



Community Development and Renewal Agency of Herriman City Agenda

Wednesday, April 09, 2025

NOTICE IS HEREBY GIVEN that the Herriman City Council shall assemble for a meeting in the City Council Chambers, located at
5355 WEST HERRIMAN MAIN STREET, HERRIMAN, UTAH

- 1. Call to Order - 7:00 p.m. (or as soon as possible thereafter)**
- 2. Approval of Minutes**

- 2.1. Motion for review and outline of the finalization process to approve the minutes of April 9, 2025**

3. Discussion and Action Items

- 3.1. Consideration of an amendment to the Tax Increment Participation Agreement with Elevated Acquisitions, LLC for The Commons at Herriman Towne Center project – Blake Thomas, Community Development Director**

4. 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) 446-5323 or info@herriman.gov and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members 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.gov

5355 W. Herriman Main St. • Herriman, Utah 84096
(801) 446-5323 office • herriman.org

Posted and Dated this 3rd day of April, 2025

Jackie Nostrom, City Recorder

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STAFF REPORT

DATE: **March 31, 2025**

TO: Herriman Community Development and Renewal Agency Board of Directors

FROM: Blake Thomas, Community Development Director

SUBJECT: **Consideration of an amendment to the Tax Increment Participation Agreement with Elevated Acquisitions, LLC for The Commons at Herriman Towne Center Project**

RECOMMENDATION:

Staff recommends that the CDRA Board **approve** the First Amendment to the Tax Increment Participation Agreement.

ISSUE BEFORE COUNCIL:

Should the CDRA Board approve an amendment to the Tax Increment Participation Agreement with Elevated Acquisitions, LLC for The Commons at Herriman Towne Center Project?

BACKGROUND/SUMMARY:

The Commons at Herriman Towne Center project was approved by the Herriman City Council on December 11, 2024. The proposed development includes a plan for approximately 215,000 sq. feet of commercial floor space including a 128,000 sq. foot big-box retail store, a 13,000 sq. foot Junior Anchor, up to 40,000 sq. feet of restaurant space, and 37,000 sq. feet of smaller retail space. It is anticipated that the project will break ground in the Spring/Summer of 2025.

The City Council approved a Development Agreement, Sales Tax Incentive Agreement, and the CDRA Board approved a Tax Increment Participation Agreement for the project on December 11, 2024.

DISCUSSION:

The developer, Elevated Acquisitions, LLC, has requested that subsection 6(c) of the Tax Increment Participation Agreement be amended. The original approved language of this section of the agreement is as follows:

(c) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and Developer. Developer may, without consent, (i) assign this Agreement in conjunction with any financing for the Project or the Property, and (ii) sell or similarly dispose of one or more portions of the Project or the Property to other parties and, while such parties are not parties to this Agreement, Developer shall nevertheless enjoy the benefits herefrom irrespective of the fact that such parties may own some portion of the Property and/or perform some of the Improvements. Furthermore, Agency acknowledges that Developer has not yet acquired the Property and that, when Developer does so acquire the Property, it intends to do using an entity that is affiliated with the named Developer entity here and this Agreement is expressly assignable to such party. Finally, any subsequent owner of the Project or Property shall enjoy the benefits hereof. Developer shall tender notice to Agency of any such transfer and in the event that Developer fails to so tender such notice, Agency may suspend such further payments under this Agreement until such time as Developer provides the same (whereupon Agency shall resume payments, including prompt repayment of any monies so suspended)

The proposed language for the amendment is as follows:

(c) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and Developer. Developer may, without consent, (i) assign this Agreement in conjunction with any financing for the Project or the Property, and (ii) sell or similarly dispose of one or more portions of the Project or the Property to other parties and, while such parties are not parties to this Agreement, Developer shall nevertheless enjoy the benefits herefrom irrespective of the fact that such parties may own some portion of the Property and/or perform some of the Improvements. In addition, Agency acknowledges that Developer has not yet acquired the Property and that, when Developer does so acquire the Property, it intends to do using an entity that is affiliated with the named Developer entity here and this Agreement is expressly assignable to such party. Furthermore, any subsequent owner of the Project or Property shall enjoy the benefits hereof. Finally, Developer shall be permitted to assign the right to receive the Reimbursement to a party or entity of its election without the necessity of assigning this Agreement (it being agreed that Developer (or its successor) shall remain the Developer party hereunder, but the proceeds of such Reimbursement shall be sent as directed by

Developer (or its successor)). Developer shall tender notice to Agency of any such transfer and in the event that Developer fails to so tender such notice, Agency may suspend such further payments under this Agreement until such time as Developer provides the same (whereupon Agency shall resume payments, including prompt repayment of any monies so suspended

The sections underlined represent changes from the original language.

This item supports Strategy CE 1 – Business Development and CE 1.1 – Business Support of the Herriman City Strategic Plan. CE 1 is a goal to cultivate an environment that allows and supports entrepreneurship, innovation, smart business development, and traditional retail and commerce. CE 1.1 is a goal to enact policies and programs that support local business development, growth, and retention.

ALTERNATIVES:

Option	Pros	Cons
1. Approve the agreement amendment as drafted	Allows the project to proceed	None identified
2. Approve the agreement with recommendations	Provides for considerations that may not have been contemplated by staff	May delay the progress of the project.
3. Deny approval of the agreement	Allows the city to maintain status quo	Likely would cause significant project delays.

FISCAL IMPACT:

None identified.

FIRST AMENDMENT TO TAX INCREMENT PARTICIPATION AGREEMENT

This FIRST AMENDMENT TO TAX INCREMENT PARTICIPATION AGREEMENT (this “Amendment”), is dated as of _____, 2025, by and between the Community Development and Renewal Agency of Herriman, a Utah Limited Purpose Local Government Entity (the “Agency”), and Elevated Acquisitions, LLC (“Developer”).

RECITALS

A. Agency and Developer are parties to that certain Tax Increment Participation Agreement dated December 11, 2024 (the “Agreement”). All initially-capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement unless the context clearly indicates otherwise.

B. Agency and Developer mutually desire to amend the Agreement as provided below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Amendment and Restatement of Subsection 6(c). Subsection 6(c) of the Agreement is hereby amended and restated in its entirety as follows:

“ (c) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and Developer. Developer may, without consent, (i) assign this Agreement in conjunction with any financing for the Project or the Property, and (ii) sell or similarly dispose of one or more portions of the Project or the Property to other parties and, while such parties are not parties to this Agreement, Developer shall nevertheless enjoy the benefits herefrom irrespective of the fact that such parties may own some portion of the Property and/or perform some of the Improvements. In addition, Agency acknowledges that Developer has not yet acquired the Property and that, when Developer does so acquire the Property, it intends to do using an entity that is affiliated with the named Developer entity here and this Agreement is expressly assignable to such party. Furthermore, any subsequent owner of the Project or Property shall enjoy the benefits hereof. Finally, Developer shall be permitted to assign the right to receive the Reimbursement to a party or entity of its election without the necessity of assigning this Agreement (it being agreed that Developer (or its successor) shall remain the Developer party hereunder, but the proceeds of such Reimbursement shall be sent as directed by Developer (or its successor)). Developer shall tender notice to Agency of any such transfer and in the event that Developer fails to so tender such notice, Agency may suspend such further payments under this Agreement until such time as Developer provides the same (whereupon Agency shall resume payments, including prompt repayment of any monies so suspended).”

2. No Other Amendments; This Amendment Governs and Controls. The Agreement, as amended by this Amendment, is hereby ratified and reaffirmed. Except as expressly modified hereby, the Agreement shall remain unmodified and in full force and effect. To the extent any of the provisions of this Amendment are inconsistent with any of the provisions set forth in the Agreement, the provisions of this Amendment shall govern and control. All references in the Agreement to “this Agreement” are deemed to be references to the Agreement as amended by this Amendment.

3. Entire Agreement. The Agreement, as amended by this Amendment, constitutes the sole and entire agreement among the parties hereto with respect to the subject thereof and shall supersede all prior written and oral agreements concerning the subject matter contained therein. No modification, amendment, alteration, change, supplement or rescission of the Agreement, as amended by this Amendment, shall be binding unless in writing and signed by all parties hereto.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

[signatures on following page]

IN WITNESS WHEREOF, Agency and Developer have executed this Amendment as of the day and year first above written.

AGENCY:

Community Development and Renewal Agency of Herriman

Signature: _____

Attest:

By: _____

Its: _____

Jackie Nostrom, City Recorder

Date: _____

DEVELOPER:

ELEVATED ACQUISITIONS, LLC, an Idaho limited liability company

Signature: _____

By: _____

Its: _____

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Signature _____

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY
RESOLUTION NO. R2025-__

**A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF
HERRIMAN CITY APPROVING THE FIRST AMENDMENT TO THE SALES TAX
INCREMENT PARTICIPATION AGREEMENT**

WHEREAS, the Development Agency of Herriman City (“Agency”) met in a special open and public meeting on April 9, 2025, to consider, among other things, approving an amendment to the tax increment participation agreement (“Agreement”) between the Agency and Elevated Acquisitions, LLC (“Owner”); and

WHEREAS, the Agency approved a tax increment participation agreement with Elevated Acquisitions, LLC on December 11, 2024, Resolution Number R2024-05; 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; and

WHEREAS, the Agency desires to enter into the Agreement

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
REDEVELOPMENT AGENCY OF HERRIMAN CITY** that the attached First Amendment to The Tax Increment Participation Agreement (Attachment A) is hereby approved, that the Chairperson and Secretary are hereby authorized and directed to execute and deliver the same.

PASSED AND APPROVED by the Board of Directors of the Redevelopment Agency of Herriman City, this 9th day of April 2025.

HERRIMAN

Lorin Palmer, Mayor

Jackie Nostrom, MMC, City Recorder

ATTACHMENT A

First Amendment to The Tax Increment Participation Agreement
Between Herriman City and Elevated Acquisitions, LLC