

RESOLUTION NO. R- 19 -2024

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH,
AMENDING THE PURCHASE AGREEMENT WITH D & B CEDAR LC
FOR THE ACQUISITION OF A RIGHT-OF-WAY ALONG OLD AIRPORT ROAD**

PREAMBLE

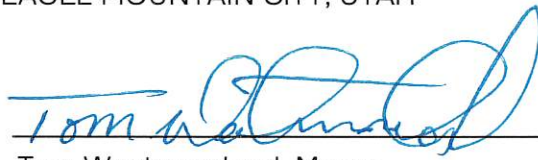
The City Council of Eagle Mountain City, Utah, finds that it is in the public interest to Amend the Purchase Agreement with D & B Cedar LC for the acquisition of a Right-of-Way along Old Airport Road, as set forth in Exhibit A.

NOW THEREFORE, BE IT RESOLVED by the City Council of Eagle Mountain City, Utah for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. The Purchase Agreement with D & B Cedar LC is amended as set forth in Exhibit A.
2. This Resolution shall become effective immediately upon its passing.

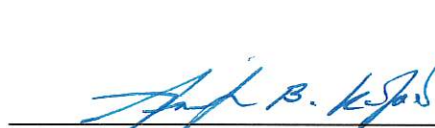
ADOPTED by the City Council of Eagle Mountain City, Utah, this 7th day of May 2024.

EAGLE MOUNTAIN CITY, UTAH



Tom Westmoreland, Mayor

ATTEST:



Fionnuala B. Kofoed, MMC
City Recorder



The above Resolution was adopted by the City Council of Eagle Mountain City, Utah on the 7th day of May 2024.

Those voting yes:

☒ Donna Burnham

☒ Melissa Clark

☒ Jared Gray

☐ Rich Wood

☒ Brett Wright

Those voting no:

☐ Donna Burnham

☐ Melissa Clark

☐ Jared Gray

☐ Rich Wood

☐ Brett Wright

Those excused:

☐ Donna Burnham

☐ Melissa Clark

☐ Jared Gray

☒ Rich Wood

☐ Brett Wright

Those abstaining:

☐ Donna Burnham

☐ Melissa Clark

☐ Jared Gray

☐ Rich Wood

☐ Brett Wright

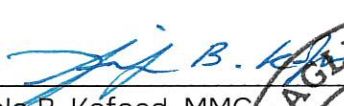

Fionnuala B. Kofoed, MMC
City Recorder



Exhibit A

AMENDED PURCHASE AGREEMENT

This PURCHASE AGREEMENT ("**Agreement**") is made and entered as of the 28 day of August, 2024 (the "**Effective Date**"), by and between Eagle Mountain City ("**City**"), a political subdivision of the State of Utah; and D & B Cedar, LC, a Utah limited liability company ("**Seller**"). The City and Seller are collectively referred to as the "**Parties**" and, individually as a "**Party**".

RECITALS

A. Seller owns an undivided fee simple interest in certain real property consisting of approximately 26.45 acres of undeveloped land located in the City, Utah County Parcel Number 58:047:0024 as more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein ("**Land**").

B. City desires to purchase from Seller approximately 3.48 acres of the Land as more particularly described in **Exhibit B** attached hereto and incorporated herein ("**Property**") to extend Old Airport Road ("**Road Extension**") into the Property to be acquired from the Seller; and

C. Upon and subject to the terms and conditions set forth in this Agreement, Seller desires to sell, transfer and convey the Property to the City, and the City desires to purchase and acquire the Property from Seller.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the City and Seller hereby agree to the following:

AGREEMENT

1. **Sale.** Seller hereby agrees to sell, transfer and convey to City, and City hereby agrees to purchase and acquire from Seller, upon and subject to the terms and conditions set forth in this Agreement, fee simple title to the Property, insurable as such by the Title Company (as defined below), free and clear of any and all liens, defects, encumbrances, leases, easements, covenants, restrictions, reservations, conditions, claims or other matters whatsoever, whether recorded or unrecorded, subject only to the Permitted Exceptions (as defined below) (collectively, "**Transfer**").
2. **Purchase Price.**
 - a. **Price Per Acre.** The total purchase price for the Property shall be Three Hundred Thirteen thousand two hundred dollars (\$313,200) ("**Purchase Price**") The Purchase Price is based on the gross acreage of 3.48 acres and a price of Ninety Thousand dollars (\$90,000) per

acre. The Purchase Price is for the underlying undeveloped land only. No mineral rights, water, or water rights are included in the Purchase Price.

- b. **Method of Payment.** City shall pay the total Purchase Price in cash, by cashier's check, wire transfer, or other immediately available funds on or before the Closing Date.

3. **Title Commitment; Survey; Disclosures.**

- a. **Title Commitment.** Seller shall provide a commitment ("**Title Commitment**") for a standard ALTA owner's policy of title insurance ("**Title Policy**") issued by the Title Company in the amount of the Purchase Price, committing to insure that title to the Property is in the condition required in accordance with this Agreement within ten (10) days after the Effective Date of this Agreement.
 - i. **Objections.** City shall have ten (10) Business Days following receipt of the Commitment to provide any written objections to any matter set forth on Schedule B of the Commitment ("**Title Objection Notice**"). If City does not timely deliver a written Title Objection Notice to Seller or fails to timely exercise its Section 3.a.iii termination remedy, City shall be deemed to have approved of all matters set forth in the Title Commitment. Matters which Seller has agreed to discharge pursuant to Section 3.a.ii(a), matters which Seller has notified City it will not cure pursuant to Section 3.a.ii(b), and any encumbrances or other title exceptions in the Title Commitment to which City does not timely provide a Title Objection Notice shall be deemed to be "**Permitted Exceptions**" and shall not be considered objections to any matter contained in the Commitment if the City fails to timely exercise its Section 3.a.iii termination remedy. Seller may arrange to pay off any Title Objection Notice matters that are monetary liens prior to or at Closing.
 - ii. **Written Notice.** If City timely provides a written Title Objection Notice in accordance with Section 3(a)(i), then Seller shall have the option to: (a) to provide written notice to City that Seller will cure such objection(s) at Seller's sole cost; (b) notify City in writing that it is no longer able to cure and/or will not cure the Title Objection Notice; or (c) terminate this Agreement.
 - iii. **Remedy.** City's sole remedy for Seller's inability or unwillingness to convey title subject only to the Permitted Exceptions by curing a City's objections in a Title Objection Notice in accordance with Section 3.a.ii(a) shall be to terminate this Agreement by providing written notice to Seller within five (5) Business Days of receiving Seller's Section 3.a.ii(b) notice. In that case, Seller shall have no other obligation to City in connection with this Agreement or the Property.
- b. **Survey.** City shall obtain, at City's expense, any needed surveys identifying the boundary lines and all structures, easements, and encumbrances of record and provide copies to Seller.

- c. **Property Documents.** No later than ten (10) calendar days after the Effective Date of this Agreement, Seller will deliver to City the following documents to the extent the same exist and are in the Seller's possession or control: (1) copies of all rights-of-way, easements, leases, rental agreements, rights of redemption, licenses, reservations, covenants, conditions, restrictions, or contracts which will be applicable to, or affect title to the Property after the Closing Date; and (2) copies of any environmental assessments, reports, site plans, surveys, studies, tests, inspections, reports or other documents in Seller's possession or control (collectively the "**Property Documents**").

4. **Closing Costs; Prorations.**

- a. **Timing.** The Closing (as defined below) shall occur within thirty (30) days or less from the Effective Date of this Agreement (the "**Closing Date**"), or at such earlier time and place as the Parties may mutually agree in writing. It is agreed that time is of the essence with respect to the Closing Date and all time and date deadlines set forth in this Agreement. "**Closing**" shall mean the consummation of the Transfer at the time the Escrow Agent has received all funds from the City required to pay the Purchase Price and all sums due hereunder, the Escrow Agent is ready to disburse, and the Deed (as defined below) is recorded in the Official Records of the Utah County Recorder's Office in the State of Utah ("**Official Records**").
- b. **Place of Closing.** The Closing shall be coordinated by Union Title (the "**Title Company**") c/o Jennifer Tucker, Esq., jennifer@uniontitle.net, O: 801-899-2332 (the "**Escrow Agent**"). At Closing, Seller shall deliver possession of the Property to City. Until a Closing occurs, the risk of loss to the Property shall be borne solely by the Seller. Real property taxes and assessments relating to the Property shall be prorated as of a Closing. Seller shall be responsible for and shall promptly pay all charges with respect to the Property attributable to the period up to and including the Closing Date. Each of the Parties shall pay its own fees and expenses in connection with this Agreement including, without limitation, its own attorneys' fees, diligence costs, and recording fees. The Parties shall share equally in the Closing Costs (as defined below) charged by the Escrow Agent.
- c. **Closing Costs.** Seller shall pay for (1) one-half of the fee charged by Escrow Agent in connection with the Transfer, (2) the cost of the Title Policy, (3) all costs related to the removal of any monetary liens or other Title Objection Notice matters Seller agreed to cure pursuant to Section 3.a.ii(a), and (4) all property taxes related to the period prior to Closing as calculated in accordance with Section 4(d). City shall pay for (1) one-half of the fee charged by Escrow Agent in connection with the Transfer and (2) all recording fees and costs related to the Transfer, except for any costs related to removal of any monetary liens or other Title Objection Notice matters Seller agreed to cure pursuant to Section 3.a.ii(a), and (3) all property taxes related to the period after Closing as calculated in accordance with Section 4(d). Seller and Buyer shall each be responsible for the cost of

their own respective attorneys' fees and related transactional expenses. The costs and expenses described in this Section 4(c) are, collectively, the "**Closing Costs**."

- d. **Real Estate Taxes.** Seller shall pay all real estate taxes for the Property that are liens for prior years. Property taxes for the year in which Closing occurs shall be prorated between City and Seller as of the date on which Closing occurs. If any greenbelt, rollback or farmland assessment taxes are payable with respect to the Property, or are necessary in order to withdraw the Property from greenbelt or agricultural use assessment in accordance with Utah Code Ann. § 59-2-511, Seller shall pay for all such taxes at Closing, or, if assessed following Closing, within thirty (30) days following Seller's receipt from City of notice of such assessment.
 - e. **Assessments.** Seller shall pay all charges for any and all assessments with respect to the Property imposed by any governmental body or public utility and/or charges or assessments imposed under or in connection with or as a consequence of any declaration or other instrument of record and/or any owner's association created relative to the Property, to the extent such charges are attributable to the period ending at 11:59 p.m. Mountain Time on the day before Closing. City shall pay all such charges to the extent attributable to the period from and after 12:00 midnight Mountain Time on the day of Closing.
 - f. **Special Assessments.** Seller shall pay in full any and all special assessments that are a lien on the Property at Closing.
 - g. **Closing Statements.** The Closing Costs and estimated Closing prorations shall be set forth on a preliminary closing statement (the "**Closing Statement**") to be prepared by the Escrow Agent. The Escrow Agent shall prepare the Closing Statement at least three (3) Business Days prior to the Closing Date for purposes of making the preliminary proration adjustment at Closing. The Escrow Agent shall revise the Closing Statement as necessary based upon comments from City and Seller, and the Escrow Agent shall deliver a final, signed version of the Closing Statement to each Party at Closing.
5. **City's Conditions.** The obligation of City to render performance under this Agreement and purchase the Property is subject to the conditions precedent (and conditions concurrent, with respect to deliveries and requirements required at Closing) (collectively, "**City's Conditions**") set forth in Sections 5(a) through 5(b) as follows:
- a. **Title.** The Title Company shall be prepared and irrevocably committed to issue to City the Title Policy. The Title Policy, to be furnished at Seller's expense, shall be subject to the following requirements: (1) it shall be delivered to City promptly after Closing showing only the Permitted Exceptions; (2) it shall contain affirmative insurance of title to all appurtenant easements benefiting the Land, if any; and (3) it shall otherwise be in form and substance reasonably acceptable to City.

- b. **No Default.** Seller shall have kept, performed and observed each and every agreement and obligation on its part to be kept, performed and observed hereunder, unless waived by City in writing or as provided in this Agreement. All of Seller's covenants, representations and warranties herein shall be true and correct in all material respects to the best of Seller's knowledge, and as if made, on the Closing Date. Seller shall have delivered all Seller's Closing Documents (as defined below) in accordance with Section 8.
6. **Seller's Conditions.** In addition to other terms and provisions of this Agreement which give Seller the express right to terminate this Agreement, Seller's obligations hereunder shall be subject to the satisfaction of the following conditions precedent (and conditions concurrent, with respect to deliveries and requirements required at Closing) (collectively, "**Seller's Conditions**") within the applicable periods set forth in this Agreement for the satisfaction of such conditions (or Seller's written waiver thereof):
- a. **Delivery of Closing Documents and Funds.** City shall have delivered or caused to be delivered to the Escrow Agent all of the City's Closing Document described in Section 8 and all funds necessary to pay the Purchase Price and other costs of closing to be paid by Seller under this Agreement in immediately funds (wire, transfer, certified/cashier's check, etc.).
 - b. **Representations and Warranties.** All representations and warranties of City contained in this Agreement shall be true and correct in all material respects to the best of the City's knowledge as of the date made and as of the Closing with the same effect as though such representations and warranties were made at and as of the Closing.
 - c. **Performance of Covenants.** City shall have performed the material covenants of City under this Agreement to be performed by City before Closing.

The conditions set forth in this Section 6 are solely for the benefit of Seller and may be waived by Seller in writing. In the event any of the foregoing conditions have not been fully satisfied or waived in writing on or before the Closing Date, then this Agreement shall terminate in accordance with Section 12.

7. **Covenants of Seller.** In addition to the covenants and agreements of Seller set forth elsewhere in this Agreement, Seller covenants and agrees that between the Effective Date of this Agreement and the Closing Date:
- a. **Title.** Seller shall not, without City's prior written consent, (1) directly or indirectly lease, sell, assign or create any right, title or interest whatsoever in or to the Property, (2) take any action, create, commit, permit to exist or suffer any acts that would give rise to a variance from the current legal description of the Property, except as expressly provided herein, or cause the creation of any lien, charge or encumbrance other than the Permitted Exceptions, or (3) enter into any agreement to do any of the foregoing.

- b. **Notice of Change of Circumstances.** Seller shall promptly notify City of any change in any condition with respect to the Property or any portion thereof or of any event or circumstance of which Seller obtains knowledge after the Effective Date of this Agreement that (1) materially or adversely affects the Property or any portion thereof or the use or operation of the Property or any portion thereof, (2) makes any representation or warranty of Seller under this Agreement untrue or misleading or (3) makes any covenant or agreement of Seller under this Agreement incapable or less likely of being performed.
- c. **No Defaults; Maintenance of Property.** Seller shall not default with respect to the performance of any obligation relating to the Property. Seller shall operate, manage and maintain the Property in a manner consistent with past practices and the ordinary course of Seller's business and in accordance with all applicable Laws (as defined below).
- d. **Development Activities.** Except as otherwise specifically set forth herein, Seller shall not take any actions with respect to the development of the Property, including applying for, pursuing, accepting or obtaining any permits, approvals or other development entitlements from any governmental or other regulatory entities or finalizing or entering into any agreements relating thereto without City's prior written consent. Seller shall cooperate with City in City's efforts to obtain any approvals from any governmental or other regulatory entity or agreements relating thereto as City deems necessary or appropriate to permit City to construct the Road Extension on the Property. Seller shall also cooperate with City and any municipality or utility in obtaining the appropriate extension of utility services on the Property.

8. **Closing; Possession and Title.**

- a. **Closing.** Closing shall occur in the offices of the Escrow Agent on the Closing Date or at such earlier time and place as the Parties may mutually agree in writing. At Closing, Seller shall convey indefeasible fee simple title to the Property to City in accordance herewith by a quit claim deed in the form of **Exhibit C** attached hereto (the "**Deed**"). Seller shall deliver to City possession of the Property upon the transfer of title to the Property at Closing.
- b. **Seller's Closing Documents.** On or before the Closing Date, Seller shall deliver to Escrow Agent the following (collectively, "**Seller's Closing Documents**"):
 - i. A quit claim deed conveying the Property duly executed and delivered by Seller in favor of City and acknowledged in the form set forth on **Exhibit C**;
 - ii. A Closing Statement, duly executed and delivered by Seller;
 - iii. Such additional assignments, instruments and documents appropriate to be executed and delivered by Seller as may be reasonably necessary to complete the Transfer and to carry out the intent and purposes of this Agreement;

- iv. Such proof of Seller's authority to enter into this Agreement and consummate the Transfer and of the power and authority of the individual(s) executing or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may reasonably be required by the Title Company or City; and
 - v. Such other documents as may reasonably be requested by City and/or the Title Company or Escrow Agent to convey clear title to the Property or to otherwise close the Transfer.
- c. **City's Closing Documents.** At or before Closing, City shall deliver to Escrow Agent the following (collectively, "**City's Closing Documents**"):
- i. Buyer's portion of the Closing Costs in accordance with Section 4 of this Agreement, cash, by cashier's check, wire transfer, or other immediately available funds;
 - ii. A Closing Statement, duly executed and delivered by City;
 - iii. Such proof of City's authority to enter into this Agreement and consummate the Transfer and of the power and authority of the individual(s) executing or delivering any instruments, documents or certificates on behalf of City to act for and bind City as may reasonably be required by the Title Company or Seller; and
 - iv. Such other documents as may reasonably be requested by Seller and/or the Title Company to close the Transfer in accordance with this Agreement.
9. **Brokerage Representations and Fee.** Each Party agrees that there is no broker, finder or intermediary with whom it has dealt in connection with the Transfer. Each Party shall and does hereby indemnify the other Party, and agrees to hold the other Party harmless from, any claim, demand or suit for any brokerage or real estate commission, finder's fee or similar fee or charge with respect to this Agreement or the Transfer based on any act by or agreement or contract with the indemnifying Party asserted by any third party, and for all losses, obligations, costs, expenses and fees (including reasonable attorneys' fees) incurred by the non-indemnifying Party on account of or arising from any such claim, demand or suit.
10. **Seller's Representations and Warranties.** City agrees that it is purchasing the Property in AS-IS condition, subject to Seller's covenants, representations and warranties that, as of the Effective Date, and as of the Closing Date:
- a. **Authority.** This Agreement and all other documents delivered by Seller prior to or at the Closing (i) have been duly authorized, executed, and delivered by Seller, (ii) are binding obligations of Seller, (iii) are collectively sufficient to transfer all of Seller's right, title and interest in and to the Property and (iv) do not violate the formation documents of Seller. Seller has obtained all required consents, releases and approvals necessary to execute this Agreement and consummate the Transfer. Seller further represents that it is a limited

liability company, duly organized and existing in good standing under the laws of the State of Utah, with its principal place of business in the State of Utah.

- b. **No Conflicts.** The execution, delivery and performance of this Agreement and the consummation of the Transfer will not conflict with, or result in a breach of any of the terms or provisions of, with or without notice or the passage of time or both, or constitute a default under, any agreement or other document or instrument to which Seller is a party or by which Seller or the Property is bound, or any applicable regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Seller or all or any portion of the Property, or otherwise.
- c. **Property Documents.** To the best of Seller's actual knowledge, the Property Documents constitute all of the material documents relating to the Property, and each such Property Document as delivered by Seller constitutes a true, correct and complete copy of the same; there are no commitments or agreements affecting the Property which have not been disclosed by Seller to City in writing; Seller is not in default of Seller's obligations or liabilities pertaining to the Property or the Property Documents (including under any recorded covenants, conditions or restrictions); nor are there facts, circumstances, conditions or events that, after the giving of notice or lapse of time or both, would constitute a default by Seller or any other party to such Property Documents.
- d. **Material Information.** To the actual knowledge of Seller, Seller has disclosed to Buyer in writing all material facts related to the Property to the extent required by any law and this Agreement, together with the Property Documents and any matters heretofore disclosed to Buyer in writing by Seller, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein not materially misleading.
- e. **Condemnation and Special Assessments.** To the actual knowledge of Seller, Seller has received no notice and is not aware of any (i) proceedings pending for the condemnation or taking of all or any portion of the Property by eminent domain or (ii) special assessments that would affect the Property and as of the Closing Date, Seller shall have given City prompt notice of the institution of any such proceedings or imposition of any assessments affecting the Property.
- f. **Bankruptcy.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, receivership, bankruptcy or reorganization or other proceedings are pending or, to the actual knowledge of Seller, threatened, against Seller.
- g. **Litigation; Liens.** There are no (i) claims, actions or legal proceedings pending before any judicial or quasi-judicial body, nor threats thereof, nor any basis therefor, with respect to the Property or any portion thereof nor (ii) actual, pending or, to the actual knowledge of Seller, threatened mechanics' liens or other liens against the Property or any portion thereof.

- h. **Compliance with Laws.** To the actual knowledge of Seller, the Property is in compliance with all existing laws, rules, regulations, ordinances and orders (collectively, "**Laws**") of all applicable federal, state and local authorities (each, an "**Authority**") having jurisdiction over the Property, and Seller has not received any oral or written notice of any violation of or noncompliance with any Laws or of any applications, ordinances, petitions, resolutions or other matters pending before any Authority, including the City, with respect to zoning, building, fire and health codes, environmental, sanitation and pollution control Laws or the Americans with Disabilities Act, as amended. To the actual knowledge of Seller, no condition currently exists or previously existed on the Property or any portion thereof that may result in any violation of any Laws applicable to the Property if it were disclosed to an Authority.
- i. **Parties in Possession.** To the actual knowledge of Seller, Seller is in exclusive possession of the entire Property and no other party occupies any portion of the Property or has any valid claim or interest in possessing the Property or any portion thereof, whether by reason of agreement, lease, farm lease or license, cell phone tower lease, adverse possession, prescriptive easement or establishment of a boundary by acquiescence. Except for applicable zoning and building restrictions and regulations, there are no covenants, easements, restrictions or private agreements that will prohibit development of the Property for commercial purposes.
- j. **Environmental.** The following statements are subject to any construction, development, or testing Buyer has completed since Buyer's Initial Entry.
 - i. To the best of Seller's actual knowledge, there are no active or abandoned wells on the Property;
 - ii. To the best of Seller's actual knowledge, there are no, and have not been any, underground or aboveground storage tanks upon the Property;
 - iii. To the best of Seller's actual knowledge, the Property has never been used as a landfill, dump or industrial or solid waste disposal area;
 - iv. To the best of Seller's actual knowledge, there are no pending or threatened actions or proceedings by any local governmental body, sewage district, the Utah Department of Environmental Quality, the U.S. Environmental Protection Agency, or any other governmental entity regarding violation of any applicable environmental laws with respect to the Property, and there is no basis for any such action or proceeding;
 - v. To the best of Seller's actual knowledge, the Property is in compliance with all Laws governing, establishing, limiting or otherwise affecting the use, discharge, storage, transportation or disposal of air, water or pollutants, process wastewater or solid, hazardous and/or toxic substances, materials or wastes, pesticides or environmentally threatening materials (collectively, "**Waste**");

- vi. To the best of Seller's actual knowledge, no waste is currently used, stored or disposed of on the Property;
- vii. To the best of Seller's actual knowledge, there are no private burial grounds located on the Property; and
- viii. To the best of Seller's actual knowledge, each of the Property and Seller is in compliance with all Laws relating to Hazardous Materials (as defined below), which compliance includes the possession by such Seller of all permits and other governmental authorities required under applicable Laws, and compliance with the terms and conditions thereof, and Seller has not received any written notice that alleges that Seller or the Property is not in such compliance and there are no circumstances that may prevent or interfere with such compliance in the future. To the actual knowledge of Seller, there is no Environmental Claim (as defined below) pending or threatened with regard to the Property or Seller and there are no past or present actions, activities, circumstances, conditions, events or incidents relating to Hazardous Materials that could form the basis of any Environmental Claim against Seller or against any person or entity, including persons or entities whose liability for any such Environmental Claim Seller has or may have retained or assumed either contractually or by operation of law.

"Environmental Claim" means any and all actions (including investigatory, remedial or enforcement actions of any kind, administrative or judicial proceedings and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including punitive damages), expenses (including attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses arising from or relating to the presence or suspected presence of any Hazardous Materials in, on, under or about the Property or properties adjacent thereto.

"Hazardous Materials" shall mean any chemical, substance, waste or material that is deemed hazardous, toxic, a pollutant or a contaminant, under any federal, state or local statute, law, ordinance, rule, regulation or judicial or administrative order or decisions, now or hereafter in effect, or that has been shown to have significant adverse effects on human health or the environment. Hazardous Materials shall include substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; in the regulations adopted and publications promulgated pursuant to such laws; and in the Hazardous Materials storage, use or discharge laws, regulations and

ordinances of the State of Utah, County of Utah or Eagle Mountain City.

The phrase "actual knowledge of Seller" or the phrase "the best of Seller's actual knowledge" and words of similar import, as used in this Agreement and the foregoing representations and warranties, shall mean the current actual knowledge of Seller's owners, employees, and agents, without such individuals having made any independent analysis, investigation, or inquiry with respect to the subject matter of the representations or warranties so qualified.

- k. **OFAC.** To the actual knowledge of Seller, Seller and all beneficial owners and agents of Seller, are currently (1) in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury and any statute, executive order or regulation relating thereto (collectively, the "**OFAC Rules**"), (2) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order or regulation and (3) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.
 - l. **Anti-Corruption.** To the actual knowledge of Seller, neither Seller nor any beneficial owner or agent of Seller has taken or shall take in connection with this Agreement or the Transfer any action, directly or indirectly, that would result in a violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any of the rules or regulations thereunder or any other anti-bribery/corruption legislation promulgated by any governmental body, and Seller has, and shall keep during the term of this Agreement, in place reasonable procedures to ensure the foregoing.
 - m. **Survival; Indemnification.** All of the representations, warranties and agreements of Seller set forth in this Agreement shall be true upon the Effective Date, shall be deemed to be repeated on and as of the Closing Date without the necessity of a separate certificate with respect thereto and shall survive the delivery of the Deed and other instruments and documents delivered at Closing for a period of one (1) year following Closing. Seller hereby indemnifies and agrees to reimburse, defend and hold harmless City and City's officers, employees, and agents from, for and against any and all claims, demands, obligations, losses, costs, damages, liabilities, judgments or expenses (including reasonable attorneys' fees, charges and disbursements) arising from, asserted against, imposed on or incurred by City, directly or indirectly, in connection with the breach of any representation or warranty set forth in this Agreement.
11. **City's Representations and Warranties.** City represents and warrants to and agrees with Seller that, as of the date hereof, and as of the Closing Date:
- a. **No Conflicts.** The execution and delivery of this Agreement, the consummation of the

Transfer, and compliance with the terms of this Agreement will not conflict with, or, with or without notice or the passage of time or both, result in a breach of any of the terms or provisions of, or constitute a default under, any agreement or other document or instrument to which City is a party or by which City is bound, or any applicable Law of any Authority, or any judgment, order or decree of any court having jurisdiction over City or all or any portion of the Property.

- b. **Due Organization; Consent.** City is a municipal corporation of the State of Utah and in good standing under the laws of the state of Utah. All requisite corporate action has been taken by City in connection with entering into this Agreement, and will be taken prior to the Closing in connection with the execution and delivery of the instruments referenced herein and the consummation of the Transfer. No consent of any officer, agent, elected official, creditor, judicial or administrative body, Authority, or other party is required in connection herewith which has not been obtained or will not be obtained prior to the Closing Date.
- c. **Litigation.** There are no judgments or other matters outstanding against or affecting City that would have an adverse effect on City's ability to perform its obligations under this Agreement, nor is there any action, charge, claim, demand, suit, proceeding, petition, governmental investigation, or arbitration now pending or, to the knowledge of City, threatened against City which could have an adverse effect on City's ability to perform its obligations under this Agreement.
- d. **City's Authority; Validity of Agreements.** City has or will have prior to the Closing full right, power and authority to purchase the Property from Seller as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of City have the legal power, right and actual authority to bind City to the terms hereof and thereof. This Agreement is and all other documents and instruments to be executed and delivered by City in connection with this Agreement shall be duly authorized, executed and delivered by City and shall be valid, binding and enforceable obligations of City.
- e. **OFAC.** City and all officers, agents, and elected and appointed officials of City, are currently (1) in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of OFAC of the U.S. Department of Treasury and any OFAC Rules, (2) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order or regulation and (3) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.
- f. **Anti-Corruption.** Neither City nor any officer, agent, or elected or appointed official of City has taken or shall take in connection with this Agreement or the Transfer any action,

directly or indirectly, that would result in a violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any of the rules or regulations thereunder or any other anti-bribery/corruption legislation promulgated by any governmental body, and City has, and shall keep during the term of this Agreement, in place reasonable procedures to ensure the foregoing.

- g. **Survival; Indemnification.** All of the representations, warranties and agreements of City set forth in this Agreement shall be true upon the Effective Date, shall be deemed to be repeated on and as of the Closing Date without the necessity of a separate certificate with respect thereto and shall survive the delivery of the Deed and other instruments and documents delivered at Closing for a period of one (1) year following Closing. City hereby indemnifies and agrees to reimburse, defend and hold harmless Seller and Seller's officers, employees and agents from, for and against any and all claims, demands, obligations, losses, costs, damages, liabilities, judgments or expenses (including reasonable attorneys' fees, charges and disbursements) arising from, asserted against, imposed on or incurred by Seller, directly or indirectly, in connection with the breach of any representation or warranty set forth in this Agreement.
12. **Default; Remedies.** If either Party shall default in any of its obligations under this Agreement, and such default shall continue for ten (10) Business Days after the other Party has given written notice specifying the nature of such default, and such default is not waived or cured, then:
- a. **Default by City.** In the event this transaction fails to close due to City's fault or inability to close, Seller shall be entitled to specific performance. Without limiting the generality of the foregoing, Seller hereby waives any rights to seek or obtain monetary damages, punitive damages, consequential damages or special damages.
 - b. **Default by Seller.** In the event this transaction fails to close due to Seller's fault then City shall be entitled to specific performance. Without limiting the generality of the foregoing, City hereby waives any rights to see or obtain monetary damages, punitive damages, consequential damages, or special damages.
13. **"As Is" Land Exchange.** Except as is expressly set forth in this Agreement to the contrary, city is expressly purchasing the Property in its existing condition "**AS IS, WHERE IS, AND WITH ALL FAULTS**" with respect to all facts, circumstances, conditions and defects, and, except as is expressly set forth in this Agreement to the contrary, Seller has no obligation to determine or correct any such facts, circumstances, conditions or defects or to compensate City for same. Seller has specifically bargained for the assumption by City of all responsibility to investigate the Property, laws and regulations, rights, facts, leases, service contracts and violations and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. City has undertaken all such investigations of the Property, laws and regulations, rights, facts, leases, service contracts and violations as City deems necessary or appropriate under the circumstances as to the status of the Property

and based upon same, except as is expressly set forth in this Agreement to the contrary, City is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and City is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property and, by reason of all the foregoing, City assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to the Property.

14. **General Provisions.**

- a. **Further Assurances.** Each Party will, except as otherwise proved herein, whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants, contingencies and agreements herein provided. Seller and City agree to use their best efforts in cooperation to carry out the intent of this Agreement.

In addition to the actions recited herein and contemplated to be performed, executed and/or delivered by Seller and City, Seller and City agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, instruments, deeds and assurances as may be reasonably required to consummate the Transfer.

- b. **Non-Merger.** The terms of this Agreement shall not merge into the Deed at Closing and shall survive the Closing.
- c. **Assignment.** City shall not assign this Agreement to any entity other than an affiliate of City without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- d. **Binding Agreement.** This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, legal representatives, successors and assigns.
- e. **Headings, Captions, and Terms.** All headings or captions in this Agreement are solely for the convenience of the parties and are not controlling as to application or interpretation. Words, terms, or clauses contained herein which are in bold print, underlined, or contained within quotation marks shall be considered to be defined terms having the meaning as set forth herein. Paragraph or section titles are merely for convenience and are not defined terms.
- f. **Counterparts.** This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto, any non-recorded closing document, or any notice delivered hereunder shall have the same legal effect as an original signature.

- g. **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provision of this Agreement.
- h. **Waiver of Breach.** Failure of any party hereto 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 date any such right or any other right it may have. Neither Party may waive any condition or breach of any term, covenant or condition of this Agreement, except in a writing signed by the waiving Party and specifically describing the condition or breach waived. The waiver by either Party of any condition or breach of any representation, term, condition or covenant contained in this Agreement shall not be deemed to be a waiver of any other condition, representation, term or of any subsequent breach of the same or of any other term, condition or covenant of this Agreement.
- i. **Attorney's Fees.** If any action is brought by either Party against the other Party, relating to or arising out of this Agreement the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 14(i) shall survive the termination of this Agreement and the entry of any judgment and shall not merge, or be deemed to have merged, into any judgment.
- j. **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the Parties hereto.
- k. **Governing Law.** This Agreement is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.
- l. **Venue.** Any action to enforce this Agreement shall be brought only in the Fourth District Court for the State of Utah, Utah County.
- m. **Notices.** Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered personally, with acknowledgment of receipt being obtained by the delivering Party, or by U.S. Certified Mail, return receipt requested, or by overnight delivery service by a reliable company, such as Federal Express or United Parcel Service, or by electronic mail as set forth below. Until further notification by written notice in the manner required by this Section 15(m) notices to the Parties shall be delivered as follows:

If to City:

Eagle Mountain
Attn: City Recorder
1650 E. Stagecoach Run

Eagle Mountain, UT 84005
recorder@emcity.org

If to Seller:

D & B Cedar LC
Attn: Birgitta N. Holbrook
720 N. 300 West
Lehi, Utah 84043

A Notice of Change of Address may be delivered to the other Party in the same manner as any other notice under this Section.

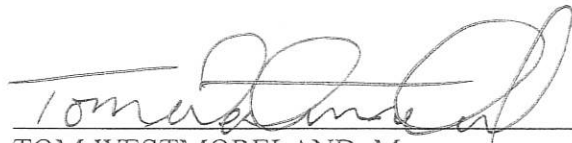
- n. **Interpretation.** The section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof. Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders. All references herein to "Section" or "Exhibit" reference the applicable Section of this Agreement or Exhibit attached hereto; and all Exhibits attached hereto are incorporated herein and made a part hereof to the same extent as if they were included in the body of this Agreement. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, unless language of limitation, such as "and limited to" or words of similar import are used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.
- o. **Construction.** Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.
- p. **Business Days.** As used herein, the term "**Business Day**" shall mean a day that is not a Saturday, Sunday, legal holiday in the State of Utah, or Federal holiday. All other references to "days" hereunder shall mean calendar days. If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Utah, then the date for performance thereof shall be extended to the next Business Day. All time periods, including the commencement and expiration of any time periods, shall be set by the time zone in effect in Utah in determining each event.
- q. **Third-Party Beneficiaries.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Seller. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights.

- r. **Confidentiality.** The Parties will not publish or disclose the terms and conditions set forth in this Agreement to anyone at any time. After the Closing, either Party may disclose that the transaction contemplated by this Agreement has occurred but shall not disclose the contents of this Agreement except as is necessary to a lender or appraiser to obtain financing or to the extent necessary to comply with law.
 - s. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.
 - t. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.
 - u. **Mutual Drafting.** Each party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.
 - v. **Entire Agreement.** This Agreement, including all Exhibits attached hereto, contains the entire agreement between Seller and Buyer, and all prior communications or agreements between the Parties or their respective representatives, whether oral or written, are merged into this Agreement and extinguished. No agreement, representation or inducement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless in writing and signed by the Party or Parties to be bound by such change, modification or termination. The Parties acknowledge and agree that this Agreement represents a negotiated agreement, having been drafted, negotiated and agreed upon by the Parties and their respective legal counsel. Therefore, the Parties agree that the fact that one Party or the other Party may have been primarily responsible for drafting or editing this Agreement shall not, in any dispute over the terms of this Agreement, cause this Agreement to be interpreted against such Party.
15. **Authority.** The Parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to Resolution No. _____ adopted by the City Council on _____, 20_____.

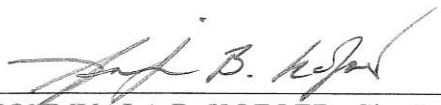
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

****SIGNATURE PAGE FOLLOWS****

EAGLE MOUNTAIN CITY


TOM WESTMORELAND, Mayor

ATTEST


FIONNUALA B. KOFOED, City Recorder


MARCUS DRAPER, City Attorney
Approved as to form



D & B CEDAR
A Utah Limited Company

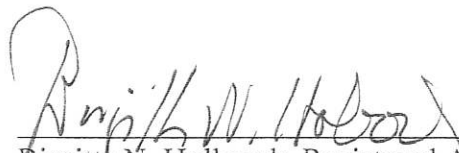

Birgitta N. Holbrook, Registered Agent

TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Land
Exhibit "B"	Legal Description of Property
Exhibit "C"	Form of Quitclaim Deed

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND OWNED BY SELLER PRIOR TO CLOSING

Legal Description: COM E1/4 COR SEC 23, T5S, R2W, SLM; N 89 DEG 31'05"W 2093.844 FT; N 62 DEG 50'06"E 2372.468 FT; S 53'06"W 1100.905 FT TO BEG. AREA 26.45 ACRES.

Together with all the improvements and appurtenances thereunto belonging or in anywise appertaining thereto.

EXHIBIT "B"
LEGAL DESCRIPTION OF PROPERTY

Parcel 1

A PART OF A PARCEL OF LAND AS SHOWN IN THAT CERTAIN QUIT CLAIM DEED RECORDED AS ENTRY NUMBER 26482-2018, OFFICIAL RECORDS, BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER OF SECTION 23; THENCE N 89°30'57" W ALONG THE CENTER LINE OF SAID SECTION 116.00 FEET, TO A POINT ON A NON TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1,102.00 FEET, THE CENTER OF WHICH BEARS S 89°07'45" E; THENCE NORTHEASTERLY 0.33 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0°01'02"; THENCE N 0°53'17" E 391.63 FEET, TO A POINT ON A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 1008.00 FEET; THENCE NORTHWESTERLY 505.85 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°45'12"; THENCE N 27°51'55" W 50.25 FEET, TO THE SOUTH RIGHT OF WAY LINE OF SR-73; THENCE N 62°08'05" E ALONG SAID LINE 94.00 FEET; THENCE S 27°51'55" E 50.25 FEET, TO A POINT ON A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 1,102.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 553.03 FEET, THROUGH A CENTRAL ANGLE OF 28°45'12"; THENCE S 89°06'43" E 22.00 FEET, TO THE EAST LINE OF SAID SECTION; THENCE S 00°53'17" W ALONG SAID LINE 391.14 FEET, TO THE POINT OF BEGINNING.

CONTAINS 99.911 SQ FT OR 2.29 ACRES

Parcel 2

A PART OF A PARCEL OF LAND AS SHOWN IN THAT CERTAIN QUIT CLAIM DEED RECORDED AS ENTRY NUMBER 26482-2018, OFFICIAL RECORDS, BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 23, SAID POINT BEING N 0°53'17" E 391.14 FEET, FROM THE EAST QUARTER OF SAID SECTION; THENCE N 0°53'17" E ALONG SAID LINE 674.05 FEET, TO THE SOUTH RIGHT OF WAY LINE OF SR-73; THENCE S 62°08'05" W ALONG SAID LINE 207.66 FEET; THENCE S 27°51'55" E 50.25 FEET, TO A POINT ON A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1,102.00 FEET, THENCE SOUTHEASTERLY 553.03 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 28°45'12"; THENCE S 89°06'43" E 22.00 FEET, TO THE POINT OF BEGINNING

CONTAINS 51.628 SQ FT OR 1.19 ACRES

EXHIBIT "C"
FORM OF QUIT CLAIM DEED

WHEN RECORDED, MAIL TAX NOTICE TO:

Fionnuala B. Kofoed
1650 E. Stagecoach Run
Eagle Mountain, Utah 84005

A Portion of Tax ID No. 58:047:0024

QUIT CLAIM DEED

D & B Cedar, LC, a Utah limited liability company, ("**Grantor**") hereby quit claims to EAGLE MOUNTAIN CITY, a Utah municipal corporation ("**Grantee**"), for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the following described tracts of land in Utah County, State of Utah:

See Exhibit A

A portion of Tax ID No. 58:047:0024

WITNESS the hand of said Grantor, this ____ day of _____, 2024.

D & B CEDAR, LC
a Utah limited liability company

By: _____
Printed Name:
Its: Manager

In the State of Utah, County of Utah, I the undersigned Notary Public, do hereby certify that _____ personally appeared before me this day and, being duly sworn, did attest and say that he/she is the Manager of D & B Cedar, LC, and that he/she acknowledged the due execution of the foregoing instrument for and on behalf of and with the lawful authorization of D & B Cedar, LC. Witness my hand and official seal this ____ day of _____, 2024.

Notary Public

**Exhibit A to Quit Claim Deed
(legal descriptions)**

Parcel 1:

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CONTAINS 99,911 SQ FT OR 2.29 ACRES

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CONTAINS 51,628 SQ FT OR 1.19 ACRES