



**City of Washington Terrace
Redevelopment Agency Meeting
Tuesday, August 18, 2020
following the Regular City Council Meeting
City Hall Council Chambers
5249 South 400 East, Washington Terrace City**

1. ROLL CALL

2. INTRODUCTION OF GUESTS

3. CONSENT ITEMS

Any point of order or issue regarding items on the Agenda or the order of the agenda need to be addressed here prior to the approval of the agenda.

3.1 APPROVAL OF AGENDA

3.2 APPROVAL OF MEETING MINUTES FROM AUGUST 4, 2020

4. RECURRING BUSINESS

**4.1 MOTION/RESOLUTION 20-13: APPROVAL FOR PARTICIPATION FOR
DEVELOPMENT WITHIN THE CENTRAL BUSINESS DISTRICT
REDEVELOPMENT PROJECT AREA**

5. COMMENTS CONSIDERED

6. ADJOURNMENT OF MEETING: CHAIR ALLEN

CERTIFICATE OF POSTING

I, Amy Rodriguez, The undersigned duly appointed City Recorder of the City of Washington Terrace do hereby certify that the above agenda was posted in three public places within the City limits and sent to the *Standard Examiner* at least 24 hours prior to the meeting.

For Packet Information, please visit our website at www.washingtonterracecity.org

City of Washington Terrace

Minutes of a Redevelopment Meeting

Held on August 4, 2020

following the Regular City Council Meeting

City Hall, 5249 South 400 East, Washington Terrace City,

County of Weber, State of Utah

CHAIR, BOARD, AND STAFF MEMBERS PRESENT

Chair Allen

Board Member Seal

Board Member Brown

Board Member Weir

Vice- Chair Barker

Board Member West

General Planner Tyler Seaman

City Manager Tom Hanson

City Recorder Amy Rodriguez

Others Present

Kim and Jacci Florence

Due to COVID 19 Restrictions, the meeting was held via zoom and live streamed on facebook

1. ROLL CALL

2. INTRODUCTION OF GUESTS

3. CONSENT ITEMS

3.1 APPROVAL OF AGENDA

3.2 APPROVAL OF MEETING MINUTES FROM JULY 21, 2020

Items 3.1 and 3.2 were approved by general consent.

4. NEW BUSINESS

4.1 DISCUSSION/DIRECTION: DISCUSSION TO CONSIDER PARTNERING WITH THE TERRACE PLAYHOUSE ON THE PLAYHOUSE EXTERIOR RENOVATION

Hanson stated that the Terrace Playhouse is known throughout Utah. He stated that it is a very recognizable landmark. He stated that the Florence's have stated to him that they would like to remain in Washington Terrace.

He stated that he has been working with Jacci and Kim on how we can team up with them through the RDA to help with that area and work on their exterior. He stated that the structure is

showing its age. Hanson stated that the Florence's have put a lot of work on the inside of the building.
Hanson is suggesting using RDA funds to help them move forward with the outside renovations. Hanson stated that there are some general maintenance around the area that could use some care. Hanson stated that the Central Business District could use some help in the area. Hanson stated that he has worked through several plans and layouts on what they would like to do to build up the exterior of the building to build up the look and feel of the environment. Hanson stated that the value to the community adds up nicely.

Kim and Jacci Florence are the owners of the Terrace Plaza Playhouse. They stated that they appreciate the invite to be at the meeting. Kim stated that one of his main concerns is an overhang that is over the sidewalk. He stated that is in deterioration. He stated that he has gotten plans from a construction company on a new overhang.
Jacci stated that the design fits into the neighborhood. Kim stated that they feel that they can attract the talent and with the new additions, they can attract more curb appeal. They stated that during this down time with the business, it is a perfect time to get the renovations completed. They feel that their patronage will increase substantially with the new curb appeal. They stated that they just need the help to get it done. Chair Allen stated that he has seen them on the RAMP grant list. Jacci stated that they RAMP funds can only be used on the productions, and not the building. Chair Allen noted that he has run into people all over the state who know where the Terrace is because of the Playhouse. Chair Allen stated that the curb appeal should not stop with the Playhouse. He stated that the fix it shop is one area that could use some RDA funding and is working with the owner to help him with his business. The Florence's expressed their appreciation to Hanson for reaching out to them on this opportunity. Hanson stated that Seaman will be working with him on this project. Hanson stated that the Playhouse team is coming to them with a 50/50 match. Hanson stated that we are not set to make an approval tonight. Hanson stated that the Board will have a site visit at the Playhouse, and the public is welcome to attend.

5. COMMENTS CONSIDERED

There are no comments considered.

6. ADJOURNMENT OF MEETING: CHAIR ALLEN

Chair Allen adjourned the meeting at 7:41 p.m.

7. SITE VISIT

The Board Members will meet at the Terrace Playhouse, located at 99 East 4700 South , Washington Terrace, UT immediately following the RDA meeting.

Date Approved

City Recorder

RDA Board Staff Report

Author: Tom Hanson
Subject: Terrace Playhouse Reimbursement
Date: August 18, 2020
Type of Item: Motion / Action



Summary:

For several years we have been working with the Terrace Playhouse to renovate the front of the structure in order to improve the overall curb-appeal of the building. With this improvement it is anticipated that the overall appeal of the Central Business District (CBD) will improve and hopefully motivate others to improve their environment as well. This sort of investment will not generate a new revenue source or significantly increase the tax increment from the structure but will help accomplish goals set out in the CBD RDA plan.

Description:

- A. **Topic:** Terrace Playhouse Incentive for the renovation of the façade and replacement of interior lobby carpeting as described in the Participation Agreement. In short, the agreement is for a 50% match up to \$110,000.00 for the construction of the façade and the replacement of the carpeting in the lobbies of the playhouse.
- B. **Background:** As described in the Summary, the Terrace Playhouse has been in need of funding to help improve the look and feel of the building. The building has deteriorated to the point that it is critical need of structural and esthetic improvements. The improvements will accomplish some of the goals associated with the RDA to include:
- Rehabilitation of buildings to assure sound long-term economic activity in the core area of Washington Terrace City.
 - Achievement of an environment reflecting a high level of concern for architectural and urban design principles developed through encouragement, guidance, appropriate controls and professional assistance to owner participants and redevelopers.
 - The strengthening of the tax base and economic health of the entire community and of the State of Utah.
- C. **Analysis:**
Based on the information provided by Beverly's Terrace Playhouse and the goals of the RDA, we anticipate a successful project that will achieve goals set out by the RDA, build a stronger sense of community, and help bring the community together in a meaningful way. The Terrace Playhouse is an anchor to the community and has become part of the fabric of our entire region. The Terrace Playhouse an institution worthy preserving. Staff would recommend approving the project as described.

Redevelopment Agency of Washington Terrace
County of Weber, State of Utah

RESOLUTION NO. 20-13

**A RESOLUTION AUTHORIZING A PARTICIPATION AGREEMENT FOR
DEVELOPMENT WITHIN THE CENTRAL BUSINESS DISTRICT
REDEVELOPMENT PROJECT AREA**

WHEREAS the Redevelopment Agency of Washington Terrace (the “**Agency**”) has been created and operates pursuant to Utah Code Annotated (“UCA”) Title 17C, the Community Reinvestment Agency Act and its predecessor statutes (the “**Act**”), for the purpose of promoting project area development within the Agency boundaries; and

WHEREAS under authority of the Act, the Agency has created the Central Business District Redevelopment Project Area (the “**Project Area**”); and

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

WHEREAS the Agency finds the participation agreement between the Agency and the owner of the Terrace Plaza Playhouse (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 Washington Terrace City.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE REDEVELOPMENT AGENCY OF WASHINGTON TERRACE AS FOLLOWS:

1. The Participation Agreement attached hereto as **Exhibit A** 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 Board in consultation with 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.
2. The Chair or his designee shall execute the Participation Agreement on behalf of the Agency.
3. This Resolution shall take effect upon adoption.

[resolution continues on next page]

PASSED AND ADOPTED by the Governing Board of the Redevelopment Agency of Washington Terrace this ____ day of _____, 2020.

REDEVELOPMENT AGENCY OF WASHINGTON TERRACE

Mark C. Allen, Chair ATTEST:

Amy Rodriguez , City Recorder

Roll Call Vote

Board Member Blair Brown	_____
Board Member Larry Weir	_____
Board Member Scott Barker	_____
Board Member Carey Seal	_____
Board Member Jeff West	_____

PARTICIPATION AGREEMENT by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF WASHINGTON TERRACE CITY and the BLAINE L OLSEN LIVING TRUST

This Participation Agreement (the “**Agreement**”) is made and entered into as of this 18th day of August, 2020 (the “**Effective Date**”), by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF WASHINGTON TERRACE 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 the Blaine L Olsen Living Trust (“**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 is to carry out in part the Project Plan (the “**Plan**”) for the Central Business District Project Area (the “**Project Area**”) by providing for incentives to entice Participant to renovate the exterior of the Terrace Playhouse building (the “**Building**”) and replace carpet in the lobby areas of the interior, 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 renovation of the Building, which will benefit the entire Project Area.

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

This Agreement is in the vital and best interests of Washington Terrace 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. The Project Area Plan and Budget

This Agreement is subject to the provisions of the Plan, as adopted and ordained on August 5, 1987, by the Agency and the Washington Terrace City Council (the “**Council**”) in accordance with the Act and is incorporated herein by this reference.

1.5. Reserved

1.6. Description of the Site

The Building is located on property that is a portion of the Project Area consisting of approximately 1.57 acres, also known as Weber County Parcel # 25-023-0001 and as 99 East 4600 South, Washington Terrace, Utah (the “**Site**”).

1.7. Description of the Investment

Pursuant to the terms of this Agreement, Participant shall renovate all or portions of the interior and exterior of the Building. The renovations to the Building shall include the installation of a new commercial façade on the front of the Building and the replacement of the main corridor area carpeting (the “**Renovations**”). Participant estimates that the cost of the Renovations will be approximately \$230,000 over a period of approximately one year (the “**Investment**”). The Agency may, at its sole discretion, include additional improvements made to the Building or volunteer labor hours as Renovations for purposes of calculating the total Investment.

1.8. The Reimbursement

As used in this Agreement, the term “**Reimbursement**” means the lesser of One Hundred Ten Thousand Dollars (\$110,000.00) or fifty percent (50%) of the Investment. The Reimbursement will be paid to Participant upon compliance with the terms and conditions of this Agreement. The Reimbursement may be paid out of Agency Funds or any other source that may be deemed appropriate by the Agency in accordance with the Act.

1.9. Parties to the Agreement

1.9.1. The Agency

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

Washington Terrace City Redevelopment Agency
Attn: Executive Director
5249 South 400 East
Washington Terrace City, Utah 84405

With a copy to:

Adam S. Long
Smith Hartvigsen, PLLC
257 East 200 South, Suite 500
Salt Lake City, UT 84111

1.9.2. The Participant

Participant's address for purposes of this Agreement is:

Blaine L Olsen Living Trust (Beverly Terrace Plaza Playhouse)
C/O Jacci Florence
1307 E 625 N
Layton, UT 84040

1.10. Prohibition against Certain Changes

1.10.1. Acknowledgement by Participant

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the Investment within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section 1.10, may be considered, for practical purposes, a transfer or disposition of the Investment or the Building, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.10.2. 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 Agency may withhold its consent to such an assignment or transfer if, in the sole discretion of the Agency, such transfer or assignment would result in the economic development goals of the Agency and the Project area not being met.

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.

1.10.3. Continuing Obligations

A permitted assignment or transfer of this Agreement, in whole or in part, 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 successors and assigns until the expiration or termination of this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Reimbursement

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant the Reimbursement. Full payment of the Reimbursement shall be made to the participant no later than ninety (90) days after it has submitted the Request for Payment and demonstrated the occupation requirements pursuant to Section 2.3.

2.2. Sole Source of Funding for the Reimbursement

The entirety of Participant's Reimbursement contemplated in this Agreement will be funded solely by the Agency Funds held by the Agency as generated through the Agency's project area development efforts. 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 or the City.

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

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Reimbursement unless and until all the following conditions precedent, as detailed in the following subsections, are satisfied:

2.3.1. Completion of the Renovations

The Renovations must be completed prior to the date that is twelve (12) months from the Effective Date of this Agreement. Completion of the building façade shall be evidenced by a Certificate of Completion from Washington Terrace City.

2.3.2. Total Investment.

The total Investment must be at least \$110,000.00.

2.3.3. Request for Payment by Participant

Participant must have made a Request for Payment in writing pursuant to Section 2.5.

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

In the event that the conditions precedent as described in Section 2.3 are not met during the term of this Agreement, and Participant is thus not entitled to receive the Reimbursement, but is otherwise not in default under this Agreement, such failure shall not constitute a Default under this Agreement. Such failure shall result in the forfeiture of the Reimbursement by Participant.

2.5. Request for Reimbursement

Participant shall submit in writing a request for payment to the Agency by March 31, 2022. The Participant shall include in the request, proof of issuance of the (1) Certificate of Completion for the building facade, (2) copies of paid invoices for the Renovations, and (3) lien clearance from all contractors that performed any part of the Renovations (the “**Request for Payment**”).

2.6. Payment of Taxes

During the term of this Agreement, to the extent applicable, Participant and any of its successors-in-interest in any portion of the Site or Building agree to pay, prior to delinquency, all undisputed real property and other *ad valorem* taxes and assessments assessed against any portion of the Site or Building or any other taxable property, including personal property, located within the Site to the extent owned by Participant or any of its successors-in-interest; 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 Reimbursement

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 Reimbursement to the Agency as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Reimbursement to the Agency 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 Reimbursement, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Further, Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, and other applicable documents 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 cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of Reimbursement to the Participant and nothing herein shall be construed as an estoppel, waiver, or consent to reduce or eliminate payment of the Reimbursement 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 Reimbursement to Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

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 or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Reimbursement 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. 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 Reimbursement. 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 Reimbursement to Participant, and nothing herein shall be construed as an estoppel, waiver, or consent to reduce or eliminate payment of the Reimbursement to Participant. In the event that the court declares that the Agency cannot pay the Reimbursement, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Reimbursement, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency's obligation to pay to Participant the Reimbursement in accordance with this Agreement will be reduced or eliminated to the extent required by law.

2.9. Dispute over Receipt of Payment of the Reimbursement

If not due to the act, error, or omission of the Agency, in the event a dispute arises as to the person or entity entitled to receive the Reimbursement under this Agreement due to a claimed assignment or claimed successor-in-interest to the Reimbursement or otherwise, the Agency may withhold payment of the Reimbursement 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 Reimbursement any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute, except in the instance that the dispute arises due to the act, error, or omission of the Agency, in which case the Agency shall be responsible for all costs and expenses including reasonable and actual attorney fees.

2.10. Nature of Participant's Obligations and Limitation

To qualify to receive the Reimbursement as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement. The failure of Participant to fulfill its obligations may result in a failure to qualify to receive the Reimbursement, trigger repayment of all or a portion of the Reimbursement, or result in termination of this Agreement but shall not give rise to any other right or remedy in favor of the Agency.

2.11. Reserved

2.12. Operation of the Building

Participant shall utilize the Building as a performance venue as it has historically been used in a commercially reasonable manner and in accordance with industry standards. For purposes of this Agreement, "**Operating**," "**Operational**," or "**Operations**" of the Building shall mean when the following conditions are satisfied: (1) successful completion of the Renovations and (2) availability of the Building for use as a performance venue.

2.13. Commencement of Operations

Operations of the Building as described in Section 2.12 shall begin no later than March 31, 2022. For purposes of this Section, the Building shall be deemed Operational if the conditions and standards in Section 2.12 are met. If Participant fails to commence Operations of the Building 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.

2.14. Continuing Operations

Operation of the Building as described in Section 2.12 shall be commenced as described in Section 2.13 and shall continue throughout the term of this Agreement as set forth in Article 4. For purposes of this Section, the Building shall be considered in Operation if the Building is Operating as described in Section 2.12 of this Agreement.

2.15. Cessation of Operations

If Participant sells or otherwise ceases to Operate the Building 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.

2.16. 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 Site and the Building. 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 Reimbursement to Participant as an incentive to improve the Building on the Site 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 the Building or the Site.

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. Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors on the Building or the Site except for willful misconduct or negligent acts or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors, and consultants. Likewise, the Agency agrees to and shall indemnify, defend, and hold Participant and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors and consultants except for willful misconduct or negligent acts or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors.

3.3.3. 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.

3.3.4. Local, State, and Federal Laws

Participant shall make the Investment and utilize the Building 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.

3.3.5. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Building for purposes of inspection, with reasonable and prior written notice (but in no event less than 48 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.

3.3.6. 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.

3.3.7. 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 for the benefit of each of the respective Parties, their successors and assigns during the term of this Agreement, which shall terminate on the date that is five (5) years from the date that the Reimbursement is paid to Participant, unless earlier terminated by written agreement of the Parties or pursuant to the terms of Article 5 (the "Term").

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 that can be cured by the payment of money is understood and agreed to be among the types of defaults that 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 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 2.13 and 2.14, above, then in such case Agency’s sole remedy shall be to terminate this Agreement and seek repayment of the Reimbursement as described in Subsection 5.3.1 (for clarity, Agency may not commence an action against Participant for specific performance to commence or continue Operations). Further, in the event of a Default by Participant, past all applicable cure periods, 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.

Upon the occurrence of an Event of Default by Participant, Participant shall repay to the Agency a portion of the Reimbursement proportionate to the number of whole months that the Building was Operating compared to the total obligation of Operate the Building of sixty (60) months.

Notwithstanding to 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 Building 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 Second District Court for the State of Utah located in Weber 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 Agents, 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.

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 mailing or making physical delivery 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 delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, 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. Mediation

In the event a dispute arises between the parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the parties, the parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner. Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Herriman City, Utah.

6.12. 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.

6.13. 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.

6.14. 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.

6.15. Incorporation of Recitals and Exhibits

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

6.16 Governmental Records and Management Act

The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement is protected under the Utah Governmental Records Access and Management Act, § 63-2-101 *et seq.* (“GRAMA”) under a claim of “business confidentiality” so

long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B).

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. Electronic pdf signatures shall be considered original signatures and 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]

**COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF
WASHINGTON TERRACE CITY**

By: _____
_____, Executive Director

Attest:

By: _____
_____, Secretary

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

In the County of Weber, State of Utah, on this ____ day of _____, 202__, before me, the undersigned notary, personally appeared _____, the executive director of the Community Development and Renewal Agency of Washington Terrace City, who is personally known to me or who proved to me his identity through documentary evidence to be the person who signed the preceding document in my presence and who swore or affirmed to me that his signature is voluntary and on behalf of the Community Development and Renewal Agency of Washington Terrace City by authority of its Board of Directors.

Notary signature and seal

BLAINE L OLSEN LIVING TRUST

By: _____
Name: _____
Title: _____

STATE OF _____)
COUNTY OF _____) : ss.

On _____ before me, _____
personally appeared _____, who proved
to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within
instrument and acknowledged to me that he/she executed the same in his/her authorized capacity,
and that by his/her signature on the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary signature and seal