

Redevelopment Agency of Sandy City



Chris McCandless	Chair
Linda Martinez-Saville	Vice-Chair
Scott Cowdell	Board Member
Stephen P. Smith	Board Member
Steve Fairbanks	Board Member
Maren Barker	Board Member
Kristin Coleman-Nicholl	Board Member

Tuesday, November 21, 2017

Sandy City Hall
10000 Centennial Parkway, Sandy, Utah

Agenda

Meeting time: Approximately 7:00 p.m.

1. Motion to convene Redevelopment Agency meeting
2. Resolution RD 17-12. A Resolution of the Redevelopment Agency of Sandy City authorizing the execution of a Tax Increment Participation Agreement with Mountain America Federal Credit Union relating to new commercial development within the Civic Center North Redevelopment Project Area.
3. Motion to adjourn Redevelopment Agency meeting.

In compliance with the Americans with Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance please call [\(801\) 568-7141](tel:8015687141).



Redevelopment Agency of Sandy City

CHRIS McCANDLESS
Chair

LINDA MARTINEZ-SAVILLE
Vice-Chair

****MEMORANDUM****

To: Redevelopment Agency of Sandy City
From: Nick Duerksen, Director
Date: November 9, 2017
RE: MACU Participation Agreement

Attached is the participation agreement with Mountain America Credit Union (MACU) for the Redevelopment Agency's (RDA) participation on the parking structure to be used by MACU, Hale Centre Theatre (HCT) and the general public.

Below is a summary of the main provisions of the agreement:

1. Within 60 days of a Certificate of Occupancy for the MACU office building, the RDA will make a payment of \$6,000,000 to MACU. Funds for this payment are from the Civic Center North Project area (\$4M) and grants (\$2M).
2. From the annual tax increment generated by the MACU office site, the RDA will pay up to \$1,481,000 (cap amount, not a guaranteed amount) in equal annual installments—estimated to be \$105,786 per year—from 2019 through 2032; in no event, however will any annual installment payment exceed 85% of the tax increment actually generated by, and received by the Agency from, the MACU office site. This participation is directly for purposes of adding an additional level of parking to the parking structure. MACU, HCT and Sandy City mutually agreed the need for this additional parking.
3. MACU must have 700 stalls of the 1,766 stalls completed by December 31, 2017 as required in the Second Amended Purchase Agreement executed November 15, 2016. The remaining stalls in the parking structure will be completed with the Certificate of Occupancy of the office building. (Estimate June 2018).
4. The parking structure is available for public use nights and weekends, including special events as provided for in the CC&R's, less the stalls allocated for HCT.
5. Should the area form a downtown association, MACU agrees to participate.

Resolution No. RD 17-12

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF SANDY CITY AUTHORIZING THE EXECUTION OF A TAX INCREMENT PARTICIPATION AGREEMENT WITH MOUNTAIN AMERICA FEDERAL CREDIT UNION RELATING TO NEW COMMERCIAL DEVELOPMENT WITHIN THE CIVIC CENTER NORTH REDEVELOPMENT 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 Reinvestment Agency Act” (the “Act”);

WHEREAS, the Agency, in furtherance of the purposes of the Act and the Project Area Plan for the Civic Center North Redevelopment Project Area (the “Project Area”), desires to enter into a Tax Increment 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 and associated parking structure 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, 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 November 21, 2017.

Chris McCandless, *Chair*

Attest:

Vickey Barrett, *Secretary*

Exhibit A
Form of Agreement

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this “Agreement”) is entered into as of November 21, 2017, between **Mountain America Federal Credit Union** (the “Company”) and the **Redevelopment Agency of Sandy City**, a Utah political subdivision (the “Agency”) as follows:

A. **WHEREAS** the Agency was the owner of certain real property known as Lot 1 Sandy Gardner Office Park (“Lot 1”), and the Agency entered into a Second Amended Purchase and Sale Agreement and Escrow Instructions dated November 15, 2016 (the “Lot 1 PSA”) with the KC Gardner Company, L.C. (the “Developer”) providing for the sale of Lot 1 by the Agency to the Developer;

B. **WHEREAS** the Developer assigned to the Company all of the Developer’s rights under the Lot 1 PSA, the Agency consented to that assignment, and pursuant to the Lot 1 PSA, the Company acquired Lot 1 from the Agency;

C. **WHEREAS** the Company currently owns Lot 1, which is located within the boundaries of a redevelopment project area created by the Agency and known as the Civic Center North Redevelopment Project Area (the “Project Area”);

D. **WHEREAS** as the Lot 1 PSA required the Company to do, the Company is currently constructing an office building (the “Office Building”) and associated parking structure (the “Parking Structure”) and other related improvements on Lot 1 (collectively, the “Office Project”), which Office Project will be of great benefit to the Project Area and to Sandy City and its residents, including in particular to certain real property owned by Sandy City adjacent to Lot 1, which City-owned property is known as Lots 2 and 3, Sandy Gardner Office Park (respectively, “Lot 2” and “Lot 3”);

E. **WHEREAS** the Company and the Developer have presented to the Agency and its consultants sufficient information, including development plans and alternatives, and other information, showing justification for the Agency’s participation in the construction of the Parking Structure to serve the Office Building and also to serve Lots 2 and 3;

F. **WHEREAS** the Agency has adopted the Civic Center North Neighborhood Development Plan (the “Plan”), which, in connection with Utah Code Ann. § 17C-1-403, authorizes the Agency to collect and use tax increment for, among other things, the purposes of this Agreement;

G. **WHEREAS** due to its location within the Project Area, Lot 1 generates tax increment revenues that are diverted to the Agency under the Plan and as provided in Utah Code Ann. § 17C-1-403 (2017);

H. **WHEREAS** the Agency’s collection of tax increment from the Project Area according to the Plan and Utah Code Ann. § 17C-1-403 (2017) was set to expire after the tax year 2022, but the Agency has negotiated, and is still in the process of negotiating, various Interlocal Cooperation Agreements with some or all of the taxing entities within the Project Area (each an “Interlocal Agreement”) in order to extend the Agency’s collection of a portion of the tax increment from the Project Area as permitted under Utah Code Ann. § 17C-2-207 (2017) for an additional ten years (until 2032);

I. **WHEREAS** before the conveyance of Lot 1 from the Agency to the Company, the executive director of the Agency provided a letter to the Company, dated September 23, 2016 (the "Participation Letter"), in which Participation Letter the Agency acknowledged having identified \$6,000,000.00 of available tax increment funds that could, subject to the future agreement and discretion of the Agency's governing body, potentially be contributed to the cost of development and construction of the Office Project;

J. **WHEREAS** after delivering the Participation Letter to the Company, the Agency also discussed with the Company their mutual desire to see one additional level added to the Parking Structure (*i.e.*, one level more than what was originally planned by the Developer), and the Agency and Company discussed the Agency paying for approximately one-half of the cost of the additional parking level, in exchange for the company agreeing to pay the other one-half of the cost of constructing that additional parking level and providing Sandy City and its residents certain limited public parking rights in the Parking Structure solely as described *below*; and

K. **WHEREAS** pursuant to the Participation Letter and the discussions relating to the additional parking level, and in consummation of all other discussions relating to Agency participation of any kind in the costs of development and construction of the Parking Structure and the Office Project on Lot 1, 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 Lot 1 (and actually received by the Agency each year), as a reimbursement for expenses relating to the construction of the Parking Structure, to the Company in order to induce the Company to construct the Office Project within the Project Area.

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. **Tax Increment.** This Agreement refers to "tax increment" which is a term defined by Utah Code Ann. § 17C-1-102(60) (2017). The term tax increment 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 within the Project Area resulting from new development and improvements on real property located within the Project Area. Under the Plan as originally adopted, the Agency is entitled to collect tax increment from the Project Area as provided in the schedule under Utah Code Ann. § 17C-1-403(2)(a) (2017), until and including the tax year 2022. Then, after that, the Agency is entitled to collect a portion of tax increment from the Project Area as expressly provided under each of the Interlocal Agreements, respectively. The parties acknowledge that as of the Effective Date, the Agency has entered into an Interlocal Agreement with each of the following taxing entities, respectively: Central Utah Water Conservancy District; Crescent Cemetery Maintenance District; Metropolitan Water District of Salt Lake & Sandy; Sandy Suburban Improvement District; South Salt Lake Valley Mosquito Abatement District; and Canyons School District. Each of those Interlocal Agreements provides that the Agency may receive 60% of tax increment from the Project Area during the ten-year extension period (tax years 2023-2032, inclusive). The parties acknowledge that as of the Effective Date, the Agency has not yet entered into Interlocal Agreement with either Salt Lake County or South Valley Sewer District; the Agency intends to pursue Interlocal Agreements with these remaining entities, but the Agency makes no

guarantees, the Agency reserves absolute discretion as to whether or not to enter into Interlocal Agreements with these remaining two taxing entities, and the Company acknowledges that each of these remaining two taxing entities has independent discretion to approve or not approve an Interlocal Agreement.

2. **Company's Commitments.** As a condition to all obligations of the Agency under this Agreement, the Company agrees to do each of the following (each a "Company Commitment"):

- a. by December 31, 2017, on Lot 1, substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of a parking structure (the "Parking Structure") with at least 700 parking units; the parties acknowledge the Company intends to construct significantly more than 700 units, but as between the Company and the Agency, the minimum requirement is only 700; and
- b. make the entire Parking Structure available—except for reserved stalls or restricted areas, so long as at least 700 stalls are left available—for use by Sandy City and/or general public on the terms and conditions set forth in the CC&R's (defined *below*); and
- c. by December 31, 2018, on Lot 1, substantially complete construction, as evidenced by obtaining a temporary certificate of occupancy, of the Office Building according to the plans and specifications prepared by WRNS Studio known as "Sandy Development 11-story building and Parking Garage 9800 South Monroe Street, Sandy Utah 84070", as previously approved by the Sandy City Council (together with any changes to the plans and specifications approved by the Sandy City Council, which approval shall not be unreasonably withheld, conditioned or delayed); and
- d. Sandy City is currently considering promoting and/or establishing a downtown association, the purview of which will likely include Lot 1; the Company agrees to participate in the downtown association if and when it is promoted or created, upon request from the Agency or Sandy City, provided the terms of such participation are reasonably acceptable to the Company and do not materially increase the Company's obligations or decrease Company's rights with respect to Lot 1 or otherwise.

3. **Parking Structure Financing.**

- a. *Generally.* The Company is solely responsible for all the costs of development, construction, maintenance, ownership, repair, etc., of the Office Project (including the Office Building and the Parking Structure). However, subject to the performance of the Company Commitments by the Company first, and also subject to Section 4 *below*, the Agency will participate with the Company in financing the construction of the Parking Structure solely by paying a maximum amount of \$7,481,000.00 (the "Maximum Reimbursement Amount") to the Company as reimbursement for expenses actually incurred by the Company in the construction of the Parking Structure, as follows:
 - i. Within 60 days after the date the Company has timely obtained a permanent certificate of occupancy for each and both of the Parking Structure and the Office Building (*i.e.*, 60 days after the second permanent certificate of occupancy is issued), the Agency will make a one-time cash payment to the Company in the amount of \$6,000,000.00, as

reimbursement for the Company's expenses in constructing the Parking Structure. Upon request by the Agency, the Company must first provide evidence of payment of at least \$6,000,000.00 in costs towards the construction of the Parking Structure. For informational purposes, the Agency intends to reimburse itself, at least in part, for this \$6,000,000.00 upfront cash payment by collecting and retaining tax increment generated from Lot 1; and

- ii. The Agency will pay to the Company annually, in equal annual installments beginning with a payment for the first year in which the Office Building is assessed and appears on the tax rolls for Salt Lake County (estimated to be 2019) and ending with a final payment for the final year of the remaining tax increment collection period for the Project Area under the Interlocal Agreements, which is currently 2032 (each such annual payment is referred to as an "Annual Increment Payment"). The Agency will calculate the estimated amount of each Annual Increment Payment based on the number of years between the first year of payment and the 2032 tax year. It is anticipated that the first Annual Increment Payment will be made for the 2019 tax year, which would mean the estimated amount of each Annual Increment Payment will be \$105,786.00 (\$1,481,000.00/14 years). In no event, however, will any single Annual Increment Payment be more than 85% of all tax increment revenues generated, and actually received by the Agency from the Salt Lake County, in any year from Lot 1. If, for any tax year, 85% of all tax increment revenues generated, and actually received by the Agency from the Salt Lake County, from Lot 1 is less than the scheduled amount of the Annual Increment Payment, then the Agency will pay the Company the lesser amount equal (*i.e.*, the amount equal to 85% of all tax increment revenues generated, and actually received by the Agency from the Salt Lake County, in any year from Lot 1), and the estimated Annual Increment Payment schedule for each succeeding year will be adjusted (*i.e.*, increased) by taking the total remaining balance of the Maximum Reimbursement Amount and dividing that by the number of tax years remaining until the tax year 2032. The Agency will retain the remaining 15% of tax increment revenues for other Agency uses/obligations as permitted under the Plan and/or the Interlocal Agreements.
- b. *Clarification on Payments.* The Agency will continue making Annual Increment Payments until the first to occur of either (i) the Agency has paid to the Company the Maximum Reimbursement Amount, or (ii) the Agency no longer has the right to receive tax increment from the Project Area because the final year of the tax increment collection period (2032), has passed. Notwithstanding anything in this Agreement to the contrary, the Agency has no obligation to pay any more than the Maximum Reimbursement Amount; accordingly, the parties anticipate that the Agency will pay the Company a series of Annual Tax Increment Payments in the maximum combined amount of \$1,481,000.00, and if and when that amount has been paid, the Agency will have no further payment obligations of any kind to the Company.

- c. *Limitation.* Notwithstanding anything in this Agreement to the contrary, if the Company does not satisfy each of the Company Commitments, then the Agency will have no obligation to pay any Annual Tax Increment Payments to the Company; instead, the Agency will then be entitled to retain all tax increment generated from Lot 1 for other legal and authorized purposes of the Agency.
- d. *Taxes - Condition Precedent.* Notwithstanding anything in this Agreement to the contrary, all obligations of the Agency to pay any Annual Tax Increment Payment(s) to the Company are conditional on the Company timely and properly paying all taxes assessed on or generated from Lot 1, including but not necessarily limited to real property, personal property, *ad valorem*, and sales taxes, to the appropriate taxing authorities. 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 Lot 1. The Company acknowledges that the Agency will not have any tax increment funds to pay to the Company if the Company does not first pay the taxes on Lot 1.
- e. *Preservation of Interlocal Agreements.* The Agency agrees that the Agency shall not, without the prior written consent of the Company, until such time as Company has been reimbursed the Maximum Reimbursement Amount as provided in this Agreement, cause, permit or consent to any modifications or amendments to any of the Interlocal Agreements in a manner that reduces the amount of tax increment to be paid to the Agency, on either an annual or cumulative basis, from the Project Area.

4. **Default under CC&Rs/Lot 1 PSA.** The Company as owner of Lot 1, together with Sandy City as owner of Lots 2 and 3 (and with a limited joinder by Hale Centre Theatre as tenant of Lot 3), has entered into the “Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements” dated on or about November 16, 2016 (the “CC&Rs”), relating to Lots 1, 2 and 3, including, without limitation, certain obligations of the Company to construct and maintain the Parking Structure. All obligations of the Agency under this Agreement, including without limitation the Agency’s obligation to pay any tax increment or Annual Tax Increment Payment to the Company, are conditional on the Company not materially breaching or being in default of its obligations to the City under the CC&Rs, and the Company not materially breaching or being in default of any obligations under the Lot 1 PSA. If the Company materially breaches or defaults under the CC&Rs with respect to the Parking Structure, and/or the Lot 1 PSA, then the Company will be considered in material breach of this Agreement and the Agency may terminate this Agreement as provided in, and subject to, Section 7 below.

5. **Timing of Annual Incentive Payments.** Subject to Sections 2 and 3 above, 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 calendar year in which the Office Project is assessed and appears on the tax rolls for Salt Lake County, and, subject to Section 5 above, the Agency will continue making the Annual Tax Increment Payments each successive year within the same thirty-day period for so long as the Agency is entitled to collect tax increment from the Project Area (as may be extended, if at all, from time to time). For informational purposes, the Agency typically receives tax increment payments from the Salt Lake County Treasurer in March or April (for the preceding tax year), which means the Agency will likely pay the first Annual Tax 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 Office Building and

Parking Structure, and then the successive payments in April or May of each succeeding year.

6. **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 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 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 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 Tax Increment Payments to the Company shall be accordingly reduced or eliminated.

7. **Agreement Term/Breach/Termination.** This Agreement will automatically terminate and expire upon payment of the final Annual Tax Increment Payment as described in Section 3 *above*. This Agreement may also be terminated earlier as follows: Upon the material breach of this Agreement by either party, the non-breaching party may provide notice to the breaching party. The breaching party shall have 30 days to cure the breach, and if the breach is not timely cured, the non-breaching party may then terminate this Agreement by providing final notice to the breaching party.

8. **Successors and Assigns.** This Agreement shall be binding upon the parties and their respective successors and assigns. Neither party may assign its rights or obligations under this Agreement without the advance written consent of the other party.

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. **Integrated Agreement/Lot 1 PSA.** The above recitals are incorporated and made an integral part of this Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed. There are no other contracts or agreements, written or verbal, between the parties relating in any way to the subject matter of this Agreement. No party is relying on any verbal or written statements of the other than those expressly set forth in this Agreement. Notwithstanding the foregoing, however, the parties acknowledge that certain provisions of the Lot 1 PSA survive and will continue to exist according to their terms as written, and will be read harmoniously with this Agreement. If there is any conflict between the Lot 1 PSA and the terms of this Agreement, the terms of this Agreement will prevail.

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.** Except as may be otherwise provided in the CC&Rs, 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 Lot 1 or in connection in any way with this Agreement, except in each case to the extent arising out of the negligence, willful misconduct, illegal acts, bad faith or breach of this Agreement by the Agency or Sandy City (including their respective officers, directors, agents, employees, contractors, and consultants).

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.

17. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Parking Structure for the general public or for any public purpose whatsoever.

[End of Terms – Signature Page Follows]

THIS TAX INCREMENT PARTICIPATION AGREEMENT IS EXECUTED effective as of the day and year first above written, by:

MOUNTAIN AMERICA FEDERAL CREDIT UNION

By: [Exhibit - Don't Sign]
Name: Sterling Nielsen
Title: President/CEO

REDEVELOPMENT AGENCY OF SANDY CITY,
a Utah political subdivision

By: [Exhibit - Don't Sign]
Tom Dolan, *Executive Director*

Attest:

[Exhibit - Don't Sign]
Vickey Barrett, *Secretary*