

## SETTLEMENT AGREEMENT

This settlement agreement (“**Agreement**”) is entered into as of the Effective Date by Tooele County, a political subdivision of the State of Utah (“**County**”); the Redevelopment Agency of Tooele County, a community reinvestment agency organized by the County and functioning under Title 17C of the Utah Code (“**RDA**”); Center Point Management, LLC, a Wyoming limited liability company (“**Center Point**”); Bonneville Salt Lake Raceway, LLC, a Utah limited liability company (“**Bonneville**”); Andrew Cartwright, an individual (“**Cartwright**”); and Mark Bensen, an individual (“**Bensen**”). The County and the RDA are collectively referred to herein as the “**County Entities**.” Center Point, Bonneville, Cartwright, and Bensen are collectively referred to herein as the “**Center Point Entities**.”

### RECITALS

- A. The County is the owner of the Property, as defined below.
- B. The County, after publishing notice and holding a public hearing as required by state and local law, sold the Property to the RDA;
- C. Center Point filed suit against the County and the RDA, seeking, *inter alia*, to invalidate the Property’s sale to the RDA;
- D. The Court entered an order setting aside the County’s sale of the Property to the RDA;
- E. The other claims Center Point has raised in its suit against the County, the RDA, and other as-yet unidentified parties remain outstanding;
- F. Center Point has indicated that it intended to assign the Property to Bonneville;
- G. Cartwright and Bensen are affiliated with Center Point and Bonneville; and
- H. After much consideration by the Parties of the strengths and weaknesses of their respective positions, their objectives, and the costs and time that will be spent in continuing litigation, the Parties have decided to settle their disputes on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and provisions set forth hereafter, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### AGREEMENT TERMS

- 1. **Definitions.** As used herein, the following terms have the following meanings:
  - a. “**Agreement**” has the meaning set forth in the preamble.

- b. **“Bonneville”** has the meaning set forth in the preamble.
- c. **“Center Point”** has the meaning set forth in the preamble.
- d. **“Center Point Parties”** has the meaning set forth in Paragraph 3 of this Agreement.
- e. **“County”** has the meaning set forth in the preamble.
- f. **“Court”** means the Utah Third District Court, Salt Lake City Department, where the Suit is filed.
- g. **“Effective Date”** is the date the last signatory executes this Agreement.
- h. **“Escrow Agent”** is Goebel Anderson PC.
- i. **“Escrow Agreement”** is that agreement attached as Exhibit 2 to this Agreement.
- j. **“Parties”** is the plural of Party as used in this Agreement and, unless otherwise stated, includes every Party.
- k. **“Party”** means a signatory to this Agreement.
- l. **“Prior Suit”** means *Center Point Management, LLC v. Tooele County*, case no. 150301347, Utah Third District Court, Tooele County, Tooele City Department.
- m. **“Property”** is what is called the Utah Motorsports Campus, located at 2901 Sheep Lane in Grantsville, Utah and consists of 512.46 acres of land, together with improvements, more particularly described as: Lot 1, Deseret Peak PUD Phase 5, a planned unit development of Tooele County, according to the official plat thereof on file and recorded December 6, 2006 as Entry No. 273563 in the Office of the Tooele County Recorder.
- n. **“RDA”** has the meaning set forth in the preamble.
- o. **“Released Center Point Entities”** has the meaning set forth in Subparagraph 5(b) of this Agreement.
- p. **“Released County Entities”** has the meaning set forth in Subparagraph 5(a) of this Agreement.
- q. **“Settlement Amount”** is \$1,550,000.00.
- r. **“Suit”** means *Center Point v. Tooele County*, case no. 160906120, Utah Third District Court, Salt Lake County, Salt Lake City Department.

//

2. **Dismissal and Payment.**

a. Upon this Agreement's Effective Date, the Parties shall forthwith file in the Suit a stipulated motion to dismiss with prejudice, each Party to bear its own costs and fees, in the form attached hereto as Exhibit 1.

b. Upon this Agreement's Effective Date, the County shall pay into escrow overseen by Goebel Anderson PC ("**Escrow Agent**") the sum of \$1,550,000.00 ("**Settlement Amount**"). Such escrow shall be governed by a separate escrow agreement ("**Escrow Agreement**") in the form attached hereto as Exhibit 2.

c. Upon the entry of the order dismissing the Suit with prejudice, the Escrow Agent shall immediately release and pay to legal counsel for the Center Point Entities, Carman Lehnhof Israelsen LLP, \$775,000.00 of the Settlement Amount from the escrow by wire transfer.

d. Upon the earlier of (i) the County's or the RDA's sale or other transfer of the Property to a third party that is not a signatory to this Agreement or (ii) March 31, 2018, the Escrow Agent shall immediately release and pay to legal counsel for the Center Point Entities, Carman Lehnhof Israelsen LLP, the remaining Settlement Amount (i.e., \$775,000.00) from the escrow by wire transfer.

e. In the event the Court denies the stipulated motion to dismiss with prejudice described above, this Agreement shall be void, and none of the Parties shall remain bound by the promises, agreements, representations, warranties, or releases made in this Agreement. The parties agree to, in that event, enter into further discussions regarding a possible resolution of their dispute.

3. **Promise Not to Interfere.**

a. The Center Point Entities represent that they, collectively and individually, no longer desire to purchase the Property and have no intention of attempting to purchase or otherwise participating in the purchase or bid to purchase the Property if the County or the RDA offer the Property for public sale.

b. The Center Point Entities, either individually, collectively, or in any combination among themselves or with a third party or third parties (as a member, manager, officer, director, principal, owner, representative, agent, broker, or stake holder of or for such third party or third parties) ("**Center Point Parties**") shall not, either directly or indirectly, interfere with the County's or the RDA's sale of the Property by (i) making a legal objection or challenge in court to the sale of the Property, or (ii) otherwise actively challenging or contesting the sale of the Property in any way.

4. **Forfeit.** If any of the Center Point Parties engage in any of the conduct set forth in Subparagraph 3(b) above, or if they or any one or any combination of them forsake the representations in Subparagraph 3(a) above and decide instead to attempt to purchase or otherwise participate in the purchase or bid to purchase the Property if the County or the RDA offer the Property for public sale, the Center Point Entities shall forfeit any payment remaining to be made to the Center Point Entities under this Agreement and jointly and severally agree to return forthwith

any payments already made to the Center Point Entities under this Agreement, plus apportioned interest accruing at a rate of ten percent per year.

5. **Mutual Release of All Claims.**

a. *Release of County Entities.* In exchange for the receipt of this Agreement and the benefits conferred herein, Center Point, Bonneville, Cartwright, and Bensen, on their own behalf and on behalf of their respective agents, assignees, attorneys, directors, employees, managers, members, officers, owners, predecessors, protectors, representatives, subsidiaries, and successors, hereby irrevocably and unconditionally waive, release, and forever discharge the County Entities, as well as their respective agents, assignees, attorneys, employees, managers, officers, predecessors, representatives, subsidiaries, and successors (collectively, the “**Released County Entities**”), from all manner of claims of any nature whatsoever, regardless whether now known or unknown or whether now ripe or unripe, excepting only the Parties’ obligations created pursuant to and identified in this Agreement, that they or any one of them may have against the Released County Entities related to the Suit or the Prior Suit, including the claims asserted or that could have been asserted therein.

b. *Release of Center Point Entities.* In exchange for the receipt of this Agreement and the benefits conferred herein, the County Entities, on their own behalf and on behalf of their respective agents, assignees, attorneys, employees, managers, officers, predecessors, representatives, subsidiaries, and successors, hereby irrevocably and unconditionally waive, release, and forever discharge Center Point, Bonneville, Cartwright, and Bensen, as well as their respective agents, assignees, attorneys, directors, employees, managers, members, officers, owners, predecessors, protectors, representatives, subsidiaries, and successors (collectively, the “**Released Center Point Entities**”), from all manner of claims of any nature whatsoever, regardless whether now known or unknown or whether ripe or unripe, excepting only the Parties’ obligations created pursuant to and identified in this Agreement, that they or any one of them may have against the Released Center Point Entities related to the Suit or the Prior Suit, including the claims asserted or that could have been asserted therein.

6. **Indemnification and Defense.** To the fullest extent permitted by law, and in addition to all other obligations undertaken in this Agreement, the Center Point Entities shall fully indemnify, hold harmless, and defend the Released County Entities from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorneys’ fees and costs), whether or not involving a third-party claim, which arise out of or relate to (1) any breach of any representation or warranty of the Center Point Entities contained in this Agreement, (2) any breach or violation of any covenant or other obligation or duty of the Center Point Entities under this Agreement or under applicable law, (3) any bids or offers for the Property made by Center Point, or (4) the claims asserted by Center Point or that could have been asserted by any of the Center Point Entities in the Suit or the Prior Suit, in each case regardless whether the relevant claim has merit.

7. **Attorney Fees.** In the event that any action is taken by any Party to enforce or construe this Agreement, the prevailing party in such action shall be awarded all its reasonable costs and legal expenses, including attorney fees, incurred in such action.

8. **Forum.** In the event that any action is taken by any Party to enforce or construe this Agreement, such action shall exclusively be taken in the Utah Third District Court, Salt Lake City or Tooele City Departments, or a federal court in Utah with jurisdiction.

9. **Applicable Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

10. **Construction.** This Agreement has been jointly prepared by the Parties hereto, and shall be construed accordingly, not strictly for or against any Party. Legal counsel for each Party has had an opportunity to review and revise this Agreement, and each Party is voluntarily entering into it. In the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document shall not apply. Captions used for sections of this Agreement are included for convenience only and shall not affect the meaning of the respective sections.

11. **Integration.** This Agreement, together with any attached exhibits, constitutes the entire agreement of the Parties and supersedes all previous and contemporaneous conversations, contracts, correspondence, and documentation relating to its subject matter.

12. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be held invalid or prohibited under applicable law by a court of competent jurisdiction, such provision shall be ineffective, but, insofar as it is an immaterial term, shall not render ineffective the remaining provisions of this Agreement. If any material provision of this Agreement is held invalid, void, or unenforceable by a court of competent jurisdiction or if consideration is removed or destroyed by an order of such a court, each Party shall have the right in its sole and absolute discretion to terminate this Agreement by providing written notice of such termination to the other Parties.

13. **Waiver.** No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

14. **Modification.** A modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by all Parties hereto. Any oral representation or modification concerning this Agreement shall be of no force or effect.

15. **Assignment.** None of the duties, obligations, or responsibilities herein may be assigned, transferred, or delegated, in whole or in part, without the prior written approval of the other Parties.

16. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, legatees, representatives, successors, transferees, and assigns.

17. **No Third-party Beneficiaries.** This Agreement is not intended to create any rights in or obligations to any persons or parties other than the Parties hereto and their respective successors and assigns, and this Agreement may not be construed to benefit any third party.

18. **Further Assurances.** The Parties shall execute such additional documents and take such further actions as may reasonably be required to carry out each of the provisions and the intent of this Agreement.

19. **Representations and Warranties.** Each Party hereby represents and warrants to each other Party that the statements in this Agreement are true, complete, and not misleading as regards the representing Party as of the Effective Date. Each Party further represents and warrants to each other Party that it has not assigned, transferred, sold, or conveyed any of the rights or claims that are addressed in this Agreement, or the underlying litigation, to any person or entity who or which is not a Party to this Agreement.

20. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if hand delivered or mailed, postage prepaid, certified mail, return receipt requested or by overnight express mail (e.g., Federal Express):

a. If to the County Entities, to:

TOOELE COUNTY ATTORNEY  
Tooele County Attorney's Office  
74 South 100 East, Suite 26  
Tooele, Utah 84074

b. If to the Center Point Entities, to:

J. Martin Tate  
CARMAN LEHNHOF ISRAELSEN LLP  
299 S. Main Street, Suite 1300  
Salt Lake City, Utah 84111-2241

21. **Authority.** Each incorporated or otherwise organized Party hereby represents that it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation or other organization. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party.

22. **Counterparts.** This Agreement may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Facsimile signatures, including scans thereof, shall have the same force and effect as original signatures.

23. **Time.** Time is of the essence in the performance of all duties and obligations in this Agreement.

EXECUTED this 21 day of November, 2017.

TOOELE COUNTY

By: Wade B. Bitner  
Name: WADE B. BITNER  
Title: COMMISSION CHAIRMAN

EXECUTED this 21 day of November, 2017.

REDEVELOPMENT AGENCY OF TOOELE COUNTY

By: Shawn Milne  
Name: Shawn Milne  
Title: Chairman of the Board, RDA

EXECUTED this 8th day of November 2017.

CENTER POINT MANAGEMENT, LLC

DocuSigned by:  
By: Andrew Cartwright  
Name: Andrew Cartwright  
Title: Manager

EXECUTED this 8th day of November, 2017.

BONNEVILLE SALT LAKE RACEWAY, LLC

DocuSigned by:  
By: Andrew Cartwright  
Name: Andrew Cartwright  
Title: Manager

EXECUTED this 8th day of November, 2017.

DocuSigned by:  
Andrew Cartwright  
Andrew Cartwright

EXECUTED this 8th day of November, 2017.

DocuSigned by:  
Mark Bensen  
Mark Bensen

# **EXHIBIT 1**

## **FORM OF MOTION AND ORDER OF DISMISSAL**



Barton H. Kunz II (USB# 08827)  
GOEBEL ANDERSON PC  
405 South Main Street, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 441-9393  
bkunz@gapclaw.com

Scott A Broadhead (USB# 06501)  
TOOELE COUNTY ATTORNEY  
Tooele County Attorney's Office  
74 South 100 East, Suite 26  
Tooele, Utah 84074  
Telephone: (435) 843-3120  
Facsimile: (435) 843-3127  
sbroadhead@tooeleco.org

*Attorneys for Defendant Tooele County*

---

THE THIRD DISTRICT COURT – SALT LAKE CITY DEPARTMENT

SALT LAKE COUNTY, STATE OF UTAH

---

CENTER POINT MANAGEMENT,  
LLC, a Wyoming limited liability  
company,

Plaintiff,

vs.

TOOELE COUNTY *et al.*,

Defendants.

**STIPULATED MOTION TO DISMISS  
WITH PREJUDICE**

Case No. 160906120  
Judge Randall N. Skanchy

---

The parties, through their respective counsel and under Utah Rule of Civil Procedure 41, hereby jointly move the Court to dismiss this matter with prejudice. The parties have reached a settlement in this dispute. A proposed order, approved as to form, is filed herewith.

DATE: \_\_\_\_ November 2017.

GOEBEL ANDERSON PC

[DO NOT SIGN – EXHIBIT ONLY]

\_\_\_\_\_  
Barton H. Kunz II

DATE: \_\_\_\_ November 2017.

SMITH HARTVIGSEN, PLLC

[DO NOT SIGN – EXHIBIT ONLY]

\_\_\_\_\_  
J. Craig Smith

TOOELE COUNTY ATTORNEY  
Scott A Broadhead

*Attorneys for Defendant Tooele County*

Kathryn J. Steffey  
Adam S. Long  
*Attorneys for Defendant Redevelopment  
Agency of Tooele County*

DATE: \_\_\_\_ November 2017.

CARMEN LENHOF ISRAELSEN LLP

**[DO NOT SIGN – EXHIBIT ONLY]**

\_\_\_\_\_  
Dallis Nordstrom Rohde  
*Attorneys for Plaintiff Center Point  
Management, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ November 2017, I caused a true copy of the foregoing motion to be served upon the following by an electronic filing service:

*For plaintiff Center Point Management, LLC:*  
Dallis Nordstrom Rohde, dallis@clilaw.com

*For defendant Redevelopment Agency of Tooele County:*  
J. Craig Smith, jcsmith@shutah.law  
Kathryn J. Steffey, ksteffey@shutah.law  
Adam S. Long, along@shutah.law

**[DO NOT SIGN – EXHIBIT ONLY]**

\_\_\_\_\_  
Barton H. Kunz II  
*Attorney for Defendant Tooele County*

Prepared and submitted by:

Barton H. Kunz II (USB# 08827)  
GOEBEL ANDERSON PC  
405 South Main Street, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 441-9393  
bkunz@gapclaw.com

Scott A Broadhead (USB# 06501)  
TOOELE COUNTY ATTORNEY  
Tooele County Attorney's Office  
74 South 100 East, Suite 26  
Tooele, Utah 84074  
Telephone: (435) 843-3120  
Facsimile: (435) 843-3127  
sbroadhead@tooeleco.org

*Attorneys for Defendant Tooele County*

---

THE THIRD DISTRICT COURT – SALT LAKE CITY DEPARTMENT

SALT LAKE COUNTY, STATE OF UTAH

---

CENTER POINT MANAGEMENT,  
LLC, a Wyoming limited liability  
company,

Plaintiff,

vs.

TOOELE COUNTY *et al.*,

Defendants.

**ORDER OF DISMISSAL WITH  
PREJUDICE**

Case No. 160906120  
Judge Randall N. Skanchy

---

The Court, having considered the parties' Stipulated Motion to Dismiss with Prejudice, and good cause appearing therefor, hereby DISMISSES this action with prejudice, each party to bear its own costs and fees.

APPROVED AS TO FORM this \_\_\_\_\_  
November 2017.

GOEBEL ANDERSON PC

[DO NOT SIGN – EXHIBIT ONLY]

---

APPROVED AS TO FORM this \_\_\_\_\_  
November 2017.

SMITH HARTVIGSEN, PLLC

[DO NOT SIGN – EXHIBIT ONLY]

---

Barton H. Kunz II

TOOELE COUNTY ATTORNEY  
Scott A Broadhead

*Attorneys for Defendant Tooele County*

J. Craig Smith

Kathryn J. Steffey

Adam S. Long

*Attorneys for Defendant Redevelopment  
Agency of Tooele County*

APPROVED AS TO FORM this \_\_\_\_\_  
November 2017.

CARMEN LENHOF ISRAELSEN LLP

[DO NOT SIGN – EXHIBIT ONLY]

\_\_\_\_\_  
Dallis Nordstrom Rohde  
*Attorneys for Plaintiff Center Point  
Management, LLC*

#### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ November 2017, I caused a true copy of the foregoing proposed order to be served upon the following by an electronic filing service:

*For plaintiff Center Point Management, LLC:*  
Dallis Nordstrom Rohde, dallis@clilaw.com

*For defendant Redevelopment Agency of Tooele County:*  
J. Craig Smith, jcsmith@shutah.law  
Kathryn J. Steffey, ksteffey@shutah.law  
Adam S. Long, along@shutah.law

[DO NOT SIGN – EXHIBIT ONLY]

\_\_\_\_\_  
Barton H. Kunz II  
*Attorney for Defendant Tooele County*

## **EXHIBIT 2**

### FORM OF ESCROW AGREEMENT

## ESCROW AGREEMENT

This escrow agreement (“**Agreement**”) is made as of the Effective Date by Center Point Management, LLC, a Wyoming limited liability company; Bonneville Salt Lake Raceway, LLC, a Utah limited liability company; Andrew Cartwright, an individual; and Mark Bensen, an individual (collectively, “**Recipients**”) and Tooele County, a political subdivision of the State of Utah; and the Redevelopment Agency of Tooele County, a community reinvestment agency organized by the County and functioning under Title 17C of the Utah Code (collectively, “**Payors**”).

WHEREAS, the Recipients and Payors are parties to that Settlement Agreement between them dated \_\_\_\_ November 2017 (“**Settlement Agreement**”); and

WHEREAS, the Parties wish to establish and maintain this escrow in accordance with the terms and provisions of this Agreement;

NOW, THEREFORE, the Parties agree:

1. **Purpose.** This Agreement provides for the escrow of \$1,550,000.00 under the Settlement Agreement, as the funding for the payment described in Paragraph 2 of that Settlement Agreement. Subject to the terms of this Agreement, the Parties establish this escrow to ensure the Recipients’ and the Payors’ compliance with the terms, provisions, and conditions of their escrow agreement under the terms of the Settlement Agreement.

2. **Definitions.** As used herein, the following terms have the following meanings:

- a. “**Agreement**” has the meaning set forth in the preamble.
- b. “**Effective Date**” is the date the last signatory executes this Agreement.
- c. “**Escrow Agent**” is Goebel Anderson PC.
- d. “**Escrow Fund**” has the meaning set forth in Paragraph 3 of this Agreement.
- e. “**Parties**” is the plural of Party as used in this Agreement and, unless otherwise stated, includes every Party.
- f. “**Party**” means a signatory to this Agreement.
- g. “**Payors**” has the meaning set forth in the preamble.
- h. “**Recipients**” has the meaning set forth in the preamble.

i. **“Settlement Agreement”** has the meaning set forth in the recitals.

3. **Establishment of Escrow Fund.** Payors have, as of this Agreement’s Effective Date, deposited with the Escrow Agent the sum of \$1,550,000.00. This shall constitute and be referred to as the **“Escrow Fund.”**

4. **Receipt.** The Escrow Agent shall issue appropriate written acknowledgements of the receipt of the Escrow Fund.

5. **Disposition of the Escrow Fund.**

a. *Release.* The Escrow Agent shall hold the Escrow Fund and shall release such funds in accordance with the terms and conditions set forth in Subparagraphs 2(c) and 2(d) of the Settlement Agreement.

b. *Disputed Claims to Escrow Fund.* If, during the term of this Agreement, the Parties, or any of them in any combination or alone, make a claim that complies with the notice provisions of this Agreement to the Escrow Fund or any portion thereof, and that claim is timely disputed in the same manner, the Escrow Agent shall not release the disputed portion of the Escrow Fund, but shall instead continue to hold that disputed portion until either (1) presented with an order from a court of competent jurisdiction determining the disposition of the disputed portion of the Escrow Fund under the terms, conditions, and provisions of the Settlement Agreement, which is incorporated in this Agreement by this reference, or (2) presented with written instructions disposing of the disputed portion of the Escrow Fund signed by all Parties to this Agreement. The Escrow Agent shall be fully protected in so acting or refraining from acting under these circumstances.

6. **Investment of Escrow Fund.** The Escrow Agent shall deposit the Escrow Fund in an interest bearing trust account with Washington Federal, N.A. During the term of the escrow all interest and/or other increments to the Escrow Fund shall be credited to the Recipients.

7. **Written Instructions to Escrow Agent.** Notwithstanding anything herein to the contrary, the Escrow Agent may act upon any written instructions given by the Parties jointly and signed by all.

8. **Status of the Escrow Agent.**

a. *Depository Only.* The Escrow Agent is to be considered and regarded as a depository only, and shall not be responsible or liable (except for its failure to exercise due care) for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited as part of the Escrow Fund, nor as to the identity, authority, or rights of any person executing the same. The Escrow Agent’s duties hereunder shall be limited to the safekeeping and investment of money received by it as Escrow Agent and for its disbursement in accordance with the terms, provisions, and conditions of this Agreement.

b. *May Rely on Signatures in Good Faith.* The Escrow Agent shall not be responsible for the genuineness of any certificate or signature and may rely conclusively upon and shall be protected when acting upon any notice, affidavit, request, consent, instruction, check, or other instrument believed by the Escrow Agent in good faith to be genuine or to be signed or presented by the proper person, or duly authorized, or properly made. The Escrow Agent shall have no responsibility except for the performance of the Escrow Agent's express duties under this Agreement and no additional duties shall be inferred or implied.

c. *Liability Limited.* The Escrow Agent shall not be responsible or liable for any act or omission in the performance of the duties of the Escrow Agent under this Agreement unless such act or omission constitutes bad faith, gross negligence, or fraud.

d. *No Duty to Enforce or Defend.* The Escrow Agent shall not be required to institute or defend any action involving any matters referred to in this Agreement or which affect the Escrow Agent or the duties or liabilities of the Escrow Agent under this Agreement.

e. *Escrow Agent's Role as Attorney for Party.* The Parties recognize that the Escrow Agent is an attorney for Tooele County in the dispute underlying the Settlement Agreement, and hereby waive any objection to it acting as the Escrow Agent under this Agreement. The Parties understand and agree that the Escrow Agent will act independently of its duties as attorney to Tooele County under this Agreement.

9. **Fees and Costs of Escrow Agent and Escrow Fund.** Tooele County shall be liable for the fees of the Escrow Agent and any costs associated with the Escrow Fund, neither of which shall be chargeable against the Escrow Fund.

10. **Non-waiver.** No delay or failure by any Party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

11. **Time of Essence.** Time is of essence for this Agreement.

12. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if sent by email or delivered by hand or by overnight express mail (e.g., Federal Express) as follows:

a. If to the Payors, to:

Scott Broadhead  
TOOELE COUNTY ATTORNEY  
74 South 100 East, Suite 26



Tooele, Utah 84074  
sbroadhead@tooeleco.org

b. If to the Recipients, to:

J. Martin Tate  
CARMAN LEHNHOF ISRAELSEN LLP  
299 S. Main Street, Suite 1300  
Salt Lake City, Utah 84111-2241  
mtate@clilaw.com

c. If to the Escrow Agent, to:

Barton H. Kunz II  
GOEBEL ANDERSON PC  
405 South Main Street, Suite 200  
Salt Lake City, Utah 84111  
bkunz@gapclaw.com

Any Party may change its own contact information under this Paragraph by notice duly given as provided herein.

13. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided that any permitted assignment of any Party's obligations or liabilities shall not relieve that Party of any of its liabilities or obligations under this Agreement.

14. **Captions.** The captions are for convenience or reference and shall not be deemed to modify or affect the interpretation of this Agreement. The term "herein" as used in this Agreement refers to this Agreement.

15. **Modification.** Neither this Agreement nor any of its provisions shall be modified, changed, discharged, or terminated except by an instrument in writing signed by every Party.

16. **Further Assurances.** In connection with the transactions contemplated by this Agreement, the Parties agree to execute any additional documents and papers and to perform and do any additional acts and things as may be reasonably necessary and proper to effectuate and carry out the transactions contemplated by this Agreement.

17. **Governing Law.** This Agreement is governed by, and construed and interpreted according to, the laws of the State of Utah and the Settlement Agreement.

18. **Authority.** Each incorporated or otherwise organized Party hereby represents that it is duly organized, validly existing, and in good standing under the laws of the state of its

incorporation or other organization. Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any electronic facsimile of any signature transmitted shall be deemed an original and shall bind each Party.

EXECUTED this \_\_\_\_ day of November, 2017.

EXECUTED this \_\_\_\_ day of November, 2017.

TOOELE COUNTY

REDEVELOPMENT AGENCY OF TOOELE COUNTY

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

EXECUTED this 8th day of November, 2017.

EXECUTED this 8th day of November, 2017.

CENTER POINT MANAGEMENT, LLC

BONNEVILLE SALT LAKE RACEWAY, LLC

DocuSigned by:  
By: Andrew Cartwright

DocuSigned by:  
By: Andrew Cartwright

Name: Andrew Cartwright

Name: Andrew Cartwright

Title: Manager

Title: Manager

EXECUTED this 8th day of November, 2017.

EXECUTED this 8th day of November, 2017.

DocuSigned by:  
Andrew Cartwright

DocuSigned by:  
Mark Bensen

Andrew Cartwright

Mark Bensen

EXECUTED this \_\_\_\_ day of November, 2017.

GOEBEL ANDERSON PC

By: \_\_\_\_\_

Name:

Title: