

**SPECIAL BOARD OF SELECTMEN MEETING  
AGENDA  
NOVEMBER 25, 2014 – 7:00 P.M.  
MEETING ROOM 133 – TOWN HALL**

- 1) CALL TO ORDER
- 2) BROOKFIELD VILLAGE LLC PROJECT PLANNED FOR THE FOUR CORNERS
  - a. PRESENTATION BY THE BOARD OF SELECTMEN
  - b. PUBLIC COMMENT
- 3) ADJOURNMENT

**AGREEMENT TO FIX  
INCREASE IN TAX ASSESSMENT**

**THIS AGREEMENT** is entered into by and between **BROOKFIELD VILLAGE, LLC**, a Connecticut Limited Liability Company, **PDM REALTY, LLC**, a Connecticut Limited Liability Company, and **48 WHEELER AVENUE, LLC**, a New York Limited Liability Company (Collectively the "**Developer**"), and the **TOWN OF BROOKFIELD**, a municipal corporation of the State of Connecticut, located in Fairfield County (the "**Town**"), who hereby enter into this Tax Deferral Agreement (the "**Agreement**").

**WITNESSETH THAT:**

**BROOKFIELD VILLAGE, LLC**, is the record owner of 7 Station Road, 13 Station Road, 800 Federal Road, and 802 Federal Road, Brookfield, Connecticut, and **PDM REALTY, LLC**, is the record owner of 806 Station Road, Brookfield, Connecticut, and **48 WHEELER AVENUE, LLC** is the record owner of 19 Station Road and 23 Station Road, Brookfield, Connecticut.

**THE DEVELOPER** has made application to the First Selectman of the Town (the "**Application**"), under the Town's Business Incentive Tax Ordinance (the "**Ordinance**"), for a deferral of assessment increases for the properties situated at 800 Federal Road, 802 Federal Road, 806 Federal Road, 7 Station Road, and 13 Station Road (hereinafter the "**Subject Property**") resulting from improvements ("**Improvements**") to the Subject Property, which Improvements are more particularly set forth in the Application which is attached hereto and is fully made a part hereof, and include Buildings 1 through 4 ("**Building**" or "**Buildings**"). A concept plan depicting Buildings 1 through 4 is attached hereto and made a part hereof.

The Subject Property has a combined total current Tax Assessment value of \$1,536,760 on the October 1, 2014 Grand List.

The Town has determined that the cost of construction of the Improvements is in excess of \$3,000,000.00.

The authorized use of the Subject Property pursuant to this Agreement is as set forth in the Application.

The Board of Selectman of the Town has deemed the proposal to construct the Improvements on the Subject Property (hereinafter the "**Project**") to be appropriate for a Tax Deferral Agreement in accordance with the requirements of the Ordinance sections 197-38 et seq., and, on December \_\_\_\_\_, 2014, the Board approved this Tax Deferral Agreement pursuant to the Ordinance and adopted a resolution authorizing the First Selectman to enter into this Agreement. In its sole and absolute discretion, the Board of Selectmen finds that the proposed construction and the Improvements will be of sufficient benefit to the Town of Brookfield and its citizens to warrant approving this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and agreements contained herein, and the representations made in the Application by the Developer, the parties hereby agree as follows:

1. No later than five (5) days after the date this Agreement is executed by all parties, **the Developer** shall: (i) file a copy of the executed Agreement with the Assessor, who shall adjust her records accordingly; and (ii) file this Agreement in the Office of the Town Clerk of the Town, for recording on the Land Records.

2. The Developer will start construction of Buildings 2 and 3 within 6 months of the date that this Agreement is approved by the Board of Selectmen. The running of this timeframe shall be tolled if necessary permits are not issued to commence construction through no fault of the Developer.

3. The Developer will start construction of Buildings 1 and 4 within 1 year after 75% of the total combined retail space in Buildings 2 and 3 has been leased. If CHFA financing is used to finance the construction of buildings 1 and 4, the terms and covenants of the CHFA contract will supersede and be senior to any provision of the Ordinance or this Agreement which directly conflicts with a term or covenant in the CHFA contract, except that construction must be completed and the final certificate of occupancy for the last Building issued by December 31, 2018, subject to the extension provision set forth in Paragraph 15 below.

4. The Developer will start the construction of market rate condominium units on the parcels known as 19 Station Road and 23 Station Road within 1 year of the date of the last of all required town and state approvals needed to construct such units.

5. The Developer will transfer to the Town, at no cost to the Town, two acres of land, being a portion of property known as 19 Station Road, at the Town's option and subject to the Town's expense for due diligence and regulatory approvals, for a park or another use that will, in the opinion of the Town, enhance the Four Corners area. The Town would consider creating walking trails, benches, and/or a gazebo and provide parking in conjunction with an appropriate use. The land will be transferred to the Town with appropriate deed restrictions, if necessary, to ensure that the land will be used for a purpose that enhances the Four Corners area.

6. If the Developer complies with the requirements set forth in paragraphs 2 through 5 above, then the tax deferral will be as described below as the "Requested Consideration". If the Developer fails to comply with any one of the requirements set forth in paragraphs 2 through 5 above, then the tax incentive will revert to the minimum tax incentive plan (labeled below as "Minimum Considerations"), as long as all other applicable requirements of the Ordinance and this Agreement are complied with:

(Expressed as a percentage of the full additional assessment that would otherwise apply)

<u>Considerations</u>	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>	<u>Yr 6</u>	<u>Yr 7</u>
<b>Minimum Considerations</b>	25%	40%	60%	80%	X	X	X

**Requested Consideration**    0%    0%    0%    20%    40%    60%    80%

7. Effective Date of Deferral:

The approved tax deferral for each Building shall be effective upon the date of the last of all of the following to occur:

- (a) completion of construction of the Building which is part of the Improvements;
- (b) the issuance of a final certificate of occupancy for the completed construction of the subject Building which is part of the Improvements; and
- (c) certification by the Assessor as set forth in the Ordinance. Deferral will be applied on a *pro rata* basis, so that any scheduled, first-year benefit commencing on the date of the final certificate of occupancy, will be continued from one assessment year to the next, as required, and for subsequent assessment years until the scheduled benefit expires. The continuance of the approved tax deferral shall be subject to the default provisions set forth in section 197-43 of the Ordinance and the contingencies set forth therein and/or as set forth in this Agreement.

8. The Assessor of the Town shall have the sole responsibility to determine the cost and value of the Improvements. Notwithstanding the foregoing, the Developer shall retain the right to appeal tax assessments on the Improvements as would otherwise be permitted by municipal regulation.

9. Upon completion of construction of each Building which is part of the Improvements made and completed in accordance with the terms of this Agreement, and upon certification by the Assessor as set forth in the Ordinance, and upon the issuance of the final certificate of occupancy for each such Building, the increase in the assessment on the Subject Property due to such construction of and improvements to the completed Building shall be deferred in accordance with paragraph number 6 above. The intent of this paragraph is that a deferred assessment will apply to each Building as completed and that separate timeframes of deferred assessment may run for each completed Building identified as Buildings 1 – 4 above and in the Application. The certification by the Assessor for the last Building of the Improvements shall certify that the cost of all completed Improvements exceeds \$3,000,000.00.

10. The fixed assessment will automatically terminate without notice if there is any delinquency in the payment of property taxes on the Property or in any other obligations owed to the Town or the Water Pollution Control Authority, such as water and sewer fees and assessments, with respect to the Subject Property or any other property owned by the Developer. Notwithstanding the foregoing, the Developer will be provided notice and a ten (10) day grace period for correction of any inadvertent or accidental failure to make such payments so long as such failure is not repeated and chronic.

11. The fixed assessment will automatically terminate without notice upon the sale or transfer of the Property, unless the new owner or lessee, as the case may be, of the Property shall

enter into a new agreement with the Town incorporating all of the terms of this Agreement as herein provided, which new agreement shall not be unreasonably withheld. Notwithstanding the foregoing, this provision shall not apply to the sale of Federal Tax Credits as to Buildings 1 and 4, or to tenants in the Buildings who do not assume direct responsibility for payment of real estate taxes and whose leases are made expressly subject to this Agreement.

12. The fixed assessment will automatically terminate without notice if the Developer, its heirs or assigns, files an application pursuant to Connecticut General Statutes section 8-30g with any Town of Brookfield land use agency pertaining to the Subject Property or the property located at 19 Station Road or 23 Station Road.

13. In the event that, on the date stated for the required completion, the Assessor denies certification that the construction or improvements have been performed in accordance with the eligibility criteria as set forth in the Ordinance and/or in accordance with the terms of this Agreement, or at any time if the Assessor determines that the owner or lessee of the property is in default under the terms of this Agreement, and has failed to cure said default after notice and an opportunity to do so within the time stated in the notice from the Assessor, the Agreement shall automatically terminate.

14. In the event of termination of the fixed assessment for any reason set forth in this Agreement or the Ordinance, the owner and/or lessee of the property, as herein provided, shall be liable for any increase in taxes for which he/she would have been liable in the absence of this Agreement.

15. The Developer may apply, prior to the expiration date, to the Board of Selectmen for an extension of time in which to complete the construction of the Improvements which, for good cause shown, the Board of Selectmen may, in its discretion, approve, but in no event shall such extension of time exceed a period of one (1) year.

16. In addition to the certification requirement of the Ordinance and as set forth in this Agreement, the Subject Property shall be subject to inspection and certification by the Building Official and Health Director, as being in conformance with such provisions of the State Building and Health Codes and local Housing Codes as may apply, and by the Zoning Enforcement Officer to ensure conformance with the Zoning Regulations, and must be in compliance with all other codes or state and local laws applicable to the Improvements and the construction thereof.

17. This Agreement shall continue only for as long as the use of the property remains the use authorized and set forth in this Agreement and the Developer must annually certify to the Assessor on or before September 1<sup>st</sup> of each year that the Subject Property is used for the authorized use set forth in this Agreement.

18. The Assessor shall forward a copy of a certification that the construction of the Improvements has been completed in accordance with this Agreement to the First Selectman and the Developer. In the event that the Assessor denies such certification, the Assessor shall send a copy of the denial, including the reasons for denial, to the First Selectman who shall then inform the Board of Selectmen and the Developer that the certification was denied and that the Tax

Deferral will not commence. Upon such denial of certification by the Assessor or upon a termination of this Agreement, the Assessor shall readjust her tax records in accordance with the provisions of the Ordinance.

19. This Agreement shall not affect the assessment of any items of personal property which may hereafter be located on the property.

20. This Agreement sets forth all (and is intended by the parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties and representations between them with respect to the assessment and imposition of real property taxes on the Subject Property and the Improvements thereto, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, between the parties with respect to said assessment and taxes other than as set forth herein.

21. This Agreement may not be modified or amended except by a written agreement signed by all parties.

22. A ruling by any court of administrative body that any provision of this Agreement is invalid or unconstitutional shall have no effect on the other provisions hereof, which shall remain in full force and effect and binding upon the parties hereto.

23. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Connecticut.

DRAFT





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Notary Public  
Commissioner of the Superior Court

DRAFT





Town of Brookfield, CT  
 Business Incentive Tax Ordinance  
 Sections 197-38 to 45

Application for a Deferral of Assessment Increase

Name of Applicant/Company Brookfield Village, LLC and PDM Realty, LLC

Address 3102 Route 9, Cold Spring, NY 10516

Contact Name Allan Rothman Contact phone# (914) 216-5400

Contact Email arothman@unicorncontracting.com

Description/Nature of Investment Project (Attach)

Property Address 800 to 806 Federal Road and 7-13 Station Road

Estimated Cost of Proposed Improvements \$14,432,000 (attach Itemized list of Improvements & Estimated Costs)

Estimated Number of Jobs (created) 100 (retained) 50 to 75

Assessment Deferral Requested:

Are you requesting a deferral under section 197-41? (Circle) yes or no

Or,  
 Are you requesting deferral under section 197-43? (Circle) yes or no. If yes, please provide (and attach) your case/rationale for consideration of a section 197-43 deferral and specifically state the Assessment Deferral being sought.

7/7/14  
 Date Submitted

Allan Rothman, Project Manager  
 Signature of Applicant, Title

Completed Applications should be returned to the First Selectman's Office

Approval: \_\_\_\_\_  
 First Selectman (for the Board of Selectmen)

Date Approved: (by the Board of Selectmen) \_\_\_\_\_

Brookfield Village, LLC and PDM Realty, LLC

Description/Nature of Investment Project

Demolishing of aging buildings with the construction of 4 new three-story buildings with retail on the bottom floor and apartments above. Three of the buildings will be on Federal Road and will have retail only on the bottom floor. The fourth building will be on Station Road and will have some retail on the bottom floor and some apartments and residential services on the bottom floor. These buildings will look modern but also have a very New England appearance which was well received by the local government. On the rear parcel, we plan to have park land which we will gift to the town and we plan to also build 24 townhouses. Our parking on the property will well exceed the amount of parking required by the town.

## Estimated Cost of Improvements

### **Buildings 2 and 3 at 802 to 806 Federal Road**

Site Work		\$660,000
Hard Costs	Residential 27,000 SF	2,350,000
	Retail 13,432 SF	1,397,000
Total Hard Costs plus site work		\$4,407,000
Soft Costs	Architectural	\$144,000
	Eng/Surveying	40,000
	Financial/Closing Costs	104,000
	Interest	144,000
	Legal	32,000
	Misc. Soft Costs	72,000
	Insurance	80,000
	Contingency	40,000
	Real Estate Taxes	24,000
Total Soft Costs		\$680,000
Total Hard and Soft Costs for Buildings 2 and 3		\$5,087,000

### **Building 1 and 4 at 800 Federal Road and 7-13 Station Road**

Site work		\$460,000
Hard Costs	Residential 51,725 SF	6,792,000
	Retail 9,883 SF	1,028,000
Total Hard Costs		8,280,000
Total Soft Costs		1,065,000
Total Hard and Soft Costs for Buildings 1 and 4		9,345,000

**Total Buildings 1 to 4: \$14,432,000**

Brookfield Village, LLC and PDM Realty, LLC

Case /Rationale for Deferral Under Section 197-43

We currently pay \$45,236 in real estate taxes. With our suggested tax deferral described below and our planned development for the 4 corners, we will be paying almost 3.7 times that amount in our first year of full operation and 8 years out we will be paying over 7.7 times what we are paying now in taxes (see attached spreadsheet).

Our suggested tax deferral numbers have already been provided to the financial institutions that would finance the projects because we have been getting positive feedback to our requests for tax deferrals for the past year and a half. We would expect that if we do not get the tax deferral, our financing would be curtailed resulting in a postponement or cancelation of our project.

As provided for in Section 197-43, we are requesting an additional deferral beyond the minimum consideration. Our project is a very positive addition to the town beyond the standard project for the following reasons:

1. Our property is located in the prime area of the 4 corners that is most visible and is currently occupied by dated strip malls. Our plan would greatly improve the look moving it from "Aging strip malls" without character to our crisp New England style buildings that have already been approved by the town. Most importantly, as discussed in the Fitzgerald and Halliday, Inc.'s report titled Four Corners Brookfield Town Center District Revitalization Plan of September 2012, "This Area [referring to our property] could prove to be the catalyst for redevelopment within the Four Corners." ( Both quotes in this paragraph are from page 21 of the Fitzgerald and Halliday report)
2. We are offering the town two acres of land to be used as a park. The plan for the four corners is to make it a down town which will have a high density. Having a green area right in the middle of the four corners will soften that density and make the entire four corners a much more desirable place to be.
3. The first developer in the four corners has to take on the biggest risk. To encourage us to be the first developer in and to take on the biggest risk, we need tax incentives. Since the property is currently profitable, without the tax incentive it will pay for us to stay on the sidelines until the other areas are developed understanding that could take many years.
4. We plan to develop the rear parcel into 24 market rate town homes. We believe it is a mistake for Brookfield to not consider housing of this nature, especially in the TCD zone, for assessment deferral. Please note that the town of Danbury is deferring assessment increases on a major housing project for a full 7 years at a 100% deferral. We estimate that our town home development will generate \$4 million in tax revenue for the next 30 years.

**Comparison of Minimum Considerations to our Proposed Considerations**  
 (Percentage of the full additional assessment that would otherwise apply)  
 For \$3 million plus projects

Considerations	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7
Minimum Considerations	25%	40%	60%	80%	X	X	X
Requested Consideration	0%	0%	0%	20%	40%	60%	80%

This tax incentive request will allow us to absorb the tremendous startup costs before the area blossoms and before we can obtain rents commensurate with the more upscale costs of the buildings we will be developing.

The tax deferment would be for the mixed use development at 800-806 Federal Road and 7-13 Station road on lots:

- Lot DD7-82
- lot DO7-81
- Lot DO7-80
- Lot DO7-78

Tax amount Year \$  
 (assumes 2% inc in taxes/yr)

Tax amount with tax incentive  
 in year 1 of operation

Current rate of taxes

Location	Market Rate	Taxes per unit	Units	Total	Location	Taxes per unit	Units	Total
Taxes					Taxes Year \$			
Front Parcels	\$ 27,938			\$ 37,938	Spent Parcels			193,357
Rear Parcels	\$ 7,278	5450 *	24	\$ 130,800	Rear Parcels	5396	22	\$ 153,253
Total Taxes	\$ 45,235			\$ 168,738	Total Taxes			\$ 346,650

\* Estimated rate from: Birdfield assessor

October 14, 2014

**Addendum to Application for a Deferral of Assessment Increase (Brookfield Village, LLC and PDM Realty, LLC (The Developer) application dated July 7, 2014)**

Whereas, the Board of Selectmen, at its October 6<sup>th</sup>, 2014, pursuant to the above referenced application, directed the First Selectman to negotiate additional covenants with The Developer as follows:

1. The Developer will start the construction project for buildings 2 and 3 within 6 months of the tax incentives agreement being approved by the Board of Selectmen.
2. The Developer will start construction of buildings 1 and 4 within 1 year of 75% of the retail space being leased in buildings 2 and 3. (If CHAFA financing is used for buildings 1 and 4, the terms and covenants of the CHAFA contract will supersede and be Senior to the ordinance covenants.)
3. The Developer will start the construction of market rate townhouse units on the back lot within 1 year of getting all town approvals to construction such units.
4. The Developer will provide two acres of land to the town for a park or another use that will enhance the four corner area. The town would consider creating walking trails, benches, gazebo and provide parking to make an ideal green space. The land would have deed restrictions to ensure that the land would be used to enhance the area.

Should The Developer not meet the additional covenants outlined above, then the tax incentive would revert to the minimum tax incentive plan (labeled below "Minimum Considerations"). If the developer meets the covenants the plan would be as described below by the "Requested Consideration").

**Comparison of Minimum Considerations to our Proposed Considerations**  
(Percentage of the full additional assessment that would otherwise apply)  
For \$3 million plus projects

Considerations	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7
<b>Minimum Considerations</b>	25%	40%	60%	80%	X	X	X
<b>Requested Consideration</b>	0%	0%	0%	20%	40%	60%	80%

Upon approval of the application as amended by this addendum, the Board of Selectman agree to have attorneys for both parties create a written agreement.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Signature/First Selectman: \_\_\_\_\_ Date: \_\_\_\_\_

Date Approved by Board of Selectmen: \_\_\_\_\_