

**PUBLIC NOTICE**

Notice is Hereby Given that the Tooele City Redevelopment Agency (RDA) of Tooele City, Utah, will meet in a Business Meeting, on Wednesday, June 19, 2019 at approximately 8:00 p.m. The Meeting will be Held in the Tooele City Hall Council Room, located at 90 North Main Street, Tooele, Utah.

1. **Open Meeting**
2. **Roll Call**
3. **Public Hearing and Motion on RDA Resolution 2019-12** A Resolution of the Redevelopment Agency of Tooele City, Utah, Adopting a Budget for Fiscal Year 2019-2020  
Presented by Mayor Debbie Winn
4. **Resolution 2019-13** A Resolution of the Redevelopment Agency of Tooele City, Utah (RDA) Approving a Tax Increment Reimbursement Agreement with Broadway-Heritage Village Apartments 2017, LLC  
Presented by Mayor Debbie Winn
5. **Project Updates**  
Presented by Brad Pratt
6. **Minutes**
7. **Adjourn**

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Michelle Y. Pitt  
Tooele City Recorder/RDA Secretary

Pursuant to the Americans with Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, at 843-2113 or [michellep@tooelecity.org](mailto:michellep@tooelecity.org), Prior to the Meeting.

**REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH**

**RESOLUTION 2019-12**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH,  
ADOPTING A BUDGET FOR FISCAL YEAR 2019-2020.**

WHEREAS, the staff of the Redevelopment Agency of Tooele City, Utah (“RDA”) has prepared and presented a proposed budget to the RDA’s Board of Directors for the 2019-2020 fiscal year; and,

WHEREAS, the proposed budget was prepared in accordance with the requirements of U.C.A. §17C-1-601; and,

WHEREAS, the RDA held a required public hearing on the proposed FY 2019-2020 budget on June 19, 2019:

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH, as follows:

1. That the fiscal year 2019-2020 RDA budget is hereby adopted; and,
2. The RDA Secretary is hereby directed to file a copy of said budget within 90 days of the date of this Resolution with (a) the Tooele County Auditor, (b) the State Tax Commission, (c) the State Auditor, (d) the State Board of Education, and (e) each other taxing entity that levies a tax on property from which the RDA collects tax increment, in accordance with the provisions of Utah Code Ann. §17C-1-601(6).

IN WITNESS WHEREOF, this Resolution is passed by the Board of Directors of the Redevelopment Agency of Tooele City, Utah, this \_\_\_ day of \_\_\_\_\_, 2019.

**REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH**

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, RDA Secretary

S E A L

Approved as to Form: \_\_\_\_\_  
Roger Evans Baker, RDA Attorney

## REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH

### RESOLUTION 2019-13

#### **A RESOLUTION OF THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH (RDA) APPROVING A TAX INCREMENT REIMBURSEMENT AGREEMENT WITH BROADWAY-HERITAGE VILLAGE APARTMENTS 2017, LLC.**

WHEREAS, on September 19, 2007, the RDA adopted a resolution approving the Broadway Community Development Project Area Plan (the "Plan") for the Broadway Community Development Project Area (the "Project Area"); and,

WHEREAS, Broadway-Heritage Village Apartments 2017, LLC (the "Company") has presented to the RDA preliminary development concept plans for a residential development, which includes the renovation and redevelopment of the former Broadway Hotel, to include 30 bedroom units, and construction of 18 new units, consisting of a mixture of one, two, and three bedroom units (the "Project"), within the boundaries of the Project Area; and,

WHEREAS, the Company leases or owns the fee title to all the land on which the Project development is located (the "Land"); and,

WHEREAS, due to its location within the Project Area, the Land generates tax increment revenues that are diverted to the RDA pursuant to a Project Area Budget adopted by the RDA for the Project Area; and,

WHEREAS, the Company has presented to the RDA sufficient information, including development plans and alternatives, financial statements, and other information, showing justification for the Agency's participation, through tax increment reimbursement, in certain costs for the construction of the Project; and,

WHEREAS, the Tax Increment Reimbursement Agreement attached hereto as Exhibit A sets forth the terms of, and conditions to, the RDA's agreement to reimburse the Company for certain development costs; and,

WHEREAS, the RDA's tax increment reimbursement obligation will be limited to a maximum of \$360,000 with a maximum annual reimbursement of 75% of the total tax increment collected by Tooele City for the Project and Land (see Exhibit A); and,

WHEREAS, the RDA Board makes a finding that the Project will provide important housing, urban renewal, neighborhood revitalization, and economic development tools to the Project Area and Tooele City; and,

WHEREAS, the RDA Board makes a finding that approving the Tax Increment Reimbursement Agreement is in the best fiscal and economic development interest of Tooele City:

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF TOOELE CITY, UTAH that the Tax Increment Reimbursement Agreement, attached as Exhibit A, is hereby approved, and that the Executive Director is hereby authorized to execute the same.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Board of the Redevelopment Agency of Tooele City, Utah, this \_\_\_\_ day of \_\_\_\_\_, 2019.

TOOELE CITY RDA

(For)

(Against)

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ABSTAINING: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Michelle Y. Pitt, RDA Secretary

S E A L

Approved as to Form: \_\_\_\_\_  
Roger Evans Baker, RDA Attorney

# EXHIBIT A

## Tax Increment Reimbursement Agreement

## TAX INCREMENT REIMBURSEMENT AGREEMENT

THIS TAX INCREMENT REIMBURSEMENT AGREEMENT (this “**Agreement**”) is made effective as of this \_\_\_ day of \_\_\_\_\_, 2019 (“**Effective Date**”) by and between **Broadway-Heritage Village Apartments 2017, LLC a Utah limited liability company** (the “**Company**”) and the **Redevelopment Agency of Tooele City, a political subdivision of the State of Utah** (the “**Agency**”). The Agency and the Company agree as follows:

1. Background.

1.1. On September 19, 2007 the Agency adopted a resolution approving the Broadway Community Development Project Area Plan (the “**Plan**”) for the Broadway Community Development Project Area (the “**Project Area**”).

1.2. The Company presented to the Agency preliminary development concept plans for a residential development, which includes the renovation and redevelopment of the former Broadway Hotel, to include 30 bedroom units, and construction of 18 new units, consisting of a mixture of one, two, and three bedroom units, within the boundaries of the Project Area (the “**Project**”). The Company leases or owns the fee title to all the land on which the Project development 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 a Project Area Budget adopted by the Agency for the Project Area.

1.3. The Company has also presented to the Agency 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 (as amended, replaced, or superseded from time to time). The parties acknowledge that tax increment generally refers to the additional ad valorem tax revenues generated by the increase in value of taxable real and personal property resulting from new development and construction. The Agency is entitled to collect a portion of tax increment from the property located within the Project Area boundaries as expressly provided under the Project Area Budget adopted by the Agency for the Project Area. A copy of the Project Area Budget is attached hereto as Exhibit C.

3. Company Commitments. As a condition to all obligations of the Agency under this Agreement, the Company agrees to do each of the following, unless waived in writing by the Agency in the Agency’s sole and absolute discretion (each a “**Company Commitment**”):

3.1. By or before April 1, 2020 (except that the deadline will be extended as and to the extent the completion of the Project, or the delivery of the certificate of occupancy, is delayed as a result of a Force Majeure Event as defined in Section 25 below), the Company must have commenced construction of the Project; and



3.2. The Company must, before receiving any tax increment from the Agency, provide reasonable proof to the Agency that the Company or the owner of the Land invested a total of \$9 million in capital costs for the Project, including without limitation land acquisition costs and the costs of all improvements constructed or installed on the land and all improvement/renovation costs of the Broadway Hotel; and

3.3. The Company must provide the Agency on an annual basis, for the period of time any tax increment is to be paid and received by the Company, a financial report that clearly identifies the gross revenue received from the Project, the total operating costs for the Project, the net operating costs of the Project, the debt service payment for the Project, and the coverage ratio for the debt service payment. The Agency has the right to audit any Company information reasonably necessary to verify compliance with this section.

4. Company Restrictions. The Company agrees that, for at least five (5) year after date on which the Agency makes the final payment of tax increment to the Company under this Agreement, the Company will continue operating its business activities at the Project in substantially the same manner as the Company had been operating while receiving tax increment payments from the Agency under this Agreement.

If the Company fails to satisfy this Company Restriction within the five (5)-year time period, then the Company agrees to immediately refund to the Agency all tax increment paid by the Agency to the Company under this Agreement, plus interest at the rate of 5.0% annually beginning on the date of the final payment of tax increment from the Agency to the Company. The Company agrees to provide any supporting or backup materials reasonably requested by the Agency to verify compliance with this section. The Agency has the right to audit any Company information reasonably necessary to verify compliance with this section.

5. Project Financing. The Company is solely responsible for all the costs of acquisition, development, construction, maintenance, ownership, repair, etc., of the Project. However, subject to the performance by the Company of each of the Company Commitments, and also subject to Sections 6 and 7 below, the Agency will participate with the Company by providing tax increment to assist in the required debt service coverage of the Project, solely by paying tax increment revenues, generated from the Project and actually received by the Agency on an annual basis, and subject to a total cumulative cap of \$360,000 (the "Maximum Reimbursement Amount"), to the Company as reimbursement for expenses actually incurred by the Company, in connection with the debt service coverage. The Company will provide to the Agency on an annual basis, for the term of the Agency participation, the information required to verify the debt coverage required, and the shortage, required for Agency reimbursement. The Agency will pay to the Company annually, (each such annual payment is referred to as an "Annual Increment Payment"), an amount required to provide the 1.30% debt coverage, but in no event shall the Agency participation exceed 75% of all tax increment revenues generated by, and actually received by the Agency from the Tooele County Treasurer under the Project Area Budget from, the Project. The Agency will continue making Annual Increment Payments until the first to occur of the following: (i) the Agency has paid to the Company the Maximum Reimbursement Amount, or (ii) the revenue generated by the Project on an annual basis covers the required debt service coverage, or (iii) 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 Project Area Budget has expired. Despite anything in this Agreement to the contrary, the Agency has no obligation to pay any more than the Maximum Reimbursement Amount, and the Agency has

no obligation to pay more than 75% of any tax increment received by the Agency from the Project annually.

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

6.1. if the Company does not satisfy each of the Company Commitments, then the Agency will have no obligation to pay any Annual Increment Payments to the Company; instead, the Agency will then be entitled to retain all tax increment generated from the Project for other legal and authorized purposes of the Agency;

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

6.3. all obligations of the Agency to pay any Annual Increment Payment(s) to the Company are conditional on the Company actually operating in normal business use, on a consistent basis during the calendar year, the Project; subject to events of casualty and/or any Force Majeure Event, if in any year the Company does not regularly operate the Project for at least 180 days for any reason other than an event of casualty or a Force Majeure Event, then the Agency will have no obligation to pay the Company an Annual Increment Payment for that year and the amount that otherwise would have been paid to the Company for that year will be a corresponding credit against (*i.e.*, cause a reduction of) the Maximum Reimbursement Amount; and

6.4. 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. Subject to Sections 2 and 3 above, the Agency will make the first Annual Increment Payment within thirty days after the Agency receives from the Tooele County Treasurer the final tax increment payment for the calendar year in which any vertical structural improvement(s) constituting part of the Project is/are constructed, assessed and first appear(s) on the tax rolls for Tooele County, and, subject to Section 3 above, 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 Tooele 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 the year following the calendar year during which the Company obtains the required temporary certificates of occupancy for the Project, 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, for the purpose of, among other things, promoting urban renewal, economic development, and community development in the City;

8.2. the City 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 (or, if such breach cannot reasonably be cured within such 30 day period, such longer period as is reasonably necessary to effectuate such cure) 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. To clarify, however, the Company will not have a 30-day period to cure a failure to satisfy a Company Commitment; and, a failure of the Company to satisfy a Company Commitment is not a material breach of this Agreement, but instead is merely a failure of a condition to the Company receiving tax increment as described in Section 3.

10. Indemnification. The Company agrees to indemnify, defend (with counsel of the Indemnitee's choosing), and hold the Agency and the City, 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 sole negligence, willful misconduct, illegal acts, bad faith, or breach of this Agreement by the Agency or the City, including their respective officers, directors, agents, employees, contractors, and consultants (the "Indemnitees").

11. Parties; Successors and Assigns. Except for the City, 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; provided, however, that the Company may, without the need for the Agency's prior written approval, assign this Agreement, and all of its rights and obligations hereunder, to any entity that controls, is controlled by, or is under common control with the Company. 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 Court shall award the prevailing party its costs, expenses, and reasonable attorneys' fees, such fees to be 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, Tooele 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, understandings, representations, 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.

24. Waiver of Jury Trial. The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

25. Force Majeure. The Agency or the Company shall be excused, without penalty, for the period of any delay in the performance of any obligations hereunder when prevented from doing so by causes beyond its control, which shall include without limitation acts of God, governmental restrictions, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain reasonable substitutes, and actions or inactions of governmental authorities (a "Force Majeure Event"). In connection with any Force Majeure Event, the party claiming such Force Majeure Event must use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. Nothing contained in this Section 25 shall excuse either party from paying in a timely fashion any payments due under the terms of 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.

**BROAWAY-HERITAGE VILLAGE APARTMENTS 2017, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**REDEVELOPMENT AGENCY OF TOOELE CITY**

\_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
Michelle Y. Pitt, RDA Secretary

Approved as to Form:

\_\_\_\_\_  
Roger Evans Baker, RDA Attorney

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

Exhibit A

*Legal Description of the Land*

Exhibit B

*Tax Id Nos. for the Land*



Exhibit C

*Project Area Budget*