

When Recorded Return To:
The Ensign-Bickford Company
c/o D. Brent Rose, Esq.
One Utah Center, Suite 1300
201 South Main Street
Salt Lake City, UT 84111-2216

Above Space For Recorder's Use Only

ASSIGNMENT AND ASSUMPTION AGREEMENT

**Pertaining to that Certain
Boundary Adjustment and Development Agreement
Harmony Ridge Development Project**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“*Agreement*”), dated as of the 20 of July, 2018, is entered into by and between THE ENSIGN-BICKFORD COMPANY, a Connecticut corporation (as “*Assignor*”), and TERRACOM DEVELOPMENT, LLC, a Utah limited liability company (“*Assignee*”). Assignor and Assignee are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

A. Assignor and Mapleton City, a Utah municipal corporation (the “*City*”), have entered into that certain Boundary Adjustment and Development Agreement, Harmony Ridge Development Project, dated June 7, 2011, recorded under Entry No. 56319:2011, on August 9, 2011, in the office of the County Recorder, Utah County, Utah (the “*Development Agreement*”), a copy of which is attached to this Agreement as EXHIBIT “A”, relating to the development of certain property owned by Assignor situated in Mapleton City, Utah (the “*Property*”), as described therein.

B. Section 8 of the Development Agreement (“*Section 8*”), specifically provides the following with respect to the assignment of rights and interests and the delegation and assumption of obligations under the Development Agreement upon transfer of the Property by Assignor (EBCo therein):

8.1 Successors-in-interest and Permitted Assigns. This Agreement shall be binding upon and inure to the benefit of EBCo and its successors-in-interest and permitted assigns in the ownership or development of all or any portion of the Property. Notwithstanding the foregoing, the purchaser of the Property or any portion thereof shall be responsible for performance of EBCo’s obligations hereunder as to the portion of the Property so transferred, subject to Section 8.2. Unless expressly stated otherwise, any reference to EBCo herein shall be applicable to its successors-in-interest and permitted assigns.

ENT 68661:2018 PG 1 of 10
Jeffery Smith
Utah County Recorder
2018 Jul 20 04:47 PM FEE 43.00 BY CS
RECORDED FOR 1st Liberty Title LC
ELECTRONICALLY RECORDED

When Recorded Return To:
The Ensign-Bickford Company
c/o D. Brent Rose, Esq.
One Utah Center, Suite 1300
201 South Main Street
Salt Lake City, UT 84111-2216

ENT 80478:2018 PG 3 of 70

Above Space For Recorder's Use Only

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Pertaining to that Certain
Boundary Adjustment and Development Agreement
Harmony Ridge Development Project

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RECITALS

A. Assignor and Mapleton City, a Utah municipal corporation (the "*City*"), have entered into that certain Boundary Adjustment and Development Agreement, Harmony Ridge Development Project, dated June 7, 2011, recorded under Entry No. 56319:2011, on August 9, 2011, in the office of the County Recorder, Utah County, Utah (the "*Development Agreement*"), a copy of which is attached to this Agreement as EXHIBIT "A", relating to the development of certain property owned by Assignor situated in Mapleton City, Utah (the "*Property*"), as described therein.

B. Section 8 of the Development Agreement ("*Section 8*"), specifically provides the following with respect to the assignment of rights and interests and the delegation and assumption of obligations under the Development Agreement upon transfer of the Property by Assignor (EBCo therein):

8.1 Successors-in-interest and Permitted Assigns. This Agreement shall be binding upon and inure to the benefit of EBCo and its successors-in-interest and permitted assigns in the ownership or development of all or any portion of the Property. Notwithstanding the foregoing, the purchaser of the Property or any portion thereof shall be responsible for performance of EBCo's obligations hereunder as to the portion of the Property so transferred, subject to Section 8.2. Unless expressly stated otherwise, any reference to EBCo herein shall be applicable to its successors-in-interest and permitted assigns.

8.2 Release of EBCo. ... in the event of a transfer of all or a portion of the Property, EBCo shall enter into a written assumption agreement with the transferee of EBCo's obligations under this Agreement, a fully executed copy of which shall be delivered to the City, wherein the transferee, among other things, shall certify that said transferee has read and understands the terms and provisions of this Agreement, that it assumes all of EBCo's obligations thereunder with respect to the portion of the Property transferred, and that it otherwise expressly agrees to be bound by this Agreement in conformance with its applicable terms and conditions; whereupon, upon delivery to the City, the transferee shall be deemed fully substituted in the place of EBCo under this Agreement as to the portion of the Property transferred, and EBCo shall be released from any further obligation with respect to this Agreement as to the parcel transferred.

C. Assignor and Assignee have entered into that certain Real Estate Purchase and Sale Agreement, dated effective as of the 18th day of May, 2018 (the "REPC"), which REPC is attached to this Agreement as EXHIBIT "B", whereby Assignor agrees to sell and Assignee agrees to purchase the entirety of the Property which is subject to the Development Agreement. This Agreement shall be effective as of the date and time of closing of the purchase and sale of the Property under the REPC (the "Effective Date").

D. Assignor desires to assign all of Assignor's rights and interests and delegate all of its duties and obligations in and under the Development Agreement to Assignee, and Assignee desires to accept such assignment of all of Assignor's rights and interests and assume all of Assignor's duties and obligations in and under the Development Agreement, as of the Effective Date, upon the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Assignor and Assignee agree as follows:

AGREEMENT

Section 1. Assignment and Delegation; Acceptance and Assumption. Subject to the provisions of Section 2 of this Agreement, and in conformance with the authority and requirement of Section 8 the Development Agreement:

1.1. Assignor hereby assigns, sets over and transfers to Assignee, and its successors-in-interest and assigns, all of Assignor's legal and beneficial rights and interests in, under and pursuant to the Development Agreement, and delegates to Assignee all of Assignor's duties, responsibilities and obligations to be performed by Assignor under the Development Agreement; and

1.2. Assignee hereby:

{01375092-1 }

(1) certifies that Assignee has read and understands all of the terms and conditions of the Development Agreement;

(2) acknowledges and agrees that it takes the Property subject to the terms and conditions of the Development Agreement;

(3) accepts the assignment of all of Assignor's legal and beneficial rights and interests in, under and pursuant to the Development Agreement; and

(4) assumes all of Assignor's duties and obligations under the Development Agreement, and agrees to be bound by and perform all of the terms, covenants and conditions previously to be performed by Assignor as set forth in the Development Agreement.

Section 2. Assignor's Continuing Obligation.

2.1. Notwithstanding the provisions of Section 1 of this Agreement, Assignor shall retain and perform those obligations under the Development Agreement which are designated to be retained and performed by Assignor as the Seller under and pursuant to Section 2.4(a) of the REPC, and Assignor shall have and retain those rights and interests under the Development Agreement which are designated to be had and retained by Assignor as the Seller under and pursuant to Section 2.5 of the REPC. The Parties hereby acknowledge and agree that all Boundary Adjustment Fee Credits to which Seller is entitled, and all other reimbursement or compensation due and owing by Mapleton City to the Seller pursuant to the provisions of Section 5.5 and Section 6.2 of the Development Agreement, as amended, shall belong solely to the Seller and that Buyer shall have no right or entitlement to or any interest in the same.

2.2. Notwithstanding the provisions of Section 1.1 and 4 of this Agreement, Assignee shall be responsible to the City for the performance of the entire Development Agreement. In the event there is a question or dispute regarding the performance of any portion of the Development Agreement, the City shall have the right to require Assignee to perform the obligations of the Development Agreement.

Section 3. Assignee's Indemnity. Assignee covenants and agrees to indemnify, defend, and hold Assignor, and any subsidiary or affiliate of Assignor, their directors, officers, members, managers, partners, employees, stockholders, representatives and agents and their respective successors and assigns, harmless from and against any and all actions, suits, proceedings, judgments, claims, causes of action, damages and liabilities, and all costs and expenses (including, without limitation, reasonable attorneys' and other consultants' fees and costs) incurred in connection therewith, based upon or arising out of any breach or alleged breach of (i) the Development Agreement occurring or alleged to have occurred from and after the Effective Date; and/or (ii) this Agreement.

Section 4. Assignor's Representations and Indemnity. Assignor hereby represents that Assignor has performed all of Assignor's obligations under the Development Agreement required to be performed prior to the Effective Date, subject to those continuing obligations

retained and remaining to be performed by Assignor as referenced in Section 2 of this Agreement. Assignor covenants and agrees to indemnify, defend, and hold Assignee, and any subsidiary or affiliate of Assignee, their directors, officers, members, employees, stockholders, representatives and agents and their respective successors and assigns, harmless from and against any and all actions, suits, proceedings, judgments, claims, causes of action, damages and liabilities, and all costs and expenses (including, without limitation, reasonable attorneys' and other consultants' fees and costs) incurred in connection therewith, based upon or arising in connection with (i) the obligations to be performed by Assignor under the Development Agreement occurring or alleged to have occurred prior to the Effective Date, and those obligations to be performed by Assignor from and after the Effective Date pursuant to Section 2 hereof; and/or (ii) this Agreement.

Section 5. Delivery of Agreement to the City; Release of Assignor. The Parties hereby acknowledge and agree that, in conformance with the provisions of Section 8 of the Development Agreement, a fully executed copy of this Agreement (with the amount of the Purchase Price as set forth therein redacted), shall be delivered by the Assignor to the City, whereupon, the Assignee shall be deemed fully substituted in the place of Assignor under this Agreement as to the Property, and Assignor shall be released from any further obligation with respect to the Development Agreement as to the Property, subject and limited to Assignor's continuing and remaining obligations under the Development Agreement as set forth in Section 2 of this Agreement

Section 6. Miscellaneous Provisions.

6.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and incorporates all prior agreements with respect to the subject matter hereof.

6.2 Modifications. This Agreement shall not be amended or otherwise modified except by a subsequent writing duly executed by the Parties.

6.3 Attorneys' Fees. If a Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, in an amount to be fixed by the court in the same action. The term "legal proceedings" as used above shall be deemed to include appeals from a lower court judgment and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters.

6.4 Interpretation. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.

6.5 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, successors-in-interest and assigns.

6.6 Governing Law; Jurisdiction. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah. The Parties agree and hereby consent and agree that any legal action with respect to this Agreement may be commenced and maintained in either the local courts in the County in which the Property is located, or in the United States District Court for the District in which the Property is located, and each Party hereby consents to the personal and subject matter jurisdictions of those courts. Each Party also agrees that venue is proper in either of those courts and waives any objection to venue.

6.7 Severability. If any provision of this Agreement is held to be void or unenforceable, in whole or in part: (i) such holding shall not affect the validity and enforceability of the remainder of this Agreement, including any other provision, paragraph or subparagraph, and (ii) the Parties agree to attempt in good faith to reform such void or unenforceable provision to the extent necessary to render such provision enforceable and to carry out its original intent.


6.9 Warranty of Authority. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

WITNESS, the hand of Grantor this 19 day of July, 2018.

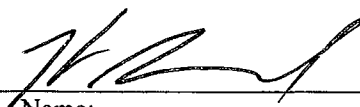
ASSIGNOR:

THE ENSIGN - BICKFORD COMPANY,
a Connecticut corporation

By: 
Name: Denise Grant
Its: Assistant Treasurer

ASSIGNEE:

TERRACOM DEVELOPMENT LLC,
a Utah limited liability company

By: 
Name:
Its: Manager

**MAPLETON CITY
ACKNOWLEDGMENT AND RECEIPT**

Mapleton City hereby acknowledges receipt of this fully executed Assignment and Assumption Agreement as of this 19th day of July, 2018, which is hereby delivered to the City pursuant to Section 8.2 of the Development Agreement.

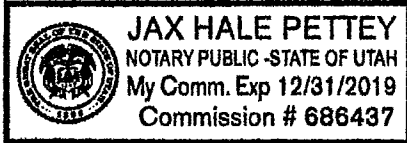
Mapleton City, Utah

By: [Signature]
Its: Danner

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 19 day of July, 2018, by Kinnen Sandlin, the manager, of Terracom Development LLC, a Utah limited liability company.



[Signature]
NOTARY PUBLIC

STATE OF CONNECTICUT)
 : ss.
COUNTY OF Hartford)

The foregoing instrument was acknowledged before me this 19th day of July, 2018, by Denise Grant, the Assistant Treasurer of The Ensign-Bickford Company, a Connecticut corporation.

**JAMES J. SCHRIERT
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2022**

[Signature]
NOTARY PUBLIC

PARCEL "A"

A portion of Sections 26, 27, 34, & 35, Township 8 South, Range 3 East, Salt Lake Base & Meridian, located in Spanish Fork, Utah, more particularly described as follows:

Beginning at the South 1/4 Corner of Section 27, T8S, R3E, S.L.B.& M.; thence $N0^{\circ}11'11''W$ along the 1/4 Section line 1,346.48 feet to the southwest corner of lands of Utah Power & Light Company; thence along said lands $S89^{\circ}30'16''E$ 1,325.51 feet to the west side of 'Parcel C' as described on a Survey Plan prepared by Jack Johnson Company and filed with the County Surveyor's Office; thence along said Parcel the following 2 (two) courses: $S0^{\circ}10'05''E$ 12.85 feet; thence $N89^{\circ}58'03''E$ 1,325.46 feet to east line of said Section 27; thence $N0^{\circ}09'03''W$ along the Section line 1,018.03 feet to said lands of Utah Power & Light; thence $N89^{\circ}49'10''E$ along said lands 1,287.28 feet to the 1/16th (40 acre) line; thence $S0^{\circ}10'07''W$ along the 1/16 Section line 1,116.04 feet; thence $N89^{\circ}29'09''E$ 15.00 feet; thence $S17^{\circ}29'47''E$ 245.02 feet; thence $S54^{\circ}32'32''W$ 91.14 feet; thence $S89^{\circ}57'45''W$ 15.26 feet to the 1/16 Section line; thence $S0^{\circ}10'07''W$ along said line 948.02 feet to the Southeast Corner of the SW1/4 of the SW1/4 of Section 26; thence $S0^{\circ}23'11''E$ along the 1/16th Section line 1,328.18 feet to the Southeast Corner of the NW 1/4 of the NW 1/4 of Section 35; thence $N89^{\circ}30'31''E$ along the 1/16th Section Line 54.41 feet to the westerly line of lands of Utah Power & Light; thence along said property the following four (4) courses: $S0^{\circ}17'59''E$ 21.82 feet; thence $N89^{\circ}42'01''E$ 91.58 feet; thence $S17^{\circ}31'05''W$ 2,212.67 feet; thence $S42^{\circ}31'08''E$ 694.61 feet to the 1/16th Section line; thence $S2^{\circ}35'19''W$ along the 1/16th Section line 1,347.76 feet to the Southeast Corner of the SW1/4 of the SW1/4 of Section 35; thence $N89^{\circ}36'11''W$ along the Section line 687.72 feet to the easterly right-of-way line of US Highway 6 & 89; thence $N35^{\circ}22'30''W$ along said right-of-way line 4,359.23 feet; thence northwesterly along the arc of a 490.00 foot radius non-tangent

curve to the left (radius bears: N65°20'18"W) 444.99 feet through a central angle of 52°02'00" (chord: N1°21'18"W 429.86 feet) to a point of reverse curvature; thence along the arc of a 310.00 foot radius curve to the right 243.50 feet through a central angle of 45°00'18" (chord: N4°52'09"W 237.29 feet); thence N17°38'00"E 78.10 feet; thence along the arc of a 600.00 foot radius curve to the right 344.24 feet through a central angle of 32°52'21" (chord: N34°04'11"E 339.54 feet) to the southerly line of that real property described in Deed Entry No. 43011:2011; thence along said real property the following twelve (12) courses: S36°54'22"E 162.96 feet; thence along the arc of a 597.00 foot radius curve to the left 243.00 feet through a central angle of 23°19'19" (chord: S48°34'01"E 241.33 feet); thence along the arc of a 797.00 foot radius curve to the left 363.70 feet through a central angle of 26°08'47" (chord: S73°18'04"E 360.56 feet); thence along the arc of a 347.00 foot radius curve to the left 139.92 feet through a central angle of 23°06'12" (chord: N82°04'26"E 138.97 feet); thence N70°31'20"E 12.86 feet; thence along the arc of a 347.00 foot radius curve to the left 350.85 feet through a central angle of 57°55'53" (chord: N41°33'24"E 336.09 feet); thence S77°24'33"E 20.00 feet; thence northwesterly along the arc of a 367.00 foot radius curve to the left (radius bears: N77°24'34"W) 175.20 feet through a central angle of 27°21'08" (chord: N1°05'07"W 173.54 feet); thence N14°45'42"W 311.55 feet; thence along the arc of a 719.92 foot radius curve to the right 263.88 feet through a central 21°00'04" (chord: N4°15'40"W 262.41 feet); thence N39°54'41"W 6.79 feet; thence N50°05'19"E 7.16 feet; thence northeasterly along the arc of a 719.92 foot radius non-tangent curve to the right (radius bears: S82°58'32"E) 105.54 feet through a central angle of 8°23'58" (chord: N11°13'27"E 105.44 feet) to the north line of Section 34; thence N89°29'50"W along the Section Line 715.86 feet to the westerly line of that real property described in Deed Entry No. 43011:2011; thence along said westerly line the following five (5) courses: S16°13'00"W 514.06 feet; thence southwesterly along the arc of a 52.57 foot radius non-tangent curve to the right (radius bears: N73°37'30"W) 42.52 feet through a central angle of 46°20'32" (chord: S39°32'46"W 41.37 feet); thence S62°44'33"W 10.09 feet; thence southwesterly along the arc of a 767.15 foot radius non-tangent curve to the right (radius bears: N25°49'23"W) 166.98 feet through a central angle of 12°28'16" (chord: S70°24'45"W 166.65 feet); thence southwesterly along the arc of a 778.48 foot radius non-tangent curve to the left (radius bears: S39°31'08"E) 173.74 feet through a central angle of 12°47'13" (chord: S44°05'16"W 173.37 feet) to the north line of that real property described in Deed Entry No. 2015:1953; thence northeasterly along the arc of a 766.34 foot radius non-tangent curve to the right (radius bears: N2°00'08"W) 103.18 feet through a central angle of 7°42'52" (chord: N88°08'42"W 103.10 feet); thence N84°17'16"W 144.41 feet; thence along the arc of a 523.14 foot radius curve to the left 112.57 feet through a central angle of 12°19'44" (chord: S89°32'52"W 112.35 feet); thence S83°23'00"W 202.69 feet; thence N0°13'27"E 62.87 feet; thence N89°58'12"W 133.67 feet; thence northwesterly along the arc of a 2,662.80 foot radius non-tangent curve to the right (radius bears: N61°16'27"E) 596.31 feet through a central angle of 12°49'51" (chord: N22°18'37"W 595.07 feet); thence S87°33'00"E along a fence line 362.50 feet; thence North 128.00 feet to the point of beginning.

Contains: ± 429.12 Acres

A portion of the NW1/4 of Section 35, Township 8 South, Range 3 East, Salt Lake Base & Meridian, located in Spanish Fork, Utah, more particularly described as follows:

Beginning at the Southwest Corner of the SE1/4 of the NW1/4 of Section 35, T8S, R3E, S.L.B.& M.; thence N0°23'11"W along the 1/16th (40 acre) Section line 8.60 feet to the easterly line of lands of Utah Power & Light Company; thence along said property the following 3 (three) courses: N17°31'05"E 1,362.30 feet; thence N89°42'01"E 21.67 feet; thence N17°10'02"E 25.04 feet; thence N89°30'31"E along the 1/16th Section line 793.68 feet to the Northeast Corner of the SE1/4 of the NW1/4 of Section 35, thence S1°01'07"W along the 1/4 Section line 1,335.15 feet to the center of said Section 35; thence S89°49'42"W along the 1/4 Section line 1,208.98 feet to the point of beginning.

Contains: ±30.98 Acres

TAX ID: 27:056:0051

TAX ID: 27:056:0045

EXHIBIT "A"
DEVELOPMENT AGREEMENT



ENT 56319:2011 PG 1 of 662
JEFFERY SMITH
UTAH COUNTY RECORDER
2011 AUG 09 2:30 PM FEE 0.00 BY EQ
RECORDED FOR MAPLETON CITY CORPORATION

WHEN RECORDED, RETURN TO:
Mapleton City Recorder
Mapleton City
125 West Community Center Way
Mapleton, UT 84664

**BOUNDARY ADJUSTMENT AND DEVELOPMENT AGREEMENT
HARMONY RIDGE DEVELOPMENT PROJECT**

THIS BOUNDARY ADJUSTMENT AND DEVELOPMENT AGREEMENT ("Agreement"), is made and entered into as of this 7th day of June, 2011, by and between **The Ensign-Bickford Company**, a Connecticut corporation ("EBCo"), and **Mapleton City**, a Utah municipal corporation (the "City"). EBCo and the City are sometimes referred to herein individually as a "Party" and collectively as the "Parties." All Code references, unless otherwise indicated, are to the Mapleton City Code (the "City Code")

RECITALS

A. EBCo is the owner of approximately 481.28 acres of land presently within the municipal boundaries of Spanish Fork City, Utah, situated immediately adjacent to the southern boundary of the City, north of U.S. Highway 6 and east of U.S. Highway 89, as more particularly described in EXHIBIT "A" attached hereto and incorporated by reference herein (the "Property").

B. Pursuant to the authority of Title 10, Chapter 2, Section 419, Utah Code Ann., 1953, as amended, and in conformance with the legal requirements thereof, Spanish Fork City and the City have cooperatively initiated legal proceedings to adjust the common boundary of the two cities whereby the Property shall be removed from the municipal boundaries of Spanish Fork City and be incorporated into the municipal boundaries of the City (the "Boundary Adjustment").

C. It is the purpose and intent of EBCo to develop, as provided for in Title 18, Chapter 78 of the City Code, a large, mixed-use, master planned development project on the Property to be known as "Harmony Ridge" (the "Harmony Ridge Project").

D. The Parties acknowledge and agree that the City Code does not contemplate the development of a master planned development project of the size and scope contemplated by the Harmony Ridge Project, and as such, there are zoning and development provisions of the City Code that either do not apply or may need to be modified by agreement to accommodate the Harmony Ridge Project.

E. EBCo is desirous of entering into this Agreement with the City, and the City is desirous of entering into this development agreement with EBCo pursuant to Title 18, Chapter 84, Section 400 of the City Code, as a binding contract between the Parties for the purposes of establishing a zone for the Property, setting forth the terms, conditions, procedures and time parameters pursuant to which the Harmony Ridge Project shall be developed, and

creating, subject to the terms and conditions of this Agreement, vested rights in the Parties with respect to density, permitted uses, conditional uses and related matters, as set forth herein, subject to the provisions of Section 7.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS; CODE REFERENCES. The Recitals set forth above are hereby incorporated into and made a part of this Agreement as though fully set forth herein.

2. COMPLETION OF THE BOUNDARY ADJUSTMENT. The lawful Boundary Adjustment as provided in Recital B shall be an express condition precedent to this Agreement. Certified copies of the duly executed ordinances of the City and Spanish Fork City effectuating the Boundary Adjustment shall, upon enactment, be attached hereto as EXHIBIT "B" and incorporated by reference herein.

3. FINDINGS.

3.1. The City has reviewed the long-term development plan for the Harmony Ridge Project proposed by EBCo as set forth herein, and finds that the Harmony Ridge Project is a unique well planned development that would not be possible under one of the City's existing zoning classifications as required for PD Planned Development Zones under Section 18.78.010 of the City Code.

3.2. The City, in conformance with the requirements of Section 18.84.400 B. 2 of the City Code, finds that: (i) the Harmony Ridge Project will be in conformity with the requirements of the City's overall general plan and capital improvements program and requirements; (ii) the Harmony Ridge Project should have a significant, positive impact on the City; (iii) upon development over time, given market and other development considerations, the Harmony Ridge Project will bring to the City a new and desirable residential community as well as provide significant commercial development with its associated enhancement of the tax base of the City, and (iv) all improvements associated with the Harmony Ridge Project should be a substantial benefit to the City, if developed as proposed herein.

4. VESTED RIGHTS.

4.1 Vested Rights. This Agreement shall, subject to the terms and conditions hereof, vest in EBCo as the owner of the Property and the Harmony Ridge Project, and EBCo's successors-in-interest and permitted assigns, effective the date hereof, the following:

4.1.1. **Development Areas.** The development plan for the Harmony Ridge Project ("*Development Plan*"), entails five (5) development areas ("*Development Areas*"), as follows: (i) a Residential Detached Development Area, (ii) a Residential Attached Development Area (iii) a Flex Development Area, (iv) a Commercial/Retail/Mixed Development Area, and (v) a Commercial/Light Industrial Development Area, together with intervening open space/public use areas ("*Open Space Areas*"), all as depicted in the "*Development Plan*" attached as EXHIBIT "C" hereto and incorporated by reference herein. The Harmony Ridge Project shall be developed in conformance with and be governed by the Development Plan.

4.1.2 **Harmony Ridge District.** In conformance with the requirements of Title 18 of the City Code, a *PD-3 PLANNED DEVELOPMENT - HARMONY RIDGE DISTRICT* ("*Harmony Ridge District*"), has been legally and finally established by the City for the Property consistent with the terms and provisions of this Agreement. The Harmony Ridge District, a copy of which is attached hereto as EXHIBIT "D" and incorporated by reference herein, sets forth the authorized land uses within the respective Development Areas of the Harmony Ridge Project. The Harmony Ridge District shall be in full force and effect as of and contemporaneously with the effective date of the Boundary Adjustment and this Agreement.

4.1.3 **Density.** EBCo shall have the vested right, in accordance with the terms and conditions of this Agreement, to develop the Property over time, as market and other conditions dictate, as determined by EBCo, and to develop within the Harmony Ridge Project up to a total of 1,050 equivalent residential units ("ERUs"), consisting of single family and multi-family residential uses and equivalent commercial and industrial uses, in conformance with the "Density Plan" attached as EXHIBIT "E" hereto and incorporated by reference herein (the "*Density Plan*"), and subject to the following:

(1) The Parties hereby acknowledge and agree that the ERU densities allowed herein are determined and limited by sewer upgrades within the existing Mapleton sanitary sewer system and the limited sanitary sewer trunk line capacity and sanitary sewer treatment plant capacity available for service to the Property. Notwithstanding the foregoing, subject to this Agreement, the density vested hereby shall not be less than 1,050 ERUs.

(2) Of the total 1,050 ERUs, a minimum of 200 ERUs shall be allocated to the Commercial/Retail/Mixed Development Area and the Commercial/Light Industrial Development Area, and a maximum of 850 ERUs shall be allocated among the various residential use areas as identified in the Development Plan, subject to the provisions of Section 4.1.3(3) below. ERU equivalency for commercial, retail and industrial use within the Commercial/Retail/Mixed Development Area and the Commercial/Light Industrial Development Area will be determined according to standard engineering practice in consideration of the proposed land use and an anticipated sewer discharge rate of 400 gallons per day per ERU, in conformance with the residential equivalency tables set forth in the administrative rules of the Utah Division of Environmental Quality.

(3) EBCo may freely transfer ERUs from one or more Development Areas to other Development Areas within the Harmony Ridge Project, subject to the density transfer requirements set forth in Section 18.78 of the City Code; except that: (i) the density subsequent to the transfer shall not exceed the total densities allowed for all areas within the Harmony Ridge Project and (ii) the ERUs associated with the Commercial/Retail/Mixed Development Area shall not be less than 200.

4.1.4 **Design Standards.** The appropriate design standards and specifications ("*Design Standards*"), specifically tailored for each distinct land use within a given Development Area, taking into account the characteristics unique to each said Development Area and the overall Harmony Ridge Project theme, shall be as follows:

(1) **Building and Landscape Design Standards.** The Building and Landscape Design Standards proposed for all residential, commercial, retail and light industrial development within the Harmony Ridge Project, and the standards and specifications (including lot areas, building setbacks, frontage, building heights, parking, etc.), are set forth in the "Harmony Ridge Residential Design Standards," EXHIBIT "F-1", and the Harmony Ridge Commercial/ Industrial Design Standards, EXHIBIT "F-2." attached hereto and incorporated by

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reference herein. In the event there is an inconsistency between the PD-3 Zone Text and Exhibits F-1 and F-2, then the PD-3 Zone Text shall be controlling.

(2) Parks and Open Space Plan and Design Standards. The parks, open space, trails and recreation amenities (collectively, the "Park Amenities"), to be developed by EBCo within the Harmony Ridge Project are configured and depicted on the "Parks and Open Space Plan and Design Standards" attached as EXHIBIT "G" hereto and incorporated by reference herein. The design standards for the Park Amenities shall be established in conformance with all applicable provisions of Chapter 17.18 Trail Location and Construction Standards of the City Code, subject to the provisions of Section 5.2.8 herein.

(3) Other. Other appropriate design standards and specifications, not inconsistent with the Design Standards set forth herein, shall be incorporated into, and be administered, interpreted and enforced pursuant to covenants, conditions and restrictions to be promulgated in connection with the development of various subdivisions within the Harmony Ridge Project.

4.2 Concept Plan; Approvals; Amendments. The provisions of Sections 4.1.1 through 4.1.4, and the Exhibits referenced therein, collectively, shall constitute the Concept Plan for the Harmony Ridge District in conformance with the requirements of Section 18.78.020 of the City Code, which has been duly approved in conformance with the requirements of said section. The Concept Plan may be modified in conformance with the provisions of Section 18.78.030 of the City Code.

4.3. Inconsistencies with the City Code. It is hereby acknowledged by the Parties that this Agreement shall not be construed as an attempt to bypass the City Code, and the Parties agree that all relevant development and other requirements set forth in the City Code and other applicable City laws and ordinances shall apply and be enforced, and EBCo shall develop the Harmony Ridge Project in conformance therewith and the terms and conditions of this Agreement.

4.4 Reserved Legislative Powers.

4.4.1 Nothing in this Agreement shall limit the future exercise of the police power of the City in enacting zoning, subdivision, development, platting, environmental, open space, transportation and other land use plans, policies, ordinances, and regulations after the date of this Agreement. Notwithstanding the foregoing, such future legislation shall only be applied to modify the vested rights described herein and other provisions of this Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah as expressed [in the case of *Western Land Equities Inc., v. City of Logan*, 617 P. 2d 388 (Utah, 1980), or successor cases and statutory law. EBCo shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Harmony Ridge Project under the compelling, countervailing public policy exception to the vested rights doctrine expressed in *Western Land*. In the event the City fails to give prior written notice, EBCo shall retain the right to be heard before an open and public meeting of the City Council in the event EBCo alleges that its rights under this Agreement have been adversely affected. Any decision adverse to EBCo shall be appealable by it to the Fourth Judicial District Court of the State of Utah.

4.4.2 This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits and protecting any compelling, countervailing public interest while at the same time providing reasonable assurances of continued vested rights under this Agreement.

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5. INFRASTRUCTURE; PROJECT DEVELOPMENT. All utility infrastructure improvements necessary to service the Harmony Ridge Project shall be provided, and the same shall be designed, constructed and installed, and development fees shall be paid in conformance with and subject to the following:

5.1. **Water Rights.** As a condition to the City's agreement to adjust its municipal boundaries to include the Property within the City and in satisfaction of the water rights conveyance requirements of Section 17.24.080 of the City Code, EBCo shall be obligated to convey to the City title to water rights sufficient to serve the Property upon the development of the Harmony Ridge Project. Subject to the terms and provisions of this Agreement, EBCo hereby agrees to transfer, assign and dedicate to the City, and the City hereby agrees to accept the transfer, assignment and dedication of water rights, as follows:

5.1.1 **Water Rights, Water Shares to be Conveyed and Strawberry Water Dedication.** Though additional water may be required pursuant the requirements of Section 17.24.080 of the City Code and as set forth in section 5.1.4(1)(C) of this agreement, the water rights and water shares to be conveyed, and the Strawberry Water dedication to be facilitated by EBCo to the City hereunder are more particularly described as follows:

(1) EBCo is the owner of certain certificated, supplemental water rights historically beneficially used on the Property, which rights are identified of record at the Utah Division of Water Rights as Water Right Nos. 51-1054 and 51-1057 (collectively, the "Water Rights"). Copies of the printouts setting forth the elements and other information pertaining to the Water Rights, as set forth in the Utah Division of Water Rights' database as of the date set forth therein, are attached as EXHIBIT "H" hereto and incorporated herein by reference. The Parties hereby acknowledge and agree that the total acre-footage of water which shall be authorized for diversion and use within the City under the Water Rights shall be established in the State Engineer's Order approving the Application for Permanent Change of Water (the "Water Right Change Application"), which, under Utah law, shall be required to be filed and approved as a condition to the diversion of water pursuant to the Water Rights for municipal use within the City. The Water Rights Change Application shall be filed jointly by EBCo and the City and approved for municipal use on the entire Property by the State Engineer prior to conveyance of the Water Rights by EBCo to the City as provided in Section 5.1.2 herein. EBCo and the City shall mutually cooperate in the preparation, filing and prosecution of the Water Right Change Application to final, non-appealable approval by the State Engineer. All costs and expenses incurred in the preparation, filing and prosecution of the Water Right Change Application shall be paid by EBCo. EBCo will not transfer the Water Rights to the City and will not receive credit for the Water Rights in satisfaction of the water right conveyance requirement that would otherwise be imposed as a condition to development approval for the Harmony Ridge Project, pursuant to Section 17.24.080 of the City Code until it has obtained all necessary authorizations for the water to be used by the City on the Property and ensured that the water is legally available for municipal use on the Property.

(2) EBCo, prior to the conveyance referenced in Section 5.1.2(1) herein, shall be the owner of 150 shares of water currently represented by Stock Certificate No. 8074 in the East Bench Canal Company (the "Water Shares"), said water being authorized for use on the Property in conformance with the rules and regulations of East Bench Canal Company. A copy of the Stock Certificate is attached as EXHIBIT "I" hereto and incorporated herein by reference. The total acre-footage of these 150 shares shall be determined by the East Bench Canal Company and an order by the State Engineer approving a Water Rights Change Application, if such a change application is necessary for the City to use the Water Shares on the entire Property. If a Water Rights Change Application is required for the City to use the Water Shares on the entire Property, the Water Rights Change Application shall be filed jointly by EBCo, the City, and the East Bench Canal Company and approved for

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municipal use on the entire Property by the State Engineer prior to conveyance of the Water Rights by EBCo to the City as provided in Section 5.1.2 herein. EBCo and the City shall mutually cooperate in the preparation, filing and prosecution of the Water Right Change Application to final, non-appealable approval by the State Engineer. All costs and expenses incurred in the preparation, filing and prosecution of the Water Right Change Application shall be paid by EBCo. EBCo will not transfer the Water Rights to the City and will not receive credit for the Water Shares in satisfaction of the water right conveyance requirement that would otherwise be imposed as a condition to development approval for the Harmony Ridge Project, pursuant to Section 17.24.080 of the City Code until it has obtained all necessary authorizations for the water to be used by the City on the Property and ensured that the water is legally and physically available for municipal use on the Property.

(3) EBCo, prior to the dedication referenced in Section 5.1.2(1) herein, shall be the owner of a minimum of 217 acre-feet of Strawberry Water that is appurtenant to that portion of the Property situated west of that certain irrigation feature known as the Mapleton Lateral Canal (the "*Canal*"), with the understanding that there may be additional Strawberry Water determined to be appurtenant to certain portions of the Property situated east of the Canal, all of which water is administered and distributed for use on the Property by the Mapleton Irrigation District ("*Strawberry Water*").

(A) The Parties hereby acknowledge that the Strawberry Water is and remains an appurtenance to the Property for irrigation use only according to the rules and regulations of the Mapleton Irrigation District and federal law, and the Parties hereby agree that at such time as the City installs and commences the operation of a pressurized, secondary irrigation water system that is capable of being connected to and delivering secondary irrigation water through the secondary irrigation water system improvements to be constructed by EBCo as provided in Section 5.2.4 herein, then, and only in such event, EBCo's right to the use of such amount of Strawberry Water as is determined by EBCo and Mapleton Irrigation District to be appurtenant to the Property shall be transferred to the City; whereupon, the Strawberry Water will remain appurtenant to the land and the City shall act as the distribution agent of said Strawberry Water, in behalf of the Mapleton Irrigation District, in providing secondary irrigation water service to the Harmony Ridge Project through the City's pressurized, secondary irrigation water system. The above referenced transfer to the City shall be accomplished pursuant to the terms of a Water Dedication Agreement to be executed by and among EBCo, as the owner of the appurtenant land, the City and Mapleton Irrigation District (the "*Water Dedication Agreement*"); the agreement will include the transfer from Mapleton Irrigation District to the City of control over any Strawberry Water Users Association shares that correspond to the lands to which the Strawberry Water is appurtenant. Upon execution of the Water Dedication Agreement, EBCo shall be entitled to receive credit for the Strawberry Water dedicated to the City against the water right conveyance obligation as set forth in Section 5.1.4(1)(B) hereof.

(B) If a Water Right Change Application is required for the City to use the Strawberry Water on the Property, the Water Right Change Application shall be filed jointly by EBCo and the City, and; if necessary the Strawberry Water Users Association and the Bureau of Reclamation, and approved for use on the Property by the State Engineer prior to conveyance of the Water Rights by EBCo to the City as provided in Section 5.1.2 herein. EBCo and the City shall mutually cooperate in the preparation, filing and prosecution of the Water Right Change Application to final, non-appealable approval by the State Engineer. All costs and expenses incurred in the preparation, filing and prosecution of the Water Right Change Application shall be paid by EBCo. EBCo will not transfer the Strawberry Water to the City and will not receive credit for the Strawberry in satisfaction of the water right conveyance requirement that would otherwise be imposed as a condition to development approval for the Harmony Ridge Project, pursuant to Section 17.24.080 of the City Code until it has obtained all necessary

authorizations for the water to be used by the City on the Property and ensured that the water is legally and physical available for use on the Property.

5.1.2 Transfer and Conveyance of Water Rights and Water Shares; Dedication of Strawberry Water; and Banking of Water. Subject to Sections 5.1.1(1) and (2) above, EBCo shall transfer title to the Water Rights and the Water Shares to the City, without cost, and by appropriate instruments of conveyance in form and substance first approved by the City's attorney, free and clear of all liens and encumbrances, except as may be expressly approved and accepted by the City in writing, and, subject to the provisions of Section 5.1.1(3) above, facilitate the execution of the Water Dedication Agreement pertaining to the Strawberry Water, subject to the following:

(1) Title to the Water Rights and Water Shares shall be transferred to the City prior and as a condition to receiving credit in satisfaction of the water rights conveyance requirement according to the provisions of Section 5.1.4(1) herein. Upon transfer of the Water Rights and Water Shares, and execution of the Water Dedication Agreement as provided in Section 5.1.1(3) herein, the Water Rights and Water Shares, and the contract rights under the Water Dedication Agreement, shall be banked and held by the City for the sole use and benefit of EBCo, and its successors-in-interest and permitted assigns, in connection with the development of the Harmony Ridge Project on the Property, subject to and in conformance with the terms and provisions of Section 5.1.4 below. ✓

(2) The City, at EBCo's cost and expense, shall have the sole responsibility to immediately record the Water Rights conveyance documents with the Recorder of Utah County, Utah, and prepare and file the Report of Water Rights Conveyance pertaining to the Water Rights and any other document required to be filed to properly document the transfer of the Water Rights to the City in the files of the Utah Division of Water Rights.

5.1.3 Responsibility of the City.

(1) As set forth in Section 5.1.1 herein, City agrees to jointly file with EBCo any Water Right Change Application and any and all other necessary change applications, with the Division of Water Rights as necessary to provide for use of water on the Property under the Water Rights and Water Shares. Upon acceptance of the Water Rights and Water Shares, the City assumes, at its sole expense, all responsibility incident to ownership of the Water Rights and Water Shares, including, without limitation, (i) the payment of assessments and other charges thereon, maintaining the Water Rights and Water Shares in good standing, including the responsibility to fully beneficially utilize the water under the Water Rights and Water Shares, and (ii) to prepare and file requests for extension of time and proof of beneficial use, as required, and (iii) all risk of loss of the Water Rights and Water Shares, including, without any limitation, lapsing or other loss thereof by reason of failing to maintain the Water Rights and Water Shares, by abandonment, forfeiture for non-use or otherwise. ✓

(2) Pursuant to the Water Dedication Agreement, the City assumes responsibility for the administration and delivery of the Strawberry Water to the Harmony Ridge Project in accordance with the terms and provisions of the Water Dedication Agreement.

5.1.4 Banked Water Right Entitlements.

(1) Water BRU Entitlements. In exchange for the conveyance of the Water Rights and Water Shares by EBCo to the City, and the rights to the use of Strawberry Water vested in the City under the Water Dedication Agreement, EBCo shall receive credit in satisfaction of the water right conveyance requirement that

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would otherwise be imposed as a condition to development approval for the Harmony Ridge Project, pursuant to Section 17.24.080 of the City Code ("*Water Right Exaction Requirements*"), in conformance with and subject to the following:

(A) If any of the Strawberry Water, the Water Rights, or the Water Shares is finally determined to only be available for irrigation use on the Property, EBCo will only receive a credit for that water up to the amount of irrigation water needed on the Property for the Harmony Ridge Project and EBCO will be required to provide the balance of the water needs of the Harmony Ridge Project as set forth in section 5.1.4(1)(D) of this agreement.

(B) Credit for Strawberry Water. As it currently reads, Section 17.24.080 of the City Code requires EBCo to dedicate 1 acre-foot of potable water for each lot in the Harmony Ridge Project. Strawberry Water being authorized for irrigation use only, EBCo will not receive a credit against the water it must provide under Section 17.24.080 unless and until this section is amended to allow for both secondary and/or potable/culinary water. If Section 17.24.080 is so amended, the Parties hereby expressly acknowledge and agree that inasmuch as, subject to the provisions of Section 5.1.1(3) herein, the Strawberry Water, upon transfer, shall be utilized by the City as a source of water supply for the pressurized irrigation system which shall serve irrigation water to that portion of the Harmony Ridge Project historically irrigated with Strawberry Water according to official Mapleton Irrigation District records (the "*Secondary Irrigation Service Area*"), and EBCo shall, upon execution of the Strawberry Water Dedication Agreement, receive full conveyance credit under Section 17.24.080 of the City Code if amended as described herein in the amount of Strawberry Water made available for use in the City's pressurized irrigation system pursuant to the Water Dedication Agreement, as set forth herein. The maximum amount of Strawberry Water made available by the Water Dedication Agreement and that EBCo will receive credit for shall be limited to the amount of water needed for secondary irrigation on the portion of the Property upon which the Strawberry Water is appurtenant and upon which the Strawberry Water may be used.

(C) Determination of Total Water Right Credit Amount. The total amount of credit to which EBCo shall be entitled hereunder in exchange for the donation of the Water Rights, the Water Shares, and the Water Dedication Agreement pertaining to the Strawberry Water (the "*Water ERU Entitlements*"), shall be determined, subsequent to final approval of any required Water Right Change Applications referenced in Section 5.1.1(1)-(3), the Water Right Change Application that may be required under section 5.1.1(2) above, the transfer of Strawberry Water under the Water Dedication Agreement, as provided in Section 5.1.1(3) above, and any other authorization necessary to allow the City to use the water from these sources on the Property, in conformance with the following:

(i) Initially, the total acre-footage of water available under the Water Rights and Water Shares shall be divided by the total number of ERUs at the rate of one (1) acre-foot of water per ERU according to the current requirements of Section 17.24.080 of the City Code.

(ii) Notwithstanding the provisions of subsection (i) immediately above, the number of Water ERU Entitlements to which EBCo shall be entitled hereunder is subject to adjustment, retroactive to the date hereof, in the event of an amendment to the water right conveyance requirements of Section 17.24.080 of the City Code. An adjustment pursuant to such an amendment may increase the number of Water ERU Entitlements to which EBCo is entitled hereunder; however, it is hereby expressly understood and agreed by the Parties that the number of Water ERU Entitlements shall not, as a result of any such amendment, be reduced below the total Water

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ERU Entitlements to which EBCo is entitled hereunder based upon the current 1.0 acre-foot per ERU conveyance requirement in effect as of the date hereof.

(D) Additional Water Right Requirements. In the event the Harmony Ridge Project requires more water rights than the total Water ERU Entitlements banked hereunder are capable of satisfying, then, EBCo may, at its option, as a condition precedent to then further development approval by the City:

(i) transfer to the City additional water rights, as approved by the City, in an amount sufficient to cover any water rights deficiency quantified as set forth in Section 5.1.4 (1) above , or

(ii) if the City determines that it has water available, or if it determines that water is otherwise available for the City to purchase, pay an in lieu cash contribution in such amount as shall then be applicable to all developers within the City, calculated according the provisions of Section 5.1.4 (1) above.

(2) Vesting of Water ERU Entitlements. The Water ERU Entitlements evidenced by this Agreement shall be fully vested in EBCo and its successors-in-interest and permitted assigns, subject to and in conformance with the terms and conditions hereof, as of the date of transfer of title to the Water Rights and Water Shares to the City, irrespective of any limitation, lapsing or other loss of the Water Rights and/or Water Shares arising subsequent to transfer of the Water Rights and Water Shares to the City.

(3) Tender of Water ERU Entitlements for the Harmony Ridge Project. Water ERU Entitlements hereunder shall be held and accurately accounted for by the City in a separate Water ERU Entitlement Account established and maintained by the City in behalf of EBCo and its successors-in-interest and permitted assigns. In conformance with the terms and conditions of this Agreement, Water ERU Entitlements hereunder shall be tendered by EBCo to the City, in satisfaction of the Water Right Exaction Requirements that would otherwise be imposed upon the Harmony Ridge Project. Each time a subdivision plat is recorded by EBCo in connection with the development of the Harmony Ridge Project, EBCo shall tender to the City the required amount of Water ERU Entitlements as are necessary for the platted property. The tendered amount of Water ERU Entitlements shall be deducted from the previous balance and a statement of the Water ERU Entitlements remaining in effect and unused shall thereupon be delivered by the City to EBCo for its records.

(4) Right to Water Service Upon Tender of Water ERU Entitlements. Upon tender of Water ERU Entitlements, EBCo shall be entitled to connect to the City's water system and receive water service from the City on the Property for that portion of the Harmony Ridge Project for which the Water ERU Entitlements has been tendered, subject to this Agreement and all other applicable City Code requirements of the City, in the same manner and on the same basis as any other customer of the City.

5.2. Infrastructure. All public infrastructure improvements necessary to service the Harmony Ridge Project shall be constructed and installed by EBCo, and title thereto shall be conveyed to the City, in conformance with all applicable requirements of Chapter 18.84.420: Adequate Public Facilities, of the City Code, subject to the following:

5.2.1 Culinary Water Storage. The City hereby represents that it has and shall hold, for the benefit of the Harmony Ridge Project, existing culinary water storage capacity in the City's Crowd Canyon Water Storage Reservoir and other City water storage reservoirs sufficient for 1,050 ERUs covering all uses contemplated within each of the Development Areas of the Harmony Ridge Project as set forth in Section 4.1.1 hereof, and that no

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additional culinary water storage is required to be provided by EBCo as a condition to approval of the Harmony Ridge Project.

5.2.2 Offsite Culinary Water Main Line Improvements. To provide needed looping and redundancy to serve the Harmony Ridge Project, EBCo shall construct and install a culinary water main pipeline and related facilities and equipment (the "*Culinary Water Main Line*"), as depicted in the "Master Utility Plan – Offsite Culinary Water Main Line," attached as EXHIBIT "J-1" hereto and incorporated by reference herein. The Culinary Water Main Line shall be constructed and installed in phases in conformance with a phasing plan to be agreed upon by the Parties during the preliminary plan process for the Harmony Ridge Project.

5.2.3 Onsite Culinary Water System Improvements. EBCo shall construct and install all onsite culinary water system improvements necessary for culinary water service within the Harmony Ridge Project, including, without limitation, all culinary pipelines, laterals, pump stations, lift stations, valves, meters and any all other appurtenances and facilities as shall be necessary to satisfy the anticipated culinary water demand within the Harmony Ridge Project, as set forth in the "Master Utility Plan – Onsite Culinary and Pressurized Irrigation Water," attached as EXHIBIT "J-2" hereto and incorporated by reference herein. Onsite culinary water system improvements shall be constructed and installed in phases in conformance with a phasing plan to be agreed to by the Parties during the preliminary plan process for the Harmony Ridge Project.

5.2.4 Secondary Irrigation Water System Improvements. EBCo shall construct and install all secondary irrigation water system improvements necessary to provide secondary irrigation water service within the Harmony Ridge Project, subject to the following:

(1) Location of Secondary Irrigation Water System Improvements. The Parties hereby acknowledge and agree that secondary irrigation water system improvements shall only be constructed and installed in the Secondary Irrigation Service Area as defined in Section 5.1.4(1)(B) above, and that the remainder of the Property shall be irrigated using water from the City's municipal water system.

(2) Secondary Irrigation Water System Improvements to be Constructed. The secondary irrigation water system improvements to be constructed and installed by EBCo within the Secondary Irrigation Service Area shall be limited to the following:

(A) Pipelines, Valves, etc. All pipelines, valves, meters and any all other appurtenances as shall be necessary to satisfy the anticipated secondary irrigation water demand within the Harmony Ridge Project consistent with City secondary irrigation water system requirements and standards of the City, as set forth in the "Master Utility Plan – Onsite Culinary and Pressurized Irrigation Water," Exhibit "J-2" attached. Secondary irrigation water system improvements shall be constructed and installed in phases in conformance with a phasing plan to be agreed to by the Parties during the preliminary plan process for the Harmony Ridge Project.

(B) Secondary Irrigation Water Storage. The Parties hereby acknowledge and agree that initially the entirety of the Property within the Harmony Ridge Project shall be irrigated using City culinary water from the Crowd Canyon Reservoir until such time as Central Utah Water Conservancy District ("*CUWCD*") constructs its intended secondary irrigation water storage reservoir (the "*CUWCD Secondary Irrigation Reservoir*"), on the Property (which reservoir is to be constructed pursuant to a separate agreement for such by and among the City, EBCo and CUWCD). At such time as the CUWCD Secondary Irrigation Reservoir is completed and available

for service, secondary irrigation water service will be provided by the City to the Secondary Irrigation Service Area through the secondary irrigation water system improvements to be constructed as set forth in Section 5.2.4(1) above,

(i) Notwithstanding the foregoing, in the event: (i) CUWCD chooses not to go forward with the CUWCD Secondary Irrigation Reservoir, or is unable, for whatever reason, within a period of five (5) years commencing the date of this Agreement, to construct the CUWCD Secondary Irrigation Reservoir with capacity sufficient to serve the entirety of the Secondary Irrigation Service Area, and (ii) the capacity in the Crowd Canyon Reservoir is not sufficient, as determined according to standard engineering practices, to enable the City to continue to provide water for irrigation use within the Secondary Irrigation Service Area, then EBCo shall be obligated to construct, at its sole expense, within the Property at a location satisfactory to EBCo and the City, a secondary irrigation water storage reservoir ("*EBCo Secondary Irrigation Reservoir*"), having a capacity sufficient to satisfy all secondary irrigation water requirements within the Secondary Irrigation Service Area, as set forth in the "Water Demand Forecasting Table," attached as EXHIBIT "J-3" hereto and incorporated by reference herein.

(ii) The five year period provided for in Subsection (B)(i) immediately above may be extended in good faith upon the mutual agreement of the Parties.

(iii) The EBCo Secondary Irrigation Reservoir, upon completion of construction, shall be conveyed by appropriate instrument of conveyance to the City and thereafter be dedicated by the City for service to the entirety of the Secondary Irrigation Service Area on a first priority basis.

5.2.5 Offsite Sanitary Sewer. In order to maximize the use of the total ERUs authorized herein, EBCo shall provide for and install all sanitary sewer system improvements necessary for sanitary sewer service to the Harmony Ridge Project as follows:

(1) Sewer Treatment.

(A) Sewer treatment services for the Harmony Ridge Project shall be provided by Mapleton City pursuant to its interlocal agreement with Spanish Fork City utilizing the existing wastewater treatment plant and sewer trunk line extension jointly owned by the City and Spanish Fork City (collectively, the "*Sewer Treatment System*"), pursuant to the terms of that certain First Amendment to the Inter-local Agreement for Construction, Use, and Maintenance of Joint Wastewater Facility, executed by and between the City and Spanish Fork City (the "*Sewer Interlocal Agreement*"), a copy of which is attached hereto as EXHIBIT "K" and incorporated by reference herein

(i) EBCo shall be obligated to pay to the City a mutually agreed-upon, total sum of Two Million Eight Hundred and Fifty Thousand Dollars (\$2,850,000.00) (the "*Sewer Treatment Purchase Price*"), all of which shall be utilized by the City to purchase an additional maximum three and four tenths percent (3.4%) capacity in the Sewer Treatment System pro rated based on the amount paid by Mapleton to Spanish Fork City, which, as set forth in the Sewer Interlocal Agreement, is sufficient for an additional 850 residential hookups, subject to the provisions of Section 5.2.5(1)(A)(ii) below. The Sewer Treatment Purchase Price shall be paid by EBCo as follows:

(a) \$50,000.00 shall be due and payable by EBCo to the City within ten (10) business days from the date of completion of the Boundary Adjustment, and

(b) the remaining \$2,800,000.00 (the "*Remaining Sewer Treatment Purchase Price*"), shall be paid by EBCo, in installments, at the rate of \$3,294.12 per ERU (which pursuant to the terms of the Sewer Interlocal Agreement is to be applied against the first 850 ERUs), due and payable by EBCo to the City at the time of, and as a condition to, the issuance of a building permit for each new ERU; except that any balance due and owing as of June 1, 2025 (the "*Sewer Treatment Final Balance*"), shall be paid in full by EBCo to the City on or before June 30, 2025. Subject to the provisions of Section 5.2.5 (1)(A)(c) below, as collateral to secure EBCo's obligations to pay the Sewer Treatment Purchase Price and as security for all of EBCo's other obligations under this Agreement, EBCo hereby agrees to grant the City a security interest in and to that certain parcel of land identified and described in EXHIBIT "L" hereto and incorporated by reference herein (the "*Secured Parcel*").

(AA) The City agrees, upon the written request of EBCo, that the City over time shall release and reduce its security interest in such portion(s) of the Secured Parcel as shall be designated by EBCo, which releases shall be in proportion, as near as possible, based upon assessed value, or other valuation method agreed to by the Parties, to 80% of the amount by which the Remaining Sewer Treatment Purchase Price has been paid and reduced pursuant to the provisions of this Section 5.2.5(1)(A)(i)(b) above; and/or the City shall release its security interest in such portion(s) of the Secured Parcel as shall be necessary to facilitate the sale or other disposition of said by property by EBCo, subject to EBCo providing equivalent, substitute collateral therefore acceptable to the City, as required, upon mutual agreement of the Parties; and

(BB) In the event EBCo shall default in the payment, in full, of the Sewer Treatment Final Balance due and owing on June 25, 2025 as required in Section 5.2.5(1)(A)(i)(b) above, then the City shall commence to accrue interest on the Sewer Treatment Final Balance at the legal rate ("*Delinquent Interest*"). Upon such default, the City shall give notice of the default to EBCo, by certified mail, return receipt requested, which notice shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid. The notice shall provide for a period of thirty (30) days in which EBCo shall pay the Sewer Treatment Final Balance then due and owing, plus Delinquent Interest accrued. If EBCo shall fail to pay the amount due within said thirty day period, the City shall immediately place in operation the procedure necessary to commence proceedings in the manner provided for actions to foreclose mortgage liens or exercise its judicial or non-judicial power of sale, as the City may elect, as under a trust deed. Should the City elect to proceed as under a trust deed, the City shall be empowered to designate a trustee, and successor trustees, if necessary, to carry out the proceedings, and such trustee(s) shall be deemed to have the power of sale and all other rights, powers and authority necessary to legally and lawfully sell the Secured Parcel, or so much thereof as shall be necessary to collect the unpaid Sewer Treatment Balance, together with all costs of collection incurred by the City, including, without limitation, attorney's fees, trustee's fees and court costs. Any trustee so selected must satisfy all of the qualifications for a trustee set forth in Utah Code Ann. Section 57-1-21 or any successor statute. If at the sale, no person or entity shall bid and pay the City the amount due as provided herein, the Secured Parcel shall be deemed sold to the City for such amount, and the City shall be entitled to pursue any deficiency by any and all means available at law or in equity. The City shall be permitted to bid at the sale. The remedies provided herein for the collection of any unpaid Sewer Treatment Balance due shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the City of the use of any other means or method.

(CC) Notwithstanding the provisions of Subsection (BB) immediately above, if, prior to the final date payment may be legally made under the proceedings for the foreclosure or sale of the Secured Parcel to collect any unpaid Sewer Treatment Final Balance due, EBCo pays the full amount of the Sewer Treatment Balance, including Delinquent Interest and all costs incurred, the City's security interest in the

Secured Parcel shall be released and all right, title and interest of the City in and to the Secured Parcel shall be re-conveyed to EBCo.

(c) Notwithstanding the foregoing, EBCo may, at any time prior to payment in full of the Remaining Sewer Treatment Purchase Price, substitute collateral in place of the Secured Parcel, in the form of other property owned by EBCo within Mapleton City or other security deemed acceptable to the City, and the City hereby agrees to not unreasonably withhold or delay its acceptance of the same.

(ii) The City hereby expressly represents and warrants that it is the policy of the City and Spanish Fork City that capacity in the Sewer System is measured only by residential hook-ups, and that EBCo is entitled, in addition to the 850 ERUs authorized under the Sewer Interlocal Agreement as residential hook-ups, to up to 200 commercial ERUs under the capacity acquired by the City in the Sewer Treatment System pursuant to the Sewer Interlocal Agreement.

(B) Reserved Sewer Treatment Capacity. For and in consideration of the payments made by EBCo to the City for Sewer Treatment System capacity pursuant to the Sewer Interlocal Agreement as set forth above, the City shall expressly reserve for EBCo, and EBCo shall be entitled to receive, sewer treatment plant capacity for up to 1,050 ERUs ("*Sewer Treatment ERU Entitlements*").

(2) Offsite Sewer Trunk Line.

(A) EBCo shall construct and install sanitary sewer trunk lines and related facilities and equipment as depicted and designed in the "Offsite Sewer Master Plan and Reimbursement Schedule," attached as EXHIBIT "M" hereto and incorporated by reference herein (the "*Offsite Sewer Trunk Line Improvements*"). The Offsite Sewer Trunk Line Improvements shall be constructed and installed in conjunction with the development of the first (1st) phase of the Harmony Ridge Project, subject to all applicable terms and provisions of the Sewer Interlocal Agreement.

(B) Reserved Offsite Sewer Trunk Line Capacity. For and in consideration of the design, construction and installation of the Offsite Sewer Trunk Line Improvements by EBCo and other parties, the City shall expressly reserve for EBCo, and EBCo shall be entitled to receive capacity in the Offsite Sewer Trunk Line Improvements for up to 1,050 ERUs ("*Sewer Trunk Line ERU Entitlements*").

(3) Vesting of Sewer Treatment and Sewer Trunk Line ERU Entitlements. The Sewer Treatment and Sewer Trunk Line ERU Entitlements evidenced by this Agreement shall be fully vested in EBCo and its successors-in-interest and permitted assigns in conformance with the terms and conditions hereof as of the date of this Agreement, subject to the terms and provisions of this Agreement.

(4) Tender of Sewer Treatment and Sewer Trunk Line ERU Entitlements for the Harmony Ridge Project. Sewer Treatment and Sewer Trunk Line ERU Entitlements hereunder shall be held and accurately accounted for by the City in a separate Sewer Treatment ERU entitlement account and Sewer Trunk Line entitlement account, established and maintained by the City in behalf of EBCo and its successors-in-interest and permitted assigns. In conformance with the terms and conditions of this Agreement, Sewer Treatment and Sewer Trunk Line ERU Entitlements hereunder shall be tendered by EBCo to the City, in full satisfaction of any sanitary sewer system exaction requirements imposed upon the Harmony Ridge Project. Each time a subdivision plat is recorded by EBCo in connection with the development of the Harmony Ridge Project, EBCo shall tender to the City

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the required amount of Sewer Treatment and Sewer Trunk Line ERU Entitlements as are necessary for the platted property. The tendered amount of Sewer Treatment and Sewer Trunk Line ERU Entitlements shall be deducted from the previous balance and a statement of the Sewer Treatment and Sewer Trunk Line ERU Entitlements remaining in effect and unused shall thereupon be delivered upon request by the City to EBCo for its records.

(5) Right to Sewer Service Upon Tender of Sewer Treatment and Sewer Trunk Line ERU Entitlements. Upon tender of Sewer Treatment and Sewer Trunk Line ERU Entitlements, EBCo shall be entitled to connect to the City's sanitary sewer system and receive sanitary sewer service from the City on the Property for that portion of the Harmony Ridge Project for which the Sewer Treatment and Sewer Trunk Line ERU Entitlements have been tendered, subject to this Agreement and all other applicable City Code requirements of the City, in the same manner and on the same basis as any other customer of the City.

5.2.6. Onsite Sewer Improvements. EBCo shall construct and install all other sanitary sewer system improvements necessary for sanitary sewer service within the Harmony Ridge Project, including, without limitation, all sewer pipelines, laterals, pump stations, valves, meters and any all other appurtenances and facilities as shall be necessary to satisfy the anticipated sanitary sewer demand within the Harmony Ridge Project consistent with City sanitary sewer system requirements and standards, as set forth in the "Master Utility Plan – Sanitary Sewer," attached hereto as EXHIBIT "N" and incorporated by reference herein. Onsite sewer improvements shall be constructed and installed in phases in conformance with a phasing plan to be agreed to by the Parties during the preliminary plan process for the Harmony Ridge Project.

5.2.7 Onsite Storm Drainage System Improvements. EBCo agrees, in connection with the development of the Harmony Ridge Project, that it shall construct and install all storm drainage system improvements necessary to insure adequate storm drainage within the Harmony Ridge Project, consistent with City and State storm drainage requirements and standards as set forth in and in conformance with the "Master Utility Plan – Storm Drainage," attached as EXHIBIT "O" hereto and incorporated by reference herein. Storm drainage system improvements shall be constructed and installed in phases in conformance with a phasing plan to be agreed to by the Parties during the preliminary plan process for the Harmony Ridge Project. The Parties hereby acknowledge and agree that the storm drainage system for the Harmony Ridge Project shall be a self-contained onsite storm drainage retention system, which shall be independent from and not connected to any other City storm drainage system.

5.2.8 Park Amenities. The Park Amenities depicted in the "Parks and Open Space Plan and Design Standards," Exhibit "G" attached, shall be developed and constructed by EBCo in conformance with the following:

(1) Park Ownership, Use, Operation and Maintenance. The parks to be developed by EBCo within the Harmony Ridge Project as depicted in the Parks and Open Space Plan and Design Standards, Exhibit "G" hereto, shall be owned, operated and maintained as follows:

(A) The approximate 3-acre park situated immediately adjacent to the Bureau of Reclamation property (the "*BOR Property*"), designated as the Lower City Park, and the approximate 8.80 acre park designated as the Bench City Park on the "Parks and Open Space Plan and Design Standards," Exhibit "G" attached (collectively the "*City Parks*"), shall be developed by EBCo at its sole cost and expense. The precise location of the Lower City Park may be relocated in relation to the BOR Property at the request of the City, subject to approval of the relocation by EBCo.

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(i) Title to the Lower City Park and the Bench City Park, together with easements and rights-of-way required for public access thereto, shall be conveyed by EBCo to the City for use as public municipal parks. The conveyance may occur prior to the approval of the preliminary plat containing such park, but shall occur not later than the filing of the final plat containing such park. The City shall accept the conveyance of the City Parks as a donation from EBCo.

(ii) In addition, subject to the City obtaining the contractual right to use a portion of the BOR Property for use as a municipal park, EBCo, in conformance with the provisions of Section 5.2.8(3) below, shall improve the park portion of the BOR property with improvements strictly limited to the construction and installation of a suitable sprinkler irrigation system to serve said property and the planting of grass thereon. Title to the sprinkler irrigation system improvements constructed by EBCo on the BOR Property shall be transferred to the City, by bill of sale, upon completion of the improvements. Notwithstanding the foregoing, in the event the City is unable to obtain the contractual right to utilize a portion of the BOR Property for a municipal park as intended herein, EBCo shall pay to the City an amount equal to the cost that would have been incurred by it in making the improvements thereon as delineated in this Subsection 5.2.8(1)(A)(ii), based upon the total acreage identified in the municipal park plan submitted by the City in its application to the Bureau of Reclamation. The amount to be paid by EBCo to the City shall be the then current market price for said work, determined by the lowest qualified bid of three bids received from reputable contractors selected by EBCo and approved by the City. The bids shall be solicited and the amount due (the "*BOR Park In-lieu Total Payment*"), determined within sixty (60) days of the date EBCo receives written notice from the City that it has been unable, after good faith negotiations on the City's part, to obtain the contractual right to utilize the BOR Property (it being the mutual desire and intent of the Parties to develop, if at all possible, a municipal park on the BOR Property). The BOR Park In-lieu Total Payment shall be paid on a per ERU basis. The amount due and owing per ERU (the "*BOR Park In-lieu ERU Payment*"), shall be determined by dividing the BOR Park In-lieu Total Payment amount by the number of ERUs authorized within Harmony Ridge for which a building permit has not then been issued. The BOR Park In-lieu ERU Payment shall be due and payable at the time of and as a condition to the issuance by the City of a building permit for the structure associated with each such ERU.

(iii) Subsequent to the transfer of the City Parks to the City, and the completion and transfer of the improvements on the BOR Property to the City as provided herein, the City shall be solely responsible for the management, operation, maintenance, repair and replacement of said facilities in perpetuity. Notwithstanding the foregoing, until such time as the City Parks have been improved by EBCo as required in this Section, EBCo shall be obligated to provide a minimum level of maintenance thereon, limited to weed, trash and rubbish control, at its cost and expense.

(B) Title to the park designated on the Parks and Open Space Plan and Design Standards, Exhibit "G" hereto, as the Public HOA Trail, shall be transferred to and be owned, managed, operated, maintained, repaired and replaced by one of the homeowner's associations to be established by EBCo in connection with the development of the Harmony Ridge Project, as approved by the City. The Public HOA Trail shall be and remain available for use as public trail in perpetuity.

(C) Title to any one or combination of the parks designated on the "Parks and Open Space Plan and Design Standards," Exhibit "G" attached, as Private Parks and the Private HOA Trail shall be owned, managed, operated, maintained, repaired and replaced by one or more of the homeowner's associations to be established by EBCo in connection with the development of the Harmony Ridge Project, as approved by the City.

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The Private Parks and the Private HOA Trail shall be and remain private and the use thereof shall be limited to owners residing within a designated subdivision or subdivisions within the Harmony Ridge Project as determined by EBCo, or its successors-in-interest and assigns, in perpetuity. EBCo shall require that the Private Parks and the Private HOA Trail continue to be improved and maintained as depicted in Exhibit "G," reasonable wear and tear excepted.

(2) Established Level of Improvement. The Park Amenities shall be developed by EBCo according to the level of improvements depicted on the "Parks and Open Space Plan and Design Standards," Exhibit "G" attached. EBCo's obligation to develop and improve the City Parks shall be fully satisfied when said Park amenities have been developed and improved in conformance with the "Park and Open Space Plan and Design Standards," Exhibit "G" attached. Any level of improvement beyond that depicted shall be the sole and separate responsibility of the City, at its sole cost and expense. The Public HOA Trail and the Private Parks and Private HOA Trail may be developed and improved to provide a level of service to exceed that depicted on the "Park and Open Space Plan and Design Standards," Exhibit "G" attached, but not less.

(3) The Park Amenities shall be constructed and installed in phases in conformance with a phasing plan pertaining to the development of the Park Amenities to be agreed to by the Parties during the preliminary plan process for the Harmony Ridge Project.

5.3. Donation of Public Safety Facility Parcel and Well Site.

5.3.1. Donation of Public Safety Facility Parcel. EBCo shall donate to the City a two (2) acre parcel of land, to be situated within the Commercial/Light Industrial Development Area, for use by the City as a public safety facility or such other use as agreed to by the City and EBCo (the "Public Safety Facility Parcel").

(A) Title to the Public Safety Facility Parcel shall be conveyed by EBCo to the City by Special Warranty Deed, in form and substance agreeable to the City.

(B) The conveyance of the Public Safety Facility Parcel, together with easements and rights-of-way required for public access thereto, may occur prior to the approval of the preliminary plat containing the Public Safety Facility Parcel, but shall occur not later than the filing of the final plat containing such parcel. The City shall accept the conveyance of the Public Safety Facility Parcel as a donation from EBCo.

(C) The Public Safety Facility Parcel shall be transferred free and clear of liens and encumbrances, subject to all environmental covenants, conditions and restrictions of record, if any, as of the date of transfer.

5.3.2. Donation of Well Site. EBCo shall donate to the City a parcel of land not to exceed 0.25 acres, to be situated over and adjacent to EBCo's existing well as described in Water Right Nos. 51-1054 and 51-1057 as described in Exhibit H attached, as mutually agreed upon by the Parties at the time of conveyance as provided herein (the "Donated Well Parcel"), together with EBCo's water well infrastructure and related improvements (the "Existing EBCo Well"), which is currently existing on the Donated Well Parcel (the Donated Well Parcel and the Existing EBCo Well are sometimes referred to herein collectively as the "Well Site"). The Donated Well Parcel is to be utilized for the drilling, by the City, of a new municipal water well. and or the rehabilitation of the Existing EBCo Well as an authorized municipal well, subject to the following:

(1) EBCo will convey title to the Donated Well Parcel to the City, together with easements and rights-of-way as necessary for construction and installation of utilities and for access to the Donated Well Parcel, by Special Warranty Deed and Grant of Easement, and will convey the Existing EBCo Well to the City by Bill of Sale, all in form and substance agreeable to the City and EBCo agrees not to oppose or object to any well or wells drilled by the City.

(A) The Well Site may be conveyed prior to the approval of the preliminary plat containing the Well Site, but shall be conveyed not later than the filing of the final plat containing the Well Site. The City shall accept the conveyance of the Well Site as a donation from EBCo.

(B) The Donated Well Parcel and related easements and rights-of-way shall be transferred free and clear of liens and encumbrances, and shall not be subject to any environmental covenants, conditions or restrictions. The Existing EBCo Well shall be transferred strictly in its "as is, where is" condition, without any representation, warranty or guarantee of any kind or nature,

(C) Until such time as the Well Site has been conveyed to the City, EBCo shall be obligated to provide a minimum level of maintenance on the Donated Well Parcel, limited to weed, trash and rubbish control, at its cost and expense.

(2) Any new well to be drilled upon the Donated Well Parcel shall be designed, drilled, developed, and equipped by the City, and any work performed in connection with the rehabilitation of the Existing EBCo Well, shall all be at the City's sole cost and expense, according to a timetable to be determined by the City, subject to the obligation and commitment of the City to serve the entirety of the Harmony Ridge Project pursuant to this Agreement, as development thereof occurs, whether a new municipal well is drilled or the Existing EBCo Well is rehabilitated on the Donated Well Parcel by the City, or not.

(3) EBCo makes no representation, warranty or guarantee, whatsoever, as to: (i) whether the drilling of a new water well on the Donated Well Parcel may be approved by the Utah Division of Water Rights, (ii) whether and to what extent a new well may be successfully drilled and equipped at the Donated Well Parcel, and (iii) the quality, quantity or flow of water that may be produced from a new well on the Donated Well Parcel and the suitability and sufficiency of the same to satisfy the City's groundwater requirements for municipal service within the Harmony Ridge Project and elsewhere within the City. Any new well drilled by the City on the Well Site, and the Existing EBCo Well, shall be operated, maintained, repaired and replaced by the City at the City's sole cost and expense.

(4) The City agrees that the well house and any other above-ground facilities related to any new well to be drilled by the City on the Donated Well Parcel, or in connection with a rehabilitated Existing EBCo Well, shall be designed and constructed in such a manner as will not detract from, but be complimentary to, the design, architecture and landscape of the Harmony Ridge Project. All such facilities shall be planned and designed in a manner similar to and consistent with the architectural standards and guidelines of the City's existing Crowd Canyon Well.

5.4. City Code Compliance; Development Agreements. All infrastructure improvements set forth in Section 5.2 herein shall be designed, constructed and installed, and all fees shall be paid in conformance with all applicable provisions of Title 17 – Development Code, Part II, Subdivisions, of the City Code, and the terms and conditions of this Agreement.

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5.5. Reimbursement of Offsite Improvements and Secondary Irrigation Reservoir Development Costs.

5.5.1. Offsite Improvements Reimbursement. The Offsite Culinary Water Main Line and the Offsite Sewer Trunk Line Improvements to be constructed by EBCo to serve the Harmony Ridge Project (collectively, the "*Offsite Improvements*"), are being sized and located, by requirement of the City, to serve future development projects on lands serviceable by the Offsite Improvements in addition to the Harmony Ridge Project. As such, EBCo shall be entitled to reimbursement from any future developer of property to be benefited by the Offsite Improvements (each, a "*Future Developer*"), in conformance with Section 17.28.050 of the City Code.

(1) Section 17.28.050 of the City Code is hereby interpreted so as to provide that a developer's cost includes interest and other fees and charges related thereto; which means, for the purpose of this Agreement, that a Future Developer's pro-rata share (i.e. that portion of the capacity of the Offsite Improvements not dedicated to the Harmony Ridge Project as provided herein), of EBCo's cost of designing, constructing and installing the Offsite Improvements shall be based upon EBCo's actual costs incurred, including interest and related fees and charges. With respect to the Sewer Offsite Trunk Line Improvements, specifically, the benefitted properties shall be identified, using the "Offsite Sewer Master Plan and Reimbursement Schedule," Exhibit "M" attached.

(2) In the event the existing ordinance, Section 17.28.050, shall subsequently be amended by the City, EBCo, in its sole discretion, shall have the right to apply and be governed by the terms and provisions of the amended ordinance which shall be incorporated into this Agreement in lieu of the existing ordinance.

5.5.2. Secondary Irrigation Water Reimbursement. The foregoing provisions of Section 5.5.1 above shall similarly apply, as applicable, to reimbursement for development costs incurred by EBCo in the construction of the on-site Secondary Irrigation Water Reservoir which, pursuant to the provisions of Section 5.2.4(B)(i) is required to be sized to accommodate the Secondary Irrigation Service Area which includes property owned and to be developed by a Future Developer.

5.6. Assignment of Water, Sewer Treatment, and Sewer Trunk Line ERU Entitlements.

5.6.1 Assignment to Future Developer. In the unlikely event EBCo shall determine that it does not intend to move forward with the development of the Harmony Ridge Project, wholly, or partially, or in the event it is determined by the Parties that upon full development of the Harmony Ridge Project that EBCo has excess Water, Sewer Treatment or Sewer Trunk Line ERU Entitlements (collectively, "*ERU Entitlements*"), banked with the City hereunder beyond that which is necessary for the Harmony Ridge Project, then, in such event, it is agreed as follows:

(1) Upon EBCo's request, the City shall cooperate with EBCo in giving written notice to EBCo of the identity of any other developer ("*Future Developer*"), who is proposing to develop property within the boundaries of the City which property is serviceable by either of the Offsite Improvements identified in Exhibit "M" or Exhibit J-1 ("*Future Development*"), and who is in need of acquiring water rights, sewer treatment or sewer trunk line capacity to satisfy the development requirement of the City Code in connection with the Future Development.

(2) In the event EBCo determines that it desires to assign excess ERU Entitlements to the Future Developer, EBCo shall, pursuant to written instructions, tender to the City the number of excess ERU Entitlements to be assigned.

(3) The excess ERU Entitlements tendered to the City by EBCo shall thereupon be assigned by the City to the Future Developer for a Future Development, as defined in Subsection (1) of this Section 5.6.1, within the City in consideration for receipt of payment from the Future Developer of the purchase price which is to be set at the then current market rate as determined by the City in consultation with EBCo. The purchase price shall be collected by the City from the Future Developer, in full, at the time of, and as a condition to, assignment of the excess ERU Entitlements to be assigned.

(4) Upon receipt of said payment by the City, the City shall tender the purchase price received by it to EBCo, less a reasonable administrative fee in an amount mutually agreed to by the Parties, which shall be deducted from the purchase price and retained by the City.

5.6.2 **Purchase by the City.** Notwithstanding the foregoing, the City may, in its sole discretion, determine to purchase one or more of the excess ERU Entitlements in lieu of assigning the same to a Future Developer; in which event, the foregoing procedure shall apply to the City, in lieu of a Future Developer, and no administrative fee shall be deducted from the purchase price.

6. FEES AND CHARGES

6.1 **Plan Review and Engineering Fees.** Except as otherwise provided herein, EBCo shall be obligated to pay all plan review and engineering review fees and all other applicable fees and charges generally applicable to development application and/or building permit review and approval, subject to state laws and court decisions as to the reasonableness and applicability of such fees generally. Nothing herein shall be deemed a waiver of the right of EBCo from challenging the reasonableness or imposition of fees under Utah and Federal law. Plan review and engineering fees shall be payable at the time payment is due pursuant to the applicable provisions of the City Code

6.2 **Boundary Adjustment Fee.** As a condition to the City's agreement to adjust its municipal boundaries to include the Property within the City, EBCo shall be required to pay a Boundary Adjustment Fee in the amount of Six Thousand Dollars (\$6,000) per ERU developed by EBCo or its successors-in-interest and assigns in connection with the Harmony Ridge Project (the "*Boundary Adjustment Fee*"), in conformance with the following:

6.2.1 The Parties hereby acknowledge and agree that the amount of the Boundary Adjustment Fee established herein is a fair and reasonable amount to be paid in recognition of the benefits of having a viable commercial area within the City as developed within the Harmony Ridge Project, including, without limitation, the benefit of increased property tax revenues, sales tax revenues, job creation, etc.

6.2.2 The amount of the Boundary Adjustment Fee shall remain constant for a period of five (5) years, commencing the date of this Agreement; thereafter, commencing with the sixth (6th) year, the amount of the Boundary Adjustment Fee shall be increased annually at the rate of Two and 75/100 percent (2.75%) per year for the remainder of the term of this Agreement.

6.2.3 The Boundary Adjustment Fee for each ERU shall be due and payable at the time of and as a condition to the issuance by the City of a building permit for the structure associated with each such ERU.

6.2.4 Subject to the provisions of Section 6.2.2, the Boundary Adjustment Fee shall be and remain set and established in such amount and be payable at the time stated herein until all of the ERUs authorized in Section 4.1.3 herein have been fully developed. The imposition and the amount of the Boundary Adjustment Fee shall not be subject to challenge by EBCo or its successors-in-interest or permitted assigns on grounds of legality or reasonableness.

6.3. Impact Fees.

6.3.1 In recognition of the payment by EBCo to the City of the Boundary Adjustment Fee and the basis for the same as detailed in Section 6.2.1 above, EBCo shall be expressly exempt from the payment of:

(1) any and all existing water, sewer, park and public safety impact fees which, as of the date hereof, are required by City ordinance to be paid as a condition of development approval by the City, as well as any future impact fees which may be related to said services, and

(2) any and all impact fees in any way related or attributable to: (i) streets, roads and highways, (ii) water other than culinary or municipal water, including, without limitation, secondary or irrigation water and industrial water, and (iii) storm water run-off, collection, drainage, transportation, retention, detention and discharge, which, at any time in the future, may be imposed by enactment of the City and be required to be paid as a condition of development approval.

6.3.2 Except as provided in Section 6.3.1 herein, upon completion of the Boundary Adjustment, the Harmony Ridge Project shall otherwise be subject to payment of all impact fees which may be imposed by the City which are generally applicable to the development of other property within the City, and EBCo shall be entitled to the treatment afforded any development project similar to the Harmony Ridge Project if an impact fee ordinance makes any such distinction or any other similar project is afforded different treatment pursuant to decision of the Courts of the State of Utah. Nothing herein shall be deemed a waiver of the right of EBCo to challenge the legality or reasonableness of any impact fee or the City's compliance with the statutory requirements for the imposition of impact fees as set forth in Section 11-36-101 *et seq.*, Utah Code Annotated, 1953, as amended, including any future amendment thereto and interpretations thereof the by Courts of the State of Utah in effect at the time. Any impact fees lawfully imposed in conformance with the foregoing shall be payable in accordance with the payment requirements of the particular impact fee enactment.

7. **TIMING OF DEVELOPMENT.** Notwithstanding anything in this Agreement to the contrary, the Parties hereby acknowledge and agree that the development of the Property and/or any portion thereof, shall proceed over time, or not proceed, as the case may be, as determined by EBCo, in its sole discretion, given market and development conditions and considerations, and other reasonable justifications for delay.

8. **SUCCESSORS-IN-INTEREST AND PERMITTED ASSIGNS; TRANSFERRABILITY**

8.1 **Successors-in-Interest and Permitted Assigns.** This Agreement shall be binding upon and inure to the benefit of EBCo and its successors-in-interest and permitted assigns in the ownership or development of all or any portion of the Property. Notwithstanding the foregoing, the purchaser of the Property or any portion thereof shall be responsible for performance of EBCo's obligations hereunder as to the portion of the Property so

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transferred, subject to Section 8.2. Unless expressly stated otherwise, any reference to EBCo herein shall be applicable to its successors-in-interest and permitted assigns.

8.2 Release of EBCo. Except with regard to the sale of lots in single or multi-family residential subdivisions or commercial/retail areas which have been platted and received development approval, in which case the provisions of this Section 8.2 shall not apply, in the event of a transfer of all or a portion of the Property, EBCo shall enter into a written assumption agreement with the transferee of EBCo's obligations under this Agreement, a fully-executed copy of which shall be delivered to the City, wherein the transferee, among other things, shall certify that said transferee has read and understands the terms and provisions of this Agreement, that it assumes all of EBCo's obligations thereunder with respect to the portion of the Property transferred, and that it otherwise expressly agrees to be bound by this Agreement in conformance with its applicable terms and conditions; whereupon, upon delivery to the City, the transferee shall be deemed fully substituted in the place of EBCo under this Agreement as to the portion of the Property transferred, and EBCo shall be released from any further obligation with respect to this Agreement as to the parcel transferred.

9. TERM. The term of this Agreement shall commence on and be effective as of the date hereof and extend for a period of thirty (30) years from and after said date.

10. RECORDATION; AGREEMENT TO RUN WITH THE LAND. This Agreement shall be recorded against the Property, and this Agreement and all covenants, rights, terms, conditions and obligations contained herein pertaining to the development of the Harmony Ridge Project shall run with the land and shall inure to the benefit of and be binding upon all successors-in-interest of EBCo in the ownership of the Property and development of the Harmony Ridge Project thereon; except that all covenants, rights, terms, conditions and obligations contained herein pertaining to the development of the Harmony Ridge Project shall cease to burden and run with that portion of the Property that is subdivided into individual lots pursuant to the applicable subdivision ordinances of the City Code and each said lot shall be released herefrom at the time of recordation of the subdivision plat pursuant to which such lot is created.

11. MISCELLANEOUS PROVISIONS

11.1 Construction of Agreement. This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

11.2 Consistency with State and Federal Law. The Parties agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

11.3 Enforcement. The Parties hereby acknowledge and agree that the City has the right to enforce its rules, policies, and ordinances, subject to the terms of this Agreement, and may, at its option, seek an injunction to

{00220880-1 }

compel such compliance. The Parties further acknowledge and recognize that EBCo has the right to enforce the provisions of this Agreement by seeking an injunction to compel compliance to the extent not inconsistent with the City's reserved legislative and police powers. In the event EBCo or its successors-in-interest violate the rules, policies, regulations or ordinances of the City or violate the terms of this Agreement, the City may, without electing to seek an injunction or after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the City Council or a court of competent jurisdiction if EBCo has used its reasonable best efforts to cure such violation within such thirty day period and is continuing to use its reasonable best efforts to cure such violation), take such action as shall be deemed appropriate under law until such conditions have been honored by EBCo. Both Parties shall be free from any liability arising out of the exercise of their respective rights under this Section; provided, however, that each Party may be liable to the other for the exercise of such rights in violation of Rule 11 of the Utah Rules of Civil Procedure, Rule 11 of the Federal Rules of Civil Procedure and/or Utah Code Annotated 78B-5-825, as each may be amended.

11.4 No Waiver. Failure of any Party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the City has the power to amend, modify or alter this Agreement or waive any of its condition so as to bind the City by making any promise or representation not contained herein.

11.5 Integration. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all other prior agreements, understandings, statements, representations and warranties, oral or written, express or implied, by and among the Parties and their respective affiliates, representatives and agents in respect of the subject matter hereof.

11.6 Amendment. This Agreement cannot be altered or amended except pursuant to an instrument in writing mutually agreed to and executed by the Parties.

11.7 Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, or for any reasons or in any legal proceedings whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals and re-hearings, and whether or not an action has actually been commenced, the prevailing Party shall be entitled to receive from the non-prevailing Party reimbursement for all attorney's fees, costs and expenses incurred by the prevailing Party. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

11.8 Notices. Any and all notices shall be in writing and shall be validly given or made to the other Party if served either personally, by electronic transmission, or by deposit in the United States mail. If such notice is served personally or by electronic transmission, service shall be conclusively deemed given at the time of such personal service or electronic transmission. If such notice is served by mail, such notice shall be sent postage prepaid, by certified mail, return receipt requested, and shall be conclusively deemed given two business days after the deposit thereof in the United States mail addressed to the Party to whom such notice is given as hereinafter set forth:

~~ENT 56319:2011 PG 23 of 662~~

To: The Ensign-Bickford Company
125 Powder Forest Drive, P.O. Box 7
Simsbury, CT 06070

With a copy to:
Clyde Snow & Sessions
One Utah Center, Suite 1300
201 South Main Street
Salt Lake City, UT 84111-2216
Attention: D. Brent Rose

To: Mapleton City
125 West Community Center Way
Mapleton, UT 84664

With a copy to:
Blaisdell & Church
5995 South Redwood Road
Salt Lake City, Utah 84123
Attention: Eric Johnson

Any Party hereto may change its address for the purpose of receiving notices as herein provided by serving written notice given in the manner aforesaid.

11.9 **Applicable Law.** This Agreement and all matters relating hereto, shall be governed by, construed and interpreted in accordance with and be enforceable under the laws of the State of Utah.

11.10 **Relationship of the Parties.** This Agreement neither acknowledges the existence of nor is it intended nor shall it be construed to establish, create or organize any principle-agent relationship, partnership, joint venture, or any other legal entity or form of business relationship between the Parties, and is limited solely to the purposes and interests expressed herein. It is specifically understood by the Parties that: (i) the Harmony Ridge Project is a private development; (ii) the City has no interest in, responsibility for, or duty to third parties concerning any improvements to the Property unless and until the City accepts the improvements pursuant to the provisions of this Agreement or in connection with a subdivision plat, site plan, deed, or map approval; and (iii) EBCo shall have the full power and exclusive control of the Property subject to the obligations of EBCo as set forth in this Agreement.

11.11 **No Third-party Beneficiaries.** This Agreement shall not be deemed to create any right in any person who is not a Party (other than the permitted successors and assigns of a Party) and shall not be construed in any respect to be a contract, in whole or in part, for the benefit of any third party (other than permitted successors and assigns of a Party hereto).

11.12 **Incontestability.** In consideration of the mutual covenants and agreements contained herein, each Party hereto does hereby agree that this Agreement, and each and every provision hereof, is and shall be enforceable by and among them according to its terms, and each Party does hereby agree that it shall not, directly or indirectly, contest the validity or enforceability hereof.

11.13 **Force Majeure.** Performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrections, strikes, lock-outs, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine, restrictions, inability (when the responsible Party is faultless) to secure necessary labor, materials, tools, acts or failure to act of any public or governmental agency or entity, or by any other reason not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, and in such event, the performance of such work or the doing of such act shall be excused for the period of the delay and the period of performance for any such work or the doing of any such act shall be extended for a period equivalent to the period of such delay.

11.14 **Inducement.** The making and execution of this Agreement has not been induced by any representation, statement, warranty or agreement other than those herein expressed.

11.15 **Further Action.** The Parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

11.16 **Severability.** Notwithstanding anything herein to the contrary, each of the provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

11.17 **Warranty of Authority.** The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

11.18 **Copies of Applicable City Ordinances.** Copies of all applicable ordinances of the City which are referenced in this Agreement and by which the Parties are bound hereunder are attached hereto as EXHIBIT "P" and incorporated by this reference herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE ENSIGN-BICKFORD COMPANY

By: [Signature]

Its: PRESIDENT

MAPLETON CITY

By: [Signature]

Mayor

ATTEST:

[Signature]
City Recorder
(00220880-1)

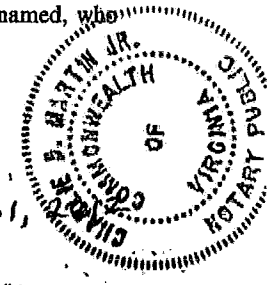


ACKNOWLEDGMENTS

~~STATE OF CONNECTICUT~~
STATE OF VIRGINIA
County of PETTSILVANEA)
:SS.

On the 2ND day of AUGUST, 2011, personally appeared before me PETER BARNETT, known to me, or proved to me on the basis of satisfactory evidence, to be the persons who executed the within instrument as the PRESIDENT, of the corporation therein named, who duly acknowledged to me that the corporation executed the same.

[Signature]
NOTARY PUBLIC
REGISTRATION NUMBER: 343398
COMMISSION EXPIRES: AUGUST 31, 2012



STATE OF UTAH)
County of Utah)
:SS.

On the 20 day of July, 2011, personally appeared before me Camille Brown and Brian Nell, known to me, or proved to me on the basis of satisfactory evidence, to be the Mayor and City Recorder, respectively, of Mapleton City, who duly acknowledged that the within and foregoing instrument was signed on behalf of said City by authority of a duly adopted resolution of its City Council, and that said City executed the same.

[Signature]
NOTARY PUBLIC



EXHIBITS

- EXHIBIT "A" LEGAL DESCRIPTION OF THE PROPERTY**
- EXHIBIT "B" BOUNDARY ADJUSTMENT ORDINANCES**
- EXHIBIT "C" DEVELOPMENT PLAN**
- EXHIBIT "D" PD-3 PLANNED DEVELOPMENT – HARMONY RIDGE DISTRICT**
- EXHIBIT "E" DENSITY PLAN**
- EXHIBIT "F" 1 - HARMONY RIDGE RESIDENTIAL DESIGN STANDARDS
2 - HARMONY RIDGE COMMERCIAL/INDUSTRIAL DESIGN STANDARDS**
- EXHIBIT "G" PARKS AND OPEN SPACE PLAN AND DESIGN STANDARDS**
- EXHIBIT "H" WATER RIGHTS DATA**
- EXHIBIT "I" EAST BENCH IRRIGATION CO. STOCK CERTIFICATES**
- EXHIBIT "J" 1 - MASTER UTILITY PLAN – OFFSITE CULINARY WATER MAIN LINE
2 - MASTER UTILITY PLAN – ONSITE CULINARY AND PRESSURIZED IRRIGATION WATER
3 – WATER DEMAND FORECASTING TABLE**
- EXHIBIT "K" SEWER INTERLOCAL AGREEMENT**
- EXHIBIT "L" LEGAL DESCRIPTION OF SECURED PARCEL**
- EXHIBIT "M" OFFSITE SEWER MASTER PLAN AND REIMBURSEMENT SCHEDULE**
- EXHIBIT "N" MASTER UTILITY PLAN – SANITARY SEWER**
- EXHIBIT "O" MASTER UTILITY PLAN – STORM DRAINAGE**
- EXHIBIT "P" COPIES OF APPLICABLE CITY ORDINANCES**

EXHIBIT "B"
REAL ESTATE PURCHASE AND SALE AGREEMENT

REAL ESTATE PURCHASE AND SALE AGREEMENT

The Ensign-Bickford Company and Terracom Development, LLC

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement"), is made and entered into effective as of this 18 day of May, 2018, by and between THE ENSIGN-BICKFORD COMPANY, a Connecticut corporation (as "Seller") and TERRACOM DEVELOPMENT, LLC, a Utah limited liability company ("Buyer"). Seller and Buyer are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

The terms set forth below shall have the meanings set forth below when used in the Agreement.

SUMMARY OF BASIC TERMS	DESCRIPTION
1. Effective Date ("Effective Date")	May <u>18</u> , 2018
2. Seller Real Property	<p>The combination of the following real property interests: (a) approximately 460 acres of real property located in Mapleton City, Utah County, State of Utah (the "Land", or "Property") currently owned by Seller, said real property being more particularly described in <u>EXHIBIT "A"</u> hereto, including all privileges, easements and appurtenances benefitting the Land and/or Improvements as defined below; (b) certain appropriated Seller Water Rights and water shares currently owned by Seller for the equivalent of approximately 385.05 acre-feet, used and to be used in connection with the Land, as more particularly set forth and described on <u>EXHIBIT "B"</u> hereto (collectively, the "Seller Water Rights"); and (c) certain intangible rights and interests including: (i) Seller's rights and interest under that certain Boundary Adjustment and Development Agreement, as amended, dated June 7, 2011, attached as <u>EXHIBIT "C"</u> hereto ("Development Agreement"); (ii) such improvements held by Seller and located on the Land (the "Improvements"); and (iii) all contract rights, warranties, guarantees, licenses, permits, governmental approvals and other intangible property rights held by Seller which are necessary for the development of the Seller Real Property as contemplated by Buyer (the "<u>Intangible Rights</u>") (all collectively referred to herein as the "Seller Real Property"). Notwithstanding anything herein to the contrary, title to all monitoring and recovery wells and related appurtenances, as well as all other equipment, facilities and appurtenances utilized or to be utilized by Seller in the performance of its Remediation Obligations, as defined herein, shall be and remain vested in the Seller.</p>

- 3. **Buyer's Notice Address**
(Section 1.4):
Terracom Development, LLC
9829 South 1300 East, Suite 303
Sandy, Utah 84094
Phone: (801) 651-3616
Attn: _____

With copies to:

[Attorneys

Attn: _____]
- 4. **Purchase Price ("Purchase Price")**
(Section 4.1):
- 5. **Deposit (the "Deposit")**
(Section 4.2): (non-refundable under certain conditions
as stated herein)
- 6. **Escrow Agent ("Escrow Agent")**
and Escrow Agent's Notice Address
("Escrow Agent's Notice Address")
(Section 5):
1st Liberty Title, LC
9488 Union Square
Sandy, Utah 84070
Attn.: Jax Pettey, Esq.
- 7. **Title Company**
(Section 5.1.)
1st Liberty Title, LC
9488 Union Square
Sandy, Utah 84070
Attn.: Jax Pettey Esq.
- 8. **Seller's Representative (Seller's**
Representative")
The Ensign-Bickford Company
125 Powder Forest Drive
Simsbury, CT 06070
Attn: Dorothy Hammett

With copies to:

Ensign-Bickford Realty Corporation
125 Powder Forest Drive
Simsbury, CT 06070
Attn: Gus Jasminski

and

Clyde Snow & Sessions
201 South Main, 13th Floor
Salt Lake City, UT 84111
Attn: D. Brent Rose

9. **Buyer's Representative (Buyer's Representative")**

Terracom Development, LLC
9829 South 1300 East, Suite 303
Sandy, Utah 84094
Attn:

With copies to:

Terracom Development, LLC
9829 South 1300 East, Suite 303
Sandy, Utah 84094
Attn:

WHEREAS, Seller desires to sell and convey to Buyer, and Buyer desires to purchase and acquire from Seller, all of Seller's right, title and interest in and to the Seller Real Property, subject to and in conformance with the terms, covenants and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants of the Parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree, and instruct Escrow Agent as follows.

1. **Purchase and Sale.**

1.1 **Seller Real Property.** 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 Seller Real Property upon, and subject to the terms, covenants and conditions set forth in this Agreement.

1.2 **Seller Water Rights.**

(a) In connection with the sale and purchase of the Seller Real Property, and as part of the consideration comprising the purchase price hereunder, Seller shall sell and Buyer shall purchase the Seller Water Rights and only those Seller Water Rights set forth and described in Exhibit "B" hereto, comprising 385.05 acre-feet, including the related Mapleton City Water ERU Certificates, as provided in Section 1.2(b) below (if any).

(b) The Parties hereby acknowledge that Section 5.1 of the Development Agreement requires, in summary: (i) that title to water rights sufficient to serve the Land is required to be conveyed to the City; (ii) that pursuant to Section 5.1.4 of the Development Agreement, water right credits in the form of Water ERU Entitlements, as defined in the Development Agreement, are given by the City in exchange for the conveyance of water rights; and (iii) that Water ERU Entitlements are tendered back to the City sufficient for development of the Land to be developed upon recordation of the subdivision plat therefor.

(c) **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE PARTIES HEREBY EXPRESSLY UNDERSTAND, ACKNOWLEDGE AND AGREE: (i) THAT SELLER OWNS ONLY THOSE SELLER WATER RIGHTS IDENTIFIED IN EXHIBIT B HEREIN; (ii) THAT SELLER HAS MADE NO REPRESENTATION THAT THERE MAY BE ANY OTHER WATER RIGHTS OR WATER SHARES, INTERESTS OR ENTITLEMENTS APPURTENANT TO OR OTHERWISE AVAILABLE WITH OR FOR USE ON THE PROPERTY; AND (iii) THAT THE SELLER WATER RIGHTS ARE NOT SUFFICIENT TO SATISFY THE CITY'S REQUIREMENTS FOR THE**

FULL DEVELOPMENT OF THE LAND AND THAT SELLER HAS MADE NO REPRESENTATION TO BUYER TO THE CONTRARY.

1.3 Allocation of the Purchase Price. The Parties shall agree on an allocation of the total Purchase Price hereunder between the Land and the Seller Water Rights, which allocation shall be set forth in a purchase price allocation memorandum (the "Purchase Price Allocation Memorandum") to be executed by the Parties at Closing as a condition to Closing.

2. Condition of the Seller Real Property.

2.1. Sale "As Is". EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 2.2 BELOW, BUYER AGREES AND ACKNOWLEDGES THAT THE SELLER REAL PROPERTY SHALL BE CONVEYED TO BUYER AT CLOSING "AS IS" AND "WHERE IS" IN ALL RESPECTS, WITH ALL FAULTS AS OF THE CLOSING DATE. NEITHER SELLER NOR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AFFILIATES, ATTORNEYS, AGENTS OR REPRESENTATIVES HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW, REGARDING THE SELLER REAL PROPERTY, OR ANY OTHER MATTER IN ANY WAY RELATED TO THE SELLER REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, TITLE TO THE SELLER REAL PROPERTY (EXCEPT AS MAY BE CONTAINED IN THE SPECIAL WARRANTY DEED TO BE GIVEN TO BUYER AT THE CLOSING), UTILITIES, ENTITLEMENTS, SUBDIVISION, ZONING, USE, VALUE, PHYSICAL OR ENVIRONMENTAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE SELLER REAL PROPERTY OR ACTIVITIES NOW OR FORMERLY CONDUCTED THEREON OR THEREIN, OR LIABILITY OF OR RELATED TO THE SELLER REAL PROPERTY OR ACTIVITIES NOW OR FORMERLY CONDUCTED THEREON OR THEREIN OR AS A RESULT OF ANY ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT ("CERCLA"), CONSENT AND OTHER DECREES, AGREEMENTS, SITE MANAGEMENT PLANS, PERMITS, APPROVALS, LICENSES, MANDATES, ORDERS, ADMINISTRATIVE AND JUDICIAL JUDGMENTS, LEGISLATION, REGULATIONS, AND ORDINANCES, RELATED TO THE SELLER REAL PROPERTY OR ACTIVITIES NOW OR FORMERLY CONDUCTED THEREON, INCLUDING BUT NOT LIMITED TO THE ENVIRONMENTAL CONDITIONS, ENVIRONMENTAL COMPLIANCE LIABILITY, ACCESS, WETLANDS, HABITABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE WHATSOEVER, THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION, OR OTHERWISE OR ANY OTHER CONDITION OF THE SELLER REAL PROPERTY, THE COMPLIANCE OF THE SELLER REAL PROPERTY OR ACTIVITIES NOW OR FORMERLY CONDUCTED THEREON OR THEREIN, WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY, SELLER REAL PROPERTY; AND SELLER MAKES NO REPRESENTATION AND PROVIDES NO WARRANTY AS TO THE COMPLIANCE OF THE SELLER REAL PROPERTY OR LIABILITY RELATED TO THE LAND, OR ACTIVITIES NOW OR FORMERLY CONDUCTED THEREON OR THEREIN, UNDER OR AS A RESULT OF ANY ENVIRONMENTAL LAWS, INCLUDING, BUT NOT LIMITED TO CERCLA; AND THAT BUYER TAKES THE SELLER REAL PROPERTY "AS IS" and "WHERE IS".

2.2. Environment Condition and Reservation; Enforceable Written Assurance.

(a) The Buyer hereby acknowledges, understands and agrees as follows:

(1) The Land is to be purchased by Buyer expressly subject to all agreements, consent decrees, settlements, and/or documents which describe certain continuing environmental covenants, obligations and limitations (collectively or individually, "Environmental Covenants"), to which portions of the Seller Real Property will remain subject and documents which describe those continuing environmental covenants of Buyer with respect to the Seller Real Property and/or adjacent offsite property, which documents shall include, but not be limited to: (i) this Agreement; (ii) that certain Stipulation and Consent Order issued by the Utah Water Quality Board on August 2, 1991 (the "Consent Order"); (iii) that certain Site Investigation Summary and Corrective Action Plan, dated May, 2002, Revised April, 2004 ("Corrective Action Plan"); (iv) that certain RCRA Facility Investigation Report dated May, 2007 ("RCRA Investigation Report"); (v) that certain Interim Measures Report, dated February, 2007 ("Interim Measures Report"); (vi) that certain RCRA Corrective Measures Implementation Report, dated December, 2009 ("Corrective Measures Implementation Report"); (vii) that certain Site Management Plan prepared for The Ensign Bickford Company, Spanish Fork, Utah and the Spanish Fork Technical Committee, by Charter Oak Environmental Services, Inc., dated December, 2009 and revised April, 2010 and August, 2010 (the "Site Management Plan"); (viii) all documentation describing the Controlled Areas and the continuing covenants and limitations which apply to and govern the Controlled Areas, as defined below (the "Controlled Areas Documentation"); (ix) that certain Addendum to Stipulation and Consent Order between Seller and the Utah Water Quality Board dated January 30, 2007; (x) that certain Well Agreement between Seller and the Spanish Fork City Corporation dated June 25, 2008 (the Spanish Fork Well Agreement); and (xi) that certain Agreement between Seller and Mapleton City Corporation dated December 24, 1997 (the "Mapleton Agreement"), (xii) any Environmental Covenants entered into by and between Seller and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board, now known as the Utah Waste Management and Radiation Control Board, including those recorded with the Utah County Recorder; and (xiii) related environmental covenants, conditions, obligations, permits, licenses, administrative approvals and orders, judgments, pre-existing agreements, contracts, laws, regulations, and/or other documents related thereto (collectively, the "Continuing Environmental Covenant Documents").

(2) The Continuing Environmental Covenant Documents obligate Seller, among other things, to perform certain prospective and ongoing environmental investigation, monitoring, inspecting, sampling and remediation work and activities related to the Land, Seller's and/or Seller's predecessors-in-interest's activities formerly or now conducted thereon or therein (collectively, "Remediation Obligations"), which are to be conducted on certain portions of the Land, and certain portions of the Land necessary for Remediation Obligations are subject to use and activity limitations as set forth in the Continuing Environmental Covenant Documents (the portions of the Land necessary for Remediation Obligations or subject to use and activity limitations are referred to as "Controlled Areas"), as described and depicted in EXHIBIT "D" hereto, including those portions of the Land upon which the Seller's monitoring and recovery wells are situated as depicted in said Exhibit D.

(3) The Controlled Areas are governed by and expressly subject to certain legal and environmental constraints, obligations and use and activity limitations, as set forth in the Continuing Environmental Covenant Documents.

(4) As an express condition precedent to this Agreement, Buyer hereby understands, acknowledges and agrees that Seller, for itself and for the benefit and use of its successors-in-interest and assigns, hereby expressly reserves and shall at all times have and maintain, and Buyer shall be obligated to provide and grant to Seller, its successors-in-interest and assigns, and their contractors, (i) access suitable for vehicular, equipment, pedestrian or other access, over and across any and all public and private roads within the Land and Controlled Areas as developed, and (ii) limited easements and rights of way over, under, in, across and through such other portions of the Land and Controlled Areas, as determined to be necessary by Seller, and (iii) the right, at any time, to occupy and use such portions of

the Land and Controlled Areas as Seller, in its reasonable, sole discretion, shall deem necessary, so as to enable Seller to perform any and all of its current and prospective Remediation Obligations under the Continuing Environmental Covenant Documents and/or other applicable agreements, laws and regulations of the State of Utah Department of Environmental Quality, the United States of America Environmental Protection Agency, and/or the City of Mapleton, relating to the Land and Controlled Areas. Notwithstanding the breadth of the foregoing, in the Grant of Easement from Buyer to Seller for the purposes set forth herein, the form of which is attached as EXHIBIT "E" hereto, Seller and Buyer have defined and limited the scope of Seller's reserved rights of use of and access to, through or across the Land to that scope that will involve a minimum of potential disruption to the Land to that extent reasonably necessary to allow Seller to satisfy Seller's ongoing Remediation Obligations under the Continuing Environmental Covenant Documents and/or other applicable agreements, laws and regulations of the State of Utah Department of Environmental Quality, the United States of America Environmental Protection Agency, and/or the City of Mapleton, relating to the Land and the Controlled Areas. Furthermore, Seller agrees to indemnify and hold harmless Buyer and Buyer's successors from and against any claims arising from or relating to damage to Property resulting from Seller's access, or that of its contractors or representatives, on or across any Property. This indemnity obligation shall survive the Closing under this Agreement.

(5) At times prior to Closing, there may be certain other activities occurring on and around the Land, including, without limitation, work related to Seller's Remediation Obligations. Buyer shall not obstruct any such activity of Seller or its contractors or designees in the course of performance of any of Seller's Remediation Obligations, or otherwise, within Land, and Buyer waives all claims of liability against Seller or others working in the vicinity of the Land.

(6) The design, development and use of the Land and Controlled Areas as it is developed under the Buyer's development plan will be such as to accommodate all of Seller's Remediation Obligations and other requirements of this Section, and Buyer shall afford the Seller reasonable time and flexibility to satisfy its obligations hereunder in compliance with all applicable laws and regulations.

(7) The rights of Seller and of Seller's successors-in-interest and assigns under this Section shall be specifically referenced in the Special Warranty Deed as the same pertains to Seller and any of its affiliates pursuant to which the Land is to be conveyed to Buyer and in all subsequent transfers, encumbrances, leases, and licenses relating to the Land and any improvements or fixtures thereto by Buyer, its successors-in-interest or assigns, lessees or licensees.

(8) Notwithstanding Buyer's acknowledgements in Section 2.1. that the Land is being conveyed "as is" and "where is", Seller confirms its responsibility to perform its Remediation Obligations as related to environmental conditions on or in the Land for which Seller is responsible as provided herein, and as further limited or defined by the Continuing Environmental Covenant Documents, and further acknowledges that Buyer is the beneficiary of such obligations.

(9) Regardless of any provisions in this Agreement or this Section to the contrary, Buyer agrees that it is and shall be responsible for compliance with all laws and regulations and other governmental obligations and performing required investigation and remediation that relate to a recognized environmental condition that is caused, created, or exacerbated by the actions or inactions of the Buyer and its agents, contractors, or invitees ("Buyer's REC").

(10) [Intentionally left blank.]

(11) Except as provided in Subsection (9) above as to a Buyer's REC, in the event of a newly discovered environmental condition on the Land ("NEC"), in or outside a Controlled Area, Buyer shall immediately notify Seller, describing the NEC in sufficient detail to allow Seller's reasoned evaluation. Seller will take responsibility for the investigation and/or remediation of the NEC. Any disputes regarding the applicability of Sections 2.2(a)(9) or 2.2(a)(11) for any NEC shall be subject to the dispute resolution provisions of Section 8.5 herein.

(12) The Parties agree that the Party who, under this Section, has the obligation to investigate and/or remediate an NEC, must promptly commence and diligently proceed with such efforts. As set forth in Section 2.4(a) herein, the ~~it is~~ Buyer will use commercially reasonable efforts in a timeframe subject to market conditions to construct roads and install utilities within the Land in the areas to be dedicated by the Buyer to the municipality that are necessary to the development of the Land ("Buyer's Utility Work"). In this connection, Seller specifically agrees to relocate, at its expense, one (1) monitoring well, identified as MW-17d (the "Relocated Well"), as described and depicted in EXHIBIT "F" hereto, which according to Seller's existing development plan, as set forth in the Development Agreement, needs to be relocated to facilitate Buyer's Utility Work in connection with its development of the Land. It is agreed that all other wells and other facilities located on the Land being utilized by Seller in the performance of its Remediation Obligations (the "Remediation Facilities," including the Relocated Well subsequent to its relocation), shall not be moved, but shall remain in place and be utilized by Seller for such purposes; and that the development of the Land by the Buyer pursuant to any amendment to the Development Agreement shall be designed so as not to in any way impact the Remediation Facilities as located or the Seller's ability to perform the Remediation Obligations. Seller agrees to exercise its commercially reasonable best efforts to relocate the Relocated Well to a location mutually agreeable to the Parties, and to otherwise perform all Remediation Obligations of Seller within the Land in a timely manner so as not to materially and unduly delay Buyer's Utility Work.

(13) Seller shall be responsible for all contacts, discussions, negotiations and other communications with any federal, state or local governmental authorities ("Governmental Authorities") related to the Continuing Environmental Covenant Documents, the Remediation Obligations, and such other investigation or remediation that Seller is responsible for under this Section 2.2 and the Agreement (collectively "Seller's Environmental Obligations"). Except for matters pertaining to any Enforceable Written Assurance obtained by Buyer, Buyer's status as a bona fide prospective purchaser under CERCLA and corresponding Utah law and for Buyer's establishing and maintaining that status, and Buyer's obligations to address a Buyer's REC (collectively "Buyer's Environmental Obligations"), Buyer shall not, directly or through any representative, contact or communicate with any Governmental Authorities as related to Seller's Environmental Obligations unless required by law. To the extent Buyer has any communications permitted under this Section, Buyer shall not comment on Seller's Environmental Obligations or make any statement or communication related to Seller or its obligations, whether under this Agreement or otherwise. In the event that any Governmental Authority initiates any communication with Buyer which may relate to Seller's Environmental Obligations, Buyer shall provide prompt notice to Seller. Any reply communication to any Governmental Authority related to Seller's Environmental Obligations shall be controlled by Seller, unless and to the extent that the Governmental Authority specifically requests a reply communication directly from Buyer. To the extent Seller has any communications permitted under this Section, Seller shall not comment on Buyer's Environmental Obligations or make any statement or communication related to Buyer or its obligations, whether under this Agreement or otherwise. In the event that any Governmental Authority initiates any communication with Seller which may relate to Buyer's Environmental Obligations, Seller shall provide prompt notice to Buyer. Any reply communication to any Governmental Authority related to Buyer's Environmental Obligations shall be controlled by Buyer, unless and to the extent that the Governmental Authority specifically requests a reply communication directly from Seller.

(14) Except as to indirect, incidental, consequential, special, or exemplary damages, Seller agrees to hold harmless, indemnify and otherwise defend Buyer from and against any and all losses, costs, expenses, claims and liabilities, judgments or settlements, including reasonable attorneys' fees, expert fees and court costs, which arise out of suits, actions, claims or proceedings against the Buyer based upon, arising from or relating to a breach of Seller's Environmental Obligations.

(15) Except as to indirect, incidental, consequential, special, or exemplary damages, Buyer agrees to hold harmless, indemnify or otherwise defend Seller from and against, any and all losses, costs, expenses, claims and liabilities, judgments or settlements, including reasonable attorneys' fees, expert fees and court costs, which arise out of suits, actions, claims or proceedings against the Seller based upon, arising from or relating to a Buyer's REC or a breach of Buyer's Environmental Obligations.

(b) Enforceable Written Assurance. Seller shall reasonably cooperate with Buyer in obtaining from the Utah Department of Environmental Quality ("UDEQ"), a letter of "Enforceable Written Assurance," issued in conformance with the applicable provisions of the Utah Hazardous Substance Mitigation Act, Title 19, Chapter 6, Part 3, Utah Code Ann. 1953, as amended, and the Administrative Rules promulgated pursuant thereto as set forth in Utah Administrative Code R311-600 et seq.

2.3. Land Use Approvals under the Development Agreement; Amendments.

(a) The Parties hereby acknowledge that the City has approved the Land for the development of a planned unit development project designated as the Harmony Ridge Development Project (the "Harmony Ridge Project"), for which a new zoning classification has been established by City Ordinance as PD-3 PLANNED DEVELOPMENT - HARMONY RIDGE DISTRICT, subject to and consistent with the terms and provisions of the Development Agreement. The Parties hereby understand and acknowledge that under the Development Agreement, the maximum number of Equivalent Residential Units ("ERU's") for the residential portion of the Harmony Ridge Project approved in connection with the Harmony Ridge Project by the City is 850, and that the total number of ERU's for the entire Land approved by the City is 1,050. The Buyer shall take the Land subject to the above zoning and the above-approved ERU limits, and all other terms and conditions of the Development Agreement, subject at all times to rights of Buyer under Section 2.3(c), below.

(b) Buyer acknowledges that it has read, is familiar with, and understands the Development Agreement. Subject to the provisions of Subsection (c) of this Section and consent of the City, if required, the Seller shall assign to the Buyer all of its rights under and delegate to the Buyer all of Seller's responsibilities and obligations set forth in the Development Agreement, and the Buyer hereby expressly agrees, as the Seller's successor-in-interest, to accept said assignment and delegation, to assume from Seller the covenants to perform all responsibilities and obligations required of Seller under the Development Agreement, agrees to be bound by and to fully and timely perform all of the terms, covenants and conditions required of it under the Development Agreement and to fully and completely indemnify Seller from all claims, causes of action, costs, fees (including reasonable attorneys' fees), or liabilities, threatened against or incurred by Seller arising out of or relating in any manner to any and all responsibilities and obligations assumed by Buyer under the Development Agreement (subject to Section 2.2 (c) below, and except as provided in Section 2.4 below), as provided in that certain Assignment and Assumption Agreement (the "Development Agreement Assignment") to be entered into by and between Seller and Buyer at the Closing in the form attached as EXHIBIT "G" hereto. In connection with the Development Agreement Assignment:

(1) Seller shall retain the right to receive reimbursement payments due and owing to Seller from Spanish Fork City pursuant to an existing agreement between Seller and Spanish Fork City, in connection with the construction and installation of the Sewer Trunk Line referenced in Section 2.5(a) herein. If Spanish Fork City fails to uphold its obligations under said agreement, Buyer is in no way responsible to make up any shortfall.

(2) Seller expressly assigns to Buyer such right, title and interest which Seller may have, without having any obligation to obtain the same, in and to: (i) design and engineering work, and other professional work product created or commissioned by Seller, which relate to the Seller Real Property (the "Seller Commissioned Work"); (ii) hosting details, passwords, and other information in Seller's possession sufficient to allow Buyer to successfully take over the harmonyridgeliving.com website; and (iii) any trademarks and logos in Seller's possession associated with the Harmony Ridge name. Within 14 days of the Closing, Seller will deliver to Buyer any originals or copies of any Seller Commissioned Work which is owned by Seller, in Seller's possession and readily retrievable by Seller.

(c) Seller and Buyer hereby acknowledge that Buyer is likely to re-design the Harmony Ridge Project by amendment to the Development Agreement and the development plan for the Harmony Ridge Project, in conformance with and subject to the terms of the Development Agreement providing for the amendment thereof. The Buyer hereby specifically covenants and agrees: (i) that no amendment to the Development Agreement shall be formalized with the City until after the Closing, with the express understanding that the Development Agreement shall remain in force and effect according to its terms until the transaction contemplated herein has Closed; and (ii) that any successful amendment of the Development Agreement in accordance with any desired re-design of the Buyer shall not, in any way, be a condition precedent to or otherwise affect or negate, in any way, Buyer's obligation to perform under all of the terms of this Agreement.

(d) It is hereby expressly understood and agreed that this Agreement operates independent of the Development Agreement. This Agreement and Seller's and Buyer's rights and obligations hereunder shall remain in full force and effect in accordance with its terms irrespective of the status of the Development Agreement; provided that, unless cured or otherwise provided for prior to the Closing under this Agreement, any default by the Seller of any of those remaining obligations of Seller under the Development Agreement, which remaining Seller obligations are specifically limited to those described in Section 2.4 below, prior to the Closing shall be treated under Section 6.1(c) below as a failure of a condition precedent to Buyer's obligations.

2.4. Responsibility for Offsite and Onsite Utilities and Other Infrastructure; Payment Obligations.

(a) Except as provided in Section 2.5(a) herein, the Seller shall assume and be solely and separately responsible, at its sole cost and expense, for the planning, designing and engineering, of the offsite culinary water, secondary water and sanitary sewer utilities. The Buyer shall assume and be solely and separately responsible at its sole cost and expense for the permitting, constructing and installing of all offsite utilities, including, without limitation all offsite culinary water, secondary irrigation water and sanitary sewer utilities and electrical power, as well as all on-site roads, utilities, improvements and infrastructure, and all other costs, of any kind, which are or may be required in connection with the development of the Seller Real Property, in conformance with the terms and conditions of this Agreement and the Development Agreement as currently stated or as amended by the Buyer and the City. Seller makes no representation regarding the reliability, capacity, system capability or quality of the culinary water, secondary irrigation water, sanitary sewer, and/or electrical utilities which may be available for the use and development of the Seller Real Property.

(b) Obligations thus assumed by Buyer include, but are not necessarily limited to, payment of the following in the amounts stated or in such other amounts as may be negotiated between the Buyer and the City subsequent to Closing: (a) required sewer treatment impact fees totaling approximately \$2,800,000.00; (b) impact fees for the Crowd Canyon water storage tank, totaling approximately \$627,180.74; and (c) Boundary Adjustment Fees of \$6,000.00 per ERU in the development. Prepayment of the foregoing shall be the sole and separate responsibility of the Buyer.

2.5. Off-site Reimbursement. The Development Agreement provides for reimbursement to be made for costs incurred in connection with the construction and installation of the offsite improvements related to the development of the Harmony Ridge Project on the Property, as more particularly set forth in the Development Agreement. With regard to such reimbursement, Seller and Buyer hereby acknowledge, understand and agree as follows:

(a) Seller, at its sole expense, has completed the construction and installation of the sanitary sewer interconnecting trunk line extending from the Spanish Fork Sewer Treatment Plant to the Land (the "Sewer Trunk Line"), at that point on the Land shown and depicted on EXHIBIT "H" hereto. Any and all reimbursement payments due and owing by the City under the Development Agreement in connection with the Sewer Trunk Line shall be the sole property of and be paid to the Seller; and if such reimbursement payments are for any reason not made by the City directly to the Seller, but are made by the City to the Buyer as Seller's successor-in-interest under the Development Agreement, then, in such event, Buyer hereby agrees to properly account to Seller for all such payments received and to immediately remit payment of the same over to the Seller within ten (10) days of receipt from the City. But if Spanish Fork City fails to fulfill its obligations under its agreement with the Seller, as referenced in Section 2.3(b)(1), Buyer is in no way responsible to make up for any shortfall.

(b) Any and all reimbursement payments due and owing by the City under the Development Agreement for any other offsite improvements and infrastructure to be constructed by the Buyer, as provided in this Section, shall be the property of and be paid to the Buyer pursuant to the terms of the Development Agreement; and if such reimbursement payments are for any reason not made by the City directly to the Buyer but are made by the City to the Seller under the Development Agreement, then, in such event, Seller hereby agrees to properly account to Buyer for all such payments received and to remit payment of the same over to the Buyer within ten (10) days of receipt from the City.

2.6 Central Utah Water Conservancy District – Right of Entry Agreement. Buyer shall take the Seller Real Property subject to that terms and provisions of that certain Right of Entry Agreement, dated March 22, 2013, by and between The Ensign-Bickford Company, as grantor therein, and Central Utah Water Conservancy District, as grantee therein, a copy of which is attached as EXHIBIT "I" hereto, which shall remain in full force and effect subsequent to Closing as defined herein.

3. Due Diligence.

3.1 Due Diligence Period. During the Due Diligence Period, defined below, Buyer may review the Disclosure Items, defined below, and conduct such other due diligence activities ("Due Diligence"), with respect to the Property as Buyer deems appropriate, in conformance with and subject to the terms of this Section. Buyer's obligation to purchase the Property shall be contingent upon Buyer's review of the Disclosure Items, and inspection and examination of the Property during the Due Diligence Period and Buyer's approval thereof. The Due Diligence Period shall commence on the Effective Date, and shall end at 5:00 p.m. Mountain Time, on that day which is Sixty (60) days from the Effective Date (the "Due Diligence Period"). Buyer may terminate this Agreement at any time, for any reason or no reason, at any time prior to the expiration of the Due Diligence Period, upon written notification to the

Seller and Escrow Agent. Upon receipt of said notice of termination, the Escrow Agent shall release the Deposit to the Buyer within five (5) business days from the date of receipt of the notice of termination.

3.2 Due Diligence for Matters Other than Title.

(a) Disclosure Items. Seller shall make available to Buyer for its inspection and review, all of the documents and other materials listed on EXHIBIT "J" hereto (the "Disclosure Items"), and shall review with the Buyer relevant matters pertaining to the Controlled Areas referenced and described in Section 2.2(a)(2) herein. Buyer shall maintain the confidentiality of all documents and information provided by Seller to Buyer that are marked confidential and shall not disclose the identity, the nature or any contents of such documents to any person other than the directors, officers, employees, agents, attorneys, accountants, financial advisers, lenders, potential debt and equity providers, auditors, partners, consultants and potential partners of Buyer (collectively, the "Buyer Representatives"), but only if such Buyer Representatives need to know such information in connection with Buyer's due diligence. Buyer agrees that: (i) such Representatives will be informed by Buyer of the confidential nature of the information provided them and the requirement that it not be used other than in connection with Buyer's due diligence hereunder, (ii) such Representatives will be required to agree to and be bound by the terms of this Agreement as a condition of receiving such information. If Buyer or Seller terminates this Agreement, or if the transaction does not Close for any reason, Buyer will return the Disclosure Items to Seller (and destroy and instruct its Representatives to destroy all copies thereof). "Person" shall mean, for purposes of this Agreement, any entity, partnership, corporation, limited liability company, association, government or natural person. The obligations of Buyer in this Section shall survive any termination of this Agreement by means other than the Principal Closing.

(b) Accuracy of Disclosure Items. THE DISCLOSURE ITEMS ARE BEING MADE AVAILABLE BY SELLER TO BUYER FOR THE SOLE PURPOSE OF BUYER'S DUE DILIGENCE REVIEW AS CONTEMPLATED HEREIN. SELLER HAS MADE AND HEREIN MAKES NO REPRESENTATION OR WARRANTY AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY OF THE DISCLOSURE ITEMS.

(c) Buyer's Right of Access and Inspection. In conducting its Due Diligence and in its effort to amend the Development Agreement as provided in Section 2.3(c), it is hereby acknowledged that Buyer and its employees, representatives, underwriters, agents, contractors, engineers, architects and other professionals have received Seller's consent to enter onto the Land to inspect the Land and complete such surveys, tests, inspections, and investigations as Buyer may determine in its sole and absolute discretion, subject to all applicable requirements, conditions, limitations and prohibitions set forth in the Continuing Environmental Covenant Documents as applicable to the Controlled Areas. Seller has permitted Buyer to examine the Disclosure Items and conduct engineering tests, as well as environmental tests, audits and inspections of the Property, including sampling, and Buyer has been given complete access to the Land for the purpose of making such tests, inspections and investigations; provided, however, that all such inspections, whether undertaken by Buyer or third parties retained by Buyer, shall be kept strictly confidential and shall not be disclosed to third parties without the written consent of Seller prior to the Closing Date, which consent may be withheld for any reason, in Seller's sole discretion. From and after the Closing, Buyer may share the foregoing information only with parties who need to review such information in connection with the potential development of the Property. Buyer shall enjoy the access and inspection rights granted hereunder until the Closing or the earlier termination of this Agreement.

(d) Copies of Buyer Obtained Information to be Provided to Seller. If this Agreement is terminated for any reason or Buyer fails or refuses to Close on the Property, Buyer shall, within ten (10) days of the effective date of the termination, provide Seller with copies of all inspections, environmental reports, studies, reports and surveys, other documents and information compiled by Buyer

in conducting its investigation of the Property, other than internal analyses, studies and notes of internal communications prepared by or for Buyer and its Buyer Representatives during its investigation (the "Buyer Obtained Information").

(e) Environmental, Geophysical and Geologic Testing. Except for Phase One Environmental Studies, Buyer shall give Seller reasonable advance notice of not less than 24 hours of any environmental, geophysical or geological testing on the Property, shall allow Seller's representatives to accompany Buyer's representatives during any such testing, shall obtain any required governmental permits or approvals for such testing, and shall provide copies of all test results and reports to Seller. In the event and to the extent Buyer generates any soil, waste, groundwater, or contaminated media in the course of performing its testing or evaluation, Buyer shall be the generator and shall properly dispose of all such material in full compliance with all applicable laws and regulations.

(f) Liability Insurance. Liability Insurance. Buyer or Buyer's agents or contractors shall not enter onto the Land until Buyer has provided to Seller adequate evidence of liability insurance insuring Buyer and Seller against any claims or damages for personal injury or death or property damage in the amount of at least \$5,000,000.

(g) Termination of Due Diligence Period; Notice of Intent to Close. The Buyer shall have until the expiration of the Due Diligence Period to examine and inspect, with the cooperation of and disclosure by the Seller as contemplated hereunder, the Seller Real Property and the terms and conditions regarding the purchase and sale thereof pursuant to this Agreement. Prior to the expiration of the Due Diligence Period, Buyer may notify Seller in writing (with a copy to the Escrow Agent) of Buyer's intent to Close (the "Notice of Intent to Close"), in which event: (i) this Agreement shall be fully binding and enforceable according to its terms; (ii) the Initial Deposit shall become non-refundable, and (iii) the Parties shall proceed to Closing as provided herein.

(h) Automatic Termination. This Agreement shall automatically terminate, subject to a refund of the Deposit, upon the earlier of the following: (i) any time within the Due Diligence Period by and upon Buyer's written notice to Seller (with a copy to the Escrow Agent) of Buyer's election to terminate this Agreement; or (ii) upon expiration of the Due Diligence Period in the event that Buyer has not delivered its Notice of Intent to Close to Seller before such expiration date. Upon such written notice of Buyer's election to terminate this Agreement, or absent such termination, upon expiration of the Due Diligence Period and failure of Buyer to deliver a Notice of Intent to Close complying with the requirements of Section 3.2(g), the Escrow Agent shall, upon Buyer's demand, refund the Deposit to Buyer, subject to the provisions of Section 4.2 with respect to the amount of the Deposit to be refunded.

(i) Effect of Delivery of the Notice of Intent to Close. Delivery by the Buyer of the Notice of Intent to Close shall constitute Buyer's acceptance and full satisfaction of its Due Diligence review, and any additional requests or claimed rights to conduct further evaluation or review thereafter shall be deemed waived.

(j) Delivery of Refunded Deposit in the Event of Termination. Unless Buyer provides written direction to the contrary, any refund of the Deposit back to Buyer shall be wired by Escrow Agent.

(k) Indemnity for Due Diligence Activities. Buyer shall defend, indemnify and hold harmless, and reimburse Seller and Seller's officers, directors, employees, consultants, agents and affiliates (the "Seller Indemnities") from and against any and all claims for property damage, personal injury, death or damage to the environment or natural resources, including without limitation, claims made against any of the Seller Indemnities as a result of any action by Buyer or its agents which violates any

covenant or restriction set forth in the Continuing Environmental Covenant Documents, fines, penalties, interest, costs fees (including reasonable attorneys' fees), arising from activities conducted by or at the request of Buyer in connection with, relating to our arising out of the Buyer's Due Diligence review, investigation and/or inspection of the Seller Real Property by Buyer or its successors, assigns, contractors or agents, including the suitability and condition of the Seller Real Property, other than claims caused by the negligence or intentional acts of Seller. The foregoing indemnity shall survive any termination of this Agreement for a period of not more than three (3) years after the date of termination. BUYER ACKNOWLEDGES THAT OBJECTS AND/OR UTILITIES MAY BE BURIED UNDER THE LAND AND ACCEPTS ALL RISK ASSOCIATED WITH INJURY OR DAMAGE RESULTING FROM CONDUCTING ITS DUE DILIGENCE REVIEW, INVESTIGATIONS AND STUDIES ON THE LAND OR USE OF THE LAND AFTER CLOSING, INCLUDING, WITHOUT LIMITATION, INJURY OR DAMAGE RESULTING FROM SUCH OBJECTS, CONDITIONS OR UTILITIES.

3.3 Due Diligence Regarding the Condition of Title.

(a) Title Review. No later than thirty (30) days from the Effective Date (the "Title Review Period"), Buyer shall have the right to approve or disapprove the condition of title to the Property, subject to and in conformance with the terms of this Section 3.3.

(b) Title Commitment. One of the Disclosure Items is a copy of a commitment for title insurance (the "Prior Commitment") on the Property previously issued by Landmark Title Company. The Parties acknowledge that Buyer has commissioned the issuance of an updated commitment for title insurance from Escrow Agent (the "Updated Commitment"), which, upon issuance by the Escrow Agent, will replace the Prior Commitment; and that upon issuance, the Updated Commitment will identify all exceptions on Schedule B, Section II of the Commitment and the exclusions, limitations and other terms and conditions of the Commitment, including, without limitation, all documents of record related to the Continuing Environmental Covenant Documents, and any Consent Agreements or Decrees entered into or issued by the Utah Department of Environmental Quality or its Division, the City of Mapleton and Spanish Fork City (collectively, the "Title Encumbrances").

(c) Title Objection Notice. Prior to the end of the Title Review Period, Buyer shall provide written notice to Seller specifically identifying any of the Title Encumbrances that are not acceptable to Buyer (the "Title Objection Notice"). All matters and exceptions in the Commitment shall be deemed to be acceptable to Buyer unless objected to by Buyer in the Title Objection Notice (such matters and exceptions not objected to by Buyer being defined herein as the "Permitted Encumbrances"). Buyer's failure to give the Title Objection Notice prior to the end of the Title Review Period shall be deemed to be approval by Buyer of status of the title to the Property as shown in the New Commitment.

(d) Resolution of Title Objections.

(1) Within five (5) business days following Seller's receipt of a Title Objection Notice, Seller shall give notice to Buyer of those defects in the Title Objection Notice that Seller is willing to cure and provide to Buyer a plan for curing such defects ("Curable Defects"), and those defects that Seller is not willing to cure ("Non-Curable Defects") (such notice being the "Seller's Title Response").

(2) If Buyer and Seller are unable to resolve any disagreement over Seller's categorization of title objections as being Curable Defects or Non-Curable Defects within five (5) business days following Seller's Title Response or if Buyer disagrees with Seller's plan for curing the Curable Defects, then Buyer may elect to terminate this Agreement by providing notice thereof to Seller within such 5-day period. If Buyer does not elect to terminate within such 5-day period, then Buyer's objections to Seller's categorization of title objections as being Curable Defects or Non-Curable Defects

shall be deemed waived and the Non-Curable Defects shall become Permitted Encumbrances and Seller's plan for curing the Curable Defects shall be deemed accepted.

(3) If Buyer delivers a timely Title Objection Notice to Seller, but Seller does not provide the Seller's Title Response in a timely manner as provided in Section 3.3(d)(1), Seller shall be deemed to have designated all title defects as Non-Curable Defects.

(4) If Seller undertakes to cure the Curable Defects pursuant to an approved plan, Seller shall pursue such cures in a commercially reasonable manner. If Seller is unable to cure the Curable Defects prior to Closing, then, Buyer may: (A) waive the remaining title objections at or prior to Closing; (B) mutually agree with Seller to extend the Closing to allow further time for a cure; or, (C) terminate this Agreement. Buyer's election to proceed to Close notwithstanding Seller's failure to cure any Encumbrance, including Curable Defects, shall constitute Buyer's acceptance of title to the Property subject to any such Encumbrance and the waiver of any objection to any such Encumbrance.

3.4 Title Insurance. Seller shall provide, at its expense, title insurance pertaining to the Property which shall be evidenced by a standard ALTA owners policy of title insurance issued by the Escrow Agent (the "Title Policy"), with liability in the full amount of the Purchase Price, insuring good and marketable fee simple title to the Property as vested in the Buyer, free and clear of all covenants, conditions, rights, rights-of-way, easements, liens, encumbrances or any other matters of record, except: (i) title exceptions approved by the Buyer to be shown on EXHIBIT "K" hereto which will be revised and attached prior to Closing after Buyer's Title Report review pursuant to Section 3.3 above (the "Approved Title Exceptions"), including Permitted Encumbrances; (ii) Monetary Liens; (iii) matters arising by, through or under the Buyer; and (iv) such other matters affecting the title to or use of the Property and to which the Buyer made no Title Objection or, if a Title Objection was made, which Seller refused to cure. The Title Policy shall be issued at the Closing with all general exceptions deleted and subject only to the Approved Title Exceptions. Any endorsements to the Title Policy which Buyer may require shall be provided at Buyer's sole cost and expense.

4. Purchase Price.

4.1. Purchase Price. Buyer shall pay as the total purchase price for the Seller Real Property the sum \$. subject to the provisions of this Section 4.

4.2. Deposit. Within three (3) business days after the Effective Date, Buyer shall deliver to Escrow Agent, the Deposit in the amount of (the "Deposit"). The Deposit shall be deposited by Escrow Agent in an interest-bearing account at a federally insured institution as Escrow Agent deems appropriate and consistent with the timing requirements of this Agreement. The interest thereon shall accrue to the benefit of the party receiving the Deposit pursuant to the terms of this Agreement. The Deposit shall be: (i) applied and credited toward payment of the Purchase Price at the Close of Escrow; (ii) retained by Seller as liquidated damages pursuant to Section 8.3 below; (iii) refunded to Buyer upon Buyer's termination of this Agreement pursuant to Section 3.2(g) and (h) herein; or (iv) refunded to Buyer at or prior to Closing by reason of a breach or default by Seller. Notwithstanding the foregoing: (i) \$25,000.00 of the Deposit amount shall become non-refundable and be retained by Seller thirty (30) days after the Effective Date, and the balance of the Deposit shall become non-refundable if the transaction is not Closed on or before the Closing Date.

4.4. Cash at Closing. \$, comprising the balance of the Purchase Price, shall be paid by Buyer to Seller, by way of wire transfer, at Closing.

5. Escrow and Title.

5.1. Opening of Escrow. Buyer and Seller shall promptly deliver a fully executed copy of this Agreement to Escrow Agent (the date of Escrow Agent's receipt thereof being referred to as the "Opening of Escrow"). Seller and Buyer shall execute and deliver to Escrow Agent any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and close the transactions contemplated hereby; provided such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend or supersede this Agreement (such supplementary instructions, together with the escrow instructions set forth in this Agreement, as they may be amended from time to time by the Parties, being collectively referred to as the "Escrow Instructions."). The Escrow Instructions may be amended and supplemented by such standard terms and provisions as the Escrow Agent may request the parties hereto to execute; provided, however, that the parties hereto and Escrow Agent acknowledge and agree that in the event of a conflict between any provision of such standard terms and provisions supplied by the Escrow Agent and the Escrow Instructions, the Escrow Instructions shall prevail.

5.2. Close of Escrow/Closing. For purposes of this Agreement, (a) the closing of the transaction contemplated by this Agreement is referred to as the "Close of Escrow" or the "Closing", and (b) the "Closing Date" shall mean the earlier of (i) the date on which the "Special Warranty Deed" (as defined in Section 5.2(a) below) is recorded in the Official Records of Utah County, Utah (the "Official Records"), or (ii) the date on which the Purchase Price is disbursed by Escrow Agent to Seller pursuant to Section 5.2(h) below. Subject to satisfaction of the conditions precedent to Closing set forth in this Agreement, the Close of Escrow shall occur on or before five (5) business days after the end of the Due Diligence Period, unless otherwise agreed upon by Buyer and Seller. Buyer's or Seller's failure to perform their respective obligations hereunder, including the timely delivery by Buyer of the balance of the Purchase Price, shall constitute a material and non-curable default by such Party under this Agreement. The conveyance of all of the Seller Real Property by Seller to Buyer shall occur at Closing and all fundamental closing documents, as described below in this Section 5.2 (the "Fundamental Closing Documents"), shall be executed and delivered by the person or Party obligated to do so. At the Closing, the following shall occur, each of which shall be considered a condition precedent to the other and all of which shall be considered as taking place simultaneously:

(a) The Seller shall execute and deliver to the Escrow Agent, in escrow, a fully-executed (and acknowledged) special warranty deed for all of the Land and the Seller Water Rights (the "Special Warranty Deed"), substantially in the form attached as EXHIBIT "L" hereto, without any condition, restriction or reservation of any kind or nature noted except as set forth in the form of the Special Warranty Deed, conveying the Land and the Water Rights.

(b) The Seller shall endorse and deliver to the Escrow Agent, in escrow, Stock Certificate No. 6166 for Five (5) shares of stock in East Jordan Irrigation Co.

(c) The Buyer shall deliver to the Escrow Agent, the cash balance of the Purchase Price due as applicable pursuant to the provisions of Sections 4.1 and 4.3, to be combined with the Deposit with credit in Buyer's favor in the amount of any interest accrued thereon.

(d) The Seller shall deliver to the Buyer a certificate and affidavit certifying that the Seller is not a "foreign corporation," "foreign partnership," "foreign trust," "foreign estate," or "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, (the "Section 1445 Affidavit") substantially in the form attached as EXHIBIT "M" hereto.

(e) The Buyer shall take delivery of the Title Policy from the Escrow Agent.

(f) The Seller and the Buyer shall execute such documents, including without limitation, closing statements reflecting the adjustments, payments and credits described in this Agreement, and take such other actions as are reasonably necessary and appropriate to effectuate the Closing in accordance with this Agreement.

(g) The Seller shall deliver or cause to be delivered to the Buyer true, correct and complete copies of the originals of all of the instruments, agreements, notices, contracts, and documents, copies of which were previously delivered (or requested to be delivered) to the Buyer pursuant to this Agreement.

(h) The Escrow Agent, in accordance with the terms and conditions of this Agreement, shall record in the official real estate records of Utah County, Utah, as applicable, and deliver, the Special Warranty Deed and, concurrently therewith disburse to Seller the portion of the Purchase Price paid by Buyer pursuant to subsection (b) above, subject to adjustment for any Closing costs as described herein and as set forth in the closing statement prepared by Escrow Agent and approved by Buyer and Seller in connection with the consummation of the transactions contemplated hereunder, inclusive of the Deposit, together with any interest accrued thereon (collectively the "Consideration").

(i) The Seller and Buyer shall execute such documents, including without limitation closing statements, reflecting the adjustments, payments and credits described in this Agreement, and, further, take such other actions as are reasonably necessary and appropriate to effectuate the Closing in accordance with this Agreement.

5.3. Prorations, Taxes and Adjustments. Prorations with respect to the Seller Real Property shall be made as of the Closing Date, and appropriate credit shall be given for property taxes, assessments and other similar matters based upon 2017 taxes for the Seller Real Property. Subject to the immediately preceding sentence and without limiting any other specific provision of this Agreement relating to such matters:

(a) Seller Tax Payment Obligations. Subject to Section 5.3(c), the Seller agrees to pay any and all state and local taxes, charges, utilities and assessments of every kind and nature, real and personal, which: (i) are or may be assessed against, and may become due on or in connection with, the Seller Real Property (and as may be attributable to the Seller Real Property), and (ii) relate to periods prior to the Closing Date.

(b) Buyer Tax Payment Obligations. The Buyer agrees to pay any and all taxes, charges, utilities and assessments of every kind and nature, real and personal, which: (i) are or may be assessed against, and may become due on or in connection with, the Seller Real Property (and as may be attributable to the Seller Real Property), and (ii) relate to periods on and after the Closing Date.

(c) Greenbelt Assessment – Payment of Rollback Taxes. The Parties hereby acknowledge and agree that the Land will be taken out of agricultural and open space greenbelt status upon Closing. Accordingly, with respect to the payment of "rollback" taxes due as a consequence thereof under Utah law ("Rollback Taxes"), it is agreed that at Closing, the Escrow Agent shall: (i) verify the actual amount of Rollback Taxes due and owing; (ii) debit the amount to be received by Seller by such amount; and (iii) pay the amount of the Rollback Taxes due to the Utah County Assessor as required by law.

5.4. Closing Costs and Expenses. The Buyer and the Seller shall each pay those Closing costs customarily allocated to Buyers and Sellers, respectively, in commercial land transactions in Utah County, Utah, as more fully described in EXHIBIT "N" hereto.

5.5. Possession; Risk of Loss. Possession of, risk of loss to, and responsibility for, the Seller Real Property shall be delivered to the Buyer, subject to the terms of this Agreement, no later than the Closing Date. Notwithstanding any other term or condition of this Agreement, any and all risk of loss to, and responsibility for, the Seller Real Property shall remain with the Seller until such time as the Closing shall have been consummated according to the terms and conditions of this Agreement.

6. Conditions Precedent to the Close of Escrow.

6.1. Conditions Precedent to Obligations of Buyer. The obligation of the Buyer to purchase the Seller Real Property and all other obligations of Buyer under this Agreement shall be subject to the satisfaction, on or before the Closing Date, of all the conditions set out below, unless waived by the Buyer, in its sole discretion:

(a) The Buyer shall not have discovered and there shall not be any material misstatement or omission in the representations and warranties made by the Seller contained in this Agreement; the Seller shall not: (i) have filed a voluntary petition in bankruptcy, (ii) been adjudicated bankrupt or insolvent, or (iii) filed any petition or answer seeking any reorganization, assignment, composition, readjustment, liquidation, dissolution, or other relief under any federal or state bankruptcy act or under any other applicable federal or state statute, law or regulation affecting creditors' rights generally or otherwise.

(b) The Seller shall have performed, satisfied, and complied with all covenants, agreements, and conditions required by this Agreement and to be performed or complied with or by the Seller on or before the Closing Date, as the case may be.

(c) As of the Closing Date, the Seller shall not be in default of any remaining obligations of Seller under the Development Agreement.

(d) The Seller shall have delivered to Buyer a certificate dated the date of the Closing and signed on behalf of each of them by a Responsible Officer in his or her representative capacity, and not individually, certifying to the satisfaction of the conditions set forth in subsections (a), (b) and (i) of this Section 6.1.

(e) The Seller shall have delivered to Buyer copies, certified by a duly qualified and acting Responsible Officer of Seller, of resolutions adopted by the board of directors of Seller approving this Agreement, any ancillary agreements to be executed by the Parties and the consummation of the transactions contemplated hereby and thereby.

(f) The Seller shall have executed and delivered to Buyer such documents as counsel for Buyer shall reasonably request to carry out the purpose of this Agreement.

(g) The Buyer shall have received an incumbency certificate or certificates, dated the Closing Date, certifying the incumbency of all Responsible Officers of Seller who have executed this Agreement or documents in connection with this Agreement or the transactions contemplated hereby. This certificate or certificates shall contain specimens of the signatures of each of the officers whose incumbency is certified and shall be executed by a Responsible Officer of Seller other than the Responsible Officer whose incumbency is certified.

(h) The Buyer shall have received copies of a certificate of good standing for Seller from the Secretary of State of the State of Connecticut as of a recent date.

(i) No action, suit, or proceeding before any court or any governmental body or authority pertaining to the transactions contemplated by this Agreement or their consummation, including without limitation any assessment or condemnation actions, shall have been instituted or threatened on or before the end of the Closing, which would adversely affect the Buyer and the transactions contemplated hereunder, which is not caused by the Buyer, other than those matters disclosed to Buyer in the Disclosure Items, including, but not limited to all covenants and restrictions set forth in the Continuing Environmental Covenant Documents.

(j) The Title Insurance Policy to be issued at the Closing, dated as of the Closing Date, shall be subject to no liens, encumbrances or exceptions other than the Approved Title Exceptions approved by the Buyer in accordance with the terms and conditions of this Agreement.

(k) As of the Closing Date any matter involving the Seller Real Property accepted by Buyer shall not have been amended, modified or reversed by any governmental authority or other entity having authority over the Seller Real Property in a manner which would result in a material adverse effect on Buyer's contemplated development of the Land as described herein and in the exhibits hereto, without the consent of the Buyer.

Buyer and Seller expressly agree and acknowledge that the foregoing conditions constitute all conditions to Buyer's obligation to Close, and that there are no other conditions to Buyer's obligation to Close. Specifically, Buyer's obligation to Close is not subject to a financing condition.

6.2. Conditions Precedent to Obligations of Seller. The obligation of the Seller to sell the Seller Real Property and all other obligations of Seller under this Agreement shall be subject to the satisfaction, on or before the Closing Date, of all the conditions set out below, unless waived by the Seller, in its sole discretion:

(a) Except to the extent waived hereunder or as otherwise contemplated hereby, the representations and warranties of Buyer herein shall be true and correct in all material respects at the Closing with the same effect as though made at and as of such time, except to the extent such representations and warranties relate to a specific time.

(b) The Buyer shall have performed in all material respects all obligations and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing (except to the extent waived in writing or to the extent that any breach hereunder has been cured).

(c) The Buyer shall have delivered to Seller a certificate dated the date of the Closing and signed by a Responsible Manager in his or her representative capacity, and not individually, certifying to the satisfaction of the conditions set forth in Subsections (a), (b) and (h) of this Section 6.2.

(d) The Buyer shall have delivered to Seller copies, certified by the duly qualified and acting Responsible Manager of Buyer, of resolutions adopted by the board of managers of the Buyer approving this Agreement, any ancillary agreements to be executed by the Parties and the consummation of the transactions contemplated hereby and thereby.

(e) The Buyer shall have executed and delivered to Seller such documents as counsel for Buyer shall reasonably request to carry out the purpose of this Agreement.

(f) The Seller shall have received an incumbency certificate or certificates, dated the Closing Date, certifying the incumbency of the Manager of the Buyer who has executed this Agreement or documents in connection with this Agreement or the transactions contemplated hereby. This certificate or certificates shall contain specimens of the signature of the manager whose incumbency is certified and shall be executed by a manager of the Buyer other than the manager whose incumbency is certified.

(g) The Seller shall have received copies of a certificate of good standing for the Buyer from the Division of Corporations and Commercial Code of the State of Utah as of a recent date.

(h) No action, suit, or proceeding before any court or any governmental body or authority pertaining to the transactions contemplated by this Agreement or their consummation, including without limitation any assessment or condemnation actions, shall have been instituted on or before the end of the Disclosure Period which would adversely affect the Seller and the transactions contemplated hereunder, which is not caused by the Seller.

(i) Buyer shall have delivered to Escrow Agent all items required to be delivered by Buyer on or before the Closing Date and the Closing shall have occurred on or before the Closing Date.

6.3. Failure of Conditions Precedent to Buyer's Obligations. Buyer's obligation to close the acquisition of the Seller Real Property pursuant to this Agreement is subject to the satisfaction of the conditions precedent to such obligations for Buyer's benefit set forth in Section 6.1. If Buyer terminates this Agreement by written notice to Seller because of the failure of the conditions precedent set forth in Section 6.1, then: (i) Escrow Agent shall return the Deposit to Buyer (plus interest accrued on the Deposit only while held by Escrow Agent) in accordance with Buyer's written instructions within five (5) days following Buyer's delivery of a written termination notice to Seller and Escrow Agent, (ii) Seller and Buyer shall each pay one-half (1/2) of any escrow cancellation fees or charges, and (iii) except for Buyer's indemnity and confidentiality obligations under this Agreement and any other obligations which expressly survive termination of this Agreement, the Parties shall have no further rights or obligations to one another under this Agreement.

6.4. Failure of Conditions Precedent to Seller's Obligations. Seller's obligation to Close the acquisition of the Seller Real Property pursuant to this Agreement is subject to the satisfaction of the conditions precedent to such obligations for Seller's benefit set forth in Section 6.2. If Seller terminates this Agreement by written notice to Buyer because of the failure of the conditions precedent set forth in Section 6.2, then (a) Escrow Agent shall deliver the Deposit to Seller (plus interest accrued on the Deposit only while held by Escrow Agent) in accordance with Seller's written instructions within five (5) days following Seller's delivery of a written termination notice to Buyer and Escrow Agent, (b) Seller and Buyer shall each pay one-half (1/2) of any escrow cancellation fees or charges, and (c) except for Buyer's indemnity and confidentiality obligations under this Agreement and any other obligations which expressly survive termination of this Agreement, the Parties shall have no further rights or obligations to one another under this Agreement.

6.5. Effect of Closing or Termination. The Closing shall constitute conclusive evidence that Seller and Buyer have respectively waived any conditions which are not satisfied as of the Closing, and after Closing, neither Buyer nor Seller shall have any right to terminate this Agreement or rescind the purchase and sale of the Seller Real Property by reason of the failure of any such condition, whether or not such failure was known to or discoverable prior to Closing. In the event this Agreement is terminated pursuant to the terms of this Agreement, within five (5) days following the date of such termination, Buyer shall return to Seller all Due Diligence Items, and, at Seller's written request, without

warranty or representation of any kind, any inspection reports, studies, surveys, and other reports and/or test results relating to the Seller Real Property which were prepared by third party consultants retained by Buyer in contemplation of this Agreement.

7. Representations and Warranties.

7.1. Definitions.

(a) For purposes of this Agreement, "to the Seller's knowledge" (or comparable phrases) means the current, actual knowledge of Gus Jasminski who, without any independent investigation, is (i) familiar with the matters so qualified, and (ii) in a position to know of the completeness and accuracy of representations and warranties so qualified.

(b) For purposes of this Agreement, "Environmental Condition" means: (i) contamination or pollution of soil, sediments, air, surface or groundwater, or other naturally occurring materials, building material, or other manmade material, (ii) the disposal, placement, existence, presence or release or threat of release of a Hazardous Material and the affects thereof, (iii) noncompliance with or violation of Applicable Law including, without limitation, any lack of required governmental permits or approvals, "Hazardous Material" means (iv) any substance, the presence of which requires investigation, remediation, or other response or corrective action under Applicable Law, or (v) any substance which is defined as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant or contaminant, or other similar term, in or pursuant to Applicable Law, or (vi) any asbestos or asbestos-containing material, PCBs or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline or other petroleum hydrocarbons, and "Applicable Law" means all existing federal, state or local laws, common law, statutes or regulations, including, without limitation, those relating to the protection of human health and safety, protection of the environment, protection of or compensation for damage to natural resources, or prevention of pollution.

7.2. Seller's Representations and Warranties. The Seller hereby represents and warrants to the Buyer, as of the date hereof and as shall be applicable as of the Closing Date, as follows:

(a) The Seller is a Connecticut corporation, in good standing and validly existing under the laws of the State of Connecticut, and qualified to do business and own property within the State of Utah, with full power and authority to enter into and perform this Agreement.

(b) Except as otherwise disclosed to the Buyer in connection with the Disclosure Items, the Seller has not received written notice of any claims, actions, suits, or other proceedings pending or threatened by any governmental department or agency, or any other entity or person, pertaining to the Seller Real Property.

(c) Except as otherwise disclosed to the Buyer in connection with the Disclosure Items, the execution, delivery, and performance by the Seller of this Agreement does not and will not conflict with, or result in the breach or termination of any provision of, or constitute a default under, any indenture, mortgage, deed of trust, lease, contract, or other instrument or agreement or any order, judgment, award, or decree to which, to Seller's knowledge, Seller is subject or by which the assets of the Seller may be bound, or result in the creation of a lien, charge, or encumbrance upon the Seller Real Property.

(d) Except as otherwise disclosed to the Buyer in connection with the Disclosure Items, the Seller has the full right, power and authority to transfer the Seller Real Property

without obtaining the consent or approval of any governmental authority or any other person or entity to which the Seller or any of the Seller's Property may be subject.

(e) The Seller owns insurable fee simple title to the Seller Real Property, subject to no liens, claims, encumbrances, easements, rights-of-way, covenants, or other similar restrictions arising by, through or under the Seller, except, as of public record, easements, rights-of-way, restrictions, reservations, and general property taxes for the year in which Closing occurs, and thereafter, except for the Approved Title Exceptions.

(f) Other than general property taxes for the years in which Closing occurs, and thereafter, and matters of public record, there are no liabilities or obligations related to the Seller Real Property which the Seller is obligated to satisfy on or before the Closing or any such liabilities and obligations which the Buyer may be obligated to satisfy after the Closing and which arise by, through or under the Seller.

(g) Except as otherwise described in this Agreement, Seller has no knowledge of:

(1) the Property having been used to generate, manufacture, refine, transport, treat, store, use, handle, dispose of, transfer, produce, process, contain or be constructed of a "Hazardous Material" (as defined below), except in compliance with all Applicable Law; or

(2) the presence or release or threat of release of any Hazardous Material in, on, under, or migrating to or from the Property; or

(3) any notice or other information, whether written or oral and whether actual or threatened, from any governmental agency or authority or any other entity or individual, whether governmental or private, concerning or alleging any liability of the Seller or other persons or entities with respect to the Environmental Condition of the Seller Real Property, or any intentional or unintentional act or omission or any fact or condition which has resulted or which may result in any Environmental Condition in, on, under, or adjacent to the Seller Real Property.

(h) Except as otherwise set forth in the Disclosure Items delivered to Buyer, Seller has no knowledge of any underground storage tanks, septic tanks or underground injection wells in, at, on, or under the Property.

(i) Except as otherwise set forth in the Disclosure Items delivered to Buyer, there are no leases, contracts or agreements pertaining to the acquisition, management, use or possession of all or any part of the Seller Real Property, or any rights or options to acquire, use or occupy any part or all of the Seller Real Property; provided that, in the event the Seller (or any affiliate thereof) has any such right or option, the Seller, as the case may be, shall cause any such right or option to be conveyed to the Buyer for no additional consideration in connection with the Closing.

(j) Other than as disclosed in the Prior Title Commitment and the Updated Title Commitment, to the Seller's knowledge, there are no existing prior assessments of any kind or nature due or payable on or prior to the date hereof and, other than as may be disclosed in the Title Commitment, to the Seller's knowledge (except as may be described by the Property Information), there are not presently pending any special assessment or condemnation actions against the subject Property or any part thereof, and the Seller has not received any notice of any assessment or condemnation actions being contemplated; provided that any assessment which is or becomes a lien against the Property prior to the Closing shall be

satisfied by the Seller prior to or at the Closing, except as set forth in this Agreement or otherwise agreed in writing by the Seller and the Buyer.

(k) To the Seller's knowledge, there are no encroachments, overlaps or boundary line disputes with respect to the Land not shown or disclosed to the Buyer on or before the date hereof.

7.3. Buyer's Representations and Warranties. The Buyer represents and warrants to the Seller (with the understanding that the Seller is relying on said representations and warranties in selling the Subject Seller Real Property in accordance with this Agreement), as of the date hereof and the Closing Date, as follows:

(a) The Buyer is a limited liability company, in good standing and validly existing under the laws of the State of Utah, with full right and authority to do business in the State of Utah.

(b) The execution, delivery, and performance by the Buyer of this Agreement does not and will not conflict with, or result in the breach or termination of any provision of, or constitute a default under, any indenture, mortgage, deed of trust, lease, contract, or other instrument or agreement or any order, judgment, award, or decree to which the Buyer is subject or by which the assets of the Buyer may be bound.

(c) The Buyer has the requisite limited liability company right, power and authority to enter into this Agreement without obtaining the consent or approval of any governmental authority or any other person or entity to which the Buyer may be subject.

(d) The Buyer has had and will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigations as such Buyer deems necessary, desirable or appropriate with respect to the Seller Real Property. Such inquiries and investigations of the Buyer shall be deemed to include, but shall not be limited to, a complete and thorough review and understanding of all Disclosure Items, the physical components of all portions of the Seller Real Property, the condition of the Seller Real Property, such state of facts as an inspection would show, the Development Agreement and all present and future zoning ordinances, permits, resolutions and regulations of Mapleton City, Utah County, and the State of Utah, and the value and marketability of the Seller Real Property, and that such Buyer shall rely solely upon such examinations and investigations in purchasing the Seller Real Property, with the express understanding and agreement that such Buyer is purchasing the Seller Real Property subject to and in conformance with the provisions terms, covenants and provisions of this Agreement.

(e) The Buyer acknowledges and agrees that except as expressly set forth in Section 7.2 herein, Seller makes no representation or warranty, express or implied, at law or in equity, with respect to the Seller Real Property or any matter that is a subject of this Agreement, including, without limitation, with respect to merchantability or fitness for a particular purpose, and any other such representations or warranties are expressly disclaimed; and that except to the extent specifically set forth in Section 7.2, such Buyer is acquiring the Seller Real Property as is, where is.

8. Default.

8.1. Time of the Essence. Time is of the essence of this Agreement.

8.2. Failure to Close as a Result of a Default by Seller. If failure to Close is a result of the default of the Seller prior to Buyer's delivery of its Notice of Intent to Close, then Buyer's sole remedy

shall be a refund of the Deposit. If failure to Close is a result of Seller's default subsequent to Buyer's delivery of its Notice of Intent to Close, including the failure of any condition precedent contained in Section 5.2 which is within the control of and caused by Seller, Buyer may terminate this Agreement and receive the return of the Deposit, subject to the provisions of Section 4.2 with respect to the amount of the Deposit to be refunded.

8.3. Failure to Close as a Result of a Default by Buyer. If failure to Close is a result of Buyer's default subsequent to the Effective Date and prior to Closing, then Seller's sole remedy shall be the disbursement to it of the Deposit which shall be retained by Seller as full and reasonable liquidated damages.

8.4. Notice and Opportunity to Cure. Notwithstanding any other provision in this Agreement to the contrary, in the event of a default by either Party hereunder, the non-defaulting Party shall provide the defaulting Party notice of an alleged default. The applicable cure period for a default shall be: (i) ten (10) days for any failure to make a payment when due, and (ii) thirty (30) days for any default other than a failure to make a payment when due, or if such default other than a failure to make a payment cannot be reasonably cured within 30 days, such time as is reasonably required to cure such default, provided the defaulting Party immediately takes commercially reasonable action to cure the default and diligently continues to take commercially reasonable action to cure the default, and further provided that such extended cure period shall not exceed ninety (90) days for any reason. Notwithstanding the foregoing, any default comprising a failure by either Party to satisfy any condition precedent to Closing for which that Party is responsible and that is not waived in writing by the other Party, must be cured prior to Closing. In the event of an uncured default occurring after Buyer's Notice of Intent to Close and existing (and not waived by the non-defaulting party) at Closing, and upon receipt of a copy of written notice from the non-defaulting Party to the defaulting Party identifying the default and electing a remedy under Sections 8.2 or 8.3 above, as the case may be, requiring the release and payment of the Deposit, the Escrow Agent shall, within five (5) business days after the date of the demand, pay over to the non-defaulting Party the full balance of the Deposit, unless the non-defaulting Party and the Escrow Agent shall, within that five (5)-day period deliver to the non-defaulting party and to the Escrow Agent a demand for mediation, consistent with the requirements of Section 8.5 below. In the event of a timely mediation demand, the Escrow Agent shall retain the Deposit in trust until a resolution of the dispute, by settlement or otherwise.

8.5. Mediation.

(a) If either Party (the "Alleging Party") alleges an uncured default prior to Closing (a "Pre Closing Default"), and so notifies the Escrow Agent and the alleged defaulting Party as provided in Section 8.4, and that Pre-Closing default is challenged by the alleged defaulting Party, the alleged defaulting Party shall make a demand for mediation upon the Alleging Party within the time limits prescribed by Section 8.4, or the Escrow Agent shall disburse the Deposit as demanded by the Alleging Party. Following such a mediation demand, the Parties shall endeavor in good faith and within thirty (30) days to negotiate a resolution before further pursuing mediation, consistent with Subsection (b) immediately below. Nothing in this Subsection (a) shall restrict an alleged defaulting Party's right to challenge a pre-Closing default even if after the Escrow Agent's release of the Deposit, nor shall the failure to make a timely demand for mediation under this Subsection (a) waive such a challenge, even after the Escrow Agent shall have released funds.

(b) If either Party alleges an uncured default after Closing (a "Post Closing Default"), or the alleged defaulting Party fails timely to make a mediation demand under Subsection (a) after receiving notice of a Pre-Closing default, but nonetheless challenges the default and/or the Escrow Agent's release of funds, the Parties shall engage in good-faith negotiations to resolve the dispute. In the event the dispute is not resolved through negotiation within thirty (30) days after the date on which notice

of the alleged default is issued to the alleged defaulting Party, the Parties agree to submit the alleged breach to mediation with a mediator approved by both Parties or a mediator selected by a court, if the Parties cannot agree upon a mediator within fifteen (15) days of the exchange of a list of mediators. In the event a dispute is not resolved through mediation and Seller or Buyer shall bring any suit or action to enforce this Agreement or any term or provision hereof, the prevailing Party shall be entitled to a reasonable sum for attorneys' fees and all costs and expenses incurred in connection with such suit or action or any appeal thereof.

9. Liens and Encumbrances; Further Acknowledgment and Release. In the event any liens or encumbrances, other than the Approved Title Exceptions, shall hereafter accrue against the Seller Real Property by reason of any acts, omissions or neglect of the Seller, then (provided that the Seller shall have ten (10) days following notice from the Buyer thereof to cure the same) the Buyer may, at the Buyer's option, pay and discharge the same and, in such event, shall immediately be reimbursed by the Seller for any such payment, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Seller, anything contained in this Agreement to the contrary notwithstanding. In the event that action shall be necessary or appropriate to cure any lien or encumbrance described in the preceding sentence, the Closing may, at the option of the Buyer, be extended for a period of time equal to the period necessary for any such cure.

10. Survival of Covenants and Related Matters: Indemnification. The representations, warranties, indemnities, covenants, conditions, environmental obligations and agreements made and set forth in this Agreement shall survive the Closing and the delivery of, and shall not be merged into, the Special Warranty Deed. Each Party (the "Indemnifying Party") hereby agrees to, and hereby does, indemnify, defend and hold harmless and reimburse the other Party (the "Indemnified Party") from and against any and all obligations, debts, damages, claims, actions, causes of action, losses, demands, suits, controversies, costs, fees (including reasonable attorneys' fees) and liabilities incurred by the Indemnified Party which result from: (i) any breach or default by the Indemnifying Party of any representation, warranty, covenant or agreement of the Indemnifying Party in this Agreement or any document or instrument delivered pursuant to this Agreement, (ii) in any such representation or warranty having been untrue or inaccurate when so made or (iii) an action by an Indemnifying Party which breaches a covenant of or causes a violation of a restriction set forth in the Continuing Environmental Covenant Documents.

11. Each Party's Individual Expenses and Fees. Except as otherwise expressly provided in this Agreement, each Party to this Agreement shall pay its own costs and expenses (including without limitation professional fees and expenses) incurred in the preparation, execution and performance of this Agreement.

12. Broker Fees and Similar Payments. The Parties acknowledge that neither Seller nor Buyer has engaged any agents or brokers in connection with the sale and purchase of the Seller Real Property, and that no fees or charges with respect thereto shall be due and owing by either Party.

13. Casualty and Condemnation.

13.1. Material Casualty. In the event that prior to the Close of Escrow the Property, or any material portion thereof, is destroyed or materially damaged (including any release of Hazardous Substances following the Effective Date but prior to the Close of Escrow in violation of Environmental Laws), Buyer shall have the right, exercisable by giving written notice to Seller by no later than the earlier of: (i) within ten (10) days after receipt of written notice of such damage or destruction or (ii) the Closing Date, either (a) to terminate this Agreement in which event the Deposit and all interest accrued thereon shall be immediately returned to Buyer, any other money or documents in Escrow shall be returned to the Party depositing the same, and the provisions of Section 6.2 shall apply, or (b) to accept the Property in its then condition and to proceed with the consummation of the transaction contemplated by this Agreement,

with an abatement or reduction in the Purchase Price in the amount of the deductible for the applicable insurance coverage, and to receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle or adjust any claims to such proceeds without Buyer's prior written consent.

13.2. Material Condemnation. In the event that prior to the Close of Escrow, all or any material portion of the Property is subject to a taking by a public or governmental authority, Buyer shall have the right, exercisable by giving written notice to Seller by no later than the earlier of (i) within ten (10) days after receiving written notice of such taking or (ii) the Closing Date, either (i) to terminate this Agreement, in which event the Deposit and all interest accrued thereon shall be immediately returned to Buyer, any other money or documents in escrow with Escrow Agent shall be returned to the Party depositing the same, and (ii) to accept the Property in its then condition, without a reduction in the Purchase Price, and to receive an assignment of all of Seller's rights to any condemnation award or proceeds payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle or adjust any claims to such award without Buyer's prior written consent.

13.3. Non-Material Condemnation. In the event that prior to the Close of Escrow, any non-material portion of the Property is subject to a taking by any public or governmental authority, Buyer shall accept the Property in its then condition and proceed with the consummation of the transaction contemplated by this Agreement, in which event Buyer shall be entitled to an assignment of all of Seller's rights to any award or proceeds payable in connection with such taking. In the event of any such non-material taking, Seller shall not compromise, settle or adjust any claims to such award without Buyer's prior written consent.

13.4. Materiality Standard. For purposes of this Section 13, damage to the Property or a taking of a portion of the Property shall be deemed to involve a material portion thereof or release of Hazardous Substances shall be deemed material if the estimated cost of restoration, repair or cleanup, as estimated by Buyer and Seller in their reasonable discretion, of such damage or such release of Hazardous Substances or the amount of the condemnation award with respect to such taking shall exceed two percent (2%) of the Purchase Price.

13.5 Notice of Casualty and Condemnation. Seller agrees to give Buyer prompt written notice of any taking of, proposed taking of, damage to or destruction of the Property.

14. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service or reputable air express service utilizing receipts) or sent by facsimile, receipt confirmed, and shall be deemed received upon the date of receipt thereof if received prior to 5:00 p.m. (Utah local time) of the recipient's business day, and if not so received, shall be deemed received upon the following business day.

To Seller: At Seller's Notice Address set forth in the Summary of Basic Terms.

To Buyer: At Buyer's Notice Address set forth in the Summary of Basic Terms.

To Escrow Agent: At Escrow Agent's Address set forth in the Summary of Basic Terms.

Notice of change of address shall be given by written notice in the manner detailed in this Section 14.

15. Miscellaneous. In addition to the foregoing, the Parties to this Agreement agree as follows:

15.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties with respect thereto.

15.2. Amendment. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both Parties.

15.3. Effect of Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed, in writing, by the Party making the waiver.

15.4. Incorporation of Exhibits. The exhibits attached to this Agreement shall be and hereby are incorporated in and made an integral part of this Agreement by this reference.

15.5. Binding Effect; Assignment to Affiliated Party. This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective successors and assigns. The Parties expressly anticipate that Buyer may assign its interest in this Agreement, without Seller approval, but only to a corporation, partnership or limited liability company in which the Buyer is the controlling party; otherwise, Seller approval shall first be required.

15.6. Severability. In the event that any provision of this Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement.

15.7. Assignment. Except as provided in Section 15.5, this Agreement may not be assigned by either Party hereto, by operation of law or otherwise, without the written consent of the other Party hereto.

15.8. Diligence. The Parties hereto agree to use reasonable diligence to fulfill their respective obligations under this Agreement at all times that this Agreement is in effect.

15.9. Governing Law; Jurisdiction; Venue. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah. The Parties agree and hereby consent and agree that any legal action with respect to this Agreement may be commenced and maintained in either the local judicial district court in Utah County, the county in which the Property is located, or in the United States District Court for the District in which the Property is located, and each Party hereby consents to the personal and subject matter jurisdictions of those courts. Each Party also agrees that venue is proper in either of those courts and waives any objection to venue.

15.10. Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one agreement. A signature received via facsimile or electronically via e-mail shall be as legally binding for all purposes as an original signature.

15.11. Attorneys Fees and Costs. In any litigation or other proceeding relating to the breach of any representation, warranty or covenant of the Seller or the Buyer, as the case may be, in this

Agreement, the prevailing Party shall be entitled to recover its out-of-pocket costs and reasonable attorneys' fees, including those incurred at trial or on appeal.

15.12. Force Majeure. If any Party to this Agreement shall be delayed or prevented from the performance of any act required hereunder by reason of a strike, labor trouble, acts of terror or acts of nature and the elements or any other cause beyond the reasonable control of such Party ("force majeure"), and such Party is otherwise without fault, then performance of such act shall be excused for the period of the delay. For purposes of this Agreement, "force majeure" shall mean any delay caused by acts of nature or the elements, acts of terrorism, weather, avalanche, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause (financial inability excepted), including without limitation governmental or regulatory action or inaction, beyond the control of the Buyer or other person or entity delayed.

15.13. No Third-party Beneficiaries. Nothing in this Agreement is or shall be intended to provide or convey any actionable right or benefit to or upon any person or persons other than the Seller and Buyer.

15.14. Costs and Expenses Incurred Herewith. Except as otherwise specifically provided herein, each Party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Agreement and the negotiation of all agreements, preparation of documents, due diligence review and inspections, and otherwise as contemplated by this Agreement.

15.15. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

15.16. Confidentiality; Publicity.

(a) Except as may be reasonably necessary to effect the transaction contemplated hereunder (including disclosure to third-party legal counsel and consultants, accountants, and/or advisors of the Seller or Buyer, as the case may be), the terms and conditions of this Agreement shall be kept confidential and shall not be disclosed to any person or entity without the advance consent of the other Party; provided that any inadvertent disclosure by a Party shall not subject any such Party to liability hereunder, so long as reasonable steps are taken to advise the recipient of any such disclosure of the confidential nature thereof.

(b) Neither Party shall be allowed to make any public announcement or otherwise generate any publicity with respect to the transaction contemplated by this Agreement until after Closing.

15.17. Further Documentation and Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the Parties hereto.

15.18. Section Headings. The section headings appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such section heading and the section at the head of which it appears, the section language and not the section heading shall control and govern in the construction of this Agreement.

15.19. Gender: Number. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and vice versa, and the singular number includes the plural.

15.20. Performance of Acts on Business Days. In the event that the performance of any act hereunder falls on a Saturday, Sunday or holiday, such act may be performed on the next succeeding business day.

15.21. Construction. This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

15.22. Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty or agreement other than those herein expressed.

15.23. Business Relationship. This Agreement neither acknowledges the existence of nor is it intended nor shall it be construed to establish, create or organize any principle-agent relationship, partnership, joint venture, or any other legal entity or form of business relationship between the Parties, and is limited solely to the purposes and interests expressed herein.

15.24. Warranty of Authority. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

SELLER:

THE ENSIGN - BICKFORD COMPANY,
a Connecticut corporation

By: _____
Dorothy T Hammett
Its President

BUYER:

TERRACOM DEVELOPMENT, LLC
a Utah limited liability company

By: _____
[INSERT NAME]
Its Manager

JOINDER BY ESCROW AGENT

Escrow Agent (as defined in the above agreement) hereby (a) acknowledges that it has received this Agreement executed by the Seller and Buyer and accepts the obligations of and instructions for the Escrow Agent set forth herein, and (b) agrees to disburse and/or handle the Deposit, the Purchase Price and all closing documents in accordance with this Agreement

Dated as of the Effective Date:

"ESCROW AGENT"
1st LIBERTY TITLE COMPANY
By: _____
Name: Jay Hale Pothay
Title: Manager

SELLER:

THE ENSIGN - BICKFORD COMPANY,
a Connecticut corporation

By: Dorothy T. Hammett
Dorothy T. Hammett
Its: President

BUYER:

TERRACOM DEVELOPMENT, LLC
a Utah limited liability company

By: _____
[INSERT NAME]
Its: Manager

JOINDER BY ESCROW AGENT

Escrow Agent (as defined in the above agreement) hereby (a) acknowledges that it has received this Agreement executed by the Seller and Buyer and accepts the obligations of and instructions for the Escrow Agent set forth herein, and (b) agrees to disburse and/or handle the Deposit, the Purchase Price and all closing documents in accordance with this Agreement.

Dated as of the Effective Date

"ESCROW AGENT"

1st LIBERTY TITLE COMPANY

By: _____
Name: _____
Title: _____

LIST OF EXHIBITS

- EXHIBIT A – LEGAL DESCRIPTION OF THE LAND
[To be determined and described by 1st Liberty Title, LC]
- EXHIBIT B – SELLER WATER RIGHTS
- EXHIBIT C – BOUNDARY ADJUSTMENT AND DEVELOPMENT AGREEMENT
- EXHIBIT D– DESCRIPTION OF CONTROLLED AREAS AND MAP; DESCRIPTION OF
MONITORING AND RECOVERY WELL SITES
- EXHIBIT E – FORM OF GRANT OF EASEMENT
- EXHIBIT F - DESCRIPTION OF RELOCATED MONITORING WELL
- EXHIBIT G - COPY OF ASSIGNMENT AND ASSUMPTION AGREEMENT
- EXHIBIT H - SEWER TRUNK LINE CONNECTION POINT
- EXHIBIT I - RIGHT OF ENTRY AGREEMENT WITH CENTRAL UTAH WATER
CONSERVANCY DISTRICT
- EXHIBIT J – DISCLOSURE ITEMS
- EXHIBIT K – APPROVED TITLE EXCEPTIONS
[To be updated]
- EXHIBIT L – FORM OF SPECIAL WARRANTY DEED
- EXHIBIT M – FORM OF SECTION 1445 AFFIDAVIT
- EXHIBIT N - SCHEDULE OF COMMERCIAL LAND TRANSACTION CUSTOMARY CLOSING
COST ALLOCATIONS