine and to have been signed and presented by a proper person or persons in conformance with the provisions of this Agreement. In the event Escrow Agent is required to deliver Earnest Money into the registry of the court and/or file pleadings in association therewith, Buyer shall be liable for all costs incurred by such agent and his reasonable prevailing hourly rate for the preparation, filing and defense of such action or pleadings.

23. Further Assurances. The parties agree to promptly execute and deliver such other documents and perform such other acts as may be reasonably necessary to carry out the purposes and intent of this Agreement.

24. Integration; Modification. This Agreement supersedes all prior discussions and agreements between Seller and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding between Seller and Buyer with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer.

25. Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Utah.

26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Facsimile or electronic signatures shall constitute original signatures.

27. Time of Essence. Time is and shall be of the essence of this Agreement. provided, however, that if the time within which any action, consent, approval or other activity contemplated, expires on a Saturday, Sunday or a national bank holiday, such time period shall automatically be deemed extended to the first day after the scheduled termination of such time period which is not a Saturday, Sunday or national bank holiday. A "**Business Day**" means any day Monday through Friday that is not a national bank holiday.

28. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way restrict, modify or amplify the terms of this Agreement.

29. Exhibits. Each and every Exhibit referred to or otherwise mentioned in this Agreement is or will be attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

30. Notices. All notices, consents, approvals and other communications which may be or are required to be given by either Seller or Buyer under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, or (b) certified mail, return receipt requested, or (c) a nationally recognized overnight delivery service (such as FedEx or UPS Next Day Air), or (d) by email to the email address listed below, with all postage and delivery charges paid by the sender and addressed to the Buyer or Seller, as applicable as set forth below, or at such other address (or e-mail address) as each may request in writing. Such notices delivered by hand, by e-mail, or overnight delivery service shall be deemed received on the date of delivery and, if mailed, shall be deemed received upon the earlier of actual receipt or three (3) days after mailing. Said notice addresses are as follows (and Seller and Buyer shall have the right to designate changes to their respective notice addresses, effective three (3) days after the delivery of written notice thereof):

If to Buyer: SFG ACQUISITIONS, LLC
3280 Peachtree Road NE, Suite 2770
Atlanta, Georgia 30305
Attention: Dusten Estes and Mike Patel
Email: dusten.estes@stonemontfinancial.com
mike.patel@stonemontfinancial.com

with a copy to: Krevolin & Horst, LLC
1201 West Peachtree Street NW, Suite 3250
Atlanta, Georgia 30309
Attention: Wesley C. Turner, Esq.
Email: turner@khlawfirm.com

If to Seller: Redevelopment Agency of Tooele City
Mayor Debra E. Winn, RDA Executive Director
90 N Main Street
Tooele City, Utah 84074
Attention: Jared Stewart
Email: jareds@tooelecitey.org, rogerb@tooelecitey.org, &
shilob@tooelecitey.org

Tooele City
Attn: Mayor Debra E. Winn
90 N Main Street
Tooele City, Utah 84074
Email: jareds@tooelecitey.org, rogerb@tooelecitey.org, &
shilob@tooelecitey.org

with a copy to: Kirton McConkie
Attn: Robert C. Hyde and Eric Robinson
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Email: rhyde@kmclaw.com and erobinson@kmclaw.com

If to Escrow Agent: First American Title Insurance Company
Attn: Anna Irons
215 South State, Suite 380
Salt Lake City, UT 84111
Email: anirons@firstam.com

31. Attorneys' Fees and Costs. In the event either party to this Agreement commences a legal proceeding to enforce any of the terms of this Agreement or any rights under this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs from the other party.

32. 1031 Exchange. Each party acknowledges and agrees that the other party may choose to treat this transaction as part of a like-kind exchange of properties as contemplated by Section 1031 of the Internal Revenue Code (an "**Exchange**"). Should a party elect to engage in an Exchange, the other party agrees to cooperate reasonably with the party engaging in the Exchange to enable the Exchange to be consummated, provided, however, that the cooperating party shall not be obligated to accept title to any real estate (other than Buyer's acceptance of title to the Property); to incur any actual or potential liability or expense in connection with the Exchange, or to delay the Closing. The party engaging in the Exchange shall not be released from any of its duties, obligations, or liabilities hereunder, and the party engaging in the Exchange hereby acknowledges and agrees that the cooperating party does not represent or warranty the effectiveness of the Exchange.

33. Confidentiality. Each party hereby agrees that it and its respective employees, affiliates and agents will not disclose the economic terms and conditions set forth herein to any third party (other than to the title company, surveyor, and such party's agents, affiliates, employees, partners, consultants, contractors, advisors, investment bankers, investors, attorneys, accountants, lenders, prospective capital or financing sources, governmental authorities, or other third parties as may be reasonably necessary to consummate the transaction contemplated herein) without the prior written consent of the other party, provided the foregoing parties are instructed to maintain the confidentiality of such information. Prior to Closing, neither party, nor any affiliate or agent of either party, shall make any press release or other disclosure to the media of this Agreement or the transactions contemplated herein without the express prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed, and the parties shall consult with each other on media disclosure or publicity prior to the same being made, with a view that all such disclosure shall be made jointly. Notwithstanding the foregoing, the following disclosures shall not be prohibited: (i) as required by court order or otherwise required by applicable law; and (ii) of items or information which are now or hereafter a matter of public record or otherwise in the general public domain, or which are now or hereafter available or provided to either party by, through or from any other independent source without violation of such source's obligations of confidentiality. The provisions of this Section 33 shall survive Closing or the earlier termination of this Agreement.

34. Exclusivity. Notwithstanding anything contained in this Agreement to the contrary, from the Effective Date through the Closing, Seller, its directors, officers, employees and agents may not, directly or indirectly, continue to initiate, solicit, and otherwise participate in negotiations and discussions with third-parties, including, but not limited to, the receipt of back up offers, and provide non-public information to third-parties in connection with the purchase and sale of the Property.

35. Other Agreements. This Agreement is being executed by Buyer and Seller in conjunction with the execution of one (1) related Purchase and Sale Agreement (the "**Other Agreement**"; together with this Agreement, the "**Agreements**") between Buyer and the individual owner of the parcels

identified on Schedule 5(c). Buyer shall be obligated to close the transactions contemplated by this Agreement and the Other Agreement concurrently. If Buyer exercises its right to terminate this Agreement or the Other Agreement pursuant to an express right to do so under any of the Agreements, then, in Buyer's sole discretion, Buyer may terminate all of the Agreements and receive an immediate refund of the Earnest Money in accordance with the applicable termination provision. The consummation of the transactions contemplated by the Other Agreement shall be a condition precedent to Buyer's and Seller's obligations to Close under this Agreement. Notwithstanding the foregoing, Buyer shall be obligated to use good faith efforts to consummate the closing of the Agreements.

36. Future Modification of Existing Well Access and Storm Water Easements. Buyer acknowledges that the Property is subject to the following easements: (i) Public Utility and Drainage Easement, recorded October 27, 2021 as Entry No. 558506; (ii) Storm Water Drainage Easement, recorded October 27, 2021 as Entry No. 558505; (iii) Storm Water Drainage Easement, recorded October 27, 2021 as Entry No. 558504; (iv) Storm Water Pond Easement, recorded October 27, 2021 as Entry No. 558507; and (v) Well Access Easement, recorded November 23, 2021 as Entry No. 560715 (collectively, the "**Storm Water and Well Access Easements**"), and that Buyer shall have no right to object to said Storm Water and Well Access Easements. Notwithstanding, upon written request by Buyer and approval by Seller of the revised drainage/access plans (not to be unreasonably withheld), Seller agrees to permit, cause, and consent to the relocation of the easement areas and those certain improvements constructed within the Storm Water and Well Access Easements; provided that such relocation is conducted at Buyer's sole cost and expense, and provided further that such relocation provides comparable easement rights and functionality to the beneficial party under such easements, including comparable access rights to the applicable facilities, provides equal capacity, and does not unduly burden the overall storm water system. Upon completion of the relocation the easement areas described in Storm Water and Well Access Easements shall be amended to reflect said relocation. This provision shall survive the Closing and delivery of the Deed.

37. Seller Imposed Covenants, Conditions, and Restrictions. Buyer acknowledges and agrees that Seller intends to record certain covenants, conditions, and restrictions on the Property ("**CC&Rs**") prior to the Closing, which CC&Rs are intended to preserve and enhance the Property's value. The CC&Rs are more particularly described on Exhibit 37-1, attached hereto and incorporated herein by this reference. The CC&Rs shall be executed and properly acknowledged by Seller and Buyer at Closing.

38. No Waiver. No waiver of any default by either party shall be implied from any omission by the other party to take any action in respect of such default. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by either party to or of any act or request of any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or request.

39. Seller's Option to Repurchase.

(a) Grant of Repurchase Option. Buyer grants to Seller the following option and right to repurchase the Property following Closing (the "**Repurchase Option**"): in the event that Buyer does not commence construction of the Project on the Property (which, for the purposes hereof means commencement of land disturbance) on or before the date which is **5** years after the Closing Date (the "**Commencement Period**"), Seller shall be entitled to demand by written notice (the "**Option Notice**") that Buyer reconvey the Property to Seller pursuant to the terms and conditions of this Section 39. The

Option Closing (as defined herein) shall occur on or before Option Closing Date (as defined herein). Seller's right to exercise the Repurchase Option shall be Seller's sole and exclusive remedy for Buyer's failure to commence construction of the Project on or before the expiration the Commencement Period. Notwithstanding any other provision of this Section 39(a) to the contrary, the Commencement Period shall be extended day-for-day for force majeure events, including, without limitation, war, strikes, fires, floods, acts of God, governmental restrictions or moratoria, delays in permitting or approvals necessary for commencement of construction or power failures.

(b) Exercise of Repurchase Option. Seller shall have **30** days from the expiration of the Commencement Period in which to exercise the Repurchase Option by delivering the Option Notice to Buyer (the "**Option Period**"). Subject to the Buyer Termination Right (as defined herein), the issuance of the notice of exercise will immediately create an effective and binding contract between Buyer to sell the Property to Seller and for Seller to acquire the Property from Buyer on the terms and conditions set forth herein. If Seller fails to send the Option Notice to Buyer prior to the expiration of the Option Period, Seller's right to exercise the Repurchase Option shall be irrevocably waived, forever forfeited and of no further force or effect. Notwithstanding anything to the contrary contained herein, in the event Seller delivers the Option Notice but Buyer thereafter commences construction of the Project prior to the Option Closing Date, then Buyer's failure to timely commence construction of the Project shall be deemed cured, the binding contract created by the Option Notice shall automatically terminate, and Seller's right to exercise the Repurchase Option shall be irrevocably waived, forever forfeited and of no further force and effect (the "**Buyer Termination Right**").

(c) Appraisal Procedure; Purchase Price.

(i) If Seller exercises the Repurchase Option during the Option Period and Buyer fails to trigger the Buyer Termination Right, the purchase price of the Property shall be based upon the Fair Market Value (as defined herein) of the Property at the time of Seller's exercise of the Repurchase Option. As used herein, the term "**Fair Market Value or FMV**" shall mean the price at which the Property could be sold by a person who desires, but is not required to sell, and is sought by a person who desires, but who is not required to buy, after due consideration of all the elements reasonably affecting value. Within **10** days after Buyer's receipt of the Option Notice, Seller and Buyer shall each select an appraiser and advise the other Party of their respective appraiser's name, address and telephone number. If either Buyer or Seller shall fail to timely appoint an appraiser, then the Party who timely appointed an appraiser shall have the power to proceed as the sole appraiser to determine the FMV of the Property.

(ii) Within **30** days after the appraisers are appointed (or if any Party shall fail to timely appoint an appraiser, within **30** days after the deadline for such appointment), each appraiser so appointed shall independently make appraisals of the FMV of the Property. If the two appraisers initially chosen by Buyer and Seller cannot agree upon the FMV of the Property, then the Buyer's appraiser and the Seller's appraiser shall consult with each other and shall select a third appraiser. The third appraiser shall choose either the Buyer selected appraiser's calculation of FMV of the Property or Seller's selected appraiser's calculation of FMV of the Property, and such selection shall be the FMV of the Property.

(iii) Each appraiser designated to participate in the appraisal of the Property shall (A) be a real estate professional specializing in industrial commercial property sales and leasing in the geographic area in which the Property is located, (B) have at least five years' experience as an appraiser, (C) be a member of the American Institute of Real Estate Appraisers, and (D) have no material, financial or other business interest in common with a Party to this

Agreement. Seller and Buyer shall each bear the fees and expenses of its own appraiser and one-half of the fees and expenses of the third appraiser; provided, however, if Seller does not purchase the Property after Seller institutes the appraisal procedure, Seller shall pay the expenses of its appraiser and the third appraiser and if Buyer triggers the Buyer Termination Right, Buyer shall pay the expenses of its appraiser and the third appraiser.

(iv) In the event that either (i) Buyer exercises the Buyer Termination Right, or (ii) Seller fails to reacquire the Property after the exercise of the Repurchase Option, then Seller's Repurchase Option right shall lapse, and the Repurchase Option shall automatically terminate and be of no further force or effect.

(d) Closing. The closing and consummation of the purchase and sale of the Property (the "**Option Closing**") will occur on the date which is **20** days after the determination of the FMV of the Property (the "**Option Closing Date**") at the offices of the Escrow Agent through the escrowing of documents. The purchase price will be payable by wire transfer of immediately available federal funds. Title to the Property will be conveyed by Buyer to Seller by special warranty deed, subject only to such title exceptions in existence at the date the Property was originally conveyed by Seller to Buyer, all real estate taxes for the year of Option Closing not yet due or payable, installments of special assessments, if any, not yet due or payable, and additional easements, if any, for utilities serving the Property. Current real property taxes and installments of special assessments will be prorated as of the date of Closing. Seller will bear the cost of any title insurance coverage desired by Seller. Buyer will pay the state transfer tax due and payable in connection with the recording of the deed with respect to the Property. Seller will pay the state and local recording taxes. Seller and Buyer will each pay the fees and expenses of its attorneys and split all escrow fees. Full and exclusive possession of the Property will be granted to Seller on the Option Closing Date.

(c) Survival. The provisions of this section shall expressly survive the Closing until the first to occur of (i) Buyer's commencement of construction of the Project, or (ii) the expiration of the Option Period. At Closing, the Parties shall memorialize this Section 39 in a memorandum executed by the Parties and recorded at the Closing against the Property and may be specifically enforced by Seller.

(d) Lender Rights. In the event Buyer's Lender requests ("**Lender's Request**") that the Repurchase Option be removed from the Agreement in order to approve its loan to Buyer as evidenced by a letter from Buyer's Lender to Seller or Seller's attorney requesting said removal and stating that Buyer's loan is approved subject to the removal of Seller's Repurchase Option, then in such event, Seller agrees, that, notwithstanding anything to the contrary, the Repurchase Option shall be unilaterally stricken from this Agreement upon receipt of such Lender's Request without the requirement of further approval by Seller and this Section 39 shall be of no further force or effect.

(e) Termination of Repurchase Option. In the event the foregoing requirement regarding the commencement of the Project shall be satisfied, or Seller's waiver of its Repurchase Option as provided hereinabove, Seller shall execute and record such instrument as Buyer may reasonably request to evidence such satisfaction and/or waiver; provided, however, Seller's failure to do so shall not affect such satisfaction or waiver and in the event Seller fails to do so Buyer may unilaterally record an instrument evidencing such satisfaction or waiver.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal all as of the day and year first written above.

CITY SELLER:

TOOELE CITY CORPORATION, a Utah municipal corporation and charter city

By: _____
Name: _____
Title: _____

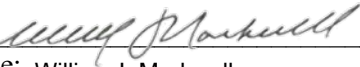
AGENCY SELLER:

REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH, a Utah redevelopment agency

By: _____
Name: _____
Title: _____

BUYER:

SFG ACQUISITIONS, LLC,
a Georgia limited liability company

By:  _____
Name: William I. Markwell
Title: Manager

The undersigned has executed this Agreement solely to confirm its agreement to (i) hold the Earnest Money in escrow in accordance with the provisions hereof and (ii) comply with the provisions of this Agreement as applicable to Escrow Agent.

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____

Name/Title: _____

Date: _____, 2021

EXHIBIT "A-1"

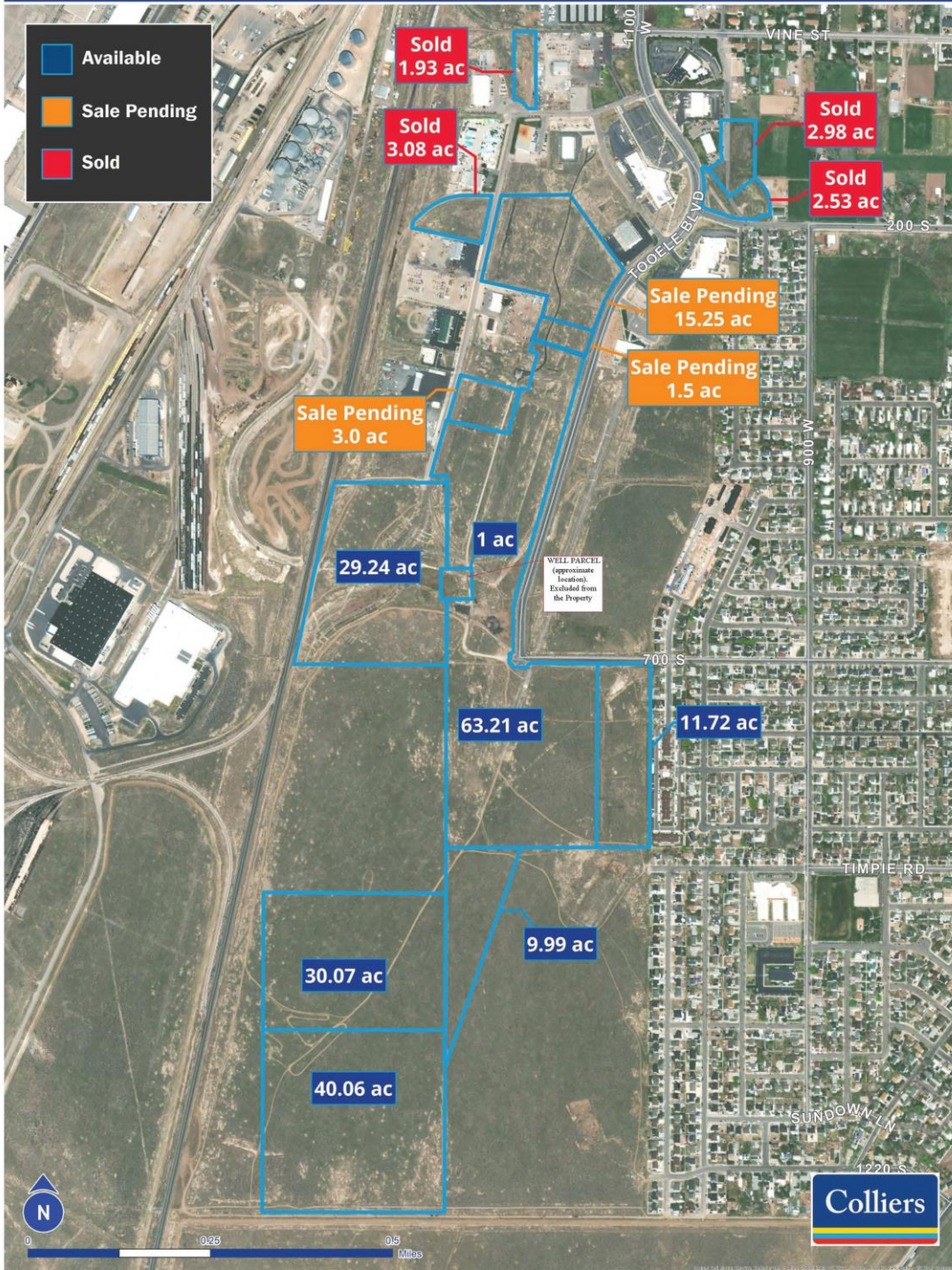
Depiction of the Property

[See the Following Page]

Parcels noted as "Well Parcel", "Sold", and "Sale Pending Parcels" are not a part of the Property

Tooele County Parcels

Tooele County, Utah



6440 S. Millrock Dr. Suite 900 Salt Lake City, UT 84121 +1 801 847 8300 colliers.com

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EXHIBIT A-2

Legal Description of the Property

To be revised pursuant to the procedure in Section 8 of the Agreement.

Affected Parcel(s): 02-010-0-0051, 02-018-0-0011, 16-078-0-025a, 02-010-0-0004, 02-018-0-0005, 02-018-0-0002

TAX ID: 02-010-0-0051: (TAX ID number is subject to change due to pending parcel lot line adjustments)

A PARCEL OF LAND BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 29, THE SOUTHEAST QUARTER OF SECTION 30, AND THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°05'41" WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, A DISTANCE OF 29.95 FEET; THENCE SOUTH 89°43'19" WEST, A DISTANCE OF 117.24 FEET TO THE EAST LINE OF 1200 WEST STREET; THENCE NORTH 15°38'12" EAST ALONG SAID EAST LINE, A DISTANCE OF 501.19 FEET; THENCE SOUTH 79°18'33" EAST, A DISTANCE OF 485.95 FEET; THENCE NORTH 16°07'20" EAST, A DISTANCE OF 523.28 FEET; THENCE NORTH 73°52'43" WEST, A DISTANCE OF 39.53 FEET TO THE EAST LINE OF INNOVATIVE SUBDIVISION (ENTRY NO. 396498); THENCE NORTH 16°07'17" EAST ALONG SAID EAST LINE, A DISTANCE OF 84.41 FEET; THENCE SOUTH 73°52'40" EAST, A DISTANCE OF 390.65 FEET TO THE WEST LINE OF TOOELE BOULEVARD (ENTRY NO. 401144); THENCE SOUTHWESTERLY ALONG SAID WEST LINE THE FOLLOWING NINE (9) COURSES:

1) THENCE SOUTH 16°07'20" WEST, A DISTANCE OF 1778.91 FEET TO A POINT OF CURVATURE; 2) THENCE 155.61 FEET ALONG A 553.00 RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 08°03'40" WEST, 155.10 FEET); 3) THENCE SOUTH 00°00'02" EAST, A DISTANCE OF 254.71 FEET TO A POINT OF CURVATURE; 4) THENCE 44.34 FEET ALONG A 29.50 RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 43°03'31" WEST, 40.28 FEET); 5) THENCE SOUTH 00°00'02" EAST, A DISTANCE OF 66.00 FEET TO A POINT OF CURVATURE; 6) THENCE 44.34 FEET ALONG A 29.50 RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 43°03'35" EAST, 40.28 FEET); 7) THENCE NORTH 89°59'58" EAST, A DISTANCE OF 106.00 FEET TO A POINT OF CURVATURE; 8) THENCE 44.34 FEET ALONG A 29.50 RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 43°03'30" EAST, 40.28 FEET); 9) THENCE NORTH 89°59'58" EAST, A DISTANCE OF 479.87 FEET TO THE WEST LINE OF WEST MEADOWS PLAT "D" AMENDED SUBDIVISION (ENTRY NO. 301108);

THENCE SOUTH 00°00'04" EAST ALONG SAID WEST LINE, A DISTANCE OF 1,336.42 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°42'18" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 1,094.86 FEET TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 32; THENCE NORTH 00°05'28" WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1,696.22 FEET; THENCE NORTH 89°54'32" EAST, A DISTANCE OF 176.82 FEET; THENCE NORTH 00°05'28" WEST PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 200.00 FEET; THENCE SOUTH 89°54'32" WEST, A DISTANCE OF 176.82 FEET TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°05'28" WEST ALONG SAID WEST LINE, A DISTANCE OF 750.32 FEET TO THE NORTHWEST CORNER OF SAID SECTION 32 AND THE POINT OF BEGINNING.

CONTAINS: 2,753,598 SQUARE FEET OR 63.214 ACRES +/-

TAX ID: 02-018-0-0011: (TAX ID number is subject to change due to pending parcel lot line adjustments)

A PARCEL OF LAND BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 00°05'28" EAST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 750.32 FEET; THENCE SOUTH 89°54'32" WEST, A DISTANCE OF 23.18 FEET; THENCE SOUTH 00°05'28" EAST PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF 200.00 FEET; THENCE NORTH 89°54'32" EAST, A DISTANCE OF 23.18 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE SOUTH 00°05'28" EAST ALONG SAID EAST LINE, A DISTANCE OF 372.95 FEET; THENCE SOUTH 89°42'59" WEST, A DISTANCE OF 1,105.82 FEET TO THE EAST LINE OF THE L.A. & S.L. RAIL ROAD RIGHT-OF-WAY; THENCE NORTH 12°07'35" EAST ALONG SAID EAST LINE, A DISTANCE OF 1,354.92 FEET TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°43'00" EAST ALONG SAID NORTH LINE, A DISTANCE OF 819.09 FEET TO THE NORTHEAST CORNER OF SECTION 31, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN AND THE POINT OF BEGINNING.

CONTAINS: 1,268,944 SQUARE FEET OR 29.131 ACRES +/-

TAX ID: 16-078-0-025a:

LOT 22, WEST MEADOWS PLAT "D" AMENDED, A SUBDIVISION OF TOOELE CITY---LESS 3.18 AC TO REDEVELOPMENT AGENCY OF TOOELE CITY, UT WD ENTRY #337099. BALANCE OF 16-78-22 AFTER 16-78-23 AND 16-78-24 FOR 2011 YEAR. 12.37 AC---LESS 0.64 AC TO TOOELE BLVD (ENTRY #401144). BALANCE OF 16-78-25 AFTER 2-10-R FOR 2015 YEAR. 11.73 AC

TAX ID: 02-010-0-0004:

COM AT NW COR SW 1/4 SEC 32, T3S, R4W, SLM, E 545 FT, S 18 49'31" W 1688.94 FT N1598.6 FT TO BEG, CONT 10 AC 10.00 AC

TAX ID: 02-018-0-0005:

COM SE COR OF NE 1/4 OF SE 1/4 OF SEC 31 T3S, R4W, SLM N 60 RDS, W 80 RDS, S 60 RDS, E 80 RDS TO BEG (ANNEXED TO TOOELE CITY FOR 88 TAX ROLL) 30.00 AC

TAX ID: 02-018-0-0002:

SE 1/4 OF SE 1/4, SEC 31, T3S, R4W, SLB&M. ANNEXED TO TOOELE CITY FOR 88 TAX ROLL. 40.00 AC 05/02/2002

Any acreage listed herein is an approximation and Seller makes no representation or warranty regarding the acreage stated herein.

SCHEDULE 5(c)

Assemblage Parcels

Approximately 92 acres of land and any improvements located thereon, located in Tooele City, Utah, comprised of certain parcels located at 1100 West 1220 South, Tooele, Utah 84047 and depicted below:



EXHIBIT 37-1

[Form CC&Rs]

When recorded, return to:

Kirton McConkie
Attn: Robert C. Hyde
50 East South Temple Street
Salt Lake City, Utah 84111

Tax Parcel No. _____

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this “**Declaration**”) is made and entered into as of the ____ day of _____, 2021, by and between TOOELE CITY CORPORATION, a Utah municipal corporation and charter city (“**City Declarant**”), REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH, a Utah redevelopment agency (“**Agency Declarant**”; together with City Declarant, the “**Declarant**”); and _____ (“**Buyer**”).

RECITALS:

A. Declarant and Buyer previously entered into that certain Purchase and Sale Agreement dated _____ as amended from time to time (collectively, the “**Purchase Agreement**”), in which Declarant agreed to sell, and Buyer agreed to purchase, certain real property located in Tooele City (the “**City**”), Utah (the “**Property**”), as more fully described on Exhibit A attached hereto.

B. As material consideration for Declarant conveying the Property to Buyer, and in order to protect the Declarant in relation to the development of the Property by Buyer, and pursuant to the terms of the Purchase Agreement, Declarant and Buyer have agreed to record this Declaration for the purpose of memorializing certain covenants and restrictions with respect to the Property, as further described herein.

AGREEMENTS:

NOW, THEREFORE, intending to be legally bound, it is agreed to as follows:

1. Permitted Uses. Any use of the Property by an Owner or Occupant shall comply with all federal, state or local laws, ordinances, statutes, rules, codes or regulations. As used herein, the following terms shall have the meanings stated below:

a. “Occupant” shall mean any party, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership, or other group, entity or association which has purchased, leased, rented or otherwise acquired the right to occupy and/or use any portion of the Property (each a “**Parcel**”), or a Building located thereon or portion thereof.

b. “Owner” shall mean any party, including Buyer, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership, entity or association, which holds in fee title, the rights and incidents of ownership of real property in the State of Utah as to a Parcel. The term “Owner” shall not refer to any party that shall have such interest solely as security for performance of any obligation.

2. Objectionable Uses. Notwithstanding any language to the contrary herein, in no event shall the Property be used for any of the uses described on Exhibit B attached hereto (the “**Objectionable Uses**”). Additionally, the following uses and restrictions shall apply to the Property:

a. Compliance with Law. No portion of the Property may be occupied for any use which is in violation of any applicable ordinances, laws and regulations of any federal, state, or local governmental or quasi-governmental agency(ies) or authority(ies) having applicable jurisdiction (collectively, the “**Governmental Authority**”). All review, permit, approval, and other approval processes established by the Governmental Authority shall continue to apply and not be altered or waived by this Declaration.

b. Outside Storage. Any materials, supplies or equipment stored outside on a Parcel shall be stored in compliance with all applicable ordinances of the City.

c. Nuisances. No Owner or Occupant shall create a nuisance on the Property. No rubbish or debris of any kind shall be permitted to accumulate upon any Parcel, and no noxious odor shall be permitted to arise therefrom including open burning, so as to render any Parcel or any portion thereof adversely unsanitary, unsightly, offensive or detrimental to any Property in the vicinity thereof or to the Occupants thereof. In all events, all proper air quality, discharge, emissions, or other permits, approvals and consents from any applicable Governmental Authority must be obtained and maintained by the Owner or Occupant.

d. Utilities. All utility systems, connections and installations must be underground unless otherwise approved by the other Owner(s) or required by the City or other utility service provider. Any external transformers, motors, heating and/or air conditioning equipment or other similar apparatus must be screened in accordance with Governmental Requirements, including all requirements set forth in the Tooele City Code. All such improvements related to the utility systems and connections shall be constructed in accordance with Governmental Requirements, including all requirements set forth in the Tooele City Code.

e. Fencing. Fencing is only allowed in a manner consistent with any law, ordinance, regulation, or requirement by any municipality or governmental agency or entity having jurisdiction over the Property (“**Governmental Requirements**”), including all requirements set forth in the Tooele City Code.

f. Improvements. No Owner shall construct, erect, place, or modify any structure, landscaping, or other improvement (collectively, the “**Improvements**”) on a Parcel, unless such Improvements are in compliance with all Governmental Requirements, including all requirements set forth in the Tooele City Code. So long as the Improvements are consistent with all Governmental Requirements, including all requirements set forth in the Tooele City Code, no further approval or review shall be required under this Declaration for any construction, erection, placement, or modification of any structure, landscaping, or other improvement within a Parcel(s); provided, approval or review may be required by any municipality or governmental agency or entity having jurisdiction over architectural or construction matters within the Parcel(s) or pursuant to additional covenants, if any, lawfully binding on an Owner or the Parcel(s).

3. Development of the Property.

a. Development. Each Owner shall be responsible for the construction of all buildings, structures, signage and other improvements made or constructed upon any portion of the Property, and shall include, without limitation, all Improvements (including but not limited to buildings, driveways, sidewalks, trails, pathways, parking areas, parking structures, parking surfaces, curbing, gutters, landscaping, retaining walls, signs, utilities, exterior lighting, street and lighting) which are constructed upon its respective Parcel.

b. Construction of Improvements. Once commenced, construction, reconstruction or repair of all Improvements shall be diligently prosecuted to completion; provided, however that the Owners acknowledge that the Parcels may be developed in multiple phases and over time. The Owner of its respective Parcel on which Improvements are being constructed, reconstructed or repaired shall at all times keep any applicable driveways and access drive aisles contiguous to such Parcel clean and free from the material collection or piling of dirt, mud, dust, garbage, refuse, trash or other debris which might be occasioned by such activities.

c. Maintenance of Improvements. Each Owner shall keep its respective Parcel free from the material collection or piling of rubbish, debris, fire hazards, graffiti or any unsanitary, unsightly or offensive condition and to conduct such weed abatement, rubbish and debris removal and other maintenance to the extent required by applicable federal, state, and/or local laws, rules, regulations and ordinances. To the extent applicable, each Owner shall be required, at its sole cost and expense, to maintain its respective Parcel, the common areas located on that Parcel, the utility systems that benefit that Parcel, and the Improvements located thereon, in a good workmanlike manner and in a clean, safe and orderly manner and to cause all weeds, rubbish and debris to be removed from its respective Parcel in accordance with the provisions of this subsection. Each Owner shall be responsible for the exterior and interior maintenance of any and all Improvements located upon such Owner's Parcel, including the timely removal of any graffiti.

4. Approval. Any approval rights of an Owner or Declarant (in its status as Declarant) herein shall be subject to such party's reasonable discretion, and such party shall not unreasonably withhold, condition, or delay its approval. All approvals granted herein must be in writing to be effective.

5. Rights, Duties and Obligations.

a. Indemnification. To the fullest extent permitted by applicable law, each Owner and their successors and assigns hereby agree to indemnify, defend and hold the other Owners harmless from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage caused by or arising out of: (i) the acts and omissions of such Owner and their agents, servants, employees, contractors, and/or invitees arising from an Owner exercising its rights under this Declaration; and (ii) the use of Property not owned by such Owner and their agents, servants, employees, contractors or invitees. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Declaration.

b. Insurance. Each Owner shall obtain and maintain a policy of general commercial liability and property liability insurance sufficient to insure their respective interests against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Owner's respective Parcel.

6. Enforcement.

a. Parties Entitled to Enforce. City Declarant, Agency Declarant, and any Owner may enforce any and all provisions of this Declaration. Except as provided for herein, absent an express assignment, no party (including, without limitation, any owner of adjacent or nearby property) shall be deemed a third-party beneficiary of this Declaration or have any rights to enforce any of the provisions contained in this Declaration.

b. Remedies for Violations. The provisions of this Declaration may be enforced by all available legal and equitable means (including an action to enjoin violative actions, compel compliance, or to require the demolition of improvements); provided, no breach hereof shall permit the termination of any easement granted hereunder. The various rights and remedies contained herein, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute.

c. Recovery of Costs. In any action to enforce this Declaration, the prevailing party may recover from the non-prevailing party all of its costs incurred in the action, including, without limitation, court costs and reasonable attorneys' fees.

d. Notice of Default. An Owner shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from the defaulting Owner's receipt of written notice from the party alleging such breach of this Declaration specifying the particulars of which such defaulting Owner has failed to perform the obligations of this Declaration unless such Owner, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice of default. However, such Owner shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period and such Owner has commenced a cure of the default specified in the notice and is using good faith and due diligence to prosecute such cure to completion.

7. Notices. Except as otherwise required by law, any notice, demand or request given in connection with this Declaration shall be in writing and shall be given by personal delivery, overnight courier service, electronic correspondence (provided sender receives verification of receipt), or United States certified mail, return receipt requested, postage or other delivery charge prepaid, addressed to Declarant or Buyer at the following addresses (or at such other address as Declarant or Buyer or the person receiving copies may designate in writing given in accordance with this Section):

Declarant: Redevelopment Agency of Tooele City
 Mayor, RDA Executive Director
 90 N Main Street
 Tooele City, Utah 84074
 Attention: Jared Stewart
 Email: jareds@tooelecitey.org, rogerb@tooelecitey.org, &
 shilob@tooelecitey.org

Tooele City
Attn: Mayor
90 N Main Street
Tooele City, Utah 84074
Email: jareds@tooelecitey.org, rogerb@tooelecitey.org, &

shilob@tooelecitey.org

WITH A
COPY TO:

Kirton McConkie
Attn: Robert C. Hyde, Eric B. Robinson
50 East South Temple Street, Suite 400
Salt Lake City, Utah 84111
Phone: (801) 328-3600

Buyer:

With a copy to:

8. Running with the Land. Except as expressly set forth herein, the restrictions, covenants, and burdens provided for herein shall be rights, restrictions, covenants, and burdens running with the Property. Any and all portions of the Property shall hereinafter be held, sold, conveyed, transferred, occupied, leased, rented, encumbered, and used subject to this Declaration and its terms, provisions, covenants, restrictions, limitations, and conditions set forth herein, all of which shall be binding on Buyer and/or users of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

9. Declarant's Rights. The rights and benefits reserved by and conferred upon Declarant herein, shall inure to and may be exercised by Declarant or such other party as Declarant designates in a recorded writing. In the event either of the Declarant (i) ceases to legally exist and (ii) has not previously assigned its rights under this Declaration, the ceasing Declarant's rights and benefits under this Declaration shall automatically vest in the other Declarant.

10. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by each Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the Declarant and a majority of the then Owners, has been recorded within the twelve-month period preceding the renewal of this Declaration, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

11. Applicable Law. This Declaration shall be construed and interpreted under Utah law.

12. Entire Agreement. This Declaration contains the full, complete and integrated statement of each and every term and provision agreed to by and between the parties hereto and supersedes any prior writings and agreements of any nature among the parties. This Declaration shall not be orally modified in any respect and may be modified only by the written agreement of the parties hereto.

13. Counterparts. This Declaration may be executed in counterparts, each of which shall be an original and all of which shall together constitute one and the same document.

IN WITNESS WHEREOF, Declarant and Buyer have executed this Declaration as of the day and year first above written.

[Signatures blocks and Acknowledgements will be added at Closing]

EXHIBIT A

(Legal Description of the Property)

EXHIBIT B

Objectionable Uses

No portion of the Property may be used for any of the following facilities, uses, or purposes:

1. A facility for any use which is illegal or would reasonably be determined to cause a threat of imminent harm to persons or property or constitutes a public or private nuisance.
2. Any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors or appropriately screened dumpsters).
3. An establishment providing (i) nude or topless entertainment or waitstaff, (ii) "head shop", (iii) adult magazine or book store, adult video store or adult "novelty" store (which are defined as stores with at least five percent (5%) of the inventory of particular categories or products (such as books, DVDs/videos) that are not available for sale or rental to individuals under eighteen (18) years old because such inventory explicitly deals with or depicts human sexuality).
4. The manufacturing, sale, display, advertisement, or promotion of pornographic, lewd, obscene, or adult-oriented (as such terms are defined and applied by applicable Laws) (i.e., "x" rated) books, magazines, photographs, prerecorded video cassettes, video tapes, video discs, laser discs, video games, digital video discs or other video software and/or any substitutes for, or items which are, technical evolution of the foregoing items (collectively, "**Media**") (exclusive of the sale or rental of Media by a national bookstore, video store, or electronics retailer normally located in first-class shopping centers in the state where the Property is located (such as, for example, Barnes & Noble, Best Buy, etc.)).
5. Any operation primarily used as a distilling, refining, smelting, agricultural, or mining operation, except for storage and/or production of products incidental to the retail sale thereof from the store.
6. Any bar (except as an incidental use to a retail, restaurant or commercial business, in which case such use shall be restricted to less than ten percent (10%) of the floor area occupied by such business), pub, tavern, or night club.
7. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; operation offering table games such as blackjack or poker; slot machines, video poker/black-jack keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant and in compliance with all applicable laws. Notwithstanding the above, this paragraph is not intended to prohibit the installation and use of video game machines by the occupants.
8. Any carnival, amusement park or circus.
9. Any liquor store (provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any occupant ancillary to its primary use of the premises, or the sale of beer, wine or alcohol for on-premises consumption at any restaurant or bar permitted by applicable laws).

10. Any establishment that stocks, displays, promotes, or rents, any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous or illicit drug, marijuana, or other controlled substance, including without limitation, any hashish pipe, water pipe, bong, chillum, pipe screens, rolling papers, rolling devices, coke spoons or “roach” clips (exclusive of and not intended to prohibit the sale of controlled substances, narcotics, drugs, etc. as part of a licensed pharmacy operation).

11. A junkyard or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

12. Any establishments with any striptease, burlesque or similar dancing, or that exhibit either live or by other means to any degree, nude or topless dancers or wait staff.

13. An operation whose primary purpose is the manufacturing, sale, display, or distribution of items that appeal to prurient interest in sex, including, without limitation, lingerie (which does not include pajamas, sleepwear, gowns, undergarments, underwear, etc.) or “sex toys;” provided that this restriction does not apply to operations that display or offer for sale an incidental amount of such items (incidental sales shall mean that the floor area dedicated to such items is less than five percent (5%) of the gross leasable area of such store).