

**RDA Chairman**  
Kenneth Romney

**Executive Director**  
Duane Huffman

**RDA Secretary**  
Cathy Brightwell

## **West Bountiful City Redevelopment Agency**

550 North 800 West  
West Bountiful, Utah 84087  
Phone (801) 292-4486

**RDA Board**  
James Ahlstrom  
James Bruhn  
Kelly Enquist  
Debbie McKean  
Mark Preece

### **THE WEST BOUNTIFUL REDEVELOPMENT AGENCY WILL HOLD A MEETING ON TUESDAY, SEPTEMBER 1, 2015 AT 7:35 PM, AT THE WEST BOUNTIFUL CITY HALL, 550 NORTH 800 WEST**

#### **AGENDA AS FOLLOWS:**

1. Consider Resolution #R195-15, A Resolution of the West Bountiful City Redevelopment Agency Requesting an Extension of Sales Tax Payment Period Under the West Bountiful Commons Participation Agreement.
2. Approval of Minutes from the June 16, 2015 Meeting.
3. Adjourn to City Council Meeting.

According to the American's with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the meeting should contact Cathy Brightwell (City Recorder) at (801) 292-4486

*This agenda was posted on the State Public Notice website, the City website, emailed to the Redevelopment Agency Board, and sent to the Clipper Publishing Company on August 27, 2015.*

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## **West Bountiful City Redevelopment Agency**

550 North 800 West  
West Bountiful, Utah 84087  
Phone (801) 292-4486  
Fax (801) 292-6355

**RDA Board**  
James Ahlstrom  
James Bruhn  
Debbie McKean  
Mark Preece  
Kelly Enquist

**TO:** RDA Chairman and Board

**DATE:** August 27, 2015

**FROM:** Duane Huffman

**RE:** **Sales Tax Participation Period**

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As part of the development of the Commons at West Bountiful, the West Bountiful Redevelopment Agency, West Bountiful City, and Johansen-Thackeray Commercial Real Estate Services, L.C. entered into a Participation Agreement in June of 2004 outlining certain requirements of all parties. A subsequent amendment was approved in July of 2005.

Among of items, the Agreement establishes a financial obligation of the Agency to the developers by way of property tax increment and sales taxes received from the development, as received from the City. Between the original agreement and the amendment, the total amount of the obligation is \$10,800,000, plus a completion incentive and interest, which was estimated by the developers in January of this year to total \$15,624,373. The Agency is obligated to pay this amount only if it is generated from the development within certain timeframes.

For the sales tax payments, a ten-year term is set and referred to as the Sales Tax Payment Period. In the event that insufficient funding is received in the initial ten-year period, the Agreement contemplates an extension of up to another 10 years. In this regard, the Agreement reads:

“In the event that [the developers have] complied with [their] development obligations with respect to Phases I, II and III and has not received the total amount of the Agency's Participation Obligation, including the Completion Incentive, prior to the expiration of the initial ten (10) year Sales Tax Payment Period, then the Agency shall seek, in good faith, to obtain an extension from the City of the Sales Tax Payment Period for the amount of time estimated to be necessary for Participant to receive the full amount of the Participation Obligation that Participant is entitled to receive; provided, however, that in no event shall such extension be longer than an additional ten (10) years.”

In January of this year, the developers provided a letter (enclosed) stating that they did not expect to receive the full participation obligation by the end of the initial ten-year period (2015), and requested that the Agency fulfill the terms of the agreement by seeking in good faith the extension of the sales tax sharing period for a period of up to another ten years. Indeed, according to current figures, the developers received only \$3.5 million through 2014.

To fulfill the Agency's obligation per the Agreement, a meeting has been called for September 1, 2015, and a resolution prepared that formally requests the City to extend the Sales Tax Payment Period for up to an additional 10 years as necessary to fulfill the participation obligation. The developers are also expected to attend this meeting and may wish to address the Agency.

**WEST BOUNTIFUL CITY REDEVELOPMENT AGENCY**  
**RESOLUTION NO. R195-15**

**A RESOLUTION OF THE WEST BOUNTIFUL CITY REDEVELOPMENT AGENCY**  
**REQUESTING AN EXTENSION OF SALES TAX PAYMENT PERIOD**  
**UNDER THE WEST BOUNTIFUL COMMONS PARTICIPATION AGREEMENT**

**WHEREAS**, the West Bountiful City Redevelopment Agency (the “*Agency*”), West Bountiful City (the “*City*”), and Johansen-Thackeray Commercial Real Estate Services, L.C., and its approved successors and assigns (“*Participant*”) entered into a participation agreement dated June 30, 2004 (the “*Participation Agreement*”) with respect to the West Bountiful Commons Redevelopment Project Area (the “*Project Area*”).

**WHEREAS**, under the Participation Agreement, the City agreed to allocate to the Agency a portion of certain Sales Tax revenues generated within the Project Area for payment to Participant for a period of ten (10) years (the “*Sales Tax Payment Period*”).

**WHEREAS**, under Section 3.3.4.2 of the Participation Agreement, in the event Participant has complied with its development obligations but has not received the total amount of the Agency’s Participation Obligation (as defined in the Participation Agreement) within the Sales Tax Payment Period, the Agency shall seek, in good faith, to obtain an extension from the City of the Sales Tax Payment Period.

**WHEREAS**, the extension referred to above, if granted, would be for the period of time, not to exceed ten (10) years, estimated to be necessary for Participant to receive the full amount of the Participation Obligation that Participant is entitled to receive (the “*Extension*”).

**WHEREAS**, the development within the Project Area has been and continues to be an economic benefit to the community.

**WHEREAS**, the Participant has maintained the development within the Project Area to a high standard.

**WHEREAS**, the Agency finds that Participant has not received, and will not receive, the total amount of the Agency’s Participation Obligation within the Sales Tax Payment Period. Without waiving any of its rights under the Participation Agreement, the Agency desires to seek, in good faith, to obtain the Extension from the City in accordance with the Participation Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE WEST BOUNTIFUL CITY REDEVELOPMENT AGENCY:**

**1. REQUEST TO EXTEND SALES TAX PAYMENT PERIOD.** The Agency, in good faith, hereby requests the City to grant the Extension.

**2. NO WAIVER OF RIGHTS.** The Agency hereby reserves all rights under the Participation Agreement, and nothing in this Resolution shall be construed as a waiver of any

such right or of any obligation of any other party to the Participation Agreement.

**3. DEFINITION OF TERMS.** Capitalized terms in this Resolution that are not otherwise defined shall have the meanings ascribed to them in the Participation Agreement.

**4. AUTHORIZATION.** The Agency’s *Executive Director* is hereby authorized and directed to deliver, file, and record this resolution; and to execute, deliver, file, and record any other documents, approved by the City Attorney, and take any other actions, necessary to carry out the purposes of this resolution.

**6. EFFECTIVE DATE.** This resolution will take effect upon adoption.

ADOPTED and APPROVED this 1st day of September, 2015.

\_\_\_\_\_  
Kenneth Romney, Chairman

**VOTING:**

James Ahlstrom	Yea	_____	Nay	_____
Mark Preece	Yea	_____	Nay	_____
James Bruhn	Yea	_____	Nay	_____
Debbie McKean	Yea	_____	Nay	_____
Kelly Enquist	Yea	_____	Nay	_____

***Attest:***

\_\_\_\_\_  
Cathy Brightwell, Secretary

**WEST BOUNTIFUL  
REDEVELOPMENT AGENCY**

**JUNE 16, 2015  
PENDING**

1 **Minutes of the West Bountiful Redevelopment Agency Meeting held on June 16, 2015,**  
2 **held at 550 N 800 West, West Bountiful, Utah.**

3  
4 Those Present: Chairman Ken Romney; Board members James Ahlstrom, James Bruhn,  
5 Kelly Enquist, Debbie McKean; Duane Huffman (Executive Director); Cathy Brightwell  
6 (Secretary), Patrice Twitchell, Ben White, Chief Hixson, Steve Maughan, Paul Holden, Brady  
7 Tracy, Alan Malan

8  
9 Mayor Romney called meeting to order at 7:30pm

10  
11 **1. Consider Approval of Resolution R125-15, a Resolution Adopting the West**  
12 **Bountiful RDA Fiscal Year 2015-2016 Budget and Certified Tax Rate.**

13 Mr. Huffman discussed two changes that had been made subsequent to the approval of  
14 the tentative budget. One reflects Board compensation of \$450 for the year. The second  
15 makes adjustments to account for salary changes of staff in the City budget, a portion of  
16 which affect the RDA Budget.

17 **MOTION:** Mark Preece moved to adopt Resolution R125-15, a Resolution  
18 Adopting the West Bountiful RDA Fiscal Year 2015-2016 Budget and  
19 Certified Tax Rate. James Bruhn seconded the motion which passed by  
20 unanimous vote of all members present.

21  
22 The vote was recorded as follows:

23 James Ahlstrom – Aye  
24 James Bruhn – Aye  
25 Kelly Enquist – Aye  
26 Debbie McKean – Aye  
27 Mark Preece – Aye  
28

29 **2. Approval of Minutes from the February 3, 2015 Meeting.**

30  
31 **MOTION:** James Bruhn moved to approve the minutes from the February 3, 2015  
32 RDA Meeting. Debbie McKean seconded the motion which passed by  
33 unanimous vote of all members present.

34  
35 **3. Adjourn the RDA meeting.**  
36





January 20, 2015

***VIA FEDERAL EXPRESS***

Mayor Ken Romney  
City Manager  
West Bountiful City  
550 North 800 West  
West Bountiful, Utah 84087

**Re: The Commons at West Bountiful**

Dear Mayor Romney,

In 2002 we began working on The Commons at West Bountiful. Although the Participation Agreement with the City which formalizes the obligations of the various parties is dated June 30, 2004, work on the project began several years earlier. It was an extremely complicated project, involving 27 property owners. The project included numerous buildings in widely different states of repair and included some derelict, rat infested buildings. As you will recall, the area was severely underutilized with many vacant parcels and buildings. It was a "redevelopment project" in the truest sense of the word. The development of this portion of West Bountiful required a developer with sufficient determination to go the extraordinary lengths necessary to clean up the property.

We ran into issues with several property owners that wanted unrealistic prices for their property and we had numerous meetings with City officials before we agreed on the final terms and conditions upon which those parcels were purchased. The only way we could proceed on the project was with the commitment made by the Agency, using monies received from the City, to reimburse us for a portion of the costs for acquisition and development of the project. Those agreements were reduced to writing in the Participation Agreement. There is one amendment to the Participation Agreement dated July 5, 2005 which included notice that the Participant's rights under the agreement had been assigned to West Bountiful Commons Partners, L.C. Reference to the Participation Agreement in this letter refers to the Participation Agreement as amended. The Participation Agreement provides that the developer is to be reimbursed approximately \$15,624,373 (see below).

At the time we started the redevelopment process, Randy Sant was retained as a consultant to the City and/or The West Bountiful City Redevelopment Agency (the "Agency"). Randy, I believe in conjunction with Jason Burningham, provided economic analysis regarding the projected tax increment and sales tax that could be generated from the project. After careful consideration of all available information, we decided to proceed with the project. As you know, the development of the project has been completed and continues to be a boon to the City. I believe that a review of history

of the development would show that the development was constructed as promised and when promised. In fact, I have been in meetings on several occasions in which Jason Burningham has stated that we not only complied with the requirements that the City imposed on us, but that we in fact exceeded those requirements and developed a shopping center that is truly a benefit to the City. The architecture, variety of tenants and quality of tenants have resulted in a project that is a significant asset to the City and its residents.

As you know, our anticipated receipt of the approximately \$15.6 Million "Participation Obligation" under the Participation Agreement was based solely on projected receipt of tax increment and sales tax. We fully acknowledge that the Agency's obligation to pay the Participation Obligation is based on actual monies received for real property tax increment and sales tax related to the project.

As amended, the Participation Agreement provides that Tax Increment received by the Agency would be paid to the Participant "over a twenty-five (25) year period of time." The Participation Agreement provides that the Sales Tax would initially be paid "for an initial period of ten (10) years which is defined as the "Sales Tax Payment Period." The Sales Tax Payment Period began January 2006, which was the date we received the first payment of Sales Tax. We note, however, that since it was uncertain at the time of our discussions with the Agency and the City whether or not the Participant would receive the Agency's portion of the Participation Obligation during the initial ten (10) years, the parties agreed to the following language which is in Section 3.3.4.2 of the Participation Agreement:

In the event that Participant has complied with its development obligations with respect to Phases I, II and III and has not received the total amount of the Agency's Participation Obligation, including the Completion Incentive, prior to the expiration of the initial ten (10) year Sales Tax Payment Period, the Agency shall seek, in good faith, to obtain an extension from the City of the Sales Tax Payment Period for the amount of time estimated to be necessary for Participant to receive the full amount of the Participation Obligation that Participant is entitled to receive; provided, however, that in no event shall such extension be longer than an additional ten (10) years.

In Section 3.3 of the Participation Agreement, the Participation Obligation is defined as follows:

Participation Obligation (see Section 3.3.1)	\$10,800,000
Interest (through 12/31/13) (see Section 3.3.2)	<u>2,824,373</u>
Sub-total	\$13,624,373
Completion Incentive (see Section 3.4)	<u>2,000,000</u>
Total Obligation	\$15,624,373

Mayor Ken Romney  
January 20, 2015  
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As the Agency records will show, the total of the payments applicable to the Participation Obligation that have been paid to us as the "Participant" under the Participation Agreement through December 31, 2014 is:

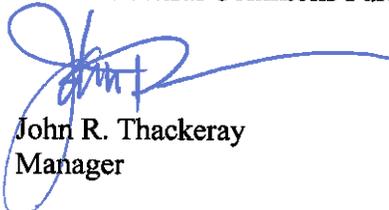
Sales Tax	\$2,462,435.58
Property Tax Increment	<u>\$1,210,279.17</u>
Total	\$3,672,714.75

Currently, \$11,951,658 of the Participation Obligation remains unpaid. Based on the date that the first payment of Sales Tax was received, as noted above, the initial ten (10) year period will expire December 31, 2015. Based on the payment history for both the Tax Increment and Sales Tax, it is unreasonable to expect that the full amount of the Participation Obligation will be paid prior to the end of that initial ten (10) year period. Therefore, it is respectfully requested that the Agency formally request an extension of the Sales Tax Payment Period from the City as contemplated by Section 3.3.4.2 of the Participation Agreement. Based upon the payment history for both the Tax Increment and Sales Tax, we request that the extension be for the full ten (10) years permitted by Section 3.3.4.2.

While the initial ten (10) year Sales Tax Payment Period expires in December 2015, we are in the process of refinancing this project. As you would expect, as part of the underwriting for any new loan secured by the project, it is critical that agreements be in place which will permit the Participant to receive the full amount of the Participation Obligation as originally agreed in the Participation Agreement. An extension of the Sales Tax Payment Period will not change the fact that the Agency's obligation to pay is always subject to the City's and the Agency's actual receipt of the Tax Increment and Sales Tax which can then be remitted through the Agency to the Participant as contemplated by the Participation Agreement as agreed to in 2004.

We continue to appreciate our relationship with the City. Please advise if we can provide additional information that will be useful in support of the Agency's request to the City for an extension of the Sales Tax Payment Period. We will, of course, make ourselves available to attend meetings of the Agency or the City Council as invited to assist in the preparation and approval of the requested extension.

Very truly yours,  
West Bountiful Commons Partners, L.C.



John R. Thackeray  
Manager

cc: Duane Huffman, City Manager  
Read R, Hellewell  
Craig Smith  
Jason Burningham