

CLEARFIELD CITY COUNCIL
AGENDA AND SUMMARY REPORT
February 9, 2016 – POLICY SESSION

Meetings of the City Council of Clearfield City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207 as amended. In such circumstances, contact will be established and maintained via electronic means and the meetings will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Executive Conference Room
55 South State Street
Third Floor
Clearfield, Utah

6:00 P.M. WORK SESSION

Discussion on SR 193 Landscaping
Discussion on the Daycare at the Aquatic Center
Discussion on Amendments to Title 11, Chapter 1, Section 10 – Public Noticing Requirements and Chapter 13 – Pawn and Secondhand Businesses
Discussion on the Ground Lessor’s Consent Agreement for property located at approximately 888 South University Park Boulevard

(Any items not fully addressed prior to the Policy Session will be addressed in a Work Session immediately following the Policy Session)

City Council Chambers
55 South State Street
Third Floor
Clearfield, Utah

7:00 P.M. POLICY SESSION

CALL TO ORDER:	Mayor Shepherd
OPENING CEREMONY:	Councilmember Peterson
APPROVAL OF MINUTES:	January 12, 2016 – Work Session January 19, 2016 – Work Session January 26, 2016 – Policy Session

PRESENTATION:

1. **PRESENTATION BY STUDENTS AGAINST ELECTRONIC VAPING (SAEV) COALITION**

BACKGROUND: Clint Bisbee and Cade Hyde will share a presentation to the Council on behalf of the SAEV Coalition.

SCHEDULED ITEMS:

2. **CITIZEN COMMENTS**

3. CONSIDER APPROVAL OF A GROUND LESSOR'S CONSENT AGREEMENT FOR PROPERTY LOCATED AT 888 SOUTH UNIVERSITY PARK BOULEVARD

BACKGROUND:

The owner of the office building at 888 South University Park Boulevard (888 Associates, LLC) is seeking a line of credit from KeyBank, and the building is one of the properties that will be used as collateral. Because 888 Associates leases from the City land that they are using to provide additional parking for the building, KeyBank is requiring that the owner of the land (the City) consent to KeyBank's ability to lien the ground lease. Essentially, this means that if 888 Associates were to default on the loan and KeyBank were to take possession of the building, then KeyBank would also become the lessee of the City's ground.

RECOMMENDATION: Approve the Ground Lessor's Consent Agreement for property located at 888 South University Park Boulevard and authorize the Mayor's signature to any necessary documents.

COMMUNICATION ITEMS:

Mayor's Report
City Councils' Reports
City Manager's Report
Staffs' Reports

****ADJOURN AS THE CITY COUNCIL AND RECONVENE AS THE CDRA****

1. APPROVAL OF THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) MINUTES FROM THE JANUARY 12, 2016 POLICY SESSION

SCHEDULED ITEM:

2. CONSIDER APPROVAL OF A GROUND LESSOR'S CONSENT AGREEMENT FOR PROPERTY LOCATED AT 888 SOUTH UNIVERSITY PARK BOULEVARD

BACKGROUND: The owner of the office building at 888 South University Park Boulevard (888 Associates, LLC) is seeking a line of credit from KeyBank, and the building is one of the properties that will be used as collateral. Because 888 Associates leases from the CDRA land that they are using to provide additional parking for the building, KeyBank is requiring that the owner of the land (the CDRA) consent to KeyBank's ability to lien the ground lease. Essentially, this means that if 888 Associates were to default on the loan and KeyBank were to take possession of the building, then KeyBank would also become the lessee of the CDRA's ground.

RECOMMENDATION: Approve the Ground Lessor's Consent Agreement for property located at 888 South University Park Boulevard and authorize the Chair's signature to any necessary documents.

****ADJOURN AS THE CDRA****

Dated this 4th day of February, 2016.

/s/Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the 'Americans with Disabilities Act' provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
January 12, 2016

PRESIDING:	Kent Bush	Mayor Pro Tem
PRESENT:	Keri Benson Nike Peterson Vern Phipps Bruce Young	Councilmember Councilmember Councilmember Councilmember
EXCUSED:	Mark Shepherd	Mayor
STAFF PRESENT:	Adam Lenhard JJ Allen Stuart Williams Scott Hodge Greg Krusi Spencer Brimley Eric Howes Curtis Dickson Rich Knapp Summer Palmer Nancy Dean Kim Read	City Manager Assistant City Manager City Attorney Public Works Director Police Chief Development Services Manager Community Services Director Community Services Deputy Dir. Administrative Services Director Human Resources Manager City Recorder Deputy City Recorder

VISITORS: Kathryn Murray

Mayor Pro Tem Bush called the meeting to order at 6:00 p.m.

DISCUSSION ON THE PROPOSED AMENDED FINAL SUBDIVISION PLAT FOR THE WILCOX FARMS SUBDIVISION PLAT LOCATED AT 850 WEST 1600 SOUTH (TIN: 12-391-0014)

Spencer Brimley, Development Services Manager, shared a visual illustration regarding the proposed amended final subdivision plat for the Wilcox Farms development and explained the purpose for the amendment was to create two lots to accommodate the expansion of the daycare, “Let Them Be Kids” and the other property would be sold to Rick Scadden, developer, for the purpose of a multi-family development. The illustration identified the location of a cul-de-sac. He announced the Planning Commission considered the item at its meeting on Wednesday, January 6, 2016, and recommended approval subject to the conditions identified in the staff report.

Councilmember Bush inquired if the portion of property currently zoned residential would remain residential. Mr. Brimley responded yes that there was currently no intention to sell that property.

DISCUSSION ON THE AWARD OF BID FOR JANITORIAL SERVICES

Eric Howes, Community Services Director, explained the City had completed a bid process for janitorial services last year. He informed the Council that the contract with the current provider was for one year with three additional one year options at the discretion of the City. He stated the City had experienced several issues with the current provider over the past year and staff determined to bid the services again without exercising any of the one year options.

Mr. Howes announced there were four responses to the janitorial bid and the lowest bid received was from the current vendor. He explained a committee had been established and criteria had been identified which was used to rate each vendor's bid. Mr. Howes distributed a handout reflecting the rating criteria and pointed out the lowest bid did not receive the highest rating and reviewed it with the Council.

Mr. Howes announced staff was recommending awarding the bid to the second lowest bidder, Coverall, based upon the rating criteria and pointed out specifics relative to that bid.

DISCUSSION ON THE FOURTH OF JULY ACTIVITIES

JJ Allen, Assistant City Manager, stated he knew Mayor Shepherd had desired to lead the discussion on organizing a Questival as part of the Fourth of July activities this year. He pointed out July 4th was on a Monday and reminded the Council of last year's activities which took place over three days. He stated the committee had begun considering events which could possibly take place on the Friday and Saturday. He continued the intent would be to take a break on Sunday and then come back on Monday for the traditional Fourth of July events. He reported the committee had suggested the open pool night at the Aquatic Center on Saturday followed by a movie in the park and a suggestion had also been made specific to a scavenger hunt or some kind of race which would get people out and about discovering parts of the City.

He announced the committee had proposed a Cotopaxi Festival or Questival. He shared a brief history of Cotopaxi and explained the charitable aspect associated with company. He explained the Questival was similar to an Amazing Race/Scavenger Hunt which had participants going to various locations completing unique challenges while recording everything through social media. He stated there was a \$30 per person entry fee. He shared a video which illustrated the race experience and explained how the race could potentially be implemented pointing out the following:

- The projected geographical area for the race would be larger than Clearfield City.
- Cotopaxi's designated charity was "Nothing But Nets" which provided mosquito netting to impoverished areas to eliminate the spreading of Malaria.
- There was definitely a social media aspect associated with the race.
- The winners were in part determined by the voting of other participants using social media.
- The race itself would be administered by Cotopaxi's app which would shut down at a certain designated time; therefore, the race would not necessarily end in Clearfield City.
- It was hopeful that Cotopaxi could compile all results and announce the winners during the City's large Fourth of July celebration at the Alex Boye headliner concert.

Mr. Allen reported Mayor Shepherd had reached out to COG (Council of Government) members and several cities had already expressed an interest in providing representatives to serve on the planning committee and Davis County had expressed a willingness to provide sponsorship.

Mayor Shepherd arrived at 6:20 p.m.

Councilmember Bush inquired how the race could potentially impact the police department. Mr. Allen emphasized Cotopaxi would shut down its app during the overnight hours to encourage participants to take a break for necessary rest. A discussion took place regarding the benefits to the City and whether Clearfield could host and customize the event. Mayor Shepherd emphasized the race was designed to be fun and friendly and build camaraderie amongst the teams.

Councilmember Young indicated he wasn't necessarily clear regarding what would be expected for the City's participation. Mr. Allen responded the City would be the "partner" community which required sponsorship. Councilmember Phipps pointed out the exposure of the City would be a great benefit and a discussion took place regarding the possible race.

Mr. Allen announced the City would need additional sponsorships for the Fourth of July festivities because of the costs associated with the Alex Boye concert on Monday and explained how that concert would be beneficial not only to the City but as part of the Cotopaxi festival as well as offering exposure for HAFB (Hill Air Force Base).

Mayor Shepherd explained how the Cotopaxi Questival would take place prior to the beginning of the race and highlighted some of those activities. Mayor Shepherd emphasized Davis County would like to possibly promote the event in conjunction with the HAFB Air Show and the Tour of Utah. He suggested one or more of the challenges could potentially benefit the Air Force Association (AFA). He expressed his opinion it would be great marketing for the City.

Mr. Allen indicated the event would probably require amending of the budget for the expenditure associated with the Fourth of July activities. He stated the additional activity would most likely require not only a committee for the Fourth of July but separate committee for the Questival that would be open to other participants other than just City staff.

Councilmember Benson asked about the We've Got Talent event for Monday and a discussion took place. It was determined she should visit with Marliss Scott, Special Events, about eliminating semi-finals. The suggestion was to have auditions and the competition on Monday.

Councilmember Bush suggested inviting a patriotic speaker which could take place at Bicentennial Park on Sunday evening. Councilmember Phipps added the Community Band could participate in that event with patriotic songs. Councilmember Benson mentioned the Community Choir could also participate. Mayor Shepherd requested Councilmember Bush take the lead on this non-denominational service.

The meeting adjourned at 6:40 p.m.

CLEARFIELD CITY COUNCIL MEETING MINUTES
6:00 P.M. WORK SESSION
January 19, 2016

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson	Councilmember
	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Stuart Williams	City Attorney
	Scott Hodge	Public Works Director
	Greg Krusi	Police Chief
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Summer Palmer	Administrative Services Director
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Tim Roper – Planning Commission, Kathryn Murray – Planning Commission, Mallory Baudry, Thomas Mayer, Jeff Baker, Alan Richardson, Chris Uccardi, Ron Jones, Connie Dooley, Alicia Clark

Mayor Shepherd called the meeting to order at 6:10 p.m.

PLANNING COMMISSION AND PARKS AND RECREATION COMMISSION INTERVIEWS

The Council interviewed Mallory Baudry, Thomas Mayer, Jeff Baker, Alan Richardson, Chris Uccardi and Ron Jones for consideration of appointments to the Planning Commission. It also interviewed Thomas Mayer, Connie Dooley and Alicia Clark for consideration of appointments to the Parks & Recreation Commission.

DISCUSSION ON APPOINTMENTS TO THE PLANNING COMMISSION AND PARKS AND RECREATION COMMISSION

The Council discussed qualifications of the candidates and possible appointments for the vacancies. It also desired to interview Nathan Wimmer, a candidate that couldn't make his appointment because he was coaching a Junior Jazz basketball team, Tuesday, January 26, 2016, after which a decision would be made about appointments to fill the current vacancies.

Following the discussion of the Planning Commission candidates it was determined to appoint Ron Jones as a regular member and Chris Uccardi as an alternate member. Mayor Shepherd also requested the reappointment of Amy Mabey whose term on the Planning Commission would expire February 2016. He expressed his confidence with Ms. Mabey and mentioned if her schedule couldn't accommodate an interview on Tuesday, January 26, 2016, he would be prepared to move forward with the reappointment. All appointments would take place during the policy session scheduled for Tuesday, January 26, 2016.

DISCUSSION ON MULTI-FAMILY RESIDENTIAL DEVELOPMENT

JJ Allen, Assistant City Manager, reminded the Council of the amendment made to the General Plan about a year a half ago which removed the zoning restriction specific to multi-family housing developments. He continued the amendment allowed the Council to consider multi-family housing on a case by case basis taking into consideration the merits of the development.

He reported since that time staff had consistently received requests from the development community regarding potential projects. He continued developers didn't want to exert the time and expense of engineering, site planning, applications, fees, etc. unless staff was willing to express some sort of verbal opinion as to whether the project would receive approval from the Council. He emphasized staff couldn't know the opinion of the Council and shared possible variables the Council would consider.

He mentioned staff didn't have anything it could refer to similar to a "check list" to determine the Council's pulse on whether a viable project could possibly receive approval. He requested direction from the Council as to how it would like staff to respond to the inquiries and a discussion took place. He suggested the Council identify specific criteria which staff could refer to as a "rule of thumb" for multi-family developments.

Adam Lenhard, City Manager, asked the Council if it was concerned with the density or the quality of multi-family housing. Councilmember Benson expressed concern with quality of multi-family developments continuing to be maintained to the integrity of the initial new building. She reminded the Council of a previous discussion which took place during the last year in which the City could potentially be divided into sections and then the Council could determine its vision by area. She believed decisions about multi-family development would come down to an area by area decision. Mr. Lenhard responded the City was still forward moving with the small area plan and indicated it would be a long process and pointed out challenges associated with staff turnover.

Councilmember Young expressed agreement with Councilmember Benson's comments regarding the need to plan for the future.

Councilmember Peterson didn't believe now was the appropriate time to consider a merit based review for a stand-alone project without having the appropriate ordinances in place. She suggested the City review its current ordinances and update them specific to small area plans as well as the General Plan regarding development and shared examples.

Councilmember Phipps agreed the City would want multi-family developments which would continue to age well for 20 to 30 years where people could enjoy living for long periods of time as opposed to “transient” or short term housing. A discussion took place regarding options for the City’s different areas. Councilmember Young cautioned the Council to be careful in potential single minded vision in case a great project was proposed for development but ordinances prevented it from coming to fruition.

Mr. Allen clarified the Council wasn’t prepared to consider multi-family requests until the small area plans had been identified because what would work in one area might not work in another. Councilmember Young believed the Council should consider ways which could expedite the City’s process since there seemed to be resurgence in development. Mr. Allen mentioned the State and Main small area plan would possibly be ready by fall 2016. Councilmember Bush suggested the Planning Commission should be included in the discussions. Mr. Allen emphasized any property owner had the right to apply and go through the current process.

The meeting adjourned at 8:30 p.m.

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CLEARFIELD CITY COUNCIL MEETING MINUTES
7:00 P.M. POLICY SESSION
January 26, 2016

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson	Councilmember
	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Stuart Williams	City Attorney
	Scott Hodge	Public Works Director
	Greg Krusi	Police Chief
	Spencer Brimley	Development Services Manager
	Eric Howes	Community Services Director
	Summer Palmer	Administrative Services Director
	Rich Knapp	Finance Manager
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Jean Wunderlich, Parker Bates, Tyler Ashby, Carter Swensen, Ethan Hill, David Curtis, Kenny Howard, Jacob W. Mumford, Jayce M. Stoker, Bryce Reed, Braxton Jeppesen, Jett Potter, Cameren Wade, Robert Bercher, Noah Steele, Chris Uccardi, Jennifer Vanhaafren, Diane Brown, Michael D. Britton

Mayor Shepherd called the meeting to order at 7:00 p.m.

Mayor Shepherd informed the citizens present that if they would like to comment during Public Hearings or Citizen Comments there were forms to fill out by the door.

Councilmember Bush and Senior Patrol Leader Jean Wunderlich conducted the Opening Ceremony.

APPROVAL OF THE MINUTES FROM THE JANUARY 6, 2016 WORK SESSION AND THE JANUARY 12, 2016 POLICY SESSION

Councilmember Benson moved to approve the minutes from the January 6, 2016 work session and the January 12, 2016 policy session as written, seconded by Councilmember Young. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Peterson, Phipps and Young. Voting NO – None.

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT FOR THE PROPOSED AMENDED FINAL SUBDIVISION PLAT FOR THE NINIGRET FIELD SUBDIVISION PLAT LOCATED AT APPROXIMATELY 700 SOUTH 1360 WEST (TIN: 12-766-0004)

Spencer Brimley, Development Services Manager, explained the amendment was for a previously existing subdivision. The two-lot subdivision would allow for the development of a public trailhead on 700 South, south of the Ninigret development in Syracuse. Syracuse City desired to develop a small portion of that property for a trailhead which would benefit both Syracuse and Clearfield City residents. The Planning Commission recommended approval during its meeting on Wednesday, January 6, 2016.

Mayor Shepherd opened the public hearing at 7:06 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

Councilmember Young moved to close the public hearing at 7:07 p.m. seconded by Councilmember Benson. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Peterson, Phipps and Young. Voting NO – None.

CITIZEN COMMENTS

Carter Swensen and Alec Richey, Boy Scout Troop 616, expressed concerns regarding car break-ins and shared some statistics which reflected approximately 3 break-ins every month. Alec Richey asked the police department what was being done or what residents could do to assist the police department or discourage the behavior.

Police Chief Krusi responded residents could help by locking their cars and removing valuable items as most break-ins are crimes of opportunity.

APPROVAL OF AND CONSENT TO THE MAYOR'S APPOINTMENTS OF INDIVIDUALS TO SERVE ON THE PLANNING COMMISSION

The Planning Commission currently had vacancies for two members. Residents were asked to submit letters of interest and interviews were conducted by the City Council during the work session on Tuesday, January 19, 2016.

Councilmember Young commented it was great to have had so many applicants interested in serving on the Commission. Councilmember Bush expressed agreement with Councilmember Young's remarks and mentioned it had been difficult to make a decision as all candidates would have done a great job for the City.

Councilmember Peterson moved to approve and consent to the Mayor's reappointment of Amy Mabey as a regular member of the Planning Commission with a term expiring February 2021 and the Mayor's appointments of Ron Jones as a regular member of the

Planning Commission with a term expiring February 2020 and Chris Uccardi as an alternate member with a term expiring February 2021, and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Benson. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Peterson, Phipps and Young. Voting NO – None.

Mayor Shepherd acknowledged the attendance of Chris Uccardi and announced Ron Jones and Amy Mabey had indicated they were unable to attend the meeting due to scheduling conflicts.

APPROVAL OF AND CONSENT TO THE MAYOR'S APPOINTMENT OF INDIVIDUALS TO SERVE ON THE CITY'S PARKS AND RECREATION COMMISSION

The Parks and Recreation Commission currently had vacancies for three members. Residents were asked to submit letters of interest and interviews were conducted by the City Council during the work session on Tuesday, January 19, 2016 and during the work session prior to the meeting.

Councilmember Phipps also mentioned the number of interested candidates expressing a desire to serve on the Parks & Recreation Commission. He commented all the applicants were good people with a genuine desire to serve their community.

Councilmember Young moved to approve and consent to the Mayor's appointments of Thomas Mayer with a term expiring December 2017, Nathan Wimmer with a term expiring December 2018, and Connie Dooley with a term expiring December 2018 as members of the Parks and Recreation Commission and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Benson. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Peterson, Phipps and Young. Voting NO – None.

APPROVAL OF A PROPOSED SUBDIVISION PLAT AMENDMENT FOR THE NINIGRET FIELD FINAL SUBDIVISION LOCATED AT APPROXIMATELY 700 SOUTH 1360 WEST (TIN: 12-766-0004)

Councilmember Phipps moved to approve the subdivision plat amendment for the Ninigret Field subdivision located at approximately 700 South 1360 West (TIN: 12-766-0004), as conditioned and recommended by the Planning Commission, and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Peterson, Phipps and Young. Voting NO – None.

Mayor Shepherd inquired who would be responsible for maintenance of the site since it was within Clearfield City boundaries. Spencer Brimley, Development Services Manager, clarified Syracuse City had been made aware of the maintenance issue associated with the site and understood it would be responsible for maintenance of the property.

UPDATE ON THE FISCAL YEAR 2016 FINANCIAL STATUS

Rich Knapp, Finance Manager, shared an update on the Fiscal Year 2016 financial status through the end of December 2015 and pointed out the following:

- The CDRA reflected a loss due to the sale of some property because the value on the books was higher than the sale price.
- PARAT tax revenue received by the City so far was on track to be about \$195,000 per year.
- Sales tax revenue was the highest it had ever been.
- The new investment strategy would result in approximately an additional \$100,000 per year.
- Sales Tax Bond refunding interest rate was locked in November and would be ready for closing in April. This would result in a savings of \$72,000 per year or \$817,000 over the remaining life of the bonds.
- When this savings is combined with last year's GO Bond refunding the City was now saving \$170,000 in interest per year of \$1.4 million over the life of the loans.
- With budget amendments the City was anticipated to spend down fund balance by \$788,000 but the City was also bringing in more monies from other funds to make the payment on the Sales Tax Revenue Bonds; therefore that figure was now \$682,000.
- He reviewed unrestricted fund balances from previous years and indicated the FY16 budget would have resulted in the fund balance dropping below 25 percent, but the beginning amount came in higher than projected.
- Sales tax revenue would be approximately \$200,000 over projected amounts.
- Shared economic trends relative to PARAT and Sales Tax collections/revenues.
- Payroll was higher than last year because there were three paydays in December 2016, in addition to the small employee wage increases.
- He reviewed the ATK incentive of \$2.8 million specific to the CDRA
- He reviewed the investment revenue and mentioned the City still participated in the State's Public Treasury and Investment Fund (PTIF) in addition to other investments.

Mr. Knapp reviewed historical revenues, expenditures and changes in balance for the first half of the fiscal year.

Councilmember Peterson clarified the City hadn't overspent in previous budget years; it had deliberately appropriated funds to reduce the amount in the City's unrestricted fund balance. Adam Lenhard, City Manager, clarified the State required the City to limit the funds in the unrestricted fund balance. Mr. Knapp mentioned the spending of those funds needed to be carefully appropriated as they should be considered "one time" monies. He stated there was nothing of note for the remainder of the identified funds.

Mr. Knapp stated pages 5 through 12 reflected more detail for specific variances between years and highlighted those reflected in blue:

- Sales Tax
- Building permits

- B&C roads – he mentioned the motor fuel tax which was passed during the last election would begin January 2016 and emphasized no funds had yet been received. He stated he didn't know when Proposition 1 monies would be received. He estimated Proposition 1 funds to be approximately \$350,000 per year.
- Aquatic Center was higher than last year.
- Interest earnings
- He mentioned the increase in sewer charges assessed by North Davis Sewer District.

He asked if there were any questions from the Council. Councilmember Phipps asked if there was speculation as to why the PARAT tax spiked in September. Mr. Knapp responded he couldn't speculate and stated he would complete further research.

Mr. Lenhard commented the City had a different retail sector than other communities because of the Freeport Center and shared some specific examples.

COMMUNICATION ITEMS

Mayor Shepherd

1. Reminded the Council he would be out of town from Friday, February 5, 2016 through Thursday, February 11, 2016.
2. Informed the Council that the first planning meeting for the Cotopaxi Questival had taken place and expressed his opinion it would be an amazing event for the City.
3. Stated staff was in the process of finalizing entertainment for the Fourth of July celebration.
4. Reported on economic trend recently presented by the University of Utah which reflected more apartments were built in Utah in the year 2015 than seen in the previous 20 years. He indicated this was a unique trend yet very explainable; the cost of homes significantly increased during that same time frame but wages and income were not increasing proportionately. He concluded the opportunity for some to purchase a home might not be available at the same time there was a huge section of the population, the millennial generation, that was perfectly fine with renting an apartment and had no desire to purchase a home. He reminded the Council of statistics shared by a realtor during the City Council meeting on Tuesday, January 12, 2016, which identified the lack of available homes on the market within the Davis County area which reflected a current supply and demand issue.

Councilmember Benson

1. Stated she was delighted to see so many youth attending the City Council meeting and encouraged the scouts to pursue their Eagle Scout.
2. Indicated she was looking forward to visiting the Legislature for Local Official's Day.

Councilmember Bush

1. Stated it was great to see so many people attending the City Council meeting.

Councilmember Peterson

1. Expressed appreciation to those individuals interviewed for different volunteer opportunities within the City. She mentioned it would be great to have so many individuals excited to serve.
2. Stated she had attended her first NDFD (North Davis Fire District) Board meeting.

Councilmember Phipps

1. Stated he was glad to see so many youth attending the meeting.

2. Informed the Council that he had attended the Utah League's Newly Elected Official's training on Saturday, January 23, 2016, in Provo and mentioned he had learned a lot.
3. Stated he had attended his first Wasatch Integrated Waste Board meeting earlier in the evening and announced the new PARC facility was open which allowed usable goods taken to the landfill to be refurbished and purchased. He mentioned it was being operated by individuals from PARC (Pioneer Adult Rehabilitation Center). He indicated the official grand opening was scheduled for Thursday, April 14, 2016.
4. Reported he had also attended his first Parks & Recreation Commission meeting on Wednesday, January 20, 2016. He announced it was starting an "Equipment Locker" which would allow used sports equipment to be donated for members of the community to reuse.
5. Announced a "Tour of Clearfield Parks" contest would be sponsored by the Parks & Recreation Commission during which visits to the City's parks would be encouraged via a contest aspect. He stated more information would soon be announced.
6. Announced "Take Pride in Clearfield Day" had been scheduled for Saturday, April 23, 2016. He stated the event would be a great opportunity for scouts and other organizations to help with clean-up projects within the community and challenged everyone to participate.

Councilmember Young

1. Announced the expanded facilities at mosquito abatement had been completed.
2. Expressed appreciation to those in attendance at the meeting.

Adam Lenhard, City Manager

1. Expressed appreciation to Rich Knapp, Finance Manager, for the financial report he shared during the meeting with the Council. He mentioned it was difficult to adequately communicate everything behind the numbers associated with the budget. He encouraged residents with budget questions to make an appointment with Mr. Knapp for further clarification. He emphasized the City's financial position was very strong based upon the fact the City had just completed the audit process. He stated City staff assumed the stewardship of taxpayer dollars very seriously.
2. Reminded the Council that the budget kick-off meeting was scheduled for Friday, January 29, 2016, beginning at 7:30 a.m. during which the City Council and Executive Staff would set the financial course for the coming year.

STAFF REPORTS

Nancy Dean, City Recorder – Reviewed the Council's calendar:

- The evening activity following the kick-off meeting would begin at 5:30 p.m.
- Local Official's Day was scheduled for tomorrow, Wednesday, January 27, 2016.
- No meeting was scheduled for Tuesday, February 2, 2016.
- Regular policy session on Tuesday, February 9, 2016.

There being no further business to come before the Council, **Councilmember Young moved to adjourn at 7:42 p.m., seconded by Councilmember Bush. Voting AYE – Councilmembers Benson, Bush, Peterson, Phipps and Young. Voting NO – None.**

Staff Report



To: Mayor Shepherd and City Council Members
CDRA Board of Directors

From: JJ Allen, Assistant City Manager

Date: February 3, 2016

Re: Ground Lessor's Consent Agreement – 888 South University Park Boulevard

I. RECOMMENDED ACTION

City Council – Approve the Ground Lessor's Consent Agreement for property located at 888 South University Park Boulevard and authorize the Mayor's signature to any necessary documents.

CDRA – Approve the Ground Lessor's Consent Agreement for property located at 888 South University Park Boulevard and authorize the Chair's signature to any necessary documents.

II. DESCRIPTION / BACKGROUND

The owner of the office building at 888 South University Park Boulevard (888 Associates, LLC) is seeking a line of credit from KeyBank, and the building is one of the properties that will be used as collateral. Because 888 Associates leases from the City and CDRA land that they are using to provide additional parking for the building, KeyBank is requiring that the owner of the land (the City and CDRA) consent to KeyBank's ability to lien the ground leases (as they are a key aspect of the building's functionality).

An important point is that KeyBank would lien the ground leases—*not the property itself*. Essentially, this means that if 888 Associates were to default on the loan and KeyBank were to take possession of the building, then KeyBank would also become the lessee of the City and CDRA's ground. The lien would allow KeyBank to pass their interest in the lease on to any future purchases of the property under the same terms as the existing lease, with the same terminating date of the original leases with the City and CDRA.

The ground leases themselves provide for assignment or assumption, but KeyBank insisted that the Consent Agreement was also necessary. The City Attorney has reviewed the Agreement, and any concerns have been addressed.

III. LIST OF ATTACHMENTS

- Ground Lessor's Consent, Nondisturbance, Attornment and Estoppel Agreement

This document prepared by
after recording return to:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

APN:



**GROUND LESSOR'S CONSENT, NONDISTURBANCE,
ATTORNMENT AND ESTOPPEL AGREEMENT**

This GROUND LESSOR'S CONSENT, NONDISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT ("*Agreement*") is entered into as of January ____, 2016, by and among **CLEARFIELD CITY CORPORATION** ("*Clearfield City*") and **CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY** ("*Clearfield CDRA*" collectively, the "*Ground Lessor*"), **888 ASSOCIATES, LLC**, a Utah limited liability company ("*Borrower*"), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association ("*Lender*").

FACTUAL BACKGROUND:

A. Clearfield City owns fee simple title to the real property described in **Exhibit A-1** hereto (the "*Clearfield City Property*"), and Clearfield CDRA owns fee simple title to the real property described in **Exhibit A-2** hereto (the "*Clearfield CDRA Property*" and together with the Clearfield City Property, collectively, the "*Property*"). Clearfield City has ground leased the Clearfield City Property to Borrower (as successor-in-interest to **CMLT 2008-LS1 BG OFFICE PROPERTIES UTAH SPE, LLC**, a Utah limited liability company), as ground lessee, pursuant to that certain Lease Agreement dated January 14, 2014 (as amended and/or assigned and as further amended and/or assigned from time to time, the "*Clearfield City Lease*"), and Clearfield CDRA has ground leased the Clearfield CDRA Property to Borrower (as successor-in-interest to **CMLT 2008-LS1 BG OFFICE PROPERTIES UTAH SPE, LLC**, a Utah limited liability company), as ground lessee, pursuant to that certain Lease Agreement dated January 14, 2014 (as amended and/or assigned and as further amended and/or assigned from time to time, the "*Clearfield CDRA Lease*" and together with the Clearfield City Lease, collectively, the "*Lease*").

B. Lender has extended a non-revolving line of credit to Borrower in the maximum principal amount of **FORTY MILLION AND NO/100 DOLLARS (\$40,000,000.00)** (the "*Loan*"), pursuant to that certain Loan Agreement (Non-Revolving Line of Credit) dated December 22, 2015 ("*Loan Agreement*"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

C. As security for repayment of the Loan and performance of Borrower's obligations to Lender, Borrower, as trustor, has executed and delivered to Lender that certain Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing,

dated December 28, 2015, and recorded in the official records of Davis County, Utah (the “*Deed of Trust*”), wherein Lender is beneficiary, granting to Lender a lien on Borrower’s leasehold interest in the Property.

D. Lender has extended the Loan to Borrower, on the condition that Ground Lessor executes this Agreement.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Borrower and Ground Lessor agree as follows:

1. Consent of Ground Lessor; Estoppel Regarding Contingencies; Notice to Ground Lessor. Ground Lessor hereby consents to the lien of the Deed of Trust upon Borrower’s interest under the Lease and agrees that the execution, delivery, performance and recordation of the Deed of Trust and any related documents (including UCC financing statements) will not constitute a breach of or default under the Lease. Ground Lessor hereby consents to the assignment of Borrower’s leasehold interest under the Lease pursuant to the terms of the Deed of Trust and any other assignment of leases that may be executed by Borrower for the benefit of Lender in connection with the Loan. Ground Lessor acknowledges and agrees that any limitations set forth in the Lease regarding the Transfer of the Property shall be inapplicable to any Transfer of the Property which may be effected in connection with any judicial or non-judicial foreclosure of the Deed of Trust. The Lease may be assigned by a Purchaser without Ground Lessor’s further consent to Lender, or to any other person or entity, pursuant to a foreclosure of or trustee’s sale under the Deed of Trust, or pursuant to an assignment of Borrower’s interest in the Lease in lieu of foreclosure.

2. Definitions of “Transfer of the Property” and “Purchaser”. As used herein, the term “*Transfer of the Property*” means any transfer of Borrower’s interest in the Property, including, but not limited to, Borrower’s right, title and interest under the Lease, by foreclosure, trustee’s sale or other action or proceeding for the enforcement of the Deed of Trust or by deed or assignment in lieu thereof. The term “*Purchaser*,” as used herein, means any transferee, including Lender, of the interest of Borrower as a result of any such Transfer of the Property and also includes any and all successors and assigns, including Lender, of such transferee.

3. Nondisturbance. Ground Lessor agrees that the enforcement of the Deed of Trust shall not terminate the Lease or prevent any Purchaser, including Lender if it should be the Purchaser, from obtaining the right of, and continuing as, the lessee (as successor-in-interest to Borrower) in the possession and use of the Property, unless, after such foreclosure, such Purchaser fails to cure any default under the Lease, in accordance with the terms of this Agreement. This nondisturbance applies to any option to extend or renew the Lease term that is set forth in the Lease as of the date of this Agreement, or that is later entered into between Ground Lessor and Borrower with the consent of Lender. This nondisturbance shall be effective and self-operative without the execution of any further instruments upon Purchaser’s succeeding to the interest of the lessee under the Lease. Upon completion of any foreclosure or trustee’s sale proceedings by Lender under the Deed of Trust (or completion of an assignment of the Lease in lieu of foreclosure), Ground Lessor will recognize Lender, or any other successor thereby to the lessee’s interest in the Lease, as the lessee under the terms of the Lease for all purposes thereunder, for the remaining term thereof and subject to and upon the terms and conditions thereof.

4. Attornment. Subject to **Section 3** above, if any Transfer of the Property should occur, any Purchaser, including Lender if it should be the Purchaser, shall, and hereby does, attorn to Ground Lessor as the landlord under the Lease, and the Purchaser shall be bound to Ground Lessor under all of the terms, covenants and conditions of the Lease for the balance of the Lease term and any extensions or renewals thereof which may then or later be in effect under any validly exercised extension or renewal option

contained in the Lease, all with the same force and effect as if the Purchaser had been the original lessee under the Lease, subject to the terms and provisions of the Lease and applicable provisions of this Agreement.

5. Notices of Default; Material Notices; Lender's Rights to Cure Default. Ground Lessor shall send a copy of any notice of default or similar statement with respect to the Lease to Lender at the same time such notice or statement is sent to Borrower. In the event of any act or omission by Borrower which would give Ground Lessor the right to terminate the Lease, Ground Lessor shall not exercise any such right or make any such claim until it has given Lender written notice of such act or omission and has given Lender either thirty (30) days to cure the default, if the default is monetary, or a reasonable time for Lender to cure the default, if the default is non-monetary, including a reasonable time to gain possession of the Property to effectuate such cure, if necessary. Nothing in this Agreement, however, shall be construed as a promise or undertaking by Lender to cure any default of Borrower. If Lender is prohibited by any process or injunction issued by any court or by any bankruptcy or insolvency proceeding involving Borrower from obtaining possession of the Property in order to cure a non-monetary default by Borrower under the Lease which requires possession to cure, Ground Lessor agrees that Ground Lessor will not terminate the Lease during such prohibition so long as Lender timely cures any monetary defaults of Borrower under the Lease, and diligently and continuously pursues all steps necessary to secure the removal or lifting of such prohibition at the earliest feasible date. The cure rights and other protections granted to Lender in this **Section 5** and in any other Sections hereof are in addition to, and not in limitation of, any such rights and protections granted to Lender in the Lease.

6. Limitation on Lender's Performance. Nothing in this Agreement shall be deemed or construed to be an agreement by Lender to perform any covenant of Borrower as the lessee under the Lease unless and until Lender becomes a Purchaser and succeeds to the rights and obligations of the lessee under the Lease. Ground Lessor agrees that, if Lender becomes a Purchaser, then, upon subsequent transfer of the Property by such parties to a new Purchaser, Lender shall have no further liability under the Lease after said transfer. Notwithstanding anything to the contrary in the Lease or in this Agreement, neither a Purchaser nor Lender as the lessee under the Lease shall be liable or responsible for any of the following:

- (a) any act or omission of any prior tenant under the Lease (including Borrower);
- (b) any offsets or defenses that Ground Lessor might have had against any prior tenant under the Lease (including Borrower);
- (c) any material amendment or modification of the Lease made without Lender's prior written consent. For purposes of this **Section 6(c)**, the term "material" is defined to include reductions in rent, the term of the Lease, the size of the Property leased or Borrower's obligation to pay operating expenses or expense reimbursements, or other modifications that materially increase Borrower's obligations or materially reduce Borrower's obligations under the Lease;
- (d) any term or provision of the Lease, or any amendment thereto, or any other agreement or instrument pertaining or related to the Lease that is personal to Borrower and that may not reasonably be performed by a Purchaser or its successors and assigns in the ordinary course of business; or
- (e) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property and Improvements except for such defects arising or occurring after the transfer of the Property to Purchaser or Lender.

7. Limitation on Liability. Upon any sale or transfer of its interest in the Property in accordance with the Lease, Purchaser shall have no further obligation under this Agreement or the Lease with respect to matters occurring after such sale or transfer, notwithstanding anything to the contrary in the Lease.

8. Ground Lessor's Covenants.

(a) Temporary Covenants. During the term of the Lease or until Lender's rights in the Deed of Trust have been fully satisfied (whichever occurs first), Ground Lessor agrees that, without Lender's prior written consent, Ground Lessor:

(i) shall not enter into any amendment, modification or other agreement relating to the Lease; or

(ii) shall not consent to any sale, assignment or transfer of any interest in the Lease by Borrower; or

(iii) shall not sell or transfer the Property or Ground Lessor's interest in the Lease except subject to the existence and effect of the Lease and this Agreement; or

(iv) shall not further encumber the Property in any manner that would constitute a priority interest over Lender's interest in the Property arising through or under the Deed of Trust unless Ground Lessor delivers to Lender a copy thereof and a subordination agreement in recordable form and otherwise in form and substance reasonably acceptable to Lender which subordinates said encumbrance to the Lease and the Deed of Trust.

9. Right to New Lease. In the event that the Lease or any New Lease (as defined below) is ever terminated for any reason (including any rejection of the Lease in a bankruptcy proceeding of Borrower), Ground Lessor shall, upon request of Borrower or Purchaser (or its nominee) enter into a new lease ("*New Lease*") of the Property with Borrower or Purchaser (as applicable) for the remainder of the term of the of the Lease, effective as of the date of such termination, at the rent and upon the same terms, provisions, covenants and agreements as contained in the Lease (including, without limitation, all renewal options, and rights of first refusal), and subject only to the same conditions of title as the Lease is subject to on the date of the execution thereof, provided:

(a) Borrower or Purchaser (or its nominee) shall pay to Ground Lessor at the time of the request for the New Lease all sums which would at that time be due pursuant to the Lease but for such termination, less the net income collected by Ground Lessor subsequent to the date of termination of the Lease and prior to the execution and delivery of the New Lease. The New Lease shall be executed by all parties within thirty (30) days of preparation by Ground Lessor.

(b) Upon the execution and delivery of the New Lease, all subleases which theretofore may have been assigned and transferred to Ground Lessor shall thereupon be assigned and transferred (without recourse) by Ground Lessor to the lessee under the New Lease; and the lessee under the New Lease shall have the benefit of all of the right, title, interest, powers and privileges of Borrower under the Lease in and to the Property, including specifically assignment of Ground Lessor's interest in and to any then existing sublease where the sublessee may have attorned to Ground Lessor. Ground Lessor hereby agrees that, with respect to any such sublease so assigned, Ground Lessor will not modify or amend any of the terms or provisions thereof, during the period between the expiration or termination of the Lease and the execution and delivery of the New Lease.

In the event that such New Lease is entered into between Ground Lessor and Borrower (or in the event that a new lease is similarly entered into between Ground Lessor and any mortgagee of Ground Lessor's fee interest in the Property), Ground Lessor and Borrower shall take such acts and shall deliver such agreements as may be reasonably necessary to grant to Lender a first priority deed of trust lien (upon the same terms and conditions as the Deed of Trust and other Loan Documents) and assignment of leases and rents on Borrower's interest in the Lease and all subleases thereunder. Lender shall also obtain a mortgagee's title insurance policy, in form and content acceptable to Lender and subject to such exceptions and with such endorsements as appear or are issued on Lender's title insurance policy insuring the lien of the Deed of Trust. Borrower shall reimburse Lender for all legal expenses, title insurance premiums and other costs and expenses of Lender reasonably incurred in connection with the New Lease, any new security documents and Lender's new title insurance policy.

10. Termination of Lease or New Lease. Following the termination of the Lease or any New Lease and until the right of Borrower and Purchaser (or its nominee) to enter into a New Lease shall have expired without any New Lease having been executed, Ground Lessor, as successor in interest to Lessor under the Lease:

(a) shall not alter or in any way demolish the buildings or other improvements situated on the Property; and, during said period, Ground Lessor shall not remove, replace or change any furniture, furnishing, fixtures or equipment located on the Property; and

(b) shall not terminate any sublease or the rights of any subtenant under such sublease unless such subtenant shall be in default under such sublease.

11. Mortgagee Protection Provisions. Lender shall be deemed to be a third party beneficiary of the Lease with respect to any and all provisions of the Lease that are intended to benefit a lender or mortgagee in that capacity ("*Mortgagee Protection Provisions*"). Upon Lender's succession to the interest of the lessee under the Lease, all of Ground Lessor's representations and warranties under the Lease shall be deemed remade by Ground Lessor to Lender as of the applicable date, except as they may be modified at that time to reflect any change in factual circumstances. This **Section 11** is intended to supplement and not to limit any Mortgagee Protection Provisions in the Lease.

12. Insurance and Condemnation Provisions. Notwithstanding anything to the contrary in the Lease, in the event of any damage to or destruction of the Property or any portion thereof or interest therein, upon the request of Lender, the proceeds of Borrower's insurance shall be deposited with Lender and shall be applied in accordance with the applicable provisions of the Deed of Trust. It is understood and acknowledged that the failure to apply the insurance proceeds to the repair and reconstruction of the Property shall not limit, restrict or in any way waive Borrower's obligation to repair and reconstruct the Property following an event of damage and destruction as more specifically provided in the Lease. Notwithstanding anything to the contrary in the Lease, in the event of any condemnation of the Property, or any portion thereof or any interest therein, upon the request of Lender, the proceeds of the condemnation award shall be deposited with Lender, who shall act as the disbursing agent and apply the condemnation proceeds in accordance with the terms of the Lease. Ground Lessor acknowledges that, except as otherwise provided in the Lease, Borrower's interest in its portion of any condemnation proceeds to which it is entitled under the Lease shall be applied in accordance with the applicable provisions of the Deed of Trust and the Loan Documents (as defined in the Loan Agreement). Nothing herein shall be construed to effect, in any way, any separate insurance or condemnation proceeds payable to Ground Lessor based upon Ground Lessor's fee interest in the Property, or otherwise separate insurance or condemnation proceeds from those proceeds attributable to Borrower's leasehold estate in the Property and interest in the Improvements.

13. Ground Lessor's Estoppel Certificate.

(a) True and Complete Lease. Ground Lessor represents and warrants to Lender that it has delivered to Lender a copy of the Ground Lease which accurately identifies the Lease and all amendments, supplements, side letters and other agreements and memoranda pertaining to the Lease, the leasehold estate and/or the Property.

(b) No Default. As of the date of this Agreement, Ground Lessor represents and warrants that, to the best of Ground Lessor's knowledge, there exist no events of default or events that, with notice or the passage of time or both, would be events of default under the Lease on either Ground Lessor's part or Borrower's. Ground Lessor represents and warrants that the Lease is in full force and effect as of the date of this Agreement.

(c) No Other Leases. To the best of Ground Lessor's knowledge and belief, as of the date of this Agreement, there are no leases, options or other agreements regarding transfer of any interest in, or otherwise materially affecting the Property other than the Lease.

(d) No Advance Payments. No rent or other sums payable under the Lease have been paid in advance. No further adjustment or credit is allowed or contemplated.

(e) No Prior Assignments. Ground Lessor has not received notice of any prior assignment, hypothecation or pledge of Borrower's interest in the Lease.

(f) No Pending Litigation/Violations. Ground Lessor has not received notice of any litigation pending, proposed or threatened against or in connection with the Property or the Lease. Ground Lessor has not sent or, to the best of Ground Lessor's knowledge and belief, received any written notice that the Property, or any part thereof, is in violation of any laws, ordinances or regulations which could materially affect any of Borrower's rights or materially increase any of Borrower's obligations under the Lease.

(g) Hazardous Substances. Ground Lessor represents and warrants that it has not used, generated, released, discharged, stored or disposed of any Hazardous Substances on, under, in or about the Property other than Hazardous Substances used in the ordinary and commercially reasonable course of Ground Lessor's business in compliance with all applicable laws. Except for such legal and commercially reasonable use by Ground Lessor, Ground Lessor has no actual knowledge that any Hazardous Substance is present or has been used, generated, released, discharged, stored or disposed of by any party on, under, in or about the Property. As used herein, "*Hazardous Substance*" means any substance, material or waste (including petroleum and petroleum products), which is designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

14. Amendments. This Agreement may not be modified or amended except by a written agreement signed by the parties or their respective successors-in-interest.

15. Notices. All notices given under this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt (or on the date when proper delivery is refused). Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Borrower shall be effective service on Borrower for all purposes.

If to Borrower: 888 Associates, LLC
1528 6th Street, Suite 100
Santa Monica, CA 90401
Attention: Raju L. Shah

With a copy to: Fabian VanCott
215 South State Street, Suite 1200
Salt Lake City, Utah 84111-2323
Attention: Diane H. Banks

If to Lender: KeyBank National Association
1675 Broadway, Suite 400
Mail Code: CO-02-WT-0401
Denver, Colorado 80202
Attn: Real Estate Capital Servicing
Reference: 424 West 33rd Street LLC & Loan No. 10102478

With a copy to: Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.

To Ground Lessor: Clearfield City Corporation

Clearfield Community Development and Renewal Agency

16. Attorneys' Fees. If any lawsuit or arbitration is commenced that arises out of or relates to this Agreement, the prevailing party shall be entitled to recover from each other non-prevailing party such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees, including the costs for any legal services by in-house counsel, in addition to costs and expenses otherwise allowed by law.

17. Miscellaneous Provisions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement satisfies any condition or requirement in the Lease relating to the consent required from Ground Lessor to the Loan or Deed of Trust. As used herein, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." Lender, at its sole discretion, may, but shall not be obligated to, record this Agreement.

18. Jury Waiver. BORROWER AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND LENDER. THIS PROVISION IS A MATERIAL

INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE LOAN AGREEMENT.

19. No Merger. The undersigned agree that, while the Deed of Trust is outstanding and unless Lender shall otherwise consent in writing, Ground Lessor's estate in and to the Property and the leasehold estate created by the Lease shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Ground Lessor or Borrower or any third party by purchase, assignment or otherwise.

20. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF BORROWER, GROUND LESSOR OR LENDER OR ANY PRINCIPAL THEREOF).

21. Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

22. Reliance. Ground Lessor acknowledges that the representations and agreements made by Ground Lessor to and with Lender herein constitute a material inducement to Lender to make the Loan, and that Lender would not make the Loan in the absence of this Agreement.

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KEYBANK NATIONAL ASSOCIATION
a national banking association

By: _____
Name: _____
Title: _____

“Lender”

STATE OF _____)

ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of January, 2016, by _____, _____ of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, on behalf of such association.

Notary Public

[Signatures Continue On Following Page]

EXHIBIT A-1

CLEARFIELD CITY PROPERTY DESCRIPTION

That certain real property located in Davis County, State of Utah, and more particularly described as follows:

CITY PARK PARCEL, HILLSIDE PARK SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED APRIL 07, 2000 AS ENTRY NO. 1585430 IN BOOK 2635 AT PAGE 171 OF OFFICIAL DAVIS COUNTY, UTAH RECORDS.

EXHIBIT A-2

CLEARFIELD CDRA PROPERTY DESCRIPTION

That certain real property located in Davis County, State of Utah, and more particularly described as follows:

ONLY THE NORTHERN 2.5 ACRE PORTION, MORE OR LESS, OF THE PARCEL BEARING DAVIS COUNTY TAX I.D./PARCEL NO. 09-021-0055, SAID PARCEL NO. 09-021-0055 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PART OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THE DAVIS AND WEBER COUNTIES CANAL COMPANY PROPERTY; WHICH IS 15.24 FEET SOUTH $0^{\circ}10'30''$ WEST ALONG THE EAST LINE OF SAID SECTION TO SAID NORTHERLY LINE; THENCE NORTHWESTERLY THREE (3) COURSES ALONG SAID NORTHERLY LINE AS FOLLOWS: 289.12 FEET NORTH $63^{\circ}36'42''$ WEST; 847.81 FEET NORTH $53^{\circ}45'03''$ WEST AND 363.01 FEET NORTH $53^{\circ}11'11''$ WEST FROM THE EAST QUARTER CORNER OF SAID SECTION 7; RUNNING THENCE NORTH $53^{\circ}11'33''$ WEST 109.04 FEET ALONG SAID NORTHERLY LINE; THENCE NORTH $0^{\circ}06'27''$ EAST 659.80 FEET; THENCE SOUTH $53^{\circ}45'03''$ EAST 449.04 FEET; THENCE SOUTH $36^{\circ}14'57''$ WEST 275.00 FEET; THENCE SOUTH $5^{\circ}20'26''$ WEST 98.95 FEET; THENCE SOUTH $36^{\circ}48'26''$ WEST 174.00 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING FROM PARCEL 3 THAT PORTION CONVEYED TO SUNDOWNER CONDOMINIUMS BY THAT CERTAIN QUIT CLAIM DEED RECORDED APRIL 27, 1998 AS ENTRY NO. 1400080 IN BOOK 2281 AT PAGE 617 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PART OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT ON THE MOST EASTERLY LINE OF THE SUNDOWNER CONDOMINIUM PHASE 4, CLEARFIELD CITY, DAVIS COUNTY, UTAH, WHICH IS 1,328.31 FEET WEST; 261.97 FEET SOUTH; AND 929.00 FEET SOUTH $0^{\circ}08'33''$ WEST FROM THE NORTHEAST CORNER OF SAID SECTION; AND RUNNING THENCE SOUTH $57^{\circ}24'35''$ EAST 31.02 FEET; THENCE SOUTH $0^{\circ}08'33''$ WEST 158.45 FEET; THENCE NORTH $89^{\circ}51'27''$ WEST 26.18 FEET; THENCE NORTH $0^{\circ}08'33''$ EAST 175.09 FEET TO THE POINT OF BEGINNING.

THE ABOVE PARCEL 3 IS ALSO DESCRIBED OF RECORD AS FOLLOWS:

PART OF THE EAST HALF OF SECTION 7, T4N-R1W; SLM; BEGINNING AT A POINT NORTH $0^{\circ}10'10''$ EAST 588.47 FEET ALONG THE EAST LINE OF SAID SECTION NORTH $53^{\circ}45'03''$ WEST 1189.26 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 7 AND RUNNING THENCE NORTH $53^{\circ}45'03''$ WEST 449.04 FEET TO THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 7, THENCE SOUTH $0^{\circ}06'27''$ WEST 107.18 FEET ALONG SAID WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 7, THENCE SOUTH $57^{\circ}24'35''$ EAST 31.02 FEET; THENCE SOUTH $0^{\circ}08'33''$ WEST 158.45 FEET; THENCE NORTH $89^{\circ}51'27''$ WEST 26.18 FEET; THENCE SOUTH $0^{\circ}06'27''$ WEST 377.53 FEET TO THE NORTH LINE OF THE DAVIS AND WEBER COUNTIES CANAL CO. PROPERTY; THENCE

ALONG SAID NORTH LINE OF THE CANAL CO. PROPERTY, SOUTH 53°11'33" EAST 109.04 FEET,
THENCE NORTH 36°48'26" EAST 174.00 FEET; THENCE NORTH 05°20'26" EAST 98.95 FEET;
THENCE NORTH 36°14'57" EAST 275.00 FEET TO THE POINT OF BEGINNING.

CLEARFIELD CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY
MEETING MINUTES
7:00 P.M. POLICY SESSION
January 12, 2016

(This meeting was held following the regularly scheduled City Council Meeting.)

PRESIDING:	Bruce Young	Chair
PRESENT:	Keri Benson	Director
	Kent Bush	Director
	Nike Peterson	Director
	Vern Phipps	Director
	Mark Shepherd	Director
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Stuart Williams	City Attorney
	Scott Hodge	Public Works Director
	Greg Krusi	Police Chief
	Spencer Brimley	Development Services Manager
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Rich Knapp	Administrative Services Director
	Summer Palmer	Human Resource Manager
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Heather Christopherson – Ulrich & Associates, Chuck Ulrich – Ulrich & Associates, Brad Lasater – Wilcox Farms, Boy Scout Troop 584, Kathryn Murray, Amber Self, Con L. Wilcox – Wilcox Farms

Chair Young called the meeting to order at 7:47 p.m.

APPROVAL OF THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) MINUTES FROM THE OCTOBER 27, 2015 WORK AND POLICY SESSIONS AND THE DECEMBER 8, 2015 WORK SESSION

Director Shepherd moved to approve the Clearfield Community Development and Renewal Agency (CDRA) minutes from the October 27, 2015 work and policy sessions and the December 8, 2015 work session as written, seconded by Director Bush. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Peterson, Phipps and Shepherd. Voting NO – None.

APPROVAL OF RESOLUTION 2016R-01 ADOPTING POLICIES AND PROCEDURES FOR THE CLEARFIELD COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA)

JJ Allen, Assistant City Manager, reminded the Board the item was discussed during a previous work session; however, new members of the Board might not have been in attendance. He explained the CDRA recently commissioned a Governance Report and one of the recommendations from that report was to adopt Policies and Procedures for the CDRA. Staff drafted the proposed Policies and Procedures for consideration by the Board.

Director Bush pointed out during the previous work session a discussion had taken place during which Director LeBaron had suggested the language “critically necessary” be eliminated from the document when referencing “eminent domain” and pointed out that language was still included in the proposed document. A discussion regarding the proposed language took place. Director Shepherd expressed his opinion the word “critically” should be stricken from the document.

Mr. Allen clarified the Board desired the language to read “only for the removal of blight”. There was no expressed opposition to the suggested change.

Director Phipps stated he wasn’t aware of the designation of the CEO. Mr. Allen responded when the CDRA bylaws were adopted in 2006 it designated the City Manager as the CEO of the CDRA and the City Recorder was the Secretary of the CDRA.

Director Shepherd moved to approve Resolution 2016R-01 adopting policies and procedures for the Clearfield Development and Renewal Agency (CDRA) with the elimination of “critically necessary” and authorize the Chair’s signature to any necessary documents, seconded by Director Peterson. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Peterson, Phipps and Shepherd. Voting NO – None.

There being no further business to come before the Community Development and Renewal Agency, **Director Bush moved to adjourn as the Community Development and Renewal Agency at 7:54 p.m., seconded by Director Shepherd. The motion carried upon the following vote: Voting AYE – Directors Benson, Bush, Peterson, Phipps and Shepherd. Voting NO – None.**