

FY 2020 Budget - Redevelopment Agency
 Proposed Budget Amendments - February 2020

<u>Redevelopment Fund</u>		<u>Uses:</u>	<u>Sources:</u>
Soils Remediation - Bello Terra Property	71-80-868-02	\$1,400,000	
Closing Costs - Bello Terra Property	71-76-549-00	\$200,000	
Payment On Interfund Loan Principal	71-78-816-00	\$1,000,000	
Payment On Interfund Loan Interest	71-78-820-00	\$90,000	
Increase In Cash/Xfer To Fund Balance	71-95-975-00	\$1,880,000	
Proceeds From Property Sale - Bello Terra	71-3651-000		\$4,570,000
		<hr/> \$4,570,000	<hr/> \$4,570,000

SECOND AMENDMENT TO AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is entered into as of January __, 2020, by and between the CITY OF SOUTH SALT LAKE REDEVELOPMENT AGENCY, a political subdivision of the State of Utah (“**Seller**”) and BOYER SOUTH SALT LAKE CROSSING, L.C., or its designated affiliates or assigns (“**Buyer**”). Buyer and Seller are sometimes referred to herein, collectively, as the “**Parties**” and, individually, each a “**Party**”.

RECITALS

A. The Parties entered into that certain Amended and Restated Purchase and Sale Agreement dated November 18, 2015 (the “**Original PSA**”), as amended by that certain First Amendment to Amended and Restated Purchase and Sale Agreement dated February 24, 2017 (the “**First Amendment**” and together with the Original PSA and this Amendment, collectively, the “**PSA**”), pursuant to which Seller granted to Buyer the option to purchase (the “**Phase II Option**”) the Phase II Property (as defined in the PSA) by delivering notice to Seller and depositing the Option Earnest Money before the expiration of the Option Period (as defined in the PSA);

B. Pursuant to the PSA, Seller gave Buyer the right to extend the Option Period for a period of one (1) additional year (the “**Extended Option Period**”), by delivering notice thereof to Seller and depositing the Additional Option Earnest Money;

C. Buyer timely exercised the Extended Option Period by notice dated October 29, 2018;

D. Petroleum Hydrocarbons and oil and grease concentrations were previously released onto the Phase II Property in amounts that exceed permissible limits under Environmental Law (the “**Existing Hazardous Materials**”);

E. Seller has agreed to remediate on or before Closing all Hazardous Materials which exist on the Phase II Property, including, without limitation, the Existing Hazardous Materials (the “**Phase II Remediation Work**”);

F. The Parties have received estimates from AGEC and Direct Push Services, LLC (collectively, the “**Remediation Companies**”), estimating the cost of remediating the Existing Hazardous Materials (the “**Estimates**”) to be approximately One Million Three Hundred Forty-Four Thousand Seven Hundred Seventy-Five Dollars and No/100 (\$1,344,775.00);

G. Seller has requested that Buyer deposit the Phase II Escrowed Funds (defined below) into escrow to be used to pay the Remediation Companies for the costs of remediating the Existing Hazardous Materials up to the amount of the Estimates on the terms set forth herein;

H. Pursuant to the PSA, Seller is responsible for stabilizing the soils on Lot 4 (the "Lot 4 Stabilization");

I. Title Company withheld Escrowed Funds due Seller to be used for the purpose of completing the Lot 4 Stabilization;

J. As of the date of this Amendment, (i) the balance of the Escrowed Funds held by Title Company is Six Hundred Fifty-Seven Thousand Eight Hundred Seventy-Eight Dollars and 53/100 (\$657,878.53) (the "Remaining Escrowed Funds"); and (ii) Seller has not completed the Lot 4 Stabilization, due to the Buyer not having yet identified an end user on Lot 4;

K. Seller has requested that Buyer release the Remaining Escrowed Funds; and

L. Therefore, the Parties desire to amend the PSA in accordance with the terms hereof.

AGREEMENT:

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Recitals; Defined Terms. The Recitals set forth above are incorporated herein and into the PSA by reference. Capitalized terms used but not defined herein shall have their meanings set forth in the PSA.

2. Phase II Option Exercised. Seller hereby acknowledges that pursuant to Section 2(b) of the PSA, Buyer has rightfully exercised the Phase II Option by timely depositing the Option Earnest Money, the Additional Option Earnest Money and by delivering the Phase II Closing Notice.

3. Purchase Price. The Parties hereby agree that the Phase II Purchase Price is Four Million Five Hundred Seventy Thousand Dollars and No/100 (\$4,570,000.00) as reduced by (i) the Option Earnest Money; and (ii) the Additional Option Earnest Money.

4. Title Company.

(a) The Parties hereby agree that, as of the date of this Amendment, Cottonwood Title Insurance Agency, Inc. ("Cottonwood") will be the title company responsible to complete the transactions contemplated by the PSA. The Parties will cause Landmark Title Company to transfer the Option Earnest Money and Additional Option Earnest Money to Cottonwood.

(b) Seller shall deliver to Buyer, within ten (10) days of the date of this Amendment, a title report as required by Section 5(b) of the PSA from Cottonwood. Such title report will be subject to Buyer's review and objection on the terms set forth in Section 5(b) of the PSA.

5. Closing Conditions. The Parties agree that Closing will occur on or before a date that is fifteen (15) business days after the satisfaction of the Phase II Closing Conditions. For purposes of this Amendment, "Phase II Closing Conditions" shall mean:

(a) All conditions precedent to Closing contained in the PSA with respect to the Phase II Property have been satisfied or waived in writing by Buyer (except that the Lot 4 Stabilization may not yet be required to be complete pursuant to Section 7 hereof);

(b) All Phase II Remediation Work has been completed;

(c) Seller has obtained and delivered to Buyer, a No Further Action letter addressed to Seller and Buyer from the Utah Department of Environmental Quality ("DEQ") for the Phase II Property following the completion of the Phase II Remediation Work ("NFA"); and

(d) Seller has obtained and delivered to Buyer, a letter of Enforceable Written Assurance addressed to Seller to Buyer from the DEQ that no enforcement action regarding the Phase II Property will be initiated by the DEQ against Buyer under the Utah Hazardous Substances Mitigation Act ("EWA").

In the event the foregoing Phase II Closing Conditions are not satisfied on or before June 1, 2020, Buyer may elect to terminate its obligations under the PSA with respect to the Phase II Property, in which event the Earnest Money will be returned to Buyer and the Parties shall have no further rights or obligations with respect to the Phase II Property.

6. Phase II Remediation Work.

(a) The Parties agree that Buyer will deposit with Cottonwood an amount equal to the Phase II Purchase Price (less the Option Earnest Money and Additional Option Earnest Money) (the "Phase II Escrowed Funds") which will be used, in part, to reimburse the Remediation Companies for the costs of completing the remediation of the Existing Conditions up to the amounts set forth in the Estimates.

(b) The Parties agree that Cottonwood will disburse the Phase II Escrowed Funds in accordance with the Escrow Agreement attached hereto as Exhibit "A". For purposes of the PSA, the Phase II Escrowed Funds will be deemed to be fully refundable earnest money and shall be refunded by Cottonwood (with respect to any amounts which are still retained by Cottonwood) and paid by Seller, with respect to any amounts which have been released to Remediation Companies, to Buyer in the event that Closing does not occur for any reason (except that Seller will be permitted to retain the Option Earnest Money and Additional Option Earnest Money if such failure is solely a result of Buyer's default).

(c) On or before February 15, 2020, Seller will enter into a contract with the Remediation Companies pursuant to which the Remediation Companies will agree to remediate the Existing Hazardous Materials. Seller will cause the Remediation Companies to complete the remediation of the Existing Hazardous Materials on or before April 1, 2020. Without limiting the generality of the foregoing, the Parties agree that all Phase II Escrowed Funds, including any amounts released to the Remediation Companies, will be credited against the Purchase Price for the Phase II Closing. Without limiting the generality of the foregoing, in the event additional

hazardous materials are discovered on the Phase II Property, Seller will be responsible for such remediation and Buyer does hereby agree that Seller may use the Phase II Escrowed Funds to cover the cost of such remediation. If additional hazardous materials are discovered on the Phase II Property which require remediation under existing law, Seller shall, at Seller's sole expense, promptly and efficiently conduct any and all further remediation, monitoring and reporting required to complete such remediation and obtain an NFA and EWA for all Phase II Remediation Work. If this Agreement is terminated and Seller is required to repay the Phase II Escrowed Funds to Buyer, amounts required to be paid by Seller to Buyer hereunder, plus interest accruing at a rate of prime (as published by Wells Fargo National Bank) plus two percent (2%), per annum, will be paid by Seller on the earlier to occur of (i) one year after the date of such termination, or (ii) the sale of all or a portion of the Phase II Property.

(d) Following the completion of all Remediation Work, Seller will promptly make all applications and provide all information as is necessary to obtain and will diligently seek to obtain the NFA and EWA for all Phase II Remediation Work.

7. Lot 4 Stabilization Work.

(a) Notwithstanding anything contained in this Section 7, Seller hereby agrees and acknowledges that Seller is responsible to reimburse Buyer (or its successors or assignors) for the actual out of pocket costs incurred for the Lot 4 Stabilization.

(b) Within five (5) days of the date of this Amendment, the Parties shall direct Landmark Title Company to release Remaining Escrowed Funds to Seller. The foregoing will not relieve Seller of its requirements to complete the Remediation of Lot 4 pursuant to Section 11(h) of the Purchase Agreement.

(c) In the event that Seller has not completed the Lot 4 Stabilization at or before Closing of the Phase II Property, the Parties agree that Cottonwood shall withhold from the proceeds due Seller the sum of One Hundred Fifty Thousand Dollars and No/100 (\$150,000) (the "Lot 4 Escrowed Funds"). Buyer will direct Cottonwood to release the Lot 4 Escrowed Funds to Seller upon Buyer's receipt of evidence that the Lot 4 Stabilization has been completed and all costs and expenses incurred in connection with such Lot 4 Stabilization have been paid in full by Seller, which Seller will be obligated to pay even if such costs and expenses exceed the Lot 4 Escrowed Funds.

(d) The Lot 4 Stabilization shall be performed by Buyer or its successors or assigns (the "Performing Party") and shall be limited to those areas which are specifically required to be stabilized in order for the Performing Party, or its tenant, to construct a building on Lot 4 (e.g., the area to be stabilized will not include landscaping areas and, unless required by a geotechnical report, areas under parking lots and sidewalks). Upon identifying the area that is required to be stabilized, the Performing Party will send a depiction of such area to Seller for its approval, which approval will not be unreasonably withheld, conditioned or delayed (the "Stabilization Area"). Upon obtaining Seller's approval of the Stabilization Area, the Performing Party may engage an unrelated third party who will complete the Lot 4 Stabilization in the Stabilization Area. Upon completion of the Lot 4 Stabilization in the Stabilization Area, the Performing Party will submit to Seller an invoice evidencing all out of pocket costs and expenses

incurred by the Performing Party in completing the Lot 4 Stabilization to the Stabilization Area, along with supporting invoices. Seller will reimburse the Performing Party for such costs within thirty (30) days of Seller's receipt of such demand.

8. Headings. The captions and headings of the various sections of this Amendment are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

9. Entire Amendment. This Amendment contains all agreements between the Buyer and Seller with respect to the matters set forth herein, and no agreement not contained herein shall be recognized by Buyer and Seller. In the event of any amendment or modification of this Amendment, the amendment or modification shall be in writing signed by Buyer and Seller in order to be binding upon Buyer and Seller. This Amendment is only for the benefit of Buyer and Seller, and no third party shall be entitled to rely on the provisions of this Amendment. In the event of a conflict between the provisions of this Amendment and the PSA, the provisions of this Amendment shall control.

10. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original. An executed counterpart of this Amendment transmitted by facsimile shall be equally as effective as a manually executed counterpart.

11. Authority. Each individual executing this Amendment does thereby represent and warrant to each other person so signing (and to each other entity for which such other person may be signing) that he or she has been duly authorized to deliver this Amendment in the capacity and for the entity set forth where she or he signs.

[Signature Page Follows]

IN WITNESS WHEREOF, Buyer and Seller have executed this Amendment as of the date first above written.

SELLER:

**CITY OF SOUTH SALT LAKE
REDEVELOPMENT AGENCY**

Executive Director

Attest:

Secretary

BUYER:

**BOYER SOUTH SALT LAKE CROSSING, L.C.,
a Utah limited liability company**

By: The Boyer Company, L.C.

Its: Manager

By:

Name:

Title:

RESOLUTION NO. R2013- 31

**A RESOLUTION OF THE CITY OF SOUTH SALT LAKE CITY COUNCIL
AUTHORIZING AN INTERFUND LOAN FROM THE CITY OF SOUTH SALT
LAKE'S CAPITAL IMPROVEMENTS FUND TO THE SOUTH SALT LAKE
REDEVELOPMENT AGENCY FOR THE PURCHASE OF CERTAIN
PROPERTY IN THE CENTRAL POINTE REDEVELOPMENT AREA.**

WHEREAS, the Redevelopment Agency for the City of South Salt Lake previously entered into a purchase agreement with the owner of certain property in the Central Pointe Redevelopment Area; and

WHEREAS, current Redevelopment Agency funds are insufficient to cover the final payment due under the purchase agreement; and

WHEREAS, the City has sufficient funds in its general fund to cover the final purchase payment for the property; and

WHEREAS, the Redevelopment Agency would otherwise be required to refinance or negotiate an extension, and pay interest to the lender or seller; and

WHEREAS, the City will get a better rate of return from a loan to the Redevelopment Agency than it would in its investment fund; and

WHEREAS, the interfund loan will be secured by a promissory note and trust deed attached to the property worth much more than the amount of the loan;

WHEREAS, the attached "Interfund Promissory Note", and the "Trust Deed" have been prepared to effectuate the loan according to the terms set forth therein, with a final amount which will be determined at the time of closing,

NOW, THEREFORE, BE IT RESOLVED by the City of South Salt Lake City Council that the Mayor is authorized to execute the attached "Interfund Promissory Note" and "Trust Deed" to allow a loan in the amount of up to, but not exceeding \$1,000,000.00 from the Capital Improvements Fund to the South Salt Lake Redevelopment Agency for the purpose set forth above.

REDEVELOPMENT AGENCY OF SOUTH SALT LAKE

RDA Resolution No. 2013-04

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SOUTH SALT LAKE AUTHORIZING AND DIRECTING ITS CHIEF ADMINISTRATIVE OFFICER TO ISSUE TO THE CITY OF SOUTH SALT LAKE A PROMISSORY NOTE AND TRUST DEED FOR THE FINANCING OF A PURCHASE OF CERTAIN REAL PROPERTY LOCATED WITHIN THE CENTRAL POINTE REDEVELOPMENT AREA.

WHEREAS, the South Salt Lake Redevelopment Agency has entered into a purchase agreement for certain property located within the Central Pointe Redevelopment Area as particularly described in the attached Exhibit; and

WHEREAS, it is in the best interest of the Agency to finance a portion of the final purchase payment by the issuance to the City of South Salt Lake of a promissory note and trust deed in the amount of up to, but not exceeding \$1,000,000.00; and

WHEREAS, the terms of the note and deed, copies of which are attached to this resolution and incorporated by this reference, are reasonable and fair,

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of South Salt Lake that its Chief Administrative Officer is hereby authorized to execute the attached promissory note and trust deed in order to pay for the purchase by the Agency the real property identified in the attached Exhibit.

INTERFUND PROMISSORY NOTE

\$ _____ By the Redevelopment Agency of South Salt Lake _____, 2013

For value received, the South Salt Lake City Redevelopment Agency ("the RDA") promises to pay the City of South Salt Lake Capital Improvements Fund ("the Capital Fund"), the principal sum of _____ \$ 1,000,000 , together with a rate of interest to be calculated annually at the rate of one and one-half per cent (1.5%). The obligation to pay this Interfund Promissory Note shall be a limited and special obligation, payable only from and limited by the availability of the funds described herein. This promissory note may not be transferred or assigned.

Payments received from tenants of the RDA property being purchased using these funds shall be deposited in the Capital Fund against this obligation and will be applied toward the principal. Accrued interest shall be paid annually to the Capital Fund. The principal and any accrued interest are due and owing upon the sale of the encumbered property by the RDA. Additional payments toward the obligation may be made without penalty.

The principal amount covered by this Interfund Promissory Note represents money advanced by the City's Capital Fund for payment of a portion of costs for the purchase of real property located in the Central Pointe Redevelopment Area pursuant to a purchase contract between the RDA and the seller.

The promissory note is payable by way of "interfund transfer" from the RDA to the Capital Fund.

THE CITY OF SOUTH SALT LAKE

Date: _____

By _____
Cherie Wood, Mayor

Attest:

Craig Burton, City Recorder