



SPECIAL COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN CITY AGENDA

Wednesday, November 30, 2016

NOTICE IS HEREBY GIVEN that the Herriman Community Development and Renewal Agency shall hold a meeting at the Herriman Community Council Chambers, located at 13011 South Pioneer Street (6000 West), Herriman, Utah.

5:15 PM: (Or as soon as possible thereafter)

1. Discussion and Action Items

- 1.1.** Discussion regarding a Participation Agreement between the Redevelopment Agency of Herriman City and Anthem Center, LLC. – John Brems, City Attorney

2. 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 and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members of the City Council may participate electronically via telephone, Skype, or other electronic means during this meeting.

PUBLIC COMMENT POLICY AND PROCEDURE: The purpose of public comment is to allow citizens to address items on the agenda. Citizens requesting to address the commission will be asked to complete a written comment form and present it to Jackie Nostrom, City Recorder. In general, the chair will allow an individual two minutes to address the Council. A spokesperson, recognized as representing a group in attendance, may be allowed up to five minutes. This policy also applies to all public hearings.

I, Cindy Quick, certify the foregoing agenda was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body. The agenda was also posted 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 22nd day of November 2016

Cindy Quick, CMC
Deputy Recorder

Participation Agreement

between

The Redevelopment Agency of Herriman City

and

Anthem Center, LLC

December [__], 2016

Participation Agreement

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

1. SUBJECT OF AGREEMENT

1.1 Purpose of the Agreement

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

1.2 The Project Area Plan

This Agreement is subject to the provisions of the Project Area Plan, as approved and adopted on [_____] 2016, by the City Council of the City, in Ordinance No. [_____] (the “**Ordinance**”), in accordance with Section 17C-5-104 of the Act. The Project Area Plan and the Ordinance are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

1.3 The Project Area

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

1.4 The Project Area Budget

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

1.5 Interlocal Agreements

The Agency anticipates that it will enter into separate Interlocal Agreement with the City, Salt Lake County, Utah (the “**County**”), and the Jordan School District (the “**School District**”) (collectively, the “**Interlocal Agreements**”) pursuant to which the County and the School District will agree to pay to the Agency Tax Increment and the City has agreed to pay the Agency Tax Increment for purposes of funding part of the costs of developing the Project Area. The Agency agrees to use good faith effort to negotiate and enter into such Interlocal Agreements. At such time as the Interlocal Agreements are executed, they will be attached to this Agreement as **Exhibit G**. The Participant acknowledges that Agency’s obligations under this Agreement are conditioned on the execution of the Interlocal Agreements by the County and School District.

1.6 Parties to the Agreement

1.6.1 Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is: The Redevelopment Agency of Herriman City, 13011 South Pioneer Street, Herriman, Utah 84096 Attention: Economic Development Directors.

1.6.2 The Participant

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

2. CHANGES AND ASSIGNMENTS

2.1 Prohibition Against Certain Changes

2.1.1 Acknowledgement by Participant

The Participant acknowledges that the identity and qualifications of the Participant are of particular importance to the Agency in view of:

- (1) the importance of the development of the Project to the general welfare of the community;
- (2) the public assistance set forth in this Agreement that has been made available by law and by the Agency for the purpose of making such development possible; and
- (3) the fact that a significant change in identity, ownership or control of the Participant may, except as otherwise provided herein, be considered, for practical purposes, a transfer or disposition of the Project.

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

2.1.2 Change of Ownership

For the reasons set forth above in Section 2.1.1, and subject to the provisions of Section 2.2 hereof, the Participant represents and agrees for itself and any successor in interest that prior to the issuance by the Agency of a Certificate of Completion for 100,000 square feet of development within the Project as provided in Section 5.3 hereof (which 100,000 square feet shall be in addition to the store to be constructed and operated as a Wal-Mart), there shall be no significant change in the ownership of the Participant or with respect to the identity of the parties in control of the Participant or the degree thereof, by any method or means, without the prior written approval of the Agency, which approval shall not be unreasonably withheld, conditioned or delayed.

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

2.2 Permissible Transfers.

Notwithstanding the provisions of this Agreement to the contrary, the Participant shall not be required to obtain the Agency's consent, and the Agency shall not be permitted to terminate this Agreement, in connection with (a) the sale, exchange, issuance or redemption of any ownership interest in the Participant so long as John Gust, Cory Gust and/or Doug Young and their respective spouses and/or lineal descendants, or trusts set up for the benefit of the foregoing, own, in the aggregate, 51% or more of the direct and indirect interests in the Participant; (b) transfers of less than a controlling interest in the Participant; (c) transfers of interests in either the Project, the Participant or this Agreement to persons or entities that, after the transfer, are controlling, under common control with or controlled by the Participant; (d) changes in the organizational form of the Participant; (e) transfer of the operational or managerial responsibilities of the Project to a third party provider who is acting as an agent on

behalf of the Participant; (f) leasing, subleasing, licenses, or granting other possessory rights in any portion of the Project; (g) a sale and leaseback or similar financing transaction of the Project; (h) a transfer of a fee simple interest in any portion of the Project to a third party; (i) the granting of encumbrances, easements, covenants, conditions, restrictions or other similar rights or obligations in the Project; (j) the granting of any lien, security interest, or other encumbrance upon the Project or the interests of the Participant in the Project or this Agreement, or the foreclosure, delivery of deed in lieu of foreclosure or other realization upon the Project, the Participant or this Agreement of such lien, security interest or other encumbrance; (k) a transfer of any portion of the Project Area which is not owned by the Participant; (l) a transfer of the rights to receive all or a portion of Reimbursable Costs to any third party, including a lender, and (m) a transfer of all or a portion of the Project to a third party while retaining all rights to receive reimbursements hereunder. For purposes hereof, “control” (and its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, or power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

2.3 Continuing Obligations

Unless the Agency consents to an assignment or transfer of this Agreement, no assignment or transfer of this Agreement, any part hereof, any right herein, or approval hereof, by the Agency shall be deemed to relieve the Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Participant and its permitted successors and assigns.

3 FINANCING OF THE DEVELOPMENT OF THE PROJECT AREA

3.1 Nature of Participant’s Obligations

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

3.2 Reimbursement of Infrastructure Improvements Costs

Following completion of all or a portion of the Infrastructure Improvements required to operate all or a portion of the Retail Improvements and upon payment by the Participant of invoices received for costs related to the Infrastructure Improvements, the Participant may submit such invoices to the Agency for reimbursement to the Participant. Subject to the terms of Section 4.1 of this Agreement, the Participant shall be reimbursed the costs related to the

acquisition, construction and/or installation of the Infrastructure Improvements, together with interest accruing thereon from the date incurred by Developer at a rate of five percent (5%) per annum (the “**Reimbursable Costs**”) hereunder but only from and to the extent of the Participant’s Tax Increment Share. Reimbursement of Reimbursable Costs shall be made in accordance with the terms of this Agreement.

3.3 Responsibility for Development Plans and Permits

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

3.4 Funding Responsibility

The Participant and the Agency understand and agree that, except as otherwise expressly provided herein, funding for the development of the Project Area and its related improvements shall come from the Participant’s internal capital or financing obtained by the Participant. Except as specifically provided herein to the contrary, the Agency shall not be liable or responsible for providing, obtaining or guaranteeing any financing for the Project, the Infrastructure Improvements, the Retail Improvements, or any other matter addressed by this Agreement.

4 TAX INCREMENT FINANCING

4.1 Tax Increment

The Project Area Plan is expected to be adopted after the date hereof, and the adoption of the Project Area Plan is a condition to the effectiveness of this Agreement. The Project Area Plan will be funded in part by tax increment pursuant to the provisions of the Act. Under the Act and the Interlocal Agreements between the Agency and the Participating Taxing Entities (as defined below), the Agency is entitled to receive, or anticipating on receiving, up to [_____] percent ([_____]%) of the Tax Increment (as defined below) over a maximum period of twenty (20) years. In accordance with the Interlocal Agreements, the Agency shall

begin to receive Tax Increment for the [_____] tax year. A copy of each of the Interlocal Agreements is, or will be, attached hereto as **Exhibit G**. The amount of Tax Increment that the Agency is allowed to receive under the Interlocal Agreements is to be paid into a special fund of the Agency in accordance with the Act and shall be applied for the purposes described in the Project Area Plan, the Project Area Budget, the Interlocal Agreements and this Agreement.

For purposes of this Agreement, (a) “**Tax Increment**” shall mean the Taxes levied each year by Participating Taxing Entities on land, real property improvements, personal property and/or other taxable property within Project Area in excess of the Base Tax Amount (as defined below) for that same property; (b) “**Taxes**” shall mean all levies on an *ad valorem* basis upon land, real property improvements, personal property, or any other property; (c) the “**Base Tax Amount**” for the property within the Project Area shall be \$[_____], calculated by multiplying the 2016 combined tax rate of all Participating Taxing Entities by the 2016 base year taxable value of the property within the Project Area; (d) “**Participating Taxing Entities**” shall mean the City, Salt Lake County, the School District and [_____]; and (e) “**Participant’s Tax Increment Share**” shall mean annually, for a maximum period of twenty (20) years commencing with the first year Tax Increment is received by the Agency, ninety-five percent (95%) of the Tax Increment actually paid to the Agency and available for reimbursement pursuant to the terms of the Interlocal Agreements and this Agreement.

The Agency agrees to reimburse the Participant for Reimbursable Costs from the Participant’s Tax Increment Share in accordance with the terms of this Agreement up to the total aggregate amount of eleven million five hundred fifty two thousand and no/100 Dollars (\$11,552,000) (the “**Maximum Reimbursable Amount**”) for the development of the Project. Reimbursement of Reimbursable Costs shall be made annually after the conditions to reimbursement have been satisfied and then only from and to the extent that Tax Increment is generated and actually paid to the Agency. If actual Reimbursable Costs are less than the Maximum Reimbursable Amount, Participant shall be entitled to receive payment hereunder only for the Reimbursable Costs the Participant actually incurs and pays. If and to the extent that the Participant does not construct improvements within the Project Area that create enough assessed value and taxable retail sales such that the sum of the Participant’s Tax Increment Share is less than the Maximum Reimbursable Amount, the Agency shall not, to that extent, be obligated to reimburse the Participant in the aggregate the full amount of the Maximum Reimbursable Amount.

Notwithstanding the foregoing, the Agency shall retain for the costs of administering the Project Area Plan an amount not to exceed five percent (5%) of the Tax Increment it receives for such year, which amount shall not be available to reimburse Participant for the Reimbursable Costs. Tax Increment are the only funding sources available or obligated under this Agreement. The Participant acknowledges and agrees that the Agency has no other funds or revenue to use to make payment hereunder other than the Tax Increment it receives under the Interlocal Agreements. Subject to the terms of this Agreement, the Agency shall reimburse the Participant for Reimbursable Costs from the Participant’s Tax Increment Share until the Participant has been reimbursed for its actual Reimbursable Costs has been paid the Maximum Reimbursable Amount

hereunder or until the Agency is no longer entitled to receive Tax Increment under the Interlocal Agreements, whichever occurs first.

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

In addition to the conditions stated elsewhere in this Agreement, the Agency shall have no obligation to make payment hereunder to the Participant from Participant's Tax Increment Share until the following conditions precedent are satisfied: (a) the Agency has received written proof acceptable to the Agency of the amount the Participant spent on Reimbursable Costs; (b) the Infrastructure Improvements for which reimbursement is sought have been constructed; (c) the Agency has actually received payment of the funds representing the Tax Increment. The Agency agrees to review all submittals and notify the Participant of any objections thereto within 30 days of receipt thereof. The Participant shall be reimbursed for Reimbursable Costs from Participant's Tax Increment Share within thirty (30) days from the date of the satisfaction of all of the conditions precedent contained in this Agreement. The Agency agrees to enforce its rights under each of the Interlocal Agreements.

4.3 Agency's Encumbrance of Tax Increment

The Agency agrees that the Agency shall not, without the prior written consent of the Participant, issue any bonds and other indebtedness that are secured by Tax Increment from the Project Area until such time as Participant has been reimbursed for Reimbursable Costs as provided in this Agreement.

4.4 Payment of Real Property and *Ad Valorem* Taxes

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

4.5 Reduction or Elimination of Tax Increment

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

eliminates the payment of Tax Increment to the Agency. In the event any change in law invalidates the Tax Increment provided in support of the Project, the Participant is hereby released from any and all obligations made by the Participant to the Agency. For further clarity, the Participant at its sole and exclusive discretion may, without penalty, terminate its obligations under this Agreement if any change in law invalidates the Participant's right to receive all or any portion of the Tax Increment. For purposes of this Section 4.5 and Section 4.6 below, the Agency's agreement to cooperate means the Agency agrees to (i) defend against any legal action seeking specific performance, declaratory relief or injunctive relief, (ii) set court dates at the earliest practicable date(s), (iii) testify on behalf of Participant, (iv) to provide information and data necessary to defend against such action, (v) affirmatively support the actions of Participant and (vi) not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights against the other Party.

4.6 Declaration of Invalidity

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

4.7 Bond.

At such time as the Tax Increment generated within the Project Area are sufficient to allow the Agency to issue a bond whose proceeds shall be used to reimburse the full then outstanding Reimbursement Amount, the Agency shall use reasonable efforts, provided that the bonding rate is reasonably acceptable to the Agency, to proceed with the issuance of a tax increment financing bond in the amount necessary to pay the full amount of the Reimbursable Expenses. At such time as Agency issues the Bond, the Agency shall only be required to pay

Tax Increment to the Participant shall no longer be entitled to receive Tax Increment from the Project Area.

5 DEVELOPMENT OF THE PROJECT AREA

5.1 Development and Operation of the Project Area

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

5.2 Right of Access

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

5.3 Certificate of Completion

5.3.1 Issuance of the Certificate of Completion

Upon the written request of the Participant, the Agency shall promptly furnish to the Participant a Certificate of Completion upon the completion of all construction and development of each building comprising the Retail Improvements, together with the Infrastructure Improvements related thereto. The Certificate of Completion shall be conclusive determination of satisfactory completion of the construction on and development of the Project Area or a specific portion thereof in accordance with the terms of this Agreement and shall specifically so state.

5.3.2 Failure to Issue the Certificate of Completion

The Agency shall not unreasonably withhold the Certificate of Completion. If the Agency fails or refuses to furnish a Certificate of Completion for the Project Area or any part

thereof as permitted by and in accordance with this Agreement, the Agency shall provide the Participant with a written statement which details the reasons for the Agency's refusal or failure to furnish the Certificate of Completion, which statement shall be delivered to the Participant within 30 days of its written request therefor. The statement shall also state the action the Participant must take to obtain the requested Certificate of Completion. If the Agency fails to provide the Participant with a written statement within the 30-day period as provided above, the requested Certificate of Completion shall be treated as issued for purposes of this Agreement.

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

- (a) evidence reasonably satisfactory to the Agency that when the specified items or materials are available, the subject construction and development shall be promptly completed, and
- (b) either a cash bond in the amount of the cost of the such items or materials or the cost to complete the minor unfinished work or other evidence satisfactory to the Agency that the Participant will complete and pay for the same.

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

6 DEFAULTS, REMEDIES AND TERMINATION

6.1 Default

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

6.2 Notice

If a default under this Agreement occurs, the non-defaulting Party shall give written notice of the default (a "**Default Notice**") to the Party in default, specifying the nature of the default. Failure or delay in giving a Default Notice shall not constitute a waiver of any default or operate as a waiver of any rights or remedies of the non-defaulting Party; but the non-defaulting Party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either Party in asserting any right or remedy hereunder shall not

deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

6.3 Cure Period

The non-defaulting Party shall have no right to exercise a right or remedy hereunder unless the subject default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting Party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. Notwithstanding the foregoing, with respect to any event of default arising with respect to a non-monetary obligation of a Party hereunder, such defaulting Party shall not be in default hereunder unless and until the defaulting Party fails to fully rectify and cure the default within thirty (30) days after final adjudication (by the highest court to which the matter may be appealed) that the defaulting Party is in default under this Agreement (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, if reasonably possible, and to diligently proceed to complete the same). During the period of time, if any, that a judicial determination of an alleged default by Participant is proceeding, the Agency obligation to pay to the Participant that portion of the Tax Increment Subsidy which is at issue shall continue unless a final non-appealable judgement determines that the Agency did not have an obligation to pay all or a portion of the Tax Increment Subsidy, in which event, such portion of the Tax Increment Subsidy shall be repaid by Participant to Agency.

6.4 Rights and Remedies

Upon the occurrence and during the continuance of an Event of Default by the Agency, the Participant shall have all rights and remedies against Agency as may be available at law or in equity, including, without limitation, the right to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Upon the occurrence and during the continuance of an Event of Default by Participant, the Agency may terminate this Agreement and, if the Agency has actual damages (excluding any consequential, punitive, or special damages) as a result of such Event of Default the Agency may seek to recover such damages in an amount not to exceed the amount of the Tax Increment actually received by Participant. Such rights and 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.

6.5 Legal Actions

6.5.1 Venue

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

6.5.2 Services of Process

Service of process on the Agency shall be made by personal service upon the Chair of the Agency or in such other manner as may be provided by law.

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

6.5.3 Applicable Law

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

6.5.4 Waiver of Jury Trial.

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

6.5.5 Early Termination by Participant.

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

7 GENERAL PROVISIONS

7.1 Notices, Demands, and Communications Among the Parties

Notices, demands, and communications between the Agency and the Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, or an overnight commercial delivery service to the principal offices of the Agency and the Participant, as designated in Section 1.6 hereof. Either Party hereto may change its address specified for notices herein by designating a new address by notice in accordance with this Section. All such notices and other communications shall be effective upon

actual receipt by the relevant Party or, if delivered by overnight courier service, upon the first business day after the date deposited with such courier service for overnight (next-day) delivery or, if mailed, upon the third business day after the date deposited into the mail or, if delivered by hand, upon delivery.

7.2 Severability

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

7.3 Nonliability of Agency Officials and Employees

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

7.4 Enforced Delay; Extension of Time and Performance

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

7.5 Approvals

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

7.6 Time of the Essence

Time shall be of the essence of this Agreement.

7.7 Interpretation

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

7.8 No Third-Party Beneficiaries

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

7.9 Effect and Duration of Covenants; Term of Agreement

The covenants contained in this Agreement shall, without regard to technical classification and designation, bind the Participant and Agency and any of their respective successors in interest. The covenants contained in this Agreement shall inure to the benefit of and in favor of the Agency and Participant and to their respective successors and assigns during the term of this Agreement. Except as otherwise provided herein, the term of this Agreement shall run from the date hereof until the expiration of the term of this Agreement, provided, the Parties shall continue to have the right to seek to enforce, or commence proceeding to enforce, the obligations of the other Party that arose prior to the termination of this Agreement.

8 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

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

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

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

- 8.4** Each Party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized by such Party and when executed and delivered will constitute the valid, legal and binding agreement and obligation of such Party enforceable against such Party in accordance with the terms hereof. Each person signing on behalf of the Agency and the Participant hereby represents, warrants and covenants that he or she has been duly authorized by the governing body or board of the Agency and the Participant, as applicable, to bind the Agency and the Participant, as applicable, to the terms and conditions hereof.
- 8.5** In the event any litigation ensues with respect to the rights, duties and obligations of the Parties under this Agreement, the unsuccessful Party in any such action or proceeding shall pay for all costs, expenses and reasonable attorney's fees incurred by the prevailing party in enforcing the covenants and agreements of this Agreement. The term "prevailing party," as used herein, shall include, without limitation, a Party who obtains legal counsel and (a) brings action against the other Party by reason of the other Party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment or (b) defends an action against brought by the other Party and the other Party fails to obtain substantially the relief sought, whether by compromise, settlement or judgment.

9 MORTGAGEE PROTECTIONS; ESTOPPEL

- 9.1** The Parties hereto agree that this Agreement shall not prevent or limit the Participant from encumbering the Project or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing ("**Mortgage**") with respect to the construction, development, use or operation of the Project and parts thereof. The Agency acknowledges that the lender(s) providing such Mortgages may require certain interpretations and modifications to this Agreement and the Agency agrees, upon request, from time to time, to meet with the Participant and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The Agency will not unreasonably withhold its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.
- 9.2** Notwithstanding any of the provisions of this Agreement to the contrary, the holder of a Mortgage (a "**Mortgagee**") shall not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Participant or other affirmative covenants of the Participant hereunder, or to guarantee such performance.
- 9.3** The Mortgagee of any Mortgage or deed of trust encumbering the Project, or any part or interest thereof, that has submitted a request in writing to the Agency in the manner specified herein for giving notices shall be entitled to receive written

notification from the Agency of any notice of non-compliance by the Participant in the performance of the Participant's obligations under this Agreement. If the Agency timely receives a request from a Mortgagee requesting a copy of any notice of non-compliance given to the Participant under the terms of this Agreement, the Agency shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of non-compliance to the Participant. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance for a period of one hundred twenty (120) days after the Mortgagee receives such written notice.

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

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

10 CONFIDENTIALITY

10.1 The Parties acknowledge and agree that this Agreement shall become a public record under Utah law, and that discussion regarding this Agreement shall take place before the Agency board in open session. The Agency covenants that it will hold all information obtained by it, or any person employed by or representing the Agency, related to the Participant's business in strictest confidence and the Agency covenants not to disclose, divulge or otherwise communicate in any manner to any person or entity, other than to those parties necessary to verify

compliance with this Agreement, provided that such parties are likewise under reasonable confidentiality obligations and not subject to public disclosure unless otherwise required by applicable laws.

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

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE TO THE PARTICIPATION AGREEMENT

**REDEVELOPMENT AGENCY OF
HERRIMAN CITY**

By: _____
Chair

Attest:

By: _____ (SEAL)
Secretary

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

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

By: _____
Name:
Title: Manager

Anthem Commercial, LLC, a Utah limited liability
company

By: _____
Name:
Title: Manager

STATE OF UTAH)
 : ss.
COUNTY OF _____)

In the County of _____, State of Utah, on this _____ day of _____, 2013, before me, the undersigned notary, personally appeared _____ and _____, the Chair and the Secretary, respectively, of the Redevelopment Agency of Herriman City, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

Notary signature and seal

STATE OF UTAH)
 : ss.
COUNTY OF _____)

In the County of _____, State of Utah, on this _____ day of _____, 2016, before me, the undersigned notary, personally appeared _____, the Manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of Anthem Center LLC, a Utah limited liability company, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

Notary signature and seal

STATE OF UTAH)
 : ss.
COUNTY OF _____)

In the County of _____, State of Utah, on this _____ day of _____, 2016, before me, the undersigned notary, personally appeared _____, the Manager of Anthem Commercial, LLC, a Utah limited liability company, a manager of Anthem Center LLC, a Utah limited liability company, who are personally known to me or who proved to me their identities through documentary evidence to be the persons who signed the preceding document in my presence and who swore or affirmed to me that their signatures are voluntary.

Notary signature and seal

Exhibit A
Project Area Plan

Exhibit B

Herriman City Ordinance No. __

Exhibit C

Legal Description of the Project Area

Exhibit D

Project Area Map

Exhibit E

Project Area Budget

Exhibit F

Infrastructure Improvements

Exhibit G

Interlocal Agreements

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