SPECIAL COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
AGENDA

Wednesday, December 11, 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.

7:00 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 December 11, 2019

2. Discussion and Action Items
   2.1. Discussion and consideration of a resolution approving an Interlocal Agreement between Herriman City and the Community Development and Renewal Agency of Herriman City regarding the Herriman North Community Reinvestment Area Sales Tax – John Brems, City Attorney
   2.2. Discussion and consideration of a resolution approving a Participation Agreement with Herriman 73 Partners and Game Point Properties LLC in the Herriman North Community Reinvestment Area – John Brems, City Attorney
   2.3. Discussion and consideration of a resolution approving an Interlocal Cooperative Agreement between Herriman City and the Community Development and Renewal Agency of Herriman City regarding the Herriman Innovation District property tax – John Brems, City Attorney
   2.4. Discussion and consideration of a resolution approving a Participation Agreement with Riverbend Management L.C. located in the Herriman Innovation District – John Brems, City Attorney

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 9th day of December 2019

Jackie Nostrom, MMC
City Recorder
DATE: December 4, 2019

TO: The Community Development and Renewal Agency of Herriman City

FROM: John Brems, City Attorney

SUBJECT: Interlocal Agreement between Herriman City and the Community Development and Renewal Agency of Herriman City

RECOMMENDATION:

Staff recommends approval of the interlocal agreement between the Community Development and Renewal Agency of Herriman City in regards to sales tax.

BACKGROUND:

The Herriman North Community Reinvestment Area (CRA) was approved in an effort to develop a new Auto Mall. The sales tax incentive will be used on a case by case basis, and to develop the publicly-owned infrastructure needed to support the development.

FISCAL IMPACT:

The approved budget for the Herriman North CRA estimates a total sales tax over 15 years (after expenses) of $14,775,061.
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
WITH RESPECT TO SALES TAX (GAME POINT AND HERRIMAN 73)

WHEREAS, the Redevelopment Agency of Herriman City (the “Agency”) met in regular
open and public meeting on December 11, 2019, to consider, among other things, approving an
interlocal cooperative agreement with Herriman City with respect to sales tax; 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 sale
tax 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 sales tax 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 11th day of December 2019.

HERRIMAN

ATTEST: 

David Watts, Chairperson

Jackie Nostrom, Secretary
HERRIMAN, UTAH
RESOLUTION NO. -___

A RESOLUTION APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN AND HERRIMAN WITH RESPECT SALES TAX (HERRIMAN NORTH-GAME POINT AND HERRIMAN 73)

WHEREAS, the Herriman City Council ("Council") met in regular session on December 11, 2019, to consider, among other things, approving the an Interlocal Cooperative Agreement with the Community Development and Renewal Agency of Herriman with respect to sales tax (Herriman North-Game Point and Herriman 73); and

WHEREAS, the Utah Interlocal Cooperative Act (UTAH CODE ANN. § 11-13-101, et seq.) (the “Act”) provides that any two or more government entities are authorized to enter into agreements with each other to do what each agency is authorized by law to perform; and

WHEREAS, the Herriman City ("Herriman") and the Community Development and Renewal Agency of Herriman ("Agency") are government entities as contemplated by the Act; and

WHEREAS, Herriman and the Agency are authorized to enter into agreements with each other for cooperative action; and

WHEREAS, the Council finds that it is in the best interests of the inhabitants of Herriman to enter into an Interlocal Cooperative Agreement with the Agency ("Agreement") with respect to sales tax (Herriman North); and

WHEREAS, the Agreement has been prepared for approval, which sets forth the purpose thereof, the extent of participation of the parties, and the rights and duties and responsibilities of the parties. A copy of the Agreement is attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the Agreement is approved, and the City Manager and Recorder are hereby authorized and directed to execute and deliver the same.

This Resolution, assigned No. 19-____, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED by the Council of Herriman, Utah, this 11th day of December, 2019.

HERRIMAN

____________________________________
David Watts, Mayor

Jackie Nostrom, MMC
City Recorder
INTERLOCAL AGREEMENT BY AND BETWEEN THE COMMUNITY DEVELPMENT AND RENEWAL AGENCY OF HERRIMAN CITY AND HERRIMAN CITY WITH RESPECT TO SALES TAX (AUTO MALL)

THIS INTERLOCAL AGREEMENT is entered into as of this 11th day of December, 2019, by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY, a political subdivision of the State of Utah (the “Agency”) and HERRIMAN CITY, 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 North Community-Community Reinvestment Project Area (the “Project Area”) and adopted a community reinvestment project area plan for the Project Area (the “Project Area Plan”) on May 22, 2019, 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”).
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 City shall pay to the Agency seventy percent (70%) of the POST generated by sales attributable to taxable sales located within the Project Area 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 requested by Agency and ending fifteen (15) years after the date of the Agency request.

   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 Herriman 73 Partners LLC pursuant to the certain Participation Agreement between the Agency and Herriman 73 Partners LLC of even date hereof (“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 its 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, real property acquisition,
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: ________________________
    David Watts, Chairperson

ATTEST:

________________________________________________________________________
Jackie Nostrom, 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
DATE: December 4, 2019

TO: The Community Development and Renewal Agency of Herriman City

FROM: John Brems, City Attorney

SUBJECT: Participation Agreement with Herriman 73 Partners in the Herriman North Community Reinvestment Area (CRA)

RECOMMENDATION:
Staff recommends approval of the participation agreement between the Community Development and Renewal Agency of Herriman City and Herriman 73 Partners.

BACKGROUND:
The Herriman North Community Reinvestment Area (CRA) was approved in an effort to develop a new Auto Mall. The developers of the Auto Mall will be installing the needed infrastructure to support the development. The sales tax increment will be used to reimburse the developer for the costs of the infrastructure. The increment may also be used for real property acquisition, and incentives to participants, developers, retailers, or auto dealers. The agreement provides for 100% of the sales tax rebate after the City’s obligations pursuant to the settlement agreement of condemnation action by and among Roger H. Furse, Dennis E. Furse, Janna F. Anderson, Chad B. Buehler, Jillene Buehler, Dian Thomas, trustee of the 1996 Dian Thomas Trust, Carolee H. Hepner, Trustee of the William Beckstead Trust, and Butterfield Commercial, LLC and the City. In addition to the City’s obligation to Game Pointe Properties, LLC.

FISCAL IMPACT:
The approved budget for the Herriman North CRA estimates a total sales tax over 15 years (after expenses) of $14,775,061.
A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING A PARTICIPATION AGREEMENTS WITH GAME POINT PROPERTIES LLC AND HERRIMAN 73 PARTNERS LLC

WHEREAS, the Community Development and Renewal Agency of Herriman City (the “Agency”) met in special open and public meeting on December 11, 2019, to consider, among other things, approving a participation agreement with Game Point Properties LLC and Herriman 73 Partners 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, Game Point Properties LLC and Herriman 73 Partners LLC and the Agency have negotiated a contract for repayment of certain infrastructure cost from sale taxes which are set forth in the participation agreements (“Agreements”) attached hereto as exhibit “A” and “B.”

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
EXHIBIT B

to Resolution No. __________

Participation Agreement
PARTICIPATION AGREEMENT

This Participation Agreement (the “Agreement”) is made and entered into this ____ day of December ____, 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 Herriman 73 Partners LLC Utah limited liability company (“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 North Community-Community Reinvestment Project Area Plan (the “Project Area Plan”) as adopted by the Agency, by providing for the development of an auto mall and other retail developments on approximately 117 acres of real property, as more particularly described below, located in the City of Herriman, Utah (the “City”), comprising the Herriman North Community-Community Reinvestment 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 May 22, 2019, by the City Council of the City, in Ordinance No. 19-___ 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 in 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 seventy percent (70%) of the POST for a period beginning on the date requested by the Agency and ending fifteen (15) years after the date of the Agency request (the “Sales Tax Rebate”).

1.6. The Site and the Facility

Participant intends to develop an auto mall and other retail establishments 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 may include cost of public infrastructure located within the Project Area, such as, roads, storm drainage, water improvements, real property acquisition, and incentives to participants, developers, retailers, or auto dealers.

1.7. The Incentive

As used in this Agreement, the term “Incentive” means one hundred percent (100%) of the Sales Tax Rebate after (i) satisfaction of the City’s obligations pursuant to that certain Settlement Agreement of Condemnation Action by an among Roger H. Furse, Dennis E. Furse, Janna F. Anderson, Chad B. Buehler, Jillene Buehler, Dian Thomas, trustee of the 1996 Dian Thomas Trust, Carolee H. Hepner, Trustee of the William Beckstead Trust, and Butterfield Commercial, LLC and the City, (ii) satisfaction of the City’s obligation to Game Pointe Properties, LLC and the City, (ii) satisfaction of the City’s obligation to Game Pointe Properties, LLC, pursuant to that certain Participation Agreement dated _____ by and between Game Pointe Properties, LLC and the Agency, and (iii) the Agency’s allocation and set aside of ten percent (10%) of the Sales Tax Rebate for housing as required by Section 17C-5-307 of the Act.

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 Herriman 73 Partners LLC, a Utah 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 on the date requested by Agency and ending fifteen (15) years after the date of the Agency request.

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 of 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 on the date requested by Agency and ending fifteen (15) years after the date of the Agency request (the "Incentive Term").

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.
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. Development of the Facility

Participant shall develop the auto mall portions of the Facility in a commercially reasonable manner substantially similar to other auto malls.
2.11. Commencement of Development

Development of the Facility as described in Section 2.10 shall begin as soon as reasonably possible. If Participant fails to develop 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.

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.

2.12. 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.

2.13. 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 over reported 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.

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 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.

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 PARTICIPANT:** Herriman 73 Partners LLC  
Attn: Lawrence Mylar  
10771 South Rippling Bay  
South Jordan, Utah 84009  
Phone: 801 376-8576  
Email: lj@larrymylar.com

**IF TO AGENCY:** Redevelopment Agency of Herriman City  
Attn: City Manager  
5355 West Herriman Main Street,  
Herriman, Utah 84096 Attention  
With a copy at the same address to: John Berms, City Attorney  
john@bremslaw.com

### 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
HERRIMAN 73 PARTNERS LLC, a Utah limited liability company

By: ______________________________________
   Name: 
   Title: 

STATE OF UTAH    )
    : ss.
COUNTY OF SALT LAKE  )

In the County of Salt Lake, State of Utah, on this _____ day of ______________, 2019, before me, the undersigned notary, personally appeared ____________, the ______________ of Herriman 73 Partners LLC, a Utah 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
Exhibit A

to Participation Agreement

Sales Tax Interlocal Agreement
DATE: December 4, 2019
TO: The Community Development and Renewal Agency of Herriman City
FROM: John Brems, City Attorney
SUBJECT: Participation Agreement with Game Pointe Properties in the Herriman North Community Reinvestment Area (CRA)

RECOMMENDATION:
Staff recommends approval of the participation agreement between the Community Development and Renewal Agency of Herriman City and Game Pointe Properties.

BACKGROUND:
The purpose of this agreement is to provide funding assistance to the development of a forty thousand square foot indoor/outdoor amusement facility, specifically “Game Pointe”. The funding mechanism is The Herriman North Community Reinvestment Area (CRA), through sales tax increment. The agreement provides for an incentive of 50% of the sales tax rebate, not to exceed $100,000. The attached participation agreement provides further details.

FISCAL IMPACT:
The approved budget for the Herriman North CRA estimates a total sales tax over 15 years (after expenses) of $14,775,061.
PARTICIPATION AGREEMENT

This Participation Agreement (the “Agreement”) is made and entered into this 11th day of December, 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 Game Point Properties LLC, a Utah limited liability company (“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 North Community Reinvestment Project Area Plan (the “Project Area Plan”) as adopted by the Agency, by providing for the development in the Herriman North 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 including the development of a Forty Thousand square foot indoor amusement facility that offers a broad selection of attractions, including, but not limited to, miniature golf, go kart raceways, batting cages, rides, bowling, arcade pavilions and/or outdoor rope course marketed towards families with small children to teenagers and a separate food establishment that stores, prepares, packages, serves, or otherwise provides food for human consumption where consumption is on or off the premises all of which is marketed towards families with small children to teenagers (collectively “Facility”).

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 __________, by the City Council of the City, in Ordinance No. __________ and Project Area Budget adopted by the Agency for the Project Area.
1.5. Interlocal Agreement

The Agency has or will 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”). 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 fifty percent to the Agency is referred as the “Point-of-sale Tax” or “POST”). Pursuant to Section 17C-5-204 of the Act, Section 11-13-215 of the Cooperation Act, and the Sales Tax Interlocal Agreement the City has agreed and consented that the Agency shall be paid seventy percent (70%) of the POST generated by sales attributable to the Facility (defined below). As set forth in the Sales Tax Interlocal Agreement, the Agency is entitled to receive the seventy percent (70%) of the POST (“Sales Tax Rebate”) for a period beginning one month and twenty days after the City issues the Facility (defined below) a Certificate of Occupancy and ending upon the earlier of _____ years from the Effective Date or Participant has received an amount not to exceed $100,000 from (i) Incentive and/or (ii) impact fee reimbursement pursuant to that certain Reimbursement Agreement dated _____ between the City and the Participant.

1.6. Miller Crossing

Participant intends to pay the City a right of way purchase fee for Miller Crossing Drive in the amount of $100,000 (“Miller Crossing Fee”).

1.7. The Incentive

As used in this Agreement, the term “Incentive” means fifty percent (50%) of the Sales Tax Rebate (i.e. fifty percent of the seventy percent paid to the Agency) after the Agency’s allocation and set aside of ten percent (10%) of the Sales Tax Rebate for housing as required by Section 17C-5-307 of the Act.

1.8. Prohibition against Certain Changes

1.8.1. 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 1.8., 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.
1.8.2. **Representation as to Investment Intent**

Participant represents and agrees that its investment in and use of the Facility, 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.

1.8.3. **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 1.8.3 (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.

1.8.4. **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.

1.8.5. **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 after request by the Agency such Sales Tax Rebate shall continue until the earlier of _____ years from the Effective Date or Participant has received an amount not to exceed $100,000 from (i) Incentive and/or (ii) impact fee reimbursement pursuant to that certain Reimbursement Agreement dated _____ between the City and the Participant.

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.

2.2.4 Payment of the Miller Crossing Fee

The Agency is not obligated to pay to Participant the Incentive unless Participant has paid the Miller Crossing Fee and the City has actually received the Miller Crossing Fee.

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 month and twenty days after the Facility has been issued a Certificate of Occupancy by the City and shall continue until the earlier of _____ years from the Effective Date or Participant has received an aggregate of $100,000 in (i) Incentive and (ii) impact fee reimbursement pursuant to that certain Reimbursement Agreement dated _____ between the City and the Participant (the “Incentive Term”).

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 Facility agree to pay, prior to delinquency, all undisputed real property and other *ad valorem* taxes and assessments assessed against any portion of the 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.

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 family entertainment facilities located in the state of Utah. 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 _______. 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 three (3) 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 Facility.

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 Facility 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 Facility or any portion thereof from the City during the Incentive Term. In the event that the Facility 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 Facility 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 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 in the Facility, except that this indemnity shall not apply to the sole negligence or willful misconduct of Participant.

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, or fails to perform or delays performance of any material obligation or is in default of that certain Development Agreement dated _____ between the City and Participant, 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.

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 PARTICIPANT:  11466 Country Knoll Rd  
South Jordan, UT  84095  
E-mail:________________

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                     )
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
GAME POINT PROPERTIES LLC, a Utah limited liability company

By: ___________________________
   
Name: ___________________________
   Title: ___________________________

STATE OF UTAH   )
   : ss.
COUNTY OF SALT LAKE  )

In the County of Salt Lake, State of Utah, on this _____ day of ______________, 2019, before me, the undersigned notary, personally appeared ____________, the ______________ of Game Point Properties LLC, a Utah 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
DATE: December 4, 2019

TO: The Community Development and Renewal Agency of Herriman City

FROM: John Brems, City Attorney

SUBJECT: Interlocal Agreement between Herriman City and the Community Development and Renewal Agency of Herriman City

RECOMMENDATION:
Staff recommends approval of the interlocal agreement between the Community Development and Renewal Agency of Herriman City in regards to property tax.

BACKGROUND:
The Herriman Innovation District (CRA) was approved in an effort to develop the Herriman Innovation District. The property tax will be used to reimburse for the public infrastructure required to support the development.

FISCAL IMPACT:
The approved budget for the Herriman Innovation District CRA estimates property tax over 15 years (after expenses) of $7,157,075. This amount is from other taxing entities, in addition to Herriman City’s portion of property tax.
HERRIMAN, UTAH
RESOLUTION NO. -___

A RESOLUTION APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN AND HERRIMAN WITH RESPECT TO PROPERTY TAX (HERRIMAN INNOVATION)

WHEREAS, the Herriman City Council ("Council") met in regular session on December 11, 2019, to consider, among other things, approving the an Interlocal Cooperative Agreement with the Community Development and Renewal Agency of Herriman with respect to property taxes (Herriman Innovation); and

WHEREAS, the Utah Interlocal Cooperative Act (Utah Code Ann. § 11-13-101, et seq.) (the “Act”) provides that any two or more government entities are authorized to enter into agreements with each other to do what each agency is authorized by law to perform; and

WHEREAS, the Herriman City ("Herriman") and the Community Development and Renewal Agency of Herriman ("Agency") are government entities as contemplated by the Act; and

WHEREAS, Herriman and the Agency are authorized to enter into agreements with each other for cooperative action; and

WHEREAS, the Council finds that it is in the best interests of the inhabitants of Herriman to enter into an Interlocal Cooperative Agreement with the Agency ("Agreement") with respect to property tax (Herriman Innovation); and

WHEREAS, the Agreement has been prepared for approval, which sets forth the purpose thereof, the extent of participation of the parties, and the rights and duties and responsibilities of the parties. A copy of the Agreement is attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the Agreement is approved, and the City Manager and Recorder are hereby authorized and directed to execute and deliver the same.

This Resolution, assigned No. 19-____, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED by the Council of Herriman, Utah, this 11th day of December, 2019.

HERRIMAN

____________________________________
David Watts, Mayor

Jackie Nostrom, MMC
City Recorder
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 December 11, 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 of the powers  
provided for in the former Utah Redevelopment Agencies Act and the current Utah Community  
Development and Renewal Agencies 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 property tax increment the terms of which are set forth in the  
attached interlocal agreements (“Interlocals”).

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE  
REDEVELOPMENT AGENCY OF HERRIMAN CITY that the Interlocals 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 11th day of December 2019.

HERRIMAN

________________________________________
ATTEST:  
David Watts, Chairperson

_______________________________  
Jackie Nostrom, MMC  
Secretary
INTERLOCAL AGREEMENT
BETWEEN THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN AND HERRIMAN CITY

THIS INTERLOCAL AGREEMENT is entered into as of the __ day of _______, 2019, by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN (the “Agency”) and HERRIMAN CITY (the “Taxing Entity”) (collectively, the “Parties”).

RECITALS

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

B. Pursuant to Resolution No. R2019-__ adopted by the Agency on __________, and Ordinance No. _______ adopted by Herriman City on __________, the Agency established the Herriman Innovation District Community Reinvestment Project Area (the “Project Area”) through adoption of the proposed Project Area Plan, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference (referred to in this Interlocal Agreement as the “Project Area Plan,” which includes the legal description and a map of the Project Area); and

C. The Agency desires to facilitate new development within the Project Area that includes the encouragement, promotion, or provision of business park development that brings good-paying jobs to the area; and

D. Pursuant to Resolution No. R2019-___, adopted by the Agency on __________, the Agency adopted a Project Area Budget for the Project Area (the “Budget”), which sets forth the Agency’s estimates and projections for development and generation of property tax revenues for the Project Area; and

E. The Agency may issue one or more bonds, including bonds secured by tax increment revenues, to finance the construction of certain infrastructure improvements for the Project Area; and

F. The Taxing Entity has determined that it is in the best interests of the Taxing Entity to provide certain financial assistance through the use of Tax Increment (as defined below) in connection with the development of the Project Area; and

G. The Agency anticipates using tax increment (as defined in Utah Code Ann. § 17C-1-102(60) (hereinafter “Tax Increment”)) from the Project Area, to assist in the development of the Project Area and for funding the implementation of the Project Area Plan; and
H. Utah Code Ann. § 17C-5-204 authorizes the Taxing Entity to consent to the payment by Salt Lake County (the “County”) to the Agency of a portion of the Taxing Entity’s share of Tax Increment generated from the Project Area attributable to the Taxing Entity’s tax levy on property within the Project Area, for the purposes set forth herein and in accordance with the terms of this Agreement; and

I. Utah Code Ann. § 11-13-215 further authorizes the Taxing Entity to share its tax and other revenues with the Agency; and

J. In order to facilitate development of and in the Project Area and to provide funds to carry out the Project Area Plan, the Taxing Entity desires to consent that the Agency receive certain Tax Increment from the Project Area attributable to the Taxing Entity’s tax levy, in accordance with the terms of this Agreement; and

K. This Agreement is entered into by the Parties pursuant to the authority of applicable State law, including the Community Reinvestment Agency Act and the Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 et seq., as amended (the “Cooperation Act”).

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. **Taxing Entity’s Consent.**

   a. The Parties agree that for purposes of calculation of the Taxing Entity’s share of Tax Increment from the Project Area to be paid by the County to the Agency pursuant to this Agreement, the base year shall be 2018, and the base taxable value shall be $696,711, which base taxable value is subject to adjustment by law in accordance with the provisions of the Community Reinvestment Agency Act. Pursuant to Section 17C-5-204 of the Community Reinvestment Agency Act and Sections 11-13-202.5 and 11-13-215 of the Cooperation Act, the Taxing Entity hereby agrees and consents that the project area funds collection period (the “Project Area Funds Collection Period”) shall be fifteen (15) years. During the Project Area Funds Collection Period, the Agency shall receive and be paid one hundred percent (100%) of the tax increment attributable to the Taxing Entity’s tax levy on both real and personal property within the Project Area (the “Taxing Entity Share”), for the purpose of providing funds to the Agency to carry out the Project Area Plan. The Project Area Funds Collection Period shall commence with any tax year from 2020 through 2022 at the Agency’s election and determination as evidenced by written notice to the Taxing Entity and to the Salt Lake County Auditor and Assessor; provided, however, that the total amount of such Tax Increment attributable to the Taxing Entity’s tax levy that is paid to the Agency over the Project Area Funds Collection Period under this Agreement shall not exceed $348,933; and provided further, that any portion of the Taxing Entity’s taxes resulting from an increase in the Taxing Entity’s tax rate pursuant to applicable hearing procedures (truth in taxation), that occurs after the Effective Date (defined below) of this Agreement, shall not be paid to the Agency unless the Taxing Entity specifically so consents in writing pursuant to an amendment to this Agreement or in a separate agreement. All tax increment from the Project Area attributable to the Taxing Entity’s tax levy for tax years beyond the Project Area Funds Collection Period shall be paid by Salt Lake County to the
Taxing Entity. The calculation of the Taxing Entity’s portion of annual Tax Increment to be paid by the County to the Agency shall be made as required by Utah Code Ann. § 17C-1-102(60) (a), using the then current tax levy rate (subject to the limitation set forth above regarding increases in the City’s tax rate pursuant to applicable hearing procedures).

b. Salt Lake County shall pay directly to the Agency the Taxing Entity Share in accordance with Utah Code Ann. § 17C-5-204 during the Project Area Funds Collection Period described in Section 1.a. above.

2. Consent to Budget. As required by Utah Code § 17C-5-304, the Taxing Entity hereby consents to the Budget as adopted by the Agency.

3. Authorized Uses of Tax Increment. The Parties agree that the Agency may use the Taxing Entity Share for any purposes authorized under the Project Area Plan or the Community Reinvestment Agency Act, 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.

4. 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.

5. Due Diligence. Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts concerning the Project Area and Project Area Plan and expected benefits to the community and to the Parties, and each of the Parties relies on its own understanding of the relevant facts and information, after having completed its own due diligence and investigation.

6. 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 Utah Code Ann. § 11-13-202.5;

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 Utah Code Ann. § 11-13-202.5(3);

c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Utah Code Ann. § 11-13-209;

d. The Chair of the Agency is hereby designated the administrator for all purposes of the Cooperation Act, pursuant to Utah Code Ann. § 11-13-207;
e. The term of this Agreement shall commence on the Effective Date and shall terminate on the date when all of the Taxing Entity Share has been paid to the Agency as provided for herein, or the date when the Agency ceases to receive such Tax Increment pursuant to Section 1 hereof;

f. Following the execution of this Agreement by both Parties, the Agency, at its sole expense, shall cause a notice regarding this Agreement to be published on behalf of both of the Parties in accordance with Utah Code Ann. § 11-13-219 and on behalf of the Agency in accordance with § 17C-5-205;

g. The Parties agree that they do not, by this Agreement, create an interlocal entity;

h. There is no financial or joint or cooperative undertaking and no budget shall be established or maintained;

i. No real or personal property will be acquired, held or disposed of or used in conjunction with a joint or cooperative undertaking.

7. **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.

8. **Further Assurance.** 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.

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

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

11. **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.

12. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

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

14. **Effective Date.** This Agreement shall become effective upon the publication of the summary of this Agreement as provided by law.

15. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the Parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

16. **Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

17. **Assignment.** No Party may assign its rights, duties or obligations under this Agreement without the prior written consent first being obtained from all Parties.

18. **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.

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.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN

By: _____________________________________
    Chair

Attest:

By: _______________________________
    Secretary

Attorney Review for the Agency:

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

_______________________________
Attorney for Community Development and Renewal Agency of Herriman
ADDITIONAL SIGNATURES TO INTERLOCAL AGREEMENT

HERRIMAN CITY

By: _____________________________________
Brett geo Wood, City Manager

ATTEST:

________________________________
Jackie Nostrom, MMC City Recorder

Attorney Review for City:

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

_________________________________
Attorney for Herriman City
Exhibit “A”

Project Area Plan
DATE: December 4, 2019

TO: The Community Development and Renewal Agency of Herriman City

FROM: John Brems, City Attorney

SUBJECT: Participation Agreement with Riverbend Management L.C. in the Herriman Innovation District Community Reinvestment Area (CRA)

RECOMMENDATION:
Staff recommends approval of the participation agreement between the Community Development and Renewal Agency of Herriman City and Riverbend Management L.C.

BACKGROUND:
The Herriman Innovation District (CRA) was approved in an effort to develop the Herriman Innovation District. The property tax will be used to reimburse for the public infrastructure required to support the development.

The participant, Riverbend Management L.C. has developed and constructed a new leisure recreation product and equipment manufacturing facility. The participant has constructed or developed Midas Creek storm drain improvements, Rocky Mountain Power main line extension, Dominion Energy main line extension, and 11800 South improvements in an amount not to exceed $743,358. The participant will be reimbursed through the tax increment generated through the CRA.

FISCAL IMPACT:
The impact is $743,358 from the tax increment generated through the Community Reinvestment Area.
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. _______

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY APPROVING A PARTICIPATION AGREEMENT WITH RIVERBEND MANAGEMENT, INC.

WHEREAS, the Community Development and Renewal Agency of Herriman City (the “Agency”) met in special open and public meeting on December 11, 2019, to consider, among other things, approving a participation agreement with Riverbend Management, Inc.; 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, Riverbend Management, Inc. and the Agency have negotiated a contract for repayment of certain infrastructure cost from property tax increment 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 by and between the COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY and PARTICIPANT for the HERRIMAN INNOVATION DISTRICT PROJECT AREA

This Participation Agreement (the “Agreement”) is made and entered into as of this ___ day of ____________________, 2019 (the “Effective Date”), by and among 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 RIVERBEND MANAGEMENT, L.C., a Utah limited liability company (“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 Participation Agreement (the “Agreement”) is to carry out in part the Project Area Plan (the “Plan”) for the Herriman Innovation District Community Reinvestment Project Area (the “Project Area”) by providing for incentives to entice Participant to develop a new leisure recreation product and equipment manufacturing facility in the Project Area (the “Facility”), and to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in bringing about such development, including funds the Agency will provide to assist in Participant’s development of the Facility, which will benefit the entire 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 Herriman City, 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 Plan, as adopted and ordained on June 26, 2019, by the Agency and the Herriman City Council (the “Council”) in accordance with the Act and is incorporated herein by this reference. This Agreement is also subject to the provisions of the project area budget (the “Budget”), as adopted by the Agency on June 26, 2019.
1.5. **Interlocal Agreements**

Subject to the terms of various interlocal agreements with other taxing entities (collectively, the “**Interlocal Agreements**”), the Agency is entitled to receive, for a period of up to 15 years, a portion of the tax increment generated by the development on the Site (the “**Agency Share**”). For clarity, the Agency Share consists of only those funds that are generated by taxes paid on development within the Site that are received by the Agency pursuant to the Interlocal Agreements; the Agency Share does not include any funds received by the Agency attributable taxes paid for any portion of the Project Area not within the Site.

1.6. **Description of the Site**

The Facility is constructed on property that is a portion of the Project Area consisting of approximately 38 acres (the “**Site**”).

1.7. **Description of the Investment**

Pursuant to the terms of this Agreement, Participant has developed and constructed the Facility, which shall be a new leisure recreation product and equipment manufacturing facility. Participant has constructed or developed Midas Creek storm drain improvements, Rocky Mountain main line extension, Dominion Energy main line extension, and 11800 South improvements in an amount not to exceed $743,358 (collectively the “**Investment**”). A listing of the Investment is attached hereto as **Exhibit “A.”**

1.8. **The Incentive**

As used in this Agreement, the term “**Incentive**” means seventy five percent (75%) of the Agency Share. Participant acknowledges that the Agency shall use two and nine tenths percent (2.9%) of the Agency Share for application to Agency administrative and overhead costs relating (“**Administrative Allocation**”) and ten percent (10%) of the Agency Share for housing as required by the Act (the “**Housing Allocation**”).

1.9. **Parties to the Agreement**

1.9.1. **The Agency**

The address of the Agency for purposes of this Agreement is:

Community Development and Renewal Agency of Herriman City  
Attn: Executive Director  
5355 W, Main St  
Herriman, UT 84096
With a copy to:

John Brems
5355 W, Main St
Herriman, UT 84096

1.9.2. The Participant

Participant’s address for purposes of this Agreement is:

c/o Riverbend Management Inc.
Executive Office
4609 West 65th South
Idaho Falls, Idaho 83402

With a copy to:

___________________
___________________
___________________
___________________

1.10. Prohibition against Certain Changes

1.10.1. 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, may be considered, for practical purposes, a transfer or disposition of the Investment, 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.

1.10.2. 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 Investment in the Site and not for speculation in land holding or otherwise.

1.10.3. Assignment or Transfer of Agreement

Participant represents and agrees for itself and its successors and assigns that 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 Agency may withhold its consent to such an assignment or transfer if, in the sole discretion of the Agency, such transfer or assignment would result in the economic development goals of the Agency and the Project area not being met.

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.

1.10.4. 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 any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the taxable property within the Site 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.

1.10.5. 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 full amount of the annual Agency Share approximately 120 days after the end of the calendar year for which property taxes were paid (e.g., the Agency will receive full payment of the Agency Share during the second quarter of 2022 for property taxes paid by Participant during 2021). After the end of the calendar year for which the Agency is collecting the Agency Share, the contemplated payment of the Incentive shall be made by the Agency within sixty (60) days after the date on which all of the conditions precedent as set forth in Section 2.3 have been met.

2.1.2. Triggering of Payments of Agency Share

The Agency shall have sole authority to begin, or “trigger,” collection of the Agency Share pursuant to the Interlocal Agreements.
2.2. **Sole Source of Funding for the Incentive**

The entirety of Participant’s Incentive contemplated in this Agreement will be funded solely by the Agency Share payments received by the Agency pursuant to the Interlocal Agreements generated solely by the Site. Participant is not, and shall not be, entitled to any other funds collected by the Agency for the Project Area or any other funds held by the Agency.

2.3. **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:

2.3.1. **Agency is Entitled to Receive the Agency Share**

The Agency is not obligated to pay to Participant the Incentive unless the Agency is legally entitled to receive the Agency Share pursuant to the Interlocal Agreements.

2.3.2. **Agency has Actually Received the Agency Share Payment**

The Agency is obligated to pay to Participant the Incentive only to the extent the Agency has actually received the Agency Share payment(s) from Salt Lake County for the particular calendar year.

2.3.3. **Continued Operation of the Facility**

The Agency is not obligated to pay to Participant the Incentive unless Participant has continuously Operated (defined in Section 2.12) the Facility as described in Section 2.15 for the entire year for which payment of the Incentive is being sought or, in the case of the first year of such Operation, for the portion of the year after the date of the initial start of Operations of the Facility.

2.3.4. **Payment of Taxes**

Participant shall not receive any payments from the Agency for any period until the Agency has received documentation from Participant that all real and personal property taxes attributable to the Site and Facility have been paid for the particular year of the Incentive Term. Documentation contemplated by this Subsection 2.3.4. shall include copies of all forms or other documents sent to the Salt Lake County Assessor or the Utah State Tax Commission for the purpose of reporting property owned by Participant within the Site. Such documentation shall be provided to the Agency by March 31 of the year following the year for which the Incentive is sought.

2.3.5. **Request for Payment by Participant**

The Agency is not obligated to pay the Incentive to Participant unless Participant has made a Request for Payment in writing pursuant to Section 2.6 for the year for which payment of the Incentive is being sought.
2.3.6. Minimum Investment Amounts

The Agency is not obligated to pay the Incentive to Participant unless Participant has commenced Operating and met the requirements of Sections 2.7, 2.12, and 3.1 of this Agreement.

2.3.7. Infrastructure Development Costs

The Increment is available to the Participant only upon verification of actual costs incurred by Participant for construction of the infrastructure improvements listed on Exhibit “A.”

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

In the event that the conditions precedent as described in Section 2.3 are not met for any given calendar year during the term of this Agreement, and Participant is thus not entitled to receive the Incentive attributable to that calendar year, 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 year.

2.5. Limitations on Incentive

The Incentive shall not be paid for a period of greater than 15 years from the date for which Participant first receives the Incentive (the “Incentive Term”). The Incentive Term shall begin when the Agency triggers collection of the Agency Share as described in Section 2.1.2. The total amount of the Incentive paid to Participant pursuant to this Agreement shall be limited to the amount of verified costs incurred by Participant. Notwithstanding the foregoing, the total Incentive paid to Participant under this Agreement shall not exceed $743,358.

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 Agency Share 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 Tax Increment generated by the Facility is determined by the taxable value of Participant’s property within the Site as determined by the Salt Lake County Assessor and/or the Utah State Tax Commission. The Agency does not guarantee a particular taxable value of the Facility and Site nor does the Agency control or influence such values.

Notwithstanding all other provisions in this Agreement, the Agency is not obligated to pay to Participant in any one calendar year more than Incentive attributable to the immediately preceding calendar year. The Incentive Term and the Incentive shall not be increased by any future extension of or modification to the Budget or the Interlocal Agreements; for purposes of clarification, if the Agency were to amend the Interlocal Agreements at some point in the future so that the Agency receives a greater percentage of Tax Increment from the Project Area or from a greater portion of the Project Area, the Agency shall not be obligated to pay to Participant any amount greater than Participant would have received under the terms of this Agreement and the Interlocal Agreements as effective as of the date of this Agreement.
The Agency shall not support any modification or amendment to the Interlocal Agreements 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.

2.6. Request for Incentive

Participant shall submit in writing a request for payment to the Agency by March 31st of the year following the calendar year for which payment of the Incentive is sought. The Participant shall include in the request proof of payment of all ad valorem real and personal property taxes subject to and as described in Section 2.7 (the “Request for Payment”). Participant’s Request for Payment shall include written documentation of actual costs incurred for infrastructure development costs for which the Incentive is sought. Unless the Agency sends written notice to Participant of deficiency in the Request for Payment within thirty (30) days of receipt of a Request for Payment, such Request for Payment shall be deemed complete. Participant shall have a reasonable time not to exceed thirty (30) days in which to rectify any deficiencies specified in a notice, and the Request for Payment shall be deemed timely delivered in the event any such deficiencies are rectified within that period.

Notwithstanding the foregoing, nothing in this Agreement shall require the Agency to pay Incentive to Developer for non-qualified costs as determined by the Agency, in its sole discretion.

2.7. 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 Site 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.

2.8. 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 Interlocal Agreements, 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, and the Interlocal Agreements were properly approved, adopted 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.

2.9. 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. If requested by Participant, the Agency may, at its sole discretion, take such actions as may be reasonably required to defend such legal action and to address the grounds for any causes of action that could result in the reduction or elimination of the payment of the Incentive to the Agency. 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 Agency Share is not received by the Agency.

2.10. Dispute over Receipt of Payment of the Incentive

If not due to the act, error or omission of the Agency, 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.

2.11. 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.

2.12. Operation of the Facility

Participant shall utilize the Facility in a commercially reasonable manner and in accordance with
industry standards. 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, or other approval have been obtained for Participant to occupy the
Facility and (2) Participant shall have received a business license issued by the City. 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.

2.13. Commencement of Operations

For purposes of this Section, the Facility shall be deemed Operational if the conditions and
standards in Section 2.12 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.


Operations of the Facility as described in Section 2.12 shall be commenced as described in Section
2.13 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 2.13 of this Agreement. If Participant ceases to Operate the
Facility for a continuous period of more than one year 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.

2.15. Funding Responsibility

The Parties understand and agree that funding for the Investment 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.

2.16. 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 Interlocal
Agreements from tax increment generated by the Investment by Participant within the Site and
that the amount of Incentive paid to Participant under this Agreement is dependent on the taxable
value of Participant’s taxable property within the Site or the taxes paid thereon.
2.17. Audits, Appeals, and Reassessments

As noted in Section 2.7, above, Participant may object to, challenge, or appeal any *ad valorem* property taxes that may be owed by Participant for property within the Site. However, in the event that such an action is pursued by Participant and is eventually successful in reducing the taxable valuation of Participant’s property within the Site, Participant shall immediately repay to the Agency the portion of the Incentive for that year proportionate to the reduction in taxable value. In the event that Participant does not timely make such payment to the Agency, the Agency may correspondingly reduce the Incentive paid to Participant for the next year of the Incentive Term. The Agency, at its sole discretion, may withhold payment of the Incentive for the final year of the Incentive Term until such date as Participant can no longer appeal or contest the assessed value of Participant’s property within the Site.

Likewise, if an audit, reassessment, or similar action by the Salt Lake County Assessor or the Utah State Tax Commission results in an increased valuation of Participant’s property within the Site, the Agency shall pay additional Incentive for that year in proportion to the increase in taxable value of Participant’s personal property within the Site, subject to compliance with the terms of this Agreement.

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 as an incentive to develop the Facility on the Site and undertake the continued Operation and Investment requirements as contemplated in this Agreement.

3.2. Responsibility for Development Plans and Permits

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

3.3. Other Terms

3.3.1. 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.

3.3.2. 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.

### 3.3.3. 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.

### 3.3.4. 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.

### 3.3.5. 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.
3.3.6. **Local, State, and Federal Laws**

Participant shall make the Investment and utilize 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.

3.3.7. **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.

3.3.8. **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.

3.3.9. **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*.

3.3.10. **Agency and City Publicity**

Throughout the term of this Agreement and notwithstanding any agreements to the contrary, the Agency shall have the right to freely use the following facts and information in Agency and City marketing, promotional, and publicity materials (together, “Promotional Materials”): (i) the presence of Participant’s operations in the City, (ii) the approximate square footage of the Facility, (iii) Participant’s approximate total Investment within the City, (iv) timing of Participant’s initial and subsequent investments within the City, (v) the details of the Incentive and the expected benefits to the City, (vi) the location of the Facility, and (vii) publicly-available information about Participant and its operations and history.

Except as specifically allowed in this Subsection 3.3.10, the Agency shall not disclose any nonpublic information about Participant or Participant’s operations within the Project Area as part of any Promotional Materials or press releases.
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 10) 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 (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.

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 2.12 and 2.13, 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 upon payment of any amounts that may be due from Participant to the Agency under 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.

Notwithstanding to foregoing, the Agency shall not have to right to compel, through a remedy of specific performance or otherwise, the Participant to make any investment within the Project Area or to Operate the Facility as contemplated by this Agreement.

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 containing the notice.

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 City, 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 and scans of original documents shall be treated as original documents.

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

By: __________________________

__________, Executive Director

Attest:

By: __________________________

__________, Secretary

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

In the County of Salt Lake, State of Utah, on this _____ day of ________________, 201__, before me, the undersigned notary, personally appeared ____________, the executive director of the Community Development and Renewal Agency of Herriman City, who is personally known to me or who proved to me his 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 signature is voluntary and on behalf of the Community Development and Renewal Agency of Herriman City by authority of its Board of Directors.

__________________________
Notary signature and seal
PARTICIPANT

By: ______________________________
Name: ____________________________
Title: _____________________________

STATE OF )
: ss.
COUNTY OF ________________ )

On _________________________ before me, _________________________________________
personally appeared ____________________________________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _________ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____________________________
Notary signature and seal
EXHIBIT A
(List of Investments)