

EXECUTION VERSION

County Contract No.

DA Log No. 17-09037

INCREMENTAL PROPERTY TAX AGREEMENT

PREAMBLE

This Incremental Property Tax Agreement (the “*Property Tax Agreement*” or the “*Agreement*”) is entered into as of the Effective Date between **Salt Lake City CH, LLC** (“*Hotel Owner*”), and **Salt Lake County** (the “*County*”).

RECITALS:

- A. The Hotel Owner has applied to construct a Qualified Hotel in the County pursuant to Title 63N, Chapter 2, Part 5 of the Utah Code (referred to as the “*Act*”);
- B. The Hotel Owner presently satisfies all conditions of the Act;
- C. The Act provides that the County shall retain Incremental Property Tax Revenue, as defined herein, and use it for specific purposes relating to the Qualified Hotel;
- D. The Governor’s Office of Economic Development (GOED) has authorized the full amount of Incremental Property Tax Revenue;
- E. The Host Agency could have claims to Incremental Property Tax Revenue that constitutes Displaced Tax Increment as provided by the Act; and
- F. The Parties desire to set forth the terms of the retention and payment of Incremental Property Tax Revenue, including the potential claims by the Host Agency pursuant to the Act.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the Hotel Owner and the County represent and agree as follows:

SECTION 1 TERMS AND RECITALS

- 1.1 Defined Terms: The following terms shall have the following meaning:
- 1.1.1 Arbitral Dispute means any dispute that the parties are unable to resolve by informal means by the senior executives of each party.
 - 1.1.2 Base Taxable Value means the same as that term is defined in Section 63N-2-502(2) of the Utah Code.
 - 1.1.3 Commencement of Construction means the time at which the County conveys the Hotel Site to the Hotel Owner. This definition is intended to deliberately differ from the same defined term contained in the Development Agreement in order to achieve the maximum benefits available under the Utah Code.
 - 1.1.4 County means Salt Lake County, a political subdivision of the State of Utah.
 - 1.1.5 Development Agreement means the Development and Funding Agreement, executed by the County and the Hotel Owner with an effective date of January 28, 2019.
 - 1.1.6 Displaced Tax Increment means the same as that term is defined in Section 63N-2-508(1) of the Utah Code.
 - 1.1.7 Effective Date means the same date as the effective date of the Development Agreement.
 - 1.1.8 Eligibility Period means the same as that term is defined in Section 63N-2-502(10) of the Utah Code.
 - 1.1.9 Force Majeure means the same as that term is defined in the Development Agreement.
 - 1.1.10 Host Agency means the Redevelopment Agency of Salt Lake City.
 - 1.1.11 Hotel Project means the same as that term is defined in the Development Agreement.
 - 1.1.12 Hotel Property means the same as that term is defined in Section 63N-2-502(14) of the Utah Code and includes personal and real property owned by the Hotel Owner at the Hotel Site.

- 1.1.13 Hotel Site means the same as that term is defined in the Development Agreement.
- 1.1.14 Incentive Agreement means the Incentive Agreement executed by the Governor's Office of Economic Development and the Hotel Owner, and joined by the County, with an effective date of January 28, 2019.
- 1.1.15 Incremental Property Tax Revenue means the same as that term is defined in Section 63N-2-502(16) of the Utah Code, and for clarity the reference in Section 63N-2-502(16) of the Utah Code to "property tax revenue generated from hotel property" includes all property taxes levied on Hotel Property for any purpose for each respective year, unless prohibited by law, which amount equals the amount of property tax paid by the Hotel Owner on Hotel Property in the subject year. Incremental Property Tax Revenue does not include any payments by the Hotel Owner of penalty or interest as may be imposed by law.
- 1.1.16 Payment to the Host Agency means any payment required by Section 63N-2-508(5)(b) or this Agreement.
- 1.1.17 Secured Obligations means the same as that term is defined in Section 63N-2-508(1) of the Utah Code.
- 1.1.18 Tax Increment means the same as that term is defined in Section 17C-1-102(60) of the Utah Code.
- 1.1.19 Tax Increment Shortfall means the same as defined in Section 63N-2-508 of the Utah Code.
- 1.1.20 Taxing Entity means the same as that term is defined in Section 17C-1-102(61) of the Utah Code.
- 1.1.21 Utah Code means the current version of Utah Code as of the Effective Date.
- 1.1.22 Other Terms. Unless expressly stated otherwise, terms contained in this Agreement have the same meaning as defined in the Act.
- 1.2 Recitals and Terms Incorporated. The Recitals and terms therein are incorporated in this Agreement for all purposes.

SECTION 2 RETENTION AND PAYMENT OF INCREMENTAL PROPERTY TAX REVENUE

- 2.1 Incremental Property Tax Revenue. Subject to the terms, conditions and agreements of this Agreement, including Section 4.3, and the Act, the Hotel Owner is entitled to one hundred percent (100%) of the amount of Incremental Property Tax Revenue generated from the Hotel Property during the Eligibility Period (as applicable to Incremental Property Tax Revenue).
- 2.2 Base Taxable Value. Under the Act, the Base Taxable Value is the value of the Hotel Site on the County tax rolls the tax year before Commencement of Construction. Since the Hotel Site is currently owned by the County, the value upon the County tax rolls for the Hotel Site is zero and thus the Base Taxable Value is zero for purposes of this Agreement.
- 2.3 Retention of Incremental Property Tax Revenue by the County. Pursuant to the Act, the County shall account separately for all Incremental Property Tax Revenue generated during the Eligibility Period.
- 2.4 Payment of Incremental Property Tax Revenue to the Hotel Owner. The County shall pay Incremental Property Tax Revenue to the Hotel Owner for real property and personal property taxes, not later than April 30th of the year following the year in which the Incremental Property Tax Revenue was generated. Pursuant to the Act, the County shall not be required to seek or obtain approval of any Taxing Entity before retaining, or paying to the Hotel Entity, the Incremental Property Tax Revenue. The County shall make no deductions from the Incremental Property Tax Revenue it pays to the Hotel Owner without the Hotel Owner's express written consent.
- 2.5 Public Infrastructure. If any Incremental Property Tax Revenue is used for public infrastructure, as authorized by the Act, such expenditures shall be made by the Hotel Owner, and approved by the County.
- 2.6 Use. The Hotel Owner agrees to use the Incremental Property Tax Revenue paid to the Hotel Owner for the purposes stated in Section 63N-2-508(3) of the Utah Code

SECTION 3 CONDITIONS

- 3.1 Conditions. Each payment of Incremental Property Tax Revenue to the Hotel Owner is conditioned upon the occurrence of the following events:
- 3.1.1 Development Agreement. The Hotel Owner is in compliance with all material terms and conditions of the Development Agreement.
 - 3.1.2 Endorsement Agreement. The County has not revoked the Endorsement Agreement, as modified by the Development Agreement.
 - 3.1.3 Incentive Agreement. The Hotel Owner is in compliance with all material terms and conditions of the Incentive Agreement.
 - 3.1.4 The Act. The Hotel Owner is in material compliance with the terms and conditions of the Act.
 - 3.1.5 Payment of Property Tax. The Hotel Owner has paid the property tax levied on the Hotel Property for the year in which the distribution relates as set forth in Section 2.4 above.
 - 3.1.6 Accounting. The Hotel Owner has provided to the County a detailed accounting of how the Displaced Tax Increment was used, and how the Displaced Tax Increment will be used in the following tax year.

SECTION 4 SPECIAL PROVISIONS

- 4.1 Incremental Property Tax Revenue is not Tax Increment. As provided in Subsection 63N-2-508(4) of the Utah Code, Incremental Property Tax Revenue is not Tax Increment and is not subject to the provisions of Title 17C of the Utah Code or any other state or local law governing Tax Increment, other than as provided in Subsection 63N-2-508(4)(c) of the Utah Code.
- 4.2 Hotel Owner Held Harmless. Except as provided in Section 4.4 below and notwithstanding any provision of the Act to the contrary, the County agrees that (a) it will not claim any Tax Increment Shortfall from the Hotel Owner at any time, including in the event the County is required to make a Payment to the Host Agency, and (b) to the extent the Host Agency or any Taxing Entity prevents the Hotel Owner from receiving one hundred percent (100%) of the amount of Incremental Property Tax Revenue generated from the Hotel Property during the Eligibility Period, the County will pay the Hotel Owner such that the

Hotel Owner is held harmless and receives one hundred percent (100%) of such Incremental Property Tax Revenue.

- 4.3 Appeal. In the event of a refund of property taxes is paid to the Hotel Owner as a result of an appeal of the assessed value of Hotel Property for which the Hotel Owner was paid Incremental Property Tax Revenue, the Hotel Owner shall pay over the refund to the County.
- 4.4 Appropriation. The County intends to request an appropriation in the event it is required to make a Payment to the Host Agency. If funds are not appropriated and made available, the County's obligation to make a Payment to the Host Agency will be null and void, and such amount will reduce the amount of Incremental Property Tax Revenue paid to the Hotel Owner under Section 2.1 above. The Parties agree that the County's obligation under this Section will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligations under this Section will be without penalty and that no right of action for damages or other relief will accrue to the benefit of the Hotel Owner, its successors, or its assigns as to this Agreement.
- 4.5 Equal Payments. The Hotel Owner intends to pursue an equal payment agreement pursuant to section 59-2-1308.5. The parties understand that this may require County Council approval. The parties further recognize that the County independent elected offices, consisting of the Assessor, Auditor, Treasurer, and Board of Equalization will be impacted and that their concerns will need to be addressed. The County will cooperate with the Hotel Owner's pursuit of an equal payment agreement, subject to the approval of the independent elected offices and County Council and the proposal complying with applicable law. This Section is not intended to bind the independent elected offices.

SECTION 5 DEFAULT

- 5.1 Default; Termination. Upon notice from the County to the Hotel Owner of the Hotel Owner's failure to comply with the conditions of Section 2 hereof, the County shall suspend distribution of Incremental Property Tax Revenues for a period of sixty (60) days. If the failed condition is not cured within such 60-day period (or if such cure cannot be completed within 60 days, then such condition shall be cured within 365 days so long as such cure is commenced within such 60-day period), the County may terminate the payment of Incremental Property Tax Revenues upon written notice to the Hotel Owner, subject to the provisions of Section 6.4 hereof. In no event shall the Eligibility Period be extended or tolled.

SECTION 6 MISCELLANEOUS

- 6.1 Notice. Any notice required under this Agreement shall be provided to the party as indicated below:

Hotel Owner

ADDRESS: 303 Peachtree Center Avenue NE, Suite 575
Atlanta, Georgia 30303

County

ADDRESS: 2001 South State Street, Suite N2-100
Salt Lake City, Utah 84114

- 6.2 Amendment. This Agreement may only be amended by written agreement of the Parties.

- 6.3 Assignment. The Hotel Owner may assign the Incremental Property Tax Revenue and/or this Agreement to an affiliate or otherwise to a third party in connection with the assignment of the Development Agreement, as provided in the Development Agreement, and the Hotel Owner may assign this Agreement or any of its rights hereunder as collateral without the County's consent. Any assignee of any such assignment agree to be bound the terms of this Agreement.

- 6.4 Mortgage; Collateral Assignment.

- a. The Hotel Owner may, without the consent of the County, obtain financing for the Hotel Project, and in connection therewith, may monetize or securitize all of Hotel Owner's right, title and interest in and to the Incremental Property Tax Revenues granted to Hotel Owner under this Agreement and all of Hotel Owner's rights and privileges under this Agreement, including without limitation, all of its rights to receive payments of the Incremental Property Tax Revenue (collectively, the "***Increment Property***"). In connection therewith, Hotel Owner may, without the consent of the County, (i) pledge, hypothecate, lien, mortgage, collaterally assign, and grant security interests in and to, or otherwise encumber, the Increment Property, and/or (ii) assign, in whole or in part, to a third party all of its right, title and interest in the Increment Property. In connection with any transaction described in subsections (i) and (ii) hereof (each, a "Collateral Assignment"), the Hotel Owner shall provide written notice to the County of such Collateral Assignment and may direct the County in writing to disburse Incremental Property Tax Revenue to either a Finance Party (as defined below) or to a trustee for the benefit of a Finance Party (a "Direction"). Following receipt of a Direction, the

County shall disburse Incremental Property Tax Revenue in accordance with the terms set forth in the Direction to the extent consistent with the terms of the Agreement.

- b. If the Hotel Owner notifies the County in writing of the address or addresses of any such party involved a Collateral Assignment (each, a "Finance Party"), the County shall provide each Finance Party with a copy of any notice required to be given to the Hotel Owner hereunder, including, without limitation, any notice of default. Each Finance Party shall be afforded the same period to remedy any default of the Hotel Owner, or causing the same to be remedied for the account of the Hotel Owner, as is given the Hotel Owner after notice to it, plus an additional period of forty-five (45) days in situations involving payments of money and one hundred eighty (180) days for any other default. Notwithstanding anything to the contrary herein, the County shall not terminate this Agreement due to an uncured event of default by the Hotel Owner unless and until each Finance Party has received notice of such default and been provided an opportunity to cure the same pursuant to the provisions of this Section.
- c. In case of any default by Hotel Owner under this Agreement, each Finance Party shall have the right to cure such default, and the County shall accept such payment or performance on the part of a Finance Party as though the same had been done or performed by the Hotel Owner. However, no Finance Party shall become liable to the County under this Agreement until such time as said Finance Party, by foreclosure or otherwise, acquires the Increment Property.
- d. No voluntary surrender of this Agreement by the Hotel Owner and no modification of this Agreement shall be effective as to any Finance Party, unless consented to in writing by such Finance Party.
- e. Upon request of any Finance Party, the County agrees to enter into a separate agreement or estoppel with such Finance Party that incorporates or affirms the provisions of this Section 6.4 and which includes such modifications as may be reasonably requested by such Finance Party.
- f. From time to time, at the request of a Finance Party, the County agrees to furnish promptly (and in no event more than fifteen (15) days after receipt of notice requesting same) a written statement (in recordable form, if requested) on the status of any matter pertaining to this Agreement, including without limitation a certification of copies of this Agreement (and any and all amendments hereto) and related documents.

- g. In the event of the termination of this Agreement or of any succeeding Agreement made pursuant to the provisions of this Section 6.4, or if applicable law results in the elimination or termination of this Agreement due to the effect of Finance Party's foreclosure, the County will enter into a new agreement with the Finance Party on the same terms as those contained herein, or, at the request of such Finance Party, to a corporation or other entity formed by or on behalf of such Finance Party or by or on behalf of the holders of bonds secured by the Increment Property held by such Finance Party, upon the covenants, agreements, terms, provisions and limitations herein contained, provided that:
 - i. such Finance Party makes written request upon the County for such new agreement within ninety (90) days from the date Finance Party receives written notice of such termination if the County terminates this Agreement, or if this Agreement terminates due to the effect of Finance Party's foreclosure, then within ninety (90) days after such foreclosure; and
 - ii. such Finance Party pays or causes to be paid any and all reasonable expenses, including reasonable counsel fees, court costs and disbursements incurred by the County in connection with any such default and termination as well as in connection with the execution and delivery of such new agreement.

6.5 Attorneys' Fees. Should any legal action be brought by either party to this Agreement because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court (subject to any limitations set forth herein).

6.6 Dispute Resolution. In the event any dispute, controversy or claim between or among the parties arises under this Agreement (a "Dispute"), including, but not limited to, a Dispute relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, including as to the existence of Force Majeure, the parties shall first attempt in good faith to settle and resolve such Dispute through discussions between the senior executives of each party. In the event an Arbitral Dispute arises, the parties shall follow the procedures set forth in Section 9.8 of the Development Agreement to resolve such Dispute.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date in the Development Agreement.

SALT LAKE CITY CH, LLC, a Delaware limited liability company

By: _____

Title: _____ Date: _____

SALT LAKE COUNTY, a body corporate and politic of the State of Utah

By: _____

Title: _____ Date: _____

Approved as to Form and Legality:

/s/ Timothy A. Bodily
Deputy District Attorney