SPECIAL COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
AGENDA

Wednesday, February 27, 2019

NOTICE IS HEREBY GIVEN that the Herriman Community Development and Renewal Agency shall hold a meeting at the Herriman City Hall Council Chambers, located at 5355 West Herriman Main Street, Herriman, Utah.

7:30 PM: (OR AS SOON AS POSSIBLE THEREAFTER)
1. Call to Order
   1.1. Motion for review and outline of the finalization process to approve the minutes of February 27, 2019

2. Discussion and Action Items
   2.1. Discussion and consideration of a resolution approving an Interlocal Cooperative Agreement between the Community Development and Renewal Agency of Herriman City and Herriman City – Gordon Haight, Assistant City Manager
   2.2. Discussion and consideration of a resolution approving an Interlocal Cooperative Agreement between the Community Development and Renewal Agency of Herriman City and Herriman City with respect to Sales Tax (WinCo) – Gordon Haight, Assistant City Manager
   2.3. Discussion and consideration of a resolution approving an Interlocal Cooperative Agreement between the Community Development and Renewal Agency of Herriman City and Herriman City with respect to Sales Tax (Non-WinCo) – Gordon Haight, Assistant City Manager
   2.4. Discussion and consideration of a resolution approving an amended and restated participation agreement with Anthem Center, LLC – Gordon Haight, Assistant City Manager
   2.5. Discussion and consideration of a resolution approving an amended and restated participation agreement with WinCo Center – Gordon Haight, Assistant City Manager

3. Adjournment

In accordance with the Americans with Disabilities Act, Herriman City will make reasonable accommodation for participation in the meeting. Request assistance by contacting Herriman City at (801) 446-5525 and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members of the Community Development and Renewal Agency may participate electronically via telephone, Skype, or other electronic means during this meeting.

I, Jackie Nostrom, certify the foregoing agenda was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body, at the principal office of the public body, on the Utah State Public Notice website www.utah.gov/pmn/index.html and on Herriman City's website at www.herriman.org

Posted and Dated this 21st day of February 2019

Jackie Nostrom, MMC
City Recorder
STAFF REPORT

DATE: February 19, 2019
TO: The Honorable Mayor and City Council
FROM: Gordon Haight
SUBJECT: Anthem Commercial Center Agreements

RECOMMENDATION: The City Council approve the following agreements in regards to the Anthem Commercial Center, and the WinCo anchor store.

DISCUSSION: This staff report relates to items in the City Council Meeting and the RDA Meeting. All the elements of these agreements have been discussed with the City Council. The agreements memorialize the direction given by the City Council to the City staff.

The following is a brief history of the Anthem Commercial Center Project, and the process that has led to these agreements. In June 2016, the Planning Commission approved the Conditional Use Permit for Walmart within the Anthem Commercial Center. Walmart submitted complete building permit plans, however the approved building plans were not picked up by the applicant for construction. City staff kept in constant contact with the developer of the Anthem Commercial Center, and Walmart. The developer and the City determined that Walmart had abandoned the project, however they still owned 18 acres in the Anthem Commercial Center.

In order to get the Anthem Commercial Center back on track, the developer and the City had two large hurdles to overcome. First, we had to find a new anchor tenant for the center, and second, the developer needed to purchase the property back from Walmart. The developer of the Anthem Commercial Center began working aggressively with City staff to find a new anchor tenant for the 50 acre project. During this time, commercial centers in South Jordan and Riverton were being developed on the City borders. Due to the proximity of these new commercial centers, potential grocery anchors were eliminated. The developer of the Anthem Commercial Center had a buyback provision in the Walmart contract. This gave Walmart until the end of 2018 to perform on building a store before the buyback proceedings could begin.

The search for a new anchor was the first priority. WinCo was looking at expanding in the Southwest area of Salt Lake County. Even when the City was working with Walmart to locate in the City, a large number of residents lamented that a WinCo would be a much more desirable store. The developer and the City had a meeting with WinCo to see if they would be interested in locating a store in the Anthem Commercial Center. WinCo expressed interest, however they
were already under contract for property outside of the City. Through subsequent meetings, the developer and the City explored ways to solve the challenges WinCo had of getting out of the existing contract, and purchasing property in the Anthem Commercial Center.

The agreements are a result of careful and thoughtful consideration by the City on how best to develop the Anthem Commercial Center.

There are four items that will require City Council action, and five items that will require Redevelopment Agency action.

1) **AN ORDINANCE REPEALING ORDINANCE 2017-07- AN ORDINANCE AUTHORIZING THE EXEMPTION TO CERTAIN IMPACT FEES WITH RESPECT TO THE DEVELOPMENT KNOWN AS ANTHEM CENTER AND AUTHORIZING THE EXEMPTION OF ROADWAY FACILITIES IMPACT FEE WITH RESPECT TO THE WINCO TO BE DEVELOPED IN THE ANTHEM CENTER**

   In an effort to incentivize the developer to quickly build out the center, the City agreed to waive water and transportation impact fees, and passed an ordinance in January 2017. That ordinance is being repealed, and the new ordinance requires a building permit (for WinCo) must be obtained by October 31, 2020. In discussions with the developer, he agreed that he would receive a 75% replacement fund. This is addressed in the Anthem amended and restated participation agreement. In addition, this ordinance waives the transportation impact fee for WinCo as part of an incentive package to locate a store in Herriman.

2) **INTERLOCAL COOPERATION AGREEMENT between HERRIMAN CITY and COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY**

   This item is an interlocal agreement between Herriman City and the Redevelopment Agency. This reimburses the City for the waived transportation impact fees. The source of the repayment is from the RDA property tax increment (Anthem Town Center CDA).

3) **INTERLOCAL AGREEMENT by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY and THE CITY OF HERRIMAN WITH RESPECT TO SALES TAX (WINCO)**

   This agreement allows the City to provide a sales tax incentive to the RDA from WinCo. This pays the point of sales sale tax generated by WinCo to the agency.
4) INTERLOCAL AGREEMENT by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY and THE CITY OF HERRIMAN WITH RESPECT TO SALES TAX (NON WINCO)

This agreement allows the City to give 50% of the point of sales sale tax from the project area, excluding the WinCo, up to the amount of 75% of the impact fees collected.

*The interlocals described above will be presented to the RDA for approval by resolution.*

5) Amended and Restated Participation Agreement Between The Community Development and Renewal Agency of Herriman City and Anthem Center, LLC

This amended and restated agreement does the following three things; 1. Allows the RDA to pay Anthem Commercial sales tax up to 75% of the collected impact fee amount. The impact fees must be collected prior to July 2023.  2. The RDA receives $250,000 of property tax increment from the Anthem Town Center CDA project area.  3. The RDA and Anthem Commercial split the property tax increment 27.67% to the RDA, and 73.33% to Anthem Commercial, not to exceed $11,660,300 or reimbursable costs.

6) Participation Agreement between the Community Development and Renewal Agency of Herriman City and WinCo Foods, LLC

This item is the WinCo participation agreement. In an effort to accelerate the timeline for the WinCo purchase and building construction, the City agrees to give back a portion of the sales tax for a period of not greater than 5 years. The total amount will not exceed $200,000 for any given calendar year, and a cumulative total of $500,000.

**ALTERNATIVES:** The City Council has the option of providing comments to City staff.

**FISCAL IMPACTS:** There is no cost to the City budget at this point in the process. The fiscal impacts are all based on the performance of the Anthem Commercial Center, and WinCo.
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. ______

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT WITH HERRIMAN CITY

WHEREAS, the Redevelopment Agency of Herriman City (the “Agency”) met in special open and public meeting on February 27, 2019, to consider, among other things, approving an interlocal cooperative agreement with Herriman City; and

WHEREAS the Agency was created to transact the business and exercise all the powers provided for in the former Utah Redevelopment Agencies Act and the current Limited Purpose Local Government Entities - Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to Section 17C-4-101 et seq. of the Act the Agency is authorized to negotiate with a taxing entity for the Agency to receive all or a portion of the taxing entity tax increment for the purpose of providing funds to carry out an adopted community development project area plan; and

WHEREAS, Herriman City is a taxing entity under the Act and the Agency has negotiated with Herriman City to receive a portion of property tax increment the terms of which are set forth in the attached interlocal agreement (“Interlocal”).

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF HERRIMAN CITY that the Interlocal be approved, that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the same, and that the Secretary is hereby authorized and directed provide notice as set forth in Section 17C-4-402 of the Act.

ADOPTED by the Board of Directors of the Redevelopment Agency of Herriman City, this 27th day of February 2019.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

ATTEST:  

__________________________________________

David Watts, Chairperson

Jackie Nostrom, MMC
Secretary
INTERLOCAL COOPERATION AGREEMENT
between
HERRIMAN CITY
and
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

This Interlocal Cooperation Agreement (“Agreement”) is entered into this ____ day of February 2019, pursuant to the Utah Interlocal Cooperation Act, codified in Title 11, Chapter 13 of the Utah Code, (“Interlocal Act”) and selected provisions of the Limited Purpose Local Government Entities Community Development and Renewal Agencies Act, codified in Title 17C, Chapter 4 of the Utah Code (“CDA Act”), by and between Herriman City, a Utah municipality (“City”), and the Community Development and Renewal Agency of Herriman City (“Agency”). The Agency and the City are sometimes referred to as the “Parties.”

WHEREAS, the Agency created a renewal project area known as the “Herriman Anthem Town Center Community Reinvestment Development Project Area” (“Project Area”) to facilitate the development of the Project Area into a viable part of the community and;

WHEREAS, the City has entered into various agreements with a private developer to pursue and conduct the overall development of the Project Area and;

WHEREAS, it is anticipated that the overall development plan is expected to substantially increase the tax base of the City and generate significant tax increment funds (“TIF”) from the Project Area and;

WHEREAS, on February ____ 2019, pursuant to Ordinance No. ____ the City waived Roadway Facilities Impact Fee in the approximate amount of $400,000 (“Waived Impact Fees”) with respect to a proposed development of an 82,500 square foot WinCo grocery store (“WinCo”) located in the Project Area and;

WHEREAS, the Agency and the City have determined that it will be mutually beneficial and in the best interests of their residents to enter into this Agreement to cause the Agency to reimburse the City for Waived Impact Fees to be paid by TIF.

NOW THEREFORE, the Agency and the City hereby enter into the following interlocal cooperation and property purchase agreement:

1. **Reimbursement.** The Agency agrees to pay the City the amount of the Waived Impact Fee (“Reimbursement”) for the WinCo. The payments of the Reimbursement will be made from
TIF held by the Agency from the Project Area. The TIF is described in the project area budget that has been approved by the Agency.

2. **Duration and Termination.** This Agreement shall take effect upon full execution of this Agreement and terminate upon the earlier to occur of full and complete payment or satisfaction of the Purchase Price by the Agency, or twenty five (25) years from the date of execution of this Agreement.

3. **Liability and Indemnification.** All Parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101, et seq. Consistent with the terms of this Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act.

4. **Interlocal Act Requirements.** In satisfaction of the requirements of the Interlocal Act, and in connection with this Agreement, the Parties agree as follows:

   a. This Agreement shall be authorized by resolution of the governing body of each party pursuant to Section 11-13-202.5 of the Interlocal Act;

   b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to Section 11-13-202.5 of the Interlocal Act;

   c. A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party, pursuant to Section 11-13-209 of the Interlocal Act;

   d. Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs;

   e. No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the City Manager of the City and the Executive director of the Agency; and

   f. As provided in Section 11-13-219 of the Interlocal Act, the Parties agree that a notice of this Agreement shall be published as required under the Interlocal Act. Any person in interest may contest the legality of this Agreement for 30 days after the publication of the notice of this Agreement. After the 30 days have passed, no one may contest the legality of the Agreement or any action performed or instrument issued under the authority of this Agreement for any cause whatsoever.
5. **Counterparts.** This Agreement may be executed in counterparts by City and the Agency. In such event, a duly executed original counterpart shall be filed with the keeper of records of each party pursuant to the Interlocal Act.

6. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

7. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written contract shall be binding or valid; and this Agreement may not be enlarged, modified, or altered except in writing, and signed by the Parties.

8. **Disclosure and Waiver of Conflict.** In connection with the preparation of this Agreement, the City and the Agency acknowledge that: (i) the attorneys that prepared this Agreement, cooperated and acted as legal counsel to the City with respect to the creation of the Agency; and (ii) the City and Agency are hereby advised that the interest of the City and Agency may be opposed to each other and, accordingly, the attorneys representation of the City and the Agency may not be in the best interests of the City and/or the Agency. Notwithstanding the foregoing, the City and the Agency (i) desire the attorneys to represent the City and the Agency with respect to the preparation of this Agreement; and (ii) jointly and severally forever waive any claims that the attorneys’ representations of the City and/or Agency constitute a conflict of interest.

[The remainder of this page in intentionally blank.]
IN WITNESS WHEREOF, the parties have executed this agreement as of the date and year first above written.

HERRIMAN CITY

By____________________________
Brett geo Wood, City Manager

ATTEST:

____________________________
Jackie Nostrom, City Recorder

Approved as to form and legality:

CITY ATTORNEY

By____________________________
John Brems
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF

HERRIMAN CITY

By_____________________________________

Chair

Approved as to form and legality:

By: _________________________________

John Brems, Attorney for the Agency
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. _______

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT WITH HERRIMAN CITY (WINCO)

WHEREAS, the Redevelopment Agency of Herriman City (the “Agency”) met in regular open and public meeting on February 27, 2019, to consider, among other things, approving an interlocal cooperative agreement with Herriman City (WinCo); and

WHEREAS the Agency was created to transact the business and exercise all the powers provided for in the former Utah Redevelopment Agencies Act and the current Limited Purpose Local Government Entities - Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to Section 17C-4-101 et seq. of the Act the Agency is authorized to negotiate with a taxing entity for the Agency to receive all or a portion of the taxing entity tax increment for the purpose of providing funds to carry out an adopted community development project area plan; and

WHEREAS, Herriman City is a taxing entity under the Act and the Agency has negotiated with Herriman City to receive a portion of property tax increment the terms of which are set forth in the attached interlocal agreement (“Interlocal”).

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF HERRIMAN CITY that the Interlocal be approved, that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the same, and that the Secretary is hereby authorized and directed provide notice as set forth in Section 17C-4-402 of the Act.

ADOPTED by the Board of Directors of the Redevelopment Agency of Herriman City, this 27th day of February 2019.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

ATTEST:  
David Watts, Chairperson

Jackie Nostrom, MMC
Secretary
INTERLOCAL AGREEMENT by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY and THE CITY OF HERRIMAN WITH RESPECT TO SALES TAX (WINCO)

THIS INTERLOCAL AGREEMENT is entered into as of this ___ day of February, 2019, by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY, a political subdivision of the State of Utah (the “Agency”) and THE CITY OF HERRIMAN, UTAH, a political subdivision of the State of Utah (the “City”; the Agency and the City may also be individually referred to as “Party” and collectively as “Parties”).

RECITALS

A. The City created the Agency pursuant to the provisions of Utah Redevelopment Law and the Agency continues to operate under the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C of the Utah Code (the “Act”), and is authorized thereunder to conduct urban renewal, economic development, community development, and community reinvestment activities within the City, as contemplated by the Act.

B. The Agency created the Herriman Anthem Community Reinvestment Project Area (the “Project Area”) and adopted a community reinvestment project area plan for the Project Area (the “Project Area Plan”) on August 9, 2017, which is incorporated herein by this reference, which includes the legal description and a map of the Project Area, pursuant to which the Agency desires to provide for redevelopment within the Project Area.

C. The City receives sales tax revenue from sales occurring within its borders and the City and the Agency have determined that it is in the best interests of the residents of the City to provide certain financial assistance through the use of a portion of that local sales tax in connection with the development of the Project Area as set forth in the Project Area Plan; and

D. Agency anticipates providing a portion of the sales tax revenue, generated by sales occurring within the Project Area to assist in the development as contemplated by Project Area Plan.

E. Utah Code Ann (“UCA”) § 11-13-215 authorizes the City to share its tax and other revenues with the Agency.

F. In order to facilitate development of the Project, the City desires to pay to the Agency a portion of the City’s sales tax revenue generated within the Project Area in accordance with the terms of this Agreement.

G. The provisions of applicable Utah state law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Title 11 Chapter 13 of the UCA, as amended (the “Cooperation Act”).

4848-7231-2428 / HE001-002
NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Point of Sale Tax.** Sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “Local Sales Tax”) per Title 59, Chapter 12, Part 2 of the UCA, the Local Sales and Use Tax Act, and more particularly per UCA § 59-12-204. Fifty (50) percent of that one-percent is paid to the City as set forth in UCA § 59-12-205(2)(b) on the basis of the location of the transaction (the “Point-of-sale Tax” or “POST”).

   a. **Changes to Laws.** If changes are made to Utah laws during the term of this Agreement that affect the amount of or calculation of the POST, the POST shall be defined as that Local Sales Tax revenue that is retained by or distributed to the City on the basis of taxable transactions occurring within the boundaries of the City, whether that amount be more or less than the current amount.

2. **City's Consent.** Pursuant to Section 17C-5-204 of the Act and Section 11-13-215 of the Cooperation Act, the City hereby agrees and consents that upon Agency request the Agency shall be paid the POST generated by sales attributable to a proposed development of an 82,500 square foot WinCo grocery store to be located in the Project Area (“WinCo”) to be used to facilitate development within the Project Area (the “Agency Share”).

3. **Restrictions on Agency Share.** The payment of the Agency Share from the City to the Agency shall be subject to the following provisions:

   a. **Time Limit.** The Agency Share shall be paid to the Agency for a period beginning on the date a certificate of occupancy is issued with respect to WinCo (“Certificate of Occupancy”) and ending five (5) years after the date the Certificate of Occupancy is issued but in no event beyond June 30, 2026.

   b. **Incentive Amounts.** The total Agency Share paid to the Agency under this Agreement shall not exceed the amount of sale tax increment due and owing to WinCo pursuant to the certain Participation Agreement between the Agency and WinCo Foods, L.L.C. dated ______ (“Participation Agreement”).

   c. **Timing of Payment.** The City shall pay the Agency Share to the Agency on a frequent basis so that the Agency is able to timely satisfy it commitment under the Participation Agreement.

4. **Use of Tax Increment and other Taxes.** Any property tax increment to be received by the Agency will be governed by separate interlocal agreement(s).

5. **Authorized Uses of Agency Share.** The Parties agree that the Agency may apply the Agency Share as contemplated in the Project Area Plan, including but not limited to the cost
and maintenance of public infrastructure and other improvements located within the Project Area, incentives to developers or participants within the project area, administrative, overhead, legal, and other operating expenses of the Agency, and any other purposes deemed appropriate by the Agency, all as authorized by the Act.

6. **Consent to Project Area Budget.** As required by UCA § 17C-5-304, the City consents to the Project Area Budget adopted by the Agency for the Project Area.

7. **No Third-Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except for the parties to this Agreement, no person or entity is an intended third-party beneficiary under this Agreement.

8. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant law and facts upon which this Agreement is based, including representations of the Agency concerning the Project and the Project's benefits to the community and to the Parties, and each Party relies upon its own understanding of the relevant law and facts, information, and representations, after having completed its own due diligence and investigation.

9. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

   a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

   b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;

   c. Once executed, a copy of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;

   d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

   e. The term of this Agreement shall commence on the publication of the notice required by Section 17C-5-205 of the Act and shall continue through the date on which all of the Agency Share has been paid to and disbursed by the Agency as provided herein.

   f. Following the execution of this Agreement by both Parties, the Parties shall cause a notice regarding this Agreement to be published in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-5-205 of the Act.
10. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

11. **Further Assurances and Cooperation.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement. Further, in the event of any question regarding the calculation or payment of amounts contemplated hereunder, the Parties shall cooperate in good faith to resolve such issue.

12. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

13. **Interpretation.** The terms “include,” “includes,” “including” when used herein shall be deemed in each case to be followed by the words “without limitation.”

14. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,
   
   a. such holding or action shall be strictly construed;
   
   b. such provision shall be fully severable;
   
   c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;
   
   d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and
   
   e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

15. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

16. **Time of the Essence.** Time shall be of the essence of this Agreement.

4848-7231-2428 / HE001-002
17. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

18. **Incorporation of Exhibits.** The exhibits to this Agreement are hereby incorporated by reference as part of this Agreement.

19. **Counterparts.** This Agreement may be executed in duplicate originals, each of which shall be deemed an original.

20. **Disclosure and Waiver of Conflict.** In connection with the preparation of this Agreement, the City and the Agency acknowledge that: (i) the attorneys that prepared this Agreement, cooperated and acted as legal counsel to the City with respect to the creation of the Agency; and (ii) the City and Agency are hereby advised that the interest of the City and Agency may be opposed to each other and, accordingly, the attorneys representation of the City and the Agency may not be in the best interests of the City and/or the Agency. Notwithstanding the foregoing, the City and the Agency (i) desire the attorneys to represent the City and the Agency with respect to the preparation of this Agreement; and (ii) jointly and severally forever waive any claims that the attorneys’ representations of the City and/or Agency constitute a conflict of interest.

**ENTERED** into as of the day and year first above written.

[remainder of page intentionally left blank; signature pages follow]
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

By: ______________________

______________, Chairperson

ATTEST:

______________, Secretary

Attorney Review for the Agency:
The undersigned, as counsel for the Community Development and Renewal Agency of Herriman City, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

________________________________
John Brems
Attorney for the Agency

[signatures continue on next page.]
[additional signatures to Interlocal Agreement]

HERRIMAN CITY

By: _________________________
   Brett geo Wood, City Manager

ATTEST:

Jackie Nostrom MMC City Recorder

Attorney Review for the City:
The undersigned, as attorney for the City of Herriman has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

____________________
John Brems
Attorney for the City
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. ______

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT WITH HERRIMAN CITY (NON WINCO)

WHEREAS, the Redevelopment Agency of Herriman City (the “Agency”) met in regular open and public meeting on February 27, 2019, to consider, among other things, approving an interlocal cooperative agreement with Herriman City (non WinCo); and

WHEREAS the Agency was created to transact the business and exercise all the powers provided for in the former Utah Redevelopment Agencies Act and the current Limited Purpose Local Government Entities - Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to Section 17C-4-101 et seq. of the Act the Agency is authorized to negotiate with a taxing entity for the Agency to receive all or a portion of the taxing entity tax increment for the purpose of providing funds to carry out an adopted community development project area plan; and

WHEREAS, Herriman City is a taxing entity under the Act and the Agency has negotiated with Herriman City to receive a portion of property tax increment the terms of which are set forth in the attached interlocal agreement (“Interlocal”).

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF HERRIMAN CITY that the Interlocal be approved, that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the same, and that the Secretary is hereby authorized and directed provide notice as set forth in Section 17C-4-402 of the Act.

ADOPTED by the Board of Directors of the Redevelopment Agency of Herriman City, this 27th day of February 2019.

COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN CITY

ATTEST:  

David Watts, Chairperson

Jackie Nostrom, MMC
Secretary
INTERLOCAL AGREEMENT by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY and THE CITY OF HERRIMAN WITH RESPECT TO SALES TAX (NON WINCO)

THIS INTERLOCAL AGREEMENT is entered into as of this ___ day of February, 2019, by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY, a political subdivision of the State of Utah (the “Agency”) and THE CITY OF HERRIMAN, UTAH, a political subdivision of the State of Utah (the “City”; the Agency and the City may also be individually referred to as “Party” and collectively as “Parties”).

A. The City created the Agency pursuant to the provisions of Utah Redevelopment Law and the Agency continues to operate under the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, Title 17C of the Utah Code (the “Act”), and is authorized thereunder to conduct urban renewal, economic development, community development, and community reinvestment activities within the City, as contemplated by the Act.

B. The Agency created the Herriman Anthem Community Reinvestment Project Area (the “Project Area”) and adopted a community reinvestment project area plan for the Project Area (the “Project Area Plan”) on August 9, 2017, which is incorporated herein by this reference, which includes the legal description and a map of the Project Area, pursuant to which the Agency desires to provide for redevelopment within the Project Area.

C. The City receives sales tax revenue from sales occurring within its borders and the City and the Agency have determined that it is in the best interests of the residents of the City to provide certain financial assistance through the use of a portion of that local sales tax in connection with the development of the Project Area as set forth in the Project Area Plan.

D. The Agency anticipates providing a portion of the sales tax revenue, generated by sales occurring within the Project Area to assist in the development as contemplated by Project Area Plan.

E. Utah Code Ann (“UCA”) § 11-13-215 authorizes the City to share its tax and other revenues with the Agency.

F. In order to facilitate development of the Project, the City desires to pay to the Agency a portion of the City’s sales tax revenue generated within the Project Area in accordance with the terms of this Agreement.

G. The provisions of applicable Utah state law shall govern this Agreement, including the Act and the Interlocal Cooperation Act, Title 11 Chapter 13 of the UCA, as amended (the “Cooperation Act”).

4848-7231-2428 / HE001-002
NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Point of Sale Tax.** Sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “Local Sales Tax”) per Title 59, Chapter 12, Part 2 of the UCA, the Local Sales and Use Tax Act, and more particularly per UCA § 59-12-204. Fifty (50) percent of that one-percent is paid to the City as set forth in UCA § 59-12-205(2)(b) on the basis of the location of the transaction (the “Point-of-sale Tax” or “POST”).

   a. **Changes to Laws.** If changes are made to Utah laws during the term of this Agreement that affect the amount of or calculation of the POST, the POST shall be defined as that Local Sales Tax revenue that is retained by or distributed to the City on the basis of taxable transactions occurring within the boundaries of the City, whether that amount be more or less than the current amount.

2. **City’s Consent.** Pursuant to Section 17C-5-204 of the Act and Section 11-13-215 of the Cooperation Act, the City hereby agrees and consents that the Agency shall be paid the POST generated by sales within the Project Area excluding the WinCo grocery store that will be developed within the Project Area to be used to facilitate development of the WinCo grocery store (the “Agency Share”).

3. **Restrictions on Agency Share.** The payment of the Agency Share from the City to the Agency shall be subject to the following provisions:

   a. **Time Limit.** The Agency Share shall not be paid to the Agency for any period before a certificate of occupancy is issued by the City with respect to any retail center that generates POST developed in the Project Area, or beyond February __, 2023.

   b. **Incentive Amounts.** The total Agency Share paid to the Agency under this Agreement shall not exceed the amount of sale tax increment due and owing to Anthem Center LLC pursuant to the certain Amended and Restated Participation Agreement between the Agency and Anthem Center LLC dated February __, 2019 (“Participation Agreement”).

   c. **Timing of Payment.** The City shall pay the Agency Share to the Agency on a frequent basis so that the Agency is able to timely satisfy it commitment under the Participation Agreement.

4. **Use of Tax Increment and other Taxes.** Any property tax increment to be received by the Agency will be governed by separate interlocal agreement(s).

5. **Authorized Uses of Agency Share.** The Parties agree that the Agency may apply the Agency Share as contemplated in the Project Area Plan, including but not limited to the cost and maintenance of public infrastructure and other improvements located within the Project Area, incentives to developers or participants within the project area, administrative, overhead, legal,
and other operating expenses of the Agency, and any other purposes deemed appropriate by the Agency, all as authorized by the Act.

6. **Consent to Project Area Budget.** As required by UCA § 17C-5-304, the City consents to the Project Area Budget adopted by the Agency for the Project Area.

7. **No Third-Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a party to this Agreement. Except for the parties to this Agreement, no person or entity is an intended third-party beneficiary under this Agreement.

8. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant law and facts upon which this Agreement is based, including representations of the Agency concerning the Project and the Project's benefits to the community and to the Parties, and each Party relies upon its own understanding of the relevant law and facts, information, and representations, after having completed its own due diligence and investigation.

9. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

   a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act;

   b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Cooperation Act;

   c. Once executed, a copy of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act;

   d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Section 11-13-207 of the Cooperation Act;

   e. The term of this Agreement shall commence on the publication of the notice required by Section 17C-5-205 of the Act and shall continue through the date on which all of the Agency Share has been paid to and disbursed by the Agency as provided herein.

   f. Following the execution of this Agreement by both Parties, the Parties shall cause a notice regarding this Agreement to be published in accordance with Section 11-13-219 of the Cooperation Act and Section 17C-5-205 of the Act.

10. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and
signed by both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

11. **Further Assurances and Cooperation.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement. Further, in the event of any question regarding the calculation or payment of amounts contemplated hereunder, the Parties shall cooperate in good faith to resolve such issue.

12. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah.

13. **Interpretation.** The terms “include,” “includes,” “including” when used herein shall be deemed in each case to be followed by the words “without limitation.”

14. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby,

   a. such holding or action shall be strictly construed;
   
   b. such provision shall be fully severable;
   
   c. this Agreement shall be construed and enforced as if such provision had never comprised a part hereof;
   
   d. the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and
   
   e. in lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

15. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.

16. **Time of the Essence.** Time shall be of the essence of this Agreement.
17. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

18. **Incorporation of Exhibits.** The exhibits to this Agreement are hereby incorporated by reference as part of this Agreement.

19. **Counterparts.** This Agreement may be executed in duplicate originals, each of which shall be deemed an original.

20. **Disclosure and Waiver of Conflict.** In connection with the preparation of this Agreement, the City and the Agency acknowledge that: (i) the attorneys that prepared this Agreement, cooperated and acted as legal counsel to the City with respect to the creation of the Agency; and (ii) the City and Agency are hereby advised that the interest of the City and Agency may be opposed to each other and, accordingly, the attorneys representation of the City and the Agency may not be in the best interests of the City and/or the Agency. Notwithstanding the foregoing, the City and the Agency (i) desire the attorneys to represent the City and the Agency with respect to the preparation of this Agreement; and (ii) jointly and severally forever waive any claims that the attorneys’ representations of the City and/or Agency constitute a conflict of interest.

ENTERED into as of the day and year first above written.

[remainder of page intentionally left blank; signature pages follow]
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

By: ______________________
       ______________, Chairperson

ATTEST:

______________, Secretary

Attorney Review for the Agency:
The undersigned, as counsel for the Community Development and Renewal Agency of Herriman City, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

________________________________
John Brems
Attorney for the Agency

[signatures continue on next page.]
HERRIMAN CITY

By: _________________________
   Brett geo Wood, City Manager

ATTEST:

Jackie Nostrom MMC City Recorder

Attorney Review for the City:
The undersigned, as attorney for the City of Herriman has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

____________________
John Brems
Attorney for the City
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. _______

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN CITY APPROVING AN AMENDED
AND RESTATED PARTICIPATION AGREEMENT WITH ANTHEM
CENTER, LLC

WHEREAS, the Community Development and Renewal Agency of Herriman City (the
“Agency”) met in special open and public meeting on February 27, 2019, to consider, among other
things, approving an amended and restated participation agreement with Anthem Center, LLC; and

WHEREAS, the Agency was created to transact the business and exercise all of the powers
provided for in the former Utah Redevelopment Agencies Act and the current Utah Community
Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to the Act, and more particularly Utah Code Section 17C-1-202, the
Agency is authorized enter into participation agreements with developers or property owners; and

WHEREAS, Anthem Center, LLC and the Agency have negotiated a contract for repayment
of certain property tax increment and sale tax increment the terms of which are set forth in the
amended and restated participation agreement (“Agreement”) attached hereto as exhibit “A.”

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY as follows:

1. that the Agreement be approved, with such minor changes and emendations as deemed
   necessary by the Agency.

2. that the Chairperson and Secretary are hereby authorized and directed to execute and deliver
   the Agreement on behalf of the Agency.

3. that this resolution takes effect upon adoption.

COMMUNITY DEVELOPMENT AND
RENEWAL AGENCY OF HERRIMAN CITY
ATTEST:

David Watts, Chairperson

Jackie Nostrom, MMC
Secretary
EXHIBIT A

to Resolution No. __________

Participation Agreement
Amended and Restated Participation Agreement

between

The Community Development and Renewal Agency of Herriman City

and

Anthem Center, LLC

February ___, 2019
Amended and Restated Participation Agreement

The Community Development and Renewal Agency of Herriman City, a political subdivision of the State of Utah (the “Agency”), and Anthem Center, LLC, a Utah limited liability company (the “Participant”) (Agency and the Participant may be referred to herein collectively as “Parties” or individually as a “Party”), hereby agree as follows:

RECITALS

A. The Agency and the Participant previously entered into that certain Participation Agreement (the “Prior Agreement”), pursuant to which the Agency agreed to refund certain tax increment to the Participant in connection with the Participant’s development of a mixed used center in Herriman City (the “Center”).

B. The City of Herriman, Utah (the “City”), adopted Ordinance 2017-07, pursuant to which the City exempted Water Infrastructure Impact Fee and Roadway Facilities Impact Fee with respect to a portions of the Center but only with respect to building permits obtained on or before January 25, 2021 (the “2017 Ordinance”).

C. The Participant has agreed to request that the City repeal the 2017 Ordinance and adopt a new ordinance to exempt the Roadway Facilities Impact Fee with respect to an approximately 83,000 square foot WinCo grocery store (the “Anchor Store”) located within the Center in an area approved by the City (the “Anchor Parcel”).

D. The Anchor Store has also requested that the Agency pay point of sale tax generated from the Anchor Store for a period beginning on the date the Certificate of Occupancy is issued with respect to the Anchor Store and ending five (5) years after the date the Certificate of Occupancy is issued but in no event beyond June 30, 2026 not to exceed a cumulative total of $500,000 or an annual total of $200,000 for any given calendar year (“Anchor Increment”) in the aggregate pursuant to a separate agreement with the Agency (the “Anchor Participation Agreement”).

E. The Agency has requested that the Participant reduce the property tax increment payable to Participant under the Prior Agreement by $250,000 (the “Participant’s Share of Anchor Increment”) and make certain other agreements with respect to the Anchor Increment as set forth herein.

F. Participant has agreed to reduce the tax increment payable to the Participant under the Prior Agreement by Participant’s Share of the Anchor Increment on the terms set forth herein.
and otherwise on the condition that the City pay to the Agency, and the Agency then pay to the Participant, point of sales tax generated by the Center on the terms set forth herein.

G. The Parties desire to amend and restate the Prior Agreement in its entirety to reflect certain changes to the Prior Agreement as more particularly set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree that the Prior Agreement is hereby amended and restated in its entirety as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of the Agreement

The purpose of this Amended and Restated Participation Agreement (the “Agreement”) is (a) to implement the Herriman Anthem Community Reinvestment Project Area Plan (the “Project Area Plan”) adopted by the Agency, by providing for the development of a mixed use retail center on approximately 49 acres of land, as more particularly described below, located in the City, comprising the Herriman Anthem Community Reinvestment Development Project Area (the “Project Area”), and (b) to specify the terms and conditions pursuant to which the Agency and the Participant will cooperate in bringing about this objective, including the funds the Agency will provide to assist in the development of the Project Area. The fulfillment of this Agreement is vital to and in the best interests of the Agency and the health, safety, and welfare of the residents of the City, and in accord with public purposes. This Agreement is carried out pursuant to the Utah Community Reinvestment Agency Act, Title 17C of the Utah Code Annotated (the “Act”).

1.2 The Project Area Plan

This Agreement is subject to the provisions of the Project Area Plan, as approved and adopted on August 9, 2017, by the City Council of the City, in Ordinance No. 2017-04 (the “Ordinance”), in accordance with Section 17C-5-104 of the Act. The Project Area Plan and the Ordinance are attached hereto as Exhibit A and Exhibit B, respectively.

1.3 The Project Area

The Project Area is located within the boundaries of the City, the exact boundaries of which are specifically and legally described in Exhibit C attached hereto. The Project Area is shown on the Project Area Map which is attached hereto as Exhibit D.

1.4 The Project Area Budget

Pursuant to the Act, a Project Area Budget has been adopted by the Agency for the Project Area (the “Project Area Budget”). A copy of the Project Area Budget is attached hereto as
Exhibit E.

1.5 **Interlocal Agreements**

The Agency has entered into separate Interlocal Agreements (collectively, the “Property Tax Interlocal Agreements”) with the City, Salt Lake County, Utah (the “County”), Jordan School District (the “School District”), Jordan Valley Water Conservancy District (“Jordan Valley”), South Valley Sewer District (“Sewer District”), Unified Fire Service Area (“UFA”) and the Central Utah Water Conservancy District (“Conservancy District”) pursuant to which the City, the County, the School District, Jordan Valley, the Sewer District, the UFA, and the Conservancy District to pay to the Agency certain Property Tax Increment (defined below). The Agency has entered into a separate Interlocal Agreement with the City to pay to the Agency certain Sales Tax Increment (defined below) for purposes of funding part of the costs of development the Project Area (the “Sale Tax Interlocal Agreement”). The Property Tax Interlocal Agreements and the Sale Tax Interlocal Agreement are attached to this Agreement as Exhibit G. The Property Tax Interlocal Agreements and the Sale Tax Interlocal Agreement are collectively referred to as Interlocal Agreements.

1.6 **Parties to the Agreement**

1.6.1 **Agency**

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is: The Community Development and Renewal Agency of Herriman City, 5355 West Herriman Main Street, Herriman, Utah 84096 Attention: Economic Development Director.

1.6.2 **The Participant**

The Participant is Anthem Center, LLC, a Utah limited liability company. The address of the Participant for the purposes of this Agreement is: 126 West Sego Lily Drive, Suite 275, Sandy, Utah 84070 Attention: President.

2. **CHANGES AND ASSIGNMENTS**

2.1 **Prohibition Against Certain Changes**

2.1.1 **Acknowledgement by Participant**

The Participant acknowledges that the identity and qualifications of the Participant are of particular importance to the Agency in view of:
(1) the importance of the development of the Project to the general welfare of the community;

(2) the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making such development possible; and

(3) the fact that a significant change in identity, ownership or control of the Participant may, except as permitted herein, be considered, for practical purposes, a transfer or disposition of the Project.

The Participant further recognizes that it is because of such qualifications and identity that the Agency is entering into this Agreement with the Participant.

2.1.2 Change of Ownership

For the reasons set forth above in Section 2.1.1, and subject to the provisions of Section 2.2 hereof, the Participant represents and agrees for itself and any successor in interest that prior to the issuance by the Agency of a Certificate of Completion for 100,000 square feet of development within the Project as provided in Section 5.3 hereof (which 100,000 square feet shall be in addition to the store to be constructed on the Anchor Parcel), there shall be no significant change in the ownership of the Participant or with respect to the identity of the parties in control of the Participant or the degree thereof, by any method or means, without the prior written approval of the Agency, which approval may be withheld if, in the sole opinion of the Agency, such transfer would result in the economic development goals of the Agency not being met.

The Participant shall promptly notify the Agency of any and all changes of the identities of the Parties in control of the Participant or the degree thereof that is not permitted by Section 2.2 hereof, of which it or its manager or any of its members have been notified or otherwise have knowledge or information.

2.2 Permissible Transfers.

Notwithstanding the provisions of this Agreement to the contrary, the Participant shall not be required to obtain the Agency’s consent, and the Agency shall not be permitted to terminate this Agreement, in connection with (a) the sale, exchange, issuance or redemption of any ownership interest in the Participant so long as John Gust, Cory Gust and/or Doug Young and their respective spouses and/or lineal descendants, or trusts set up for the benefit of the foregoing, own, or control in the aggregate, 51% or more of the direct and indirect interests in the Participant; (b) transfers of less than a controlling interest in the Participant; (c) transfers of interests in either the Project, the Participant or this Agreement to persons or entities that, after the transfer, are, under common control with or controlled by the Participant; (d) changes in the organizational form of the Participant; (e) transfer of the operational or managerial responsibilities of the Project to a third
party provider who is acting as an agent on behalf of the Participant; (f) leasing, subleasing, licenses, or granting other possessory rights in any portion of the Project; (g) a sale and leaseback or similar financing transaction of the Project; (h) a transfer of a fee simple interest in any portion of the Project to a third party; (i) the granting of encumbrances, easements, covenants, conditions, restrictions or other similar rights or obligations in the Project; (j) the granting of any lien, security interest, or other encumbrance upon the Project or the interests of the Participant in the Project or this Agreement, or the foreclosure, delivery of deed in lieu of foreclosure or other realization upon the Project, the Participant or this Agreement of such lien, security interest or other encumbrance; (k) a transfer of any portion of the Project Area which is not owned by the Participant; (l) a transfer of the rights to receive all or a portion of amounts payable to the Participant hereunder to any third party, including a lender, and (m) a transfer of all or a portion of the Project to a third party while retaining all rights to receive amounts hereunder. For purposes hereof, “control” (and its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, or power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

2.3 Assignment or Transfer of Agreement

The Participant represents and agrees for itself and its successors and assigns that, during the term of this Agreement and except as set forth in Section 2.2, the Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

2.4 Transfers to Tax-exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by the Participant or its successor(s) in interest to transfer any of the real or personal property within the portions of the Project Area owned by the Participant to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from ad valorem property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to the Participant or its successors or assigns.

2.5 Continuing Obligations

Unless the Agency consents to an assignment or transfer of this Agreement, no assignment or transfer of this Agreement, any part hereof, any right herein, or approval hereof, by the Agency shall be deemed to relieve the Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Participant and its permitted successors and assigns.
3 \hspace{1em} \textbf{FINANCING OF THE DEVELOPMENT OF THE PROJECT AREA}

3.1 \hspace{1em} \textbf{Nature of Participant’s Obligations}

The Participant shall have the right to improve the Project Area by developing, at its own expense, the Retail Improvements in accordance with the terms of this Agreement. The term “Retail Improvements” mean all improvements constructed from time to time for the purposes of operating retail, restaurant, entertainment and hospitality uses from time to time in Center. In addition, the Participant shall, or will cause purchasers of portions of the Center to, plan, hire, oversee, arrange, coordinate and supervise the acquisition, construction and/or installation of the infrastructure improvements as identified in the Project Area Plan and set forth in Exhibit F, which have been determined by the Participant and the City to be necessary in connection with the development of the Project Area (the “Infrastructure Improvements,” and together with the Retail Improvements, the “Project”).

3.2 \hspace{1em} \textbf{Reimbursement of Infrastructure Improvements Costs}

Following completion of all or a portion of the Infrastructure Improvements and acceptance of such Infrastructure Improvements dedicated to the City by the City engineer (but not the passage of any applicable warranty period), the Participant will (a) submit such invoices (along with such other evidence or documentation of costs reasonably required by the Agency) to the Agency for the portions of the Infrastructure Improvements constructed by the Participant for reimbursement to the Participant (the “Project Invoices”), and (b) submit a certification from an engineer engaged by the Participant, and acceptable to the Agency, setting forth such engineer’s estimate of the costs of the Infrastructure Improvements not constructed by the Participant in the Center, broken down into the line items set forth on Exhibit F (each an “Engineer’s Estimate”), for payment to the Participant. Provided the City Engineer approves the Engineer’s Estimate, such approval not to be unreasonably withheld, and subject to the terms of Section 4.1 of this Agreement, the Participant shall be reimbursed or paid for the costs related to the acquisition, construction and/or installation of the Infrastructure Improvements, (the “Reimbursable Costs”) hereunder but only from and to the extent of the Participant’s Tax Increment Share and from Tax Increment actually received by the Agency. Reimbursement of Reimbursable Costs shall be made in accordance with the terms of this Agreement.

3.3 \hspace{1em} \textbf{Responsibility for Development Plans and Permits}

If the Participant elects to develop all or a portion of the Project, with respect to the portion which the Participant has elected to develop, the Participant shall prepare and complete all plans for the acquisition and construction of such portion of the Project, and such plans shall be in accordance with all federal, state and local laws and regulations. Before commencing development of the portion of the Project which the Participant desires to develop, the Participant shall secure or cause to be secured, at its own expense, any and all permits required in order to proceed with the development of such portion of the Project as then being developed. The Agency acknowledges
that the Participant cannot predict if, when or at what rate development of the Project will occur. The timing and rate for development of the Project will depend upon numerous factors outside of the control of the Participant such as market orientation and demand, competition, availability of qualified laborers to construct the Project, and/or weather conditions that may delay construction. The Agency hereby acknowledges that the Participant may develop the Project in such order and at such rate and times as the Participant deems appropriate within the exercise of its sole and absolute discretion. The Agency acknowledges that this right is consistent with the intent, purpose, and understanding of the Parties. Nothing in this Agreement shall be construed to require the Participant to proceed with the construction of or any other implementation of the Project or any portion thereof.

3.4 Funding Responsibility

The Participant and the Agency understand and agree that funding for the development of the Project Area and its related improvements shall come from the Participant’s internal capital or financing obtained by the Participant. Subject to the Agency’s obligations to provide Tax Increment on the terms set forth herein, the Agency shall not be liable or responsible for providing, obtaining or guaranteeing any financing for the Project or any other matter addressed by this Agreement.

4 TAX INCREMENT FINANCING

4.1 Tax Increment

The Project Area Plan was adopted on August 9, 2017. The Project Area Plan will be funded in part by real and personal property tax increment and sales tax increment pursuant to the provisions of the Act. Under the Act and the Interlocal Agreements between the Agency and the Participating Taxing Entities (as defined below), the Agency is entitled to receive, or anticipating on receiving, up to a certain percent of the Tax Increment (as defined below) as set forth in each Interlocal Agreement over a maximum period identified in the Interlocal Agreements. In accordance with the Interlocal Agreements, the Agency shall begin to receive Tax Increment for various tax years (the “Trigger Year”), which the Agency expects to receive the year following the applicable Trigger Year. The amount of Tax Increment that the Agency is allowed to receive under the Interlocal Agreements is to be paid into a special fund of the Agency in accordance with the Act and shall be applied for the purposes described in the Project Area Plan, the Project Area Budget, the Interlocal Agreements and this Agreement.

4.1.1 Definitions

For purposes of this Agreement, (a) “Tax Increment” shall mean collectively the Property Tax Increment and the Sales Tax Increment, (b) “Property Tax Increment” means the Property Tax Increment, as defined in the Interlocal Agreements that is actually received by the Agency less any rebate due or paid to Salt Lake County and the Jordan School District, administrative fees.
or mitigation payments owing to Salt Lake County and the Jordan School District, pursuant to their respective Interlocal Agreements, and the ten percent (10%) affordable housing set-aside due or paid to a housing authority either the Housing Authority of Salt Lake County or otherwise for use as provided in Utah Code Ann.§17C-1-412; (c) “Sales Tax Increment” means the sales tax actually received by the Agency pursuant to the Sale Tax Interlocal Agreement (Non WinCo) less the ten percent (10%) affordable housing set-aside due or paid to a housing authority either the Housing Authority of Salt Lake County or otherwise for use as provided in Utah Code Ann.§17C-1-412 ; (d) the “Base Tax Value Amount” for the real and personal property within the Project Area is $10,248,574; (f) “Participating Taxing Entities” shall mean the City, the County, the School District, Jordan Valley, the Sewer District, the UFA, and the Conservancy District; and (g) “Increment Period” means Tax Increment Collection Period as defined or contemplated in the Interlocal Agreements.

4.1.2 Property Tax Increment

Commencing with the year in which the Agency is required to pay the Anchor Increment, the Agency shall retain two hundred fifty thousand and no/100 dollars ($250,000) of Property Tax Increment, in amounts equal to $50,000 per year (the “Anchor Contribution”). The Agency agrees to pay the remaining Property Tax Increment to the Participant on the following terms (a) annually after the Agency has retained the Anchor Contribution, if any, and all the other conditions to reimbursement or payment have been satisfied; (b) only from and to the extent that Property Tax Increment is generated from the Project Area and actually received by the Agency; and (c) annually in an amount equal to seventy-three and 33/100 percent (73.33%) of the Property Tax Increment generated from the Project Area for the prior year (the remaining 26.67% being referred to herein as the “Agency’s Tax Increment Share” and paid as described below), not to exceed the lesser of (i) the Reimbursable Costs, and (ii) an aggregate amount of eleven million six hundred sixty thousand three hundred and no/100 dollars ($11,660,300) (the “Participant’s Tax Increment Share”). The Agency shall not be obligated to pay the Participant more than the Participant’s Tax Increment Share. Further, the Agency shall not have any obligation to make any Tax Increment payments to the Participant for any time beyond the end of the tax year which is sixteen (16) years after the applicable Trigger Year. Notwithstanding the foregoing, the Agency shall retain for the costs of administering the Project Area, an amount not to exceed the lesser of (a) five percent (5%) of the Property Tax Increment the Agency receives for such year, or (b) such lesser amounts permitted by the Interlocal Agreements, which amount shall not be available to pay to the Participant for the Participant’s Tax Increment Share. Tax Increment is the only funding source available or obligated under this Agreement.

4.1.3 Sales Tax Increment

If the Anchor Store is substantially completed on or before November 30, 2020 (as such date may be extended as a result of the events described in Section 7.4), and after satisfying the Agency obligation to the Anchor Store to pay the Anchor Store Sales Tax Increment generated
from the Anchor Store in an amount not to exceed a cumulative total of $500,000 or an annual
total of $200,000 for any given year the Agency will pay to the Participant the Sales Tax Increment
generated from the Anchor Store up to an amount not to exceed (a) $2400,000 in any calendar
year, and (b) $400,000 in the aggregate. In addition, the Agency will pay to the Participant the
Sales Tax Increment generated from the Center specifically excluding the Anchor Store in an
amount equal to seventy-five percent (75%) of the amount of Water Infrastructure Impact Fees
and Roadway Facilities Impact Fees actually collected by the City (or would have been collected
had such fees not been waived by the City (other than fees waived in favor of the Participant and
the Anchor Store)) with respect to the Retail Improvements from August 1, 2018 through and
including July 31, 2023. The payments of Sales Tax Increment by the Agency shall be (a) subject
to the Sale Tax Interlocal Agreement, and (b) be made only from and to the extent that Sales Tax
Increment is generated and actually received by the Agency.

4.2 Conditions Precedent to Payment of the Participant’s Tax Increment Share

In addition to the conditions stated elsewhere in this Agreement, the Agency shall have no
obligation to make payment hereunder to the Participant from Participant’s Tax Increment Share
until the following conditions precedent are satisfied: (a) the Agency has received Project Invoices
and/or the Engineer’s estimates; (b) the Infrastructure Improvements for which reimbursement is
sought have been constructed; (c) the City has inspected and accepted the Infrastructure
Improvements for which reimbursement is sought (but not the passage of any applicable warranty
period), and (d) the Agency has actually received payment of the funds representing the Property
Tax Increment. The Agency agrees to review all submittals and notify the Participant of any
objections thereto within 30 days of receipt thereof. The Participant shall be reimbursed for
Reimbursable Costs from Participant’s Tax Increment Share within thirty (30) days from the date
of the satisfaction of all of the conditions precedent contained in this Agreement.

4.3 Agency’s Encumbrance of Tax Increment

The Agency agrees that the Agency shall not, without the prior written consent of the
Participant, issue any bonds and other indebtedness that are secured by Tax Increment from the
Project Area until such time as the Participant has been paid amounts owing under this Agreement.

4.4 Payment of Real Property and Ad Valorem Taxes

The Participant understands and agrees that the sole source of Tax Increment for payment
of the Participant’s Tax Increment Share hereunder is the payment of the ad valorem taxes on the
real and personal property within the Project Area and to the extent such taxes are not paid, the
Participant’s Tax Increment Share shall be reduced until such taxes are paid. Nothing herein
contained, however, shall be deemed to prohibit the Participant from contesting the validity or
amount of any tax assessment, encumbrance, or lien, or to limit the remedies available to the
Participant in respect thereto.
4.5 Reduction or Elimination of Tax Increment

In the event that the provisions of Utah law which govern the payment of Tax Increment to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency, the Agency’s obligation to pay such amounts to the Participant hereunder shall be accordingly reduced or eliminated. The Participant specifically reserves and does not waive hereunder any right it may have to challenge any law change that would reduce or eliminate the payment of Tax Increment to the Agency. The Participant acknowledges, understands and agrees that the Agency is under no obligation to challenge a change in law that reduces or eliminates the payment of Tax Increment to the Agency; provided, the Agency will not oppose the Participant, if the Participant challenges a change in the law that reduces or eliminates the payment of Tax Increment to the Agency. In the event any change in law invalidates the Tax Increment provided in support of the Project, the Participant is hereby released from any and all obligations made by the Participant to the Agency.

4.6 Dispute over Receipt of Payment of Tax Increment.

In the event a dispute arises as to the person or entity entitled to receive payments under this Agreement due to a claimed assignment or claimed successor-in-interest to such payments or otherwise, the Agency may withhold the portion of the payment which is in dispute (but shall pay the undisputed portion) until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency.

4.7 Declaration of Invalidity

In the event a court of competent jurisdiction after final adjudication (by the highest court to which the matter may be appealed) (i) declares that the Agency cannot receive Tax Increment or pay the Participant Tax Increment as provided in this Agreement, (ii) invalidates the Project Area, or (iii) takes any other action which eliminates or reduces the amount Tax Increment paid to the Agency, the Agency’s obligation to pay such amounts to the Participant hereunder shall be accordingly reduced or eliminated. The Participant specifically reserves and does not waive hereunder any right it may have to challenge a ruling, decision or order by any court that would reduce or eliminate the payment of Tax Increment to the Agency. The Participant acknowledges, understands and agrees that the Agency is under no obligation to challenge a ruling, decision or order by any court that reduces or eliminates the payment of Tax Increment to the Agency; provided, the Agency will not oppose the Participant if the Participant challenges a ruling by any court. Additionally, if any court invalidates the Project Area Plan or Project Area Budget as a result of a procedural defect, the Agency shall take such actions as are necessary to correct such procedural defect and adopt the Project Area Plan and Project Area Budget. In the event any court invalidates the Tax Increment provided in support of the Project, the Participant is hereby released from any and all obligations made by the Participant to the Agency. For further clarity, the Participant at its sole and exclusive discretion may, without penalty, terminate its obligations under
this Agreement if any court invalidates the Participant’s right to receive Tax Increment pursuant to this Agreement.

4.8 Reduced Payment.

The Agency shall in its sole and absolute discretion have the option, by delivering written notice to the Participant, to pay to the Participant, in lieu of all Tax Increment owing to the Participant hereunder, an amount equal to the sum of (a) $10,400,000, less (b) Tax Increment previously paid to the Participant (the “Reduced Amount”). In order to pay the Reduced Amount, the Agency must deliver written notice to the Participant, on or before December 31 of the year that is three (3) years after the Trigger Year (the “Outside Prepayment Date”), which written notice shall specify that the Agency is electing to pay the Reduced Amount (the “Prepayment Notice”). If the Agency delivers the Prepayment Notice, the Agency shall pay to the Participant the Reduced Amount on or before the Outside Prepayment Date. Upon timely payment of the Reduced Amount, this Agreement shall terminate and the Participant shall have no additional rights to receive Tax Increment under this Agreement. If the Agency fails to deliver the Prepayment Notice, or fails to make pay the Reduced Amount to the Participant, in either case, by the Outside Prepayment Date, the Agency’s rights to pay the Reduced Amount shall terminate.

5 DEVELOPMENT OF THE PROJECT AREA

5.1 Development and Operation of the Project Area

If the Participant elects to develop the Project Area, the Participant agrees to develop, or cause to be developed, the Project Area as permitted by the Development Agreement.

5.2 Right of Access

Upon delivering prior written notice to the Participant, the representatives of the Agency specified in such notice shall have the right of reasonable access to the Project Area and to any and all improvements thereon for purposes of inspection, during regular weekday work hours, with reasonable prior notice and without charges or fees. All representatives of the Agency visiting the Project Area shall observe any reasonable rules adopted by the Participant for purposes of maintaining safety and security on the Project Area, including the requirement that all visitors be escorted by a manager or supervisor of the Participant at all times. The Agency agrees to and shall indemnify and hold the Participant harmless from and against all liability, loss, damage, costs, or expenses arising from or as a result of any accident, injury (including death), loss or damage whatsoever caused to any person or the property of any person which shall occur as a result of or arising from Agency representatives’ entry upon or activities on the Project Area, except that this indemnity shall not apply to the negligence or willful misconduct of the Participant or its directors, officers, agents, employees or consultants.

5.3 Certificate of Completion
5.3.1 Issuance of the Certificate of Completion

Upon the written request of the Participant, the Agency shall within 30 days of such written request furnish to the Participant a Certificate of Completion upon the completion of all construction and development of the Infrastructure Improvements. The Certificate of Completion shall be conclusive determination of satisfactory completion of the construction on and development of the Project Area or a specific portion thereof in accordance with the terms of this Agreement and shall specifically so state.

5.3.2 Failure to Issue the Certificate of Completion

The Agency shall not unreasonably withhold the Certificate of Completion. If the Agency fails or refuses to furnish a Certificate of Completion for the Project Area or any part thereof as permitted by and in accordance with this Agreement, the Agency shall provide the Participant with a written statement which details the reasons for the Agency’s refusal or failure to furnish the Certificate of Completion, which statement shall be delivered to the Participant within 30 days of its written request for the Certificate of Completion. The statement shall also state the action the Participant must take to obtain the requested Certificate of Completion. If the Agency fails to provide the Participant with a written statement within the 30-day period as provided above, the requested Certificate of Completion shall be treated as issued for purposes of this Agreement.

If the Agency determines that the Participant’s failure to complete to the required construction and development is due to the immediate unavailability of minor specific items or materials or otherwise constitutes minor unfinished work for which a specific cost can be identified, the Agency shall issue the requested Certificate of Completion upon receipt of:

(a) evidence reasonably satisfactory to the Agency that when the specified items or materials are available, the subject construction and development shall be promptly completed, and

(b) either a cash bond in the amount of the cost of such items or materials or the cost to complete the minor unfinished work or other evidence satisfactory to the Agency that the Participant will complete and pay for the same.

If the Agency refuses to issue the Certificate of Completion due to the Participant’s failure to otherwise perform its obligations under this Agreement, the Agency may issue the Certificate of Completion upon receipt from the Participant of assurances satisfactory to the Agency that the Participant will perform its obligations hereunder.

5.4 Restriction Against Parcel Splitting.
During the term of this Agreement, the Participant shall not, without the prior written approval of the Agency, (a) convey the Project Area or any portion thereof in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install, or allow to be constructed or installed, any building or structure within the Project Area in such a way that any portion of the structure would extend outside of the Project Area. The Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels. For the avoidance of doubt, the Participant may join or aggregate parcels of real property, that are entirely within the Project Area without the prior written approval of the Agency.

5.5 Deannexation

The Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Project Area or any portion thereof from the City during the term of this Agreement. In the event that the Project Area or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency’s obligations to make payments to the Participant for that portion of the Project Area outside of the City shall immediately cease.

6 DEFAULTS, REMEDIES AND TERMINATION

6.1 Default

If either the Agency or the Participant fails to perform or delays performance of any term or provision of this Agreement or any representation, warranty or covenant made herein proves to be false or misleading in any material respect, such conduct shall constitute a “Default” hereunder. The Party in Default must commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 6.3 hereof.

6.2 Notice

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice of the Default (a “Default Notice”) to the Party in Default, specifying the nature of the default. Failure or delay in giving a Default Notice shall not constitute a waiver of any Default or operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any right or remedy hereunder shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
6.3 Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the Default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of Defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such Default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be a Default, and the non-defaulting Party, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have. During the period of time, if any, that a judicial determination of an alleged Default by the Participant is proceeding, the Agency may withhold payment of disputed Tax Increment to the Participant until such dispute is resolved.

6.4 Rights and Remedies/Limits on Liability

Upon the occurrence of a Default (following the expiration of the applicable cure period proved herein) the non-defaulting Party shall have only the rights set forth in Section 6.3. Notwithstanding the foregoing to the contrary, (a) in no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between the Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise, and (b) in no event shall the Agency be entitled to receive damages that exceed the amount of the Tax Increment actually received by the Participant.

6.5 Legal Actions

6.5.1 Venue

All legal actions must be instituted in the Third Judicial District Court for the State of Utah, unless they involve a case with mandatory federal jurisdiction, in which case they must be instituted in the Federal District Court for the District of Utah.

6.5.2 Services of Process

Service of process on the Agency shall be made by personal service upon the Chair of the Agency or in such other manner as may be provided by law.
Service of process on the Participant shall be by personal service upon its Registered Agent, or in such other manner as may be provided by law. The Participant’s Registered Agent in the State of Utah is Cory Gust with a physical address of 126 West Sego Lily Drive, Suite 275, Sandy, Utah 84070. The Participant shall notify Agency of any change in its Registered Agent by delivering written notice to Agency.

6.5.3 Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6.5.4 Waiver of Jury Trial.

Each Party hereto hereby irrevocably waives any and all rights it may have to demand that any action, proceeding or counterclaim arising out of or in any way related to this Agreement be tried by jury. This waiver extends to any and all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law or any applicable statute or regulation. Each Party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.

6.5.5 Early Termination by Participant.

The Participant may at any time elect to terminate this Agreement by providing written notice to Agency, in which event, this Agreement shall terminates as of the date of the delivery of such notice to Agency.

7 GENERAL PROVISIONS

7.1 Notices, Demands, and Communications Among the Parties

Notices, demands, and communications between the Agency and the Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, or an overnight commercial delivery service to the principal offices of the Agency and the Participant, as designated in Section 1.6 hereof. Either Party hereto may change its address specified for notices herein by designating a new address by notice in accordance with this Section. All such notices and other communications shall be effective upon actual receipt by the relevant Party or, if delivered by overnight courier service, upon the first business day after the date deposited with such courier service for overnight (next-day) delivery or, if mailed, upon the third business day after the date deposited into the mail or, if delivered by hand, upon delivery.
7.2 **Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant or provision herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

7.3 **Nonliability of Agency Officials and Employees**

No member, director, officer, agent, employee, or consultant of the Agency shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Participant or its successors or on any obligations under the terms of this Agreement.

7.4 **Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, neither Party shall be deemed to be in default hereunder when its fails to perform or delays performance of any non-monetary obligations under this Agreement to the extent due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, newly enacted governmental restrictions unusually severe weather, inability to secure necessary labor, materials or tools, acts or failure to act of the Agency (with respect to the Participant only) or any other public or governmental entity. An extension of time to perform shall be granted as a result of any of the foregoing causes, which extension shall be for the period of the forced delay and shall run from the time of the commencement of the cause, if notice is sent by the Party claiming such extension to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and the Participant by mutual agreement.

7.5 **Approvals**

Whenever the consent or approval is required of any Party hereunder, such consent or approval shall not be unreasonably withheld, delayed or conditioned except as otherwise specifically provided herein, and shall be in writing.

7.6 **Time of the Essence**

Time shall be of the essence of this Agreement.

7.7 **Interpretation**
The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise among the Parties hereto.

7.8 No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create in either Party hereto any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any of the benefits hereunder should accrue to any third party.

7.9 Headings

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

7.10 Contra Profernetum

This is an arm’s-length Agreement. The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.

7.11 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.

7.12 Non-waiver of Governmental Immunity

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code Ann. §63G-7-101, et seq.

7.13 Incorporation of Recitals and Exhibits

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

7.14 Effect and Duration of Covenants; Term of Agreement
The covenants contained in this Agreement shall, without regard to technical classification and designation, bind the Participant and Agency and any of their respective successors in interest. The covenants contained in this Agreement shall inure to the benefit of and in favor of the Agency and the Participant and to their respective successors and assigns during the term of this Agreement. This Agreement shall run from the date hereof until the earlier of (1) the final payment made by the Agency to the Participant as provided for in Section 4.1, or (2) upon written agreement signed by the Parties hereto, provided, the Parties shall continue to have the right to seek to enforce, or commence proceeding to enforce, the obligations of the other Party that arose prior to the termination of this Agreement.

8 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

8.1 This Agreement may be executed in duplicate originals, each of which shall be deemed an original. This Agreement, including all Exhibits hereto, constitutes the entire understanding and agreement of the Parties with respect to the matters set forth herein. All Exhibits attached hereto are hereby incorporated herein by reference and are made a part hereof as though fully set forth herein.

8.2 When executed by both Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between or among the Parties with respect to all or any part of the Project Area and the development thereof.

8.3 All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement by the Participant and the Agency.

8.4 Each Party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized by such Party and when executed and delivered will constitute the valid, legal and binding agreement and obligation of such Party enforceable against such Party in accordance with the terms hereof. Each person signing on behalf of the Agency and the Participant hereby represents, warrants and covenants that he or she has been duly authorized by the governing body or board of the Agency and the Participant, as applicable, to bind the Agency and the Participant, as applicable, to the terms and conditions hereof.

8.5 In the event any litigation ensues with respect to the rights, duties and obligations of the Parties under this Agreement, the unsuccessful Party in any such action or proceeding shall pay for all costs, expenses and reasonable attorney’s fees incurred by the prevailing party in enforcing the covenants and agreements of this Agreement. The term “prevailing party,” as used herein, shall include, without limitation, a Party who obtains legal counsel and (a) brings action against the other Party by reason of the other Party’s Default and obtains substantially the relief
sought, whether by compromise, settlement or judgment or (b) defends an action against brought by the other Party and the other Party fails to obtain substantially the relief sought, whether by compromise, settlement or judgment.

9 MORTGAGEE PROTECTIONS; ESTOPPEL

9.1 The Parties hereto agree that this Agreement shall not prevent or limit the Participant from encumbering the Project or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing (“Mortgage”) with respect to the construction, development, use or operation of the Project and parts thereof. The Agency acknowledges that the lender(s) providing such Mortgages may require certain interpretations of this Agreement and the Agency agrees, upon request, from time to time, to meet with the Participant and representatives of such lender(s) to negotiate in good faith any such request for interpretation. The Agency will not unreasonably withhold its consent to any such requested interpretation, provided such interpretation is consistent with the intent and purposes of this Agreement.

9.2 Notwithstanding any of the provisions of this Agreement to the contrary, the holder of a Mortgage (a “Mortgagee”) shall not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Participant or other affirmative covenants of the Participant hereunder, or to guarantee such performance.

9.3 The Mortgagee of any Mortgage or deed of trust encumbering the Project, or any part or interest thereof, that has submitted a request in writing to the Agency in the manner specified herein for giving notices shall be entitled to receive written notification from the Agency of any notice of non-compliance by the Participant in the performance of the Participant’s obligations under this Agreement. If the Agency timely receives a request from a Mortgagee requesting a copy of any notice of non-compliance given to the Participant under the terms of this Agreement, the Agency shall provide a copy of that notice to the Mortgagee within ten (10) business days of sending the notice of non-compliance to the Participant. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance for a period of one hundred twenty (120) days after the Mortgagee receives such written notice.

9.4 If this Agreement is terminated as to any portion of the Project by reason of (i) any Default or (ii) as a result of a bankruptcy proceeding of the Participant, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for the Participant or its property, the Agency, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new Participation Agreement substantially in the
form and subject to similar terms and conditions of this Agreement with the most senior Mortgagee requesting such new agreement.

9.5 At any time, and from time to time, the Participant may deliver written notice to the Agency, and the Agency may deliver written notice to the Participant, requesting that such Party certify in writing that, to the knowledge of the certifying Party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, (iii) the requesting Party is not then in breach of this Agreement, or if in breach, a description of each such breach, and (iv) any other factual matters reasonably requested (an “Estoppel Certificate”). The Agency’s Chief Administrative Officer shall be authorized to execute, on behalf of the Agency, any Estoppel Certificate requested by the Participant which complies with this Section 9.5 within fifteen (15) days of a written request for such Estoppel Certificate. The Agency’s failure to furnish an Estoppel Certificate within fifteen (15) days after request therefor shall be conclusively presumed that: (a) this Agreement is in full force and effect without modification in accordance with the terms set forth in the request; and (b) that there are no Defaults on the part of Participant. The Agency acknowledges that an Estoppel Certificate may be relied upon by transferees or successors in interest to the Participant and by Mortgagees holding an interest in the Project Area or portion thereof.

10 CONFIDENTIALITY

10.1 The Parties acknowledge and agree that this Agreement shall become a public record under Utah law, and that discussion regarding this Agreement shall take place before the Agency board in open session. The Agency covenants that it will hold all information obtained by it, or any person employed by or representing the Agency, related to the Participant’s business in strictest confidence and the Agency covenants not to disclose, divulge or otherwise communicate in any manner to any person or entity, other than to those parties necessary to verify compliance with this Agreement, provided that such parties are likewise under reasonable confidentiality obligations and not subject to public disclosure unless otherwise required by applicable laws.

10.2 The Participant may designate any trade secrets or confidential business information included in any report or other writing delivered to the Agency pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that the Participant claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors of the Participant and serve no public purpose (such information, collectively, “Confidential Business Information”). The Agency shall redact or delete from any records it makes available for inspection or of which it provides copies any material designated by the Participant as Confidential Business
Information. Promptly following the Agency’s receipt of any request to provide copies of public records relating to this Agreement or the Project or for inspection of the same by any third party, the Agency shall give written notice and a copy of such request to the Participant. The Agency shall not allow inspection or provide copies of any such records until the Agency shall have had not less than ten (10) business days excluding the day of receipt to determine whether to contest the right of any party to inspect or receive copies of the records or to inspect such records without redaction of the Confidential Business Information. Any such action to enjoin the release of Confidential Business Information may be brought in the name of the Participant or the Agency. The costs, damages, if any, and attorneys’ fees in any proceeding commenced by the Participant or at its request by the Agency to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement or the Project shall be borne by the Participant.
SIGNATURE PAGE TO THE PARTICIPATION AGREEMENT

THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY, a political subdivision of the State of Utah

By: ______________________________

Chair

Attest:

By: _____________________________________

Secretary

ANTHEM CENTER, LLC,
a Utah limited liability company, by its managers

Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By: ______________________________

Name: ______________________________
Title: Manager

Anthem Commercial, LLC, a Utah limited liability company

By: ______________________________

Name: ______________________________
Title: Manager
STATE OF UTAH  )
COUNTY OF _________  )

In the County of ________, State of Utah, on this _____ day of ________________, 2019, before me, the undersigned notary, personally appeared ____________ and ________________, the Chair and the Secretary, respectively, of the Community Development and Renewal Agency of Herriman City, a political subdivision of the State of Utah, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

________________________________________
Notary signature and seal
STATE OF UTAH  

COUNTY OF ________  

In the County of __________, State of Utah, on this _____ day of _______________, 2019, before me, the undersigned notary, personally appeared ____________, the Manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of Anthem Center LLC, a Utah limited liability company, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

______________________________
Notary signature and seal

STATE OF UTAH  

COUNTY OF ________  

In the County of __________, State of Utah, on this _____ day of _______________, 2019, before me, the undersigned notary, personally appeared ____________, the Manager of Arbor Commercial, LLC, a Utah limited liability company, a manager of Anthem Center LLC, a Utah limited liability company, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

______________________________
Notary signature and seal
Exhibit A

Project Area Plan
Exhibit B

Herriman City Ordinance No.__
Exhibit C

Legal Description of the Project Area
Exhibit D

Project Area Map
Exhibit E

Project Area Budget
Exhibit F

Infrastructure Improvements

Landscaping
Street Improvements
Storm Drainage & Detention
Mass Earthwork
Water Improvements
Sewer Improvements
Retention & Decorative Screen Walls
Architectural Improvements and Geopiers
Directional and Monument Signage
Exhibit G

Interlocal Agreements
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. _______

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING AN AMENDED AND RESTATED PARTICIPATION AGREEMENT WITH WINCO CENTER, LLC

WHEREAS, the Community Development and Renewal Agency of Herriman City (the “Agency”) met in special open and public meeting on February 27, 2019, to consider, among other things, approving an amended and restated participation agreement with WinCo; and

WHEREAS, the Agency was created to transact the business and exercise all of the powers provided for in the former Utah Redevelopment Agencies Act and the current Utah Community Reinvestment Agency Act and any subsequent, replacement or amended law or act (the “Act”); and

WHEREAS, pursuant to the Act, and more particularly Utah Code Section 17C-1-202, the Agency is authorized enter into participation agreements with developers or property owners; and

WHEREAS, WinCo and the Agency have negotiated a contract for repayment of certain property tax increment and sale tax increment the terms of which are set forth in the participation agreement (“Agreement”) attached hereto as exhibit “A.”

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY as follows:

1. that the Agreement be approved, with such minor changes and recommendations as deemed necessary by the Agency.

2. that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the Agreement on behalf of the Agency.

3. that this resolution takes effect upon adoption.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY

ATTEST: David Watts, Chairperson

Jackie Nostrom, MMC
Secretary
EXHIBIT A

to Resolution No. __________

Participation Agreement
Participation Agreement

between

the Community Development and Renewal Agency of Herriman City

and

WinCo Foods, LLC

[______________], 2019
PARTICIPATION AGREEMENT

This Participation Agreement (the “Agreement”) is made and entered into this ____ day of February ____, 2019 (the “Effective Date”), by and between the Community Development and Renewal Agency of Herriman City (the “Agency”), a political subdivision of the State of Utah, operating under the Utah Community Reinvestment Agency Act (the “Act”; § 17C-1-101 et seq., or its predecessor statutes), and WinCo Foods, LLC, a Delaware limited liability company qualified to do business in Utah (“Participant”). Participant and the Agency may from time to time hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

1. SUBJECT OF AGREEMENT

1.1. Purpose of the Agreement

The purpose of this Agreement is (a) to implement the Herriman Anthem Town Center Community Reinvestment Project Area Plan (the “Project Area Plan”) as adopted by the Agency, by providing for the development of a WinCo Foods retail store within a mixed use retail center on approximately forty nine acres of land, as more particularly described below, located in the City of Herriman, Utah (the “City”), comprising the Herriman Anthem Town Center Community Reinvestment Development Project Area (the “Project Area”), and (b) to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about this objective, including the funds the Agency will provide to assist in the development of the Project Area.

1.2. Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of the City of Herriman, Utah (the “City”) and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Act.

1.3. The Project Area

The Project Area is located within the boundaries of the City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

1.4. The Project Area Plan and Budget

This Agreement is subject to the provisions of the Project Area Plan, as approved and adopted on August 9, 2017, by the City Council of the City, in Ordinance No. 2017-04 and Project Area Budget adopted by the Agency for the Project Area.
1.5. Interlocal Agreement

The Agency has entered into an Interlocal Agreement with the City to pay to the Agency certain sales tax amounts for purposes of funding part of the costs of development the Project Area (the “Sales Tax Interlocal Agreement”). The Sales Tax Interlocal Agreement is attached to this Agreement as exhibit “A.” As described in the Sales Tax Interlocal Agreement, sales occurring within the boundaries of the City are currently subject to a one (1) percent sales tax (the “Local Sales Tax”) per Title 59, Chapter 12, Part 2 of the Utah Code, the Local Sales and Use Tax Act, and more particularly per Utah Code Ann. § 59-12-204. Approximately fifty (50) percent of that one-percent tax as set forth in UCA § 59-12-205(2)(b) is based on the transaction occurring within the boundaries of the City (the “Point-of-sale Tax” or “POST”). Pursuant to Section 17C-5-204 of the Act and Section 11-13-215 of the Cooperation Act, the City has agreed and consented that the Agency shall be paid the POST generated by sales attributable to the Site (defined below) (the fifty percent paid to the Agency is referred to as “Point-of-sale Tax” or “POST”). Pursuant to the Sales Tax Interlocal Agreement, the Agency is entitled to receive up to one hundred percent (100%) of the POST for a period beginning one (1) year after the City issues the Facility (defined below) a Certificate of Occupancy and ending upon the earlier of five years from the date from which Participant first receives the Participant’s Incentive payment or October 31st, 2026 (the “Sales Tax Rebate”).

1.6. The Site and the Facility

Participant intends to construct a WinCo Foods retail store within the Project Area (the “Facility”). The Facility shall be located on approximately the portion of the Project Area shown on exhibit “B” (the “Site”). The Facility shall include at least 82,500 square feet of interior space and shall be constructed in a manner and to standards substantially similar to other WinCo Foods retail stores operated by Participant and the design standards as set forth in that certain Master Development Agreement for Anthem Commercial Project recorded January 12, 2017 as Entry No. 12453407, in Book 10520, at pages 2618-2663 of the Salt Lake County Official Records.

1.7. The Incentive

As used in this Agreement, the term “Incentive” means ninety percent (90%) of the Sales Tax Rebate. Participant acknowledges that the Agency shall allocate and set aside ten percent (10%) of the Sales Tax Rebate for housing as required by Section 17C-5-307 of the Act (“Housing Allocation”).

1.8. Parties to the Agreement

1.8.1. The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency is stated in Section 6.2 below.
1.8.2. The Participant

Participant is WinCo Foods, LLC, a Delaware limited liability company. The address of Participant is stated in Section 6.2 below.

1.9. Prohibition against Certain Changes

1.9.1. Acknowledgement by Participant

Participant acknowledges the importance of the development of the Project Area to the general welfare of the community, the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making the investment within the Project Area possible, that a significant change in the identity of Participant, as prohibited by this Section 1.9.1, may be considered, for practical purposes, a transfer or disposition of the Facility, the qualifications and identity of Participant are of particular concern to the Agency, and that it is because of such qualifications and identity that the Agency is entering into this Agreement with Participant.

1.9.2. Representation as to Investment Intent

Participant represents and agrees that its investment in and use of the Site, and Participant’s other undertakings reflected in this Agreement are and shall only be for the purpose of Participant’s development of the Facility and not for speculation in land holding or otherwise.

1.9.3. Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that, during the term of this Agreement and except as set forth in the following sentence, Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, during the term of this Agreement except as explicitly allowed herein or as agreed to in a writing signed by the Parties.

The foregoing notwithstanding, Participant may transfer its rights and obligations under this Agreement to any of its subsidiaries or affiliates without the Agency’s prior written approval during the term of this Agreement so long as the Facility continues to operate as described in this Agreement.

The attempted or actual assignment or delegation of this Agreement in violation of the above provisions is a material Default that shall be subject to the provisions of Article 5 of this Agreement.

For purposes of this Section 1.9.3 (i) the term “subsidiaries” shall mean those companies or entities in which Participant both holds an ownership stake of more than 50 percent and over which Participant is able to exert control and (ii) the term “affiliates” shall mean those companies in which the owner of Participant both holds an ownership stake of more than 50 percent and over which the owner of Participant is able to exert control.
1.9.4. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or its successor(s) in interest to transfer the Site or any of the personal property within the Site to a tax-exempt organization or otherwise to exempt any of the property within the Project Area from ad valorem property taxation without the prior written consent of the Agency will entitle the Agency, at its sole discretion, to immediately and without prior notice terminate this Agreement and cease further payments under this Agreement to Participant or its successors or assigns.

1.9.5. Continuing Obligations

Any permitted assignment or transfer of this Agreement, in whole or in part, shall relieve Participant from any and all obligations under this Agreement; provided, however, that the assignee has accepted the assignment and assumed all duties, obligations and liabilities of Participant under this Agreement in writing. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement are and will remain binding upon Participant and its successors and assigns until the expiration or termination of this Agreement.

2. OBLIGATIONS OF THE PARTIES

2.1. Payment of Incentive

2.1.1. Payment Obligation

So long as Participant fulfills all of its obligations under this Agreement, the Agency will pay to Participant the Incentive. The Agency expects to receive the monthly Sales Tax Rebate approximately one month and twenty days after the end of the calendar month for which the sales taxes were paid (e.g., the Agency will receive August payment of the Sales Tax Rebate by October 20). After the end of the calendar month for which the Agency is collecting the Sales Tax Rebate, the contemplated payment of the Incentive shall be made by the Agency within fifteen (15) days after the date on which all of the conditions precedent as set forth in Section 2.3 have been met.

2.1.2. Sales Tax Rebate Payments

The Agency is entitled to receive the Sales Tax Rebate beginning one (1) year after the City issues the Facility a Certificate of Occupancy and such Sales Tax Rebate shall continue for a period of not greater than five years from the date from which Participant first receives the Participant’s Incentive.

2.1.3. Sole Source of Funding for the Incentive

The entirety of Participant’s Incentive contemplated in this Agreement will be funded solely by the Sales Tax Rebate payments received by the Agency pursuant to the Sales Tax Interlocal Agreement. Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area, including other sales taxes, property taxes, or current or future interlocal agreements, or any other funds held by the Agency.
2.2. Conditions Precedent to the Payment of the Incentive to Participant

In addition to other provisions in this Agreement, the Agency has no obligation to remit to Participant the Incentive unless and until all the following conditions precedent, as detailed in the following subsections, are satisfied:

2.2.1. Agency is Entitled to Receive the Sales Tax Rebate

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Sales Tax Rebate pursuant to the Sales Tax Interlocal Agreement.

2.2.2. Agency has Actually Received the Sales Tax Rebate Payment

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Sales Tax Rebate payment(s) for the particular calendar month. Participant agrees and acknowledges that the calculation of payments of the Sales Tax Rebate pursuant to the Sales Tax Interlocal Agreement may require information about taxable sales occurring at the Facility from Participant or from the Utah State Tax Commission. Participant agrees to take such actions as reasonably necessary to provide the Agency with information reasonably necessary to allow the City and the Agency to calculate the amount of the Sales Tax Rebate.

2.2.3. Continued Operation of the Facility

The Agency is not obligated to pay to Participant the Incentive unless Participant has continuously operated (defined in Section 2.10) the Facility for the entire month for which payment of the Incentive is being sought.

2.3. Effect of Failure to Meet Conditions Precedent to Payment of Incentive

In the event that the conditions precedent as described in Section 2.2 are not met for any given calendar month during the term of this Agreement, and Participant is thus not entitled to receive the Incentive attributable to that calendar month, but is otherwise not in default under this Agreement, such failure shall not constitute a Default under this Agreement. Such failure shall result in the forfeiture by Participant of the Incentive for that particular calendar month.

2.4. Limitations on Incentive

The Incentive term shall begin one year after the Facility has been issued a Certificate of Occupancy by the City and shall continue for a period of not greater than five years from the date Participant first receives Participant’s Incentive payment (the “Incentive Term”). The total amount of Incentive paid to Participant under this Agreement shall not exceed a cumulative total of $500,000.00 or an annual total of $200,000.00 for any given calendar year.

Participant further acknowledges that the Incentive paid by the Agency to Participant under this Agreement is limited by the Incentive Term and the amount of Sales Tax Rebate actually
received by the Agency. Participant further acknowledges that the Agency does not guarantee that Participant will receive a minimum dollar amount during the Incentive Term. The amount of Sales Tax Rebate generated by the Facility is determined by taxable sales occurring at the Facility.

Notwithstanding all other provisions in this Agreement, the Agency is not obligated to pay to Participant in any one calendar month more than Incentive attributable to such calendar month.

The Agency shall not support any modification or amendment to the Sales Tax Interlocal Agreement that would reduce, on a percentage basis, the amount of Incentive that Participant is entitled to receive under this Agreement or the term during which Participant is entitled to receive the Incentive.

2.5. Payment of Taxes

During the term of this Agreement, to the extent applicable, Participant and any of its successors-in-interest in any portion of the Site or Facility agree to pay, prior to delinquency, all undisputed real property and other ad valorem taxes and assessments assessed against any portion of the Site or Facility or any other taxable property, including personal property, located within the Facility to the extent owned by Participant or any of its successors-in-interest; provided, however, that Participant expressly retains any and all rights to: (a) challenge, object to, or appeal any real property or personal property and other ad valorem taxes and assessments; and (b) petition for the reduction thereof.

2.6. Reduction or Elimination of Incentive

The Parties agree that Participant assumes and accepts the risk of possible alteration of Federal or State statute, regulation, or adjudication rendering unlawful or impractical the collection, receipt, disbursement, or application of the Incentive to the Agency as contemplated in and by this Agreement. If the provisions of Utah law which govern the payment of the Incentive to the Agency are changed or amended so as to reduce or eliminate the amount paid to the Agency under the Sales Tax Interlocal Agreement, the Agency’s obligation to pay Participant annually the Incentive, as applicable, will be proportionately reduced or eliminated, but only to the extent necessary to comply with the changes in such law. Further, Participant agrees and acknowledges that it has made such investigations as necessary and assumes all risk as to whether the Project Area, the Plan, the Budget, the Sales Tax Interlocal Agreement, and this Agreement were properly approved, adopted, executed, and made effective. Notwithstanding any change in law, Participant specifically reserves and does not waive any right it may have to challenge, at Participant’s cost and expense, the constitutionality of any law change(s) that would reduce or eliminate the payment of Incentive to the Agency and/or Participant and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to the Agency and/or Participant. Participant acknowledges, understands, and agrees that the Agency is under no obligation to challenge the validity, enforceability, or constitutionality of a change in law that reduces or eliminates the payment of Incentive to the Agency and/or Participant, or to otherwise indemnify or reimburse Participant for its actions to independently do so.

WinCo Participation Agreement
2.7. Declaration of Invalidity

In the event any legal action is filed in a court of competent jurisdiction that seeks to invalidate the Project Area or this Agreement or that otherwise seeks to or would have the possible result of reducing or eliminating the payment of the Incentive to the Agency, the Agency shall provide written notice of such legal action to Participant. In the event such an action is filed, the Agency shall have no obligation to challenge that action or defend itself against such action. Participant specifically reserves and does not waive any right it may have to intervene, at Participant’s cost and expense, in any such legal action and challenge the basis for any causes of action or any remedy sought that would reduce or eliminate the payment of the Incentive to the Agency and/or Participant, and nothing herein shall be construed as an estoppel, waiver or consent to reduce or eliminate payment of the Incentive to the Agency and/or Participant. In the event that the court declares that the Agency cannot receive the Incentive, invalidates the Project Area or this Agreement, or takes any other action which eliminates or reduces the amount of Incentive paid to the Agency, and the grounds for the legal determination cannot reasonably be addressed by the Agency, the Agency’s obligation to annually pay to Participant the Incentive in accordance with this Agreement will be reduced or eliminated to the extent that the Incentive is not received by the Agency.

2.8. Dispute over Receipt of Payment of the Incentive

In the event a dispute arises as to the person or entity entitled to receive the Incentive under this Agreement due to a claimed assignment or claimed successor-in-interest to the Incentive or otherwise, the Agency may withhold payment of the Incentive and may refrain from taking any other action required of it by this Agreement until the dispute is resolved either by agreement or by a court of competent jurisdiction and sufficient evidence of such resolution is provided to the Agency. The Agency shall be entitled to deduct from its payment of the Incentive any costs or expenses, including reasonable attorney fees, incurred by the Agency due to the dispute, except in the instance that the dispute arises due to the act, error or omission of the Agency, in which case the Agency shall be responsible for all costs and expenses including reasonable and actual attorney fees.

2.9. Nature of Participant’s Obligations and Limitation

To qualify to receive the Incentive as set forth herein, Participant shall fulfill all of its obligations as set forth in this Agreement. The failure of Participant to fulfill its obligations may result in a failure to qualify to receive the Incentive or termination of this Agreement but shall not give rise to any other right or remedy in favor of the Agency.

2.10. Operation of the Facility

Participant shall operate the Facility in a commercially reasonable manner substantially similar to other WinCo Foods retail stores operated by Participant. For purposes of this Agreement, “operating”, “operational” or “operations” of the Facility shall mean when the following conditions are satisfied: (1) any required permits, licenses, certificate of occupancy, or other approvals have been obtained for Participant to occupy the Facility, (2) Participant shall have received a business license issued by the City, and (3) the Facility is open to the public during
regular business hours. For purposes of this Section, Participant shall be deemed to have continuously operated the Facility if the foregoing standards are substantially met or exceeded, notwithstanding temporary cessation of operations for inspection, maintenance, repair, replacement, line down-time, and/or events of force majeure or destruction.

2.11. Commencement of Operations

Operations of the Facility as described in Section 2.10 shall begin no later than December 31, 2020, or as soon as practical thereafter. For purposes of this Section, the Facility shall be deemed operational if the conditions and standards in Section 2.10 are met. If Participant fails to commence operations of the Facility as required by this Section for any reason other than events of force majeure, the Agency shall have the right to terminate this Agreement upon written notice to Participant, subject, however, to any notice and cure periods set forth in Article 5.

2.12. Continuing Operations

Operations of the Facility as described in Section 2.10 shall be commenced as described in Section 2.11 and shall continue throughout the term of this Agreement as set forth in Article 4. For purposes of this Section, the Facility shall be considered to be in operation if the Facility is operating as described in Section 2.10 of this Agreement. If Participant ceases to operate the Facility for a continuous period of more than six (6) months for any reason other than events of force majeure or destruction, the Agency shall have the right to terminate this Agreement upon written notice to Participant at any time during such cessation of operations.

2.13. Funding Responsibility

The Parties understand and agree that funding for the Facility comes entirely from Participant’s internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

2.14. Potential Shortfall

Participant agrees and acknowledges that the only funds available to the Agency for compensation or incentives to Participant are those funds received by the Agency under the Sales Tax Interlocal Agreement and that the amount of Incentive paid to Participant under this Agreement is dependent on the taxable sales occurring within the Site.

2.15. Audits, Appeals, and Reassessments

In the event that the Utah State Tax Commission or other court or governmental entity with jurisdiction (a “Tax Authority”) finds that Participant owes additional sales taxes for taxable sales occurring at the Facility, the Agency shall have no obligation to pay the Incentive for such additional amounts. In the event that a Tax Authority finds that Participant overreported or overpaid sales taxes for sales occurring at the Facility, Participant shall immediately pay to the Agency the portion of the Incentive attributable to such overage.
3. ADDITIONAL TERMS

3.1. Investment

Participant will at all times be responsible for its investment at the Facility. Recognizing the level of investment by Participant, the Agency has determined that it is in the best interests of the residents of the City to provide the Incentive to Participant to develop and operate the Facility as contemplated in this Agreement.

3.1.1. Responsibility for Development Plans and Permits

The Agency shall not have any responsibility to obtain permits, licenses, or other approvals for Participant’s development or operation of the Facility.

3.2. Other Terms

3.2.1. City Land Use Authority

Participant acknowledges that nothing in this Agreement shall be deemed to supersede, waive, or replace the City’s authority over land use, zoning, and permitting within the City.

3.2.2. Restriction Against Parcel Splitting

If applicable, during the term of this Agreement, Participant shall not, without the prior written approval of the Agency, (a) convey its interest in the Site or any portion thereof, if any, in such a way that a parcel of real property would extend outside the Project Area, or (b) construct or install any building or structure within the Project Area in such a way that any portion of the Facility or structure would extend outside of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the splitting of any parcels of real property within the Project Area and to avoid the joining of any parcels of real property inside of the Project Area with parcel(s) outside of the Project Area in such a way that Salt Lake County could no longer identify the periphery of the Project Area by distinct parcels.

3.2.3. Deannexation

Participant agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect, or disincorporate the Site or any portion thereof from the City during the Incentive Term. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency’s obligations to pay the Incentive for that portion of the Site outside of the City shall immediately cease.

3.2.4. Indemnification

Participant agrees to and shall indemnify, defend, and hold the Agency and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorney fees and court costs) arising from or as
a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors on the Facility or the Site except for willful misconduct or negligent acts or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors, and consultants. Likewise, the Agency agrees to and shall indemnify, defend, and hold Participant and its directors, officers, agents, employees, and representatives harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any third party person or to the property of any third party person, directly or indirectly caused by any acts done or any errors or omissions of the Agency, the City, or their respective directors, officers, agents, employees, contractors and consultants except for willful misconduct or negligent acts or omissions of Participant or its directors, officers, agents, employees, consultants, and contractors.

3.2.5. Limits on Liability

In no event shall one Party be liable to the other(s) for consequential, special, incidental, indirect, exemplary, or punitive damages of any kind (including, but not limited to, loss of profits, loss of reputation, or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship or dealings between Participant and the Agency, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), willful misconduct, strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

3.2.6. Local, State, and Federal Laws

Participant shall develop and operate the Facility in conformity with all applicable laws; provided, however, that unless otherwise addressed elsewhere in this Agreement, nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law.

3.2.7. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Facility for purposes of inspection, with reasonable and prior written notice (but in no event less than 48 hours prior), and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant, subject, however, to the rules, regulations, security protocols and other access limitations for safety and security purposes as required by Participant or by the owner or operator of the Facility. The Agency agrees to and shall indemnify and hold Participant harmless from and against all liability, loss, damage, costs, or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur as a result of or arising from the Agency’s or the City’s, or their respective directors, officers, agents, employees, contractors and consultants, entry upon or activities on the Site or in the Facility, except that this indemnity shall not apply to the sole negligence or willful misconduct of Participant.

WinCo Participation Agreement
3.2.8. **Responsibility of the Agency**

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Except as expressly provided for in this Agreement, nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency’s discretion or judgment on any issue prior to an appropriate hearing (if required), review, or compliance with any other requirement.

3.2.9. **Non-waiver of Governmental Immunity**

Nothing in this Agreement shall be construed as a waiver of any immunity, protection, or rights granted to the Agency under the Governmental Immunity Act of Utah, Utah Code 63G-7-101, et seq.

4. **EFFECT AND DURATION OF COVENANTS; TERM OF AGREEMENT**

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on the Parties and any successors-in-interest for the benefit of each of the respective Parties, their successors and assigns during the term of this Agreement, which shall terminate upon the later of: (a) the final payment of the Incentive during or upon the expiration of the Incentive Term (i.e., year 1 through year 3) as set forth in Article 2 of this Agreement; or (b) upon the written agreement signed by the Parties hereto.

5. **DEFAULTS, REMEDIES, AND TERMINATION**

5.1. **Default**

If either the Agency or Participant fails to perform or delays performance of any material obligation of this Agreement and fails to cure as provided for in this Article 5, such conduct constitutes a default of this Agreement (“Default”). The Party in default must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy within the periods provided in Section 5.3 hereof.

5.2. **Notice**

If a Default under this Agreement occurs, the non-defaulting Party shall give written notice pursuant to Section 6.2 below (a “Default Notice”) of the Default to the defaulting Party, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive the other Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

*WinCo Participation Agreement*
5.3. **Cure Period**

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such Party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and the non-defaulting Party may pursue such other rights and remedies as it may have, except, however, if Participant fails to commence or continue Operations as required by Sections 2.10 and 2.11, above, then in such case Agency’s sole remedy shall be to terminate this Agreement (for clarity, Agency may not commence an action against Participant for specific performance to commence or continue Operations). Further, in the event of a Default by Participant, past all applicable cure periods, Agency’s sole remedy shall be to terminate this Agreement.

5.3.1. **Rights and Remedies**

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law, whichever is longer), the non-defaulting Party shall have all remedies provided for in this Agreement and shall have the right to obtain specific performance, unless otherwise limited by the express remedies set forth in this Agreement. Such remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting Party.

5.3.2. **Legal Actions**

5.3.2.1. **Venue**

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Third District Court for the State of Utah located in Salt Lake County, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

5.3.2.2. **Service of Process**

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law. Service of process on Participant shall be by personal service upon its Registered Agents, or in such other manner as may be provided by law, whether made within or without the State of Utah.
5.3.2.3. Applicable Law

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

6. GENERAL PROVISIONS

6.1. Authority

Each Party hereby represents and warrants to the other that the following statements are true, complete, and not misleading as regards to the representing and warranting party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder; (b) those executing this Agreement on behalf of each Party do so with the full authority of the Party each represents; (c) this Agreement constitutes a legal, valid, and binding obligation of each Party, enforceable in accordance with its terms.

6.2. Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if emailed and: (1) personally delivered; or (2) if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.8.1 and 1.8.2 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing to the following as outlined above:

IF TO WINCO: WinCo Foods, LLC
Attn: Greg Goins
Vice President of Real Estate
650 N. Armstrong Place
Boise, ID 83704
Telephone: (208) 672-2072
E-mail: greg.goins@wincofoods.com

With a copy at the same address to: Chad Lamer, Real Estate Attorney
E-mail: chad.lamer@wincofoods.com

IF TO AGENCY: Redevelopment Agency of Herriman City
Attn: City Manager
5355 West Herriman Main Street,
Herriman, Utah 84096 Attention
Telephone: ______________________
E-mail: ______________________

With a copy at the same address to: John Berms, City Attorney
john@herriman.org
6.3. **Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant, or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

6.4. **Nonliability of Officials and Employees**

No director, officer, agent, employee, representative, contractor, attorney, or consultant of the Parties hereto shall be personally liable to any other Party hereto, or any successor-in-interest thereof, in the event of any Default or breach by a Party hereto or for any amount which may become due to a Party hereto or to its successor, or on any obligations under the terms of this Agreement.

6.5. **Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent, whether on the part of the Agency’s Executive Director or its governing board or on the part of Participant, to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

6.6. **Approvals**

Whenever the consent or approval is required of any Party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

6.7. **Time of the Essence**

Time shall be of the essence in the performance of this Agreement.
6.8. Attorney Fees

In the event of any litigation arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees related to such litigation.

6.9. Interpretation

The Parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either Party hereunder, shall be construed as creating the relationship of principal and agent, or a partnership, or a joint venture, or an enterprise between the Parties hereto.

6.10. No Third-Party Beneficiaries

It is understood and agreed that this Agreement shall not create for either Party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

6.11. Mediation

In the event a dispute arises between the parties with respect to the terms of this Agreement or the performance of any contractual obligation by one or both of the parties, the parties agree to submit the matter to formal and confidential non-binding mediation before any judicial action may be initiated, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. A mediator will be selected by mutual agreement of the parties. The parties must mediate in good faith to resolve the dispute in a timely manner. Each party will be responsible for its own costs and one-half of the cost of the mediator. The place of mediation shall be Herriman, Utah.

6.12. Headings

Article and Section titles, headings or captions are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

6.13. Contra Proferentum

This is an arm’s-length Agreement: The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and the risks involved and having had the opportunity to obtain legal counsel of their choice. Consequently, no provision of this Agreement shall be strictly construed against either Party.
6.14. 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.

6.15. Incorporation of Recitals and Exhibits

All recitals and exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

6.16 Governmental Records And Management Act

The Agency acknowledges that Participant considers all of the information provided to the Agency in connection with this Agreement is protected under the Utah Governmental Records Access and Management Act, § 63-2-101 et seq. (“GRAMA”) under a claim of “business confidentiality” so long as Participant complies with the applicable requirements in making a claim of business confidentiality under § 63G-2-309(1)(a)(i)(A) & (B).

7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

7.1. Duplicate Originals

This Agreement may be executed in duplicate originals, each of which shall be deemed an original. Electronic pdf signatures shall be considered original signatures.

7.2. Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties regarding the subject matter thereof. When executed by the Parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter thereof.

7.3. Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

[Remainder of page intentionally left blank; signature pages to follow]
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY, a political subdivision of the State of Utah

By: ________________
    ____________________________, Chair

Attest:

By: __________________________
    ________________, Secretary

STATE OF UTAH  )
    : ss.
COUNTY OF _________  )

In the County of _________, State of Utah, on this _____ day of ______________, 2019, before me, the undersigned notary, personally appeared ________ and ______________, the Chair and the Secretary, respectively, of the Community Development and Renewal Agency of Herriman City, a political subdivision of the State of Utah, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

Notary signature and seal
WINCO FOODS, LLC, a Delaware limited liability company

By: ___________________________

Name: ___________________________
Title: ___________________________

STATE OF IDAHO )
COUNTY OF ________ )

In the County of Ada, State of Idaho, on this ______ day of ___________, 2019, before me, the undersigned notary, personally appeared ____________, the _____________ of WinCo Foods, LLC, a Delaware limited liability company, who is personally known to me or who proved to me his/her identity through documentary evidence to be the person who signed the preceding document in my presence and who swore or affirmed to me that his/her signature is voluntary.

____________________________
Notary signature and seal

WinCo Participation Agreement

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Exhibit A

to WinCo Participation Agreement

Sales Tax Interlocal Agreement
Exhibit B
to WinCo Participation Agreement

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