

**PUBLIC NOTICE**

Notice is Hereby Given that the Tooele City Redevelopment Agency of Tooele City, Utah, will meet in a Business Meeting, on Wednesday, April 4, 2018 at 8:00 p.m., or as soon Thereafter. The Meeting will be Held at the Tooele City Hall Large Conference Room Located at 90 North Main Street, Tooele, Utah.

1. Open RDA Meeting
2. Roll Call
3. RDA Resolution 2018 - 03 A Resolution of the Redevelopment Agency of Tooele City, Utah Approving a Purchase and Sale Agreement with M-53 Associates for 33 Acres of Land Located at Main Street and 1000 North Street  
Presented by Randy Sant
4. Discussion on an Interlocal Agreement between Tooele City & the Tooele City Redevelopment Agency for Management of Economic Development and Administrative Services  
Presented by Randy Sant
5. Minutes  
February 21, 2018
6. Adjourn

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**Michelle Y. Pitt**  
Tooele City Recorder/RDA Secretary

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 843-2110 or [michellep@tooelecity.org](mailto:michellep@tooelecity.org), Prior to the Meeting.

**REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH**

**RESOLUTION 2018-03**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH APPROVING A PURCHASE AND SALE AGREEMENT WITH M-53 ASSOCIATES FOR 33 ACRES OF LAND LOCATED AT MAIN STREET AND 1000 NORTH STREET.**

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

WHEREAS, the RDA desires to sell the Property to M-53 Associates ("Kimball") to realize the Project; and,

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

WHEREAS, to effectuate the sale of the Property to Kimball, the RDA desires to execute a Purchase and Sale Agreement (the "Agreement") with Kimball, a draft of which Agreement is attached hereto as Exhibit A); and,

WHEREAS, the purchase price for the Property is \$4.1 million:

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH that the Purchase and Sale Agreement, attached as Exhibit A, for the sale of the Property to M-53 Associates aka Kimball for the Project, is hereby approved, and that the RDA Chairman is hereby authorized to execute the same.

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

IN WITNESS WHEREOF, this Resolution is passed by the Board of the Redevelopment Agency of Tooele City, Utah, this \_\_\_\_ day of \_\_\_\_\_, 2018.

TOOELE CITY RDA

(For)

(Against)

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

RDA CHAIRMAN

(Approved)

(Disapproved)

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ATTEST:

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

S E A L

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

# EXHIBIT A

## Purchase and Sale Agreement

**REAL ESTATE PURCHASE CONTRACT**  
(VACANT LAND)

THIS REAL ESTATE PURCHASE CONTRACT (this “**Agreement**”) is dated effective as of \_\_\_\_\_, 2018 (the “**Effective Date**”), by and between the REDEVELOPMENT AGENCY OF TOOELE CITY, a political subdivision of the State of Utah (“**Seller**”) and M-53 ASSOCIATES, LLC, a Utah limited liability company (“**Buyer**”).

WHEREAS Seller owns approximately 31 acres of real property located in Tooele, Utah, generally located at the Southwest corner of 1000 N and Main Street in Tooele, as generally depicted on the map attached as **Exhibit A** (the “**Property**” as further defined below); and

WHEREAS it is the intent that Buyer will purchase and develop the Property as an integrated development in a manner to be approved by Seller’s governing body; and

WHEREAS pursuant to the terms and conditions set forth herein, Seller desires to sell the Property to Buyer and the Buyer desires to purchase the Property from Seller,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Definitions. For the purpose of this Agreement, the following terms shall have the following definitions:

“**Affiliate**” means, with respect to Buyer, a person that directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, the Buyer. For the purposes of this paragraph, “control” shall mean any person or entity with (i) ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or the possession of the right to vote in the ordinary direction of its affairs at least fifty-one percent (51%) of the voting interest in Buyer, or (ii) the power to direct or cause the direction of the management and policies of Buyer, whether through the ownership of voting shares, by contract or otherwise.

“**Cash Balance**” means an amount equal to the Purchase Price minus the Earnest Money, plus all other costs required to be paid by Buyer hereunder prior to or at Closing.

“**Certification**” means a Certification of Non-Foreign Status in a form reasonably and customarily provided by Escrow Holder at Closing.

“**Closing**” means the consummation of the purchase and sale of the Property, as evidenced by the delivery of all required funds and documents to Escrow Agent.

“**Closing Deadline**” means the date that is 15 calendar days after the date of expiration of the Due Diligence Deadline (as may be extended as provided below).

“**Deed**” means a special warranty deed in substantially the form attached hereto as **Exhibit B**.

“**Earnest Money**” means the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

“**Effective Date**” means the date set forth in the opening paragraph of this Agreement.

“**Escrow Account**” means an interest-bearing account with a federally insured state or national bank, held by Escrow Holder.

“**Escrow Holder**” means Metro National Title Company, Salt Lake City office, which is an issuing agent of the Title Company.

“**Due Diligence Deadline**” means 5:00 p.m. (Mountain Time) on the date that is 90 calendar days after the date Seller has provided to Buyer the Property Files. This ninety-day period is referred to as the “**Due Diligence Period**”.

“**Hazardous Substances**” means any and all substances, materials and wastes which are regulated as hazardous or toxic under applicable local, state or federal law or which are classified as hazardous or toxic under local, state or federal laws or regulations, including, without limitation, (i) those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “solid waste,” “pollutant” or “contaminant” as such terms are defined by or listed in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) (“SARA”), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) (“RCRA”), the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Control Act (7 U.S.C. § 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616 Nov. 9, 1984), the Federal Clean Air Act (42 U.S.C. § 7401 et seq.), and in the regulations promulgated pursuant to such laws, all as amended, (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101) or 40 CFR Part 302, both as amended, and (iii) any material, waste or substance which is (A) oil, gas or any petroleum or petroleum by-product, (B) asbestos, in any form, (C) polychlorinated biphenyls, (D) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended, (E) flammable explosives, or (F) radioactive materials.

“**Master Concept Plan**” means preliminary site and development plans including, at a minimum and without limitation, a preliminary site plan/concept plan for the entire Property together with an estimated timeline for development and construction of the entire Property and also together with architectural and site design standards, for a mixed-use development.

“**Person**” means and includes all natural persons, corporations, limited partnerships, general partnerships, limited liability companies, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and branches agencies and political subdivisions thereof.

“**Permitted Exceptions**” is as defined in Section 5(b) *below*.

“**Project**” means a master development contemplated by Buyer to be located on the Property.

“**Property**” means the real property currently owned by the Seller and generally depicted on the map attached hereto as **Exhibit A**, generally located between 1000 North, 200 West, and Main Street in Tooele, Utah, with a final legal description to be determined by the Survey, together with all improvements (if any), and all appurtenances (if any), including, but not necessarily limited to, any assignable licenses, permits, mineral rights, easements, rights-of-way or other items, to the extent such items relate to and benefit the described real property.

“**Property Files**” means the following documents that are in Seller’s possession, and nothing else: Phase 1 environmental report, A.L.T.A. Survey, and Geotechnical Report.

“**Purchase Price**” an amount equal to FOUR MILLION ONE HUNDRED THOUSAND DOLLARS.

“**Title Commitment**” means a preliminary title report, or commitment for title insurance, to be issued by the Title Company with respect to the Property, together with copies of all underlying title documents described in such preliminary title report, in connection with an ensuing Title Policy.

“**Title Company**” means any reputable title insurance company approved by Buyer and for which Escrow Holder is an issuing agent.

“**Title Policy**” means an ALTA Standard Coverage Owner’s Policy of Title Insurance written with liability in the amount of the Purchase Price.

2. Agreement to Purchase/Sell. Subject to the terms, covenants and conditions of this Agreement, on or, if mutually agreeable to the parties, before the Closing Deadline, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller’s right, title and interest in and to the Property.

3. Buyer’s Post-Closing Obligations; Development Requirements; Seller’s Re-Purchase Option. The provisions of this Section 3 shall survive the Closing and recording of the Deed. Buyer acknowledges that the Property is of unique and particular importance to the Seller. Additionally, Buyer acknowledges that in order to recover funds sufficient to repay outstanding bonds issued by Seller for the Property acquisition proceeds, Seller needs to receive the benefit of tax increment generated from new development on the Property. To those ends, Buyer acknowledges that Seller is, as material consideration to this Agreement, significantly interested in the timely construction of a quality development project on the Property substantially according to plans and specifications to be approved by Seller’s governing body as provided under Section 7.b.iii *below*. Any failure of Buyer to timely commence or complete the construction of the Project according to the Seller-approved Plans would be significantly detrimental to the Seller. Accordingly, Buyer agrees to commence the construction of the Project on the Property within two years after the Closing Date. If Buyer does not (i) obtain a building permit for, and (iii) commence construction of, the Project within two years after the Closing Date then Buyer agrees to immediately pay Seller damages in the amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS, which is the amount needed to compensate Seller for the lack of tax increment proceeds from the Property due to the lack of Project improvements, in order for Seller to meet its obligations relating to Seller’s original acquisition of the Property. Additionally, Buyer agrees to

diligently prosecute the completion of the Project after commencing construction. At Closing, Buyer will execute a Deed of Trust, in substantially the form attached hereto as **Exhibit C**, to Buyer's performance under this Section 3. The Deed of Trust will provide that Seller will cause the Deed of Trust to be reconveyed (i.e., released from the Property) upon either (i) timely satisfaction of the two conditions (obtain a building permit and commence construction), or (ii) payment of the ONE MILLION ONE HUNDRED THOUSAND DOLLARS.

4. Earnest Money Deposit. Within five business days after the Effective Date, Buyer shall deposit the Earnest Money into escrow with Escrow Holder, along with a copy of this Agreement to the Title Company, executed by Buyer and Seller. The Earnest Money shall be deposited in an interest bearing account with all interest accruing to the benefit of the party to whom the Earnest Money is released. The Earnest Money shall be applied to the Purchase Price at Closing. The Earnest Money shall be fully refundable to Buyer if Buyer terminates this Agreement prior to expiration of the Due Diligence Period.

5. Seller's Obligations.

(a) Property Files/Additional Costs. Seller shall, at its sole cost and expense, and within five business days after the Effective Date, provide Buyer with all of the Property Files. If Buyer reasonably determines that any of the Property Files require updates or additions, Buyer and Seller agree to evenly split the cost (50/50) for such updates or additions reasonably required. Seller will initially order and pay for those updates or additions, and then the cost will be prorated on the settlement statement at Closing. If Buyer fails to purchase the Property for either of the following reasons, then Seller will bear the full cost of those updates or additions: (i) Buyer terminates this Agreement before the expiration of the Due Diligence Period (as may be extended), or (ii) Buyer has timely submitted to Seller's governing body a proposed Master Concept Plan as provided under Section 7.b.iii *below*, but Seller's governing body has not approved the proposed Master Concept Plan.

(b) Title Commitment. Seller shall, at its sole cost and expense, and within five business days after the Effective Date, shall cause Escrow Agent to provide Buyer with the Title Commitment. The Title Commitment shall show all matters affecting title to the Property including all exceptions, easements, restrictions, rights-of-way, covenants, reservations and other conditions or encumbrances affecting the Property and shall provide legible copies of all recorded documents, specifically requested by Buyer, constituting such exceptions. Prior to the Due Diligence Deadline, Buyer shall provide written notice to Seller of any matter contained in the Title Commitment to which Buyer objects. Seller, in its sole discretion, shall (a) use its good faith efforts to remove or cure any such matter, or (b) notify Buyer that it cannot or will not remove such matter. In the event Seller cannot or will not remove any such matter, Buyer may elect to either waive such matter or terminate this Agreement (in which case the Earnest Money and any interest accrued thereon will be returned to Buyer). Any matters contained in the Title Commitment to which Buyer does not timely object or which have been waived by Buyer shall be deemed "**Permitted Exceptions**".

6. Due Diligence Period.

(a) Due Diligence. Before the Due Diligence Deadline, Buyer may, at its sole expense, review all Property Files and perform any studies, tests, and obtain any reports Buyer

deems necessary for its intended use of the Property. Buyer may, in its sole discretion, accelerate the Due Diligence Deadline at any time by providing written notice to Seller. Seller hereby grants Buyer, its employees, agents and prospective tenants and licensees access to the Property for the purpose of conducting Buyer's inspection, provided however, Buyer shall restore the Property to its condition prior to such inspection activities, and provided further that Buyer shall indemnify and hold Seller harmless from any and all liability, claims or expenses arising out of or in any way related to such inspection activities. The foregoing indemnification shall survive Closing or termination of this Agreement. Unless Buyer delivers to Seller, on or before the Due Diligence Deadline, a notice of acceptance of the Property or an extension notice as provided in the next subparagraph (b), Buyer shall, after expiration of the Due Diligence Deadline, be deemed to have rejected the physical condition of the Property and this Agreement shall terminate and the Earnest Money shall be returned to Buyer.

(b) Extension of Due Diligence Deadline. Before the expiration of the Due Diligence Deadline, Buyer may extend the Due Diligence Period Deadline for an additional 30 days, one time only, if, and only if, before the Due Diligence Deadline:

i. Either (A) Buyer discovers information in the Property Files that reasonably requires additional investigation that cannot reasonably be completed before the Due Diligence Deadline, or (B) Buyer has timely submitted to Seller's governing body a proposed Master Concept Plan as provided under Section 7.b.iii *below*, but Seller's governing body has not approved the proposed Master Concept Plan; and

ii. Buyer provides written notice of extension, including the reasonable basis for the extension, to Seller.

7. Conditions Precedent. The conditions precedent to Buyer's and Seller's respective obligations to participate in the Closing are as follows:

(a) Buyer's obligation to purchase the Property is contingent upon the following, any or all of which Buyer may waive in its sole and absolute discretion by providing written notice to the Seller:

i. All of the representations and warranties of Seller, if any, contained in this Agreement shall be true and correct in all material respects as of the date made and as of each Closing;

ii. Seller shall have performed, satisfied and complied in all material respects with all material covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller on or before each Closing;

iii. Before the Due Diligence Deadline, Buyer obtaining, or determining that it can obtain, financing for its purchase and development of the Property on terms and conditions acceptable to Buyer in Buyer's sole determination, and

iv. Before the Due Diligence Deadline, Buyer obtaining, or satisfying itself that it can obtain, all entitlements necessary for its development of the Property.

(b) Seller's obligation to sell the Property is contingent upon the following, any or all of which Seller may waive in its sole and absolute discretion by providing written notice to the Buyer:

i. All of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date made and as of each Closing;

ii. Buyer shall have performed, satisfied and complied in all material respects with all agreements, covenants and conditions required hereby to be performed or complied with by Buyer on or before each Closing, including without limitation, payment in full of the Purchase Price; and

iii. Buyer shall have submitted to Seller's governing body the Master Concept Plan, and Seller's governing body shall have approved, by motion or resolution in an open and public meeting, and in Seller's sole discretion, the Master Concept Plan. Buyer acknowledges that Seller's decision to approve, or not approve, the Master Concept Plan for the Property is discretionary and is different from standard regulatory approval required from a governmental body.

If any of those conditions cannot be satisfied on or before the Closing, Buyer or Seller, as applicable, may elect to either: (a) terminate this Agreement by providing written notice thereof to the other party, in which case the Earnest Money and accrued interest shall be returned to the party entitled to it, or (b) waive the condition(s) and proceed to Closing.

8. Buyer's Representations and Warranties. Buyer represents and warrants as follows:

(a) Company Status. Buyer is a limited liability company, duly formed, validly existing and in good standing in the State of Utah.

(b) Authority. Buyer has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Buyer pursuant to this Agreement, and all required actions and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Buyer are and shall be duly authorized to sign the same on Buyer's behalf and to bind Buyer thereto. This Agreement and all documents to be executed pursuant hereto by Buyer are and shall be binding upon and enforceable against Buyer in accordance with their respective terms.

(c) No Breaches. Buyer's obligations contemplated hereby and the execution, delivery and performance of this Agreement by Buyer will not result in a breach of, or constitute a default under any instrument or agreement to which Buyer is bound. Buyer's obligations and responsibilities hereunder are valid and binding obligations of Buyer.

9. Closing Instructions.

(a) Escrow/Closing Instructions. Upon the execution of this Agreement by Buyer and Seller, and the acceptance of this Agreement by Escrow Holder in writing, this Agreement shall

constitute the joint escrow instructions of Buyer and Seller to Escrow Holder to open the Escrow. Upon Escrow Holder's receipt of the Earnest Money and written acceptance of this Agreement, Escrow Holder is instructed to act in accordance with the terms of this Agreement. In connection with Closing, Buyer and Seller shall promptly execute general escrow instructions based upon this Agreement at the request of Escrow Holder; provided, however, that if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Upon the occurrence of Closing, Escrow Holder shall pay any sum owed to Seller with immediately available United States federal funds.

(b) Deposit of Documents/Funds by Buyer. On or before the Closing Deadline, Buyer shall deposit the following items into escrow with Escrow Holder, each of which shall be duly executed and acknowledged by Buyer where appropriate (notwithstanding anything to the contrary herein or elsewhere, if Seller fails to timely deposit any documents or funds when required, then Buyer may immediately (or later) withdraw its documents and funds from Escrow without further instructions, and despite any contrary instructions from Seller, and Escrow Holder will comply with any request by Buyer in this regard):

- i. The Cash Balance; and
- ii. All other funds and documents as may reasonably be required by Escrow Holder or Seller to close the Escrow in accordance with this Agreement.

(c) Deposit of Documents/Funds by Seller. On or before the Closing Deadline, Seller shall deposit, or cause to be deposited, the following items into escrow with Escrow Holder, each of which shall be duly executed and acknowledged by Seller where appropriate (notwithstanding anything to the contrary herein or elsewhere, if Buyer fails to timely deposit any documents or funds when required, then Seller may immediately (or later) withdraw its documents and funds from Escrow without further instructions, and despite any contrary instructions from Buyer, and Escrow Holder will comply with any request by Seller in this regard):

- i. A Deed for the Property;
- ii. The Certification;
- iii. Such title affidavits and indemnities as may reasonably be required by the Title Company in order for the Title Company to issue the Title Policy; and
- iv. All other documents as may reasonably be required by Escrow Holder to close the escrow in accordance with this Agreement.

(d) Closing Procedure. Provided that all conditions to the Closing set forth in this Agreement, as applicable, have been satisfied or, as to any condition not satisfied, waived by the party intended to be benefited thereby, Escrow Holder shall conduct the Closing by recording and/or distributing the following documents and funds in the following manner:

- i. Record the Deed in the Official Records of Tooele County, Utah;
- ii. Deliver to Seller (a) amounts shown in the Settlement Statement, and (b) copies of all documents deposited with Escrow Holder pursuant to this Agreement.; and

iii. Deliver to Buyer: (a) the original Title Policy (within 30 calendar days after Closing); (b) the original Certification; and (c) copies of all other documents deposited with Escrow Agent pursuant to this Agreement.

(e) Prorations. At Closing, current real property taxes, assessments and personal property taxes with respect to the applicable Property shall be prorated between Buyer and Seller as of the date of Closing. Seller shall be required to pay all greenbelt, rollback or other taxes, if any, that have accrued prior to Closing or that may be triggered due to Closing. If on the date of Closing either applicable assessed value or mill levy for the applicable year cannot be ascertained, real property taxes relative to the Property shall be apportioned on the basis of the assessed value and mill levy for the previous year, and the parties shall make adjustment payments after the Closing based on the actual assessed value and the actual mill levy for the applicable year when such information is available.

(f) Closing Costs. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Buyer shall be responsible for all other escrow fees and closing costs, other than Seller's attorneys' fees.

(g) Title Policy. At Closing, Escrow Holder shall cause the Title Company, at Seller's cost, to issue to Buyer the Title Policy (Standard Owner's Policy). Buyer shall pay all premium amounts for any extended coverage, and any requested endorsements not included in a Standard Owner's Policy, except for such endorsements as are required to cure any objections which Seller has agreed to cure under Section 5(b) *above*, which endorsements shall be paid by Seller at the Closing. Seller shall, without assuming any further risk or obligations, provide such additional documents as may reasonably be required by Title Company in connection with such endorsements or Extended Coverage Policy (if obtained and paid for by Buyer).

(h) Possession. Seller will deliver possession of the Property to Buyer immediately following Closing.

(i) Approval of Closing Documents. All closing documents to be furnished by Buyer or Seller pursuant to this Agreement shall be in form and substance reasonably acceptable to both Buyer and Seller.

10. Seller Disclosure of Agent Status and Brokers' Commissions. The parties acknowledge that CBC Advisors represents both Buyer and Seller in this transaction. Seller will pay a commission per the terms of a separate agreement. Buyer and Seller each warrants that it has had no dealing with any broker or agent in connection with the transaction contemplated by this Agreement and each agrees to indemnify and hold the other harmless from and against any claims by any broker, agent or person claiming a commission or other form of compensation by virtue of having dealt therewith with regard to this transaction.

**DISCLOSURE OF PRINCIPAL AS LICENSEE - Personal Interest.** One or more of the principals of Buyer's entity  are a real estate broker or sales agent licensed as such under the laws of the State of Utah, who may share in the brokerage fee paid for this transaction.

Default and Liquidated Damages. If Buyer defaults in any obligation hereunder and does not cure such default within seven calendar days after receiving written notice from Seller, Seller may elect as its sole remedy to terminate this Agreement and receive the Earnest Money deposited as of such date together with accrued interest as liquidated damages for Buyer's default. The parties further agree that this default and liquidated damages provision and the amounts set forth as liquidated damages represent a reasonable estimate of the value of the anticipated damages, losses, costs and expenses which would be incurred by Seller due to a breach of this Agreement by Buyer. If Seller defaults in any obligation hereunder and does not cure such default within seven calendar days after receiving written notice thereof, in addition to return of the Earnest Money Deposit with interest thereon, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law.

11. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Buyer: Kimball Investment Company  
1000 S Main Suite 104  
Salt Lake City UT 84101

If to Seller: Tooele City Redevelopment Agency  
Attention: RDA Director  
90 North Main Street  
Tooele, UT 84074

*With a copy to:*

Tooele City  
90 North Main Street  
Tooele, UT 84074  
Attn: City Attorney

12. Miscellaneous.

(a) Time of Essence. Time is of the essence of this Agreement.

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

(c) Assignment; Amendment. Buyer shall have the right to assign its rights and obligations under this Agreement, by giving prior written notice to Seller prior to the date of Closing and further provided that such assignee assume all of the obligations of Buyer hereunder, to any Affiliate, and no one else. Any purported or attempted assignment or delegation by Buyer to any person other than an Affiliate, without obtaining Seller's prior written consent, shall be void and of no effect. Seller shall neither assign its rights nor delegate its obligations hereunder without obtaining Buyer's prior written consent, which may be withheld in Buyer's sole and absolute discretion. Any purported or attempted assignment or delegation in without obtaining

Buyer's prior written consent shall be void and of no effect. This Agreement may be amended only in writing authorized and signed by both Buyer and Seller.

(d) Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. In addition, the parties agree that facsimile and electronically generated signature pages shall be as valid as any signature pages bearing original signatures, provided, that upon the written request of either party, the other party shall provide counterparts containing original signatures.

(e) Entire Agreement. Seller and Buyer agree that this Agreement states the entire agreement between the parties and that no promises, representations or agreements other than those herein contained have been made or relied upon.

(f) No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.

(g) Attorneys' Fees. If any action is brought by either party on account of any breach of or to enforce or interpret any of the provisions of this Agreement, or if either party incurs attorneys' fees on account of any breach of any of the provisions of this Agreement, the party prevailing or successfully enforcing its rights hereunder shall be entitled to recover from the other party all costs and expenses, including attorneys' fees, reasonably incurred in connection therewith.

(h) Further Assurances. The parties each agree to perform, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

(i) Binding Effect. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and permitted assigns.

13. Land Use Approvals. At any time during the term of this Agreement, Buyer may seek the rezoning and/or subdivision of the Property, including any and all permits, licenses and other land use approvals (both preliminary and final) required for the development of Buyer's Project (collectively, the "Land Use Approvals"). However, Buyer cannot obtain any Land Use Approvals that will become before to the Closing Deadline or which will be binding on Seller if this Agreement is terminated prior to the Closing for any reason. Seller will reasonably cooperate with Buyer in obtaining the Land Use Approvals, which cooperation may include, but not be limited to, joining in applications, providing information, data, and other reports in Seller's possession and control, attending and testifying in favor of (or if permitted by the local authority, indicating by written correspondence that Seller has no objection to) such Land Use Approvals at meetings and hearings, and providing such other assistance as Buyer may reasonably request from time to time. Seller's cooperation is conditioned upon full compliance with federal, state, and local ordinances and this Agreement. All of Seller's obligations under this Section 14 are conditional upon the Land Use Approvals being consistent with the Master Concept Plan approved (if at all) by Seller.

*[End of Terms – Signature Page Follows]*

IN WITNESS WHEREOF, Buyer and Seller have executed this REAL ESTATE PURCHASE CONTRACT as of the date set forth above.

**SELLER:**

REDEVELOPMENT AGENCY OF TOOELE CITY,  
a Utah political subdivision

\_\_\_\_\_  
Chair

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Roger Evans Baker  
Attorney for RDA

**BUYER:**

M-53 ASSOCIATES, LLC  
a Utah limited liability company

\_\_\_\_\_  
By: Victor Kimball  
Its: Manager/Member

ESCROW HOLDER ACCEPTANCE

This Real Estate Purchase Contract between REDEVELOPMENT AGENCY OF TOOELE CITY, a political subdivision of the State of Utah as "Seller" and M-53 ASSOCIATES, LLC, a Utah limited liability company as "Buyer" (the "Agreement") is accepted and the Escrow is opened this \_\_\_\_ day of \_\_\_\_\_, 2018. Escrow Holder hereby agrees to act as the Escrow Holder as defined in the Agreement and to perform its duties in accordance with the provisions of the Agreement. Further, Escrow Holder agrees to act as "the person responsible for closing" the Purchase and Sale Transaction within the meaning of Section 6045(a) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

ESCROW HOLDER: METRO NATIONAL TITLE COMPANY

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

**EXHIBIT A**

*Map of Property*

**EXHIBIT B**

*Form of Deed*

*[Attached]*

**Exhibit 1**

*[to be attached at Closing]*

**EXHIBIT C**

*Form of Deed of Trust*

**REAL ESTATE PURCHASE CONTRACT**  
(VACANT LAND)

THIS REAL ESTATE PURCHASE CONTRACT (this “**Agreement**”) is dated effective as of \_\_\_\_\_, 2018 (the “**Effective Date**”), by and between the REDEVELOPMENT AGENCY OF TOOELE CITY, a political subdivision of the State of Utah (“**Seller**”) and M-53 ASSOCIATES, LLC, a Utah limited liability company (“**Buyer**”).

WHEREAS Seller owns approximately 31 acres of real property located in Tooele, Utah, generally located at the Southwest corner of 1000 N and Main Street in Tooele, as generally depicted on the map attached as **Exhibit A** (the “**Property**” as further defined below); and

WHEREAS it is the intent that Buyer will purchase and develop the Property as an integrated development in a manner to be approved by Seller’s governing body; and

WHEREAS pursuant to the terms and conditions set forth herein, Seller desires to sell the Property to Buyer and the Buyer desires to purchase the Property from Seller,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Definitions. For the purpose of this Agreement, the following terms shall have the following definitions:

“**Affiliate**” means, with respect to Buyer, a person that directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, the Buyer. For the purposes of this paragraph, “control” shall mean any person or entity with (i) ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or the possession of the right to vote in the ordinary direction of its affairs at least fifty-one percent (51%) of the voting interest in Buyer, or (ii) the power to direct or cause the direction of the management and policies of Buyer, whether through the ownership of voting shares, by contract or otherwise.

“**Cash Balance**” means an amount equal to the Purchase Price minus the Earnest Money, plus all other costs required to be paid by Buyer hereunder prior to or at Closing.

“**Certification**” means a Certification of Non-Foreign Status in a form reasonably and customarily provided by Escrow Holder at Closing.

“**Closing**” means the consummation of the purchase and sale of the Property, as evidenced by the delivery of all required funds and documents to Escrow Agent.

“**Closing Deadline**” means the date that is 15 calendar days after the date of expiration of the Due Diligence Deadline (as may be extended as provided below).

“**Deed**” means a special warranty deed in substantially the form attached hereto as **Exhibit B**.

“**Earnest Money**” means the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

“**Effective Date**” means the date set forth in the opening paragraph of this Agreement.

“**Escrow Account**” means an interest-bearing account with a federally insured state or national bank, held by Escrow Holder.

“**Escrow Holder**” means Metro National Title Company, Salt Lake City office, which is an issuing agent of the Title Company.

“**Due Diligence Deadline**” means 5:00 p.m. (Mountain Time) on the date that is 90 calendar days after the date Seller has provided to Buyer the Property Files. This ninety-day period is referred to as the “**Due Diligence Period**”.

“**Hazardous Substances**” means any and all substances, materials and wastes which are regulated as hazardous or toxic under applicable local, state or federal law or which are classified as hazardous or toxic under local, state or federal laws or regulations, including, without limitation, (i) those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “solid waste,” “pollutant” or “contaminant” as such terms are defined by or listed in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) (“SARA”), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) (“RCRA”), the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Control Act (7 U.S.C. § 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616 Nov. 9, 1984), the Federal Clean Air Act (42 U.S.C. § 7401 et seq.), and in the regulations promulgated pursuant to such laws, all as amended, (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101) or 40 CFR Part 302, both as amended, and (iii) any material, waste or substance which is (A) oil, gas or any petroleum or petroleum by-product, (B) asbestos, in any form, (C) polychlorinated biphenyls, (D) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended, (E) flammable explosives, or (F) radioactive materials.

“**Master Concept Plan**” means preliminary site and development plans including, at a minimum and without limitation, a preliminary site plan/concept plan for the entire Property together with an estimated timeline for development and construction of the entire Property and also together with architectural and site design standards, for a mixed-use development.

“**Person**” means and includes all natural persons, corporations, limited partnerships, general partnerships, limited liability companies, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and branches agencies and political subdivisions thereof.

“**Permitted Exceptions**” is as defined in Section 5(b) *below*.

“**Project**” means a master development contemplated by Buyer to be located on the Property.

“**Property**” means the real property currently owned by the Seller and generally depicted on the map attached hereto as **Exhibit A**, generally located between 1000 North, 200 West, and Main Street in Tooele, Utah, with a final legal description to be determined by the Survey, together with all improvements (if any), and all appurtenances (if any), including, but not necessarily limited to, any assignable licenses, permits, mineral rights, easements, rights-of-way or other items, to the extent such items relate to and benefit the described real property.

“**Property Files**” means the following documents that are in Seller’s possession, and nothing else: Phase 1 environmental report, A.L.T.A. Survey, and Geotechnical Report.

“**Purchase Price**” an amount equal to FOUR MILLION ONE HUNDRED THOUSAND DOLLARS.

“**Title Commitment**” means a preliminary title report, or commitment for title insurance, to be issued by the Title Company with respect to the Property, together with copies of all underlying title documents described in such preliminary title report, in connection with an ensuing Title Policy.

“**Title Company**” means any reputable title insurance company approved by Buyer and for which Escrow Holder is an issuing agent.

“**Title Policy**” means an ALTA Standard Coverage Owner’s Policy of Title Insurance written with liability in the amount of the Purchase Price.

2. Agreement to Purchase/Sell. Subject to the terms, covenants and conditions of this Agreement, on or, if mutually agreeable to the parties, before the Closing Deadline, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller’s right, title and interest in and to the Property.

3. Buyer’s Post-Closing Obligations: Development Requirements: Seller’s Re-Purchase Option. The provisions of this Section 3 shall survive the Closing and recording of the Deed. Buyer acknowledges that the Property is of unique and particular importance to the Seller. Additionally, Buyer acknowledges that in order to recover funds sufficient to repay outstanding bonds issued by Seller for the Property acquisition ~~proceeds~~, Seller needs to receive the benefit of tax increment generated from new development on the Property. To those ends, Buyer acknowledges that Seller is, as material consideration to this Agreement, significantly interested in the timely construction of a quality development project on the Property substantially according to plans and specifications to be approved by Seller’s governing body as provided under Section 7.b.iii *below*. Any failure of Buyer to timely commence or complete the construction of the Project according to the Seller-approved Plans would be significantly detrimental to the Seller. Accordingly, Buyer agrees to commence the construction of the Project on the Property within two years after the Closing Date. If Buyer does not (i) obtain a building permit for, and (iii) commence construction of, the Project within two years after the Closing Date then Buyer agrees to immediately pay Seller damages in the amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS, which is the amount needed to compensate Seller for the lack of tax increment proceeds from the Property due to the lack of Project improvements, in order for Seller to meet its obligations relating to Seller’s original acquisition of the Property. Additionally, Buyer agrees to

Commented [RB1]: This word seems extraneous.

Commented [RB2]: Correct numbering.

diligently prosecute the completion of the Project after commencing construction. At Closing, Buyer will execute a Deed of Trust, in substantially the form attached hereto as **Exhibit C**, to Buyer's performance under this Section 3. The Deed of Trust will provide that Seller will cause the Deed of Trust to be reconveyed (i.e., released from the Property) upon either (i) timely satisfaction of the two conditions (obtain a building permit and commence construction), or (ii) payment of the ONE MILLION ONE HUNDRED THOUSAND DOLLARS.

**Commented [RB3]:** If the Buyer does not diligently prosecute the completion of construction, we have a lawsuit asking the court to decide what "diligently prosecute the completion of the Project" means. Is there a way we can define this term, or to include an end-of-construction deadline?

4. Earnest Money Deposit. Within five business days after the Effective Date, Buyer shall deposit the Earnest Money into escrow with Escrow Holder, along with a copy of this Agreement to the Title Company, executed by Buyer and Seller. The Earnest Money shall be deposited in an interest bearing account with all interest accruing to the benefit of the party to whom the Earnest Money is released. The Earnest Money shall be applied to the Purchase Price at Closing. The Earnest Money shall be fully refundable to Buyer if Buyer terminates this Agreement prior to expiration of the Due Diligence Period.

**Commented [RB4]:** Since failure to commence construction is tied to such a large consequence, I suggest that "commence construction" be a defined term, and that it mean more than simply turning a teaspoon of dirt.

5. Seller's Obligations.

(a) Property Files/Additional Costs. Seller shall, at its sole cost and expense, and within five business days after the Effective Date, provide Buyer with all of the Property Files. If Buyer reasonably determines that any of the Property Files require updates or additions, Buyer and Seller agree to evenly split the cost (50/50) for such updates or additions reasonably required. Seller will initially order and pay for those updates or additions, and then the cost will be prorated on the settlement statement at Closing. If Buyer fails to purchase the Property for either of the following reasons, then Seller will bear the full cost, through a deduction from the Earnest Money, of those updates or additions: (i) Buyer terminates this Agreement before the expiration of the Due Diligence Period (as may be extended), or (ii) Buyer has timely submitted to Seller's governing body a proposed Master Concept Plan as provided under Section 7.b.iii *below*, but Seller's governing body has not approved the proposed Master Concept Plan.

(b) Title Commitment. Seller shall, at its sole cost and expense, and within five business days after the Effective Date, shall cause Escrow Agent to provide Buyer with the Title Commitment. The Title Commitment shall show all matters affecting title to the Property including all exceptions, easements, restrictions, rights-of-way, covenants, reservations and other conditions or encumbrances affecting the Property and shall provide legible copies of all recorded documents, specifically requested by Buyer, constituting such exceptions. Prior to the Due Diligence Deadline, Buyer shall provide written notice to Seller of any matter contained in the Title Commitment to which Buyer objects. Seller, in its sole discretion, shall (a) use its good faith efforts to remove or cure any such matter, or (b) notify Buyer that it cannot or will not remove such matter. In the event Seller cannot or will not remove any such matter, Buyer may elect to either waive such matter or terminate this Agreement (in which case the Earnest Money and any interest accrued thereon will be returned to Buyer). Any matters contained in the Title Commitment to which Buyer does not timely object or which have been waived by Buyer shall be deemed "**Permitted Exceptions**".

**Commented [RB5]:** Are we confident the Escrow Agent can produce the Title Commitment within 5 days? It's a pretty short fuse.

6. Due Diligence Period.

(a) Due Diligence. Before the Due Diligence Deadline, Buyer may, at its sole expense, review all Property Files and perform any studies, tests, and obtain any reports Buyer

deems necessary for its intended use of the Property. Buyer may, in its sole discretion, accelerate the Due Diligence Deadline at any time by providing written notice to Seller. Seller hereby grants Buyer, its employees, agents and prospective tenants and licensees access to the Property for the purpose of conducting Buyer's inspection, provided however, Buyer shall restore the Property to its condition prior to such inspection activities, and provided further that Buyer shall indemnify and hold Seller harmless from any and all liability, claims or expenses arising out of or in any way related to such inspection activities. The foregoing indemnification shall survive Closing or termination of this Agreement. Unless Buyer delivers to Seller, on or before the Due Diligence Deadline, a notice of acceptance of the Property or an extension notice as provided in the next subparagraph (b), Buyer shall, after expiration of the Due Diligence Deadline, be deemed to have rejected the physical condition of the Property and this Agreement shall terminate and the Earnest Money shall be returned to Buyer.

(b) Extension of Due Diligence Deadline. Before the expiration of the Due Diligence Deadline, Buyer may extend the Due Diligence Period Deadline for an additional 30 days, one time only, if, and only if, before the Due Diligence Deadline:

i. Either (A) Buyer discovers information in the Property Files that reasonably requires additional investigation that cannot reasonably be completed before the Due Diligence Deadline, or (B) Buyer has timely submitted to Seller's governing body a proposed Master Concept Plan as provided under Section 7.b.iii *below*, but Seller's governing body has not approved the proposed Master Concept Plan; and

ii. Buyer provides written notice of extension, including the reasonable basis for the extension, to Seller.

7. Conditions Precedent. The conditions precedent to Buyer's and Seller's respective obligations to participate in the Closing are as follows:

(a) Buyer's obligation to purchase the Property is contingent upon the following, any or all of which Buyer may waive in its sole and absolute discretion by providing written notice to the Seller:

i. All of the representations and warranties of Seller, if any, contained in this Agreement shall be true and correct in all material respects as of the date made and as of each Closing;

ii. Seller shall have performed, satisfied and complied in all material respects with all material covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller on or before each Closing;

iii. Before the Due Diligence Deadline, Buyer obtaining, or determining that it can obtain, financing for its purchase and development of the Property on terms and conditions acceptable to Buyer in Buyer's sole determination, and

iv. Before the Due Diligence Deadline, Buyer obtaining, or satisfying itself that it can obtain, all entitlements necessary for its development of the Property. Obtaining entitlements shall not include obtaining amendments to City ordinances.

(b) Seller's obligation to sell the Property is contingent upon the following, any or all of which Seller may waive in its sole and absolute discretion by providing written notice to the Buyer:

i. All of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date made and as of each Closing;

ii. Buyer shall have performed, satisfied and complied in all material respects with all agreements, covenants and conditions required hereby to be performed or complied with by Buyer on or before each Closing, including without limitation, payment in full of the Purchase Price; and

iii. Buyer shall have submitted to Seller's governing body the Master Concept Plan, and Seller's governing body shall have approved, by motion or resolution in an open and public meeting, and in Seller's sole discretion, the Master Concept Plan. Buyer acknowledges that Seller's decision to approve, or not approve, the Master Concept Plan for the Property is discretionary and is different from standard regulatory approval required from a governmental body.

If any of those conditions cannot be satisfied on or before the Closing, Buyer or Seller, as applicable, may elect to either: (a) terminate this Agreement by providing written notice thereof to the other party, in which case the Earnest Money and accrued interest shall be returned to the party entitled to it, or (b) waive the condition(s) and proceed to Closing.

8. Buyer's Representations and Warranties. Buyer represents and warrants as follows:

(a) Company Status. Buyer is a limited liability company, duly formed, validly existing and in good standing in the State of Utah.

(b) Authority. Buyer has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Buyer pursuant to this Agreement, and all required actions and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Buyer are and shall be duly authorized to sign the same on Buyer's behalf and to bind Buyer thereto. This Agreement and all documents to be executed pursuant hereto by Buyer are and shall be binding upon and enforceable against Buyer in accordance with their respective terms.

(c) No Breaches. Buyer's obligations contemplated hereby and the execution, delivery and performance of this Agreement by Buyer will not result in a breach of, or constitute a default under any instrument or agreement to which Buyer is bound. Buyer's obligations and responsibilities hereunder are valid and binding obligations of Buyer.

9. Closing Instructions.

(a) Escrow/Closing Instructions. Upon the execution of this Agreement by Buyer and Seller, and the acceptance of this Agreement by Escrow Holder in writing, this Agreement shall constitute the joint escrow instructions of Buyer and Seller to Escrow Holder to open the Escrow. Upon Escrow Holder's receipt of the Earnest Money and written acceptance of this Agreement, Escrow Holder is instructed to act in accordance with the terms of this Agreement. In connection with Closing, Buyer and Seller shall promptly execute general escrow instructions based upon this Agreement at the request of Escrow Holder; provided, however, that if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Upon the occurrence of Closing, Escrow Holder shall pay any sum owed to Seller with immediately available United States federal funds.

(b) Deposit of Documents/Funds by Buyer. On or before the Closing Deadline, Buyer shall deposit the following items into escrow with Escrow Holder, each of which shall be duly executed and acknowledged by Buyer where appropriate (notwithstanding anything to the contrary herein or elsewhere, if Seller fails to timely deposit any documents or funds when required, then Buyer may immediately (or later) withdraw its documents and funds from Escrow without further instructions, and despite any contrary instructions from Seller, and Escrow Holder will comply with any request by Buyer in this regard):

- i. The Cash Balance; and
- ii. All other funds and documents as may reasonably be required by Escrow Holder or Seller to close the Escrow in accordance with this Agreement.

(c) Deposit of Documents/Funds by Seller. On or before the Closing Deadline, Seller shall deposit, or cause to be deposited, the following items into escrow with Escrow Holder, each of which shall be duly executed and acknowledged by Seller where appropriate (notwithstanding anything to the contrary herein or elsewhere, if Buyer fails to timely deposit any documents or funds when required, then Seller may immediately (or later) withdraw its documents and funds from Escrow without further instructions, and despite any contrary instructions from Buyer, and Escrow Holder will comply with any request by Seller in this regard):

- i. A Deed for the Property;
- ii. The Certification;
- iii. Such title affidavits and indemnities as may reasonably be required by the Title Company in order for the Title Company to issue the Title Policy; and
- iv. All other documents as may reasonably be required by Escrow Holder to close the escrow in accordance with this Agreement.

(d) Closing Procedure. Provided that all conditions to the Closing set forth in this Agreement, as applicable, have been satisfied or, as to any condition not satisfied, waived by the party intended to be benefited thereby, Escrow Holder shall conduct the Closing by recording and/or distributing the following documents and funds in the following manner:

- i. Record the Deed in the Official Records of Tooele County, Utah;

ii. Deliver to Seller (a) amounts shown in the Settlement Statement, and (b) copies of all documents deposited with Escrow Holder pursuant to this Agreement.; and

iii. Deliver to Buyer: (a) the original Title Policy (within 30 calendar days after Closing); (b) the original Certification; and (c) copies of all other documents deposited with Escrow Agent pursuant to this Agreement.

(e) Prorations. At Closing, current real property taxes, assessments and personal property taxes with respect to the applicable Property shall be prorated between Buyer and Seller as of the date of Closing. Seller shall be required to pay all greenbelt, rollback or other taxes, if any, that have accrued prior to Closing or that may be triggered due to Closing. If on the date of Closing either applicable assessed value or mill levy for the applicable year cannot be ascertained, real property taxes relative to the Property shall be apportioned on the basis of the assessed value and mill levy for the previous year, and the parties shall make adjustment payments after the Closing based on the actual assessed value and the actual mill levy for the applicable year when such information is available.

(f) Closing Costs. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Buyer shall be responsible for all other escrow fees and closing costs, other than Seller's attorneys' fees.

(g) Title Policy. At Closing, Escrow Holder shall cause the Title Company, at Seller's cost, to issue to Buyer the Title Policy (Standard Owner's Policy). Buyer shall pay all premium amounts for any extended coverage, and any requested endorsements not included in a Standard Owner's Policy, except for such endorsements as are required to cure any objections which Seller has agreed to cure under Section 5(b) *above*, which endorsements shall be paid by Seller at the Closing. Seller shall, without assuming any further risk or obligations, provide such additional documents as may reasonably be required by Title Company in connection with such endorsements or Extended Coverage Policy (if obtained and paid for by Buyer).

(h) Possession. Seller will deliver possession of the Property to Buyer immediately following Closing.

(i) Approval of Closing Documents. All closing documents to be furnished by Buyer or Seller pursuant to this Agreement shall be in form and substance reasonably acceptable to both Buyer and Seller.

10. Seller Disclosure of Agent Status and Brokers' Commissions. The parties acknowledge that CBC Advisors represents both Buyer and Seller in this transaction. Seller will pay a commission per the terms of a separate agreement. Buyer and Seller each warrants that it has had no dealing with any broker or agent in connection with the transaction contemplated by this Agreement and each agrees to indemnify and hold the other harmless from and against any claims by any broker, agent or person claiming a commission or other form of compensation by virtue of having dealt therewith with regard to this transaction.

**DISCLOSURE OF PRINCIPAL AS LICENSEE - Personal Interest**. One or more of the principals of Buyer's entity are a real estate broker or sales agent licensed as such under the laws of the State of Utah, who may share in the brokerage fee paid for this transaction.

Commented [RB6]: I need to see this agreement. The RDA needs to approve this agreement.

Commented [RB7]: There was an empty text box here, which I deleted.

Default and Liquidated Damages. If Buyer defaults in any obligation hereunder and does not cure such default within seven calendar days after receiving written notice from Seller, Seller may elect as its sole remedy to terminate this Agreement and receive the Earnest Money deposited as of such date together with accrued interest as liquidated damages for Buyer's default. The parties further agree that this default and liquidated damages provision and the amounts set forth as liquidated damages represent a reasonable estimate of the value of the anticipated damages, losses, costs and expenses which would be incurred by Seller due to a breach of this Agreement by Buyer. If Seller defaults in any obligation hereunder and does not cure such default within seven calendar days after receiving written notice thereof, in addition to return of the Earnest Money Deposit with interest thereon, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law.

11. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Buyer: Kimball Investment Company  
1000 S Main Suite 104  
Salt Lake City UT 84101

If to Seller: Tooele City Redevelopment Agency  
Attention: RDA Director  
90 North Main Street  
Tooele, UT 84074

*With a copy to:*

Tooele City  
90 North Main Street  
Tooele, UT 84074  
Attn: City Attorney

12. Miscellaneous.

(a) Time of Essence. Time is of the essence of this Agreement.

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

(c) Assignment; Amendment. Buyer shall have the right to assign its rights and obligations under this Agreement, by giving prior written notice to Seller prior to the date of Closing and further provided that such assignee assume all of the obligations of Buyer hereunder, to any Affiliate, and no one else. Any purported or attempted assignment or delegation by Buyer to any person other than an Affiliate, without obtaining Seller's prior written consent, shall be

void and of no effect. Seller shall neither assign its rights nor delegate its obligations hereunder without obtaining Buyer's prior written consent, which may be withheld in Buyer's sole and absolute discretion. Any purported or attempted assignment or delegation in without obtaining Buyer's prior written consent shall be void and of no effect. This Agreement may be amended only in writing authorized and signed by both Buyer and Seller.

(d) Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. In addition, the parties agree that facsimile and electronically generated signature pages shall be as valid as any signature pages bearing original signatures, provided, that upon the written request of either party, the other party shall provide counterparts containing original signatures.

(e) Entire Agreement. Seller and Buyer agree that this Agreement states the entire agreement between the parties and that no promises, representations or agreements other than those herein contained have been made or relied upon.

(f) No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.

(g) Attorneys' Fees. If any action is brought by either party on account of any breach of or to enforce or interpret any of the provisions of this Agreement, or if either party incurs attorneys' fees on account of any breach of any of the provisions of this Agreement, the party prevailing or successfully enforcing its rights hereunder shall be entitled to recover from the other party all costs and expenses, including attorneys' fees, reasonably incurred in connection therewith.

(h) Further Assurances. The parties each agree to perform, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

(i) Binding Effect. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and permitted assigns.

13. Land Use Approvals. At any time during the term of this Agreement, Buyer may seek the rezoning and/or subdivision of the Property, including any and all permits, licenses and other land use approvals (both preliminary and final) required for the development of Buyer's Project (collectively, the "Land Use Approvals"). However, Buyer cannot obtain any Land Use Approvals that will become before to the Closing Deadline or which will be binding on Seller if this Agreement is terminated prior to the Closing for any reason. Seller will reasonably cooperate with Buyer in obtaining the Land Use Approvals, which cooperation may include, but not be limited to, joining in applications, providing information, data, and other reports in Seller's possession and control, attending and testifying in favor of (or if permitted by the local authority, indicating by written correspondence that Seller has no objection to) such Land Use Approvals at meetings and hearings, and providing such other assistance as Buyer may reasonably request from time to time. Seller's cooperation is conditioned upon full compliance with federal, state, and local ordinances and this Agreement and upon a finding that the Land

Commented [RB8]: Something is missing here.

Use Approvals are in the best interest of the health, safety, and general welfare of Tooele City. All of Seller's obligations under this Section 14 are conditional upon the Land Use Approvals being consistent with the Master Concept Plan approved (if at all) by Seller.

*[End of Terms – Signature Page Follows]*

**Commented [RB9]:** This clause is necessary to prevent Buyer from forcing Seller to cooperate with and support land use approvals, i.e., a rezone, that the City does not want, i.e., 36 residential units to the acre. The City Council should not be required by this contract to waive its legislative prerogatives.

IN WITNESS WHEREOF, Buyer and Seller have executed this REAL ESTATE PURCHASE CONTRACT as of the date set forth above.

**SELLER:**

REDEVELOPMENT AGENCY OF TOOELE CITY,  
a Utah political subdivision

\_\_\_\_\_  
Chair

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Roger Evans Baker  
Attorney for RDA

**BUYER:**

M-53 ASSOCIATES, LLC  
a Utah limited liability company

\_\_\_\_\_  
By: Victor Kimball  
Its: Manager/Member

ESCROW HOLDER ACCEPTANCE

This Real Estate Purchase Contract between REDEVELOPMENT AGENCY OF TOOELE CITY, a political subdivision of the State of Utah as "Seller" and M-53 ASSOCIATES, LLC, a Utah limited liability company as "Buyer" (the "Agreement") is accepted and the Escrow is opened this \_\_\_\_ day of \_\_\_\_\_, 2018. Escrow Holder hereby agrees to act as the Escrow Holder as defined in the Agreement and to perform its duties in accordance with the provisions of the Agreement. Further, Escrow Holder agrees to act as "the person responsible for closing" the Purchase and Sale Transaction within the meaning of Section 6045(a) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

ESCROW HOLDER: METRO NATIONAL TITLE COMPANY

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

**EXHIBIT A**

*Map of Property*

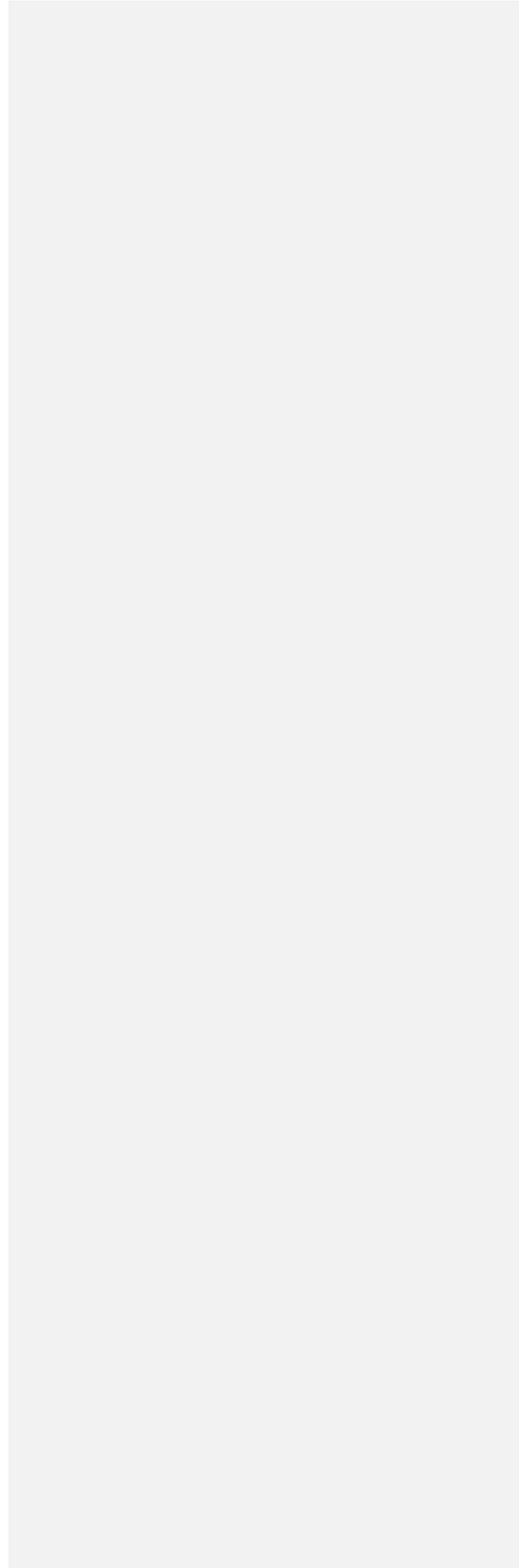
**EXHIBIT B**

*Form of Deed*

*[Attached]*

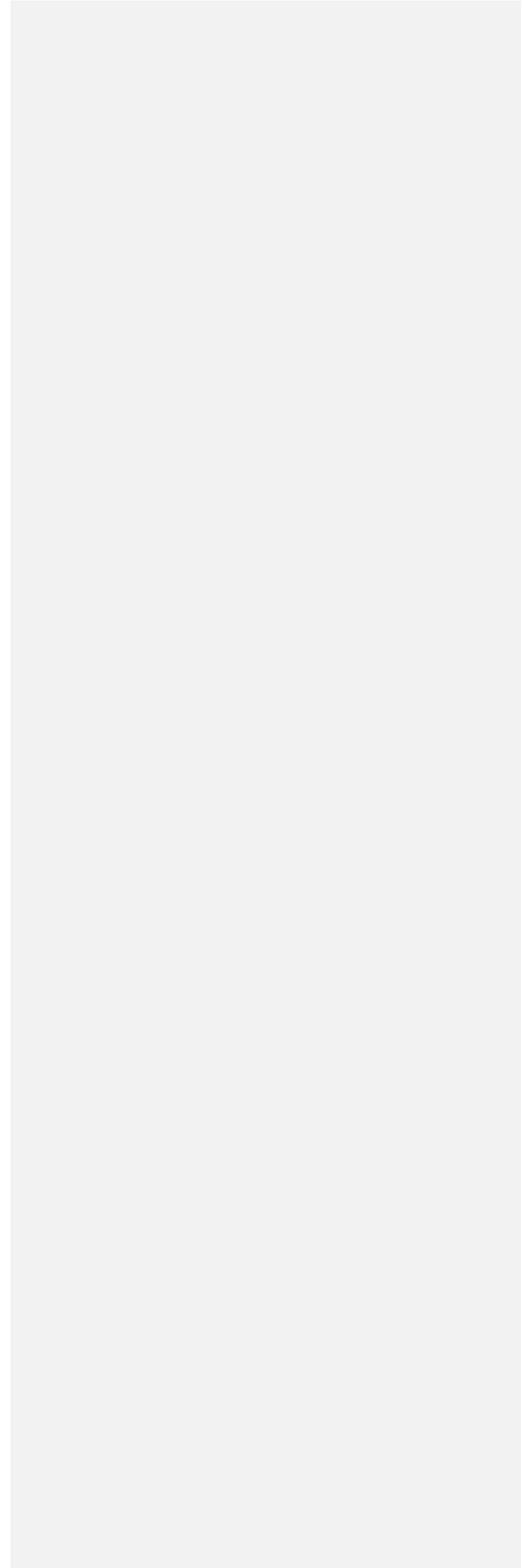
**Exhibit 1**

*[to be attached at Closing]*



**EXHIBIT C**

*Form of Deed of Trust*



Tooele City Redevelopment Agency of Tooele City, Utah  
Business Meeting Minutes

Date: Wednesday, February 21, 2018  
Time: 7:30 p.m.  
Place: Tooele City Hall, Council Chambers  
90 North Main Street, Tooele, Utah

**Board Members Present:**

Steve Pruden  
Brad Pratt, Chairman  
Dave McCall  
Scott Wardle  
Melodi Gochis

**City Employees Present:**

Mayor Debra E. Winn  
Jim Bolser, Community Development and Public Works Director  
Chief Ron Kirby, Police Department  
Roger Baker, City Attorney  
Glenn Caldwell, Finance  
Michelle Pitt, City Recorder  
Lisa Carpenter, Deputy City Recorder  
Paul Hansen, City Engineer  
Heidi Peterson, Communities That Care Director  
Randy Sant, Economic Development Consultant  
Minutes prepared by Amanda Graf

Chairman Pratt called the meeting to order at 7:28 p.m.

**1. Open RDA Meeting**

The meeting was called to order by Chairman Pratt.

**2. Roll Call**

Scott Wardle, Present  
Brad Pratt, Present  
Steve Pruden, Present  
Dave McCall, Present  
Melodi Gochis, Present

**3. Close Meeting**

Chairman Pratt explained that the RDA was able to discuss their business at their prior work session meeting and take care of all items of business at that time.

**Board Member Pruden moved to forgo the closed RDA meeting to discuss property acquisition.** Board Member Gochis seconded the motion. The vote was as follows: The vote was as follows: Board Member McCall, "Aye," Board Member Pruden, "Aye," Chairman Pratt, "Aye," Board Member Wardle, "Aye," Board Member Gochis, "Aye." The motion passed.

#### **4. Adjourn**

**Board member Pruden moved to adjourn the meeting.** Board Member Gochis seconded the motion. The vote was as follows: The vote was as follows: Board Member McCall, "Aye," Board Member Pruden, "Aye," Chairman Pratt, "Aye," Board Member Wardle, "Aye," Board Member Gochis, "Aye." The motion passed.

The meeting adjourned at 7:30 p.m.

*The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.*

Approved this 7th day of March, 2018

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Brad Pratt, RDA Chair