

RESOLUTION NO. _____

DATE _____

A RESOLUTION OF THE SALT LAKE COUNTY COUNCIL AUTHORIZING
THE PURCHASE OF A 138 ACRE PARCEL OF LAND FROM RAIN CLOUDS,
LLC AND SHAW PROPERTIES, LLC

RECITALS

A. Rain Clouds, LLC as to an undivided one-half (1/2) interest and Shaw Properties, LLC as to an undivided one-half (1/2) interest (the “Owners”), own or will own a parcel of real property located at approximately 3885 Millcreek Canyon Road, Millcreek, Utah, identified as Parcel No. 16-36-200-003 (the “Property”).

B. Salt Lake County (“County”) desires to purchase the Property, consisting of approximately 139 acres, for \$1,250,000.00, which has been determined to be a fair market value by the Salt Lake County Real Estate Section. The Property is proposed to be used for open space.

C. The County will be acquiring the Property with the assistance of a grant obtained by Millcreek from the Utah Office of Outdoor Recreation. Closing is conditioned on securing an agreement with Millcreek to use the proceeds of the grant to purchase the Property.

D. The terms and conditions for the acquisition of the Property are contained in the Real Estate Purchase Contract, attached hereto as Exhibit A.

E. It has been determined that the best interests of the County and the general public will be served by paying the Owners \$1,250,000.00 for the Property under the terms and conditions of the attached Real Estate Purchase Contract. The execution of the Real Estate Purchase Contract will be in compliance with all applicable state statutes and county ordinances.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Salt Lake County Council that the attached Real Estate Purchase Contract is accepted and approved, and the Council

ratifies and otherwise authorizes the Mayor to execute the Real Estate Purchase Contract and sign all other documents necessary to close the purchase on behalf of Salt Lake County.

APPROVED and ADOPTED this _____ day of _____, 2021.

SALT LAKE COUNTY COUNCIL

By: _____
Steve DeBry, Chair

ATTEST:

Sherrie Swensen
Salt Lake County Clerk

Council Member Alvord voting	_____
Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member DeBry voting	_____
Council Member Granato voting	_____
Council Member Winder-Newton voting	_____
Council Member Snelgrove voting	_____
Council Member Stringham voting	_____
Council Member Theodore voting	_____

APPROVED AS TO FORM:

R. Christopher Preston
Deputy District Attorney

EXHIBIT A
(Real Estate Purchase Contract)

REAL ESTATE PURCHASE CONTRACT

OFFER TO PURCHASE

The Buyer, SALT LAKE COUNTY, a body corporate and politic of the State of Utah, offers to purchase the Property described below from the Sellers, Rain Clouds, LLC as to an undivided one-half (1/2) interest and Shaw Properties, LLC as to an undivided one-half (1/2) interest, on the terms and conditions contained herein.

1. PROPERTY: Parcel No. 16-36-200-003. Common Address 3885 Millcreek Canyon Road, Millcreek, Utah. For legal description, see Exhibit A (hereinafter, the "Property").

1.1 INCLUDED ITEMS: Unless excluded herein, this sale shall include all buildings and fixtures presently attached to the property. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: none.

1.2 EXCLUDED ITEMS: These items are excluded from this sale: none.

2. PURCHASE PRICE: the purchase price shall be \$1,250,000.00, which shall be payable as follows: \$100,000.00 Earnest Money Deposit shall be deposited with Inwest Title, 444 East Tabernacle, Suite B202, St. George, Utah 84770 (the "Title Company") within five (5) business days of the Acceptance Date (defined below), and the balance of \$1,150,000.00 shall be payable at Closing. Unless this Agreement is terminated as provided in Sections 9 or 13 or the Sellers are otherwise in default, the Earnest Money Deposit shall become non-refundable upon the expiration of the Due Diligence Period (defined below).

3. CLOSING: This transaction shall be closed on or before 30 days after the end of the Due Diligence Period. Closing shall occur when Buyer and Sellers have (a) signed and delivered to each other (or to the escrow/title company), all documents required by this contract, by written escrow instructions, and by applicable law, (b) Buyer has approved all items referenced under Sections 7 and 8, and has removed all contingencies referenced in Section 9, and (c) the monies required to be paid under these documents have been delivered to the escrow/title company in the form of cashier's check, collected or cleared funds. The Parties shall share the costs associated with the escrow closing fee unless otherwise agreed by the parties in writing. All pro-rations, particularly of real estate property taxes, shall be made as of the date of closing. Buyer anticipates working with Millcreek City to use a grant from the Utah Office of Outdoor Recreation (the "Grant") to assist with the purchase of the Property. Closing is contingent upon Buyer obtaining a commitment from Millcreek City to use the Grant proceeds for the purchase of the Property.

4. POSSESSION: Sellers shall deliver possession of the Property to Buyer at the time of the closing.

5. AGENCY DISCLOSURE: By signing this contract, Sellers represent and warrant that it is not represented by a real estate broker and Buyer is not obligated to pay any real estate commission in this transaction. Neither Buyer nor any of Buyer's officers, agents, or employees has employed any brokers, finders or other intermediaries, or incurred any liability for any brokerage fees, finder's fees, commissions or other amounts, with respect to the transaction contemplated by this Agreement, which liabilities can be asserted against Sellers or the Property, or require payment by Sellers.

6. TITLE TO PROPERTY AND TITLE INSURANCE: (a) Sellers have, or shall have at closing, fee simple title to the Property, and agree to convey such title to Buyer by warranty deed, free of financial encumbrances. (b) Buyer agrees to pay for a current title report within ten (10) days of execution of this contract, and, if Buyer determines in its own discretion to acquire a current standard form policy of title insurance in the amount of the purchase price, it shall do so at its own expense. All costs associated with obtaining the title report and title insurance, if any, shall be paid for by Buyer.

7. SELLER DISCLOSURES: No later than 15 calendar days after Sellers' acceptance, Sellers will deliver to Buyer the following Sellers disclosures: (a) a Seller Property Condition Disclosure ("Seller Disclosures") for the Property, signed and dated by the Sellers; (b) copies of all loan documents, leases, rental agreements, liens, and other financial encumbrances against the Property; (c) copies of any environmental assessments, reports, site plans, or other documents which may materially affect the Buyer's interest in the Property.

8. BUYER UNDERTAKINGS: Buyer may undertake the following elements at its own expense and for its own benefit for the purpose of complying with the contingencies under Section 9: ordering and obtaining (a) an appraisal of the Property, (b) a survey of the Property, (c) an environmental study of the Property, (d) a physical inspection of the Property, (e) a report on compliance with all applicable federal, state, and local law, ordinances,

and regulations with regard to zoning and permissible uses of the Property. Sellers agree to fully cooperate with Buyer's completion of these matters, and to make the Property available as reasonable and necessary for the same.

9. CONTINGENCIES: This offer is subject to the Buyer's approving in its sole discretion the contents of the title report referenced in Section 6, the Seller Disclosures in Section 7, and the results of the appraisal, survey, environmental study, and report referenced in Buyer Undertakings in Section 8. Buyer shall have until November 15, 2021 ("Due Diligence Period"), to approve Seller Disclosures, to complete Buyer Undertakings, and to remove the contingencies referenced in this Section 9. During the Due Diligence Period, Buyer will also be working with Millcreek City to secure the Grant funding to apply toward the payment at Closing. Buyer may request a 30-day extension of the Due Diligence Period in order to secure the Grant funding. If Buyer, in Buyer's sole discretion, is not satisfied with the results of any one of the Contingencies referenced herein or if Sellers refuse Buyer's request to extend the Due Diligence Period, Buyer may cancel this agreement at any time by providing written notice to the Sellers, or the parties may elect to sign a mutually agreeable addendum to remedy the Contingency deficiencies. Upon written notice of termination during the Due Diligence Period, the Earnest Money Deposit in its entirety shall be refunded to Buyer.

10. ADDENDUM: The terms of attached Addendum # ___ are incorporated into this contract by this reference.

11. SELLER'S WARRANTIES: Regarding the condition of the Property, Sellers warrant to Buyer the following:

11.1 When Sellers deliver possession of the Property to Buyer, it will be free of Sellers' personal belongings.

11.2 Within 15 days of executing this agreement, Sellers will disclose all claims and/or notices of any environmental, building, or zoning code violations regarding the Property which have not been resolved.

11.3 Any private well or septic tank on the Property, whether working or not, is in compliance with all governmental regulations.

11.4 Sellers have complied with all applicable laws, ordinances, regulations, statutes and rules relating to the Property or any part thereof.

11.5 There has been no storage, production, transportation, disposal, treatment or release of any solid waste, hazardous waste, hazardous substance, toxic substance, or any other pollutants or contaminants on or in the Property. If inspection results in a determination that pollutants or contaminants exist on the property, Sellers may elect to remediate the property or reduce the Purchase Price to compensate Buyer for any required remediation. If Sellers choose to do neither of the foregoing, Buyer may terminate this Agreement without penalty.

11.6 Sellers agree that after executing this agreement it will not enter into any written contracts, agreements, amendments, encumbrances, or listings, or be a party to any oral understandings or agreements affecting the Property, which may become binding upon Buyer.

12. CHANGES DURING TRANSACTION: Sellers agree that no changes to any existing leases shall be made, no new leases entered into, and no alterations or improvements to the Property shall be made or undertaken without the written consent of the Buyer.

13. AUTHORITY OF SIGNERS: If either of Sellers is a corporation, partnership, trust, estate, or other entity, the person executing this contract on its behalf warrants his or her authority to do so and to bind the respective Seller. The Buyer, Salt Lake County, is a body corporate and politic of the State of Utah. The signature of the Salt Lake County Mayor, pursuant to a resolution of the Salt Lake County Council, is required in order to bind the Buyer. In the event an authorized representative of the Salt Lake County Real Estate Division first executes this agreement, this agreement is subject to ratification by the County Council and to execution by the Mayor. If the County Council decides, in its sole discretion, not to fund performance of Buyer under this agreement, Buyer shall promptly notify Sellers of said non-funding and Buyer's termination of this Agreement. If the Buyer terminates this Agreement due to non-funding, Buyer shall not incur any penalty.

14. COMPLETE CONTRACT: This instrument, together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire contract between the parties, and supersedes and replaces any and all prior negotiations, representations, warranties, understandings, or contracts between the parties. This contract cannot be changed except by written agreement of the parties.

15. GRAMA. Sellers acknowledge that this Agreement and other documents are subject to public disclosure by Buyer upon approval and ratification of this Agreement by the County Council pursuant to the Utah Government Records Access Management Act ("GRAMA"), Utah Code Ann. §§ 63G-2-101, *et seq.* If Sellers deem any documents or portions of documents to be proprietary and protected, Sellers must make those designations in

accordance with GRAMA. Disclosure of any documents or portions of documents designated as proprietary by Sellers will be pursuant to GRAMA and at the sole discretion of Buyer.

16. ETHICAL STANDARDS Sellers represent that they have not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

17. CAMPAIGN CONTRIBUTIONS: Sellers acknowledge the prohibition of campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances, 2001. Sellers also acknowledge and understand this prohibition means that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with Buyer maybe prohibited from making certain campaign contributions to County candidates. Sellers further acknowledge that violation of this prohibition may result in criminal sanctions as well as termination of this Agreement. Sellers represent, by executing this Agreement, that Sellers have not made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

18. ABROGATION: The warranties and provisions made in this contract shall survive closing and conveyance of title to Buyer, notwithstanding the merger doctrine or any other rule or law to the contrary.

19. RISK OF LOSS: All risk of loss or damage to the Property shall be borne by Sellers until closing.

20. TIME IS OF THE ESSENCE: Time is of the essence regarding the dates set forth in this transaction. Any extension of the times or dates in this agreement must be agreed to in writing and executed by all parties.

21. ELECTRONIC TRANSMISSION AND COUNTERPARTS: Electronic transmission (including email and fax) of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of an original. If the transaction involves multiple Buyers or Sellers, electronic transmissions may be executed in counterparts.

22. ACCEPTANCE: Acceptance occurs when Sellers or Buyer, responding to an offer or counter offer of the other: (a) sign the offer or counter offer where noted to indicate acceptance, and (b) communicate to the other party or the other party's agent that the offer or counter offer has been signed as required. The "Acceptance Date" shall be the date on which the last of Buyer and Sellers execute this Agreement.

23. CONTRACT DEADLINES. Buyer and Sellers agree that the following deadlines shall apply to the Agreement.

(a) Seller Disclosure Deadline 15 calendar days from the Acceptance Date

(b) Due Diligence Period Until November 15, 2021

(c) Closing Deadline Within 30 days after the end of the Due Diligence Period.

24. OFFER AND TIME FOR ACCEPTANCE: Buyer offers to purchase the Property on the above terms and conditions. If Sellers do not accept this offer by ____ () AM () PM Mountain Time _____, 2021, this offer shall lapse.

Exhibit Only - Do Not Sign

(Buyer's Signature)
Real Estate Division

(Offer Date)

Notice Address: Salt Lake County Real Estate Division
2001 South State Street, #S3-110
Salt Lake City, Utah 84114-4575
Phone: 385-468-0341

Salt Lake County Mayor or Designee

Date

APPROVED AS TO FORM

Salt Lake County
District Attorney's Office



ACCEPTANCE

Sellers accept the foregoing offer on the terms and conditions specified above. Notice Address:

Rain Clouds, LLC

By: Shane Brinkerhoff

(Date)

(Time)

Its: _____

Shaw Properties, LLC

By Bryan Shaw

(Date)

(Time)

Its: _____

REJECTION / COUNTER OFFER

CHECK ONE:

Sellers () **REJECT** the foregoing offer.

Sellers () Present for Buyer's acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached **COUNTER OFFER #** _____.

Rain Clouds, LLC

By: Shane Brinkerhoff

(Date)

(Time)

Its: _____

Shaw Properties, LLC

By Bryan Shaw

(Date)

(Time)

Its: _____

Exhibit A
(Legal Description)

COMMENCING IN THE CENTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 160 RODS, THENCE EAST 160 RODS, THENCE SOUTH 1940 FEET, THENCE SOUTHWESTERLY TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION OF SUBJECT PROPERTY AS DISCLOSED ON THAT CERTAIN QUIT CLAIM DEED RECORDED SEPTEMBER 14, 1973 AS ENTRY NO. 2569299, IN BOOK 3418, AT PAGE 350, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTER OF SECTION LINE OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING SOUTH 2418.81 FEET AND EAST 2640.0 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 36 AND RUNNING THENCE SOUTH 55°31', EAST 58.66 FEET; THENCE SOUTH 34°29" WEST 85.40 FEET TO A POINT ON SAID CENTER OF SECTION LINE; THENCE NORTH TO THE POINT OF BEGINNING.