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Sandy City Copy

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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
SANDY CITY
10000 CENTENNIAL PARKWAY
SANDY UT 84070
BY: STP, DEPUTY - WI 4 P.

When recorded, return to:

Sandy City
Tom Ward, Public Utilities Director
10000 Centennial Parkway, Suite 241
Sandy, Utah 84070

WATER RIGHT PURCHASE AGREEMENT

This Water Right Purchase Agreement (the "Agreement") is entered this 24 day of February, 2020 ("Effective Date") between Sandy City Corporation ("City") a municipal corporation and political subdivision of the State of Utah, and Portofino Holdings, LLC, ("Seller") of P.O. Box 1378, Draper, Utah 84020, collectively the "Parties".

Recitals

WHEREAS, Seller claims an interest in a portion of the South Despain awards made by Judge C. W. Morse in the Decree entered June 16, 1910 in the matter of *Union and East Jordan Irrigation Company v. Richards Irrigation Company, et al.*, Third Judicial District Court, Salt Lake County (the "Morse Decree"), identified in the Utah State Engineer records as water right nos., 57-9001, and 57-9013 (together with water right no. 57-10381 and any and all other related or segregated rights therefrom), and as modified by that Agreement dated August 8, 1934 by and between Salt Lake City and L.E. Despain and Annie Butler Despain et al (the "1934 Agreement") in which the then owners of the South Despain awards conveyed all of the South Despain awards available for use from October 1st to April 1st each year to Salt Lake City, reserving a 7,500 gallons per day culinary winter water right (the "Reserved Winter Water Right"). The South Despain awards under the Morse Decree and the Reserved Winter Water Right (including any related water delivery system) are collectively referred to herein as the "Water Right."

WHEREAS, Seller owns certain real property, described as 9709 South 3775 East, Sandy Utah 84092 (the "Property") at which some water is claimed to have been used pursuant to the Water Right.

WHEREAS, City desires to purchase and receive, and Seller desires to sell, convey, and assign all of Seller's rights, title, and interests, if any, in the Water Right.

WHEREAS, the Parties desire to complete the purchase, sale, and conveyance of the Water Right as set forth herein.

Agreement

The Parties agree as follows:

1. Incorporation of Recitals and Exhibits. The above recitals and attached Exhibits are hereby incorporated and made part of this Agreement by this reference.

2. Water Right to be Purchased. The City agrees to purchase, and Seller agrees to sell, convey, and assign, all of Seller's rights, title, and interests, if any, in the Water Right. Seller is not aware of any facts that would suggest there are defects in Seller's claimed title to the Water Right or encumbrances. Such representation will be true as of Closing or Seller will bring any contrary facts to the attention of the City before closing. Seller makes no other representation, and makes no warranty, regarding the Water Right.

3. Purchase Price. The total purchase price to be paid by the City to Seller for the Water Right shall be **\$2,000.00** (the "Purchase Price"), plus water service (the "Water Credit") plus other consideration from the City as follows:
 - a. Subject to the terms and limitations defined herein, the City will deliver culinary quality water to the Property through the City's existing water pipes, infrastructure and meter(s) according to City's generally applicable water service policies, procedures, and ordinances. Seller will not be required to pay the monthly base rate or any per unit water used overage charge or conservation rate to the City for culinary quality water in the following quantities. Such Water Credits will be applied based upon monthly billing, or other billing frequency in accordance with City billing policy at the time. City may adjust the actual Water Credit on monthly, daily, hourly or other basis to meet administrative efficiency needs, as long as such credits are at least equivalent to the gallon per minute Water Credit specified herein. The Water Credits are:
 - i. During the summer months of April through end of September of each year, the Water Credit shall be 1.122 gallons per minute. When applied on a daily basis this is 1,616 gallons per day or 49,278 gallons per month on an average monthly billing cycle.
 - ii. During the winter months of October through end of March of each year, the Water Credit shall be 0.0521 gallons per minute. When applied on a daily basis this 75 gallons per day or 2,275 gallons per month on an average monthly billing cycle.
 - b. If the Seller's water use exceeds the applicable Water Credit, Seller shall pay the City for water used in excess of the Water Credit (the "Additional Water") at the then applicable water rate for the sale of water as adopted by the City. The price of Additional Water shall be based on Seller's cumulative water use. The Water Credit will be applied to the first water used. The cost of Additional Water will be billed, without credit, based on Seller's actual cumulative water use (Water Credit plus Additional Water). If the City has a generally applicable tiered rate structure, the Water Credit will be applied first to the lowest tier (the "lowest tier" being that tier applicable to the first gallon of water used) and then to successive tiers, and the Additional Water shall be billed at the applicable higher tier(s).

c. Seller shall use the water received from the City on the Property for the same purpose and in the same manner as it is currently used. The Water Credit shall terminate with any subdivision, change in land use or zoning of the Property. Seller shall abide by City water conservation policies and restrictions as applied to all other customers of similar residential use class, including any emergency or drought restrictions that may be imposed in accordance with City ordinance, policy or practice.

d. The Water Credit is unique to the Property and may not be applied to water use on any other property. Subject to terms herein, this Water Credit shall remain effective for so long as Sellers or their child/children (or trust(s) for the benefit of Sellers or their child/children) own the Property. However, if Sellers or their child/children (or trust(s) for the benefit of Sellers or their child/children) convey or lease the Property within twenty (20) years of the Effective Date, the Water Credit shall remain valid for water use on the Property up to twenty (20) years from the Effective Date and then shall terminate automatically without any further action by City.

e. Subsections 3(a), 3(b), 3(c), and 3(d) of this Agreement shall survive the closing specified below.

f. City will deliver to Seller an easement as set forth in section 4, "Transfer Instruments" of this Agreement.

4. Transfer Instruments.

a. At the closing specified below, Seller shall deliver to City a quitclaim deed conveying all of Seller's right, title and interest in the Water Right and assigning all rights under the 1934 Agreement. The quitclaim deed shall be in the form of **Exhibit A**, attached hereto (the "Quitclaim Deed").

b. At the closing specified below, City shall pay to Seller the Purchase Price.

c. At the closing specified below, City shall deliver to Seller an easement in the form of **Exhibit B**, attached hereto (the "Easement").

5. Closing. The closing shall take place prior to February 28, 2020 at a place and a date agreeable to the Parties. At the closing the City shall deliver to Seller the Purchase Price and Easement, and Seller shall deliver to the City the Quitclaim Deed. Upon closing, Seller shall have no further rights to use of water under the Water Right and no further rights under the 1934 Agreement, including the use of the related water delivery system.

6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations or understandings between the Parties.
7. Authority to Sign. Each individual executing this Agreement does hereby represent to each other person so signing that he or she is authorized to sign and execute this Agreement on behalf of the Party to which he or she is representing.

SANDY CITY CORPORATION



Kurt Bradburn, Mayor

Attest 
DEPUTY City Recorder

SELLER:

 (MANAGER)

LANE HALVERSON,
PORTOFINO HOLDINGS, LLC.



CORPORATE ACKNOWLEDGEMENT LLC

STATE OF Utah)
County of Salt Lake : SS)

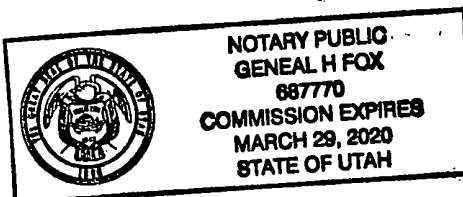
On the 24 day of February, 2020, personally appeared before me _____ and Lane Halverson, who, being by me duly sworn on oath did say that they are the manager and _____ of Portofino Holdings, LLC corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors; and said persons acknowledged to me that said corporation executed the same.

NOTARY PUBLIC, Residing in Salt Lake

My commission Expires:

March 29, 2020





Water Purchase Agreement

SANDY CITY APPROVALS

Department _____
Risk Mgt. _____
Budget _____
Page 4 of 4
Legal Form _____
Purchasing Compliance _____