



NOTICE AND AGENDA

SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY BOARD MEETING TUESDAY, NOVEMBER 19, 2024 – 6:00 P.M.

Notice is hereby given that the South Ogden City Community Development and Renewal Agency Board will hold a meeting on, Tuesday, November 19, 2024 beginning at 6:00 p.m. in the Council Chambers located at 3950 So. Adams Avenue, South Ogden, Utah. Any member of the board may be joining the meeting electronically.

I. CALL TO ORDER – Chairman Russell Porter

II. CONSENT AGENDA

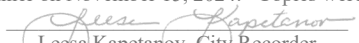
A. Approval of June 18, 2024 CDRA Meeting Minutes

III. DISCUSSION/ACTION ITEMS

A. Consideration of CDRA Resolution 24-02 – Amending the Participation Agreement With The Gardens at Mount Ogden LLC

IV. ADJOURN

The undersigned, duly appointed City Recorder, does hereby certify that a copy of the above notice and agenda was posted to the State of Utah Public Notice Website, on the City's website (southogdencity.gov) and emailed to the Standard Examiner on November 15, 2024. Copies were also delivered to each member of the governing body.


Leesa Kapetanov, City Recorder

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the meeting should notify the City Recorder at 801-622-2709 at least 48 hours in advance.



**MINUTES OF THE
SOUTH OGDEN CITY COMMUNITY DEVELOPMENT
AND RENEWAL AGENCY BOARD MEETING**

TUESDAY, JUNE 18, 2024 – 6:00 P.M.

COUNCIL CHAMBERS, CITY HALL

BOARD MEMBERS PRESENT

Chair Russell Porter, Board Members Susan Stewart, Mike Howard, Jeanette Smyth, Doug Stephens, and Jeremy Howe

STAFF MEMBERS PRESENT

City Manager Matt Dixon, Assistant City Manager Doug Gailey, Finance Director Steve Liebersbach, Parks and Public Works Director Jon Andersen, Fire Chief Cameron West, Deputy Fire Chief Brandon Storey, Police Chief Darin Parke, and Recorder Leesa Kapetanov

OTHERS PRESENT

No one else was present

Note: The time stamps indicated in blue correspond to the audio recording of this meeting, which can be found by clicking this link:

https://cms7files.revize.com/southogden/document_center/Sound%20Files/2024/CC240618_1803.mp3

or by requesting a copy from the office of the South Ogden City Recorder.

Motion from council meeting to enter CDRA Board Meeting:

01:31:31

Council Member Smyth moved to enter into a CDRA Board meeting. Council Member Stephens seconded the motion. The voice vote was unanimous in favor of the motion.

I. CALL TO ORDER

- Chair Porter called the meeting to order at 7:35 pm and moved to the consent agenda

II. CONSENT AGENDA

- A. Approval of June 20, 2023 CDRA Minutes**

- The chair called for a motion to approve the consent agenda

01:32:04

Board Member Howard so moved, followed by a second from Board Member Smyth. Board Members Stewart, Howard, Smyth, Stephens, and Howe all voted in favor of the motion.

III. PUBLIC HEARING

To Receive and Consider Comments on the FY2025 CDRA Budget

Chair Porter entertained a motion to enter into a public hearing to receive and consider comments on the FY2025 CDRA budget

01:32:20

Board Member Howe so moved, followed by a second from Board Member Howard. All present voted aye.

- Overview of CDRA Budget by Finance Director Steve Liebersbach
- There was no one in chambers to comment. The chair called for a motion to close the public hearing and return to the CDRA Board meeting.

01:32:33

Board Member Smyth so moved. Board Member Howe seconded the motion. The voice vote was unanimous in favor of the motion.

01:33:35

IV. DISCUSSION/ACTION ITEMS

A. Consideration of CDRA Resolution 24-01 – Adopting the FY2025 CDRA Budget

- Chair Porter called for a motion to approve CDRA Resolution 24-01

01:33:36

Board Member Howe so moved. The motion was seconded by Board Member Howard. After determining there was no more discussion, the chair made a roll call vote:

Board Member Stewart -	Yes
Board Member Howard -	Yes
Board Member Smyth -	Yes
Board Member Stephens-	Yes
Board Member Howe-	Yes

CDRA Resolution 24-01 was adopted.

V. **ADJOURN**

- The chair called for a motion to adjourn the CDRA Board Meeting

01:34:11

**Board Member Howard moved to adjourn the CDRA meeting and return to City Council meeting.
Board Member Smyth seconded the motion. All present voted aye.**

The meeting ended at 7:37 pm.

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Community Development and Renewal Agency Board Meeting held Tuesday, June 18, 2024.



Leesa Kapetanov, City Recorder, Board Secretary

Date Approved by Board

CDRA Resolution No. 24-02

**A RESOLUTION OF THE SOUTH OGDEN CITY COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY APPROVING AN
AMENDMENT TO THE PARTICIPATION AGREEMENT WITH THE
GARDENS AT MT. OGDEN, LLC AND AUTHORIZING THE
COLLATERAL ASSIGNMENT OF THE SAME**

WHEREAS, the South Ogden City Community Development and Renewal Agency (the “Agency”) is authorized to provide for project area development pursuant to Utah Code Ann. § 17C-1-101 et seq., the Limited Purpose Local Government Entities - Community Reinvestment Agency Act (the “Act”); and

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

WHEREAS, the Agency previously executed a participation agreement with The Gardens At Mt. Ogden, LLC (the “**Participation Agreement**” and the “**Participant**”, respectively) for development within the City Center Community Reinvestment Project Area (the “**Project Area**”); and

WHEREAS, the development contemplated by the Participation Agreement is now complete and the Participant has requested that the Agency consent to the collateral assignment of the Participation Agreement as part of Participant’s long-term financing for the project; and

WHEREAS, the Participant has also requested an amendment to the Participation Agreement allowing the assignment of the Participation Agreement under certain circumstances; and

WHEREAS, the Agency has reviewed these requests from the Participant and evaluated the risks of taking such actions and now desires to approve the requested consent to collateral assignment and requested amendment to the Participation Agreement.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH OGDEN CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY:

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

2. The Agency, having reviewed the matter, hereby approves the Consent to Collateral Assignment of Participation Agreement, attached hereto as **Exhibit A** (the “**Consent**”) and authorizes the Chair to sign the Consent on behalf of the Agency.

3. The Amendment and the Consent are approved with such minor additions, modifications, deletions or other changes as may be deemed necessary or appropriate and approved by the Chair of the Agency Board 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 documents.

4. This Resolution shall take effect upon adoption.

APPROVED AND ADOPTED on the 19th day of November, 2024.

Russell L. Porter, Chair
*South Ogden City Community Development
and Renewal Agency*

Attest:

Leesa Kapetanov, Secretary

EXHIBIT A

Amendment Participation Agreement

**AMENDMENT NO. 1 to the
PARTICIPATION AGREEMENT by and between the SOUTH OGDEN
CITY COMMUNITY DEVELOPMENT AND RENEWAL AGENCY and
THE GARDENS AT MT. OGDEN, LLC for the SOUTH OGDEN CITY
CENTER COMMUNITY REINVESTMENT PROJECT AREA**

This Amendment No. 1 (“**Amendment**”) to the Participation Agreement (the “**Participation Agreement**”) by and between The South Ogden City Community Development And Renewal Agency (the “**Agency**”) and The Gardens At Mt. Ogden, LLC (“**Gardens**”), for the South Ogden City Center Community Reinvestment Project Area, is made by Gardens and Agency.

RECITALS:

WHEREAS, Agency and Gardens entered into the Participation Agreement, which was dated as of [undated in original], 2021.

WHEREAS, Gardens is presently pursuing a long-term loan to replace its construction loan on the Project, and the new long-term lender has requested certain consents, clarifications and amendments related to the Participation Agreement.

WHEREAS, in order to complete the closing of its long-term loan on the Project, Gardens has requested, and Agency is willing to consent to, the requested consents, amendments and clarifications of the Participation Agreement, as more particularly described below.

NOW, THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. The Preamble of the Participation Agreement is hereby revised to provide that Effective Date is October 5, 2021.

2. Gardens and Agency hereby confirm that the “Commencement Date” as defined in Section 1.7.1 of the Participation Agreement is December 31, 2023.

3. Because construction of the Project is now complete and the multi-family apartment building comprising the Project is substantially occupied, Agency is willing to waive Section 1.9.8 of the Participation Agreement. Accordingly, Section 1.9.8 of the Participation Agreement is hereby deleted, which reads:

“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.”

In all other respects the Participation Agreement remains in full force and effect, without amendment.

IN WITNESS WHEREOF, this Amendment No. 1 to Participation Agreement is executed on the dates indicated below, to be effective as of the date last signed.

AGENCY:

South Ogden City Community
Development And Renewal Agency

By: _____
Russell L. Porter
Its: Chair

Date

Attest:

By: _____
Leesa Kapetanov, Secretary

GARDENS:

The Gardens At Mt. Ogden, LLC
a Utah limited liability company

By: _____
James R. Wakefield
Its: Manager

Date

EXHIBIT B

Consent to Collateral Assignment

CONSENT TO COLLATERAL ASSIGNMENT OF PARTICIPATION AGREEMENT

PGIM REAL ESTATE AGENCY FINANCING, LLC, a Delaware limited liability company (“**Lender**”) has agreed, subject to the satisfaction of certain terms and conditions, to make a loan in the original principal amount of \$_____ (the “**Mortgage Loan**”) to **THE GARDENS AT MT. OGDEN, LLC**, a Utah limited liability company (“**Borrower**”), which loan is or will be secured by a lien on that certain multifamily residential apartment project located at 955 Country Hills Drive, Ogden, UT 84403 (the “**Mortgaged Property**”). Lender is requiring this Consent to Collateral Assignment of Participation Agreement (the “**Consent**”) as a condition to making the Mortgage Loan.

The South Ogden City Community Development And Renewal Agency , a political subdivision of the State of Utah operating under the Utah Community Reinvestment Agency Act (the “**Authority**”), hereby consents to the collateral assignment by Borrower of (1) that certain **Participation Agreement** (the “**Redevelopment Agreement**”) between the Authority and Borrower dated as of [undated in original], 2021, pursuant to the terms of that certain Collateral Assignment of Participation Agreement from Borrower to Lender, dated as of November __, 2024 (the “**Assignment**”), for the purpose of (i) securing the Mortgage Loan, and (ii) assigning the Redevelopment Agreement to Lender as collateral for the Mortgage Loan as provided in the Assignment. Until such time that Lender succeeds to Borrower’s interest under the Redevelopment Agreement pursuant to the terms of the Assignment, the Authority agrees that Lender shall not be deemed to have assumed any of the obligations or liabilities under the Redevelopment Agreement, nor shall Lender be liable to the Authority by reason of any default by any party under the Redevelopment Agreement. At such time that Lender succeeds to Borrower’s interest under the Redevelopment Agreement, Lender’s liability shall be strictly limited to acts and omissions of Lender occurring during the period of ownership and operation of the Mortgaged Property and the improvements located thereon by Lender.

(1) The Authority Representations and Warranties.

The Authority hereby represents and warrants to Lender that:

(a) it has the right to exercise and deliver this Consent under the terms of the Redevelopment Agreement. The execution of this Consent and performance and observance of its terms have been duly authorized by necessary agency action and do not contravene or violate any provision of the Authority’s organizational documents;

(b) to the knowledge of the Authority, Borrower has made no prior assignments of the Redevelopment Agreement;

(c) the Redevelopment Agreement is in full force and effect, subject to no defenses, setoffs or counterclaims; and there exists no event, condition or occurrence that would cause the Redevelopment Agreement to be subject to any defenses, setoffs or counterclaims;

(d) the Authority has performed all of its obligations under the Redevelopment Agreement and there exists no event, condition or occurrence which constitutes, or which with notice and/or the passage of time would constitute, a breach of or default under any terms or conditions of the Redevelopment Agreement; and

(e) the Authority has not delivered any notice to Borrower of the Authority's intention to prepay all or any portion of the Participation Agreement in advance of the regularly scheduled payments thereunder.

(2) The Authority Covenants Regarding Collateral Assignment of Participation Agreement.

The Authority hereby covenants and agrees:

(a) to faithfully observe and perform all of the obligations and agreements of the Redevelopment Agreement, if any;

(b) not to do any act which would destroy or impair the security afforded to Lender under the Assignment;

(c) to simultaneously deliver to Lender a copy of each notice delivered by the Authority to Borrower pursuant to the Redevelopment Agreement, including any notice relating to any default, alleged default, or potential default of Borrower, under and pursuant to the Redevelopment Agreement; and

(d) not permit or consent to the amendment, modification, cancellation or surrender of the Redevelopment Agreement without the prior written consent of Lender.

The Authority acknowledges and agrees that (i) the Authority is executing this Consent to induce Lender to make (A) the Mortgage Loan and (B) approve of the Redevelopment Agreement as additional security for the Mortgage Loan, and (ii) Lender will rely on the representations and agreements made by the Authority herein in connection with Lender's agreement to make the Mortgage Loan and the Authority agrees that Lender may so rely on such representations and agreements.

[SIGNATURES CONTINUE ON NEXT PAGE]

TIF Project Name: The Gardens On 40th

Executed November ___, 2024.

AUTHORITY:

The South Ogden City Community Development
And Renewal Agency

By: _____
Name: Russell L. Porter
Title: Chair