

## **AGREEMENT REGARDING RELOCATION OF DIRT**

THIS AGREEMENT REGRADING RELOCATION OF DIRT ("Agreement") is made effective this 12<sup>th</sup> day of March, 2021 by and between TITAN JOURNAL CENTER LOFTS, LLC, a New Mexico limited liability company ("Titan JCL"), and CHRISTINE R. BRENNAN AND MARY FRANCES BURKE AS THE CO-TRUSTEES OF THE IRREVOCABLE FRANK A. ROWE SR. FAMILY TRUST B ("Rowe Trust").

WHEREAS, Titan JCL is the fee simple owner of that certain real property, more particularly described as follows ("Titan Tract"):

Tracts "A" Legacy II at Journal Center a Replat of Tract 2A-2A-2B-1-A, Journal Center, Projected Section 23, Township 11 North, Range 3 East, N.M.P.M., Elena Gallegos Grant, City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on said replat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on August 6, 2020, in Plat Book 2020C, page 69 as Document No. 2020074221.

WHEREAS, the Rowe Trust is fee simple owners of that certain real property, more particularly described as follows ("Rowe Tract"):

Lots numbered Seventeen (17), Eighteen (18) and Nineteen (19) in Block numbered Nine (9), in Tract numbered Three (3), Unit numbered Three (3) of North Albuquerque Acres, a subdivision of a tract of land in School District Three (3), filed in the office of the County Clerk of Bernalillo County, New Mexico on September 10, 1931 in Plat Book "D", folio 121.

WHEREAS, Titan JCL desires, and the Rowe Trust agrees to allow Titan JCL, to transport and deposit dirt to and onto a portion of the Rowe Tract as more fully depicted on Exhibit "A" attached hereto and made a part hereof ("Deposit Area"), pursuant to the terms set forth herein.

NOW THEREFORE, for consideration given, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of License and Right of Entry. Subject to the terms and conditions of this Agreement, the Rowe Trust hereby grants to Titan JCL a license and right of entry onto the Rowe Tract for the purpose of depositing up to 20,000 c/y of dirt from Titan Tract onto the Deposit Area within the Rowe Tract. Titan JCL shall bear all costs and expenses to remove the dirt from Titan Tract and to deposit the dirt onto the Deposit Area.

2. Removal of Dirt. Any removal of dirt from the Titan Tract by or on behalf of Titan JCL shall be performed in a good and workmanlike manner and in compliance with all applicable laws, ordinances and permits. Titan JCL shall, at its sole cost and expense, obtain the required permits and establish the necessary Stormwater Pollution Protection Plan ("SWPPP") for the transfer and placement of the dirt in the Deposit Area.

3. Limited Representations and Warranties. Titan JCL represents and warrants that to its actual knowledge, (i) Titan JCL is the owner of Titan Tract, and (ii) Titan JCL has not received notice of the existence of hazardous materials (as defined under federal, state or local environmental laws, ordinances or regulations) located on the Titan Tract in violation of environmental laws. As used in this Agreement, the "actual knowledge" of Titan JCL shall be limited to the actual, present knowledge of the individual signing below as of the date of this Agreement, in his capacity as an authorized representative of Titan JCL, without any duty of investigation or inquiry. Except the foregoing, Titan JCL makes no further representations and warranties as to the nature of the dirt, including, without limitations, any express or implied warranty of fitness for any purpose, compactability, usability or composition.

4. Termination. The license and right of entry granted hereunder shall terminate on the first to occur of (i) the sale of the Rowe Tract by the Rowe Trust to Titan Property Management, LLC, a New Mexico limited liability company, its successors or assigns ("TPM") pursuant to that

Purchase and Sale Agreement between TPM and the Rowe Trust dated February 12, 2021 (“PSA”), (ii) the termination of the PSA, or (ii) the parties hereto mutually agree in writing to terminate the Agreement. In the event of a termination of this Agreement pursuant to sub-sections (i) or (ii) herein, Titan JCL shall take all reasonable steps, at its sole cost and expense, necessary to complete and close out the SWPPP.

5. Dirt Ownership After Deposit. Once deposited in the Deposit Area, the dirt shall become the property of the Rowe Trust and the Rowe Trust shall have all rights, interests and liabilities therein and thereto. The Rowe Trust accepts the dirt in its AS-IS and WHERE-IS condition, with all faults, if any.

6. Indemnification. To the extent allowed by law, Titan JCL shall indemnify, defend and hold the Rowe Trust harmless for, from and against any and all costs, expenses, mechanic’s liens, materialmen’s liens, claims, suits, actions, fines, penalties, fees, liabilities, judgments and reasonable attorneys’ fees arising from property damage, personal injury or death caused by Titan JCL or its employees, contractors, subcontractors or agents in the course of placing the dirt on the Rowe Tract. The Rowe Trust waives and releases Titan JCL from all private rights of action under federal, state, local and common law, which the Rowe Trust may have against Titan JCL arising out of or relating to the dirt, including without limitation, any presence of hazardous waste within the dirt or any compaction issues. The terms and provisions of this paragraph shall survive the fulfillment or earlier termination of this Agreement.

7. Amendments. No subsequent alteration, amendment, change, deletion or addition to this Agreement will be binding upon the parties hereto unless in writing and signed by all said parties.

8. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without giving effect to any choice or conflict of law provision or rule.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

10. Execution of Additional Documents. Each of the parties hereto shall execute and deliver, at the reasonable request of the other parties hereto, such additional documents and instruments and take such further actions to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**[SIGNATURE PAGE IMMEDIATLEY FOLLOWING]**

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first written above.

**TITAN JOURNAL CENTER LOFTS, LLC**  
a New Mexico limited liability company

By: Titan Property Management, LLC  
its Manager

By:   
Ben F. Spencer, Manager

**THE IRREVOCABLE FRANK A. ROWE SR.  
FAMILY TRUST B**

By: \_\_\_\_\_  
Christine R. Brennan, Co-Trustee

By: \_\_\_\_\_  
Mary Frances Burke, Co-Trustee

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first written above.

**TITAN JOURNAL CENTER LOFTS, LLC**  
a New Mexico limited liability company

By: Titan Property Management, LLC  
its Manager

By: \_\_\_\_\_  
Ben F. Spencer, Manager

**THE IRREVOCABLE FRANK A. ROWE SR.  
FAMILY TRUST B**

By: Christine R. Brennan  
Christine R. Brennan, Co-Trustee

By: \_\_\_\_\_  
Mary Frances Burke, Co-Trustee

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first written above.

**TITAN JOURNAL CENTER LOFTS, LLC**  
a New Mexico limited liability company

By: Titan Property Management, LLC  
its Manager

By: \_\_\_\_\_  
Ben F. Spencer, Manager

**THE IRREVOCABLE FRANK A. ROWE SR.  
FAMILY TRUST B**

By: \_\_\_\_\_  
Christine R. Brennan, Co-Trustee

By: Mary Frances Burke  
Mary Frances Burke, Co-Trustee 03-12-2021



# EXHIBIT "A" DEPOSIT AREA

