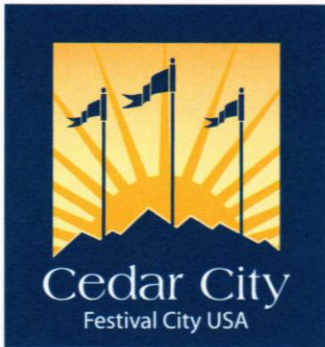




Cedar City

10 North Main Street • Cedar City, UT 84720
435-586-2950 • FAX 435-586-4362
www.cedarcity.org

REDEVELOPMENT AGENCY MEETING

MAY 15, 2024

5:30 p.m. or as soon thereafter as the meeting is called

Mayor

Garth O. Green

Council Members

Robert Cox
W. Tyler Melling
R. Scott Phillips
Ronald Riddle
Carter Wilkey

City Manager

Paul Bittmenn

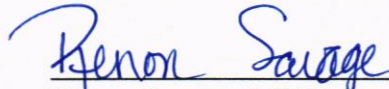
The Cedar City Redevelopment meeting will be held Council Chambers at the City Office, 10 North Main Street, Cedar City, Utah, at 5:30 p.m. or as soon thereafter as the meeting is called.

I. Call to Order

II. Business Agenda

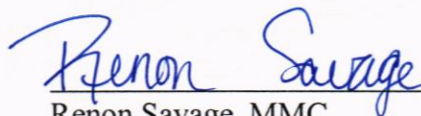
1. Public hearing to consider the adoption of the 2024-2025 fiscal year tentative budget. Jason Norris
2. Consider a resolution approving a participation agreement for the Cedar City Downtown Community Reinvestment Project Area. David Johnson

Dated this 13th day of May, 2024.


Renon Savage, MMC
City Recorder

CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 13th day of May, 2024


Renon Savage, MMC
City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the City not later than the day before the meeting and we will try to provide whatever assistance may be required.

CEDAR CITY CORPORATION RESOLUTION NO. RDA _____

**A RESOLUTION ADOPTING THE CEDAR CITY REDEVELOPMENT AGENCY'S
FISCAL YEAR 2024-2025 TENTATIVE BUDGET.**

WHEREAS, the Redevelopment Agency of Cedar City, Utah, has been presented with and reviewed the tentative budget for fiscal year 2024-2024; and

WHEREAS, the Redevelopment Agency conducted a public meeting to receive public comment on the proposed tentative budget on May 15, 2024; and

WHEREAS, it is necessary that the Cedar City Redevelopment Agency adopt a tentative budget for fiscal year 2024-2025; and

WHEREAS, the tentative budget adopted by the Cedar City Redevelopment Agency and all supporting schedules and data shall be a public record in the office of the City Recorder, available for public inspection for a period of at least ten days prior to the adoption of the final budget.

NOW, THEREFORE, be it resolved by the Redevelopment Agency of Cedar City, Utah, that the tentative budget for fiscal year 2024-2025, presented by the City's Financial Department, is hereby adopted as the Cedar City Redevelopment Agency's tentative budget and is ordered to be filed and maintained as a public record, available for public inspection in the office of the City Recorder, at 10 N. Main St., Cedar City, Utah, until adoption of the final budget.

This resolution, Cedar City Resolution No. RDA _____, shall take effect immediately upon passage. This resolution was made, voted, and passed by the Cedar City Council at its regular meeting on this 22nd day of May, 2024.

Council Vote:

Green -
Melling -
Riddle -
Cox -
Wilkey -

BY: _____
R. Scott Phillips, Chairperson

ATTEST:

Garth O Green, Secretary

CEDAR CITY CORPORATION
BUDGET

ACCT #	DESCRIPTION	ACTUAL FY19/20	ACTUAL FY20/21	ACTUAL FY21/22	ACTUAL FY22/23	ADOPTED FY23/24	PROPOSED FY24/25	\$ Change	% Change
57	REDEVELOPMENT AGENCY FUND								
	REVENUE								
5739101	TAXES-PORT 15	446,323	366,930	498,920	524,534	498,920	498,920	-	0%
5739103	TAXES-GENPAK-INCENTIVE	233,868	165,296	187,487	-	-	-	-	-
5739105	TAXES-MSC AEROSPACE	18,512	20,829	24,454	25,606	24,455	24,455	-	0%
5739106	TAXES-DECORWORX	-	12,126	15,733	13,668	15,733	15,733	-	0%
5739200	RENTS-LINS BUILDING	325,000	325,000	329,062	341,250	325,000	325,000	-	0%
5739310	STATE GRANT-STREET LIGHTS	75,000	-	-	-	-	-	-	-
5739500	INTEREST EARNINGS	34,528	8,541	8,088	53,198	8,000	8,000	-	0%
5739801	TRANS FROM PARKING AUTHORITY	8,600	8,600	8,600	8,600	8,600	8,600	-	0%
5739900	FUND BALANCE-APPROPRIATED	-	-	-	-	285,192	-	(285,192)	-100%
	TOTAL REVENUE	1,141,830	907,322	1,072,345	966,856	1,165,900	880,708		
	EXPENDITURES								
5740262	BUILDING & GROUND MAINTENANCE	6,071	3,025	27,376	42,519	22,000	22,000	-	0%
5740300	ADMINISTRATION FEE	5,000	5,000	5,025	8,836	5,000	5,000	-	0%
5740311	AUDIT	2,500	1,950	1,950	1,950	1,950	1,950	-	0%
5740510	INSURANCE & SURETY BONDS	6,290	7,807	8,276	9,604	10,791	4,765	(6,026)	-56%
5740613	INCENTIVE-GENPAK	233,868	218,731	187,487	-	-	-	-	-
5740614	INCENTIVE-MSC	-	-	-	-	24,455	24,455	-	0%
5740616	INCENTIVE-DECORWORX	-	15,949	15,733	15,035	15,733	15,733	-	0%
5740620	PORT 15-DEVELOPER	185,139	202,339	206,952	217,577	206,952	206,952	-	0%
5740621	PORT 15-IRON COUNTY SCHOOL DISTRICT	99,532	108,779	111,259	116,971	111,259	111,259	-	0%
5740622	PORT 15-CEDAR CITY HOUSING AUTHORITY	89,267	97,560	99,784	104,907	99,784	99,784	-	0%
5740623	PORT 15-ECONOMIC INCENTIVES	-	-	-	306,217	55,979	55,979	-	0%
5740624	PORT 15-ADMINISTRATION FEE	-	-	-	-	24,946	24,946	-	0%
5740633	INCENTIVE-TENANT IMPROVEMENTS	-	-	-	8,275	50,000	-	(50,000)	-100%
		627,667	661,141	663,842	831,890	628,849	572,823	(56,026)	-8.91%
5740730	CAP OUTLAY-IMPROVEMENTS	195,625	392,611	166,187	(13,428)	350,000	-	-	-
5740810	DEBT SERVICE-PRINCIPAL	155,000	158,000	162,000	166,000	161,555	176,000	-	-
5740820	DEBT SERVICE-INTEREST	32,151	29,051	25,496	21,446	25,496	11,696	-	-
5740990	FUND BALANCE-UNAPPROPRIATED	-	-	-	-	-	120,189	-	-
	TOTAL EXPENDITURES	1,010,442	1,240,803	1,017,525	1,005,907	1,165,900	880,708		
	NET REVENUES OVER EXPENDITURES	131,388	(333,480)	54,820	(39,051)	-	-		
58	MUNICIPAL BUILDING AUTHORITY								
	REVENUE								
5839500	INTEREST EARNINGS	2,752	114	-	-	-	-	-	-
5839800	TRANS FROM GENERAL FUND	127,051	32,744	32,944	65,389	64,589	66,789	2,200	3%
5839801	TRANS FROM PUBLIC SAFETY IMPACT FEES	95,385	95,585	95,385	94,695	95,435	95,145	(290)	0%
	TOTAL REVENUE	225,188	128,443	128,329	160,084	160,024	161,934		
	EXPENDITURES								
5840220	PUBLIC NOTICES	-	-	-	-	250	250	-	0%
5840610	SUNDRY	-	-	-	-	280	280	-	0%
5840720	CAP OUTLAY-BUILDINGS	206,781	-	-	-	-	-	-	-
5840811	DEBT SERVICE-PRIN ANIMAL SHEL	-	-	31,625	32,000	32,000	35,000	3,000	9%
5840812	DEBT SERVICE-PRIN FIRE TRUCK	81,000	82,000	83,000	84,000	86,000	87,000	1,000	1%
5840821	DEBT SERVICE-INT ANIMAL SHEL	30,219	31,625	30,295	30,174	30,825	30,025	(800)	-3%
5840822	DEBT SERVICE-INT FIRE TRUCK	14,385	13,170	11,940	10,794	9,435	8,145	(1,290)	-14%
5840830	BANK CHARGES	-	-	-	-	1,234	1,234	-	0%
	TOTAL EXPENDITURES	332,385	126,795	156,860	156,968	160,024	161,934		
	NET REVENUES OVER EXPENDITURES	(107,198)	1,648	(28,531)	3,116	-	-		

CEDAR CITY REDEVELOPMENT AGENCY
RESOLUTION NO. RDA-24-_____

**A RESOLUTION APPROVING A PARTICIPATION AGREEMENT FOR
THE CEDAR CITY DOWNTOWN COMMUNITY REINVESTMENT
PROJECT AREA**

WHEREAS the Agency has created the Cedar City Downtown Community Reinvestment Project Area (the “**Project Area**”); and

WHEREAS the Agency is authorized to enter into agreements with property owners, governmental entities, private entities and others; and

WHEREAS the Agency finds the participation agreement between the Agency and the developer of the hotel project (the “**Participation Agreement**”) to be in harmony with and consistent with the Plan for the Project Area and in the best interests of the Agency and Cedar City.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE CEDAR CITY REDEVELOPMENT AGENCY AS FOLLOWS:

1. The Agency, having reviewed the matter, hereby approves the Participation Agreement attached hereto as **Exhibit A** and authorizes the Chair and Secretary to execute the Participation Agreement on behalf of the Agency upon execution of the Participation Agreement by the counterparty to the agreement.

2. The Participation Agreement is approved with such additions, modifications, deletions or other changes as may be deemed necessary or appropriate and approved by the Chair of the Agency in cooperation with Agency legal counsel, whose execution thereof on behalf of the Agency shall conclusively establish such necessity, appropriateness and approval with respect to all such additions, modifications, deletions and/or other changes incorporated therein, so long as such changes are keeping with the intent and purpose of the Participation Agreement.

3. This Resolution shall take effect upon adoption.

[continued on next page]

APPROVED AND ADOPTED on the 22nd day of May 2024.

**CEDAR CITY
REDEVELOPMENT AGENCY**

_____, Chair

ATTEST:

_____, Secretary

EXHIBIT A

Participation Agreement

**PARTICIPATION AGREEMENT by and between the REDEVELOPMENT
AGENCY OF CEDAR CITY and TITLE HOLDER EXCHANGE NO 10
LLC for the CEDAR CITY DOWNTOWN COMMUNITY
REINVESTMENT PROJECT AREA**

This Participation Agreement (the “**Agreement**”) is made and entered into as of this _____ day of _____ 2024 (the “**Effective Date**”), by and among the REDEVELOPMENT AGENCY OF CEDAR CITY (the “**Agency**”), a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Act**”; § 17C-1-101 *et seq.*, or its predecessor statutes), and TITLE HOLDER EXCHANGE NO 10 LLC, a Utah limited liability company and GUIDANCE, LLC, a Utah limited liability company (together, “**Participant**”). Participant and the Agency may from time to time hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. SUBJECT OF AGREEMENT

1.1. Purpose of the Agreement

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Project Area Plan (the “**Plan**”) for the Cedar City Downtown Community Reinvestment Project Area (the “**Project Area**”) by providing for incentives to entice Participant to develop an upper-midscale hotel and attached parking structure in the Project Area (the “**Project**”), and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in Participant’s development of the Project, which will benefit the Project Area and the City as a whole. A conceptual development plan for the Project is attached as **Exhibit A**.

1.2. Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of Cedar City, Utah (the “**City**”), and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

1.3. The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

1.4. Description of the Site

The site of the Project is located within the Project Area on parcels consisting of approximately 1.72 total acres (the “**Site**”) that are owned by Participant. The Site is shown in detail on the site map, attached hereto as **Exhibit B**. The Site is only a portion of the Project Area. The Site is located at approximately 50 S Main Street, Cedar City and is identified as Iron County Parcel Nos. B-0535-0008-0000 and B-0535-0009-0000.

1.5. Interlocal Agreements

Subject to the terms of the interlocal agreements with Cedar City, Iron County, the Iron County School District, and the Central Iron County Water Conservancy District (attached hereto as **Exhibits C, D, E, and F**, respectively) (together, the “**Interlocal Agreements**”), the Agency is entitled to receive, for a period of up to 15 years (the “**Tax Increment Term**”), a portion of the tax increment generated by the development within the Site (the “**Agency Share**”). Participant shall have no claim to interest earned by the Agency on any portion of the Agency Share. For clarity, the Agency Share consists of only those funds that are generated by taxes paid on development within the Site that are received by the Agency pursuant to the Interlocal Agreements; the Agency Share does not include any funds received by the Agency pursuant to the Interlocal Agreements due to development outside of the Site, funds currently held by the Agency, or funds received by the Agency from any other sources. The amount of Agency Share generated by the Site shall be calculated as shown on **Exhibit G**.

1.5.1. Commencement of Tax Increment Term

The Interlocal Agreements allow the Agency to begin (or “trigger”) collecting the Agency Share beginning on January 1, 2023 at the earliest and the Agency may trigger the collection of tax increment in phases as provided for in the Interlocal Agreements. The Agency shall take such actions as may be necessary to trigger collection of the Agency Share for the Site on January 1, 2027.

1.6. Description of the Project

Participant shall develop the Project within the Site. Participant agrees that its total construction and improvements in the Site shall be no less than \$15,000,000 (the “**Investment**”). Nothing in this Agreement shall be construed to require the Participant to proceed with the construction of or any other implementation of the Project or any portion thereof. The Agency hereby acknowledges that Participant may develop the Project in such order and at such rate and times as Participant deems appropriate within the exercise of its sole and absolute discretion. The Agency acknowledges that this right is consistent with the intent, purpose, and understanding of the Parties. Participant acknowledges that failure to develop the Project prior to the various performance deadlines described in this Agreement will cause Participant to be ineligible to receive the Incentive.

1.7. The Incentive

1.7.1. Definitions

- a. “**Commencement Date**” means the date on which Participant achieves substantial completion of construction of the Project and receives a certificate of occupancy from Cedar City prior to that date for a hotel and adjacent parking structure within the Site with at least 85,000 square feet of interior space, at least 85 guest rooms, and at least 150 parking stalls in the parking structure with at least 75 stalls located above ground level.

b. **"Incentive"** means an annual payment from the Agency in an amount equal to eighty-five percent (85%) of the amount of the Agency Share, for a period of up to fifteen (15) consecutive tax years; beginning with the first full tax year after the Commencement Date and ending no later than December 31, 2041.

c. **"Taxes"** means the real and personal property taxes paid by Participant on the Site.

1.7.2. Agreement to Pay Incentive

The Agency agrees to pay Participant the Incentive for each of the fifteen (15) years following the Commencement Date but in no case for any period beyond December 31, 2041, subject to compliance with the terms and conditions of this Agreement.

1.8. Parties to the Agreement

1.8.1. The Agency

The address of the Agency for purposes of this Agreement is:

Redevelopment Agency of Cedar City
10 N. Main Street
Cedar City, UT 84720
Attention: City Manager
Email: jdavid@cedarcityut.gov

With a copy to:

Smith Hartvigsen, PLLC
Attn: Adam S. Long
257 East 200 South, Suite 500
Salt Lake City, UT 84111
Email: along@shutah.law

1.8.2. The Participant

Participant's address for purposes of this Agreement is:

Title Holder Exchange No 10 LLC
1125 N Hovi Hills Drive
Cedar City, UT 84721
Email: jim@burgessinvestmentgroup.com

Guidance LLC
86 S. Main St, Suite 107
Cedar City, UT 84720
Email: snelson0527@gmail.com

1.9. Prohibition against Certain Changes

1.9.1. Representation by Agency

Agency represents that the qualifications and identity of Participant are of particular concern, and that in reliance on Participant's qualifications and identity the Agency is entering into this Agreement. Accordingly, the transfer restrictions of this Section 1.10 represent a material inducement for Agency to enter into this Agreement.

1.9.2. Representation as to Development Intent

Participant represents and agrees that its Investment in and use of the Project, and Participant's other undertakings reflected in this Agreement are and shall only be for the purpose of Participant's development of the Project and not for speculation in land holding or otherwise.

1.9.3. Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

The foregoing notwithstanding, Participant may transfer its rights and obligations under this Agreement in connection with (a) the sale, exchange, issuance or redemption of a controlling interest in the Participant; (b) transfers of interests in either the Project, the Participant or this Agreement to persons or entities that, after the transfer, are under common control with or controlled by the Participant; (c) changes in the organizational form of the Participant; (d) a sale and leaseback or similar financing transaction of the Project; or (e) the granting of encumbrances, easements, covenants, conditions, restrictions or other similar rights or obligations in the Project; in each case without the Agency's prior written approval during the term of this Agreement; provided, however, that Participant must provide notice of the intended transfer to the Agency at least 60 days in advance of the actual transfer.

The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default that shall be subject to the provisions of Article 5 of this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, Participant's granting, pledging or otherwise transferring an interest in this Agreement, the payment of the Incentive as contemplated by this Agreement, the Project, or the Site or any portion thereof as collateral or security in connection with a financing transaction shall not constitute an assignment or transfer and shall not otherwise require the consent of the Agency.

1.9.4. Conveyance of Site Prior to Completion of Construction

Prior to substantial completion of construction of the Project, Participant shall not sell, transfer, directly or indirectly, any Interest in the Site, except as set forth in Section 1.9.3. If, prior to substantial completion of construction of the Project, any Interest in the Site is sold or transferred, Participant shall be deemed to have breached this Agreement, and the Agency shall be relieved of any and all remaining obligations under this Agreement from the date of sale or transfer. For this purpose, "Interest in the Site" means any legal or beneficial interest in the Site, including but not limited to, those beneficial interests transferred in a deed, contract for deed, installment sales contract, or escrow agreement, the intent of which is the transfer of title by Participant at a future date to a purchaser.

1.9.5. Conveyance of Site After Completion of Construction

With any sale or transfer of the Site, Participant shall, with the consent of Agency, assign this Agreement to the purchaser of the Site or any undivided interest therein, on condition that: (a) such assignment shall only be permitted in connection with the sale of the entire Site, (b) Participant shall not be in default hereunder beyond any applicable notice or cure period, and (c) the form of the assignment shall both assign the rights and require the transferee to assume the responsibilities under this Agreement.

1.9.6. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or its Agency-approved transferee or assignee to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the taxable property within the Site from *ad valorem* property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement, cease further payments under this Agreement to Participant or its successors or assigns, and seek remedies, pursuant to Subsection 5.3.1., including repayment of all amounts paid to Participant under this Agreement. If an Interest in the Site is sold or transferred to a third-party unaffiliated with Participant, the subsequent sale or transfer of that Interest in the Site to a tax-exempt entity is not subject to the restrictions set forth in this Subsection 1.10.6.

1.9.7. Continuing Obligations

A permitted assignment of this Agreement that is associated with the conveyance of a partial Interest in the Site shall not relieve Participant from any and all obligations under this Agreement unless specifically agreed to in writing by the Agency. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant and its Agency-approved transferee or assignee until the expiration or termination of this Agreement.

1.9.8. Foreclosure

The transfer of the Site or any portion thereof pursuant to a foreclosure, judicial sale, or similar action, or under threat of such action, shall constitute a Default under this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Incentive

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant the Incentive. The Incentive for any given year shall not exceed eighty-five percent (85%) of the total amount of the Agency Share generated by the Site for that year. The Agency shall make the payment to Participant representing the Incentive for the preceding year within sixty (60) days after the date on which all of the conditions precedent as described in Section 2.3 are met. Notwithstanding the foregoing, the Agency, in its sole discretion, may delay the final payment of the Incentive until all deadlines to contest or appeal the assessed value of taxable property within the Site have passed; in the event of such a decision by the Agency, the final Incentive payment shall be made no later than sixty (60) days after such deadlines have passed.

2.2. Sole Source of Funding for the Incentive

The entirety of Participant's Incentive contemplated in this Agreement will be funded solely by the Agency Share received by the Agency pursuant to the Interlocal Agreements generated solely by the Site. Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area or any other funds held by the Agency.

2.3. Conditions Precedent to the Payment of the Incentive to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all the following conditions precedent (each a "**Condition Precedent**" and together "**Conditions Precedent**"), as detailed in the following subsections, are satisfied:

2.3.1. Agency is Entitled to Receive the Agency Share

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements. The Agency agrees not to amend the Interlocal Agreements in a way that would reduce, or would potentially reduce, the Agency Share available to pay the Incentive without the prior written consent of Participant.

2.3.2. Agency has Actually Received the Agency Share Payment

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Agency Share payment(s) from the entity charged with collecting property taxes for the particular calendar year.

2.3.3. Operation of Project

The Agency is not obligated to pay to Participant the Incentive unless Participant has commenced operation of the Project as described in Section 2.12 and has continuously operated the Project as described in Section 2.13.

2.3.4. Payment of Taxes

Participant shall not receive any payments (including payments representing the Incentive) from the Agency for any period until the Agency has received documentation from Participant that all Taxes applicable to the Site have been paid by Participant. Notwithstanding the foregoing, Participant may at its cost petition the Iron County Board of Equalization to have the assessed valuation of the Site reduced; if Participant does initiate any such proceedings, it shall promptly notify the Agency in writing. Participant acknowledges that any reduction in assessed value of the Site will result in a corresponding reduction in the amount of the Incentive. If Participant's petition to contest the assessed valuation of the Site has not been resolved by the payment deadline for the Taxes, Participant shall pay the full assessment by that deadline. Upon the final determination of any proceeding or contest: (a) if the determination results in Participant owing additional Taxes, Participant shall immediately pay the Taxes due, together with all costs, charges, interest, and penalties incidental to the proceedings; and (b) if the determination results in Participant owing a lesser amount of Taxes than already paid, then Participant shall promptly notify the Agency, which shall adjust the amount of the Incentive for that year.

2.3.5. Request for Incentive

The Agency is not obligated to pay the Incentive to Participant unless Participant has made a timely Request for Payment in writing pursuant to Section 2.5 for the year for which payment of the Incentive is sought.

2.4. Effect of Failure to Meet Conditions Precedent to Payment of Incentive

In the event that the conditions precedent as described in Section 2.3 are not fully met by March 31 of the year following the year for which the Incentive is sought, and the Participant is thus not entitled to receive the Incentive attributable to that tax year, but is otherwise not in default under this Agreement, such failure shall not be a breach of this Agreement. Such failure shall result in the forfeiture by Participant of the Incentive for that particular year. Except as explicitly allowed herein, in no event will the Participant be subject to a clawback or repayment of any portion of the Incentive that has already been paid to the Participant, unless such repayment is necessary to correct for an administrative or clerical error that resulted in an overpayment to the Participant.

2.5. 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 Incentive is being sought (the "**Request for Payment**"). Each Request for Payment shall be in substantially the form attached hereto as **Exhibit H** and shall include, at a minimum, the information listed in **Exhibit H**. In the event that 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. Each Request for Payment shall be signed by an authorized representative of each entity that is the Participant under this Agreement and shall indicate the proper payee for the Incentive for that year.

2.6. Payment of Taxes

During the term of this Agreement, to the extent applicable, Participant and any of its successors-in-title to any portion of the Site agree to timely pay, prior to delinquency, all Taxes assessed against the Site to the extent owned by Participant or any successors-in-title; provided, however, that Participant expressly retains any and all rights to: (a) challenge, object to, or appeal any real property or personal property and other *ad valorem* taxes and assessments; and (b) petition for the reduction thereof.

2.7. Reduction or Elimination of Incentive

The Parties agree that Participant assumes and accepts the risk of possible alteration of federal or state statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Incentive as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Incentive are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Interlocal Agreements, the Agency's obligation to pay Participant the Incentive, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, the Budget, and the Interlocal Agreements were properly approved, adopted, and made effective. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant's sole cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of the Incentive to Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Incentive to Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so; provided, the Agency will not oppose the Participant, if Participant challenges a change in the law that reduces or eliminates the payment of the Agency Share to the Agency.

2.8. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area, the Plan, or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Incentive to Participant, the Agency shall provide written notice of such legal action to Participant. In the event 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 its 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 Incentive. 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 Incentive to Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to Participant. In the event that the court declares that the Agency cannot pay the Incentive, invalidates the Project Area or the Plan, the Interlocal Agreements, or this Agreement, or takes any other action which eliminates or reduces the amount of Incentive, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to pay to Participant the Incentive in accordance with this Agreement will be reduced or eliminated to the extent required by law. The Participant at its sole and exclusive discretion may, without penalty, terminate its obligations under this Agreement if any court invalidates the Participant's right to receive the Incentive pursuant to this Agreement.

2.9. Dispute over Receipt of Payment of the Incentive

In the event a dispute arises as to the person or entity entitled to receive the Incentive under this Agreement due to a claimed assignment of this Agreement by Participant or claimed successor-in-interest to this Agreement and successor-in-title to the Project, the Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorney fees, reasonably incurred by the Agency due to the dispute.

2.10. Nature of Participant's Obligations and Limitation

The Agency shall have no right to compel Participant to install any necessary improvements or otherwise develop or construct the Project.

2.11. Development and Operation of the Project

From and after substantial completion of construction of the Project, Participant shall continuously Operate the Project on the Site as a residential apartment facility for the full Term of this Agreement. For purposes of this Agreement, "**Operated**", "**Operate**", "**Operational**", or "**Operations**" of the Project shall mean when the following conditions are satisfied: (1) Participant has constructed for a hotel and adjacent parking structure within the Site with at least 85,000 square feet of interior space, at least 85 guest rooms, and at least 150 parking stalls in the parking structure with at least 75 stalls located above ground level, with design elements that fit the historic character of the downtown Cedar City area as shown on Exhibit A and on the plans that have been approved by Cedar City as of the date of this Agreement; (2) Participant is operating the Project as a Hampton Inn; and (3) rooms, including typical hotel amenities, are available to nightly guests. For purposes of this Section, Participant shall be deemed to have continuously Operated the Project if

the foregoing standards are met or exceeded, notwithstanding temporary cessation of Operations for inspection, maintenance, repair, replacement, and/or events of *force majeure* or destruction.

2.12. Commencement of Operations

Operations of the Project as described in Section 2.11 shall begin no later than January 1, 2027. If Participant fails to commence Operations of the Project as required by this Section for any reason other than events of *force majeure*, the Agency shall have the right to terminate this Agreement upon written notice to Participant, subject, however, to any notice and cure periods set forth in Article 5.

2.13. Continuing Operations

After Operations of the Project have commenced, Operations of the Project shall continue throughout the term of this Agreement as set forth in Article 4. For purposes of this Section, the Project shall be considered to be in Operation if the Project is Operating as described in Section 2.11 of this Agreement. The Project shall only be deemed Operational for purposes of this Agreement so long as the Project is operated as a Hampton Inn branded hotel, unless written consent is granted by the Agency prior to any such branding change, which consent may be withheld in the sole and absolute discretion of the Agency.

2.14. Cessation of Operations

If after January 1, 2027 Participant ceases to Operate the Project for any reason other than events of *force majeure* or destruction ("**Cessation**"), such Cessation shall be a default subject to the provisions of Article 5.

2.15. Funding Responsibility

The Parties understand and agree that funding for the Investment comes entirely from Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

3. ADDITIONAL TERMS

3.1. Investment

Participant will at all times be responsible for its Investment in the Project Area. Recognizing the level of Investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Incentive to Participant as an incentive to develop the Project and undertake the continued Operation requirements as contemplated in this Agreement.

3.2. Responsibility for Development Plans and Permits

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for any development within or relating to the Project Area, provided, however, Agency will reasonably cooperate in providing any consents or acknowledgments as may be required to obtain the same.

3.3. Other Terms

3.3.1. City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City's authority over land use, zoning, and permitting within the City.

3.3.2. Restriction Against Parcel Splitting

During the Term, Participant shall not, without the prior written approval of the Agency subdivide the Site or consolidate the Site with other real property in such a way that any portion thereof would extend outside of the boundaries of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the creation by the Iron County Assessor of tax identification parcels that extend beyond the boundaries of the Project Area.

3.3.3. Deannexation

Participant agrees that it will not vote or petition to remove, deannex, disconnect, or disincorporate the Project Area or any portion thereof from the City during the Term of this Agreement. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations to pay the Incentive shall immediately cease. Further, Participant shall not seek to nor support any legislation that would (i) restrict or eliminate the City's land use authority over any portion of the Project Area or (ii) allow for any portion of the funds that comprise Agency Share to be paid to any other person or entity.

3.3.4. Limits on Liability

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

3.3.5. Local, State, and Federal Laws

Each Party shall act in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

3.3.6. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Site for purposes of inspecting Participant's compliance with this Agreement, with reasonable and prior written notice (but in no event less than 24 hours prior), and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant, subject, however, to the rules, regulations, security protocols and other access limitations for safety and security purposes as required by Participant.

3.3.7. Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudice any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

3.3.8. Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code § 63G-7-101, *et seq.*

4. EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest during the term of this Agreement, which shall terminate on the date that is 180 days after the final payment is made to Participant pursuant to this Agreement, unless earlier terminated by written agreement of the Parties or pursuant to the terms of Article 5 (the "**Term**"); provided, the Parties shall continue to have the right to seek to enforce, or commence proceeding to enforce, the obligations of the other Party that arose prior to the termination of this Agreement. All of the rights and benefits associated with this Agreement shall only inure to the benefit of the Participant and any Agency-approved transferee or assignee.

5. DEFAULTS, REMEDIES, AND TERMINATION

5.1. Default

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement ("**Default**"). The Party in default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 5.3 hereof.

5.2. Notice

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice (a **"Default Notice"**) of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.3. Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default (**"Event of Default"**), and the non-defaulting Party may pursue such other rights and remedies as it may have, except, however, if Participant fails to commence or continue Operations as required by Sections 2.12 and 2.13, above, then in such case Agency shall be entitled to, as its sole remedy, immediately terminate this Agreement (for clarity, Agency may not commence an action against Participant for specific performance to commence or continue Operations). Further, in Event of Default by Participant, Agency's sole remedy shall be to terminate this Agreement upon payment of any amounts that may be due from Participant to the Agency under this Agreement.

5.3.1. Rights and Remedies

Upon the occurrence of an Event of Default, the non-defaulting Party shall have all remedies provided for in this Agreement and shall have the right to obtain specific performance, unless otherwise limited by the express remedies set forth in this Agreement. Such remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting Party.

Notwithstanding the foregoing, the Agency shall not have to right to compel, through a remedy of specific performance or otherwise, the Participant to make any investment within the Project Area or to Operate the Project as contemplated by this Agreement.

5.3.2. Legal Actions

5.3.2.1. Venue

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Fifth District Court for the State of Utah located in Iron County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

5.3.2.2. Service of Process

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law. Service of process on Participant shall be by personal service upon its Registered Agent, or in such other manner as may be provided by law, whether made within or without the State of Utah.

5.3.2.3. Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6. GENERAL PROVISIONS

6.1. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms, subject to: (i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and (ii) the effect of the exercise of judicial discretion in accordance with general principles of equity.

6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.9.1 and 1.9.2 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon making physical delivery or five days after mailing of the writing containing the notice.

6.3. Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the

remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

6.4. Nonliability of Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

6.5. Enforced Delay; Extension of Time and Performance

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where a "force majeure" event has occurred, which shall mean and include delays or defaults due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, pandemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency's Executive Director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

6.6. Approvals

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

6.7. Time of the Essence

Time shall be of the essence in the performance of this Agreement.

6.8. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall

be construed as creating the relationship of principal and agent, or a partnership, or a joint venture, or an enterprise between the Parties hereto.

6.10. No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

6.11. Headings

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

6.12. Contra Proferentum

This is an arm's-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

6.13. 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.

6.14. Incorporation of Recitals and Exhibits

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.1. Duplicate Originals

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Email transmission of pdf-format signatures shall be considered original signatures and pdf-format scans of original documents shall be treated as original documents.

7.2. Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter thereof.

7.3. Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

[Remainder of page intentionally left blank; signature pages to follow]

“Agency”

**REDEVELOPMENT AGENCY OF
CEDAR CITY**

By: _____
_____, Chair

Attest:

By: _____
_____, Secretary

“Participant”

**TITLE HOLDER EXCHANGE NO 10,
LLC**

By: _____
_____, its _____

GUIDANCE, LLC

By: _____
_____, its _____

Exhibit A
to Participation Agreement

Conceptual Development Plan



Exhibit B
to Participation Agreement

"Site" Map



Exhibit C
to Participation Agreement

Cedar City Interlocal Agreement

Exhibit D
to Participation Agreement

Iron County Interlocal Agreement

Exhibit E
to Participation Agreement

Iron County School District Interlocal Agreement

Exhibit F
to Participation Agreement

Central Iron County Water Conservancy District Interlocal Agreement

Exhibit G
to Participation Agreement

Calculation of Agency Share

The Agency Share for purposes of this Agreement shall be calculated as follows:

((current taxable value of the Site) – (base year value of the Site)) = incremental value of the Site

*(incremental value of the Site) * (current tax rate) = tax increment*

*(tax increment) * (85%) = Agency Share*

For all calculations, the “base year value of the Site” shall be \$620,230.

Form of Request for Payment

REQUEST FOR PAYMENT

To: Redevelopment Agency of Cedar City
 10 N. Main Street
 Cedar City, UT 84720
 Attention: Economic Development Director
 Email: jdavid@cedarcityut.gov

From: TITLE HOLDER EXCHANGE NO 10 LLC

GUIDANCE, LLC

Re: PARTICIPATION AGREEMENT by and between the REDEVELOPMENT AGENCY
 OF CEDAR CITY and TITLE HOLDER EXCHANGE NO 10 LLC for the CEDAR
 CITY DOWNTOWN COMMUNITY REINVESTMENT PROJECT AREA

Date of Request: _____

Desired Payee Name and Address:

Calendar year for which request is being made: _____

As of December 31 of the year for which the request is being made:

- Total amount of real property taxes paid by Participant: _____
- Total amount of personal property taxes paid by Participant: _____

Describe development within the Site or significant changes to operation of the Project during the year:

Signatures:

TITLE HOLDER EXCHANGE NO 10 LLC

GUIDANCE, LLC

By: _____

By: _____

Name:

Name:

Title:

Title: