REQUEST FOR BOARD ACTION

Action: **Request feedback from the Board**

Presenter: Chris Pengra

Department Sponsor: Economic Development Director

Agenda Type: Business Item

Time Requested: 10 minutes presentation, 10 minutes Council

Meeting Date Requested : 2/23/2022

Deadline of item : 2/23/2022

(Council may elect to provide more or less time)

Approval Signatures *(required for all transmittals)*

Submitter: Chris Pengra (Feb 15, 2022 11:16 MST)

Dept. Head: Chris Pengra (Feb 15, 2022 11:16 MST)

Reviewed as to Form:

Executive:

Council Office:

1. **AGENDA SUBJECT**
   Consider **Resolution No. 231** authorizing the execution of a participation agreement between the Redevelopment Agency of the City of West Jordan and Wagscap, LLC for the West Jordan Copper Hills Marketplace Community Development Area.

2. **EXECUTIVE SUMMARY**
   This participation agreement was drafted to create a project area plan for development of an auto mall and associated retail. The agreement was designed to ensure development of the project area in a manner that maximizes value to the Redevelopment Agency (RDA) and the City by reducing auto related sales tax leakage to surrounding communities. This agreement tightly controls the RDA's obligation to sell property at a discount, by clearly defining the types and retail activities that will be allowed and the area dedicated to them. The agreement seeks to prevent awarding any incentive until the property is subdivided, all infrastructure is delivered, and a building permit is approved for each lot. The RDA has exclusive right to deny the sale of property to the Participant for any reason, granted that the RDA reimburse the developer for pre-approved infrastructure costs and pay a development fee for the corresponding acreage.

3. **TIME SENSITIVITY / URGENCY**
   Legislation currently making its way through the State Legislature proposes a prohibition on certain retail incentives. This agreement would be prohibited under the existing language. The bill language as it exists today would become effective as of July 1, 2022 if signed into law as is. There is some risk, though likely limited, that the bill language could change to move up the effective date. The Legislative session will end on March 4th.

4. **BUDGET IMPACT**
   This agreement will not provide cash incentives and will not reimburse sales tax increment to the business. The agreement obligates the RDA to sell land to the developer for the Anchor Parcel (Truck Ranch) at a discounted price of $7.50 psf for approximately 7.2 acres. This represents a discount of approximately $940,896 from the appraised value of $10.50 psf.

Additional auto dealership lots may be developed on 9.7 additional acres. These lots may be sold at the discretion of the RDA, for the same discounted price. If these additional lots are developed and sold, the total discount for the additional lots would be approximately $1,267,596, for a total incentive of $2,208,492.

Under this agreement, property would not be sold until it is subdivided, and all roads, curb, gutter, sidewalks, and utilities are constructed for the entire development and a building permit is issued for the lot proposed for purchase. The discounted sale price will be held for a period of thirty-six months from the time of the completion of all Site Improvements, at which time the discount price of dealership lots will be 80% of the then appraised value.

The remaining land for roads, and retail uses will be sold for full appraised value at $10.50 psf. This 19+ acre parcel was originally purchased in December of 2015 for $5.31 psf. Estimated sales tax distributions to West Jordan City over a 10-year period are projected to be between $12M and $18M.

5. DEPARTMENT RECOMMENDATION

The department recommends approving the participation agreement.

6. MOTION RECOMMENDED

I move that the Board approve **Resolution No. 231** authorizing the execution of a participation agreement for the West Jordan Copper Hills Marketplace Community Development Project Area.

7. PACKET ATTACHMENT(S) – Complete _____

- ✔ Resolution No. 231
- ✔ DRAFT WAGSCAP Participation Agreement
- ✔ Auto Mall Report

REDEVELOPMENT AGENCY OF WEST JORDAN CITY

RESOLUTION NO. 231

A RESOLUTION APPROVING A PARTICIPATION AGREEMENT PROVIDING FOR THE SALE OF REAL PROPERTY

WHEREAS pursuant to the provisions of the Utah Limited Purpose Local Government Entities - Community Reinvestment Agency Act, specifically Utah Code Annotated § 17C-3, the Redevelopment Agency of the City of West Jordan (the "**Agency**") created the West Jordan Copper Hills Marketplace Community Development Project Area ("**Project Area**"); and

WHEREAS the Agency is authorized to enter into agreements with the landowner, governmental entities, private entities, and others; and

WHEREAS the Agency finds the proposed participation agreement, attached as **Exhibit A** (the "**Participation Agreement**"), in harmony and consistent with the Plan for the Project Area and in the best interests of the Agency and the City of West Jordan; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN AS FOLLOWS:

1. The Participation Agreement is approved, attached hereto as **Exhibit A**.

2. The Agency Executive Director is authorized to execute the Participation Agreement on behalf of the Agency.

3. This resolution takes effect upon adoption.

APPROVED AND ADOPTED this ____ day of _____ 2022.

REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN

_____

Attest: Kayleen Whitelock, Chairperson

_____

Cindy M. Quick, Secretary

Voting by the City Council	**"YES"**	**"NO"**
Board Chairperson Kayleen Whitelock	☐	☐
Board Vice-Chair Kelvin Green	☐	☐
Board Member Pamela Bloom	☐	☐
Board Member Zach Jacob	☐	☐
Board Member Christopher McConnehey	☐	☐
Board Member David Pack	☐	☐
Board Member Melissa Worthen	☐	☐

Exhibit A

Participation Agreement

PARTICIPATION AGREEMENT
by and between the
REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN
and
[WAGSCAP, LLC]
FOR THE WEST JORDAN COPPER HILLS MARKETPLACE COMMUNITY DEVELOPMENT PROJECT AREA

The parties hereto, the **Redevelopment Agency of the City of West Jordan**, a political subdivision of the State of Utah (the "**Agency**"), and **[Wagscap, LLC]**, a Utah [limited liability company] ("**Participant**", the Agency and the Participant may also be individually referred to as "**Party**" and collectively as "**Parties**"), as of the date this Agreement is executed by the last Party hereto (the "**Effective Date**"), hereby covenant and agree as follows:

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 West Jordan Copper Hills Marketplace Community Development Project Area (the "**Project Area**") by providing for the sale of real property to the Participant at less than fair market value to cause the Participant to develop and market multiple buildable lots for multiple automobile dealerships and compatible retail and commercial establishments in the Project Area, and develop and operate one or more automobile, recreational vehicle, and/or powersports dealerships and related facilities.

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

This Agreement promotes economic development within the City of West Jordan (the "**City**"), and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to Utah Code Title 17C, the Limited Purpose Local Government Entities – Community Reinvestment Agency Act, as amended (the "**Act**").

1.3. The Project Area

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

1.4. The Plan

This Agreement complies with the provisions of the Plan, as adopted and ordained on January 13, 2016 by the governing board of the Agency and by the city council of the City of West Jordan (the "**Council**") in accordance with Section 17C-3-106 of the Act.

1.5. Description of Project Site

The project is expected to include several used automobile dealerships, a powerboat dealership, and compatible retail and commercial establishments (the "**Project**"). The Project will be located within the Project Area and shall consist of a parcel of approximately 19.81 acres (Salt Lake County Parcel No. 26024260030000) (the "**Project Site**"). The Project Site is shown in detail on the Project Site Map, attached hereto as **Exhibit A**, and described in the description, attached hereto as **Exhibit B**. The Project Site is currently owned by the Agency, but may be purchased, in whole or in part, by the Participant upon the satisfaction of certain conditions and according to the terms set forth in this Agreement.

1.6. Parties to the Agreement

1.6.1. The Agency

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Act. The address of the Agency for purposes of this Agreement is:

Redevelopment Agency of the City of West Jordan
Attn: Chris Pengra
8000 S. Redwood Rd.
West Jordan, UT 84088

With a copy to:
Smith Hartvigsen PLLC
257 East 200 South STE 500
Salt Lake City, UT 84111
Attn: Adam S. Long

1.6.2. The Participant

The Participant is [Wagscap, LLC], a Utah [limited liability company] lawfully registered to do business in Utah. The Participant's address for purposes of this Agreement is:

Wagscap, LLC
Attn: Jadon Wagner
4697 S Cherry Street

Murray Utah 84123

1.7. Prohibition against Certain Changes

1.7.1. Transfers of Property

The Participant represents and agrees that, during the term of this Agreement, the Participant shall not deed, sell, convey, lease, or otherwise alienate the Project Site (as defined above) or any portion thereof without the prior written approval of the Agency, and that the Agency may withhold its approval if such deed, sale, conveyance, assignment or alienation or lease would result, in the sole judgment of the Agency, in the economic development goals of the Agency not being met.

Prior to, or at the closing of, a sale or transfer of the Project Site or any portion thereof, as approved by the Agency as set forth in this section, the Participant shall pay the Agency in accordance with Section 2.2, below.

1.7.2. Assignment or Transfer of Agreement

The Participant represents and agrees for itself and its successors and assigns that during the term of this Agreement the Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the Agency. The attempted or actual assignment or delegation of this Agreement without the prior written consent of the Agency is a material breach of this Agreement, and relieves the Agency of any obligation to the Participant under this Agreement. As a condition of the Agency approving an assignment of this Agreement by the Participant the Agency may, among other things, require the proposed assignee to execute an acknowledgement of its acceptance to perform all duties and obligations of the Participant under this Agreement.

1.7.3. Transfer to Tax-Exempt Organization

Notwithstanding anything in this Agreement to the contrary, any transfer, whether voluntary or involuntary, or any attempt by the Participant or its successor(s) in interest to transfer any of the real or personal property within the Project Site to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from *ad valorem* property taxation without the prior written consent of the Agency shall be a material default of this Agreement and entitle the Agency, in addition to any remedy available to the Agency at law or equity, at its sole discretion, to immediately require payment from the Participant of all amounts received from the Agency and payment of an amount equal to all discounts from fair market value as to property sold by the Agency to the Participant under this Agreement.

1.7.4. Continuing Obligations

In the absence of a specific written agreement by the Agency, no assignment or transfer of this Agreement, in whole or in part, or approval of this Agreement by the Agency, relieves the Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement are and will remain binding upon the Participant and its successors and assigns.

2. PROJECT SITE

The Agency owns the Project Site of approximately 19.81 acres. The Project Site is located within the Project Area. In order to encourage development within the Project Area, the Agency agrees to sell the Anchor Lot (as defined below) to the Participant under the terms and conditions set forth below and may, at its sole discretion, sell the Dealership Lots and Remainder under the terms and conditions set forth below. All inspections and other due diligence relating to the sale of the Project Site or any portion thereof shall be the responsibility of the Participant. The Agency agrees to allow such access to the Project Site or any portion thereof as may be reasonably necessary for such due diligence to be completed by the Participant. The Agency makes no representations or warranties as to the fitness of the Project Site or any portion thereof, including current zoning, for development of the Project or any portion thereof, the condition of the Project site or any portion thereof, or the availability or likelihood of approvals and permits from the City or other entities that may be necessary for the development contemplated herein.

2.1. Concept Plan of Project Site and Subdivision

The plan for the Project Site involves multiple facilities to be developed over time. The Project Site is currently a single parcel, which may be subdivided by the Agency, provided that the Participant performs all required tasks and bears all costs relating to the subdivision process (the "**Subdivision**"). In the event the Project Site is subdivided in phases or re-subdivided, each such process is a Subdivision, provided, however, that the first Subdivision must establish the Anchor Lot (defined below). The lots created by the Subdivision are the "**Lots**." The Participant shall cause the Subdivision to generally allow for the Project Site to be developed pursuant to the terms described in this Section 2.1 and depicted in the Project Concept Map attached hereto as **Exhibit C**.

a) The Subdivision will provide for an anchor tenant on a Lot of approximately 7.2 acres (the "**Anchor Lot**") which shall be a Truck Ranch facility with an integrated Boat Ranch facility and a customization shop and retail sales center for truck-related products (the "**Anchor**"). The Anchor Lot shall be located at the northwest corner of the Project Site.

b) The Subdivision will provide for approximately 9.7 additional acres of the Project Site to be auto dealerships, with Lots sized between 2 and 4 acres each (the "**Dealership Lots**").

c) The remaining portions of the Project Site will be for necessary streets and easements and retail and compatible commercial uses on Lots (together, the "**Remainder**").

Compatible commercial uses include, without limitation, restaurants (including drive-through restaurants), automobile related retail stores or service, and powersport and recreational vehicle related retail stores or services. Uses not listed in this Section 2.1 may be approved by the Agency's Executive Director, at the Executive Director's sole discretion, upon written request by Participant and in accordance with Sections 2.2, 3.1 and 3.2 below.

d) The Participant may not submit any applications for land use approvals related to the Project Site or any portion thereof without prior written consent of the Agency.

2.2. Sale of Project Site

In order to cause the construction and operation of the Anchor and other facilities on the Project Site, the Agency agrees to sell the Anchor Lot, and consider offers to sell the Dealership Lots, to the Participant (the "**Purchase Option**") for the sum of seven dollars and fifty cents per square foot ($7.50/sf) (the "**Dealership Discount Price**") and ten dollars and fifty cents per square foot ($10.50/sf) for the Remainder or any portion thereof (the "**Remainder Discount Price**") (together the Dealership Discount Price and Remainder Discount Price are the "**Discount Prices**") subject to the following conditions that must be satisfied prior to the sale of the respective Lot to the Participant:

a) Anchor Lot:
   1. The Participant must purchase and develop the Anchor Lot before, or at least contemporaneously with, any other Lot.
   2. The Participant shall purchase, and the Agency shall sell, the Anchor Lot with the closing of that transaction occurring within sixty (60) days following issuance of the building permit for the building as described in Section 3.1.1.
   3. The Participant must have obtained any necessary approval to operate the Anchor as a Truck Ranch dealership to be located on the Anchor Lot prior to the sale of the Anchor Lot to the Participant.
   4. The Agency Executive Director must provide written approval of a conceptual design plan for the Anchor submitted by the Participant to the Agency as described in Section 3.1, below.
   5. The Participant must have obtained a building permit from the City for vertical construction of the Anchor on the Anchor Lot, unless separately agreed to in writing by the Parties.

b) Dealership Lots:
   1. The Participant must have obtained all applicable approvals for a used auto dealership to be located on a Dealership Lot prior to the purchase of the respective Dealership Lot.

2. The Agency's Executive Director must provide written approval of a conceptual design plan for the facilities on the respective Dealership Lot submitted by the Participant to the Agency as described in Section 3.2, below.
3. The Participant or future purchaser must have obtained a building permit from the City for vertical construction of the facility on the respective Dealership Lot.
4. Unless otherwise agreed to in writing by the Agency, the dealership operated on the particular Dealership Lot must meet the following standards:
    i. The dealership shall not seek to market or sell salvage vehicles, branded title vehicles, or vehicles for which notice to a prospective purchaser would be required under Utah Code § 41-1a-1004 as a business strategy and transactions involving such vehicles shall not constitute a material portion of the dealership's business.
    ii. The Dealership shall not seek to market, sell, or display non-functional, or visibly damaged (excluding normal wear and tear such as minor scratches and dents) vehicles as a business strategy, and transactions involving such vehicles shall not constitute a material portion of the dealership's business.
    iii. The majority of vehicles marketed, displayed, and sold by the Dealership must have a suggested sale price of $15,000 or greater.
    iv. Vehicles marketed, displayed, or sold by the Dealership with a suggested sale price of less than $15,000 shall constitute a minority portion of the Dealerships sales. Such vehicles should be primarily resulting from inventory acquired through customer trade-ins and not intentional wholesale purchases for retail inventory.

c) <u>All Lots</u>: With respect to any Lot:
1. the Participant or intended future purchaser must demonstrate, in the sole opinion of the Agency, that the Participant or other purchaser has sufficient capital on hand, or can obtain sufficient financing, to construct, equip, open and operate the planned facility as contemplated by this Agreement before purchase of the respective Lot; and
2. the Agency Executive Director must approve, in writing, the proposed use and facility, as presented to the Agency in a conceptual design plan by the Participant (Sections 3.1 and 3.2, below), to be constructed and operated on the respective Lot; and
3. the Participant must complete the installation of all improvements required by the Agency for the respective Lot; and

4. each purchase of a Lot must also include the purchase of property sufficient for the roads, easements, access routes, and utility infrastructure necessary for the development of that Lot; and
5. each purchase of a Lot must be subject to a separate purchase and sale agreement between the Agency and Participant, substantially in the form attached hereto as **Exhibit D**. The Agency Executive Director shall have authority to execute such agreements, subject to Participant's compliance with the terms of this Agreement.

d) All Lots, excluding the Anchor Lot: Prior to the sale of any Lot (other than the Anchor Lot), all Site Improvements (as defined below) must be installed as reasonably necessary for the development of the entire Project Site approximately as contemplated by this Agreement, and shown on **Exhibit A**. "**Site Improvements**" means (i) all utility infrastructure identified on any approved site plan for the Project Site and on the subdivision plat(s) for the Subdivision(s) creating each Lot, including but not limited to water, sewer, electricity, gas, and telecommunications infrastructure, (ii) all roads and accessways, including curbs, gutters, and sidewalks as applicable, whether public or private, as shown on any site plan for the Project Site and on all Subdivision Plat(s) for the Project Site, and (iii) all easements and other property rights necessary for the installation, operation, and maintenance of the items listed under (i) and (ii) in this sentence.

e) Expiration Date. If the sale of any Lot to the Participant is not completed by the earlier of (i) thirty-six (36) months from the date on which all Site Improvements for that Lot have been completed or (ii) forty-two (42) months following the approval of the Subdivision by the City for the particular Lot (the "**Expiration Date**"), then the Discount Prices for any Lot still owned by the Agency as of the Expiration Date shall be adjusted to the greater of:

1. For the Anchor and Dealership Lots
   i. Eighty percent (80%) of the fair market value of the Lot as of the date of the purchase or transfer as determined by an appraiser of Agency's choosing; and
   ii. Seven dollars and fifty cents per square foot ($7.50/sf); and

2. For the Remainder:
   i. the fair market value of the Lot as of the date of the purchase or transfer as determined by an appraiser of Agency's choosing; and
   ii. Ten dollars and fifty cents per square foot ($10.50/sf).

f) Sale of Individual Lots. The Agency may, in its reasonable discretion, sell individual Lots to Participant independent of each other Lot.

g) No Guarantee of Sale. The Agency is not required to sell any Lot to the Participant. In the event that Participant makes a bona fide offer pursuant to this Agreement which the Agency declines to complete, the Agency shall (i) reimburse the Participant for the actual and reasonable hard costs of installing infrastructure ("**Infrastructure Costs**") benefitting the particular Lot which the Agency and Participant agreed upon, in advance and in writing, pursuant to Section 3.2 of this Agreement and (ii) pay to the Participant a development fee of one dollar per square foot ($1.00/sf) for the respective Lot, provided that the respective Lot has been developed to such a condition that all improvements benefitting the particular Lot as shown on the subdivision plat and, if applicable, the Site Plan have been (i) installed to the property line and, (ii) for improvements that require acceptance by the City, have been accepted by the City. The Infrastructure Costs for a particular Lot, as contemplated by the preceding sentence, shall be calculated based on the following formula:

$$\frac{Area\ of\ the\ Lot}{Total\ area\ of\ Project\ Site}\ x\ Cost\ of\ all\ Site\ Improvements = Infrastructure\ Costs\ to\ be\ reimbursed$$

h) Right of First Refusal. The Agency may, in its sole discretion and for a period of five (5) years following the sale of any Lot to the Participant, regardless of subsequent sales, transfers, or conveyances of any kind from Participant to a third party, exercise a right of first refusal on the respective Lot. The Participant shall provide the Agency with the terms of each bona fide offer to purchase any Lot from the Participant (each an "**Offer**"). If the Agency matches the Offer, the Participant shall sell the respective Lot to the Agency. The Participant expressly authorizes the Agency to record a Notice of Interest or similar document against any Lot at or following the sale of the Lot to the Participant to facilitate the exercise of this right. In the event the Agency elects not to exercise a right of first refusal following an Offer, the Participant may only sell the respective Lot to the prospective buyer if the prospective buyer agrees in writing to be bound to the terms of this Section 2.2(g) for any remaining period.

i) Agency Approval. The Agency hereby grants its Executive Director authority to review, approve, and execute documents related to:

1. the purchase and sale of the Project Site or any portion thereof and/or Lots as anticipated by this Agreement on terms that do not materially differ from the applicable terms in this Agreement; and
2. the proposed uses, in the Executive Director's reasonable discretion, as presented by the Participant for the Remainder Lots and Dealership Lots; and
3. other actions reasonably required to facilitate the terms of this Agreement, provided however, that the Agency Board must approve the repurchase of

the Project Site or any portion thereof, or the exercise of the Agency's right(s) of first refusal under this Agreement.

3. DEVELOPMENT AND OPERATION OF THE PROJECT SITE

3.1. Development of the Anchor

3.1.1. Development Standards

The Participant will at all times be responsible for all development and operation of the Anchor pursuant to the Plan and this Agreement. The Participant shall construct and equip the Anchor and improve the Anchor Lot in compliance with the terms of this Agreement and the Project Concept Map attached as **Exhibit C**, and shall at its own expense construct upon the Anchor Lot buildings and structures reasonably required for the operation of the Anchor. The construction of the Anchor shall be to a level meeting or exceeding the standards of other such dealerships in the market area.

Additionally, the construction shall include:

- the installation of all public and private utilities necessary for operation of the Anchor not already otherwise provided; and
- a building or buildings of no less than 5,000 interior square feet for showrooms, offices, related retail facilities, and other services; and
- no less than 50,000 square feet of paved ground for display of vehicles; and

3.1.2. Responsibility for Development Plans and Permits

The Participant must responsibly prepare all plans and secure all permits for the development of the Anchor. All plans must be in accordance with all applicable federal, state and local laws and regulations, subject to any legally obtained concessions, special permits and/or variances. Before commencing construction of Anchor, the Participant must secure or cause to be secured all zoning or land-use approvals and permits required in order to proceed with the construction of the Anchor. Expenses for such applications, permits, and approvals shall be borne by the Participant.

3.1.3. Construction and Continuous Operation

The Participant agrees to construct and operate the Anchor on the Anchor Lot according to the terms of this Agreement. After construction of the Anchor, the Participant shall open and continuously operate on the Anchor Lot a full-service Truck Ranch facility including, among other things, facilities and equipment for used automobile and powersport vehicle sales, a full-service auto repair facility on the Anchor Lot, and a retail sales facility for related products. Any discontinuance of operation shall be a material breach of this Agreement and shall entitle the Agency to the remedies provided for herein.

3.1.4. Commencement of Operations

Such operations as described in Section 3.1.3 shall begin no later than thirty (30) months following the Effective Date of this Agreement (the "**Anchor Expiration Date**"). For purposes of this section, the Anchor shall be deemed to be in operation on the date that motor vehicles are offered for sale to the public, the showroom is open to the public, and the service facilities are open for business.

3.2. Development of other Lots

The Participant shall develop all Lots. Development of a Lot includes, but not limited to, final subdivision plat approval, site plan approval (if applicable), any necessary grading, installation of access roads and utility infrastructure as shown on the applicable subdivision plat and site plan, and building permit issuance for vertical construction on the Lot. Notwithstanding, the Participant may choose at its discretion to phase Subdivision of individual Lots in order to accommodate the specific lot sizes and shapes needed to attract quality dealerships and retail businesses. Participant shall submit use and design plans to the Agency for review, which the Agency Executive Director may approve in the Executive Director's sole discretion.

3.3. Development Standards, Plans and Permits

The Participant must responsibly prepare all plans and secure all permits for the development of the respective Lot. All plans must be in accordance with all applicable federal, state and local laws and regulations, subject to any legally obtained concessions, special permits and/or variances. Before commencing construction of Anchor, the Participant must secure or cause to be secured all zoning or land-use approvals and permits required in order to proceed with the construction of Anchor. Expenses for such permits and approvals shall be borne by the Participant.

3.4. Operation of Dealerships

The Participant agrees to construct and operate the Anchor on the Anchor Lot according to the terms of this Agreement for a continuous period of at least three (3) years from the commencement of operations as described in Section 3.1.4.

4. OBLIGATIONS OF THE PARTIES

4.1. Building Permits and Fees

The Participant shall be responsible for obtaining all necessary permits and shall pay all building permit fees, impact fees and other fees required to construct the Anchor and other facilities.

4.2. Design and Layout of Utility Infrastructure

The Participant agrees to cooperate in good faith with the City and the owners of real property surrounding the Project Site to design utility infrastructure necessary to serve the Project Site in

such a way that the utility infrastructure can also conveniently serve adjacent and nearby properties.

4.3. Access to Lots

The Participant agrees to cooperate in good faith with the Agency to plan and construct the roads serving the Project Site allowing vehicular and pedestrian access to any portion of the Project Site that will still be owned by the Agency at the time the Participant wishes to purchase a Lot (each a "**Retained Lot**"). In no event will the Agency be obligated to transfer title to any Lot to Participant prior to obtaining access easements and related improvements to the Agency's satisfaction to all Retained Lots. It is not the intention of the Parties for the Participant to dedicate land for public roads from the Project Site, although Participant agrees to dedicate public utility easements where necessary for service and maintenance of utility infrastructure.

4.4. Payment of Sales and Use, Real Property, and *Ad Valorem* Taxes

During the term of this Agreement, the Participant and any successors in interest agree to pay, or cause to be paid, all applicable sales and use taxes, all real property and other *ad valorem* taxes and assessments assessed against any portion of the Project Site owned by the Participant or improvements thereon or any other property, including personal property, located within the any portion of the Project Site owned by the Participant at the respective time. The Participant must remove, or must cause to be removed, any levy or attachment made on the Project Site or any portion thereof, or any Lot or any portion thereof, or must assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder or default on any lease thereof.

4.5. Declaration of Invalidity

If a court of competent jurisdiction declares that the Agency cannot perform any of the acts contemplated by this Agreement, invalidates the Project Area, or takes any other action which prevents the Agency from performing under this Agreement, the Agency shall be released from such obligations hereunder.

4.6. Nature of the Participant's Obligations

To qualify to purchase any Lot as set forth herein, the Participant shall fulfill all of the obligations in this Agreement.

4.7. Responsibility of the Agency

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. 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 appropriate hearing (if required), review, or compliance with any other requirement.

4.8. Funding Responsibility

The Parties understand and agree that funding for the purchase of any Lot and for the construction of Anchor any other facility and related infrastructure improvements comes entirely from the Participant's internal capital or from financing obtained by the Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

4.9. Hold Harmless Agreement

The Participant agrees to defend and hold the Agency and its directors, officers, agents, employees, representatives, contractors, attorneys and consultants harmless for any and all claims, liability, and damages arising out of any work or activity on the Project Site by the Participant and its directors, officers, agents, employees, consultants and contractors.

4.10. Hazardous, Toxic, and/or Contaminating Materials

The Participant agrees to defend and hold the Agency its directors, officers, agents, employees, representatives, contractors, attorneys and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials on or from the Anchor, any other facility, and the Project Site, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the Agency or where such claims existed (regardless of whether asserted) prior to the effective date of this Agreement.

4.11. Indemnification

The Participant agrees to and shall indemnify and hold the Agency and its directors, officers, agents, employees, representatives, contractors, attorneys and consultants 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 person or to the property of any person, directly or indirectly caused by any acts done or any errors or omissions of the Participant and its directors, officers, agents, employees, consultants and contractors on the Anchor or any other facility constructed on the Project Site, or the Project Site except for willful misconduct or negligent acts or omissions of the Agency or its directors, officers, agents, employees and consultants. Likewise, the Agency agrees and shall indemnify and hold the Participant and its directors, officers, agents, employees, consultants and contractors 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 person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of the Agency and its directors, officers, agents, employees and consultants except for willful misconduct or negligent acts or omissions of the Participant or its directors, officers, agents, employees, consultants and contractors.

4.12. Discrimination

The Participant agrees for itself and its successors and assigns that it will not unlawfully discriminate against any employee or applicant for employment, or any contractor or any bidder on any contract.

4.13. Local, State, and Federal Laws

The Participant shall construct and operate Anchor and Facility B in conformity with all applicable laws; provided, however, that nothing herein shall limit the right of the Participant to properly challenge any such law or the applicability of such law.

4.14. City and Other Governmental Agency Permits

The Participant shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by the development or operation of the Anchor and any other facility.

4.15. Rights of Access

Representatives of the Agency shall have the right of reasonable access to the Project Site and any and all improvements thereon, including the Anchor and any other facilities, for purposes of inspection, with reasonable and prior notice to and consent from the Participant, which consent shall not be unreasonably withheld, and without charges or fees, during normal business hours or as otherwise agreed to in writing by Participant. Such representatives of the Agency and other visitors to the Project Site shall observe any reasonable rules adopted by the Participant for purposes of maintaining safety and security, including requirements that such representatives or visitors be escorted by the general manager or other designated agent of the Participant at all times.

5. EXCLUSIVE MARKETING PERIOD

For a period of sixty (60) months from the Effective Date of this Agreement, the Participant will have the exclusive right to develop, market, and sell the Project Site and/or any Lots (the "**Marketing Rights**"). Notwithstanding the foregoing, in the event the Participant makes a bona fide request or offer to purchase a Lot or portion of the Project Site pursuant to this Agreement and the Agency declines to sell a Lot or a portion of the Project Site to the Participant, the Marketing Rights as to that specific portion of the Project Site will expire effective as of the date the Agency provides the Participant with written notice of its election not to sell the respective Lot or portion of the Project Site and payment has been received by the Participant in accordance to Section 2.2(f), above.

6. 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 date that is ten years after the date on which the Participant purchased the Anchor Lot.

7. DEFAULTS, REMEDIES AND TERMINATION

7.1. Default

If either the Agency or the Participant fails to perform or delays performance of any material term or provision of this Agreement, 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 7.3 hereof.

7.2. 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.

7.3. 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 in writing 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, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have.

7.4. Rights and Remedies

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law), the non-defaulting Party shall have all rights and remedies against the defaulting Party as may be available at law or in equity to cure, correct or remedy any Default, to terminate this Agreement, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. 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.

7.5. Legal Actions

7.5.1. 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 City, 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.

7.5.2. Services 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 the Participant shall be by personal service upon its registered agent, or in such other manner as may be provided by law, whether made within or without the State of Utah.

7.5.3. Applicable Law

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

8. REPURCHASE OF PROPERTY BY AGENCY

8.1. Acknowledgement by Participant

The Participant acknowledges and agrees that the development of the Anchor and the Project Site would not be possible but for the Agency's sale to the Participant of the real property that constitutes the Dealership Lots, including the Anchor Lot. The Participant further acknowledges that the provisions in this Article 8 are of significant concern to the Agency and of material importance to the Agency and its decision to offer the Dealership Lots to the Participant.

8.2. Repurchase of the Anchor Lot by Agency

The Participant recognizes that the Dealership Lots, including the Anchor Lot, are being sold to it by the Agency at a substantial discount from Dealership Lots' fair market value to encourage and incentivize Participant to construct and develop the Anchor and other facilities on the Dealership Lots. In the event that Participant purchases the Anchor Lot and then fails to construct, equip, open and continuously operate the Anchor as of the date that is two (2) years from the date of the sale of the Anchor Lot to the Participant (the "**Anchor Lot Repurchase Option Date**"), the Agency shall have the option to purchase Anchor Lot from the Participant, or its successors or assigns, at the Anchor Lot Repurchase Price, as defined below (the "**Anchor Lot Repurchase Option**"). The Agency may exercise the Anchor Lot Repurchase Option within one year of the Anchor Lot Repurchase Option Date.

8.2.1. Notice

If the Agency decides to exercise the Anchor Lot Repurchase Option, the Agency shall provide the Participant with written notice of its intent to do so. Notice given by the Agency of its intent to exercise the Anchor Lot Repurchase Option shall not obligate the Agency to repurchase the Anchor Lot. The Participant shall take all actions reasonably necessary in consummating the purchase of the Anchor Lot by the Agency pursuant to this Article 8.

8.2.2. Determination of Anchor Lot Repurchase Price

The repurchase price of Anchor Lot (the "**Anchor Lot Repurchase Price**") for purposes of this Article 8 shall be the amount paid for Anchor Lot by the Participant as described in Section 2.1., plus verifiable hard costs incurred by Participant in the construction of improvements to the Anchor Lot. The Anchor Lot Repurchase Price shall not be affected by any personal property remaining upon the Anchor Lot.

8.2.3. Operation of the Anchor

For purposes of this Article 8, the Anchor shall be deemed in operation on the Anchor Lot Repurchase Option Date if the criteria set forth in Sections 3.3 and 3.4 of this Agreement are met, except that temporary cessation of operations for purposes of repairs, maintenance, or upgrades to the Anchor shall not prevent Anchor from being deemed in operation so long as regular operations are resumed within thirty (30) days of the Anchor Lot Repurchase Option date.

9. GENERAL PROVISIONS

9.1. Notices, Demands, and Communications between the Parties

Notices, demands and required communications, between the Agency and the Participant shall be in writing and sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return-receipt requested, to the principal offices of the Agency and the

Participant, as designated in Sections 1.6.1 and 1.6.2 hereof. Such written notices, demands, and required 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. 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.

9.2. Nonliability of Agency Officials and Employees

No director, officer, agent, employee, representative, contractor, attorney 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 to its successor, or on any obligations under the terms of this Agreement.

9.3. Indemnification

The Participant shall indemnify the Agency against any liability to a third party resulting from this Agreement.

9.4. 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; governmental restrictions or priority; litigation; unusually severe weather; acts of the other Party; or any other causes beyond the 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 the 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 the Participant by mutual agreement.

9.5. 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.

9.6. Time of the Essence

Time is of the essence in the performance of this Agreement.

9.7. 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 be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the Parties hereto.

9.8. 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.

9.9. Incorporation of Exhibits

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

9.10. 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.

9.11. Restriction Against Parcel Splitting

During the Term, Participant shall not, without the prior written approval of the Agency subdivide the Site or consolidate the Site with other real property in such a way that any portion thereof would extend outside of the boundaries of the Project Area. Participant understands and acknowledges that these requirements are intended to avoid the creation by the Salt Lake County Assessor of tax identification parcels that extend beyond the boundaries of the Project Area.

9.12. Deannexation

Participant agrees that it will not vote or petition to remove, deannex, disconnect, or disincorporate the Project Area or any portion thereof from the City during the Term of this Agreement. In the event that the Site or a portion thereof is disconnected, deannexed, disincorporated, or otherwise removed from the municipal boundaries of the City, the Agency's obligations under this Agreement shall immediately cease. Further, Participant shall not seek to nor support any legislation that would restrict or eliminate the City's land use authority over any portion of the Project Area.

9.13. 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.

9.14. 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*.

9.15. 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, subject to: (i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and (ii) the effect of the exercise of judicial discretion in accordance with general principles of equity.

9.16. 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 Salt Lake County, Utah.

9.17. 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.

9.18. 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.

9.19. 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.

10. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS

10.1. Duplicate Originals

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

10.2. Integration

This Agreement (including its exhibits) constitutes the entire understanding and agreement of the Parties. 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 all or any part of the Project Site.

10.3. 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 The Participant and the Agency.

[Remainder of page intentionally left blank; signature pages to follow]

REDEVELOPMENT AGENCY OF THE CITY OF WEST JORDAN

By:_____
Kayleen Whitelock, Chairperson

Attest:

By:_____
Cindy M. Quick, Secretary

[WAGSCAP, LLC]

By: _____
Name:
Title:

AGENCY DRAFT 2022-02-14

Exhibit A

To [Wagscap] Participation Agreement

Project Site Map

Exhibit B

To [Wagscap] Participation Agreement

Project Site Legal Description

Parcel 26024260030000

Beginning at a point on a found right –of-way monument located on the southerly right-of-way line of 9000 South Street, said point being 888.64 feet North 89°39'12" West along the section line, and 2769.23 feet South 00°20'48" West, from the Northeast Corner of Section 2, Township 3 South, Range 2 West, Salt Lake Base & Meridian; and running thence North 87°22'04" East, along said 9000 South Street right-of-way line, 458.89 feet; thence South 279.39 feet; thence East, 386.40 feet to a point on the westerly right-of-way line of 5600 West Street; thence South 06°53'52" East, 222.86 feet; thence South 02°40'37", 97.64 feet; thence South 89°47'03" East, 9.27 feet, more or less, to the West line of the West Jordan Marketplace Phase 1 Subdivision, as recorded on April 3, 2002, as Entry No. 8193771, in Book 2002P, on Page 81; thence along said subdivision the following two (2) courses: South 00°03'22" West, Parallel to and 17.00 feet from the Section line, 405.23 feet, to a point on a non-tangent 410.00 foot Radius curve to the Right; thence 81.10 feet along said curve through a Central Angle of 11°20'02" (Chord bears South 05°36'52" East 80.97 feet), to the southwest corner of said subdivision; thence leaving said subdivision, North 89°46'29" West, 1051.23 feet, to a point on easterly right-of-way line of the Mountain View Corridor; said point also being on a non-tangent 1730.00 foot radius curve to the left; and running along said easterly right-of-way line the following four (4) courses: thence 472.54 feet along the arc of said curve through a central angle of 15°39'00" (chord bears: North 18°22'50" East, 471.07 feet); thence North 79°26'40" West, 20.00 feet to a point on a non-tangent 1710.00 foot radius curve to the left; thence 312.21 feet along the arc of said curve through a central angle of 10°27'40" (chord bears: North 05°19'30" East, 311.78 feet); thence North 00°05'41" East, 297.67 feet to the point of beginning.

Contains: 863117 Sq. Ft. Or 19.81 Acres more or less

AGENCY DRAFT 2022-02-14

Exhibit C

To [Wagscap] Participation Agreement

Project Concept Map

AGENCY DRAFT 2022-02-14

Exhibit D

To [Wagscap] Participation Agreement

Form of Purchase and Sale Agreement

AGREEMENT
FOR SALE AND PURCHASE
OF REAL PROPERTY

This Agreement for Sale and Purchase of Real Estate (the "Agreement") is entered into as of the _____ day of _____, 20__ (the "Effective Date"), by and between _____ ("Seller") and _____, a Utah _____, and its successors or assigns hereunder ("Buyer").

RECITALS

A. Seller owns approximately _____ acres of real property, County APN number _____, located in Salt Lake County, State of Utah, as more fully described on Exhibit "A" attached hereto (the "Real Property").

B. Buyer desires to purchase the Real Property, together with (i) all easements, rights of way, benefits, privileges, rights, and appurtenances running with, related to, or pertaining thereto, (ii) all improvements of any kind located on, and all of Seller's right, title and interest in any land lying in any street, road or avenue in front of or adjoining, such Real Property, (iii) any and all entitlements, approvals, consents, goodwill, zoning rights, use rights, and other intangible assets and/or rights of any kind whatsoever related or appurtenant to such Real Property (collectively, the "Property").

TERMS AND CONDITIONS

In consideration of the amounts to be paid and the mutual promises contained herein, Buyer and Seller agree as follows:

ARTICLE I
AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE

1.1 Purchase and Sale. In accordance with the terms and conditions set forth in this Agreement, and subject to the conditions precedent set forth in Section 1.4 below (or in any other provision of this Agreement), Seller agrees to convey to Buyer, and Buyer agrees to purchase and take from Seller, fee simple title in and to the Property.

1.2 Purchase Price. The purchase price for the Property (the "Purchase Price") is _____ ($_____).

1.3 Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller in cash, by cashier's check, or other immediately available funds on the Closing Date, as adjusted for prorations on the Closing Date as provided herein as follows:

(a) Upon execution of this Agreement by Buyer, Buyer shall pay an earnest money deposit of _____ ($_____) (the "Earnest Money Deposit"), delivered to _____ Title Company located at

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_____(the "Title Company") to be held in its trust account and credited toward the Purchase Price on the Closing Date. If the purchase and sale transaction described in this Agreement is not consummated (i) for any reason (or no reason at all) prior to the expiration of the Due Diligence Period, (ii) in connection with any other express termination right granted to Buyer hereunder, or (iii) due to any Seller default hereunder; then Buyer shall receive a full refund of the Earnest Money Deposit (plus any interest accrued thereon). In all other events in which the purchase and sale transaction described in this Agreement is not consummated, Seller shall be entitled to keep the Earnest Money Deposit as its sole and exclusive remedy against Buyer. Both Buyer and Seller hereby agree that Seller's actual damages would be very difficult or impossible to determine and both agree that the Earnest Money Deposit is a reasonable estimate thereof.

(b) Buyer shall pay the balance of the Purchase Price in cash, by cashier's check, or other immediately available funds on the Closing Date, as adjusted for prorations on the Closing Date as provided herein.

1.4 Conditions Precedent to Purchase. The purchase of the Property by Buyer, and Buyer's obligations to close and consummate the purchase and sale transaction described herein, is expressly contingent on, conditioned on, and subject to the satisfaction, at Buyer's sole discretion, of all of the conditions listed below. In the event any one of the following items or issues has not been satisfied by the Closing Date (defined below), Buyer shall have the option (at Buyer's sole discretion) of terminating this Agreement and receiving a refund of the Earnest Money Deposit (with any interest accrued thereon) or may defer Closing for up to sixty (60) additional days.

(a) Buyer has obtained all federal, state, and local governmental approvals ("Governmental Approvals") acceptable to Buyer, at Buyer's sole discretion, for Buyer's intended or contemplated uses of the Property.

(b) Upon completion of Buyer's inspection as set forth in Section 5.1, Buyer has determined that the Property is suitable for Buyer's intended or contemplated uses of the Property as determined at Buyer's sole discretion.

(c) Completion and acceptance of all other feasibility studies, reports, tests, inspections, evaluations, and surveys that verify, in Buyer's sole discretion, the Property is suitable, desirable and feasible for Buyer's improvements and contemplated use of the Property.

(d) Buyer's receipt before the Closing occurs of the Title Policy (defined below), or of the Title Company's irrevocable promise and commitment to issue the Title Policy.

(e) The full and complete satisfaction of all other terms, conditions and obligations of Seller under this Agreement.

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ARTICLE II
TITLE INSURANCE

2.1 Commitment of Title Insurance.

(a) Commitment. Buyer is in possession of, or will obtain, a commitment for extended owner's title insurance (based on a _____ policy form) covering the Property (the "Commitment"), issued by the Title Company. The commitment shall be updated by the Title Company to a date on or after the date of this Agreement.

(b) Objections to Title. Buyer shall have forty-five (45) days following full execution of this Agreement and receipt of the updated Commitment to provide any written objections to any matter or issue set forth or disclosed in the Commitment or Schedule B thereof, which objections may include matters and issues shown on any survey of the Property (collectively, the "Title/Survey Objections"). If Buyer does not timely deliver written notice of its Title/Survey Objections to Seller, Buyer shall be deemed to have approved of all matters set forth in the Commitment and on any survey. If Title/Survey Objections are timely made, Seller shall determine, at its sole discretion, as to each Title/Survey Objection, whether Seller is willing or able to eliminate (or obtain affirmative coverage in the Title Policy) over each of the Title/Survey Objections. At least five (5) business days prior to the end of the Due Diligence Period (defined below), Seller shall notify Buyer in writing as to those Title/Survey Objections that Seller will cause to be cured, eliminated, or insured over at Closing. Notwithstanding the foregoing, Seller shall be obligated to eliminate any deeds of trust, mortgages, judgment liens, mechanics' liens, materialmen's liens and other liens (the "Liens") recorded against the Property to the extent caused by, or arising as a result of, any actions or inactions by, on behalf of, or under the direction of, Seller. If (a) Seller's written notice indicates that Seller is unable or unwilling to eliminate or provide affirmative coverage over any Title/Survey Objections (other than the Liens), upon terms acceptable to Buyer at Buyer's sole discretion, or (b) Seller does not timely deliver the written notice as required hereunder, then in either event Buyer may (i) waive the Title/Survey Objections that Seller was unwilling or unable to cure and otherwise purchase the Property subject to the other terms and conditions of this Agreement, or (ii) terminate this Agreement by either giving written notice to Seller at any time before the Closing occurs, whereupon the Earnest Money Deposit, and any interest accrued thereon, shall be immediately returned to Buyer, and except as otherwise provided herein, neither Buyer nor Seller shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination. Matters to which Buyer does not object shall be deemed to be "Permitted Exceptions" and shall not be considered objections to any matter contained in the Commitment.

(c) Delivery of Title Insurance. Except as otherwise stated in Section 2.1 (b), Seller shall obtain and deliver to Buyer within ten (10) days after the Closing Date an ALTA Extended Owner's Policy of title insurance in the amount of the Purchase Price (in a form satisfactory to Buyer), which title policy shall (i) be effective as of the Closing Date, (ii) contain no exceptions other than the Permitted Exceptions, and (iii) include any and all endorsements

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requested by Buyer (collectively, the "Title Policy"). Buyer shall pay for the cost of the above stated Title Policy and any requested endorsements.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall extend beyond and survive the Closing Date and delivery of the deed for the Property from Seller to Buyer:

(a) Seller has and on the Closing Date will have good and marketable fee simple title to the Property, free and clear of all encumbrances, liens, claims, or reservations, except as specifically approved by Buyer under this Agreement.

(b) Seller has the right, power and authority to execute, deliver, and perform this Agreement and the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate (or other) actions on the part of Seller. Upon execution and delivery this Agreement, this Agreement shall constitute valid and binding obligations of Seller enforceable against Seller in accordance with its terms.

(c) Seller is unaware of and has not received notice any judgment, suit, claim, action, arbitration, legal, administrative, eminent domain action, or other proceeding or governmental investigation, pending or threatened, with respect to the Property and no activities or events have occurred on or in connection with the Property that could give rise to any such claims or proceedings.

(d) Seller has no undisclosed knowledge of any fact or condition that would materially impair the fair market value of the Property, would materially increase the cost of operating the Property, or would be inconsistent with the terms of this Agreement.

(e) Seller has not received any notices, demands, or deficiency statements from any mortgagee of the Property or from any state, municipal, or county government or agency or any insurer relating to the Property and which have not been cured or remedied except property valuation and tax notices issued by the county which are not yet due and payable.

(f) Except as otherwise expressly disclosed in the Commitment, the Property is not subject to any proposed special assessment or to any existing special assessment lien arising as a result of any works or improvements completed, installed, or contemplated at or before the Closing Date.

(g) No contracts, leases, licenses, commitments, or undertakings of which Seller is a party exist relating to the Property.

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(h) Seller has paid and shall pay all liens, charges, taxes, and assessments for the Property arising prior to the Closing Date.

(i) No person, broker or entity, whether or not affiliated with either party is entitled to a commission, finder's fee, or other compensation arising from this Agreement, as regarding Seller. Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims, loss, or damage relating to or arising out of any claim for compensation by any broker, person, or entity claiming by or through Seller.

(j) The Property is in compliance with all applicable laws, statutes, ordinances, regulations. and zoning codes.

(k) During the period from the Effective Date until the Closing Date, Seller shall maintain the Property and all improvements and personal property thereon (or related thereto) in a good and clean condition, and to the extent in Seller's control, shall preserve in all respects all value in the Property.

(l) All Inspection Materials (defined below), and any and all updates thereto received by Seller during the operative period of this Agreement, have been delivered in full to Buyer.

(m) Neither Seller nor any of its affiliates has made any assignment for the benefit of creditors, filed any petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned or applied to any tribunal for any receiver, conservator or trustee of it or any of its property or assets, or commenced any action or proceeding under any reorganization arrangement, readjustment of debt, conservation, dissolution or liquidation law or statute of any jurisdiction; no such action or proceeding has been commenced or threatened against Seller by any creditor, claimant, governmental authority or any other person or entity. Seller is not currently contemplating making any such assignment for the benefit of creditors or filing any bankruptcy petition as more fully described above.

3.2 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall survive the Closing and delivery of the deed for the Property from Seller to Buyer.

(a) Buyer has the right, power and authority to execute, deliver, and perform this Agreement.

(b) No person, broker or entity, whether or not affiliated with Buyer, is entitled to a commission, finder's fee, or other compensation arising from this Agreement as regarding Buyer. Buyer shall indemnify, defend, and hold Seller harmless from and against any and all claims, loss, or damage relating to or arising out of any claim for compensation by any broker, person, or entity claiming by or through Buyer.

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ARTICLE IV
SELLER'S USE OF THE PROPERTY

From and after Seller's execution of this Agreement, Seller shall not, without the prior written consent of Buyer, grant or convey any easement, lease, license, permit, encumbrance, or any other legal or beneficial interest in or to the Property or engage in any negotiations with any party other than Buyer regarding the purchase or sale of the Property. Seller shall not enter into any service contract or other agreement related to the Property that would be binding on Buyer after the Closing. Except as otherwise provided for herein, Seller agrees to pay, as and when the same are due, all payments on any encumbrances presently affecting the Property and any and all taxes, assessments, and levies with respect to the Property through the Closing Date.

ARTICLE V
BUYER'S RIGHT OF INSPECTION

5.1 Buyer's Inspection. Buyer shall have until 5:00 pm, Utah time, on the date that is sixty (60) days after the date this Agreement is fully executed by all parties hereto, to inspect and review the Property ("Due Diligence Period"). Buyer or its employees, contractors, representatives, consultants, or agents may enter the Property upon at least twenty-four (24) hours' notice to Seller to inspect and review the Property and perform any and all surveys, evaluations, investigations, or tests as Buyer may elect at Buyer's sole discretion; provided, however, that such entry shall not unreasonably interfere with the activities of Seller on the Property and Buyer shall, if necessary and within a reasonably period of time, restore the Property to substantially the same condition that existed immediately prior to Buyer's entry.

At any time prior to the end of the Due Diligence Period, Buyer shall have the right terminate this Agreement for any reason (or for no reason at all), in which event the Title Company shall immediately return the Earnest Money Deposit (with any and all interest accrued thereon) to Buyer, in which event, except as otherwise provided herein, neither Buyer nor Seller shall have any further right, liability, duty, or obligation under this Agreement, except for agreements or covenants that specifically survive termination.

5.2 Inspection Materials. Seller hereby agrees to deliver or cause to be delivered at Seller's sole expense, within five (5) days after the Effective Date, all of the following to Buyer (collectively, the "Inspection Materials"), to the extent such Inspection Materials are in Seller's possession or reasonable control, or in the possession or reasonable control of any of Seller's agents or contractors:

(a) All surveys of the Property;

(b) Real estate tax bills and assessments for the Property (for at least the previous three (3) years);

(c) All environmental reports, studies, and site assessments relating to the Property;

(d) All traffic, engineering, soil, geotechnical, and hazardous substance reports, tests and inspection results and other similar tests, investigations or studies relating to the Property;

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(e) All documents, agreements, leases, contracts, correspondence, written notices, memorandums of understanding, letters of intent, permits, or other information of any kind related to the construction, purchase, sale, and or transfer of the Property;

(f) All documents, agreements, contracts, correspondence, written notices, memorandums of understanding, letters of intent, permits, or other information of any kind related to the zoning, use, or entitlements of the Property;

(g) All documents, agreements, contracts, correspondence, written notices, memorandums of understanding, letters of intent, permits, or other information of any kind related to the water and water rights (or stock in water companies) with respect to the Property, including without limitation, all documentation or information regarding (i) all wells, well sites and development thereof (including any and all well permits, pumping logs and related documentation), (ii) all surface water rights, (iii) any other water rights, (iv) all water testing, sampling, reports, treatments, or studies of the water on, around, about, under, or affecting the Property, and (v) all existing agreements, discussions or proposals with all water districts, water companies, municipalities, or any other water supplier that could possibly service the Property;

(h) All documents, agreements, contracts, correspondence, written notices, memorandums of understanding, letters of intent, permits, or other information of any kind related to wetlands, flood plains, flood control, and/or any mitigation of any of the foregoing (including, without limitation, any information and/or documentation relating to any permits in connection with Section 404 (and other related sections) of the Federal Water Pollution Control Act (Clean Water Act) and the regulations promulgated under such act or its successor acts/laws);

(i) All documents, agreements, contracts, correspondence, written notices, memorandums of understanding, letters of intent, permits, or other information of any kind related to any and all utilities for the Property, and, if applicable, for each and every Lot within the Property (including the availability thereof);

(j) All site plans, specifications, designs, plats, and/or other plans related to the Property;

(k) Any and all evidence of the current and historical uses of the Property;

(l) Any and all leases of any kind related to, encumbering, or affecting the Property (whether or not shown or disclosed on the Title Commitment); and

(m) Any and all other documents, agreements, contracts, correspondence, written notices, memorandums of understanding, letters of intent, permits, appraisals, market studies, or other information of any kind related to the Property.

To Seller's knowledge, there are no false, untrue, or misleading statements or information in any of the Inspection Materials. In addition, until Closing, to the extent Seller received any new or additional information related to any of the foregoing, Seller will promptly provide such information to Buyer.

ARTICLE VI
CLOSING

6.1 Time and Place of Closing. The purchase and sale transaction contemplated by this Agreement shall be consummated through a closing conference (the "Closing"), which shall be held at the Title Company not more than thirty (30) days after Buyer has given notice to Seller that

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all of the conditions precedent set forth in Section 1.4 have been satisfied to Buyer's satisfaction in Buyer's sole discretion (the "Closing Date"), but in no event later than _____, or at such earlier time and place as the parties may mutually agree in writing. In the event Buyer is unable to obtain the necessary Governmental Approvals as specified in Section 1.4, Buyer, by written notice to Seller delivered at any time before the Closing Date, shall have the option (but not the obligation) to extend the date of the Closing by an additional period of time necessary to obtain such approvals.

6.2 Actions at Closing. At the Closing, the following events shall occur and each being declared to have occurred simultaneously with the other:

(a) All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow, to hold, deliver, record and disburse in accordance with supplemental escrow instructions, the form and content of which shall be agreed to by the parties prior to Closing.

(b) At the Closing or sooner as otherwise stated in the escrow instructions, the following shall occur:

(i) Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) A Special Warranty Deed, in the form attached hereto as Exhibit "B", conveying the Property to Buyer subject only to the Permitted Exceptions, which deed shall be duly executed and acknowledged by Seller and in proper form in all respects for recording in Salt Lake County, Utah;

(2) All documentation, including without limitation an owner's affidavit, that the Title Company deems necessary or desirable in order to allow the Title Company to provide Buyer with the Title Policy;

(3) An affidavit fully executed and properly acknowledged by Seller, as required by Internal Revenue Code Section 1445(b)(2), in a form reasonably acceptable to the Title Company and to Buyer;

(4) A certificate from Seller (in a form acceptable to Buyer) certifying that all representations and warranties of Seller set forth in this Agreement are true and accurate in all respects as of the date of the Closing;

(5) All other documents required to be executed by Seller pursuant to the terms of this Agreement; and

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(6) Any and all proration amounts as more fully set forth in this Agreement.

(ii) Buyer shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) The balance of the Purchase Price to be paid as provided in Section 1.3 hereof; and

(2) All other documents required to be executed by Buyer pursuant to the terms of this Agreement.

(c) Buyer and Seller shall each deliver to the other, two executed copies of the Buyer's and Seller's settlement statement setting forth all prorations, credits provided in this Agreement, disbursements of the Purchase Price, and expenses of the Closing.

(d) Except as otherwise specifically set forth herein, Buyer and Seller shall share equally any Closing or escrow charges of the Title Company.

6.3 Seller's Remedies. In the event this transaction fails to close due to Buyer's fault or inability to close after the expiration of the Due Diligence Period, Seller, as Seller's sole and exclusive remedy, shall have the right to retain the Earnest Money Deposit as liquidated damages for Buyer's failure to close. The parties hereby agree that such amount is reasonable compensation to Seller for Buyer's failure to close, since the precise damage to Seller due to such failure of Buyer would be very difficult or impossible to determine.

6.4 Buyer's Remedies. In the event this transaction fails to close due to Seller's fault, Buyer shall be entitled to have the Earnest Money Deposit returned and shall be entitled to any and all other remedies available at law or in equity, including (without limitation) specific performance.

ARTICLE VII
PRORATIONS

7.1 Prorations Between Seller and Buyer. The following prorations shall be made between Seller and Buyer as of the Closing Date:

(a) Real property taxes and assessments on the Property for the year of Closing shall be prorated between Seller and Buyer based on the number of days each owned the Property. In the event the Property constitutes some portion of a larger tract of land, such proration shall be based upon the average of the Property as a percentage of the acreage of the entire tract. If, as of the Closing Date, the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated cannot be ascertained, then the most recent known rates, millages, and assessed valuations (which amounts shall relate to the same tax year) shall be used, and such proration shall be repeated when the final tax bill is available and either Buyer and Seller, as the case may be, shall promptly

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pay to the other the net amount owing as a result of such redetermination. Notwithstanding any language to the contrary herein, any and all rollback taxes of any kind shall be paid by Seller.

(b) Other Closing costs shall be apportioned between the parties in accordance with the normal and customary practice of commercial real estate transactions in Salt Lake County, Utah.

ARTICLE VIII
RELEASE, ASSUMPTION AND INDEMNITY

Seller shall release, indemnify, save, hold harmless, and defend Buyer against any and all claims, suits, losses, liabilities, costs, expenses, or damages made against or incurred by Buyer relating to the condition (environmental or otherwise) of the Property prior to the Closing Date or any activity in connection with the Property that occurred prior to the Closing Date.

ARTICLE IX
LOSS OF THE PROPERTY PRIOR TO CLOSING

9.1 Risk of Loss. The risk of loss with respect to the Property shall be borne by Seller until the Closing occurs.

9.2 Condemnation. If any portion of the Property becomes the subject of a condemnation proceeding(s), Seller shall promptly notify Buyer in writing of such proceedings, and Buyer shall have the option to (i) terminate this Agreement with written notice to Seller, in which event the Earnest Money Deposit shall be immediately returned to Buyer, or (ii) elect not to terminate this Agreement, in which event this Agreement shall remain in full force and effect. If Buyer does not make any election within fifteen (15) days after receipt of Seller's written notification of such condemnation proceedings(s), then Buyer shall be deemed to have elected to not terminate this Agreement. If Buyer does not terminate the Agreement (or is deemed not to have terminated this Agreement), then at Closing (a) Seller shall pay to Buyer all condemnation awards or proceeds from any such proceedings or actions in lieu thereof received by Seller to the date of Closing, (b) Seller shall assign to Buyer all of Seller's rights to defend such proceedings or actions in lieu thereof, and all of Seller's rights to receive any additional condemnation awards or proceeds, and (c) Buyer shall take the Property subject to any such condemnation proceeding(s). As used herein, the phrase "becomes the subject of a condemnation proceeding(s)" shall mean any notice or knowledge by Seller of any formal or informal condemnation by any governmental authority against any portion of the Property.

9.3 Casualty. If the Property shall be damaged by any casualty of any kind prior to Closing, Seller shall promptly notify Buyer in writing of such damage, and Buyer shall have the option to (i) terminate this Agreement with written notice to Seller, in which event the Earnest Money Deposit shall be immediately returned to Buyer, or (ii) elect not to terminate this Agreement, in which event this Agreement shall remain in full force and effect. If Buyer does not make any election within fifteen (15) days after receipt of Seller's written notification of such damage, then Buyer shall be deemed to have elected to not terminate this Agreement. If Buyer

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does not terminate the Agreement (or is deemed not to have terminated this Agreement), then at Closing (a) Seller shall pay to Buyer all insurance awards or proceeds from any such damage or received by Seller to the date of Closing, (b) Seller shall assign to Buyer all of Seller's rights to any additional awards or proceeds, and (c) Buyer shall take the Property subject to any such damage.

ARTICLE X
TAX PROTESTS

In connection with any assessment(s) for real property taxes that is received by Seller at any time between the Effective Date and Closing, but which is not due and payable until after Closing, Seller hereby agrees to immediately deliver a copy of such assessment(s) to Buyer. Further, Seller agrees to protest, using all reasonable means and to the fullest extent possible, any such assessment(s) to the extent and in the manner reasonably requested by Buyer. The costs of any such protests requested by Buyer shall be the responsibility of Buyer.

ARTICLE XI
MISCELLANEOUS

11.1 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, which written or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto.

11.2 Amendments. This Agreement may be amended or modified only by mutual written agreement of the parties hereto.

11.3 Survival. All warranties, representations, covenants, and agreements contained in this Agreement (including without limitation the release and indemnity described in Article VIII above) shall survive the execution and delivery of this Agreement and all documents delivered in connection with this Agreement and shall survive the Closing of the transactions contemplated by this Agreement and all performances in accordance with this Agreement.

11.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns; provided, however, that notwithstanding the foregoing, Seller's interest under this Agreement may be assigned, encumbered, or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise.

11.5 Notices. Any notice, demand, or document which any party is required or any party desires to give or deliver to or make upon any other party shall be in writing, and may be personally delivered or given or made by recognized overnight courier service or by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To Seller:

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To Buyer:

With a copy to: Smith Hartvigsen PLLC
257 East 200 South, Suite 500
Salt Lake City, UT 84111
Attn: Adam S. Long

Any party may designate a different address for itself by notice similarly given. Unless provided herein, any such notice, demand or document so given shall be effective upon delivery of the same to the proper address of the party or parties to whom the same is to be given.

11.6 Time of Essence. Time is of the essence in the performance of each and every term, condition, and covenant of this Agreement.

11.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.8 Headings. Any and all headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

11.9 Attorneys' Fees. The prevailing party in any legal proceeding brought to enforce rights hereunder shall recover from the other party its reasonable attorney fees and costs. As used herein in the term "prevailing party" means the party entitled to recover the costs in any suit, whether or not brought to judgment, and whether or not incurred before or after the filing of suit.

11.10 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms of this Agreement or by law upon the default of another party, and no delay in the exercise of any such right by the first party at any time when such other party may be in default, shall operate as a waiver of any default, or as a modification in any respect of the provision of this Agreement.

11.11 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a part of this Agreement by reference.

11.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

11.13 No Recording. This Agreement shall not be recorded in the real property records.

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11.14 Further Instruments. Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party, its counsel, or the Title Company may reasonably request to effectuate the intent of this Agreement, including without limitation documents necessary for compliance with the laws, ordinances, rules, and regulations of any applicable governmental authorities.

11.15 Confidentiality. The Purchase Price and terms of this Agreement are intended by both parties to be confidential during the operative period of this Agreement. Therefore, except as directed by a court, administrative authority or required by subpoena or by law, neither party shall disclose the Purchase Price or terms of this Agreement or any other non-public information related hereto; provided, however, Buyer may disclose any and all information related to this Agreement or the Property to any and all consultants, attorneys, employees, contractors, agents, representatives, lenders, and others to the extent necessary to evaluate, inspect, or review the Property and the purchase and sale transaction as described herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

[*remainder of page intentionally left blank; signature pages follow*]

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“Seller”
[name of Seller]

_____

Date Signed:

“Buyer”
[name of buyer]

By: _____

Date Signed:

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EXHIBIT A

PROPERTY DESCRIPTION

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EXHIBIT B

FORM OF DEED

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Purpose

The following report is intended to explore the potential fiscal value of the proposed auto mall development and corresponding incentive through the following approaches:

1. Comparing the projective fiscal outcome of the proposed auto mall to previous economic developments featuring incentives;
2. Comparing the projected sales tax revenue of the proposed development to existing top preforming retail sectors within West Jordan; and
3. Reviewing historical sales leakage in various economic areas within the City.

Report Limitations

Because this incentive offer is motivated by a desire to expand the tax base of the City, the Council should note that this report focuses on comparing the tax generation or "direct impact" of the auto mall project and its correlating incentive against past projects with incentives in West Jordan.

While this narrow scope of analysis is appropriate for this potential incentive, it should be noted that past economic development projects in West Jordan have aimed to achieve various objectives which would be more appropriately measured using different metrics.

A cursory review of past economic development incentives shows a diversity of objectives including job creation, filling vacant big box stores, extending infrastructure for development of new areas, and many others.

These objectives would commonly measure "indirect" and "induced" impacts in addition to "direct impacts".

Measurement of these impacts are typically conducted through complex studies which would be impractical and ineffective for analysis of this incentive.

Due to this dynamic, it should be noted that this report will be helpful only in determining the relative value of direct impacts when compared to past projects, though it will not enable the reader to assess the value or success of past economic development projects.

Findings

In Utah it has been generally accepted that auto dealerships produce more tax revenue for municipalities than any other type of retail business. The analysis presented in this report confirms this assumption.

When looking at the auto mall project from the provided financial perspectives, the baseline assumptions for the auto mall shows high financial returns in a short period of time compared to other incentive projects when examining tax returns alone.

WHAT MOTIVATES A CITY TO OFFER AN INCENTIVE?

Economic Development:

Increase the availability of good jobs or enhance core economic assets

Community Development:

Improve quality of life and amenities for local residents

Expanded Tax Base:

Increase or broaden a community's tax base

Inclusive Growth

Provide equitable opportunities for people of color, people with disabilities, and other marginalized groups

1. Fiscal Comparison

Comparing the projective fiscal outcome of the proposed auto mall to previous economic developments featuring incentives

Three methods were used to compare the expected value of the auto mall, to the value of past economic development projects that received incentives. Eight projects were analyzed along with the auto mall's baseline performance expectations.

Annual Net Revenue per Square Foot

The information below considers the productivity of the land from a tax revenue perspective. Only the Auto Mall features property tax and sales tax, which is why its revenue per square foot is much greater than previous incentives. As mentioned in the "Report Limitations" section, the fiscal comparison favors this incentive because this incentive is designed to increase the tax base of the City.

The following equation was implemented:

Step 1: Total Revenue

(Property Tax Revenue + Sales Tax Revenue) x 20 Years

Step 2: Revenue when Considering Incentive

(Value of the Incentive - Total Revenue) / 20 Years

Step 3: Value Per Square Foot

Revenue when Considering Incentive / Total Square Footage of Property

Totals

$40.12 Auto Mall 736,164.00 Sq. Feet	**$1.02** Snugz 429,501.60 Sq. Feet	**$0.87** Smith & Edwards 207,781.20 Sq. Feet
$0.82 Amazon 429,501.60 Sq. Feet	**$0.75** Aligned Energy 3,315,787.20 Sq. Feet	**$0.71** Oracle 2,597,482.80 Sq. Feet
$0.43 Paypal 2,224,609.20 Sq. Feet	**$0.01** Kraftmaid 2,597,482.80 Sq. Feet	**$0.86** Jordan Valley TOD 3,288,344.40 Sq. Feet

Calculations for Smith and Edwards would increase if sales tax revenues were known and included.

Revenue from the Kraftmaid project has decreased due to personal property depreciation. Current year appraised values were used for the calculation.

The Jordan Valley TOD agreement is backloaded and most of the revenue will occur in the last years of the agreement. Sales taxes from Starbucks are not known/included

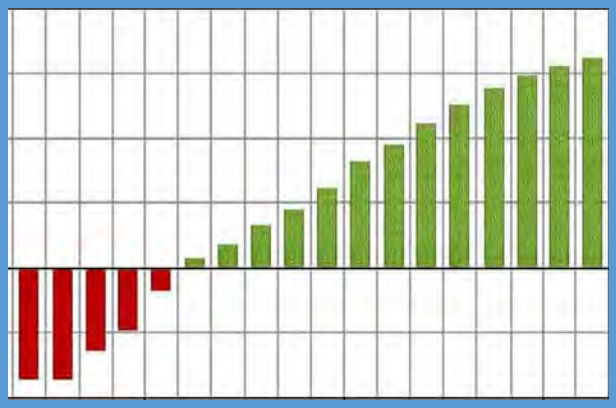
Baseline Auto Mall Projections assume year 1 performance with all dealership lots developed. Expected annual sales growth was omitted from calculation.

PSF calculations for the Auto Mall are based on the 16.9 acres dedicated to auto dealership use, and which would receive the incentive. 2.91 acres will not receive an incentive and is not included in the calculation. If included taxes of $34.23 would be expected per sq.uare foot.

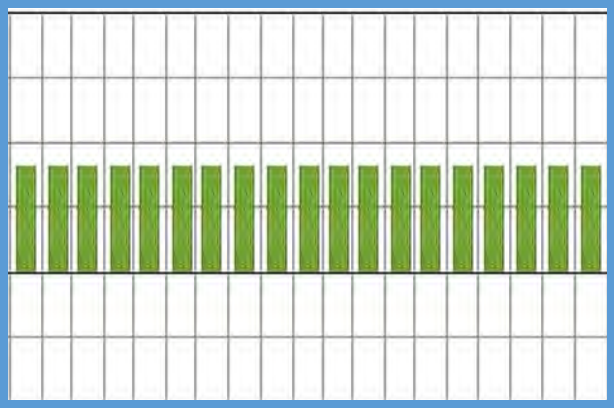
Why 20 Years?

Multiplying revenue by 20 years allows enough revenue to be generated to allow many projects to have a positive cash flow to cross compare.

In reality, the cash flow stream of these types of projects looks like the graph below—a positive return may take several years. Which year a positive return occurs varies by incentive.



The values represented on the left smooth out the curve above to represent a constant return—as shown in the graph below. Although this isn't technically how money works, this is a helpful way to create a standard value for each incentive's property tax return by square foot.

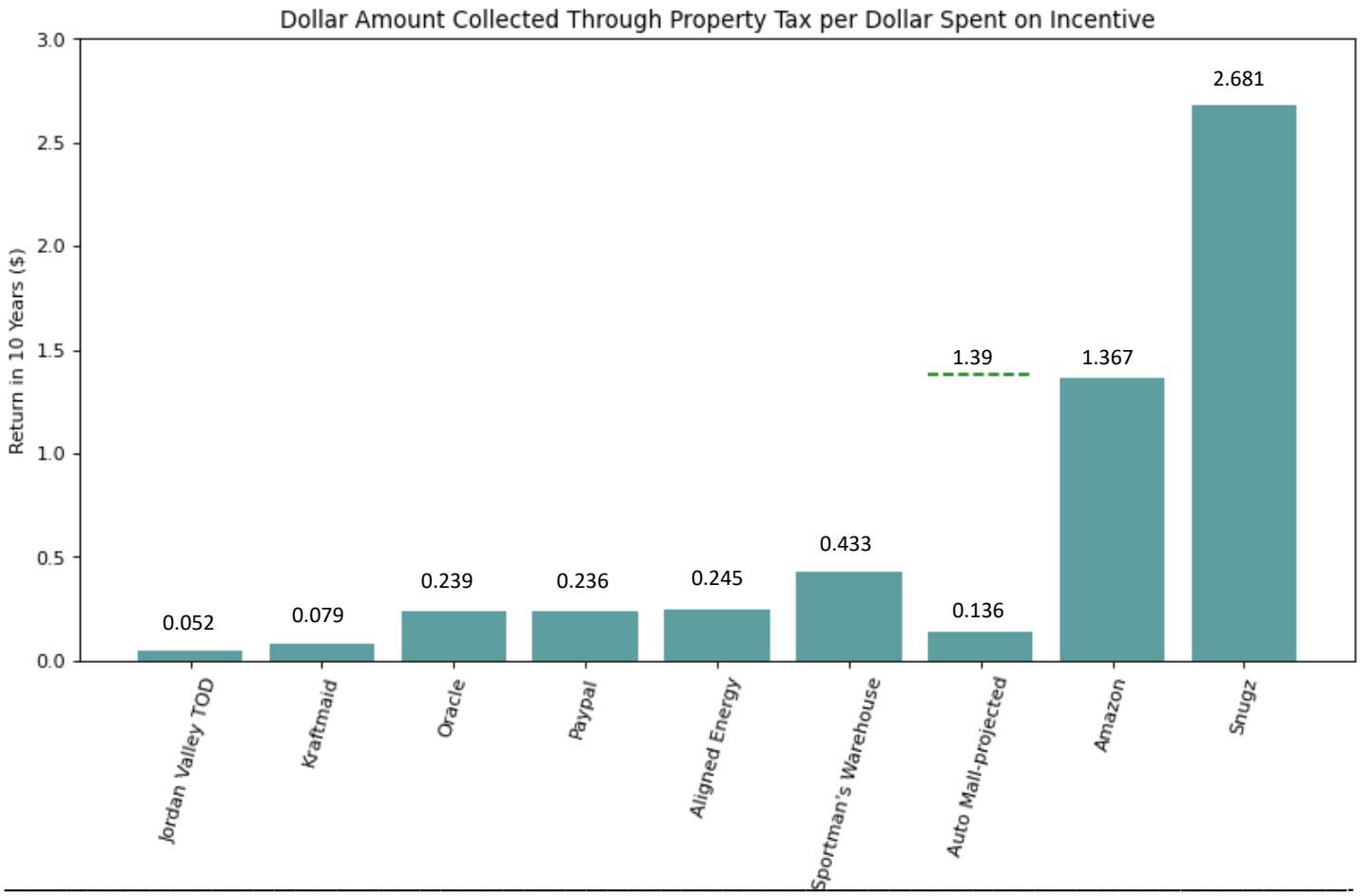


Amount of Dollar Spent on Incentive Compared to Dollar Amount Received Across 10 years for the ***City of West Jordan***

This chart represents the amount of incentive estimated to be paid under each project's incentive agreement versus the City taxes collected over a ten-year period using 2021 property tax assessment.

$1 : $x

"For every $1 the City gave away, in 10 years the City has received X dollars."



This analysis favors incentive agreements with shorter terms.

This analysis will favor "City only" agreements that do not include incentive participation from other taxing agencies.

Sportsman's warehouse would have a lower ratio if sales tax was known/included in the calculation.

This analysis is biased against incentive agreements where the majority of tax revenues will be generated in the final years of the agreement due to a phased construction schedule, such as JVTOD.

How long is this going to take?!?

Many of these projects will eventually reach a 1:1 ratio of dollars spent by the City on the incentive to money returned through the collection of property tax; however, this return for some properties will take over a lifetime.

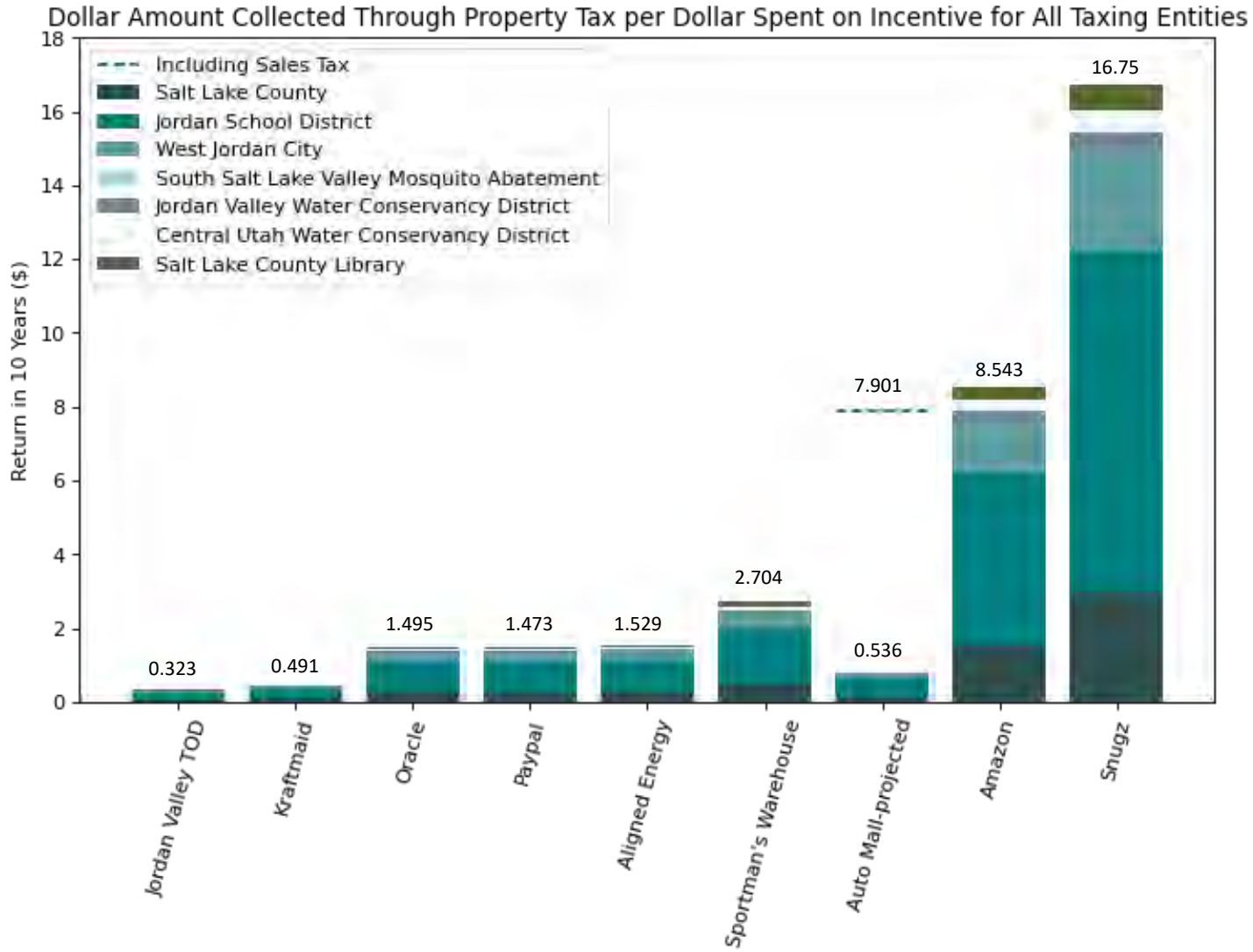
However; many of these properties were partially funded by incentives that fit in the other categories explained on the first sheet of this report, so a poor ratio doesn't mean the incentive "failed," it just doesn't perform well under this type of scrutiny.

$1 : $x

"For every $1 the City gave away, in 10 years the total tax collected by all entitled entities is X dollars."

*Amount of Dollar Spent on Incentive Compared to Dollar Amount Received Across 10 years for **all Taxing Entities***

This chart represents the amount of incentive estimated to be paid under each project's incentive agreement versus all taxes collected over a ten-year period using 2021 property tax assessment.



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Sportsman's warehouse would have a lower ratio if sales tax was known/included in the calculation.

This analysis is biased against incentive agreements where the majority of tax revenues will be generated in the final years of the agreement due to a phased construction schedule, such as JVTOD.

2. Retail Comparison

Comparing the projected sales tax revenue of the proposed development to existing top preforming retail sectors within West Jordan

The graph below compares the baseline auto mall performance expectations to the performance of the most productive retail segments in West Jordan City.

For each segment below (grocery, home improvement, and big box), the average annual sales tax distribution from each store was calculated for a group of retailers using the most recent 12-month period from August 2020 to July 2021. The average square foot of property per store was also calculated. The average assessed value for that group was also calculated. The property taxes and sales tax revenues were combined for a total average revenue, which was then divided by the average square foot of land per retailer in that segment.

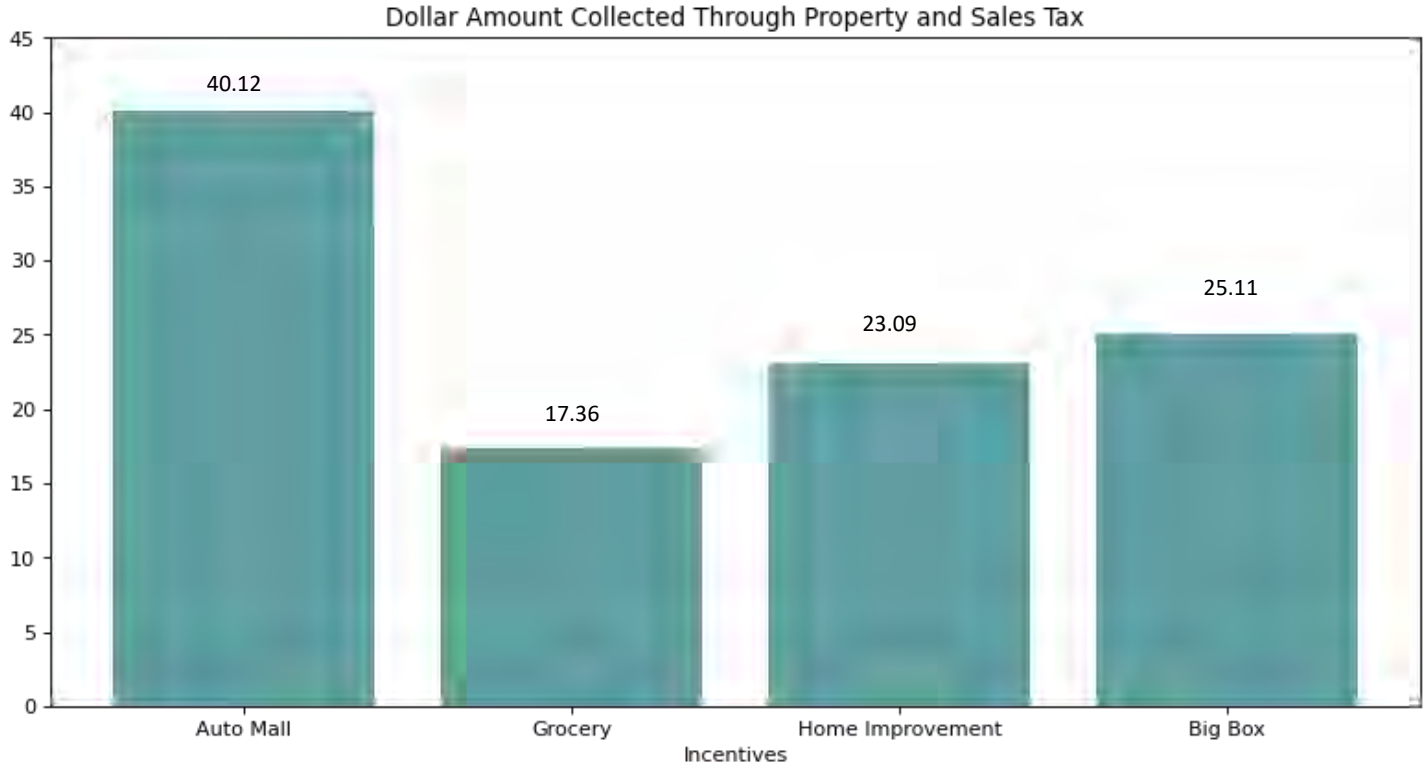
All retailers except one included in this analysis are ranked among the top twenty-five highest sales tax producing businesses in West Jordan.

Stores Included in Analysis

Grocery:
Smith's, Reams, & Macey's

Home Improvement:
Lowes & Home Depot

Big Box:
Target, Wal-Mart, Best Buy, & Sam's Club



3. Historical Sales Tax Leakage & Capture Rates

Reviewing historical sales leakage in various economic areas within the City.

In 2013, Zion's Public Finance prepared a Retail Market Study and Analysis for the City of West Jordan, which included analysis of West Jordan's "Sales Leakage". This type of analysis first identifies sales within the State for each major NAICS code category and then calculates the average sales per capita for each.

Per capita sales in West Jordan were then compared to average per capita sales statewide in order to estimate what portion of resident purchases are being made in West Jordan and what portion is being made outside of the City.

As you can see from the table, in 2013, motor vehicle related sales represented the biggest source of retail leakage in West Jordan. Because an updated sales tax leakage study has not been performed, we can only speculate on the current capture rate of motor vehicle related sales in West Jordan. Since the time the study was performed Immaculate Used Cars, and CRS America have located in West Jordan.

CRS sells approximately 100 vehicles per year, and Immaculate Used Cars sells roughly double that volume. These two dealerships would certainly help to reduce leakage, though population growth will offset some of the gains potentially made to capture rate.

The following page includes capture rates of other communities near West Jordan.

Table 7: Sale Leakage and Capture Rates in West Jordan

Area	Leakage (Y/N)	Per Capita Leakage	Total Leakage	Capture Rate
Retail:				
Motor Vehicle	Yes	-$1,282	-$138,016,456	13%
Furniture & Home Furnishings	No	$16	$1,758,281	107%
Electronics & Appliance	No	$78	$8,387,215	128%
Building Materials & Garden	No	$526	$56,620,529	179%
Food & Beverage	No	$35	$3,646,284	103%
Health & Personal Care	Yes	-$35	-$3,675,123	75%
Gasoline Stations	Yes	-$60	-$6,464,254	80%
Clothing	Yes	-$20	-$2,171,148	96%
Sporting Goods, Hobby & Music	Yes	-$118	-$12,716,646	61%
General Merchandise	No	$385	$41,473,003	120%
Miscellaneous Store Retailers	Yes	-$38	-$4,069,011	93%
Non-Store Retail	Yes	-$78	-$8,407,351	49%
Services:				
Arts, Entertainment & Recreation	Yes	-$78	-$8,372,603	51%
Accommodation	Yes	-$372	-$40,073,776	6%
Food Service and Drinking Places	Yes	-$45	-$4,894,660	96%
Other	Yes	-$94	-$10,131,198	77%
Total	**Yes**	**-$1,180**	**-$127,106,914**	**88%**

Table 19: 2012 Capture Rates; West Jordan and Surrounding Communities

Area	West Jordan	Draper	Midvale	Murray	Sandy	South Jordan	Taylorsville	West Valley
Retail:								
Motor Vehicle	**13%**	160%	66%	370%	204%	126%	18%	132%
Furniture & Home Furnishings	**107%**	477%	168%	509%	62%	21%	243%	29%
Electronics & Appliance	**128%**	95%	173%	279%	158%	253%	192%	75%
Building Materials & Garden	**179%**	74%	157%	207%	166%	9%	4%	90%
Food & Beverage	**103%**	91%	209%	86%	91%	79%	75%	138%
Health & Personal Care	**75%**	97%	110%	327%	141%	39%	46%	75%
Gasoline Stations	**80%**	88%	147%	68%	48%	48%	67%	121%
Clothing	**96%**	73%	157%	566%	149%	149%	50%	75%
Sporting Goods, Hobby & Music	**61%**	122%	743%	351%	295%	27%	110%	128%
General Merchandise	**120%**	28%	88%	207%	138%	107%	84%	158%
Miscellaneous Retail	**93%**	65%	19%	131%	99%	102%	6%	23%
Non-Store Retail	**49%**	116%	478%	90%	63%	92%	198%	298%
Services:								
Arts, Entertainment & Recreation	**51%**	83%	60%	121%	72%	28%	72%	75%
Accommodation	**6%**	87%	91%	35%	58%	16%	3%	35%
Food Services	**96%**	78%	180%	155%	105%	78%	100%	117%
Other	**77%**	77%	164%	169%	83%	51%	28%	110%
Total	**88%**	**93%**	**144%**	**255%**	**225%**	**88%**	**66%**	**115%**

3a Copper Hills Marketplace CDA Participation Agreement

Final Audit Report 2022-02-15

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