

TAX INCREMENT REIMBURSEMENT AGREEMENT

THIS TAX INCREMENT REIMBURSEMENT AGREEMENT (this “Agreement”) is made effective as of December 12, 2018 (the “Effective Date”) by and between **Zellerbach Property LLC** (the “Company”) and the **City of South Salt Lake Redevelopment Agency, a political subdivision of the State of Utah** (the “Agency”). The Agency and the Company agree as follows:

1. **Background.**

1.1. In April of 2015, the Agency adopted a resolution approving the Streetcar Community Development Project Area Plan (the “Plan”) for the Streetcar Community Development Project Area (the “Project Area”).

1.2. The Company presented to the Agency preliminary development concept plans for a high-quality residential development within the boundaries of the Project Area, and accompanying plaza improvements, which plaza will be dedicated to the Utah Transit Authority (the “Project”). The Company owns the fee title to all the land on which the Project is located (the “Land”), which Land is described in Exhibit A attached hereto, and currently covers the list of property tax identification numbers attached hereto as Exhibit B. Due to its location within the Project Area, the Land generates tax increment revenues that are diverted to the Agency pursuant to interlocal cooperation agreements (collectively, the “ILAs”) entered into between the Agency and (i) Salt Lake County, and (ii) the City of South Salt Lake, respectively. Subject to Section 2.6 of the Salt Lake County ILA (described further in Section 5 *below*), the Agency is entitled to receive 60% of all tax increment from the Project Area for a period of 15 years under each of the ILAs. The Agency will begin collecting tax increment under the ILAs for the tax year 2019 (paid to the Agency in the spring of 2020 as explained *below*). Copies of the ILAs are attached hereto as Exhibit D.

1.3. The Company has also presented to the Agency and its consultants sufficient information, including development plans and alternatives, financial statements, and other information, showing justification for the Agency’s participation in certain costs for the construction of the Project. This Agreement sets forth the terms of, and conditions to, the Agency’s agreement to reimburse the Company for certain development costs.

2. **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” in this Agreement has the same meaning as defined by that statute. 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 ILAs.

3. **Project Financing.** The Company is solely responsible for all the costs of acquisition, development, construction, maintenance, ownership, repair, etc., of the Project. However, the Agency will participate with the Company in paying for certain plaza improvement portions of the Project (identified in Exhibit C), solely by paying tax increment revenues, generated from the Project and actually received by the Agency on an annual basis, and subject to Sections 4 and 5 *below*, a total cumulative cap of \$814,750.00 (the “Maximum Reimbursement Amount”), to the Company as

reimbursement for expenses actually incurred by the Company as identified in the attached Exhibit C (the “Reimbursable Costs”). The Company will provide, upon request from the Agency at any time, proof of payment of all Reimbursable Costs. The Agency will pay to the Company annually, (each such annual payment is referred to as an “Annual Increment Payment”), an amount equal to 100% of all tax increment revenues generated by the Project and actually received by the Agency from the Salt Lake County Treasurer under the two existing ILAs. The Agency will continue making Annual Increment Payments until the first to occur of either (i) the Agency has paid to the Company the Maximum Reimbursement Amount, or (ii) the Agency no longer has the right to receive tax increment from the Project Area because the final year of the tax increment collection period under the ILAs has expired. Despite anything in this Agreement to the contrary, the Agency has no obligation to pay any more than the Maximum Reimbursement Amount. The Agency does not guarantee that the Company will be paid the full Maximum Reimbursement Amount.

4. Agreement to Request School District Participation. The parties acknowledge that as of the Effective Date, the only taxing entities that have agreed to contribute tax increment from the Project Area to the Agency are the City of South Salt Lake and Salt Lake County. The Agency agrees to request that the Granite School District also participate by entering into an interlocal cooperation agreement with the Agency under which the School District agrees to share tax increment revenues (60% for 15 years, similar to the existing ILAs) with the Agency within the Project Area. The Agency’s sole obligation under this paragraph is to make a request to the School District. The Agency does not guarantee the School District will participate. The parties acknowledge the School District may simply say no, and the Company solely assumes this risk. However, if and only if the School District does agree to participate in sharing tax increment with the Agency from the Project Area, then, upon execution of an interlocal cooperation agreement between the Agency and the City relating to the Project Area, (i) the Maximum Reimbursement Amount will be automatically increased by an amount equal to 95% of the amount of tax increment shared by the School District with the Agency under that interlocal agreement cooperation agreement, and the Agency agrees that each Annual Increment Payment will be increased by an amount equal to 95% of the amount of tax increment received by the Agency each year under interlocal cooperation agreement with the School District, and (ii) the agreement will be attached hereto as part of Exhibit D and incorporate into this Agreement to the same extent as the other ILAs described in this Agreement.

5. ILA Performance Benchmarks, and Other Conditions. The Company acknowledges that Section 2.6 of the ILA with Salt Lake County imposes certain “Performance Benchmarks” as a condition to the Agency’s receipt some of the tax increment otherwise provided under that ILA. The Company acknowledges that the Company owns or controls a sufficient portion of the total acreage within the Project Area so that the Company’s development activities will in large part determine whether those “Performance Benchmarks” are met. If any of those Performance Benchmarks are not met, regardless of who caused or contributed to the failure to meet, then (i) the Company acknowledges that tax increment received by the Agency, and consequently available to be paid to the Company under this Agreement, will be diminished as provided in the Salt Lake County ILA, (ii) the Agency will have no liability of any kind to the Company relating to that reduction in tax increment, and (iii) the Maximum Reimbursement Amount will be automatically reduced by the exactly the amount of the reduction under the Salt Lake County ILA. All conditions and obligations to tax increment payments to the Agency under the ILAs are hereby incorporated into this Agreement and the Company assumes all the risk relating to satisfaction of those conditions and obligations.

6. Limitations/Clarifications on Tax Increment Participation. Despite anything in this Agreement to the contrary:

6.1. all obligations of the Agency to pay any Annual Increment Payment(s) to the Company are conditional on the property owner timely and properly paying all taxes assessed on or generated from the Land, including but not necessarily limited to real property, personal property, ad valorem, and sales taxes, to the appropriate taxing authorities;

6.2. the Company acknowledges the Agency's participation is provided solely on a post-performance basis, meaning the Company must first increase the assessed value of the Land by improving the Land, then pay the applicable taxes, and only then will the Agency have tax increment funds to pay to the Company; and

6.3. the Company reserves all, and does not waive or relinquish any, rights available at law or in equity to appeal or contest any taxes or assessments on the Land.

7. Timing of Annual Payments. The Agency will make the first Annual Increment Payment within thirty days after the Agency receives from the Salt Lake County Treasurer the final tax increment payment for the 2019 calendar year, and the Agency will continue making the Annual Increment Payments each successive year within the same thirty-day period for so long as the Agency is entitled to collect tax increment from the Project Area (as may be extended, if at all, from time to time). For informational purposes, the Agency typically receives tax increment payments from the Salt Lake County Treasurer in March or April (for the preceding tax year), which means the Agency will likely pay the first Annual Increment Payment to the Company around April or May of 2020, and then the successive payments in April or May of each succeeding year.

8. Limitations on Agency Authority. The Company acknowledges that:

8.1. 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 of South Salt Lake, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City;

8.2. the City of South Salt Lake is not a party to this Agreement and the City will not have any commitments, obligations, duties, liabilities or obligations under this Agreement;

8.3. the Agency has no independent taxing power, and therefore the Agency's sole source of revenue, at least for purposes of this Agreement, is tax increment financing as provided under Utah law;

8.4. if Utah law is amended or superseded by new law that has the effect of reducing or eliminating the amount of tax increment revenue to be paid to the Agency, the Agency's obligation to pay Annual Increment Payments to the Company will be accordingly reduced or eliminated;

8.5. if a court of competent jurisdiction declares that the Agency cannot receive tax increment revenues, or make payments to the Company from tax increment revenues as provided in this Agreement, or takes any other action which eliminates or reduces the amount of tax

increment revenues paid to the Agency, the Agency's obligation to make Annual Increment Payments to the Company shall be accordingly reduced or eliminated; and

8.6. the Agency has no power or authority to grant any land use approvals;

8.7. nothing in this Agreement creates, implies, or guarantees any land use approvals; and

8.8. all land use approvals are subject to the standard requirements of applicable law and City policies and procedures.

9. 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 may provide notice to the breaching party. The breaching party shall have 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.

10. Indemnification. The Company agrees to indemnify, defend (with counsel of the Company's choosing, as approved by the indemnitee, in its reasonable discretion), and hold the Agency and the City of South Salt Lake, 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 Company, including its officers, directors, agents, employees, contractors, and consultants, upon or in connection with the Land 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 of South Salt Lake, including their respective officers, directors, agents, employees, contractors, and consultants.

11. Parties; Successors and Assigns. Except for the City of South Salt Lake which is an intended third-party beneficiary as described in the immediately preceding paragraph regarding indemnification, this Agreement is intended solely for the benefit of the Agency and the Company and there are no intended third party beneficiaries. The Company has no right to assign this Agreement or its obligations under this Agreement without the Agency's advance written consent, in the Agency's sole and absolute discretion. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

12. No Liability of Officials/Employees. No director, officer, agent, employee, or consultant of the Agency or the Company 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 Company or for any amount which may become due to the Company or its successors or on any obligations under the terms of this Agreement.

13. No Legal Relationship. 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.

14. No Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Land or Project for the general public or for any public purpose whatsoever.
15. Attorneys' Fees. In the event of litigation between the parties related to this Agreement, the unsuccessful party in such litigation must pay the other party's costs, expenses, and reasonable attorneys' fees, determined by the court sitting without a jury.
16. Governing Law. The laws of the State of Utah will govern this Agreement. Any action pertaining to or arising under this Agreement must be brought in the applicable state or federal court having jurisdiction in, and located in, Salt Lake County, Utah, and nowhere else.
17. Waiver. The waiver by any party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason of the matter previously waived.
18. Amendment. This Agreement may be modified or amended only by a written instrument authorized and executed by the Company and the Agency, respectively, each in their sole discretion.
19. Entire Agreement/Amendment/Counterparts. 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 in this Agreement.
20. Construction/ Headings. The parties waive the application of any rule of law relating to the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the party who prepared this Agreement or any earlier draft thereof. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.
21. Severability. If any provision (or portion of any provision) of this Agreement shall be deemed to be invalid or unenforceable, such invalidity or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof provided the removal of same does not materially alter the overall intent of this Agreement.
22. Time is of the Essence. Time is of the essence with respect to each and every term, condition, obligation and provision hereof.
23. 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.

[End of Terms – Signature Page Follows]

IN WITNESS WHEREOF, the Agency and the Company have executed this Tax Increment Reimbursement Agreement effective as of the date shown above.

ZELLERBACH PROPERTY, LLC

By: _____
Name:
Title:

CITY OF SOUTH SALT LAKE REDEVELOPMENT AGENCY

Executive Director

Attest:

Secretary

[Exhibits A, B, C, and D to be attached]

Exhibit A

Legal Description of the Land

Exhibit B

Tax Id Nos. for the Land

Exhibit C

Reimbursable Costs

Zellerbach Plaza Improvement Estimate

	Total	Description
1 Soft Costs		
Architect	35,000.00	Cost of plaza design and coordination. Estimate.
Structural Engineer	6,500.00	Detailing for fire lane reinforcement, art installation, misc. detailing.
Electrical Engineer	8,500.00	Site electrical estimate. Lighting circuitry and distribution
Landscape Architect	15,000.00	Landscape and hardscape design and art installation coordination
Civil Engineer	12,000.00	Detailing for fire lane misc. detailing.
Testing and Inspection	7,500.00	Allowance.
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Sub-Total	\$ 84,500.00	
2 Hard Costs		
Plaza Area		
Site Civil Improvements	65,000.00	Grading, footings and misc. improvements.
Hardscape	96,750.00	Concrete and Pavers
Landscaping	68,500.00	Landscaping at plazas. Trees, ground cover, tree grates, soil prep, irrigation, misc. costs.
Site Electrical	225,000.00	Site lighting, distribution, bollards and underground
Rocky Mountain Power	-	Power line burial estimates are between \$150k and \$175k from Julianne Chapman at RMP, N.A.P. of Jacobsen \$'s or ou
Signage	50,000.00	Allowance for future signage. Design in process
Art Installation	225,000.00	Budget for Art installation at plazas.
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Sub-Total	\$ 730,250.00	

Exhibit D

Interlocal Cooperation Agreements