

## REAL PROPERTY PURCHASE AGREEMENT

**THIS REAL PROPERTY PURCHASE AGREEMENT** (this “Agreement”) is made and entered into by and between the **CITY OF SANTAQUIN, UTAH**, a municipality of the state of Utah (“Seller”) and **STRATTON ACRES, L.L.C.**, a Utah limited liability company (“Buyer”) as of the date Seller and Buyer execute this Agreement as provided on the signature page. Seller and Buyer are herein sometimes referred to individually as a “Party” and collectively as the “Parties.” The transactions contemplated by this Agreement are herein sometimes collectively referred to as the “Transaction.”

### RECITALS

WHEREAS, the City of Santaquin, Utah obtained certain real property via a “Dedication Deed” recorded by Utah County Recorder on April 4, 2002, as Entry 39873:2008, comprising approximately six hundred and twenty-four square feet (“the Property”), which is more particularly described in Exhibit A attached hereto; and

WHEREAS, on January 4, 2022, the Santaquin City Council found the Property would not be used for the construction of public infrastructure and declared the Property to be Surplus; and

WHEREAS, Buyer desires to purchase Seller’s interest in the Property and the Santaquin City Council has determined that the sale of the Property to Buyer will best serve the interests of the City and its residents; and

WHEREAS, the Parties desire now to enter into this agreement to accomplish Buyer’s purchase of Seller’s interest in the Property.

**NOW THEREFORE**, the Parties hereto agree as follows:

**1. Property Purchase.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions contained herein, the Property, together with all improvements and appurtenances (if any), and any oil, gas and mineral rights owned by Seller (if any).

**2. Purchase Price.** The Purchase Price for the Property is One Thousand Dollars (\$1,000.00).

**3. Property Condition to be “As Is.”** Subject to the terms and conditions contained in this Agreement, Buyer agrees to take the Property “as is” regarding its physical condition without reliance upon any opinion or statement of the Seller, or any of its representatives. Seller makes no covenant or warranty regarding the condition of the soil or subsoil or any other condition of the land, or as to the status of any governmental restrictions.

**4. Closing.** This Transaction shall be closed at the offices of Seller or at any other place as the Parties may agree on or before September 30, 2022. "Closing" shall occur when Seller and Buyer have made all of their respective deliveries described below, to-wit:

**a. Seller's Closing Deliveries.** Seller shall deliver to Buyer:

(i) a quit-claim deed (the "Deed"), fully executed and properly acknowledged by Seller, conveying Seller's interest in the Property to Buyer;

(ii) written evidence that all state and local property taxes have been paid in full; and

(iii) any other funds, instruments or documents as may be reasonably requested by Buyer or reasonably necessary to effect or carry out the purposes of this Agreement (which funds, instruments or documents are subject to Seller's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed).

**b. Buyer's Closing Deliveries.** Buyer shall deliver to Seller:

(i) the Purchase Price (payable to Seller); and

(ii) any other funds, instruments or documents as may be reasonably requested by Seller, or reasonably necessary to effect or carry out the purposes of this Agreement (which funds, instruments or documents are subject to Buyer's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed).

**5. Closing Costs and Prorations.**

**a.** Seller and Buyer shall each pay their own legal expenses in connection with this Transaction.

**b.** Buyer shall pay any and all costs associated with title insurance regarding the Property. Unless otherwise agreed by the Parties in writing, Buyer shall pay all other closing costs.

**6. Possession.** Unless otherwise agreed in writing by the Parties, Seller shall deliver possession of the Property to Buyer upon Closing.

**7. Conveyance; Title Insurance.** As required by paragraph 4.a.(i), Seller shall convey to Buyer, by quit-claim deed, all of its right, title, and interest to the Property. As provided in subparagraph 5.b. above, Buyer may acquire a current standard coverage owner's policy of title insurance. Seller agrees to cooperate with Buyer as necessary to obtain a title insurance commitment on the Property; however, all costs associated with title insurance, including but not limited to the policy premium will be paid by Buyer,

**8. Buyers Right to Cancel.** Buyer's obligation to purchase under this Agreement is conditioned upon Buyer's approval of the content of all of the Seller's Disclosures referred to in paragraph 4. a. above, Buyer's satisfactory completion of such evaluations and inspections as

Buyer may deem reasonably necessary in its sole and absolute discretion (“the Approvals”). The Approvals shall be sought and conducted by persons selected by Buyer, and Buyer shall pay all costs in connection with the Approvals. If any of the Approvals have not been obtained or occurred at or prior to Closing, Buyer may either waive the same and proceed to Closing or cancel this Agreement.

**9. Seller’s Representations, Warranties and Covenants.** Seller represents, warrants, and covenants to Buyer that:

**a.** Seller has full power and authority to enter into this Agreement and complete this Transaction.

**b.** Except as otherwise disclosed herein, Seller is unaware of any unrecorded agreements, leases, liens, or encumbrances that may affect title to the Property to which Seller is a party or of which Seller has knowledge.

**c.** Upon Seller’s execution of this Agreement, it will be binding and enforceable against Seller in accordance with its terms, and upon Seller’s execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against Seller in accordance with their terms.

**d.** Subject to the foregoing, neither the execution and delivery of this Agreement, nor the consummation of this Transaction will constitute a breach under any contract or agreement to which Seller is a party or by which Seller is bound that affects the Property or any part thereof.

**e.** Seller has not entered into any agreement or contract with respect to the Property or granted any interest in the Property that is inconsistent with Seller’s obligation to convey to Buyer all of Seller’s right, title, and interest in the Property in accordance with the requirements of this Agreement. Except as otherwise provided herein, Seller shall not, prior to any termination of this Agreement and without Buyer's prior written consent, enter into or execute any easement, encumbrance, lease, or other agreement with respect to the Property, or execute, record or consent to any declaration of covenants, conditions and restrictions or other similar document with respect to the Property.

**f.** There are no suits, claims, proceedings, or investigations pending or, to Seller’s actual knowledge, threatened with respect to the Property or that will adversely affect Seller’s ability to meet its obligations under this Agreement.

**g.** Seller is not in default under the terms of any written agreement with a third party to which Seller is a party pertaining to the Property, nor has any event occurred that, with notice or passage of time, or both, would constitute a default by Seller under any such agreement, nor has Seller received notice of any default under any agreement or encumbrance to which the Property or any portion thereof is subject.

**h.** Neither the execution and the delivery of this Agreement nor the consummation of this Transaction is subject to any requirement that Seller obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party that has not been obtained or that, in any case or in the aggregate, if not obtained or made would render the execution, delivery or consummation illegal or invalid, or would constitute a default under this Agreement, or result in the creation of any lien, charge or encumbrance upon the Property.

The foregoing representations, warranties, and covenants shall be true, correct, and accurate on and as of the date of this Agreement and on and as of the date of Closing and shall survive the Closing for a period of twelve (12) months. Prior to Closing, should Seller inform Buyer or should Buyer become aware of facts or information which differs with any representation or warranty of Seller set forth in this Agreement, Seller's representation or warranty shall be deemed to have been modified accordingly. Should Buyer be aware of contrary facts and circumstances before the Closing, but elect to close, Buyer must be deemed to have waived the same. **AT THE CLOSING, BUYER SHALL ACCEPT TITLE TO THE PROPERTY, AND ACCEPT THE PROPERTY, AS IS, WHERE IS, WITH ALL FAULTS EXCLUDING ONLY THOSE WARRANTIES INHERENT WITHIN THE WARRANTY DEED BY WHICH SELLER WILL CONVEY TITLE TO THE PROPERTY TO BUYER AND REPRESENTATIONS, WARRANTIES AND COVENANTS EXPRESSED IN THIS AGREEMENT, TO THE EXTENT THEY SURVIVE THE CLOSING.**

**10. Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that:

**a.** Buyer is a validly existing limited liability company of the state of Utah, organized and existing pursuant to the provisions of Utah law, and has full power and authority to enter into this Agreement and complete this Transaction.

**b.** This Agreement will be binding and enforceable against Buyer in accordance with its terms, and upon Buyer's execution of the additional documents contemplated by this Agreement, those terms and conditions and additional documents will be binding and enforceable against Buyer in accordance with their terms.

The foregoing representations and warranties shall be true, correct, and accurate on and as of the date of this Agreement and on and as of the Closing date. All representations, warranties, and covenants by Buyer set forth in this Agreement will survive the consummation of this Agreement, the delivery and recordation of the Deed and the Closing of this Transaction.

**11. Broker's Commissions.** Seller and Buyer warrant, each to the other, that they have not dealt with any finder, broker, or realtor in connection with this Transaction. Each Party shall and does hereby indemnify the other Party against, and agrees to hold such other Party harmless from, any claim, demand, or suit for any brokerage commission, finder's fee, or similar charge with respect to the execution of this Agreement or this Transaction based on any act by or agreement or contract with the indemnifying Party, and for all losses, obligations, costs,

expenses, and fees (including attorneys' fees) incurred by the other Party on account of or arising from any such claim, demand, or suit.

**12. Risk of Loss.** The risk of loss will be upon Buyer. Seller shall not be responsible to protect the Property from loss, damage, or deterioration prior to or after Closing.

**13. Default and Remedies.**

**a. Seller Default.** If Seller shall have failed to close escrow and sell its interest in the Property to Buyer on the terms and provisions contained herein within the time for performance as specified herein or otherwise breaches any Seller obligation under the terms of this Agreement, Buyer's sole remedy shall be to seek specific performance of this Agreement.

**b. Buyer Default.** If the closing fails to occur as a result of Buyer's default in its obligation to close the purchase of the Property as provided in this Agreement, Buyer shall deliver possession of the Property to Seller within thirty (30) days of the date by which Closing was to have occurred. **THE PARTIES HERETO EXPRESSLY AGREE AND ACKNOWLEDGE THAT IN THE EVENT OF A DEFAULT BY BUYER IN ITS OBLIGATION TO CLOSE THE PURCHASE OF THE REAL PROPERTY ON THE CLOSING DATE, SELLER SHALL BE ENTITLED TO POSSESSION OF THE PROPERTY, AND ALSO TO RECOVER ITS COSTS AND DAMAGES ASSOCIATED WITH THE TRANSACTION, INCLUDING REASONABLE ATTORNEYS' FEES.**

**14. Entire Agreement; Amendments.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements, and agreements, whether oral or written and whether made by a Party hereto or by any one acting on behalf of a Party, shall be deemed to be merged in this Agreement and shall be of no further force or effect. No amendment, modification, or change in this Agreement shall be valid or binding unless reduced to writing and signed by the Parties hereto.

**15. Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind, or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including reasonable attorneys' fees, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees, and/or expenses are incurred in connection with any bankruptcy proceeding.

**16. Notices.** Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight courier service, confirmed facsimile, or United States certified or registered mail, return receipt requested, postage prepaid, addressed to Seller or Buyer as follows (or at another address or facsimile number as Seller or Buyer or the person receiving copies may designate in writing):

Seller: Santaquin City  
Attention: City Manager  
275 West Main Street  
Santaquin, Utah 84655

With a copy to: Nielsen & Senior, P.C.  
Attention: Brett B. Rich  
1145 South 800 East, Suite 110  
Orem, Utah 84097

Buyer: Stratton Acres, L.L.C.  
Attn: Andy Flamm, Manager  
847 E. Draper Meadow Lane  
Draper, UT 84020

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, on the date of delivery to the overnight courier service, if that service is used, and on the date of deposit in the mail, if mailed. Notice is deemed to have been received on the date on which the notice is actually received, or delivery is refused.

**17. Survival.** Except as otherwise provided herein, all of the covenants, agreements, representations, and warranties set forth in this Agreement survive the Closing, and do not merge into any deed, assignment, or other instrument executed or delivered under this Agreement.

**18. Waiver.** The failure to enforce at any time any provision of this Agreement or to require the performance of any provision hereof shall not constitute a waiver of any such provision or affect either the validity of this Agreement or any part hereof or the right of either Party hereto to thereafter enforce each and every provision of this Agreement in accordance with the terms of this Agreement.

**19. Time of Essence; Dates of Performance.** Time is expressly declared to be of the essence of this Agreement. In the event that any date for performance by either Party of any obligation hereunder required to be performed by such Party falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be deemed extended until the next business day following such date.

**20. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all such counterparts, when taken together, shall be deemed to constitute one instrument.

**21. Electronic Transmission.** Electronic transmission of this Agreement, signed by a Party, and retransmission of any signed electronic transmission, shall be the same as delivery of an original hereof.

**22. Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

Any third party acquiring an interest in the Property after the Closing shall be a permitted assignee of Buyer and any third party obtaining an interest in the Property prior to Closing shall be a permitted assignee of Seller. Otherwise, neither Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party.

**23. Further Acts.** The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.

**24. Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah.

**25. Submission to Jurisdiction.** Each of the Parties submits to the jurisdiction of the Fourth Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Each Party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity.

**26. Interpretation.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement. This Agreement has been divided into paragraphs and subparagraphs for convenience only and the paragraph headings contained herein are for purposes of reference only, which shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine, and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof.

**27. Authority of Signers.** Each person executing this Agreement hereby warrants his or her authority to do so, on behalf of the entity for which he or she signs, and to bind such entity.

**IN WITNESS WHEREOF**, the Parties have executed this Real Property Purchase Agreement on the dates set forth opposite their respective names below.

**SELLER:**

**SANTAQUIN CITY**

**DATE:** \_\_\_\_\_, 2022.

\_\_\_\_\_  
DANIEL M. OLSON, Mayor

**ATTEST:**

\_\_\_\_\_  
AMALIE R. OTTLEY, City Recorder

**BUYER:**

**STRATTON ACRES, L.L.C.**

**DATE:** \_\_\_\_\_, 2022.

\_\_\_\_\_  
ANDY FLAMM, Manager



## **EXHIBIT "A"**

### **DESCRIPTION OF THE PROPERTY**

BEGINNING AT A POINT LOCATED NORTH 89° 32' 33" EAST ALONG THE QUARTER CORNER SECTION LINE 1,136.25 FEET FROM THE WEST 1/4 CORNER OF SECTION 36, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE NORTH 1°41'33" EAST 17.18 FEET; THEN ALONG THE ARC OF A 790 FOOT RADIUS CURVE (RADIUS BEARS NORTH 14°48'36" EAST) 80.27 FEET THROUGH A CENTRAL ANGLE OF 5°49'18" (CHORD: SOUTH 78°06'03" EAST 80.23 FEET) TO SAID QUARTER SECTION LINE; THENCE SOUTH 89°32'33" W 79.02 FEET TO THE POINT OF BEGINING.

Contains ±624 sq. ft.

