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Attorneys for Michael F. Thomson, Chapter 11 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

THE FALLS EVENT CENTER LLC,

Debtor.

Bankr. Case No. 18-25116

Chapter 11

The Honorable R. Kimball Mosier

**DECLARATION OF MICHAEL F. THOMSON, CHAPTER 11 TRUSTEE, IN
SUPPORT OF CHAPTER 11 TRUSTEE'S MOTION PURSUANT TO
11 U.S.C. § 363(B)(1) TO AUTHORIZE TRUSTEE TO (1) EFFECTUATE THE
SALE OF PROPERTY OF THE DEBTOR'S WHOLLY OWNED, NON-DEBTOR
SUBSIDIARY, THE FALLS AT CEDAR PARK, LLC, TO A THIRD PARTY
BUYER, AND (2) RELEASE LIEN IN FAVOR OF THE DEBTOR AGAINST THE
PROPERTY IN EXCHANGE FOR AGREEMENT WITH SECURED CREDITOR
ON ALLOCATION OF SALE PROCEEDS**

I, Michael F. Thomson, being of lawful age, declare, certify, verify and state as follows:

1. I am the duly appointed Chapter 11 Trustee (the "Trustee") for the bankruptcy estate of The Falls Event Center LLC (the "Debtor") in the above-entitled bankruptcy case.
2. I make the statements in this Declaration based upon my personal knowledge and belief. I submit this Declaration in support of the *Chapter 11 Trustee's Motion Pursuant to*

11 U.S.C. § 363(b)(1) to Authorize Trustee to (1) Effectuate the Sale of Property of the Debtor's Wholly Owned, Non-Debtor Subsidiary, the Falls at Cedar Park, LLC, to a Third Party Buyer, and (2) Release Lien in Favor of the Debtor Against the Property in Exchange for Agreement with Secured Creditor on Allocation of Sale Proceeds (the "Motion"). Unless stated otherwise, capitalized terms used herein have the meaning ascribed to them in the Motion.

3. The Debtor owns a 100 percent membership interest in the Seller, The Falls at Cedar Park, LLC ("Seller" or "TFCP").

4. Pursuant to a Unanimous Consent effective October 15, 2018, a copy of which is attached hereto as **Exhibit 1**, the Debtor is the manager of TFCP.

5. As of the Petition Date, I understand that the amounts owed under Golf's Promissory Note were in arrears and payments have not been made since the Petition Date.

6. The Debtor's books and records include a Secured Promissory Note dated November 26, 2016 (the "Debtor Note"), a true and correct copy of which is attached hereto as part of **Exhibit 2**.

7. The Debtor's books and records include a Deed of Trust dated November 28, 2016 (the "Debtor DOT"), a true and correct copy of which is attached hereto as part of **Exhibit 2**.

8. I have been informed that no one has established that convertible secured promissory notes pursuant to a November 28, 2016 private placement offering by the Debtor ever came into existence, or that loan funds from such convertible secured promissory notes were advanced to the Seller. As part of my initial investigation, I have been told that the Debtor's management in 2016 may have made documents such as the Debtor Note and Debtor

DOT to attempt to validate fundraising representations that it was providing security to investors. I have also been informed that some investors who were demanding payment were given notes with promises of security or interests in property. I do not know if any of these types of notes are the convertible secured promissory notes referenced in the Debtor Note or the Debtor DOT.

9. The Debtor's books and records include recorded Subordination Agreements, true and correct copies of which are attached hereto as **Exhibit 3** and **Exhibit 4**.

10. Prior to my appointment, the Debtor, as manager of the Seller, entered into a *Commercial Contract-Unimproved Land* (the "Agreement"), agreeing to sell the Property to Gogoplot Venture, LLC, Aaron Holmes, and Taylor Holmes (collectively, the "Buyer") for the amount of \$1,830,000.00. A copy of the Agreement is attached hereto as **Exhibit 5**.

11. A copy of the title report for the Property is attached hereto as **Exhibit 6**.

12. I have independently reviewed the proposed Agreement, and have determined that a sale of the Property as proposed therein is in the best interests of the Debtor and the Non-Debtor Subsidiaries.

13. According to an appraisal of the Property obtained by the Debtor prior the Petition Date, the Property is valued at approximately \$1,870,000.00. Based thereon, I believe that the proposed purchase price is fair and reasonable.

14. I have no connection to the Buyer, and I understand that the sale of the Property proposed in the Agreement was negotiated at arms' length and in good faith. I have no knowledge of and no reason to believe that there has been any fraud, collusion or unfair advantage. Also, to the best of my knowledge, Buyer is a third-party purchaser who has no

connections to my professionals, the Office of the United States Trustee or its employees, or to the Debtor or the Debtor's creditors.

15. Since my appointment, I have informed the Buyer that I will not proceed with the sale until I have an order authorizing me to act on behalf of the Seller and approving the Lien Release. Initially, the parties agreed to extend the closing date until December 21, 2018, but I have since informed the Seller that the date will now need to be pushed to January, 2019. The Buyer has informed me that it requires a closing as soon as possible. Accordingly, I am requesting that the Motion be heard on shortened time.

16. Upon consummation of the sale, I will execute a *Release of Deed of Trust*, a copy of which is attached hereto as **Exhibit 7**. Negotiations with Golf related to the Allocation Agreement has been at arms' length and in good faith.

17. I submit that the proposed sale will benefit the Debtor and all of the Non-Debtor Subsidiaries. The Seller has no income to maintain debt service to Golf or the Debtor. The proposed sale will significantly reduce the total amount owed to Golf under its Promissory Note, which includes the Debtor's obligation as a borrower. As a result, obligations of the Debtor's estate will be reduced, and Golf's secured claim based on the Golf DOT against the other Non-Debtor Properties will be reduced. I am informed that with the reduction of the debt against the Non-Debtor Subsidiaries, there should be equity in the other Non-Debtor Properties.

18. I further submit that the release of the Debtor DOT in connection with the sale will benefit the Debtor inasmuch as its release is necessary to convey the Property and sale of the Property will reduce obligations under Golf's Promissory Note, thereby reducing the amount of Golf's claims. Release of the Debtor DOT does not harm the Debtor's estate because the Debtor

DOT has no value inasmuch as Golf's secured claim is senior to the Debtor Note and Debtor DOT and the amount of Golf's claim exceeds the value of the Property.

19. Also, the Allocation Agreement is in the best interests of all parties. Absent the Allocation Agreement, the Debtor would not receive any proceeds from the proposed sale. The release of the Debtor DOT thus will not only facilitate the sale of the Property, but it will allow the Debtor to receive proceeds from the proposed sale of the Property.

20. In my business judgment, effectuating the non-debtor Seller's sale of the Property, executing the Lien Release and agreeing to allocation of the gross sale proceeds under the Allocation Agreement is in the best interest of Debtor's creditors, the Debtor's estate and the interests of the Non-Debtor Subsidiaries.

21. I believe that the Property will be sold to a good faith purchaser.

22. In my business judgment, it would be in the best interests of the Debtor's creditors and the estate to effectuate the sale of the Property to the Buyer as set forth in the Agreement, and execute the Lien Release as part of the Allocation Agreement. I further believe that the Allocation Agreement benefits the Debtor's estate and, to the extent necessary, should be approved. Finally, the sale of the Property and the treatment of the gross sale proceeds is beneficial to all of the Non-Debtor Subsidiaries for the reasons stated herein.

23. I request that the Motion be granted.

Dated this 18th day of December, 2018.

/s/ Michael F. Thomson
Michael F. Thomson
Chapter 11 Trustee

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on this 18th day of December, 2018, I electronically filed the **DECLARATION OF MICHAEL F. THOMSON, CHAPTER 11 TRUSTEE, IN SUPPORT OF CHAPTER 11 TRUSTEE'S MOTION PURSUANT TO 11 U.S.C. § 363(b)(1) TO AUTHORIZE TRUSTEE TO (1) EFFECTUATE THE SALE OF PROPERTY OF THE DEBTOR'S WHOLLY OWNED, NON-DEBTOR SUBSIDIARY, THE FALLS AT CEDAR PARK, LLC, TO A THIRD PARTY BUYER, AND (2) RELEASE LIEN IN FAVOR OF THE DEBTOR AGAINST THE PROPERTY IN EXCHANGE FOR AGREEMENT WITH SECURED CREDITOR ON ALLOCATION OF SALE PROCEEDS** the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

- James W. Anderson jwa@clydesnow.com, jritchie@clydesnow.com
- David P. Billings dbillings@fabianvancott.com, jwinger@fabianvancott.com;mdewitt@fabianvancott.com
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- Michael F. Thomson thomson.michael@dorsey.com, montoya.michelle@dorsey.com;ventrello.ashley@dorsey.com
- Michael F. Thomson tr thomson.michael@dorsey.com, UT17@ecfcbis.com;montoya.michelle@dorsey.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Brent D. Wride bwride@rqn.com, docket@rqn.com;pbrown@rqn.com

/s/ Michelle Montoya

EXHIBIT 1

**UNANIMOUS CONSENT OF THE SOLE MEMBER OF
THE FALLS AT CEDAR PARK, L.L.C., A LIMITED LIABILITY COMPANY
ORGANIZED IN THE STATE OF TEXAS**

The undersigned, being the sole member of THE FALLS AT CEDAR PARK, L.L.C., a Limited Liability Company organized in the State of Texas (the "**Company**"), hereby consents to the following resolutions pertaining to actions to be taken by the Company:

RESOLVED, that all persons or entities that have previously served as a Manager or Managers of the Company, including, but not necessarily limited to David W. Down, Steven L. Down, and Brooks Pickering, be immediately removed as a Manager or Managers of the Company to the extent that their removal did not previously take place by way of resignation or other consent or action by the sole member of the Company; and

RESOLVED, that The Falls Event Center, LLC, a Utah limited liability company, is appointed as the sole Manager of the Company, with effect from the 15th day of October, 2018, and granted all powers to act on behalf of, or to represent the Company as Manager in any authorized manner on behalf of the Company, including, without limitation, the power and authority to make all decisions and to execute and deliver on behalf of the Company as to the sale, development, lease, or other disposition of the Company's assets, and to execute and deliver on behalf of the Company all contracts, conveyances, and other documents covering or relating to the sale of the Company's assets, as outlined in Section 4.3 of the Company's Operating Agreement.

The foregoing resolutions are hereby adopted by the undersigned as the sole Member of the Company in accordance with the Operating Agreement of the Company dated September 11, 2015 (the "**Operating Agreement**"). The undersigned hereby represents and warrants that it is the sole Member of the Company, as so identified in Exhibit 2 of the Operating Agreement.

DATED to be effective as of October 15, 2018.

SOLE MEMBER:

THE FALLS EVENT CENTER, LLC, a Utah
Limited Liability Company

By: 
Gil A. Miller

Its: Chief Restructuring Officer

EXHIBIT 2

When recoded mail to:
Michael Zumwalt
9067 South 1300 West Suite 301
West Jordan, UT 84088

TRUST DEED

THIS TRUST DEED, made effective this 28th day of November, 2016, by and between The Falls at Cedar Park, LLC, a Utah limited liability company, as TRUSTOR, whose address is 9067 S 1300 W Ste 301, West Jordan UT 84088; and The Falls Event Center, LLC, a limited liability company, as TRUSTEE, whose address is 9067 S 1300 W Ste 301, West Jordan UT 84088; and The Falls Event Center, LLC, as BENEFICIARY, whose address is 9067 S 1300 W Ste 301, West Jordan UT 84088.

WITNESSETH: that Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST WITH POWER OF SALE, the following described property, situated in Williamson County, State of Texas:

See Attached Exhibit A.

Together with all building, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT HOWEVER, to the right, power and authority, hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits;

FOR THE PURPOSE OF SECURING the: (1) payment of the indebtedness evidenced by certain convertible secured promissory notes (each individually a "Note," and collectively the "Notes"), having a maximum aggregate principal balance of \$1,631,610.11, made and issued by Trustor, and held by and payable to certain individuals and entities (the "Investors") at the times, in the manner and with interest as therein set forth, and any extensions, renewals and/or modifications thereof, with the Investors, and their interests under such Notes, being collectively represented hereunder through the Beneficiary, as the appointed agent thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by the Beneficiary or the Investors under or pursuant to the terms hereof, together with interest thereon as herein provided.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration

herein not excluding the general. Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or the restoration or repair of the property damaged.

3. To deliver to, pay for, and maintain with Beneficiary until the indebtedness secured hereby is repaid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the right or powers of Beneficiary, or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including, without limitation, the cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. To pay at least ten (10) calendar days before delinquent all taxes and assessments affecting said property, including, without limitation, all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property, as well as all dues, fees, assessments and other charges that are imposed on Trustor or the said property by a property owners association, condominium association, or similar organization; to otherwise pay, when due, all encumbrances, charges, and liens with interest on said property or any part thereof, which at any time appear to be prior to superior hereto; to pay all costs, fees, and expenses of this trust.

6. Should Trustor fail to make any payment or to do any act as herein provided or as provided under the Notes, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may; make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any actions or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay counsels' reasonable fees.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the default rate set forth in the Notes, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

8. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name or any Investor's name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorneys' fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of such action and proceeds as Beneficiary or Trustee may require.

9. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and any Note or the Notes for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof to truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

10. As additional security, Trustor hereby assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right of Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, not an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

11. Should Trustor sell or convey, or agree to sell or convey all of said property, or of any building or improvement now or hereafter located thereon, or any interest whatever therein to any person, firm, entity or corporation, or should Trustor permit or suffer the occupancy of all of the said property by anyone, whether as a tenant or otherwise, then each such occurrence shall be

deemed a default by Trustor, and the entire indebtedness secured by this Trust Deed at the option of Beneficiary shall become immediately due and payable, and thereupon, Beneficiary may demand immediate payment in full of said indebtedness and may exercise all legal limits to collect said indebtedness, including, without limitation, foreclosure of this Trust Deed.

12. Upon any default by Trustor hereunder or under the Notes, Beneficiary may, at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name or any Investor's name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine appropriate.

13. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. The failure on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

15. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, including, without limitation, the Notes, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, any notes and all documents evidencing expenditures secured hereby.

16. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he/she deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including

Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to the payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the default rate set forth in the Notes from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the Clerk of the District Court in the county in which the sale took place.

17. Upon the occurrence of any default hereunder or under the Notes, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorneys fee in such amount as shall be fixed by the appropriate court.

18. Beneficiary may appoint a successor trustee at any time by filing for record, in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

19. Each abstract of title, title insurance policy, or all other evidences of title, and all insurance policies placed or deposited with Beneficiary shall be deemed an incident to the title of the property herein described and upon sale or foreclosure or otherwise shall pass to the purchaser, and same are hereby pledged as additional security for payment of the indebtedness secured hereby.

20. If Beneficiary and Trustee or either of them shall: (a) determine to foreclose this Trust Deed by court action; or (b) find it necessary to resort to the courts to secure protection of the security given hereunder or to enforce or protect the rights hereunder of Beneficiary; or (c) be involved in court action involving or affecting this Trust Deed, the security given thereunder or the indebtedness secured thereby, Trustor agrees to pay all costs and expenses incurred therein and reasonable compensation for the attorneys representing Beneficiary and Trustee, or either of them.

21. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, as well as the Investors, including any pledge, and their respective heirs, legatees, devisees, administrators, successors and assigns. All obligations of Trustor hereunder are joint and several. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

22. Trustee accepts this trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

23. This Trust Deed shall be governed by federal law and the law of the jurisdiction in which the property affected by this Trust Deed is located. All rights and obligations contained in

this Trust Deed are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Trust Deed or the Notes conflicts with Applicable Law, such conflict shall not affect other provisions of this Trust Deed or the Notes that can be given effect without the conflicting provision. For the purpose of this Trust Deed, the phrase "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

[This remainder of this page intentionally left blank. Signatures appear on the following page.]

IN WITNESS WHEREOF, the Trustor has caused this Trust Deed to be duly executed and delivered as of the date and year first above written.

TRUSTOR:

The Falls at Cedar Park, LLC, a Utah limited liability company

By: *Steve Down*

Name: Steve Down

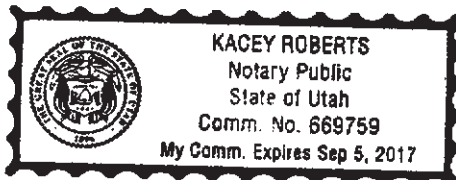
Its: President

COUNTY OF SALT LAKE)

: ss.

STATE OF UTAH)

On the 18th day of April, 2017, personally appeared before me, Steve Down who is the Manager of The Falls at Cedar Park, LLC, the signer of the foregoing instrument who duly acknowledged before me that he/she executed the same.



Kacey Roberts
NOTARY PUBLIC

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES LAW OR PURSUANT TO RULE 144 OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Up to \$ 1,631,610.11

November 28, 2016

The Falls at Cedar Park, LLC

SECURED PROMISSORY NOTE

FOR VALUE RECEIVED, The Falls at Cedar Park, LLC, a Utah limited liability company (the “**Company**”), promises to pay to The Falls Event Center, LLC, a Utah limited liability company (the “**Holder**,” and together with the Company, the “**Parties**”), the principal sum of \$1,631,610.11 (or the unpaid balance of all principal advanced against this Note, if that amount is less) together with all interest that accrues on the unpaid principal balance of this Secured Promissory Note (this “**Note**”) as set forth below.

1. **Principal and Interest.** By the Holder’s acceptance of this Note, the Holder agrees to advance to the Company, as advances of principal against this Note, proceeds received by the Holder from the sale of convertible secured promissory notes pursuant to the Holder’s private placement offering of even date herewith, pursuant to which agreement the Holder may issue and sell to third parties convertible secured promissory notes having an aggregate principal amount of up to \$1,631,610.11. Interest on the unpaid principal balance of this Note shall accrue at the rate of 7.5% per annum commencing on the date hereof, and shall be payable annually on the anniversary during the seven-year term of this Note. The entire unpaid balance of principal and all accrued and unpaid interest shall be due and payable on the seventh anniversary of this Note (the “**Maturity Date**”). Notwithstanding the provisions of this Section 1, upon the occurrence of an Event of Default (as defined in Section 6 below) this Note shall accrue interest at the rate of 9% per annum from and after the date of the Event of Default, whether before or after judgment. Notwithstanding any provision to the contrary herein, in no event shall the applicable interest rate at any time exceed the maximum interest rate allowed under applicable law.

2. **Payment.** All payments of interest and principal shall be in lawful money of the United States of America. All payments shall be applied first to costs of collection, if any, then to accrued and unpaid interest, and thereafter to principal. Payment of principal and interest hereunder shall be made by check delivered to the Holder at the address furnished to the Company for that purpose.

3. **Prepayment by the Company.** The Company may, in its sole and absolute discretion, pay without penalty all or any portion of the outstanding balance along with any accrued but unpaid interest on this Note at any time upon ten (10) days prior written notice to the Holder.

4. **Collateral.** This Note is secured by a Deed of Trust (with Assignment of Rents) (the "**Trust Deed**") of even date herewith in favor of the Holder encumbering certain real property owned by the Company, which property is located in the city of Cedar Park, Williamson County, Texas, as more specifically set forth in the Trust Deed (the "**Property**"), all the terms and conditions of which are hereby incorporated and made a part of this Note.

5. **Company Representations.**

(a) Organization and Qualification. The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Utah, and has the requisite corporate power and authority to own and operate its properties and to carry on its business as presently conducted.

(b) Authority. The Company has the requisite corporate power and authority to enter into this Note and to carry out its obligations hereunder. The execution and delivery of this Note by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized and no other proceedings on the part of the Company are necessary to authorize this Note. This Note has been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company, enforceable in accordance with its terms. No authorization, consent or approval of, or filing with, any public body, court or authority is necessary on the part of the Company for the consummation of the transactions contemplated by this Note.

(c) Authorization; No Breach. The execution and delivery by the Company of this Note and all other agreements contemplated hereby to which the Company is a party, and the fulfillment of and compliance with the respective terms hereof and thereof by the Company, do not conflict with or result in default under or a breach of (i) the charter or operating guidelines of the Company, (ii) any law, statute, rule or regulation to which the Company is subject, or (iii) any material agreement, instrument, order, judgment or decree to which the Company is subject.

(d) Title. Seller is the sole owner of the Property. Except (a) for liens currently of record, (b) for liens for current taxes not yet delinquent, (c) for liens imposed by law and incurred in the ordinary course of business for obligations not past due to carriers, warehousemen, laborers, materialmen and the like, (d) for liens in respect of pledges or deposits under workers' compensation laws or similar legislation, or (e) for minor defects in title, none of which, individually or in the aggregate materially interferes with the use of the Property, the Company owns the Property free and clear of all mortgages, liens, claims and encumbrances.

(e) Environmental Matters.

(i) Neither the Company nor any of its subsidiaries has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against the Company or any of its subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any environmental laws, except, in each case, such as could not reasonably be expected to result in a material adverse effect on the business, condition, operations, assets, or properties of the Company.

(ii) Neither the Company nor any subsidiary has knowledge of any facts which would give rise to any claim, public or private, of violation of environmental laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a material adverse effect on the business, condition, operations, assets, or properties of the Company.

(iii) Neither the Company nor any subsidiary has stored any hazardous materials on real properties now or formerly owned, leased or operated by any of them and has not disposed of any hazardous materials in a manner contrary to any environmental laws in each case in any manner that could reasonably be expected to result in a material adverse effect on the business, condition, operations, assets, or properties of the Company.

(iv) All buildings on all real properties now owned, leased or operated by the Company or any subsidiary are in compliance with applicable environmental laws, except where failure to comply could not reasonably be expected to result in a material adverse effect on the business, condition, operations, assets, or properties of the Company.

(v) For purposes of this Note, "environmental laws" means the common law and all applicable federal, state, local and foreign laws, regulations, rules, ordinances, codes, orders, decrees, judgments, injunctions or any other legally enforceable requirement issued, promulgated, approved or entered thereunder, relating to pollution or protection of public or employee health and safety or the environment.

6. **Default.** If any of the events specified below shall occur (each, an "***Event of Default***"), the Holder of this Note may, so long a such condition exists, declare the entire principal amount and unpaid accrued interest hereon immediately due and payable, by notice in writing to the Company:

(a) Failure to Pay. The Company's failure to make any payment due and payable under the terms of this Note, and such payment shall not have been made within ten (10) days of Company's receipt of the Holder's written notice to Company of such failure to pay.

(b) Failure to Pay Debts; Voluntary Bankruptcy. If the Company fails to pay its debts generally as they become due, or if the Company files any petition, proceeding, case or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, rule, regulation, statute or ordinance (collectively, "***Laws and Rules***"), or any other Law and Rule for the relief of, or related to, debtors.

(c) Involuntary Bankruptcy. If any involuntary petition is filed under any bankruptcy or similar Law or Rule against the Company, or a receiver, trustee, liquidator, assignee, custodian, sequestrator or other similar official is appointed to take possession of any of the assets or properties of the Company or any Guarantor.

(d) Governmental Action. If any governmental or regulatory authority takes or institutes any action that will materially affect the Company's financial condition, operations or ability to pay or perform the Company's obligations under this Note.

7. **Governing Law.** The terms of this Note shall be construed in accordance with the laws of the State of Utah as applied to contracts entered into by Utah residents within the State of Utah which contracts are to be performed entirely within the State of Utah.

8. **Binding Effect.** This Agreement shall be binding on the Parties and their respective heirs, successors, and assigns; *provided, however*, that the Company shall not assign its rights hereunder in whole or in part without the express written consent of the Holder, which consent shall not be unreasonably withheld, conditioned, or delayed.

9. **Attorneys' Fees.** If any action at law or in equity is necessary to enforce this Note or to collect payment under this Note, the Holder shall be entitled to recover reasonable attorneys' fees directly related to such enforcement or collection actions.

10. **Notices.** Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given under this Note shall be in writing, shall be delivered by hand or overnight courier service, by certified mail, postage prepaid, or by facsimile, and will be deemed given upon delivery, if delivered personally, one business day after deposit with a national courier service for overnight delivery, or one business day after transmission by facsimile with confirmation of receipt, and three days after deposit in the mails, if mailed, to the following addresses:

Company: The Falls at Cedar Park, LLC
9067 South 1300 West, Suite 301
West Jordan, Utah 84088
Attention: Steven Down

Holder: The Falls Event Center, LLC
9067 South 1300 West, Suite 301
West Jordan, Utah 84088
Attention: Steven Down

11. **Final Note.** This Note contains the complete understanding and agreement of the Company and Holder and supersedes all prior representations, warranties, agreements, arrangements, understandings, and negotiations. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, THE COMPANY IS NOTIFIED THAT THE NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Note as of the date set forth above.

The Falls at Cedar Park, LLC

By: 
Steven L. Down, Manager

ACCEPTED BY HOLDER:

The Falls Event Center

By: 
Steven L. Down, President

[Signature page to Secured Promissory Note]

[Cedar Park, Texas]

ENDORSEMENT PAGE TO SECURED PROMISSORY NOTE

This Endorsement is attached to and made a part of that certain Secured Promissory Note, dated November 28, 2016 (the "**Note**"), in the principal sum of up to \$1,631,610.11, executed by The Falls at Cedar Park, LLC, a Utah limited liability company, as maker.

The foregoing note is hereby made payable to the order of The Falls Event Center, LLC without recourse.

The Falls Event Center, LLC

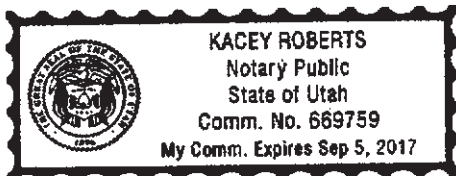
By: 
Steven L. Down, President

COUNTY OF SALT LAKE)

: ss.

STATE OF UTAH)

On the 18th day of April, 2017, personally appeared before me, Steve Down who is the Manager of eFalls Cedar Park, LLC, the signer of the foregoing instrument who duly acknowledged before me that he/she executed the same.




NOTARY PUBLIC

EXHIBIT "A"

LOT 12 OF FINAL PLAT CEDAR PARK TOWN CENTER- PHASE II, BEING SITUATED
IN WILLIAMSON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF
RECORDED IN DOCUMENT NO. 201322149, OFFICIAL PUBLIC RECORDS OF
WILLIAMSON COUNTY, TEXAS.

**ELECTRONICALLY RECORDED
OFFICIAL PUBLIC RECORDS**

2017069528

Pages: 15 Fee: \$73.00
07/28/2017 01:15 PM



Nancy E. Rister

Nancy E. Rister, County Clerk
Williamson County, Texas

EXHIBIT 3


SUBORDINATION AGREEMENT

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

That The Falls Event Center, LLC, a Texas limited liability company, hereinafter called "Grantor", for and in consideration of the sum of Ten Dollars (\$10.00) cash, and other good and valuable considerations to them paid by Papa H, LLC, whose address is P.O. Box 19443, Houston, Texas 77224, hereinafter called "Grantee", the receipt and sufficiency of which is hereby acknowledged and confessed, have subordinated any debt and related security interest held by Grantors, including, but not necessarily limited to, that certain Promissory Note between **The Falls Event Center, LLC** and **The Falls at Cedar Park, LLC**, of even date herewith in the amount of One Million Six Hundred and Thirty-One Thousand and Six Hundred and Ten and 11/100 Dollars (\$1,631,610.11), secured by a Deed of Trust in that certain lot, tract, or parcel of land, together with all improvements thereon, lying and being situated in the County of Williamson, the State of Texas, that was filed on or about July 28, 2017 with the file number, 2017069528 and the legal description of the real property is more specifically described in Exhibit "1," to that certain promissory note in the amount of \$154,500.00 dated on April 2, 2018, payable to Papa H, LLC, and secured by that certain Deed of Trust executed on even date.

EXECUTED this the 2nd day of April, 2018.

GRANTOR
The Falls Event Center, LLC



Signature

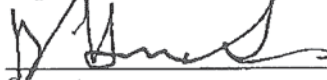
Steven Down

Print Name

CEO

Title

GRANTEE
Papa H, LLC



Signature

GARY HMANJAN

Print Name

Manager

Title

Acknowledged:

The Falls at Cedar Park, LLC

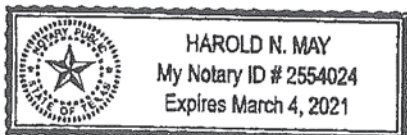
[Signature]
Signature

CEO Steven Down
Print Name

CEO
Title

THE STATE OF TEXAS §
COUNTY OF HARRIS §

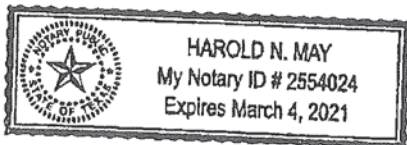
This instrument was acknowledged before me on the 2 day of April, 2018, by
STEVEN Down.



[Signature]
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 2 day of April, 2018, by
GARY HMAIDAN.



[Signature]
Notary Public, State of Texas

RETURN TO:
Harold "Hap" May, PC
Two Riverway, 15th Floor
Houston, Texas 77056

[Notary Page for Subordination Agreement]

Exhibit "1"

Legal Description

LOT 12 OF FINAL PLAT CEDAR PARK TOWN CENTER- PHASE II, BEING SITUATED
IN WILLIAMSON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF
RECORDED IN DOCUMENT NO. 201322149, OFFICIAL PUBLIC RECORDS OF
WILLIAMSON COUNTY, TEXAS.

② Harold "Hap" May, PC
Two Riverway, 15th Floor
Houston, TX 77056

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2018029624

SUB Fee: \$29.00
04/09/2018 03:08 PM MBARRICK



Nancy E. Rister

Nancy E. Rister, County Clerk
Williamson County, Texas

EXHIBIT 4

ELECTRONICALLY RECORDED 2018053986
Williamson County, Texas Total Pages: 5

FILED BY
NORTH STAR TITLE COMPANY
180513728

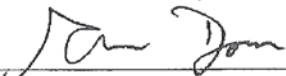
SUBORDINATION AGREEMENT

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

That The Falls Event Center, LLC, a Texas limited liability company, hereinafter called "Grantor", for and in consideration of the sum of Ten Dollars (\$10.00) cash, and other good and valuable considerations to them paid by Golf 6061, LLC, whose address is P.O. Box 19443, Houston, Texas 77224, hereinafter called "Grantee", the receipt and sufficiency of which is hereby acknowledged and confessed, have subordinated any debt and related security interest held by Grantors, including, but not necessarily limited to, that certain Promissory Note between **The Falls Event Center, LLC** and **The Falls at Cedar Park, LLC**, of even date herewith in the amount of One Million Six Hundred and Thirty-One Thousand and Six Hundred and Ten and 11/100 Dollars (\$1,631,610.11), secured by a Deed of Trust in that certain lot, tract, or parcel of land, together with all improvements thereon, lying and being situated in the County of Williamson, the State of Texas, that was filed on or about July 28, 2017 with the file number, 2017069528 and the legal description of the real property is more specifically described in Exhibit "1," to that certain promissory note in the amount of \$2,640,000.00 dated on May 31, 2018, payable to Golf 6061, LLC, and secured by that certain Deed of Trust executed on even date.

EXECUTED this the 31 day of May, 2018.

GRANTOR
The Falls Event Center, LLC



Signature

Steven Down

Print Name

GRANTEE
Golf 6061, LLC,



Signature

GARY HMALBAN

Print Name

Manager
Title

Title

Acknowledged:
The Falls at Cedar Park, LLC

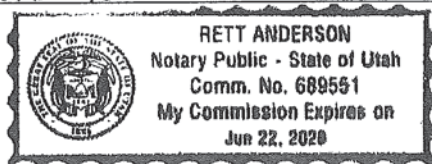
Ste Down
Signature

STEVEN DOWN
Print Name

Manager.
Title

UTAH
THE STATE OF ~~TEXAS~~ §
COUNTY OF ~~HARRIS~~ SALT LAKE §

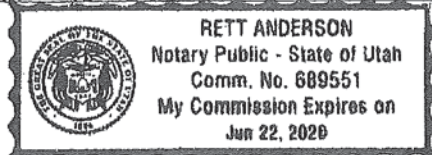
This instrument was acknowledged before me on the 31 day of May, 2018, by
STEVEN DOWN



[Signature]
Notary Public, State of ~~Texas~~
UTAH

UTAH
THE STATE OF ~~TEXAS~~ §
COUNTY OF ~~HARRIS~~ SALT LAKE §

This instrument was acknowledged before me on the 31 day of May, 2018, by
STEVEN DOWN



[Signature]
Notary Public, State of ~~Texas~~
UTAH

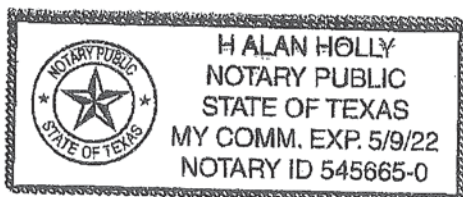
RETURN TO:
Harold "Hap" May, PC
PO Box 79057
Houston, Texas 77279

[Notary Page for Subordination Agreement]

NORTH STAR TITLE CO
1321 ANTOINE DR
HOUSTON, TX 77055

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 31 day of May, 2018, by
Bany Hmaidan



A Alan Holly
Notary Public, State of Texas

[Notary Page for Subordination Agreement]

Exhibit "1"
Legal Description

LOT 12 OF FINAL PLAT CEDAR PARK TOWN CENTER- PHASE II, BEING SITUATED
IN WILLIAMSON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF
RECORDED IN DOCUMENT NO. 201322149, OFFICIAL PUBLIC RECORDS OF
WILLIAMSON COUNTY, TEXAS.

**ELECTRONICALLY RECORDED
OFFICIAL PUBLIC RECORDS**

2018053986

Pages: 5 Fee: \$33.00

06/21/2018 08:13 AM



Nancy E. Rister

Nancy E. Rister, County Clerk
Williamson County, Texas

EXHIBIT 5

DocuSign Envelope ID: 96DE40EC-367B-40A4-948B-0527B7C2C17F



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED
©Texas Association of REALTORS®, Inc. 2018

1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: The Falls at Cedar Park, LLC

Address: 9067 South 1300 W, Suite 301, West Jordan, UT 84088

Phone:

E-mail:

Fax:

Other:

Buyer: Gogoplot Venture, LLC

Aaron Holmes and Taylor Holmes

Address: 15731 Airline Highway, P.O. Box 158, Norco, LA 70079

Phone: (504)463-5468

E-mail: aholmes@bigriverla.com

Fax:

Other:

2. **PROPERTY:**

- A. "Property" means that real property situated in **Williamson** County, Texas at **1400 Discovery Boulevard** (address) and that is legally described on the attached Exhibit **4.78 Acres of Block A, Lot 12 in Cedar Park Town Center, Phase 2, 1400 Discovery Boulevard, Cedar Park, TX 78613** or as follows:

- B. Seller will sell and convey the Property together with:

- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
- (3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)
(If mineral rights are to be reserved an appropriate addendum should be attached.)

3. **SALES PRICE:**

- A. At or before closing, Buyer will pay the following sales price for the Property:

- | | | |
|---|----|--------------|
| (1) Cash portion payable by Buyer at closing | \$ | 1,830,000.00 |
| (2) Sum of all financing described in Paragraph 4 | \$ | |
| (3) Sales price (sum of 3A(1) and 3A(2)) | \$ | 1,830,000.00 |

(TAR-1802) 4-1-18

Tech & Rivers Realty 700 Rio Grande Austin, TX 78701
Paul Smith

Initialed for Identification by Seller

Produced with xplSign® by xplSign 16070 Folsom Mile Road, Fraser, Michigan 48026 www.xplSign.com

and Buyer

Phone (512)226-8874

Fax (512)394-8041

Page 1 of 14
1400 Discovery

DocuSign Envelope ID: 96DE40EC-3678-40A4-9486-0527B7C2C17F

Commercial Contract - Unimproved Property concerning 1400 Discovery Boulevard

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- X (1) The sales price will not be adjusted based on a survey.
(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.
- (a) The sales price is calculated on the basis of \$ _____ per:
(i) square foot of total area net area.
(ii) acre of total area net area.
- (b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:
(i) public roadways;
(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
(iii)
- (c) If the sales price is adjusted by more than _____ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ _____
This contract:
(1) is not contingent upon Buyer obtaining third party financing.
(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____
- C. Seller Financing: The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____

5. **EARNEST MONEY:**

- A. Not later than 3 days after the effective date, Buyer must deposit \$ **\$18,300.00** as earnest money with **Heritage Title Company of Austin** (title company) at **401 Congress Ave, Ste. 1500 Austin TX 78701** (address) **Margaret Gonzales** (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.
- B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:
(i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
(ii) _____
Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

(TAR-1802) 4-1-18

Initialed for identification by Seller _____ and Buyer _____
Produced with zipForm® by zipLogix 18070 F/teen Mile Blvd., Fraser, Michigan 48028 www.zipLogix.com

Page 2 of 14
1400 Discovery

DocuSign Envelope ID: 96DE40EC-3678-40A4-9488-0527B7C2C17F

Commercial Contract - Unimproved Property concerning 1400 Discovery Boulevard

6. TITLE POLICY AND SURVEY

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - X (b) will be amended to read "shortages in areas" at the expense of Buyer X Seller.
- (3) Within 10 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 10 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer (insert amount) of the cost of the survey at closing, if closing occurs.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- X (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller Buyer (updating party), will, at the updating party's expense, obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to the other party and the title company within 20 days after the title company notifies the parties that the existing survey is not acceptable to the title company. ~~The closing date will be extended daily up to 20 days if necessary for the updating party to deliver an acceptable survey within the time required.~~ The other party will reimburse the updating party 0 (insert amount or percentage) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 30 days after Buyer receives the last of the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If the commitment or survey is revised or any new document evidencing a title exception is delivered, Buyer may object to any new matter revealed in such revision or new document. Buyer's objection must be made within the same number of days stated in this paragraph, beginning when the revision or new

(TAR-1802) 4-1-18

Initiated for Identification by Seller

and Buyer

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Page 3 of 14

1400 Discovery

DocuSign Envelope ID: 98DE40EC-3B78-40A4-9486-0527B7C2C17F

Commercial Contract - Unimproved Property concerning 1400 Discovery Boulevard

document is delivered to Buyer. If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:



B. Feasibility Period: Buyer may terminate this contract for any reason within ~~60~~ 15 days after the effective date (feasibility period) by providing Seller written notice of termination.

(1) Independent Consideration. (Check only one box and insert amounts.)

X (a) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(b) Not later than 3 days after the effective date, Buyer must pay Seller \$ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

~~(2) Feasibility Period Extension: Prior to the expiration of the initial feasibility period, Buyer may extend the feasibility period for a single period of an additional _____ days by depositing additional earnest money in the amount of \$ _____ with the title company. If no dollar amount is stated in this Paragraph or if Buyer fails to timely deposit the additional earnest money, the extension of the feasibility period will not be effective.~~

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

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(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
 - (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
 - (c) abide by any reasonable entry rules or requirements of Seller;
 - (d) not interfere with existing operations or occupants of the Property; and
 - (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.
- (3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

- (1) Delivery of Property Information: Within 5 days after the effective date, Seller will deliver to Buyer: (Check all that apply.)
- X (a) copies of all current leases, including any mineral leases, pertaining to the Property, including any modifications, supplements, or amendments to the leases;
 - X (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
 - X (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
 - X (d) copies property tax statements for the Property for the previous 2 calendar years;
 - X (e) plats of the Property;
 - X (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
 - X (g) Tree or topographical surveys or any other information or reports in Seller's possession, if any. (h) Documents related to Property's shared common area improvements, costs, assessments and budgets, if any.

- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (Check all that apply.)
- X (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
 - (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied in any format; and
 - (c) deliver to Seller copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

- E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

- A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller

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must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

~~B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.~~

9. BROKERS:

A. The brokers to this sale are:

Principal Broker: Dell Nichols Commercial Real Estate, LLC

Agent: Dell Nichols

Address: P.O. Box 1233

Centerville, UT 84014

Phone & Fax: (801)797-9900

E-mail: dell@dncre.com

License No.:

Cooperating Broker: Equitable Commercial Realty, PLLC

Agent: Lee Ellison/Hayden McCarty

Address: 812 San Antonio Street, Ste. 105

Austin TX 78701

Phone & Fax: (512)505-0000

E-mail: lellison@ecrta.com

License No.: 803700

Principal Broker: (Check only one box)

- ☒ represents Seller only.
☐ represents Buyer only.
☐ is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

B. Fees: (Check only (1) or (2) below.)

(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

☒ (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:
☒ 3.000 % of the sales price.

Cooperating Broker a total cash fee of:
☒ 3.000 % of the sales price.

The cash fees will be paid in Williamson County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

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NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

- C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The date of the closing of the sale (closing date) will be on or before the later of:
- (1) ☒ 30 days after the expiration of the feasibility period.
(specific date).
 - (2) 7 days after objections made under Paragraph 6C have been cured or waived.
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver, at Seller's expense, a general ☒ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) an assignment of all leases to or on the Property;
 - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
 - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply with applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
 - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the title company;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.

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11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this contract. (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

1. If Property is subject to property owner's association, an addendum to the contract is required and Seller will pay all costs related to delivery of subdivision and association information and related transfer fees.

2. Seller and Buyer agree to split the cost evenly if a new or revised survey is required by the Title Company.

13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

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- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or
(Check if applicable)
enforce specific performance, or seek such other relief as may be provided by law.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
- (1) Seller and the sales price will be reduced by the same amount; or
 - (2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

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- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.
19. **MATERIAL FACTS:** To the best of Seller's knowledge and belief: *(Check only one box.)*
- X A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR-1408).
- B. Except as otherwise provided in this contract, Seller is not aware of:
- (1) any subsurface structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

20. **NOTICES:** All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- X B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. **DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

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22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- D. Addenda which are part of this contract are: *(Check all that apply.)*
 - (1) Property Description Exhibit identified in Paragraph 2;
 - (2) Commercial Contract Financing Addendum (TAR-1931);
 - X (3) Commercial Property Condition Statement (TAR-1408);
 - (4) Commercial Contract Addendum for Special Provisions (TAR-1940);
 - (5) Notice to Purchaser of Real Property in a Water District (MUD);
 - (6) Addendum for Coastal Area Property (TAR-1915);
 - (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916);
 - (8) Information About Brokerage Services (TAR-2501);
 - (9) Information About Mineral Clauses in Contract Forms (TAR-2509); and
 - (10)

(Note: Counsel for the Texas Association of REALTORS® (TAR) has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by TAR are appropriate for use with this form.)

- E. Buyer X may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.
- 23. TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 24. EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receives this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you

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- will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract (*the Addendum for Coastal Area Property (TAR-1915) may be used*).
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract (*the Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TAR-1916) may be used*).
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- I. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable:
26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on **September 11, 2018**, the offer will lapse and become null and void.

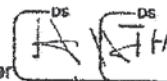
This contract as modified herein and in the attached Addendum 1, which is hereby referenced and made a part hereof, is acceptable to the Seller.

(TAR-1802) 4-1-18

Initialed for Identification by Seller



and Buyer



Page 12 of 14

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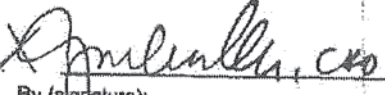
1400 Discovery

DocuSign Envelope ID: 96DE40EC-3678-40A4-8486-0527B7C2C17F

Commercial Contract - Unimproved Property concerning 1400 Discovery Boulevard

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.


Seller: The Falls at Cedar Park, LLC
The Falls Event Center LLC

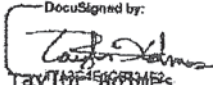
By: 
By (signature):
Printed Name: Gil Miller
Title: CRO

By:
By (signature):
Printed Name:
Title:

Buyer: Gogoplat Venture, LLC

Aaron Holmes and Taylor Holmes

By: 
By (signature):
Printed Name: Aaron Holmes
Title: Co-Owner

By: 
By (signature):
Printed Name: Taylor Holmes
Title: Owner

(TAR-1802) 4-1-18

Page 13 of 14

DocuSign Envelope ID: 96DE40EC-3678-40A4-9486-0527B7C2C17F

Commercial Contract -Unimproved Property concerning 1400 Discovery Boulevard

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:
\$, or
% of the sales price, or
% of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker:

Cooperating Broker:

By:

By:

ATTORNEYS

Seller's attorney: Douglas Monson

Buyer's attorney: Rae Ann Shanley

Address: Ray Quinney & Nebeker

Coats Rose, PC

Phone & Fax: 801-323-3345

Address: 901 S Mopac, Bldg. 1, Suite 500

Austin TX 78748

Phone & Fax: (512) 541-3598

(512)469-9408

E-mail: dmonson@RQN.com

E-mail: rshanley@coatsrose.com

Seller's attorney requests copies of documents, notices, and other information:

Buyer's attorney requests copies of documents, notices, and other information:

the title company sends to Seller.
Buyer sends to Seller.

X the title company sends to Buyer.
X Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:

- ✓ A. the contract on this day October 17, 2018
- ✓ B. earnest money in the amount of \$18,300.00 on August 29, 2018

(effective date);
in the form of Business Check

Title company: Heritage Title Company of Austin

Address: 401 Congress Ave., Ste 1500

Austin, TX 78701

By: Anna Owen for Margaret Gonzales

Phone & Fax: 512-505-5000

512-505-5024

Assigned file number (GF#): 201801582

E-mail: mgonzales@heritage-title.com

DocuSign Envelope ID: 96DE40EC-367B-40A4-9486-0527B7C2C17F



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL PROPERTY CONDITION STATEMENT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED
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CONCERNING THE PROPERTY AT: **1400 Discovery Boulevard**

THIS IS A DISCLOSURE OF THE SELLER'S OR LANDLORD'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES A BUYER OR TENANT MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER, SELLER'S AGENTS, LANDLORD, LANDLORD'S AGENTS OR ANY OTHER AGENT.

PART I - Complete if Property is Improved or Unimproved

Are you (Seller or Landlord) aware of:

Aware **Not
Aware**

(1) any of the following environmental conditions on or affecting the Property:

- | | | |
|---|-----|-------|
| (a) radon gas? | [] | [X] |
| (b) asbestos components: | | |
| (i) friable components? | [] | [X] |
| (ii) non-friable components? | [] | [X] |
| (c) urea-formaldehyde insulation? | [] | [X] |
| (d) endangered species or their habitat? | [] | [X] |
| (e) wetlands? | [] | [X] |
| (f) underground storage tanks? | [] | [X] |
| (g) leaks in any storage tanks (underground or above-ground)? | [] | [X] |
| (h) lead-based paint? | [] | [X] |
| (i) hazardous materials or toxic waste? | [] | [X] |
| (j) open or closed landfills on or under the surface of the Property? | [] | [X] |
| (k) external conditions materially and adversely affecting the Property such as nearby landfills, smelting plants, burners, storage facilities of toxic or hazardous materials, refiners, utility transmission lines, mills, feed lots, and the like? | [] | [X] |
| (l) any activity relating to drilling or excavation sites for oil, gas, or other minerals? | [] | [X] |

- | | | |
|---|-----|-------|
| (2) previous environmental contamination that was on or that materially and adversely affected the Property, including but not limited to previous environmental conditions listed in Paragraph 1(a)-(l)? | [] | [X] |
| (3) any part of the Property lying in a special flood hazard area (A or V Zone)? | [] | [X] |
| (4) any improper drainage onto or away from the Property? | [] | [X] |
| (5) any fault line at or near the Property that materially and adversely affects the Property? | [] | [X] |
| (6) air space restrictions or easements on or affecting the Property? | [] | [X] |
| (7) unrecorded or unplatted agreements for easements, utilities, or access on or to the Property? | [] | [X] |

(TAR-1408) 4-1-18 Initialed by Seller or Landlord:

and Buyer or Tenant:

Twelve Rivers Realty 708 Elm Grande Austin, TX 78701
Paul Smith

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Phone: (513) 228-8874

Fax: (513) 394-8941

Page 1 of 4

1-800-Discover

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Commercial Property Condition Statement concerning 1400 Discovery Boulevard

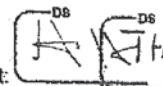
- | | Aware | Not
Aware |
|---|-------|--------------|
| (8) special districts in which the Property lies (for example, historical districts, development districts, extraterritorial jurisdictions, or others)? | [] | [X] |
| (9) pending changes in zoning, restrictions, or in physical use of the Property? | [] | [X] |
| The current zoning of the Property is: | | |
| (10) your receipt of any notice concerning any likely condemnation, planned streets, highways, railroads, or developments that would materially and adversely affect the Property (including access or visibility)? | [] | [X] |
| (11) lawsuits affecting title to or use or enjoyment of the Property? | [] | [X] |
| (12) your receipt of any written notices of violations of zoning, deed restrictions, or government regulations from EPA, OSHA, TCEQ, or other government agencies? .. | [] | [X] |
| (13) common areas or facilities affiliated with the Property co-owned with others? | [] | [X] |
| (14) an owners' or tenants' association or maintenance fee or assessment affecting the Property? | [] | [X] |
| If aware, name of association: | | |
| Name of manager: | | |
| Amount of fee or assessment: \$ _____ per _____ | | |
| Are fees current through the date of this notice? [] yes [] no [] unknown | | |
| (15) subsurface structures, hydraulic lifts, or pits on the Property? | [] | [X] |
| (16) intermittent or weather springs that affect the Property? | [] | [X] |
| (17) any material defect in any irrigation system, fences, or signs on the Property? | [] | [X] |
| (18) conditions on or affecting the Property that materially affect the health or safety of an ordinary individual? | [] | [X] |
| (19) any of the following rights vested in others: | | |
| (a) outstanding mineral rights? | [] | [X] |
| (b) timber rights? | [] | [X] |
| (c) water rights? | [] | [X] |
| (d) other rights? | [] | [X] |
| (20) any personal property or equipment or similar items subject to financing, liens, or lease(s)? | [] | [X] |
| If aware, list items: | | |

If you are aware of any of the conditions listed above, explain. (Attach additional information if needed.)

(TAR-1408) 4-1-18 Initialed by Seller or Landlord:



and Buyer or Tenant:



Page 2 of 4

DocuSign Envelope ID: 96DE40EC-3678-40A4-9488-0527B7C2C17F

Commercial Property Condition Statement concerning 1400 Discovery Boulevard

PART 2 - Complete only if Property is Improved

A. Are you (Seller or Landlord) aware of any material defects in any of the following on the Property?

	<u>Aware</u>	<u>Not Aware</u>	<u>Not Appl.</u>
(1) <u>Structural Items:</u>			
(a) foundation systems (slabs, columns, trusses, bracing, crawl spaces, piers, beams, footings, retaining walls, basement, grading)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) exterior walls?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) fireplaces and chimneys?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) roof, roof structure, or attic (covering, flashing, skylights, insulation, roof penetrations, ventilation, gutters and downspouts, decking)? ...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) windows, doors, plate glass, or canopies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>Plumbing Systems:</u>			
(a) water heaters or water softeners?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) supply or drain lines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) faucets, fixtures, or commodes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) private sewage systems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) pools or spas and equipments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) sprinkler systems (fire, landscape)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) water coolers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(h) private water wells?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) pumps or sump pumps?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <u>HVAC Systems:</u> any cooling, heating, or ventilation systems?			
(4) <u>Electrical Systems:</u> service drops, wiring, connections, conductors, plugs, grounds, power, polarity, switches, light fixtures, or junction boxes?			
(5) <u>Other Systems or Items:</u>			
(a) security or fire detection systems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) porches or decks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) gas lines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) garage doors and door operators?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) loading doors or docks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) rails or overhead cranes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) elevators or escalators?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(h) parking areas, drives, steps, walkways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(i) appliances or built-in kitchen equipment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are aware of material defects in any of the items listed under Paragraph A, explain. (Attach additional information if needed.)

(TAR-1408) 4-1-18

Initialed by Seller or Landlord:

and Buyer or Tenant:

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1408 Discov

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Commercial Property Condition Statement concerning 1408 Discovery Boulevard

B. Are you (Seller or Landlord) aware of:

Aware Not
Aware

- (1) any of the following water or drainage conditions materially and adversely affecting the Property:
- (a) ground water? [] []
 - (b) water penetration? [] []
 - (c) previous flooding or water drainage? [] []
 - (d) soil erosion or water ponding? [] []
- (2) previous structural repair to the foundation systems on the Property? [] []
- (3) settling or soil movement materially and adversely affecting the Property? [] []
- (4) pest infestation from rodents, insects, or other organisms on the Property? [] []
- (5) termite or wood rot damage on the Property needing repair? [] []
- (6) mold to the extent that it materially and adversely affects the Property? [] []
- (7) mold remediation certificate issued for the Property in the previous 5 years? [] []
If yes, attach a copy of the mold remediation certificate.
- (8) previous termite treatment on the Property? [] []
- (9) previous fires that materially affected the Property? [] []
- (10) modifications made to the Property without necessary permits or not in compliance with building codes in effect at the time? [] []
- (11) any part, system, or component in or on the Property not in compliance with the Americans with Disabilities Act or the Texas Architectural Barrier Statute? [] []


If you are aware of any conditions described under Paragraph B, explain. (Attach additional information, if needed.)

The undersigned acknowledges receipt of the foregoing statement.

Seller or Landlord:

The Falls at Cedar Park, LLC


The Falls Event Center LLC

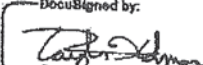
X By: 
By (signature):
Printed Name: Gil Miller, CRO
Title:

By:

By (signature):
Printed Name:
Title:

Buyer or Tenant:

By: 
By (signature):
Printed Name: Aaron Holmes
Title: Co-Owner

By: 
By (signature):
Printed Name: Taylor Holmes
Title: Owner

NOTICE TO BUYER OR TENANT: The broker representing Seller or Landlord, and the broker representing you advise you that this statement was completed by Seller or Landlord, as of the date signed. The brokers have relied on this statement as true and correct and have no reason to believe it to be false or inaccurate. YOU ARE ENCOURAGED TO HAVE AN INSPECTOR OF YOUR CHOICE INSPECT THE PROPERTY.

(TAR-1408) 4-1-18



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT AMENDMENT

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**AMENDMENT TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED BUYER AND SELLER
 CONCERNING THE PROPERTY AT**

1400 Discovery Boulevard, Cedar Park, TX

Effective October 16, 2018, Seller and Buyer amend the contract as follows: (Check all applicable boxes.)

A. Sales Price: The sales price in Paragraph 3 of the contract is changed to:

Cash portion payable by Buyer at closing. \$

Sum of all financing described in the contract. \$

Sales price (sum of cash portion and sum of all financing) \$

B. Property Description: The Property's legal description in Paragraph 2A of the contract is changed to the legal description described on the attached Exhibit or as follows:

C. Repairs: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

(TAR-1932) 4-1-18

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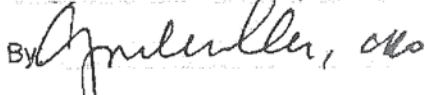
and Buyer

Page 1 of 2


Amendment to Commercial Contract concerning 1400 Discovery Boulevard, Cedar Park, TX

- ☐ D. Extension of Feasibility Period: For nominal consideration, the receipt of which Seller acknowledges, and the consideration described under (1) or (2) below, if any, Buyer's right to terminate under Paragraph 7B of the contract is extended until 11:59 p.m. on _____.
- ☐ (1) The independent consideration for Buyer's right to terminate that will be deducted from the earnest money if Buyer terminates the contract under Paragraph 7B(1) is increased to a total amount of \$ _____. (Insert an amount greater than the amount in Paragraph 7B(1) of the contract.)
- ☐ (2) Buyer has paid Seller additional consideration of \$ _____ for the extension. This additional consideration _____ will _____ will not be credited to the sales price upon the closing of the sale.
- ☐ E. Closing: The closing date in Paragraph 10A of the contract is changed to _____.
- ☐ F. Expenses: At closing Seller will pay the first \$ _____ of Buyer's expenses under Paragraph 13 of the contract.
- ☐ G. Waiver of Right to Terminate: Upon final acceptance of this Amendment, Buyer waives the right to terminate under Paragraph 7B of the contract.
- ☐ H. Counterparts: If this amendment is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- ☒ I. Other Modifications:
1. Section 4 is hereby deleted in its entirety.
 2. Section 6(A)(2) (b) will be amended to read "shortages in areas" at the expense of the Buyer.
 3. Section 6(B)(3) shall read "if the existing survey is not acceptable to the title company, the Buyer shall obtain a new or updated survey acceptable to the title company at Buyer's sole expense.
 4. Section 7(B) Feasibility Period shall read, "Buyer may terminate this contract for any reason within the 15 days after the effective date by providing Seller written notice of termination.
 5. Section 12 Special Provisions shall include item #3. Within 15 days after the effective date, Seller shall provide written confirmation to Buyer that Exception Nos. 7,8,9,10,11,12, and 18 in Continued... See Addendum Other Modifications 1


Seller: The Falls at Cedar Park, LLC
Teh Falls Event Center, LLC

By: 
By (signature):
Printed Name: G. A. Miller
Title: CRO/TFEC

Buyer: Gogo Plot Venture, LLC

By: Aaron Holmes
By (signature): 
Printed Name: Aaron Holmes
Title: Co-Owner

By: _____
By (signature):
Printed Name:
Title:

By: Taylor Holmes
By (signature): 
Printed Name: Taylor Holmes
Title: Owner

ADDENDUM

PROPERTY: 1400 Discovery Boulevard, Cedar Park, TX

1) Other Modifications

Schedule C of the Commitment for Title Insurance issued by Old Republic National Title Insurance Company, GF No. 201801582, with an Effective Date of September 4, 2018, and issued on September 21, 2018, at 9:10 AM, shall be satisfied or released of record at the time of closing. In the event Seller does not provide such written confirmation in a timely manner, this contract shall automatically terminate and Buyer's earnest money, including the independent consideration, shall be immediately refunded to Buyer"

Date:

10/16/18

Signature

Date:

Signature

Date:

10/16/2018 10:12:52 AM PDT

Signature

Date:

10/16/2018 10:16:05 AM PDT

Signature

Addendum

EXHIBIT 6



Fidelity National Title

Insurance Company

Document Page 58 of 81

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN **SCHEDULE A**, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

FIDELITY NATIONAL TITLE INSURANCE

We (FIDELITY NATIONAL TITLE INSURANCE) will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

Mauricio Gonzalez
Authorized Countersignature

Fidelity National Title Insurance Company



By:

ATTEST

Ignacio L. Lopez

President

[Signature]

Secretary

6924TX
Heritage Title Company of Austin, Inc.
401 Congress Ave, Ste 1500
Austin, TX 78701
Tel: (512) 505-5000
Fax: (512) 380-8840

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements, or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

COMMITMENT FOR TITLE INSURANCE

Issued By

Fidelity National Title Insurance Company

SCHEDULE A

Effective Date: **November 2, 2018, 8:00 AM**

GF No. **201801582**

Issued: **November 13, 2018, 11:14 AM**

1. The policy or policies to be issued are:

- (a) OWNER'S POLICY OF TITLE INSURANCE (Form T-1)
(Not applicable for improved one-to-four family residential real estate)

Policy Amount: **\$1,830,000.00**
PROPOSED INSURED: **Gogoplot Ventures, LLC**

- (b) TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)

Policy Amount:
PROPOSED INSURED:

- (c) LOAN POLICY OF TITLE INSURANCE (Form T-2)

Policy Amount: **\$1,470,000.00**
PROPOSED INSURED: **First Guaranty Bank**
Proposed Borrower: **Gogoplot Ventures, LLC**

- (d) TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)

Policy Amount:
PROPOSED INSURED:
Proposed Borrower:

- (e) LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)

Binder Amount:
PROPOSED INSURED:
Proposed Borrower:

- (f) OTHER

Policy Amount:
PROPOSED INSURED:
Proposed Borrower:

2. The interest in the land covered by this Commitment is:

Fee Simple

3. Record title to the land on the Effective Date appears to be vested in:

The Falls at Cedar Park, LLC, a Texas limited liability company

4. Legal description of land:

Lot 12, Block A, CEDAR PARK TOWN CENTER-PHASE II, a subdivision in Williamson County, Texas, according to the map or plat thereof, recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.

COMMITMENT FOR TITLE INSURANCE

Issued By

Fidelity National Title Insurance Company

SCHEDULE B

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

Document No. [2013022149](#) of the Official Public Records; and

Document No. [2013025690](#) of the Official Public Records; both as recorded in Williamson County, Texas.

(But omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons)

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.

(Applies to the Owner's Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year **2018**, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, *Texas Tax Code*, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2018 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder)

on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)

8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only. Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).)
10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):
 - a. **Public utility easement 10 feet in width along the north and west property lines, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - b. **Public utility easement 7.5 feet in width along the east property lines, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - c. **A variable-width pedestrian and landscape easement in the west part of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - d. **A variable-width public water and wastewater easement along a portion of the west property line, in the central west part of the subject property and across the south part of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - e. **A public wastewater easement 15 feet in width across the south part of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - f. **A private water easement 15 feet in width across the south part of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - g. **A portion of a private gas utility easement 10 feet in width across the eastern southeast corner of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - h. **A portion of a private building setback 60 feet in width across the southern southeast corner of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - i. **A private gas utility easement of unspecified width across the south part of the subject property, as shown by the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - j. **Public utility easement 10 feet in width along street rights-of-way on all lots, as stated on the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - k. **Public utility easement 5 feet in width along each side property line, as stated on the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - l. **Public utility easement 7 1/2 feet in width along all rear property lines, as stated on the Plat recorded under Document No. [2013022149](#) of the Official Public Records of Williamson County, Texas.**
 - m. **INTENTIONALLY DELETED**
 - n. **INTENTIONALLY DELETED**

- o. INTENTIONALLY DELETED
- p. INTENTIONALLY DELETED
- q. INTENTIONALLY DELETED
- r. INTENTIONALLY DELETED
- s. INTENTIONALLY DELETED
- t. An undivided 1/16th royalty interest in all oil, gas and other minerals, together with all rights relating thereto, express or implied, reserved in instrument recorded in [Volume 1220, Page 770](#) of the Official Records of Williamson County, Texas. Said mineral estate not traced further herein.
- u. The terms, conditions and stipulations of that certain Shared Common Area & Improvements Maintenance and Cost Sharing Agreement dated October 11, 2012, recorded under Document No. [2012093898](#) of the Official Public Records of Williamson County, Texas, as affected by Partial Assignments of Rights under Shared Maintenance Agreement recorded under Document Nos. [2013025691](#), [2015013221](#) and [2016103130](#) of the Official Public Records of Williamson County, Texas, by Assignment and Assumption recorded under Document No. [2014014962](#) of the Official Public Records of Williamson County, Texas, Partial Assignment and Assumption of Shared Common Area & Improvements Maintenance and Cost Sharing Agreement recorded under Document No. [2014087786](#) of the Official Public Records of Williamson County, Texas, and Assignment and Assumption of Shared Common Area & Improvements Maintenance and Cost Sharing Agreement recorded under Document No. [2017077334](#) of the Official Public Records of Williamson County, Texas.
- v. A public water easement granted to the City of Cedar Park, by instrument dated July 23, 2013, recorded under Document No. [2013083729](#) of the Official Public Records of Williamson County, Texas.
- w. A public wastewater easement granted to the City of Cedar Park, by instrument dated July 23, 2013, recorded under Document No. [2013083730](#) of the Official Public Records of Williamson County, Texas.
- x. A utility easement granted to Pedernales Electric Cooperative, Inc. by instrument recorded under Document No. [2013105127](#) of the Official Public Records of Williamson County, Texas.
- y. An underground electric distribution system easement granted to Pedernales Electric Cooperative, Inc., by instrument dated September 18, 2013, recorded under Document No. [2013105129](#) of the Official Public Records of Williamson County, Texas.
- z. A utility easement granted to Pedernales Electric Cooperative, Inc. by instrument recorded under Document No. [2013109096](#), of the Official Public Records of Williamson County, Texas.
- aa. A no-build easement granted to the owner of Lot 11, by instrument dated April 10, 2015, recorded under Document No. [2015029050](#) of the Official Public Records of Williamson County, Texas.
- bb. The terms, conditions and stipulations of that certain Resolution Adopting Xeriscaping Policy dated April 10, 2015, recorded under Document No. [2015029288](#) of the Official Public Records of Williamson County, Texas.
- cc. The terms, conditions and stipulations of that certain Notice to Purchasers dated October 5, 2015, recorded under Document No. [2015088145](#) of the Official Public Records of Williamson County, Texas.
- dd. The terms, conditions and stipulations of that certain Resolution Adopting Policy Concerning Code, Covenant and Restriction Violations dated January 28, 2016, recorded under Document No. [2016011676](#) of the Official Public Records of Williamson County, Texas.
- ee. The terms, conditions and stipulations of that certain Deed Recordation Affidavit dated April 28, 2016, recorded under Document No. [2016039800](#) of the Official Public Records of Williamson County, Texas.

- ff. The rights of Upper Brushy Creek Water Control and Improvement District to levy taxes and issue bonds.**
- gg. INTENTIONALLY DELETED**
- hh. INTENTIONALLY DELETED**
- ii. INTENTIONALLY DELETED**
- jj. Location of portion of electric utility and transformer pad outside of dedicated easement as shown on survey dated July 3, 2015, prepared by Eric J. Dannheim, Registered Professional Land Surveyor No. 6075 ("the Survey").**

COMMITMENT FOR TITLE INSURANCE

Issued By

Fidelity National Title Insurance Company

SCHEDULE C

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - b. all standby fees, taxes, assessments and charges against the property have been paid,
 - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, subcontractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - d. there is legal right of access to and from the land,
 - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. **This Company must follow Procedure Rule P-27 as set out by the Department of Insurance in disbursing funds provided by the Assured and/or Insured on Schedule "A" of this Commitment. Good Funds shall be in possession of the title company prior to any disbursements. Good Funds shall be as defined in Rule P-27, and include cash or wire transfers, certified, cashier's or teller checks.**
6. **For each entity that will execute any document in connection with the proposed closing (AND any other entity executing said document on its behalf), this company must be furnished the following authority and existence documentation:**
 - (a) **Corporation - Certificate of Existence from the Secretary of State, Articles of Incorporation from the Secretary of State, and a properly executed Corporate Resolution (in recordable form) to support the proposed transaction.**
 - (b) **Limited Liability Company - Certificate of Existence from the Secretary of State, Articles of Organization from the Secretary of State, copy of Regulations (and any Amendments thereto), and Secretary's Certificate (in recordable form).**
 - (c) **General Partnership - copy of Partnership Agreement (and any Amendments thereto).**
 - (d) **Limited Partnership - Certificate of Limited Partnership from the Secretary of State, Certificate of Existence from the Secretary of State, copy of Limited Partnership Agreement (and any Amendments), and evidence of consent of limited partners (in recordable form), if required.**
 - (e) **Joint Venture - copy of Joint Venture Agreement (and any Amendments thereto).**

- (f) Trust - copy of the Trust Agreement (and any Amendments thereto) for review or, in the alternative, the Trustee must file a Certification of Trust in the real property records meeting all of the provisions of Section 114.086(a) and (c) of the Texas Property Code, and provide excerpts from the Trust Agreement sufficient to evidence authority of the Trustee to enter into this transaction.

7. Deed of Trust dated November 28, 2016, recorded under Document No. [2017069528](#) of the Official Public Records of Williamson County, Texas, executed by The Falls at Cedar Park, LLC, to The Falls Event Center, LLC, Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby; securing the payment of one promissory note of even date in the principal amount of \$1,631,610.11, payable to The Falls Event Center, LLC.

Said lien further affected by Subordination Agreements recorded under Document Nos. [2018029624](#) and [2018053986](#) of the Official Public Records of Williamson County, Texas.

8. Deed of Trust dated May 31, 2018, recorded under Document No. [2018050971](#) of the Official Public Records of Williamson County, Texas, executed by The Falls at Cedar Park, LLC, The Falls at Cutten Road, LLC, and The Falls at Stone Oak Parkway, LLC, to Harold N. May, Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby; securing the payment of one promissory note of even date in the principal amount of \$2,640,000.00, payable to Golf 6060, LLC.

Said lien collaterally assigned to Texas Gulf Bank, N.A., a national banking association, by instrument recorded under Document No. [2018082450](#) of the Official Public Records of Williamson County, Texas.

9. Company must be furnished evidence that the assessments payable to Cedar Park Town Center Residential Owners Association, Inc., are either paid in full or not yet due.
10. NOTE: The last recorded deed to convey the subject property (or a portion thereof) is dated October 5, 2015, filed for record on October 5, 2015, recorded under Document No. [2015088143](#) of the Official Public Records of Williamson County, Texas, executed by Cedar Park Town Center LP to The Falls at Cedar Park, LLC.

11. Company must be furnished a satisfactory Affidavit of Debts and Liens executed by Seller(s).

12. Company must be furnished a satisfactory Waiver of Inspection executed by Purchaser(s).

13. THIS COMMITMENT MUST BE UPDATED PRIOR TO CLOSING AND FUNDING.

14. The following Financing Statement appears to affect Leasehold Interest, is shown herein for informational purposes only and will not appear on any policy(ies) issued hereunder:

Financing Statement filed August 28, 2018, recorded under Document No. [2018077042](#) of the Official Public Records of Williamson County, Texas, naming Golf 6061, LLC as Debtor, for the benefit of Texas Gulf Bank, N.A., as Secured Party, creating a security interest in fixtures located on the subject property.

15. The Texas Department of Insurance Rules and Regulations do not provide for survey exception (B-2) modification on Commitments; however, an acceptable survey dated July 24, 2015, prepared by Eric J. Dannheim, Registered Professional Land Surveyor No. 6075, has been received and the Company will amend said exception to read "Shortages in Area" in the proposed Policy(ies) upon payment of any applicable premium, subject to no contradictory information being received prior to closing.

This Survey approval is conditioned upon receipt of a satisfactory survey affidavit executed by the owner of the subject property. If any of the information furnished in the affidavit indicates that the survey does not conform to underwriting guidelines, Company will require a new survey be submitted prior to issuing a policy with the survey exception amended.

This Survey approval is conditioned upon receipt of a satisfactory survey affidavit executed by the owner of the subject property. If any of the information furnished in the affidavit indicates that the survey does not conform to underwriting guidelines, Company will require a new survey be submitted prior to issuing a policy with the survey exception amended.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE D

GF No. 201801582

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The issuing Title Insurance Company, Fidelity National Title Insurance Company, is a corporation whose shareholders owning or controlling, directly or indirectly, 10% of said corporation, directors and officers are listed below:

Shareholders: Fidelity National Group, Inc. which is owned 100% by FNTG Holdings, LLC which is owned 100% by Fidelity National Financial, Inc.

Directors: Raymond Randall Quirk, Anthony John Park, Michael Louis Gravelle, Michael J. Nolan

Officers: President, Randal Raymond Quirk, Executive Vice President, Anthony John Park, Secretary, Michael Louis Gravelle, Treasurer, Daniel Kennedy Murphy

2. The issuing Title Insurance Agent, Heritage Title Company of Austin, Inc., is a corporation whose shareholders owning or controlling, directly or indirectly, 1% or more of said corporation (or owning or controlling 10% or more of any entity that owns 1% or more of the Agent), directors, and officers are listed below:

Owners of 10% or more: Gary S. Farmer, Douglas J. Dwyer Family Trust and Laura A. Beuerlein

Board of Directors: Gary S. Farmer, Jan Cox Dwyer and Laura A. Beuerlein

Officers: Gary S. Farmer, President; Laura A. Beuerlein, Executive Vice President/Treasurer; Brenda K. Hindsman, Executive Vice President/Secretary; John Bruce, Senior Vice President; Amy Fisher, Senior Vice President; Deedee King, Senior Vice President; Daniel R. Elkins, Jr., Senior Vice President/Plant Manager; Elida Dandridge, Senior Vice President; Mary Metz, Senior Vice President; Carolyn Thornton, Senior Vice President; Stacey Dunn, Senior Vice President/Residential Escrow Manager; Lea Holubec, Senior Vice President; Cari Ezell, Senior Vice President.

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

Owner's Policy	\$9,646.00
Loan Policy	\$100.00
Endorsement Charges	\$825.40
Other	\$0.00
Total	\$10,571.40

Of this total amount: 15% will be paid to the policy issuing Title Insurance Company; 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

<u>Amount</u>	<u>To Whom</u>	<u>For Services</u>
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*The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance.

TEXAS TITLE INSURANCE INFORMATION

<p>Title insurance insures you against loss resulting from certain risks to your title.</p> <p>The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.</p>	<p>El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.</p> <p>El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.</p>
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Your Commitment of Title insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

---MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

---EXCEPTIONS are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the policy is issued, all Exceptions will be on Schedule B of the Policy.

---EXCLUSIONS are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

---CONDITIONS are additional provisions that qualify or limit you coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at (800) 654-7041 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

---Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

---Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to

increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

DELETION OF ARBITRATION PROVISION
(Not applicable to the Texas Residential Owner's Policy)

Arbitration is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

SIGNATURE

DATE

Document Page 72 of 81
FIDELITY NATIONAL FINANCIAL
PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, “FNF,” “our,” or “we”) respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

Types of Information Collected

We may collect two types of information from you: Personal Information and Browsing Information.

Personal Information. FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g. Social Security Number, driver’s license, passport, or other government ID number);
- financial account information (e.g. loan or bank account information); and
- other personal information necessary to provide products or services to you.

Browsing Information. FNF may automatically collect the following types of Browsing Information when you access an FNF website, online service, or application (each an “FNF Website”) from your Internet browser, computer, and/or mobile device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

How Personal Information is Collected

We may collect Personal Information about you from:

- information we receive from you on applications or other forms;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

How Browsing Information is Collected

If you visit or use an FNF Website, Browsing Information may be collected during your visit. Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

Other Online Specifics

Cookies. When you visit an FNF Website, a “cookie” may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer’s hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

Do Not Track. Currently our FNF Websites do not respond to “Do Not Track” features enabled through your browser.

Links to Other Sites. FNF Websites may contain links to other websites. FNF is not responsible for the privacy practices or the content of any of those other websites. We advise you to read the privacy policy of every website you visit.

Use of Personal Information

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and third parties' products and services, jointly or independently.

When Information Is Disclosed

We may make disclosures of your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Please see “**Choices With Your Information**” to learn the disclosures you can restrict.

Security of Your Information

We maintain physical, electronic, and procedural safeguards to guard your Personal Information. We limit access to nonpublic personal information about you to employees who need to know that information to do their job. When we provide Personal Information to others as discussed in this Privacy Notice, we expect that they process such information in compliance with our Privacy Notice and in compliance with applicable privacy laws.

Choices With Your Information

If you do not want FNF to share your information with our affiliates to directly market to you, you may send an “opt out” request by email, phone, or physical mail as directed at the end of this Privacy Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you.

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

For California Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law.

For Nevada Residents: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

For Oregon Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

For Vermont Residents: We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

Information From Children

The FNF Websites are meant for adults and are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

International Users

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

FNF Website Services for Mortgage Loans

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except (1) as required or authorized by contract with the mortgage loan servicer or lender, or (2) as required by law or in the good-faith belief that such disclosure is necessary to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

Your Consent To This Privacy Notice; Notice Changes

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The revised Privacy Notice, showing the new revision date, will be posted on the FNF Website. Each time you provide information to us following any amendment of this Privacy Notice, your provision of information to us will signify your assent to and acceptance of the terms of the revised Privacy Notice for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you submit to us in any manner that we may choose without notice or compensation to you.

Accessing and Correcting Information; Contact Us

If you have questions, would like to access or correct your Personal Information, or want to opt-out of information sharing for affiliate marketing, send your requests via email to privacy@fnf.com, by phone to (888) 934-3354, or by mail to:

Fidelity National Financial, Inc.
601 Riverside Avenue,
Jacksonville, Florida 32204
Attn: Chief Privacy Officer

Fidelity National Financial, Inc.

Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries (“FNF”) respect the privacy and security of your non-public personal information (“Personal Information”) and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF’s privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements; and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Disclosure to Affiliated Companies – We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties – We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

Access to Personal Information/

Requests for Correction, Amendment, or Deletion of Personal Information

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer Fidelity National
Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Branded or Co-Sponsored Websites

If you provide Personal Information to us through a co-branded or co-sponsored website, you may be providing such information to the co-sponsor as well. In that event, we will make reasonable efforts to provide notice to you at the time you provide the information and you can decide whether you wish to do so. If you do submit such information, we will not be responsible for the use of the information you submit by the co-sponsor.

Links to Other Websites

Our websites may contain links to websites that are provided and maintained by third parties and that are not subject to this Privacy Statement. Please review the privacy statements on those websites. We make no representations concerning and are not responsible for any such third party websites or their privacy policies or practices.

Cookies

Our websites may use "cookies" or similar technologies to improve our service to you. Our cookies do not collect your Personal Information. Your browser can most likely be configured to notify you when cookies will be received and offer you the option of refusing cookies. If you reject cookies, you may still use our websites, but your ability to use some areas may be limited.

Changes to this Privacy Statement

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.



AUSTIN, TEXAS

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information-particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

EXHIBIT 7

RELEASE OF TRUST DEED
(WILLIAMSON COUNTY, TEXAS)

Date: January ____, 2019

Trustee of Trust Deed: The Falls Event Center, LLC

Beneficiary of Trust Deed: The Falls Event Center, LLC

Beneficiary's Mailing Address: Michael F. Thomson, Chapter 11 Trustee
Dorsey & Whitney LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111

Trust Deed Description: The Trust Deed ("**Trust Deed**") dated November 28, 2016, with The Falls at Cedar Park, LLC as Trustor, The Falls Event Center, LLC as Trustee, and The Falls Event Center, LLC as Beneficiary, filed on July 28, 2017 in the Williamson County Real Property Records as File No. 2017069528.

Property: That certain real property located in Williamson County, Texas (the "**Property**"), and more particularly described as: **LOT 12 OF FINAL PLAT CEDAR PARK TOWN CENTER - PHASE II, BEING SITUATED IN WILLIAMSON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN DOCUMENT NO. 2013022149, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS.**

Subordinations of the Trust Deed: The Trust Deed has been subordinated pursuant to two Subordination Agreements: (a) the Subordination

Agreement dated April 2, 2018, and recorded on April 9, 2018 under Document No. 2018029624 of the Official Public Records of Williamson County, Texas, and (b) the Subordination Agreement dated May 31, 2018, and recorded on June 21, 2018 under Document No. 2018053986 of the Official Public Records of Williamson County, Texas.

The Beneficiary is the owner and holder of the subordinated Trust Deed described above.

The Trustee and the Beneficiary release the Property from the lien of the subordinated Trust Deed and from all liens held by the Beneficiary of the subordinated Trust Deed, without regard to how they were created or evidenced.

The Beneficiary of the subordinated Trust Deed expressly waives and releases all present and future rights to establish or enforce the subordinated Trust Deed against the Property as security for payment of any future or other indebtedness.

Trustee and Beneficiary of the Subordinated Trust Deed:

The Falls Event Center, LLC, a Utah Limited Liability Company, a Chapter 11 Debtor under Bankruptcy Case No. 18-25116 (United States Bankruptcy Court for the District of Utah)

By: _____
Michael F. Thomson, Chapter 11 Trustee of The Falls Event Center, LLC, a Utah Limited Liability Company, the Chapter 11 Debtor under Bankruptcy Case No. 18-25116 (United States Bankruptcy Court for the District of Utah)

ACKNOWLEDGEMENT

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

The foregoing instrument was acknowledged before me this _____ day of January, 2019, by Michael F. Thomson, the Chapter 11 Trustee of Trustee and Beneficiary The Falls Event Center, LLC, a Utah Limited Liability Company, the Chapter 11 Debtor under Bankruptcy Case No. 18-25116 (United States Bankruptcy Court for the District of Utah).

Notary Public

Residing at: _____

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