

RESOLUTION U2023-11

A RESOLUTION OF THE VINEYARD REDEVELOPMENT AGENCY APPROVING A TAX INCREMENT PARTICIPATION AGREEMENT WITH COTTONWOOD GENEVA, LLC

WHEREAS, Cottonwood Geneva, LLC, owns property within the boundaries of Phase IV of the Geneva Urban Renewal Project Area (“Development”); and

WHEREAS, the Development will generate tax increment that is diverted to the Agency pursuant to the provisions of the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C, et seq., Utah Code Annotated, as amended (“Act”).

WHEREAS, Agency desires to share a portion of the tax increment funds with Cottonwood Geneva, LLC, to facilitate the Development; and

WHEREAS, the Vineyard Redevelopment Agency desires to approve the Tax Increment Participation Agreement, to allow for the completion of the Development for the benefit of the residents of Vineyard City;

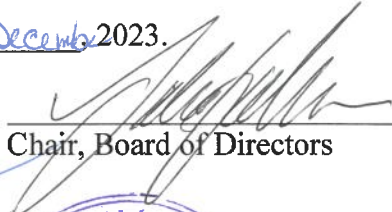
NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE VINEYARD REDEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Approval. The Board of Directors of the Vineyard Redevelopment Agency hereby approves that certain Tax Increment Participation Agreement, attached hereto as Exhibit A and incorporated herein by reference. The Chair of the Board of Directors of the Redevelopment Agency is hereby authorized to negotiate and sign the Tax Increment Participation Agreement for and in behalf of the Agency.

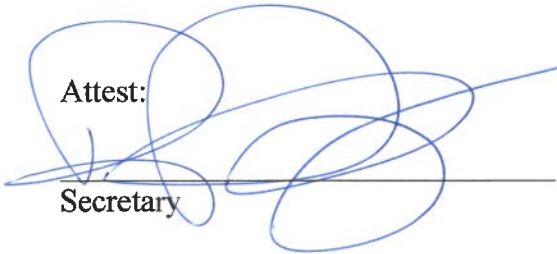
Section 2. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall become effective immediately upon its approval by the Board of Directors.

Passed and dated this 27 day of December 2023.


Chair, Board of Directors

Attest:


Secretary



PASSAGE BY MUNICIPAL COUNCIL
ROLL CALL VOTE

RESOLUTION NO U2023-11

**A RESOLUTION OF THE VINEYARD REDEVELOPMENT AGENCY
APPROVING A TAX INCREMENT PARTICIPATION AGREEMENT WITH
COTTONWOOD GENEVA, LLC**

ROLL CALL VOTE:

MAYOR JULIE FULLMER

COUNCILMEMBER TYCE FLAKE

COUNCILMEMBER AMBER RASMUSSEN

COUNCILMEMBER MARDI SIFUENTES

COUNCILMEMBER CRISTY WELSH

TOTALS

MOTION	SECOND	AYES	NAYS	ABSENT
		X		
		X		
	X	X		
			X	
X		X		
		4	1	

This Resolution was passed by the City Council of Vineyard, Utah on the 27th day of December 2023, by a roll call vote as described above.

CITY RECORDER'S CERTIFICATE AND ATTEST

This Resolution was recorded in the office of the Vineyard City Recorder on the 28th day of December 2023.

I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Resolution No. U2023-11.

ATTEST:



Deputy Recorder

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (“**Agreement**”) is entered into and effective as of this _____ day of December, 2023 (“**Effective Date**”), by and between COTTONWOOD GENEVA LLC, a Utah limited liability company (“**Participant**”) and the VINEYARD REDEVELOPMENT AGENCY, a political subdivision of the State of Utah (“**Agency**”).

Recitals

A. Agency and the City of Vineyard, Utah (“**City**”), have created the Geneva Urban Renewal Area (“**Project Area**”) through the adoption of the Geneva Urban Renewal Project Area Plan, as amended February 9, 2011 (“**Plan**”) and the Geneva Urban Renewal Project Area Budget (“**Budget**”) pursuant to the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C, *et seq.*, Utah Code Annotated, as amended (“**Act**”).

B. Agency and the City have determined that redevelopment of the Project Area constitutes the performance of an essential public purpose, which protects and promotes the public health, safety, and welfare.

C. The Act grants Agency the authority to use Agency funds, as defined in Utah Code Annotated § 17C-1-102(5) (“**Agency Funds**”) to incentivize new businesses to locate within the Project Area.

D. The Participant owns and is developing the real property described on **Exhibit A** attached hereto and depicted on **Exhibit B** attached hereto (“**Property**”). The “Property” shall include any real property of which Participant subsequently obtains ownership and provides written notice thereof to the Agency, and which is contiguous to the real property described on the attached **Exhibit A**. The Property is located within the boundaries of Phase IV of the Project Area (“**Phase IV**”).

E. The Property will generate tax increment that is diverted to the Agency pursuant to the provisions of the Act. The tax increment that generated from the Property and diverted to the Agency pursuant to the provision of the Act is referred to herein as the “**Property Funds**”.

F. Agency desires to share a portion of the Property Funds with Participant to facilitate the development of the Property.

G. The Plan and Budget contemplates the use of Agency Funds to incentivize development within the Project Area.

H. Agency is authorized to enter into this Agreement with Participant and utilize Agency Funds for the purposes set forth herein pursuant to Section 17C-1-202 of the Act.

I. Participant is a “Participant”, and this Agreement qualifies as a “Participation Agreement” as these terms are defined in Section 17C-1-102 (38) and (39) of the Act.

Agreement

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree as follows:

1. **Tax Increment.** This Agreement refers to “tax increment” which is a term defined by Utah Code Ann. § 17C-1-102(60) (2018). The term tax increment has the same meaning as defined by that statute (as amended, replaced or superseded from time to time). The parties acknowledge that tax increment generally refers to the additional *ad valorem* tax revenues generated by the increase in value of taxable real and personal property resulting from new development and construction. The Agency is entitled to collect a portion of tax increment from the property located within the Project Area boundaries as expressly provided under the Act and the Agency Plan and Budget, respectively.

2. **Participant Reimbursement.**

- a. *Payment of Participant Reimbursement.* So long as Participant is current on its obligations under this Agreement, the Agency will annually reimburse Participant from the Participant Share (defined below) as provided in Sections 2.b and 2.c below, and such annual payment is referred to herein as the “**Annual Increment Payment**”. If the amount of the Participant Share for a given year is greater than the Annual Increment Payment, the Agency shall retain such excess Participant Share in a segregated account and shall use such funds for the payment of a future Annual Increment Payment in accordance with this Agreement.
- b. *Calculation of Participant Reimbursement.* The amount of the Annual Increment Payment shall be limited to the amounts invested by Participant into all costs incurred by Participant in developing, acquiring, or installing structured parking improvements, pedestrian element improvements, open space improvements, public infrastructure, and other costs and expenses described and allowed under the Project Area with respect to the Property (collectively, “**Project Improvements**”). Participant shall be entitled to receive an Annual Increment Payment of up to 75% of the Property Funds actually received by the Agency for Project Improvements constructed within the Property (the “**Participant Share**”). Participant may request the Agency’s approval of an amendment to this Agreement in order to provide for an Annual Increment Payment of up to 85% of the Property Funds actually received by the Agency for Project Improvements constructed within the portion of the Property identified as “Lot 1” on the attached **Exhibit B** in order to incentivize a certain use or feature within such Lot 1, which request will be considered in good faith by the Agency.
- c. *Interest on Unreimbursed Expenses.* In addition to the Participant Share, Participant is entitled to receive interest at a rate of 8.5% per annum on the costs Participant incurred installing the Project Improvements until such time that Participant receives the Annual Increment Payment for the installed Project Improvements.
- d. *Conditions Precedent to Payment of Participant Share.* The Agency shall pay the

Annual Increment Payment to Participant on the date identified in Section 3 below provided that all of the following conditions precedent are satisfied (collectively, “**Conditions Precedent**”):

- i) The Agency has actually received the Property Funds from Utah County for the particular calendar year.
 - ii) Participant has made a request for payment in writing pursuant to Section 2.f for the year for which Participant seeks payment of the Annual Increment Payment.
- e. *Effect of Failure to Meet Conditions Precedent.* If the Conditions Precedent are not met during the term of this Agreement, and Participant is thus not entitled to receive the Annual Increment Payment until the Condition Precedent is met, but Participant is otherwise not in default under this Agreement, such failure of a Condition Precedent shall not constitute a default under this Agreement. If a Condition Precedent has not been met, Agency agrees, subject to the requirements of then existing law, to accrue in segregated accounts the Property Funds and to distribute timely the same to Participant upon satisfaction of the applicable Conditions Precedent.
- f. *Request for Payment.* Participant shall submit in writing a request for payment to the Agency by March 31 of the year following the year for which the Participant Share is being sought (the “**Request for Payment**”). With the Request for Payment, Participant shall include a calculation of the cost of the Project Improvements and provide supporting documentation that is sufficient to establish the details of construction and the actual costs of the Project Improvements. If the Agency determines that a Request for Payment is incomplete or otherwise deficient, the Agency shall notify Participant within thirty (30) days of the Agency’s receipt of the Request for Payment. A deficient Request for Payment that is submitted by the date established in this section shall be treated as timely so long as Participant provides an updated Request for Payment within fifteen (15) days of receiving notice of the deficiency from the Agency.

3. **Timing of Annual Increment Payments.** Subject to Section 2 above, the Agency will make the first Annual Increment Payment on May 1 of the year after construction on the Project Improvements has commenced, and, subject to Section 2 above, the Agency will continue making the Annual Increment Payments on or before the first day of May each successive year through and until the later of (a) twenty-five (25) years after the first Annual Increment Payment, and (b) the end of the Phase IV term (as may be extended from time to time).

4. **General Reimbursement Terms.**

- a. *Reservation of Reimbursement Rights.* Notwithstanding any provision in any present or future laws to the contrary, the Participant reserves unto itself the right to all payments and reimbursements for items constructed within the Property or by the Participant even if the Participant sells any portion of the Property to a third-party. Any assignment of the right to receive payments and reimbursements under this Agreement

must be in writing, signed by the Participant, and approved by the Agency, and must include specific details regarding the right or amount of reimbursement transferred to a third party. In the event of a transfer of any reimbursement or payment right under this Agreement, both assignor and assignee must provide written notice to the Agency in accordance with this Agreement. Notwithstanding the foregoing, the Participant shall not be entitled to retain reimbursements or payments under this Agreement that exceed the actual costs incurred by the Participant. Notwithstanding the foregoing provisions of this Section 4.a, Participant may assign or pledge its right to receive Tax Increment under this Agreement to a lender or other financing person or entity to secure financing for the Project, without the Agency's consent, provided that Participant provides notice to the Agency of such an assignment or pledge

- b. *Reduction or Elimination of Reimbursement.* Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the Annual Increment Payment to Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Annual Increment Payment to Participant.
- c. *Declaration of Invalidity.* If any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area, this Agreement, or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Annual Increment Payment to Participant, the Agency shall provide written notice of such legal action to Participant. If such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action but agrees not to enter into any settlement, consent, decree, or other resolution without first providing Participant a reasonable opportunity to intervene and defend the rights and privileges provided under this Agreement. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the Annual Increment Payment. Participant specifically reserves and does not waive any right it may have to intervene, at Participant's cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Annual Increment Payment to Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Annual Increment Payment to Participant. In the event that the court declares that the Agency cannot pay the Annual Increment Payment, invalidates the Project Area, or this Agreement, or takes any other action which eliminates or reduces the amount of Annual Increment Payment, the Agency's obligation to pay to Participant the Annual Increment Payment in accordance with this Agreement will be reduced or eliminated to the extent required by law.
- d. *Nature of Participant's Obligations and Limitations.* The failure of Participant to fulfill its obligations under this Agreement may result in a failure to qualify to receive the Annual Increment Payment, trigger withholding of an unpaid portion of the Annual Increment Payment or result in termination of this Agreement but shall not give rise to

any other right or remedy in favor of the Agency. The Agency shall have no right hereunder to compel Participant to install improvements or otherwise develop the Project.

5. **Agency Authority/Powers.** The Participant acknowledges that the Agency is a political subdivision of the State of Utah operating and existing under Title 17C of the Utah Code Ann., separate and distinct from the City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City. The Participant acknowledges that the City is not a party to this Agreement and the City will not have any duties, liabilities or obligations under this Agreement. The Participant understands that the Agency has no independent taxing power, and therefore the Agency's sole source of revenue is tax increment financing as provided under Utah law.

6. **Agreement Term/Breach/Termination.** Despite anything else in this Agreement to the contrary, this Agreement will terminate immediately and automatically upon payment of the final Annual Increment Payment as described in Section 3 above. This Agreement may also be terminated earlier as follows: Upon the material breach of this Agreement by either party, the non-breaching party shall provide written notice to the breaching party. The breaching party shall have thirty (30) days to cure the breach, and if the breach is not timely cured, the non-breaching party may then terminate this Agreement by providing final notice to the breaching party; provided, however, if more than thirty (30) days shall be required because of the nature of the breach, so long as the breaching party shall commence to cure such breach within thirty (30) days after receipt of written notice from the non-breaching party specifying the nature of such breach and the breaching party shall thereafter diligently prosecute the cure to completion, then the non-breaching party may not terminate this Agreement.

7. **Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified (or another commercially acceptable means requiring a return receipt), postage prepaid, addressed as follows:

If to Participant: Cottonwood Geneva LLC
299 S Main Street
Salt Lake City, Utah 84111
Attention: Scott Swallow
Email: sswallow@dakotapacific.com

With a Copy to: Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attn: Craig T. Jenson
Email: cjenson@swlaw.com

If to Agency: Vineyard Redevelopment Agency
125 South Main Street

Vineyard, UT 84059
Attn: Board Chair

With a Copy to:

Hayes Godfrey Bell, P.C.
2118 East 3900 South, Suite 300
Holladay, Utah 84124
Attn: Jayme Blakesley
Email: jblakesley@hgblaw.net

Such communications may also be given by facsimile transmission or electronic mail, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

8. **Successors and Assigns.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither party may assign its rights or obligations under this Agreement without the advance written consent of the other party.

9. **Amendments.** Except as otherwise provided herein, this Agreement may be modified or amended by, and only by, a written instrument duly authorized and executed by the Participant and the Agency.

10. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court having jurisdiction in Utah County, Utah. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

11. **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never composed a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided, however, that such illegal, invalid or unenforceable provision does not relieve the Participant from any obligation for Project Improvements for which Agency has an obligation to reimburse the Participant under the provisions of this Agreement.

12. **Integrated Agreement.** The Recitals, and all exhibits, schedules and attachments attached hereto, are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed. There are no other contracts or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than

those expressly set forth in this Agreement.

13. **Further Assurances.** The parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement.

14. **Indemnification.** The Participant shall indemnify, defend (with counsel of the indemnitee's choosing), and hold the Agency (including their respective officers, directors, agents, employees, contractors, and consultants) harmless from and against all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of death, injury, accident, loss or damage of any kind caused to any person or property because of the act(s), error(s), or omission(s) of the Participant (including its officers, directors, agents, employees, contractors, and consultants) upon or in connection with the Property or in connection in any way with this Agreement, except in each case to the extent arising out of the negligence, willful misconduct, illegal acts, bad faith or breach of this Agreement by the Agency or the City (including their respective officers, directors, agents, employees, contractors, and consultants).

15. **Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Agency and the Participant and there are no intended third-party beneficiaries.

16. **No Liability of Officials or Employees.** No director, officer, agent, employee, or consultant of the Agency or the Participant shall be personally liable to the other party hereto, or any successor in interest, in the event of any default or breach by the Agency or Participant or for any amount which may become due to the Participant or its successors or on any obligations under the terms of this Agreement.

17. **Force Majeure.** No liability or breach of this Agreement shall result from delay in performance or nonperformance caused, directly or indirectly, by circumstances beyond the reasonable control of the Participant, including, but not limited to, strikes, lock-outs, fire or other casualty, inclement weather abnormal for the period of time and not reasonably anticipatable, the elements or acts of God, war, riot, insurrections or shortages of or unusual delays in the delivery of construction materials (which have been ordered in a timely manner) or other causes, other than financial and managerial, beyond the reasonable control of the Participant, or its subcontractors of any tier, agents or employees.

18. **No Legal Relationships.** The parties disclaim any partnership, joint venture, fiduciary, agency or employment status or relationship between them. No party has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party, nor shall they make any representation to any third party inconsistent with this paragraph.

19. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Property or Project Improvements for the general public or for any public purpose whatsoever.

[End of Terms -Signature Page Follows]

THIS TAX INCREMENT PARTICIPATION AGREEMENT IS EXECUTED effective as of the day and year first above written, by:

PARTICIPANT:

COTTONWOOD GENEVA LLC,
a Utah limited liability company

By: _____
Name: _____
Its: _____

AGENCY:

VINEYARD REDEVELOPMENT AGENCY,
a political subdivision of the State of Utah

Board Chair

ATTEST:

Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1, 2, 3, 4, 6, 7, AND 10, PLAT A, THE FORGE SUBDIVISION AS SHOWN BY THE
OFFICIAL PLAT THEREOF FILED IN THE OFFICE OF THE RECORDER OF UTAH
COUNTY, UTAH

DEPICTION OF THE PROPERTY
(Outlined in Red)

