

ACQUISITION AND REDEVELOPMENT AGREEMENT

This Acquisition and Redevelopment Agreement (the Agreement) is entered into by and between the Town of Bluff, a Utah municipality (the Town), and Utah Dine Bikeyah, a Utah non-profit corporation (UDB), as follows. The Town and UDB are collectively referred to as the Parties.

INTENT AND PURPOSE

a. The Town has entered into a contract with the San Juan School District (the District) for the purchase and sale of a parcel of real property in the County of San Juan, State of Utah, commonly known as the old Bluff Elementary School. That contract is identified as the Contract and a true and correct copy of same is attached as **Exhibit 1**.

b. The Contract encompasses the former school grounds and approximately four (4) acres of land described as follows (the Property):

Parcel 1: W ½ Lots 1 and 4 and Lots 2 and 3 of Block 1, Bluff Townsite Survey, Plat "A" embraced within the Northeast quarter and the East half of the Northwest quarter of Section 25, Township 40 South, Range 21 East, Salt Lake Base Meridian, Utah; EXCEPTING and RESERVING all the oil, gas, and minerals in and upon said land; Parcel ID C00000010020; and

Parcel 2: East half of Lots 1 and 4, Block 1, Plat A, Bluff Townsite. Parcel ID C00000010010.

c. The Town desires to acquire the Property for the purpose of redevelopment of part of the site for a future town hall and community center. The Town finds that this is a valid public purpose, and that this Agreement represents an appropriate effort to promote the public health, safety, and welfare.

d. UDB desires to acquire the Property for the purpose of redevelopment of part of the site as a future headquarters for its organization, with the intent that it be used as a center for non-profit activities, including Native American arts and cultural programs and other community services.

e. The Parties have conferred and agree that it is in the best interests of their respective organizations that they jointly undertake the acquisition and redevelopment of the Property for the purposes stated herein, it being understood that neither Party could complete the planned work in its entirety without the assistance of another entity.

f. As a condition for completion of the sale, the District will require that the Property be encumbered by a use restriction covenant (the Covenant) that will prohibit the future use of the Property for any primary/secondary (K-12) school use that would compete with the mission and purpose of the District; the Covenant is appended to the Contract in **Exhibit 1**. Both Parties have examined the Covenant and agree that the restrictions are acceptable and compatible with their future development plans and intended uses.

g. The Parties have jointly undertaken certain inspections of the Property, and they both acknowledge that it is suitable for their intended uses, subject to certain repairs, upgrades, and remodeling that will be needed.

h. It is the intent of the Parties that: i) the Town will acquire the Property as described in the Contract and elsewhere in this Agreement with financial assistance from UDB; ii) the Property will be lawfully configured into units as described in this Agreement; iii) the Town will subsequently convey units to UDB for its separate ownership; iv) the Town will similarly retain units as described in this Agreement ; v) the Parties will cooperate in jointly managing the common elements to be created through a condominium process; and vi) the Parties will cooperate in seeking grants, loans (if applicable), or other financial resources to provide for the redevelopment of the Property for their respective uses.

i. There are important community links between the Town and its residents and UDB and its members and area-wide constituents that make cooperation on this project a worthwhile endeavor.

j. The Parties intend that this Agreement is entered into to facilitate the acquisition and redevelopment of the Property. It is not the intention that either Party should surrender or compromise its separate existence, governance, or purpose. Nor shall this Agreement be construed to abrogate or impair the police power possessed by the Town. And, it is also the intention of the Parties that this Agreement will terminate when the redevelopment process is complete.

AGREEMENT

THEREFORE, the foregoing recitals are incorporated by reference, and it is agreed as follows.

1. Acquisition of the Property. The Parties hereby ratify and agree to the Contract between the Town and the District and authorize the Town to complete the purchase of the Property in conformity with that Contract, and in reliance upon the commitments of this Agreement. For purposes of this Agreement, the closing on the Property shall be completed no later than **October 8, 2021**, unless otherwise agreed by the Town and District.

2. Initial Cash Contribution; Funds Availability. The purchase price under the sales Contract is **THREE HUNDRED SEVEN THOUSAND FIVE HUNDRED DOLLARS** (\$307,500)(the Sales Price). UDB agrees to pay the Sales Price to the District as provided by the terms of the purchased Contract with the District. The funds, including the initial earnest money deposit, shall be wire transferred to the closing agent designated in the sales Contract so as to timely complete the sale by the closing date specified in the Contract, or as amended. The Town will provide UDB with wiring information for the transfer. All funds shall be transmitted in a form that is immediately available for disbursement to the seller. UDB warrants and represents that it has the funds specified above available now for disbursement as required by this Agreement. Transmittal of the Sales Price to the closing agent shall be completed no later than **October 5, 2021**.

3. Title to the Property Post-Closing. The Property shall be conveyed to the Town by general warranty deed. The Town shall hold title to the Property until such time as it can be lawfully subdivided or split in accordance with this Agreement.

4. Condominium Process. Subsequent to the conveyance to the Town, the Parties will undertake enactment of a condominium declaration (the Declaration), subject to lawful approval by the Town through its land use review process. It is understood and agreed that nothing in this Agreement shall be deemed to abrogate or impair the land use review processes mandated by Town ordinances or applicable law.

a. Description of Building Units. The parties agree that the condominium process will create two (2) units within the existing school building, one each for the Town and UDB, together with common elements, as further described below and further defined in the Declaration. The boundaries of the units within the existing school building to be allocated to the Town and UDB, together with common elements within the building, are as described in **Exhibit 2.**

b. Exterior Units. Additionally, the areas of the Property occupied by parking, the septic field, propane tanks, and the electrical shed shall be dedicated as common elements. The modular building to the east of the existing school building shall be allocated to UDB and be a part of its unit. The remainder of the Property, not otherwise allocated, will be split into two (2) exterior units of approximately equal, size, configuration, and value, one (1) each to be allocated to UDB and the Town. The exact boundaries of those two (2) exterior units shall be determined in future negotiations to be completed prior to review and enactment of the Declaration.

c. Conveyance to UDB. The conveyance by the Town to UDB shall be via general warranty deed. The Parties anticipate that the Town will hold title to the Property immediately following the closing, with UDB taking title when the Declaration and accompanying condominium plat are enacted. The timing of the conveyance to UDB will be subject to final approval of the Declaration and mutual agreement of the Parties.

5. Redevelopment Planning. Immediately following the closing of the sale from the District, the Parties agree to confer and jointly undertake planning for the design, remodeling, and reconfiguration of the Property so as to accommodate their separate uses. Without limiting the foregoing, the redevelopment process shall encompass architectural design; vehicle and pedestrian ingress/egress, and parking; heating, ventilation, and air conditioning systems; fire suppression systems; windows and doors; siding and exterior elements; domestic water and wastewater systems; electrical systems; signage and lighting; common elements and open space; planning for possible third-party rental space; phasing of improvements; and other incidental tasks.

a. Design Goals. The goal for the design review process will be for there to be two distinct facilities, with separately identifiable spaces, and functions. The Parties may wish to create common areas that can be jointly managed and/or made available to others as needed.

b. Design Review Committee. The Parties shall establish a Design Review Committee (DRC) comprised of not more than four (4) persons, two (2) each representing UDB and the Town, respectively. DRC members will be designated separately by the governing bodies of each Party. The DRC will be charged with developing a project design for review and approval by the Parties. The DRC may also interview and make recommendations for the retention of consultants or contractors as needed to perform professional services, i.e. architectural design, engineering design, or the like. All such persons shall be reviewed via a competitive process based on evaluation of such factors as price, professional competence, experience, and conformity with project specifications. The decision to recommend a consultant or contractor shall be based on the affirmative vote of a majority of the DRC. The DRC shall not have the authority to enter into contracts obligating either Party. All such contracts, if any, shall only be approved by the governing bodies of the Parties.

c. Funding Applications. The Parties may jointly submit applications or requests for grant funding, donations, or similar aid in furtherance of the redevelopment of the Property. All such funding requests shall be as authorized and approved by resolution adopted by both governing bodies, the UDB Board of Directors and the Town of Bluff Town Council, respectively. Grant funding, aid, or donations received via this process shall be held in a common account and utilized solely for the purposes authorized under this Agreement and any requirements of funding entities.

d. Debt Limitations. The Parties acknowledge that the Town, as a local government entity, is subject to certain legal and constitutional restrictions upon its ability to enter into loan financing. Accordingly, the entering into loan financing is not anticipated at this time. In any case, loan financing shall only be undertaken subject to the applicable requirements of Utah law and upon separate approval by the governing body of the Town. Nothing in this Agreement shall constitute the lending of the credit of the Town in aid of a private individual or corporate enterprise, nor shall this Agreement constitute a donation by the Town in favor of UDB.

e. Redevelopment Funding Accounts, Usage, and Signatories. Grant funding, donations, loans (if any), or similar financial aid jointly authorized and obtained by the Parties for the redevelopment of the Property (defined here as Redevelopment Aid) shall be held in an account or accounts held at a licensed Utah banking institution. All such Redevelopment Aid accounts shall be held jointly by the Town and UDB, and both Parties shall have access to all account records. Redevelopment Aid funds shall be used solely for costs and expenses for the redevelopment of the Property, including: i) professional design (architectural services, engineering, or the like); ii) construction, remodeling, or major repairs (other than ordinary maintenance); or iii) similar costs or expenses as authorized by the Parties. Redevelopment Aid proceeds shall not be used or expended for utilities, insurance, or maintenance (UIM) costs for the Property, as described further in Section 6, below. Withdrawals or expenditures from the Redevelopment Aid accounts shall require two (2) signatures, one (1) each from UDB and the Town, as authorized by signature resolution of each Party.

f. Redevelopment Contracting. All contracting for redevelopment shall be subject to approval by the governing bodies of the Parties. The Parties shall jointly develop and approve

a budget (the Project Budget) for redevelopment covering design, construction, fixtures & equipment, and a contingency reserve. Total project costs shall not exceed the approved Project Budget. Contracts with contractors, consultants, material suppliers, or other persons supplying goods, services, or labor shall be in writing and approved by the governing bodies of the Parties.

i. In their discretion, the Parties may elect to form a separate entity for contracting purposes, which may be responsible for contracting and administration during the redevelopment/construction phase. Any such entity will be a non-profit corporation formed in accordance with Utah law, as further defined in its governing documents.

g. Redevelopment Aid Excluded for Separate Improvements. The Parties acknowledge that each may require certain improvements to their respective units that may be specific to the needs of that Party. Accordingly, furniture, fixtures, and equipment (FFE) or other similar improvements that are particular to the needs of that Party, but not of benefit to the other, will be excluded from the Redevelopment Aid jointly procured by the Parties. Each Party will separately contract for and pay for FFE and other separate improvements that are specific to its needs and planned uses.

h. Redevelopment Wind-Down. The redevelopment phase shall be deemed complete (Redevelopment Completion) upon: i) the final completion of all construction; ii) the issuance of certificates of occupancy for the Property by building authorities; iii) the final payment and settlement of all claims associated with the construction; iv) conveyance of the deed to UDB as specified in Section 4(c); and v) enactment of the condominium Declaration and final plat specifying any prospective requirements for management of common elements. When that stage is complete the Parties shall execute resolutions terminating this Agreement; however it is expressly understood that the subsequently enacted Declaration shall survive termination of this Agreement. The initial target date for the Redevelopment Completion is December 31, 2022.

6. Utilities, Insurance, and Maintenance. Costs for utilities, insurance, or maintenance (UIM) for the Property, including all areas designated as common elements, shall be paid proportionately by the parties until such time as the Declaration is enacted and the units are conveyed to UDB. The allocation of each party's share of UIM costs shall be determined by multiplying the UIM cost by a fraction¹, the numerator of which is the heated interior area occupied by that party (excluding the area of interior common elements), and the denominator of which is the total heated interior area of the building (including the heated interior area of the adjacent modular building but excluding interior common elements). For purposes of illustration, if the monthly UIM cost (including common elements) is \$1,200 and the area occupied by the Town is 3,000 square feet and the area occupied by UDB is 12,000 square feet the resulting allocation would as follows: $\$1,200 \times 3,000/15,000 = \240 (for the Town); $\$1,200 \times 12,000/15,000 = \960 (for UDB). The parties will confer and agree upon the exact dimensions of their allocated areas for purposes of this calculation. The Town is authorized to contract for

¹ The fraction described here may be converted to an equivalent percentage for ease of administration.

UIM for the Property, subject to regular review by UDB of all such costs. UIM costs and records shall be kept separate from Redevelopment Aid records.

a. Separate Expenses Excluded from Redevelopment Aid. The Parties acknowledge and agree that the redevelopment and use of Redevelopment Aid as described in Section Five, above, shall, to the extent practicable, include installation of separate utility connections to provide service to the units to be separately owned by the Parties. These separate connections will be for: i) culinary water; ii) electricity; iii) gas/propane service; iv) telephone/data lines; and v) wastewater disposal, if a separate leach field or similar disposal system is deemed feasible. Upon the conveyance of the units to UDB, each Party shall be separately responsible for payment of its own UIM obligations applicable to its units, as specified in the Declaration.

b. Billing. Prior to conveyance of the second unit to UDB the Town will periodically, but at least quarterly, submit an invoice to UDB with supporting documents showing all UIM costs. UDB shall reimburse the Town for its share of such charges within thirty (30) days of receipt of same.

7. Accounting and Records of Financial Contributions. The Town will provide accounting and bookkeeping services in connection with this Agreement. It will maintain complete and accurate records documenting revenue and expenditures for all financial matters under this Agreement (Project Accounting Records). All Project Accounting Records shall be subject to periodic review by the Parties as needed. The Project Accounting Records shall accurately document the cash contributions by UDB, the Town, and all other funding sources. There shall be no co-mingling of Town or UDB general revenues or general expenditures with Project Accounting Records.

8. Designated Points of Contact; Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery if served personally. Otherwise, notice shall be deemed to have been given on the fifty (5th) day after mailing if it is mailed to the party to whom notice is to be given, by first class mail or certified mail, postage prepaid, and properly addressed as follows:

Utah Dine Bikeyah
Attention: Executive Director
P.O. Box 554
Salt Lake City, UT 84110

Town of Bluff
Attention: Mayor
P.O. Box 324
Bluff, UT 84512

At any time, a Party may change the address for purposes of notice under this Agreement by providing written notice to the other Party specifying the change. The Parties may exchange routine communications via email at the addresses they may designate.

a. Designated Contacts. The Parties shall designate persons who shall be the primary point of contact for routine communications and matters requiring immediate attention under this Agreement. The Parties will designate points of contact who are reasonably available and who are knowledgeable about matters pertaining to this Agreement. Points of contact are as follows:

Town of Bluff: Ann Leppanen

Utah Dine Bikeyah: Woody Lee

9. Entire Agreement; Modifications; Waiver. This document constitutes the sole and complete agreement of the Parties. No prior or contemporaneous agreement, representation, or statement shall be effective for any purpose. No supplement, modification, or amendment to this Agreement shall be binding unless executed in a writing authorized by both Parties. Routine email communications or electronic communications between the Parties or their points of contact shall not constitute modifications to the terms of this Agreement.

a. Conferral Regarding Unforeseen Events. The Parties acknowledge that there may be unforeseen events or circumstances that require consultation and, if applicable, modifications to the terms of this Agreement. Without limiting the description of those potential circumstances, the Parties acknowledge that it may be necessary to modify this Agreement to account for or accommodate: i) requirements of funding entities; ii) unforeseen site conditions or cost increases associated with construction or redevelopment; iii) permitting or licensing by governmental authorities; or iv) extreme weather, calamitous event, or public emergency. In light of those possibilities, the Parties agree that they will confer in good faith should modifications or changes to this Agreement become necessary as a result of unforeseen events, requirements, or conditions.

10. Dispute Resolution, Mediation. Prior to invoking any remedies under this Agreement the parties shall first confer and attempt to reach a resolution of the disagreement. At minimum, a Party shall deliver written notice to the other party identifying the act, omission, or event constituting a breach (or potential breach) and allowing the other party a period of not less than thirty (30) days in which to cure or abate the act, omission, or event. Cure within that period extinguishes any breach and the Parties shall continue to perform their respective obligations.

a. Mediation. In the event of an unresolved dispute, the Parties agree to engage in mediation before a mutually acceptable third-party neutral as a condition precedent to invoking any other remedies under this Agreement. Mediation shall be held promptly following selection of a mediator, and costs for the mediator shall be split and paid equally between the Parties. Each Party shall be separately responsible its own legal costs, if any, incurred in connection with mediation.

11. Interpretation; Severability. This Agreement is the product of mutual bargaining. It shall be interpreted in accordance with its plain meaning, regardless of the identity of the drafter. If any provision of this Agreement shall be found to be unlawful or unenforceable it shall be stricken, and the remainder of the Agreement shall be fully enforced without the offending provision.

12. Counterparts. This Agreement may be executed in separate counterparts which, when combined, shall evidence and constitute a valid and binding contract.

13. Relationship of the Parties; Duties. The Parties are independent contractors with respect to one another. This Agreement shall not be construed to form a partnership, joint venture, or separate business entity. Neither Party shall contract for or otherwise incur debts or financial obligations for on behalf of the other, and any such debt or obligation incurred in violation of this Agreement shall be void.

a. Specific Duties. Both Parties acknowledge that this Agreement will require trust and cooperation. Though the Parties are independent contractors, each Party shall be subject to a duty of candor to provide truthful and accurate information to the other with respect to all matters pertaining to the performance of this Agreement.

14. Authority. This Agreement has been duly executed by the Parties after having obtained all necessary authority from the respective governing bodies of each. The Agreement is a valid, binding, and enforceable obligation of each Party.

15. Time. Time is of the essence under this Agreement. Where a temporal limitation or duration is specified, the Parties shall perform within the specified time. Where no specific period of time for the performance of any action is specified, the Parties shall perform within a reasonable period of time. If any temporal deadline for the performance of any act should fall on a Sunday or a legal holiday of the State of Utah or the United States, the deadline for any such performance shall be extended to the next day that is not a legal holiday.

16. Governmental Appropriations. As a Utah local government entity the Town is subject to constitutional and legal limitations on its ability to incur multi-year fiscal obligations. Accordingly, all fiscal or monetary obligations of the Town under this Agreement are deemed subject to annual appropriation by the Town, as otherwise provided by law.

17. No Third-Party Beneficiaries. The Parties to this Agreement are UDB and the Town. No other persons or entities are intended beneficiaries under this Agreement, and no such persons shall have rights to enforce, construe, or seek remedies arising under or related to this Agreement.

18. Effective Date. The effective date of this Agreement is the date of last signature.

19. Governing Law, Venue, Jury Waiver. The laws of the State of Utah govern this Agreement. The sole venue for any dispute arising from or under this Agreement shall be the Seventh Judicial District Court of San Juan County, Utah. In any judicial proceeding

concerning or arising under this Agreement the matter shall be decided solely by the court sitting without a jury, regardless of the denomination of any claims that may be brought.

20. Compliance with Use-Restriction Covenant. Both Parties agree that they and their respective agents, employees, tenants, subtenants, and all other persons acting subject to their direction or control, shall act in a manner that conforms to the Covenant as identified in **Exhibit 1** to this Agreement.

21. Recording Statement of Interest. In its discretion, UDB may elect to record a statement of interest in the San Juan County land records documenting its interest in the Property. The Statement of interest may be recorded until such time as the conveyance from the Town contemplated by this Agreement is completed, following which it shall be released in a recorded document. The form and content of the statement of interest and any release of same shall be as mutually agreed by the Parties.

22. Remedies. This Agreement may be enforced in an action seeking specific performance, declaratory relief, damages, or other legal or equitable remedies as may fit the circumstances. It is specifically agreed that if the condominium Declaration is not enacted in conformity with Section Four, above, the adversely affected party may apply for equitable relief appropriate to the facts then existing. A prevailing Party seeking relief under this Agreement may seek to recover its reasonable legal fees and court costs in addition to other remedies. A court may award such reasonable legal fees and court costs, in its discretion, based upon consideration of general equitable principles.

23. Immunity. The Parties agree that nothing in this Agreement shall be deemed to waive or abrogate any immunity, including immunity under the Utah Governmental Immunity Act, possessed by the Town as a local government of the State of Utah.

24. UDB Not a Tribal Corporation. The Parties acknowledge and agree that UDB is a non-profit corporation formed under the Utah Non-profit Corporation and Co-operative Association Act. UDB warrants and represents to the Town that it is not a tribal corporation formed under federal law, nor does it possess tribal immunity as defined by federal law. Accordingly, as an inducement to the Town to enter into this Agreement, UDB expressly and unequivocally waives and/or disclaims any claim of tribal immunity with respect to this Agreement. Additionally, nothing in this Agreement shall be construed to authorize any assignment or transfer of UDB's rights or obligations under this agreement to any entity possessing tribal immunity, and any such purported transfer or assignment to such an entity shall be void and of no force or effect. However, UDB shall retain all rights and privileges of a valid non-profit corporation arising under Utah law or its organizing corporate documents.

-Remainder of Page Intentionally Left Blank-

The Parties have approved and executed this Agreement, as indicated by their signatures below.

Town of Bluff:

By: _____

Mayor Ann Leppanen

Attest:

Linda Sosa, Town Recorder

Date

Utah Dine Bikeyah

By: _____

Woody Lee, Executive Director

Date

Attachments:

Exhibit 1, Real Property Purchase and Sales Agreement

Exhibit 2, Proposed Allocation of Space within Building

-End of Document-