



Midvale City  
7505 South Holden Street  
Midvale, UT 84047  
801-567-7200  
[www.midvalecity.org](http://www.midvalecity.org)

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**THE REDEVELOPMENT AGENCY OF MIDVALE CITY  
MEETING AGENDA  
October 20, 2015**

**PUBLIC NOTICE IS HEREBY GIVEN** that the **Redevelopment Agency of Midvale City** will hold a regular meeting on the **20th Day of October, 2015** at Midvale City Hall, 7505 South Holden Street, Midvale, Utah as follows:

**7:00 p.m. – Or Immediately Following the City Council Meeting**

**REGULAR MEETING**

**I. GENERAL BUSINESS**

A. Roll Call

**II. CONSENT AGENDA**

A. Approve Minutes of October 6 and 13, 2015 [*Rori Andreason, H.R. Director/City Recorder*]

**III. ACTION ITEMS**

A. Approve Resolution No. 2015-14RDA entering into a Purchase Agreement for property within the Jordan Bluffs Project Area [*Danny Walz, Redevelopment Agency Director*]

B. Approve Resolution No. 2015-15RDA entering into an Exclusive Listing Agreement with JHB Realty Advisers [*Danny Walz, Redevelopment Agency Director*]

**IV. ADJOURN**

In accordance with the Americans with Disabilities Act, Midvale City will make reasonable accommodations for participation in the meeting. Request assistance by contacting the City Recorder at 801-567-7207, providing at least three working days advance notice of the meeting. TTY 711

A copy of the foregoing agenda was provided to the news media by email and/or fax; the agenda was posted in the City Hall Lobby, the 2<sup>nd</sup> Floor City Hall Lobby, on the City's website at [www.midvalecity.org](http://www.midvalecity.org) and the State Public Notice Website at <http://pmn.utah.gov>. Board Members may participate in the meeting via electronic communications. Board Members' participation via electronic communication will be broadcast and amplified so other Board Members and all other persons present in the Council Chambers will be able to hear or see the communication.

**PLEASE MAKE SURE ALL CELL PHONES ARE TURNED OFF DURING THE MEETING**

Date Posted: October 16, 2015

**RORI L. ANDREASON, MMC  
H.R. DIRECTOR/CITY RECORDER**



**REDEVELOPMENT AGENCY REGULAR MEETING**  
*Minutes*

**Tuesday October 6, 2015**  
**Council Chambers**  
**7505 South Holden Street**  
**Midvale, Utah 84047**

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**CHAIR:** JoAnn Seghini

**BOARD MEMBERS:** Board Member Paul Glover  
Board Member Paul Hunt  
Board Member Stephen Brown  
Board Member Quinn Sperry  
Board Member Wayne Sharp

**STAFF:** Kane Loader, City Manager; Phillip Hill, Asst. City Manager/CED Director; Laurie Harvey, Assistant City Manager/Admin. Services Director; Rori Andreason, City Recorder/H.R. Director; Bob Davis, Public Works Director; Lisa Gardner, City Prosecuting Attorney; Danny Walz, Redevelopment Agency Director; Annaliese Eichelberger, RDA Coordinator; and Jarin Blackham, IT Manager.

Chair Seghini called the meeting to order at 7:30 p.m.

**I. ROLL CALL**

Board Members Paul Hunt, Stephen Brown, Quinn Sperry, Wayne Sharp, and Paul Glover were present at roll call.

**II. CONSENT AGENDA**

**A. APPROVE MINUTES OF SEPTEMBER 22, 2015**

**MOTION:** Board Member Wayne Sharp **MOVED** to approve the Consent Agenda. Board Member Stephen Brown **SECONDED** the motion. Chair Seghini called for discussion on the motion. There being none, she called for a roll call vote. The voting was as follows:

Board member Paul Glover	Aye
Board member Paul Hunt	Aye
Board member Stephen Brown	Aye
Board member Quinn Sperry	Aye
Board member Wayne Sharp	Aye

**III. ACTION ITEMS**

**A. APPROVE RESOLUTION NO. 2015-11RDA AUTHORIZING THE EXECUTION OF A TAX INCREMENT REIMBURSEMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF MIDVALE CITY AND RIVERWALK INVESTMENTS II, LLC**

Annaliese Eichelberger said on February 19, 2013, the Redevelopment Agency of Midvale City Board of Directors approved the creation of a program for the reimbursement of a percentage of

the incremental costs associated with projects within the Bingham Junction Project Area. The overall goal of the program is to facilitate and attract development to the area that has a positive impact for Midvale City. The program was created to provide reimbursement for projects that increase tax value, provide high paying jobs, attract prominent tenants, promote green building standards or encourage good planning design.

The reimbursement agreement is separate from the master reimbursement agreement that was executed with Littleton and subsequently assigned to Mercer Bingham Junction LLC and Arbor Gardner Bingham Junction Holdings LC. It is a limited obligation payable from the tax increment of the specific project and subordinate to any prior tax increment obligations of the Agency including the debt service of current and future bonds as well as the Agency's administration costs.

The agreement details the requirements the owner must satisfy in order to receive the portion of tax increment. The attached agreement represents a commitment for reimbursement from tax increment up to an amount of \$750,000. The Agency will reimburse the developer through annual payments for a period of seventeen (17) years or until the costs have been paid, whichever comes first. Over the course of the agreement, the owner must continue to meet the requirements for reimbursement. If not, the Agency has the option to reduce the reimbursement payment.

The reimbursement agreement has been prepared by Tom Berggren of Jones Waldo and has been reviewed by legal counsel for Riverwalk Investments II, LLC.

**FISCAL IMPACT:**

The reimbursement agreement will be subordinate to the Agency's existing obligations. Future payments will be allocated within future budgets as funds are available. The Owner is responsible for paying the initial costs of the project and the reimbursement is limited by the amount of tax increment generated from the property.

**MOTION:** Board Member Paul Hunt **MOVED** that we adopt Resolution No. 2015-11RDA authorizing the execution of a tax increment reimbursement agreement between the Redevelopment Agency of Midvale City and Riverwalk Investments II, LLC. Board Member Quinn Sperry **SECONDED** the motion. Chair Seghini called for discussion on the motion. There being none, she called for a roll call vote. The voting was as follows:

Board member Paul Glover	Aye
Board member Paul Hunt	Aye
Board member Stephen Brown	Aye
Board member Quinn Sperry	Aye
Board member Wayne Sharp	Aye

**B. CONSIDER RESOLUTION NO. 2015-12-RDA AUTHORIZING THE CHAIRPERSON TO EXECUTE A CONTRACT WITH LOGAN SIMPSON DESIGN, INC. FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF THE BINGHAM JUNCTION PARK**

Danny Walz said over the past year, Agency staff has been working on the design for proposed improvements to the Bingham Junction Park. The project was presented to the Board on April

14, 2015. The initial design was completed by Logan Simpson Design under the existing consulting contract with the City. The Agency is ready to prepare the construction documents and solicit bids for the project; however, the proposed architectural costs warrant execution of a separate contract to complete the final phases.

The Agency currently has \$950,000 budgeted for the first phase of this project that includes the overall site improvements to the park. The second phase of the project provides for the construction of a softball field and related upgrades. Funding for this phase is currently being sought through the County's TRCC funding. In order to secure the best pricing for the project, staff would like to solicit bids over the winter and begin construction the first of spring.

The proposed agreement provides authorization to proceed with the Scope of Work in accordance with the current and active agreement between Logan Simpson and Midvale City. If the Board is comfortable proceeding with the design and solicitation of the project staff recommends approval of the resolution and execution of the agreement.

**FISCAL IMPACT:**

The total costs are estimated at \$1,500,000 for both phases of the project. The Agency currently has \$950,000 budgeted for phase one which includes the architectural fees and is seeking \$665,000 from the County for phase two. The proposed agreement includes a lump sum fee of \$116,896.00 that covers both phases. If the Agency is not successful in securing funding from the County then the Board can determine whether additional funds for phase two should be allocated in future Agency budgets or if the project proceeds with only phase one.

**MOTION:** Board Member Quinn Sperry **MOVED** that we adopt Resolution No. 2015-12RDA authorizing the chairperson to execute a contract with Logan Simpson Design, Inc. for the design and construction management of the Bingham Junction Park Project. Board Member Paul Hunt **SECONDED** the motion. Chair Seghini called for discussion on the motion. There being none, she called for a roll call vote. The voting was as follows:

Board member Paul Glover	Aye
Board member Paul Hunt	Aye
Board member Stephen Brown	Aye
Board member Quinn Sperry	Aye
Board member Wayne Sharp	Aye

**IV. DISCUSSION ITEM**

**A. DISCUSS POTENTIAL LOCATIONS FOR 2016 PUBLIC ART COMMISSION**

Annaliese Eichelberger discussed options to place public art. After extensive discussion between the Board and staff, the Board decided on the medians on 7200 South as the location for the public art.

**V. ADJOURN**

**MOTION:** Board Member Wayne Sharp **MOVED** to adjourn. Board Member Stephen Brown **SECONDED** the motion. Chair Seghini called for discussion on the motion. There being none, she called for a call vote. The motion passed unanimously.

Chair Seghini declared the meeting adjourned at approximately 8:02 p.m.

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**Rori L. Andreason, MMC**  
**City Recorder**

Approved this 20<sup>th</sup> day of October, 2015

DRAFT



**MIDVALE CITY  
REDEVELOPMENT AGENCY OF MIDVALE CITY  
WORKSHOP MEETING  
*Minutes***

**Tuesday, October 13, 2015  
Council Chambers  
7505 S. Holden Street  
Midvale, Utah 84047**

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**CHAIR:** JoAnn Seghini

**BOARD MEMBERS:** Board Member Wayne Sharp  
Board Member Stephen Brown - Excused  
Board Member Paul Glover  
Board Member Paul Hunt  
Board Member Quinn Sperry

**STAFF:** Phillip Hill, Asst. City Manager/CD Director; Rori Andreason, H.R. Director/City Recorder; Bob Davis Public Works Director; Danny Walz, Redevelopment Agency Director; Annaliese Eichelberger, RDA Coordinator; Christopher Butte, Economic Development Director; and Jarin Blackham, IT Manager.

Chair Seghini called the meeting to order at 6:58 p.m.

**I. DISCUSSION ITEMS**

**A. DISCUSS TERM SHEET FOR AN OPTION TO PURCHASE AGREEMENT FOR PROPERTY WITHIN THE JORDAN BLUFFS PROJECT AREA**

Danny Walz acknowledged Tom Burgon, Jones Waldo and Jeff Burnson, Realtor. He said Mr. Burnson knows the ins and outs of environmental studies better than anyone else. He distributed the term sheets for discussion. He reviewed the details of the term sheet for an option to purchase the Jordan Bluffs property.

**B. DISCUSS TERM SHEET FOR AN EXCLUSIVE LISTING AGREEMENT WITH JHB REALTY ADVISERS**

Danny Walz discussed the listing agreement for the Jordan Bluffs property. Mr. Burnson will bring buyers to the agency interested in purchasing this property. He reviewed the details of the listing agreement with JHB Realty Advisors.

These two agreements will come back for approval at the next meeting.

**II. ADJOURN**

Mayor Seghini adjourned the meeting at approximately 7:32 p.m.

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**Rori L. Andreason, MMC**  
**CITY RECORDER**

Approved this 20<sup>th</sup> day of October, 2015.

PENDING



**Redevelopment Agency of MIDVALE CITY**  
**SUMMARY REPORT**

**MEETING DATE: OCTOBER 20, 2015**

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**SUBJECT:** Discussion and Action regarding Resolution No.2015-14RDA authorizing the execution of an Option to Purchase Agreement between the Redevelopment Agency of Midvale City and the Jordan Bluffs Sellers.

**SUBMITTED BY:** Danny Walz, Redevelopment Director

**SUMMARY:** On October 13, 2015, the Redevelopment Agency of Midvale City Board of Directors discussed the terms for entering into an option agreement to secure the exclusive right and option to purchase property located within the Jordan Bluffs project area. The purpose of the option agreement is to allow the Agency to investigate the property in order to determine the value and market the property to prospective developers. The initial term of the option period is for twelve months with two extension periods of six months each.

The Option Agreement details the terms for the Agency's inspection and potential purchase of the property. The Agreement has been prepared by Tom Berggren of Jones Waldo and has been reviewed by legal counsel for the sellers group as well.

**FISCAL IMPACT:** The cost of the initial option period is three hundred thousand dollars. This expenditure will be funded through reallocation of funds within existing Agency accounts. The Agency shall also bear the costs for any property inspections and consultants. These charges will come from Agency accounts but depending on the amount and timing of the expenditures the Agency may need to secure short term loans through the end of the fiscal year.

**RECOMMENDED MOTION:** I move that we adopt Resolution No. 2015-14RDA authorizing the execution of an Option to Purchase Agreement between the Redevelopment Agency of Midvale City and the Jordan Bluffs Sellers.

**ATTACHMENTS:** Resolution No. 2015-14RDA, Option to Purchase Agreement

**MIDVALE CITY  
RESOLUTION No. 2015-14RDA**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN OPTION TO  
PURCHASE AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF  
MIDVALE CITY AND THE JORDAN BLUFFS SELLERS**

**WHEREAS**, the Redevelopment Agency of Midvale City was created to transact the business and exercise the powers provided for in the Utah Redevelopment Agencies Act; and

**WHEREAS**, the Board of Directors of the Redevelopment Agency of Midvale City adopted the Jordan Bluffs Redevelopment Plan on August 10, 2004; and

**WHEREAS**, the Board of Directors of the Redevelopment Agency of Midvale City desires to encourage redevelopment within the Jordan Bluffs Project Area; and

**WHEREAS**, the Jordan Bluffs Sellers consist of eight individual entities owning approximately 256 acres of land within the Jordan Bluffs Project Area; and

**WHEREAS**, the Board of Directors of the Redevelopment Agency of Midvale City desires to secure the exclusive right and option to purchase the Property from the Jordan Bluffs Sellers.

**NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, STATE OF UTAH**, that the Board of Directors does hereby authorize the Chief Administrative Officer and Executive Director to execute the Option to Purchase Agreement in the form attached subject to such other terms and conditions as recommended by Agency's legal counsel.

**PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF MIDVALE CITY, STATE OF UTAH**, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JoAnn B. Seghini  
Chief Administrative Officer

\_\_\_\_\_  
Kane Loader  
Executive Director

ATTEST:

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Rori L. Andreason, MMC  
Secretary

**Voting by the Board:**

Steve Brown  
Paul Glover  
Quinn Sperry  
Paul Hunt  
Wayne Sharp

**“Aye”**

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**“Nay”**

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## OPTION TO PURCHASE AGREEMENT

This Option to Purchase Agreement (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of October, 2015 (the “**Effective Date**”) by and among:

(1) the Redevelopment Agency of Midvale City, a governmental entity organized under the laws of the State of Utah (the “**Purchaser**”), and

(2) SK Gordon Developments, LLC, a Utah limited liability company,  
Heart Mountain, LC, a Utah limited liability company,  
Beaver Creek, LC, a Utah limited liability company,  
MMBI, LLC, a Utah limited liability company,  
Clearwing, LC, a Utah limited liability company,  
JB Asset Capped LLC, a Utah limited liability company,  
Martin Houck, Trustee of The Chavez-Houck Family Trust dated 1/1/1993, and  
Agate LLC, a Utah limited liability company  
(collectively, the “**Sellers**”).

A. The Sellers own certain real property located in Midvale, Utah (as more particularly defined below, the “**Property**”).

B. The Purchaser desires to obtain an option to purchase the Property on the terms and conditions contained herein;

NOW, THEREFORE, the Parties hereby agree as follows:

### **SECTION 1: Definitions**

As used herein, the following terms shall have the meanings respectively indicated:

“**Authority Documents**” means, with respect to each Seller, the organizational documents for such Seller and resolutions of the appropriate governing persons authorizing the execution of this Agreement and the closing of the sale of that portion of the Property owned by such Seller, together with all other related documents as are reasonably requested by the Title Company.

“**City**” means Midvale City Corporation.

“**Closing**” means the transfer of title to the Property by the Sellers to the Purchaser in accordance with Section 5 below.

“**Closing Date**” has the meaning specified in Section 5.2 below.

“**Completed Environmental Tests**” has the meaning specified in Section 2.10(e) below.

“**Covered Parties**” means the Purchaser, the City and each of their past, present, and future directors, officers, employees, representatives, and agents.

“**Deed**” means the special warranty deed from the Sellers to the Purchaser conveying title to the Property, in the form of Exhibit C attached hereto.

“**Environmental Laws**” means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree, requirement or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, ordinances, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) (“CERCLA”); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) (“RCRA”); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); and (viii) Institutional Control Ordinance and any federal, state or local statute, regulation, or ordinance or judicial or administrative decree, requirement or decision that specifically relates to the Property.

“**Environmental Tests**” has the meaning specified in Section 2.10(b) below.

“**First Option Extension Fee**” means Fifty Thousand Dollars (\$50,000).

“**Hazardous Materials**” means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law, including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste. Without limiting the generality of the foregoing, the term shall mean and include: (i) “Hazardous Substances,” as defined in CERCLA, as amended, and regulations promulgated thereunder; (ii) “Hazardous Waste,” as defined in the RCRA, as amended, and regulations promulgated thereunder; (iii) Materials defined as “Hazardous Materials” in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and (iv) “Chemical Substance or Mixture,” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

“**Institutional Control Ordinance**” means the Institutional Controls Ordinance for Bingham Junction, Jordan Bluffs and Designated Rights-Of-Way, Chapter 8.10 of the Midvale Municipal Code.

“**Option Fee**” means Three Hundred Thousand Dollars (\$300,000).

“**Option Fees**” means the Option Fee and, if applicable, First Option Extension Fee and the Second Option Extension Fee.

“**Option Period**” means the period commencing on the Effective Date and ending on the first business day that is at least twelve (12) months following the Effective Date; provided, however, that for each day that a Seller is outside the time specified in providing the Authority Documents pursuant to Section 2.6 or the Reports pursuant to Section 2.7 or the Specified Title Matters Documents pursuant to Section 2.8, such ending date shall be extended by one day. The Option Period may be extended in accordance with Section 2.4 below.

“**Outside Closing Date**” means the first business day that is at least thirty (30) days following the expiration of the Option Period.

“**Party**” means the Purchaser or one of the Sellers individually. “**Parties**” means the Purchaser and the Sellers.

“**Permitted Exceptions**” means the exceptions that are listed on Exhibit D attached hereto.

“**Property**” means that certain real property described on Exhibit A attached hereto.

“**Purchaser Event of Default**” means a default under this Agreement by the Purchaser and the Purchaser does not cure such default within fifteen (15) days after written notice thereof from each of the Sellers.

“**Purchase Price**” means Sixteen Million Dollars (\$16,000,000).

“**Reports**” means surveys, studies, evaluations, investigations, test results, analyses and other reports regarding the condition of the Property.

“**Restoration Activities**” has the meaning specified in Section 2.10(e) below.

“**Second Option Extension Fee**” means Fifty Thousand Dollars (\$50,000).

“**Seller Event of Default**” means a default under this Agreement by one or more of the Sellers and such Seller or Sellers do not cure such default within fifteen (15) days after written notice thereof from the Purchaser.

“**Seller’s Pro Rata Share**” means, with respect to a Seller, the percentage listed next to such Seller’s name on Exhibit B.

“**Sellers**” has the meaning set forth in the Recitals.

“**Settlement Statement**” means a settlement statement prepared by the Title Company, showing the Purchase Price and each Party’s share of prorations and Closing costs as specified herein.

“**Specified Title Matters**” means those of the “Requirements” in Schedule B-Section 1 of the Title Commitment and those of the “Exceptions” in Schedule B-Section 2 of the Title Commitment that are listed on Exhibit E attached hereto.

“**Specified Title Matters Documents**” has the meaning specified in Section 2.8 below.

“**Title Commitment**” means that certain Commitment for Title Insurance with an Effective Date of September 1, 2015 issued by the Title Company for an ALTA 2006 Form Owner’s Title Policy for the Property.

“**Title Company**” means First American Title Insurance Company of Utah, 215 South State, Suite 380, Salt Lake City, Utah 84111 Attn: Anna Irons.

**SECTION 2: Option to Purchase**

2.1 Option. For and in consideration of the terms and conditions of this Agreement, the Sellers hereby grant to the Purchaser the exclusive right and option to purchase the Property (the “**Option**”).

2.2 Option Memorandum. In connection with entering into this Agreement, each of the Sellers and the Purchaser has executed an original Memorandum of Option in the form attached hereto which is in recordable form and has all proper notary acknowledgements attached (“**Option Memorandum**”). The Parties hereby instruct the Title Company to record the Option Memorandum in the official real property records of Salt Lake County, Utah promptly following the Title Company’s receipt of the Option Fee in accordance with Section 2.3 hereof.

2.3 Option Fee. Within ten (10) business days of the execution of this Agreement, the Purchaser shall, in consideration of the Option granted hereunder, deliver to the Title Company to hold in escrow the Option Fee. Except as otherwise provided in Section 2.9, Section 3.2 and Section 7.2 below, the Option Fee shall be deemed fully earned by the Sellers for executing this Agreement, shall not be applied against the payment of any portion of the Purchase Price, and shall not be refundable to Purchaser.

2.4 Option Extensions. For and in consideration of the terms and conditions of this Agreement, the Sellers hereby agree that the Purchaser may extend the Option Period by an additional six (6) months by delivering to the Title Company the First Option Extension Fee no later than the last day of the initial Option Period. Upon delivery of such amount, the Option Period shall be automatically extended as provided in the previous sentence, and the Title Company is hereby instructed to release to each Seller such Seller’s Pro Rata Share of the First Option Extension Fee. Sellers further agree that the Purchaser may extend the Option Period by a second additional six (6) months by delivering to the Title Company the Second Option Extension Fee no later than the last day of the Option Period (as previously extended). Upon delivery of such amount, the Option Period shall be automatically extended as provided in the previous sentence, and the Title Company is hereby instructed to release to each Seller such Seller’s Pro Rata Share of the Second Option Extension Fee.

2.5 Exercise of the Option; Termination of the Option. The Purchaser shall exercise the Option, if at all, by delivering to each of the Sellers, prior to the expiration of the Option Period, written notice of the Purchaser’s exercise of the Option (“**Notice of Exercise of Option**”). If the Purchaser does not timely and properly exercise the Option, the Sellers shall be released and discharged from any and all obligations at law and in equity to sell or convey the Property to the Purchaser, and the Purchaser shall promptly, upon written request from each of the Sellers, execute, acknowledge, and deliver to the Sellers a notice of termination of the Option, suitable for recording, for the Property.

2.6 Authority Documents. Within fifteen (15) days after the Effective Date, each Seller shall deliver to the Purchaser and the Title Company a copy of all Authority Documents with respect to such Seller. The Title Company shall have five (5) business days to review and approve such Authority Documents, such approval not to be unreasonably withheld. In the event that the Title Company

determines that any Authority Documents are not satisfactory, it shall within such five (5) business day period so notify the Sellers and the Purchaser, and the Sellers whose Authority Documents were specified in such notice shall promptly provide the Title Company and the Purchaser with revised Authority Documents. Within three (3) business days of the Title Company approval of the Authority Documents, the Title Company shall confirm its approval by so notifying the Sellers and the Purchaser.

2.7 Reports. Within fifteen (15) days after the Effective Date, each Seller shall deliver to the Purchaser a copy of every Report that it has obtained or that is under its control. In the event that a Seller has no such Reports, it shall provide the Purchaser a signed certificate to that effect. At such time as the Purchaser receives all the Reports and/or such certificates, the Purchaser shall confirm its receipt by so notifying the Sellers and the Title Company. Sellers make no representation or warranty with regard to the accuracy, completeness or any other aspect of any Report. The Purchaser agrees that it shall not rely upon any such Report and that it shall not hold any Seller liable with respect to any inaccuracies in any Report delivered to the Purchaser by any Seller.

2.8 Specified Title Matters. Within ninety (90) days after the Effective Date, the Sellers shall (a) cause to be delivered to the Title Company such documents, agreements, court orders and other instruments as are necessary for the Title Company to issue a revised Title Commitment that omits all of the Specified Title Matters (collectively, the “**Specified Title Matters Documents**”) and (b) cause the Title Company to deliver such revised Title Commitment to the Purchaser. The Purchaser shall have five (5) business days to (a) review and approve such revised Title Commitment, such approval not to be unreasonably withheld, and (b) confirm its receipt and approval by so notifying the Sellers and the Title Company.

2.9 Release of the Option Fee. Upon (a) the Title Company’s confirmation that it has approved the Authority Documents pursuant to Section 2.6, (b) the Title Company’s receipt of the Purchaser’s confirmation that it has received the Reports pursuant to Section 2.7, and (c) the Title Company’s receipt of the Purchaser’s confirmation that it has received a revised Title Commitment pursuant to Section 2.8, the Title Company is hereby instructed to release to each Seller such Seller’s Pro Rata Share of the Option Fee. If, within one hundred twenty (120) days after the Effective Date, the Title Company cannot provide the confirmation pursuant to subsection (a) or does not receive both the confirmation pursuant to subsection (b) and the confirmation pursuant to subsection (c), and the Purchaser does not waive any such requirement (such waiver to be granted or withheld in the Purchaser’s sole discretion), then the Title Company is instructed to return the Option Fee to the Purchaser, in which event this Agreement shall terminate and the Sellers shall be released and discharged from any and all obligations at law and in equity to sell or convey the Property to the Purchaser.

2.10 Evaluation of the Property.

(a) General Review. During the Option Period, the Purchaser may make such investigations and inspections of the Property and of the condition and marketability of the Property as the Purchaser deems necessary or acceptable, in the Purchaser’s sole discretion and at the Purchaser’s sole expense. In connection with such investigations and inspections, the Purchaser, and its employees, agents, consultants and contractors, shall have the right to enter upon the Property and inspect and conduct such assessments, investigations, reviews, studies, tests and analyses of the Property, as the Purchaser deems necessary or acceptable, in the Purchaser’s sole discretion and at the Purchaser’s sole expense; provided that such assessments, investigations, review, studies, tests and analyses are conducted in compliance with the conditions set forth in this Section 2.10.

(b) Environmental Investigations. During the Option Period, the Purchaser may make such investigations and inspections of the Property relating to environmental, engineering and geotechnical matters as the Purchaser deems necessary or acceptable, in the Purchaser's sole discretion and at the Purchaser's sole expense, including but not limited to, the performance of Phase I Environmental Site Assessments, Phase II Environmental Site Assessments, geotechnical studies, engineering studies, sampling of soil, water and materials on and under the Property through grab samples, borings, monitoring wells, or other methods, and conducting of other tests or investigations of or on the Property (collectively, the "**Environmental Tests**"); provided that such Environmental Tests shall be conducted in strict accordance with Environmental Laws, and other applicable laws, regulations, and ordinances, including, without limitation, the requirements and procedures of the Institutional Controls Ordinance and any other Environmental Laws. Prior to conducting any Environmental Tests on the Property for which the Institutional Control Ordinance or other applicable Environmental Laws require permits, approvals, or consents from any governmental entity or agency, the Purchaser shall obtain the requisite permits, approvals and consents. The Sellers agree to cooperate, at no expense to the Sellers, as necessary with Purchaser obtaining such permits, approvals and consents.

(c) Title and Survey Matters. During the Option Period, the Purchaser may review the Title Commitment and all exception documents referred to therein and any surveys it obtains at its expense.

(d) Indemnity. The Purchaser shall indemnify, defend and hold each Seller and the Property harmless from any and all damages, claims, liabilities, expenses (including reasonable attorneys' fees), penalties, and fines (collectively, "**Claims**"), including any Claims pursuant to CERCLA, as amended, or any other Environmental Laws, to the extent arising out of or as a result of any testing and inspection of the Property, or any other activity and/or failure to observe, perform or comply with any Purchaser obligation under this Section 2.10, by the Purchaser, its agents, consultants, contractors and/or their subcontractors, provided the Purchaser shall have no obligation, responsibility or liability under this provision with respect to any damages, claims, liabilities, expenses (including reasonable attorneys' fees), penalties or fines to the extent arising out of or as a result of the negligence or willful conduct of any Seller.

(e) Restoration. Within sixty (60) days after the Option is terminated without Purchaser having acquired the Property, Purchaser shall take all such actions as are necessary to restore any changes to the condition of the Property created by the activities of the Purchaser, its agents, consultants, contractors and/or their subcontractors under this Section 2.10, including those in connection with each Completed Environmental Test (as defined below) to its condition existing immediately prior to such activities (collectively, the "**Restoration Activities**"). Within ninety (90) days after the Option is terminated without Purchaser having acquired the Property, Purchaser shall provide Sellers with a written report that describes (i) each of the Environmental Tests undertaken by Purchaser, (a "**Completed Environmental Test**"), including, without limitation, the location (as identified by GPS coordinates), type and scope of each Completed Environmental Test, (ii) any changes to the condition of the Property (with every location identified by GPS coordinates) created by the activities of the Purchaser, its agents, consultants, contractors and/or their subcontractors under this Section 2.10 or any other person authorized by Purchaser, including those in connection with each Completed Environmental Test, and (iii) the Restoration Activities. The report provided to the Sellers pursuant to this Section 2.10 shall be in sufficient detail so that Sellers may be able to reasonably determine the changes to the condition of the Property that have been created by the activities of the Purchaser, its agents, consultants, contractors and/or their subcontractors under this Section 2.10 or any other person authorized by Purchaser, including those in connection with the Completed Environmental Tests and what

actions have been taken to restore the Property in accordance with Purchaser's obligations hereunder. Until such restoration is complete, Purchaser shall take all steps necessary to ensure that any conditions on the Property created by the activities conducted by Purchaser pursuant to this Section 2.10 do not create any dangerous, unhealthy, or unsightly conditions on the Property.

(f) Disposal of Samples. Purchaser shall (i) make arrangements for the lawful disposal of any contaminated samples of soil, rock, water, and other materials taken from the Property by Purchaser, or Purchaser's representatives, employees, contractors or agents, (ii) pay any related transportation and disposal fees, and (iii) sign the manifest and any other documents required in connection with the transportation and disposal of contaminated samples.

(g) Insurance.

(i) Purchaser's Insurance. During the Option Period and until Purchaser either: (A) terminates the Option and has completed its restoration obligations under Section 2.10(e) of this Agreement and no longer needs access to the Property; or (B) closes on the purchase of the Property, Purchaser shall, at its sole cost and expense, provide and maintain a comprehensive general liability insurance policy designating Sellers as additional insureds and covering damages or injury to persons or property by reason of any inspections or other activities conducted by or on behalf of Purchaser on or about the Property with a liability limit of One Million Dollars (\$1,000,000) to Sellers.

(ii) Consultants' Insurance. Purchaser shall require each consultant or other person who will perform Environmental Tests or other environmental or geotechnical evaluations on the Property, including environmental and geotechnical consultants, to indemnify Purchaser and the Sellers for any claims for personal injury or property damage, including any claims arising under any Environmental Laws, and to obtain insurance policies with the following types of coverage and liability limits and to designate Sellers as additional insureds under the following policies (except the professional errors and omissions policy):

(A) Commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (1) to be on "occurrence" form with a limit (including "umbrella" coverage, of not less than One Million Dollars (\$1,000,000)); and (2) to cover at least the following hazards: (I) premises and operations; (II) products and completed operations; (III) independent contractors; and (IV) blanket contractual liability for all written and oral contracts, to the extent the same is available;

(B) If applicable, workers' compensation, subject to the statutory limits of the State of Utah, and employer's liability insurance with a limit of at least One Million Dollars (\$1,000,000) per accident and per disease per employee, and One Million Dollars (\$1,000,000) aggregate coverage for disease in respect of any work or operations on or about the Property, or in connection with the Property or its operation;

(C) Pollution legal liability (or contractor's pollution liability) insurance with the following coverages: (1) bodily injury and property damage liability; (2) third party claims for on-site bodily injury or property damage;

(3) first party and third party claims for on-site cleanup costs; (4) third party claims for off-site bodily injury, property damage or cleanup costs; (5) third party claims for on-site and off-site bodily injury, property damage or cleanup costs – non-owned locations; (6) sudden and accidental coverage; (7) hostile fire and building equipment; (8) products pollution and exposure liability; and (9) transported cargo. Such insurance shall be “occurrence” based, be for known and unknown conditions, name Sellers as additional insureds, have coverage in the amount of Three Million Dollars (\$3,000,000).

(D) Professional Errors and Omissions Insurance with coverage in the amount of Three Million Dollars (\$3,000,000).

(iii) Certificates. Purchaser shall provide Certificates of Insurance for all required insurance showing the Sellers as additional insureds (except for the professional errors and omissions insurance) within the following time frames:

(a) Purchaser’s CGL Policy – On the effective date of this Agreement;

(b) Consultants’ Policies – Prior to the date any consultant or other person performs Environmental Tests or other work under Section 2.10 on the Property.

2.11 Subdivisions. During the Option Period, the Purchaser may apply to the City for approval to subdivide the Property into development parcels. The Sellers agree to reasonably cooperate, at no expense to the Sellers, with the Purchaser in obtaining such approvals. If the Purchaser does not exercise the Option or purchase the Property after exercising the Option, at the Sellers’ election the Purchaser agrees to assign to the Sellers all of its rights and interests in such approvals, and cooperate as needed to effectuate the assignment.

2.12 Zoning. During the Option Period, the Purchaser may apply to the City for approval to change the zoning of the Property. The Sellers agree to reasonably cooperate, at no expense to the Sellers, with the Purchaser in obtaining such approvals. If the Purchaser does not exercise the Option or purchase the Property after exercising the Option, at the Sellers’ election the Purchaser agrees to assign to the Sellers all of its rights and interests in such approvals, and cooperate as needed to effectuate the assignment.

2.13 Signage and Advertising. During the Option Period, and at the Purchaser’s sole expense, the Purchaser or its agents may place signs on the Property and otherwise advertise the Property as being available for sale. In the event that any Seller receives any inquiry regarding the availability or status of the Property, such Seller shall promptly forward the inquiry to the Purchaser.

2.14 No Changes. During the Option Period, the Sellers agree as follows:

(a) to not enter into any lease, license or use agreement with respect to any portion of the Property,

(b) to not subject any portion of the Property to a deed of trust, mortgage or similar instrument, or to otherwise not allow any encumbrances on the Property,

(c) to not sell, assign, or encumber their ownership rights in the Property to any person or entity, or to agree to sell to, or grant an option to purchase, or encumber to any other person or entity, any portion of the Property, in either case individually as well as a group,

(d) to not allow any person or entity access upon, use of or to dump, discharge or place any materials or objects of any type on any portion of the Property,

(e) to not change the condition of the Property in any way, without the consent of the Purchaser, such consent not to be unreasonably withheld, and

(f) to not use or access the Property for any purpose, without the consent of the Purchaser, such consent not to be unreasonably withheld.

2.15 Assignment. The Purchaser may assign its rights hereunder to one or more other parties provided that: (i) all of the Property is purchased as part of the Closing, by the Purchaser and/or one or more assignees of the Purchaser; (ii) the Purchaser's obligations under this Agreement shall remain in full force and effect until the Purchaser or its assignee(s) discharges Purchaser's obligations by performance strictly in accordance with the terms of this Agreement; (iii) each assignee executes an Assignment in the form attached as Exhibit F; (iv) Purchaser provides notice of each assignment and a copy of each Assignment to Sellers as part of the Closing or with any notice of termination of the Option and (v) if the Purchaser assigns any of its rights under Section 2.10 of this Agreement the Purchaser and any assignee(s) shall be jointly and severally liable to Sellers for satisfaction of their obligations under this Agreement (including without limitation, Purchaser's obligations to indemnify Sellers under Section 2.10(d)). In the event Purchaser's assignee(s) does not satisfy its obligation to close on the purchase on the portion of the Property subject to an Assignment, Purchaser remains responsible to purchase all of the Property as part of the Closing.

### **SECTION 3: Conditions Precedent to Purchase of the Property**

3.1 Conditions Precedent to Purchase of the Property. The Purchaser's obligation to purchase the Property after the Option has been duly exercised is subject to the satisfaction or the Purchaser's waiver of the following conditions:

(a) Representations and Warranties. All representations and warranties of the Sellers shall be true and correct as of the date made and as of the Closing Date with the same effect as if the representations and warranties were made as of the Closing Date.

(b) No Material Adverse Change. There shall have been no material adverse change to the condition of the Property since the date Purchaser exercises the Option.

(c) Seller Event of Default. There shall not be a Seller Event of Default.

3.2 Termination Upon Failure of Certain Conditions. In the event that any condition specified in Subsection 3.1(a) or (b) has not been satisfied or waived by the Purchaser by the date that is three (3) business days prior to the Outside Closing Date, then the Purchaser may terminate this Agreement and, in such event, the Sellers shall return the Option Fee to the Purchaser, and no Party shall have any further obligations or liability to any other Party except as provided in Sections 8.14 and 8.19. In the event of a Seller Event of Default, the Parties' rights and obligations are set forth in Section 7.

#### **SECTION 4: Conditions Precedent to the Sellers' Obligations**

4.1 Conditions. The Sellers' obligation to sell the Property is subject to the satisfaction within the time periods specified (or the Sellers' waiver) of the following conditions:

- (a) Exercise of Option. The Purchaser shall have exercised the Option as provided herein.
- (b) Representations and Warranties. All representations and warranties of the Purchaser shall be true and correct as of the date made and as of the Closing Date with the same effect as if though the representations and warranties were made as of the Closing Date.
- (c) Purchaser's Performance. There shall not be a Purchaser Event of Default.

4.2 Termination Upon Failure of Certain Conditions. In the event that the condition specified in Subsection 4.1(a) or 4.1(b) has not been satisfied or waived by the Sellers by the date that is three (3) business days prior to the Outside Closing Date, then the Sellers may terminate this Agreement, retain the Option Fees, and no Party shall have any further obligations or liability to any other Party except as provided in Sections 8.14 and 8.19. In the event of a Purchaser Event of Default, the Parties' rights and obligations are set forth in Section 7.

#### **SECTION 5: Closing**

5.1 Closing. Following the execution of this Agreement, the Purchaser shall open an escrow with the Title Company. A copy of this Agreement shall be provided to the Title Company to advise the Title Company of the terms and conditions hereof. Prior to the Closing, each of the Sellers and the Purchaser shall give separate written closing instructions to the Title Company (with a copy sent concurrently to the other Party) which instructions shall be consistent with the provisions of this Agreement. The entire Closing shall be handled by the Title Company alone, and there shall not be a "split closing" involving another title company acting on behalf of either Party.

5.2 Outside Closing Date. The Closing hereunder shall take place on a date (the "**Closing Date**") that is on or before the date that is thirty (30) days after the date of the Notice of the Exercise of Option but in no event later than the Outside Closing Date.

5.3 Prorations. Normal prorations of taxes and related items shall be made at Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the proration of taxes shall be based upon taxes for the prior year and adjusted for the year of Closing within a reasonable time after they become finally determined for such year.

5.4 Costs and Title Policy. The Sellers shall pay the cost of recording the Deed. Any escrow fees and additional recording fees shall be paid half by the Purchaser and half by the Sellers. The Sellers shall pay the cost of the premium for a standard form owner's policy of title insurance for the Property. If the Purchaser elects extended coverage, the Purchaser shall pay the difference between the title insurance premium for standard coverage and the title insurance premium for extended coverage. The Purchaser shall pay the costs of any endorsements requested by the Purchaser. In addition, if the Closing does not occur as a result of a Party failing to perform or an Event of Default attributable to that Party, any cancellation charges in connection with the Title Commitment shall be paid by that Party. The Sellers shall deliver all affidavits and indemnifications against mechanic's and materialmen's and other similar liens requested by the Title Company to eliminate the standard printed mechanic's lien exception from the

standard owner's policy of title insurance, as well as any updates to the Authority Documents delivered to the Title Company pursuant to Section 2.6 as the Title Company shall reasonably request.

5.5 Items to be Delivered by the Sellers at the Closing. At the Closing, the Sellers shall deliver, or cause to be delivered, to the Purchaser each of the following items:

(a) The Deed signed by the Sellers, in form for recording, conveying fee simple title to the Property to the Purchaser, subject only to the applicable Permitted Exceptions.

(b) All documents and information requested by the Title Company, including without limitation the Title Company's standard form of indemnity agreement for sellers.

(c) A standard owner's title policy for the Property, with the Permitted Exceptions being the only exceptions listed.

(d) The Settlement Statement, approved by the Sellers. The Settlement Statement shall show each of the Sellers receiving its Seller's Pro Rata Share.

5.6 Items to be Delivered by the Purchaser at the Closing. At the Closing, the Purchaser shall deliver, or cause to be delivered, to the Sellers each of the following items:

(a) The Purchase Price by wire transfer, as such amounts are adjusted as shown on the Settlement Statement.

(b) The Settlement Statement, approved by the Purchaser.

5.7 Possession. Possession of the Property shall be delivered to the Purchaser by the Sellers at Closing.

## **SECTION 6: Representations and Warranties**

6.1 Representations of the Sellers. Except as noted, each of the Sellers represents and warrants, as of the date this Agreement is fully executed and as of the Closing Date, as follows:

(a) If such Seller is a limited liability company, it has been duly formed and is validly existing as a limited liability company and in good standing in the State of Utah.

(b) Martin Houck, Trustee of The Chavez-Houck Family Trust dated 1/1/1993, alone among the Sellers, represents and warrants that he is the sole trustee of such trust.

(c) Such Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.

(d) This Agreement has been, and all of the documents to be delivered by such Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of such Seller, enforceable in accordance with their terms. That s

(e) Such Seller has taken all action required by law, and all required action under its Authority Documents necessary to authorize such Seller to enter into this Agreement and to carry out its obligations hereunder. The Purchaser acknowledges and agrees that each Seller owns its

interest in the Property as a tenant in common with the other Sellers, that the Sellers have not formed a partnership to sell the Property or for any other purpose, and that by executing this Agreement, the Sellers do not intend to form a partnership or otherwise create any form of joint liability.

(f) There is no agreement to which such Seller is a party or that is binding on such Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to such Seller's knowledge, threatened, against such Seller or the Property, which challenges such Seller's ability to execute or perform its obligations under this Agreement.

(g) To such Seller's knowledge, such Seller is not in actual receipt of and has not received any written notice, sent by any governmental authority or agency having jurisdiction over the Property, or that the Property is in material violation of any law, ordinance, or regulation.

(h) To such Seller's knowledge, such Seller is not aware of any disputes with respect to the boundaries of the Property. The Purchaser acknowledges, however, that minor boundary disputes with neighboring property owners may exist, and the Purchaser agrees that no such minor boundary disputes shall constitute a breach of any warranty or render untrue any representation by any Seller.

(i) To such Seller's knowledge, such Seller is not aware of any existing claims by any person (other than the Sellers) as to ownership of the Property.

6.2 Purchaser's Covenants, Representations and Warranties. As a material inducement to the Sellers to execute this Agreement and consummate this transaction, the Purchaser covenants, represents and warrants to the Sellers that:

(a) Authority. The Purchaser is a political subdivision of the State of Utah. The Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by the Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of the Purchaser, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. There is no agreement to which the Purchaser is a party or to the Purchaser's knowledge binding on the Purchaser that is in conflict with this Agreement. There is no action or proceeding pending or, to the Purchaser's knowledge, threatened against the Purchaser which challenges or impairs the Purchaser's ability to execute or perform its obligations under this Agreement.

(c) No Representations as to the Property. With the exception of the representations and warranties set forth in Section 6.1 hereof and the Deeds (the "**Sellers' Express Representations and Warranties**") and without in any way limiting the effect of Section 8.14 hereof, the Purchaser hereby affirms that the Sellers, their agents, employees, and/or attorneys have not made, nor has the Purchaser relied upon any representation, warranty, or promise with respect to the Property or any other subject matter of this Agreement, other than the Sellers' Express Representations and Warranties, including, without limitation, any warranties or representations, express or implied, as to matters of title or the existence of any easements or other encumbrances, the general plan designation, zoning, value, use, tax status or physical condition of the Property, or improvements thereon, or any part thereof, including but not limited

to the flood elevations, drainage patterns and soils and subsoils composition and compaction level, and other conditions at the Property, or the existence or non-existence of hazardous materials or any other environmental condition on or under the Property or adjacent property, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or reports therefor. Without limiting the generality of the foregoing, and except for the Sellers' Express Representations and Warranties, the Purchaser is purchasing the Property from the Sellers in an "AS IS", "WHERE IS" CONDITION, SUBJECT TO "ALL FAULTS", INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS, AND THE EXISTENCE OF HAZARDOUS MATERIALS. EXCEPT FOR THE SELLERS' EXPRESS REPRESENTATIONS AND WARRANTIES, THE PURCHASER HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE, CONDITION, AND USE OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) Purchaser's Release. Excluding (i) any claim that Purchaser may have against a Seller as a result of any breach by a Seller of any of its representations, warranties, covenants or obligations under this Agreement, and (ii) any claim with respect to a release or dumping of any Hazardous Materials on the Property to which one or more Sellers consented, and as to which Sellers did not disclose to Purchaser, Purchaser, for itself and its agents, affiliates, successors, successors in interest and assigns, hereby releases and forever discharges Sellers, and their officers, managers, directors, shareholders, members, partners, agents, employees, affiliates, predecessors, successors and assigns (collectively, "Sellers' Parties"), from, and waives any right to proceed against Sellers or Sellers' Parties for, any and all costs, expenses, claims, liabilities and demands (including attorneys' fees and costs) at law or in equity, whether known or unknown, regarding the condition of the Property (including but not limited to the presence or absence of Hazardous Materials), including any claims pursuant to CERCLA, as amended, or any other Environmental Laws, or any other federal, state, or local law, ordinance or regulation which Purchaser has or may have in the future.

## **SECTION 7: Defaults**

7.1 Purchaser Event of Default Termination. IN THE EVENT OF A PURCHASER EVENT OF DEFAULT OR IN THE EVENT THE CONDITIONS PRECEDENT DESCRIBED IN SECTIONS 3 AND 4 HEREIN HAVE BEEN SATISFIED OR WAIVED, AND THE PURCHASER FAILS TO CLOSE THE TRANSACTION AS PROVIDED FOR HEREIN, IT IS AGREED THAT THE SELLERS MAY TERMINATE THIS AGREEMENT. The Sellers hereby waive any right to seek specific performance or to recover any other damages or sums from the Purchaser; provided, however, this Section applies only to a default of the Purchaser in its obligation to complete the acquisition of the Property after the exercise of the Notice of Exercise of Option and in no way limits the Purchaser's potential liability for attorney's fees or for the indemnity obligations set forth in this Agreement, or for the breach of other agreements contained herein other than the agreement to close.

7.2 Seller Event of Default. In the event of a Seller Event of Default, the Purchaser shall, as the Purchaser's sole remedy, either seek specific performance or a refund of the Option Fees; provided, however, this Section applies only to a default of the Sellers in their obligation to complete the sale of the Property after the exercise of the Notice of Exercise of Option and in no way limits the Sellers' potential liability for attorney's fees or for the indemnity obligations set forth in this Agreement, or for the breach of other agreements contained herein other than the agreement to close.

## **SECTION 8: Other Provisions**

8.1 No Real Estate Commissions. The Purchaser and each of the Sellers each represents that it has not entered into any unexpired written contracts with any brokers or finders nor obligated themselves to pay any real estate commissions or finders' fees on account of the execution of this Agreement or the close of the transaction contemplated hereby, except for contracts under which (a) such Purchaser or Seller is solely responsible to pay a real estate commission or finders' fee, and (b) the other contracting party(s) have no recourse against the Property or any other Party. Based on such representations, the Purchaser and each of the Sellers hereby agree to indemnify and hold each other harmless from any claims, damages, expenses, liabilities, liens, or judgments (including costs, expenses, and attorneys' fees in defending the same) which arise on account of any claim made against the indemnifying party that real estate commissions or finders' fees (including those identified above) are payable and have not been discharged in their entirety.

8.2 Claims. Each of the Sellers agrees that, in the event that any person or entity makes a claim against such Seller's interests in the Property or the proceeds of the Purchase Price payable to such Seller (or such Seller and one or more other Sellers), either in connection with the Closing or otherwise, and either as a result of a claim pursuant to Section 8.1 or a claim pursuant to this Section 8.2, such Seller hereby, without any other further action needed to be taken or any other instrument signed (except as otherwise specified in the last sentence of this Section 8.2):

- (a) authorizes the Closing of the sale of the Property to proceed notwithstanding such claim,
- (b) instructs the Title Company to close the sale of the Property and to disburse to all other Sellers their shares of the Purchase Price (unless any such other Sellers are subject to the same or any other claim) and to hold the proceeds from the sale payable to such Seller in escrow pending a resolution of the claim,
- (c) agrees to sign all affidavits and indemnifications against such claims requested by the Title Company,
- (d) if the dispute has not been resolved within sixty (60) days of the Closing Date, consents to the Title Company filing an interpleader with the Third District Court of the State of Utah and depositing the disputed funds into an account specified by such Court, and
- (e) agrees to pay or reimburse the Title Company the reasonable expenses incurred by the Title Company, including without limitation legal fees.

In connection with the implementation of the foregoing, the Parties agree to enter into an escrow agreement with the Title Company in a form reasonably required by the Title Company.

8.3 Condemnation. If any material portion of the Property is condemned or access thereto is taken prior to the Closing Date, and the Purchaser reasonably concludes that the taking renders the Property unsuitable for the development and the Purchaser so notifies the Sellers in writing promptly after learning of such condemnation action, then this Agreement shall terminate. If this Agreement is not terminated pursuant to the preceding sentence, the Purchase Price shall not be affected, it being agreed that if the award is paid prior to the Closing Date, such amount shall be held in escrow and delivered to the Purchaser at the Closing, and if the award has not been paid before the Closing Date, then at the Closing the Sellers shall assign to the Purchaser all of their right, title, and interest with respect to such award.



from a lower court judgment and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters.

8.10 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of such State shall govern the validity, construction, enforcement and interpretation of this Agreement, unless otherwise specified herein.

8.11 Amendments. This Agreement may be amended or supplemented only by an instrument in writing, executed by both the Purchaser and the Sellers.

8.12 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

8.13 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and delivered by the Purchaser and the Sellers, the Purchaser and the Sellers each agree to perform, execute, and deliver or cause to be performed, executed, and delivered at the Closing or after the Closing any and all such further acts, deeds, and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

8.14 Survival. All indemnities, releases, covenants, representations and warranties contained herein shall survive the termination of this Agreement, Closing, the delivery of the Deed, and the acquisition of the Property by the Purchaser.

8.15 Conflict of Interests. No member, official or employee of the Purchaser shall have any direct or indirect interest in this Agreement, nor participate in any decision relating, to the Agreement which is prohibited by law.

8.16 Warranty Against Payment of Consideration for Agreement. Each of the Sellers represents and warrants that neither it nor any of its members, managers, employees, or officers has: (1) provided an illegal gift or payoff to a City or a Redevelopment Agency of Midvale (“**RDA**”) officer or employee, or former City or RDA officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City’s conflict of interest ordinance; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City or RDA officer or employee, or former City or RDA officer or employee to breach any of the ethical standards set forth in the City’s conflict of interest ordinance.

8.17 Nonliability of Purchaser Officials and Employees. No member, official, or employee of the Purchaser shall be personally liable to the Sellers, or any successor in interest, in the event of any default or breach by the Purchaser or for any amount which may become due to the Sellers on any obligation under the terms of this Agreement.

8.18 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors of each Seller and the successors and assigns of Purchaser, subject to Purchaser’s compliance with Section 2.15.

8.19 Recordation of Notice of Termination. In the event that this Agreement terminates pursuant to Section 2.9, 3.2, 4.2, 7.1, or 8.3, the Purchaser shall promptly execute, acknowledge, and deliver to the Sellers a notice of termination of the Option, suitable for recording, for the Property.

*[Remainder of this page intentionally left blank, signature page to follow.]*

IN WITNESS WHEREOF, the Parties have caused this Option to Purchase Agreement to be duly executed as of the date first written.

Purchaser:

**REDEVELOPMENT AGENCY OF MIDVALE CITY**

By \_\_\_\_\_  
JoAnn Seghini  
Its Chief Administrative Officer

By \_\_\_\_\_  
Kane Loader  
Its Executive Director

Approved as to legal form:

Jones, Waldo, Holbrook & McDonough, P.C.

By \_\_\_\_\_

SELLERS:

**SK GORDON DEVELOPMENTS, LLC**

Address:

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

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

With copy to:  
Eric P. Lee  
Jones Waldo Holbrook & McDonough  
1441 West Ute Blvd., Suite 300  
Park City, UT 84098  
[elee@joneswaldo.com](mailto:elee@joneswaldo.com)

**HEART MOUNTAIN, LC**

Address:

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

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**BEAVER CREEK, LC**

Address:

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

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**MMBI, LLC**

Address:

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

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**CLEARWING, LC**

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

Address:

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**JB ASSET CAPPED LLC**

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

Address:

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**MARTIN HOUCK, Trustee of The Chavez-Houck Family Trust dated 1/1/1993**

\_\_\_\_\_

Address:

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**AGATE LLC**

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

Address:

c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, UT 84\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_

**TITLE COMPANY ACCEPTANCE**

The Option to Purchase Agreement (the "Agreement") is accepted and the escrow described in Section 2.2 thereof is opened this \_\_\_\_ day of \_\_\_\_\_, 2015. The undersigned hereby agrees to act as the "Title Company" as defined in the Agreement and to perform its duties in accordance with the provisions of the Agreement. Further, the Title Company agrees to (a) timely file returns with the Internal Revenue Service, on Form 1099-B or such other forms as instructed by the Internal Revenue Service, showing the gross proceeds of each transaction contemplated hereunder, the recipient thereof and such other information as the Internal Revenue Service may by form or regulation require from time to time, and (b) furnish the Purchaser and the Parties with a written statement showing the name and address of the Title Company and the information shown on such returns with respect to each such transaction. These returns shall be filed to ensure that the Parties to these transactions will be in compliance with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations promulgated thereunder.

FIRST AMERICAN TITLE INSURANCE COMPANY OF UTAH

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

**Legal Description of Parcel 1**

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

**Legal Description of Parcel 2**

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

EXHIBIT B  
(To Option to Purchase Agreement)

**Sellers Pro Rata Shares**

<b>Seller</b>	<b>Seller's Pro Rata Share</b>
SK Gordon Developments, LLC	45.24%
Heart Mountain, LC	5.35%
Beaver Creek, LC	1.43%
MMBI, LLC	7.54%
Clearwing, LC	26.01%
JB Asset Capped LLC	10.18%
Martin Houck, Trustee of The Chavez-Houck Family Trust dated 1/1/1993	1.01%
Agate LLC	3.24%
	100%

**Form of Special Warranty Deed**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sidwell Nos. \_\_\_\_\_

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED (this "Deed"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by [the parties listed on the Signature pages below] (the "Grantor") in favor of \_\_\_\_\_ (the "Grantee").

For and in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, as the owner of 100% of the parcels described below, does, by this Deed, CONVEY AND WARRANT to the Grantee, against all claiming by, through or under Grantor that certain real property situated in Midvale City, Salt Lake County, Utah more particularly described in Exhibit "A-1" attached hereto, subject to the exceptions to title set forth in Exhibit "B" attached hereto.

IN WITNESS WHEREOF, the Grantor has caused this Special Warranty Deed to be duly executed as of the date first above written.

[Signature Pages]

**Permitted Exceptions**

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[It is a “Permitted Exception” (a) if it states “None” or (b) if the Preliminary Notice is with respect to a party or matter that is the result of the Purchaser’s activities or the activities of any person acting by, through or under Purchaser. Any other Preliminary Notice is not a “Permitted Exception”.]

**Specified Title Matters**

Specified Requirements:

8  
9

Specified Exceptions:

57  
62  
65

RECORDING REQUESTED BY AND WHEN  
RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### MEMORANDUM OF OPTION

This Memorandum of Option (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015, by and among the Redevelopment Agency of Midvale City (the "Purchaser"), a public body, and the entities listed on the signature pages hereof (collectively, the "Sellers").

WHEREAS, the Purchaser and the Sellers (the "Parties") have entered into that certain Option to Purchase Agreement (the "Agreement") dated as of August \_\_, 2015 (the "Effective Date"), pursuant to which the Sellers agreed to grant the Purchaser the option (the "Option") to acquire certain Property which is described in Exhibit A attached hereto; and

WHEREAS, the Parties desire to give notice of the Option;

NOW, THEREFORE, the Parties agree as follows:

Section 1. Option: The Purchaser shall have the Option to acquire the Property as provided in, and in accordance with the terms and conditions of, the Agreement, for a period commencing on the Effective Date and ending on \_\_\_\_\_, 2016, unless the Option is extended for six (6) months as provided in the Agreement (the "Option Period").

Section 2. Restrictions: The Parties desire to give notice that the Agreement contains certain restrictions on the rights of the Sellers, including without limitation a prohibition against granting any deed of trust, mortgage or other lien on the Property.

Section 3. Inquiries: Inquiries regarding the terms of the Option may be addressed to:

Purchaser:                      Redevelopment Agency of Midvale City  
                                            7505 South Holden Street  
                                            Midvale, UT 84047  
                                            Attention: Executive Director

Sellers:                              As specified on the signature pages

Section 4. Successors: The rights and obligations described in this Memorandum of Option shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Option as of the date first written above.

[Signature Pages]

**Legal Description of Parcel 1**

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

**Legal Description of Parcel 2**

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

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**ASSIGNMENT AND ASSUMPTION OF OPTION TO PURCHASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF OPTION TO PURCHASE AGREEMENT (this “Assignment”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between the Redevelopment Agency of Midvale City, a governmental entity organized under the laws of the State of Utah (“Assignor”), and \_\_\_\_\_, a Utah limited liability company (“Assignee”).

WHEREAS, Assignor entered into that certain Option to Purchase Agreement dated as of \_\_\_\_\_, 2015 (the “Agreement”) with the parties listed therein as the Sellers (the “Sellers”), pursuant to which the Sellers granted to the Assignor the right to purchase certain property located in Midvale (as more particularly defined on Exhibit A attached hereto, the “Property”); and

WHEREAS, Assignor desires to transfer and assign to Assignee, and Assignee desires to assume, all of Assignor’s right, title, duties, obligations, liabilities and interest in, to and under the Agreement with respect to [that portion of ]the Property [more particularly defined on Exhibit B attached hereto (the “Assigned Property”)] first accruing from and after the date hereof;

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Assignor hereby assigns to Assignee, as of the Effective Date, all of Assignor’s right, title and interest in, to and under the Agreement [with respect to the Assigned Property], upon the terms and conditions herein set forth.

2. Assignee hereby accepts such assignment, as of the Effective Date, and assumes and agrees to be bound by and to fully and timely keep, perform and fulfill each and all of the terms, covenants, conditions and obligations required to be observed, kept, performed and fulfilled by Assignor first accruing from and after the Effective Date, as “Purchaser” under the Agreement, in the place and stead of Assignor [with respect to the Assigned Property]. Without limiting the generality of the foregoing, Assignee acknowledges that the sale of the Property is in its “As Is” condition, as provided in Section 6.2(c) of the Agreement and assumes and agrees to be bound by Section 2.10(d), Indemnity, Section 2.15, Assignment, and Section 6.2(d), Purchaser’s Release of the Agreement. Notwithstanding Assignee’s rights hereunder, Assignor shall remain responsible to Sellers for its obligations under Sections 2.10(d), 6.2(d) and 8.9 and any other obligations of Purchaser under the Agreement arising out of Purchaser’s actions [with respect to the Assigned Property].

3. Assignor hereby agrees to indemnify Assignee against, and hold Assignee harmless from, any and all suits, claims, actions, damages, liabilities, losses, costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) which Assignee may sustain or incur, arising out of, in connection with, or by reason of, Assignor's actions and/or failure to observe, perform or comply with any of its obligations during the term of the Agreement [with respect to the Assigned Property] on or prior to the Effective Date.

4. Assignee hereby agrees to indemnify Assignor against, and hold Assignor harmless from, any and all suits, claims, actions, damages, liabilities, losses, costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) which Assignor may sustain or incur, arising out of, in connection with, or by reason of, Assignee's actions and/or failure to observe, perform or comply with any of its obligations during the term of the Agreement [with respect to the Assigned Property] first accruing after the Effective Date.

5. Assignor represents and warrants to Assignee that there is no existing, uncured default under the Agreement [with respect to the Assigned Property] on the Assignor's part and no event has occurred which, with the giving of notice, the lapse of time, or both, could construe such an event of default under the Agreement [with respect to the Assigned Property].

6. If any litigation between Assignor and Assignee arises out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the non-prevailing party shall pay the prevailing party's costs and expenses of such litigation including, without limitation, reasonable attorneys' fees.

7. This Assignment shall be governed by and construed in accordance with the laws of the State of Utah.

8. This Assignment may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

9. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

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

**COUNTERPART SIGNATURE PAGE  
ASSIGNMENT AND ASSUMPTION OF OPTION TO PURCHASE AGREEMENT**

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

**ASSIGNOR:**

**REDEVELOPMENT AGENCY OF MIDVALE CITY**

By: \_\_\_\_\_  
JoAnn Seghini  
Its Chief Administrative Officer

By: \_\_\_\_\_  
Kane Loader  
Its Executive Director

APPROVED AS TO FORM:

JONES WALDO HOLBROOK & McDONOUGH P.C.

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

STATE OF UTAH                    )  
                                          : ss.  
COUNTY OF SALT LAKE        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me JoAnn Seghini, who being duly sworn, did say that she is the Chief Administrative Officer of the Redevelopment Agency of Midvale City, a governmental entity organized under the laws of the State of Utah, and that the foregoing Assignment and Assumption of Option to Purchase Agreement was signed on behalf the Redevelopment Agency of Midvale City by authority of law.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County

STATE OF UTAH                    )  
                                          : ss.  
COUNTY OF SALT LAKE        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me Kane Loader, who being duly sworn, did say that he is the Executive Director of the Redevelopment Agency of Midvale City, a governmental entity organized under the laws of the State of Utah, and that the foregoing Assignment and Assumption of Option to Purchase Agreement was signed on behalf the Redevelopment Agency of Midvale City by authority of law.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County

**COUNTERPART SIGNATURE PAGE  
ASSIGNMENT AND ASSUMPTION OF OPTION TO PURCHASE AGREEMENT**

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

**ASSIGNEE:**

\_\_\_\_\_

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

STATE OF UTAH                    )  
                                          : ss.  
COUNTY OF SALT LAKE        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me \_\_\_\_\_, who being duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a Utah limited liability company, and that the foregoing Assignment and Assumption of Option to Purchase Agreement was signed on behalf of \_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County

Legal Description of the Property

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

Legal Description of the Assigned Property

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



**Redevelopment Agency of MIDVALE CITY  
SUMMARY REPORT**

**MEETING DATE: OCTOBER 20, 2015**

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**SUBJECT:** Discussion and Action regarding Resolution No.2015-15RDA authorizing the execution of an Exclusive Listing Agreement between the Redevelopment Agency of Midvale City and JHB Realty Advisors.

**SUBMITTED BY:** Danny Walz, Redevelopment Director

**SUMMARY:** On October 13, 2015, the Redevelopment Agency of Midvale City Board of Directors discussed the terms for entering into a listing agreement to provide the terms and conditions for JHB Realty to secure the exclusive right to market property on behalf of the Agency. The purpose of the agreement is to authorize the broker to market the property for sale and development by prospective buyers. The term of the listing agreement runs concurrently with the Agency's option agreement on the property.

The listing agreement provides the requirements for the broker's marketing and commission on the sale. The Agreement has been prepared by Tom Berggren of Jones Waldo and has been approved by Jeff Bernson of JHB Realty.

**FISCAL IMPACT:** Upon sale of the property pursuant to the terms of the listing agreement, the Agency shall pay the broker a sales commission equal to six percent (6%) of the gross sales price. This expense will either be paid from the Agency's resale of the property or Agency funds.

**RECOMMENDED MOTION:** I move that we adopt Resolution No. 2015-15RDA authorizing the execution of an Exclusive Listing Agreement between the Redevelopment Agency of Midvale City and JHB Realty Advisors.

**ATTACHMENTS:** Resolution No. 2015-15RDA, Exclusive Listing Agreement

**MIDVALE CITY**

**RESOLUTION No. 2015-15RDA**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN EXCLUSIVE LISTING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF MIDVALE CITY AND JHB REALTY ADVISORS**

**WHEREAS**, the Redevelopment Agency of Midvale City was created to transact the business and exercise the powers provided for in the Utah Redevelopment Agencies Act; and

**WHEREAS**, the Board of Directors of the Redevelopment Agency of Midvale City adopted the Jordan Bluffs Redevelopment Plan on August 10, 2004; and

**WHEREAS**, the Board of Directors of the Redevelopment Agency of Midvale City desires to encourage redevelopment within the Jordan Bluffs Project Area; and

**WHEREAS**, the Board of Directors has entered into an Option to Purchase Agreement for approximately 256 acres of land within the Jordan Bluffs Project Area; and

**WHEREAS**, the Board of Directors of the Redevelopment Agency of Midvale City desires to engage the services of JHB Realty Advisors for the marketing and development of the property to prospective buyers.

**NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, STATE OF UTAH**, that the Board of Directors does hereby authorize the Chief Administrative Officer and Executive Director to execute the Exclusive Listing Agreement in the form attached subject to such other terms and conditions as recommended by Agency's legal counsel.

**PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF MIDVALE CITY, STATE OF UTAH**, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

JoAnn B. Seghini  
Chief Administrative Officer

---

Kane Loader  
Executive Director

ATTEST:

---

Rori L. Andreason, MMC  
Secretary

**Voting by the Board:**

Steve Brown  
Paul Glover  
Quinn Sperry  
Paul Hunt  
Wayne Sharp

**“Aye”**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**“Nay”**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXCLUSIVE LISTING AGREEMENT FOR THE SALE OF REAL PROPERTY  
(UNDER THE TERMS OF AN OPTION AGREEMENT)**

This Exclusive Listing Agreement for the Sale of Real Property (Under the Terms of an Option Agreement) is made and entered into as of the \_\_\_\_\_ day of August, 2015 between Redevelopment Agency of Midvale City (the “RDA”) and JHB Realty Advisors, Inc., a Utah corporation (the “Broker”).

Recitals:

A. The RDA has been negotiating with the owners (the “Current Owners”) of two parcels of property located in Midvale City with Tax Identification Numbers 21-35-400-016 and 21-35-400-017-4001/4002 and depicted on Exhibit A attached hereto (the “Property”) in an effort to enter into an agreement pursuant to which the Current Owners will grant to the RDA an option to purchase the Property (the “Option Agreement”).

B. In the event that the RDA and the Current Owners enter into the Option Agreement, the RDA will have a period of up to twenty-four months (the “Option Period”) during which the RDA will investigate the Property and evaluate the feasibility of successfully selling the Property.

C. The Broker desires, during the Option Period, to assist the RDA in evaluating such feasibility and to seek purchasers for the Property or portions of the Property.

D. By the end of the Option Period, the RDA shall either purchase the Property or not purchase the Property.

E. The RDA desires to grant the Broker the exclusive right to market the Property on behalf of the RDA, for the period and on the terms specified herein.

F. The Broker understands and agrees that in the event that the RDA does not exercise its option under the Option Agreement and purchase the Property, the RDA shall be under no further obligations to the Broker.

NOW, THEREFORE, the Parties agree as follows:

1. Listing of the Property and RDA’s Requirements.

(a) The RDA hereby grants the Broker the exclusive right to market the Property on behalf of the RDA on the terms specified herein for a period (the “Marketing Term”) commencing on the date hereof and ending on the following applicable date, as the case may be:

(i) if the RDA does not exercise its option under the Option Agreement, the date the Option Period expires, or

(ii) if the RDA exercises its option under the Option Agreement but does not purchase the Property, the date the Option Agreement expires, or

(iii) if the RDA exercises its option under the Option Agreement and purchases the Property, the day after the RDA purchases the Property.

Notwithstanding the foregoing with respect to the expiration of the Marketing Term, the RDA may continue to be obligated to pay a Commission with respect to a sale of the Property pursuant to Section 2 below after the Marketing Term expires.

(b) During the Marketing Term, the Broker agrees (i) to provide the RDA with all information it obtains concerning the feasibility of the selling the Property and (ii) to use diligent efforts to find users and/or developers interested in acquiring all of the Property or one or more portions of the Property (“Potential Purchasers”).

(c) The RDA agrees to promptly refer to the Broker all inquiries of anyone interested in the Property.

(d) The Broker agrees to not promise or otherwise hold out to any person that it can make any decisions with regard to the sale of the Property or that it can reserve any portion of the Property for the benefit of any person.

(e) The Broker shall use commercially reasonable efforts to obtain during the Marketing Term a Real Estate Purchase Contract signed by a Potential Purchaser (a “Buyer Signed REPC”) for the sale of the Property in the form of Exhibit B attached hereto; provided, however, the Broker may make changes in such form or use another form of purchase and sale agreement required by the Potential Purchaser with the approval of the RDA, such approval to be granted or withheld in the RDA’s sole discretion.

(f) The Broker acknowledges that the RDA desires to sell the entire Property to a single buyer for \$16 million cash (the “Target Price”). However, at any time during the Marketing Term, the RDA may divide the Property into areas as shown on a plan (the “Designated Areas”) and identify a desired minimum purchase price per acre for each Designated Area as shown on a separate confidential list, in which case the Target Price for any Designated Area shall be the amount specified in such list.

(g) The RDA acknowledges that in determining the financial soundness of any prospective buyer, the RDA will rely solely upon the RDA’s own investigation, notwithstanding the Broker’s assistance in gathering such information.

(h) The Broker agrees that it will not submit to the RDA a Buyer Signed REPC unless previously the Broker has provided the RDA with the following (a “Written Proposal”):

(i) an unsigned draft of a letter of intent prepared by the Broker that includes the following information: (A) the identity of the buyer, (B) the proposed use for the Property, (C) a drawing that shows the size and location of the Property, and (D) the proposed purchase price and other basic terms,

- (ii) a Confidentially Agreement signed by the buyer or the buyer's agent, and
- (iii) an Agency Disclosure Agreement signed by the buyer or the buyer's agent.

The RDA, shall as soon as possible and in any event not later than three (3) business days after it has received a Written Proposal, shall notify the Broker that it (1) approves the Broker proceeding to seek a Buyer Signed REPC on the basis of the terms contained in the Written Proposal, (2) approves the Broker proceeding to seek a Buyer Signed REPC on the basis of the terms contained in the Written Proposal, with certain specified changes, or (3) the RDA does not desire to pursue the Written Proposal.

(i) If the Broker obtains a Buyer Signed REPC, it shall promptly deliver it to the RDA. The RDA may accept, reject or counter a Buyer Signed REPC and the RDA is not obligated to accept a Buyer Signed REPC even if the purchase price equals or exceeds the applicable Target Price; provided, however, that in the event that a Buyer Signed REPC is consistent with an approved Written Proposal, the Broker may be entitled to a Commission as provided in Section 2 below. The Broker may recommend that the RDA take certain actions with respect to a Buyer Signed REPC but the RDA shall not be bound by any such recommendations. A Buyer Signed REPC that has been accepted and signed by the RDA in accordance with the terms of this Agreement during the Marketing Term or during the Protection Period (as defined in Section 2(e) below), and not otherwise, shall be referred to herein as a "Signed REPC".

## 2. Commission.

(a) In the event of a sale of the Property or any portion thereof pursuant to a Signed REPC, the RDA agrees to pay the Broker a sales commission equal to six percent (6.0%) of the gross sales price in connection with the closing of such sale (the "Commission"). Except as otherwise expressly provided below, the Commission shall only be earned and payable if there is a sale of any such Property pursuant to a Signed REPC.

(b) If the transaction changes to any other type of transaction, including but not limited to, an exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease ("Alternative Transaction") then the Broker shall be entitled to the Commission if such Alternative Transaction is consummated.

(c) In the event that a sale of any Property does not place as a result of the RDA's default under a Signed REPC, the Broker shall be entitled to a Commission as provided above.

(d) In the event that a Buyer Signed REPC is not signed by the RDA even though its terms are consistent with a Written Approval, the Broker shall be entitled to a Commission as provided above.

(e) Not later than five (5) business days before the expiration of the Marketing Term pursuant to Section 1(a) above or other termination of this Agreement in accordance with

Section 6 below, the Broker may send to the RDA written notice specifying Potential Purchasers to which the Broker has engaged in significant efforts to market the Property during the Marketing Term, together with a summary of such efforts. If within the period ending on the date that is one hundred eighty (180) days after the expiration of the Marketing Term pursuant to Section 1(a) or Section 6, as the case may be (the “Protection Period”), the RDA enters into an Signed REPC and then sells all or a portion of the Property to a Prospect (whenever such sale takes place, i.e. either during or after the Protection Period), the RDA shall pay to the Broker, upon the closing of the sale, the Commission. The RDA’s obligations herein shall survive the expiration or termination of this Agreement, other than a termination as a result of the Broker’s default hereunder.

3. Marketing of the Property.

(a) The Broker shall utilize the efforts of the following team members of Broker (“Team Members”) to procure purchasers for the Property: Jeffrey H. Bernson and Whitney Bernson. Broker agrees that Jeffrey H. Bernson (“Key Broker”) personally will have primary responsibility for overseeing the Broker’s obligations herein and managing the Team Members. The Key Broker and the Team Members shall be supported by the Broker’s personnel and resources at no additional charge to the RDA. The Broker acknowledges and agrees that it is a material inducement to entering into this Agreement to have Key Broker and the Team Members personally responsible for the performance of the Broker’s obligations hereunder. If the Key Broker no longer has primary responsibility for the listing, the RDA shall have the right to immediately terminate this Agreement as provided below.

(b) The Broker shall advertise the Property by such means and methods and in such media as is approved in writing in advance by the RDA, including but not limited to:

(i) Placing a “For Sale” sign or other similar marketing sign on the Property.

(ii) Developing and placing information about the Property (including interior and exterior photographs and videos) (“Property Information”):

(1) on the internet on Broker’s website or other websites that Broker deems appropriate;

(2) in print or electronic advertisements;

(3) with listing services that may publicize the Property Information on the Internet or by other means; and

(4) in brochures.

(c) The Broker shall be responsible for any out-of-pocket expenses incurred by the Broker to carry out the terms of this Agreement (the “Broker’s Expenses”).

(d) If another agent in the Broker's office other than a Team Member finds a prospective party for a transaction, the Broker may represent and act as a dual agent for such party with the written approval of the RDA, such approval not to be unreasonably withheld.

(e) The Broker shall cooperate in good faith with other independent brokers unaffiliated with the Broker ("Cooperating Brokers") in order to market the Property and procure a Potential Purchaser. The RDA shall have no obligation whatsoever to pay any compensation to any Cooperating Brokers. The Broker shall be responsible for splitting the Commission with Cooperating Brokers pursuant to a separate agreement between the Broker and Cooperating Brokers. If any Cooperating Broker refuses to accept such arrangement the Broker may terminate negotiations with such Cooperating Broker, provided Broker has promptly provided to the RDA the name of such Cooperating Broker and the name of their prospective purchaser.

(f) The Broker may, at its sole cost and expense, employ such co-broker or co-brokers (each, a "Co-broker") as the Broker determines is necessary or desirable to market the Property and procure a lease. In such event, the Broker shall not be entitled to, and the RDA shall not be obligated to pay, any additional Commission. The Broker shall be responsible for paying any compensation to any Co-broker pursuant to a separate agreement between the Broker and any Co-broker and the RDA shall have no obligation whatsoever to compensate any Co-broker.

4. Broker Representations and Warranties. The Broker hereby represents and warrant to the RDA as follows:

(a) The Broker is duly licensed as a real estate broker in the state in which the Property is located and shall remain duly licensed throughout the Marketing Term.

(b) The Broker does not have and shall not enter into any conflicting relationships that would affect its ability to act in the best interests of the RDA and in accordance with all applicable agency and fiduciary obligations imposed upon the Broker by law.

(c) The Broker has provided the RDA with certificates of insurance evidencing that Broker carries and maintains such general liability insurance policies with such companies and in such scope and amounts as are acceptable to the RDA in its reasonable discretion, and in all cases, naming the RDA as an additional insured party and loss payee thereunder.

5. Indemnification by the Broker. The Broker shall defend (with counsel reasonably acceptable to the RDA), indemnify and hold harmless the RDA from and against any and all damages, loss cost or expense with respect to: (a) any action, proceeding, claim or liability (including reasonable attorneys' fees) arising out of, in connection with, or resulting from any intentional misrepresentations, gross negligence, illegal conduct or fraud perpetrated by the Broker during the performance of this Agreement; or (b) any claim for brokerage or finder's fees or commissions or any other like payment by any Cooperating Broker or Co-broker, as provided in Section 3 above, or any other broker. The Broker's obligations herein shall survive the expiration or termination of this Agreement.

6. Right to Terminate.

(a) The RDA's Termination Rights. The RDA may terminate this Agreement immediately at any time upon written notice if the Broker, or its affiliates, or any of their respective officers, agents or employees commit any of the following:

(i) There is a material change in the personnel or control of the Broker (by merger, acquisition or otherwise) which would be detrimental to the marketing process, in the RDA's sole determination.

(ii) If Key Broker resigns or is removed from primary responsibility for the marketing of the Property.

(iii) An illegal act or any act which involves a conflict of interest.

(iv) A breach of this Agreement, including any representations, warranties, and performance obligations, if such breach shall continue for thirty (30) days after written notice thereof from the RDA.

In the event the RDA terminates this Agreement for any of the above actions, the RDA shall not be liable to the Broker for any Commission.

(b) The RDA's Additional Termination Right. The RDA shall also have the right to terminate this Agreement at the RDA's sole and absolute discretion upon written notice to the Broker at any time after one hundred fifty (150) days after the date hereof. The Broker shall be entitled to a Commission as outlined in Section 2(e) and if no commission is or becomes due then the RDA shall reimburse the Broker for its Broker Expenses within thirty (30) days after the RDA's receipt of satisfactory receipts and invoices.

7. Acknowledgment. The Parties hereby acknowledge and agree that in fulfilling its contractual obligations hereunder, (i) the Broker shall devote only such time, resources, and energy in marketing and procuring purchasers for the Property as the Broker, in its sole discretion, deems reasonably necessary and appropriate, given its experience, training and expertise; (ii) except as expressly provided otherwise herein, neither the Broker nor its principles is prohibited from engaging in any other businesses, ventures, transactions (including brokering real estate transactions) or business activity generally during the Marketing Term; and (iii) the Broker provides no assurance, guaranty or warranty that it will be able to successfully procure Buyer Signed REPCs with Potential Purchasers, or more generally, sell the Property during the Marketing Term.

8. Miscellaneous.

(a) Costs of Litigation. In the event of any litigation between the RDA and the Broker arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred in such litigation from the losing party, including attorneys' fees incurred at all tribunals, Including appeals.

(b) Assignment. This Agreement and the rights, duties, obligations and privileges hereunder may not be assigned by The Broker without the prior written approval of the RDA, such approval to be given or withheld in the RDA's sole discretion.

(c) Section Headings. The section titles contained herein are for convenience only and do not define, limit or construe the interpretation of any of the contents of such sections.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the RDA and the Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written, No amendment, alteration or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both the RDA and the Broker. This Agreement shall be binding upon the heirs, successors and assignees of the parties.

(e) Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Utah.

(f) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument. A signed copy of this Agreement delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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

**REDEVELOPMENT AGENCY OF MIDVALE CITY**

By \_\_\_\_\_  
JoAnn Seghini  
Its Chief Administrative Officer

By \_\_\_\_\_  
Kane Loader  
Its Executive Director

**JHB REALTY ADVISORS, INC.**

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

Name: Jeffrey H. Bernson, CCIM

Its: Principal Broker