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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
4/11/2024 8:55 AM
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DEP AAM REC'D FOR LAYTON
CITY

WHEN RECORDED, RETURN TO:

North Utah Holdings, LLC
3651 North 100 East, Suite 125
Provo, UT 84604
Attn: McKay Winkel

15-

Tax Parcel ID No. 15-144-0001, 15-144-0002, ~~14~~-144-0003

CONSENT AND ACKNOWLEDGMENT
[Participation Agreement]

This CONSENT AND ACKNOWLEDGMENT ("**Consent**"), dated effective as of _____, 2024 (the "**Effective Date**"), is made by and between NORTH UTAH HOLDINGS, LLC, a Utah limited liability company ("**Participant**") and the REDEVELOPMENT AGENCY OF LAYTON CITY, a political subdivision of the State of Utah (the "**RDA**").

RECITALS

A. Participant and RDA are parties to that certain Participation Agreement, with an effective date of June 6, 2016 (the "**Participation Agreement**"). The Participation Agreement sets forth certain payment obligations by the RDA (the "**RDA Payment**") to Participant, which RDA Payment has been completed as to the "Tax Increment" portion but not as to reimbursement for certain environmental remediation costs in accordance with Section 2.4.2 of the Participation Agreement. The Participation Agreement also sets forth certain development obligations to be completed by Participant (the "**Obligations**") for the "**Site**" (as defined in the Participation Agreement), which was previously referred to as Tax Parcel ID: #11-061-0157, 11-061-0158, and 11-061-0029 and is now portions of Lots 1, 2 and/or 3 of the Layton Station Phase 1 Subdivision, recorded on October 26, 2023, as Record No. 3548782, in Book 8367 at Page 478 (the "**Phase 1 Subdivision**"), as more particularly described on **Exhibit A** attached hereto and incorporated herein.

B. In connection with the Participation Agreement and the RDA Payment, Participant entered into one or more promissory notes in the aggregate amount of the Tax Increment (\$820,000.00) in favor of the RDA (the "**Note**", and, together with the Participation Agreement, the "**RDA Documents**"), which Note is unsecured and not secured by the Site.

C. Participant and RDA are parties to that certain Consent and Acknowledgement, recorded on May 24, 2023 as Entry No. 3529942, Book 8262, Pages 476-483 of the Official Records of the Davis County Recorder's Office (the "**Prior Consent**"), wherein RDA consented to conveying the Site to Winkel Rock, LLC, a Utah limited liability company ("**Winkel Rock JV**"). Consistent with the Prior Consent, Winkel Rock JV currently owns the Site.

D. Winkel Rock DE, LLC, a Delaware limited liability company ("**Developer**"), a successor in interest to Winkel Rock JV, contemplates developing the Phase 1 Subdivision, including the Site, and other adjacent real property as a multifamily, retail, commercial, and hospitality development (the "**Mixed-Use Project**"). Developer and/or its predecessors in interest have obtained the necessary land use approvals and permits necessary for the development of the Phase 1 Subdivision of the Mixed-Use Project, which includes the development of the multifamily, retail, and commercial components.

E. Participant, by and through its member(s) and/or manager(s) or other affiliate(s), has a membership interest in Winkel Rock JV and previously contributed the Site to Winkel Rock JV. Winkel Rock JV intends to contribute, deed, and otherwise convey the Phase 1 Subdivision, including the Site, to Developer, for the completion and development of the Phase 1 Subdivision of the Mixed-Use Project.

F. In accordance with Section 1.7.1 of the Participation Agreement, RDA's prior written consent is required for deeding, selling, conveying, assigning, or otherwise alienating or leasing the Site.

G. RDA is entering into this Consent for the limited purpose of (i) consenting to the further conveyance of the Site from Winkel Rock JV to Developer; and (ii) agreeing to the scope of the outstanding Obligations as of the Effective Date.

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

1. **Consent.** In accordance with Section 1.7.1 of the Participation Agreement, the RDA hereby provides its express consent to the contribution, deed, and/or conveyance of the Site by Winkel Rock JV to Developer.

2. **Outstanding Obligations.** The RDA and Participant hereby agree and acknowledge that the following table sets forth the only remaining obligations under the Participation Agreement (the "Obligations") and the status for the same:

Section	Obligation	Status
2.4	Participant agrees to sign a Promissory Note (the Note) for the full amount of the Tax Increment paid to Participant.	Completed by Participant.
2.4.1	Participant shall deed or dedicate by plat to Layton city, at no cost, a public right-of-way access connected to an intersection with Main Street. Participant shall proceed with obtaining subdivision approval (if necessary) and complete the process in good faith and in a reasonable period of time.	Completed by Winkel Rock JV, as set forth on the Phase 1 Subdivision.
2.4.2	Participant agrees that the existing building(s) shall be demolished, and all debris removed from the Site.	Completed by Participant.
2.4.2	Participant and RDA agree to remediate additional environmental contaminations, if any, as determined in the conclusions of the Limited Subsurface Investigations dated June 2, 2015 and June 5, 2015 conducted by EarthTouch Inc. for the Site.	Completed by Participant.
2.4.3	Participant agrees that development of the Main Street frontage of the Site shall be compliant with MU-TOD zoning regulations and include, at minimum, office/retail uses on the main floor level of the Main Street frontage. (the "Construction Zoning Compliance Obligation")	Outstanding – the Construction Zoning Compliance Obligation will be completed by Developer in its development of the Phase 1 Subdivision.
2.4.4	Participant agrees to not erect, or cause to be erected, any billboards advertising off-site business on the entire development site.	Addressed below as described in Section 3.d.
3.1; 3.3	Participant will at all-times be responsible for all development of the Site pursuant to the "Plan" (as defined in the Participation Agreement). Participant agrees to improve and develop the Site according to the terms of the	Outstanding – the Development Obligation will be completed by Developer in its development of Phase 1 Subdivision.

	Participation Agreement (the "Development Obligation").	
3.2	Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site.	Completed by Developer and/or its predecessors in interest.

Participant shall use good faith and reasonable efforts to ensure that the foregoing Obligations shall be completed by Developer. As set forth in the Participation Agreement, upon completion of the foregoing Obligations, the RDA shall issue a "Certificate of Completion" and thereafter terminate and release the Note. The parties agree that upon issuance of a certificate of occupancy for the last building on Phase 1 Subdivision, a Certificate of Completion shall be issued by the RDA and, upon the issuance of the Certificate of Completion, the Obligations (and any and all other terms, conditions, and obligations under the Participation Agreement) shall be considered discharged and completed, the RDA Documents shall be deemed terminated, and neither Participant, Winkel Rock JV, nor Developer (or any successor owner of the Site) shall have any obligations under the RDA Documents.

3. **RDA Representations and Warranties.** The RDA hereby represents and warrants to Participant and Developer (and shall be estopped from asserting any matter to the contrary as against Participant and Developer (or any successor owner of the Site) as follows:

a. True, correct and complete copies of the RDA Documents, including all amendments, modifications, supplements, and assignments related thereto, are attached hereto as **Exhibit B**. Except as reflected in **Exhibit B**, the RDA Documents have not been amended, modified, supplemented or assigned in any other respect.

b. To the knowledge of the RDA, there exists no default by Participant under the RDA Documents, nor any state of facts which with the passage of time or the giving of notice would constitute a default under the RDA Documents on the part of Participant. There exists no default by the RDA under the RDA Documents, nor any state of facts which with the passage of time or the giving of notice or both would constitute a default on the part of the RDA.

c. The Tax Increment has been fully funded and Participant has invested the Tax Increment into the Site in compliance with the RDA Documents. There are no other Tax Increments or other tax incentives available to Participant or applicable to the Site.

d. For the avoidance of doubt, (i) other than the Developer (with respect to the Construction Zoning Compliance Obligation and the Development Obligation and the negative covenant set forth in **Section 2.4.4 (Billboards/Signage)** of the Participation Agreement) and the Participant, no other party, person or entity is obligated (or shall be obligated) under the Participation Agreement unless expressly assigned or otherwise transferred (and no foreclosure, deed-in-lieu or similar transaction or subsequent sale will be deemed to violate the terms of the Participation Agreement or to result in any liability or obligation on the party thereby acquiring title to the Site or on the Site itself), and (ii) other than the Participant, no other party, person or entity is obligated under the Note. Other than the negative covenant set forth in **Section 2.4.4 (Billboards/Signage)** of the Participation Agreement, there are no other terms, conditions, provisions, or covenants under the RDA Documents that shall be binding on any successors in interest to the Site other than Participant and Developer upon completion of all the terms of the Participation Agreement, Construction Zoning Compliance Obligation, and the Development Obligation.

4. **Miscellaneous.**

a. Governing Law. This Consent shall be governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule.

b. Successors and Assigns. This Consent shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. Counterparts. This Consent may be executed in counterparts, each of which will be deemed an original, but which together constitute one and the same instrument. Delivery of executed signature pages by facsimile or email transmission shall be effective.

[Signature and Acknowledgment Pages Follow]

IN WITNESS WHEREOF, the RDA, Participant, and Winkel Rock JV have executed this Consent as of the Effective Date.

PARTICIPANT:

North Utah Holdings, LLC,
a Utah limited liability company

By: [Signature]
Print Name: Mickey Winkel
Title: Manager

ACKNOWLEDGMENT

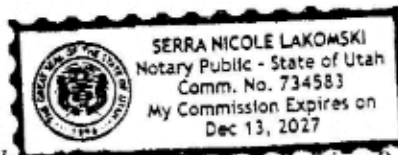
STATE OF UTAH)
COUNTY OF SALT LAKE) : ss.

The foregoing instrument was acknowledged before me this 03 day of APRIL, 2024, by MICHAEL WINKEL, the MANAGER of North Utah Holdings, LLC, a Utah limited liability company.

[Signature]
NOTARY PUBLIC
Residing at: 1967 S 2100 E, SU, UT

My Commission Expires:

12/13/2027



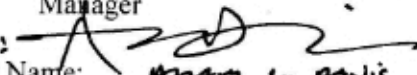
[Signatures and Acknowledgments Continue on Following Page]

DEVELOPER:

Winkel Rock DE, LLC,
a Delaware limited liability company

By: **Winkel Rock, LLC,**
a Utah limited liability company
Its: Manager

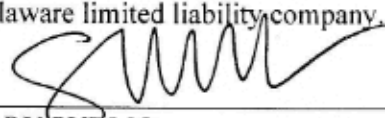
By: **Rockworth Companies, LLC,**
a Utah limited liability company
Its: Manager

BY: 
Print Name: ADAM L. DAVIS
Title: MANAGER

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

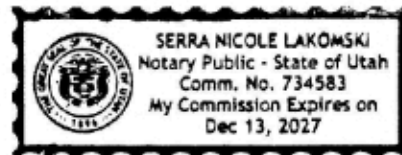
The foregoing instrument was acknowledged before me this 8th day of April, 2024, by ADAM DAVIS, the MANAGER of Rockworth Companies, LLC, a Utah limited liability company, the Manager of Winkel Rock, LLC, a Utah limited liability company, the Manager of Winkel Rock DE, LLC, a Delaware limited liability company.



NOTARY PUBLIC
Residing at: 667 S. 2100E - SLC, UT

My Commission Expires:

12/13/2027



[Signatures and Acknowledgments Continue on Following Page]

Exhibit A

Legal Description

The Phase 1 Subdivision located in Layton City, Davis County, Utah is more particularly described as follows:

LOTS 1-3, ACCORDING TO THE LAYTON STATION PHASE 1 SUBDIVISION, AS RECORDED OCTOBER 26, 2023, AS RECORD NO. 3548782, IN BOOK 8367 AT PAGE 478, IN THE OFFICE OF THE DAVIS COUNTY RECORDER.

(For reference purposes only, Tax Parcel Nos. 15-144-0001,
15-144-0002, ~~14~~-144-0003)

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Exhibit B

RDA Documents

[The RDA Documents are on file with Layton City.]

**Exhibit B - PARTICIPATION AGREEMENT BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF LAYTON CITY AND NORTH UTAH
HOLDINGS, LLC**

Participation Agreement

By and Between

The Redevelopment Agency of Layton City,

And

North Utah Holdings, LLC

Participation Agreement

The parties hereto, the Redevelopment Agency of Layton City, a political subdivision of the State of Utah (the “**Agency**”) and North Utah Holdings, LLC, a Utah Limited Liability Company (“**Participant**”)—(the Agency and Participant may also be collectively referred to as “**Parties**”), agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of the Agreement

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Plan for the South Main / South Fort Lane Redevelopment Project Area (the “**Plan**”¹ and Project Area Budget “**Budget**” are attached hereto as **Exhibit A**), by providing public right-of-way access, assembling the land under one property owner, and removing barriers to the future mixed-use development of the property within the South Main / South Fort Lane Project Area (the “**Project Area**”). Also, to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in purchasing land, establishing right-of-way, and future development guidelines, including funds the Agency will provide to assist in acquiring property, which will benefit the Project Area.

1.2 Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of Layton City, and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Title 17C, Utah Code Annotated as amended (the “**Act**”).

1.3 The Project Area

The Project Area is located within the boundaries of Layton City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

1.4 The Project Area Plan and Budget

This Agreement is subject to the provisions of the Plan, as revised, amended and adopted on December 3, 2009, by the Agency and the Layton City Council (the “**Council**”) in accordance with Section 17C-3-106 of the Act.

¹ The Plan was originally adopted by the Layton City Council by Ordinance 04-44 on June 17, 2004. A copy of that Ordinance is attached as **Exhibit B**.

1.5 Description of the Site

The site of the property (the "Site") within the Project Area shall consist of three parcels property, totaling approximately 1.43 acres. The Site is shown in detail on the Site Map, attached hereto as **Exhibit C**, and described in the description(s), attached hereto as **Exhibit D**.

1.6 Parties to the Agreement

1.6.1 The Agency

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Community Development and Renewal Agencies Act. The address of the Agency for purposes of this Agreement is:

The Redevelopment Agency of Layton City
Attn: RDA Executive Director
437 Wasatch Drive
Layton, Utah 84041

1.6.2 The Participant

Participant is North Utah Holdings, LLC, a Utah Limited Liability Company (LLC), lawfully registered to do business in Utah. Participant's address for purposes of this Agreement is:

North Utah Holdings, LLC
Attn: McKay Winkel, Managing Member
3651 North 100 East, No. 125
Provo, UT 84604

1.7 Prohibition against Certain Changes

1.7.1 Transfers of Property Prohibited

Participant represents and agrees for itself and any successor(s) in interest that, during the term of this Agreement, it shall not deed, sell, convey, assign or otherwise alienate or lease the Site or any portion thereof or interest therein without the prior written approval of the Agency, and that the Agency may withhold its approval if such deed, sale, conveyance, assignment or alienation or lease would result in the objectives of the Agreement not being met. Notwithstanding the foregoing, Participant shall be entitled (without the consent of any party) to transfer any interest in the real estate to any wholly-owned subsidiary (or sister company that has substantially the same owners) of Participant, who agrees to continue to occupy and/or operate the business in substantially the same form and to undertake all obligations and restrictions of the

transferring Participant(s). Any such undertaking shall be in writing and properly executed. No subsequent transfer can occur without the write approval of the Agency.

1.7.2 Assignment or Transfer of Agreement

For the reasons cited above, Participant represents and agrees for itself and its successors and assigns that during the term of this Agreement Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the Agency. The assignment or delegation of this Agreement without the prior written consent of the Agency is a material breach and default, under this Agreement, and relieves the Agency of any obligation to Participant under this Agreement. As a condition of the Agency approving an assignment of this Agreement by Participant the Agency may, among other things, require the proposed assignee to execute an acknowledgement of its acceptance to perform all duties and obligations of Participant under this Agreement.

1.7.3 Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or their successor in interest to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from *ad valorem* property taxation without the prior written consent of the Agency constitutes a material breach and default under this Agreement and will entitle the Agency, in its sole discretion, to terminate this Agreement.

1.7.4 Continuing Obligations

In the absence of a specific written agreement by the Agency, no assignment or transfer of this Agreement, in whole or in part, or approval of this Agreement by the Agency, relieves Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement are and will remain binding upon and inure to the benefit of Participant and their successors and assigns.

1.8 Term of the Agreement

Unless terminated sooner, by a breach or default as provided herein, this Agreement shall terminate, upon the issuance of a "Certificate of Completion," by the Agency upon completion of the obligations of the parties within the time periods set forth herein, under the terms of this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1 Provision of Tax Increment

The Agency agrees to provide an amount not to exceed eight hundred twenty thousand dollars (\$820,000.00) solely from Tax Increment generated by the Project Area for the purpose of writing down the cost of the Site. RDA funds will be deposited in Escrow prior to closing for the purchase of the Site by Participant.

The Participant shall submit a letter to the RDA requesting release of Tax Increment for the purchase of the following Parcel ID's: #110610158, #110610157, and #110610029. The letter shall include a fully executed Real Estate Purchase Contract, Title Company, closing instructions, and estimated time frame for closing. Prior to closing, the RDA shall receive a copy of the HUD-1 Settlement Statement and proof of Title Insurance.

The amount of release of Tax Increment funds shall be:

Parcel ID #110610158, located at 127 South Main Street, also known as Kings First Stop Auto, in the amount of four hundred twenty thousand dollars (\$420,000.00).

Parcel ID #110610157, located at 137 South Main Street, and #110610029, located at 143 South Main Street, with both parcels also known as Tom Randall Distributing, in the amount of four hundred thousand dollars (\$400,000.00).

2.2 Tax Increment

The Project Area Plan and payments contemplated in this Agreement will be funded by Tax Increment as budgeted by the RDA in compliance with the provisions of the Act.

For purposes of this Agreement:

(a) "**Tax Increment**" means the Taxes levied each year on land, real property improvements, personal property and other taxable property within the Project Site in excess of the Base Tax Amount (as defined below) for that same property; as defined in the Act;

(b) "**Taxes**" means all levies on an *ad valorem* basis upon land, real property improvements, personal property, or any other property;

(c) "**Base Tax Amount**" for the Site will be calculated by multiplying the combined 2004 tax rate of all taxing entities that levy taxes on property within the Project Area by the base year taxable value which is equal to the taxable value of the Project Site as determined by the Davis County Assessor based upon the assessment roll last equalized before November 1, 2004.

2.3 Conditions Precedent to Payment of Participant's Tax Increment Share

2.3.1 Dispute over Receipt of Payment of Tax Increment

In the event a dispute arises as to the person or entity entitled to receipt of Tax Increment under this Agreement due to a claimed assignment or claimed successor in interest to the Tax Increment or otherwise, the Agency may withhold payment of Tax Increment until the dispute is resolved either by agreement or by a court of competent jurisdiction. The Agency shall be entitled to deduct from its payment of Tax Increment any costs or expenses, including reasonable attorney's fees, incurred by the Agency due to the dispute.

2.4 Nature of Participant's Obligations

To qualify to receive the Tax Increment funding set forth herein, Participant shall fulfill all of the obligations in this Agreement. Failure to fulfill any obligation shall be considered a material breach and termination of the Agreement. Participant agrees to sign, concurrent with this agreement, a Promissory Note (the Note) for the full amount of Tax Increment paid to Participant by the Agency. The Agency will not require that the Note be secured with a deed of trust. The Agency shall hold that Note until such time as all of Participant's responsibilities under this Agreement, are fully executed or until such time as a breach or default occurs under the terms of this Agreement. Upon completion of Participant's responsibilities, Participant shall request and the Agency shall issue a "Certificate of Completion" and the Note shall thereafter, be null and void. Upon a breach or default under the terms of this Agreement, the Agency shall, at its option and without waiving any rights under this Agreement, call the Note due, independent of the terms of this Agreement and proceed to collect on the Note.

2.4.1 Provision of a Public Right-Of-Way Access

As part of the subdivision process, Participant shall deed or dedicate by plat, to Layton City, at no cost, a public right-of-way access connected to an intersection with Main Street to provide public access to the interior of the Site. The specific location and size of such public right-of-way shall be determined with the approval of a road dedication plat, or Commercial Subdivision or other division or dedication of the road, specifically approved as provided in the Layton Municipal Code, Title 18, Land Use Development. The conceptual orientation of the public right-of-way is illustrated in **Exhibit E**. Participant shall proceed with obtaining subdivision approval (if necessary) and complete the process in good faith and in a reasonable period of time, but no longer than five (5) years after Participant's acquisition of the last property within the Site.

2.4.2 Demolition and Environmental Remediation

The Environmental Remediation of the Tom Randall Distributing Layton Bulk Plant at 137 South Main Street, Layton, Utah shall be performed under the Leaking Underground

Storage Tank Petroleum Cleanup Project Facility ID # 3000154, Release Site KYZ and shall not be the responsibility of Participant or the Agency.

Participant agrees when each parcel within the Site is acquired, the existing buildings shall be demolished and all debris removed from the Site within one (1) year of acquisition of all parcels referenced in this Agreement. Participant and Agency agree to remediate additional environmental contaminations, if any, as determined in the conclusions of the Limited Subsurface Investigations dated June 2, 2015 and June 5, 2015 conducted by EarthTouch Inc for the Site and in a manner consistent with the all Federal, State, and Local requirements. If there is any contamination on the King parcel not covered by the Leaking Underground Storage Tank Petroleum Cleanup Project Facility ID # 3000154, Release Site KYZ then the Agency shall bear up to the first fifty thousand dollars (\$50,000.00) of the costs of environmental remediation. Participant and Agency shall each be responsible for 50% of any additional remediation costs on the King parcel beyond the costs covered by the UDEQ Cleanup Project and the Agency's subsequent \$50,000.00. In no case shall the demolition and remediation of the site exceed one (1) year from acquisition of all parcels referenced in this Agreement. Participant shall not be responsible for any delays caused by the DEQ remediation which shall be an act of force majeure.

2.4.3 Street Frontage Land Use

Participant agrees, for itself and any successors in interest, that the development of the Main Street frontage of the Site shall be compliant with the MU-TOD zoning regulations and shall include, at a minimum, office/retail uses on the main floor level of the Main Street frontage. All residential dwelling units, if any, must be located above the main floor level or not on the Main Street Frontage. Office, retail and residential uses shall be the sole uses of all floors of the buildings unless otherwise approved by the Agency.

2.4.4 Billboards/Signage

Participant agrees to not erect, or cause to be erected, any billboards advertising off-site businesses on the entire development site, which shall include any associated property south of Gentile Street, east of Main Street, north of Layton Parkway, and west of I-15. All signage for on-site businesses shall comply with applicable City codes as may be modified by any development agreement.

2.5 Funding Responsibility

The Parties understand and agree that funding for the construction upon the Site and related improvements comes entirely from either Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

2.6 Use of Tax Increment Funds

Participant agrees to use the funding received from Agency solely for buying down of the purchase price of the property within the Site and direct costs associated with acquisition. The Agency shall have the opportunity to review all documents relating to the acquisition of the property within the Site, prior to making payment on behalf of Participant. Participant shall demonstrate to the Agency, through proper documentation, that the Tax Increment was used to purchase property within the Site or make the payment jointly to property owner and Participant.

3. OPERATION AND DEVELOPMENT OF THE SITE

3.1 Development of the Site

Participant will at all times be responsible for all development of the Site pursuant to the Plan and this Agreement. In light of the level of capital investment by the Participant in the development of the Site, the Agency has determined that it is in best interests of the residents of Layton City to provide Tax Increment, upon the terms and conditions set forth in this Agreement, to Participant as an incentive to undertake the development of the Site as contemplated in this Agreement and in the Project Area Plan.

3.2 Responsibility for Development Plans and Permits

Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site. All plans must be in accordance with all applicable federal, state and local laws and regulations. Before commencing development, Participant must secure or cause to be secured, at its own expense, all zoning or land use approvals and permits required in order to proceed with the development of the Site.

3.3 Site Improvements and Future Development

Participant agrees to improve and develop the Site according to the terms of this Agreement. During the term of this Agreement, Participant and the Agency hereby agree as follows:

3.3.1 Hold Harmless Agreement

Participant agrees to defend and hold the Agency and its directors, officers, agents, employees and consultants harmless for any and all claims, liability and damages arising out of any work or activity of Participant, their agents, or their contractors or employees.

3.3.2 Hazardous, Toxic, and/or Contaminating Materials

Participant agrees to defend and hold the Agency its directors, officers, agents, employees and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous,

toxic and/or contaminating materials, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the Agency or where such claims existed (regardless of whether asserted) prior to the effective date of this Agreement.

3.3.3 Indemnification

Participant agrees to and shall indemnify and hold the Agency and its directors, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of Participant or their agents, servants, employees, or contractors except for willful misconduct or negligent acts or omissions of the Agency or its directors, officers, agents, employees and constants. Likewise, the Agency agrees and shall indemnify and hold Participant and their directors, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of Agency or its agents, servants, employees, or contractors except for willful misconduct or negligent acts or omissions of Participant or their directors, officers, agents, employees and consultants.

3.3.4 Discrimination

Participant agrees for itself and their successors and assigns that they will not unlawfully discriminate against any employee or applicants for employment, or any contractor or any bidder on any contract.

3.3.5 Local, State, and Federal Laws

Participant shall develop the Site in conformity with all applicable laws; provided, however, that nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law. Development of the Site shall also be subject to review and approval of the Agency.

3.3.6 County and Other Governmental Agency Permits

Participant shall, at its own expense, secure or cause to be secured, any and all permits that may be required by Davis County or any other governmental agency affected by the development or operation of the Site.

3.3.7 Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Site and any and all improvements thereon for purposes of inspection, with reasonable and prior notice, and without charges or fees, at normal hours. Such representatives of the Agency and other visitors to the site shall observe any reasonable rules adopted by Participant for purposes of maintaining safety and security on the site, including requirements that such representatives or visitors be escorted by the General Manager or other designated agent of Participant at all times. Such representatives of the Agency shall be those who are so identified in writing by the Agency. The Agency agrees to and shall indemnify and hold Participant harmless from and against all liability, loss, damage, costs, or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur as a result of or arising from the Agency's entry upon or activities on the Site, except that this indemnity shall not apply to proportional negligence or willful misconduct of Participant.

3.3.8 Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to appropriate hearing (if required), review, or compliance with any other requirement. Participant shall not have any obligation under this Agreement other than those specifically provided for herein.

4. EFFECT AND DURATION OF COVENANTS

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on Participant and any successors in interest to the Site for the benefit and in favor of the Agency, its successors and assigns during the Term of this Agreement.

5. DEFAULTS, REMEDIES AND TERMINATION

5.1 Default

If either the Agency or Participant fail to perform or delays performance of any material term or provision of this Agreement, such conduct constitutes a default of this Agreement ("Default"). The party in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within the periods provided in Section 5.3 hereof.

5.2 Notice

If a Default under this Agreement occurs, the non-defaulting shall give written notice (a “**Default Notice**”) of the Default to the party in Default, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the injured party; but the injured party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.3 Cure Period

The non-defaulting party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and the non-defaulting party, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have.

5.3.1 Rights and Remedies

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law), the non-defaulting party shall have all rights and remedies against the defaulting party as may be available at law or in equity to cure, correct or remedy any Default, to terminate this Agreement, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement, including the filing of the Note as a Trust Deed. Such rights and remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting party.

5.3.2 Legal Actions

5.3.2.1 Venue

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Second District Court for the State of Utah located in Layton, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

5.3.2.2 Services of Process

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law.

Service of process on Participant shall be by personal service upon their Registered Agent, or in such other manner as may be provided by law, whether made within or without the State of Utah.

5.3.2.3 Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6. GENERAL PROVISIONS

6.1 Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.6.1 and 1.6.2 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

6.2 Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If

such condition, covenant or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

6.3 Nonliability of Agency Officials and Employees

No director, officer, agent, employee or consultant of the Agency shall be personally liable to Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to Participant or to their successors, or on any obligations under the terms of this Agreement.

6.4 Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or suppliers, acts of the other party, or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause on the part of Agency's Executive Director or its governing board or on the part of Participant. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

6.5 Approvals

Whenever the consent or approval is required of any party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

6.6 Time of the Essence

Time shall be of the essence in the performance of this Agreement.

6.7 Interpretation

The parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties hereto.

6.8 No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create for either party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

6.9 Incorporation of Exhibits

All Exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.1 Duplicate Originals

This Agreement shall be executed in two duplicate originals, each of which shall be deemed an original. This Agreement (including its Exhibits) constitutes the entire understanding and agreement of the parties.

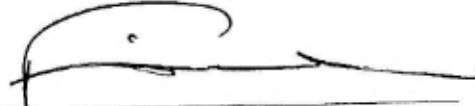
7.2 Integration

When executed by the parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

7.3 Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

North Utah Holdings, LLC, a Utah Limited Liability Company



F. McKay Winkel, Managing Member

6-6-16

Date

State of Utah)
 Utah : SS
County of *Davis*)

On this 6th day of June, 2016, before me, the undersigned Notary Public, personally appeared F. MCKAY WINKEL, who affirmed that he is the MANAGING MEMBER of NORTH UTAH HOLDINGS, LLC, a Utah Limited Liability Company, and acknowledged to me that he is authorized to, and did in fact execute the foregoing Participation Agreement. Witness my hand and official seal.





Notary Public

EXHIBIT "A"