

Resolution No. RD 16-05

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY AUTHORIZING THE EXECUTION OF A PARTICIPATION AGREEMENT WITH WORKERS COMPENSATION FUND RELATING TO NEW COMMERCIAL DEVELOPMENT WITHIN THE SOUTH TOWNE RIDGE ECONOMIC DEVELOPMENT PROJECT AREA.

WHEREAS the Redevelopment Agency of Sandy City (the “Agency”) has been created by the Sandy City Council to transact the business and exercise all of the powers provided for by Title 17C of the Utah Code Annotated, “Limited Purpose Local Government Entities—Community Development and Renewal Agencies” (the “Act”);

WHEREAS, the Agency, in furtherance of the purposes of the Act and the Project Area Plan for the South Towne Ridge Economic Development Project Area (the “Project Area”), desires to enter into a Participation Agreement (the “Agreement”), substantially in the form attached hereto as **Exhibit A**, encouraging and promoting the private development of a major commercial/office campus within the Project Area.

NOW, THEREFORE, BE IT RESOLVED BY GOVERNING BODY OF THE REDEVELOPMENT AGENCY OF SANDY CITY:

1. The Agreement in substantially the form attached hereto as **Exhibit A** is hereby approved, and the Executive Director of the Agency is authorized and directed to execute the same for and on behalf of the Agency. The Executive Director is authorized to approve any minor modifications, amendments, or revisions to the Agreement as may be in the Agency’s best interest and in harmony with the intent and purpose of the Agreement, including but not necessarily limited to finalizing any exhibits to the Agreement, and the Executive Director’s signature upon the final Agreement shall constitute the Agency Board’s acceptance of all such minor modifications, amendments, or revisions.

2. This resolution takes effect upon adoption.

THIS RESOLUTION IS APPROVED AND ADOPTED BY THE REDEVELOPMENT AGENCY OF SANDY CITY on this April 26, 2016.

Kristin Coleman-Nicholl, *Chair*

Tom Dolan, *Executive Director*

Attest:

Vickey Barrett, *Secretary*

Exhibit A
Form of Agreement

PARTICIPATION AGREEMENT

This Participation Agreement (this "Agreement") is entered into as of April 26, 2016, between **Workers Compensation Fund**, a Utah corporation (the "Company") and the **Redevelopment Agency of Sandy City**, a Utah political subdivision (the "Agency").

A. **WHEREAS** the Company currently owns certain real property depicted in **Exhibit A** attached hereto and known currently as Salt Lake County Tax Parcel Nos. 2712276019, 2712276028, 2712283001, 2712284001, 2712276013 and 2712285001 (the "Property"), which Property is located within the boundaries of an economic development project area created by the Agency and known as the South Towne Ridge Economic Development Project Area;

B. **WHEREAS**, the Company intends to develop on the Property a master commercial development that, it is anticipated, will include: (a) 374,762 square feet of class "A" office space; (b) 23,000 square feet of retail; (c) a 124-room hotel; and (d) two parking structures totaling 1,652 stalls (the "Development Project");

C. **WHEREAS**, it is estimated that the total assessed value of the Development Project upon full build out will be \$90,815,894.00, which will result in the anticipated generation of about \$1,252,805.00 in annual tax increment;

D. **WHEREAS**, the Company has presented to the Agency sufficient information, including development plans and alternatives, and a projected financing pro forma, showing justification for the Agency's participation by reimbursing the Company for certain extraordinary site development costs, including, in particular, the physical diversion and covering of a canal on the Property;

E. **WHEREAS**, the Agency has adopted the South Towne Ridge Economic Development Project Area Plan (the "Plan"), which, under applicable Utah law, authorizes the Agency to collect and use tax increment for, among other things, the purposes of this Agreement;

F. **WHEREAS**, due to its location within the Project Area, the Property generates tax increment revenues that are diverted to the Agency under the Plan and as provided under applicable Utah law;

G. **WHEREAS**, the Agency is, subject at all times to the prior performance of the Company as described below, willing to provide a portion of the tax increment generated from the Development Project (and actually received by the Agency each year) to the Company in order to defray the extraordinary site development costs relating to the Development Project;

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants, conditions, and considerations as more fully set forth below, the parties hereby agree as follows:

1. **Company Commitments.** Notwithstanding anything in this Agreement to the contrary, the Company shall not be entitled to receive any payment(s) from the Agency under this Agreement unless the Company timely and properly pays all taxes assessed on or generated from the Property, including but not necessarily limited to real property, personal property, and *ad valorem* to the appropriate taxing authorities.

2. **Post-Performance Tax Incentives.** Subject to the Reimbursement Cap Amount described in the next section, the Agency agrees to contribute to the Company the following annual financial incentive, on a reimbursement basis, for a portion of the costs of the Company in diverting and covering a canal located on the Property: The Agency will pay to the Company, on an annual basis through and including the tax year 2019, an amount equal to 80% of all legally available tax increment revenues generated from the Development Project and actually received by the Agency from the Salt Lake County Treasurer each year pursuant to the Plan and applicable Utah law (each annual payment being an “Annual Tax Increment Payment”). For purposes of clarification, the parties intend that 80% of tax increment revenues generated from the Development Project (and actually received by the Agency each year) will be paid to the Company, while the remaining 20% will be retained by the Agency for income-targeted housing purposes as provided and required by the Plan and applicable Utah law. The Agency cannot and does not guarantee any specific amount of tax increment; instead, all obligations of the Agency are conditional on the amount of tax increment actually paid to the Agency by the Salt Lake County Treasurer. At the Company’s request, the Agency shall use commercially reasonable efforts to enforce its right to collect tax increment from the Development Project pursuant to the Plan and applicable Utah law. Utah Code Ann. 17C-1-102 (2015) provides a thorough definition of tax increment revenue, but in general, it means the increased property taxes, resulting from new development, over and above the base taxable value of the property, of which the Agency is entitled a percentage of this increased property tax for a period of time, as outlined in the Plan.

3. **Reimbursement Cap Amount.** Notwithstanding anything in this Agreement to the contrary, the maximum total amount of tax increment that the Agency will pay to the Company is \$1,500,000.00 (the “Reimbursement Cap Amount”). In no event will the Agency pay more than the Reimbursement Cap Amount to the Company. If any Annual Tax Increment Payment would otherwise be in an amount that would cause the total payments to the Company to exceed the Reimbursement Cap Amount then that Annual Tax Increment Payment shall be reduced to an amount that will cause the total amount of all Annual Tax Increment Payments made by the Agency to the Company to equal to the Reimbursement Cap Amount.

4. **Timing of Annual Incentive Payments.** The Agency will make the first Annual Tax Increment Payment within thirty days after the Agency receives from the Salt Lake County Treasurer the final tax increment payment for the tax year 2016, and the Agency will continue making the Annual Tax Increment Payments for an additional three years (for a maximum total of four Annual Tax Increment Payments) within the same thirty-day period in each successive year. 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 Tax Increment Payment to the Company around April or May of 2017, and then the successive three payments in April or May of 2018, 2019, and 2020 (again, subject to the Reimbursement Cap Amount).

5. **Agency Authority.** The Company acknowledges that 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 Sandy City, for the purpose of, among other things, promoting the urban renewal, economic development and community development in the City. The Company acknowledges that Sandy City is not a party to this Agreement and Sandy City will not have any duties, liabilities or obligations under this Agreement. The Company understands that the Agency has no independent taxing power, and therefore the Agency’s sole source of revenue is tax increment financing as provided under Utah law. If Utah law is amended or superseded by new law so as to reduce or eliminate the amount of tax increment to be paid to the Agency, the Agency’s obligation to pay Annual Tax Increment Payments to the Company shall be accordingly reduced

or eliminated. Similarly, if a court of competent jurisdiction declares that the Agency cannot receive tax increment, 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 revenues paid to the Agency, the Agency's obligation to make Annual Tax Increment Payments to the Company shall be accordingly reduced or eliminated.

6. **Prior Tax Increment Funding Agreement.** The Agency and the Company have previously entered into a Tax Increment Funding Agreement dated September 28, 2010 (the "Prior Agreement"), which Prior Agreement relates, generally, to the development of, and tax increment arising from, certain real property (the "Adjacent Property") located adjacent to the Property defined herein; a portion of the Adjacent Property has been developed and is generating tax increment (the "Developed Adjacent Property"), while the remaining portion of the Adjacent Property currently remains undeveloped (the "Undeveloped Adjacent Property"). The Adjacent Property is currently known as Salt Lake County Tax Parcel No. 271228001, which single Tax Parcel No. includes both the Developed Adjacent Property and the Undeveloped Adjacent Property. Nothing in this Agreement modifies, amends, or alters the Prior Agreement in any way with relation to the Developed Adjacent Property; the intent being that the Company will receive the benefit of tax increment generated by any existing development on the Developed Adjacent Property pursuant to the Prior Agreement, and the Company will receive the benefit of tax increment generated from new development on the Property and the Undeveloped Adjacent Property pursuant to this Agreement. The Property, the Undeveloped Adjacent Property, and the Developed Adjacent Property are each identified in the diagram attached as **Exhibit A** to this Agreement. The Adjacent Property is currently known as Salt Lake County Tax Parcel No. 271228001, which single Tax Parcel No. includes both the Developed Adjacent Property and the Undeveloped Adjacent Property. As a condition precedent to including the Undeveloped Adjacent Property as a part of the Property from which tax increment will be paid under this Agreement, the Company must cause the Salt Lake County Assessor to separately identify, by separate Tax Parcel Nos., the Developed Adjacent Property and the Undeveloped Adjacent Property, so that tax increment can be calculated separately for each of the Developed Adjacent Property and the Undeveloped Adjacent Property respectively. If the Company is not able to cause the Salt Lake County Assessor to divide the Adjacent Property into two separate Tax Parcel Nos. then the Agency shall have the sole and absolute discretion to determine the amount of tax increment generated from each of the Developed Adjacent Property and the Undeveloped Adjacent Property respectively, and accordingly, how much tax increment should be paid under this Agreement or the Prior Agreement, respectively, and the Company waives any rights to challenge the Agency's determination(s). The Company acknowledges that it may be required to subdivide the Adjacent Property before the Salt Lake County Assessor will assign separate Parcel Id Nos. to the Developed Adjacent Property and the Undeveloped Adjacent Property.

7. **Agreement Term/Breach/Termination.** This Agreement shall automatically terminate and expire upon the first to occur of either of the following: (i) payment of the final Annual Tax Increment Payment by the Agency to the Company, which the parties anticipate will be in approximately April or May of 2020, or (ii) payment of the Reimbursement Cap Amount. 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 notice to the breaching party.

8. **Successors and Assigns.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither this Agreement nor any of the rights of the Company under this Agreement may be assigned by the Company without the prior written consent of the

Agency; provided, however, that consent of the Agency shall not be unreasonably withheld or delayed for any request to assign all or part of the rights of the Company to a party who shall become the owner of real property located within the Development Project. The preceding restriction shall not be applicable to any pledge or assignment of Company's rights under this Agreement as security for the repayment of a loan which is encumbered by all or part of the Property or the Development Project. The Company shall timely provide the Agency written notice of any such collateral assignment. Notwithstanding any of the foregoing, however, the Agency shall have no obligation to provide any payments, communications, information, or correspondence to or with any of the Company's assignees, it being understood that the administrative burden of apportioning the Company's rights under this Agreement among the various assignees, if any, of the Company shall be borne by the Company. The Agency will continue to make all payments, provide all notices, and communicate and correspond with the Company only, notwithstanding that the Company may have assigned some or all of its rights under this Agreement.

9. **Amendments.** Except as otherwise provided herein, this Agreement may be modified or amended by, and only by, a written instrument duly authorized and executed by the Company and the Agency.

10. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Utah, and any action pertaining hereto shall be brought in the applicable state or federal court having jurisdiction in Salt Lake County, Utah.

11. **Incorporation of Recitals and Exhibits.** The above recitals are hereby incorporated and made an integral and binding part of this Agreement.

12. **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.

13. **Indemnification.** The Company shall indemnify, defend (with counsel of the indemnitee's choosing), and hold the Agency and Sandy 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 Property or in connection in any way with this Agreement.

14. **Third-Party Beneficiaries.** Except for Sandy 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.

15. **No Liability of Officials or 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.

16. **No Legal Relationships.** 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.

[Signature page to follow – remainder intentionally blank]

THIS AGREEMENT IS EXECUTED to be effective as of the day and year first above written.

COMPANY: WORKERS COMPENSATION FUND,
a Utah corporation

By: _____
Name:
Title:

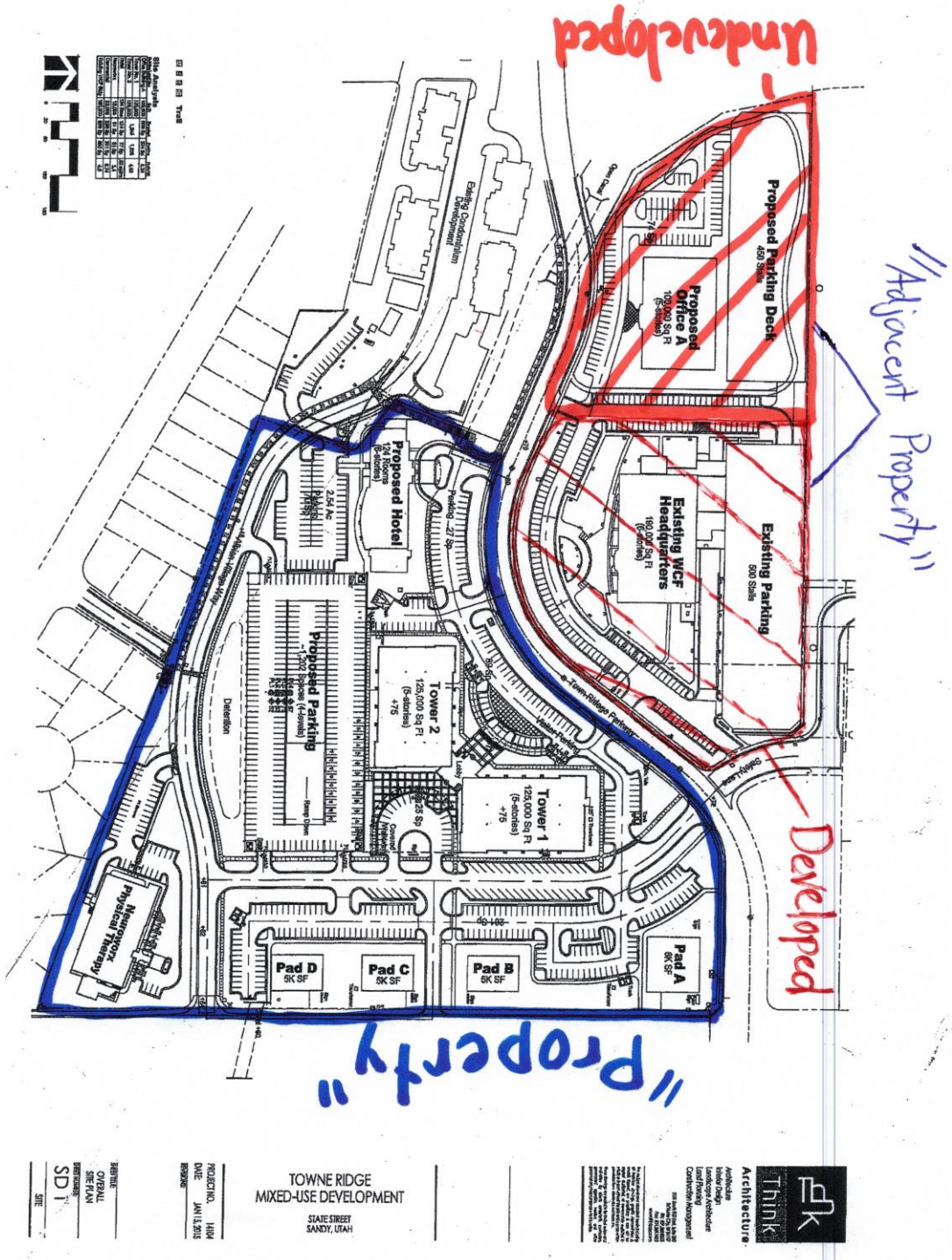
AGENCY: REDEVELOPMENT AGENCY OF SANDY CITY,
a Utah political subdivision

By: _____
Tom Dolan, Executive Director

Attest:

Vickey Barrett, Secretary

EXHIBIT A
DEPICTION OF THE PROPERTY



For purposes of clarification: the "Undeveloped Adjacent Property" includes the Proposed Parking Deck and Proposed Office A and surrounding land; the "Developed Adjacent Property" includes the Existing Parking and the Existing WCF Headquarters and surrounding land; and the "Property" Tower 1, Tower 2, Proposed Hotel, Pad A, Pad B, Pad C, Pad D, Neuroworx Physical Therapy Building, and Proposed Parking and surrounding land.