

**REDEVELOPMENT AGENCY STAFF MEMO**

**DATE:** October 13, 2015

**ITEM #: 7.B.**

**PREPARED BY:** Cara Lindsley

**RE:** Hazardous Material Indemnification Agreement for Beehive Brick Property

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**REQUESTED ACTION:** Consideration and Adoption of a Resolution of the Board of Directors of the Redevelopment Agency of Salt Lake City Approving the Terms of the Hazardous Material Indemnification Agreement for the Beehive Brick Property

**POLICY ITEM:** Depot District Strategic Plan – Station Center

**BUDGET IMPACTS:** N/A

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**EXECUTIVE SUMMARY/ANALYSIS:**

Artspur Revitalization Group has requested that an indemnification agreement be executed prior to its purchase of the RDA-owned property located at 244 South 500 West (the “Beehive Brick Property”). The agreement states that the RDA will indemnify Artspur Revitalization Group, its lenders, and its investors against claims related to the release of hazardous materials associated with the former presence of eight buried drums that were discovered on the site, west of the existing building, in August 2015.

**REDEVELOPMENT ADVISORY COMMITTEE RECOMMENDATIONS:**

N/A

**ANALYSIS & ISSUES:**

During remediation of soil contaminated with polycyclic aromatic hydrocarbons (PAHs), eight buried 55-gallon drums were discovered approximately two feet below the surface in the area directly west of the building. Two of the drums appeared to contain old, dried paint; three drums contained unknown liquids; and two drums were crushed and empty. The remediation scope of work was expanded to include removing the drums and over-excavating contaminated soil from the drum area. Following excavation and backfilling, two groundwater monitoring wells were installed at the property. Groundwater contamination was detected in the area where the drums were discovered.

Our discovery of these contaminated materials has led Artspace to request protection from liability associated with the materials that were discovered. We have negotiated an indemnification agreement that meets the needs of Artspace and its lenders, and also manages the RDA's risk to an acceptable level. Once we have completed the cleanup procedures recommended by our environmental consultant, we believe the risk of exposure to contaminants is very low. The key terms of the indemnification agreement are summarized in the attached Term Sheet.

**PREVIOUS BOARD ACTION:**

- On May 13, 2014, the RDA Board adopted a resolution approving the terms for the Purchase and Sale Agreement, Development Agreement, and other agreements with Artspace for the sale and development of the Beehive Brick Property and the Structure.
- The RDA Board approved the removal of soil contaminated with polycyclic aromatic hydrocarbons (PAHs), after it was discovered at the Beehive Brick property in February 2015.
- On August 18, 2015, the RDA Board granted an extension to December 9, 2015, to complete environmental remediation of the Property.

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**ATTACHMENTS:**

1. Resolution
2. Beehive Brick Hazardous Material Indemnification Agreement Term Sheet

RESOLUTION NO. 762.\_\_\_\_

October 13, 2015

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING THE TERMS OF THE HAZARDOUS MATERIAL INDEMNIFICATION AGREEMENT BETWEEN THE RDA AND ARTSPUR REVITALIZATION GROUP, ITS LENDERS, AND ITS INVESTORS, FOR THE DEVELOPMENT OF RDA-OWNED PROPERTY LOCATED AT 244 SOUTH 500 WEST

WHEREAS, the Redevelopment Agency of Salt Lake City (“Agency”) was created to transact the business and exercise the powers provided for in the Utah Community Development and Renewal Agencies Act; and

WHEREAS, the Agency adopted a redevelopment plan effective October 15, 1998 entitled “Depot District Redevelopment Project Area Plan;” and

WHEREAS, the Agency currently owns property located at 244 South 500 West (the “Property”) in the Depot District Project Area; and

WHEREAS, the Agency purchased the Property with the intent of restoring the structure (“Structure”) located on the Property to its original historic character; and

WHEREAS, on May 13, 2014, the RDA Board adopted Resolution No. 746.02 approving the terms for the Purchase and Sale Agreement, Development Agreement, and other agreements with Artspace for the sale and development of the Property and the Structure; and

WHEREAS, on May 12, 2015, the RDA Board adopted Resolution No. 758.03 granting an 80-day extension of the deadline for the sale of the Property to Artspace; and

WHEREAS, Artspace has formed a nonprofit organization, Artspur Revitalization Group, and the Property will be sold to Artspur Revitalization Group; and

WHEREAS, on August 18, 2015, the RDA Board adopted Resolution No. 750.05 granting a second extension, to December 9, 2015, to complete environmental remediation of the Property.

WHEREAS, the RDA and Artspur Revitalization Group, its lenders, and its investors desire to enter into an Indemnification Agreement prior to the execution of the Purchase and Sale Agreement, Development Agreement, and other agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY, that we do hereby approve the terms of the Hazardous Material Indemnification Agreement.

\_\_\_\_\_  
Stan Penfold, Chairperson

ATTEST:

\_\_\_\_\_  
D.J. Baxter, Executive Director

Transmitted to the Chief Administrative Officer on \_\_\_\_\_, 2015. The Chief Administrative Officer:

\_\_\_ does not request reconsideration

\_\_\_ requests reconsideration at the next regular Agency meeting.

\_\_\_\_\_  
Ralph Becker, Chief Administrative Officer

ATTEST:

\_\_\_\_\_  
D.J. Baxter, Executive Director

Approved as to legal form:

By: \_\_\_\_\_

**Introduction:** Artspur Revitalization Group has requested that an indemnification agreement be executed prior to its purchase of the RDA-owned property located at 244 South 500 West (the “Beehive Brick Property”). The agreement states that the RDA will indemnify Artspur Revitalization Group, its lenders, and its investors against any and all claims related to the release of hazardous materials associated with the former presence of eight buried drums that were discovered on the site, west of the existing building, in August 2015.

**Indemnitor/  
Indemnitees:** The RDA is the Indemnitor and the Indemnitees are:

- Artspur Revitalization Group,
- Macaroni Flats, LLC,
- Artspace,
- Alliance Finance Fund 7, LLC,
- Western Macaroni Mt, LLC and,
- U.S. Bancorp Community Development Corporation

**Indemnification:** The indemnity covers the Indemnitees for damage, injury or actions arising out of, or related to, the former presence of drums identified in Section 5 of the Kleinfelder report dated September 18, 2015.

**Financial  
Exposure:** The Indemnitor’s total financial exposure for all items, costs and performances is capped at a total maximum amount not to exceed \$6,000,000.

**Indemnity  
Termination:** The indemnity terminates on the earlier to occur of:

- the Property is sold or transferred (except for sale or transfer of the Property in connection with foreclosure or under any arrangement or proceeding in lieu of foreclosure with respect to the Debt),
- the Debt is paid in full, or
- the date which is one (1) year following the expiration of the later of the (a) NMTC Compliance Period and (b) the HTC Recapture Period (each of which periods shall not last longer than seven years).

**General Terms:** There are other standard general terms and conditions.