

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-15

A RESOLUTION APPROVING AND RATIFYING ENTRY INTO AN ASSIGNMENT OF RIGHTS UNDER REAL ESTATE PURCHASE CONTRACTS

WHEREAS, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met in regular session on 8 April 2014 to consider, among other things, approving and ratifying the City’s entry into an “Assignment of Rights Under Real Estate Purchase Contracts” (the “*Agreement*”) with City Investment, Inc., et al. (“*Assignor*”), whereby Assignor will assign and delegate to City, and City will assume and take from Assignor, all of Assignor’s right, title and interest in, to and under eight documents entitled “Real Estate Purchase Contract” (the “*REPCs*”) covering eight parcels of real property containing approximately 4.7 acres (the “*Property*”) that are located at the Northwest corner of 2300 East and Bengal Blvd. in the City; and

WHEREAS, pursuant to the Agreement, City will become the buyer of the Property under the REPCs; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved and ratified, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and be it

FURTHER RESOLVED by the Cottonwood Heights city council that any prior actions by the City’s mayor and recorder to execute and deliver the Agreement on behalf of the City be, and hereby are, ratified and confirmed.

This Resolution, assigned no. 2014-15, shall take effect immediately upon passage.

PASSED AND APPROVED effective 8 April 2014.

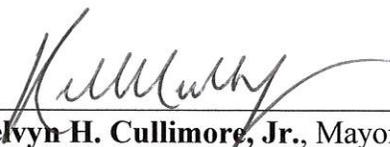
COTTONWOOD HEIGHTS CITY COUNCIL

ATTEST:


Kory Solorio, Recorder



By


Kelynn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Absent	
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 8th day of April 2014.

RECORDED this 8 day of April 2014.

618034.1

Assignment of Rights Under Real Estate Purchase Contracts

THIS ASSIGNMENT OF RIGHTS UNDER REAL ESTATE PURCHASE CONTRACTS (this "*Assignment*") is made effective 2 April 2014 by **CITY INVESTMENT, INC.** ("*CII*") and **ERIC ENSIGN** ("*Ensign*"), a Utah corporation and an individual whose address is 2401 Foothill Drive, Salt Lake City, UT 84109 (CII and Ensign are, collectively, "*Assignor*"), in favor of the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*Assignee*"). This Assignment amends, restates and supersedes any prior assignment agreement between the parties concerning the REPCs (defined below).

RECITALS:

A. Assignor is a licensed real estate broker who has aggregated contiguous parcels of realty within Assignee's municipal boundaries of sufficient total size and appropriate location to accommodate future construction of a governmental complex/city hall for Assignee.

B. Specifically, Assignor, as buyer, has entered into seven agreements entitled "Real Estate Purchase Contract" (the "*REPCs*") for realty totaling approximately 3.97 acres. The REPCs are described as follows:

1. A REPC dated 11 November 2013 between Ensign, as buyer, and David R. McCormick Trust, as seller, covering improved realty containing about 18,295 sf that is known as 2251 East Bengal Blvd., Cottonwood Heights, UT, for a purchase price of \$385,000;

2. A REPC dated 11 November 2013 between Ensign, as buyer, and James and Karen Nilsson, as seller, covering improved realty containing about 19,600 sf that is known as 2261 East Bengal Blvd., Cottonwood Heights, UT, for a purchase price of \$462,000;

3. A REPC dated 11 November 2013 between Ensign, as buyer, and Stefan Gartner, as seller, covering improved realty containing about 20,908 sf that is known as 2265 East Bengal Blvd., Cottonwood Heights, UT, for a purchase price of \$420,000;

4. A REPC dated 5 February 2014 between Ensign, as buyer, and Julia K. Pehrson, as seller, covering improved realty containing about 10,450 sf that is known as 2287 East Bengal Blvd., Cottonwood Heights, UT, for a purchase price of \$296,550;

5. A REPC dated 3 December 2013 between Ensign, as buyer, and Reginald M. Corona, Jr., as trustee of the Erma Brown Trust, as seller, covering improved realty containing about 22,650 sf that is known as 7576 South 2300 East, Cottonwood Heights, UT, for a purchase price of \$360,000;

6. A REPC dated 16 January 2014 between Ensign, as buyer, and Arthur Nettleship, as trustee of the Arthur Nettleship Trust, as seller, covering improved realty containing about 57,060 sf that is known as 7550 South 2300 East, Cottonwood Heights, UT, for a purchase price of \$1,083,000; and

7. A REPC dated 30 January 2014 between Ensign, as buyer, and Mr. and Mrs. Thomas Gavnik, as seller, covering improved realty containing about 23,958 sf that is known as 7560 South 2300 East, Cottonwood Heights, UT, for a purchase price of \$443,225.

8. A REPC dated 14 March 2014 between Ensign, as buyer, and David H. Jones, as seller, covering improved realty containing about 32,670 sf that is known as 7534 South 2300 East, Cottonwood Heights, UT, for a purchase price of \$392,364.

C. Assignor now desires to assign and delegate to Assignee, and Assignee desires to take and assume, all of Assignor's rights and duties in, to and under the REPCs.

A G R E E M E N T:

NOW THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which consideration is hereby acknowledged, the parties hereby agree as follows:

1. **Assignment of Rights**. Assignor hereby assigns to Assignee, and Assignee hereby takes from Assignor, all of Assignor's right, title and interest in, to and under the REPCs.

2. **Delegation of Duties**. Effective immediately, Assignor hereby delegates to Assignee, and Assignee hereby assumes from Assignor, all of Assignor's obligations under the REPCs. Assignee shall indemnify and hold harmless Assignor from any action, cause of action, claim or demand (including any reasonable attorney's fees that may be incurred by Assignor) arising under the REPCs and that relates to circumstances that occur on or after the date of this Assignment. Similarly, Assignor shall indemnify and hold harmless Assignee from any action, cause of action, claim or demand (including a reasonable attorney's fee that may be incurred by Assignee) arising under the REPCs and that relates to circumstances that occurred prior to the date of this Assignment.

3. **Assignment Fee**. In consideration of Assignor's assignment of the REPCs hereunder, Assignee shall pay to Assignor a fee equal to 4.5% of the purchase price under each of the REPCs, conditioned on closing of all of the transactions contemplated by all of the REPCs as provided therein. One-half of such fee for an individual closing under a REPC shall be paid at that closing, and the other one-half of such fee shall be paid within 30 days after the last closing to occur under all of the REPCs. For example, the 4.5% fee for the Jones REPC described in recital B(8) above equals \$17,656. One-half of that amount (\$8,828) would be paid by Assignee at the closing of the purchase contemplated by the Jones REPC, and the remaining \$8,828 would be paid within 30 days after final closing and consummation of the last REPC to close. If all of the REPCs do not close, then the final payment shall not be due and owing by Assignee to Assignor.

DATED effective the date first-above written.

ASSIGNOR:

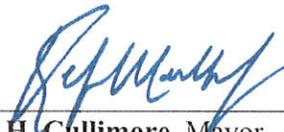
CITY INVESTMENT, INC., a Utah corporation

By: 
D. Eric Ensign, President


D. ERIC ENSIGN, Individually

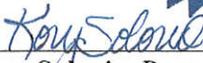
ASSIGNEE:

COTTONWOOD HEIGHTS,
a Utah municipality

By: 
Kelvyn H. Cullimore, Mayor

ATTEST:



By: 
Kory Solorio, Recorder